

मैं चाहूँगा, अध्यक्ष महोदय, जैसा बाबड़ी जो और दूसरे साधियों ने निवेदन किया है, इसे पर बहुस की इजाजत दी जाय। इसका मोटिस दिया जा चुका है—इस पर तुरन्त चर्चा की जाय।

श्री कबीरराव बाबड़ी : अध्यक्ष महोदय, ...

MR. SPEAKER: I am going to consider that. There are Calling Attention Notices which are under my consideration.

(Interruptions)***

MR. SPEAKER: Don't record.

12.48 hrs.

CONSTITUTION (FORTY-FIFTH AMENDMENT) BILL

Consideration of Amendments made by Rajya Sabha

MR. SPEAKER: The House will now take up consideration of amendments made by Rajya Sabha in the Constitution (45th Amendment) Bill, 1978 as passed by Rajya Sabha, for which five hours have been allotted.

If the House agrees, we may have three hours for discussion on the motion that the amendments made by Rajya Sabha be taken into consideration and two hours for discussion and voting on the Rajya Sabha amendments.

Voting on the motion that the Rajya Sabha amendments be taken into consideration may take place at 5.30 p.m. and voting on the Rajya Sabha amendments will take place thereafter.

Each of the six amendments listed in the List of Business will require the requisite special majority for adoption, and accordingly division will be held thereon. Similarly, the motion for passing of the Bill, as amended by the amendments agreed to, will require the requisite special majority and a division will be held thereon.

Dr Pratap Chandra Chunder may now move the motion. Before that Mr. Kamath is raising a point of order.

No, it will be after the Minister moves the motion.

SHRI HARI VISHNU KAMATH (Hoshangabad): But I may submit that if necessary, the time may be extended by the leave of the House.

MR. SPEAKER: That we will consider, that is the usual request.

THE MINISTER OF EDUCATION, SOCIAL WELFARE AND CULTURE (DR. PRATAP CHANDRA CHUNDER): I beg to move:

"That the following amendments made by Rajya Sabha in the Bill further to amend the Constitution of India, as passed by Lok Sabha, be taken into consideration:

"New Clause 7A.

(1) That at page 3, after line 4, the following new clause be inserted, namely:—

Amendment of article 31C

7A. In article 31C of the Constitution, for the words and figures "article 14, article 19 or article 31" the words and figures "article 14 or article 19" shall be substituted."

Clause 8.

(2) That at page 3, clause 8, be deleted.

Clause 35

(3) That at page 8, clause 35, be deleted.

Clause 44

(4) That at page 13, clause 44, be deleted.

Clause 45

(5) That at pages 13 and 14, clause 45, be deleted.

Clause 47

(6) That at page 14, clause 47, be deleted."

SHRI HARI VISHNU KAMATH:
 Mr. Speaker, by a curious concatenation of circumstances, Sir, the House will discuss today and tomorrow, and may be the day after as well, unprecedented issues which have now arisen in the history of free India's Parliament.

I invite your attention first to rule 367, i.e. the rule governing points of order, according to which I will seek your guidance, in your infinite wisdom....

MR. SPEAKER: I thought it was finite, not infinite.

SHRI HARI VISHNU KAMATH:
in regard to the interpretation of the rules of procedure and/or such articles of the Constitution to which it refers. I am seeking your interpretation of the rules and certain articles of the Constitution with regard to the motion that has been made.

I will first draw your attention to article 368 of the Constitution. That is well known. I am not going to tire the patience of the House by reading out the article or even the relevant part of it, because it is a well-known article. Under that, or in pursuance of that article, the rules of procedure have been framed by the House—rule 155 et seq., Chapter XI of the Rules of Procedure.

Then, there is rule 159 of that Chapter—Bills seeking to amend the Constitution—which clearly lays down:—

"In all other respects, the procedure laid down in these rules with respect to other Bills shall apply."

What are the other rules? To begin with, let us take rule 98—Bills other than Money Bills returned by the Council. There are three categories of Bills, the Constitution amending

Bills, the Money Bills and other Bills, other than Money Bills. The Constitution amending Bills category stands in a class by itself, that is to say, each House has got to pass the Bill under a particular procedure. With regard to the Money Bills, we have the last word; the Lok Sabha has the last word. Even if the other House, the other place, amends the Money Bill, they are helpless; they are, more or less, impotent to have their own way.

MR. SPEAKER: That means you have the final word.

SHRI HARI VISHNU KAMATH:
 The last word.

As regards other Bills, other than Money Bills, what happens? Suppose there is, unfortunately, a division, a difference of opinion, between this august House and the other place....
 (Interruptions)

MR. SPEAKER: The other is equally august House.

SHRI HARI VISHNU KAMATH:
 The first Speaker, Mr. G. V. Mavalankar, advised us to refer to the Rajya Sabha as the "other place", not "the other House". I do not know whether it is right; if it is not right, I would say, "the other House".

MR. SPEAKER: There is no prohibition to refer to the Rajya Sabha.

SHRI HARI VISHNU KAMATH: I will bow to your ruling; I accept your guidance and I will refer to it as the Rajya Sabha henceforth.

Now, if there is a difference of opinion, a disagreement, between the two Houses on other Bills, other than Money Bills, then we have a Joint Sitting as we had recently in May and earlier, in 1961, I believe, on the Dowry Bill. And the Lok Sabha had its own way again. In this particular case, it is an unprecedented issue that has arisen. The Constitution Amendment Bill which has been amended by

[Shri Hari Vishnu Kamath]

the Rajya Sabha had earlier been passed by the Lok Sabha and the Bill, as passed by the Lok Sabha, so amended by the Rajya Sabha, has come back to us.

There was one instance earlier. Of course, it did not come back to us, to the Lok Sabha. That was the Privy Purses Bill....

MR. SPEAKER: How long are you likely to take on this?

SHRI HARI VISHNU KAMATH: I will take another 15 minutes. It is a very important point of order on which you have to give your considered ruling; you may give it tomorrow. It is an extra-ordinary issue.

MR. SPEAKER: I am sure, you know how to put it very briefly.

SHRI HARI VISHNU KAMATH: I will try my best.

MR. SPEAKER: We now adjourn for lunch to meet again at 2 P.M.

13 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha reassembled after Lunch at five minutes past Fourteen of the Clock.

[Mr. SPEAKER in the Chair]

CONSTITUTION (FORTY FIFTH AMENDMENT) BILL—Contd.

Consideration of Amendments made by the Rajya Sabha—Contd.

MR. SPEAKER: Mr. Hari Vishnu Kamath.

SHRI HARI VISHNU KAMATH : Mr. Speaker, Sir, I shall now, by your leave, resume the thread which had been snapped by the lunch recess, and I will obey your very wise direction and try to be as brief as possible.

As I have already stated, article 368, read with rules 98 to 102 and 155 to 159, governs the consideration of the motion before the House. As is well known, article 368 does not lay down the procedure. The procedure is laid down in the rules. The then Chief Justice, in 1951, Justice Patanjali Shastri, of the supreme judicial forum in our country, which you so well adorned a few years ago, said this in *Shankari Prasad vs. Union of India*—I am quoting from 1951 A.I.R. page 458:

"It is not correct to say that article 368 is a 'complete code' in respect of the procedure provided by it. There are gaps in the procedure as to how and after what notice a Bill is to be introduced, how it is to be passed by each House and how the President's assent is to be obtained. Having provided for the Constitution of a Parliament and prescribed a certain procedure for the conduct of its ordinary legislative business to be supplemented by rules made by each House (art. 118), the makers of the Constitution...."

According to my young friend from Pondicherry, the 'founding fathers' or 'founding brothers'.

"....the makers of the Constitution must be taken to have intended Parliament to follow that procedure, so far as it may be applicable consistently with the express provision of art. 368, when they entrusted to it the power of amending the Constitution."

Two former Secretaries of Lok Sabha, Shri M. N. Kaul and Shri S. L. Shakhder, as you very well know, have written and published a book 'Practice and Procedure of Parliament', and in the 1972 edition of that book, this is what is stated:

"Barring the requirement of special majority, ratification by State Legislatures in certain cases and the mandatory assent by the President, a Bill for the amendment of the

"Constitution follows practically the same legislative process as an ordinary piece of legislation."

The only thing which they forget to mention is that there can be no joint sitting for a Constitution Amendment Bill. That is totally ruled out. For Money Bills we have the last word.

MR. SPEAKER: What is the point that is troubling you?

SHRI HARI VISHNU KAMATH: This background is very necessary; otherwise you will not appreciate what I am driving at.

MR. SPEAKER: I appreciate it surely.

SHRI HARI VISHNU KAMATH: You have been a model of patience; you have been a paragon of patience in the Supreme Court.

MR. SPEAKER: Not here?

SHRI HARI VISHNU KAMATH: Not here...

MR. SPEAKER: I only asked you, whether I am not so here; I did not say that.

SHRI HARI VISHNU KAMATH: At your age, Sir, I hope you will not deviate from that virtue.

Now, Sir, I will turn to rules 98 to 102. I do not know what the mind of the Government is. The hon. Minister has today behaved like a sphinx, on this occasion. He has just moved the motion. He has not indicated the Government's mind. If the Government's stand is that the amendments made by the Rajya Sabha be accepted by the House, for some reason or other, then, my point of order assumes great importance.

Sir, in all humility but with all earnestness, I submit this, because, to my

mind, Art. 107 comes into operation. I quote Article 107, sub-clause (2).

It says:

"Subject to the provisions of Article 108 and 109, a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses, either without amendment or with such amendments only as are agreed to by both Houses."

Now, Sir, my submission is that this House is not bound to or obliged to accept the amendments or to approve the amendments or to pass the amendments as have been passed by the Rajya Sabha. Because, Sir, let us see what happens under these rules—rules 98 to 102, in case the amendments are not approved of. I hope they will not be, because we have already given our vote. We don't want to change our vote. We don't wear our hearts on our sleeve. How can we change our vote? We have never done that before; why should we do it now?

MR. SPEAKER: That is on merits. Let us come to the point of order.

SHRI HARI VISHNU KAMATH: This is an integral part of the point of order. I hope you will appreciate it.

MR. SPEAKER: Very much.

SHRI HARI VISHNU KAMATH: What happens if they are disagreed to here? You have got Rule 101. It says:

"The House, if it agrees to the amendments made by the Council..." You will see this at the top of the page. It refers to Bills other than money Bills originating in the House and transmitted to the Council.

I quote here Rule 101:—

"101. The House, if it agrees to the amendment made by the Council, shall send a message to the Council to that effect, but if it disagrees with that amendment or proposes further

[Shri Hari Vishnu Kamath]

amendment or an alternative amendment, the House shall return the Bill or the Bill as further amended to the Council with a message to that effect."

So, it goes back to the Council if you don't agree. Then what happens further? What is its fate? Rule 102 comes into operation. I quote here Rule 102:—

"102. If the Bill is returned to the House with a message that the Council insists on an amendment or amendments to which the House has disagreed, the Houses shall be deemed to have finally disagreed as to the amendment or amendments."

Therefore, the outcome will be that the two Houses are deemed to have disagreed with regard to those provisions on which there have been no agreement. Therefore, in my humble judgement Article 107 sub-rule (2) of the Constitution comes into operation, and the Bill will be deemed to have been passed minus those provisions on which there have been no agreement. Therefore, the House, as a matter of fact, need not take even much time. We can stick to our guns.

MR. SPEAKER: If they are unlicensed guns, then it will not be permitted.

SHRI HARI VISHNU KAMATH: I am asking you, therefore, to give a ruling on this.

SHRI JYOTIRMOY BOSU (Diamond Harbour): He is asking about the licensed guns.

SHRI HARI VISHNU KAMATH: I will request you, in your mature wisdom, to give your ruling on this point. This is the short point. Whether in case the Houses disagree,—this House does not agree with the amendments, does not accept the amendments made by the Rajya Sabha,—the entire Bill falls through or whether only those amendments and those provisions fall

through and the Bill minus those provisions shall be deemed to have been passed by both the Houses? Ultimately, perhaps, the Government will say it would involve delay. That is the last pretext which they might use to hustle the Bill through this House and get it passed by the House as amended by the Rajya Sabha. It will have to go to the Rajya Sabha again, and there will be delay. Now, I will answer that point straightway. It will not be passed very soon and it will not become law because it will have to go to the State Legislatures for ratification and that can be done only next year because the State Legislatures are not in session now. May be they will meet in February or March for their budget session.

MR. SPEAKER: Now, we are only concerned with the legal position. That is not a point of order.

SHRI HARI VISHNU KAMATH: The Government takes various pretexts and excuses....

MR. SPEAKER: You are far more experienced than many of us here.

SHRI HARI VISHNU KAMATH: Not more experienced than you, Sir. Government's plea has no legs to stand upon. That is not tenable at all. That will not hold water and if the Government has the will, and I hope it has—when the Bill is returned by the Council they can get it through and send it to the Rajya Sabha in a day, as they did last time. I remember the Rajya Sabha set on a Saturday last time—and get the Bill approved with the amendment. The Rajya Sabha can consider the Bill on a Saturday. There are still two weeks to go. So, I would request you to rule on this point whether in case the House does not agree with the Rajya Sabha—and it does not accept them—and does not pass the amendments, the Bill as a whole falls through or the Bill minus the amendments is deemed to have been passed.

**DR. PRATAP CHANDRA CHUN-
 DER:** Mr. Speaker, Sir, the hon. Mem-
 ber, Shri Kamath is an experienced
 parliamentarian and he is one of the
 founders of this Constitution, but I res-
 pectfully submit that he has tried to
 create a difficulty which is not there,
 because the provisions are quite clear
 and he has himself argued against his
 own point of order.

Shri Kamath has cited that celebrat-
 ed case of Sankari Prasad Vs. Union
 of India in which Justice Patanjali Sas-
 tri, the then Chief Justice, said that the
 constitutional provision of Article 368
 is not a complete code and, therefore,
 the House can make rules. And the
 House has made rules; not only this
 House, but the other House also has
 made rules. He has cited these rules
 from Rules 98 to 102. There, it is clear-
 ly mentioned in Rule 98:

"If a Bill other than a Money Bill
 passed by the House and transmitted
 to the Council is returned to the
 House with amendments, it shall on
 receipt be laid on the Table."

Now, this is a Bill which is not a
 Money Bill. Therefore, it comes with-
 in the scope of Rule 98. This Bill, as
 amended, has been laid on the Table of
 the House. We are considering this
 amended Bill. I do not know how he
 can argue that this House cannot take
 this matter into consideration.

MR. SPEAKER: That is not his point.
 The point is: What will be the effect if
 this House does not agree to these
 amendments, whether the Bill as a
 whole lapses or only the portions not
 agreed to?

**DR. PRATAP CHANDRA CHUN-
 DER:** I am coming to that. We need
 not jump before we come to the stile.
 We have not yet come to the stile. If
 this House accepts the amendments as
 made by the Rajya Sabha, there is no
 difficulty at all, because both the

Houses have passed this Bill with
 amendments.

The hon. Member has referred to
 Article 107(2). It reads:

".....a Bill shall not be deemed
 to have been passed by the Houses
 of Parliament unless it has been
 agreed to by both Houses, either
 without amendment or with such
 amendments only as are agreed to
 by both Houses."

Therefore, if both the Houses agree to
 the amendments, then there is no diffi-
 culty and the Bill will be deemed to
 have been passed by both the Houses
 with the requisite majority as you have
 just now pointed out.

The hon. Member seems to ask that
 if this House rejects the amendments,
 what will happen? Clear procedure is
 laid in the rules of procedure of this
 House and the other House. It is clear-
 ly mentioned that the Bill as amended
 further by this House will be sent to
 the other House. It is something like the
 game of badminton. It goes from this
 House to the other House. Then, from
 that House it comes to this House.
 Again it goes back to the other House.
 If the other House agrees to it, all
 right; if it does not agree, then like a
 shuttle cock, again it will come back
 to this House. And if the Bill is re-
 turned to this House with a message
 that the other House insists on the
 amendments, only then the Houses
 shall be deemed to have finally dis-
 agreed. I draw your kind attention to
 the word 'finally'. Before that, the
 Bill is in motion from one place to an-
 other and it is not finally disposed of.
 Therefore, the other House cannot be
 deemed to have said that they have
 disagreed or this House also cannot be
 said to have disagreed unless we arrive
 at that final stage. I would respect-
 fully say that this House is fully com-
 petent to take this matter into consi-
 deration and it will depend on the
 wishes of the House to decide, what is
 to be done.

SHRI HARI VISHNU KAMATH: I resolved by a joint sitting of the two Houses. But that procedure is not available in the case of Bills amending the Constitution. Article 368 of the Constitution lays down a mandatory provision that every amendment of the Constitution must comply with the prescribed majorities. There is no provision either in the Constitution or in the rules providing for a joint sitting. That being so if any amendments made by the Rajya Sabha are not agreed to by this House, the Bill will have again to go back to the Rajya Sabha and if the Rajya Sabha does not agree the Bill does not become law.

MR. SPEAKER: Shri Kamath has raised a point of order as to the effect on the Constitution Amendment Bill which has not been agreed to in some respects by both the Houses of Parliament. It is well settled that Article 368 of the Constitution which governs the amendment of the Constitution is not exhaustive and that Article to the extent it does not prescribe a particular procedure is supplemented by the rules of the House. The relevant rules are found in Rules 98 to 102 and 155 to 159 of the Rules of Procedure and Conduct of Business in this House.

When a measure has been passed by this House but that measure has not been fully accepted by the other House or when that measure has been amended in certain respects by the other House, the Bill comes back to this House and this House may or may not agree to the amendments proposed by the Rajya Sabha. If it agrees, the matter ends. But if it does not agree the Bill will again go back to the Rajya Sabha and it is for the Rajya Sabha to decide whether the alternative amendments proposed by this House are acceptable to it. If it does not agree to the alternative amendments suggested, then sub-article (2) of article 107 comes into operation. It says: "Subject to the provisions of articles 108 and 109 a Bill shall not be deemed to have been passed by the Houses of Parliament unless it has been agreed to by both Houses either without amendment or with such amendments only as are agreed to by both Houses."

In the case of Money Bills a different procedure is prescribed; the decision of this House is final. In the case of Bills other than Bills amending the Constitution, if there is disagreement between the two Houses the same can be

Mr. Kamath has raised another point, that is, if the two Houses do not agree on all the provisions, does the Bill as a whole lapse or only those parts which are not agreed to do not come into operation? In my opinion the Bill as a whole lapses because the amendment made by the Rajya Sabha says that the Bill is passed as amended. That being so, if the amendments made by the Rajya Sabha are not agreed to by this House and the alternative amendments proposed by this House are not agreed to by the Rajya Sabha the Bill as a whole lapses and there is no question of circulating the Bill to the State legislatures for their concurrence. This order covers the point raised by Mr. Kamath.

SHRI HARI VISHNU KAMATH: On a point of clarification. In case this House agrees with the Rajya Sabha amendments and the Bill is deemed to have been passed and subsequently the Bill goes to the State legislatures and they do not agree to ratification?

MR. SPEAKER: Your point is covered.

SHRI HARI VISHNU KAMATH: In case the House agrees with all the amendments of the Rajya Sabha, the Bill does not go back to Rajya Sabha?

MR. SPEAKER: No.

SHRI HARI VISHNU KAMATH :
The Bill will go to the state legislatures. Suppose the state legislatures do not ratify the amendments made by Rajya Sabha, the Bill will lapse again?

MR. SPEAKER: I am not going into the powers of the State legislatures; they have a right to discuss it.

SHRI HARI VISHNU KAMATH:
Interpretation of article 368 is in your province.

MR. SPEAKER: I do not want to encroach upon the powers of the State legislatures.

SHRI HARI VISHNU KAMATH:
Suppose the States do not ratify?

MR. SPEAKER: We will consider it at that time. Mr. Kamath, all these troubles are created by you by not making it clear at the time of the framing of the Constitution.

DR. PRATAP CHANDRA CHUNDER: May I make this submission on the motion for consideration on the amendments that have been made by the Rajya Sabha and sent to this House for concurrence?

This is a very important occasion in our parliamentary history when for the first time the Constitution Amendment Bill which has been passed by the Lok Sabha has been passed in Rajya Sabha with certain amendments. Earlier, as hon. Shri Kamath had pointed out, there had been cases where a Constitution Amendment Bill passed by the Lok Sabha has been rejected by the Rajya Sabha straightway. But here for the first time Rajya Sabha passed the Bill with certain amendments.

You will remember that the original Fortyfifth Amendment Bill was passed on 23rd August this year. There were 49 clauses. The Rajya Sabha agreed with the opinion of this House with regard to 44 clauses. Only in

respect of 5 clauses there is some disagreement and Rajya Sabha has added one new Clause which is in fact a consequential amendment which arises from something which Rajya Sabha has already agreed to. That means the deletion of Article 31. That is the short position of the Bill as sent by the Rajya Sabha.

You will notice that the purport of the amendments which have been made by the Rajya Sabha can be summarised as follows:

In the original Bill, as passed by the Lok Sabha, Article 31C had been drastically modified. The scope of the Directive Principles having precedence over the fundamental rights had been curtailed to a large extent. But Rajya Sabha did not agree to this proposition. Rajya Sabha chose to retain Article 31C. But because earlier Rajya Sabha had agreed with this House that Article 31 should be deleted, Rajya Sabha introduced a new amendment, namely—

"7A. In article 31C of the Constitution for the words and figures "article 14, article 19 or article 31" the words and figures "article 14 or article 19" shall be substituted."

In other words from 31C, only Article 31 is deleted. That is one amendment which Rajya Sabha made.

The other amendment was a comprehensive one. In Article 35 of the original Bill, this House agreed to delete all provisions concerning tribunals. But the Rajya Sabha felt that Administrative Tribunals would be necessary. So, it has retained the existing provisions in the Constitution.

The third change relates to Clause 44 of the original Bill passed by this House. It deals with the question of definition of the words 'secular' and 'socialist' in the preamble of our Constitution. Rajya Sabha felt that this clause also should be deleted because

[Dr. Pratap Chandra Chunder]
in its own judgement such definition
was not necessary.

