PRICE CONTROL BILL*

DR. KARNI SINGH (Bikaner) : I beg to move for leave to introduce a Bill to control the prices of all essential consumer articles.

MR. DEPUTY-SPEAKER : The quetion is :

"That leave be granted to introduce a Bill to control the prices of all essential consumer articles."

The motion was adopted.

DR KARNI SINGH : I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL*

(Amendment of articles 19 and 39)

DR. KARNI SINGH (Bikaner) : I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

DR. KARNI SINGH : I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL*
(Amendment of Eighth Schedule)

SHRI RATTANLAL BRAHMAN (Darjeeling) : I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. DEPUTY-SPEAKER : The question is :

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The Motion was adopted.

SHRI RATTANLAL BRAHMAN : I introduce the Bill.

15.34 hrs.

CONSTITUTION (AMENDMENT) BILL—*Contd.*

Amendment of article 141 and insertion of new article 143A, etc.) by Shri C.M. Stephen.

MR. DEPUTY-SPEAKER : The House will now take up further consideration of the Constitution (Amendment) Bill moved by Shri Stephen. Out of the two hours allotted for the Bill only 9 minutes have been taken and 1 hour 51 minutes are left Shri Stephen will continue his speech.

SHRI C. M STEPHEN (Muvattpuzha) : Mr. Deputy-Speaker, on the last occasion I was trying to spell out the general considerations which persuaded me to move for the consideration of this Bill. Before I pass on to the clauses, there are one or two things that I want to say

As I was trying to explain last time, the Constitution itself considers the law bearing on the Constitution as a class apart, so much so that article 145(3) says :

"The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143 shall be five :"

That shows the approach of the fathers of the Constitution to any issue involving the interpretation of the Constitution or constitutional law, that it is a very important law, a class apart, which has got to be treated with special emphasis and with special precautions.

Now I am endeavouring to sub-divide this constitutional law. The general law bearing on the interpretation of any constitutional law is one thing, but there is another class of law arising from the inter-

*Published in Gazette of India Extraordinary, Part II, section 2, dated 30.3.72.

pretation of the Constitution, which involves a clash of opinion between the legislature and the judiciary in the matter of the stand that the respective bodies take on interpretation ; that is, the law coming up for challenge under article 13 of the Constitution. Those cases, where the judiciary is asked to consider the validity of any law on the ground that it runs counter to the stipulation of article 13, must be considered as another class which is much more important.

As I said last time, when Parliament or the Legislature passes a law, it is presumed to have taken into consideration the question as to whether the law which it is passing does or does not contravene the provisions of article 13 ; that is to say, whether it contravenes any of the fundamental rights It interprets that law to itself It interprets the provisions in Chapter III -Fundamental Rights and satisfies itself that there is no contradiction. Having interpreted to itself the concerned law, it passes a law. Then, it goes to the Supreme Court. The Supreme Court, in exercise of its functions, proceeds to interpret the law in its own sphere.

My argument is that Parliament in the process of enacting a law is discharging a constitutional function of interpreting the law to itself and satisfying itself that there is no contradiction. The Supreme Court, when considering the law, does another interpretation and tries to satisfy itself whether it has contravened article 13. Two supreme bodies come to or are apt to come to two different conclusions. Under such circumstances, is it enough that the Supreme Court disposes of this matter, as it does, by a mere interpretation of a particular constituttional provision ? According to me, it is not enough. Therefore, I attempt through this Bill to consider any law, which is sought to be struck down as contravening article 13, as a class apart for which special provisions have got to be made.

I shall now take the Bill clause by clause. I would begin with clause 5 of my Bill. Clause 5 seeks to incorporate a new article after article 226. I am dealing in this clause with the functions of the High Court. The position now is that if the Supreme Court considers a question of Constitution, the Constitution says that it shall be done by a bench of five Judges ; but if the validity of a law is challenged before the High Court, under the rules now prevailing in many of the High Courts, a single member bench can sit in judgment and strike down the law. The absurdity is very evident. Whereas the Supreme Court is asked to constitute a special bench for the purpose and decide it, the High Court, in its jurisdiction, can constitute a single member bench which will hear it and which can strike it down, whether it is an Act of the Legislative Assembly or of Parliament. Acts of Parliament can also go before the High Courts. Even the Constitution (Twenty-fourth Amendment) Act can go before a single member bench of a High Court. That is what the present law is. If nobody takes it in appeal, that is the final thing. That vitiates the entire scheme of things of constitutional law in the country.

What is happening is that very basic laws, which grapple with fundamental social questions of the country, like agrarian reforms and many other fundamental questions, are struck down by a single member bench sitting in judgment. The contradiction is evident and I am now seeking that this absurdity must be removed. Since the the Constitution says that there must be a special bench of five in the Supreme Court to consider such constitutional law, all that the High Court can do is to look into it, hear it and form its own opinion, but that cannot be the final opinion. There must be a reference to the Supreme Court and the Supreme Court alone must be competent to say finally whether that is or is not valid. That is all that I am asking.

