

Lbecretary]

Procedure and Conduct of Business in the Lok Sabha, I am directed to enclose herewith a copy of the Code of Criminal Procedure (Amendment) Bill, 1954 as passed by the Lok Sabha at its sitting held on the 8th December 1954."

I lay the Bill on the Table.

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

The House reassembled after lunch at 2-30 P.M. (MR. DEPUTY CHAIRMAN in the Chair.

THE CONSTITUTION (FOURTH AMENDMENT) BILL, 1954—
continued

SHRI H. V. PATASKAR: Sir

SHRI S. BANERJEE: Is there a quorum, Mr. Deputy Chairman?

SHRI H. V. PATASKAR: Sir, as I was saying, the main argument of the protagonists of this proposal was that there is a provision to this effect in article 142 of the Soviet Constitution and that therefore this is a very wholesome provision which should be incorporated here in our Constitution. What I was trying to point out is that our Constitution is more or less based on and is what is known as Parliamentary democracy and that type of democracy is entirely different from the Soviet Constitution which admittedly, as I said, is nothing short of a proletarian dictatorship. We ourselves having laid down in the Constitution, we cannot adapt anything from a form of Government of that type and put something which is entirely different. Therefore so far as that argument is concerned that this right of recall because it exists in the Soviet Constitution, it is such a good thing, that it should also be drafted on to our Constitution is something which I cannot understand. I can understand that let us examine it from another point of view without in any way trying to deprecate the Parliamentary democracy or the dictatorship. That is a different matter because as I said every country

has its own Constitution, it has developed out of some historic circumstances and the whole criterion is whether that is really serving the purpose for which it is intended *i.e.*, the proper governance of that country. From that point of view I need not dilate on it. But merely because it finds a place in the Soviet Constitution, that is no justification for bringing it here. Then it was tried to be shown by the mover of the motion that there are other countries in the world which have no proletarian dictatorship and he pointed out that in many of them probably the right of recall exists. He said that in some of the States of America it is there but I will quote an authority from the Soviet State itself to show that that provision there is hardly at any time used and is not being found very useful and for that purpose, I will quote a short passage from Vyshinsky's book on The Law of the Soviet State and what he has got to say with respect to those States in U.S.A. or in Swiss Cantons where probably there is this right of recall. This is what he says:

"The practice of recalling deputies is encountered very rarely in certain cantons of Switzerland and in individual States of the U.S.A. An American political economist Bird, says that there are in California more than fifty different statutes concerning the recall of municipal officials, and more than forty statutes concerning the recall of officials of autonomies in the village localities. These laws are so complicated, so confused, that it is utterly impossible to use them and their broad application in practice is therefore not feasible. Data as to the recall of deputies in California show that the citizens of California

ies, having the right of recall, use it to fact about once in fifty years, during which they recall not more than one elected official. The electors of rural autonomous organizations use the right of recall still more rarely."

"Upon the evidence of the famous French political scientist, Hauriou,

the matter of recalling deputies stands no better in the Swiss cantons than in the U.S.A.: 'Swiss citizens have for a long time ceased to employ the right of recall.' Another expert of public law, Karl j Braunias, asserts that the right of recall has lost its significance in the Swiss cantons."

What I mean to point out is that even those that were responsible for the present Soviet Law were of the opinion that this right of recall might be working well so far as their Constitution was concerned but so far as its being embodied in certain other Constitutions in other countries is concerned, which are more or less Parliamentary democracies that is absolutely of no use. It is not actually being worked and in fact it has become a dead letter. That is from the authority of those leaders who have been responsible for the provision of recall in the Soviet Constitution. Therefore it comes to this. Are we going to introduce in our Constitution something which has been found not working in Parliamentary democracies, which they find is only a dead letter? Therefore, to my mind, on no grounds from the constitutional point of view, the right of recall in the Constitution of the type of which we have got, is desirable. Then apart from that, there is the other question. Will it really serve any proper purpose from the point of view of our Constitution? Sir, our Constitution lays down in article 81—because according to our Constitution the President and two Houses are to constitute what we know as the sovereign will of the people and what is it that is laid down in article 81? I will not read the others. It says:

"Subject to the provisions of clause (2) and of articles 82 and 331, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States.

fb) For the purpose of subclause (a), the States shall be divided etc."

