

The motion was adopted.

SHRI C. K. CHANDRAPPAN: I introduce† the Bill

CHILDREN, STUDENTS AND YOUTH (RIGHTS AND WELFARE) BILL*

SHRI C. K. CHANDRAPPAN (Telli-cherry): I beg to move for leave to introduce a Bill to provide for the establishment of a Board to safeguard the rights of children, students and youth, to look after their welfare and to levy a cess and for matters connected therewith.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide for the establishment of a Board to safeguard the rights of children, students and youth, to look after their welfare and to levy a cess and for matters connected therewith".

The motion was adopted.

SHRI C. K. CHANDRAPPAN: I introduce† the Bill.

15.33 hrs.

MAINTENANCE OF INTERNAL SECURITY (REPEAL) BILL*

SHRI ERASMO DE SEQUEIRA (Marmegoa): I beg to move for leave to introduce a Bill to repeal the Maintenance of Internal Security Act, 1971.

MR. SPEAKER: The question is:

"That leave be granted to introduce a Bill to repeal the Maintenance of Internal Security Act, 1971".

SHRI AMRIT NAHATA (Barmer): I have an objection at this stage.

MR. SPEAKER: I cannot allow it.

SHRI AMRIT NAHATA: It is on other grounds. It is beyond the jurisdiction of the House to consider it. I will explain.

MR. SPEAKER: You should have given prior notice.

The question is:

"That leave be granted to introduce a Bill to repeal the Maintenance of Internal Security Act, 1971."

The motion was adopted.

SHRI ERASMON DE SEQUEIRA: I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL*

(Amendment on Article 80 and omission of Fourth Schedule)

by Shri Dinesh Chandra Goswami

MR. SPEAKER: Now we will take up further consideration of the following motion moved by Shri Dinesh Chandra Goswami on the 2nd May, 1975:

"That the Bill further to amend the Constitution of India, be taken into consideration."

Shri Goswami was already on his legs. He has taken five minutes; he may continue.

SHRI DINESH CHANDRA GOSWAMI (Gauhati): Sir, on the last day, I only began my speech and, therefore, I think, I should start afresh.

The Bill which I have brought may be a sensitive one which wants to amend Article 80 of the Constitution of India with omission of Fourth Schedule. Article 80 deals with the

with the recommendation of the President.

*Published in Gazette of India Extraordinary Part II, Section 2, dated 9.1.76. †Introduced

Council of States and the allocation of seats in the Council of States in accordance with the provisions contained in the Fourth Schedule. On the basis of population, different number of seats have been allocated to different States. The whole purpose of my amendment is that instead of different number of seats being allocated to different States, the Council of States should have equal representation from all States irrespective of the size of population and as such, I have suggested that ten representatives from each State may be there in the Council of States and three each from the Union Territories retaining the existing provision of nomination of twelve Members by the President because of their distinguished service to the country. This House has debated in the past on various occasions various aspects of Rajya Sabha and views have been expressed by very many persons that Rajya Sabha to a certain extent has no function to perform and, therefore, it should be abolished. Views have also been expressed in this House that the election to Rajya Sabha should be direct one, but these are, more or less, matters out of the scope of present amendment and I will leave them out except referring to these whenever I feel that this becomes relevant for the purpose of discussion of the amendment which I have sought for.

Sir, in spite of the fact that there is strong debate going round the whole world as to the necessity of the second chamber, yet the fact remains that all the leading countries of the world, and more particularly, the federal countries have bicameral legislature, except New Zealand which abolished its second chamber in 1951. Except New Zealand all other important countries have got the second chamber though there is a famous saying of one of the revolutionary thinkers of the 18th century, who said: "If the second chamber dissents from the first, it is mischievous, if it agrees with the first, it is superfluous." I do not go to that extent

and I feel that the second chamber may have many important functions to perform in the parliamentary democracy of a country, provided it becomes effective in its composition and also in regard to its powers. What are the functions of the second chamber primarily? One of the function is, the function of revision. That means, the second chamber is composed of more experienced and aged persons, though the Law Minister, who is opposing this or looking after the Government interests today does not appear to be very elderly person in spite of the fact that he comes from the 2nd chamber. Whatever it is, it is said that the second chamber is composed of experienced and elderly persons and that itself is an asset. But I feel that this argument has lost much of its relevance today with the growth of the party system. When a party brings a Bill in the House, whether it comes from the Opposition or the ruling party, all aspects of the Bill are considered at the party level, and therefore, whenever it is brought, it has got a certain amount of previous and thorough study, and as such I do not see much of a purpose even if a Bill is gone through in two chambers instead of one.

It is also said that some time becomes available between the consideration of the Bill in the Rajya Sabha and the Lok Sabha and it provides an opportunity for a national consensus to emerge on important issues. I think, to a certain extent that has also become irrelevant because the national consensus in important issues are formed even before a Bill is brought before a House because the mass media provides enough opportunity for the debate.

The third is that because in the Lok Sabha or the first Chamber often the members are guided by sentiments, debates become more passionate and in the Upper House as the Members do not have the fear of facing the electorate, it becomes more reasonable.

[Shri Dinesh Chandra Goswami]

It may be so because in the last two years at least, we will have to concede that in so far as the Lok Sabha debates are concerned—I do not say that these debates lacked in merit—but at least these debates were more passionate than the debates in the upper House.

The fourth and the more important functions that the Upper House performs is that it suppresses the centrifugal forces and affords an opportunity to the States to have their say in national legislation and in fact in the debates in the Constituent Assembly, this aspect was put with great emphasis by Mr. Gopalaswamy Ayyangar. A second Chamber is essential in a federal structure because the House of People being the representative of the people, obviously the people will have their say there, but the States also should have a say of their own in a democratic constitution and the Rajya Sabha, being a Council of States, obviously the States will have a say and, in our Constitution, we have recognised the importance of the voice of the States because certain constitutional amendments cannot go through unless they are passed by the majority of the States. Therefore, in our democracy people are the main criteria but the opinion of the majority of the States on important issues is also an important factor.

