

15.421/2 hrs.

**PROTECTION OF CIVIL RIGHTS
(AMENDMENT) BILL ***

[Translation]

SHRI MOHAN SINGH (Deoria): I beg to move for leave to introduce a Bill further to amend the Protection of Civil Rights Act, 1955.

[English]

MR. DEPUTY SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Protection of Civil Rights Act, 1955."

The motion was adopted.

[Translation]

SHRI MOHAN SINGH: I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL

(Amendment of Article 356) — Contd.

By Shri Sudhir Giri

MR. DEPUTY SPEAKER: The House shall now take up further consideration of the motion by Shri Sudhir Giri. Shri Sudhir Giri will continue his speech now and he has already taken nine minutes.

SHRI SUDHIR GIRI (Contd.): Mr. Deputy Speaker, Sir, at the outset, I seek your indulgence for giving me some time.

The provisions under Article 356 of the Constitution are very controversial in nature. The implementation of these provisions has generated much heat, anguish and grievances in the country. A section of the people

does get elated when the invocation of Article 356 is made. Simultaneously, Another section of the people does express deep resentment over promulgation of emergency. It is, therefore, clear that the intention of the founding fathers of our Constitution has been interpreted differently to suit to the interests of the different sections of the people.

We strongly and sincerely feel that the intentions of the makers of the Constitution have not been properly translated into action. Mostly the Congress Party has abused the provisions. This has been so, because the present generation of the people belonging to the Congress Party are not equipped with as much democratic values as their predecessor's did have during the freedom struggle. However, let us come to the main question.

We are aware of the peculiar conditions of our country. Our country is of sub-continental dimensions with immense diversities, socio-economic disparities and multitudinous people having divided loyalties. So, the threat to the unity and integrity of the nation and to the stability of the polity cannot be ruled out off-hand. It was not beyond perception of the founding fathers of our Constitution that certain grave emergencies might arise sometime and somewhere in the country. And in such emergent situation, the Union must have overriding powers to control and direct the administration of the whole country most quickly and effectively. The Centre must see that the country is not disintegrated and its unity and integrity is preserved.

In order to enable the Centre to discharge this most important duty, the Constitution vests it with the extraordinary powers to deal with certain emergency cases.

As provided in the Constitution, there may arise three types of phenomena calling for the invocation of proclamation, the national emergency, emergency due to the

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breakdown of the constitutional machinery in the States and financial emergency.

The provision for emergency due to the constitutional machinery breakdown in the States must be read in conjunction with the provision laid down under Article 355. Article 355 is an indicator of the minds of the founding fathers of our Constitution. They drafted Article 356 not to plunge the States and the Centre into undesirable skirmishes but to effect a co-ordinated co-operation among them in the maintenance of peace and tranquility in the administration of States with the sole object of economic development, dissemination of consciousness, social and cultural upliftment of the people of India as a whole. But it is a matter of deep concern that in invoking the proclamation under Article 356, the purpose and spirit of Article 355 have not been pursued.

Now I shall deal with Article 356. Article 356 provides for the situation arising out of the breakdown of the constitutional machinery in the States. It has been provided therein that the President may dissolve a State Legislature and dismiss a State Government if he is satisfied on receipt of a report from the Governor of a State or otherwise that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution. Thereafter he may assume to himself all or any functions of the Government of the State. He may declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament. If literally construed, the provision empowers the Central Government to dismantle a State Government and a Legislature with a stroke of pen in a moment to the contrary of the people's wishes and aspirations.

Article 356 was brought to action eightyfour times since the commencement of Constitution. The Punjab was the first State which came under President's Rule in 1951. Kerala did come under President's

Rule as many as nine times. Orissa and U.P. came under President's Rule six times each. The longest single spell of President's Rule had been in the Punjab for more than four Years. In Nagaland President's Rule continued for two years and eight months. The shortest spell of President's Rule was in Karnataka for eight days; followed by Orissa for thirteen days. In the initial years, there were not many instances of the use of Article 356. But with the passing of years, the provisions have been invoked with increasing frequency. Let us cite the examples:

1950-54	-	3
1955-59	-	3
1960-64	-	2
1965-69	-	9
1970-74	-	16
1975-79	-	21
1980-84	-	16
1985-89	-	6
1990-92	-	8
		84

The grounds for dismissal of the State Governments have been enumerated as defection, discontinuation of the coalition, No Confidence, Resignation of the Chief Ministers, Absence of Legislatures in the newly formed States, public agitation etc.

However, a close scrutiny of the circumstances that led to the proclamation of the President's Rule reveals that the power exercised by the President in such circumstances is surcharged with political motive.

Since the proclamation under Article 356. assumed political dimension, this extraordinary power has been used more often for political purposes against the State Governments which does not belong to the

party in power at the Union or to secure the purposes of that ruling party in forming a Government of their own in a particular State, taking advantage of fortuitous circumstances. The infamous instances corroborating to this view are to be found in such proclamation cases more often than not. A few such cases would help us understand the situation.

The first Communist led Ministry in Kerala under Comrade E.M.S. Namboodiripad was pulled down by the Central Government under the Prime Ministership of Shri Jawaharlal Nehru in 1959 when Shrimati Indira Gandhi as Congress Leader was in charge of Kerala. The reason advanced was the inability of the Kerala State Government to maintain law and order. If that was the position, why Shri E.M.S. Namboodiripad was not called to lead the Ministry after restoration of law and order. The same reason was put forward to dismantle the Government in Assam. Equally infamous are those instances such as Tamil Nadu in 1976 and Manipur in 1979 when the Centre imposed President's Rule because it considered those State Governments to be corrupt. Thus, in all 24 States, the proclamations were invoked on grounds as flimsy as they were but which suited to the interests of the Congress Party ruling at the Centre. What is very much astonishing in these manoeuvrings is the Constitutional assumption that the States and the Centre cannot effectively co-operate to deal with law and order problems without sacrificing representative democracy in the States concerned. Just for example, we may consider the phenomena of Tamil Nadu. Despite the disagreement of the Governor of Tamil Nadu to the proposal of pulling down the Government on the pretext of law and order, proclamation under Article 356 was invoked and the Karunanidhi Government was dismissed in spite of about two thirds majority. The Centre did not hesitate to trample down the people's verdict and the principles of democracy and federalism.

Now, take the instance of Meghalaya, what had happened there? Proclamation under Article 356 was invoked and the State Government dismantled. The Legislative

Assembly had been kept under suspended animation till the party in power at the Centre could gather majority through horse-trading.

Further, the phenomena in Manipur is a pointer to the dismal failure on the part of the Congress Party ruling at the Centre to re-define the Centre-State relations. The Central Government have dismissed the State Government of Manipur ignoring the spirit of the provisions under Article 355. Instead of making sincere efforts to pave the way for smoothly running the administration by those people forming the Government showing due respect to the verdict of the electorate, Central Government have kept the Legislative Assembly under suspended animation to grab the political power in Manipur. The crudest forms of horse-trading is going on there.

All these instances clearly point to the fact that the provisions under Article 356 which are extraordinary in nature and were anticipated to be invoked in extraordinary circumstances have been repeatedly abused in the interest of the ruling party at the Centre. In the eyes of the people in India and abroad, the sanctity of the emergency provisions under Article 356 has been irreparably impaired. But the importance attached to it by the makers of our Constitution was of great dimension. This is evident from the Constituent Assembly debate.

When the extraordinary provisions, as under Article 356, were debated in the Constituent Assembly, the stalwarts like S/ Shri H.V. Kamath, Shri Shibban Lal Saxena, H.N. Kunzru, P.S. Deshmukh criticised and uttered caution in so far as the practicability and implementation was concerned. Even Dr. Ambedkar considered the provisions as anathema to genuine federalism. Still he supported the inclusion of the provision on the grounds of exigencies of the circumstances to arise in course of India's sojourn to democratic federalism. Dr. Ambedkar however, had said that the extraordinary provisions would meet the break down of the constitutional machinery of a State. In fact

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the framers of our Constitution had in mind the perception of unity and integrity of India while drafting this very provision. And they did not visualise the phenomena when most of the impositions of President's rule would be *malafide*, improper and fraud upon the Constitution for the sole purpose of bundling out of a State Ministry when the Party in power at the Centre cannot vote that State Government out by legitimate means. So, before anyone has time to breathe, President simply kills the State Government by bringing the Constitutional life of that Government to an untimely end. This was not the intention of the framers.