Then it also deleted Article 45 of the original Bill which had been passed by this House and that relates to certain amendment in Article 368 dealing with referendum. Rajya Sabha does not think that referendum is at all necessary. And it also restores Article 368 (4) and (5).

Finally, Rajya Sabha also deleted Clause 47 which deals with alterations in the Seventh Schedule. Some of the matters which were brought in the concurrent list, this House wanted to restore to the State List, but Rajya Sabha does not want such changes.

This is the position about the amendments which have been made by the Rajya Sabha. I do not want to take much of the time of the House. We think that we can accept the amendments made by the Rajya Sabha because we are making sufficient gain by this amendment as it removes a lot of distortions which had been brought about in the Constitution by the earlier amendment of the Constitution. It is true that we would have been happy if Rajya Sabha had accepted all the amendments which had been proposed by this House but it had accepted only 44 such amendments and not accepted only five.

Considering all these factors, I humbly suggest that this House do consider these amendments and I will submit that the House accept the amendments made by the Rajya Sabha and pass the Bill as amended for which I shall make a separate motion.

MR. SPEAKER: Motion moved:

"That the following amendments made by Rajya Sabha in the Bill further to amend the Constitution

of India, as passed by Lok Sabha, be taken into consideration:—

"New Clause 7A

(1) That at page 3, after line 4, the following new clause be inserted, namely:—

'Amendment of 7A, In article 31C of the Constitution, for the words and figures "artical 14, article 19 or artical 31", the words and figures "article 14 or article 19" shall be substituted.'

Clause 8

(2) That at page 3, clause 8, be deleted.

Clause 35

(3) That at page, 8, clause 35, be deleted.

Clause 44

(4) That at page 13, clause 44, be deleted.

Clause 45

(5) That at pages 13 and 14, clause 45, be deleted.

Clause 47

(6) That at page 14, clause 47, be deleted."

चौधरी बलबोर सिंह : (होशियारपुर) : अध्यक्ष जी, पब्लिक का इतना खयाल क्यों जाया किया गया ? अगर पहले ही जो कांग्रेस वालों ने पास करना था उसको मानना था तो पहले ही उसको यहाँ पास कर देते ताकि पैसा जाया न होता । उस वक्त उन्होंने एतराज किया और आपने ताकत के नशे पर कहा कि हम इसको नहीं मानेंगे । तो मैं जानना चाहता हूँ कि अब क्या कमी नजर आ गई है जो अब हम फिर उसको वैसे ही पास करें जैसा कि राज्य सभा ने मेजा है ?

PROF. P. G. MAVALANKAR (Gandhinagar): The Minister is deputising for the Law Minister who is not well, and I hope he will get well soon. Now, I do not know why he chose to explain to the House at this

stage merely what the Rajya Sabha did or what it did not do. But he has not come out with a statement on behalf of the Government as to why this hon. House where they are in a majority, should accept what the Rajya Sabha has passed. Unless the Minister is elaborate and specific in regard to letting this House know the Government's stand as to why they felt that the Rajya Sabha's amendments be accepted, how are we to proceed with the discussion? The House would like to know in detail the Government's reasoning and stand on these points and then the discussion can continue so that we will have fruitful discussion.

DR. PRATAP CHANDRA CHUNDER: I have already explained that we wished that the entire Bill had been accepted by the Rajya Sabha. But there a sufficient majority was not supporting us. At this stage, out of 49 amendments 44 had been accepted by the Rajya Sabha. It is now proper that we accept 44 clauses including the one which has been added by the Rajya Sabha as a consequential measure. If it is intended that we may take some of these matters at a later stage, our hands are not tied. We can take them up at a later stage. But it is always better to have half a loaf than no bread. I submit that it is more than half a loaf, about 44 amendments have been accepted by the Rajya Sabha.

SHRI HARI VISHNU KAMATH: Is it the Government's stand that half a loaf is better than no bread?

MR. SPEAKER: I do not know how much but it is less than is loaf.

श्री यमुना प्रसाद शास्त्री (रिवा) :
अध्यक्ष महोदय, मेरा पीछें प्राफ़ आर्डर है। और वह यह कि राज्य सभा ने जो संशोधन किये हैं व संशोधन यहाँ कांग्रेस पक्ष की तरफ से लाये गये थे। जब यहाँ बहस हो रही थी प्रगस्त महीने में 45 वें संशोधन विधेयक पर तो, मारे क्लासेज पर जिनको राज्य सभा ने डिस्मिट किया है जैसे रेफ़रेंडम का क्लाज और जैसे कान्फ़रेंट सिस्ट से जो हमने गिना को स्टेट को लौटाया, या सेक्यूलरिज्म और

सोशालिज्म की परिभाषा, इन चीज़ों पर कांग्रेस की तरफ से यहाँ संशोधन लाये गये थे, और इस सदन ने दो तिहाई बहुमत से उन संशोधनों को रिजेक्ट किया था। और अभी तीन महीने भी पूरे के पूरे होते नहीं हैं..... 3 महीने से थोड़ा समय ही अधिक बीता है, तो क्या इस सदन के लिए यह सम्मानजनक होगा कि जिन संशोधनों को हमने प्रस्वीकार किया, उन्हीं संशोधन को हम स्वीकार करें? यह कहाँ तक वैधानिक और नैतिक ढंग से इस सदन के सम्मान को देखते हुए उचित है? जिन संशोधनों को हमने दो-तिहाई बहुमत से प्रस्वीकार किया, उन्हीं संशोधनों को क्या हम स्वीकार करें?

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

SHRI R. VENKATARAMAN (Madras South): Mr. Speaker, Sir, I think the House will be grateful to my friend, Shri Kamath, for having elicited a very valuable ruling from the Chair, because there has been some doubt as to what is the effect of the amendment of certain clauses in the case of the Constitution Amendment Bill. Sir, you have laid down that if certain part of the Constitution Bill is rejected in the other House, the whole Bill will lapse. Therefore, it has become necessary for those amendments to be accepted, and to follow the other procedure which has been laid down here.

My point is this. The rules really deal with the procedure. The substance is contained in article 368. But, so far as the present procedure is concerned, under our rules, if an ordinary Bill is totally rejected by the Rajya Sabha, then under article 108 of the Constitution the President can order a joint session. The language used in that article is "both the Houses have finally disagreed". In that case, the President can order a joint session. For that purpose the rules have been framed. Suppose the Lok Sabha passed a Bill, in which some amendments were made by the Rajya Sabha; when it comes back to the Lok Sabha, if it opposes those amendments, then the Bill has again to go to the Rajya Sabha in order that it may be brought

[Shri R. Venkataraman]

within the four corners of article 108. Otherwise, the President will not have the power to order a joint session.

I appreciate the stand taken by the Government that in the larger interests of the country it is better to get through as much of the constitutional amendments as possible, as there has been agreement in both the Houses, rather than carry on a long drawn debate between this House and the other with no results being achieved.

Sir, you may remember that when we discussed this Bill in the last session, this side of the House voted for the Bill. But, at the same time, it made certain reservations in respect of certain clauses. We did not object to the passing of the Bill, because we were in agreement with a number of clauses which had been brought forward by the Government. We had only certain differences of opinion, certain reservations, in respect of certain clauses, and it is only in respect of those clauses that we asked for a vote to make sure that this has been considered by the Government. It has been considered by the House and the House has exercised its mind over those points. Therefore, the Government has, in my opinion, done the right thing; instead of allowing the Bill to hang fire, they accepted what the Rajya Sabha has recommended, done by way of amendment, and they have come forward in this House to accept those amendments.

If you look at these amendments, they are innocuous. They are not based on any strong principles on which there can be a violent difference of opinion. I will deal with only two of them, because I do not want to take more time; I feel that those members who oppose it should have more time to present their case.

Now, as far as the amendment is concerned, the first amendment is purely a consequential amendment and does not call for great discussion.

Then we come to the tribunals. You will find that that Article in the Constitution is only an enabling provision. It does not compel the Government to appoint tribunals or to establish tribunals. It only enables the Government to establish tribunals for the purpose of trying certain kinds of cases. I spoke elaborately about certain kinds of tribunals in the international field in other countries when I spoke on the last occasion. If this Government does not want to appoint any tribunal, there is nothing in the amendment which says that the Government should be compelled to appoint tribunals. When an amendment to the Constitution is made, it is our suggestion that if a situation arises in which this Government or any other successor government should consider it necessary to have the power to appoint tribunals for expeditious disposal of certain types of cases or, as I said, to give protection to certain types of people like the civil servants, then the enabling provision should be available to the country as a whole, not merely to the Government, but throughout the country as a whole in order that those provisions may be utilised. Therefore, there should be no serious objection so far as this Article is concerned. The provision, as I have already said, does not compel the Government to appoint tribunals and therefore, I do not see any great objection to that amendment made by the Rajya Sabha.

Then with regard to the definitions of the words 'secular' and 'socialist', my friend Mr. Kamath will agree with me that even we did not agree with the definition given in the amendment brought forward by the Government. There is difference of opinion on the question as to what exactly is the definition of 'socialism' or 'secularism'. In fact, there is no definition. Sometimes the definitions restrict the scope of the words. Definitions are not always to the advantage of the citizen. * Very often they hamper the judicial interpretations based on various aspects and environments of the case. Interpretation should appropriately be

given in order that the spirit of the Constitution may be brought into effect. In fact, the spirit of the Constitution should prevail and in order that the spirit may prevail instead of the letter that prevails, we have no definition clause. Therefore, even on this I do not see why anybody should have any objection with regard to the amendment carried out by the Rajya Sabha.

The third amendment relates to the referendum. On this question of referendum there can be an honest difference of opinion. There is a difference of opinion throughout the world in respect of the value, utility and importance of the referendum in regard to legislation. Not all countries have adopted referendum as a method of legislation. In fact, smaller countries, as a rule, generally resort to referendum as a method of endorsement of the legislation, but the larger countries have found it very difficult because of the size and the population involved and all the difficulties attendant on having a referendum of this kind. More particularly in our country when it is very difficult for people to understand the nuances of the difference in the Constitution amendments, it would be very difficult for them to understand what they are voting, particularly when they are amendments. They can vote on general principles in a referendum like whether you want prohibition or not, and whether you want capital punishment or not, but it would not be possible to vote on a question of amendment to the Constitution where a great deal of legal thought has gone in, and a great deal of consideration has taken place at the hands of the experts. It will be difficult to explain to them, it will go probably by emotion, and then, as I said somewhat tritely during the course of the debate at that time, we are having elections with symbols; in a referendum, what type of symbols will you give the people to vote for? You cannot give the party symbols because a referendum is not a party issue, it is the people who must vote

on the issue, they are not voting for a party, and if they are to vote on an issue, they must know what the issue is, and in order to explain the issue, you must give a symbol, and the whole thing becomes a farce. Therefore, there is honest difference of opinion. Nobody says that a referendum as such is totally wrong, nobody would say the introduction of the principle of referendum is totally wrong. There can be differences of opinion, different shades of opinion in this respect, and therefore it was that this side of the House resisted and objected to the introduction of this clause.

There were other legal arguments as to what would happen to the various judgments which had been given, and about the relation between the decision of a referendum and the decisions of courts. According to the decision in the Keshavanand Bharati case, as you know, the basic features of the Constitution cannot be amended. Does it mean that by a referendum you can amend the basic features of the Constitution? If you can amend the Constitution, the basic features of the Constitution, by a referendum, where is the authority for it? And I submit that even that is liable to be struck down. The Government has steered clear of all these difficulties in accepting this amendment and coming forward to have this enacted as amended by the Rajya Sabha, and as desired in the last session by this side of the House.

Lastly, I will say one or two words about the question of education being in the Concurrent List. There are several reasons why education should be in the Concurrent List. We want national integration, and in order that we may have national integration, some kind of a policy towards unifying the country should be laid down, and that can be laid down only by the Centre. I am anxious that the history of India should be taught from Kanya Kumari to Kashmir, from Assam to Gujarat on the same basis. . .

SHRI HARI VISHNU KAMATH:
From Kutch to Kohima.

SHRI R. VENKATARAMAN: instead of the emphasis which is now being laid by several State Governments on their own history to the detriment of the national picture and national history. A person who passes the 10th or 12th standard should be able to know the history and culture of India, and there must be some kind of an authority which will lay down that these are the principles that are fundamental and universal. You can add anything you want to that in your State. After all, keeping it in the Concurrent List does not mean that the States' powers are being taken away. They are not taken away. On the contrary, the States will have all their powers. Only, in respect of national matters would the Centre come in, and therefore it is to our advantage to have matters like this with the Centre.

There are questions about language, about national integration. All these things are better discussed in Parliament in which all the States are represented and an over-all, national view is taken. It is for this purpose that the House insisted that it may be retained in the Concurrent List, and I am very happy that the Rajya Sabha has endorsed it. I am more happy that Government have accepted it. We wholeheartedly support the Bill.

श्री निर्मल चन्द्र जैन (सिवनी) : वैसे तो मैं इस बिल का समर्थन करने के लिए खड़ा हुआ हूँ लेकिन भारी हृदय के साथ ही इसका मुझे समर्थन करना पड़ रहा है। मैं उन कुछ एक ऐसे व्यक्तियों में से हूँ जिन्होंने यह चाहा था कि 42वाँ संशोधन जो है इसको पूर्णतया रद्द किया जाना चाहिये। जिन परिस्थितियों में यह संशोधन पारित किया गया था वे इस सदन की मर्यादा के विरुद्ध थी, हमारे ऊपर एक कलंक था। हमारे मंत्रिमंडल ने तब प्राश्नासन दिया था कि कांग्रेस पक्ष से कुछ चर्चाएं चल रही हैं और हो सकता है कि पूर्ण रूप से इस संशोधन को रद्द करने में हम सफल न हो सकें क्योंकि यहां तो हमें दो तिहाई बहुमत मिल जाएगा लेकिन राज्य सभा में पता नहीं क्या होगा। उसके बाद विचार विमर्श हुआ। पहले सिर्फ कांग्रेस से और बाद में कांग्रेस के साथ एक कैबिनेट भाई,

मैं की भावना वाली एक दूसरी कांग्रेस अस्तित्व में आ गई और उससे भी विचार विमर्श हुआ और वहां पर इस निष्कर्ष पर पहुंचा गया कि इस प्रकार का बिल लाया जाए और 45वाँ संशोधन लाया गया था। उसको हमने यहां पर दो तिहाई बहुमत से पारित कर दिया था। लेकिन कांग्रेस के कुछ लोगों ने विरोध किया था। राज्य सभा में भी उन्होंने विरोध किया और यह उस रूप में वहां पारित न हो सका जिस रूप में यहां से पारित हुआ था। वस्तुस्थिति यह है कि यदि हम इस बिल में कुछ एक अच्छी भावनाओं को रखना चाहते हैं तो हमें राज्य सभा के संशोधनों को स्वीकार करना पड़ेगा। इस लिए यहां यह बिल आया है। नहीं तो शायद पूर्ण रूप से यह रद्द हो जाए अगर उसको यहां उस रूप में पास न किया जाए जिस रूप में राज्य सभा ने पास किया है।

यहां एक बात मैं जरूर कह देना चाहता हूँ। राज्य सभा की मर्यादा की ध्यान में रखते हुए, उनको धृजत देते हुए, मैं यह कहना चाहता हूँ कि राज्य सभा हमेशा या तो दो साल अथवा चार साल समय से पीछे रहा करती है।

It has always been behind the actual time either by two years or by four years.

हम जब चुनकर आते हैं यहां पर उस समय जनता की भावनाओं को सर्वोपरि समझ कर जनता की भावनाओं के अनुरूप हम यहां पर चुन कर आते हैं। जनता ने हमें वोट दिया था, भारी बहुमत प्रदान किया था इस वास्ते कि हम 42वाँ संशोधन को रद्द कर दें। यह हमारे घोषणापत्र का एक भाग भी था। लेकिन राज्य सभा के जो लोग चुने जाते हैं वे रोटेशन से चुने जाते हैं, उनको जनता के सामने स्पष्ट रूप से नहीं जाना पड़ता। वैसे राज्य सभा जब बनी थी तो आपने बहुत अच्छा कहा है कि कामत साहब ने उसको बनवा कर गलती की थी....

श्री हरि विष्णु कामत : मैंने विरोध किया था।

श्री निर्मल चन्द्र जैन : जब राज्य सभा बनाई गई थी तब बात यह समझी गई थी कि शायद हम लोग भावनाओं में बह कर कुछ ऐसे बिल पास कर दें जो कि तर्क पर ठीक न उतर सकें। इस वास्ते राज्य सभा में कुछ ऐसे लोग रहने चाहिये जिन्हें हम एल्डरमैन कहते हैं कि जो भावनाओं के स्तर से ऊपर उठ कर तर्क के आधार पर हमारे द्वारा पारित संशोधनों को और कानूनों को देखा करें। लेकिन यहां पर बिल्कुल उल्टा हो गया है हमने तर्क की बात की लेकिन राज्य सभा ने भावनाओं के आधार पर, उनमें बह कर हमारी चीज का निस्तार कर दिया और वह भी इस आधार पर कर दिया कि एक महिला कहीं दूर बैठी है, उसने कहा था कि मेरे साथियो, मेरी पार्टी के बफाबार सिपहसालारो, इनको तो रद्द करना है, इसलिए रद्द करो। किसी

बाहर वाली एक महिला ने राज्य सभा के बहुत से लोगों को हिला दिया और वहाँ इसको पास नहीं होने दिया।

MR. SPEAKER: Kindly avoid any adverse reference to the other House.

SHRI NIRMAL CHANDRA JAIN:
I am not referring to any person who is not a Member of this House. I am referring to such a person who is a Member of this House. There was a report in the newspapers that she had given directions.

MR. SPEAKER: I am not referring to that. Don't pass any adverse comments on the Rajya Sabha.

SHRI NIRMAL CHANDRA JAIN:
I am not. I have earlier mentioned that I have great respect for them. But in this particular matter they have acted on emotions and not on logic. We have acted on logic and not on emotions.

15 hrs.

अध्यक्ष महोदय, जनतंत्र में दो बातें बड़ी स्पष्ट होती हैं और बड़ी सर्वोपरि हुआ करती हैं। एक यह है कि जनता सर्वोपरि है और दूसरे न्यायालय की प्रतिष्ठा। हमने न्यायालय की प्रतिष्ठा को सर्वोपरि माना है। हमने यह माना है कि हम यहाँ कुछ भी क्यों न पास कर दें उस पर न्यायालय का अधिकार होना चाहिए कि वह उस पर विचार कर सके और हस्तक्षेप कर सके। हम न्यायालय के अधिकार को मानते हैं।

अध्यक्ष महोदय, जितने भी संशोधन इस संविधान संशोधन विधेयक में किये गये हैं, उन को दो दृष्टियों से देखें। हमने प्रजातंत्र की जो प्रतिमति स्थापित करने की चेष्टा की थी वह इन संशोधनों द्वारा भ्रष्ट करने का प्रयत्न किया जा रहा है।

अध्यक्ष महोदय, पहले हम आर्टिकल 31सी और उस को हटाने की जो बात है, उसको लें। सम्पत्ति के मामले को लेकर हमने एक मौलिक विचार रखा है। वे चाहते हैं कि इस मामले में स्थिति यथावत् रहे, उन में परिवर्तन करना वे नहीं चाहते। अब तक वे सम्पत्ति और सम्पत्ति के अधिकार के बारे में बहुत चिल्लाया करते थे, हमारे कांग्रेसी भाई बहुत उसका जिक्र किया करते थे। जब मैं कांग्रेस की बात करता हूँ तो मुझे माफ करेंगे मेरा आशय कांग्रेस भाई से होता है। कांग्रेस भाई के द्वारा धर्मपरी और गरीबी के बीच जो भेदभाव है, उस की बहुत बात की जाती है लेकिन जब हम

धर्मपरी की सम्पत्ति के बारे में चर्चा करने लगते हैं तो कांग्रेस भाई के लोग विशेष रूप से झड़क उठते हैं। इस में भी उन्होंने यही किया है।

अध्यक्ष महोदय, एमजेंसी के दौरान ट्रिब्यूनल्स बनाये गये थे। ये ट्रिब्यूनल्स क्या हैं? जहाँ हमने न्यायालय की प्रतिष्ठा को सर्वोपरि रखा, वहाँ सुप्रीम कोर्ट और उस के नीचे जो हाई कोर्ट हैं, उच्च न्यायालय हैं, वे इन के खिलाफ फैसला नहीं सकते। इन्होंने ट्रिब्यूनल प्रलग बना कर एक समानान्तर अधिकार उन को दे दिया। बाकायदा ती-हूँ पर न्यायालयों से जो हम अपेक्षा रखते हैं शायद ट्रिब्यूनल्स में थोड़ी सी पक्षपात की बात हो सकती है और ये नहीं चाहते कि कोर्ट्स की जो प्रतिष्ठा हम सर्वोपरि रखना चाहते हैं वह डनी रहे। जो प्रतिष्ठा कोर्ट्स की है वह एक ट्रिब्यूनल को प्राप्त नहीं हो सकती है। हमने यही चाहा है— अपने 45वें संविधान संशोधन विधेयक में— कि ट्रिब्यूनल्स हटा दिये जाएँ और सर्वोच्च न्यायालय और उच्च न्यायालय की जो प्रतिष्ठा है उस को यथावत् रखा जाए। लेकिन इस बात को हटा कर इन्होंने न्यायालय की प्रतिष्ठा को एक ठेस लगायी है। (व्यवधान) मैं उपरसेन जी की बात को कहने ही जा रहा था मगर वे समय से थोड़ा धागे चला करते हैं इसलिए वे जल्दी बोल गये।

