

artificial differentiation which you have made without any rational basis. The Commerce Minister has categorically admitted so on the floor of the House and promise to look into this question and do something about it. Unfortunately, nothing has been done. I hope the hon. Finance Minister will look into this aspect. Since I have no time to go into other aspects, I will conclude by saying that in my view, the Budget reflects the basic philosophy of the twenty-point programme, the philosophy of growth, the philosophy of price stability and also the philosophy of given importance to the common man. That is why I welcome this Budget.

श्री मुल्की राय सेनी (बेहराइन) :
उपाध्यक्ष महोदय, मैं इस बजट को सपोर्ट करने के लिए खड़ा हुआ हूँ। जैसा कि इस बजट के बारे में कहा गया है, इसका उद्देश्य सामाजिक न्याय के माध्यम से आर्थिक विकास को प्राप्त करना है। इस बजट को अच्छा और कल्याणकारी कहा जा सकता है, मासिक कहा जा सकता है, लेकिन इसको समाजवादी नहीं कहा जा सकता है। कुछ माननीय सदस्यों ने इसको समाजवादी कहा है। श्री मेरे साथी ने कहा है कि कुछ दिनों के बाद इस देश में कोई नैडलार्ड नहीं रहेगा। लेकिन आज स्थिति यह है कि इस देश में इंडस्ट्रियलिस्ट्स हैं, बिग बिजिनेस हैं, बौद्धिक लोग हैं, अप्पर मिडल क्लास हैं, और उनके साथ ही बहुत ही गरीब वर्ग भी है। जब बजट के माध्यम से हम एक सोशलिस्ट इकॉनॉमी को और बढ़ सकेंगे, तभी हम उस बजट को एक सोशलिस्ट बजट कह सकेंगे।

MR. DEPUTY-SPEAKER: He may continue on Monday.

We shall take up Private Members' business.

15.29 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

SIXTIETH REPORT

SHRI S. P. BHATTACHARYYA (Uluberia): I beg to move the following:

"That this House do agree with the Sixtieth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 17th March, 1976".

MR. DEPUTY-SPEAKER: The question is:

"That this House do agree with the Sixtieth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 17th March, 1976".

The motion was adopted.

15.30 hrs.

RESOLUTION RE: CHANGES IN THE CONSTITUTION—Contd

MR. DEPUTY-SPEAKER: We take up further consideration of the following Resolution moved by Shri K P Unnikrishnan on the 30th January, 1976—

"This House taking into consideration the experience of the working of the Constitution of India during the last twenty-five years and confronted with the tasks and challenges of social reconstruction, is of the opinion that significant changes are called for in the constitutional framework of the country. The House, therefore, urges the Government of India to initiate constitutional amendments particularly in the nature of property rights and to secure meaningful realisation of the principles enshrined in the Preamble and the Directive Principles of the State

[Mr. Deputy-Speaker]

Policy of the Constitution keeping intact the supremacy of Parliament, the federal structure and legitimate rights of the minorities, the Tribals, Harijans and other submerged sections of our population".

Shri Unnikrishnan may continue his speech.

SHRI JAGANNATH RAO (Chattrapur): What is the time allotted for this?

MR. DEPUTY-SPEAKER: Two hours. He has just started

SHRI JAGANNATH RAO: We have to extend the time.

MR. DEPUTY-SPEAKER: I seem to have become heavy-tongued. People do not understand me. I said he has just started—I must do some tongue exercise.

SHRI K P UNNIKRIISHNAN (Badagara): When I formally moved this Resolution on January 30, I had begun with a remark from Justice Holmes which I shall repeat. Justice Holmes said that the life of the law has not been logic; it has been experience. However much some of the leading lawyers, legal luminaries of this country—I do not mean any disrespect to anyone might pretend constitution or law results from our social experience. It cannot transgress the laws of social experience or demands of social experience. And social experience, I would say, comes out of struggles, whether some would prefer to call them as class struggles or some may refer to them as tensions

15.32 hrs.

[SHRI ISHAQUE SAMBHALI in the Chair]

I would say it comes out of struggles, of the relentless struggle that goes on in every society. Neither law, nor

constitutions which are dependent on the law making processes can claim exemption from the way social dynamics function or work. That is why K. C. Wheare has remarked "that a country's constitution is the resultant parallelogram of forces, political, economic and social. That is the sum total, whatever Palkhiwala may say. Constitutions and laws result from the inner relationship between this parallelogram of forces, political, economic and social. That is why I would say that forces change laws and constitutions, forces mould situations and constitutions follow! That is what history records; systems collapse and newer ones emerge because of the new correlation of forces in society

Our constitution can be no exception to this rule. The fact that it has 395 articles, 9 schedules or that it has had 39 amendments does not give our constitution any special significance more than what other constitutions can claim! We cannot say that this is something "transcendental" or something "immutable" or something above everything else which we cannot touch. I should like to invite the attention of this House to the views of some constitutional pundits and historians of constitutional developments of this country as well as in some other countries. They regard it as a refined version of Government of India Act of 1935. They forget that it was a social document which is only an expression of our social intent; it was only an expression or manifestation of the desires of the people of a particular generation; those who demanded our liberation from the imperialist yoke. It cannot claim any kind of permanence. It was made clear by Pandit Nehru who was not merely the captain of our freedom struggle but one who also guided the deliberations of the Constituent Assembly. That was made clear also by another architect of our constitution, Dr. B. R. Ambedkar. It was also made clear by various other

luminaries of the constituent assembly. Still I say this without meaning any disrespect to those who adorn the benches of the High courts and the Supreme Court and for those whom it has become a profession, including the great luminaries of the courts, it is sometimes propounded with great vehemence from these benches that Constitution is "transcendental", "immutable" and something which cannot be touched. That has been our experience.

What are facts? How come that this constitution was made? We have to go into its ancestry; into the roots of those forces which moulded this constitution in 1947-50. Unfortunately many persons in this country as well as abroad think that what took place in 1947 was a "transfer of power"

What about the great liberation of this entire sub continent, particularly the territories which now comprise the Indian Union? For those persons it was mere transfer of power. But as you, Sir, would agree, it was not a mere transfer of power.

There is a basic hiatus between those two approaches. For some it merely signified transfer of power and for others it meant liberation. Similarly many persons claim that it was the 1919 Government of India Act or the 1935 Act to be more precise. They say it provides the framework of the Indian Constitution. It may be correct in the sense that similar phrases may occur in certain clauses. But the spirit of the Indian Constitution does not form part of the 1935 Act which was an Act of British Parliament. It comes out of the content of our own struggle for freedom. That is why the Indian National Congress was demanding a constituent assembly right from 1934; while reacting to the 1933 white paper and proposals the Congress declared that it shall be the duty of the British Government to provide for a

freely elected constituent assembly. This demand was repeated again in the Congress sessions because the Congress was the biggest national platform and National Liberation movement which led the struggle for independence in this country. The demand was repeated in the Congress session at Faizpur, Haripura and Tripura. The Father of the Nation, Mahatma Gandhi, said:

"Swaraj would not be a gift of the British Parliament. It must spring from the wishes of the people of India expressed through their freely chosen representatives."

Jawaharlal Nehru, while moving the objectives resolution in the Constituent Assembly had said of our determination:

"The Congress has within its fold many groups widely differing in their view-points and ideologies. But it reflects the national sentiments and it is these sentiments which are reflected in our determination to have a Constitution for ourselves."

There are many constitutional pundits who find in the concept of the Indian Union shades of parallel in the Constitution of United States or provisions from the British-North America Act of 1862 or elsewhere. But the basic approach underlying our Constitution has been the approach of the people who struggled for independence, and the demand for unity. The basis of the demand for the Constituent Assembly was the growing self-confidence of the growing elite and a greater sense of unity manifested during the national struggle and weakening of the British imperialist foothold.

After all; what is a Constitution? It can only be a declaration of a social intent and an administrative blueprint. It cannot claim anything

[Shri K. P. Unnikrishnan]

more than that. It may be important that India had to work within certain limitations, when the Constituent Assembly met in 1946 because India had worked within a federal structure which pre-existed independence; i.e. the federal system of the 1935 Government of India Act. So, the institutional patterns which were already laid at the time of constitution-making, had certainly influenced the moulding of our Constitution towards the various objectives which came up during the assembly debates. But the basic question which the Constituent Assembly faced was, which road to Indian revolution? Shall we take the capitalist path of development or the socialist path? Shall we take the democratic path of development or shall we accept the non-democratic or undemocratic path? That was the crucial question.

The basic objective of the Constitution was not merely to codify certain principles but to conserve the goal of peaceful social change and national renaissance. The attempt was to create institutions that would initiate and permit social change—I would underline the words “permit social change”—and to create conditions for ensuring its success. It was an attempt to create a particular level of class equilibrium and to promote unity where, in the words of Jawaharlal Nehru, continuity and change can be ensured. Between 1920 and 1945, the quarter century that preceded the convening of our Constituent Assembly, both in the national movement and even in smaller groups whether of socialists or of people to the right or left or centre;—through them the people of this country had articulated the demand for a parliamentary constitutional pattern. The various resolutions that I referred to earlier, were only reflecting this demand of the Indian people. It was a reflection of the liberal democratic temperament of the progressive elite which led the Indian National Congress.

Again, I would say that socialism was very much in the minds of a substantial section of Members who participated in the deliberations of the Constituent Assembly. Granville Austin remarked that “the Constitution was dedicated to socialism.” Now it was not merely an Indian document, that my earlier remarks should not be misunderstood to mean that it was something uniquely an Indian document because we had never experimented with any other form of parliamentary system of Government. And to find historical parallels and situations in the history of preceding centuries while alluding reference to this Sabha or that Sabha, I think it would be doing a great injustice to the great architects of our Constitution. As B. N. Rao remarked: “It would be idle to pretend that the parliamentary system in all its modern details was organised in ancient India. But we may perhaps venture to say that the essential constitution was familiar”.

Now, Sir, we have reached a stage when I would contend, it is time for us to have a fresh look, to have a review of the Constitution because 26 years have elapsed since then, and a quarter century in a dynamic situation, and in the international context where the aspirations of the people as they have been given expression to by them through their social struggles, through the working of Indian democracy itself and the revolution of rising expectations with which we are confronted everyday, every year, and which have created a situation compelling us to have a new look at the Constitution.

Again a number of problems have cropped up. These are not problem of a technical or legal nature. While I do not claim to be a constitutional pundit except beyond the fact that I went to a law college—there are very many luminaries here, our Law Minister is here, Mr. Frank Anthony is here and there are many more, and I mean no disrespect to them when I

say that I do not think this is a business which can be left to lawyers alone! It was never the intention as Pandit Jawaharlal Nehru had remarked in the Constituent Assembly: "Half a dozen lawyers cannot sit together and frame a constitution". The constitution, I repeat, has the sanction of historical forces and social experience. So, it has a much wider scope. While we can have their assistance and their rich experience, the constitution is not a matter to be left to lawyers alone just as the constitution cannot be left to judiciary alone because it primarily concerns the lives and aspirations of the people of this country, the citizens of this great country. The constitution has only recorded what the people of this country have wanted. Right from the Preamble and over the 395 articles and all these amendments, I would say, is a reflection of some kind of interest or other. If that is so, I would say, the Parliament should be concerned in having a discussion in depth and that is why I have moved this resolution. Let us have a look at the unique experience that we have had in regard to the exercise, by the people, of adult franchise. There were many pundits who had questioned this. There were many leaders even within the Indian National Congress at that time—as history has recorded it—who had doubted whether we could go in for this experiment. There were many who had doubted whether adult franchise would succeed in India. But it was again a tribute to the leadership and far-reaching vision of Jawaharlal Nehru who insisted on having adult franchise in this country. Whatever we may say about the malpractices that have crept into the electoral system, this basic fact of adult franchise and the consequences that had followed—whether in the electoral system or in the pattern of representation—must be preserved, so that democracy can be preserved.

While we need not go into the fundamentals of this kind—which have

been debated and settled over a period of time—a number of questions like the Centre-State relationship, the inter-relationship between the Executive, Judiciary and Parliament, the question of Presidential powers, powers of Governors etc. have been thrown up during the last 25 years, apart from other basic questions, to which I shall refer later. I do not want to go into many of these things, because the time at my disposal is limited; I shall try to be as brief as possible.