Thus, if the extraordinary provision is resorted to at the unbridled pleasure of the political parties, there would be an end of democracy and Constitutional Government in India because it rests on a federal system and the existence of a responsible Government in each State founded on the free election to the State Legislature. The application of this extraordinary power of the Centre involves grave tension in the relationship between the Centre and the States. Too frequent use and on grounds as diverse as could be imagined of this power certainly strains the federal relationship. This aspect was studied in detail by the Sarkaria Commission. It expressed the view that the relevant provision of the Constitution regarding emergency powers and President's Rule were made with the object of ensuring the unity and integrity of the nation and were not conceived as a grant on over-riding powers to the Union.

Referring specifically to the President's Rule under Article 356, the Commission had stated that this power was necessary, but it had caused much controversy. The Commission recommended that it should be used sparingly and only as a measure of last resort. It was of the opinion that the imposition of President's Rule in 1977 and 1980 was improper. Its observation is that all attempts should be made to resolve the crisis at the State level before taking recourse to

Article 356. The Commission has suggested that in a situation of political crisis warning should be issued first to the errant State in specific terms, that it was not carrying on the Government of the State in accordance with the provisions of the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account. In a situation of political break down the Government should explore the possibilities of having a Government enjoying majority support in the Assembly. If it was not possible for such a Government to be installed and if fresh elections could be held without avoidable delay, he should ask the outgoing ministry, if there was one, to continue as a caretaker Government provided the Ministry was defeated solely on a policy issue.

The Commission also suggested some amendments to the Article 356. In the opinion of the Commission the material fact and grounds justifying the President's Rule should form part of the proclamation. It has also been suggested that when imposing President's Rule, the Legislative Assembly should not be dissolved either by the Governor by the President before the Parliament approved the proclamation.

All these suggestions are recommendations have been made by the Sarkaria Commission with a view to strengthen the Centre-State relations on the basis of equality and reciprocal understanding. In the opinion of the Commission the Centre is the custodian of these over-riding powers granted under Article 356. The Centre is also the custodian of all confidences and trusts reposed in it by the States for the purpose of preserving their unity and integrity in the events of their disturbances both internal and external. So, any breach in such confidence and trust resulting from the misuse or abuse of these drastic powers is bound to damage the fabric of the Constitution. The principles of democracy and federalism consisting the fabric of our Constitution would be jeopardised inviting nasty political games. Hence the Commission has specifically warned that a wide liberal construction of

Article 356 would simply cut at the root of the Parliamentary system of our country.

(SHRI MALINI BHATTACHARYA *in the Chair*)

16.00 hrs

Why this strengthening of the Centre-State relationship? Why should not the overriding powers be exercised to strain the relationship between States and the Centre? Why should there be restraint over the concentration of powers? My question is should there be on curbs the growth of a Centre with authoritarian tendencies as evident from the invocation of proclamation under Article 356 for 84 times in 40 years?

We should strengthen Centre-State relationship because ours is a welfare State. Our State is a democratic State extending help to all to grow and develop consciousness about their rights and choices. Everyone has his own characteristics. Every one tries to manifest his intrinsic virtues. Every one aspires to unfold himself to others. All these aspirations can be achieved if the environment around the individuals become conducive. To promote the individuals to fulfil their aspirations and for this purpose to create conducive environment is democracy. Without decentralisation of powers, democracy limps and throbs.

The makers our Constitution in their wisdom drafted Article 356 to bring about a process of assimilation through thick and thin. There are different political parties based on different social classes as our society is class divided society. So, sometimes, there may be a particular Government by a particular party at the Centre and there may be different Government by the other political party at the State. This difference in political creed must not stand in the way of smooth administrations of the Centre and the States, because the mottoes of all the Governments are to do welfare work to all the persons in the State. So, the incorporation of the Article 356 provides a test to all the political parties. In this test, the Congress(I)

Party has lagged behind because it has to invoke very frequent proclamations which have aggravated the nationality question, problems of separatism, regional chauvinism and the suspicion and scepticism. The frequent incidents of proclamation of emergency have unmasked the authoritarian outlook of the Congress(I). Side by side, the democratic outlook of the Left Front Government in West Bengal can be visualised from the decentralisation of powers even at the block level.

An impartial analysis of the events leading to the President's rule and the very causes behind such events reveals that the ruling class in the Indian society exerts its power in various forms to realise its own ends at cost of the toiling masses. The Constitution is the umbrella under which the exploitation of the tillers and the workers and deprivation of them do take place. Sometimes, some agitation here and there comes into picture and sometimes not. This process of suppression and oppression cannot go on indefinitely. One must realise this reality.

I have brought the amendment simply to stop the abuse of the drastic power bestowed upon the Centre. The State Governments are formed by the people of the States on the basis of free election. So, the people of the States have inherent right either to allow a particular party and or group of parties to govern the State or to vote them out. It is not the business of the Centre to vote the State Government out by hook or by crook as has been going on since the commencement of the Constitution.

So, it is to be watched if the State Government after coming into power, through election, is taking any means to subvert the unity and integrity of the nation. If it is found involved in such subversive activities, it must be bundled out of power. So, when the President would impose his rule at the advice of the Council of Ministers, he must be satisfied on the basis of material facts that the State Government is not observing the Constitutional provisions. All these are the

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outcomes of the Congress(I) Government's authoritarian outlook. In this contest, the National Front Government in the short period of its rule, tried to adopt a different posture to the States and not to pursue confrontational policies. As for the decentralisation of powers below the State Government level, the Congress(I) Governments have been inimical to such moves. That is why we have been insisting on the amendment to Article 356 in order to safeguard the democratic norms so far retained in the hands of the State Governments.

There are the federal systems in the USA and Switzerland. In the USA federalism is respected on time tested basis. Swisher, a Constitution expert, said, "In spite of our fascination with bigness in most works of life there is a provision of belief that too much of power concentrated in one place is dangerous." Further, in the USA, for quelling domestic insurrection, the Federal Government intervenes only when the State authorities make a request to the Central Government.

I do like to stress on the fact that on some occasions the Governor could determine the strength of a political party by counting heads of the Members of the States Legislature in his own drawing room or by the signatures submitted to him. This process surely violates the basic principles of democracy. It is the Floor of the Legislature where the relative strength of the party or parties concerned can be ascertained. I, therefore, demand that henceforth such improper procedure should be stopped.

Further, as the people of India are patriots and democratic, they should be respected. Their opinions should be given due weightage. So, after constitution of the Legislature, if the Ministry is found involved in any act of subversion of the sovereignty and integrity of the nation, the extraordinary power of proclamation of emergency may be called into operation.

At last I do draw the attention of all the

hon. Members of the House to the fact that we all are democratic people and at the same time we want to preserve our identity. We have separate culture, language and environments of varied dimensions. The identity of these endeared objects can be preserved in the federation only. So, the extraordinary powers at the disposal of the Centre must be used appropriately with an eye to healthy development of Centre-State relation.

With these words, I appeal to the Members of the House to see that my amendment should be adopted.

[Translation]

DR. LAXMINARAYAN PANDEYA (Mandsaur); Mr. Chairman, Sir the Bill introduced in the House calls for the amendment of Article 356 of the Constitution. It is due that cordial Centre-State relationship is essential for a healthy and vibrant democracy. It is also very much necessary to remove any bitterness or tension between the Union and the States. The Sarkaria Commission was constituted with the objective of finding those grey areas where there is scope for friction between the Centre and the States.

In the recent part, we have seen how tension in Centre-State relations, whether it be the case of Punjab, Jammu and Kashmir or Assam and Manipur has led to undesirable situations in those States.

