

**Mr. Deputy-Speaker:** Those against will please say "No".

**Some hon. Members:** No.

**Mr. Deputy-Speaker:** I think, the "Ayes" have it . . .

**Some hon. Members:** The "Noes" have it.

**Mr. Deputy-Speaker:** Let the Lobbies be cleared. Now, the Lobbies have been cleared. I put the question to the vote of the House.

The question is:

"That leave be granted to introduce a Bill further to amend the Salaries and Allowances of Members of Parliament Act, 1954."

Those in favour of the motion will please say "Aye".

**Some hon. Members:** Aye.

**Mr. Deputy-Speaker:** Those against will please say "No".

**Several hon. Members:** No.

**Mr. Deputy-Speaker:** The "Noes" have it, the "Noes" have it.

*The motion is negatived.*

*The motion was negatived.*

**Mr. Deputy-Speaker:** Now, we go to the next item.

**Shrimati Lakshmikanthamma (Khammam):** May I crave your indulgence? I want to say about the procedure of the House. The right of the Member to introduce a Bill is there. Since some people do not agree with the contents of the Bill, the situation has now arisen where a Bill cannot be introduced even . . . (Interruption).

**Mr. Deputy-Speaker:** That is over now. You ought to have challenged it.

**Mr. Deputy-Speaker:** The next item is that of Mr. Vajpayee. He is not present here.

15.55 hrs.

CONSTITUTION (AMENDMENT)  
BILL—contd.

(Amendment of Article 368) by Shri Nath Pai

**Mr. Deputy-Speaker:** Now we shall take up further consideration of the motion moved by Shri Nath Pai to refer the Constitution (Amendment) Bill (Amendment of Article 368) to a Select Committee.

We have already exhausted five hours. Now the Law Minister will intervene. He is not replying. His junior colleague will reply at a later stage.

**The Minister of Law (Shri Govinda Menon):** I have moved an amendment that this Bill be referred to a Joint Committee of both the Houses . . . (Interruptions).

**Shri E. K. Nayanar (Palghat):** There are so many members who have not spoken on this.

**Mr. Deputy-Speaker:** I have said that the Law Minister is intervening and not replying. We have already exhausted five hours. We should try to finish this as early as possible because the next Bill has also to be taken up. (Interruptions). I have already indicated that we have already had enough time for this Bill. We have exhausted five hours. Now the Law Minister is intervening. Then Dr. Lohia is supposed to speak. Then one or two members will be called. We have to finish this as early as possible because the next Bill is also an important one and Mr. Madhu Limaye is sitting here.

**Shri N. K. P. Salve (Betul):** On a point of information. Last time quite a few of us had written to the Speaker that we should be given an opportunity to speak and the Speaker promised that on the next Friday when the Bill would be taken up, all of us would be called. You should be fair to us and give us an opportunity to speak on this very important Bill. If necessary, I submit that the time may be extended.

**Shri Ganesh Ghosh (Calcutta South):** I was assured by the Chairman that I would be given an opportunity to speak.

**Mr. Deputy-Speaker:** Let the Law Minister's speech be over. Then we shall take up this point.

**An hon. Member:** The feeling of the House is to extend the time.

**Mr. Deputy-Speaker:** As I have already said, the Bill is supposed to go to a Joint Committee. We must bear in mind that we have already exhausted five hours.

**Shri E. K. Nayanar:** Our representative, Mr. Ganesh Ghosh, must get the chance.

**Shri N. K. P. Salve:** This is the time when we should get the chance, Sir. Last time we did not press because the leaders were supposed to be speaking on the Bill.

**Mr. Deputy-Speaker:** There should be some limit. We have already taken five hours.

**The Deputy Minister in the Department of Parliamentary Affairs (Shri R. L. Chaturvedi):** If the wish of the House is that the time should be extended, it may be extended.

**Mr. Deputy-Speaker:** Today we shall go for 1½ hours.

**Some hon. Members:** No, no. The whole day.

**Mr. Deputy-Speaker:** Is there a unanimous view on this point?

**श्री शिव नारायण (बस्ती) :** उपाध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि इस बिल पर दो घंटे का समय बढ़ा दिया जाय और मैं आप से चाहता हूँ कि इस पर वोट ले लिया जाय।

**श्री मधु लिमये (मुंगेर) :** मेरी एक प्रार्थना है और वह यह कि मुझे केवल अन्त में एक मिनट का समय दे दिया जाय अपने बिल की चर्चा को चालू करने के लिए बाकी सारा समय इनको दे दिया जाय, मुझे इसमें कोई आपत्ति नहीं है।

**श्री शिव नारायण :** उपाध्यक्ष महोदय, मैंने प्रस्ताव कर दिया है कि वर्तमान बिल पर दो घंटे का समय बढ़ा दिया जाय। उस पर आप वोट ले लाजिये और हा, या ना करवा लाजिये।

**श्री प्रकाशवीर शास्त्री (हापुड़) :** मैं श्री शिव नारायण के प्रस्ताव का समर्थन करता हूँ।

16 hrs.

**श्री शिव नारायण :** उपाध्यक्ष महोदय, मैंने प्रस्ताव किया है कि इस बिल के ऊपर दो घंटे का समय और बढ़ाया जाये।

**श्री सुरेन्द्र नाथ द्विवेदी (केन्द्रपाड़ा) :** यह बिल तो सारा दिन चलेगा।

**Mr. Deputy-Speaker:** I am prepared to put the motion to vote. But is it necessary? As I have said, we may extend the time for nearly 2 hours and 20 minutes, leaving just one or two minutes for Shri Madhu Limaye in whose name the next Bill stands. The hon. Member is suggesting an extension by 2 hours, whereas I am suggesting an extension for about 2 hours and 20 minutes. We can continue this Bill for the whole of the day; at the end two or three minutes may be given to Shri Madhu Limaye to start his speech on the next Bill.

**श्री शिव नारायण :** मैंने प्रस्ताव किया है कि समय दो घंटे के लिये बढ़ाया जाये।

Mr. Deputy-Speaker: The time may be extended initially for two hours I think the House agrees to this.

Several hon Members: Yes

The Minister of Law (Shri Govinda Menon) The is certainly a very important Bill and that is why from large sections of the House demands have been made that the time for the Bill be extended. It is because of the importance of the Bill that although it is not an official Bill, on behalf of Government, I have moved a motion that it be referred to a Joint Committee of both Houses consisting of 45 Members

16.02 hrs.

[SHRIMATI LAKSHMIKANTHAMMA in the Chair]

The subject-matter of the Bill, although it is an one-clause Bill, takes in the entire subject of the power and right of the Parliament of India to amend the Constitution. In other words, the subject-matter of the Bill, although it is covered by a single clause is the power of amendment or the principles regarding the amendment of the Constitution

Shri Ranga (Srikakulam) It is whether Parliament should have the power

Shri Govinda Menon. It is whether Parliament should have the power whether Parliament has the power, whether Parliament has not the power and all those things

Article 368 has been referred to, because until the 27th February this year, it was thought not only by Parliament, not only by the other legislatures in India but by all the High Courts and by the Supreme Court that article 368 contained the power to amend the Constitution.

For the last seventeen years, we have been functioning with the understanding

Shri P. H. Mody (Godhra). With the misapprehension.

Shri Govinda Menon: All right, it may be a misapprehension. His interjections will not add to the weight of what Chief Justice Subba Rao and the other judges of the Supreme Court have said on this matter.

This is a constitutional matter which should be discussed and considered in a very cool atmosphere because it pertains to the rights and powers of Parliament under our Constitution.

There is an impression, and that impression has been assiduously propagated by my friend Shri Ranga and other members of his party that this Parliament has been misusing the powers of amendment

Shri Ranga Shamelessly

Shri Govinda Menon times out of number, in fact, on 21 occasions our Constitution has been amended, it is only a partial truth to say that power of amendment has been misused because there have been 21 amendments to the Constitution

Shri S. K. Tapurajah (Pali) Why only a partial truth?

Shri Govinda Menon I shall tell, why. Let him please listen. There have been 21 amendments to the Constitution and these 21 amendments have been printed in an appendix to the latest edition of the Constitution published by Government. If my friends in this House, particularly those who say that Parliament has misused the powers of amendment would kindly go through those 21 amendments they will see that except three, all the other amendments were with respect to non-controversial matters. Our Constitution is one with 395 articles and 8 schedules, a very voluminous Constitution providing for all sorts of things, important and unimportant. It was necessary that we should have done so. It became necessary, therefore, from time to time to amend the Constitution. Take, for

example, the latest one, the 21st amendment which was passed in this House unanimously to provide that the Hindi language be included in the 8th Schedule. That also is referred to and reckoned as one of the many amendments to the Constitution which this House has passed. If you look into the matter, you will see that except the 1st, the 4th and 17th amendments, all the other amendments were with respect to matters on which the House, the country, the people, all were agree should have been passed.

**Shri Piloo Mody:** Nobody disagrees with him.

**Shri Govinda Menon:** If he does not disagree with me, he should have said

**Shri Piloo Mody:** Only on these three amendments Do not build a bogus case

**Shri Govinda Menon:** Do not raise a bogus criticism

I am not making a bogus case. These three amendments touched principally one and only one of the fundamental rights provided in the Constitution, that is article 31. That is the reason why, and that alone is the reason why, Shri Mody and others of his way of thinking raise protest.

**Shri Piloo Mody:** Is he entitled to make these allegations?

**Shri Govinda Menon:** It is no allegations, please keep quiet

**Shri Piloo Mody:** On top of these allegations, he says 'keep quiet'

**Mr. Chairman:** All this trouble arises because of interruptions on this side. Let the Minister be heard without interruption.

**Shri Govinda Menon:** I was saying that there have been three amendments to the Constitution. All these three refer to the right to property

referred in art. 31. I do not say for a moment, I will not contend for moment, that friends in this House or outside, who do not want this right to be touched, should not have the right to say so.

