

[Shri B. S. Murthy]

The original replies given by me were as follows :—

- (1) As far as the information received by us indicates, 41 have died so far.
- (2) No body has run away.
- (3) 41 persons died before they were taken to the hospital.

The correct information on these points is as follows :—

- (1) As far as the information received by us indicates, 47 have died so far.
- (2) Two suspected persons were absconding.
- (3) 47 persons died before they were taken to hospital.

12.48. hrs.

ESSENTIAL SERVICES MAINTENANCE BILL*

THE MINISTER OF HOME AFFAIRS

(SHRI Y. B. CHAVAN) : I beg to move for leave to introduce a Bill to provide for the maintenance of certain essential services and the normal life of the community.

MR. SPEAKER : Motion moved :

"That leave be granted to introduce a bill to provide for the maintenance of certain essential services and the normal life of the community."

SOME HON. MEMBERS *Rose*—

MR. SPEAKER : I will allow you one after the other.

श्री जार्ज फरेन्जेस (बम्बई दक्षिण) : इन्हें बोलने से रोका जाय ।

श्री कंबर लाल गुप्त (दिल्ली सदर) : अध्यक्ष महोदय, इस सदन की प्रथा यह है कि जब कोई विधेयक इन्ट्रोड्यूस होता है तो उसकी मुसालिफत नहीं की जाती परन्तु जो विधेयक आज माननीय एह मंत्री महोदय ने इस सदन के सामने रखा है वह एक काला बिल है और प्रजातंत्र पर एक खबरबस्त चोट है। मैं

समझता हूँ इस के कारण से जो एक फंडामेंटल राइट है ट्रेड यूनियन का, हड़ताल करने का, अपनी तकलीफों को निवारण करने का और जैसा कल मंत्री महोदय, ला मिनिस्टर साहब ने कहा कि कलेक्टिव डिफेंस का राइट है, वह जो केरल में प्रचार करते हैं, क्या वह कलेक्टिव डिफेंस का राइट जब मजदूरों पर चोट होती है तो उसको ले लेना चाहते हैं। यह डबल स्टेण्डर्ड जब यह सरकार करती है तो मुझे आश्चर्य होता है।

अध्यक्ष महोदय, अगर सरकार यह चाहती थी कि सरकारी कर्मचारी हड़ताल पर न जायें, तो उसके लिए कोई व्यवस्था इस बिल में करनी चाहिये थी। लेकिन क्या व्यवस्था की ? उन्होंने वगैर किसी व्यवस्था के फण्डामेंटल-राइट्स को ले लिया। मैं समझता हूँ कि यह जम्हूरियत का गला घोटने के बराबर है। अगर आप उन का हड़ताल करने का अधिकार ले लेते हैं तो उन के पास रहना क्या है ? क्या आउटलेट है ? नतीजा यह होगा कि वे वायलेंस की तरफ जायेंगे, अनलाफुल काम करेंगे। एक तरह से आप लोगों को वायलेंस करने के लिए धकेल रहे हैं। यह देश में अमान और प्रजातन्त्र पैदा करने का तरीका नहीं है। आप देश में एक बहुत गलत प्रथा पैदा कर रहे हैं, जिसके कारण जम्हूरियत को धक्का लगेगा।

मैं आपके जरिये माननीय मंत्री महोदय से कहूँगा कि वे इस के बारे में पुनः विचार करें, क्योंकि इंग्लैंड में भी यह अधिकार है, दूसरे सभी प्रजातन्त्र देशों में यह अधिकार दे रखा है, लेकिन अगर आप इस तरीके से देश को चलाना चाहेंगे तो देश टोटली टैरियनिज्म की तरफ जायेगा, जिसकी कल्पना हमारे इस विधान में नहीं की है। मैं चाहूँगा कि आप इस काले विधेयक को आपस ले और इस देश के माथे पर जो कलक का टीका लगने जा रहा है, कृपा कर उसको हटा दें।

SHRI S. M. BANERJEE (Kanpur) : Sir, I rise to oppose this Bill even at the

introduction stage on constitutional, logical and Moral grounds.

May I invite your kind attention to articles 19, 23, 23(1) 39(e) and 43 of the Constitution ?

Article 19, which is a fundamental right, says :—

"All citizens shall have the right— to freedom of speech and expression ; to assemble peaceably and without arms ; to from associations or unions ;".

After this nefarious and pernicious Bill becomes an Act, this fundamental right guaranteed to all citizens, who are also workers, whether Government employees or non-Government employees, is going to be taken away from them. We feel that after the withdrawal of the emergency fundamental rights, which were taken away temporarily, should have been established. This particular legislation cannot taken away the fundamental rights since the emergency is over and there is no immediate reason for their limitation.

Then, if you kindly read the Bill, you will find that on page 2 under (b) it says :—

" "strike" means the cessation of work by a body of persons employed in any essential service acting in combination or a concerted refusal or a refusal under a common understanding of any number of persons who are or have been so employed to continue to work or to accept employment, and ;

(i) refusal to work overtime where such work is necessary for the maintenance of any essential service ;".

I emphasize the words :

"refusal to work overtime".

Suppose, I am a Government employee. There is a contract with the Government that I shall work from 8 o'clock to 4 o'clock or from 10 o'clock to 6 o'clock with some interval and so on. I should not be forced to work overtime.

May I invite your kind attention to article 23(1) ? It says :—

"*Right against Exploitation*

Traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contra-

vention of this provision shall be an offence punishable in accordance with law".

The moment this is passed the Home Minister should be the first person to be convicted and prosecuted under this, because I do not want to work overtime.

MR. SPEAKER : How does the forced labour come in ?

SHRI S. M. BANERJEE : I am comparing compulsory overtime with the forced labour or *begar* which, according to the Constitution, under article 23(1), is prohibited and any contravention of the provision shall be an offence punishable according to law.

Then, I invite your kind attention to clause 7 of the proposed legislation. It says :

"Not withstanding anything contained in the Code of Criminal Procedure, 1898, any police officer may arrest without warrant any person who is reasonably suspected to having committed any offence under this Act."

What are the provisions in the Constitution knew that such things may happen in this country and they provided the safeguards. They knew that mini-dictators may lead the country to fascism. What safeguards have been provided in the Constitution ? Article 22(1) says :

"No person who is arrested shall be detained in custody without being informed, as soon as may be ; of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice."

Then, sub-section (2) says :

"Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest..."

What is happening here ? Any police officer can arrest any employee without showing any warrant or anything. An Assistant Sub-Inspector is also a police officer and even a Class IV employee is a Class IV officer. Any officer, even a constable on the street or on the road controlling traffic, can arrest an employee without any warrant or anything. I say

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that this is against article 22(1) and 2 of the Constitution.

Then, Sir, I read for your information the provisions of the Industrial Disputes Act ..

SHRI RANGA (Srikakulam) : This is not the time to make long speeches on the merits of the Bill.

SHRI S. M. BANERJEE : I am raising the constitutional points.

MR. SPEAKER : Only constitutional points at this stage, not the merits of the Bill.

SHRI S. M. BANERJEE . Kindly read clause 8 of the proposed legislation. It says :

"The provisions of this Act and of any Order issued thereunder shall have effect not withstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force."

Sir, the Industrial Disputes Act is also an Act of this Parliament. This was discussed for hours together—I was not a Member of the House at that time—and men like Mr. N. M. Joshi, the father of the trade union movement, discussed at length the right of strike. What is the right of strike? Any body who wants to go on strike will have to give a notice of 14 days, etc. This is the provision in the Industrial Disputes Act. It says :

"No person employed in a public utility service shall be on strike in breach of contract.

(a) without giving to the employer a notice "of strike, as hereinafter provided, within six weeks before striking ; or

(b) within 14 days of giving such notice ; or

(c) before the expiry of the date of strike specified in any such notice as aforesaid ;"

Supposing a matter is referred to arbitration or adjudication in accordance with Section 10 of the Industrial Disputes Act, the strike, automatically, becomes illegal.

In this industrial Disputes Act, there are punishments provided for going on an illegal strike. Still the Essential Services Maintenance Bill is being brought forward before the House. I say, in all humility, this bill is superfluous, illegal, unnecessary and should be withdrawn.

MR. SPEAKER : There are other hon. Members also who want to oppose the introduction of this Bill, Shri Madhu Limaye, Shri Goyal, Shri V. Krishna-moorthi, Shri Nambiar, Shri George Fernandes, Shri Atal Bihari Vajpayee and Shri Hem Barua also. Only these Members will be allowed. I would only constitutional points may be raised in opposing it. They have a right to do it.

At this stage the merits of the Bill should not be gone into ; merits could be discussed later on when we discuss the Bill. Here, at the introduction stage, the objection can only be Constitutional, pure and simple,

Now, we adjourn for Lunch.

13.00 hrs.

*The Lok Sabh adjourned for Lunch till
Fourteen of the Clock.*

— — —

*The Lok Sabha reassembled after lunch
at four minutes Past—Fourteen of the Clock.*

[Mr. Deputy Speaker in the Chair]

ESSENTIAL SERVICES MAINTENANCE BILL—Contd.

MR. DEPUTY-SPEAKER : Shri S. M. Banerjee...

SHRI TENNETI VISWANATHAM (Visakhapatnam) : Sir, please add my name also to the list.

MR. DEPUTY-SPEAKER : It requires prior notice : anyway I shall see.

SHRI S. KUNDU (Balasore) : In place of Shri Hem Barua I will speak.

MR. DEPUTY-SPEAKER : First, let him conclude.

SHRI S. M. BANERJEE : I was referring, Sir, to Clause 8 of the Bill where it says :

"The provisions of this Act and of any Order issued thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Industrial Disputes Act, 1947, or in any other law for the time being in force."

I submitted that in the Industrial Disputes Act it is already mentioned that if anybody or any organisation wants to go on strike they will give a notice.

The provision reads thus :

"No person employed in a public utility service shall be on strike in breach of contract :—

- (a) without giving to the employer a notice of strike as hereinafter provided within six weeks before striking ; or
- (b) within fourteen days of giving such notice ; or
- (c) before the expiry of the date of strike specified in any such notice as aforesaid."

My contention is that if this Bill is passed with the brute majority of the ruling party, in spite of the unconstitutional, illegal and pernicious character of it, then the Industrial Disputes Act, 1947 which was applicable to lakhs and lakhs of Central or State Government employees or other employees will become superfluous.

You will recall that recently the insurance employees wanted to go on strike, but the matter was referred to adjudication by the Labour Minister and those employees had deferred the strike.

Yesterday, Shri B. R. Bhagat was replying to a question which was raised by my hon. friend Shri George Fernanades on fundamental rights. I had put this question :

"The right to strike is also a human right. Strike is resorted to only by human beings. I would like to know, before bringing any legislation to ban any strike, whether this aspect of the question will also be taken into consideration that the human right is not taken away so easily."

Shri B. R. Bhagat replied as follows ; I am reading out his answer ; it is incor-

rected ; I hope he has not corrected it to the advantage of Government.

SHRI R. D. BHANDARE (Bombay Central) : He is on a weaker ground there; therefore, his voice is also weak.

SHRI S. M. BANERJEE : I do not want to raise my voice where I am strong. This was what Shri B. R. Bhagat said :

"Our country provides this right to strike. In the Human Rights as declared in the United Nations there is the right to work ; that includes the right to strike."

MR. DEPUTY-SPEAKER : He had not used the word 'fundamental'.

SHRI S. M. BANERJEE : I am not talking of fundamental rights. There is no fundamental right to strike.

SHRI MADHU LIMAYE (Monghyr) : There is.

SHRI S. M. BANERJEE : Even as a human right, this right is sought to be taken away from a section of human beings in this country, by the inhuman behaviour of this Government.

Clause 1 (3) of this Bill says :

"It shall cease to have effect on the expiry of five years from the date of commencement of this Act except as respects things done...".

This Government may continue or may not continue after 1972, and they want this Bill to be passed so that it may be in force for five years.

SHRI CHENGALRAYA NAIDU (Chittoor) : Perhaps, he may not be here after the elections.

SHRI GEORGE FERNANADES : This Government will not continue after 1972.

SHRI S. M. BANERJEE : I am contesting right from 1957 and I challenge the Home Minister to resign on this issue and contest from Kanpur or anywhere else...

SHRI NAMBIAR (Tiruchirappalli) : Both should resign on this issue.

MR. DEPUTY-SPEAKER : The rules permit a debate, but the hon. Member will have to point out how it is outside the legislative competence of this House. That is the only limited issue before us now.

SHRI S. M. BANERJEE : That will be my last point. The Bill also says :

"Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to Union employees,"

When this black piece of legislation becomes an Act it will apply to the Union employees in the State of Jammu and Kashmir; other employees will not be affected by this. So, there is a clear discrimination which is against the spirit of the Constitution.

Clause 9 (2) of the Bill reads thus :

"Notwithstanding such repeal, anything done or any act done taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had come into force on the 13th day of September, 1968."

All the illegal actions taken against so many Government employees, 12000 of whom are still on the streets, are sought to be legalised and covered by passing this Bill and providing that it would have been deemed to have come into force on 13th September, 1968.

So, I submit that clause 8, clause 7, and clause 2(1) (b) (i) (which deals with refusal to work overtime where such work is necessary for the maintenance of any essential service) are all against articles 19 and 23 which I have quoted already and which refers to *beggar* or traffic in human beings. It says :

"Traffic in human beings and *beggar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."

This means that if anybody does not want to work overtime, he cannot be forced. But once this Bill becomes an Act, he will be forced to work overtime. According to me, that is *beggar* or forced labour and

as such it would violate article 23 of the Constitution. This is also against the Industrial Disputes Act and its provisions.

The hon. Minister may say that a strike can be declared illegal if it is against the community. I do not know whether he is trying to develop the community. But I know that these Ministers have not developed the community. Under the Industrial Disputes Act, once a dispute is referred to arbitration.....

MR. DEPUTY-SPEAKER : The hon. Member should bear in mind that it is beyond the scope of the debate at this stage.

SHRI S. M. BANERJEE : Am I repeating ?

MR. DEPUTY-SPEAKER : No,...

SHRI S. M. BANERJEE : I am only referring to the clauses of the Bill.

MR. DEPUTY-SPEAKER : Now, the only question is whether this House has legislative competence to consider this Bill. That is the only limited issue. I am prepared to give him ample opportunity but he should restrict himself to that limited issue.

SHRI S. M. BANERJEE : That is my last point. Once a dispute is referred to arbitration under the Industrial Disputes Act, under section 10 of that Act, the consequences of an illegal strike will follow, and therefore, it is not necessary to have this Bill for that purpose.

When 12,000 people are just on the streets, and the Home Minister has not been able to take a lenient view of the matter or take them back, in spite of our repeated objections, constitutional and moral and logical, he seeks to have this Bill introduced and also passed, I would submit that it will be passed only on our dead bodies, not as long as we are alive in this House.

MR. DEPUTY-SPEAKER : Now, Shri V. Krishna moorthi. I would request hon. Members to confine their remarks only to one point, namely whether this House is competent from the legislative point of

view or not. On that issue only we can have a debate now.

श्री मधु सिन्घे : मैं बहुत बुनियादी सवाल उठा रहा हूँ। मैंने अपना नाम दिया है।

SHRI V. KRISHNAMOORTHY (Co-dalore) : I had given notice earlier.

श्री मधु सिन्घे : मैं बाद में बोल सकता हूँ, इस में मुझे प्राप्ति नहीं है।

SHRI RANDHIR SINGH (Rohtak) : Some Members from the Congress side also should be called.

हम कोई भेड़ बकरी थोड़े ही हैं। यह तो मैं मान सकता हूँ कि पांच मेम्बर अपोजीशन के बोलें और दो मेम्बर इधर के बोलें।

MR. DEPUTY-SPEAKER : He will get an opportunity. There are about ten names in the list before me. After giving them chance, I shall permit him also.

