

CONSTITUTION (AMENDMENT) BILL

(Amendment of article 74)
by Dr. Karni Singh

MR. CHAIRMAN : The next Bill is in the name of Prof. Madhu Dandavate. But he is absent. So, now, Dr. Karni Singh's Bill will be taken up.

DR. KARNI SINGH (Bikaner) : I beg to move :

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

17.22 hrs.

[SHRIMATI SHEILA KAUL *in the chair*]

I consider myself singularly fortunate to have the opportunity of moving this Bill for consideration before this House today. In relation to the advice by the Council of Ministers to the President, article 74(1) reads thus :

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions".

Article 124(2) reads thus :

"Every judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years."

Article 74 is a general article, and article 124(2) is mandatory. But there is no mention in article 74(1) that this advice would refer to appointment of Supreme Court judges, and in article 124(2) there is no mention of the Prime Minister advising the President in the appointment of Supreme Court judges. Therefore, there is a certain amount of ambiguity, and the object of my Bill is to remove this ambiguity by an explanation.

I am desirous of placing before the

House this Bill with the request that we add an explanation under article 74(2) which would read as follows :

"In this article, the expression 'aid and advise' shall not empower or entitle the Prime Minister to aid and advise the President in matters relating to the appointment of a Judge of the Supreme Court under article 124."

It is not only my belief but the belief of all of us who believe in democracy that the President should be advised by the Chief Justice of the Supreme Court and no other in the appointment of Supreme Court judges. The appointment of judges, as we see today, has been encroached upon by the executive and more say is there today when the Prime Minister has some say in the matter whereby who is to be appointed as the Supreme Court judge is more or less becoming a direction from the chief executive and not the President, and this brings to the mind of the country the question and the danger of packing of the Supreme Court. I do not say that this will happen today or tomorrow, but the danger is very much there and it is time that our Parliament which believes in democracy begins to take stock of the situation and appreciate that if such vast powers of appointment of Supreme Court judges are left to the executive,—because after all the President will follow the advice of the Prime Minister and her Government—then we are actually shaking the very foundations of our democracy and the independence of our judiciary.

Many people today have begun to ask whether the lifting of the emergency is not being done with the express purpose so that in the next few months the correct type of judges would be there in the Supreme Court and consequently they would be able to dispense justice which would be able to the liking of the executive. Madam Chairman, you understand perfectly well the implications of such a situation. If the fundamental principle of independence of the judiciary is to remain, then the executive's powers to advise the President in the appointment of Supreme Court judges has to be taken away.

For the last few years, we have been seeing an intolerance both in the Government and in our supreme Parliament, when

adverse judgments by the Supreme Court have been frowned upon. The founding fathers of our Constitution were wise men and they made it a principle to see that the legislature, the executive and the judiciary remain separate and with adequate checks and balances, but such an encroachment ultimately may reduce the judiciary to a pure mockery, and if this were to happen, I do not have to be a prophet; you are understanding that the days of democracy, the days of the rule of law, are limited. And it is because of this that I wish to bring in this amendment and place it before this hon. House in the hope that the people's representatives in this House particularly those on the Treasury Benches would give this matter their very serious consideration, not only because they are drunk with power as some people may think as a result of this massive mandate, but think of the future, think of tomorrow, that type of democracy we are going to build for our children and our children's children.

There is no doubt in my mind that India today is sitting on the cross-roads, when a decision by our people will have to be taken whether we are to remain a democracy or become a totalitarian communist State. That is the decision the people will have to take, this sovereign legislature will have to take. I for one am a firm believer in the democracy of the Nehru and Gandhi type, and I would like to say that the people in my country enjoy their freedoms their fundamental rights, and not have a steamroller government that can go over them in the name of radicalism—

SHRI M. RAM GOPAL REDDY (Nizamabad): But previously also we had the steamroller majority.

DR. KARNI SINGH: But you had Nehru.

SHRI M. RAM GOPAL REDDY: Yes; and now we have Nehru's daughter.

DR. KARNI SINGH: I do not want to enter into any such dispute. But Nehru was one man that the world respected as a father image. (*Interruption*)

MR. CHAIRMAN: You go on with your speech:

DR. KARNI SINGH: You kindly ask him to refrain from interrupting.