I do not want to elaborate on this, I have already explained the rationale behind this provision. The Supreme Court alone should be the castodian of this particular branch of law; the Supreme Court alone must finally say, whether or not the law passed by the legislature is valid or not. Because the clash is between the supreme legislature of the country and the supreme judiciary of the country. The Supreme Court alone must have the competence to say about the validity of a law. Otherwise, there are obvious contradictions

[Shri C.M. Stephen]

The constitutional law is being violated. The fundamental reform actions and revolutionary actions which have got to take place are just altered by a cantankerous action by any single judge. That should be obviated.

Now, I come to article 145A which deals with the case of a law being sought to be challenged on the basis that it contravenes article 14. My submission is that the Bench to be constituted must be a larger Bench than the one contemplated under article 145A(3). Article 145A (3) deals with ordinary interpretation of question of law and, for that, the Consititution says, five Judges, I am suggesting that when under article 13 a law is challenged, the Bench must be consituted of nine Judges and, in the matter of constitution of the Bench, the President of India must have a vioce. The President of India also is a guardian of the Constitution. The minimum should be ninc Judges but the President can say that there should be more Judges.

It can be a larger Bench in accordance with the importance of law before it. When that Bench is constituted, I further say:

> "Provided that the Judges to be appointed to the Bench may include Judges eligible for appointment under articles 127 and 128."

Under articles 127 and 128, how the Judges of the Supreme Court can be called upon for a particular purpose is provided. The best legal talent all over the country can be selected and a Bench constitued. That Bench will be constituted by the Chief Justice. I am not suggesting that the President of India may constitute the Bench. But the President of India must be consulted. The President of India must be consulted and, in concurrence, a Bench must be constituted.

Now, there, it should not be a simple majority, a mere majority. We take a mere majority for granted. But the judgment by mere majority does not automatically, logically follow. It is there by a provision of the Constitution.

The provision under article 145 of the Constitution says:

> "No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion."

Therefore, what I am submitting is that the judgment of the court is to be by the majority is not by the general law, is not as a mere ordinary logic, but it is enjoined by a particular provision of the Constitution. If it can be a majority, it can also be a larger majority. For example, to amend the Constitution, it is enjoined on us that there must be a two-thirds majority. That is what is specifically enjoined on us. If it is an ordinary, it is not a two-thirds majority. If it is an amendment of the Constitution, it is a two-thirds majority. In the same way, to strike down a law which is passed by the legislature of the country, it shall not be by a mere majority. It must be by a two-thirds majority.

What happened in the Golak Nath case ? It must be a warning to us. There was a judgment given by the Constitution Bench of the High Court by an absolute majority in the first place, and then by a simple majority. A precedent is established by two successive judgments. That judgment is invalidated by what is known as an inherent jurisdication of the Supreme Court to go back upon the decision of the previous Bench.

And that is struck down by a single majority! One additional judge sitting in a Constitution Bench, a majority of one, has done havoc, and the progress of the country has been held up. I do dot say that the Supreme Court must not or must pass a judgment like that. What I am saying is that there must be ample precaution for that. It shall be by two-third majority. If, by two-third majority, in a Bench constituted in consulation with the President a decision

is taken that the law passed by the supreme legislature of the country is invalid, we accept. The only things is that there must be sufficient precaution. Let it not be by a simple majority; let ue not take any chance. That is the spirit and purpose with which I have moved that it must be by a two-third majority. That is then principle of article 145A. This is what I want to say:

> "No judgment shall be delivered by the Constitution Bench of the Supreme Court adjudging any law as constitutionally void, save with the concurrence of two-thirds of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge, who does not concur, from delivering a dissenting judgment."

There is another clause, article 143A, new clause which I am seeking to bring in. The clause is that if, at any time the President of India feels that a judgment has been pronounced by some court in the country which is *prima facie* wrong constitutionally, then the matter shall not be allowed to rest there. Now the position is this : suppose somebody goes to High Court, somebody passes a judgment; a Constitutional proposition is put forth; and that man does not take up in appeal, because for an appeal to be given there are certain provisions; and if he does not take up in appeal; then that becomes a part of law precedent. And that vitiates the stream of Constitutional law of the conutry. That ought not to be done. The guardian of the Constitution, the President of India, must have the power and the jurisdiction to be on the look-out as to whether the Constitional law of the country is being vitiated. If he is satisfied that a wrong decision has been given, then he is not given the power to veto it, but he is given the power to take up the matter and refer it to the Supreme Court and asked the Supreme Court to decide on that particular question; he can say, "I have got my doubts as to its validity; you are asked to decide on this." In this, I do not want a two-third majority; I want a simple majority because it is not a question of striking down a law; it is an interpretation of the Constitutional provision. When interpretation of Constitutional provision comes, article 143A comes; a Constitutional Bench will be constituted and by a simple majority they can decide whether the law propounded by the court is correct or not. If the Supreme Court also pronounces on a Constional question under Article 143 and if the President feels that it is wrong, he must have the jurisdiction to offer it back to the Supreme Court and ask them to constitute a Special Bench for that; a Special Bench must concider it and finally pronounce what the law or the question must be. This is only to keep the stream of Constitutions law clean because that is a very fundamental law. Why is it fumdamental ? It is accepted throughtout that the priniciple of precedents does not apply to Constitutional law. American law takes up that position; the Indian law takes up that position. They say that where there is a written Constitution that prevails and not what the Bench said. Therefore, whatever is the decision of thn previous Bench, they go ahead on their owe opinion on the case before them because it is a fundamental law. If it is a fundamental law, the fundamental law must be kept clean and clear, and no judge must be permitted to tamper with it and vitiate it. The guardian of the Constitution, the President of India, must have the jurisdiction to be on the guard that the Constitutinnal law is not vitiated.