श्री अटल बिहारी वाजपेयी (बलरामपुर) : अगर माननीय सदस्य बिल का समर्थन कर रहे हैं तो वह कैसे मौका पा सकते हैं। विरोध करना चाहें तो दूसरी बात है।

श्री रणधीर सिंह : अगर आप गलत बात कहेंगे तो हम विरोध करेंगे। यहाँ पर जो लेजिस्लेटिव कामिंटेंस की बात उठाई गई है, हम उस पर बोलना चाहते हैं।

MR. DEPUTY-SPEAKER : If the hon. Member wants to oppose the introduction, he will also get an opportunity.

श्री क० ना० सिन्घारी (बेतिया) : जो बात माननीय सदस्य कह चुके हैं अगर उस का रिपिटीशन होगा तब टाइम ज्यादा लग जायेगा। अगर किसी को नया प्वाइंट रखना है, तब जैसा आप ने कहा है, उस को सुना जाना चाहिये।

MR. DEPUTY-SPEAKER : I shall be quite watchful.

SHRI RANDHIR SINGH : I have also something important to say.

MR. DEPUTY-SPEAKER : If he wants to oppose the introduction he will get an opportunity. If he can throw some light on the legal point then he can do so.

SHRI RANDHIR SINGH : I also want to throw some light on some important matters.

SHRI V. KRISHNAMOORTHY : I am opposing this Bill because it violates articles 14, 19(1) (a) and 19 (1)(g).

This law abridges the right of Government servants to go on strike, whereas the same right is given to other workers in State Governments as well as in industrial establishments. On this score, it is discriminatory in nature and attracts art. 14 :

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

Workers, whether employed in any undertaking, State Government undertaking or public sector undertaking or private industrial undertaking or any government concern, are all workers.

SHRI K. N. TIWARY : Government servants are not workers.

SHRI V. KRISHNAMOORTHY : People employed in the railways are workers. But a worker employed in railways and a worker employed in a public sector undertaking are treated differently under this Bill. So it violates art. 14.

Secondly, it violates art. 19 (1) (a) :

"All citizens shall have the right to freedom of speech and expression".

Expression denotes a protest when there is a grievance. People have got the fundamental right to protest against a grievance. But people employed in Government have this right curtailed by means of this Bill. When they have a grievance against their masters, they have got a fundamental right to express their resentment to authority. That fundamental right of expression is vouchsafed to all citizens including employees in government undertakings. But employees in government in the postal as well as tele-

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graph services, railways and others are brought within the purview of this Bill which denies them this right of protest.

I concede that the State has got every right to place reasonable restrictions. I do not question that right. After the verdict of the Supreme Court in the Golak Nath case, Parliament has been deprived of any right to amend fundamental rights already enjoyed by the citizens with a view to abridge them.

श्री सीताराम केसरी (कटिहार) : ऐसा मत कहिये ।

SHRI V. KRISHNAMOORTHY : He does not understand these things. Let him not interrupt.

Parliament does not have any authority to amend Chapter III of the Constitution. This Bill virtually curbs the rights guaranteed under art. 19 (1) (a). The workers employed in railways or posts or telegraphs do not have the freedom to express their grievance and are not even allowed to go out of their working undertakings to signify their protest, because such action attracts the provisions of this Bill. So it offends art. 19 (1) (a).

This Bill also violates art. 19 (1) (c)—right to form associations or unions already registered under the appropriate Act. People who have been given the fundamental right to work as well as to agitate, the right to strike, are deprived of the exercise of that right by this Bill which virtually takes away that fundamental right. Government can have reasonable restrictions. But this Bill completely and totally deprives them of this right. If they want, they can curtail it to a certain extent ; they can say that in an establishment employing more than 1,000 workers, all of them should not go on strike, they will allow 10 or 20 to go on strike. But they cannot prohibit by law all of them from exercising this right and taking part in a strike.

Of course, this Bill does not have a financial memorandum. I do not want to raise this objection at this stage ; I reserve it to the time when it is brought in for consideration. At that stage, I shall press

that on this ground it should be thrown out. I am now confirming my remarks and arguments to this point that this Bill violates articles 14, 19 (1) (a) and 19 (1) (c).

So, this law is illegal, after the Supreme Court judgment in Golaknath's case laying down that Parliament has no right to amend the fundamental rights or to take away the existing rights of the citizens of India, we do not have any right, this Parliament does not have any right, to pass this Bill. With these words I oppose this Bill.

MR. DEPUTY-SPEAKER : Shri Limaye.

SHRI R. D. BHANDARE : What about this side ?

MR. DEPUTY-SPEAKER : I am calling those who have given notice for opposing the Bill. On legal points I will permit you.

SHRI R. D. BHANDARE : That is not the position. May I read the rule ?

MR. DEPUTY-SPEAKER : As I have already said, I will permit you to make your submission.

SHRI R. D. BHANDARE : There is no question of notice under the rule.

SHRI NAMBIAR : Is it a debate ?

SHRI RANDHIR SINGH : One from this side and one from that side.

MR. DEPUTY-SPEAKER : This is not a debate. If we make it a general debate, we will have to continue for three or four hours.

SHRI CHENGALRAYA NAIDU : They can oppose the introduction of the Bill, but now this has become a discussion. When they are getting a chance we must also get a chance.

MR. DEPUTY-SPEAKER : Under our rules, if competency to legislate is challenged, a full discussion is allowed.

SHRI VIKRAM CHAND MAHAJAN (Chamba) : Please see rule 72.

MR. DEPUTY-SPEAKER : The first part does not apply here.

SHRI VIKRAM CHAND MAHAJAN : The proviso reads :

"Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon."

How can there be discussion if only one side speaks ?

Discussion means discussion by both sides.

MR. DEPUTY-SPEAKER : As I have already said, I will permit those who want to speak on this limited point.

SHRI VIKRAM CHAND MAHAJAN : Then you have to call from both sides one after the other.

श्री मधु लिम्बये (मुंगेर) : सबसे पहले सवाल हमारे नियमों का और प्रक्रिया का है। अब तक सिर्फ नियम 72 के अन्तर्गत हम लोग काम करते आए हैं। हर एक सदस्य को किसी भी विधेयक का विरोध करने का अधिकार है। लेकिन विरोध अगर साधारण विरोध है, सिद्धान्त को लेकर है, यानी बिल के प्राणय को लेकर है तो प्रथा यह है कि एक सदस्य जिसका नोटिस पहले आता है वही केवल विरोध करता है, दूसरा नहीं करता है। लेकिन अगर आपत्ति संविधान को लेकर उठाई जाती है कि पालियामेंट को इस तरह का विधेयक पास करने का अधिकार नहीं है तो यहां पर यह प्रथा है कि आप उस पर पूरी बहस करवाते हैं ताकि सारे उसके पहलू सदन के सामने आएं। नियम को बदलने की बात में नहीं कर रहा हूँ क्योंकि नियम के बाहर जा कर मैं नहीं बोल सकता। लेकिन अगर मैं जो सुझाव देने वाला हूँ उसके

ऊपर कोई रोक या प्रतिबन्ध नहीं है और हमारे संविधान को देखते हुए अगर इस रिवाज में परिवर्तन करने की आवश्यकता है तो दूसरे साधारण नियमों को मद्देनजर रखते हुए—यह नियमों में परिवर्तन भी नहीं है, एक प्रथा में थोड़ी तबदीली हो रही है और वह आपको करनी चाहिये। अब तक यह रिवाज रहा है कि जब किसी भी विधेयक या प्रस्ताव को पेश करने की अनुमति मांगी जाती है यह प्रस्ताव है इस वक्त—तो उस पर कभी तरमीम नहीं दी जाती, संशोधन नहीं दिया जाता। लेकिन अब मेरी यह निश्चित राय हो गई है कि यह जो इंग्लैंड की परम्परा हम लोगों ने यहां पर अपनाई है वह यहां चल नहीं पाएगी और उसका कारण यह है कि इंग्लैंड में कोई लिखित संविधान नहीं है। वहां पर पालियामेंट के किसी भी कानून को इस बिना पर कभी अदालत में चुनौती नहीं दी जाती है—ब्रिटेन की पालियामेंट को यह अधिकार नहीं है कि वह इस तरह का बिल पास न करे। यह बिलकुल साधारण सी बात है जिसके बारे में कोई विवाद नहीं हो सकता है। इंग्लैंड में पालियामेंट सार्वभौम है। वह जो कानून चाहें पास कर सकती है। उसके द्वारा पास किये गये कानून को अदालत में चुनौती नहीं दी जा सकती है और अगर बी भी जानी है तो अदालत उनकी बात भी नहीं सुनेगी।

लेकिन चूंकि हिन्दुस्तान में लिखित संविधान है और पालियामेंट के अधिकार सीमित हैं, दो तरह से, एक तो अधिकारों का बटवारा हुआ है, 245 और 246 इत्यादि में और दूसरा प्रतिबंध है कि हम कोई कानून पास नहीं कर सकते हैं जो संविधान के तीसरे हिस्से के साथ यानी बुनियादी अधिकारों के साथ टकराये। उसको देखते हुए हमारे देश में और अमरीका में अदालतों को यह अधिकार प्राप्त है कि वे इस मामले की जांच करें कि क्या पालियामेंट को इस तरह का कानून बनाने का अधिकार था या नहीं था। इसीलिए आपने इस में यह प्राविसो—किन्तु जोड़ा है :—

"Provided that where a motion is opposed on the ground that the Bill

[श्री मधु लिमये]

initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon."

लेकिन उसके बाद मैं यह चाहता हूँ कि इस सदन का अगर कोई सदस्य यह चाहता है और उसकी राय में संविधान की भवहेलना इस विधेयक के द्वारा होती है तो जो प्रस्ताव आता है उस पर वह स्थानापन्न प्रस्ताव या तरमीम दे सकता है और तरमीम पर विभाजन मांगने का उसका अधिकार है ताकि इस बात का पता चले कि उसने या मैंने जो मुद्दा उपस्थित किया है—संशोधन के द्वारा उसके ऊपर विचार किया गया है, गौर फरमाया गया है और गौर फरमाने के बाद, विचार करने के बाद सदन इस नतीजे पर पहुँचा है कि उस संशोधन में दम नहीं है। अगर दम है तो वह तरमीम पास हो जायेगी और अगर सदन का बहुमत यह राय रखता है कि मेरे आक्षेप में कोई तथ्य नहीं है तो सदन मेरी तरमीम को ठुकरा देगा और उसके बाद उनका जो प्रस्ताव है वह पास हो जाएगा।

मैं यह क्यों कह रहा हूँ? यह जो नियम है हमारा 72 यह कैसे आया है। मैंने मेज पार्लियामेंटरी प्रेक्टिस में देखा है। उस को मैं पहले पढ़ूँगा और जो फर्क है वह मैं बताऊँगा। यह मेज पार्लियामेंटरी प्रेक्टिस का 17वाँ एडिशन है। इसके 511 पृष्ठ हैं उसी के ऊपर हमारा नियम आधारित है और प्राविसो—किन्तु जोड़ कर थोड़ा फर्क किया गया है। यह इस प्रकार है :—

"Under the provisions of this standing order, notices of motions for leave to bring in Bills may be set down for consideration at the commencement of public business on Tuesdays and Wednesdays, and, if given by a Minister of the Crown, on Mondays and Thursdays also. After the mover has given a brief explanatory statement of the objects of the Bill and the Speaker has proposed the question, another Member is permitted to make a short speech, but only if he rises to oppose the motion; he is not, however, obliged

to divide the House upon the question."

यह इंग्लैंड में प्रथा है कि उस पर विभाजन नहीं होता है। लेकिन मेरी राय में हिन्दुस्तान में अगर कोई सदस्य चाहे कि उस पर विभाजन होना चाहिये तो उसको रोकना नहीं चाहिए। अगर विभाजन तभी होगा जब संशोधन या स्थानापन्न प्रस्ताव आप सदन के सामने रखेंगे।

श्री अटल बिहारी वाजपेयी : उनके प्रस्ताव पर विभाजन हो सकता है ?

श्री मधु लिमये : नहीं। उसमें यह नहीं लिखा है। इतनी जल्दी उतावले न हों।

श्री अटल बिहारी वाजपेयी : उतावलेपन की बात कही है तो मैं एक व्यवस्था का प्रश्न उठाना चाहता हूँ। आप मुझे अपनी बात कहने दीजिए। मेरा व्यवस्था का प्रश्न यह है कि क्या इस समय हम सदन में नियमों में परिवर्तन करने पर चर्चा कर रहे हैं? नियमों में कौन सा संशोधन होना चाहिये और कौन सा नहीं होना चाहिये, यह चर्चा का विषय नहीं है। श्री मधु लिमये अगर उस बारे में प्रश्न उठाना चाहते हैं तो वह कमेटी में उठा सकते हैं, अलग संशोधन दे सकते हैं। लेकिन अभी तक का जो उनका भाषण है वह मुख्य विषय से सम्बन्धित नहीं है। आप उनको निर्देश दें कि जो विधेयक सामने है और जिसके पेश किये जाने का वह विरोध कर रहे हैं, उस तक ही अपने को सीमित रखें।

श्री मधु लिमये : मैं अभी बताता हूँ कि साधारण नियम है एमेंडमेंट के बारे में। उसी के अन्तर्गत मैं बोल रहा हूँ।

MR. DEPUTY-SPEAKER : Mr. Vajpayee, he is trying to build up a case because he has submitted a motion.

श्री अटल बिहारी वाजपेयी : क्या हम यह चर्चा कर रहे हैं कि नियमों में कौन सा संशोधन किया जाये ?

श्री मधु लिम्बे : संशोधन करने के लिए कौन कह रहा है ?

MR. DEPUTY-SPEAKER : He should build up a case on which it is to be seen whether the House should take-up the motion on this subject and divide. That is the only question.

श्री अटल बिहारी वाजपेयी : अभी तक माननीय सदस्य का सारा भाषण यह हुआ है कि हाउस आफ कामन्स के प्राधार पर हमारे नियम हैं, लेकिन उन नियमों में परिवर्तन होना चाहिये। यह समय नहीं है यह बात कहने का।

MR. DEPUTY-SPEAKER : That will come before the Rules Committee, if he is seeking to introduce a fundamental change. But the question is a limited one, and therefore I said that he had better read his motion.

श्री मधु लिम्बे : मेरी समझ में नहीं आता कि माननीय सदस्य को इतना गुस्सा क्यों आया।

श्री अटल बिहारी वाजपेयी : माननीय सदस्य उतावलेपन की बात कह रहे थे।

श्री मधु लिम्बे : माननीय सदस्य ने मुझे टोका।

उपाध्यक्ष महोदय, मेरी इस एमेंडमेंट के बारे में दो नियम हैं; एक साधारण नियम है और एक विशेष नियम है। जहाँ विशेष नियम रहता है, वहाँ साधारण नियम नहीं चलता है, लेकिन जहाँ कोई खास नियम नहीं है, वहाँ साधारण नियम ही चलता है। इस लिए यह साधारण नियम तो है ही। यह मैं श्री वाजपेयी की जानकारी के लिए कहना चाहता हूँ।

मेरा संशोधन यह है :

"That it is the sense of the House that since the Bill is violative of the directive principles enumerated in articles 37, 39, 42, 43 and 47 as also the fundamental rights mentioned in arti-

cles 14, 19 and 23 and is beyond the legislative competence of Parliament, the House requests the Government to re-examine the Bill."

