

15.30 hrs.

RESOLUTION RE. CHANGES IN THE CONSTITUTION—Contd.

MR. DEPUTY-SPEAKER: We now 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 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."

On the last occasion Shri Suryanarayana was on his legs. He has taken two minutes.

SOME HON. MEMBERS: Sir, the time allotted for this Resolution may be extended till 6 p.m.

SHRI H. N. MUKHERJEE (Calcutta—North-East): Sir, I have the resolution immediately following. My Resolution has been waiting for the last fortnight. If it is not moved then...

MR. DEPUTY-SPEAKER: There are certain rules which we have adopted. If time is extended in respect of the Resolution under discussion then the next Resolution will not lapse. I think the House will keep

in mind and allow Mr Mukherjee to move his Resolution.

15.32 hrs.

[SHRI BHAGWAT JHA AZAD is the Chair]

SHRI K. SURYANARAYANA (Eluru): Sir, the other day a senior advocate of the Supreme Court and also a senior Member of this House, Shri Frank Anthony, said that so far as the Resolution was concerned, it was better drafted. There is no difference of opinion also as regards the first part of Shri Unnikrishnan's Resolution, that is,

"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."

I think there will not be any difference of opinion so far as this part of the Resolution is concerned and this is the opinion expressed by our senior advocate colleague also.

One more senior Members and ex-Minister of Law said:

"He agreed that the Constitution required a fresh look, at the same time exploration about those areas where it had shown faulty working, exploration of the area of judicial review ensuring that different organs of the Government and the different constituent units and the different states worked within their others, should also be made. We must ensure that there should be 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. In the written Constitution, the expression parlia-

[Shri K. Suryanarayana]

mentary supremacy had 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 set for them".

There is a feeling in the country even among people without any knowledge of law, in the common man, that there must be amendments to the Constitution, there must be a change in the Constitution. They have different opinions about the changes to be made. We want to impress this on the Government, on other parties and other gentlemen also who are not happy with the Constitution as it is. We will sit together and decide how to do it, how it should be done, how it should be amended. That is the only thing. Whether it should be done by Parliament or by a Constituent Assembly or by going to the polls on this issue is a different thing. We will see about it.

Even the Bar Council, of which Shri Anthony might be a member, wants changes in the Constitution. In the Bar Councils' Convention they passed a resolution on the 28th March in which they also urged that 'suitable provisions be made in the Constitution to say that fundamental rights shall not come in the way of implementation of the directive principles of state policy, and primacy shall be given to the directive principles of state policy in interpreting the laws'. The resolution also suggested that some articles of the Constitution conferring powers on the court 'may also have to be suitably amended'. That is the thing. The Bar Council themselves have agreed on this. So there will not be any dispute about the general opinion of the Mover and also the members who have spoken already. There is a necessity for change. The Constitution was framed 25 years ago. The

framers took enormous pains. They said that the best in the world's constitutions had been incorporated in it in those days. Now changes have come about. Days have changed. We have amended the provisions about property rights and State rights. There is no question of any property right as such now. Shri Sen also spoke about this. We agree with that. There must be some limit on property also. Now there is no limit. We have put a ceiling on land holdings by individuals. Why do we not introduce a ceiling on property also, on income also? Why are Government hesitating to put a ceiling on incomes? That is the feeling in the country. So it may be incorporated in the Constitution also. A man should not have property or income above a certain limit. I was told in communist countries they are allowed to save money and deposit it in banks. Unless it is my property, who will take care of it? But there must be a limit to it. Any ordinary man must have some property. A labourer who lives in his hut must also feel that the hut belongs to him. Shri Jayaprakash Narayan also started with *Bhoodan*, after some time there was *gram dan*, after that there was *sampathi dan* and then *jivan dan*, sacrifice of one's life for the country. These slogans will go on like this.

What I want to impress on Members is that the ownership of property must be limited. This is my pen. If it is not my pen, who will care for it? If it is lost and the watchman finds it, to whom will he give it? The pen is mine, the property is mine. But it must be limited. It may be one lakh or two lakhs.

This is the only thing. We accept the principles and ideas expressed by other friends. I am quoting only experienced judicial people. Recently a judge of the Supreme Court, Justice K. K. Mathew said this:

"Judges must remember, Justice Mathew said, that shaping the future

law was primarily the business of the legislature. Tolerance and humility in the judgement on the experience and beliefs expressed by those entrusted with the task of legislation should become a decisive factor in constitutional adjudication. Even if their personal views run counter to the legislation before them, they should not attempt at improving society by setting up their judgement against conscientious effort of those whose primary duty is to govern."

We are making the laws and the government is to govern on behalf of parliament. We have elected the Prime Minister and the Chief Ministers and entrusted them with that work. Similarly, the government appoints judges and we can change them if necessary. We do not want to revolt against judgements. Even if there is difference of opinion about some law, it can be amended; it is only subject to the wishes of the people; the laws are for the benefit of the people and they can be amended for the benefit of the people. In this context, I want to support the Resolution. In the last 25 years our experience of the working of the constitution has made us feel that some changes are needed so that any impediments that stand in the way of improving the lot of the common man might be removed. Now about the dowry system. The other day it was suggested that the law should be made accordingly. It should go. If girls are given hereditary property-rights, it will be a step in the right direction. Now-a-days socialism is on paper; we read about that. In the old days, at the time of marriage, they were not demanding; people did or gave according to their ability and conditions. In my childhood days, in the villages when there was a marriage, all the relatives and friends used to present one or two rupees each so that the marriage expenses could be met. That was socialism really speaking. Now, they are writing on paper and we are reading in

books. So, there is no difference of opinion about the need for amending the constitution. The point is: in which way, in what manner it should be done. It should be done for the benefit of the entire country, as well as other countries also because they are all neighbours. So, I want to support it. The Prime Minister said several times that there was no need for wholesale amendment. Therefore, I fully support the resolution, subject to these observations.

MR. CHAIRMAN: Before I call on the next speaker, I have to say that I have a list of 18 members before me; the number had doubled within five minutes; I hope it will not treble in another five minutes. The hon. Minister says that he will take about 15-20 minutes and the hon. Mover, Shri Unnikrishnan, about 15 minutes. That means that the other Members can have only six minutes each. Please do not force me to ring the bell thrice; at the end of five minutes, one bell; at the end of the next minute the next bell; and I will call the next speaker; otherwise I cannot accommodate all the 18 members who want to speak.

SHRI D. K. PANDA (Bhanjanagar): Sir, the main question is: in what direction the Constitution has to be amended. It has to keep pace and be in conformity with the changed times and situation, in our country. I shall begin with a quotation from a British jurist, Lord Denning who said in a memorial lecture in Bombay: "Like other laws, constitution also has to change to meet the needs of a developing society." Ours is a developing society. "Society cannot remain static and so also statutes cannot remain static while the world is progressing ahead." This is what he has said.

Ours is a confrontation between the people's aspiration and the judgements that were delivered in the Courts. Ours is also a confrontation between the reaction and the progress. Now, the question is when the confrontation is

[Shri D. K. Panda]

going on we have to see that the confrontation is resolved in favour of progress, in favour of the weaker sections of the society. That is the basic question. Here, I would only put one question. After Golaknath case, we have carried out 24th Constitutional amendment. Then, who prevented our country, our Government from taking radical measures by amending the Constitution and also certain measures for eliminating poverty and certain measures to curb monopoly? What we need is the political will. Now, under socialism so much of talk is going on. In the Directive Principles it is embedded that socialism is our national objective. That being so, democratic socialism is not of an utilitarian type. If we do not keep in view that concept, that will take us to self-reliance, that will take us to democracy and to the next stage towards the socialism. That is the only yard-stick to measure this. Now, Mr. Unnikrishnan has not made any reference to the 20-point programme because constitutional changes are to be made to guarantee the implementation of the 20-point programme.

There are hundreds and thousands of cases pending in Orissa High Court, Patna High Court and in West Bengal High Court also. The figures regarding pending cases in Calcutta High Court have come out. Now, even a sub-tenant has to contest upto the High Court, first. Later on he has to contest in the Supreme Court. So, what I would suggest is that the provisions contained in the three Articles of the Constitution are the main things that would lead us to socialism. About that there should not be any confusion. Socialism is not confused. We are confused about socialism. Those who are confused about socialism should have a clear understanding and things should move accordingly.

SHRI C. M. STEPHEN (Muvattupuzha): Tell us what your clear understanding is.

SHRI D. K. PANDA: If I am given enough time, I can deliver a lecture on this.

MR. CHAIRMAN: You complete your points.

SHRI D. K. PANDA: Articles 32, 326, and 327 deal with land laws and wherever cases of land ceiling laws arise, they take shelter under these articles. We must put an end to this. This is No. 1. My second point is that as far as other Articles are concerned, that is about monopoly of capital, they should be amended because they deal with the fundamental right to property. This right should cease. Then only we will be able to curb the monopoly.

MR. CHAIRMAN: Your time is over Shri Vayalar Ravi.

SHRI K. P. UNNIKRISSHANAN (Badagara): Sir, we can sit upto 6.30. This is an important resolution.

MR. CHAIRMAN: I do not accept that. Now I have got the list of Members who are sitting here to speak on this.

SHRI D. K. PANDA: I have not finished, Sir.

MR. CHAIRMAN. I have called Shri Vayalar Ravi. Only five minutes.

SHRI VAYALAR RAVI (Chirayinkil) Sir, I have no time to trace the whole history of the evolution of the Indian Constitution but I shall fail in my duty if I do not point out that the whole content of the freedom movement which was based on economic independence of the country. I would like to quote what Shri Jawaharlal Nehru said in 1928, when the freedom movement was gaining momentum:

"We may demand freedom for our country on many grounds, but ultimately it is the economic one that matters. Our educated classes have so far taken the lead in the fight for swaraj, but in doing so, they have seldom paid need to the needs of the masses."

This was one of the basic pictures which was in the mind of Shri Jawaharlal Nehru even during the days of the freedom movement. Even in those

days, there was a conflict in the Indian society between two sections—those who believed in the principles of socialism and those who were in favour of the *status quo*. This is also clear from the resolutions passed by the Indian National Congress from time to time.

The Indian Constitution is the product of a compromise between two sections who had conflicting interests and as a compromise, two things were accepted—fundamental rights and directive principles. The vested interests were clever and they cheated the people by providing that whereas fundamental rights had sanction of the State and they could be enforced through the judiciary, directive principles did not have the same sanction and they were not justiciable. I would like to quote again what Shri Jawaharlal Nehru said in this very House in 1952. In 1950, the Patna High Court, thinking that the Indian Constitution was so sacrosanct, ruled that the progressive legislation for zamindari abolition was against the fundamental rights relating to Property Right in the Constitution. Later, the Allahabad High Court also held the same view and this forced Shri Jawaharlal Nehru to move an amendment in this House to the Constitution. He said in 1951:

"The real difficulty which has come up before us is this. The Constitution lays down 'certain Directive Principles of State Policy. We agreed to them after a long discussion and they point out the way we must travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. This Fundamental Rights represent something static; their object is to preserve certain rights which already exist. Both again are right. But sometimes it might so happen that the dynamic movement and the static concept do not quite fit in with each other."

"The basic defect has been pointed out by Jawaharlal Nehru. The basic ques-

tion is: Why we have freedom? The freedom is not to starve or to die. That is why our Prime Minister, Shrimati Indira Gandhi, said: "Quit poverty. So far poverty exists, we cannot find a meaning for the freedom of India." When we are fighting against poverty, we can see the fundamental rights coming in the way.

If you permit, I can quote Jawaharlal Nehru in order to show how this defect exists:

"The essential difficulty lies in the fact that the whole conception of fundamental rights is for the protection of individual liberty and freedom. That is a basic conception and to know where it was derived from, you have to go back to the European history in the latter days of the 18th century roughly speaking, from the days of the French Revolution on to the 19th century."

Since the time is short, I do not want to quote it full. I agree that judicial review is necessary and it can be done. But it must have some base. In this connection, Justice K. K. Mathew has said that the judiciary is inevitable but it should not be the personal opinion of the judge.

Before concluding, I would like to quote Mahatma Gandhi. It may clear a wrong notion about Congress as somebody believe that Mahatma Gandhi had asked to dissolve the Congress.

"Indian National Congress, which is the oldest national political organisation and which has after many battles fought her non-violent way to freedom, cannot be allowed to die. It can only die with the nation. A living organism ever grows or it dies. The Congress has won political freedom, but it has yet to win economic freedom, social and moral freedom. These freedoms are harder than the political, if only because they are constructive, less exciting and not spectacular...."

[Shri Vayalar Ravi]

This is the task of the Congress to lead the country to socialism on the principles of Jawaharlal Nehru and Mahatma Gandhi and the fundamental rights should not have any upper-hand over the directive principles and the basis of the progress is the Directive Principles of State Policy.

SHRI K. P. Unnikrishnan: Sir, you should think of extending the time of the House by half-an-hour.

MR. CHAIRMAN: I cannot extend the time. The rules do not permit it.

16.00 hrs.

SHRI DINESH CHANDRA GO-SWAMI (Gauhati): Mr. Chairman, since the time at my disposal is very short, I would deal only with one point relating to the supremacy of Parliament. On this point, there cannot be any doubt viz. that Parliament being the forum in which the people's aspirations are expressed, in a democratic country, it must play the supreme role. I am not entering into a debate as to whether the Constitution is supreme or the people are supreme. Leaving it aside, Nobody can dispute that in a parliamentary democracy, Parliament must have the supreme right or authority make laws for the good of the people. Everybody says that Parliament is sovereign, to prepare the laws. But when I look back to my own experience during the last five years, it appears to me to be the greatest need of the country. The Executive brings up laws before us, we discuss and pass them. But ultimately the court frames the laws. If you look at some of the most important laws as they emerged after scrutiny by the courts, you will always find that the court has deviated from the interpretation which we had wanted to give to the law in question. The Constituent Assembly had passed a Constitution, which the people adopted. It was then said in clear terms that Parliament will have the right to amend any part of the Constitution. Unfortunately in Golak Nath's case, this right was cur-

tailed; and it was said that we cannot curtail the fundamental rights; but it did not try to go into the views of the founding fathers of our Constitution. I quote from what Mr. Jawaharlal Nehru had said when he wanted to assert the supremacy:

"The Free India will see the bursting forth of the energy of a mighty nation. What it will do, and what it will not, I do not know. But I do know that it will not consent to be bound down by anything. Some people imagine that what we do now may not be touched for 10 or 20 years. I should like this House to consider that we are on the eye of revolutionary changes, revolutionary in every sense of the word, because when the spirit of a nation breaks its bonds, it functions in peculiar ways; and it should function in strange ways. It may be that the Constitution that this House may frame may not satisfy the Free India. This House cannot bind the next generation; and the people who will duly succeed us in this task."

So, it was clear that Mr. Nehru, with his vision, could realize that when the energy of this nation, the spirit, breaks its bonds, nobody can bind the nation for all times to come, with a Constitution which is either unalterable or in part unalterable; but unfortunately we find the Golak Nath case. But thereafter we re-asserted and said, "No; in spite of Golak Nath case, Parliament has the sovereign right to amend all the parts; but again, in the Keshavananda Bharati case too, we found the court saying that we cannot amend the basic structure. I do not know what the basic structure means. What my father might have considered to be the basic structure, I do not consider to be the basic one today.

MR. CHAIRMAN: You have taken four minutes.

SHRI DINESH CHANDRA GO-SWAMI: Allow me to develop at least one point, Sir.

SHRI K. P. UNNIKRISHNAN: You can give 5 minutes to each Member.

MR. CHAIRMAN: Mr. Unnikrishnan, that will come to mean an additional half-an-hour, I mean giving 5 minutes each. It will mean our sitting up to 6.30 p.m. I assure you

SHRI DINESH CHANDRA GO-SWAMI: We should be allowed to develop at least one point.

MR. CHAIRMAN: It is unfortunate, sitting in the Chair. What can I do? (Interruptions)

SHRI K. SURYANARAYANA: I want to propose that we extend the sitting by another hour. We will sit; what is the harm?