One more provision I have added and that is an amendment to article 141. That is only re-statement of the law as it is now. Regarding the law as propounded by the Supreme Court, the judgment, wherever there is a Contsitutional question, we are not bound by what the other judge said. I want to put it beyond any doubt so that even Golak Nath case may not be cited by anybody. It need not be the law of the land. As it is it can be looked back upon. Therefore, I say:

> "Provided that it shall not be binding on the Constitution Bench of the Supreme Court which may be constituted from time to time under articles 143A and 145A."

As it is. although we have passed the Constieutional Amendment Bill, ths fact remains that according to Art. 141 the judgment delivered by the Supreme Court is the law of the land and that law is binding on every subordinate Judge in the court. We have now passed the 24th Amendment to the Constitution. If the 24th Constitutional Amendment goes straight to the Supreme Court, the Supreme Court can have a

[Shri C.M. Stephen]

stsaight look at it Therefore, suppose an Act is passed by some legislature in contravention of Art. 13 and suppose that is taken up before the High Court of a particular State, the High Court is bound not by the law we passed but by the law laid down by the Supreme Court under Art. 141 because the law says that the law laid down by the Supreme Court is the law of the land and shall be binding on every court in the country and the Supreme Court has said by giving an interpretation that it does not come within the defimtion of law, it a clause That is the danger now Therefore, I submit that Art 141 itself must be amended and I say that any constitutional decision given by the Supreme Court is not the law of the land Every case that is coming up may be looked at afresh and that is the purpose of the amendment I am ceking

SHRI N K SALVI (Betul) The law laid down by the Supreme Court is final and you cannot amend it

SHRI C. M STEPHEN What I am saying is provided that it shall not be binding on the Constitution Bench of the Supreme Court. That is what I said

This is already covered by the 24th Constitution Amendment Bill That is to say, whatever be the authority to amend the Constitution, you can modify in accordance with the procedure laid down in clause (2) This was introduced or moved before we passed the 24th Amendment Bill But here, I take a separate stand about it According to me, the word 'Bill' means the 'Constitution'. The stand taken by th Supreme Court is that any amendment of ...e Constitution is a law. Any amendment, any Act of amendment to the Constitution is a law It is on that basis that they said that this Act, which you are enacting is a law under Art 13 and 'therefore, we have the jurisdiction to consider whether this law contravenes the provisions of the Fundamental Rights'.

Now, I want that the word 'Bill' be removed and in that place 'Resolution' may be substituted I want for the words "only by the introduction of a Bill for the purpose in either House of Parliment", the words "by movmg in either House of Parliament a resolution with the terms of the proposed amendment specifically stated therein" shall be substituted This is only to take the wind out of the argument of the Supreme Court that any amendment to the Constitution is also ordinary law and it is hit by Art 13. Therefore, I have sought to remove the word 'Bill' and instead I have sought to put in the word 'Resolution'. That is; it is a constituent act and not a legislative action By a constituent action it may be carried Therefore, Art 13 will not be hit Anyway, the 24th Amendment Bill has been passed by us and that is on the statute book Therefore, that is not very serious, and amendment to Art 141, as I submitted, is only a restatement of the position that the Supreme Court has already taken This is also not very vitally important, according to me. Therefore, I request the Minister to accept that this Article must be looked into very seriously even for the purpose of seeing that the constitutional scheme is not vitiated and also to see that the High Court does not tamper with the laws which are passed by the State legislatures or the Parliament and to ensure that the Supreme Court again as a normal function cannot take it up and strike it down by a special majority and that the verdict of the spreme Parliment must not be tampered with

With these words, I move this Bill for the consideration of the House

श्री कमल मिश्र मधुकर (केसरिया)

उपाध्यक्ष जी, माननीय स्टीफेन साहब जो बिल लाए है उसके जरिए हाल मे उठे विवाद को हल करने की उन्होंने अपने तई प्रयास किया हैं—इस विवाद को कि लेजिसलेचर बडा है या जुडिशियरी बड़ी है। कुछ ऐसे जजमेन्ट्स हुए हैं सुप्रीम कोर्ट के जिनसे यह विवाद खड़ा हो गया है कि संविधान की व्याख्या का अंतिम अधिकार किसके हाथ मे हैं। मैं समझता हूं स्टीफेन साहब जो बिल लाए हैं उसमें इस बात की भूल की है कि पूंजीवादी समाज मे अन्तर्विरोध रहता है, वैचारिक अन्तर्विरोध विभिन्न रूपों से और विभिन्न धारणाओ से होता है जिसका एक रूप यह भी है। इस बिल में वे प्रेसीडेन्ट को पावर दे रहे हैं, सुप्रीम कोर्ट को कुछ नयी पावर

