Sixth Series, Vol. XVII No. 25

Monday, August 21, 1978
Sravana 30, 1900 (Saka)

Lok Sabha Debates

(Fifth Session)

सत्यमेव जयते

(Vol. XVII, contains Nos. 21-30)

LOK SABHA SECRETARIAT

New Delhi

Price- Rs 4.00

CONTENTS

No. 25 Monday, August 21, 1978/Sravana 30, 1900 (Saka)

LOK SABHA

Monday, August 21, 1978/Sravana 30, 1900 (Saka)

The Lok Sabha met at Eleven of the Clock

[MR. SPEAKER *in the Chair*]

RE. MOTIONS FOR ADJOURNMENT, CALLING ATTENTION, ETC.

MR. SPEAKER: Now the House will take up the 45th Constitutional Amendment Bill.....

(*Interruptions*)**

MR. SPEAKER: I have received a large number of Adjournment Motions. I am going through them. I will let you know my decision tommorrow morning.

(*Interruption.*)**

I am considering all of them.

(*Interruptions*)**

MR. SPEAKER: I will enquire from the Minister about the bonus and let you know.

(*Interruptions*)**

SHRI SAUGATA ROY (Barrackpore): Sir, the Minister is there. You can ask him to make a statement.

श्री राम बिलास पासवान (हाजीपुर): अध्यक्ष महोदय बिहार में जमशेदपुर में 6 आदिवासियों को ठेकेदार के गुंडों द्वारा स्वर्णरेखा नदी में फैंक दिया गया है। यह बहुत गम्भीर मामला है। ..... (व्यवधान)

MR. SPEAKER: I have received a number of Calling Attention Notices. I will give you an opportunity either tomorrow or day after.

SHRI SAUGATA ROY: Apart from adjournment motion, whether my notice under rule 377, my Calling Attention and my Short Notice Question have been consisidered?

(*Interruptions*)**

MR. SPEAKER: I have told all of you that the matter is under consideration. (*Interruptions*) I have told every one of you that the matter is under consideration. Is it the idea to obstruct the regular business?

(*Interruptions*)**

MR. SPEAKER: Even after I mentioned to you that the matter is under my consideration, you are still at it.

I allowed you for more than ten minutes. Let us go to the business.

(*Interruptions*)

SHRI JYOTIRMOY BOSU (Diamond Harbour): About bonus, we want the Government to make a statement. (*Interruptions*)

MR. SPEAKER: You have mentioned it hundred times. What is the point in it?

(*Interruptions*)

MR. SPEAKER: Mr. Bagri is raising a point of order. Let us go according to some order.

श्री मनीराम बागड़ी (मथुरा): अध्यक्ष महोदय मेरा पांयट आफ़ आर्डर है। जो आदमी पार्लियामेंट का मेम्बर नहीं है जो इस सदन का सदस्य नहीं है उसकी चर्चा यहां पर नहीं होनी चाहिए। श्री चन्द्रभान गुप्त इस सदन के सदस्य नहीं हैं। उनकी चर्चा यहां पर नहीं होनी चाहिये।

MR. SPEAKER: That is not the point of order.

(*Interruptions*)

MR. SPEAKER: What is your point of order, Mr. Mavalankar?

PROF. P. G. MAVALANKAR (Gandhinagar): I am rising on a point of order.

In the Bulletin Part II, dated August 18, the Secretariat, presumably, under your direction, has drawn the attention of the Members to the entire procedure under Rule 376....(*Interruptions*)**

**Not recorded.

श्री धनीराम बागड़ी : जो व्यक्ति यहां पर न हो क्या आप उस पर चर्चा करने का अधिकार देंगे ? श्री चन्द्रभान गुप्त इस सदन में जवाब नहीं दे सकते हैं। श्री चन्द्रभान गुप्त पर जो आरोप लगे हैं .. (व्यवधान) हम दस करोड़ चंदा करें इस से आप को क्या मतलब है ?

MR. SPEAKER: This is not a point of order.

What is your point of order, Mr. Mavalankar?

PROF. P. G. MAVALANKAR: I am inviting your attention to the Bulletin Part II, dated August 18, Item No. 976 in which presumably under your direction the rule for point of order has been printed. Some time back also you had given direction about the fact that there is no zero hour and that if members want to raise the points, they must see you in your chamber, take your consent and raise something here.

MR. SPEAKER: What is the point of order?

PROF. P. G. MAVALANKAR: Today from 11 to 11.17 so many things have been....

MR. SPEAKER: There is no point of order.

PROF. P. G. MAVALANKAR: I am not speaking on any of the subjects. I am seeking your guidance under Rule 376 and Rules 380 and 381. Rules 380 and 381 are about expunction. I want to know as to what happened today. So many members have been speaking simultaneously. Only parts of it were being recorded. Others were not being recorded. What happens is this—what you say is being recorded, what we say is not being recorded. My point is, often I see, you say—'do not record, do not record.' That is correct, according to you. When you say something in response to something which is not recorded, that is recorded. How are we to know, sitting in this House? I am sorry, I have not understood a word of it what was being demanded for the last fifteen minutes. Apart from that, how are the press going to report what is going on in this House? If you say, something is off the record, they will not be allowed to report that. But if it is on record, then they should be able to report. So, you kindly tell us what has gone on record so that the press people may know that much.

*(Interruption)***

MR. SPEAKER: Do not record anything. This is not a point of order.

11.42 hrs.

CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL—*Contd.*

Clause 33—(*Omission of article 257A*)

MR. SPEAKER: Before we take up further clause by clause consideration of the Constitution (Forty-Fifth Amendment) Bill, I have to inform the House that voting on clauses and amendments moved thereto will start at 3 p.m. today.

We may now take up consideration of clause 33 of the Bill.

SHRI SHAMBHU NATH CHATURVEDI (Agra): I beg to move—

Page 8,—

for clause 33, *substitute*—

"33. In article 257A of the Constitution, after sub-clause (1), the following proviso shall be inserted, namely :—

Provided that the State Government shall be kept informed of such deployment." (183)

Prior to the amendment, the practice was that the Centre could send forces to states even without their consent. After the inclusion of this clause for withdrawal of this Article, it completely gives a different interpretation. That is why, I say that 'provided that the State Government shall be kept informed of such deployment.' By including this clause, I say that a different situation has been created because this provision was included in the constitution and now, it has been withdrawn. It would not restore *status quo* and it would give a different interpretation. That is why, my amendment should be accepted.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): It is not possible to accept this amendment because it is not right that, when the law and order is a State subject, the Centre should have any power to deploy armed forces in the States without the consent of the State. So, I am not in a position to accept this amendment for deleting this clause even with any condition at all.

**Not recorded.

Clause 34—(*Insertion of new Chapter IV in part XII*)

SHRI SAUGATA ROY (Barrackpore): Sir, I beg to move:

"Page 8,—

after line 24, *insert*—

"300B. Notwithstanding anything contained in article 300A, if any property is compulsorily acquired or requisitioned for an amount fixed by law or which may be determined in accordance with such principles and given in such manner as may be prescribed in such law; no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash or that such law is void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14." (226)

SHRI KANWAR LAL GUPTA (Delhi Sadar): Sir, I beg to move:

"Page 8,—

for lines 23 and 24, *substitute*—

"300A. No person shall be deprived of his property as provided in article 19(1)(f)." (241)

SHRI HARI VISHNU KAMATH (Hoshangabad): Sir, I beg to move:

"Page 8, lines 23 and 24,—

for "save by authority of law" *substitute*—

"except according to procedure established by law." (284)

"Page 8, lines 23 and 24,—

for "save by authority of law" *substitute*—

"save by due process of law" (285)

SHRI SUSHIL KUMAR DHARA (Tamluk): Sir, I beg to move:

"Page 8,—

after line 24, *insert*—

"300B. Ceiling on Urban property shall be fixed in parity with the valuation of the ceiling on rural property." (317)

SHRI RAGHAVJI (Vidisha): Sir, I beg to move:

"Page 8,—

after line 24, *insert*—

'300B. Property of any person shall not be acquired for any purpose other than the public cause.' (398)

PROF. P. G. MAVALANKAR (Gandhinagar): Sir, I beg to move:

"Page 8, lines 23 and 24,—

for "save by authority of law" *substitute*—

"except by due process of law" (410)

"Page 8, line 24,—

add at the end—

"and save for public purpose and social good." (411)

MR. SPEAKER: Now, let us come to Mr. Kanwarlal Gupta's amendment. Let us be as brief as possible because a large number of amendments have to be dealt with.

SHRI KANWAR LAL GUPTA (Delhi Sadar): My amendment is:

for lines 23 and 24, *substitute*—

"300A. No person shall be deprived of his property as provided in article 19(1)(f)".

(*Interruptions*)

अध्यक्ष महोदय, क्लाज 19(1) (एफ) का जहां तक सोशियो एकोनामिक कंडीशन का सम्बन्ध है, जहां तक गरीब लोगों की सहायता का सवाल है मैं सरकार से सहमत हू कि उन के लिए जो कुछ हो सकता है वह किया जाना चाहिए। अभी भी उस के लिए प्रावधान है उसको और भी ज्यादा कर सकते हैं। आपने इस में सात फ्रीडमस कही हैं जिस में राइट आफ मूवमेंट है, राइट आफ स्पीच है, राइट आफ थाट है, राइट टू पर्चेज एण्ड एक्वायर प्रापर्टी है। इस में सात के बजाय जो 6 हमारे राइटस हैं इस में से राइट टू एक्वायर एण्ड पर्चेज प्रापर्टी हटा देंगे तो उसका परिणाम क्या होगा ? परिणाम यह होगा कि बाकी भी जो 6 हैं वह इस से इंटर-लिंकड हैं। उस दिन भी मैं ने कहा था राइट आफ मुवमेन्ट है freedom to move in any part of the country. अगर मेरी सारी की सारी प्रापर्टी ले ली जाती है I cannot move without money. So, how can I move?

[Shri Kanwar Lal Gupta]

तो वह जो राइट है, राइट आफ मूवमेन्ट वह भी बेकार हो जायेगा और उस का कोई मतलब नहीं रहेगा ।

Mr. Shanti Bhushan was a lawyer. He has got a good library.

SHRI JYOTIRMOY BOSU (Diamond Harbour): He is still a lawyer.

SHRI KANWAR LAL GUPTA: Yes, he is still a lawyer. He has a good library. There is a right of thought and expression and suppose his library is taken away from him. Because library is a part of property, if it is taken out, can he express freely? Can he think freely?

फिर फ्रीडम आफ थाट और फ्रीडम आफ स्पीच दोनों ही नहीं रहेंगी। इसलिए मेरा कहना है—यह मामला पार्टी में भी आया था—कि आप ने माइनारिटीज के लिए एक बात कही कि उनके एजूकेशनल इंस्टीट्यूशन्स को आप लेंगे तो पूरा कम्पन्सेशन देंगे, मुझे उसमें कोई एतराज नहीं है, मैं उसको और बढ़ाना चाहता हूं कि माइनारिटीज या मेजोरिटी किसी के एजूकेशनल इंस्टीट्यूशन आप लेंगे या कोई और वेलफेयर की चीजें हैं जैसे सोशल और कल्चरल इंस्टीट्यूशंस उन को भी अगर गवर्नमेंट ले तो पूरा कम्पेंसेशन दिया जाना चाहिए। यह अगर आप रखते हैं तब बाकी के लिए आप क्या कम्पेंसेशन दे रहे हैं उस से मुझे कोई इन्ट्रेस्ट नहीं है । इमर्जेन्सी के दिनों में दो लाख फेमिलीज को उजाड़ कर दिल्ली में बीस पच्चीस मील परे फेंक दिया गया । उन को कोई कम्पेन्सेशन नहीं दिया ।

Are you going to think that only Tatas, Birlas and Dalmias want to get compenation? No, it is the poor people who will suffer.

इस लिए मेरा कहना है कि जो गरीब हैं—

If you keep this clause 19 (1) (f) this is inter-dependant.

अगर और राइट्स आप ने रखने हैं तो इसको भी रखिये। अगर इस को नहीं रखेंगे तो आप के दूसरे राइट्स भी पूरी तरह से कायम नहीं होंगे । आप कम्पेन्सेशन की क्लाज को लिबरल कीजिये । मैं जानता हू कोई भी गवनमेंट गरीबों के लिये कुछ करना चाहती है तो पूरा कम्पेन्सेशन नहीं दे सकती है । इस लिये उसको आप कीजिये, लेकिन ऐसा न हो कि इस के जरिये गरीबों पर मार हो, गरीब दब जाय—ऐसा नहीं होना चाहिये । मैं चाहता हूं कि इस पर विचार किया जाय ।

MR. SPEAKER: Mr Kamath.

SHRI HARI VISHNU KAMATH (Hoshangabad): Mr. Speaker, Sir, I have moved two amendments standing in my name-amendment nos. 284 and 285. They are alternative amendments. If amendment no. 284 is not accepted, then I will move to amendment no. 285. I am moving both, and I have leave the alternative to the decision of the House.

I would like to urge briefly that by moving this amendment I wanted to bring the clause in line with the language and the wording of article 21. Article 21 which is a key-article for this Amendment Bill, reads as follows :

—You are very well conversant with that—it reads :

"No person shall be deprived of his life or personal liberty except according to procedure established by law."

I want to adopt the same wording...

MR. SPEAKER: No, no. You have said "due process of law."

SHRI HARI VISHNU KAMATH: No, Sir. My first amendment, viz., amendment no. 284 is to substitute "except according to procedure established by law."

MR. SPEAKER: That is true.

SHRI HARI VISHNU KAMATH: If that is not acceptable, then am endment no. 285 takes its place. There was in the Constituent Assembly, at times a very acrimonious discussion on the interpretation and the construction and ha

clarification of these two phrases—"procedure established by law" and "due process of law". These are very well known to you, more known to you than to me, and so I need not dilate upon that. But ultimately the Constituent Assembly accepted and adopted the phrase "procedure established by law" for Article 21, and finally rejected the phrase "due process of law." I believe in the United States Constitution, the phrase used is "due process of law" which has got its own significance and its own connotation. I would have preferred that but for the fact that in the Constitution itself in Article 21, we have adopted the phrase "procedure established by law" and I would like the same language and the same phrase to be adopted for this new clause which we are seeking to insert in the Bill, and thereby in the Constitution. Therefore, it will read as follows :

"No person shall be deprived of his property except according to procedure established by law".

If that is not acceptable to the Minister and to the House, then I hope the House will accept even better phrasing, "that is, due process of law". I commend both for the consideration of the House.

MR. SPEAKER: Mr. Dhara.

SHRI SAUGATA ROY: I have given an amendment.

MR. SPEAKER: You can get later only. You were not there when your name was called.

SHRI SAUGATA ROY : Just one point I want to mention. This amendment has been shown in the name of a wrong person. Actually, Dr. Seyid Muhammad's name was there. But the Lok Sabha Secretariat has mistakenly put somebody else's name. That is why I was not here to present it. I thought Dr. Seyid Muhammad will move this amendment, but the correction has not been made.

Sir, I may be allowed to speak on this, even if the amendment has not been moved.

MR. SPEAKER: Yes. Shri Sushil Kumar Dhara.

SHRI SUSHIL KUMAR DHARA (Tamluk) My Amendment is 317 to Clause 34 wherein the right to property is a fundamental right. Now we find so many things. From the background note published by the Lok Sabha Secretariat (Research and Information Section) we find that there are so many changes in the preamble and in as many as 36 Articles, fourteen new Article, namely 31(B), 36(B), 39(A), 226(A) etc. have been inserted, and they have substituted four Article—Articles 103, 150, 192 and 226—and even the august terminology 'sovereign democratic republic' has been replaced by the words 'social, secular, democratic republic'

I must convey my gratitude to the eminent Law Minister that he has made the necessary changes in this clause, but I am sorry to have to move this amendment and to be compelled to use the harsh words that he has not mentioned a single word regarding the urban property ceiling. For urban property, a ceiling is there in regard to open land in the urban area but while, in the rural areas, the ceiling has been reduced twice and it has been brought down to a small size, in the urban areas there is no ceiling on property of the value of lakhs and crores of rupees. There are so many persons living in the urban areas who have this sort of property. There must be some ceiling in parity with the rural ceiling. Of course, you know that in urban areas on a 'Katha' of land a multistoreyed building can be erected which will cost lakhs of rupees—at least ten to twelve lakh—and even a 'Bigha of land' in the urban areas would be worth about Rs. 4,000 to Rs. 5,000. So, this parity should be maintained, otherwise it will be a mockery, I can say.

When this Constitutional Amendment was made by the previous regime, at that time even Members on that side like the Congress Member Nimbalkar expressed, with anguish and in a choked voice, but in very nice words, regarding the power of the Rashtrapati being cut to pieces, that by this method the Rashtrapati will be turned into an expensive rubber stamp. Even in a national seminar held in this capital, Shri Choudhury Charan Singh remarked that the people will have their duties but the Government will have none. In the same tune, I can say that the rural people will have to forgo or give up their rights like the right to property in many ways, but the urban people will have to give up little.

So, I would request the Law Minister, through you, to make the necessary amendment to this clause as suggested by me—

"300B. Ceiling on urban property shall be fixed in parity with the valuation of the ceiling on rural property".

श्री राघव जी (विदिशा): अध्यक्ष महोदय, प्रापर्टी का अधिकार मूल अधिकारों से हटाने का मैं स्वागत करता हूं लेकिन इस के लिये कुछ सेफगार्ड अवश्य होना चाहिए। कोई भी सम्पत्ति सार्वजनिक कार्यों के

[श्री राघव जी]

अतिरिक्त किसी अन्य कार्य के लिये अधिगृहीत नहीं होनी चाहिए। यदि कोई अपनी सम्पत्ति के द्वारा मजदूरों का शोषण कर रहा है अथवा कोई सम्पत्ति सड़क बनाने, नहर बनाने, विद्यालय बनाने के लिये या ऐसे किसी अन्य कार्य के लिए चाहिए तो उस सम्पत्ति का अधिग्रहण अवश्य होना चाहिए। लेकिन व्यक्तिगत विद्वेष या राजनीतिक विद्वेष से जो सम्पत्ति अधिगृहीत की जाती है ऐसे कारणों से सम्पत्ति का अधिग्रहण करने का अधिकार संविधान में नहीं होना चाहिए।

साथ ही साथ जो सम्पत्ति लोगों के पास एक लाख रुपये से कम मूल्य की है उस सम्पत्ति का अधिग्रहण बिना क्षतिपूर्ति के नहीं होना चाहिए क्योंकि इस तरह से तो गरीब आदमियों के खाने-पीने के बर्तन, कपड़े, झोंपड़ी आदि भी अधिगृहीत कर ली जायेंगी। अगर किसी गरीब आदमी की पांच एकड़ जमीन बिना मुआवजा दिये अधिगृहीत की जाती है तो उस को बहुत उचित नहीं कहा जायेगा।

इसके साथ साथ इस में इस बात का भी सेफगार्ड होना चाहिए कि जिस सम्पत्ति का उपयोग सार्वजनिक कार्यों में हो रहा है अर्थात किसी विद्यालय, मंदिर या धर्मशाला की सम्पत्ति है यदि उस का अधिग्रहण किया जाता है तो उस सम्पत्ति की क्षतिपूर्ति अवश्य की जानी चाहिये अन्यथा भविष्य में कोई भी व्यक्ति अपना धन सार्वजनिक कार्यों में लगाने से हिचकेगा।

PROF. P. G. MAVALANKAR (Gandhinagar): I have moved the following amendments:

Page 8, lines 23 and 24,—

for "save by authority of law" *substitute*—

"except by due process of law"

Page 8, line 24,—

add at the end—

"and save for public purpose and social good".

Mr. Speaker, Sir, I want to move both my Amendments Nos. 410 and 411 to Clause 34--regarding Right to Property. I do conceive that in the Indian context, the Right to Property has to be viewed in a special manner and that there has to be a political emphasis on the Right to Property. Therefore, if you take it away from the Fundamental Rights Chapter, perhaps it may be right politically. But the Law Minister has said that it has not still ceased to be a legal or a constitutional right. If the law Minister's statement is to be accepted, then I am not sure what he says is what he meant by the Amendment that he has brought under Clause 34. what he says is this:

"Chapter IV—Right to Property.

300A. No person shall be deprived of his property save by authority of law."

But what does it mean? It does not mean what the Law Minister assured this House. He told last time before the Clause by Clause discussion started that although it is taken away from the Fundamental Rights, it is no less than a legal and Constitutional right and in the Notes on the Clause, he mentions like this:

"The object of the amendments proposed in these provisions is to take away the right to property from the category of fundamental rights and make the same a right which can be regulated by ordinary law."

Then he says:

"Clause 34 seeks to insert a new article 300A in Part XII of the Constiution to provide that no person shall be deprived of his property save by authority of law."

But where does this guarantee come that it will not be taken away without some compensation? Mr. F. S. Nariman, one of the leading advocates of our country, has invited the attention of the country to two very important aspect, of this matter. One is his objection regrading the right of a worker who claims a bonus and I will read out the relevant paragraph of what he says. He says:

"The right of a worker to claim bonus against the Life Insurance Corporation under the Industrial Disputes

Act 1947 has (recently) been held to be a right to property entitled to protection under Article 19:"

"it could not be taken away by legislation." Now this is the first objection. If the right to property is taken away, where do the workers go?

The second objection is this. He has given it very interestingly. I am again quoting him. He says :

"I am also apprehensive that the deliberate deletion of Article 19(i)(f) might provide in impetus to some States to adopt legislation making residence in the State a necessary qualification for acquiring property; once this starts it will snowball (with reciprocal measures adopted by the other States) and India will be a foreign country to its own inhabitants—the very fear expressed by the brave Justice Khanna in striking down the leter part of Article 31C."

It is no use the Law Minister merely telling us that nobody should be deprived of the property except by authority o flaw. That is too vague and too general. He must come out with a specific additional guarantee enshrined in a particular amendment of the clause. That is why I am mentioning in my amendments two things. One is that instead of "save by authority of law", I say "except by due process of law". Why do I say this? You (Mr. Speaker) had been a judge for a long time. Therefore, it will be carrying coal to New Castle when I am addressing you to say this. But I must say that if you have a phrase called due process of law, even with regard to state legislation either by the Union Government or by the State Government on the Right to Property, the due process will inevitable come into the picture. In other words, the Right to Property will always be subject to judicial review. The American example is not an example which can be quoted as an adverse illustration; it can be quoted as an illustration in point that in the American Supreme Court this phrase of due process has been so used only to enable the citizens to enjoy more rights rather than getting them restricted. Therefore, the whole purpose of having this "due process of law" is to ensure always and permanently that the judicial review will be available. The moment you say, no due process of law but only authority of law, that means you are giving the whole thing to the Government of the day, whoever or whichever party or complexion they belong to. That is a great danger. Therefore, my amendment is that it must be "due proces of law".

Finally, my other amendment is: "and save for public purpose and social good". I hope the House will notice it. In other words, any law which has been passed by either a State Government or by the Union Government, will have to elaborate specifically and concretely the specific public purpose and social good involved. If it is not done, then merely because the State has power to make a law, it will not happen. Otherwise, the law as it stands today will mean that the State can take away property without any compensation whatsoever. There will be no right. Then, what is the difference between the thief and a robber on the one side and Mr. Shanti Bhushan on the other? I know that he is neither a thief nor a robber. But I do not want him to be a robber or a thief by saying: I am doing it by a process of law and by authority of law. Do not do it. I am all for the right to property being taken away from fundamental rights because of political compulsions of the Indian situation. I do not dispute on that point. But I do not want this right to become so flexible that it becomes loose, and that compensation is not available and that the Right to Property is gone. I do not want to take much time of the House by going into more details.

In the library, from the references, I find that practically all countries of the developing and developed world have got this right to property guaranteed. Only those countries which are communist countries have taken away the right to property from the fundamental rights. (*Interruptions*)

SHRI KANWAR LAL GUPTA: *Rest...*

(*Interruptions*)

MR. SPEAKER: No, no...

(*Interruptions*)

PROF. P. G. MAVALANKAR: The rights to property in Russia, in China, in Czechoslovakia and in German Democratic Republic are taken away: they are not part of the fundamental rights, as far as my reading goes. I am open to correction. My point is that even in the developing, small countries like Burma, Ethiopia, Gabon, Japan, Lebanon, Malaysia and so on, they have not taken away this right to property. Now, Sir, in India, unfortunately, more than 70 per cent people live below the poverty line; and unfortunately poverty is increasing rather than decreasing. This is a great shame on all of us. Therefore, I can understand it in the compelling political context. But the Law Minister must come out with the amendment and explain how it is not going to adversely

[Prof. P. G. Mavlankar]

affect the citizens' interests and he must allay then fears which I have mentioned in my speech. That is why in order to allay these fears and apprehensions I have come forward with these two amendments. I hope he will be good enough to accept them.

MR. SPEAKER: Mr. Saugata Roy, do you want to say something? You are not correct in saying that we issued the corrigendum.

SHRI SAUGATA ROY (Barrackpore): I have seen the corrigendum. This is with regard to my amendment no. 26 to Clause 34. In Clause 34, a new thing is being added regarding right to property —no person shall be deprived of his property "save by authority of law". This is an attempt to take away the right to property from the fundamental rights into a legal and constitutional right.

(*Interruptions*)

Not a fundamental right but a legal right. On the face of it, it seems to me that it is a very bold venture in the sense that it takes away the fundamental right to property; and it will be serving a death knell to the property clause. But, if looked at it from another angle it may be an indirect help to the propertied class. I will explain why I say so. You remember in the Bank Nationalisation case the Supreme Court had decreed that in the case of taking over of property, compensation had to be given and compensation had to be given at the market price. With regard to that we later changed the Constitution—replaced the word 'compensation' by the word 'Amount'. As the Constitution stands to-day if the State takes over any property, it need not give compensation at the market value, it has to give amount—the amount can be Re. 1/-. In many cases—properties, mills and industries have been taken over by giving an amount of Re. 1/-.

Now we are shifting this away from the fundamental right without implanting any safeguard. What will happen? Now it will become a legal right. Somebody's property is taken over by the Government. He goes to the court. The court decrees that compensation has to be paid at the market value. Then the Government is bound to pay compensation at the market value. The safeguard that we have introduced—replacing compensation by 'amount'. that safeguard is taken away. What will he claim before the court?

If the property of the poor man is taken over and he is given compensatiion at market value because he is a poor man and if my property is taken over, I am paid Re. 1/-. I am being deprived of the right to equality. The man will take recourse to Article 14. That is why I think this necessary, especially in a country where the rich go the courts. It is known to you that our courts have always been favourable to the propertied class whether it has been in Zamindari case, Bank Nationalisation case, the courts have favoured the properties class. That is why without any safeguard if we remove this fundamental right to property and make it a legal right....

MR. SPEAKER: You want executive action.

SHRI SAUGATA ROY: I will read my amendment I have said—

"*after* line 24, *insert*

"300 B. Notwithstanding anything contained in Article 300A, if any property is compulsorily acquired or requisitioned for an amount fixed by law or which may be determined in accordance with such principles and given in such manner as may be prescribed in such law; no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash or that such law is void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14."

If the intention of the Government is really to take away some rights from the propertied class to the benefit of the weaker section, it is my humble submission to the Government that they should accept the safeguard, otherwise without the safeguard, any property, any mill or any factory when that is taken over, the owners will go to the court. It is my fear that the court will always decree with regard to Article 14. This means massive compensation at the market value as others are being given. So, the safeguard is necessary. That is why I have proposed this amendment to save the country from the attack of the propertied class and to give some relief to the poor.

SHRI SHANTI BHUSHAN: I may sorry that I am not in a position to accept any of the amendments which have been suggested. I must make it clear as to what is the difference between a legal right and fundamental right. A fundamental right is a right which can be exercised even against the elected legislatures of the country so that they impose a restriction on the legislative powers of the State. That, even by law passed

by a House which represents the people on the basis of general elections based on adult franchise, you cannot do a certain thing. On the other hand when there is a legal right, the legal right is against the executive, viz., the executive cannot do certain things even in regard to the property of a person. Unless it arms itself with some power, with the sanction of the legislature, the idea is whether in the matter of property one should trust the elected representatives of the people or should not trust even the elected representatives of the people. So far as very important fundamental rights are concerned liberty, freedom of speech, formation of associations, trade unions, etc., even equality—they are much more basic rights in the context of a poor country. So far as property is concerned, I am one of those who feels that even a property a person acquires, he acquires not solely by his own effort. It is the entire system, under the system as a whole, that a person is enabled to acquire that particular amount of property. It is the taxation system, it is the other licensing system, it is by so many other systems, it is by the work of society as a whole that some persons get property. Therefore, sanctity beyond a point to that property cannot be attached in a democracy like in India, in a poor country like India. So far as executive is concerned, it should not be possible to bulldoze any person's properties, etc. without any law. Therefore, it should remain a legal right. Even the right to property is recognised. It is not said that people will not hold property or will not acquire a property or a lawyer will not have a library if he so likes. Of course, a stage might arise when a person might have a feeling that only very rich lawyers have beautiful libraries—for example, I have a very huge library—and some day, the legislature of this country might get a feeling that, all right, why not that lawyer go to a public library; let all the libraries be made public libraries and so on. That will not come in the way of freedom of thought, expression, belief, etc. It is just a question of what is good for the country as a whole. Therefore, the spirit of this amendment is that, here after the Constitution....

SHRI KANWARLAL GUPTA: Who will decide?

SHRI SHANTI BHUSHAN: You people, the legislature will decide; the Parliament will decide.

SHRI KANWARLAL GUPTA: What about last Parliament?

SHRI SHANTI BHUSHAN: This is not a question of last Parliament. That is why, even the Supreme Court recognised a distinction between fundamental right of property and other fundamental rights.

We cannot attach so much importance to property in this country. Otherwise, our credibility will not be there among the poor people. They will feel that we are here for the rich people because so far as the poor people are concerned, which legislature is going to deprive the poor people of their small items of property?

SHRI KANWARLAL GUPTA: 2 lakh families were uprooted and not a single paisa was given. Now, this Government is giving.

SHRI SHANTI BHUSHAN: Even after all kinds of safeguards against emergency against a terror stricken society, etc. have been provided, even then if in a matter of property we cannot trust the elected representatives of the people to exercise this legislative power wisely, properly, in a manner which will be for the good of the society and not in a vindictive spirit, then the very important right of equality will aways be there. Article 14 would be there. A point was made that if one might say that so and so will not be entitled to build a house and so on, then in that case, Article 14 is there. Obviously, if there is any law, if any provision is made which will be discriminatory, which will discriminate against some person against other person, then certainly even if the legislation relates to property, it will be hit by Article 14. So, you have to act in a reasonable manner even you have to act with an even eye. But once you act with an even eye, then the legislature must be trusted as to how property rights have to be regulated so that ultimately the property rights are used for the general good of the society and not merely for private aggrandisement.

PROF. P. G. MAVALANKAR: He has not replied about "due process of law."

12 hrs.

SHRI SHANTI BHUSHAN: Why due process or procedure established by law cannot be accepted is that would be making it again a fundamental right by the backdoor. Because "due process" in America has been construed to mean, even though the legislature may try to regulate property in a particular manner, unless the judiciary also sanctions it, they say, it is not "due process'. The same thing arises even when you have "procedure established by law." There is the latest case law on that. Therefore, the will of the elected representatives could

[Shri Shanti Bhushan]

be frustrated. I do not want to say, "All right, it will cease to be a fundamental right and become a legal right" and make it a fundamental right again without calling it a fundamental right.

SHRI R. VENKATARAMAN: (Madras South) : I have given an amendment for the deletion of clause 34. I oppose clause 35. Therefore, I want to speak on it.

DR. V. A. SEYID MUHAMMAD (Calicut): I had given an amendment. But, unfortunately, because of some mistake, I could not come in time I would like to have a clarification.

You are retaining article 19(1)(g), freedom to carry on trade, profession, etc. My doubt is this. Suppose there is a factory where certain industrial production is going on and the Government wants to acquire the property. Under the law, you will have to pay the market value for that. The earlier provision which enabled the Government to pay an amount, whatever may be the amount, and acquire the property has gone. Now, when you acquire any property, you will have invariably to pay the market price. By deleting article 30 and article 19(1)(f) and retaining article 19(1)(g), you are really bringing back the concept of "market value" because article 19(1)(g) says, freedom to carry on trade, professions, etc. Any property which is acquired without paying the market value can be attacked on the ground that it is in violation of article 19(1)(g). By deleting article 30 where the Government had only an obligation to pay an amount, whatever may be that amount, by this mechanism you are giving back the right to insist that the market value should be paid. I want a clarification on that.

SHRI SHANTI BHUSHAN: I have great respect for my hon. friend, Dr. Seyid Muhammad. Of course, I can quite appreciate because a lawyer always as the capacity to make worse appear to be better. He has tried to use that faculty. Supporting if you take away Rs. 20 from a pe son's pocket, you can claim that you are trying to make him richer; if certain fundamental right to property is taken away, you claim that nothing is being taken away, that the rights of the people have been expanded, I have not been able to understand.

DR. V. A. SEYID MUHAMMAD: Without safeguards.

