

14.30 hrs.

**CONSTITUTION (AMENDMENT)  
BILL—contd.**

(Amendment of articles 22, 32, etc.)  
by Shri Dinesh Bhattacharyya.

**MR. DEPUTY-SPEAKER** We take up further consideration of the Bill to amend the Constitution by Shri Dinesh Bhattacharyya.

Shri Dinesh Joarder to continue his speech.

15.30 hrs.

[MR SPEAKER in the Chair]

**SHRI DINESH JOARDER** (Malda)  
Mr Speaker, Sir, the other day we were discussing the Constitution Amendment Bill in respect of Art 22 Art 32, Art 226 and Art 311, Sir, it was particularly Art 22 of the Constitution where there is a provision for preventive detention empowering the Executive the Government to take away or curtail the fundamental rights of the citizen that have been guaranteed in the Constitution itself and also particularly in Art 13 and other relevant Articles In the same breath the fundamental rights and civil liberties of the free citizens of our democratic republic of India guaranteed in Art 32 have been taken away We know what sort of movements were going on in our country at the time when this provision was incorporated in the Constitution In a large part of the country the peasantry was very much agitated and there were peasant movements all over the country before our independence and just after independence The peasantry were actually fighting the land lords—in many parts of the country and also in many native States of the kings and native lords, and in other parts against the zamindars and landlords The peasant movements were at that time mostly being led by the Communist Party There were also other popular movements—the trade-union movement and others—for es

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establishing their rights and privileges for their livelihood, for their wages and also for the recognition of the trade union rights and other things These things were going on when the Constitution was being framed And before the Constitution came into force also there were popular demands for the abolition of the zamindari system landlordism and the feudal system and the labourers got new enthusiasm after independence to fight the industrialists the mill owners and also the capitalists and there were many popular mass movements in the country In that context, the preventive detention powers against the leaders of these movements began to be used It came first in West Bengal where popular movements were there to a very high degree And who were the victims of the preventive detention? Mostly leaders of the Communist Party and also leaders of the peasant movement the trade-union movement labour movement the democratic movements became the victims of the preventive detention Previously the BCLA (Benal Criminal Laws Amendment Act) was declared null and void by the High Court because it was derogatory to the fundamental rights that were guaranteed by rule of Law Then came the question as to how they could be detained without bringing them to the law courts Certain State Governments took recourse to framing certain laws preventive laws and ultimately the Central Government agreed to accept the proposal of these State Governments who were unable to face the popular movements. Thus the Draconian provision was incorporated in the Constitution On the one hand in one article of the Constitution we say that certain Fundamental Rights are guaranteed to the free citizens and at the same time in article 22 we are taking away those rights and are empowering the State Governments to frame laws enabling the State Governments to detain any citizen for any period Originally it was stated 'not more than three months', but subsequently it was enlarged and enlarged Ultimately in 1971 when the ruling

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Party under the leadership of Mrs. Indira Gandhi; got the massive mandate, Article 13, where the Fundamental Rights are guaranteed, was amended, to incorporate the following provision, namely,

"Nothing in this Article shall apply to any amendment of this Constitution made under article 368."

That means, now, the Parliament is empowered, not actually the Parliament, but the Government, the ruling Party, is empowered to frame any sort of laws curtailing the Fundamental Rights of the free citizens

Regarding the incorporation of the provision for preventive detention in the Constitution itself, it has been our experience in the last 27 or 28 years, after Independence, that this provision has only given the power to the State to apply it against its political opposition and also against the popular movements and mass movements and their leaders, when any agitation or democratic movement takes place and reaches such a degree that it becomes popular and the Government cannot face that, they apply these preventive detention laws. And very well this is the situation now also in the country. You have already detained many of the Opposition leaders and MPs, including your own men. What is the reason behind it? That is because you are not able to rule in the same manner as you ruled previously, and now you want certain other powers to coerce people to bow down before you and not raise their voice of opposition, discontent and resentment. That is why, you are applying the preventive detention laws in a larger measure. Thousands of citizens are put behind the bars under this provision. It has been our experience that the preventive detention laws are not being applied against the actual anti-social elements or against such class of people who are actually exploiting the large masses and the poor people of our country, and the black-marketeers