MR. CHAIRMAN: If we extend by one hour, do you know how much time you will get? Anyway, let the House decide. This sort of thing cannot go on. Will all the Members who are here, sit to the end? Will they commit? What do you say, Mr. Deputy Whip? It is surprising. Even otherwise, it will come to 6.30 p.m. What can I do?

SHRI DINESH CHANDRA GO-SWAMI: I want to develop only one point.

MR. CHAIRMAN: It depends on how you develop your point. Now, don't speak. 5 minutes are up now. Next speaker, Mr. Daga.

SHRI DINESH CHANDRA GO-SWAMI: After all, this is a debate.

SHRI K. SURYANARAYANA: Can we not request you to extend the time of the House to-day?

श्री मूलचन्द्र डागा (पाली) : सभापति जी, एक बात जरूर है कि समय के साथ अनुसूची और समाज का वातावरण भी बदलता है और उसके अनुसार हमें चलना चाहिए। एक बात यह है कि संविधान में परिवर्तन होना चाहिए और इसके लिए मैं माननीय सदस्य से,

जिन्होंने यह रेजोल्यूशन मूव किया है, यह चाहता था कि वे इस संबंध में एक बिल कांफ्रेंट शीप में लाते। मैं ऐसा समझता हूँ कि उनके दिमाग में इस के बारे में पक्कर साफ नहीं है।

सभापति जी, हिन्दुस्तान में हरेक आदमी आज ऐसी बात कहता है कि वह संविधान में परिवर्तन चाहता है। गंदी खुशी की बात है पर वह परिवर्तन क्या चाहता है और कैसा चाहता है, यह मालूम नहीं है। आज हर एक आदमी प्रोग्रेसिव बनना चाहता है, प्रगतिशील बनना चाहता है और चांद तक पहुंचना चाहता है। आज हम बहुत तेजी से प्रगति करना चाहते हैं। जिन्होंने संविधान बनाया है, उसके अनुसार तीन चीजें मुख्य हैं। एक कार्य-पालिका है, दूसरी न्यायपालिका है और तीसरा लेजिस्लेचर है। आप की जो यह संसद है यह कानून बनाने का कांस्टीट्यूशन बनाने का काम करती है। ये नीतियाँ अपना काम कर रही हैं लेकिन हम ने कुछ निर्देशक सिद्धान्त भी बनाए हैं और हमारी जो मूलभूत अधिकारें हैं, उस के अनुसार हम ने अपने सिद्धान्त बनाए और उन के अनुसार हम हिन्दुस्तान को आगे ले जाना चाहते हैं। इस के साथ ही साथ हम ने यह भी कहा कि ये हमारे मूलभूत अधिकार हैं, उन को हिन्दी में मूलभूत कहें या मौलिक अधिकार कहें ; (अपवाह)

सभापति महोदय : मूलभूत ठीक है। अगर कोई हिन्दी ठीक से न समझे, तो क्या किया जाए। अगर किसी को भाषा नहीं आती है, तो हम कुछ नहीं कर सकते। 'मूलभूत' शब्द ठीक है।

श्री मूल चन्द्र डागा : धन्यवाद, सभापति जी। अब मौलिक अधिकारों के कारण अगर हम अपने निर्देशक सिद्धान्तों को प्राप्त नहीं कर सकते, तो यह सोचने की बात है कि

[श्री मूल चन्द्र डागा]

क्या करना चाहिए। आज 28 साल के काय भी जो आप के डाइरेक्टिव प्रिंसिपल हैं और जिन को स्टेट्स को लागू करना या और जिन के आधार पर देश को आगे बढ़ाना था, वे पूरे नहीं हुए। 10 साल के अन्दर एजुकेशन दे देनी थी, वह हम नहीं कर पाए। हम को डिस्पेन्ड्री कम करनी थी, वह नहीं कर पाए। एक आदमी और दूसरे आदमी के बीच में जो अन्तर है वह आज भी है। इस के लिए हम केवल संविधान को दोष नहीं दे सकते। मैं यह नहीं कहता कि संविधान के कारण हममें रुकावट आई है।

अब एक बात और चलती है। उधर के बैठने वालों को कोई बात अच्छी नहीं लगती है तो वे दो, चार गालियां दे देते हैं और यह समझते हैं कि उन का काम पूरा हो गया। न्यायाधीश क्या करते हैं? न्यायाधीश केवल एक बात करते हैं कि जो कानून बनता है, संविधान के आधार पर उस की जांच करत है और लोग यह सोचते हैं कि वे कानून का दुरुपयोग करते हैं। वे अपनी तरफ से कानून ठीक नहीं कर सकते हैं। अगर कानून ठीक नहीं कर सकते हैं अगर कानून की वजह से कुछ रुकावट आती है तो उन में आप को परिवर्तन करना चाहिए।

SHRI VAYALAR RAVI: How did Patanjali Shastri and Subba Rao come into conflict? That is the basic point.

MR. CHAIRMAN: I would request hon. Members not to interrupt, because each Member gets only five minutes. Let them be allowed to make their points.

श्री मूल चन्द्र डागा : पार्लियामेंट में इतने मेम्बर बोलते हैं, यह जरूरी नहीं कि सब के विचार एक न हों। हिन्दुस्तान के कुछ लोग बेस्टेड इन्टेलिजेंस की बात करते हैं और कहते हैं कि हम देश को बढ़ाना चाहते हैं। मैं कहता हूं कि देश को

आगे बढ़ाने में, देश को समाजवाद की ओर ले जाने में जिन जिन से भी रुकावट पड़ा होती है, उन सब रुकावटों से हमें बचना है। संविधान में इसके लिए जो भी आर्टिकल परिवर्तित करने की आवश्यकता है, जितने भी आर्टिकलों में परिवर्तन करने की आवश्यकता है, मेहरबानी करन उन सबमें परिवर्तन को जिए।

समापति नहीं होय : डागा जी बस हो गया, अब आप बैठिए।

SHRI B. R. SHUKLA (Bahrajch): I support the resolution moved by Shri Unnikrishnan.

The socio-economic conditions obtaining in the country are persistently clamouring for radical change through legislation, although such legislation may have the effect of curtailing the fundamental rights guaranteed under Part III of the Constitution. The changes may be desirable, but the question is whether under the rule of interpretation placed by the Supreme Court, this House is competent to effect those fundamental changes which are necessary.

Mr. Gokhale brought an amendment to article 13 stating that law passed in exercise of the constituent power under article 368 is not law within the meaning of article 13. That point has been upheld by the Supreme Court, but in Keswa Anand Bharati's case it has been clearly laid down that the basic features of the Constitution are not amenable to changes in exercise of article 368. Therefore, there is a perpetual conflict between the view taken by this Parliament and the view taken by the judiciary.

Every year Government comes with certain amendments by inserting legislations in Schedule IX. That is an ever expanding immunity umbrella. Whenever there is difficulty with the courts, Government rushes to Parliament to put the impugned legislation in that Schedule. My submission is that this will not do. Let us once and for

all decide who is the supreme and sovereign power in this country, whether a few intellectuals, however eminent they may be, sitting in an ivory tower, very objective in their outlook, are nearer the wishes, aspirations and feelings of the people, or those who have been returned to this House on the basis of adult franchise, though they may be lay men and not be sophisticated in their outlook, since this Parliament is more representative in character than the Constituent Assembly which framed the original Constitution. This deadlock, this basic question has to be resolved once and for all and no deviation or subterfuges to avoid a conflict with the judiciary would meet the ends of justice.

At the moment, thousands of writs against the ceiling laws passed by the various States are pending in the different High Courts, and the whole matter is pending determination. By the time five years of this House lapses, this legislation will not be implemented. Therefore, the writ jurisdiction of the courts should be curtailed drastically.

Then there is the question of the suspension of liberty. This part of the House which stands for the curtailment of the right of property is very jealous of the protection of the rights of civil liberties. My submission is that when the paramount interests of the State require it, there should be a curtailment of the right of civil liberty as enjoined in article 19. Therefore, Government should initiate a discussion on the desirable changes in the Constitution.

There is one more thing. The laws which are passed by this Parliament are not sometimes really laws passed by the Parliament, but they are laws prepared by the Secretariat and the seal of approval is given by this Parliament. This Parliament intervenes in the matter only when the question of validity of any legislation is being challenged in the High Court or in the Supreme Court. Therefore, there should be proper discussion and proper scope for exchange of views among the Members of Parliament

before any change is effected in the Constitution.

श्री कचता बिज 'मधुकर' (केसरिया)
श्री उन्नीकुण्डान् ने आज उस प्रस्ताव को यहां रखा है जिस पर सारे देश में चर्चा हो रही है, जो सारे देश में चर्चा का विषय बना हुआ है। वह विषय है कि संविधान में किम किम तरह रु संशोधन किए जाएं। आज इस प्रस्ताव को लोक सभा में लाकर उन्होंने बहुत ही सही काम किया है। मबाल यह है कि हमारा जो वर्तमान 'संविधान है वह देश को जो आर्थिक, सामाजिक आदि जरूरत हैं उनको पूरा करना है, ग्राम आदमी को जो जरूरतें हैं, उनको पूरी करना है, देश को समृद्धि में, देश के विकास में सहायक होता है? यही सब चीजें हैं जो इस संविधान में निहित हैं। मबाल यह है कि क्या यह उनकी पूर्ति करता है या नहीं करता है? मैं समझता हूं कि यह उनकी पूर्ति नहीं करता है। देश को आवश्यकताएं इस बात की मांग करती हैं कि समूचे रूप से यहां से सामन्तवाद का खान्दा किया जाए। उनके खान्दों में यह जो संविधान है यह बाधक मिट्ट हो रहा है। साधन मिट्ट नहीं हो रहा है। हम लोगों को किसानों का खेतीहार मजदूरों का, भूमिहीनों बड़ाईदारों का अनुभव है, वे किन परिस्थितियों में काम करने हैं उनका अनुभव है। आज बड़ाईदारों के केमिम भ्रष्टानतों में मन्त्री राज्यों में हजारों की संख्या में चल रहे हैं लेकिन उनके निर्णय नहीं हो पा रहे हैं। कानूनी झड़ने रास्ते में खड़ी कर दी जाती है। अगर हम वर्तमान व्यवस्था में से सामन्तवाद का सफाया नहीं कर सकते हैं तो मैं समझता हूं कि यह गलत बात होगी। संविधान अगर इसके रास्ते में बाधक है तो उसको बदल दिया जाना चाहिए। देश की प्रगति में अगर वह बाधक है तो संविधान में परिवर्तन होना चाहिए। देश में जनतन्त्र का जो आधार है, जनतंत्र का जो

[श्री कमला मिश्र 'मधुकर']

फैलाव है अगर वह उसमें बाधक है तो उसको बदल दिया जाना चाहिए। हमें यह देखना होगा कि जनतंत्र का फैलाव हो रहा है या संकुचन हो रहा है। मैं समझता हूँ कि संकुचन हो रहा है। इस चीज पर हमको ध्यान देना चाहिए।

गांव में रहने वाले किसान खेतिहर मजदूर, हरिजन, आदिवासी तथा दूसरे लोगों को जो अधिकार मिले हुए हैं आज संविधान की वजह से उन अधिकारों की रक्षा नहीं हो पाती है। वे लोग कोर्ट में चले जाते हैं। वहां पर वे गरीब घमसाय आदमी मुकदमा लड़ नहीं पाते हैं। इस मामले इनको न्यायालय नहीं मिल पाता है। इस दृष्टि में भी तथा इनके हितों की रक्षा करने के लिए भी संविधान में जिन परिवर्तनों की आवश्यकता हो उनको किया जाना चाहिए।

राइट टू प्रापर्टी का जो अधिकार है वह आज भी बना हुआ है। इसकी वजह से जमींदारी, पूंजीवादी, माहूकारी व्यवस्था पनप रही है। इस पर प्रकृश लगाना होगा। इसके लिए अगर संविधान में संशोधन करने की आवश्यकता हो तो वह किया जाना चाहिए। जनतंत्र के प्राधान्य को मजबूत करने के लिए, उसको बढ़ाने के लिए संविधान में परिवर्तन लाया जरूरी है।

आज आवश्यकता इस बात की है कि सेक्युलर फॉर्मिज को बढ़ावा मिले। धर्म के नाम पर जो लोगों की भावनाओं को है, उस पर रोक लगे। धर्म के नाम पर लोगों को सहूलियतें मिली हुई हैं। उसकी आड़ में देश में फासिस्ट फॉसिस्ट पनप रही है, राइट रिप्रेजेंटेशन भी देश में आज पनप रहा है, उसको बढ़ावा मिल रहा है। संविधान ऐसा होना चाहिए कि राइट रिप्रेजेंटेशन पर

रोक लगाने में यह सफल सिद्ध हो, भ्रष्टाचार, संवैधानिक अधिकारों को है, उनको समूल नष्ट किया जा सके। जो मोनोपोलिस्ट हैं, जो बड़े बड़े पूंजीपति हैं उन पर रोक लगनी चाहिए। डाक्टरेटिब प्रिंसिपल जो हैं उन में यह कहा गया है कि धन का केन्द्रीयकरण नहीं होना चाहिये। लेकिन हमारा अनुभव क्या कहता है? अनुभव यह कहता है कि टाटा, बिड़ला आदि जो बड़े बड़े पूंजीपति हैं उनके परिवारों में धन का केन्द्रीयकरण हो रहा है। यह सब संविधान की व्यवस्थाओं के ठीक विपरीत हो रहा, विपरीत हो रहा है, डाक्टरेटिब प्रिंसिपल के ठीक विपरीत हो रहा है। मोनोपोली का विकास हो रहा है। इस सब को रोकने में संविधान असफल सिद्ध हुआ है। इस मामले उसको बदला जाना चाहिए। नव उद्दिष्टवाद को समर्थन हो रहा है। उसको रोकने में संविधान सफल सिद्ध नहीं हो रहा है। इसलिए भी उनको बदला जाना चाहिये। जिस संविधान में देश में प्रशासन का वर्गोकेमी का विकास होता है, प्रशासन का विन्द्रीयकरण नहीं होता है, मेरा खयाल है वह भी जो संविधान में डिफिकल्ट है, इसलिए नहीं होता है और उस दृष्टि से भी डिफिकल्ट को दूर करने के लिए कार्यवाई होनी चाहिये और संविधान में परिवर्तन किया जाना चाहिये।

संविधान में न्यायपालिका को जो अधिकार दिए गए हैं ऐसा देखा गया है कि उस की वजह से जो महत्वपूर्ण बिज हमने पाम किए हैं उनको भी उमने लागू होने नहीं दिया है। दट इज ए मैनेज। उस मैनेज को रोकना जरूरी है। न्यायपालिका के अधिकारों को हमें सीमा में लाना पड़ेगा। पार्लियामेंट की सुप्रीमेसी की व्यवस्था करनी पड़ेगी। न्यायपालिका संसद के उपर न रहे। ऐसी व्यवस्था होनी चाहिये जिससे मजदूरों को जो समस्याओं हैं, जो उन पर गड़बड़ है उनको हल करने के लिये ट्रिब्यूनल की स्थापना हो ताकि कामूनी अदालत पैदा

न हो और मजदूरों के विचार हल किए जा सकें। संविधान में ऐसा संशोधन होना चाहिये ताकि जनतंत्रीय अधिकारों का विकास हो सके।

इसलिये संविधान का दिशा-परिवर्तन होना चाहिये और एक ऐकी-क्यूडल-सामन्त-वाद विरोधी, एंटी मोनोपलिस्ट, साम्राज्यवाद विरोधी ग्रन्थ-राष्ट्रवाद विरोधी और फासिज्म विरोधी और सामप्रदायिकता विरोधी व्यवस्था होनी चाहिये जिसके जरिये देश में समाजवाद की प्रगति हो।

नये समाज की स्थापना के लिये, नये जनतंत्र को धोपिन करने के लिये संविधान में परिवर्तन करना लाजमी बन गया है, सरकार इसको टाल नहीं सकती है। देश की मांग है, जमाने की मांग है, इसलिये मैं चाहता हूँ कि संविधान में संशोधन होना चाहिये।

SHRI SATYENDRA NARAYAN SINHA (Aurangabad). Mr. Chairman, Sir, the time at my disposal is very short. I find it very difficult to say all that I want to say. So, I will be very brief. I will just skip over some of the points.