The basic thing that we have faced, apart from these constitutional problems and hurdles, was the tasks and challenge of social re-construction, or the establishment of a socialistic pattern of society. It was very interesting to me, when I read sometime ago a very eminent author and journalist, James Cameron, who said that it was interesting to watch even the so-called right-wingers in India talking in terms of socialism! While many abroad would even abhor the word socialism and would have nothing to do with it, all parties and movements in India—except a small fraction which came up, viz the Swatantra Party, after the 17th Amendment of the Constitution—most of the time all parties swore by socialism. This is the most significant part of the social reality, because the people of this country, whatever some people might say, have accepted not merely a socialistic economic system but, I would contend, the socialist ideology. That is why I had quoted Granville Austin here and had said that even during the debates in the Constituent Assembly 25 years ago, the picture of socialism was very much in the minds of its leaders and Members; and it had cast its shadow or reflection however feeble on the various provisions.

The tasks and challenges of social reconstruction take us to the question of the structure of rights, the structure of Fundamental Rights and,

[Shri K. P. Unnikrishnan]

particularly, to the realm of property rights. As I have explained earlier, while the Preamble and the Directive Principles of State Policy reflect a deep concern, a deep social concern, they had to be given effect to; and muscle had to be put into them. And life had to be given to these declarations of intent contained in the Preamble and the Directive Principles. That is what, I would say, we have attempted to do under the leadership of Jawaharlal Nehru and Shri mati Indira Gandhi during the last 25 years, right through the successive Plans and right through the expression of our intent in governmental decisions on various occasions. I had remarked earlier how a section of our judiciary—I do not want to cast any reflection on anyone—had made some pronouncements through certain judgements—and you are aware how this House had to deal with the judicial pronouncements like those in the Golak Nath case. Also, a section of the legal luminaries had taken up the position that the Constitution was something which we could not touch and that the fundamental rights, as they stood in 1950, had to remain even if one century elapsed because they are something permanent and something fundamental, according to them. This is what Mr. Palkhiwala, in his book *Our Constitution—Defaced and Defiled*, says:

"We have failed to preserve the integrity of our Constitution against many hasty, ill-conceived changes, fruits of passion and ignorance. Our basic freedoms have been drastically eroded. Article 31(C) has dealt a nearly fatal blow on liberty and law. Unfortunately, its implications are understood by few, except specialists. Politicians have been able to get away with virtual destruction of our fundamental rights, simply because of the ignorance and apathy of our people."

This is what the great luminary has said!

The House should forgive him for the way he has treated the great people of this country. They are not so ignorant and apathetic that they cannot understand what goes on nor are they ignorant of the processes of change that has taken place. I can say with confidence that the people of this great country can understand the social dynamics of their own struggle. From morning till night, day after day, for 365 days in a year, they understand this much better than Mr. Palkhiwala. Of course, Mr. Palkhiwala is free to have his own views, but it reflects a particular thinking in this country which, unfortunately, should also be traced to the highest court in this country at a particular point of time. That is why Chief Justice Subba Rao said in his judgment in the Golak Nath case, that fundamental rights are "primordial transcendental and immutable." Both the Golak Nath case and the Bank Nationalisation case tried to unsettle the earlier decisions arrived at by the Supreme Court itself on a number of issues regarding the fundamental rights.

What did Justice Patanjali Shastri say in Shankari Prasad case? In that case he remarked:

"On the other hand, the terms of article 368 are perfectly general and empowers the Parliament to amend the Constitution without any exception whatsoever. Had it been intended to save the fundamental rights from the operation of that provision, it would have been perfectly easy to make that intention clear by adding proviso to that effect."

Again, in Sajjan Singh's case, Justice Gajendragadkar said:

"That is why we think that even on principle it would not be reasonable to proceed on the basis that the fundamental rights enshrined in Part III were intended to be final

and immutably settled and determined once and for all, and were beyond the reach of any future amendment."

Regarding this particular question, there is a very interesting remark by another Judge Justice P B Mukherjee of the Calcutta High Court. He said

"After all fundamental rights is a gift of the Constitution. What the Constitution has given, the Constitution can take away no doubt by constitutional means and no doubt by making constitutional provision for the same. This word 'fundamental' *ipso facto* does not mean constitutionally unalterable. A constitution which cannot be constitutionally amended is an invitation to revolution."

Again, I would quote another learned Judge Justice K K Mathew of Supreme Court who said

"Fundamental rights themselves have no fixed content. Most of them are mere empty vessels into which each generation must pour its content in the light of its own experience."

Despite the fact that there were many enlightened Judges who understood the spirit of the Constitution, we have had enough experience in a number of cases of the interpretation that has been put on various Acts of this Parliament and the various amendments which we have undertaken to the Constitution. So, now it is time for us to consider whether it can be left to the judiciary to interpret some of these basic questions because it has been very well established that it is very well within the rights of this House to determine this question and no other authority can change it except this House itself.

The question also arises how fundamental are some of these fundamental rights. While freedom of expression,

freedom of worship, freedom of religion and so on have certainly and undoubtedly been accepted as standard reference of civilised existence in all States, I cannot say the same thing about the right to property. Justice Hidayatulla himself remarked that he did not understand how the right of property had crept into the chapter on fundamental rights. He said

"It was an error to place the right of property in the list of fundamental rights and of all fundamental rights the right of property is the weakest."

If that is so if an eminent Judge has said so I cannot understand how some people elsewhere can still claim that something terrible will happen in this country if we remove it from the chapter on fundamental rights."

Pandit Jawaharlal Nehru once remarked that originally property did not belong to any individual. So it can never be claimed that it is a transcendental right. But unfortunately in this country there are many people who claim it to be so. Dr Ambedkar however said

"Each generation is a distinct nation with a right to the will of the majority to bind themselves, but not to bind the succeeding generations."

MR CHAIRMAN My view is in your favour. This is a very important resolution but I think you would also like the maximum number of Members to participate in this discussion.

SHRI K P UNNIKRISHNAN When the question of zamindari abolition arose in the Constituent Assembly, Dr Ambedkar remarked

"Such a liberty is the liberty for landlords to increase rents, for capitalists to increase the hours of work and reduce the rates of wages."

[Shri K. P. Unnikrishnan]

"In other words, what is called liberty from the control of the State is another name of the dictatorship of the private employer"

[Quoted from the Framing of India's Constitution edited by B Shiva Rao—Vol II, P 114]

Even then, the members of the Constituent Assembly did not want it to be left to the judiciary

16 hrs.

Then, Shri Govind Vallabh Pant, while participating in the proceedings of the Constitution Advisory Committee said

"To allow the court to sit in judgment over the legislature or to control the legislature itself and to say that a law will not be valid unless it is declared so by a single individual sitting in the Supreme Court is extremely risky and I cannot subscribe to that proposition"

It was not a Communist or a Socialist who said this but it was Shri Govind Vallabh Pant

Now, with all the judicial constraints which I explained earlier and conditions and forces which now compel us to ask for a change it is necessary for Parliament to decide that the Constitution shall be given a fresh look and that a review of the Constitution in its various provisions shall be undertaken forthwith so that we can fulfil the pledge of the Constitution makers given in 1950

I would particularly ask the hon. Law Minister and the Government to look into articles 32, 141, 226 and 311. Since you are not permitting me to go into details I do not want to say much on that. I briefly refer to that question in passing.

In conclusion, I would say that it is not merely a question of ideology. It

is a compelling question. The Planning Commission in one of its reports of the Task Force has said:

"In a society in which the entire weight of civil and criminal laws, judicial pronouncements and precedents, administrative tradition and practice is thrown on the side of the existing social order based on the inviolability of private property, an isolated law aiming at the restructuring of power relations in the rural areas has hardly any chance of success."

All possible avenues of appeal and revision would be exhausted before a single step could be taken to implement it."

It has always been understood throughout the world that it rests on the State to determine the rules of accumulation, disposal and protection of property and India cannot be any exception. If we were not to fulfil our duty and our commitment, we will be failing in our duty to the succeeding generations.

Before I conclude I would like to read out a poem which is of some interest in this context. It is by a Harijan poet, Lalit Pant, poet Pawar of Maharashtra. He writes:

These Clenched fists won't
loosen now

Coming revolution Won't
wait for you

We have endured enough, no
more endurance now

The fire pit is ablaze
it is for tomorrow

Even if you take to your heels
now"

MR CHAIRMAN Resolution moved

"This House taking into consideration the experience of the working of the Constitution of India during the last twenty-five years and confronted with the tasks and challenges of social reconstruction is of the opinion that significant changes

are called for in the constitutional framework of the country. The House, therefore, urges the Government of India to initiate constitutional amendments particularly in the nature of property rights and to secure meaningful realisation of the principles enshrined in the Preamble and the Directive Principles of the State Policy of the Constitution keeping intact the Supremacy of Parliament, the federal structure and legitimate rights of the minorities, the Tribals, Harijans and other submerged sections of our population."

*SHRI KRISHNA CHANDRA HALDER (Ausgram). Mr Chairman, Sir, our party, the CPI(M) is in favour of a radical change in the Constitution and I would like to initiate my speech by citing the views of my party on this issue. Our party feel that "the whole present Constitution should be radically altered. That can be done only when a People's Democratic State headed by the working class replaces the present bourgeois—landlord State headed by the big bourgeoisie." If this is done then only a true democracy can be established in the country which can take proper and just care of the toiling masses. The question that confronts us today is what type of changes we would like to introduce in the Constitution in the background of the present prevailing conditions in the country.

Mr Chairman, Sir you are aware of the provisions of the Preamble to the Constitution which says that there shall be justice, liberty and equality and under the Chapter devoted to fundamental rights the Constitution confers on the citizen of India right of peaceful assembly without arms, a right to move freely in the country, a right to settle in any part of the country, a right to speak and express freely and many such rights. The country is passing through double emergency. You are also aware of the fact that all the fundamental

rights stand suspended. Not only this, large number of arrests are being made and the people who are being arrested are not even being told to the high courts by the Government the grounds of their arrests and in this way people are being kept behind the bars and they are being denied justice. In these circumstances the first and foremost thing that we demand is the restoration of all the democratic rights as enshrined in the Preamble to the Constitution and other Chapters of Fundamental Rights and unless this is done we do not think that the Constitution can ever work for the benefit of the working class, the peasantry and the toiling masses and in the interest of 60 crores of people of our country. The second point that I would stress upon is about the right of the citizen in regard to property. Right to property has been included under the Chapter of Fundamental Rights. Even though some laws have been passed for land reforms and only very recently the urban land ceiling Act has been passed yet it is known to all of us here that the urban rich are still in possession of vast landed property both in the form of land and buildings by hoodwinking the law. Until and unless this concentration of land in the hands of the rich is broken and unless the land is taken from their hands and distributed to the toiling masses I do not think we would be able to achieve any real progress nor we will be able to give the benefits to the millions of the toiling masses that they deserve. While initiating the resolution Shri Unni Krishnan has already pointed out how there exist at present a relation of antagonism between the executive and the judiciary. He has also explained how the Supreme Court and the High Courts through their rulings are creating unnecessary interference in the implementation of the land reforms legislation all over the country and all such rulings have gone in favour of the landed bourgeoisie. I would like to recall that when the United Front Government was in power in

*The original speech was delivered in Bengali.