**Shri Piloo Mody:** Are you attacking freedom of speech?

**Shri Govinda Menon:** Let me be heard

I was saying that during the last 16 or 17 years, on three occasions Parliament had to consider the question of amendment of the Constitution with respect to certain matters concerning the right to property. One of the learned Judges who constituted the majority in the Golak Nath case—I am referring to Hidayatullah J thought that this right to property should not have found a place in Part III

**Shri Piloo Mody:** Suppose I agree with you?

**Shri Govinda Menon:** Mr. Justice Hidayatullah said—I suppose all of us have read the judgment—that it was a mistake have placed article 31 in the Chapter on Fundamental Rights. He says that that is the one article which ought not to have found a place there, the least strong among the fundamental rights. On no occasion has this House touched the other fundamental rights, except in small particulars, and wherever those fundamental rights were touched, again Mr. Justice Hidayatullah said that they were legitimate. Those amendments were good according to the learned judge. On one or two occasions, for article 15 was amended. The Judge says that it is not an offensive amendment, that it is consistent with article 13, that it is a good amendment—he upholds it. Article 16 was amended, article 19 also was amended to provide that the freedom given under that article should be consistent with the security of the State and all those things. There-



[Shri Govinda Menon]

again, Mr. Justice Hidayatulla, in his very learned judgment, was said that that is an amendment which was legitimate.

**Shri Ranga:** Oh.

**Shri Govinda Menon:** Don't say "oh". He is one of the six Judges whose judgement you are supporting.

**Shri Piloo Mody:** We accept it *in toto*.

**Shri Govinda Menon:** Please keep quiet, Mr. Mody. You spoke at length and we heard you. You referred to matters . . .

**Shri Ranga:** Would it be right for him to say "shut up". He cannot use that expression.

**Shri S. K. Tapuriah:** He must withdraw.

**Mr. Chairman:** Please address the Chair. Why do you address them?

**Shri Govinda Menon:** What I am saying is: let others also address you. What I request, what I beseech of my friends is: let me expand my theme.

This first amendment to the Constitution was brought in 1951, and I wish to refer to the Statement of Objects and Reasons of that Bill which was the first amendment of the Constitution. That is very important. It was introduced in this House and piloted by the then Prime Minister himself. We were not tinkering with the Constitution. Please permit me to read that short statement. It says:

"During the last 15 months (i.e. after the passage of the Constitution) certain difficulties have been brought to light by judicial decisions and pronouncements especially with regard to the chapter on fundamental rights. The citizen's right to freedom of speech and expression guaranteed by article 19(1)(a) has been held by some courts to be so comprehen-

sive as not to render a person culpable even if he advocates murder and other crimes of violence. In other countries with written constitution freedom of speech and of the press is not regarded as debarring the State from punishing or preventing the abuse of that freedom.

The citizen's right to practice any profession or carry on any occupation, trade or business conferred by article 19(1) (g) is subject to reasonable restrictions which the laws of the State may impose in the interests of the general public. While the words cited are comprehensive enough to cover any scheme of nationalisation which the State may undertake, it is desirable to place the matter beyond doubt by a clarificatory addition to article 19(6).

Another article in regard to which unanticipated difficulties have arisen is article 31. The validity of agrarian reform measures passed by the State legislatures in the last three years has, in spite of the provisions of clauses 4 and 6 of article 31, formed the subject matter of dilatory litigation, as a result of which the implementation of these important measures affecting large numbers of people has been held up.

The main objects of this Bill are, accordingly to amend article 19 for the purposes indicated above, and to insert provisions which will secure the constitutional validity of the zamindari abolition laws in general and certain special State Acts in particular.

Opportunity has been taken to propose a few minor amendments to other articles in order to remove difficulties that may arise. It is laid down in article 46 as a directive principle of State policy that the State should promote with special care the educational and economic interests of the

weaker sections of the people and protect them from social injustice. In order that any special provision that the State may make for the educational, economic and social advancement of any backward class of citizens may not be challenged on the ground of being discriminatory, it is proposed that article 15(3) should be suitably implied. Certain amendments in respect of the articles dealing with the convening and proroguing of the sessions of Parliament have been found necessary and are also incorporated in this Bill

Jawaharlal Nehru

I referred to this statement of objects and reasons because a few months after the Constitution was enacted it was found that certain provisions required amendment, particularly in view of the other provisions relating to the Directive Principles. With respect to these directive principles, I shall draw the attention of the House to one—and one alone—provision in articles 37

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

Often we concentrate our attention only on the first part which says that these are not justiciable. What is meant by that statement? It is not open to a citizen to approach the Supreme Court or any High Courts to seek a writ of mandamus against the Government or a legislature to take up legislation to implement one or other of the provisions given in the chapter. Otherwise, it is stated that they are fundamental in the governance of the country. It shall be the duty of the State to apply these principles in making laws. Therefore, article 37 and other articles in this chap-

ter lay down the fundamental duties of this Parliament. The earlier chapter deals with the fundamental rights of the citizens, this lays down fundamental duties of the governments and Parliament, fundamental duties in administration. It is the fundamental duty of the Lok Sabha and the Legislatures in this country to see that effect is given in enacting laws on the directive principles laid down in the Constitution. When you attempt to implement the directive principles, as was stated in the statement of objects and reasons which I just now read out, often it becomes necessary to have amendments of the Constitution. Only three, on the occasion of the first, fourth and 17th amendments, could we feel it necessary. I think most of the political parties in the country believe that there should be agrarian reforms, that the right to property should be limited and restricted in the interest of the general public, that the tenants should have certain very important rights, that ceilings should be provided with respect to holdings of property etc. I need not dilate upon that. I think most of us contribute to the theory that there should be an egalitarian society developed in our country. These are the principles laid down in this chapter. It is our fundamental duty to see that law are enacted in order to further the objectives laid down thereunder. And when that is attempted often we feel that some amendment here and there may become necessary. The first amendment was passed by this House, and after the first amendment was passed, it was tested, the vires of that amendment was tested in the Supreme Court, and in that case the much discussed case of *Sankari Prasad v. the State*, the question was raised whether Parliament has the power to restrict the rights laid down under article 31. The question was raised whether a constitutional amendment is law under article 13 or whether it is something more. The question was raised whether, when Parliament is acting under article 368, it is not exercising constituent powers or

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it was exercising merely legislative powers. The Supreme Court held unanimously—a Bench of five Judges—that the amendment was a good amendment.

Shri N. C. Chatterjee (Burdwan) And also held that the fundamental rights could be affected by Parliament, as it was done including the Ninth Schedule.

Shri Govinda Menon: I am thankful to Shri Chatterjee. I think he appeared and argued in that case. Then came the fourth amendment wherein also—I do not want to read out from that—with respect to many of these amendments, it was stated by Mr Justice Hidayatullah in his judgment that they were necessary amendments. I would refer to page 43 of the copy of his judgment which I have in my possession. I do not know whether it will be the same page in the other copies. Referring to the amendment of article 19, the learned judge said that the amendment was necessary. The amendment was necessary because in *Romesh Thaper v the State of Madras*, it was held that disturbance of public tranquility did not come within the expression “undermine the security of the State”. In the first amendment Act there was an amendment to article 19 also. All that I contend for is that the Lok Sabha and the Rajya Sabha—this Parliament—has not attempted to whittle down to any extent the transcendental fundamental rights. I am using the words which are often used by many people: the transcendental fundamental rights—laid down in the chapter on Fundamental Rights.

Shri Banga: Question

Shri Govinda Menon: All that was done was to do something with respect to article 31 and it is with respect to that article that Mr Justice Hidayatullah said that “Our Constitution accepted the theory that the right to property is a fundamental right. In my opinion it was an error to place it in that category.” That is what he said

श्री मधु लिमये : क्या मंत्री महोदय इस को मानते हैं ? मैंने कहा है कि इस को मानता हूँ ।

Shri Govinda Menon: That is what he said. I have no objection to have it out of that particular chapter of the Constitution.

श्री मधु लिमये : वह पहले अपनी पार्टी को सम्हालिये और कास्टीट्यूट एसेम्बली का बुलावें ।

Shri Govinda Menon. Here, we are now on the question of the amendment of the Constitution, and if we want to amend the Constitution, if we want to take article 31 from that chapter wherein it finds its place today, this Parliament should have the power to do so.

Shri Pilloo Mody. Just one minute Sir. I would like to request the hon. Minister, if he is hell bent only against the fundamental right to own property, let him by his legal genius remove that particular right and leave the other, intact so that soiled hands may not fall on them.

Shri Govinda Menon. I have been stating particularly with reference to the very learned speech which Mr Mody made on an earlier occasion, wherein he expressed his fear that if this right to amend the Constitution is conceded to Parliament, all the fundamental rights which are enshrined in the Constitution may be taken away. There is absolutely no occasion for that fear. I was speaking of the 21 amendments we have had during the last 17 years. Under the English Constitution, it is open to the British Parliament to pass any legislation. There are no restrictions or limitations on the legislative power of the British Parliament.

Shri J. B. Kripalani (Guna): It is a unitary constitution, not a federal

constitution. Our federal constitution limits the powers of this Parliament even in the States

**Shri Govinda Menon** I was developing another point. Because of the existence of unlimited powers with the British Parliament, we do not hear of cases where the British Parliament have for example, passed legislation taking away the right of habeas corpus or the Bill of Rights. This is all a case of political prudence. You may have the power, but you do not utilise it. That is why I referred to the 21 amendments we have made in the past. In none of them did parliament think of whittling down any of the rights.

**Shri Pileo Mody** What about the future?

**Shri Govinda Menon** I am speaking about the present and the past. In the future, why should one think that we are going to act in a way different from the way we have been acting hitherto? There is absolutely no basis for the idea which has been propagated that the Constitution has been amended several times to whittle down the rights of the people. The Constitution has been amended several times to clarify the several provisions in the Constitution, and on three occasions to enable the State Governments to have the necessary agrarian and other reforms.

Regarding Mr Nath Pai's Bill, I would for a moment request my friends to forget the provisions about the amendment of fundamental rights. Do we or do we not believe that our Constitution should have provisions contained therein to amend the Constitution? Or, do we want a Constitution of such rigidity that it would not be possible to amend it? If there should be a right to amend the Constitution, would it be correct to say that that right should be spelt out of what is called the residuary powers of legislation, vested in Parliament? Amendment of the Constitution is not such an unimportant matter that it

should be searched for in the residuary powers which have been provided. There is a provision in the Constitution which is not sufficiently clear. Mr Nath Pai thinks, by his Bill, he can make it clear. I believe there are several other aspects to be considered. In the Joint Committee, we can consider all these aspects and produce before Parliament legislation based upon the Bill of Mr Nath Pai, which will guarantee the right of amendment in appropriate cases and also safeguards wherever necessary.