and hoarders. What we have experienced is that in the name of security of the nation, you have detained many opposition leaders, political party leaders, particularly many workers of our party, leaders of the peasants movement, trade union movement etc. They have not been released as yet. But those who were detained under the name of hoarders and black-marketeers under MISA and the Preventive Detention law, were released within 10, 12 or 15 days. In my constituency alone—it is a small district, after the promulgation of Emergency, there were as many as 400 or so MISA cases and about 100 people belonging to our party or associated with the popular movement as also some businessmen were arrested under MISA. But what happened? After 10—15 days, all those businessmen were released, their detentions were not confirmed by the State Government, whereas many of the detenus belonging to our party and belonging to the popular movement and peasants movement are still under detention. This is the result of the Preventive Detention laws. We are dead against this sort of preventive detention measures that have been incorporated in the Constitution and the powers that have been given under those provisions. That is why, I support the Bill that has been brought by our hon. friend Shri Dinesh Bhattacharyya, particularly this part of the amendment of the Bill.

As regards Article 32, power has been given to the High Courts and Supreme Court as a measure of guarantee for the fundamental rights of the citizens. Whenever there is any curtailment or infringement on such rights, any citizen can seek the protection of the High Courts or Supreme Court. That power has been given under Article 32. This Bill wants to incorporate one proviso, that is:

"Provided that notwithstanding anything contained in the Constitution, the Supreme Court shall have no power to entertain any proceedings or to issue any direction or order or writ under Clauses (1) or

(2), in any matter where any order or direction to any appropriate Government or authority regarding distribution of land vested in the State under any law of Estate Acquisition is called in question"

We have seen that though land distribution measures and land reform measures were passed in the year 1953-54 in many of the States particularly in West Bengal but these were not implemented till 1967 when in all most all States Congress lost their power and the opposition Governments came in. It was only then that the question of distribution of land was thought of and some steps were taken

These laws the Estate Acquisition and Land Reforms laws were passed in many States long before—not because at that time i.e. 1954-54 the Congress was much progressive but because it was the culmination of a long drawn fight against the landlords and the Zamindars and the kings of the native States and also the freedom movement and particularly the movements that were going on in the years 1947-1948 and 1949 the movement of the share croppers the movement of the landless labour and also the movement of the peasantry which was high in various parts particularly in Telangana and West Bengal. After that in 1952 in the First General Elections, the Congress were compelled or were forced to take those measures and to declare and announce that if they won they would go forward with land reforms and estates acquisition. Because of that, because of those peoples' movements, these Estate Acquisition and Land Reforms Acts were passed in 1953-54 and thereafter in many States even though the Acts were passed, they were not implemented before 1967 and after 1967, when the Congress lost in many States including West Bengal, the question of land distribution came in and particularly where parties like CPI(M) and CPI were partners in Coalition Governments actual land reforms were started under their guidance and leadership

But difficulties came in at the time of actual implementation of those land reforms. When the question of distribution of land came in, when some lands were actually distributed to the peasants and when they took over the possession of the vested lands in some places clashes began with the landlords and in some places, the landlords went to High Courts and other civil courts and also to Supreme Court seeking protection of their vested interests and those cases remained pending for years numerous cases started and land distribution was ultimately frustrated

Though there is a provision of right to property is a fundamental right, we want that this right should not be guaranteed in the Constitution and should not be included in the Fundamental Rights. Still when there is such a right we want that in Article 32 where these fundamental rights have been guaranteed and any citizen can seek the protection of the Supreme Court and High Courts for their rights to be restored in that particular article we want that there should be a provision whereby the Supreme Court, the High Court or any civil court shall have no power to interfere or take cognizance of any matter concerning land distribution. If that land which was already vested in the State or is liable to be vested in the State or the land already possessed by and standing in the name of a landless if any dispute comes up before the courts in regard to this land the courts shall not interfere. This is the main purpose of the amendment to Art 32. I also welcome this amendment and this part of the Bill also

Similarly, in Article 226 with regard to the power of the High Court and the Supreme Court to issue writs of *Certiorari*, writs of *Mandamus* and other writs there also we want this provisions should be included that any case regarding the distribution of or vesting of land or concerning distribution of vested land should not come under the jurisdiction of the High Court or the Supreme Court and the

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civil courts will have no power to take cognizance of these cases.

