and various steps are being taken in this direction. It is a pragmatic approach that we have to this problem. The general policy as far as the Government is concerned is laid down in the Third Five Year Plan. I believe, on the basis of this stand that I have explained and on this assurance, the hon. Member would be persuaded to withdraw his Bill unlike on a former occasion when I had the misfortune of not satisfying him.

Shri Jhulan Sinha (Siwan): Sir, I am very grateful to the House for the support that it has given to my Bill. I am particularly grateful to the grand old man of this House, Dr. Aney, who very righly dived into my feelings that the Bill was merely an attempt to awaken the conscience of the Government. I am glad that I have succeeded in doing it.

So far as my own idea about fixing economic prices of food grains is concerned, I never meant that the growers will be put in a position where they can exploit the consumers or anybody else in this world. I belong to the class of growers. I never thought of doing anything to exploit the consumers or anybody else. I hope that is not the idea of any grower in this country, which boasts of a high civilisation. We never thought that because the Government is composed of persons elected by the masses of people, we will succeed in getting the prices fixed for the grower which the consumer cannot afford to pay or which would not be fair for him to pay. When I pleaded for fixation of prices for foodgrains, I expected that the Government would fix a price which was economic to the grower and economic to the consumer. We have very seriously taken the lesson of importing foodgrains from outside. Whatever else may be said about it, those of us who have been associated with public affairs in this country for long years, have felt it a degenerating thing for an agricultural country like India to go out asking for foodgrains to support our own people who are mainly agriculturists, who live on agriculture. These are the feelings that actuated me in putting forward the Bill.

I am glad that despite all differences about the details of the Bill, the Government has been pleased to accept the principles underlying it. The reasons given by the hon. Deputy Minister, in the Third Plan and also the policy statement made by him have satisfied me. In spite of differences on a previous occasion where he did not succeed, inconvincing me, I feel convinced and I beg leave of the House to withdraw the Bill.

The Bill was, by leave, withdrawn.

15.14 hrs.

CONSTITUTION (AMENDMENT) BILL

(*Amendment of Article* 226) by Shri C. R. Narasimhan

Shri Narasimhan (Krishnagiri): Sir, I beg to move:

> "That the Bill further to amend the Constitution of India be circulated for the purpose of eliciting opinion thereon by the 1st November, 1961."

When this Bill was introduced, in the earlier stages, many of my esteemed colleagues had also appended their signatures. They included Shri Maniyangadan, Shri Kuttikrishnan Nair, Shri Siddiah, Shri K. S. Ramaswamy, Shri N. R. Muniswamy, Shri Rami Reddy, Shri Achar and Shri Sonavane. The object is to amend article 226 of the Constitution.

Article 226 of the Constitution is one of the provisions of the Constitution which goes farther than any known constitutional provision in the direction of securing effective, speedy remedies for the enforcement of rights guaranteed in the various parts of the Constitution. In fact, it is the chief armoury in the arsenal of the agitated

[Shri Narasimhan]

and the affected individual to get remedies. But, unfortunately, the efficacy of this article enabling the High Courts to reach and strike at injustice has been curtailed by judicial interpretation. Particularly, the Supreme Court, which is the ultimate arbiter in all matters involving interpretation of the Constitution has made it clear that the remedy of writs effected through the High Court have to be only in a particular manner. That is to say, it should be routed only through the Punjab High Court. It is not like a cause of action matter where either the affected party or the injuring party become causes and anywhere matters can be raised. But, the seat of Government or the seat of authority is the guiding factor in giving jurisdiction to a particular court. In this way, all the High Courts of India have been made, so to say, out of court in the matter of getting legal remedies and only the Punjab High Court is the court which can take up those matters. Actually, this means that all the High Courts are not put on an equal footing, there is discrimination between High Court and High Court, without actually doing that, but in effect.

Mr Deputy-Speaker: Why should the hon. Member argue like that that there is discrimination between High Court and High Court? The Punjab High Court has not been invested with that power in contradistinction with the others. But, the interpretation is, because the seat of the Central Government is in Delhi and the Punjab High Court has that jurisdiction. He might argue that way.

Shri Narasimhan: I do follow. As a matter of fact, from the point of view of the litigant,....

Mr. Deputy-Speaker: He is put to extra difficulty. That is right.

Shri Narasimhan: I stand corrected.

Mr. Deputy-Speaker: He can argue that the seat of the Government should not be the criterion, but the Government has powers all over India and therefore every High Court should have that power.