अध्यक्ष महोदय, एक विशिष्ट प्रकार की प्रणाली यहाँ पर उत्पन्न की जा रही थी। हाई कोर्ट्स और सुप्रीम कोर्ट के जजों में यह भावना भरने की चेष्टा की गयी यह सब एमजेंसी के दौरान किया गया, कि यदि तुम हमारे वफादार रहोगे तो 65 सा। और 62 साल के बाद भी हम तुम को गारन्टी देते हैं कि हम तुम को नौकरी देंगे, तुम सुरक्षित रहोगे रिटायर नहीं होगे। उस समय यह भावना जजों के दिलों में भरी जा रही थी। (व्यवधान) मैं यह नहीं कहता कि यह किस ने किया मगर यह भावना उन के दिलों में घर कर रही थी कि इस सरकार को विश्वास और स्नेह प्राप्त करते रहना चाहिए चाहे इसके के लिए हमें न्यय की तराजू में तीलते समय सरकार के पक्ष में ही पलड़ा क्यों न झुकाना पड़े क्योंकि बाद में हम को जीवन में फिर से नौकरी मिलने वाली है। इसलिए हम ने कहा था कि ये ट्रिब्यूनल्स हटा दिये जाएँ।

अध्यक्ष महोदय, इन ट्रिब्यूनल्स की यहाँ पर बड़ी परिभाषा रखी गयी थी डेफिनिशन्स रखी गयी थी उन से बहुत मे लोगों का विरोध हो सकता है, लेकिन सेक्युलरिज्म की जो परिभाषा रखी गयी थी कल बहुत सी गालियाँ बकी गईं, परसों बकी गईं, धार एस एस को बकी गईं, जनसंघ को बकी गईं। यह सब कहने के बाद यदि यह परिभाषा होती है कि सभी धर्मों को समान आदर दिया जाना चाहिए तो इसमें कौन सी बुरी बात थी। मैं चाहता हूँ कि यह चीज रहनी चाहिये थी। इसमें एक और बात है। यहाँ आपके ऊपर आप देखें लिखा हुआ है धर्म चक्र प्रवर्तनाय। धर्म होना चाहिये सब धर्म होना चाहिये। लेकिन कुछ लोग ऐसे हैं जो कि किसी भी धर्म में विश्वास नहीं करते हैं जो निहिस्तिः

[श्री निर्मल चन्द जैन]

होते हैं वे सेक्यूलर नहीं हो सकते हैं। सब धर्मों के ऊपर समान भावना रखना, विश्वास रखना, सब को सान भ्रातर देना, यह प्रत्येक भारतीय नागरिक का कर्त्तव्य है। यदि इसमें इस प्रकार की परिभाषा जोड़ दी थी तो उसको निकालने की उनको कौन सी आवश्यकता थी? वे इसको इसलिए निकालना चाहते थे ताकि किसी को कुछ ज्यादा फैवज दे सकें और उनके वोट प्राप्त कर सकें क्योंकि कांग्रेस पार्टी का हमेशा यह रवैया रहा है कि उसने भ्रष्टाचारियों को भारतीय नागरिक कभी नहीं समझा, उसने उनको सिर्फ वोटर समझा है। इसलिए उन्होंने इस तरह से इसका विरोध किया है।

जहाँ तक रेफैंडम की बात का ताल्लुक है और एमजैसी के दौरान का एक काला इतिहास जो हमारे सामने है उस में एक बात स्पष्ट है और वह यह कि यहाँ पर बैठ कर इसी सदन के द्वारा बहुत जल्दी में 42वां संशोधन पास करवा लिया गया था, ए. जैस की परिभाषा भी की गई, बहुत सी चीजों को हटा दिया गया, मौलिक अधिकारों को तिजोरी में बन्द कर दिया गया। इस तरह की चीज फिर से दुबारा नहीं सकें इसलिए यह रेफैंडम लाया गया था। रेफैंडम क्या है? हम देश के प्रतिनिधि हैं, जनता के प्रतिनिधि हैं हम जनता के न्यायालय में जा कर कहते हैं, अपने मालिकों के पास पहुँच कर यह कहते हैं कि हमें आदेश चाहिये। लेकिन मालिकों के सामने जाने में ये डरते हैं, इसलिए इसको इन्होंने हटा दिया है।

स्थिति स्पष्ट है। कुछ गड़बड़ हो गई है। राज्य सभा ने पूरा विधेयक पारित नहीं किया है। जितना उसने पारित किया है उसी पर हम संतोष हैं लेकिन इस अपेक्षा के साथ कि पूर्ण रूप से हम यह बाद में पारित करवा सकेंगे।

इन शब्दों के साथ मैं इसका समर्थन करता हूँ।

DR. V. A. SEYID MUHAMMAD (Calicut): Sir, I support the Bill as amended by the Rajya Sabha. As I have already spoken in this House a number of times, immediately after the 1977 General Elections, our party—the undivided party—examined the 42nd Amendment with a view to re-appraise what are the objectionable provisions which have been incorporated and which are not acceptable and we came to the conclusion that the entire 42nd Amendment can be divided into three groups. One group consists of those provisions which should be immediately deleted, without even giving time for those provisions to stay in the Constitution.

Art. 31(d) relating to a anti-national activities is one of them and I think, in the 43rd Amendment, when Government brought up the deletion of Art. 31(d), we supported it.

The second group consisted of those provisions where some of them had certain good aspects and we thought that they may be retained or they may not be retained, but we will not make an issue out of it. Amendment to Art. 226 was in that group.

The third group was those provisions which we thought were basically necessary and should be retained in the Constitution.

These were, largely these three groups, and when negotiations went on with the Government, we made it absolutely clear. Coming to the group which, we thought, should be essentially retained, one was pertaining to the Tribunals. Another was the introduction of the words 'Socialism and Secularism' in the Preamble of the Constitution. The third, which we thought essential, was retention of education and forest in the Concurrent List. On these issues, we made it definitely clear to the Government when the negotiation was going on that we would insist on the retention of these three. And when the Government attempted to define the expression 'Socialism and Secularism', we made it clear that we could not support that attempt to define 'Socialism and Secularism' because that would do more harm than good. At this stage I do not propose to go into details.

A provision relating to referendum, an entirely new provision, which was not even dreamt of anywhere before, whether in the Forty-Second Amendment or at any other time, crept in, and after prolonged discussion in the various forums in our Party, we came to the conclusion that we could not

accept the new provision regarding referendum. I will not go into details. But I can tell you one thing. The stand of the Congress Party and the Congress Government has been consistent, that there is no limitation on the plenary power of the Parliament to make amendments under article 368. For a long period of time, that has been the law and that has been accepted by the Supreme Court, and we thought that we could not make a deviation from that stand. We found that, apart from the other objections to the limitation on the plenary power of the Parliament, a further limitation was being attempted to be made, namely, the amendment which has been brought in by Parliament should be subject to a referendum. This, we could not accept. Apart from the impracticability of the whole thing, we were certain that concepts like referendum and recall were alien to our particular type of Parliamentary democracy which we have accepted. These concepts were discussed and tried to be incorporated in the Constitution at the time of the Constituent Assembly, but the founding fathers wisely rejected them. Now, your trying to bring back those concepts through the back-door, we cannot accept.

These are some of the important grounds on which we made our stand clear during the negotiations with the Government as well as to the House when the Bill came up for discussion, and we voted against that provision. These were the four provisions which we voted against in this House, and I am glad that the wisdom of the Upper House has been that the stand taken by us in this House on these issues was correct. But in the Rajya Sabha, a new provision—not exactly new—a new Clause, Clause 7A, relating to article 31C of the Constitution was introduced. That is not a Clause which we proposed here or supported here. The Speaker himself knows. He has written an authoritative book on Directive Principles. For some time it was a

controversy in the country, both in the court and outside, whether the Fundamental Rights have primacy over the Directive Principles or the Directive Principles have primacy over the Fundamental Rights. There are definite political theories and justifications for both. But at some stage we started upholding the theory that fundamental rights being essentially individual rights and the area covered by the Directive Principles being social rights, whenever there is a conflict between individual rights and the social rights, the primacy should be given to the social rights. That is the theory behind the primacy being given to the Directive Principles.

15.16 hrs.

[SHRIMATI PARVATHI KRISHNAN in the Chair]

But in view of the fact that by this 45th Amendment, Art. 31 relating to property was being deleted, we thought that since 95 per cent of the cases in which conflict between Directive Principles and the Fundamental Rights arose, related to property rights and since properly rights were themselves being deleted from the Constitution, the primary reason to uphold the primacy of Directive Principles was not so compelling as it was before. So we did not make an issue of it in this House. But when it came to the Rajya Sabha, it appears that the theory of the primacy of the Directive Principles prevailed in that House and they introduced this clause, clause 7A. The House has discussed and decided on this issue. Possibly there is a reason why that House did not think in the same way as we did here. Even at that time I had the occasion to speak and I have also expressed my opinion in various places. The mere deletion of the Fundamental Rights relating to property, namely, Art. 31 will not suffice because as long as Art. 19 and certain clauses of Art. 19 are

[Dr. V. A. Seyid Mohammed]

there, property rights can be brought through the back door and the deletion of Art 31 relating to property rights is a mere sham. Possibly that view must have prevailed in the rights is a mere shame. Possibly that mere deletion of Art 31 does not in fact and in reality delete the property rights and it will be brought by the back door by reason of Art. 19. They thought the necessity for stressing the primacy of the Directive Principles over the Fundamental Rights still remained. I bow before the wisdom of the Rajya Sabha in this regard. The other reasons—I will not go into in detail.

For this reason I support the Bill as amended by Rajya Sabha. I want to say only one thing regarding deletion of clause 47. Clause 47 deals with the entries in the Schedules and the amendments brought by the 42nd Amendment. As I said we were concerned primarily to retain the amendments which were brought by the 42nd Amendment relating to education and forests. As forests and education were transferred to the Concurrent List, when we said that we cannot agree with this clause, our main concern was to retain only this. But there was an extremely objectionable clause that is the introduction of item 2A in List I by the 42nd Amendment, namely, deployment of central forces in the States under certain contingencies. This, we certainly did not want to be retained. We want it to be deleted from the 42nd Amendment. In the negotiations with the Government we made it clear that we would support the deletion of this 2A because it is an objectionable clause, namely, deployment of central forces in the State. We suggested delinking of education and forests from 2A so that we can support the deletion of 2A, but the government thought it wise not to adopt that mechanism. Now the result is that you are throwing the baby along with the bath water.

SHRI SAMAR MUKERJEE (Howrah): Then why did your people support it in the Rajya Sabha?

DR. V. A. SEYID MUHAMMAD: Not our people, many people and your people also supported it.

Why did not the Government, as suggested by us, delink 2A from Education and Forest. We could have avoided that. But, they thought it wise to let the whole thing go on.

SHRI DINEN BHATTACHARYA (Serampore): They thought it wise to include this.

DR. V. A. SEYID MUHAMMAD: Whatever it may be, I say that by a simple mechanism, they could have avoided and deleted the highly objectionable 2A—Deployment of the Central Forces in the State. For retaining it in the Constitution, the responsibility is entirely on the Government and not on us.

I do not propose to go into further. I am thankful to the Chair for giving me this opportunity.

Mr. Chairman: I think the Minister will have his chance to reply. Now, Shri Dharam Vir Vashist. He is not here. Shri Y. P. Shastri.

श्री यमना प्रसाद शास्त्री (रीवा): सभापति महोदय मुझे दुःख है कि सरकार ने राज्य सभा के द्वारा सुझाये गये संशोधनों को स्वीकार करने का निर्णय लिया है। अगर सरकार पहले से ही इस बात को समझ लेती कि राज्य सभा में कांग्रेस पक्ष का बहुमत है, और किसी भी संविधान संशोधन को पारित कराने के लिए एक विशेष धंग के बहुमत की आवश्यकता होती है, और इस बात को समझ कर अगर उसी समय इस संविधान संशोधन के सम्बन्ध में उन लोगों की बात को मान लिया जाता, तो यह बात कुछ सम्मानजनक रहती। लेकिन दुर्भाग्य से उस समय इस बात को माना नहीं गया। अगर केवल व्यावहारिक दृष्टिकोण ही अपनाया था, तो कांग्रेस पक्ष की बात को उसी समय स्वीकार कर लेना चाहिए था, ताकि हमें इस घसम्मानजनक स्थिति का सामना न करना पड़े। आज हालत यह हो गई है कि अल्पमत के प्रादेश को बहुमत स्वीकार कर रहा है।

देश की जनता ने हमें लोक सभा में दो-तिहाई से अधिक बहुमत दे कर भेजा है। हमने अपने चुनाव घोषणापत्र में स्पष्ट रूप से यह उल्लेख किया था कि हम 42वें संविधान संशोधन को, जो आपातकाल के समय में स्वीकार कराया गया था, रद्द करेंगे। हमारे उस वादे पर विश्वास कर के जनता ने दो-तिहाई से अधिक बहुमत दे कर हमें यहाँ भेजा। अपने चुनाव घोषणापत्र में दिये गये वचन की ध्यान में रखते हुए हमने संविधान का 45वाँ संशोधन यहाँ पर स्वीकार किया। सरकार ने इस बारे में बिगड़ी दलों से पहले बात भी की और उसके बाद कांग्रेस पक्ष के कहन पर 42वें संशोधन की भी कुछ बातों को स्वीकार कर के 45वाँ संशोधन यहाँ पर रखा गया।

मैं उन लोगों में से था, जिन्होंने यह मांग की थी कि बातचीत से जाहे जो भी नतीजा निकले, लेकिन हमें अपनी बात पर अटल रहना चाहिए, जनता से हमने जो वादा किया है, उसे पूरा करना चाहिए और हमको अपनी तरफ से 42वें संशोधन को अक्षरशः—लाक, स्ट्राक एंड ब्रेल—रद्द करने की व्यवस्था करनी चाहिए। लेकिन सरकार ने उस समय कहा कि अगर कुछ बातें स्वीकार कर लेने के बाद हम से पारित करा सकते हैं, कुछ बयानीयों संशोधन की बात रहने दीजिए, कुछ विशेष महत्व की बातें वह नहीं हैं जिन पर वह जोर दे रहे हैं। तो उन की रख कर के पतालीसवाँ संशोधन यहाँ लाया गया। वह दो-तिहाई बहुमत से यहाँ स्वीकृत किया गया। राज्य सभा में गया। राज्यसभा में जिन संशोधनों को यहाँ अस्वीकार किया गया था दो-तिहाई बहुमत से उन्हीं संशोधनों को कांग्रेस दल ने अपनी सख्या के बल पर स्वीकार करा लिया और आज हम इस स्थिति में आए हैं कि शासन की ओर से हम से यह कहा जा रहा है कि जो राज्य सभा में संशोधन स्वीकार कर लिया गया है उसे स्वीकार कर लेना चाहिए। अब इसके अलावा और कोई चारा नहीं है। लेकिन मैं समझता हूँ कि यह दूरदृष्टि का अभाव है। दूरदर्शिता के साथ हमें इसे पहले ही मान लेना चाहिए था। अथवा अगर नहीं माना तो फिर आज हम को इस बात पर अड़ना चाहिए। आखिर कोई एक सिद्धान्त भी होता है, कोई आदर्श भी होता है। जिन आदर्शों को ले कर उस समय हमने कांग्रेस पक्ष की बात को नहीं मंजूर किया आज वह कहाँ चले गए? क्या केवल व्यावहारिकता के नाम पर तीन महीने के अन्दर ही हम अपनी बात को बदल दें? यह हमें किसी भी हालत में उचित और सम्मानजनक नहीं दिखाई देता। मैं समझता हूँ कि समूची दुनिया में इस से हमारा उपहास होगा। न केवल अपने देश में बल्कि समूची दुनिया में हमारा उपहास होगा कि जिस बात को तीन महीने पहले हमने पूर्णतः स्वीकार किया, एक अल्पमत के दबाव में आज उस को बदल दिया। आज लोक सभा में वह अल्पमत में है। देश की जनता ने उन्हें अल्पमत दिया है और केवल 1977 के मार्च में ही नहीं, अभी भी उत्तर प्रदेश और समस्तीपुर में आज के तीन दिन पहले और अभी कल जिस की जनता ने स्वीकार किया है कि जनता पार्टी ने

जो वायदा किया है जनता उस के साथ है, जनता जब इस प्रकार का हमें बार बार जनादेश दे रही है तो उस जनादेश की अवहेलना कर के आज हम एक अल्पमत के सामने झुक रहे हैं और अपने प्रादशों की अवहेलना कर रहे हैं। प्रादशों के सम्बन्ध में मैं खास तौर से धारा 368 के सम्बन्ध में कहना चाहूँगा। धारा 368 के सम्बन्ध में हमने विशेष रूप से बल दिया। उस में हमने यह कहा था कि संविधान में अगर संशोधन किया जाय और उस से हमारे बुनियादी ढाँचे में फर्क आता हो तो उस के लिए हम जनता की राय माँगेंगे। यह एक बड़ी बुनियादी और मौलिक बात थी जिसे हमने अपने संविधान में स्थान दिया था। पतालीसवें संविधान संशोधन विधेयक में जो हमने इस बात को स्थान दिया था यह एक बहुत ही मौलिक और बहुत ही लोकतांत्रिक बात थी जिस पर कि हमें प्रज्ञा चाहिए था क्यों कि हमने देखा था सन् 76 में आपात काल के समय में संविधान की धारियाँ उड़ा दी गईं। मौखिक अधिकारों का हनन कर दिया गया, उन को सस्पेंड कर दिया गया। मौलिक अधिकारों की यहाँ तक हत्या कर दी गई कि जीवन के अधिकार तक से जनता को वंचित कर दिया गया। इसलिए इस संशोधन में हम लोगों ने यह प्रावधान किया था कि अगर कभी बयस्क मताधिकार पर आंच आती हो, कभी न्यायालयों की स्वतंत्रता का अपहरण किया जाता हो, कभी धर्म-निरपेक्षता के सवाल को और लोकतंत्र के जो बुनियादी तत्व हैं इन में परिवर्तन करने की बात आए तो केवल लोक सभा का दो-तिहाई बहुमत ही उसे पारित न कर दे बल्कि उस के लिए देश की जनता की राय मांगी जाय। यह एक ऐसी बात थी जो हमारे संविधान को प्राण प्रदान करती, हमारे लोकतंत्र को जीवन प्राण करती। यह लोकतंत्र को सजीव बनाने वाली बात थी। लोकनायक जय प्रकाश नारायण ने अपने आन्दोलन के दरम्यान यह बात कही थी कि केवल जनता के प्रतिनिधियों की ही जिम्मेदारी लोकतंत्र को बनाए रखने की नहीं है, जनता के प्रतिनिधि अगर गलत काम करें तो जनता स्वयं उन पर अंकुश रखे। जनता की राय का भी महत्व होना चाहिए और इसी बिलसिले में उन्होंने जन-प्रतिनिधियों को वापस बुलाने के अधिकार की बात कही थी। खर, वह बात तो इस पतालीसवें संविधान संशोधन विधेयक में नहीं आ पायी थी, अपने प्रतिनिधियों को वापस बुलाने के अधिकार की बात उस में नहीं आई थी लेकिन उस दिशा में यह एक चरण अवश्य था, उस दिशा में यह एक प्रयास अवश्य था कि अगर लोकतंत्र के बुनियादी तत्वों को परिवर्तित करने की बात चले तो उस को केवल लोक सभा का दो-तिहाई बहुमत ही पारित न करे बल्कि जनता के बीच में उसे ल जाया जाय और यह कहना बिल्कुल गलत है कि यह अत्यावहारिक है, हमारे देश की जनता नहीं समझती है लोकतंत्र के सिद्धान्तों को अथवा संविधान के संशोधन को। यह कहना यहाँ की जनता का अपमान करना है। यहाँ की जनता ने एक बार नहीं कई बार बता दिया है कि वह संविधान को समझती है, लोकतंत्र को समझती है, अपने बुनियादी अधिकार को समझती है और इसका प्रमाण 1977

[श्री यमुना प्रसाद शास्त्री]

के मार्च में इस देश की जनता ने दिया है। आज यह कहना कि देश की जनता संविधान के संशोधन का अर्थ नहीं समझेगी और उस के पक्ष या विपक्ष में अपनी परिपक्व राय नहीं दे सकेगी, मैं समझता हूँ कि इस देश की जनता का सब से बड़ा अपमान है और इसे हम कभी स्वीकार करने को तैयार नहीं हैं।

उसी तरह से यह एडमिनिस्ट्रेटिव ट्रिब्यूनल की बात है। हमें देखना चाहिए कि यह एडमिनिस्ट्रेटिव ट्रिब्यूनल स्थपित करने की बात क्यों की गई थी संविधान में? यह एडमिनिस्ट्रेटिव ट्रिब्यूनल की बात केवल इसलिए की गई थी ताकि इस देश के न्यायालयों के अधिकार क्षेत्र को सीमित किया जाय। न्यायालयों के अधिकार क्षेत्र को कम करने की दृष्टि से एडमिनिस्ट्रेटिव ट्रिब्यूनल बनाने की बात की गई थी। उन को समाप्त करने के लिए हम ने पैतालीसवें संविधान संशोधन विधेयक में प्रस्ताव किया तो आज कांग्रेस वालों को यह स्वीकार नहीं है। राज्य सभा में वे अपनी जिद पर अड़े हुए हैं। वे दिखाना चाहते हैं कि हम अपनी जिद पर अड़े हैं, इस लिये लोक सभा को हमारी बात स्वीकार करनी पड़ेगी। लेकिन इस का औचित्य क्या है? जब एडमिनिस्ट्रेटिव ट्रिब्यूनल नहीं थीं, तब उन के बिना क्या दिक्कत आ रही थी? ये ट्रिब्यूनल तो 1976 के संविधान संशोधन में जोड़ी गई हैं, आप बतलाइये उस के पहले किस काम में बाधा पड़ रही थी, यह केवल अपने इशारे पर कोई निर्णय कराने की इच्छा का प्रदर्शन मात्र है। इन को समाप्त करने की जो व्यवस्था इस बिल में की गई थी, वह सर्वथा उचित थी, उस पर कायम रहना चाहिये था, उस पर राज्य सभा को झुकना नहीं चाहिये।

इसी तरह से सैकुलरिज्म और सोशलिज्म की परिभाषा की बात है, हम ने उन की व्याख्या कर के उन को सगुण रूप दिया है—इस में आपत्ति की कोई बात नहीं थी। जो समाजवाद के नाम का दिबोरा पीटते हैं, उन के लिये यह बिलकुल असम्मानजनक है। लेकिन चूँकि शासन ने इसे स्वीकार करने का निर्णय दिया है, इस लिये समर्थन करना पड़ेगा, लेकिन मैं इन को अनैतिक मानता हूँ और यह भी समझता हूँ कि यह किसी भी हाज़त में उचित नहीं है।

SHRI SAMAR MUKHERJEE (Howrah): Madam Chairman, in regard to these amendments sent to us by the Rajya Sabha, I may say that our party is totally opposed, excepting for one very minor amendment, No. 4, regarding the definition of secularism and socialism, because, there has been some controversy on this definition and therefore we support that. But

otherwise we wish to point out that these recommendations of the Rajya Sabha are reactionary and anti-people. It is mainly aimed at retaining some of the very vital clauses of the Forty-Second Amendment Act. To agree to this would mean betrayal of the pledge given by the Janata Party to the masses of our country. The Forty-Second Amendment Bill was in essence the institutionalisation of totalitarianism, and of emergency. That is why we contemned that and wished that that should go lock, stock and barrel. When there was some patch-work even in the original Constitution (Forty-fifth) Amendment Bill, we criticised that also. Now, we say that there have been further inroads into the amendments by the Congress elements in the Rajya Sabha. It is obvious that mainly it is the Congress (I), because their leader is, day in and day out, justifying emergency and declared it even today but also by other sections who declared that they are opposed to totalitarianism Congress (I) is still under the hope that they will come to power in the future and that they can again misuse their majority to demolish democracy completely. That is why they want to retain these clauses, which they had introduced in the Constitution (Forty Second) Amendment Bill.