Whether this aspect will be properly fulfilled by the Rajya Sabha will be dependent to a great extent on the composition and the powers which the Rajya Sabha—and I will try to examine its existing powers and composition—has in comparison with some of the other Second Chambers that we have in the world to-day. For example, the most powerful Second Chamber in the world to-day, everyone will have to agree, is the Senate of the United States. The Senate Members are directly elected. Their powers are, also much wider because

the Senate possesses the power of even vetoing treaties which are agreed upon by the President. Ratification by the Senate is necessary before a treaty comes into force and uptill now more than 60 treaties have been vetoed by the Senate. In the United States Senate each State is represented by two Members, irrespective of its size and population. Now, let us look to another federal country, Australia. There the Senate is not as powerful as that of the USA. There 60 Senators are there and they are elected, ten each from the six States. Therefore, irrespective of the size of the population, uniformity is maintained there also of all the States. Same is the case in Switzerland also where each State has two members. So also in the case of Soviet Russia where in spite of the divergence and composition of the population and the area, 25 deputies are there from each Republic. The only country where this principle is not followed is Canada and we are following to a certain extent that pattern. In Canada 120 members are nominated by the Governor-General and 4 Provinces have 24 Members each and other Provinces have got varying number of members with a minimum of 4. We have, to a certain extent followed the pattern of Canada and Eire because we have accepted the principle of both nomination and indirect election and also the principle of not having uniform representation. Our principle has been to provide one representative for every five million of the population and one for every additional two million or part thereof. Why I am objecting and asking for an amendment and asking this House to consider the necessity of changing the present structure, I will just now come to that.

In the House of the People, obviously the House being representative of the people, the populous States will have more representatives. Nobody can deny it and that should be the first and basic principle. But,

unless there is another Chamber where the smaller States may feel that they are not overwhelmed by the populous States, I think to a certain extent a situation may arise some day when the smaller States may feel that their problems are not being discussed in the proper perspective as it should be discussed. For example, to-day in the Rajya Sabha we find that 7 States alone command a majority in the Rajya Sabha out of the 25 States (including Union Territories). 11 States have 180 seats while 14 States have only 45 seats. 14 States totally have 45 seats whereas 11 States have 186 seats. It is not that these 14 States do not have their own problems. They have many diverse and complex problems but they may not get an opportunity of expressing their viewpoint in an effective manner because they may be overwhelmed by the strength of the other major States. Obviously, at this moment I will concede that not only the quantity but quality also counts. But in a democracy the number also counts very much. Nobody can deny and in fact this is one of the reasons probably which prompted all other federal democratic countries like the United States, U.S.S.R. and Switzerland to have uniformity of the numbers representing their States. In the United States we find that the Senate and House of Representatives try to strike a balance of conflicting interests through different compositions conflicting with one another. For example, in the United States we find that they have got eight farming States like Iowa, Kansas, Minnesota and these States have 47 representatives in the House of Representatives whereas there are industrial States like Illinois, Ohio, New Jersey, the number of their representatives in the House of Representatives is 174. In the House of Representatives the disparity is there. The industrial States may have a dominating voice and much more time may be taken in discussing the industrial matters. But that has been balanced in the Upper

House. In the Upper House the farming States have 16 representatives whereas the industrial States have 14 representatives. It indicates that in the case of conflicting interests which is natural in a big country like India, if there is uniformity of the representations from different States, the disparity of a particular viewpoint to a certain extent reduces and that is why I feel, we should have also a fresh view as to whether the composition of the Rajya Sabha should be changed because of this first principle alone.

Secondly, the Constitution has recognised in our own country the equality of all States irrespective of its size and its population and we say that the Rajya Sabha is a Council of States. Should not this equality be reflected in the composition of the Rajya Sabha also? If all the States are equal, should they not have equal representation in the Upper Chamber? If you do not give them equal representation, can I not come and say, theoretically you have given me equal status, but in practical field you have not provided me an opportunity to express that equal status because so far as numbers are concerned in Parliament both the things do count. Theoretically I am equal but in practically, I am in minority, that is what I feel. When the Constitution has laid down the principle of equality of States, I feel that that should be reflected in the Upper House of the Rajya Sabha. That can be reflected by treating all the States equally. I am not for a moment saying that populous States should not have a predominant voice in the House of the People. There these States have the greatest degree of representation. But when we have made Rajya Sabha, the Council of States, if we make the Council of States and the House of the People the same in composition are we not almost making the powers and functions of both the House the same?

[Shri Dinesh Chandra Goswami]

What distinction can be there that one is representative of States and the other the representative of the people if the composition is almost same in principle? Can you say that for representation of a particular body you will treat every State differently? I have come before the House not in order to give more representation to any particular State, not to curtail representation of other States but on the basis of certain principles. May I pose another aspect of the matter? Today both in the House of the People and in the Rajya Sabha, many complex matters are to be discussed. Many of us do not know the complexities of particular regions. Some such States are represented by only a couple of Members in Lok Sabha and Rajya Sabha. We ourselves know the difficulties of getting sufficient time for speaking in Debates. I know the difficulties of getting time from my Whip Mr. Mahajan to speak and if any Member wants to speak on all subjects he cannot do that, he will not be permitted. I know that today if I want to speak on a particular subject, that requires certain amount of expertise, certain amount of study and so on. Would it be possible for a member who may be the sole representative in this House or the other House to project effectively the problems of his State in the House? I can tell you that in some matters the complexities of States represented by smaller number of people are more than the complexities of more populous States. UP is a most populous State; we know much more about UP than, for example, some of the remotest corners of our country. And if you want debates to be meaningful and effective, don't you feel that more members coming from a particular region must be given opportunities to express their view points? If States are given adequate number of representatives, although these members may not be able to project the views in the House of the People, but in the other House they will be able to

project their views and those views naturally will be reflected in this House also. This is another reason why I have thought it necessary to bring this measure. This is a very sensitive matter. I am not saying that my view point is the last view point or the only correct view point. But I thought that when we are talking about constitutional changes, a debate should take place on many aspects, and this is one aspect to which I thought I could draw the attention of the House. And I do hope that hon. Members will examine this view point not from any sensitive point of view, but from a rational point of view in which I have tried to place my whole case before you.