[Shri Krishna Chandra Halder]

West Bengal, they wanted to enforce the land reforms act and wanted to make the tillers of the soil the masters of the land. Unfortunately the efforts of the Government was frustrated and when the Calcutta High Court issued injunctions in favour of the big zamindars who were holding land beyond the ceiling limits and also those who were in possession of benami land. Pressed in difficult corner, the United Front Government and our party had given a call for peasants agitation and I feel proud to say even though there was court injunction the Government was able, with the cooperation of the people, to get hold of the excess land they were able to distribute no less than 7 lakhs acres to the share croppers, tillers and landless agricultural workers. I distinctly remember, Sir, and may hon. Members will also remember that in this House the ruling party had let loose a campaign of slander against the Government of West Bengal at that time for their pro-labour actions. It was being shouted from the house tops that the U.F. Govt. were not showing adequate respect to judiciary. Today, the whole spectrum has changed. Today we hear the Prime Minister often saying that the Opposition Government of West Bengal under the leadership of our party—the CPI(M) had done nothing to ameliorate the conditions of the poor peasantry. But I am sure that every right thinking person in the country will concede that it was the U.F. Govt. of West Bengal who was the first pace setter for land reform legislation and its implementation in this State and it was they who had highlighted the fact that but for this essential reform no real progress can be achieved in the country and thereby making the issue a National one. Today the Central Government seems to have woken up to the needs of introducing land reforms and to deal with the problems connected thereto but they feel shy today to acknowledge what was done by the U.F. Government in West Bengal. Even though they are say-

ing so many things about land reforms our party feel that they are really not interested in these matters and these are being used as slogans to baffle the people at large because unless we go into the roots of the problem we can not solve it and we also feel that right of property cannot be fundamental and as long it is there it will frustrate all efforts to make any headway in making any reforms in tenancy legislation. We also feel that he who owns the plough must be the owner of the land but we have to go a long way to achieve this. It is also our feeling that attaining this laudable objective cannot be possible unless we are able to arouse the people and enthuse the toiling masses, unless there is agitation and unless the prevailing social structure is changed lock stock and barrel. We also feel that to carry out these purposes, Article 19(f) and Article 31(1) should be amended and my party feels that these should be substituted by the following:

"(1) The right of citizens to their land holdings, handicrafts and small-scale industries, house, trade, profession or vocation, implements and other accessories necessary to carry on their trade, profession vocations within the limits prescribed by law, and the right of citizens in their incomes and savings from their work, and the income derived from the above-mentioned properties, articles of domestic economy and use and articles of personal use and convenience as well as the rights of citizens to inherit personal property shall be protected by law."

"(1A) All other property besides that specified in clause (i) of this article may be acquired by authority of law for public purposes or for securing justice, liberty and equality to all citizens, without paying any compensation or paying such amounts as may be fixed by such law or as may be determined according to the principles laid down in such law for pay-

ing such compensation. No such law shall be called in question by any court including the Supreme Court."

These are the changes that we want in the Constitution in the present situation in the country.

Mr. Chairman, Sir, I would like to draw the attention of this House to another matter of great importance. You are well aware of the fact and so are the members of this House that the members of the Scheduled Castes and Scheduled Tribes entirely depend on land for their living. These two communities comprise the biggest sector of agricultural labour, sharecropper, and only a small percentage of them possess tiny pieces of land. In many parts of the country such as Bihar, UP, Tamilnadu, M.P. etc., these people are being deprived of the common human rights. They are not being given living wages, they are being evicted from the land and even their cultural rights are not being protected. I would therefore strongly urge to uphold the cause of these down trodden people and to ensure to them all the above rights that I have mentioned. If the Constitution comes in the way then let us amend the Constitution. We also feel that it should not be sole prerogative of the President to declare emergency where. We also feel that like the Constitution Amendment where a two-third majority is required for passing a Constitution Amendment Bill, declaration of emergency can in a similar way be passed only by Parliament when there arises a situation which affects the internal security of the country and this proposal should be passed by the 2/3 majority of the members as in the case of the Constitution Amendment. We also feel that the Governors should not be appointed and should be elected by the respective State Legislatures and the State Legislatures should have the right to

remove them through a majority vote. We also feel that it should not lie within the powers of President to dismiss a Minister. In fact this power should vest with the Council of Ministers. It is also our feeling Sir, that persons of 18 years of age and above should have a right to vote. There should be a proportional representation. Once again we find that the game of Aya Rams and Gaya Rams have started and to curb this evil tendency of defection there should be a provision to recall in our Constitution. There should be no occasion for the Central Government to dissolve a State Government as long as the party forming the Government enjoys majority in the legislature. We strongly deprecate the Central action of introducing President's Rule in Tamilnadu recently. Merely on the grounds of prevailing corruption or charges of corruption the legally constituted Government cannot be dislodged because such alterations are not uncommon to a Government formed by the Opposition Party but they are prevalent in equal measure in Governments that are formed by the Congress Party and among the Central Ministers. We should have one yard stick of measuring corruption in all States and the balance of justice cannot be tilted against an opposition ruled Governments only.

SHRI K. P. UNNIKRISHNAN: May I submit that on an important issue like this you should permit some more time and I am seeking extension. On such an important issue a large number of members would like to take part.

MR. CHAIRMAN: We will consider

SHRI M. C. DAGA (Pali): Every member would like to participate in the discussion. The time should be extended by two hours.

SHRI KRISHNA CHANDRA HALDER: I support it.

SHRI THAKIRUTTINAN (Sivaganja): As far as possible, please try to accommodate almost all the members.

सभापति महोदय अभी मुझ से पहले डिप्टी स्पेकर साहब ने कहा था कि इसका टाइम बढ़ाने के बारे में जरूर कन्सीडर किया जा सकता है, क्योंकि यह एक बहुत इन्वारटेंट रेजोल्यूशन है। इस वक्त इसके लिए दो घंटे एलाट हुए थे, साढ़े तीन बज में इस पर बहस शुरू हुई थी, यानी अभी भी 1 घंटा 8 मिनट बाकी है। जब इस का टाइम खत्म होने वाला हो, तब इस पर गौर किया जाय। लेकिन एक बात में जरूर कह देना चाहता हूँ— बहुत बड़ी मादाद में मेम्बरान इस बहस में पार्टिसिपेट करना चाहते हैं, यह एक अच्छी बात है। मैं मेम्बर साहबान में यह दरखास्त करता कि उन प्राइन्ट्स को रिपोर्ट न करें जो पेश किये जा चुके हैं, नये प्राइन्ट्स सामने लायें तो ज्यादा अच्छा होगा, ताकि ज्यादा से ज्यादा लोग इसमें पार्टिसिपेट कर सकें।

श्री भोगन्दा झा (जयनगर) : पार्टीज का टाइम बढ़ा दिया जाय, ताकि मेम्बरज कन्सीडर ओपीनिमन रख सकें।

सभापति महोदय : मेरे पास स्पिकर साहब की डायरेक्शन्स हैं, उसमें साफ लिखा है कि मूवर को आधा घंटा और दूसरे स्पिकर को 10 से 15 मिनट दिये जा

सकते हैं। जो पार्टी के रिजेजेन्टिव होंगे उन को मैं 15 मिनट दूंगा। क्लर्क साहब को 15 मिनट दे रहा हूँ, 13 वें मिनट पर मैंने घण्टी बजा दी थी।

SHRI DINESH CHANDRA GO-SWAMI (Gauhati): This is a subject in which justice cannot be done within ten minutes. The time each member will get will be dependant upon the time of the debate. If you decide to conclude it to-day, the members will get less time. If it is extended, members will get more time. So, a decision may be taken now so that members may know what time they will be getting.

श्री भोगन्दा झा : कांफ्रेंस के बारे में यह भी बयान रखना होगा कि इसमें दो पार्टियाँ एक साथ शामिल हैं।

श्री मूल चन्द झावा : कांफ्रेंस में कोई दो पार्टियाँ नहीं हैं, कांफ्रेंस एक ही पार्टी है।

MR CHAIRMAN I will see that justice is done to the subject

***SHRI KRISHNA CHANDRA HALDER** At present we find that all powers are concentrated in the Central Government and this is hampering in a great measure the Centre State relations. We feel that the subjects enumerated in the State List should be the concern of the State Governments and they along should legislate and there should not be any undue interference by the Central Govt in this sphere. If this is done then the States will have some autonomy. This will promote integrity and unity of the nation apart from ensuring a strong Govt. at the Centre. It is very necessary that the Constitution should be amended to make the country powerful and make the

people happy. It is necessary to amend the Constitution to provide that there should be a right to work for every citizen, that education upto higher secondary standard is made free, that all citizens are given free medical treatment, that the unemployed persons get unemployment allowance, that the old and infirm get suitable pension and that there is proper implementation of the law which provides equal pay for equal work both for men and women

This we cannot achieve unless we are able to liquidate the vested interests in the country. It is equally essential that all foreign money and the capital invested by the multinationals are nationalised. In a similar manner, monopoly capital should also be nationalised. Land should go to the tillers and all surplus land should be taken over by the Govt without any payment of compensation. These surplus lands should be distributed among the landless belonging to the Scheduled Caste and Scheduled Tribes, the toiling masses, the landless, the charcoopers, and unless we are able to make a determined bid to take the country to the above direction amendments of the Constitution will be of no avail. They will continue to be perfunctory and against the interests of the toiling millions of the country.

श्री सैयद अहमद खाण (बागमूना)

सदे मोहनरम म हमकी लीगल बहन में नदी पड़ना चाहता क्यों कि वह बेकार है आप लोष जानते हैं। मबान यह है कि एक ग्राम आदमी जिसकी बदीनत में यहा हूं या जिसकी बदीनत हमे आत्रादी शामिल है, या जिसकी बदीनत हम आत्रा आत्रादी की फिजा में माम ले रहे हैं, वह क्या कह रहा है। मैं वहीं कहना चाहता हू। वह आईन को पढ़ता

वह अदालत के फैसले को नहीं पढ़ता और न उस में जाना चाहता है। पा-खोवाला को उस बहम को बिल्कुल बेकार समझता है जिस के मुनाबिक रद्दीबदन की कोई गुंजायश नहीं है। मबान यह है वह यह चाहता है और कहता है कि आप वह काम कीजिये जिससे उसे राहत मिले। वह कहता है कि आप ने कहा था कि हम लोगों के मयारे जिन्दगी का ऊपर उठाना चाहते हैं। लेकिन वह आम इन्मान आत्र भी वही का वही है जहा आत्र से 27 साल पहले था। आप ने कह था कि बेकार का रोटी मिलेगी। लेकिन आत्र उस को दो वक्त भी खाना मुश्किल में नमीव होता है। वह यह कहता है कि आप कोई जिल बनान है ता अदालत आप का काम राखती है। जब आप बैंको को नेशनलाइज करने हैं ता आप के हाथ राके जाने हैं, और आप का यह कहा जाता है कि जा आईन बना था वह इने बड़े अकनमन्द लाग। ने बताया था इसलिए उसमें रद्दीबदन नहीं हुआ मरनी। वह यह कहता है कि जा अन्नाह का क्लाम है वह भी बदल गया 10 नमिन्डमेंट्स भी वक्त की रफ्तार के मुनाबिक बदल गये न्यू टेस्टमेंट आया, फिर कुगल आया खदान भी अपना फरमान वक्त की जरूरत के मुनाबिक दिया। वे कहते है कि आपका आईन क्यों नहीं बदलता है। हमसे क्या बात है और यह क्या बहम है। यह प्रोपर्टी का क्या मबान है, यह क्या बहस है? मैं एक तीन फीट की झोपड़ी में रहता

[श्री सैयद अहमद शाणा]

हूँ और मेरे पास ही ओबराय का 35 मजिला ओबराय-बोरीटन होटल है। उसका दो मजिला से 35 मजिला कैसे हो गया और मेरे पास जो एक ओपडी थी, वह नीचे चली जा रही है और वह ऊपर चला जा रहा है। यह इतना बड़ा फर्क है। आप ने कहा था कि हम फर्क मिटाएंगे और इक्वलिटी लाएंगे। वह कहता है कि यह फर्क क्यों है और इसको मिटाने के लिए आप क्या कर रहे हैं। वह कहता है कि मैंने आप को बोट दिया है और आप इस एवान में आए हैं। तो इस एवान में क्या हो रहा है। इसका मुझे जवाब मिलना चाहिए। यह जो बड़ी बड़ी वही होनी है यह लीगल ल्यूमनरीज की बात है और वह अलग बात है। सवाल यह है कि जिस वकन आप ने आईन बनाया था, उसमें उस समय आप ने यह रखा था कि हम बेहतर समाज बनाएंगे लेकिन बेहतर समाज बनाने के लिए हम ने कदम उठाए या नहीं उठाए। वह यह जानना चाहना है। वह कहना है कि आप पहले कहते थे कि एकमप्लायमेंशन नहीं होगा लेकिन आज भी एकमप्लायमेंशन हो रहा है। वह एकमप्लायमेंशन क्यों नहीं बन्द हुआ। वह कहना है कि आप ने कहा था कि जो सरकार होगी वह कोशिश करेगी कि वेलफेयर स्टेट हो और समाजवाद लाया जाएगा लेकिन ऐसा नहीं हुआ है। जिस वकन मैं आईन को देखना हूँ और गौर से देखना हूँ तो मैं यह पाता हूँ कि डाइरेक्टिव प्रिंसिपल्स से