अब श्री वाजपेयी को पता चलेगा कि इस वक्त जो विचार का विषय है, मैं उसी के बारे में कह रहा हूँ। मैं चाहता हूँ कि मेरे इस संशोधन पर सदन गौर फरमाये और गौर फरफाने के बाद अगर सदन की बहुमत से राय है कि मेरे संशोधन में कोई तथ्य नहीं है, तो वह उम को फेंक दे और उसके बाद मंत्री महोदय का प्रस्ताव आये। मेरे संशोधन पर रोक लगाने वाला इस वक्त कोई नियम नहीं है। बल्कि साधारण नियमों में मुझे संशोधन रखने का अधिकार है।

मैं इस संशोधन को क्यों रखना चाहता हूँ ? उपाध्यक्ष महोदय, आप वकील हैं, संविधान और कानून के जानकार हैं। 'कूलीज कांस्टीट्यूशनल लिमिटेशन' में कूली ने लिखा है कि जब कभी काँग्रेस के द्वारा पास किया हुआ कानून सुप्रीम कोर्ट के सामने जाता है, तो वह अदालत साधारण तौर पर किसी कानून को संविधान के बरखिलाफ करार देने के लिए तैयार नहीं होती है। हमारे यहां भी अदालतों का यही नियम है। क्या ? इसलिए कि सुप्रीम कोर्ट यह मान कर चलती है कि काँग्रेस में—और यहाँ पार्लियामेंट में—समझदार लोग हैं और वे समझदार लोग पहले विवेकपूर्ण ढंग से सोचेंगे कि उन्हें वह कानून बनाने का अधिकार है या नहीं और जब वे इस नतीजे पर पहुंचेंगे कि उन्हें अधिकार है, तभी वे वह कानून बनायेंगे। इसी लिए, जैसा कि मैंने अभी कहा है, सुप्रीम कोर्ट यह सोचती है कि साधारण तौर पर किसी भी कानून को अर्बब करार नहीं देना चाहिये। हां, अगर कोई विशेष कारण बताये, संविधान के तीसरे हिस्से के अन्तर्गत बुनियादी अधिकारों या केन्द्र राज्यों के बीच अधिकारों के बंटवारे के बारे में प्रश्न उठाये, तब बहुत मजबूर हो कर वह इस बारे में फैसला करती है।

इसलिए पार्लियामेंट पर यह जिम्मेवारी आती है कि पहले हम अपने विवेक से इन प्रश्नों

[श्री मधु लिमये]

पर सोचें। चूँकि भ्रदालत साधारण तौर पर किसी भी कानून को प्रसाविधानिक, प्रनकांस्टी-ट्रूशनल, घोषित करने के लिए तैयार नहीं होती है यह सोच कर कि हमने—पालियामेंट ने—विवेक से काम किया है, इसलिए हमारे लिए यह जरूरी हो जाता है कि जब इस प्रकार किसी कानून के बारे में आपत्ति उठाई जाती है, तो सदन उस पर गौर फरमाये।

मैं कूली से एक उद्धरण देना चाहता हूँ :
cooley's constitutional limitations.

"The constitutionality of a law then is to be presumed because the legislature which was first required to pass upon the question acting as they must be deemed to have acted with integrity and with a just desire to keep within the restrictions, laid by the Constitution upon their action have adjudged that it is so. They are a co-ordinate department of the Government with the judiciary invested with very high and responsible duties as to some of which their acts are not subject to judicial scrutiny as they legislate under the solemnity of an official oath which, it is not supposed, they will disregard."

"It must, therefore be supposed that their own doubts of the constitutionality of their action have been deliberately solved in its favour, so that the courts may, with some confidence, repose upon their conclusion as one based upon their best judgment. Although it is plain upon the authorities that the courts should sustain legislative action when not clearly satisfied of its invalidity, it is equally plain in reason that the legislature should abstain from adopting such action if not fully assured of their authority to do so. Respect for the instrument—i.e. Constitution—under which they exercise their power should impel the legislature in every case to solve their doubts in its favour and it is only because we are to presume that they do so that courts are warranted in giving weight in any case to their decision. If it were understood that legislators refrain from using their

judgment or that in cases of doubt, they allowed themselves to lean in favour of the action they desire to accomplish, the foundation for the cases we have cited would be altogether taken away." [pp. 374—75, Vol. I Eighteen edition]

इसमें मैं इतना बढ़िया विवेचन किया गया है कि इन बारे में अधिक भाष्य करने की आवश्यकता नहीं है।

MR. DEPUTY-SPEAKER : He has summarised the constitutional limitations of a legislature. You will have to show that we are transgressing those limitations.

श्री मधु लिमये : ठीक है। मैं चाहता हूँ कि मेरे इस संशोधन के बारे में मत-विभाजन होना चाहिए, क्योंकि मैं यह प्रस्थापित करना चाहता हूँ कि मेरे मुद्दों पर और मेरे संशोधन पर सदन ने गौर फरमाया और गौर फरमाने के पश्चात् वह इस नतीजे पर पहुँचा कि मेरे प्राक्षेप में कोई तथ्य नहीं है।

माननीय सदस्य, श्री बनर्जी, ने कहा है कि संविधान के अनुच्छेद 23 का उल्लंघन हुआ है। अनुच्छेद 23 इस प्रकार है :

23 (1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

लेकिन क्या इस सम्बन्ध में कोई एक्सेप्शन, अपवाद, रखा गया है ?

(2) में हमें यह अपवाद मिलता है :

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service, the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

यह बिल्कुल साफ है कि इस में जो अपवाद-वस्ती प्रोवर-टाइम लेने की बात कही गई है,

वह तो कम्प्लेसरी पब्लिक सर्विस में नहीं आता है ।

MR. DEPUTY-SPEAKER : It applies to the individual. You must make a distinction.

श्री अशु लिमये : प्रनिवार्य सेवा या सैनिक भरती का मामला बिल्कुल भ्रम है । अगरे एक आदमी अदालत के सामने जायेगा कि मुझे से जबर्दस्ती धोवर-टाइम करवाया जा रहा है, तो अदालत को फैसला करना पड़ेगा । अदालत तो फैसला करेगी, लेकिन क्या हमने अपना विवेक खो दिया है, छोड़ दिया है ? ऐसी बात नहीं है । पहले हम अपने विवेक से काम करेगे और अगरे हमारे विवेक के अनुसार कोई काम अच्छा है, तो वह हो जायेगा ।

इसके बारे में बहुत बूढ़ने पर मुझे कलकत्ता हाई कोर्ट का एक निर्णय मिला है । उससे एक मिनट में फैसला हो जायेगा । इसमें नकारात्मक ढंग से एक बात कही गई है । लेकिन इस विधेयक में नकारात्मक ढंग से लागू नहीं होती है । आप इसको सकारात्मक रूप में ले लीजिये, तब फैसला हो जायेगा । यह केस ए० आई० आर० 1952, कलकत्ता, 496 है । उपाध्यक्ष महोदय, आप यह नम्बर लिख लीजिये, क्यों कि इस बारे में आपको फैसला करना है । कुछ रेल मजदूरों के दो घंटे प्रतिरिक्त काम करने की बात थी । तो इन लोगों ने यह नहीं बताया था कि उसके लिए उन को पैसा मिलता है या नहीं, यह जबर्दस्ती है या नहीं, इसके बारे में इन्होंने फाइडिंग्स दी हैं नकारात्मक रूप में :
Paragraph 10 :

"Coming now to the question whether the work done by the petitioners can be regarded as Begar or forced labour within the meaning of Article 23 (1) of the Constitution, it appears to me that upon the facts of this case it cannot be said that the petitioners are doing Begar or forced labour. As I have pointed out already, the very idea that the petitioners had voluntarily agreed to do this extra work by entering into a contract to that effect repels of idea of their work being a forced labour."

यह अगरे अपनी सम्मति से वा स्वेच्छा से किए हैं तो अदालत ने कहा है कि वह बेगार नहीं है या अगरे फार्स फोर्स्ड लेबर नहीं है । लेकिन इसमें अगरे स्वेच्छा से धोवर टाइम करने की बात होती तो यह करने की ही जरूरत नहीं पड़ती । बू कि स्वेच्छा से धोवर टाइम करने के लिए तैयार नहीं हैं इसीलिए यह जबर्दस्ती कानून उनके ऊपर लाद कर अनिच्छा से उनसे आप काम लेना चाहते हैं । आप देखिये :

Refusal to work over-time where such work is necessary for the maintenance of any essential service.

अध्यक्ष महोदय, रिफ्यूजल का मतलब ही साफ है कि स्वेच्छा से वह काम करने के लिए तैयार नहीं है । उनकी अनिच्छा है लेकिन आप उनको धमका कर कह रहे हैं कि काम करो ? अब 23 का उलंघन कैसे होता है यह बात साफ है । 23 में रीजनेबल रेस्ट्रिक्शन की बात नहीं है । 23(2) में जो अपवाद बताया गया है उसके लिए जहां तक जबर्दस्ती काम लेने का सवाल है, कोई रीजनेबल रेस्ट्रिक्शन का सवाल नहीं है । इसलिए यह नम्बर 1 कारण है जिसको लेकर मैं कहना चाहता हूँ कि हम यह कानून पास नहीं कर सकते ।

अब दूसरे मुद्दे पर आइये । खण्ड 3 देखिये :

"If the Central Government is satisfied that in the public interest it is necessary or expedient so to do it may be general or special order prohibit strikes in any essential service specified in the Order."

अब मेरा ध्यान यह है कि पब्लिक इंटेरेस्ट शब्द है । अगरे पब्लिक आर्डर शब्द होता तो वह बात भ्रम थी । संविधान की 19वीं धारा में जो विभिन्न अधिकार दिए गये हैं टु फार्म एंजोसिएशंस एंड यूनियन्स जिस में से सामुदायिक सोचे करना, सम्झौते करना, हड़ताल करना, यह सब अधिकार निकलता है और हड़ताल के बारे में मैं स्वयं कबूल करता हूँ कि बू कि यूनियादी अधिकार से यह निकलता है, इसलिए पब्लिक आर्डर में अगरे यह प्रतिबन्ध लगाना है तो किया जा सकता है ।

[श्री मधु लिमये]

अब 10 का (4) आप को देखना पड़ेगा :

"Nothing in subclause (3) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said subclause."

अध्यक्ष महोदय, साबरन्टी एंड इन्टेग्रिटी, अखण्डता और प्रभुसत्ता नहीं है इस विधेयक में। पब्लिक आर्डर और मोरैलिटी नहीं है। रीजनेबल रेस्ट्रिक्शन इस के ऊपर लग सकता है..... (व्यवधान)..... पब्लिक आर्डर पर भी सुप्रीम कोर्ट ने भाष्य कर के डा० लोहिया को छोड़ा था। तो मैं यह कह रहा था कि इसमें फर्क है पब्लिक आर्डर और पब्लिक इंटरेस्ट में, जमीन आसमान का फर्क है। पब्लिक इंटरेस्ट में बहुत सारी बातें आ सकती हैं। लेकिन यह जरूरी नहीं है कि पब्लिक आर्डर के लिए यह सारी बातें जरूरी हों। पब्लिक आर्डर एक सीमित कल्पना है और पब्लिक इंटरेस्ट असीमित कल्पना है।

श्री रणधीर सिंह : आप को धंधे जी नहीं घाती है।

श्री मधु लिमये : हां, नहीं घाती है। मैं कबूल करता हूँ। स्टेट्समैन में यह खबर छपी है कि कौन-कौन जज प्रादेशिक भाषा नहीं जानते। तो मैं कबूल करता हूँ कि मैं धंधे जी नहीं जानता।

श्री रणधीर सिंह : जानते बहुत हो, जान-बूझकर नहीं जानते।

श्री मधु लिमये : तो पब्लिक आर्डर या मोरैलिटी, इंटिग्रिटी और साबरन्टी, इन्टी को लेकर निर्बंध आ सकता है। पब्लिक इंटरेस्ट को लेकर नहीं आ सकता। इस बात को नोट किया जाय।

अब मेरा एक सवाल है नियमों को लेकर और इसी से संबंधित है। वह है डेलीगेशन के

बारे में। और कोई बात आप नहीं कबूल करेंगे तो डेलीगेशन वाले मुद्दे को लेकर तो स्वयं इस बिल को बिलकुल खरम कर देंगे। यह नियम 70 है :

"A Bill involving proposals for the delegation of legislative power shall further be accompanied by a memorandum explaining such proposals and drawing attention to their scope and stating also whether they are of normal or exceptional character."

अब आप पूरा डेलीगेशन का मेमोरेण्डम देखियेगा... (व्यवधान)... कम्पलीट क्या इस में बताया ही नहीं गया है सही तौर पर कि यह साधारण है या असाधारण है। कोई बात नहीं है इसमें। इसे मुझे पूरा पढ़ना पड़ेगा :

"MEMORANDUM REGARDING DELEGATED LEGISLATION"

Item (a) of clause 2 (1) of the Bill seeks to define "essential service." Sub-Items (i) to (vii) of this item enumerate certain essential services. As it is not possible to enumerate all essential services, sub-Item (ix) of this item empowers the Central Government to declare by notification in the Official Gazette certain other services also to be essential services for the purposes of the proposed legislation. The sub-item clearly brings out the criteria on the basis of which any service may be declared thereunder to be an essential service. Thus a service cannot be declared to be an essential service under the said sub-Item (ix), unless the service is connected with matters with respect to which Parliament has power to make laws and unless the Central Government is of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community. Under clause 2 (2) of the Bill, any notification under the said sub-Item (ix) has to be laid before Parliament in the same way as rules made

under an enactment. In the circumstances, the delegation of legislative power is of a normal character."

अध्यक्ष महोदय, आप देखिएगा कि यह जो सेक्शन है यह इतना अनरल है और इस को आपने माना है कि यह एक्स्ट्रा-ऑर्डिनरी है क्योंकि इसमें जो क्राइटीरिया है, जो कसोटियां दी गई हैं इन को कोई प्रकट करके नहीं रखा गया है। यह कोई ऐसा क्राइटीरिया नहीं है कि जिस के बारे में पालियामेंट को कानून बनाने का अधिकार है, यह तो एक इतनी साधारण चीज है कि इसके बाहर जा कर यह कोई काम करेंगे तो चलेगा ही नहीं। इसलिए मेरा निवेदन है कि डेलीगेशन वाली बात को लेकर इन का यह कहना कि यह साधारण डेलीगेशन है यह सही बात नहीं है यह भ्रम है या बंध है इसका फैसला तो प्रदालन करेगी, इस में मैं जाना नहीं चाहता। आप को यह फैसला करना है कि क्या यह साधारण डेलीगेशन है या नहीं? अगर आप इस नतीजे पर पहुंचते हैं कि यह भ्रसाधारण है तो फिर इसमें जो नियम 70 हमारा है, उस का उलंघन हुआ है। अब मैं और आप का समय नहीं लेना चाहता हूँ।

सिर्फ डायरेक्टिव प्रिंसिपल के बारे में एक बात कह कर खत्म करता हूँ। यह बात सही है कि डायरेक्टिव प्रिंसिपल्स को लेकर कोई प्रदालत में नहीं जा सकता। लेकिन इस वक्त हम प्रदालत के सामने नहीं हैं। इस वक्त हम पालियामेंट में हैं। कोई भी यह नहीं कह सकता कि कानून बनाते समय, पालियामेंट डायरेक्टिव प्रिंसिपल्स के बारे में नहीं सोचे।

शुरू में ही इसके बारे में 37 में दिया हुआ है।

"37. The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws."

स्टेट की जो व्याख्या संविधान के धारा

13 में है, उसमें पालियामेंट धाता है। मैं निवेदन करना चाहता हूँ कि हो सकता है कि सुप्रीम कोर्ट इन सिद्धांतों पर न सोचे और उनके उलंघन को लेकर कोई जायेगा तो न्याय नहीं मिलेगा। लेकिन जहां पालियामेंट है, पालियामेंट राज्य में धाता है और पालियामेंट का यह प्रथम कर्तव्य है कि कोई भी कानून बनाते समय देखे कि इस धारा का उलंघन हो रहा है या नहीं। कैसे उलंघन हो रहा है।

मैंने इस विधेयक की धाराओं पर अपने संशोधन दिये हैं, मैं उनके बारे में नहीं कहना चाहता हूँ—जीवन का स्तर बढ़ाने, लिविंग बेज, प्रादि के बारे में, यह संबंध था, इन सभी बातों को लेकर हड़ताल की बात चली थी, घाउजेक्ट्स एण्ड रीजन्ज में स्वयं सरकार ने कहा कि इन्हीं को लेकर है, इसलिए मेरा नम्र निवेदन है कि पालियामेंट को जो ये निदेशक सिद्धांत हैं, उन सिद्धांतों का उलंघन करके, प्रवहेनना करके कोई कानून बनाने का अधिकार नहीं है और न इसमें कोई मौचिर्य है। आप सब की राय सुनने के बाद, इस पर वोट करवाइये ताकि मेरे मन को तसल्ली हो कि मेरे मुद्दों पर गौर फरमाया गया और विवेक से फैसला किया गया कि इन मुद्दों में तथ्य नहीं है।

MR. DEPUTY-SPEAKER : Shri Bhandare.