So these 500 people are supposed to represent the interests of the whole of India, whether in this House or in the other House. I need not read the other provisions. Therefore, it is not as if a person who is elected either to this House or to the other House is representative when here of a particular State, when elected there, he represents only a particular constituency. That is taking a wrong view of the thing. The thing is for the purpose of convenience and for ascertaining as to how this number of 500 shall be comprised. So we say that there are those constituencies and they will be elected by those people for the purpose of looking at the affairs of the country as a whole. For the purpose of the States or for the purposes of other boards etc. we have other machinery. Therefore it is not as if a person, when he has been elected to the House of the People, is on the basis of a certain constituency and if a conflict comes between the interests of his constituency and the larger interests of the country, I am sure our Constitution says that it shall be his duty to serve the interests of the whole country. That is what he is charged with. Therefore if you give this right of recall,

what will be the state of affairs? Suppose in the constituency there are certain people of a certain majority who are against whatever is beneficial' from the point of view of the whole country. Are we to give them, consistently with the aim in which our Constitution is based, the right to recall that man only on that ground? Therefore I think this provision of "recall is not working in Parliamentary democracies satisfactorily because of the inherent nature as Vyshinsky himself admits that they are unsuited to Parliamentary democracy. They might be suited for the type of dictatorship which is there in Russia. Therefore it is not as if because something is there, that we should try to take it and put it in our Constitution. Another argument advanced is that this matter was very seriously considered and discussed in the Constituent Assembly. I don't know from

[Shri H. V. Pataskar.]

where certain Members remarked that it was not discussed. I found that in May 1949 this question was raised and discussed in the Constituent Assembly and also in the Committees which were appointed by the Constituent Assembly and ultimately they came to the conclusion after a great deal of debate that it was not suited to us and therefore they rejected it. The hon. Mr. Kamath had tried to introduce an amendment to the same effect which is contained in this Bill but that was defeated and we started the Provincial Government for 2 years from 1950. This is the first election under the Constitution in the year 1950-51 and I should like to know what has happened in between the decision taken there in 1949 and today that we should try to incorporate in it something which has not been found useful even in the Constitutions where it exists so long as they are Parliamentary democracies. I am not talking of the Soviet Republic. Therefore, let us consider this question most dispassionately and see what we are going to do and see whether that is consistent with the frame of our Constitution. The Constitution, after all, is something which should not be lightly changed. Laws are amended and laws are liable to be changed, though even in that case, it is not desirable to alter laws very often and without any sense of responsibility. But, so far as the question of amending the Constitution itself goes, the Constitution which is the thing that lays down the pattern of our laws and our government, when it is to be changed, the matter has to be very carefully looked at. And as I have been pointing out, a dispassionate consideration of this question shows us that it has not worked satisfactorily in any Parliamentary democracy in the world and therefore, I feel that this is hardly the sort of thing that we should try to do now and we should not at this time try to incorporate in our Constitution something which, though it might have been useful in some dictatorships, has not been found useful in i

any country having a Parliamentary democratic form of government. I do not think there is any reason to show that this change that is now proposed is necessary in our country.