The judgments delivered by this bench of 11 judges have to be considered and we have to consider what steps we have to take. There are very many interesting aspects. As **Shri Viswanatham** the other day pointed out, all the eleven Judges agreed in non-suiting the petitioners. The petitioners did not succeed in the case. Five of them said that the right to amend the Constitution is contained in article 368 of the Constitution. Five of them enunciated the theory of prospective over-ruling. One of them Mr Justice Hidayatullah who joined those five in declaring that right of amendment is not contained in article 368 of the Constitution, upholds in his judgment that Section (2) of the Seventeenth Amendment to the Constitution is good.

Now as it is the position, is extremely confused. I would draw your attention and particularly the attention of those hon. Members who have not carefully read the judgment to a certain portion of this judgment (*Interruptions*). I refer to it because **Shri Madhu Limaye** in his speech the other day said that he is opposing this Bill but would advocate the acceptance of the principle laid down in the judgment regarding amendment of the Constitution by a Constituent Assembly. There is a general impression that the majority of the Judges said that a Constituent Assembly should be convoked in order to amend the Constitution. I want to point out that it is one among the eleven

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Judges who alone said that that is possible. It was Mr Justice Hidayatullah who said.

"There is a legal method. Parliament must act in a better way to abridge the fundamental rights. The State must reproduce the power which it has chosen to put under a restraint. Just as the French or the Japanese etc cannot change the articles of their Constitutions which are made free from the power of amendment but must call a Convention or a constituent body, so also we in India cannot abridge or take away the fundamental rights by the ordinary amending process. Parliament must amend article 368 to convoke another Constituent Assembly pass a law under item 97 of the first list of Schedule VII to call a Constituent Assembly, and then that Assembly may be able to abridge or take away the fundamental rights if desired. It cannot be one otherwise."

I do not find any of the other Judges clearly subscribing to this doctrine. I do not want to utilise this occasion to offer any criticism about what a learned Judge has stated but I would only refer to what Shri Chatterjee said the other day, that he felt surprised as a lawyer—and his eminence as a lawyer will be conceded by all of us—and that he found it difficult to understand how what Parliament cannot do directly it can do indirectly. That is the criticism which Shri Chatterjee raised in this connection. I would like to add, a Bill which is passed under article 368 of Constitution will still be the law, if the majority decision prevails. And how can that law bring about an amendment of the Constitution, which directly Parliament cannot do? All these difficulties are there.

Shri Lobo Prabhu (Udipi): On a point of clarification. Are you disputing that the majority judgment of the Supreme Court does not stand? If you are not disputing that, does the

argument that there are other judgments

Shri Nath Pai (Rajapur): The Judgment stands.

Shri Lobo Prabhu: Then the second point of clarification is this. Are you stressing that article 368 will have you powers to amend the fundamental rights? If so my third question is, what are you going to do with article 13(2)? Are you going at the same time to delete that article or will it continue as a contradiction of article 368?

Shri Govinda Menon: There is nothing like saying that a decision is right or wrong. What the Supreme Court of the country says is right so long as it stands. So today this is the law. What we are attempting there is to see whether Parliament can

Shri Ranga: Whether it can be upset.

Shri Govinda Menon: Yes, whether we could restore the position.

Shri Lobo Prabhu: Have you not an opportunity to go to the Supreme Court and challenge this very law which they have given? That has been done thrice. You can do it the fourth time. Another point is this. Government is reported to have decided to refer the question of privy purses to the Supreme Court for its advice. Would you not also refer this, under the same provision of the Constitution, to the Supreme Court for its advice, whether this Bill is proper and within the competence and power of this House? It is very important that this House should not commit itself to legislation which is not going to stand the test of law. We must not make ourselves ridiculous.

Shri Govinda Menon: I pay great respect for Shri Lobo Prabhu and his arguments and views. But the question now for Members of Parliament is not whether an advocate can

again appear before the Supreme Court and argue against the correctness of the decision. The question is what Parliament can do. As for reference to the Supreme Court under article 143, all that I can say is that there are limitations. It is open to the Supreme Court to say that it will not give an opinion. Then, it has been held that the opinion of the Supreme Court is not binding even on the Supreme Court. Therefore, that is not the method. In our judgment, that is, in my judgment, in the judgment of Shri Nath Pai and in the judgment of several other Members in this House who supported this Bill, the proper course to be taken is to clarify article 368. Now the question is a very narrow one, whether this Parliament in certain situations has got constituent power or not.

**Shri N. K. P. Salve:** May I ask one straight and direct question to the Minister? By this Bill, are you or are you not flouting the provisions of the Constitution, as interpreted by the Supreme Court?

**Shri Govinda Menon:** In several decisions it is said that when a case is decided in a certain way, it is because the law which is considered, is framed in a certain manner. It does not prevent Parliament from amending the law so that the decision later may be different.

**Mr. Chairman:** Are hon. Members not accepting the supremacy of this body? This is a supreme House.

**Shri Pileo Mody:** That is also a supreme body.

**Shri P. K. Deo (Kashhandl):** You can make laws within the four corners of the Constitution.

**Shri Govinda Menon:** Amending a law which, when it existed in a certain manner, led to a certain decision, 1489 (A) L.S.—10.

is not unknown to parliamentary process. We have done it several times.

**Shri Pileo Mody:** You quoted Justice Hidayatullah so many times. Have you read his conclusion?

**Shri Govinda Reddy:** I have read the entire judgment.

**Shri Pileo Mody:** Why do you not quote his conclusion then?

**Shri Govinda Menon:** I was saying that the question is whether Parliament has got constituent powers. I want to remind hon. Members of this House that the Constituent Assembly itself, when it sat in the Central Hall with Babu Rajendra Prasad as its President, was exercising constituent powers and when the same Members came and sat in this hall with Shri Mavalankar in the Chair, it was exercising legislative powers.

I attach great value to what Mr. Justice Mulla said the other day, namely, that acting in a certain manner we may exercise constituent powers and acting in a certain other manner we exercise legislative powers. It is my contention that article 368 provides and lays down procedure acting under which we exercise constituent powers. It contains, therefore, not only the procedure but also the power vested in Parliament to amend the Constitution if Parliament acts in the manner provided for in that article of the Constitution. What Shri Nath Pai's Bill seeks to do is to clarify that position. If there are other clarifications necessary, for example something may have to be stated in article 13, let us in the cool and unbiased atmosphere of the Joint Committee where Members from all the parties will be there, discuss the matter and produce a report which can be considered at the later stage.

(Shri Govinda Menon)

I would once again appeal to Professor Ranga to send one or two Members from his party to the Joint Committee so that we can have that discussion

With these words I commend my amendment to the acceptance of the House.

ड० राज गोविंद मेनॉन (कन्नड़)  
समापति महोदय, यह प्रश्न सर्वोच्च न्यायालय और सदन का मेरे लिए नहीं है। यह प्रश्न हमारे राज्य के रूप और रंग की है। अगर ऐसा मैं न समझता तो घाज की बहम मे काफी तकलीफ उठा कर भी हिस्सा लेने की कोशिश मैं नहीं करता। राज्य के रूप, रंगकी जब भी नाबपाई से बात हो रही थी घाज से 15 दिन पहले तो मैंने उन से पूछा कि घाज के शिथेयक के पास हो जाने के बाद क्योंकि यह जितनी बहल यहा चल रही है वह निःसंक रहेगी सार्थक केवल इन का एक वाक्य रहेगा। केवल एक वाक्य और यह है

"Any provision of this Constitution may be amended in accordance with the procedure hereafter provided in this article"

इस के अलावा और कोई फर्क नहीं पड़ेगा और बाकी की जितनी घाजाएँ हैं उन मे जहा समझिये "an amendment of the Constitution" है वहा "any provision of the Constitution" है। बाली फर्क यह पड़ता है कि पहले वो सिबा

हुया है "इस संविधान का संशोधन" और अब सिबा दिया जायगा "इस संविधान की किसी भी धारा किसी भी बात का संशोधन"। जब यह पास हो जायगा तब कोई नाबब सामने नहीं रहेगा कि यह सम्पत्ति के सम्बन्ध में है या यह स्वतन्त्रता के अधिकारों के सम्बन्ध में है या यह राज्य और केन्द्र के सम्बन्ध के सम्बन्धों मे है। केवल यही बात रहेगी कि कोई भी संविधान की धारा बदली जा सकती है। मैं ने इन से पूछा कि जब घाज ने यह शिथेयक रक्खा तो इन पर सोच लिया ना कि हमारी जो सबसे पहली भूमिका है और जहा हम ने यह कहा है :

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC."

"REPUBLIC and to secure to all its citizens: . . ."

बाकी मैं नहीं पड़ता हू। यह जो भूमिका है

"हम, भारत के लोग, भारत को एक सम्पूर्ण प्रभुत्व-तन्त्र लोकतन्त्रात्मक गणराज्य" बनाने का फैसला करते हैं क्या यह हटाया जा सकता है या नहीं? इन के लिए इन को याद होगा कि इन्होंने कहा था कि हा, यह हटाया जा सकता है। अगर यह कानून जिस पर कि घाज यहा पर हम बहल कर रहे हैं, पास हो जाता है तो वह हटाया जा सकता है। फिर उस के बाद जो और बात हुई उस को मैं अभी छोड़ देता हूँ।



श्री नाथ पाई : धरम बुनियादी अधिकार, पर धाक्कन किबा गया, उन का हनन किबा गया तो मैं उस की अवश्य मुखात्फल करूंगा।

डा० राज बनोहर मोहिया : ठीक है घाय भी उस की मुखात्फल करोगे धीर मैं भी करूंगा बाकी हम दोनों की दुर्घति उस समय वही होगी जो जर्मनी में कम्युनिस्टों धीर समाजवादियों की हुई थी। ऐसी दुर्घति होगी समापति महोदय, इन का धरम कही यह कानून पास हो गया कि कुछ कहना नहीं। मैं घाय के सामने बिलकुल बर्ब के साथ कह रहा हूँ। हो सकता है मैं त को देख रहा हूँ। हो सकता है कि भाजकन धीर पिछले 10-15 वर्ष में मैं ने जो कुछ भारत का इतिहास देखा है, बार बार यहा नवी जी से प्रश्न पूछा गया अधिव्य के बारे में। मुझे अधिव्य के बारे में प्रश्न पछने की जरूरत नहीं है। मैं भूत को प्रतीत को जो देख चुका हूँ, कन देख चुका हूँ बस्तर में देख चुका, केरल में देख चुका धीर न जाने धीर कड़ा कहा देख चुका, उस के बाद मेरे सामने यह भूत खड़ा रहता है कि इस विधेयक के पास हो जाने के बाद इन के बिना पास हुए भी क्योंकि जिन सत्तों के लोग हैं वह बहुत कुछ कर सकते हैं लेकिन यह घाय उन के हाथ में इतना बड़ा भस्त्र दे रहे हैं कि वह अपने देश के रूप धीर रग को खत्म करेगा। मैं अधिव्य के बारे में नहीं कह रहा हूँ, प्रतीत काल में जो घाय ने किया, आज के घाय से पूछता हूँ कि मैं इस सविधान में धाराएं 352 से 360 तक धीर फिर जो उस में विधाय करके 356 धारा है, यह धाय-कालीन धाराएं सब हैं सविधान वाली, 352 से 360। वह जैसे कोई एक सविधान धरम मान तो उस की उपमा धादमी से भी जाय तो उस की धाक्के हैं। ऐंसा, ताना जो जाय या टेंडी हो जाय या कानी हो जाये, उसी तरीके से हमारे सविधान को काना बनाने वाली, एक धाक्के का बनाने वाली यह 352 के 360 तक की धाराएं हैं। इस