SHRI SHANTI BHUSHAN: Article 19(1)(g) was a fundamental right which was subject to reasonable restrictions. The reasonable restrictions were already there and they will continue to be there. But any restriction which could have been imposed earlier and if some-one says that that restriction cannot be imposed now, I would say it is like saying that if you take away some money from some person's pocket, you are trying to make him richer because in the whole context even if a person has got a mill etc., if constitutionally taking away his mill in certain circumstances and on certain conditions, etc. would have been regarded as a reasonable restriction on his fundamental right to trade or carry on a business, then it will continue to be a reasonable restriction on his right to trade or carry on a business. So far as the additional right to property is concerned, because the quantum of this right is directly related to property, every time it used to be brought under Article 19(1)(f) or article 31. If both are deleted, even in that case, the rights of the properties people do not get expanded, they get curtailed. Of course, take for instance, tools of trade. If there is a person who has got an axe and with his axe he goes to make a living, then if his axe is taken away from him and he is told, 'You have a right to carry on trade or business', then, in that case, it will be open to the court to say, 'No, if you say that a person has a right to trade or carry on business to a reasonable extent, you must allow him to retain his tools of trade,' and may we say that may be Mr. Kanwar Lal Gupta may be able to retain some kind of a library which he may be having on that argument. Otherwise, the basic right to property is being taken away.

DR. V. A. SEYID MUHAMMAD: I put a specific question. The property, namely, the factory and the land attached to that—the government want to acquire, leave alone the factory but the land they want to acquire. When the government acquire the land according to the law before it is amended the Government need pay only an amount. Now you have to pay not an amount but after this amendment you have to pay the market value. That is what I have said.

SHRI SHANTI BHUSHAN : There will be no such question. If in the entire context it is reasonable and if it is in the interests of the society that that particular business, lock, stock and barrel, along with the entire land, etc. should be taken away, then, in that case, it will be taken away and he will not be entitled to the market value.

SHRI BAPUSAHEB PARULEKAR (Ratnagiri) : I had an amendment...

MR. SPEAKER: When the amendments are called, the members are not present .

SHRI BAPUSAHEB PARULEKAR: I am not on that point.

The hon. Minister has given a reply to the amendment moved by Mr. Mavalankar. I did not move my amendment because that very amendment was moved by Mr. Mavalankar.

MR. SPEAKER: He has replied to two amendments of Mr. Mavalankar. One was about the due process of law. The Minister said the term due process of law' has a particular technical meaning and that it has acquired a meaning which is very dangerous.

SHRI BAPUSAHEB PARULEKAR: I am not on thas point. I am on the other point.

Under Article 31(2) there was a safeguard for acquiring peoperty save for public purposes. Now that is deleted. if you take into consideration the cumulative effect of deletion of Articles 31(2) read with Art. 300A and Art. 131A it means that the State can pass a law for acquisition of property for private purposes. That would affect educational institutions established by the minorities. The point which I would like to be clarified is : whether in view of the fact that the terms 'save for public purposes' is not included under Art. 300A, does the government wish that property can be acquired even for private purposes ?

SHRI SHANTI BHUSHAN : May I just say one thing ? Unfortunately, if I may say so with the greatest respect, the discussion on this aspect goes on in a conditioned thinking, namely, that we have started thinking as if the legislature is not to be trusted. If the legislature can be trusted with creating new crimes saying under what circumstances a person can be sent to jail..(*Interruptions*) Regarding public purpose, why should the legislature take away some property of some person unless it is really for the public good Why cannot it be a guarantee ? . . . (*Interruptions*)

PROF. P.G. MAVALANKAR : That is an academic point.

SHRI SHANTI BHUSHAN : After all it is only a question of whether it is by a bare majority or a two-thirds majority. Even the Constitution can be amended by a two-thirds majority. Ordinary legislation is adopted by a bare majority . Of course, it is said that even by a two-thirds majority you can do this, that and the other. Of course, if there is this distrust in democratic institutions, one cannot help it. In that case democracy has to be scrapped. Then it will mean that those people have no faith in democracy. But, if you have faith in democracy, then why should you feel that the legislature will run amuck ? After all any legislation is enacted after discussion in this House and after discussion in the other Houses. Then there is the very fact that the pressure of public opinion is a guarantee. If a legislation is going against the general public good.. (*Interruptions*)

PROF. P. G. MAVALANKAR: In the emergency Parliament, don't you have an example of a legislature committing atrocities ?... (*Interruptions*)

Mr. SPEAKER : This is not a cross debate at all. You have mentioned your point. He is either to accept it or not to accept it. (*Interruptions*)

SHRI SHANTI BHUSHAN : If a limitation is again imposed on the Legislature on what appears to a court to be a justiciable issue, namely the public purpose, then again the litigation will start on this. All right, the people of this country feel that the property rights should be regulated in a particular manner ; then this will go on as a controversy before the court etc. Will this constitute a public purpose by merely making available the property to the poor people who have no property etc. ? There are certain matters which have to be put beyond doubt. Otherwise it acts as a great hamper on doing things for the poor people. Therefore, anything which acts as a hamper for the poor people acts as a deterrent against doing things for the poor people. That is why the Janata Party in its election manifesto has said that the right to propert for a public purpose.. (*Interruptions*) The Parliament and the Legislatures will have adequate safeguards.

SHRI HARI VISHNU KAMATH : Just a minute. Mr. Speaker, May I ask you to come to our rescue and tell us whether you agree with the rather strange construction that has been placed by him on the two pharases ?

MR. SPEAKER : Please do not drag me in between. I do not propose to say anything at all.

On Clause 35 Shri R. Venkataraman wants to speak as he opposes it.

SHRI R. VENKATARAMAN (Madras South) : Sir, I oppose clause 35

[Shri R. Venkataraman]

which seeks to delete the provisions regarding the administrative tribunals.

I am afraid the hon. Law Minister, in his anxiety, to undo the Forty-second Amendment has thrown away the baby with the bath water. Article 323A provides for an administrative tribunal relating to the conduct in Government service. Article 323B provides for the tribunal relating to the taxation, foreign exchange, industrial disputes etc.

Now, Sir, these articles are the enabling provisions only to empower the Government to constitute such tribunals for rendering speedy, just and equitable justice to the persons affected. Sir, the concept of an administrative tribunal affording relief to Government servants in respect of their recruitment and conditions of service is alien to Anglo-Saxon jurisprudence. It is accepted as axiomatic in the continental jurisprudence—*Conceil d' Etah*—in the French jurisprudence has provided the bulwark for the protection of the civil servants against hierarchical arbitrariness and unfair adverse actions against the civil servants. The League of Nations provided for an administrative tribunal and the United Nation has also provided for an administrative tribunal. To-day there is administrative tribunal, for the civil servants, for the international civil servants, International Labour Organisation and the Court of Justice of the European communities also provide for such and organisation. I speak with a measure of personal knowledge on this matter. I may even at the risk of offending modesty, mention that I am the President of the United Nations Administrative Tribunal to settle the disputes between the United Nations staff and the organisation in respect of interpretation of the contracts, service conditions, regulations and pension rights, etc. Sir, the procedure which is followed in these tribunals is different from the one followed in the trial courts in our country. According to the *Conceil D' Etah* procedure, the tribunals does not decide the case on what is presented before it as a trial court but seeks information *suo moto* from Administration. The pleadings are more like a brief containing pleas, facts and arguments than a plaint and written statement. Many things which are beyond the purview of the trial court as in the case of Liverside *Vs.* Anderson are not beyond the purview of *Conceil D' Etah* because the administrative tribunals have a greater competence to go and seek the truth in respect of these matters.

Sir, my submission is, therefore, that there should be adequate protection for the civil servants in this country so that they may discharge their responsibilities and duties without fear or favour. One of the protection provided by the Constitution is under Article 311 but this is confined to civil service of a particular grade. The other persons do not have any recourse except by appeals to the hierarchy. The point I want to make is that if you provide a sort of independent administrative tribunal where they can bring before the tribunals cases of the abuse of authority, cases of non-observance of contracts and cases of punishments improperly given, the civil servant having some kind of protection will be able to exercise his functions letter than he is able to do under a hierarchical system of appeals. The author of Law governing employment in international organisations puts it like this. The mere existence of a tribunal insites the Administration to greater observance of staff rights and thus constitutes a safeguard to the staff against arbitrary action.

Sir, I will now deal with the tribunals in respect of taxation, foreign exchange and industrial disputes. The industrial disputes go to the tribunals now a days but under the existing law there is such a large number of appeals provided that ultimately by the time the labourer gets justice he would have either retired from service or died.

Mr. Speaker Sir, one of the objections which the Law Minister raised towards Article 323 (a) and (b) as framed under the Forty-second amendment was that it provides only for one remedy by way of an appal to the Supreme Court under Article 136. In my opinion this is more to the advantage rather than to the disadvantage. Today from the tribunal a matter goes to the High Court in a writ; then there is a writ appeal and from the writ appeal it goes to the Supreme Court. So, it takes a tortuous course before a dispute is settled. Now, with the setting up of the labour tribunal it has added fifth wheel to the coach and made the proceedings elongated.

So, my submission is that if we have an administrative tribunal of competent knowledge, authority and of sufficient status then it would be able to render justice between the parties in a far better manner than it is able to do under the procedures by which it is subjected to control of serveral appeals.

MR. SPEAKER : I want to know one thing from you. Under the existing law cann't the legislature constitute an administrative tribunal taking away all the appeals excepting under Article 226 & 227 and 132 even without this Article?

SHRI R. VENKATARAMAN : That was my next point.

In fact, in Clause 47 . . . . .

SHRI SAUGATA ROY : There are already so many Income-tax Tribunals.

SHRI R. VENKATARAMAN : You have this in Clause 47. Please see the difference between the tribunal which is constituted under the law now and the tribunal which is contemplated under art. 323 A and B.

MR. SPEAKER : *Prima facie* this clause takes away the right under Art. 226 and 227. Beyond that all the other rights are there.

SHRI R. VENKATARAMAN : That is my point. My point is that there should be quick remedy and justice and not this elongated and continuous proceedings before courts. That is the point in regard to Article 323 as against the present tribunals. In Clause 47, the Law Minister has provided this, that list Number three of the Seventh Schedule will be amended to include protection so far as the State Government servants are concerned for providing tribunals etc. As I pointed out the remedy there is speedy and the remedy is direct whereas the remedy now provided is one which takes them through a long process of litigation. The Labour Law Journal reports in August issue seven cases decided by the Supreme Court. Wherever the employer is having the means, he does not rest content until he has taken it to the Supreme Court.

MR. SPEAKER : Even under this Supreme Court's power is there.

SHRI R. VENKATARAMAN : There is only the tribunal and the Supreme Court whereas here you have a tribunal, a writ to the High Court under Art. 226, then a writ appeal in some cases and then, an appeal to the Supreme Court under Article 136. As against the four stages under the present law, the Constitution (Forty second) Amendment provided for speedy justice and there were only two stages, namely, one administrative tribunal under Article 323 and an appeal to the Supreme Court under Article 136. This is nothing new. Even in the United Nations, the appeal from the Administrative Tribunal goes only to the International Court of Justice. Only one appeal is provided and that too on limited jurisdiction or exces of jurisdiction or want of jurisdiction or fundamental error of procedure. It is a very salutary provision which has been introduced in the Constitution (Forty Second) Amendment and it need not be thrown out.

SHRI SAUGATA ROY : Sir, as Mr. Venkataraman has said, myself and my party are totally opposed to this amendment which I think is a very regressive amendment. There is no need for it at all. This amendment was brought forward for the reason that in the whole country there was a large backlog of cases in the High Court and the Supreme Court and justice was being denied to the poor people. In case of Industrial Disputes, (where employees were dismissed or some employees' agitation was there), the employers went and took the shelter of the high courts, under Article 226. And even in the matter of collection of levies on rice or any other produce, there were large number of litigations in the different courts and these things prevented the Government from collecting the levies. Regarding the share-croppers' rights also a large number of injunctions were sought. This new Article was added in order to ensure speedy justice and to go with the postulate that Justice delayed is justice denied.

MR. SPEAKER : I would like to have one clarification. Right to the high court is a limited one under Article 226. Right to the Supreme Court is both on fact and on law. Therefore, is it beneficial to the richer people or the poor people?

SHRI SAUGATA ROY: I will come to that point. What is the most important part of Article 323A? It is this—to exclude the jurisdiction of courts, except the jurisdiction of the Supreme Court under Article 136 with respect to the disputes or complaints referred to in clause (1).

MR. SPEAKER : Regarding Supreme Court, it is appeal both on facts as well as on law. But so far as High Court is concerned it is confined to certain limited things.

SHRI SAUGATA ROY : But it was the High Courts which were putting impediments in the way of ensuring social justice. Not only was there such a backlog of cases, but I know of cases where certain high courts including the Calcutta High Court were only too eager to give injunctions o each and every matter. Not only that, Sir. Here it says, 'Administrative tribunals of disputes and complaints with respect to the regulations and conditions of services of persons appointed to public service and posts in connection with the affairs of the Union.' What happened in West Bengal? There are several cases. A certain person was not promoted to the rank of Inspector General of Police from the post of Deputy Inspector General of Police. He went to the High Court and has an injunction. So, we had no Inspector General of Police for some time. No poor man would be able to go but any person at the top who thought that he had been superseded in the matter of promotion went to the court. Tribunals are not denying that opportunity tribunals are not adopting extra-legal procedure, this is also a legal procedure,

[Shri Saugata Roy]

it only simplifies the procedure, that is followed in High Courts. That is why, we thought that Tribunals are necessary. Our Party, when the discussions were taking place with the Government, stressed that these tribunals should be kept ; the provision for tribunals should at least be kept. It does not mean that you have to set up tribunals immediately, but this provision should be there. I do not know, why the hon. Minister is taking away this provision relating to setting up of tribunals. I think, there must be pressure from his group, that is, lawyers. Whenthis provision was bro ught,it is the lawyers in the country who raised the maximum protest; they thought that in the High Courts, their practice will be lessened. Thank God, I am not a lawyer, but I think, no other profession looks after its own interest as much as the lawyers do. That is why, under pressure from the lawyers—I told Shri Shanti Bhushan earlier also—High Court lawyers, not the Supreme Court lawyers—

SHRI SOMNATH CHATTERJEE (Jadavpur) : Have you got any experience of any tribunal?

SHRI SAUGATA ROY : Yes, labour and industrial tribunals.

SHRI SOMNATH CHATTERJEE : Have you got any experience of any administrative tribunal?

SHRI SAUGHTA ROY : Yes, I have got.

SHRI SOMNATH CHATTERJEE : You do not have that is the trouble. Some of the sentiments expressed byyou are good, but you are also being briefed by somebody to say this.

SHRI SAUGATA ROY : No, no.

SHRI SOMNATH CHATTERJEE : You have no experience. I woul d uch prefer an intelligent judge to these tribunals, which comprise of administrative officers who have tehemselves taken the decisions.

SHRI SAUGATA ROY : Tribunals may also be composed of judges.

SHRI SOMNATH CHATTERJEE : Unfortunately, there is no officer who has got the expanse of mind and has views and can override the bureaucracy. This is the trouble..... .(*Interruptions*).

SHRI SAUGATA ROY : He is proving my point that lawyers though politically may be strange bed-fellows, when their professional interest comes, they are all the same.

Sir, this amendment to clause 35, should not have been brought and I still appeal to the hon. Minister to reconsider whether to keep this clause in this Bill, because we will have to vote against this amendment.

SHRI SHANTI BHUSHAN : Sir, I have great respect for Shri Venkataraman as a kind and affectionate parent and I am very sorry if I have injured his feeling and given him the impression that I have thrown away his baby along with the bath water. I can assure him that even when I did throw away the bath water, I had tried to be very careful to see whether there was any baby in the bath water and I found only two dead flies in the water and that is why, I have thrown away the water.

The main point, which has been made, is that there would be these administrative tribunals, they would have an excellent procedure which is quite suited to deciding a particular kind of disputes and so on. I have no quarrel with that proposition because no chapter 14A was required, if the intention was only to create these tribunals. The chapter 14A was required only if the decision of these tribunals was to be made immune from writ jurisdiction of the High Courts under Article 226. They have also not taken away the jurisdiction of the regular court completely. If the feeling was that if you interpose in any regular court, which is used to the normal functioning etc., therefore, that will take away the benefit of these tribunals, then they should have gone to the extent of making these tribunals free from the operation of Article 136. But if you have the Supreme Court sitting over the procedure of the tribunals, the decisions of these tribunals etc., in that case, the question was: what is the justification of not giving the power to the High Court, because in the Supreme Court, the poor man cannot invoke; so far as the rich man is concerned, there is no impediment in his way,he can all ways go to the Supreme Court, the highest court, and the experience of my hon. friend is that in the Supreme Court, things have remained pending for a very long time, but the poor man can only invoke the High Court, because the expenses which he has to incur in the High Court are not even one-tenth of what a person has to incur in the Supreme Court. The whole question is, if a person cannot go to the Supreme Court and you do not give him power even of going to a High Court, while its independence and objectivity is guranteed, the independence and objectivity of these tribunals which might be created, may be there, or may not be there. It all depends upon the kind of

legislation and how you create it. You may create an objective tribunal. I do not deny it. But you may also create a non-objective tribunal, a tribunal consisting of party people, who will be deciding various issues etc., in a partisan manner. But the people of the country will have no confidence in the decisions of such tribunals, i.e., of those which are created only to serve certain partisan interests. Therefore, the safeguard—and the benefit—of an independent authority for overseeing the functions of these tribunals is very important.

So far as these delays are concerned, I have not been able to understand how the faculty of some person, merely because he is called as the presiding officer of a tribunal, will get immediately a fillip—and he will start deciding cases like a machine very quickly—and, on the other hand, if he is given an appellation of a High Court Judge, his faculties will get dull immediately and his speed in deciding cases will become very slow—because the same kind of people would also be appointed to the tribunals. The real solution is not one of finding such methods and expedients, because in many places, tribunals have been created—and the experience has been that things became even slower than they were otherwise. The process in the High Courts and the Supreme Court has to be speeded up. It has to be found out as to why the process is so slow. There is nothing in the procedure on account of which the work in the High Court is so slow. What is the procedure in a writ petition? There is no formalized procedure. Only a person puts in his version in the form of a writ petition. The version of the other person is invited in the form of a counter-affidavit. The first person again gives a reply to the new facts that might be stated.

SHRI R. VENKATARAMAN : *rose*

SHRI SHANTI BHUSHAN : quite right. It was so, becasue the strength of the High Courts was never assessed properly, on a realistic basis. Even 10 to 15 vacancies were allowed to remain in the High Courts for years and years. Even when new work-load was added, like election petition and other things, nobody ever bothered to find out whether more strength was required or not. But now, things are being looked into; and I am assured by the Chief Justice of one High Court that by December this year, cases of more than 1 years' pendency will not be pending in that High Court. Work in many other High Courts also .....*(Interruptions)* one High Court, of course, because things are so bad that they will take 3 or 4 years. We are working on a time frame of 4 years. Our objective is that during the next 4 years, the entire backlog from all the courts must be disposed of, so that thereafter, no case should remain pending in the High Court for a period of more than 3 to 6 months. There is no reason nothing in the procedure of the High Court which requires.....

चौधरी बलबीर सिंह (होशियारपुर): इसका असर यह होने लगा है कि रिट पैटीशंज को उन्होंने आउटराइट रिजैक्ट करना शुरू कर दिया है ।

MR. SPEAKER : Mr. Venkataraman, I will bring to your notice that tribunals have been constituted, consisting of MLAs. Has it come to your notice? I don't want to mention details. MLAs have been members of the tribunal; and if you don't have an appeal to the High Court—but only to the Supreme Court—where will you go?

SHRI. R. VENKATARAMAN : The fact that certain tribunals were improperly constituted does not at all go against my argument for expeditious justice.

MR. SPEAKER : With that we agree.

SHRI SHANTI BHUSHAN : I concede Mr. Venkataraman's point.

SHRI R. VENKATARAMAN : I have also been a Law Minister. I have never pleaded in my life for appointing Members of the Legislature as members of the tribunals. We have appointed only competent men who are fit to be members of the tribunals. You can always choose the right man to be a member of the tribunal.

MR. SPEAKER : If the present provision remains, that is the difficulty.

SHRI R. VENKATARAMAN : In the Constitution, you can always provide that persons with such-and-such qualifications should be appointed to the tribunals.

SHRI SHANTI BHUSHAN : In fact, I may inform the hon. Member that in U.P., recently in sales tax matters, instead of providing for judge revisions, then application for a reference in the High Court, then a statement of case being called and then the reference being decided and then the matter being sent back, now only a simple revision of questions of law has been directly provided for, in the High Court. Even the revisions which were pending before the Sales Tax Commissioner, have been transferred to the High Court. And the High Court is disposing of those revisions very expeditiously,

[Shri Shanti Bhushan]

in a matter of 2 to 3 months. If things are organized in a proper manner, it is not something in the name of the High Court that it must function slowly. If things are found out, i.e., as to what is the reason for the slow speed, and if appropriate action is taken, there is no reason why things should not improve. You have the best men in the High Court and thereafter, they will function in the best possible manner. So, merely by substituting the High Court by some sort of a tribunal. and by this sort of *mantram*, this problem of delayed justice is not going to be solved.

Clause 38—(*Amendment of article* 352)

MR. SPEAKER : We shall take up clause 38. There are a number of amendments.

SHRI SOMNATH CHATTERJEE : I beg to move :

Pages 8 and 9,—

for lines 31 to 33 and 1 to 8 respectively,

Substitute,—

"(*a*) in clause (1), the words, "or internal disturbance" shall be omitted." (14)

Page 10,—

for lines 34 to 38, *substitute*,—

'(*c*) clause (4) shall be renumbered as clause (9) and in the clause as so renumbered, the words, "or internal disturbance" in both the places where they occur, shall be omitted.' (15)

SHRI BAPUSAHEB PARULEKAR : I beg to move :

Page 9, line 7,—

after "aggression or" *insert* "armed." (45)

SHRI EDUARDO FALEIRO (Mormugao) : I beg to move :

Page 8,—

for lines 32 and 33, *substitute*—

'(*i*) the words "or internal disturbance" shall be omitted ;' (99)

SHRI V.M. SUDHEERAN (Alleppey): I beg to move :

Page 8, lines 32 and 33,—

for "armed rebellion" *substitute*——

"rebellion by the armed forces" (142)

Page 9, lines 5 and 6,—

for "armed rebellion" *substitute*—

"rebellion by the armed forces". (143)

Page 10, line 36—

for "armed reb llion" *substitute*—

"rebillion by the armed forces." (144)

SHRI LAXMI NARAIN NAYAK (Khajuraho) : I beg to move :

Page 8, lines 32 and 33,—

for "armed rebellion" *substitute* "civil war" (156)

Page 10, line 36,—

for "armed rebellion" *substitute* "civil war" (157)

SHRI R. VENKATARAMAN : I beg to move :

Page 10, lines 13 to 15.—

omit, "and by a majority of not less than two-thirds of the members of that House present and voting." (165)

Page 10,—

omit, line 38. (166)

SHRI R.K. MHALGI (Thana) : I beg to move :

Page 10,—

after line 38, *insert*,—

"(*e*) after clause (9), as so renumbered the following clauses shall be inserted namely :—

(10) Whoever, being the Prime Minister, advises the President to make a Proclamation under this article—

(*a*) without the existence of a grave emergency whereby the security of India is threatened by the imminent danger of war or external aggression or internal disturbance or armed rebellion ; or

(*b*) without a prior decision of the Council of Ministers authorising the Prime Minister to so advise the President ;

[Shri R. K. Mhalgi]

shall be guilty of an offence punishable according to law.

(11) Clause (10) hereof shall be deemed always to have been in force from the inception of this Constitution." (175)

SHRI KANWAR LAL GUPTA : I beg to move :

Page 9, (*i*) line 15,—

for "Union Cabinet" *substitute* "Council of Ministers".

(*ii*) lines 16 and 17,—

for "other Ministers of Cabinet rank" *substitute*—

"Council of Ministers" (242)

SHRI VINAYAK PRASAD YADAV (Saharsa) : I beg to move :

Page 9,—

for lines 3 to 8, *substitute*—

"*Explanation.*—A Proclamation of Emergency declaring that the security of any part of Indian territory is threatened by war or by external aggression or by armed rebellion may be made only after the actual occurrence of war, or of any such aggression or armed rebellion."; ' (252)

SHRI HARI VISHNU KAMATH : I beg to move :

Page 9, line 34,—

for "thirty days" *substitute* "fourteen days". (286)

Page 9, line 36,—

for "thirty days" *substitute* "fourteen days". (287)

SHRI HUKMDEO NARAIN YADAV (Madhubani) : I beg to move :

Page 9,—

for lines 3 to 8, *substitute*—

"*Explanation.*—A Proclamation of Emergency may be declared only when war or external aggression or armed rebellion actually takes place." (294)

Page 9,—

after line 18, *insert*—

"Provided that the Minister having views against Proclamation of Emergency shall have the right to give his dissenting note which shall be communicated to the President." (295)

Page 10,—

for lines 11 to 15, *substitute*—

"(6) For the purposes of clauses (4) and (5), a resolution shall be passed by either House of Parliament only by a majority of two-thirds of the total membership." (296)

SHRI B.C. KAMBLE (Bombay South-Central) : I beg to move :

Page 9, line 7,—

for "or rebellion" *substitute*—

"and in case of rebellion, its grave danger exits". (302)

Page 9, lines 11 and 12,—

omit "varied or" (303)

Page 9, line 15,—

for "Cabinet" *substitute* "Council of Ministers". (304)

Page 9, line 39,—

for "six" *substitute* "two". (305)

Pages 9 and 10,—

omit lines 42 to 49 and 1 to 10, respectively. (306)

Page 10, line 18,—

omit "or a Proclamation varying such Proclamation". (307)

Page 10, lines 19 to 20,—

omit "or, as the case may be, disapproving the continuance in force of," (308)

SHRI HARI VISHNU KAMATH: I beg to move:

Page 9, lines 5 and 6,—

omit "or by armed revellion" (319)

Page 9, line 7,—

omit "or rebellion" (320)

Page 9,—

after line 8, *insert*—

"*Explanation* II.—'Armed revellion' in this clause means a series of actions by an armed body of men aimed at the forcible overthrow of the Government established by law." ' (321)

SHRI B. C. KAMBLE: I beg to move :

Page 9, line 14,—

omit "or a Proclamation varying such Proclamation" (342)

SHRI HARI VISHNU KAMATH: I beg to move:

Page 10,—

after line 37, *insert*—

'(cc) after clause (9) as so renumbered, the following clause shall be inserted, namely:—

"(10) A Proclamation issued under clause (1) shall be revoked within fifteen days after the termination of

[Shri Hari Vishnu Kamath]

war or external aggression or armed rebellion." ' (349)

SHRI BAPUSAHEB PARULEKAR : I beg to move :

Page 10,—

for lines 34 to 37, *substitute*—

'(c) clause (4), shall be renumbered as clause (9) and in the clause as so renumbered, the words "or internal disturbance" in both the places where they occur, shall be omitted' (383)

DR. BALDEV PRAKASH (Amritsar): I beg to move :

Page 9,—

after line 8, *insert*—

"*Explanation.* II—The 'armed rebellion' means a revolt by the use of fire-arms and explosive weapons and shall include rebellion by the army and civil war". (384)

SHRI CHITTA BASU (Barasat) : I beg to move :

Pages 8 to 10,—

for clause 38, *substitute*—

'38. In article 352 of the Constitution in clause (1), the words "or internal disturbance" shall be omitted.'

SHRI AJITSINH DABHI (Anand) : I beg to move :

Page 8,—

omit lines 32 and 33. (390)

PROF. P.G. MAVALANKAR : I beg to move :

Page 8, lines 32 and 33,—

for "armed rebellion" *substitute*—

"revolt by a section of the armed forces" (412)

Page 9, lines 5 and 6,—

for "armed rebellion" *substitute*—

"revolt by a section of the armed forces". (413)

Page 10, line 36,—

for "armed rebellion" *substitute*—

"revolt by a section of the armed forces". (414)

Page 10,—

after line 37, *insert*—

'(cc) after clause (9) as so renumbered the following clause shall be inserted, namely :—

"(10) A Proclamation issued under clause (1) shall be revoked within thirty days after the termination of war or external aggression or civil war or revolt by a section of the armed forces." ' (415)

SHRI DHIRENDRANATH BASU (Katwa) : I beg to move

Page 8, —

for, lines 32 and 33, *substitute*—

'(i) for the words "by war or external aggression or in internal disturbance" the words "by war or external aggression" shall be substituted'. (423)

SHRI SOMNATH CHATTERJEE (Jadavpur): Sir, I believe this is the most important clause of the Forty-fifth Amendment Bill, with which we are dealing now. It is a matter not only of great shame but a matter of great concern that the Janata Government has not learnt the lessons of history of the not too distant past. We have seen that the Constitution was treated as a mere play thing in this country and the large majority of the Members of this Parliament had to dance to the tune of one person who wanted to have her personal hegemony throughout the length and breadth of the country. Have we not learnt that just to keep herself in the *gaddi* of this country, she treated the judgement of the hon. High Court with contempt, organised demonstrations in her favour, tried to let loose people againtst the judiciary? And we have seen how propaganda was made against the particular Judge in person. Effigies of the Judge were burnt, copies of the judgement were burnt, and there were some people inside this House unfortunately who gave her all support, may be out of fear, may be out of something else, I do not know what it was, but that was the most shameful period of the country's history and of this parliamentary institution. We had demeaned ourselves, this parliamentary institution had demeaned itself, denigrated itself.

And to give a constitutional coverage to what was done, the emergency was declared. I am not thinking only of the formalities, namely that a Cabinet meeting was not called, that the Cabinet Ministers were treated as chaprasis by her, that the President of this country was, it appears, pressurised to put his signature, may be by truth or untruth, we do not know, he may have been misled, may have been threatened. The Prince of Wales was operating at that time in full glory. So, we do not know. But the question is how the Constitution was treated for the purpose of playing a hoax on the country and the people.

Internal disturbance was supposed to be of such a magnitude in this country that it justified the declaration of emergency, the proclamation of emergency. Have we not learnt, and has this Government not accepted the position, that there was no such internal disturbance in this country at all which would have justified the proclamation of an emergency? Therefore a Government which had the requisite majority in the Lok Sabha or Parliament could make black into white and *vice versa*, and with the help of the mass media, with the help of newspapers, controlled newspapers at that time, with the help of sycophants and stooges, and with the active help of the bureaucracy in this country, she had gone all out to justify a non-fact namely internal disturbance.

The Constitution-makers, the founding fathers of the Constitution, never dreamt of such abuse of the Constitution, they could not have even dreamt that such things could be done. We have tried to go through the debates of the Constituent Assembly. Nobody had expressed such fears. The fears expressed by T.T. Krishnamachari were that a situation might arise when the governance of this country would be impossible, but that assumed the *bona fides* in the administration, that assumed the *bona fides* in the political leadership of the Government, the Government for the time being, in this country.

Today everybody has accepted in this country that there was no reason for the emergency except those who are made to say the contrary, those who have not got back their courage to speak freely and fairly as Members of Parliament, those who are still dancing to the tune of the dictator, the erstwhile dictator; and some people have not even the sense of shame to admit that the emergency was the greatest outrage on the people and the Constitution of this country that was ever committed.

Otherwise, it has been accepted by everybody that the plea of internal disturbance was a myth, was a hoax, was an outrage on the people of this country. This was a falsehood, which was not only thought of but was perpetrated and adumbrated in various forms and ways. We are against it, and we shall fight till the last against the retention of the emergency powers in the Constitution, even on the basis of substituting "internal disturbance" by "armed rebellion". That is why we have opposed that and we want to say that "internal disturbance" should go and "armed rebellion" should also go.

We have said, yet there may be situations in the county existing when there is actual war or external aggression, when emergency provisions will have to be invoked. In 1971, not very distant past, when this country was attacked, during the Pakistani attack, this House unanimously approved the Proclamation of Emergency, and the then Speaker said "I am proud to be the Speaker of this House which has shown such great unanimity and sense of patriotism at the time of trial of the nation." Then not a single Member of this House was wanting in his support to the Government, when the country was in some dire need of some extra provision, some very extraordinary powers, to protect its territorial integrity.

But we have seen how that was taken recourse to, how that emergency was not withdrawn for years and years together, how the external emergency was supported subsequently on the ground of economic difficulties faced by the Government. Though we have been demanding for the withdrawal of that emergency, there was no response and the Ministers had to stand up and say "well, in the mean while, the economic situation has deteriorated, we have to continue this emergency."

Then, when even that sort of fear psychosis could not be created by the external emergency, the internal emergency was declared. The emergency provisions are taken recourse to and have been incorporated in the Constitution to arm the Government with certain additional powers which, in the normal times, it would not be possible because the other provisions of the Constitution would stand in the way.

The external emergency of 1971 had clothed the Government with all the powers. They could have taken all the powers for the purpose of assuming the emergency powers. DIR was there, MISA was there. What more powers they wanted? They need not have any more powers. What they wanted to do was to create a feeling of fear psychosis in this country, a sense of terror, treating the human beings in this country as worse than dogs with the misuse of MISA in this country, with the misuse of official authority in this country, and people had no protection, no safety anywhere. Even dissenting members of the ruling party were not spared and the dissenting Ministers were shadowed. That was the position.

Therefore, it has now been clearly established that what the founding fathers have thought of for the purpose of incorporating article 362 of the Constitution, including internal disturbance, has become a mode, a source, of coercion

[Shri Somnath Chatterjee]

of the people of this country. Whenever there is a democratic movement, if it is not to the linking of the party in power, then such an emergency declaration can be issued. We have seen that only three years back.