यह लिखा है "दि स्टेट शॉल स्ट्राइव"। जो करना है वह तय नहीं है बल्कि यह लिखा है कि कोशिश की जाएगी। वह कोशिश नहीं हो रही है। क्यों नहीं हो रही है? सवाल यह है कि एक तरफ तो आप धातुओं को प्रोपर्टी राइट्स को महफूज रखने के लिए बेतहाशा अभियान देने हैं और दूसरी तरफ आप डाइरेक्टिव प्रिंसिपल्स में यह कहते हैं कि कि "कोशिश करेंगे"। यह कोशिश का सवाल नहीं है। आईन इन लिए बना था कि सब को इक्विनिटी और एक्विनिटी मिले, आईन इसलिए बना था कि हम समाजवाद लाए। सवाल यह है कि पालकीवाला को जो बहस है वह बहस उन लोगों के लिए बेकार सी है और लोग उसको नहीं सुनना चाहते हैं। उसको अलग रख कर हमें और चीजों को सोचना चाहिए। वह क्या बहस करने है वह अलग बात है। वे एक लफ्ज के बेअन्दाज मादन लगाने हैं और उस इन्टर-प्रिटेन में आगे चलना चाहते हैं जो कोर्ट में होता है। जो लोग ल्यूमनरीज हैं, वह हर चीज का इसी तरह से करना चाहते हैं पालकीवाला ने एक किताब लिखी है। वह आपने भी पढ़ी होगी और मैंने भी पढ़ी है।

"The State shall direct its policy towards securing adequate means of livelihood"

अब फिर वही बात आ जाती है। उस में लिखा है "लेवल डाइरेक्ट" अगर हममें यह कहीं नहीं लिखा है "शुद्ध लेवल हूँ"। प्रोपर्टी को महफूज रखने के लिए यह सब किया गया है क्योंकि उस समय

जो लोग थे, जोकि हमारे वर्ज्य थे और जिन के लिए हमारे दिल में बड़ा एहतराम है, उनमें से बहुत से उस क्लास को विलाप करते थे जो शायद प्रोपर्टी रखे थे और प्रोपर्टी को महफूज रखना चाहते थे। मबाल यह है कि आज वह जमाना नहीं है। आज हम भागे जाना चाहते हैं और गरीबी को दूर करना चाहते हैं। इसलिए हमारी एप्रोच भी भ्रमलन होनी चाहिए और जो एप्रोच डाइरेक्टिव प्रिंसिपल की है, वैसी एप्रोच नहीं होनी चाहिए मबाल यह है कि हमारा एकोनोमिक सिस्टम ऐसा होना चाहिए और उसको हमें ऐसा इबोल्व करना चाहिए जिसके तहत हम नाबराबरी को दूर करें। अगर वह नहीं करते हैं तो यह जा बहस है, इसमें क्या हो सकता है, यह सब बेकार हो जाती है। हमें मागी एप्रोच बदलनी है और उस एप्रोच को बदलने के लिए हमारी थिंकिंग फिर वापस जानी चाहिए उस तरफ जब हमने आईन बनाया था। जो आईन थे उनको हम नहीं ला सके और ऐसी क्या वजह थी जिसमें हम आईन को भ्रमली जामा नहीं पहना सके, जैसा हम चाहते थे उस ढंग से नहीं कर सके, इन सब बातों को हमें देखना चाहिए।

मैं इस करारदाद की जो श्री उनीकुण्णन साहब ने आपके सामने रखी है तारीफ करता हूँ और समझता हूँ कि हमें प्रोपर्टी के राइट को जिस को प्रोटेक्शन मिला हुआ है, यह नहीं मिलना चाहिए, बिल्कुल नहीं मिलना चाहिए। इसके साथ साथ मैं यह

भी चाहता हूँ कि नाबराबरी को दूर किया जाए। दोनों चीजें साथ साथ जानी चाहिए। जो वादे हमने किए थे वे पूरे होने चाहिये।

उठो मेरी दुनिया के गरीबों को
 जगा दो

काखाए उमरा के दरो दीवार हिला
 दो।

फिर तो जो छोटा सा मकान है अगर वह गिर गया और जो बड़ा मकान है वह और बड़ा हो गया, तो इसको कोई बरदाश्त नहीं करेगा। जो आज तक होता आया है उसका हमें जवाब देना है। गरीब का कहना यह है कि उसकी गरीबी पिछले पच्चीस बरस में क्यों दूर नहीं हुई? कौन सी रुकावटें थी जो रास्ते में आईं? उनको हम को दूर करना चाहिए। गरीब अगर गरीबी दूर करने के लिए कहता है तो यह उसका हक है। उसकी गरीबी को दूर करना हमारा फर्ज भी है। उसको उसका हक मिलना चाहिए। इसलिए, उसने आजादी की जो जंग लड़ी और हम आज यहां विराजमान हैं। इतना ही मुझे अर्ज करना है।

[شرعی سید احمد آغا (بارالاولا):]

مہر ہے - میں اسکی لکل
 بھٹ میں نہیں ہونا چاہتا
 ہوں کیونکہ وہ بے کار ہے - سوال
 یہ ہے کہ ایک نام آدمی جس کی
 بدولت میں یہاں ہوں یا جس کی
 بدولت میں آزادی حاصل ہے یا
 جسکی بدولت ہم آج آزادی کی فضا

[شری سعود احمد آغا]

میں سانس لے رہے ہوں۔ وہ
کہا کہہ رہا ہے۔ میں وہی کہتا
چاہتا ہوں۔ وہ انہیں کو نہیں پڑھتا۔
اور نہ اس میں جاتا چاہتا ہے وہ
پالکی والا کی اس بحث کو بالکل
بے کار سمجھتا ہے جسکے مطابق وہ
بدل کی کوئی گنجائش نہیں ہے۔
وہ یہ چاہتا ہے اور کہتا
ہے کہ آپ وہ کام کھائے جس
سے اس کو راحت ملے۔ وہ کہتا ہے کہ
آپ نے کہا تھا۔ کہ ہم لیگ کے
ممبران زندگی کو لوہر اٹھانا چاہتے
ہیں۔ لیکن وہ عام انسان آج بھی
وہوں کا وہوں ہے جہاں آج سے ۲۷
سال پہلے تھا۔ آپ نے کہا تھا کہ
بے کار کو روٹی ملے گی۔ لیکن آج
اسکو دو وقت کا کھانا ممکن ہے
نصیب ہوتا ہے۔ وہ یہ کہتا ہے کہ
آپ کوئی بل دیتے ہیں تو عدالت
ایک آم روکتی ہے۔ جب آپ لیگ
کو نیشنلائز کرتے ہیں تو آپکے
دوڑے جاتے ہیں۔ اور آپکو یہ کہا جاتا
ہے کہ جو آئین بنا تھا وہ بڑے
عتساف لیگ نے بنایا تھا لیکن آج
اس میں وہ بدل نہیں ہو سکتا
وہ یہ کہتا ہے کہ جو اللہ کا کلام ہے
وہ بھی بدل گواہ دس کمانڈمنٹس
بھی وقت کی رفتار کے مطابق بدل گئے
ہیں۔ وہ کہتے ہیں سوشلسٹ مینٹ
آیا یہ قرآن آیا آپ کا آئین گواہ نہیں

بدلتا ہے۔ اس میں کہا بات ہے۔ اور یہ
کہا بحث ہے۔ یہ پراپرٹی کا کیا سوال
ہے۔ یہ کہا بحث ہے۔ میں ایک
تین نصف کی جہیزوں میں رہتا
ہوں۔ اور میرے پاس ہی اوپر کے کا
35 ملز سوچا ہوٹل ہے۔
اس کا دو ملز سے 35 ملز کہے ہو
کہا۔ اور میرے پاس جو ایک جہیزوں
تھی وہ نچے چلی جا رہی ہے۔ اور
وہ لوہر چلا جا رہا ہے۔ یہ اتنا ہوا
فرق کہوں ہے۔ آپ نے کہا تھا کہ ہم فرق
سٹائمنٹ۔ اور ایک ویلٹی لائن کے۔ وہ
کہتا ہے کہ یہ فرق کہوں ہے اور اس
کو مٹانے کے لئے آپ کیا کر رہے ہیں۔
وہ کہتا ہے کہ میں نے آپکو روٹ دیا
ہے۔ اور آپ اس ایوان میں آئے ہیں۔
تو اس ایوان میں کہا ہو رہا ہے ؟
مجھے جواب ملنا چاہئے۔ یہ
جو دبی دبی بحثیں ہوتی ہیں وہ
لیگل اور ممبرز کی بات ہے اور وہ
ایک بات ہے۔ سوال یہ ہے کہ جس
وقت تم نے آئین بنایا تھا اس میں
اس سے آپ نے وہ رکھا تھا کہ ہم
ہوئے سماج بدلتوں گے۔ لیکن بہتر
سماج بنانے کے لئے نئے قدم اٹھائے
یا نہیں اٹھائے۔ وہ یہ جانتا چاہتے
ہیں۔ وہ کہتا ہے کہ آپ پہلے کہتے
تھے۔ کہ ایکسپانڈیشن نہیں ہوگا۔
لیکن آج بھی ایکسپانڈیشن ہو رہا
ہے۔ وہ ایکسپانڈیشن کہوں نہیں بلکہ
ہوا۔ وہ کہتا ہے کہ آج کہا تھا

کہ جو سرکار ہوگی وہ کوشش کریگی
کہ ویلفیئر سٹیٹ ہو۔ اور سماجواں ایسا
چاہتے ہیں لیکن ایسا نہیں ہوا ہے
جس وقت میں انہیں کو دیکھتا ہوں۔
اور فور سے دیکھتا ہوں تو میں یہ
پتا ہوں کہ ڈائریکٹو پرنسپل میں
یہ لکھا ہے۔ دوسری بات شمل سٹرائیو
(strive) جو کارن ہے وہ طے نہیں ہے۔
بلکہ یہ لکھا ہے کہ کوشش کی
چائیگی۔ وہ کوشش نہیں ہو رہی ہے۔
کہوں نہیں ہو رہی ہے؟ سوال یہ ہے کہ
ایک طرف تو آپ عدالتوں کو پراپرٹی
وائٹس کو محفوظ رکھنے کے لئے
اختیار دیتے ہیں اور دوسری طرف
آپ ڈائریکٹو پرنسپل میں یہ کہتے
ہوں کہ کوشش کریں گے کہ کوشش کا
سوال نہیں ہے۔ انہوں اس لئے بنا
تھا کہ ایک ہی آف ایور چھوٹی ملی۔
انہوں اس لئے بنا تھا کہ ہم سماج واد
لٹوں۔ سوال یہ ہے کہ پالکی
والا کی جو بحث ہے وہ بحث
اُن لوگوں کے لئے ہے گا۔ سی ہے
اور لوگ اسکو نہیں سہا چاہتے ہیں۔
اسکو الگ رکھ کر ہمیں اور چھوڑ
کو۔ سوچنا چاہئے۔ وہ کہا بحث کرتے
ہیں۔ وہ الگ بات ہے۔ وہ ایک لفظ
کے بے انداز۔ علی لکاتے ہیں۔ اور اس
انٹریپرٹیشن سے آگے بھی چلنا چاہتے
ہیں۔ جو کورٹس میں ہوتا ہے جو
لیگل لیو ممبرز میں وہ ہر چیز کو
اسی طرح کرنا چاہتے ہیں۔ اس کے

بارے میں ایک آرٹیکل بھی لکھا گیا
تھا۔ وہ شاید آپ نے پڑھا ہوگا۔ اب
سوال یہ ہے کہ ہم نے پھر اس
انہیں میں یہ لکھا ہے

"The State shall direct its policy
towards securing adequate means of
livelihood."