There is the other Congress now who wish to demarcate themselves from totalitarianism but it is a pity that they also joined in the Rajya Sabha with Congress(I) to get these recommendations passed or prevent the Forty-Fifth Amendment Bill on these aspects.

Now, what are the arguments given by them in support of their amendments and their recommendations? They say about the precedence of directive principles over fundamental rights. This was the clause that was introduced in the Constitution (Forty Second) Amendment Bill. Why should Fundamental rights be attacked in this manner, to give

effect to directive principles? Directive principles have no mandatory power. These are pious wishes only to hoax the people. In the directive principles it is written that right to work should be one of the directive principles. Yet thousands and thousands of workers are being thrown out of jobs. When they demand right to work to be included as a fundamental right, you do not come forward to accept that demand. Where is the contradiction in all the Socialist countries' Constitutions? All the Directive Principles in our Constitution are part of the Fundamental Rights in the Socialist Constitutions. Now, when the right to property has been excluded, all the Directive Principles must be included in the Chapter of the Fundamental Rights. There should not be any contradiction. Now, when you raised the question of precedence, there is a motive behind that. Taking advantage of that and giving a wrong interpretation of the Directive Principles, you want to suppress all the just and democratic movements of the working class, peasants and the common masses. That is why I say it is motivated and this should not misguide the people and it must be bitterly opposed. Now, Article 31C can bar anybody from going to the court. Nobody can be allowed to go to the Court taking plea of the precedence of the Directive Principles. I give an example here. In the Directive Principles it is stated that the disparity between the highest and the lowest wages should be reduced. Now, the Janata Government appointed the Bhoothalingam committee. What were the terms of reference? The term of reference is to reduce the disparity of incomes between the highest grade and the lowest grade of employees and workers. All the monopoly houses and the big houses are excluded from the purview of terms of reference of that Committee. Now, the Bhoothalingam Committee has recommended that the national minimum wage should be Rs. 100 per month. All the Central Trade Unions have rejected

these recommendations and opposed the report. So, if this precedence of Directive Principles is allowed, then constitutionally the Government can suppress all the Trade Unions movements who are opposing the recommendations of the Bhoothalingam Committee. So, we cannot accept this position. In the Directive Principles, there is a pious wish that everybody would get a living wage, but the Bhoothalingam Committee's recommendation is Rs. 100/- per month and Rs. 150 after seven years. So, this is an example of how the Directive Principles are being implemented and in the name of implementation of Directive Principles, you are cutting the wages, you are introducing wages freeze and you are introducing constitutional amendments to take away the fundamental right to register protests against these anti-workers' laws. This is a very serious thing which we cannot ignore simply by formally accepting that half a loaf is better than no bread. This was not the assurance given to the people by the Janata Party. Then, if you take all the amendments, you will find that the totality of these amendments which the Rajya Sabha has sent to this House, are an attack on the democratic rights of the people.

You take the question of Administrative Tribunal. The right of the employees to go to the Court was taken away. Those who are victimising these employees are becoming the judges. So, strengthening the bureaucracy means taking away the democratic rights which are enshrined in the Chapter on Fundamental Rights. Then the first amendment, the second Amendment excepting the Fourth, all the other amendments taken together are an attack on the democratic rights of the people. Now, there is the question of sovereignty of Parliament versus the question of the sovereignty of the people. It is open for a long discussion because we had got a very bitter experience during the Emergency. Taking advantage of the majority in the Parliament in the

[Shri Samar Mukherjee]

name of Constitution, parliamentary democracy was completely subverted and totalitarianism established by the Indira Regime. So, that sovereignty the Congress-I wants to retain.

This is because they are hopeful that by the failure on the part of the Janata Party, they will be able to take advantage of the people's discontent and come into power by getting the majority. That is why they are trying to do this so that they can again impose totalitarianism in the name of the Constitution.

SHRI DINEN BHATTACHARYA:
An empty dream.

SHRI SAMAR MUKHERJEE: Now, what is the referendum clause? It provides that no basic feature of the Constitution can be changed by the Parliament itself. If any necessity arises for a change in the basic features, they will have to go to the people to get the sanction. Thus, the provision of referendum provides more democratic rights to the people; they would exert their sovereignty, whether they would allow this Parliament to change the Constitution in its basic features. The amendment suggested by the Rajya Sabha seeks to take away that power of the people. In the name of supremacy of the Parliament, they again want to clamp authoritarianism on the people, as was done during the 20 months of the emergency.

Then, I come to the sixth amendment suggested by the Rajya Sabha. This relates to the provision introduced by the Constitutional Forty-second Amendment with regard to the right of the Centre to send armed forces to any State without consulting them or in spite of their opposition.

This was the worst feature of the Forty-second Amendment Bill. This was the very essence of the Forty-second Amendment Bill and the essence of totalitarianism. Again, Rajya Sabha has recommended to retain

this provision. This is nothing but to keep full authority for suppression of the people's movements through armed forces. Such things should have no place in democracy. It is unfortunate that the Janata Government is going to accept this and they are asking the hon. Members of this House to accept this. We can never accept this position if we have to defend the democracy and we have to keep to our pledges.

Then, the rights of the States in the field of education and forest are sought to be taken away. Whatever rights they have, you are taking those away on the plea of centralization, and on the plea of integration of India. I would like to tell the hon. Members that the integration of India can only grow and develop by accepting the distinctiveness and peculiarities of all the nationalities and the linguistic peoples. They must be given the fullest autonomy so that they can flourish, their culture can develop, and their education can spread. If you deny them this right, integration of India is impossible. This recommendation of the Rajya Sabha goes against the concept of greater autonomy to the States. You want to take away whether autonomy they have. We are totally opposed to this recommendation.

In view of this, I hope, the Janata Party should reconsider, before they ask this House to consider these amendments.

SHRI JAGANNATH SHARMA (Garhwal). The hon. Minister has recommended that the amendments made by Rajya Sabha in the Constitution (Forty-fifth Amendment) Bill be accepted by this House. As the learned Speaker has already ruled, the justification for such recommendation is very reasonable and realistic because there is no alternative to such acceptance.

We are aware that the Thirty-ninth Amendment Bill was passed within

three days. On 7th it was notified and passed by Lok Sabha, on 8th it was approved by Rajya Sabha, on 9th it was ratified by the State legislatures of this country and on 10th, the President gave his consent to this Bill. It inserted Article 329A(4) making the election of the former Prime Minister unchallengeable and included 37 Acts in the Ninth Schedule. Article 329A(4) was set aside by the Supreme Court later as violating the basic structure.

We have also considered the 42nd amendment which was a constitutional outrage and an outrageous distortion. The Janata Party was pledged to repeal completely amendments 42 and 39. To that effect the Government introduced a Bill in this House. Even at that time there were two views prevalent. One was, despite the built in safeguards in the Constitution, incorporated by the Founding Fathers, the provisions of the Constitution are not sufficient to stop the recurrence of what happened during the Emergency. The view was that in spite of the repeal of the 42nd amendment, the abuse of power will not stop. Hence it was proposed that such changes should be made in the Constitution which existed before the Emergency so that any future government may never be able to use it to establish a Police State. The second view was that the desirable portions in it must be retained. I share that view. I regret to say that in spite of the agreement, so to say, between the government and the leaders of opposition parties and groups and considering various shades of opinion, the Rajya Sabha has chosen to reject five clauses. I should say that these are sweeping amendments; I deliberately use the word 'sweeping' because in the first place it is completely ousting the jurisdiction of courts. Secondly in the 42nd amendment, article 368(iv) gives unlimited power to Parliament to amend the Constitution. Thirdly, in the Union list, there are provisions; as many friends pointed out for deployment of armed forces in the state which have been relieved.

They are sweeping generalisations; sweeping powers. I want to make a proposal to the government. This time it has not been within the competence of the Government to get the Bill passed for want of requisite majority in Rajya Sabha. So the government should come with an amending Bill for deletion of those clauses which are offensive, which oust the jurisdiction of the courts and which have made the powers of the Parliament unfettered and increased them to such an extent that they have enabled the Parliament to perpetuate its sanctity and authority for all times to come.

SHRI DINEN BHATTACHARYA: For that you must change the composition of the Rajya Sabha.

SHRI JAGANNATH SHARMA: My friend reminds me of that I shall come to it later. So far as this proposal is concerned, it should be accepted by the Opposition, and by everybody because it would restore jurisdiction of courts and the inability of the government to command two thirds majority in the Rajya Sabha should not stand in the way of these amendments. The Janata government can wait till 1980 for other amendments or till such time as those who are opposed to these amendments will as Charles Evans Hughes says "recoup from their self-inflicted wounds." Coming to amendments, the first amendment relates to clause 8 on page 3, the supremacy of the Directive Principles over Fundamental Rights. In this matter I should like to quote one of the greatest jurists of the world Grenville Austin who while paying a tribute to the Indian Constitution spoke about the Fundamental Rights. "These Fundamental Rights may be considered to conform to our notions of social justice; it embodies the essence of social justice." This was quoted by Mr. Gokhale in 1973 while he said, "These are the monuments of vision and wisdom" but in 1975 according to him they became a

[Shri Jagannath Sharma]

'cesspool of inequality'. I want to emphasise that the Rights, Freedoms and Liberties can never be sustained if the directive principles have supremacy over fundamental rights. Articles 14 and 19 of the Constitution shall be completely destroyed if directive principles have sway over fundamental rights. Directive Principles in 39A and 39(b) and 39(c) are sufficient to carry out the objectives of the Constitution. But if they provide in one form or another, the directive principles would definitely come in direct clash with the fundamental rights and it would be impossible to uphold the fundamental rights.

Therefore, the original amendment of 39(b) and (c) was sufficient for Socio-economic legislation and not to give supremacy to the Directive Principles and also for imparting social justice.

Many of my friends have spoken much about the retention of 42nd Amendment-provision for Administrative Tribunals. I want to say, authority, powers and jurisdiction of High Courts and Supreme Court should not be ousted. It is neither in the interest of the nation nor it is in the interest of the people. There should always be supervision of the High Court and the Supreme Court and their powers and authority should be restored.

The third relates to the removal of the definition of "secularism" and "socialism". Left to me I was never in favour of adding 'Socialist and Secular to the Preamble. That was also redundant and also further the definition is neither advantageous nor disadvantageous. Republic is always sovereign. Republic is always democratic. Socialism when qualified is something short of socialism. Socialism when qualified by national is fascism and socialism qualified by democratic is capitalism. It is no use

to define these words. It does not give an ideological projection. The ideological projection remains unchanged. The amendment with regard to education in the concurrent list is in the right direction and I have always been advocated it.

I am now coming to the most important of these amendments i.e. referendum.

MR. CHAIRMAN: You have only one minute more.

SHRI JAGANNATH SHARMA: I shall take only two minutes.

What is the effect of this deletion? I want to emphasise, there are two effects of this deletion.

Article 368(4) as incorporated in 42nd Amendment remains. The unlimited power of Parliament means the majority in Parliament can amend the Constitution at any time and even without reference to the States. That is a very dangerous proposition. It can perpetuate the existence of party in power indefinitely by extending the duration of Parliament or of the State Legislatures.

As regards the question of referendum, President Wilson said—"That is a gun behind the door" which can be utilised when the Parliament or the legislatures misuse their powers". This is a Constitutional and legal device which this country had to adopt after the two conflicting judgements of the Supreme Court—Golakh Nath and Keshava Nanj Bharati. If at any time the Parliament over-rides the interpretation of the basic feature of the Constitution, then the only alternative is to go to the people who are sovereign and if the people decide by 2/3rd majority and agree with the Parliament, then the basic feature can be changed in spite of the judgement of the Supreme Court to the contrary.

Even in Switzerland, only this year, in September a new State was created by referendum—the State of Jura. This device is also adopted in Irish, free State-Canada, Italy and France. Prof. K. T. Shah had also supported in the Constituent Assembly that the device of Referendum should be adopted while amending the Fundamental Rights and the rights to minorities. If the 2/3rd majority of citizens approve a particular amendment, the Constitution can be amended accordingly.

In the end I would like to emphasise that the nation as a whole would gain if we agree to the proposal even after amendments by the Rajya Sabha because they restore the rights of the citizens and seven freedoms taken away by the 42nd Amendment. For the first time the nation's mass media will be constitutionally shielded by new Article 631A and the voice of Parliament and legislature shall never again be stifled.

SHRI M. N. GOVINDAN NAIR (Trivandrum): I whole heartedly share the vehemence, emotions and arguments put forward by my hon. colleague Samar Mukherjee in opposing these amendments. So, I do not want to repeat all the arguments that he has put forward.

It also raises the question whether we should have a Rajya Sabha at all. But I know there are vested interests which have so well developed that it may not be possible to dispose of Rajya Sabha. But all the members will agree that the amendments we had adopted were not bad to be rejected by the Rajya Sabha. Even one of the main promises that the Janata party made to the people on internal emergency was given up. Internal emergency still remains a part of the Constitution. I thought that was a compromise formula for everybody to accept, but I now understand that it was not so. There was an understanding between both the groups whereby both agreed that

the emergency clause will remain. As long as we are there, we can use it. If somebody else comes, he can also use it. This was the thinking among the two major groups. That is why forgetting the promise you made to the people, you are not amending the Constitution in such a way that nobody else will be able to impose internal emergency in future. One silver lining in the amendment was the question of referendum. Everybody speaks of democracy. Is it parliamentary democracy you are meaning, i.e. freedom for political parties to fight elections, make speeches and get them published in the papers, or is it something more? If it is something more, the principle of referendum, which we had accepted in our amendment for changing the basic structure of the Constitution, was a safeguard for a democratic set-up. I do not know why Rajya Sabha thought it fit to remove it. We are very sorry for it. I need not again narrate all the arguments. I quite understand the difficulty of our friends there. Just as the speaker pointed out, if we reject these amendments, the whole thing will go. So, they have found out an argument: If we want this amending Bill to be passed, we have to swallow all these amendments made by the Rajya Sabha. We do not agree with it. But I quite understand your anxiety, because if nothing is done about the Forty Second Amendment, what will you say about it to the public and how can you be sure that you can continue for long? All the quarrels taking place within the Janata Party are hastening them to somehow pass this Bill. I do not happen to see Mr. George Fernandes here. In the morning newspapers I found that his resignation is in the hands of the Prime Minister, but its disposal will be after 23rd. An army is being raised by Mr. Charan Singh and company—26 lakhs of people are coming on the 23rd. Many things are happening within the ruling party.

[Shri M. N. Govindan Nair]

In their anxiety to see that at least something is salvaged from the Forty-fifth Amendment Bill, if they want to adopt this procedure, all right, I am not against it. But in principle I oppose all these amendments. I know that it is a conspiracy between the two groups to dilute the provisions....

16 hrs.

SHRI DINEN BHATTACHARYA:
Birds of the same feather.

SHRI M. N. GOVINDAN NAIR: I am very glad that at least now my hon. friend, Shri Dinen Bhattacharya, has realised that they are birds of the same feather. So, I would request him, rather appeal to him, to keep this in mind and not to keep company with those who do not belong to our class.

डा० रावजी सिंह : (भागलपुर) : मभापति महोदया, अभी जो संविधान में संशोधन राज्य सभा के द्वारा वापस किया गया है वह जित्ना यह संशोधन भेजा है उन के और जो इस लोक सभा के द्वारा मंजूर किया गया है, उस के, दोनों वर्गों के चरित्र का द्योतक है, क्लाम कैरेक्टर का द्योतक है। जहां प्रगतिशीलता की और समाजवाद की चर्चा होती है वहां "राइट टु प्रापर्टी" को निकालने की बिल्कुल सामान्य बात उस में रखी गई थी, "कम्पलीट एबालीशन आफ राइट टु प्रापर्टी" भी नहीं था, उस का भी विरोध वहां हुआ है और दूसरी तरफ जहां प्रजातंत्र की चर्चा होती है, उस के लिए उस में जनमत-संग्रह की जो बात थी उस का भी विरोध किया गया है। जहां तक न्यायालय को पतित और कर्तकृत करने के लिए जो न्यायाधिकरण की व्यवस्था है उस को भी रखने की व्यवस्था है और सब से बड़ी बात तो यह है कि जो "डाय-रेक्टिव प्रिंसिपल्स" के नाम पर "फंडामेंटल राइट्स" को बढ़ाने की बात कही गई है यह भी एक प्रकार का धोखा है।

सब से बड़ी बात तो यह है कि इस के संबंध में जो चर्चा है उस को ध्यान देखें, वस्तुतः इस संशोधन के दो उद्देश्य थे। एक उद्देश्य था कि बयलीसवा संशोधन ने जो दुष्टतापूर्ण काम किया था, उसे खत्म करना था, टु "लिक्विडेट दि मिस्वीफ इन बाइ दि फार्टी सेकंड एमेन्डमेंट",

एक उद्देश्य तो यह था और दूसरा उद्देश्य था कि जनता ने जिस धाकाझा से हम दोनों को मतदान दिया था उस की धाकाझा को पूर्ण करना। दोनों में से कोई काम नहीं हो सका है। यह एक नया मिस्वीफ हुआ है। सचमुच में जिस प्रकार से बयलीसवा संशोधन लाया गया था वह केवल वस्तु में ही दोषपूर्ण नहीं था, विधि में भी दोषपूर्ण था। जिस संसद का जीवन-काल समाप्त हो गया था, उस के द्वारा धाकाझा पर चलने वाली संसद के द्वारा संविधान में इतने बड़े मौलिक परिवर्तन करने का जो प्रयास किया गया था, जो साजिश की गई थी वह भी गलत था। इसीलिए जनता पार्टी ने देश को यह वचन दिया था कि जिस प्रकार से हो, इस पाप को, इस संविधान संगोष्ठी को, हम समाप्त करेंगे। लेकिन दोनों में से कोई काम भ्रष्टी तरह से नहीं हुआ। इसीलिए आज जो समर्थन हुआ है वह बहुत भरे हृदय से समर्थन है।

सभापति महोदया, कांग्रेस के भाई किस आधार पर प्रगतिशीलता का नाम लेते हैं। कौन सी प्रगतिशीलता—आर्थिक प्रगतिशीलता या राजनीतिक प्रगतिशीलता? यदि आर्थिक प्रगतिशीलता की चर्चा या समाजवाद की बात हो, तो फिर "राइट टु प्रापर्टी" को डिलीट करने में आपत्ति क्यों? उन का यह समाजवाद का नारा वास्तव में एक धोखा है।

जहां हम प्रजातंत्र की बात करते हैं, वहां रेफ्रेण्डम के विषय पर हमारे दूसरे सदन के माननीय सदस्य श्री शंकर घोष जी कहते हैं कि सिद्धान्ततः तो मैं जनमत-संग्रह का विरोधी नहीं हूँ, लेकिन—वह यहां पर "लेकिन" लगा देने हैं—

"But the way the question has been brought here will not subserve the purpose for which the referendum has been brought... I believe in the sovereignty of the people."

जब जनता मालिक है, तो फिर जनता से भागते क्यों हो? रेफ्रेण्डम का विधान, इनीशियेटिव का विधान, रिकाल का विधान—ये नये प्रजातंत्र के द्योतक हैं। सचमुच में हमारे कांग्रेस के भाई जिस प्रजातंत्र की चर्चा करते हैं, वह बुर्जुआ प्रजातंत्र है जो संविधान की पैचीदगियों में रहना चाहते हैं, जनता का भ्रामना-सामना, मुकाबला नहीं करना चाहते हैं और इसीलिए जनमत-संग्रह से भागते हैं।

लोग कहते हैं कि जनमत संग्रह कहां है? फ्रांस में है, यू०एस०ए० के कुछ राज्यों में है और जैसा अभी हमारे शर्मा जी ने कहा था—जब हमारे संविधान का निर्माण हो रहा था, उस समय प्रो० के० टी० शहा ने भी इस की बकालत

की थी। रिकाल की व्यवस्था भी प्रायः दुनिया के 14 देशों में है। जब यह कहा जाता है कि यह देश बड़ा है, यह देश प्रगढ़ है, जिस देश की जनता को वह प्रगढ़ समझते हैं—उसी जनता ने दो वर्ष पहले ही देश में 31 वर्षों से छाये हुए कांग्रेसी शासन को उखाड़ कर फेंक दिया था, इन को ना-समझ या बेईमान समझने की गलती नहीं करनी चाहिये। 42वें संविधान संशोधन का अन्त किसलिये किया गया था? उस का एक कारण यह था कि अधिनियम में देने वाली कोई भी सरकार फिर इस तरह से जनतन्त्र का गला न चोटे, इसीलिये “बैक्स-एण्ड-बैलेंसेज” के लिये, प्रजातन्त्र की रक्षा के लिये इस को लाया गया था। सभापति महोदया, सचमुच में इस के लिये जनता पार्टी का दोष नहीं है—मैं उन्हीं के शब्दों में कहना चाहता हूँ—शंकर घोष जी कहते हैं—यह दोष जनता पार्टी का नहीं है—

“People are the sovereign”

फिर “लूई 14” ने भी कहा था—“मैं सावरन हूँ।”

Now the minority is the sovereign, 1978 की जो माइनोरिटीज हैं, जो इस सदन के अल्पसंख्यक हैं, जो अपने आप को सोवरन कहते हैं, लेकिन उन्होंने ही इस की राजनीतिक प्रगतिशीलता को रोक दिया और सचमुच में आज यह सावरनिटी चरमरा रही है।

“The Janata Party will not be guilty of violating its electoral pledge of making the Constitution an adequate tool for democracy by diverting it of the obnoxious elements added to it by the 42nd amendment.”