SHRI M. RAM GOPAL REDDY: I wanted enlightenment.

DR. KARNI SINGH: There has been talk not only in the legal circles in the country—I am not a legal expert, and I do not even hold an LL.B. degree—that the ultimate result, the end-result of what is happening now will be the packing of the judiciary, and if the Government becomes so powerful as it is doing now, the only way that it can exercise such powers will be to have a judiciary which would, shall I say, be more pliable, more reasonable, to the needs of the Government. But that is something those of us who believe in democracy cannot support.

A committed judiciary is often discussed. We talk about the rule of law and a committed judiciary in the same breath.

It is something I cannot understand. I do not for a moment wish to say that Parliament is not supreme; it is indeed supreme. But the sheer majority of lay men like us are not capable of interpreting the Constitution as it should be interpreted. That is clearly the function of experts in our law courts and the Supreme Court. The supreme legislature or the Government cannot usurp that power unto themselves. I am not opposed to social justice. We want poverty to be removed. We want that all sorts of things which are keeping our country from moving forward should be set aside. But justice is a legal thing. How do you interpret a particular clause of the Constitution? This cannot be done by a committed judiciary or slogans of social justice only. The same law, whether it applies to a State run by communist in Kerala or to Orissa where at one time Swatantra Party was in power, holding diametrically opposite views, cannot be interpreted differently. I would like to give you an absurd example. Supposing there was a case in the Supreme Court in Delhi between a citizen of Kerala residing in Delhi and a citizen of Orissa residing in Delhi, one State being administered by the Swatantra party, the other by the Communist Party and the Centre holding the middle of the road way of thinking. What is the Supreme

[Dr. Karni Singh]

Court judge to do? How is he going to give his judgment? Is he going to interpret it from the Communist angle or from the Swatantra angle or from the angle of the Centre holding the middle of the road way of thinking?

I honestly feel that the law is equal for everybody. If Justice has to be dispensed, Judges have to be above all these bickerings, party feelings and commitment. Then and then alone Supreme Court can dispense justice, where it can even pull up parliament or the Prime Minister. But if you weaken the foundations of our judiciary, if our judiciary is going to be packed—I fear this may well happen—if the steamroller becomes too powerful, we are going to run into a great deal of difficulty.

I will give a small quotation from Jefferson from the *State of Virginia*, page 195:

"The concentration of all the powers of Government, legislative, executive, judicial, in the same hands is precisely the definition of despotic Government. It will be no alleviation that these power will be exercised by a plurality of hands and not by a single one, One hundred and seventy three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the Republic of Venice. As little will it avail us that they are chosen by ourselves. An elective despotism was not the Government we fought for"—this may very well apply to India in the next year or two—"but one which should not only be founded on free principles, but in which the powers of Government should be so divided and balanced among several bodies of magistracy, as that no one could transend their limit without being effectively checked and restrained by others."

Therefore, while concluding my remarks, I would like to say, we do not wish our judiciary to be subservient to the executive or the legislature and *Vice versa*. These are checks and balances kept in the Constitu-

tion, the whole design being to see that all the three departments of Government function normally. Here again I would like to give a rather far-fetched example. The example may well come true before these five years are over. A time may well come when your law courts may become so subservient to the desires of the executive, as it used to happen 50 years ago in the times of the former Indian States or in the times of the British, when the judges looked to the places to find out which way the wind was blowing and how justice was to be dispensed.

India is a free country after passing through the freedom struggle. Now we cannot go back to the law of the jungle. Today justice is something that every single individual in this country, be he rich or be he the poorest, can expect from the judiciary. If that faith in justice is shaken, even the faith in democracy, faith in everything that we stand for, the faith in all those things for which Nehru and Gandhi fought, will be lost. With these words, I would commend my Bill to the hon. House and I request that it may kindly be taken into consideration and passed.