اب تک پھر وہی بات آ جاتی ہے۔ اس
میں لکھا ہے وہ شمل ڈائریکٹ ہے مگر
اسمیں یہ کہیں نہیں لکھا ہے وہ بات شمل
قو ہے پراپرٹی کو محفوظ رکھنے کے لئے
یہ سب کیا گیا ہے۔ کیونکہ اس سے
جو لوگ تھے جو کہ ہمارے بزرگ
تھے اور جنکے لئے ہمارے دل میں
بڑا احترام ہے ان میں سے بہت سے
اس کلاس کو پانگ کرتے جو شاید
پراپرٹی رکھتے تھے۔ اور پراپرٹی کو محفوظ
رکھنا چاہتے تھے۔ سوال ہے کہ آج وہ
زمانہ نہیں ہے۔ آج ہم لوگ جاننا
چاہتے ہیں۔ اور غریبوں کو دور کرنا
چاہتے ہیں۔ اسلئے ہماری اپروچ بھی
علا ہونی چاہئے۔ اور جو اپروچ
ڈائریکٹو پرنسپل کا ہے ویسی اپروچ
ہونی چاہئے۔ سوال یہ ہے کہ
ہمارا ایکٹو سسٹم ایسا ہوا چاہئے
اور اسکو ہمیں اپلو کرنا چاہئے
جس کے تحت ہم نابرابری کو دور
کریں۔ اگر وہ نہیں کرتے ہیں تو یہ
جو بحث ہے اس میں کیا ہو سکتا ہے۔
یہ سب بے کار ہو جاتی ہے۔ ہمیں
ساری اپروچ بدلی ہے اور اس اپروچ
کو بدلنے کے لئے ہماری تہذیب پھر

[شری سچند اُردا]

وایس آئی چاہئے۔ اس طرف جب ہم نے آئین بدلایا تھا۔ جو آدرش تھے انکو ہم نہیں لے سکے اور ایسی کہاوت تھی جس سے ہم آئین کو صلی جامہ نہ دے سکتے۔ چوسا ہم چاہتے تھے۔ اس تھلک سے نہیں کر سکے۔ ان سب باتوں کو ہمیں دیکھنا چاہئے۔

میں اس قرارداد کی جو شری لونی کرشنن صاحب نے آپکے سامنے رکھی ہے نایاب کرتا ہوں اور سمجھتا ہوں کہ ہم پراپرٹی کے رائٹس کو جس کو پروٹیکشن مای ہوئی ہے یہ نہیں ملای چاہئے۔ بالکل نہیں مای چاہئے۔ اس کے ساتھ ساتھ میں یہ بھی کہتا ہوں کہ نااہلی کو دور کیا جائے۔ دونوں چیزیں ساتھ ساتھ جانی چاہئیں۔ جو وعدہ ہم نے کئے تھے وہ پورے ہونے چاہئیں۔

انہو مای ذہن کے شرمیلوں کو دیکھا دو کچھ و امرا کے دور دیوار کا دور۔ پور تو جو چھوٹا سا مکن اگر وہ گر گیا اور جو بڑا مکن ہے وہ اور بڑا ہو گیا اسکو کوئی برداشت نہیں کریگا۔ جو آج تک ہوتا آیا ہے اسکا ہمیں جواب دینا ہے۔ فریب کا کہنا یہ ہے کہ اُسکی فریبی پچھلے پچھس برسوں میں کبھی دور نہیں ہوئی؟ کون سی روگاہیں تھیں جو راستے میں آئیں۔ لیکن کو ہم کو شور کرنا چاہئے۔

فریب اگر فریبی دور کرنے کے لئے کہتا ہے تو پھر یہ اس کا حق ہے۔ اس کی فریبی کو دور کرنا ہمارا فرض بھی ہے۔ اس کو اس کا حق ملنا چاہئے۔ اس لئے اس نے آزادی کی جاگ لڑی اور ہم آج یہاں برآمدان ہری۔ اتنا ہی مجھے عرض کرنا ہے۔ [

SHRI BHOGENDRA JHA (Jainagar): Mr. Chairman, Sir, I am very happy indeed that my hon. friend, Shri Unnikrishnan has moved this Resolution. I am particularly happy because this Resolution has been moved by a Member from the Congress Bench. We would like to state here that if the Congress Party do not support this, no constitutional amendment is possible.

Last Friday, 3 out of 8 speakers who spoke from the Congress Benches totally and fanatically supported the property right as a fundamental right. In that background, I am particularly happy that this Resolution has been moved by a Congress Member. I am not going to blame our Constitution. At the time when the Constitution was framed, the conditions prevailing then were entirely different; the country had been partitioned, millions had been uprooted from their homes and we had attained Independence just then and, therefore, we maintained the basic structure. In that background we gave unto ourselves the Constitution drafted by the Constituent Assembly which had not been elected on the basis of The adult franchise. That was the position at that time.

Now, after the experience that we have gained, we know how our Constitution has been amended so many times: many more amendments are still pending. I think our Constitution has to be given a thorough look

afresh and some basic changes are to be made by Parliament for that purpose. (Interruptions). In that background, I am speaking. There are vested interests; monopoly houses; ex-princes and big landlords whose spokesmen in the judiciary say that our Constitution cannot be amended. Some of my friends who call themselves as leftists also see the point; I am not blaming anyone here. I hope each one of you will support this measure.

In such a situation, I want to remind this House that we should not go by the judgment given in the case of Shri Keshavanand Bharti. In that case, the Supreme Court had given its verdict that the basic structure of our Constitution should not be touched. I want to tell you here that the words 'basic structure' have not yet been defined. I wish to state here that we should uphold the sovereignty of Parliament; the Parliamentary system is the basic structure. We should go to nothing beyond that. Nothing beyond that, that is, the Parliament elected on the basis of adult franchise is sovereign and this is the basic structure of our democratic structure and anything else should be and 'can be' altered or amended by this Parliament. Even the case of Keshvanand Bharti must not be accepted and in regard to Article 368 of the Constitution—if that is to be clarified—that should be clarified although there is no need for it.

The sovereignty of Parliament need to be emphasised and has been emphasised in the Resolution because there is loud talk going on for Presidential form of Government being more suitable to India. We know, Sir, in the case of the biggest presidential form of Government, namely, U.S.A. how the President who was elected by the largest margin of votes had to go. He proved to be one of the most corrupt Presidents and in that very big and powerful

country we have an unelected President at the helm of affairs. Among the capitalist countries and capitalist democracies ours is not the least democratic country but I would say it is the most democratic system. At the moment I am only talking of capitalist democracies vis-à-vis our democracy.

The sovereignty of Parliament, the federal structure of our country, the autonomy to the States and protection to the minorities—because ours is a multi-lingual and multi-religious country and separate identities and interests have to be safeguarded—these must form the basic structure of our Constitution. But, Sir, attempts are being made to confuse the issue. At the time when the Constitution was framed and since then it has been taught to us in the institutions also that there are three pillars of our democracy—judiciary, executive and legislative.

For several years in the past now our judiciary has come into contact with the people and people feel that judiciary is on the side of wealth and not on the side of people; that the judiciary is siding with the vested interests and, I do not think, we should permit our judiciary to be equated or to be bracketed along with the vested interests of our country. So, in that context some drastic changes have to be made with regard to the composition of the judiciary, its manner and method of functioning also so that its prestige and dignity are maintained in the interest of our democracy itself. In that context I would like to point out that at present the judges are nominated by the President in consultation with the Prime Minister and the State Governors as far as the High Court judges are concerned. I think it is very undemocratic. I suggest that Government should take into consideration whether it would be possible that Parliament prepares

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a panel of judges and from that panel alone. . .

SHRI M. C. DAGA (Pali): Will the Members of Parliament decide the whole thing;

SHRI BHOGENDRA JHA Please do not interrupt. I know you are speaking on behalf of money. Under our Constitution, justice is on sale in the courts. You pay the highest fee and you will get the senior-most barrister. Here you turn white into black. 2 (Interruptions)

MR. CHAIRMAN Mr. Daga your name is here.

SHRI BHOGENDRA JHA Law is on sale, legal talent is on sale. The biggest moneybags can get it. The honest peasant cannot. This is the stark reality, the fatal reality. It must be remedied.

In such a situation, I think respect for the judiciary should be maintained and it shall be enhanced if the Judges are not allowed to interfere into matters of fundamental right to the smugglers, to the blackmarketers, to the hoarders and to fascists who want to do away with democracy. (Interruptions) In such a situation, I think the Supreme Court Judges' panel should be prepared by Parliament, because after all, we represent the people. If we are bad, the people will throw us out. The Judges' panel should be prepared by Parliament. Similarly, the High Court Judges' panel should be prepared by the State legislatures and only from amongst them they should be nominated. (Interruptions) Members who do not like what I say could either keep mum or keep out. If they have to ask me anything, they can but if they are turning it into a market, it should not be allowed.

In such a situation, I think the composition of the judiciary will be

changed, because of the democratic urges of the people. There is no dearth of eminent lawyers in the country who can sacrifice for the cause of democracy, who can sacrifice for the cause of the people. It has been our tradition from Gandhiji, C. R. Das and Motilal Nehru. Many in the profession have sacrificed for that. In that situation, it will be for the democratic organs, the sovereign Parliament and State legislatures, to prepare the panels from which they should be nominated. For that articles 124 and 217 should be amended.

Then the question arises: who should test the constitutional validity of any law enacted by Parliament? I do seriously propose that Judges should not be allowed to do that. (Interruptions) Please hear me. We are discussing it. I speak out. I will also hear you. Take it seriously. Because we are serious; we do not want a violent overthrow, either fascist or any other; we want our democratic structure to give solutions to our problems in a peaceful manner. That is why I am seriously proposing things which will allow our democracy to function and advance in consonance with our needs and requirements not only of today, but of tomorrow and the day after too.

In such a situation, because the legislatures are there to interpret the law, the judiciary should be there to see that the laws are enforced and not violated by the executive, not that Parliament should not enact law. For testing the validity of laws, there should be a Constitution Committee elected by Parliament. (Laughter) Nominated members may laugh at it, but people who are elected, do seriously demand it. There should be a Constitution Committee elected by Parliament in which non-MPs may also be members. It should be a statutory Committee. (Interruptions) Many people who have said it long ago, have gone and in their place you have come. I say it today.

tomorrow someone else will come. But history will march on, India will march on and democracy will proceed.

SHRI M. C. DAGA: Is it the idea of the hon. Member to abolish the judiciary altogether?

SHRI Bhogendra Jha: No. I want to give it dignity and prestige.

SHRI HARI KISHORE SINGH: To Daga?

SHRI BHOGENDRA JHA: To the judiciary. That is beyond me, to give prestige to him. I am talking of the judiciary. There should be a statutory Constitution Committee, for which there should be provision in the Constitution, which can decide on the constitutional validity of any law enacted by Parliament.

One more thing Justice should be made cheaper, because today you have fabulous fees over which there is no control, no limitation, in our country. It may be hundreds or thousands or hundreds of thousands. This is sale of justice, this is sale of legal talent which is insulting to the legal profession itself. It is high time we put a limit on it, a bar on its excess. Under capitalism, we cannot totally abolish it. But we must limit it. That is my submission. We have respected the judiciary when they said that the privy purses must be maintained and Parliament had no right to alter it, again when they said that the bank owners must keep the money of the depositors, of millions of people. Then Parliament was dissolved and we went to the people. You can imagine the situation. Suppose there is an attack on our country and the Army marches and someone goes under article 31(C) to the Supreme Court and the Supreme Court gives a stay order that the Army will not march pending the final disposal of the case. Any thing can be taken there.... (Interruptions).

SHRI M. C. DAGA: If the Army marches, can a stay order be issued? (Interruptions). We want to understand, the hon. Member is giving very noble ideas.

SHRI DINEN BHATTACHARYYA (Serampore): It shows that there is no dearth of lunatics in the country.

SHRI BHOGENDRA JHA: For two years in Punjab and Haryana, the High Courts stayed the operation of land ceiling laws which gave opportunity to millions of people. Strugglers wanted their fundamental rights from the Supreme Court and they were released. There is a country called India and there are 600 million people and they have also to get their fundamental rights. We can impeach the President, the impeachment of judges also should be provided for in our Constitution.

SHRI JAGANNATHA RAO (Chattrapur): It is there.

SHRI BHOGENDRA JHA: It should be specified to certain cases.