Shri Narasimhan: That is exactly what I am driving at. I only wanted to make it clear that from the point of view of the citizen, one citizen has the advantage of having the court near and the other citizen has to go far away. Distance, time and money go against him. On a very similar matter, while one set of citizens are able to get remedies quickly, another set of citizens are not having the same convenience.

Mr. Deputy-Speaker: And one set of lawyers can get more cases than the other.

Shri Narasimhan: If I had stated that, I did not know how you would have viewed it and so I did not state that.

Mr. Deputy-Speaker: That is the trend of the argument.

Shri Narasimhan: It has become very necessary to review the matter. Even the Supreme Court, when giving this interpretation, had indicated the desirability or feasibility of amending the Constitution, to make all High Courts available to the citizens within their jurisdiction to have this powerful remedy.

Also, the Law Commission further considered this matter and suggested amendment of the Constitution to bring about the effect. I would, with your permission, quote the remarks of the law Commission on this matter. In para 17 of its Fourteenth report, it says:

> "High Courts other than the High Court of the Punjab have found themselves unable to exercise jurisdiction under article 226 when the statutory authority or official concerned has headquarters in Delhi. This tends to

> This tends to defeat the very purpose of the jurisdiction conferred by Article 226 which is to enable a person to seek a remedy under that article in respect of acts done in violation of his rights within the State by an application to the High Court of his own State.".

So, if a suitable amendment is effected in the Constitution, the citizen will have all the benefits which the spirit of the Constitution, when it was framed, disired that should have.

In my Bill, there is also a provision to make it operative from the date of commencement of the Constitution, so that pending cases may not be left in a kind of vacuum.

I shall now explain the details of the provisions of my Bill. A similar Bill seeking to amend article 226 of the Constitution was before this House a fortnight ago, when Shri C. R. Pattabhi Raman moved his Bill for circulation for the purpose of eliciting public opinion thereon. There is a difference in scope between that Bill and my Bill. That is why I have chosen to trouble this House on this matter and take its time. I would like my Bill also to go for circulation, so that the learned bodies, the lawyers and others might apply their minds more effectively to both the Bills before them.

No doubt, as a matter, this thing has been before the public and also the legal circles. But when we actually have to amend the Constitution, it is better that their minds are made to examine this matter through the medium of Bills, so that their decision and their opinion will be more useful to us, because when there are Bills actually before them, then their final selection will be the best. That will also help the Law Ministry. After all their views are obtained, again when the Law Ministry finds the time to draft a Bill and bring it forward before us. with the combined wisdom of the whole House, we shall have a fool-proof article substituted for the one which we have now.

Therefore, it is not very necessary to go into the details of the Bill on their merits. Shri C. R. Pattabhi Raman's Bill confines the amendment to the Government of India and their orders only. But I would prefer to bring within the purview of this article the orders of other authorities also, because there are several statutory authorities, appellate authorities and so on.

I would request the Law Minister also to give his consent to this Bill going for circulation.

The Deputy Minister of Railways (Shri S. V. Ramaswamy): Consent of the House.

Shri Narasimhan: Consent of the House through the consent of the Minister. I am requesting him to give his consent and agreement so that the Bill may be sent for circulation, because his consent can be taken as the consent of the House.

Mr. Deputy-Speaker: Motion moved:

> "That the Bill further to amend the Constitution of India be circulated for the purpose of eliciting opinion thereon by the 1st November, 1961.".

Shri N. R. Muniswamy (Vellore): I was most unwilling to participate in the discussion, because I was given to understand that this Bill would also go for circulation.

The Deputy Minister of Law (Shri Hajarnavis): The hon. Member's understanding is correct.

Shri N. R. Muniswamy: So, without wasting further time of the House, I would only make one suggestion. This Bill is almost on the same model as Shri C. R. Pattabhi Raman's Bill; though the wording and scope etc. may be different, the substance is the same, whether it may be worded as authority, or jurisdiction or anything like that. The

[Shri N. R. Muniswamy]

object of the Bill is to see that citizens are given the facility to agitate their grievances and seek remedies in a place where they could have easy access.

I wish that instead of having allowed a private Member to take the initiative, Government themselves should have been a bit more alert, and on receipt of the Law Commission's report, they should themselves have come forward with an amendment to the Constitution. That would have obviated the necessity of a private Member bringing forward a Bill for this purpose. But I understand that there is some procedural difficulty in this regard. I wish that Government had taken some initiative by ascertaining the opinion of the State Governments and then brought forward a Bill for this purpose.