MR. SPEAKER: Motion moved:

"That the Bill further to amend the Constitution of India, be taken into consideration."

Mr. Daga, are you moving your amendment?

SHRI M. C. DAGA (Pali): Yes, Sir. I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 7th May, 1976." (1)

May I say something, Sir?

MR. SPEAKER: Yes.

श्री मूल चन्द्र डागा : अध्यक्ष महोदय मझे यह मालूम हुआ है कि श्री श्री हमारे श्री डी सी गोस्वामी अमेरिका हो कर आए हैं। तो वह एक बात मीठ कर आए हैं वहां से मिनेट की बात कई महीने तक वहां रहे तो उन्होंने सोचा कि आसाम के केवल छः आदमी है, आसाम के, हिमाचल प्रदेश के श्री हरयाने के वही मेम्बर होने चाहिये जो उत्तर प्रदेश के होते हैं। उन्हें मालूम तो जरूर है कि उत्तर प्रदेश के 7 करोड़ आदमी हैं और हरयाने के 1 करोड़ कुछ

भादमी है। उन्होने एक बात और कही। बड़े प्रिंसिपल्स की बात कर रहे थे। मेरे ख्याल से हाफ हाउंडली प्रारम्भमेंट कर रहे थे लेकिन चला रहे थे इस बात को।

जब पार्लमेंट का मेम्बर कोई बनता है तो मैं नहीं समझता वह केवल राजस्थान की बात करता है, केवल एक स्थान का ही प्रतिनिधित्व करना है। मेम्बर बनने के बाद वह सारे हिन्दुस्तान को एक नजर से देखता है। मैं नहीं समझता गोस्वामी जी यहां पर केवल आसाम की ही बात करेंगे। जो और बैकवर्ड रीजन है उनकी बात भी वह यहां पर रखेंगे। कांस्टीट्यूशन के अन्तर्गत लोकसभा न तो लोवर हाउस है और न राज्य सभा अवर हाउस है। यह तो हमने उनके नाम रख दिए हैं। इसके अलावा यहां पर आज एक नयी बात हुई। इस हाउस के मेम्बर श्री चन्द्रप्पन ने पूछा है कि राज्य सभा को एवंगनिश कर दिया जाये उनका यह विल है। कांस्टीट्यूशन अमेन्डमेंट करने के लिये जो बाने चल रही है उसमें भी वह अपना अमेन्डमेंट रख लेंगे। मैं कई बार कह चुका हूँ कि अगर राज्यसभा को एक बड़ा हाउस बनाया जाये, उसमें जितने उत्तर प्रदेश के मेम्बर हों तो उतने ही दूसरे छोटे छोटे राज्यों के भी हों तो वह कितना बड़ा हाउस हो जायगा। आज तो हिन्दुस्तान के किसी भाग से जो पार्लमेंट का मेम्बर बनता है वह हिन्दुस्तान के सारे राज्यों की बातें कह सकता है, उसके लिए किसी तरह की कोई मुमानियत नहीं है।

15.55 hrs.

[SRI G. VISWANATHAN in the Chair].

हमारे माननीय सदस्य ने अपने बिल के आब्जेक्ट्स ऐंड रीजन्स में जो कहा है वह इस प्रकार है :

"True and proper representation is never possible if the States are represented in unequal numbers..."

लेकिन क्या प्रिंसिपल्स ने आउट किए हैं। कुछ नहीं। अगर 20.25 मेम्बर ज्यादा हो जाये तो कोई बात नहीं है लेकिन मैं समझता हूँ कोई भी मेम्बर अच्छी तरह से किसी भी राज्य की बात रख सकता है। ऐसी हालत में मैं समझता हूँ ऐसी बात कहना जिसकी हम कल्पना नहीं कर सकते हैं, जो प्रैक्टिकल नहीं है, जो हमारे लिए संभव नहीं है, ठीक नहीं है। जब विज्ञान बना था उस समय की सारी प्रोसीडिंग्स आप पढ़ेंगे तो आपको मालूम होगा कि इस बात पर बड़ी चर्चा होने के बाद उन्होंने मुनामिब समझा कि माइटिस्ट्स, आर्टिस्ट्स, लिट्टेचर जानने वाले—ये लोगो को उसमें रखा जाये। आर्टिकल 80 के अन्तर्गत शायद 12 इस प्रकार के सदस्यों को गवर्नमेंट नामिनेट कर सकती है। लेकिन यह जो प्रयोजन लेकर आप मायें है कि लोकसभा और राज्य सभा का रिजिस्ट्रेशन बराबर हो उसके लिए आपने बहुत अच्छा टाइम चुना है क्योंकि सारे लोग संविधान में रद्दोबदल करना चाहते हैं इसलिये आपने भी अमेन्डमेंट दे दिया। मैं चाहता हूँ अभी इसको पब्लिक ओपीनियन के लिए सर्कुलेंट किया जाये और इसका प्रचार किया जाय। हम कोई कानून यहां पलियामेंट में नहीं बना सकेंगे जब तक हमारे 58 करोड़ लोगो की जानकारी न हो जाय, उन की राय न ले ली जाये कि इस कानून में तबदीली करनी है या नहीं। आज हमारी यह नीति है कि जब हमें संविधान में संशोधन करना है तो हमें हिन्दुस्तान के तमाम लोगो की राय जाननी है। इसी लिये मैंने यह अमेन्डमेंट रखा है कि सारे हिन्दुस्तान की राय जानी जाय। आज जब एक हवा सारे देश में बन रही है कि संविधान में संशोधन किया जाय तो श्री गोस्वामी का यह प्वाइंट भी उस में धाना चाहिये।

[श्री मूलचन्द डागा]

16 hrs.

श्री गोस्वामी ने जो प्रमॉण्डमेंट पेश किया है— बसल में यह अमरीका की हवा का असर है, वे वहाँ दो महीने रह जाये हैं, इस लिये वहाँ की बातें उन के दिमाग में घुस गई हैं।

SHRI DINESH CHANDRA GOSWAMI: I have given you the example of Switzerland.

