

[श्री भोगेन्द्र झा]

संशोधन करने वाले विधेयक को पेश करने की अनुमति चाहता हूँ।

MR. DEPUTY-SPEAKER: The question is:

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

The motion was adopted.

श्री भोगेन्द्र झा : मैं विधेयक को पेश करता हूँ।

HINDU SUCCESSION (AMENDMENT) BILL*

(AMENDMENT OF SECTIONS 10, 15; ETC.)

SHRI RANDHIR SINGH (Rohtak) : I beg to move for leave to introduce a Bill further to amend the Hindu Succession Act, 1956.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Hindu Succession Act, 1956."

श्रीमती लक्ष्मीकान्तम्मा (खम्मम) : उपाध्यक्ष महोदय, मैं इस विधेयक का विरोध करती हूँ।

श्री छटल बिहारी बाजपेयी (बलरामपुर) : उपाध्यक्ष महोदय, वह इस विधेयक का विरोध कर रही हैं।

MR. DEPUTY-SPEAKER: She has not written to me. She ought to have informed me in advance.

श्रीमती लक्ष्मीकान्तम्मा : लेकिन मैं इसका इन्ट्रोडक्शन पर विरोध कर सकती हूँ।

MR. DEPUTY-SPEAKER: Note has been taken of this.

The question is:

"That leave be granted to introduce a Bill further to amend the Hindu Succession Act, 1956."

The motion was adopted.

SHRI RANDHIR SINGH: I introduce the Bill.

CONTEMPT OF COURTS (AMENDMENT) BILL*

(AMENDMENT OF SECTION 4)

SHRI TENNETI VISWANATHAM (Visakhapatnam) : I beg to move for leave to introduce a Bill further to amend the Contempt of Courts Act, 1952.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Contempt of Courts Act, 1952."

SHRIMATI LAKSHMIKANTHAMMA (Khammam): No, no.

MR. DEPUTY-SPEAKER: This is a different measure altogether.

The Ayes have it, the Ayes have it. The motion is carried.

The motion was adopted.

SHRI TENNETI VISWANATHAM: I introduce the Bill.

15.03 hrs.

CONSTITUTION (AMENDMENT) BILL—contd.

(AMENDMENT OF ARTICLE 368) BY SHRINATH Pai

MR. DEPUTY-SPEAKER: Now we take up further consideration of the following motion moved by Shri Nath Pai on the 15th November, 1968:—

"That the Bill further to amend the Constitution of India, as reported by Joint Committee, be taken into consideration."

SHRI SURENDRA NATH DWIVEDY: (Kendrapara): Mr. Deputy-Speaker, Sir, before we proceed further, I want to bring to the notice of the House and also to your notice a Constitutional impropriety committed by the Chief Justice of India who has shown the most unseemly anxiety, haste, and, if I may say so, impatience, by making references to this Bill which is under discussion in the House. This is most unusual and extraordinary.

As you know—and we are all happy about it,—this Bill has raised a great debate all over the country. We also know that there is a strong section opposing it both inside and outside the House. In the Parliament itself there has been a suggestion made that the Bill or the question may be referred to the Supreme Court for review so that they may reconsider the whole position and there may not be any need for a Bill of this nature. Even this suggestion has been made. That is because we have respect and the highest regard for the Judiciary. We have our respective positions in the Constitution—the Judiciary, the Parliament and the Executive. And we are also observing this convention because we have laid down in our rules that a matter which is *sub Judice* would not be discussed in the House. Suppose a matter has been decided by the court and any citizen violently opposes it and says that it is wrong, the judges are wrong, he will be hauled up for contempt, and rightly that right has been given to the court. (*interruption*)

SHRI RANGA rose—

MR. DEPUTY-SPEAKER: There is some point of order on some observation of yours.

SHRI SURENDRANATH DWIVEDY: What is it that they want to point out? Is it on certain sentence which I have said, or is it that I cannot stand? What is the point of order, Sir?

MR. DEPUTY-SPEAKER: Shri Ranga.

SHRI RANGA (Srikakulam): I am sorry, Sir, I have to come in the way of my hon. friend Shri Surendranath Dwivedy.

SHRI S. KUNDU (Balasore): Sir, I want to say something on his very point of order, on his intervention....

MR. DEPUTY-SPEAKER: No, not now. One point of order has been raised. In between no other point of order is entertained. Please resume your seat.

SHRI RANGA: Sir, I am extremely sorry to be obliged to have to come in the way of my hon. friend Shri Surendranath Dwivedy presenting his case before you. I am not quite sure and I do not know—there was no introduction from you either—on what basis he has started talking now, and making this particular speech. I understand, he wants to raise an objection to what the Chief Justice is reported to have said in a seminar or conference. Is this intervention a part of the speech which he wants to make on this Bill? Or is it a point of order, a sort of intervention, for which he has taken your special permission? If so, under what rule, and in what manner? With what justification you have allowed him to do this, Sir, I would like to know. (*Interruption*) It is not between him and me; it is a matter between me and the Chair.

Secondly, the Chair has got to take into consideration the propriety of questioning whatever is reported to have been said by the Chief Justice of the Supreme Court. Would it be proper for this House to take into cognisance what is reported to have been said by him and then proceed with it? (*Interruption*) It is not my intention to excite anybody. If my hon. friends are not prepared to have patience with themselves let them have patience with me. They are welcome to do it because it is not a new thing for them. What I am concerned with is this. Would it be proper for us, would it be right for us, to bring in this kind of a discussion? Because, Sir, what would happen is this. If you allow my hon. friend to have his full say in criticising this report—we do not know whether it is a correct report or full report—then what will happen is this, that everyone of us would wish to say something on that it would open the doors for a full debate, and we must have the right also then to say whether he is justified or not justified and all that. Some of us will say he is justified; some others will say, this House has got the

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right and so on. Therefore I would submit to you this. This is a ticklish matter which has to be decided. I don't think it is right for you here and now to give a ruling. It must be necessary for you with all your wisdom to take counsel with your own officials as well as unofficial advisers, in whichever way you like, so that you may be advised properly, and thereafter only give your ruling on this matter.

SHRI S. KUNDU : Mr. Deputy-Speaker, Sir....

MR. DEPUTY-SPEAKER : Let the hon. Member please resume his seat.

SHRI S. KUNDU : May I submit....

MR. DEPUTY-SPEAKER : If this kind of defiance goes on, I shall have to be very strict. When I am asking him to resume his seat, he must resume his seat.

SHRI S. KUNDU : You cannot threaten us like this.

MR. DEPUTY-SPEAKER : Let him resume his seat first.

SHRI THIRUMALA RAO (Kakinada) : May I submit....

MR. DEPUTY-SPEAKER : Let the hon. Member resume his seat. I am not going to listen to anybody now.

SHRI S. KUNDU : We cannot allow you to usurp our rights.

SHRI RANDHIR SINGH (Rohtak) : You may please name him. He is not obeying the Chair.

SHRI THIRUMALA RAO : Are we to keep order in this House or not ?

MR. DEPUTY-SPEAKER : Shri Surendranath Dwivedy wrote to me just before we were to adjourn for lunch that he wanted to raise this matter. I said that at the time when the Private Members' business would be taken up, I would permit him and in between I would also try to inform Government because their point of view also must come forward. So, I allowed him. I had consulted the rules of proce-

sure also on this point. He could raise it as a point of order or as a point of propriety under rule 376 or 377. It is not a debate that he wants to have here on this. Nor had I seen the full text of the report. But in between I have seen....

SHRI ATAL BIHARI VAJPAYEE (Balrampur) : The propriety of the judge's conduct is in question.

MR. DEPUTY-SPEAKER : No, no. I have consulted the rules and I find that he can either raise it as a point of order or as a point of propriety. He began by asking whether this was proper. He ought to have introduced the point by saying why he was raising it.

SHRI SURENDRANATH DWIVEDI : I started with the question of propriety. I said it was a constitutional impropriety.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय .. (ठप्रबधान) ..

SHRI HEM BARUA (Mangaldai) : We are pointing out that the Chief Justice is trying to impede this legislation on the floor of this House. We are discussing his conduct not as judge in the Supreme Court but outside the court.

MR. DEPUTY-SPEAKER : This is not proper.

श्री अटल बिहारी वाजपेयी : मैं व्यवस्था का प्रश्न उठाना चाहता हूँ। आप कह रहे हैं कि प्रां प्रायटी, तो किस की प्रां प्रायटी ? क्या किसी जज के आचरण के प्रांचित्य पर सदन में चर्चा हो सकती है ? प्रां प्रायटी किसी प्रांसीजर के बारे में ही हो सकती है।

उपाध्यक्ष महोदय, संविधान हमें इस बात की इजाजत नहीं देता कि हम किसी न्यायाधीश के आचरण की यहां पर मालोचना करें।

SHRI NATH PAI (Rajapur) : We are not discussing his conduct as *nyayadheek*.

SHRI HEM BARUA : We are raising the issue with regard to a statement made by him outside the Supreme Court.

श्री अटल बिहारी वाजपेयी : अगर यह तर्क दिया जा रहा है कि उन्होंने भदानीत के बाहर कहा है तो फिर उन्होंने वह एक व्यक्तिगत हैसियत में कहा है और उसमें प्रोप्रायटी का सवाल भी पैदा नहीं हो सकता है। फिर यह आपत्ति ही नहीं उठाई जा सकती है। यह आपत्ति तभी उठाई जा सकती है जब कि यह माना जाए कि उन्होंने चीफ जस्टिस की हैसियत में कहा है। लेकिन चीफ जस्टिस के आचरण पर इस सदन में चर्चा हो नहीं सकती है।

अगर वे कोई सक्वेटेंटिव मोशन लाना चाहते हैं तो लाये, आप उन्हें इजाजत दे दीजिए।

MR. DEPUTY-SPEAKER : There is one point that I want to clarify so as to pin-point the debate. If at all somebody wants to put a question, then the point is this. The question is whether it is a matter to be raised on a point of order or as a point of propriety. I have gone through whatever little report I could get. The question is only a very limited one, and therefore, I have permitted the hon. Member.

SHRI ATAL BIHARI VAJPAEYEE : It is not just a limited question. You are opening the flood-gates.

MR. DEPUTY-SPEAKER : The limited point is whether the Chief Justice can question the rights of this House.