Mr. Chairman, Sir, I would like to submit that our democratic system has gone wrong somewhere and the situation has come to such a pass that voluntary organisations and legislators have lost credibility in the eyes of the public and people often refer to the legislators as '*Aya Ram and Gaya Ram*'. This is very unfortunate. A similar situation had developed in Manipur, which was taken up by the house for discussion sometime back. During that crisis, some basic issues like the number of times a legislator can cross floor and the money he could mint in the process, came to the fore. It is certainly a matter of regret, if the common talk form

such low opinion about their elected representatives, including M.Ps and Legislators. Keeping in view the same fact, it has been mentioned in it as to where this Article 356 is to be used and how it is to be made effective and the ways through which the existing shortcomings can be removed.

On several occasions when a situation of defection arises, I have observed that a parade of MLAs is used to be organised before the hon. President. On one occasion in the past, when there was a move to dissolve and bring changes in the Madhya Pradesh Assembly and was also a move to bring changes in the set up of the Government of Madhya Pradesh, the counting of MLAs was made. I understand that it is a sorry state of affairs. All these powers should not be conferred on the President and the trial of strength should be judged on the floor of the Assembly and not outside. This thing has been mentioned in the Bill itself.

As regards, backwardness whether it exists in Madhya Pradesh or in other States, it reflects the Centre and States relations. I would like to urge that complaints regarding backwardness in Bastar and Chattisgarh district of Madhya Pradesh are made, in Uttar Pradesh a demand for Uattaranchal is being made. Similarly, in Bihar, a demand for Vananchal is being made. This sort of demand is made only to highlight this fact that the development work that was required to be taken up by the Central Government in those areas, have not been done and there by those areas remained undeveloped. As a result of it, a feeling of resentment among the people of that area is bound to create such resentment causes formation of new organization whether they are Jharkhand Mukti Marcha or a *Bheel* organization. This is an attack on the unity of our country. Keeping in view these aspects it is necessary to remove the regional imbalances, stop the formation of new organisations and our relations should remain cordial. As such, I request the hon. Minister to make every possible effort to implement the report of Sarkaria Commission. Though the report is certainly there yet nothing has been done so far to implement

the recommendations made in the report. Discussions in this regard have taken place but merely discussing an issue is not enough. Keeping all these things in view, our party has taken a permanent stand from the very beginning that the Centre-State relations must be cordial and the recommendations made by the Sarkaria Commission should be implemented. In our manifesto also, we have mentioned that Centre-State relations should be cordial. Therefore, we have reiterated our views again and again. For the removal of regional imbalances, I would like to urge that a consolidated thought should be given to contral the prevailuig circuinstances. In this context, no doubt a mention has been made to make amendment through this Bill in the Article 356 but in view of the sentiments behind it, I would request the Government to consider seriously about the imbalances owing to which the disparities are increasing. These disparities ate creating a chain of controversies. With a view to avoid such situation, we had taken recourse to a democratic process and our leaders had made a determined effort to establish a sovereign State. From that point of view also, it is essential that we must accept it. It will serve no purpose if we go on talking of more and more rights. It is a matter of giving autonomy to the States under the Constitutional set up and to ensure the development of the States. Therefore, I would like to submit that keeping in view, the above facts this Bill should be taken into consideration. So far as the spirit of the Bill is concerned, I welcome it and I would also like to state that before taking any action on the Governor's report regarding the dissolution of the Assembly, the President should reconsider the situation carefully, otherwise the situation that has developed today, would be a mockery of democracy. With these words, I conclude.

[English]

SHRI SRIBALLAV PANIGRAHI (Deogarh): Madam Chairperson, today we are discussing once again in this august House an important and a sensitive subject, that is, Centre-State relationship.

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So long, there was a situation in our country where both the Centre and the State were administered, ruled, by the same political party there was no question of raising this subject. But later on, when different political parties came to power in different States and also at the Centre, gradually this question of Centre-State relationship got importance, it was raised, and also it got a momentum in course of time. But I do not think that this subject should cause anguish or resentment among the Members of different political parties. Only one party was not ruling from the Centre. Even at the Centre, there has been a change. So much we are talking today about this. I was listening to the earlier speeches today. I do not say that this is an ideal situation, which is prevailing. Article 356 of the Constitution of India enables the Centre to go for President's Rule in respect of certain States under certain very extraordinary situation. And for that matter, another point is the powers of the Governor. These are the two aspects which are agitating in the minds of different political parties and its leaders. And together with that, a new dimension was given now. That is, more autonomy, more financial powers, should be given to the States.

Madam Chairperson, this proclamation of Governor's Rule, etc. were issued twice, first in 1977 and then in the 1980s. When the Congress Party ceased to come power at the Centre, we all know what had happened in our country. So far as the administration of this provision is concerned, what did those who are now claiming the monopoly of propriety do? In one stroke of pen, without any logistic ground—there was no logic of justification in their favour—they took over the administration of different States although in such States, the concerned ruling parties were enjoying absolute majority.

This was again repeated in 1989. With a stroke of pen, the Governors were changed. I do not say that it should not be debated. I do not say that the Centre-State relationship should be very rigid. It should be flexible to fit

into the changing times. This is exactly what has been stated by our present Prime Minister that this is a flexible arrangement. This should be so. The Centre-State relationship is like partnership. Our Prime Minister said this.

We should appreciate about the situation and location of our country, composition of our population, the climatic condition and the largeness of the country. Because of all these, ours is just not a country but it is more than that. It is a sub-continent. It can be called a mini-world. India is a mini-world. So many religions are here with different food habits. Different types of people are living here from Kashmir to Kanyakumari, from Assam to Cutch in Gujarat. Our prime need, therefore, is to find out how best we can maintain unity amidst diversity. For this, our founding fathers had considered all these aspects in depth and in greater details and rightly had come to the conclusion that we should have a federal system. It is just not fully federal. It cannot be. It is not fully Unitary. But it is a federal system with a Unitary bias.

In this regard I pay compliments to the Sarkaria Commission. They have held this position. When this question arose, and as I said the discontentment was brewing in different parts and gained momentum, the then Prime Minister Shrimati Indira Gandhi thought it proper in 1983 to appoint a commission—the Sarkaria Commission. Three distinguished persons were chosen to serve this Commission as Chairman and Members. They have done a creditable job. They had prepared questionnaires very diligently and moved throughout the length and breadth of this country meeting people—not only Chief Ministers—but leaders of different political parties, public opinion makers and all those who wanted to come and appear before them. They examined the issue in detail and came out with their report, probably, in 1988. They took a long time also and since then we had before us the Sarkaria Commission Report and this Sarkaria Commission also had clearly advocated for the continuance of the system and as I said, this could be

flexible, no rigidity should be there. As you know, Madam, particularly the last one or two years have been the years of rapid changes and drastic changes all around in Eastern Europe, in Soviet Union and elsewhere. Some countries which were divided earlier have been reunited. After the great Second World War some countries which had become one are now broken into pieces. So many changes are taking place there. We have to take adequate lessons of all the changes taking place all around us. So, this question had been gone into in detail. Of course, Madam, it is no sin for political people to entertain hope and ambition and from that angle also our plight begins in many areas. If a Chief Minister dreams of becoming a Prime Minister and if he thinks that unless his State secedes from the whole of Hindustan he cannot get his dream translated in to action, that way he can advocate secessionism. Is it not happening, is it not demanded now? We have to decry all these things, but at the same time reasonable requirements or needs of people of different regions or different States should be taken due note of, should be given due consideration well in time and unless the situation is created and unless they grow hostile and violent, their reasonable demands will not be heeded to—that also should not be there. So, it has got to be a realistic thing, a flexible one so as to be in a position to change to meet the cultural aspirations of the people and other aspirations also of the people. So, from that angle I would like to approach this subject, Madam, and of course, as I said, there are certain things where there are differences of opinion—the appointment of Governors, exercise of power under Article 356 by the Governor and by the Centre and also the financial matters. As I said, some States the bigger States with metro cities are demanding more financial and fiscal autonomy. Metro cities have not developed of their own. So many States have contributed. The neighbouring States of which metro cities are the centre have their own contribution and it is an irony of fate, Madam that in our country the States, the places which came under the British Rule or the East India company rule first became the leaders in the matter of

development. Some of them came under their rule first off. After fighting and some also surrendered, but where the resistance was much more against the British Administration, where there was a fierce battle, they came under the British rule much later. They remain more backward. This is an irony of fate. I can say about my State, Orissa and again, inside Orissa, in Sambalpur, there was great patriot-rebel called Shri Vir Surendra Shah who spent 17 years of his life in a British prison when India saw the first war of independence in 1857. But it is far backward today. So, in India there are so many types of States today, small and big in size. In population they are different, they are different in economic aspects and they are different in natural resources. So, if there is no strong Centre, then who will look after those far off small States with their own difficulties? Can India remain united?