श्री मूल चन्द डागा : आप पढ़िये, वहाँ पर भी रिप्रेजेंटेशन और पीपुलेशन का सवाल है। आप ने जो किताबें ले रखी हैं, जरा उन को पढ़िये लेकिन समाप्त नो; मैं तो यह राय दूंगा कि वे इस बिल को वापस ले लें।

SHRI P. G. MAVALANKAR (Ahmedabad): Mr. Chairman, Sir, I welcome Mr. Goswami's Bill which seeks to ensure a more equal representation and a fairer representation to various States of our Indian Union, and I welcome it because it gives to us all some chance to do loud thinking on the floor of this august House about certain aspects of our Constitution and its working.

I am glad that Shri Goswami mentioned various illustrations from different countries, and he did not restrict himself to USA only. He has referred to many other federal constitutions of the world. He has also said in so many words that the problem is bound to be considered as very sensitive, and perhaps explosive too, and, therefore, I hope the House gives dispassionate consideration to the whole matter. What does he want? He wants certain equal representation of the States in the Rajya Sabha, but the main question is, do we really commit ourselves to bicameral legislature? Mr. Daga referred to the Bill sought to be moved by Mr. Chandrappan in which he wants the second chamber to be completely abolished. I can understand that extreme also, but if you have a federal structure then I do not

see how you can escape having two chambers. If you have the federal structure, bicameralism becomes indispensable because at the federal level the Parliament will have to consist of two houses—one representing the entire country on the basis of population and directly elected, and another representing the States which are very much part and parcel of the whole federal scheme. Therefore, as long as we have a federation, bicameralism is a must and a question of abolition of Rajya Sabha would be out of consideration. Having said so, let me go to the original point and ask this question. Does bicameral legislature really serve the purpose for which, at least theoretically, it is meant? Theoretically the idea is this; if you have two chambers, then the lower house, being elected directly, consist of people with passions, fury and enthusiasm and they may in a hurry talk something, decide something and legislate something which may not be right and good. Therefore, there must be a second chamber to review, reconsider and check, the haste, the hurry, the rashness and the enthusiasm of the Lower House. George Washington, one of the founding fathers of America and his associates were talking about bicameralism, because they were also concerned about it at the Philadelphia Convention in 1787, and even before that, between 1776 and 1787. One of the stories going round about it was this. He had a guest at tea. The question was asked, 'Why do you want a second chamber?' Tea was being served in the cup. But it was too hot to drink, so from the cup he poured some tea into the saucer, and said, 'The first chamber, the popularly elected House is the cup and the second chamber is the saucer. You pour the tea from the cup in to the saucer; now it has cooled down, and you can drink the tea'.

The idea, therefore, basically was that the second chamber stops the arbitrariness, the absoluteness, of the Lower House; it corrects the first chamber, it improves upon the first

chamber. But this is all academic and theoretical, because as things go in all democracies of any type where there are free and fair elections and representative bodies, you will find that the second chamber hardly improves on the first, because the party system is there and the chambers work through the mechanism of political parties. What happens is that almost every subject, every discussion, every legislation, every resolution or debate that takes place in the first House is repeated in the other House. In any discussion that takes place on any subject, there are the same arguments, the same lines of defence, the same lines of attack, and there are hardly any additional or new points made in the second chamber. It is almost a repetition of what is said in the first chamber.

Moreover, having two chambers, the other problem that arises is what happens when there is a deadlock. When the second chamber does not agree with the first or *vice versa*, whose decision will prevail? Naturally, you will have to say that the will of the larger body must prevail, which means the House which is directly elected by the people, which is the Lower House.

SHRI ERASMO DE SEQUEIRA (Marmagoa): Not necessarily.

SHRI AMRIT NAHATA (Barmer): There is provision for a joint sitting.

SHRI P. G. MAVALANKAR: I know. I agree that there is such a provision. But with the mechanism of the party system as it is and with the strength of the Lower House being what it is—it will be 545 now—and the Upper House having only 250 members, if we have a joint sitting, the built-in majority in the Lower House is still there and this majority plus the majority party's own strength in the Upper House put together will mean the same thing. So, it is only a kind of contrivance of the Constitution that if the two Houses do not agree, there

must be a joint session and the joint session will decide. What does it ultimately mean? It means that even when you have a bicameral legislature, one of the chambers must lead and the other must follow. In all parliamentary democracies—I am not talking of the presidential type that exists in America—wherever there are two chambers, inevitably, by the logic of things, by the very reality of political events, by the operation of the party mechanism, the Lower House. I do not say dictates but certainly leads, and the Upper House has to follow.

Therefore, perhaps the Lower House pleases the Upper House by saying that it consists of elders, wiser people, statesmen, experienced people, more mature people...

SHRI ERASMO DE SEQUEIRA: There the average age is lower than that in this House.

SHRI P. G. MAVALANKAR: They say, 'Look here...

SHRI AMRIT NAHATA: You mean this is the Lok Sabha and that is the 'Parlok' Sabha?

SHRI P. G. MAVALANKAR: I am using the phraseology Lower House and Upper House. The Lower House will say, 'You are all experienced, and very knowledgeable persons, and your chamber has in it some retired Generals, retired administrators, retired politicians etc. and, therefore, you give us the benefit of your guidance, experience and advice, but ultimately agree to what we say!' Even in this built-in system, on all financial matters, it is only the Lower House, the popularly elected House which has got the full monopoly of doing everything. This is so with regard to the Finance Bills. If the Speaker of the Lower House certifies that a particular Bill is a Money Bill, the matter ends there. That is what the Constitution says.

I am saying all this because this debate also gives us a chance to open out some wider issues, namely, whether

[Shri P. G. Mavalankar]

we want a second chamber or not. I feel that whether it is a unitary or a federal state, if we have a bicameral system, we must accept the fact that one will have to lead the other. Otherwise, there will be deadlock. No constitution can deliberately create a deadlock situation. So, it cannot be allowed. Of course, if occasionally there is a deadlock, the Lower House's decision will prevail through this built-in majority system which is there in our own Constitution.