Firstly, the main thrust of the Resolution appears to be that the mover of the Resolution wants judicial review of the enactment passed by Parliament or the State Legislature to be removed. The Government has also disclosed its mind. The Law Minister, Mr. Gokhale, has already made a statement to this effect that there should be a parliamentary machinery to decide about the constitutionality or validity of enactments passed by Parliament or the State Legislature and that there should be no judicial review. He has said that the courts should only decide whether the Parliament or the State Legislature has exceeded their powers defined in the Constitution.

That is what Mr. Gokhale is reported to have said. From this, we gather that this is the thinking of the Government. It leads to the question whether judiciary should be permitted to function, as it is functioning today, i.e. to go into the validity or the constitutionality of enactment passed by the Parliament or the State Legislature.

The question of sovereignty of legislature has been raised by my hon. friend, Shri B. R. Shukla. In a democratic set-up, the legislature is sovereign within the field demarcated by the Constitution. So is also the judiciary. Neither Parliament nor the judiciary can claim to have more powers than what have been allotted to them or conferred on them by the Constitution. To that extent, the Parliament of India functions in a limited manner. The general view all the world over is for judicial review of, within the limit set by the Constitution, the laws passed by the Parliament. These laws should be reviewed by an organ which is outside the legislature or the executive. That was the view expressed even by Dr Ambedkar. I have no time but I would hurriedly quote the relevant part. He said:

"The executive shall not give its own interpretation of law which is in conflict with the interpretation of the judicial organ created by the Constitution."

Even Pandit Jawaharlal Nehru who has been quoted by my hon. friends here had said that we must respect the judiciary, the Supreme Court and other High Courts and it is their duty to see that "in a moment of passion, in a moment of excitement, even the representatives of the people do not go wrong." This clearly goes against the views expressed by the Law Minister that a parliamentary committee should be constituted to review or to decide about the constitutionality or the validity of the enact-

[Shri Satyendra Narayan Sinha]

ments passed by the Parliament or the State Legislature.

After all, what is parliamentary democracy? Democracy envisages that the rule is by majority, but postulates that the opposition also has got a role to play.

As soon as you say that there is a Parliamentary system prevailing here, the Opposition also comes into the picture and it has no less a responsible role to play.

Now, you are blaming the Constitution for lack of progress in the social and economic fields; but the Constitution is not lacking in this respect. You are aware that the Directive Principles embody in them the social and economic rights of the people and they set the path to be followed to reach the goal of an egalitarian society. It is for the Government to bring about measures to change the socio-economic structure of this country. For the last 26 years, this party has been in power, and it is their Govt's failure. But it has become customary with Government that they want to pass on the buck for their failures to somebody else. They have to find scape-goats elsewhere: sometimes the blame the Constitution, then the courts and then they blame the Opposition. They are talking of reviewing the entire Constitution. Yes, do have a fresh look and a review in a comprehensive manner, but in what way? Is it only for the Government Party to do it or should the entire nation have a look at it? In a democracy, the people also have to be educated about the changes we propose to make in the Constitution—and that is not possible unless we initiate a national debate on the question. I am pleading with the Government that they should initiate a national debate and create an atmosphere which will be conducive to the expression of free, frank, fearless, impartial and objective opinion. That is not the atmo-

sphere today: you are having only one side of the picture. If you cannot find any other method, you can convert the entire House into a Select Committee, you can call the representatives of the people, the Bar Council and other associations to give their opinion about the Constitution and the amendments you want to make. You want to do it in this Parliament which is today a subdued Parliament with no Opposition worth the name. Thousands of people are in jail. Unless they are released and opposition leaders are enabled to participate in the national debate, you can not have the requisite atmosphere for free and frank views. But you are not thinking of that. Nobody has yet said that the Emergency powers also should be periodically reviewed. You assumed Emergency powers which may continue indefinitely; they need not be submitted to parliament for a review! My submission is that they should also be submitted for a review, periodic review.

Similarly, with regard to Art. 226, you have been talking about talking away the power of the High Court under Article 226. It is not merely land legislation which is pending before it. You can make a suitable provision there in Article 226 that High Courts would not have powers to issue writs in socio-economic matters; but where the liberty of a citizens is concerned, they should have the right to go into it. Currently the Supreme Court is seized of the matter and examining the question whether the High Court could go into the question of *malu fide* or not when persons are arrested under the Maintenance of Internal Security Act. Sir, the High Courts have that power, and you should not take away their powers merely because it does not take away their powers merely because it does not suit you.

With these words, I do welcome the Resolution, but I say that there should be a national debate and our

people who are in Jail and who are representatives of the people, should also be allowed to participate in the debate to make it more meaningful and purposeful.

SHRI SOMNATH CHATTERJEE (Burdwan): So far as this Resolution is concerned, I don't find anything to quarrel about it because it is precatory in nature—it is wishful thinking. So far as the Constitution is concerned, we don't believe in its immutability. Since 1971, this Parliament has been here and, whenever any Constitution Amendment Bill came up, we supported it, except on one occasion when you brought a Constitution Amendment Bill for the purpose of placing one individual or a group of individuals about law. We did not want to be a party to it and were not a party to it, but you have used the amending provision of the Constitution to put some persons above law was that constitutional amendment in the right direction? Do you want such amendments now? The other amendment which the Government has made is to include MISA in the Ninth Schedule. That is your greatest contribution towards the functioning of the Parliament and for maintaining a constitutional set-up in the country! You are putting the Election Laws Amendment Act in the Ninth Schedule. For whose benefit? You have put the Additional Emoluments Compulsory Deposit Act in the Ninth Schedule. For whose benefit? You have not put the Temporary Restriction on Dividends Act in the Ninth Schedule. These are laws which have been given the shield of protection of the Ninth Schedule, which are not for the benefit of the people. Now, the MISA which will not stand the scrutiny of a single day under Article 22 is being given protection of the Ninth Schedule and nobody can challenge. People are being sent to Jail. The Attorney General of this Government is arguing before the Supreme Court. There is no right to live in

this country. There is no right to life. There is no right to liberty. We do not want such changes in the Constitution. We want that you make the Directive Principles as enforceable rights of the citizens of the country. Would you do it, Mr. Unnikrishnan? I have respect for him. He used good English in his speech and made some very relevant quotations in his speech, but I am sorry he has not indicated in what direction he wants changes to be made.

You mentioned about the property rights. You know we are not enamoured of the property rights. But, where is the property right? Article 31 has been amended. Article 368 has now been amended. Kindly enlighten us how you have exercised your powers since 1971 to bring in such measures to do away with the remnants of the property right that might be there in this country. But you have taken away the people's liberty.

Now, one very vital point was made by Mr. Sinha. Now, when people's personal liberties are at stake, it requires a constant review, a review of the emergency powers. From 1962 we know emergency continued till 1968. Then, there was a respite for 3 years, not because of any love for personal liberty but because of the trouble in your own party. Then, only in 1971 when on the promise of the Garibi Hatao you came back to power with a very big majority in this Parliament, the first thing which you removed from this country was personal liberty, in the form of Maintenance of Internal Security Act, 1971. One of the very first Bills that was introduced by this Government. Instead of banishing poverty, you banished personal liberty from this country and that law has now become more and more draconian every day. I am not entitled to know why I am in jail. I am not entitled to know how long I shall be

[Shri Somnath Chatterjee:]

there. I am not entitled to know if the courts can go into this question or not. We do not want such amendments in the Constitution.

Now, the emergency provisions of the Constitution have been used for political purposes. Where is the power to stop it? We see many of the powers are being utilised only for political purposes. The Prime Minister asked for a national debate on constitutional amendments. We, the leftist parties, wanted to hold a rally in Calcutta and we wanted to hold a debate. No question could be discussed in a closed hall. But this government did not allow. The West Bengal Government stopped it under the Calcutta Suburban Police Act. What sort of discussion can there be when the Opposition leaders are not here? You know many of the leaders of the opposition are not here. People are not allowed to say things outside. We cannot hold an open meeting. We cannot hold a meeting inside a closed hall. With whom shall we discuss? You are having your officially-sponsored conferences and we find, as one of the Members, not on this side, said a Division Bench of the Supreme Court goes to the State capitals every week, two of the Judges are going and making speeches. I have got nothing against them. I have high respect for the Judges. They are entitled to have their views. But give this liberty to others also. We are also citizens of this country. We have our own views. Do not think that you have got the monopoly of the interests of the people of this country.

That is the reason we say, do not use these types of provisions, these types of occasions gimmickily. Please do not use this to explain away your failures of the Executive, do not shed crocodile tears for the poor people because they know what you are doing.

I would like to say, do not make everybody a scape-goat for your failures. I have spoken last time that there are many failings in the judiciary which require to be corrected. When a particular provision of the Constitution was there, the judiciary delivered the Golak Nath judgement. But Golak Nath judgement has become dead as mutton. We have nullified legislatively the Golak Nath judgement. But since then, what have you done? Mr. Unnikrishnan, please point out any legislation which has been nullified by the Supreme Court which we wanted since 1971. Please do it objectively. We want betterment of the people of this country. We also want, if any obstacle is created by any provision of the Constitution which leads to non-enforcement of the peoples urges and aspirations or achievement of what we want for the people, remove the fetters. We shall be with you also as we have been in the past except on one occasion as I have told you. Do not try to use them for the purpose of creating an atmosphere through which you continue with the draconian powers. Do not do that.

SHRI C. M. STEPHEN (Muvattupuzha): Mr. Chairman, this House. I am sure will be grateful to Mr. Unnikrishnan for having raised this current issue for discussion on the floor of the House. I do not want to go to the terms of the Resolution because there is nothing very stunning as such. It is the subject that matters. The subject is that the Constitution must be looked into afresh to discover and to discern whether to amend, and if so what should be amended in the Constitution. This idea of amendment of the Constitution to give a new leaf and a new wing came after the Supreme Court gave a judgement: that these fundamental rights cannot be altered. In the Golak Nath case a new dictum was spelt out by Justice Subba Rao that the business of the court is not merely to declare law but to make

law. By the principle of prospective ruling that Bench ruled that no constitutional amendments, in fact not even the ordinary law that we can make, can, by the principle of prospective ruling amend the very basic structure Constitution itself. Now the new ruling has come—that the power exercised by this Court. Under Rule 368 is a constituent power, that in exercise of the constituent power you can amend any Article of the Constitution. But they have put up something new, very dangerous, that the basic structure of the Constitution should not be altered without defining what the basic structure is. Therefore, in exercise of the power of the Parliament, the Damocle's sword is hanging over the head. This has made the amendment of the Constitution vital and the discussion very important. Now if this hurdle is got over, viz., that the constitutional power is abridged and circumscribed by the consideration of the basic structure, then I think remaining is a matter of course. The constitution is flexible enough to meet any contingency and we have amended the Constitution quite a number of times—about 38 or 39 times we have amended the Constitution. Neither super-human has happened. Whenever occasion arose we did amend the Constitution.

Now, about the property rights, we have got here Article 31(b) in which a very momentous amendment has been made that whenever a law, whether it violates the fundamental rights or not be, is put under the Ninth Schedule, it gets the constitutional protection. In fact the fundamental rights have been by-passed to the extent of its inclusion in the Ninth Schedule. Under Article 31(c)—in discharge of the obligations in part 4, namely in the Directive Principles—any law can be passed.

Any law can be passed, if declaration is made to the effect that that is in discharge of an obligation. Then, in spite of whatever may be there in Article 14, Article 19, Article 31, etc.

that law will be valid. This sort of amendment is possible and more things can be brought around it. But, as far as I am concerned, to me it appears, the most fundamental thing in the matter of constitutional structure is the power of this Parliament, its constituent power. Any attempt by the judiciary to circumvent that power is against the progress of the nation. Therefore this discussion has started.

Now, Sir, Mr. Unnikrishnan's Resolution states:

"Keeping in tact the supremacy of Parliament, the federal structure and legitimate rights of the minorities, the Tribals, Harijans and other submargined sections of our population."

If the legitimate rights of minorities, tribals, harijans, and other submargined sections of our population come in there, then, what other things are excluded, I do not know. Now, so far as property rights are concerned, Article 31(b) and 31(c) are there. Further amendment can be done. Any fundamental right can be altered. The power of judicial review is something which needs a very closer look. But one thing is certain that there cannot be any compromise on the principle that the constituent power of this Parliament is supreme. So, there cannot be any compromise on this principle. That is the function of this Parliament and not any court of law. Abrogation by the Supreme Court of that power, as in the dictum of Justice Subba Rao, saying that by prospective ruling, even the Constitution can be amended, cannot be agreed to and there cannot be any compromise on that point.

Therefore, what we should do is to re-establish the supreme authority of the constituent power of this Parliament. That is the essence of the whole matter. Once that is done, then, the Constitution need not stand in the way of whatever progress we want to make. Any Article is amendable. Any Article

[Shri C. M. Stephen]

is changeable. We can go ahead. As far as broad constitutional structure is concerned it is all right. We do not want to change federalism, we do not want to change the republican character; we do not want to change secularism; we do not want to change parliamentary democracy. There is the position of the judiciary subject to the authority of this Parliament, its constituent power, as I have already stated. We can make whatever changes are necessary so that the country can go ahead these principles are spelt out.

Shri Somnath Chatterjee said about personal liberty of persons. The days when personal liberty had no limit was not long past. Under those conditions, what was the condition of masses in this country? What was the condition of economy in this country? Liberty degenerated into licence. Under these conditions, emergency had to be declared. Nobody can dispute that there were emergency conditions prevailing. That is why emergency was imposed. Mr. Sinha spoke about the judiciary. It is the same judiciary which in Shankari Prasad's case said that fundamental rights cannot be changed. It is the same judiciary which later said that it can be changed, it is the same judiciary which said that the basic structure should not be altered. There is nothing sacrosanct, nothing inviolable, immutable about the wisdom of the judiciary.

The collective wisdom, the collective will, the collective verdict and the collective decree of the people is the most sacrosanct thing and there is nothing sacrosanct so far as judiciary is concerned.

Once the judiciary accepts that position, the conflict in this country will be over. If they do not accept it, then such steps will have to be taken to show them their proper place and supremacy of Parliament will have to be reestablished. That is the whole thing in this discussion involving a discussion on the constitutional amendment on this national debate. I support

the principle underlying the Resolution of Shri Unnikrishnan and I wish the national debate may take a turn which should take us to a constructive basis.