Now, I come to my last point. Under Article 311 of the Constitution of India, security of service of the civil officers has been guaranteed. It reads:

311(1) "No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed."

This provision protects the rights of the civil service people holding posts under the Central or State Governments. If some doubt arises in regard to their conduct, etc., action is taken against them after giving them full opportunity to explain or to defend their case.

I would draw your attention to proviso (c) which reads:

(c) "where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."

This means that even without holding any enquiry or even without assigning any reason, whatsoever the Governor or the President can dismiss at any time any Government officer without giving him an opportunity to defend his own case. Under the cover of this provision in the Constitution, we have seen that during these days hundreds of Government officers are being dismissed and thrown out of their office every day. Now you are taking the plea of 'emergency' and of bringing discipline in the Government offices and also of taking certain measures against the incompetent, insincere officers. I may tell the House that even before emergency hundreds of employees due to certain political motivation and also due to certain other reasons had been thrown out of em-

ployment. Those reasons would not at all have made them liable to dismissal i.e. certain employees were forming union, certain groups of employees were demanding certain privileges where the working conditions were not very congenial so that they could work efficiently. They were also demanding their right to form association. To terrorise Government employees, they have been using this proviso (c) to Article 311. This is there in (b) and (c) proviso; it is there in the last part of sub-section (3). This should be omitted. It is a welcome step that no employee of the Govt. should be dismissed without giving opportunity of defending himself or going to court, without benefit of enquiry, without taking all legal procedures etc. No employee either of the Centre or of the States should be dismissed without these. In West Bengal we know this. They formed a coordination committee. They formed a non-political trade union association of their own. They achieved many benefits fighting under the banner of this coordination committee. They achieved many privileges and benefits to the enumerable employees of Government. Large sections of such Government employees were benefited. It was a very strong association. To liquidate this association hundreds of the leaders of the coordination committee and State Government employees serving the Government for more than 15, 20 or 25 years were all on a sudden served with notices that the Governor has been pleased and so they are dismissed, and thrown out of employment. Hundreds of employees in West Bengal have been thrown out of employment under the provision of this Article of the Constitution and in all the other States also these things are going on. Under the plea of emergency you have already thrown and dismissed thousands of employees in the Centre and the different State Governments. This is undemocratic, unprincipled, derogatory to fundamental and democratic rights of citizens. This is a black

provision incorporated in the Constitution. So we want that these provisions under Art. 311 should go. This should be omitted.

I support this Bill. I want that this House should adopt this Bill. I request the Law Minister to accept this Bill and get the Constitution accordingly amended in the best interests of the free citizens of our country.

**SHRI CHAPALENDU BHATTACHARYYA** (Giridih): The opposition unfortunately during the tenure of the debate has been taking two contrary positions. In some cases they would like the power of the Supreme Court to be curtailed. In other cases as in this Bill when it comes to the right of the enquiry about Corruption and so on, they say neither the Governor nor the President nor the officer concerned shall have any say in the matter.

The Bill is a sort of an Indian rope trick. If these people none of them, have any right to consider these cases, then who under the heavens, is going to consider the cases? What happens? The question basically is whether the writs of *habeas corpus mandamus certiorari* should operate and continue to operate; some of these rights we borrowed from the British juridical system. The position with reference to writs has always to be equated with the responsibility. The situation should never have arisen in the first place if the Opposition had played its role with responsibility understanding and making constructive suggestions. Some of these changes including this Emergency had to come about in the context (*Interruptions*).... you are a bonded labour; you are a prisoner of your experience of your own party of Marxism which is a derailed bogie. Now you can call it a revolutionary marxism. That marxism is fractured in fragments now. (*Interruptions*). Which variety of coat you would like to turn to—Chinese, Cuban, Yugoslavian or Russian or of

indigenous variety? You first decide that. I know where I stand? All of us have to go through the first preliminary classes in our colleges. And I certainly have reached a higher philosophy and a completer synthesis through and beyond marxism which you have not done. Your philosophy is fractured. I am here merely replying in kind to what you say. (*Interruptions*).