SHRI H. N. MUKERJEE (Calcutta North East) : I would beg of you to pull a veil over these proceedings and persuade my hon. friend Shri Surendranath Dwivedy to drop this matter, because the last thing that we want is polemics in regard to the conduct of the Chief Justice unless we are ready with a substantive motion. Therefore, propriety can only relate to what is said to have been spoken by the Chief Justice at a meeting whose report appeared in the newspapers. We are not here to

discuss the propriety of the conduct of a citizen, Chief Justice or not, outside this House. If it is just a point of propriety, you may please limit yourself to proceedings in this House and things relative to the proceedings in the House. We should not spoil the atmosphere of the proceedings by injecting this tangle between the judiciary and the legislature.

SHRI SURENDRANATH DWIVEDY : I entirely agree with that view. I do not want to create an impression that there is a tussle going on between the Chief Justice of India and the Parliament of India (*Interruptions*). There is no dispute (*Interruptions*). They may shout at the top of their voice. But I will have my say. I will confine my remarks only to the limited point you have referred to (*Interruptions*).

SHRI PILOO MODY (Godhra) : I would like to make a statement.

SHRI SURENDRANATH DWIVEDY : I will confine my remarks to the limited reference that you have made.

THE PRIME MINISTER AND LEADER OF THE HOUSE (SHRIMATI INDIRA GANDHI) : I entirely agree with what has been said, that the last thing we desire is that there should be a discussion of the merits of what the Chief Justice has said. This matter was sprung on us. I only heard about it just before I came in...

SHRI RANGA : We did not even know it.

SHRIMATI INDIRA GANDHI : We are trying to discuss something the authenticity of which we do not know. We have no authentic report; we know only what has appeared in the newspapers. If even without discussion there is so much excitement, a discussion on this matter may lead to something for which we may be sorry later on. (*Interruptions*)

THE MINISTER OF LAW (SHRI GOVINDA MENON) : If you are admitting a discussion, it would be much better that the members of the House know what exactly the Chief Justice had said. Therefore, if time is given, I shall try to get from the Chief Justice a copy of what he said.

SOME HON. MEMBERS : No, no.

SHRI RABI RAY (Puri) : A lawless Law Minister ! (Interruptions).

SHRI M. L. SONDDHI (New Delhi) : He should resign. He is the most incompetent Minister. He is bringing the Chief Justice into disrepute. He wants to drag the Chief Justice into controversy. The other day he misbehaved here. Now he has done it again.

SHRI GOVINDA MENON : What I said was that I would try to get an authentic version of his speech.

SHRI M. L. SONDDHI : He has crossed all standards and limits in this House (Interruptions).

SEVERAL HON. MEMBERS *rose*—

MR. DEPUTY-SPEAKER : I will first hear Acharya Kripalani. Then I will listen to others.

SHRI J. B. KRIPALANI (Guna) : May I know whether the criticism that is being offered is criticism against the Chief Justice in his capacity as Chief Justice or in his capacity as a citizen expressing his opinion ?

SHRI RANGA : Even if he were expressing his opinion as a citizen, people are free to say what they like.

SHRI J. B. KRIPALANI : Was he speaking in the course of conducting a case or was he speaking outside as a citizen ?

SHRI C. C. DESAI (Sabarkantha) : It is immaterial.

SHRI J. B. KRIPALANI : He was speaking as a citizen of India and he has every right to do so.

SHRI S. KUNDU : Everybody has got the right to speak as a citizen and say whatever he likes. This is a sovereign Parliament and we can discuss whatever we like, we can discuss the statement made by the Chief Justice. When Mr. Dwivedy got up, after obtaining your permission, there was no occasion to create a furor in this House unnecessarily without listening to what he is going to say. Here is the report

in the press that the Chief Justice has said that by this amendment an attempt has been made to whittle down fundamental rights. It is quite right that he can say as a citizen of India, but what I want to bring home to all these members is this, that he will sit in judgment tomorrow. Suppose this Bill is passed, a writ petition is filed and he may sit on judgment over it. So, we can discuss whether it is proper for him to comment like this on the Bill.

SHRIMATI TARKESHWARI SINHA (Barh) : He is discussing the conduct of the Chief Justice.

SHRI PILOO MODY : He has just said something which I find highly objectionable. Please allow me a minute.

SHRIMATI TARKESHWARI SINHA : The Chief Justice was speaking in his capacity as a private citizen. The hon. Member says that if a writ petition is filed, the Chief Justice sitting as the Chief Justice in the Supreme Court will react to it. This is discussing the conduct of the Chief Justice which no hon. Member is permitted to do.

MR. DEPUTY-SPEAKER : Let me make one thing clear.

SHRI PILOO MODY : Not before hearing me. What the hon. Lady Member has said is entirely correct. Shri Kundu has said that the Chief Justice sitting as the Chief Justice of the Supreme Court of India gives judgments according to his personal prejudice. This is the import of what he said,—that the Chief Justice does not listen to the arguments that are advanced before him but that he gives judgments on the basis of his personal prejudice. This is highly objectionable and I recommend that these remarks be expunged from the record.

SOME HON. MEMBERS *rose*—

MR. DEPUTY-SPEAKER : No further debate on this.

SHRI TENNETI VISWANATHAM (Visakhapatnam) : I am not going to speak. I want you to stop this.

MR. DEPUTY-SPEAKER : I am going to stop this.

श्री मधु लिङ्गदे (मुंगेर) : उपाध्यक्ष महोदय, आप निर्णय लीजिये नहीं तो मामला और उलझ जायगा।

श्री रवि राय : यह नहीं चल सकता है आप अपनी रुलिंग दीजिये।

MR. DEPUTY - SPEAKER : This is quite a serious matter and I do not think even Mr. Dwivedy, when he wrote to me a longish note, had any desire to have some sort of conflict or raise a controversy with the Chief Justice of India because his note is very clear.

As Acharya Kripalani has said rightly, recently his individual capacity the Chief Justice made a longish speech on the law of contempt. I have got a copy of it with me because I was studying it. As Acharya Kripalani has said he was speaking in his personal capacity and no body can take objection to that.

SHRI SURENDRANATH DWIVEDY : I respect the wishes of the House and I also agree that we should not cast any aspersion on the conduct of the Chief Justice of India. But what is worrying me, and it is a matter of concern for the entire House and the country, is that reference is being made to a Bill which is under discussion in the House. Certainly the House can take note of it. Some of our friends want you to get an authorised copy.

SHRI ATAL BIHARI VAJPAYEE : He is going into the merit.

SHRI PILOO MODY : Please stop him. (Interruptions)

SHRI SURENDRANATH DWIVEDY : I have to place my point of view and you must give me proper opportunity. What I want to say is this.....

MR. DEPUTY-SPEAKER : I give you hearing. But one thing is, your remarks should not give rise to either controversy or create an impression that a certain feeling is here and certain remarks were made somewhere and they have been heard. You should not say anything about that.

SHRI SURENDRANATH DWIVEDY : Here an attempt has been made to

prejudice issues in discussion. Here is a report published in the newspapers. I do not take all newspapers. This is a PTI report.

MR. DEPUTY-SPEAKER : Can we not presume that this is made in his personal capacity? If you presume that, there is no point.....(Interruption)

SHRI SURENDRANATH DWIVEDY : Then it becomes all the more serious and there will not be so much objection. You must admit that it has been published. Some portions of it were under quotation. They have not been contradicted. Neither the Chief Justice has come forward with a statement 'I have made a personal remark.' There is no such thing before us. How do you come to that conclusion? I want to know because—you must bear with me—(Interruptions)

SHRI PILOO MODY : You cannot listen to this, Sir.

SHRI SURENDRANATH DWIVEDY : It is a deliberate attempt to whittle down.

MR. DEPUTY-SPEAKER : With the observations made by Acharyaji you agree. Your speech is likely to create an impression.....

SHRI SURENDRANATH DWIVEDY : That is going to be decided. There is no record. What has been published in the paper? On the basis of that I am coming to you. There is no question that it is a personal remark he has made.

MR. DEPUTY SPEAKER : You must conclude.

SEVERAL HON. MEMBERS rose—

SHRI SURENDRANATH DWIVEDY : It would be difficult for me if you permit that. You will write to the Chief Justice to get.....

MR. DEPUTY-SPEAKER : No, no. As I said in a personal capacity he has made certain observations and others who are not in favour of the Bill are also making similar observations, I take it in that light.

SEVERAL HON. MEMBERS rose—

SHRI SURENDRANATH DWIVEDY: If you permit these interruptions, it will be impossible to function in this House. (*Interruptions*) When you have permitted me, you must listen to me.

MR. DEPUTY-SPEAKER: By your speech, the grounds of propriety have been lost completely.

SHRI SURENDRANATH DWIVEDY: You must permit me. Have I said anything unparliamentary? Have I said something which is not connected with the issue raised before us?

Do you want to stop me like this?

MR. DEPUTY-SPEAKER: It is not unparliamentary. But even within the framework of the Constitution if anything is said here which is likely to create a sense...

SHRI SURENDRANATH DWIVEDY: It is not impropriety.

MR. DEPUTY-SPEAKER: No; not impropriety. (*Interruption*)

SHRI SURENDRANATH DWIVEDY: It is impossible to function.

SHRI UMANATH (Pudukkothai): It may be right or wrong, but we are entitled to put it before the House.

SHRI RANDHIR SINGH: Sir, there is a point of order.

MR. DEPUTY-SPEAKER: There is a point of order from this side.

SHRI SURENDRANATH DWIVEDY: If this is the case, at every stage, every speaker in this House would not be permitted to speak. I am relevant. If I am irrelevant, if I am going out of the way, you have a perfect right to call me to order. But I must be permitted to say what I want to say. (*Interruption*)

MR. DEPUTY-SPEAKER: The Prime Minister.

SRIMATI INDIRA GANDHI: I want to assure the hon. Member, Shri Surendranath Dwivedy, that nobody is questioning his motives or his sincerity or his...

AN HON. MEMBER: discharge of his duties.

SHRIMATI INDIRA GANDHI:... discharge of his duties. Nobody wishes to suppress anything which he wishes to say. But he has himself agreed that it would not be proper to have a discussion here which may create acrimony..

SOME HON. MEMBERS: No.

SHRIMATI INDIRA GANDHI: But it is. What is the use of saying "No?"

SHRI UMANATH: If only acrimony is introduced, there will be acrimony; other wise not. (*Interruption*)

SHRIMATI INDIRA GANDHI:... whether you want it or not, that situation has already arisen, and therefore, I would appeal to Mr. Dwivedy to agree to drop the matter now.

SOME HON. MEMBERS rose—

SHRI J. B. KRIPALANI: I want to... point out one thing. Mr. Hidayatullah was immediately contradicted by Mr. Chatterjee. Was Mr. Chatterjee contradicting him as a Supreme Court judge? He was contradicting an individual who was giving his opinion. I suppose that every citizen of India has the right to give his opinion and his opinion before Parliament.