श्री नरसिंह काराधरबाई (गोरखपुर):

सभापति जी, जो प्रस्ताव माननीय उन्नीकृष्णन् ने रखा है। मैं उस का स्वागत करता हूँ और उन को धन्यवाद देता हूँ कि उन्होंने ने एक अवसर प्रदान किया इस सदन को और इस देश में ऐसे लोगों को जो कि आज महसूस करते हैं कि विधान का संशोधन होना चाहिये। आज जो सामाजिक और आर्थिक परिस्थितियाँ तेजी से बदल रही हैं और जिस तरह से जन आकांक्षायें लोगों की ऊपर आ रही हैं, उस के लिये जरूरी है कि विचार किया जाय, और इस बात का अवसर प्रदान करने के लिये मैं उन को धन्यवाद देना चाहता हूँ। हम उन के प्रस्ताव से सहमत हो सकते हैं, असहमत हो सकते हैं, लेकिन एक बात बहुत साफ है कि देश में जो आज परिस्थिति पैदा है उस में यह बात स्वीकार करने की है कि विधान पर "डी-नोवो" विचार होना चाहिये और देखना चाहिये कि आज की परिस्थिति के अनुसार हम कैसा विधान में संशोधन करें जो आज की आवश्यकताओं को पूरा कर सके।

जब यह विधान बनाया गया था तो आप जानते हैं कि उस समय हम देश की आजादी की लड़ाई लड़ रहे थे। हमारे देश में बहुत से राजा, नबाब, जमींदार और बहुत से ऐसे लोग थे जो कि हमारे देश में रहते थे। और इस विधान को बनते समय हम ने सारे देश की परिस्थिति, जो स्वराज्य के बाद हमें प्राप्त हुई थी, उस को ध्यान में रख कर अपने देश का एक विधान बनाया था। संविधान विमर्शकों ने जो विधान बनाया उस परिस्थिति को देखते हुए और उस परिस्थिति में जो उस समय हमें सामाजिक और

आर्थिक क्रान्ति लानी थी उस को देखते हुए वह विधान बनाया गया था। आज विधान में संशोधन करने की जरूरत है। अब तक 39 संशोधन उस में हो चुके हैं। इस विधान को जब हम डी-नॉबो बेंच करने की बात कहते हैं तो हम यह नहीं कहते इस विधान में जो मौलिक सिद्धान्त है, या उन की जो व्याख्या की गई है, जो विधान से ऐंग्लिक्यूटिव सेजिस्ट्रेचर और जुडिशियरी की शक्तियाँ दी गई है उन का आज की परिस्थितियों में संशोधन न किया जाय। माननीय ऐम्बोनी संविधान सभा के सदस्य थे, उन्होंने कहा कि बेसिक फीचर हमारा क्या है? उन की समझ में बेसिक फीचर केवल इतना है कि ऐंग्लिक्यूटिव, जुडिशियरी और पार्लियामेंट या काउन्सिल आफ मिनिस्टर्स या जो आज उन से पार्लिस मिलती है, उन के अलग अलग जो काम है, जो उन के अधिकार है, उस अधिकार को समाप्त न किया जाय। वह इसे ही बेसिक फीचर मानते हैं। लेकिन हम बेसिक फीचर मानते हैं संविधान के उस तत्व को जिस के अन्तर्गत इस देश की करोड़ों जनता को रोजी रोटी देने के काम को पूरा कर सके, या जिन को काम की जरूरत है, उन को काम दिला सके, और यह काम हमारा विधान पूरा कर सके। जनता की आकांक्षाओं को पूरा करने के लिये, जनता के सुख शांति के लिये जो काम आवश्यक है उन को पूरा कर सके, इसी को हम बेसिक फीचर मानते हैं।

16.49 hrs.

[SRI C. M. STEPHEN in the Chair]

अगर माननीय ऐम्बोनी की परिभाषा को लिया जाय इस देश में, तो वो तरह के नागरिक पैदा होते हैं। एक तो वह जो बड़े बड़े स्कूलों में पढ़ते हैं, जिन के लिये किंगडॉम कॉलेज बने हुए हैं, और दूसरे वह लोग जो गांवों में प्राइमरी स्कूलों के पढ़ते हैं, जिन के पास पढ़ने के लिये तन्त्र मौजूद नहीं है जो वेष्ट की आवश्यकताओं को पूरा कर सके।

अगर आज हम माननीय ऐम्बोनी के सिद्धान्त को मानते हैं, और अगर आज छत्र के फंडामेंटल को मानते हैं तो आज यह बात सर्व-विदित हो जानी चाहिए कि आज इस देश में दो तरह के सिटीजन्स को कभी भी नहीं रोका जा सकता है, दो तरह की शिक्षा पद्धति को कभी भी दूर नहीं किया जा सकता है।

श्रीमान् आप जानते हैं कि इस देश में पूजा-रतियों ने, इस देश में आज जो शोषक लोग हैं, उन्होंने अंग्रेजों के समय में जो परिस्थिति पैदा की और जिन के तहत में उन के कामप्रोमोशन के अन्तर्गत हम को एक कास्टी-ड्यूशन देना पड़ा, आज इस देश में आजादी के बाद भी ऐसे लोग हैं जो सोसाइटी बना कर शिक्षा के क्षेत्र में जहाँ हमारे संविधान मौलिकता और समानता का अधिकार दिया गया है, एकमप्लायेशन कर रहे हैं और इस देश में दो तरह के नागरिक बना रहे हैं। हमलिये मैं चाहूंगा कि हम बात को भी ध्यान में रखना चाहिये। अगर इस संविधान को आप सही मानते हैं, अगर इस के प्री-एम्बल को सही मानते हैं, अगर इसके डारेक्टिव प्रिंसिपल्स को सही मानते हैं, तो डारेक्टिव प्रिंसिपल्स, या प्री-एम्बल या फंडामेंटल राइट्स में यह कहीं नहीं लिखा हुआ है कि आज दो तरह के सिटीजन्स इस देश में पैदा किये जायेंगे, लेकिन श्रीमान्, आज इस तरह की परिस्थिति देश में पैदा की जा रही है और यह बात सही है कि आज एक पक्ष ऐसा है जो इस को मानता है और उस रास्ते पर चलने वाले श्री फ्रीक एम्बोनी हैं लेकिन आज की जो सामाजिक परिस्थिति है, उस में हमारे देश का नागरिक उस को स्वीकार नहीं करता है और इसलिये मैं कहता हूँ कि इस कास्टीड्यूशन में बेंच होनी चाहिए, इस कास्टीड्यूशन में बेसिक स्ट्रक्चर बेंच होना चाहिए, इस कास्टीड्यूशन में फंडामेंटल राइट्स बेंच होने चाहिए और राइट्स आफ प्रोबर्टी बेंच होना चाहिये जिस से सही तरीके से देश की परिस्थितियों के मुताबिक जो क्रान्ति आ रही है, उस क्रान्ति को, सामाजिक व्यवस्था को हम इस देश में

[श्री गरीधर गमंगो बोलते हैं]

मैं बहुत ही खुशखबर हूँ कि बड़े ही मौलिक प्वाइंट पर यह डिबेट हो रही है और उन्नीकुण्ज जी इस प्रस्ताव को इस सदन में लाए हैं और इस प्रस्ताव का जो भी स्वरूप हो, हमारी आकांक्षा है कि इस कांस्टीट्यूशन को भी मोबों बेंज करना चाहिये और इस के स्ट्रक्चर में भी मोबों बेंज होनी चाहिए। हम यह चाहते हैं कि पार्लियामेंट को कांस्टीट्यूट एसेम्बली के रूप में बैठ कर सारी बातों पर पुनर्विचार करना चाहिए ताकि आज की परिस्थितियों में उसे लागू किया जा सके।

SHRI GIRIDHAR GOMANGO (Koraput): Sir, I support this Resolution. One thing is true in life and in the world, that is, 'there is change'. One cannot stop the change and we are changing according to the needs of the society and the condition of the country. I think, Sir, time has come to change the Constitution by which the lacunae which are existing in the acts and regulations or in the Constitution itself can be rectified.

A chair has four legs and like-wise there are four pillars of the Constitution of India, namely, social, economical, political and legal. Out of these four pillars whichever pillar is weak, we have to strengthen that pillar. The Constitution has well-protected the weaker sections. If you go through the Constitution you will find Section 275, a number of Articles and Fifth and Sixth Schedules which protect fully the interests of the weaker sections. The society is changing. Accordingly we should have some changes and there are some conditions which are yet to be changed.

So I think when we change the articles of the Constitution, the weak pillar should be kept in mind. I support this Resolution.

The India of 1947 and the India of 1976 is not the same. If we rightly think that nothing is changing, if we

confine ourselves to the four walls of a house and think there should not be any change, I think we are thinking like the toad in the well.

I will conclude my submission by saying that there is a provision which has yet to be included in the Constitution which will be discussed with the Ministry of Home Affairs, the inclusion of some areas in the Scheduled Areas. Their non-inclusion is coming in the way of the development of the backward communities and backward areas.

So far as officers are concerned, the I.A.S. officers or State gazetted officers have their rights, duties and responsibilities. But what about the representatives? As a representative, I know coming to this House is part of my duty. To go to my constituency is my responsibility. Passing a law or supporting a legislation here is also my duty. But what is the specific duty of a representative and what is the power of the representative? These should be given in writing, that 'this is your responsibility, this is your duty'. Now we are facing problems when we go to our constituencies. I do not know in what way, in which manner, we have to deliver our responsibility.

So I think when the change is coming, nobody can check it. We want a change, specially the younger generation want a change for the better future of the country, for the better future of the younger generation.

17.00 hrs.

श्री भागवत झा बोलते हैं (भागलपुर):

सभापति महोदय, प्रश्न यह है कि संविधान किस के लिये है, हम संविधान में परिवर्तन क्यों चाहते हैं? आज इस देश के ऐसे वाले, इस देश के पूँजीपति, इस देश के बड़े बड़े बकीलद, ला पण्डित, जिन्होंने अबाह सम्पत्ति जमाकर ली है, वे इस बात की गलत कहानी फैला रहे हैं कि हम लोग संविधान को तोड़ना चाहते हैं, इसमें सुधार करना चाहते

हैं। मैं स्पष्ट कहूँ कि हम संविधान को तोड़ना नहीं चाहते हैं। इस देश के संविधान ने 28 वर्षों में इस देश को सच्ची परम्परा दी है, इस देश को गणतंत्र दिया है, इस देश को बालिग मताधिकार दिये हैं। इस संविधान में हमारे यहाँ प्रतिनिधित्व का वह रूप दिया जिसके कारण हम सभी वर्ग यहाँ पर हैं। लेकिन आज इस देश में संविधान के नाम पर, सम्पत्ति के अधिकार के नाम पर, ऐसे व्यक्ति हैं जो यह चाहते हैं कि उनके महुलों में और मंजिलें उठती जाएँ और झोंपड़ी वहीं की वहीं रह जाय। हम चाहते हैं कि संविधान में ऐसा परिवर्तन हो जिससे सम्पत्ति का केन्द्रीकरण न हो। हम ऐसा कानून नहीं मानेंगे, न बनेंगे ऐसे जिससे इन महुलों पर मंजिलें और जुड़ती जायें और बगल की झोंपड़ी बराबर रोनी रह जाये। हम संविधान में ऐसा परिवर्तन नहीं चाहते हैं कि सबका प्रापटी राइट छीन लिया जाय, सम्पत्ति छीन ली जाय, भिखमंगा बना दिया लेकिन हम यह चाहते हैं सम्पत्ति के नाम पर इस देश के बड़े-बड़े पूज्यपति, बड़े-बड़े लायर—जो आज संविधान का नाम लेते हैं और जो एक पैसा इकम टैक्स नहीं देते—इस देश के बड़े-बड़े डाक्टर, बड़े बड़े इंजीनियर बड़े बड़े अफसर जिनकी तमाम की कोठियाँ दिल्ली शहर में चमचमायमान हैं, अपनी सम्पत्ति बढ़ाते न जायें। हमारा संविधान इन पर सीमा नहीं लगा सकता है, उसकी इजाजत नहीं देता है। इसलिए हम प्रापटी राइट में परिवर्तन चाहते हैं, उसका संशोधन चाहते हैं। हम यह नहीं चाहते हैं कि संविधान का जो बैसिक स्ट्रक्चर है, उस में परिवर्तन कर दिया जाए। केसवानन्द भारती का कैस तो आप जानते ही हैं उस केस के संबंध में बैसिक स्ट्रक्चर क्या है? यह है कि संघीय शासन प्रणाली है। प्रधान मंत्री ने स्वयं कहा है कि संविधान में इस तरह का परिवर्तन हम नहीं करना चाहते हैं जिससे प्रेजीडेंसल फॉर्म आफ गवर्नमेंट की स्थापना हो। प्रधान मंत्री ने बार बार कहा है कि संविधान

में परिवर्तन अगर कुछ करना है तो यह करना है कि जो हमारा उद्देश्य है, जो प्रीम्बल है, जो डायरेक्टिव प्रिंसिपल है, उनकी प्राप्ति के लिए देश की जनता की राय से कर, यहाँ के लोगों के कंसेंस से, जो कार्रवाई करने की जरूरत है वह की जाए। कंसेंस की बात विरोधी पार्टी वाले भाज कहते हैं। लेकिन वह बात तो प्रधान मंत्री ने बहुत पहले कही थी। हमारे विरोधी पार्टी वाले हल्ला ही करने हैं। कहते हैं कि प्रधान मंत्री आज देश में जनतंत्र को समाप्त करके डिक्टेटोरियल टाइप आफ गवर्नमेंट चाहती हैं, प्रेजीडेंसल फॉर्म आफ गवर्नमेंट चाहती हैं। लेकिन प्रधान मंत्री जी ने स्पष्ट कह दिया है कि ऐसा कुछ नहीं वह चाहती है। हम यह चाहते हैं कि देश में ज्यूडिशरी रहे, म्युनिम कोर्ट हाई कोर्ट, डिस्ट्रिक्ट कोर्ट आदि कोर्ट्स रहे। लेकिन हम यह चाहते हैं कि जिस आर्टिकल के अंडर यह रिट शुरू करने की बात आती है और जिस रिट के नाम पर आज छांटी सी बात भी अगर की जाती है तो उसको करने नहीं दिया जाता है, दारोगा की अगर ट्रांसफर की जाती है तो उसके खिलाफ रिट शुरू कर दी जाती है तो इस तरह की बातें नहीं चाहते हैं। जहाँ कहीं पर जमीन का बटवारा हुआ, गवर्नमेंट ने सम्पत्ति पर सीमा लगाई, जमीन पर सीमा लगाई फौरन हाई कोर्ट में रिट होती है। एक आदमी के पास हजारों हजार एकड़ जमीन रहे उसको पता न हो कि उसकी हद कहाँ तक है, वह खा कर मर जाए, हजारों मन गल्सा उस में पैदा हो उस पर अगर सरकार कानून के अन्तर्गत, प्रीम्बल वाला जो आर्टिकल है, उसके अन्तर्गत, चाहती है कि जमीन पर सीमा लगा दी जाए और वह लगा देती है, और हाई कोर्ट अगर उसके खिलाफ रिट शुरू करती है तो उस रूप में हम उसको नहीं मानेंगे, उस रिट को नहीं मानेंगे। इसलिए हम चाहते हैं कि संविधान में परिवर्तन हो। डागा जी की मैं विश्वास दिलाता हूँ कि हम कांग्रेसजन संविधान को फाड़ कर देश में

[श्री आनन्द झा-आनन्द]

अन्यथा फैलाता नहीं चाहते हैं। हम कांग्रेस जन देश में चाहते हैं कि जिस समाज-वादी समाज की कल्पना हमने की है उसकी सही मानों में स्थापना हो। प्रधान मंत्री ने जो देश के सामने आदर्श रखा है कि हम गरीबी को हटाना चाहते हैं उस उद्देश्य को प्राप्त करने के लिए संविधान में परिवर्तन हम चाहते हैं। श्री उन्नीकुण्ण ने क्या कहा है? क्या उन्होंने कहा है कि हम यह चाहते हैं कि सारी कोर्ट की पावर को अंदर रिबिजन छीन लिया जाए? आप उनकी स्पीच को पढ़ें। हम तो यह चाहते हैं कि जो आर्टिकल हमारे उद्देश्य के रास्ते में बाधक हैं, उन में संशोधन किया जाए। आज तक जो हमने 39 संविधान में संशोधन किए हैं, वे किस लिए किए हैं? जहां जहां कठिनाई अनुभव हुई उसको दूर करने के लिए ही तो वे किए हैं। जमीन के बंटवारे का जब प्रश्न आया तब हमने संशोधन किया। बैंको का जब प्रश्न आया तो हमने संशोधन किया। क्या संविधान यह है जो कुछ बकीलों ने लिख दिया या श्री पालकीवाला ने सुप्रीम कोर्ट में कह दिया? संविधान को आर्थिक, सामाजिक, राजनीतिक शक्तियों के संघर्ष से निकला हुआ एक अस्तार्वज होना चाहिये, संविधान गंगा की बहती हुई धारा है जिस में हम बराबर उसको बहने दे, उस में किसी प्रकार की रुकावट हम लागू नहीं करते। पालकीवाला, डोलक-बाबा, चमचावाला आदि तमाम चाहते हैं कि उस धारा को रोक दिया जाए। उसको रोक कर देश के बंद पूंजीपति और भी बड़े पूंजीपति बनना चाहते हैं। इस तरह से वे सम्पत्ति को न कमा सके, यह परिवर्तन हम संविधान में चाहते हैं। हम यह नहीं चाहते हैं कि स्टेट्स की प्राटोमोमी को छीन लिया जाए, संघीय शासन प्रणाली को समाप्त कर दिया जाए, हाई कोर्ट और सुप्रीम कोर्ट न रहे, प्रेजिडेंशियल फॉर्म ऑफ गवर्नमेंट स्थापित हो। डागा जी सुनें कि हम संविधान में ऐसा परिवर्तन नहीं चाहते हैं जिस में वे कोर्ट्स