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Anyway the point is a simple one. How far should our rights be protected to operate in the interest of democracy in the interest of right to free expression. The limits are set by the responsibility with which these rights are discharged. If there is a character assassination, if there is a smear campaign, if there is daily disturbance in the Lok Sabha itself and if there is a threat of *dharna*, then what else can be done? These are all contributed by my friends on the opposite side with some exception of course. (*Interruptions*).

16.01 hrs

[**SHRI C. M. STEPHEN**—*in the Chair.*]

In that case, you are really trying to subvert the democratic system and its functioning. (*Interruptions*). I do not know in which coat you are? Your entire party is a party derailed from the main line of Marxism long ago. That is why you find in such a grand company of Jansangh! The dialectics of history brought the extreme right and the so-called extreme left together into a strange bedfellowship!

Now, Sir, coming to the Bill proper, I oppose it for the very simple reason that the Bill is ill-conceived and it will only impede the functioning of the implementation of the 20-point programme under the emergency scheme.

[Shri Chapalendu Bhattacharyya]

I appeal to the Opposition of all shades that India, in the present context, can ill afford this spectacle of wrangle. We have put all our shoulders together to the wheel. The population explosion is before us. That one fact alone will lead us to greater illiteracy rather than growth of literacy and worsening of living standards. On the other hand there are serious challenges of subversion from outside elements supported by some of the internal friends.

In the circumstances, I oppose the Bill because this Bill itself is not properly conceived and shot through and through with contradictions.

श्री नाथूराम अहिरवार (टीकमगढ़)

सभापति महोदय, यहाँ पर जो संविधान संशोधन विधेयक प्रस्तुत हुआ है, मैं उसका विरोध करता हूँ। इसके द्वारा माननीय सदस्य ने न्यायालय के अधिकार भागे हैं। एक ओर तो वे कहते हैं कि न्यायालय में इतने अधिकार नहीं होने चाहिए क्योंकि जब केरल में इनकी सरकार थी तो इनके दल के नेता ने वहाँ पर मुख्य मंत्री की हैसियत में न्यायालय के खिलाफ आवाज उठाई थी कि न्यायालय में बड़े बड़े घण्टासेठों के लडके हैं जोकि जनता के हित में काम नहीं कर सकते हैं इसलिए उनको हटाना चाहिए।

(व्यवधान) केरल में यहाँ तक हालत हो गई कि वहाँ मजिस्ट्रेट ने इन्कार कर दिया कि हम कैसे काम करें। मुकदमा होता था, तो इन के कार्यकर्ता जाते थे और मजिस्ट्रेट से कहते थे कि ऐसा कीजिये, इस आदमी ने क्लब किया है, इसको छोड़ दीजिये, ये अपने मन की अदालत चाहते हैं, जनता के हित के लिये नहीं। ये संविधान में इस तरह का अधिकार मांगते हैं, जो उस में कम किये गये हैं। लेकिन दूसरी पार्टीज ने जो देश में माहौल बना रखा था, उस से जन-जीवन दूषित हो गया था, देश का एक एक नगरिक परेशान था। आज से छः

महीने पहले की बात किसी से पूछ लीजिये, क्या हालत थी? लोग कहते थे—देश में कोई शासन भी है या नहीं? किसी का जीवन सुरक्षित नहीं था। आप इतने अधिकार मांगते हैं, लेकिन वे वही तक सही हो जाते हैं, जब तक दूसरों के अधिकारों का हनन हो। धर्म वही अच्छा है, जो दूसरों के धर्म का हनन न करे। आप को मालूम होना चाहिये—जैसा कि किसी विद्वान ने कहा है—

“Religion is all after when it produces better citizens. If it fingers at others' liberty then it is a curse.”

