

LOK SABHA

THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993
(Insertion of new articles 24A, 28A, 102A and 191A & amendment of
article 329 and Ninth Schedule)

AND

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993

REPORT OF
THE JOINT COMMITTEE

Presented to Lok Sabha on 20 August, 1993
Laid in Rajya Sabha on 20 August, 1993



LOK SABHA SECRETARIAT
NEW DELHI

August, 1993/Sravana, 1915 (Saka)

Price: 16.00

C O N T E N T S

	PAGE
1. COMPOSITION OF THE JOINT COMMITTEE	(iii)
2. REPORT OF THE JOINT COMMITTEE	(v)
3. MINUTES OF DISSENT	(viii)
4. BILLS AS REPORTED BY THE JOINT COMMITTEE	
(i) The Constitution (Eightieth Amendment) Bill, 1993	1
(ii) The Representations of the People (Amendment) Bill, 1993	7
Appendices	
APPENDIX I : Motions in Lok Sabha for reference of the Bills to the Joint Committee.	11
APPENDIX II : Motions in Rajya Sabha	12
APPENDIX III : List of Associations/Organisations, Individuals etc. from whom memoranda were received.	13
APPENDIX IV : List of witnesses who tendered oral evidence before the Joint Committee.	14
APPENDIX V : Minutes of the sittings of the Joint Committee	15
APPENDIX VI : List of amendments circulated	34

**JOINT COMMITTEE ON THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993 AND
THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993**

COMPOSITION OF THE COMMITTEE

Shri Pawan Kumar Bansal — Chairman

MEMBERS

Lok Sabha

2. Shri L.K. Advani
3. Shri E. Ahamed
4. Shri Somnath Chatterjee
5. Shri P. Chidambaram
6. Shri George Fernandes
7. Shri Nurul Islam
8. Shri K.M. Mathew
9. Shri Vilas Muttemwar
10. Kumari Vimla Verma
11. Shri Sharad Dighe
12. Shri K.P. Reddiah Yadav
13. Shri Ashok Gehlot
14. Shri Digvijay Singh
15. Shri Rasheed Masood
- *16. Shri Indrajit Gupta
17. Shri Abdul Ghafoor
18. Shri Guman Mal Lodha
19. Shri Jaswant Singh
20. Shri Chandrajeet Yadav

Rajya Sabha

21. Mufti Mohd. Sayeed
22. Shri Chaturanan Mishra
23. Shri Satya Prakash Malaviya
24. Shri Sikander Bakht
25. Shri R.K. Dhawan
26. Shri Madan Bhatia
27. Shri Sushil Kumar Sambhajirao Shinde
28. Shri Ramchandran Pillai
29. Shri Subramanian Swamy
30. Shri Mentay Padmanabham

SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Shri S.C. Gupta — *Joint Secretary*
3. Shri R.K. Chatterjee — *Deputy Secretary*
4. Shri Ram Kumar — *Under Secretary*

*Appointed w.e.f. 12.8.1993 vice Shri Bhogendra Jha resigned.

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri N.N. Vohra — *Secretary*
2. Shri P.P.R. Nair — *Special Secretary*
3. Shri T. N. Srivastava — *Joint Secretary*
4. Shri R. Balakrishnan — *Adviser*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. P.C. Rao — Secretary
(Department of Legal Affairs)
2. Shri K.L. Mohanpuria — Secretary
(Legislative Department)
3. Shri A.C.C. Unni — Additional Secretary
(Legislative Department)
4. Shri B.S. Saluja — Joint Secretary and
Legislative Counsel
(Legislative Department)
5. Dr. S.C. Jain — Joint Secretary and Legal Adviser
(Department of Legal Affairs)

REPORT OF THE JOINT COMMITTEE ON THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993 AND THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993

I, the Chairman of the Joint Committee to which the Bill* further to amend the Constitution of India and the Bill* further to amend the Representation of the People Act, 1951 viz., the Constitution (Eightieth Amendment) Bill, 1993 and the Representation of the People (Amendment) Bill, 1993 were referred, having been authorised to submit the report on their behalf, present this Report.

2. The Bills were introduced in Lok Sabha on 29 July, 1993. The motions for reference of the Bills to the Joint Committee of both Houses of Parliament were moved in Lok Sabha by Shri S.B. Chavan, Minister of Home Affairs and Shri H.R. Bhardwaj, Minister of State for Law, Justice and Company Affairs respectively on 3 August, 1993 and were adopted (Appendix I).

3. The Rajya Sabha concurred in the said motions on 5 August, 1993 (Appendix II).

4. The messages from Rajya Sabha were published in Lok Sabha Bulletin Part I on 5 August, 1993.

5. The Committee held 8 sittings in all.

6. The Committee held their first sitting on 10 August, 1993 and considered their future programme of work. The Report of the Committee was to be presented to the House by 16 August, 1993. The Committee were granted an extension of time upto 20 August, 1993.

7. Three memoranda on the provisions of the Bills were received by the Committee from various associations/organisations and individuals etc. (Appendix III).

8. The Committee heard the views of Shri S.B. Chavan, Minister of Home Affairs and Shri H.R. Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs on the various provisions of the Bills on 12 August, 1993. The Committee also heard the views of the representatives of the A.I.A.D.M.K. Party, Shiromani Akali Dal (Longowal) and Shiv Sena on the various provisions of the Bills on 17 August, 1993 (Appendix IV).

9. The Committee held clause-by-clause discussion on the provisions of the Bills on the basis of amendments proposed by the members, at their sittings held on 16, 17 and 18 August, 1993.

10. At their sitting held on 20 August, 1993, the Committee decided that (i) the evidence tendered before the Committee be laid on the table of both the Houses of Parliament; and (ii) two copies each of Memoranda received by the Committee be placed in the Parliament Library, after the Report has been presented, for reference by the Members of Parliament.

11. The Committee considered and adopted the Report at their sitting held on 20 August, 1993.

12. The Observations of the Committee with regard to the principal changes proposed in the Bills are detailed in the succeeding paragraphs.

*Published in the Gazette of India, Extraordinary, Part II, Section 2, dated 29 July, 1993.

I. THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993

Clause 2—State to have equal respect for all religions

13. The Constitution of India no doubt provides for the establishment of a secular State for governance of the country. However, the word 'secular' has not been defined in the Constitution. The new article proposed to be inserted by Clause 2 stated that the State shall have equal respect for all religions. The provisions of the new article were discussed at length by the members of the Committee and it was felt that the provisions should be further amplified so as to make it clear that the State shall not profess, practise or propagate any religion. It was further suggested that the proposed article should be re-numbered as article 24A which may be inserted immediately before article 25 under the heading "Right to Freedom of Religion". Accordingly, clause 2 has been adopted with these amendments.

Clause 3—Legislation to declare certain associations as banned on certain grounds.

14. Clause 3 proposed to insert new article 35A in the Constitution so as to empower Parliament to make law for banning any association or body of individuals "if it promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between different classes of citizens of India on ground of religion or on grounds of race, place of birth, residence, language, caste or community". The proposed article also provided that the stipulated law may make provisions for forfeiture of property of the banned associations and other incidental or consequential provisions. It further proposed that the Supreme Court shall have exclusive jurisdiction in respect of any matter arising under the proposed law. The members of the Committee discussed the provisions of the new article and a view was expressed that the words "Notwithstanding anything in this Constitution" be omitted as they might create an impression that it overrides the Fundamental Rights and other provisions relating to weaker sections of the Society. Further the members of the Committee felt that the provisions of the new article should focus on and be confined to the ground of religion and other grounds relating to race, place of birth, residence, language, caste or community should be omitted. Accordingly, the clause has been modified to cover cases of promoting disharmony, feeling of enmity, hatred or ill-will "between different religious groups" "on ground of religion". It was further felt that the provisions relating to exclusive jurisdiction of Supreme Court should also be omitted. It was also felt that new article 35A be re-numbered as article 28A and inserted under the heading "Right to Freedom of Religion". Clause 3 has accordingly been amended.

Clause 4 — *Amendment of article 102*

Clause 5 — *Amendment of article 191*

Clause 6 — *Amendment of article 226*

15. Clauses 4 and 5 seek to amend articles 102 and 191 of the Constitution so as to include a new ground of disqualification for being chosen as a member of either House of Parliament or the Legislature of a State. There were elaborate discussions in the Committee on the contents of the new amendments suggested in the Bill. Some members felt that disqualification of a candidate after his nomination but before the start of the poll might run counter to the provisions of article 329 of the Constitution. Accordingly, clause 6 relating to amendment of article 226 has now been replaced by new Clause 6 relating to amendment of

article 329 of the Constitution so as to make it clear that the provisions of article 329 will apply subject to the provisions of new articles 102A and 191A.

It was further felt that ground of pre-poll disqualification should be confined to use of religion, including religious symbols. In view of this, new articles 102A and 191A, as amended, have been adopted *vide* clauses 4 and 5 of the Bill.

II. THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993

Clause 2 — *Amendment of section 29A*

16. While discussing the amendment to sub-section (7) of Section 29A which seeks to provide that no association or body shall be registered as a political party under that section if the association or body bears a religious name, the members expressed divergent views on the use of expression "religious name." After elaborate discussions, the members ultimately felt that no change is called for in the said expression. Clause 2 has been accordingly adopted without any change.

Clause 3 — *De-registration of political parties*

17. Clause 3 seeks to insert a new section 29B in the Representation of the People Act, 1951 to provide for de-registration of political parties on certain grounds. During the discussions on the said clause, the members felt that sub-clause (c) should be amended so as to clearly state that where the political party promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups, its registration as a political party shall be liable to be cancelled. It was further suggested that the reference to office bearers or members of a political party in proposed sub-section (3) of section 29B was not necessary and might be omitted. A view was also expressed that a new sub-section (5) might be inserted so as to provide for appeal to the Supreme Court from any order of the High Court made under this section. In view of the opinion expressed by the members, the proposed new section 29B, as amended, has been adopted.

18. The Joint Committee recommend that the Bills, as amended, be passed.

19. The Committee also recommend that a suitable provision be made in law to prohibit the issuance of any directive, edict or command by any religious institution for electoral purposes.

NEW DELHI;
20 August, 1993

PAWAN KUMAR BANSAL
*Chairman,
Joint Committee.*

MINUTES OF DISSENT

I

28 A (a) This amended article will confer simultaneous powers on the Parliament or the Legislature of every state to bring legislation for making provision to ban any association or body of individuals on grounds specified therein.

A State Legislature will thus be given powers to ban within the jurisdiction of its state, the functioning of any association or body of individuals with an All India character. I am of the view, that state legislatures should not be armed with such wide powers as it is fraught with danger. The power to legislate on this subject must remain exclusively with the Parliament.

I am fully alive to the fact that today we are facing the danger of communal politics to our survival as a nation and that there is a need to prevent and ban the misuse and abuse of religion for politics or for elections. Religion is the personal affair of each individual and it must not be mixed with politics or elections or affairs of the State. Despite this, I do not see any necessity for adding articles 102-A and 191-A in the Constitution, as these provisions will make the contesting candidates to the Parliament and the State Legislatures liable to disqualification before the date of polls. These provisions will also necessitate the printing of ballot papers again and again, in case contesting candidates are disqualified.

The provision of pre poll disqualification for contesting candidates will create uncertainties in the minds of all the candidates, the electors and all those who are neither candidates nor electors. I have tried and searched in vain but have not been able to come across any Constitution or Election Laws of other democratic countries carrying similar provisions for disqualifying the candidature before the actual date of polls. The fact that election petitions do take long to decide should not be a ground to enact such a provision. The remedy lies in taking measures or enacting laws so that Election petitions could be disposed off speedily.

NEW DELHI

SATYA PRAKASH MALAVIYA

20 August, 1993

II

Thanks to Government of India for having agreed to constitute a Joint Parliamentary Committee to examine and make necessary changes in (i) the Constitution (80th Amendment) Bill (ii) Representation of the people (Amendment) Bill.

The Joint Parliamentary Committee commenced its sittings on 16th August onwards and completed deliberations by 18th, presented the final version on 20th August, 1993, allowed the Members who disagreed with the majority view to submit dissent Note by 4.00 P.M. on the same day.