हटा दी जाएं। लेकिन यह परिवर्तन जरूर चाहते हैं कि हाई कोर्ट्स और सुप्रीम कोर्ट रिट के नाम पर एक दारोगा की टांसकर को रोक न दे। जमीन के बंटवारे का प्रश्न आए तो फौरन रिट न लगा दे। हम चाहते हैं ऐसा परिवर्तन ताकि डागा जी के महलों पर और महल उठते चले न जाएं और मेरी झोंपड़ी रोती रह जाए। यह परिवर्तन हम चाहते हैं। और यह यह है कि अगर देश की करोड़ों करोड़ जनता को रोटी मिलनी है, समाजवाद की बहुत सी परिभाषाएं हैं, लेकिन मेरी परिभाषा यह है कि समाजवाद के अंदर, हिन्दुस्तान में हर नागरिक को रोटी, कपड़ा, मकान, स्वास्थ्य और शिक्षा मिलनी चाहिये। इन पांच चीजों के मिलने के लिये संविधान में अगर सैंकड़ों परिवर्तन करने पड़ें तो वह परिवर्तन किये जायें।

आज खेत, खलिहान और हर जगह में पुकार आती है कि नहीं मानेंगे वह संविधान, जिसमें तुम को खाते-खाने मरने का अधिकार हो और हमको बिना खाये मरने का अधिकार हो। अंत में मैं यह कहना चाहता हूँ कि देश के हर कोने से यह आवाज आ रही है—

नहीं मानेंगे यह कानून जो मुझ से गरीबी पट्टा लिखाता है,

मिटकर झोंपड़ी मेरी जो महलों को रिखाता है।

खा-खाकर मरेंगे वे, मौलिक अधिकार उनका है।

बिना खाये मरे हम, यह अधिकार मेरा है ॥

इसलिये हम संविधान में परिवर्तन करना चाहते हैं।

SHRI AMARNATH VIDYALANKAR (Chandigarh): Sir, there is a lot of talk about fundamental rights. But what is fundamental is that without a society, there can be no right. All the rights are founded in the society. Those who are talking of fundamental rights are conceiving our society to be static.

In a static society there may be no change, but in a dynamic society there must be dynamic changes. No society can continue to exist if there is no dynamism or change. If there is change in the society, accordingly there will be change in the Constitution and in the fundamental laws. This basic principle must be applied when we are considering about society.

Property rights have been changing. History shows that property rights have not been static. In every society, in every community, in every country, property rights have been changing. In Vishnu Purana there is a sloka which says :

यावत् विषयि जठरं तावत्सर्वं हि देहिन्

अधिकं योऽनुमन्त स स्तेनोऽन्वर्तते ।

'What is property ? Upto the point that he can fill his belly, up to the consumption ; he has right on the goods that he consumes. If he wants more, he is a thief and he should be punished. That is the meaning. So, this is not a new concept to us. From society to society this concept of proper right has been changing. So, I do not see any reason why we should say today that the Constitution is static, that fundamental rights are static and society must be bound down to these rights which certain people have conceived to be sacrosanct. No property right is sacrosanct. If we want a socialistic society, naturally the rights will change and property relationship must also change. The structure of society depends on property relationship. If the structure of society is socialist the property relationship also must change.

I wholeheartedly support the resolution of Mr. Unnikrishnan which is very important and timely. I think our Constitution should be reviewed properly not only in the matter of fundamental and other rights, but in other matters also and the Constitution should undergo changes from time to time so that the society may progress. Ours is a dynamic society and natu-

rally dynamic changes are required. If Parliament supports the progress and development of society, we must also support the dynamic changes and have amendment, in our Constitution.

SHRI P. G. MAVALANKAR (Ahmedabad: Mr. Chairman, Sir, it is good that my friend, Shri Unnikrishnan, has moved this Resolution because he has at least given us, the Parliament, an opportunity to discuss the controversial and fundamental question of changes in the Constitution in a very cool and considered manner.

A country's Constitution can never be a static document especially when such a country is a dynamic and a rapidly developing democratic polity. In such an atmosphere, the Constitution even though it may be good to start with, it may need changes here and there and, therefore, the need for the change is self evident. The very fact that the founding fathers of the Constitution incorporated Article 368 elaborately in the Constitution, shows that they also wanted the Constitution to be amended from time to time as per the needs and requirements and challenges of changing times.

Now, the first question is whether such a climate for change or such a debate for change can take place only in Parliament or only within the circles of the ruling party. Again and again, the Prime Minister and the Law Minister and other responsible people have been saying that this is a matter on which all much express their opinions. But I want to ask the Law Minister and I hope he will be honest in replying to this particular question, whether there is any atmosphere today wherein honest expression of opinion, comments and criticisms of the working of the Constitution is available through the Press, through the Radio, through the television and through public meetings. As long as there is emergency with censorship and gagging of free opinion and dissent, I do not know how one can have a climate of free debate. I, therefore, urge the Government, in the interest of the need for a free and proper debate about the

[Shri P. G. Mavalankar]

a free and proper debate about the changes in the Constitution in order to have better deal for our teeming millions, to left this emergency and the accompanying censorship and gagging up of free opinion and dissent, as early as possible, so that the debate is not only a national debate, a full debate but also a free debate.

My second point is that the changes that we make in the Constitution must be the changes which make the Constitution after such changes, more democratic, more serviceable, more useful and more workable.

In the very first sentence of Shri Unnikrishnan's Resolution, a mention is made of 'experience of the working of the Constitution.' We should really fix our attention on the past experience. It is no use merely making political speeches whether inside Parliament or outside Parliament. We can go on making speeches, hot speeches but this is not an election campaign issue. This is an issue of life and death for millions of our countrymen. Therefore, although it stirs our deepest emotions and passions, surely the debate must be dispassionate as far as it is possible for human beings to be dispassionate and objective on these matters.

My third point is that if the Constitution is to be made more democratic, useful, etc. then we must see that no amendment is sought to be made in such a way that the Constitution goes backwards rather than forward.

Well, Sir, the Constitution is both a means as well as an end. To the extent, it is a means, let us change it. But to the extent it is an end, let us not change it.

Since the time is short, I shall briefly refer to two points. I came across two very fine quotations from Pandit Jawaharlal Nehru's speeches published in a new book edited by our own Secretary-General, Shri Shaktidhar "The Constitution and the Parliament in India—The 25 Years of the Republic" in which many studied articles of value have been included. I will not take time

of the House in reading out these two quotations from Nehru. My point is that if you take the founding fathers of the Constitution—Ambedkar, Nehru, Rajendra Prasad, Maulana Azad, Sardar Patel and the whole galaxy of eminent individuals and jurists—I am sure they also wanted India's teeming millions to be better in terms of their all round welfare and they wanted an egalitarian society. They wanted the social status of each one of us to be raised. Now, sir, the question as Mr. Unnikrishnan has brought in the Resolution, boils down on two aspects: property rights and judicial review. Property is, of course, individuals; but it is the result of social circumstances and is a product of social situations. It is earned by me, because I am a member of the society. So, the individual has or I have no property against the society, or for me alone, irrespective of social obligations. I do not, therefore, say that the right to property must not be curtailed; there must be restrictions, regulations and curbs on individual property; but elimination altogether of the institution of property would not be in tune with the general principles and spirit of our democratic Constitution.

As regards judicial review, I would say that frivolous appeals and frivolous litigations must go; and the Law Minister must bring in such amendments as well enable such frivolities to be dispensed with. But again there is a point of judicial review where the philosophy of the judge also comes in. It also comes on out the matter of recruitment and appointment of the judges. I see that quite a few of the judges are conservative. Nonetheless the important thing to remember is review gives an opportunity for our basic democratic structure to be kept intact. It must remain unaltered. The Directive Principles of State Policy and the Preamble, both, in our Constitution are a very happy combination of Fabian socialism and Gandhian Sarvodaya ideals. If they are good paper, why can't they be seemingly good in practice? It is not the document which is bad; it is our unwillingness to go

forward in the right direction, on the lines enshrined in the Constitution. If we keep this in mind, I am sure the need for changes will be minimum; and occasional so that the Constitution even after the changes becomes more democratic and workable.

SHRI K. LAKKAPPA (Tumkur): I rise to support the Resolution of my friend Mr. Unnikrishnan which reflects the views of the people of this country after an experience with the operation of our Constitution over decades. He has made certain observations. He has of course not specified the directions in which the changes are to be made, in our Constitution. His observations are more or less of a general nature. I speak for the common people who constitute the will of the nation. The will of the people is sovereign. Sovereignty should prevail and it should be reflected in the Constitution. Whether our present Constitution really reflects the will of the people, is one of the important questions to be considered. With this idea in mind, many political philosophers having different political ideologies are debating this question in the country. But ultimately, it is the concerted opinion and will of the people of the country which will prevail. They feel that structural changes are very necessary. Political freedom means that we must work for economic freedom. Whether this Constitution really helps us in working towards economic freedom is one of the important questions that we are considering inside Parliament and outside, every day. But I would like to say that there is a certain rigidity in the Indian Constitution. The provision in regard to the powers and functions of the President of India have been some times compared by certain authors as political graveyard. I would like to draw attention to the rigidity of the Constitution. Sir Ivor Jennings has said:

"India obtained independence after a long controversy between the leaders of Indian opinion on the one side, and the governmental authorities on the other."

Here 'governmental authorities' means the British. In regard to the other provisions of the Constitution, we can compare the parliamentary democracy here with the British Parliament and its functioning.

Sometimes federal structure is there, but the federal structure and its functions are not duly and legitimately considered as to how they are actually operating on the constitutional aspect, in regard to the safeguards to the people and their guarantees.

Even though the supremacy of Parliament cannot be questioned it has been questioned by courts. Whatever may be the powers and functions of the judiciary, they have been enumerated in the Constitution. Sometimes they come in conflict with our thinking on the socio-economic structural changes.

MR. CHAIRMAN: He should conclude now. His time is up.

SHRI K. LAKKAPPA: This useful discussion should lead to re-thinking on the structural changes which are necessary in the Constitution in view of the socio-economic change. Shri Gokhale is a very experienced lawyer and a learned person. I am sure he will make clear the thinking of the Government.

The property rights which have been mentioned in the Constitution have been opposed by many people. The Left Communists, who are always talking of working for the destruction of the Constitution, have advocated structural changes, in tune with the legitimate will of the people of this country. Therefore, whatever structural changes are necessary, which are in tune with the socio-economic changes, should be brought forward by the Government. I hope all hon. Members will support this Resolution.

श्री सत्यपाल कपूर (पटियाला) : नेयर-
मैन माहव, पिछले एक्सपीरियन्स मे मालूम
हवा है कि कांस्टीट्यूशन मे बेसिक चेजेज

[की संज्ञास कपूर]

जाने की जरूरत है। अभी बीबीसी साहब ने भी कहा कि पार्लमेंट की सुप्रीमैसी रहनी चाहिए, सारे देश में इस पर बहस चल रही है। पिछले हफ्ते यहाँ पर सारी इंडिया की बार एसोसिएशन के मंजे हुए वकील आये थे और उन्होंने मीटिंग में फैसला किया और यह प्रोपीनियन दी कि सुप्रीमैसी आफ पार्लमेंट रहनी चाहिए। मैं इस बात को समझ नहीं पाया कि अगर आर्टिकल 149 को विधान से निकाल दें या अमेड कर दें तो उससे सारे मुल्क की जुडीशियरी खत्म हो जायेगी—मैं समझता हूँ यह कहना बिल्कुल गलत और फुजूल है। इस देश में जो विधान को बनाने हैं उनको उसका इन्टरप्रेटेशन करने का अधिकार नहीं है। हमारे बनाये हुए कानून के क्या डिटेल्स हैं, उसका क्या मकसद है, क्या पर्पज है, किस सोशल बेज को सामने रखकर वह बनाया गया है या उसमें तब्दीली की गई है—इन बातों का इंटर्प्रेटेशन करने का राइट आज हम पार्लमेंट को नहीं है बल्कि उसके इन्टरप्रेटेशन का राइट सुप्रीम कोर्ट को है। सुप्रीम कोर्ट जो इन्टरप्रेटेशन कर दे वह इस मुल्क का कानून बन गया—मैं समझता हूँ यह बिल्कुल गलत और फुजूल चीज है। इसमें फौरन तब्दीली करने की जरूरत है। हमारे विधान में तीन हिस्से हैं—पार्लियामेंटरी सिस्टम, जुडीशियरी और एग्जीक्यूटिव। सुप्रीम कोर्ट के बारे में अभी यहाँ पर कांग्रेस (भो) के सदस्य कह रहे थे कि अगर हमने यह कर दिया तो सारे मुल्क में जुडीशियरी सिस्टम को नुकसान पहुँचेगा। उन्होंने पंडित नेहरू का कोट किया। उन्होंने कहा था कांस्टीट्यूट असेम्बली में कि सुप्रीम कोर्ट को किसी भी हालत में हाउस आफ करेक्शन नहीं बनने देना चाहिए। ऐसी बात नहीं करनी चाहिए कि सुप्रीम कोर्ट में बैठे हुए लोग या हाई कोर्ट में बैठे हुए लोग यह कहें कि हमारी पावर हाउस आफ करेक्शन की है।

जुडीरी काय सहे है कि कानून 228
 ओ है उसके रहते, ओ-संभव नैव हुन जानी
 चाहते हैं वह नहीं आ सकती है। और आप
 इसी तरह से राइट-आफ-रिट रखेंगे तो
 हमारे मुल्क में हजारों मुकदमों, जो आम तौर
 से लैडसीलिय के सिलसिले में, लैड एक्सीजीशन
 के सिलसिले में, आप कोई कैबिनेटरी सनाना
 चाहते हैं, उस के सिलसिले में, कोई डबेलपेट
 का काम करना चाहते हैं, उस के सिलसिले में,
 कोई सड़क निकालना चाहते हैं—उस के
 सिलसिले में, कोई रेलवे निकालना चाहते हैं,
 उस के सिलसिले में, अदालतों में चलते रहेंगे
 और मुल्क का तरक्की का काम आगे नहीं
 बढ़ सकेगा। यह ठीक है कि लैड को हम ने
 अब शेड्यूल में डाल दिया है, उस पर
 अब फर्द रिट नहीं हो सकती, लेकिन पुराने
 केसिज के लिये हम ने कुछ भी नहीं किया,
 वे केसेज अभी भी चल रहे हैं, उन को नर्लीफाई
 करने का कोई इंतजाम नहीं हो सका।
 इस लिये इस आर्टिकल को खंज करना चाहिये
 ताकि कोर्टस के राइट्स पर कुछ अकुश
 लग सकें। मैं यहाँ पर किसी की नुक्ताचीनी
 नहीं करता, लेकिन ऐसा कई बार देखने में
 आया है कि कोर्ट में जो जज साहब बैठे
 होने हैं, वे इनका भी नहीं सोचते कि जो जमीन
 एक्वायर हो रही है वह किस परपज के
 लिये हो रही है, कोई पुन बन रहा है या
 कोई मडक बन रही है। मेरी अपनी कन्स्टी-
 ट्यून्सी में हम एक पुल बनाना चाहते थे,
 15 साल से हम उस के लिये कोशिश कर रहे
 थे, पञाब गवर्नमेंट और हरियाणा गवर्नमेंट
 उस के लिये पैमिलिटी दे रहे हैं, लेकिन
 मामला कोर्ट में पड़ा है, कुछ नहीं हो रहा
 है।

मैं आपकी तबज्जह आर्टिकल 311
 की तरफ भी दिखाना चाहता हूँ मैं नहीं
 जानता हमारे ट्रेड यूनियन के लोग इसके
 बारे में क्या फील करते हैं मैं भी किसी
 वक्त ट्रेड यूनियन में काम करता था,