I wish that this Bill also may go for circulation. In the meantime, Government may also take steps to see that they bring forward a Bill for this purpose, so that these two Bills may then become out of order, and the main purpose can be achieved at the same time.

Mr Deputy-Speaker: Now, the hon. Minister. No hon. Member from Punjab wants to speak on this Bill?

An Hon. Member: They have nothing to say.

Shri Hajarnavis: I had the privilege to accept a motion for circulation in respect of a similar Bill seeking to amend article 226, a fornight ago. It is indeed a matter of gratification to me that I am able to accept the motion for circulation of this Bill also today.

Though the article which is sought to be amended is the same, I understand that the scopes of the two Bills are somewhat different, and each of these Bills brings before the House an important aspect of article 226.

The first question that arises is this. Which is the High Court to which an application under article 226 can be made if the writ is sought against the Central Government? Article 32 certainly gives power to the Supreme Court, but an application under article 32 can only be made if there is a complaint of violation or contravention of the Fundamental Rights. But the jurisdiction under article 226 is much wider. But it has been held by the Supreme Court, and if I may respectfully say so, rightly, in view of their previous decisions and in view of the clear terms of article 226 that the only High Court which can entertain an application under article 226 against the Government of India is the High Court of Punjab. Though the interpretation is correct, it has led to manifest inconvenience in other parts of India. I think that requires to be corrected.

The second question which Shri Narasimhan's Bill has placed before the House is this. What happens if the original authority is in one State and the appellate authority is in another? Several High Courts have dealt with this question, but they have not arrived at any identical solution. Now, this also is an important question which has to be considered, and the Government of India are certainly considering that question.

But, as I mentioned last time, the question is a very difficult one, and we have not found a solution which satisfies even us. I shall, therefore, not deal with what I would regard as omissions in the present Bill.

I am accepting the motion for circulation. And I would appeal through you, to the House, to the lawyer Members of the House, to the Judges, to the jurists and to the students of law to assist us in devising an amendment of article 226 which, as Shri Narasimhan was optimistic enough to call

would be a fool-proof amendment to the article of the Constitution, because as a lawyer, I know that no language can be so written, so that it is fool-proof.

I might mention what exactly is agitating our mind. What should be the Jurisdiction of a High Court? On what should it be based? The Supreme Court dealt with two questions. Should the Government of India be regarded as functioning throughout the whole country and therefore any High Court could issue a writ or direction to that Government? The Supreme Court rejected this basis of jurisdiction. They said Government functioned only at the place where it had its seat and therefore, only that High Court could issue a writ or direction where the Government had its seat. The seat of the Government of India is Delhi.

The other question was the concept of cause of action. One judge, a very learned and eminent Judge, has written a powerful dissenting opinion. He thought that it could be based upon cause of action. We have been thinking whether we could not so amend the Constitution that under article 226 jurisdiction should be vested in the High Court in which the cause of action arose. But as lawyer Members would recall, there may not be single place where the cause of action arises. In respect of a single transaction, there may be several places where the cause of action can be said to arise. It is within our experience when we frame suits under the Civil Procedure Code that where a transaction consists of several acts and those acts take place in different places more courts than one have jurisdiction. Each of these courts would have jurisdiction on the basis of cause of action. Suppose we make cause of action as the basis of jurisdiction, and there are more than one court involved, each of them would be dealing with the matter and there would be conflict of jurisdiction. This is problem number one.

The second problem has been dealt with by Shri Narasimhan. It arises where the original order passed in one State is set aside by an appellate authority sitting in the other State. In that case, which should be accepted as the basis of jurisdiction ? The first one or the second one? Which is the authority against which the writ should go? Very often it is the original authority which executes the order, but the appellate authority is the one whose order must set it aside. Between these two, which should be preferred?

These are some of the problems which we are considering. I must inform the House that we have found no satisfactory solution to them. Had a solution been found, surely I for one would have immediately come to the House and placed it before it. As to the necessity for amending the Constitution, there are no two opinions. I again repeat my appeal to all students of law to come together and throw light on this matter.

I support the Motion for circulation.

Shri S. V. Ramaswamy: Let us have collective wisdom.

Shri Narasimhan: I forgot to tell the House one thing to which the hon. Minister referred when he was speaking when the Bill moved for consideration by Shri C. R. Pattabhi Raman was under discussion. It was that even the Government of India felt the inconvenience at some stages of the existing situation, that is to say, they had to get their files and other connected documents from distant areas.