With regard to the other services, legislative and executive, I want to say this. Our bureaucracy, executive, needs to be democratized. The democratically elected representatives are in need of being made more accountable to the people and to the tasks that they are performing, that they are supposed to perform. Now when they go to the people they say: I have asked questions in parliament, I have spoken in Parliament but I cannot implement the scheme. When people go to the bureaucrats, officers they say: what can we do, whatever we are asked to implement, we are implementing. People run hither and thither. They do not know who is accountable for this under our democratic system. You can abuse the Minister or the Prime Minister individually. The elected representatives should be made more accountable and more responsible with

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regard to performance, with regard to implementation of the schemes and enactments. For the purpose of execution of schemes the constituencies of the Lok Sabha and the legislative assemblies should be turned into administrative units. There is no reason to maintain the subdivisions and taluks as in the British days. There will be people's committees in each administrative unit over which the elected MP will preside, the panchayat heads, members of legislative assemblies etc. will be there. The development officer will be the secretary of that committee. That committee should be responsible for the execution of schemes and that should be provided for in the constitution. There should be a standing committee for each ministry consisting of members of parliament and that should see through the implementation of the schemes and policies enunciated at the ministerial level. That way our democracy would be more meaningful in the present context of things. Every production unit—factory or mine—should have committees to ensure its proper functioning so that those who produce can feel elated that they are producing things in their factory or production unit.

We have violated the solemn principles contained in the directive principles and the whole country's march has been stopped. These directive principles are fundamental in the governance of the country, but has any government—Central or State—taken note of it? It says

The State shall in particular direct its policy towards securing—

"that the citizens men and women equally have the right to an adequate means of livelihood"

Have we been able to guarantee even the minimum means of livelihood? Have we not violated this? Then it says

"that the operation of the economic system does not result in con-

centration of wealth and means of production to the common detriment"

But here monopolies have arisen. There is concentration of wealth on the one side and poverty on the other. Then it says

"The State shall, within the limits of its economic capacity and development make effective provision for securing the right to work to education"

This also has been violated. About education it says

The State shall endeavour to provide within a period of ten years from the commencement of this Constitution for free and compulsory education for all children until they complete the age of 14 years'

We have totally violated all these provisions up till now. We should feel ashamed if anyone were to say that the Constitution should not be amended to make these directive principles enforceable. These can be enforced but for that economic chapter and other chapters of the Constitution will have to be changed, the directive principles should not be allowed to remain a scrap of paper but should be enforced. The Constitution should also provide for annual review by Parliament and the State Legislatures of the implementation of the various provisions of the directive principles. There should be a mandatory provision for this.

Articles 31C, 32 and 226 should be suitably amended so that the vested interests are not in a position to misuse these provisions against the democratic urges of the people. In article 311(2)(c) it is stated—

"in the interest of the security of the State." The words "in the interest of eradication of corruption and prevention of economic offences should also be added and they should not be allowed to go to the

judiciary. The judiciary should not be allowed to interfere in these cases. For that there should be a committee to review these things. There may be an ex-Judge in that Committee who can review whether any injustice has been done. An employee representative should also be there. And they should not be allowed to go to the courts.

The time has come to make the elections cheaper. Why cannot it be mandatory that no candidate in a Lok Sabha election be allowed to have more than two jeeps? And that jeep can be provided by the State. (Interruptions) Otherwise you will have to go for black-money. This is a shame on our democracy, shame on our electoral system. Why cannot be provide that the State will provide jeeps? None will be loser. (Interruptions) In the situation the election should be made cheaper.

The anti-defection Bill is pending in the Committee for many years. The ruling party is not clearing this Bill because of its own benefit. I hope the new Chairman will pay much more attention and will bring that Bill before the Parliament.

17 hrs

SHRI B V NAIK (Kanara) Sir, sometimes, I have a feeling that we are taking in the air. After the 25th amendment for which at this moment we must remember late Mr Mohan Kumaramangalam I feel virtually the property right is only a paper tiger in our Constitution and it has no teeth. (Interruptions)

MR CHAIRMAN Mr Bhattacharyya, why are you interrupting every speaker?

SHRI B V NAIK De jure we have the property rights. De facto none at all, as mentioned rightly by Mr Frank Anthony, I think this is an exercise in futility, trying to flog

a dead horse. The right to property, in fact, does not exist in our Constitution. I have answered Mr Bhogendra Jha. He must have participated in the discussion on the amendment, and unless he was suffering from some acute form of amnesia he would have remembered what exactly he had said then. (Interruptions) If you could kindly bear with me there is no definition clause in our Constitution. I cannot talk like a great architect, Mr Unnikrishnan had talked of the whole social structure, of the political history of this country, and about the foundation of our Constitution. I cannot talk like that. I may be able to talk, not like an architect, not even like an engineer, but I may be able to talk like a mechanic. I have been an ex-bureaucrat. I have not been an agitator all my life and I am proud of it. I have been a civil servant and I have been a disciplined man, not an agitator. I have been very disciplined for 20 years. I have become an agitator after coming here. Sir, after all property can be defined in clear cut precise, economic terms. Property can exist in the form of land and capital. After all, capital is the tool of production. You may call capital as money. Property can also exist in the form of labour when it is taken as a commodity. Under the system of bonded labour in this country, labour was treated as the property which belonged to the master or the slave-driver. It was a property at that time. There can be a passive property and an active property or an aggressive property, i.e., something which is exploitative. Our friends who are money lenders like a Muslim seth would make an amount of say Rs 100 into Rs 200 within two months. That is a property which is aggressive. If I have Rs 100 and if I deposit it into the bank for constructive purposes it is a passive property. It is not an exploitative property, so we are against that particular brand of property, the unorganized and exploitative one. And in this context, to go wholesale, hammer

[Shri B V Naik]

and tongs against all the property in this country would be an exercise—it is futility, of course—would not be a wise step. Our dear friend Mr Unnikrishnan—he has drafted the entire Resolution with a considerable amount of care and caution—comes very near to the point of amendment of the property rights. He says

The House therefore urges the Government of India to initiate constitutional amendments particularly in the nature of property rights "

Why is he beating about the bush? Why does he not if he believes in it, say clearly that he wants the abolition of property rights (Interruptions) and its removal off the chapter on Fundamental Rights? He does not say so, because he does not believe in it (Interruptions)

SHRI K P UNNIKRIISHNAN The hon Member had not listened to me

SHRI B V NAIK I had listened to every word of his. I can reproduce his speech to him, outside in the Lobby. The question today is not property per se but it is a question of property—property for what? The mere size of the property makes it sometimes attain a position of dominance and exploitation. I think that the abolition of property as a whole would be an extremely unwise step in society like ours (Interruptions). The elite of Kerala comes here and gives us a lecture on property. Who has drafted this constitution? Who could have drafted it much better than a person who belonged to one of the most depressed classes in this country namely Dr Bhim Rao Ambedkar? Did he not have compassion for the poor people? He enshrined it in the Constitution. Was he out of his mind at the time when he drafted the Constitution from A to Z? So I do not think there can be greater people in this country with a greater amount of compensation for the poor and the

down trodden, the depressed and the backward, than Mr B R Ambedkar.

So, what we want is a non-acquisitive society, not an acquisitive society. Now we are encroaching on the time of the resolution of our revered elderly member, Shri H N Mukherjee. So, we should be brief. Under these circumstances, I would go, as far as saying that we should have a limitation on property. Let it be in consonance with our present policy. Let not a few people have more and more, and continue to have more and more, and more and more people continue to have less and less. We want a socialist order and a non-acquisitive society.

Now I come to the other operative part. I will say a word and conclude. We could go on but then there is the question of other speakers. Ours is a federal structure. My hon friend seems to have completely forgotten it. As I stated yesterday, a federal structure is most important for administering a welfare state especially, a future socialist state. But our federal Constitution as it is suffers from certain handicaps. It suffers from the handicap of having to stand on the crutches of linguistic States. I think this handicap has got to be removed. The polio patient has to be made strong and his legs have got to be made firm. In this direction we need a strong Central leadership, a symbolic leadership, a strong Centre vis-à-vis the States.

Subject to the condition that the hon Mover of the Resolution not withdraws his resolution but *suo motu* is able to suggest certain amendments in regard to property rights, we can agree to this because the rest of the things are excellent. Anyway, it is a very good intellectual exercise and an effort on the part of the mover.

SHRI FRANK ANTHONY (Nominated—Anglo-Indians) Mr Chairman, Sir, as the Mover of the Resolution

has been pleased to point out, this is a very important Resolution, and it is a little unfortunate that more members of the House are not here to listen to our speeches, however much they may lack in depth, because in ten or fifteen minutes we cannot import any depth to a speech. I notice that the press is even less interested in this subject, than the members of the House.

So far as the Resolution is concerned, it is well drafted. But it is so compendious that it can be all things to all people, people of all parties, people of all political complexions. For instance, I would certainly go along with this Resolution if it postulates significant and necessary changes. But it is so sweeping that it can include changes which will distort the whole basic character of our Constitution and undo it and even efface the rule of law.

Even when my friend, Shri Nath Pai, was here I was always among those who supported the concept that Parliament in its constituent capacity has certainly the right to amend the Constitution. I have always felt that an immutable Constitution carries with it the germs of its own destruction.

So far as property rights are concerned, I have never had any qualms about it. As my friend has pointed out, it is like flogging a dead horse, because, now that compensation is not justiciable, I do not know what property rights exist in substance. I think the Mover pointed out that Chief Justice Hidayatulla, as he then was, said that it seemed to be an anomaly that property should have been included in fundamental rights. Speaking for myself, I think we can take it out because it gives a handle to people to attack all and sundry. I would not be sorry if property rights were to be limited.

In the short time at my disposal, I want to underline certain basic features of the Constitution. It is impor-

tant, and I wish more Members were here, to remember what kind of a democracy we have. It is not an alleged socialist democracy, it is not a communist democracy which is a contradiction in terms, it is not a capitalist democracy, it is a constitutional democracy. Do not let us forget that. And because it is a constitutional democracy, advisedly that the galaxy of Constitution founders—I had the privilege of being among them—provided that the Constitution will be the final touch-stone of the validity of legislative and executive action.

What is the fundamental feature of our constitutional democracy? It is the separation of the legislative, executive and judicial powers. Let us remember that, I do not want to offend anybody, but it has become a populist slogan that we must entrench or underline the supremacy or sovereignty of Parliament. The supremacy or sovereignty of Parliament, however, finds no place in our constitutional democracy. The legislature, the executive and the judiciary are all creatures of our Constitution, let us realise that.

Justice V. S. Deshpande, one of the Judges of the Delhi High Court, has written a very instructive book, "Judicial Review of Legislation" which I would recommend to my friends to read. He has put it very correctly. He says these are the three organs, the legislature, the executive and the judiciary; they are co-ordinate organs of State, and they are all bound by the Constitution. That is the constitutional democracy that we have given ourselves. There is no use invoking the position in Britain because they have no written constitution.

Ministers like my friend there representing the executive, you and I representing the legislature, and the judges—why are we all required to

[Shri Frank Anthony]

take an oath of allegiance to the Constitution? It is in clear acknowledgement of the supremacy of the Constitution, the fact that ours is a constitutional democracy. You can efface the Constitution, but we cannot talk in terms of retaining a constitutional democracy and at the same time talk of effacing the basic features of the Constitution. Deliberately the framers of the Constitution carved out a chapter on fundamental rights. As the name itself implies, they were intended to be fundamental.

Now my friends are suggesting, and it has become a sort of populist slogan, that some kind of a committee be appointed by Parliament, and that committee will determine the vires of legislation. This is an extraordinary proposition. Why did the framers of the Constitution evolve checks and balances? One of the reasons is that we have an ultra pluralistic society, we have a mosaic of linguistic, religious and other minorities. I will come to that in a minute. And that is why deliberately they have remitted to the judiciary its own carefully assigned functions.

I would like to deal primarily with the fundamental rights of minorities vis-a-vis judicial review. My friends are saying let there be no judicial review. That means that all the fundamental rights of the minorities in this country, their educational, religious, cultural rights will be placed at the mercy of a permanent majority in the legislature.