About autonomy, there is a case and it has been considered by the Sarkaria Commission. They have come out with strong recommendations and I would plead that those recommendations should be accepted. I would not like to go beyond that in naming them, because that is not the propriety here. Even among the Chief Ministers, somebody says, that unless this is done, I will see that coal does not move out of my State; if all these things are not done, then India will go the Russia way; These are all irresponsible statements made by responsible political leaders. Now, the Sarkaria Commission recommendations are under active consideration of a Sub-Committee of the Inter-State Council. The Sarkaria Commission had made as many as 258 recommendations; a prominent recommendation among them is the establishment of an Inter-State Council to go into the inter-State disputes. That had been established and that had been made functional also. A Sub-Committee of that body is presided over by the Union Home Minister and some Chief Ministers are also members of that Committee; two or three meetings had already taken place and about 30 or 35 recommendations have been considered; about 18 of them were unanimously adopted. There could not

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be consensus with regard to other recommendations and they are still at it. They need not be in a hurry; Heaven is not going to fall when our own Chief Ministers are sitting and discussing about it. The Prime Minister of the country has openly come forward to say that we are ruling the country as partners in the Centre and the States. Naturally, we can wait and right now there is no need for any amendment to any of our statutes on this account.

Madam, again with regard to the Constitution the appointment of Governors, as we see in the Press, there has been unanimity in the Sub-Committee that whatever might be the role played by the Governor, they should not be persons having direct contact with the affairs of a particular State and they should not be appointed as Governor to those States where they have some contact. After retirement also, he should not join political life. He should not hold any office of profit, etc. Of course, I am not in agreement with one suggestion i.e. no political person should be considered for appointment as Governor or for occupying Raj Bhavan. This is a democracy. In a democratic country of our size, people after retirement, after resigning their jobs are joining politics. Therefore, any person including a political person should be judged by what action he takes, what he does. But to say that because he is a politician, he is a member of a Political party, he is untouchable so far as Raj Bhavan is concerned, Rashtrapati Bhavan is concerned, is not correct and I do not agree to it.

Of course, if he becomes Governor, he should dissociate himself from party polity. What about the Speaker's Chair? Once he is elected, he is a different person. He does not have any partisan attitude. That is the spirit which the Governors could also follow. Therefore, it is not that today only the Sarkaria Commission has suggested this. Our former Prime Minister, builder of modern India, Jawaharlal Nehru's thinking with regard to appointment of Governor was exactly the same as that of the Sarkaria Commission.

Regarding the imposition of President's rule etc., can we rule out a situation where the Central intervention is called for? It is a must in some cases. It is a question of objective assessment of the situation there. The Governor is a link between the Centre and the States. Regardless of the political party who are at the helm of affairs in a particular State, when the implementation of certain poverty alleviation schemes like Jawahar Rozgar Yojana is discussed here in this House, the Members belonging to all sides say, there should be a monitoring done from the Centre. The Members complain that money is not reaching the beneficiary as it should according to the philosophy behind the scheme. On many occasions, we say here that there should be more Central intervention; there should be more monitoring from the Centre. But when it does not suit us, we criticise the Centre.

There are recommendations that majority test should always be resorted to on the floor of the House. I agree with that. It should not be done at Raj Bhavan etc. Even what is happening today in Manipur which has been discussed earlier. The Supreme Court has issued summons to the Speaker of Manipur Assembly. We have to take into account all these things.

In the beginning, I have said, ours is not a small country but a big country, a mini world. Contradictory situations sometimes do prevail in our country. Some places are very very hot and at the same time some other places are very very cold. Therefore, contradictory situations do prevail at some places. Therefore, it has got to be flexible. Of course, the motive should not be there. While such powers are exercised, there should not be selfish political motives. That is the main point.

About Planning Commission, and the Finance Commission, today also after the question hour and during zero hour, we saw our learned friends and esteemed colleagues from Uttar Pradesh, followed by also Members belonging to some other States, making allegations of negligence by the Planning

Commission, not giving due consideration.

We have all our feelings in our own way. There is the Planning Commission. There is Finance Commission. This institution need to be strengthened. That is also the recommendation of the Sarkaria Commission. The States should be given more opportunity, and should be consulted in a more meaningful way about formulation of their Plans and also to what extent they can finance their own Plans. About Finance Commission also, of course, as I said, they have to take the totality of the country into consideration. I do not say that everything is going on well. Some States which are not vociferous, some areas which are backward, which ought to be given more attention, are not given attention because there is no agitation being built up there.

Therefore, regional imbalance is our enemy number one. Unless we tackle this problem effectively, that will be a constant threat to our much-needed, much-significant, national integrity and national solidarity.

Again when it is a question of Centre-States and, intra-State relations, there also we have our own allegations.

Inside the State also, there should be some arrangement. I congratulate the Sarkaria Commission. They have in their wisdom come forward with a suggestion that this Article 258 should be amended for devolving more powers, not only from the Centre to the State but also from the State to the districts. At district level also, there should be planning body. There should be zilla-parishad like institution to successfully and effectively implement the smaller schemes in the districts. As I said, we have two-tier system now, the Union Government and the State Government. The Union Government formulates many policies which are implemented only by the State Governments, like the Plan programmes etc.

It is the State machinery which imple-

ments many of the Central schemes also. We are having a participatory democracy and the system in our country today which has got to be really a co-operative federalism. That is also the wording of the Sarkaria Commission.

I would like to conclude by saying one thing. I feel that the word autonomy as also a very vague word. 'Autonomy' means 'Self-Government'. But we cannot define adequately as to what is 'Self-Government'. We can talk of giving more powers. As I said earlier, 'Autonomy' means 'Self-Government', a State within a State or something like that. Of course, we are having the Hill District Council in Darjeeling. In some areas, we are having Regional and District Councils, development councils etc. Also, in different States the situation is similar. Take for example the case of Telengana in Andhra Pradesh, Jharkhand or Chottanagpur areas in Bihar, Vidharbha in Maharashtra, the Western Parts of Orissa where the situation is some what similar. The Western Parts of Orissa are more backward than some of all these States. They are more backward than even Vidharbha. So, we should see to it that an arrangement is made even inside the States so that all areas develop proportionately and there is balanced development. We have to see that balanced development takes place in the whole of this country. In this case also, it calls for greater decentralisation of planning, decentralisation of powers. In this background, when Shri Rajiv Gandhi was the Prime Minister, he was toying with the idea of giving money direct to the Panchayats. He wanted to see that the money released by the Centre should go straight to the district level, panchayat level because in between so many agencies are there. They do play with the funds; they fritter away with the funds. Anyway, what I feel is that there should be balance development, healthy development of all the areas, of all the States. So, I would say that decentralisation is the need of the hour.

Madam, you know that the Inter-State conflicts were not a new phenomenon. They were very much there even in the unified

[Sh. Sriballav Panigrahi]

British days, Pre-Independence days. Therefore, the British administrators had come out with a suggestion to sort out these things. They had devolved a mechanism to sort out these things as per Article 135 of the Government of India Act, 1935. They had evolved a mechanism to sort out the Inter-State disputes even during those days under this Article. Now, the suggestion of setting up of an Inter-State Council has already been considered. That Council is made functional. Together with that, there is the National Development Council. It should meet very often. Also, in the changed situation, the Planning Commission and the Finance Commission should adopt new approaches. Our prime need of maintaining the unity of the country would be achieved by the balanced development. We want speedy development of all regions. Therefore, the balanced development of all these regions would help us very much. I would conclude by quoting one thing from the Sarkaria Commission.

MR. CHAIRMAN: I am not ringing the Bell. But I would request you to conclude.

SHRI SUDARSAN RAYCHAUDHURI (Serampore): Please speak something of Article 356.

SHRI SRIBALLAV PANIGRAHI: I have already spoken about it. Were you not there from the beginning? Madam, I think they were not there. Or, they were not attentive. I have spoken about Article 356. I have spoken about the appointment of Governor, financial autonomy etc.