Moreover, in our country we are trying to build up a new form of democracy. We are at present experimenting with it, so to say, trying to develop a new line of democracy. We were dependent till recently and only a few years back we framed a Constitution, as early as possible, compared to what has happened in some other country—I will not name it—and we are trying to build up a particular type of democracy. We cannot say that all people are completely satisfied. Of course, some may not be quite satisfied. But is that the reason why we should try to introduce at this stage something which may lead to other results? According to the basis of our Constitution, we have fixed a certain period during which a Member continues once he is elected. He does not remain there permanently, but only for that period. He may be re-elected, but that is another matter. And if he misbehaves during that period he will not be re-elected. Should he not be allowed to remain there for the remainder of that period? Even the supporters of the Bill before the House do not want the Member to be immediately turned out, for they provide for a period of one year during which the man could continue. But after all, this question of recalling a Member was discussed by the Constituent Assembly and the only way of recalling the man is to repeat the process by which he was elected. Suppose "A" is elected by a majority. If he has to be recalled, it must be done by the same process, may be by secret election, by secret ballot. That means the whole country will be seething for five years and there will be nothing but excitement all round and all other work will come to a standstill.

SHRI B. GUPTA: Have election.

SHRI H. V. PATASKAR: We know what happens at elections. We are,

for the first time building up our infant democracy in this country and you cannot administer to it doses which *older* people may bear but not infants, which our democracy may not be able to stand. Suppose a man is elected by a narrow margin and.....

SHRI B. GUPTA: We offer it milk.

SHRI H. V. PATASKAR: The only way of recalling the Member consistent with the pattern of our Constitution is by ascertaining the wish of the people by the same process. Otherwise, when the man gets elected by secret vote, how are you going to turn him out? Therefore, my submission is, if we really think over this question in a serious and dispassionate manner, we will come to the conclusion that this proposal does not suit the pattern of our Constitution, though it may be found useful in other countries.

DIWAN CHAMAN LALL (Punjab): May I know how really this motion interests this House? Some of us were elected by constituencies of 7 or 8 persons, or a maximum of about 33. Does the hon. Member mean that he is going to give the power to 7 or 8 or 33 people to recall a Member?

SHRI B. GUPTA: The hon. Member, I am afraid, was not in the House when I spoke.

SHRI H. V. PATASKAR: I think I will be able to satisfy my hon. friend. Take the House of the People where the state of things is slightly different from what obtains here. The Bill says that you can recall anybody, whether the Member be in this House or in the other. I do not, however, want to go over the same ground. We have seen that this proposal does not work well in other democracies. Where it has, I would be the last person to say whether it is good or bad for them, it is their own matter. All I want to point out to the mover of the Bill is that we must remember that it has only succeeded in the case of those countries where they have the proletarian democracy or a

sort of a dictatorship. But our Constitution is not of the proletarian type and in democracies of other type we have seen that it has failed according to the evidence of this Soviet author which I referred to. It is no good trying to make these experiments or trying to tamper with a thing which after a great deal of deliberation we have decided on and which lays down the pattern of the government for this country. We should not lightly interfere with the whole thing. As I have said, the amendment of the Constitution should be looked at not in the same manner in which we consider amending any ordinary law.

My learned friend the mover of the Bill probably wants to have the measure circulated for getting public opinion. But if we are to take public opinion on a matter like this, I do not know how many people will be able to understand the implications or what it all means.

SHRI S. MAHANTY: May I ask the hon. Minister.....

SHRI H. V. PATASKAR: I am not yielding.

SHRI S. MAHANTY: I only want to ask a simple question, and the hon. Minister, I think, will have to yield, if he is going to convince me. May I ask him whether it is his contention that all the Bills which are being circulated for eliciting public opinion serve no purpose?

DIWAN CHAMAN LALL: No, they don't.

SHRI H. V. PATASKAR: If I have not satisfied my hon. friend already, I don't know how I can. I have already said there is a great deal of distinction between the amendment of the Constitution and the changing or amending of a law. So far as ascertaining the public opinion is concerned, on a matter which changes the pattern of our democracy which has been laid down by our Constitution, at this stage we cannot do it and.....

SHRI S. MAHANTY: Why not?