I am going to tell this to my friends here. I have got a little more practical experience of what has happened and what is likely to happen. In a legislature, the ruling party passes a resolution; it will appoint a committee and that committee is expected to say that the legislation passed by the ruling party is bad. It is a proposition which has only to be

stated to be repelled. Mr. Gokhale has said—I do not know whether he has changed his view; he has written a very eloquent preface to the Constitution of ours—that the Constitution has served us very well. And it has. It needs necessary amendments. I have no objection to that. But it has projected this basic feature of checks and balances.

Let me say this without any qualification and, I hope, every member of the minorities will agree with me, that the greatest check and balance vis-a-vis a minority and its fundamental right is in the nature of judicial review. That is why the framers of the Constitution have put it in the Constitution. I pleaded for the rights of minorities with a certain amount of passion because I knew what would happen. I do not know whether we will produce those people, that kind of a galaxy of giants, in future. They realised that unless the minorities in this country were protected by having their fundamental rights subject to judicial review, the minorities would be remitted to permanent—I underline the word "permanent"—helo-try—political, economic, religious and cultural. That is why this is the greatest check and balance for the minorities so far as judicial review is concerned.

I give you a certain examples of cases. My friend, Asok Sen, is there. We argued the Kerala Christian College case. He was very busy. He left it to me to argue the case. That was one of the cases. I have been for over 30 years closely associated with education and it is a passion of mine. Probably, I have a certain sort of a distorted view of this matter. For over 30 years I have been closely associated with education, with Anglo-Indian and Christian schools. Since 1954, I have appeared in the Supreme Court in every case, practically dealing with article 30. Article 30 postulates the right of a minority based on language or religion to establish an

educational institution of its choice. There was that first case, the Bombay Education Society case in 1954, the Anglo-Indian schools case. I do not want to say anything that might hurt anyone. But Mr. Morarji Desai was then the Chief Minister—he may not have intended it—but the diktat went out that only Anglo-Indians whose mother tongue admittedly was English may be taught in the medium of English. If the legislature had the right to test the vires, obviously, they would have ratified that. What would have been the result? Not only the Anglo-Indian but also English-medium schools and colleges would have faced extinction. Would that have helped the country?

You may not agree with me publicly but privately you will agree with me that these institutions are among the few real national educational institutions because they transcend the barriers of region, language and not least regional chauvinism. But if it was left to the Bombay Legislature, they would have affirmed the death sentence on all English-medium schools and colleges.

Again, in 1958, I argued for the Anglo-Indian schools in Kerala. There was a Government with a particular ideology there. I think it is still a dominant ideology. They sought to strangle the Anglo-Indian and Christian schools. Once again, we had to get it struck down through the Supreme Court, not through the legislature. That would not have been possible. It is a contradiction in terms to say, if the legislature has passed a legislation, it will say that that legislation is bad.

In 1970—this is a case I was referring to—My hon. friend, Mr. Asok sen was there with me and, once again the same Government, the Kerala Government, sought to garrote the Christian colleges. Once again, the Supreme Court interpreting article 30 came to the rescue....

SHRI BHOGENDRA JHA: I want to simply say, please do not equate trading in education with the right of Christian community for whom I have got great respect.

SHRI FRANK ANTHONY: This is not only limited to the conventional minority. I am not pleading for Christians, Muslims, Sikhs, Parsis and other minorities. It affects everybody. I was one of the Counsel and Mr Asok Sen was also there for the D.A.V. Arya Samaj colleges. We argued and argued successfully because the test of minority is *vis-a-vis* their position in the State. So, the Supreme Court said, 'yes, *vis-a-vis* the Sikhs the Hindus are a minority and, therefore, the Arya Samaj accepting that they are part of the Hindus, are also a minority entitled to the protection of Art. 30' and therefore, the attempt of the Guru Nanak University authorities to interfere with the Arya Samaj colleges was struck down.

Very recently, we had the Gujarat University case and I appeared for one of the St. Xavier colleges. Now, what would have happened? Let me give an example of what would have happened in the Delhi School Education Act. This Parliament passed the Delhi School Education Act; let me give you the inside story—and Prof. Nurul Hasan and Shri H. K. L. Bhagat will bear out what I am going to say. I fought in the Select Committee alone. I was completely isolated; not a single member of any minority was prepared to support me. I don't know what was the reason—perhaps because he was a member of the ruling party. I took out the law and explained to them; it was clear as daylight. But I was isolated and my pleas were unanimously and summarily rejected. I went home and they thought I had walked out. Prof. Nurul Hasan had asked me to Dinner. I never walk out; I don't do what some people do; I stay in and fight. The reason why I went then was that with my Dinner I have a

[Shri Frank Anthony]

couple of chota whiskies and Prof. Hasan was not giving us any chota whisky! When I came back I found they had reversed their decision and said 'we will accept Mr. Anthony's plea'. I was amazed. Then, when I was taking Mr. Bhagat home, he told me what had happened. He said 'I am a lawyer and I told them that we can easily over-rule Mr. Anthony and we can pass this in the House, but he is a lawyer and he knows something about the minority rights; he will go to the Court and the whole measure will be struck down'. It was my right to go to the Court for judicial review of the Fundamental Rights and that persuaded all those members to put in a separate chapter for minority rights.

Now, I am coming to one of my last points. I don't understand. I hope my friend the Law Minister, will not abjure, with all his professional training and experience and the eloquent preface he has written to the Constitution, that judicial review is not only the paramount function but it is the paramount duty of the Judiciary. That is the paramount duty of the Judiciary except that what has Patanjali Shastri, the then Chief Justice of India, said in the B.G. Rao case? I will read it because it summarises what a great Chief Justice felt in the matter. This is p. 199, para 13—1952 S.C.

"Before proceeding to consider this question, we think it right to point out, what is sometimes overlooked, that our Constitution contains express provision for judicial review of legislation as to its conformity with the Constitution, unlike in American where the Supreme Court has assumed extensive powers of reviewing legislative acts under cover of the widely interpreted "due process" clause in the Fifth and Fourteenth Amendments. If, then, the Courts in this country face up

to such important and none-too easy task, it is not out of any desire to tilt at legislative authority in a crusader's spirit, but in discharge of a duty plainly laid upon them by the Constitution. This is especially true as regards the "fundamental rights", as to which this Court has been assigned the role of a sentinel on the "qui vive". While the Court naturally attaches great weight to the legislative judgment, it cannot desert its own duty to determine finally the constitutionality of an impugned statute. We have ventured on these obvious remarks because it appears to have been suggested in some quarters that the Courts in the new set up are out to seek clashes with the legislatures in the country."

That sets it out. The judges are only discharging a duty placed on them and they have taken an oath to discharge that duty—unless, as I said, we are prepared to distort or to destroy our Constitution. And remember this—what was one of the most obvious reasons why the Courts have been assigned this duty of judicial review. Both the Supreme Court and High Court Judges are persons of professional training, experience and knowledge

The interpretation of the Constitution, it is their job. Are our politicians going to interpret the Constitution? When Mr. Sen and I appear to argue they would not even know what we are talking about. Remember this. The judges interpret the Constitution, not according to any political predilections but according to their oath; they look at the plain meaning and they say that it is this. That is their duty. Let me say this also. One of the most important reasons why they have been assigned this duty is because by training and experience, they are objective and evenhanded; they are not influenced by considerations—I am saying this generally about our judges, whether they are Hindus or Muslims or anybody else—of religion, community

and caste. But the politicians are the anti-thesis of this. I say it again without qualification. An average politician is a creature, in this country, of political, religious, caste and communal considerations....

SHRI BHOGENDRA JHA: No. It is not correct. (*Interruptions*)

SHRI FRANK ANTHONY: He says 'no'. I know a little more than what my friend does. I do not have to shout to underline what I know. Ask my friend to analyse the figures and in his quieter moments, he will, privately admit it. Everywhere, in every Party—not in the urban seats—people are selected because of their community and, worse, because of their sub-caste label....

SHRI DARBARA SINGH (Hoshiarpur): It is altogether wrong.

SHRI FRANK ANTHONY: Let us be honest. They all compete putting people who are likely to get the vote of the dominant caste or sub-caste. Let us be honest in this matter. People, in this country, are returned to Legislatures because they are creatures of this particular aspect of our political life. To ask Members of Parliament to arrogate to themselves judicial functions would mean immediately to spell out death not only for the minorities but to spell out death for the citizens. I remember, when Dr. Dhillon was in the Chair, I raised this question....

श्री विभूति बिष्य (मोतीहारी) : यह जो आप कहने हैं, इसमें माइनारिटी का सवाल कहाँ आता है? सवाल तो यह है कि कांस्टीट्यूशन को आज जैसी हालत देश की है उसको देखते हुए तरमीम किया जाए। यह जो कहने हैं, इन्हीं के जैसे आदमी थे जो 1947 में 15 अगस्त की 12 बजे रात तक विश्वास नहीं करने थे कि हिन्दुस्तान में अंग्रेज चले जाएंगे। देखिए जान यह है कि जाकी रही आबना जैसी, प्रभु मूरत देखो तिन तैसी। चूँकि

इनके दिमाग की बनावट कम्यूनल है इसलिए सभी को यह कम्यूनल समझते हैं। हम लोगों ने फ्रीडम के लिए फाइट किया तो कोई कम्यूनल बात के लिए नहीं किया।

SHRI FRANK ANTHONY: I will accept my friend's assertions at their face value. Whether I believe them or not is a different matter.

श्री विभूति बिष्य : आप यह जो कहते हैं कि कम्यूनल फ्रेम में सब आते हैं तो चूँकि आप हिन्दुस्तान की आजादी की लड़ाई में भाग नहीं लिए थे, आप को पता नहीं अंग्रेजों की बजह से देश का पार्टीशन हुआ। उस समय जो कांस्टीट्यूट असेम्बली बनाई गई, उस वक्त जैसे हालात थे उनको देखते हुए उस कांस्टीट्यूट असेम्बली में इस तरह का कांस्टीट्यूशन बना। आप वकील हैं, उसकी बुनियाद पर जिन्दा रहना चाहते हैं।

SHRI FRANK ANTHONY: Mere assertions of secularism would not convince me. Probably I am a greater secularist than my friend could ever attempt to be, because, I am a member of minority, a minority cannot afford to be communal, he gets nothing if he lives in a pocket, by living in a small pocket, he gets nothing; but the majority member, by parading his majority, communalism and masquerading as nationalism can always be in a position of permanent authority.

श्री विभूति बिष्य : मेरे यहाँ बोर्डे से क्रिश्चियन है, एक हजार दो हजार होंगे आप चल कर पूछिए उन क्रिश्चियन से कि उनके ऊपर हम लोगों की तरफ से कोई ज्यादाती हुई? यह बलन बात कहने हैं। हमारे यहाँ बैतिया में और

[श्री विप्लव सिन्हा]

दूसरी जगहों में जो किसानों हैं हम सब लोग उन के साथ भाई-भाई की तरह रहते हैं।

SHRI FRANK ANTHONY I am sorry I am not able to make myself understood to my friend

I was saying that the Delhi Education Act was going, deliberately, to be passed in the teeth of all Supreme Court's decisions and but for my friend Mr H K L. Bhagat saying that it would be struck down, it would have been passed. Was it not an expression of the fact that you were prepared to overrun minority rights in the face of the most explicit Supreme Court's decisions?

And if the Supreme Court is not there to stand between the minorities and death, who will do that? My friend does not know, what I am talking about

The question of judicial review is very crucial apart from the minority rights. It is a question of life and death for us. Take for example the question of executive action. Judicial review is a crucial psychological factor. We have got this pluralistic society of ours. If the executive action was not to be subjected to judicial review, what would happen? What is the good of this cliché mongering and this self-adulation and hypocrisy? Don't I know? I do not want to say anything that will hurt any political party, but don't I know, what happens? I did a lot of constitutional cases, when one political party, not the present one, was running the Corporation. It was a cesspool of corruption. People were promoted only because a political party was putting them up. I went to the court and got that struck down over and over again, but the same political party was practising nepotism. People were demoted mala fide and people were promoted because of political favouritism. And they, the Political Parties, are going to decide the validity of Chairman's act

As I said, judges at least are conditioned in a different atmosphere.

I say this without qualification that there can be no constitutional democracy without judicial review. This is a basic concept. There is no constitution left without judicial review. I say this not for the minorities, without judicial review in the matter of fundamental rights, it will be a question of not life but death. Without judicial review, it would be just death.