These two Bills are of vital importance, fraught with momentous consequences to the functioning of the Parliamentary System of Government. The party system even though found no mention anywhere in the Constitution, is a vital ingredient in the Parliamentary System of Government. As such the Joint Parliamentary Committee should have been given more time to deliberate and to elicit the views of Political Parties, informed citizens and Associations etc. However, since the Government is insistent that these Bills be passed

during this Session and also refused to entertain the plea for the extension of time, the Committee have no alternative but to finalise the two Bills in such a short time. I hope and believe that more time had been given to the Committee, the final shape of the Bills would have been more reflective of the Constitutional jurisprudence which we have been assiduously cultivating during the last four decades. Because of this haste and the constraint of time certain infirmities have crept into the Bills. Therefore, I am not able to agree with the majority opinion on certain basic issues. Hence this note of dissent.

The Constitution (80th Amendment) Bill seeks to amend the Constitution by inserting three new articles, namely, (1) 28-A, (2) 102-A and (3) 191-A. The objective of this amendment as stated in the "Statement of Object and Reasons," in Para-2: (As per the Bill introduced in Lok Sabha):

"Despite the safeguards provided in the Constitution communalism is taking roots and unless effective measures are urgently taken to curb it, it may become a threat to the secular and democratic ideals on which our society based." I am in total agreement with the Statement of Objects and Reasons. In fact, it should have been stated more clearly and unequivocally. But my concern is whether the new articles which is sought to be inserted namely—28-A, 102-A and 191-A would really achieve these objectives without endangering the very foundations of our democratic system. Article 28-A, as it stands now, would enable the Parliament and also the State Legislatures to make a law to provide for banning of a body of individuals or any Association etc. which use religion to create disharmony or feelings of enmity, hatred or ill-will between the different religious groups. In other words this amounts to giving wide ranging powers to the Government of the day to ban any political party or organisation etc. on a spurious plea that the party or organisation in question is spreading disaffection among different Religious Groups. We are all acquainted with the functioning of the Parliamentary System of Westminster Model. The power to legislate although theoretically vest in Parliament or State Legislature, but in actual practice it is the Party in power, party which commands majority in the Legislature, makes all the decisions and initiate Legislation. Therefore, it is really the party in power which is endowed with the power. The real question is:

Whether it is a prudent to entrust such sweeping powers to the Govt. of the day?

Whether there is any guarantee that they will not misuse it for their political and partisan ends?

The Government in its evidence before the Committee could not offer any convincing reply to the point that why the Article 28-A is sought to be included in Part III of the Constitution. Is it wise to entrust to the Government or for that matter any Government with this kind of sweeping legislative powers.

The communalism is a virus which is eating into the vitals of our body politic. I have no doubt in my mind that every effort should be made to contain this menace. Number of laws in the Constitution, in Indian Penal Code and also in various Acts are available to the Government to ban any Organisation etc. for spreading communal menace for political gains. But what is required is the will to act and determination to implement these existing laws. I, therefore, feel that this new Article 28-A is redundant and superfluous and should be deleted in toto.

Article 102-A is fraught with dangerous consequences and would make the entire electoral process a farce and a mockery. This article which is sought to be inserted by amending the Constitution will give power to the Parliament to enact a law to disqualify any person being chosen for either Houses of Parliament for misuse of religion. Similarly, Art. 102-A

article 191-A will give power to the State Legislature to disqualify any person to be elected to the State Legislature. I have already stated that there are number of provisions in the Constitution and in other laws including some sections are available to ban any political party without any specific Article in the Constitution. The same reasons are applicable for Article 102-A and 191-A also. Therefore, these two articles are superfluous and redundant. But I have serious misgivings and even go to the extent of imputing malafide intentions for the inclusion of clause '2' to the Article 102-A. It reads:

"Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of dis-qualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law."

Which means a new agency is sought to be created to deal with Election offences, over and above the Election Commission which goes against the "basic features" concept.

The founding fathers of the Constitution in appreciation of free and fair elections for the successful functioning of Parliamentary system provided for Election Commission free from Executive Control to supervise the electoral process. This new clause 2 will hit at it and de-value the role of the Election Commission.

Apart from this, this clause bestows extraordinary powers on Returning Officers or any other judicial authority to deal with the complaints of violation of this Article and disqualify the candidate. As the time involved in the adjudication is very short, it would not permit proper investigation of complaints, taking evidence, giving reasonable time to the candidate to rebut the charge, and apply the principles of natural justice. It is also likely cause dislocation to the electoral process and create uncertainty about the poll in a large number of constituencies. The provision is likely to be misused and abused. The provisions in the Representation of the People Act dealing with misuse of religion for furthering the prospects of a candidate are adequate and could serve the purpose if they are faithfully implemented. Setting up of Special Tribunals to expeditiously dispose of election petitions may be considered.

The Committee on Electoral Reforms (Dinesh Goswamy) made some valuable suggestions in this regard. The Government may take serious note of these suggestions and implement them. I, therefore, reject the Articles 102-A and 191-A and other consequential provisions.

NEW DELHI

MENTAY PADMANABHAM

20 August, 1993

III

While opposing the introduction of the Constitution (Eightieth Amendment) Bill in the Lok Sabha on July 29, 1993, I had stated that this Bill had provisions which went against the very structure of our democratic polity and the fundamental rights enshrined in the Constitution. The Government saw substance in that criticism and after the Bill was referred to the Joint Committee, moved amendments to delete some of the clauses I had described as objectionable. However, even in its amended form, the Bill has provisions that go contrary to the basic tenets on which our democracy is founded. These provisions also run counter to the basic structure of the Constitution in the sense it has been spelt out in the Keshavanand Bharati case.

The ostensible objectives of the Bill may be laudable. The communal virus has to be exercised from our body politic. But the way this Bill seeks to go about it, the remedy will turn out to be far worse than the disease.

I believe that this Bill is at best superfluous, and at worst dangerous. There is another and, perhaps, more unfortunate aspect to it. It will not be implemented, thereby exposing Parliament to ridicule and making a mockery of the Constitution.

For instance, the proposed new article 28A for banning certain associations and for the forfeiture of their property is wholly unnecessary. When under the Unlawful Activities (Prevention) Act, 1967, it is possible to ban any communal organisation. If there are any lacunae in that Act, Government can come before Parliament to remove them. And if it feels the need to secure more teeth to that law, that also could be done.

The provision for the forfeiture of the property and assets of the banned association is, in my view, unconstitutional. The existing provision in the Unlawful Activities (Prevention) Act, 1967 prohibiting the use of funds and other assets during the duration of the ban is more than adequate, and is not in violation of the Constitution.

The provision to give powers to the Legislature of a State to ban an association including a political party contained in 28A is wholly ill-advised. This will create situations that could land the country in many constitutional crises. A party in power at the Centre may find itself banned in one or more states for the right or for the wrong reasons, setting in motion a chain of events threatening the very unity of the country.

For the reasons stated hereinabove, I am opposed to this clause.

The insertion of articles 102A and 191A is not only uncalled for but strikes at the root of our democratic institutions and the parliamentary system. In the long run, it may even pave the way for a one-party state. The lofty and noble intentions of the law makers may, in the hands of an unscrupulous and unprincipled Executive, become a curse on the people. We should not forget that Hitler used the democratic Constitution of the Weimar Republic to become a dictator, and we know at what cost to humanity and particularly to the German people. Therefore, the merit of every piece of legislation must be judged not only by what it seeks to achieve, but also be the mischief it may cause.

It is my conviction that the least that the two new articles will do is to create chaos in the election process. Moreover, these articles go against the fundamental right of the people to elect a government of their choice and are wholly violative of Article 326 of the Constitution. Both the articles also militate against the letter and the spirit of Articles 324 and 329. They are literally a Pandora's box, and will be the source of unprecedented deceit and corruption at every stage of the election process.

I firmly believe that the existing laws regulating elections and particularly concerned with the misuse of religion in elections are more than capable of dealing with the challenges that have cropped up in recent times. Sections 29A, 123 and 125 of the Representation of the People Act, 1951 contain within them power of strong deterrence against the use of religion during elections. While Section 153A (offence of promoting enmity between different groups on grounds of religions; committing an act which is prejudicial to the maintenance of harmony between different religious groups; organising exercise, movement, ~~and~~ etc., knowing it to be likely that the participants in such activity will use or be trained to use criminal force against any religious group or to cause fear, alarm or a feeling of insecurity among members of such religious community), Sub-section (2) and Sub-section (3) of Section 505 (offence of making statements creating or promoting enmity, hatred or ill-will on grounds of religion, or committing such offence in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860) and Section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991—all read with Section 8 of the Representation of the People Act, 1951 disqualify those convicted for such offences for

membership of Parliament and State legislatures for a period of six years from the date of such conviction. In addition, there is the Religious Institutions (Prevention of Misuse) Act, 1988 which prohibits any involvement by the religious institutions in political activity.

Against the backdrop of this reality, I have grave apprehension of the purpose behind these two amendments, and I strongly oppose them.

I am very unhappy at the haste with which this Bill is sought to be passed. This is the eightieth Constitution Amendment Bill, and constant amending of the Constitution may have made us forget the collective wisdom and labour the founding fathers put into drafting it. The challenges to which the present amendments are supposed to be the response have not struck at us as a sudden thunderbolt. They have been there during the days of the freedom struggle, at the time the Constitution was being framed and since then. What we tend to pass over is that these challenges are ideological in their nature, and the battle of ideas, laws are of secondary importance, if at all. Ideas have to be challenged by superior ideas and this can be done only by a people who have a vision and a commitment. And, of course, the ideas. Unfortunately, our political life is today concerned only with power and the search of short-cuts to achieve it. Unless this situation is first amended, all the Constitutional amendments and the other amendments now proposed will come to naught.

The powers of monitoring and regulating whether political parties registered under Section 29A of the Representation of the People Act, 1951 conform to the conditions of registration should, in my opinion, vest solely with the Election Commission. Since in the first instance a party would not be registered by the Election Commission if it does not fulfil the several conditions spelt out in Section 29A, it is in the fitness of things that the same registering authority, on receipt of a complaint from any source that a political party has violated any of those conditions, serve a notice to the concerned political party seeking its explanation. If the explanation is not satisfactory, a notice to show cause why its registration should not be cancelled must be served on the party, to be followed by a hearing given to it. After these procedures have been complied with, an order of deregistration can issue, assuming that there are legitimate grounds justifying such action. An appeal against such an order should lie to the Supreme Court in the same manner as an appeal against refusal to register a party.

I oppose the insertion Section 29B, and suggest that a new amendment on the lines suggested above be introduced.

NEW DELHI

GEORGE FERNANDES

V

WE strongly disagree with the majority report of the Joint Select Committee on the Constitution (80th Amendment) Bill, 1993, and the Representation of People (Amendment) Bill, 1993.

THE twin Bills proposed, we hold are politically perverse, constitutionally questionable and culturally corrosive of national values.

POLITICAL MOTIVATIONS

THE avowed purpose of these Bills is to delink Religion from Politics. It is obvious that this is only a pretext. The actual intent is to delink BJP from elections.

Commenting on the proposed 80th Amendment of the Constitution, Justice H. R. Khanna has observed in a recent article:

“...the general impression is that it is directed against the policies and programmes of the BJP and aims at creating legal hurdles in the way of that party fighting elections.

It is but natural that the growing popularity of BJP would cause concern to the Congress Party, which, leaving aside short interregnum, has been in power at the Centre since the dawn of independence. The challenge now being posed by the BJP to the Congress is essentially a political challenge and has to be fought on the political plane.

There is no office in a democracy more important than that of an elector, for he is the ultimate arbiter of the political parties in the contest. It therefore seems fair and appropriate that the democratic battle should be fought through the ballot rather than by taking aid of constitutional amendments of which we already have a surfeit."

THE HINDUSTAN TIMES
(August 17, 1993)

The anti-BJP intent of Government has been known all along. But the Bills, as introduced, were somewhat camouflaged, even though thinly. Now the mask has been cast aside.

The Statements of Objects and Reasons appended to the Bills expressed concern not only about secularism but also about democracy, and declared that the Bills would seek to curb promotion of disharmony among different classes of Indian citizens on grounds of religion, race, caste, community, language, place of birth or residence.

The official amendments incorporated in the Bill have omitted all references to race, caste, community, language, etc. and singled out religion as the sole target of Government's wrath. The omissions virtually confer legitimacy on the abuse of these factors for the purpose of securing electoral dividends.

It has been an unfortunate experience of Indian public life since the first General Elections of 1952 that caste has been one of the most abused factors during elections. In some States, even the language factor has been abused to create ill-will against people from outside the State who do not speak the dominant language of the State. In some parts of the country the issues of ethnicity and domicile also have been used to engender bitterness and thereby reap electoral harvests.

The fact that these grounds were expressly mentioned in the Statement of Objects and Reasons and also in the Bills as originally proposed, but have now been omitted by the official amendments conclusively establishes that the present legislative exercise is not concerned either with social harmony or with cleansing of the poll process. Government is interested only in acquiring legislative weapons to thwart the onward march of its principal political opponents.