SHRI SHRI CHAND GOYAL rose—

MR. DEPUTY-SPEAKER : You will get an opportunity.

SHRI SHRI CHAND GOYAL (Chandigarh) : Why not in time ? You always by pass me. That is very unfortunate.

MR. DEPUTY-SPEAKER : The order is there. I want to give an opportunity to some of the friends on this side also.

SHRI RANDHIR SINGH : One from this side and one from that side.

MR. DEPUTY-SPEAKER : This I will not follow. This is not an ordinary debate. I will give an opportunity to those who want to make certain constitutional points.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, एक गड़बड़ हो रही है, जब बोलने के लिए सदस्यों को बुलाया गया, तब यह कल्पना थी कि जिन्होंने पहले लिख कर दिया है, जिनका नाम पहले बैलेट में आया है, उनको पहले बुलाया जायेगा और इस दृष्टि से कुछ लोगों को बुलाया गया। अब यह कहा जा रहा है कि चर्चा होगी, इसलिए कुछ को नहीं बुलाया जायगा। आप पहले यह बतलाइये कि जिन्होंने लिखकर आपत्ति दी है, पहले वही बुलाये जायेंगे या चर्चा हो रही है। चर्चा हो रही है तो सब सदस्यों को मौका देना होगा।

MR. DEPUTY-SPEAKER : A full debate is permissible.

SHRI ATAL BIHARI VAJPAJEE : But it was not permitted at the first instance. Only the Members who informed the Speaker were to speak.

MR. DEPUTY-SPEAKER : That is the usual practice.

SHRI ATAL BIHARI VAJPAJEE : That is not the usual practice. When there is a full discussion, then you are to go by parties.

SHRI RANDHIR SINGH : It has taken a form of full debate now. Let us meet them fully.

MR. DEPUTY-SPEAKER : May I read the rule ? Don't get excited.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, दो स्थितियाँ हैं.....

SHRI SHRI CHAND GOYAL : First you make up your mind. There are two situations...

MR. DEPUTY-SPEAKER : Your name is there. Only one exception I made by mistake in calling Shri V. Krishnamoorthi. Otherwise, I am following the order. I will give you an opportunity. Here it says :

"The Speaker may permit a full discussion thereon..."

A full discussion on what ? It is on constitutional and legislative competence. If somebody from this side says that the argument advanced by a member is wrong, am I not entitled to give him an opportunity or is he not entitled to have his say ? Shri Bhandare.

SHRI SHRI CHAND GOYAL : When you have allowed others from this side, why not allow me also ? They can also reply to the points I am going to raise.

SHRI R. D. BHANDARE (Bombay Central) : The legislative competence of this Bill is challenged under rule 172. Therefore, the first question is whether this Government has a right to issue an Ordinance... (Incursions). When I have heard them very patiently without disturbing them, they should also be patient when I speak. The second question which I would like to raise is whether this Parliament has the right to convert this Ordinance into a law. Therefore, the main question is whether this House has the right to pass this Bill which is based on the Ordinance.

When this Bill was sought to be moved, objection was taken. Objection has been taken on the ground that it militates, in the first instance against article 14, in the second instance it militates against article 19, and in the third instance it militates against the Directive Principles ..

The first point which they have raised is that it discriminates between a worker and worker, between an employee and an employee. The second question which they have raised is that it takes away the right to strike because, according to them—and they have advanced arguments for this—the right to strike is a Fundamental Right. But there I beg to differ with them...

MR. DEPUTY-SPEAKER : I want to correct you. By implication, they are deriving that ...

SHRI R. D. BHANDARE : Not only by implication, the right to strike is a recognised right of the worker, but that is a conditional right. Therefore, I wanted to draw the attention of the House to the difference between the Fundamental Rights and the other rights. The Fundamental

Rights are not dependent on the mercies or suffrance of any other person or any other political party; it is my Fundamental Right to exercise it. But what happens to the other rights? The other rights are conditional rights. Take, for instance, the right to strike under the I.D.A. 14 days' notice must be given. Unless the 14 days' notice is given—the procedure is laid down; the condition is laid down—there can be no right to strike. Even if the notice is given, when the matter is referred to conciliation, then the right to strike is taken away when the conciliatory proceedings are going on. Therefore, I submit very respectfully that the right to strike is a conditional right, recognised undoubtedly but dependent, for being exercised, on the procedure. It is a conditional right..... (Interruptions).

MR. DEPUTY-SPEAKER: If all the conditions are satisfied—notice and the other things which are laid down under the Industrial Disputes Act—, how will you define it? In what category does that right come?

15.00 hrs.

SHRI R. D. BHANDARE: It is a very simple proposition. It is a conditional right. All the conditions are to be fulfilled. It is a hypothetical question; what are the conditions (Interruptions). If the right to strike is to be enjoyed, that right to strike should not violate this piece of legislation. Here is the Essential Services Maintenance Bill which we are trying to pass I am not dealing with that Bill now because it would be going into the merits or demerits of it which is not permissible now. My point is this. Suppose a conditional right is made more conditional by a piece of legislation imposing further conditions, such legislation cannot be set at naught by the right to strike.

That is the point, Sir. Coming to this particular question I made the point here because they have raised it. Coming to Article 19, there is a long list of rights given. (Interruption). Sir, I take the side of the Constitution and not the side of my hon. friends there. I am taking the side of the Constitution and the constitutional provisions mentioned therein. Now, I

come to the question whether any of these things mentioned in the Bill militate against Article 14. Now, here is a Bill, which under clause 2 can specify what service should be treated as essential service. By an order under clause 3 prohibiting the strike under that essential service. What is an essential service? If a particular service is so essential to the life of the community, that is, if the service is stopped the life of the community will be stopped, that is an essential service. Take for an illustration the case of the Bombay Municipal Corporation when those people had gone on strike and certain points were argued in the High Court. They said: "Well right to strike, to stop water is not the right of the workers at all". Right to stop the scavenger's service is not essential by a right, and therefore, it is not an essential right, and therefore Government has every right to say under clause 3 as to which service is to be treated as essential service. As soon as the Government comes to the conclusion that a particular service is essential that service, becomes a class. And, if under that service, within the class itself, if some workers are discriminated against, then, article 14 steps in, because there should not discrimination between one class and the other. Article 14 speaks in simple language, and it is based on simple principles. Likes should be treated alike. All the employees are not alike, because there are employees who come under the essential services and they do not come under the other class and therefore there cannot be any discrimination at all. Likes should be treated alike. This should always be remembered as a principle; and this really is the foundation-stone of Articles 14, 15, and 16. Therefore, so long as one class of employees who come under the essential service are treated alike Article 14 does not come in, but if there is discrimination among them, then Article 14 steps in. Distinction has to be made between class and class and a worker and worker within the class itself. If discrimination is made, if distinction is made, as between individual and individual, then Article 14 comes in.

SHRI V. KRISHNAMOORTHY: A worker employed in a public sector undertaking has got the right to go on strike,

[Shri V. Krishnamoorthi]

but a worker employed in the railways does not have the same right. So, there is discrimination and it violates article 14 of the Constitution.

SHRI R. D. BHANDARE : Again, he is making a mistake. I was dealing with a class of employees. Within a class there could be categories. I am not dealing with the categories of workers in a particular class. I am dealing with a class of workers who could come under services essential to the community.

SHRI SEZHIAN (Kumbakonam) : Government can declare anything as essential at any time.

SHRI V. KRISHNAMOORTHI : Government can declare Shri Bhandare as non-essential.

SHRI R. D. BHANDARE : The point has been made that Government can declare any person to come under essential services at any time. I would submit that it is not so simple as that. This Bill is not so simple. If this power has to be exercised by Government, than the exercise of that power is also conditional under clause 3. Moreover, it is not a permanent measure. If an order is made declaring a particular service as an essential service, that is not a permanent one. It can continue only for a particular period.

SHRI NAMBIAR : Five years.

SHRI R. D. BHANDARE : This legislation is for five years. But the order declaring a particular service as essential service is only for six months.

SHRI NAMBIAR : That can also be for five years ;...

SHRI R. D. BHANDARE : It can be in force for not more than six months.

SHRI NAMBIAR : It can be in force up to five years.

SHRI R. D. BHANDARE : I would like to point out that this measure does not offend against any article of the Constitution at all. (Interruptions). Am I not

entitled to deal with the points which have been raised ?

SHRI NAMBIAR : We shall give him some more points presently to answer.

MR. DEPUTY-SPEAKER : Now, the hon. Member should try to conclude. I think he has made his point.

SHRI R. D. BHANDARE : I have made the points very clear including the one relating to the Directive Principles ; if you are satisfied that I have made them clear then I shall sit down ..

MR. DEPUTY-SPEAKER : He has made them clear. That does not mean that I am satisfied with it. He has made his point clear so far as he is concerned.

SHRI R. D. BHANDARE : It is my duty to satisfy you. Therefore, I am saying this.

MR. DEPUTY-SPEAKER : I must tell him very plainly that there are very distinguished lawyers here who have their own views. This is a piece of legislation which has many facets to it and many complicated things. If I were to say that I am satisfied on a particular point, it would not be doing justice to it.

SHRI R. D. BHANDARE : I should be very clear to you.

SHRI V. KRISHNAMOORTHI : We have a right to call the Attorney-General to come here so that we can have our doubts cleared.

SHRI SHRI CHAND GOYAL (Chandigarh) : I shall confine my arguments to the constitutional validity and the legal validity of this piece of legislation. I build up my case under article 13 (2) which says that a law to the extent to which it abridges or abrogates the fundamental rights will be declared illegal by all courts in India. My hon. friend Shri R. D. Bhandare had tried to take this out of the purview of article 14. But I feel that this clause is fully covered by article 14 which says that the State shall not deny to any

person equality before law or equal protection of law within the territory of India.

My hon. friend tried to make a distinction between essential services and non-essential services. I would like to draw his attention to clause 2 (1) (a) (viii) which reads thus :

"any service in connection with the affairs of the Union, not being a service specified in any of the foregoing sub-clauses ; "

And the foregoing clauses relate to posts and telegraphs, telephone service or transport service or aerodromes and airports or mint, or defence establishments etc. I could understand if the Bill had stopped at item (vii) and had not exceeded that and had not incorporated items (viii) and (ix). You will observe that item (viii) absolutely removes the distinction which is sought to be maintained in the first six items, because those relate to only certain departments which have been clearly specified as relating to essential services.

So far as 2 (1) (a) (viii) is concerned, it is a blanket provision covering all services of the Union Government. Now the distinction which was sought to be created in the first six sub-clause has been obliterated in this sub-clause, and now we are not left with any distinction between essential and non-essential services. All have been covered within the purview of (viii).

MR. DEPUTY-SPEAKER : This is a sort of blanket provision.

SHRI SHRI CHAND GOYAL : All services of the Union have been covered in it.

Then (ii) is equally wide and dangerous :

"Any other service connected with matters with respect to which Parliament has power to make laws and which the Central Government being of opinion that strikes therein would prejudicially affect the maintenance of any public utility service, the public safety or the maintenance of supplies and services necessary for the life of the community or would result in the infliction of grave hardship on the community, may, by notification in the official gazette..."

SHRI S. M. BANERJEE : Everything under the sky.

SHRI SHRI CHAND GOYAL : The only criteria prescribed and which serves as a rider on this are two : first, that Parliament must have the competence to frame a legislation. That means all matters which are covered either by List I or List II of the Seventh Schedule have been brought in under this piece of legislation.

What has been done ? Discretion has been left to the Government without prescribing any guiding principle, without prescribing any channel, without denoting any definition. The entire discretion is being left to the Central Government to declare any service as a service covered by the provisions of this Bill. I would appeal to your legal acumen to see that (viii) and (ix) wholly remove the distinction between essential and non-essential services and cover all services.

The second distinction would be the one that Shri Bhandare avoided dealing with. A distinction is being made between an employee and another employee. What about an employee serving any State Government ? What about an employee serving any corporation, employees serving in other departments which are not government-owned departments ? He says that no distinction is being made between citizen and citizen. But I would build up my case that even from another aspect, distinction is being created, that government employees are being put at a disadvantage and a restriction, which by no means can be called a reasonable restriction, is being provided by this legislation. To that extent, it will be unable to stand scrutiny in law courts and is likely to be declared illegal and ultra vires the Constitution, because a distinction is sought to be created which the law does not warrant and which is against the fundamental rights vouchsafed to us, and will be struck down under art. 13 (2) as abridging or abrogating those rights.

Then I would like to say a few words — because those preceding me have dealt with this elaborately—with regard to 19 (1) (b) and (c), to assemble peaceably and without arms and to form associations or unions. There are number of cases which must have come to your knowledge as a practising lawyer which show that the right to strike is a genuine trade union

[Shri Shri Chand Goyal]

activity. Under the objects and reasons in para 2, the Bill clearly authorises the Central Government to prohibit strikes in essential services. Government are not concealing their objective of prohibiting these strikes. Now the question is : if we consider strikes as a legal and genuine and well-recognised trade union activity, then it is taking away that right granted to us by article 19 (b) and (c) to form associations, because it is the right of the Government employees to form their own unions and to take important decisions and even the right of strike or the right of demonstration has been recognised to be a genuine and legitimate trade unions activity. So, from that aspect also I feel that this will be hit.

Mr. Madhu Limaye only touched the point with regard to delegated legislation, but that is a very important point. This piece of legislation certainly suffers from excessive delegation, because unguided and uncanalised power is being invested in the State Governments to determine which service will be an essential service which will be a non-essential service and which services Government will have the right to prohibit strikes. My humble submission is this that by this Parliament is abdicating its authority, its legislative functions and arming the executive with powers to make laws because the crucial point is whether service is covered by the definition of "essential service". By entrusting the power to the executive Government to declare a particular service to be an essential service, Parliament is giving the right of framing legislation to the executive Government. This is not a ordinary matter. This is taking away the liberty of the employees, this is placing a very serious curb on their trade union activities and to that extent this piece of legislation suffers from excessive delegation, and I submit it would not be safe to do this.

This piece of legislation is being passed for a period of five years. Even a state of emergency hardly lasts for a year or two. Where has the Government built up a case for having such powers in its armoury? Is not the law that is prevalent sufficient to deal with any contingent situation? It is said that this law is for preventing attempts as were made on the

occasion of the strike on 19th September. There is no guarantee that even this Government will remain in power for five years, and they are going to pass this legislation for posterity. I can understand if they wanted to deal with a particular contingency which had arisen. For that they had passed an ordinance. But now to give them this power for five years to curb any trade union activity is a very serious matter and I agree with my hon. friend Mr. Krishnamoorthi that on this crucial and important legal matter we must seek the opinion, advice and guidance of the Attorney General so that the court may not say that Parliament before framing such a piece of legislation did not look into its validity.

They do not look to the constitutional provision. It also will bring us dishonour if it is struck down by the courts of India. Therefore it will be advisable to summon the Attorney-General.

MR. DEPUTY SPEAKER : I would now request the hon. Members to confine their remarks to 5 minutes. What is happening is that all the points that have been raised are repeated. It is enough if they are just mentioned. We have taken already one hour and 20 minutes.

श्री भद्रल विहारी बाजपेयी : उपाध्यक्ष महोदय, इस पर खुली चर्चा की इजाजत दीजिये। यह विधेयक इस तरह से पास नहीं होने दिया जायेगा। क्या आप बोलने भी नहीं देंगे? वह हमारा गला दबा रहे हैं और आप हम को बोलने भी नहीं देंगे?

MR. DEPUTY SPEAKER : I will permit but there must be some time limit. I will call you a little later.

श्री एस. एन. जोशी (पूना) : यह बहुत महत्वपूर्ण बात है। वह हमारी जान ले रहे हैं और आप टाइम की बात कर रहे हैं?

MR. DEPUTY SPEAKER : There must be some time limit.

