


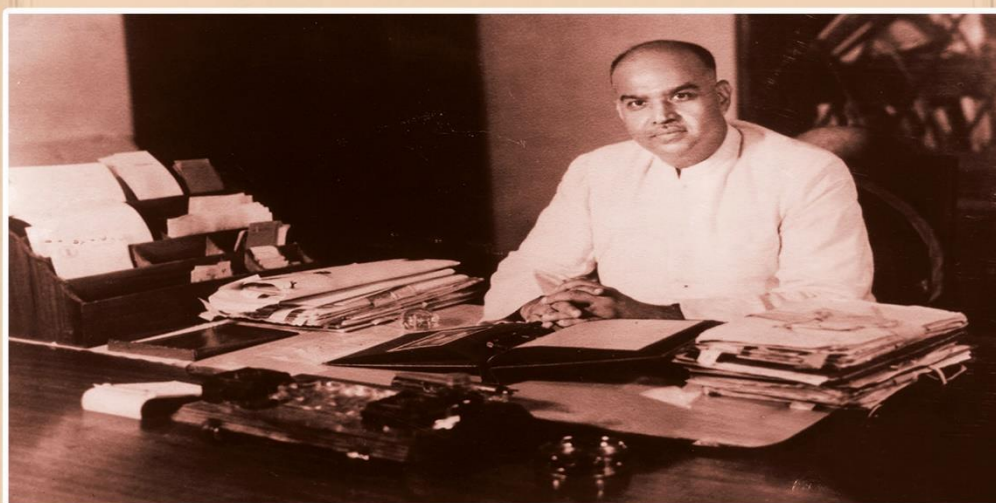
The Parliamentary Debates

Constitution (First Amendment) Bill

OF THE
CONSTITUTION OF INDIA

(16th May, 1951 - 2nd June, 1951)

Preamble  THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN DEMOCRATIC REPUBLIC and to secure to all its citizens:



THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and answers.)
OFFICIAL REPORT
PARLIAMENT OF INDIA
Wednesday, 16th, May, 1951.

The House met at Half Past Eight of the Clock.

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

PAPERS LAID ON THE TABLE

DELIMITATION OF PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES
ORDERS

The Minister of Law (Dr. Ambedkar): I beg to lay on the Table the following Orders made by the President on the 15th May, 1951, under sub-section (3) of section 13 of the Representation of the People Act, 1950:

- (1) The Delimitation of Parliamentary and Assembly Constituencies (Assam) Order, 1951.
- (2) The Delimitation of Parliamentary and Assembly Constituencies (Bihar) Order, 1951.
- (3) The Delimitation of Parliamentary and Assembly Constituencies (Orissa) Order, 1951.
- (4) The Delimitation of Parliamentary and Assembly Constituencies (West Bengal) Order, 1951.
- (5) The Delimitation of Parliamentary and Assembly Constituencies (Hyderabad) Order, 1951,
- (6) The Delimitation of Parliamentary and Assembly Constituencies (Madhya Bharat) Order, 1951.

(7) The Delimitation of Parliamentary and Assembly Constituencies (Patiala and East Punjab States Union) Order, 1951.

(8) The Delimitation of Parliamentary and Assembly Constituencies (Rajasthan) Order, 1951.

(9) The Delimitation of Parliamentary and Assembly Constituencies (Saurashtra) Order, 1951.

(10) The Delimitation of Parliamentary and Assembly Constituencies (Travancore-Cochin) Order, 1951.

(11) The Delimitation of Parliamentary Constituencies (Part C States) Order, 1951.

Mr. Speaker: I have to inform hon. Members that copies of certain Orders made by the President regarding Delimitation of Constituencies, which have just now been laid on the Table, will be placed in the Parliamentary Notice Office as soon as they are received from the press today. Hon. Members may obtain a copy of each of these Orders on request.

Shri Sonavane (Bombay): Certain Orders relating to the other States have not yet been placed. May I know by what time these Orders will be placed on the Table by the Government?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): So far as I know, three-fourths of the Orders have already been placed. The four or five that remain will probably be placed by day after tomorrow.

Shri Kamath (Madhya Pradesh): May I know what procedure will be adopted by this House for the discussion or consideration of these Orders?

Mr. Speaker: The hon. Member will note the provision of Act which does not say, so far as I remember now, that the Orders are open to discussion. The only point provided for is that they are subject to such modifications as Parliament would like to make on a motion made within 20 days. So, a motion has to come from those who want to have a modification in any of these Orders. It is not that these orders are open to discussion generally. It is only the modification desired that should be discussed in this House and if the House decides that we should modify the Order, the Order will stand modified.

Shri Kamath: Twenty days, inclusive or exclusive of.

Mr. Speaker: We shall decide that question if it arises.

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Dr. Deshmukh (Madhya Pradesh): Sir, before you go to the next item, may I rise on a point of order, which I was going to raise during the Question Hour? The point of order is: When an hon. Minister replies to a question and when even you are pleased to remark that you do not follow the answer or understand the answer, whether that should be considered as a satisfactory state of affairs and you should pass on to another question. That is the point of order which I wish to raise and which arises out of the questions answered this morning.

Mr. Speaker: When I said that I could not follow, what I meant was that I did not hear, because, as I have very often said, there are always loud conversations going on all sides of the Chamber and it becomes difficult for the Chair to catch each question and each answer. So, that disposes of the first part. When I said that we should go on to the next question and that it was no use putting further questions, it was not because the hon. Minister had no answer, but because the matter was not of importance certainly to justify taking more time of the House.

Dr. Deshmukh: With due respect...

Shri Kamath (Madhya Pradesh): That was my difficulty too. I did not hear and so I wanted to know whether.....

Mr. Speaker: Order, order; the point of order has been raised and the Chair has ruled; the matter ends there.

Shri R. K. Chaudhuri (Assam): Before you go to the next item, sir may I draw your attention to the fact that we have received copies of a letter addressed to the President of India by the Naga National Council stating that they are holding today, the 16th.....

Mr. Speaker: Order, order. He may raise the point in the House in a different manner. I believe reference to that point was made by the hon. Home Minister. He may have received any letter. Every Member of Parliament has received letters including myself. It is a question, really speaking, of discussing the matter privately first with the hon. Prime Minister because he is incharge of External Affairs. Then, there is the hon. Home Minister. The hon. Members may get information and then if they are dissatisfied and have to raise any further points, they have to request the Chair for

admission of a question or in any other form which may be open to them. Hon. Members will realise that it should be the anxious concern of everyone in this House not to speak or riot to convey information which is likely to disturb the atmosphere of peace in any way, in any part of the country or the world. Therefore, merely because a letter has been received, just to rush with that letter in the House is not, I think, proper procedure. Let us proceed in this matter as responsible men who want to have peace everywhere in the world. That is the only thing which I can say. I believe sufficient information was given the other day when the hon. Home Minister made a statement in this House and said that is desirable or better—I am not quoting his exact words—that this question is not discussed here. That is what he said.....

Shri R. K. Chaudhuri: Today is the 16th. May, I know.....

Mr. Speaker: Order, order. Whatever it is, let us trust those who are in charge of Government, that they are alive to this kind of thing. Let us not be guided by reports, circulars and letters that come to us.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): I beg to move:

"That the Bill to amend the Constitution of India be referred to a Select Committee consisting of Prof. K. T. Shah, Sardar Hukam Singh, Pandit Hirday Nath Kunzru, Dr. Syama Prasad Mookerjee, Shri Naziruddin Ahmad, Shri C. Rajagopalachari, Shri L. Krishnaswami Bharati, Shri Awadheshwar Prasad Sinha, Shri T. R. Deogirikar, Dr. B. R. Ambedkar, Shri V. S. Sarwate, Shri MohanlalGautam, Shri R. K. Sidhva, Shri Khanduhhai K. Desai, Shri K. Hanumanthaiya, Shri Raj Bahadur, Shrimati G. Durgabai, Shri Manilal Chaturbhai Shah, Shri Dev Kanta Barooah, Shri Satya Narayan Sinha and the Mover with instructions to report on Monday the 21st May, 1951."

This Bill is not a very complicated one; nor is it a big one. Nevertheless, I need hardly point out that it is of intrinsic and great importance. Anything dealing with the Constitution and change of it is of importance. Anything dealing with Fundamental Rights incorporated in the Constitution is of even greater importance. Therefore, in bringing this Bill forward, I do so and the Government does so in no spirit of light-

heartedness, in no haste, but after the most careful thought and scrutiny given to this problem.

I might inform the House that we have been thinking about this matter for several months, consulting people, State Governments, Ministers of Provincial Governments, consulting, when occasion offered itself, a number of Members of this House, referring it to various Committees and the like and taking such advice from competent legal quarters as we could obtain, so that we have proceeded with as great care as we could possibly give to it. We have brought it forward now after that care, in the best form that we could give it, because we thought 'what the amendments mentioned in this Bill are not only necessary, but desirable, and because we thought that if these changes are not made, perhaps not only would great difficulties arise, as they have arisen in the past few months, but perhaps some of the main purposes of the very Constitution may be defeated or delayed. In a sense this matter, of course, has been mentioned rather vaguely and has been before the public for some time. But in the precise form that it has been raised in this Bill, it came up only when I introduced this Bill in the House a few days ago.

There have been quite a number of criticisms of various kinds. There have been criticisms not only in our own country, as they should be but also in some foreign countries, where some of, our friends or those who were our friends have got into the habit of criticising whatever we might do. If we seek peace it is criticised. If we do something else, they say that we are not peaceful. And so, as I said, there has been a good deal of criticism and we welcome this criticism, because in a matter of this kind, the greater the scrutiny the better. And may I say that it is with no desire to hurry this that I have mentioned an early date for the report of the Select Committee. I do not myself see how a prolongation of this date for a relatively simple Bill, however important, enables us to give greater thought to it. Such thought and experience that we have with regard to the three or four articles, surely, can be brought to bear on the question within a few days; and even if we make the few days into a few weeks, it is not going to increase the amount of concentrated attention or thought that we might give it.

Now, various types of criticisms have been raised. One of them is a rather curious one namely that this House having been elected on a narrow franchise, not being really representative of the country and of the organised will of the community, is not justified or it is not proper for it to deal with such amendments. I seem to remember those very people who raise this criticism criticising the right, not of this particular House, but nevertheless, very much the same House which preceded it, criticising the Constituent Assembly for daring to draft the Constitution for India, because they were elected on a certain franchise. Now, that Constituent Assembly which has gone into the history of India is no more; but we who sit here, or nearly all of us, still continue that tradition, that link. In fact, it is we after all, who were the Constituent Assembly and who drafted this Constitution. Then we were not supposed to be competent enough to draft the Constitution. But now, the work we did was so perfect that we are not now competent enough to touch it! That is rather an, odd argument. We have come up here, naturally because after the experience of a year and a half or so; we have learned much. We have found out some, if I may say so, errors in drafting or in possible interpretations to be put on what we had drafted. That is but natural. And the House will also remember that when this matter of the Constitution was being considered in the Constituent Assembly, a clause or an article was proposed, that within a space of five years any changes in the Constitution should be relatively easy, that the normal procedure laid down need not be followed, but an easy procedure should be followed. Why? Because it was thought—and if I may say so, rightly thought—that after a little while many little things may come to our notice which did not come up in the course of the debate, and we could rectify them after that experience, with relative ease, so that after this preliminary experience, the final shape may be more final and there would be no necessity for extensive amendments. However, that particular clause unfortunately—if I may say so with due respect—was dropped out. Nevertheless, so far as this House is concerned, it can proceed in the manner provided by the Constitution to amend it, if this House so chooses.

Now, there is no doubt that this House has that authority. There is no doubt about that, and here, I am talking not of the legal or constitutional authority, but of moral authority, because it is, roughly speaking, this House that made the Constitution. We

are not merely technically, the inheritors of the fathers of the Constitution. We really shaped it and hammered it after years of close debate. Now we come to this House for amendments because we have noticed some lacunae. We have noticed that difficulties arise because of various interpretations. It has been pointed out to us by judicial interpretations that some of these lacunae exist. Now, let me say right at the outset that so far as the interpretation of the Constitution is concerned, it is the right and privilege of the highest courts of the land to do it, and it is not for us as individuals or even as a Government to challenge that right. The judiciary must necessarily stand above, shall I say, political conflicts and the like, or political interpretations. They have to interpret it in the light of the law and with such light as they can give to it. We respect that and we must obey that. But having followed that interpretation, it becomes our business as Parliament to see whether the purpose we aimed at is fulfilled, because if it is not fulfilled, then the will of the community does not take effect. And if the will of the community ultimately does not take effect, then serious difficulties might arise at any time. And more so at a time like this when powerful and dynamic forces are at work, not merely in India, not merely in Asia, but all over the world, when changes take place and when we cannot think in terms of anything being static and unchanging. Therefore, while fully respecting what the courts of the land have laid down and obeying their decisions, nevertheless it becomes our duty to see whether the Constitution so interpreted was rightly framed and whether it is desirable to change it here and there so as to give effect to what really in our opinion was intended or should be intended. Therefore I come up before this House, not with a view to challenge any judicial interpretation, but rather to find out and to take the assistance of this House in clearing up doubts and in removing certain approaches to this question which have prevented us sometimes from going ahead with measures of social reform and the like. This House knows very well that there are many kinds of Constitutions in the world. There is the Constitution which is not written down, for instance, the Constitution of the United Kingdom where Parliament is absolutely supreme and can do and say what it likes and that is the law of the land, and no court can challenge it, however they may interpret the law. Then there is the written Constitution like the Constitution of that great country—the United States of America—where the Constitution to some extent,

limits the authority of the legislature in so far as certain Fundamental Rights or other provisions are given in it. Now, in the United States of America, by a long course of judicial decisions, healthy conventions have been laid down and the power of the legislature has been widened somewhat. Because of the interpretations by high judicial authority and because of those conventions, the extreme rigidity that perhaps the written word might have given it has been made more flexible in the course of generations. I have no doubt that if we live through a static period, gradually those conventions would arise here too, relaxing that extreme rigidity of the written word and that our courts would help relaxing that rigidity. But unfortunately we have no time. It is barely a little more than a year since, we started functioning under this Constitution. And to begin with therefore, it is only the written word in all its rigid aspects that apparently counts and not the many inner meanings that we sought to give to it. So we are deprived of that slow process of judicial interpretation and development of conventions which the other countries with the written Constitutions have gone through like the United States of America. Therefore because we live in these rapidly changing times, we cannot wait for that slow process. We have to give a slightly different shape to the written word. In effect we do what in the normal course judicial interpretation might have done and probably would have done and we come up before this House for that purpose.

A great deal has been said about the desire of this Government to put any kind of curb or restraint on the freedom of the citizen or Press or of groups. First of all, may I remind the House that this Bill only perhaps clears up what the authority of Parliament is. We are not putting down any kind of curb or restraint. We are removing certain doubts so as to enable Parliament to function if it so chooses and when it chooses. Nothing else happens when this Bill is passed except to clarify the authority of Parliament. May I also point out to this House that we in this Government and we in this House, have not got a very long life. This session is coming to a close and after this session there is likely to be a brief session again before the General Elections take place in this country. This present Parliament will give place to another—a larger one, perhaps a different one. The Government may give place to another, and whatever changes we may make in the Constitution to-day, it is highly unlikely that this

Government or this Parliament -will, take advantage of them by passing laws to that effect, unless some very severe crisis, national or international, arises. In effect, therefore, it is not this Government that is trying to seek power or consolidate itself and certainly I do repudiate the suggestion which has been made here and there that any of these amendments are meant to be utilized for political or party purposes. Because nothing could be farther from our thought and indeed, from the practical point of view, the House will observe that that can hardly be done. We do wish, when we walk away from this present scene before the election or after to leave something for the succeeding Parliament and for the younger generation that will come up—something that they can wield and handle with ease for the advancement of India and not something which will come always in their way and deflect them from the set purpose we have in view. Therefore, it is from this point of view that we have put forward this Bill.

The House is seized of this Bill and no doubt hon. Members have noticed the various proposals made therein. A number of amendments might be called rather secondary in importance—not concerning any vital matters of principle. I shall point them out to the House a little later. They are not of great importance but they have come up before us because of certain difficulties which we have experienced. For instance if I may mention one particular difficulty, one of the articles—for the moment—I forget the number—lays down that this House should meet twice a year and the President should address it. Now a possible interpretation of that is that this House has not met at all this year. It is an extraordinary position considering that this time this House has laboured more than probably at any time in the previous history of this or the preceding Parliament in this country. We have been practically sitting with an interval round about Xmas since November and we are likely to carry on and yet it may be held by some acute interpreters that we have not met at all this year strictly in terms of the Constitution because we started meeting in November and we have not met again—it has not been prorogued—the President has not addressed Parliament this year. Put it in the extreme way, suppose this House met, for the full year without break except short breaks, it worked for 12 months, then it may be said under the strict letter of the law that it has not met at all this year. Of course that article was meant not

to come 'in the way of our work but to come in the way of our leisure. It was indeed meant and it must meet atleast twice a year and there should not be more than six months' interval between the meetings. It did not want any Government of the day simply to sit tight without the House meeting. Therefore it wanted to compel it by the force of the Constitution and meet atleast twice a year but without a big gap. That again by interpretation leaves the curious situation that if you continue meeting, you do not meet at all!

Shri Kamath (Madhya Pradesh): Calendar year or financial year?

Shri Jawaharlal Nehru: Totally immaterial. It does not much matter which you consider. (Shri Kamath: It does matter sometimes); The point is presumably we deal with the calendar year in such matters. So, you will see three or four amendments really deal with this. That is to say, two of them deal with Parliament and two deal with the State Assemblies because the same rule affects them also. There are one or two other matters which are rather minor. I might as well refer to them before I go to the more important one. Article 85 is the article to which I have referred about the sessions of Parliament, prorogation and dissolution. Article 87 is the consequential one to change. So also articles 174 and 176 apply to State Assemblies in the same way in regard to a Governor summoning them twice a year. Then articles 341 and 342 relate to notification of scheduled tribes and castes by the President. Here it is really a verbal change to make it clear because some States have not got Rajpramukhs etc. Article 372 relates to the adaptation of laws where it is sought to increase the period from two to three years. Article 376—the last one—enables Government to appoint a Chief Justice even though he might not be a citizen of India.

These are relatively minor points. The real important provisions which I am putting before the House relate to articles 19 and 31. There is also article 15 with which I will deal first. In article 15 it is sought to add certain words. Perhaps it might appear that these words might almost be considered redundant Nevertheless it has been considered desirable to add them and I am not quite sure if a slight further addition would not even be better to make it quite clear.

The real difficulty which has come up before us is this. The Constitution lays down certain Directive Principles of State Policy and after long discussion we agreed to

them and they point out the way we have got to travel. The Constitution also lays down certain Fundamental Rights. Both are important. The Directive Principles of State Policy a dynamic move towards a certain objective. The Fundamental Rights represent something static, to preserve certain rights which exist. Both again are right. But somehow and sometime it might so happen that that dynamic movement and that static standstill do not quite lit into each other.

A dynamic movement towards a certain objective necessarily means certain changes taking place: that is the essence of movement. Now it may be that in the process of dynamic movement certain existing relationships are altered, varied or affected. In fact they are meant to affect those settled relationships and yet if you come back to the Fundamental Rights they are meant to preserve, not indirectly, certain settled relationships. There is a certain conflict in the two approaches, not inherently, because that was not meant, I am quite sure. But there is that slight difficulty and naturally when the courts of the land have to consider these matters they have to lay stress more on the Fundamental Rights than on the Directive Principles of State Policy. The result is that the whole purpose behind the Constitution, which was meant to be a dynamic Constitution leading to a certain goal step by step, is somewhat hampered and hindered by the static element being emphasised a little more than the dynamic element and we have to find out some way of solving it.

The amendment which I seek to move is, to be quite frank with the House, not a solution of the basic problem which will come up before the House in various shapes and forms from time to time. But it does lay stress on one small aspect of it.

May I also point out and try to remove a possible misconception that might be in the minds of some hon. Members. They might think that this is perhaps a devious method to bring in some kind of a communal element in the consideration of this problem. I want to make it perfectly clear that so far as Government are concerned they do not wish to have any truck with communalism in any form. But You have to distinguish between backward classes which are specially mentioned in the Constitution that have to be helped to be made to grow and not think of them in terms of this community or that.

Only if you think of them in terms of the community you bring in communalism. But if you deal with backward classes as such, whatever religion or anything else they may happen to belong to, then it becomes our duty to help them towards educational, social and economic advance. Naturally that advance is not meant to be, if I may say so, at the expense of the others. We want to pull people up and not pull them down. But sometimes in this intervening period difficulties arose, because we have not got enough provision, let us say, for giving a certain type of education, technical or other. The question arose whether we should give some reasonable encouragement and opportunity for that education to be given to members of the backward classes, which otherwise, without that encouragement and opportunity, they may not get at all, so that they remain where they are and we cannot pull them up. Therefore the object of this amendment is to lay stress on this.

The House may remember article 29 (2) which says that no one by reason of his religion, etc., etc., should be kept out of an educational institution. That is a fundamental thing by which this Constitution stands and we must stand by it. There is no question of going behind that. What I submit is, respecting that we have also to respect that fundamental directive of this Constitution and the fundamental aims of our policy, that we must encourage and help those who are backward to come up and give them proper training and proper opportunities of social and economic advance.

The essential difficulty is this. The whole conception of the Fundamental Rights is the protection of individual liberty and freedom. That is a basic conception and to know wherefrom it was derived you have to go back to European history from the latter days of the 18th century; roughly speaking, you may say from

the days of the French Revolution which spread on to the 19th century. That might be said to be the dominating idea of the 19th century and it has continued and it is a matter of fundamental importance. Nevertheless, as the 19th century marched into the 20th century and as the 20th century went ahead, other additional ideas came into the field which are represented by our Directive Principles of State Policy. If in the protection of individual liberty you protect also individual or group inequality, then you come into conflict with that Directive Principle which wants, according to your own Constitution, a gradual advance, or let us put it another way, not so gradual but more rapid advance, wherever possible to a State where there is less and less inequality and more and more equality. If any kind of an appeal to individual liberty and freedom is construed to mean as an appeal to the continuation of the existing inequality, then you get into difficulties. Then you become static, un-progressive and cannot change and you cannot realise that ideal of an egalitarian society which I hope most of us aim at.

These problems arise and I have mentioned them to the House, not because they arise out of the little amendment that I propose but at the back of these problems they are there and we have to come to grips with them. If this particular amendment can be somewhat varied I should welcome it. In the Select Committee or elsewhere some few words may perhaps make the meaning clearer which I have sought to put before the House and I would personally welcome it.

Then we come to the two main articles which have to be dealt with in this Bill. Article 19 deals with the Fundamental Rights regarding freedom of speech etc. It has been said that this Government seeks to curb and restrict the freedom of the Press. Hon. Members are fully aware of the state of affairs today. I do, not think there is any country in the world at the present moment where there is so much freedom—if I may use that word for the moment—in regard to Press publications as in India. I have frequently given expression to my appreciation of the way responsible journals in this country are conducted. I should like to say so again. But I have also drawn attention to the way the less responsible news-sheets are conducted, and it has become a matter of the deepest distress to me to see from day to day some of these news-sheets which are full of vulgarity and indecency and falsehood, day after day, not injuring me or this

House much, but poisoning the mind of the younger generation, degrading their mental integrity and moral standards. (*Hon. Members*: Shame, shame.) It is not for me a political problem but a moral problem. How are we to save our younger generation from this, progressive degradation and poisoning of the mind and spirit? From the way untruth is bandied about and falsehood thrown about it has become quite impossible to distinguish what is true and what is false. Imagine our younger generation in the schools and colleges reading this, imagine, I ask this House, our soldiers and our sailors and our airmen reading this from day to day. What kind of impression do they carry?

Yes, we can satisfy ourselves that we have got the completest freedom of the Press. That is true. But freedom like everything else, and more than everything else, carries certain responsibilities and obligations and certain disciplines, and if these responsibilities and obligations and disciplines are lacking then it is no freedom, it is the absence of freedom, whether an individual indulges in it or a group or a newspaper indulges or anyone else.

For my part, as I grow in years I become more and more convinced that one cannot deal with any major problem, whether it is international or national, by simply relying on coercive processes. More and more I have come to realise that. I know of course that essentially, or at any rate a part of the duty of a Government is a duty to coerce the evil doer according to the laws of the land. That is true. And till we rise to higher levels a Government will always have that duty. I know that it is the duty of a Government to protect the freedom of the country from external, invasion, by keeping armies and navies and the like. And so, in spite of my deep and almost instinctive belief that this kind of violence does not solve the problem, yet, having responsibility, I have to rely on those coercive processes, on the army and the navy etc., and keep them in the most effective and efficient way that we can. Therefore, it is not with any idea of trying to improve, if I may say so, the morals of the country by coercive processes that I approach this question. I do not believe that morality is improved by coercive processes whether in the individual or in the group. Nevertheless, when there is a total lack or a great lack of those restraints which make up civilisation, which go behind any culture, whether it is of the East or the West, when there is no sense of

responsibilities and obligations, what are we to do? How are we to stop that corroding influence, that disintegrating process that goes on?

Now, I am in a difficulty. This particular amendment is not, let me remind the House, a law curbing or restraining anybody. All these amendments are enabling measures merely clarifying the power of Parliament which might be challenged or has been challenged in regard to some matters. Things remain, so far as the law is concerned exactly as they were, so long as this Parliament or a future Parliament does not take some action after due thought. I have never heard of anyone saying that in the United Kingdom there is no freedom of the Press or freedom of anything because Parliament is all-powerful—I have never heard that said. It is only here we seem not to rely on ourselves, not to have faith in ourselves, in our Parliament or our Assemblies, and rely, just as some of us may have relied on external authority like the British power of old days; we rely on some external authority—maybe geographically internal—and not perhaps have faith in this Parliament. After all, the responsibility for the governance of India, for the advancement of India lies on this and future Parliaments, and if this Parliament or future Parliaments of India do not come up to expectations, fail in their great enterprise then it would not be good for India, and nobody else would preserve India from going towards misfortune. So that you rely on this Parliament for the biggest things, and yet you come and tell us, "Do not trust this Parliament because it may do something wrong, it may do something against the Constitution." So, I would beg the House to remember that this Bill does not bring in any offence, any curb, any restraint. It is an enabling measure clarifying the power of Parliament to deal with the matter. To what extent, is another matter and I shall go into it.

As I have said, I have a difficulty in dealing with, let us say, the Press. The Press is one of the vital organs of modern life, more especially in a democracy. The Press has tremendous powers and tremendous responsibilities. The Press has to be respected, the Press has to be co-operated with. In a somewhat varied career I have sometimes considered myself also a bit of a journalist and a Pressman. So I approach this question not as an outsider but to some extent as an insider also, with full sympathy for the difficulties that journalists and newspaper men and editors have to face. But

then, what is the Press; those great organs of national opinion, or some two-page news-sheet that comes out overnight from time to time without regularity, full of abuse, sometimes used even for blackmailing persons? What is the Press? Is that news-sheet the Press or the great national organs or the hundreds and thousands of periodicals and newspapers in between? What standard have I to devise? Everything is the Press. Nobody thinks of restraining the freedom of the responsible organs unless some very extraordinary thing occurs. But what are we to do with these little sheets that come out from day to day and poison and vitiate the atmosphere? As I said, it is a difficult thing and a dangerous thing. And power and responsibility do not go together. A Prime Minister of the United Kingdom once, referring to certain types of the Press, said that they had the harlot's privilege of power without responsibility. Well, there it is. One has to face the modern world with its good and bad, and it is better, on the whole, I think, that we give even licence than suppress the normal flow of opinion. That is the democratic method. But having laid that down, still I would beg to say that there is a limit to the licence that one can allow at any time, more so at times of great peril and danger to the State. At the present moment it is our good fortune that in spite of difficult problems in the country, we function normally; we function in this Parliament normally; we function in State Assemblies more or less normally; the machinery of Government goes on: the administration goes on and we try as best we can to face the problems. Yet we live at a time of grave danger in the world, in Asia, in India. No man can say what the next few months may bring, the next few months, or if you like, the next year—I am not thinking of the election, but rather of other happenings that are bigger than elections. Now at this moment when great countries—not to mention smaller ones—even great countries think almost of a struggle for survival when they think that in spite of their greatness and power they are in danger, all of us have to think in terms of survival. And when a country is face to face with grave problems and questions, from the national point of view, of life and death and survival, then there is a certain priority and a certain preference in the way of doing things.

As the House knows, when there is a great war on and your country is involved in it, one has to deal with the situation somewhat differently than otherwise. Today,

although there is no great war of that type, although we hope that no great war will come, and even if it comes we hope we shall be out of it; even so, war or no war, we live in a kind of pre-war state of deep crisis and we have to suffer the consequences of it. So, in this critical stage where always there is the question of survival, we cannot function loosely, inefficiently, without discipline, without responsibility, without thinking of our obligations. Therefore, it becomes necessary to give power to this Parliament, or to the future Parliament, which will represent the organised will of the community in India to take in a time of crisis such steps as it chooses. To prevent us from doing so is to deceive yourself and not to have faith in yourself and to be unable to meet a crisis when it arises and thereby perhaps do great injury to the cause we represent.

Now, what are these wonderful amendments which are said to be curbs and restraints on the Press? In the main, the amendment to article 19, clause (2) that we suggest, contains three new phrases. The three phrases are; friendly relations with foreign States, public order and incitement to an offence. All the rest practically, apart from minor changes in the words, are in the old clause (2). The new clause reads thus:

"(2) Nothing in sub-clause (a) of clause (1) shall affect, the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, restrictions on the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, contempt of court, defamation or incitement to an offence."

The three novel words or sets of words, compared to the old phraseology are: friendly relations with foreign States, public order and incitement to an offence. Let us now examine them. For the moment, as I said, it is only an enabling measure giving power to Parliament. But let us go beyond that. Does it involve any radical attack on the basic conception of the Fundamental Rights? Take the first thing—foreign relations. Now if anyone thinks that this is meant to stifle criticism of foreign countries, certainly it is not my intention and I am quite sure not of my Government. Ultimately, of course, if such a matter arises, it will be the subject of legislation that Parliament

will frame. We are not framing legislation here. We can only indicate that such a thing can be legislated about. Nobody wants it. At the same time, this House will realise that at this particular moment of a very delicate international situation and tension, we cannot easily take the risk when something said and done, not an odd thing said and done, but something said and done repeatedly and continuously, may lead in regard to foreign countries to the gravest consequences, may lead to our relations with that foreign country deteriorating rapidly. It is a power which every Government possesses and deals with. It is certainly a power which can be used or misused—it is true. But that question has to be examined when that particular power is granted. All that is said here is that the authority to deal with this matter should vest with Parliament and should not be taken away. Surely, no Member in this House is prepared to say, I hope, that this House should not have the authority to deal with this matter when grave international issues are involved, when something written or said continuously may endanger the peace of the world or our country. It is a very serious matter, that we cannot stop it. What steps to take and how to take them are matters for careful determination when the question arises. Unless this House has the authority to deal with it, the situation cannot be faced and we would be simply helpless to prevent a steady deterioration and disintegration of the situation.

Then the other things are public order and incitement to an offence. Again these are words which may mean more or less—it is perfectly true. If such words were used in an actual piece of legislation, they have to be examined strictly as to how far they go and what powers they confer on the executive. But when you use them here in the sense of enabling Parliament to take steps, then you should use some general phrase not limiting the power of Parliament to face a situation. But when it brings any legislation to that effect, then examine it thoroughly and carefully. It is clear that the original clause, as interpreted by superior courts in this country, has put this Government, or would put any Government, into a very difficult position. The House knows—and it is mentioned in the Statement of Object and Reasons—that one of the High Courts held that even murder or like offences can be preached. Now it is an extraordinary state of affairs if that can be done. It may be and I am quite sure it would be in the long run, as in other countries, that judicial interpretation would

gradually bring things more in line with which I would beg to say is the spirit of the Constitution.

Prof. Ranga (Madras): Was it an Indian Judge who said that even murder could be preached?

Shri Jawaharlal Nehru: I do not remember his nationality; I cannot say.

An Hon. Member: It was a Punjab Judge.

Shri. Jawaharlal Nehru: But I do not think we should go into that question.

Pandit Krishna Chandra Sharma (Uttar Pradesh): That position has been rejected by the Supreme Court.

Shri Jawaharlal Nehru: I have no doubt that in course of time with the help of the highest courts in the land we would develop conventions eventually which would widen the authority of the Legislature to deal with them as the United States of America has done. The unfortunate part is that we just cannot wait for a generation or two for these conventions etc. to develop. We have to deal with the situation today and tomorrow, this year and the next year. Therefore the safest way is not to pass legislation in a hurry but to enable Parliament to have authority to deal with such matters. Personally I confess my own belief is that it is better in any event and always for Parliament to have a large measure of authority, even the authority to make mistakes and go to pieces. Certainly I realise that in conditions as they exist in India today the exact form, let us say, and of the Constitution of the United Kingdom is not applicable. We are too big a country, too varied a country. We have to have a kind of federation, autonomous States and the like. Therefore it is inevitable that we should have a written Constitution. We have got it, and it is a fine Constitution. Gradually as we work it, difficulties appear. As wise men we deal with them and change it.

Here may I say, in connection with the use of the coercive apparatus of the State to deal with these problems, it has been our misfortune in the past two or three years to have had to use it in a variety of ways? We have had to use it because, practically speaking, we have had sometimes to face a challenge which can only be comparable to the challenge of war. The challenge may have come internally, but it was a challenge to the State as a war challenge is, that is by violence and by violent effort. We had to face it—as every State has to face it—by the organised strength of the

State, whether it is the police or the military strength, whether it was in Telangana or wherever it may be. Yet I should like to remind the House in this connection of Telangana which I mentioned that we have recently seen—and the thing is happening today—another way of meeting this type of situation, a peaceful way, a non-violent way. We have been seeing the frail figure of Vinobha Bhave marching singly into Telangana and by his words and by his action producing a tremendous effect on the people there and possibly even in the immediate present producing much more effect than any armed force could have done and certainly, if that is so in the immediate present, taking a longer view, must certainly be doing more because the effect of the armed force is good for the time being but in the long run it may not be so good; it may leave a bad trail of memories.

Now I shall proceed with the other article, the important one, namely article 31. When I think of this article the whole gamut of pictures comes up before my mind, because this article deals with the abolition of the zamindari system, with land laws and agrarian reform. I am not a Zamindar, nor am I a tenant. I am an outsider. But the whole length of my public life has been intimately connected, or was intimately connected, with agrarian agitation in my Province. And so these matters came up before me repeatedly and I became intimately associated with them. Therefore I have a certain emotional reaction to them and awareness of them which is much more than merely an intellectual appreciation. If there is one thing to which we as a party have been committed in the past generation or so it is the agrarian reform and the abolition of the zamindari system.

Shri Hussain Imam (Bihar): With compensation.

Shri Jawaharlal Nehru: With adequate and proper compensation, not too much.

Shri Hussain Imam: 'Adequate' is quite enough.

Shri Jawaharlal Nehru: Now, apart from our commitment, a survey of the world today, a survey of Asia today will lead any intelligent person to see that the basic and the primary problem is the land problem today in Asia, as in India. And every day of delay adds to the difficulties and dangers, apart from being an injustice in itself. There are many ways of dealing with this problem. We have seen in many countries this problem being dealt with quickly and rapidly and without any check, either by

expropriation absolute or by some middle way of part expropriation and part nominal compensation, whatever it may be. Anyhow they have dealt with it rapidly. And where they have done so they have produced a new stability. I am not going into the justice or injustice of it but am looking at it purely from the point of view of stability. Of course if you go into, the justice or injustice, you have to take a longer view, not the justice of today but the justice of yesterday also. But we adopted another method. and I think we rightly adopted that method, of trying to deal with it not in such a hurry but as adequately—after full thought and consideration of all interests—as we could, and the giving of compensation. Now, I am not going into those questions, but it is patent that when you are out basically to produce certain equality, when you are out to remedy inequalities, you do not remedy inequalities by producing further inequalities. We do not want anyone to suffer. But, inevitably, in big social changes some people have to suffer. We have to think in terms of large schemes of social engineering, not petty reforms but of big schemes like that. Now, if all our schemes like that are stopped--maybe rightly stopped, maybe due to a correct interpretation of the law and therein too the lawyers differ and even Judges have differed—again, I have no doubt that we have a generation to wait for things to stabilize. Then, we will have the help of the High Courts of the land, but we cannot wait. That is the difficulty. Even in the last three years or so some very important measures passed by State Assemblies and the rest have been held up. No doubt, as I said, the interpretation of the courts must be accepted as right but you, I and the country has to wait with social and economic conditions—social and economic upheavals—and we are responsible for them. How are we to meet them? How are we to meet this challenge of the times? How are we to answer the question: For the last ten or 20 years you have said, we will do it. Why have you not done it? It is not good for us to say: We are helpless before fate and the situation which we are to face at present. Therefore, we have to think in terms of these big changes, land changes and the like and therefore we thought of amending article 31. Ultimately we thought it best to propose additional articles 31A and 31B and in addition to that there is a Schedule attached of a number of Acts passed by State Legislatures, some of which have been challenged or might be challenged and we thought it best to save them from long delays and these difficulties, so that this

process of change which has been initiated by the States should go ahead. Many of us present here are lawyers and have had some training in law which is a good training and many of us respect lawyers. But nevertheless a lawyer represents precedent and tradition and not change, not a dynamic process. Above all, the lawyer represents litigation.....

Shri Kamath: You have also been a lawyer.

Shri Jawaharlal Nehru: ...just as, if I may say so with all respect, that in the modern system of treating disease the doctor is rightly interested in disease.....

Shri Hanumanthaiya (Mysore): May I say that a judge presides over litigation?

Mr. Speaker: Order, order. Let him proceed.

Shri Jawaharlal Nehru: Somehow we have found that this magnificent Constitution that we have framed was later kidnapped and purloined by the lawyers.

Shri Gautam (Utter Pradesh): It is a paradise for them.

Shri Jawaharlal Nehru: Yes. I do not grudge anyone entering paradise but what I do object to is the shutting of the door and of barring and bolting it and preventing others from coming in. The other day I was reading an article about India by a very eminent American and in that article which contained many correct statements and some incorrect statements, the author finished up by saying that India has very difficult problems to face but the most acute of them he said, can be put in five words and those five words were: land, water, babies, cows and capital I think that there is a great deal of truth in this concise analysis of the Indian situation.

Shri Kamath: No lawyers there?

Shri Jawaharlal Nehru: I am not for the moment going to say anything about babies or cows, important as they are nor do I wish to say anything about capital which is a most important question. Our capital resources are matters with which my colleague the Finance Minister and the Planning Commission are dealing but we come back to land and water. Water is connected with the land that we want to improve and we have big river valley schemes, wells and all that. Finally we come back to the land which is the most important of all and if we do not make proper arrangements for the land, all our other schemes whether they are about grow-more-food or anything else may fail. Therefore, something in the shape of this amendment that I have suggested

becomes necessary. Again, if I may say so, what is intended is to give power to this House or to a future Parliament to deal with this so that it may not feel helpless when a situation arises which calls for its intervention.

Mr. Speaker: Motion moved:

"That the Bill to amend the Constitution of India be referred to a Select Committee consisting of Prof. K. T. Shah, Sardar Hukam Singh, Pandit Hirday Nath Kunzru, Dr. Syama Prasad Mookerjee, Shri Naziruddin Ahmad, Shri Rajagopalachari, Shri L. Krishnaswami Bharati, Shri Awadheshwar Prasad Sinha, Shri T. R. Deogirikar, Dr. B. R. Ambedkar, Shri V. S. Sarwate, Shri Mohanlal Gautam, Shri R. K. Sidhva, Shri Khandubhai K. Desai, Shri K. Hanumanthaiya, Shri Raj Bahadur, Shrimati. G. Durgabai, Shri Manilal Chaturbhai Shah, Shri Dev Kanta Borooah, Shri Satya Narayan Sinha and the Mover with instructions to report on Monday the 21st May, 1951."

Under the rules whenever the Deputy-Speaker is a member of any Select Committee, he presides but as he is not a Member of this Committee, I have to nominate one.

Shri T. T. Krishnamachari (Madras): It can be nominated after the motion has been accepted by the House.

Mr. Speaker: I am mentioning the Chairman. The whole thing will fall through in case the House throws this motion out. I should clarify the point because the name of the Chairman is usually mentioned. I will in this case suggest the hon. Leader of the House to be the Chairman of the Committee.

Shri Naziruddin Ahmad (West Bengal): I have been selected as a member of this Select Committee and I am grateful for it. In view, however, of the fact that I have an amendment standing in my name coming up later, wherein I am opposing the present motion, I want to know whether I would really be a proper member of the Select Committee.

Mr. Speaker: Essentially it is a point of propriety which the hon. Member has to decide for himself. If he refers to the amendment about circulation in his name, he need not move his own. There are others whose amendments are there.

Sardar Hukam Singh (Punjab): Similar would be the case with me.

Shri Naziruddin Ahmad: I wish to move the amendment.

Mr. Speaker: I do not see any contradiction looking to the nature of this measure. As regards the formation of the Select Committee, I should not express any opinion on it as it should be representative of all the different views in the House.

There are different amendments. Which of them are going to be moved? There are different amendments giving different dates.

Shri Naziruddin Ahmad: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st day of May, 1951."

Sardar Hukam Singh: I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st day of July, 1951."

Shri Sarangdhar Das (Orissa): I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 30th day of June, 1951."

Shri Syamnandan Sahaya (Bihar): I beg to move:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 15th June, 1951."

Dr. S. P. Mookerjee (West Bengal): I beg to move:

"That the Bill be circulated for the purpose of eliciting Opinion thereon by the 1st June, 1951."

Shri Kamath: I beg to move:

In the motion, for "Monday, the 21st May, 1951" substitute "Monday, the 4th June, 1951."

Mr. Speaker: We can take it that these amendments are before the House. There is the main motion for reference to the Select Committee and the amendments for circulation for different dates.

Shri Kamath: May I ask, Sir, if you will adhere to the healthy convention you have established in this House that members of the Select Committee should not participate in the debate at this stage?

Pandit Kunzru (Uttar Pradesh): Members of the Select Committee should be allowed to take part in the discussion. My hon. friend has not....

Mr. Speaker: Order, order; let the hon. Member hear my reactions first. I am not going to finally decide. I have given thought to this matter. Though the convention is sound and healthy, looking to the exceptional legislation that is coming before the House, I do not propose to place any ban on any of the Members including members of the Select Committee. It is only an exception to the general rule. It does not mean that the convention is slackened. On a Bill of this importance, I do not think it is possible or proper to restrict the discussion only to the other hon. Members.

Dr. Deshmukh (Madhya Pradesh): Let the Members at least make short speeches.

Mr. Speaker: It all depends on the Members.

Dr. S. P. Mookerjee: I believe never-before in the history of Parliament were we called upon to consider a matter which is so momentous and grave as we have been today on the-motion of the hon. Prime Minister. The Prime Minister, in his speech, tried to clarify the position and here inferred to his own opinion that the measure is not a complicated one, nor a big one. It is he said, a simple one; but even through a simple process very serious consequences may often ensue when it affects the rights and liberties of individuals or of a nation.

I do not want to say anything on the technical aspects of the change proposed, namely, whether this House is competent to consider this matter or not. The Prime Minister pointed out, that if the Constituent Assembly was competent to pass a Constitution which has been found more or less satisfactory by all sections of public opinion in this country, obviously, if there is a need for changing the provisions of such a Constitution, Parliament, according to the Constitution itself, must be competent to deal with this matter. There may be an opinion expressed that such changes should wait until the new Parliament has been constituted, because, then, the people who would come in a more representative character representing the adults of the Indian population, would be able to judge whether the changes proposed in the Constitution are really necessary or desirable.

I shall not say much on those formal amendments which have been proposed, although I have some suggestions to make in respect of them which I may place before the Select Committee when it meets. I shall deal with the three main changes which have been proposed in the Constitution. The Constitution has been working for

about 15 months. It was incumbent upon the Prime Minister to point out in his speech what exactly have been the difficulties which have compelled the Government to come forward with the proposed changes. To my mind, the explanation which he gave was weak and halting and not acceptable, nor was it satisfactory.

[SHRIMATI DURGABAI in the Chair]

He has assured the House and the country, to quote his own words, that he has not brought forward this measure in a spirit of light-heartedness, not in haste, that he has bestowed careful thought and scrutiny not he, but the Government also; and that they have consulted various people throughout the country. I accept these assertions. But, surely, any changes in the Constitution which may be considered by Parliament have to be considered not in secrecy by the Government along with certain chosen people; but opinion has to be called for on the provisions of the Bill from the people at large, by all sections of public opinion outside the House. I ask the Prime Minister what steps he proposed to take to secure public opinion on the changes that he proposes to make. We have suggested some of us, that the Bill should be circulated for eliciting public opinion. It has not been suggested as a dilatory motion, because the date within which opinion has to be received varies from 31st May to 15th of July. It is not a formal proposal also. The Prime Minister said that there is no particular hurry about the matter. He made the strange declaration that this Government has no desire to pass any laws on the lines of the changes which he proposes to make and that these are only enabling powers which he wishes to hand over to Parliament or the State Legislatures; that he is making these changes not for the purpose of securing better administration so long as he is the Prime Minister of this country, but that he is thinking more in terms of future Parliaments and the welfare of generations yet to be born. If that is his magnanimity, if that is his great foresight and statesmanship when he tries to peep into the future and read the minds of the people that are yet to come in the sphere of Parliamentary politics, why should he not accept the proposal for circulating the Bill for eliciting public opinion? The changes proposed are not simple. The changes are fundamental and they go to the very root of some of the vital provisions of the Constitution, not only the Constitution of this country, but the Constitution of any country in which people are anxious to retain freedom and liberty

of thought and action. I therefore ask the Prime Minister that he should be true to his word. If he really does not want to hurry, then, he should accept our proposal. Let the time be two weeks or three weeks; it does not matter. But, let the public of India have this impression that when this first great step is being taken by the Government to amend the Constitution, there is no indecent or undue haste followed by the Government of the day.

How was the Constitution framed? We spent nearly four years to frame this Constitution. It was not hurriedly done. Take this Chapter on Fundamental Rights. A special committee was appointed of which the Prime Minister himself was the Chairman. How many months, how many years did we not take to weigh every single paragraph, every single sentence and every single word of that chapter? How many changes did we make at various stages of the proceedings of the Constituent Assembly? We were criticised by the people outside the Constituent Assembly that we were taking too long a time. But many of us justified this delay because we were anxious that nothing should be done hastily or on the spur of the moment. We were doing something which was unique in the annals of this country, something indeed, to which there are not many parallels in the entire civilised world. The country had attained political freedom and within a few months of attaining it, it set itself to the task of writing a Constitution and putting down everything clearly and precisely so that the people of the country belonging to all shades of opinion might have a clear idea of what exactly the country stood for. If that is so, why this indecent haste to change such a Constitution? Changes in the Constitution have been made in other countries. I was looking at the first change or amendment made to the American Constitution, and that was within three years of its first enactment. But what were the changes for? The first amendments which were made in the American Constitution were not for curtailing freedom, not for taking away rights that had been deliberately given two and a half years ago. But every single one of those changes was made for extending the individual and the social rights of the people of the United States of America. It was a change for the advancement of the sacred policy and the principle for which the United States of America stood. And what is the sad picture that we present to the country to-day? Within a year, and a half of enacting the Constitution,

we come forward and however much the Prime Minister might attempt to say that the changes are simple, that there is no controversy about it, he knows it and knows it in his heart of hearts, champion of liberty that he has been throughout his life, that what he is going to do is nothing short of cutting at the very root of the fundamental principles of the Constitution which he helped, more than anybody else, to pass only about a year and a half ago. This is the challenge which he has deliberately thrown up to the people of India. I do not know why he has thrown up this challenge. Is it due to fear? Does he feel that he is incapable to-day to carry on the administration of the country unless he is clothed with more and more powers to be arbitrarily utilised so that his will may be the last word on the subject? Or is it his doubt in the wisdom of the people whose champion he has been all his life? Does he feel that the people of India have run amuck and cannot be trusted with the freedom that has been given to them? What is it that he has in his mind? I was hearing the explanation that he was giving—explanation which, if I may say so, cannot stand the test of a moment's scrutiny. He has spoken a number of times and said that, after all, what he is doing is simply to clothe Parliament with permissive power, that he is trusting Parliament. But is he really trusting Parliament? Is he giving the Members of Parliament full liberty to decide questions? As we understand it, it is something different. He is treating this matter as a purely party question. He ought to treat this question as something different, something which affects the lives and liberties of individuals and the people as a whole and not as a party question, however big and however well-organised that party might be. He issued a circular to all the members of his party that their physical presence for the Constitution (First Amendment) Bill was necessary, even though the temperature in Delhi might go up to 110 or 112 degrees, that their presence was an imperative necessity.

An Hon. Member: That was so even when the Constitution was being made.

Dr. S. P. Mookerjee: There is nothing wrong in their physical presence when Parliament is considering a matter of such vital importance. (*Interruptions*). If hon. Members will hold themselves in patience when I come to the second part, they will immediately realise what has been the second step which the hon. the Prime Minister, the Leader of the House took in this matter. The circular has gone out that the motion

of the hon. Jawaharlal Nehru is to be accepted. No amendment is to be moved by the members of the Party, and if moved by non-party Members, is to be opposed. (*Interruptions*). That is perfectly all right from the party point of view. That is quite proper. But.....

Shri Naziruddin Ahmad: On a point of order. Instructions to the members of a party to the shape of a whip are private instructions and relate only to the internal working of a party, and as such they are outside the scope of the discussion here. **Mr. Chairman:** I was about to say that the Whip's instructions to Members are private instructions and are not meant to be alluded to and the hon. Member's point of order is accepted.

Dr. S. P. Mookerjee: Then I do not know how it came to my hands inside the Chamber. In any case, my point is not about the wording of the Whip. Let me not refer to it at all. But my point is with reference to what the Prime Minister himself said, that after all what is being done is to clothe Parliament with permissive powers so that Parliament may decide what should be done and what should not be done. That is all right so far as it goes, provided vital matters like this are not looked upon as party questions. The free will of every Member of the House must be exercised without fear or expectation of favour.

Shri Sidhva (Madhya Pradesh): In that case, no Government can exist.

Dr. S. P. Mookerjee: Whether any Government can exist or not is a matter completely irrelevant now.

Mr. Chairman: The Whip does not bind anybody who does not belong to any party. They can take any course they like.

Dr. S. P. Mookerjee: Good, and that they are doing.

The hon. Prime Minister stated in his speech that the three, particular articles which are proposed to be changed by the amendments deal with vital matters concerning the welfare of the State as a whole. Let me take article 19 in the first instance. The Prime Minister referred in detail to the freedom of the Press. Now I would like him to look at the article as it stands at present. He referred specially to two-pages or sheets-newspapers in this country which are responsible for the progressive deterioration of the moral standards of our younger folk, and he pointed out that what they are writing

are immoral, untrue, vulgar, indecent, corroding. Now, what are the provisions that exist at present which authorise either Parliament or a State Legislature to pass laws for the purpose of curbing such a state of affairs? The exceptions which have been embodied in article 19 state very clearly in clause (2):

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the Security of, or tends to overthrow, the State."

Now, if there are newspapers which are guilty of these very serious acts of omission and commissions which the Prime Minister so graphically' described, obviously the present Constitution arms Parliament and the' State Legislatures with sufficient powers to deal with them.

Pandit Balkrishna Sharma (Uttar Pradesh): Ask the High Courts.

Dr. S. P. Mookerjee: I shall ask the High courts.

Pandit Balkrishna Sharma: A person can preach murder and still go scot-free.

Dr. S. P. Mookerjee: There is a proverb that the heat of the sand is sometimes greater than the heat of' the Sun. Well, so far as this reference to the preaching of murder is concerned, when the Prime Minister referred to it, it was pointed out by an hon. Member that the judgment had already been reversed by the Supreme Court.

Shri Sidhva: No, no.

Shri Bharati (Madras): No.

Dr. S. P. Mookerjee: So far as that decision is concerned it has been reversed by the Supreme Court. I have got with me the judgements of the Supreme Court which is the final court of the land, in two cases, one of Ramesh Thapar vs. The State of Madras and the other of Brij Bhushan vs. the State of Delhi. When the question of interpretation of article 19 came up, the Supreme Court held that if the maintenance of public, order or securing the public safety was something which did not affect the security of the State or the overthrowing of the State, then there could be no restriction on freedom of speech. At the same time in another case considered by the Supreme Court recently where the question of the validity of the Preventive Detention Act came up for discussion, the Court held that it was open to a State Legislature or to

Parliament to pass laws in respect of matters which affected even public order and thereby detain persons. Now, let us look at the present provisions of the law. Parliament has passed the Preventive Detention Act. Its powers are sufficiently wide in character. Any person, according to that law, read with the provisions in the Constitution, can be detained for an unlimited period provided conditions are fulfilled which would make Government satisfy itself and the public that no one is being unreasonably detained. Now, supposing there are persons who are preaching murder and who are doing, something of that character, supposing there is some newspaper which is doing something of that character and the writer is there, the individual can be secured under the Preventive Detention Act So, if you want to prevent a person, or group of persons from committing acts which you consider to be against the interests of public order, you are already clothed with sufficient authority to do so.

Mr. Chairman: I think that the Preventive Detention Act has laid down certain conditions under which alone persons could be detained, and these persons cannot be covered.

Dr. S. P. Mookerjee: It is not the Prime Minister's intention nor Government's intention that men who are innocent should be detained. If there is some case against any one you need not even present it in the court. The only thing you are to do is to satisfy an Advisory Council that you have sufficient material which would justify you to take the person in custody and detain him as long as you like. There is no limit imposed under the provisions of the Constitution. That is the present law.

An Hon. Member: Do you advise that?

Dr. S. P. Mookerjee: I am not advising it. The power is there. The Prime Minister takes upon himself the responsibility.....

Pandit Thakur Das Bhargava (Punjab): Can that man be punished by the Court?

Dr. S. P. Mookerjee: If you detain man as long as he lives, obviously it is a very severe punishment you can give. Now that is one part of the problem.

The next is that supposing a man commits an act, makes a speech and some overt act is done, then what happens? The provisions of the ordinary Penal Code or the criminal law' of the land are applied. The man may be bound down under the criminal law. He makes a speech; he is arrested and put in jail. That is being done. If your intention' is

only to take action against a small group which is spreading venom and vulgarity throughout the country, obviously you do not have to change the provisions of the Constitution. As the Prime Minister also hinted in his speech, there is the possibility of extending the operation of such wide powers to bona fide cases and thereby abuse the power given. Now what is the guarantee that these provisions will not be so abused? If you say public order, Parliament does not administer. Parliament passes laws. If you say anything that offends public order then I may state that public order is an expression which is capable of the widest possible definition. You can utilise it in penalising your political opponents. The Prime Minister said something about the legal profession not being dynamic and remaining static and preventing all sorts of things. Now it is rather strange that a member of the legal profession who happens to be a Judge of the Supreme Court in the case of Ramesh Thapar, while dealing with the provisions for maintenance of the civil life of the citizen under the Constitution of India said these memorable words:

"Thus, very narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression, and this was doubtless due to the realisation that freedom of speech and of the press lay at the foundation of all democratic organisations, for without free political discussion no public education, so essential for the proper functioning of the processes of popular government, is possible. A freedom of such amplitude might involve risks of abuse. But the framers of the Constitution may well have reflected, with Madison who was 'the leading spirit in the preparation of the First Amendment of the Federal Constitution', that 'it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits' ".

Here was a Judge—an Indian Judge—appointed by the same Government which is in power today, Mr. Justice Patanjali Sastri, who has interpreted the Constitution not to prove himself a man who did not know what dynamic growth was but one who gave a noble interpretation to our own Constitution for the protection of the liberty of the Indian subjects. Whether the Legislature, Parliament or Government would agree with the Supreme Court or not is a different matter. But at any rate we should feel proud that our judiciary has proved so independent. It has, given expression to its opinion in

interpreting the provisions of the Constitution not in a manner which goes against the interest of the country but for securing the expanding rights and liberties of the people.

Shri Sidhva: What about the independence of the country?

Dr. S. P. Mookerjee: The independence of the country will remain intact if you do not try to pass coercive measures. As the hon. Prime Minister said, no country can ever be governed by force or by coercion. If the country has run amuck, if there are people who could not be kept under control without exercising very strict executive rights and powers, then you must enquire why it is that the country has come to that state of affairs. Why should these people who were swearing by you only a year ago, should condemn you to-day and why should it be necessary to find bullets and bayonets for keeping your freedom intact?

Shri Sidhva: For political purposes

Dr. S. P. Mookerjee: Mr. Sidhva says for political purposes. I have said that I do not want more heat from the sand and I would like the heat from the Sun. So far as political power is concerned I would say with all earnestness that very often it is our inability to probe into particular situations that create difficulties. We fail miserably to solve national problems and we want to gag and coerce people. I would specially remind the Prime Minister of the happenings at Cooch-Bihar a few days ago. I was myself there. I saw how India celebrated her first Jalianwala Bagh after her attaining freedom. I saw how there was complete collapse of the administration there. The price of rice was shooting up from Rs. 30 to Rs. 70. About 56,000 maunds of rice were lying under the control of the local administration and not one maund of rice was released in time. The order for modified rationing came two hours before the bullets were used. Even that order was not communicated to the people and young women and children were shot dead, the answer given was political exploitation by certain groups. I saw the people. There might have been some political groups here and there but the vast majority of the people were peace-loving, were anxious to co-operate with the Government. They did not know what politics was. I saw ladies, illiterate who had never seen politics and they asked: "After attainment of freedom, is this state of affairs that is to come to our country? We cannot get our rice even when it is there and when

we ask for it, we get bullets in place of rice." If you say that you want more and more powers for curbing such situations, you will fail and hopelessly fail.

Shri Sidhva: If there was so much food, why was there any riot?

Dr. S. P. Mookerjee: You come to me and I will explain it.

I therefore say that the Prime Minister has not succeeded in pointing out any reason why the amendment to article 19 should be made as proposed.

Let me deal with foreign relations. The Prime Minister said that it was not his intention that criticism of foreign powers should be curbed. I have been trying to read the Constitution of other countries and I have also been trying to find out from case law—and in this Dr. Ambedkar might be able to help us—and I have not been able to find any precedent in any part of the civilised world whereby law under the provisions of the Constitution criticism of foreign powers is taboo. Who will be the person who will be first affected if you pass this law? It will be our Prime Minister, Pandit Jawarharlal Nehru. Will he then be able to say that if Pakistan encroaches one inch more into the territory of Kashmir he will consider it as a war on India? That will offend Pakistan and he cannot make that statement.

Shri JawaharIal Nehru: May I point out that I said nothing about criticism of foreign powers being prohibited.

Dr. S. P. Mookerjee: I am glad about it. We can discuss this question later on. But the way in which the wording has been suggested here—affecting friendly relations with foreign powers—is hardly reassuring. Who is to decide this question? Will our High Court decide it? Or will our Supreme Court decide whether criticism which has been made would disturb the friendly relations between India and any foreign country? Will this be a matter which will be decided by the foreign country? We may say anything about a foreign country with the utmost friendship in our hearts but if that country misunderstands and says that it offends it or it affects our friendly relations with them, you are at once bound by the provisions of the Constitution. Why should you pass such a law? I do not know whether it relates to the demand which is made in certain quarters about a possible reunion of India and Pakistan. I know the Prime Minister holds very strong views about it and he has said a number of times that any such movement or agitation is harmful to the interests of the country and that he does not

like it. I do not mind it is his view. But if I hold a contrary view, as indeed I do most seriously and earnestly, that this partition has been a mistake and has to be annulled some day or other (An Hon. Member: By force?) why should I not have a right to say that?

Pandit Malaviya (Uttar Pradesh): And give 40 per cent or 50 per cent representation to the Muslims everywhere all over this country.

Dr. S. P. Mookerjee: Why should I not have the right to agitate for it? Pandit Jawaharlal Nehru as the leader of a big political party may oppose this view. He can appeal to his countrymen not to listen to those who today are advocating an annulment of the partition of India. I can understand that: it will be an appeal to the logic and the good sense of the people. He wins or I win or somebody else wins. We will see what is the verdict of the people. That is a perfectly constitutional approach to the problem. I can even understand the Prime Minister of India, not as leader of the Congress party, to say that if by carrying on such agitation you create conditions in the country which lead to riots and bloodshed, he must step in and prevent it. The ordinary law of the land will then operate.

I have heard the Prime Minister speak on many occasions and I have been trying to analyse his viewpoint. But unfortunately his statements are so contradictory to one another that I found it difficult to get at the core of them. But I would like him to explain some time or other as to what should be the attitude of Government on matters so vital to the interests of the people of India. If he says as the head of the Government that he is prepared to allow any viewpoint to be circulated within the country—and that is what we understand by democratic freedom—so long as it does not advocate chaos, I would be at one with him. If he says that because he does not like that anybody should speak about the annulment of the partition he means to prevent us and therefore wants to put these words in the Constitution and later pass some law consistent with them, then I say it is most arbitrary and if done, will lead to very serious consequences. I do not know what will happen in future. I am not necessarily thinking in terms of war. I am hoping—it may be a hope which may not be achieved in my lifetime—that this terrible mistake, which we made in partitioning the country trying to get something which we thought we were getting but which we actually did

not, has to be remedied, not in communal interests but in the interests of both the Hindus and Muslims and everyone else. We have got to realise that apart from the communal aspect of it, economically, strategically, nationally and internationally we have been rendered weak and severely hit by British diplomacy. I hope that someday people will realise that this mistake will have to be rectified by the good-sense of the people of both the countries.

Pandit Krishna Chandra Sharma: Were you sleeping when the country was partitioned? Why did you not revolt then?

Dr. S. P. Mookerjee: I am at least revolting today and will you also have the good sense to revolt with me?

Mr. Chairman: May I appeal to hon. Members to be very calm. Everyone will have his chance to say what he likes.

Dr. S. P. Mookerjee: The point that I would like to urge before the Prime Minister is that this provision is totally unnecessary. People are saying that this is being done to placate or appease Pakistan. But how long can this go on? Supposing Pakistan wants that India should be tagged on to Pakistan and we protest against it and carry on agitation, which would disturb the friendly relations between India and Pakistan, we will be guilty. It is a most dangerous clause, a clause which we do not find in any constitution in the world and there is no justification at all why such a clause should be provided. It is not a question of Pakistan only: it may be the case of other foreign countries about whose policy we may not be in agreement.

I have got here a book written in Chinese issued by the present Chinese Government. I have not been able to get it fully translated: otherwise I would have read it out to the House. I have a partial translation of the book with me today. The book is issued by the present Chinese Government and it is nothing but a scurrilous abuse of India, her culture, her leaders starting from Mahatma Gandhi and ending by saying that England is the running dog of America and India to-day under Pandit Jawaharlal Nehru's leadership is the running dog of Britain. That is how that book concludes. Supposing we want to give a constructive and reasoned reply. It may affect the friendly relations between India and China and we will be committing an offence under the law. What is the necessity? What has happened here? Why are you anxious to make such a drastic

provision in the Constitution itself? (An Hon. Member: Is it a Chinese Government publication?) It is published by the present Chinese Government in Chinese (An Hon. Member: When?) in 1949. It is being translated and I shall be able to bring the full translation tomorrow.

Let me now come to the important article 31. What is the change that is being proposed? The Prime Minister talked very feelingly and quite rightly too about his great desire and ambition to introduce land reforms. There is no quarrel about this standpoint. Naturally the present land system in India is an outdated one and we cannot allow it to continue without great detriment to the interests of the people at large. When we passed the Constitution the Prime Minister would remember how he passed days and weeks in finding out a formula which would not compromise on any great question of principle but at the same time present a workable agreement. His anxiety was, as it was the anxiety of many of us, that in matters like this we should proceed with the greatest measure of agreement. He referred to the pledge which the Congress party gave for the abolition of zamindari. As he rightly pointed out the declaration was that zamindari would be abolished, for which fair compensation would be paid. Whether right or wrong, there are many parties which say that no compensation should be given and others who insist that the fullest compensation should be given. In any case the Congress stood for abolition of zamindari on payment of fair compensation.

An Hon. Member: Equitable compensation.

Dr. S. P. Mookerjee: Equitable compensation. That was the pledge which was given by the Congress. Now, when you passed the Constitution after a good deal of discussion, what is the frame-work that you produced? We were anxious that the quantum of compensation should not at every stage, be subject to judicial decisions. At the same time we were anxious that a certain framework should be placed before the country and the persons concerned so that the fullest measure of assurance could be given to all concerned. Now, article 31 provides that either the actual compensation or the principles on which compensation is to be paid, or the principles on which payment is to be made, will all be determined by law. We also protected certain specific legislative measures which were passed eighteen months prior to the commencement of the Constitution.

That is how matters stand now. What has happened since then? That there has been delay is not the fault of the Constitution. There is only one party which is ruling India today. All the Governments are under the control of a centrally organised party. It is not that one particular party in one particular State proceeds in one manner and another party in another State proceeds in another manner. Why has not the Centre set down and given some sort of a formula saying: "This is the formula which every State should adopt in effecting land reforms, making such minor changes as local conditions may necessitate"? Now, pursuant to the provisions of the Constitution several State Legislatures have passed laws. The Bihar law has been declared to be ultra vires by the Patna High Court—mind you, not on the ground of compensation but on an entirely different ground: the question of discrimination between one class and another. Well, whether that judgment is right or not is not my point. Then the U.P. Legislature has passed a law which the Allahabad High Court has held to be intra vires. The Nagpur High Court also has held the Madhya Pradesh Act to be intra vires. If the Patna High Court has passed a judgment which according to Government is not correct—in fact, some aspects of the matter are already before the Supreme Court—the only way in, which any Government can or should proceed, is to have a quick decision made by the Supreme Court.

Shri Bharati: How can that be done?