दे रहे हैं तथा कांस्टीट्यूशन बैंच का कैसे निर्माण हो उसका विधान बताया है तथा यह भी बताया है कि संवैधानिक प्रश्न जो खड़े हों उनका निर्णय कैसे लिया जाये।

15.50 hrs.

[SHRI K.N TIWARY IN THE CHAIR.]

सभापति महोदय, बुनियादी बात यह है कि पूंजीवादी समाज मे जो अन्तर्विरोध रहते है उनकी अभिव्यक्ति कई तरह से होती है बल्कि आज कल तो अपने देश में यह सवाल पैदा हो चला है कि गवर्नर के अधिकार कम है या गवर्नर के अधिकार अधिक है, सुप्रीम कोर्ट के अधिकार कम है या अधिक है। यह सारा विवाद जो पैदा होता है वह इसलिए पैदा होता है कि पूंजीवादी समाज अपने अन्तर्विरोधो को हल नही कर पाता है। उस अभिव्यक्ति को उन्होने यहां पर हाईलाइट किया है और यह एक अच्छा काम किया है लेकिन जो सुझाव है वह मानने के लायक नहीं मालूम पड़ रहे है। उन्होंने कहा है :

> If at any time it appears to the President that a decision by the Supreme Court, otherwise than by the Constitution Bench, or by any High Court, on a question of law as to the interpretaation of the Constitution, requires futher judicial consideration, the President may refer the question to the Supreme Court for hearing and decision by a Constitution Bench of the Supreme Court to be constituted as provided for in Article 145A.

यानी प्रेसीडेन्ट को ऐसा लगे। परन्तु आज देश की हालत यह है कि जो कानून है, जो संविधान है, जो न्यायपालिका है वह आम लोगों को लिए नहीं है। नतीजा यह होता है कि जो सम्पत्ति वाले लोग हैं, जो प्रभाव वाले लोग हैं वे लोग ही हाई कोर्ट अथवा सुप्रीम कोर्ट तक जा सकते हैं। जो जजमेन्ट्स होते हैं या संविधान का जो प्रश्न हैं इन प्रश्नों को हल करने के लिए क्या मेथड हो उसका कोई हल नहीं बताया गया है। इन्होंने यह नहीं बताया है कि वह कौन से रास्ते होंगे जिनसे प्रेसीडेन्ट को ऐसा अपीयर हो। इन्होंने यह भी नहीं बताया है कि संविधान में जो बिल इन्होंने पेश किया है संशोधन के लिए, जहांतक सम्पत्ति का अधिकार है जैसा कि गोलकनाथ केस का इन्होंने उदाहरण दिया वहां तक मान्य हो सकता है या सामान्य अधिकारों पर भी लागू होगा इस बात की सफाई भी नही की है। मैं समझता हूं जहां तक सम्पत्ति के अधिकार का प्रश्न है संविधान में जो संशोधन लाया गया है, जिस को पार्लियामेंट ने पास कर दिया है, उस से समस्या का हल बहुत हद तक हो जाता है और आगे भी कुछ संशोधन लाये जा सकते है। इस में सम्पत्ति के अधिकार को बुनियादी अधिकार न मान कर उस को समाप्त करने की बात की जानी चाहिये। जहां तक दूसरे प्रश्न का सवाल है वहां पर भी यह संशोधन लागू होगा, इस बात की व्याख्या नहीं की गई है। वैसे ही आज तक इस बात पर एक गलत नोशन के जरिये पूंजीवादी समाज गाइड होता है, वह इस तरह से कि ज्यूडिशरी बिलकुल पवित्र है, जब लोग तमाम आलोचनाओं से ऊपर हैं। वे ऐसे लोग हैं जिन पर आलोचना का प्रश्न नहीं उठता, परन्तु स्थिति यह है चाहे अमरीका हो, इंग्लैंड हो या हिन्दुस्तान हो, जज लोग भी अपने क्लास करेक्टर से ऊपर नही होते हैं। उन के जजमेंटस जो होते हैं वह, उन का जो दृष्टिकोण बना होता है, जो चरित्र बना होता है, उस से लगातार प्रभावित होते हैं। तो होता क्या है, इस का हल क्या है? इस को आप को सोचना चाहिए कि जब आप ने अपने देश में समाजवादी लक्ष्य की घोषणा की है, तो समाजवादी मुल्कों में जजमेंट कैसे होता है, जजों की नियुक्ति कैसे होती है, क्या फैसले होते हैं, ऐसे विवाद खड़े

[श्री कमल मिश्र मधुकर]