SHRI H. V. PATASKAR: Because we cannot ignore the fact that in our country there is a large amount of illiteracy. We actually know what is happening. We are trying to establish a democracy, for the first time and to develop it. After some years it may be that some other aspects may come up. But what has happened between 1949 and 1954 that we should now go to the public and get it agitated? Already it is agitated over other matters and I do not from any point of view think that I can support this motion. Sir, I oppose it.

SHRI S. BANERJEE: Mr. Deputy Chairman, I have heard with interest and attention, but without any profit, the speeches from the side of the Government and I am grateful to Mr. Mahanty and Mr. Dwivedy for the support that they have given to my Bill. I need not mention the name of Shri Bhupesh Gupta because he belongs to the same group here in the Parliament as myself? First of all, let me refer to the remarks of Shri Pataskar, the hon. Minister in charge on behalf of the Government.

He said that democracy is a much abused word. Yes, it is so. There is a bourgeois democracy which is another term for Parliamentary democracy. There is proletarian democracy and there is a new democracy which is being practised in the Peoples' Republic of China and there has come on the scene very recently "controlled democracy", a la Iskander Mirza, Home Minister of Pakistan. My amendment belongs to that category which I call pure and simple democracy.

SHRI B. K. P. SINHA: What is that?

SHRI S. BANERJEE: If I have elected one to represent me in Parliament or in a State Legislature, I have inherent right to recall him when "I find that he does not represent me at all

DIWAN CHAMAN LALL: You have elected him for five years.

SHRI S. BANERJEE: That is the whole point. I want to remove him, if he does not behave properly during these five years.

SHRI B. K. P. SINHA: Who conferred the inherent right?

MR. DEPUTY CHAIRMAN: Pure and simple democracy of Satyapriya Banerjee.

SHRI S. N. MAZUMDAR: Who conferred the inherent right to be represented?

SHRI S. BANERJEE: As I was saying, my reference to the Soviet Union and the other Peoples' Democracies has been like a red rag to them. I have referred to those States because they are the most progressive States of the world today and if you want to be progressive I do not want that you should imitate them or copy them as you have copied from the Government of India Act, 1935 but you should emulate them and apply them to Indian conditions and I have no doubt such an application is not only desirable but necessary. He has quoted the late Vyshinsky, who died only the other day, saying that proletarian dictatorship prevails in Soviet Russia. Yes, it did but not now. Proletarian dictatorship is a term in Marxists' ideology; it is a Marxist terminology. What does it mean? When he has imported this word into this discussion, I must explain what proletarian dictatorship means. Proletarian dictatorship is the counter-part of bourgeois dictatorship which exists in India today, which existed in Russia in 1917 and is transitional and not perpetual.

SHRI T. S. PATTABIRAMAN (Madras): That is a negative definition.

SHRI S. BANERJEE: If we have to supplant that bourgeois democracy which is in other words nothing else than the bourgeois dictatorship, we have got to do it by its counterpart, proletarian democracy which is proletarian dictatorship. There is now in Soviet Russia, perfect real democracy because there are no classes there: there is only one class and that is the class of the working people

which every man has the same right to grow to his full stature and has actually grown.

SHRI J. S. BISHT (Uttar Pradesh): Physically?

SHRI S. BANERJEE: Mentally, spiritually and physically.

SHRI GALIB (Andhra): Is there - spirituality there?

SHRI S. BANERJEE: Not the spirituality that you understand but there is spirituality there.

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRI H. C. DASAPPA (Mysore): Lot of spirituousness.

SHRI S. N. MAZUMDAR: The spirituality of blackmarketeers is different.

SHRI S. BANERJEE: Therefore, there is real democracy there. Every man has the right to grow to his full stature, every man, woman and child. Have we that sort of democracy here? Has the child of a working man the opportunities to rise to his or her full stature?

SHRI J. S. BISHT: Oh, yes.