इतना ही नहीं, वह तो कहते हैं कि इस माइन्डफिकेशन से भी मुझे संतोष ही है।

“Even with the modifications made by the Rajya Sabha, the Constitution will remain a citadel of democracy which a shrewd, designing, ambitious and power-drunk political leader will be unable to demolish.”

लेकिन हम कहते हैं कि यह ठीक है। यदि हमारे माननीय कामय साहब का क्वार्टर-आफ़ आर्डर स्वीकार हो जाता, तो हम ये क्वांटेज वापस पुनर्विचार के लिए भेज देते, लेकिन ऐसी व्यवस्था विधान में नहीं है। इस लिए यह दोष जनता पार्टी का नहीं है। यह दोष सदन ने उन अल्पसंख्यकों का है जिन्होंने बहुसंख्यकों के ऊपर अपना अधिकार जमाया है।

जहाँ तक और चीजों का सम्बन्ध है—मैं इतना ही कहना चाहता हूँ—जब रेफ़रेंडम की चर्चा होती है तो उस के सम्बन्ध में यह कहा जाता है कि यह बड़ा विस्तृत है, काम्प्लेक्स है, लेकिन वास्तव में यह काम्प्लेक्स नहीं है। फ्रांसिलिया में अभी हुआ है। मैं कहता हूँ कि प्रायः जनता से भागते क्यों रहे? और इसीलिए इस को हमें स्वीकार करना चाहिए।

आज जो हमारे सामने बात हो रही है, उस में हम एक ही बात और आपके सामने कहना चाहेंगे कि शिक्षा को समबर्ती सूची में ही रहने दिया जाए। सचमुच में शिक्षा इस देश में अब तक बहुत ही उपेक्षित रही है। मैं पूरी बिनमता के साथ कहना चाहता हूँ कि मैं इस पक्ष में नहीं हूँ कि राज्यों के अधिकारों को कम किया जाए लेकिन शिक्षा एक हमारी ऐसी आवश्यकता है जिस को समबर्ती सूची में रखना बहुत अच्छी बात है। हमारे चटर्ज साहब इस को नहीं चाहते। अगर आप राष्ट्रीय एकता के दृष्टिकोण से सोचेंगे तो पायेंगे—

It is education that forms the common mind. Just as the twig is bent, the tree is inclined. Education is the best defence of a nation, and as in terms of defence we are one, so in terms of education we should also have one mind.

इसीलिए अध्यक्ष महोदया हम इतना ही कहेंगे कि यह ठीक है कि जनता पार्टी के ऊपर यह जो अल्पसंख्यक का दबाव है

MR. CHAIRMAN: Dr. Ramji Singh, do not force me to call the next speaker while you are still on your legs. Please conclude now.

डा० रामजी सिंह: इस को हम बहुत मुश्किल से स्वीकार कर पा रहे हैं और इस का बहुत दुःख के साथ समर्थन कर पा रहे हैं। ऐसा करने में हमें कोई प्रसन्नता नहीं है।

SHRI A. BALA PAJANOR (Pondicherry): Madam Chairman, I thank you for giving me this opportunity to participate in the debate on the Constitution Amendment Bill again as sent back by the Rajya Sabha. I agree with my learned friend, the leader of the CPI, Mr. Govindan Nair, that there is some conspiracy to conveniently circumvent certain things that may be attributed to

[Shri A. Bala Pajanor]

them. I think, Madam, our Law Minister, Mr. Shanti Bhushan, who is not able to move this Bill, is a Member of the Rajya Sabha. Perhaps he wants to give the maximum disrespect to Rajya Sabha and that is why he has asked the Education Minister to move the Bill.

DR. PRATAP CHANDRA CHUNDER: He is not well.

SHRI A. BALA PAJANOR: He is not well, but you are a Member of our House and so it may be acceptable to us.

DR. PRATAP CHANDRA CHUNDER: Any Minister can move it.

(Interruptions)

MR. CHAIRMAN: Mr. Pajanor, you continue. Members may kindly desist from the running commentary. This is not the test match in Bombay. You may continue.

SHRI A. BALA PAJANOR: The Education Minister understood the spirit. My friends wanted to get a clarification and I said I know about it also.

As expressed by Mr. Somnath Chatterjee earlier, the spirit behind this Constitution Amendment Bill is to be understood, but I am at a loss because I am unable to understand the spirit behind this present Government moving this Bill in this fashion. If they are so happy or if they are so sincere, as very often our Railway Minister used to say 'I am pleased to state in this House', they must have considered the views of many of the democratic parties which are ruling the States and have given thought to them. On a number of occasions we have raised this not only in this House, but outside this House. When they held consultations with various groups and parties outside, we said so many things to them that they must amend the Preamble in such a manner that the federal aspect also is

considered. But even for that they have not given any answer. Leave alone that, Madam, even about the position of Union Territories, I say they are in a sad state of affairs and it is not now after the Janata Party took the position, but even earlier when Mrs. Gandhi was ruling that we said they are in a slavish position under the Constitution. Even that they failed to consider because this Government, I feel, is going on the principle of convenience rather than of conviction. If they have any conviction, I am sure that when it is coming from a single Member or an independent Member like Prof. Mavalankar or from a party that is 19 or 20 strong in this House or from a party that has 80 or 90 Members, they should give due consideration. But they are going by numbers in Parliament, but not considering the views of the Members of Parliament. I am sorry to state that that is the reasons why this Government is a Government of convenience. Because they did not get the number there, they could not convince the Members, now on the strength of numbers they want to get it through in this form in this House.

I say this because if they had the conviction, they could have come out with a statement that they are not moving it now, that they will do it when they have the majority. There was no such statement from the Education Minister while moving this.

Secondly, it is a question of their own prestige. I was not able to follow Dr. Ramji Singh because I did not want to hurt my ears with the entire translation. He must have thought that the Janata Party, according to its manifesto, has restored the rights of the people by reversing the Fortysecond Amendment lock, stock and barrel. They could have conveniently postponed it saying, here as well as outside that they want to come out with a compre-

hensive Bill, so as to give a clear picture to the country once and for all. If that conviction was there, they could have waited for some more time to come out with a comprehensive Bill, because the Bill as amended now is not going to serve any immediate purpose.

When our founding brother and beloved friend, Shri Kamath, raised a point of order this morning, I think he did so not only to point out the technical irregularities, but out of his conviction. Now you say you want to pass it tomorrow. It cannot be passed as it is like a badminton ball, because I am sure the Education Minister is a sportsman and he is also in charge of sports. The badminton ball need not go back to the other House, but it must go to the States' badminton courts, and there they know to play very well, because, as you know, as Mr. Somnath Chatterjee and the other CPI Member has also said, the autonomy of the States is involved. Your Akali friends may be a party in your Government, but I know how much Mr. Badal is fighting for the rights and autonomy of the States. I do not know how Mr. Basu in West Bengal, who called for a conference of Chief Ministers, and the Chief Minister of Jammu & Kashmir, will take this Constitution Amendment Bill, because now you are taking away the rights of the States in respect of education and forests. I am sure that if half the states do not pass it, your Constitution Amendment cannot become an Act. We will be able to move the States, we may even call conferences in the States and tell them that their rights are being taken away. So, the Centre-State relation, comes in, and if they do not ratify your Bill, it will go hay-wire.

16. 18 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

So, this is a Government of convenience, they just want to please the people by telling them that they have

come forward with a Constitution Amendment Bill. They ought not to have conceded article 368, because I wish my party gets a thumping majority and forms the Government here and then I may change the whole thing. That is why we introduced the referendum. You said the people of the country should have some rights on fundamental matters. Some inalienable rights, as the Supreme Court has repeatedly said, must be given to the people, and they alone should decide certain matters. That is the reason we believed you and voted with you. I can also make certain calculations, and I say that in your tenure you will not be able to get a majority in the Rajya Sabha. That is why you are acting on convenience, and you are not a Government of conviction. It is not a mere pun on words. We doubt your sincerity on every matter now. You people claim to be the greatest democrats. I repeat it again, I have been found fault for the statements that I make here; you are considered to be the greatest democrats with a sense of feeling for democratic value in this country, but what have you done to the Government of Pondicherry? I am asking you this question. Some Members may not be aware of the facts. People were changing from one party to another party from day to day, and hour to hour and not month to month because of the loopholes, because of the patronage that you have given not only from here, from elsewhere also. The expansion of the Pondicherry Ministry created some problems. Even here you are not able to expand your Ministry. If you do it here, you may also have similar problems. But you want to have double standards. That is why I said, you have no conviction for your principles. There is no power above you to question you or to dismiss you. Just because you had the power to dismiss a State Government, you dismissed the Government of Pondicherry. Still you say that you are the greatest democrats.

[Shri A. Bala Pajanor]

The facts are like this. The Assembly was called to meet on the 24th of that month and on the 12th, you dismissed the Government. When a paper was laid on the Table of the House, I questioned it. I went through the entire material, but I was not able to find even a single reason. It was stated that the Governor had sent a report, a secret report. We are not given a copy of that. What prompted the dismissal? You are not a democrat. If you were a democrat, you could have waited for 24th and the Chief Minister could have tried his strength on the floor of the House and then you could have dismissed the Government. But no chance was given to him to prove his strength.

Here, there are meetings and conciliations going on among the leaders of the ruling party. You are taking three or four months to expend the Ministry here. It has become a big news for us to see in the newspapers that so and so is meeting so and so and whether it was a success or not. But you are not able to give the same right to a small territory or to a small man. You said so many things about the corruption charges. I would like to ask whether they were proved. You became a prey to the bureaucratic set up that was there in Pondicherry. There has always been a flight between the bureaucrats and the administrators there. You succumbed to the bureaucratic views. You took the picture that the bureaucrats put forward and you dismissed the Pondicherry Government. You call it a democratic system.

In the other House you do not have the numbers and you could not also convince the Members there and that is why you have now come forward with these amendments here. Here, you tried all through to convince the Members and finally it was agreed to. But now you have come out with these amendments. I strongly oppose these amendments. I

agree with you on this Tribunal. The Tribunals must be given their right back. On the transfer of education and forest, we will oppose it tooth and nail until we get it back. That is why I said you are going by the numbers and not by principles. If you continue to do this, I am afraid you will not be able to rule this country at all.

MR. DEPUTY-SPEAKER: Please wind up.

SHRI A. BALA PAJANOR: Just two minutes. The Minister has put it very conveniently. I oppose the deletion of Clause 45, i.e., the amendment of Article 368 because we have promised the people. People's will will be the last will. The Sovereign will should be taken into consideration. To that, you are now giving a good by. I strongly oppose this method of moving this Bill. You could have waited for some more time. After all, the amendments which you are going to make now are not something sacred or noble, it is not going to give more employment to the people, more shelter to the people, more freedom to the people. After all, by this Bill, you are only making us spend most of our time in a wasteful manner.

श्री नाथ सिंह (दोम) : उपाध्यक्ष महोदय, राजन्सभा ने जो 45वां संविधान संशोधन विधेयक वापिस भेजा है, उस पर बोलने के लिए जो समय मुझे दिया गया है, उस के लिए मैं आभारी हूँ।

42वां संशोधन जब किया गया था, उस समय देश के अधिकतर प्रबुद्ध लोग, राजनीतिक दलों के नेता जेलों में बन्द कर के, जनता की आवाज को दबाकर, बिना इस पर विचार किये उस समय की सरकार ने संविधान में यह संशोधन किया था। 42वां संशोधन 100 वर्ष के बूढ़े बाप की ओलाद थी जो कि इस स्वतन्त्र भारत में संभव थी, लेकिन यह 100 वर्ष के बूढ़े बाप की नाजायज ओलाद एमर्जेंसी के दौरान कांग्रेस के द्वारा पैदा कर दी गई। जनता पार्टी इसे सुधारना चाहती है और कांग्रेस पार्टी उसे रखना चाहती है। ये चाहती हैं कि नाजायज ओलाद अभी भी इस देश में बनी रहे और पनपे। उस बूढ़ी सरकार की यह नाजायज ओलाद जो इस देश में पैदा तो कर दी गई, अगर बड़ी हो कर जवान हो जाती तो न जाने इस देश का क्या होता ? कुछ प्रावीजन्स इन्होंने वापिस

लौटायें हैं, जिसमें उन्होंने कहा है कि संविधान के मूलभूत ढांचे में कोई भी परिवर्तन किया जा सकता है, मूलभूत ढांचे को बदला जा सकता है।

हमने कहा है कि इसको जनमत-संग्रह के लिए जनता में भेजना चाहिए। उन्हें क्या आपत्ति है? वह चाहते हैं कि उनको फिर कभी इसी तरह मौका मिल जाये तो वह फिर इसमें परिवर्तन कर सकेंगे। मैं जानना चाहता हूँ कि इस बात की क्या गारंटी है कि एक बार आने के बाद संसद यदि चाहे तो अपने कार्यकाल को, जैसा कि 6 साल बढ़ा दिया, अब चाहे कि 100 साल बढ़ा दें तो उसे कौन रोक सकता है? इसलिए हमने यह परिवर्तन करना चाहा है कि यदि संविधान के मूलभूत ढांचे में परिवर्तन किया जाये, तो उसे जनमत-संग्रह के लिए भेजा जाना चाहिए, उसके लिए दूसरी संविधान-सभा बनानी चाहिए, जो इस बात पर विचार करे कि संविधान में क्या परिवर्तन किया जाना चाहिए और क्या नहीं। वरना मुझे लगता है कि एक बार चुनकर आने के बाद यह संसद सोच सकती है, अगर सरकार को पता हो कि हम दोबारा चुनकर नहीं आयेंगे तो कोई भी तानाशाह सरकार संविधान के मूलभूत ढांचे में परिवर्तन कर सकती है कि हमेशा के लिए यह सरकार परमानेंट हो गई, कोई चुनाव नहीं कराये जायेंगे।

इसलिए राज्य-सभा ने जो यह विधेयक वापिस भेजा है, यह कांग्रेस की तानाशाही का द्योतक है कि उन लोगों के दिमाग में अभी भी तानाशाही की बू है।

हमारे शिक्षा मंत्री जो यहां बैठे हुए हैं। श्री कामत ने एक प्वाइन्ट ऑफ ऑर्डर उठाया था, उनकी मंशा यह थी कि इस संविधान संशोधन शिक्षा को जो राज्य-सूची में दिया गया है, वह ठीक नहीं है। यदि हम शिक्षा को राज्य-सूची में ले जायेंगे तो देश के लिए यह बहुत हानिकारक होगा।

आपात काल में कांग्रेस सरकार ने जितने भी कार्य किये, उनमें पता नहीं एक अच्छा काम उनके दिमाग में कैसे आ गया? जिन्दगी में श्रीमती इन्दिरा गांधी ने कोई अच्छा काम किया तो शिक्षा को समवर्ती सूची में रखने का किया है। उन्होंने जो यह एक अच्छा काम किया है, इसको हटा देना हमारे लिए उचित नहीं है।

शिक्षा देश की आधारशिला है। यदि विशिष्ट प्रदेशों में अलग-अलग शिक्षा दी जायेगी तो उस समय कोई प्रदेश सरकार कहे कि हमें हिन्दी से कोई मतलब नहीं, काम नहीं, इसलिए केन्द्र से हमारा कोई मतलब नहीं, हम भारतीय संघ से अपने प्रदेश को अलग करना चाहते हैं, यदि ऐसी मांगें आगे उठाये जाने लगे तो उस समय क्या होगा? क्या

गारंटी इस बात की है कि ऐसा नहीं किया जा सकेगा? इसलिए मैं इसका सख्त और कड़ा विरोध करता हूँ। जो शिक्षा का विषय राज्य-सूची में रखा है, इसको समवर्ती सूची में रखना चाहिए।

कई प्राविजन्स और भी हैं। राज्य-सभा ने जो संशोधन किया है कि शिक्षा को राज्य-सूची में न रख कर समवर्ती सूची में रखा जाये, मैं इसका समर्थन करता हूँ और शिक्षा मंत्री जो से कहना चाहता हूँ कि वह इसके बारे में कुछ करें, अभी समय है, वरना जो नुक्सान इस से हो जायेगा, वह देश के लिए बहुत घातक हो जायेगा। सारे देश के प्रबुद्ध बुद्धिजीवी लोग, विद्यार्थी और शिक्षक—मंती महादय शिक्षक रहे हैं—चाहते हैं कि शिक्षा समवर्ती सूची में रहे। पता नहीं, किन किन प्रदेशों की सरकारों को खुश करने के लिए सरकार ये काम कर रही है। देश के लिए यह ठीक नहीं है।

भूतपूर्व कांग्रेस सरकार ने जो प्रशासकीय पंचाट की स्थापना की थी, वह केवल ब्यूरोक्रेसी को हावी करने का एक तरीका था। वह चाहती थी कि ब्यूरोक्रेसी को अधिकार दिये जायें। 1947 में ब्यूरोक्रेसी को जो अधिकार प्राप्त थे, आज उसे उससे कहीं अधिक अधिकार मिले हुए हैं। आज सरकारें ब्यूरोक्रेसी के कारण ठीक काम नहीं कर पा रही हैं। वे लोग अपने आप को सरकार से ऊपर मानते हैं। कांग्रेस के लोगों की मंशा थी कि ब्यूरोक्रेसी का और हावी किया जाये, और मजबूत किया जाये। जिस ब्यूरोक्रेसी के कारण पाश्चात्य सभ्यता इस देश में पनप रही है, उसके वे हमी हैं। इस लिए राज्य सभा ने यह जो प्राविजन पास कर के भेजा है, मैं उसका विरोध करता हूँ। यह बहुत गलत है। इससे कांग्रेस के लोगों की इस प्रवृत्ति का पता चलता है कि वे इस देश में जनता का राज्य नहीं, बल्कि ब्यूरोक्रेसी का राज्य चाहते हैं, कुछ मिले-जुले डिक्टेटर्स का राज्य चाहते हैं। आज जनता पार्टी अपनी नीतियों को जनता तक पहुंचाने में सफल नहीं हो रही है क्योंकि अधिकतर ब्यूरोक्रेट कांग्रेस के साथ मिले हुए हैं। वे हमारे कामों में अड़चन डाल रहे हैं। इसलिए यह प्राविजन ठीक नहीं है।

ये लोग बड़े धर्मनिरपेक्ष और समाजवादी बनते हैं, मगर कहते हैं कि उनकी परिभाषा नहीं दी जानी चाहिए। उन्होंने केवल दिखाने के लिए धर्मनिरपेक्ष और समाजवादी शब्द जोड़ दिये थे। लेकिन उनका समाजवाद क्या है? वे संजय गांधी को समाजवाद का प्रतीक समझते हैं, लेकिन आज वह क्रोटर्स के चक्कर काटता फिरता है। वे केवल जनता की सहानुभूति प्राप्त करना चाहते हैं, मगर वे कहते हैं कि समाजवाद और धर्मनिरपेक्षता की कोई सर्वमान्य परिभाषा नहीं हो सकती है। इसलिए राज्य सभा ने यह जो संशोधन किया है, वह ठीक नहीं है। यह जनता की आकांक्षाओं पर कूटाराघात है।

[श्री नाथू सिंह]

राज्य सभा ने इन संशोधनों को वापस भेजा है, बहुतों का काम नहीं किया है। एक बुद्धिमानी का काम उन्होंने किया है कि शिक्षा को समस्त सूची में रखा जाना चाहिए। मैं पुनः उसका समर्थन करता हूँ। मगर फारेस्ट्स को उन्होंने राज्य-सूची में रख दिया है, यह भी उन्होंने उचित काम नहीं किया है। धाणा है कि शिक्षा सबों इस पर पुनर्विचार करेंगे।

SHRI DHIRENDRANATH BASU (Katwa): Mr. Deputy Speaker, Sir, the Constitution should be considered as a sacred document, a document which should not be lightly interfered with. Amendments may be made when they are considered to be absolutely necessary, but such amendments should heed the aspirations of the people. We find, however, that in some cases, Fundamental Rights have been taken away and the rights given to the States have also been taken away. I cannot support such clauses. The Government should have come forward with a comprehensive Bill and the Government should not have devised ways to take away the liberty of the States and powers which have already been given to the States. Sending armed forces to the States is certainly wrong. We do not agree to this proposal.

Also they say that, when there is an armed rebellion, Emergency can be declared. We do not agree to this. When there are disputes between political parties, the ruling Party can say that there is an armed rebellion—just to gain their political ends. So, 'armed rebellion' should be deleted from the Constitution.

The Fundamental Rights of the people must be guaranteed. Here what we find is old wine in a new bottle. What is this Amendment for? This Amendment has not improved the Constitution. The Amendment should have been done in such a way that the Fundamental Rights of the people are fully preserved. In no case should the Fundamental Rights be curtailed. But unfortunately here we find that, in some way

or other, some Fundamental Rights have been taken away. To this we cannot agree.

With regard to the capital punishment, that is, death penalty may be awarded, we are against it. The death penalty should be abolished. There are certain Bills given by several hon. Members of the House for abolition of this penalty. Taking all these points into consideration, I would request the hon. Minister to come forward with a comprehensive Bill.