SHRI UMANATH: We have the right to discuss this also. (*Interruption*)

SEVERAL HON. MEMBERS rose—

MR. DEPUTY-SPEAKER: This is closed. About this nothing will go on record.

SOME HON. MEMBERS: ** **
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SHRI SURENDRANATH DWIVEDY: Nothing has been recorded.

MR. DEPUTY-SPEAKER: You see from the records, except your last sentence when certain bad things have been said—all these are not from your mouth—all the others have been recorded. There are some friends who said something from behind and therefore I said that the last sentence

need not be recorded. You can see that from the records that only the last sentence has not been recorded. (*Interruptions*)

SHRI SURENDRANATH DWIVEDY: I have not said anything else. Please see whether I have said anything else. Thus see our records. I want you to see whether any of my sentences has been recorded.

MR. DEPUTY-SPEAKER : I would call for the records in my room to see if there is any other sentence except the last sentence which has not been recorded. You have completed the last sentence.

SHRI SURENDRANATH DWIVEDY: I have not completed. I have not uttered it. How could this be recorded? Do you presume what I am going to utter? This is very strange you know what I was going to say. I want to know whether this is recorded or not. I shall utter the sentence and then I shall sit down. Otherwise the House will remain in suspense unless you permit my sentence to be recorded

MR. DEPUTY SPEAKER: If I allow it, others may speak from behind.

SHRI SURENDRANATH DWIVEDY: Nobody will speak. Nobody wants to speak.

MR. DEPUTY-SPEAKER: I do not know. They were also standing; you also know that Mr. Nath Pai was standing and everybody was standing. I shall permit the sentence to go on record provided others do not speak.

SHRI SURENDRANATH DWIVEDY: What is the position now? Shall I complete the sentence?

MR. DEPUTY SPEAKER: Complete the sentence if you want to complete.

SHRI SURENDRANATH DWIVEDY: Will that be recorded?

MR. DEPUTY SPEAKER: Yes, that will be recorded.

SHRI SURENDRANATH DWIVEDY: All right. Thank you. What I wanted to say was this, that since I found that the House was in an excited atmosphere and

since friends from all sections of the House expressed a desire that we should not take up the question at the moment, I respected the wishes of all sections of the House—I also know the implications because it was hardly my desire to do that—and therefore, I drop this matter for the present.

SHRI NATH PAI (Rajapur): Mr. Deputy Speaker, Sir, in order to remove any misunderstanding, let me explain to you and through you to the House, what you had written to him. Mr. Dwivedy has not been getting a fair deal from you.

Let me read out to you what you wrote to him. It was on that authority given by you that he was trying to speak. If you are not going to allow us to speak, we shall also play that game. (*Interruptions*)

AN HON. MEMBER: He is a heart patient. Let him speak.

SHRI NATH PAI: Let my heart go to hell. You cannot pull our legs like this. I want to finish this sentence.

You wrote to Shri Dwivedy in your own handwriting this letter:—

“Raise it”—

that means, raise the alleged reference to legislation in Parliament by the Chief Justice.

“Raise it when we take up Nath Pais Bill. In the mean time I shall keep Minister informed.”

The Leader of the House and the Law Minister should know that since the matter was very important, with your consent, with your permission, with your knowledge he sought to raise it. You gave him permission under rule 377. Nobody can say that it was without your permission. We owe it to you that Shri Dwivedy was allowed to complete his submission. When he was about to refer to it, he was interrupted. At no stage had he cast any aspersion on the Supreme Court Chief Justice. He wanted to refer to it with the permission of the Chair. Now that you have made an appeal, we want to drop it.

So far as shouting is concerned, whenever Shri Ranga raises, as a senior man,

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not only as the leader of his party but also as a man who has contributed very largely to the freedom struggle, we show respect to him.

SHRI RANGA: Have I not shown it to you?

SHRI NATH PAI : You must be ashamed of your partymen doing like this. I have not done that in my life.

SHRI PILOO MODY rose—

MR. DEPUTY-SPEAKER: No further provocation.

SHRI PILOO MODY: I will agree to no further provocation. If you accept that there was provocation. If you so accept, I will sit down.

SHRI UMANATH: We are not afraid of your weight. Do not show your size.

SHRI PILOO MODY : Let me make it quite clear....(Interruption)

SHRI UMANATH: We are game for it.

SHRI PILOO MODY: Let me make quite clear to these puny little Reds that just because they shout, we are not afraid. We are not afraid of what they do in the bazars; we are not afraid of what they do in the streets; we are not afraid of what they do in Parliament....(Innerruption). Did you hear me?

SHRI NATH PAI: Finally, may I make an appeal? Let the House return to the old atmosphere of mutual respect and tolerance. Tolerance and respect cannot be unilateral. In this House we have a multi-party system. Respect and tolerance will have to be reciprocal. If this is wanting, and responsibility will lie on those who will challenge it.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, मुझे एक निवेदन करना है। माननीय सदस्य, श्री एस० एन० द्विवेदी, के लिए सब लोगों के हृदय में आदर है। कभी भी ऐसा नहीं हुआ है कि श्री द्विवेदी बोलने के लिए खड़े हों और हमने मोर मचाया हो। इस

सदन में उन की बात हर दम ध्यान से सुनी जाती रही है। लेकिन आज इस मामले पर हम लोगों ने व्यवस्था का प्रश्न उठाया।

श्री नाथ पाई : जान बूझ कर, हरकत के लिए।

श्री अटल बिहारी वाजपेयी : जान बूझ कर नहीं। यह तो अपनी-अपनी समझ का सवाल है (व्यवधान) किसी को यह नहीं समझना चाहिए कि हम किसी के बोलने के अधिकार पर प्रतिबन्ध लगाना चाहते हैं। लेकिन जिन मामलों पर हम उग्रता से अनुभव करते हैं उनके सम्बन्ध में व्यवस्था के प्रश्न के रूप में हम मांग कर सकते हैं कि अगर किसी के आचरण पर आपत्ति की जानी है, तो वह सबस्टैंटिव मोशन लाकर होना चाहिए, अन्यथा नहीं।

MR. DEPUTY-SPEAKER: Shri Dwivedy was very eager to raise this issue. Therefore I requested him to raise it when we took it up. I may also tell him that there was no intention on anybody's part, neither the Chair nor anyone else, to show disrespect. Now let us stop it here once and for all.

Let us take up the debate further.

SHRI J. B. KRIPALANI rose—

श्री मधु लिमये : मेरा एक व्यवस्था का प्रश्न है।

SHRI S. M. BANERJEE (Kanpur): Sir, before he starts his point of order, I apologise to Shri Dwivedy on behalf of Shri Piloo Mody.

SHRI PILOO MODY: Exactly five minutes too late.

श्री मधु लिमये (मुंगेर) अध्यक्ष महोदय, मेरा एक व्यवस्था का प्रश्न है। इस वक्त सदन के सामने जा कार्यवाही है वह है इस विधेयक पर चर्चा। जः पहले हुआ उस से मुझे कोई मतलब नहीं। इस कार्यवाही के सम्बन्ध में व्यवस्था का प्रश्न उठाना

चाहता हूँ और उसके लिए मैं आप का ध्यान कुछ उद्धरणों की ओर दिलाना चाहता हूँ जो मैंने शकघर साहब की किताब से लिए हैं। यह जो नाथ पै साहब का बिल है इस का शायद वर्गीकरण हुआ था और इसके महत्व को मद्देनजर रखते हुए शायद कमेटी ने इस को पहली श्रेणी में रखा था। उसके बारे में मुझे कुछ नहीं कहना है। यह बाकई महत्वपूर्ण बिल है। लेकिन आप जानते हैं कि इस विधेयक पर पिछले साल से चर्चा चल रही है। एक महीने में दो शुकवार हम को निजी सदस्यों के विधेयकों पर चर्चा करने के लिए मिलते हैं। दो शुकवार निजी सदस्यों के संकल्पों और प्रस्तावों के ऊपर चर्चा करने के लिए मिलते हैं। मैं आप से एक सवाल पूछना चाहता हूँ और इस सदन से पूछना चाहता हूँ कि अगर एक ही सदस्य के बिल पर एक डेढ़ साल से बहस चलती रहे और हर शुकवार को अगर वही बहस जारी रहे तो इस वक्त 190 विधेयक निजी सदस्यों के पेश हैं, अकेले मेरे 19 विधेयक हैं, तो उनका क्या होगा? तो ऐसा तो कोई नहीं कह सकता है कि दूसरे विधेयक महत्वपूर्ण नहीं हैं। मैं मानता हूँ कि इन का बिल बहुत महत्वपूर्ण है। इसलिए इस पर अब तक काफी बहस हो चुकी है। सरकार ने इस विधेयक के सिद्धान्तों को कबूल किया है। ठीक है न मेरी राय? मैं कानून मंत्री से पूछ रहा हूँ। उन का भाषण यहां पर हुआ है। मैं आप के मार्फत कानून मंत्री से पूछ रहा हूँ।

SHRI SURENDRANATH DWIVEDY: Has the House not permitted that the Bill be discussed? That is the point of order then?

MR. DEPUTY-SPEAKER: He is making a different point altogether, whether one Bill should exhaust all the time of the Private Members business throughout the session. He has informed me.

SHRI SURENDRANATH DWIVEDY: That is for the House to decide.

SHRI N. SREEKANTAN NAIR (Quilon): Let him move a closure motion if he wants.

श्री मधु लिमये : मेरी बात आप सुन लीजिए। उसके बाद यह लोग कह सकते हैं। इसके बारे में मैं कुछ निर्णय आपके सामने रखना चाहता हूँ। शकघर की किताब 626 और 627 पृष्ठ देखें। इसका शीर्षक है :

"Allocation of Time to Bills and Resolutions"

One of the important functions of the Committee is to recommend the allocation of time to all private members' Bills and resolutions: in the case of Bills, this is done after their introduction in the House and in the case of resolutions after they have been balloted. The maximum time allotted for consideration and subsequent stages of a Bill as also for discussion of a resolution is four hours.

After the adoption of the report of the Committee by the House, the allocation of time in respect of Bills and resolutions takes effect as if it were an order of the House."