सूची की सूची, जो सूचीकार करेंगे धीर उस में विशेष करके 356 धारा छोड़ सकते हैं। जितने भी राज्य हैं सब में राष्ट्रपति शासन कायम हो सकता है। धरम में घाय से केवल एक ही प्रश्न पूछता हूँ कि धरम कोई राज्य यहा हो जो 356 धारा को सभी राज्यों में लागू कर दे तो सब राज्य खत्म, राज्यों की विधान सभाएं खत्म, विधान परिषदे खत्म धीर सरकार खत्म। ऐसा घाय मत समझना कि यह ध्वंशुत बात है। धरम में घाय को बतलाऊंगा कि यह सब ससार के इतिहास में कितना हो चुका है। वह सब खत्म हो जायेगे। फिर नाथ पाई जी के विधेयक में 308 का नम्बर 2 धीर नम्बर 3 रहता है जिसमें लिखा हुआ है प्रोवाइडेंट डेट इफ, राज्य वगैरह सब खत्म हो जाते हैं। राज्य सब खत्म हो जाते हैं। उन से पूछने की कोई जरूरत नहीं है। विधान सभाएं रहती ही नहीं हैं। धरम रह गयी यहा की बात। फिर भी यहा तो ससद है। तो ससद को कैसे लोग किया करते हैं? घाय जानते हा कि केवल एक कानून है:

"Gesetz zur Behebung Der Not vom Volk und Reich"

एक कानून ने, मैं बतलाऊंगा कि किस कारण से जर्मनी में हिटलर को यह ताकत दे दी थी जिसका कि मैंने धरम तक बिक किया है। "गैसेट्ज़ जूर" भी। वह कैसे? यह भी प्रो० रगा से मैं धरम कर दूँ कि जैसे प्रपने यहा 352 से ले कर 360 धाराये हैं, जैसे ही बाइमार सविधान, जो कि बड़े उदार सविधानों में से गिना जाता है, उस में भी एक धारा थी, जो कि उस की एक धाक्के छोड़ देती थी या हायद खेबा ताना बना देती थी। वह धारा थी धाटिकल 48। धाटिकल 48 द्वारा यह कानून पास हो जाता था। श्री नाथ पाई जी धनजाने जो विधेयक ने धाये हैं, मैं इतना ही कहूंगा कि वह इतना अधिकार दे देगा कि :

"Gesetz zur Behebung der Not Vom Volk und Reich".

[श्री: राम मनोहर लोहिया]

वह कानून जो जनता और राज्य की शक्ति हटाने के लिये है, और आप जानते हैं कि न जाने कितनी शक्तें रहती हैं, मध्य प्रदेश में भी एक शक्ति हो गई है . . .

श्री नाथपार्थ : कोई कोर्ट जनता की मदद नहीं कर सकता ।

श्री० राम मनोहर लोहिया : कोर्ट को छोड़ो । मैं उच्च न्यायालय या सर्वोच्च न्यायालय की चर्चा इस समय नहीं कर रहा हूँ । केवल यह चर्चा कर रहा हूँ कि हो सकता है कि तब तक भेदे जैसे धादमी को तो खत्म ही कर दिया जायेगा, लेकिन नाथपार्थ जी भी जैसे मे रब दिये जायेंगे मैं केवल इस की चर्चा कर रहा हूँ और इस पर आप ध्यान दें । वही एक कानून था जिसका मैंने जिक्र किया और जिस से हिटलर की विक्टोरी कायम हुई थी, और उस कानून को मैं खाली आप को, आप चाहें तो—प्रबन्धी ने पकना किजूस होगा ।

एक भारतीय सदस्य : आप जरूर करें ।

श्री० राम मनोहर लोहिया : उसे दि एनेबलिंग बिल कहा करते थे, लेकिन जर्मन में बैसा नहीं था । जर्मन में बैसा मैंने बतलाया, शक्ति को दूर करने वाला कानून था ।

"The Enabling Bill which was laid before the House contained five clauses. The first and fifth gave the Government the power for four years to enact laws without the co-operation of the Reichstag."

यदि रिज्यूशन, चार वर्ष के लिये खत्म । लोक सभा खत्म । लोक सभा भी खत्म और दूसरे भी खत्म ।

"The second and fourth specifically stated that this power should include the right to *derivate* from the Constitution and to conclude treaties with foreign States, the only subject reserved being

the institutions of the Reichstag... and Reicharat."

वह भी कहने की जरूरत नहीं है । क्योंकि मैं पहले ही कह चुका हूँ कि श्री नाथपार्थ जी के विधेयक को अब खाली एक चीज की जरूरत है :

We hereby resolve that this Constitution be suspended and in its place . . .

और जो कुछ भी करना हो वह कर दें । क्या करना होगा वह आप देखिये .

"The third provided . . ."

और मही होगा । एक ही चीज की जरूरत होगी :

"The third provided that laws to be enacted by the Government should be drafted by the Chancellor . . . . ."

18.54 hrs.

[Mr. DEPUTY-SPEAKER in the Chair.]

चासलर । इस पर आप ध्यान दें

"The third provided that laws to be enacted by the Government should be drafted by the Chancellor, and should come into effect on the day after publication."

इस विधेयक के पास हो जाने के बाद, मैं समझता हूँ कि बाकी चारों की जरूरत नहीं है । खाली यह पांचवा कानून यह कहता है कि इस संविधान को खत्म करते हैं । हम यह कानून बनाते हैं कि जितने भी कानून होंगे, वह किसी का भी नाम ले लेंगे । मैं नहीं जानता हूँ कि इस वक्त कौन होने वाला है, कोई पब्लिक का अधिकारी होगा, कोई राष्ट्रपति होगा, कोई प्रधानमंत्री होगा या होगी, कौन होगा मैं नहीं जानता । लेकिन कोई एक हो कर वह इस ताकत को अपने हाथ में ले सकता है । और फिर क्या होगा ? इस को भी जरा आप जानना ।

" 2 अक्टूबर, 1934 को जो कसब जर्मन सेना के सैनिकों को खाली पड़ी थी, जर्मन नागरिकों को सिरफ नहीं, जर्मन जनता को जर्मन सेना को, जिस सेना ने सारे संसद

"मैं बहुत उत्साह बना रखता था। मैंने कभी  
कोई संसार में जो क्या उत्साह बना सकती  
है, लेकिन अपने घर में तो बहुत ज्यादा  
उत्साह बना ही सकती है। वह कसम क्या  
की, इस को ध्यान देखिये।

"Ich schwore bei Gott diesen  
heiligen Eid, dass ich dem Führer  
des Deutschen Reiches und Volkes,  
Adolf Hitler . . .

इस को अरा धुन में। यह बहुत आरनाक  
कसम है, यह मैं आप को बतलाऊंगा।

"Ich schwore bei Gott diesen  
heiligen Eid, dass ich dem Führer  
des Deutschen Reiches und Volkes,  
Adolf Hitler, dem Oberbefehlshaber  
der Wehrmacht unbedingten Ge-  
horsam leisten und tapferer Soldat  
bereit sein will, jederzeit für die-  
sen Eid mein Leben einzusetzen."

यह अंतरनाक कसम 2, अगस्त, 1934  
को हिटलर की या जर्मनी की पूरी सेना को  
लेनी पड़ी थी, जो कभी जर्मनी में नहीं हुआ,  
आयत संसार में कभी नहीं हुआ, यह इस  
विधेयक के स्वीकृत होने के बाद हो सकता है।  
इस कसम का मतलब है कि "मे ईश्वर का नाम  
ले कर हम पवित्र कसम को खाता हूँ कि मैं  
जर्मन राष्ट्र की जनता के नेता एडोल्फ  
हिटलर, जो कि सेना के सब से बड़े  
सिपहसालार हूँ, नर-निःहसालार हूँ, बिना  
किसी शर्त के उन की आज्ञा का पालन करूंगा,  
मतलब उन के अख्तियार में रहूंगा और एक  
बहादुर सिपाही बनूंगा हूँ। इस कसम  
के लिये अपना जीवन खत्म करने के लिये।"  
यह कसम एडोल्फ हिटलर के नाम से आई  
गई थी, और यह सारा काम जर्मनी में  
हुआ। इस लिये कि इसी तरह का विधेयक  
हुआ।

उपाध्यक्ष महोदय, हो सकता है कि  
मुझ वाली धुन दिखलाई पड़ता हो। मैं

"बहुत बर्त" आया हुआ है, आप भी थोड़ी  
बहुत बोट का चुके हैं, इस लिये मेरे साथ  
कुछ दमदमी कर सकते हैं। हम ने से बहुतों  
ने बहुत बोट खींची हुई है।

Mr. Deputy-Speaker: The hon.  
Member should try to conclude now.

Shri P. K. Deo: Let him take some  
more time. The Minister took 45  
minutes.

Mr. Deputy-Speaker: I am most  
reluctant to disturb the hon. Mem-  
ber when he is propounding a theory.

Shri Phoo Mody: But you cannot  
resist the temptation either.

Mr. Deputy-Speaker: The time is  
limited, and, therefore, he should try  
to finish as early as possible.