Having said that, I come to some further points. What does my friend Mr. Goswami want? He wants that each State must have in the Rajya Sabha ten seats and the Union Territories must each have three seats. If a Union Territory becomes a State of the Indian Federation, from three that number will then jump to ten automatically, I suppose. That is the proposal which he has made. That is a step in the right direction, in the sense that India is a federation; our constitution-makers have said that India, that is Bharat, is a Union of States. That means the States must have a say at the federal level and the States' authorities are co-ordinate with the federal authorities in many matters. I think his move is a step in the right direction because it restores at least to a small extent one important principle of federalism, namely, equality of states irrespective of their size and population in terms of their status and their rights. In America we find that a small State like the Rhode Island or Kentucky or Ohio has fewer seats in the federal House of Representatives in Washington DC and states like New York or California have a large number of seats on the basis of their population. But in the Senate of the American Congress there are two representatives from each State, irrespective of their size or population, because the principle of federalism is that all states are equal in their status, powers and rights.

The constitution-makers thought of India as a federal state. But in so many constitutional provisions in the structure, they have in the end made it not a strictly or a genuinely federal State. In the end what you get is an Indian Federal Structure which is neither completely unitary—you cannot obviously do it—nor completely federal, because they could not afford to do it in the context of the Indian conditions of those days. Therefore, they came to this kind of a golden mean, a golden *via media* whereby as Professor K. C. Wheare says, the Indian Constitution has provided a quasi federal structure. We have a federal authority and we have State Governments, but these State Governments are more dependent on the Centre in India, compared to the American Scene.

Having said that, I want to ask Mr. Goswami one question; do you or do you not want a genuine federal structure? If we are going to have a genuine federal structure in our constitutional set-up then what my friend Mr. Goswami suggests is a step in the right direction, because today the States are in many respects at the mercy of the Centre. In respect of concurrent powers the State law does not prevail; the union law prevails over the state laws. The residuary powers are entirely with the federal government. Matters of finance are entirely with the federal government. Matters of foreign affairs or defence, they are with the federal government; you cannot have ten different foreign policies and financial policies. Even in America, the States are on the losing side. Ever since the Philadelphia Convention which was held in 1787, through these last nearly 200 years, the experience of the American constitutional and political pundits and also of enlightened individuals is that the Centre is becoming more and more powerful and the States are constantly losing their rights. In our new constitutional scheme, if we are able to restore India to a more genuinely and

more properly worked out federal structure, Mr. Goswami's Bill is certainly a step in the right direction, because the States, irrespective of their size and population, must have equality of status in the Constitution. But that is not going to be achieved merely by giving 10 seats to each State in the Council of States. The important thing is that the States will have to be given other rights like financial viability, independent economic authority and genuine autonomy in their respective territories. I want India to become a genuine federation. A country of this size and diversity can never be a unitary State. It has to be federal, and if that is so, let it be a genuinely federal State. But that purpose. Mr. Goswami will, I am sure, agree that he will have to bring another Bill—or some other private member like myself will have to do it,—giving the States other rights like financial viability, genuine autonomy, etc.

SHRI ERASMO DE SEQUEIRA: Sir, this is private members' day and it pains me that so many of our leading private members like Shri Jyotirmoy Bosu, Shri Vajpayee, Shri S. N. Mishra, our two Madhus, Shri Piloo Modi, Shri Janeswar Mishra and others are absent from the House.

MR. CHAIRMAN: That is not relevant to the Bill.

SHRI ERASMO DE SEQUEIRA: It is relevant because this is a private member's Constitution (Amendment) Bill on which every one of these gentlemen would have had something very significant to say. I am sorry they are not here, not because they do not want to be here, but because they have been held without trial under the misused MISA. All the same, I am happy that this Bill has come before the House, because at a time when Parliament itself is being made, in my opinion, more and more irrelevant by executive action, here is an hon. member of the Congress Party coming forward with a Bill towards making one of the Houses of Parliament more

relevant. I trust, if I may say so, he will not in any manner be made uncomfortable in his party swimming against the tide, as our colleague Shri Ram Dhan had been a little earlier. Sir, as Mr. Goswami rightly pointed out, many of the problems of the States are problems of the States themselves and they apply in equal measure to U.P. as they apply to Nagaland. Therefore, there is a lot in what he is saying that the voicing of these problems is distinct from the problem of the people themselves. Fortunately, of course, all problems are problems of the people. There are many problems which are problems of the State itself.

I am one with Mr. Goswami where he says that equal representation in Upper Chamber will certainly lead to a greater balance of the voices that emerge from the House to the people if these voices are ever allowed to re-emerge. Right now they are grossly interrupted by the Chief Censor of the Government.

There is one thing where I am in disagreement with Mr. Goswami and that is about the representation to Union territories. There I am in disagreement with the very concept of Union territories because Union territories today have the very same structure, incur the same expenditure as the States and I do not see any reason why they should not be turned into States. As you know, I represent a Union Territory, a constituency from Goa. When I go to the Central Government and say that my Government which is mis-ruling even more than this Government if it is at all possible, is doing something wrong, they say, talk to the State Government. When I talk to the State Government, they say, it is Union Territory and they cannot do it. When I go to Goa, they say that the papers are struck up in the Home Ministry. Therefore, I am saying that turn them into States because they have the entire structure of the State and they

[Shri Erasmo De Sequaira]

will exactly cost as much as they cost and no less.

He was talking about the relevance of Parliament. There are one or two issues here. One of them was mentioned by Mr. Goswami and that is the question of whip. I know that a bill before it comes to the House is supposed to be discussed in the Party. We all know it is not. It is a few who decide and a whip who carries it through the House. In these circumstances, I submit to the representatives of the Government here that one particular law and one particular article that we should look at is the West German Basic Law. In that law it is very specifically provided and it has happened after the Weimar Constitution went the way ours is going, that no member shall be bound by any order or instruction and shall be bound only by his own conscience. The Whip is prohibited in their Constitution.