श्री मधु लिमये : अगर मुझे की पुनरावृत्ति हो तो आप रोकिये। नये पहलू आ रहे हैं।

SHRI NAMBIAR : Whoever has given his name, he should be allowed first.

SHRI S. M. BANERJEE : He is reading the mini constitution.

MR. DEPUTY-SPEAKER : With your concurrence I will fix a time limit. (*Interruptions*) What happens is that more or less same points are further stressed. I know the importance of it, but it need not be elucidated further.

SHRI VIKRAM CHAND MAHAJAN : The question is what is public order. If you stop the drinking water supply to a particular town in the month of June at 3 O'clock, it is causing a lot of inconvenience to the public. If in such an essential service the strike is prohibited, is it not in the interest of public? Take the case of the railways. If the train is abandoned between two railway stations, is not the public inconvenienced. If you prohibit strike, my submission is, in such services which affect the public that will be covered by Art. 19.

SHRI S. M. BANERJEE : The Minister who pilots the Bill should be here. The Home Minister has gone home and this Bill is being discussed. (*Interruptions*)

SHRI R. D. BHANDARE : The Law Minister is here. They should be satisfied.

MR. DEPUTY SPEAKER : Your point is followed. In the Bill what is an essential service is not mentioned. If enumeration is there I can understand.

श्री जार्ज करनेबीज : यह मंत्री हाजिर नहीं हैं जो कि बिल को पाइलट करने वाले हैं। कौन इस बिल को पाइलट कर रहा है ?

SHRI VIKRAM CHAND MAHAJAN : What are the essential services under the Bill. Essential Services is a term in common use.

MR. DEPUTY-SPEAKER : I have told them. The Home Minister will be present.

If a particular service which has been declared by the Government as an essential service, but in fact, under the common usage, does not fall within the term "essential service", then the courts will automatically strike it down. But what I submit is that the policy is laid down in the Bill, and the policy is that this measure will apply to essential services. If a particular service is not an essential service, then it will not come within the purview of this Bill and that particular service will be out of it; the law in that case will become null and void. I therefore submit that the policy is laid down.

श्री जार्ज करनेबीज : बहस को स्पष्टित कीजिये।

SHRI V. KRISHNAMOORTHY : The Home Minister should authorise him or he should seek the permission of the Speaker.

Another argument is that clauses 8 and 9 are a blanket provision. They are not blanket provisions. and they are governed by the earlier provisions, the earlier provisions being that essential services are those which are enumerated in the Bill. If under clauses 8 and 9, any service is not an essential service, you can strike it down, but you cannot strike down the power to declare a service as an essential service.

MR. DEPUTY SPEAKER : I agree. The bone of contention is constitutional compatibility and legal compatibility. The Law Minister is here for the time being. The Home Minister will come.

SHRI S. M. BANERJEE : There are three Ministers—Mr. Ramaswamy, Mr. Vidya Charan Shukla and Mr. Y. B. Chavan. All the three Ministers are not here. I do not know where they are. They are not required to remain at home. They should be here.

SHRI VIKRAM CHAND MAHAJAN (Chamba) : There are 3 or 4 constitutional questions. One is regarding Article 19. That going the right to form an association. The right is limited. If you read article 19 (4), you will see that in public interest there can be imposed reasonable restrictions.

The next point is that article 14 is hit; the argument is raised by quoting article 14; that you are excluding a class

[Shri Vikram Chand Mahajan]

of employees and not excluding certain other classes of employees. I submit that what article 14 envisages in this: If the Government says that water supply service in Delhi, for example, is covered by essential service, it is a class by itself; but if it says that only a particular area, say, Karolbagh, is included in the essential service and not other areas, then it will be discriminatory *inter se* the other areas, and that article will be hit. Therefore, the class of service is covered by article 14.

Finally, one of the points touched by Shri Madhu Limaye is that he can raise the point and move an amendment at the introduction stage.

MR. DEPUTY-SPEAKER : I have to decide that point. That is a procedural point. You need not deal with it.

SHRI VIKRAM CHAND MAHAJAN:

The point is, wherever the legislature has wanted to give a particular power of amendment, it has given it, but wherever it does not want, it has not. Therefore, I submit that the points raised have no validity.

SHRI NAMBIAR (Truchirappalli) : I do not want to repeat any point. My point is that apart from the article quoted by my hon. friends on this side, article 20 (1) and articles 21, 39 (e) and 42 are being violated by pursuing this piece of legislation. Article 14 has been well explained, but I would deal with only one other aspect of the question. Article 14 says :

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

Here, it is stated that certain sections of employees, called the Central Government employees—they are classified like this—should not go on strike, and it will be declared illegal. That means a discrimination and equality is denied.

Further, you will kindly see the definition of a strike. On page 2 of the Bill, "strike" has been defined as "refusal to work overtime where such work is neces-

sary for the maintenance of any essential service; and any other conduct which is likely to result in, or results in, cessation or substantial retardation of work in any essential service." This is not only a stoppage of work by a strike. This is about the conduct of the employees which will result in substantial retardation of work. Suppose an employee produces a thousand bolts and nuts a day as prescribed, and he could not produce the same quantity but produces only 800 on a particular day,—because of some defects in the machine and so the production is reduced to 800—this clause is violated since it is retardation of work. Therefore, equality before the law is not only denied but it is taken to such a dirty extent that it goes down the ditch; the definition is such that anybody can define it in any manner he likes. Therefore, it has become absurd and nonsensical, and hence it is all the more emphatically violating article 14.

SHRI PILOO MODY (Godhra) : Nuts and bolts are certainly missing.

SHRI NAMBIAR : Then, let me come to article 20 (1).

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

Section 9(2) of the Bill says :

"Notwithstanding any such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act, as if this Act had come into force on the 13th day of September, 1968."

This is retrospective legislation with regard to penal action. The so-called offence was committed before the Act comes into force. There was no law in force on the 13th September. Penal provisions cannot be made with retrospective effect. You can punish a person for committing an offence after the Act comes into

force, not retrospectively. If the ordinance is valid today, you can convict him under that, even though in my view, the ordinance is illegal. But that point I will raise in the court. You are prosecuting 5000 people in the court and they will give the answer there. This retrospective effect to the penal provision violates article 20(1).

Article 21 says :

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

What is the procedure established by law? The passing of this Bill is procedure established by law. But the Bill contradicts various provisions of the Constitution. Therefore, it violates article 21 also.

Article 39 (e) says :

"The States shall, in particular, direct its policy towards securing —

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

Here comes the question of overtime. The Bill says that refusal to work overtime where such work is necessary for maintaining essential service, is an offence. This clause violates article 39(e). Even the the Wanchou Committee has said that railway people are made to work 20 hours a day and they cannot be asked to work more than 12 hours a day. Under this Bill, if they refuse to work for 20 hours, it will be an offence.

Article 42 says :

"The State shall make provision for securing just and humane conditions of work and for maternity relief."

All humane conditions are being denied to the workers. Under all these sections, this is against the law of the land. We should not wait for the court to decide.

But, we ourselves, this Legislature itself, should throw it out and the Government should not pursue this matter. With regard to punishment, victimisation of 20,000 workers, etc., I am not bringing them now and I reserve that for the next occasion.

I am very much opposed to all that is

being done in the name of this legislation. (ends)

श्री रत्नधीर सिंह (रोहतक) : डिप्युटी स्पीकर महोदय, मुझे हैरत होती है इस बात पर कि बेकार बातों में इस हाउस का बहुत वक्त जाया किया जाता है।

SHRI S. M. BANERJEE : I rise on a point of order. I take very strong exception to this.

MR. DEPUTY-SPEAKER : If I consider that certain points are irrelevant, I will stop him. Mr. Randhir Singh, you speak in English.

श्री रत्नधीर सिंह : मैं जब धरोखी में बोलता हूँ, तो ये मुझे बोलने नहीं देते हैं और जब उर्दू समझता हूँ, तो समझते नहीं हैं।

श्री स० मो० बनर्जी : उपाध्यक्ष महोदय मुझे अपने दोस्त से कोई ख़ाती भगड़ा नहीं है लेकिन मुझे उन्न की इस बात पर एतराज है कि बेकार बातों में हाउस का वक्त जाया किया जाता है। जो भी सबस्य इस वक्त बोले हैं, वे आप की इजाजत से बोले हैं। अगर उन्होंने कोई बेकार बात कही होती, तो आप उन्हें रोक सकते थे। इस लिए उन्हें यह कहने का हक नहीं है कि यहाँ पर बेकार बातें कही जाती हैं।

श्री रत्नधीर सिंह : आप ने रूलिंग दे दिया है कि इर्रिलिबेंट बातें नहीं कहनी चाहिए।

SHRI S. M. BANERJEE : It is a reflection on the Chair, Sir. When you point out that certain irrelevant points have been made by anyone of us on this side of the House and you ask us to sit down, we sit down and the discussion is discontinued. The behaviour of Shri Randhir Singh is the high water-mark of blunder.

श्री रत्नधीर सिंह : अगर प्रानरेवन मेम्बर एक बात कर सकते हैं, तो मैं भी बानों में उस का जबाब दे सकता हूँ। (अध्यक्षान) चार नाम फंडी बानों को ले कर यह एक किसान को डराते हैं। (अध्यक्षान)

श्री स० मो० बनर्जी : यह हमेशा हारते रहे हैं ।

श्री रणधीर सिंह : हम करोड़ों के नुमायंदे हैं । यह चन्द मुट्ठी भर आदमियों के नुमायंदा हैं । यह हमेशा हाउस को तंग करते रहते हैं ।

मैं समझता हूँ कि यह कहना इस हाउस की तोहीन है कि हमें इस बिल पर बहस करने और इस को पास करने का अस्त्यार नहीं है । अमल में कृशल पायंट ही यही है कि क्या हम में इस बिल पर बहस करने और इस को पास करने की कम्पीटेंस है या नहीं । इन लोगों ने कहीं की ईट और कहीं का रोड़ा ले कर पता नहीं कौसी बहस कर दी है । जो लोग कहते हैं कि हम इस बिल पर बहस नहीं कर सकते हैं, उनका वही हाल है, जो हर एक मुकदमे में कमजोर वकील का होता है, जो कहता है कि बि कोर्ट हेज नो जूरिसडिक्शन और फिर प्रिलिमिनरी इस्यू में ही हार जाता है । ये भी कमजोर वकील हैं और ये अभी हारने वाले हैं ।

मैं आप की मार्फत श्री बनर्जी से पूछना चाहता हूँ कि अगर हम इस बिल पर बहस करने और इस को पास करने के कम्पीटेंट नहीं हैं, तो कौन है । अगर ला मेकिंग के लिए हिन्दुस्तान के पचास करोड़ लोगों के नुमायंदे कम्पीटेंट नहीं हैं, तो फिर और कौन कम्पीटेंट हैं ? क्या हमारे ऊपर कोई और सुपर-गालियामेंट है ? (व्यवधान)

MR. DEPUTY-SPEAKER : That is not the question. The question is whether within the framework of the Constitution, this House or this Legislature can pass this law.

श्री रणधीर सिंह : जहां तक लेजिस्लेशन का सवाल है, यह पार्लियामेंट सुप्रीम है । जैसे सुप्रीम कोर्ट जूडिशियरी में सुप्रीम है, हम सिर झुकते हैं, ऐसे ही सुप्रीम कोर्ट और तमाम भाइयों को सिर झुकाना चाहिए, हम लेजिस्लेशन में सुप्रीम हैं । एक तो मेरा प्वाइंट यह है ।

दूसरा प्वाइंट यह है कि जो बार-बार,

स्ट्राइक है, स्ट्राइक है, यह हम सुनते हैं, यह सुनते-सुनते हमारे कान बहरे हो गए । क्या मुसीबत है ? आर्टिकल 31 को पढ़िए—राइट आफ प्रापर्टी । आर्टिकल 31 चेप्टर ३, फंडामेंटल राइट्स आफ दि कांस्टिट्यूशन । जब राइट आफ प्रापर्टी जो फंडामेंटल राइट है उस पर रेस्ट्रिक्शन हो सकता है तो राइट आफ स्ट्राइक जो फंडामेंटल राइट नहीं है, उस पर रेस्ट्रिक्शन क्यों नहीं हो सकता ? यह नोट फरमाएं मधु लिमये साहब । राइट आफ प्रापर्टी फंडामेंटल राइट है लेकिन पार्लियामेंट उस को कर्ब कर सकती है, ला बना सकती है उस के लिए और एक नहीं सैंकड़ों बना सकती हैं । उस के अमेंडमेंट एक नहीं, दो नहीं, कई बार हो चुके हैं । पार्लियामेंट अमेंड कर चुकी है तो जो फंडामेंटल राइट नहीं है उस के सिलसिले में लेजिस्लेशन नहीं ला सकते यह कौसी मजाक की बात करते हैं, समझ में नहीं आता । एक मेरा यह प्वाइंट है ।

दूसरी बात जो मेरे भाइयों ने कही, मुझे अफसोस भी होता है इन की अकल पर, सारे आर्टिकल २१, २० और ३६ सब को मिसकोट किया । वह कोई अप्लाई नहीं करता । एक दफा आप उस को फिर पढ़ कर रखें, आर्टिकल ३६ या २१ या २० कैसे यहां कोट होता है ? आर्टिकल २३ मधु लिमये ने कोट किया । लेकिन थोड़ा सा अकल में भ्राने की बात थी । उन्होंने 23 (1) पढ़ा, 23 (2) नहीं पढ़ा ।

श्री मधु लिमये : मैं ने पढ़ा है ।

श्री रणधीर सिंह : कहां पढ़ा है ? उस में सारा मामला साफ हो जाता है । आर्टिकल 19 के क्लॉज 2,3,4,5,6 इन में जाने की... (व्यवधान)... यह तो कर्ब हैं । अगर यह लोग कल को प्राग लगाना शुरू करेंगे नई दिल्ली को या किसी ट्रेन को फूंकना शुरू करेंगे और कहेंगे कि यह हमारा राइट है, कल फ्रांस की तरह से कूप करना चाहेंगे, तक्ता चलटना चाहेंगे तो क्या हम देखते रहेंगे ? यह हम नहीं होमे देंगे ? इन्टेन्डिटी आफ दि स्टेट, साबरेन्टी आफ दि स्टेट के नाम पर हम इस को रेस्ट्रिक्ट करेंगे । सारी

बात पिन प्वाइंट होती है पब्लिक ब्रांडर पर। ट्रेन का फूंकना, कास्टीट्यूशन का जलाना, भंडे को जलाना, गवर्नमेंट का तस्त्ता उलटने की कोशिश करना, यह सब पब्लिक ब्रांडर है। अगर यह लोग यह चीज करना चाहते हैं तो हम नहीं होने देंगे। होम मिनिस्टर उस बात को होने नहीं देंगे। यह आर्टिकल 23 (2) पढ़ लीजिए। उस को पढ़ने के बाद दिमाग साफ हो जायगा।

"Nothing in this article shall prevent the State"—

the State of Shri Chavan, the Central Government—

"from imposing compulsory service for public purposes"

यही आर्टिकल 23 (2) सेंट्रल गवर्नमेंट को एसाऊ करता है पब्लिक परपरा के लिए इस प्रकार का कानून बनाने के लिए।... (व्यवधान)... और क्या पब्लिक इन्टरेस्ट है? यही पब्लिक परपरा है, पब्लिक इन्टरेस्ट है। यह लोग कल जा कर देश को भाग लगाना चाहें तो हम लगाने देंगे? तो एक बात तो मुझे यह कहनी थी आर्टिकल 23 (2) की।

दूसरी बात जो मैं आप की नोटिस में लाना चाहता हूँ वह है आर्टिकल 19 (2) टु (6)। यह लोग मिस कोट कर रहे हैं ला को। यह थोड़ा सा दिमाग पर जोर डालें तो समझ में आ जायगा। आर्टिकल 19 (1) (2) (3) हम भी समझते हैं। लेकिन जहाँ राइट आफ एक्स-प्रेसन है, राइट आफ एसोशिएसन है, राइट आफ यूनिवर्सल प्रायटी का सवाल है, राइट टु रिजाइड इन एनी पार्ट आफ इंडिया का सवाल है, वह तो सभी मानते हैं। लेकिन इन पर भी कब्ज़ा है। वह हैं (2), (3), (4), (5) और (6)...