Thus, the Bills have now become clearly exposed as a crude, clumsy but desperate attempt to stem the ideological avalanche of cultural nationalism which BJP has come to spearhead.

THE official amendments made to the two Bills as originally introduced have transformed the Bills in a manner as to make the Statement of Objects and Reasons appended to the Bills absolutely meaningless. Some amendments contradict the stated objects, while others constitute radical deviations from the Statement.

Thus, the principal object of the proposed amendment to the Representation of People Act, 1951, as indicated in the Statement of Objects and Reasons was to provide for deregistration of a political party if its activities were not in accordance with its declared commitment "to the principles of socialism, secularism, and democracy,... the sovereignty, the unity and integrity of India."

As a result of the official amendment, the above provision has been scrapped and instead it has been provided that a party can be deregistered if "the political party promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between the citizens of India on grounds of religion."

We feel that when Government through amendments makes such basic departures from the Statement of Objects and Reasons given along with the Bill, it should withdraw the original Bill and bring in a fresh Bill. We take exception to the fact that this has not been done.

In this context, it is noteworthy that the all-party Committee headed by the then Law Minister Shri Dinesh Goṣwami, set up in 1990 to make recommendations for electoral reform, had opined that Sec. 29A of the Representation of people Act providing for registration of political parties was serving no purpose at all and so should be repealed. This Bill not only disregards that recommendation, it goes even further to acquire powers for selective deregistration of a formidable adversary.

In the Select Committee, we had pointed out that the two Bills if enacted would have far reaching implications for the election process. So it would be in the fitness of things if the main constitutional authority in so far as conduct of elections is concerned, is invited to the Committee and the members have the benefit of his opinion on these Bills. We regret that our request was turned down.

We do not recall any earlier example where a Select Committee dealing with two important Bills—one a Constitution Amendment, and the other an amendment to the Election Law has been compelled to complete its work in less than a fortnight, and that too while the session is on.

Direction 78 of the Speaker requires the Select Committee to consider the Report not earlier than three days after conclusion of the clause-by-clause consideration is over. Here the report was taken up within 24 hours. The Report was adopted at 10 A.M. and Members were asked to submit their dissent notes, if any, by 4 P.M. the same day. In bypassing procedures and conventions, this Select Committee has indeed created history of sorts.

Even apart from all this, it has been obvious that Government is in a desperate hurry to pass these Bills in this session itself so that the anti-democratic weapons being forged are available to it for the forthcoming four Assembly Elections. The motivations are thus crystal clear. During the Emergency of 1975-1977 the then Government had similarly armed itself with the authoritarian 42nd Amendment. History is witness that that Amendment only contributed in further alienating the people from the ruling party. It would be no surprise if this time too the ruling party becomes hoist with its own petard!

CONSTITUTIONAL & LEGAL INFIRMITIES

THE proposed amendments to the Constitution include two particularly obnoxious provisions—one Art. 28A providing Government with a weapon which can be used to outlaw any organisation (this does not exclude either political parties or trade unions); and secondly, Article 102A and Art. 191A seeking to disqualify pre-emptively candidates for Parliament or for State Legislatures if in the opinion of the authority empowered (still to be named by a subsequent statute) the candidate concerned has invoked religion or religious symbolism to influence the voters.

CLAUSE 3 of the 80th Amendment* empowers not only Parliament but even State

Legislatures to enact laws banning associations for allegedly creating ill will among different sections of the people on grounds of religion. A law already exists whereby the same objective is attainable. This is the Unlawful Activities Prohibition Act, 1967. We do not fully agree with the provisions of this Act; but this statute at least has inbuilt safeguards against executive high-handedness in the shape of a judicial tribunal set up by a High Court. The ban becomes really operative when the Tribunal after hearing the viewpoint of the association which has invited the executive's ire endorses it. In the proposed amendments there are no such safeguards.

Obviously, this new provision is the present government's vendetta against the Bahri Tribunal which some time back set aside the illegal ban on the RSS.

In our opinion, this provision constitutes a body-blow to the citizen's sacred Right of Association. What is really outrageous is that this new Article 28A is being included in Part III of the Constitution, the Part which enshrines the Fundamental Rights of Indian citizens!

Does the present Government of India regard it a Fundamental Right of the State to outlaw associations? We do not know of any analogous provision in any other democratic constitution of the world. Those who have conceived of this constitutional amendment do not seem to realise that incorporating such a provision in the Indian Constitution, and that too in the Chapter on Fundamental Rights, would really make India a laughing stock for the democratic world!

The declared objective of the Bills is to delink Religion from Politics. But the proposed new Art. 28A of the Constitution would arm the Executive with wide ranging powers to outlaw not only political parties and trade unions who in Government's opinion are creating ill-will among sections of the people but even social and religious organisations like the Arya Samaj! The fact that the authority to ban associations, contrary to the Statement of Objects and Reasons, is being extended even to State Legislatures makes the provision really dangerous for democracy.

IN the matter of election law in our country*, there are five fundamental principles which no legislature should violate. These are:

- (i) Elections must be free and fair.
- (ii) Elections must determine the sovereign will of the people, free from any obstruction.
- (iii) A multi-party system is part of the basic structure of the Constitution and no poll law should strive to convert this into a single party set-up.
- (iv) Once the poll process starts, it must proceed unhampered; not even courts can intervene.
- (v) There must be judicial review of electoral malpractices and that too by an election petition to be decided by a judicial authority.

We regret to note that the proposed changes violate each one of these fundamental aspects of election laws in India.

Democracy is a system wherein all political parties and ideologies must be allowed to grow. Ideologies can be countered ideologically and never by legislative oppression. The proposed Eightieth Amendment to the Constitution strikes at the roots of this concept. This Bill has focussed on one ideology and seeks to block its growth by these amendments. If the country acquiesces in this, tomorrow yet another ideology would be targetted. This is the path to one-party rule.

A controlled democracy with a Tribunal acting as an ideological ombudsman spells disaster for the very system. One the pretext of delinking religion from politics democracy is sought to be throttled and destroyed.

Under the present provisions of the Constitution and the election law, disqualifications for membership of Parliament or State Legislatures as a rule, are, *ex post facto* and not pre-emptive. The R.P. Act defines Corrupt Practices and Electoral Offences. Violations of these provisions can be challenged only after the elections are over.

The only disqualifications which can be decided before an election are those (constitutional and statutory) which are reasonably definite. They pertain to legally determinable facts which a returning officer can discover and decide upon through a summary investigation — as for example whether a candidate has been declared mentally unsound, or is an undischarged insolvent, or holds an office of profit, or has been convicted to a sentence above a certain term for some crime or act of moral turpitude, etc.

The law makers have been so concerned about the smooth uninterrupted progress of the election process that even the Supreme Court and High Courts have been prohibited under Art. 329 from interrupting the election process.

In K.C. Mathew Vs. Chief Election Commissioner, the Kerala High Court (A. 1982; Ker. 265; paras 27A-29) has cited several Supreme Court cases in this regard and succinctly summed up the rationale for Art. 329 as follows:

“After surveying the historical background of the provision, the Supreme Court observed that in a country with a democratic Constitution in which the legislatures have to play a very important role it will lead to very serious consequences if the elections are unduly protracted or obstructed. It is in that view that immediate individual relief at an intermediate stage when the process of election is under way has to be sacrificed for the paramount public good of promoting the completion of elections.”

A hearing relating to the commission of an electoral offence by a candidate must necessarily be a judicial hearing. During the 21 days period between the scrutiny of nominations and actual polling, the time constraint is a major limitation. Postal ballot papers are sent to constituencies at least a week in advance. The printing of the ballot paper also takes a considerable time. To expect an authority to adjudicate within ten days all these complaints about commission of an electoral offence by a candidate would reduce the adjudicatory process to a mockery. K.C. Davis in “The Requirement of a Trial Type Hearing” (70, Howard Law Review) has observed:

“Adjudicative facts are facts about the parties or their activities, business and properties usually answering the question who did what, where, how, why and with what motive or intent, adjudicative facts are roughly the kind of facts which go to the jury. Legislative facts do not usually concern the immediate parties but are generally facts which help the Tribunal decide the question of law, policy and discretion. Facts pertaining to the parties and their activities *i.e.* adjudicative facts are intrinsically the kind of facts that ordinarily ought not to be determined without giving the parties a chance to note and to meet any evidence that may be unfavourable to them that is without providing the parties an opportunity for trial.”

Can it be seriously suggested that in this extremely brief period fair adjudication of such electoral offence can take place, particularly when the same is based on value judgement? The amendment being suggested will reduce the hearings to a mockery and will be used to tinker with the electoral process, for partisan ends.

Section 123 of the Representation of the People Act, 1951 defines the phrase "corrupt practice". The statutory definition includes:

- (i) the bribing of the electorate;
- (ii) the undue influence or any interference with the right of a person who exercises his electoral right;
- (iii) appeal by a candidate or his agent to vote or refrain from voting on the ground of religion, race, caste, community or language or the use of religious symbols;
- (iv) promotion or attempt to promote feelings of enmity, hatred or ill-will between different classes;
- (v) publication of any false imputation in relation to the personal conduct of a rival candidate;
- (vi) incurring of expenditure in violation of law;
- (vii) booth capturing by a candidate or his agents; or
- (viii) the use of services of a public servant.

If a candidate commits any of the above mentioned corrupt practices for the furtherance of his electoral prospects, his election can be challenged in the High Court. A right of appeal is provided against the judgement of the High Court/the Hon'ble Supreme Court. There is thus absolutely no logic in picking up the grounds mentioned at (iii) and (iv) above and provide a dual trial—once during the elections by a nominated authority to debar a candidate from contesting elections and hence interfering with the election process; and the second after the election by way of an election petition.

It is preposterous that the same electoral offence will be investigated by two separate authorities, one a High Court after the election and the other prior to election by a different authority. Can it not be conceived that both may come to different findings? It appears that in a mindless fascist frenzy to oust the BJP from the electoral arena, the Government does not feel inhibited from monkeying with the basic norms of a free and fair election.

In *Ponnuswami v. Returning Officer, Namakkal* [AIR (39) 1952 S.C. para 9 pg. 68], the Supreme Court has sharply underscored this point and explained why even the High Courts are barred from interrupting the poll process. The Supreme Court has observed:

"The question now arises whether the law of elections in this country contemplates that there should be two attacks on matters connected with election proceedings, one while they are going on by involving the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and an other after they have been completed by means of an election petition. In my opinion, to affirm such a position would be contrary to the scheme of Part XV of the Constitution and the Representation of the People Act, which as I shall point out later, seems to be that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court."

No wonder, Justice Hosbet Suresh, a retired Judge of the Bombay High Court, has in a well-argued article pronounced this verdict on the Constitution (80th Amendment) Bill, 1993:

"It is at best a farce, at worst machiavellian."

THE SUNDAY TIMES OF INDIA

15th August, 1993

OUR Constitution makers had consciously avoided using the word 'secular' in the Constitution when it was first framed. The word was incorporated in the 'Preamble' in 1976. The eightieth amendment is now, in a superficial half-baked manner, trying to define the term. A new article, Art. 24A, is proposed to be added which says that "the State shall have equal respect for all religions" and further that the State "shall not profess, practise or propagate any religion."

We think the Article is totally unnecessary and uncalled for. But while one cannot object to the first part of this provision, we wonder what the practical consequences of the second part would be for Government institutions and those in Government.

In our country cultural practices are often derived from religious rituals—the graceful lighting of a lamp to mark the inauguration of a function, for instance. Till now we have had Muslim League Ministers in Kerala refusing to light lamps. With this new amendment, would the League objection become a constitutional embargo? Then, would not the coverage of Diwali or Idd or Christmas or Guru Nanak Jayanti celebrations by Doordarshan make it guilty of violating the Constitution?

Such ill-conceived provisions may be all right for people who believe that religion is the opium of the masses. But for the mass of the Indian people for whom their respective religion is a perennial source of moral inspiration, such provision only betray that the official brand of secularism is not just pseudo, under Marxist influence, it can actually become anti-religion.

CULTURAL ROOTLESSNESS

FOUR decades back Dr. Sampurnanand remarked to a friend that sometimes the mistranslation of just one word can wreak havoc on the thought processes of a country. He referred in this context to **Dharma** being translated as Religion.

The twin Bills sought to be passed in the name of delinking Religion from Politics bear eloquent testimony to the forebodings of Dr. Sampurnanand.

The Hindi version of the Bills invariably translate Religion as **Dharma**. Banishing Religion from public life is bad enough, but the very concept of casting Dharma from public life would shock the average citizen of our country.