There is a Clause which says that the persons who has no means to pay will be sent to prison. This is a clause which should have been deleted. The person who has no means to pay should not be sent to prison. Government should find out some other means to see that in such cases, he is not imprisoned but some other penalty is imposed.

In all these Clauses and sub-clauses, I find that there are only some additions, some omissions, and so on. What we expected was this: we expected that Dr. Pratap Chandra Chunder would come here with a comprehensive Bill which can fulfil the aspirations of the people, which can fulfil the desires of the people. Now, what do we find? The Emergency Clause is there. Emergency should be imposed only when there is external aggression. Except on grounds of external aggression, there should be no room for declaring Emergency. We strongly oppose this Emergency clause.

The right to property may go but the right to work must be there, the right to live must be there, the right to education must be there. If there is no right to live no right to work, then what are we here for? We are here to look after the welfare of the people. The right to property may go, but when that right goes, the right to work must be there. All the unemployed and under-employed youth must be employed. The people should not be made to starve. We cannot allow this. Here we should safeguard these rights of the people.

I would, therefore, make this appeal to the hon. Minister through you. Let them come with a comprehensive Bill. Merely adding some clauses or omitting some clauses will not serve the purpose. Why should we take away the rights of the states? Why should we not give the states more powers? All these points should be taken into consideration. People have voted you to power, and you should see that people's wishes and aspirations are fulfilled to the greatest extent.

With these words, I conclude.

चौधरी बलबोर सिंह (होशियारपुर) : उपाध्यक्ष महोदय, मुझे एक कहानी याद आ रही है—100 जूतियां और 100 प्याज की। किसी को मजा हुई—उम को कहा गया कि 100 जूतियां खायेगा या 100 प्याज खायेगा? उम ने कहा—जूतियां खाऊंगा। जब 10 जूतियां उम को लग गईं, तो उम ने कहा, मैं जूतियां नहीं खाऊंगा, प्याज खाऊंगा। जब उम ने प्याज खाना शुरू किया और कुछ प्याज खाने के बाद तबियत खराब हुई, तो फिर उम ने कहा—मैं जूतियां खाऊंगा। नतीजा यह हुआ कि वह 100 जूतियां भी खा गया और 100 प्याज भी खा गया। यही हालत आज हमारी हो गई है। जिस दिन यह बिल यहां पेश हुआ था, उस दिन, हमारी सरकार को पता था कि इस को राज्य सभा में पास नहीं करवा सकते थे, तो फिर उनका ही करते, जिनका पाम हो सकता था। इतने दिनों तक हम ने यहां बहस की, इनका पैसा इस पर खर्च हुआ और फिर वापस आ गया। जिस चीज के खिलाफ हम ने यहां पर वोट दिया, सरकार ने उस के खिलाफ बयान दिया, और यहां पर उस को अमेण्ड नहीं होने दिया, राज्य सभा ने हमारी उन बातों को रिजेक्ट कर दिया और अब आज हम से यह कहा जा रहा है कि हम उस को मान लें, चाक जारी कर रहे हैं कि इस को मान लो, तुम उस को मानते हो या नहीं मानते हो, लेकिन वोट हमारे साथ दो। यह सब क्या हो रहा है?

बिल्कुल सीधी सी बात थी, इतनी झंझटों में जाने की क्या जरूरत थी, 42वें संशोधन को बिलकुल खत्म कर देते और उस को बिलकुल खत्म कर के फिर जो काम्प्रोमैसिव अमेण्डमेण्ट लाना चाहते थे, उन को लाते। लेकिन हम ने ऐसा नहीं किया और इस बात की कोशिश की कि इस में कुछ अच्छी बातों को शामिल कर दें। लेकिन नतीजा कुछ नहीं निकला।

आप रेफ्रेण्डम वाले मामले को देखिये—अगर कभी किसी का समय खराब हो जाय—जैसे जर्मनी

में हिटलर का हुजूम था, उस ने पार्लियामेंट को घाग लगवा दी थी और पास करवा दिया था कि अब उस का राज चलेगा—तो यह ऐसी हालत को रोकने के लिये था। आप इस तरह से देखिये—इन लोगों का वक्त 6 साल था, जो उन्होंने संशोधन किया था, अगर ये चाहते तो 15 साल भी कर सकते थे, उस वक्त इन्दिरा जी के दिमाग में पता नहीं कहां से यह बात आ गई कि चुनाव करालो, उन के जो एडवाइजर्स थे, उन की प्राइवेट सी०प्राइ०डी० के लोगों ने उनसे कहा—“बीवी, यह चुनाव कराने का बहुत अच्छा चान्स है।” उन्होंने अपने एस्ट्रालाजर्स से भी पूछा था, अपने तान्त्रिकों से भी पूछा था—सब ने यही कहा कि इस से अच्छा मौका और नहीं मिलेगा, आप को इस वक्त चुनाव कराने से ओवर-हेलमिंग मैजोरिटी मिलेगी और इस गलतफहमी में आ कर वह इलैक्शन का ऐलान कर बैठी। इसी का नतीजा यह हुआ कि अब उन को बाइ-इलैक्शन में चिकमगलूर से चुन कर आना पड़ा—बैक-डोर से इस हाउस में आई। (व्यवधान) यह बैक-डोर ही है—अगर उन को भरोसा होता, तो यू०पी० में कई इलैक्शन हुए, वहां से खड़ी हो सकती थी, लेकिन उन को पता था कि अगर नार्थ से खड़ी हुई तो फिर सत्यानाश हो जायेगा।

हमारे कुछ इन्कलाबी दोस्त पब्लिक की बात कहते हैं, जनता हमारे खिलाफ यह कहती है, बाहर के लोग यह कहते हैं—लेकिन ये लोग वे लोग हैं जो एमर्जेन्सी में उन के साथ थे। जिन लोगों ने उस वक्त उन का साथ दिया, आज वे लोग हम को जम्हूरियत या लोकतन्त्र की बात समझाने की कोशिश करते हैं। मेरे कहने का मकसद यही है कि इस में यह इन्तजाम किया गया था कि आने वाले जमाने में अगर किसी का दिमाग खराब हो जाय, खुद डिक्टेटर बन कर लोकतन्त्र को खत्म कर दे, तानाशाही को फिर कायम कर दे, उस को रोकने के लिये ही हम ने इस में रेफ्रेण्डम का प्रावधान रखा था। अगर विधान में तन्दीली करनी है तो उस के लिए लाजमी तौर पर रेफ्रेण्डम होगा, उस पर जनता अपना फैसला करेगी।

आज कुछ लोग दलील देते हैं कि जनता अनपढ़ है। आप लोग उस जनता को आज अनपढ़ कहते हो जिस ने तीस साल तक आप को गद्दी पर बिठाये रखा और आप तीस साल तक तानाशाही चलाते रहे। उस जनता को आप अनपढ़ कहते हो जिस ने आप को उखाड़ कर फेंक दिया और आपकी तानाशाही को खत्म कर दिया। जनता भला और बुरा अच्छी तरह सोच सकती है। आप के ब्याल से कुछ अंग्रेजी पढ़े लिखे लोग, जिन्होंने कुछ किताबें पढ़ लीं, वे ही तालीम-याप्ता बन गये। जिन्होंने सारी जिन्दगी अपनी आंखों से देखी है, वे आप को अनपढ़ दिखायी देते हैं, पीने दो साल पहले जनता ने आप को बता दिया कि वह कितनी पोलिटिकली कांशस है। जब वह पोलिटिकल्ली कांशस थी तभी उस ने हमें करोड़ों की तादाद में वोट दे कर यहां बिठाया है।

सभापति महोदय, मैं कहना चाहता हूं कि आज इस बिब को जिन ढंग से यहां पेश किया गया है, यह

[बीचरी बलबीर सिंह]

ठीक नहीं है। अगर यही करना था तो इन से पहले ही बात कर लेनी थी कि ये किस बात को मानते हैं और किस को नहीं मानते हैं। जब राज्य सभा ने इस में संशोधन कर के यहां वापस भेज दिया है और आप इसे उसी ढंग से पास करना चाहते हैं। हमें चाहिए तो यह था कि जिस तरह से हमने इसे पहले पास किया था इसे उसी तरह से फिर से पास करते और अगर राज्य सभा उसे फिर वापस भेजती तो हम जनता से जा कर कहते कि हम ने तुम्हारा हुक्म मान कर इस बिल को पास किया लेकिन ये जो राक्षस वहां बैठे हैं ये इस को पास नहीं होने दे रहे हैं। लेकिन जिस ढंग से आज आप इस बिल को लाये हैं यह अच्छी बात नहीं है। अगर हम इसे उसी शक्ल में पास कर वहां फिर से भेजते और वहां से रिजेक्ट भी हो जाता है तो हम जनता से कह तो सकते हैं कि पहले इन्होंने विधान के साथ बलात्कार किया, अब हम उसे ठीक करना चाहते हैं तो हमें ये करने नहीं दे रहे हैं। ये राक्षस अपने बहुमत से हमें इस को करने नहीं दे रहे हैं। इस तरह से जनता के सामने हम अपनी सही इमेज पेश कर सकते थे। हम ने यह नहीं किया और इन थोड़े से लोगों ने जो बाढ़ा वह पूरा हो रहा है। अब ये लोग जा कर जनता में कहेंगे कि जनता पार्टी ने पहले तो हमारी बात को माना नहीं अब उन्होंने हमारी बात को माना है। दो महीने पहले तो इन्होंने हमारी बात को माना नहीं आज क्या हो गया जो इनको हमारी बात करनी पड़ी।

इसलिए मैं मिनिस्टर से कहना चाहता हूं कि कल तो आपने इस को पास कर दिया, और आज आप इनकी बात मान कर फिर से इनकी मर्जी के मुताबिक पास कर रहे हैं। इस को पास करना क्यों जरूरी हो गया था और अब क्यों इनकी बात को मानना जरूरी हो गया है? यह अफसोस और शर्म की बात है कि हम ने जो जनता से वायदा किया था उस को हम पूरा करने में नाकामयाब रहे हैं। सीधे तौर पर हम अपने पहले वाले प्रमिसेड्स को पास करते और ये उन्हें न भी पास करते तो हम खुद लोगों से जा कर कह सकते थे कि हम ने तो आपको मर्जी के मुताबिक प्रमिसेड्स पास किये हैं लेकिन इन्होंने नहीं किये, इन्होंने बैसे ही रख दिये। यह ज्यादा अच्छी बात होती।

MR. DEPUTY-SPEAKER: Mr. Chitta Basu.

SHRI CHITTA BASU (Barasat): Mr. Deputy Chairman, Sir,....

AN HON. MEMBER: He is Mr. Deputy-Speaker.

MR. DEPUTY-SPEAKER: He was a Member of Rajya Sabha when I was the Deputy Chairman.

SHRI CHITTA BASU: You were a Deputy Chairman there. You are an ex-Deputy Chairman.

Mr. Deputy-Speaker, Sir, I rise to oppose the proposal for amendment which has been done in the wisdom of the Rajya Sabha.

I would like to state the reasons for my opposition to this. Firstly, you know that this Sixth Lok Sabha was elected on the basis of a clear-cut verdict of the people of India where in the Lok Sabha is committed to fight against all trends of authoritarianism in our country. Sixth Lok Sabha has been elected by the people of this country to defend democratic rights of the people of this country and to ensure the path for democratic advance.

Mr. Deputy Speaker, Sir, I think we cannot forget the circumstances in which the Forty-second amendment of the Constitution was passed by a Parliament which was nothing but a pitiable and a captive Parliament. At that time the former Prime Minister of this country could establish her dictatorship in a constitutional manner. She was not only able to establish her personal dictatorship through the Constitution itself but institutionalised her dictatorship for all the time to come. We are elected here to oppose that. The Janata party gave that promise to the people of the country that the Constitution of our country should not be utilised for the establishment of personal dictatorship of anybody. But unfortunately I find that while the pledge was to rescind the Forty-second amendment log, stock and barrel certain selective approach was made by the government and certain good points were discovered in the notorious Forty-second amendment of the Constitution. That was the first slide back on the part of the Janata government in the fulfilment of the electoral promise given to the people. Now, I find by accepting the amendment suggested by the Rajya Sabha

certain pernicious provisions of the Forty-second amendment of the Constitution are being re-introduced in the present Bill.

Sir, you would agree with me that those members of the Congress(I) and the Congress who in the other House in their wisdom wanted to abolish 31(C) raised one arguments namely, the Directive Principle should prevail over the fundamental right. Sir, we on behalf of the left parties working amongst the workers and the peasants feel that the fundamental right is not only a right cherished by those who control the State machinery but the fundamental is much more precious to those who fight for workers' and peasants' interests and to bring about radical change in the economic policy of the government. Therefore, we the representatives of the workers and the peasants and the toiling millions of our country can present the fundamental right on the platter to those who have trampled over the fundamental right because we the toiling people value the fundamental right more than anybody else. But, unfortunately, I find some of the left parties could not understand the difference between the fundamental right and directive principles enunciated by a bourgeois government. The directive principle, if I am allowed to say, is nothing but a pious declaration of the principles of the government yet the right to private property as a fundamental right was the only obstacle to implement or to give effect to enforce the directive principles of our Constitution. There was a complete lack of political will on their part and the only sort of political will that they displayed was to perpetuate their exploitation. Now, so far as the Directive Principles are concerned, why is it that their congress (I) representative in the Rajya Sabha did not implement these Directive Principles in all seriousness? Who prevented them from making laws for the benefit of the workers? Who prevented them from

making laws for the agricultural workers, giving them living wage? Who prevented them from making laws for equal pay for equal work for agricultural labour and for the peasants and for the workers in the plantations and so on? It is not a fact that fundamental rights stood in the way and therefore they could not implement the directive principles. That is not at all the case. They did not have the political will. That is the point. And this political will was not there, only because they wanted to perpetuate the role of capitalism.

Therefore, this particular argument raised by them (that the Directive Principles should prevail over Fundamental rights) I again say, is nothing but a hoax perpetrated on the people of this country.

We equally feel that the Fundamental Rights should be guaranteed to the peasants and to the workers of this country, so that the struggle for their emancipation can be continued.

Now, this amendment proposes to take away that Fundamental Right under the guise or under the cover of the slogan of 'prevalence of directive principles over fundamental rights'. This is done to disarm the working class in this country. This is done to disarm the poor people of this country, and to take away their fundamental rights to fight for their rights.

Secondly, I wish to point out this, that Article 368 is the crux of the whole matter in regard to these Forty-Fifth Amendments which are now sought to be amended by the Rajya Sabha.

There was a provision of Referendum. Now, Rajya Sabha, in their own wisdom, have suggested the removal of this provision. Now, what is a Referendum? What is the principle of Referendum, in the Indian context? This principle of Referen-

[Shri Chitta Bosu]

dum was brought in because we wanted to have a built-in mechanism to fight against any kind of authoritarianism in this country. We wanted to safeguard the provisions of the Constitution. We wanted to safeguard the sovereignty of the people. We wanted to safeguard against the sinister motives of those who only wanted to perpetuate themselves and their dictatorship over the whole country. That is what we wanted to do. Now, the provision of this Referendum was there only to provide that kind of a safeguard. It was a bulwark against that kind of attack on the democratic rights of the people. If we accept the Rajya Sabha's amendment then the so-called supremacy of the Parliament will be there and this Constitution can be changed even in respect of its basic features and basic character sometimes beyond the recognition of all of us and dictatorship and authoritarianism and totalitarianism can be instituted.

I think that the Janata Government should be aware of these dangers which are likely to emanate. There are forces still which justify the proclamation of emergency. They still feel that there should not be fundamental rights. They still believe that by imposing emergency they have strengthened democracy. Those forces are still very much there. By this sort of referendum, we wanted to have a built-in mechanism, so that, such kinds of evil designs can be defeated and defeated by the people. The sovereignty of the people is the ultimate weapon that we have. It is not the Parliament Member whose sovereignty is ultimate. It is that of the people. I do not know why these people are afraid of approaching the people. The Constitution of the country should be amended only with the approval of the ultimate sovereignty of the people of the country. Education

should not be included in the Concurrent list because that militates against the right of the States. The States are demanding more power in order to develop their own personalities on the basis of their own culture, on their own requirements and the States must have power. The amendments made by the Rajya Sabha really takes away the right of the States. The States should have the power to develop their own culture and personalities. Thank you.

17 hrs.

*SHRI P. VENKATASUBBALAH (Nandyal): Mr. Deputy Speaker, Sir, the 45th Constitution Amendment Bill about which we are discussing here today. (Interruptions).

Mr. Deputy Speaker, Sir I will speak in my mother tongue. My Party and I support this Bill, as amended by Rajya Sabha. Just now, we heard many hon. Members speaking on this Bill. We have expressed our views on this issue many a time on the floor of this august House. We need not now go to the extent of defining the words like Socialism or Secularism. If we do that it may injure the susceptibilities of somebody or some groups. It is enough if we understand that in socialism one enjoys equal status, and secularism means freedom of worship. Let us not go deep into the matter. Unfortunately, our views had not been given due consideration the past. We have also criticised the policy of the present Janata Government in shifting education and forest from the State List. When Janata Members speak of secularism and socialism, I wonder whether they are not the people who devoted their entire life to the theory of exclusive Hindu State and domineering Hindu culture. With their oft repeated slogans on Hindu State and Hindu culture, they have created a panic in the minds of Minorities as second class citizens of this country. When they talk of socialism, secularism, it

*The original speech was delivered in Telegu.

it like the devil quoting the scriptures. Today the people consider a Congress man belonging to any particular caste or religion. The people of this country know it very well that Congress is synonymous with secularism and socialism. Even after 20 months of their rule, a section of the Janata Party does not accept either socialism or secularism. That is the view of the minorities about this Janata Government. So it is nothing but foolishness to say that the Janata Party is marching forward in the direction of socialism and secularism.

It is worth mentioning how the Government in the past 30 years utilised with education and forests for the progress of this country. We have accepted Education in the Concurrent list with the sole objective of making our children glorious and responsible citizens of future. We thought that integration and equality of all citizens would be well-maintained by doing so. Regarding Forests we all know how the deforestation is going on in a brisk manner causing us a lot of damage in the form of floods, drought etc. In the past when the Forests were in the States List, there was no national policy. No National consensus was there in this matter. That is why we thought it better to keep it in the Concurrent list, so that we could evolve a national policy for the good of the entire nation.

Now regarding the Administrative Tribunals there is no basis, whatsoever, for the apprehensions of Janata Party members and for their hue and cry. By having Tribunals we will be in a position to provide justice without any delay. As all of us know, justice delayed is justice denied. We have at our disposal High Courts and Supreme Courts which are above these Tribunals. So we consider it better to have Tribunals which will be of help to the common man at the lowest stratum of society.

We should not think that the amendments proposed by Rajya Sabha are not acceptable to the people. At times, in an environment of surcharged emotions, Lok Sabha takes certain hasty decisions. Rajya Sabha, in a cool and calm fashion, does correct us wherever we falter. Let us also not think that the Rajya Sabha members are not elected by people. They have been elected by the elected members of Assemblies and Councils. It is but proper that we accept the amendments suggested by the Rajya Sabha. The C.P.I. (M) members are constantly blaming us as authoritarian and dictatorial. But people of this country know it better as to who is authoritarian or dictatorial and who is not. They also know who are pursuing the policies of authoritarianism. By creating chaos, if they think that they can achieve their objective they are grossly mistaken, for the people can judge better. The people of this country have implicit faith in democracy and they will not be swayed by demogogy.

Once again I am making it clear to the CPI(M) members that the people are not at all supporting them. They are not at all supporting them. They are not at all behind them. With these words I conclude.