Dr. S. P. Mookerjee: That can easily be done. You consult the Law Minister or the Attorney General, they will advise you. You get a quick decision by the Supreme Court. Supposing it takes a month, or two months even, if the Supreme Court comes to a certain conclusion which you consider to be fundamentally opposed to the basic principles on which the Constitution was framed then and only then would there be the right for you to ask for an amendment of the Constitution. That is the only logical, fair and equitable procedure which any Government which believes in the sanctity and sacredness of any Constitution, or any Parliament, which believes in such sacredness and sanctity would follow. But what is it you are doing? Will hon. Members read and re-read the clause as it has been proposed? What you say is that particular laws which are to be mentioned in a Schedule to the Constitution, no matter whether they infringe any provision of the Constitution or not, are deemed to be valid. Is that the way in which the Constitution should be amended? Supposing a particular Legislature passes a piece of legislation which is absolutely nonsensical. By this amendment to the Constitution you are saying that whatever legislation is passed it is deemed to be the law. Then why have your Constitution? Why have your Fundamental Rights? Who asked you to have these Fundamental Rights at all? You might have said: "Parliament is Supreme and Parliament may from time to time pass any law in any matter it liked and that will be the Law binding on the people. You passed the Fundamental Rights deliberately and you clothed the judiciary with certain powers not for the purpose of abusing the provisions of the Constitution but for giving interpretations and generally acting in a manner which will be consistent with the welfare of the people. If the Supreme Court has gone wrong, come forward and say that the Supreme Court has come to such-and-such conclusions which are repugnant to the basic principles on which the Constitution was based. But the Supreme Court has not had a chance to consider this matter and you are coming forward with this hasty proposal that any law mentioned in the Schedule--there are a dozen of them there—would be deemed to be valid. Not only that. I can even understand your considering the laws which are already passed and which are before you, but you are saying that in future if any law is passed with regard to these subjects, it would be deemed to be valid notwithstanding the provisions of the Constitution. Can anything be more absurd and more ridiculous?

Is Parliament being considered as a serious body? You are treating this Constitution as a scrap of paper. This is not a Constitution----it is just a piece of legislative enactment passed by Parliament. You come forward and say: "We want to change the Constitution." You cannot do like that. And what is the dangerous precedent that you are creating? Maybe you will continue for eternity, in the next generation, for generations unborn; that is quite possible. But supposing some other party comes into authority? What is the precedent which you are laying down? - that if any particular Bill is passed by any Legislature all that you have to do is to get hold of your subservient Parliament and make it change the Constitution and provide that whatever is passed by the Legislature is valid. Let us treat the subject more seriously, more rationally.

Therefore, I would very earnestly suggest that a situation has not yet come when any change in article 31 is called for. Let us not confuse the issue by raising the question as to whether zamindari is good or abolition of zamindari is good.

Shri D. D. Pant (Uttar Pradesh): What is your own view?

Dr. S. P. Mookerjee: My own view is that zamindari must be abolished with compensation. Now will you follow me in what I am saying? You have heard my view.

The question is not today whether the zamindari system is good or bad, because merely by abolition of zamindari, you cannot improve the land system. Much more has to be done in order to improve the conditions of the peasants and also makes them produce more so that the wealth of the country may be increased. But that is neither there nor here. Today the point is not whether the zamindari system is good or bad, but the point is, what is the procedure you are following for attaining a certain objective for which you had made a specific provision in the Constitution and which, let me emphasise, you have not tried yet? If you tried it and then failed I can understand your anxiety to change the Constitution, but merely in haste you come and say: "I cannot achieve something quickly. I cannot wait for the fulfilment of the provisions of the Constitution. Let us get hold of all the legislative enactments and deem them as legally passed." Then do not work the Constitution. For a period of so-called emergency, you can pass a law and say that the entire task of framing,

interpreting and working the Constitution will be left in the hands of Pandit Jawaharlal Nehru assisted by such people whom he may desire to consult—pass a simple amending Bill And thus declare that for the next two years nothing more need be done in India. That we may understand. It may be dictatorship, it may be anything else, but you have then a clear-cut, straightforward way of looking at things. But do not have a camouflaged Constitution; you have declared Preamble of your Constitution that you have done something unheard of in history, that within so short a period of attainment of freedom you have trusted the people of this country to draft a Constitution; you have given a charter of rights to them. Now YOU come forward and stab them in the back. You are not working for the benefit of the present generation but for party ends.

Mr. Chairman: May I know whether it is not the will of Parliament that is Supreme over everybody? Is it not the present Parliament that is inviting the amendment? It is not Mr. Jawaharlal Nehru or anybody that is doing it.

Dr. S. P. Mookerjee: Since the will of Parliament is Supreme I am appealing to the sober will of Parliament not to do something which will be dangerous. Otherwise I would not have spoken here—I might have addressed a meeting elsewhere. (Interruption) The hon. Member interrupts. I know in her heart of hearts she does not like this amendment. She told me yesterday definitely what she thought of it.

Shrimati Renuka Ray (West Bengal): I said that.....

Shri Jawaharlal Nehru. Some of us doubt whether the hon. Member really means what he says

Dr. S. P. Mookerjee: The hon. Prime Minister apparently speaks standing before a mirror and thinks everybody is like himself.

Shri Raj Bahadur (Rajasthan): Madam, I must take objection to the hon. Member describing Parliament to be subservient.

Dr. S. P. Mookerjee: The hon. Member should have known that I did not refer to the present Parliament at all. I said, supposing in future something like this happens and there is a subservient Parliament then what happens? How can I dare call this Parliament subservient when I am a Member of it?

I like these interruptions, because I can feel from these interruptions that there is a real searching of the heart amongst Members of this house. What we are doing today is not

the right thing. It is not necessary, it is retrograde, and I would appeal to the Prime Minister.....

Mr. Chairman: I was only trying to tell the hon. Member that he is saying that it is the Prime Minister and his colleagues who are trying to bring this amendment. That is not correct. It is Parliament that is now considering the amendment.

Dr. S. P. Mookerjee: The reason why I was appealing to the Prime Minister especially was that I thought, my capacity being limited, if I could convince one individual, my objective could be attained. By appealing to the emotions of the Prime Minister I was appealing to all the Members of this House warning them that we are today being asked for the first time to amend our sacred Constitution. It is a great document. It is not a matter which you can take in a light-hearted way. We are anxious—no matter what our individual views may be on various matters—to retain the foundation of a good and solid Government which can work in the interest of all sections of the people of this country. That I certainly believe is the objective of all of us. Now, if we proceed in a light-hearted way to amend the Constitution, naturally we create a precedent which may lead to very serious consequences. These things, taken each one of them separately, may not mean much. But after all if you take them as a whole and the manner in which you are proceeding, you are doing a great disservice. If there is anything standing in your way you just come and amend the Constitution, utterly ignoring public opinion.

I would just like to refer the Prime Minister to the Constitutions of England and of America. Here we have deliberately made our choice. We decided to have a written Constitution. We decided to have a Part on Fundamental Rights.

Naturally when you have a Part on Fundamental Rights it obviously means that not the executive Government, not even Parliament, but the judiciary and the judiciary alone will be able to interpret and advise and decide whether the Constitution is working properly or not. That is how it is worked in different countries.

As I was reading one of the judgments yesterday I came across significant remarks made by one of the Judges of America that the greatest constitutional issue in all American history was not settled by the court, not even in the halls of the Congress, but on the battlefield of America. Freedom developed in that country not by passing laws, or by the decrees of the President, because the ultimate sanction rested with the people. We have also to reckon with the people in this country. We have drawn up the Constitution with a declared desire to protect the mighty rights and interests of the people, millions of them who are downtrodden and have not the courage to speak out. But as the Prime Minister knows, even in their hearts a new awakening has come. As we move about from place to place, we can see the signs of that reawakening, which we could not have dreamt could happen so quickly. Now let us take the fullest advantage of that reawakening in the larger interests of this country. Let us not try to arm the executive with wider and larger powers being afraid of a Frankenstein that is supposed to have raised its head in India. There may be elements in this country with mischievous intentions. But the larger section of the population of the country is well mannered and they are anxious that this country should go ahead peacefully. Therefore, their hearts being sound, we have to approach them in the proper way. We have to tackle the great problems of administration in social and economic spheres specially so as to earn their spontaneous confidence.

Talking about the Supreme Court, the Prime Minister said that while conventions may arise even in this country—I hope they will—that will take a generation, and how can you wait for a generation? Therefore, what is the remedy? Do not create healthy conventions. Let the executive decide what is to be done; let it be armed with new and arbitrary Powers; and even that slow attempt at making new conventions you want to crush. Is that the way you want to preserve the sanctity and sacredness of the Constitution which is your own handiwork. Now look at this—I am reading from Beck's *The Constitution of the United States*. This is how it reads:

“This great power to curb legislatures and executives, and therefore majorities, by resort to the paramount will of a written Constitution, has been exerted for over 10 years, and while not infrequently the party whose power is thus curbed has vented its wrath and disappointment upon the Supreme Court, yet after the thunder of political debate has passed and the earthquake of party passion has spent its force, the 'still small voice' of the Supreme Court has always prevailed.”

And further on:

"The most effective restraint which freemen have ever imposed upon themselves is this extraordinary power of the Supreme Court. The value of such a restraint upon precipitate action is so great that it is improbable that the American people will, atleast in the near future, thus destroy the efficacy of the great balance wheel."

That is the spirit in which the Constitution has to be respected and worked. Here are a set of men who are selected by the Government. They are not foreigners coming from outside. They are our own chosen selected men holding office during their life, entrusted with the duty of seeing whether the country is being administered in the spirit of the Constitution. At the same time I do not say that the Supreme Court Judges are infallible. They are after all human beings. Supposing the Supreme Court does something which goes entirely against the basic principles on which the Constitution of free India should stand. I am not suggesting that we should tie our hands and watch helplessly. Then come forward on that specific issue and amend the Constitution on that particular point. Do so after giving fullest opportunity to the public to express their viewpoints. The Prime Minister referred to three points. Has the Supreme Court given any decision with regard to foreign powers? Has anything happened in this country which necessitates that the Constitution should be disfigured with such a deplorable provision? What has happened about public order? Is not your present law sufficient? Has the Press run amuck? Even according to the Prime Minister, there may be a few news-sheets who may be shouting. Let them shout. If they shout, use the other Press; use the platform, the radio or whatever machinery you have. You make the people feel that what the gutter Press is saying is absolutely unacceptable. That is the only way in which you can nullify the activities of a small section of people who want to destroy your freedom. But do not give them the tragic importance and make

them feel that if a few papers shout, you are compelled to change the Constitution. Why give them the honour which they do not deserve?

The Prime Minister himself said that a major section of the Press is all right—their heart is sound. Then sit down with the Press representatives and discuss as to how the freedom which is being abused by a small section of the Press can be combated. I do not know which section the Prime Minister has in view; but supposing there is such a section, surely it cannot imperil the freedom of the general masses of the people.

Lastly, I shall read out only one quotation, and that is also a judgment from the Supreme Court, in answer to what the Prime Minister said towards the end of his speech that after all you are making only small changes and it does not vitally affect the position at all. But this warning was sounded in the last paragraph of a judgment delivered by the Supreme Court in America—the danger signal has come and let no one ignore: it if he wishes well of the country.

"Do the people of this land—in the providence of God, favoured, as they sometimes boast, above many others in the plentitude of Their liberties—desire to preserve those so carefully protected by the First Amendment: liberty of religious worship, freedom of speech and of the press, and the right as free men to peaceably assemble and petition their Government for a redress of grievances? If so, let them withstand all beginnings of encroachment." —And here is a beginning of the encroachment of the liberty of the people in Free India.—"For the saddest epitaph which can be carved in memory of a vanished liberty is that it was lost because its possessors failed to stretch forth a saving hand while yet there was time."

Mr. Chairman: Prof. Ranga.

Shri Kamath: There are other amendments for circulation of the Bill. There are several from Mr. Naziruddin Ahmad, Sardar Hukam Singh, Mr. Sarangdhar Das, Mr. Arun Chandra Guha and an amendment in my name.

Mr. Chairman: They are before me. But it does not mean that every mover needs to speak on it.

Shri Kamath: But these other amendments must take precedence under the rules.

Mr. Chairman: That is not necessary.

Prof. Ranga: I rise to speak after the close of one of the most powerful and eloquent speeches made by the Indian Burke of our present generation. As my hon. friend Dr. Syama Prasad Mookerjee was holding forth so eloquently in support of his innate conservatism I began to think how the British Parliament must have reacted to that other great man, Edmund Burke, as he was reeling out his great eloquence in support of British conservative social order. It is not so very easy for me to try to speak in the same eloquent and passionate manner in reply to my hon. friend Dr. Syama Prasad Mookerjee who is just now leaving the House—because I do not wish to hurt the

feelings of those who have had to be necessarily hurt by the process of the social revolution that India is obliged to go through and this House is obliged to put its stamp of approval upon.

My hon. friend was asking why this House should not be a little more patient with itself as well as with our own social forces in this, country until these various conventions could be established by a series of judgment that are to be given by our High Courts as well as by the Supreme Court. But I want to ask him one question. Has he come across any country which has waited for so long as this country has waited in order to put an end to this anachronism, to this octopus, that is the order of the zamindari system in this country? We have waited long enough and we have fought also long enough against this system. In the end the Congress Party in this country had taken upon itself the responsibility of putting an end to this social order. It went to the country with its manifesto, came back again to the various Legislatures as well as to this Parliament with the mandate of the people to put an end to this social order and has then proceeded to put an end to it. But in the course of this we have found so many difficulties, one of them being the innate conservatism—of which my hon. friend is so very proud—of the courts. I do not wish to attribute any motives, but certainly I think I am in my rights when I refer to the general approach that the courts make to some of the social forces and social revolutions.

Shri Kamath: What about the Nagpur and Allahabad High Courts?

Prof. Ranga: Yes, some Courts have given a 'progressive interpretations of the laws passed by our Legislatures, but some Courts were not able to do so. But my hon. friend wants us to wait till the Supreme Court's help itself is invoked, and till then all these millions of people who have been expecting some relief from this legislation are to go on suffering from this system of exploitation. I wish to say that I am entirely in favour of this particular provision proposed in this Bill and I hope the House will certainly set its seal of approval thereon.

Secondly, my hon. friend is opposed to the partition of this country. I am sure quite a large number of people have not been happy over this partition. I myself was very much opposed to the decision when it was made. Nevertheless, once it was made and it has come to be accepted by our people, there can be two opinions about this matter,

some holding the view that we should accept the fait accompli and then make the best of what we possibly can out of this and some of course I like my hon. friend Dr. Syama Prasad Mookerjee who would like some day to change this order. I have no quarrel at all with him, nor would the hon. Prime Minister, I think, like to quarrel with him. But at the same time should we or should we not give to ourselves, to this House and the future House also, power to deal with such social forces in our country and individuals who would like to upset this order not by mere persuasion, not by propaganda, not by publicity but through violent means and that too by destroying the State which has got to carry on the social order of this country?

Then I take up the question of the Press. My hon. friend was saying that the present law is enough. It might be enough, it might not be enough. Suppose it comes to be found later on either by this Parliament or by its successors not to be enough, then what is it that we have to do? Are we to invoke the cumbrous provisions that are provided for changing our own Constitution and then proceed to give powers to our Parliament, or are we to take advantage of the present opportunity and give that power to Parliament trusting to the judgment and wisdom of this Parliament as well as its successors to go only thus far and no further in dealing with such sections of the Press which might indulge in harmful activity? As I have pointed out, one experience of mine has come to my mind that there were certain papers which did not mind castigating public men as bastards. What are we to do with such papers?

Shri Sidhva: Blackmailing.

Prof. Ranga: It is worse than blackmailing. To call a public man a bastard and then to run away with it with impunity is something which is an insult to the Press itself. And there are papers in this country which indulge in such language. There are also papers which circulate obviously false statements, and if legal notices were given to them either to substantiate those charges or to offer an unconditional apology, some of them do offer the apology but the papers that claim to copy this slanderous attack from the papers which offer the apology go about the country scot-free. How are we to deal, with them?

It might be said by my hon. friend that the present legislation is enough to deal with them. It might not be enough. When he says: Deal with it as and when the problem arises, we say: The problems are there before you. There are certain papers coming from one of our biggest cities whose names are very well known to quite a large number of hon. Members here. They have no other business but to indulge, not in any political discussion but in personal abuse, vilification and reckless charges, charges which they ought to know are unfounded and which cannot be sustained at all and yet they go on day after day and week after week decrying not our public policies but our own public men, not attributing wrong motives but attributing, false activities for which these public men are not at all responsible and in which public man had not indulged in at all. How are we to deal with such a Press? I wish to associate myself

with all these eloquent things and very noble words indeed that the hon. the Prime Minister has said in praise of a large section of our own Press. I am second to none indeed in my admiration of some of our most important daily papers, as well as weekly papers and they compare very favourably with some of the best papers produced anywhere in the world. At the same time there are certain papers, they may be weeklies, they may be monthlies, they may be even occasional publications but they do indulge in such heinous propaganda- I cannot think of any softer words than heinous propaganda—against individuals and their personal lives. Sufficient power has got to be vested in this Parliament so that it might be possible for this Parliament or its successors to take advantage of it if and when the occasion arises. Then there is the other difficulty with regard to 'foreign relations'. In this I feel that there is some strength in what my hon. friend Dr. Syama Prasad Mookerjee said today.

Mr. Chairman: May I suggest that group discussions may be carried on outside the House. The hon. Member is not being properly heard.

Prof. Ranga: In regard to this matter, I do think that Government as well as the hon. Prime Minister should take an early occasion and especially through the discussions in the Select Committee to try and bring about such amendments as would help us to some of the risks that my hon. friend Dr. Mookerjee has suggested to us.

Then there is the other question of 'public order'. How are we to deal with it? Who is to define it? Is the present legislation adequate for this purpose? Now in regard to this matter, I do not feel quite competent to offer any sort of suggestion to this House. But I would like this matter also to be carefully discussed in the Select Committee and sufficient safeguards provided in order to prevent even the future Parliament from exercising it.

Then my hon. friend talked about the 'mighty interests of the people'. It is in the mighty interests of the People that I want this amending Bill to be accepted by this House but with suitable amendments. It is in the mighty interests of the people that I want Parliament also to be clothed with these powers, but suitably amended. At the same time I also wish to sound a note of warning in regard to the confidence that my hon. friend, the Prime Minister expressed with regard to this Parliament as well as its successors. It is always possible for Parliaments to make mistakes. The British

Parliament has made grievous mistakes but at the same time it had the wisdom also to rectify those mistakes and go forward. It is much better to rely upon your Parliament than to rely upon a Supreme Court. What was the experience of U.S.A.? U.S.A. has not been noted for speed. On the other hand it has always been a sort of hurdle which the American people had had to get over in order to speed on with their own progress. What was their own experience with that great chapter of social legislation that President Roosevelt had initiated, known as 'the New Deal Legislation'? Almost all that legislation was negated by the Supreme Court. Why so? Because there were men in it who were old and they could not very well understand the significance of the economic, depression with which America was then faced between 1930 and 1935 and they were so old that they could not understand the dynamic forces which were propelling their own people to make their choice between Communist party's leadership on the one side and the democratic leadership on the side other and President Roosevelt had had to wait for two or three years before it was possible for him to replace some of those old Judges by younger Judges who could understand the dynamics of the social forces which were confronting them. Are we to be condemned to a similar plight? Are we even in regard to these very essential matters to depend entirely upon the natural forces of the age of the Supreme Court Judges so that some of those people might either die or might be obliged to retire before it would be possible for our own Government to replace them by more progressive minded Supreme Court Judges? Anyhow, we have agreed upon a written Constitution. Therefore, it is absolutely essential for us to have a Supreme Court and therefore we have to be patient with the Supreme Court also.

An Hon. Member: They only interpret the law.

Prof. Ranga: We make the law and they can go on interpreting it but our law is to be interpreted in the light of this law, the law of laws and it is over this law that they are the masters because they are the only, interpreters and not this Parliament and the law which Parliament might be making will be at the mercy of their interpretation. Therefore we have to safeguard ourselves from the conservatism or from the fancies or from the social matrices of these Supreme Court Judges, day to day and from time to time to the extent that it is possible.

Shri Kamath: That is true of all countries which have a written Constitution.

Prof. Ranga: That is why we should try and see that as much power as possible is vested in this Parliament in its own right, so that we can minimise the scope for the free play of the conservative forces that will be installed in power through the Supreme Court and it is in this light that I wish to support this Bill.

Several of my colleagues in this Parliament have had informal talks with me and they were anxious to suggest that I should also join hands with them in opposing this Bill. I very much wanted to oppose this Bill also for this reason because I am on my way towards the formation of an Opposition in this House. I have bidden goodbye to my old comrades and their party and I am slowly moving towards the Opposition which unfortunately for us has not yet come into existence. While we are still in this embryonic stage of an Opposition, some of my friends who would like to be my friends in the Opposition that is to come into existence have suggested that I might possibly oppose this and as it is generally the duty of the Opposition to look into every proposal that is made by the Government in power, to see whether they can offer any tangible and reasonable criticism, I began to examine it in a very critical manner. Then I said to myself: What is the duty of an Opposition? Is it the duty of the Opposition merely to oppose everything that is suggested or is it to be a responsible Opposition? Then I came to the conclusion.....

Mr. Chairman: Does that part of the speech relate to the motion under discussion? Any individual matter cannot have any relevance.

Prof. Ranga: I owe a duty to this House as well as to myself to explain why, I have come to the conclusion that I should support this Bill in spite of the duty I have cast upon myself to examine everything from the view point of the Opposition. I said I came to the conclusion that I should support it if we are to oppose it from a responsible point of view. Why so? That is where I come to the point repeatedly made by the hon. Prime Minister. It is this. The hon. Prime Minister has not come and said: "These are the powers that I want this Parliament to exercise straightway; the moment you pass this Bill, I will take these powers in my hands, and run with the bit in my mouth and begin to implement all these things and execute all these orders; put these people in the jail; hold up such and such papers, and ban such and such Press." He has

made it clear that he is only asking these powers to be given to this Parliament and future Parliaments so that if and when the necessity arises, either on the motion of a private Member or on the motion of the responsible Government of the day, proposals would be put forward in a responsible manner before this Parliament and it would be open to this Parliament or its successors to accept those proposals or not, either with or without amendments. When such is the position, I think it is only the duty of all those who belong to the Government party as well as those who would like to belong to the Opposition party to support this Bill.

Shri Kameshwara Singh (Bihar): I rise to support the amendment that the Bill be circulated for eliciting public opinion thereon.

Although the Bill seeks to amend ten articles of the Constitution, the two important articles that are sought to be amended are articles 19 and 31. The position is this. Some of the Acts passed by Parliament or by some of the States in derogation to the Fundamental Rights conferred upon a citizen by the provisions of the Constitution have not met with the approval of some of the Courts. The decision of the Supreme Court, the highest judicial authority of the land, has not yet been given in respect of most of such Acts. Before we know what the decision of that authority is, the Constitution, which we gave to ourselves after deliberating for full three years, is going to be altered. The written Constitution of a country, being the Supreme Law of the land, is expected to lay down principles generally applicable to cases of a particular kind.

But, by attempting to introduce provisions like those contained in this Bill, the Prime Minister is bringing down the Supreme Law of the land to the level of an ordinary statute which can be, and is modified, altered and amended by the proper legislature as and when required by the exigency of the hour. The written Constitution has certainly been amended in other countries also; but I know of no country in which it has been altered so soon after its solemn acceptance, and in such a manner as is sought to be altered here. The Constitution, if it is allowed to be amended in such a light-hearted manner, will lose all its permanent character and forfeit the respect....

Shri Hanumanthaiya: On a point of order.

Shri Kameshwara Singh: and sanctity which should be attached to it.

Mr. Chairman: Order, order; the hon. Member is rising on a point of order.

Shri Hanumanthaiya: I suggest that the words that we are doing things in a light-hearted manner may not be used, because it is not in keeping with the dignity of the House.

Hon. Members: There is no point of order in this.

Mr. Chairman: It is not a point of order. It is only just a suggestion. I think that expression is parliamentary, not unparliamentary, at any rate.

Shri Satish Chandra (Uttar Pradesh): On another point of order. The hon. Sneaker has ruled several times that speeches shall not be read in this House. The hon. Member is reading from a manuscript speech. He is not referring to notes, but is reading his speech from the beginning to the end. I submit that in view of the Speaker's ruling this practice is out of order.

Hon. Members: Various speeches have been read.

Mr. Chairman: May be speeches need not always be read. But, there are certain exceptional circumstances where it is allowed. I would allow him to read.

Shri Kameshwara Singh: This is, after all, a care-taker Government.

Shri J. R. Kapoor (Uttar Pradesh): If the hon. Member reads slowly, we would be able to follow it.

Mr. Chairman: I would say that it need not be a very long reading.

Shri Kameshwara Singh: This Parliament again is a provisional one and it cannot be said to be reflecting the will of the people in the way the Constitution wants Parliament to reflect it. For a Government or a Parliament of this kind it's highly improper to make such fundamental changes in the Constitution without making any reference to public opinion, and that too at the far end of a strenuous parliamentary session and almost on the eve of a General Election. Such an attempt betrays a mentality unworthy of those who swear by the name of democracy.

Both Parliament and the State Legislatures were elected on the basis of representation which gives them no right to regard themselves as representatives of the people as a whole. Again, the last General Election, though with a restricted franchise, was fought on a different issue. It was on the issue of the Independence of the country. The result was that the party that is in power today got an overwhelming majority of seats in the

State Legislatures. Election of Parliament from those Legislatures practically meant representation by the nominees of the majority party. That was specially so in the bye-election. Thus, by no stretch of imagination can it be said that the will of the people in general was expressed with respect to the far-reaching changes made by the laws enacted by the different State Legislatures. This Parliament may have the legal right to alter the Constitution, but certainly it has no moral right to do so.

If the opinion of the Press is a guide for assessing public opinion, the Prime Minister must have seen that the public opinion is against making any change in the Constitution before the General Elections. If the opinion of the members of the bar associations and eminent jurists represent the opinion of the thoughtful section of the society, the Prime Minister must have noted by now that they dislike the manner in which the Constitution is sought to be amended.

Let us now examine the implications of this attempt to amend the Constitution. The Union Ministers have sworn allegiance to the Constitution of India and have agreed to do right to all manner of people in accordance with the Constitution and the Law. Do they not show utter disregard for the Constitution when they attempt to amend it, simply because some of the Laws have been and found invalid by the judiciary? Instead of enacting such laws as may conform to the Constitution, they are amending the Constitution itself to make it conform to certain laws enacted by the State Legislatures. Is this not a very absurd thing to do?

We should remember that under the present Constitution of India the supremacy of Parliament is not absolute: Judicial review of the legislation is taken to be the constitutional doctrine of India. But, now that certain enactments are going to be taken away from the purview of the judiciary, it appears that the purpose of the amendment is to upset the very scheme of the Indian Constitution. The Prime Minister, I am constrained to say, is creating a very bad precedent by sowing the seed of executive despotism and playing with the supremacy of the Constitution for party advantages. We find to our great dismay that article 13(2) of the Constitution, which provides that the State shall not make any law which takes away or abridges the right conferred by the part dealing with Fundamental Rights and any law made in contravention of this clause shall, to the extent of the contravention, be void, is sought to be made

meaningless. The Prime Minister wants to cut down materially the Fundamental Rights of personal freedom, and what is worse, to validate retrospectively the Acts passed by the State Legislatures. He has thought of an extreme case of the abuse of the right of free expression on the part of the governed; but he has completely ignored the possibility of the abuse of power on the part of the party in power.

Coming to article 31, I beg to submit that in this amending Bill, the enactments of the various State Legislatures, although varying in material respects, are being validated without bestowing any thought on their provision. For example, in respect of acquisition of the same kind of property, the principles of compensation laid down in the Act passed by the Uttar Pradesh Legislature are materially at variance with the principles laid down for fixing the compensation in respect of similar property by the Legislature of Bihar. Item 42 of the concurrent list gives power to Parliament to lay down the principles and the manner of determining the compensation. But Parliament has so far refrained from exercising that power. If it had done so, it would have at least maintained uniformity in laying down principles of determining the compensation. To give constitutional sanction to the most discrepant provisions in the Acts of different states relating to the acquisition of the same kind of property is, to say the least, a glaring example of thoughtlessness. I wonder if the sponsor of this Bill has critically examined the provisions of the various Acts which are sought to be validated by the proposed amendment of the Constitution. I refer particularly to the various provisions in the Acts relating to the acquisition of estates which seek to lay down principles on which and the manner in which compensation is to be determined. Has he realised that whereas in one State if a zamindari having an income of say, Rs. 50 lakhs is acquired, the owner will get Rs. 80 Lakhs as compensation, in another State owner of a zamindari having the same income will get only Rs. nine lakhs by way of compensation? Has he realised that in the case of a particular estate in Bihar which yields a gross income of about ten lakhs the amount of compensation calculated according to the provisions of the Bihar Land Reforms Act, is much below zero?

Mr. Chairman: I do not think the hon. Member need go into the details of the compensations or their quantum.

Shri Kameshwara Singh: No, Madam. I am only making a passing reference to them. So I do not want to discuss at present in any great detail the provisions of either this Bill or of the enactments of the State Legislatures mentioned in it. The Bill, I feel, should not be proceeded with, unless it is approved by the people in general and until suggestions are received from the thoughtful sections of society. Personally, I am of the opinion that the Constitution should not be amended till it has been given a fair trial and the country is in a position to judge - whether, in the light of the ultimate decision of the highest judiciary in the land, any amendment of the Constitution, so solemnly adopted is at all called for. It will be in complete disregard not only of the sanctity of the Constitution, but also of the sanctity of the Courts if, on the mere strength of the majority in the House, a measure of this kind is rushed through. Let it not be said that the champion of democracy is following dictatorial methods.

Pandit Thakur Das Bhargava: This Bill is proposing the first amendments to the Constitution and it deals mainly with three articles of the Constitution, that is, article 15, article 19 and article 31. The rest are more or less of a formal nature. Now, various arguments have been advanced against this Bill. I heard with rapt attention the opposition speech of Dr. Mookerjee. (*An Hon. Member:* No Opposition here.) Some friend here says that there is no Opposition here. But I regard that speech as such, though the hon. Member Shri Velayudhan may think that it does not savour of Opposition. (Interruption) Mr. Kamath here goes to the rescue of Mr. Velayudhan and says that there is no official Opposition. But anyhow, the speech that was made does savour of an Opposition speech. Many arguments there were not advanced for the purpose of making out a case against this Bill, but were only advanced in such a manner that one feels that the speech was being made for other purposes than for contributing anything so far as this Bill is concerned.

Ch. Ranbir Singh (Punjab): Political purposes?

Pandit Thakur Das Bhargava: If my hon. friend will have some patience. I will come to that presently.

Well, I maintain that there is good reason and there is need for the amendment of the Constitution. I maintain that the present Constitution of the Country is such that there is clear need for its amendment. But this, however, does not commit me to every word

in this Bill. On the contrary, I maintain that some of the provisions of this Bill go much further than what the needs of the situation require. (Interruptions) If my hon. friend wants to interrupt, he may do so in a voice which is audible to me. Otherwise . . .

Mr. Chairman: Order, order. I am noticing that there is a continuous prompting from behind. I do not think hon. Members who are speaking need such promptings. This does not speak well of the House.

Pandit Thakur Das Bhargava: The interruptions should at least be audible to me.

Shri R. K. Chaudhuri (Assam): Why do you listen to them?

Pandit Thakur Das Bhargava: Unfortunately I have to listen to them. I lack the powers of my hon. friend Mr. Chaudhuri who can say the most humorous things, without a smile on his face.

Well, the Constitution that we passed was proved to be faulty in certain respects. I maintain that even in a democracy there is a clear need for provisions which relate, generally speaking, to sedition and to spread of disaffection and enmity among the various communities living in the country. In the very first case, that of Master Tara Singh, the Punjab High Court held that sections 153A and 124A were no longer good. I am not here to criticise the judgment of the High Court. I believe the judgment was correct according to the legal situation created by the Constitution. According to the Constitution that we made, these sections no longer remained on the Statute Book. About the Punjab Safety Act also there was a similar judgment of the Supreme Court and the High Court. That was not all. When other cases were taken to the Supreme Court, the Supreme Court also held that the laws that existed could not stand scrutiny. If hon. Members will kindly look at article 19 (2) they will see that this clause lays down:

"Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

Now, in the original draft, the word "sedition" was there, but it was removed by an amendment of the hon. Mr. Munshi. I too had given notice of an amendment to the

same effect. So the present position is that every person in the land is at liberty to preach disaffection against the Government. Every person in this land is at liberty to sow seeds of disaffection and enmity between different classes living in this country. This attempt can go on as long as the last words in this clause are not satisfied, viz., "which undermines the security of, or tends to overthrow, the State." I maintain that there is no civilized country in the world with a written or unwritten Constitution which is not armed with provisions relating to sedition or to meet situations as lead to public disorder which are presently outside the purview of these last words. These last words go much beyond the present law in England, in America, in Australia and other countries. The Judges of the Supreme Court held in the case of Ramesh Chandra Dutt the following. I am reading from the same judgment from which my friend Dr. S. P. Mookerjee read out some portions in this House. They said:

"Deletion of the word 'sedition' from the draft article 13(2), therefore, shows that criticism of Government exciting disaffection or bad feelings towards it is not to be regarded as a justifying ground for restricting the freedom of expression and of the press, unless it is such as to undermine the security of or tend to overthrow the State. It is also significant that the corresponding Irish formula of 'undermining the public order or the authority of the State' (article 40(6) (1) of the Constitution of Eire, 1937) did not apparently find favour with the framers of the Indian Constitution. Thus, very narrow and stringent limits have been set to permissible legislative abridgement of the right of free speech and expression....."

I am submitting therefore that so far as our Press law is concerned, in this country there are no provisions in the law which can deal with a situation like this. In England as well as in America the provisions of Law are there which can certainly meet the situations for which we have no such law. If the law in America is to be seen, you will find that the same words "due process of law" contained in 14th Amendment of the Constitution constitute the law in America. While we imbibed that section, we did not put those very words in the statute with the result that we were left without any law so far as sedition and disaffection between the various communities are concerned. In many of the Judgments of the High Courts and Supreme Court it has been said if a situation like the one described by me arises in other countries for which we have no

remedy in India the law of those lands is sufficient to deal with the situation so that person who spreads disaffection between communities is liable and has been sentenced by the courts of law there. Similarly so far as England is concerned the law of England—while they have no written Constitution in England—is that if any person published such literature or did anything of that kind whereby there might be any apprehension of disturbance of public order, then that person is liable. The law of that land is sufficient for which our law is quite insufficient. This is not what I am submitting. This is the view of the Supreme Court also. As I have read out from the case of Ramesh Chandra Dutt the law is impotent to deal with a situation like this. Is it not perfectly true as said by the hon. Mover of this Bill that the Press in India has taken more liberties than they enjoy in any part of the world? We find every day that malicious attacks upon the Government are to be found in almost all the papers and many of these papers are absolutely irresponsible. But the Government is helpless. I do not think that any person who wishes well by this country can possibly tolerate a situation in which Government finds itself helpless to suppress public disorder or such kind of literature as will bring out a situation in which nothing but anarchy shall result. So far as the question of Government policy is concerned I do not say it cannot be attacked. If my friend would consult the explanation to section 124A he will find that any attack on the policy of Government is perfectly consistent with the rights of free, speech of the people. I do not for a moment say that the rights of the people and the freedom of the Press should be curbed. In a democracy no activity constitutes graver crime than suppression of liberty and freedom of expression. But at the same time there are limits to it. The limits that are there, in other countries should also be set to our laws. So far as the present position is concerned after we passed the Constitution and after the Supreme Court has delivered its judgment, the situation in the country is that there is no law worth the name which can in any way set any limit to those activities, or to those people who want to subvert the Government or issue literature without any responsibility and poison the minds of the people.

My friend asks me what those limits are. I will give that. Before we passed the present law, there were sections 124A, 153A and other sections in the Indian Penal code and the Criminal Procedure Code which dealt with these matters and other safety Acts in

the Provinces. It is no doubt true that those laws were very obnoxious. Many of our patriots were put behind the bars in consequence and every Indian disliked those laws, namely sections 124A and 153A. According to the exigencies of the situation the British Government employed them. They thought that such laws were quite necessary and sufficient to meet the situations that confronted them. When we succeeded the British we had this legacy and we were very much averse to the retention of those laws. Perhaps because of this the word sedition which existed in the original draft of the Constitution was taken away at the time the Constitution was passed. (Interruption). There was not much discussion: I have seen the debates. The reason was quite clear. The word sedition was very obnoxious' and none of us liked it. I am one of those who moved for the deletion of the word. That law went much further than the needs of the situation. My complaint is that this Bill again wants to bring in those obnoxious provisions. It wants to see that those very laws which were obnoxious and were never liked by us are revived. As the House knows, in the very famous case of Bal Gangadhar Tilak it was held that if a person merely excited disaffection towards the Government, without any results whatsoever or reference to mutiny or insurrection or public disorder, merely spreading disaffection was regarded as an offence. That interpretation has held the field in regard to section 124A till a few years ago when in the Niharendru Dutt Mazumdar's case the law was laid down by the Chief Justice Sir Maurice Gwyer in the Federal Court. With the permission of the House I would read out a portion, which would show how that law was construed at that time. This is a very important judgment so far as the law on sedition is concerned. This is what he said:

"The words as well as the acts, which tend to endanger society, it has been observed, differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. In the present day meetings and processions are held lawful which 150 years ago would have been deemed seditious, and this is not because the law is weaker or has changed, but because the times have changed, society is stronger than before [Lord Summer in *Bowman v. Secular Society, Ltd.* (2)]. The right of every organised society to protect itself against attempts to overthrow it cannot be denied; but the attempts which have seemed grave

to one age may be the subject of ridicule in another, Lord Holt was a wise man and a great Judge; but he saw nothing absurd in saying that no Government could subsist, if men could not be called to account for possessing an ill opinion of the Government, since it was necessary for every Government that the people should have a good opinion of it.[The Queen v. John Tutchin (3)]. Hence many judicial decisions, in particular cases which were no doubt correct at the time when they were given may well be inapplicable to the circumstances of today. The time is long past when the mere criticism of Governments was sufficient to constitute sedition, for it is recognised that the right to utter honest and reasonable criticism is a source of strength to a community rather than a weakness. Criticism of an existing system of government is not excluded, nor even the expression of a desire for a different system altogether. The language of s. 124A of the Penal Code, if read literally; even with the explanations attached to it, would suffice to make a surprising number of persons in this country guilty of sedition; but no one supposes that it is to be read in this literal sense. The language itself has been adopted from English law, but it is to be remembered that in England the good sense of jurymen can always correct extravagant interpretations sought to be given by the executive government or even by Judges themselves; and if in this country that check is absent, or practically absent, it becomes all the more necessary for the Courts, when a case of this kind comes before them, to put themselves so far as possible in the place of a jury, and to take a broad view, without refining very much in applying the general principles which underlie the law of sedition to the particular facts and circumstances brought to their notice."

This is a long judgment and I do not want to read further excerpts from it but then this view of the law was not confirmed by the Privy Council. And the last word, on the subject that is the law in vogue, I should say again, was just in consonance with the judgment reported as in I.L.R. 22 Bombay, Bal Gangadhar Tilak's case. That was the state of the law. In that state of the law the framers of the Constitution put in this article 19 which, as a matter of fact, took away the word "sedition" and enabled the High Court of Punjab to hold that sections 124A and 153A etc. and others, in fact all laws regarding "sedition" , were non-existent and void. The Supreme Court went so far as to hold that only when there was a law dealing with speeches and writings

calculated to undermine the security of the State or when they tended to overthrow the State, only in that contingency a person could be held guilty under such law if he used his right of speech or freedom of expression in that way. Today, if this Bill is not passed, the position is that in cases where a person wants to spread sedition or wants to disseminate disaffection in the country or does anything in an irresponsible manner, the law is unable to catch hold of him. It is easy for Dr. Syama Prasad Mookerjee to say, that the detention law is there and that a person could be detained. I am sorry he is not in his seat, but may I humbly ask if it is possible to run a Government by the law of detentions? Then he will be the first man to say that this Government is not worthy to hold the reins of Government when it used detention in all cases. Does any Member of the House like that detention should be resorted to in that manner? When the Preventive Detention Bill was placed before the House everyone of us said that we did not like detention. To plead before the House today that detention should be resorted to is to use an argument which is untenable. I maintain that no man can be punished unless there is a law which is able to catch hold of him if he chooses to act in such a manner as even to come within the definition of "undermining the security of the State or trying to overthrow the State". That is the present state of the law. At the same time, if that person were in any other country, say, in England or America, he would have been punished, but in our country that man cannot be punished. I humbly want to ask those hon. speakers who have preceded me, and especially Dr. Mookerjee, if this is a satisfactory state of law, that in this country any person can go about with impunity saying anything and doing anything which may be dangerous to the security of the State, without his being hauled up before a court of law.

Then this theory of detention means that thousands of people should be under detention. Then Dr. Mookerjee would come forward and say that this Government is incapable of working because it has recourse to a very doubtful method of enforcing the law. The law of the country is deficient. It is deficient because of us, because in the Constitution we did not take full care to see that the words are as a matter of fact there which could enable the courts to decide cases rightly or enable the Government to make laws whereby public order could be maintained. So far as public order is concerned, I do maintain that the gist of the offence of sedition is that it leads to public

disorder. This is the view of the best judges in England. I do not want to quote from many authorities because I believe hon. Members are aware of the principles of law. It is quite clear that so far as the gist of it is concerned, if any activity leads to public disorder, or to insurrection or to mutiny or other forms of disorder then such action should be culpable. But in India we cannot have recourse to that because unless and until the act is such which directly endangers the security of the State no action can be taken in bringing forward this amendment, Government has only done its duty.

While maintaining that Government have done well in bringing forward this Bill I do not and I cannot believe, so far as the provisions of the law are concerned, that it should be passed by the House as it is. I would like the Select Committee to go deeply into this question, because a question of this nature relating to the liberties of the people of this land is such that the deepest consideration should be given to it. When I see the provisions at sub-clause (2) of clause 3, I am stunned that it goes to the very foundations of the liberty of the people of this land. Sub-clause (2) of clause 3 reads:

"(2) No law in force in the territory of India immediately before the commencement of the Constitution which is consistent with the provisions of article 1 of the Constitution as amended by sub-section (1) of this section shall be deemed to be void, or ever to have become void, on the ground only that being a law which takes away or abridges the right conferred by sub-clause (a) of clause (1) of the said article, its operation was not saved by sub-clause (2) of that article as originally enacted, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, every such law shall continue in force until altered or repealed by a competent Legislature or other competent authority."

Shri Kamath: Contempt of court.

Pandit Thakur Das Bhargava: There is no question of contempt of court. It means that the Punjab Safety Act and similar Acts which everybody in this country dislikes should be revived in its original pristine glory as in the days of the British Government. It abridges the power given to the courts under article 13 of the Constitution. Now clause (2) of article 13 reads:

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

It means that if there is any law which is inconsistent with the provisions of article 19, to the extent of that inconsistency the law is void. This is exactly what the Punjab High Court and the Supreme Court have held in regard to all these Acts. But this provision revives all those Acts, and says that notwithstanding any judgement, decree, or order of any court or tribunal to the contrary, every such law shall continue in force until altered or repealed by a competent Legislature or other competent authority.

Now, no court is capable of altering or repealing any law. It can only declare a law to be void.

Pandit Krishna Chandra Sharma: My hon. friend is ignoring the limitation—"which is consistent with the provisions of article 19 of the Constitution as amended by sub-section (1): of this Section."

Shri Kamath: Pandit Bhargava is right; you are wrong.

Mr. Chairman: The hon. Member is not right in saying 'You are wrong'. He may address the Chair.

Shri Kamath: I shall address the Chair. Madam, Pandit Krishna Chandra Sharma is wrong.

Pandit Thakur Das Bhargava: I was submitting that according to this all those laws which have been held to be void by the High Courts and the Supreme Court will be revived. I do not know how my hon. friend, says that they will not be revived. If my hon. friend just peeps into clause 3 he will find that the provisions contained in the proposed clause (2) in clause 3 are much more serious than what he thinks. In the previous Constitution we had one formula in article 19(2) and another formula in 19(3), (4), (5), and (6). As regards 19(2), as I have already read out, the formula was that the State shall not be prevented from making any law in respect of certain subjects, whereas in 19(3), (4), (5) and (6) the rule was that restrictions were placed on the various Fundamental Rights given in article 19(1), but these restrictions were sought to be limited by the word "reasonable". In regard to 19(2) the word "reasonable" was not placed because the law-making power in regard to certain

matters was of such unexceptional character that no restrictions need have been placed at that time. Now, in the present proposed clause (2), in clause 3 the words are a mixture of both. It runs thus:

"Nothing in such-clause (a) of clause (1) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, restrictions on the exercise of the right....."

My hon. friend will kindly see that so far as the provisions of this part are concerned, the restrictions are only to be placed by law. If he reads further on he will find the words.

"...and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, contempt of court, defamation or incitement to an offence."

which means that so far as the latter portion of the clause is concerned there is no question of restriction, much less of reasonable restriction.'

There are two parts. The first one is of the same kind as existed in Article 19(3), (4), (5) and (6). The second one is the same as in article 19(2). Now this is a mixture of both. It means that in the matter of the latter portion there will be no restrictions on the right of the Legislature to make any law. It is very easy to say, as we heard the Prime Minister saying "What is this? It is not very important because no restrictions are presently being placed." I submit he is not treating us with the courtesy that is due to Members of the House when he makes an argument of this nature. This amending Bill is a very important measure. This terms the powers of the Legislature. But the Prime Minister says "You need not look into it very seriously, it only gives powers". As a matter of fact under Article 19 these powers were circumscribed and the need has arisen for the Prime Minister to come with this Bill. If it is such a simple matter and the Members need not consider it seriously, the House will be entirely mistaken. This is a Bill of a very fundamental character and I would respectfully ask all the members of the Select Committee kindly to look through it rather carefully. In my humble opinion it goes far beyond the need of the occasion. It wants to enact certain provisions of the law which the Constituent Assembly rejected and which no Member

of the House would like to see repeated now. May I humbly ask, does this House like that the original interpretation as in Tilak's case should be restored now, that sedition should be so defined and the liberty of the people should be so curtailed that no person should be able to say anything against the Government which the authorities may choose to term disaffection?

Ch. Ranbir Singh: Why are you afraid of them? Those Acts which you are mentioning can be repealed at any time.

Pandit Thakur Das Bhargava: I have not been able to understand the interruption but if the meaning of the interruption is that every person is able to do what he pleases, then what I am submitting to the House is that it should not be allowed. We want that a certain limit should be placed on the liberty of the people. If they want to act in such a manner as to affect the safety of the State, then it is sedition as it is understood in America and England. I do not want that the law of my country should be changed in the matter of the liberties of the people, that they should be curtailed in such a fashion and if there are more restrictions than those which exist in other civilized countries, then I am afraid, there will be frustration and misunderstandings shall crop up. The people in this country will certainly feel that they are not being dealt with in a satisfactory manner. Similarly if amendment to Article 19(2) is passed, that would mean the beneficent effect of the activities of Supreme Court and High Courts will be taken away and retrospective effect will be given to obnoxious laws. I am afraid we can-riot possibly agree to a change of this drastic nature.

In regard to article 19(1), as the House is fully aware that whole thing was fought out in the Constituent Assembly and the point at issue was whether the words "due process" should be put in or not. In the original draft article 15 which is now article 21 there was a controversy but we failed in our attempt. At the same time, I must say in the amendment brought by me and kindly accepted by our Law Minister the word "reasonable" was put in and I ask this House whether that word 'reasonable' has not served us in good stead? Does any person want any Government, be it the Congress Government or any other Government, to be armed with arbitrary powers? After all we have accepted this proposition and accepted it for all time that the courts should be the final arbiters of the fortunes of the people in this country. (An Hon. Member: The

courts are not the final arbiters.) In one sense, so far as the interpretation is concerned. I am not submitting that the Legislatures have no power. If they do not have such a power, why is the Bill before us? I am supporting this Bill because the Legislature is supreme and its will must be enforced. The will of the people is supreme and unless it is supreme and made effective by this Parliament, Parliament will lose its function. A well-ordered society has to see that the courts are there and they exercise the powers which are their own and the Legislatures also exercise such powers as the law gives them. This Constitution gives Parliament power under the Constitution these powers are exercised. This Constitution of this country is a sacred thing to me. I do not want the Constitution of a country should necessarily be changed for certain purposes or should be so changed that the Legislatures may be given such powers which we do not like to give them. I do not mean to say that Parliament is not supreme. It is, supreme for all purposes but the Constitution, under the Fundamental Rights, has set a limit for certain purposes to those powers.

In 1947 we passed a law by virtue of which bombs could be hurled on an innocent crowd from above without any warning. We passed certain laws in this House under panic to which we were all a party and one of our friends who are now adorning the Treasury Benches stood up and said that it was a black law. We passed those laws because they were necessary; the emergency was there and the Legislature had to pass the law. I do not mean that if we pass a law today, we cannot pass another law tomorrow. I do not doubt for a moment that our Legislatures are supreme. This is our own Government. Some other Government may come tomorrow and adorn the Treasury Benches. Then what would happen? I do not want to give any more powers to my own Government than what I would give to any other Government which occupies those Benches. I, therefore, beg of the House kindly to look at the question from the standpoint not because the Congress Government is there but to look at it from a strict point of view: What is good for our country? What is good for the Constitution of the country, for the eventual welfare of this country? And from that standpoint, we do not want to give up the principles which actuated us in framing the Constitution. I want that the liberties of the citizen of this country should be protected and unless and until the word 'reasonable' is placed before the word 'restrictions'. It

would not ensure that liberty. Otherwise, the courts will not be able to protect you and to say that the Legislature has gone further than the limits prescribed for them by virtue of this Constitution.

Mr. Chairman: May I know whether the hon. Member is likely to take some time?

Pandit Thakur Das Bhargava: I will take an hour more.

Mr. Chairman: Before I adjourn the House, may I suggest that the Bill is in the hands of about 20 Members in the Select Committee and in order to enable more Members to speak, hon. Members should try to make short speeches. This would help. If every hon. Member wants to speak for hours, I do not think it will be helping other hon. Members. **Several Hon. Members:** No limit of time.

1 P.M.

Pandit Thakur Das Bhargava: May I humbly submit one point? Time is not extravagantly taken up in this House. After all, our country has to spend so much for every minute that we take and I consider it a sin to take more time than is necessary. But, on an occasion like this, when we are dealing with the Constitution and the basic liberties of the people, I would respectfully ask you to be a little more indulgent.

The House then adjourned till Half Past Eight of the Clock on Thursday the 17th May, 1951.

THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and answers.)
OFFICIAL REPORT
PARLIAMENT OF INDIA
Wednesday, 17th, May, 1951.

The House met at Half Past Eight of the Clock.

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

9-40 A.M.

CONSTITUTION (FIRST AMENDMENT) BILL.—contd.

Mr. Speaker: We will now proceed with the further consideration of the motion to refer the Constitution (First Amendment) Bill to a Select Committee moved by the hon. Shri Jawaharlal Nehru on the 16th May, 1951.

Babu Ramnarayan Singh (Bihar): I rise to a point of order. I beg to draw your attention to Part XX, article 368 of the Constitution. It reads:

"An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House. . . "

The Bill is to be passed in each House. This means that the other House must be in existence.

Shri Hussain Imam (Bihar): Article 379 cures it.

Babu Ramnarayan Singh: After the coming elections, when both the Houses of Parliament will come into existence, I think, the Bill to amend the Constitution can be considered and proceeded with.

Mr. Speaker: The hon. Member's Point seems to be that according to article 368 as originally passed, it is not competent for this House to take up the question of amendment of the Constitution as there are no two Houses. Is that the point?

Babu Ramnarayan Singh: Yes.

Mr. Speaker: Then I may invite his attention to the further fact which it seems has not been brought to his notice that this particular article is adapted by the President long ago and the article as adapted reads like this:

"An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in Parliament and when the Bill is passed by a majority of the total membership of Parliament and by a majority of not less than two-thirds of the members of Parliament present and voting. . .

So long as the provisional Parliament is working, this Parliament is supposed to be doing the functions of both the Houses under the adaptations in the Constitution. That is, I think, the most correct answer to the point so far raised by the hon. Member.

Shri Naziruddin Ahmad (West Bengal): There is another article covering the same point, namely, article 379 which says that so long as both Houses of Parliament are not constituted, this Parliament shall exercise all the powers and perform all the duties conferred by the provisions of this Constitution on the next Parliament.

Mr. Speaker: That is also there.

Pandit Thakur Das Bhargava (Punjab): Yesterday, when we parted, I had made a point in this House that as a matter of fact the rulings of the Supreme Court and our High Courts had created a void in this country and the country was in such a desperate situation that there was no law existing by virtue of which Government could curb the activities of those who wanted to create disorder and take advantage of the vacuum. I submitted this in all humility but at the same time I must say with all the emphasis at my command that this particular situation as it is at present has been the cause of grave anxiety to all the Provincial Governments and possibly to the Central Government also. In reply it was said that the detention law was there to meet the situation but when a question was put by me to Dr. Syama Prasad Mookerjee whether any delinquent could be punished under the present law as it existed, he did not reply

to the question and referred me to the effect of a continuous detention on the whole life of a person implying that such a weapon was fairly deterrent.

Now, Sir, Dr. Syama Prasad Mookerjee, when there were interruptions from Members of this House, treated us with some contempt.

Dr. S. P. Mookerjee (West Bengal): Not at all; with great respect.

Pandit Thakur Das Bhargava: This is the respect that he showed. He said that the heat of the sand is sometimes greater than that of the sun. It is quite true that we are just like sand. We are like dust: everybody is formed of dust. "Dust thou art to dust returnest". But, I must say that a humble Member of this House is certainly entitled to more courtesy from our leaders be he Dr. Syama Prasad Mookerjee or be he the Leader of the House. If he could not answer some of the inconvenient interruptions, it was only fair that he should have admitted and said that the case was as I submitted it to be. As a matter of fact, even now, I submit that the present position of the law is that no person can be punished unless his act or speech or publication is brought within the purview of some existing law, which according to the Constitution, endangers the security of the State or tends to overthrow it. Therefore my humble submission is that the present state of the law is certainly such that calls for a change in the Constitution. He will be a bold man who like Dr. Syama Prasad Mookerjee will give us some platitudes to live upon. He said in his speech yesterday that as a matter of fact, a country could not be governed by coercive processes, as if all the laws of the land are in the nature of coercive processes. It is quite true that politicians are perhaps much greater sinners than lawyers. Lawyers are traduced for nothing. Politicians give out arguments which in their calmer moments they will never support. Can any country be governed by persuasive methods alone? Do we not require any laws in any country? May I just enquire, what was the relevancy of the Cooch-Bihar firing in relation to this Bill? Dr. Syama Prasad Mookerjee waxed eloquent when he expressed that the firing in Cooch-Bihar had some relation with this law. I humbly submit that if you go into the causes which produced this incident in Cooch-Bihar, it may be found that the speeches and writings of some people who were out to create disorder might be responsible for the situation. It is quite true that coercive methods are not absolutely necessary; but it is unjust to say that any Government can subsist without

some law. Not only for some centuries, but from time immemorial, in fact from the birth of civilisation, we have always had laws to curb crimes and punish offenders. At the present moment, we have got no law—I have repeated it so many times and I want somebody to challenge me—there is no law today, according to the judgments of the High Courts and the Supreme Court which can deal with a situation in which all kinds of offences which do not fall within the category of endangering the security of the State or which threaten to overthrow the Government can be committed with impunity. Therefore, in this situation, I must say that no Government can function, and it is none too soon that our Government has brought in this measure. Our Government would have been guilty of apathy and neglect of its duty if it did not bring a Bill of this nature as soon as possible.

Having said this much, I may submit that the present state of the law is such that it was not even contemplated by the framers of the Constitution or even by the Press men. A committee was appointed sometime after we attained independence, the Press Laws Inquiry Committee. When they examined article 13 (2), they came to the conclusion that some of the present laws will subsist as good. Even when confronted with the provisions of article 13 (2), they came to this conclusion and a summary of their recommendations is given on page 49 of the report. They were under the impression that some of the present laws were conformable to article 13(2). But, the Supreme Court and the High Courts have been pleased to hold, and rightly, I should say, that some of these provisions could not exist and were void. In my opinion, even if a man makes a violent speech, advocating the creation of disorder as a result of sedition, he cannot be convicted under section 124A or section 153A of the Indian Penal Code even though his speech could be brought under the purview of those sections, because our High Courts have held that those laws do not exist, as these sections are too wide and innocent persons could be enmeshed in them. The High Courts having held that these laws do not exist at all, no case, whatever the nature may be, could be brought within the purview of those sections. This is a thing which the man in the street cannot understand and appreciate. A void has been created. A person is able to make any speech he likes, even such as may endanger the security of the State, and he does not come under the clutches of the law because such laws as could

have relation to such a situation have been declared void. Therefore, it is absolutely necessary in my opinion that Government should make a change in the Constitution and enact suitable laws for enforcing public order and ensuring good Government in the country.

The next question is whether the present Bill which has been moved in the House is sufficient to meet the situation or insufficient to meet the situation, or whether the necessities of the hour are met by the proposed changes. My submission is that clause 3 (2) of this Bill is very wide, and would revive all those obnoxious laws for which no countrymen of mine would be agreeable. At the same time, it is too narrow and it will not meet the situation. As I submitted yesterday, I would respectfully request the House to read carefully clause 3 (2). This sub-clause is divided into two parts. A cursory reading of Article 19 of the Constitution will show that it is divided into six liberties and six controlling provisions of those liberties. In the first part, the Fundamental Rights are given; in the succeeding parts the safeguards against these liberties are given. It is provided that in regard to these liberties, certain restrictions could be put in by law, but they must be reasonable restrictions. But, in article 19(2) no question of any reasonable restrictions comes in. On the contrary, absolute power has been given for making laws. The extent of this power was defined by the last words of the clause so that the powers could be exercised to that extent only and no further and no less. In prescribing this limit we made a mistake that it did not include 'public order' in those last words. Had we included 'public order', all this confusion would not have arisen. In the present clause 3, which seeks to amend article 19 (2), the difficulty is that it is much wider than the provisions we have enacted in article 19 (2), previously. The words used are too vague, too wide and too drastic and too unbridled. The words are:

“.....prevent the State from making any law imposing, in the interests of the security of the State, friendly relations with foreign States, public order decency or morality, restrictions on the exercise of the right..... Or prevent the State from making any law. . .”

I do not know, what is the full import of the words, "in the interests of friendly relations with foreign States"? We have got, in this connection, the Foreign Relations

Act passed by the previous Government and that Act, says that the rulers of foreign nations, are immune from attack from us and. the law of defamation applies to them. But, reading the words here as they are, "in the interests of friendly relations with foreign States", what is the meaning? Does it mean that any-sort of criticism as would endanger-the security of those States or endanger our relations with those States? What is taboo? What is allowed? Unless and until you put in the word 'reasonable', this clause will not be justiciable and may destroy a considerable part of the liberties of the citizens of India. After all, these rights have been made justiciable and the courts have been empowered to protect people from embargo on them. The Courts should be able to determine whether the restrictions put are reasonable. If you put in only the restrictions and do not say what these restrictions are in relation to foreign States, the position is left vague. The restrictions may be any restrictions, in the absence of the word "reasonable".

And what is the meaning of "public order"? What exactly is the import of restrictions in the interest of public order? That is left too wide and it is something even unheard of even the history of the British regime. Unless and until you define the full scope of it and make it amenable to the justiciability of the courts, you will not be justified in granting these powers in the Constitution.

And as regards the making of laws relating to contempt of court, defamation or incitement to an offence, it is absolute in the Bill. I am yet to find the meaning of the words 'incitement to offence'. Offence itself is defined in probably section 40 or 41 of the Indian Penal Code. Anything prohibited by law is an offence under the factory Act spitting in a place not prescribed is an offence. Many acts of omission and commission fall under section 34 of the Police Act. But that definition of section 40 may or may not be applicable. Moreover what incitement to an offence is has not been defined, as far as I know. We know what abetment is. But what is the meaning of incitement to an offence? So far as my knowledge goes, it has not been defined in any Act so far. And here we are giving the full power to Government without restriction, unbridled power. This is not fair. I submit that article 19 (2) is extremely wide and the Members of the Select Committee may please look into this carefully.

In every land, in England, in America and other countries, the Government has the power to see that disaffection and enmity are not preached between different sections of the people or against the Government, provided such disaffection tends to affect the public peace. But even under the present wide powers, any person can take it into his head to disseminate disaffection and enmity between different classes and he may not come within the clutches of the law. India is inhabited by different classes and there are so many prejudices and animosities among them and there should certainly be provision to see that the Government has the power to prevent the spread of enmity or disaffection between different sections. But so far as the present provisions go, even though they are wide, they do not arm Government with the power to see that such disaffection is not spread. Such power is essential in the nascent situation in which the State now is. The proposed clause 19(2) is too narrow in one sense and too wide in another. This provision needs to be amended. The word "reasonable" should be put before "restrictions" and again, in the later portion also, dealing with the making of laws relating to contempt of court, defamation or incitement to an offence. Reasonable restrictions have to be put on the exercise of the right to make the laws. Restrictions are put on individual rights of freedom of speech and expression in the interest of security of the State. There should be a balance of the two. Unless there is this balance it will be difficult to protect such fundamental rights as have been given to us by the Constitution. I now come to part (b) of clause 3 and I do not want to say much on except that I feel that even the change sought is neither called for nor just. Every person has been given the right to practise any profession or carry on any occupation, trade or business. At the same time we realise that in the interest of the general public nationalisation of industries is necessary. I do not grudge it. But I do not grudge it. But I fail to understand the import of the words "the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise". It is not clear what the words "or otherwise" mean. They may have reference to "State or corporation", or to "exclusion complete or partial" or to "citizens". Thus they may encourage or curb monopolies or cartels, may include foreigners or may exclude others than State or corporation. I therefore suggest that the words "reasonable

restrictions" as used in sub-clauses (3), (4) and (5) should be used here also, and the construction of this sub-clause should be on the same lines.

Mr. Speaker: In view of the fact that the Bill is a very important one, and there must be discussion of the essential points and as many hon. Members have a desire to speak, I would suggest to the speakers that they may confine themselves to the salient points and state them broadly, instead of going into the language which, in the light of whatever suggestions are made here will certainly be gone into very, carefully by the Select Committee. . But if we are to take up each of these clauses in the light of the wording, we may perhaps be leaving out a number of points. Moreover, we have another chance of the Bill being scrutinised when it emerges from the Select Committee. Therefore, it would be better if hon. Members confine themselves to salient points and just say a few words in support of them. That is what I suggest. Otherwise one of two courses will have to be followed. We may not be able to deal with it fully or we may not be able to give sufficient time to a large number of people who desire to speak; and hon. Members are anxious that the session should come to an end as early as possible. That should not be done at the cost of the full debate so as to bring out all the points. Therefore, I would suggest that hon. Members need not go into the wordings at the present stage. They may take up just those objectionable features that they want to discuss and point to certain things, if necessary, by way of example, without going into details.

Pandit Thakur Das Bhargava: I certainly accept your advice and I will not go into the wording of the clauses. Actually I was not going into the wording. The point I was trying to explain is one of great substance. Anyway I will not encroach on the time of the House farther by referring to particular words in the Bill. This is an important measure and that is my justification for taking more time of the House than I do usually.

Yesterday I submitted that sub-clause (2) would create great confusion, if the intention is to give retrospective effect to this Bill. I can understand the giving of retrospective effect to certain measures, but to ask that a Bill of this nature should be given retrospective effect is asking for too much. Usually according to the accepted principle of legislation a Bill is not given retrospective effect in the ordinary course,

though as I said in certain cases, for instance, when relief has to be given to down-trodden people, this sort of retrospective effect has been given. But if we give retrospective effect to certain provisions of a Bill of this nature, it would create great confusion. It is stated that it shall be taken as if this amendment existed already, when article 19(2) was enacted, which means that all the effect of the judgments of the High Courts and the Supreme Court is sought to be washed off. The scope of clause 3 is very wide and it would even otherwise create confusion. Where is the occasion for courts to review these cases? Even if the article is amended in the manner we seek now, still it may be held by the courts that certain acts are not valid according to the amended Constitution. That is not possible which means that all these acts will be revived according to the will of the executive. It will not be the Courts who will be called upon to review the cases in the light of the amended article. Unless similar cases go again to the High Court and the Supreme Court, we will be in a state of suspense because according to this provision if the law cannot stand the scrutiny from the standpoint of the amended article it has to be declared void. Therefore, my submission is that so far as this aspect is concerned, this should be carefully considered and this question of giving retrospective effect should not be insisted upon. In regard to Article 31, I agree hundred per cent with the Mover of the Bill that not only the Congress Party but all the parties in this country are committed to the principle of abolition of Zamindari and it is not any innovation now. In the previous Constitution also we had a provision in Section 31 (4) and (6) that the pending legislations will not be questioned by any court. The Constituent Assembly spent a good part of its time in coming to an agreed conclusion in regard to this article. I remember the occasion when our Prime Minister moved this amendment in the Constituent Assembly when he said that this abolition of zamindari must be given effect to. He said a balance must be found between the will of the people and the static structure of the society. He thought the provision in article 31 was a good adjustment and we all accepted it. In insisting that compensation should not be adjudicated by courts we are not going beyond the provision which we enacted there already. We want only to see that they are given effect to and the dilatory tactics of those who are interested should not be allowed to prevent it. At that time all the lawyers in the House

came to the conclusion that there was very little justiciability in article 31. According to the present article 31 also, the Courts have little to do so far as the amount of compensation is concerned. Even then it is quite true that our Supreme Court has not had the occasion to finally decide this point whether article 31 came in the way or not because the Patna High Court decided about Bihar Zamindari Act in a different way. The will of the country is quite clear that we want abolition of zamindari and the whole country wants it. It is also not true that Government want to take estates without compensation. Compensation is to be determined according to the will of the State in which the legislation is enacted. Now when Dr. S. P. Mookerjee was confronted with the question, he also said that he was in favour of abolition of zamindari with compensation. Let us not delude ourselves about the amount of compensation. When such a large amount is involved, it is absolutely clear that the same amount of compensation cannot be given as in the ordinary way. In regard to abolition of zamindari, the whole country is of one view that the Court should not be allowed to question the amount of compensation when it is determined by the Legislature of any State. I placed an amendment in the Constituent Assembly that so far as the abolition of zamindari and certified agrarian reforms are concerned, no court should be allowed to poke its nose into it in regard to amount of compensation and whatever is the will of the state Legislation must be given effect to. That was not accepted then and I am glad that the principle is accepted now that so far as abolition of zamindari and the measure of compensation is concerned, the Court will have nothing to do. All the same I must submit that these provisions in new articles 31A and 31B go much beyond the necessities of the case. Under these articles it appears that nine Acts which are given in the Schedule are finalised by one stroke of the pen. I have not read all those Acts nor have I been able to find copies of those Acts in the Library. Some of the Acts may be based on certain principles which we may not, like. So far as compensation is concerned.....