The Bills have made no attempt to define either religion or religious symbolism thereby laying these concepts open to arbitrary interpretations. There is, however, a logic in the lapses. Unlike the western and some eastern civilisations where religion is by and large codified and marked by an adherence to specified holy texts and religious hierarchies, the Indian ethos has never permitted such a reduction.

Indeed, the notion of Dharma so recurrent in daily life is much more than religion. It symbolises both the personal and public code of ethics, the ability to distinguish between good and evil and between the just and the unjust. The Bhagwad Gita is regarded as a dharmic tract precisely because it touches upon moral and ethical concerns. In a similar vein, the traditional idiom of public discourse is inevitably centred on allusions from the Mahabharata Ramayana and even the Pauranic tales. To reduce these treasures of the Indian inheritance to dead dogma is unwarranted. Dharma embraces a public space much

greater than religion, it is a living code of ethics for all spheres of existence. Sri Aurobindo referred to this phenomenon in a speech on March 16, 1908: "It has been said that democracy is based on the rights of man; it has been replied that it should rather take its stand on the duties of man; but both rights and duties are European ideas. Dharma is the Indian conception in which both rights and duties lose the artificial antagonism created by a view of the world which makes selfishness the root of action, and regain their deep and eternal unity, Dharma is the basis of democracy which Asia must recognise, for in this lies the distinction between the soul of Asia and the soul of Europe". (Sri Aurobindo, *India's Rebirth*, Institut de Recherches Evolutives, Paris p. 37)

Nor is this concern with the classical heritage exclusively a function of the nationalist movement. A more contemporary thinker, Girilal Jain, hinted at the absurdity of erecting a wall between culture and politics. "It would be in order to say", he wrote, "That Ram, of Balmiki is no mere cultural hero... He is above all, an exemplar for the ordering of the community's polity. That is why shakti (power) is regarded as a vital component of his personality as sheela (conduct suffused with a moral vision, but not bound by traditional received wisdom)."

Girilal Jain went on to suggest that Mahatma Gandhi consciously promoted the vision of Ram Rajya:

"He was looking for an ideal concept for the reordering of India's public life when she gained freedom...In that search, he landed inevitably on Ram; inevitably because no one else has better embodied the essence of Hinduism in the public domain".

**SUNDAY MAIL
November 4, 1990**

Yet, by the proposed legislation any invocation of Dharma is sought to be banned, and any allusion to the Mahabharata and Ramayana—even Ram Rajya—to drive home a contemporary point made an electoral offence. Had they been living, both Mahatma Gandhi and Sri Aurobindo, not to mention Lokmanya Tilak and Lala Lajpat Rai, would have been transformed into political outlaws. For, what the Government and its allies have contemplated is not merely a rootless India, but an amoral even immoral, India.

At the root of their apprehension is, of course, the popular impatience with the politics of pseudo-secularism based on minoritism. But equally significant is the paranoia over the resurgence of cultural nationalism. The fear is grounded in crass stereotypes. In the last century, an European missionary Abbe Dubois came to the bewildering conclusion that "Hindu imagination is such that it cannot be excited except by what is monstrous and extravagant". In his introduction to Sir Valentine Chirol's in famous *Indian Unrest* in which Lokmanya Bal Gangadhar Tilak had been accused by the British author of using religion for politics, Sir Alfred Lyall, a colonial administrator, reiterated this theme: "...the beliefs and practices of popular Hinduism are obviously irreconcilable with the principles of modern civilisation..." Lyall expressed his utmost concern at the rising tide of militant nationalism, "the strange spectacle, in certain parts of India, of a party capable of resorting to methods that are both reactionary and revolutionary, of men who offer prayers and sacrifices to ferocious divinities and denounce the Government by seditious journalism, preaching primitive superstition in the very modern form of leading articles. The mixture of religion with politics has always produced a highly explosive compound, especially in Asia."

It is one of the tragedies of India that powerful sections of the political elite of the country have internalised these colonial stereotypes and thereby are contributing dangerously to cultural rootlessness.

The BJP adjures this attempt to take the soul out of India. For us, nationalism and culture are inseparable; they are bound together in a symbiotic relationship. The BJP disavows any attempt to create a theocratic State in India; it also rejects any attempt to pit Indian against Indian on the grounds of caste, community, language and faith. We view all Indians as equal citizens of the republic who must be governed by the same set of laws.

At the same time we are convinced that it takes much more than legislation to make India a vibrant nation that is able to live up to its potential. What is needed is a focus for our national energies, a nationalist mantra that encapsulates the past, present and future. The basis of this nationalism is our culture and heritage. To us, nationalism has no meaning separated from the inheritance of the Vedas, the Ramayana, the Mahabharata, Gautam Buddha, Lord Mahavira, Adi Sankaracharya, Guru Nanak, Maharana Pratap, Shivaji Maharaj, Rani Laxmibai, Swami Vivekananda, Swami Dayanand, Lokmanya Tilak, Mahatma Gandhi, Jayaprakash Narayan and countless other national heroes. This nationalism is also our dharma.

If the Government chooses to outlaw this faith on some specious ground on another, it does so at its own peril. Neither Mahmud of Ghazni nor Aurangzeb were able to uproot Dharma by their adharma. This corrupt Government will not succeed either.

The grim consequences of the proposed legislation on the future of India as a functioning democracy have been underlined. The authoritarian facets apart, the Bills are, besides, an insidious attempt to redefine the very culture of the nation and transpose an alien and unfamiliar idiom into public life. It is a crude attempt, bordering on the sinister, to take the soul out of the nation. It is, therefore, that we have recorded this strong minute of dissent.

NEW DELHI;

20 August, 1993

L.K. ADVANI
JASWANT SINGH
SIKANDER BAKHT
GUMAN MAL LODHA

VI

The report of the Joint Select Committee shows that the reference of these two Bills to a Joint Select Committee of the both Houses of Parliament has been more than justified. Though some changes have been made in the original Bills by the Select Committee, I am not in agreement with certain recommendations of the Select Committee as well as retention of certain Clauses in these Bills which are set out below:

CONSTITUTION (EIGHTIETH AMENDMENT) BILL

1. In Clause 2 of the Constitution Amendment Bill, with respect to new Article 24A in part III of the Constitution, it is mentioned that "State shall have equal respect and not profess, practice or propagate any religion". I am of the opinion that the real purpose shall not be served unless the State shall also give equal treatment to all religions so as to maintain impartiality of the State in respect of religions in the affairs of the State. A State shall not identify itself with or to patronise any particular religion, and the State shall also maintain strict impartiality in the matter of treatment to all religions and to refrain from taking sides in any conflict of interest between two different religious groups. Therefore, the amendment of the present Clause as found place in the Report is insufficient in the context of commitment of the State to uphold its secular character as enshrined in the Preamble of the Constitution.

2. With regard to Clause 3 of the Constitution Amendment Bill making modification in the Article 35A, I am in agreement with the deletion of non-obstantate Clause namely "notwithstanding anything in this constitution" by which restrictions imposed on availing fundamental rights in the Constitution has been removed. However, the amendments made in this Article conferring power on the State Legislatures to make laws in order to ban the association or a body of individuals for the alleged misuse of religion is unacceptable as it is likely to be misused easily and at the State level it may turn to be fountain head of mischief. If a State Government in their wisdom intend to bring legislative measures to ban a particular organisation in the State, it will be easy for that particular organisation to shift its activities in the neighbouring State or States. Likewise, a State Government can use this powerful weapon as a "democles sword" against an organisation which is not in tune with that State Government. If at all any power to make such laws are to be made, it should be given only to the Parliament of the country to make such laws with its collective wisdom.

There is no dearth of any law in the land for banning an organisation for creating disharmony or feeling of enmity among the people. It is only the lack of the political will on the part of administration to make use of the existing legal provisions to take stern action against such political parties which propagate hatred and enmity among the different religious groups. Even if any law is proposed to be made that should be to ban an organisation which harms or attempts to harm the secular character of our democratic Republic and it should be amended accordingly. No organisation preaching violence and communal hatred should be permitted for the proper functioning of democracy and growth of national unity and solidarity. But this new Article 28A as recommended by the Selection Committee does not comply the Constitutional requirement to ban association or body of individuals which preaches violence, communal hatred and also functioning on the fascist style thereby harming the secular character of the very Constitution.

3. As far as Clauses 4 and 5 referring Articles 102 and 191 adding a new disqualification to a person for being chosen a candidate to the either House of the Parliament or of State legislature respectively on the ground of misuse of religion are concerned, I have serious reservations. There is no doubt that nobody can oppose the exploitation of religion for their political ends. We must put an end to the misuse and exploitation of religion during the election campaign. But the clause as pointed out in Article 102 and 191 are likely to be misused, in the least by persons who are on inimical terms with a candidates during the election campaign. It would also effect adversely the right of a candidate to perform his duties as a candidate in the election. If one will take totality of the new disqualification as recommended in the Report, it will be seen what amount of mischief it would make even dragging a candidate before the "Authority" during his campaign only if he attends a Friday prayer in a Mosque, a Sunday service in a Church or such other religious congregation during his campaign. Anybody can complain against a candidate in the name of misuse of the religion on such sensitive issues.

In the event, the candidate who is instead of canvassing for the election will be compelled to run after such "Authority" to prove his innocence, since "Authority" will have power to disqualify him before the Polling date. If such a drastic step to disqualify a candidate come before the date of a Poll, one can imagine the amount of confusion even when the name of the disqualified candidate will appear on the Ballot Paper. Further if that decision of such "Authority" will be nullified by an Appellate body later, what will happen to the candidates who had been returned already and who in no way connected with this disqualification litigation against the candidate who is disqualified. I feel that there is some apparent danger hidden in giving this power to an "Authority" for the pre-election disqualification. It would not only create administrative difficulties, confusion among the voters, impairing on the democratic

rights of a candidate but also turned to be in an practical proposition. Therefore, we are to sharpen the existing legal provisions so as to disqualify a candidate even at the time of scrutiny of his nomination and I am for the deletion of this pre-election disqualification Clause.

REPRESENTATION OF THE PEOPLE AMENDMENT ACT

1. In Clause 2 of the Bill with respect to Section 29A, the present Proviso has been substituted by a new Proviso which give power to the Election commission to reject the registration of a political party if it bears a religious name and also on the ground of non-conformity of its rules and regulations under Sub-Section 5 (a). I failed to persuade the members of Joint Select Committee to delete the first part of the proposed Clause in the Bill namely "if the political party bears a religious name".

I cannot understand how a simple religious name will play havoc in an election activity. What is in a name? After all, it is the content that is very important. There are political parties which spit communal venom and preaching violence and hatred against hapless religious minorities, but such political parties also bear beautiful national names. On the other hand, there are political parties which have religious names but nothing to do with the religion in its political or election activities. We should bear in mind that India is a country with innumerable religions and faiths. There is nothing wrong with a religion. The political parties which do not bear a religious name are functioning day in and day out action against other religions and working without any hindrance. There is no difficulty to these parties to be recognised as political party by Election Commission as it does not bears a religious name.

We come across several names connected with the religion but with secular credential and nothing to do with one religion or its promotion. For example, the Newspaper 'Hindu' is a political document for every Indian who read it. But it is one of the most secular newspapers of the country and the nomenclature of that newspaper does not have any bearing in the news or the contents of it. On the other hand if an ugly woman bears a name 'Sundari' will she be a beautiful woman by just having such a name? Therefore, the conditionalities for refusing the registration of a political party only if it bears a religious name according to me, is unacceptable and to be rejected and such provision shall not find a place in the Clause.

There are provisions in the Constitution recognising the rights of religious minorities and if a minority community forms a political party with a religious name for the protection of its rights as a religious minority as enshrined in the Constitution, the denial of the registration to such an organisation only it bears a religious name will be against the spirit of the Constitution.

2. In Clause 3 of the Bill with regard to new Section 29B it is quite unfair to cancel registration on the basis of its having a religious name. If a political party which will be compelled to change its name as provided in Sub-Section (4) of Section 29B as reported in the Bill I might say it will be amount to compelling that political party to give up its history and to start a new political party. In a democratic country as we have it will be repugnant to the fundamental rights given by the Constitution.

In a democratic country, the rights of a political party with their religious name shall not be anathema. There are many such political parties with the religious names in existence in the western democracy with the secular credentials. India as a multi-religious and a multi

ethnic country, it cannot deny the existense of such political parties with a religious name and deny such parties with the religious names in the participation of election will also amount to denial of Constitutional guarantee. I do not think that basic foundation of our democratic polity is very weak which could be shattered with the participation of a political party in election with their religious name.