Sir, we are looking at the country from the top down. My feeling is that if we wish democracy to be strengthened in this country and we wish a position where nobody will ever touch if which is not the position today—it is being touched and destroyed by a very few people—then we must make our Panchayats work. We must make Panchayats a constitutional institution. We must ensure that revenue accrues directly to Panchayats and we must make a regular monthly People's Sabha in the Panchayats, something which must be held just like the Parliament session use to be held. Then, you will involve the people in the democracy and they will have stake in the democracy and they will see that none of us ever temper with it.

Another point I wish to make is that we are at the end of our term.

Our mandate is running out. There is nothing wrong in our debating a major measure for, in my opinion, we do not have any more right to decide on it; because, if we continue in this House beyond 18th March, or whatever the date is—that is what it says on my railway pass—then we shall be riding here as ticketless travellers. There is no getting away from this fact. If this Government plans to postpone elections, I can only think of one reason—I will borrow the expression Mr. Goswami had used, but not in the same context, in fairness to him—fear of the electorate. Thank you.

MR. CHAIRMAN: Mr. Amrit Nahata.

SHRI AMRIT NAHATA (Barmer): I entirely agree with Mr. Mavalankar that a bicameral legislature is a 'must' in a federal constitution. But having said that, Mr. Mavalankar went on to contradict himself. The justification for a second chamber that he gave later on, is not the justification for federal bicameralism, but one for a unitary bicameralism. In the U.K, for example, the philosophy behind the two chambers is that the House of Commons is represented by Tom the drunk; and the House of Lords is represented by Tom the sober. They thought that the representatives directly elected by the people would be heady, impassioned, restless, headless, romantic, running for change and inspired by flights of fancies. So, they needed some check and some restraint, so that the Upper House was given revisionary powers to exercise a check of age, experience, wisdom and sobriety. That was the justification for the Upper House in the U.K. We have not accepted that basis of bicameralism in our country. There are no 'commons' and no 'lords' in this country. We are all commons'. There are no plebeians and patricians. We have people and we do not divide representatives of the people into heady and romantic on the one hand

and sober, experienced, wise and old men on the other, who would act as correctives over the Lower House. That philosophy we have not accepted. We introduced the second chamber because we had States and a Union in this country. The founding fathers of our Constitution provided for a House of the People where for the sake of convenience, Members would be elected from different constituencies and yet each Member would represent the entire people of the country. Though I have been elected from a particular constituency in Western Rajasthan, I am not supposed to represent only that constituency. I am supposed to represent the entire people of India. Each one of us in this august House represents the entire people of India. The Rajya Sabha, as the very name denotes, the Council of States, as the very name denotes, represents the different States of India; and that is why the Members of that House are elected by the State legislatures. They represent their States. So, the theoretical basis for the two chambers in our Parliament is that we have a Central Government and the State Governments; the Members of the Lok Sabha and of Rajya Sabha. In common parlance we may call them the Lower House and the Upper House; but that is not a correct, scientific or constitutional terminology. We have the House of the People and the House of the States. So, the Members in the other House represent their respective States. This is true as far as it goes, but here again, Mr. Mavalankar was getting confused. We are not a strictly federal State or a federal republic. In a strictly federal republic, it is not only bicameralism which is inevitable, but the Upper House is, of necessity, more powerful than the Lower House. For example, in the United States, the Senate has the real power. Nobody knows even the names of the important Members of the House of Representatives, it is almost a non-entity, but the Senate has all

the powers. What happened to President Wilson and many other Presidents? The Senate has refused to ratify many treaties. They have quasi-judicial and quasi-vestigative powers, and that is why some extra-constitutional practices have evolved known as Senatorial courtesy. In order to win over the support of the Senators, the President gives certain concessions legally or behind the curtain and somehow he manages to placate the Senate. So, the upper chamber in a Federation is far more powerful than the lower one. Is that the intention of the Mover of this Bill? I hope it is not.

That brings us to the question of the type of Republic that we have. Mr. Mavalankar very correctly said that we have a quasi-federal type of State or Republic in this country. We are not a Federation, we are a Union Republic. The main purpose of the founders of the Constitution was to strike a balance between unity and diversity. I know, Mr. Chairman, that you would definitely have reservations about my views because I know the views of your party, and, therefore, I pray for some indulgence from you.

A federation is a system in which the constituent States are almost sovereign or at least autonomous. Very few powers are vested in the Federal Government. Here we do not have that system. Owing to certain historical and political conditions, we wanted to maintain the diversity the richness, the variety of our land and yet remain a nation. We were a nation long ago, we are a nation today and we shall continue to be a nation. Therefore, the emphasis is greater on unity in our Constitution than on diversity. Our Constitution seeks to strike a balance between unity and diversity, and that is why we have three Lists, two of which are under the Centre, because the Concurrent List for all practical purposes is a Central List. The Union

[Shri Amrit Nahata]

List and the Concurrent List are for the Centre and the State List is for the States. The residuary powers are also with the Centre.

Not only that. In actual practice, though law and order is a State subject, the Central Reserve Police is the most powerful police in this country. Though agriculture is a State subject, the Agriculture Ministry is the greatest empire in Delhi. Though education is a State subject, the Education Ministry's Advisers and its various institutions in India are the most powerful instruments in the field of education. So, even where the subjects are in the State List, the Union has to play a very important role in laying down policies, in co-ordinating the efforts of the States and in providing research programmes and plans. The very fact that planning is centralised means that our Constitution lays much greater emphasis on the powers of the Centre than those of the States. I think the framers of the Constitution were very wise in this.