MR. CHAIRMAN: Motion moved:

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

SHRI BIREN DUTTA (Tripura West): Madam Chairman, I rise to support this Bill. I support this Bill at this juncture for we feel that now the ruling party is giving the slogan "one country, one party, one leader". They are striving to absorb all the power under their sway. So, a situation has arisen where the question of protecting the civil liberties is agitating the minds of legal experts. We have seen that even personalities, like Shri Chagla, are thinking of organising civil liberties union, just as it was done before independence to protect the civil liberties of the citizens of India. In this context, the issue raised by the hon. Member in this Bill rightly point to the danger of making the judiciary a subsidiary of the ruling party. This is practically felt in almost all the States. If the present trend continues, it is the feeling of all opposition parties, then there

will be no democracy and no rule of law. In this context, this Bill has given us an opportunity to think seriously whether the ruling party is eager to maintain the judiciary, which is not influenced by the will of the Prime Minister.

Now everything in this country is done in the name of the Prime Minister. Whatever is done in the name of the Prime Minister is shown as a democratic action be it the superseding of a State Government or anything you like. Democracy means whatever the Congress Party says. In this situation, this Bill points out committed judges are going to be posted throughout India. To whom is this commitment given? To the ruling party. And these committed judges are not judges to judge what is really justice for the people but to judge what is the will of the Congress Party. In this situation, this Bill particularly highlights the necessity to consider very seriously the protection of democracy and the civil liberties in this country.

I am afraid that if the present process of suppressing of the opposition parties continues by the methods adopted in West Bengal and other parts, that is, by raising some organisation which will take law and order in their hands and disturb the activities of other parties, then they cannot even go to the courts. The people are threatening that if you go to court, you will be killed. This situation is prevailing for a long time. Even if one goes to court, the judge, are afraid to give proper justice. Even the release on bail is dictated by the party. His service condition is deteriorated and he is black-listed.

In this way, the present ruling party is, leading the country towards an autocratic State. So, I would urge upon all the Members of this House to think over the matter and do something to assist these courts and have democracy restored. At least, you leave these judges to act according to their will and not to carry out the verdict of the Congress Party.

With these words, I support the Bill.

SHRI SHYAM SUNDER MOHAPATRA (Balesore) : Madam, Chairman, It is

indeed funny to have a Bill like this after we have already said in the Lok Sabha that Fundamental Rights can be amended. One can understand the death-pangs of a *Raja* but I could not understand the other Member who said that India is leading towards autocracy.

Article 124 of the Constitution lays down that every judge of the Supreme Court shall be appointed by the President after consultation with such of the Judges of the Supreme Court and of the High Court in the States as the President may deem it necessary. I do not think the President of India has ever acted on a bias or prejudice while appointing the Judges. There has been no record of it. It is, of course, a fact that the Prime Minister has got to aid and advise. But we have never found that the advice of the Prime Minister has ever been wrong.

The late Prime Minister, Pandit Nehru, used to regard judiciary with highest esteem and in most of his speeches, he had given due respect to the judges of the High Courts and the Supreme Court. We know, if go into the records of courts, that the people who have been unduly punished by the Government have sought redress from the High Court. A number of mandamus petitions were admitted as far as the detenus were concerned who were put in jail without any trial. There were also habeas corpus petitions. I know many employees of the Government of India, including IAS officers, who were roughly handled by the Government and who did not find justice from the Government, went to court and had justice. So, it will be incorrect to say that the Government of India has ever tried to interfere with the running of courts in India.

I must indeed bring before you the glaring instances as to how the courts have failed to do justice to many complicated questions which have focussed public opinion in our country. Even the P. M.'s election was questioned and the matter went to court. The symbol of the Indian National Congress came into controversy and went to court. The question whether the ballot papers were having some ink which was imported from Russia also went to court. A chemist of Naval Tata said a very funny

[Shri Shyam Sunder Mohapatra]

thing in a paper published by the the tycoons of India, namely, *Curreal*, that a chemical ink was such powerful that it carried away 90 per cent of Indian votes into the ballot boxes in favour of Congress.

So, all these things are there to prove that the court in India, the judiciary in India, is definitely something which is of a high order and Government has never tried to interfere in any manner.