श्री रणधीर सिंह : इम्पार्टेंट बात पर तो कई दिन बहस होगी ही।

श्री मधु लिमये : मैं कहां कह रहा हूँ कि न हो, मैं तो कहता हूँ कि इस बिल पर 25 घंटे बहस होनी चाहिए। मेरी बात तो सुन लीजिए आप। नीचे केवल दो अपवाद अब तक के लिए हैं। एक विधेयक था सैठ गोविन्द दास का और खुद जवाहर लाल नेहरू के प्रस्ताव पर 4 घंटे के अतिरिक्त 15 मिनट समय उस का बढ़ाया गया था। एक दूसरा अपवाद हुआ है कि जिस में जो कार्यवाही यहां पर होती है वह अखबारों में छापने के बारे में और उसको इम्प्युनिटी देने के बारे में विधेयक उस पर डेढ़ घंटे समय बढ़ाया गया था। यह जब से लोक सभा बनी है, पिछले 18 सालों में यह एक या दो अपवाद

[श्री मधु लिमये]

हुए हैं, एक पन्द्रह मिनट का और दूसरा डेढ़ घंटे का।

अब मेरा निवेदन है कि सरकार ने इस विधेयक के सिद्धान्तों को कबूल किया और इस में यह परिष्पाटी है, यह कोई सिर्फ इन के बारे में नहीं है। मेरे कम्पनी डोनेशन वाले बिल को सरकार ने मान लिया था और इस को भी सरकार ने मान लिया है, तो मैं ने उसको वापस लिया। सरकार ने उस को रखा है। दूसरा मेरा विधेयक है मंत्रिमंडल की संख्या पर निर्बंध लगाने का।

श्री रणधीर सिंह : यह क्या प्वाइंट ऑफ ऑर्डर है। एक घंटे के 18 हजार रुपये खर्च होते हैं। पन्द्रह मिनट का साढ़े चार हजार रुपया होता है।

MR. DEPUTY-SPEAKER: The question is whether the House should encroach upon the time allotted to the Private Members' business to such a limit. This is the question. There are some precedents. We have to take a decision on this.

श्री मधु लिमये : अध्यक्ष महोदय, रेस्ट्रिक्शन आन दि साईज ऑफ कौन्सिल ऑफ मिनिस्टर्स का मेरा बिल था। उसको उन्होंने मान लिया गृह मंत्री ने, और कानून मंत्री ने। वह मैं ने वापस ले लिया।

वह डिफेक्शन कमेटी को रेफर किया था। सरकारी विधेयक के तौर पर अब वह आएगा। तो मेरी समझ में नहीं आता है कि जब नाथ पै साहब के बिल के सिद्धान्त को सरकार ने कबूल किया है तो सरकार उसको रखे। 25 घंटे दे दे। मुझे कुछ नहीं कहना है। लेकिन 190 निजी सदस्यों के बिल पड़े हुए हैं। मेरे 19 बिल पड़े हुए हैं। मेरी राय में वह उतने ही महत्वपूर्ण हैं जितना महत्वपूर्ण इन का है। कम-से-कम उस में से कुछ बिल तो हैं ही इसलिए मेरी प्रार्थना है कि इस पर बहस अब स्थगित की जाय और गोविन्द मेनन साहब से का जाय कि अगर सरकार

इस को मानती है और सरकार ने यह कहा है, यह मैं अपने मन की बात नहीं कह रहा हूँ, यह तो कार्यवाही में छपा है सरकार ने इस के सिद्धान्त को स्वीकार किया है, तो सरकार आश्वासन दे दे और दूसरा बिल ले आए। एसेंशियल सर्विसेज मेन्टिनेंस बिल है, हम नहीं चाहते [व्यवधान]

श्री सुरेन्द्रनाथ द्विवेदी : इनके 19 बिल को सरकारी टाइम दे दिया जाय।

श्री मधु लिमये : अब आप अपनी बात बाद में कह सकते हैं। अभी आप कह रहे थे कि आप किसी को टोकते नहीं।

SHRI SURENDRA NATH DWIVEDI: This is an interruption and not 'tokna'. I think, Mr. Limaye will agree that this is permitted in all Parliaments.

श्री मधु लिमये : ठीक है, मुझे कोई आपत्ति नहीं है। मैं कहां आपत्ति कर रहा हूँ? तो अध्यक्ष महोदय, मेरा यह निवेदन है कि दूसरे निजी सदस्यों का जो विधेयकों का समय है वह खत्म न किया जाय। सरकार भी जब उसको कबूल कर रही है तो उन की हिम्मत क्यों नहीं है? वह खुद बिल लेकर आएँ। सरकारी टाइम में से 25 घंटे दिए जायें। हमको कोई आपत्ति नहीं है। लेकिन हमारे 19 बिलों को और दूसरे सदस्यों के जो 190 बिल हैं उनको न रोका जाय।

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, श्री मधु लिमये ने एक बहुत महत्वपूर्ण मुद्दा उठाया है। इस बात से कोई इन्कार नहीं कर सकता कि श्री नाथ पै का विधेयक महत्वपूर्ण है। सदन उस पर चर्चा करना चाहता है। अधिक समय चाहता है लेकिन प्रश्न यह है कि क्या जो निजी सदस्यों के विधेयकों और संकल्पों के लिए समय है उस में से समय लिया जाय या सरकार ने जब श्री नाथ पै के विधेयक के अन्तर्निहित सिद्धान्त को स्वीकार कर लिया है तो सरकार उस पर विधेयक लाए। प्राइवेट मेम्बर्स का जो समय है

उस का अपना महत्व है, उस का अपना मूल्य है। एक विधेयक के लिए उपाध्यक्ष महोदय, सब विधेयकों का दरवाजा बंद हो जाय, यह मेरे मित्र श्री नाथ पै भी नहीं चाहेंगे। इसलिए मैं चाहता हूँ आप निर्णय करें और सदन निर्णय करे कि श्री नाथ पै का विधेयक सरकार के द्वारा आए और बाकी के और गैर-सरकारी विधेयकों को पेश करने का मौका मिले।

SHRI H. N. MUKERJEE (Calcutta North East): We all want the Private Members' Bills time not to be encroached upon. But I remember, Mr. Anthony had a Resolution or a Bill in regard to languages which went on for three or four weeks. I am not asking for that sort of discussion. We are at the end of the Session. We know that Government, even if it accepts the suggestion, cannot bring it up during this Session. But there is a probability of this Bill being accepted here and now today. There is no reason why there should be the dilatory proceedings in this fashion... (*Interruptions*). There has been a precedent. Mr. Anthony's Resolution took more than three days of the non-official time. I know some of the reasons why they are motivated like this. You can give four hours time and finish it.

16 hrs.

SHRI SURENDRA NATH DWIVEDY: Only the Committee of which you are the Chairman decides the time. The Committee has given 4½ hours for the discussion of this Bill. So, there is no question that the time of other Bills are being taken. The Committee has taken into consideration all aspects and provided time for other Bills.

श्री शिवनारायण (बस्ती) : उपाध्यक्ष महोदय, मेरे मित्र मधु लिमये ने बहुत जैनुइन सवाल रखा है। हर मेम्बर को राइट है कि वह अपने बिल को यहां पेश कर सकता है, 19 बिल तो प्रकले मधु लिमये जी के हूँ और इस हाउस में 521 मेम्बर हैं। इस में कोई सन्देह नहीं कि नाथ पाई जी ने जो बिल यहां पर पेश किया है, वह बड़ा महत्व-

पूर्ण है, लेकिन इसमें भी भेद है—जैसा प्रटल बिहारी बाजपेयी जी ने कहा कि सरकार इसको चाहती है, जब सरकार इसको चाहती है तो इस बिल को यहाँ सस्पेंड कर दीजिये और सरकार दूसरा बिल यहां पर ले आवे, उस पर फिर आप चाहें 48 घण्टे डिस्कशन के लिये दीजिये, हमें कोई एतराज नहीं है। दूसरे प्राइवेट मेम्बरों के बिलों के लिये क्यों रोड़ा डाल रहे हैं। इस लिये मैं महसूस करता हूँ कि मधु लिमये जी की मांग जायज है।

SHRI RANGA (Srikulam) : I am opposed to the Bill, but here I would like to support the point of order raised by my hon. friend Shri Madhu Limaye. Government has already come out some time ago, through the Law Minister, in support of the principles underlying this Bill. We opposed it, but the Parliament, with the support of Government, sent it up to the Joint Committee. This has come up before us and this is the stage which we have now. Would it not redound to the credit of this Government, would it not be proper for this Government to undertake to shoulder the whole responsibility of this Bill and make it their own, and bring forward the Bill in some modified form or some such thing, as their own Bill, and give official time to this Bill, thus giving the fullest opportunity to this House to discuss this matter properly? My hon. friend Shri Nath Pai said the other day that he could not agree with me in regard to my attitude to this Bill. But on one point we both agreed and I am one with him on that point, namely, that Parliament should be given full time for the discussion of this Bill. Only four hours have been allotted. This time is not enough. I would plead with the Chair that this is an important Bill affecting the Fundamental Rights of the citizens which are accorded by the Constitution of India.

Whether some of our hon. friends sitting over there are in agreement with Fundamental Rights or not, is another matter. But, the time that is sought to be given to this important Bill is most insufficient and I would plead with the Chair that plenty of time must be given for the discussion of

[Shri Ranga]

this Bill. I raised it then. You were good enough, Mr. Nath Pai was also good enough, and the House has cooperated in having given so much time. I am grateful to all of you. But, at the same time, would it not be proper for this Government, that they come forward more courageously and say, this is a Bill of such importance and magnitude and we are in favour of it, and we are prepared to take it as our own. They can bring up this bill as their own Bill and we can have a discussion. Would it not be proper, Sir, that the House also should have some consideration for the Movers of the other Bills? Non-official time need not be taken away and Government may bring it up as their own Bill. But one thing I want to make clear. Even if Government brings it up as their own Bill, I myself, our party, and our friends in this House, and in the country also, would go on fighting it in the constitutional manner, in every possible decent way.

THE MINISTER OF LAW (SHRI GOVINDA MENON): After all, it is Shri Nath Pai's right as a non-official member to bring a Bill, and I think it is Government's duty to support the Bill if it thinks that the principle is acceptable to Government. We have now proceeded for so many days. There has been a Joint Committee on it over which you presided. Now at the last moment to say that it should be withdrawn by Shri Nath Pai and a fresh Bill should be brought forward by Government is, to put it at the lowest, only dilatory tactics. As to whether Shri Nath Pai should withdraw it or not, it is for him to decide. But I think you have inherent power, if necessary, in consultation with the Leader of the House to allot time even on official days for a Bill like this. Because Government support a Bill, it does not become a Government Bill.

Therefore, I would submit that after having gone all these days with the Bill, it would be wrong to make such a suggestion. To make such a suggestion would be dilatory tactics. I do not agree to it.