Mr. Deputy-Speaker: Now he has no difficulty.

Shri Narasimhan: This is also another aspect.

Shri Hajarnavis: We should not like to go to three High Courts.

Mr. Deputy-Speaker: The question is:

"That the Bill further to amend the Constitution of India be circulated for the purpose of eliciting opinion thereon by the 1st November 1961".

The motion was adopted.

15·35 hrs.

RESTORATION OF PLACES OF RELIGIOUS WORSHIP BILL

(by Shri Prakash Vir Shastri)

Shri Prakash Vir Shastri (Gurgaon): I beg to move:

"That the Bill to provide for the restoration of places of religious worship in the possession of certain persons or communities to the original rightful owners thereof be taken into consideration".

उपाध्यक्ष महोदय, धार्मिक स्थान प्रत्यावर्तन विधेयक उपस्थित करते हुए मैं सबसे पहले इस सम्बन्ध में दो शब्द कहना चाहता हूं कि इस विधेयक को उपस्थित करने की प्रेरणा मेरे मस्तिष्क में क्यों आई ?

विभाजन के पश्चात् जब अपना देश स्वतन्त्र हुआ, तो उस समय कुछ इतने उतार-चढ़ाव आये, जिनकी कल्पना भी इस समय भयंकर है । उन्हीं विषम स्थितियों में लाखों लोग भारत से पाकिस्तान गये और लाखों भाई बेघर बार होकर पाकिस्तान से हिन्दुस्तान आये । उस समय जिस को जहां भी सिर छिपाने के लिये जगह मिली, उसने वहां शरण ली । दिल्ली, पंजाब, राजस्थान, उत्तर प्रदेश और गुजरात व पश्चिमी बंगाल आदि स्थानों से जो मुसलमान भारत छोड़ कर पाकिस्तान गये थे, उनके कुछ धर्म-स्थान, जो कि मस्जिदें कहलाती हैं, भारत में रह गये और पाकिस्तान से आये हुए हिन्दुओं ने उनमें से कुछ में बेसहारा होकर रहना आरम्भ कर दिया और कुछ में अपने मन्दिर बनवा कर पूजा आरम्भ कर दी ।

यह हमारा सौभाग्य था कि जिस समय यह भीषण संक्रमण-काल देश में चल रहा था, उस समय गांधीजी जैसे दूरदर्शी और विचारक महापुरुष हमारे मध्य में थे । स्थिति को बिगड़ते हुए और सरकार को असहाय स्थिति में देख कर गांधी जी ने दिल्ली में अपनी प्रार्थना सभाओं में कई बार यह कहा कि मुसलमानों की जो मस्जिदें हिन्दुओं ने अपने अधिकार में ले ली हैं, वे खाली कर दी जायें । उन्होंने समय समय पर उन प्रार्थना-सभाओं में तत्कालीन स्थिति के सम्बन्ध में वक्तव्य दिये ।

२१ नवम्बर, १९४७ की प्रार्थना-सभा में गांधी जी ने कहा कि दिल्ली में लगभग १३७ मस्जिदें इस प्रकार की हैं, जिनको इन हमलों में कुछ क्षति पहुंची है, अथवा जो मन्दिर के रूप में बदल ली गई हैं । सरकार ने गांधी जी के उस कथन पर कुछ कार्यवाही की, जिससे आश्वस्त होकर गांधी जी ने फिर ३० नवम्बर, १९४७ की प्रार्थना सभा में कहा कि मुझे सरदार पटेल की ओर से यह आश्वासन मिला है कि जो मस्जिदें गिरा दी गई हैं, उनको फिर से खड़ा कर दिया जायगा । लेकिन उन्होंने यह भी कहा कि अच्छा यह हो कि जनता ही अपनी ओर से इस कार्य को करे ।

लेकिन बाद में इस कार्य में कुछ थोड़ी ढील देख कर ऐसा समय भी आया, जब गांधी जी को देश की तत्कालीन अशान्त परिस्थितियों के सम्बन्ध में आमरण अनशन भी करना पड़ा । अपने उस अनशन को तोड़ने के लिये उन्होंने सात शर्तें रखीं, जिन में एक यह भी थी कि मुसलमानों की जिन मस्जिदों पर किसी तरह भी दूसरों ने अधिकार कर लिया हैं, वह उनको वापस दे दी जायें