So far as "armed rebellion" is concerned, subject to correction by the eminent Law Minister and also by you, Sir, there is no judicial definition as yet, nor is there any constitutional definition in the proposed amendment. "Rebellion" is open opposition to lawful authority; that is one definition from Chambers. What is "armed"? It is "furnished with "arms" what type of arms? It is arms as a means of defence or arms as a weapon. And "weapon" means any instrument for offence or defence. How would "armed rebellion" be defined by the hon. Minister ? Would there be any authority to decide whether there is armed rebellion or not ? Emergency is decarled and then *ex post facto* sanction may be obtained from Parliament. There is some provision, to limit all that. But with the majority that is there, it can always happen. Therefore, we are opposed to the words "armed rebellion"—. There is no possibility of going to a court of law. The Supreme Court has said that in Political matters, they shall not go into. Once there is an Emergency provision with articles 358 and 359 operating what will the courts do? This is the position.

is a mJatter of great shock. The Janata Party which has come to power in this country had promised to the people in this country that they will restore fundamental rights and see that there is no tabuse of constitutional provisions. Tha was the basic stand taken by the Janata Party. They are going back upon that promise. It is a breach of promise. They are not keeping their commitment to the people. I can tell the Law Minister, don't take the people of thiis country for granted. They are watchng the performance of the Government. They are seeing that. Please take lesson from that. The people cannot be kept at the mercy of one individual or one party or one group of people. Therefore, we are opposing it. I am requesting the hon. Minister and I am also repuesting all my friends in the Janta Party and all my friends on this side also to supe ort my amendment. Please do not giv such a power to any individual or any group of people in this country.

The minimum basic human rights of the people, their position as human beings, in this country must be protected and preserved. They were treated as second-class citizens during that dark period. Let it not be another period of oppression on the people of this country. Therefore, I request the Hon. Minister and everybody in the House and I appeal to them, don't treat it as a party matter or a mere political issue. It is a question of the survival of the people as decent human beings with some civilised tence. Don't give this power to anybody in this country. The words "armed revellion" should be deleted and the words "internal disturbances" should be deleted.

SHRI BAPUSAHEB PARULEKAR: Sir, I congratulate the Hon. Law Minister for having removed the words "internal distrubances" from article 352. However, I am sorry to say that he has instead added the words "armed rebellion". I believe, by this kind of an amendment, in fact, the *status quo* has been maintained. I have given these Amendment Nos. 45, 380 to 383. I will speak on all the Amendments together. In doing so, I fully endorse the submissions made by my esteemed friend Mr. Somnath Chatterjee.

At the time of elections, we pledged ourselves to the people of India that when we come to power, this particular provision in the Constitution would be deleted. We also told the people that we would suitably amend the Constitution. Not only we obliged ourselves but all our leaders, when they addressed meetings, they also told this to our electorate. I believe that the people, beliving in us, trusting in us, voted to us to power. When the time has come to redeem our pledge, I feel, we are hack backing out. That is most unfortunate.

Now, it is suggested that Emergency powers are necessary. I fail to understand the logic and the wisdom behind this reasoning. Sir, are our laws and are our jawans in all the defence forces not powerful enough to defend any kind of aggression, external or internal ? Where is the necessity for giving powers to the Government to declare Emergency when there is an 'armed rebellion' ? As Mr. Somnath Chatterjee has said, I feel, the words 'armed rebellion' have not been defined anywhere; they have not been defined in the Constitution; and the words are so loose that any mischievous Government that might come to power in future may construe these words in any way they like and we may have the repetition of those 19 months of black days which we had experienced during the last Emergency. I do not understand the meaning of the word 'armed'. Are we to take the definition of the word 'armed' from the Arms Act? Or, are we to take the general meaning of the word 'arms'?

AN HON. MEMBER : What about 'rebellion' ?

SHRI BAPUSAHEB PARULEKAR: I will come to 'rebellion' later. It must be an 'armed rebellion'. I may ask one question of the hon. Law Minister. We have many cultural organizations in the country. We have the Sikh community, for instance; they have the right to have sword with them. We have many cultural societies here, and they have, with them, wooden swords, wooden daggers and butter knives. Are these to be taken as weapons? Unless and until you define what is 'armed', it is difficult to understand. Of course, the word 'rebellion' could be very well understood. But if we do not define the word 'armed' any Government that might come to power in the future may ban certain organizations. We have had this experience during the Emergency: when in the offices of certain cultural bodies wooden daggers, swords and butter knives were found, those organizations were banned on the ground that those particular organizations were indulging in armed rebellion. There must be some protection for them. Inasmuch as it is not here, I feel, this power should not be given to the Government for declaration of internal Emergency. The sum and substance of the amendments which I have moved is that no power should be vested in the Government for declaration of internal Emergency because I believe that such a power for declaration of internal Emergency is not necessary and that, whatever situation is created in the country internally can be met with the law and with the defence forces. I believe that the provision in the Constitution for declaration of Emergency because of 'armed rebellion' is an insult and affront to our armed forces. Are our jawans in the armed forces not competent enough and powerful enough to meet such a type of contingency?- Is that the reason for having the power for declaration of internal Emergency? Are we going to put the people behind the bars and then we are going to meet this ty pe of armed rebellion? I am at a loss to understand the logic behind keeping this particular power, behind giving this power to the Government.

One small point more which I would like to make. We have also used the word 'war' in article 352—war or external aggression or armed rebellion. I would like to request the hon. Minister to clerify what exactly he means by 'war' vis-a-vis armed rebellion because there is no wording here that it is war by another nation or against another nation. Under section 122 of the Indian Penal Code, 'war' against the Central Government is an offence. I want to know whether the war that was started by the people of this country can be equated with this 'war'.

Again, the word 'war' along with 'armed rebellion', put together , would be misused, and I believe that internal Emergency can be declared—and Government would get this particular power. I would, therefore, request the hon. Law Minister to consider deletion of this clause—to accept the amendment that I have moved, as also the same or similar amendments moved by my hon. friends on this particular Clause.

SHRI EDUARDO FALEIRO (Mormugao): I rise in support of the demand—and my amendment is also to that effect—that the power to proclaim Emergency on the ground of internal Emergency be deleted and removed from the Constitution. It has already been pointed out here how, in the not-very-distant past, this power has been abused, how on the assumption that internal Emergency was there when, in fact, it might not have been there, this power has been exercised, has been abused.

17 hrs.

My friend, Mr. Bapusaheb Parulekar has pointed out that the Janata Party has been in the fore front of opposing the continuation of it is power and made of it a great propaganda platform. But then it shows the difference and the large gap that exists between propaganda and solid deeds. When it comes to actually amending the Constitution on this direction, when it comes to actually removing this power, then the Government merely plays on words. Instead of 'grave emergency' or 'grave situation arising out of internal disturbances', you change the words to "armed rebellion". There is really no substantial difference. The power continues, clothed in different words, but the power is, in substance, absolutely the same. My submission is that this power can be abused and there is no reason for this provision. If in a State there is a law and order situation, the first thing is that it is the responsibility of the State Government itself. Law and order is a State subject. By giving such a wide power to the Centre, in principle, this will be an encroachment on the State subject, it will go against the federal principles and the federal scheme of the Constitution. Secondly, if, in fact, there is a breakdown of law and order in a State, then the representative of the Central Government is there, the Governor, to recommend and to report to the Central Government that such a breakdown exists under Article 356. Article 356 is sufficient to take charge of and to solve any situation in which there is a breakdown of law and order in a State and there is no reason for the Central Government to intervene under the guise

[Shri Eduardo Falerin]

of internal emergency. My submission, therefore, is that if there is a breakdown in a particular State, the responsibility of law and order is that of the State Government.

13.02 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

This power under Article 352 will encroach on the sphere of the State and will harm the federal or quasi-federal structure of our Constitution. That is the first thing. If a State is unable to control the law and order situation, then the representative of the Central Government in the State is there, that is, the Governor, and he can report to the Central Government that the State cannot manage the law and order situation and then Article 356 comes into operation. There is no reason for continuance of the power under Article 352 to declare internal emergency. This power is likely to be abused.

I may point out in this connection that there has never been any situation in which a State has been unable to cope up with the law and order situation and has not immediately requested the Central Government for assistance. The Law Minister may inform us how he visualises, on what basis he visualises such a condition in which the State Government will not request the Central Government for interfering or for sending the armed forces, if necessary, to control any law and order situation. Is there any single precedent? I say, Sir, there is not a single precedent for this type of assumption to give wide powers to the Central Government and, on the contrary, this power is likely to be abused. It has been abused in the past and there is nothing to show that it cannot be abused in the future.

Now, you consider the situation in which the Central Government is ruled by one political party and the State Government is ruled by a different political party and the Central Government wants to take over the administration of that State, though the law and order situation is perfectly solid, perfectly firm and perfectly alright. Even the Governor does not report that there is a breakdown of law and order. Even then, the Central Government just by putting their own supporters there in the State with some weapons can create a situation of armed rebellion and can intervene. It will be very bad. This will be, in substance, reducing the States to municipalities. He is making the States dignified municipalities, he is destroying the federal concept of the Constitution and the States will be big panchayats or municipalities and the whole scheme of the Constitution, the basic scheme of the Constitution will be affected.

MR. DEPUTY-SPEAKER: Mr. Ravi, actually your amendment will be treated as not moved because it is the same as amendment No. 15. But if you want to speak, you can just take a couple of minutes.

SHRI VAYALAR RAVI (Chirayinkil): Mr. Deputy-Speaker, Sir, because my amendment is not moved as it is the same as the amendment of Mr. Somnath Chatterjee, I fully support his amendment. The demand made by him to take away this internal Emergency completely will be receiving our support.

Mr. Deputy-Speaker, Sir, every nation, the people and the society, take the lesson from the past and the history and I wish Mr. Shanti Bhushan had taken lessons from the past experience. That is my contention. Every revolution will have a message, and here your Party claims that you came through a revolution which you call a silent revolution. The message of the revolution is that the people, as you say, voted against the Emergency. The Constitution should reflect the will and pleasure of the people, especially the aspirations and decisions of the people. At the last General Election the major question you posed before the people is whether they wanted Emergency or not and the decision of the people, by and large, was that they were against internal Emergency. That is the first and basic question you have to answer before Parliament and, through Parliament, before the people—that you are incorporating Internal Emergency even though you are against it, because of other reasons. The Minister has argued that many a protection has been given, and there has been substitution by 'Armed Rebellion' etc. But 'Armed Rebellion' has not at all been defined. As Shri Somnath Chatterjee had said even before coming to this clause, the Hon. Law Minister must define what he means by 'armed rebellion'. As pointed out earlier, 'armed rebellion' is always based on the political and economic content of the situation. I believe that, in the name of 'armed revellion' this can be misued because we have seen how Emergency itself has been misused. This is absolutely unnecessary and unwarranted, and this clause should be deleted.

Our Amendment is very clear and I hope Mr. Shanti Bhushan will take the message of the Indian people received through the 1977 General Election and will agree to fulfil the promises made to the people to take away Emergency which was completely misused.

श्री लक्ष्मी नारायण नायक (खजुराहो): माननीय सदस्य महोदय, मेरा संशोधन इस प्रकार है कि अनुच्छेद 352 में जहां पर शब्द "सशस्त्र विद्रोह" हैं, उन के स्थान पर शब्द "गृहयुद्ध" रखे जाएं। यह संशोधन मैंने इसलिए दिया है कि भारत एक बहुत बड़ा देश है और यहां पर कुछ न कुछ घटनायें होती रहती हैं और बड़े व्याप्त आन्दोलन भी हो सकते हैं और कोई भी शासन उन को कह सकता है कि ये सशस्त्र विद्रोह हैं। पिछला एक उदाहरण मैं आप को देना चाहता हूं। नागालैण्ड में बराबर सशस्त्र विद्रोह होता रहा है, फिर भी शासन ने वहां पर कोई इमर्जेंसी नहीं लगाई क्योंकि उस ने यह देखा कि हम अपनी शक्ति के द्वारा या मौजूदा कानूनों के द्वारा, उस से निपट सकते हैं और इस समस्या को हल कर सकते हैं। जब वहां पर इमर्जेन्सी नहीं लगी, तो मैं चाहता हूं कि इमर्जेन्सी जो है, वह ऐसी स्थिति में ही लगाई जाए जब बाहर से कोई आक्रमण हो या यहां पर कोई गृह-युद्ध हो। शासन के खिलाफ़ गृह-युद्ध होता है, तब तो यह बात सही जंचती है कि इमर्जेन्सी लगनी चाहिए, वैसे और किसी दूसरी सूरत में यह नहीं लगनी चाहिए। ये जो सशस्त्र विद्रोह हैं ये तो फुटकर होते रहते हैं और उन को ले कर इमर्जेन्सी नहीं लगनी चाहिए। हम ने देखा है कि पिछले दिनों इमर्जेन्सी के नाम पर कितना कुछ हुआ और सारा देश संकट में पड़ गया। वैसी स्थिति फिर से देश के सामने न आए, इसलिए मेरा कहना यह है कि "सशस्त्र विद्रोह" के स्थान पर "गृह-युद्ध" शब्दों को रखा जाए और ऐसा प्रावधान इस अनुच्छेद 352 में किया जाए। मैं चाहता हूं कि विधि मंत्री जी मेरे इस संशोधन को मान लें।

SHRI R. K. MHALGI (Thana): Sir, I support the view expressed on the Amendments of Hon. Members Shri Chatterjee and Shri Parulekar. But, without prejudice to them, I would like to add one more important clause, which makes certain modifications.

The modification I want to make is to delete Clause 11. The present Indian Constitution, unlike those of several other countries, has inbuilt provisions for punishing those found guilty of violating the Constitution. The Constitution provides for the impeachment of the President, but, in the case of the Prime Minister, there is no corresponding provision at all for punishment for violation of the oath other than dismissal from office. Shah Commission has given a clear-cut finding that the ex-Prime Minister has violated the constitutional provisions, especially in respect of Article 352. The clamping of emergency by her was a fraud on the Constitution, but the present government is not in a position to go to the court against her on that ground as there is no such provision either in the Constitution or in any law for the time being in force. I, therefore, like to incorporate this provision in the Constitution so that the Parliament may legislate a law by which offenders can be brought to book.

Acharya Kripalaniji also holds these views in his press note which has been released in Madras on the 12th June 1978. I am quite conscious that Article 20 of the Constitution bars any such retrospective application and hence I have moved my amendment with certain modifications.

SHRI KANWAR LAL GUPTA: My amendment is technical in this , that for 'Union Cabinet' substitute 'Council of Ministers' and for 'other Ministers of Cabinet rank' substitute 'Council of Ministers'.

My amendment is only technical and it is because in the Constitution, so far as I know, there is no term as 'Cabinet Minister', if I am not mistaken and there the words used are only 'the Council of Ministers'. There is nothing like a 'Union Cabinet'. It may be correct, but if we take a strictly legal and constitutional view, then this should be substituted by 'Council of Ministers'.

Similar is the case with 'other Ministers of Cabinet rank' because nowhere in the Constitution, as I know, the words 'Cabinet Minister' have been used. It is always the Council of Ministers. Hence, my amendment.

श्री विनायक प्रसाद यादव (महरसा): उपाध्यक्ष महोदय, मेरा अमेंडमेंट है ——

[श्री विनायक प्रसाद यादव]

"Explanation—A Proclamation of Emergency declaring that the security of any part of Indian territory is threatened by war or by external aggression or by armed rebellion may be made only after the actual occurrence of war, or of any such aggression or armed rebellion."

उपाध्यक्ष महोदय, एमर्जेन्सी का जो प्रावधान है, यह सब से ज्यादा कंट्रोवर्सियल इस संविधान संशोधन विधेयक में है। जनता पार्टी ने अपने चुनाव घोषणा पत्र में साफ साफ कहा था कि इस देश में आन्तरिक मामलों में आगे एमर्जेन्सी नहीं लगायेंगे। अभी हमें पावर में आये एक साल ही हुआ है और हम अपने चुनाव घोषणापत्र को भूल कर उसी रास्ते पर जा रहे हैं जिस रास्ते पर श्रीमती इंदिरा गांधी गई थीं। यह जो संशोधन विधेयक लाया गया है इस में कहा गया है कि जब वार की आशंका होगी आर्म्ड रिबेलियन की आशंका होगी तभी एमर्जेन्सी का एलान कर दिया जायेगा। इस में यह नहीं है कि जब यह सब होगा, लेकिन यह है कि जब सरकार को सिर्फ इन की आशंका हो जायगी तब देश में एमर्जेन्सी को लाया जा सकता है।

उपाध्यक्ष महोदय, प्रेजीडेंट के जहां तक सैटिस्फेक्शन का सवाल है, उस के बारे में यह स्पष्ट है कि जब कौंसिल आफ मिनिस्टर्स कोई राय देगी तो प्रेजीडेंट को उस के मुताबिक करना होगा। असल में प्रेजीडेंट के सैटिस्फेक्शन का सवाल नहीं है बल्कि मंत्री मंडल के चाहने का सवाल है। जब कोई मंत्री मंडल या यों कहें कि प्रधान मंत्री चाहेंगे, देश में आपात काल की घोषणा हो जायेगी। उपाध्यक्ष जी, मैं पूछना चाहता हूं कानून मंत्री से कि पहले की धारा 352 और अब संशोधित धारा में क्या फर्क है? 'Internal disturbance' की जगह पर 'armed rebellion' रखा गया है और कहा गया है कि सिर्फ 'armed rebellion' के होने की आशंका पर ही इमरजेन्सी घोषित की जा सकती है। काउंसिल आफ मिनिस्टर्ज जिस वक्त उनको आशंका होगी या जब वे चाहेंगे इस देश में एमजेन्सी लागू कर दी जाएगी। ऐसे साधारण प्रिटक्स्ट पर जैसे इंदिरा गांधी ने किया था वैसा किया जा सकता है या कोई भी सरकार कर सकती है। आपको याद होगा कि जब श्रीमती इंदिरा गांधी ने एमरजेंसी घोषित की थी उस वक्त देश में कोई आन्दोलन नहीं चल रहा था। जो छात्र आन्दोलन दो तीन साल पहले से चल रहा था वह भी खत्म हो गया था। किसी तरह का कोई प्रदशन या आन्दोलन उस वक्त नहीं हो रहा था। आपको यह भी याद होगा कि इलाहाबाद हाई कोर्ट का जजमेंट हुआ और तब श्रीमती इदिरा गांधी को एहसास हुआ कि इस जजमेंट के बाद उनको कोई मारल अधिकार नहीं है हकूमत करने का और उन्होंने एमरजेंसी घोषित कर दी। उस वक्त देश को कोई आन्तरिक या बाह्य खतरा नहीं था और उन्होंने एमरजसी घोषित कर दी और समचे देश को जेलखाना बना दिया गया। एमरजेंसी में और उसके बाद अपने चुनाव घोषणापत्र में भी हमने जनता को साफ कहा था कि किसी भी स्थिति में साधारण परिस्थितियों में एमरजेंसी लागू नहीं की जायगी। मैं आपको सावधान करना चाहता हू और इसीलिए मैंने संशोधन दिया है कि साधारण टाइम में, किसी भी हालत में एमरजेंसी लाग कोई न कर सके, इसकी आपको व्यवस्था करनी चाहिए और एमरजसी लाई भी जाए तो तब जब वास्तव में कोई वार छिड़ जाए या वास्तव में सशस्त्र विद्रोह, हथियारी आन्दोलन शरू हो जाए। कानून मत्री जी को मेरे

इस संशोधन पर सहानभूति से विचार करना चाहिए। सिर्फ सशस्त्र आन्दोलन की आशंका है या विदेशी आक्रमण हो सकता है, इस आधार पर एमरजेंसी देश में कोई ला सकता है, इस तरह का संविधान में संशोधन किसी भी हालत में नहीं किया जाना चाहिए। मैं आपके जरिए उन से यह भी निवेदन करना चाहता हूं कि हम लोगों को वह मजबूर न करें इस एमेंडमेंट के विरुद्ध वोट करने को। आपको इस एमेंडमेंट को वोटिंग के लिए नहीं लाना चाहिए। हम लोगों ने जनता को जो कुछ कहा है उसके खिलाफ हम लोगों को आप जाने पर मजबूर न करें और अपनी आत्मा के खिलाफ काम करने पर मजबूर न करें। अगर आपने ऐसा किया तो आपके व्हिप को हम लोगों को बिल्कुल नजरन्दाज करने पर मजबूर होना पड़ेगा। हमें आप अपने खिलाफ वोट करने के लिए मजबूर न करें, यही मेरा आप से निवेदन है। आखिर प्रजातंत्र में चुनाव घोषणापत्र की भी कोई सैंकटिटि है। अमेरिका ने तो आज तक लड़ाई के जमाने में भी कभी देश में एमरजेंसी नहीं लगाई। अतः मेरे संशोधन को मान लें।

SHRI HARI VISHNU KAMATH : Mr. Deputy-Speaker, Sir, I dare say, the House will agree with me, that the clauses 38 to 42 are the key provisions of this Bill, because the House and the country and the people are painfully aware, you are also aware, that it was the gross misuse of these provisions of the Constitution that led to the tragic days of tyranny and terror during the dark days from June, 1975 to January 1977. In a way, Sir, the gross misuse of those provisions has made history, though tragic history. The basic freedoms and liberties which people enjoyed were sought to be snuffed out by the tyrant during the days from June 1975 to January 1977. This has led to the present rebirth of those freedoms and resurrection of the Constitution. I do not wish to dilate too long upon that gruesome and sad history except to read an excerpt from an article from that percipient critic who so frequently writes in the *London Times*, Mr. Bernard Levin. From his third article on the Shah Commission Report, I will read one sentence only. I am sure the House will bear with me. He says:

> "The whole document makes frightening, yet invaluable, reading. It is frightening because of the portrait it paints of a society being driven down the road of totaliarism by a callous, corrupt, mendacious and ruthless leader, whose sole purpose was the maintenance of her power and who, if she had not made the mistake of believing that an election would give her regime the legitimacy it lacked, would by now have succeeded in fastening upon India the chains of a permanent dictatorship."

Well, Sir, God and the people willed otherwise—*vox populi vox dei* the voice of the people became the voice of God, and we have had a re- birth of democracy and freedom. I do hope the House will give a very earnest attention to these five clauses of the Bill because unless the safeguards in these clauses are made foolproof, and knave-proof they will still pose a constitutional threat to democracy. I am glad that the Janata government has sought to modify those provisions of the Emergency Chapter, Sir, thirty years ago in 1948-49 I had sought to move certain amendments in the Constituent Assembly and later included them in a Bill which I introduced and moved in this House last year. That Bill was withdrawn on the solemn assurance given by the Minister that a comprehensive Bill would be introduced in this House. I am glad that he has kept his promise and incorporated many of the amendments which I suggested in the course of debate in the Constituent Assembly and later in the Bill which I introduced last year in the House. Even so, Sir, there are certain suggestions which I would like to make for further safeguarding the provisions of the Emergency Chapter because as far as human wisdom can make it, सबको सम्मति दे भगवान as far as it is possible for us to do that, we should make Emergeny provisions safe enough for democracy in our country.

Now, what is the main thrust and import of these provisions as sought to be demanded by the government? I am glad that in keeping with the promise given by the Minister in April 1978 it is sought to be made obligatory that the Emergency proclamation would be ratified by Parliament. That amendment I had moved in the Constituent Assembly. I hope that will be endorsed by this House because the power should vest in the Parliament and not the President.

[Shri Hari Vishnu Kamath]

There is one controversial clause for proclamation of Emergency, in the phrase "armed rebellion". I am not sure whether my colleague Shri Somnath Chatterjee was on strong ground when he said that the Janata party in the election manifesto had promised or pledged the entire repeal of the Emergency chapter. As far as I recollect—I speak subject to correction—the pledge was to the effect that internal emergency would be lifted and also that the necessary change would be made in the Emergency Chapter, that is to say, for internal disturbance there would not be proclamation of Emergency. That being the election pledge, I am sure that has been kept because now the amendment is for empowering the President and Parliament to proclaim Emergency only in the case of war, external aggression and armed rebellion. The moot point here is: What is armed rebellion? What constitutes armed rebellion? Because any arbitrary ruler can say that this is armed rebellion and, as such, I proclaim Emergency." Therefore, just to provoke the Law Minister—a very capable Law Minister—I am moving the amendment and am trying to define "armed rebellion". I am not satisfied with it myself. I do not think this is a satisfactory definition of armed rebellion.

I would like the Government to define what armed rebellion is. I have given amendment No. 321 which is in list No. 40. I have tried to define the term armed rebellion. My amendment reads:—

Page 9,

After line 8, *insert*

"Explanation II.—'Armed rebellion' in this clause means series of actions by an armed body of men aimed at the forcible overthrow of the Government established by law."

I have not copied it from any Constitution. But I have tried to base it on what little I know of Constitutional and legal history and law. I know, it is a very insufficient, inadequate definition, according to me not a satisfactory definition; and therefore I would be happy if the Law Minister would provide a more satisfactory and a fuller and a more complete definition of armed rebellion, because, otherwise, that phrase 'armed rebellion' would also be misused by any would be dictator or any would be tyrant as happened during the time of proclaiming the last emergency.

The Shah Commission has come to the definite conclusion that there was nothing in the country to justify the proclamation of emergency and there was no serious disturbance of law and order in the country which could not have been tackled by the ordinary law of the land. This is the decisive finding of the Shah Commission in the Interim Report Number Two, which I read out in this House the other day.

Now, Sir, there are one or two other points which I would like to deal with.

I am sure, if this term 'armed rebellion' is defined clearly, and fully, the House will have no objection perhaps to accept that. But in the absence of a definition like this, a clear definition, very definitely, the House may have objection to accepting the amendment.

Now, Sir, may I come to the other point? This is regarding the provision seeking to reduce the period.

I am quoting from the Debate in the Constituent Assembly. I will just take only two minutes by your leave and the indulgence of the House. As you are aware, in Britain, there was, what was called DORA (Defence of the Realm Act) during the First World War. I think this term was changed subsequently, but at that time it was called Defence of the Realm Act at the time of the First World War, for short, DORA—that was the acronym. Even there it was provided that a proclamation shall be issued "for a meeting of Parliament within 5 days and Parliament shall accordingly meet and sit upon a day appointed by that proclamation and shall continue to sit and act in like manner as if it had stood adjourned or prorogued that day. Any regulations so made shall be laid before Parliament as soon as may be after they are made and shall not continue in force after the expiration of 7 days." It provided for 7 days only even that very rigorous and drastic Defence of the Realm Act in Great Britain in the First World War had such a provision. A similar Act came into force with similar provisions in the Second World War also. I have sought however to reduce the period from 30 days to 14 days in the proviso to sub-clause (4). Perhaps with the efficiency we have got in India—I am sorry to say this I am both to say this it may not be possible to have it in 7 days or in 5 days. So, I am suggesting 14 days as a concession to our in-efficiency in India.

Therefore, I would be happy if this amendment commends itself to the acceptance of the hon. Minister and of the whole House.

Then, there is only one more word and I have done.

There is a lacuna in this clause and it is

that it does not state precisely when such a Proclamation will come to an end.

That should be a clear provision, a definite provision to that effect and therefore I have sought to insert after clause 9 as a so renumbered the following:

"(10) A Proclamatiod issued under clause(1) shall be revoked within fifteen days after the termination of war or external aggression or armed rebellion."

And one more provision I have sought to insert, one more safeguard, foolproof and knave-proof, and that is that the power to proclaim an Emergency shall not be invoked where there is imminent danger of armed rebellion. It may be invoked in the case of war and external aggression but not certainly in the case of imminent danger of armed rebellion because the ordinary law is more than enough to deal with minor armed disturbnces. When however there is actual armed rebellion, this power can be invoked and not where there is imminent danger of armed rebellion. That is my amendment. I have moved my Amendments 319, 320 and 321 of list 40. I have also moved my amendment Nos. 286, 287 and the last one of my amendment is 349. I have moved all these amendments and commend them for the acceptance of the House.

श्री हुकम देव नारायण यादव (मधुबनी): उपाध्यक्ष महोदय, सब से पहले मैं विधि मंत्री जी का ध्यान इस ओर आकृष्ट करना चाहता हूं कि जनता पार्टी के चुनाव घोषणा-पत्र में जो कुछ भी लिखा गया है, वह जनता के साथ किया गया वादा है। वादाखिलाफी नहीं होनी चाहिए, लोकतंत्र में यह सब से बड़ा अपराध है। हमारे चुनाव घोषणा-पत्र में साफ़ लिखा है कि जनता पार्टी "42वें संशोधन को रद्द कर देगी।" तो 42वें संशोधन को रद्द करने का मतलब यह नहीं है कि उस में जो ग़लत बातें हैं, उन्हें समाप्त कर दिया जाये, बल्कि उस का मतलब यह है कि जिस 42वें संशोधन ने संविधान के चेहरे को बिगाड़ दिया था, उसे समाप्त कर दिया जाये।

आपातकाल के बारे में हमारे चुनाव घोषणापत्र के पृष्ठ 3 पर स्पष्ट लिखा है: 'तथाकथित आंतरिक आपातस्थिति की घोषणा के बाद देश ने आतंक और अपमान की जो यातना भोगी है, वह उन दिनों की याद दिलाती है जब हम एक विदेशी साम्राज्य के दास थे। जब हम लोगों ने यह मान लिया है कि आपातस्थिति एक "आतंक का राज" था और वह किसी दूसरे देश की गुलामी के समान थी, तो फिर उसको समाप्त करने का काम होना चाहिए था, न कि उसे फिर किसी न किसी प्रकार से लागू करने का।

इस बारे में दो विचार-धारायें हैं— जनता पार्टी में भी दो विचार-धारायें हैं। कुछ लोग लगातार सत्ता के ख़िलाफ़ विद्रोही रहे हैं— देश-द्रोही नहीं, बल्कि सत्ता के ख़िलाफ़ विद्रोही। हम लोग सदा सत्ता और अन्याय के ख़िलाफ़ विद्रोही रहे हैं। आज भी हम लोग यह मान कर चलते हैं कि इस देश में जनता पार्टी की सरकार सदा रहने वाली नहीं है, और हो सकता है कि कोई ऐतिहासिक घटना घटे और मुझे सत्ता के ख़िलाफ़ संघर्ष करने के लिए मजबूर होना पड़े। ऐसी स्थिति में जो भी सत्ता के ख़िलाफ़ संघर्ष करने वाला विद्रोही होगा, वह हमेशा इस बात की गारण्टी चाहेगा कि यदि वह सत्ता के ख़िलाफ़ एक सीमा तक संघर्ष करे—शान्तिपूर्ण सत्याग्रह करे, तो उसे किसी प्रकार से दबाया न जाये। पिछले दिनों जब

[श्री हुकमदेव नारायण यादव]

सत्ता के अन्याय के खिलाफ हम लोगों ने संघर्ष किया तो यह तय हो गया शांतिपूर्ण सत्याग्रह करने के कारण भी आपात स्थिति के नाम पर हम को दबाया गया । यहां आप कहते हैं सशस्त्र विद्रोह या बाहरी युद्ध की आशंका, बाहरी चढाई और सशस्त्र विद्रोह की सन्निकट संभावना--किस को? सत्ता में जो रहता है वह हमेशा शंका से ग्रस्त रहता है, सत्ताधारी को हमेशा शंका रहती है कि हमारी सत्ता को पलटने के लिए देश की जनता कोई न कोई रास्ता अख्तियार कर रही है । सत्ताधारी हमेशा शंका से ग्रस्त रहेगा और सत्ताधारी का मतलब सम्पूर्ण मंत्रिमंडल नहीं, मंत्रि-परिषद् नहीं सत्ताधारी का मतलब होता है एक व्यक्ति जो एक नम्बर की कुर्सी पर बैठा रहता है । जब कभी एक नम्बर की कुर्सी पर बैठने वाले को अपनी कुर्सी का खतरा महसूस होगा वह हमेशा इस बात का सहारा लेगा कि हम को शंका है सशस्त्र विद्रोह की, सन्निकट संभावना है सशस्त्र विद्रोह की । तो इस सन्निकट संभावना का निर्मूलन कैसे होगा ? दुनिया के अन्दर जितनी सरकारें हैं उन के आचरण और व्यवहार को देखा जाये तो एक ही बात निकलेगी । डा० राम मनोहर लोहिया को जब गिरफ्तार किया गया था तो उच्च न्यायालय ने उस समय एक फैसला दिया था । उस समय सारे देश में गिरफ्तारी हुई थी, सारे देश के अन्दर समाचारों बन्द किए गए थे । उस समय उच्च न्यायालय ने सरकार के खिलाफ़ यह कहा कि एक क्षण के लिए भी डा० लोहिया को जेल के अन्दर बन्द कर के रखना अन्याय है, अपराध है । 42वें संविधान के संशोधन पर लिखते हुए जनता पार्टी ने अपने घोषणा पत्र में यह कहा है —

"स्वेच्छाचार की जिन प्रणालियों का विकास पिछले कई वर्षों से देखा जा रहा था उन को 42वें संशोधन में एकत्र करके लोक सभा से बलात पारित किया गया । इस संशोधन का एक ही उद्देश्य था—प्रधान मंत्री के पद पर आरूढ़ एक व्यक्ति के हाथों में सत्ता का सम्पूर्ण केन्द्रीकरण । इस अनाचार को सम्मानित और प्रतिष्ठित करने के लिए संविधान की आड़ ली गई । संविधान बनाने वाले मनीषियों व जिन आस्थाओं की धरोहर जनता को सौंपी थी उस का गबन किया गया ।"

आप ने इतना लिखा 42वें संशोधन के बारे में—42वां संशोधन इस षड्यंत्र की पराकाष्टा थी । आप ने यही नहीं लिखा, आपने लिखा कि आपात स्थिति की एक ही उपलब्धि है—आतंक और भय की सृष्टि । आपात स्थिति देश के अन्दर आतंक और भय की सर्जना करता है, देश के अन्दर कोई निर्माण नहीं करता । आपात स्थिति को आप ने आतंक और भय की जननी कह दिया, उस को आप ने कहा कि यह किसी भी सभ्य देश के लिए, सभ्य सरकार के लिए, सभ्य नागरिक के लिए उचित नहीं है, इतनी कठोर वाणी का प्रयोग आपने अपने चुनाव घोषणा पत्र में किया है और आज उस में थोडा सा परिवर्त्तन करते हैं कि आपात स्थिति लागू कर सकते हैं सशस्त्र विद्रोह होने की संभावना पर । मैं कहता हूं कि अगर देश में सशस्त्र विद्रोह होगा तो सरकार की पलटनें, सरकार की सेना, सरकार की सत्ता सारे देश में हर जगह है, अगर कहीं सशस्त्र विद्रोह की चिन्गारी फूटेगी तो सरकार तुरन्त उस को रोक सकती है, खत्म कर सकती है । संवैधानिक अगर कोई सरकार है जो संविधान के तहत सत्ता में है उस को पलटने के लिए हिंसात्मक आन्दोलन कोई करे तो हिंसा में मैं मानता हूं किसी की जान लेना हिंसा है, लेकिन अहिंसात्मक आन्दोलन में मेरे ऊपर अगर सरकार बल प्रयोग करे और सरकार के बल का प्रतिकार करने के लिए कहीं कोई सरकारी प्रतीक है, कोई सरकारी भवन है, सरकारी टेबल या कुर्सी है तो उस को तोड़ देने को मैं

कभी भी हिंसा मानने को तैयार नहीं हूं। जहां किसी की जान ली जाय उसी को हम हिंसा मानेंगे। हिंसात्मक स्थिति में अगर अराजकता फैल जाय, लाखों लोगों की जान जाने लग जाय, ऐसी भयंकर स्थिति में सरकार आपात स्थिति लागू कर सकती हो तो करे। लेकिन इस तरह संभावना और शंका के आधार पर करेंगे तो शक है कि एक नम्बर की कुर्सी पर बैठा हुआ आदमी हमेशा अपने कुर्सी बचाने के लिए देश की जनता के ऊपर आपात स्थिति लागू कर के उन को दबाएगा, विद्रोह को दबाएगा, जनता की आवाज को दबाएगा, बेकारी, बेरोजगारी, अन्याय और शोषण के खिलाफ जो मुक्ति चाहने वाला है उस को दबाएगा और इसी नाम पर हिन्दुस्तान के अन्दर सकड़ों नौजवानों को बिहार में नक्सलपंथ के नाम पर सीने पर गोली मार कर गिरा दिया गया था। उस बात को हम लोग नहीं लौटने देना चाहते। इसलिए आपात स्थिति का सिद्धान्त रूप में विरोध करना चाहिए और उस को मानना नहीं चाहिए।

SHRI B.C. KAMBLE (Bombay South-Central): Mr. Deputy-Speaker, Sir, to my mind, the explanation which has been added—and it is a new explanation—to clause 38, is probably the most dangerous one and I would like the hon. Law Minister to look into it because it provides that internal emergency can be declared even prior to the occurrence of the alleged event. The storm centre in this debate is the exercise of power of internal emergency if we compare this provision with the previous provision, what we find is that this Government has made it such a declaration of internal emergency a little easier, then what the position was, previoulsy. Therefore, I would suggest first of all—and that is why I have moved my amendment, i.e. No. 302 and I have stated therein that at least a grave danger of rebellion must exist i.e. in the present tense. If the wording is that a rebellion is likely to take place and this Government makes a declaration of emergency, such a declaration would be justified, so far as the provision in the Bill is concerned. Therefore, I would request the Law Minister kindly to consider the fact that hereafter the declaration of internal emergency is going to be explosive. And the Government which declares it will be thrown away, just as the Government prior to the present one was thrown.