I have talked about it. If you want me to repeat, I can repeat it provided you get me additional time from the Chair. If you are prepared to do so, I can do that.

I have talked about Article 356. I mentioned about what happened in 1977 and what was done in 1989. Did I not say that? (Interruptions)

MR. CHAIRMAN: Please come to your concluding point.

SHRI SRIBALLAV PANIGRAHI: The Sarkaria Commission has said:

"In firm consistency with their resolve to constitute a federation with a strong centre, the framers of the Constitution made an elaborate distribution of governmental powers—legislative, administrative and financial—between the Union and the States to make it strong, to give weightage to the Union allocating to it dominant and relatively larger powers."

At the same time, the division of power should not be water-tight. I have told you how it can be flexible. At the same time, neither Justice Sarkaria and two other Members have played to the gallery nor they chosen to preserve the *status quo*. I underline the word '*status quo*'. They have devised some scheme that balances the need for expanding the area of State autonomy and gives more powers to the States. They have recognised this need to preserve the national unity. The totality of its recommendation vindicates the Commission's claim that its paramount concern has been to promote co-operative federalism.

With these words, I conclude.

[Translation]

SHRI DAU DAYAL JOSHI (KOTA): Madam Chairperson, I welcome the Private Members, Bill that has been introduced by Shri Sudhir Giri for bringing an amendment in the Constitution in view of the prevailing circumstances in the country. The sentiments expressed by him in this Bill reflects the sentiments mentioned in the Manifesto of B. J. P. He has stated that in term of Article 356 State Government can be dissolved by the Centre only in the event of real constitutional crisis. This Article will not be used to serve the interest of the party. This has been mentioned by B. J. P. in its manifesto.

It is unfortunate that on the recommendations of the Governor, every other day, the Central Government dissolves the elected Government in the States. Several such examples have come to light during the last few years. Now that democracy flourishes in the country, Government of various parties are formed in different States whereas there is Congress Government at the Centre. The Governments of Opposition Parties have been formed in many States, even in those States also the Governments of Opposition parties exist where there used to be Congress Governments. Thus despite Congress Government being at the Centre, many States have gone out of its hands. Under such circumstances, Article 356 should not be misused. From this point of view, what hon. Sudhir Giri has said that appears to be factually correct. My submission is that the Government who are in a way the trustees of the State Governments and accordingly they are responsible to the Central Government too, misuse their position in terms of their party affiliation. Sarkaria Commission has very clearly projected this thing and have comunity that there should be an inter state council consisting of a panel of five Members and the Governors should be appointed through this Council. The appointment of Government should be above party affiliations. The situation today is that a person who be a Chief Minister a few days ago, is appointed as a Government which strenghtens the feeling of party affiliation. Even the Sarkaria Commission have recommended that a Government should not be appointed without the recommendations of the Chief Minister but this is just a formality, the consent of Chief Minister is taken for name's sake only. The Chief Minister has no vital role to play in this regard. As a result, various types of disputes arise at many places.

Madam, recently this has happened in Rajasthan. Mr. Reddy has been appointed as Governor there. It is true that after his arrival there, he has categorically made an announcement that he has categorically made an announcement that he has nothing to do with politics. Although he was a Chief Minister till yesterday, but today he has nothing to do

with politics. In the begining, it appeared that on one pretext or the other, Rajasthan Government may be dissolved. May be some other problems are created before the Government. Every now and then Shri Balram Jakhar used to announce that Rajasthan Government would be dissolved within a month or so. With the result Shri Ashok Gahlot and Shri Rajesh Pilot have also been making such pronouncements. These pronouncements led to an impression that perhaps Centre may be having some plan to dissolve the Government and under the same plan, Shri Chenna Reddy has been sent to Rajasthan as a Governor. We fear for its repetition. But the manner in which Shri Bhairon Singh Shekhawat honoured Shri Reddy through his good relation it seemed that there would be no danger on his Government. Today, the State Government is in such a situation that it is forced to rely upon centre for every thing and as a consequence, Chief Minister of one or the other State always stays in Delhi.

Madam, several development schemes of Rajasthan are lying pending here. Central Government always puts hurdles on some or the other pretext. In the same way, irrigation schemes of several States are lying pending for many years with the Central Government. No attention is paid to them. It clearly reflects the party politics. On these basis, the Government of those States are criticised, same is the position regarding providing funds. Funds are not released. Today, in the morning hon. Members of Uttar Pradesh have expressed their resentment over the reduction in the plan expenditure of the State. The assistance to be given to that State, has been stopped. What does it indicate ? It indicates the special relief from the Central Government under article 356. Changes are made usually on the recommendations of the State Chief Ministers which creagle many problems for the State Government.

Madam, I request that the Government should be appointed on the recommendation of an inter-State Committee for a certain period say five years and be should be

[Sh. Dau Dayal Joshi]

retired after that he should not practice any vocation. I will cite an example that Shri Jagannath Pahadia was the Chief Minister of Rajasthan after that he was appointed as a Governor and also became a Central Minister. So, I suggest that this matter should be taken up for consideration after a fix period. I request that this House will seriously think over it and accept the Bill presented by Shri Sundhir Giri. With these words, I thank you.

SHRI MOHAN SINGH (Deoria): Madam Chairperson, I support the important Bill which has been presented by Shri Sudhir Giri. At the time of framing the Constitution, its framers expressed this view that the Constitution of our country would be federal as well as unitary. But in the present situation of the country, it is easy to say that the Centre should give more powers to the State but the manner in which the Centre has misused the article 356, to suppress the feelings of the States, forces us to reconsider the article 356.

Madam, I would like to say that article 356 is the main hurdle in the way of maintaining and preserving the federal structure of the country. History is a proof that the national president of the Congress started a movement to dismiss a non Congress Government which came in power first time after independence in 1957 in Kerala. That was not a mass movement. But the Central Government called it a great movement, and told that it was difficult for the State Government to function smoothly, so the Central rule was imposed under article 356 and first time an unholy practice was started in the political history of this country from Kerala. Mrs. Indira Gandhi provoked and instigated that movement when she became Congress president for first time in 1956-57 and her father, Shri Jawahar Lal Neharu, who made a great contribution in framing the Indian Constitution, misused that article first time in Kerala. After that a new situation arose on the political horizon of India in 1967 when Congress established its monopoly over the

whole country. In 1967, a new political era started with the formation of united legislator's party's Governments are Coalition Governments in the States. But unfortunately Ajay Mukharji's Government in Bengal, Charan Singh's Government in Uttar Pradesh, Mahamaya Prasad Singh's Government in Bihar, Govind Narayan Singh's Government in Madhya Pradesh and as Shri Panigrahi was stating in his speech in his own State Orissa. R. N. Singh Dev's Government was dismissed in 1967 by the Central Government within 11 to 20 months by misusing this article and fresh elections were held in all the States. Again a new matter arose in 1977. I do not want to protect anyone or to show partiality. The same Article 356 was misused by the Congress Government at the Centre to dismiss the non-Congress Government in 1967 and the Communist Government of Kerala in 1959-60. Similarly, when the Janata Party won Lok Sabha Elections in 1977 and the Congress Party was totally swept away in North India, the Janata Party Government misused the Article 356 and made the then Vice President who was holding the charge of the office of the President that time instrumental to dismiss the Government of many those States where Assembly elections were yet to be held.

My only submission is that regardless the Party in power in Centre all the Governments have misused this Article to serve their party interests. Irony is that once the hon. President was on a visit to some foreign country but his signatures were obtained from there only to dismiss Shri Charan Singh's Government in Uttar Pradesh through this article. I do not say that Congress Party alone is responsible for it. My submission is that so long as there is such a provision in this article that the Government in power in the Center can interfere in the working of the State Government then any Party which is in power at the Centre and has majority can misuse it or use it to serve its own political purposes. Therefore, now the time has come to review the Article. We should amend the Constitution and bring about a provision under which any party which is in power in

the Centre may not be able to misuse it for establishing a Government of its own party against the will and sentiments of the people of that State by inciting defection and adopting other dirty tactics and thereby creating an atmosphere of secessionism and separatism.