SHRI V. KRISHANAMOORTHY :
Only reasonable restrictions, not unreasonable restrictions.

श्री रत्नधीर सिंह : कहां से निकलोगे ? एक से नहीं, दूसरे से नहीं तीसरे से, तीसरे से नहीं चौथे से, कहीं न कहीं पकड़ में आ

जाओगे। यह जो इतने सारे रेस्ट्रिक्शंस हैं इन में से किधर से निकलोगे ?

This Constitution is all brakes.

कहां भागोगे जाकर ? एक आर्टिकल नहीं, पचासों आर्टिकल मैं गिन कर अभी आप को दे दूंगा कि इस के ऊपर ला भेकिंग पावर पालियामेंट को है। तो हर रोज की यह बहस और इस में इतना समय जाया होना, यह आप की भी तौहीन है, यह नेरे इन भाइयों की भी तौहीन है, इस में देश का बक्त जाया होता है। यह बेड़े घन्टे बक्त बच सकता था। बड़े अच्छे-अच्छे भाषण होते, चव्हाण साहब भी सुनते, कुछ उस में एकमोबेशन हो जाता, कुछ प्रमेंडमेंट्स मंज़ूर हो जाते, गरीबों का भी फायदा होता, मजदूरों का भी फायदा होता और हाउस का भी फायदा होता, देश का फायदा होता।

15.45 hrs.

[Shri Vasudevan Nair in the Chair]

SHRI S. KUNDU (Balasore) : Mr. Chairman, Sir, I oppose the introduction of this Bill. For some time the past, we have been seeing various Bills, such as, the Industrial Security Bill, the Railway (Amendment) Bill and also the Banking Law (Amendment) Bill, are coming before the House which directly restrict the rights of workers. This goes to show that the Government is going to take the posture of a dictator and is, gradually, turning to be a totalitarian State.

Somebody said that this House has no power to decide about the legislative competence of the Bill. It is too late in the day to raise such questions. Can anybody bring forward a Bill saying that the Prime Minister of India should not be a lady and that only a male should be the Prime Minister of India and get it passed here? Certainly not. Where it is *Prima facie* unconstitutional, its competence has to be decided here. Once it is found that it violates the Constitution, it is *Prima facie* unconstitutional, it has to be thrown out.

Most of the points have been raised here. I would not repeat them. I would

[Shri S. Kundu]

just point out one or two points. In this Bill an attempt has been made to usurp the rights workers. They have said that only the law-making powers of the Central Government are transgressed. I feel—I have genuine fear—that it also transgresses List II, State List, which is the law-making power of the States. For instance, in clause 2, where it defines "essential service." it says :

"(ii) any railway service or any other transport service for the carriage of passengers or goods by land, water or air ;"

Now, "any other transport service" also comes under List II, item 13 which says :

"Communications, that is to say, roads, bridges, ferries and other means of communication not specified in List I ; municipal tramways ; ropeways ; inland waterways and traffic thereon .."

It transgresses the law-making power of the States.

There are many other things which also directly encroach upon List II. Various things have been said. I do not want to repeat them. I want to point out one thing here. It is for the Law Minister to reply. I want to ask : Can we enact a law where we would not definitely point out who has the right to notify, what are the circumstances and when we are going to prohibit strike ? What does clause 3 say ? It says :

"(1) If the Central Government is satisfied that in the public interest it is necessary or expedient so to do, it may by general or special Order, prohibit strikes in any essential service specified in the Order."

Then, sub-section (2) says :

"(2) An Order made under sub-section (1) shall be published in such manner as the Central Government considers best calculated to bring it to the notice of the persons affected by the Order."

I feel this is in violation of the principles of natural justice. You cannot make a law which abrogates the right of the people against whom you make a law—how and when it is made. They would not know any-

thing, how the law is made, when you are going to prohibit strikes and all that. The executive has been given the power to decide time and the circumstances of publishing such an Order. This is highly arbitrary. This violates the principles of natural justice. Therefore, the entire Bill be declared *ultra vires* of the Constitution because as it violates the principles of natural, justice.

Another point is this. I would say that this is a colourable piece of legislation because in the Industrial Disputes Act the right to strike has been provided ; it is has been said that, in so far as public utility services are concerned, it will be illegal unless notice is given and certain other things are done. You give the right to strike by one Act of Parliament and by another Act you are surreptitiously taking away that right without repealing the right to strike from that Act. This compels me to say that this is a colourable piece of legislation. The right which has been given by one Act cannot be taken away by another Act indirectly.

I will not go to the other points which have already been dealt with in this connection. I associate myself with most of the Constitutional points that have been raised. I would just like to point out only one thing.

15.52 hrs.

[Mr. Deputy Speaker *In the Chair.*]

In clause 7 of this Bill it is said :

"Notwithstanding anything contained in the Code of Criminal Procedure, officer 1898, any police may arrest without warrant any person who is reasonably suspected of having committed any offence..."

Mr. Chavan and the Law Minister must be knowing how obnoxious are sections 151, 107 and 109 of Cr. P. C. In the struggle for freedom days when people were arrested they were arrested under section 107 and they were told that it was because they were moving like vagabonds. These things have been objected to all along by the jurists. This is a black piece of law which has to be abrogated. What does

section 151 Cr. P. C. say? It says that if there is any suspicion or apprehension of committing any cognizable offence, the person can be arrested. Here in this Bill, it is said :

"...who is reasonably suspected of having committed any offence..."

Under the Municipal Act, to spit is an offence, and the police can say that 'to spit' is an offence and arrest the person whose spat and put him in Jail. So, this is a black piece of legislation. This is unconstitutional and it should not be allowed to be passed.

Lastly, Clause 6 reads :

"Any person who knowingly expends or supplies any money in furtherance or support of a strike..."

"any money" will also mean donation. To forbid donation is violating article 19 of the Constitution. Article 19 guarantees the right to organize a union; it guarantees the freedom of movement. Once you form a union, you are called upon to give donation. If donation is forbidden, then it takes away the right to form a union which is guaranteed under article 19.

Therefore, on all these grounds, I strongly object to the introduction of this Bill. I feel that no more we are going to live in a democratic form of Government: I think, the 'ballot raj' is being replaced gradually by the 'danda raj' which Mr. Chavan is spearheading through every piece of legislation of this kind. I hope, he will be wise enough to withdraw this Bill and not press for its introduction.

SHRI H. N. MUKERJEE (Calcutta North-East): Mr. Deputy-Speaker. Sir, I shall be brief. I am glad to see you back because I was getting a little bewildered that since you had heard the arguments earlier, it would be rather unreal to be arguing to the Chairman who did not happen to be you. I am glad you are back to listen to whatever we have to say. I shall be brief.

We all know that we in this House pursue this salutary principle that the Chair does not usually intervene where the question of constitutionality comes up.

But on this occasion what I feel is that not only is the constitutionality of the matter in question; but it is also happen-

ing in juxtaposition with what I consider to be an attack on the ways of work which we have developed in what we consider to be a parliamentary system. So, those two things are juxtaposed, which is why I was expecting from the Chair that it would put its foot down on the kind of legislation which is proposed.

Now, Sir, my friend over there, said in his airy fashion that just because we happen to be Parliament we can consider this matter and the Chair need not have any say. But the point is this. Apart from the fact that in the constitution we have the chapter on Fundamental Rights, which has been supplemented by judicial decisions of all sorts, we have also the corpus of rights accruing to our people, and in this case our working people have gone through a long process of stern struggle as in every country in order to achieve that corpus of rights which is incorporated mainly in the Industrial Disputes Act and similar legislations. Even though they do not come under the provisions of the Fundamental Rights chapter, because that Fundamental Rights Chapter has certain lacunae, as a matter of fact, this particular convention has grown in this country, and it has become part of the accepted norms of social living. That is why, the word 'shall' has been used in the constitution, that the State shall take into consideration the directive principles; and Parliament being part of the State, and a very important part of the State, has got to guide itself in conformity with the Directive Principles. That is why I wish you to please apply your mind more perhaps than normally you would have done. You could have got away by saying that this is purely a constitutional matter which only the Supreme Court can take cognisance of. But, Sir, we have a feeling that the emergency is returning; and it has already returned by the back door. And my hon. friend Mr. Kundu spoke a little while ago about what any lawyer worth his salt knows the legal maxim that, you cannot do indirectly something which you cannot do directly. Well, at this present posture of time, we are almost in the process of doing something, putting to a final decision, something about the unalterability of the Fundamental Right Chapter. Government is doing stealthily what amounts to abrogation of Fundamental Rights as

[Shri H. N. Mukerjee]

generally understood in this country, on account of, as I have said, the juxtaposition of the technical aspect of the letter of the law, and the spirit of the law, as it has functioned so far. Because of that we say that the Government is trying to do indirectly what it cannot do directly.

Then, Sir, there is another point mentioned by my hon. friend Mr. Nambiar and earlier by my hon. friend Mr. Krishnamoorthi, which to my mind is very important. Clause 9 (2) gives retrospective immunity to actions committed as from the 13th day of September, 1968. If it is a normal piece of legislation I can understand, but this is a very abnormal piece of legislation. But some of us happen to be now working on a piece of legislation introduced in this House by Government, that is, the Liability in Torts Bill and this is being considered now by the Joint Committee. In that Committee we are pursuing this matter and we have heard the evidence of Mr. Setalwad, Mr. Daphtary and such other eminent people in regard to the kind of immunity being offered to Government servants who might be committing tort or might not be committing tort. But this kind of offering immunity retrospectively to the Government action militates against the entire process of Parliamentary functioning as I understand it. Some of us, at this present moment of time, are working in the Joint Committee which has very nearly come to the reporting stage of a piece of legislation where the liability in tort of Government servants in particular is the subject of discussion, and now we get this kind of legislation.

My hon. friend Mr. Randhir Singh seems to have an idea that we live in such troubled times that water supply can be stopped or something may happen. No. Is it Government's contemplation that we live in times of such terrific disorder that nothing but the harshest emergency measures can do the trick? That is why Sir, the whole matter is nauseating. Till about the 9th of September, Parliament was sitting, but on the 11th of September, this ordinance was issued, as if this was not anticipated when Parliament was sitting. And, once an ordinance, it is permanently a legislative measure. Is that the kind of

tradition which we are going to build for ourselves find for posterity?

It cannot happen on any reasonable computation of fundamental rights, on any interpretation which would square with our idea of a libertarian form the society. This kind of thing does not pass muster and, therefore I, would like you to apply your mind not in a technical legal-logomachic fashion, but in a fashion which would take into account the working of our parliamentary system.

16.00 hrs.

As I have said, apart from the vulnerability from the purely constitutional aspect of this legislation, there is the question of liability of torts, which is the subject matter of legislation very nearly complete, and I consider that this whole thing is so bad that it suggests as if Government are out to establish something like a neo-fascistic order in this country. And that is why they are going to rush through this kind of legislation, and even discussion regarding its constitutionality or otherwise is being resisted by some of the over enthusiastic friends on the other side.

Therefore, these are my submissions which I do hope will attract your attention.

श्री जार्ज फरनेग्डीज (बम्बई दक्षिण) :
 अध्यक्ष महोदय, काफी बहस इस मसले पर हो चुकी है और संविधान की कई धाराओं को यहां पर पेश किया गया है। मैं आपका ध्यान खासतौर पर धारा 248 और 309 की तरफ आकर्षित करना चाहता हूँ। धारा 248, आप जानते हैं कि यूनियन लिस्ट, स्टेट लिस्ट और कानकरेंट लिस्ट को साफ तौर पर बताती है। इस विधेयक को अगर आप पढ़ेंगे तो इसकी डिफिनीशन्स की क्लॉज (2) में दिया हुआ है :

"In this Act, 'essential service' means any railway service or..."

अब पूँ कि यह बहुत महत्व का प्रश्न है इसलिए मैं चाहूँगा कि आप भी इस पर अपनी राय दें। 'any other transport service for the carriage of passengers or goods by land, water or air..."

मेरा विचार है कि गृह मंत्री जी को इस रूप में इस विधेयक को यहां लाने का कोई अधिकार नहीं है, संविधान के अन्तर्गत उनको ऐसा अधिकार नहीं मिलता है। जब आप any other transport service for the carriage of passengers or goods"की बात करते हैं तो २४६ में, सेविन्थ शेड्यूल में जो लिस्ट नम्बर एक है उससे तत्काल आप बाहर जाते हैं क्योंकि लिस्ट नं० एक में "carriage of passengers by land by any other transport service इसके ऊपर लेजिस्लेट करने या किसी किस्म का बंधन लगाने का आपको कोई अधिकार नहीं है।

अब आप यूनिनयन लिस्ट को देखें। उसको मैं आपके सामने रखना चाहता हूँ। यूनिनयन लिस्ट नं० ३० :

"Carriage of passengers and goods by railway, sea or air or by national waterways in mechanically propelled vessels"

इसमें रोड्स की बात नहीं आती है। अब आप आगे बढ़कर स्टेट लिस्ट को देखिए।

MR. DEPUTY-SPEAKER : Road transport—that is very clear.

श्री आर्ज फरनेग्बीज : जी हा, कतई नहीं आता है। लेकिन इसमें मैं और बातें आपके सामने रखना चाहता हूँ। आप स्टेट लिस्ट को देखें। नं० ५ में आप के सामने रखता हूँ :

"Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.

अब जहां तक लोकल गवर्नमेन्ट की बात है, आप जानते हैं कि कांस्टीट्यूशन में पावर आप म्युनिसिपल कारपोरेशन्स की बात आती है और हिन्दुस्तान के कई शहरों में नगरपालिकाओं और महानगर पालिकाओं के पास रोड ट्रान्सपोर्ट का अधिकार देखने में आता है। बाम्बे, पूना, कोल्हापुर तथा हिन्दुस्तान के अन्य शहरों में वहां की लोकल बाडीज के पास ट्रान्सपोर्ट की भ्रलग व्यवस्था है। तो जब रोड ट्रान्सपोर्ट वाली बात आती

है, हम देखते हैं कि राज्य सरकारों के द्वारा भी राज्य परिवहन संस्थाओं को चलाया जा रहा है। स्टेट लिस्ट (५) में राज्य सरकार का एक्स्क्लूसिव अधिकार होता है कि अगर वह खुद रोड ट्रान्सपोर्ट को चलाना चाहे तो चलावे अन्यथा किसी अन्य स्थानीय संस्थाओं को मौका दे और वह चलावे। म्युनिसिपल ट्राम्वेज आज भी कई शहरों में देखने को मिलती हैं जोकि मुसाफिरों को ले जाती हैं जोकि बाई रोड पसेन्जर ट्रान्सपोर्ट हैं

MR. DEPUTY-SPEAKER : You need not dilate on that. I have followed your point.

श्री आर्ज फरनेग्बीज : लिस्ट नं० १३ में लिखा हुआ है :

"Communications, that is to say, roads, ...not specified in List I ; municipal tramways, ropeways ; inland waterways and traffic thereon subject to the provisions of List I and List III with regard to such waterways ; vehicles other than mechanically propelled vehicles."

यहां भी मामला बिल्कुल साफ है। यह क्लोज जिसमें कहा गया है : any other transport service for the carriage of passengers or goods by land water or air,

इसके बिल्कुल विपरीत जाता है। अब मैं मानता हूँ कि गृह मंत्री जी शायद कानकरेंट लिस्ट की बातों को उठावेंगे, लासकर Trade Unions ; industrial any labour disputes को उठावेंगे,

Shipping and navigation on inland waterways as regards mechanically propelled vessels...को उठावेंगे और हो सकता है

Ports other than those declared by or under law made by Parliament or existing law to be major ports.