Secondly, if we consider the entire rprovisions in the Constitution, we see that Constitution does not provide for a constitutional breakdown as far as the Centre, or the Parliament, is concerned. And therefore, in the earlier constitutonal provision, there was a provision either declaring an emergency or for revoking it. There was no third step possible. The Indira Government introduced a third principle of variation, i.e. of varying the emergency. It has been copied by this Government. I submit to the Government; "Don't accept this principle of making a variation. Either impose the Emergency or revoke it." There should be no third alternative to it. Otherwise you will be following in the footsteps of the Indira Government. Therefore, I have suggested that this principle of variation should be deleted so far as the present provisions are concerned.

I have also submitted an amendment about the Council of Ministers. If you are going to follow the principle of collective responsibility, that collective responsibility should come from the whole of the Council of Ministers—and not merely from the chosen few viz. the Cabinet Ministers. Of course, some other hon. Members have also suggested it. Therefore, I will not dilate on it.

There is another principle, about the approval, so often even by Parliament. That principle should not be accepted. If from time to itme Emergency is to be approved, even by Parliament, it should not be accepted. Otherwise it will mean that Emergency will be approved from time to time and year after year, and it will go on. And Emergency will be used as it is a routine affairs; and what is not provided for in the Constitution, viz. not making any provision for constitutional breakdown at the Centre, will be there in practice. Any Government will be tempted to use Emergency as a routine matter. And it will be used, just as we use Presidential regime in the constitutent States. It should not be the position.

Then, finally, what I have submitted is something about the continuation of the variation. Even continuation of variation has been provided for. I request the Minister to be wiser. This provision under

[Shri B. C. Kamble]

Article 352 is so explosive that any Government which exercises it in regard to internal emergency, will be blown up and changed. And you would not have another opportunity to change it later on.

There is a good feature in the provisions, viz. that the hon. Members are given an opportunity to requisition a session of Parliament or of the Lok Sabha to consider it; and that too, after 14 days. A 14 days' notice is necessary. It is good, but it is not enough. I would suggest that you reduce the period to a week. Not that a requisition should be signed by all the Members in one sheet; even if there are various Members requesting for the session separately—and if the total comes to one-tenth of the strength such a session should be held.

Lastly, even though I have not given such an amendment, I would request this Government that they should first call the emergency session of Parliament, a secret session of Parliament and then only they declare an internal emergency. Otherwise, there should not be any internal emergency at all.

डा० बलदेव प्रकाश (अमृतसर) : उपाध्यक्ष महोदय, 38वें क्लाज में जो संशोधन सदन के सामने प्रस्तुत किया गया है, उस का आशय तो यह है कि जिन कारणों से एमर्जेंसी लगाई गई थी, दोबारा उन कारणों से एमर्जेंसी लगाई न जा सके, इसी लिये शब्द, "इनटरनल डिस्टरबेन्सेज" की जगह "आर्म्ड रिबैलियन" रखा गया है। लेकिन मैं ऐसा समझता हूं कि "आर्म्ड रिबैलियन" या "इन्टरनल डिस्टरबेन्सेज"—ये दोनों एक ही अर्थ में प्रयुक्त हो रहे हैं। इस संशोधन के लाने से अगर सरकार की मंशा यह है कि पहले जैसी स्थिति यानी दोबारा एमर्जेन्सी लगाने के लिये कोई साहस न करे, तो मैं समझता हूं कि सरकार का जो लक्ष्य है, वह इस संशोधन से पूरा नहीं हो सकता है। पहले तो जो एमर्जेन्सी लगाई गई थी, उस में भी यही कहा गया था कि हालात ऐसे बिगड़ गये हैं, विद्रोह हो रहा है, लोग सशस्त्र विद्रोह पर उतारू हो गये हैं, आर० एस० एस० के दफतरों पर छापे मारे गये, वहां जो लकड़ी की तलवारें ड्रिल के लिये रखी हुई थीं, उन के बड़े-बड़े चित्र खिच कर अखबारों में छापे गये। उन दिनों हम लोग जेल में थे। क्या इस को आर्म्ड-रिबैलियन गिना जायगा ? ड्रिल के लिये अगर कोई चीज इकटठी की गई है—क्या उस को आर्म्ड-रिबैलियन कहा जा सकता है ? इसलिये मेरा निवेदन है कि इस परिभाषा में कोई भी ऐसी चीज शामिल नहीं की गई है जिस से स्पष्ट हो सके कि आर्म्ड-रिबैलियन किस प्रकार का होगा, कौन-कौन सी चीज आर्म्ड-रिबैलियन में शामिल होगी, कौन-कौन सी नहीं होगी।

लोक नायक जय प्रकाश नारायण जी ने उस समय कहा था — पुलिस और फौज के लोग किसी भी गैर कानूनी हुक्म को न मानें। क्योंकि उन्हें पता था कि गैर-कानूनी हुक्म दिये जाने वाले हैं और बाद में शाह कमीशन में यह बात स्पष्ट भी हो गई कि गैर-कानूनी हुक्म दिये गये थे, दस्तखत कर के वारन्टस पुलिस अधिकारियों को दे दिये गये, वे जिस को चाहे गिरफ्तार कर के बन्द कर दें। इसी चीज की रोकथाम के लिये जय प्रकाश जी ने कहा था कि कोई भी अफसर कोई भी गैर-कानूनी हुकम न माने, लेकिन उनकी सलाह का यह अर्थ लिया गया कि जय प्रकाश जी ने पुलिस और फौज को विद्रोह के लिये भड़काया —**वेट-मीन्ज-आर्म्ड-रिबैलियन**। यह जो शब्द है—इस का कोई भी अर्थ लगाया जा सकता है। आर्म्ड में कौन से आर्म्ज शामिल हैं—इस का स्पष्टीकरण कहीं भी नहीं है। इस हिसाब से तो लाठी भी आर्म है तलवार भी आर्म है। हिन्दुस्तान के संविधान के अन्दर किसी भी सम्प्रदाय के आदमी को तलवार और बरछा लेकर खुले-आम

घमने फिरने की आजादी है । पंजाब में अगर कोई बरछा ले कर और तलवार लेकर जलूस निकालता है, तो उस पर कोई पाबन्दी नहीं है— तो क्या यह आर्म्ड-रिबैलियन है ? इस की परिभाषा कहीं भी स्पष्ट नहीं है, इसलिये मैं ऐसा महसूस करता हूं कि इस शब्द का भी उसी प्रकार से दुरुपयोग हो सकता है है, जैसा "इन्टरनल डिस्टेरबेन्सेज" शब्द को हुआ है ।

इसलिये मेरा यह संशोधन है कि या तो इन्टरनल-डिस्टरबेन्सेज या आर्म्ड रिबैलियन — इन शब्दों को बिलकुल हटा दीजिये, इन की कोई आवश्यकता नहीं है और यदि "आर्म्डरिबैलियन" शब्द को रखना है तो इस तरह से परिभाषित करें, उस की व्याख्या इस तरह से करें कि इन का दुरुपयोग होने की दोबारा सम्भावना न रहे । आर्म्ड-रिबैलियन में क्या-क्या चीजें हो सकती है, उसमें कौन-कौन से हथियार होंगे—इन सब बातों को स्पष्टीकरण हो जाना चाहिये । यदि ऐसा संशोधन नहीं किया जायगा तो मैं समझता हूं—इस का अर्थ पहले जैसा ही लिया जायगा, और इसके दोबारा दुरुपयोग की सम्भावना भी रहेगी ।

SHRI CHITTA BASU (Barasat): Sir, my amendment is very simple and it is this. There should not be any emergency on account of internal disturbances or it should be substituted by armed rebellion. Emergency can be proclaimed only under one set of circumstances, namely, external aggression. I do not want to dilate upon it, but I am tempted to. .

MR. DEPUTY-SPEAKER : Please do not get tempted because we do not have that much time.

The same arguments, I find, are being repeated again and again.

SHRI CHITTA BASU: I only want to recall the apprehension which was expressed by our esteemed colleague Shri H. V. Kamath when this particular emergency clause was being pu . He himself just like a prophet told the Constituent Assembly that there were possibilities of misuse and abuse of the emergency powers.

To-day I find him in a different mood.

SHRI HARI VISHNU KAMATH: 'Armed insurrection' I had moved then.

SHRI CHITTA BASU: The Constitution itself provided certain instruments for authoritarianism. The erstwhile regime took advantage of that and misused that instrument of authoritiarism. My complaint and charge against the Government is instead of dismantling this instrument which leads to the growth of forces of authoritarianism, these instruments are going to be preserved and preserved with great seriousness. The very provision of armed rebellion is one of that kind of instrument which can be used for scuttling democracy.

MR. DEPUTY-SPEAKER: This is not a general debate. Please try to confine to the amendment alone.

SHRI CHITTA BASU: This is an important clause. There is political contention in it.

MR. DEPUTY-SPEAKER : Do you know how much time you have taken on this important amendment? You are just repeating the same argument.

SHRI CHITTA BASU : Even to-day I express my apprehensions. Everybody will agree that there is complete normalcy in the country. There is no scope of internal emergency. I think the entire House will agree. But if there is a mischievous Government to-day, even Baila Dilla incident might be cited as an example for getting promulgated an emergency under armed rebellion. Even Pant Nagar incident might be cited as an example to invoke emergency. Even the situation which is in West Bengal— Pant Nagar might be cited as a case for invoking emergency. Therefore, these instruments are there. The Janata Governemnt is committed to dismantle the instruments of authoritarianism. Is this restoration of democracy ? You can restore it only when you dismantle the instruments which destroy democracy. You have to dismantle the instruments of authoritarianism. Are you nourishing such instruments which help to protect democracy ? I may give a note of warning - you have to keep the instruments of authoritarianism away and take steps which help to ensure democracy in the country.

[Shri Chitta Basu]

With these words I commend my amendment.

SHRI AJIT SINH DABHI (Anand) : Sir, the amendment brought by the Janata Government for dropping the words 'internal disturbance' from article 352 has been brought with an ulterior motive. After their crushing defeat at the hands of the Congress in 1971 and 1972 elections, the political parties like Jan Sangh, BLD, Cong (O) etc. wanted to overthrow the Congress Government by law established by means of internal disturbance. They had practically succeeded in Gujarat in 1974 in overthrowing the Government by law established. The same parties have now formed one single Janata Party. That is why they want to drop the words 'internal disturbance' from article 352.

Before the emergency was declared in 1975 we all know what happened in Gujarat during 1973 and 1974. The so-called Nav Nirman agitation started on a peaceful note. But with the entry of Jan Sangh, RSS, Marxists and Socialists it took a violent turn. Firing had taken place and the army was called in 1974 in Gujarat because even the Central Police Force failed to control the violent situation. Mr. Jayaprakash Narayan, the so-called Loknayak, who was the master mind behind this internal disturbance issued a statement that the police and the army should not obey the orders of the Government. What happened ? Banks, Government offices, post offices, telephone exchange and other public and private property worth Rs. 300 crores was either destroyed or looted. Not only that. The duly elected members of the Gujarat Legislative Assembly were attacked. Their families were attacked. Their property was destroyed The house of ex-Chief Minister, Mr. Madhav Singh Solanki was set fire to. When ex-Minister, Mr. Ratubhai Adani was taking treatment in the civil hospital, he was attacked. The house of Shri Somalal Shiroia, MLA, was burnt down in Godhra. The MLAs were terrorised to resign from the Assembly. In February 1974, these people had given a threat to derail all the trains coming to Gujarat. Therefore, with the weapon of internal distrubance, the then Congress Government was forced to resign and the Central Government was forced to dissolve the Gujarat Legislative Assembly. It was alleged that the then Gujarat Government was a corrupt Government. But the Chief Minister of that allegedly corrupt Gujarat Government is now with Shri Morarji Desai, the Prime Minister. Shri Charan Singh ex-Home Minister of the present Central Government, said a month ago that the present Central Government abounds in corrupt people. (*Interruptions.*)

श्री लाल जी भाई (सलूम्बर) : उपाध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है ।

उपाध्यक्ष महोदय : किस रूल के अन्तर्गत आप व्यवस्था का प्रश्न उठा रहे हैं ? आपका कोई रूल नहीं है जिसको आप कहें कि मैं यह रूल कोट करता हूं । व्यवस्था का प्रश्न उठाने का यह कोई तरीका नहीं होता है । आप बठ जाइये । पहले आप रूल कोट कीजिए कि किस रूल को कोट कर आप व्यवस्था का प्रश्न उठाना चाहते हैं ।

(*Interruptions*)

MR. DEPUTY SPEAKER : Don't record.

(*Interruption*)**

MR. DEPUTY SPEAKER: Please take your seat. You have finished your time.

14 hrs.

SHRI AJIT SINH DABHI : I am speaking on the Bill.

MR. DEPUTY SPEAKER: We are not discussing the Bill; we are on the amendments.

SHRI AJIT SINH DABHI : I have given amendments that the Government's amendments should not be there. I have moved that this amendment should be dropped.

MR. DEPUTY SPEAKER : Yau cannot treat it as a general discussion. Please wind up.

SHRI AJIT SINH DABHI : So far, the experience has shown that the weapon of internal disturbance,' though it may

**Not recorded.

not be termed "armed rebellion". it can be utilised so effectively as to overthrow a Government by law established and to demolish the democratic institutions. The founding fathers of our Constitution had rightly envisaged the situation in which internal disturbance can overthrow the Government by law established. I, therefore, request the hon. Minister not to disturb the present emergency provisions in Article 352. I also request him not to overlap the steps of wisdom taken by our founding fathers including Sardar Patel and Panditji with all their wisdom, sagacity and foresightedness.

PROF. P. G. MAVALANKAR : This Article 352 has become notorious because of the way it was used by Mrs. Gandhi in 1975. But, Sir, I have given my amendments because after second and more considered thought I felt that the words which Mr. Shanti Bhushan wants to introduce by substituting from 'internal disturbance' to 'armed rebellion' do not really solve the problem. It becomes not only vague but in some other ways, more difficult to define and therefore, worse. After all, the law, as he himself says, must be specified. Armed rebellion is not specific because anybody, a small group can get up and use some arms and Government may say, it is armed, rebellion, let us do something. Therefore, my amendment is instead of 'armed rebellion', you say 'revolt by a section of the armed forces'. One can understand revolt by a section of the armed forces. It may be defined as challenge to the established authority. Instead of saying that, if the Minister says in the amendment 'armed rebellion', then it is vague, it is not specific.

The other point is that in Notes on clauses on page 22 of the Bill he has mentioned six safeguards and then an additional safeguard by saying that the President's satisfaction is not final. So, I want to ask him, after having all these safeguards, which incidentally show the honest intentions of the Government—it is good that they donot believe in any kind of artificial or wrong type of emergency—will any Government be able to use article 352 if there is some kind of disturbance in the country ? That is why, my argument is that instead of giving a vague type of definition 'armed rebellion', why not get rid of the whole thing ? Because in the begining I thought that some kind of an armed disturbance may be there which may necessitate and justify internal emergency, but when internal disturbance is going to be called 'armed rebellion' and 'armed rebellion' is going to be protected against these six safeguards plus the additional safeguard that the President's satisfaction is not final, I do not think any Government can use those powers under Article 352.

SHRI SHANTI BHUSHAN: Not misuse.

PROF. P. G. MAVALANKAR : For use, I mean misuse. If you are sure that nobody can use it, then why not get rid of the whole thing ? If you cannot do it, then at least accept my amendment.

Regarding Amendment No. 415, I agree with Mr. Kamath. He says 15 days but I say within 30 days.

I am not saying "at the end of 30 days" but "within 30 days". It can be ended in 8 or 10 or 15 days, but perhaps in a country of the size and nature of India, perhaps you may take more time to come back to normalcy. That is whv I have given 30 days.

SHRI DHIRENDRA NATH BASU (Katwa) : In clause 38 I want that the words "internal disturbance" or "armed rebellion" must be deleted. That is what we have been saying since long.

Instances like those that happened in Pantnagar, Agra, Bankura, Tamil Nadu etc., cannot be called armed rebellion, but the Government can term it armed rebellion. So, what is the definition of "armed rebellion" ? Internal disturbances cannot justify the proclamation of an emergency by the President. There may be disputes between students and the police, between employers and employees, and there may be firing, but they cannot be called armed rebellion. So, what is the definition of "armed rebellion" ? That should have been given here.

The nation is looking forward to you to give the lead in the light of what you have been preaching so long. The hon. Law Minister has made speeches in various public meetings saying that the Forty-second Amendment would be completely thrown out, but unfortunately, what do we find now ? This is old wine in new bottle. It would mean taking away some fundamental rights of the people.

Law and order is the responsibility of the State Governments. State Governments are well equipped with the power to control and check these disturbances. So, why should you bring into this article internal disturbances or armed rebellion ? Why should you take away the rights of the States ? So, I would appeal to the hon. Minister through you to withdraw these words "armed rebellion". People

[Shri Dhirendra Nath Basu]

will feel that you preached something during your election campaign, but now you are putting old wine into a new bottle.

SHRI M. N. GOVINDAN NAIR (Trivandrum) : My amendment is to delete "internal disturbances" in article 352 and leave it at that, and it is against the substitution of the words "armed rebellion".

Much has been said here. I am reminded of the words of the great historian Toynbee, that the biggest lesson of history is that nobody learns from history. This is another example.

Why do I say that armed rebellion should not be included ? Today, the law of the land provides ample powers in the hands of the Government to deal with any situtaion including an armed rebellion. Among the amendments that have already been moved, there is one which provides for the State Governments to requisition the army if necessary. My most serious objection to this clause is that internal emergency is not something that will help quell an internal rebellion rather it will boomerang, because you are punishing the whole nation for the rebellion of a section of the people. When you deal with external aggression you have to use the maximum force to crush your opponent.

14.10 hrs.

[SHRIMATI PARVATHI KRISHNAN *in the Chair.*]

But in dealing with internal situtations, you will have to use minimum force and isolate those people, the rebellious people, from the others. If this is not done, you will be just playing into the hands of the rebellious group rather than helping the established government. That is why I say you must reconsider this.

If there is time, I can quote innumerable examples, but I am not doing it. The best illustration is the victory of the Janata Party. Since the emergency was clamped on the entire people, the people revolted and put you in power. The same thing will happen again. My third objection is that it is liable for any kind of abuse,

Now, when you put this "armed rebellion", in place of internal disturbance, what is the demarcating line ? Somebody attempted a definition of ' armed rebellion'. Even that will not help. Now, I will state an example. You know about your internal quarrels. Already it has been announced that on the 23rd of December there will be a kisan ralley of lakhs. They will all be coming with lathis. I am not saying that it will happen, butfrom what happened at the demonstration of 13th of this month, at the Prime Minister's residence I can say that if a few lakhs of kisans from all parts of the country come armed with lathis, easily if the Government wants, they can say that here is a situation where there is threat of armed rebellion and declare emergency. Therefore, my point is that this "armed rebellion' that you want to substitute for 'interna disturbances' should be given up and I think the Law Minister will do it. Even if the Law Minister is not in a position to withdraw that now, if you don't issue a whip the House will reject the substitution of "armed rebellion". I am quite sure that a good number of people who spoke here, even though I don't follow Hindi I could find out, are in support of my point. So, either you yourself withdraw it or you give freedom to this House to vote as they like.

SHRI L. K. DOLEY (Lakhimpur) Mr. Chairman, because of the shortage of time, I will simply sum up by saying that this Government, and the party in power, which was making a ceaseless tirade against the Emergency, we were expecting that this Government would come up with the total abolition of the provision relating to Emergency lock, stock and barrel. But it is surprising that they have not been able to have that courage or valiance to abolish outright the emergency. On the contrary, they have realised more and more the importance of Emergency. That is why I say that the present Government are going to beautify the provisions on Emergency. But, in their attempt to make more beautification of the Emergency, they are making a valiant attempt to call for an unnecessary surgical operation in the provision about Emergency. The result is that this type of plastic surgery attempted is going to fail and leave an ugly scar on the sanctity of the provision about Emergency, which was enshrined by the founding fathers of the Constitution.

I am, therefore, of the view that there is a saying, "It is well-known what strange work there has been in this world under the name and pretence of reformation. How often it has turned out, to be, in reality de-formation or at best a tinkering sort of business ; where while one hole has been mended, many more have been made."

Now you have been adding the words "armed rebellion". What is this type of armed rebellion ? There is armed rebellion going on in Nagaland, Mani-

pur and Mizoram. There may be many other States which may interpret that they are going to have armed rebellion. It is left to the interpretation of the rules, according to one's own discretion, whether they find it convenient or inconvenient to enforce Emergency.

What I would like to emphasize is that the sanctity of the Constitution, so far as the Emergency provisions are concerned, be preserved and it should be left quite untouched. What I have been finding is that Shri Shanti Bhushan, our legal guardian of the nation and his party have not been able to show any courage ; rather, I find that there has been perpetual timidity and fear that emergency will re-emerge. It is correct that in the normal course of life there should be no re-imposition of emergency. Well, emergency comes once in a nation's life and it is never desirable. I should counter it by saying that one emergency has brought this country and democracy to a proper shape ; and I will not be surprised if another emergency comes which will bring about huge prosperity to this country.

Therefore, the founding fathers of the Constitution felt that Emergency may be necessary. Emergency has not been imposed, I should say, by Mrs. Indira Gandhi just like that ; perhapts there was no other alternative then. Emergency sometimes imposes itself. That is why in my maiden speech, I have said—I quote a Hindi song :—

यह क्या हुआ कब हुआ कैसे हुआ ।
अरे भाई, जब हुआ तब हुआ ।

The Emergency came that way. It is nobody's attempt to try to justify the proclamation of Emergency. But you are leaving an ugly scar by adding the words "armed rebellion", in the provision making emergency more easily applicable. The sanctity of the Constitution should be preserved and left untouched. It all depends upon the type of leader who comes next. It is really striking and surprising to find that there is a perpetual fear that one Indira Gandhi will rule this country for all eternity.

MR. CHAIRMAN : My perpetual fear is that you will not conclude now.

SHRI L. K. DOLEY : Therefore the words "armed rebellion" ought to be deleted and we shall certainly oppose this clause.

MR. CHAIRMAN : The Minister.

SHRI MALLIKARJUN (Medak) My party was told that my name is second, after Mr. Doley.

MR. CHAIRMAN : There is only one Member from each group to speak on each amendment. Mr. Mallikarjun will you please resume your seat ? The Minister. (*Interruptions*)

SHRI SHANTI BHUSHAN : Madam Chairman, I am not surprised at the sentiments which have been expressed by a number of hon. Members of this House. I fully appreciate their anxieties, their apprehensions and the feelings because of the traumatic experience that all of them have had and this country has had during the last internal Emergency. So, it is quite appropriate for them to entertain all these feelings of anxiety and apprehension.....

SHRI HARI VISHNU KAMATH : All of us, including yourself.

SHRI SHANTI BHUSHAN : I am saying, all those who have spoken, for them.....

SHRI SOMNATH CHATTERJEE : All those who have spoken and those who are speaking.

MR. CHAIRMAN : Why don't you wait for him to complete. He will tell you his personal experiences. You need not remind him. That only delays matters.

SHRI SHANTI BHUSHAN : In fact, I am reminded in this connection of an incident which I would like to share with the hon. Members here. Soon after the Emergency had been revoked by the then Government, not by us, as soon as that Government was getting out, they revoked the Emergency, what was their intention, I am not aware, but they did revoke the emergency. But soon after the new Government had taken over, somebody has come to Delhi from another State and when he was going in a taxi to the place where he was supposed to stay, there was a hospital in between and there was that neon-sign or some other red sign board with the words "Emergency Ward", he just looked at the Board and turned to the Driver and told him to take him back to the Station as he did not like to stay there because he felt that Emergency was redeclared. But those kind of apprehension were quite possible. But then we have to look at things in a balanced way. No article can be considered or seen in isolation. There are various changes

[Shri Shanti Bhushan]

which are being made by this Constitution (Amendment) Bill, which are of a far-reaching nature. I would like to assure the hon. Members that whoever, even if a more dictatorial person gets an opportunity to be in the seat of power in this country at any time, it would not be possible for that person to bring that kind of Internal Emergency, which this country has faced, because of the various safeguards which are being built in here viz., that there shall be no censorship on the publication of the proceedings of Parliament and the State Legislatures. Now if such a thing is being made Constitutionally not permissible, how would it be possible to create that kind of atmosphere, because it is not one factor alone, it is not merely by declaration of Emergency, because this country has seen so many declarations of Emergency, but can any comparison be drawn between the Emergency which we had in 1962 in the wake of Chinese aggression and the Emergency which was declared in June 1975 ? There are Emergencies and Emergencies..—*(Interruptions)* It is not merely the notification of the declaration of Emergency which brings about a qualitative change in the polity of the country or in the atmosphere of the country....*(Interruptions)*

MR. CHAIRMAN : Those who are not called are not being recorded.

SHRI SHANTI BHUSHAN : It was a package of steps, which was well-conceived. *(Interruptions)*.

So far as the constitutional powers are concerned, the enhanced powers which the Government gets and so on are not different. Whether Emergency is declared on account of external aggression or it is declared on the basis of internal factors, the consequences are the same. But yet we have seen that the kind of atmosphere and the kind of situation which existed in the country during other Emergencies, which had arisen in different circumstances, was very different from the circumstances which arose in the country after the internal Emergency was declared in June, 1975. What was the reason ? The various steps which were taken, a combination of all those steps, resulted in the suspension of right to life and liberty, the consequence of which was, on the basis of the Supreme Court judgement, that no habeas corpus was admissible and no grounds need be given. A detention order may be wholly *mala fide*. It could be demonstrated by saying, even if theoretically such a fact was put before the court, supposing a District Magistrate says in so many words in the detention order, because I had offered the hand of my daughter to this youngman and this youngman has refused it and, therefore, I feel, he should be detained, whether the courts will have any power to entertain the habeas corpus and release the person, the answer was that so long as article 21 stood suspended, no habeas corpus was maintainable.

So, even if the detention order has been made on extraneous consideration, it is not possible to have him released. All these various factors had combined to produce an atmosphere which nobody would like, even with the slightest possibility, to be repeated.

I fully appreciate the anxieties and the apprehensions which have been expressed. I would only appeal to hon. Members to consider whether with all these various safeguards which are being introduced by way of a package, that possibility will remain. Even if the worst kind of a dictator is there in this country, after the Constitution stands amended, he would not be able to repeat the kind of atmosphere which had prevailed from 1975 to 1977. I can say that with the fullest confidence behind my words.

I would like to impress upon the hon. Members that even—their anxiety is for democracy and liberty—for protecting democracy and liberty, the Government has to be invested with certain powers, with all the safeguards, because if the powers are not with the Government, then neither democracy nor liberty can be safe. If you take away all the powers of the Government even for dealing with situations as they arise, when they pose a threat to the democratic values and the values of liberty, what can the Government do to protect the values of democracy and liberty. It was said that even the power to criminally prosecute a person, have him convicted and have him sent to jail has been abused. Since there could be some possibility of abuse of those provisions and some over-enthusiastic person may say, scrap the Criminal Procedure Code, because the possibility of abuse will not be there, at the same time all those safeguards which those provisions contemplate for the society would also vanish. So, we have to have a balance between the two, it would not be possible to abuse the powers of the Government and, at the same time, it would be possible to make a proper use of those powers in the interest of democracy and liberty itself. That is why I am happy that Shri Kamath had envisaged a 'golden mean', a balance, even at that time, by his prophetic words in the Constituent Assembly. I am happy that the thinking

of the Government also led to the same conclusions which his thinking had led him to, even 30 years back or even a few months back.

Now, about 'armed rebellion', it has been stated by all sections of the House that there must be provisions for the declaration of Emergency and consequential changes in the polity and so on, when there is a threat to the security of India from external aggression. May I put it before the Hon. Members to consider this : if a threat to the security of India can arise on account of the fact that there is armed aggression against the country from external sources, cannot the same danger arise to the security of India if the same kind of danger through aggression can be shown to arise only from within, whether it has been inspired or helped from outside or not ? But, sometimes, it is not possible to identify how it has been inspired or helped from outside. All that can be seen visually is . . . (*Interruptions*).

MR. CHAIRMAN : You can continue with your reply.

SHRI SHANTI BHUSHAN : My difficulty is that I cannot match their voices.

MR. CHAIRMAN : Mr. Minister, I am not asking you to shout : all that I am saying is, don't have a dialogue with anyone but continue with your reply.

SHRI SHANTI BHUSHAN : I was talking about 'armed rebellion'. It has even been suggested that there should be a definition of 'armed rebellion', but, as I have said on earlier occasions also, 'armed rebellion' is a concept which one can feel, which one can very clearly appreciate and understand. Sometimes, putting a thing in a definition becomes difficult because there is a limit to definitions also. Sometimes, if you want to concretise a certain idea in prose, the result is that the difficulties are much more.

As to what 'armed rebellion' means, it is not possible to say because there are two words 'armed' and 'rebellion'. Now, Shri Kamath has suggested a definition and I have no doubt that his definition is perfectly correct, but the whole question is . . .

SHRI HARI VISHNU KAMATH : I am not satisfied with it.

SHRI SHANTI BHUSHAN : He is not satisfied, but I am satisfied. I am satisfied in the sense that if a definition was to be enacted, perhaps it would have been difficult to find a better definition. But, at the same time this concept of having definitions etc. can be extended too far. Definitions cannot be that expressive as the original expression would be. In fact, every word cannot be defined : otherwise, where will we end ? Even a definition will contain some words and then you may say 'All right, define those words' and that definition will again contain some words, and the process will be endless. Therefore, we have to stop at some stage : namely, we must have a clear concept, and that concept has to be identifiable. The concept of 'armed rebellion' is very clearly identifiable —namely, that it is rebellion against the Government established by law and its purpose is to remove the Government established by law, and it is done with the use of arms and not peacefully. Now, if one wants to peacefully agitate against the Government, create public opinion against the Government and remove the Government, one is welcome to do so. Everybody is welcome to do so, but not by means of 'armed rebellion'. So long as democracy is preserved, so long as the right of the people to vote is preserved, so long as Elections are preserved, so long as the people are given a sense of participation by sending their elected representatives at due intervals to the House, then, in that case, the Government has to be fought in a democratic way, by creating public opinion and not by means of armed rebellion because there is hardly any difference between armed rebellion and external aggression. The only difference is, from where it is inspired : otherwise, the consequences are the same.