मेरा ऐसा क्या है कि इस आर्थिक व कापी कम्प्यूटर पैदा किया हुआ है। हम इस मुल्क में अपने बीस सूखी कार्यक्रम को इम्प्लीमेंट करना चाहते हैं, तो हम उस में कन्सेशन दे सकते हैं—अपने लो पेड एम्प्लाइज को, बलास 3 एम्प्लाइज को प्रोटेक्शन दे सकते हैं, लेकिन हम में अपने तमाम आइ० ए० एस०, आइ० सी० एस०, आइ० एफ० एस०, पब्लिक सैक्टर यूनिट्स—गर्जक तमाम ब्यूरो-क्रेट्स को इस आर्थिक के तेहत इतनी पावर्स दी हुई हैं जिसकी वजह से आप कोई भी सोशल बेन्ज मुल्क में नहीं ला सकते, इसलिये उनके राइट्स को कर्ब करना बहुत जरूरी है। यही तीन बातें मैं इस मौके पर प्रार्थ करना चाहता था।

श्री राजेन्द्र प्रसाद यादव (मधेपुरा) : सभापति जी, मैं श्री उन्नीकृष्ण के प्रस्ताव का समर्थन करने के लिये खड़ा हुआ हूँ। वास्तव में यह प्रस्ताव बहुत ही सामयिक है और आज जरूरी हो गया है कि हम अपने संविधान के बारे में फिर से सोचें। आप जानते हैं किसी भी देश का संविधान वहाँ के लोगों की अकांक्षाओं का प्रतीक होता है। लेकिन मुझे दुःख के साथ कहना पड़ता है कि हमारा संविधान हमारे लोगों की अकांक्षाओं का प्रतीक नहीं है। अभी यहाँ पर अनेकों सदस्यों ने कोर्ट्स की तरफ इशारा करते हुए कहा कि आज जितने भी प्रोग्रेसिव स्टेप्स लिये जाते हैं, उन को कोर्ट्स के माध्यम से रोक दिया जाता है और कहा जाता है कि यह संवैधानिक कार्यवाही है, संविधान इस को ऐसा ही मानता है। मैं पूछना चाहता हूँ—यह संविधान किस के लिये है? यह संविधान क्या किसी एक आदमी के लिये है या चन्द लोगों के लिये है या वह देश की आम जनता के लिये है।

आप प्रापर्टी राइट्स को देखिये—चन्द लोग जो अरबपति और खरबपति बन जाते हैं, जो इस की मजदूरी से अपनी

दौलत को बढ़ाते जा रहे हैं। बिनाबा जी ने कहा था—सबे भूमि गोपाल की। हम भी इसी सिद्धान्त को मानते हैं और हमारी सरकार भी आज जो कदम उठा रही है, वह उसी तरफ जा रहा है। इस देश की सारी धरती यहाँ के लोगों की है और इसका बटवारा होना चाहिये। अभी लैंड सीलिंग का जिक्र आया, मैं बिहार में आता हूँ—हमारे यहाँ अभी भी हजारों कंसेज कोर्ट्स में पेंडिंग पड़े हुए हैं, क्योंकि यह फैसला नहीं हो पाया है कि सरकार जमीन का बटवारा कर भी सकती है या नहीं?

इसलिये, सभापति महोदय, मैं आग्रह करना चाहूँगा—हम ने बीस सूखी कार्यक्रम देश के सामने रखा है, इस में जनता के अन्दर जागृति आई है, लोग चाहते हैं कि देश में परिवर्तन हो, लेकिन चन्द लोग कानून के नाम पर या संविधान में ऐसा प्रावधान नहीं है—इस आधार पर उस में रोक लगाना चाहते हैं, देश को पीछे ले जाना चाहते हैं। मैं चाहना हूँ कि ऐसी रुकावटों को हटा दिया जाय ताकि ताकि देश आगे बढ़े।

एक बात मैं और कहना चाहता हूँ कि संविधान में अधिकार की बातें की जाती हैं। ठीक हैं, अधिकार अवश्य होना चाहिये। लेकिन उसी के साथ कर्तव्य भी होना चाहिये। आप ने देखा पिछले साल क्या हुआ? अधिकार के नाम पर किस तरह के अन्याय किये गये। हमारे बिहार में तथाकथित क्रान्ति के नाम पर क्या कुछ नहीं किया गया। आप यह भी जानते होंगे कि जो अधिकार वास्तव में लोगों को नहीं था, उस अधिकार का भी प्रयोग किया गया और उन्होंने कहा कि हम सेना को भी उक्सा सकते हैं कि वह आज्ञा पालन न करे। तो जहाँ पर अधिकार की बात होती है, वहाँ कर्तव्य की बात भी होनी चाहिये। यदि कर्तव्य की बात नहीं होगी तो

[श्री राजेन्द्र प्रसाद यादव]

केवल अधिकार की बात करने से वह अधूरा रह जायेगा और जो वास्तव में हम चाहते हैं वह नहीं कर पायेंगे।

स्वतंत्रता का प्रविधान है संविधान में। तो स्वतंत्रता किस प्रकार की? केवल गाली देने की, या सही बात कहने की भी। आप ने देखा गये साल देश में किम तरह की नाजायब बातों की गई, मदन भण्डार और बाहर भी। इसलिये स्वतंत्रता अवश्य हो, लेकिन उस पर रेस्ट्रिक्शन होने चाहिये ताकि वास्तव में सही माने में स्वतंत्रता हो। संविधान में कुछ न्यायभूत आधार दिये गये हैं, लेकिन कुछ उस में रोजी रोटी का भी प्रावधान होना चाहिये। कुछ लोग ऐसे हैं जो स्वतंत्रता के बाद पैदा हुए, वह नहीं जानते हैं कि रिवोल्यूशन में क्या क्या लोगों को मैक्रीकाइसेज करने पड़े। अधिकतर लोग चाहते हैं कि उन्हें भी जीने का सहारा मिले। इसलिये रोजी रोटी का प्रावधान होना चाहिये, रोजगार का प्रावधान होना चाहिये। आज देश में करोड़ों लोग बेरोजगार हैं। सरकार बेरोजगारी को दूर करना चाहती है, लेकिन कुछ इस तरह की अड़चनें सामने आती हैं कि कुछ नहीं कर सकते। इसलिये इस तरह का कुछ प्रावधान ही जिंग में रोजी रोटी का इनकाम हम कर सकें।

हमारा संविधान रिजिड नहीं हो सकता। इंग्लैंड के संविधान में आप देखेंगे जिस समय चाहें संशोधन कर सकते हैं। दूसरा तरफ अमरीका का संविधान है, जिसमें कुछ प्रतिबन्ध लगे हैं कि दो तिहाई सदस्य उस को पास कर सकते हैं, उस के बाद तीन चौथाई राज्य उस को स्वीकार करें। हमारे यहाँ दोनों के बीच का रस्ता है।

हमारे यहाँ यह प्रावधान है कि यदि हम चाहते हैं तो हाउस के जितने सदस्य उपस्थित हैं उस के दो तिहाई सदस्य वोट करके

परिवर्तन कर सकते हैं। दूसरी बात यह है कि उस संवैधानिक संशोधन को 50 परसेंट स्टेट्स मानें। तो हम कुछ रिजिड भी नहीं होना चाहते और इतनी स्वाधीनता भी नहीं देना चाहते कि जहाँ तक नहीं जाना चाहिये वहाँ तक चले जायें। इसलिये यह प्रावधान रखा है।

इसलिये अन्त में मैं विधि मंत्री महोदय से कहना चाहता हूँ कि आप इन सब बातों पर विचार करें और जो देश आज चाहता है, जो जनता चाहती है, उसकी आकांक्षाओं की पूर्ति करें।

SHRI THA KIRUTTINAN (Sivaganja): Mr. Chairman, Sir, first of all, I must congratulate Mr. Unnikrishnan for having brought this Resolution before the House so that the Members of Parliament can take part and give their opinion and also it will lead the nation to give opinion regarding constitutional amendments. But I do not know the intention of Mr. Unnikrishnan. In the last few years, our party has supported all progressive measures that have been brought before the House. After 1971, we have seen, though the Congress party in power has got absolute majority in this House, they have not brought forward any constitutional measures to meet the needs of the people of this country. I am very sorry to say that. If such constitutional amendments are brought before the House, we are here to support them wholeheartedly.

So far as this Resolution is concerned Mr. Unnikrishnan wants constitutional amendments in respect of two matters. One is about the property right and the other is to secure meaningful realisation of principles enshrined in the Preamble and the Directive Principles of the Constitution.

Regarding the second one, the mover of the Resolution wants the supreme

macy of the Parliament, a federal structure, the legitimate rights of the minorities, the tribes and other sub-merged sections of our population. Let us take the first one. It is true that the law has become an umbrella for the vested interests of all sorts of wealthy classes raising legal defence of their privileges with the best talents in their service. The same legal talent is not available to the poorer sections of the community as they cannot pay for it. Therefore, to reduce the concentration of wealth in the hands of a few and to lessen the disparities, it is necessary that the fundamental right to property be removed from the Constitution.

I do not object to a careful review of the working of the Indian Constitution and removal of such difficulties and defects as have been experienced in these 25 years. But every effort must be made to see that the democratic character of the Constitution is not diluted. I am for constitutional changes and my party, the DMK, has been repeatedly pressing for constitutional amendments of all these years. So I would welcome any amendments to the Constitution for implementing the socialistic policies. But the basic structure of the Constitution, such as the parliamentary system of government and its federal character, should remain undisturbed. While I welcome the change in the rigidity of the Constitution, nothing should be done which would disturb basic structure of the Constitution. By basic structure, I mean the legislature, the executive and the judiciary. I also feel, among others, that a constitution should not be looked upon as a static document that merely lays down the necessary ground rules for running the country's parliamentary system but it is a live instrument that has to be revised at reasonable intervals of 20 or 25 years to meet the requirements of the changing situation.

Regarding federalism and Centre-State relations, I want to say something. Soon after the Constitution

began to work, there was a growing realisation of the strong domination of the Centre, not only on general policies but also in the spheres to which exclusively belonged to the States and the tendency on the part of the Centre to exercise control over the States drastically affecting the autonomy of the States. Strong feelings have been voiced against the attitude of the Centre in curtailing the powers of taxation enjoyed by the States before the introduction of the Constitution and the manner in which the Centre has been interfering with the powers of the States ever since.

Only one quotation. On the 17th June 1967 presenting the Budget to the legislature of Tamil Nadu, our great leader, Anna said:

"The Constitution had already provided for considerable concentration of powers in the hands of the Central Government. Through a new institution which was beyond the key of the architects of the Constitution, the centre has acquired still larger powers causing concern about the position of the States. This new development relates to economic planning. The powers which the Central Government have assumed in regard to mobilisation, allocation and pattern of utilisation of resources for the plan have reduced the States to the status of supplicants for aid from centre..."

Last point about judiciary and I have finished. Logically and practically the Constitution requires one authority to resolve all constitutional issues. Now we are aware that our Constitution provides a judiciary with independent powers for the purpose. This system should continue. Nowadays much has been talked about doing away with the independent judiciary. If the executive is vested with this power, it will have in effect an absolute vote power. So, the independent judiciary should continue.

With these words, I thank you.

PROF. NARAIN CHAND PARASHAR (Hamirpur): I rise to support the Resolution introduced in this House by Shri Unnikrishnan. He has done yeoman's service to the task of constitutional development in this country by presenting this Resolution at a time when the people are also taking interest in constitutional reforms.

The Constitution is a symbol of the aspirations and hopes of the people and when I look at the Constitution the first word that comes to my mind in the preamble is 'Justice'. It is significant—Justice—social, economic and political. Social comes at the first place, economic at the second and political at the third. Justice comes before liberty, equality and fraternity because if justice is denied, there can neither be any liberty, nor equality nor fraternity. Taking my cue from this I plead a constitutional reform should be initiated in the nature of not tinkering with one Article or another but as a whole with the entire Constitution to see that the spirit with which this Constitution was adopted by the Constituent Assembly on 26th November, 1949 should be promoted in the times to come.

I want to ask a fundamental question—when the courts have the power under Article 329 to challenge the very election which represents the will of the people, the sovereignty of the people, in the form of the election of the representatives being sent to the House, I fail to understand how the Parliament is supreme. When a person represented by a million people is being denied of the opportunity to sit in this House simply because he has to attend to his petitions which are being discussed day in and day out or debated for petty reasons in the courts of law, I think, to think that Parliament is supreme is only a wishful thinking. So, I want that this Article 329 should be enlarged and part (b) of it should be deleted and the true sovereignty of this House and the will of the people should be restored and

given once for all by taking away the entire electoral process out of the purview of the courts, because until and unless we do so, we are not doing true interpretation of the word 'sovereignty' and the true meaning of the 'will of the people'.

When the delimitation of constituencies which is the basis of the entire electoral process is beyond the purview of the courts, I fail to understand why the process of election should be subjected to the courts; and we have seen that the time has come when we must understand very clearly as to what we mean by sovereignty.

Article 144 says that all authorities of the country, civil or otherwise should aid the Supreme Court, and Article 141 declares that a law in this country shall be the one as declared by the Supreme Court.

The word 'declared' is significant. It is not as framed but in the process of time certain brains have come in this country which have given more connotation to the word 'declared' than it requires lexicographically or semantically or even otherwise through usage. They have tried to see that the Supreme Court not only declares law, not only interprets law but makes law on the basis of precedent, which process is, of course, a fraud on this Constitution. I would like to suggest that the Constitution should be reviewed in such a manner, it should be amended in such a manner as provided in Article 368—that the entire Constitution reflects the supremacy of the Parliament, restores supremacy to the people and also ensures justice, social, economic and political to the poorest section of our society and also to those who are living in the remotest area of our country. I want that a new Article 371 (g) after (f) should be added to make it binding on the Parliament and the Government of India to provide adequate funds for the uniform development of the entire country and for

the balanced development of all the regions of the country which have not been given their due. Constituted as a federal system of States and Union Territories, this system cannot provide for those areas which have poor representation in the House. The representatives of the people, whether they are living in far-away snow-bound areas or in areas which have Union Territories, or areas which have no legislature, whatever that may be, they should have their views freely reflected in this House, I say, not only reflected in this House, but respected in this House. And this cannot be guaranteed unless the Constitution ensures social and economic planning in this country which is in tune with the spirit of the Constitution, which seeks to give to the country and to the countrymen of this great nation, justice, social, economic and political. I support the Resolution and I call for a framework in which the entire Constitution is thoroughly reviewed and radically altered in order to suit the spirit of the times and also to fulfil the aspirations with which this Constitution was adopted on the great day, the 26th November, 1949.

SHRI K. NARAYANA RAO (Bollu): Mr. Chairman, Sir, the Resolution moved by hon. friend Mr Unnikrishnan is timely. I wish to make a few observations on this.

The hon. Prime Minister Shrimati Indira Gandhi has called for a national dialogue on the desirability of making changes in the Constitution so that we can have a clear picture emerging out of it. The Resolution moved by Shri Unnikrishnan is therefore timely, as I said.

Sir, I do not want to make a long speech on this matter. The hon. Prime Minister's call for national dialogue is not confined to examination of any particular provision of the Constitution, or group of provisions, but it related to the examination of the whole working of the Constitution for the past 25 years. That is to say, we

have to see the totality of the functioning of the Constitution to decide whether any changes are necessary. There are various functionaries or creatures of the Constitution. We have got to examine how they have been working for the last 25 years. We have to see in what particular legal context this Constitution was framed. Without meaning any disrespect to the framers of the Constitution, I wish to say this. At that time they had certain limitations when they framed the Constitution. The political thinking and the legal thinking of those times were totally different from what they are today. At that time, the impact of the socialist countries on other countries, that is, the developing countries, was not there. This was totally absent then. Now that these are available, we have to think of changes in the Constitution, in the light of these developments which have taken place.