Shri Hussain Imam: Uniform policy regarding payment of compensation all over India.

Mr. Speaker: Whatever that may be, when the hon. Member gets a chance he can speak.

Pandit Thakur Das Bhargava: From the interruption I find that my friend is in favour of the abolition of zamindari and so far I do not find anyone who objects to it. I heard the speech of an hon. Member who is a very big landlord himself and I did not find anything in his speech which went counter to the will of the nation that zamindari should be abolished.

When I was a Member of the Constituent Assembly I had occasion to speak about the Bihar law. In that law by one stroke of the pen on a certain day all the rights of the people in the land were taken away and the Government of Bihar became the sole master and proprietor of all the lands in Bihar. This is to unjust. I for one cannot agree to this way of enacting a law. There is no occasion for finalising all these Acts and saying that none of these Acts shall be questioned in any court of law. We provided a safeguard by enacting that the assent of President will be the condition precedent but this is being done away with. As far as compensation is concerned we are committed to it and we stand by it. I do not want to be a party to this drastic amendment which seeks to validate all the laws by one stroke without going through those laws and coming to the conclusion as to whether any of the other provisions of the Constitution have been contravened them. Even in article 31A the words are a bit too wide to the mark.

While recognising all that, I submit for the consideration of the House that the court should not be given the power of finding out if the compensation given is more or less or equitable or otherwise. We should look into these Acts rather carefully. It is practically an accepted principle that in regard to acquisition of property which does not come within the ambit of the words "abolition of zamindari", the law should be as it is today. The Act I of 1894 is just and not so drastic as article 31 of the Constitution. According to article 31 the matter is not justiciable, whereas previously when the executive officer fixed the value the matter could be taken to the court. My submission is that that law should be allowed to continue and should not be interfered with. Apart from cases in which the question of the abolition of zamindari is involved the amount given should be justiciable and therefore in the Constituent Assembly I suggested that the word 'appropriate' should be inserted in the proper place in article 31. I still hold that view.

In articles 16 and 340 the words "backward classes" are used. I do not know the exact connotation of the words. I know what is meant by the Scheduled Castes and Scheduled Tribes but I do not know who these people are who are known by the term backward classes. In the Constituent Assembly I wanted to define the word by including the Scheduled Castes and such other classes as were recommended by the Commission to be appointed by the President under article 340. Unfortunately my amendment was not accepted. I adhere to the view that the Scheduled Castes are the real backward classes. There might be a few other classes which may be on the same level but which are not in the Schedule. Beyond that I do not know what is meant by backward classes. So far as backwardness is concerned all the Brahmins of India are backward economically. I think the Rajputs, who are considered as one of the most influential classes in India are very backward socially because they observe purdah and previously resorted to infanticide. In article 340 we have used the words "socially and culturally backward" and my fear is that if these words are allowed without being refined we may be confronted with difficulties.....

Dr. Deshmukh (Madhya Pradesh): A Commission is going to be appointed to investigate it.

Pandit Thakur Das Bhargava: I know it and I will advert to it later. It is quite right that those classes who are, considered by the Commission to be backward should be included and I have no objection. But supposing the Madras Government notification about the reservation of seats in universities, etc. is sought to be maintained by the backdoor method and some classes who are not backward are brought in as backward, then I am very much against this.

Dr. Deshmukh: It is not the intention.

Pandit Thakur Das Bhargava: The Mover of the Bill was pleased to say that our Government is committed to bringing about a classless society. We all stand by it. But if by this backdoor method the Government of Madras wants seats reserved for the non-Brahmins, including other classes, I am opposed to it.

Dr. Deshmukh: Is it the Brahmin in you speaking?

Pandit Thakur Das Bhargava: I respect the Brahmins and I respect the other classes also. But I want that the really backward classes alone should be given the protection.

Give them all that you can and even if you want that property should be given to them I am quite ready to agree. But at the same time it would be quite wrong to bring in those classes which are not backward by virtue of an ambiguous phrase and introduce confusion and uncertainty. As regards reservation of seats I was of opinion that under article 16 you can very easily include it, as you have already included reservation of appointments for the backward classes. These words "economically, educationally and socially" throw open a very wide field and I want to know which way we are going, how far we are going and where exactly we are going. Whatever can be done for the Scheduled Castes should be done and I do not want to be misunderstood in this regard. We would be failing in our duty if we do not do all that we possibly can for the weaker and Scheduled Classes. During the last three years we have done quite a bit but that is not sufficient. We should give them proprietary Rights on their houses and every student should get a stipend or scholarship to go up to the highest standard and they should also be given jobs. But I do not want that communalism should be introduced by the backdoor methods. I know that the Government do not want it. At the same it is not the Central Government that is going to implement it. But it is the Provincial Ministers who will give effect to it and I do not know what they may or may not do. As a matter of precaution I am uttering this warning, though I am not opposed to the proposed amendment.

I shall now deal with the clause which deals with the appointment of the Chief Justice. I do not want that a non-Indian should be appointed as Chief Justice. I quite realise that those judges who are already in service may feel a sort of injustice that they are not allowed to go up to the highest position. But I am yet to know any country where such a responsible office is allowed to be filled by any person except the national of the country.

In the end I would make one request to you, Sir. In the Select Committee on this Bill I would beg of you to allow that any Member who wants to appear before the Select Committee may be heard there, though his vote may not be taken. So far as the provisions of this Bill are concerned every Member should be given the opportunity to contribute his mite for the improvement of the Bill as was done in the Representation of the People Bill.

I am very glad that the Prime Minister gave us this assurance while moving this motion that he would certainly go into the provisions of the Bill with an open mind. I welcome that assurance and hope that when the Bill emerges from the Select Committee it may not only place us in a much better position than we are today so far as the laws of the land are concerned, but at the same time may be such as to give satisfaction to all the parties in the land.

Several Hon. Members *rose*—

Mr. Speaker: Before we proceed further, I think, we must make some arrangements for shortening speeches and for lengthening the hours of sitting—otherwise it will not be possible for us to progress further. So far as speeches are concerned, I have already made my suggestion while the hon. Member, Pandit Thakur Das Bhargava was having his say. Now, as regards the lengthening of the time, instead of sitting for five hours as we do from day to day, it is better if we could also sit in the afternoon today. And if the House is agreeable I might suggest from four to six today.

Hon. Members: Yes, Sir.

Mr. Speaker: So, that will be the time fixed then.

Shri Hussain Imam: Every day, or only today?

Mr. Speaker: Not every day, but only for today

Pandit Kunzru (Uttar Pradesh): The Bill before us seems to be very simple, but it is nonetheless of a very far-reaching character. It affects not merely the Constitution but also the spirit in which the Constitution is to be dealt with. A measure of such importance requires careful consideration and I think that we ought, all, to welcome the scrutiny to which it has been subjected by previous speakers. In order to justify the important changes that are sought to be made in the Constitution, Government should have taken care to supply us with full information on every point, to tell us exactly why each particular amendment was needed. The Prime Minister spoke at considerable length but dealt, generally speaking, with principles. When he dealt with specific matters he was very tantalizing; he did not throw much light on the reasons for the specific measure that the Government have placed before us. In view of this, some other Member of the Government should have given us fuller information than the Prime Minister gave. Perhaps my hon. friend, Dr. Ambedkar would have been the

fittest person to explain to us in detail the provisions of the Bill, particularly those which relate to the amendment of article 19 and the insertion of two new articles 31A and 31B. I have no doubt that he will take part in the debate. He will probably get up in the end in order to have the last word on the subject.

The Minister of Law (Dr. Ambedkar): No, no.

Pandit Kunzru: That may suit him and the Government of which he is an important member, but it is most unfair to the House that it should be called upon.....

Shri Sidhva (Madhya Pradesh): What is the unfairness?

Pandit Kunzru: If Mr. Sidhva will have a little patience he will realise that every Member is not as enlightened as he is and that most of them require a little more instruction than he has ever done or ever will do.

I was saying that it is most unfair to the House that it should be called upon to consider a measure that vitally affects the liberties of the people and their economic rights without having been supplied with the material on which a correct judgment could be based. Not being in possession of this material, I am forced to take some of the more important amendments and deal with them in the light of such information as I have.

[SHRIMATI DURGABAI in the Chair]

Easily the most important amendment before us relates to article 19. This article was not passed in a hurry by the Constituent Assembly. It gave the Assembly and the Drafting Committee a great deal of trouble and it was after a full consideration of the matter, by the Drafting Committee and probably by the Government that the language of the draft Constitution was changed and Parliament was given power to control the freedom of speech and expression only in certain limited cases. What is now being sought to be done is not a mere amendment of article 19 in one unimportant respect or another. What these changes mean is that article 19 will be brought into line with the Preventive Detention Act. Under the Preventive Detention Act persons can be detained for acting in any manner prejudicial to the relations of India with foreign Powers, or the maintenance of public order. I shall say nothing about the security of the State because that is already provided for in the article under reference. Now, why is it necessary for Government to go so far in the amendment of article 19 as to try to

place the Preventive Detention Act and the Constitution on the same footing? I listened as carefully as I could to the Prime Minister, even, when he, as is his habit, inconveniently dropped his voice, but I did not discover any reason in his speech for such a policy. I know the difference between the Preventive Detention Act and any law that Parliament may make under article 19, if the amendment proposed by Government is passed. The Preventive Detention Act, as its name shows, is preventive, while any law passed under article 19 will be punitive. It is not detention, but trial in a court of law that will be necessary to bring a man within the purview of any legislation passed after article 19 is amended in the manner desired by Government. But the scope of the two pieces of legislation will be the same. We have not been told that the Preventive Detention Act will be done away with if the scope of article 19 is made wider. We shall, therefore, have both the Preventive Detention Act and a law passed on the wide grounds on which the Preventive Detention Act is based. I think that if Government think that it is only a small number of persons that has been or will be guilty of inciting people to commit offences, or to do any other thing that would seriously endanger the interests of the State, then I think that the Preventive Detention Act, however, objectionable it may be in principle should be enough for this purpose. Again I do not see really, taking the present situation in the Country into account in the absence of any information of an alarming character or of a serious character being given by Government, that there is any need for the drastic changes proposed by the Prime Minister.

I have already pointed out what the character of the Bill is by comparing it with the Preventive Detention Act. But I should like to draw the attention of the House in a more pointed manner to what the Prime Minister seeks to do. If the amendments proposed are accepted then it is not merely that article 19 will be amended, but that, for all practical purposes part (a) of clause (1) of article 19 will be deleted. The provision relating to freedom of speech and expression will be reduced to the position that Fundamental Rights occupy in the continental Constitutions. In those Constitutions Fundamental Rights are no more than pious wishes. At the best, they are indications of the policy of the authorities; nothing more than that. I, therefore, think that if Government really feel that the clause to which I have referred must be hedged

round with such serious limitations as to make it valueless for all practical purposes than they should courageously come forward and ask for the deletion of that clause.

I shall now consider the three changes that Government desire to make in article 19. The Statement of Objects and Reasons says that the provision relating to the freedom of speech and expression as interpreted by certain courts, has created very inconvenient situation. We are told that some courts have taken the view that article 19 is so comprehensive as not to render a person culpable even if he advocates murder and other crimes of violence. I understand this and I am for the time being prepared to allow—and when I say for the time being I mean subject to full information given by Government—that some amendment of the law of the Constitution is necessary in order to prevent incitement to violence. St the language of the Sill is so wide as to cover not merely incitement to violence, but other things. It prohibits incitement to the commission of an offence. Now, the word "offence" is of a very general character. It is very wide in its scope and if all that the Government desire is to check incitement to violence, why should they not use the words that will make these words plain. But while some reason has been given in the Statement of Objects and Reasons in favour of the last amendment, no reason whatsoever has been given to justify the insertion of the words "public order" and "friendly relations with foreign states".

The words "friendly relations with foreign States" raise a very important issue. My hon. friend Dr. Mookerjee when he referred to this matter yesterday and said that it amounted to a restriction on the criticism of foreign powers, the Prime Minister corrected him and said that it did not relate to criticism. But surely if a law is made in pursuance of the amended article 19, it is Government that will decide what would be prejudicial to the: maintenance of friendly relations between India and other States and it is quite possible that strong criticism of foreign policy may be banned. I do not think that there is any such law in the United States of America. When the Constituent Assembly was in session we frequently referred to the Constitutions of other Countries. I consider myself justified, therefore, in taking into account the provision made in the Constitutions of other countries in this respect.

So far as I know, the United States Constitution has made no provision of the kind in our Bill. This matter was considered by the Press Laws, Enquiry Committee and it too

has not pointed out that the United States Constitution does not enable Government to deal with this matter. The Committee also referred to the position in England and said: "With regard to foreign relations in Great Britain words which may expose a foreign Government to contempt or hatred or may cause disquiet in some way are not punishable unless they contain an incitement to commit violent crimes".

In France, according to the same Committee,

"The State has the power to prevent defamation of heads of States and diplomats, public insult to a sovereign or to a foreign Government as well as defamation of a foreign nation and any person who indulges in these can be punished both with fine and imprisonment".

The position that has been placed before us is not merely contrary to, the position in England but also to, the position as it is in France. In these countries which have to deal with foreign powers find it unnecessary to have such sweeping powers as the general language of the amendment that I have referred to will arm Government with, why should our Government ask for this power? If all that they desire is to control defamation, even the defamation of a State, that is complete distortion of its actions; they have the Foreign Relations Act which can be amended in order to cover the wilful distortion of the motives of States in friendly relations with India. I should like to refer in this connection once more to the Press Laws Enquiry Committee. The Committee on page 34 of its Report says:

"We recommend that the Act (that is the Foreign Relations Act, 1932) in its present form should be repealed and legislation should be undertaken to make provision on a reciprocal basis to protect heads of foreign States, foreign Governments and their diplomatic representatives in India from defamatory attacks and to prevent the circulation of false or distorted reports likely to injure India's friendly relations with such States".

Clearly, it is within our power to punish those who defame the persons mentioned in the Foreign Relations Act. As regards the punishment for the distortion of the motives of a foreign power, something more will be required. But I do not know whether it is necessary at the present time even for this limited purpose to change the Constitution. Government has told us nothing that can incline us for the moment in favour of so

sweeping an amendment. Then, I come to the words "public order". Is there any limit to the meaning of these words? They are of unlimited scope. Government can under cover of these words pass any kind of law that it likes. Virtually it means that in future even actions which do not seriously injure the State—the man who commits them—may be made liable to punishment. I have said that all these words taken together make so fundamental a change in the right of free speech and expression as to amount to a complete abrogation of that right. It is true that the Constitution does not abrogate that right. Well, the Constitution will abrogate that right. The Prime Minister said yesterday while Dr. Mookerjee was speaking that the Bill before us does nothing, that it only empowers Parliament to do certain things. This was a somewhat surprising remark. For the object of Fundamental Rights is not to confer powers on the State but to confer rights on the individual so as to protect him against the tyranny of changing Parliamentary majorities in the future. That is what I understand to be the meaning of Fundamental Rights. When you give Parliament the right to make a law that will affect our liberties, then our liberties are not guaranteed against an attack in moments of excitement and passion under the direction of a Government that may find certain acts done by the people very inconvenient. Taking all things into account I cannot support the amendments proposed by the Prime Minister in their present form.

Now I shall say a word with regard to the insertion of the new articles 31A and 31B. When the Prime Minister made in the Constituent Assembly the motion that subsequently became article 31 of the Constitution, he asked us to consider the matter with reference to two principles. The first principle that he enunciated was that the right of property was not an abstract, absolute right but was subject to the rights of the community which were greater than the rights of the individual. The second principle that he laid down was, in explanation of the various clauses of the proposal made by him, that property would be acquired only on compensation, that there would be no expropriation without compensation. I wholeheartedly accept these principles. I think whatever Government may be in power in future will be guided, or will have to be guided, by the principles on which the Prime Minister moved the acceptance of article 31 of the Constitution. And I want to consider the new articles proposed only in the light of the principles recommended to us by the Prime Minister. So far as I know, the

comprehensive character of clause (2) of article 31 has been admitted by all the High Courts that have been called upon to consider the legislation passed by the States under article 31. The Bihar High Court has set aside the Bihar Land Reforms Act not because of any flaw in article 31 but because it thought that the different scales provided for the payment to the different categories of holders of zamindari property were contrary to the provisions of article 14. The High Courts of Allahabad and Nagpur have held that even that article does not modify the operations of article 31. Is it necessary in these circumstances for Government to come forward with the two new articles referred to by me? What does the article 31st amount to? If one considers the language of article 31, one feels as one does in the case of amendment of article 19, that it is no mere amendment that Government are seeking, but the virtual repeal of article 31. So far as I have been able to see nothing will be lost if we retain only the first clause of article 31, "No person shall be deprived of his property save by authority of law," and delete the rest of the article. Perhaps my hon. friend Dr. Ambedkar will explain to us what effect the proposals embodied in articles 31A and 31B will have on article 31. But so far as I can see it, these articles will leave only the first clause of article 31 intact. Again I say if that is the intention of Government, why should they not then choose this simpler course rather than the indirect and cumbersome course that they have adopted? There may be a need only for the legislation passed in Bihar. The legislation passed is sought to be validated before the Supreme Court has had any opportunity of considering the matter. This is not a purely formal decision. I am not referring to this matter in order to delay the operation of article 31, though the decision of the Supreme Court will inevitably involve some delay. Normally I am certain that Government could have adopted this course. They could have allowed the matter to come to the Supreme Court and awaited its decision. What are the special reasons compelling Government to take the extraordinary course that they have adopted? I can discover only one reason and that is that General Elections will be held at the end of the year. If that is the real reason, then the two new articles that I have referred to are to be inserted not because article 31 has been found ineffective but for a political purpose (Hear, hear) and I deprecate this in connection with so vital a matter as -the spirit in which we should consider an amendment of the

Constitution. We must, if necessary, change the Constitution so as to enable it to fulfil the social purpose for which it was designed.

Shri Hanumanthaiya (Mysore): May I know what is the political purpose referred to?

Pandit Kunzru: I can explain things, but I cannot compel my hon. friend to see their meaning.

Shri Hanuinthaiya: That does not explain matters.

Pandit Kunzru: Perhaps my hon. friend will require a little more time than I can give him just now to explain the matter to him. I deprecate that this was not the spirit in which the amendment of the Constitution should be considered. We should not act in such a way as to make anybody feel that mere impatience or anything that thwarts our will can drive us to take up so serious a matter as the amendment of the Constitution.

Another reason why I ask Government to allow the Supreme Court to consider the matter is this: The Supreme Court may after considering the matter feel that the agrarian laws passed by some of the States are constitutionally valid. It may point out the manner in which the powers are exercised by the State have not been fair in all cases. One of the Judges of the Patna High Court who considered the validity of the Bihar Land Reforms Act has drawn attention to the case of a zamindar whose total income was Rs. 10,05,000 but whose liabilities after the payment of the agricultural income-tax and the statutory deductions would amount to Rs. 10,26,000. Though the courts may be debarred from considering such a thing, the Prime Minister's intention has not been fulfilled in the manner in which this question has been dealt with. The number of such cases has been small, but I venture to think that this is a matter requiring the attention of so fair-minded a man as the Prime Minister is. I should not be willing to agree for a moment that the Prime Minister had as a matter of policy put forward either of the principles to which I have referred. I am certain that he did so out of conviction and he would be the last person in India to throw any of his convictions overboard for the sake of any convenience. I ask him, therefore, whether it would not be an advantage to him and to the State to allow the Supreme Court to consider the matter and then to take up the amendment of the Constitution in the light of the views expressed by the Supreme Court.

Let me guard myself once more against any misunderstanding. There can be no re-opening of the questions which were at issue when the Constituent Assembly discussed the Constitution. Those questions have been laid to rest. Article 31 has to be given effect to. The rights of the community have to be given precedence over the rights of the individual. But, the Prime Minister sought to reconcile the one with the other so that there may be not only progress, but also stability. In view of this, I support the view of those hon. Members who think that the Bill should be circulated even though it may be for a short time, for a fortnight, in order to enable the public to express its opinion. It is not the same thing as the consideration of the matter by the Supreme Court. But, it will enable us to consider the measure more fully than it could be done at the present time. I am almost certain that this view, will not commend itself to the Government. But, even if a Select Committee is appointed, they can still give some time for the expression of public opinion. If we want to go forward in such a way as to have both progress and stability, it is of the utmost importance that we should give the fullest opportunity for the expression of views by those who are interested in such matters.

Shrimati Renuka Ray (West Bengal): I am very glad that this Bill which seeks to make certain changes in the Constitution we drew up a year and a half ago, is being sent to a Select Committee for careful consideration and scrutiny. Even when we were in the midst of passing the Constitution, we realised that in the light of experience, certain amendments would become necessary. There were many of us who felt and who expressed the view that the Constitution we were drawing up was of a very voluminous nature, and that in our zeal, and a righteous zeal, to see that the executive Government should not wield too much power and that this Constitution of our Sovereign Republic should not become a pawn of dictatorship either of the right or of the left, we forgot that we were in the meantime circumscribing in many ways the powers of the sovereign Parliament, which expresses the will of the people and which is the very basis of the democratic system. I believe as we all do, that there are certain inviolable sacred rights that pertain to individual citizens such as the right of liberty and freedom of expression. Such rights must be guarded at all costs. But, we have to remember that wherever there are rights, there are responsibilities. If the rights are not

utilised in a proper way, if they are turned into licence, then, we cannot have or protect the greatest good of the greatest number which is the basic tenet of democracy. Yesterday, when the Prime Minister spoke, he pointed out that in the United States, the Fundamental Rights in the Constitution took some time to establish themselves and that judicial findings through many decades have brought about the present position. It is very interesting reading to go through the judicial decisions on the American Constitution. But, as he very rightly pointed out, we are living in times when swift-riding changes are taking place, times which are dynamic, and we cannot go through decade after decade before we can find suitable judicial decisions which will allow of such changes that are urgently needed in the interests of the State, in conformity with the times in which we live.

There are two provisions in this Bill on which I want to speak. There are also other amendments of a minor character. I do not want to take up too much of the time of the House; nor do I feel that I have the eloquence to hold the House for a long time. Therefore, I shall confine myself to the two clauses in which we are particularly interested. The first is article 19. I think the Prime Minister said in his speech yesterday, and it is quite right, that the unwritten Constitution of Britain is so different and very elastic: When there is no written Constitution, one is able to uphold the precious rights of the citizens while-also seeing that liberty is not turned into licence. This system has worked well in the United Kingdom. But, it is unfortunate that it is not possible in a country which is so large and with so many complex problems to have such an unwritten Constitution. But, as I have said before, we have made a written Constitution, which is very bulky. In this written Constitution, we have however to see that while we do not infringe or curtail in the least bit the right of liberty of expression, at the same time, we must give to the Government such powers as would enable them to curb those who would restrain the liberty of others. Preservation of law and order and the creation of an atmosphere in which the citizens are able to exercise their rights are the fundamental duties of every Government and it is Parliament which rightly must have the power to check and to curb the Government if it exceeds its powers. Our Constitution as it has been drawn up has certain escape provisions in order to affect these things. We have seen that perhaps these provisions

are not altogether sufficient. At the same time I must say that I also feel that we must be very careful before we introduce any changes in the Constitution by which we may go further than we want to. I hope the Members of the Select Committee will give careful thought to article 19 and will keep a proper sense of balance so that there is a harmonious balance about it, that in our anxiety to see that rights are not turned into licence, we do not go to the other extreme and take away those rights altogether. Both sides are of equal importance. When my hon. friend Pandit Kunzru was speaking, he mentioned something about this enabling measure being on the same level as the Preventive Detention Act. I do say that there is something very different here from that Act. I do not say that the amendments now proposed are quite perfect. They will probably require some changes. At the same time I do think that the two things are not akin. This is an enabling measure and the other is something very different, and to mix up the two does not help us in any way.

I am very anxious to speak on the clauses amending article 31. We know today that the content of democracy does not mean merely political democracy. It does include economic and social equality for the citizens. In the Directive Principles we have introduced certain measures which to-day due to practical difficulties we have not been able to lay down as Fundamental Rights. In the Directive Principles we have laid down that "the ownership and control of the material resources of the community should be so distributed as best to subserve the common good", and further "that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment". Though we have laid this down, we have made it impossible for this Parliament, almost, or for any future Parliament to implement these Directive Principles, because we have laid down in the Constitution itself provisions which entrench the vested rights on property which make it impossible to change the economic pattern of society even when such changes are urgently required. Inclusion of article 13(2) further strengthened by article 31(2) deprives Parliament of the right to determining what the pattern of society should be. It is surprising that while in the matter of other rights and liberties we have not made the assurance doubly sure, we have done so in this matter of property. While the Constitution was under consideration some lawyers held the view that clause (2) of

article 31 was not very justiciable—I think that is the word they used—that the principle of compensation as laid down by Parliament would not be challenged. They did not say the same thing about the amount of compensation. But what is significant is that clause (4) had to be put into this article 31 by which exemption was made in the case of certain zamindari Acts. Pandit Kunzru in his speech just now said that obviously after the decision regarding zamindari Bills, particularly of the Allahabad High Court, the Constitution as it stands is good enough. I say that the reason why the Allahabad Court has upheld the Bill is only because of clause (4) being there and this clause only deals with certain legislations which were pending before certain legislatures. Further, to-day when we have this new article 31A, in view of the urgency of the matter—and I do not deny the urgency of land reform—it has been extended to include all forms of zamindari. Does this not show that clause (2) by itself does not cover or meet the situation? The very fact that we had to introduce this legislation goes against the interpretation of those lawyers who hold that this is not justiciable—that clause (2) is not justiciable. I remember Our Constitutional Adviser—Shri B. N. Rau said at the time that unless it was explicitly laid down that a court of law should not challenge Parliament's decision or the Legislature's decision in regard to the amount and the principle of compensation the question would necessarily be interpreted otherwise. This question has not actually come up for interpretation in regard to other forms of property, because so far the State has not in the national interest, acquired any other form of property since the Constitution was passed. But if it is compelling to have land reform, it is equally compelling to see that Parliament is not bound down and fettered in this way that it is not left to a court of law to put varying interpretations and defeat the very purpose of nationalisation that is so necessary. I do admit that to-day practical difficulties arise. We do not have adequate administrative machinery to nationalise all forms of property or even all the basic and key industries. But is it fair that we should lay down such provisions that we bind and fetter Parliament of tomorrow also from doing the same thing? I know there are amongst us certain sections of the community who suspect that if these powers are given to Parliament which is the expression of the will of the people, then Parliament might do certain very unjust and unfair things. I do not think that so long as

constitutional government lasts, so long as we follow the path of evolution and not that of revolution, that any Parliament would be so unjust or would be so much against its own interest, as to create a new class of the poor by taking away property without compensation or with some very nominal compensation. I am perfectly satisfied that the Parliament of to-day will not do that. And no Parliament of the future also will do it. But if you bind and fetter Parliament and if it is made impossible to evolve a proper economic pattern of society then it will not be through constitutional means that changes will come, but through revolution. When that comes this Constitution that we have adopted and which we seek to-day to amend, will be considered just a scrap of paper. It is true that amendments to the Constitution can come in the future as well as to-day. But as we see our country to-day, it looks as if we are going to have Government not of two-party system but perhaps of many parties and the provisions in the Constitution for amendment of the Constitution are such that it may become impossible to apply the constitutional method in the future. I would appeal to the hon. Prime Minister who I know, above all, believes in a society where there is equality of opportunity for all, where economic equality does obtain, that he and the Select Committee should alter this provision in such a manner that it will be applicable in regard not only to zamindari but to all forms of property and that the right of Parliament to express the will of the people—its inalienable right in this matter—is not challenged by any court of law. I do not want to enter into the phraseology but I hope that the Select Committee will take into account all this.

Yesterday when Dr. Mookerjee was making a very eloquent speech, he was perhaps interrupted many times and I also tried to say something to him but he would give me no opportunity. The question I wanted to ask him was this that does he not think that there is one great transgression in this Constitution—one great flaw—that the right of Parliament to decide the economic pattern of society has been taken away and he would not allow me this opportunity but he claimed to know what I thought in my heart of hearts. There is one question which I would like to address to the hon. Law Minister. That is in regard to new article 31A. In this article there are certain definitions given—the definition of "rights" for instance. I want to ask him whether even in regard to land reforms or agrarian reforms, all forms of land and agrarian

reforms will really be included in this clause. Because it seems to me, of course I may be wrong, that there is some differentiation. Whereas we are talking about intermediaries, it is necessary in the interests of the people and of the State to have reforms of a different nature. For instance the Congress Government and the Congress Party are committed to the formation of a co-operative commonwealth. At the Nasik session this was reiterated. I want to ask, will it be possible for them to go ahead with the formation of a co-operative commonwealth if this new clause is not changed and made wider not in regard only to other property but even in regard to land and agrarian reform? I hope when Dr. Ambedkar replies, he will give us some explanation about this.

Lastly, I want to appeal to this House that in the Preamble of our Constitution we have said that we, the People of India having solemnly resolved to constitute a Sovereign Democratic Republic, to secure to all its citizens, justice, social, economic and political, is it not for us to see to it that Parliament has the power to bring in such legislation as is necessary? This is, after all, only an enabling: power and if we bind through this Constitution further the power of Parliament' is it in keeping with the Preamble of the Constitution that we, laid down? What will future generations think of us when they see our Preamble and see also how we have entrenched the right of vested interests as the only economic right in our Constitution whereas the other economic rights are relegated for the moment to Directive Principles which even cannot come in as long as this stands in its way?

Mr. Chairman: Before I call upon hon. Members to speak, may I suggest that with the consent of the House we-should have some time-limit to the speeches?

Shri Hussain Imam: I shall be as short as possible.

Shri Kamath (Madhya Pradesh): Yesterday the Speaker held in another connection that this was an extraordinary piece of legislation and he even relaxed the rule that Members of the Select Committee should not take part in the discussion here. In view of that, there should be no restriction on the right of Members to participate in the discussion and if necessary, we may sit longer and for three or four or five days more.

Mr. Chairman: I do realise that this is a very important matter but it is also necessary to realise that a number of Members want to speak and that will not be possible if hon.

Members get up and speak for hours together. Therefore, however much we are inclined even to extend the consideration of this Bill, it will not be possible to enable more Members to participate and therefore, I would request hon. Members to agree to some kind of time-limit. It may be 15 minutes or in some cases, it may extend to another 10 minutes more.

Shri Sarangdhar Das (Orissa): On many previous occasions I had pointed out that when the discussion began there was no time-limit and after a day or two, limits are imposed. I do not think it is fair to Members. If any time-limit has to be imposed, it should be done in the beginning itself.

Shri Sidhva: At the beginning the Speaker will not know how many wish to speak.

Mr. Chairman: Some hon. Members are interested in one particular article which is sought to be amended. Suppose they confine their remarks to that particular article, it may not be necessary to speak for more than 20 minutes.

Shri Syamnandan Sahaya (Bihar): There are eleven Acts of different States which are affected. Those who have interest in the amendment should have their say about it. This sort of Bill does not come everyday.

Mr. Chairman: It is for that reason that I am anxious that all such Members have their say. So I want a time-limit so that every Member wanting to speak can speak.

Shri Sondhi (Punjab): How many days have been fixed for the debate?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): It is hoped to finish by tomorrow midday. If necessary, we can sit tomorrow afternoon also.

Shri Sidhva: Time-limit is necessary then.

Mr. Chairman: I will leave it to hon. Members to see that they do not take much time.

Shri Kamath: I beg to move:

In the motion, for "Monday, the 21st May, 1951" substitute "Monday, the 4th June, 1951".

This shifts the date by a fortnight.

Coming to the motion before the House straightway I felt as I listened to the Prime Minister that he was in two minds. There was a conflict raging in his mind as he spoke

and as he dilated upon the different clauses of the Bill. It looked as if he was kicking against the pricks of his soul and conscience.

The speech that he made yesterday, while it touched great heights, also revealed certain fundamental contradictions. May I bring to the notice of the House two or three passages in the speech which appear to me to be so relevant that they go to the root of the matter before the House?

At one stage he remarked that it was not intended by his Government to take advantage of this enabling measure. He said:

"It is highly unlikely that this Government or this Parliament will take advantage of them by passing laws to that effect unless some very severe crisis, national or international arises. In effect, therefore, it is not this Government that is trying to seek power or consolidate itself and certainly I do repudiate the suggestion which has been made here and there that any of these amendments are meant to be utilised for political or party purposes, because nothing could be farther from our thought and indeed from the practical point of view, the House will observe that that can hardly be done".

And this is the most important part:

"We do wish, when we walk away from this present scene before the election or after, to leave something for the succeeding Parliament and for the younger generation that will come up—something that they can wield and handle with ease for the advancement of India and not something which will come always in their way and deflect them from the set purpose we have in view".

It is from that point of view that we have to address ourselves to this Bill. It is obvious from his speech that there is no very great hurry or emergency that calls for the introduction of this measure before Parliament. The Prime Minister made it clear that neither his Government nor this Parliament will in all likelihood take advantage of this Bill. If that be so, I ask him a straight question, what is the occasion for bringing this Bill at all before the House? If it is meant for the next Parliament which comes after the General Elections we can certainly leave the whole matter to the next Parliament which will be elected on the widest franchise that India has ever seen.

There was another remark that he made which I thought was made in a temper, I will not say in a huff, but perhaps in a temper. He said:

"Personally I confess my own belief is that it is better in any event and always for Parliament to have a large measure of authority, even the authority to make mistakes and go to pieces."

If that be his view that Parliament must have the authority to go to pieces, I do not know whether he meant that Parliament itself should go to pieces or make the State or the Government to go to pieces. I do not know what exactly was in his mind or whether he meant at all what he said. But I may straightway say so far as this Parliament is concerned and I hope future Parliaments are also concerned, we will hold fast to the oath or affirmation that we made when we all came into Parliament and that was that we shall be loyal to the Constitution. The oath or affirmation reads:

"I, A.B., having been elected (or nominated) a member of Parliament do swear in the name of God (or solemnly affirm) that I will bear true faith and allegiance to the Constitution of India as by law established and that I will faithfully discharge the duty upon which I am about to enter."

That, I submit, will completely dispose of that part of the argument that Parliament will think of anything which will allow it to go to pieces.

But the first part of the speech read with the second makes me doubt what exactly was in his mind when he moved the motion yesterday.

The Bill is a curious mixture of revolution and reaction

I am rather surprised but it is not unusual with the hon. Prime Minister to thus walk out of the House. It may not be as a protest against my remarks: perhaps he has some other important business to attend to.

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha): I am here taking notes.

Shri Kamath: I see his deputy, rather, the Minister of State for Parliamentary Affairs taking his place physically. I hope therefore that everything said is noted down for the benefit of the Prime Minister.

Shri Satya Narayan Sinha: Yes.

Shri Kamath: Though a pencil is not provided for us I hope he has before him a pencil and paper.

I was saying that the Bill has provisions which are a curious mixture of revolution and reaction. The amendment to article 31 may be looked upon as an amendment of a revolutionary character. But the amendment to article 19, in my humble judgment, is definitely one of a reactionary nature. And the Bill therefore; I have no hesitation in saying, is a mixture of sugar and sand.

I must also say something about the way in which the Bill is being rushed through the House. Usually in many other countries an amendment of the Constitution is before the people for three or six months and people are asked to give their considered views. The forum is furnished all over the country and on the platform and in the press it is debated? But here this Bill was introduced last week, taken up for consideration this week, hardly two or three days are given to the Select Committee and the Bill is being brought back to the House for final consideration and passing next week. I can only say that this action of rushing this amending measure, important as it is, is midsummer madness. I cannot find any other words to describe such a procedure. It is nothing short of midsummer madness. What I mean is that we must be given some more time and that is the least that can be done.

Shri Amolakh Chand (Uttar Pradesh): All the leading newspapers have commented on the Bill.

Shri Kamath: I do not have as much time as my hon. friend has for reading newspapers. In any case there are other organisations, parties and associations which are vitally interested in a measure like this and they must be given an opportunity to express their views on this measure. Therefore, I suggest as the least that can be done is that the Select Committee should be given more time, say a fortnight, to deliberate on this measure. And during that interval they should summon witnesses who are representatives of political parties, bar associations, of industrial and commercial organisations, and even of rural organisations of which my friend Prof. Ranga, I believe, is the president. I hope, therefore, that the Select Committee will not hustle itself, will not rush this measure, and will give itself more time to consider and to examine witnesses before submitting their report to Parliament.

Coming to the Bill as a whole, the Prime Minister yesterday observed that the problems of India could be summed up in five words: land, water, babies, cows and capital. He spoke on land and water and also referred, in passing, to capital, but he omitted, or he did not make any further reference to, babies and cows. I personally feel that a large majority of the problems that beset us, that are fast overwhelming us today, are due to the fact that in many of the States, in many of the State Governments, in some of the State: Governments at any rate, those who are in charge of administration—some of the Ministers—are political babies, and unfortunately they are surrounded by docile "cows". This combination of political babies and docile "cows" has contributed in a large measure to our ills. I personally think, therefore, that if one were to go deep enough into the matter one would come to this conclusion so far as political babies and their entourage of docile "cows" are concerned.

The *raison d'etre* for the amendment of article 19 is, as I have already remarked, very strange as propounded by the Prime Minister. He says, we must empower future parliaments; we do not want this power. We are tyagis, we are self-denying! We want to empower future parliaments to do what they like in the interest of the country. And the strange part of the proceeding is that the Statement of Objects and Reasons is founded on incorrect assumptions, I may almost say false pretences. It is stated here in the Statement of Objects and Reasons:

"The citizen's right to freedom of speech and expression guaranteed by article 19(1) (a) has been held by some courts to be so comprehensive as not to render a person culpable even if he advocates murder".

The Prime Minister was asked by an hon. friend yesterday what was his authority for the statement and he replied that it was unnecessary for us to go into that question. And my friend Mr. Krishna Chandra Sharma interrupted and said the Supreme Court had reversed the judgment. It is therefore a mere *obiter dictum* or an *ipse dixit* on the part of the Prime Minister. And unless and until the highest tribunal of the land, the Supreme Court, holds this view either in this matter or in any other matter, there is, in my humble judgement no valid reason, no *raison d'etre* for the Government to come before Parliament for an amendment of the Constitution. That is a fundamental point

on which I hope Dr. Ambedkar will agree—he is now keenly listening to me in the absence of the Prime Minister.

As regards the other amendments contemplated to article 19, that is to say, with regard to friendly relations with foreign States, public order, incitement to offence, there is no basis or ground quoted in the Statement of Objects and Reasons as to why this amendment is being brought forward as regards these three matters. As regards public order, Dr. Ambedkar may recall the debate that took place in the Constituent Assembly on the 17th October, 1949. My friend, Mr. T. T. Krishnamachari, who is not here now, on the 16th October, 1949 brought this amendment to article 13 (then 13, now 19) seeking to include "public order" within the purview of that article. Then when it was about to be moved, Mr. Krishnamachari got up on behalf of the Drafting Committee—he was a member of the Drafting Committee in those days—and suggested it be held over. On the next day Mr. Krishnamachari made a statement that after prolonged deliberation they have thought it fit to delete the words "public order" from the amendment suggested earlier. That was the official view, and one endorsed by the Constituent Assembly. Now, within barely a year and a half after that date, just fifteen months after the inauguration of the Constitution, this clause is again sought to be included in this amendment to article 19. I fail to see how or in what way the existing statutes have been found inadequate to deal with offences relating to public order. I am sure there are enough laws and Acts in the armoury of Government for all such offences against public order, and that amendment therefore read with this other one relating to incitement to an offence make very dangerous reading indeed. An "offence" may be of any kind; an offence may range from a petty violation of the municipal Act or of the Motor Vehicles Act, right up even to sedition and treason or murder. I wonder whether Dr. Ambedkar has carefully bestowed careful attention upon this when it was drafted. And rightly it was decided that it should go to the Select Committee and the Select Committee must have some scope, some sort of satisfaction; as is usually done here, some sort of loophole is left, some lacuna is left to be filled by the Select Committee who may have the satisfaction of "changing" the Bill, lay the flattering unction to their soul that after all they have done something; and the House will be happy that the Select Committee has done something I believe that

is the only reason. Otherwise an able constitutionalist and a jurist of Dr. Ambedkar's calibre would not have left this as vague as it is in this Bill. I sure he has got something up his sleeve, to let the Select Committee do some improvement in this measure. Otherwise there is no reason at all whatever for this delightfully vague manner. Then, even as regards the security of the state, the scope has been very much enlarged. Article 19 as it stands in the Constitution refers only to the overthrowing of the State or undermining the security of the State. But here the phrase used is "security of the State" and under that blanket provision many a law can be passed by this Parliament or the next Parliament—I am not interested in the next Parliament, I am interested in this Parliament because what we do concerns us intimately. As I said, if we were to leave it to the next Parliament, if we were to leave the whole thing to them, we need not bother our heads about it at all. Reference was, I believe, made to the American Constitution. But, so far as I am aware, the amendments that were proposed and accepted to the Constitution of the United States of America in the first three years of its life sought to enlarge the freedoms that had been already conferred upon the citizens of the new country, of the new State, and throughout the 150 years of its life, I believe, not more than a dozen amendments have been carried out. (An Hon. Member: No, no. Many more.) If not, at the most two dozen. For the first three years of its life, at any rate, the amendments carried out sought to enlarge the fundamental freedoms and not restrict them, as is sought to be done in this Bill. I would like to refer to the Prime Minister's statement wherein he said that his anxiety was to give power to the future Parliament. I am afraid the power that is sought to be conferred upon the future Parliament will come in the shape of a boomerang to those who might not be in a majority in the future Parliament, but may find themselves in a minority. We must be farsighted enough to see that.

A Schedule is proposed to be added as the Ninth Schedule to the Constitution, which lists about eleven Acts in all, not brought before Parliament so far, which as my hon. friend Pandit Bhargava said, will legalise all these Acts that have been passed in spite of any judicial pronouncements thereon. Late last evening I got a telegram from Bombay, (not from the Bombay City but from Kumta in Bombay) saying that one of the Acts listed here (the Bombay Tenancy and Agricultural Lands Act, 1948) is

already before the Bombay High Court and, therefore, to discuss its validity in Parliament at this stage, when the High Court of Bombay is seized of the matter, will be highly irregular, if not improper and unconstitutional. As my hon. friend Pandit Bhargava has already remarked, now that this matter is before the High Court we have no right to consider it; yet it is sought to list them in the Schedule and get them legalised and validated.

Next, I would very much welcome the suggestion made by Pandit Bhargava that as was done in the case of the other provisos to article 19, the word "reasonable" may be pre-fixed to the word "restrictions". It has been done in the case of all the provisos to article 19. This is the only provisos left out and now that that is being amended, it is wise on our part to say that we impose only reasonable restrictions that will reconcile the liberty of the individual with the security of the State.

As regards the proposed amendment to article 15, it is rather inconsistent with article 29 of the Constitution. Article 29 (2) of the Constitution, which is not sought to be amended says:

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them".

I wonder how the ingenuity of Dr Ambedkar and other legal advisers to Government will reconcile the proposed amendment to article 15 with clause (2) of article 29 as it still stands in the Constitution.

The amended article 15 (3) will read as follows:

"Nothing in this article shall prevent the State from making any special provision for women and children or for the educational, economic or social advancement of any backward class of citizens".

The background to this amendment is very well known. I need not go into the history of the Communal G.O. (the Government Order) issued by the Madras Government and later held ultra vires and invalid by the Supreme Court. To obviate any difficulties arising out of the Supreme Court's judgment this amendment has been brought before the House. But I submit that so long as article 29(2) stands as it is, this amendment will be wholly inconsistent with that article, and I do not know what will happen to it in the Supreme Court if it were to go before the Supreme Court again. Two fundamentally inconsistent articles will be incorporated in the Constitution and it will militate against the consistency of the whole provision as it is sought to be brought before the House in this amendment to article 15. I was saying that the assumptions on which this Bill is based are incorrect. Because, the Statement of Objects and Reasons makes certain sweeping remarks, there are certain unfounded remarks for which no evidence or proof has been adduced by the Prime Minister. The proposed amendment, in clause 13 of the Bill, to article 376 which entitles foreigners to sit as Judges—either as puisne Judges or as Chief Justice—in our High Courts and Supreme Court militates against the spirit of the struggle which we have waged all these many years. It is well known to the House that Indianisation was a slogan raised as far back as 1920, or soon after that, and steps were taken almost every year to see that the services—

administrative, judicial and other—were Indianised gradually, and quickly too. It was expected that with the advent of freedom, so far as these key services were concerned they would not be left in the hands of foreigners. When the Constitution was being discussed in the Constituent Assembly this question was raised and Dr. Ambedkar made it clear that so far as the qualifications for Judges were concerned one of the essential qualifications should be that he should be a citizen of India, an Indian citizen. It was very gladly accepted by the House. Now, so soon after the Constitution has been promulgated, we are by this amendment seeking to appoint foreigners in our High Courts and Supreme Court. Is that not, I ask, an indirect reflection upon the Indian Judges who have discharged their duty so wisely and so well? Will they riot resent it as an aspersion cast upon them—that they have been in a way found wanting and therefore it is sought to appoint foreigners as their colleagues or their chief in our High Courts and in the Supreme Court? I am sure you too, Madam, who have practised before the High Court and the Supreme Court will agree that our Judges are not behind anyone else, and perhaps even superior to many foreign Judges, in the discharge of their duty. What then is the reason I ask, that this amendment is brought forward seeking to appoint Judges who are foreigners in our High Courts and in the Supreme Court? Is it because Government feel that they will be more pliable? Do they think that that foreigner, who has come here on a, very fat salary, just because he could not get a better job and therefore comes here, will be more pliable so far as the Government is concerned, and more accommodating to the Government? If that is so I must repudiate any such attempt against our Indian Judges.....

Shri Venkataraman (Madras): May I point out to the hon. Member that this is a transitory provision intended to cover only those non-national Judges who are now in service and is not intended to enable the appointment of foreigners hereafter?

Mr. Chairman: I think the hon. Member is making the point that he has no objection to their continuing but to their elevation as Chief Justice. Perhaps that is his point.

Shri Kamath: That is right, I hope, Madam, in view of the light that you have shed upon this point raised by my friend Mr. Venkataraman, that this matter will rest there and will not be controverted in the House, and that our Government and Parliament

will see to it that there is no permanent right conferred upon foreigners to sit in our High Courts or in the Supreme Court, in the highest judicial tribunals of the land.

There is another amendment, to article 372.

Mr. Chairman: Was this question discussed when the Constitution was under consideration—this question of nationality?

Shri Kamath: I believe so. I do not recall every debate that took place then, but I believe it was. But anyway I leave it to Dr. Ambedkar who was the architect and chief pilot of the Constitution.

Now, article 372 (3) refers to the power conferred upon the President during the transitional period. It says:

"Nothing in clause (2) shall be deemed to empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution."

It is now sought to be amended from two to three years. This will again provoke doubt and suspicion in the mind of the people as regards the vital matter before the nation, that is to say the General Elections, that the nation is expecting would be held in November or December. If the elections are to be held in November and December then by February or March we will have a new Parliament and a new President that is in 1952. Therefore, unless the Government has already decided or is thinking of postponing the elections by a year or six months, I see no reason why an amendment of this nature should be brought forward today. Dr. Ambedkar knows the mind of the Government and he might tell us, honestly and straightly, whether the elections are definitely intended to be held in November or December or whether he has still got doubts if it will be feasible to hold the elections in November or December or whether Government are thinking of postponing them by three or six months.

Government have already armed themselves with extraordinary powers under the Preventive Detention Act, and in this amendment again they have sought to include those very matters like foreign affairs and public order as under the Preventive Detention Act. I make bold to say that in no country in the world except those governed by totalitarian or dictatorial regimes is there such a power arrogated to itself by Government, powers of detention along with such wide sweeping powers under the

Constitution apart from the power to detain indefinitely. To my mind, therefore, it makes it repugnant to the spirit of the Constitution which only 15 months ago we enacted and as the Preamble says: It is not we members of the Assembly who adopted it, but we the people of India adopted this Constitution as stated in the Preamble. I do not know whether the people did actually adopt the Constitution, whether meetings were held in every town and city to adopt this Constitution. I recollect that some of our Members here in the House refused to sign the Constitution but that is a different matter. But if the spirit of the Preamble is to be maintained, namely that "We the people of India, having solemnly resolved we do hereby adopt, enact and give to ourselves this Constitution". If you intend seriously and earnestly to promote, to maintain the spirit of the Preamble, then I for one feel that the amendment of the Constitution, vital as it is—nobody will deny that it is not—this amendment must go to the people and the people must be given time (hear, hear), one month, two months or three months to pronounce their views. The Prime Minister made it clear and said: We do not want to have the power to ourselves. We want to give it to future Parliaments. If it is intended for the future Parliament which will come into being in January or later, then there is no reason why it cannot go to the people at all. In the Constitution of Eire and in that of some other countries also any amendment of the Constitution must be before the public for six months before the legislature or the Parliament of that country can consider it. That is a very healthy provision and it was unfortunate that we could not provide for it in our Constitution so far as amendment of the Constitution is concerned, but even now it is not too late. If the Prime Minister is taken at his word, or if he meant what he said, then the way is clear. If the Prime Minister said and meant what he said, that it is for the future Parliament to enact a law, that we do not want to arrogate or confer upon ourselves this power, then it is easy to postpone this further consideration of the Bill till the next session of Parliament at least; if not to the next Parliament. It can be done and in the meantime it can be circulated, for eliciting public opinion thereon. If that too is not acceptable to Government and to Parliament, I would earnestly implore Government and Parliament to accept this very simple amendment of mine, giving a fortnight more to the Select Committee. After all we are not dispersing till I believe the 10th of June. The

delimitation orders of some of the States are yet to come and the Speaker ruled yesterday that 20 days will and must elapse before the motion for consideration is made. Members will get 20 days time if they want to submit amendments. I do not know when the delimitation orders will be placed before the House, perhaps tomorrow or on Monday. Anyway it will not be before tomorrow and that is 18th and from the 19th it will take us up to the 8th or 9th of June and my amendment seeks to give more time to the Select Committee so as to enable them to summon witnesses from various political parties, organizations, associations, bar councils and examine them, in the absence of circulating this Bill for eliciting public opinion thereon.

The Prime Minister in the course of his speech yesterday referred to the valiant efforts that are being made by Vinobha Bhave to set matters right and to curb or arrest the Communist menace in some parts of Telangana, in Hyderabad. He commended those methods to the House. He said ultimately that armed force will be of no avail. He said that the methods that must be adopted for the solution of problems must be different ultimately from the use of coercion or armed force. If that be so, I for one think that nothing has happened during the last 15 or 16 months during which the Constitution has been in force which warrants an amending Bill of this nature. There have been no upheavals in the country which call for an amendment of this nature. In substance it is almost as if we are suspending some of the Fundamental Rights which under the Constitution can be done only in the case of an emergency under article 352 of the Constitution. If that be so, it will be honest for the Government to tell the House that there is an emergency in the country because an emergency under the Constitution can be proclaimed, not merely when there is war or internal aggression, but also when there is internal disturbance. When the Prime Minister spoke yesterday; he was torn between several thought currents. At one place he appeared reluctant to introduce this amending Bill, while at another stage it looked as if he wanted this measure because the circumstances and conditions of the country demanded it. It would be more honest for the Government to say that there is so much internal disturbance in the country that an emergency must be proclaimed. Then all the consequences of that proclamation will follow. Otherwise, we will lay ourselves open to the universal objection and protest in the country that this amending Bill, coming as it does on the

eve of General Elections, is being rushed and hustled in this House merely with a view to make the elections smooth for the party in power. That impression, I am sure, everyone in the House wishes to avoid. Nothing will be more unfortunate than if that impression gains ground in the country. Especially in view of the Prime Minister's statement that we do not want this power, but it is for future Parliaments, the only reason that the people would attribute to this measure, in the light of the Prime Minister's speech yesterday, would be that these powers are being sought for a definite and particular end, and that is, for the General Elections which are not very far off. That impression, we must avoid, and the least that should be done is to take as many people as possible, representatives of organisations and individuals into our confidence, summon them before the Select Committee and listen to what they have got to say.

Before I sit down, I will say this that the conditions in the country today are such that what is needed is not a Bill to amend the constitution, but very resolute and definite measures to amend the policy of Government in respect, of food, clothing and shelter. I have been talking about this on various occasions. Unfortunately, these fundamental, vital necessities of life have not been provided to all the teeming millions in our country. I know a large majority of the population have got enough to live on. But, it will not be far from the truth to say that about 100 million people in our country live on perhaps not even one full meal a day. It may be a legacy of the past. But, the policy adopted by Government during the last three or four years has not advanced us very far towards the implementation of the promises that were made to the people. The Prime Minister waxed eloquent yesterday upon the commitments that we had made to the people in the past as regards the abolition of zamindari. I whole heartedly support him in the implementation of that promise given to the people. But, has he forgotten the other promises made to the people of a better and more abundant life, of a fuller life? What have the Government done to see that food is not hoarded, to see that the offenders are brought to book and drastic punishment is meted out to them, and not to pursue the mirage, will-o'-the-wisp of self-sufficiency, which however they have already abandoned. As regards clothing, the short-sighted policy of the export of yarn has created so much trouble in the country. Today, I got a telegram from Madras that

weavers who wanted yarn were lathi charged in Saidapet, a few of them killed and many wounded. I do not know how far it is true; I am only reading from a telegram.....

Shri Kesava Rao (Madras): No, your information is wrong.

Shri Galib (Madras): That is wrong.

Shri Kamath: I do not vouch for its truth; I said I have received a telegram to that effect. It appears the hon. Minister of Commerce and Industry instead of giving yarn to the people has been giving so many yarns to Members of Parliament. As regards shelter, the promise given even to the displaced persons in Delhi, that within a few months of August, 1947, they would get roofed shelter, still remains to be implemented. A crore has been wasted on a foolish project, the Pre-fab., and that factory in Jangpura stands as a monument to the folly of the Government and a lesson for the coming generation and the next Parliament. I hope they will not indulge in such stupidity. I was saying that instead of amending the Constitution, what is needed is the amending and implementation of the Policy of Government in regard to vital matters, food, clothing and shelter I repeat, if that is done, there will be no need for amending the Constitution. If that is done, the troublesome elements, the anti-social elements and the trouble makers in the country will be silenced, the people will be contented, and there will be no disorder or upheaval as has been feared by the Government and the Prime Minister. The other day, there was trouble in Cooch-Bihar. Dr. Mookerjee referred to

Mr. Chairman: Is it the suggestion of the hon. Member that the Government has done nothing to meet the situation?

Shri Kamath: I did not say so. I only said that one-third of our population is not getting even one full meal a day in the capital under the very nose of the Government ...

Pandit Krishna Chandra Sharma (Uttar Pradesh): All this is hardly relevant to the question at issue.

Shri Kamath: That the Chair will decide and not you.

Pandit Krishna Chandra Sharma: I am only pointing it out to the Chair.

Shri Kamath: I will only say this that Government will think twice before rushing this Bill in this House and in the Select Committee and will see their way to accepting

this very simple amendment of mine changing the date to the 4th of June, giving a fortnight more to the Committee, lest it should be dubbed by the people of this country...

Shri Husain Imam: And the world.

Shri Kamath:and the world as sheer midsummer madness.

Shri Syamnandan Sahay: It is tragic I say, indeed tragic, that we should be called upon so soon after giving ourselves the Constitution to amend it.

Mr. Chairman: I wish that the hon. Members instead of making complaints against the Chair, would appeal to their colleagues, other hon. Members to make short speeches and give them also time to speak.

Shri Syamnandan Sahaya: The first impression that I got when I read the proposed amendments was that our Constitution is really being reduced to the position of an ordinary legislation. A Constitution is not meant for one Government or the other. It is meant to cover the needs of the country as a whole; it is meant to foresee even the future up to a point and lay down such rules that may be suitable for the country at large for some time to come. Even the best admirers of this Constitution when it was framed did not claim infallibility for it and did not say that it was the last word. But even its worst critics did not apprehend or anticipate that the sponsors would be coming up so soon to amend it. I am reminded in this connection of a suggestion by some Members in the Constituent Assembly that we should in the Constitution itself lay down that no amendment will be made for a certain period. That suggestion of course did not find favour with the Members of the Constituent Assembly. But one does feel now that there was some point in it and that if we had made some provision at least for eliciting public opinion upon amendments we should not today be faced with an amendment which on all accounts is being rushed through. An important Bill which we were considering has been postponed. This Bill is being referred to a Select Committee with the direction to report to the House within a few days. The powers sought in the Bill for Parliament are not it is said for using presently but just to enable Parliament to pass certain legislation if needed. But I submit that the attempt to rush through this measure is not the proper attitude which we should adopt in any case that this House should adopt. Perhaps Government may feel the necessity for it but this

House has to consider it ultimately and we think we should not at least create this precedent of amending the Constitution in such a way. At present we are not only responsible for passing legislations and the present Government is responsible not only for the Governance of the country but it devolves upon us as Members of this House to create good conventions and good precedents. And might I not ask my hon. friends here to consider whether we are in this way really laying down good precedents for amending the Constitution? It is another matter whether the amendment that we are effecting is useful or not. But certainly we are not laying down healthy conventions for taking up amendments to the Constitution. It devolves upon this House being the first to take up amendments to lay down such procedure as may be followed by posterity in the matter of amending the Constitution and maintaining its sanctity and solemnity which it fully deserves.

Even now in the short time that this matter has been before the country have we tried to find out what has been the reaction of the public to this measure? Public opinion I was told in State Assembly at one time was what the Government themselves thought. But I do not think we should take public opinion so lightly. In the absence of opportunities to the general public to express an opinion we are to be guided by what opinions have been expressed in the press. I have tried in the course of these few days to go through newspapers and I find that almost all of them are against having this amendment and at least against their being rushed through in this manner. Newspapers occupying very high positions in the country, like the Hindu of Madras for instance wrote a very big article on this question a couple of days ago in which it had shown how unnecessary the present amending provisions were. Men of the position of Dr Jayakar have spoken against these amendments. Different bar associations of different High Courts have assemble in meetings and passed resolution against these amendments. I saw reports of one passed at the Allahabad High Court Bar and another at the Patna High Court Bar. And above all Madam the Bar which you represent the Supreme Court Bar Association here under the presidency of the Attorney-General Mr. Setalwad also passed a resolution saying that these amendments were unnecessary and not called for.

Shri R. Velayudhan (Travancore Cochin): What did they say?

Shri Syamnandan Sahaya: I do not have the copy of it with me but what I say is correct as I have got the copy of the resolution at my place and I have read it carefully. And the Supreme Court is just next door and any hon. Member can verify.

Shri Rudrappa (Mysore): Is it because it will reduce litigation?

Shri Syamnandan Sahaya: That is for the hon. Member to ask the Bar Association.

Mr. Chairman: That suggestion is not correct Even before the Constitution was passed, these Bar Associations were in existence.

Shri Sidhava: Did the hon. Member Shri Sahaya say that the resolution was passed by the Supreme Court Bar Association?

Shri Syamnandan Sahaya: Yes. My hon. friend Shri Sidhva is getting old and does not hear or listen to what is said here. In the absence of any public opinion being elicited what is the opinion that is available to this House. As I said, the opinions expressed in the press the opinions expressed by the intelligentsia, the men who are important people among the middle classes, the lawyers, the bar associations and as I said the last meeting of the Supreme Court Bar Association itself presided over by no less a person than the Attorney General opposed the amendments.

Shri Sidhva: Why do you give importance to the bar associations? They want more cases.

Shri Syamnandan Sahaya: I do so because they have been our saviours in many cases and almost always produced front rank leaders of public opinion. I submit therefore that from the opinions that we have got from outside this House and even from the opinions that have been expressed by Members here it is clear that the matter deserves more careful consideration that it has received so far and I wish to submit that it makes out a very good ground for circulation of the Bill for eliciting public opinion. The information conveyed to this House by the hon. Prime Minister yesterday portions or extracts thereof were read out by Mr. Kamath here—gives one the impression that there is no immediate hurry about this. The hon. Prime Minister also said that there was likelihood of another session of the Parliament being held before the elections. So there is ample time for circulation and also for bringing it back to the House and passing it. The House must therefore consider this matter very

carefully weigh the precedent they are setting up, weigh the procedure they want to adopt and in any case nothing should be done in a hustling manner.

If you read the Objects and Reasons attached to this Bill you will find that one of the reasons for the amendments is supposed to be judicial pronouncements. I have no doubt all of us assembled in this House and many outside will admit that it is the judiciary that is the strongest bulwark of democracy. It is they who are the best custodians of the liberties of the people and that the business of the judiciary is not merely to decide matters between one citizen of the State and another citizen of the State but their business also is and very much more important is that they are to decide matters even between a State and the citizen. That being so I submit the mere fact of a judicial pronouncement should not hustle up in to amending the Constitution. It is the needs of the case that is most important and I submit that no case was made out in the Objects and Reasons or even in the speech delivered by hon. Prime Minister introducing this measure which would justify that the amendments sought for are really required. I repeat that no case has been made out for the amendment of any of the provisions which have been laid down in the amending Bill.

If you take up the amendments, one gets lost and begins thinking if the matter has really received serious consideration. The first amendment regarding article 15 leaves us in serious doubts. In the first place, the amendment seeks to introduce a new phrase 'backward class' I do not know if the phrase 'backward class' has been defined anywhere and if it has not been, it will create a position extremely difficult to fulfill the objectives which the present Government and the Congress and for a long time. We have already made provisions in the Constitution and regard to Scheduled Castes and Scheduled Tribes. Now we propose to make this change with regard to backward classes.

Dr. Deshmukh: There is provision for backward classes also in the Constitution.

Shri Syamandan Sahaya: In the Directives.

Mr. Chairman: The provision enables the Government to appoint a committee.

Shri Syamnandan Sahaya: If there is already a provision in the Constitution. Then what is the amendment for. I suppose it is only there to meet the requirement of a certain Provincial Government.

Dr. Deshmukh: The Purpose is not being fulfilled.

Shri Syamnandan Sahaya: That is what some people may think and there are others again who think that the provision in the Constitution is sufficient. If you read the clause to which the amendment is proposed...

Mr. Chairman: The Prime Minister made it clear yesterday in his speech that what is added to article 15 (3) is only to give effect to what is laid down in the Directive Principles and also the provision enabling the President to appoint a committee. He further clarified the position by saying that it was to enable the backward classes to make progress and not to allow any other communal point of view to enter into it.

Shri Syamnandan Sahaya: The term backward classes has first to be defined. The President has the power to appoint a commission. If the President had already appointed the commission and if the commission had reported and if as a result of that part we found that these backward classes were not included in the Scheduled Castes or Scheduled tribes and their number was so large as to necessitate such a provision then we might have agreed to amend the Constitution. At present we are not aware of what is meant by backward classes. When we talk in terms of backward classes we know that it generally avers to Scheduled Castes and Tribes. By calling a new set of people as backward classes you want to bring in new communities by the backdoor.

Some Hon. Members: No, no.

Shri Syamanandan Sahaya: I am entitled to my opinion and you are entitled to yours. I do not know what particular conditions obtain in different parts of the country but I do not see that there is any special case...

Shri Rudrappa: We want an explanation from the hon. Member as to what is meant by backdoor.

Shri Kesava Rao: For the information of the hon. Member...

Mr. Chairman: Is he giving information or does he want information?

Shri Kesava Rao: The hon. Member said that there was no definition of backward classes. The President has already notified the backward classes.

An Hon. Member: A Commission is going to be appointed.

Shri Syamanandan Sahaya: I do not follow what the hon. Member has said. As far as I know it is not defined anywhere. An amendment is proposed to be made in clause 15 (3) which reads:

“Nothing in this article shall prevent the State from making any special provision for women and children”.

To that it is proposed to add “or for the educational, economic or social advancement of any backward class of citizens” When the clause is thus amended we are faced also with another provision in article 29 (2) which lay down:

“No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion race caste language or any of them”.

On the top of these there is the directive policy about it in article 46.

Article 46 lays down:

“The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”.

I would ask the House through you to consider what anomalies and complicated situation this amendment will create. We say now in this amendment that we shall make special arrangements for the educational, economic and social advancement of what are called “backward classes”. At another place we say in clause (2) that we shall not discriminate with regard to admissions to colleges on the ground of caste, religion etc. etc. Then we have also a directive in article 46 that where necessary Government will take special steps to see that the weaker sections are encouraged to improve. Then again as Dr. Deshmukh said the President has got the power to appoint a commission to look in to the question of backward classes. In view of all this, where is the justification for this amendment? Let us first of all know what are the requirements, and of which section in the country, before we are asked to amend the Constitution. I submit this amendment is more with a view to meet a

certain judgment which has been passed by the Supreme Court with regard to admission to colleges. But if that is the purpose of this amendment then I submit that it does not cure the trouble as long as article 29 (2) is there can be no discrimination in the matter of admission of students to colleges aided by Government or entirely financed by them.

Dr. Deshmukh: Suggest an amendment of that.

Shri Syamnandan Sahaya: That is quite a different matter but so long as that article 29 (2) is there this amendment would make confusion worse confounded and that is why I have been trying to tell the House not to accept it.

Coming to article 19, I have nothing to add to what has been already said. But I would draw the attention of the House to one thing that is to what happened in the Constituent Assembly itself. If the House is satisfied that the question of introducing the words public order in this clause was raised in the Constituent Assembly and that the consensus of opinion being against it was dropped I think it would not be proper for this House to introduce so soon those words again into the same clause. Surely nothing has happened within the last fifteen months to warrant the introduction of these words which after careful consideration we rejected about fifteen months ago. Surely it cannot be claimed that we have grown suddenly very wise and feel that the introduction of these words is now necessary! I submit that this matter was raised by Mr. Krishnamachari in his speech which is reported on page 394, Vol. X, No. 10 of the Constituent Assembly Debates.

Mr. Chairman : That was already referred to.

Shri Syamnandan Sahaya: That was already referred to and I shall not read it. He said they—the members of the Constituent Assembly—objected to the words “public order” being included and the matter was ultimately dropped. Therefore it is not as though it had not been considered at the Constituent Assembly stage and when it was considered at the stage this House will not be justified in re-introducing those words.

The second point which has also been referred to in the different speeches so far is that the restrictions that are proposed to be imposed are “restrictions” of all kinds and not “reasonable restrictions” as in the case of clauses (3), (4), (5) and (6) of this very article 19 where the restrictions to be imposed are to be “restrictions to be

imposed are to be “reasonable restrictions” The word used in the amending bill is “restrictions” only. Either the word “reasonable” is an inadvertent omission or it is not. If it is a conscious one the House should not give its assent to all kinds or reasonable and unreasonable restrictions being placed on freedom of speech and expression.