SHRI M. N. GOVINDAN NAIR : There is a difference between external aggression and armed rebellion.

SHRI SHANTI BHUSHAN : That is all right : there is a difference, I have said. But sometimes there may not be any difference and it may not be possible to show that the help and inspiration has arisen from outside. Even an armed rebellion inside the country might be helped, aided and inspired from outside, but it may not be possible to demonstrate it ; it may not be possible to show it. If you have to demonstrate, if that provision is there, if it is a conditional power, then obviously this power can be exercised only on the fulfilment of that condition ; if, in the condition, it is stipulated that it must be shown, that it is an external aggression, then it will be the responsibility of the Government to show it, namely, 'Yes; the aggression is there; the aggression has come from external sources'. And if it cannot be demonstrated,

[Shrimati Shanti Bhushan]

then in that case it will not be proper for it to exercise that power. Let us be honest about it . .

PROF. P. G. MAVALANKAR : There is a catch in the hon. Minister's argument when he says that armed rebellion is something which everybody knows. We all had thought that 'internal disturbance' was something which everybody understood; yet, it was abused in 1975—when there was no internal disturbance.

SHRI SHANTI BHUSHAN : I agree. (*Interruptions*)

MR. CHAIRMAN : I would remind all the hon. Members that they can have their final say when the Clause is put to vote. At that time, they can have their final say. (*Interruptions*) Mr. Mallikarjun. this is not going to help anybody. You can have your final say when the Clause is put to vote. The Minister will have his say now.

SHRI SHANTI BHUSHAN : May I remind the hon. Member that, in the ultimate analysis—and this is what very eminent people have said—it is not the words that you write which will have the ultimate sanctity or which will give protection to the people because whatever may be the words that you might use in a provision, ultimately it is a question of those in-built safeguards . .

SHRI G. NARSIMHA REDDY (Adilabad) : Did you say, Mr. Chairman, that you were going to put it to vote after the Minister's reply ?

SHRI SHANTI BHUSHAN : I said that you would have an opportunity to give your final opinion when the Clause is put to vote. At that time you can give your final word on that—when you actually press the button.

SHRI SHANTI BHUSHAN : May I put this to the hon. Members ? All-right, they are accepting that the apprehension of external aggression, namely, threat to the security of India arising from external aggression should give an occasion for the declaration of Emergency. Well, there may be no external Emergency and yet the Government may dishonestly say that there is an external aggression and threat to the security of India. That way, it is not the words which count ; whether you use these words or those words, they are only for the purpose of honest application. The words which are used in a particular provision are for the purpose of telling the authority which is being invested with the power so that it may know as to in what circumstances it is called upon to exercise the power. It is not that it wants to create a facade; if it wants to create a facade, it can do so whatever words you may use in a particular article of the Constitution. Ultimately the safeguards will arise, not from the Government, but from different sources like courts or Parliament or the pressure of public opinion, and so on and so forth. Those safeguards have to be strengthened. The words should be seen in a normal perspective, not with a suspicious eye. If, honestly, there is a threat to the security of India from armed rebellion inside the country—forget for a moment the other apprehension about misuse of power—do you want that the Government should be properly armed to meet that threat to the security of India ? Or do you feel that, even though the threat to the security of India arises from armed rebellion inside the country, Government should remain powerless; it should succumb to it, the country may succumb to it ? Do you want that ? Therefore, so far as safeguards are concerned, safeguards do not arise from the words which are used in an article. Words are for the purpose of telling the authority in what circumstances it is supposed to honestly exercise the power. The safeguards have to come from different sources, and that is why, a large number of safeguards are being introduced —two-thirds majority in both the Houses, to be repeated every six months, requisition by one-tenth of the Members, immediate revocation, and so on and so forth.

I will, very briefly, deal with the other points which have been made. Mr. Kanwar Lal Gupta made a point that the word 'Cabinet', because it has not been used in the Constitution elsewhere, should be substituted by the expression 'Council of Ministers'. I appreciate his feeling behind this. But the thesis would be that either a certain expression should be used in the Constitution at more than one place or it should not be used at all. After all there are expressions either at one place or at two places or at ten places, and so on and so forth. How does it arise that merely because it is used at one place and in one context because it is required to be used there, it should be used everywhere ? There is justificatiou for not using that expression. There is a difference between the Council of Ministers and the Cabinet. Every Junior Minister is also a member of the Council of Ministers. The Council of Ministers is a more embracing concept but Cabinet is also a well-known concept. Everything need not be defined because it is well-known as to what is a Cabinet. Naturally, anybody who reads the Constitution and applies the Constitution

knows what a Cabinet is. So also Ministers with Cabinet Rank because the ultimate decision-making authority is the Cabinet. Therefore, it is said that the Cabinet must decide this matter . . . (*Interruptions*).

MR. CHAIRMAN : Mr. Balbir Singh, please do not compel the Minister to take longer than what is required.

SHRI SHANTI BHUSHAN : It was said that it should also be laid down that when war or external aggression, etc. is over, then within a certain period and within a matter of a few days therefrom the emergency should automatically come to an end or it should be revoked. May I assure the hon. Members, that suppose a war takes place, now the war may come to an end but yet the situation may be such that although physically and on the face of it, the war has come to an end, but because the declaration of emergency can be made not only when there is a formal declaration of war but even when there is an apprehension of external aggression because obviously you would like to take certain steps in order to meet the situation as early as possible, you cannot say and in fact it may not be possible in the context of modern warfare, to locate the point of time at which the war or the external aggression comes to an end. It may not be possible. It is a question of subjective decision as to whether the war has come to an end. There might have been a time when trumpets were blown to announce, 'All right, the war has come to an end' and both the sides jointly blow the trumpets and then that would mark the end of the hostilities.

SHRI SOMNATH CHATTERJEE : What about the 1971 aggression ?

SHRI SHANTI BHUSHAN : But in the modern warfare that is no longer applicable. Sometimes, it may be and sometimes it may not be. Therefore, it would not be possible to pinpoint and, therefore, if you have that concept, who will apply that concept ? Obviously, the idea is that the courts must have the power to determine that on such and such date, at such and such time the external aggression must be deemed to have come to an end. It must be an identifiable point of time. Otherwise, such a provision would not have any meaning. That is why the safeguard which has been introduced is that the Members of Parliament must have a feeling, 'All right, conditions have become such that the declaration of emergency need not continue.' Therefore, they would requisition a meeting of the Lok Sabha if necessary ..... (*interruptions*) And immediately the meeting has to be called and the revocation has to take place. (*Interruptions*)

Shri Kamble felt that the explanation that we are adding, namely, that it was not necessary that external aggression must have already taken place before the declaration of emergency as if it was a new provision which was being introduced in this amendment for the first time. I can assure him that this is not new. This is already there, only the wording of the clauses and the arrangement of the clauses has been altered.

Clause 3 of the old Article contained that concept because whenever you put it the exercise of power on an apprehension and on the basis of a judgement, even in that case, such a provision by way of abundant caution and to make things clear would have to be there. That provision has to be there. . . . . (*interruptions*) I again appeal to the hon. Members to appreciate that it will not be possible to abuse these powers and this is the proper balance which has been found between avoiding any use and yet not paralysing the government to maintain democracy and to maintain the liberties of the people and to protect them by having the necessary powers which may be necessary in an eventuality.

Clause 39—(*Amendment of article 356*)

MR. CHAIRMAN : Now we come to Clause 39. There are several amendments. Are you moving ?

SHRI SOMNATH CHATTERJEE : I beg to move :—

Page 10, line 43,—

for "six months" *substitute* "three months" (16)

Page 10, line 46,—

for "six months" *substitute* "three months" (17)

Page 10, line 48,—

for "six months" *substitute* "three months" (18)

Page 11, line 6,—

for "one year" *substitute* "six months" (19)

SHRI M. N. GOVINDAN NAIR : I beg to move :—

Page 10, line 43,—

for "six months" *substitute* "two months" (193)

[Shri M. N. Govindan Nair]

Page 10, line 46,—

for "six" *substitute* "two" (194)

Page 10, line 48,—

for "six" *substitute* "two" (195)

SHRI B. C. KAMBLE : I beg to move :—

Page 10,—

for lines 40 to 48, *substitute*—

'(a) clause (4) and the provisos thereto shall be omitted and these shall be deemed to have always been omitted.' (309)

SHRI HARI VISHNU KAMATH : I beg to move :—

Page 10,—

after line 39, *insert*—

'(a) in clause (3),—

(i) for the words "two months" the words "one month" shall be substituted ;

(ii) for the words "resolutions of both Houses of Parliament" the words "a resolution passed by each House of Parliament by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting", shall be substituted;

(iii) in the proviso, for the words "two months" the words "one month" and for the words "thirty days" in both the places where they occur, the words "fifteen days" shall be substituted, and, (350)

Page 10 line, 40,—

for "(a)" *substitute*, "(b)" (351)

Page 10, line 46,—

add at the end—

'and for the words "three years" the words "one year" shall be substituted". (352)

Page 10, line 48,—

add at the end—

'and for the words "thirty days" in both the places where they occur the words "fifteen days" shall be substituted (353).

Page 11,—

for lines 1 to 16, *substitute*—

"(b) clause (5) shall be omitted." (354).

SHRI V. ARUNACHALAM Alias 'ALADI ARUNA' : I beg to move :

Pages 10 and 11,—

for clause 39, *substitute*—

"39. Article 356 of the Constitution, shall be omitted" (3/4)

PROF. P. G. MAVALANKAR : I beg to move :

Page 10, line 43,—

for "six months" *substitute*—

"one hundred and twenty days" (416)

Page 10, line 46,—

for "six months" *substitute*—

"one hundred and twenty days" (417)

Page 10, line 48,—

for "six months" *substitute*—

"one hundred and twenty days" (418)

MR. CHAIRMAN : Shri Dhirendranath Basu is absent. I would request the members to confine themselves to three minutes each. Shri Arunachalam.

SHRI V. ARUNACHALAM Alias 'ALADI ARUNA' (Tirunelveli) : Madam, Chairman, the most undemocratic article in our Constitution, is the one which brings the State Government under President's Rule. No other Constitution in the world with the exception of Pakistan's is having such a baneful clause. Unfortunately in this aspect we are equal to Pakistan.

Our Constitution fails to recognise that the Governments in the States are equal, popular and tantamount to that of the Centre. The party at the centre is always exploiting this Clause through the Governor, the stooge of the Centre.

If we can examine the usage of this clause in the past, we can easily understand how atrocious injustice has been done to ruling parties in the States, by the Centre. More than 36 times the President's rule was imposed in various states. The total period of the President's rule in the States exceeds twenty years. These are the darkest periods in our democratic life. In the beginning the Congress party was alittle hesitant and restrained in imposing the President's rule. That is why during the period of Pandit Nehru, President's rule was imposed for only six times. But after Nehru, Mrs. Gandhi created an unbroken undemocratic record, by imposing President's rule 30 times during the tenure of her office. Because of this undemocratic clause the lawful Government was removed by the Centre by the party in power. During the discussion in the Constituent Assembly, some of the founding fathers of the Constitution raised their voice and registered their protest against this Article. In the draft Constitution, the position was a little better, reasonable and acceptable :

> "The proclamation under this article ceases to operate at the expiration of two weeks unless revoked earlier by the Governor or by the President by Public notification".

This is the draft provision in the Constitution. Even Dr. Ambedkar was not in favour of this clause to the extent that it was amended, altered and then passed. Dr. Ambedkar said :

> 'The Presient will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do, would be to issue a mere warning to a province that has erred, that things were not happening in the way they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order election allwoing the people of the province to settle matters by themselves."

These are the wordings of Dr. Ambedkar.

Madam, the assurance and the sentiment expressed by Dr. Ambedkar were never honoured in the past. When a state government loses its majority, the responsibility of the Governor is to allow another political party which claims majority to form the Government. If there is any doubt about the clear majority of the party which intends to form the Ministry, the Governor, must summon the House immediately and asscertain the strength. If there is no chance of forming a Government by any political party, the Governor must dissolve the Assembly, and simultaneously announce the date for the ensuing election.

In Britain, the dissolution and date for the next General Election are announced in the same proclamation.

MR. CHAIRMAN : Will you now please conclude ?

SHRI V. ARUNACHALAM ALIAS 'ALADI ARUNA' : In Ireland the period allowed is not later than 30 days, after dissolution. In France, after dissolution, the time-limit is not less than 20 days and not more than 30 days. In Italy it is seventy days. Therefore, in India also, instead of imposing President's Rule, after dissolution, we must conduct the election for the Assembly not later than 60 days after dissolution. No. doubt the present amendment is gonitg to reduce the danger. At the same time, even after this amendment, the State Governments have to function un?er the threat of the President's Rule. The peculiarity of our Constitution is that the party at the Centre can run the government free from the threat of President's rule whereas the States are always under the threat of the President's rule. There is no justification and logic behind this. Therefore, I appeal to the hon. Minister to accept my amendment so that the political exploitation will be averted and the State Governments will be saved from the victimisation by the party at the Centre.

SHRI SOMANTH CHATTERJEE : May I remind you, Madam Chairman, also how this clause has been misused. I cannot say whether Mr. Bahuguna was a beneficiary or a victim but since he is now deputising for the Law Minister I hope he will be less intransigent and he should tell the Law Minister that the entire House is aginst Article 356. The position is that starting frm 1959 and during the great leadership of Congress of Smt. Indira Gandhi by machinations of the Centre, and not because of any bonafide reasons Article 356 had been used for political purposes and not for any administrative reasons. This is the experience of the application of Article 356. It has been used indiscriminately aginst political oppendents in West Bengal. We have been victims in Kerala. We have been victims in Orissa. Theq people have been vicims in Uttar Pradesh, Haryana nd what not. It was most compreshensively used not only aginst political opponents but also aginst their own governments–probably with some restraint. You know there was PAC revolt in Uttar Pradesh and how the President's rule was utilised only to control the PAC revolt but also to get rid of Shri Kamlapati Tripathi. Then Shri Bahu-

[Shri Somnath Chatterjee]

guna came and, of course, for Bahuguna 356 was not necessary as by that time Emergency had come.

Madam Chairman, Article 356 is very anti-thesis of a federal structure of government in this country. They canot really go together. If a political party in power loses its majority or if there is uncertainty in the government at the Centre, there is no provision for President's rule. Then why should you take the States as second-class political entities. Now, in the present context we have seen different political parties are ruling different States in this country. Now, there is no protection what soever aginst the mis-application or political mis-application of Article 356 so far as a particular State is concerned. Therefore, Madam Chairman, we have suggested that in cases where only elections cannot be held then for three months there can be a sort of interragnum only to allow elections to be held. We can allow to that extent but we would be happly if Article 356 altegether goes. Due to the over-bearing attitude of the Centre they can stifle State Governments in different manner—not only in respest of political and constitutional power—and there is economic strangulation of different State governmemts in this country.

Article 356 cannot go side by side with federal structure of our country. We are clear about this. The people of this country are convinced about this. Article 356 is a method of crushing political opposition in this country as also the dissidents in the ruling political party in this country (*An hon Member : Groups also.*) Therefore we are objecting to it on principle. Various things happened in the name of the Constitution which our founding-fathers had never dreamt of. Many things happened during the period of emergency which we have never imagined during the 30 years of our experience Please look at Article 352. Please look at Article 22. providing for Preventive Detention. Please look at Article 356, providing for the President's rule. Please look at Article 359 barring recourse to courts of law. Look at Article 359 and see how it was expanded during the last emergency. You are blaming the founding fathers for everything. Well, they had contemplated emergency: they had contemplated President's rule.

MR. CHAIRMAN : The hon. Member's time is up.

SHRI SOMNATH CHATTERJEE : They had contemplated Preventive Detention. They are supposed to be more mature and it is said that we should go by their experience. But our experience is much more. The experience of the people in 1977-78 is much more than what their experience was in 1947. They had certain ideas, they had certain basic faith in honest pglitical government, honest political attitude of the ruling party in this country. They thought that certain norms of political behaviour will be followed in this country. But that has not been done.

Therefore, we wish to point out that powers which are to be treated as emergency and extraordinary powers should not be allowed to remain any longer in the Constitution, in the body-politic and the organic laws of this country.

Therefore, out of the experience and in view of the people's mandate in this country, I am making this request to the hon. Law Minister and also to my hon. friends in this august House. Let him ponder over it. If any particular political party is in power in one State and the Centre is governed by another political party, there is no protection. If there is some motivated unconstitutional act, there is no protection at all. If there is imposition of President's rule, there is no protection at all. Kindly remember how many types of President's rule were imposed in many States where the opposition parties were in power in the States. There were many cases where Assemblies were dissolved and President's rule imposed. Where there was scope for manipulation and manoeuvring and Aya Rams and Gaya Rams had to be tackled, purchase of MLAs and so on and so forth, then, the Assemblies were kept in suspended animation so that the horsetrading could be completed and the chosen Chief Minister could assume the *gaddi*. Such things have happened in this country. There are no yardsticks. The constitution does not say where the assembly will be suspended and where it will be kept in suspended animation, whether it is for 2 months or 3 months and so on.

MR. CHAIRMAN : Your one minute is over.

SHRI SOMNATH CHATTERJEE : It may be that one day your State will be the victim of this Article 356.

MR. CHAIRMAN : The Chair wont' be under President's rule. Please go on.

SHRI SOMNATH CHATTERJEE : I mean your State, Madam.

Here we have provided for a minimum period of President's rule. Kindly accept it. Even the Constitution (Forty Fifth Amendment) Bill is sought to be passed under whip. One is reminded in this connection of what happened last time when we discussed the Constitution

(Forty-Second Amendment) Bill. Mr. Brahmananda Reddy was the then Home Minister. He did not know what was there but still he had to vote for it. That was the position then. Now also the same attitude is being repeated. It is very important for them to see that the whip is not there. Let the Members vote according to their conscience. Let them vote according to what is best for the country, not according to their predelictions.

SHRI M. N. GOVINDAN NAIR : Madam Chairman, I do not want to argue the same points which have already been put forth by my honourable friends before the House. Formerly I was a Member of the Rajya Sahha. It was 10 years ago.

MR. CHAIRMAN : From being elder, you have now become younger.

15 hrs.

SHRI M. N. GOVINDAN NAIR : When I came back to the Lok Sabha, I was told great changes have taken place. Most of the faces were the same, but they are called by different labels. Then, I went through all these Constitutional Amendments. The Janata Party may write anything in their manifesto. They do not have the courage to take away the undemocratic provisions that are already there in the Constitution. When it comes to a question of internal Emergency, the approach is the same as that of the previous Governments. Here also the same is the case. I request Shri Bahuguna to tell the Law Minister about your experience about the imposition of President's rule or interference by the Centre and how you suffered. So, do you want the same thing to continue, do you want the same provision in the Constitution? Therefore, I would appeal to you, personally, to advise the Law Minister. Since he is a very competent lawyer, I have no doubt he will understand. My admiration for him is due because with a client like Mr. Raj Narayan he could win the election case. I have no doubt about your competency, about your understanding and you can very well understand that as long as you maintain this provision it will be misused. Therefore, my request is that it should be withdrawn.

15.02 hrs.

[MR. SPEAKER *in the chair*]

Sir, the Law Minister is very fond of stories. I will tell a story about Issac Newton. In order to avoid anybody interfering in his work, he wanted his room locked and work inside. But he was fond of dogs. So, he called the carpenter and asked him to make two holes—one big and the other small in the door of his room, so that the small dog and the big dog could come into his room through the holes respectively. When his servant asked him the reason for making these two holes in the door, Isaac Newton explained the position. Then the servant told him "can't you understand that small dog can go through the big whole? Why did you spoil the door with two holes?" Definitely the servant was right. But upto that time, nobody had considered that the servant was superior in intelligence to Isaac Newton. Therefore, have no false prestige in accepting reasonable amendments, amendments that come from the Opposition. Kindly accept this and save this country.

SHRI HARI VISHNU KAMATH: Mr. Speaker, Sir, I shall be very brief, concise and precise. I am glad when my friend Shri Somnath Chatterjee has agreed that in order to hold fresh elections in those States where Constitutional machinery seems to have broken down, there should be an interregnum of two or three months to enable the Election Commission to arrange for fresh elections in those States. That is exactly what Dr. Ambedkar, who piloted the Constitution Bill and one of the architects of the Constitution, said in the Constituent Assembly on the 4th August 1949. He said and I quote :

> "In fact, I share the sentiments expressed by my honourable Friend, yesday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces."

That is why, he went on to say, the first thing should be a warning and then :

> "If that warning fails, the second thing for him would be to order an election..."

I am glad that the Janata Government, for the first time, unlike its predecessor Congress Governments, took a new line and broke new ground when after suspending the Constitution and imposing President's rule in eight States last year in 1977, ordered fresh elections immediately. That was the only time when this provision was implemented in letter and spirit that was displayed in the Constituent Assembly. On all other earlier

[Shri Hari Vishnu Kamath]

occasions in the past, from 1952 to 1977, it was misused, I believe, 42 times, by the Congress Government and every time, the President's rule lasted two years, and very often three years. Therefore, I have sought to move my two amendments. One is to make the safeguards more stringent, more strict and I may even say, more drastic—the safeguards with regard to approval by Parliament of the resolution on proclamation imposing President's rule.

I have sought to move that each House of Parliament will have to adopt that resolution, approve that proclamation by a two-thirds majority as is the case for the other proclamation under Art. 352 of this chapter. That will be an adequate safeguard, not full safeguard, but a more adequate safeguard against misuse of the power under Art. 356.

I have sought to move another amendment to reduce the period of the President's rule from three years to one year only. If at all we have to retain the provision. This is because sometimes, as had been envisaged in the clause, it may be necessary for the Election Commission to have some time to arrange for elections in those States, or when an emergency is proclaimed under circumstances of war or external aggression and is in operation, perhaps it may not be possible in those circumstances to hold an election. Therefore, while I would be happy if this provision is repealed, but if this is not to be repealed, there must be adequate safeguards to ensure that the period should not be more than one year and to ensure that Parliament will approve it by a two-thirds majority and not by simple majority of both the Houses.

SHRI B. C. KAMBLE: Sir, So far as Article 356 is concerned, the provisions that were made in the Constitution Forty-Second Amendment Act, have almost been retained. The maximum period that is allowed for President's rule when the constitutional machinery breaks down is three years. This is really a mockery of a constitutional provision. In fact, when powers under Article 356 are required to be exercised, they are not exercised. When there were disturbances in Marathawada, and there was no constitutional machinery for full ten days, that was the appropriate time to exercise such powers under Article 356, but such powers were not used during that period. Similarly, there were disturbances in Bombay city in Worli and Naigaun area, there was no Government for nearly fourteen days. Even at that time, when there were great riots, these powers were not used.

What I am submitting is that when the powers are required to be used, that are not used. These are used for political purposes and now with this proposals, the period for this is being kept as three years. I have, therefore, suggested in my amendment No. 309, that we should delete that sub-clause (4) which was enacted under the 42nd Constitution Amendment Act.

PROF. P. G. MAVALANKAR: This Article 356, like Article 352, has been grossly abused—not once but several times; and as was pointed out by Mr. Kamath, 42 times in 28 years. Did the founding fathers envisaged that President's rule would be promulgated so frequently?

The Law Minister should have, therefore, come forward with a still more stringent provision. He has already outlined his attitude, when he was talking about Article 352, about safeguards etc. Why does he not have a similar and even a stern attitude towards the use of Article 356, if they have to use that kind of an Article in any State?

This is meant for tackling the problem of failure of the constitutional machinery in a State. Our experience is that it was not a failure of constitutional machinery, but the creation of an artificial situation where they could say that it was there, and then usurp power—not take power and use it, but usurp power for a couple of years. Therefore say that we should reduce the time. The scope for artificial crises similar to the ones created by the previous Central Government should go; so also the perversion of Article 356. It was a perversion, pure and simple, for political ends. If the Law Minister does not want it, how do we tolerate it by having it for six months—more than once? Therefore, let us make it as minimum a period as possible. Mr. Somnath Chatterjee wanted it to be reduced to 3 months; I have said that it should be reduced to 120 days. You may take some time to restore normalcy; but how long can the people remain dis-enfranchised? The case of Gujarat was not mentioned. We in Gujarat also suffered because of President's rule more than once. And whenever there is President's rule, to an extent in excess of the required period, we deny their legitimate rights to our people to enjoy popular Government, politically and constitutionally. Why should people be denied a duly-elected representative Government? To that extent it is disenfranchisement—considering the fact that in the whole country, elected Governments are working, whereas in a section of the country or in one State or more, only bureaucratic governments work. In that period, you have to come to Parliament. There are Committees of Parliament. Parliament has to

look to the problems of the whole country. The people of the States which have President's rule for a long time, are denied their legitimate and basic rights of political representation through properly and duly elected democratic Governments. That is why I say that the time must be reduced to 120 days.

SHRI SHANTI BHUSHAN: Hon. Members have already seen that the amendment which is being proposed by this Bill to Article 356 would create a very valuable safeguard, particularly in the sense that earlier, the maximum period during which there could be President's rule, was as long a 3 years. That period of 3 years is being reduced by the Bill to 1 year, except in one contingency, viz. when a proclamation of emergency is in operation. Not only that; the Election Commission should also certify that on account of the proclamation of Emergency, been enforce it is not possible to hold elections straightways. Only then can the period of the President's rule exceed one year. Otherwise the maximum period is 1 year. It is the declared policy of the present Government that if it becomes necessary to have the President's rule, it will be utilized only to have the elections as early as possible. But we have to have this period of one year for the reason that this provision applies to all the States; and there are some States in which, except in some seasons, holding of general elections is not possible.

Therefore, one has to keep that in mind. Of course, when the maximum period is one year, every season is bound to come within that year, and therefore, proper season in which election can be held would also intervene during that period of one year. That is the reason why this period of one year had to be kept. But the consent of the Parliament will have to be taken every six months.

Now, it has been suggested by some hon. Members that even this period of six months should be reduced to three months; every three months, the consent of the Parliament for prolongation of the President's Rule may be necessary. But, Sir, in this connection, as the whole House is aware, the constitutional requirement is that the House must meet at least every six months. But the period which may lapse between one regular session of the House and another regular session of the House, of course, cannot exceed six months. So, it will be possible to have these ratification resolutions. . . But if this period of three months or six months is introduced, this would not make much of a difference. It is the spirti which is really more important. But then unnecessarily this session may have to be merely for these resolutions. So, my submission would be that the hon. Members should appreciate the spirit in which the amendment is being made; the spirit is that only for the minimum possible period. . . .That is the experience during the last 16-17 months when this present Government has been there.

Whenever the President's Rule was imposed, either in the States in North or South, then immediate elections were ordered because elections were possible during that season. Therefore, I would request the hon. Members not to press their amendments.

Clause 40—(*Amendment of article* 358).

MR. SPEAKER: Mr. Somnath Chatterjee, are you moving your amendment no. 20?

SHRI SOMNATH CHATERJEE: Yes.

MR. SPEAKER: Mr. Tridib Chaudhuri is not here. Then the rest of them are not present. Mr. Kamath, are you moving your amendment no. 355?

SHRI HARI VISHNU KAMATH: Yes.

MR. SPEAKER: Mr. Arunachalam, are you moving your amendment no. 375? Then Mr. Chitta Basu, are you also moving your amendment no. 406?

SHRI V. ARUNACHALAM ALIAS 'ALADI ARUNA': Yes.

SHRI CHITTA BASU: Yes.

SHRI SOMNATH CHATTERJEE I beg to move:

Page 11,—

For clause 40, *substitute*—

"40. Article 358 of the Constitution shall be omitted." (20)

SHRI HARI VISHNU KAMATH: I beg to move :

Page 11,—

after line 27, *insert*—

'(iii) after the existing proviso, the following proviso shall be inserted, namely :—

"Provided further that the State shall not make any law which takes away or abridges the rights conferred by article 21." (355)

MR. SPEAKER: Mr. Somnath Chatterjee. Let us be as brief as possible because the time is running.

SHRI SOMNATH CHATTERJEE: Clause 40 deals with amendment to Article 358. We want the deletion of this. Now that the right to property is not going to be a fundamental right any longer, we do not see why at all any other fundamental rights, the remaining fundamental rights in our Article 19 should be suspended during the proclamation of emergency. No doubt, the proposed amendment talks about external aggression or war and that type of emergency which would be prevailing to apply 358, but, even the basic human rights as contained in the Article 19 of the Constitution, except the right to property, should not be made subject to the presidential declaration, notification to be in operation or not. Therefore, we are opposing to it in principle; and we have seen how the scope of these two Article 358 as well as 359 has been enlarged from time to time, and thereby a complete restriction on the rights of the people in this country was brought about. Therefore, we are opposing this and we want that 358 should go altogether, specially when the right to property is being deleted from Article 19 of the Constitution.

SHRI M. N. GOVINDAN NAIR: I do not want to repeat the same arguments that have been put forward. I stand by my amendment. I have found from my previous experience that there is no use in appealing to the Law Minister. Before he became the Minister, he had the capacity to understand an argument. Now he has lost that capacity also. So, I am not appealing to him but to the House that they should accept my amendment.

SHRI HARI VISHNU KAMATH: Mr. Speaker, Articles 358 and 359 should, in my humble judgment, called twin articles and they go together. There are so many other things in life like bread, butter, potatoes and onions. Those things go together.

(*Interruptions*)

Now, if you look at Article 359, as you will see, amendment suggested by the Government restricts the power of suspension of rights conferred by Part III. That is to say Article 21 is now becoming entrenched, the right to life and liberty..

MR. SPEAKER: That cannot be suspended.

SHRI HARI VISHNU KAMATH: And rightly so, after the traumatic experience of 19 months, when they tried to enforce dictatorship in our country, and many of them opposite cooperated heartily, to the best of their ability and now some of them are repenting, but not all of them are repenting. I would like to ensure that Article 358 also compliments and supplements what Article 359 would seek to ensure. Therefore, in my amendment, I have suggested—

355. Page 11,—

after line 27, *insert*—

'(iii) after the existing proviso, the following proviso shall be inserted, namely :—

"Provided further that the State shall not make any law which takes away or abridges the rights conferred by article 21."

Article 358 as it stands to-day reads as follows :—

"While a Proclamation of Emergency is in operation, nothing in article 19 shall restrict the power of the State as defined in Part III to make any law or to take any executive action which the State would but for the provisions contained in that Part be competent to make or to take, but any law so made shall, to the extent of the incompetency, cease to have effect as soon as the Proclamation ceases to operate, except as respects things done or omitted to be done before the law so ceases to have effect."

'Nothing in this Article or proviso thereto restricting the power to make any law which seeks to abridge, which takes away or abridges the rights conferred by Article 21.'

In the Constituent Assembly I had moved an amendment. This was on the 20th August, 1949 to the clause moved by Dr. Ambedkar. I had moved—

'Notwithstanding anything contained in this Article the right to move Supreme Court or High Court by appropriate proceedings by writ of *habeas corpus* (because Article 21 by that time had not been passed. Perhaps, that is why I said (*habeas corpus*) and all such proceedings pending in any court, shall not be suspended except by an Act of Parliament.'

This, as I said earlier, should go with Article 358 and, therefore, I said we should also prevent any Law which restricts or abridges, takes away the right conferred by Article 21.

I hope the Minister, who in spite of the allergy to many amendments moved in this House to-day, has made up his mind with regard to all amendments. I hope he will see his way to accept this as a necessary corrollary of thea mendment he will move in Article 359. I hope whatever he may or may not do, this

amendment of mine will commend itself to the House; otherwise the amendment to Article 359 will not have much effect unless this is incorporated in Article 358.

MR. SPEAKER: Your amended clause removes the article 32. Whether that is intended, I do not know. Article 21 alone is retained. Original article 359 takes away all the fundamental rights in Part III. Article 32 is in Part III. So, Supreme Court cannot be approached even if you save article 21.

SHRI SHANTI BHUSHAN: High Court would be available.

MR. SPEAKER: High Court alone is there. If it is intended like that, that is a different matter.

SHRI SHANTI BHUSHAN: It is my misfortune that Shri Govindan Nair, whom I hold in the highest esteem, has the impression that I have become deaf after becoming Minister. But I can assure him it is on account of so many hon. members speaking simultaneously that I have become deaf.

So far as the spirit of the amendments which have been suggested is concerned, namely, while article 359 requires a conscious order to be made by the President, i.e. by the Government to suspend a fundamental right, article 358 has automatic operation in so far as article 19 is concern d, perhaps the spirit behind the amendments is that even in regard to fundamental rights contained in article 19, it should be a conscious decision of the Government which should have that effect. But the amendment which has already been suggested, namely, addition of clause (2) to article 358 in the fact really provides for that when it says:

> "(2) Nothing in clause (1) shall apply—
>
> (a) to any law which does not contain a recital to the effect—that such law is in relation to the Proclamation of Emergency in operation when it is made; or
>
> (b) to any executive action taken otherwie than under a law containing such a recital"

Therefore, the effect of article 358 is being completely altered. It wluld not have the effect of upholding any and every law against the onslaught of fundamental rights contained in article 19. It will only save those laws which are enacted only for the purpose of meeting the situation or difficulties created by the emergency and such laws will have to contain a recital to that effect. Even executive action, if it is to be protected, would be taken only under such law which contains a recital that that law is necessary in order to meet the situation created by the emergency. Therefore, it will only be a conscious decision of the Government which will allow article 19 to be prevailddover by a deliberate law. Therefore, so far as the spirit of the criticismis concerned, that has already been taken care of.