I would like to state categorically that it is a great irony that the post of Governor is gradually becoming meaningless. The House should review this extravagant post of Governor. The Central Government appoints or nominates Governors of States to find out whether the concerned Government of the State is functioning in accordance with the Constitution or not. But I have made the opinion that now the Governor is not being appointed a watchdog but as a Party representative to promote the political interest of the Party in power at the Centre. Therefore this extravagant post needs, to be reviewed.

To conclude with, I would like to cite two more examples. Uttar Pradesh had been under emergency before 1977, Dr. Chenna Reddy of Congress Party was the Governor at that time there. As in the case with the President in the Centre the responsibility of a Governor is to address the joint meeting of both the Houses once a year before the beginning of the session. In his address to the joint sitting of both the Houses in 1976 Shri Reddy had openly appreciated emergency but just one year later when Government to the State was changed and the Janata Party came in power, then Governor Shri Reddy condemned emergency and called for new option in his speech which was contrary to his speech in 1976. The same thing happened in West Bengal also. The State Governor Shri Dharam Veer dismissed the Ajay Mukerjee Government. After election Shri Jyoti Basu's Government was formed there. The State Governor asked Shri Dharam Veer to read out a paragraph which was his self-criticism. The Governor declined to do so. A great hue and cry was made due to it. This has been happening in recent times also. When the Governor happens to address the joint sitting of both the Houses, he faces a very difficult situation.

Therefore, I politely urge you to think over this post once more very seriously. We are passing through great economic crisis and compulsion of taking specific steps to meet the economic crisis, we should decide whether the post of Governor should continue or it should be abolished.

The Governor has two main functions. First is to call the leader of the Party in majority to form Government and administer the oath of the office and second is to send a report to the Central Government when the State Government is in minority so that the Centre may dismiss the State Government. In my opinion, it is not proper to waste crores of rupees on Governor till 5 year for these two purposes only. The works in his disposal can be handed over to the Chief justice of the State or the Chief justices of High Courts of the States. After the declaration of Presidents rule in the State the President himself should send a representative on his behalf to the State till an elected Government is formed there. So long as there is elected Chief Minister in the State, it is the misuse of article 356 to have a Governor as showpiece on a lavish expenditure and to serve the political ends.

Madam, I would like to speak on the second point that there is a situation of upheaval in the States. In 1982-83 it was demanded in one State that only defence external affairs and tele-communication should remain under the jurisdiction of the Union Government and rest of the issue should come under the jurisdiction of State. At that time Sarkaria Commission was appointed to determine Centre-State relationship. But the practice of toppling State Government began in 1967. At that time D. M. F party appointed a Rajmanna Commission in Madras, Tamilnadu and that Commission also submitted its report. In nutshell the report said that the way Central Government usurps the resources of States and in return provides economic resources to them or political considerations is not acceptable to them. For instance there is mineral wealth in Bihar. But the Central Government has not paid the due share of cess to Bihar for years

[Sh. Mohan Singh]

The prices of the Minerals found in Bihar are increasing continuously but the Centre does not increase the percentage of cess in that proportion. Today the issues of Uttar Pradesh and Orissa have been raised. The undeveloped state of the country have been blaming the Central Government for discrimination against them and it has been said that financial assistance given by the Centre is responsible a lot for increasing regional imbalance. The resources of big States are insufficient for their development. There has been over-staffing in these States and it has become difficult for them to pay the salaries of their employees from their resources. Hence, the Rajmanna Commission had said in its report in 1967 that some sources of income should be given to the states also.

[English]

17.10 hrs.

[MR. DEPUTY SPEAKER *in the Chair*]

[Translation]

Sir, Coal is produced in Bihar but the people of Bihar can use only the quota allotted by the Centre to them. Similarly, we produce the large quantity of sugar in Uttar Pradesh and Maharashtra, but we can use the quota allotted to us by the Central Government. Sir, in this way we have resources of production, but the resources of development are provided by the Central Government. Therefore, a new distribution system should be developed. State Governments have means of production and they should have income from that. The Central Government should have the same power in regard to the income as per our constitutional provisions or we should reconsider it. We should reconsider it afresh. Various Commissions from Rajmanna Commission to Sarkaria Commission tried to define it many times. But, unfortunately, whenever there is pressure on Central Government from Separatist forces it starts saying that a Commission will

be constituted and that commission gives recommendations but after that nothing happens. Something happened 8 or 9 year ago. The Commission recommendations are not implemented. The Commission recommends that the Governors should be appointed in the States after consulting the Chief Ministers but the Centre against the interests of the State appoints such a person as a Governor who is able to keep the Chief Minister under his control. Therefore, Sir, I strongly support the resolution moved by Shri Sudhir Giri and demand that at least the recommendations of Sarkaria Commission should be implemented immediately if you don't abolish the post of the Governor and don't amend Article 356 so that growing discontentment and tendency of separatism can be controlled in the States and a Committee comprising Members of the House should also be constituted to determine the rights of the States on their resources.

With these words I conclude and support the resolution of Shri Sudhir Giri.

[English]

SHRI SUDHIR SAWANT (Rajapur): I rise to oppose the proposed enactment relating to the Constitutional amendment. I oppose it not because of any other reason but because this amendment is founded on a misconceived concept, a suspicion of *malafide* intention on the part of the Central Government at all times. It does not take into account the prevailing conditions in the country, especially the demographic conditions, the danger of disintegration and various other aspects.

Whenever we think of a Constitutional amendment which is indeed a very serious matter, we have to take two factors into account. The first is whether we in this House are legally empowered at all to enact such an amendment. I say it because a number of cases starting from Keshavananda Bharathi case, clearly brought out the fact that this House is not empowered to legislate on matters which will strike at the very basic foundations of the Constitution. So, on the

one hand, we have to take this aspect into account and read through the Bill or the amendment proposed to see whether it strikes at the foundation or the basic structure of our Constitution.

The second aspect is national interest. We have to see whether the proposed enactment furthers our national interests or whether it is a retrograde step. Once we relate our arguments to these basic issues, we can come to certain conclusions whether the amendment is desirable or whether it is superfluous and goes against the national interests.

I will take the second issue first, i. e. whether this enactment promotes national interests or not. This enactment tries to strike at the emergency powers of the Central Government. The emergency powers essentially emanate out of a requirement, out of a contingency. In the Constitution there are three such contingencies which have been earmarked by our founding fathers wherein the Central Government can interfere in the affairs of a State. There are eight other cases where the Central Government can thus interfere. As far as the emergency powers go, there are three such cases - (1) war; (2) break-down of constitutional machinery; (3) financial emergency.

This amendment, in fact, does not include the situation of war. But it relates to the breakdown of constitutional machinery and financial emergency that may arise, and intends to take away the powers of the Central Government to interfere in any way in such contingencies.

I would like to ask one question here. I want to know whether giving powers to the Central Government to interfere or intervene in certain contingencies takes out the federal structure of the Constitution or whether the judicious use of this power will essentially promote national interests? It is rather a merit of the Constitution that it visualises the contingencies when the strict application of the federal principle might destroy the basic assumptions on which our Constitution is

built. Hence we come to the other question, as to whether our Constitution is federal at all or whether it is quasi-federal or unitary.

These questions have been debated a number of times. Sarkaria Commission was appointed to go into these matters. As per Shri V. S. Tripathi's version it has been proved that India is basically a unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features. This is a statement of facts which has arisen out of the historical necessity and political expediency. When the Constitution was enacted, at that point of time the political parties were in the grip of the divisive forces. On the basis of the two nation theory, India was struck into two parts: Pakistan and India. At that point of time a number of princely States were existing in our country. On the basis of all this, our constitution was given a unitary character with federal features. But, it has essentially a federal feature as the State can act in their own rights in many circumstances. The Constitution says that the States and Centre can legislate, execute and run the affairs of this country hand in hand. We have a loose federal structure. What is the necessity of having this sort of Constitution ?

We want our nation to be a strong nation, a nation which when goes into the 21st century would be second to none. That is our basic aim towards which we are striving to develop our country. So, we should see that this particular enactment relates to that aim or it tends to destroy or put obstacles in that goal. We must know that many foreign powers are trying to take advantage of our diverse culture and they are trying to create a rift between different sections of the people. One section of the population is aroused against another section. To take care of all these things we require a strong Centre.