होते हैं या नहीं होते है, इन बातों का भी हवाला देना चाहिए था। अब उन्होंने नहीं दिया। मालूम पड़ता है कि आज उन के लिए आदर्श अमरिका, इग्लैंड आदि देश ही रहे गये हैं और इन्ही के जूडिशियल सिस्टम पर पेबेन्द लगाने की कोशिश की गई है। इन बातो की तरफ इन्होंने ध्यान नहीं दिया है। मैं चाहूंगा कि स्टीफन साहब इस प्रश्न को हल करें कि समाजवादी अर्थ-व्यवस्था के अन्दर, समाजवादी संविधान के अन्दर जब ऐसे विवाद खड़े होते हैं तो उन का निरूपण कैसे किया जाता है। मैं समझता हू कि अगर वे इस से शिक्षा लेंगे तो फिर ऐसा बिल लाने की जरूरत न पड़ती क्योंकि यह एक काम्प्रीहैसिव चीज है और इस मे पेबन्द लगाने से काम चलने वाला नही है। काम्प्रीहैसिव दृष्टिकोण से वे इन तमाम चीजो को देखें। इस लिहाज से संविधान के समझने में उन से भूल हुई है। बात यह है कि अगर ऐसा विवाद खडा होता है तो वह इसलिए होता है कि यह सुप्रीम कोर्ट के जज या हाई कोर्ट के जज अपने दृष्टिकोण को या आउटलुक को भूले नही है। अगर वे इन को देखते तो यह समस्या आप से आप सुलझ जाती। आवश्यकता इस बात की है कि आज जूडिशियरी मे आने वाले लोगो की, नये केडर की नियुक्ति कैसे की जाए, उन्हे कैसे बदला जाए। इन मे श्रम के महत्व को समझने वाले लोगो को लिया जाए। अगर ऐसा होगा तो ऐसे विवाद खड़े नही होगे। इसलिए यह जरूरी है कि यह जो आप ने संशोधन रखा है, तो संशोधन लाने मे आप को ध्यान देना चाहिए कि आप के राष्ट्र का सामाजिक लक्ष्य क्या है, आप को ध्यान रखना चाहिए कि उस लक्ष्य की पूर्ति की दिशा मे कैसे जूडिशियेरी को ठीक किया जा सकता है, उस की रचना कैसे कर सकते हैं, जजो की नियुक्ति कैसे कर सकते है, उन के कैरेक्टर को कैसे बदल सकते है। इन समस्याओ को हल करने की दिशा में अगर आप संशोधन लाते तो स्वाभाविक था कि इस के जरिये से यह समस्या भी हल हो सकती थी। आप ने इस बात का विचार नहीं किया है कि पूजीवादी कास्टीट्यूशन के अन्दर कुछ कठिनाइया पैदा होती है और जो पेबन्द लगाये जाते है उन से फिर वही समस्याएं पैदा होती है। इसलिए जिस उद्देश्य की पूर्ति के लिए यह संशोधन लाया गया है उस ध्येय की पूर्ति इस से नही हो रही है और इस वास्ते हम को इसे मानने मे कठिनाई है यद्यपि आप की नियत ठीक है और वह प्रशसनीय है और मैं उस की तारीफ करता हू। लेकिन मेरा कहना है कि आप की जो नियत है, उस की पूर्ति के लिए जो संशोधन लाया गया है, वह जहा तक मैं समझ पाया हू, उस को पूरा नही करता है। मैं कोई संविधान का पंडित नहीं हू लेकिन जो कुछ मै समझ पाया हू और जो मैंने संशोधन का पढ़ा है उस मे जो आप का जूरिस्ट्स का सुझाव है वह मेल नही खाता है और उस से उस उद्देश्य की पूर्ति नही होती है। इसलिए इस बिल को नहीं मानना चाहिए।

श्री राम रतन शर्मा (बादा) सभापति जी, यह कान्स्टीट्यूशन एमेंडमेंट बिल नं० 94 आफ 1971 जो लाया गया है इस के बारे मे मैं कुछ रचनात्मक सुझाव प्रस्तुत करना चाहता हू। इस एमेंडमेंट के सेक्शन 1 मे कुछ डेफिनीशन्स हैं लेकिन सेक्शन 2 जो है उस मे आर्टिकल 141 आफ दि कास्टीट्यूशन में स्टेफिन साहब एक प्रोवीजो जोडना चाहते है। प्रोवीजो इस प्रकार है :

> "Porvided that it shall not be binding on the Constitution Bench of the Supreme Court which may be constituted from time to time under articles 143A and 145A".

मेरा कहना यह है कि आर्टिकिल 141 जो है वह अपने मे बिल्कुल साफ है और इस से स्टेफिन साहब का कोई मतलब हल नही होता है।

"The law declared by the Supeme Court shall be binding on all courts within the territory of India".