को उठावेंगे। लेकिन एक बात मैं साफ कर दूँ कि इन तीनों में जहाँ तक रोड ट्रान्सपोर्ट वाली बात है उसका कहीं जिक्र नहीं है। यह तो सीधे-सीधे राज्य सरकार का अधिकार है

[श्री जार्ज फरनेन्डीज]

जोकि प्रापकी लेजिस्लेटिव काम्पिटेन्स के बिल्कुल बाहर है।

अब मैं आपके सामने बसु की किताब Joint Parliamentary Committee on Indian Constitutional Reforms, Vol. IV, page 167, से कुछ रचना चाहता हूँ। इसके आधार पर ही तीनों लिस्टें बनी हैं। इसमें कहा गया है :

"Need for a Concurrent List : The object of a Concurrent List of Subjects over which the Centre and the units have concurrent powers..."

MR. DEPUTY-SPEAKER : I have followed your point. You need not provide any commentary or authority. You may go to the next point.

श्री जार्ज फरनेन्डीज : मैं कोई कमेंटरी नहीं पेश कर रहा हूँ बल्कि ज्वाइन्ट पार्लियामेन्टी कमेटी की रपट पेश कर रहा हूँ। उसमें बताया गया है कि क्यों कानकरेंट लिस्ट रखी है। मैं यह बताना चाहता हूँ कि अगर सरकार कानकरेंट लिस्ट का भी सहारा लेना चाहे तो वह भी गलत होगा, कांस्टीट्यूशन बनाने वालों के मन में जो कल्पना थी उसके विपरीत होगा। मैं उस रपट को आपके सामने पढ़कर सुनाना चाहता हूँ :

"Experience has shown both in India and elsewhere that there are certain matters which cannot be allocated exclusively either to a Central or to a provincial legislature, and for which, though it is often desirable that provincial legislation should make provision, it is equally necessary that the Central legislature should also have a legislative jurisdiction to enable it in some cases to secure uniformity in the main principles of law throughout the country."

MR. DEPUTY-SPEAKER : The hon. Member is asking why the Concurrent List was necessary. That is not the point at issue. I have got your point so far as Lists are concerned. Now the hon. Member should conclude.

श्री जार्ज फरनेन्डीज : मैं अभी प्रार्टिकल 309 पर हूँ जिसमें यह कहा गया है :

Recruitment and conditions of service of persons serving the Union or a State.

"Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State."

उपाध्यक्ष महोदय, अब 311 की बात आप ने सुनी है। यह ३०९ उस के पहले आ जाता है। अपनी स्टेट में जैसे स्टेट ट्रान्सपोर्ट अडर-टेकिंग्स हैं उन के बारे में नियम बनाने का अधिकार किस को है ? जाहिर है कि यह तो राज्य सरकार का अधिकार है। राज्य सरकार उन की कंडिशनस आफ सर्विस वगैरह के बारे में नियम प्रादि बना सकती है जिस पर कि आप यह मन्त्री महोदय यह विधेयक लाकर कुछ रुकावटें डालना चाहते हैं और उन के अधिकारों को छीन लेना चाहते हैं। मेरा आप से यह आग्रह है कि 246 जितनी मजबूती से केन्द्रीय सरकार को यह अधिकार नहीं देता है कि वह राज्य सरकारों के अधिकारों में हस्तक्षेप करे वैसे ही यह 309 सिर्फ राज्य सरकारों को ही इस का अधिकार देता है कि अपने कर्मचारियों के बारे में वह नियम बनाये। यह दो मुख्य बातें मैं आप के सामने पेश करना चाहता था। इस के अलावा जो अलग-अलग 14, 19, 22 या 23 की चर्चा की गई और उस सिलसिले में जो तमाम बातें यहाँ पर कही गई उन सब का समर्थन करते हुए मैं यह मन्त्री महोदय से निवेदन करना चाहता हूँ कि जैसे उन्होंने पहले राष्ट्रपति को उस तरह का एक अध्यादेश जारी करने की सलाह दी थी उसी तरह आप पुनः राष्ट्रपति को जाकर सलाह दीजिये और मैं कहूँगा कि उन को राष्ट्रपति को यह सलाह देने का अधिकार है कि जो अध्यादेश उन्होंने जारी किया था और उस से जो काम उन्हें

करना था वह काम उन्होंने कर लिया है, जितने लोगों को मार डालना था उन्हें मार दिया है और जितने लोगों को बंद करना था उतने लोगों को बंद कर दिया है। और अब उस अध्यादेश की कोई आवश्यकता नहीं है और राष्ट्रपति महोदय उस अध्यादेश को वापिस ले लें।

MR. DEPUTY-SPEAKER : Mr. S. M. Joshi.

SHRI CHENGALRAYA NAIDU : Mr. Deputy Speaker, how many people are you going to allow to speak in one Party ?

MR. DEPUTY-SPEAKER : I am not looking at this question from a Party angle. Fundamental constitutional issues are raised.

श्री एस० एम० जोशी (पूना) : उपाध्यक्ष महोदय, मैं एक मिनट से एक सैंकड़ भी इस पर ज्यादा समय नहीं लूंगा। मैं आप का ध्यान यह जो विधेयक सामने है उस में जो क्लॉज 9 (2) है उस की ओर दिलाना चाहूंगा। उस के बारे में हमारे माननीय मित्र श्री कुण्डू ने अभी बतलाया है कि जो काम और जो बर्ताव हम ने इस बिल के या इस कानून के होने से पहले किया है उस को लेकर है। अब यहां यह बतलाया जाता है कि उस वक्त आर्डिनंस या इसलिए वह है, अगर मैं यह पूछना चाहता हूँ कि जब आर्डिनंस निकला भेरे जैसा आदमी अगर यह समझ लेता है कि वह आर्डिनंस गलत है और मैं कोर्ट में जाकर फैसला ले सकता हूँ तो अब तो इस विधेयक से वह भी दरवाजा बंद हो जायगा क्योंकि कोर्ट ने अगर यह कहा भी कि आर्डिनंस गलत है फिर भी इस कानून से जो हमारा बर्ताव रहा वह फिर गुनाह हो जायगा तो इस के लिए भी मैं सकार्य चाहूंगा।

THE MINISTER OF LAW (SHRI GOVINDA MENON) : Mr. Deputy Speaker, Sir, the questions raised by several friends on the opposite side being important questions, I attended to them with very

interesting questions and I should particularly refer to the points raised by Mr. Madhu Limaye who exhibited a fund of learning and research in the matter which may well cause jealousy in the mind of a constitutional lawyer. There are others also other lawyer friends here who raised various other points.

Were I on virgin grounds, that is to say, on fresh grounds, on grounds which have not been covered previously by the Supreme Court and other courts, I would have taken a long time to answer these points. But fortunately for you, and for this House, the questions raised here—all of them—have come before the courts particularly because there had been issued in 1960 an ordinance of a similar character. The Essential Services Maintenance Ordinance was issued in 1960.

SHRI S. M. Banerjee : It was different.

SHRI GOVINDA MENON : In connection with that ordinance, almost all the points raised here by friends on the opposite side were raised before the Supreme Court and before the high courts.

AN HON. MEMBER : It was an emergency.

SHRI GOVINDA MENON : 1960 —It was not an emergency matter. What I consider the most important argument raised is this. Article 19 concedes, guarantees, certain fundamental rights. And those are enumerated in article 19 which is a very long article. The most important among them which is relevant for the present purpose is the right to form unions and the right of the freedom of speech, etc. The argument raised by many learned friends on the other side amounted to this: when these rights have been conceded or guaranteed by article 19, does it not follow that a concomitant right, if I may use that word, in order to establish the rights guaranteed under article 19, would also be implied ? [You also once put that question as the debate was going on.

This question was raised before the Supreme Court, that is to say, this article being there, does it not follow that a right

[Shri Govinda Menon]

was at about 12 noon today that my esteemed colleague asked me to look up the questions connected with this matter and even so, in the short time at my disposal, I could come across at least four cases of the Supreme Court in which this matter was discussed and conclusions reached. The Supreme Court having pronounced upon the matter, it is not perhaps necessary for us to go into first principles and argue the point. I would, therefore, draw your attention to what the Constitution Bench of the Supreme Court said about the right to strike as following from the guaranteed rights under article 19.

I am referring to AIR 1962 Supreme Court at page 171 and this is what the Constitution Bench lays down.

SHRI S. M. BANERJEE : Let him study more and speak tomorrow.

SHRI GOVINDA MENON : I shall speak today.

MR DEPUTY-SPEAKER : You must appreciate that they have taken all the points.

SHRI GOVINDA MENON : This is what the Constitution Bench of Five judges unanimously held.

SHRI S. M. BANERJEE : Which month was that ?

SHRI GOVINDA MENON : It says :

"Applying what has been stated earlier to the case of a labour union, the position would be this. While the right to form unions is guaranteed by sub-clause (c), the right of the members of the association to meet would be guaranteed by sub-clause (b), their right to move from place to place within India by sub-clause (d), their right to discuss their problems and to propagate their views by sub-clause (a), their right to hold property would be that guaranteed by sub-clause (f) and so on, each of these freedoms being subject to such restrictions as might properly be imposed by clauses 2 to 6 of article 19, as might be appropriate in the context ; it is one thing to interpret

each of the freedoms guaranteed by the several articles in Part III in a fair and liberal sense ;

"It is quite another to read each guaranteed right as involving or including a concomitant right necessary to achieve the object which might be supposed to underline the grant of each of those rights. The right to form unions, guaranteed by sub-clause (c) of clause (1) of article 19 thus, does not carry with it the fundamental right in the unions so formed to achieve every object for which it was formed. Even a very liberal interpretation of sub-clause (c) of clause (1) of article 19 cannot lead to the conclusion that the trade unions have a guaranteed right—i.e. a fundamental right—to effective collective bargaining or to strike either as part of collective bargaining or otherwise. The right to strike or right to declare a lock-out may be controlled or restricted by appropriate industrial legislation—not by the Constitution—and the validity of such legislation would have been tested not with reference to the criteria laid down in article 19, but by totally different considerations."

I refer to this decision because it is a direct answer to the points raised by my learned friends on the opposite side that the right to collective bargaining, the right to form associations, the right of freedom of speech, etc. being guaranteed rights under article 19, it logically follows that there is a concomitant right to go on strike as a fundamental right ? That was the question raised in the above case and was negated by the Supreme Court.

With respect to the ordinance issued in 1960 regarding the right to strike by Government Servants, etc. there is a direct decision by the Supreme Court in the case *Radhe Shyam versus The Union of India*, reported in 1965 Supreme Court at page 311. That also was decided not because of the emergency but based on the articles of the Constitution. During the emergency, article 19 is not there. The Supreme Court said in that case :

"The constitutionality of these sections—prohibiting strike, etc.—is

attacked on the ground that they violate the fundamental rights guaranteed by clauses (a) and (b) of article 19 (1). Under clause (1) (a), all citizens have the fundamental right of freedom of speech and expression, under clause 1 (b), to assemble peaceably and without arms. Reasonable restrictions on these fundamental rights can be placed under the conditions provided in clauses (2) and (3) of article 19. We are of opinion that there is no force in the contention that these provisions of the ordinance violate the fundamental rights enshrined in sub-clauses (a) and (b) of article 19 (1). A perusal of article 19 (1) shows that there is no fundamental right to strike and all that this ordinance provide is with respect to an illegal strike, as provided by the ordinance."

I do not want to take up your time by referring to other decisions.

A reference was also made to article 23. I was a bit surprised that there has been reference to that article. The article has not been properly read. But fortunately for me and for you too, that question also came up for consideration in the High Court of Bombay with respect to the 1960 ordinance.

SHRI S. M. BANERJEE : What about Calcutta High Court ?

SHRI GOVINDA MENON : The case I have got was decided by the Bombay High Court.

This is a constitutional question. Why don't my good friends have the patience to hear what I have to say ? I will read the decision also. Traffic in human beings and *Begar* and other similar forced labour are well known to all of us. What is prohibited in Article 23 is traffic in human beings and *Begar* and other similar forms of forced labour.

Now, after having prohibited *Begar*, the Constituent Assembly thought that it may be that there are other forms of forced labour also and they wanted to provide against that. In sub-article (2) you find this :

"Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in

imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them."

So, even in the sub-article it is stated that the State is not prevented for public reasons from saying that there shall be forced labour, but it shall not belong to the category of *Begar* and other forms of such forced labour. The only constitutional restriction is that there shall be no distinction between caste etc., and the argument against overtime would have been valid if there was an attempt to say that Mohammedans shall do overtime, Hindus shall not do, etc. The case which I have in mind is...

MR. DEPUTY-SPEAKER : There are several points raised, but the fundamental issue on which we can apply our mind at this stage is—other points will follow—banning strike. That is the main thing. I have followed your argument. What I want to know from you is this. While laying down our industrial policy it is inherent in the scheme of things that when you ban strike, then you provide an alternative remedy also. The scheme of our Constitution is like that. This fundamental issue must be clarified. Once you declare arbitration or adjudication, you ban strike. In this scheme of things I don't find any alternative remedy and you are restricting the right. This is a fundamental right.

SHRI GOVINDA MENON : I am aware of that. We are discussing under Rule 72. The actual question is whether there is any constitutional or legislative incompetence on the part of this House. Now, the question of legislative incompetence might arise either because the Parliament seeks to legislate on a matter which is in the State list only or when it proposes to transgress one of the fundamental rights given in Part III. What you stated just now is, no doubt, very important.

MR. DEPUTY-SPEAKER : I want a clarification from you on this. Putting a restriction or a limitation on a right without providing an alternative remedy.

SHRI RANDHIR SINGH : When you acquire the land of somebody, what is the alternative remedy ?

MR. DEPUTY-SPEAKER : Another point is this, You have very rightly pointed out the decision of the Supreme Court after the issue of the 1960 Ordinance which was allowed later on to lapse. That question is also very relevant here. I have also gone through the judgments of some High Courts. Looking to the scheme of industrial legislation, they presume that the right to strike is inherent more or less and there is also no unanimity on that issue. Even if the right to strike is not fundamental, it has assumed the proportion of a fundamental right because of certain social objectives which we have followed in laying down our industrial policy. On this point also I want a clarification.

SHRI GOVINDA MENON : I am one with you that the right to strike is important; but, what I say is that the right to strike is not fundamental.

If it is important, it is for us at the next stage, when we are discussing the Bill, to consider whether it should be in this form or not. Here the discussion is under rule 72.

I also want to draw your attention to the fact that the Home Minister has brought forward this Bill in order to replace an Ordinance. We are not doing anything new. The Ordinance itself has been questioned in the Supreme Court and in two High Courts.

SHRI S.M. BANERJEE : The Supreme Court has not pronounced its judgment on it. *(Interruption)*

SHRI GOVINDA MENON : That is why I have said, "It has been questioned." In one of the High Courts the writ petition has been dismissed. The Ordinance is there.

MR. DEPUTY-SPEAKER : When we are not in session the executive authority has a right to issue an Ordinance. Once it comes before this House, it is open to question because it is in a way an emergency legislation. That emergency is over and now when we are quietly debating the issue,

I want further light to be thrown on this fundamental issue whether without providing an alternative remedy you can restrict the right to strike.

SHRI RANDHIR SINGH : My question should be answered. What remedy do you provide to the owner of a property when his property is acquired? Why should Professor Ranga not speak now? He should speak,

SHRI GOVINDA MENON : Liberal social philosophers, like many of us in this House including you, might consider that it may be bad to take away the right to strike, but the question under rule 72 is whether it is beyond the legislative competence of the House.

AN HON. MEMBER : It is illegal.

SHRI GOVINDA MENON : There is nothing like illegality for this Parliament. This Parliament can legislate on any matter provided there is no legislative incompetence. Legislative incompetence will arise if the matter is in the State List or is prohibited by the Fundamental Rights. What you raise is a matter about which the Home Minister will say something at the appropriate stage. This House will have to consider such details at the time of consideration of the Bill. Today the question is whether there is legislative competence.

I heard Shri Madhu Limaye read from the famous textbook of Cooley. What is it that Cooley has said? I have read that passage before. It says that before the Congress in the United States proceeds to legislate on a matter, Congress should consider whether it is within the legislative competence of Congress under the Constitution of the United States. Here rule 72 has been enacted so that the Home Minister, who is the Mover of the Bill, myself who is the Law Minister, and other members in the Cabinet and others may be put on their guard whether it is valid under the Constitution or not. If the arguments made here make us doubt in that matter, rule 72 has been enacted to afford an opportunity to the Mover to withdraw the Bill. But we have no doubt in this matter because of the rulings of the Supreme Court. Therefore, all that is

needed is to improve the Bill at the time of consideration of the Bill keeping in view what you have stated. All that we have to decide now is whether there is legislative competence.