The second point which I would like to state is this. This is regarding the basic structure of the Constitution. The question is, to what extent we can go. The Supreme Court ruled that Parliament cannot alter the basic structure of the Constitution. Now the issue is whether we have to confine ourselves to this basic structure. Suppose we are confronted with a situation that the basic structure has to be changed, what are we to do? My submission is this. We have to get out of the situation. We have come to the conclusion that we need some basic structural change and we cannot do it under the present provisions. Therefore we have to bring about new provisions.

We should have a total revision of the Constitution. It is not enough if we change this provision or that provision or a bunch of provisions. What we can do is, we can bring about a totally new Constitution by which we can get out of the difficulties put by the Supreme Court Judges in the Keshavananda Bharati case.

[Shri Narayana Rao]

With these words, I wish the Law Minister should reflect the suggestions of mine for the provision for revision of the Constitution. We can act on the revised provision for the revision of the Constitution and not under the amending provision under Art. 368 of the Constitution.

MR. CHAIRMAN: I have got two more Members in the List and then the hon. Minister and Shri Unnikrishnan will speak.

Is it the pressure of the House that we may sit for thirty more minutes?

SEVERAL HON. MEMBERS: Yes, Sir.

MR. CHAIRMAN: Then, we shall sit upto 18—30 hours.

श्री स्वामी ब्रह्मानन्दजी (हमीरपुर) .
महापति महोदय, अभी यह विचार हो रहा है कि संविधान बदलना चाहिये या नहीं बदलना चाहिये। भाखिर, यह विधान बनाया हुआ किम का है, क्या भगवान ने बना कर भेजा था ? जो चन्द्र आदमी चन कर भेजे गये थे, विधान उन्होंने बनाया है। अब हम सब यहां बालिंग मताधिकार में आये हैं, तो हम इसे बदल सकते हैं।

मौलिक अधिकार क्या है ? मौलिक अधिकार यह हैं कि आपको मोठा अच्छा लगता है, मोटर और हवाई जहाज अच्छा लगता है तो वह सब को ही अच्छा लगता है। क्या मौलिक अधिकार यह हो सकते हैं कि हम बड़ी बड़ी कोठियों में रहें और एक गरीब आदमी जो मेहतर है वह एक शोपडी में रहे ? क्या हमारा मौलिक अधिकार यह है कि हम यहां से उठें, मोटर में बैठें और चले जायें, हवाई जहाज में बैठें और चले

जायें, जाकर अपने कोठियों में बस गये यह मौलिक अधिकार नहीं है।

मानव समाज में झगड़े न हों, इसलिये राजा और संविधान बनाये गए। अगर हाईकोर्ट गरीबी नहीं मिटा सकता है। तो फिर हाईकोर्ट का रहने का मौलिक अधिकार नहीं हो सकता है। अगर पार्लियामेंट और विधान सभाएँ बराबरी पैदा करने में समर्थ नहीं हैं तो वे भी खत्म हो जायेंगी।

कुछ लोग धर्म को मौलिक अधिकार कहने हैं। कुछ लोगों ने धर्म बना लिये। धर्म बनते हैं और मिटते हैं, वे मानव के कल्याण के लिये हैं। अगर उन से मानव का कल्याण नहीं होता है और अधर्म होने लगता है तो उसको बदल दिया जाता है।

यह संविधान इसलिये बनाया गया था कि हमारे समाज को सुख मिलेगा, लेकिन वह नहीं मिला रहा है। गरीब और गरीब होता गया है तथा अमीर और अमीर होता गया है। संविधान का बदलने का बारे में बड़ी बड़ी बहस रही है। अमीरों के लड़के बनी बनी जगह इन्वेस्ट करेंगे और जा कर पढ़ेंगे और वहां में अग्रेज बनकर लौटेंगे हैं। अगर उन में रुद्धि है, अन्न है तो उन को कौन मिटायेगा। संविधान को बदलने की आवश्यकता उन लोगों के लिए है जो गरीब हैं, दिनभर भिट्टी खोदने हैं, जिनके पास कपडा नहीं है। जो स्त्री दिन में 4 बार माडी बदलती है, एक एक हजार की साडी पहनती है, संविधान उन के लिये नहीं बदला जा रहा है। जो लोग गंगे हैं, गरीब स्त्रियो है, जिनके पास जूता नहीं है, जिन्होंने मिठाई नहीं खानी है कि क्या है, जिन्होंने पलंग पर सोना नहीं जाना, संविधान का बदलने की आवश्यकता उन लोगों के लिए है।

लोग इस बात पर आपस करते हैं कि श्रीमती इंदिरा गांधी को संविधान को बदलने का क्या अधिकार है। हम कहना चाहते हैं कि जनता ने हमें चुना है। अगर हम संविधान को नहीं बदलेंगे और जनता को आराम नहीं देंगे तो फिर जनता हम को बदल देगी।

मैं दस साल से कह रहा हूँ कि इस संविधान को बदला जाये। संविधान हो गीता, रामायण, वेद या पुराण हो, अगर उनमें जनता का हित नहीं होता है, तो उन को बदल दिया जाये, मिटटी का तेल डालकर फूक दिया जाये।

मैं पहले भी कई बार कह चुका हूँ कि यह मनुष्यों द्वारा मनुष्यों के लिये बनाया गया संविधान है। हम लिये अगर वह मनुष्यों को आराम नहीं पहुँचा रहा है, तो मनुष्यों द्वारा चुने गए पार्लियामेंट के 400 सदस्य उस को बदल सकते हैं। पार्लियामेंट के कुछ सदस्य इस बात से घबराते हैं। लेकिन वे क्या करेंगे। उन के ऊपर जनता की तलवार लटक रही है - जनता यह मांग कर रही है कि संविधान को बदलो वरना खून खराबी होगी। इस लिये हम संविधान को बदल देना चाहिये।

डा० बल प्रताप सिंह (वागवक्ता) : माननीय यश्विन्दाग महोदय, मैं आप का हृदय में आभारों हूँ जो आप ने मुझ को श्री उन्नीषण ने द्वारा प्रस्तुत संविधान में मजबूत सम्बन्धी प्रस्ताव पर बोलने का अवसर प्रदान किया है। मैं उस का समर्थन करने के लिये खड़ा हुआ हूँ।

मान्यवर, हमारे देश में अहिंसावाद, अवसरवादी यथार्थवादी और साम्प्रदायिक शक्तियों ने जो एक भयंकर कूचक रचा था, विश्व की महान और राष्ट्र को महान बनाने में, श्रीमती इंदिरा गांधी ने आपात कालीन स्थिति लागू कर के देश को उस से रक्षा की, और साथ ही 20 सुखी आर्थिक कार्य-

क्रम को लागू कर के देश को एक नई दिशा दी यह माननीय सदन, और भारत ही नहीं विश्व के समस्त देश, इस बात से सहमत हैं, कि श्रीमती इंदिरा गांधी के नेतृत्व में एक नये भारत का निर्माण हो रहा है।

श्रीमती इंदिरा गांधी ने संविधान भारत की महान जनता की भावनाओं और आकांक्षाओं के अनुरूप नहीं है। इन लिये श्री उन्नीषण ने संविधान में मजबूत का जो प्रस्ताव किया है, वह बिन्दुल समय के अनुसार है, और बहुत आवश्यक हो नहीं, बल्कि अनिवार्य लगता है। हम समाज का नव निर्माण करना चाहते हैं। जब हम समाज के नव निर्माण की बात करने हैं तो हमारे मस्तिष्क में एक ऐसे समाज की कल्पना होती है, जिस में जातिवाद भाषावाद लिंगवाद, साम्प्रदायिकता और क्षेत्रीयता के लिये कोई स्थान न हो। हमें दुःख है कि भारत को स्वतंत्रता के इतने वर्ष व्यतीत हो जाने के बाद भी आज भारत का शरीर इन तमाम व्याधियों से ग्रस्त है, और ग्रस्त होना जा रहा है। हमें इस देश के शरीर को इन व्याधियों से मुक्ति दिलाने होगी, तभी जा वह हम वास्तव में भारत को जनता के साथ न्याय कर सकेंगे। मुझे लगता है कि भारत का वर्तमान संविधान समाज को इन तमाम कुरितियों को दूर करने में कुछ असमर्थ है। श्रीमान संविधान में सम्पत्ति के अधिकार को जो व्यवस्था की गई है, उस के माध्यम से वह देश के सम्पत्ति वाले लोगों को अधिकारों को रक्षा कर रहा है, अगर जो निर्धन लोग हैं, जिनके पास सम्पत्ति नहीं है, उन को सम्पत्ति दिलाने में, उन के लिये प्राय की साधनों की व्यवस्था कर पाने में वह पूर्ण रूपसे असमर्थ है। इसलिये यह बहुत ही आवश्यक है कि भारत के संविधान का इस प्रकार से संशोधन किया जाय, जिस से सम्पत्ति के अधिकार के नाम पर किसी प्रकार की भ्रष्टाचार न रह सके। मेरा सुझाव है कि उस में इस प्रकार की व्यवस्था की

[श्री स्वामी ब्रह्मानन्द जी]

जानो चाहिये कि भारत में कितने की परिवार के पास एक लाख रुपये से अधिक की सम्पत्ति न रहे और कितने की परिवार की इनकम एक हजार रु० से अधिक न हो।

श्रमान् भारत को समद ने समय समय बहुत महत्वपूर्ण निर्णय लिये हैं, जिन को बड़ी सम्पत्ति वालों और बड़े इजारेदारों ने अदालतों में चुनौतियाँ दी हैं। इस प्रकार के हमारे जो निर्णय रहे हैं चाहे भूमि सुधार के मस्य में चाहे शहरी सम्पत्ति के संबंध में चाहे बड़े उद्योगों के राष्ट्रीयकरण के संबंध में बराबर हम प्रकार से उनमें बाध ए आई है। आवश्यकता हम बात को है कि हम भारत के संविधान का हम प्रकार से संशोधन करे कि भविष्य में हम प्रकार की बाध ए उपस्थित न हो और उन तमाम बड़े उद्योगों को, तमाम बड़े सम्पत्तियों को उन से लेकर भारत के तमाम जो बेकार नौजवान हैं उन को सहकारिता के आधार पर वे उद्योग दे दिये जाने चाहिये।

12.33 hrs.

श्रीमन् अन्तिम बात मैं यह कहना चाहना है जैसा कि प्रस्ताव में कहा गया है भारत के संविधान का हम प्रकार से संशोधन किया जाना चाहिये कि जो हमारे देश के अत्यंत आवश्यक पिछड़े वर्ग हरिजन और अनुसूचित जन जातियों के लोग हैं उन के हितों की रक्षा हो। देश के संविधान में उन के हितों की रक्षा की जान बड़ी गई है। लेकिन वास्तविकता यह है कि जिस रीति हमारे संविधान में प्रावधान कर रखा है पिछड़े वर्ग, अनुसूचित जातियों और अनुसूचित जन जातियों के लिये, उन के उन अधिकारों की रक्षा कर पाने में हमारा वर्तमान संविधान असमर्थ है। हमें ऐसे संविधान की आवश्यकता है जो देश को तमाम सर्वहारा और शोषित जनता को कल्याण कर सके।

जान में जो देश का होकर, सर्वहारा और शोषित जनता है उन के संबंध में मैं एक-एक पक्ष कर समाप्त कर दूंगा। उन के बारे में मैं केवल इतना कहना चाहता हूँ :

जिनमें हीर सज्जनरुत्ता दिया तुम ने।
बड़ी चिराय जलेंगे तो रोखनी होगी ॥

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Sir, this debate has gone on for quite some time, on the last occasion and today. And it was appropriate because the Resolution which Shri Unnikrishnan has brought forward is no doubt very important, and as members have said—I join with them—we should really be very grateful to him for having brought this Resolution and given an opportunity to this House to discuss this very vital and fundamental issue which is now the subject matter of a debate in the entire country. But more than the debate outside the House, a debate in the House has a special and more important significance. It is from that point of view that I very much welcome this Resolution here before the House for discussion. Without any inhibitions or limitation as to time, it has been discussed at great length giving as long an opportunity as possible to all members of the House.

The Resolution is not only important but it is very well-thought-out also. I do not want to read it. For example, it highlights the fact that we have to take into account the experience of the last 28 years: it highlights the fact that significant changes are called for in the constitutional framework; it highlights the fact that amendments, and as he puts it particularly, in the nature of property rights should be carried out. He does not forget, and rightly, that the preamble and the Directive Principles of State Policy of the Consti-

tion, 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, should be realised meaningfully.

Therefore, although I did not read it, I have virtually reproduced everything in it because I thought that this bears re-emphasis that the material aspects of the question have already been dealt with in the Resolution. In the light of this well-thought-out Resolution, the discussion also was in well-directed channels, although I cannot say that every speaker added something new; there was quite a lot of re-emphasis on the same points, as is natural on a subject like this. Therefore, without naming any particular member, without trying to reply to any particular member, I will deal generally with the issues which have been raised.

Now, the first and foremost question, about which I have spoken a number of times before outside on different platforms and here too, is the question of the supremacy of Parliament. I have said, and I repeat, that the people of India, and therefore, the representatives of the people of India who are sitting here, will not tolerate, whatever may come, any erosion of this principle that Parliament in this country is supreme and will remain supreme, and any other body, howsoever high, will have no authority to encroach on that supremacy. An attempt was made, not today but on the last occasion by one or two speakers, with all respect to them, to twist the issue and to divert the attention of the people through their speeches in this House. For example one hon. Member asked: by supremacy of parliament do you mean that a money Bill can be passed in the Rajya Sabha while under the Constitution a money Bill has to be introduced only in the Lok Sabha. I just cannot believe that the hon. Member who spoke did not

understand the whole concept but to my mind it appeared that he wanted to channelise it in a direction away from the main issue, supremacy of parliament. When we speak of the supremacy of Parliament what we really mean is that in respect of its legislative and other functions, Parliament will be supreme and its decisions and resolutions will not be questioned in any other forum. It did not mean that Parliament itself adopts a certain framework, adopts a constitution or passes a resolution and it will flout its own legislation or flout the provisions of the constitution which it has itself passed. I think therefore it was an unfortunate attempt to argue in a direction which really tried to run away from the main issue. So, I repeat that when I say supremacy of Parliament. I mean that Parliament is supreme in the discharge of its legislative functions, including its legitimate right in the exercise of its constituent power, namely, amending the Constitution. That is what is meant by supremacy of Parliament. No reasonable person who tries to understand the issue will argue that Parliament has that supremacy to flout its own constitution which it has made by the requisite majority or by the requisite procedure which the constitution lays down.

Some attempts were made by another hon. Member. I am not saying that the issues are not important. What I am saying is that an attempt was made to create a sort of a scare in the minds of the people. If the power is given for amending the constitution or to have a fresh look at the constitution, it was stated: what would happen to the provisions of the constitution with reference to the protection given to the minorities? What happens to the protection given in respect of religious beliefs, right to worship and so on and so forth? We have been discussing these issues all along and I do not think that it has been in the minds

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of anyone that such basic things as the secular character of the constitution, republicanism, democratic character of the constitution should be trifled with at any stage. I presume, not only do I presume, I can also say with confidence, that it is not the intention to do anything which will deprive the minorities of the legitimate rights which had been given to them under the constitution. Therefore, I say that it was really an attempt to scare away people by saying that if parliament was allowed to amend the constitution, what will happen to the minority religious groups or other religious groups? It is really beside the point. Nobody ever, thought or said that the basic things which we have agreed to, namely, we will have a secular state, a republic, we will have a democratic structure, will be tampered with. I have no hesitation in saying that their rights and protection would be there.

When we made the 25th amendment of the Constitution, we made an appropriate amendment in the amendment at a later stage when we realised that a certain protection given to the minorities ought to be preserved. This showed that these things should not be trifled with. But this does not mean that there should be, as somebody said, two categories of citizens. There are basic things in which all citizens must be governed by the same yardstick. Subject to this, subject to the broad principles that we must maintain the secular character of the country, we must maintain the republic, we must maintain the democracy, etc., we must have a Constitution which will enable us to go ahead in the direction of the fulfilment of our objective of socialism about which there can be no two opinions. I can say with a certain degree of confidence that any change which may have to be made will not affect these basic things.