'कोर्ट्स' से यहां मतलब 'कोर्ट्स सबोर्डिनेट टू दि सुप्रीम कोर्ट' से है। आप भी यही सेविंग करना चाहते हैं कि कांस्टीट्यूशनल कोर्ट की जो बेंच होगी उस के निर्णय की सेविंग इस मे होनी चाहिए लेकिन क्योंकि सुप्रीम कोर्ट के जजमेंट की सेविंग इस मे है, इसलिए सुप्रीम कोर्ट की कांस्टीट्यूशन बेंच की सेविंग की आवश्यता नही है। सुप्रीम कोर्ट अपने जजमेंट को फिर से देख सकता है और अगर मामला रेफर होता है तो उस जजमेंट के खिलाफ डिसिजन दे सकती है। यह आज तक की पद्धति चली आई है। इसलिए मेरा विचार है कि यह सब क्लाज व्यर्थ है और इस की कोई उपयोगिता इस एमेंडमेंट के अन्तर्गत नही है। मेरा अध्ययन य है कि इस को ध्यान मे नही पढा गया है। इसलिए यह प्रोवीजा इस आर्टिकल के अन्दर जोडा गया है। अभी मेरे लायक दोस्त जब इस बिल की आलोचना कर रहे थे तो उन सारी बातो को उन्होंने कहा है, समाजवाद के बारे मे कहा है लेकिन क्योंकि यह एक कास्टीट्यूएनेलिटी का मेटर है, मैं उन सब बातो मे नहीं जाना चाहता हू।

आप ने इस म एक मजोरिटी की बात कही है कि दो-तिहाई मेजोरिटी होनी चाहिए। इस के लिए उन्होने कहा कि बेंच को कास्टीट्यूट करने के लिए पाच जज जो अभी होते है ती कम से कम 9 जज होने चाहिए। अगर दो-तिहाई का बहुमत नही होता है तब क्या जजमेंट नही होगा ? तब क्या वह नही होना चाहिए ? इस बात को जब कास्टीट्यूशन बनाया गया था तो अच्छी तरह से मसा गया था और यह बताया गया कि बहुमत एक जज का काफी है। अगर 9 जज आप बनवा देंगे तो 9 में से 5 डिसाइड करते हैं तो यह बायड है और अगर बायड है तो इस के बाद क्या फिर कांस्टीट्यूशन बेंच कास्टीट्यूट होगी और अगर वह पाती है कि नहीं तो इस को ठीक से नहीं देखा गया है और वह निर्णय अगर कानून के खिलाफ जाय तो उस को फिर देख सकती है और इस के खिलाफ फैसला दे सकती है। इस लिए जजों की संख्या बढाना ठीक नहीं। आज आप 9 कहते हैं कल को किसी की विद्वम मे आता है कि नही 11 होने चाहिए और फिर 15 की बात कही जाएगी और फिर 25 की बात कही जाएगी। इसलिए जो एगजिस्टिंग प्रोवीजन्स है कांस्टट्यूशन मे उन्हीं को रहना चाहिए और मैं इस से सहमत नही हूं कि कास्टीट्टीयूशन बेंच के लिए सख्या 9 या 11 कर दी जाए क्योंकि इस से कोई परपस हल होनेवाला नही है। इस मे यह लिखा है:

'No judgment shall be delivered by the Constitution Bench of the Supreme Court adjudging any law as constitutionally void save with the concurrence of two thirds of the judges present .."

इस मे हो सकता है कि मेरा कहना गलत हो या फिर स्टीफन साहब का सोचना गलत है, कि सुप्रीम कोर्ट का जजमेंट या किसी भी कोर्ट का जजमेंट ला माना जाता है। उस को अलग से कास्टीट्यूशनल सेंक्शन देना और उस के लिए अलग से प्रोवीजन करना, मेरी समझ में उचित नही है। इस तरह से इस इनेक्टमेंट को देखते हुए और इस का अच्छी तरह से अध्ययन करने से कुछ ऐसा लगता है कि इस संविधान मे यह जो इन का एमेंडमेंट है, यह कोई चीज जोड़ नही रहा है, जो चीजें संविधान मे हैं, उन्ही को यह जरा स्पष्ट कर रहा है और इस तरह के प्रोवीजन्स वहा पर एगजिस्ट करते है। और उनको घुमा फिराकर दूसरी तरह से कह रहे है। अगर वास्तव मे वह को चीज चाहते है, कोई अच्छी बात संविधान में जोड़ना चाहते हैं, जनता को फायदा पहुंचाना चाहते हैं तो श्री स्टिफंज को चाहिये कि कोई कम्प्रिहेंसिव बिल इस तरह का लाएं जिसमें जो प्राविजंज संविधान की हो उनको या तो एक तरफ करें या फिर

[श्री राम रतन शर्मा]

एक बिल्कुल नई चीज़ लाएं ताकि जनहित हो। मैं समझता हूं कि इस एमेंडमेंट में कोई नई चीज नहीं है जो संविधान में न हो और संविधान में वह कोई एमेंडमेंट भी नहीं करना चाहते। कोई चीज़ जोड़ना चाहते हैं। इसलिए मैं इस एमेंडमेंट का समर्थन नहीं करता।