SHRI NATH PAI: We also know some elements of procedure (*Interruptions*). Their expectation from you that we should

follow the procedure, I regard as a compliment. But sometimes it tends to be punishing those who try to follow it too scrupulously. Earlier, you remarked when I rose 'Mr. Nath Pai, you are rising again'. I do not know when 'first' becomes 'again so far as that adverb is concerned....(*Interruptions*). My hon. friend, Shri Frank Anthony, interrupts. He does not know what happened in the House. For him this is another club where he will condescend to attend when he likes. Let him interrupt about something only when he knows about what happened.

Prof. Ranga and Shri Anthony and a number of other distinguished members made the very content point that the matter is important, so enough time should be given. There was a consensus of opinion that the matter being important and of such far-reaching consequence there should be enough time. Today, we are finding just the reverse arguments, this is important, but others' time is being curtailed. I do not know under what rules of procedure whereby a matter under discussion is sought to be prevented from being discussed and its time curtailed. Whatever other objections they may have— they may have legitimate objections. I fail to understand why this sort of argument is advanced.

Prof. Ranga will recall that when first the question of extension of time was mentioned by him, I heartily welcomed it. It was after hearing views on that that a decision was taken in connection with the time. I think Shri Frank Anthony wanted something like 15 hours for this.

SHRI J. B. KRIPALANI: He said 50.

SHRI NATH PAI: If this is to be taken up consecutively on Monday and Tuesday, I have no objection. But I fail to understand this argument: 'Nath Pai, hand over your Bill'. I shall never agree to it. It may be defeated or destroyed. But I shall not agree to handing it over.

As regards the rights of other members, Shri Limaye was not present here. We very much missed his presence and he is making good for it now. He was incarcerated in Monghyr. We tried to raise the matter here. You know it was discussed.

My point is also a point of order. Because a member was absent, can a matter which was raised, discussed and resolved, be raised indefinitely? Is the record binding only on us? Was not the question raised debated and discussed and decided upon? If so, I fail to understand while I appreciate your leniency and generosity how the procedure is being departed from on a matter once decided upon by you, and why it is sought to be raised again.

SHRI NAMBIAR (Tiruchirappalli)
Let us not waste time. There are only 2½ hours. Let us start.

MR. DEPUTY SPEAKER: I fully agree that so far as the time allocation up till now is concerned, one hour and fifty minutes are left. Today we can proceed. Because many members pleaded in the committee that as an exceptional case extension of time should be given, maximum allocation was made. Because we are supposed to make a maximum allocation of four hours, I said let it be four and a half hours leaving a little margin. I must present the other side also. Some members complained that if this goes on it is not likely to conclude even in this session and their Bills would not get a chance. On behalf of the Government the Law Minister has already said that it is not a question of changing the character or the sponsorship of the Bill. For finding time we will have to refer the matter to the committee next time, because these four and a half hours will be exhausted if we sit continuously. So, we will have to take a decision on that issue whether further extension should be given or not. But the main valid point that has been made according to me is that the total time that we have spent on this Bill since it was introduced is 11 hours and 53 minutes. I would like Government to provide some time for this Bill.

SHRI SURENDRA NATH DWIVEDY:
Is that the time taken after the Bill came from the Select Committee?

MR. DEPUTY SPEAKER: Before and after, total time.

SHRI SURENDRA NATH DWIVEDY: Probably I do not make a demonstration of it, but I know the procedure.

This Bill when it comes again from the Select Committee is a new Bill before the House. If you take the total time, the number of hours in the Select Committee can also be included and then probably it will be 50 hours or more.

MR. DEPUTY SPEAKER: That is not right. You are making an injustice. This Bill has taken a total time of more than 11 hours from private members' time. I would like the Government to make up their mind. We will take it up with the Minister of Parliamentary Affairs. Objection has been raised, but for today time has been allotted. Later on we will find some time, that is all.

16.13 hrs.

[SHRIMATI TARKESWARI SINHA *in the Chair*]

SHRI J.B. KRIPALANI (Guna): It is admitted by all that this is a very important Bill. Therefore, on the previous occasion I was much pained to see that a Congress Member sitting behind me, I do not know his name, imputed motives to those who spoke against the Bill. I could have understood his imputing motives to the member of the Swatantra Party; as he happened to be a Raja, he thought that he was opposing because he wanted to preserve his privy purse. I do not know where the question of the privy purse comes in this Bill whether you pass it or not. These privy purses are regulated by treaties between two parties. They have nothing to do with the Bill.

Then there was a Congress member, my friend to the left, Mrs. Mukherji, he said that she is Birla's agent. This Bill has nothing to do with Birlas, because you had the right, Government had the right, but no property of the Birlas or Dalmias or Tatas were confiscated, rather it is the property of the poor people and they suffer. So, I do not understand why motives should be imputed to persons who speak for or against the Bill.

First of all this is not merely a legal question. Beyond that it is a political question, social question, economic question and moral question above all. So far as lawyers

[Shri J.B. Kripalani]

are concerned, my friend Mr. Chatterjee he would kindly excuse me if I say—once got a brief to speak that these fundamental rights are unalterable. That brief was with money. Now he has another brief within himself without money. So the lawyers speak according to the occasion.

SHRI N.C. CHATTERJEE (Burdwan: Lawyers speak according to their instructions. Here I spoke only as an elected Member of Parliament.

SHRI J.B. KRIPALANI: I remember a story. A man accused of having committed a murder was brought before the court. Then the prosecution advocate began to argue with his stock arguments. At the end the Judge asked the person, 'Are you guilty or not?'. He said, 'I know I am not guilty but after hearing the argument of the prosecution, I begin to feel that I may be guilty'. This is not a question to be legally decided. But it has to be decided from other points of view. They also include our claim to humanity. Apart from the political, economic and social and moral aspects, the very basis of our humanity is involved whether we have these fundamental rights or we abrogate them.

The fundamental rights are not peculiar to us. It is said that the concept as to what is right or what is wrong is changing. It may be that economic and the moral concepts may be changing. But I have yet to know of a human being who does not want freedom of speech and the freedom of conscience and freedom of association or any minority which will not require their rights to be protected. Democracy to-day does not mean as it used to mean, the rule of the majority. It means that respect must be paid to the rights of the minority. If that is not done, then I say that we have abrogated the Constitution. Most of us, 90 per cent of us here are Hindus. There may be a wave of fanaticism and we may say that India shall be a Hindu country and no Mussalman or Christian has the right to live here. You can do that with your majority.

SHRI S.M. KRISHNA (Mandya): Has it been done?

SHRI J.B. KRIPALANI: In Italy was it not done? In Germany has it not been done? This conception of fundamental rights is as old as, may I submit, as the Greek philosophy. The Stoics considered that there is a moral law implanted in every human heart and they called it the law of nature. Then the law of nature traversed to Rome. The Romans were conducting the Government of many peoples and they found that the principles that governed the laws were common to many people and, therefore, they made that as a source of law.

If I mistake not, they called it *jus gentium*. Then came the Christians. The Christians knew all these views and they propagated that the law of nations, is the moral law that abides in every human heart. Then came the French Revolution. In the French Revolution these moral precepts were given a political form. Then they became what are known as the fundamental rights. And today, these very fundamental rights have been turned into human rights the rights of man as adopted by the UNO. It is nothing new. In many Constitutions, these fundamental rights are protected.

Then we must remember that we have got the directive principles and also the fundamental rights. Directive principles are such that they have to be evolved, that we have to come to that goal, but for these fundamental rights, you have not to go to the goal; they are there, present. They can be enforced today. Therefore, they were made justiciable. Not only were they made justiciable, but it is also said that the State shall not abridge or abrogate any of these laws. Mark the word "State". The State is not the legislature; the State is not the judiciary; the State is not the executive. The State consists of all these three branches. Therefore, the judiciary was prohibited from interfering with them; the legislature was prohibited from interfering with them; and the executive was prohibited from interfering with them.

I am told that the sovereignty resides with the people. I am yet to find the people; I have not found them. Well, Mr. Nath Pai might have found them. First

of all, we do not swear allegiance to the people of India; nor do we swear allegiance to the Parliament. To whom did we swear allegiance? To the Constitution. But take it for granted that the people are sovereign. I would submit by whatever logic you may argue you may argue by the dialectic logic you cannot make the people equal to Parliament; you cannot make people equal to the majority in the Parliament, may be of two or three; you cannot make people equal to the Cabinet, because the Cabinet decides all the legislation here. Even Mr Nath Pai's Bill will be passed only when it is supported by the Cabinet. He cannot get it passed otherwise.

SHRI S. M. KRISHNA : Even if the Supreme Court decides by a majority of one.

SHRI J.B. KRIPALANI : I do not mind your interruptions. You only show your wisdom. That is all. It does not affect me at all. I was telling you that the majority in the Cabinet becomes the sovereign people. And when did Mr. Nath Pai consider this Parliament, the majority in it representative? Did he consider it representative when we were discussing the Czechoslovakian question? If there had been a general vote, a referendum, a free vote—not in Parliament—if there had been a free vote and a reference made to the people, I am sure, and he also will agree with me, that the policy of the Government would have been considered wrong.

And the other day there was the strike by the Government employees. If you take a referendum in the country, the Government will be obliged to take every person who has been so far dismissed.

You know there are certain Constitutions where provisions are made for referendum on certain vital issues. If the people were sovereign and in their place the Parliament was sovereign, there will be no question of providing for any referendum in any Constitution whatsoever.

I now come to a very important point. I was Chairman of the Sub-Committee on Fundamental Rights appointed by the Constituent Assembly. I will tell you the whole history. I told the Members "There

are no fundamental rights now. Every Government finds ways and means to get round the fundamental rights. We are engaged in a useless activity." They said, "No. Fundamental Rights must be incorporated in our Constitution. We shall see that they are irrevocable."

There were two or three lady members. They said, put down the right that the women can discard the *purdah*. I said, nobody has taken to task any woman for discarding the *purdah*. But the modern women do not have a *purdah*. They have a mask of powder and paint. You can never penetrate through it. You can penetrate through the *purdah*. Who knows, the paint and powder may be poisonous, but you cannot.

SHRI NATH PAI: You cannot what?

SHRI J.B. KRIPALANI: That I leave to the younger people.

SHRI NATH PAI: To be poisoned? It is rather very unkind of you!

SHRI J.B. KRIPALANI : They (the members of the Sub-Committee) said, "Mr. Chairman, remember that this country consists of so many minorities. We want that these minorities should be protected. You know what the communal situation is. We, therefore, want to make these principles inalienable by the Parliament." So, we denied power to ourselves. It was a self-denying ordinance that we passed against ourselves. We were to be the Parliament, but we said, no; we shall not have this right of abrogating or annulling these fundamental rights. This is the whole history of how the fundamental rights came to be incorporated in our Constitution. They are incorporated in other Constitutions also. For instance, you have the American Constitution. The Declaration of Independence. It says:

"We hold these truths to be self-evident that all men are equal, created equal and that they are endowed by their creator with certain inalienable rights."