Now I want to come to article 31. Reading the article, I was reminded of the fear expressed by Dr. Ambedkar in his concluding speech in the Constituent Assembly. He then said that he apprehended that our democracy may not tend to become totalitarian. I have never claimed to know very much about constitutional laws. I tried to read some of them when I was in the Constituent Assembly. But I like everyone else, have a general impression about what a constitutional law should be and when I read new articles 31A and 31B. I could not reconcile how these provisions could form part of any constitutional law. We are validating laws which, as several speakers previous to me have said, may be infringing not only the compensation clause but which may be infringing other vital fundamental rights which have been guaranteed under the Constitution and by a stroke of pen we are going to decide that these Acts should become valid laws.

I was also for long a member of the Provincial Assembly. Latterly I found that there had grown a fashion of passing laws prefaced by the words “notwithstanding” anything contained in any law for the time being in force or in any rules or in any circulars etc. etc.” I find that tendency here also and particularly in the matter of Constitution we are adopting that formula. Whatever may have happened whatever judgments might have been passed whatever decrees might have be passed whatever executions under those decrees might have taken place when this amendment comes into force everything is restored to the status quo ante. That I submit is a very wrong way of amending a constitution. It is a wrong thing even for ordinary legislation but I submit that this is very wrong for amending a constitution. If the members of the Central Government particularly those interested in this amendment would have cared to read the judgment of the Patna High Court in the matter of the Bihar Land Reforms Act, I have no doubt in my mind that they would have been convinced that the saving which was introduced in article 31 by incorporation of sub clause (4) was completely

effective. It did serve its purpose. The Judges have held that in the matter of compensation. They cannot go into in view of sub-clause (4). They have held that the Act was ultra vires on other grounds.

I will just cite an example. There are different scales laid down for what is termed as benefits to tenants. Now I am a landlord in the same village as my hon. friend to my right who is also a landlord in the same village. If his total income is Rs 50,000 he has to pay ten per cent of his income or whatever it may be for the benefit of tenants. But if my income is Rs. 5,000, I will pay only 2 1/2 per cent for the benefit of the tenants with the result that some of the tenants of the same village benefit by a larger amount whereas other tenants will benefit only to the extent of 2 1/2 percent. The Judges held that this type of distinction was unfair and undesirable.

Now again the hon. the Prime Minister in his speech when introducing amendments to the then article 24 (now 31) said most emphatically which he also repeated it this House yesterday, that it was not a measure of expropriation that compensation and adequate and fair compensation for acquisition of zamindaris shall be paid. I shall not read the extracts—it is known to everybody and I hope it will be accepted as the correct position. Then when the report of the Fundamental Rights Committee was placed before the House there was a general discussion in which it was expressed and in the report itself it was laid down that in the matter of acquisition of property compensation shall be paid. It has now been a kind of fashion as they say to give a dog a bad name and hang him. They say “Well, the zamindars have fought they have entered in to litigation therefore we shall pass such a law that there shall be no litigation”. That is not the right attitude to take either for the House or for the Government. The Zamindars as far back as 1937 in Bihar conceded all the rights that were demanded of them and a Congress-zamindar agreement was entered into and the agreement published under the signatures of Dr. Rajendar Parasad and Maulana azad—this was the year in which the first Congress Government came into power. Since then many a legislation granting special concessions and privileges to tenants have been passed in the Legislative Assembly of Bihar, and with the consent and concurrence of the zamindars who were represented in the Assembly. To say now that they have...

Dr. Deshmukh: You have enjoyed it too long!

Shri Syamnandan Sahaya: That is another matter. Some people say you have been sitting in the House too long and get away therefore unceremoniously.

Under the present system and under the present rules of paying compensation as laid down in the Bihar Act, the result is that in the case of a person like the Maharaja of Darbhanga whose income is nearly fifty lakhs. (*Interruption*). Have patience. There are many of us who after five or ten years may have that income. I wish and pray to god that that may happen soon and my country may prosper in that way. As I was saying the Maharaja of Darbhanga has an annual income of nearly fifty lakhs of rupees. This has been reduced to three lakhs on account of different deductions, and the amount of compensation is calculated to be nine lakhs (*Interruption*). Kindly listen to me. I am not asking you to agree with me. My whole request is that you should listen to me. That will help you to understand the problem. I was saying that this income of forty lakhs as a result of different deductions is reduced to three lakhs. Compensation is proposed at three times which comes to nine lakhs.

Mr. Chairman: Does the hon. Member want to plead individual cases here?

Shri Syamnandan Sahaya: That is not pleading any individual case. I am only telling you that there is no compensation under the Act. It is not a case of any individual at all. I am referring to the High Court Judgment. It is all mentioned there. In the Maharaja's zamindari there are arrears of rent to the extent of thirty lakhs. Under the Act fifty per cent of the arrears will be taken away by the Government without compensation. Therefore the actual position in this estate is that the whole of the estate will be acquired and Government will not have to pay anything. On the other hand six lakhs will be a saving to Government alters payment of the compensation.

Mr. Chairman: I have also read the Act and the judgment. I think the other amounts are taken away for effecting improvements.

Shri Syamanandan Sahaya: I said, Madam, that after deductions for effecting improvements they come to an income of three lakhs and the Maharaja is supposed to get nine lakhs. The Government are keeping 50 per cent of the arrears of rent for which revenue and cess and all items of Government demand agricultural income-tax

etc. has been paid by the landlord. After realization of all these arrears six lakhs is kept by the government and they pay him nine lakhs and say they have paid compensation! Is it, I ask any compensation or clean expropriation.

The other case was referred to by my friend Pandit Kunzru in which it was pointed out by him that after deductions not only is there no balance left over which compensation is to be paid but there is a liability of twenty thousand over which perhaps the landlord may be asked to pay something in order that his estate may be acquired. These are matters which require serious consideration. Several Members who have spoken have said that the land system is outmoded and one friend even said "You have enjoyed it too long". What the landlords would like to know whether you stick to what you have already decided namely to pay compensation. If you have decided to pay compensation pay it. If not, have the courage to come and say that you will pay no compensation for property. Why not come up to Parliament and pass an amending Bill that acquisition of private property will not be paid for? That will be an understandable proposition.

Shri Hussain Imam: All property including banks.

Shri Syamanandan Sahaya: Analyzing the whole matter...

Mr. Chairman: The hon. Member may continue in the afternoon.

The House then adjourned till full of the Clock.

The House reassembled at four of the Clock

[Mr. Speaker in the Chair]

Shri Syamanandan Sahaya: I was speaking on the amendment to article 31 when the House rose. I had said that in proposing the amendment to the Constitution in the manner in which it had been done I had the feeling that the matter has not been given the consideration that the problem deserved. This question of land reforms has been agitating the mind of the people of this country for long time and I have no hesitation in saying also as a zamindar that land reforms are called for. You will however appreciate that land reform should not be carried on in a manner which may create

other and more serious complications. Perhaps it has not been appreciated as to what is the total number of people who will be affected by carrying on the reform in the manner in which it is propose to be done. In Bihar alone there are about 13 lakhs of recorded proprietor and if you calculate at the rate of three members to a family you will find that in Bihar alone there at about 40 lakhs of people involved is this matter. As far as I have been able to appreciate the real reason for passing these different Acts and the manner in which they have been passed is that it is not financial possible for the Government to pay the compensation that by any stretch of interpretation the zamindars man have to get. My grievance is that if it is so, there has been no attempt at consulting the landlords and finding out if they can they suggest a way out. It is not that the land lords are now enamoured of the zamindari system but their grievance is that they have not been taken into confidence and that no opportunity has been given to them to suggest what is the method which would suit them and which would also be within the financial capacity of the Governments to undertake this land reform. If we have gone to the civil courts, it is in pursuance of the Constitution which we have framed. The zamindars so far have taken to no unconstitutional methods for the remedy of their grievances. It was perfectly open to them to go to courts and even if they have gone to courts, the result as I said has not in any way gone against the objective of the Constitution that is in the matter of the compensation. As you know two High Courts have already held the laws intra vires and the Patna High Court has held it ultra vires not on grounds of compensation but on other grounds. I submit that it is not difficult to approach this question in another way and to find out a solution. I had desired to place a new formula which I have been thinking over for some time, in the discussions of this measure. Of course, the proper place for that would have been the Select Committee, but as it has not been possible to give us a chance to work on the Select Committee, I think, I will take this opportunity.

Shri Satya Narayan Sinha: I think you have been invited to attend the Select Committee.

Shri Syamnandan Sahaya: Very well. Then, I shall probably state it there if I get an opportunity. In the meantime I say the real point in the matter of the present land reforms is the removal of the intermediary. That is possible by abolishing zamindari

and permanent settlement but still allowing the zamindar to receive a certain portion of the income of that property. I think that if after deducting ten per cent for administrative costs the balance was distributed in equal proportions between the land lord and the Government by way of revenues and other taxes that are payable by zamindar and the remaining 30 per cent is set apart for benefit of the tenants it should meet for the present the desire of the Government to have land reforms because the intermediary zamindar will have been eliminated. The zamindar also cannot say that no sympathy has been shown to him or that he has been shown to him or that he has been left completely without any resource. The Government will continue to get their revenues and the tenant will have the benefit of a very big sum of money available for land improvement works. If it is proposed that the zamindar's interest should be abolished completely then this can be easily done if these two items of 30 per cent each that is one receivable by the Government and the other receivable for purposes of benefit to the tenants is set apart and allowed to accumulate for payment of compensation. In the course of eight or nine years the Government will thus have at their disposal a sum equal to about twenty times the share of the income that the zamindar is to get in this arrangement. As I have pointed out the 60 per cent will be allowed to accumulate and in eight or nine years time the Government will be in a position to pay almost 20 times of the zamindar's share of the income that is 30 per cent which he will be receiving within this period of eight or nine years and this does not involve any long delay either. The Government will get complete control even before the acquisition of the share of the landlord by this arrangement. In the meantime the landlord will be getting his 30 percent and thus we will be preventing a large section of the population of this country from becoming indigent and resource less. I submit that if we proceed on the lines we are proceeding now we shall be creating a vast army of unemployed people who had lived a particular way of life and then it may be difficult to foresee and visualize what will be the reaction of such a large mass of people.

Analysing the different amendments to the Constitution we find that there are other difficulties also. It is proposed for example in this amending Bill that laws which might have been declared ultra vires by judicial pronouncements will all be validated.

This again is not the correct procedure to adopt in the matter of legislation and particularly constitutional legislation. The right procedure should have been to amend the articles which are directly concerned and then to leave the appellate court to reconsider the point and then give a judgment that the particular law is intra vires in view of the amendments made to the law concerned. In fact I do not think I am far wrong when I say that there is hardly one Member in the House who has read all the eleven Bills which we propose to validate under this amending Bill which is a serious responsibility that the House is taking upon itself. The best course and the course which has been followed in the past is that if a certain law has been declared as ultra vires on the basis of interpretation of certain sections then that section is amended and then the matter is to be left to the appellate authority to decide that the impugned Act has become fully legalized. The procedure adopted in the Constitution (Amendment) Bill in my opinion proceeds on a dangerous principle and the House will do well to consider carefully whether we should accept this principle of validating a whole Act or not by means of an amending Bill.

As I said with regard to the compensation clause we stand by every word of what the Prime Minister has said, not only in the Constituent Assembly when the article was under discussion but also by what he said yesterday. He said "Yes you must be paid adequate and fair compensation but not too much". I concede that we only want adequate and fair compensation and not too much. What I will plead with him and with this House is to see whether the Bihar Act gives adequate and fair compensation. I explained in the morning by exemplifying two cases where nothing will have to be paid as compensation at all, leaving aside fair or adequate compensation. I submit that this legislation concerns a vast section of the people of this country and the Government and this House would be well advised to give the matter careful consideration. You are closing all judicial avenues to a vast section of the people where they could seek their remedy. If even this House is not willing to give a patient consideration and is not prepared to give time for the full consideration of the problems which are facing a vast number of people then it will indeed be apparently unfair. This House may want that these matters should not go to the law courts at all. Of course this House has the power to stop that in certain circumstances

and they may also have full justification for doing so—but there could be no justification for this House itself not going into the question fully and there can be no justification for the Government which is sponsoring this Bill. For not going into the whole question in detail along with those who are affected and arriving at a solution which may be acceptable to all.

If we analyze the different provisions of this Bill we will find—at least I have the apprehension—that even after passing these amendments perhaps the object which the Government has in view may not be fully met. I voiced this apprehension when clause (4) of draft article 24 now article 31 was being discussed in the Constituent Assembly. I voice that apprehension today also. Look at the very first amendment of article 15. The judgment of the Supreme Court relates to clause (2) of article 29. We leave clause (2) of article 29 as it is but amend article 15. I do not know how far the purpose of this Government will be fulfilled. I know it is difficult to amend clause (2) article 29. I feel similarly in this matter of zamindari abolition Article 14 is the article which is real concerned but we deal with article 31. That being so. I find that ultimately these amendments may not serve the desired objective In the meantime. They are creating a feeling which to say the least is not very much liked namely hustling through the amendments and trying to create a situation which in the present conditions is not warranted. I will therefore again appeal to the House that this is a matter of serious important and the least that they could do is to secure public opinion. If they are not able to do that the House itself should give the time necessary for going through all the Acts which are going to be validated and all other matters connected therewith for to act in haste is to repent at leisure.

Shri Deshbandhu Gupta (Delhi): I have listened with great respect and attention to the speech of the hon. Prime Minister yesterday and also to the speeches of the hon. Members who have preceded me. It is a matter of no small satisfaction to me and to the Press of India that almost all the speakers who have so far participated in this debate have expressed their disapproval of the idea of amending article 19 dealing with the freedom of the Press.

The Prime Minister in his elucidation of the various clauses of this momentous Bill has brought an objective approach and I appreciate that. I must admit also that

what he has said about the various clauses has caused considerable embarrassment to some of us who do not see eye to eye with him on certain amendments. My first embarrassment is that the Bill has taken the form of good in parts like curate's egg. While I am one of those who believe that a certain amount of sanctity should be attached to a Constitution drawn up through the prolonged labours of some of the best brains of the country. I realize that our Republic is still very young and our Constitution has still to stand the test of time and the strain of crises. I am therefore not opposed to the idea of amending the Constitution. I concede that there may be occasions when it may be necessary in the national interests or to achieve the objects that the framers of the Constitution had in view that some slight amendments may be necessary.

Dr. Deshmukh: The same brains are changing it.

Shri Deshbandu Gupta: But, Sir..

Shri D.D. Pant (Uttar Pradesh): The speech may be taken as read.

Mr. Speaker: Order, order.

Shri Deshbandhu Gupta: I am not reading.

But the question is whether it is sought to be done in the larger national interests or whether it is done to make the task of the executive easier. After all there is a certain amount of sanctity which attaches to the Constitution. And I am glad that the Prime Minister himself has recognized that fact when he said that he had not taken this decision light heartedly and that he had consulted many of his colleagues members of this Parliament State Governments and others before taking recourse to it.

With regard to the amendments which relate to clauses other than clause 19 I do not wish to take much time of the House. I would only say that on principle the right thing to do would be that before this Parliament is asked to amend the Constitution the Government should go to the highest court in the land and get its verdict on the various points that may arise from the judgments of the High Courts which may prompt Government to take recourse to the extreme step of amending the Constitution.

I wish to confine my remarks mainly to article 19. This article in my opinion stands on a different footing It cannot be said that the amendment which is sought to

be made is in the larger national interests. In spite of the very long arguments which the hon. Prime Minister has given the House remains unconvinced at any rate the speakers who have preceded me remain unconvinced as to the necessity and justification for amending this article. It is a curb on the freedom of expression which implies also the freedom of the Press and which is one of the important tests whereby the freedom enjoyed by the citizens of a country is measured. The Prime Minister himself has been in the forefront of our fight for the freedom of the Press and therefore it cannot be said that he does not realize the importance of that freedom especially for the successful working of the democratic constitution. Where men cannot freely convey their thoughts to one another no freedom is secure. An American statesman has said:

“If people are to govern themselves their only hope of doing so clearly lies in the collective wisdom derived from the fullest possible information and in the fair presentation of differing opinions. And it is also necessary to permit each man to find his way to the religious and political beliefs which suit his private needs”.

The hon. Prime Minister in the course of his speech took legitimate pride in the fact that the Press in India enjoyed greater freedom than the Press in any other country today. By implication he also meant that even though our Republic is still an infant the citizens of India are freer than the citizens of any other country. While he was keen to preserve and even permit this freedom he explained to the House some of the difficulties of his Government. The Prime Minister pointed out that while a very large section of the Indian Press had made use of this freedom with restraint and responsibility and had contributed to the building up of healthy public opinion a small section of the irresponsible news-sheets and periodicals had indulged in writings repugnant to the moral conscience of society. According to this statement the problem becomes a very limited one. It is admitted that the responsible section of the Press or even any big section of the Press has not been abusing the liberty of the Press which has been guaranteed by our Constitution. The Prime Minister has posed to us in this House and I have no doubt to leaders of the Press outside the important question as to what Government should do to stop the vulgar and debasing activities of the irresponsible section of the Press. I would like to point out to the Prime Minister that

if freedom of expression has any meaning it implies obviously has any meaning it implies obviously the ability of every citizen to express himself or herself freely whether by word of mouth or through any other medium—It must necessarily follow therefore that some people according to their training ability and upbringing will express themselves with restraint and a sense of responsibility, while there may be others who are unable to rise to appropriate standards of moral decency. The question which arises therefore is whether this section of the press which according to him is not behaving is exceptional to our country or whether it is in existence in other countries also. He has drawn a comparison between the liberty enjoyed by the Press in this country and the liberty enjoyed by the Press in other democratic countries like the United States of America and the United Kingdom. I am glad that he has made a reference to that.

Now, it has already been pointed out by more than one member that so far as the United States of America is concerned the first amendment to their Constitution was undertaken to widen the scope of the liberty of the Press while the United Kingdom has not got a written constitution and the question of amending the constitution could not arise. But the United Kingdom is perhaps the one country where there are very few Press laws if any. The United Kingdom has been governed by a conservative Government for many years. There have been other political parties in power there. But no party has felt itself competent to interfere with the liberty of the Press. That is a fact which cannot be denied. Why then is it necessary for us in this country after trying the experiment hardly for any year or so to seek to abridge the freedom of the Press which was guaranteed by our Constitution? I have been reading the passages or writings of that section of the Press to which the Prime Minister had made reference. That is one of the duties imposed on me by the A.I.N.E.C.—and I admit I do not feel happy about them and I do keep a watch over the writing which appears in the Press from time to time and which are objectionable. But what I would like to point out is that the yellow Press exists not only in this country but much more so in other countries and in the United States of America. It was despite the existence of the yellow Press there that in 1791, they decided to extend the scope of the liberty so far as the Constitution of the United States is concerned.

The fact is that while the responsible newspapers in India observe as great. If not greater restraint and fair-mindedness as the responsible section of the American Press some of the sections of the yellow Press in the sections of the yellow Press in the United States of America have hardly a parallel even among the news sheets to which the hon. Prime Minister has made reference. I do not have the time now to cite instances of what types of writings generally appear in the yellow Press of the United States of America have hardly a parallel even among the news sheets to which the hon. Prime Minister has made reference. I do not have the time now to cite instances of what types of writings generally appear in the yellow Press of the United States of America. I had an occasion to be in the United States in 1947 on their elections and at that time particularly I saw writings which I am sure bear no comparison even with our news-sheets to which strong exception has been taken. As I have said this particular disease abominable thought it may seem to be is not only in India but exists also in other free countries just as good people and bad people continue to exist in any free society. But that does not mean that we should amend our Constitution and curb the freedom of the entire Press.

In this connection I would like to draw the attention of the House to a speech which the hon. Prime Minister himself delivered a few months back addressing the last session of the A.I.N.E.C. at which I had the honors to preside. He was referring to the existence of this disease and this was the main theme of that historic utterance of his. After referring to this irresponsible though very small section of the Press in India he said as follows. I would like to invite the particular attention of the hon. Prime Minister to what he said in that memorable utterance a few months ago. He said.

“I think I can say that whatever our other failings might be (he was referring to his Government) at the present moment the amount of freedom of expression that is allowed or indulged in by the Press can hardly be exceeded in any country in the world I shall be quite frank with you he said) much that appears because of that freedom seems to be exceedingly dangerous from many points of view Nevertheless. I have no doubt in my mind that the freedom of the Press from the larger point of view not as a slogan is an essential attribute of the democratic process and that from any point of view—even the narrowest point of view shall I say of Government disliking

these things or considering them dangerous even from that point of view it is bad to interfere with that freedom. Because ultimately you do not cure them You merely suppress the public manifestation of it and that idea and that thought spreads. Therefore he continued I would rather have a completely free Press with all the dangers involved in the wrong use of that freedom than a suppressed or regulated Press”.

These are the words of the hon. Prime Minister which he uttered in a memorable speech only a few months back addressing the editors of all the Press of India. We are proud of our Prime Minister for having uttered these words which place him among the class of freedom-loving statesmen like Jefferson and Abraham Lincoln. Naturally after having heard these words only a few months ago. Some of us are in the embarrassing position of not knowing whether to place our faith in the author of these remarks or the sponsor of the Bill that is before us. I have no doubt that at the time when the Prime Minister gave this assurance and made this memorable speech the problems that have prompted him to bring forward this Bill were very much present to his mind. And it cannot be said that the problems that have necessitated the bringing of this Bill have cropped up during the last four or five months. If that is so the question arises as to what has happened during the last few months to justify the bringing forward of this measure which seeks to curb the freedom of the Press which was guaranteed by this article to such an extent. If the Prime Minister had pointed out some new disease or had shown some fresh reasons for bringing forward this amendment. The Press would have certainly given weighty consideration to his word but the evil to which he referred yesterday is neither new nor unprecedented and was fairly apparent to the hon. Prime Minister when he made the historic remarks I have quoted. At the time he made his memorable speech. He himself compared the past with the present and further said:

In the old days it was or at least it was thought to be the function of Government to stop such newspapers as the Government thought had an evil tendency”.

He further remarked:

“You cannot cure that evil by trying in a governmental way to suppress it. What then are we to do?”

Dr. Deshmukh: He said the same thing here.

Shri Deshbandhu Gupta: I would like to draw the attention of the House to this passage in which he himself prescribed the remedy. He said:

“For some time the evil may grow and may become dangerous to public welfare. Well, obviously the right way is for an organization like the A.I.N.E.C. to interest itself in it directly not of course in the sense of punishing people—there is no question punishing—but of forming such a strong large body of public opinion among those who are responsible for newspapers that any back-slider can be pulled up or anyhow the public made to know that he is a back-slider and he is not acting right”.

Shri Sidhva: Has that advice been carried out?

Shri Deshbandhu Gupta: I am coming to that. That exactly is my case. He further remarked:

“Anyhow it seems to me that the only right approach to it is for newspaperperson and the organization to tackle the problem and it is not for an external agency even though that might be Government. They should raise their standard not again by punishment because they are not an executive branch of Government but by making it perfectly clear to their erring brethren that what they do is bad”.

Now my friend Mr. Sidhva has asked me a question whether we have tried to fulfill the expectations which were entertained by the Prime Minister. I may point out that my fellow editors in the country were only too eager to respond to this appeal and soon after this speech was made the Standing Committee of the A.I.N.E.C. met and passed a resolution condemning objectionable writings of paper which from the which from the moral standpoint where take exception to. Not only that the A.I.N.E.C. went further and adopted a positive code of conduct for the Press and directed its various advisory bodies to see that these codes are adhered to by the Press. It is true that the A.I.N.E.C. has not the power to punish lapses. It is equally true that through the process of moral persuasion lapses have become less and less and the general tone of the Press has considerably improved. Not only have the A.I.N.E.C. adopted codes of

conduct for domestic purposes alone but have also employed its good offices for creating a joint code for the guidance of newspapers in India and Pakistan with the help and co-operation of the Pakistan Editors Conference. The Prime Minister himself paid a very high tribute in this House to the efforts of the A.I.N.E.C. in this direction. It will therefore be seen that not only the Press of India has generally shown a high sense of responsibility and restraint but it has also cordially cooperated in all efforts to build a better standard of journalism in the country and in pulling up backsliders in its fold. In this connection I must point out that before such a Bill was drafted we had expected that a body like the A. I.N.E.C would be consulted. Particularly in view of the memorable utterance to which I have referred. But although the Prime Minister assured the House that it has taken him a long time to take a decision in the matter and that he has had conferences and consultations with many people it is to be regretted that this body of the editors which is the only representative organization was neither consulted nor taken into confidence. Not only that strangely enough I find that even on the Select Committee which has been proposed by the hon. Mover not one Member of this House who has anything to do with the Press has been invited to serve. I do not know whether it is through inadvertence or by design.

Shri Hussain Imam: By design.

Shri Deshbandhu Gupta: I cannot say that but it does look strange that although there are more than half a dozen hon. Members of this House who are connected with the big newspapers in India not one of them has been invited to serve on the Select Committee. I also find that persons who had a hand in the shaping of the Constitution and who took a prominent part in the debate when this elapse was discussed in the Constituent Assembly—friends like Mr. T.T. Krishnamachari and Pandit Thakur Das Bhargava who also served as chairman of the non-official committee which recently went into this question—have been left out. I do not know what was the purpose behind it.

The A.I.N.E.C. has been co-operating with the Government not only by pulling up the offending papers from time to time through its various advisory bodies but that soon after the murder of Mahatmaji it was at the initiative of the Central Press Advisory Committee of the A.I.N.E.C. that the Government called a high power

conference and on its advice went to the extent of suppressing some newspapers whose writings were calculated to promote violence. We did not at that time falter or hesitate to take the odium of our own people. Later also when there was an exodus of refugees from East Bengal and a tense situation had been created in the country, the A.I.N.E.C. at its own initiative called a conference of Indo-Pakistan editors in Delhi which appealed to the Press of both countries to cry halt and help to stem the tide of hatred which was fast developing into an interdominion crisis. Members of this organization went to Dacca and then to Calcutta to study the situation on spot and bring moral pressure on Bengal papers to act with restraint. This has been recognized by the Government. Again the predecessor of the present Home Minister late Sardar Patel more than once recognized in this House that the Central Press Advisory committee set up by the A.I.N.E.C. has generally concurred with the executive in the action taken against certain offending Papers when occasion arose. In the light of all this I ask is it fair to the Press of India to spring a surprise by bringing forward an amending Bill of this kind which seeks to abridge the freedom expression guaranteed by the Constitution?

The history of Press laws in India is as old as the Press itself. During the last 150 years the Press in India has been fighting for the removal repeal of the various laws which sought to restrain the freedom of the Press. A relentless war has been fought and the contribution of the Prime Minister himself to that has by no means been small. We were therefore hoping the at least after the country had attain freedom we would have a free Press.

When this question came up before the Constituent Assembly I and my Colleagues who belong to the Press fought hard that there should be specific clause guaranteeing the freedom of the Press just as there is in the Constitution of the U.S.A. But we could not persuade the framers of the Constitution at that time to make such an express provision. But they made it clear that the freedom expression included the freedom of the Press also. So you can therefore imagine the extent of our disappointment the day when we find that such a bill which seeks to curb that freedom has been brought forward in a lightheaded manner. My own feeling is that there is no occasion or justification for such a measure. The malady is not so severe and of such

magnitude as to call for an amendment of the Constitution. Today we can raise our head with pride and say that our country which had the unhappy distinction in the past of having the largest number of repressive Press laws on its statute according to the Prime Minister himself has guaranteed complete freedom to its Press. Let this distinction be maintained. The Prime Minister has tried to make out a case for the amendment of the Constitution by saying that all that we are doing is that we are clothing this House with certain powers. He went to the extent of saying:

“This is not going to make any difference... The particular amendment is not, let me remind this House a law curbing or restraining anybody. These amendments are enabling measures merely clarifying the power of Parliament which might be challenged or has been challenged in regard to some matters. Things remain, so far as the law is concerned exactly as they were so long as this Parliament or a future Parliament does not take some action after deliberate thought”.

I would like to join issue with the Prime Minister on this. I would ask him whether the effect of this amendment will not be that all the repressive Press laws which exist today will be revived. After all even today the Press (Emergency Powers) Act Public Safety Acts and so many other repressive laws which had been in existence in the days of the foreign rulers are there. They are still on the statute book of the land. The law of sedition is there. Section 153A is there and the all-powerful section 144 which has been abused day in and day out is also there. I want to know, whether after enlarging the scope of clause (2) of article 19 all these laws will be revived or not without there being the necessity of bringing them before the House or any State legislature. He wants us to trust the Government but let me point out to him what is happening even today. The House probably is not aware of it. Only the other day I received a complaint from the Ajmer Press Advisory Committee. I referred that complaint to the hon. Home Minister also.

[Shrimati Durgabai in the Chair]

The complaint was you will be surprised to learn that the district Magistrate of Ajmer which is a centrally administered area. Recently issued an order under the Punjab

Public Safety Act calling upon a daily paper published in Sindhi to submit on the previous day by noon an English translation of all matters relation to law and order whether they were items of news or editorial and also matters referring to displaced persons It is a daily paper and this district magistrate in Ajmer sought to impose these conditions on a daily paper requiring it to submit on the previous day for censorship all matter which is to appear the next day duly translated in to English. This is what is happening today when the freedom of expression and speech is guaranteed by the Constitution and the Prime Minister wants us to believe that there is not going to be any curtailment of the rights of the Press after this amendment. In the light of this may I know what guarantee is there that all these laws will not be resorted to after they have been revived?

In another place the Prime Minister has said, "I do not believe that morality is improved by coercionary processes whether in the individual or in the group. The Prime Minister wants us to have faith in Parliament. I appeal to him most humbly that instead of asking the Members of this House or the member of the Press to have faith in Parliament let him have faith in the good sense of the people whom he represents in the good sense of the Press which has stood by the country and which has fought the battle of freedom so valiantly during all these years. I am sorry to say that this Bill so far as the amendment of this particular clause is concerned betrays a lack of faith on his part in the good sense of the people. It also betrays I am sorry to say a sense of fear and fright. He is perhaps the boldest man in the country and if I may say so the one thing which the Father of the Nation hated most was fear and fright in choosing him to be his heir perhaps the Father of the Nation was attraction by this one great virtue which he shared so abundantly with him. He the Prime Minister has led so many struggles he has fought so valiantly for the freedom of the nation he has inspired people young and old women and children to sacrifice their all even their lives in the cause to the freedom of the country. I want to know why is he losing faith in his people today? Why is he taking fright and listening to the counsels of despair that may have been given to him? It really does not go well with him. I would like to appeal to him not to give way to despair. I would recall his own words and say that the remedy lies not in coercion. It lies in utilizing the agencies which can have moral pressure the

remedy lies in appealing to the good sense of the people and making them feel that it is their patriotic duty not to make the task of the Government difficult. Today I have no doubt that if he appeals to the Press even that section which has not been behaving would listen to him. Have they not improved since he made his last statement in this House? Did not the A.I.N.E.C. call a special meeting of the Standing Committee and appeal to that section of the Press and condemn its objectionable writings? Has there not been a definite improvement in their tone?

I do not propose to take any more time of the House. But I would like to appeal to the Prime Minister once again and say: Let not our Constitution, which guarantees today the important fundamental right of the freedom of speech and expression, be sullied by this amendment. Let it enjoy this distinction which it enjoys today. Let us not be frightened into action of the type that he proposes to take. If he feels and as the burden of his speech is that there is no immediate fear of this House passing any repressive legislation after passing this amendment to the Constitution and the Press will continue to enjoy the same freedom as it does today if that is so where is the hurry for passing this amendment? If he cannot give it up altogether, I suggest let him delete this amendment from the present Bill and bring forward a separate Bill and bring forward a separate Bill if necessary circulate it for eliciting public opinion and when the House meets again in August it can consider it. My friends Mr. Syamnandan Sahaya has rightly pointed out that although no opportunity was given to the people to come forward with their views so many bar associations several leading public men and politicians have expressed themselves against this amendment. If I were to read extracts from the leading articles of the Press during the last one week it will show how that very section of the Press which had received compliment from the Prime Minister not once but on many occasions, has with one voice taken strong exception to this amendment. That should certainly weigh with the Prime Minister and his Government who have thought it fit to bring a measure of this kind before this Parliament.

I hope my appeal would be heeded and this part of the Bill which seeks to curtail this reteam of the Press will be dropped or at least postponed for the time being.

Shri Kala Venkatarao (Madras): I rise to support all the clauses of the Bill as have been introduced by the hon. Prime Minister but I am very much interested in only one of the clauses. Namely amendment to article 31 to the Constitution. That ought to have been the only one article which ought to have received the unanimous support of this House but as you see there are dissentient voices in the House even on that clause. That clause refers to the violation of zamindaris (interruption). My friend reminds me that no objection has been raised regarding the principle of abolition. I say one would really be a fool if not anything else who would stand up in any legislature of India today and question the fundamentals of the abolition of the zamindari system. Abolition is in a very advanced stage of legislation. Practically every legislature in India has gone to a very large extent in implementing one of the great pledges that the Congress has given to the people of this country.

Babu Ramnarayan Singh: Nobody raises any objection to the abolition of zamindari.

Shri Kala Venkatarao: I have already said that there is hardly any objection to the principle of abolition but the objection is mainly in regard to the question of compensation which has led to litigation. Therefore, I would confine myself to that particular aspect.

First let me ask: Is there any property in what is called zamindari? I maintain that zamindari has no property worth mentioning in it. The zamindars of today are mainly those who were farmers of revenue in the latter part and the early part of the 18th and 19th centuries respectively and today if we have to compensate for their property it must be on a different basis than the one which we normally adopt when we compensate for 'real property'.

I may mention to the House a simile that was once given by Rajaji regarding zamindari property. A had a house in village. He was leaving the village and was going to a town to practice law. When going he called 'B' and said "You take charge of my house and pay me a rent of Rs. eight per month." While getting into the bandy (cart) while leaving the village he met 'C' and told him: "You please collect the house rent at Rs. Eight per month and send me Rs. six for the trouble taken you take Rs two as your commission" After a time 'A' returned to his village and found his house

dilapidated and then he questioned the lessee. He said “Well Sir how can I repair the house you are taking so much rent from me” ‘A’ wondered how. He was told that from the time he went away the rent was increased from rupees eight to rupees ten to 12 to 14 to 16 and then to Rs. 24. This increase of Rs. 16 between Rs. 8 and Rs. 24 which was being collected from him was going into the pockets of this ‘C’ who was neither the owner nor the lessee. The zamindar’s possession is similar to that and therefore today if he claims compensation for something which has not been his by ownership or which has not been by ‘lesseeship’. I think the nature of such a property is not real at all.

After all, all the legislation now on the anvil, or all the legislation that has already become law, does not seek to expropriate these zamindars. As a matter of fact, we are compensating them. I can state that the *sanad milkiat istamirar* is not treated as a mere scrap of paper. It is being treated as a script. Of course, its value is being fixed with reference to its social utility, history and equity. More consideration than this the zamindars cannot expect from any popular legislature in this country or anywhere else.

I would like to put one question to those gentlemen who are claiming a big compensation. I would like to ask them “Who compensated to ask them “Who compensated the poor ryot when feudalism became the law of the country and when free farming was replaced? Who paid compensation to those free farmers of this country when this system of permanent settlement was introduced at the end of the 18th century and the beginning of the 19th century?” Therefore, the plea that they should get the market value for the property is a myth. They say that the Land Acquisition Act provides for a particular way of calculating this compensation. But please remember that the Land Acquisition Act is after all a municipal law a law that can be changed by the Legislature itself at its will and pleasure. Therefore, the Land Acquisition Act by itself should not be the only way of fixing the compensation when we seek to abolish these zamindaris.

Then speaking about the market value, we have to note that the market value represents the capitalization of the income which the zamindar was getting upon his estate. I would also like to state in this connection that the market value as demanded

by the zamindar is not just compensation for the unreal property that he holds as his estate. The value of a property depends upon the nature of the interest in the property the extent of the right and the quantum of income. It has been held by the Privy Council and many High Courts in this country that the Legislature has the right to reduce the rent which is being collected by the zamindars. Therefore, if the legislature simply passes a Rent Reduction Bill, the value of that property becomes very much less and therefore the market value becomes variable. The present rate of compensation paid to the zamindar in relation to the present value of his rent collected is a real value and not an illusory payment as is alleged.

I would like to bring to your kind notice that many Abolition Bills and Acts have not only provided for compensation but also liberal interim payments and even for rehabilitation grants for the smaller zamindars as is done in Uttar Pradesh. Now all this good work that has been done in many of the provinces has been questioned before the courts of law. Four years are now over from the time we won our freedom and from that time onwards attempts were started in this country to abolish the estates and even now on account of organized opposition of vested interests we have not been able to make the desired progress. Bills were passed by the Legislative Assemblies and received assent of the President but they have been dragged to the courts of law. At any rate we are glad that two of the highest courts of law in this country particularly the ones at Allahabad and Nagpur have held that the Legislatures are competent to legislate about abolition of estates and fix compensation. But it fell to the lot of the Patna High Court to declare the Bihar Abolition of Zamindari act as ultra vires of the Bihar Legislature. The main ground for such a declaration apart from other things is the provision for a sliding scale of compensation. Every Bill has provided that if the basic annual sum or the net assets of any particular estate is fixed at a particular amount according to the provisions in the Bill, the compensation payable varied according to a sliding scale on which that basic sum was multiplied. If the basic new value is Rs. 100 the compensation paid will be 30 times if it is Rs. 1000 it may be 20 times if it is Rs. 10,000 it may be ten times, if it is 10,00,000 it may be three times. That is the sliding scale provided for.

Article 14 of the Constitution has been brought into support and the court held that the provision for a sliding scale for the payment of compensation will result in treating individuals differentially; therefore the Act is ultra vires. The decision is incorrect. The Legislature could have passed a separate Act for the abolition of each zamindari and could have fixed the quantum of compensation as it liked for each estate so abolished. But instead of doing that for the sake of convenience they have adopted the system of the sliding scale in the Bills. If this system is questioned the principle of progressive taxation itself goes.

Anyhow, after all this effort at litigation obstructs progress. I do not see any reason why Parliament should not rise to the occasion and protect the legislation that has been passed in almost all the provinces with the unmistakable support of the people. A question has been raised that this Parliament is not fully representative of popular opinion. I would only like to ask those friends are not those Legislatures which passed this zamindari abolition legislation popular Legislatures? Were they not directly elected by millions of voters in the country? They have passed these Bills and now we are only lending legal support to them so that those laws can be protected and those laws can be given effect to.

Shri Bharati (Madras): It is those representatives who have elected us and therefore we fully represent public opinion in the country.

Shri Kala Venkatarao: My friend reminds me that those gentlemen have elected us and therefore we also represent public opinion.

Shrimati Renuka Ray: What about other forms of property?

Shri Kala Venkatarao: Here the question is not one of the other properties. At present we are concerned only with the Zamindari property.

Babu Ramnarayan Singh: Why not other property?

Shri Kala Venkatarao: As regards other landed property also I have no objection to deal with and I can invite the attention of my hon. friend to page 12 of the report of the Economic Programme adopted by the Congress of which he has been an honoured member—I do not know about his future—that all intermediaries between the tiller and the State should be eliminated and that all middlemen should be replaced by non-profit making agencies such as co-operatives. The abolition of zamindaris is only a

first step toward that end and as we progress I am sure that the Congress will redeem its pledges regarding other landed property also wherever such property has accumulated at the expense of the common man and where its utility does not go to the help of the common man as such.

Then I have to answer one more question namely that the Legislature has no right to fix the quantum of compensation as it likes I can quote many decisions from the laws of other countries to show that it is within the competence of the Legislature to fix the quantum of compensation. It has been held by many legal writers that this is a fundamental right of a parliament as such and I would invite attention to what Mr. Wynes said in his book Legislative and Executive powers in Australia. He said.

“It is submitted that the view that a Commonwealth Act authorizing acquisition of property and fixing a nominal sum for compensation would be a valid enactment is correct. No measure of justice is laid down in the Constitution and it is not conceivable that the Court would question the judgment of Parliament on this matter”.

I am very glad that even in India many of the Courts did not question this right of Parliament. But the Bihar Act was adjudged ultra vires on the ground which I have mentioned and which I feel is not a correct decision.

I need not take the time of this House for long. I would only like to quote Laski and say that “it is possible to admire the architect of a great fortune it is not possible to admire those who live by his achievement. Even if such owners are imbued with a high sense of social obligation the virtues of a few do not compensate for the social inertia of the many”. That is good description of our present zamindar. He has not improved the land. He has not improved the estate and the estate has become a burden upon society. Therefore it is our duty that we should abolish this institution long stock and barrel. The Abolition Acts that have been passed by the various Legislatures are just equitable and legal. In order to see that all such Acts are not delayed by litigation this amendment is sponsored. I am very sorry that my hon. friend Mr. Syamnandan Sahaya said that none of our friends in this House has read the Acts mentioned in the Ninth Schedule. At least I claim exception to that. I have read all these Acts and I feel that what has been legislated upon as I have said already is just equitable and legal. Therefore I think that the present amendment seeking to protect certain Acts which are

enumerated in the Ninth Schedule is a correct course and that the amendments as drafted and as proposed in the Bill sponsored by the hon. the Prime Minister should receive the unanimous support of this House.

Shri Hussain Imam: My work has been considerably lightened by the previous speaker who have thrown light and expressed opinions which I wished to express. Further I intend to follow your advice and concentrate on one particular feature of this Bill I refer to the clause pertaining to article 31 which is clause 4 of this Bill it is an inopportune and unnecessary amendment to the Constitution and it is altogether so anti-democratic that it will be difficult to find in the annals of history a measure of this nature to have been introduced in any democracy of the world.

Shri Bharati: Are there zamindaris in other parts of the world also?

Shri Hussain Imam: I am referring to a thing which I hope to the hilt to the satisfaction of every unbiased person. I am saying that the measure is undemocratic, that it is unnecessary and it is inopportune.

I will first begin with the inopportune aspect. We were in the midst of the Representation of the people Bill on Monday. On Saturday this Bill was introduced and no indication was given whether it would be taken up immediately or after some time. Up till Monday when we were discussing the Representation of the People Bill there was no indication, and as a matter of fact the Law Minister had made arrangements to consider clauses 7 and 9 of that Bill on Wednesday—when we have had to take this Bill. An intimation came to us on Monday late in the evening. Many of the Members who are wide awake did not know that this measure was coming when they came to the House on Tuesday morning.

Shri Satya Narayan Sinha: The information was given on Monday that it would be taken up on Wednesday. So the hon. Member is not correct in his statement.

Shri Hussain Imam: The intimation came late in the night because our post had to contain to contain other things.

Mr. Chairman: May I suggest to the hon. Member that he may usefully employ his time on the merits of the Bill?

Shri Hussain Imam: I shall not go further into the inopportune aspect. It was unnecessary and that has been admitted by the hon. the Prime Minister himself.

Shri Jawaharlal Nehru: The hon. Member's powers of hearing are very remarkable. He hears things that I never said. As regards the point raised by him, may I say that it was the hon. Speaker's desire that we introduce it on that particular day?

Shri Hussain Imam: I had a feeling that it was unnecessary because it is not going to be used by the present Government. It was unnecessary because the Acts which are going to be legalized have not been pronounced by highest tribunal to be ultra vires of the Legislature. No such pronouncement has been made on any of the eleven Acts. Then where does the necessity arise? Even the High Courts have not adjudicated on that point, let alone the Supreme Court. The Supreme Court has not adjudicated on any one of the Acts. Then how do we come to an understanding that these Acts will be found to be ultra vires of the Legislature and that we must amend the Constitution? We are trying to cure a situation which has not arisen.

Pandit Krishna Chandra Sharma: My I ask my hon. friend, what will happen if the zamindars go to the law courts and keep in abeyance the laws for four years? Would it not result in an upheaval? Where will he go?

Shri Hussain Imam: Why are you talking on this presumption? The Congress Governments came into power in the States in 1946 and the U.P. Act was assented to on the 24th January 1951.

Shri M.P. Mishra (Bihar): The Bihar Act was passed in 1948.

Shri Hussain Imam: And it was abrogated by the Bihar Government itself. It was repealed by the Government itself. Things are dirty enough-- the way in which the States have been playing with this thing. As was pointed out by Shri Mishra, the Act was passed in 1948. When it came to the High Court and it was to be adjudicated upon, the Government took steps to get the Act repealed so that the High Court may not adjudicate on that.

An Hon. Member: Adjust to the Constitution.

Shri Hussain Imam: I may be excused for saying, but it was to take undue advantage.

I said I will confine myself to this one clause. What is the condition of this House? We are gagged, blindfolded put in a strait-jacket and told that we are free to speak our mind, see the things as they are, and do whatever we like. I say that the

Government did not take the ordinary care which it should have taken and make available the eleven Acts in sufficiently large number for the Members to study, and I had to ask the Speaker on Tuesday evening at the meeting of the Rules Committee and he passed it on to Government and the Government had only made available one copy each of these eleven Acts, which are going to be given perpetual life by being included in the Constitution life by being include in the Constitution. I regret that Dr. Ambedkar is not here or I would have asked him to cite the example of any Constitution which has the ignominy of including legislations in constitution and making them out of purview of the Fundamental Rights. Because the very fact that you bring it and give it a protection shows that there is something which is not in accordance with the spirit of the Constitution that is in force.

What is our position and why are we getting this treatment? The opposition Members are almost negligible. The Governing party is not free to express its opinion. It is whipped up to vote in a particular manner. At least on this occasion, I appeal to the Prime Minister and his sense of democracy and hope that he will leave the party free to decide and to vote as they please on this Bill.

Mr. Chairman: What is the hon. Member's information about this particular matter?

Shri Hussain Imam: We have seen Dr. Mookerjee reading out yesterday that the motion was to be passed and no members of the party was to say anything in opposition to this measure. I am appealing to the Congress, to Shri Jawaharlal Nehru as a democrat to give this freedom of thought to the party members on this subject.

Shri Jawaharlal Nehru: The hon. Member is repeatedly referring to this. I should give him an adequate reply when the time comes. He seems to be entirely going beyond the scope of the debate and referring to private and other matters. May I inform him that if there are no whips in this party, he will be astonished with the things passed here, much to his discomfiture?

Shri Hussain Imam: I was referring to the fact because it was referred openly in the speech of Dr. Mookerjee that a whip was issued. We find also that certain important members of the party even in the panel of Chairmen have been excluded from the Select Committee, because they have known views on the subject which was an impediment in their way.

An Hon. Member: Other Members are not important perhaps.

Shri Hussain Imam: The whole trouble arises from one concept. Here we started to frame a constitution under the aegis of the British and immediately after the removal of the British suzerainty. We were obsessed by the British model which had no written Constitution and where the supremacy of Parliament was undisputed. In all the written Constitutions, the Parliament is not a fully sovereign body; it is subject to the limits laid down by the Constitution. As far as the Constitution is concerned it is regarded as superior. In other Constitutions, notably that of the USA, you have got stringent measures by means of which it is not only that an absolute majority of the two Houses, the House of Representatives and the Senate must vote—a two-thirds majority—but two-thirds of the States also must ratify the amendment. It is only when the 36th State ratifies the amendment that the amendment takes place. We have not got that provision. The reason is plain and simple. In other countries, notably USA and Ireland, the revolutionary fervor was there. People had attained independence through revolution and they were eager to preserve the rights and interests of the people. A Constituent Assembly had never functioned as a legislature also. By combining them and giving the dual function to the Constituent Assembly, we made the task of the Constituent Assembly well-nigh impossible. It could not preserve the rights of the people and at the same time give power to the government. It had therefore to devise ways and means through which it could give something to the one and at the same time give power to the other. An hon. colleague of mine, Mr. Anthony, aptly described this Chapter as a Chapter of denial of Fundamental Rights, because the Fundamental Rights that have been given in this Chapter have been hedged in by so many safeguards. Notably in articles 19 and 31; the safeguards far exceed the positive rights that are given. The question which arises, and which I wish to put plainly and squarely before the Government is whether a justiciable right could be made non-justiciable. This is exactly what we are doing. Article 31 is included in the list of justiciable rights; by means of this amendment, what are we doing? We are excluding all the jurisdiction of the courts? Is this correct? Is this democracy? Is this constitutionalism? My hon. colleague Mr. Kala Venkatarao referred to the fact that he had read the Bihar Act. I am glad that he has done so I should invite the attention of

the House to the fact that here are the two Acts of the two adjacent provinces, the U.P. Act and the Bihar Act. The U.P. Act contains 343 sections and six schedules in this size of a book. Here is the Bihar Act which contains only 43 sections.

Dr. Desmukh: Short and sweet.

Shri M.P. Misha: It could have been done in five pages.

Shri Kala Venkatarao: The Madras Act has about 60 sections and the zamindaris have already been notified and may have been taken over.

Shri Hussain Imam: Let me proceed. The Bihar Act is called the Land Reform Act. It does not mention a word about the abolition of zamindari because the Government was advised by its legal advisers that by bringing in those words, it will have to undergo certain fundamental checks. Therefore they have called it the Land Reform Act and left out the words abolition of zamindari. But it contains not a single section about the reform of the land laws. If Mr. Kala Venkatarao will show me a single section on the subject I shall be grateful.

Shri M.P. Mishra: There is provision for the Land Commission. Have you seen it?

Shri Hussain Imam: Yes. What is that Commission to do? Is there any task given to it? Is the Government bound to follow the recommendations of that Commission? It is stated that the Commission will be created which will advise. When will it be created? What will be its constitution and terms of reference? Nothing is stated here.

Shri M.P. Mishra: Let the zamindari go first.

Shri Hussain Imam: In the U.P. Act. Out of 343 sections more than 200 sections deal purely with land reforms. Yet they were not ashamed of calling their Act "The U.P. Zamindari Abolition and Land Reforms. Act".

Shri B.R. Bhagat (Bihar): Why go by the name go by the spirit?

Shri Hussain Imam: I was comparing the Acts to find out whether there is one Central Government or two and whether we were citizens of one country or two countries.

Pandit Krishna Chandra Sharma: You are a citizen of two States.

Shri Hussain Imam: The Prime Minister when he was introducing his amendment in the Constituent Assembly laid stress on the fact that the measure was to be brought to the President. According to his own words:

“...Previous to this it has already been said that the matter has to go to the President. That is if you like a kind of check to see that in a hurry the legislature has not done something which it should not have done”.

I ask as a citizen of India why the zamindar of Bihar should be treated differently from the Uttar Pradesh zamindar? Pandit Govind Ballabh Pant on the 12th of September 1949 said in the Constituent Assembly that he was going to pay as compensation to about 95 per cent of the zamindars as much as twenty-eight times their net income. It is on page 1288 Volume IX No. 32 dated the 19th of September 1949. Is it the same President who sanctioned this much for Uttar Pradesh and so little for the zamindar of Bihar?

Shri Kala Venkatarao: It depends on the basic annual income or net assets.

Shri Hussain Imam: It depends on nothing except the failure of the Central Government of advice the President correctly. The reason why it has been laid down in the Constitution that the President's sanction has to be obtained is that there should be uniformity. I will cite another instance of differentiation between the two States.

Shri Santhanam: Are we going into the merits of these Bills or the Presidents' action or are we dealing with the rights of Parliament and the Legislatures to deal with these matters?

Shri Hussain Imam: I am referring to the fact that what is being proposed by this measure is unnecessary and undemocratic. In order to show that it is undemocratic. I am trying to convince the House that there is this differentiation and one thing more. Even in the Constituent Assembly the Bihar Ministry remained mum over the matter even though they had passed a measure already. During the whole of the debate in the Constituent Assembly no one spoke on behalf of the Government of Bihar.

Shri M.P. Mishra: They did speak.

Shri Hussain Imam: I am referring the Government of Bihar. Hon. Members may presume that they are the Government but they are not. I am referring to facts as they exist and not as they are presumed or assumed to be by some.

Well, in section 4 of the Uttar Pradesh Act Government has the power to apply the provisions either to the whole or to a part that is a particular area, which means that there will be a geographical basis. But according to the Bihar Act, the marvelous

Act it is provided that it will apply only to the named persons. If this is not discrimination what can be called discrimination I would like to know? No area has been fixed. It is this kind of things which has lead the High Court to declare this Act ultra vires.

Shri M. P. Mishra: There has been discrimination made between big sharks and small ones.

Shri Hussain Imam: Are big sharks the preserve of Bihar? I am surprised to hear that from an hon. Member coming from Bihar.

I will refer to another factor. My hon. friend Pandit Thakurdas Bhargava the champion of Hindu joint family is here. The two States have dealt with the joint family in different ways. Uttar Pradesh had said that as long as the father is there his lineal descendants will be regarded as one unit along with the father in the assessment of the share of the particular person. They have gone so far that even if partition has taken place after the 8th August 1946 that partition will be disregarded. Where as in Bihar even without any partition everyone of the co-parceners (including lineal descendant) is regarded as a unit himself. Where is the unity and where is the similarity? I am referring to these facts to show that there has been no Central co-ordination. The pledge given to us in the Constituent Assembly that the President will see to it that there is uniformity, equality and justice has been given a complete go-by.

As regards the cost of management it has been uniformly fixed in U.P. at 15 per cent and this includes unrealizable arrears of rent. In Bihar they have provided for cost of management and work of benefit to ryots which are nowhere mentioned in this beautiful Act—not a word has been said as to what will be the work of benefit to the ryots which the Government will undertake. This item has been provided at a variable rate from nine per cent to 32.5%. I ask you, was this Act such that any court of law sitting in judgment could allow the Act to be intra vires of the legislature, which goes counter to all canons of equality before the law of man to man?

I come to another item. The compensation rate under section 54 of the Uttar Pradesh Act was eight times the roll. In Bihar it varies from 3 to 20 times. Under Section 98 of the Uttar Pradesh Act rehabilitation grant is to be given from one to 20 times in addition to the compensation. There is no provision like this in Bihar Act.

Pandit Munishwar Datt Upadhyay (Uttar Pradesh): Government in Uttar Pradesh tried to collect 170 crores for zamindars but they opposed that scheme and only 30 crores were collected.

Mr. Chairman: I say that these interruptions will only make his speech longer.

Shri Hussain Imam: I was saying that the fundamental question before the House is whether it is just and equitable that we should give sanctity and deny the justifiable right to a part of the citizens and give it to others. Here you are on the broad question. Bengal because it has not passed an Act if it passes an Act afterwards, will not have this recognition of article 31B Punjab has not passed this Act and therefore it will not have the sanctity of article 31B. You are differentiating and what is worse is that the zamindars of Bihar are to be created into Harijans to whom every right of having redress is to be denied. By abolishing untouchability, you are creating a vacuum and we zamindars are to fill that. (*Interruption*). Then do not oppose the Madras G.O.

Shri Kala Venkatarao: I never opposed it. I was one of the parties to it when I was a Minister there.

Mr. Chairman: I would request the hon. Member to come to matters which are more relevant to our present purpose and enable other Members to have their chance to speak.

Shri Hussain Imam: I am going to confine myself to articles 31A and 31B. As regards the other articles I will simply mention that I entirely agree with the views of such and such colleague and I will not take up the time of the House.

I was referring to the fact that it creates discrimination not only between the citizens of two adjacent States but what is worse in the State itself. The original article 31 (2) reads.

“No property, movable or immovable, including any interest in or in any company owning any commercial or industrial undertaking shall be taken possession of or acquired for public purposes under any law authorizing the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of...”

Zamindari formed part of the general plan for acquisition of property. But what is being done today is that the zamindars are being deprived of the general right. Their

civil rights are being taken away and they are denied this right. The denial of this right is out is the list of justifiable rights. We are denied the justiciability of our rights. This is something obnoxious to all sense of propriety and democracy that such discrimination should be made. For what purpose? As I said out of eleven laws which you are going to sanctify two have been declared *intra vires* of the Legislature namely the two major Acts of U.P. and Madhya Pradesh. Seven Acts are under various stages of consideration by the High Courts. Only one Act has been declared *ultra vires*—the Bihar Act; and it is for that reason that this amendment is brought forward. It is a solitary *ultra vires* Act. I am not going to make the claim made by Mr. Syamnandan Sahaya but I am going to ask you a very simply thing. Do not deny us those facilities which U.P. has given. If you do not give me those rights the U.P. zamindars should not receive anything more than us.

Pandit Munishwar Datt Upadhyay: Then you approve of the U.P. law?

Mr. Chairman: May I request hon. Members not to interrupt him.

Shri Hussain Imam: The Leader of the House pointed out that liberty is different from license. But what are we doing today? We are denying the liberty of the people and giving full license to the Government to do whatever they like. Under the party Government we have today it is undeniable that the Party leaders exercise an amount of control over the generality of the party. If the leaders wish to do anything there are numerous reasons which compel the party to follow the directive such condition exists in almost every party in the words. I am not referring to the Congress Party alone. It is for that reason that the Fundamental Rights have been provided so that the claimant may not be the judge. Here the clamant is the judge. The legislature which passes the law is given the absolute power and the Fundamental Rights on which we had laid stress so much are completely buried. But we are not burying the Fundamental Rights of the property-holders alone. I appeal to you and say that Government are burying democracy to- day, you are setting light to the funeral pyre of democracy if you pass an Act of this nature. An Act to invalidate the decision of the highest courts of the country and to give immunity to offending Acts for all time. What will be the result I ask you? Will this immunity apply to all the amendments subsequently made by those Legislatures? Because the name of the Act will continue to be the same, I want this

legal conundrum to be considered coolly. A State Legislature has complete power to modify its enactment as and when it likes. By giving immunity to these Acts we are not only depriving the private citizen of his right of redress from the Act as it is today but I say that it is denying to him for all time the right to go to the court of law for adjudication. What is the principle to which the Congress Party is pledged and to which we all subscribe? There is no one today in Bihar who denies the right of and the necessity for the abolition of zamindari and therefore where is the quarrel? The quarrel is only about one particular matter. What should be the fair and adequate compensation? Government full rights and opportunity to act when the matter came up to the centre for the President's assent to the Bihar bill when it was kept over for three months. In those days the late lamented Sardar was alive. I know he exerted his influence to bring about moderation, but he was in failing health and his voice was not heard. We, the Bihar zamindars, made no claim except of equality of treatment. The law must not differentiate. Whatever the law you may pass, it must be not for zamindari alone but for all kinds of property. Property must not be sacrosanct when it is held by black-marketers and industrialists, and taken without fair compensation when held by simple zamindars of villages.

Even in ordinary thing there are the rules of the game. Should there be no rules of the game for the abolition of the zamindari and abolition of property? We are at the parting of the ways and it is necessary that we should come to some conclusion, a conclusion which should be right and proper. It is undeniable that Parliament is suzerain to adopt the Constitution as it likes. But should it not exercise an amount of restraint? It is not enough in democracy that you should be convinced that you are doing the just thing—it is necessary that people should be convinced the sovereign people should be convinced that you are doing justice and you are treating them all equally fairly and without malice and prejudice. This measure has been conceived in an atmosphere of distrust. My complaint which I have often voiced is that this Government is always in a hurry. It wants to do too many things. Life is too short and the things are too many and everything must be completed! In the economic field we have seen the result. Many a scheme has been embarked upon and has ended in failure. In the legislative field we have seen that Acts were passed in one session and

in the next session big amendments have come forward. This is our Constitution. I appeal to the House to accept our amendments which have been moved. The Bill must not be hustled through this session. The Select committee should be given ample time and circulation should be made so that you can have the opinion of the world. Otherwise the historians of the future will regard that today was laid the foundation of a dictatorial authoritarian State and democracy was buried.

Mr. Chairman: Before I call upon other hon. Members to speak may I inform hon. Members that this debate will conclude tomorrow by 12:15 P.M. and the hon. Prime Minister will reply after that. Therefore, I would like to know the opinion of hon. Members as to whether we can go on for another hour, or an hour and a half because I find that a number of Members want to speak. At the same time. I should point out that no purpose would be served if each hon. Member goes on taking an hour or an hour and a half. For instance, only three Members were able to speak till now this afternoon. I would therefore request hon. Members to make their submissions within fifteen minutes.

I hope hon. Members will agree to this course and continue to sit till seven O'clock.

Shri Naziruddin Ahmad: I want a clarification. There are some Members who have tabled amendments, which have not been actually moved. What will be the position of those unfortunate people? Will they be allowed to speak?

Shri R.K. Chaudhuri (Assam): I am one of those persons who have sent notice of circulation I am the only exception who has not been allowed to speak.

Mr. Chairman: All these amendments are before me. It is not necessary that every mover of the amendment should speak especially Members of the Select Committee.

Shri Naziruddin Ahmad: In that case I may be relieved of the necessity of working on the Select Committee. Please withdraw my name so that I may speak.
(*Interruption*).

Mr. Chairman: Is there any decorum in this House? Two hon. Members are beginning to speak at the same time.

श्री एम.पी. मिश्र : मैं बड़े ध्यान से कल से इस सदन में इस बिल पर जो बहस हो रही है उसको सुनता रहा हूँ और दो हैरानियों के बीच में पड़ा रहा हूँ। एक तो यह है कि विधान में एक दूसरी धारा जोड़ी

गई थी, तो उस समय विधान परिषद् ने आज से सिर्फ पौने दो साल पहले लगभग 22 महीने पहले विधान परिषद के सामने 24वीं धारा को पेश करते हुए वही धारा जो आज 31वीं धारा इस बिल की है, हमारे पण्डित जवाहरलाल नेहरू ने जो भाषण दिया था, और भाषण ही नहीं, 31वीं धारा जो आज वर्तमान बिल की है, उसकी साफ मंशा और उसका साफ इरादा है कि जमींदारी उन्मूलन के संबंध में जो कानून होगा उस कानून को हेरफेर करने, उस पर विचार करने का किसी भी कोर्ट या न्यायाधीश को अधिकार न होगा और इसी हेतु 31वीं धारा में चौथी और छठी उपधारा जोड़ी गई है और तब जो स्थिति थी और हमारी मंशा थी, वही आज भी है। तब भी पंडित जवाहरलाल हमारे प्रधानमंत्री थे, और आज भी है और जो उस समय विधान परिषद थी, वही आज पार्लियामेंट के रूप में वर्तमान है। आज यह तो नहीं हो गया है कि आज कोई बिल्कुल दूसरी पार्लियामेंट हो, अगर ऐसा होता तो समझा जाता कि उनकी और विधान परिषद की राय अलग-अलग थी, मुख्तलिफ थी। और मेरा तो कहना है कि अपनी पुरानी मंशा और इरादे के अनुसार आज उस समय की 24वीं धारा की जगह पर 31वीं धारा को पेश किया गया है। उससे यह बात साफ है कि हमारे विधान बनाने वालों की यह मंशा और थी और यह इरादा था कि जमींदारी उठाने के संबंध में जो कानून हम बना रहे हैं, या जो हमारे राज्यों की सरकारें बना रही हैं, या जो बनाने वाली हैं उनके कानून को कोई कोर्ट व अदालत देख न सके और उसके बाद जमींदारी उठाने के संबंध में जो सबसे विवादास्पद और असली बात है वह मुआविजे की बात है। इस मुल्क में कुछ लोग हैं जरे असल में जमींदारी उठाना नहीं चाहते और वह लोग आज इस बिल का विरोध कर रहे हैं मुआविजे का प्रश्न लेकर सीधे-साधे यह तो कोई आज के युग में कहने का साहस कर सकता कि जमींदारी बनी रहनी चाहिए और खत्म न की जानी चाहिए, क्योंकि (Shri Hussain Imam: I take strong objection to this) जनमत की अवहेलना करना उनके बस की बात नहीं है। और डाक्टर श्यामा प्रसाद मुखर्जी जैसे व्यक्ति की भी हिम्मत नहीं होती कि वह कहें कि हम जमींदारी उठाना नहीं चाहते और वह भी यही नारा लगाते हैं कि हम जमींदारी उठाने के पक्ष में हैं। हालांकि हम जानते हैं कि अगर कहीं उनका राज्य हो गया, ऐसा होगा नहीं, लेकिन अगर किसी दिन ऐसा हो गया तो हम जानते हैं कि वह जमींदारियां रखेंगे और वह श्री रामचन्द्र से लेकर पृथ्वीराज तक के वंशजों को ढूँढ कर निकालेंगे और उनके राजा बनायेंगे औं हिन्दू राज यहां पर कायम करेंगे। लेकिन आज ऐसे लोगों की हिम्मत नहीं होती कि वह जनता के सामने आयें और कहें कि हम जमींदारियां कायम रखना चाहते हैं और वह मुआविजे का प्रश्न उठाकर बड़े झगड़े उठाते हैं, उनके पास पैसा है और अदालतों में बड़ी दूर तक इस प्रश्न को ले जा सकते हैं और ऐसा झगड़ा डाल कर कम से कम ऐसा जरूर करेंगे कि जमींदारी उठाने की और भूमि व्यवस्था को सुधारने की जो सरकार की योजना है, सरकार का जो इरादा है, वह उसको फिलहाल रोक देंगे और उसको आगे नहीं बढ़ने देंगे। और मैं आपको इस सम्बन्ध में पंडित जवाहरलाल नेहरू का भाषण जो उस समय उन्होंने दिया था उसका कुछ हिस्सा आपको सुनाना चाहता हूं। मैं यह कहे बिना नहीं रह सकता कि यह बड़े दुर्भाग्य की बात है कि विधान सभा जिसने 31वीं धारा में वह 4 और 6 उपधारा जोड़ी, विधान को जिसने पैदा किया, पार्लियामेंट और सुप्रीम कोर्ट (Supreme Court) को उसने पैदा किया और उसकी इस मामले में स्पष्ट राय थी कि जमींदारी और मुआविजे की बात को हम कोर्ट के सामने नहीं ले जाने देंगे, उसके मामले में किसी कोर्ट को, किसी अदालत को अधिकार नहीं होगा कि वह उस पर फ़ैसला दे या अपना निर्णय दे। पण्डित जी ने यह कहा था:

“But more and more today the community has to deal with large schemes of social engineering etc. Which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure. Difficulties arise—apart from every other difficulty the question of time. Here is a piece of legislation that the community as presented in its chosen representatives considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of legislation to long widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected otherwise the whole structure of the State may be shaken to the foundations: so that we have to keep these things in view.”