NEW DELHI;

20 August, 1992

E. AHAMED.

**THE CONSTITUTION (EIGHTIETH AMENDMENT)
BILL, 1993**

(AS REPORTED BY THE JOINT COMMITTEE)

THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993

(AS REPORTED BY THE JOINT COMMITTEE)

[Words side-lined indicate the amendments suggested by the Committee.]

A

BILL

further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Eightieth Amendment) Act, 1993.

Short
title
and
com-
mence-
ment.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In Part III of the Constitution, under the heading "*Right to Freedom of Religion*" and before article 25, the following article shall be inserted, namely:—

Insertion
of new
article
24A.

10 "24A. The State shall—

(a) have equal respect for all religions; and

State
to have
equal
respect
for all
religions.

(b) not profess, practise or propagate any religion."

15 3. In Part III of the Constitution, after article 28 and before the heading "*Cultural and Educational Rights*", the following article shall be inserted, namely:—

Insertion
of new
article
28A.

Legisla-
tion to ban
certain
associa-
tions.

"28A. (a) Parliament or the Legislature of a State may, by law, provide that any association or body of individuals be banned, if it, by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups.

(b) The law referred to in clause (a) may make provisions for the forfeiture of property, movable or immovable, of the banned association or body of individuals and other incidental or consequential provisions."

Insertion
of new
article
102A.

4. After article 102 of the Constitution, the following article shall be inserted, namely:—

Disquali-
fication
for
member-
ship for
misuse of
religion.

"102A. (1) A person shall be disqualified for being chosen as a member of either House of Parliament if, after such person makes and subscribes the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to Parliament, he or any other person with his consent,—

(i) makes an appeal to vote or refrain from voting for any person on the ground of his religion or uses, or appeals to, religious symbols; or

(ii) promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups,

for the furtherance of the prospects of his election or for prejudicially affecting the election of any other person.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of disqualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law."

Insertion of
new article
191A.

Disquali-
fication
for
member-
ship for
misuse of
religion.

5. After article 191 of the Constitution, the following article shall be inserted, namely:—

"191A. (1) A person shall be disqualified for being chosen as a member of the Legislative Assembly or Legislative Council of a State if, after such person makes and subscribes the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to the Legislature of a State, he or any other person with his consent,—

(i) makes an appeal to vote or refrain from voting for any person on the ground of his religion or uses, or appeals to, religious symbols; or

(ii) promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups,

for the furtherance of the prospects of his election or for prejudicially affecting the election of any other person.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of disqualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law."

6. In article 329 of the Constitution, in the opening portion, after the words "this Constitution", the words, figures and letters "but subject to the provisions of article 102A and article 191A" shall be inserted. Amendment of article 329.

10 7. In the Ninth Schedule to the Constitution, after entry 257 and before the *Explanation*, the following entry shall be inserted, namely:— Amendment of Ninth Schedule.

"258. The Religious Institutions (Prevention of Misuse) Act, 1988 (Central Act 41 of 1988).".

**THE REPRESENTATION OF THE
PEOPLE (AMENDMENT)
BILL, 1993**

(AS REPORTED BY THE JOINT COMMITTEE)

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993

(AS REPORTED BY THE JOINT COMMITTEE)

[Words side-lined indicate the amendments suggested by the Committee,
asterisks indicate omissions.]

A

BILL

further to amend the Representation of the People Act, 1951.

BE it enacted by Parliament in the Forty-fourth Year of the Republic
of India as follows:—

1. This Act may be called the Representation of the People (Amend-
ment) Act, 1993.

Short
title.

of 1951. 5 2. In section 29A of the Representation of the People Act, 1951 (here-
inafter referred to as the principal Act),—

Amend-
ment of
section
29A.

(i) in sub-section (7), for the existing proviso, the following pro-
viso shall be substituted, namely:—

10 “Provided that no association or body shall be registered as
a political party under this sub-section, if—

(a) the association or body bears a religious name; or

(b) the memorandum or rules and regulations of such
association or body do not conform to the provisions of sub-
section (5).”;

(ii) for sub-section (8), the following sub-section shall be substituted, namely:—

“(8) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, an appeal shall lie to the Supreme Court from any decision of the Commission under this section: 5

Provided that every appeal under this section shall be preferred within a period of thirty days from the date of the decision of the Commission:

Provided further that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the association or body had sufficient cause for not preferring the appeal within such period.”. 10

Insertion of new section 29B.

3. In Part IVA of the principal Act, after section 29A, the following section shall be inserted, namely:— 15

De-registration of political parties.

“29B. (1) Where,—

(a) any political party bears a religious name; or

(b) the memorandum or rules and regulations of the political party no longer conform to the provisions of sub-section (5) of section 29A; or 20

(c) the political party promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups,

its registration as a political party under section 29A shall be liable to be cancelled by an order of the High Court within whose jurisdiction the main office of that political party is situated. 25

(2) On receipt of a complaint that there is sufficient cause for cancelling the registration of a political party under sub-section (1), the High Court may call upon the political party affected by notice in writing to show cause, within thirty days from the date of the service of such notice, why the registration of the political party should not be cancelled: 30

Provided that where the High Court is not satisfied that there is sufficient cause for cancelling the registration of the political party, it may summarily reject the complaint. 35

(3) After considering the cause, if any, shown by the political party ***, the High Court may, after holding such inquiry as it may deem fit and after calling for such information as it may consider necessary from the political party ***, decide whether or not there is sufficient cause for cancelling the registration and make such order as it may deem fit either dismissing the complaint or cancelling the registration of the political party. 40

5 (4) No complaint under sub-section (2) shall lie to the High Court on the ground specified in clause (a) of sub-section (1), if the political party changes its religious name within a period of ninety days from the commencement of the Representation of the People (Amendment) Act, 1993.

(5) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, an appeal shall lie to the Supreme Court from any order of the High Court under this section:

10 Provided that every appeal under this section shall be preferred within a period of thirty days from the date of the order of the High Court:

15 Provided further that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the political party had sufficient cause for not preferring the appeal within such period."

APPENDIX I

(Vide Para 2 of the Report)

MOTION IN LOK SABHA FOR REFERENCE OF THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993 TO THE JOINT COMMITTEE

"That the Bill further to amend the Constitution of India, be referred to a Joint Committee of the Houses consisting of 30 members, 20 from this House, namely:—

1. Shri Abdul Ghafoor
2. Shri Lal Krishna Advani
3. Shri E. Ahamed
4. Shri Pawan Kumar Bansal
5. Shri Somnath Chatterjee
6. Shri P. Chidambaram
7. Shri Sharad Dighe
8. Shri Digvijaya Singh
9. Shri George Fernandes
10. Shri Ashok Gehlot
11. Shri Nurul Islam
12. Shri Jaswant Singh
13. Shri Bhogendra Jha
14. Shri Guman Mal Lodha
15. Shri Rasheed Masood
16. Shri K.M. Mathew
17. Shri Vilas Muttemwar
18. Shri K.P. Reddaiah Yadav
19. Kum. Vimla Verma
20. Shri Chandrajeet Yadav

and 10 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the 16th August, 1993;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committees shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee."

**MOTION IN LOK SABHA FOR REFERENCE OF THE REPRESENTATION OF THE PEOPLE
(AMENDMENT) BILL, 1993 TO THE JOINT COMMITTEE**

“That the Bill further to amend the Representation of the People Act, 1951, be referred to a Joint Committee of the Houses consisting of 30 members, 20 from this House, namely:—

- 1. Shri Abdul Ghafoor**
- 2. Shri Lal Krishna Advani**
- 3. Shri E. Ahamed**
- 4. Shri Pawan Kumar Bansal**
- 5. Shri Somnath Chatterjee**
- 6. Shri P. Chidambaram**
- 7. Shri Sharad Dighe**
- 8. Shri Digvijaya Singh**
- 9. Shri George Fernandes**
- 10. Shri Ashok Gehlot**
- 11. Shri Nurul Islam**
- 12. Shri Jaswant Singh**
- 13. Shri Bhogendra Jha**
- 14. Shri Guman Mal Lodha**
- 15. Shri Rashced Masood**
- 16. Shri K.M. Mathew**
- 17. Shri Vilas Muttemwar**
- 18. Shri K.P. Reddaiah Yadav**
- 19. Kum. Vimla Verma**
- 20. Shri Chandrajeet Yadav**

and 10 from Rajya Sabha;

that in order to constitute a sitting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that the Committee shall make a report to this House by the 16th August, 1993;

that in other respects the Rules of Procedure of this House relating to Parliamentary Committee shall apply with such variations and modifications as the Speaker may make; and

that this House do recommend to Rajya Sabha that Rajya Sabha do join the said Joint Committee and communicate to this House the names of 10 members to be appointed by Rajya Sabha to the Joint Committee.”

APPENDIX II

(Vide Para 3 of the Report)

MOTION IN RAJYA SABHA FOR REFERENCE OF THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993 TO THE JOINT COMMITTEE

“That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Constitution of India and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

- 1. Mufti Mohd. Sayeed**
- 2. Shri Chaturanan Mishra**
- 3. Shri Satya Prakash Malaviya**
- 4. Shri Sikander Bakht**
- 5. Shri R. K. Dhawan**
- 6. Shri Madan Bhatia**
- 7. Shri Sushil Kumar Sambhajirao Shinde**
- 8. Shri Ramachandran Pillai**
- 9. Shri Subramanian Swamy**
- 10. Shri Mentay Padmanabham.”**

**MOTION IN RAJYA SABHA FOR REFERENCE OF THE REPRESENTATION OF THE
PEOPLE (AMENDMENT) BILL, 1993 TO THE JOINT COMMITTEE**

“That this House concurs in the recommendation of the Lok Sabha that the Rajya Sabha do join in the Joint Committee of the Houses on the Bill further to amend the Representation of the People Act, 1951 and resolves that the following members of the Rajya Sabha be nominated to serve on the said Joint Committee:—

- 1. Mufti Mohd. Sayeed**
- 2. Shri Chaturanan Mishra**
- 3. Shri Satya Prakash Malaviya**
- 4. Shri Sikander Bakht**
- 5. Shri R. K. Dhawan**
- 6. Shri Madan Bhatia**
- 7. Shri Sushil Kumar Sambhajirao Shinde**
- 8. Shri Ramachandran Pillai**
- 9. Shri Subramanian Swamy**
- 10. Shri Mentay Padmanabham.”**

APPENDIX III

(Vide Para 7 of the Report)

LIST OF ASSOCIATIONS/ORGANISATIONS, INDIVIDUALS ETC. FROM WHOM MEMORANDA WERE RECEIVED BY THE JOINT COMMITTEE

1. Shri Murasoli Maran, M.P. (Rajya Sabha),
Leader, D.M.K. Parliamentary Group,
New Delhi.
2. Shri Vishwa Bandhu Gupta,
Secretary General,
Federation of Legislators of India,
New Delhi.
3. Shri Rajeev Dhavan,
Director,
Public Interest Legal Support and Research Centre,
New Delhi.

APPENDIX IV

(Vide Para 8 of the Report)

LIST OF WITNESSES WHO TENDERED ORAL EVIDENCE BEFORE THE JOINT COMMITTEE

1. **Shri P.G. Narayanan, M.P. (Lok Sabha),
Leader, A.I.A.D.M.K. Parliamentary Group in Lok Sabha,
New Delhi.**
2. **Shiromani Akali Dal (Longowal), New Delhi**
Representatives: (1) Jathedar Onkar Singh Thappar
All India General Secretary.
(2) Shri R.S. Sodhi, Adviser.
(3) Shri Gurdeep Singh Dua
(4) Shri Nanak Singh
3. **Shri Satish Pradhan, M.P. (Rajya Sabha),
Leader, Shiv-Sena Parliamentary Party,
New Delhi.**

APPENDIX V

MINUTES OF THE SITTINGS OF THE JOINT COMMITTEE ON THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993 AND THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993.

I

First Sitting

The Committee met on Tuesday, 10 August, 1993 from 1500 to 1715 hours in Committee Room 'B', Parliament House Annexe, New Delhi.