I want Mr Nath Pai to remember this.

SHRI NATH PAI: I know that by heart.

SHRI J. B. KRIPALANI : Among those are life liberty and pursuit of happiness. To secure these human rights, government are formed. This government is not there to abrogate the whole idea! The whole Government—judiciary, executive and the legislature—are there to uphold these rights. These rights are guaranteed to us. This is nothing new that we did. These rights are inalienable. Remember you may take away if you like the rights to property. For that you find out other methods. You are not going to throw away the baby with the bath water. When you abrogate all other human rights, you make human beings as animals. Do you want to reduce us to animals? We have certain rights as human beings and we must preserve those rights against all authority because they are fundamental and because they go to the very root of our very being. If we do not have them, we are not human beings. Why do you want to reduce us to that? Is it in order that you may not be able to pay a little compensation to some miserable persons that might have some? This is not the way to protect socialism. So far as socialism is concerned, you have been able to nationalise what you call Life Insurance. Have the fundamental rights stood in your way? You have been thinking of nationalising banks and you have done something towards that direction though it may be an eye-wash. Nobody has prohibited you from nationalising anything connected with national activity, commerce or industry. You have been doing it so often!

Another thing is that we have changed our Constitution many times in these 21 years—this is a record. No where else has the Constitution been changed so often? My hon. friend, Shri Nath Pai, said that the framers of our Constitution said that our Constitution is elastic. I might say that a girl is beautiful. Does it mean that in every part she is beautiful?

SHRI NATH PAI : How do you feel that? Which is that part that you choose?

SHRI J. B. KRIPALANI : I shall tell you how it is. It is on the whole.

So the whole of the Constitution may be elastic. But this particular item cannot

be called elastic. What can I do? They laugh; they do not understand the arguments.

SHRI NATH PAI : I am most respectful to you, Sir.

MR. CHAIRMAN : The hon. Member must conclude now. He cannot take away the entire time of the House.

SHRI J. B. KRIPALANI : The other thing is this. For God's sake, don't do this. We have got one little institution, the courts, to guard these rights, which England has left with us. This is more valuable than any other thing. It was the supremacy of the courts of law. In this also, unfortunately, there has been deterioration. But, there is one Supreme Court in which every Indian believes.

I was given a calculation by my hon. friend that so many Judges were for giving Parliament the power of amendment and so many Judges were not for it and that the number of Judges not for it was certainly smaller than of the Judges for it. But he is a barrister and he ought to know that the final judgment prevails. I hope, my lawyer friends behind me will bear me out that as long as that judgment remains, you will be going against the Supreme Court; you will be doing great injustice to our Constitution; you will be doing great injustice to our rights if the final judgment is changed unless it is changed by the Court itself in any future reference.

Therefore, I say that on a very delicate task we are assembled here. Let everybody exercise his judgment clearly and conscientiously looking to the facts of our country looking at the circumstances in which we are living and vote accordingly. I hope, no whip will be used by any party in this matter.

MR. CHAIRMAN : Shri Bhandare. May I appeal to Members that as many Members are desirous of speaking they would confine their remarks to ten minutes?

SHRI SHRI CHAND GOYAL (Chandigarh) : This should have been announced in the beginning. Now some

parties have taken half an hour and others are left with ten minutes' only.

MR. CHAIRMAN : Things that have happened cannot be undone now. It is my duty to regulate the debate and give a chance to Members as far as I can. Therefore I would request Members to confine their remarks to ten minutes. I have to accommodate the maximum number.

SHRI R. D. BHANDARE (Bombay Central) : Mr. Chairman, we are now applying our mind to the Bill as it has emerged from the Select Committee. I have moved certain amendments to the Bill that has emerged from the Select Committee. I hope, with those amendments the Bill will be restored to its original position and will restore the power of Parliament to amend the Constitution.

When we say that Parliament should have power to amend the Constitution it shocks many Members of the House and many citizens of this country. A chain of reaction is set in in their minds. This chain of reaction is created because of fear and apprehension that prevails in their minds arising out of and due to misunderstanding of the Constitution of India and the facts of life.

It has been said and repeated *Adnauseum* that the Constitution has been amended so many times that it is a record by itself. Let me draw your attention to the simple fact that out of 21 amendments that have been effected to the Constitution only three amendments deal with fundamental rights. Only three times the Constitution has been amended so far as fundamental rights are concerned. We have to remember that.

And what are the fundamental rights that have been touched or amended by the amending process? Only one, that is, the right dealing with property. No other fundamental right has been touched during the last 17 years.

Now, it has been said that once power is given, the power may be utilised or misused at any time to take away the rights of the minorities. It is a fantastic proposition which has been advanced by some of the

Members and this campaign has been carried on that the rights of the minorities will be taken away.

SHRI J. B. KRIPALANI : That fantastic proposition was before the Constituent Assembly.

SHRI R. D. BHANDARE : I have gone through the records of the Constituent Assembly. Unfortunately, being born very late, I was not a member of it. But at the same time, I have gone through the records, the documents, which deal with the framing of the Indian Constitution. What happened at a particular time when a particular measure or a particular article was hammered out and enshrined in the Constitution, every word of it, Madam chairman, believe it or not, I have gone through. I am coming to that point.

My hon. friend Shri Madhu Limaye said, "Since you have been associated with Dr. Ambedkar, do you really think that Parliament should be allowed to have the right to amend the Constitution, more specially article 32?" I say, "No". No power on earth will allow Parliament to amend article 32 and no power on earth will allow Parliament to take away the rights of the minorities. Why is it that I say so emphatically? In different parts of the world, different countries have different Constitutions. And those Constitutions deal with the provision of amending the Constitution. Let me give one illustration of the British Constitution. The British Constitution is the most flexible Constitution. At any time, any provision of the Constitution could be amended by a simple legislative process. It is the most flexible Constitution. And yet what is the position? When we talk of the British Constitution, they say, the conditions and situations are different. In the United Kingdom, the British people are totally different and all that. Why is it that we should show suspicion and doubt about the capacity and the ability of the Indian people? Since we have accepted the Constitution, we must be earnest to work out the Constitution. The British Constitution is the most flexible Constitution in the world. There is the *habus-corporis* Act. Since it is an open society, has it been amended? I doubt very much,

[Shri R. D. Bhandare]

because Parliament possesses vast powers to amend any portion of the Constitution by a simple legislative process, the British people will go to the extent of amending any provision of the Constitution.

I would like to draw your attention to one remark that has been made by Dicey. He has said that the British Parliament is so sovereign, so dictatorial, that it can pass any law, the law that all blue-eyed people should be murdered. But the British people should go mad before they accept it. The Members of British Parliament must be idiotic to pass such a law. There are certain sanctions, certain limitations which cannot be overcome when we talk of Parliament's right to amend the Constitution.

Then, take the illustration of the American Constitution. The American Constitution is the most rigid Constitution. The American Constitution is based on individualistic philosophy. But has not the American Constitution been amended in respect of the property rights?

Since Acharya Kripalani has quoted a certain portion of the American Declaration of Rights, let me deal with it also in the same proportion. When there was a conflict between the individual rights of the industry, when there was a conflict between the interests of the vast masses and the industry, under the New Deal, Mr. Franklin D. Roosevelt declared to the world that in case of conflict, the rights of the Congress to amend the property rights must prevail.

“A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens inter-state commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist.”

He said, “It cannot exist to the detriment of the masses, to the detriment of the workers, to the detriment of the individuals; and to that extent I shall get the new deal passed even though it was struck three times by the Supreme

Court. If there is a conflict between the individual rights, the fundamental rights, and the rights and progress of the society, the rights of the society and progress must prevail.” This is from the American Constitution.

Do you really think that because we are talking of the right of Parliament to amend the Constitution, we shall amend any portion of the Constitution? What is the history of the past eighteen years? Why is it that the Constitution cannot be amended so far as the Fundamental Rights are concerned? No people are interested in destroying their own sovereignty; no people are interested in destroying their own Fundamental Rights, but in case of conflict between the individual rights and the rights of the society, then only the rights of the society must prevail over the rights of the individual. Why do I say so? I say so because of this, we must go back to the Constitution itself.....

MR. CHAIRMAN : The hon. Member may try to conclude. There are many members who want to speak. I would, therefore, request him to confine his remarks only to ten minutes.

SHRI R. D. BHANDARE : We are taking the matter to the Business Advisory Committee, so that the time could be extended. This has been the desire expressed by the members. We are not going to finish this measure within the time allotted. We are going to get the time extended again. I will finish in five minutes.

I was trying to draw your attention to the Constitution itself. When we talk of amendment of the Constitution, two questions must be kept in mind; one is, what is the Constitution? This is a philosophical question, and the other, what is it that it is intended to be? It is a question of achieving certain objectives. We must bear in our mind both these concepts when we deal with the right of Parliament to amend the Constitution.

We have incorporated in our Constitution to deal with the first question as to what is the Constitution—a certain philo-

sophy which we want to pursue and follow. Let me lay down the first proposition that our Constitution is a social document; it does not simply describe the institutions or the separation of powers or the division of powers or the federal principle of division powers; it is a social document which incorporates a social philosophy in it. Therefore, I would like to read only a line or two from pages 75 and 76 of Austin's Book, "The Indian Constitution—a corner stone of the Nation". I am thankful to Acharya Kripalani; he has given the history as to how the Fundamental Rights were divided and incorporated into two different chapters, namely Chapter III and IV, Now what is the right of an individual? As Laskie said "The right of an individual is an interest which is recognised and preserved by the society." The Directive Principles are principles which deal with the destinies of the people; they give directions as to how to carve out their destiny. I will read out that portion:

"The Directive Principles of State policy....."

SHRI THIRUMALA RAO (Kakinada): Are they justiciable?

SHRI R. D. BHANDARE : They give directions to the Indian society. If time permits, I will read out what Mr. Ranga said at the time the Directive Principles were framed, and what Dr. Ambedkar had said when the Directive Principles were framed.

MR. CHAIRMAN : You must conclude.

SHRI R. D. BHANDARE : These fundamental rights deal with that aspect of the exercise of power by the State; it says, the State shall not be allowed to take away those Fundamental Rights. But it is the Directive Principles which give direction to the State to implement them. They must implement them so that progress of society must be achieved. Let us not forget that Directive Principles are not only pious platitudes. This is what Dr. Ambedkar had said;—

"I find that these directive principles are made a matter of fun both by jud-

ges and by lawyers appearing before them. Article 37 of the Directive Principles has been made a butt of ridicule".