मैं बड़ी हैरत में पड़ गया कि यह विधान की धारा जिसमें साफ ऐलान कर दिया है कि हम अदालतों को न्यायाधीशों पर इस मामले पर फैसला देने के लिए नहीं बैठने देंगे। उसके 22 महीने बाद पंडित जवाहरलाल नेहरू को विधानों में फिर ऐसा संशोधन करने की आवश्यकता आ पड़ी जिसमें फिर वही बातें दोहरानी पड़ी जो आज से 22 महीने पहले उन्होंने और विधानसभा के मेम्बरों ने दोहराई थी। मैं तो यह देखकर बड़ी हैरत में पड़ गया। पंडित जवाहरलाल नेहरू कांग्रेस पार्टी के नेता हैं, प्रधानमंत्री हैं और यदि देश की आशंका, इच्छा और देश के इरादों का अगर कोई प्रतिनिधित्व कर सकता है तो वह यह व्यक्ति है। और उस समय उन्होंने साफ कहा था कि हम लॉ कोर्ट्स कहा था:

(*Law Courts*) को इस मामले पर दखल नहीं देने देंगे, लेकिन क्या हुआ, 22 महीने उसको कहे गुजर गये और कई जगह हाईकोर्ट ने जमींदारी अवोलीशन एक्ट (*Law Courts*) गैर कानूनी घोषित किया और बिहार प्रान्त में जमींदारी कानून गैरकानूनी घोषित कर दिया। मैं समझता हूँ कि दो बातें इसमें हुई हैं या तो पंडित जवाहरलाल नेहरू के जो सलाहकार थे और जो विधान बनाने का काम करते थे, उन्होंने विधान का ड्राफ्ट (*Draft*) बनाते वक्त उसके अर्थ को सही-सही नहीं रखा या फिर हमारे देश की अदालतें, हमारे देश के जज और हमारे देश के न्यायाधीश अपने रास्ते से बाहर चले गये हैं और उन्होंने अपने रास्ते से बाहर जा कर अपने हक से बाहर निकल कर इन विषयों पर फैसला देने का निश्चय किया है और उन्होंने अपने रास्ते से बाहर जाकर अपने मार्ग से हटकर इन विषयों पर फैसला देने का निश्चय किया। मैं आपसे कहता हूँ कि 31वीं धारा की जो चौथी उपधारा है उसमें यह बात साफ है कि इस पर अदालत का फैसला नहीं दे सकती। लेकिन बिहार के कानून के बारे में कहा गया कि 14वीं आर्टिकल के मुताबिक उसको गैरकानूनी करार दिया गया है। धारा 31 की चौथी उपधारा में साफ लिखा है:

“If any Bill pending at the commencement of this Constitution in the Legislature of a State has after it has been passed but such Legislature, been reserved for the consideration of the President and has received his assent then notwithstanding anything in this Constitution...”

यह बात साफ है कि इस तरह के विषय का कोई अदालत फैसला नहीं कर सकती चाहे जो कुछ भी इस कांस्टीट्यूशन में लिखा हो उसके बावजूद भी किसी अदालत का उस पर फैसला देने का अधिकार नहीं है उसमें लिखा है:

“...the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)”

इसके बाद भी मेरी ख्याल से हमारे देश के न्यायाधीश और खासतौर से मेरा सूबे के न्यायाधीश अपने रास्ते से बाहर गया है कि उन्होंने इस पर विचार किया और फैसला दिया।

Shri Syamnandan Sahaya: It is said “Notwithstanding anything in the Constitution....”

श्री एम.पी. मिश्र : *That is compensation.* उस पर फैसला करने का अधिकार किसी को नहीं है।

इसके बाद मैं दूसरी परेशानी में और हूँ। मेरे कई जमींदार दोस्त उठकर खड़े हुए और उन्होंने उस प्रस्ताव का समर्थन किया जो कि पंडित जवाहरलाल नेहरू ने विधान में संशोधन के लिए उपस्थित किया है, परन्तु उन्होंने कहा कि इस पर जनमत लेना चाहिए। मुझे हैरत होती है कि अब भी कुछ लोग यह चाहते हैं कि आज सन् 1951 में इस प्रश्न पर जनमत लिया जाए कि जमींदारी हटाई जाए या न हटाई जाए या कम्पेंसेशन दिया जाय या न दिया जाय। क्या उनको मालूम नहीं है कि हमारे राष्ट्रपति ने क्यों तिलिंगाना के बारह किसानों के फांसी के दण्ड को आजन्म कारावास में बदला है? यह वह प्रदेश है जहां के किसान जमींदारों के जुल्मों से पागल हो गये हैं और जहां उनको शांत करने के लिए आजकल श्री विनोबा भावे घूम रहे हैं। यह वहां इसलिए ही हुआ कि वहां के जमींदारों ने किसानों की हडिडियों तक को चूस लिया और जिस लड़ाई की वजह से बारह किसानों को फांसी का दण्ड दिया गया था। इसके बाद भी आप जनमत चाहते हैं। हमारे सूबे के 10 हजार किसानों ने सन् 1936-37 में जुल्म सहे थे और वह जेल गये थे। आज जो गांव-गांव में इस जमींदारी प्रथा के खिलाफ आग भड़क रही है क्या उसको संसद के सदस्य नहीं जानते और अगर वह नहीं जानते तो यह देश का और इस संसद का दुर्भाग्य है। हमारे सूबे के बारे में कहा जाता है कि वहां जमींदारों को इतना थोड़ा कम्पेंसेशन दिया जाता है। मुझे तो उस जज पर तरस आता है, जिसने जमींदार की बात को मान लिया कि उसको इतना भी मुआवजा नहीं मिलेगा जितनी कि उसकी आमदानी है। महाराजाधिराज दरभंगा को बिहार कानून के मातहत 15 लाख मुआवजा दिया जाना तय हुआ है। जमींदार की तरफ से जो हिसाब दिखाया गया है वह गलत था। दरभंगा के महाराजाधिराज का वकील कहता है कि उनका पिछले साल का बकाया 30 लाख है और मुआवजा 15 लाख ही दिया जा रहा है। मैं समझता हूँ कि जिस जज ने इस बात को मान लिया उसको जमींदारी का कुछ भी ज्ञान नहीं था कि पिछले साल का आधा भी बकाया वसूल नहीं होता है। उससे भी बहुत कम वसूल होता है मैं तो कहता हूँ कि बिहार सरकार ने जमींदारों के साथ बहुत रियायत की है कि उनको इतना मुआवजा दिया जा रहा है।

Shri Hussain Imam: But in the U.P. Act it is said...

श्री एम.पी. मिश्र: I am not giving way. The hon. Member had had his say.

जो कुछ जमींदार का वकील कहता है उसको जज मान लेते हैं और लिखते हैं कि सचमुच जमींदार को मुआवजा नहीं मिलेगा। मैं तो सरकार से कहूंगा कि दरभंगा के जमींदार को तो नौ लाख ही मिलना चाहिए और ज्यादा नहीं मिलना चाहिए। मैं तो कहता हूँ कि नौ लाख भी क्यों मिले। आज जो मुआवजा मिल रहा है उसके लिए उनको कांग्रेस को और महात्मा गांधी के चेलों को धन्यवाद देना चाहिए नहीं तो अब सन् 1951 के बाद कोई ऐसी सरकार आने वाली नहीं है जो कि जमींदारों को मुआवजा दे। इन जमींदारों ने क्या किया है यह किसी से छुपा नहीं है। उनके कारनामों की एक कहानी सुन लीजिए। सन् 1950 में एक किसान से बेगार पर काम करने को हा गया, पर वह बीमार था। इसलिए नहीं जा सका। इस पर जमींदार ने अपना अमला भेजा। अमले वाले उनके मकान पर आये पर वहां से सब आदमी भाग गये थे। सिर्फ एक सत्तर बरस का आदमी और उसकी 16 बरस की पतोहू मिली। दरभंगा के जमींदार के अमले के आदमी उनको पकड़ ले गये और जेट की दुपहरी में उनको बांध दिया और उनको गरम पानी डाला। यह बर्ताव किया है जमींदारों ने किसानों के साथ और फिर कहा जाता है कि जमींदारों को मुआवजा मिलना चाहिए। वुड हैड (Woodhead) कमीशन की रिपोर्ट में कहा गया है कि बंगाल में जो भुखमरी हुई उसका कारण जमींदार ही थे।

हमारे राष्ट्रपति श्री राजेन्द्र बाबू ने सन् 34 में एक किसान इन्क्वारी कमेंट (Peasant Inquiry Committee) बनाई थी जिसके वह खुद चेयरमैन (Chairman) थे। वह कमेटी गांव-गांव घूमी थी और उसने यह बयान दरभंगा की जमींदारी में जाकर लिया था। वुडहैड कमीशन (Woodhead Commission) ने कहा था कि बंगाल की जो भुखमरी हुई उसका कारण जमींदार ही थे। उसके बाद आज यह कहा जाता है कि यह जुल्म किया गया कि सरकार ने इस तरह का फैसला किया। अब जमींदार जानते हैं कि जमींदारी बच नहीं सकती फिर भी वह इतनी बड़ी गद्दारी देश के साथ कर रहे हैं कि जितनी कोई कर नहीं सकता। आज हमारे मुंशी साहब नहीं है। वह यह कहते-कहते नहीं थकते कि देश की पैदावार कम होती जा रही है। मैं कहना चाहता हूँ कि इसकी भी जिम्मेदारी जमींदारों पर है। मैं आपसे कहना चाहता हूँ कि बिहार के जमींदारों को जो यह दा साल का मौका मिल गया है उसमें उन्होंने सूबे का बहुत बड़ा नुकसान कर दिया है। उन्होंने जंगल के जंगल कटवा दिये हैं जिसके कारण पिछले साल पानी नहीं बरसा और आज जनता को इतना कष्ट हो रहा है। वहां के जो जंगल कटवाए गये इसकी कुछ जिम्मेदारी तो अंग्रेज सरकार पर है कि उसने लड़ाई के जमाने में बहुत जंगल कटवा दिये और बचे हुए जंगलों को यह जमींदार कटवा रहे हैं।

बाबू रामनारायण सिंह: बिहार सरकार ने भी जंगल कटवाए हैं।

श्री एम.पी. मिश्र: यह गलत बात है। यहां जो आज लोग भूखों मर रहे हैं इसकी जिम्मेदारी इस जमींदार प्रथा पर ही है।

हमारे यहां तीन जिले हैं—सहरसा, भागलपुर, और पुरनिया, इन तीन जिलों में बिहार सरकार को स्पेशल पुलिस (Special Police) रखनी पड़ रही है, इसलिए कि वहां किसान पिछले एक साल में इतने तबाह हो गये हैं कि वह समय-समय पर जा कर जमींदारों के खलियान लूट लेते हैं। वहां इतनी बदअमनी फैली हुई है कि अगरन वहां यह स्पेशल पुलिस न रखी जाएं तो वहां के जमींदार बच नहीं सकते हैं। एक आदमी के खिलाफ तो वारंट है मगर वह पकड़ा नहीं जाता है क्योंकि वहां के लोग उसको जगह देते हैं। मैं कहना चाहता हूँ कि आज हिन्दुस्तान में प्रान्तीय सरकारें पुलिस पर करीब 240 करोड़ या करीब ढाई अरब रुपया खर्च

कर रही है जबकि भारत सरकार सारी सेना पर केवल 170 करोड़ ही खर्च कर रही है और यह पुलिस उनकी हिफाजत करने के लिए है। आप कहते हैं कि हम जनता की मर्जी जानना चाहते हैं। हां तो आपको मैं बता दूँ कि जनता तो आपको एक दिन के लिए महलों में सुख से नहीं रहने देगी। आपको वह खत्म कर डालेगी। लेकिन आप पुलिस के खर्च पर सरकार की रक्षा, सरकार की कृपा पर जी रहे हो। उसके बाद अब आप मुआवजा मांगते हो। मुआवजा ही नहीं मांगते हो, आप सरकार को धमकी भी देते हो। हमारे सूबे में जमींदारों की क्या हालत है? एक जमींदार का हाल मैं जानता हूँ। वह कम्युनिस्टों को, जो फरार हुए हैं, अपने घर में छिपाता है, उनको रक्षा देता है। बड़े ताज्जुब की बात है कि जमींदार मुआवजा चाहते हैं तो हम तो उनको मुआवजा देते हैं तथा भले आदमियों की तरह समाज में रहने को जगह देते हैं, लेकिन वह कांग्रेस को खत्म करना चाहते हैं। जिन लोगों को आप आज अपने घरों में जगह देते हो वह लोग आवेंगे तो वह आपको बिल्कुल ही खत्म कर देंगे। अब आप राय देते हैं और कहते हैं कि इसको जनमत के लिए भेज दो। क्या जमींदारी उठाने पर जनमत जाना जाएगा? आधी दुनिया लाला हो चुकी है और बाकी हिस्से में भी वह हवा तेजी से चल रही है। अब दुनिया में नई कीमतें आई हैं, नए माने चल पड़े हैं और हमारे कान्स्टीट्यूशन में भी वह बातें लिखी हुई हैं हमारे देश की बदकिस्मती है कि हमारे न्यायाधीश, हमारे वकील, जो पुरानी पीढ़ियों से सम्पत्ति पर चलते आए हैं वह समझते नहीं हैं, कि इस कान्स्टीट्यूशन में दूसरी बातें क्या लिखी हुई हैं। इसमें लिखा हुआ है कि किसी को शोषण करने का अधिकार नहीं है। मैं पूछना चाहता हूँ कि क्या जमींदारों का यह सब रुपया कमाया हुआ है। यह सारे का सारा रुपया अनअर्न्ड इनकम (unearned income) है। अब उसके बाद आप कहते हैं कि हम विधान की सुरक्षा चाहते हैं। कल हमारे एक जमींदार साहब ने पार्लियामेंट से अपील की कि जनतंत्र की रक्षा कीजिए। मैं आपसे कहना चाहता हूँ कि जमींदारी और जनतंत्र साथ-साथ नहीं चल सकते। आपका फर्ज था कि आप समय को देखते। हमारे यहां अभी श्री श्यामनंदन सहाय ने कहा कि उन्होंने एक स्कीम (scheme) बनाई है। उन्होंने कहा कि उन्होंने सन् 1937 में भी बिहार के जमींदारों के साथ एक स्कीम बनाई थी। मैं पूछना चाहता हूँ कि सन् 1947 में आपने क्यों नहीं बिहार सरकार के साथ बातचीत की, क्यों नहीं उस वक्त आपने इस तरह की स्कीम पर बातचीत की? उस समय आप दिल्ली आते थे तथा और जगह जाते थे और समझते थे कि इस तरह से आप अपने को बचा लेंगे। इसलिए बिहार सरकार के साथ बातचीत करने के बजाय उसके खिलाफ युद्ध का ऐलान कर दिया। बिहार सरकार के खिलाफ जो भाव 'इंडियन नेशन' (Indian Nation) अखबार ने दिये हैं, वह और किसी अखबार ने नहीं दिये। बिहार सरकार के खिलाफ झूठी सच्ची सब तरह की बातें इस अखबार ने लिखी। पंडित नेहरू ने जब कल अपने भाषण में अखबारों के विषय में चर्चा की तो उनके ध्यान में बम्बई के अखबार थे। हम कहते हैं कि पटना के 'इंडियन नेशन' को ही देखिए। वह भी इतनी झूठ, अश्लील और गंदी बातें लिखता है। तो जमींदारों ने बिहार सरकार के खिलाफ युद्ध छेड़ दिया और वह इसलिए कि वह समझते थे कि दिल्ली उन्हें बचा लेगी और दिल्ली जमींदारी रख लेगी। मैं आपको कहना चाहता हूँ कि दिल्ली तो क्या, दुनिया की तमाम राजधानियां भी आपको नहीं बचा सकतीं, दुनिया के तमाम शासक आपको नहीं बचा सकते। आपको कोई बचा रहा है तो कांग्रेस ही बचा रही है, आपको कांग्रेस राज्य बचा रहा है, जो भले आदमियों की तरह आपको समाज में रहने का मौका दे रहा है।

आप मुआवजे की बात कहते हैं। मैं आपसे पूछता हूँ कि क्या नौ लाख का मुआवजा कोई थोड़ी चीज है। एक आदमी को, जिसके बाल बच्चे भी नहीं हैं, यदि नौ लाख रुपये मिलें तो क्या यह थोड़ी बात है? उसके बाद भी आप इस सबको भूल जाते हैं। फिर हमारे यहां बिहार में एक चीज और है और वह यह है कि बकिया जमींदारों के पास जमीनें रहेंगी, सिर्फ दरभंगा के जमींदार पर दस हजार एकड़ जमीन रहेगी। यह चीज आप के पास रहेगी। यह आपको कांग्रेसी राज्य ने तो दिया है, दूसरे लोग जो आवेंगे वह इस सबको खत्म कर देंगे। आपके वह दोस्त जिन्हें आप अपने घरों में छिपा रहे हैं, वह खत्म कर दें या आपकी खुद अक्ल इसको खत्म कर देगी और आज इतना बड़ा मुआवजा आपके और कौन दे सकता है? हमारी तो शिकायत बिहार सरकार से यह है कि जिन लोगों ने जब अंग्रेजी राज्य था तो अंग्रेजों के गीत गाए, जिन्होंने देश के आंदोलन के खिलाफ और कांग्रेस के खिलाफ काम किया आज उन्हीं जमींदारों को छोड़ दिया जाता है। अभी जब हुसैन इमाम साहब अपनी स्पीच में कह रहे थे कि बिहार में डिसक्रिमिनेशन (discrimination) हुआ है तो मैंने कहा था कि विग शार्क (big shark) और स्माल शार्क (small shark)। तो बिहार में छोटे जमींदारों को हम मुआवजा देना चाहते हैं, देश की आजादी की लड़ाई में उन्होंने सबसे ज्यादा गोलियां खाईं, जेल गए और तबाह हुए। लेकिन बड़े जमींदारों का क्या रिकार्ड (recprd) है? अंग्रेज रहे तो सब दिन वह अंग्रेजों के तुलवे सहलाते रहे, कांग्रेस आंदोलन हुआ तो देश में उस आंदोलन के खिलाफ उन्होंने काम किया। और आज जब कांग्रेसी राज्य आया है तो कांग्रेसी राज्य के खिलाफ वह किस तरह का काम कर रहे हैं, कांग्रेसी हुकूमत के खिलाफ वह क्या काम कर रहे हैं? मैंने अभी कहा जाओ एक जमींदार कम्युनिस्टों को फरार कम्युनिस्टों को मुजफ्फरपुर में अपने घर में भगाये हुए हैं, उनको अपने घर में छिपाए हुए हैं। इसके बाद जब कम्युनिस्ट राज्य आयेगा तब आपको पता चलेगा कि आपकी क्या इज्जत रहेगी, आपकी क्या आबरू रहेगी? उनका राज्य आयेगा तो न आपकी इज्जत रहेगी और न आबरू ही रहेगी।

मिस्टर चेयरमेन : मैं क्या आनरेबल मेम्बर से पूछ सकती हूँ कि क्या वह और सूब वालों को भी चान्स (chance) देंगे।

श्री एम.पी. मिश्र: जरूर। इसलिए हम आपसे कहना चाहते हैं कि इस बिल (Bill) पर जनमत लेने की कोई जरूरत नहीं है। इस पर जनमत तो इतना ज्यादा है, जितने कि इस भवन में बैठे हुए सदस्य जाहिर कर सकते हैं। जनमत उनके आगे नहीं जा सकता।

इसके बाद मुझे इस पर कोई लम्बी बहस करने की जरूरत नहीं है। मेरा तो कहना है कि आर्टिकल (Article) 14 भी अमेंड (amend) कर दिया जाये जिसका सहारा लेकर पटना के इस कोर्ट ने इस कानून को गैर कानूनी करार दिया है। हमारे डाक्टर श्यामा प्रसाद मुकर्जी ने कहा कि आपको सुप्रीम कोर्ट (Supreme Court) का फैसला करा लेना चाहिए था, और इतनी देर तो सब्र करते। मैं आपका बताना चाहता हूँ कि हमारे पटना के जज ने यह कहा था कि वह नहीं समझते कि 14वीं दफा इस कान्स्टीट्यूशन में क्यों लाई गयी। वह कहते हैं कि मैं नहीं समझता वह क्यों लाई गयी और 14वीं दफा के जो मानी सुप्रीम कोर्ट ने लगा दिये हैं उसके बाद में मजबूर हूँ कि इस कानून को गैर कानूनी करार दूं। नहीं तो उन्होंने लिखा है कि तमाम प्रान्तीय धारा सभाओं को हक है कि वह जमींदारी को उड़ा दें और वह जो भी चाहें कम्पेनसेशन (compensation) दें और जितना चाहें उतना कम्पेनसेशन दें। मैं सिर्फ उसको पढ़कर सुनाता हूँ।

“I must confess that I have found it difficult to understand, and have been unable to discover why article 14 was inserted in the Constitution. So far as I am aware there was in 1950 no class of persons anywhere in India who were subjected to such discrimination before the law as in 1867 the victorious Northern states apprehended the Negro population of the Southern States might be subjected to Article 14 occurs at the beginning of a series of five articles which appear under the heading ‘Right to Equality’ and having regard to the succeeding articles, I should have been disposed myself to think that what the makers of the Constitution had in mind were potential evils of the kind which the American people aimed at when they adopted the fourteenth amendment. There are a number of articles in the Constitution which rather express the ideals of the makers than aim at existing evils or evils which are likely to arise. The Supreme Court has however given to the article the extended interpretation which has been out on the fourteenth amendment in modern times in America. I am bound by that decision and I am constrained to hold that the impugned Act is unconstitutional as it transgresses article 14.”

उसके बाद भी क्या सुप्रीम कोर्ट में जाने की जरूरत रह जाती है? इसके उपर जब विधान परिषद् ने साफ अपनी राय जाहिर कर दी थी कि हम इस जमींदारी के मामले को कोर्ट में नहीं जाने देंगे, जब उसने इस तरह का फैसला दे दिया था तो कोई जरूरत नहीं है कि हम आज इस पर सुप्रीम कोर्ट को फैसला करने दें। सुप्रीम कोर्ट अलग-अलग सूबों के कानूनों पर क्या फैसला करेगी। हमको नहीं मालूम और उसका क्या असर होगा कि हमको बहुत दिनों तक इंतजार करना होगा।

इसके अलावा एक बात और है। यह हाउस (House) और जितनी प्रान्तीय धारा सभाएं हैं वे जनता के प्रतिनिधि हैं, वे जनता की राय प्रकट करती हैं। क्या आप चाहते हैं कि सुप्रीम कोर्ट के दस जज या दो हजार जज जो कितने ही बड़े विवकेशाली क्यों न हों, उस राय पर बैठें और फैसला दें? इसके बारे में पंडित नेहरू की राय स्पष्ट है। मैं उसको पढ़कर सुना देना चाहता हूं। यह भी उन्होंने पिछले ही साल कहा था ज बवह इस कानून को पेश कर रहे थे।

“It has been not today’s policy, but the old policy of the National Congress laid down years ago that the zamindari institution in India, that is the big estate system must be abolished So far as we are concerned, we who are connected with the Congress shall give effect to that pledge naturally completely one hundred percent and no legal subtlety and no change is quite clear. We will honour our pledges. Within limits no judge and no Supreme Court can make itself a third chamber No Supreme

Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community.”

यह बात सीधी सी है। एक जज, एक ज्युडिशियरी (Judiciary) आखिर किसका क्रियेशन (creation) है? अमेरिका में प्रेसिडेंट रूजवेंट ने आपने पढ़ा होगा, अच्छे-अच्छे जजों को हटाकर अपनी मर्जी के जज नियुक्त कर दिये। वह तरीका अमेरिका में रूजवेल्ट ने अख्तियार किया। हम यह तरीका अख्तियार नहीं करना चाहते थे। इसी वास्ते हम इस विधान का संशोधन करना चाहते हैं। तो यह तरीका बहुत स्वाभाविक है और यह वही तरीका है जो विधान परिषद ने अख्तियार किया था।

(English translation of the above speech)

Shri Mr. P. Mishra: I have since yesterday been listening very carefully to the debate on this Bill and I find myself puzzled for two reasons. In the first instance, I am reminded of the time, about 22 months back, when Article 24 (of the Draft Constitution). Which is now Art 31 was moved before the Constituent Assembly and the speech that was then delivered by Pandit Jawarlal Nehru. Even irrespective of that speech it is a clear intention of the present Article 31 that no court or judge shall be competent to adjudicate upon or modify any law relating to the abolition of Zamindari. With the same end in view Clauses (4) and (6) were added to Article 31. The position today is the same as it was then and the same thing may be said of our intentions. Pandit Jawaharlal Nehru who is our Prime Minister today was also our Prime Minister then and what was then the Constituent Assembly is now here in the form of the Parliament. It is not an entirely new House that has supplanted the old Constituent Assembly. Had that been the case one might have said the view of the former Constituent Assembly was different from that of the present Parliament. I should say it is in accordance with our old intention and purpose that the present clause is being introduced in place of the old Article. It is clear from this that it was the intention of the framers of our Constitution that no court should be in a position to go into any law relating to the abolition of Zamindari that either we or any of our State governments are enacting or are about to enact. Now the most controversial subject in connection with the abolition of Zamindari is the subject of compensation. There are people in this country who are in fact not in favour of the abolition of Zamindari but

are today opposing this Bill on the question of compensation. In the present times nobody dare say openly that Zamindari should continue and should not be abolished for they cannot flout public opinion. (Shri Hussain Imam: I take strong objection to this). Even a man like Dr. Syama Prasad Mookerjee does not have the courage to say that he is not in favour of the abolition of Zamindari. Even he has taken up the slogan that he is in favour of its abolition although we know that if ever he and his party come into power and form the Government of course this is not going to happen. But all the same if ever it does they would retain Zamindaris. They would search and bring out the descendants of the old rulers from Shri Rama Chandra down to Prithvi Raj appoint them as the Rajas and establish Hindu Raj here. But today such people do not possess the courage to come forward before the public and declare that they are in favour of the retention of Zamindaris. However they raise the question of compensation and kick up a row over that. They have money and can pursue the matter at length in the courts. By means of these disputes they can do at least one thing that us they can for the time being at least hold up the Government's plans and intentions with regard to the abolition of Zamindari and the land reform. In this connection I wish to read out to you a portion of the speech of Pandit Jawaharlal Nehru which he delivered at that time. I cannot help saying that the position is very unfortunate. It was the Constituent Assembly which had added clauses (4) and (6) to Article 31 which had framed the Constitution itself, which had created the Parliament and the Supreme Court and it was clearly of the view that the question of Zamindari and compensation would not be allowed to be taken before a court and that no court would have the authority to adjudicate upon or decide any matter connected therewith. Pandit ji had said.

“But more and more today the community has to deal with large schemes of social reform social engineering, etc. which can hardly be considered from the point of view of that individual acquisition of a small bit of land or structure. Difficulties arise—apart from every other difficulty the question of time. Here is a piece of legislation that the community, as presented in its chosen representatives, considers quite essential for the progress and the safety of the State and it is a piece of legislation which affects millions of people. Obviously you cannot leave that piece of

legislation too long, widespread and continuous litigation in the courts of law. Otherwise the future of millions of people may be affected; otherwise the whole structure of the State may be shaken to its foundations so that we have to keep these things in view.”

Thus, I was puzzled to find that just 22 months after this clear declaration in the Constitution that courts and judges would not be allowed to sit in judgment on this matter Pandit Jawaharlal Nehru has been driven to the necessity of introducing such an amendment to the Constitution where in a repetition has to be made of all those things that had been said already by him and other Members of the Constituent Assembly. This has greatly puzzled me. Pandit Jawaharlal Nehru is the leader of the Congress Party, he is the Prime Minister and if any one man can stand as a symbol of the country's ambitions desires and intentions he is that man. It was he who had especially stated that we would not permit law courts to interfere with this thing and yet what do we find? Just after a lapse of 22 months High Courts in several places have declared Zamindari Abolition Acts as ultra vires. In Bihar State the Zamindari law has declared ultra vires. I think! that one of the two things has happened. Either those who were the advisers of Pandit Jawaharlal Nehru and were entrusted with the drafting of the Constitution failed to convey the meaning correctly or that our country's courts and our country's judges have strayed beyond their jurisdiction and have come to adjudicate on these matters by acting in excess of their authority. I submit that Article 31 Clause (4) is clear on the point that the courts are barred from adjudicating on that matter. But in regard to the Bihar law it is said that it has been declared Ultra vires in accordance with Article 14. Article 31(4) reads:

"If any Bill pending at the commencement of this Constitution in the Legislature of a State has, after it has been passed by such Legislature, been reserved for the consideration of the President and has received his assent, then notwithstanding anything in this Constitution ..

"It is clear that matters like this cannot be adjudicated upon by law courts and that they are barred from doing so in spite of anything to the contrary provided for in the Constitution. It says further:

"the law so assented to shall not be called in question in any court on the ground that it contravenes the provisions of clause (2)."

If, in the face of all this, the judges of this country, especially those of my State, have adjudicated upon and decided these matters they have evidently acted beyond their jurisdiction

Shri Syamnandan Sahaya: It is said "Notwithstanding anything in the Constitution...."

Shri M. P. Mishra: That is compensation. No body is authorised to adjudicate upon that.

Then there is the second circumstance which is puzzling me, A number of my zamindar friends stood up and supported the resolution moved by Pandit Jawaharlal Nehru for the amendment of the Constitution but they added that there should be a referendum on the point. I am surprised to find that even at this time

"In the year of grace 1951 there are people who want a referendum on the question as to whether Zamindari should or should not be abolished, whether compensation should or should not be paid. Do they not know why the death sentences passed against the twelve kisans of Telangana have been commuted by our President to imprisonment for life?

It is that part of the country where the kisans have been driven to desperation by the atrocities committed by the zamindars and where Shri Vinoba Bhave is touring these days in order to pacify them. This episode occurred because the zamindars of that area had sucked away the very life blood of the kisans. This led to rioting which in its turn resulted in the twelve kisans being sentenced to death. Even after all that would you insist on a referendum? Ten thousand kisans in our State suffered atrocities and courted imprisonment in the year 1936-37. Are the Members of this Parliament not aware of the fires of resentment that are raging against this Zamindari system in each and every village? If they are not aware of that, it is the bad luck of the country and of this Parliament. In regard to our State it is said that so little compensation is being paid there to the zamindars, I am inclined to pity the judge who accepted the plea put forth by the Zamindar that he was not getting even as much compensation as

was his income. The compensation to be paid to the Maharaja of Darbhanga under the Bihar law has been assessed at rupees fifteen lakhs. The accounts produced on behalf of the zamindar were wrong:

The counsel for the Maharaja of Darbhanga stated that even the arrears of rent due to him for the previous year amounted to thirty lakhs of rupees whereas he was going to be awarded only fifteen lakhs by way of compensation. I think the judge who accepted that statement knew pretty little about the Zamindari. Not even one-half of the last year's arrears are capable of realization. Much less than that even is realized. I would say

Bihar Government is being over indulgent to the zamindars in as much as they are being paid compensation on such a lavish scale.

Shri Hussain Imam: But in the U.P. Act it is said. . .

Shri M.P. Mishra: I am not giving way. The hon. Member has had his say.

The judge accepts whatever allegation the zamindar's counsel makes and he writes that in fact the zamindar would not be getting sufficient compensation. I would suggest to the Government that the Maharaja of Darbhanga should not get anything more than nine lakhs—or why should he get even nine lakhs? For whatever compensation they are getting today they ought to thank the Congress and the disciples of Mahatma Gandhi for now, after the year 1951, there is no more likelihood of such a Government coming into office as might award compensation to the zamindars. The things these zamindars have been doing are not unknown to anybody. Let me recount to you just one story to give you an idea of the things they have been doing. In 1950 a kisan was asked to do some job by way of beggar but he could not attend the call as he was ill. There upon the zamindar sent forth his amla (party of officials). The men of the amla went to his house but the people there had already fled in panic. They found only an old man of seventy and his sixteen year old daughter-in-law. The men of the zamindar's amla marched them off. In the blazing midday of the month of jeth (May-June) they tied them up in the open and poured hot water on them. This is the kind of treatment meted out to the kisans by the zamindars and yet it is urged they should be awarded compensation. The Woodhead Commission had expressed the view that the Bengal famine was only due to the zamindars.

Our President, Dr. Rajendra Babu had appointed a Peasant Inquiry Committee in 1934 of which he himself was the Chaiman. The Committee had toured from Village to village and this statement was recorded by it in the zamindari of Darbhanga. The Woodhead Commission had expressed the view that Bengal famine was only due to the zamindars. Despite all these facts the Governments' decision to this effect is described as arbitrary. Although. The zamindars are fully convinced that now it is not possible to retain their zamindaris any longer, yet they are simply betraying the country. Today hon. Shri Munshi is not present here. He has been constantly warning that the food production in country is tending to decrease. I would like to say that the responsibility of this also lies on the zamindars. I wish to submit that during the two years that the zamindaris of Bihar gained they have done a good deal of harm to the State. They denuded forests after forests which amounted to lack of rains last year and untold misries to the public at present. This responsibility also lies partly on the old British Government which had denuded many forests during wartime and partly on the zamindars who are now denuding the remaining ones.

Babu Ramnarayan Singh: The Bihar Government has also denuded the forests.

Shri M.P. Mishra: It is incorrect. The cause of the present starvation condition is this Zamindari system. Saharsa Bhagalpur and Purnea are the three districts in Bihar. The State Government has been compelled to post special police in these three districts because for the last one year the cultivators have been totally ruined, so much so, that they often loot the zamindars grain stores. The disorder has spread there to such an extent that the local zamindars cannot be protected, should no special police be posted there. A warrant has been issued against a particular person but he could not be arrested so far because the local inhabitants provide him with shelter. While the Government of India's total expenditure on defence comes to only 170 crores of rupees the State Governments of India are spending something about 240 crores on police forces. For whom is this police meant? The zamindars require protection and for this the police has to be kept. They plead for public opinion being elicited. May I tell them that the people are not going to allow them to live happily in their palatial buildings. They will ruin them. It is only on account of the expenditure incurred by the police and the protection by and the humane treatment of the Government that that the

zamindars are able today to keep their body and soul together. Still they demand compensation. Not only do they demand compensation but they also threaten the Government. What are the conditions prevailing in the zamindararies in my state. I am aware of the activities of the particular Zamindar. He gives shelter to communist absconders and hides them in his house. Really it is a pity that while the Congress is even ready to pay compensation to them and also provide them with a respectable place among the society. They should try to exterminate it. Should the people whom the zamindars provide with shelter return to power it will be seen that those very people will uproot them. Now they suggest this Bill should be circulated for eliciting public opinion. Will the public opinion be ascertained after the abolition of zamindaris? Nearly half of the world has already been affected by communism which is fast going to spread over the remaining parts also. Now new valuations and new interpretations have come in vogue.

It is very unfortunate for the country that our judges and lawyers, who have been believing in the existence of property for generations could not quite follow what the Constitution laid down among other things. The Constitution provides that none is entitled to indulge in exploitation. May I ask whether it is the earned money that the zamindars possess? The entire income is unearned one. Still they advocate for the safeguard of the Constitution. One of my zamindar friends yesterday made an appeal in this house that the democracy should be preserved. I wish to make it very clear that the institution of zamindari and democracy are the two things that cannot go side by side. Such is the case also with the capitalism and the democracy. It is high time they should rise to the occasion. Shri Syamanandan Sahaya told the House—a little while ago, that had formulated a scheme. He further disclosed that in 1937 too he had formulated another scheme in collaboration with the zamindars of Bihar. May I ask him why did he not enter into a similar negotiation with the Bihar Government in 1947 also? At that time he used to visit Delhi and various other places in the hope that thus they would be saved. But now instead of negotiating with the State Government. He has launched a war against it. Whatever view has been expressed by the paper. “Indian Nation” in regard to the Bihar Government has so far not been put by any other newspaper. This particular paper has written all sort of baseless facts in regard to

the Bihar Government. Pandit Nehru had in mind the papers of Bombay when he dealt with the newspapers the other day. Take the case of "Indian Nation" of Patna. This paper too gives the same type of trash and nonsense. So we see the zamindars have launched a war against the Bihar Government in the hope that they would be saved by Delhi and thus their zamindaris would be retained. Let alone Delhi all the capitals of the world or all their rulers combined together cannot save them. Only the Congress and the Congress Government which are providing them with an opportunity to live a respectable and honourable life are saving them.

They talk of compensation. Is a compensation of nine lacs of rupees an ordinary thing? If a man who has no children even gets nine lacs of rupees as compensation it is certainly not an ordinary thing. Still they forget all these things. In Bihar there is also a provision that the zamindars will retain some land. The zamindar of Darbhanga alone will hold ten thousand acres of land. It is only the Congress Government which has done this favour in case any other Government comes in they will not allow even this provision to continue. Their so-called friends, whom they are providing with shelter in their houses. Or their own wisdom will rob them of whatever little privilege they are enjoying at present who else can give them so huge a compensation? I for one would go so far as to complain to the Bihar Government that they have left some zamindaris of those who used to dance to the tunes of Britishers during the British regime and used to oppose the Congress movements tooth and nail are left with their own zamindaris. A short while ago when Shri Hussain Imam said in his speech that in Bihar the zamindars were discriminated against. I had remarked that there were big sharks and also small sharks. We propose to pay compensation to the small zamindars in Bihar because it is only they who most of all faced bullets, went to jails and got ruined during the great struggle for freedom. But is there any record of big zamindars making any achievement? When the Britishers were here these zamindars used to lick their shoes and during the Congress movements they always confined their activities to oppose the country's stand. Now that the Congress Government has taken over, they are again opposing it. As I have just said a zamindar in Muzaffarpur has given asylum to communist absconders. What will be the state of their self-respect and

honour should a communist Government be set up in the country? Under communist rule they will have neither self-respect nor honour as such.

Mr. Chairman: May I ask the hon Member whether he would also give way to those belonging to other States?

Shri M.P. Mishra: By all means. I want to submit, therefore that there is no necessity of circulating this Bill for eliciting public opinion. No public opinion can be more weighty than the will of all these Members of this Parliament which represents the entire community.

Having said so much I need not indulge in a long controversy. I for one would like to say that Article 14, in accordance with which the Patna High Court declared this Act void be also amended. The hon. Shri Syama Prasad Mookerjee suggested this Bill should have been delayed pending the Supreme Court's decision. I may tell you what the hon. Judge of the Patna High Court had remarked in this regard. He said he did not quite understand why Article 14 was incorporated in the Constitution. Now that the Supreme Court has interpreted Article 14 in that way, he added, that he was compelled to declare that measure void. Besides he has also written that all the State legislatures are empowered to abolish zamindari and pay as much compensation as they like. I just read it out:

"I must confess that I have found it difficult to understand and have been unable to discover why article 14 was inserted in the Constitution. So far as I am aware there was in 1950 no class of persons anywhere in India who were subjected to such discrimination before the law as in 1867 the victorious Northern States apprehended the Negro Population of the Southern States might be subjected to. Article 14 occurs at the beginning of a series of five articles which appear under the heading Right to Equality and having regard to the succeeding articles, I should have been disposed myself to think that what the makers of the Constitution had in mind were potential evils of the kind which the American people aimed at when they adopted the fourteenth amendment. There are a number of articles in the Constitution which rather express the ideals of the makers than aim at existing evils or evils which are likely to arise. The Supreme Court has however given to the article the extended interpretation which has been put on the fourteenth

amendment in modern times in America. I am bound by that decision and I am constrained to hold that the impugned Act is unconstitutional as it transgresses article 14”.

Still is it necessary to wait for the Supreme Court’s decision? Moreover, in view of the fact that the Constituent Assembly had clearly expressed its view that this issue of zamindars would not be allowed to be referred to the Supreme Court, there appears to be no reason why we should allow the Supreme Court to deliver its judgment on this issue. I do not understand how the Supreme Court will decide the issue relating to the various States and what will be the ultimate effects of its judgment. It will also make us wait for a considerably long period.

Apart from this there is one more consideration. This House as well as other State Legislative Assemblies are the representative bodies of the people and represent the public opinion. Do we want ten or say any number of judges howsoever wise they may be to stand in judgment over this sovereign will? Pandit Nehru’s views in this regard are quite clear. While in this regard are quite clear. While moving this measure last year, he had remarked:

“It has been not today’s policy but the old policy of the National Congress laid down years ago that the Zamindari institution in India that is the big estate system must be abolished. So far as we are concerned. We who are connected with the Congress shall give effect to that pledge naturally completely one hundred percent and no legal subtlety and no change is going to come in our way. That is quite clear. We will honour our pledges within limits no judge and no Supreme Court can make itself a third chamber. No Supreme Court and no judiciary can stand in judgment over the sovereign will of Parliament representing the will of the entire community”.

It is a clear fact. After all who has created a judge or a judiciary? In America you might have read, President Roosevelt had removed many able judges and appointed in their places those chosen by himself. We do not want to do likewise and that is why we seek to amend the Constitution. This method is very natural and is the same that was adopted by the Constituent Assembly.

Pandit Krishna Chandra Sharma: This is a very important Bill which deals with amending the Fundamental Rights. I want to disabuse the mind of the hon. Member

who made so much of the Fundamental Rights. It is one thing to have formal recognition of the Fundamental Rights either in the Constitution or in any set of laws but it is quite another thing to have them effectively recognized in the day to day life of people. No Constitution nor law can give any rights if public opinion is not willing and ready to uphold them. The law of a country can only come into force in accordance with the social economic and political conditions of the community, the intellectual capacity of its people and their moral receptivity. Do you think that a degraded and down-trodden people will ever be willing to uphold the zamindari system? I am sorry my hon. friend is not here. He talked of the sand's heat being greater than the heat of the sun. The sun has been reduced to sand. For hundreds of years you have been reaping where you had not sown. You have degraded the people, you have trampled upon them the people who labored for you and still you say that you want light from the sun. Where is that damned sun? Where does it exist? You want the man who labours for you to remain silent for ever. That is an impossibility. I want to disabuse the mind of hon. Members of the impression that because certain rights are given in the Constitution or any set of laws therefore they are sacrosanct and therefore you can effectively count upon them. That is not the way of the world. The people are greater than any set of laws or anything in the Constitution.

I now come to the freedom of speech and the freedom of the Press. My friend Mr. Deshbandhu Gupta made much of it but I make bold to say that I am ashamed of the Press. Thousands of people have been murdered on account of the false reports published in the Press regarding Hindu-Muslim riots. What do their Press do? I know of an instance in the Hindu-Muslim riot days of 1947 when not a single man died but one Delhi daily published that 50 Hindus were killed and the following day a village was attacked and 30 Muslims were killed. Who is responsible for these 30 lives? What are their correspondents doing? What do they pay to their correspondents? They remain in the city and concoct news and things are published which affect the lives and liberty of the people. My friend Mr. Deshbandhu Gupta had the cheek to say that the Press is good. I say that there is no Press at all. The blackmarketer deals in goods which affect the convenience and comforts of the people. The Press today deals with the very lives of the people and with the very liberties of the people not knowing what

they are doing. It is easy to refer to the freedom of the Press, but I am constrained to say, and it is my painful task, that Press has not done the job.

Mr. Chairman: May I know whether the hon. Member is making a generalization in this regard?

Pandit Krishna Chandra Sharma: There are noble exceptions I am coming to the freedom of the Press.

So much about the much-applauded ways of the good Press in India. But may I say that even in U.S.A. which is said to be the heaven of liberty and freedom of the Press about which so much is being said that it is a land of the free, may I say even in that country the freedom of the Press is not unrestricted? There are two kinds of restraints: the freedom of the Press is restricted to every great extent in time of emergency, but even normally it is restricted in so far as it involves slander indecency incitement to insurrection and similar offences against public welfare. And there have been in the last decade several attempts to restrict the power of the Press and the freedom of speech. Many Acts have been passed which curtail the liberty of the Press and freedom of speech. They are: the sedition Act of 1798. The Espionage Act of 1917. The Aliens Registration Act of 1940 and the sections of emergency legislation 1941. Then again the freedom of the Press and freedom of speech are subject to police powers. What are these police powers? They are the inherent power of every State to Presecrbe regulations to promote the health peace, Morals education and good order of the people. All these police powers are above the fundamental rights. And what the State says comes under police powers the court will not adjudge a law as invalid because it infringes some Fundamental Rights. These are the restrictions observed even in U.S.A. with regard to the freedom of of speech and freedom of the Press.

Let me come to the case of Switzerland. Freedom of speech in that country is guaranteed under article 55 of their Constitution. The right of freedom of speech is limited by the good of the people as a whole so there too it is not unrestricted and absolute right. It is said that Switzerland is the happiest democracy in the world but that happiest democracy of the world does not give unlimited and unrestricted right of speech or freedom of the Press.

With regard to Germany, article 118 of the Weimar constitution limits the freedom of speech by the general laws and therefore there is no absolute right. The right of expression and the freedom of the Press in Germany is to be enjoyed within the limitations of the general laws of the land which means the laws passed and enacted by the legislature of the land.

Section 46 of the Irish Constitution says:

“The State guarantees liberty of the exercise of the following rights subject to public order and morality: the right of the citizen to express freely their conviction and opinions”.

But that is subject to public order and morality and subject to general laws.

So, I submit that there is nowhere in the world as my hon. friend supposes such a thing as absolute right to the freedom of speech to say what one likes or absolute right to the Press to print anything it likes.

The amendment as the Prime Minister said, deals with three things: friendly relation with foreign countries, public order and incitement to an offence. So far as friendly relations with foreign countries are concerned we have got article 51 on Directive Principles. Article 51 says:

“The State shall endeavor to—

(a) Promote international peace and security;

(b) Maintain just and honourable relations between nations.”

These Directive Principles are like the general instructions formerly issued by the Governor-General and were meant to guide the policy of Government. They are not justiciable rights. But it is difficult to hold that any State will try to act in contravention to these rights.

Shr T.T. Krishnamachari (Madras): There seems to be no member of Government listening to the hon. member.

Mr. Chairman: There is the hon. Mr. Thirumala Rao.

The Deputy Minister of Food and Agriculture (Shri Thirumala Rao): I have given one of my ears to my hon. friend's speech.

Pandit Krishna Chapdra Sharma: Then Dr. Syama Prasad Mookerji said that he has a right to say that partition should be annulled. He should have known the course

of events in Korea. How could any citizen of India stand up and say he wants to wage a war against a neighbouring country? No law can permit it; no Government can permit it. It is to open a chapter of terrorism of miseries of grievances of wrongs towards people. It is easy to claim the right to make propaganda for the annulment of partition of the country, you accept the partition of the country. It is not now given to you to undo something on which the Constitution is based... The Constitution is based on the old India being partitioned. So to rise in revolt against Pakistan is to rise in revolt against the Constitution itself. Canada is different from the United States. Can any citizen in the U.S.A. stand up and say I want to run over the land of Canada and annex it to the U.S.A.? Such a thing is impossible. So friendly relations with foreign powers are necessary to safeguard the directive even in article 51. Similar provisions regarding public order are contained in the Constitution of U.S.A. and other countries and nothing new is contained in this amendment. Incitement to offence here the offence means against the Constitution itself—if it is in accordance with the Fundamental Right or permissible under the Constitution the act does not become an offence. It becomes an exercise of a right and not an offence. Therefore it becomes an offence because it is an act in contravention of the Constitution. It is therefore not a novel thing to claim power to punish an offence for it is a contravention of the Constitution itself.

Now I come Madam, to property.

Mr. Chairman: May I suggest that some time is lost when the hon. Members address the Chair as Sir and then correct it into ‘Madam’? I am perfectly willing to be called ‘Sir’ so that no time need be lost.

Pandit Krishna Chandra Sharma: I will take care to call ‘Madam’. Well, Madam, I beg to submit with regard to the property question that there is a misconception about this property business. My friend Mr. Hussain Imam thinks that it is such a sacred thing that it is not to be lightly dealt with. But I would respectfully submit that there are two different things—acquisition of property and the distribution of wealth. When you create wealth you are limited by circumstances, that is it is limited by your personal capacity to work, mental equipment, the situation as it is and so on. But when once property is created it becomes a matter for social institution. Once it is there you

can distribute it as you like. Therefore, property having been created it comes in the hands of the society to be treated as the society likes. That is the fundamental thing (Interruption). You cannot say No to it. Therefore there is nothing so sacred about it that it cannot be touched.

Regarding land I would like to inform my friend that ever since the time of Plato to Karl Marx this question has been taxing the brains of the great thinkers and most of them have come to the conclusion that the sooner land is taken out of the private ownership the better it would be for the people.

Shri Hussain Imam: All lands; all rights of property.

Pandit Krishna Chandra Sharma: The other property a man creates. Land you have not created. And you have no right to reap where you have not sown. It is a simple proposition. Who is a thief? A thief takes away a thing which he has not laboured to create. You reap where you have not sown. How are you better than a thief?

Shri Hussain Imam: What about the Government which wants to expropriate it?

Pandit Krishna Chandra Sarma: You have not created it but you want the benefit from it. Also from the latter half of the Nineteenth century from John Stuart Mill to Gassen and Walras and many other thinkers there have been devices to make the proprietary rights in land unprofitable. The Henry George problem is a single tax that is a tax should be levied on land alone, that the ownership of the land or possession of the land should become unprofitable. Therefore there have been devices and all through the history of economic thought there have been attempts that this problem of land should be solved. The meaning of the expression that this problem of land should be solved is that the land form private ownership must pass to social ownership. Having come so far, it does not lie in my hon. friend's mouth to say: We are deprived of the sacred right.

Shri Hussain Imam: I never said that.

Pandit Krishna Chandra Sharma: What is the sanctity in a right which the people do not want you to possess? You must understand your very life your property, your social existence depends upon the will of the people. If the people do not like you to exist you cannot exist. No military no police would allow you the full lease of life if

the people are not willing to give you that. Do you want the people should run into desperation? They would make your life impossible.

Having said about the land reform I come to amendments to article 31.

Mr. Chairman: I thought we have agreed to the time-limit of 15 minutes and I expected from the hon. Member a great spirit of accommodation with regard to the other hon. Members.

Pandit Krishna Chandra Sharma: With regard to article 31A I beg to submit that there is nothing novel in this. Even in the U.S.A. the position is that the land property will not be taken for public purposes without just compensation. But nowhere in the long history of the Supreme Court judgments it has been decided what is just compensation and what is public purpose. Both these expressions are vague and ambiguous. They have devised a method by which when the land is taken by the U.S.A. Government the parties and the Government representatives agree with regard to the amount of compensation and if they do not agree the question comes to the departmental tribunal but it seldom goes to a law court. So the position remains that the departmental tribunal is the final authority to decide with regard to public purpose and just compensation. In other countries all rights to property are subject to general laws that is the general good of the people and they in turn mean the laws passed by the legislature of the country. So far as article 31A is concerned there is nothing new there is nothing strange. It has always been in existence in other countries and the provisions have been working well. Therefore my hon. friend cannot say that he is being unjustly treated when all the world and all the people outside this country have been so treated and they think that they have been well treated.

So far as article 31B is concerned I agree with my hon. friend. Pandit Takur Das Bhargava that copies of the Bills should be supplied to members so that they may carefully study them and be able to offer sound views on them.

Mr. Chairman: I would like to call upon such a Member who can finish his speech precisely at 7. P. M.

Shri Hussain Imam: May I say that I never advocated against the abolition I only wanted the U.P. plan to apply to Bihar.

Ch. Ranbir Singh (Punjab): Conditions may be different.

Shri Hussain Imam: or I want the Bihar plan for U.P. Let us have a uniform plan.

Shri Kala Venkatarao: You have left out Madras.

Shri Shankaraiya (Mysore): I rise to congratulate the Leader for the bold step he has taken in sponsoring this Bill against such such severe attacks. He has taken a bold step indeed in order to eradicate the social evils and inequalities that are existing and which have been causing so much of disturbance in this country for a very long time. It is really a bold step. The vested interests are doing their level best to see that these measures are not pushed through and that their interests are perpetuated and safeguarded and they are allowed to run in their own manner as long as possible I am in agreement with the other amendments proposed in the Bill and support it. Within the limited time at my disposal I would like to confine myself to the amendment to article 15 (3).

The Prime Minister in his speech has given an account of the conditions prevailing in the country. Particularly in South India and he has been fully aware of the serious consequences that would arise if things are not settled in proper time. Being aware of those consequences he has proposed this amendment to article 15 (3) by providing that equal opportunities be given to the minority communities. Especially the backward communities or the backward classes so to say for economic and educational advancement. But the only point that I wish to bring to the notice of the House is that this amendment will not serve the purpose we have in view. If it is not specifically laid down. In view of the decision of the Supreme Court on the communal G.O. of the Madras Government under article 29 (2) no restrictions could be placed with regard to admission to colleges on grounds of community, caste or religion. This has led to a good deal of upheaval and a sort of agitation in the minds not only of the elderly people but even of the younger generation particularly the student community. In order to prevent this I would request the hon. Prime Minister to seriously consider this matter and see that the proposals that are laid down are fully effective. Even if the proposed amendments are carried the proposed amendments are carried the purpose will not be served. It is a legal question. I would like to explain it. The proposed amendment is of a general nature. It runs like this.

“For the educational economic or social advancement of any backward class of citizens”

This is a general clause. No doubt it gives facilities to them. But this general clause will be qualified to the extent that article 29 (2) stands there. So long as the general provision is there it will be interpreted subsequently that any State Government or the Central Government may provide all facilities for their advancement in the educational and economic field, but it will be qualified to the extent that article 29 (2) is not altered or modified. When a specific article is there. Like article 29(2), it will have precedence and it must be enforced. Even though there is a general clause that general provision is subject to article 29 (2), so long as Article 29(2) is there no Government can try to act or pass any order or devise any means whereby the difficulty that has now arisen on account of the decision of the Supreme Court could be obviated. The purpose in view in the Bill will not be achieved if article 29 (2) were to remain operative and it will be very difficult for the backward classes to get educational facilities. If they are deprived of these facilities and if they do not get admission into the colleges, what will be the consequence? I would like to bring this to the notice of the House. If they do not succeed in getting admission into these institutions, especially the technical colleges and institutions then the very purpose of giving them these facilities would be defeated. Also article 16 (4) which provides for equal opportunity for appointments will also be a dead letter. At the time of appointment there will be a dearth of candidates from among the backward classes and hardly anyone among them can be appointed. So I submit equal opportunities should be given to the backward classes to get into the colleges and this can be effected by inserting a provision even in the present Bill to the following effect, namely that notwithstanding any other article in the Constitution and notwithstanding article 29 (2) equal opportunities should be given. If the present measure is qualified in some such manner as I have just suggested that will serve the purpose and enable the backward class students to get access into these institutions. Otherwise it will be open to the High Court to again say that so long as article 29 (2) is there this general clause 15(3) will not help in the matter. This will not solve the problem and as I said article 16 (4) will remain a dead letter.

Another effect will be this. We are now in the country which has yet to make advance in the economic and industrial fields. Progress of the country in these fields will depend to a very great extent on the extent of training we give to our people in technical fields and on the extent of their technical knowledge. If the people of backward classes are denied access to the technical colleges and are deprived of the opportunity of getting this technical knowledge, the backward communities will be entirely dependent on others and will be at their mercy. So greater opportunities should be given to them.

I would like to bring to the notice of the hon. Prime Minister that the matter is not so simple as it may appear and that it is deeply agitating the minds of the people especially in the southern part of the country. Even though the Congress may not carry on any communal propaganda there are people who try to take advantage of the present situation and who want to exploit it. Therefore it is highly desirable that this question should be tackled properly and the country is not driven into communal feelings and rancor if I may say so. This possible danger should be guarded against.

I would like to bring to the notice of the hon. Prime Minister that these communal feelings have already entered the portals of the universities not only among the students, but even among the professors, teachers and others. It is high time that we do something to prevent this sort of thing. Because if the mind of the younger generation is poisoned on account of this the country will be lost and the potential danger to the country will be far greater. It is not only the Madras Government that is concerned with this but the whole of South India—the States of Mysore, Travancore-Cochin and even Bombay are all affected by this. I will not be wrong if I say that this feeling is being spread and propaganda is being carried on in Northern India too. So I would request, that this enabling provision should be included in the Bill if any relief is to be given and that it shall be duly effective. I would request the Select Committee to bear this in mind, the serious consequences that will follow and hence bestow their best attention to the matter.

With regard to the conditions, I do not want to beg the question again as it would lead to all sorts of undesirable results. Therefore it is for the good of the country that such things are being tackled. I would like to dispel a feeling that has

been prevalent and that is this; it is not a communal question but it is a question of distinction or inequality that has been existing in the different classes in South India. It is only those who are interested in it that are giving it a communal colour in order to retain their vested interests and rights. Whatever may be the circumstances that have led to the present position, I would request that we should not allow it to be exploited by anybody in the country but it should be prevented and the larger interests of the country should be looked into and fuller opportunities should be given to all classes and communities. There is a question as to who are the backward classes. With regard to that there is article 340 and the President has got power to appoint a commission and the terms of reference of that commission could include all the details. It may be immediately appointed and it can ascertain the opinion of the people find out the social conditions and report. This commission's report need not be final for all times. It can be reviewed periodically and these backward communities could be reclassified off and on as and when circumstances require by taking into consideration the progress and the development they have made and I would request that this article can be easily availed of. This is not of very serious consequence but it would lead to the greatest harmony in the country. Therefore I would request the Prime Minister to consider this matter and see that article 29 (2) is not exploited again and the present amendment even though introduced will not be carried to the Supreme Court for interpreting again. If at all we are legislating, let us be definite on the point and see that all reliefs are given. With this request, I support this Bill.

Mr. Chairman: Before I adjourn the House, I would like to inform the hon. Members that the debate on this motion will conclude by 12-15 p.m. tomorrow and the hon. Prime Minister will reply at 12-15 p.m.

The House then adjourned till Half Past Eight of the clock on Friday, the 18th May, 1951.

Parliament of India

Friday, 18th May, 1951

The House met at Half Past Eight of the Clock

[Mr. Speaker in the Chair]

Questions and Answers

(See Part -I)

Shri S.C. Samanta (West Bengal): Sir, I want to ask something.

Mr. Speaker: But the Question Hour is over, I said. He cannot put any question now. Unless it is some point that he want to raise.

Shri S. C. Samanta: Sir, I have a complaint regarding my question No. 4259. This question has been taken up by the hon. Minister of Food and Agriculture. But when I submitted this question it was actually addressed to the hon. Minister in charge of Natural Resources and Scientific Research and Scientific Research and it was to have been answered on the 12th of this month. I was informed that it would be answered on the 18th. But to-day to my surprise I find that it is not answered by the Minister in charge of Natural Resources and Scientific Research but by the Minister in charge of Natural Resources and Scientific Research but by the Minister of food and Agriculture who has said that the information is being collected or something to that effect. If the question had been left with the Minister of Natural Resources and Scientific Research, I probably would have got an answer by this time.

Mr. Speaker: I shall of course enquire into this matter. I may however say that the Minister to whom a question is addressed may not necessarily be the Minister in

charge of the Department which has the information on a particular matter. Anyway as I said I will enquire into this matter.

PAPER LAID ON THE TABLE

Report on the Fifth Session of Transport and Communications Commission

The Minister of States Transport and Railways (Sri Gopaldaswami): I beg to lay on the Table a copy of the Report by the India's representative on the Fifth session of the Transport and Communication Commission held at New York in March 1951. [Placed in Library See No. P-170/51]

SEA CUSTOMS AND THE CENTRAL EXCISES AND SALT (AMENDMENT) BILL

The Minister of State for Finance (Shri Tyagi): I beg to move for leave to introduce a Bill further to amend the Sea Customs Act, 1878 and the Central Excises and Salt Act, 1944."

Mr. Speaker: The question is : "That leave be granted to introduce a bill further to amend the Sea Customs Act, 1878 and the Central Excises and Salt Act, 1944".

The motion was adopted.

Shri Tyagi: I introduce the Bill.

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CONSTITUTION (FIRST AMENDMENT) BILL - contd.

Mr. Speaker: The House will now proceed with the further consideration of the motion to refer the Constitution (First Amendment) Bill to a Select Committee.

I understand that the House has agreed to a time-table arrangement and the usual time-limit of...

Shri Sarangdhar Das (Orissa): No. not all Sir.

Mr. Speaker: The sense of the House was taken. Probably the hon. Member might have been absent.

Shri Sarangdhar Das: I was not absent Sir. I protested and it is on record.

Mr. Speaker: Well then it shows that he was present and had protested. The sense of the House has been taken. It is not possible to allow each hon. Member to have the fullest length for his speech, unless we are prepared to sit all through the year.

Shri Sarangdhar Das: But I have not even had a chance to speak.

Mr. Speaker: Of course he will get his chance.

Well as I was saying time-limits have to be put in two directions. One is the time-limit of 15 minutes for each speech except of course for the hon. Ministers concerned. That is limit number one. The second is that I propose to call upon the hon. the Leader of the House at 12-15 p.m. to reply to the debate. It is just to refresh the memory of hon. Members that I am announcing this.

Shri Kamath (Madhya Pradesh): Cannot the Prime Minister's reply be out of till tomorrow?

Mr. Speaker: I do not think we should go on like that.

Shri Sidhva (Madhya Pradesh): The Leader of the House stated that the remaining Delimitation of Constituencies Orders will be placed on the table of the House to-day. But I do not find them as an item on to-day's agenda. When are they likely to be placed on the table of the House?

Mr. Speaker: He said if it is possible they will be placed. After all he is equally anxious to place them before the House as the hon. Member and nobody wants to sit longer than is absolute necessary.

Shri Sidhva: But he stated that ...

Mr. Speaker: May be he said so in anticipation. We need not waste any more time it making such enquiries.

The Minister of Law (Dr. Ambedkar): In the course of the debate yesterday. My friend Pandit Hirday Nath Kunzru said that Government had done great injustice to the House by not explaining the necessity and the purposes of the various clauses in this Bill. And that someone on the side of Government—and he referred particularly to me—should have got up to discharge that duty to the House. I do not know that any

member of the House will believe that a person of the intelligence of my hon. friend Pandit Hirday Nath Kunzru is on who requires an explanation of this Bill. My friend Dr. Syama Prasad Mookerjee evidently did not require any explanation of the Bill. As soon as the Prime Minister finished he stood up and opened his fire. And I do not think that my friend Pandit Kunzru is less intelligent than my friend Dr. Mookerjee. However a Pandit Kunzru expressed the wish on many members of this House, I thought it incumbent on my part to intervene in this debate and to clarify the position so as to dispel the two arguments which had been used in the course of the debate. That there was no necessity for the amendment of the Constitution and secondly that government could wait and give the country and the public larger and longer time and should not rush through this measure. In the observations that propose to make. I will take the bill clause by clause. And try to explain the necessity for making the changes which the Bill proposes to make.

I will begin with clause 2 of the Bill, clause 2 of the Bill proposes to amend article 15. The necessity for the amendment of article 15 has arisen on account of the judgments recently delivered by the Supreme Court in two cases which came up before them from the Madras State. One case was Madras us. Shrimati Champaka Dorairajan and the other was Venktaraman us the State of Madras. In the case of Venkataraman the article involved was article 16 clause (4) and in the case of Shrimati Champaka the article involved was article 21 clause (2) In the one case the question involved was the reservation for backward classes in public service and in the other case the question it evolved was the reservation for backward classes in educational institutions. The question turned upon what is known in the Madras Presidency and elsewhere as the Communal G.O. The argument on which the Communal G.O. of the Madras Government was declared to be void and invalid was this. It was said by the Supreme Court that article 29, clause (2), did not have a saving clause like Clause (4) attached to article 16. As this House will remember under Clause (4) of article 16 a special provision is made that article 16 shall not stand in the way of the Government making a suitable provision for the representation of backward classes in the services. Such a provision of course is not to be found in article 29. With regard to article 16 clauses (4) the Supreme Court came to the Conclusion that it involved discrimination

on the ground of caste and therefore it was invalid. I have carefully studied both these judgments of the Supreme Court and with all respect to the judges of the Supreme Court I cannot help saying that I find this judgment to be utterly unsatisfactory.

Shri Naziruddin Ahmad (West Bengal): Sir on a point of order. Is it in order for any Member to express disrespect to the highest judiciary in the land? It is the custom in Parliament not to speak disparagingly about the courts.

Dr. Ambedkar: There is no disparagement of the learned judges at All.

Mr. Speaker: I myself felt that the word should not have been used but I think what the hon. Law Minister meant was that the judgment was unsatisfactory from the point of view of what the Government proposed to do.

Dr. Ambedkar: The judgment does not appear to be in consonance with the articles of the Constitution. That is my point.

Mr. Speaker: I am afraid the hon. Minister will not be in order to pass any such strictures on any judgement expressed by the Supreme Court.

Dr. Ambedkar: I am very sorry.

Mr. Speaker: I was thinking whether what he expressed was not capable of a different interpretation viz, that the judgment was unsatisfactory from the point of view of what the Government proposed to do.

The Minister of Home Affairs (Shri Rajagopalachari): Will the hon. Speaker forgive my intervention? I think really what the hon. Law Minister meant is that a doubt has arisen on account of the judgment.

Mr. Speaker: Let us now proceed.

Dr. Ambedkar: My view is that in article 29 clause (2) the most important word is only No distinction shall be made on the ground only of race religion or sex. The word only is very important. It does not exclude any distinction being made on grounds other than those mentioned in this article and I respectfully submit that the word only did not receive the same consideration which it ought to have received.

Then with regard to article 16, clause (4), my sub-mission is this that it is really impossible to make any reservation which would not result in excluding somebody who has a caste. I think it has to be borne in mind and it is one of the fundamental principles which I believe is stated in Mulla's last edition on the very first page that

there is no Hindu who has not a caste. Every Hindu has a caste, he is either a Brahmin or a Mahratta or a Kundby or a Kumbhar or a carpenter. There is no Hindu—that is the fundamental proposition—who has not a caste. Consequently if you make a reservation, in favour of what are called backward classes which is nothing else but a collection of certain castes, those who are excluded are persons who belong to certain castes. Therefore in the circumstances of this country it is impossible to avoid reservation without excluding some people who have got a caste. On these points I do not think personally that the judgment is a very satisfactory judgment. In this connection I would like to state notwithstanding what the House and some Members are saying that I have often in the course of my practice told the presiding judge in very emphatic terms that I am bound to obey his judgment but I am not bound to respect it. That is the liberty which every lawyer enjoys in telling the judge that his judgment is wrong and I am not prepared to give up that liberty. I have always told the judges before whom I practiced that is my view of the matter. Now the point has to be borne in mind that in article 46 of the Directive Principles an obligation has been laid upon the Government to do everything possible in order to promote the welfare and the interest of what are called the weaker sections of the public by which I understand to mean the backward classes or such other classes who are for the moment not able to stand on their legs—the scheduled castes and the scheduled tribes. It is therefore incumbent not merely on the Government but upon this Parliament to do everything in its hands to see that article 46 is fulfilled and if that fulfillment is to come. I cannot see how one can escape an amendment so as to prevent article 29, clause (2) and article 16 clause (4) being interpreted in the way in which it has been interpreted and being made to block the advancement of the people who are spoken of as the weaker class. That is the necessity for amending article 15.