In this Lok Sabha we have said times without number that the country is passing through a resurgence, of the country is passing through a transformation of society from one stage to the other; whether it is executive or judiciary, whether it is Lok Sabha or the Assemblies, they have to take into consideration the tide of the country and the time through which the country is passing. A country which is socialistic cannot have a judiciary with judges who have vested interests. The judges in High Court or Supreme Court have to take into consideration the fact that this country is passing through a time which is for the lower strata of the people, which is for the peasants and which is for the workers. We are going to have a Government which will represent the workers and peasants in society. So, the judiciary cannot certainly think in terms of private sector or vested interests,

✓ The hon. Member belonging to the CPM, who was supporting the Bill, probably did not know that Mr. F. M. S. Namboodiripad, ex-Chief Minister of Kerala said that 'in courts, whether High Court or Supreme Court, there are judges who have vested interests and who only speak out their class character.' Mr. Namboodiripad brought the judges into this controversy. I wonder if the CPM member had read these statements of Mr. E.M.S. Namboodiripad. Particularly in China, the judiciary is completely different; they have people's courts in every district or division or village there are persons who are elected to the people's courts can try anybody at any time and impose any penalty. At least our Indian judiciary is not like the judiciary in the People's Republic of China.

Madam Chairman, judiciary is not that sacred, judiciary is sub-servient to the wishes of the people. Rousseau said in his General will that it is the general will which is supreme because it is created out of a social revolution; whether judiciary or executive or legislature, it is a part of the general will. So philosophically speaking, judiciary cannot enjoy a separate status.

Coming to the practical things, I must say that it was in the United States of America-it has been discussed on the floor of the House-that President Roosevelt wanted to limit the age of judges when he wanted to bring the New Deal. It was just to have the country pass through a new time-which, Roosevelt felt, was in the interest of the United States of America. In this House, Prime Minister Shrimati Indira Gandhi gave a call that privy purses should be abolished. Congress, under the leadership of our Prime Minister, Shrimati Indira Gandhi, thought that Fundamental Right is not that sacred, is not that fundamental, it has to be subservient to the wishes of the people, so that we could amend the Constitution any time we liked to suit to the wishes of the people and not to the convenience of the Government, and we had many enactments, many amendments. This is a new time.

Go through the pages of the verdicts of Soviet judiciary on important cases, or of Yugoslavia, Czechoslovakia, Rumania or Hungary; I have gone through many reports, and I have found that those things may seem to us incongruous, may seem to us unnatural, may seem to us fantastic, because yet in this world there are millions of people, crores of people, who do not think that the poor people can be brought to the position of rich people. Dr. Karni Singh cannot certainly feel the same impulse as a poor peasant in a village feels. Dr. Karni Singh cannot certainly feel the same urge, the same devotion to society as a poor worker in a factory feels because he dedicates his whole life to the country. There are rich people among even the Judges who have vested interests and who have lakhs of rupees in banks. They cannot certainly appreciate that this Lok Sabha may bring any enactment to control the income of a man. They cannot understand and appreciate that we can go to the extent of curbing

accumulation of personal property or there can be a ceiling on urban property. These are new ideas. These are new developments. These are all new upsurges. These are all new ideas and the present judiciary in India, I personally feel, cannot think in line with these ideas. So, if Dr. Karni Singh feels that the judiciary is something which is sacred, which cannot be touched, I am certainly not one with him. The ultimate supreme body is the Legislature who are elected by the people. He has quoted Jefferson and said that it will be elected despotism. But I will ask him, I will request him rather, to kindly refer to President Lincoln. President Lincoln said after the civil war in his memorable address to the people of the United States what did he say? he said 'we are the elected Members of the House and those who are elected to the House, they carry the public opinion with them.

So, we are supreme, not the Executive, not the Judiciary. The Government is not supreme. The Prime Minister or the Cabinet Ministers are not supreme. The Judges are not supreme. Here, we are supreme because the people are supreme.

So, that is why I say that the Bill has a sinister design behind it. The Bill seeks to point out that what we have done to day or what we have done before, during the last one year, we have gone against the wishes of the people. We have tried to encroach upon the freedom of the Judiciary, that the Prime Minister has unduly advised the President in the matter of selection of Judges or may unduly advise in future. But, I can tell the mover of the Bill that the Prime Minister of India is not a child to think something which will be against the wishes of the people. The Prime Minister of India has emerged as a national leader, as the leader of the teeming millions of India. Whatever advice she may give to the President will be in the interests, will be in the best interests of the country and if, by that advice, we can have committed men to the Judiciary, it will be better for the country.