He goes on saying that these are the very fundamental principles for the governance of the society. These are the instruments of instructions given to the party in power that it shall have no title-deed to power unless it follows the directive principles. This is the importance of the directive principles. And that is the difference between the fundamental right of an individual and that of the society. In case of any conflict between the individual's fundamental right and that of the society, the interest of the society must prevail.

One more point and I finish. What was the position of the Supreme Court? They had realised this position, namely, in case of conflict between the individual right and the directive principles, right of the State to move society forward, who should be the arbiter? It is the Supreme Court this which will be the arbiter. I am just reading one sentence. After framing the Constitution we installed supreme power in the judiciary. This is what Mr. Austin says in his book, 'The Indian Constitution' corner stone of a nation :

"The Supreme Court first appeared in the proceedings of the Assembly in its role as guardian of the social revolution".

The role assigned was 'guardian of the social revolution'. That was the role assigned to the Supreme Court. If I am permitted to quote some of the illustrations....

MR. CHAIRMAN : Please Conclude. Let him conclude that sentence.

SHRI R. D. BHANDARE : It was envisaged that the Supreme Court would be the guardian of the social revolution. The question arises whether the Supreme Court has acted as an instrument of the social revolution or it has thwarted the progress of society by giving the judgment. Under the American Constitution or the British Constitution, on the question of

[Shri R. D. Bhandare.]

property, nationalisation of industry and all that, the supreme court and the high court did not thwart the social progress of society.

MR. CHAIRMAN : No more sentences. Shri Goyal.

SHRI R. D. BHANDARE : Parliament is supreme. Parliament must have the right to amend the Constitution.

SHRI SHRI CHAND GOYAL (Chandigarh) : I am grateful to you for giving this opportunity but I hope you will be indulgent to me so far as time is concerned. We rise to oppose, Madam Chairman, this Constitution Amendment Bill which seeks to enlarge the Scope of Article 368 in order to cover the judgment of the Supreme Court delivered in the case of Golaknath on the 27th February, 1967 by a special bench of 11 judges, which lays down that Article 368 merely prescribes certain procedures in the matter of amendment of the Constitution, and does not confer on Parliament, either expressly or impliedly, the power to amend or abridge the fundamental rights. I have got great respect for Shri Nath Pai who has not only legal acumen but also possesses the fine art of oratory and has also done a good deal of work on this Bill. But as a democrat, I think he will permit me to differ from his point of view. Because it is an article of faith with us, our Party decided even to abstain from the proceedings of the Joint Committee. We know that ours is a constitutional democracy in which three institutions have been created, the legislature, the executive and the judiciary. They are all to work each within its own limits and none to overstep the limits prescribed by the Constitution. That also implies that our Constitution is supreme. All other wings, whether it is Parliament or judiciary are creatures of the Constitution. That is why even when a member seeks election, he has to subscribe to an oath to the Constitution, and having been elected as a member of this House or any State legislature, he has to take an oath that he will remain faithful to the Constitution.

Now it is our duty to uphold the judgment delivered by a Special Bench of 11

Judges. Shri Nath Pai was quoting judgments which have been overruled, the Judgment delivered in Shankari Prasad's case and that delivered in Sajjan Singh's case. As a barrister, I have to draw his attention and say that overruled judgments cannot be cited as good authority.

What is the position in our country today? What does Shri Nath Pai want? Where is the necessity for this Bill? Has he built up a case for bringing forward this piece of legislation? Because he is not pleading that any fundamental rights need be amended, abridged or abrogated. Does he only want to re-establish the supremacy of Parliament? Does he only want it for a matter of record? I could understand it if he had made out a case for abridging or abrogating fundamental rights.

When we are proposing to give this power to Parliament even to amend fundamental rights, what does it actually mean? We know that Parliament these days is the rule of majority. Shri Nath Pai has enough experience of how it functions. Whenever these fundamental rights have been put in jeopardy, he has always been a great defender of those rights. I want to ask him in all fairness whether, by investing Parliament with these powers, he is not investing the majority in Parliament with this authority. Knowing the way it functions, the coercive whips used for the purpose, can any powerful Prime Minister or Home Minister not manage to abrogate the entire chapter of fundamental rights once this Bill succeeds in getting through? Once Parliament is given the authority to abrogate fundamental rights, this power will be an instrument in the hands of the majority which will be able to utilise it to its purpose whenever it feels convenient or necessary.

SHRI NATH PAI: Did it not have those powers before 27th February?

17 Mrs.

SHRI SHRI CHAND GOYAL: It did have. In all developed democracies, there are three checks on the arbitrary function-

ing of the executive. There is enlightened public opinion, there is a responsible and strong opposition and there is also a spirit of compromise by means of conventions, but in our country none of these three checks is operating. We are wholly lacking in them and it will be very dangerous in our nascent state of democracy to accept Mr. Nath Pai's Bill.

As I have submitted, it is the majority which in fact functions through Parliament because the minority can only plead or demonstrate, but its voice is not effective and it is reduced to the status of a helpless spectator. It was on account of this that our founding fathers who were men of vision, who were men of imagination and had the liberal spirit, decided to create this chapter on fundamental rights in order to guarantee the freedom of the people against the actions of the executive. That is why they provided article 32 that any citizen can move the highest court of the country for the enforcement of these fundamental rights whenever there was an attack or invasion on those rights. That is why a provision was made in article 13(2) to the effect that if Parliament or Government wants to abridge or abrogate fundamental rights through any law, it will be void to that extent. In Golak Nath's case the Supreme Court has come to our rescue to guarantee the freedom of the citizen.

Acharya Kripalani was saying that in a period of 18 years our Constitution has been amended 21 times and this is the twenty-second. Why has the Constitution been so often amended? The reason is that the executive found the check that is being exercised from time to time on their power by the Supreme Court to be distasteful and that is why in order to get over the judgments of the Supreme Court, the Government or rather the majority has always found it convenient to change the Constitution. Considering the fact that reasonable restrictions have already been imposed on the exercise of these fundamental rights where are the fundamental rights today in their original form? We know that the property of any citizen can be acquired in the public interest. Reasonable restrictions on the freedoms guaranteed under the Constitution have also been imposed and

upheld by the Courts. But what is being done now by Mr. Nath Pai's Bill will have two effects. Firstly, as a lawyer I apprehend that this will be struck down by the Courts. It was not a question of six Judges against five, it is the judgment of 11 Judges because the historic judgment is the result of the labour and consideration and thought given by the 11 Judges who constituted the Bench. In order to get over the effect of that judgment this Bill is being brought and the Government has conveniently left it to Mr. Nath Pai. The Government does not want to share the blame. Mr. Limaye suggested that it should be adopted as a Government Bill.

But the Government, on the one hand, does not want to share the blame and on the other hand, the Government through Mr. Nath Pai is anxious that this Bill is passed. I am grateful to the three sisters of our motherland, Shrimati Subeta Kripalani, Shrimati Sharda Mukerjee and Shrimati Tarkeshwari Sinha who have come forward to uphold these fundamental rights when they are in jeopardy and they have spearheaded the movement that this is a matter of conscience, this is a matter of principle and there should be no quarrel in such matters. I consider them as Sita and Draupadi or in more recent times Durga and Rani of Jhansi and these three sisters of our motherland have come forward to protect the freedom of the citizens of India, when these fundamental rights are in jeopardy. I was suggesting that this Bill of Mr. Nath Pai, if passed, will be struck down.

श्रीवती लक्ष्मी कान्तन्ना (खम्मम) : मैं एक बात पूछना चाहती हूँ। जो लेडीज फेवर में बोलती हैं वह कोनसी लिस्ट में आती हैं और खिलाफ होती हैं वह कोनसी लिस्ट में आती हैं ?

SHRI SHRI GHAND GOYAL: My apprehension is that this Bill if passed by Parliament, is likely to be struck down by the Supreme Court and my reasons are two. Firstly the Supreme Court has said clearly, Mr. Hidayatullah, in a separate judgment as well as the majority judgment that the Parliament has no power to amend the fundamental rights and if it is so, it

[Shri Shri Chand Goyal]

will be violative of the provisions made in Article 13 and my second reasons is: what cannot be done directly cannot be done indirectly. Now what is being done? Mr. Nath Pai is bringing this Bill in order to get over the judgment of the Supreme Court and the Supreme Court has said that what cannot be done directly, cannot be done indirectly. If we amend the Constitution, my submission in this respect is that since the Supreme Court has laid down an injunction, has made specific binding and has clearly laid down that the Parliament has no power to abrogate or abridge the fundamental rights and the Supreme Court has also laid down that whatever force it gives, it hardly matters and if it is law, it will be declared void if it abrogates or abridges the fundamental rights.

Now, the question is,

MR. CHAIRMAN: You have taken 16 minutes. Please conclude. If you do not conclude, I will call the next speaker.

SHRI SHRI CHAND GOYAL: Only a few minutes more. So far as the Constituent Assembly is concerned, no provision has been laid down in our Constitution which enables the Parliament to convert itself into a Constituent Assembly. The Constituent Assembly was constituted by the Indian Independence Act and prior to that by that Mission; I have to make my submission that since Parliament cannot convert itself into a Constituent Assembly, we have to seek the help of the people. If we really want to change these fundamental rights, we have to appeal to the people because when we contested our election, this was never the issue before us. We have never sought the mandate of the people on this issue. If you want to abridge the fundamental rights we have to seek the help of the people, and Parliament can do it and the Constitution allows it, because there are the residual powers, to convene a Constituent Assembly which will be in a position to settle the matter.

SHRI VIKRAM CHAND MAHAJAN (Chamba) : There is a great deal of controversy over the Constitution (Amendment) Bill, and the question is, should

there be a power of amendment in the Constitution or should it be permanently a rigid Constitution. A case has been made out that the fundamental rights are natural rights and they should never be abridged, as the freedom of speech, freedom of association, freedom of expression etc. The rights to property are rights existing from the beginning of creation. They are a sort of natural rights and therefore we should not have any power of amendment.

I am not disputing whether these rights are natural rights or not. The question is different. The question is, have you created a perfect Constitution; has there been ever a generation which could create a perfect Constitution. If a generation which is perfect one has evolved a perfect Constitution then no case for a power of amendment can be argued. Can a generation say that it is the most perfect generation and it has evolved a perfect Constitution? If they are modest enough to concede that they can also make mistakes, then we concede the proposition that we can also evolve an imperfect Constitution. Then, if we give the right to each generation to decide for itself what Constitution it wants, once you concede that proposition, then there must be a power of amendment in the Constitution.