SHRI H N MUKERJEE (Calcutta—North East) Mr Chairman, Sir, I am not proposing to speak on this Resolution. I have introduced the next Resolution. I feel the House perhaps has given an extension of time to this Resolution. Therefore, as it is, under Rule 9A of the Directions by Speaker, my Resolution ought to be protected. Rule 9A takes care of this but I want to be doubly sure that my Resolution will continue to be there.

सभापति महोदय प्रो० माहव, आपका खयाल बिल्कुल सही है। आपका यह रजान्यूनन अगर आज नहीं भी आता है तो यह आईदा डेट पर डिसकस होगा, नैप्स नहीं होगा।

SHRI H N MUKERJEE Under Rule 9A of the Directions by Speaker, my Resolution will continue to have its priority in the next Resolution Day

MR CHAIRMAN Yes

SHRI K P UNNIKRIISHNAN I beg to move

"That this House do extend the time allotted to the Resolution moved by me regarding Changes in Constitution by two hours".

MR CHAIRMAN The question is:

"That this House do extend the time allotted to the Resolution moved by Shri K P Unnikrishnan regarding Changes in Constitution by two hours".

The motion was adopted.

समाप्ति बहोदय : इस समय जो मेरे सामने लिस्ट है उसमें हमारे बुजुर्ग प्रो० सूर्य नारायण का नम्बर है लेकिन अशोक सेन साहब की चिट्ठी आई है कि वे आज ही बोलना चाहते हैं। अगर आप परमिट करें तो मैं अशोक सेन साहब के लिए कहूँ।

SHRI A. K. SEN (Calcutta—North-West): I am very much obliged for the indulgence extended to me by allowing me to speak on this Resolution. It is very apposite, it is very topical and I think it focusses a very vital problem facing us to-day.

It is true that the Constitution has served us well. It is also equally true that there have been many facets which have been exposed and which need treatment for the purpose of facilitating the progress of our country the achieving of the Directive Principles which the Constitution had set for itself in Part IV of the Constitution as also for realising the paramount objective of giving a full life, a purposeful life to every citizen. It is certainly a truism to repeat once more that every citizen cannot declare that he has achieved that share of the new national wealth which was his due that he has achieved that purposeful life which certainly he was entitled to under the Constitution. It is certainly equally true that he cannot say that he has reached that stage of existence which has rid him of poverty for all times to come. So many things are yet to happen, so many steps are yet to be taken and so much is yet to be achieved that it is not really a heresy to say that we should have a fresh look at the workings of our Constitution.

I am deeply wedded to our Constitution. I am very proud of it. At the same time, I cannot be oblivious of the fact that it cannot be called a perfect instrument. No instrument of human making can be a perfect instrument. Nor can an instrument serve people for whom it is designed for all times to come with equal efficacy. Further

all life which goes on from decade to decade, from age to age brings in its wake so many problems to the forefront, so many complications of life and our national existence are thrown up everyday and it is only a very bold person who can claim that an instrument made to-day would last for ever. Even the laws of the Medes and Persians had to change. It is said that they never change, but they did change. So, if the laws of the Medes and Persians did change, our Constitution changes, would not be a very shameful thing. But the question is to think very carefully, to design and desire very carefully, and with all the prudence that we possess, those changes which we think should be necessary to serve our national life and to achieve better and quicker the objectives which we have accepted for ourselves. It is not possible to give an *ad hoc* solutions and the Prime Minister rightly has stressed this fact repeatedly that it needs study and discussion, a study at all levels and particularly by experts.

I am not one who thinks that every ill from which our nation suffers to-day is to be traced to our Constitution. It is a very facile way, to blame someone or some organization or some organ of the government for all the ills that visit us from time to time. I think for all the ills everybody is equally responsible and to say that somebody or as some people sought to put it that the Judges are responsible or that the Members of Parliament are responsible or the governmental machinery is responsible is again a very facile way of answering a question.

When all the organs work together and certain deficiencies come to light, it will be very difficult to say that only one organ is responsible. But, to the credit of our Judiciary, it must be said that by and large, they have served us well. Outside the country they have achieved a reputation, but like all organs of government, there have been deficiencies. There are good judges, bad judges and there are ordinary judges and brilliant judges. As I said,

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the same thing can be said of our administrators. Same thing can be said of our Members of Parliament and also Members of legislatures. One thing should not be forgotten and that is inherent in every written Constitution, that there must be some organ to interpret the Constitution, to interpret our law. Take a very simple case. My learned friend, Mr. Frank Anthony has spoken of minorities. He feels very strongly about it. But even if everybody does not feel in such a fashion about the minority rights, yet, it is such a glorious chapter of our Constitution. It underlined, as one great Chief Justice had said deciding on the Kerala Education Bill which the Government of that day led by our late Prime Minister Pandit Jawaharlal Nehru sent to the Supreme Court for its opinion, that our Constitution glorifies that national objective of ours which regards our civilization as a composite product of all these streams that have come into this country and the translation of our national anthem was put in for the purpose of underlining this fact that our nation is not the product of one or two or three groups or categories of civilizations, but it is a composite amalgam of all the streams which have flown into this country through all the ages and which have enriched together, what we call the Indian civilization. It is, therefore, to protect that composite amalgam that minority rights had been given such a great importance in our Constitution.

The Kerala Government of that day was the United C.P.I. Government. I think one of our present judges of the Supreme Court was then the Law Minister of Kerala—Mr. Krishna Iyer. I was then the Law Minister myself in the Central Government. I had to deal with the vires of the Act—Kerala Education Act—which according to the minorities was designed entirely to crush the Catholic Institutions so that they would be denied the contributions and donations which alone could sustain educational institutions. In a great judgement which will remain a *magna carta* for all minority rights of

our country, the Supreme Court had said that the Government of Kerala could not appropriate to themselves the right to dictate minority institutions or to run their education; to say that either you take my money or you do not, but if you take my money, you must run it according to my dictates would be really striking at the very roots of the Constitution and the guarantee of the minority rights. Who would have decided that? As I said, it is inherent. In any written Constitution, the dictates of the Constitution have to be obeyed by the legislatures, by the judiciary and by the other organs of Government. If they do not, who is to decide the contravention? If you do not have the judges, you must have someone else equally respectable and equally capable of commanding the confidence of the people. For instance, by convention in England the highest judiciary is the House of Lords. The First Committee of the House of Lords decides everything. It is a part of the legislature, like a Committee of our House and yet nobody ever had thought that that First Committee of the House of Lords decides in any way different from the highest judicial traditions. It never decides in favour of the Government of the day. It always decides impartially and upholding the highest traditions of all judicial organs. If we can set up such an organ, we can certainly do it, there is no harm. But it is inherent in a written Constitution that there must be somebody to decide whether the State Legislatures have conformed to the Constitution, whether other organs of the Government have conformed to the Constitution or whether the Parliament itself has contravened the Constitution.

Take a very simple case. Supposing the Parliament to-morrow tries to levy Sales Tax for the State and it is challenged. Who is to decide? Sales Tax authority is exclusively assigned to the States. Suppose, to-morrow, Parliament passes a law imposing barrier in trade between States or taxing differently different products as it enters

different areas contravening the prescriptions of Part XII of the Constitution which guarantees Freedom of Trade all over the country, which prohibits discriminatory taxes being levied by different States against products coming from other States. For instance, suppose to-morrow, Punjab levies discriminatory taxes against products coming from U.P. or vice versa.

SHRI DINEN BHATTACHARYYA:
From one State to any other State. . .

SHRI A. K. SEN: But supposing such a law is passed by the U.P. legislature or the Punjab legislature, who will decide the validity of such a law?

It is not a question of doing away with judicial review but to put judicial review in the proper context and define the scope of judicial review. For instance, I personally believe myself that civil servants get much better justice in France than in England with their administrative tribunals. In England by the writs they can hardly give justice. They can only confine the Governments to the so-called limits of jurisdiction. It is the same in our country, but if we had administrative tribunals dealing with the problems of the civil servants it would have done away with lot of inconvenience caused due to constant judicial interference in matters where they cannot give justice and yet they can cause lot of friction and lot of inconvenience for the government. These are the areas which have to be explored for the purpose of finding out what should be the limit of judicial review. If judicial review in its widest scense has done any inconvenience or has put any restrictions in the way of our progress it has to be found where it has done so, and then curbed. Therefore, the extreme proposition which is sometimes canvassed very forcefully that there should never be any curb on judicial review would be a fallacious thing. The curbs must be there. If it is found that judicial review untrammelled is going to cause obstruction to the way of our progress, to say, do away with

judicial review altogether, would be equally fallacious and it would be destructive of our very federal structure. Who will decide the disputes between the States and the Centre. We had so many disputes when different Governments were set up in the various States. I gave the example that if the Kerala Education Act was sent to a committee of this House to decide whether it was correct or not, and if the House decides as the Supreme Court did, that that Act was bad, many of the provisions contravene the various Articles of Part III of our Constitution, that decision of our House would not have been accepted by....

SHRI BHOGENDRA JHA: It was the Leader of the House. Pandit Jawaharlal Nehru, the political leadership of the country, that sent that Act to the Supreme Court.

SHRI A. K. SEN: If he did, he was a great leader respected universally in our country and whether it is he who decided it or Pandit Gobind Ballabh Pant, who is one of the greatest parliamentarians that we have known in this House, who was the Home Minister then, all the same, the Kerala Government led by Mr. Namboodripad would not have accepted it and it is quite clear. But once the Supreme decided that many of those provisions contravene Article 30 of the Constitution, it had to be accepted. Now, this is the reason why we have the system of judicial review in a federal structure where the organs of the government are defined and their jurisdiction and fields are well-demarcated or transcended. Who is to see that they are set right?

Therefore, my submission is this, I feel and this is possibly shared by Basu, that whereas the Constitution does require fresh look, exploration about those areas where it has shown faulty working, exploration of the area of judicial review for the purpose of defining the proper limits of judicial review and at the same time ensuring that,

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the work of different organs of the Government and the different constituent units and the different States work within their limits, and none collides with the others, at the same time, there is to be a proper, smooth and harmonious functioning of the different elements in the Government and there should be no conflict between the judges and our Parliamentary or Executive authority.

The expression of Paramouncy of Parliament has to be understood in the proper context. Again, wherever we have written Constitution, Parliament is never paramount in the sense that British Parliament is. When we say that we shall pass a Money Bill, then we must follow the provisions of how to pass a Money Bill; we cannot contravene the provisions of the Constitution itself on how a Money Bill is to be introduced. But, the British Parliament could—they could pass a resolution saying that this is how we shall pass the Money Bill.

This is why in a written Constitution, the expression parliamentary supremacy has to be understood in a proper context. It must mean that Parliament and the different State Legislatures must be armed with all the powers for the purpose of achieving what Part IV of the Constitution has set for them.

That is the decisive step. But, at the same time, to see that within the framework of the Constitution there must be somebody to watch and to ensure that none transcends the limits. That is the problem. I think this will be studied properly and Shri Unnikrishnan deserves all the congratulations for bringing in this Resolution so

that this Parliament—for the first time, we have been debating this here and even outside Parliament—has a chance of expressing itself and a proper discussion and a proper exploration follows for the purpose of enabling us to take proper decisions in relation to the future set up and framework of our Constitution. Mr. Gokhale is here and I again appeal to him that this must be done dispassionately, objectively and without passion and without any predilections. We have only this desire to see that this Constitution becomes a live frame for achieving the great objective which our Constitution has set to us.

SHRI K. SURYANARAYANA (Eluru): Mr. Chairman, Sir, after hearing the eminent lawyers and young people like Shri Unnikrishnan and a person like Sardar Darbara Singh at this late hour, it seems that we are all in favour of a change in our Constitution for the sake of the people—not for the sake of any individual or minority community—and for the development of this country and to safeguard the interests of the minority community. This Resolution speaks about the need for amendments to the Constitution. In the very first sentence it says that there is no objection to this and the entire country also needs that after 20 or 25 years of Independence on the basis of the experience that we have had in this country.

MR. CHAIRMAN: The hon. Member may continue on the next day. Now, the House stands adjourned till 11 A.M. on the 22nd March, 1976.

17.59 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, March 22, 1976 (Chaitra 2, 1898 (Saka)).