SHRI S. BANERJEE: Mr. Bisht is saying 'yes' and I think in his vocabulary 'yes' means 'no'. Sir, Shri Pataskar quoted Vyshinsky in his support. What was that? The countries that I named, some States of the United States and some Cantons of Switzerland have the right to recall but he bases his whole argument upon the late Vyshinsky who was one of the most important leaders of the Soviet Union and who has stated that the right of recall was very seldom used there. Yes, it is true in those States of U.S.A. and in Cantons of Switzerland the right of recall was seldom exercised and that is exactly my case. You incorporate this innocuous, harmless article in the Constitution if you know that it will not

come into use, what objection is there to incorporate this amendment in the Constitution?

DIWAN CHAMAN LALL: It would be redundant.

SHRI S. BANERJEE: Even if there is only one case of recall, then it will not be redundant. There is no sense in denying the right of recall. Sir, my esteemed friend from Bihar, Shri Sinha.....

SHRI M. P. N. SINHA (Bihar): "Shri Sinha"?

SHRI S. BANERJEE: Shri B. K. P. Sinha, over there sitting with the Gandhi cap on.

SHRI H. P. SAKSENA: Yours has flown away.

SHRI S. BANERJEE: I wore Gandhi cap so long as it was not the badge of blackmarketeers.

He said that my placing of the amendment is not quite fitting with the Constitution, that it ought to have been placed somewhere else. I do not quarrel with him there. Put it anywhere in the Constitution, anywhere you like. But put you must. If only putting an amendment in a certain chapter and not in another is my offence, you please correct me and I will support you and I do not think you will have the courage to support me when that is done. He said also many things; he said something about dialectical materialism. I do not think I will be in order to speak at great length on dialectics. That will take hours together. I will only say that he has not understood the word, neither dialectics nor materialism, not to speak of dialectical materialism. He said that the people in Soviet Russia and in other People's Democracies are human automatons, they make everything to order. Yes, when they construct things they make everything to plan but they are not automatons; automatons cannot achieve the results which have been achieved in Soviet Russia and Peoples' China. Automatons cannot produce things

[Shri S. Banerjee.] which have been produced there and are being produced even now there. They are men with minds, with creativeness and with zeal to remove the wants of working people of the country. They are not automatons. Automatons, if there are any, with regret I have to point out to the Members of the Congress benches who like automatons react to the whips of the Government.

SHRI B. K. P. SINHA: Mr. Deputy Chairman, I may point out one small thing to my hon. friend that automatons now are solving very complex mathematical problems.

SHRI S. BANERJEE: And he said also very many interesting things. He said that men are not for Constitution but that the Constitution is for men and also Government is for men and not men for Government. Yes, I agree with him there, not men for theories but theories for men and precisely because of this I want to incorporate the right of recall in the Constitution.

I now come next to my revered sister, Dr. Seeta Parmanand.

SHRI B. K. P. SINHA: Just one more clarification, Sir. I want to know from the hon. Member what machinery has been prescribed in other countries.

SHRI S. MAHANTY: That will be provided by law.

MR. DEPUTY CHAIRMAN: It is a matter for law; it is for law to provide. Yes, yes. deal with Dr. Parmanand.

SHRI S. BANERJEE: I deal with Dr. Parmanand.

About machinery, as you say, it is a matter of detail and that would be provided for in a law.

MR. DEPUTY CHAIRMAN: If this Bill is accepted.

SHRI S. BANERJEE: I hope that this innocuous Bill will be accepted— this is a motion for circulation—although Mr. Pataskar has opposed it very vehemently. Dr. Seeta Parmanand also has spoken in the same strain as Dr. Pataskar.

SHRI B. K. P. SINHA: He is not a Doctor.

SHRI S. BANERJEE: I beg pardon, I stand corrected. He said.....

SHRI B. GUPTA: Between them, they have spoken in vain.