But there is another misconception as to what the Supreme Court has said. The Supreme Court nowhere has said that there is no power of amendment in the Constitution. The Supreme Court has never said that the Constitution can never be amended. In Golaknath's case, what the Supreme Court has said is that Parliament cannot, but you should call a Constituent Assembly and after calling it, you can abridge the fundamental rights. Even the Supreme Court accepted the proposition that the Constitution can be amended.

Here, I will disagree a little. There have been talks about the Supreme Court. There has been a vilification campaign against it. Some Members went to the extent of saying that the strength of the judges of the Supreme Court should be raised. Attempt has been made to browbeat them so that they can change the decision. I submit that once you concede that you can evolve a

Constitution which is imperfect, then you also concede that possibly by your imperfection you evolved a Constitution which left this lacuna. You have cast a duty on the Supreme Court to interpret the Constitution as it is. If you also concede that you are like any other generation capable of making mistakes, then possibly you created a Constitution which is imperfect and the Supreme Court pointed out the lacuna. And when lacuna is pointed out you become peevish and you said, Supreme Court has infringed the right of Parliament to amend the Constitution. You should be modest enough to concede the proposition that there may be a lacuna. The question is how to set it right and what will be the procedure for amending the fundamental rights. Should the right to amend be given to the Parliament or should it be given to the majority of people of India? One line of thought, embodied in Mr. Nath Pai's Bill, is that Parliament plus the State legislatures should have the right. But I beg to differ slightly. The party in power in Parliament and in the States can sometimes reflect the minority of voters *i.e.* if that is a four-cornered contest, if 3 candidates secure 20 per cent of votes each the winning candidate gets only 40 per cent. You can have a Parliament or State legislature with the party securing 40 per cent votes forming the Government. If you amend the Constitution through them, you are depriving 60 per cent of the people from expressing their view on it. Therefore, you must evolve a system which will reflect the majority will of the people. For that, there is no better system than an opinion poll or referendum. Therefore, along with Parliament and State legislatures, you should have it ratified by opinion poll also. This will be a happy combination of the right of Parliament and the right of the people. It will not suffer from the shortcoming that I have already indicated. This is a genuine argument, because in Germany, the minority Government completely scrapped the Weimar Constitution and Hitler came to power with a minority vote. Therefore, it should be ratified by a referendum.

There is another shortcoming. By virtue of its duty of interpreting the Constitution the Supreme Court has said that this Par-

liament cannot amend the fundamental rights by the procedure of article 368. Through this Bill, you are changing the procedure for amending the fundamental rights. As Mr. Goyal pointed out, directly you cannot abridge fundamental rights, but indirectly you are trying to follow a procedure which will enable you to abridge the fundamental rights. If the opinion of the Supreme Court remains the same as in Golaknath's case this amendment is bound to be struck down. If directly you cannot abridge, indirectly you cannot change the procedure and abridge them. Therefore, I submit that it is better that we should ask the Supreme Court in a reference what procedure the Supreme Court would like to suggest which would enable us to amend the fundamental rights. Then a suitable amendment can be made in Mr. Nath Pai's Bill. Since we have cast the duty of interpreting the Constitution on the Supreme Court, by virtue of that duty, the Supreme Court can help us in finding out the Procedure they want us to follow, so that by following that procedure, we may get back the right under the Constitution to amend the fundamental rights.

SHRI H.N. MUKERJEE (Calcutta North East): Mr. Chairman, I rise to accord my support to the Bill and I hope that Government adheres to its declared intention of supporting the Bill though I am constrained to remark that at this point of time the Government is represented here only by the Law Minister who does not appear particularly to be law-minded.

I support this Bill because it restores to Parliament its right to amend the Constitution in order that it might further enrich and strengthen fundamental rights in the interest of social justice and real democracy. The Indian Constitution tries to make a balance between a complete written guarantee of fundamental rights and the collective interests of the community. But I do not wish to take a stand primarily on legalistic principles. I would rather like to recall to this House what was said by Abraham Lincoln on the occasion of his first inaugural speech as President on 4th March, 1861, when he said;

“This country, with its institutions, belongs to the people who

[Shri H.N. Mukerjee]

inhabit it. Whenever they shall grow weary of the existing government, they can exercise their constitutional right of amending it, or their revolutionary right to dismember or overthrow it."

These are the words of Abraham Lincoln. But these words are forgotten and that was seen when our friend, Acharya Kripalani, told us that he had not "found" the people. That is the tragedy of Congress politics before and after 1947. You have not discovered the people, Dada. That is what you had said.

I do not wish this House to take a purely legalistic view and I wish to advise my hon. friend, Shri Madhu Limaye, who is not here and whose feeling for the judiciary at the present moment is understandable, to trust his people more than our highly esteemed judiciary. If we think only in legal terms, I think, this is a hang-over of the British days and I wish to recall a limerick which I heard in 1947 it goes as follows :—

"He thought, he saw a Congressman
A-spinning with a wheel.

He looked again and saw it was
A practising *vakil*

"If we should lose Swaraj", he said,
"We'll win it on appeal."

That is the kind of temper which has been bequeathed to us and it is better we give it up.

My hon. friend, Frank Anthony, is not here. He rushed into the fray last time with his King Charles head, namely, his championship of the minorities, and he said that the minority rights allegedly were safe only in the hands of the judiciary and not in the hands of the rabble which we here in Parliament are supposed to be.

Judges are esteemed figures, no doubt, but at the back of their minds there is always, what the late Oliver Wendell Holmes had said, "the inarticulate major premise of conservatism." In present day society every Judge is trained to think of

the rights of property as being more sacrosanct than any other right whatever. That is why when President Roosevelt had to introduce his New Deal, he had to bring in new Judges. That is why the role of Oliver Wendell Holmes is so important. That is why Judges like Mr. Justice Felix Frankfurter and Mr. Justice Black have become so important in American history.

When the Supreme Court, according to the Constitution, negates a legislative enactment it does not certainly hurt the dignity of Parliament or any other legislature. Similarly, why must anybody here or outside think that when Parliament adopts this legislation it undermines the dignity of the Supreme Court? Only a little while earlier the House showed by its unanimous gesture how greatly we respect the Supreme Court and our judiciary.

I am rushing, in view of the shortness of the time at my disposal but I do not know if you will increase my ration slightly. If Members had read at least the gist of the main points made by the important witnesses who came before us, they would know how we proceeded in regard to this matter. We had a member of the Constituent Assembly, Shri Santhanam, who told us that when the Constituent Assembly came to the consideration of article 368, they did not think of excluding Part III from the purview of article 368.

He opposed the idea of this Bill, but he said so in his evidence. Then, the Indian Society of International Law pointed out that the sanctity of the Constitution was not being vitiated if this particular measure is given effect to. The Secretary of the Department of Legal Affairs, Government of India, told the Committee as follows:

"For the socio-economic development of the country, it was essential that the right of amending the Constitution should be restored to Parliament because, in view of the Supreme Court's judgment in the Golak Nath case, it would be difficult for Parliament to give effect to the Directive Principles of State policy contained in Part IV, whenever those Principles came into conflict with

Fundamental Rights guaranteed by Part III of the Constitution."

I could refer also—there is no time—to the evidence of Mr. Seervai and Mr. Setalvad who made it very clear how the best and finest and, usually, the most conservative legal opinion in this country is in support of the Bill. But we find on the other hand that the serried ranks of property and profit have joined together in order to bring about the defeat of this Bill.

The question sometimes arises that we are a very unpredictable people in India who can return the wrong kind of people to Parliament. We are what we are and we have to make do with what we happen to be. If we have a better society in this country, it will not be imported from outside or dropped from the skies. It will have to be made by our own people with their faults and their imperfections. We have been told that if Communists come to power, if they can get more than 50 per cent of seats here and the same proportion of seats in half the number of States of the country, the heavens will fall. If the Communists or the Swatantra or the Jan Sangh or any other party comes to power through the franchise of the people who are we to stop them from doing so because that will be the proper thing to do?

Somebody was saying that Reaction took over in Hitler's Germany. Of course, the Weimar Constitution was the "freest in the world." But Reaction could take over because of certain other things happening, reactionary movements taking on a tremendous character befuddling the masses into submission. Can a watertight legal text book prevent Reaction taking over where it can? Are we to go against the elemental forces of History. This measure, at any rate, wants to make sure of progress if we believe in Parliamentary Democracy. Somebody once said that Parliamentary Democracy was the worst of all political systems except for the others. The others are perhaps even worse. Can't we all combine and can't we think of a conceivable period of time when we can get together and bring about such changes as would make our country worth living and dying for?

I think, there is a lot of meretricious talk about the sanctity of the Constitution. Acharya Kripalani excelled himself in that regard. I remember, as a student of history how during the days of the French Revolution, they put up the Declaration of the Rights of Man which they described "as trenchant as mathematical propositions, true as the truth itself, intoxicating as a vision of the absolute". That Declaration went the way of all flesh because of objective conditions of social struggle. Acharya Kripalani himself quoted the American Declaration of Rights....

MR. CHAIRMAN: The hon. Member may continue on the next occasion. We will now take up the Half-an-Hour Discussion.

17.30 hrs.

HALF-AN-HOUR DISCUSSION
GOSADANS RUN BY CENTRAL
GOSAMVARDHAN COUNCIL

श्री प्रकाशचौर शास्त्री (हाउड) : सभापति महोदया, आज्ञा भ्रपनी इस भाष घंटे की चर्चा के द्वारा मैं इस सदन का ध्यान गो-सदनों की ओर दिलाने जा रहा हूँ जहाँ पर कि भारत सरकार का लाञ्छी रुपया लग कर योजनाबद्ध कसार्खाना चल रहा है। भारत के गोसदनों का भ्रपना एक इतिहास है। गांधीजी ने उस समय गोभक्त श्री सतीशचन्द्र दास को यह काम सौंपा था कि वह इस बात का ग्रन्थेक्षण करें कि जो गायें बेकार हो जाती हैं, या जो पशु बूड़े हो जाते हैं, उन्हें किस तरीके से उपयोगी बनाया जा सकता है। इसके लिए सतीशचन्द्र दास ने कई वर्षों के ग्रन्थेक्षण के बाद ग्रन्थेजी में एक पुस्तक लिखी जिसका नाम 'काऊ' था। हिंदी में उसका अनुवाद होकर दो भागों में वह पुस्तक छपी है। उस पुस्तक में विस्तार से गाय की उपयोगिता के बारे में बतलाया गया है। अगर इन गायों और पशुओं को ठीक तरीके से सही स्थान पर रक्खा जाय