श्री राम मनोहर लोहिया : लेकिन  
मैं उस वक्त की बात बतलाऊँ। जब यह  
धीज हो रही थी, जर्मनी का चारों तरफ लोक  
सभा के नास्ती लोग हल्ला मचा रहे थे कि  
हम को विधेयक चाहिये, नहीं तो धारा और  
धुन। यह विधेयक चाहिये। तब उस वक्त

"It needed courage to stand up  
before the packed assembly—  
most of the communists and about  
a dozen of the Social Democratic  
Deputies had already been thrown  
into prison."

मैं श्री रंगा से कहूँगा कि वक्त धा गया है कि  
ज्यादा देर मत करो। कम्युनिस्ट जब खत्म  
किये जाते हैं तो कभी-कभी-हमेंशा नहीं-उन  
के साथ धारा के और मेरे जैसे लोग भी खत्म  
लिये जाते हैं

They had been thrown into prison.

लेकिन अब मैं बतलाऊँगा जो श्री नाथपाई  
को धुन करने वाली थीज होती

[डा० एल् वेलर लोहिया]

"... and to tell Hitler and the Nazis to their faces that the Social Democratic Party would vote against the Bill".

उस प्रावदी का मैं धाय यहाँ श्रद्धा के साथ नमस्कार कर के नाम लेना चाहता हूँ। प्रोटो वेल्स उस सभा में था। तो धाय ने जो मुझ से तबाल पूछा शायद धाय प्रोटो वेल्स हों, और हो सकता है, मेरे जैसा प्रावदी तो क्या कर पायेगा, सब तक मेरी जिव्यवी रह या न रहे लेकिन शायद धाय प्रोटो वेल्स बनें।

"Otto Wells spoke with moderation: 'To be defenceless', he added 'was not to be without honour'.

हो सकता है कि नाथवाई जी इसको बापिस ले ले। मैं धायको कह रहा हूँ। वह ना पानना पड़े।

To be defenceless is not to be without honour.

बयोनि ऐसे लोग हैं।  
17 hrs.

मैं सविधान को पसन्द नहीं करता हूँ। मैं चाहता हूँ कि धाय 132 और 133 धाराओं को देखे। वे बड़ी विचित्र धाराएँ हैं। ऐसी बात सवार में नहीं हुई होगी। धाय तो सम्पत्ति की बात कर रहे हो। धायद किसी प्रावदी को फाँसी की सजा हो जाए उच्च न्यायालय से और उच्च न्यायालय किसी हासत में उसको धराल करने की इजाजत न दे तो सर्वोच्च न्यायालय के लिए बड़ा कठिन हो जाता है। लेकिन धायर मामला सिफ बीस हजार रुपये से ज्यादा का हो तो उसको तत्काल सर्वोच्च न्यायालय के पास भेजे जाने का बीका मिल जाता है। कोई मुक नहीं है। अब सविधान तो न जाने किन लोगों का बनाया हुआ है। बीस हजार रुपये की अपराध कर इस में की गई है बनिश्चय एक प्रावदी

पान के। एक प्रावदी का बीस हजार रुपये का है, फाँसी की सजा उसको हो रही है उसको अपराध में जाने की, धराल करने की इजाजत नहीं मिलती है लेकिन बीस हजार रुपये का मामला होता है तो अपराध में चले जाये। इसलिए यह जरूरी हो-गया है कि इस सविधान को और चौड़ा सज्ज बनाया जाए।

मुझे यह सुन कर खुशी हुई कि श्री मोदी कहते हैं कि सम्पत्ति वाला मामला जो है उसको धाय बिल्कुल खत्म करो। खत्म करो इसी तरह में उस सम्पत्ति के मोह को भी। खत्म हो सम्पत्ति की संस्था भी। मैं जानता हूँ कि यहाँ बहुत से सज्जन हैं जो सम्पत्ति की संस्था को खत्म करना चाहते हैं लेकिन मोह को बनाये रखना चाहते हैं। लेकिन मैं कहूँगा कि दोनों को खत्म करो। उसके साथ साथ यह भी जरूरी हो कि सविधान में लिख दिया जाए हमेशा के लिए इन सार्वभौम सर्वोच्च गणतन्त्र को कभी कोई खत्म नहीं कर सकेगा। किसी प्रकार की राज शाही से किसी प्रकार की तानाशाही से इसको खत्म नहीं किया जा सकेगा। उसके लिए जरूरी है कि धाय किसी न किसी प्रकार की एक विधान निर्मात्री परिषद बनाओ जो मधु लिमये जी ने और दूसरों ने भी कहा न सिर्फ वह बल्कि धाय की धार विधान निर्मात्री परिषद ऐसी हो कि वह जो सविधान बनाये वह भारत की समूची बालिय जनता से जनमत ले कर पास कराया जाये क्योंकि धायिर को धायकी याद होगा कि यह सविधान एक सीमित बोट वाले लोगों ने बनाया था और वे तब चुने गये थे जब धायेन यहाँ था। उसका धसर है।

मैं नाथवाई जी से निवेदन करता हूँ कि वह इस विधेयक को बापिस ले ले। धायना हाथ ऐसी चीज से—

Shut Your Mouth, Sell your hands.

इसे एक सप्ताह सीमित : गन्दा नहीं कहूँ किनी जगाने में नाचपाई जी और हम साथ साथ थे। गन्दा सब आप कह सकते हैं। मैं तो कहूँ कि अपने हाथ से इसको छुट नहीं, ऐसी चीज को छुने के लिए बिधि मन्त्री साह को छोड़ दे, यह उन्हीं को जपती है बात, उन्हीं को सोभा देती है। आप इससे हट जायें।

आज मैं अपने सच्चे मन से बोला हूँ। मुझे खतरा है कि कहीं शायद पहले छ महीने या साल भर में यह बीज न हो जाए क्योंकि आप जानते हो, चीन और पाकिस्तान वाले तैयारी कर रहे हैं। उनको इवराईस की छूट लग गई है। वे नौका डूट रहे हैं। जब एक वक्ता भारत पर हमला हुआ, आप दखेंगे कि आपके इस विधेयक को ले कर न जाने कितनी कितनी चीजें होने लग जायगी। इस बात की भी बेवसी है जब मैं इस तरफ दखता हूँ कि कितनी बल हम लोगों में गर्मी थी। इतनी गर्मी थी कि सामने वालों को बिल्कुल खत्म कर दो। लेकिन वह गर्मी सिर्फ जबान की गर्मी थी, दिल की गर्मी अगर हो तो यहाँ से लेकर बहा तक सब हम लोग इकट्ठा हो जायें और हटाये इस कर्नेक्टर को भी। बाली उन पटवारियों को हटाने से काम नहीं चलेगा, चाहे वे मध्य प्रदेश के पटवारी हों और चाहे वे लखनऊ के पटवारी हों। इस कर्नेक्टर को हटाओ। जब तक यह यहाँ से नहीं हटेंगा तब तक खतरा बना रहेगा। कर्नेक्टर माने केन्द्रीय सरकार और पटवारी माने प्रदेशीय सरकार। जब तक यह कर्नेक्टर नहीं हटेंगा तब तक यह खतरा बना रहेगा और इसलि मैं धैर्य करता हूँ कि आप अपने इस विधेयक को इस बन्त वापिस ले लें।

Mr. Deputy-Speaker: Mr. Salva.

Shri N. K. P. Salva (Betal): I promise I will avoid irrelevance and therefore I will be brief.

Mr. Deputy-Speaker: Maximum ten minutes.

Shri Ganesh Ghosh: So long this question did not come up. Now you are limiting it to ten and five minutes.

Mr. Deputy-Speaker: A lot of time has been taken. It is going to the Select Committee where it will be debated, and I will come back here.

Shri Pilo Mody: Why did the Minister filibuster for 45 minutes?

Mr. Deputy-Speaker: This is not fair. He was explaining the background.

Shri Banga: Let us have more time.

Shri N. K. P. Salva: I welcome the motion that the Bill be referred to a Joint Committee, but I submit that I am unable to agree with the Bill in principle. I am ardently convinced that article 368 as contemplated by the Bill cannot be amended without this Parliament inviting a very grave peril of an impropriety of the violation of the Constitution, as interpreted by the Supreme Court in the case of Golaknath and others vs the State of Punjab.

Inter alia the judgment of the Supreme Court has been assailed in this House, which I submit this House has hardly any authority to do, on the ground that the judgment has laid down the law about the fundamental rights, as if it was a law of the Medes and the Persians, that they are absolutely inviolable, that they are immutable forever, and that this judgement foists the fundamental rights for eternity on our people even if such fundamental rights were to run counter to the general will.

I submit that nothing can be more unfair so far as the judgment is concerned. It is a very unfair reading of the judgment. The Supreme Court

[N. K. P. Salve]

has not stated, has not laid down, that these fundamental rights as enshrined in part three of the Constitution are "eternal", they have only stated that they are "permanent". They have merely stated that 'the Constituent Assembly in its wisdom has not conferred authority and power on the special majority of Parliament to amend fundamental rights if it causes their abridgement or deprivation. It is not fair for the Law Minister to say that only one Judge, Justice Hidayatulla, has pointed out that a constituent assembly can be convoked. I will refer later to the judgement of Justice Subba Rao who delivered the judgement on behalf of the majority of the Judges. He has pointed out how we can get over the difficulty.

Therefore, when the Supreme Court has stated that article 368 cannot be amended so as to vest in the special majority of Parliament authority to amend the entrenched articles in which our fundamental rights are enshrined.

Shri Nath Pai Where have they stated it?

Shri N. K. P. Salve: I will read out excerpts from the judgement for the benefit of my very able friend Mr. Nath Pai, who is great parliamentarian, a great constitutional pundit and a greater gentleman. That does not mean that whatever he says on the Constitution is correct.

Justice Hidayatulla, while delivering a separate judgement concurring in the majority, said.

"To bring into existence a constituent body is not impossible, as I had ventured to suggest during the hearing and which I have more fully explained here. It may be said that this is not necessary so that the article 368 can be amended to confer on Parliament constituent powers over the fundamental rights. This would be

wrong and against article 13(2). Parliament cannot increase its powers in this way to do indirectly that which it is not intended to do directly."

Shri Surendranath Dwivedy: That is Justice Hidayatulla.