So far as article 21 is concerned, article 358 does not suspend article 21 at all. It was capable of suspension only under article 359 and that is being taken care of. Therefore, article 21 will always remain for prototecting the liberty of the peoole in every situation.

Clause 41—(*Amendment of article* 359.)

MR. SPEAKER : We shall now take up clause 41.

SHRI SOMNATH CHATTERJEE : I beg to move :—

> Pages 11 and 12,—
>
> *for* clause 41, *substitute*—
>
> "41. Article 359 of the constitution shall be omitted." (21)

SHRI G. M. BANATWALLA (Pounani) : I get to move :

> Page 11, line 39,—
> *for* "(except article 21)" *substitute*—
>
> "(except articles 21 and 25)" (50)

SHRI KANWAR LAL GUPTA : I beg to move :—

> Page 11, line 39,—
>
> *for* "article 21" *substi tute*—
>
> "articles 20 and 21" (425)

SHRI DHIRENDRA NATH BASU : I beg to move :—

> Page 11,—
>
> *after* line 39, *insert*—
>
> '(aa) in clause (1), the words "in consulatation with the Council of Ministers" shall be inserted at the end ; (426)

SHRI SOMNATH CHATTERJEE : Sir, our objection to the retention or article 359 in the Constitution is basic, be-

[Shri Somnath Chatterjee]

cause you are aware that by the Thirty-eighth amendment, after clause (1) sub-clause (1A) to the article 359 was inserted. Previously there was suspension of the remedy while article 359 was enlarged by suspending the right as a whole with the issuance of a Prolamtion of Emergency. Therefore, so far as fundamental rights in Part III are concerned, we do not know to meet what emergent situation would any of the fundamental rights stand in the way of the Government doing its duty to the people. We are happy that at least Article 21 is being protected and during the emergency, Article 21 cannot be abrogated or out in cold storage. If you go through the minimum freedoms; basic freedoms in Part III of the Constitution, there is nothing which will stand in the way of safeguarding the interests of the country, but these are used against the people as such and not for prontecting the country's interests. That is why, on principle, we are against 358 and 359 and we want that they should be deleted. So far as the powers are concerned there are ample powers and they are still keeping the preventive detention law. There are other laws which can deal with a real emergency.

There should not be blanket abrogation so far as Fundamental Rights are concerned, even apart from 19. Even though the Government is trying to preserve Article 21 intact, the other rights should also be placed in similar footing.

SHRI G. M. BANATWALLA (Pounani): It is rather unfortunate that Fundamental Rights are being treated with scant respect. I submit that the Fundamental Rights mentioned in Part III are the minimum that are guaranteed because while enumerating the rights as fundamental rights in Part III, several other rights which are natural rights have been shut out from being guaranteed. Secondly, all these Fundamenal Rights mentioned in Part III are subject to several restrictions. Therefore, the Fundamental Rights mentioned in Part III are the minimum that must be guaranteed under all circumstances. These Fundamental Rights are there in the Constitution as a matter of social policy and not as a matter of any convenience for any individual. Therefore, the best and the ideal situation would be that these Fundamental Rights should never be subjected to any suspension whatsoever. However, if that position is not acceptable to the Government, then in that case, my amendment suggests that as Article 21 can never be suspended in an emergency, in the same manner Article 25 should also be so entrenched that it cannot be suspended in any emergency at all. This Article 25 relates to freedom of conscience, religious freedom, etc. It does not come in the way of functioning of the Government or any conceivable situation of the emergency. Therefore, when Article 21 is sought to be so entrenched that it cannot be suspended in any emergency, there is no reason why, Article 25 guaranting the freedom of consience and the religious freedom should not also be so entrenched. Therefore, without dilating further upon the nature of the concept of religious freedom which is the first and foremast and basic freedom, I have to appeal to this House to rise above all consideration to see that this basic freedom is so entrenched that it cannot be suspended during he emergency.

The origin of the term 'freedom' is to be found in the concept of religious freedom. I am not trying to dilate on that theory but I am only pressing upon the same in order to emphasise two things. In the first place, the fundamental Rights mentioned in Para III are the minimum and are there as a matter of social policy and not as a matter of individual's conveience. Secondly, Article 25 should be so entreched that it cannot be suspended even during the emergency.

SHRI K. A. RAJAN (Trichur): I need not dilate on what is in the best interests of the country. Ths clause should not be there. The experience we had shows that fundamenal rights were forfeited so that it is a very dangeous clause, and so, I want that it should be deleted.

श्री कंवर लाल गुप्त : अध्यक्ष महोदय इस बिल के द्वारा यह संशोधन किया गया है कि इमर्जेन्सी के दौरान आर्टिकल 21 को सस्पेंड नहीं किया जायेगा। मेरा संशोधन यह है कि इस कानून में आर्टिकल 21 के साथ आर्टिकल 20 को भी रखना चाहिए ताकि आर्टिकल 20 को भी इमर्जेन्सी के दौरान सस्पेंड न किया जासके। आर्टिकल 21 में कहा गया है :

> "No person shall be deprived of his life or personal liberty except according to procedure established by law."

इस आर्टिकल को इमर्जेंसी के दौरान भी बनाये रखने के लिए मंत्री महोदय ने जो संशोधन रखा है उस के लिए मैं उन्हें बधाई देता हूं क्योंकि यह एक हिस्टारिकल डिसिजन है कि इमर्जेन्सी के दिनों में

भी—खराब से खराब स्थिति में भी—किसी को राइट टु लाइफ और पर्सनल लिबर्टी से वंचित नहीं किया जायेगा।

हमने इमर्जेन्सी के दिनों में देखा, और अनुभव किया, कि जहां इन्दिरा जी को मर्डर आफ़ डेमोक्रेसी कहा जा सकता है, वहां हम सुप्रीम कोर्ट को एबेटमेंट आफ़ मर्डरिंग दि डेमोक्रेसी के लिए एक्यूज कर सकते हैं। हम लोग जेल से याचिका लेने के लिए सुप्रीम कोर्ट जाते थे। सुप्रीम कोर्ट ने इमर्जेन्सी के दिनों में फ़ैसला दिया—जस्टिस खन्ना को छोड़ कर बाकी जजों ने कहा कि राइट टु लाइफ़ नहीं है, आप हेबियस कार्पस नहीं कर सकते, आप यह मालूम नहीं कर सकते कि डिटेंशन की ग्राउंड्ज क्या हैं, कोर्ट भी यह नहीं पूछ सकती है कि ग्राउंड्ज क्या हैं, अगर रांग आइडेंटिटी की वजह से कोई पकड़ा जाये—अगर मेरी जगह कामत साहब को पकड़ लिया जाये, और यह साबित हो जाये कि कामत साहब को ग़लत तौर पर पकड़ा गया है—, तब भी कोर्ट उसमें इन्टरफीयर नहीं कर सकती है, अगर कोई कांस्टेबल किसी को शूट भी कर दे, तब भी अदालतों के पास उसमें दख़ल देने के लिए कोई तरीका नहीं है। इस लिए मंत्री महोदय ने यह जो एमेंडमेंट रखा है, उसके लिए मैं उन्हें बधाई देना चाहता हूं।

अब आप आर्टिकल 20 देखिए:

"(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once."

मैं मंत्री महोदय से यह पूछना चाहता हूं कि अगर कल कोई ऐसी सरकार आ जाये, जो इमर्जेन्सी लागू कर के किसी ऐसे काम को आफ़ेंस बना देना, जो पहले आफ़ेंस नहीं था, उस को रेट्रोस्पेक्टिव इफ़ेक्ट दे दे, और पकड़ कर अन्दर कर दे, तब क्या होगा? आज जनता पार्टी का मेम्बर होना कोई आफ़ेंस नहीं है। मान लीजिए, बाद में कोई सरकार आ जाये, जो यह कहे कि जो व्यक्ति जनता पार्टी का मेम्बर था, उसे सज़ा दो जायेगी, या कोई सरकार किसी ऐसे काम को इमर्जेन्सी लागू कर के आफ़ेंस बना दे, जो आज आफ़ेंस नहीं है। यह नहीं होना चाहिए। जो आज आफ़ेंस है, वही रहना चाहिए। हां, अगर इमर्जेन्सी में कोई नया कानून बना कर किसी को सज़ा दी जाये, तो ठीक है। लेकिन उसको रेट्रोस्पेक्टिव इफ़ेक्ट नहीं देना चाहिए, और जो सज़ा पहले थी, वही रहनी चाहिए। आज मुझे मालूम है कि मुझे क्या काम करना है और क्या नहीं करना है, यह गलत काम है, जो मुझे नहीं करना है; यह आफ़ेंस है और यह आफ़ेंस नहीं है। जो पहले आफ़ेंस नहीं था, अगर इमर्जेन्सी में उसे आफ़ेंस बना दिया जाये, और सज़ा भी ज्यादा कर दी जाये, तो यह नैचुरल जस्टिस के खिलाफ़ होगा। जहां आपने आर्टिकिल 21 को जिन्दा रखा है एमर्जेंसी में मैं मांग करूंगा कि आर्टिकिल 20 को भी आप जिन्दा रखिए। यह न्याय होगा और इसके लिए मैं आप को बधाई भी दूंगा।

SHRI DHIRENDRANATH BASU: Mr. Speaker, Sir, in the morning the Law Minister has explained and replied on clause 38 where he supported "armed rebellion" in place of "internal dis-

[Shri Dhirendranath Basu]

turbances" which we opposed. Here again our esteemed friend has come forward for suspension of Fundamental Rights of the people. In Part III, the Fundamental Rights, as mentioned, are the most minimum which should not be taken away by the Government. What do we find in the Constitution (Forty-fifth Amendment) Bill ? What is he going to do here ? He has already changed "internal disturbances" into "armed rebellion". That is, it relates to matters of States. The States should be competent enough to check intrnal disturbances. And what is the definitien of "rebellion" ?

Again, Article 358 and 359 are redundant. They should be deleted. There is no necessity of retaining them in the Constitution. (Amendment) Bill.

Sir, suspension of Fundamental Rights is very serious. That means people will not be allowed to go to any court, they will not be allowed to go to a district court or a High Court or Supreme Court. What is this ? We cannot accept this position. So, I would request the hon. Minister, through you, to withdraw these Articles 358 and 359. There is no necessity for them.

SHRI SHANTI BHUSHAN : If, through you, I could have the attentien of Mr. Govindan Nair, I would be able to demonstrate now that I have not grown deaf because I am in the happy position of being able to accept one amendment suggested by Shri Kanwarlal Gupta. I am happy that he has pointed out that not only Article 21 is an essential safeguard for the life and liberty of the people, but Article 20 also is an essential safeguard for the life and liberty of the people because if Article 21 is capable of being suspended during the Emergency, then after suspending it, a method can be found for victimising people by creating a retrospective law to convert the acts which were innocent at the time when they were committed into crimes and thereafter punish a person. So I am happy that he has pointed it out and I would be accepting the amendment of Mr. Kanwarlal Gupta that Article 20 be also added along with Article 21 in this proviso to Article 359.

So far as the other Fundamental Rights are concerned, hon. Members have said that there should be total deletion of Article 359. I am sorry I am not in a position to accept it because after all, declaration of Emergency is with a purpose and the purpose is all right if some Fundamental Rights come in the way of tackling the situation for preserving the security of the country. Then in that case, those Fundamental Rights should not be allowed to come in. So far as the right to life or liberty is concerned, it stands on a different footing compared to other Fundamental Rights. But we have introduced another safeguard in Article 359 also that it will protect only those laws which are for the purpose of tackling the Emergency and which contain that recital.

SHRI HARI VISHNU KAMATH : How about Article 32 ?

SHRI SHANTI BHUSHAN : So far as Article 32 is concerned, I don't think so because for the contravention of any Fundamental Right which is not suspended it is open to a person to go to the High Court and after the High Court, of course, an appeal lies to the Supreme Court. I don't think at any time anybody would think of suspending Article 32 because it does not serve any purpose. In fact, there are many other Fundamental Rights also which no governmeent will ever think of suspending them. But then when you are having Article 359 in general terms, then in that case you have to be scientific in respect of every Fundamental Right and every part thereof. Otherwise, so far as the right to life and the right to liberty are concerned, they are most essential because there can be a desire to abuse that power. But so far as other Fundamental Rights are concerned, one need not have those apprehensions because one can always go to the High Court and after the High Court to the Supreme Court. So, I don't think, it is justified on a practical plane.

SHRI HARI VISHNU KAMATH : Why go to the Supreme Court *via* the High Court ? Why not directly ? Sir, you had also expressed some doubts about it a little while ago.....

MR. SPEAKER : I do not come into the picture.

Clause 42—(*Amendment of article 360*)

SHRI SOMNATH CHATTERJEE: I beg to move :

Page 12,

for clause 42, *substitute*—

"42. Article 360 of the Constitution shall be omitted." (22)

SHRI EDUARDO FALEIRO : I beg to move :

Page 12,

Omit line 26. (403)

SHRI SOMNATH CHATTERJEE : Sir, we want the deletion of article 360 by this amendment. Because, this article seems to confer power on the Central Government "to give directions to the State to observe such canons of financial propriety as may be specified in the directions, and to the giving of such other directions as the President may deem necessary and adequate for the purpose." Under article 360 the Central Government is supposed to be the repository of wisdom and all good idea of financial propriety and financial good behaviour. So far as the power to decare an emergency under article 360 is concerned, it is subjective and there are no guidelines here. This can be used as a means of curbing the powers of the State Government. There are various obligations on the State Governments under the Constitution and there are good reasons for a reconsideration of the distribution of powers between the Centre and the States ; I am not going into it at the moment.

The provisions of article 360 of the constitution have not been taken recourse to so far, subject to correction. But when we are considering amendments and undoing the provisions in the Constitution, as amended by the 42nd Amendment, we should review such provisions in the Constitution which affect not only the basic rights of the human beings but also the minimum powers of the State Governments under the so-called quasi-federal structure in this country. This arrogation of powers, or the concentration of powers, in the hands of the Centre is not in keeping with the federal structure of the Constitution, and this is an in-built opportunity or scope for interfering with the State Governments which do not toe the line of the Central Government. Because of this provision, at any point of time the Government at the Centre will have the power of interfering with the State Governments. Probably the days of tyrants are not over. Therefore, we should have such protection for the States, because for the fulfilment of a proper federal structure, to give a proper opportunity to the State Governments to look after their own affairs, there should not be unnecessary interference, or even any interference with the exercise of their rights and powers. Therefore, *prima facie* this article seems to be a hindrance to the proper functioning of a federal structure, and so this should be deleted.

*SHRI S. G. MURUGAIYAN (Nagapattinam) : Hon. Mr. Speaker, Sir, I would like to say a few words on my Amendment No. 199 to Clause 42, which seeks the removal of Article 360 of the Constitution. As my hon. friend who preceded me pointed out, Article 360 of the Constitution, which enables the declaration of Emergency if a situation has arisen whereby the financial stability or credit of India or of any part of the country thereof is threatened, is an anathema to the concept of federalism.

We have experienced 19 months of Emergency declared by Shrimati Indira Gandhi during which the fundamental rights of the citizens were abrogated, the rights of labour to form themselves into Unions were forfeited, their inherent right to strike was impinged upon, the Bonus Law was repealed, depriving the workers of their legitimate share in profits, the capitalists and those in authority were enabled to enjoy maximum benefits in such an authoritarian administration while those opposed were thrown out their jobs. All these undemocratic and anti-people actions were taken under the shelter of Article 352 of the Constitution under which the Proclamation of Emergency was resorted to. It is really regrettable that Article 352 is being retained under this Amending Bill. It makes little difference that 'internal disturbance' is being substituted by 'armed rebellion' through this amending legislation. My party is opposed to the retention of Article 352 empowering the Government to declare Emergency on the guise of internal disturbance or on the guise of armed rebellion.

Similarly we are opposed to retention of Article 360 also which may be utilised for perpetuating oneself or his or her party in power. We are afraid that this Article 360 would also be misused for some ulterior motives. We want that this Article 360 should be removed from the Constitution. I am sure that the hon. Minister of Law will bear in mind the experience of 19 months of Emer- and agree to my amendment No. 199.

MR. SPEAKER : Financial Emergency is totally different from other Emergencies. Shri Eduardo Faleiro.

SHRI EDUARDO FALEIRO : I do not wish to speak.

SHR SHANTI BHUSHAN : I am sorry I am not in a position to agree to the deletion of article 360 because the

*The original speech was delivered in Tamil.

[Shri Shanti Bhushan]

purpose of article 360 is to protect the country from Financial Emergency. If at any time there is a Financial Emergency and, therefore, a financial discipline has to be maintained, then, such an article is necessary.

Clause 43—(*Insertion of new article* 361*A*)

SHRI G. M. BANATWALLA : I beg to more :—

Page 12,—

after line 38, *insert*—

"(1A) Notwithstanding anything contained in this Constitution, there shall be no previous restraints upon publication of any matter in a newspaper :

Provided that reasonable restraints may be imposed in relation to a Proclamation of Emergency in operation declaring that the security of India or any part of the territory thereof is threatened by war or by external aggression." (51).

SHRI R. .K. MHALGI : I beg to move :—

Page 12, line 30,—

omit "in a newspaper" (176).

SHRI RAGHAVJI : I beg to move :—

Page 12, line 33,—

after "State" *insert* "or any court" (399).

SHRI G. M. BANATWALLA : Mr. Speaker, Sir, I am moving a very importan amendment and it is with respect to the freedom of the press. My amendment seeks to do away with any concept of pre-censorship whatsoever.

The Government has come forward with a half-hearted attitude towards the freedom of the press. It has been accepted that there will be no censorship whatsoever under any circumstances on the proceedings of Parliament and legislature. However, limiting this to the proceedings of Parliament and legislature is only a half-hearted measure.

After having gone through the experience of 19 months, one expected the Government come forward with a constitutional guarantee to the effect that the press in our free and democratic country will never be strangulated at any point of time and that there shall and there ought to be no pre-censorship whatever on any publication under any circumstances. We know that during the Emergency, the censorship was used in order to suppress any views against the Government and to play up the views that would go to support the Government. There was killing of news ; there was distortion of news.

I may very briefly state one personal experience. The national executive of my party, the Indian Union Muslim League, met in Delhi during the Emergency and passed a resolution against compulsory sterilisation. The very next morning, we were shocked to find the news stating that the resolution had been passed in favour of the population policy of the then Government. When we approached the authorities, we were told that such were the orders of the Censor authorities. Therefore, there can be no such attitude whatsoever in a democracy. We have known and we now have a bitter experience that strangulating the press is strangulating democracy. The guidelines or censorship laid down that even the decisions of the courts and even the proceedings of the courts shall be censored. Such was the State of affairs and such was the blatant abuse of authority that the courts had to intervene to observe that :

> "It was not the function of the Censor acting under the Censorship Order to make all newspapers and periodicals trim their sails to one wind or to tow along in a single file or to speak in chorus with one voice."

But even the proceedings of the courts and even the decisions of the courts were subjected to censorship and were not allowed to be published. Some guidelines were laid down, no doubt, but it is shocking that even the guidelines themselves were subjected to censorship and could not be published.

In the case of Shri C. Vaidya *versus* Shri D'Penha, Chief Censor, the Court observed :

> "People, therefore, have an indefeasible right in a democracy to judge the governmental policies and must, therefore, have a right to point out to the Government errors in its policies so that the Government may correct them and set itself on the correct action if it has strayed away from it."

The Court has further observed :

> "Public criticism, which is the life-line of democracy, is sought to be cut by these guidelines..... to permit such guidelines to operate even for a moment more will be destructive of our cherished democratic social order."

I therefore submit that, when the Government has come forward to ensure that there shall be no censorship of Parliamentary proceedings and of the proceedings in the Legislatures, my Amendment seeks complete freedom of the Press to the effect that there shall be no censorship, whatsoever, in this free, democratic country, viz. India.

SHRI R. K. MHALGI : Two Amendments stand in my name, but I am moving only the Amendment at Sl. No. 176. There is no reason why a publication other than in a newspaper, if it is substantially true and is made without malice, should not have the same freedom from court proceedings. There is nothing specially sacrosanct about publication in a newspaper. Hence my amendment.

SHRI SHAMBU NATH CHARTURVEDI (Agra) : My Amendment is only about the deletion of the words "unless the publication is proved to have been made with malice". The Clause reads :

> "No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State, uneless the publication is proved to have been made with malice".

If it is a substantially true report, then the question of malice does not arise and this part of the clause should not be there. It should therefore be deleted, in the interests of unfettered freedom of the Press.

श्री राव जी : अध्यक्ष महोदय, आपात्कालीन स्थिति के दौरान हमारे यहां एक ओर तो संसद और विधान सभाओं की कार्यवाही के प्रकाशन पर प्रतिबन्ध लगा हुआ था और उसको सैंसरशिप लगा था, वहां दूसरी ओर हिन्दुस्तान के न्यायालयों, जिन में उच्च न्यायालय भी थे, उन सब न्यायालयों की कार्यवाही के प्रकाशन पर भी सैंसर लगा हुआ था और न केवल सैंसर लगा हुआ था अपितु अगर किसी ने उस को प्रकाशित कर दिया, तो उस की तंग किया जाता था। अभी जो माननीय मंत्री जी ने एमेंडमेंट प्रस्तुत किया है, उस में केवल लोक सभा और राज्य सभा की कार्यवाहियों को ही संरक्षण प्रदान करने की बात है। लेकिन न्यायालय की जो कार्रवाई है उसके प्रकाशन को यह सुरक्षा प्रदान नहीं करता है। इस में दिया हुआ है :

> "No person shall be liable to any proceedings, civil or criminal, in any court in respect of the publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or the Legislative Assembly, or, as the case may be, either House of the Legislature, of a State . . ."

I want the following words to be added here, After 'State', "or any court".

यह मेरा संशोधन है जो बहुत छोटा सा है। मैं आशा करता हूं कि विधि मंत्री इसको स्वीकार कर लेंगे।

SHRI SHANTI BHUSHAN: I thought that it would not be possible to find any fault with this particular Clause. But I must acknowledge the ingenuity of the hon. Members that they have been able to find fault even with this Clause. It has been suggested that the Clause should have created a total ban on any kind of censorship. I will remind the hon. Members of article 19 which contains the freedom of speech—which includes freedom of press also. Only reasonable restrictions which are necessary in the interest of the country alone can be imposed except during the period of Emergency when, in the interest of the security of the country, something may be required. The purpose of this Clause is to say that, at any time, even during the period of the Emergency, the voice of the nation will not be stifled, because the voice of this House or any House of a Legislature is the voice of the nation. It was by stifling the voice of the nation that those conditions during the period of

[Shri Shanti Bhushan]

internal Emergency could be created. Therefore, this safeguard is being introduced that, under no circumstances, shall the voice of the nation be stifled.

So far as freedom of the press is concerned, that is taken care of by article 19.

Clause 44—(*Amendment of article* 366).

SHRI DINEN BHATTACHARYA (Serampore) :

Page 13, line 10, —

add at the end—
"and in which there is public ownership of all means of production, distribution and exchange" (23).

SHRI MRITUNJAY PRASAD (Siwan) :

Page 13,—

for lines 5 to 7, *substitute*—

'(1) the expression "REPUBLIC" as qualified by the expression "SECULAR", means a republic in which there is equal respect for all religions and neither any religious bias is permitted in the affairs of the State nor the State is allowed to interfere in the sphere of religion ; and' (31)

Page 13,—

for lines 8 to 10, *substitute*—

'(2) the expression "REPUBLIC" as qualified by the expression "SOCIALIST", means a republic in which the values of justice, liberty, equality, and fraternity are realised and there is freedom from all forms of exploitation, social, religious, political and economic.' (32)

SHRI SHAMBHU NATH CHATURVEDI: I beg to move:

Page 13,—

for Clause 44, *substitute*—

'44. In the Preamble to this Constitution the words "SOCIALIST SECULAR shall be omitted.' (86)

SHRI P. K. KODIYAN (Adoor):

Page 13, lines 6 and 7,—
for "there is equal respect for all religions; and" *substitute* "all citizens irrespective of their religious beliefs or not shall have equal rights and opportunities; and" (200)

Page, 13,—

for lines 8 to 10,—

'(2) the expression "REPUBLIC" as qualified by the expression "SOCIALIST" means a republic in which there shall be social ownership of all means of production, distribution and exchange and there shall be freedom from all forms of exploitation, social, political and economic'.(201)

16 hrs.

SHRI VAYALAR RAVI:

Page, 13—

omit lines 5 to 7. (253)

Page 13,—

omit lines 8 to 10. (254)

SHRI B. C. KAMBLE:

Page 13, lines 6 and 7,—

for "in which there is equal respect for all religions". *substitute* "whose affairs are non- religious and means a republic which does not discriminate on the grounds of religion" (310)

Page 13, lines 9 and 10,—

for "means a republic in which there is freedom from all forms of exploitation, social, political and economic"

substitute—

"means Indian Republic having ownership and control of all means of production and distribution." (311)

Page 13, line 7, —

after "all religions" *insert*,—

"and the State shall not discriminate against any person, or group of persons on the ground of religion, not shall the State favour any one religion as between religion and religion in matter, of services and posts and any other secular affairs of India" (343)

SHRI EDUARDO FALEIRO:

Page 13, line 10, —

add at the end—

"and which is oriented towards public ownership of all means of production" (404)

SHRI CHITTA BASU:

Page 13, line 10, —

add at the end—

"and which accepts the principle of the social ownership of the means of production and distribution" (409)

PROF. P. G. MAVALANKAR:

Page 13, line 7,—

after "religions" insert—

"and in which no particular religion as such shall be discriminated against" (419)

Page 13, line 10, —

add at the end—

"and in which social justice and egalitarian society as goals, free from any doctrinaire or rigid ideology, are constantly striven for" (420)

SHRI DINEN BHATTACHARYA (Serampur): In my amendment I have suggested, after line 10, where it is mentioned :

"...'SOCIALIST' means a republic in which there is freedom from all forms of exploitation, social, political and economic.",

the following be added, namely,

"and in which there is public ownership of all means of production, distribution and exchange".

In their amendment, the Government, in the preamble, have defined 'secularism' and 'socialism'. That definition is most illusive. So long as the means of production are not owned by the society itself, so long as the means of production, as well as distribution and exchange do not come under social ownership, the word 'socialism' is nothing but a hoax, it is an utopia. There can never be, at any time, any stage in which we can achieve socialism so long as public ownership is not there. That is why I have suggested that those lines may be added to what you have enunciated here.

श्री मृत्युंजय प्रसाद (सीवान) : मैंने जो संशोधन दिया है वह इसी उद्देश्य से दिया है कि जो परिभाषा आपने दी है वह बिल्कुल स्पष्ट रहे और उस परिभाषा से जो आपका मंशा है वह पूरा हो सके और उसके कोई दो मानी या उल्टा पुल्टा अर्थ करके उल्टा पुल्टा काम न कर सके । आपने सैक्युलर के माने लगाये हैं :

"Secular Republic" means

"a republic in which there is equal respect for all religions"

केवल इक्वल रिसपेक्ट से काम नहीं चलेगा। यह बहुत सुन्दर बात आप ने कही है, इसको मैं मानता हूं और सोलह आने इस में मैं आपके साथ हूं, किन्तु उसमें थोड़ी कसर रह गई है । इसलिए मैं चाहता हूं कि उसके साथ रेसपेक्ट के साथ पद भी रहे

"...neither any religious bias is permitted in the affairs of the State nor the State is allowed to interfere in the sphere of religion;"

यानी ईक्वल रेस्पेक्ट के साथ साथ पूरा प्रोटेक्शन सब को मिले । रेस्पेक्ट में तो प्रोटेक्शन आ जाते है, लेकिन हमने देखा है कई साल पहले कहीं कुछ धर्म के देवताओं के लिए जिनको हम पूज्य मानते हैं उनकी नक्ल उतारी गई, उनके बारे में बुरी बुरी बातें कही गई और प्रदर्शन किये गये मगर किसी सरकार ने इसके विरुद्ध एक लफ्ज भी नहीं कहा, करोड़ों धर्मानुयायियों को सख्त चोट लगी, किन्तु उनको प्रोटेक्शन नहीं दिया । और वैसे ही दूसरे मौके पर किसी दूसरे धर्म के बारे में अगर कोई एक लफ्ज बोलता है तो बहुत कुछ किया जाता है । इसलिए मैं चाहता हूं कि ईक्वल प्रोटेक्शन रहे, मगर साथ साथ धर्म के नाम पर कोई आपके ऊपर दबाव न डाल सके, और न आप किसी पर दबाव डालें। जैसे शिक्षा संस्थानों में ऐजुकेशनल इंस्टीट्यूशन्स में

[श्री मृत्युंजय प्रसाद]

आपके यहां धर्म के नाम पर धार्मिक शिक्षा नहीं दी जा सकती है, किसी भी धर्म के नाम पर नहीं दी जा सकती, किन्तु, साधारण नैतिक शिक्षा दी जा सकती है । किन्तु अल्पसंख्यकों, माइनारिटीज के नाम पर सब कुछ होता है । तो या तो सब के लिए पूरी छूट दीजिए, और नहीं तो किसी के लिए नहीं, और ऐसी व्यवस्था रखिये जिसमें यह झगड़ा धर्म का रूप न ले ले बल्कि सीधे सीधे सामाजिक रूप में रहे और आपकी ओर से सब को पूरा संरक्षण मिले । धर्म के नाम पर आप कहते नहीं हैं मगर कुछ साल पहले बहुत बड़ा प्रदर्शन सरकार के खर्चे से हुआ था, 25वीं सदी मनायी गई थी महात्मा बुद्ध की । उससे मुझे कोई झगड़ा नहीं है, बहुत उचित था । किन्तु वह होना चाहिए था 16 आने संस्कृति के नाम पर और तब बुद्ध का नाम आना चाहिए था, बौद्ध धर्म, बौद्ध विहार, आदि की बात नहीं आनी चाहिए थी । उसी तरह अगर आप दूसरों को आगे बढ़ने देते हैं तो उनको भी न रोकिये । नहीं तो हर बार यही झगड़ा लगा दिया जाता है कि अमुक व्यक्ति फलां जगह गये, मंदिर में दर्शन करने गये, धार्मिक उत्सव में शामिल हुए, इस काम में उन्होंने क्यों हाथ लगाया ? सर्व धर्म समादर का अर्थ धर्म तथा धार्मिक कृत्यों का लोप नहीं है ।

मेरा दूसरा संशोधन सोशलिस्ट रिपब्लिक के बारे में है । उसमें भी मैं आपसे 16 आने सहमत हूं और इतना ही जोड़ना चाहता हूं :

> Socialist Republic means a republic in which the values of justice, liberty, equality, and fraternity are realised and there is freedom from all forms of exploitation, social, religious, political and economic.

क्योंकि सोशलिस्ट रहते हुए भी बहुत तरह का ऐक्सप्लायटेशन चलता है, और चल रहा है । इसलिए मैं आपसे कहता हूं कि मेरे शब्दों को न देखिए बल्कि भाव को देखिये, और अगर आपको जंचे, जितना जंचे उतना स्वीकार कर लीजिए क्योंकि मूल भाव में हमारा आपका कोई अन्तर नहीं है । मैं चाहता हूं स्पष्टीकरण रहे जिससे आगे कोई शक शुबहा, डाउट न रहे । आप समता का कानून बनाते हैं और थोड़े दिन हुए एक कानून बना था जिसमें प्रधान मंत्री, राष्ट्रपति, स्पीकर इत्यादि के लिए एक विशेष कानून बन गया था जिसके अनुसार उनके विरुद्ध चुनाव याचिका को सुनवाई अलग प्रकार की होनी थी । क्यों बना था ? दूसरे कानून से प्रधान मंत्री का पद ऐसा बना दिया गया था कि जो कभी प्रधान मंत्री रह चुका हो, वह कुछ भी अपराध करे, उसके विरुद्ध मुकदमा चल ही नहीं सकेगा । अगर ईक्वोलिटी की बात रहे, ईक्वल अपौर्चुनिटी की बात रहे तो वह सब के लिए एक सी होनी चाहिए, कोई भेदभाव नहीं होना चाहिए । अगर यह बात मेरी मानी जाती तो दुबारा ऐसा कानून नहीं बनेगा । जैसाकि इमरजेंसी के समय बन चुका था । दुबारा वैसी बातें न दुहराई जायें इसलिए मैंने संशोधन दिया है । आप कानून जानते हैं, मैं नहीं जानता हूं कि किस भाषा में यह बात कैसे लाया जाये । जिस में भविष्य में कोई ऐसी विषमता के कानून न बना सके लेकिन मतलब मेरा वही है जो आपका, मुझे इतने से ही मतलब है कि शब्दों में चूक न रह जाय ।

SHRI SHAMBHU NATH CHATURVEDI (Agra): My amendment is to delete the words 'socialist secular' from the Preamble.

My contention is that these words are redundant. They would only create confusion for, the essence of both socialism and seculiarism is embodied in the Preamble of the Constitution and the fundamental rights and Directive Principles of the State. I do not know what more is assured to the people by these two words than beyond what the Preamble promises to them, *viz.*

"Justice, social, economic and political;

Liberty of thought, expression, belief, faith and worship;

Equality of status and of opportunity; and to promote among them all

Fraternity assuring the dignity of the individual and the unity of the Nation."

The Preamble is further reinforced by Articles 38, 39, 39A, 41, 42, 43 and 43A in regard to the content of Socialism. Socialism has wide and varied connotation, utopian and scientific, and has taken many forms. That is why it is now sought to be defined in Clause 44 of the Bill.