I am not for total unitarism as the Jana Sangh used to be. They want one Centre, one State, one flag, one leader. That is not my approach at all. We do want the States to flourish, we do want the diversity, the richness, the variety and the multi-coloured garden that our great land is in which various flowers bloom to be retained, and yet we should not weaken the thread of unity and nationalism that unites us, and that is why the spirit behind our Constitution which is a quasi-federal State having greater emphasis on unity than on diversity is a correct and wise approach. Having come to this, what happens? It is true that since we have States, they must be represented in a Chamber. Now, the doubt that Mr. Mavalankar has raised would be raised by everybody, because party system has eroded the relevance, the

validity and the constitutional reasons in support of bicameralism even in the United States of America. Lincoln had to wage a civil war, but that was in a different context. But in federal States, States have the freedom to cede also. States voluntarily join. States have the right to cede also—strictly federal structure of the States. Many States have joined in the United States of America..

MR. CHAIRMAN: That is the confederation.

SHRI AMRIT NAHATA: No. They were even in a federation. More States have joined in the United States of America. Originally, there were 13 States. But today there are 51.

MR. CHAIRMAN: 50.

SHRI AMRIT NAHATA: It continues to be a federation and not a confederation.

What my dear friend Mr. Goswami concludes is between quality and autonomy or equality and sovereignty. It is true that our States are equal in the sense that they all enjoy the same power. There is a separate list for them. They have legislatures though some States are more equal than others. I have not been able to understand the rationale of bicameralism in States. I am all for abolishing the second Chamber in the States. There is no justification for it, because we have not accepted syndicalism in our Constitution. But that apart, to what happened in the United Nations at the time of Bangla Desh crisis. I would like to draw your attention. 80 votes went against us in the General Assembly. The population of those 80 countries was less than the number of refugees that had entered our land, because there, each member being a sovereign State

has one vote, irrespective of the population.

Do we want to introduce that principle in our country or that sovereignty or that autonomy? Do we want our States to be that autonomous? The logic behind having equal representation from the States would lead to the implication that the Upper House has got to be more powerful than the Lower House, that the States have the right to cede; and in actual practice, let us come to the realities that are obtainable in our country today. It would definitely encourage fissiparous tendencies. There would be a clamour for more and more and smaller and smaller States in this land. I cannot understand the logic. People say that Haryana is a small State, but look at the progress it has made. Orissa is a smaller State than Haryana, but it is one of the most backward States. What is the size to do with the growth or the economic development or the efficiency of the administration? It has nothing to do with that.

And that is why, I think, the present arrangement in the Constitution, as far as the Upper House is concerned, or the Rajya Sabha is concerned, is, as it should be. Then there may be some other changes that one may think. But that is altogether a different pattern, because I want some kind of a quasi-judicial body within the Parliament having revisionary powers over the Constitution. I do not want judiciary, as it is, to act as the third Chamber of correction and sitting in judgment over the wisdom of the representatives of the people. If we make the Constitution, we are the watch-dogs and the people of India are the watch-dogs of the Constitution. If we amend the Constitution, that is final. If somebody raised a doubt about the amendment of the Constitution or about the *vires* of a particular law,

whether a particular legislation passed by us is within the Constitution or *ultra-vires* of the Constitution, he should not be a body to decide it. Let there be something like they are having in the House of Lords or something like that.

We may conceive of some such body in the Rajya Sabha or we may have some experts or people of knowledge of jurisprudence from both Houses who may decide whether a particular law passed by us or being considered by us is within the *vires* of the Constitution or *ultra-vires* of the Constitution; whether a particular amendment of the Constitution is justified or not. I would like some such type of amendment in the powers of the Rajya Sabha, adding certain things to Rajya Sabha and bridging and reducing the powers of the judiciary.

As far as the reviews of the Constitution are concerned, there, I would support such an amendment. But to change the composition of the Rajya Sabha considering the autonomy of the States and having equal representation in number would not solve any problem; it may create many anomalies. There may be a State having three Members in the Lok Sabha and ten Members in the Rajya Sabha. There may be State having two Members in the Lok Sabha and ten Members in the Rajya Sabha. A very strange situation would develop. This could be consistent only with a totally federal type of State where also, every time, the sovereignty or the autonomy or the paramountcy, whatever you may call, of the State is gradually eroded. Though there are different federal laws and State laws in the United States, still such are the realities of life that even though, when the Constitution of the USA was framed, different States had different historical background, different dialects, different economies, and they thought it was a voluntary union of so many

[Shri Amrit Nahata]

States, now they have also emerged and evolved into one nation. There is the American nation now. That is why, of necessity, the federalism has gradually eroded and unitarism is gaining ground. It is inevitable in a country like ours, where there is the supreme need of strengthening the feeling of emotional integration, of nationhood, it is essential that the present character of our Constitution, a quasi-federal character with greater emphasis on unitarism must be retained. That is why I submit that there is no need for introducing any change in the composition of the Rajya Sabha.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (DR. V. A. SEYID MUHAMMAD): Mr. Chairman, Sir, I am very thankful to my hon. colleague, Mr. Goswami, for having made a very enlightened and illuminating speech on the Bill and the various issues involved. There was a considerable discussion on the merits and demerits of bicameral legislature. I must thank various hon. Members for the very learned and profound discussion which they have had here in this House today. While thanking them for that, I must say, since that question was not an issue before the House, I will not waste the valuable time of the House by replying to that.

In the Statement of Objects and reasons of the Bill. Mr. Goswami has stated that equal representation is the main object of federalism or something to that effect. While agreeing that that is one of the purposes or one of the objectives. I cannot agree that that is the sole objective or the purpose. Considerable discussion has taken place amongst the constitutional pundits; essays have been written; books have been written about this question. While conceding to what Mr. Goswami has said that it is one of

the purposes, the modern trend seems to be, as one of the constitutional writers has said, that it is not the equality of the States that is the main purpose but, what he calls, it is the essence of Statehood that is the main purpose. Stated as such, it may sound as a sort of metaphysical proposition. But it is not.

What is meant by that statement is that in view of the diversity in a State, the various interests in a State, the various sections of the people which constitute a State, it is the representation of sum-total of the essence of Statehood that is represented in the Upper House. I think, there is much to be said on that.