Shri N. K. P. Salve: Yes, Justice Subba Rao says: "we declare that Parliament will have no power from the date of this judgement to amend any of the provisions" . . . (Interruptions.) This is a constitutional point and if the hon. lady bears with me, she will learn some thing. Justice Subba Rao delivering the judgment of the majority observed—I crave the indulgence of Mr. Nath Pai for whom I have great regard and who, I expect, after hearing this debate would withdraw this Bill—as follows: "we declare that Parliament will have no power from the date of this decision to amend any of the provisions"—that is the first, secondly "or part III—of the Constitution so as to take away or abridge the Fundamental Rights enshrined thereon". After this decision, is there any doubt left as to what is the constitutional provision regarding amendment of article 368? This issue had already been decided and the present Bill, I submit, just works against that verdict. To achieve the objective of the Bill a constituent assembly will have to be convoked or we will have to fall back upon the other method which is pointed out by Justice Subba Rao. The hon. Law Minister pointed out the difficulty. How is it that we are going to convoke a constituent assembly; after all for that purpose also provisions of article 13(2) would need to be satisfied and we would be making what is called law and once we make that we will be under the same difficulty as we are for amending 368. My country question to him is, assuming that the law laid down by the Supreme Court is followed in future, and assuming this Bill is enacted and it becomes part of the Constitution and as such if it is struck down again

by the Supreme Court, what remedy are you going to have? The whole point is whether the Constituent Assembly has in its wisdom vested in this Parliament's special majority the authority to amend the fundamental rights to the extent of their abridgement or their deprivation. On a clear issue as to whether instead of convocating a constituent assembly or by adopting other modes suggested by Justice Subba Rao, could not amendment of article 368 itself vest authority in the special majority of Parliament to amend articles of fundamental rights? The Supreme Court has clearly and unreservedly said "no" It is argued that it is an obiter dicta. But surely the finding that amendments of articles containing the fundamental rights are beyond the authority, of the Constituent powers of a special majority of Parliament is not obiter dicta. At any rate, I personally consider that even if the Supreme Court whispers on any matter which is german to the immediate issue before it, such whisper lays down the law, it is binding on the court; it is binding on this House as well to the extent that it is the final interpretation. We make the law and they interpret it. Therefore, the argument that an important finding is an obiter cannot be resorted to flout one of the other finding of the Supreme Court for it is not defying Supreme Court, it tantamounts to defiance of the Constitution itself.

Sir, the time given is extremely short. I wanted to deal with a number of other points. Some of the points were dealt by Dr Lohia, he pointed out the latent and patent . .

Mr. Deputy-Speaker: You must have seen the last chapter of Mr Seervai's book.

Shri N. K. P. Salve: I have seen that, I have gone through that book. I cannot claim to be as great an authority on constitutional law as yourself or as the Law Minister or as Shri Nath Pai but I go by a little

commonsense. I may not go by the niceties of the law and I may be forgiven for my lack of erudite scholarship which I see in abundance in the House, but sometimes a Member may be allowed to go by commonsense.

Shrimati LakshmiKanthamma (Khammam) That is exactly what is needed for this.

Shri N. K. P. Salve. I am grateful at least one Congress Member agrees with me. Amongst us at least the women are intelligent. I wish that in the Opposition also at least the women were intelligent. (Interruption) I submit that it was always intended by the constitution-makers to make these fundamental rights more permanent and not as facile and as easily amenable for amendment as other articles which can be amended by a special majority.

I shall now refer to a speech of Pandit Jawaharlal Nehru on April 30, 1947, while proposing for the adoption of the interim report on the fundamental rights. He said

"A fundamental right should be looked upon not from the point of view of any particular difficulty of the moment, but as something you want to make permanent in the Constitution. The other matter should be looked upon, however important it might be not from the permanent and fundamental point of view."

I would also like to quote from Dr Ambedkar, one of the chief architects of the Constitution. Speaking on September 18, 1949.—Dr Ambedkar was speaking on the fundamental rights on the amendment suggested by Shri Kamath—I may point out that this was an amendment just similar to the one now moved by my friend Shri Nath Pai.

Shrimati LakshmiKanthamma: Dr Ambedkar is the author for the principle that Parliament is supreme.



**Mr. Deputy-Speaker:** The hon. Member has quoted only half of what Panditji had said. Later on, in that speech, he has warned that the Supreme Court cannot act as a third chamber in this country.

**Shri N. K. P. Salve:** I am grateful for this information, but in fact another hon. Member had stated that Panditji had participated in favour of amending the fundamental rights. All that I am submitting is that for what you say it does not mean that Panditji did not say this. Now Dr. Ambedkar dealing with the amendment which was proposed by Shri Kamath—an amendment to the effect as now suggested by Shri Nath Pai, namely, "any provision of this Constitution may be amended, whether by way of variation addition or repeal, in the manner provided in this article,"—said:

"Now, what is it we do? We divide the articles of the Constitution under three categories. The first category is the one which consists of the articles which can be amended by the Parliament by a bare majority. The second set of articles are articles which require two-thirds majority. If the future Parliament wishes to amend any particular article which is not mentioned in Part III or article 304 ..."

and so on. I submit therefore that there is no doubt in my mind that fundamental rights were never at the mercy of the Parliaments special majority.

I deem it my bounden duty finally to point out to the author of the Bill and its supporters that let not some day a special majority of the Parliament use its weapons of amendment against the general will of the people, to destroy the very base and the very foundation of the cherished ideals of the Indian way of life. If India has some day to give up its democratic traditions, let the same be achieved on the dead bodies of all those who hold

democracy not only as a political creed but as an article of faith, as their way of life. Let the sacred floor of this Chamber never be utilised to lawfully destroy the cherished ideals of democracy in this country.

**Shri Surendranath Dwivedy:** The people of India are vigilant now.

**Shri N. K. P. Salve:** Then, why are you afraid. Leave it to them. Why do you want to trust only the special majority? They, the people, can be trusted. Why do you want to give it to those who come here, and merely by a sheer accident, may constitute a special majority?

Before I close, I want to give a warning. The late Sir Muhammad Iqbal, in a beautiful couplet in the British days, gave a warning to his countrymen; and I quote his words on the floor of this House, for Mr. Nath Pai and all other hon. Members of this House:

बलक की किक कर तादा मुसलत माने वाली है  
 देर-बदकियों के मन्वरे हैं धासमानो मे,  
 न समझोगे वो मिट जाओगे ऐ हिन्दोस्ता वाली,  
 तुम्हारी दास्ता तक बाकी न रहेगी दास्तानो मे।

**Shri Nath Pai:** He went to Pakistan after that, and became the prophet of the division of the country.

**Shri G. A. Dange (Bombay Central South):** Sir, I rise to support the Bill moved by my friend Mr. Nath Pai for amending the constitution and also the motion for referring the Bill to a Select Committee. Not being either a lawyer or a very constitutionally-minded person, as some might say, I am unable to follow all the intricacies of the arguments that are being put forward here to oppose the Bill. Therefore, Mr. Nath Pai will excuse me if I cannot support him by quoting this judge or that judge or this court or that court. I can only sup-

port him by 'quoting what has happened in the making of the Constitution and after the Constitution was enacted and applied to this country

In India, after the British were overthrown, the ushering in of the Constitution did sound as a voice of liberation that certain democratic rights were conferred on the people, saying that certain liberties were given and we can with our own sovereign rights, shape our own future. But a point is made by some that if Mr Nath Pai's amendment were carried we would be opening the road to Hitlerism. Why should we raise the ghost of Hitler in this House. I cannot understand it because India is not West Germany. It has not yet developed that kind of dictatorial capital that West Germany had nor the culture that West Germany had. Therefore I cannot understand why this bogey is raised

In India no doubt this Constitution is an advance on our historical past. But to think that India has become a democratic country with this Constitution only is a mistake. India in the older days had a better democracy even. I need not quote historical precedents. Literature is available on that subject. We had any number of republics in this country whose Constitution was based on adult franchise and fundamental rights which were even better than our own rights. In fact, in these republics, there was no right to landed property, no right to hire or fire labour, no right for the kins to imprison a person because he acted against a certain right in the republic. I do not want to bother this House with that history. After those democracies were destroyed, when dictatorial kingships were instituted, then a certain curtailment of democratic rights took place. But even then, each caste and varna had its own autonomous democracy for its functioning. Each one's duty to the other was also enshrined in an unwritten Constitution. Therefore, to

think that we are the wisest people in the world and in 1951 we have evolved a wonderful democratic constitution by which we must swear for all our life and till eternity is wrong. People having seen the history of India should not talk of converting that fundamental rights chapter into a new divine right which can never be amended, which may be interpreted by the Supreme Court even in the opposite direction. But which cannot be amended. If Mr Nath Pais Bill is not adopted on the basis of the argument that we cannot amend the Constitution or the fundamental rights, we the people of India who have given this constitution to ourselves, cease to be the people of India who can have the right to amend the Constitution which we ourselves have made. Once we have made a thing we cannot amend it—this is called divine right. That product, which we ourselves have produced by itself acquires such an immobile divine right that we cannot touch it. This is the most undemocratic concept. This is the most dictatorial concept that the product which we as people of India have produced we have no right to amend, but an institution inscribed in the Constitution can amend it, interpret it, overthrow it and can do anything—that is the Supreme Court. The whole supreme wisdom of the people of India about this Constitution is handed over to six or seven supreme wisemen of the Supreme Court and all sorts of arguments are being thrown about that this judge said this, that judge said that and so on. But what have the people said.

We are a sovereign parliament. We are elected on the basis of adult franchise. Was the Constituent Assembly elected on the basis of adult franchise? Did the Constituent Assembly represent the people of India? The Constituent Assembly was brought in by the will of the British Parliament. It was composed of people elected from the legislatures which were not based on adult franchise even. It had

[Shri S. A. Dange]  
 nominated members and a whole *Jharkhand* was made in that Constituent Assembly which only got the revolutionary name "The Constituent Assembly" which framed the Constitution of the French Republic and so on. But that Constituent Assembly, though it spoke in the name of "we the people of India" never represented the people of India. We as an elected Parliament are a far greater authority than the Constituent Assembly. The demand that the Constituent Assembly be invited again on the same old basis—or what basis I do not know and there is perhaps new Rajamathas and Maharajas will come in by mutating the former example as the Constituent Assembly—to see whether the Constitution can be amended, is a surrender of the sovereignty of the Indian people which is enshrined in this House on the basis of elections on adult franchise. The elections may be vitiated by many other factors, by bribery, by corruption, by money and many other things, but even then the right of every man or woman to vote and elect was exercised as enshrined there. Therefore, we are more sovereign than the Constituent Assembly. That is why I say we as a sovereign Parliament have every right to amend the Constitution and the fundamental rights.