I now come to the provisions of article 19, an article which gave rise to great excitement among the Members of the House. I first propose to take clause (3) (1) (a) of the Bill which amends the original clause (2) of article 19. As Members will see this sub clause proposes to add three new heads.

1. Relations with foreign States.
2. Public Order,

3. Incitement to offence.

A question was asked as to what was the necessity for introducing three new heads. The necessity has arisen out of certain judgments which have been delivered by the Supreme Court as well as by the Provincial High Courts. I would like to refer in this connection to the judgments of the Supreme Court in Ramesh Thapar's case and in Brij Bushan's case. These are the two judgments of the Supreme Court. Then I come to the judgments of the State High Courts.

The following judgments of the Punjab High Court may be taken into consideration.

1. Master Tara Singh's case.
2. Amarnath Bali versus the State of Punjab.

There are two judgments of the Patna and Madras High Courts.

1. Shilabala Devi versus the Chief Secretary of Bihar.
2. Bynes versus the State of Madras.

In Ramesh Thappar's case what was involved was the validity of the Madras Maintenance of Public Order, 1949. Brij Bhushan's case involved the validity of the East Punjab Public Safety Act, 1949. Master Tara Singh case involved the validity of sections 124A and 153A of the Indian Penal Code. Amarnath Bali's case involved the validity of section 4 of the Indian Press (Emergency powers) Act of 1931. Shilabala Devi's case also involved the validity of section 4 of the Press Act and the same was involved in the case of Bynes versus Madras State.

All these cases have resulted in the decision that they are void laws, that is to say in view of the provisions contained in clause (2) of article 19, the courts have held that all these Acts, however valid they might have been before the Constitution came into existence are bad laws now, because they are inconsistent with the Fundamental Rights.

What I want to ask the House to consider is what is the effect of these decisions of the Supreme Court and the various High Courts in the States? In order to give the House a very clear idea I can read many of the sections of the Acts which have been declared to be null and void but in view of the shortness of time I would content

myself by reference to the Press Act section 4 which has been called in question. This is what section 4 of the Press Act says:

“Whenever it appears to the Provincial Government that any Printing press in respect of which any security has been ordered to be deposited under section 3 is used for the purpose of printing or publishing any newspaper, book or other document containing any words signs or visible representations which— I want the House to mark these clauses carefully—

“(a) incite to or encourage or tend to incite to or to encourage, the commission of any offence of murder or any cognizable offence involving violence or.

(b). directly or indirectly express approval or admiration of any such offence or of any person real or fictitious. Who has committed or is alleged or represented to have committed any such offence.

Or which tend directly or indirectly

(c) to seduce any officer, soldier, etc...”

The important point to which I wish to draw the attention of the House is (a) “incite to or encourage or tend to incite to or to encourage the commission of any offence of murder or any cognizable offence involving violence.” It means that under the decisions of the Provincial High Courts to which I had referred it is now open to anybody to incite, encourage tend to incite or encourage the commission of any offence of murder or any cognizable offence involving violence.

The one question that I would like the House to consider is this. Is it a satisfactory position that any person should now be free to incite or encourage the commission of offences of murder or any cognizable offence involving violence? I want the House to consider this matter dispassionately. Is it a desirable state of affairs (Several Hon. Members: No no.) that our Constitution should leave us in this desperate position that we could not control the right of free speech which has been granted by clause (1) of article 19 and it should be so unlimited that any person should be free to preach murder or the commission of any cognizable offence. I have tried to put the matter in a nutshell. That is the position.

The same thing has now occurred with regard to the public safety laws or the laws made by the various states for the maintenance of public order, because they also

have been held by the Supreme Court to be not open to any limitation by virtue of the Constitution. The Supreme Court has made a distinction between the security of the State and the maintenance of public order. They say that it may be open for Parliament to make a law for the security of the State but it is not open to Parliament to make a law for the maintenance of public order. There again I wish the House to consider the matter seriously. Is the House prepared to allow the right of freedom of speech and expression to be so untrammled to so unfettered that any man can say anything and go scot-free although such speech creates public disorder? If the judgments of the Supreme Court and the High Court's stand as they are then the only consequence that follows is that we shall never be able to make a law which would restrict the freedom of speech in the interests of public order and that we shall never be able to make a law which would put a restraint upon incitement to violence. I want my friend Dr. Mookerjee who—as coming events cast their shadow—played the part of a Leader of the Opposition, whose business undoubtedly, from a party point of view is to oppose everything to consider whether the void created in our legislation by the decisions of the Supreme Court and the Provincial High Courts should be allowed to remain in the name freedom of speech. That is the simple question. I am sure in my mind that if my friend Dr. Mookerjee were to study the different decisions of the Supreme Court and the Provincial High Courts in the light of the observations I have made he will beyond question come to the conclusion that this is a situation which must be remedied and cannot be allowed to go on.

Pandit Thakur Das Bhargava (Punjab): He wants detention laws to be used for the purpose.

Dr. Ambedkar: Detention laws are something quite different. That is in a nutshell (Shri Kamath: What a poor nut!) the case for amending article 19 of the Constitution.

It is next important to consider why the Supreme Court and the various State High Courts have come to this conclusion. Why is it that they say that Parliament has no right to make a law in the interests of public order or in the interests of preventing incitement to offences? That is a very important question and it is a question about which I am personally considerably disturbed. For this purpose I must refer briefly to the rules of construction which have been adopted by the Supreme Court as well as by

the various State High Courts, but before I go to that I would like to refer very briefly to the rules of construction which have been adopted by the Supreme Court of the United States—and I think it is very relevant because the House will remember that if there is any Constitution in the world of a country of any importance which contains Fundamental Rights it is the Constitution of the United States and those of us who were entrusted with the task of framing our own Constitution had incessantly to refer to the Constitution of the United States in framing our own Fundamental Rights. There are many Members, I know who are familiar with the Constitution of the United States. How does the Constitution of the United States read? I think hon. Members will realize that apparently there is one difference between the Constitution of India and the Constitution of the United States so far as the Fundamental Rights are concerned. The Fundamental Rights in the Constitution of the United States are stated in an absolute form the Constitution does not lay down any limitation on the Fundamental Rights set out in the Constitution. Our Constitution, on the other hand not only lays down the Fundamental Rights but it also enumerates the limitations on the Fundamental Rights and yet what is the result? It is an important question to consider. The result is this that the Fundamental Rights in the United States although in the text of the Constitution they appear as absolute so far as judicial interpretations are concerned they are riddled with the limitations of one sort or another. Nobody can in the United States claim that his Fundamental Rights are absolute and that the Congress has no power to limit them or to regulate them. In our country I find that we are in the midst of a paradox: we have Fundamental Rights, we have limitations imposed upon them and yet the Supreme Court and the High Court say “You shall not have any further limitations upon the Fundamental Rights”.

Now comes the question: how does this result come to be? And here I come to the canons of interpretation which have been adopted in the United States and by the Supreme Court and High Courts in our country. As hon. Members who are familiar with the growth of the Constitution of the United States will know, although the Constitution of the United States is a bundle of bare bones, the United States Supreme Court has clothed it with flesh and muscle so that it has got the firmness of body and agility which a human being requires. How has this happened? This has happened

because the U.S. Supreme court, although it was the first court in the world which was called upon to reconcile the Fundamental Rights of the citizen with the interests of the State, after a great deal of pioneering work came upon two fixed principles of the constitution. One is that every State possesses what is called in the United States “police power” a doctrine which means that the State has a right to protect itself whether the Constitution gives such a right expressly or not. The “police power” is an inherent thing just as our Courts have inherent powers, in certain circumstances to do justice. It is as a result of this doctrine of “police power” that the United States Supreme Court has been able to evolve certain limitations upon the Fundamental Rights of the United States citizens. The second doctrine which the United States Supreme Court developed and which it applied for purposes of interpreting the Constitution is known as the doctrine of “implied powers”. According to the decisions of the Supreme Court if any particular authority has been given a certain power then it must be presumed that it has got other powers to fulfill that power and if those powers are not given expressly then the Supreme Court of the United States is prepared to presume that they are implied in the Constitution.

Now, what is the attitude which the Supreme Court has taken in this country in interpreting our Constitution? The Supreme Court has said that they will not recognize the doctrine of the “police power” which is prevalent in the United States. I do not wish to take the time of the House in reading the judgments of the Supreme Court but those who are interested in it may find this matter dealt with in the case known as Chiranjit Lal Chowdhuri versus the Union of India otherwise known as the Sholapur Mills case. You find the judgment of Mr. Justice Mukherjea expressly rejecting this doctrine which in text of the judgment has occurred on page 15. They say they will not apply this doctrine. The reason why the Judges of the Supreme Court do not propose to adopt the doctrine of “police power” is this, so far as I am able to understand. That the Constitution has enumerated specially the heads in clause (2) under which Parliament can lay restriction on the Fundamental Right as to the freedom of speech and expression, and that as Parliament has expressly laid down the heads under which these limitations should exist, they themselves now will not add to any of the heads which are mentioned in clause (2). That is in sum and substance the construction that

you will find in the case of Thapar's judgment which was delivered by Mr. Justice Patanjali Sastri. He has said that they will not enlarge it and therefore as the Constitution itself does not authorize Parliament to make a law for purposes of public order according to them. Parliament has no capacity to do it and they will not invest Parliament with any such authority. In the case of the Press Emergency Laws also they have said the same thing—that in clause (2) there is no head permitting Parliament to make any limitations in the interests of preventing incitement to an offence. Since section 4 of the Press (Emergency Powers) Act provides for punishment for incitement to the commission of any offence, Parliament has no authority to do it. That is the general line of argument which the Supreme Court Judges have adopted in interpreting the Constitution.

With regard to the doctrine of implied powers they have also more or less taken the same view personally myself I take the view that there is ample scope for recognizing the doctrine of implied powers and I think our Directive Principles are nothing else than a series of provisions which contain implicitly in them the doctrine of implied powers. I find that these Directive Principles are made a matter of fun both by judges and by lawyers appearing before them. Article 37 of the Directive Principles has been made a butt of ridicule. Article 37 says that these Directives are not justifiable, that no one would be entitled to file a suit against the Government for the purpose of what we call specific performance. I admit that is so. But I respectfully submit that that is not the way of disposing of the Directive Principles? The Directive Principles are nothing but obligations imposed by the Constitution upon the various Governments in this country—that they shall do certain things although, it says that if they fail to do them no one will have the right to call for specific performance. But the fact that there are obligations of the Government, I think, stands unimpeached. My submission in this that if these are the obligations of the State how can the State discharge these obligations unless it undertakes legislation to give effect to them? And if the Statement of obligations necessitates the imposition and enactment of laws it is obvious that all these fundamental principles of Directive Policy imply that the State with regard to the matters mentioned in these Directive Principles has the implied power to make a law. Therefore my contention is this that so far as the doctrine of

implied powers is concerned there is ample authority in the Constitution itself to permit Parliament to make legislation, although it will not be specifically covered by the provisions contained in the Part on Fundamental Rights.

Dr. S.P. Mookerjee (West Bengal): Even though they may become inconsistent with the provisions of the Constitution?

Dr. Ambedkar : That is a different matter.

Shri Kamath : That is a vital matter.

Dr. Ambedkar: What I am saying is this that the various provisos attached to the various fundamental articles need not be interpreted as though they were matters of strait-jacket as if nothing else is permissible.

Shri Kamath: You yourself made it.

Dr. Ambedkar: The point that I was trying to make to the House is that on account of the declaration by the Supreme Court that this Parliament has no capacity to make a law in certain heads the question before the House is this can we allow the situation to remain as it is, as created by the judgments or we must endow Parliament with the authority to make a law?

At this stage I do want to make a distinction and I do so for the special reason that Dr. Mookerjee came and said that we were taking away the freedom which people enjoyed. I think it is necessary to make a distinction between the capacity to make a law and the enactment of a particular law. All these matters as to whether a particular law encroaches upon the freedom of the people is a matter which can be discussed when the law is being made. Today we are not dealing with the capacity of Parliament to make a law.

[SHRIMATI DURGABAI IN THE CHAIR]

Dr. S.P. Mookerjee: May I ask one question with regard to this point that you are only asking Parliament to endow you with power to make a law? But according to the changes which have been proposed all the laws which were invalidated will become valid retrospectively.

Dr. Ambedkar: I know that is a point on which my friend Pandit Bhargava laid great stress and it would be very wrong on my part to leave it unexplained.

Dr. S.P. Mookerjee: And the much hated emergency laws will become good laws.

Dr. Ambedkar: It is not quite so.

Shri Kamath: Almost.

Dr. Ambedkar: So far I have dealt with two heads namely public order and the incitement to an offence. There remains the third category, namely friendly relations. We have at present on our statute book a law enacted in 1932 dealing with friendly relations with the foreign States. It is true that that law has not come for any adjudication before High Court or the Supreme Court and it has so far not been declared to be ultra vires. But the fact remains that in view of rules of interpretation adopted by the Supreme Court that nothing is within the capacity of Parliament unless that particular head of legislation is mentioned in clause (2) and as “friendly relations with foreign States” is not mentioned in clause (2). I do not think it requires an astrologer to predict that when that question comes before the judiciary they will follow the same line of interpretation.

Shri Kamath: Dr. Ambedkar is quite enough for the purpose.

Dr. Ambedkar: And it is for that reason that we have thought it necessary to include in the new heads this head of friendly relations with foreign states.

My friend Dr. Mookerjee asked whether there was any country where such a law prevailed. Well I have searched for a precedent and I can tell him that I find no country which has not such a law. In the case of England it is a rule of Common Law. No statutory law is necessary. The Common Law is operative not only in England but in all the Dominions. Therefore that same rule prevails there. In fact the Common Law rule has been amended and made more stringent by a statutory provision in Canada.

Pandit Kunzur (Uttar Pradesh): Will my hon. friend explain a little more the position in England?

Dr. Ambedkar: Yes, I will I do not know—I must leave some time for the Prime Minister.

Hon. Members: Take your own time.

Dr. Ambedkar: There is some confusion. I think in the minds of the people...

Dr. S.P. Mookerjee: And the framers of the Bill.

Dr. Ambedkar: No I do not think so. You will presently see that we have no such confusion. At any rate my mind is very clear about it.

Shri Kamath: Government as a whole. Not you.

Dr. Ambedkar: What does maintenance of friendly relations imply? Most Members are under the impression that if this category was added they would not be in a position to criticize the foreign policy of the Government. I like to say that that is a complete misunderstanding and a misconception.

Shri Kamath: That is your opinion.

Dr. Ambedkar: The underlying principle of this category namely maintenance of friendly relations with a State is nothing more than an extension of the principle of libel and defamation that you shall do nothing you shall say nothing you shall circulate no rumor which will involve a foreign State in any kind of ignominy. Beyond that there is nothing in this category. Even the English Common Law is based upon this namely that it is a part of the law of defamation—that you shall not defame a foreign State which has a friendly relation with this country. Now I want to know from Dr. Syama Prasad Mookerjee whether he thinks that even asking him or others that they shall not defame a friendly nation is such a serious inroad upon the liberty of speech that it should be condemned.

Dr. S.P. Mookerjee: Why not specify it?

Dr. Ambedkar: It is understood this is so I know my friend is a reader, but if he were to read debates that took place in this assembly in 1932 when this law enacted, if he will read the State of Objects and Reasons—which I have read—and also the Report of Select Committee on that Bill he will find that in this particular law there is nothing more than what I have stated.

Shri Kamath: Is not the expression “running dog” used by the Peking Government libelous or slanderous?

Dr. Ambedkar: There the Peking Government ought to make a law.

Shri Kamath: If someone retaliates here?

Dr. Ambedkar: This policy of tit for that is not good for the State.

Shri Kamath: What about reciprocity?

Dr. Ambedkar: It may involve to in great deal of trouble. If we are responsible to our friendly neighbor that our citizens shall not defame them in the same way the Chinese Government is responsible that the Chinese citizens shall not defame India and the remedy must be left for each Government to adopt in accordance with its own executive authority.

Prof. Ranga (Madras): And sense of honour.

Dr. Ambedkar: Yes and sense of honour.

Shri Naziruddin Ahmad: But the present law of defamation will protect foreign States also.

Dr. Ambedkar: My friend has provoked me to do something more which I did not want to do! Now let me read to him—this is very important—the law in the United States. Incidentally I would like to remind my friend Dr. Syama Parsad Mookerjee who so vehemently asked Is there any country which has such a law? Well I point to the United States of America. I have got this big volume with me Foreign Relations and Intercourse.

Shri Frank Anthony (Madhya Pradesh): Is it part of the Bill of Rights?

Dr. Ambedkar : It says—this is an important point—“Notwithstanding the fact that the United States does not permit the Congress to make a law on this particular subject the Supreme Court on the basis that every State has a police power to protect itself has permitted such a legislation to be on the statute book.”

Shri R.K. Chaudhuri (Assam): But not on the Constitution.

Dr. Ambedkar: “What is the law?”—my hon. friend Mr. Naziruddin who asked the question may read it. It goes much beyond our Indian law. The first clause says that “anybody willfully and knowingly making any untrue statement. Either orally or in writing about any person shall be punished by imprisonment for not more than ten years and may in the discretion of the court be finding not more than five thousand dollars”. I want him to compare the punishing clause of our law with the punishing clause of this law.

Shri Nziruddin Ahmad: I raised different question.

Dr. Ambedkar: Let me read it again.

Mr. Chairman: Order, order. I do not think that too many interruptions help the debate.

Dr. Ambedkar: I do not mind replying if I can understand what they ask.

Shri Nziruddin Ahmad: I raised a different question altogether. My question was whether our law of defamation does not protect foreign States also.

Dr. Ambedkar: It does not.

Shri Naziruddin Ahmad: I think it does.

Dr. Ambedkar: No it applies only when one person defames another. That is the point. Then the second clause in that law is about “wrongful assumption of character of a diplomatic or consular officer”. That also is made punishable under the law relating to foreign relations. One more important clause is about “conspiracy to injure property of a foreign Government” There again the punishment is imprisonment of not more than three years or fine of not more than five thousand dollars or both. Therefore, our law is a very mild one.

Shri Kamath: If all untrue state mints are tabooed it will put an end to all diplomacy.

Dr. Ambedkar: We are talking of citizens doing harm to the Government of the foreign State.

Shri Kamath: Not Government to Government.

Dr. Ambedkar: With the explanation that I have given so far members of the House, I think will agree that there is a necessity for amending article 19 in the way in which sub classes (1) of clause 3 of the Bill makes provision for it.

Some hon. Members: No.

Dr. S.P. Mookerjee: If it is only for protection against defamation, why are you having it separately?

Dr. Ambedkar: Sometimes it is better to separate a certain category.

Shri Kamath: Expediency.

Dr. S.P. Mookerjee: Which is the Constitution in the rest of the world where such a separate provision is made? You contradicted me.

Dr. Ambedkar: The whole point is that the British Constitution is an unwritten Constitution and therefore nothing is necessary; Parliament is supreme.

Dr. S.P. Mookerjee: What about the American Constitution?

Dr. Ambedkar: There are no Fundamental Rights in the United Kingdom. That is the difficulty.

Dr. S.P. Mookerjee: In any written Constitution dose a similar provision exist?

Dr. Ambedkar: It does not but in the United States of America according to the canons of interpretation aborted by the Supreme Court such a law is possible.

Dr. S.P. Mookerjee: That is a different matter.

Dr. Ambedkar: It is not different at all.

Now I come to clause 3 sub-clause (1) (b). This clause seeks to amend clause (6) of article 19 which deals with trade, profession etc.

Shri Deshbandhu Gupta (Delhi): Before the hon. Minister goes to clause 3 (1) (b) may I ask him one question? The words are “defamation or incitement to an offence” and all laws existing today will become...

Dr. Ambedkar: I have not come to that.

Shri Deshbandhu Gupta: I want you to answer that.

Dr. Ambedkar: I will not answer it now. I will answer it at my own time. I have noted it and I think it is a question to which some answer should be given. There is no ground for running away from it. It may be that the House may not accept my explanation, but that I have no explanation to offer is not the presumption that should be made.

With regard to this clause it will be noticed that the latter part of clause (6) has been separated into two parts, one dealing with the qualifications for practicing any profession and the second part dealing with the actual carrying on of any trade etc. The important part of that second part lies in this that it permits the State to make a different classification between private members carrying on the trade and the State carrying on the same trade. This clause and the necessity for its introduction has arisen on account of the judgment of the Allahabad High Court reported in 1951 A.I.R. (Allahabad) 257. Full Bench known as Motilal versus the Government of Uttar Pradesh as hon. Members will remember U.P. Government have introduced a scheme of nationalization of motor transport. They were proceeding with their scheme piecemeal territory by territory certain territory they had said would be subject to their monopoly and that no private individual would be entitled to run their buses within

that territory certain territory which they thought in the beginning they could not cope with they left to private bus owners. In doing so they said that it would not be necessary for the State to obtain a license for the running of their buses within the territory that they had earmarked for themselves but required the private owners to obtain licenses from the State. This question was raised before the Allahabad High Court on the ground that this involved discrimination. It seems to me that if nationalization is a desirable thing and in the best interests of the country, then it must also be admitted that it may not be possible for the State to undertake nationalization all throughout the country at one and the same time. It involves administrative problems, it involves many other problems and consequently in order to fully carry out the scheme and to consolidate it may be necessary for the State to define a territory and to leave others to carry on for the time being such a process should not be hampered by the doctrine of non-discrimination. It is to get rid of this doctrine of non-discrimination in the matter of nationalization that this particular amendment has been introduced. And I do not think that the House will very seriously object to this kind of thing.

An Hon. Member: The same thing from the High Court.

Dr. Ambedkar: Now I come to clause 3 sub-clause (2) about which...

Dr. S.P. Mookerjee: Why have you omitted the word 'reasonable' from the existing clause?

Dr. Ambedkar: The word reasonable was not there. That is a matter which may be discussed. (*An Hon. Member:* In the Select Committee). It may be discussed in the Select Committee, in the House everywhere.

Now I come to clause 3, sub-clause (2) In order to understand what this amendment precisely does. I think it is necessary to go back to article 13. It is only in the light of article 13 that one can have a clear idea of this particular sub-clause. As hon. members know article 13 declares that if any law is inconsistent with the Fundamental Rights, that law shall be declared to be void and inoperative. As I have shown in the course of my observations, certain provisions of laws such as sections 153A and 124A of the Indian Penal Code, certain provisions of the Press (Emergency Powers) Act and the Public Safety Acts have now been declared to be void by the

Supreme Court and by the various High Courts. In view of this what are we to do? It seems to me that there are three alternatives which we could pursue. The first alternative is to refuse to amend the Constitution and to let the void provision remain as it is I do not think that any Member or this House would like this alternative. (*An Hon. member*: It would be distrust). The second alternative is to amend the Constitution and then under this there are two courses open. The first course open to us is to re-enact this law in consonance with the amended article. That is one way Parliament and the various State Legislatures should call in their sessions and tackle with these laws once again. The second course is to revive these laws and to say that the revival of these laws shall be subject to the provisions contained in the amended Constitution. I cannot see what else one can do. The Bill adopts the second course. The Bill says: let the laws which have been declared by the Supreme Court and the High Courts to be null and void be deemed to be alive but subject to one proviso and that proviso is that they shall not be alive in their original body and flesh but they shall be alive only in such degree and in such manner as may be consistent with the amended article 19. That is the position. Now I would like to ask the House whether they will seriously contemplate the possibility of either this Parliament or the various Legislative Assemblies in the Provinces to again sit and re-enact these laws.

Dr. S.P. Mookerjee: Why not?

Dr. Ambedkar: Is there time for it?

Dr. S.P. Mookerjee: What is happening?

Dr. Ambedkar: I do not know what time it might take. But I am sure about that if my hon. friend Dr. Mookerjee were to be a member of the Bengal Legislative Assembly, he will prevent such a law being passed there for at least six months. His argument, his eloquence, all that would stand as a formidable Chinese wall against any re-enactment of these laws. Therefore it seems to me not to be a very unnatural presumption that in the present circumstances in which this Parliament is situated or the local Legislative Assemblies are situated you cannot presume that there would be immediately the time available for the re-enactment of these laws. I cannot think of it myself. We have so much legislation here.

Shri Sarangdhar Das: Why not the new Parliament?

Dr. Ambedkar: If it is the new Parliament it means that for six seven or eight months or a years there will be no law for public order; there will be no law for incitement to an offence and no law for friendly relations with foreign States. If Members of Parliament can contemplate such a contingency, they are welcome to it.

Ch. Ranbir Singh (Punjab): The new Parliament can repeal these laws if they so want.

Dr. Ambedkar: I have dealt with article 19.

Dr. S.P. Mookerjee: Why are you giving retrospective effect?

Dr. Ambedkar: Unless you give retrospective effect these laws cannot be revived.

Shri Shiv Charan Lal (Uttar Pradesh): Is that legal?

Dr. Ambedkar: Why not? If these laws are to be in operation, they must be in operation on the date when this law comes into existence. You can give it a new beginning if you can re-enact; but I do not see how you can re-enact; but I do not see how you can re-enact.

Shri Deshbandhu Gupta: Because the hon. Law Minister is going to another article may I ask a question with regard to this article? The power sought to be conferred refers to incitement to an offence. Section 4 of the Press (Emergency Powers) Act to which the hon. Law Minister has referred involves incitement to murder or to an offence involving violence. I want to know..

Dr. Ambedkar: Do you want to advocate it?

Shri Deshbandhu Gupta: No. I want to know whether under the wide powers that are sought to be taken it is not possible to advocate even non-violent disobedience to any order which may be against the liberties of the people and which will constitute an offence under other enactments. I want an explanation. For instance section 144 prevents the holding of a meeting for unlawful purposes. Some district magistrate issues an order. A newspaper tomorrow advises the people that this order is absolutely obnoxious and it may be disobeyed. Will it or will it not constitute an offence although it is neither an incitement to violence nor incitement to murder?

Shri Rajagopalachari: I submit that such extensively detailed discussion may be reserved for the Select Committee. The principles have been explained. Otherwise, we will have no time.

Shri Deshbandhu Gupta: If the hon. Minister gives an assurance that it will be modified it is enough.

Mr. Chairman: Whatever it may be the hon. Members who are frequently interrupting I think, have had their say already and their points of view have been taken note of. Now let the hon. Law Minister who is now speaking have his say.

Shri Kamath: Does it mean that those who have not had their say can interrupt.

Mr. Chairman: No; that does not mean that. Most hon. Members will do well to take note of this.

Shri Shiv Charan Lal: Only one question. Will it be legal to give retrospective effect?

Dr. Ambedkar: Oh yes, undoubtedly.

Pandit Thakur Das Bhargava: May I ask one direct question? Is the hon Law Minister satisfied with the terms of article 19(2) as he seeks to amend it?

Dr. Ambedkar: I have explained the principle. If as I said the language requires to be modified to give effect to the principle there can be no objection. But the principle is that they shall be revived.

Shri Deshbandhu Das Gupta: The hon. Minister has not thrown any light on the removal of the word reasonable.

Dr. Ambedkar: It is not removed; it was not there.

Pandit Thakur Das Bhargava: But the other things were there. You have taken away all those safeguards.

Dr. Ambedkar: That is a different matter. That will be considered by the Select Committee.

Now, I come to clause 4 of the Bill. This clause introduces a new article 31A. Let us understand first of all what this article does. What this article does is to permit a state acquire what are called estates. Secondly it says that when any legislation is undertaken to acquire estates. Nothing in the Fundamental Rights shall affect such a legislation. The merits of this article I think have to be judged in the light of one question and it is this. Is there anything revolutionary in this article?

Shri Frank Anthony: It is reactionary.

Dr. Ambedkar: Is there anything in this article which is not to be found in article 31? It is from this point of view that I want the House to consider this question. The House would remember that the later clauses of article 31 provided that certain laws which were then on the anvil and had not been passed shall not be questioned on the ground of compensation if a certificate was issued by the President. That is the gist of those clauses of article 31. The new amendment to article 31 not only removes the operation of the provision relating to compensation. But also removes the operation of the article relating to discrimination. In this amendment. I am emphasizing the word estate. The new article is a very limited one. It does not apply to the acquisition of land. It applies to the acquisition of estate in land which is a very different thing. What is an estate has been defined in this particular article namely the right of a proprietor, sub-proprietor, tenure holder or other intermediary. Of course the terminology is different in different provinces. It does not refer to the acquisition of land. That is a point to be borne in mind. Therefore, all that article 31A does is this when any law is undertaken with regard to the acquisition of property two questions can properly arise. One is the amount of compensation the second is discrimination as between the various proprietors as regards the amount of compensation. These are the only two questions that can possibly arise and give rise to litigation. With regard to one part of it dealing with compensation, we have already excluded the acquisition of proprietary and zamindari interests by the original article 31. By this article we are excluding the operation of the discriminatory provision. That is all what we are doing by this article. It seems to me that we really cannot adopt the said two articles of the Fundamental Rights relating to compensation and discrimination with regard to this land question. I have paid considerable attention to this subject. I may say that I have studied with great care the situation in Ireland a country which resembles very closely our own. In Ireland, the peasantry is hungering for land. Land in Ireland has been unevenly distributed. Some have very large estates some have very small. There are many who are landless. What has the Irish Constitution done? I want the Members who are representing the landed interests to consider this case in a comparative manner. Now so far as the Irish Constitution is concerned property in land particularly is not a Fundamental Right. Article 43 of the Irish Constitution clause (2) states that the

exercise of the right mentioned that is the right on land should be regulated by the principles of social justice. It does not say that land shall not be taken except on the basis of full compensation or without any discrimination as between landlords. What the Irish law does is this. They have anointed what is called the “Congested Board” as they call it or Congested Areas Board. It is a separate organization created by law and this board has been given the power to acquire land to break up holdings to equalize land to make uneconomic holdings economic ones by taking land from a neighboring owner and the right of assigning compensation has been given to this board of congested areas. There is no judicial authority to interpret the action of this board.

An Hon. Member: And no appeal?

Dr. Ambedkar: And no appeal at all some people have of course taken appeals to the courts but the courts have held that no appeals lie with any court.

Now, I can speaking for myself say without any hesitation that I am not at all an admirer of the New schemes that have been drafted by these States who have acquired land. It is in my judgment, not a very good thing to create peasant proprietors in this country. Our difficulty in this country has arisen by reason of the fact that we have small landlords holding half an acre of land or an acre or two acres with no money, no manure, no bulls, no bullocks, no implements, no seeds and no arrangement for water. And yet they are the landlords and the holders of the land. Looking at the future, I feel very aghast as to what is going to happen to this country and its national production of food if this kind of agricultural system continues. I would have very much liked if the State had acquired all these properties and kept the land as State land and given it on permanent tenancy to cultivators so that the State would have had the right to create collective farming and cooperative farming on the basis of supplying the materials and so on and so forth. But now we have a large number will exceed even five crores. But when you make these laws making the tiller of the soil the owner of it what provision can you make for the welfare of these landless labourers? They will remain where they are—high and dry—notwithstanding the abolition of the zamindars. I am therefore, not very happy at what is being done. But that is a different question altogether. The question we are considering now is whether the intermediaries should be allowed to continue. That is the point, and on

that point, I think there can be no dispute that the intermediaries should be liquidated without any kind of interference from the Fundamental Rights either on the ground that there is no adequate compensation or that a discrimination has been made. I have got with me a very interesting paper which I secured from the Government of West Bengal. Hon. Members will remember that there was a Commission called the Floud Commission appointed for the purpose of liquidating the zamidars in Bengal. After that Commission had reported, the Government of Bengal appointed a special officer in order to find out how effect could be given to the recommendations of the Floud Commission and that officer has made a very interesting report. I have got a copy but as I said I have not got the time now to go through the whole of it. But that officer himself recommended that equality of compensation would be wrong. It would be neither just nor equitable, of compensation would be wrong. It would be neither just nor equitable though it may be administratively smooth. He has worked out a scheme of compensation which is very interesting and the scheme is one of graded compensation. In the case of profits up to Rs. 2,000 the compensation should be fifteen times the net profit. From Rs. 2,000 up to Rs. 5,000 it should be twelve times but not less than the maximum amount given under the previous item. From Rs. 5,000 up to Rs. 10,000 the compensation should be ten times but not less than the maximum under the Rs. 2,000-Rs. 5,000 category and for profits above Rs. 10,000 it should be eight times but not less than the maximum under the last-mentioned category. It is all a graded thing and I am afraid that we should not get mixed up with this question of compensation which is a very ticklish problem. If you want the betterment of agriculture, I am convinced that these intermediaries must be liquidated. The original article exempted compensation for the acquisition of zamindari rights. We are now dealing with exemption from discrimination. I do not see why article 31 should now continue to operate when there is a law for the purpose of acquiring these estates.

Shri Shiv Charan Lal: What about article 14 about discrimination?

Dr. Ambedkar: The whole chapter is excluded from operation.

Shrimati Renuka Ray (West Bengal): When the hon. Minister is prepared to go far why does he not go further?

Dr. Ambedkar: I am not revolutionary enough.

Shrimati Renuka Ray: But you yourself suggested that the State should acquire the land?

Dr. Ambedkar: Yes but I am a progressive radical.

Now, I come to article 31 B. This article enumerates in the Ninth Schedule certain laws which have been passed. Great objection has been taken that this is a very unusual procedure. Prima facie, it is an unusual procedure. But let us look at it from another point of view. What are these laws? What are the principles on which these laws are made which are being saved by the Ninth Schedule. All the laws that have been saved by this Schedule are laws which fall under article 31A. That is to say, they are laws which are intended to acquire estates. And when we say by article 31A that whenever a law is made for the acquisition of an estate neither the principle of compensation nor the principle of discrimination shall stand in the way of the validity of it, I admit that sentimentally there may be objection. But from the practical point of view, I do not understand why we should not declare them valid pieces of legislation.

Shri Naziruddin Ahmad: They are bad laws and so they have to be declared valid!

Shri Syamnandan Sahaya (Bihar): May I enquire whether these laws that are now sought to be validated will cover only land reforms or whether there will be interference with other laws like the Transfer of Property Act and other Act? Has this aspect of the matter been investigated by the Government?

Dr. Ambedkar: I shall be quite frank about it. The only other method to adopt would be to give power to the President to revise these laws and to reconstruct them and to bring them strictly in conformity with the provisions of article 31.

Pandit Thakur Das Bhargava: Under article 31 we decided that if President certifies certain laws they will be valid. Now that safeguard has been taken away.

Dr. Ambedkar: The reason why that has not been done is this. Just imagine the amount of burden that would be cast upon myself, on the Law Ministry, the Food and Agriculture Ministry and other Ministries involved if we were to sit here and examine every section of each one of these Acts to find out whether they deviate. I think that is impossible.

Shri Kamath: Appoint a Committee for the purpose.

Dr. Ambedkar: That will mean postponement of this Bill.

Now I come to clause 6 which seeks to amend article 85. In article 85 the word used is summon. This word has given rise to some difficulty. The word 'summon' has a technical meaning viz. sitting of Parliament after a prorogation or dissolution. It does not cover the case of the sitting of Parliament after adjournment. The result is that although Parliament may sit for the whole year adjourning from time to time it is still capable of being said that Parliament has been summoned only one and not twice. There must be prorogation in order that there may be a new session. It is felt that this difficulty should be removed and consequently the first part of it has been deleted. The provision that whenever there is a prorogation of Parliament the new session shall be called within six months is retained. That is the difference between the old article and the new viz. the summoning has been dispensed once and it may continue to go on after short adjournments from time to time.

Another difficulty with regard to clause (2) is—it was contended by some that according to the letter of this article it is necessary that both Houses should be prorogued simultaneously and not at different times. That certainly was not the intention of the Constitution. The Constitution intended that one House may be summoned at one time, another may be summoned at another time one—may be prorogued at one time and another may be prorogued at another time. It is to make this possible that clause (2) has been amended.

With regard to article 87, which is sought to be amended by clause 7, the position is this. Under the old article the provision was that whenever Parliament was summoned there was to be an address by President. Now as Parliament will be summoned only once and it will continue either by prorogation or by adjournment it is not necessary to retain this provision. Similarly..

Shri Kamath: How can it continue after prorogation?

Dr. Ambedkar: If it is prorogued, then it will be summoned. If there are two summoning the address by President will be only once. With regard to precedence for debate that also has been deleted—on that there will be no time given but for the simple reason that there may be some urgent business which may require to be disposed of earlier...

Shri Syamnandan Sahaya: Supposing the President wants to address the House. This will be a limitation imposed on him.

Dr. Ambedkar: Now I come to articles 341 and 342. As the House knows to-day the power of issuing scheduled castes and the scheduled tribes order so far as Part A and Part B States are concerned is given only to the President while the power to issue such orders with regard to Part C States is given to Parliament. That position is now being altered and the power is given to president even to make an order with regard to scheduled castes and scheduled tribes in respect of Part C States also.

Then article 372 invests the President with the power to make adaptation in existing laws in order to bring them in conformity with the provisions of the Constitution and that power is given only for two years. This House will remember on account of the pressure of other business it has not been possible for Government to examine all the existing laws in order to find out how many of them are inconsistent with the provisions of the Constitution. It is therefore felt that the President's power to make such adaptation in the existing laws in order to bring them in conformity with the Constitution be extended by one more year so that means may be adopted in order to find out which laws are inconsistent and a consolidated order may be issued thereafter.

Shri Kamath: The article also provides that one Parliament is elected under the new Constitution the President shall not exercise this power.

Dr. Ambedkar: If this article gives the power than that of course overrides.

Shri Kamat: How can that be?

Dr. Ambedkar: Then I come to article 376 clause 13. A good deal of objection was taken to this particular clause. It deals with the appointment of persons who are not citizens of India to the posts of Chief Justice and judge of any High Court. The position is this, Article 217, clause (2) says that a Judge of the High Court must be a citizen of India. Article 376 provides that existing Judges including Judges who were not citizens on the date when the Constitution came into operation shall continue as Judges if they so choose. Now it so happens that we have in our country some four High Court Judges who were on the date of the Constitution Judges of Certain High Courts, but were not citizens of India. They chose to remain at their posts and did not

retire. We were therefore bound to carry them over under the provisions of article 376. A question has arisen and it is this. Can such a person be appointed as a Chief Justice either in the Court in which he is serving or in some other Court? Another question that has arisen is this. Can such a Judge be transferred to another High Court the point being whether the appointment of a Chief Justice or the transfer of a Judge from one High Court to another High Court is a new appointment? If it is a new appointment obviously the provisions of article 217 (2) would apply. This was felt as a great difficulty, because it could not be presumed that Parliament intended merely to continue them but their prospects should be blocked. Such evidently was not the intention. Consequently the President under the powers vested in him under article 392, clause (1) for the purpose of removing difficulties, issued an order regularizing the position. That order in some quarters has been questioned as being outside the power of the president, there being no difficulty whatsoever. In order to remove these doubts it is thought better to make a provision in the Constitution itself and that is why clause 13 is included in this Bill.

Mr. Chairman: Will the hon. Minister explain why was not originally the transfer contemplated? Is it not a new situation created by this clause?

Dr. Ambedkar: That is what I interpret to be the intention of article 376 viz., that once they were carried over, they were carried over for all purposes, either transfer or promotion.

But some people have found this difficulty...

Pandit Thakur Das Bhargava: The idea was that the Chief Justice shall not be a non-national. What is the reason now?

Dr. Ambedkar: The reason is obvious. When you accept a man as a Judge you certainly accept him for your own convenience and you should be in a position to transfer him to some other court. For the benefit of and in fairness to that individual he should not be debarred from promotion.

Pandit Thakur Das Bhargava: Would you like the Prime Minister of India to be a non-national?

Dr. Ambedkar: We are dealing with these four exceptional cases. (*Interruption*). The provision is very clear and I do not think anybody can quarrel with it. I believe I have

exhausted all the points raised in the course of the debate. If anything remains I shall be prepared to deal with it when the Bill is taken up clause by clause.

Dr. Deshmukh (Madhya Pradesh): Would it not be necessary to amend article 29 to give effect to this?

Mr. Chairman: There are only 60 minutes more before the Prime Minister replies...

Shri Kamath: If he is agreeable he may reply tomorrow. (Interruptions).

Mr. Chairman: If too many Members speak at the same time it is impossible for people to understand what they are saying.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): I thought it has been decided yesterday.

Mr. Chairman: Yes, it has already been decided yesterday and announced to the House that the Prime Minister would speak at 12:15 p.m. today.

Dr. S.P. Mookerjee: Can we not meet for two hours this afternoon? The Prime Minister may at least agree to that. There are a number of Members who have given notice of amendments but have not yet been able to speak. The debate can be concluded tomorrow morning or this afternoon at least.

Mr. Chairman: Some hon. Members who have given notice of amendments are in the select Committee. When the Bill comes back from the Select Committee there will be plenty of opportunities for them to speak. So we have now 60 minutes and if hon. Members are agreeable to confining their speeches to ten minutes six Members can speak.

Shri Sarangdhar Das: Ten minutes will not do. I am speaking but under protest. As I have said yesterday and several times previously in a debate on a Bill the time limit is not fixed at the beginning but after the debate goes on for a couple of day then the times is limited to 15 or ten minutes. Although I protest against this procedure and I have done so before, I will make speech as short as possible.

I wish to say first of all that I have moved my amendment for circulation. After hearing Dr. Ambedkar I admire his erudition and his exposition of legal precedents in other countries but I do not respect his judgment. I do not respect his judgment for this reason, that in delving into law he has forgotten the democratic principles.

It was rumored over a month ago that this Bill was coming and consequently all sorts of organizations and jurists have expressed their opinions and protested that this is not the time for bringing forward a Bill like this particularly trampling as it does, the Fundamental Rights under the foot. During the discussion even a great number of Congress party members have pointed out and from their speeches I understood that they were surprised that a Bill like this has come without their knowledge. The Prime Minister said that they had worked on it for months. With whom did they work then? Their own party members did not know about it. I understand that there was a committee of four or five which had gone into the matter and then it went to the Chief Ministers of States. As far as my information goes other Ministers in the States have not known anything about it....

Mr. Chairman: I think the statement of the hon. Member is not correct at all. I do not know which member of the Congress party made this statement. I do not think the hon. Member's statement that the Bill came up without the knowledge of party members is correct.

Shri Sarangdhar Das: Pandit Bhargava said...

Mr. Chairman: I may further say that a sub-committee was appointed in the party and they went into the amendments very carefully and they have brought their report.

Shri Sarangdhar Das: And if the Congress party knew all about it there are many non-Congress people in this House and outside who have not been consulted nor informed that such a Bill was coming. That is why I lodge my protest that an important proposition of this nature where the Constitution is being amended, is being hustled and the Select Committee has to report within a few days. This shows that there is a purpose behind this amendment to the Constitution which has come in the form of this Bill.

I wish to make a few points which others have not touched upon. I believe the members of the House know that all over the world in every country there is a battle between two ideologies going on between Communism and what is called democracy although it may be capitalistic democracy or socialistic democracy. In U.S.A. the Government is faced with such a problem where the Communists are disrupting their social life. But what has the Government done there? Has it rushed immediately to

amend the Constitution to curb the activities of the Communists? President Truman has formed a non-partisan committee not only of his Democratic Party but also of the Republican Party and others under the chairmanship of Fleet Admiral Nimitz. They are investigating as to how to protect the Fundamental Rights of the people and yet curb subversive activities of antisocial elements like the Communists who are infiltrating into every sphere of American life and disturbing the peace of the country. Here is America by which we—our Constitution-makers and our Prime Minister—swear, America is taken to be the model in many things and yet here is a country where there is graver danger from the Communists than exists in India, and they form a commission composed of persons of other parties along with the Democratic party that is ruling to go into the question. And that commission is working even now.

Dr. Deshmukh: There is not much fodder for Communists in America.

Shri Sarangdhar Das: That brings me to the question of public order. I think the whole House will agree with me that there is more peace in this country at the present time—actually the peace of the dead. There is no disturbance of any kind excepting for a little pocket in Telangana and a few districts of Madras and some area around Calcutta in the rest of the country there is no disturbance of any kind. As a matter of fact I deplore that there is no disturbance when there is no food, no clothing, no shelter. Because many years ago when I lived in America I have seen that when people have no food they go and break open the shop windows in the main streets of the city and then food does come from the well-to-do people.

Shri R.K. Chaudhuri: Do you advise that here?

Shri Sarangdhar Das: I do but our people are not built that way, they do not have the propensity to make trouble. If they had the propensity then thirty lakhs of people would not have died around Calcutta in 1943 when the godowns were full with thousands of bags of rice. And they are doing so now in various parts of the country. It is due to the lack of food, lack of cloth and lack of shelter—and in all these three matters the Government both at the Centre and in the States have bungled during the last four years and instead of making any progress they have take the country backwards Under the circumstances. I do not see as necessity for safeguarding public Order and bringing an amendment this nature to the Constitution.

Then there is the question of friendly relations with foreign power. Foreign powers are certainly of inanes we want to be friend with every country but I at the Prime Minister: if his government is trying to negotiate treaty with Soviet Russia and these are many people or even a few what believe that it will do no good: India then what happens? My friend may be frightened if I say only Russia—let it be the U.S. or any other country with whom Government want to enter into a treaty: There may be people who may not like such treaty or who may not think that it will do any good to our country such people may criticize the Government in the Press or on the platform is there any guilt in it? Unless every section of the public expressed its opinion how is democracy going to work? And if it is not done will the Government of the day whatever party it may belong to walk into the straight narrow path? I wish to remind the House of an incident in which the Prime Minister took to taste some forty Members who had cabled to the American Congress about food I was puzzled then as to why there should be so much of criticism of those forty Members. I was not one among them—I did not know of the cable having been sent till the Prime Minister mentioned it in the House Since that time I have met some American citizens who were surprised as to why the Members of Parliament or any other people in India should be forbidden...

Pandit Thakur Das Bhargava: We do not understand the relevancy of all this so far as this Bill is concerned. I do not know what the Prime Minister's criticism about sending that cable has to do with the Bill before us.

Shri Sarangdhar Das: You will know it if you wait till the end of my speech just as I did till the end of yours. I do not consider this reference as irrelevant. Government may have one idea of relations with foreign powers while in the public mind there may be some other idea. Expression of that idea should not embarrass Government. Recently I read a very funny report of what an American Senator told Sardar J.J. Singh. He is reported to have said that the Prime Minister of India has a son who is a Communist and that he has been in Soviet Russia for many years. There are people in America who do not take these things for gospel truth there may be some ignoramuses who believe in such things but not all the people do that. The Prime Minister referred to the two-page news-sheets. Fortunately for me I must say that during my whole life I

have not been in the habit of reading sensational newspapers. But I have seen some in our country occasionally; I have never paid for them but somebody had it somewhere and I have looked at it. (*An Hon. Members: You did not pay for it?*) Paying means I am interested in it— I am not interested in it. I call such news-sheets scurrilous; there are plenty of people who do not care to look at them. But the younger generation of readers finds that the Prime Minister is being abused in it or somebody else is being abused and it appeals to those readers. But in order to stop that appeal you have to tackle these problems of food, cloth and shelter satisfy the people bring contentment to them. By coercion and police power you will never accomplish anything. What has Government done to satisfy the people's bare animal needs? About food we had the other day the Cooch Behar firing. Then in connection with the compulsory food levy in Rajasthan there were one or two firings which were not judicially enquired into.

Shri Jawaharlal Nehru: May I know if the hon. Member is under a misunderstanding? It is not a Budget debate—its scope is rather limited.

Shri Sarangdhar Das: That is an election slogan. By abolition of zamindari Government becomes a super zamindar. What do the people gain? Take the land distribute it to the tillers who will cultivate and improve the land and then it will be a real agrarian reform.

Therefore, I would appeal to the whole House at least to send this Bill for circulation in order to elicit opinion from people who are interested in the various clauses of the Bill in one way or another and then it can be considered in the next session and if the House agrees to all the amendments, We may pass it.

Mr. Chairman: I would like to inform hon. Members that the hon. Prime Minister has agreed to accommodate more hon. Members to express their views. So subject to his reply in the afternoon, this debate will conclude by 1 p.m. precisely. But I would suggest to hon. Members to show a spirit of accommodation by making their speeches short and to finish within ten minutes.

At 4.30 p.m. the hon. the Prime Minister will reply.

Shri Ethirajulu Naidu (Mysore): Within the short time that has been allotted to me I may be pardoned if I am rather abrupt on some matters and cryptic on some matters and cryptic on some others. Enough has been said with regard to the freedom of speech and property. I would like to make a brief reference to the amendments dealing with property before I pass on to deal with the amendment to article 15 (3).

The two provisions that have been incorporated in this amending Bill with regard to property are the new clause (6) of article 19 and new article 31A. Now, article 31A deals only with zamindari rights and as was pointed out by the hon. the Law Minister it deals with property in a very limited manner. The other article relates to nationalization of any particular industry in part or in whole.

The concept of property is in a state of flux in the whole world and I for one do not believe that this concept should be changed only by bloody revolution and not by parliamentary majorities. When we deal with zamindari national opinion has crystallized itself for so long that it is unnecessary again to create a bloody revolution on that matter. This may very well be decided on a majority vote of the future Parliaments instead of having to expect the whole country to adopt that view by two-thirds majority of both Houses. I for one believe that Parliament may be authorized to decide these matters as and when they arise by a majority vote only. I would only appeal to the zamindars and those who support them that they may look into history and shape their attitude in such a way as to enable future Parliaments to decide these matters in a peaceful and constitutional manner.

I now propose to deal with article 15 (3) which is sought to be amended. May I say that we are very much indebted to the hon. Prime Minister for raising this very human and national problem into a higher place and lifting it from the morass of communal and caste politics which has gathered round it for lifting it out of this sphere and putting it on that psychological plane enables us to look at this problem in its real perspective without the prejudices and other disturbing factors that may otherwise gather round it I do not want to tread on anybody's corns. But I would say this for historical or other reasons a situation has arisen in most States where one or two sections have intellectually advanced far beyond the rest of the community. Out of that other consequences flow—their predominance in the services, in the

educational institutions their ability to secure seats in technical colleges and professional colleges etc. This creates a vicious circle. Just as rivers flow into the ocean, the forward classes get more and more forward and the backward classes recede further backward. Therefore a conscious effort is necessary if the backward classes are to be pulled up. It may be partly due to their lethargy and partly due to circumstances over which they have no control. The Prime Minister has often said that the future lies in the hands of engineers and technicians and that the days of the lawyers are over. But I am more concerned with the first part of his statement that the future lies in the hands of engineers, technicians doctors and scientists. And unfortunately it so happens that it is in these institutions that accommodation is limited. In regard to this I can do no better than quote the words of the Prime Minister himself, uttered when he moved the motion. In his own way he said that there was a static state of things and if we are to move forward as we propose to do, a certain amount of dynamic effort is necessary. And then he continued.

“But sometimes in this intervening period difficulties arose, because we have not got enough provision let us say, for giving a certain type of education technical or other. The question arose whether we should give some reasonable encouragement and opportunity for that education to be given to members of the backward classes which otherwise, without that encouragement and opportunity, they may not get it all so that they remain where they are and we cannot pull them up. Therefore the object of this amendment is to lay stress on this”.

Now that being so how is that purpose to be achieved? It is sought to be achieved by amending article 15 (3) I would bring it to the notice of the members of the Select Committee that that does not serve the purpose. The judgment of the Supreme Court was based on an interpretation of clause (2) of article 29 and they went further and said that in that light it was unnecessary to consider the provisions of articles 14 and 15. I have got a copy of that judgment and that is what they say. When they base their decision on an article of the Constitution and we find that the intention of the Constituent Assembly was something different the appropriate thing to do would be to amend that article on which the judgment is based. I would therefore suggest—it may not be too late—I would suggest it to the Select Committee and I

would press it on the Prime Minister as well as the Government that article 29 (2) itself may be amended so that there may be no doubt left as to the intention that is sought to be achieved. Or alternatively I would suggest that article 15 (3) may be amended in such a way as to override the effect of articles 14 and 5 and clause (2) of article 29. That view has been expressed by my hon. friend Mr. Kamath, Mr. Syamnandan Sahaya and Mr. Shankaraiya and other hon. friends who have spoken before me. There is a conflict in amending article 15 (3) without amending article 29 (2) It may again be a case of our meaning one thing and not expressing it clearly and again the matter may be taken to the courts I am further heartened in this matter because the Prime Minister while speaking about this amendment more than once expressed himself that he would welcome an addition to these words or a change so that the intention may be made clear.

Before I conclude I would express one sentiment It is not a matter of putting the wording of a clause in a particular way or amending an article in a particular way. The primary purpose is to adjust these human relationships which unfortunately are now in conflict on account of these factors. Constitutions and laws must change to meet this supreme need. We who claim to represent the masses cannot remain indifferent to their aspirations, indifferent to their progress and allow them to remain in their backward condition and at the same time claim to represent them or to demand their support.

Shri Ramalingam Chettiar (Madras): Madam. I thank you for giving me a chance to place the view which I with a large section of the population of the south entertain with reference to some of the provisions in this Bill.

I agree with several of the Members who said that it would have been better if more time had been allowed to consider the several provisions that have been made in this Bill. We have not had time to consider the effect of several of the provisions on the matters to which they relate. It may be that the principles may be unexceptionable. But whether the wording of the clauses as they appear in the Bill carry out the principles or whether they are adequate to meet the situations that have arisen is a matter which will have to be considered well.

I will first say a few words about the amendment relating to the question of the Communal G.O. as it is called in the Madras State I was never an admirer of the of the Communal G.O. It may say at once. But at the same time the principle underlying that Communal G.O. is a matter which will have to be considered very deeply and I am very glad to say that the Constitution as framed embodies the principle that underlines the Communal G.O. The first provision that it has made is for social justice. There ought to be justice among all the communities. You cannot prefer or give an advantage to one community as against the other. The second principle that is enunciated is that is that the weaker sections of the community should be helped to come up. That again is an unexceptionable provision which will have to be borne in mind in making provisions for the advancement of the several sections of the community. And thirdly it has also been recognized in article 16 of the Constitution that the unrepresented communities in the services should be given preference so that they may have their due share in the administration of the country. These are all principles which are unexceptionable. But unless they are given effect to in the spirit in which they have been framed there will be no sort of social justice in the country. The question is whether the provisions that are made in the other clauses carry out the principles that are enunciated.

This question of discrimination mentioned in clause 15 is put very widely and whether or not it really contrives the other clauses in the Bill and what it really means are all matters that have to be considered carefully. The matter has gone up to the Supreme Court and the Supreme Court has stated that this applies both to giving some preference to the education of the backward classes and also for giving some special representation to unrepresented classes in the services. As I said in the beginning I am not a supporter of the Communal G.O. as framed. The chief difficulty of the Communal G.O. is that it specifies the proportion of appointments or the proportion of admissions that will have to be made. If on the other hand the provision that is made relates to some preference being given to those classes which are backward? I think that principle cannot be attacked in view of the principles already contained in the Constitution itself. The question now is Government has found it necessary to amend article 15 to meet the difficulties that have been raised by the Supreme Court.

The question is whether the amendment that is proposed is adequate to meet the difficulties that have been felt. The two difficulties that have been met with are (1) admission to educational institutions and (2) the representation of the unrepresented classes in the service. These are the two matters about which the Supreme Court has expressed itself and this present amendment is intended as was explained to meet those difficulties. I should think that the amendment as proposed will not meet the difficulties. It is not framed in such a way as to meet the difficulties at all. In the first place the amendment says for educational economic or social advancement of any backward class” What do you mean by the “backward class”? It is not defined anywhere. The Governments also in the States have got their lists of backward communities for different purposes. They sometimes are satisfactory and sometimes they are not. What is contemplated in the Constitution itself is not a question of merely backward classes in the sense that there are lists of backward communities in this several States and they will have to be helped. What is provided for in the Constitution is as I said those communities which are not represented in the services are mentioned in article 16. Whether they are backward communities or they are forward communities the question that will always be in doubt. For instance a person belonging to the Vaisya caste who may be rich. But whose caste will be educationally very backward and probably none of whose members will be represented in the State services. Will that person be considered as a backward person or not? If you are going to do social justice, it cannot be done merely by saying that if he is rich in one matter, he need not have any share in the Government of the country. That is not a position which will be either good for the country or safe in the interests of the general advancement of the country.

What is meant by this discrimination and all these differences and things like that? When we are talking about this. We are talking merely in terms of the marks obtained in the examinations. Is that the proper standard? When there is a question raised for instance in Madras that Brahmins are discriminated against, all that is said is that some Brahmin boys who got more marks in an examination have not been admitted and that some boys belonging to other communities who got less marks have been admitted. Is that the proper test? There are technical colleges all over the

country. What has been the result of the training that we have been giving in these technical colleges? I can speak for Madras. Take for instance the agricultural college. There have been so many thousands of boys who have been turned out of the college. How many of them have taken to agriculture? Are these degrees in the agricultural colleges considered merely as a passport for service in the civil departments? For purposes of manufacturing merely clerks are we going to give preference to persons who have got more marks. For instance in mathematics or in some other subject for admission to the agricultural college and thereby deflect all the money that you are spending for enabling these boys to get jobs in the civil departments? Should you not discriminate in favour of those boys who are likely to make use of the special technical knowledge they are given by taking to agriculture? Similarly with reference to the engineering college. For instance most of the boys who pass from the engineering college only find employment in the civil services of the State. Those who are acquiring the technical knowledge during their education are not using that special knowledge for the purpose of advancing the interests of the country or entering into the particular professions for which they are being trained.

So it seems to me that the tests that we are applying are not the proper tests. It ought to be a test with reference to the use to which the knowledge they gained in the technical colleges is likely to be utilized. That ought to be the test and if that is going to be the test, the mere test of marks in an examination—very often it has nothing to do with the technical college to which admission is sought—will not be the proper way of dealing with the thing. So, it seems to me what ought to be done is a matter of liberalizing these admissions, not with reference to the marks obtained in the Intermediate or the B.A. or the School Final but with reference to the possibility of the students who are seeking admission utilizing the knowledge they gained for the purposes for which they are going to be trained. If there is going to be a liberalization in that way probably it will meet at least half of the difficulty that is met with at the present moment.

So it seems to me that the present amendment that is proposed will not meet the difficulties of the situation. It will have to be considered seriously whether the amendment to article 15 alone will solve the difficulties that we are meeting with and

whether we ought not to amend the other articles. For instance the article relating to admission to educational institutions and to appointments in such a way that the difficulties we are experiencing will be met properly and not have the effect of a sort of white wash like the amendment that is being proposed. I hope the Select Committee will seriously consider the problems they have to meet and they will frame the amendments in such a way that the problems are met and not merely bring a sort of a white-washing amendment and just as a salve to the conscience of the people who are dealing with it.

Shri J.P. Srivastava (Uttar Pradesh): At the outset I would say that my feeling is that these amendments to the Constitution, at this stage are ill advised and ill-timed. I would not go into the merits of the amendments themselves. But is this the time to bring forward such far-reaching amendments? I listened with rapt attention and with the respect which he deserves and commends to the speech of the hon. Law Minister. I have known him at work at close quarters and I know he can argue a case no matter how bad it is. He was in this case arguing against his own former brief. When he pleaded for the incorporation of Fundamental Right he brought forward all kinds of arguments justifying them. He had no manner of doubt at that time that these benefits which have been conferred on benefits which have been conferred on the citizens of future India will not work: he was absolutely certain. The Constitution of India was founded on those Fundamental Rights. They became our charter of liberty. Now in 15 month time, it is proposed to abrogate them a word which was used by my hon. friend Pandit Kunzru. At all events it is now intended to seriously restrict the Fundamental Rights which were conferred by the Constitution.

Our Constitution, I remember—I was abroad at that time—was praised by all the nations of the world because of these Fundamental Rights. They thought that India had made a great advance and the Constitution that it had framed would be an object-lesson to the rest of the world. I ask you Madam what would be the impression created in the minds of these foreign nations? They would say that we are never consistent and that there is no stability in this country. I ask you whether it is worthwhile creating that impression at this stage. What is the benefit which it is going to bring?

I will not enter into the rights or wrongs of the many things which these amendments seek to remedy. Supposing zamindari is not abolished for six months or one year more, will the heavens come down? Will the skies fall to the earth? I do not believe that. Zamindari has gone on all these years. I do not believe that it is such an essential measure of agrarian reform. It may be necessary; but there are many more things which could be done today without altering the Constitution.

Shrimati Renuka Ray: You are lucky to have been untouched yourselves.

Dr. Deshmukh: Bank balances?

Shrimati Renuka Ray: I mean the capitalists.

Shri J.P. Srivastava: I know the charming lady I listened to her speech with great respect and I hope she will extend the same respect to me.

The point is whether when we have so many problems on our hands, this is the right time to raise this controversy. It is argued that this Parliament is competent to pass the amendments, Of course it is so. But is it proper for this Parliament which has only about six months to run and which consists of 90 per cent of Members who are under a party whip to make these fundamental changes? The Fundamental Rights were guaranteed not only to the Members of the Congress party. They were guaranteed to everybody who lives in this country. To take away the rights of those people who have no majority here, who have no say is that right for this kind of Parliament?

An. Hon. Member: Guaranteed by whom?

Dr. Deshmukh: Guaranteed behind their back.

Shri J.P. Srivastava : Guaranteed by you. But, you cannot say that since you have given away a thing you can also take it back. You have given away a thing in your generosity you should not take it away. From the very start you could have said that there shall be no equality of rights to a non-Congressman. That would have been understandable. You could have said that property shall be taken away without compensation from such and such classes of people. That would have been understandable.

Shri Sidhva: Congressmen also have property.

Shri J.P. Srivastava: Make an exception in their favour in the Constitution. That would have been understandable. But once having guaranteed I appeal to you will you not keep to your word of honour, solemn word? It will only be stultifying yourselves if you do not.

My friend Dr. Ambedkar argued that this Bill was only an enabling Bill that is to say dealt with the capacity to enact. That is exactly where the mischief is. The Constitution is meant to restrict the steam-roller of democracy from crushing the minorities. If you invest Parliament with that power, so long as it consists of a certain party, that part can take away all the rights of property of those who do not command a majority here. I take it that that is not democracy. Democracy means that you must have the same regard and the same respect for the life, property and everything, freedom of speech etc. of those who belong to your party and those who do not. It is this aspect of the matter that I would like to press. If you invest the Legislatures with such vast powers, they may not be abused so long as we have a Prime Minister like Pandit Jawaharlal Nehru. He stands for everybody and he is not swayed by party considerations. But that is no reason why these vast powers should be conferred on this Legislature. We do not know what changes may take place tomorrow. I think it is dangerous for Parliament to have these powers.

My friend Dr. Ambedkar spoke with the voice of a former colleague of his, Sir Reginald Maxwell. The arguments which he advanced for suppressing the liberty of speech and liberty of the Press were exactly those which Sir Reginald Maxwell at one time advanced. But the time has changed.

An Hon. Member: You have not changed.

Shri Sondhi (Punjab): He is a die hard.

Shri Bhatt (Bombay): He has also changed.

Shri J.P. Srivastava: I will just touch upon another aspect of the matter and end in one minute. Are we sure that these things are now final and that there is no need for any more changes? As we go on, will there not be more changes necessitated? Are we to meet tomorrow or the day after and again amend our Constitution? If this process goes on, if we meet every day with ninety per cent of the House having to vote in a particular manner under the party whip, where will our Constitution be?

And to give retrospective effect to these laws is extremely reprehensible. The High Courts have already given their judgments. And what we now do is to invalidate those judicial pronouncements and I do not know how far that is correct from the legal point of view. I am not a lawyer but there are many lawyers here who will understand the legal aspect of the matter. I am however sure that the courts will regard this as a challenge and that is unfortunate. We all feel that the Government in this country. Should rest on law and on judicial pronouncements in the last resort.

I will not take any more of the time of the House but would only appeal to Government knowing as I do that my appeal will carry no weight that they should hasten slowly with this Bill. Let the country take time to think over it. If you pass this Bill like this I assure you Madam this will be the first nail in the coffin of democracy in this country.

Prof. K.K. Bhattachararya (Uttar Pradesh): The oracles of Delphi and of Dodona have spoken. The Prime Minister has advocated this Bill and Dr. Syama Prasad Mookerjee and some other speakers have opposed it. The whole point is this. Has Parliament the power to amend this Constitution? In my judgment Parliament has clearly this right to amend the Constitution. And if it is contended that this Parliament cannot amend our Constitution then I must say that contention is not tenable.

This is quite a simple matter. Parliament has this right and clauses 4 to 13, there is no doubt at all are quite necessary. About these amendments I have no doubt in my mind but as have no doubt in my mind. But as regards the amendment dealing with the freedom of expression, I feel strongly that the freedom of the Press should not be curtailed at all and the Press of this land should continue to enjoy the same rights and liberties that it has been doing till now. It has been said of the English Constitution, that the law of England is the law of liberty. We want the same thing here. Let it not be said that the law here entails the curtailment or the liberties and rights of the Press. We cannot forget the splendid services rendered by our Press in the cause of Indian freedom. Right from the days of British domination especially from 1921 till 1947—through all these long years of trials and tribulations. The Press held aloft our banner of liberty through all these years. In spite of hardships in spite of suppression and in spite of so many difficulties. These things never made them swerve

from the path of duty they had set before themselves for the emancipation of our motherland from foreign domination and for the attainment of our freedom. Of course there may be irresponsible sections of the Press—the two sheets papers and the rest. But the wholesome section will certainly exercise its power and influence over that irresponsible section. And curtailment of the rights and liberties of the Press cannot be tolerated by any section of responsible men and they cannot tolerate it for the simple reason that freedom of expression is a Fundamental Right. Our Prime Minister, as the President of the Civil Liberties Union of Allahabad of which I myself was an ordinary member had said as much that freedom of expression was of the utmost importance and was a Fundamental Right. Today he is the Prime Minister and I am a humble Member of this House; but I say there should not be the slightest deflection even by an inch from the stand that he took then on this matter of freedom of expression.

I am not happy about this matter of foreign sections being brought in this connection. If we do then everything we say about policy or any action of a foreign power will be restricted. Take for instance the case of South Africa and the policy that country has adopted with regard to Indians there. As we know Indians there are fast becoming helots and mere drawers of water and hewers of wood. Should we swallow down into our stomachs all that is being said and done there? Cannot we say anything about this matter? If this restriction is put then I submit we will simply be gagged and tied down. We cannot say anything. And then there are those in other countries who say that we are towing the line of the Russians or of the Americans. Should we keep quiet? Cannot we criticize them? There should surely be freedom of expression and I would ask the hon. Prime Minister to elicit public opinion on this matter.