जब हम अपने पूरे राजनीतिक अधिकार मांगते हैं तो यह जरूरी है कि हमारा पडोसी भी उतने ही अधिकारों का भोगी हो, लेकिन आप कहते हैं कि जो कुछ हम कहें वही सही अधिकार है, बाकी हिन्दु-तान में कोई नहीं है। इस तरह से थोड़े से आदमी अपने अधिकारों को बनाना चाहते हैं . . . (व्यवधान) . . . आप ने देखा—संविधान बदला जाता है तो जनता के हित के लिये बदला जाता है। समाज के लिये ही संविधान होता है, संविधान के लिये समाज नहीं होता। जैसी आवश्यकता पड़ती है, जैसी समाज की रचना होती है, उस के मुताबिक कानून बनाया जाता है। जब हमारी सरकार ने देखा कि कोर्ट कानून आड़े आ रहा है, उस को संशोधन करना आवश्यक है तो हम ने उस को संशोधित किया। हमारे धर्म ग्रन्थों से कहा है कि ये जातियाँ और ये जातियाँ बनी रूढ़ क्योंकि मनुस्मृति और दूसरे धर्म ग्रन्थों में ऐसा कहा गया है कि इस जाति के लोगों को छूना नहीं चाहिये, तो क्या उसी तरह से आप संविधान को भी बनाना चाहते हैं। एक तरफ आप कहते हैं कि संविधान को बदला जाय, दूसरी तरफ आप का मतलब हल नहीं होता है तो आप कहते हैं कि संविधान में ऐसा नहीं होना

चाहिये। एक तरफ आप कहते हैं अदालतों के अधिकार कम किये जायें और दूसरी तरफ कहते हैं कि उन को बढ़ाया जाय। हमारे जो कार्यक्रम हैं, जो जनता के हित के लिये बन रहे हैं उन में अगर कोई कानून छोड़े आता है तो उन को हटा कर ही हम जनता का हित कर सकते हैं। हम ने देखा कि जब बैंकों का राष्ट्रीकरण किया गया तो उसके खिलाफ फसला हुआ। जब राजाओं के प्रीवी पर्स को समाप्त किया तो हमारे खिलाफ फसला—हुआ तो क्या ये अदालतें हमारी जनता के हित के लिये थीं? क्या यह उचित था कि राजा महाराजा घर में बैठे बैठे बिना किये लाखों रुपये की पेंशन लेते रहें। उन के कुत्ते और बिल्ली सरकार के खर्च पर हवाई जहाज से इंग्लैंड की यात्रा करें और हमारे यहां लोगों को खाने के लिये गौटी न मिले, पहनने को लंगोटी न मिले। यह कैसा समाजवाद है? यह कैसी समानता है? अगर सब को समान अधिकार है तो चाहे महारानी हो या एक साधारण व्यक्ति सब को बराबर के अधिकार मिलने चाहिये।”

आप को याद होगा हम ने राजाओं का प्रीवी पर्स खत्म किया, लेकिन उमर विरुद्ध न्यायालयों ने जो फैसला दिया, वह इतिहास में लिखा हुआ है, कभी मिट नहीं सकती और आप लोगों ने उस का समर्थन किया था आप लोगों ने कहा था कि राजाओं का प्रीवी पर्स समाप्त नहीं होना चाहिये। आप कहते कुछ और हैं, लेकिन आप के दिल में कुछ और है। आप को याद होगा, उमर के बाद पार्लियामेंट भंग हुई, नये चुनाव हुए तब आप लोगों ने गठबन्धन किया। कैसा गठबन्धन—कहीं की ईंट कहीं वा रोडा, भानमनी ने कुलवा जोडा। लेकिन जनता ने आप को कह दिया कि हम तुम को नहीं चाहते है, उस के बाद आप ने जनता पार्टी बनाली। समझ में नहीं आता—जब जनता ने आप को छोड़ दिया, तो फिर जनता पार्टी बनाने का आप को क्या अधिकार है?