Dr Karni Singh has criticised committed judiciary. Sir, there should be commitment to every thing. Without commitment no man can live in this world. The Rajas had

commitments. Their commitment was to Rajaship. They wanted slavery to be perpetuated. The capital has a commitment. The commitment is to accumulate property and have personal riches. They say that land and labour have nothing to do with the accumulation of capital. It is the capital which is supreme. So, even the executive to-day is to have a commitment. The commitment is to socialism. Those who say it is commitment to work, it is fantastic. It is a commitment to a particular ideology. The ideology is socialism. We have accepted socialism. If the Judges think that socialism is something with which they have no concern and they have only to look up the pages of the law books, they are certainly wrong. An ex-Chief Justice, Gajendragadkar says it is the social will which is all-pervading. The Judge has to think that he can give a twist to a certain thing by which the society can progress. So, if the Judges cannot feel in this time I think the Judges in Courts whether it be the High Courts or the Supreme Court, will not be in a position to deliver the goods.

Madam Chairman, I will conclude in this way that this Bill is moved with a sinister design. The Bill is trying to create confusion in the minds of the people. But we are very clear. We should have a committed Judiciary.

SHRI M. RAM GOPAL REDDY :
Clever also.

SHRI SHYAM SUNDER MOHAPATARA : Yes. But we stand by what we have told in this Lok Sabha that we are for a committed executive. We are for a committed judiciary. Committed Judiciary means committed to the definite ideals which the country has accepted.

Sir, I oppose the Bill.

AN HON. MEMBER : What is the time limit for this discussion?

MR CHAIRMAN : We have taken half an hour for this discussion. We were to discuss the subject relating to grant of loans by banks to small farmers and small scale industries in the rural sector as a Half-an-hour Discussion. But the Mover, Shri Arjun Sethi is not present and he requested.

[Mr. Chairman]

somebody else should do it, which is not right according to the rules. We have got 4 minutes more. I would request Shri Bhandare to continue with Dr. Karni Singh's Bill. We shall adjourn at 60' clock.

SHRI R. D. BHANDARE (Bombay Central) : Madam Chairman. I am really surprised that the learned and enlightened Dr. Karni Singh should move such a Bill which would produce such consequences and results that the whole political and social structure on the whole Indian polity would be changed in toto. But the burden of his song seems to me, or is based on his suspicion that the judiciary will, in course of time, be so subservient, or, to use his words, 'will become so committed' that there would be end of rule of law. That is the burden of his song or the theme of his speech. I do not know what he wants. I do not know whether he has really understood the significance, the importance, the connotation, of the meaning of the Explanation to Article 74 which he wants to add.

Here, Madam, if Article 74 is changed and if the Explanation is added, then the power will be given to the President. Even today, the position is, the power vests with the President, to appoint a judge either of the High Court or of the Supreme Court, in consultation with the Chief Justice of the Supreme Court or the High Court. That is the position today. Dr. Karni Singh wants that the power should be exclusively vested in the President.

The question, therefore, arises whether he wants in this country a Presidential rule.....

17.59 hrs.

RE : HALF-AN-HOUR DISCUSSION

AN HON. MEMBER : Shri Arjun Sethi is not here.

SHRI M. C. DAGA (Pali) : Madam, I want to raise a point of order. We four Members are here and there should be this Half-an-hour discussion. We are here; we have already given our names for asking questions. We cannot be debarred from putting questions. The discussion has already been moved.....

MR. CHAIRMAN : The hon. Member who has to raise the discussion is not present. So, the other Members cannot ask questions.

SHRI M. C. DAGA : We have all been deprived of our chance to put questions.

SHRI SAT PAL KAPUR (Patiala) : Practically we have all been deprived.

MR. CHAIRMAN : The debate on this Bill will continue. Shri R. D. Bhandare may continue his speech on the next occasion.

18.00 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Monday, May 29, 1972. Jyaishta 8, 1894 (Saka)