Take the case of Punjab and Jammu and Kashmir. Keeping these States in view, what will happen if enactment was to be accepted. Hypothetically a State Government has now come in Punjab. If this enactment was to be passed then we will not be

[Sh. Sudhir Sawant]

able to do anything in case the Constitutional machinery feals.

Now, I would like to refer to the second aspect and that is law and order. At many places, the State Government have been unable to implement the law. I myself had raised this issue in this House wherein the State Governments and particularly progressive States like Maharashtra, have filed to implement the law. I think that point was brought before this House also. So, what would happen, if the law and order situation breaks down in any State in this country? If this enactment was to go through, then the Centre would be totally unable to do anything. Hence, in the interest of the nation; in the interest of the people; in the interest of the society, the contingencies have been earmarked by the founding fathers of this nation in the Constitution were in the Centre can intervene in a situation. Where the condition becomes impossible to live; where the condition had developed to such an extent where the national interest had been harmed there, the Centre can step in. Whether there is a *mala fide* intention or not, that is the question on which this particular enactment has been introduced. But, that is catered for in this Constitution. It is because, if there is a *mala fide* intention on the part of the Central Government and if it is visible, then electorate is there who can change the situation after every five years. Hence, rather than taking away the powers of the Central Government, it would be better to let as it is.

The next aspect which we must examine is whether this House is at all empowered to legislate on this issue; whether this House is at all empowered to push through this Amendment to the Constitution; and whether this proposed enactment strikes at the very basic structure of the Constitution. I would say that this enactment strikes at the very basic structure of the Constitution and hence it is *void ab initio* and *ultra vires* of the Constitution.

There are two or three reasons for this. Article 53 has clearly mentioner the powers

of the President. When we read Article 53 in conjunction with conjunction with Article 71, it is clear. The executive functions of this country rests in the Central Government and the President is the Constitutional Head and there by, when we come to Article 356 of the Constitution. it gives certain powers to the President which who be used on the advice of the Council of Ministers. When certain contingencies arise in this country wherein the law and order situation or the Constitutional machinery breaks down; the President will take certain powers unto himself or assume to himself all or any of the functions of the Government of the State. Then, all the powers of the State Government will be taken over by the Central Government.

Now, by introducing this particular statement the Council of Minister of the State have lost majority or have adopted measures which will tantamount to subversion of the sovereignty of the country relates only to a particular situation when the Legislature has lost majority. But it does not cater for those particular contingencies which our founding fathers of the Constitution have earmarked clearly in the Constitution and those are the three particular emergencies. Hence, if we were to enact this particular law, then we would take away the powers of the Central Government to act in contingencies in the national interest and thereby-because of this very basic issue where it tries to destroy the power of the Central Government to run this country- I feel that it strides at the very basic structure of the Constitution.

And hence this amendment is *ultra vires* and void *ab initio*. On these grounds, I oppose the proper amendment because India today is on the brink of the industrial revolution. And at this particular point of time, we require to gear up ourselves and the country and integrate the country and face the challenges which are in front of us to go into the 21st century.

SHRI V. DHANANJAYA KUMAR (Mangalore): I rise to support the amendment, proposed by Shri Sudhir Giri and also to endorse the view expressed in support of this amendment.

So much is said about the relationship between the Union and the States. Now in the opening sentence in Article 1, Part I of the Constitution, we find the definition of India. "India, that is Bharat, shall be a Union of states." So, my submission is without the existence of the States there will not be and there cannot be a Union. So, naturally, from this it follows what should be the relationship between the Union and the States.

Now the question is one of the nature of relationship between these independently administered States and the Union within the federal structure contemplated in the Constitution. We will have to gather as to the nature of the independent administration of the states. From the provisions contained in Articles 152 to 237, of the Constitution, the States are given certain powers; they are vested with administrative powers. They have got to discharge certain functions within the framework of the Constitution. Then we have also the provisions for the relationship between the Union and the States. We find these provision in Articles 245-263 of the constitution. Now, with background, we will have to look into the provisions contemplated in Article 356. Article 356 itself would show that it is only an emergency provision. No doubt the Union will have to see that the administrative functions of a States will have be properly discharged within the ambit of the powers given to the States. Now, the amendment proposed by Shri Sudhir Giri would not totally take away the sovereign function of the Union in establishing administration, law and justice in the States also. The provision, as of now, in Article 356 (1) reads as follows:

"If the President on receipt of a report from the Governor of a State of otherwise is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by proclamation....."

Now this Article pertains specially to the carrying on of the Government in a State if

the President who is the Head of the Constitution, who is the Head of the nation, also is of the opinion that the Government of the State cannot be carried on in accordance with the provisions of the Constitution. Then of course, he will have to make certain provisions for the carrying on of the administration of that particular State/territory of our Union.

What is contemplated here through this amendment is, instead of the words, "The Government of the State cannot be carried on in accordance with the provisions of this constitution", the words "Council of the Minister of the State has lost majority or has adopted measures which tantamount to subversion of the sovereignty of the country" shall be substituted.

Now we are living in a democracy. A democratic set up is contemplated in the administration of the States, which are constituted under the Constitution of India. The duly elected government in which the people of that State, the citizens of India have reposed confidence, should it not be allowed to discharge its functions properly to the best satisfaction of the people living within that territory?

In the democratic set up, no doubt, we have political parties, we have political ambitions. But all of us will have to work within the framework of the Constitution. That being the case, the question is, whither, for a moment the Union headed by the President, headed by the President, acting under the advice of the Council of Ministers can think that a government in a State which is duly elected, which has the confidence of the people cannot be carried on in accordance of the provisions of the Constitution.

Now many things are said about the later developments; the experience we gained in the working of the Constitution all these years is there. Commissions after Commissions are appointed to decide the nature of the relationship between the Union and the States, the latest being the Sarkaria commission. My friends from the ruling

[Sh. V. Dhananjaya Kumar]

benches have been giving credit to the late Prime Minister, Shrimati Indira Gandhi, for constituting the Sarkaria Commission. Unfortunately they forget for the moment that the report of the Sarkaria Commission is intentionally kept in the cold storage.

Probably the Government thought that the powers conferred in the Union are being taken away or that they cannot act as they like to take full control of the administration in a particular State, specially with political motives.

The amendment merely says that until and unless it is proved that the Council of Ministers has lost the majority or has adopted a measure which would tantamount to subversion of the sovereignty of the country, the powers vested in the President or the Union shall not be exercised, or shall be exercised with diligence. Sir, he has also proposed the methodology by which the majority of the Council of Ministers is to be assessed. In the proviso he wants to add the following:

"provided that the fact whether the Council of Minister has lost majority shall be proved on the floor of the Legislative Assembly of the State."

Again this fear has been expressed in the light of our experience in the working of the Constitution.

Shri Mohan Singhji has dealing at length as to how the various Government are being appointed at the whims and fancies of the Union and how they have been acting purely under political considerations. We had also seen as to how Governments after Governments in the States were toppled. We have got examples of recent occurrence before us. In the year 1989, the Janata Dal Government in Karnataka headed by Shri Bommali was toppled overnight. In 1991, what had happened in Meghalaya, was being discussed a little while ago. And just now, this House is seized up with the matter pertaining to Manipur, which has happened in 1992.

In the light of all these, this Amendment has been proposed here to decide the confidence in the Council of Ministers in a State Legislature; how it should be decided by the Governors, who are supposed to exercise their functions, their duties, within the framework of the Constitution again within the powers conferred on them by the Order of appointment issued by the President, who is the Head of the Constitution.

So, in all fairness the majority of the Council of Ministers will have to be assessed only on the floor on the floor of the Legislative Assembly. What is wrong in that? Often we use the words "Heaven will not fall if we wait for a moment". Now, the Governors should exercise with due diligence and an opportunity for the duly elected Government in a State to constitute the Legislature and prove their majority on the floor of the Legislature. Otherwise, this provision is very often abused. And the words as of now exist in Sub section 1 of Article 356- "of a report from the Governor of a State or otherwise" are very mischievous. Great stress was laid on the words "or otherwise". Many times, by making use of this power conferred on the Union, the President is made to issue the Proclamation so that the administration of a State is taken into the hands of the Union.