इसी लिये संविधान में ऐसा संशोधन किया गया कि जनता के हित में जो कानून बनाये जायें, हमारी करौटो गरीब जनता के हित के लिये जो कानून बनाये जायें, न्यायालय उन पर अकुश न लगा सके। आप जाते हैं पिछले दिनों हम अपनी जनता को एक बीघा जमीन भी नहीं दे पा रहे थे, ऐसी स्थिति पैदा हो गई थी कि वे अपने पैरों पर खड़े हो कर यह कहने की स्थिति में भी नहीं थे कि हम इस देश के स्वतंत्र नागरिक हैं। हम जो भी कानून बना रहे हैं उसी जनता के लिये बना रहे हैं और उस के हित के लिये अगर हम का किसी की जमीन और सम्पत्ति भी छीननी पड़े तो हमें पीछे नहीं हटना चाहिये और हम यह चाहेंगे कि ऐसे जो भी कानून बनाये वे न्यायालय की सीमा में बाहर रहें।

इस लिये जो विधेयक पेश किया गया है मैं उस का घोर विरोध करता हूँ।

THE MINISTER OF STATE IN THE  
MINISTRY OF LAW, JUSTICE AND  
COMPANY AFFAIRS (DR. V. A.  
SEYID MUHAMMAD): Mr. Chair-  
man, I oppose the Bill, every clause  
of it. Three amendments are pro-  
posed to be effected in the Constitu-  
tion, first, amendment to art. 22,  
second, amendment to art. 32 and  
third, amendment to art 311 Amend-  
ment to art 22 is to the effect that  
clauses 4, 5, 6 and 7 be deleted.  
Apparently, this is purported to be  
done to protect civil liberties and the  
interests of democracy. But when  
we examine it, we will see that if  
these amendments are accepted, the  
opposite effect will be the result.

Let us take these clauses, but before  
that I want to mention one thing  
Articles 21 and 22 should be read  
together. Article 21 negatively says  
that nobody's liberty shall be taken  
away except through procedure

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established by law. To put it positively, provided by valid law a procedure is established and by that procedure liberty is taken away, that shall be sanctioned by the provisions of the Constitution. Article 22 is only an elaboration of art. 21. In this connection, I wish to recall....

**SHRI DINESH JOARDER:** Not preventive detention.

**DR. V. A. SEYID MUHAMMAD:** When you spoke, I did not interrupt. I must be assumed to know about preventive detention.

You may recall that at the time the Constitution was being framed, there was great controversy whether we should import the entire due process concept in the American constitution. It was decided that we shall not. We accepted a limited concept, namely procedure established by law which as I said, has a negative as well as positive content. The negative content is that you shall not do certain things except according to the procedure established by law and the expression "law" has been interpreted by the Supreme Court to mean a valid law. So, if by a valid law a law which is otherwise valid, you wish to deny the liberty, etc. to the citizen, the qualifications and conditions mentioned in Article 22 are to be satisfied.

Certain restrictions are imposed under clauses (1) (2) (3) (4) and (5) of this Article. That is in order to protect the liberty of the people certain things cannot be done or certain things are prohibited and certain things have to be done. I may just refer to it very briefly. Now, 22(1) says that nobody shall be detained without providing him with the grounds. Article 22(2) says that everyone so detained shall be produced before the Magistrate within a specified period. Article

23(3) says "Nothing in clauses (1) and (2) shall apply. Article 22(4) and (5) are very important which give very basic rights and protection to the citizens. Clause (4) says. "No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless the condition specified therein, is fulfilled. Clause (5) says:

"When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds....."

So, when you take Clauses (1) (2) (3) (4) and (5) together you will find that those Clauses are intended to be for the protection of the individual even though under Article 21 the authorities are empowered to detain any person by a procedure established by a valid law. Now, this protection which is given to the citizen is purported to be taken away by this amendment. Clauses 4 and 5 are to be deleted altogether. The protection would not have been there if you take Article 21 alone. These protections are not there in article 21. So, by this amendment these protections are purported to be taken away, to which the Government cannot agree. Clauses 6 and 7 are only enabling clauses which say that the Parliament shall have power, etc to make laws. So by deleting these clauses (4) (5) (6) and (7) what they want in substance is to take away the liberty of the citizen. This position the Government cannot agree to at all. I can understand a section of the opposition wanting to destroy the liberty and the protection given to the citizen but the Government cannot be a party to it and Government cannot accept this amendment and take away the liberties and protection given by the Constitution itself to the citizen.