PRESENT

Shri Pawan Kumar Bansal — *Chairman*

MEMBERS

Lok Sabha

2. Shri L.K. Advani
3. Shri E. Ahamed
4. Shri Somnath Chatterjee
5. Shri George Fernandes
6. Shri Nurul Islam
7. Shri K.M. Mathew
8. Kumari Vimla Verma
9. Shri K.P. Reddiah Yadav
10. Shri Abdul Ghafoor
11. Shri Jaswant Singh

Rajya Sabha

12. Mufti Mohd. Sayeed
13. Shri Chaturanan Mishra
14. Shri Sikander Bakht
15. Shri R.K. Dhawan
16. Shri Sushilkumar Sambhajirao Shinde
17. Shri Ramachandran Pillai

SECRETARIAT

1. Shri G.L. Batra, — *Additional Secretary*
2. Shri S.C. Gupta, — *Joint Secretary*
3. Shri Ram Kumar, — *Under Secretary*

REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS

1. Shri P.P.R. Nair, Special Secretary
2. Shri R. Balakrishnan, Adviser

Representatives of Ministry of Law, Justice and Company Affairs

1. Dr. P.C. Rao, Secretary, Department of Legal Affairs
2. Shri B.S. Saluja, Joint Secretary and Legislative Counsel, Legislative Department

2. Shri H.R. Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs and Shri Vidyacharan Shukla, Minister of Parliamentary Affairs, who were not members of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. At the outset, Chairman welcomed the members of the Committee and drew their attention to the significance and urgency of the piece of legislation referred to the Committee for scrutiny.

4. The Chairman pointed out that as per the terms of the Motion adopted by the House, the Committee was to present their Report to the House by 16 August, 1993. As the time for deliberations was too short the Committee decided to seek an extension of time for presentation of the Report upto 20 August, 1993.

5. The Committee decided to consider the Bills in two stages—first a general discussion on the principles underlying the Bills and secondly, clause-by-clause consideration in the light of the amendments to be moved by the members of the Committee.

6. The Chairman then announced that the members desirous of giving notices for amendment may do so by Saturday, 14 August, 1993 upto 1100 hours.

7. The Committee then decided to hear the views of the Minister of Home Affairs and the Minister of State in the Ministry of Law, Justice and Company Affairs on the provisions of the Bills at their next sitting fixed for 12 August, 1993.

The Committee then adjourned.

II

Second Sitting

The Committee met on Thursday, 12 August, 1993 from 0900 to 1100 hours in Committee Room No. 63, Parliament House, New Delhi.

PRESENT

Shri Pawan Kumar Bansal — *Chairman*

MEMBERS

Lok Sabha

2. Shri L.K. Advani
3. Shri E. Ahamed
4. Shri Somnath Chatterjee
5. Shri P. Chidambaram
6. Shri George Fernandes
7. Shri Nurul Islam
8. Shri K.M. Mathew
9. Kumari Vimla Verma
10. Shri Sharad Dighe
11. Shri K.P. Reddiah Yadav
12. Shri Ashok Gehlot
13. Shri Abdul Ghafoor
14. Shri Guman Mal Lodha
15. Shri Jaswant Singh
16. Shri Chandrajeet Yadav

Rajya Sabha

17. Mufti Mohd. Sayeed
18. Shri Chaturanan Mishra
19. Shri R.K. Dhawan
20. Shri Madan Bhatia
21. Shri Sushilkumar Sambhajirao Shinde
22. Shri Ramachandran Pillai
23. Shri Subramanian Swamy
24. Shri Mentay Padmanabham

SECRETARIAT

1. Shri S.C. Gupta, — *Joint Secretary*
2. Shri R.K. Chatterjee — *Deputy Secretary*
3. Shri Ram Kumar, — *Under Secretary*

REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS

1. Shri T.N. Srivastava, Joint Secretary
2. Shri R. BalaKrishnan, Adviser

REPRESENTATIVES OF MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Shri K.L. Mohanpuria, Secretary, Legislative Department

2. Shri A.C.C. Unni, Additional Secretary, Legislative Department

3. Dr. S.C. Jain, Joint Secretary and Legal Adviser, Department of Legal Affairs

2. Shri Vidyacharan Shukla, Minister of Parliamentary Affairs, who was not a member of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee heard the views of Shri S.B. Chavan, Minister of Home Affairs and Shri H.R. Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs on the provisions of the two Bills.

4. The Committee held a general discussion on the provisions of the Bills but felt that if the Government intended to make certain amendments to the Bills, those amendments should be brought in urgently so as to enable the members to give their notices of amendments by 1100 hours on 14 August, 1993.

The Committee then adjourned to meet again on 16 August, 1993.

III

Third Sitting

The Committee met on Monday, 16 August, 1993 from 0900 to 1100 hours in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Shri Pawan Kumar Bansal — *Chairman*

MEMBERS

Lok Sabha

2. Shri L.K. Advani
3. Shri E. Ahamed
4. Shri Somnath Chatterjee
5. Shri P. Chidambaram
6. Shri George Fernandes
7. Shri Nurul Islam
8. Shri K.M. Mathew
9. Shri Sharad Dighe
10. Shri Ashok Gehlot
11. Shri Rasheed Masood
12. Shri Indrajit Gupta
13. Shri Guman Mal Lodha
14. Shri Jaswant Singh
15. Shri Chandrajeet Yadav

Rajya Sabha

16. Mufti Mohd. Sayeed
17. Shri Chaturanan Mishra
18. Shri Satya Prakash Malaviya
19. Shri Sikander Bakht
20. Shri R.K. Dhawan
21. Shri Madan Bhatia
22. Shri Sushilkumar Sambhajirao Shinde
23. Shri Ramachandran Pillai
24. Shri Subramanian Swamy
25. Shri Mentay Padmanabham

SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Shri S.C. Gupta — *Joint Secretary*
3. Shri R.K. Chatterjee — *Deputy Secretary*

REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS

1. Shri N.N. Vohra, Home Secretary
2. Shri T.N. Srivastava, Joint Secretary
3. Shri R. Balakrishnan, Adviser

REPRESENTATIVES OF MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. P.C. Rao, Secretary (Deptt. of Legal Affairs)
2. Shri K.L. Mohanpuria, Secretary (Legislative Department)
3. Shri A.C.C. Unni, Additional Secretary (Legislative Deptt.)
4. Shri B.S. Saluja, Joint Secretary and Legislative Counsel (Legislative Department)
5. Dr. S.C. Jain, Joint Secretary and Legal Adviser (Department of Legal Affairs)

2. Shri S.B. Chavan, Minister of Home Affairs, Shri H.R. Bhardwaj Minister of State in the Ministry of Law, Justice and Company Affairs and Shri Vidyacharan Shukla, Minister of Parliamentary Affairs, who were not members of the Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. Some members objected to the Government tabling amendments which, in their view, had the effect of overhauling the provisions and were beyond the objects and reasons of the Bill.

4. When some members pointed out that the existing provisions in the Constitution and the laws in force were adequate to meet the situation, the Minister of State for Law and Justice clarified that those provisions did not specifically provide for banning of religious associations and bodies and for deregistration of political parties misusing religion for political purposes.

5. The Committee did not favour taking the evidence of the Chief Election Commissioner. Some members withdrew from the Committee protesting against the decision.

6. The Committee thereafter took up clause-by-clause consideration of the Constitution (Eightieth Amendment) Bill, 1993. The discussion on clause 2 of the Bill was in progress.

The Committee adjourned to meet again at 1500 hours on the same day.

IV

Fourth Sitting

The Committee met on Monday, the 16 August, 1993 from 1500 hours to 1645 hours in Committee Room 50, Parliament House, New Delhi.

PRESENT

Shri Pawan Kumar Bansal — *Chairman*

MEMBERS

Lok Sabha

2. Shri E. Ahamed
3. Shri Somnath Chatterjee
4. Shri George Fernandes
5. Shri Nurul Islam
6. Shri K.M. Mathew
7. Kumari Vimla Verma
8. Shri Sharad Dighe
9. Shri K.P. Reddiah Yadav
10. Shri Ashok Gehlot
11. Shri Indrajit Gupta
12. Shri Chandrajeet Yadav

Rajya Sabha

13. Mufti Mohd. Sayeed
14. Shri Chaturanan Mishra
15. Shri R.K. Dhawan
16. Shri Madan Bhatia
17. Shri Sushilkumar Sambhajirao Shinde
18. Shri Ramachandran Pillai
19. Shri Mentay Padmanabham

SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Shri S.C. Gupta — *Joint Secretary*
3. Shri R.K. Chatterjee — *Deputy Secretary*
4. Shri Ram kumar — *Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri N.N. Vohra—Home Secretary
2. Shri P.P.R. Nair—Special Secretary
3. Shri R. Balakrishnan—Adviser
4. Shri T.N. Srivastava—Joint Secretary

SECRETARIAT

- (1) Shri G.L. Batra —Additional Secretary
- (2) Shri S.C. Gupta —Joint Secretary
- (3) Shri R.K. Chatterjee —Deputy Secretary
- (4) Shri Ram Kumar —Under Secretary

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

- 1. Shri N.N. Vohra —Home Secretary
- 2. Shri P.P.R. Nair —Special Secretary
- 3. Shri R. Balakrishnan —Adviser
- 4. Shri T.N. Srivastava —Joint Secretary

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

- 1. Dr. P.C. Rao —Secretary (Deptt. of Legal Affairs)
- 2. Shri A.C.C. Unni —Additional Secretary
(Legislative Department)
- 3. Shri B.S. Saluja —Joint Secretary and Legislative Counsel
(Legislative Department)
- 4. Dr. S.C. Jain —Joint Secretary and Legal Adviser
(Deptt. of Legal Affairs).

2. Shri H.R. Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs and Shri Vidyacharan Shukla, Minister of Parliamentary Affairs, who were not members of the Committee, attended the sitting with the permission of the Chairman under rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed the discussion on the clause-by-clause consideration of the Constitution (Eightieth Amendment) Bill, 1993.

4. The Committee then took oral evidence of Shri P.G. Narayanan, M.P. and Leader of AIADMK Parliamentary Party, Lok Sabha, on the provisions of the Bills.

[A verbatim record of the evidence was kept]

5. The Committee resumed clause-by-clause consideration of the Bill. The Committee felt that the proposed article 28A as contained in clause 2 of the Bill required amplification. The Committee accordingly, substituted a new clause 2 for the existing one, as under:—

‘2. In Part III of the Constitution, under the heading “Right to Freedom of Religion” and before article 25, the following article shall be inserted, namely:—

“*24A. The State shall—

- (a) have equal respect for all religions; and
- (b) not profess, practise or propagate any religion.”.

6. The Committee took up consideration of clause 3 of the Bill. The Committee decided to drop the phraseology “Notwithstanding anything in the Constitution” used in the

*The proposed articles were so renumbered by the Committee at their sitting held on 17 August, 1993 from 1630 hours to 1830 hours.

proposed article 35A and to restrict the grounds specified in the proposed article to only religion. The existing clause 3 in the Bill was substituted by a new one as under:—

‘3. In part III of the Constitution, after article 28 and before the heading “*Cultural and Educational Rights*”, the following article shall be inserted, namely:—

*“28A. (a) Parliament or the Legislature of a State may, by law, provide that any association or body of individuals be banned, if it, by words, either spoken or written, or by signs or by visible representations or otherwise, promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups.

(b) The law referred to in clause (a) may make provisions for the forfeiture of property, movable or immovable, of the banned association or body of individuals and other incidental or consequential provisions.”.’

The Committee then adjourned to meet again at 1630 hours on the same day.

*The proposed articles were so renumbered by the Committee at their sitting held on 17 August, 1993 from 1630 hours to 1830 hours.

VI

Sixth Sitting

The Committee met on Tuesday, 17 August, 1993 from 1630 hours to 1930 hours in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Shri Pawan Kumar Bansal—*Chairman*

MEMBERS

Lok Sabha

2. Shri E. Ahamed
3. Shri Somnath Chatterjee
4. Shri P. Chidambaram
5. Shri George Fernandes
6. Shri K.M. Mathew
7. Shri Sharad Dighe
8. Shri K.P. Reddiah Yadav
9. Shri Digvijay Singh
10. Shri Indrajit Gupta
11. Shri Abdul Ghafoor
12. Shri Chandrajeet Yadav

Rajya Sabha

13. Shri Mufti Mohd. Sayeed
14. Shri Chaturanan Mishra
15. Shri Satya Prakash Malaviya
16. Shri R.K. Dhawan
17. Shri Madan Bhatia
18. Shri Sushilkumar Sambhajirao Shinde
19. Shri Ramachandran Pillai
20. Shri Mentay Padmanabham

SECRETARIAT

1. Shri G.L. Batra —*Additional Secretary*
2. Shri R.K. Chatterjee —*Deputy Secretary*
3. Shri Ram Kumar —*Under Secretary*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri P.P.R. Nair, Special Secretary
2. Shri R. Balakrishnan, Adviser
3. Shri T.N. Srivastava, Joint Secretary

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. P.C. Rao, Secretary (Deptt. of Legal Affairs)
2. Shri A.C.C. Unni, Additional Secretary (Legislative Department)
3. Shri B.S. Saluja, Joint Secretary and Legislative Counsel (Legislative Department)
4. Dr. S.C. Jain, Joint Secretary and Legal Adviser (Deptt. of Legal Affairs)

2. The Committee took up oral evidence of the following representatives of the Shiromani Akali Dal (Longowal).

1. Shri Onkar Singh Thapper, Gen. Secretary
2. Shri R.S. Sodhi, Adviser
3. Shri Gurdeep Singh Dua
4. Shri Nanak Singh

[A verbatim record of the evidence was kept.]