Sir, I was going through the discussion that took place in the Constituent Assembly about article 80 which was then, I think, article 336. Except Shri K. T. Shah, nobody referred to this aspect of the matter because, it seems, there was a consensus that the second aspect of the problem which I quoted, as discussed by constitutional writers, it is the essence of Statehood, namely, representation of the various interests, diverse people, diverse cultural and other aspects, which is the purpose of the representation in the Upper House. Consequentially, except Mr. K. T. Shah, nobody mentioned even the question of equal representation of States. The main emphasis was on whether there was necessity for a bicameral legislature and, on these lines, we have had an excellent treatment of the subject today in this House

So, that being the position, the Constitution makers deliberated upon that and the Constitutional Pandits and the fathers who drafted the Constitution ultimately, weighing the two aspects of the matter whether equal representation was the essence of statehood, came to the conclusion that the principle of equal representation is what is called the essence of statehood.

So, it is a debatable point and I agree to that extent. But what is now before us is an amendment of the Constitution. An amendment of the Constitution, I need not stress, cannot be treated lightly. Unless there are compelling reasons we should leave the Constitution or whichever provision is concerned for the time being, as it is. If you have compelling reasons, we may have it. But in areas of debatable positions, where much can be said on both sides, we should not tamper with the Constitution.

In that spirit, while I admit that Mr. Goswami's Bill represents one point of view, I would request him to bear it in mind that unless we have some compelling reasons, we should not tamper with the provisions of the Constitution in Article 80. So, while appreciating his point of view I would very humbly request him, for the reasons stated, to kindly withdraw his Bill from further consideration by the House.

SHRI DINESH CHANDRA GOSWAMI: Mr. Chairman, Sir, at the outset I wish to express my sincerest thanks to all the Members and the Minister of State for Law for their participation in this debate, and I take this opportunity of congratulating Dr. Seyid Muhammad for what I consider his maiden appearance in a debate in this House after taking over the charge of the Ministry. When I started this debate, you must have noticed that I spoke in a very low key. I spoke in a low key because I was apprehensive that, as my amendments are to curtail the number of Members of some States, passion may be roused and, if passion is roused, the purpose of the discussion would be lost. I am happy that members approached the debate dispassionately and calmly and, in fact, we had a very good discussion, as I see it, on all points.

Mr. Sequerira supported me. He criticised the Whip system and I understand why he has criticised. Because it appears that the Whip of his

Party did not permit him to speak in the Presidential Address debate. Therefore, what he could not speak in the Presidential Address debate he tried to speak here and though most of what he said had no relevance to the subject matter except referring to my Bill once his whole speech was on other subjects and I think I need not reply to them because this morning the Prime Minister has replied to all the points and, during the debate on the Presidential address, there was enough discussion on these points.

Mr. Mavalankar has supported me but, as an extremely intelligent Member of the House, he has tried to give in a subtle way, a very different political overtone to it. He said that the Bill should be the first step for increasing the power of the States. I beg to differ from him so far as this is concerned, because I feel that in a country like ours with so many diversities and centrifugal forces, there must be a strong centre and one of the essences or basic features of the reason for which bicameralism is encouraged is to keep a check on the centrifugal forces. My own view point was—on which Mr. Amrit Nahata has differed through an illuminating speech—that if only some of the States are given too much representation, they may upset the balance at some point of time. For example, in a House where there are eleven States with a representation of 186 and fourteen States with only 45, the views of the 45 from 14 States, though they are more in number, may be upset by those of these eleven States. Shri Daga spoke that populous States should have more representation. I am not denying that; in fact, in this House, it would always be so. But on the question whether Rajya Sabha should have it there is undoubtedly a difference of opinion; I had a particular view and I thought, the House should discuss it. Well, different views have been expressed by other Members. It is also true that amendment of the Constitution should not be treated

[Shri Dinesh Chandra Goswami]

lightly and as Dr. Seyid Muhammad said that at the present moment, there is no compelling reason for this amendment and when in fact a debate has started on different constitutional amendments, a debate of this nature serves my purpose and therefore in keeping with his request, I beg to move for leave to withdraw the Constitution (Amendment) Bill.

MR. CHAIRMAN: There is one amendment by Shri M. C. Daga that has already been moved. I will put this amendment to the vote of the House.

THE MINISTER OF WORKS AND HOUSING AND PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): Sir, it would be a futile exercise if an amendment is to be moved in respect of a Bill which is to be withdrawn. This is my submission.

MR. CHAIRMAN: I would like to draw the attention of the Minister, that when an amendment is moved, it has to be put to the vote of the House.

SHRI AMRIT NAHATA: On a point of order. When an amendment is moved that has always to be voted first, but where the mover of the Bill seeks the leave of the House...

MR. CHAIRMAN: It comes later.

SHRI AMRIT NAHATA: When the leave to withdraw is refused, only then amendments come.

SHRI P. G. MAVALANKAR: My point of order is different. I agree that the amendments should come first, but since the mover is not there, why have his amendment put before the House. We do not know, whether he is pressing for it or not.

MR. CHAIRMAN: Once the amendment is moved, it becomes the property of the House. We have to take a decision.

The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 7th May, 1976." (1)

The amendment was negatived

MR. CHAIRMAN: The question is:

"That leave be granted to withdraw the Constitution (Amendment) Bill"

The motion was adopted

SHRI DINESH CHANDRA GO-SWAMI: Sir, I withdraw the Bill.

MR. CHAIRMAN: Shri Naval Kishore Sharma is not moving Item 10, so we will take up next item.

CONSTITUTION (AMENDMENT) BILL

(Amendment of Articles 22, 32 etc.)

SHRI DINEN BHATTACHARYYA (Serampore): Sir, I beg to move:

"That the Bill further to amend the Constitution of India, be taken into consideration."

Sir, my Bill was introduced about three years back. However, the purpose for and the urgency with which the Bill was moved is more now than it was at that time. Now, we are under Emergency. The first part is very clear in the Bill. It is rather a shame on our part that still the Constitution should provide for provisions for making laws to detain a person without trial for any length of time. Now the situation has become worse than it was before and even the little scope that was there to go to the Court and challenge the validity of retention order has been snatched away by the emergency provisions and even to-day a notification has been issued that whatever little scope