I must humbly say that I was pained to hear the hon. Law Minister show scant respect to the Judges of the Supreme Court. If Judges err, it is no reason why they should be shown scant respect. After all to err is human. We should always remember that wherever democracy is valued, the judiciary is held in high esteem and where democracy sinks there the judiciary too sinks low. The ordinary man should feel that there is the judiciary to safeguard his rights and liberties. He should feel that in the courts he has a palladium to which he can go to safeguard his rights and liberties. That should be the position that we must give to our judiciary.

As regards zamindari abolition. I feel that it should be abolished. But as we all know there have been judgments of different High Courts on this question. There was the judgment of the Patna High Court and there were also the judgments of the Allahabad High Court and the Nagpur High Court. These have come to the Supreme Court and I feel that we should await the decision of the Supreme Court in this matter and no hasty action should be taken now.

The Constitution of a country is a sacred thing and amending the Constitution is no ordinary affair. It is a very important matter and therefore I say the members of the Select Committee should exercise the greatest circumspection and see that when the Bill emerges from the Select Committee It is fully competent or sufficient to meet the exigencies of the situation.

I would ask for more time to be given for eliciting public opinion which is of paramount importance. It is wrong to say that notwithstanding all the mistakes we cannot alter the Constitution. We can do it. The Act of 1935 was criticized because it was cast iron. A Constitution is a living organism and it must be capable of being changed according to the necessity of the times. You cannot tie down the Constitution. It is not sacrosanct and it must move with the times.

Now the Bill is being referred to the Select Committee. I would ask the hon. Prime Minister who I know is an ardent lover of democracy to consider even at this stage allowing some more time for eliciting public opinion so that the opinions of people of the eminence of Shri Jayakar and the Attorney General of India and others may be available to us.

चौधरी रनबीर सिंह: मैं वकील नहीं हूँ, लेकिन जो बातें मैंने सुनी है उनो मैं कह सकता हूँ कि यह प्रश्न जो है वह नटशैल (nut shell) के अन्दर एक तरफ तो शोषकों और शोषितों का सवाल है। या दूसरे लफजों में यह कहा जा सकता है मित्र आने वाले चुनावों में जो लोग मेम्बर (Members) बन के आयेंगे उनके उपर विश्वास या अविश्वास का सवाल है। या यह कहा जा सकता है कि यह सवाल आगे बढ़ी हुई जातियों का और पिछड़ी हुई जातियों का है। कुछ दोस्तों ने कहा है कि यह एक राजनीतिक सवाल है। मैं कहता हूँ कि यह राजनीतिक सवाल नहीं है बल्कि इकानामिक (economic) सवाल है। मैंने जो अभी हाउस में निवेदन किया है मैं उसकी वजाहत करना चाहता हूँ।

कुई दोस्तों ने कहा है कि पब्लिक की राय लेनी चाहिए। मैं उनसे पूछना चाहता हूँ कि उनकी राय से क्या अर्थ है। अगर वह अवाम की राय जानना चाहते हैं तो वह राय तो लोगों ने उसी वक्त बता दी थी जब

कि कांग्रेस को राय दी थी। कांग्रेस ने जब चुनाव लड़ा था उसमें दो बड़ी बातें थीं। एक यह कि हम हिन्दुस्तान को आजाद करायेंगे और दूसरी यह कि भूमि को जोतने वाले असैर सरकार के बीच में जो इंटरमीडियरी (intermediary) या शोषक है उसको खत्म करेंगे। इन प्रश्नों पर लोगों ने कांग्रेस को राय दी थी और अगर कोई आदमी अब भी लोगों की राय जानना चाहता है तो यह बात मेरी समझ में नहीं आती है।

दूसरा जो प्रश्न है वह पिछड़े हुए लोगों को रियायत देने का है। इस मुल्क के अन्दर बहुत बड़ी तादाद 80 और 85 फीसदी तादाद पिछड़े हुए लोगों की है। अगर लोगों की राय जानना चाहते हैं तो लोगों की राय तो बिल्कुल साफ है। अगर आपका अर्थ राय से उस राय से है जो कि शोषणप वर्ग की है तो वह भी बिल्कुल साफ है। वह इस अमेंडमेंट (amendment) के हक में नहीं है। देश के अन्दर आज यह हालत है कि एक्सप्लायटर (exploiter) बहुत छोटी माइनारिटी (minority) में है और जो एक्सप्लाइटेड (exploited) है उसकी एक बहुत बड़ी तादाद है। तो जहां तक सही लोगों की राय का ताल्लुक है वह राय तो हमारे माननीय नेता पंडित जवाहर लाल नेहरू ने हाउस के सामने रख दी है। शोषक वर्ग की जो राय का सवाल है उसको इस हाउस का हर एक मेम्बर जानता है।

दूसरा जो सवाल है वह बोलने की आजादी और लिखने की आजादी का सवाल है। मैं कहता हूं कि यह आजादी भी एक क्वालीफाइड टर्म (qualified term) है। यह एबसोल्यूट टर्म (absolute term) नहीं है। जो एक शोषक के लिए आजादी है। वह एक शोषित के लिए गुलामी है और आज जो भाई यह कहते हैं कि लिखने की और बोलने की आजादी हो, वह एक खास वर्ग की यानी शोषक वर्ग की आजादी है। इस बारे में भी अगर वह शोषितों से पूछना चाहते हैं तो उनकी राय साफ है और अगर शोषकों से पूछना चाहते हैं तो उनकी भी राय साफ है।

एक और बात कही गई है। हमारे डाक्टर अम्बेडकर साहब माने हुए वकील हैं। उन्होंने इस बात को कुछ दूसरे ढंग से कहा है। यानी हमारे दूसरे देशों के ताल्लुकात के सम्बन्ध में है। आ इंग्लैंड का इतिहास ले लीजिए। वहां घरेलू मामलात में चाहे जो भी मतभेद रहा हो, पर जहां तक दूसरे देशों के सम्बन्ध का ताल्लुक है उसमें चाहे वह लेबर पार्टी (Labour Party) हो या कंजरवेटिव पार्टी (Conservative Party) हो वह हमेशा एक रहे हैं। लेकिन अगर दुनिया में कोई ऐसा देश है कि जहां पंचायती राज्य हो और जहां पर विदेशी मामलात में भी मतभेद पाया जाता है तो वह हमारा ही देश है, वरना और देशों में चाहे किसी भी पार्टी की गवर्नमेंट हो विदेश मामलात में एक रहे हैं। इसलिए मेरी समझ में यह आता है कि यह जो बहुत बड़ा सवाल है यह किसी हद तक दुरुस्त नहीं है।

एक चीज की मुझे बाबू ठाकुर दास जी से गिला है। वह हमारे इलाके के माने हुए होशियार वकील है। जैसा हमारे माननीय नेता पंडित जवाहरलाल नेहरू जी ने बतलाया और कुछ दूसरे मेम्बरों ने भी कहा है कि यह कांस्टीट्यूशन (Constitution) वकीलों के लिए स्वर्ग बन गया है। हमारे बाबू ठाकुर दास भी अब भी इस कोशिश में है कि वह एक शब्द से वकीलों के लिए स्वर्ग पैदा कर दें। वह चाहते हैं कि रेस्ट्रिक्शन (restriction) के पहले रिजनेबल (reasonable) या एप्रोप्रिएट (appropriate) शब्द लगा दिया जाय। वह समझते हैं कि अगर यह शब्द न लगाये गये तो पुराने जितने सिडीशन एक्ट (Sedition Acts) है वह जिन्दा हो जाएंगे।

जिस वक्त वह बोलते थे उस वक्त भी मैंने कहा था और डाक्टर अम्बेडकर साहब बोलते थे उस वक्त भी मैंने कहा था। लोगों के नुमाइंदे यह नहीं चाहते कि इस तरह के कायदे और कानून कानूनी ढंग पर अदालतों में खींचे जाएं। इसलिए मुझे डर है कि इसके पहले अगर "रीजनेबुल" या "एप्रोप्रिएट" शब्द लगा दिया गया तो बहुत खींचातानी होगी। अब यह डर क्यों है? देखिए कि हम आज क्यों जरूरत महसूस कर रहे हैं कि कांस्टीट्यूशन की विधान को तब्दील किया जाये। यह इसलिए कि विधान का जो इंटरप्रिटेशन (interpretation) जजों ने मुख्तलिफ ढंग से किया वह विधान सभा का आशय नहीं था और जगर यह रीजनेबुल और एप्रोप्रिएट शब्द आ गये तो फिर वही झगड़ा हो जायेगा। गो यह बहुत मामूली शब्द है और कई सदस्य यह भी कहते हैं कि यह बिल्कुल मासूम शब्द है। लेकिन मैं यह समझता हूं कि यह मासूम नहीं है, इसके असली तह का पता लगाइए। इस शब्द से वह फिर दोबारा बैकडोर (back door) से अदालतों को लाना चाहते हैं। वह इस हाउस के और देश के जो नुमाइन्दे हैं, उनकी जो ख्वाहिशात हैं उन ख्वाहिशात पर जजों को और सुप्रीम कोर्ट (Supreme Court) को थोपना चाहते हैं। इसलिए मेरा हाउस से यह निवेदन है कि हर एक सदस्य इस पर अच्छी तरह विचार करें जैसे कि प्रोफेसर रंगा ने किया। प्रोफेसर रंगा, गो वह अपना इरादा कांग्रेस पार्टी से जुदा होने को जाहिर कर चुके या वह जुदा हो जायेंगे और एक तरह से आज उन्हें अपोजीशन पार्टी (Opposition Party) का मेम्बर कहा जा सकता है, लेकिन चूंकि वह शोषित वर्ग से आते हैं इसलिए वह शोषित वर्ग और शोषित लोगों की भलाई के लिए सोचते हैं। इसलिए पार्टी से अलग होने के बावजूद भी उन्होंने इससे इतिफाक किया।

मेरे लायक दोस्त सारंगधर दास जी ने इस तरह की बात कही कि न मैं इसकी मुख्तलिफत करता हूं और न मैं इसके हक में हूं बल्कि एक बीच की सी बात उन्होंने कही। और जैसा मारे माननीय नेता ने कहा जैसे कि बजट पर जिस ढंग से तकरीर करते हैं, वैसी तकरीर उन्होंने की। लेकिन उनके दिल से अगर पूछा जाए तो मैं समझता हूं कि वह कभी इसकी मुख्तलिफत नहीं कर सकते और जो लोग आज लूटे जा रहे हैं उनकी भलाई जो कोई आगे रखते हैं वह कभी इसकी मुख्तलिफत नहीं कर सकते।

(English translation of the above speech)

Ch. Ranbir Singh: I am no lawyer, but from whatever I have heard I can say that the point under discussion in a nutshell is the issue of the exploiters versus the exploited or in other words it is an issue of confidence or no confidence of the people in the persons who will be returned as Members in the coming elections. In yet another way it is an issue concerning the progressive sections of the society and the backward classes. Some hon. friends have characterized it even as a political question. I disagree with them; I am of the view that it is more of an economic issue than a political one. I will like to explain what I have said just now.

Several hon. friends have suggested about eliciting public opinion on this point. I will like to know what is their meaning of the word opinion. If they mean thereby the

opinion of the masses at large then it was made known at the time they had cast their votes in favour of the Congress. The Congress had contested the elections on two main issues; one was the issue of independence while the other was a clear assurance to put an end to all exploitation of the intermediaries existing between the Government and the tiller of the land. These were the issues which had won for the Congress a popular vote. If despite that they want to know the public opinion then I simply fail to appreciate the logic of their argument.

The other issue concerns the granting of concessions to the backward classes. In this country the backward classes constitute from 80 to 85 percent of the total population. The public opinion should you desire to know it is very clear on this point. If however, you mean to elicit the exploiters opinion then that too is quite clear. They are not in favour of this amendment. As things stand the exploiters form a very small minority while the exploited constitute a large majority in this country. So far as an accurate viewpoint is concerned it has been placed before the House by our respected leader hon. Shri Jawaharlal Nehru and as far the opinion of the exploiting section is concerned. Every hon. Member of the House is quite aware of that.

The other issue is that of the liberty of speech and writing. I hold that this sort of liberty is only a qualified term and cannot be an absolute term Freedom or liberty of the exploiters means bondage and slavery for the exploited. Those who plead for the liberty of speech and writing today in fact want full liberty for the exploiters. So on this issue too the views of the exploiters and the exploited are quite manifest.

Another point has been raised. The hon. Dr. Ambedkar is a constitutionalist of renown. He has stated this point in a different form. To him it is an issue that concerns our relations with foreign countries. Just look at the History of England. They may have had differences on the domestic issues but as far their relations with other nations are concerned throughout they have been a compact block irrespective of the consideration whether they belonged to the Labour Party or owed allegiance to the Conservative party, Ours is on the other hand the only country in the world which though having a panchayati (democratic) set-up yet has differences of opinion on matters relating to foreign countries, otherwise, in all other countries, whatever the party may be running the Government they are all combined so far as the foreign

issues are concerned. I therefore, feel that our approach to this major issue is to some extent not a correct one.

I have one complaint against Pandit Thakur Das. He is a lawyer of professed ability and renown of our area. As stated by our respected leader hon. Shri Nehru and some other hon. Members this Constitution has become a paradise for the lawyers. Even now he (Pandit Bhargava) is making efforts to create a paradise for the lawyers by making some small verbal changes here or there. He wants that the words reasonable and appropriate should be added before the word restriction. He is of the view that if these words are not added the old Sedition Acts will be revived. On both the occasions when he and hon. Dr. Ambedkar were speaking I had intervened to say that such rules and regulations should not be made a subject for the law courts. I am, therefore, afraid that too much legal tussle will follow if these words reasonable and appropriate are to be added. What is the justification for such fears? Just consider the reasons which have impelled us to feel the necessity of making certain modifications in the Constitution. It is because of the different interpretations which the judges have given of some articles of the Constitution—Interpretations which are contrary to the intentions of the Constituent Assembly. A similar controversy will follow if the words reasonable and appropriate are actually added. Apparently they are very ordinary words and some hon. Members have characterized them even as quite harmless. I however, do not regard them as ordinary and harmless. Just probe deep in to their implications by including these words he is seeking to bring the courts in the picture through the backdoor. He wants to thrust the judges and the Supreme Court up on the will of the people as expressed through their representatives in this House. I therefore request every hon. Member in the House to give a close scrutiny to this issue as has been done by Prof. Ranga. Although he has expressed his desire to sever connection with the Congress and he may actually do so in the near future and as such in a way today he may be regarded as a member of the Opposition Party yet the fact remains that he belongs to the exploited sections of the society and their well-being is his primary concern. That is why despite cutting connections with the Congress Party he has agreed with it in this matter.

My hon. friend Shri Sarangdhar Das has stated that he is neither against nor in favour of this amendment. He has suggested a middle course. He has delivered as described by our respected leader a speech worthy of the occasion of a debate on Budget proposals. But I am sure that if asked to express his honest opinion he too will not be able to oppose it nor can those who hold the well-being of people above all things—of people who are the target of exploitation at present.

Shri Himatsingka (West Bengal): The provisions of the Bill as introduced by the Prime Minister have been clearly explained by the Law Minister today and he has been able to remove quite a number of doubts which were felt by a large number of Members in the House. He has clearly explained the necessity for amending article 19 (2) because the recent decisions of the various High Courts and the Supreme Court have created a void in the existing laws of the land. At the present moment the situation is such that no law could be passed to prevent incitement to violence or the commission of other offences. Therefore it was absolutely necessary that Parliament should have the right to enact the necessary legislation for the purpose of keeping public order and the other purposes mentioned in sub-clause (2).

The only Question to be considered in that connection is whether we should validate all the existing laws in the form in which they are or some reasonable restrictions as suggested by some Members should be put in those articles. That of course will be for the Select Committee to consider and to make such provisions as may be necessary.

The present amending Bill seeks to validate a number of laws which have been declared to be void by the judiciary. The Bill not only enables Parliament to enact laws but it also seeks to validate certain legislative enactments which have been declared void. It is more a validating measure than a mere enabling one.

I would now like to invite the attention of the Mover to some of the provisions of the Bill which to me appear to go much beyond the necessity of the occasion. There was a decision of the Allahabad High Court which declared that the State had no right to refuse giving licenses to persons who are running buses. That was the only decision so far as clause (6) of article 19 is concerned, but the amendment that is proposed in the present Bill goes much beyond that necessity. At present article 19 (1) (g) gives

the right to all citizens to practice any profession or to carry on any occupation or trade or business. The amendment proposed seeks to give powers to make any law relating to

“The carrying on by the State or by a corporation owned or controlled by the State, of any trade business, Industry or service, whether to the exclusion complete or partial of citizens or otherwise”

There cannot be any objection to the State or a corporation owned or controlled by the State carrying on a business, industry trade or service as may be thought necessary by the State, but to allow the State to carry on any trade, business, industry, etc. to the exclusion of citizens does not appear to be fair or necessary. It may be that if this right were restricted to services that are generally known as public utility services like electricity concerns transport services or such-like services which work for the benefit of the people there would be some justification to empower to take away the right of citizens to carry on such businesses. But the amendment as proposed seems to me to go far beyond the necessity of the occasion. Therefore it will be for the Select Committee to consider whether or not this wide form in which clause 3(1) (b) of this amending Bill has been framed needs attention and modification.

So far as the other clauses are concerned I think amendments were necessary in order to remove a number of doubts or difficulties which are likely to arise on account of the present form in which the articles stand. Only as regards clause 3(1) (b) of the Bill seeking to amend article 19 I suggest it should be considered from the point of view of whether or not it should be restricted to what are known as public utility services which generally are started by the State in order that full facilities may be available to every citizen irrespective of his position and that such service may be run in a manner to give the best advantage to all the citizens.

As regards article 31. No one will question the right of the States to acquire zamindaris because that is the present position and I think it will be futile for anyone to question the right of any state to introduce land reforms. The question that is to considered is whether by mere abolition of zamindari we will be able to effect any improvement. At the present moment that tenants in Bihar, Bengal and other places where there is permanent settlement have definitely settled rights in the lands and

unless you take certain further rights to make changes in their rights also. You cannot introduce any improvement. Therefore, you will be merely substituting the state in place of the zamindars by abolishing the zamindaris. So far as proposed article 31B is concerned, it seems to me to be rather unusual to name a number of statutes passed by different state legislature to be validated by being inserted in the constitution. If some other method could be found without their names being mentioned in the constitution to keep them outside the scope of judiciary. Perhaps that would be much better because it does not look nice that a number of statute which we have had had time or time or occasion to consider should be validated in this fashion.

Shri Ghule (Madhya Bharat): I do not want to repeat all those things that have been said here regarding this Bill. I want to make a mention of only one thing which relates to my own province. I want to submit that the Zamindari Abolition Bill which has been referred by the Madhya Bharat Legislative Assembly should with the sanction of the President be also included in the Schedule already containing some eleven different Laws and which relates to Section 31-B that has been inserted in this amending Bill the Madhya Bharat Legislative Assembly passed the Zamindari Abolition Bill on the 6th April, 1951 more than one month ago and it has like all other Bills been submitted to the President for according the necessary sanction. The sanction of the President means the sanction of the Cabinet. I therefore like to submit to the hon. Prime Minister the mover of this Bill that he should add this Bill to the list of those other eleven Bills which are being validated by him. Because on account of the zamindari system the condition of the cultivators of Madhya Bharat is nearly the same as is that of the cultivators of Madras, Bombay, Madhya Pradesh or any other States in respect of which you are going to validate this Bill. I need not mention that the Madhya Bharat people have been making efforts since long for abolition of the zamindari system and the present Bill was introduced by our Ministers, after obtaining the goodwill of the Ministers at the Centre before the Constitution actually came into force so that items Nos. 4 and 6 of the section 31 may be applicable to it and filter its introduction it may be deemed to be a pending Bill. As the various enactments have been declared ultra vires by the various High Courts, similarly there is an apprehension lest this enactment also may have the same fate. Even if it is not

declared ultra vires still there can be caused a great deal of laxity on account of legal proceedings taken against it. In this way it can be delayed by several weeks. The cultivators are very anxious to see this law enforced and that is why section 31-B has been inserted. Therefore I would like to request the hon. Prime Minister to take this point into consideration and make up his mind as soon as possible before it is discussed in the Select Committee. The Bill passed by our Legislative Assembly is not a big one. It contains only some 55 or 60 sections and our experts of the Law Ministry can scrutinize it within a day or two and after bringing it to the notice of the President can get it included in the Schedule.

Mr. Chairman: Mr. Rohini Kumar Chaudhuri. I think he is not to be found in his seat. Therefore...

Shri Syamanandan Sahaya: He is available. He has come.

Mr. Chairman: The hon. Member may come to his seat. Hon. Members are expected to be in their seats when they desire to speak.

Shri R.K. Chaudhuri: Madam, I am thankful to you for giving me this opportunity of saying something on this bill. I am sure madam you will appreciate if I proceed businesslike and straightway suggest what the Select Committee should do.

My first suggestion is that the Select Committee should expunge the Ninth Schedule altogether and amend the clause relating to article 31 in such a way that it may be possible for the zamindars to get adequate and proper compensation and that this amendment may not empower the Government to pass any legislation which will enable them to deprive the zamindars of their due compensation. If the Select Committee does not do that we shall understand that they are not obeying the wishes of our Prime Minister. The Prime Minister said in clear terms that he is in favour of giving adequate and proper compensation, and therefore I would suggest that the Select Committee should amend this clause in such a manner that it may not be possible for any authority to deprive the zamindars of their just and adequate compensation (*Some Hon. Members:* What is adequate?) I would submit that those hon. Members who had expected to get good wishes in support of this amendment of the Constitution must have been sadly disappointed by the speech which was delivered by my hon. friend Dr. Ambedkar. To him I would put a straight question

whether in his opinion the Constitution which he framed about fifteen months ago is defective or not. If it is defective according to him I can understand the justification for bringing this Bill. If it is not defective then I would say that there is absolutely on the face of it no justification for such an amendment. So far as I could understand Dr. Ambedkar said that the judgment that was delivered by some of the courts of the realm was unsatisfactory, that is to say, that they had gone against the clear meaning of the Constitution. If that is the position, no amount of amendment will help us at all.

Because if the Judges give a perverse decision are you going to amend after every decision given by a Judge? If a Judge gives an erroneous judgment, are you going every day to amend the Constitution? That is the question which I am asking and whether he seriously means that his Constitution is perfect and the decision of the Judges is not correct. In that case I would humbly submit for the consideration of this House as well as of the Prime Minister whether it will be worthwhile to amend the Constitution or not you amend the Constitution now in order to satisfy a particular judiciary a judiciary which is now functioning. What guarantee is there that in spite of your amendment the next Judge sitting on judgment on such questions will not pronounce that the Acts passed under this amendment are also ultra vires? Will you come back again and ask for an amendment of the Constitution in a particular way? Will Parliament only abide by the wishes of a particular Judge or a particular judiciary? Is that the position to which we are drifting?

If on the ground that your Constitution was defective it is sought to be amended today, I would submit that more time should be given to think about it more time not merely to the Members of Parliament but also to the law officers of our Government. Something is wrong somewhere. I think Government does not possess lawyers of first class acumen lawyers who can guide them properly in drafting their law otherwise it would not have been possible for the Judges to find loopholes so frequently and often. Taking the view that the Constitution is defective and therefore the amendments are necessary, even then the present amendments are not necessary, so long as you do not adopt other methods. The other methods are firstly to remove the Judiciary which is clearly and palpably acting against the plain meaning of the Constitution, acting as an obstruction to the wishes of the people, and secondly to provide in the law not to

allow any kind of appeal from the decision of the magistrate. These are the two remedies that may sound very undemocratic. But there is no remedy for it (*An Hon Member: Right of the Judges*). I am not going to that extent. What I am suggesting is not unknown. There have been laws where it has been provided that the decision should be given by a tribunal and there would be no appeal against the decision of that tribunal. This method should be adopted.

So far as I am concerned of course I do not seek any reason to support this amendment of the Constitution I give my support whether there is any reason or whether there is no reason. At any rate I must make it perfectly clear that the reasons which have been adduced by Dr. Ambedkar are most unsatisfactory. To me the question is quite plain. We the Members of the Congress party have been responsible for the administration of this country for the last three or four years. (*An Hon. Members: Not all*). The Members have been responsible in the sense that we are sent here as the chosen representatives to be responsible for the administration and that administration has functioned fairly well. There has been no chaos in this country. The railway trains are running aero planes are moving and officers are getting their salaries: the military is carrying out the wishes of the civilian Government and everything is going in a perfect order. We have been responsible for the administration. The responsibility has been discharged to the satisfaction not of a few but of the majority of the people in spite of the fact that there was some sort of an opposition by no less a person than Dr. Mookerjee. There has been a very feeble support of the opposition. My point of view is this: If we want to administer this country as we have been doing and if we give the responsibility to some people we must abide by the wishes of those persons who are responsible and if they want a particular legislation to be carried out for the good government of this country it is not for us to stand in the way. If there is another party which can replace that party if that party can come and say that they shall take the responsibility of the administration of the country let them come forward and take charge of this country. Then we shall see how they can carry on. So far we have found that it is very easy to criticize. But there is not one person who is ready to take up the administration of the country in these difficult times. I mention particularly Dr. Mookerjee. Would he agree to take up the

responsibility of the administration of this country in these difficult times? Instead of being responsible for the administration and Government of the country at this very difficult time he has given up the reins of the office. (*An Hon. Member: Why?*) I honestly believe and think that the Pact could not be worked successfully and I am entirely at one with him. I suggested to him— I may say if I am not breaking any confidence—that the best way for him would be to be in the administration and prove by his own action whether this Pact is good or bad. I say this even now to him. Will he be ready to take up the administration? With a view to the better administration of the country this Government has come forward with these changes in the Constitution. If he thinks that these amendments are not necessary let him come out openly and say that he can administer the country properly without resort to these powers. I doubt whether he will take up that responsibility. It is very easy to criticize; but it is very difficult to carry on the administration particularly during such times as we are in today of course as I have said. I have given my frank opinion. I had heard the speech of my hon. friend Dr. Mookerjee the other day and I felt that I was between two fires; you may say two blazes instead of two fires.

Dr. S.P. Mookerjee: But you always sit on the fence that is the difficulty.

Shri R.K. Chaudhuri: Nobody helps me to cross the fence that is my difficulty on the one hand there is my deep-seated loyalty, as most hon. Members of this House have for my leader and the unbounded faith that we have in his leadership, a leadership which has been responsible for keeping the peace in this country. On the other hand I have my great regard for Dr. Mookerjee, his sound and cool reasoning and his appeal to national honour. There is no difficulty in coming to the conclusion and the conclusion is this: If you want to carry on the Government properly and peacefully you must give to our executive and the leaders the powers which they need. If after hearing the other side of the picture in the Select Committee, the Select Committee comes to the conclusion that some amendment is necessary that amendment will be forthcoming. That is all.

Mr. Chairman: Before I adjourn the House. I should like to inform hon. Members that I have received information that the remaining Delimitation of Constituencies

Orders. Which the President is expected to make during the course of today. Will be laid on the Table in the afternoon sitting by the hon. Minister of Law.

I would also make another announcement that the debate on this motion is now concluded and the House will meet at 4.30 pm only for the reply of the hon. Prime Minister.

The House then adjourned till half past four of the Clock.

The House re-assembled at half past Four of the Clock.

[Mr. Speaker in the chair]

PAPERS LAID ON THE TABLE

DELIMITATION OF PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES ORDERS

The Minister of Law (Dr. Ambedkar): Under sub-section (3) of section 13 of the Representation of the People Act, 1950 I beg to lay on the Table the following Orders made by the President on the 18th May 1951.

- (1) The Delimitation of Parliamentary and Assembly Constituencies (Bombay) Order 1951.
- (2) The Delimitation of Parliamentary and Assembly Constituencies (Madhya Pradesh) Order 1951.
- (3) The Delimitation of Parliamentary and Assembly Constituencies (Madras) Order, 1951.
- (4) The Delimitation of Parliamentary and Assembly Constituencies (Punjab) Order, 1951.
- (5) The Delimitation of Parliamentary and Assembly Constituencies (Uttar Pradesh) Order, 1951.
- (6) The Delimitation of Parliamentary and Assembly Constituencies (Mysore) Order, 1951.

[Placed in Library. See No. P-169/51]

Mr. Speaker: That exhausts all the Orders, I believe?

Dr. Ambedkar: Yes.

Mr. Speaker: I have to inform hon. Members that copies of certain Orders made by the President regarding Delimitation of Constituencies which have just now been laid on the Table will be placed in the Parliamentary Notice Office as soon as they are received from the Press. Hon. Members may obtain a copy each of these Orders on request.

Dr. Deshmukh (Madhya Pradesh): Sir, may I know the procedure that you are going to lay down or the dates that are to be prescribed for the modification or passing of these delimitation proposals?

Mr. Speaker: Well provisions have already been made, I believe by section 13 of the Representation of the People Act 1950, and within the period of that limitation, it is competent for any Member of the House to make a motion suggesting the modification he may want. That motion will be considered by Parliament and whatever Parliament decides will be the modification in the Order if any decision is taken in favour of the modification otherwise it will be the order as it is.

Dr. Deshmukh: Will it be in the nature of a resolution?

Mr. Speaker: It will be a motion.

श्री भट्ट : माननीय अध्यक्ष महोदय, चुनाव क्षेत्रों के निर्माण के सम्बन्ध में जो राष्ट्रपति के हुक्म निकले हैं, उनमें कई चीजें नहीं हैं, जैसे कि आबादी कितनी है, मतदाता कितने हैं, गांव कितने हैं उसके नक्शे कहां हैं, ता मैं जानना चाहता हूं कि इन चीजों को प्राप्त करने के लिए क्या करना चाहिए। क्या यहां टेबल पर कुछ रखी गयी है या लाइब्रेरी में रखी गयी है या आयन्दा रखी जायंगी।

अध्यक्ष महोदय: मैं समझता हूं कि लाइब्रेरी में रखे गये हैं। सैंसेज फिगर्स (census figures) भी रखे गये हैं, ऐसा मैं समझता हूं।

Shri Sondhi (Punjab): Sir, we want the voters list.

श्री भट्ट: वोटर्स कितने हैं, आबादी कितनी है, उनका नक्शा है या नहीं गांव कितने हैं इन सब चीजों को देखने के लिए हमें सामग्री कहां मिलेगी, यह मैं जानना चाहता हूं।

अध्यक्ष महोदय : मैं समझता हूं सब इलैक्शन कमिश्नर (Election Commissioner) के दफ्तर में मिलेगी।

श्री जवाहर लाल नेहरू : यह जरा मुश्किल है कि सारा दफ्तर यहां लाकर सामने रख दिया जाए।

अध्यक्ष महोदय: यह सब इनफार्मेशन (Information) इलैक्शन आफिस से मिल सकती हजै और जो कोई मेम्बर वहां जाना चाहते हैं वह वहां जाकर सब मैटिरियल जो कुछ चाहे देख सकते हैं।

श्री भट्ट : वह दफ्तर कहां है? वह पार्लियामेंट हाउस में पार्लियामेंट लाइब्रेरी में है या कहीं और जगह जाना पड़ेगा?

अध्यक्ष महोदय : यहां पार्लियामेंट हाउस में इलैक्शन आफिस का दूसरा कमरा है, वहां जाना पड़ेगा।

[Shri Bhatt (Bombay) : Sir, the Orders relating to the delimitation of the constituencies issued by the President do not contain such information as to what is the total population what is the number of voters what is the number of villages and the maps there of would be available from where etc. So I would like to know what we should do in order to get all this information. Has this information been placed on the Table of the House or put in the Library or will it be placed there in future?

Mr. Speaker: I think this information has been placed in the Library I think the census figures have also been put there.

Shri Sondhi (Punjab): Sir, we want the voters' list.

Shri Bhatt: I would like to know from where we can get information regarding the number of voters the total population the number of villages and the maps thereof? I want to have this information only.

Mr. Speaker: I suppose all this information will be available in the Election Commissioner's Office.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): It is rather somewhat difficult to bring all the records and place them here before you.

Mr. Speaker: All this information can be had from the Election office. Hon. Members who want to get information may go there and see the material needed by them.

Shri Bhatt: Where is that office located? Is it located in the Parliament Library of the Parliament House or will we have to go to any other place?

Mr. Speaker: Here in the Parliament House there is a separate room of the Election office. You will have to go there.

Shri Sondhi: Sir, may I point out that the Election Commission's office is not in Parliament House but in "P" Block.

Mr. Speaker: Yes, it is not in Parliament House.

The Minister of State for Transport and Railways (Shri Santhanam): Would it not be better if a motion is tabled for approval of these Orders and all the motions are brought in as amendments? Then we can have a regular method of consideration. Otherwise each of the 300 Members will table an amendment and it will come up as an ad hoc motion and we shall have to find the time for considering it and the whole procedure will become impossible.

Mr. Speaker: The hon. Member will see that the matter is not in my hands now. It is regulated by section 13 of the Representation of the People Act 1950 and there it is said that the Order excepting in so far as it is modified will stand. So it does not require, to my mind any resolution of approval of this House.

Shri Santhanam: But sir the procedure for modification is in your hands. And it is for you to lay down the time and the manner in which the motion can be tabled and the way in which it can be taken up for discussion.

Mr. Speaker: We will settle it later, if there be any difficulty.

Shri Sarwate (Madhya Bharat): May I know whether you are going to fix a date for discussing the motions?

Mr. Speaker: I need fix a date for bringing in or tabling motions. Hon. Members may as well table motions as they like and within reasonable time we shall keep up the motions for discussion and carry them on as long as we dispose of them. It is not possible to fix up any date just now.

CONSTITUTION (FIRST AMENDMENT) BILL — contd.

The Prime Minister and Minister of external Affairs (Shri Jawaharlal Nehru): We have had a considerable debate on the motion that I placed before the House. I listened with due respect to the speeches made and I tried to profit by them. I confess that at the end of this debate I had a lurking suspicion that somehow some Members of this House perhaps had not quite understood the import of this Bill or had perhaps attached certain inferences, certain ideas to it for which there was no warrant. Certain things that were said had absolutely no bearing so far as I could see, to this Bill I do not merely refer to the hon. Member who spoke this morning and told us what we

should do in regard to food and we should do in regard to food and clothing and housing which are very important subjects but if I may venture to say so are totally irrelevant to the issue before the House. But apart from that hon. Members of this House—some of them spoke in terms of heat and passion about the way we are putting curbs and restraints on the Press about the way we were stabbing liberty and freedom in fact about the way the executive was arming itself with all kinds of powers: and not only hon. Members but some newspapers even abroad in foreign countries have talked about this Bill introducing all kinds of restraints on the Press and freedom of the Individuals One hon. Member described this Bill as treating the Constitution as a scrap of paper. Another hon. Member talked about the sweeping restrictions of the Press. Another said that this measure was more undemocratic than anything that has happened in the world. Now I ask you Sir, what exactly does all this mean? Is this sense—leave out good sense—to talk in this way of this measure—to say that it puts restrictions on the Press to say that this sweeps away the rights of the People, or to say that this is stabbing the Constitution and freedom in the back or to say that this measure gives the executive all kinds of power? I say it has nothing to do with all those things that have been said. Either the hon. Members have not taken the trouble to understand or that the hon. Members have deliberately tried to misunderstand what it contains. I speak in no terms of apology. I brought forward the measure with full conviction and I intend proceeding with it and I see no reason to apologize to this House or to anybody because some individual whether he is a Member here or an outsider say something which is not really relevant to the facts of the case.

What is this measure about which so much has been said? Sometimes in listening to the speeches I had a sense of play-acting. An hon. Member the other day said—I forget what he was referring to—he referred to some village plays, where the same person comes as Duryodhan and later shaves his moustaches and appears as Draupadi. It seems to me that some hon. Member is also playing a number of rolls even in the course of the same speech and I could not understand whether there was any sequence or continuity about the line of thought he was pursuing.

I beg this House to understand the measure as it is and not to import other considerations. There are many things in this wide world and this great country that are happening about which opinions may differ and they do differ but there is no reason why we should mix them up. The hon. Dr. Mookerjee cannot refrain, whatever the subject—whether it relates to the stars or this earth from bringing in Pakistan and the partition. What relation the partition or Pakistan has to this measure passes my comprehension many other things have also been said.

I want this House coolly and dispassionately to consider this measure and I do affirm with full faith that far from changing this Constitution these amendments give full effect to the Constitution as we wanted it to be. I say that with full faith it was implicit in the Constitution when we discussed it again and again in the Constituent Assembly, and indeed it is implicit in every such Constitution and has to be implicit if the State is to endure.

Remember also that this measure has nothing to do with making any fresh law. That is for Parliament to do this Parliament or some other that may succeed it. So to talk about the executive grabbing powers is completely outside the mark. It may be of course that Parliament decides this or that at some future date. Whatever it may decide it will have to decide naturally in terms of the Constitution.

Take some of the principal amendments. The second amendment is amendment of article 19 (2). What exactly is it? It refers to friendly relations with foreign powers: it refers to the security of the State and public order and then to incitement to an offence. May I say that when I spoke on the last occasion I did not go deeply into the wording of this clause I rather dealt with the principle underlying it with the difficulties we had to face and how we had attempted to get over those difficulties. I did not deal with the wordings partly because I hoped that we were going to appoint a Select Committee which would consider those words and I have no doubt that if there is a better wording to suggest they will recommend it. So far as we are concerned we had given a great deal of thought to this matter before we put it before the House. Nevertheless, if fresh wisdom dawns upon us, naturally we shall keep our minds open in regard to the wording. I laid then stress on the principles underlying this not on the wordings.

Then again when it comes to the wordings, if I may say so with all respect, one enters into the legalistic sphere which is important because in Constitutions we have to be careful about the wording. Nevertheless one does enter that legalistic sphere. I suppose I am enough of a lawyer to have to say something about it if necessary. But I felt that there were better lawyers here who could deal with it more effectively. Indeed this morning we had a very able a very exhaustive and illuminating address from my hon. colleague the Law Minister. I would rather put before the House the particular approach to this question and I do submit that in this particular approach what we have sought to do in these amendments is partly implicit in the Constitution and partly also explicit and it is partly implicit in any constitution.

Take article 19 (2). Article 19 (2) itself is some restriction on the bald statement in article 19(1) (a). It is a restriction there is no such thing as one hundred per cent. Freedom for the individual to act as he likes in any social group. This idea of individual freedom arose in the days of autocracy in every country where an autocratic ruler or a group of rulers suppressed individual freedom; therefore the idea of individual freedom arose. In a democratic society there is also that idea of individual freedom but always it has to be balanced with social freedom and the relations of the individual with the social group as well as other matters as well as the individual not infringing on other individuals freedom. Therefore, you have to define these balances although the basic accept of individual freedom remains. Now in this Constitution the basic concept is given in that article 19 (1) (a).

“All citizens shall have the right to freedom of speech and expression.”

That is the basic concept going to clause (2) of article 19 it says.

“Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to or prevent the State from making any law relating to libel slander defamation contempt of court of any matter which offends against decency or morality or which undermines the security of or tends to overthrow, the State.

That is to say this clause (2) is a restriction of that bald statement on freedom. That restriction does not mean that it is the only possible restriction—it is an indication of what restrictions there may be other restrictions may legitimately arise. I

will give you a rather ridiculous example. Suppose I choose, as a right of individual freedom to take the conveyance I am in on the right of the road and not the left of the road. I exercise my right of individual freedom to walk on the wrong side of the road. Well the policeman will arrest me or I will be run over by a car and that will be the end of me. There are hundred and one restrictions if you live in society restricting your right of individual freedom if you are a social being so that this clause (2) is a restricting clause in regard to libel, slander morality, decency and the security of the State. That is not an exhaustive list of those restrictions. Others are understood, are implied. And normally speaking it might not have not been necessary to say very much about it but because some doubt was cast about these other matters, other implied and necessary and inevitable restrictions, therefore it would become necessary to make that clear. It is nothing new. Every State must have the right of what Dr. Ambedkar called the “police power” of the State. Every State has to defend itself against an external enemy or an internal enemy and freedom is limited for that purpose. I am not for a moment going into basic things, as to why external or internal enemies arise. That depends on policy depends on many things but it has to defend itself and no Constitution can possibly take away that right from the State, it does not intend taking it away. It takes away the undue exercise of that right the unfair exercise, an exercise which is partial and so on and so forth.

Therefore clause (2) by itself cannot possibly be an exhaustive clause other things are implied. Normally speaking in Constitutions, that is where there are no written Constitutions, where there are no Fundamental Rights, they naturally grow up by the Common Law or sometimes by enactment of Parliaments and the like. Where there are written Constitutions they have grown up by judicial interpretations. Take this great Constitution of the United States of America. In its beginning what was it? It was only an adaptation of the colonial Constitution. Naturally, because they had been functioning under a colonial Constitution framed by the British power in America. It was an adaptation of it was based on it, as ours has been based on the Government of India Act, 1935. In spite of our freedom and independence the extent to which the provisions of the 1935 Act have come into our Constitution is extraordinary. So the United State Constitution was based on the colonial

Constitution. It is not that later a new Constitution was made by the United States. Possibly probably it would have been rather different. However they did the other thing and that is they stuck to that Constitution but by process of judicial interpretation, they brought in what was implied in the existence of the Constitution. They had many tussles about it. But in the cores of the last one-hundred and fifty years or more, gradually they built up those conventions and interpretations and those things which were implicit were made explicit.

Our difficulty here has been, frankly speaking that something that we considered as absolutely implicit in the Constitution, something that was obvious if looked at from the strictly narrow legalistic literal meaning of the words is not implicit. Though obviously a thing is implicit legalistically it may not be there—if you look at it in a legalistic way as sometimes Judges tend to unless they take the broader view, then immediately you narrow the scope of Constitution, you limit the very ideas that the framers of the Constitution had.

After all nearly all the Members who are present here in this House were framers of this Constitution and they will remember the long debates we had about various matters. We spent many months over this. That does not mean of course that everything that we did was perfect. No doubt we shall learn by experience and try to remedy. But the fact remains that we have good, general broad idea of what we intended. So my first point if I may make it is this that in the principal amendments that we seek to put forward there is not an attempt at real change of the Constitution. We have only sought to bring out what is implicit and what we knew should be there and what everybody I think if he considers it carefully and dispassionately must recognize should be there. In regard to article 19 (2) that applies very much so.

Again there are in article 19 (2) the words “friendly relations with foreign States” Reference was made in the course of the debate to some Act of 1932. Well I looked it up. It was an Act to provide against publication of statement likely to prejudice the maintenance of friendly relations. This Act was originally passed in regard to the Indian States and to rulers of States outside, but adjoining India. In other words it was meant to apply to Afghanistan and-Nepal plus the States in India. The purport of the Act is this that before any act in a court of law against a ruler can be

taken up. Someone in the Government of India should authorize that man to take it up. There is also something about the power of the State to stop some publications etc. in regard to these matters. Now the whole thing was framed in a different context; it does not apply today at all. The Indian States have ceased to be. Of our two neighboring countries one of them has ceased to be so; with the other country we are in very friendly terms.

So far as I know, there is no other Act so that unless Parliament in the future pass any legislation in regard to these friendly relation with foreign powers, there is no Act governing or restricting anything. But whether there is an Act or not as I think Dr. Ambedkar pointed, somethings are implicit. Obviously however much freedom you may give to a person. If an individual does something which might result in war. It is a very serious matter No State in the name of freedom, can submit to actions which may result in wholesale war and destruction. It is the implied power of the State to stop any such thing happening. It may be that the State sometimes may act wrongly or rightly, but you cannot take away the power of a State to prevent a great catastrophe happening which may involve us in some great war or other.

Shri Kamath (Madhya Pradesh): If the State itself does something which leads to war?

Shri Jawaharlal Nehru: Obviously, then the State is wrong and Parliament in so far as it represents the State should pull the executive up or change it. If parliament itself goes wrong then what should be done? Then Parliament should be replaced by another parliament. If the people go wrong then there is no help for it.

Anyway, I am not aware of any State, democratic, semi-democratic or other in the world today which will not pull up a person or a group which does something which is dangerous to its security or safety from an outside power or internally. Therefore to say that Parliament should have the right to frame laws in regard to relationship with foreign powers is an inherent right of Parliament to do so. It just does not matter if it is not incorporated there. Because I do maintain with all respect that Parliament has the right and nothing in the Fundamental Rights takes it away or can take it away because it is the basic right of the State to that in relation to foreign powers. At any time that will be so more specially at this time when the world is faced

with great difficulties, great tensions, great dangers possibly with grave disasters; at that time for us to ignore all this and think in terms of some academic exercise of the eighteenth century forgetting that we are in the middle of the twentieth century is I submit, very far from being realistic very far from anything that is happening in this world. So I submit that putting in some provision about friendly relations with foreign powers does not change the Constitution. Does not extend it, does not limit individual freedom in the slightest degree. It is obvious. You may put it or not but it is there. It has to be admitted.

Again in regard to foreign powers so far as our policy goes which this House has approved of on many occasions, it is a policy of friendship with other nations. Now because it is a policy of friendship with other nations it becomes all the more necessary that we should not encourage activities which lead to injury in regard to our relations with other powers. Some hon. Members pointed out what had been said in China or what might have been said in Russia or what is sometimes said even now in other countries bitter criticism of individuals here or of the Government Perfectly true. I think that our newspapers and people here have also sometimes used strong language. We do not wish to come in the way of that. There is no question of stopping criticism or even strong language. But times may arise when it overshoots the mark and there is danger of disruption or a break or danger to international interests or to our relations with those powers. And so we shall have to come in there. In what way we come in or in what measure we come in will be a matter for Parliament to determine because there is no law at the present moment to stop these things.

Let us take the other matter, namely public order. As I have said so far as the actual wording is concerned, it may perhaps be improved. This is the best that we could put forward; it can be considered in the Select Committee but the fact remains that public order is as much a part of the security of the State as anything. It is perfectly true that a Government or a judicial officer may interpret these words widely or narrowly he may use it when it should not be used; that is perfectly true. Now if you are formulating as Act it is desirable that you use words precisely and definitely so that as far as possible, they cannot be misused; but when you are enabling Parliament to function, then again the question of narrowing and curtailing

Parliament's powers does not arise. Only when Parliament passes an Act you have to observe carefully that you do not go too far and do not allow a magistrate or a judge or somebody else to exercise more powers than you want them to exercise. That I can understand but you are merely enacting the power of Parliament merely defining and removing doubts about them and this question of putting in a narrowing word does not arise. I am afraid we are mixing up these two ideas. We are considering as if it was an enactment giving certain powers to the executive. It is nothing of the kind. It is only an enactment which brings out the essential and inherent power of the State in regard to these matters affecting the stability of the State, the security of the State, affecting public order in the widest sense of the word and this inherent power of the State is merely mentioned there. Why is this amendment brought? It is because some doubts were cast on it and I am quite sure that at the time of the making of this Constitution, if most of us had been asked about it there would not have been any doubt in our minds but in recent months some courts in the land have cast doubts and because they differed, I think it was the Bihar High Court which said something to the effect that preaching of murder is allowed under this clause.

Hon. Member: Punjab.

Shri Jawaharlal Nehru: I think it was Bihar. I am sorry, I may be wrong and some other Judge also agreed with that somewhere. I think that Allahabad and Nagpur disagreed with that view; it may be they have differed, but the point is I have no doubt it may be that I am wrong about the names of the High Courts—anyhow there has been some disagreement and it is quite possible, as I said, that ultimately in course of time, conventions and judicial interpretation will be established by the Supreme Court and other courts which would remove these doubts from the public mind, but at the present moment the doubts persist and the present moment is a difficult moment....

Pandit Kunzru (Uttar Pradesh): Has any reference been made on the matter to the Supreme Court?

Shri Jawaharlal Nehru: By whom?

Pandit Kunzru: By Government.

Shri Jawaharlal Nehru: No.

Pandit Kunzru: By the President?

Shri Jawaharlal Nehru: No because Government does not refer to the Supreme Court any matters of policy. It is for parliament and the government to decide the policy and not the Supreme Court. I am surprised at the hon. Members question.

Pandit Kunzru: May I ask the Prime Minister to clarify this point. What he said was that in view of the different views of the High Courts on so important a matter as punishment for incitement to murder it was necessary to change the constitution unless the Supreme Court upholds this view, it cannot be said that it has become a matter of policy. We have yet to find out what the existing law is.

Pandit Thakur Das Bhargava (Punjab): The High Court itself propounded this view in accordance with the ruling given by the Supreme Court. They just followed the observation of the Supreme Court and held that this was the law.

Shri Hussain Imam (Bihar): Will the hon. Law Minister enlighten the House on the subject?

Shri Jawaharlal Nehru: The Law Minister will not enlighten the House while I am speaking. May I confess a feeling of great surprise at the questions that my hon. friend Pandit Kunzru has put? When I give the example of certain High Court expressing a certain opinion, or giving a decision, or whatever it was that even preaching murder was justified, that by itself is an extreme example. That does not cover the whole field. Although my hon. friend has pointed out that the decision of the High Court according to them flowed from a previous ruling of the Supreme Court—may be so—I say, Suppose this matter went up to the Supreme Court and the Supreme Court decided, “No, that is a wrong view; to preach murder is not allowed under the Constitution” that particular thing will have been decided. It will not have decided any general principle. Suppose a man preaches cutting of the hand of a person or removing his feet. Only preaching murder is not allowed, naturally courts do not lay down broad policies. They function on the facts before them and they give a certain opinion which we must accept and respect. Therefore when question of broader policies are concerned. You do not go to the courts. Parliament decides or the Government functioning under Parliament decides. Where it is the interpretation of a particular legal issue, we go to the Supreme Court or some other court. Now doubts have arisen. High Courts are deciding differently. Where even the Supreme Court brings about a

certain measure of uniformity, that uniformity is confined to that particular issue. We shall have to wait for 50 or 100 ruling on various issues to develop into a consistent policy. That is why I referred to the American judicial interpretations which have, gradually in the course of 100 or 150 years brought about that uniformity. How are we to bring that about in the course of a few months or years, when daily dangers face us, and daily we have to meet particular situations? Therefore because doubts have arisen, because delays occur, because litigation goes on, because hundreds and perhaps I am not sure I believe, thousands of applications are made before the Supreme Court burdening the hon. Judges with this work, because of all this we feel that it is desirable in the public interest, in the interests of public policy as well as in the interests of individual freedom, to define this power clearly also, which was implicit in the Constitution. It has ceased to be implicit because of these doubts and interpretations and therefore it has to be made implicitly. Again if I may say so all that it means is that Parliament gets that power; the executive does not. It is for this Parliament or the future Parliament to exercise, presumably the next Parliament because it is very doubtful whether this Parliament will have the time or the leisure to consider this matter.

Then again the words “incitement to an offence”, I confess that taking the words as they are they cover a wide field may be any offence a minor offence or a major offence. That is true. Again I would say that you are not for the moment dealing with an enactment giving a punishment. You are dealing with the broad powers of Parliament. That is a difficult thing and that is the difficulty that we had in thinking about it. Are we going to make a long list of the offences here in the Constitution? You cannot do it. It is very difficult and it will make it more and more rigid, with schedules of offences attached to it. You have to do that sort of thing when you have to deal with a specific law. But here we are merely indicating what was supposed to be implicit. We are making a broad generalization and the broad generalization may cover rather trivial offences. But obviously one must take it for granted that when use is made of this authority or power, Parliament and hon. Members will see to it that there is no wrong application or misuse of it.

Then with regard to the other article 31B, may I remind the House...

Dr. S.P. Mookerjee (West Bengal): What about the validity of the laws?

Mr. Speaker: He is going to refer to that.

Shri Jawaharlal Nehru: I am coming to that With regard to article 31B...

Dr. S.P. Mookerjee: I am referring to article 19 (2) under which the existing law will be revalidated and given retrospective effect.

Shri Jawaharlal Nehru: Oh I understand. All the existing laws will not be validated just automatically just as all the existing laws were not made invalid either, by the Court's judgment if the judgment was in that way—I speak subject to correction. But as I understand the position, it is this some judgment of the superior court might either invalidate some particular law or some part of the law and to that extent if this Bill is passed. It would remove that invalidity. To what extent that particular law is valid or not would depend even now if necessary, on an interpretation whether in terms of the Constitution as amended it is valid or not. Such a thing would not automatically follow, May I beg the House to consider this question from a practical point of view? No doubt there is these laws plenty of them. There are the laws of sedition and the others let us take the laws of sedition. Now I cannot conceive that that is going to function or will be allowed to function or can function in future, unless it comes under the other clause of endangering the security of the State etc. etc. As the House knows we have been functioning for the last three and a half years as an independent country—more than that —three years and ten months, I think. And these judicial pronouncements have come only in the course of the last seven or eight months —I do not know the exact dates. Now how far in the course of these three years, quite apart from these judicial pronouncements had we recourse to these laws? That is for the House to consider. I cannot give an answer straightway. If my memory is right we have hardly ever used them. Most of them have not been used, and they cannot be used in the circumstances easily. Maybe there were one or two odd cases here and there. But, the fact is they have no value left and Parliament can put an end to them or have them revised as it chooses. What I mean to say is that from the practical point of view there is no danger. First of all the validity of the Act will be judged in accordance with the Constitution as amended. It does not automatically become valid. If it does come within the scope of the amended Constitution, it will be considered as

valid, but it will have to be considered and judged. But from the strictly practical point of view, those Acts are not alive. If not wholly dead, they are half dead, though one or two might not be. But generally speaking there is no fear of any misuse of them arising. Take any Press law...

Dr. S.P. Mookerjee: What about the Emergency Press Law?

Mr. Speaker: It will be better if these questions are thrashed out in the Select Committee.

Shri Jawaharlal Nehru: Yes, Sir, Really the position is this House can take up these laws put an end to them modify them or do what it likes with them. There might be an interval possibly of a few months, but there is no fear that during these few months, some misuse might occur. It is because of that I ventured to remind the House that during the last three years I do not think it can be said that there has been any marked misuse of these laws. The fact of the matter is the Press in India functions quite differently from what it used to. The Press is not an external force. It is a powerful force outside, but it is something internal. In previous times it had to influence an alien Government and the alien Government could suppress it or do injury to it. But to-day it is much more powerful, for a variety of reasons. But apart from the influence it exercises on the outside world though it is not of the Government it is part of Parliament, if I may say so. It can make a great noise if anything wrong happens to it. So practically speaking there is no danger during the intervening period and when you revise these things, put an end to them or put them in the right shape as Parliament considers proper.

Shri Deshbandhu Gupta (Delhi): May I know whether the Government will at least accept the recommendations made by the Press Laws Enquiry Committee which were not accepted in view of the provision in the Constitution and thereby relieve the anxiety of the Press to that extent for the interim period?

Shri Jawaharlal Nehru: I regret to say that I have not seen those recommendations of the Press Laws Enquiry Committee and hence I have no knowledge of the same but the hon. Member will see that this question can only arise if this law is passed.

Shri Deshbandhu Gupta: That is the assurance I am asking.

The Minister of Home Affairs (Shri Rajagopalachari): I might inform the hon. Member that, that was the very thing that made it difficult to accept the recommendations. The judgments already pronounced under the constitutional provision made these recommendations totally unnecessary and the interpretation given by the courts took liberty much beyond any possible recommendation that could be got out of the Committee. So it was unnecessary. But now if these amendments of the Constitution are passed and if a certain amount of restriction became possible Parliament can then sit tight over the amount of restriction to be imposed by law.

Shri Jawaharlal Nehru: Reference has been made to newspapers in this country and to the freedom of the Press. I venture to say that so far as I am concerned and so far as our Government is concerned, they believe entirely in the freedom of the Press. Mr. Deshbandhu Gupta was good enough to read out some extracts from the speech I delivered sometime back. I completely accept what I said then and I am prepared to repeat it but in repeating it I may say that in that very speech I also drew the attention of the Press to various things that were happening in connection with the Press in India and appealed to them to put an end to them. But there is another matter which I may mention in this connection and that is this. We talk of the freedom of the Press. What exactly does it mean, I ask? So much freedom of the Press we have got today. But the freedom only means suppression or lack of suppression by Governmental authority. When huge Press chains spring up preventing the individual freedom of the Press when practically the Press in India is controlled by three or four groups of individuals, what is that Press?

Dr. Deshmukh (Madhya Pradesh): The remedy is to dissolve the Press chains.

Mr. Speaker: The hon. Prime Minister may confine himself to the general observations.

Shri Jawaharlal Nehru: Yes Sir.

Now I come to articles 31, 31A and 31B. May I remind the House or such Members of the Constituent Assembly of the long debates that we had on this issue. Now the whole object of these articles in the Constitution was to take away and I say so deliberately to take away the question of zamindari and land reform from the purview of the courts. That is the whole object of the Constitution and we put in some

proviso etc. in regard to article 31. It was deliberately excluded from the jurisdiction of the courts. Now how does it come in under their jurisdiction? Here the Bihar High Court comes in. The Bihar High Court brings in article 14 of all articles to apply it to a question on land reform. Article 14 says:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

I am reminded, if I may say so that one has to respect the majesty of the law. The majesty of the law is such that it looks with an even eye on the millionaire and the beggar and whether millionaire steals a loaf of bread or a beggar steals the sentence given is alike. It is all very well to talk about the equality of the law for the millionaire and the beggar but the millionaire has not much incentive to steal a loaf of bread, while the starving beggar has perhaps and this business of the equality of the law may very well mean, as it has come to mean often enough, making rigid the existing inequalities before the law. That is a dangerous thing and it is dangerous in a changing society and it is completely opposed to the whole structure and method of this Constitution and what is laid down in the Directive Principles.

What are we to do about it? What is the Government to do? If a Government has not even the power to legislate to bring about gradually that equality, the Government fails to do what is has been commanded to do by this Constitution. That is why I said that the amendments I have placed before the House are meant to give effect to this Constitution. I am not changing the Constitution by an iota: I am merely making it stronger. I am merely giving effect to the real intentions of the framers of the Constitution and to the wording of the Constitution, unless it is interpreted in a very narrow and legalistic way. Here is a definite intention in the Constitution. This question of land reform is under article 31 (2) and this clause tries to take it away from the purview of the courts and somehow article 14 is brought in. That kind of thing is not surely the intention of the framers of the Constitution. Here again I may say that the Bihar High Court held that view but the Allahabad and Nagpur High Courts held a contrary view. That is true—there is confusion and doubt. Are we to wait for this confusion and doubt gradually to resolve itself while powerful agrarian movement grows up? May I remind the House that this question of land reform is most intimately

connected with food production? We talk about food production and grow-more-food and if there is agrarian trouble and insecurity of land tenure nobody knows what is to happen. Neither the zamindar nor the tenant can devote his energies to food production because there is instability. Therefore these long arguments and these repeated appeals in courts are dangerous to the State, from the security point of view, from the food production point of view and from the individual point of view whether it is that of the zamindar or the tenant or any intermediary.

I not for the moment, as I said saying much about the exact wording. It has been dealt with thoroughly and the Select Committee will no doubt deal with it.

My I now go back to article 15? I tried to make clear on the last occasion when I spoke that in what we were trying to add there was really not the slightest attempt at changing the Constitution or amending it in any real sense. It was to lay a certain emphasis on something which had been adequately emphasized in other parts of the Constitution, but again because some doubts had arisen it is perfectly true that those doubts had arisen in another connection. Although there is a connection nevertheless it is another matter. Looking at that narrow issue that arose in Madras, for my part this amendment, I should like to say is not intended to be a communal amendment or to help in any way a communal approach to this problem. We must distinguish between the communal approach and the approach of helping one of our weaker backward brothers and sisters. And if I may say so although it is my amendment, thinking about it I do not particularly like the words "backward class of citizens", and I hope the select committee may find a better wording. What I mean is this it is the backward individual citizen that we should help. Why should we brand groups and classes into backward and forward?

Several Hon. Members: That is the point.

Shri Jawaharlal Nehru: However, it is a fact that certain groups or classes are backward. But I do not wish to brand them as such or treat them as such.

Shri Sidhva (Madhya Pradesh): The order itself says, "communal".

Shri Jawaharlal Nehru: In this connection may I say that perhaps a group or class which deserves greater sympathy from this House are tribal folk whether in the North-East Frontier tract or in Central India or elsewhere, We have many of our colleagues

in this House representing the scheduled castes and they help us not only in our work but keep us up to the mark in regard to the necessities of the scheduled castes but we have very few persons in this House to speak for the scheduled tribes. Therefore, it should be the peculiar concern and care of this House to look after the interests of the scheduled tribes and their advancement in every way and when we add these words to article 15 or maybe any other words in addition to them we certainly include the scheduled tribes.

Some doubts again arose because of the judgment of the Allahabad High Court in regard to the nationalization of public transport services. Now we have been following a policy which is normally called a "mixed" economy. We encourage private enterprise and at the same time we extend the activities of the State in regard to these matters; that is more and more. There is nationalization socialization of services etc. It is essential therefore, that the State should have power to do that. Again we thought this was implicit that nobody could challenge it but as it has been challenged it should be clarified. And may I say this in this matter, that this is a process going on all over the world? Even in a country like the United States of America which is more committed to the individualistic and capitalistic form of State than any other country you will find that this progressive socialization is going on of public utilities and the like. The progress made in this matter has been very considerable there. But in this country and in countries situated like India where private enterprise, howsoever you may encourage it is limited in scope and resources inevitably the State has to come in and the State must have the power to nationalize completely or partly anything that it takes up. And therefore this elucidation has been put in.

We have heard a great deal about democracy; about freedom and the like in the course of this debate. In some criticism made outside this House, in newspapers outside this country even some of us, and especially I have been criticized as forgetting the stand we made, or what we stood for in the past days. Well it is very difficult to judge oneself and it may be that unconsciously some of us may have slipped—I am not aware of that for So far as we are concerned, we still try to act up to those ideals of democracy and freedom. But it was rather a mixed pleasure to me to

hear praise of democracy and freedom coming from some hon. Members of this House who were not remarkably associated with these concepts in the past—in fact who opposed them! Anyhow this is welcome change and we hope it will lead to a better understanding between us in the future.

One thing rather surprised me, I think it was Pandit Kunzru who asked: “Why do you make these changes when you have got the Preventive Detention Act?” First of all—again I may repeat—these changes do not give any power to do anything but apart from that Pandit Kunzru and this House will not like the use of the Preventive Detention Act all the time or at any time for the matter of that unless one is compelled by some circumstances to do it for a short while. So to take that as a standby is a dangerous thing. We want to put an end to it—to use it as far as possible.

I hope, therefore, that this House will agree to refer this Bill to a Select Committee. My I say that I should have liked to have as much cooperation of the House as possible in this Select Committee but one cannot have an indefinite number of Members. We selected twenty-one I believe. In addition, I would gladly have added a few more but at this moment I have to confine to that figure. If one goes on adding I do not quite know where it will stop. We have invited a number of other Members to be good enough to come and assist us and I hope they will come and do so.

Shri Kamath: What about the date?

Shri Jawharlal Nehru: In the motion which I moved, I think the date is 21st. I would like to make it, Wednesday, the 23rd.

Mr. Speaker: Now we have before us the motion—I do not think I need read the motion again with all the names. It is now going to be placed before the house with a small change, namely that instead of 21st May, the words 23rd May will be substituted.

I will now take the amendments; five of these refer to circulation of the Bill by different dates. I propose to put all these, not in the order in which they are given in the Order Paper but in the order of these dates which means that the one giving the longest date will be put first by me. If I were to place the shortest date first and it is rejected all other amendments will be barred. Therefore, I propose adopting this course.

Dr. Pattabhi (Madras): If the shortest is rejected. Everything else is rejected.

Mr. Speaker: I felt that rather unfair as a matter of procedure. But if hon. Members are agreed, I have no objection to putting the shortest date amendment. (*Some Hon. Members:* No, no.). Then I shall first put the amendment of Sardar Hukam Singh which mentions the 31st July, 1951 the longest date.

The Question is:

“That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st day of July 1951.”

The Motion was negatived.

Mr. Speaker: Should I put the other amendments to the House?

Hon. Member: It is not necessary now.

Mr. Speaker: I shall enquire one by one, Mr. Naziruddin Ahmad?

Shri Naziruddin: Ahmad (West Bengal) : No Sir but I have not been allowed to put in my arguments.

Mr. Speaker: Order, order. I was told he was not very anxious to place them. (*Interruption*) Order, order. Whatever it may be. Mr. Sarangdhar Das?

Shri Saranghar Das (Orissa): No.

Mr. Speaker: Shri Syamnandan Sahaya?

Mr. Syamnandan Sahaya (Bihar): No.

Mr. Speaker: Dr. Mookerjee has already said that Mr. Kamath?

Shri Kamath: As the date has already been changed by the Prime Minister I do not press my amendment.

Shri Sondhi (Punjab): A loyal subject now!

Shri Kamath: A fair compromise!

Mr. Speaker: Order. I may now put the Motion to the House. But before that I wish to mention one thing. One notice of amendment has been received very late and unless it is an agreed one I cannot allow it. That is with reference to the addition of three names. I understand that it has not been circulated. So I shall put the original motion.

Shri Kamath: May I ask whether Members who are desirous of attending the Select Committee meetings may attend them without being invited, just as you were pleased to do with regard to the Select Committee on the Representation of the People Bill?

Mr. Speaker: Really speaking I did that after obtaining the consent of the Charmin. In all these matters, the matter rests really with the Chairman and not with the Speaker here. I shall put the motion now.

The question is:

“That the Bill to amend the Constitution of India be referred to a Select Committee consisting of Prof. K.T. Shah, Sardar Hukam Singh, Pandit Hirday Nath Kunzru, Dr. Syama Prasad Mookerjee, Shri Naziruddin Ahmad, Shri C. Rajagopalachari, Shri L. Krishnaswami Bharati, Shri, Shri Awadheshwar Prasad Sinha, Shri T.R. Deogirikar, Dr. B.R. Ambedkar, Shri V.S. Sarwate Shri Mohanlal Gautam, Shri R.K. Sidhva, Shri Khandubhai K. Desai, Shri K. Hanumanthaiya, Shri Raj Bahadur, Shrimati G. Durgabai, Shri Manilal Chaturbhai Shah, Shri Dev Kanta Borooah, Shri Satya Narayan Sinha, and the Mover With instructions to report on Wednesday the 23rd 1951.”

The motion was adopted.