Even so, the question remains as to how it has to be achieved. According to socialistic doctrine, that has to be achieved by nationalisation of the means of production exchange and distribution and liquidation and elimination of the exploiting classes. It is based on class war and that freely sanctions incitement of hatred and the use of violence and expropriation of property without compensation. Both violence and expropriation are foreign to the Gandhian ideals, by which we swear. So is the doctrine of the dictatorship of the proletariat. The socialist philosophy seeks concentration of powers in the hands of the State as has happened in Russia, China and other East European countries. The liberties of the citizen are severely curtailed. Gandhian ideal is wedded to the decentralisation of power and it respects liberty, dignity and worth of the individual.

Similarly, content of secularism in the Preamble, is supported by Articles 15, 16, 25, 27, 28 and 31A. Secular State is opposed to the theoratic State but there is no State religion in this country; so the question does not arise. Secularism has come to be associated in the public mind with anti-religious bias which is objectionable. Not only protection has been provided in the articles of the Constitution to the minorities but even the privileged treatment. The minority communities have the right to set up and manage and administer their educational institutions and to promote its culture; and they have protection from acquisition without adequate compensation under Article 31A of the Constitution. The majority do not have this right. The Government has made several inroads into the personal law of the majority community, but has not touched the Muslim law Therefore, no uniform civil code could be enacted. How secularism is interpreted and understood in the country is evidenced by the walk-out of the Congress party when the question about persecution of Hindus on Pakistan border was raised Sir, religion in this country imposes certain moral inhibitions which exercise whoelsome restraint on the wayward tendencies of the individual. The secular society has released him from restraints and the country is now enjoying the blessings of a permissive society with consequences that we daily bemoan I, therefore, urge that my amendment be accepted and these redundant and loose words omitted from the Preamble.

SHRI P. K. KODIYAN (Adoor): Sir, I am seeking to improve the definition given by the hon'ble Law Minister in the amending Bill to the expression secularism. Secularism has been defined by the hon'ble Law Minister has showing equal respect to all the religions. I would like to submit that secularism is much beyond showing respect to all religions. It has a wider concept. The underlying principle of secularism is that the State will be separate from religion and religion will be separate from State. Religion will not interfere in the State and State will also not interfere with the affairs of the religion.

Sir, another main feature of secularism is that no citizen can be discriminated on the basis of his belief or non-belief in a particular religion All citizens irrespective of religious beliefs should have equal rights and equal opportunities. Secularism also enjoins upon the government to create such conditions so that different religions and people belonging to different religious sects can live and work in peace and harmony Secularism also enjoins upon the government to protect the interests of the minorities. Children should be developed in a spirit of secularism It should guard against attempts to instill ideas which run counter to the idea of secularism which make them narrow-minded.

[Shri P. K. Kodiyan]

Sir, I would also like the point out that secularism is not something new to us. We have not borrowed it from any foreign country. It is as old as our history itself. In the midst of diversities of religion, culture and languages, by and large, India has remained one single nation. It was possible to do so because of tolerance and compassion that our forefathers had taught us through ages. The moment this spirit of tolerance and secularism is given up the narrow-chauvanistic ideas will get upper hand and our country will suffer very badly as it has already suffered.

Now, Sir, coming to my second amendment, that is, regarding the definition of the word 'secularism', I am surprised about this. The Minister has given an amendment which tries to show that our socialist republic is a republic where there will be freedom from economic, political and social exploitation and so on. Sir, this is nothing but an attempt at hypocrisy. How can there be freedom from these exptoitations? The very root of this exploitation is in the system itself, our society, our economic set-up and in the existing set-up of private property. Our society is divided into various classes. So long as this root of exploitation remains, so long as the base remains, you cannot have any real freedom. Our Directive Principle says that the State will take all steps to protect the weaker sections of the society from all sorts of exploitation. Now, what is actually happening is this. For the unemployed there is freedom to starve and freedom to die in starvation. That is all. The Constitution has envisaged people's right to carry on trade and profession. These are things which lead to concentration of wealth in a few hands. Therefore, I would request the hon. Minister to ponder over this point. He himself pointed out while replying to other hon. friends that attempting to define certain words and phrases used in the Constitution would only create more difficulties. Such definitions will always tend to limit the real meaning of the words and phrases used in the Constitution.

Therefore, I would request him about this. I have tried to improve the definition but I am myself not fully satisfied with my own definition. But then, these basic concepts are always there. These terms 'secularism' and 'socialism' are wider concepts with many connotations. I would request the Minister either to accept my Improvement of his definition or not to have any definition at all. This is my request.

SHRI SAUGATA ROY: Sir, I want to know whether you will stick to the original schedule of voting. Are you going to take vote on the clauses already dealt with?

MR. SPEAKER: We will complete the clauses first.

SHRI K. P. UNNIKRISHNAN (Badagara): We will not be able to sit beyond six O'clock.

MR. SPEAKER: Now, Mr. Vayala Ravi.

SHRI VAYALAR RAVI (Chirayinkil): These amendments given by the hon. Minister only result in an ugly pojection of the Indian Constitution. The definition given on secularism will go against the spirit of the Constitution. Article 19 and 20 gives protection to the minorities in all cases. That protection is limited by the very definition of the word 'secularism'. The Minister might have referred to Oxford Dictionary or whatever it may be, but I am not satisfied with the definition which is given here. Mere respect alone will not give freedom and protection to the minorities of this country. Merely writing into the document that we will respect all religions does not mean anything. What do you mean by respect? It is only done to satisfy certain internal fads within the Janata Party which are always preaching Hindu communalism in this country. This is doing greatest harm to the crores and crores of minorities who are living in this country. With all the force at my command, I oppose this clause which limits the definition of the word "secularism". This will only help and encourage those people who are Hindu fanatics in this country and this would lead to a war against the minorities who are peacefully living in this country. The hon. Minister himself explained about the purpose of this Clause and why he wants to define the word "secularism". For the last 30 years, the Government has not been able to protect the minorities. This is meant to malign and also harm the interests of the minorities. This would create chauvenistic attitude towards the minorities. So, it would be a very dangerous thing. So, I appeal to the hon. Minister to withdraw it. Though you may like to satisfy some of your colleagues and constituent partners, who are Hindu fanatics, you may do it by some other method, but please do not do it at the cost of minorities. So, I repeat that by this definition, you are introducing a clause in the Constitution which

would be against the minorities, the interests of the minorities.

In this Parliament, there are theoreticians and philosopher who out-witted all ancient philosophers from Karl Marx, whether to call them Shanti Marx or something else, I do not know. Socialism has evolved over the last hundred years. Does he mean to say that socialism can be achieved by putting an end to exploitation only? Chaudhri Charan Singh has said that the small scale industries will not be exploited by the big industries. I do not know what he means by that. There are socialist of different types sitting in this House. Let Mr. Madhu Dandvate get up and say that this definition of 'Socialism' is the right one. Can Mr. Raj Narain, an old colleague of Dr. Lohia stand up and say that the definition given by Mr. Shanti Bhushan is right? Can he say that this definition is right one? Does Babuji agree to this definition? (*Interruptions*)

SHRI RAJ NARIAN (Rae Bareli) : When I get an opportnty to speak, I will speak out. I have written a letter while I was in prison to Shrimati Indira Gandhi and Shri Shanti Bhushan. I do not know whether Shri Shanti Bhushan has got that letter or not.

SHRI VAYALAR RAVI : I really appreciate that Mr. Raj Narain showed courage and denounced the hypocrisy that has been incorporated in the Constitution. I would like to ask the hon. Members on the treasury benches, right from Mr. George Fernandes to Mr. Brij Lal Verma as to whether they agree with this definition. People of different ideologies have assembled together and formed the Janata Party and they are trying to give a new definition. If at all you want to give your own definition of 'socialism', you can do so in the Janata Party Manifesto, but not in the Indian Constitution. This, I would say, is absurd. This shows your ignorance, lack of knowledge and it shows that you have not understood socialism. You do not see whether in rich countries, socialism has been exprimented.

SHRI DINEN BHATTACHARYA: Why are you getting angry with him? (*Interruptions*)

SHRI VAYALAR RAVI: There were amendments to the Constitution even during Congress time. I also tried to understand socialism during Congress regime. But I was unable to understand socialism even in those days. Socialism should be a scientific socialism. But by the definition given in the Bill, you have limited its scope very much. It goes against the minorities and against the poor people. Therefore, I would request the hon. Minister to withdraw the definition given to words "secularism" and "socialism" so that the poor people and the minorities do not suffer.

SHRI KRISHNA CHANDRA HALDER (Durgapur): Sir, earlier you said that the voting will be taken at 3.co O'clock; now, it is already 1630...

MR. SPEAKER: It will be after the discussion on the various clauses is over.

SHRI B. C. KAMBLE: Mr. Speaker, Sir, I have moved three amendments. So far as the definitions of 'secular' and 'socialism' are concerned, it would reflect upon the wisdom of the House. The question is whether what is provided in this Bill is correct or the dictionary meaning or the judicial dictionary meaning, or what has been stated in the standard books is correct.

There cannot be two opinions so far as the definition of seculrism is concerned or socialism is concerned. 'Secular' clearly means something which is wordly and which is materialistic and the definition which has been poposed to be given in this particular bill is that secular means that all religions shall have equal respect. What do we mean by equal respect? This is like defining H_2O, and saying that all kinds of liquids including wine are having the same qualities.

What I am submitting is that the word 'secular' has no such meaning, as defined in this Bill. Let there be no reflection upon the wisdom of this House, that this House was misled, the hon. Members were not true to their conscience and have not put in the correct meaning of this expression in the Constitution.

My amendment is that 'secular' ans a republic :

"whose affairs are non-religious and means a republic which does not discriminate on the grounds of religion".

I would submit to the hon. Law Minister and for this purpose even the Government and all the hon. Members of the Janta Party should accept my amendment. We have been the victims of discrimination; the Buddhists have been suffering for the last twenty-five years, because they have been discriminated against only on the ground of religion.

[Shri B. C. Kamble]

There is another amendment about which I am not speaking much; and this is about the definition of 'socialism'. So many hon. Members have spoken about it already. If the ddfinition that 'socialist' means a republic in which there is freedom from all forms of exploitation, social, political and economic, is going to be accepted, then give it some other new name, do not give it the name of 'socialist'. This is not the meaning of socialism.

My third amendment is:

> "and the State shall not discriminate against any person, or group of persons on the ground of religion, nor shall the State favour any one religion as between religion and religion in matters of service and posts and any other secular affairs of India."

I would, once again, appeal to the conscience of the whole House to consider which is the correct scientific meaning of these terms, otherwise we shall be a laughing stock before the whole world.

SHRI EDUARDO FALEIRO: Mr. Speaker, Sir, the Constitution (Forty-Fifth) Amendment Bill seeks to correct the distortions and the subversion of the Constitution which were brought about by the Forty-Second Amendment according to them and which, in part, is quite true and I must admit it also. The sad part of it is that while purporting to correct the defects or the damage done to the Constitution, this Forty-Fifth Amendment Bill itself does subvert the Constitution and this is what would be evident from the definitions being given to certain expressions in the Preamble.

It is said that the Preamble has no legal effect, but there is no doubt and it is admitted by all that the Preamble is the key to the Constitution; it contains the spirit of the Constitution which illuminates all the other provisions and it is here that a definition of 'Socialism' is sought to be imported. I must say that the concept of socialism is not a concept which has been brought about by the Forty-Second Amendment; it is there since the Constitution came into being on 26th January, 1950. This is the thrust and the purport of the Directive Principes and this, in fact, illuminates the entire Constitution. What the Forty-Second Amendment has done is to make explicit what was implicit; it has brought that into sharper focus what was there all these years.

What we find in this Bill is:

> "the expression 'Republic', as qualified by the expression 'socialist', means a republic in which there is freedom from all forms of exploitation, social, political and economic."

I have read this, because I thought that this was a joke, a joke on socialism, a joke on the Constitution, though I must say it is not a joke in good taste.

There is only one concept of socialism anywhere in any dictionary or economic or political glossary: viz. the doctrine according to which all the means of production are administered by the society through the State. I think this is the definition in the book of Mr. Dandavate "Marx and Gandhi". It is also in the election manifesto of Babu Jagjivan Ram's C.F.D.

Mr. Saugata Roy was suggesting that this definition may be that of a new form of socialism. May I call it the Charan Singh or Shanti Bhushan-socialism? Whatever it is, one must have the courage of one's convictions. If one's convictions are reactionary, half-capitalist and semi-feudal one must have the courage to voice them. Government should have the courage of their convictions and should delete the word socialism. If they do not delete it, then they should give the word socialism the meaning it deserves viz. socialism is a doctrine according to which all the means of production are administered by the society through the State.

SHRI CHITTA BASU: There has been an attempt made to define the word socialism. I want to be very clear: this is nothing but a joke, and a cruel joke because the word socialism has got a connotation of its own. We cannot go by the definition of Mr. Shanti Bhushan or of anybody amongst us here. It has got certain ingredients. I have no time to explain what those ingredients are. Mr. Dandavate will agree that one of the ingredients is about the relation between the exploiting class and the exploited class; and the other ingredient is about the character of the State— to which class the State belongs: does it belong to the exploiter or to the exploited. It is the ingredient of instrumentality towards the path of building up socialism.

All these are ingredients. I do not say that Babu Ji has mentioned all ingredients. I do not say that Prof. Madhu Dandavate mentioned all the ingredients. But the common ingredient for all varieties

of socialism is the one about the social ownership of the means of production. There is no alternative to accepting a minimum definition relating to social ownership of all the means of production and of distribution. Otherwise, I want to be on record as saying that the change in the Preamble, as it has come today, merely indicates certain changes in the order of rhetoric. Something was there first; and that something has been brought next. It is nothing but a change of the order of rhetorics from what was used by the earlier Government. In the existing Constitution, it has no content even though the word socialism was there in the Constitution, the gap between the haves and have-nots continues to be a yawning one. Even when the word socialism is there in the Constitution, concentration of wealth in the hands of a few is there. It does not mean that the character of our State has changed. It remains the State of the capitalist class, whether you remove the word socialism, or introduce a new word in the Constitution. Therefore, my amendment is very simple. I do not want that everybody will accept my definition of socialism, but the House should, in its wisdom, accept the minimum ingredients of socialism, namely, social ownership of the means of production and means of distribution. Therefore, my amendment is very simple; and I want this word should be added which accepts the principle of social ownership of the means of production and distribution. I want that this principle of socialism should be accepted as the minimum thing which can really give some content and meaning to the word 'socialism'. Otherwise, as my colleague had said, you delete the word 'socialism' from the Constitution; you have got no right to follow the word 'socialism'.

(*Interruptions*)

SHRI K. S. CHAVDA (Patan): There are 88 Members. If there is no time limit on the speeches made by them, then how can we proceed further.

MR. SPEAKER: I am trying to restrict it to the minimum.

(*Interruptions*)

PROF. P. G. MAVALANKAR: Mr. Speaker, Sir, this Article 366, as the House knows, as it stands today, contains some 30 definitions. The Minister by this clause wants to add two more. Now, a little while ago, he was very unwilling to define the word 'armed rebellion' saying that all words cannot be defined. Then, what was the imperative need for defining these two good terms which defy definition. That is my first point.

This Preamble to which he referred was strangely enough, I am sorry to say, amended during the emergency when it was 44th Amendment Bill and later on became 42nd Amendment Act. At that time I said: how could people later on amend something which that Preamble mentions at the end: "In our Constituent Assembly of this day of 26th November, 1949, do hereby adopt, enact, and give to ourselves this Constitution"? What was said something on 26th November, 1949, how can you add new words to it and then say: this is what we said on 26th November 1949? What were the words added? The words added were: socialist, secular and integrity. I fully accept those ideals; I respect them and I want them to be implemented. But my point is this. Mr. Shanti Bhushan, have you also tried to define the other key words of the Preamble—democratic, sovereign, liberty, equality, unity, integrity ? Have you been defining all of them? Why do you stop only defining at these two words? Then, you must go on defining every single word that has appeared in the Preamble to the Constitution. But that will not be a very good thing to do.

But Sir, having got these amendments, it is now only a matter of our academic interest; and if I may take the liberty of a professorial attitude and use Professorial liberty, I would have said that the best thing and perhaps the safest thing is to tell the students in the class: do not define anything. That is the best thing. After having given the whole lecture and saying that this is a good thing; this is a good description, but it is not worth defining! That would be a better thing to do.

But having gone into it and defined the words 'secularism' and 'socialism', I would only like the liberty to say that I would like to define it in such away that I elaborate it and improve upon it, and hences my two amendments. I will now read my amendments because the House will know in what way I want to elaborate and improve upon those amendments. First of all, he says: secular is one in which there is equal respect for all religions and he stops at that. Is it a philosophical discourse? सर्वधर्म समभाव ?

This is the definition of the term in the Constitution and so you have to be more specific. If, however, you say like this, then I would like to add these words; "and in which no particular religion as such shall be discriminated against." Otherwise, you will merely say that we respect all and stop at that. But people who belong to the religion which is of a minority, they should have an assurance that the secular State, they shall not be discriminated against in terms

[Prof. P.G. Mavalankar]

of services, treatment, recruitment and so on.

Finally, about socialism, he says: "socialist" means, our republic in which there is freedom from all forms of exploitation—social, political and economic. Now, if I have to quote Laski, I could say that there is one definition. I can quote Robert Owen; of course, I can quote Karl Marx; I can go on quoting, but I am not doing it.

MR. SPEAKER: One author said: there are as many socialisms as there are socialists.

PROF. P. G. MAVALANKAR: You are quite right. I would improve upon it and say "plus one"! Any way, my amendment is that having said that: republic in which there is freedom from all forms of exploitation, social, political and economic, then I suggest, "in which social justice and egalitarian society as goals, free from any doctrinaire or rigid ideology are constantly striven for."

SHRI R. VENKATARAMAN (Madras South) : I oppose this clause. I consider that it is totally unnecessary to have this clause at all. There is no need for the definition The preamble as it stands in the original will quite serve the purpose of the Constitution.

In the first place, as you know, the preable is not enforceable as such. It is only a guide to open the minds of those who legislate on the subject to draw proper inferences if there is any dispute in respect of the interpretation that arise later. So far as this is concerned, the present Articles in the Constitution completely define what Shri Shanti Bhushan has tried to do in this. Take for instance Article 15. He defines secularism as a republic in which there is equal respect for all religions. Article 15 of the Constitution says—

> "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

Therefore, he is not adding anything new to the Constitution. It is already in the Constitution. It is a redundancy, not only the redundancy, it is a restrictive clause which seems to confine, to restrict the definition as against what is already laid down in some of the Articles. Take again Articles 29 and 30 which deal with the minorities. Therefore, my submission is that this definition is totally unnecessary, not only unnecessary, it is irrelevant and then it is harmful, because it tries to go into conflict with some of the latter Sections and Articles of the Constitution.

The second point which I would like to mention is that the definition of socialism is again contained in the Directive Principles—Article 39(c) of the Constitution. Here again we have defined—

> "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;"

Therefore, with this clause, where is the need now to define socialism as one in which there is freedom from all forms of exploitation, social, political and economic.

Chapter III and Chapter IV contain all the ideas which have been put in these two clauses. They are totally unnecessary and if any thing they may lead to, they will lead conflict of interpretation if any disputes should arise.

I oppose this clause and I hope the Law Minister will withdraw it.

SHRI SHANTI BHUSHAN : A few more definitions of secularism and socialism have been suggested by the hon. members. In fact, perhaps, that if I was to be surprised, the surprise would be on account of the fact that many more definitions have not been suggested.

So far as Shri Dinen Bhattacharya is concerned, I can only sympathise with him, that his concept of socialism which, of course, is a special concept, has not been subscribed to by the country and this country is not prepared to subscribe that concept of socialism which contemplates that all the means of production shall be taken over by the State. But I am surprised that the hon. members of the Congress party, some of them should also speak in the same vein. I would like to be enlightened as to when did the Congress party decide to get rid of the small peasant farmers from this country?

If they have taken a decision at any time that there will not be a peasant farmer in this country, I would like to know. Land is the most important means of production in this country and if the Congress members have started subscribing to the idea that hereafter there shall not be small peasants in the country and all the small farms even within the ceiling limits will be taken over by the State, I would like to know. So far I thought it was not the creed of the Congress Party. For the

first time I am hearing from the members of the Congress Party that they also believe that the small peasant should be done away with and the Government should take all the agricultural land. If you have started subscribing to that proposition, say so.

SHRI DINEN BHATTACHARYA: He has mislead the House. I never said that the State will take over the small holdings of the small peasants.

MR. SPEAKER: Your amendment is capable of that interpretation.

SHRI SAUGATA ROY: He is speaking the Swatantra philosophy, not Janata philosophy. (*Interruptions*).

SHRI SHANTI BHUSHAN: I can appreciate what Shri Venkataraman has said. He asked where was the need to define socialism? But may I know from him, if articles 39 and 15 were there in the Constitution and those articles clearly define what the philosophy of the Constitution was, where was the need for the Forty-second Amendment to amend the Preamble and add 'secular' and 'socialist' therein? If the directive principles and fundamental rights contained in articles 15 and 39 were quite adequate, the same might apply to the amendment which was brought to add these two objectives then.

I would make it clear why these definitions have been attempted. I concede that many definitions of these words are possible. All I would say is, the definitions which have been suggested in the Bill are the best possible definitions. I have to indicate why it was necessary to have a definition, when these two words have been added in the Preamble. I hope hon. members are aware that the word 'secular' is defined in some dictionaries to mean 'irreligious'. We wanted to avoid the impression that the philosophy of this country is that the country must be irreligious. I hope the whole House would agree with me that when the words 'secular' was used in the Preamble it was not used in that sense as if this nation shuns being religious land every person must be irreligious. It is not used in that sense. I hope it was not in that sense that even in the Forty-second Amendment, this word 'secular' had been used. (*Interruptions*).

So far as the definition of 'socialist' is concerned, I believe the definition which has been put forward is not only the best but the least controversial.

Clause 45—(*Amendment of article 368*).

KER: Now, we shall take

SHRI G. M. BANATWALLA: I beg to move :—

Page 13,—

after line 28, *insert*—

"Provided further that no amendment shall be made if it is prejudicial to—

(*a*) the territorial integrity of India as a whole ; or

(*b*) any of the rights of citizens under articles 14, 15, 16, 17, 19, 21, 25, 26, 29 and 30 ;" (10)

Page 13, lines 40 to 42, —

for "the voters voting at such poll and the voters voting at such poll constitute not less than fifty-one per cent of the voters entitled to vote at such poll".

substitute—

"not less than two-thirds of the voters entitled to vote at such poll". (11)

SHRI SOMNATH CHATTERJEE: I beg to move :—

Page 13, line 17,—

after "democratic" *insert* "or federal" (24)

Page 13,—

after line 25, *insert*,—

"(v) altering or impairing or affecting or abrogating the Parliamentary and Republican system of Government under this Constitution ; or

(*vi*) affecting or abrogating the principle of collective responsibility of the Council of Ministers to the House of the People ; or " (25)

SHRI BAPUSAHEB PARULEKAR: I beg to move :—

Page 13,—

for lines 12 to 28, *substitute*—

'(*a*) in clause (2), after the proviso the following Explanation shall be inserted, namely :—

"*Explanation.*—(*a*) The expression "amendment of this Constitution" does not enable Parliament to abrogate or take away fundamental rights or to completely change the fundamental structure or the basic elements of the Constitution so as to destroy its identity.

[Shri Bapusaheb Parulekar]

(*b*) The expression "fundamental structure or basic elements of the Constitution" includes—

(1) The Supremacy of the Constitution ;

(2) Republican and Democratic form of Government and sovereignty of the country ;

(3) Secular and Federal character of the Constitution ;

(4) Demarcation of power between the Legislature, the Executive and the Judiciary ;

(5) The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a Welfare State contained in Part IV ;

(6) The unity and integrity of the Nation."' (46)

Page 13,—

after line 30, *insert*—

"(3A) If one of the Houses of Parliament decides a revision, by way of amendment of the Constitution, and the other House does not consent to it the question whether such amendment should take place or not, shall be submitted to the vote of the people of India at a refrendum under clause 4." (47)

SHRI SHAMBHU NATH CHATURVEDI : I beg to move :—

Page 13,—

for lines 27 and 28, *substitute*—

"the amendment shall also be required to be ratified by not less than two-thirds of the States by a resolution to that effect passed by those Legislatures by a majority of the total membership of the House and two-thirds of those present and voting."; (87)

SHRI SAUGATA ROY : I beg to move :—

Page 13,—

after line 25, *insert*—

"(v) affecting the territorial integrity of India or"(110)

SHRI NARENDRA P. NATHWANI (Junagadh) : I beg to move :—

Page 13,—

(*i*) line 14,—

for "if such amendment" *substitute*—

"no amendment which"

(*ii*) *for* lines 27 and 28, *substitute*—

"shall be made" (150)

Page 13, Line 40,—

after "by a majority"

insert "of eighty per cent". (151)

SHRI VAYALAR RAVI : I beg to move :—

Page 14,—

omit lines 1 to 4. (185)

SHRI C. K. CHANDRAPPAN (Cannanore) : I beg to move :—

Page 13,—

after line 25, *insert*—

"(v) impairing or weakening in any manner the Cabinet-cum-Parliamentary system under this Constitution ; or

(*vi*) impairing or weakening the principle of collective responsibility of the Council of Ministers to the House of the People, or" (202)

SHRI KANWAR LAL GUPTA : I beg to move :—

Page 13,—

after line 25, *insert*—

"(v) changing the system of functioning of joint responsibility of the Council of Ministers headed by the Prime Minister, or" (243)

Page 13, lines 40 to 42,—

omit, "voting at such poll and the voters voting at such poll constitute not less than fifty one per cent of the voters entitled to vote at such poll". (244)

Page 13,—

after line 42, *insert*—

"(*iii*) after the approval of any such amendment by the people of India, such amendment can be revoked by the people of India on a refrendum held for the purpose after a resolution is passed in each House by majority of members present and voting. The majority of the voters voting at such poll shall approve the revocation of such amendment." (245)

SHRI VAYALAR RAVI : I beg to move :—

Pages 13 and 14,—

omit, lines 29 to 47 and 1 to 4 respectively. (255)

SHRI SHYAMNANDAN MISHRA : (Bagusarai) : I beg to move :—

Page 13,—

omit lines 17 and 18. (277)

SHRI HUKAMDEO NARAIN YADAV : I beg to move :—

Page 13, line 17,—

after "impairing the" *insert* "socialistic," (297)

Page 13,—

for lines 38 to 42, *substitute*—

"(*ii*) any such aendment shall be deemed to have been approved in the course of such referendum if such amendment is approved by a majority of 51 per cent of the total number of voters." (298)

Page 13,—

omit lines 43 to 47. (299)

SHRI B.C. KAMBLE : I beg to move :

Page 13,—

for lines 24 and 25, *substitute*—

"(*iv*) impairing the powers of the judiciary as are prescribed under the Constitution of India; or" (346)

Page 13,—

after line 28, *insert*—

"Provided further that if any question arises, as to what constitutes—

(*i*) impairing the secular or democratic character of this Constitution; or

(*ii*) abridging or taking away the rights of citizens under Part III; or

(*iii*) prejudicing or impeding free and fair elections to the House of the People or the Legislative Assemblies of States on the basis of adult suffrage ; or

(*iv*) compromising the independence of the judiciary ; or

(*v*) amendment of the above mentioned proviso,

the same shall be decided, ONLY by a joint Session of both Houses of Parliament." (347)

SHRI HARI VISHNU KAMATH : I beg to move :

Page 13, line 40,—

for "a majority of the voters" *substitute*— "seventy-five per cent of the voters" (356)

Page 13, line 40,—

for "a majority of the voters" *substitute*— "two thirds of the voters". (357)

SHRI V. ARUNACHALAM ALIAS 'ALADI ARUNA' : I beg to move :

Page 13,—

after line 25, *insert*—

"(*v*) weakening the federal structure of the Constitution ; or" (377)

SHRI BALDEV PRAKASH : I beg to move :

Page 13,—

after line 25 , *insert*—

"(*v*) compromising the integrity and unity of the country and making any alteration in its geographical boundaries; or" (385)

SHRI G. NARSIMHA REDDY : I beg to move :

Page 13, lines 27 and 28,—

for "approved by the people of India at a referendum under clause (4)"

substitute—

"ratified by the legislatures of more than half of the States". (387)

SHRI CHITTA BASU : I beg to move :

Page 13,—

after line 25 , insert—

"(*v*) impairing the federal principle as embodied in the Constitution or" (392)

SHRI A. ASOKARAJ (Perambalur) : I beg to move :

Page 13,—

for lines 27 and 28, *sunstitute*—

[Shri A. Asokaraj]

"the amendment shall also require to be ratified by the Legislatures of two-thirds of the States". (397)

SHRI EDUARDO FALEIRO : I beg to move :

Page 13, line 40,—

after "majority", *insert*—

"of seventy five per cent". (405)

PROF P.G. MAVALANKAR : I beg to move :

Page 13, line 14,—

for "Provided further that if such amendment—"

substitute—

"Provided further that the articles of the Constitution providing for the following basic features shall not be subject to any amendment which—". (421)

Pages 13, and 14,—

omit lines 27 to 47 and 1 to 4 respectively. (422)

SHRI HARI VISHNU KAMATH : I beg to move :

Page 13, line 17,—

for "democratic" *substitute*—

"democratic socialist" (427)

Page 13, line 17,—

for "democratic" *substitute*—

"socialist democratic". (428)

MR. SPEAKER : It may not be possible to have the voting today. So, do not be in a hurry. Therefore, may I suggest that there will be no question hour tomorrow and tomorrow's questions will be taken up next Tuesday? We shall take up the Bill at 11 'oclock. Even that half-an-hour which is used for other purpose, will not be used.

Is it the pleasure of the House to accept my suggestion?

SEVERAL HON. MEMBERS : Yes.

श्री यशवत शर्मा (गुरदासपुर) : अध्यक्ष महोदय, आदिवासियो का जो सवाल है वह तो कल लिया जायेगा ।

MR. SPEAKER : I have selected it for tomorrow but now, it will be taken up day after tomorrow.

SHRI MALLIKARJUN (Medak) : I want your ruling. On 9th August you told the House that those who have not given their amendments, would be given an opportunity to speak on this Bill in the third reading. I have written to the Chair.

MR. SPEAKER : There is no ruling. I shall consider at the time of third reading.

SHRI G. M. BANATWALLA : Clause 45 amends article 368 of the Constitution which relates to the amendments of the Constitution.

A claim has been persistently made that the present Constitution (Amendment) Bill does away with the abnoxious provisions of the Forty-second Amendment Act, but we find here a strange attitude with respect to the amendability of the Constitution.

Before the Forty-second (Amendment), Act, the position as laid down by the Supreme Court in the Keshvananda Bharati case..... was that article 368 does not enable Parliament to destroy or damage the basic structure or framework of the Constitution. But this Clause 45 of the present Bill seeks to allow even such amendments to the Constitution which may impair or abridge or destroy the fundamental rights and even the basic structure of the Constitution. Of course, a proviso has been added that approval has to be obtained at a referendum. We are therefore introducing this concept of a referendum, but I most humbly submit that the approach taken to the concept of referendum is also lacking in several respects.

A proposal will be deemed to be approved at a referendum if not less than 51 per cent of the electorate go to vote and a majority of those who vote accept the proposal. In other words, hardly, 26 per cent of the total electorate is needed in order to endorse the proposal submitted to the referendum. Twenty-six per cent of the total electorate can approve an amendment which can impair, which can destroy, the basic character or the fundamental rights enshrined in the Constitution.

Only those above the age of 21 can go to the polls, and they constitute about 50 per cent of the total population. Thus a

majority of those going to the polls, which is only about 13 per cent of the population, is given the right to destroy the fundamental rights or the basic structure of the Constitution through a referendum. This is a position that deserves our serious attention. I have, therefore, in my amendment provided that at least two-thirds of the total electorate should at the referendum endorse a proposal if it is to be carried. This would be necessary in view of the sanctity of the fundamental rights and the basic structure of the Constitution.

The first point introduced by this Clause 45 is this. As per Supreme Court decision prior to the Forty-second Amendment Act and as per the decision in the Keshavanand Bharati case, the basic structure cannot be amended, but it is now sought to allow the amendability of the basic structure, nay, the destruction of the basic structure at a referendum by only 13 per cent of the population. I have, therefore, with great respect submitted that a favourable vote of at least two-thirds of the electorate shall be necessary for a proposal to be carried at a referendum.

There is also another amendment given by me, which seeks to secure the total inviolability of the minority rights and certain civil liberties. The minority rights and certain other civil liberties mentioned by me in my amendment cannot be so amended that they can be impaired or destroyed at any level whatsoever. In view of the fact that we are a secular democratic country; it is necessary that the rights of a citizen under articles 14, 15, 16, 17, 19, 21, 25, 26, 29 and 30 should be entrenched in the Constitution as to be made inviolable.

Similarly, I have also tried to provide that no amendment shall be made which is prejudicial to the territorial integrity of India as a whole. Both these things are to be made inviolable. I would not take much time of the House on this. I would only conclude by saying that this inviolability of the fundamental rights and territorial integrity of India are absolutely essential for the proper maintenance of the democratic and secular character of our country.

The fundamental rights have been made inviolable by article 97 of the Japanese Constitution, which provides :

> "The fundamental human rights by this Constitution guranteed to the people of Japan are fruits of age-old struggle of man to be free ; they have survived the many existing tests for durability and are conferred upon this and future generations in trust, to be held for all time inviolate".