My friend Shri Sudhir Sawant, has been referring to alternation of the basic structure of the Constitution. No doubt we all agree and there have been a number of decisions rendered by the Supreme Court that the basic structure of the Constitution cannot be altered; the basic structure of the Constitution cannot be amended.

Sir, as I have already submitted, this is an emergency provision contemplated to be exercised only in extreme cases wherein the law and order machinery has been broken; wherein the President or the Union feels that the administration of the particular State cannot be carried on without intervention by the Union. Then only, in such extreme cases, the provisions contemplated under Article 356 will have to be exercised. That itself shows that this provision will have to be

exercised with due diligence, with all care and placing certain restraints on the powers that will have to be exercised. In all fairness, the amendments now proposed are very much called for in the present situation.

A fear is expressed that whether this House is competent to carry out such amendments as on date. My submission is that we have seen many provisions of the Constitution is being amended. This is not be one pertaining to the basic structure of the Constitution. By amending the provisions contained in Article 356 we are not, in any way, going to alter the basic structure of our Constitution. We are making an amendment to this provision just to make restraints on the powers which are more often abused to the detriment of the people of a particular State. So, I would make a request to the hon. Minister that let him not take a view that this particular amendment is being moved by a Private Member and it is not being piloted by the Government and let him please accept this amendment and see that these disputes between Union and the States in the matter of administration are settled once for all. If not let the Government itself come up with such an amendment so that the amendment could be carried out by this august House. Thank you very much.

MR. DEPUTY SPEAKER: There are four Members who are eager to participate in this debate. They are also waiting. The time allotted is also coming to an end.

SHRI A. CHARLES (Trivandrum): Sir, it is an important subject. Please extend the time.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI M.M. JACOB): Sir, let us extend the time allotted

MR. DEPUTY SPEAKER: Very good. If the treasury benches are willing I have no objection.

Now Shri Sudhir Ray.

DR. SUDHIR RAY (Burdwan): Mr. Deputy Speaker, Sir, I strongly support the proposal moved by Shri Sudhir Giri. In 1946 when general elections were held all over the Congress party issued a manifesto which promised that India would be turned into a federation and federal government would retain only Defence, External Affairs and Finance and the rest would go to the States. But, unfortunately, when the Constitution was framed, it was seen that the Central government has become very much powerful. The Central List consists of 99 subjects, the State List contains 62 subjects and the concurrent list contains more than 50 subjects. The Constitution laid down that if there is any doubt regarding any subject, that subject would lie in the jurisdiction of the federal government.

Not only this but the office of the Governor was misused by the ruling party at the Centre from the very beginning. Generally leaders who are defeated in the elections, leaders who are ousted from are ousted from the State politics and bureaucrats who retire from civil service are appointed as Governors. They all dance to the tune of the Central Government.

Thus, in 1952 when general elections were held, in the Madras Legislative Assembly the then Progressive Democratic Front consisting of Communist Party and the Krishak Mazdoor Praja Party won the majority. But the then Governor, Shri Sriprakash, who all along a Congressman, opined that a stable Government can be formed only by the Congress Party. Shri Ragagopalachari was nominated as a Member of the Upper House and then he was called upon to form the Government. He was given sufficient time to induce or purchase some Members to join the ruling party. Thus Congress came to power there. But the next year in 1953 in Andhra when there was a talk of forming the Government, Shri Nagi Reddy should have been invited to form the Government as he was the leader of the single largest party, but this Governor Chandulal Trivedi opined that the Government must be formed by a coalition of parties which enjoy the majority in the

[Dr. Sudhir Ray]

Legislature, and therefore, a coalition Government came into existence in Andhra .

SHRI A. CHARLES: When the National Front Government was there, 13 Governors were dismissed at a stroke and they were allowed to continue on daily wages. (*Interruptions*).

SHRI P.C. CHACKO (Trichur): They were keeping the Governors on daily wages. (*Interruptions*).

DR. SUDHIR RAY: Now, Sir, these Governors are pliant tools in the hands of the Central Government and whenever there was any prospect of the Opposition coming into power, they were sending a report under Article 356 that the Government cannot be run in accordance with the principles of the Constitution and up till now the State Government were suspended or overthrown 84 times. Why? Sir, India is a federation and federation implies that the State Governments and the Central Government should enjoy coordinate power and they are equal in their own spheres. But what is the situation in India? It is the Central Government which tries to control the State Governments and Governors were one of the instruments and these Governors often recommended the dissolution of the State Assembly, dissolution of the State Government under Article 356 of the Constitution.

Sir, my previous speakers referred to the case of Kerala when they spoke of the Civil war situation which was sponsored by the Catholic Church, by the tea planters and by the CIA. Ambassador Moynihan's report supports this and then suddenly under Article 356 the Governor's rule was imposed in Kerala.

I do not want to repeat the stories told by Shri Mohan Singh about what happened in 1967 and 1968. Sir, the State Legislatures turned into cattle marts where they were purchased and sold and Governors helped in this process. Whenever the Congress

tried to get into power, they purchased some willing M.L.As. and then it was reported that President's Rule under Article 356 may be lifted and a constitutional government can be formed. Therefore Sir, we know that India is undergoing rapid changes. Rajamannar Commission was debunked one day. Justice Rajamannar gave a voluminous report, but that report was simply struck down. But now Sarkaria Commission has also given its recommendations. And it has been said that the Governor must be above politics. But, Sir, last year the Tamil Nadu Government was overthrown even without a report from the Governor, Saleem.

SHRI A. CHARLES: You had a Government which supported the LTTE.

DR. SUDHIR RAY: You patronised the LTTE, don't talk of LTTE. (*Interruptions*).

SHRI P.C. CHACKO: And you are still in collusion with them. (*Interruptions*).

SHRI ERA ANBARASU (Madras Central): The Congress supported the LTTE for their human rights violation and to get their rights, but not for their terrorist activities. So, they should withdraw their words. (*Interruptions*).

DR. SUDHIR RAY: Therefore, I support Shri Sudhir Giri's Bill because if this article is deleted is deleted forthwith, it will strengthen our Constitution.

SHRI P.C. THOMAS (Muvattupuzha): Mr. Deputy Speaker, Sir I am glad that Shri Sudhir Giri has brought this Bill. This is a Bill which is really thought provoking and which is provoking the conscience of all of us. I would think that this something which will act as a pointer to the political propriety and political honesty of the persons in power. I do not think that even with such an amendment the problem which we are facing can be solved because there must be some kind of residual power with the Central Government in a state of emergency. But the main dispute is when it should be used, how it should be used to what extent and in what manner.

Therefore, what is really called for is a real political honesty on the part of the persons who exercise that power.

Now, the amendment which is brought in, only says that instead of a little change in the sense that it should be restricted to conditions where the Council of Minister has lost the majority or secondly, where the measures which are tantamount to the sovereignty of the country are being taken by the Government. The interpretation goes to an extent of giving it a larger perspective. I would think that it will also be in the same category as in a case where the constitutional machinery has completely flopped. There are so many examples which have been quoted here. We know that the allegations on either side to controvert each other is to show that this power can be used so many times. The persons who were in power were actually misusing this power and used it indiscriminately to cut at the root and in 1977, we had the best example where without assigning any reasons, several State Governments were dismissed. I think the examples which have been quoted here very clearly show that this power had been misused on either side.

MR. DEPUTY SPEAKER: You can continue your speech next time.

17.59 hrs.

CONSTITUTION (AMENDMENT)
BILL*

(Amendment of Eight Schedule)

SHRIMATI DIL KUMARI BHANDARI (Sikkim): I beg to move for leave to introduce a Bill further to amend the Constitution of India.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill further to amend the Constitution of India."

The motion was adopted.

SHRIMATI DIL KUMARI BHANDARI: I introduce the Bill.

MR. DEPUTY-SPEAKER: The House stands adjourned to meet again tomorrow, Saturday 29th February, 1992 at 5 p.m. for the presentation of General Budget.

18.00 hrs

The Lok Sabha then adjourned till Seventeen of the Clock on Saturday, February 29, 1992/Phalguna 10, 1913 (Saka).