Other minor questions were raised.

MR. DEPUTY-SPEAKER : Those we will take up during the clause-by-clause consideration.

SHRI GOVINDA MENON : During clause-by-clause consideration we can consider them. My submission is that rule 72 has been enacted, in the manner in which it has been enacted, so that while Parliament should be put on its guard regarding constitutionality of a Bill, Parliament will not decide that matter and it will be left to the courts.

SHRI MADHU LIMAYE : No.

SHRI GOVINDA MENON : You are aware of the latest decision of the Supreme Court regarding the Punjab case, the Ordinance issued by the Governor with respect to the Punjab matter. What is it that the Supreme Court said? The Supreme Court said that it is the courts and the courts alone who can pronounce upon the constitutionality of a law.

What Mr. Madhu Limaye and others have said should make us think whether it is constitutional or not. But in the face of the Supreme Court decision delivered by four Constitution Benches of the Supreme Court and having considered this matter, I personally, as the Law Adviser to the Government of India, have absolutely no doubt in my mind that legislative competence is there. It may be that you may differ on this thing or that thing. For example, somebody said, whether a police officer should be allowed to arrest without warrant, that is to say in legal language, whether an offence under this should be made a cognizable offence or not. These are matters of detail which should be discussed at the consideration stage.

Mr. Madhu Limaye said that because of what Cooley has said, his substitute motion should be put to vote. The same

result will be achieved if Mr. Chavan's motion is put to vote.

SOME HON MEMBERS : *rose*—

MR. DEPUTY SPEAKER : Do you want any clarification on other points? We will have it at clause-by-clause consideration stage. Let me give my ruling now.

श्री मधु लिमये : आप रुलिंग दीजिए, लेकिन एक बात की सफ़ाई तो होनी चाहिए। श्री मंत्री महोदय ने कहा कि हमारे नियमों के तहत अगर लोग इस बिल के इन्ट्रोडक्शन का विरोध करेंगे, तो वे लोग—केबिनेट के सदस्य—सोचेंगे कि क्या सन्देह के लिए कोई जगह है। उपाध्यक्ष महोदय, यह केबिनेट को नहीं सोचना है, आप को भी नहीं सोचना है, यह तो पार्लियामेंट को सोचना है। इस लिए मेरे प्रस्ताव पर विभाजन होना जरूरी है।

MR. DEPUTY-SPEAKER : I have your motion before me. (*Interruptions*). I want to finish it.

SHRI SHRI CHAND GOYAL : You yourself were convinced about two points. Firstly, the distinction between "essential" and "non-essential" has been obliterated in sub-clauses (viii) and (ix). He has not said anything about that. Secondly, about the delegated legislation—this suffers from excessive delegation—he has not said anything.

MR. DEPUTY-SPEAKER : At this stage, under the Rules, a question whether this House is competent or not to legislate or to undertake this legislation has been raised. Several important issues regarding essential service, delegation of powers and other things have been raised. As I said, at this stage, I only wanted a clarification about competence. I am glad he has made it very clear. Though keeping in view the letter of the Constitution, I feel, while interpreting the Constitution in this House, we cannot brush aside the social objectives of a policy, he has given an assurance on that. Without providing an alternative remedy can we train the right? On that, he has given an assurance. Once

[Mr. Dupty-Speaper]

that is accepted, I think, all the points raised... (*Interruptions*).

SHRI S. M. BANERJEE : Kindly here me.

MR. DEPUTY-SPEAKER : Not a word now. We have nearly taken 3 hours. Please resume your seat. I have listened to you very patiently for 3 hours. On that point, he has kept his mind open and on behalf of Government also, on behalf of Home Minister, he has said that they will apply their mind. On other points, at this juncture. I cannot pronounce my decision.

श्री मधु लिमये : हाउस को फैसला करने दीजिए। इस बिल की कांस्टीट्यूशनेलिटी के बारे में मैजोरिटी से फैसला हो जाये।

SHRI V. KRISHNAMOORTHY : Let the Supreme Court certify that this Bill is in conformity with the fundamental right. Than, we can pass the Bill even without discussin. Let it be referred to the Supreme Court for its approval.

SHRI NAMBIAR : We can call the Attorney-General.

MR. DEPUTY-SPEAKER: Mr. Madhu Limaye, your motion is there. Your suggestion is that we should follow a different practice now from what we have been following and we should put a substitute motion or an amendment at the introduction stage.

SHRI MADHU LIMAYE: The objection is on the ground that it is beyond the legislative competence.

MR. DEPUTY-SPEAKER ; This is the stage of introduction. We have to keep in view the practice that we have been following. Your point should be raised in the Rules Committee. At this stage, when I put the motion for grant of leave to the vote of the House, you have a right to reject it. I would not accept your suggestion now.

श्री मधु लिमये : कारण देना चाहिए या नहीं देना चाहिए अस्वीकृत के लिए ?

MR. DEPUTY-SPEAKER : I would not accept your motion.

श्री मधु लिमये : आप एक मिनट मेरी बात सुनेंगे ?

MR. DEPUTY-SPEAKER : When the motion for grant of leave to introduce the Bill is put to the vote of the House, you have a right to reject it.

श्री मधु लिमये : मैं बोलना नहीं चाहता, मैं वोट चाहता हूँ लेकिन वह मेरे प्रस्ताव पर होना चाहिए। तब मेरी तसल्ली होगी कि हाउस ने फैसला किया।

MR. DEPUTY-SPEAKER : I have given three hours.

श्री मधु लिमये : मैं अपने प्रस्ताव पर वोटिंग चाहता हूँ।

MR. DEPUTY-SPEAKER ; I have given my ruling... (*Interruptions*).

SHRI S. M. BANERJEE ; On a point of order.

MR. DEPUTY-SPEAKER : On my ruling ? I have give my ruling.

SHRI S. M. BANERJEE : Not about that.

MR. DEPUTY-SPEAKER : Please resume your seat .. (*Interruption*). I heve beared for three hours. Mr. Limaye has built up a case for following a different procedure There is some valid point. But on this occassion, on the spur of the moment, we cannot make any deviation from the accepted practice...

श्री मधु लिमये : रेविेशन नहीं है।

MR. DEPUTY-SPEAKER : It is not proper. It should go to the Rules Committee.

श्री मधु लिमये : मेरा ब्यवस्था का प्रश्न है।

MR. DEPUTY-SPEAKER : I will now put the motion to the vote of the House,...

SHRI S. M. BANERJEE : On a point of order.

MR. DEPUTY-SPEAKER : I will not listen to anything now. I am now putting it to the vote...

SHRI S. M. BANERJEE : On a point of order.

MR. DEPUTY-SPEAKER : Show me the rule. I have heard for three hours. Under what rule are you raising the point of order ?

SHRI S. M. BANERJEE : I would only request you to hear my point of order without any anger.

MR. DEPUTY-SPEAKER : I have heard for three hours. I have given my ruling.

SHRI S. M. BANERJEE : You have heard only for three hours, but we are going to suffer for five years.

MR. DEPUTY-SPEAKER : Show me the rule under which you are raising the point of order.

SHRI S. M. BANERJEE : Under rule 376.

"A point of order may be raised in relation to the business before the House at the moment."

A motion has been made by the hon. Home Minister that leave be granted to introduce this Bill. (*Interruption*). If you are angry, then I will not speak.

MR. DEPUTY-SPEAKER : I wanted to know the rule.

SHRI S. M. BANERJEE : Rule 376.

DIVISION No. 22

Achal Singh, Shri
Agadi, Shri S. A.
Ahirwar, Shri Nethu Ram

MR. DEPUTY-SPEAKER : There is no substance here...

SHRI S. M. BANERJEE : I invite your attention to rule 340, which reads thus :

"At any time after a motion has been made, a member may move that the debate on the motion be adjourned."

I have reason to raise this. Certain Constitutional points have been raised. The Law Minister has replied only to certain points.

We are only referring to certain points, Sir, which were raised under Article 19... (*Interruption*).

MR. DEPUTY-SPEAKER : Order, order. When the debate was serious, I have given so much latitude. What does Rule 341(1) say ? It is like this...

श्री मधु लियये : मेरा प्वाइंट ऑफ ऑर्डर प्रोसीजर पर है ।

श्री जार्ज करनेम्डीज : व्यवस्था के प्रश्न पर मैं खड़ा हूँ । 344 पर मेरा व्यवस्था का प्रश्न है ।

MR. DEPUTY-SPEAKER : The rule says :

"If the Speaker is of opinion that a motion for the adjournment of a debate is an abuse of the rules of the House, he may either forthwith put the question thereon or decline to propose the question."

Now, if I think of declining, I can straightway put the question just now..... (*Interruption*). The question is :

"That leave granted to introduce a Bill to provide for the maintenance of certain essential services and the normal life of the community."

The Lok Sabha divided.

AYES

16.52 hrs

Ahmed, Shri F. A.
Bajpai, Shri Vidya Dhar
Barua, Shri Bedabrata

Barua, Shri R.
 Basumatari, Shri
 Besra, Shri S. C.
 Bhandare, Shri R. D.
 Chaudhary, Shri Nitiraj Singh
 Chavan, Shri Y. B.
 Choudhary, Shri Valmiki
 Deshmukh, Shri B. D.
 Deshmukh, Shri K. G.
 Deshmukh, Shri Shivajirao S.
 Gajraj Singh Rao, Shri
 Gandhi, Shrimati Indira
 Ghosh, Shri Bimalkanti
 Ghosh, Shri Parimal
 Himatsingka, Shri
 Jadhav, Shri Tulshidas
 Jagjiwan Ram, Shri
 Kamble, Shri
 Kamala Kumari, Kumari
 Kedarla, Shri C. M.
 Kesri, Shri Sitaram
 Kotoki, Shri Liladhar
 Krishna, Shri M. R.
 Kureel, Shri B. N.
 Laskar, Shri N. R.
 Laxmi Bai, Shrimati
 Lutfal Haque, Shri
 Mahadeva Prasad, Dr.
 Mandal, Dr. P.
 Mandal, Shri Yamuna Prasad
 Master, Shri Bhola Nath
 Menon, Shri Govinda
 Mirza, Shri Bakar Ali
 Mishra, Shri Bibhuti
 Mondal, Shri Jugal
 Mrityunjay Prasad, Shri
 Nahata, Shri Amrit
 Naidu, Shri Chengalraya
 Pahadia, Shri Jagannath
 Pandey, K. N.
 Pant, Shri K. C.
 Paokai Haokip, Shri
 Parmar, Shri Bhaljibhai
 Partap Singh, Shri

Parthasarathy, Shri
 Patil, Shri S. D.
 Poonacha, Shri C. M.
 Prasad, Shri Y. A.
 Qureshi, Shri Mohd. Shaffi
 Raj Deo Singh, Shri
 Rajasekharan, Shri
 Ram Dhan, Shri
 Ram Subhag Singh, Dr.
 Rana, Shri M. B.
 Randhir Singh, Shri
 Rao, Shri J. Ramapathi
 Rao, Shri Thirumala
 Reddi, Shri G. S.
 Reddy, Shri M. N.
 Roy, Shri Bishwanath
 Sadhu Ram, Shri
 Saha, Dr. S. K.
 Saleem, Shri M. Yunus
 Salve, Shri N. K. P.
 Sambasivam, Shri
 Sapre, Shrimati Tara
 Sayeed, Shri P. M.
 Sen, Shri Dwaipayan
 Shah, Shri Shantlal
 Shambhu Nath, Shri
 Shankaranand, Shri
 Sharma, Shri Naval Kishore
 Shashi Bhushan, Shri
 Shastrri, Shri Biswanarayan
 Sheo Narain, Shri
 Sher Singh, Shri
 Shinde, Shri Annasahib
 Shinkre, Shri
 Shriv Chandika Prasad, Shri
 Singh, Shri D. N.
 Sonar, Dr. A. G.
 Supakar, Shri Sradhakar
 Sursingh, Shri
 Swaran Singh, Shri
 Tarodekar, Shri Y. B.
 Tiwary, Shri D. N.
 Tiwary, Shri K. N.

NOES

Abraham, Shri K. M.
 Banerjee, Shri S. M.
 Dar, Shri Abdul Ghani
 Diveekan, Shri
 Fernandes, Shri George
 Gopalan, Shri P.
 Goyal, Shri Shri Chand
 Halder, Shri K.
 Jha, Shri Shiva Chandra
 Joshi, Shri S. M.

Kalita, Shri Dhireswar
 Kameshwar Singh, Shri
 Kapoor, Shri Lakhan Lal
 Kisku, Shri A. K.
 Kothari, Shri S. S.
 Krishnanmoorthi, Shri V.
 Kundu, Shri S.
 Kunte, Shri Dattatraya
 Limaye, Shri Madhu
 Madhukar, Shri K. M.

Nair, Shri N. Sreekantan
 Nair, Shri Vasudevan
 Nambiar, Shri
 Nihal Singh, Shri
 Pandey, Shri Sarjoo
 Patil, Shri N. R.
 Ramabadrán, Shri T. D.
 Ramani, Shri K.

MR. DEPUTY-SPEAKER : The result* of the division is : Ayes : 93 ; Noes : 36. The 'Ayes' have it ; the 'Ayes' have it. The Motion is carried.

The Motion was adopted.

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : I introduce the Bill.

SHRI NAMBIAR : This is a nail in the coffin of the Congress. (*Interruptions*)

SHRI VASUDEVAN NAIR (Peer made) : As a protest, we walk out. (*Interruptions*)

Shri Nambiar, Shri Vasudevan Nair and some other hon. Members then left the House

STATEMENT RE. ESSENTIAL SERVICES MAINTENANCE ORDINANCE

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : I lay on the Table a copy of the explanatory statement giving reasons for immediate legislation by the Essential Services Maintenance Ordinance, 1968, under rule 71 (1) of the Rules of Procedure and Conduct of Business in Lok Sabha. [*Placed in Library. See No. LT-2522/68.*]

16.53 hrs.

INSURANCE (AMENDMENT) BILL—
Contd.

MR. DEPUTY-SPEAKER : Further consideration of the motion for consideration of the Insurance (Amendment) Bill moved by Shri K. C. Pant on 4th December, along with amendments moved.

Samanta, Shri S. C.
 Sen, Shri Deven
 Sharma, Shri Beni Shanker
 Sharma, Shri Yogendra
 Singh, Shri J. B.
 Suraj Bhan, Shri
 Vajpayee, Shri Atal Bihari
 Viswambharan, Shri P.

Shri Bedabrata Barua may now continue his speech.

SHRI BEDABRATA BARUA (Kaliabor) : While this was discussed yesterday, I was saying that the question of mobilisation of resources and other vital issues are involved in this matter, but so far as the limited objectives placed before the country are concerned, social control would certainly achieve those limited objectives.

The question of high premium rates charge should be gone into. The rates of premium may be high. Particularly when the policyholders' interests are involved, we have to realise that the bulk of the policyholders are those people who are not only the common people, but also under the recent regulations and requirements of insurance, the bulk of policyholders happen to be quite a sizeable number of policyholders in regard to fire insurance and all that—public institutions, government and other people. These policyholders happen to be people who generally do not have much claims against insurance : and when claims are paid, as for example, in the case of motor vehicles, they are paid to people who have got a certain understanding with those inspecting staff and other people. Naturally, therefore, when the public pays a lot of the premium to these insurance companies, it is essential that these rates should be brought down. The aim of social control in that direction can certainly be achieved.

Secondly, the other aim is to control malpractices. There have been lots of these brought out in the inquiry; they were brought out at the Joint Committee stage. There were allegations that some companies used to purchase shares worth Rs. 6 at Rs. 1.50 and then sell them at Rs. 6. It is very dangerous to allow them to indulge in these practices.

*The following Members also recorded their votes :
 Noes : Sarvasbri S. M. Krishna and Swami Brahmanandji.*