3. The Committee decided to renumber the proposed articles 26A and 35A as contained in clauses 2 and 3 respectively as 24A and 28A.

4. The Committee took up oral evidence of Shri Satish Pradhan, M.P., Rajya Sabha and leader of Shiv Sena Parliamentary Group.

[A verbatim record of the evidence was kept.]

5. The Committee felt that clauses 4 and 5 of the Bill required amendment so as to confine the pre-poll disqualification under these provisions only to the use of religion including religious symbols.

6. Clauses 4 and 5 were recast by the Committee, to read as under:—

‘4. After article 102 of the Constitution, the following article shall be inserted, namely:—

“102A. (1) A person shall be disqualified for being chosen as a member of either House of Parliament, if after such person makes and subscribes the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to Parliament, he or any other person with his consent,—

(i) makes an appeal to vote or refrain from voting for any person on the ground of his religion or uses, or appeals to, religious symbols; or

(ii) promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups,

for the furtherance of the prospects of his election or for prejudicially affecting the election of any other person.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of disqualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law.”’

‘5. After article 191 of the Constitution, the following article shall be inserted, namely:—

“191A. (1) A person shall be disqualified for being chosen as a member of the Legislative Assembly or Legislative Council of a State if, after such person makes and subscribes the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to the Legislature of a State, he or any other person with his consent,—

(i) makes an appeal to vote or refrain from voting for any person on the ground of his religion or uses, or appeals to, religious symbols; or

(ii) promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups,

for the furtherance of the prospects of his election or for prejudicially affecting the election of any other person.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of disqualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law.”.’

7. Clause 6 of the Bill was substituted by a new clause which sought to amend article 329 to attune the provisions thereof to ensure effective enforcement of provisions contained in clauses 4 and 5, as amended by the Committee. New clause 6 provide as under:—

‘6. In article 329 of the Constitution, in the opening portion, after the words “this Constitution”, the words, figures and letters “but subject to the provisions of article 102A and article 191A shall be inserted.”.’

8. Clause 7 was adopted by the Committee without any amendment.

9. Clause 1, enacting formula and long title of the Bill were adopted.

10. The amendments moved to various clauses by members of the Committee may be seen at Annexure.

11. The Committee then took up clause-by-clause consideration of the Representation of the People (Amendment) Bill, 1993. The discussion on clause 2 of the Bill was not completed.

The Committee then adjourned to meet again at 0900 hours on 18 August, 1993.

VII

Seventh Sitting

The Committee met on Wednesday, the 18th August, 1993 from 0900 hours to 1030 hours in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Shri Pawan Kumar Bansal — *Chairman*

MEMBERS

Lok Sabha

2. Shri E. Ahamed
3. Shri Somnath Chatterjee
4. Shri George Fernandes
5. Shri Nurul Islam
6. Shri K.M. Mathew
7. Shri Sharad Dighe
8. Shri K.P. Reddiah Yadav
9. Shri Ashok Gehlot
10. Shri Abdul Ghafoor
11. Shri Chandrajeet Yadav

Rajya Sabha

12. Mufti Mohd. Sayeed
13. Shri Chaturanan Mishra
14. Shri Satya Prakash Malaviya
15. Shri R.K. Dhawan
16. Shri Madan Bhatia
17. Shri Sushilkumar Sambhajirao Shinde
18. Shri Ramachandran Pillai
19. Shri Subramanian Swamy
20. Shri Mentay Padmanabham

SECRETARIAT

1. Shri G.L. Batra — *Additional Secretary*
2. Shri S.C. Gupta — *Joint Secretary*
3. Shri R.K. Chatterjee — *Deputy Secretary*
4. Shri Ram Kumar — *Under Secretary*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

Shri T.N. Srivastava — *Joint Secretary*

REPRESENTATIVES OF THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. P.C. Rao — *Secretary*
(Department of Legal Affairs)
2. Shri A.C.C Unni — *Additional Secretary*
(Legislative Department)
3. Shri B.S. Saluja — *Joint Secretary and Legislative Counsel*
(Legislative Department)

2. Shri H.R. Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs, who was not a member of the Joint Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee resumed clause-by-clause consideration of the Representation of the People (Amendment) Bill, 1993.

4. *Clause 2* : Some members expressed apprehensions about the probable abuse of clause (a) of the proposed proviso in section 29A (7) of the Representation of the People Act, 1951 as contained in clause 2 (i) of the Bill. The Minister of State for Law and Justice clarified that sufficient safeguards exist against such abuse. After discussion, the Committee felt that the working of the provision as it stood in the Bill might remain undiluted. Clause 2 was adopted without any amendment.

5. *Clause 3* : The Committee felt that clause (c) of proposed section 29B(1) should be substituted by a better worded provision for amplifying the ground for deregistration of political parties. The amendment proposed by Minister of State for Law and Justice was accepted by the Committee with verbal modifications for substituting the existing clause (c) in proposed section 29B (1) as under:—

“(c) the political party promotes, or attempts to promote, on ground of religion, disharmony or feelings of enmity, hatred or ill-will between different religious groups.”

6. The Committee agreed on the provisions as contained in proposed section 29B(2).

7. The Committee however decided to omit words “or office bearer or member thereof” and the words “or from any office bearer or member thereof ” used in proposed section 29B (3).

8. The Committee rearranged the terminology used in proposed section 29B(4) as under:—

“(4) No complaint under sub-section (2) shall lie to the High Court on the ground specified in clause (a) of sub-section (1), if the political party changes its religious name within a period of ninety days from the commencement of the Representation of the People (Amendment) Act, 1993.”

9. The Committee felt that there should be a provision for appeal under proposed section 29B. The Committee accordingly inserted a new sub-section (5) in proposed section 29B as under:—

“(5) Notwithstanding anything contained in any other provision of this Act or in any other law for the time being in force, an appeal shall lie to the Supreme Court from any order of the High Court under this section:

Provided that every appeal under this section shall be preferred within a period of thirty days from the date of the order of the High Court:

Provided further that the Supreme Court may entertain an appeal after the expiry

of the said period of thirty days if it is satisfied that the political party had sufficient cause for not preferring the appeal within such period."

Clause 3 was adopted, as amended.

10. Clause 1, the enacting formula and the long title of the Bill were adopted.

11. Amendments to various clauses of the Bill moved by the members of the Committee may be seen at Annexure.

12. The Committee decided to meet again on 20 August, 1993 to consider and adopt the draft Report on the Bills.

13. The Committee gave time upto 4 P.M. on 20 August, 1993 for submission of notes of dissent, if any, by members.

The Committee then adjourned.

VIII

Eighth Sitting

The Committee met on Friday, 20 August, 1993 from 0900 to 1000 hours in Committee Room No. 62, Parliament House, New Delhi.

PRESENT

Shri Pawan Kumar Bansal—Chairman

MEMBERS

Lok Sabha

2. Shri L. K. Advani
3. Shri E. Ahamed
4. Shri Somnath Chatterjee
5. Shri P. Chidambaram
6. Shri George Fernandes
7. Shri Nurul Islam
8. Shri K. M. Mathew
9. Kum. Vimla Verma
10. Shri Sharad Dighe
11. Shri K.P. Reddiah Yadav
12. Shri Askok Gehlot
13. Shri Indrajit Gupta
14. Shri Abdul Ghafoor
15. Shri Guman Mal Lodha
16. Shri Jaswant Singh
17. Shri Chandrajeet Yadav

Rajya Sabha

18. Mufti Mohd. Sayeed
19. Shri Chaturanan Mishra
20. Shri Satya Prakash Malaviya
21. Shri Sikander Bakht
22. Shri R. K. Dhawan
23. Shri Madan Bhatia
24. Shri Sushilkumar Sambhajirao Shinde
25. Shri Ramachandran Pillai
26. Shri Mentay Padmanabham

SECRETARIAT

1. Shri G.L. Batra—*Additional Secretary*
2. Shri S.C. Gupta—*Joint Secretary*
3. Shri R.K. Chatterjee—*Deputy Secretary*
4. Shri Ram Kumar—*Under Secretary*

REPRESENTATIVES OF MINISTRY OF HOME AFFAIRS

Shri T.N. Srivastava, Joint Secretary

REPRESENTATIVE OF MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS

1. Dr. P.C. Rao, Secretary (Department of Legal Affairs)

2. Shri A.C.C. Unni, Additional Secretary

Legislative Department

3. Shri B.S. Saluja, Joint Secretary and Legislative Counsel

2. Shri H.R. Bhardwaj, Minister of State in the Ministry of Law, Justice and Company Affairs and Shri Vidyacharan Shukla, Minister of Parliamentary Affairs, who were not members of the Joint Committee, attended the sitting with the permission of the Chairman under Rule 299 of the Rules of Procedure and Conduct of Business in Lok Sabha.

3. The Committee considered and adopted the draft Report of the Joint Committee on the Bills.

4. The Chairman suggested that to incorporate the substance of the amendment suggested by one of the members of the Committee which sought to prohibit issuance of Hukamnama or Firman etc. by any religious institution a recommendation in the following terms might be added at the end of the report:

“The Committee also recommend that a suitable provision be made in law to prohibit the issuance of any directive, edict or command by any religious institution for electoral purposes.”

The Committee approved of it.

5. The Committee directed that the evidence tendered before the Committee might be laid before Parliament and that two copies each of the memoranda received by the Committee might be placed in the Parliament Library.

6. The Committee authorised the Legislative Counsel to carry out certain minor corrections of a drafting nature.

7. The Chairman reiterated that minutes of dissent, if any, might be sent so as to reach the Lok Sabha Secretariat by 1600 hours today, 20 August, 1993.

8. The Committee authorised the Chairman to present the Report and lay record of evidence before the two Houses.

9. The Chairman thanked the officers of the Lok Sabha Secretariat for their assistance and the members of the Committee for their cooperation.

The Committee then adjourned.

APPENDIX VI

JOINT COMMITTEE ON THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993 AND JOINT COMMITTEE ON THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993

Amendments Circulated

Part I

THE CONSTITUTION (EIGHTIETH AMENDMENT) BILL, 1993

A. Amendments to Clauses

Sl. No.	Name of Member and Text of Amendment	Clause No.
1	2	3

SHRI E. AHAMED

1. Page 1, line 8 2

after "respect" insert "and treatment"

SHRI SOMNATH CHATTERJEE
SHRI RAM CHANDRAN PILLAI
SHRI INDRAJIT GUPTA
SHRI ABDUL GHAFOOR
SHRI CHANDRAJEET YADAV
MUFTI MOHD. SAYEED
SHRI CHATURANAN MISHRA

2. Page 1, for line 8, 2

*substitute "28A. The State shall not profess, practise or propagate
any religion and shall maintain separation of religion from
the affairs of the State".*

1	2	3
SHRI MADAN BHATIA		
3.	Page 1, for line 8 substitute	2
<p>“28A (a) The State shall not give preference to one religion over another and shall not use any religion or appeal to any religion in the conduct of its affairs.</p> <p>(b) The state in clause (a) of Article 28A shall include a political party.</p> <p>(c) Notwithstanding anything contained in this Constitution, the State may by law prescribe such measures as it deems fit to prevent any political party from violating the provisions of clause (a) of this article and/or to ensure compliance by it to the requirements of the aforesaid clause.</p> <p><i>Explanation</i></p> <p>For the purpose of this Article, political party includes an association of person which sponsors or maintains political principles and beliefs in the public policies of the government or which is formed for the purpose of urging the adoption and execution of such principle or beliefs in the affairs of state.”</p>		
SHRI S.B. CHAVAN KUM. VIMLA VERMA SHRI K.M. MATHEW		
4.	Page 1, for lines 11-23, substitute	3
<p>Legislation to “35A. (a) Parliament or the Legislature of a State declare certain may, by law, provide that any association or body of associations as individuals be banned, if it, by words, either spoken banned on or written, or by signs or by visible representations certain grounds. or otherwise, promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between the citizens of India on ground of religion.</p> <p>(b) The law referred to in clause (a) may make provisions for the forfeiture of property, movable or immovable, of the banned association or body of individuals and other incidental or consequential provisions.”</p>		
SHRI E. AHAMED SHRI GEORGE FERNANDES		
5.	Page 1, line 11 omit “Notwithstanding anything in this Constitution,—”	3