Similarly, according to article 79, clause (3) of the West German Constitution of 1949, certain provisions of the Constitution have been made unamendable. They are :

(1) The basic rights guaranteed by article 1.

(2) The federal and democratic form of the State declared by article 20.

(3) The federal system and the participation of the States in legislation.

Article 89 of the Constitution of the Fifth Republic of France provides that :

(*a*) No amendment can be made if it is prejudicial to the integrity of the territory; and

(*b*) The Republican form of Government shall not be the object of an amendment.

We have similar provisions in the Constitutions of various other countries, where some rights have been made inviolable. Article 139 of the Italian Constitution of 1947 and article 112 of the Constitution of Norway make immune certain constitutional provisions from the amending process.

Therefore, I plead for the inviolability of the minority rights, for the inviolability of the civil rights and for the inviolability of the territorial integrity of our country, which is in accordance with the trends which we have in the Constitutions of several countries of the world.

I hope that my amendments will receive due consideration at the hands of the Government and approbation by this august House.

SHRI SOMNATH CHATTERJEE : Mr. Speaker, I am pressing my amendment Nos. 24 and 25.

MR. SPEAKER : Why are you half-hearted?

SHRI DINEN BHATTACHARYA : He has been tired. We are sitting without lunch.

SHRI SOMNATH CHATTERJEE : As a matter of fact, on the issue of referendum, although there was some initial reluctance, Government ultimately accepted the principle of referendum. If you kindly see what has been proposed, it is to secure what is known as the basic structure of the Constitution by making a provision for an amendment to take the sanction of the ultimate sovereign in the country, that is, the people, on that question.

[Shri Somnath Chatterjee]

There are three or four clauses which have been set out here. With regard to the first one, it says, "impairing the secular or democratic character of the Constitution". We want to add there the word "federal". Although we have not got a perfect system of federal structure, it is essential that the basic concept of even a quasi-federal structure in the country should not be allowed to be altered by somebody who may be controlling the Central Government or the Parliament. Therefore, it is essential that the basic "federal" concept should be unamendable without express sanction from the people. We feel that for the proper development of this country, it is essential to have a federal set-up. That is why we want that should be inserted in the proposed amendment.

Then, we have also suggested for "altering or impairing or affecting or abrogating the parliamentary and republican system of the Government under the Constitution" and for "affecting or abrogating the principle of collective responsibility of the Council of Ministers to the House of the People", the sanction should be taken from the people. So far as the collective responsibility of the Council of Ministers to the House of the People is concerned, there is a specific provision in the Constitution which we consider as the basic necessity of a parliamentary system of the Government in this country. Therefore, nobody should be allowed to change this provision of the Constitution without express sanction from the people. Similarly, in regard to the parliamentary and republican system of Government also it should be done. We almost had a mini-monarchy in this country during those 19 months, if not, actual monarchy. A hereditary rule was going to be set up, in effect, what is known as the extraconstitutional source of power. It was nothing but a hereditary system of the Government which would have replaced the parliamentary and republican system of the Government. That could have been done by a simple amendment of the Constitution. If that amendment had been brought along with the Forty-Second Amendment I have no doubt that would have received the approval of those who were in the ruling party at that time because they did not have the courage to say no. Even now-a-days they do not have the courage to say no.

I would like to know from the hon. Minister whether the Government considers my proposed amendments as part of the basic structure of the Constitution or not, that is, the federal set up of the country, the parliamentary and republic system of the Government, the collective responsibility of the Council of Ministers to the House of the People. If am I not very much mistaken, in the Keshav Bharati case, the learned judge tried to indicate what would be at least undisputed part of the basic structure of the Constitution and the federal structure of the country, and the political set-up was noted. Therefore if these are port of the basic structure of the Constitution, we do not want that these should be left to be amended without the reference to the people. I would request the hon. Minister that along with other provisions, this should also be inserted. Compromising the independ of the judiciary free and fair elections which is the basis of a parliamentary system of the Government, the rights enshrined in Part III of the Constitution, the secular and democratic character, cannot be done by a simple amendment. If there had been no elaboration of all that, I would not have suggested this. If it had been left to be determined as to what are the basic structures, then I would not have suggested. But when there is an indication of the subjects which are treated as of basic nature or structure, then it is essential that our country's set up should be maintained as a federal set-up as a Parliamentary system of Government, and that the Ministry would be responsible to the House of the people whose Members are chosen by the people of this country. Ultimately if, in respect of those matters, there is an attempt to modify or take away or abrogate, then the ultimate sovereign must give its sanction; without that, it should not be allowed to be done.

I would request the hon. Minister to accept these two amendments.

SHRI BAPUSAHEB PARULEKAR : I have moved two amendments, Nos. 46 and 47, and I have suggested four amendments: one is deletion of the proviso which is sought to be added by Clause 45, addition of one explanation which defines the meaning of the words amendment of the Constitution's and defines the expression 'fundamental structure or basic elements of the Constitution', then I have suggested that referendum need not be taken in these cases and if at all referendum is to be taken, it should be taken only when there is disagreement between the Lok Sabha and the Rajya Sabha on the passing of a particular amendment of the Constitutiom. These are the four suggestions which I have made.

I entirely endorse the first part of the argument of Mr. Banatwalla and Mr. Somnath Chatterjee, the amendment

which is tried to be suggested by adding the proviso, in my respectful submission, is directly in contradiction with the ratio laid down in the Kesavanand Bharati case. It is unfortunate, rather more unfortunate, when the Bill is being piloted by an eminent Advocate like Shri Shanti Bhushan and you, Mr. Speaker, were one of the presiding judges on that particular Bench—and I believe you shared the majority view when this particular expression was given. If we read Clause 45, we find that amendment of the Constitution can be made so as to impair the secular or demorcatic character of the country, that is to suggest that our Constitution can be theocratic and our Constitution can also be dictatorical. Moreover, we find in part (ii): 'abridging or taking away the rights of citizens under Part III' that is to suggest that in the case of amendment, Parliament along with the people will have the right to remove article 21, that is, the right to live. The point which I would like to submit for the consideration of the hon. Law Minister is whether, in view of the ratio laid down in the Kesavanand Bharati case, this can be done because before going to the people, this has to be put before both the Houses. And putting this before the House, in my respectful submission, would be *ultra vires* the Constitution and the principle laid down in the Kesavanand Bharati case which is a good law, and so long as that; is not set aside, I am afraid any person can challenge this very amendment by filing a writ I believe that, even by getting this illegal, *ultra vires* nature of the Constitution endorsed by the people, it would not be *intra vires*. I have, therefore, suggested that, in clause (2), after the proviso, the following Explanation be inserted, namely,

> "The expression 'amendment of this Constitution' does not enable Parliament to abrogate or take away fundamental rights or to completely change the fundamental structures or the basic elements of the Constitution so as to destroy its identity."

The fundamental structures or the basic elements of the Constitution includes those ingredients which the six judgees in the Kesavanand Bharati case have laid down. I believe that no power should be given to Parliament or to the people so as to change the basic structure of the Constitution, so as to abrogate or remove what has been guaranteed to the citizens under article 21.

Coming to the question of referendum, I am of the opinion that that Clause is too clumsy, and with your persmission I would like to read out a small paragraph which expresses the opinion of one of the eminent jurists, Dr. Rao, who say, about the referendum :

> "Referendum is always a crude and unreliable method of ascertainig popular—will a veritable lottery. That is the considered opinion of scholars after watching its working elsewhere."
>
> "...To adopt it in the context of our large illiterate population would be a calculated risk and a costly business cumbersome in its operation. Popular consent (sovereignty) need not be defied to the extent of idolatary. One can understand illiterate voters taking parts in elections, appreciating the issues and voting wisely—the elections of 1977 bear ample testimony to that'—but referendum on constitutional issues is altogether a different matter. In an election, the performance of the previous government and the promises of various parties are before them, and they can easily choose. But in a referendum, the issues are abstract, highly technical and sometimes beyond the understanding of even educated people. It is meaningless to expose intricate, constitutional law to popular choice."

I only quoted this because our hon. Law Minister repeatedly told this august House that in 1977 our people showed how intelligent they are in understanding the various issues and that we can very well leave these in the hands of the electorate.

Lastly, I have suggested that if at all the matter is to be sent to the people, its should be sent only in case when there is a disagreement between the Lok Sabha and the Rajya Sabha. My amendment is to the effect :

> "If one of the Houses of Parliament decides a revision, by way of amendment of the Constitution, and the other House does not consent to it the question whether such amendment should take place or not. shall be submitted to the vote of the people of India at a referendum under clause 4."

This difficulty ar ose many times and it may arise in future also and this can be solved if my amendment is accepted.

SHRI R. VENKATARAMAN: But that may not be accepted by the other House.

MR. SPEAKER : Mr. Shambhu Nath Chaturvedi.

[Mr. Speakar]

This is a much debated question. Therefore, long arguments are not necessary. A beief reference will be welcome.

SHRI SHAMBHU NATH CHATURVEDI : No long arguments. I am always brief.

MR. SPEAKER : That everybody does say.

SHRI SHAMBHU NATH CHATURVEDI : My amendment is in the place of the provision for a referendum.....

It reads :

> "the amendment shall also be required to be ratified by not less than two-thirds of the States by a resolution to that effect passed by those Legislatures by a majority of the total membership of the House and two-thirds of those present and voting".

And then I have asked for the deletion of the remaining part of the clause.

17.23 hrs.

[MR. DEPUTY SPEAKER *in the Chair*.]

I do think as has been stated by the previous speaker, a referendum is a very cumbersome, a very expensive, a very time-consuming and I think, a very uncertain process because 51% of the electorate is required to vote for it. But this 51% is doubtful because in most of our elections in spite of the efforts made by the candidates themselves and in spite of the amount of money and the propaganda that is done, sometimes the voting is as small as 46%, 50% and very often it is below 50% and a majority of 51% will be only 26% of the voters and it means an amendment will be carried by 26% of the voters. That is hardly a good index of public opinion. We should not minimise the value of the referendum. I do not mean to say that our electorate are not conscious or are not alive to the issues but not to this type of abstract questions like amendments to the Constitution where it is quite different. What they did in 1977 is centainly quite different because in the elections and prior to that during the emergency hardly any house or any family had escaped scatheless from the tyranny and oppressions of the previous regime.

Sir, these abstract questions cannot be decided by a referendum. Even the educated electorate do not understand the implications of all the amendments; nor do I think that the electorate was conscious when their rights wre trampled upon by the constitutional amendments by the 39th or 42nd Constitution Amendment. It was only when it hit them, that they calised what had come about.

Sir, the position regarding amending the basic structure of the Constitution has completely changed after the abolition of the right to property and it will be desirable to revert to the position as it existed after the Supreme Court judgment in the Golaknath Case.

If, however, a reserve power for amending the basic structure has to be kept then, it should be done in the manner indicated in my amendment so that all shades of opinion have their full representation. If we have the two-thirds majority by legislatures and two-thirds of the legislators voting, then, probably, we will have a fair index of the opinion of the people and their representatives. This idea about a reference to the people of course gets established even without the referendum. I think such an amendment will be more practical. That was why I said that I would rather prefer the position after Golaknath case judgment restored minus the clause about the property.

SHRI SAUGATA ROY : Sir, in opposing this amendment to Clause 45 in the Forty-Fifth Constitution Amendment, I am faced with a problem of all those honest men who want to oppose the bogus but populis, and apparently, populis case. I fail to understand what the Minister is trying to do. After all he is going to give the power to the people in changing certain features of the Constitution. But, if you really go to into it actually he is trying to keep the old pledge of his party which was given in regard to the case of Keshavanand Bharati. There the Supreme Court decided that under the Constitution, there are certain basic features which cannot be disturbed. It was a very narrow majority judgment decided by seven to six in the Supreme Court. They gave a certain structure to the basic features. It is the backdoor attempt to bring that basic feature concept in to our Constitution. That is why we feel that we should oppose it.

Now, with regard to the basic features also, Mr. Shanti Bhushan has mentioned certain things, that is, impairing the democratic rights like abridging or taking away the rights of the citizens. The judiciary has to be fair and free. How to do that without compromising the independence of the judiciary etc.? There is no proper definition of basic features in the Constitution; these basic features do not appear in the Constitution itself.

Shri Shanti Bhushan has said that these are the basic features. Mr. Somnath Chatterjee who spoke from his party's point of view naturally said that the federal structure should also be the basic feature; then somebody will come and say that

federa, quasi-capitalistic structure shou also be basic features. Then the Supreme Court can at any time decide that a certain clause, a certain thing, to be the basic feature of the Constitution. So, this clause is meant to make the Constitution unamendable. Any Constitution has to be a living vibrant and a growing mechanism. If there is an attempt to make the Constitution a stagnant mechanism, a stagnant document, then there will be opposition from all sections of the people. Shri Shanti Bhushan is actually not trying to give the people the power but he is trying to prevent amendments to the Constitution. In a certain clause, one thing that is involved is referendum. I am not going into the procedural problems. That has already been pointed out by my learned friends from the Janata Party so thoroughly. It raises another fundamental thing. That is about the supremacy of Parliament. There are Praja-Socialist people in the Janata Party who should remember about Nathpai's Bill who worked hard to bring forward a bill to establish supremacy of Parliament over the Supreme Court. Now that concept is sought to be diluted. You are giving freedom *not* to Parliament but to the people. But, you cannot have two supremacies—one Supremacy of the Parliament and another supremacy of the people. After all, you have give supremacy the Parliament; Parliament represents the opinion of the people.

The Law Minister was himself saying after all how can we expect Parliament can go mad. If you do not expect Parliament can go mad then why are you making this mad provision of referendum.

MR. DEPUTY-SPEAKER : Please conclude now.

SHRI SAUGATA ROY : Lastly, this 50 per cent business. Now, Sir, 51 per cent members resent and voting out of them majority can change the Constitution. It will be setting a very dangerous precedent. Supposing there is a RSS government at the Centre and wants to convert India into a Hindu Rashtra then it will mean that 20 per cent population of the country is enough to convert India into a Hindu Rashtra. So, it will be setting a very dangerous precedent. Sir, it has been shown before that Hindi speaking North can dominate Parliament. We have accepted that but we are not prepared to accept it further by enshrining it in the Constitution which will give rise to fanaticism. All campaigns in a referendum will be marked with fanaticism. So, my submission is that in the name of giving power to Parliament a dangerous concept is sought to be introduced in the Constitution and we should oppose this and we are opposing this Clause with all the force at our command.

SHRI NARENDRA P. NATHWANI (Junagadh) : Mr. Deputy Speaker, Sir, I have moved my two amendments bearing Nos. 150 and 151. By my first amendment I am opposing the second proviso which is sought to be added. Several speakers who have taken part in this debate have opposed it and have tried to point out that it runs counter to the ratio in Keshavanand Bharati's case. Of course, there is a further reference in the provision sought to be made that apart from Parliament passing such amendment those amendments have to be approved by the people by a referendum and, therefore, it is necessary to point out whether the decision in Keshavanand Bharati's case at all affects this position or not. Mr. Seervai, an eminent and distinguished jurist has pointed out in his recent book on Emergency by pointing out that having regard to the decision of Keshavanand Bharati, referendum is not a method which could be legitimately resorted to for altering the basic structure nor does he consider it an appropriate force of making amendment of the nature indicated. He says that the question o. amending basic features with reference to referendum was exhaustively and ellaborately discussed in Keshavanand Bharati's case but the Supreme Court has not even remotely referred to referendum as a means of altering basic features. Therefore, I share the grave doubt expressed by the previous speakers. (*Interruptions*)

Therefore, the matter boils down to this that unless ratio in Keshavanand Bharati's case is reviewed the present amendment seems to run counter to that.

I fail to understand what has promted the hon. Law Minister to resort to this device. Even on merits, as several other hon.rMembers have pointed out, even in regard to Referendum,—apart from its being a very costly ting, apart from its feasibility,—what is it that you are now seeking to do by the present provision.

As my hon.friend on my left has just now pointed out, 51 per cent of the voters should, participate in it. Therefore, ultimately, if 26 per cent of the voters support certain amendments, they will have the sanctions of altering even the basic structure of the Constitution. My point is, you should not trifle with basic features in such a manner.

If you really want to ascertain the wishes of the people, the first thing that you should guard against is to see that the people are not caught temporarily, even for a transition period, in a whirlpool. We have seen, Sir, that even under a dictatorial regime it is possible to get even 90 per cent of the vote and destroy the democratic nature of the Constitution. Students who

[Shri Narendra P. Nathwani]

have studied the way in which the Weimar Constitution was wrecked under Nazi Regime know the position. This is an illustration in point. Therefore, even if you want to keep the provision regarding Referendum, kindly see that in whatever device you adopt atleast 51 per cent of the citizens who are voters, who are entitled to vote, support those amendments. This is my request and with these words, Sir, I have done.

SHRI VAYALAR RAVI : Mr. Deputy Speaker, Sir, I do not want to repeat what my hon. friend Shri Saugata Roy has said already. I fully appreciate the arguments with which some Members of the Janata party also opposed this Clause.

I would only wish to impress upon the Law Minister that instead of standing on false prestige he may kindly withdraw this unwanted clause which he wants to add to the Constitution of India.

We people, especially those of us who are coming from the southern part, the southern States, have got our own genuine fear. That fear is based mainly on the question of language, on the question of the secular character, on the question of the Centre-State relations and so on. These are all inter-linked subjects. The subject Centre-State relations is a very important one especially in the context of the concept of the federal structure in our Indian Constitution. The hon. Law Minister, I am sure, will agree with me that even the founding-fathers of the Constitution never imagined that the emergency provision will be used or misused to this extent during the 19 months of emergency.

So, my question is this. What guarantee can he give to the country and to the Parliament that this Clause will not be misused by somebody in future, that it will not go against the interest of the nation and so on Sir, I have very suspicion that this is an attempt—directly and indirectly-to impose Hindi on the non-Hindi-Speaking people. I wish to point out that this attempt will have very serious and very disastrous consequencies. And so far as Centre-State relations are concerned and fiscal matters are concerned, certain things are more authoritatively asserted by the Centre and even the federal structure of the Constitution can be taken away by any person who may come in future as the ruler of the country.

So, I hope that the hon. Law Minister will not give any opportunity to anybody to do anything which is againt the interest of the country. I only hope that he will withdraw this clause. I oppose this clause.

श्री कंवर लाल गुप्त : उपाध्यक्ष महोदय , मेरे इस क्लाज में 3 संशोधन हैं नं० 243, 244 और 245 । इन तीनों को मैं आपके समक्ष रखता हूं । मैं मंत्री महोदय को इस चीज के लिये बधाई दे रहा हूं कि दुनिया के विधानों में शायद यह हमारा पहला विधान है, जहां यह कहा गया है कि चुने जाने के बाद भी पार्लियामेंट सुप्रीम नहीं है । यह सिद्धान्त हम ने माना है ।

अपने मित्र श्री बयालार रवि की बात सुन कर मुझे आश्चर्य हुआ, उनका यह ख्याल है कि साउथ इंडिया के लोगों के साथ भेद भाव होगा । मैं मानता हूं इस में जैन्विन एप्रीहैंशन होगी। मेरा कहना यह है कि विधान को संशोधन करने के कई तरीके हैं, कुछ चीजें जो मैजोरिटी से तय करते हैं, कुछ दो-तिहाई मैजोरिटी से तय करते हैं और कुछ चीज ऐसी हैं जो मैजोरिटी आफ स्टेट्स के पास एप्रूवल के लिये जाती हैं ।

मेरा एक संशोधन यह है कि बजाय इस के कि 51 परसैंट लोग वोट करें और उसकी मैजोरिटी 26 परसैंट इस को तय करे, मैंने कहा है कि वोटर्स का 51 परसेंट होना चाहिये अगर बेसिक फीचर में बदल करना है । अगर यह प्रोवाइड कर दिया जाय कि जब तक सारा देश वोटिंग में शामिल नहीं होगा, तब तक कांस्टीट्यूशन के बेसिक फ़ीचज में कोई परिवर्तन नहीं किया जायेगा, तो यह एप्रिहेंशन दूर हो जायेगा । अगर इस को बढ़ा कर 75 परसेंट कर दिया जाये, तो मैं इस को और भी अच्छा समझूंगा । मैं चाहूंगा कि अगर साउथ इंडिया के लोगों को कोई एप्रिहेंशिन है, तो विधि मंत्री इसके प्रोपोर्शन को बढ़ा दें, और यह भी प्रोवाइड कर दें, कि अगर साउथ इंडिया के लोग किसी बेसिक फ़ीचर को बदलने के पक्ष में वोट न

दें, तो उसे न बदला जाये। अगर कोई माननीय सदस्य चाहते हैं कि ट्-थर्डज आफ़ दि टोटल वोटर्ज रख दिया जाये, तो मैं इस से एग्री करता हूं और इसको पूरी तरह से सपोर्ट करता हूं । क्यों ? एक तो इस से एंबीहशन दूर हो जायेगी। दूसरे, क्या पार्लियामेंट फ़ंडामेंटल राइट्स को बदल सकती है, इस बारे में सुप्रीम कोर्ट का रवैया बदलता रहता है। उसने पहले कहा कि फ़ंडामेंटल राइट्स बदले जा सकते हैं। फिर उसने कहा कि नहीं बदले जा सकते हैं। फिर उसने कहा कि बेसिक फ़ीचर्ज नहीं बदले जा सकते हैं, बाकी प्रोविज़न्ज बदले जा सकते हैं । यह उसका लेटेस्ट फ़ैसला है । हम ने सुप्रीम कोर्ट पर निर्भर न कर के ब्लैक एंड व्हाइट में यह तय कर दिया है कि बेसिक फ़ीचर्ज कौन कौन से हैं । इसके लिये मैं मंत्री महोदय को बधाई देता हूं ।

हम चाहते हैं कि कहीं ऐसा न हो कि कल कोई और सुप्रीम कोर्ट आ जाये, और वह कुछ और कह दे , और देश में तानाशाही आ जाये। हमारे देश के इतिहास में यह पहला मौका है, जबकि में ऐसा कांस्टीट्यूशन में ऐसा प्राविज़न किया गया है। यह मानना पड़ेगा कि इन्दिराजी जो तानाशाही लाईं, वह एक कांस्टीट्यूशनल तरीके से लाईं । उन्होंने कांस्टीट्यूशन को वायलेट कर के तानाशाही नहीं लाई । उन्होंने जो कुछ किया , भले ही वह कांस्टीट्यूशन की स्पिरिट के ख़िलाफ़ हो, लेकिन उन्होंने फ़ार्मल कार्यवाही कर के तानाशाही लाईं । इस विधेयक में जो बेसिक फ़ीचर्ज रखे गये हैं, उनका समर्थन करते हुए मैं उन के साथ यह भी ऐड करना चाहता हूं :—

Page 13,—

after line 25, *insert*—

"(v) changing the system of functioning of joint responsibility of the Council of Ministers headed by the Prime Minister, or"

आपको याद होगा कि जब उस दिन साठे साहब से बात हुई थी, तो प्रेजिडेंशल फ़ार्म आफ़ गवर्नमेंट की बात चली थी। संविधान के निर्माताओं ने इस पर विचार किया था और उन्होंने यह निर्णय लिया था कि प्रेजेंट सिस्टम बहुत अच्छा है। मैं चाहता हूं कि इस में भी बदल नहीं होना चाहिए । इसलिए इसको भी बेसिक फ़ीचर्ज में शामिल कर देना चाहिए।

मेरा दूसरा एमडमेंट यह है :

Page 13, lines 40 to 42,—

omit "voting at such poll and the voters voting at such poll constitute not less than fifty-one per cent of the voters entitled to vote at such poll."

बेसिक फ़ीचर में बदल करने के लिए वोटर्ज के कम से कम 51 परसेंट का समर्थन होना चाहिए—26 परसेंट नहीं । —अगर इस को 75 परसेंट करने का सुझाव हो, तो मैं उस से और ज्यादा सहमत हूंगा । क्योंकि मैं यह नहीं चाहता कि कांस्टीट्यूशन के बेसिक फ़ीचर्ज को बदला जाये। वे बने रहने चाहिएं, वे ह्यूमन वैल्यूज को, हमारे देश की वैल्यूज को, रिप्रेज़ेन्ट करते हैं। किसी तानाशाह को यह हक नहीं होना चाहिए कि वह उन्हें बदल सके।

मेरा तीसरा अमेंडमेंट यह है :

Page 13,—

after line 42, *insert* —

"(iii) after the approval of any such amendment by the people of India, such amendment can be revoked by the people of India on a referendum held for the purpose after a resolution is passed in each House by majority of members present and voting. The majority of the voters voting at such poll shall approve the revocation of such amendment."

[श्री कंवर लाल गुप्त]

उस दिन श्री स्टीफ़न ने कहा था कि मैजोरिटी ने बेसिक फ़ीचर्ज में बदल कर दिया, तो उन्हें रेस्टोर करने के लिए क्या प्राविजन है । मैंने अपने अमेंडमेंट के जरिये यह कहा कि है कि दोनों सदन इसको पास करें, और फिर उस को जनता के पास भेजा जाये । जितने वोट पड़ें उसकी मेंजोरिटी उसके पक्ष में होनी चाहिए । यहां मैं ने 51 परसेंट नहीं रखा है, क्योंकि मैं चाहता हूं कि बेसिक फ़ीचर्ज में चेंज नहीं होना चाहिए । इसलिए मैं मंत्री महोदय से यह प्रार्थना करूंगा कि मेरे ये तीनों संशोधन हैं इनको वह मान ले तो अच्छा होगा । इन संशोधनों के जरिए से मैं मंत्री महोदय को बधाई देता हूं कि उन्होंने जो सुप्रीम कोर्ट को इंटरप्रिटेशन करने की पावर्स हैं उन पर भी कर्ब लगाया है और आने वाले रेप्रेजेन्टेटिव्ज हैं कल को वह अपनी एथारिटी का मिसयूज न कर सकें जसे पहले किया, उस पर भी कर्ब लगाया है । जनता सुप्रीम है, इस सिद्धान्त को हम ने माना है और मैं चाहूंगा कि इस बारे में मंत्री महोदय जवाब दें । इस को वह मान लें तो बहुत अच्छा होगा ।

SHRI C. K. CHANDRAPPAN (Cannanore): We support, in principle, the idea of referendum which has been advanced by the Government. We have had two kinds of experience in our country in the past: one, the Supreme Court of this country took the position that Parliament had no right to amend the Constitution, i.e. in the Golak Nath case; and later, after Parliament reversed that position, in Keshavanand Bharati case the Supreme Court said that Parliament can amend the Constitution,but not its basic structure. Here, by this amendment, we make an advance over that position, and say that Parliament can amend the Constitution, but that in relation to fundamental propositions, it should be ratifed by the people; i.e. to say that we go to the people who are the supreme in a democracy. That is why we supported this principle of referendum.

We have had, at the same time, another experience of how Parliament was misused in the name of supremacy of Parliament. We believe that Parliament must be supreme in a democracy; but we have seen the aberrations, viz. that in the name of exercise of supremacy of Parliament, its powers were misused. and the Constitution was amended in such a fashion that we are to-day again sitting and amending the Constitution. These two extreme propositions should not be there. As a third course, we agreed that you go to people to amend these things which you consider to be fundamental. That is why we agree with this proposition made by the Minister At the same time, in our amendment No. 202 we propose to include certain other things also which we consider to be fundamental. One is regarding the Parliamentary and Cabinet form of Government. There was a third proposition posed, posed even in the days of Indira Gandhi viz. whether we should have a Presidential form and whether we should have a system whereby the son will succeed the mother. That should not be there. Here again, we hear the same voice from the other side, from some of the Janata Members, viz. that we should have the Presidential form of Government. (*Interruptions*). So, let us put that question also to the people—if such changes are sought to be made.

Another thing is about the collective responsibility and the accountability of the Council of Ministers to the House of the People. This, we think, cannot be amended without getting the sanction from the people. When I say this, I do not agree with the proposition made by some of the learned jurist Members of this House who said that they were eulogizing the wisdom of the Supreme Court in deciding, rather sealing once and for all, the basic features of the Constitution as something fundamental and unamendable. We do not agree with that proposition. If that happens, and if you make a Constitution unamendable, it will mean that you make the Constitution such a thing that it will not respond to the wishes and aspirations of the people, living generations after generations. We think that the Constitution should be amendable and that it should respond to the aspirations and desires of the people who live after our time. We are to-day reflecting the people and their desires to-day. Tomorrow a different set of people will live, who may have a different desire: and that desire may not be understood by us. It need not also be understood. If that is the majority desire of the people, that should be reflected in our Constitution tomorrow. That is our proposition. But if you accepts the idea that certain basic features of the Constitution should be sealed and made an eternal truth once for all, there is only one method left for us to challenge the Constitution, i.e. to challenge

the Constitution in the streets. That is not good for democracy. This is what I would like to remind the protagonists of basic features.

SHRI SHYAMNANDAN MISHRA (Begusarai): Sir, broadly speaking, I am not very enthusiastic about the provision for referendum. The main reason for that is that I am afraid that instead of solving certain problems we have in our minds, it might complicate them. It may be very expensive. That is obvious enough. At the same time, it may be infructuous. If there is no 51% of polling it will be completely infructuous. So, you go on having referendum after referendum and this country would be a country of referendums.

What exactly this amendment seeks to do is to find a way out of the conflict that arises between the ratio in Keshavanand Bharati case and the Forty-second Amendment. That is precisely the purpose of this amendment. In one sense, the amendment confirms the ratio in Keshavanand Bharati case. In another sense, it contradicts it. It confirms it in the sense that it also recognises that there is something like a basic frame-work of the Constitution. It also spells out the ingredients of the basic features of the Constitution, as the judgment in Keshavanand Bharati case sought to do. So, it confirms the ratio in the Keshavanand Bharati case. But whereas the judgement in Keshavanand Bharati case says that the basic frame-work of the Constitution could not be destroyed or altered, this amendment says that it can be destroyed and altered beyond recognition. The change here in the amendment postulates that this can be done not through Parliament but through referendum. But, it does mean that the basic features of the Constitution can be destroyed or altered. So, it negatives the ratio in Keshavanand Bharati case. My fear is, as pointed out by the hon. member sitting at my back, that it might conflict with the judgement in the Keshavanand Bharati case and therefore, it might be held to be invalid. For so far it is the ratio in the Keshavanand Bharati case that holds the field and that is the law of the land. But if you go against that ratio, you are sure to invite the Verdict that it is against the ratio in Keshavanand Bharati case.

The main point to be considered by the House is, whether what the referendum would seek to do would be an amendment or an abrogation of the Constitution. There can be a different forum for the amendment of the Constitution, but there cannot be a new forum for the abrogation of the Constitution. This referendum would be for the abrogation of the Constitution. What an amendment can be made to mean is that it would bring about changes in the Constitution, while the identity, the personality, of the Constitution would survive those changes. But these ingredients of the basic features of the Constitution, which are sought to be referred to the people, can be destroyed through the process of referendum. So, it is my humble submission, it is not an amendment that is sought to be made, but it is an abrogation of the Constitution that is sought to be done through the referendum. Therefore it must not be held in order and it cannot be held in order.

There is also another aspect to be considered. If there is any amendment of the Constitution which the Supreme Court says is against the basic features as adumbrated in Clause 45 which we are considering just now, then would that amendment of the Constitution be not invalid? Or, would that amendment be again referred to the people at a referendum? What would happen? There might be a number of amendments which might be judged by the Supreme Court as going against the basic features of the Constitution as laid down in Clause 45 also. If that happens, then what would be the attitude of the House in that matter? When the judgment comes from the Supreme Court, would you again refer these issues to the people at a referendum? That is also a problem which it seems, has not been considered by the Government.

SHRI VASANT SATHE (Akola): We will have a perpetual referendum.

SHRI SHYAMNANDAN MISHRA: There is a third aspect which also seems to have escaped the attention of the Government. You leave out many things which might constitute the basic features of the Constitution. One or two things have been pointed by the hon. Members from the other side. One was the federal character of the Constitution. The second is the republican character of the Constitution. Do you think the question whether we should become a monarchy can be referred to the people of India? The republican feature of the Constitution has been adjudged to be one of the basic features of the Constitution in the Keshavanand Bharati case, but that is not included here, I am not suggesting whether that should also be included. The list cannot be exhaustive by any means. But it needs to be emphasised that you are leaving out some other aspects of the Constitution which can be considered to be the basic features of the Constitution. Then Consider the answerability to the Lok Sabha. So far as the Government is concerned, it is answerable to the Lok Sabha. Can it be changed? If you change that and you say that it does not come within the basic features, what would happen to that? Would that be changed? I am only illustrating that you cannot make the list ex-

[Shri Shyamnandan Mishra]

haustive and then if it is so, it would be open to anybody to claim that he can seek to change those features of the Constitution. That would be a very dangerous proposition to enunciate.

18 hrs.

I would, therefore, repeat that this provision of referendum does not seem to be any solution to the problems that we have in our mind.

Coming precisely to my amendment, which would require only half a minute, —I have only illustrated what I want to emphasize clearly — for us the secular character of the Constitution or the democratic character of the Constitution is non-votable, non-negotiable. We cannot leave it to the tender mercies of 26 per cent of the electorate to change the secular or the democratic character of the Constitution. It would be the rule, in a sense, by 26 per cent of the electorate; to that we cannot subscribe. So only to emphasize this I have brought this amendment,— at least the democratic and the secular character of the Constitutiond should no be a matter to be referred tot the peopl at a referendum. Otherwise, my basic position is that the provisionf of reerendum should be reconsidered an the Government should drop it.

18·01 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, August 22, 1978/Sravana 31, 1900 (Saka).

GMGIPND L 2515 L.S.—6-9-78—8,80