SHRI DINESH JOARDER (Malda): Mr. Chairman, Sir, this Bill has been introduced by C. M. Stephen, and in his earlier speech a few days ago, he himself stated that since the Constitution (24th Amendment) Bill has been passed and adopted by this Parliament the main purpose of introducing this Bill has been served. Even then, there are some other provisions in this Bill wherein the functioning of the Supreme Court aud in certain cases the High Courts has been dealt with or taken into consideration. This Bill envisages that from time to time a constitution Bench should be formed to dispose of new cases or some matters wherein the Constitutional laws are involved or fundamental rights are involved. This Constitution Bench should be formed according to certain procedure as have been laid down in this Bill. But even before accepting the provisions of this Bill, the Supreme Court has already been forming Constitution Benches from time to time for disposing of such matters; particularly in the Golaknath case, a Constitution Bench was formed to dispose of that matter, and therefore it is needless that a particular provision should be made for forming a Constitution Bench to dispose of such matters.

Secondly, in clauses 3 and 4 of the Bill, seeking amendments to article 143A and article 145A respectively, the President and not Parliament has been given the power to interfere in the judgments passed by the Supreme Court and the high courts. In the Constitution (24th Amendment) Bill, it has been once again re-established that Parliament is the supreme law-making body and it can amend the Constitution in whatever manner it likes. The supremacy of Parliament has been re-established by the Constitution (24th Amendment) Bill, but in this Bill the President has been given the power to interfere in the judgments passed by the Supreme Court or the high courts from time to time as he would think it necessary.

Again, by clause 5 of the Bill, article 226A is sought to be inserted in the Constitution by which the independence of the high courts in the matter of dealing with fundemental rights or declaring them as void in law as contravening the fundamental rights of the citizens is interfered with. That has also been curtailed and impaired. According to this Bill the High Court shall have to refer such matters to the Supreme Court, which in turn will constitute a Bench and unless the decision is arrived at by two-third majority the decision of the High Court shall have no effect. That means that the independen t character of the High Court in dealing with Fundamental Rights has been curtailed.

Again, according to this Bill the Constitution Bench should decide the matter by two-thirds majority where the validity of the law under article 13 is involved. If this Bill is passed, a lot of complications will arise. For instance, a judgment given by a simple majority of the Constitution Bench on a Bill shall have no effect; the simple majority opinion of the judges will have no value.

What do we see in practice In our country ? Laws are passed by simple majorities in Parliament or State Assemblies. Election result are decided by simple majority. Every political decision is taken by simple majority. Hence the provision for two-thirds majority made in this Bill is self-contradictory. According to article 141 (a) the decision of the Supreme Court on a law passed by Parliament shall be binding on all concerned. It appears that this Bill wants to place the Constitution Bench of the Supreme Court above the Supreme Court itself.

Apart from controlling the functions and powers of the Supreme Court or High Court, there are laws already passed. There are laws regulating the fate of our toiling masses, agrarian laws, labour laws and similar laws that are already passed by Parliament and State Assemblies. They have not yet been given effect to seriously and sincerely. There is the struggle of the millions of peasants. The workers are being suppressed by the ruling party. It is necessary that those laws should be given effect to, and the Ninth Schedule along with article

31B should be amended, instead of controlling the powers and functions of the Supreme Court and the High Courts. So, I would humbly suggest to the mover of the Bill that he should not press it at the moment.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI NITIRAJ SINGH CHAUDHARY): On 27th February, 1967, the Supreme Court decided the case popularly known as the Golaknath case. How that decision agitated the mind of the people of this country is proved by this Bill. The Mover of the Bill has said that it is that decision which prompted him to bring forward this Bill. The affect of the decision has been nullified by the Twentyfourth Constitution Amendment Bill, and I had hoped that since that is now on the statute-book and the Twentyfifth Constitution Amendment Bill has also been passed, the Mover would allow this to lapse, but surprisingly he has persisted in moving it and has given reasons for doing the same. I will try to reply to the points raised by him.

By Clause 2 he wants to add a proviso to article 141. He has admitted that he is only trying to make a re-statement of the present position. After this admission, I think he would agree that no such re-statement is necessary. The present position is very clear, and we need not try to complicate it by adding certain things which may subsequently be taken up for interpretation and so many things may be said about it.

By Clause 3 he wants to add article 143A, and by Clause 5 he wants to add article 226A. In the Statement of Objects and Reasons he says :

> "...the President is to remain a helpless spectator even when he feels that a wrong judicial interpretation vitiates the constitutional law. He should be empowered to initiate steps to settle the question at the highest level."

To achieve this he wants these two articles. In his speech he has given some material to the Government to think abot, but I think he has also heard the views of other Members of the House and he would agree that presently if we accept the position, things would be complicated and we would be unnecessarily creating difficulties.

I would also in this connection draw his attention to article 132 of the Constitution under which any party who goes to a High Court has the right to go to the Supreme Court by moving the High Court for leave to appeal, and if that leave is refused, by moving the Supreme Court for special leave. With that provision there, I think it should not be necessary for us to have these two articles 143A and 228A.