Of course, the fear expressed is that if the amending right is given then the whole democracy may be destroyed—I have to refer to that argument again. This is a very false argument because if a dictatorial power wants to amend the Constitution or overthrow it, it is not going to come to this Parliament to ask for that power. Hitler did not do it with the consent of the Reichstag or the Constitution. He based it on the army, he killed the opposition party leaders, destroyed the Communist party and then he was given the formal power to destroy everything. So that question can be decided outside this House and not inside this House. If that power is to come which will

destroy the Constitution or overthrow it, that power does not rest here, even within the Constitution. But is the power there or not to declare an emergency? And, under the emergency what has happened? All the fundamental rights are suspended and even when they are supposed to be violated a man cannot have legal remedy. People were imprisoned in the last four or five years. They went to the Supreme Court. The Supreme Court in its wisdom said we protect the fundamental rights but we cannot give you any remedy because the Constitution does not allow us to give you any remedy. Every right is curtailed by a law. The Constitution itself provides that every democratic right by suitable law can be curtailed and its functioning can be almost abolished. The right of free speech, the right to assembly and other rights can be curtailed. Section 144 has been imposed in certain areas of India for years together continuously, and nobody agrees to remove that section 144 until people come to revolt and defy it. People are imprisoned without trial. Associations are permitted, but their functioning can be restricted. Unions are permitted, but their functioning can be restricted. Therefore, to think that these fundamental rights which are so mal-administered in this democracy that if we take the right to amend those rights, then they will vanish, that is itself an illusion, because some of the rights are already an illusion in practice. So, the Constitution has a democratic basis, but the Constitution does not practise democracy in this country. That is my complaint. Therefore, if by amending it I can modify it in such a way that democracy can become a reality in that case, I want the right to amend this part of the Constitution.

The revolt against the proposed amendment and the proposition of Shri Nath Pai has been triggered off by the question of property. Yes, Sir, I want the right to amend the

right to property, which is concentrated in the hands of seventy-two houses, to the detriment of this country and its democracy. Democracy is not challenged by future Hitlers. Democracy in India is being challenged by certain monopoly houses which thrive on the protection given in the Constitution. That is why, when people began to take up agrarian reforms by abolition of landlordism, when those amendments were carried out, there was revolt in the country against the amendments and the Supreme Court went to the rescue of the propertied classes. The revolt is again triggered off by propertied classes and propertied interests. Therefore, the very fact that the revolt, or the criticism, or the opposition, to this proposition has come from certain interests which are highly interested in property will show the necessity of having the right to amend the Constitution.

Tomorrow, for example, if the colour of democracy in this country changes and we do have a Parliament which really goes in towards socialist democracy, I do not want that clause about right to property to stand in the way of Parliament abolishing the right to own property or factory or land to the detriment of the people, to exploit the people. The opposition to this proposition has come from certain interests which are not for developing this democracy into a socialist democracy. Therefore, I want the right to amend the Constitution so as to facilitate the path towards socialist India, and not be obstructed by the fundamental rights, some of which are in favour of propertied classes.

Mr. Deputy-Speaker: Now the time allotted for this Bill is over, including the extended time. Of course, I could not accommodate all the hon. Members who wanted to participate in this. If I have to do that, I will have to postpone the debate again.

Shri Ganesh Ghosh: Sir, Members on this side are not given an opportunity. Why this discrimination?

Mr. Deputy-Speaker: I am not discriminating. I am only explaining the position. Only 2½ hours are available today. If we extend the time, then it will have to go to the next day.

Shri Ranga: Let it go to the next non-official day.

Shri Piloo Mody: In fact, I want this to be discussed for the next ten years.

Mr. Deputy-Speaker: What is the Law Minister's view?

The Minister of State in the Department of Parliamentary Affairs and Communications (Shri I. K. Gujral): We have discussed it enough, for such a long time. Secondly, when the motion is to refer the Bill to a Select Committee, much time is not spent in discussing it in the House because it will be discussed in detail in the Select Committee. Further, the House will have an opportunity to discuss it, when it comes back from the Select Committee.

An hon. Member: We are short of time because too much time was taken by the Industries Minister.

Mr. Deputy-Speaker: That I have already compensated by having discussion for a longer time.

Shri Ganesh Ghosh: The Law Minister took a major part of the time.

Shrimati Lakshmitanamma: Not only Parliament but the whole country was agitated when this decision was given by the Supreme Court. Even during the last session if they did not say anything about it, it was because they did not want to embarrass the Supreme Court. So, it was not discussed. The feeling of the members on this question is still there. This kind of discussion should

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take place and members should have an opportunity to place their viewpoint before the House

**Mr. Deputy-Speaker:** The question is whether the discussion here should continue further?

**Shri Piloo Mody:** Yes, for the next five years

**Shri Ranga (Srikakulam)** The discussion should continue. Let me explain why I say this. Suppose, this Bill had come from the Government, I am sure, the Business Advisory Committee would have agreed and the House also would have appreciated it if three or four days had been given for general discussion of an important Bill like this. Even 20 hours would not have been found to be adequate because it is a matter of supreme importance which concerns the very process of amending the Constitution. It is not as if some one amendment is being brought in order to make some kind of an amendment to the Constitution. It is how this Constitution is to be amended. That is the most important thing that is being discussed.

It is unfortunate or fortunate, whatever it may be, that it has come as a kind of a private Bill, with the result that most people are not able to apply their mind just as much as they would have liked to if only they had at that moment realised the significance of this. We have been going on in a piecemeal fashion—one hour, two hours, three hours.

**Mr. Deputy-Speaker:** At your request I extended the time.

**Shri Ranga:** Therefore what I am suggesting is that it is in the interest of proper discussion and it would be in the fitness of things for this Parliament that this discussion should not be hastened. You were good enough to agree to two hours today—

initially, you said and you were well advised in using that word "initially"; I very well remember. Therefore I plead that it should be extended by another 2½ hours at least.

**Mr. Deputy-Speaker:** Whether it is a Government sponsored Bill or a Private Member's Bill, Government has taken into consideration that there is a good deal of opinion to be taken into consideration at the proper stage, so, they have proposed for the Joint Committee.

**Shri Ranga:** No. They have mothered this Bill now that somebody else has fathered it. If only the Government had done it.

**Mr. Deputy-Speaker:** It is not fair.

**Shri Ranga:** Let us not go into all those things. I only plead with you and with the Government also that they will be good enough to agree to this extension.

**Shri I. K. Gujral:** I have a great deal of respect for the hon. Professor Ranga.

**Shri Piloo Mody:** Then show it.

**Shri I. K. Gujral:** I have no objection in showing it and I will do it.

If Professor Ranga feels that another two hours' discussion can bring out more points, I will not insist. But Professor Ranga may kindly amend that part of his remark where he says, "2-1½ hours initially". It should not mean that after 2½ hours we will extend it further. I had no objection to continue the debate as long as you and the House likes. My only submission is that it is very unusual for a Bill which has to go to the Joint Committee to go on like this. All the same we would not like to create an impression from this side of the House that we are insisting on cutting the time for this Bill down. Therefore if you decide to have two hours more for this, we will not object to it.

**Shri Nath Pal:** I did not know what Professor Ranga has submitted but so far as his main submission that, the debate should be sufficiently adequate, is concerned I fully endorse it. He had written a letter also.

But because Acharya Kripalani was talking to me I did not hear some remarks which he also made about the Bill being inspired. I strongly resent it.

**Shri Ranga:** I did not use that word.

**Shri Nath Pal:** I do not know Shri Surendranath Dwivedy told me about it. I am happy that he did not say that. I very much respect Professor Ranga.

**Shri Surendranath Dwivedy:** He has said, "fathered".

**Shri Nath Pal:** It is worse then. I do not know what exactly is the word he used but this kind of insinuation I strongly resent.

**Shri Ranga** himself admitted it just now that he has not been able to apply his mind.

**Shri Ranga:** I did not say about me; I said, "Most Members".

**Shri Nath Pal:** I do not know why he should talk of most Members. Most Members have spoken and have supported it strongly. I suggest that Shri Ranga should read parliamentary papers a little more carefully. It has happened a second time. We have great regard for Professor Ranga but he should not go on making a mockery of things like that. I would like to point out that five Bills were introduced. I hope, Professor Ranga knows it. One suggested that the right of parliamentarians to be free from the danger of arrest for expressing views must be guaranteed. The Bill for immunity to MPs I have introduced last session. There is the Bill regarding the election of the Speaker and the Deputy Speaker.

There is the Bill guaranteeing that the Governors who are nominated by the President shall be ratified by Lok Sabha. These are all, by various means, the rights of the people of India and of Parliament thereby definitely curtailing the arbitrary powers of the executive. Now, to say this is so low, so mean . . . (Interruption) There have always existed two schools of thought in the world. (Interruption) He says, it has been fathered by them. Where is the question of fathering it? I object to all this . . .

**Shri Ranga:** What did I say? Why do you unnecessarily say all this? What I said was, the Government has fathered it. What is wrong in it? (Interruption).

**Shri Surendranath Dwivedy:** You should not have said that. That is absolutely wrong.

**Shri Ranga:** This Government has fathered it. Otherwise, this Government would not have come forward with a proposal of constituting a Joint Committee . . . (Interruption)

**Shri Nath Pal:** I am not going to be bullied by you . . . (Interruption).

**Shri Ranga:** There is no question of bullying you, we need not quarrel with each other.

**Shri Nath Pal:** You started it

**Shri Ranga:** You started it (Interruptions)

**Mr. Deputy-Speaker:** Order, order. Please listen to me now.

**Shri Nath Pal:** You have to hear me

If Professor Ranga did not say that, I am very happy. Let me point out to him—he was not here—when Raja of Kalahandi was speaking, you remember, he was compelled to withdraw some of his remarks. If he did not say so, I am very happy. But I want to say, as in this country, as in

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any other country where there is federal structure—I know some people do not suffer from the disadvantage of being familiar with Constitution and law—there have always been two schools of thought throughout the world. In the United States there were two schools of thought, the one that of Justice Holmes and the other that of President Roosevelt. There can be two schools of thought as to what should be the powers. Let us respect one another; let us disagree without attributing motives to one another.

**Mr. Deputy-Speaker:** Now, that is all. Let us extend the time by 2 hours. But there will be no further extension.

**Shri Ranga:** Let us see how it develops.

श्री मधु सिमप्रे : उपाध्यक्षमहोदय, मेरा विषय खत्म तो नहीं होगा न ?