श्रीमती ग्रहिया पी० रामनेकर (बम्बई उत्तर-मध्य) : उपाध्यक्ष महोदय, अभी जो माननीय सदस्य बोले वह अंग्रेजी में ट्रांसलेट नहीं हुआ है।

उपाध्यक्ष महोदय : आप जरा ट्रांसलेशन यंत्र लगाती तो सब समझ में आता।

श्री रामनरेश कुशवाहा (मलेमपुर) : उपाध्यक्ष महोदय, आज मुझे बड़े ही दुःख के साथ कहना पड़ता है कि जिस संशोधन को हम लोगों ने कहा था कि सरकार मान ले उसे सरकार ने नहीं माना और जब बिपक्ष का डंडा पड़ा तो मान लिया। हमारी समझ में नहीं आता कि इस सरकार को पहले यह समझ क्यों नहीं आई? क्यों इस तरह की बेइज्जती उसने करायी? अगर सारे का सारा विधेयक ही लैप्स हो जाय तो आप का क्या जाता है? जो ब्यालीसवां संविधान संशोधन है वह तो जो भी गद्दी पर रहेगा उसी के लिए लाभप्रद रहेगा, चबराता चाहिए उन लोगों को जिन्होंने पास किया था अपने फायदे के लिए और चले गए उस तरह।

श्री एम० रामगोपाल रेड्डी (निजामाबाद) :
हम फिर आ रहे हैं ।

श्री राम नरेश कुलशब्दा : वह ठीक है, यही तो मैं कहना चाहता हूँ कि शायद कुछ लोगों को डर हो कि फिर कस धाप धा जायेंगे तो वही धन्धा करेंगे जो धाप ने किया है । लेकिन मैं धाप से कहना चाहता हूँ कि कतई धाप यहाँ धाने वाले नहीं हैं, हम धावे चाहें न धावें । इसलिए इधर किसी को डरने की जरूरत नहीं है और न कोई डरता है ।

इसलिए धाप धपने गले में वह फन्दा डाले रहें । बयालीसवें संविधान संशोधन का फन्दा धाप धपने गले में डाले रहें, इस में हम को कोई एतराज नहीं होना चाहिए । लेकिन अगर हम ने पहले पास किया है कि हम इन संशोधनों को नहीं मानेंगे तो धाप भी न मानें, नहीं तो पहले ही मान लेना चाहिए था । क्या हर्ज था ? हर्ज केवल यह था कि धाप ने यह वादा किया था कि हम बयालीसवें संशोधन को रद्द करेंगे, तो वह पूरा रद्द कर देते । केवल इसीलिए न धाप ने धपने वचन का पालन करने के लिए कहा कि नहीं, हम इसकी रहने देंगे ? हम जरूर इस को हटाएंगे ? लेकिन जब उधर के धंधुधों ने उस को फेल कर दिया, संशोधन पास कर दिया उस में तो धाप ने मान लिया । हम नहीं समझ पा रहे हैं कि जब धाप पूरा बयालीसवां संविधान संशोधन रद्द करने का वादा किए हुए थे और इसी बिना पर धाप ने हमारी बात नहीं मानी, हमारा संशोधन नहीं माना तो धाप क्यों मान रहे हैं ? हो जाने दीजिए पूरा का पूरा लैस । और मैं उन बंधुओं से भी कहना चाहता हूँ कि उन्होंने जो किया और उसमें संशोधन पास किया, अगर कहीं पूरा का पूरा विधेयक ही रद्द कर दिया जाय तो वह गले का फन्दा जो धाप ने हमारे लिए बनाया था वह धाप के गले में पड़ सकता है और अगर कोई भी ऐसा सरकार धा जाय जो प्रादशवादी न हो, जो मिश्रितवादी न हो, केवल कुसीबादी हो धपनी कुर्सी को रक्षा करने के लिए जिस तरह से धाप लोगों ने सारा कुकर्म किया, उसी तरह धाप को हथियार से ही धाप को कोई भी वहाँ धा कर बुझा कर सकता है । पता नहीं क्यों उस से धाप को मोह है ? क्यों उस से धाप को मोह है ? हमारा धाप से नम्र निवेदन है कि जिस तरह से यहाँ से विधेयक पास किया गया था उसी तरह से पास करवाइए और या तो समचा रद्द करवा दीजिए, नये सिरे से जो जो अच्छी चीज धाप रखना चाहते हैं उस का विधेयक तैयार कीजिए और लाइए, उसे यहाँ से पास करवाइए । लेकिन प्राधा तीतर, प्राधा बटेर, प्राधा तुम्हारा प्राधा हमारा, इस से कुछ काम बनने वाला नहीं है । कहीं की ईंट कहीं का रोड़ा, मानमती ने कुनबा जोड़ा । इस तरह से कुनबा जोड़ने से कोई फायदा नहीं है । चाहे इस बार चाहे उस बार, इस मिली जुली कुचरी से कुछ नहीं होगा । और हमारा उधर के माननीय सदस्यों से भी यह निवेदन है कि यह पूरा बयालीसवां संविधान संशोधन अगर धाप रद्द करवा दें तो धाप का कुछ बिगड़ता नहीं है । धाप का बनने वाला है । धाप की सदाशयता पर देश के लोगों का विश्वास हो जायगा और साथ ही साथ अगर कोई पाजी भी प्रादमी यहां

बैठ जाय तो वह भी धाप के खिलाफ कोई कार्यवाही नहीं कर पाएगा । हम तो धाप के गले के लिए कह रहे हैं । हम तो भोग चुके हैं, जो हम लोगों को देखना था, जितनी दुर्गति हम लोगों की करनी थी, संविधान संशोधन कर के, वह इन्होंने कर दी, धाप अगर यह रह जायगा, तो रहने दिया जाय । जब धाप खुद चाहते हैं कि यह फन्दा गले में बरकरार रहे, तो मैं यह कहूँगा कि इस क. धपने धाप लैस हो जाने दीजिये । जो भी गद्दी पर धाये उस का इस का फायदा उठाने दीजिये, हालांकि हम उस का फायदा उठाना नहीं चाहते हैं इन को ही धनन्तकाल तक इन्तबार करने दीजिये, जिस दिन ये गद्दी पर धायेमें, यही तो होगा कि हम सब फिर से जेल चले जायेंगे । लेकिन हम इस का इस्तेमाल नहीं करेंगे, हम किसी पर इन की तरह से धत्याचार नहीं करेंगे, किसी के मौलिक अधिकार को छीनने नहीं जायेंगे, उन की तमशा है, तो उन को छीनने दीजिये । (ध्वजध्वन) यह हम कैसे कहें कि इन को भी उसी तरह से बन्द कर के उस का धानन्द उठाने दिया जाय । यह हमारा प्राशय नहीं है, हमारी ऐसी इच्छा भी नहीं है । अगर हम को 42वें संशोधन से तकलीफ हुई है तो हम वह चीज जो हम को बुरी लगती है या जिस से हमको तकलीफ हुई है वह दूसरों के लिये हम को नहीं करना चाहिये । हम जानते हैं कि धाप ने कुकर्म किया है, धापने हम पर धत्याचार किया है, हम को धाप ने जेलों में बन्द किया था—लेकिन यह समूचा हिन्दुस्तान तो बड़ा जेल है । छोटे जेल में तो खाने की गारन्टी है दवा की गारन्टी है, बांमने की गारन्टी है, वहाँ हम कुछ भी बोल सकते हैं, लेकिन इस बड़े जेल में तो न मरने की प्राज्ञादी है और न जीने की प्राज्ञादी है । अगर धाप धात्महत्या करने जायेंगे, अगर मर जायेंगे तब तो कोई भगवान के यहां से धाप को बुलाने नहीं जायगा, लेकिन यदि बच गये, तो धात्महत्या के अपराध में धाप पर मुकदमा चलेगा, इसलिये यहां तो मरने का भी अधिकार नहीं है । यहां जीने का भी अधिकार नहीं है । अगर धाप 9 दिन तक उपवास करेंगे, तो कोई भी नहीं पूछेगा कि धाप ने क्या खाया है, क्यों उपवास कर रहे हो, उल्टा धाप को जेल भेज दिया जायगा, जहाँ हर चीज की गारन्टी है । मेरे कहने का तात्पर्य यह है कि देश में कानून ऐसा बना रखा है, जिस से गरीबों का कहीं भी कोई भला होने वाला नहीं है । इस कानून को पास करवा कर अगर धाप धपना गला बांधे रखना चाहते हैं तो पास करवाइये, लेकिन मैं तो धाप से यही कहूँगा कि इस को रद्द हो जाने दीजिये ।

श्रीमन्, मैं धाप से बड़ी विनम्रता से निवेदन करना चाहता हूँ—शिक्षा को समवर्ती सूची में रखा जा रहा है और धाप भी चाहते हैं कि इस को उस में रखा जाय—यह अच्छी बात है, धाप को सद्बुद्धि आई है, उस वक्त धाप इस को नहीं मान रहे थे, लेकिन कोई हर्ज नहीं है, भला काम चाहे देर से भी हो तो स्वीकार करना चाहिये । यह बात दूसरी है कि दूसरों के सिखाते से यह बुद्धि आई है या इन्दिरा गांधी के डण्डे से आई है—यह अच्छा काम करने जा रहे हैं, इस को धाप धाप पास कीजिये ।

SHRI G. M. BANATWALLA (Ponnani): Rajya Sabha has made six amendments to the Constitution 45th Amendment Bill. I rise to voice my protest against some of these amendments made by the Rajya Sabha.

The implications of Amendment No. 1 and Amendment No. 2 made by the Rajya Sabha is to give precedence to Directive Principles over the Fundamental Rights. I must say with all the force at my command that any attempt to give precedence to Directive Principles over the Fundamental Rights is a retrograde step. I am sorry to say that, this is what is implied by amendments 1 and 2 made by the Rajya Sabha. We are often told that directive principles give the social objectives and social goals whereas fundamental rights give a list of the rights of the individual and, therefore, social objectives must have precedence over individual rights. I most respectfully submit that this misunderstanding stems out of a wrong notion of directive principles and fundamental rights. Fundamental rights, as enshrined in our Constitution are not merely rights of an individual as against society. It must be clearly understood that the fundamental rights are there as a matter of social policy and hence the supremacy of the social policy. For example, take article 21 which ensures the protection of life and liberty and says that no person can be deprived of his life and liberty except in accordance with the procedure established by law. Some friends may argue that this is an individual right. But the fact is that this is a matter of social policy because nobody can go to the court and say "I waive my individual right under article 21. I waive the entire procedure of law and I am prepared to be convicted."

17.22 hrs.

[MR. SPEAKER in the Chair]

Even if we take such a stand, the supremacy of the law will be there and the procedure established by law

will take its own course as a matter of not an individual right but as a matter of social policy and in accordance with the democratic and secular ideals enshrined in the Constitution. It is, therefore, wrong to say that individual rights mentioned under fundamental rights are against society. I have, therefore, to oppose the precedence that is sought to be given to directive principles over fundamental rights. The idea of fundamental rights in India originated in the 19th century. Though there was no Bill of Rights prior to the adoption of the Constitution even during the British regime, the Indian National Congress started an agitation for the recognition of civil rights. For example, in 1928 we had the Pandit Motilal Nehru Report. The Congress friends have forgotten what is given in that report. The report lays down that our fundamental rights should be so enterrenched that they should not be amendable under any circumstances whatsoever. That is the nobility of the fundamental rights. The fundamental rights are there for the protection of the rights of the working group and for the protection of the rights of the minorities. Giving precedence to directive principles over fundamental rights is a serious injustice to the working group and to the minorities in the country.

On the same point, I have to oppose another amendment made by Rajya Sabha. Rajya Sabha wants that clause 45 should be deleted. Clause 45 deals with the amendability of the Constitution. If it is deleted the Constitution, as it stands today, gives sweeping powers to this Parliament even to destroy the democratic and secular structure. Such a position cannot be acceptable. There is something like the basic structure. There are the fundamental rights of the working group, of the minorities. Those must be inviolable. I understand that there must be a socialist advance—an advance towards the socialist pattern of society. But

[Shri G. N. Banatwalla.]

I submit that every socialist advance envisaged by the directive principles must be within the framework of the fundamental rights enshrined in the Constitution. This is in conformity with the democratic and the secular framework of the Constitution. Otherwise, we will have an authoritarian society. If a socialist advance throws to wind the democratic and secular considerations as envisaged in the fundamental rights, then there is nothing but authoritarian regime. It is, therefore, I oppose the Rajya Sabha amendment not only for giving precedence to directive principles over fundamental rights but also with regard to the amendability of the Constitution.

Ours is a federal structure and we must understand the constraints and limitations of the federal structure where fundamental rights play a very important part and judiciary also plays a very important part. As Dicy puts it the fundamental laws derives its existence from the Constitution. Hence every part, executive, legislative or judiciary, whether it belongs to the nation or it is an individual's case, is subordinate to and controlled by the Constitution. The Constitution constitutes the supreme law of the land. There is, therefore, a pre-dominance of the judiciary to check parliamentary invasion on the Constitution. This is no threat to political supremacy of this House which is distinct from its legal omni-competence as a law making organ.

To conclude, I would say that the Rajya Sabha by suggesting the amendments to these two particular clauses, has done a great injustice to the minorities. The rights of the minorities and the rights of the working group also become subject to the whim and fancy of any transient majority here in the parliament. Of course, I will go to the extent of saying that minority's rights should be inviolable but then there must be certain limi-

tations. The Parliament cannot be given sweeping powers and its transient majority cannot be given sweeping powers to trample over these rights.

However, I must also support the idea of education being in the State List. Further, I must say that in one respect, the Rajya Sabha's amendment is good and it is that the Rajya Sabha wants tribunals to continue. There is no reason why the tribunals should not function to the advantage of one and all where we have experience of experts. If Income-tax Tribunals can function smoothly, there is no reason why other tribunals cannot run smoothly.

With these observations and with partial opposition to certain amendments made by the Rajya Sabha, I hope that the matter will receive serious consideration of the House.

PROF. P.G. MAVALANKAR: (Gandhinagar): Mr. Speaker, Sir, I must say that while considering these amendments from the Rajya Sabha, we in this House are caught in a very extraordinary position. Not only that. A very unprecedented situation has arisen in as much as for the first time, what we passed here, had been rejected partially and partially also amended by the other hon. House. We passed this Bill on the 23rd August, it went to the other House, and the other House sent us this Bill back, I would not say in a mutilated form but certainly in a changed form, which we cannot ordinarily accept. We are in a dilemma. If we do not accept what the Rajya Sabha has done, we shall have to face the consequence of the entire thing collapsing. We have, therefore, to think whether that is a better alternative, or accept this unfortunate political humiliation at the hands of the other House, and agree to these amendments, get them passed, and then carry on the battle for further improvement of the distortions of the Constitution, which were sought to be made during the Emergency. This

is the dilemma in which we are in, and we have to take a realistic political judgement in this matter.

We cannot be sentimental or emotional and talk about the rights of this House or that House. The point is that unfortunately the Constitution is silent on this. My hon. friend, Shri Hari Vishnu Kamath, raised a point of order and you gave a very important ruling. I am very grateful for that. I wish the founding fathers of the Constitution had made some provision to get over this kind of eventuality where the Bill originating in the lower House, the directly elected chamber, gets amended in some form by the other House what do we then do? The Constitution is silent on this matter.

Since my esteemed friend from both the Congresses are fortunately present here, I would ask them this question. Let them imagine for the moment that they are in the position where the Janata Party is today. How would they like a majority for the time being in the other House using that majority to undo what has been done by the elected representatives of the people in this House? It is all right that the two Congress combined, and because they combined, they got a certain majority and, therefore, they could negative what we did in this House. Therefore, I do not think we should have really gone into the merits of the Rajya Sabha amendments.

But let me tell you this, and I will be very frank on these two points. The root cause for this is perhaps the Janata Government's inability and refusal to come forward with a simple categorical amendment of the Constitution, saying that the Constitution (Forty-second Amendment) Bill is rescinded lock, stock and barrel. That was the manifesto of the Janata Party. Why did they not do it? They were afraid that the Upper House may not accept it. Even if they had the fear that the Upper House may not accept it, they would have been well-advised, and politi-

cally rightly so, if they had come forward with such a Bill and got it rejected by the Upper House. Then they could have told the people "we did our best, but the other House came in the way; so, we are now coming with this Amendment Bill". I wish they had done it.

Secondly, the non-performance of the Government for the last so many months, and also the in-fighting in the party has given weight and strength to both the Congresses in this House, and particularly in the other House where they have a majority. If the Government had been run efficiently, perhaps they would not have been able to do the way in which they have done in the other House.

I want to ask this question in all sincerity and seriousness, and I do not mean any disrespect to the other House. If there is the bicameral system—and we have accepted it because of our federal scheme. We have to have it and I accept it—when there are two chambers in a federal scheme of things, there is always a dilemma. As a French author has said, the dilemma is: if the second chamber agrees with the first, it is superfluous; if it does not agree, it is obnoxious. We do not want either. But, at the same time, I say with great respect to Rajya Sabha, because a second chamber in a federal scheme of things is a must, if there is a conflict between the two Houses, which is unavoidable and inevitable, then the conflict has to be solved by this political dictum that the Lower House, which has been elected directly by the people, shall lead and the view of the Lower House shall prevail over that of the other House. That must be accepted politically, not as a constitutional formality. Without that we cannot do anything. Politically speaking, the House which is elected directly by the people shall lead and the views of that House shall prevail over the other. I am sorry, that has not been done.

Lastly, I will say only this. As I said, there is no point in telling any-

[Prof. P. G. Mavalankar]
 thing about these six amendments. Shri Banatwalla talked about something good in some and something bad in some other provisions. Many other Members have also said the same thing. Can we, however, change our stand or views when we are considering the same matter again and say something different from what we said then? We can only repeat what we said earlier. We cannot now say that something is good, so we accept it, something is bad and so we cannot accept it. As I said in the beginning, we have to accept it as it is. But having said that, I want to conclude by saying that I am sorry that the two Congress Parties, and I am particularly sorry for the Indian National Congress—I am not referring to the Congress (I), but I am referring to the Indian National Congress—I am sorry that reasonable and realistic individual leaders and members of that party chose, for certain political advantages perhaps, to side with Congress (I) and get through these amendments in the Rajya Sabha so that that part of the Emergency cake is sought to be retained. That was not to be done. This House must reject it. When I was a Member in this House in the last Parliament, my friend Mr. Somnath Chatterjee will bear me out when I say this, some of us in spite of their huge majority did our best to the last minute, to the last second, to oppose those atrocious, extraordinary and unbearable amendments to the Constitution. Some good things are there, and I agree with my friends of the Indian National Congress that some of the good things have come in that amendment. But those good things have come in a wrong way, in a bad way and in an arbitrary way. Therefore, there is no point in discussing those details of this amendment and that amendment. We have taken the position and we have stick to it.

Having said this, I want to say a word, in conclusion, by way of con-

gratulations to the Janata Government for at least doing something by this Forty-fifth Amendment Bill which is substantially undoing the damage and evil that is done by the Forty-second Constitution Amendment Act. My fervent appeal to them is, having gone in a right direction thus far substantially, I hope they will have the courage and the political will and political unity and leadership and efficient government to come forward during their regime with a new Bill, if necessary, or a set of new Bills and undo the remaining evil that is still lingering and lurking in the Constitution Amendment Act, namely, the Forty-second Constitution Amendment Act. This is my appeal and I hope the Minister will kindly bear this in mind and bring forward such a Bill in 1979, latest by 1980, but preferably next year 1979. But before that, unite, govern and have good leadership.

THE MINISTER OF EDUCATION, SOCIAL WELFARE AND CULTURE (DR. PRATAP CHANDRA CHUNDER): Sir, I would not take much of the time of this House. I notice that some of the hon. Members have supported this Bill. The honourable Member, Shri Venkataraman, clearly assigned certain reasons as to why these amendments made by the Rajya Sabha should be supported. I do not want to go as far as that. But at the same time, I also find that those of the hon. Members who want to oppose these amendments are divided in their opinion. For instance, the hon. Member, Shri Samar Mukherjee, felt that the definitions of secularism and socialism should not have been there and they have been rightly rejected. Similarly, the hon. Member, Shri Banatwalla, feels that tribunal should remain. Therefore, Rajya Sabha's decision was right. It shows that there is no unanimity even in the matter of opposition. I share some of the expressions used by the hon. Member, Prof. Mavalankar, because he has indicated the dilemma which we are facing. It is true that it is a

dilemma for us and many of the hon. Members on our side have felt that they are supporting this with a heavy heart. Naturally I had also supported this Bill in this Lok Sabha and when I am saying that we have to accept the views of the Rajya Sabha here in this House, I cannot be happy because I had supported the Bill as a whole. So, that is the feeling. But what is to be done? We have to see the alternative.

As hon. Member in anger has said that we should reject the whole Bill. Anger does not lead us anywhere. Particularly in the political field, if we are prompted by anger, then we will face great danger in our society. So, I would submit that instead of having anger or anguish, let us study this objectively and as I have pointed out earlier, out of 49 clauses which were passed by this House, 44 have been accepted by the Rajya Sabha. If we do not accept these 44 which have already been accepted by the Rajya Sabha, the result will be that much of our intention to fight authoritarianism will be completely thwarted by the existing provisions of the Constitution.

Shri Chitta Basu said that we must fight against authoritarianism. Is it fighting against authoritarianism to continue uncontrolled power of preventive detention? Is it fighting against authoritarianism to continue to have limited jurisdiction of courts in the matter of applications under article 226? Certainly these are not matters which will enable us to fight against authoritarianism. I can cite many more instances. There are many good features which are already there within these 44 clauses which have been accepted by the Rajya Sabha. So, I most humbly submit before this august House: let us accept the amendments passed by the Rajya Sabha even with some diffidence, and then we can see how in future we can do

something to undo some of the distortions which still continue within the Constitution.

With these words, I request that the amendments be taken into consideration.

MR. SPEAKER: Before I put the motion to the vote of the House, this being a Constitution (Amendment) Bill, voting has to be by division. Let the lobbies be cleared.

The lobbies have been cleared. We shall now have a division. Before votes are recorded by operating the machine, I may remind the Members that the Rules Committee at their sitting held on 28th October, 1978 have decided that to expedite matters four distinctive slips may be used for recording corrections from Members. The slips are as follows:

(i) *Slip for recording vote for 'Aye':* This slip is printed on green paper and is to be used by Members for recording vote for 'Aye' in case the vote has not been recorded by the machine or for correcting the vote from 'No' or 'Abstain' to 'Aye', as the case may be.

(ii) *Slip for recording vote for 'No':* This slip is printed on pink paper and is to be used by Members for recording vote for 'No' in case the vote has not been recorded by the machine or for correcting the vote from 'Aye' or 'Abstain' to 'No', as the case may be.

(iii) *Slip for Recording Abstention:* This slip is printed on yellow paper and is to be used by Members for recording Abstention in case the vote has not been recorded by the machine or for correcting the vote from 'Aye' or 'No' to 'Abstention', as the case may be.

(iv) *Slip for correcting vote recorded from a wrong seat:* This slip is printed on white paper and is to be used by a Member who has recorded his vote from a wrong seat (i.e. seat allotted to another Member).

[Mr. Speaker]

All slips have been printed in English on one side and Hindi on the reverse.

Any Member who wants to record his correction should get up in his seat as soon as the votes have been recorded by the machine whereupon a Teller will come to him and hand over to him the appropriate correction slip. Members are requested to fill in the correction slips correctly and completely. The portions which are not applicable should be struck off.

I have also to remind Members that when Division is announced, a gong will sound which is signal to the Members for casting their votes. Each member has to press the push switch and then operate one of the three push buttons according to his choice. The push button and the push switch must be kept pressed simultaneously until the gong sounds for the second time after ten seconds.

Now Division

The question is:

"That the following amendments made by Rajya Sabha in the Bill further to amend the Constitution of India, as passed by Lok Sabha, be taken into consideration:—

"New Clause 7A

(1) That at page 3, after line 4, the following new clause be inserted, namely:—

'Amendment of article 31C—

7A. In article 31C of the Constitution, for the words and figures "article 14, article 19 or article 31", the words and figures "article 14 or article 19" shall be substituted'

Clause 8

(2) That at page 3, clause 8, be deleted.

Clause 35

(3) That at page 8, clause 35, be deleted.

Clause 44

(4) That at page 13, clause 44, be deleted.

Clause 45

(5) That at pages 13, and 14, clause 45, be deleted.

Clause 47

(6) That at page 14, clause 47, be deleted."