SHRI S. BANERJEE: I expected something else from my sister Seeta — Parmanand because she had a change only recently. But I am sorry to have to say that that change has not done her any good. She has got to unlearn

DR. SHRIMATI SEETA PARMANAND: I have seen a number of good things in China but that does not mean that we should spend money in this way in doing what you demand.

SHRI S. BANERJEE: This is one of the best things, this right of recall in China. What I was going to say was that she has got to unlearn many things before she learns something new. She also said "democratic dictatorship" or "dictatorial democracy". My friend Mr. Bhupesh Gupta gave a fitting reply to it, yes, the form of Government that prevails in China is People's Democratic Dictatorship, dictatorship with regard to those who are enemies of the country and democracy with regard to the people. Crushing the opponents is certainly an article of faith there.

DIWAN CHAMAN LALL: So there is the example as far as opposition is concerned.

SHRI S. BANERJEE: I did not say "opposition".

SHRI B. GUPTA: Opponents of the country and its welfare.

SHRI S. BANERJEE: That is purely a thing which any country which wants to proceed on the path of progress ought to do. Because it is not done, article 31 stands. Because that is not done this amendment is not going to be accepted. Therefore, Sir, I would ask my revered sister to forget for the time being what did not please her in China and to support this amendment which is one of the finest things in the Constitution of the New Republic of China.

Mr. Deputy Chairman, I know what the fate of my Bill will be. I know also I am perhaps casting pearls before the sublimest of God's creation. I know also that people outside.....

SHRI T. S. PATTABIRAMAN: Outside the country?

SHRI S. BANERJEE: The precincts of the Chamber will watch the proceedings of today. People outside will carefully scan and scrutinise the attitude of the Government and when the next election comes and if this becomes a plank in the platform of election, I have no doubt the overwhelming majority of the people will support my amendment. I would wish that at the next general elections the whole Constitution be put before the electorate, let the whole Constitution be put before them and let the people sanction this Constitution.

SHRI GOVINDA REDDY (Mysore): People know much better.

SHRI S. BANERJEE: They would have thrown out the Constitution. It was never placed before them. The people did not sanction the Constitution at all. Shri Pataskar referred to the history of the Constituent Assembly. When I recall to mind the circumstances in which the Constituent Assembly was convoked by Lord Wavell, the then Viceroy, I hang my head in shame. When I recall to mind that the Members of the Constituent Assembly did not represent the majority of the people of the country I think they had no right to foist this on the people of India. The Members

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of the Constituent Assembly naturally did not put the whole Constitution before the people of the country. If it were done so, in that case the Constitution would have been rejected in its present form. The Constitution that has been framed is there; we abide by that Constitution, but that is not the people's Constitution. I say that here and now; the Constitution that has been framed is not the people's Constitution and the Constituent Assembly that framed it was not the people's Constituent Assembly. Let a fresh Constituent Assembly upon the basis of adult universal suffrage be elected and a new Constitution be framed. I am sure in that Constitution the right of recall would be there.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Constitution of India be circulated for the purpose of eliciting opinion thereon by the 31st May 1955."

(After a count) Ayes—11; Noes—40. The motion was negatived.

MR. DEPUTY CHAIRMAN: Next Bill. Mr. Rajagopal Naidu.

SHRI RAJAGOPAL NAIDU (Madras): Sir, I requested for postponement of this Bill.

MR. DEPUTY CHAIRMAN: Yes, yes it has been postponed.

**THE ANCIENT AND HISTORICAL
MONUMENTS AND ARCHAEOLO
GICAL SITES AND REMAINS
(DECLARATION OF NATIONAL
IMPORTANCE) SECOND
AMENDMENT BILL, 1954.**

DR. RAGHUBIR SIN[^]H (Madhya Bharat): Mr. Deputy Chairman, I beg to move:

"That the Bill further to amend the Ancient and Historical Monuments and Archaeological Sites and Remains (Declaration of National Importance) Act, 1951, be taken into consideration."