Two reasons have been given for this amendment. One is political motivation that is to say the constitution provisions are being abused for political reasons. This had been refuted innumerable times, the whole day yesterday, today in this House and in the other House. Wild allegations have been made. I do not wish to revert except to say that the allegations that have been made. I deny emphatically. The second reason given is that there are already sufficient protective procedural provisions in the various laws of the country which can be used. But I do not think they are sufficient and it has been found that they are not sufficient. One of them is contained in the Criminal Procedure Code. The maximum you can do is that you can get a bond executed. In individual cases, it may be possible, but to prevent large scale organised attacks against democracy you cannot use these preventive sections of C.R.P.C. like Sections 107 and 109. These are only for rounding up ordinary criminals or undesirable elements and preventing their activities.

AN HON. MEMBER: Let it not be a blanket power.

DR. V. A. SEYID MUHAMMED: That power is not sufficient. When political movements in the sense of organised anti-democratic movements are there, Sections 107 and 109 of the Cr.P.C. would not be of avail to protect the interests of the State as well as the citizen. So, to say that there are sufficient provisions in existing laws is not correct.

Regarding article 32, the substance of the amendment proposed is that in matters where by any land legislation land is vested in the government, any order made by the executive shall not be questioned before the Supreme Court under article 32. Suppose an order is made which is detrimental to the interests of the tenants, what happens? An order

may be in favour of the tenant or against the tenant. What will happen in the case of an order made in favour of the landlord which is against the basic interests of the tenant? It is a blanket power you are giving to the executive by making the executive order final. By taking it away from the purview of the Supreme Court you are throwing the tenants to the mercy of the executive. The Government cannot agree to it.

Then I come to amendments to article 311, provisos (b) and (c) of clause (2). Clause (2) provides for an enquiry to be conducted in the case of suspension, dismissal, etc. Proviso (b) says that such an enquiry need not be conducted if the officer concerned is convinced, for reasons to be recorded, that it is impossible or impracticable to conduct such an enquiry. As I already pointed out, one amendment suggests that the executive should be supreme, but the other amendment shows that there is no confidence in the executive at all. What will you do if a man is absconding? The Cr. P.C. and the Evidence Act contain provisions covering cases where a man cannot be found or where a man is incapable of giving evidence etc. What is to be done if a person deliberately absconds? These provisions in the Cr. P.C. and Evidence Act have been there for almost a century. Similarly proviso (c) deals with a situation where the President or Governor can say that it is not necessary to conduct an enquiry, the reason being the security of the State. After all, security of the State is the ultimate test to be applied in such situations. I submit that these provisions have stood the test of examination by the Supreme Court and been found to be valid.

In these circumstances, I think the proposed amendments, particularly with regard to article 22(5) and (6), are pernicious and detrimental to

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the best interests of a citizen and I oppose the amendments. With these words, I request the hon. Member to withdraw the Bill.

**SHRI DINEN BHATTACHARYYA** (Serampore): Mr. Chairman, I must thank the hon. Members who have participated in the debate from both sides of the House including the Minister who has tried to explain away his position. I do not know why he is not agreeable to the amendment that is proposed here in the Bill. But I must say that he has not understood the intentions behind moving this amendment. If he will kindly look into the amendment that is in section 2 of the amending Bill, there I have said that in case of alien or in case of an enemy of the country, we do not ask for any relief or any relaxation but it is only in the case of people and citizens of our country that I want this thing. The United Nations have also drawn a Chapter on Human Rights. What is the reason that a man who is a citizen of India is put under detention on the subjective reasons given by somebody who does not know him personally. How the preventive detentions are taking place? So, you kindly try to understand the reason for bringing this amendment. Some people may look into the matter in their own way, with a jaundiced eye. Why a man is deprived of his personal liberty? That is my question to which you have not replied.