The Lok Sabha divided.

AYES

Division No. 2]

[17.48 hrs.

Abdul Lateef, Shri

Ahuja, Shri Subhash

Alluri, Shri Subhash Chandra Bose

Amat, Shri D.

Ananthan, Shri Kumari

Arif Beg, Shri

Arunachalam alias 'Aladi Aruna' Shri V.

Asokaraj, Shri A.

Bagri, Shri Mani Ram

Bairagi, Shri Jena

Bal, Shri Pradyumna

Balak Ram, Shri

Balbair Singh, Chowdhry

Banatwalla, Shri G. M.

Barakataki, Shrimati Renuka Devi

Barrow, Shri A. E. T.

Basappa, Shri Kondajji

Basu, Shri Dhirendranath

Bhadoria, Shri Arjun Singh

Bhakta, Shri Manoranjan

Bhanwar, Shri Bhagirath

Bharat Bhushan, Shri

Birendra Prasad, Shri

Bonde, Shri Nanasaheb

Borole, Shri Yashwant	Gode, Shri Santoshrao
Brahm Perkash, Chaudhury	Gopal, Shri K.
Brij Raj Singh, Shri	Gore, Shrimati Mrinal
Chakravarty, Prof. Dilip	Gotkhinde, Shri Annasaheb
Chand Ram, Shri	Gowda, Shri S. Nanjesha
Chandan Singh, Shri	Goyal, Shri Krishna Kumar
Chandra Pal Singh, Shri	Guha, Prof. Samar
Chandrappan, Shri C. K.	Gulshan, Shri Dhanna Singh
Chandravati, Shrimati	Hande, Shri V. G.
Charan Narzary, Shri	Harikesh Bahadur, Shri
Chaturbhuj, Shri	Hazari, Shri Ram Sewak
Chaturvedi, Shri Shambhu Nath	Heera Bhai, Shri
Chaudhary, Shri Motibhai R.	Hukam Ram, Shri
Chaudhry, Shri Ishwar	Jain, Shri Kacharulal Hemraj
Chaudhury, Shri Rudra Sen	Jain, Shri Kalyan
Chauhan, Shri Bega Ram	Jain, Shri Nirmal Chandra
Chauhan, Shri Nawab Singh	Jaiswal, Shri Anant Ram
Chavan, Shri Yeshwantrao	Jasrotia, Shri Baldev Singh
Chhetri, Shri Chhatra Bahadur	Jethmalani, Shri Ram
Chowhan, Shri Bharat Singh	Jeshi, Dr. Murli Manohar
Chunder, Dr. Pratap Chandra	Kachwai, Shri Hukam Chand
Dandavate, Prof. Madhu	Kadam, Shri B. P.
Das, Shri S. S.	Kailash Prakash, Shri
Dasgupta, Shri K. N.	Kaldate, Dr. Bapu
Dave, Shri Anant	Kamath, Shri Hari Vishnu
Dawn, Shri Raj Krishna	Kar, Shri Sarat
Deo, Shri V. Kishore Chandra S	Kaushik, Shri Purushottam
Desai, Shri Morarji	Khan, Shri Kunwar Mahmud Ali
Deshmukh, Shri Nanaji	Khan, Shri Mahmood Hasan
Deshmukh, Shri Ram Prasad	Khirme, Shri Rinching Khandu
Dhandayuthapani, Shri V.	Kishore Lal, Shri
Dhillon, Shri Iqbal Singh	Kodiyar, Shri P. K.
Dhurve, Shri Shyamlal	Kotrashetti, Shri A. K.
Digvijoy Narain Singh, Shri	Krishan Kant, Shri
Durga Chand, Shri	Krishnan, Shrimati Parvathi
Dutt, Shri Asoke Krishna	Kushwaha, Shri Ram Nareish
Elanchezhian, Shri V. S.	Lakkappa, Shri K.
Faleiro, Shri Eduardo	Lalu Prasad, Shri
Fernandes, Shri George	Limaye, Shri Madhu
Gandhi, Shrimati Indira Nehru	Machhand, Shri Raghunir Singh
Ganga Bhakt Singh, Shri	Mahala, Shri K. L.
Ganga Singh, Shri	Mahi Lal, Shri
Gattani, Shri R. D.	Mahishi, Dr. Sarojini
Ghosal, Shri Sudhir	Mandal, Shri B. P.

Mandal, Shri Dhanik Lal
 Mangal Deo, Shri
 Mankar, Shri Laxman Rao
 Mavalankar, Prof. P. G.
 Meerza, Shri Syed Kazim Ali
 Mehta, Shri Ajit Kumar
 Mhalgi, Shri R. K.
 Miri, Shri Govind Ram
 Mishra, Shri Janeshwar
 Mishra, Shri Shyamnandan
 Mohanarangam, Shri Ragavalu
 Mondal, Dr. Bijoy
 Mritunjay Prasad, Shri
 Multan Singh, Chaudhary
 Munda, Shri Govinda
 Munda, Shri Karia
 Murmu, Father Anthony
 Nahar, Shri Bijoy Singh
 Naidu, Shri P. Rajagopal
 Nair, Shri M. N. Govindan
 Narendra Singh, Shri
 Nathu Singh, Shri
 Nathwani, Shri Narendra P.
 Nayak, Shri Laxmi Narain
 Nayar, Dr. Sushila
 Negi, Shri T. S.
 Onkar Singh, Shri
 Pajanor, Shri A. Bala
 Pandeya, Dr. Laxminarayan
 Pandit, Dr. Vasant Kumar
 Parmai Lal, Shri
 Parmar, Shri Natwarlal B.
 Parulekar, Shri Bapusaheb
 Paswan, Shri Ram Vilas
 Patel, Shri H. M.
 Patel, Km. Maniben Vallabhbhai
 Patel, Shri Meetha Lal
 Patel, Shri Nanubhai N.
 Patidar, Shri Rameshwar
 Patil, Shri Chandrakant
 Patil, Shri S. B.
 Patil, Shri S. D.
 Patil, Shri U. S.
 Patil, Shri Vijay Kumar N.

Patnaik, Shri Biju
 Periasamy, Dr. P. V.
 Pipil, Shri Mohan Lal
 Poojary, Shri Janardhana
 Pradhan, Shri Gananath
 Pradhan, Shri Pabitra Mohan
 Qureshi, Shri Mohd. Shafi
 Rachaiah, Shri B.
 Raghu Ramaiah, Shri K.
 Rahi, Shri Ram Lal
 Rai, Shri Narmada Prasad
 Rai, Shri Shiv Ram
 Raj Keshar Singh, Shri
 Rajan, Shri K. A.
 Rajda, Shri Ratansinh
 Ram, Shri R. D.
 Ram Deo Singh, Shri
 Ram Dhan, Shri
 Ram Gopal Singh, Chaudhury
 Ram Kinkar, Shri
 Ram Murti, Shri
 Ramachandran, Shri P.
 Ramalingam, Shri P. S.
 Ramamurthy, Shri K.
 Ramapati Singh, Shri
 Ramdas Singh, Shri
 Ramji Singh, Dr.
 Ramjiwan Singh, Shri
 Rao, Shri Jagannath
 Rao, Shri M. Satyanarayan
 Rao, Shri P. V. Narasimha
 Rathor, Dr. Bhagwan Dass
 Ravi, Shri Vayalar
 Ravindra Pratap Singh, Shri
 Reddy, Shri K. Brahmananda
 Reddy, Shri K. Obul
 Reddy, Shri M. Ram Gopal
 Rodrigues, Shri Rudolph
 Roy, Shri Saugata
 Sahoo, Shri Ainthu
 Sai, Shri Larang
 Sai, Shri Narhari Prasad Sukhdeo
 Saini, Shri Manohar Lal
 Saran, Shri Daulat Ram

Sarangi, Shri R. P.
 Sarda, Shri S. K.
 Sarkar, Shri S. K.
 Sarsonia, Shri Shiv Narain
 Satpathy, Shri Devendra
 Satya Deo Singh, Shri
 Sayeed, Shri P. M.
 Sen, Shri Prafulla Chandra
 Shaiza, Shrimati Rano M.
 Shakya, Shri Daya Ram
 Shakya, Dr. Mahadeepak Singh
 Shankaranand, Shri B.
 Sharma, Shri Jagannath
 Shastri, Shri Bhanu Kumar
 Shastri, Shri Ram Dhari
 Shastri, Shri Y. P.
 Shejwalkar, Shri N. K.
 Sheo Narain, Shri
 Shiv Sampati Ram, Shri
 Shrikrishna Singh, Shri
 Shukla, Shri Chimanbhai H.
 Shukla, Shri Madan Lal
 Sikander Bakht, Shri
 Singha, Shri Sachindralal
 Sinha, Shri C. M.
 Sinha, Shri H. L. P.
 Sinha, Shri M. P.
 Sinha, Shri Purnanarayan
 Sinha, Shri Satyendra Narayan
 Somani, Shri Roop Lal
 Somani, Shri S. S.
 Stephen, Shri C. M.
 Subramaniam, Shri C.
 Sudheeran, Shri V. M.
 Suman, Shri Surendra Jha
 Sunna Sahib, Shri A.
 Suraj Bhan, Shri
 Surya Narain Singh, Shri
 Swamy, Dr. Subramaniam
 Swatantra, Shri Jagannath Prasad
 Tan Singh, Shri
 Tej Pratap Singh, Shri
 Thorat, Shri Bhausaheb
 Tiwari, Shri Brij Bhushan

Tiwary, Shri D. N.
 Tiwary, Shri Ramanand
 Tripathi, Shri Madhav Prasad
 Tripathi, Shri Ram Prakash
 Tyagi, Shri Om Prakash
 Ugrasen, Shri
 Unnikrishnan, Shri K. P.
 Vajpayee, Shri Atal Bihari
 Varma, Shri Ravindra
 Vasisht, Shri Dharma Vir
 Venkataraman, Shri R.
 Venkatasubbaiah, Shri P.
 Verma, Shri Brijlal
 Verma, Shri Chandradeo Prasad
 Verma, Shri Hargovind
 Verma, Shri R. L. P.
 Verma, Shri Raghunath Singh
 Verma, Shri Sukhdeo Prasad
 Visvanathan, Shri C. N.
 Yadav, Shri Hukmdeo Narain
 Yadav, Shri Jagdambi Prasad
 Yadav, Shri Narsingh
 Yadav, Shri Ramji Lal
 Yadav, Shri Sharad
 Yadav, Shri Vinayak Prasad
 Yadawa, Shri Roop Nath Singh
 Yadvendra Dutt, Shri
 Yuvraj, Shri
 Zulfikarullah, Shri

NOES

Basu, Shri Chitta
 Bhagat Ram, Shri
 Bhattacharya, Shri Dinen
 Bhattacharyya, Shri Shyamaprasanna
 Bosu, Shri Jyotirmoy
 Burande, Shri Gangadhar Appa
 Chatterjee, Shri Somnath
 Das, Shri R. P.
 Dhondge, Shri Keshavrao
 Goswami, Shrimati Bibha Ghosh
 Joarder, Shri Dinesh
 Kisku, Shri Jadunath
 Lahanu Shidava Kom, Shri

Mandal, Shri Mukunda

Modak, Shri Bijoy

Mukherjee, Shri Samar

Patnaik, Shri Sivaji

Pradhan, Shri Amar Roy

Rangnekar, Shrimati Ahilya P.

Roy, Dr. Saradish

Saha, Shri A. K.

Saha, Shri Gadadhar

Sen, Shri Robin

MR. SPEAKER: After correction the result of the division is: Ayes 273, Noes 23. The 'Ayes' have it; the 'Ayes' have it. The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

The motion was adopted.

(Interruptions)

MR. SPEAKER: If any member wants to check up, he can do so.

SHRI C. M. STEPHEN (Idukki): I wanted to raise one thing which I raised last time also. The point is: 377A is the governing provision and under 377A.... Sir, I do not raise it.

MR. SPEAKER: Now is it the pleasure of the House to continue the discussion today or to continue it tomorrow?

SHRI C. M. STEPHEN: I would suggest that we continue and finish the Bill.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): We may complete it and the clauses may be put together.

MR. SPEAKER: Now we take up the amendments.

MR. B. C. KAMBLE—he is not here.

Shri Somnath Chatterjee.

SHRI SOMNATH CHATTERJEE (Jadavpur): I beg to move:

That for Amendment No. 5 made by Rajya Sabha, the following be substituted:—

Pages 13 and 14,—

for clause 45, substitute,—

'45. In article 368 of the Constitution, in clause (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no amendment shall be made which—

(a) seeks to make any change which, if made, would have the effect of—

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

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

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

(iv) compromising the independence of the judiciary; or

(b) seeks to amend this proviso." (2)

That for Amendment No. 6 made by Rajya Sabha, the following be substituted—

Page 14,—

for clause 47, substitute,—

'47. In the Seventh Schedule to the Constitution,—

(a) In List I—Union List, in entry 2A, after the words "any State" the words "only with the consent of the said State," shall be inserted;

(b) in List III—Concurrent List, after entry 25, the following proviso shall be inserted, namely:—

“Provided that Parliament shall not make any law with regard to any of the matters relating to this entry, unless requested by Resolution to that effect passed by the Legislature of not less than three fourth of the States.” (3)

MR. SPEAKER: Mr. Kamath, are you moving your amendments?

SHRI HARI VISHNU KAMATH: Sir, after your ruling, it is an unnecessary exercise.

MR. SPEAKER: So you are not moving.

SHRI SOMNATH CHATTERJEE: I have moved my amendment No. 2 to Clause 45 and amendment No. 3 to clause 47.

So far as clause 45 is concerned, it relates to amendment of the Constitution, which is Art. 368. There, we found how taking advantage of the amending power that was there in the original Constitution, the 42nd Amendment was brought about under the cover of the constitutional provision itself. We have seen how the 42nd Amendment was conceived, formulated and rushed through the Parliament with a view to institutionalise a ruthless dictatorship in the country under the garb of a democratic set up. The Members of this Lok Sabha are committed to the people of this country to remove the cancer from the body politic and to free the organic law of all the undemocratic and the anti-people provisions which were deliberately introduced by the 42nd Amendment. After the Lok Sabha elections, the verdict of the people was absolutely clear; the Janata Party went to the people with the vow to remove lock, stock and barrel the 42nd Amendment.

The party unnecessarily dragged its feet, tried to come to an arrangement with the perpetrators of the crime and with the good wishes of those people wanted to bring about a constitution amendment Bill and for that purpose waited more than a year allowing these authoritarian forces in the country again to regroup themselves and we find today the strange phenomenon of the people's clear verdict being mutilated and nullified by the other House where the members are not directly elected. The position is this that one cannot but view what was done to mutilate the Forty-fifth Amendment Bill as anti-people.

Sir, by the amendments which Rajya Sabha has made the seeds of authoritarianism are kept embedded in our Constitution to be nourished and nurtured by those authoritarian and totalitarian forces and to utilise them if they are able to get an opportunity again for which they are now waiting on the wings. Sir, it is our solemn duty that we should not allow those who had been responsible for taking away the people's rights, those who had perpetrated most heinous crimes against humanity and democratic traditions and values in this country, who ushered in an era of complete darkness and who kept people including Members of Parliament in detention without trial for no fault of their because their only crime was that they loved democracy and they opposed dictatorship to nullify the mandate of the people.

Sir, when during that regime people lost their right to life and liberty and emergency was proclaimed in this country not for the sake of the people but for one individual and her family, then it is our solemn duty to register our protest against the anti-people action taken by the Rajya Sabha. Sir, we feel that the Rajya Sabha had taken advantage of a temporary and artificial majority although that House has not been directly elected—though I do not mean any disrespect to any member. We found after Lok Sabha

(Shri Somnath Chatterjee.)

elections in 1977 that the State Assemblies in various States ceased to represent the wishes of the people and that was proved by the Assembly elections held in June 1977. That proved that the previous assemblies did not represent the wishes of the people any longer and the result was that new assemblies have been constituted and new governments have been formed but the Rajya Sabha which has been elected by the old assemblies have now stood in the way of the advance of the people towards restoration of their democratic rights. And, Sir, taking advantage of that those persons who have been guilty of all these have retained the power of amending the Constitution as in the Forty-second Amendment Bill, and we must register our protest. We submit, Sir, that if we are a party to this it will be a betrayal of the people of this country. (*Interruptions*)

SHRI B. SHANKARANAND (Chikodi) : Sir, I rise on a point of order. Whether comments can be made on the functioning of the Rajya Sabha in this House and aspersions can be cast on the functioning of the Rajya Sabha and the members of Rajya Sabha. I think the hon'ble Member has cast aspersions. That should be expunged from the record.

MR. SPEAKER : It is not a point of order. He has not mentioned anything objectionable.

SHRI B. SHANKARANAND : Mr. Speaker, can he cast aspersions on the functioning of Rajya Sabha? This House has no right. Please look into the record. (*Interruptions*)

MR. SPEAKER : I do not think the point of order is valid. No aspersion has been cast on Rajya Sabha.

SHRI SOMNATH CHATTERJEE : Sir, as an institution I have not said anything but that institution—a part of Parliament—has been utilised by some members of a particular politi-

cal party and some of their supporters. Therefore, I am entitled to say that. Therefore, Sir, my amendment is that at least so far as amending power is concerned under Article 368 there must be a check and a restraint. That cannot be allowed to be abused in the manner it was done. Therefore, at least in our wisdom I appeal to all the hon'ble friends, that my amendment with regard to 368 be adopted because let us find out whether hon'ble Members of the Rajya Sabha will have a re-thinking of their own on the basis of the fact that the Lok Sabha which represents the people of this country and which represents the latest views of the people of this country and we have seen it in Fatehpur and Samastipur that they have voted against authoritarianism, have rejected their amendment. Now, let us find out whether Rajya Sabha will reconsider the position and come in tune with the people's urges and aspirations. We know, Sir,.... (*Interruptions*)

MR. SPEAKER : Mr. Chatterjee, you have taken a lot of time.

SHRI SOMNATH CHATTERJEE : Therefore, Sir, our duty is to see that, as was said at the time of the Forty-second amendment of the Constitution that under the constitutional provision itself the amendment had been brought about, we undo that situation. We do not want to allow anybody to take the help of the constitution, to wreck the Constitution. The other important point (*Interruptions*)

SHRI A. BALA PAJANOR : Sir, you said that the pleasure of the House is to extend the time of the House. We want to know upto what time. It cannot be indefinitely. You please spell it out.

SHRI C. M. STEPHEN : Sir, the point is that we thought we could get the Bill through today. But if long speeches are attempted—I do not want to stand in the way of anybody making a point of it—then this being the

Constitution amendment Bill members have to be present for voting. We cannot keep it pending indefinitely. If anybody wants to make a point and reply will have to be given it looks like that, we may have to adjourn the House because we cannot remain that indefinitely long. (*Interruptions*)

MR. SPEAKER: He will take another two minutes.

SHRI SOMNATH CHATTERJEE: Sir, after all this is an amendment to the Constitution. (*Interruptions*) As regards the Centre-State relations which have been upset, even the limited powers of the State which were upset by the Forty-second amendment and which this House in its wisdom restored that has been upset by the Rājya Sabha. (*Interruptions*)

MR. SPEAKER: The question is:

That for Amendment No. 5 made by Rājya Sabha, the following be substituted:—

Pages 13 and 14,—

for clause 45, substitute,—

'47. In article 368 of the Constitution, in clause (2), after the proviso, the following proviso shall be inserted, namely:—

"Provided further that no amendment shall be made which—

(a) seeks to make any change which, if made, would have the effect of—

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

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

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

(iv) compromising the independence of the judiciary; or

(b) seeks to amend this proviso."'
(2)

The motion was negatived.

MR. SPEAKER: I will now put Amendment No. 3 of Shri Somnath Chatterjee to the vote of the House.

The question is:

That for Amendment No. 6 made by Rājya Sabha, the following be substituted:—

Page 14,—

for Clause 47, substitute,—

'47. In the Seventh Schedule to the Constitution,—

(a) In List I—Union List, in entry 2A, after the words "any State" the words "only with the consent of the said State," shall be inserted;

(b) in List III—Concurrent List, after entry 25, the following proviso shall be inserted, namely:—

"Provided that Parliament shall not make any law with regard to any of the matters relating to this entry, unless requested by Resolution to that effect passed by the Legislatures of not less than three-fourth of the States." (3).

The motion was negatived.

MR. SPEAKER: Both these amendments of Shri Somnath Chatterjee are lost.

Now, shall I put the clauses to vote? It is only putting to vote, nothing more than that.

AN. HON. MEMBER: No speeches.

SHRI RAVINDRA VARMA: I would request the hon. Leader of the Opposition to agree to sit for a few more minutes so that the clauses may be disposed of.

MR. SPEAKER: It will take more than 45 minutes.

SHRI RAVINDRA VARMA: Let us complete the voting.

MR. SPEAKER: You may not have the quorum.

SHRI C. M. STEPHEN: You are not going to get that number.

SHRI A. BALA PAJANOR: It was decided that everything will be over today. That is the consensus in the B.A.C. and in the House also. I wish that you take an upper hand and control the timing and finish it up today itself.

MR. SPEAKER: All right. I will now put Rajya Sabha Amendment No. 1 regarding insertion of 'New Clause 7A' to vote.

Division now.

Let the lobbies be cleared.

The lobbies have been cleared.

Now, Mr. Minister, you can make up your mind whether it cannot be taken up tomorrow.

(Interruptions)

I am very much doubtful whether you have got the required number.

SHRI RAVINDRA VARMA: Please take it up tomorrow, the first thing after the Question Hour.

(Interruptions)

MR. SPEAKER: Now, the lobbies have been cleared. Both the Minister for Parliamentary Affairs and the Leader of the Opposition think that the matter may be taken up tomorrow. So.....

(Interruptions)

Therefore, we shall take it up the first thing tomorrow after the Question Hour. The House now stands adjourned to meet tomorrow at 11 A.M.

18.23 hrs

The Lok Sabha then adjourned till Eleven of the Clock of Thursday, December 7, 1978/Agrahayana 16, 1900 (Saka).