**Shri Sheo Narain:** Last time, you raised the time by 2 hours. You are now extending the time further by 2 hours. There should be no further extension of time.

**Mr. Deputy-Speaker:** Shri Sheo Narain has made a suggestion that this is the final extension of time and that there should be no more extension of time. Shri Kundu.

**Shri H. N. Mukerjee** (Calcutta North East): Is Mr. Sheo Narain the leader of the House? Where is the Leader of the House?

**Shri S. K. Nayanar:** We should also be given an opportunity.

**Mr. Deputy-Speaker:** I will call you. Shri Kundu. I would request you to be brief.

**Shri S. Kundu** (Balasore): I will be very brief.

Sir, I have heard two speeches with rapt attention, one of Dr. Lohia and

the other of Mr. Dange. I must say that I will agree emotionally with Dr. Lohia but it is very difficult to find reason in what he said. Certain extraneous matter has been brought in to give a different colour to this Bill. It has been said that if this amendment is accepted in Article 368, then in India the situation which was prevalent at the time of Hitler will come in or may come in. I would like to ask Dr. Lohia one question. I wish Dr. Lohia was here. Without this insertion, can he say that such a situation will not come in? It is not that because we make this amendment in Article 368 that it comes in or it does not come in; it comes because of some other reason. He did not say what were the circumstances in Germany when Hitler came to power. He did not analyse the sociological background, the economic conditions and the political conditions of Germany. It was clearly some sort of political, economic, psychological, oppression on the German youth brought in the disaster. A young man like Hitler who was a painter in the streets of Vienna, became the greatest oppressor of the world. Six million people were unemployed at that time. There was starvation there was humiliation after the defeat of Germany. The entire liberal socialists were not vigilant. They fell as pack of cards before Hitler. So, it has nothing to do with this insertion. How can this amendment bring about such a situation? Suppose this amendment is not there, is there anything in the Constitution which will prohibit an amendment saying that all the powers of this House be given to the Prime Minister, Shrimati Indira Gandhi; it can also be brought in without this amendment. The question is not that. (*Interruptions*). The question is very basic because the entire thing started when the First Amendment came in the fundamental right chapter. The First Amendment came in regarding the right of property. To-day if we want that the Directive Principles should be absorbed one after another in the Constitution, the clause about



the right of property in the Constitution should be amended. It cannot be done unless we bring changes in the fundamental rights. Unless we change that, there will be upheaval in the country. Prices are rising, there is unemployment, there is frustration among the people, banks should be nationalised, big business houses should be nationalised. From where will they pay the compensation? (Interruptions). What does the law say? When amendment to the right of property clause was brought in, the law said that no person shall be deprived of his property say by the authority of law. (Interruptions). The due process of law was interpreted as saying that there should be a clear categorical mention about the quantum of compensation. Unless we make this amendment here, we have to give a huge amount as compensation. We want the banks to be nationalised. Rs. 1500 crores are involved. Multiply it by 30 times. That is the reasonable compensation. How much it becomes! How can you pay this? If you do not nationalise, there will be chaos outside, there will be frustration outside, there will be upheaval and this democratic structure will go, and not the other way as feared by Dr. Lohia.

What does this judgement suggest? It directs to call a Constituent Assembly. Why? On what authority? How can you call it? You are working under a Constitution. How can you call a Constituent Assembly? Who will call? What would be the charter before the Constituent Assembly? What will members do? If you want to change the fundamental rights, you have to call a Constituent Assembly! It is fantastic! The persons who framed the Constitution thought of some sort of a Constituent Assembly within the framework of the Constitution and therefore, they made a provision of two-third majority. Think of a forum where the two-third majority of this House which itself transforms to some sort of a Constituent Assembly who can bring about an amendment in the fundamental rights. Is it not a Con-

stituent Assembly? What is it? Look at the Fourth Lok Sabha. Many new young people have come in. Many people have come in. I could not have come but for the Constitution. I have come here basically because the people wanted me to come, and I feel proud of it. I have been able to come here because of the Constitution. About 60 to 70 per cent new Members have been able to come, and many different type of people have also been able to come here as Members. That has been possible because of this Constitution. Therefore, they express the feelings of the people. So, if two-thirds majority of them come to any decision, they would be perfectly right in doing so, and they would be some sort of constituent assembly having the power to change the fundamental rights.

There is no point in arguing in a vicious circle and saying that because a judge has said so, we should have to call a constituent assembly for amendment of the Constitution. I shall read out a few lines from the judgment to show why the judges have said so. I would not go into the niceties of this legal terminology, because *per se* the judgment is defective. The judges have said that a constituent assembly must be called under the residuary power. But I would submit that the residuary power is itself a legislative power. This power has nothing to do with the powers given under the Constitution. So, to say that a bigger assembly than a sovereign body in the form of the constituent assembly can be called under a residuary power is a fiction in law. I cannot imagine how this kind of judgment could have been given. I shall read out just one sentence from the judgment. It reads thus:

"If it is the duty of the Parliament to enforce the Directive Principles, it is equally its duty to enforce them without infringing fundamental rights."

This is a beautiful sentence. Now, what is the directive principle? It

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states certain things which have to be done if our country is to survive. I would refer, for instance, to article 39 which says:

"The State shall, in particular, direct its policy towards secur- ing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

In order that there may be equal means of livelihood for all, I feel that it would be necessary to nationalise the entire sources of production. If I want to do that, I have to change the fundamental rights. But what has the judgment said? The judgment says that it is the duty of Parliament to enforce the directive principle without infringing the fundamental rights. That is all right. But what is the basis of this argument? The basis is something very interesting and it shows what they have thought of a democracy and what they think of a democracy and what they have thought of as a totalitarian structure. Any legislation bringing about a progressive change, then that legislation is totalitarian; this is so close to the views of the Swatantra Party. I hope these portions in the judgment have not been missed by anyone. I have all respect for the Supreme Court judges, but the feeling of those judges seems to be that any progressive legislation is a totalitarian in concept, but we all social democrats differ from that. It is only through such progressive measures that we can bring about equality in this country, and if there is no equality, democracy will topple down because the people are not going to tolerate a situation where two million people will spend sleepless nights in the Bombay parks and there will be millowners having crores of black money at the same time. The people will not tolerate such a state of affairs. But these judges think that if we want to bring about some progressive legis-

lation infringing the fundamental rights if necessary for that purpose, it is a totalitarian concept. This is the psychology of the man; after all, the judge has been a product of the society himself. If a judge comes from a very wealthy and rich family, this will be the type of judgment that he would write. So, they have viewed the entire thing in this background and they have tried to give arguments for taking that view.

**Shri Randhir Singh (Rohtak):** Let there be no aspersions on the judge. The judge may be correct in his own way.

**Shri S. Kundu:** I am just talking about their sociological thinking.

**Shri J. B. Kripalani:** The hon. Member is not a product of society, but only judges are products of society?

**Shri S. Kundu:** There has been a fear that if this amendment is made, there will be a possibility or the danger that the ruling party or the State will have a lot of power and would become autocratic and dictatorial.

We have fundamental rights in Part III of the Constitution. What about the emergency provisions? Have not in this Parliament Dr. Lohia, Shri Madhu Limaye and everybody else said that these emergency provisions smack of a totalitarian tendency? Have rights not without making these amendments in article 368 taken out of our hands the Fundamental rights enshrined in Part III? I feel that only by giving ourselves this power to amend as indicated in the Bill we can respect the democratic and republican character of our Constitution; otherwise not. Because I have faith in the people, the younger generation who will come here as the elected representatives. They will not be promoters of totalitarian tendencies they will fight for keeping this Constitution intact enshrined in our policy for ever. So there should be no fear on that score. The fear is on the part of the vested interests who think that through this amendment the

window is opened and new legislation might be brought in which will deprive them of any property.

**Mr. Deputy-Speaker:** Shri Ganesh Ghosh. He might start and continue next time.

**Shri Ganesh Ghosh** (Calcutta South): I must start with a protest against the Chair for discriminating against my party.

**Shri Randhir Singh:** He should not say that. He should not asperse the Chair. He should respect the Chair. We all want we should have more time.

**Shri Sheo Narain:** The Chair is the supreme authority here. He must withdraw it.

**Mr. Deputy-Speaker:** There is no discrimination against any party. This is not a party issue. Shri Nath Pai has brought in this Bill not as one belonging to a particular party, but as a member of this House doing his duty. So do not think in terms of party. You can say whatever you have got to say without bringing this consideration.

**Shri Sheo Narain:** He must withdraw that remark.

**Mr. Deputy-Speaker:** He will

**Shri Ganesh Ghosh:** Some learned members on this side have spun many legal cobwebs to make a very simple proposition very complicated and almost unintelligible. The common people, the man in the street, will look at this as a simple thing and approach it from that standpoint.

What Shri Nath Pai wants to do is to amend art. 368 so that this Parliament can change any provision of the Constitution. Hon. Members of the Swatantra Party have vehemently opposed it. The reason for their opposition is quite intelligible and

understandable. But what is the opposition to?

We know that fundamental rights are enshrined in Part III of the Constitution. They are put in there. Though they are not up to our expectations, still they contain certain good things. But a cursory glance at them would convince you of the very strong emphasis put on the right to property. In the present condition of our society, is it not a fact that only those persons who have got some property have got the exclusive privilege to enjoy all the fundamental rights enumerated in Part III? This cannot be denied. In the fundamental rights is the proposition that all are equal before the law. But you must have property, movable or immovable, before you can approach the law court and claim justice or register your protest against an injustice done.

**Mr. Deputy-Speaker:** He might resume on the next occasion. We shall talk up the half an hour, discussion now.

18 hrs.

#### \*PANDE COMMITTEE REPORT ON DURGAPUR STEEL PLANT

श्री सच्चिदानंद (मुंबई) उपाध्यक्ष महोदय, आज दुर्गापुर के इस्पात कारखाने में जो खामिया हैं उनके ऊपर मैं बड़ा उदाहरण हूँ। इस मामले में इस्पात मंत्रालय की मांगों पर बल नहीं होने वाली है क्योंकि बल मांग मारी मांगों पर मिलोटीन गया है।

सब से पहले मैं श्री महोदय से कहूँ कि मेरी सपना में नहीं आता है कि हिन्दुस्तान स्टील के द्वारा अपनी सालाना रपट पर इतना बच्चा काटकर क्यों खर्च किया जा रहा है क्योंकि यह रपट घाल-पलाधा थी