In my introductory speech I have said that the situation now is worse. Whatever may be your explanation, ultimately the result is that there is no rule of law in this country. That aspect you have not replied. I do not know whether you have intentionally done so or you have deliberately avoided it.

I expect at least something from you regarding the amendment which

is there in section 3 of my amending Bill. You should have taken it very objectively. I have no grouse whether you give protection to persons of their personal property. My point is that only the land which is vested in the Government and the same land which is being distributed to the poor peasants and agricultural labourers, in that case you make it sure that the person is given some protection. You said something in your own way. I am not a lawyer and Shri Salve, the other day, has said that I am not a legal pandit. I will say humbly that your leader, Smt. Indira Gandhi is on record that, in that sense, she is not a very highly educated lady. From her commonsense, from her personal experience she speaks and she takes decisions on very serious problems. Mr. Salve should remember the same utterances of Shrimati Gandhi, when he challenges my knowledge regarding Constitution. So, I do not know how these gentlemen, who are sitting here, and pose themselves as legal luminaries, Mr. Chairman, Sir, can venture in making such a slurring remark on me, who is not a lawyer but who understands from common knowledge the impact of Constitution on common people (Interruptions).

I would have gladly withdrawn the Bill if the Government had accepted at least section 3 of my Bill which deals with the question of vested land which may be distributed to the landless people. But you have not done so. So, what will happen?

The next question is in regard to Article 311. The position there also is very funny. You say that whatever the Governor decides, is sacrosanct. Is he a super man? How can he know that the conduct of an ordinary clerk has become a matter of State security? These are pleas to do away with the services of these employees who may not be in your

good books because of their long-standing movement for the betterment of their service conditions.

Sir, I would request you kindly to see that this debate is continued on the next day, so that I may get an opportunity to come forward with other examples as to how these ordinary people, poor peasants are being cheated and how the propertied people are being given guarantee by the Constitution, whereas you do not care to consider the cases of the poor and the ordinary people.

I commend this bill and request you to continue the debate

MR CHAIRMAN There is now no motion before the House for the adjournment of the debate; and, therefore, I cannot take that into consideration at all.

SHRI DINEN BHATTACHARYYA That was my submission, Sir.

MR. CHAIRMAN There was no motion. Moreover, you have to take the consent of the Speaker

THE MINISTER OF WORKS, HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K RAGHU RAMAIAH) If you adjourn, it will have to be balloted again

SHRI DINEN BHATTACHARYYA If so, what is the fate of this amending Bill? Mr Chairman, Sir, don't give your ruling. Kindly tell me

MR CHAIRMAN The hon Member, in the course of his speech, has made a request that the discussion may be prolonged to the next day, or that the debate may be adjourned.

SHRI K RAGHU RAMAIAH We have absolutely no objection to adjourn the debate on this, provided the consequences that follow from

this, according to the rules, will be taken with grace by the mover.

SHRI DINEN BHATTACHARYYA: I agree to your proposal to adjourn.

SHRI K RAGHU RAMAIAH: I beg to move:

"That the further debate on the Constitution (Amendment) Bill be adjourned"

MR. CHAIRMAN The question is'

"That the further debate on the Constitution (Amendment) Bill be adjourned"

The motion was adopted.

16.34 hrs

EMPLOYEES' PROVIDENT FUNDS AND FAMILY PENSION FUND (AMENDMENT) BILL

(Amendment of sections 1, 2, etc.)

SHRI P M MEHTA (Bhavnagar) I beg to move\*:

'That the Bill further to amend the Employees' Provident Funds and Family Pension Fund Act, 1952, be taken into consideration.'

There is widespread unrest and discontent among the industrial workers of this country in regard to the shortcomings and maladministering of the present Act, viz, the Employees' Provident Funds and Family Pension Fund Act, 1952

The workers and the trade unions have constantly made a demand for some changes so as to meet the very purpose of the Act as well as the needs of the workers under the

\*Moved with the recommendation of the President.