1	2	3
<hr/>		
SHRI E. AHAMED		
6.	Page 1, for lines 12—15	3
<i>Substitute</i> “35A (a) Parliament may, by law, provide that any political party be banned if it directly or through its subsidiary or allied organisations or members, by words, either spoken or written, or by signs or visible representations or by other means, harms or attempts to harm the secular character of the Republic——”		
 <i>“Explanation</i>		
For the purpose of this clause, “harms or attempts to harm secular character” means any propaganda, speech, publication, ideology which is inconsistent with and repugnant to secularism as envisaged under this Constitution, or the propagation of any religious faith for the establishment or the promises to establish a theocratic State.”		
 SHRI GEORGE FERNANDES		
7.	Page 1, line 15	
<i>for</i> the words “classes of citizens of India——” <i>Substitute</i> the words “religious groups of India.”		
 <i>And Omit</i> lines 16—18.		
 SHRI SATYA PRAKASH MALAVIYA		
8.	Page 1, line 17	3
<i>omit</i> “place of birth, residence,”		
 SHRI E. AHAMED		
9.	Page 1, line 22 <i>after</i> “jurisdiction” <i>insert</i> “under Art. 32.”	3
 SHRI GEORGE FERNANDES		
10.	Page 1, <i>omit</i> lines 22-23.	3

1

2

3

SHRI S.B. CHAVAN
KUM. VIMLA VERMA
SHRI K.M. MATHEW

11. Page 1, for lines 24—43, substitute

4, 5 and 6

“Insertion of new article 102 A. 4. After article 102 of the Constitution, the following article shall be inserted, namely:—

Disqualification for membership for misuse of religion. “102A. (1) A person shall be disqualified for being chosen as a member of either House of Parliament if, after such person makes and subscribes the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to Parliament, he or any other person with his consent,—

(i) makes an appeal to vote or refrain from voting for any person on the ground of his religion or uses, or appeals to, religious symbols; or

(ii) promotes, or attempts to promote, feelings of enmity or hatred between the citizens of India on ground of religion,

for the furtherance of the prospects of his election or for prejudicially affecting the election of any other person.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of disqualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law.”

SHRI S.B. CHAVAN
KUM. VIMLA VERMA
SHRI K.M. MATHEW

Insertion of new article 191A.

5. After article 191 of the Constitution, the following article shall be inserted, namely:— 4,5 and 6

Disqualification
for membership
for misuse of
religion.

"191A. (1) A person shall be disqualified for being chosen as a member of the Legislative Assembly or Legislative Council of a State if, after such person makes and subscribes the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to the Legislature of a State, he or any other person with his consent,—

- (i) makes an appeal to vote or refrain from voting for any person on the ground of his religion or uses, or appeals to, religious symbols; or
- (ii) promotes, or attempts to promote, feelings of enmity or hatred between the citizens of India on ground of religion,

for the furtherance of the prospects of his election or for prejudicially affecting the election of any other person.

(2) Notwithstanding anything in this Constitution, Parliament may, by law, provide that the question of disqualification under clause (1) shall be determined by such authority and in such manner as may be specified in such law."

Amendment of
article 329.

6. In article 329 of the Constitution, in the opening portion, after the words "this Constitution", the words "but subject to the provisions of article 102A and article 191A" shall be inserted.

SHRI GEORGE FERNANDES

12. Page 1, *omit* lines 24—43.

SHRI E. AHAMED

13. Page 1, *for* lines 26—28 substitute

4

"(da) if he, either before or after making and subscribing the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for elections to Parliament, harms or attempts to harm the secular character of the country within the meaning of Art. 35A (as amended) of the Constitution."

Explanation

"For the purpose of this clause, a person so disqualified may appeal to the High Court of judicature within two days and the High Court shall dispose of such appeal within three days."

1	2	3
SHRI K. P. REDDIAH YADAV		
14.	Page 1, <i>after</i> line 31 <i>Insert</i> "4A. In article 102 of the Constitution, after clause (2), the following clause shall be inserted, namely:— (3) Parliament may, by law, make provisions with respect to all matters relating to, or in connection with, complaints for disqualification under clause (1) (da) and clause (1) (db)."	4
SHRI E. AHAMED		
15.	Page 1, <i>for</i> lines 34—40 <i>substitute</i> "(da) if he, either before or after making and subscribing the oath or affirmation in accordance with the form set out for the purpose in the Third Schedule for election to the Legislature of a State, harms or attempts to harm the secular character of the country within the meaning of Art. 35A of the Constitution."	5
B. AMENDMENTS TO GOVERNMENT AMENDMENTS		
SHRI GEORGE FERNANDES		
1.	Page 1, line 2, <i>omit</i> "or the Legislature of a State"	3
2.	Page 1, lines 6-7, <i>for</i> "the citizens of India on ground of religion" <i>substitute</i> "different religious groups in India"	3
3.	Page 1, <i>omit</i> lines 11—50,	4—6
SHRI RAMACHANDRAN PILLAI		
4.	Page 1, line 22, (i) <i>after</i> "to promote" <i>insert</i> "disharmony" (ii) <i>after</i> "hatred" <i>insert</i> "or ill-will"	4
5.	Page 2, line 1, (i) <i>after</i> "to proomote" <i>insert</i> "disharmony" (ii) <i>after</i> "hatred" <i>insert</i> "or ill-will"	5
GENERAL SUGGESTION		
SHRI GEORGE FERNANDES		
Page 1, <i>for</i> line 8, <i>substitute</i> "25(1) The State shall accord equal treatment to all religions and shall not identify itself with or patronise any religion."		

1

2

3

C. NOTICE OF AMENDMENT UNDER RULE 301

DR. K.V.R. CHOWDARY:

Page 1, line 17,

delete the words "place of birth, residence."

Part II

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1993.

Sl. No.	Name of Member and Text of Amendment	Clause No.
1	2	3
SHRI E. AHAMED		
1.	Page 1, for lines 8—13, <i>Substitute</i> “Provided that no association or body shall be registered as a political party under this sub-section, if— (a) the association or body or any of its allied or subsidiary association harms or attempts to harm the secular character of the Republic.”	2
SHRI GEORGE FERNANDES		
2.	Page 1, for line 10, <i>Substitute</i> “(a) the name of the association or body connotes a religion or religious community.”	2
SHRI MADAN BHATIA		
3.	Page 1, in the end of line 12 <i>add</i> “or” and <i>insert</i> “(c) If such Association or body subscribes to an ideology which is likely to confine its membership to members of any particular religion or which is likely to make its membership predominantly held by members of a particular religion.”	2
SHRI E. AHAMED		
4.	Page 1, for line 25, <i>Substitute</i> “(a) any political party directly or through its subsidiary or allied organisation or members, harms or attempts to harm the secular character of the Republic.”	3
SHRI GEORGE FERNANDES		
5.	Page 1, for line 25, <i>Substitute</i> “(a) the name of the political body connotes a religion or religious community.”	3

1	2	3
SHRI H.R. BHARDWAJ: KUMARI VIMLA VERMA: SHRI K.M. MATHEW:		
6. Page 1, for lines 28-29		3
<i>Substitute</i>	"(c) the political party promotes or attempts to promote disharmony or feelings of enmity, hatred or ill-will between citizens of India on ground of religion."	
SHRI SUBRAMANIAN SWAMY:		
7. Page 1, after line 29		3(d)
<i>Add</i>	"29 B(d) No political party shall be a front organ for any group, set up or organisation which professes a theocratic state in which any one religious group or its sub-culture has hegemony or supremacy."	
SHRI MADAN BHATIA:		
8. Page 1, in the end of line 29 <i>add</i> "or" and		3
<i>insert</i>	"(d) the political party subscribes to an ideology which is likely to confine its membership to members of any particular religion or which is likely to make its membership predominantly held by members of a particular religion."	
<i>Explanation I</i>	For the purpose of removing any doubt it is clarified that if any political party espouses or supports any religious issue or abets any person to do so calculated to or having the tendency to exploit the religious sentiments of any particular community so as to enhance its political standing in that community or its electoral prospects, or promotes or attempts to promote feeling of enmity or hatred or ill-will between different classes of citizens of India on grounds of religion, it shall be deemed that the activities of that political party are not in accordance with its memorandum or rules and regulation referred to in sub section (5) of section 29 A.	
<i>Explanation II</i>	Without prejudice to the generality of the expression "Political Party", the expression political party includes its national executive, governing or working body or any member or members thereof acting with its implicit or explicit consent, connivance, abetment or support.	
SHRI GEORGE FERNANDES:		
9. Page 1, in lines 39-40		3
	<i>omit</i> the words, "or office bearers or members thereof".	
	10. Page 1, in lines 41-42	
	<i>omit</i> the words, "or from any office bearers or member thereof".	
	11. Page 1, in lines 47-48	
	<i>for</i> the words "changes its religious name".	

1

2

3

Substitute "whose name connotes a religion or religious community changes its name".

SHRI MADAN BHATIA:

12. Page 1, *after* line 48

3

Add "Or if the political party which subscribes to any ideology referred to in clause (d) of Sub-Section 1 in its memorandum or rules and regulations deletes its subscription to that ideology from the same within the said period."

SHRI MADAN BHATIA:

13. Page 1, *after* line 48

3

Insert "29C-If the Registration of any political party has been cancelled under Section 29B of this Act, then any member of the House of the people or a State Legislative Assembly who was elected after the date of the complaint referred to in clause (2) of Section 29B above on the electoral symbol of that political party allotted to him by the election commission at the instance of that political party under any rules framed under this act shall stand automatically disqualified and shall cease to be a member of the House of the people or the State Legislative Assembly as the case may be.

Provided that this section shall not apply to any member who has been elected before the coming into force of this section.

29D-If the registration of any political party has been cancelled after any election has been notified, the list of candidates for any constituency has been finalized, but before the voting has actually taken place, the allotment of electoral symbol of that political party allotted to any candidate shall stand cancelled, but that candidate shall be entitled to allotment of another electoral symbol in accordance with the rules framed under this Act."

SHRI SATYA PRAKSH MALAVIYA:

14. Page 1, *after* line 48

3

Insert "29 C-Appeals to Supreme Court:—

1. Notwithstanding anything contained in any other law for the time being in force, an appeal shall lie to the Supreme Court on any question (whether of law or fact) from every order made by a High Court under section 29 B.

1

2

3

2. Every appeal under aforesaid section shall be preferred within a period of thirty days from the date of the order of High Court under section 29 B.

Provided further that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within such period."

SHRI RAMACHANDRAN PILLAI:

15. Page 1, *after* line 48,

3

insert

"(5) (i) For the purpose of determination whether a person has become disqualified by reason of article 102 A and 191 A of the Constitution, the President shall constitute a panel of judges of not less than three in number for each district and such judges shall be of the rank of District Judge or Additional District Judge or Chief Judicial Commissioner.

(ii) The personnel of the said panel of judges shall be selected by the Chief Justice of the State in which the district is situated and the judges so selected shall be appointed by the President to constitute a panel.

(iii) The procedure to be followed in the matter of deciding the question of disqualification under article 102 A and 191 A of the Constitution shall be such as may be prescribed by the Central Government.

(iv) An appeal shall lie to the High Court of the concerned State from any final decision given by the concerned panel of judges."

General Suggestion

SHRI CHATURANAN MISHRA:

1. Page 1, *after* line 45, *insert* new clause -

'4. In Part VII of the principal Act, after section 135A, the following section shall be inserted, namely:—

"135B. If any individual or organisation or congregation issues any directive, instruction, appeal, fatwa or makes an exhortation in the name of any religion purporting to act with or without any religious authority to members of any religion to vote for any particular political candidate or any particular political party in any election under this Act, such individual and in the case of an organisation every member of the managing or governing body of such organisation shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to fifty thousand rupees."

SHRI SATYA PRAKASH MALAVIYA:

2. A provision should be made for filing of an appeal before the Supreme Court against the order of the High Court which may be passed under sections 29B(1)(c) or 29B(2) or 29(3).

© 1994 BY LOK SABHA SECRETARIAT

**Published under Rule 382 of the Rules of Procedure and Conduct
of Business in Lok Sabha (Seventh Edition) and Printed by the
Manager, Letter Press Unit, Government of India Press,
Minto Road, New Delhi**