A lot was said, for example, about judicial review. It is true I have been speaking about it myself, other responsible people also have been speaking, almost everyone in Parliament also spoke about it and almost unanimously everyone said, there should be some re-thinking on the scope and powers of judicial review. I do not think anyone at any time ever said that it was the intention to abolish the courts, do away with the judiciary or not to enable the judiciary to review certain matters. But there is a near consensus in the country that on the basis of the experience gained in the last 26 years, a time has come to think whether it is necessary or not to reconsider the scope, the ambit, the powers of the courts in respect of what is known as judicial review. I do not want to pinpoint any article; we know the articles. This is not to say that there will be no courts or no power to review anything. Any constitutional amendment which will be thought of will no doubt include consideration of the question as to whether the relevant articles relating to powers of judicial review ought to be appropriately altered so that such impediments or road blocks as had been created in the past and as are being created even now almost every day, are not allowed to exist in the future. I do not want to prejudge the issue. I have said, the Prime Minister has said and everybody has said that this is a matter of such vital importance and it is not merely the close preserve of the lawyers to say that this or that should be done. Mr. Unnikrishnan has also said it and I agree with it. Although lawyers do play and will have to play an important part, it is not as though lawyers alone can be the ultimate deciding power in this matter, because this is a matter which affects the entire people of the country. Though lawyers are expressing their opinions now more frequently and I am glad about it, I wish people in other professions like teachers—not merely law teach-

ers but other teachers—professors, writers, artistes and everyone concerned, should be involved in this process of taking a decision as to what is good and what is not good. I do expect such a participation in this debate will take place. Only then can this debate be meaningful and effective. As I said, I do not want to prejudge the issue. I really do not know what we are going to do. It is wrong to say that we will do this or that, when we ourselves are saying that we are looking forward to hearing the views of the people and we want a debate to take place on this.

Therefore, while we may have a preliminary idea of certain things, we may have been preparing and doing some exercises in certain directions, it does not mean that we will not respond to what comes out when it is thought that what has come out is legitimate and ought to be accepted.

Sir, I am very sorry that some Members, fortunately they have gone away, talked of democracy. They said that you did this and you did that and how in this atmosphere, how can a debate take place. But do we not respond to what comes out when it not very long ago, when these very people who are talking of democracy had been creating obstacles and obstructions in the functioning of democracy itself? Now, I am not saying in any derogatory manner but they quote democracy; even Satan quoted the Bible. The point is this that if we really intended that the democratic process should function, we should have expected of them to have behaved differently when what they called as real freedom—although I do not believe that real freedom have gone away—were in existence? But what was being done? Was it really the exercise of freedom or was it indulgence in licence? Freedom at any time cannot mean the freedom to destroy the basic values of democracy itself. And if it comes to that,

I have no hesitation in saying that such licence which seeks to destroy democracy, will be curbed and destroyed by legal and constitutional methods.

I agree with my friend, Shri Mavalankar that he is not behind bars. Why? Because he has been using this Forum properly howsoever, he may have disagreed with us. We have no objection to anybody disagreeing with us, opposing us, pointing out to us that here we are right and here we are wrong. He is free to enter the debate and we will listen to him with great respect. There are people like him outside the House who can enter the debate on this and many other issues. But what do we expect of those people who, when the debate was possible not only on this issue but on many other issues, used that so-called freedom....

SHRI K. S. CHAVDA (Patan): He cannot hold any meeting in Ahmedabad.

SHRI H. R. GOKHALE: Why not? He is entitled to hold a legitimate meeting. Surely, he is not required to speak in Ahmedabad only. I do not think anybody will prevent Mr. Mavalankar from speaking in any legitimate meeting.

Some mention was made about a meeting in Calcutta. I must confess that I do not know the full details. But last time, the same hon. Member had referred to another meeting, not with reference to discussion on constitutional changes, but some other meeting that was planned by him, I do not know. Last time, he spoke in a meeting in respect of the unfortunate death of Chou-En-lai. Today, he spoke off a meeting in respect of discussion on constitutional reforms. What is it? I am not justifying anybody who does not allow legitimate and peaceful meetings from taking place, but I do not think, it has so happened. I can vouchsafe that when legitimate peaceful democratic meetings are held by democratic means,

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those meetings are held and they should be allowed, and they are being allowed to be held, and democracy to that extent is completely as it was before or perhaps better than before. Here, in Parliament, for example, I wonder whether we would have been able to hold this debate at all in this way if the old situation had continued.

One important suggestion was made with regard to the electoral process. We will consider it separately. In fact, when we moved the amendment last time, subject to correction, I did indicate that in England while it was true that there was a forum consisting of judges who decided this, the ultimate decision was that of the Speaker. It indicates the fundamental principle that the power of control over the electoral processes is that of Parliament. We may not necessarily copy what is happening in England. We need not; but the question is that it is an important matter, on which we should give thought. I am glad that my friend has raised this question. At the appropriate time, we will be able to say something on it. Most of these things have been said. Mr. Unnikrishnan's points have also been dealt with by some of our friends, to a fuller extent. My task has been lightened. I do not want to add anything further. I want to request Mr. Unnikrishnan not to press his Resolution, but to withdraw it; not because I am not in agreement with the principles behind it, but because we ourselves are saying that there should be a debate, which we want to hear. If Parliament passes a Resolution on this question, we would really be forestalling a debate. To the extent the hon. Members have expressed their views, it is going to help that debate. Therefore, the hon. Member's Resolution has served more purpose than what it would have served had it been passed. As such, I request him to withdraw the Resolution, while at

the same time thanking him for bringing it.

SHRI K. P. UNNIKRISHNAN: Mr. Chairman, Sir, at the outset, I can assure you that I do not want to take more time than is necessary; and I shall confine my remarks in reply to certain brief observations. I am deeply indebted to many hon. Members and grateful to the hon. Law Minister, Mr. Gokhale, for taking part in what I thought, was a significant matter to be debated at length by this House. I am also thankful to the House for having given me its indulgence for nearly 5 hours and 45 minutes. I am thankful to all those who have participated in this debate.

My main purpose in moving this Resolution, as I had emphasized while introducing it last time, was that if the Constitution were the result of social experience—and to specify it and put it in a better way—the experience of working a Constitution alone should guide us while dealing with it—and nothing else. We cannot call the Constitutional provisions “primordial, transcendental” or anything of that kind, as one of our learned Chief Justices had referred to the Fundamental Rights, in a controversial judgment. My only purpose was to seek significant changes to seek a review, or, more than that, to call for a national debate; and to initiate that debate in this House. I do not want to go into many other details and points referred to by many hon. Members here. I would say that primarily, my idea was to put a proper focus on the debate on the need and desirability of having constitutional changes, or changes in our constitutional framework.

That is why I had not specified anything further; my friends Mr. Dag and Mr. Naik had asked me about it. I am sorry they did not understand the purpose of my Resolution. I would only briefly refer to certain things. I am glad that Mr. Gokhale has refer-

red to certain remarks made by two hon. Members last time; and I would refer to certain remarks made by one distinguished Member who was a Member of the Constituent Assembly, Mr. Frank Anthony. Mr. Frank Anthony said,—and right'y so, that ours is a constitutional democracy; but he further said that the most distinguishing features—or the only distinguishing feature—of this Constitution—are the separation of powers and judicial review. There was nothing else in this Constitution! Separation of powers, as a political doctrine at a particular point of time and history; did evolve in Europe. It was accepted by democracies and it found expression in various Constitutions, but this was not to be a permanent penance. Unfortunately, Mr. Frank Anthony is not a political scientist; he is a lawyer! Never has it been suggested that by the doctrine of separation of powers it is presumed that State powers are put in water-tight compartments, that you cannot move one from the other, or that you have to confine the whole thing into water-tight compartment!

MR. CHAIRMAN: In our Constitution there is no separation of powers.

SHRI K. P. UNNIKRISHNAN: I was about to remark that; I am thankful to you.

I am sorry that Sri Frank Anthony tried to divert the whole debate by taking it in a different direction by referring to the various cases regarding minority rights in our Constitution. Primarily what I wanted to emphasise and what I claim has found acceptance in this House, I would say, is that Constitution is a political instrument. The validity of the Constitution, I would further contend, is extra-legal; it is not merely legal, it is extra-legal.

But what is the most important thing about law, the legal processes and more so about the Constitution, I

would say is its social acceptance. If the Constitution is not accepted by the Society then it can no longer be valid! Even if the spirit of the Constitution is not accepted, as we have seen in this House, as we have seen in this country in recent months unfortunately, it tries to derail the whole system, it tries to derail the whole Constitution itself. So, the most important point I would emphasize about the Constitution is that its social acceptance must be preserved, and to preserve its social acceptance we will have to move with the times, in response to the changing rhythms of social values.

I am glad Sri Stephen referred to the constituent powers of the Parliament. An assertion of these powers is very vital for the preservation of democracy in this country.

I am sorry, Sri Somnath Chatterjee referred to the whole amending process in a way as though we have been dealing with changes in the Constitution in a frivolous manner. I would say that it was an insult to the House to say that we are dealing with this question in a light-hearted way. He also referred to the special protection given to certain laws by placing them in the Ninth Schedule. If the House in its wisdom found it necessary to include certain laws in the Ninth Schedule and give them special protection; it was only because we felt it was necessary to preserve the system itself, so that the system itself did not get derailed and that the system was not used as an instrument to sabotage the system itself.

Similarly, on the question of judicial review, it has never been my conception, and I do not know if a proper understanding of my Resolution can take any Member to such a logical conclusion—that I wanted the abolition of the judiciary! I never said it in my speech, nor could it be deduced from any of my references either. What I said, as right'y pointed

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out by Shri Gokhale and earlier by you, Mr. Chairman, in your contribution, was that we have to find the parameters of judicial review and also find out how far the judiciary can go. If the Constituent Assembly in its wisdom, or the Parliament in its wisdom has made some provisions, as pointed out by Shri Jawaharlal Nehru in the Constituent Assembly, we are not binding our successive generations. If the House in its wisdom finds it necessary to go in for some changes, we will have to do so.

It is also an amusing thing to note that while for a constitutional amendment in this House we need two-thirds majority, the entire amendment can be dismissed in half a sentence and half a minute by a single Judge Bench of the Supreme Court, which to me is a fantastic principle! So, while paying the well-deserved tributes to the founding fathers of this Constitution, I would say that judicial review must have its limitations. Even in countries like Australia, Canada and elsewhere we have found that the whole process of judicial review, the meaning and content put into it has been creating problems. So, I would repeat my earlier plea that articles 32, 141 and 226 will have to be gone into in detail and reviewed.

The question has been raised regarding the right of property. Unfortunately, even some of my friends on this side have misunderstood me! It is not my idea that there should be no legal right of property. I certainly want legal rights of property. Mine is not a Utopian or anarchist idea of abolishing property or having communes or anything of that kind. The only idea was, as I quoted Justice Hidayatullah last time, that it was unnecessary to have put the right of property in the fundamental rights chapter of the Constitution. The entire legal history of the last 26 years

ever since the Supreme Court came into being and the decisions of the High Courts and the Supreme Court will bear me out, I am sure, that this has to be taken out of that chapter because primarily property, without getting into any kind of debate on any dogma, I would say is the result of social intercourse and it has to be regulated by the State, and it will also have to be regulated also by executive action. There can be no running away from this fact, and that is why I would say that I was surprised to listen to Mr. Somnath Chatterjee talking about "what remains of the remnants of property rights"; after amendments to the article 31!

I do not know if he is a Marxist, though he is in that party, but he talked today more like a lawyer, a liberal intellectual, and also as a prisoner of his own party for the sake of political convenience of his party and a prisoner of the system which probably is beneficial to him! As I said, my idea was only that this right should be taken out of the chapter on fundamental rights.

Another important area which I would like to emphasize is that of Centre-State relations. I should have thought that some of my friends would have raised these vital questions because there are a number of questions like Central and State finances, the role of the Finance Commission etc.—I am glad that you Mr. Parashar mentioned it—and also the question of regional imbalances. It affects the federalizing process which is a continuing process, it affects the federal features of the Constitution, it affects the whole system because the Union of ours is not like any other federal system because I would say that fundamentally we are so many different cultural entities! When I say this I hope nobody will misunderstand me. It is a fact of Indian history that right from the Bhakti movement to this day there have been powerful as-

assertive regional cultural forces operating in this sub-continent. It was our misfortune that our neighbour did not understand this and it resulted in its break-up. So, I would say that there are areas of national activity which have to be co-ordinated and planned, and that is why we have a Planning Commission, an instrument which is outside the purview of the Constitution. May be because the Planning Commission came into being after the Constitution and we could not conceive of the nature and rightful sphere of its activities, it could not find a constitutional place, but I would say that, as has been pointed out by a few friends, we can combine the functions of the Planning Commission and the Finance Commission, and such a Planning Commission must be given a permanent place in the Constitution itself.

A lot has been said about the demand for autonomy. However learned he may be, Justice Rajamannar, who went into the question as a result of a resolution of the Tamil Nadu Assembly, completely misunderstood the idea and concept of the Union itself. The word "Union", I am sure you will bear me out, has a particular significance in the context of our Constitution. So, when we demand "autonomy", it must be put in proper focus and in the background of the Union. Unfortunately, our friends who have been campaigning for "autonomy" have ultimately turned out to be the enemies of the Union, and from that step it is only another step towards their own earlier pet theory of secession. I would demand more powers for the States. But also in certain spheres, I would demand more powers for the Union. That is why I say, these changes can be undertaken when a proper review is made. What we are seeking is, harmony, not homogeneity; unity, not uniformity.

We will have to put down also the forces of linguistic chauvinism and fight these anti-national elements. Re-

garding the strengthening of our secularism. I am glad that Mr Gokhale has made that point, that these forces will have to be put down ruthlessly. I would urge upon the Government that some of the communal parties will have to be permanently and constitutionally banned. Formation of such organisations will have to be considered even as an anti-national act by the State.

Before I conclude, I would say, as Mr. Kokhale suggested elsewhere, there should also be a chapter of fundamental duties of citizens and that will be a useful addition to our Constitution. But I am not merely content with changes in the Constitution. The Rules of Procedure of this House will have to be changed, modified and the Parliament itself re-structured. Everything will have to be gone into. All aspects of legal framework will have to be gone into. I hope, in the new climate that prevails in the country, we will be able to do it. After all, a polity evolves and fulfils itself. We have reached a point where we have to have a date with our own destiny, and promises to fulfil. I am glad that my hon friend, Shri Amar-nath Vidyalankar referred to *Vishnu Purana*. I have also found one quotation from *Upamishads*. It says:

"Law is the king of kings, far more rigid and powerful than them; there is nothing higher than the law; by its wide powers as by that of the highest monarch; the weak shall prevail over the strong"

That is the basic idea. I hope, in our deliberations in this very House, during the days to come, we will be able to adopt such concepts by which we can bring about necessary changes.

In deference to the request of the hon. Law Minister, I withdraw my Resolution. I, once again, thank everyone who has taken part in the discussion. |

MR. CHAIRMAN: Is it the pleasure of the House that the hon. Member be allowed to withdraw his Resolution?

HON. MEMBERS: Yes.

The Resolution was, by leave, withdrawn.

developing countries and to take concrete measures to bar the entry into the nation's economic life of foreign and particularly U.S. multinationals."

Perhaps, Sir, I shall be permitted to continue the next day.

MR. CHAIRMAN: Yes. The hon. Member may continue the next day.

SHRI B. V. NAIK (Kanara): Sir, there is an amendment of mine.

MR. CHAIRMAN: Not now. He has just formally moved his Resolution.

After his speech is over then only you can move your amendment. The House stands adjourned to meet again on Monday at 11 A.M.

18.40 hrs.

Lok Sabha then adjourned till Eleven of the Clock on Monday, April 5, 1975/Chaitra 16, 1898 (Saka)

RESOLUTION RE.

MULTINATIONAL CORPORATIONS

SHRI H. N. MUKERJEE (Calcutta-North-East): Mr. Chairman, Sir, I beg to move:

"In view of the latest disclosures in several countries of the subversive and corrupting activities of the multinational corporations, this House urges upon Government to exercise the utmost vigilance against this menace which confronts all