Regarding article 145A, he seeks two things—one, that the Benches that are constituted in the Supreme Court by the Chief Justice should be constituted in consultation with the President of India, and secondly that the decisions of these Benches when they refer to constitutional matters, should be made binding only if they are given by a two-thirds mojority. The Government feels that the President should be kept away from this, that he should not be brought in, and he should not be made to give his advice to the Chief Justice on the constitution of Benches. It should be left to the Chief Justice to constitute the Benches. About the number of Judges, though the minimum is fixed as five, there have been cases like the bank nationalisation case and the Privy purses case in which even 11 Judges have sat. So, the number of judges varies according to the importance of the matter. I think the main purpose of raising the number of juddes to 9 is met by the present provisions also.

Then, he said, under article 368, when Parliament wants to amend the Constitution two-thirds majority is needed and on the same analogy, he wants that it should be made obligatory that for a judgment of the Supreme Court to be binding, it should have a two—thirds majority. But I would request him to refer to the judicial system thourghout the world, where only a majority decision is accepted as binding. If we accept his suggestion, I think we would be doing something which would be extraordinary. However, he has given substantial material for the Government to think over. My other friends who have spoken have given substantial material for the mover to

[Shri Nitiraj Singh Chaudhary]

think over. I hope after having heard the other hon. members, the mover would not press his Bill and would withdraw it.

SHRI C. M. STEPHEN : Sir, it goes without saying that I will withdraw the Bill. My only purpose was to meet the particular need of a particular hour. As pointed out by the minister, the Golaknath case stimulated certain thoughts and pinpointed certain dangers in the present arrangement and therefore, a corrective was necessary. I am still of the view that a corrective is necessary, but I am satisfied with the minister's statement that this has given substance for him to think over.

With regard to the contentions raised by my friends on the other side, I do not want to reply in detail. Most of their statements arose out of a misconception of the purpose of the Bill. To bring in politics into this is absolutely misplaced. The only purpose was to guard that the judiciary functions in a particular manner so that contradictions and stalemates may not arise, which will hold up the progress. That argument was not really met and the purpose was not really understood. I may tell the minister that the statements made by my friends on the other side were only for the purpose of contradicting what I said and have not offered any substance for me to think about. But I am satisfied with the minister's statement that this has given substance for him to think over.

With these words, I withdraw the Bill.

MR. CHAIRMAN : The question is :

"That leave be granted to withdraw the Bill further to amend the Constitution of India."

The motion was adopted.

SHRI C. M. STEPHEN : I withdraw the Bill.

16.29 hrs.

INDIAN PENAL CODE (AMENDMENT) BILL

(Substitution of section 153 A) by Shrimati Subhadra Joshi.

MR. CHAIRMAN : Shrimati Subhadra Joshi.

श्री जगन्नाथ राव जोशी (शाजापुर) : सभापति महोदय, मैं एक व्यवस्था का प्रश्न उठाना चाहता हूं। आज तक इंडियन पीनल कोड के सैक्शन 153 की व्यवस्थायें व्यक्ति से सम्बन्ध रखती हैं और माननीय सदस्या इस विधेयक के उद्देश्यों में कहती हैं कि इस सैक्शन के दायरे में संगठनों और संस्थाओं को भी लाया जाये। इस विधेयक के उद्देश्यों में स्पष्ट किया गया है : "दि क्रिमिनल ला हैव टु बि सूटेबली रमेंडिड टु ब्रिंग विदिन दि परव्यू आफ़ दि ला सच एसोसियेशन्ज़ एंड आर्गनाइज़ेशन्ज़।" किन्तु यदि आप विधेयक को देखें, तो यह व्यक्तियों पर ही लागू होगा, इसमें संगठनों और संस्थाओं का कोई उल्लेख नहीं है। इसमें सजा का यह प्रावधान किया गया है : "शैल वि पनिश्ड विद इमप्रिज़नमेंट विच मे एक्सटेंड टु थ्री यीअर्ज़ आर विद फ़ाइन आर विद बोथ।" इसमें संगठनों और संस्थाओं को सजा देने का प्रश्न नहीं है।

सभापति महोदय : पहले माननीय सदस्या को मूव तो करने दीजिए।

श्री जगन्नाथ राव जोशी : सभापति महोदय, इसमें जल्दबाजी करने की जरूरत नहीं है। चूंकि यह बिल दोषपूर्ण है, इसीलिए मैंने यह व्यवस्था का प्रश्न उठाया है।

SHRI R. S. PANDEY (Rajnandgaon) : Until the Bill is introduced and is before the House no point of order can arise.

SHRI N. K. P. SALVE (Betul) The Bill has already been introduced. Now it is being taken up for consideration. But until Shrimati Subhadra Joshi is heard no point of order can arise. मेरा एक निवेदन है। अगर जोशी जी ने कानून ठीक से पढ़ा होता तो यह चीज उन्होंने