Mr. Speaker: There is one more announcement before we adjourn namely that the Select Committee on the Bill will meet tomorrow at 5-30 pm in the old Council of State Chamber and again on Sunday. That finishes the business. The House is now adjourned.

*The House then adjourned till half Past Eight of the Clock on Saturday the 19th
May, 1951.*

**THE
PARLIAMENTARY DEBATES**

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

PARLIAMENT OF INDIA

Tuesday, 29th May, 1951

The House met at Half Past Nine of the Clock.

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(No Questions: Part I not published)

CONSTITUTION (FIRST AMENDMENT) BILL

Shri Kamath (Madhya Pradesh): On a point of order, Sir. The House is well aware that the Constitution (First Amendment) Bill was referred to a Select Committee on the 18th of this month and came back to the House on the 25th. A careful perusal of the report of the Committee, particularly of the minutes of dissent, shows that to a certain extent the proceedings of the Committee have been vitiated in several respects and.....

Mr. Speaker: Order, order. I do not want to decide on that point now. Let the motion first come before the House. That the report of the Select Committee be taken into consideration, and let the discussion proceed. And then, of course, if necessary, the

hon. Member may point out to me in what respects the proceedings were defective and I shall then consider the matter.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru):

I beg to move:

"That the Bill to amend the Constitution of India as reported by the select Committee, be taken into consideration"

The Select Committee considered this matter for six days, and yet perhaps to say that it considered it for six days does not exactly convey the right impression, because the amount of time and thought that it gave to it probably represented much more than six days. The Committee consisted of many hon. Members of this House holding a variety of opinions and pressing them, quite rightly, with all the force at their command. And It was our wish and attempt in this Committee to come, as far as we could, to a large measure of common understanding because it was a serious matter—and an amendment of the Constitution is always a serious matter —and we tried to find common ground. And may I say, that in effect, we did find a great measure of common ground, and even though there are a number of minutes of dissent attached to this report, I think that the common ground we found in the course of our deliberations was far greater than might be expected by -an unwary reader of these minutes of dissent. Nevertheless there is no doubt that there was and is a measure of dissent, and I do not deny that. But I think perhaps the emphasis or stress laid on the dissent in those minutes of dissent is greater or appears to be greater than actually existed in the deliberations of the Committee. I am merely trying to point out that we did approach this question, not in a partisan Spirit, but in a spirit of trying to understand, of trying to weigh and balance the opinions of our critics and trying to find a way out which would, as far as possible, be satisfactory to them as well as to others. And I think, on the whole, we succeeded. Therefore, the report that I presented to the House is, I believe, an improvement on the original Bill that I placed before the House. I cannot say, of course, that what I put before the House is perfect in all respects, because there is no perfection in such matters. Opinions may differ and where there is an attempt to find a middle way, often there is a certain dissatisfaction on either side. But I think that the report does represent a very hard and very continuous attempt to find as good

language as we could possibly do, to give expression to our intentions, without doing violence to any part or any intention of the Constitution. Indeed, as I said at an earlier stage, the amendments we sought to put in, however worded, were really meant more to amplify and clarify than to make a change in any part of the Constitution. But naturally any amplification and clarification involves some change in the interpretation, some change in effect. That is true. But keeping before us all the time the spirit which animates the Constitution and those who made it, we felt that we were not going beyond it, but rather attempting to clarify it.

In the minutes of dissent stress is laid on the fact that this Constitution has only been in existence for sixteen months, and it is too short a period for us to try to amend it or to improve upon it. Now, I would not venture to criticise that statement. And yet I think that to lay stress on sixteen months in this connection has little bearing on the subject, as if after sixteen years we will be in a better position to judge. No doubt we would be, if we are there. In the long run it may be so, but it has often been said to those who talk about long-run that we shall all be dead anyhow by then. Now, the question is not whether the Constitution has been in existence for months or for years, but rather what is necessary to be done, because of the experience we have had. Because of the conditions that face us, if something is necessary, then it does not matter whether it is sixteen months or sixteen weeks, if you like, but if it is necessary then the time factor does not count at all. Therefore, the whole basis should be whether such a change is necessary or not.

Now, a fair number of amendments have been suggested and as the House knows, many of them are rather of a technical or formal nature, being attempts to get over some slight difficulty that had arisen, without any interference with any basic provisions of the Constitution. There are in fact, two or three, if you like, matters that are considered more important and more basic—those relating especially to articles 19, 31 and 15. I do not want to take the time of the House at this stage in referring to the other articles in the report, because there is little dissent in regard to them, although one hon. Member of the select Committee has objected to the phraseology of one or two. But the meaning behind them is accepted and if it is necessary to change the phraseology by a word here or a word there in order to bring out the meaning more

clearly, surely we shall have no objection. We have tried to give it the best wording we could think of.

Now I come to deal with those three specific articles to which a great deal of argument has been attached. There is article 15 (2) or 15 (4) as it is proposed to make it, that is to say, the clause which says that nothing in article 15 (2) or In article 29(2) should come in the way of our making special provisions for certain groups or classes etc. which are not defined exactly, but indicated there. I wonder if the House remembers that when I referred to this during the earlier stages of this Bill I mentioned that by an oversight the Bill as printed then had left out a small but rather important matter, that is, in clause relating to article 15 we had said at that time In the oriented Bill that nothing in article 15(2)' will come In the way etc. What we had intended saying—in fact what we had decided to say was that “nothing in article 15 or in article 29(2)'but unfortunately owing to a slight error, the words "article 29(2)" were left out I mention this clearly merely to indicate that this was not an afterthought on our part. It was an error for which I take full share. It was not an afterthought to include article 29(2) because we had decided about it previous to putting It in the Bill. There were two views in regard to article 29(2). It was the view of many eminent people that article 29(2)' in this particular context does not affect the matter at all. It does not come in the way at all, and yet. In another context article 29(2)' had been referred and because of the certain doubt in people's minds that although the best opinion was that it does not come in the way, nevertheless, there as a hesitation or doubt and we thought that that doubt should be removed.

Without going into the details of this article or of the amendment proposed. I wish to say a few words about—shall I say—our basic ideas on this subject. Why have we done this and why has it been thought that these articles come In the way of doing something that we wish to do? The House knows very well and there is no need for trying to hush it up, that this particular matter in this particular shape arose because of certain happenings in Madras. Because the government of the Madras issued a G.O.—I do not know the details of it by making certain reservations etc. for certain classes or certain communities—rather for all communities—and the High Court of Madras said that this G.O. was not in order, was against the spirit or letter of the Constitution etc. I

do not for an instant challenge the right of the High Court of Madras to pass that order. Indeed from a certain point of view it seems to me, it I may say so with all respect, that their argument was quite sound and valid. That is to say, if communities as such are brought into the picture, it does go against certain explicit or implied provisions of the Constitution. Nevertheless while that is quite valid and we bow to the decision of the High Court of Madras in that matter, the fact remains that we have to deal with the situation where for a variety of causes for which the present generation is not to blame, the past has the responsibility, there are groups, classes, individuals, communities, if you like, who are backward. They are backward many ways—economically, socially, educationally—sometimes they are not backward in one of these aspects and yet backward in another. The fact is therefore that if we wish to encourage them in regard to these matters, we have to do something special for them. We come up against this difficulty that we talk on the one hand in our Directive Principles of Policy of removing inequalities, in raising people up in every way—socially, educationally, economically, reducing the distances which separate groups or classes of individuals from each other, we cannot separate them entirely, we cannot make a fool a wise-man or make a wise-man a fool, individuals are clever or not clever, individuals are tall or short, thin or fat and nobody tries to have similar rotundity either in the mind or body but we do wish to give the same opportunities to everyone so that he can take full advantage of those opportunities and grow to the full stature as far as that stature allows it and if anything comes in the way of achieving this, we should remove that. It is not an easy matter, it is not a thing to be done quickly and suddenly when we have a vast population.

Yet, again, there is one Member who has pointed out in his minute of dissent that when we talk of people, or groups as backward, whom are we thinking of. Because 80 per cent.—I do not know what percentage it is—are backward in all these respects. ! That is perfectly true and yet we have to tackle the problem. It is no good saying that because 80 per-cent, are backward, so we must accept the position. We have to give them opportunities—economic opportunities, educational opportunities, and the like. Now in doing that we have been told that we come up against some provisions in the Constitution which rather lay down some principles of equality or some principles of

non-discrimination, etc. So we arrive at a peculiar tangle. We cannot have equality because in trying to attain equality we come up against some principles of equality. That is a very peculiar position. We cannot have equality because we cannot have non-discrimination because if you think in terms of giving a lift up to those who are down, you are somehow affecting the present status quo undoubtedly. Therefore you are said to be discriminating because you are affecting the present status quo. Therefore if this argument is correct, then we cannot make any major change in that respect because every change means a change in the status quo, whether economic or in any sphere of public or private activity. Whatever law you may make, you have to make some change somewhere. Therefore we have to come to grips with this subject in some other way.

Take another very important approach of ours, that is, in our attempt gradually or rapidly to realize an egalitarian society or some society where these differences are not great, apart from national or physical differences etc., in our attempt to do that, we want to put an end to or end to all those infinite divisions that have grown up in our social life or in our social structure—we may call them by any name you like, the caste system or religious divisions etc., 'There are of course economic' divisions but we realize them and we try to deal with them not always very satisfactorily. But in the structure that has grown up—quite apart from the religious point of view, or the philosophical 'aspect of it—this is the structure of society with its vast numbers of fissures or divisions etc. Now, to get rid of that in order to build, not only to give opportunity to each individual in India to grow . But also to build up a united nation where each individual does not think so much of his particular group or caste but thinks of the larger community—that is one of our objectives. On the other hand while that may be our objective, the fact remains that there are these large numbers of divisions and fissures in our social life, though I think they are growing less. We 'are gradually obliterating those hard and fast laws that divide them but nevertheless the process is slow and we cannot ignore the present. We cannot ignore existing facts. Therefore one has to keep a balance between the existing fact as we find it and the objective and ideal that we aim at. If we stick to the existing fact alone, then we are static and unchanging and we give up all the objectives we have or the Directive

Principles of Policy that are laid down in the Constitution. That of course we cannot do, and must not do. On the other hand if we talk only about those Directive Principles etc. ignoring existing facts, then we may talk logic and we may talk fine sense even in a way but it has no relation to facts and it becomes artificial, it becomes slightly adventurish and therefore not realistic enough.

So we have to find a middle way, that is keeping with the objective or the ideal in view, taking steps which gradually carry us in that direction and yet not ignoring the existing facts with which we have to deal. We have to deal with them anyhow, even if you have to deal with it in the sense of fighting against the existing situation.

These were the difficulties and the House will understand that in grappling with this problem one can lay emphasis on this aspect or that aspect of it, because both aspects are important and the real difficulty comes in finding a balance between the two. It is very easy to say to any Member that it is a simple problem which requires an aye or nay. This is good or that is bad. But normally the problems we have to face cannot be answered easily by ayes and nays. We have to consider them in the total context of things. We have to consider them in their relation to a hundred other things and thereby bring the ideal into some relation to the actual. These were the matters at the back of our minds as we discussed this matter from hour to hour in the Select Committee.

I think, I may say with perfect truth that every single Member of the Select Committee recognised the desirability of giving these opportunities for growth to those in any sense may be considered backward. There was no doubt in any Member's mind but what some Members were afraid of in doing so was, might not this be abused, might this be utilised for the accentuation of the very class or communal divisions which have done us so much injury and which we have been trying to get rid of. This fact troubled and rightly troubled their minds as it must trouble the House and each one of us. So we tried to find a middle way and I submit that the Wording we have adopted in this article is more or less a successful way of meeting this difficulty and finding the middle way.

You must have read an earlier paragraph in the report which says: "Some apprehensions have been expressed in respect to this amendment. The Select

Committee is of the view that this provision is not likely to be, and cannot indeed be, misused by any Government for perpetuating any class discrimination against the spirit of the Constitution, or for treating non-backward classes as backward for the purpose of conferring privileges on them."

We have said so and we earnestly hope that if and when this provision is passed it will not be misused. Nobody can guarantee against misuse or some kind of special or undesirable use by any authority of any provision you may make. We can only try our best to create the conditions where this would not be so. What I wish to assure this House about is this, that we are alive to the possibility of this kind of thing being used for a particular purpose to which- we are opposed.' And may I say also that when 'we talked with certain persons, including the Chief Minister of the Madras Government, they also told us that they realised our difficulty, they appreciated it and they had no desire to function exactly in that way which people feared. So I would commend this particular amendment of article 15 to the House.

Then I come to article 19(2), which perhaps has given rise to more comment and controversy than any other suggested amendment. Here may I deal with one matter, because I think two or more hon. Members of the Select Committee have protested and raised objections to the fact that they were not supplied with the list of the laws that might be affected by these changes. There are those laws of course, most of them finding a place in the proposed Ninth Schedule. They are there and they are available to anybody, every one of them and I may inform the House.....

Dr. S. P. Mookerjee (West Bengal): That is not under article 19(2) but under article 31B.

Shri Jawaharlal Nehru: You are perfectly right. Perhaps I have got mixed up between the two. But I shall finish this matter. Those were considered carefully by our Law Department. In regard to the other laws I have not quite understood the complaint or, if I may say so, having understood it partly, I have not been quite able to see what I can do about it. It is exceedingly difficult to make a list of all kinds of laws which might be affected. Some I can say straight off. For instance, you can say straight off what effect it will have on a particular law or part of it. I can say that because of a particular judgement of the Supreme Court or the High Court. That is a specific thing.

Even there I do not know exactly what the position might be. It is not as if we are suddenly resuscitating or rejuvenating certain laws which had become obsolete, disabled or blocked. It is because of a certain interpretation put by some of our superior courts on a certain fact and we wish by this amendment to change that interpretation. What effect that interpretation will have on any particular law again is to be decided by the superior courts of the land and not by us. I might perhaps give you or perhaps the Law Department might give you an indication of their opinion as eminent lawyers. This might or might not be so. Ultimately it can only be decided by the courts of the land as to what effect this particular amendment when passed has on a particular law. My view will not be a precise and definite opinion but rather an opinion which with my limited knowledge of the law I might, give. With regard to some matters I might be more precise and in regard to others I would be vague, because it is not making law out of nothing but making it valid by removing certain obstructions that have come, certain interpretations that had been given which might apply to a part or the whole of the law, as the case may be or might not apply at all to it.

I speak with great respect when I have to deal with the law, because. I have not only great respect for the judges but great fear of the lawyers. Take for instance section 153A of the Indian Penal Code which deals with what might be called communal discord or the preaching of enmity between communities. I have no doubt that the amendment we are seeking to put in brings back into operation —the exact words might be different —how it should be worked. That is if there is going to be preaching of communal hatred, certainly if this is passed, that can be dealt with.

Take again section 124A of the Indian Penal Code. Now so far I am concerned that, particular section is highly objectionable and obnoxious and it should have no place both for practical and historical reasons, if you like, in any body of laws that we might pass. The sooner we get rid of it the better. We might deal with that matter in other ways, in more limited ways, as every other country does but that particular thing as it is should have no place, because all of us have had enough experience of it in a variety of ways and apart from the logic of the situation, our urges are against it. I do not think myself that these changes that we bring about validate the thing to any large

extent: I do not think so, because the whole thing has to be interpreted by a court of law in the fuller context, not only of this thing but other things as well. Suppose you pass an amendment of the Constitution to a particular article, surely that particular article does not put an end to the rest of the Constitution, the spirit, the language, the objective and the rest? It only clarifies an issue in regard to that particular article.

Therefore, when you consider these amendments and when you pass them into law, all I can say is that the effect of certain judgments will, if this amendment is passed, be removed; the article will be interpreted in a slightly different way but always in terms of the whole Constitution. And therefore it becomes difficult for me to place before the House a list of laws and say, "This has happened to them", because it is a question of judgment of each individual. Some might say, "Yes, this has been affected by this particular judgment and this is the effect which we wish to produce." Now these laws—two, three or four—are well-known to the House and to every person who takes an interest in them. For the rest, I just do not know. That was my difficulty.

In so far as this question of reviving laws etc. is concerned, it is a question of removing a certain obstruction that had come so that, first of all, we can deal with the situation without that obstruction; secondly, that we can consider the whole matter afresh and put an end to those old laws which are objectionable, and bring something new. The situation became a little difficult for us even to have any new legislation in this matter. The House will remember that there was a Committee known as the Press Laws Enquiry Committee. This Committee made certain recommendations, and it was stated by some Members here and many people outside that these recommendations had been rejected by the Government or by the Home Minister. The fact of the matter was that these recommendations, many of them, were completely pointless if the interpretation of certain courts was correct, as we were bound to accept them to be. Either we could not accept those interpretations then the question did not arise in that particular way or we had to proceed in some different way. Supposing you pass this amendment, then their recommendations are something that can be considered as capable of being effective, if you approve of them. Personally, so far as their recommendations are concerned, in some matters they go rather far, or rather, if I may say so, they do not go far enough. But that is a matter of judgment. The point is the

whole issue became a little difficult for us to deal with because of these certain interpretations.

Now as I stated previously, when we brought forward these amendments, any desire to curb or restrain the freedom of the Press, generally speaking, was exceedingly far from our minds. That, of course, is no excuse, or no reason, if in effect the words do that—I realise that—and it is folly for any Government to say, “ We did not think of this”, when a certain consequence inevitably flowed from that action. That is perfectly true. Nevertheless, there is something in it when I repeat that any desire to curb the freedom of the Press was not before us. We are dealing with a particular situation, I think a difficult situation, a situation which grows more difficult, for a variety of reasons, national and international. And it was not in terms of curbing the Press but it was rather in wider terms that we thought of this problem. Because we were all the time considering the question of the Press rather independently, we wanted to deal with it independently, to put an end to some old laws and bring something more in conformity with modern practice, in consultation with those people who- are concerned with this matter. However, it is perfectly true that whether we thought of it or not, this affects the situation to some extent. it affects it in two ways: one, directly, that is to say a certain thing has been done which may put an obstruction if l the way of the Press in theory, and, secondly, it may give a chance to a Government to impose some disabilities, that is, the Government may have the legal power to impose some disabilities unless some change is made. Both are possibilities, I recognise that so far as we are concerned we do not wish, and we do not wish any State Government, to take unfair advantage or any advantage of this change to curb the freedom of the Press, generally speaking, and we wish to review ,ale whole scheme as soon as possible. But I would beg of you to consider this matter in theory as well as, of course, in practice.

Great exception has been taken to some additional phrases in the proposed article 19(2). First of all, may I draw your attention to a major change; although the change is of one word only, it is a major change. That is the introduction of time word "reasonable" which makes anything done patently justiciable, although, as a matter of fact, even it mat word "reasonable" was not there every part of the Constitution,

within some limitations, is always justiciable. It just did not matter if this word "reasonable" was there or not—the matter could have gone to a court of law and could have been interpreted by our superior courts. There is no doubt about that. It is true that their interpretation would have been limited by the new thing that we have said. That is true, of course, because in interpreting the Constitution they will have to consider the new part of the Constitution that has come in. Nevertheless, the interpretation would have been given taking the Constitution as a whole—the spirit of it, the wording of it, the precise language of it, and so on and so forth. Nothing can take away their power to consider any part of the Constitution and to give their opinion. You can, by constitutional amendments, direct your attention one way, that the Constitution means this more than the other, and naturally they would interpret it a little that way. But then, whether the word "reasonable" is there or not, surely it is open to a court, if some fantastic thing was done, to say it is fantastic. Suppose the word "reasonable" was absent from all those various clauses of article 19 as it does occur in various clauses, it does not mean that the idea of "reasonable" was absent. It is, there although the word may be absent. However, I shall not go into that technical argument. My point is that whatever the power the court might have had if the word "reasonable" had not been there, certainly the introduction of the word "reasonable" gives it the direct authority to consider this matter.

Now why did we not put that word "reasonable" at an early stage? Then we wished to avoid not so much the courts coming into the picture to give their interpretation; not that, but we wished to avoid an excess of litigation about every matter, everything being held up and hundreds, and may be thousands, of references constantly made by odd individuals or odd groups, thereby holding up not only the working of the State but producing a mental confusion in people's minds at a time when such confusion might do grave injury to the State.

Shri Kamath: It is a matter of Fundamental Rights.

Shri Jawaharlal Nehru: I am glad my hon. friend interfered. He said that it is a matter of Fundamental Rights. Does he mean that a matter of Fundamental Rights ought to be allowed to lead not only to confusion but to grave danger to the State? Surely not, I say nothing, not a single Fundamental Right can survive grave danger to

the State. (*Hear. hear*). And I wish the Rouse would be clear about this and realise the times we live in. In this country and in other countries, and not to quote so much some ancient script or ancient thing that was said at the time of the French Revolution or the American Revolution. Many things have happened since then. It is an odd thing that some of my hon. friends—not many—have taken umbrage at this amendment in the Constitution and hold up to us that the Constitution is something sacred. Some of them or their colleagues outside this House have openly stated that the first thing they would do if they come to power is to scrap this Constitution and put an end to it. That is a curious position to adopt—that this Constitution has to be scrapped just as this Parliament has to be scrapped and something new has to come in its place. Here. What we want to do is not to change it. But to amend it slightly, But that is the position only of very few Members of this House.

Some hon. Members who have written their minutes of dissent have referred to the sacred and sacrosanct character of this Constitution. A Constitution must be respected if there is to be any stability in the land. A Constitution must not be made the plaything of some fickle thought or fickle fortune.—that is true. At the same time we have in India a strange habit of making gods of various things, adding them to our innumerable pantheon and having given them our theoretical worship doing exactly the reverse. If we want to kill a thing in this country we defy it. That is the habit of this country largely.

So if you wish to kill this Constitution make it sacred and sacrosanct —certainly. But if you want it to be a dead thing, not a growing thing, a static, unwieldy, unchanging thing, then by all means do so, realising that that is the best way of stabbing it in the front and in the back. Because, whatever the ideas of the 18th century Philosophers, or the philosophers of the early 19th century and many of those ideas may be very good, nevertheless the world has changed within a hundred years—changed mightily. The world has changed in the course of your generation and mine tremendously and we have seen great wars and great revolutions. We have seen the most perfect of Constitutions upset, not because they lacked perfection, but because they lacked reality, because they lacked dealing with the real problems of the day. Do you know of any better framed, or better phrased Constitution than the Constitution of the

Weimar Republic—the German Constitution? It was perfect in wording, phraseology, balance and adjustment. Yet that whole Constitution went lock, stock and barrel. Away it vanished into the dustbin of history.

Do you know of a better Constitution than the Constitution of the Republic of Spain which unhappily was killed, assassinated about eleven or twelve years ago? It was a magnificent constitution. It went so far as to say that it would not go to war with any country or make treaty with any foreign country unless the League of Nations of the day permitted it to do so, or agreed to its doing so. It was a Constitution of fine idealists. Yet these fine idealists are spread over the various corners of the world and that Constitution has no place in Spain.

I have given you two instances; I could give you any number of them from every country of Europe and many countries of Asia, so that do not imagine that because we have passed a Constitution and because we call it sacred and sacrosanct, we have necessarily given it that stability, not also imagine that anything that is considered by you stable is necessarily so. If it is true that a country and a community grow—they are not static—then surely conditions come which should be dealt with in a different way, not in the old way.

Do you wish India to continue as it is? Surely not. You want industrial growth. You want social equality; you want all kinds of things to happen here. You have yourself laid them down in the Directive Principles of Policy. And as I said on the last occasion the real difficulty we have to face is a conflict between the dynamic ideas contained in the Directive Principles of Policy and the static position of certain things that are called 'fundamental' whether they relate to property or whether they relate to something else. Both are important undoubtedly. How are you to get over them? A Constitution which is unchanging and static, it does not matter how good it is, how perfect it is, is a Constitution that has passed its use. It is in its old age already and gradually approaching its death. A Constitution to be living must be growing; must be adaptable; must be flexible; must be changeable. And if there is one thing which the history of political developments has pointed out, I say with great force, it is this that the great strength of the British nation and the British people has laid in their flexible Constitution. They have known how to adapt themselves to changes, to the biggest

changes, constitutionally. Sometimes they went through the process of fire and revolution. Even so, they tried to adapt their Constitution and went on with it.

Shri Kamath: They have no written Constitution.

Shri Jawaharlal Nehru: The hon. Member reminds me of a fact that had not escaped my notice that they have no written Constitution. We in this country could not obviously adopt the British way of an unwritten Constitution. We cannot have that especially in a big country with numerous autonomous Provinces and States. Nevertheless the other extreme of a rigid Constitution is a dangerous one, which might lead to the breaking up of that Constitution when it walks away—if you like—at a tangent from reality. Because life is a curve—it is not a straight line—and the life of a nation is even more of a curve, and the life of a nation in the present day of changing humanity is very very curvy. Logical and straight lines are tangents which go off the curve and if the tangent goes too far away from that curve of life and curve of growth of a nation, then there is conflict, an upheaval and after that upheaval, well, something new emerges. You come back as you are forced to come back, to the line of life because you cannot depart too far from it. So if you are flexible in your action and Constitution, then you keep near that curving growth of the nation's life.

We live in a haunted age. I do not know how many hon. Members have that sense and that feeling—we in this country or in the world—of ghosts and apparitions surrounding us, ideas, passions, hatred, violence, preparations for war, many things which you cannot grip, nevertheless which are more dangerous than other things. We live in this haunted age where vast numbers of people in various countries become frustrated because they see no light, because they see danger, the danger of a future war and the danger of a future breakup, before them. Hon. Members tell me that this Constitution has been in existence for sixteen months. Can any Member tell me what the fate of the world will be in another sixteen months? I cannot.

Shri Kamath: Nobody can.

Shri Jawaharlal Nehru: Nobody can, except this that it will be very different from what it is today. And that is a big thing to say. In regard to this country too I venture to say that another sixteen months time will see many changes, and big changes, in this country. Whether they are for the good or for the bad, I do not know. But it will

see many changes. As Mr. Gokhale said, how can you enchain the growth of a country? Do you think by some form of words and phrases and calling them a fixed concept it must prevent the growth of a country? So you have to balance. You have to balance between that fickleness of approach— which takes these matters lightly—heartedly—that is dangerous, of course; these are serious matters; we cannot treat them in that fashion—and on the other hand not to lose yourself in rigidity of thought, in unreceptiveness of happenings all around.

These amendments that we have placed before you are an attempt to balance between that stability of approach and at the same time that flexibility, an attempt to balance between the idealism and the realism, between the conditions in the country as we see them today and the possible dangers that may confront us, and at the same time to keep the whole, entire spirit of the Constitution, the spirit which ensures us freedom, freedom of the Press and various other freedoms.

Some people have thought that the whole object of these amendments somehow is connected with these elections that are coming. I confess that when I first heard that—it might have been a legitimate inference in those persons minds—but it came as a great surprise to me, because the idea had not struck me at all. In fact, may I confess it that I do not get excited about these elections at all, either way, anyway. I have never been excited about elections, and these elections, which are going to be colossal and very big, are not likely to excite me. But if the House or the country disbelieves our bona fides, then no word of mine of course is helpful. But I can assure the House that none of us, to my knowledge, has the least notion that this had anything to do with the elections as such.

I can tell you one thing, that the fact of elections coming may previously create a situation in the country, a situation dangerous from the point of view of security. Certainly and if I or anybody who is in a responsible position in the country, responsible for the security of the country, does not think that he can deal with it in a particular way, then it is his duty to come to this House and tell it "We want this particular power to deal with the situation". I am in a responsible position. It is not merely a question of what words you put in the Constitution or not: it is a question of dealing with the situation in the country, of saving the country from going to pieces,

as some people want and try to make it. So far as I am concerned, and I am sure so far as the House is concerned, we shall fight to the uttermost all these elements.

Are we going to fight it with these words, to be told that this word comes in the way and that word prevents you from doing this? No word will be allowed to come in the way because the country demands it. How many of you remember, or have you forgotten, three and a half years ago, in this city of Delhi in the month of September 1947, in Punjab, in that entire body of Western Pakistan, What had happened? This Constitution was not there. But I am not thinking of the Constitution. Where was freedom anywhere—not constitutional freedom but the freedom of normal human impulses—where were those freedoms? Do you think any Constitution will prevent me from dealing with such a situation? No. Otherwise the whole Constitution goes, and the country goes. And I want to be perfectly fair to this House and to the country in declaring that, if I am responsible and the Government is responsible, anything that goes towards disrupting the community, anything that goes towards creating communal discord in this country will be met with the heavy hand of this Government. There has been enough of loose talk about this. It is for this country and for this House to have or not to have this Government. But these are the terms of the Government, no other terms.

Now, the Press has said a great deal about the liberty of the Press. I know something of the Press, and I have been connected with the Press too somewhat, and I can understand their apprehensions. Yet I say that what they have said is entirely unfair to this Government. And I say that the Press, if it wants that freedom—which it ought to have—must also have some balance of mind which it seldom possesses. They cannot have it both ways—no balance and freedom.

Every freedom in this world is limited, limited not by law so much, limited by circumstances. We do not wish to come in their way. Personally I am convinced, as I have said previously, and as I believe a pamphlet has been circulated which contains the speech of mine delivered some time back—I am glad that it has been circulated, because I repeat I stand by every word of what I have said about the freedom of the Press—and I hope that in so far as I can I shall be able to help in maintaining that freedom. That is so. But I care a little more for the freedom of India, and I am not

going to allow anything coming in the way of the freedom and unity of India, whatever it may be. I do not mean to say that the freedom of the Press comes in the way of the freedom of India. Not that. But we have to look at things in the proper perspective and not lose ourselves as if we are in a court of law, arguing this case or that case. We are legislators sitting in Parliament with the fate of this nation in our hands, possibly also affecting to some extent the fate of other nations. It is a difficult and highly responsible position, and we cannot be moved away by passion or prejudice or by some logical chain of thought which has no relation to reality.

Therefore we have to consider these matters in all seriousness, remembering always that certain freedoms have to be preserved. It is dangerous even in the flush of excitement to weaken them, I admit. We must not weaken them. At the same time, while we want freedom, freedom of the Press or freedom of speech or freedom of anything—they may be good—we have to remember that the nation must be free, the individual must be free and the country must be free. If national freedom is imperilled or individual freedom is imperilled, what good do other freedoms do? Because the basis of freedom is gone, so all those have to be balanced. Maybe the balance we suggest is not a correct balance. Let us look at it. But it is no good saying vaguely that this freedom has been attacked and weakened.

The House will remember—a fact that has been repeatedly stated—that this amendment is an enabling one, it is not a law. If there was a law before the House it should be considered very carefully, each word. Naturally when you give an enabling power, it is given in slightly wider terms. Suppose I say "friendly relations' with foreign Governments", it is a friendly way of putting it; it is a nice way of putting it, both from the literary point of view and from the international or national point of view. Exactly what would amount to a danger to friendly relations is so difficult to state; you cannot specify. You may, of course, put down one thing or, the other. You may say "defamatory attacks" as we sought to say at one time "defamatory attacks on the heads of foreign nations or others" but in effect if once you have a check to see that it is not done unreasonably, it is best you use gentle language. During three years or so, and long before the courts gave this clause this interpretation, I am not aware it may be I am wrong—of any action being taken anywhere in regard to criticism of

foreign countries Or foreign policy. So far as I am concerned and so long as I have anything to do with it, I can assure you that you can criticise to your heart's limit and extent the foreign policy that my Government pursues or the policy of any country; to the utmost limit you can go. I cannot dislike your criticism; nobody will be allowed to come in their way. But suppose you do something which seems to us to incite to war, do you think we ought to remain quiet and await the war to come? And if it is so, I am sure no country would do that. We cannot imperil the safety of the whole nation in the name of some fancied freedom which puts an end to all freedom. Therefore, it is not a question of stopping the freedom of criticism of any country and naturally we should like not to indulge in what might be called defamatory attacks against leading foreign personalities. That is never good, but in regard to any policy you can criticise it to the utmost limit that you like, either our policy or any country's policy,' but always thinking in terms of this, that we are living in a very delicate state of affairs in this world, when words, whether oral or written count; they make a difference for the good or for the bad. A bad word said out of place may create a grave situation, as it often does. In fact, it would be a good thing, I think, if many statesmen, most of them are all dealing with foreign affairs, became quiet for a few months; it would be a still better thing if newspapers became quiet for a few months. It would be best of all if all were quiet for a few months. However, these are pious aspirations which I fear will not be accepted or acted up to but we live in dangerous times and I wish the House to consider them in dealing with this article 19(2).In the Select Committee we examined it in a variety of ways. You will remember that the word 'reasonable' was not there at first. -We tried to redraft it completely, more on the lines of the present shape of words in article 19(2) of the Constitution. In the present form of words, there is no mention of 'restrictions'. So we thought that we had better proceed on that line and then we tried naturally to limit the various subjects mentioned there, for instance,—I should be quite frank with you—ii regard to friendly relations with foreign powers, we sought to put in the words 'defamatory attacks on heads of foreign States' plus such other attacks which might impair the friendly relations with foreign States. Now that is obviously limited and that is all that one wants and so on we went on limiting the other subjects. We produced a new draft at that time. Then we looked at it and we

found that while some people liked this part of the draft better, the other people liked that, but nobody seemed to like the whole thing as it was and so we thought: Let us go back to our old draft but with a very major change, that is, the addition of the word 'reasonable' which really, immediately and explicitly limits everything that you do and puts it for the courts to determine whether it is reasonable or not. It is a big addition. As I said, it is not the courts we are afraid of. There are courts of eminent judges, but what really frightens me a little is the tremendous volume and bulk of litigation that all this kind of thing encourages and thereby bringing in complete uncertainty in everything.

There is one thing else. My colleague Shrimati Durgabai has put in a note in which she has argued that these changes should be made by Parliament and not by the States. I am 100 per cent in sympathy with her desire. My sympathies are there but my mind is not quite clear about the legal aspects of this. I think it would be a very good thing if Parliament alone can go into these matters, but I am assured by some lawyers that there are difficulties in the way (An Hon. Member: No difficulty). Then again another Member of the Select Committee has suggested that the President may certify any such Bills connected with these matters passed by the State Legislatures. That is a matter which we may consider. These are not matters of basic principles because, we do want two things: A certain power to deal with a certain critical situation if and when it arises and we do want checks to see that that power may not be misused. We want both these things. It is impossible to do these things perfectly; you have to find some middle way and trust to luck that the people who exercise that power will be sensible, reasonable and wise. As a matter of fact, Governments whether Central or State Governments today have naturally a great deal of power. If they misuse it they can do a lot of mischief in a hundred and other ways. Ultimately the check consists in that Government falling out. The only check is that we have to choose the right persons who are likely to behave in a reasonable and wise way.

I need not draw your attention to the fact that not only the word 'reasonable' has gone in in article 19 but two or three lines of words have gone in. which I think improve the article greatly and make it more concise and bring the whole scope of the article under the word 'reasonable'.

Then I come to article 31. Here some minor changes have been made. I need not go far into it but there is one thing which I should like to say particularly. Some hon. Members, I believe, have given notice of amendments to add other laws to the Ninth Schedule. I would beg of them not to press this matter. It is not with any great satisfaction or pleasure that we have produced this long Schedule. We do not wish to add to it for two reasons. One is that the Schedule consists of a particular type of legislation, generally speaking, and another type should not come in. Secondly, every single measure included in this Schedule was carefully considered by our President and certified by him: every one, except the last one. I think, and that last one was independently examined by us quite a great deal. So that, it has gone through a process of examination, analysis and scrutiny and we can take a certain responsibility about it. If you go on adding at the last moment, it is not fair, I think, or just to this Parliament or to the country.

This article 31 refers chiefly and principally to the abolition of the zamindari system and the like, which has been a basic programme of the country for a long time. I am, not speaking at the moment from any partisan or party point of view, although that is important enough in the sense that if we are pledged to something we should give effect to it, but rather from larger considerations. I would beg the House to consider that the basic problem today in Asia is the agrarian problem. If we delay in giving effect to it, as we have delayed we will get entangled in all manner of difficulties out of which we might not be able to extricate ourselves, quite apart from its intimate relationship with the food problem.

I should like to say that in this matter there has been a fair amount of litigation. In fact, it is due to that litigation that some of these difficulties have arisen. I cannot blame the people for going to law courts to get such protection as they think they could get. I am not blaming the zamindars for doing so. They have every right to do so and profit by it. But, I would like to put it to them and to others, that their security ultimately lies in a stable economic system and not in the law courts, not in anything else. If there is lack of peace between the vast agrarian population and them, then, they have no security. That system cannot continue; just it does not matter what your Fundamental Rights might say, what your Constitution might say or what your courts

might say. Then, you arrive at a revolutionary situation which ignores all these things. Therefore, that is not the right way. We have to consider the reality and readjust, put an end to the big zamindari system, reform our, land system, make it progressive and modernise it, at the same time keeping the old ways also, not uprooting the ways of the community.

Now, that balance has to be created. In creating that balance, repeated attempts to go to the law courts and check the various things will not help. For my part, I would advise on the one side, if I may say so, the State Governments concerned—if this amendment is passed, they have a certain power to go ahead with the laws that they have already passed—that they should exercise that power with restraint and wisdom, and that they should examine any hard cases that come to them. We shall help them in examining them and dealing with them. They should, if necessary amend their law here and there so as to deal with these hard cases, because nobody wants injustice or hardships. But, the fact remains that when you change the social system, when you change the agrarian system, the burden must fall on somebody. You cannot distribute your resources equally to all; if they are distributed unequally, the same thing happens and you start the other operation. Therefore, I would like the State Governments to look upon it from that point of view. I should like the representatives of the zamindars also to look upon it from the point of view of not trying to get something from a long litigation. They will not, I can assure them. They may gain a point here or there. The only parties who profit will be the lawyers.

Shri Hanumanthaiya (Mysore): May I say that it is the judicial system that is responsible and not any individual member of the system?

Mr. Speaker: Order, order. Let the Prime Minister continue his speech.

Shri Jawaharlal Nehru: I know that; I am not blaming anybody; it is always the system that is responsible, or lack of system, sometimes.

I beg to place this report of the Select Committee before the House for their favourable consideration. I can assure them that anything that is said here, we should listen to with respect and attention. I need hardly shy that during the last two or three weeks since we have been considering this matter, we have given an enormous amount of thought and energy to it in a concentrated way. Although it has been here

only for three weeks or so we have perhaps compressed the work of months into it. What we have put forward has been carefully thought out and discussed. Naturally, if any valid reason appears to us to change a word or a phrase here or there, we shall gladly consider that. What is put forward is not lightly put forward.

Shri Kamath: May I raise my point of order.....

Mr. Speaker: Let me first place the motion before the House.

Motion moved

"That the Bill to amend the Constitution of India as reported by the Select Committee, be taken into consideration."

What is the point of order?

Shri Kamath: I may state briefly why this motion cannot be proposed to the House. Apart from the fact which has been referred to by the Prime Minister in his speech that several documents and other materials were not made available to the Members of the Select Committee, a fact which has been mentioned by my hon. friends Prof. K. T. Shah, Mr. Naziruddin Ahmad and Sardar Hukam Singh, the vital fact emerges from the minute of dissent or rather the post script appended to the minute of dissent by Mr. Naziruddin Ahmad that "up to the time of writing his minute.

The fact of the matter is that this Bill was at first finalised, I understand on the 23rd May. Then, again, there was a last minute revision that night or the next morning. But, the Bill as finally settled by the Committee was not with the Members of the Committee when they wrote the minutes of dissent or actually signed the report. Therefore, the Bill which is ostensibly brought before the House as amended by the Select Committee, the motion reads, the Constitution (First Amendment) Bill 1951, as amended by the Select Committee is in my humble judgment not really so because the final text of the Bill as revised was not with the Members of the Committee at that point of time. Therefore, I submit that the motion for consideration of the Bill, as amended by the Select, Committee is not in order.

Mr. Speaker: I have not been able to appreciate the point of view of the hon. Member who has raised the point of order. Assuming that all that he has stated is true—I do not know how far that is correct—it is clear that the report which is placed before the House is signed by all the Members of the Select Committee, including those who

have appended their minutes of dissent. The objection appears to be only to the final forms of the amendment Bt. that does not mean that what is placed before the House is a thing to which the Select Committee had not applied its mind. Therefore, I do not see why this motion cannot be placed before the House. Of course, whether, the Members of the House should vote for a particular amendment or not, is entirely a different matter. All that the hon. Member has urged may perhaps be grounds which may be urged for saying that the House should not accept this or that amendment because the final form was not before the Members. That is a different matter. The question that he has raised is that the motion as such cannot be placed before the House. I am afraid I cannot accept that position.

Shri Shiv Haran Lal (Uttar Pradesh): Sir, before the hon. Member commences his speech may we know what is the programme on this motion so that we may act accordingly?

Mr. Speaker: Before the hon. the Leader of the House moved his motion. I was considering whether I should express to the House what I feel about the scone of the discussion at this stage and the discussions at the subsequent stages also. When we come to the clause by clause consideration, provided the consideration motion is accepted by the House. In this connection I would like to invite the attention of hon. Members that the question that is now before the House for discussion. So far as it's general character is concerned, has been amply covered during the consideration of the motion to refer the Bill to the Select Committee. The general background has already been fully and amply discussed. That is one thing.

Then, the same matter, so far as the forms and the particular amendments are concerned, is again coming before the House in the clause by clause stage, and it would be better, therefore to reserve more time for criticising the particular clauses and the amendments rather than take up the time now in general discussion which would practically mean a repetition of the same debate. That is my reaction.

However, looking to the importance of the matter, I do not propose to place any limitation. But hon. Members will do well to remember that they have to bring this session to a close within a reasonable time. They would, therefore, like to give more time for the clause by clause stage, rather to the stage of general discussion. But it is a

matter for the House and I do not want to come in the way, unless the House generally desires it. I should be prepared to accept any suggestion for putting a time limit, if that is the general desire of the House. We may remember the fact—and I repeat it—that the debate now is going to be nothing else than a mere repetition of the same things that were urged on the previous occasion---99.9 per cent, if not full 100 per cent. Theoretically, it is always possible for people to say that they would urge new points, but I do not see what further new things can be raised. Of course new instances could be multiplied.

Shri Kamath: What about the Prime Minister?

Mr. Speaker: Order, order. Hon. Members should not compare the Prime Minister With another hon. Member in this matter. Though theoretically he may be in the same position as any other hon. Member, as a matter of realism, we must understand that as the Leader of the Government it is his duty to place before the House completely all the facts that were considered by the Select Committee and all the aspects of the question. That does not mean that every Member will be either in order or it will be proper for him to reply to every argument that the hon. Prime Minister might have advanced. So the hon. Member need not go with the impression that because the Prime Minister talked for about an hour and twenty minutes, so he will be entitled to have one hour and twenty minutes. That disposes of the point-of order.

I may also invite the attention of hon. Members to rule 81 of the Rules of Procedure where it is stated:

"The debate on a motion that the Bill as reported by the Select Committee be taken into consideration shall be confined to consideration of the report of the Select Committee and the matters referred to in that report or any alternative suggestions consistent with the principle of the Bill."

And so both on the rules of procedure and on grounds of propriety and of practical outlook, and also in view of the time at the disposal of the house, I would suggest that attention may be centred on the clause by clause consideration of the Bill.

Dr Deshmukh (Madhya Pradesh): What about the choice of speakers?

Shri Naziruddin Ahmad (West Bengal): I had sent three amendments, but only two have been printed in the list here.

Mr. Speaker: I like it that he moves them together and the whole thing may be discussed together.

Shri Naziruddin Ahmad: But I have not moved them at all.

Mr. Speaker: Let him move them and then they can be discussed.

Shri Naziruddin Ahmad: I beg to move:

(i) "That the Bill be circulated for the purpose of eliciting opinion thereon by the first week of the next session of Parliament."

(ii) "That the Bill be recommitted to the same Select Committee which reported thereon for thorough enquiry into the circumstances necessitating each clause or part thereof and report by the first week of the next session of Parliament."

But then I should have the right to speak first on them.

Mr. Speaker: I have already called Prof. K. T. Shah. I shall give the next opportunity to Mr. Naziruddin Ahmad. I will place his amendments before the House.

Amendments moved:

(i) "That the Bill be circulated for the purpose of eliciting opinion thereon by the first week of the next session of Parliament."

(ii) "That the Bill be recommitted to the same Select Committee which reported thereon for thorough enquiry into the circumstances necessitating each clause or Part thereof and report by the first week of the next session of Parliament."

Prof. K. T. Shah (Bihar): In considering the motion that is now before the House, I would like to make it clear from the outset that though I have been obliged to adopt the role of opposition it has never been adopted for the sake of opposition only. It has been said that under a-constitutional parliamentary Government, the business of the Opposition is to oppose. Speaking for my part, however, I have never accepted that proposition, or the policy or the principle underlying it, at least while considering the Constitution. Wherever I see anything good, anything in the interests of the country, anything serving the ideals that we hold in common, that would be accepted by me and supported by me, no matter on what side of the House I happen to be, no matter who initiates those proposals. If, therefore, to-day I am obliged to oppose these amendments that have come before the House, need I assure the hon. Member opposite, and the House that it is not in any spirit of carping criticism, in any spirit of

mere negation, or mere opposition that I have persuaded myself to rise against this motion, to submit certain notes of dissent to the report of the Select Committee and tabled certain amendments.

[MR. DEPUTY-SPEAKER in the Chair]

A point was made by the Prime Minister about the complaint that only 16 months had passed since we adopted this Constitution, and that therefore sufficient experience had not been gained in the working of this Constitution. I am one of those who have emphasised the fact, that the Constitution has been in operation only for about sixteen months; and that period is not sufficient to give us enough experience, enough knowledge of the working difficulties of the Constitution to enable us to propose satisfactory amendments at this stage.

I quite agree with the hon. Prime Minister that the matter 'merely of time is not so important. Whether it is 16 months or 16 years, if there is no experience gained, would not make any difference; and if experience has revealed some defects even in a shorter period, we may well try and remove them. What was intended, and insisted upon and indicated by this reference was that, actually, within that time, the experience that we have gained is not enough to justify us in undertaking the alteration, the amendment of the basic Constitution of the land we are now attempting.

This is not an ordinary law that we are dealing with. It is the fundamental Constitution of the country assuring a system, a provision for the working or conditioning of our whole public life, which is at stake.

Mr. Deputy Speaker: The hon. the Speaker has already referred to the rules about the discussion at this stage. The House is committed to the principles of the Bill. These matters referred to by the hon. Member ought to have been raised at the earlier stage of the Bill and not at the time of the consideration of the report of the Select Committee.

Shri Kamath: He was absent then.

Mr. Deputy-Speaker: The House I seized of the matter. There is no good saying now that the Constitution (First Amendment) Bill should not have been brought. The House has accepted the principle and we are bound to look into the Bill and there is an urgency also to modify certain provisions. Whatever has been done in the Select

Committee it is open to the hon. Member to say that a particular thing should or should not have been done but beyond it, any other matter is not relevant here.

Prof. K.T. Shah: Sir, I am not going beyond, I hope, the scope permitted to speakers on this occasion. I was saying—if you had allowed me to complete—that I have accepted myself the principle, as accepted by the House, whether I was present or not, whether I took part in that debate or not. And, in this, I do not follow my learned friend the hon. Dr. Ambedkar who says that he is obliged to obey the judgment of the Supreme Court even though he may not have respect for that. I have both obedience and respect for the decision of the House. It is, therefore, not for me to question the necessity of this Bill at this stage far from it. But I think I am within order in pointing out that the experience we have gained of the working of the Constitution, and the consequent need for particular amendment—not of the Bill in general—sought to be made, is not enough; and that I trust is not out of order for me to point out even at this stage.

My remark was, besides, necessitated by the reference of the Prime Minister—himself. In sheer justice for, those who have taken that point, it was necessary for me to give this much rejoinder or explanation.

As regards the particular matters urged, you will agree that the Constitution is, whatever its stability in times of emergency or revolution, a sacred thing, with which we have to work. Changes, therefore, in its very basic articles should not be undertaken very lightly. For instance, this question of special provision for the so-called "backward classes of citizens" is liable, not only to a misdirection of the entire, system of Constitutional life we hope to live in this country, but it is liable even to be abused for party reasons. I hold, therefore, the view that, if you, really think of this country's millions: educationally, socially or economically deficient, backwardness is the rule, and forwardness is the exception, if at all. It was 'I who has said that it is something like 80 per cent of the, population which is illiterate; and if you take women only, perhaps 95 per cent is illiterate. On this matter we have got a whole Chapter of Directive Principles of Policy, which though not "justiciable" are certainly intended to embody the intention of Government, and enshrine our ideals of the life to be in this country. We have yet to give concrete shape, to 'those heads which would

change the "backwardness" into something 'like a normal, reasonable standard of living and working for the 'masses of our people. to this connection, may I add that we are passing through an age when idealism is very much at a discount; and those who are charged with holding ideals are usually ridiculed as lacking in a sense 'of practical statesmanship. I plead guilty to that. I am afraid that—no matter what ridicules showered upon I may be, no matter, what the prophets, of realism may insist upon—I shall remain incorrigible in this regard. It is therefore, impossible for me to overlook the three of the ideals embodied in the Chapter on Directives of Policy. My greatest regret is that this Government has not yet been able to implement substantially, or even up to a reasonable extent, many of the great things promised in this Chapter, so that the Chapter remains so much paper promises, or eye-wash; and that, in reality, these prophets of realism and practical wisdom do not insist upon giving effect to any of these, notwithstanding their claims for realism in this regard.

The amendment now proposed to be made is, thus, not only offending against all the grandiose promises which were equally held out to all, but lays a new emphasis on "class consciousness," or backwardness of certain classes, rather than of citizens as a body. This, in my opinion, is highly objectionable. We shall consider that matter when the amendment comes up specifically on that subject. But I cannot help feeling that, notwithstanding the actual language embodied, —which includes a reference to both articles 15 and 29(2)—what is stated in the amendment is positive, not negative, whereas 29(2) lays it down in negative terms that no citizen shall be barred from any educational institutions; on grounds of race, creed, class etc. If this amendment we are proposing—and please do not misunderstand me, I am not against the basic idea of this amendment,—we' are authorising and permitting special provision being made for "backward classes of citizens" educationally or socially. The word "economically" does not find any place here. I will try to place the matter more clearly before the House when the time comes. But here I must add that the educational, social and material development of the "backward classes" is a sacred obligation, which none of us deny. The hon. Prime Minister was only just when he said that every Member of the Select Committee, and I am sure every Member of this House, shares that desire with him. But when you think of it with the background of the history that we have

had, we cannot but recognise that it would be the word 'classes' that would be stressed, and not the 'citizens'. It is, therefore, my regret that the amendment does not really carry the intention, either of the Chapter of Directives, or of the sponsor of the Bill into effect in that regard. The greatest need in this country at the moment is bread; and according to the calculation that I have personally made two out of three citizens of this country do not get even one meal out of three that are necessary to keep body and soul together; and that, too, of the coarsest, the poorest and the scantiest. If 3,600 calories are supposed to be necessary, according to the experts of the League of Nations, for keeping the human body in a condition to work efficiently, we in this country hardly get 1,200 on an average. And believe me, the term "average" is very misleading; it is a fallacious idea. The average is not the actual or real, for vast masses of our country. It is the flat level, the average, over millions of this country, where perhaps one per cent owns and monopolises one-third of the total wealth of the country, and two-third may not get even half the 'average'. for each of them. The average of 1,200 salaries 'would mean less than 600 per day for each one of 67 per cent of the population. If, as the Planning Commission has told us, the average per capita income in this country in 1948-49 was Rs. 265, the actual per capita income for 25 crores, perhaps, of our people would work out at less than Rs. 12 per month, a very poor, misleading, insufficient standard of living. Your Chapter of Directives has declared that a normal standard of living shall be secured for all. Here you are providing, by a specific amendment of the Constitution, special facilities for what you expressly state as "backward classes of citizens". That would naturally draw attention, focus attention, upon "classes" rather than upon "citizens"; and, if i may say so, throws the larger problem that is facing us, the people and the rulers of this country, somewhat in the background, to the advantage only of certain classes which may be more vocal, but to the disadvantage of the masses as a whole.

Take another amendment that has also been proposed and accepted in the Select Committee, with regard to the freedom of speech and expression, or the Press. Whatever may be the role and function that has hitherto been discharged by the Press in this country; it is unquestionable that, if we wish to live a civilized democratic life,

freedom of speech and expression is indispensable. We want to convert people, not by blows but by argument, not by force but by reasoning.

If the argument is advanced that the freedom of the Press and the freedom of expression must be inviolate, I am not conveying thereby that there shall be no reasonable restriction on that freedom. On the contrary that particular amendment has my support, viz, that restriction should be there under certain conditions or circumstances, but that they should be reasonable. All I wish to say is that the categories in connection with which those restrictions are to be imposed are categories that not only were outside the scope of the original article, the amendment proposed has extended the scope for restrictions far more than is just either to the Press of the country, the publicists, or to the freedom that we think we have obtained in this regard.

The introduction, for instance, of "friendly relations with foreign states" is a factor for imposing a new restriction; and, as such makes an extension which I think is not justified nor is necessary. The working of the Constitution has not revealed—it may reveal hereafter anything that would show that this particular extension is necessitated by experience. Even if, one were to concede that that is a legitimate reason for imposing "reasonable" restriction on the freedom of speech and expression. The actual terms of the proposed amendment are indefensible. Let me add that the freedom of the Press as such is nowhere mentioned in specific terms in the Constitution; it is only embodied or implied in the freedom of speech and expression; at the time of the passage of the Constitution through the Constituent Assembly, I had pointed out the omission; but it was thought to include the freedom of the Press as well. Here, therefore, is a restriction on the freedom of speech and expression which I think will materially affect the freedom of the Press in India; and the reason given is not proved by any danger to our friendly relations with any foreign State. There is no clear and present danger to justify this inroad upon a primary freedom of the citizen; and so we cannot accept the proposal.

However out of date those conditions may be, they were held to be sacred. It was in virtue of this freedom that England of the 19th century offered asylum to all those who were not satisfied with the prevailing regime in Europe that did not allow the

fullest freedom of speech and expression and of the Press and who could enjoy unrestricted freedom there. Even as late as the last world war, When the matter was brought to the notice of the British Prime Minister by the German Dictator, that the Press in England in season and out of season was criticising him personally and was making defamatory attacks on the head of the State, even the Conservative Government of the day did not think it necessary to impose any restrictions upon the freedom of the Press in that country. What has happened in India, in the last 16 months since the new Constitution came into operation, to necessitate such a radical change in this fundamental regard?

There is, no doubt, an advantage as between a written and unwritten constitution, in favour of the latter. The Constitution of England is not a written definite document. It is made, not so much by the Parliament as by its courts of law. The interpretation of the Common Law, as given by the judicial authority in England, has not only created but guaranteed and maintained all the freedoms of the individual in that country, perhaps, the widest in scope and greatest in degree, in the world. On the other hand those who have written Constitutions have always found it more and more necessary to elaborate and keep pace with the changing circumstances, either through specific amendment or through judicial interpretation. The American Constitution is a written one. It grants this freedom in more absolute terms; but there, also, under the so-called police powers of the State they have evolved and elaborated and brought about a number of implied restrictions, which every time have been discovered and declared to be implicit by the courts. No one has thought it necessary to question the decisions of the Supreme Court. When they have accepted the reasonableness of certain restrictions, or when they refused to recognise the validity of certain State or Federal laws in that regard no one has challenged their verdict. But we have chosen to have not only a written Constitution, but a very exhaustive categorisation of the factors which should limit those restrictions. At the time the Constitution was passing through the Constituent Assembly, it was pointed out, time and again, that it was not wise to lay down these in so many terms, because one does not know what other contingencies might arise future. By putting down the various reasons or factors

which might necessitate the imposing of restrictions, you left hardly any scope for the judiciary to determine, except in so far as the restrictions were "reasonable" or not.

It is, therefore, a new factor which is now being introduced by the amendment. At the time of the draft of Constitution we did not consider it necessary, even though we have adopted a policy of laying down as many contingencies as we could imagine, which might necessitate such restrictions. I maintain, therefore, that no case has been made out why this new and a very serious ground for restriction should be introduced. With all the good will in the world, with all: the sympathy for the difficulties and delicacies with which the conduct of foreign policy is beset under the present circumstances, one cannot see the justification for this extension. I do not doubt for one minute the bona fides of the Prime Minister. I am perfectly certain that, if he is not, influenced by his guardian angels who persistently prevent him from straying into the right path, he would himself be most averse to impose the restrictions. He is a born liberal, and he remains one. In saying this I am not indulging in any flattery. But there are guardian angels and guardian circumstances whereby he is deflected from the path of righteousness, being burdened as he is with so many duties and responsibilities. Being situated as he is in the very centre of a changing kaleidoscope, he has necessarily to take the moment's consideration as being more important than considerations of "long range" policy. But, for me, however important momentary, considerations may seem, in this particular case the momentary consideration also does not appear to me. To have made out a case for the restriction of the freedom of speech or expression, and consequently, the freedom of 'expression of either the individual or the press in this country—the long range growth of the democratic freedoms should not be ignored. I trust that the promise he has made in another connection to newspapers, about a new and wholesome Press law, will be implemented soon; and shall, I say, that the freedoms or conditions under which the Press of this country will function will be definitised, and placed before this House. The Press in this country, it need hardly be added, is a "class" Press, it is in the hands of a few—they cannot be called Lords - magnates, who naturally are very vociferous and influential. It is not always that they really take a national rather than a "class" view of any problem of Government or policy. Those of us, who have some

experience of the class consciousness of the Press in India, cannot but feel that, if reasonable restrictions are imposed upon them, they will not really hinder their own class consciousness being emphasised. The classes which have been and are backward will always remain backward and unvocal, unless and until a complete change in the social system occurs. That apart, every innovation, addition or extension of restriction on this freedom by this amending Bill must be opposed. Here is another example, concerning "incitement to offence", which is much too vague a term not to be objectionable. It is not in harmony or in tune with this Constitution, its spirit or even the letter of the Objectives resolution. "Incitement to offence" may involve a very petty or small technical offence, which should not be made the ground for restricting the freedom of speech or expression, as embodied in the Constitution and with the limitations which the Constitution has already imposed.

The suggestion was made — I hope I am not going out of the bounds of convention in this matter when I say that — the suggestion was made at one time that this should be changed into "incitement to crimes of violence", that is, such offences as might endanger public security or the security of the nation. Everyone would be at one with the Prime Minister when he says that every liberty we possess may have to be restricted when it comes to the question of the integrity and independence and continued existence of this country as an independent sovereign State. That, of course, is an indisputable proposition. But we have made separate provision for dealing with emergencies in our Constitution. With the right person being on the right spot at the right moment, there is no fear that, in the moment of emergency, there will not be persons at the helm who will take courage in both hands, and deal with the situation as it arises and as it requires. But I submit, with all respect, that is no reason to monkey with the Constitution now. The possible happenings that may take place in sudden emergencies threatening the very existence of the country will be dealt with by the man on the spot at the time. He must have confidence in himself, and not forge an instrument in advance that may never have to be used. It may have all been very well for an imperialist foreign Government to forge a weapon which was never put into execution. But, I say with all respect to the sponsor of this Bill, it does not behove us, for fear of possible emergencies, that we should today, make a general provision, and

limit the freedom of speech in the interest either of public order, or in the interest of a possible danger of incitement to offence. While on this, point, may I add that I am one of those who had complained that we did not get sufficient material on which to frame our judgment on the actual phrasing of the Amendment. Now there is another case in which it is possible perhaps that we are mistaken, that a different interpretation may be placed upon the original clause, which has brought about this last item, namely" incitement to offence. So far as I could see from tile extracts from the judgments that were made available to us, it is only an obiter dictum of a single Judge. It is not the judgment of the Supreme Court which has sanctioned, which has, as it were permitted, allowed or recognised, that crimes of violence may take place with impunity because of this article. I do not think that is the spirit or even tile letter of that judgment. It is, I venture to say, not the meaning of those remarks which the learned Judge on that particular occasion made. I, therefore, feel that merely because of a passing remark, a mere observation, somewhat exaggerating the possible circumstances, you should not formally restrain the freedom of speech and expression in the manner this amendment seeks to do.

In this connection may I bring out another feature of this amending Bill, which seems to me to hold the scales most unevenly as between the vested interests and the, non-vested interests? I refer to the amendment made in the Bill, which would go to reserve any legislation passed by any state Legislature affecting the vested interests of zamindari lands, for the consideration of the President, and tor his assent. On the other hand, any legislation that may affect the fundamental Rights of the people in regard to freedom of speech or expression receives no such safeguard. I ask you, Sir, is this even justice? The Fundamental Rights of the people are far more important, I venture to submit, than the rights of the zamindars, whose rights have not been acquired always in the most approved manner. How many of them have acquired them by honest means is a matter into which I do not think I will go now, though a French economist has said "all property is theft" — and zamindari is a property. Though it may be a child of robbery; violence or cheating, it is one that receives so much protection from this Bill, that any legislation affecting the abolition of these vested

interests will have to be specifically reserved for consideration by, and for assent of, the President.

Babu Ramnarayan Singh (Bihar): What about high salaries?

Prof. K. T. Shah: That is different. High salaries, after all, are some remuneration for the work you do, however disproportionate it may be. There may be people who receive salaries without doing work - I am not concerned with that. But in this particular case, if you do not insist on the law of limitation and go into the background and history of zamindari rights, I do not know how much of these zamindari properties will survive a searching examination on moral or social grounds considered as satisfactory.

My point just now is not about the origin of landlordism or land ownership. My point is only about the unevenness of justice as between the landed interests, and the rest of the freedoms which are guaranteed to us in the Constitution. I trust. Therefore, that here is a point in which the House and the Prime Minister will, I hope, agree with me, that in the mere interests of even-handed justice, in the mere interests of equality of all citizens, this right of freedom of speech should be regarded as sacred as the right of the zamindars. It is a matter of general importance which I have—referred to incidentally, but it is nonetheless a matter. In my opinion going to the root of the matter, under which this amendment has been prompted and brought about.

Yet another matter with regard to the question of the abolition of zamindari. I am sure the Prime Minister recognises it that, by the mere removal of large-scale zamindars we are neither solving the food problem, nor the land problem, nor any problem of national economy. I am no advocate, no champion of the large zamindars. But I must point out this that the larger zamindars being necessarily limited in number, would be much more easier to liquidate than a proportionately very much larger number of peasant proprietors would be. They are apparently sought to be created through some of the legislation that is now being brought forward for validation. Or which has been questioned. The larger zamindar is more advanced, in the sense that he is able to see his own advantage of better technique in cultivation, better methods of farming and working the land, better means to provide all these. The smaller proprietor, even if he was able to realise the need for such improvements.

would not have the means, would not have the knowledge, would not have the opportunity, to do it, and unless the State comes to his rescue by collectivisation, that is to say, unless the State goes to the rescue of the entire landed interest in this country by completely re-conditioning the cultivation of land, the holding of land and the working of land, I am afraid we are not going to solve the agrarian problem.

That does not mean that I stand by or would like the zamindars or the talukdars to continue for a day longer than is absolutely unavoidable under this legislation. But I do wish that the point should not be lost sight of that these pests or parasites of society, being removed, will perhaps leave their roots still farther, and perhaps make worse the situation by other, still smaller, narrower, more jealous, more restricted, substitutes for them. And they might vitiate the economy of this country. I have, therefore, suggested that while you take power by this amendment to facilitate, to expedite the abolition of land-ownership in this country, care should be taken at the same time to see that new evils are not brought into being or perpetuated. After all, if you really believe in the "dynamic urge" which has necessitated this 'amendment, if you really believe that the entire social system requires to be changed on the basis of equality, then I think it is far more necessary to see that a complete reorganisation of the agrarian economy of this country takes place. At the same time laws should be framed in the States with a view to see that these changes are properly given effect to. Do not give rise to new vested interests of smaller men or numerous men who perhaps would stand much more in the path of agrarian revolution than the limited few zamindars can ever be. That is why I suggest that the present opportunity should be seized whereby the fundamental changes I am suggesting should be made.

Let me also mention at the same time another thing. This amendment confines itself mainly to landed estates and the taking over of the landed property. Why should not the spirit and the letter of it be extended to personal property?

Pandit Thakur Das Bhargava (Punjab): May I know whether the hon. Member wants the elimination of peasant proprietors?

Prof. K. T. Shah: My proposition is contained in my amendment I have tabled; and I will deal with it when I come to it. But I may say, for the satisfaction of my hon. friend, that what I am suggesting is a universal system of cooperative farming on a large

scale. That is not necessarily abolition of private proprietors in land as such. It is securing of all the necessary economies and the efficiency, which the small zamindar is not willing to do, and which the small peasant proprietor left to himself will not be able to secure.

I was saying that you are confining this amendment only to the landed estates. Why should you not extend it to personal property as well. An article of the Constitution does permit you to take over any enterprise, any business, any undertaking, whether it is joint stock company, or individually managed, with such compensation as the Constitution may allow. I suggest that the same principle should apply in the treatment of personal property as in regard to landed property. You have already taken over such properties in driblets. If you should decide to take over any business undertaking any industry, any mill, or factory, or workshop, you should be in a position. to say that the same principle, the same logic shall apply in the case of personal property, or movable property, as in the case of immovable property.

In this connection there is another point which I must bring to the notice of this House. It seems to me to be some inequality of treatment in regard to that particular sphere or sector of the national. Economy, where side by side, you want to continue both private and public economy. That is to say in one and the same field, you keep up both a socialised enterprise and also in the same industry or in the same business private proprietary enterprise. I do not agree with the principle that the two should go together. I do not like what is called 'mixed economy'. I know you have accepted it. But, respecting your assumption in that regard, and taking it as the law of the land. or as the established system that there will be for some time mixed economy—that in one and the same industry there may be a public sector, a socialised sector, and a private or individual sector. I suggest that, in sheer fairness, the dice should not be loaded only in favour of the State, however Just the measure may be. If you want to get private property out do it only and directly but do not use indirect methods, oblique methods. I say straightway go and say: "We shall from such and such a date take over the entire cotton textile industry of this country, or the entire jute industry, or iron and steel industry of this country". But do not say that we shall allow an enterprise to continue in the same field which we shall partly socialise. If you do so,

then keep the balance even as between the two sectors; do not impose restrictions on the private portion of the enterprise that the State does not share. That I wish should be made clear and there is an amendment of mine to that effect also.

I now pass on from this larger, to somewhat minor propositions, which, however, in my opinion, are no less important. There are amendments to articles 85, 87, 175 and 177 which make a change from the Houses of Parliament being summoned, to the power being vested in the President, or the Governor, or the Rajpramukh, as the case may be, to summon the Legislature. I think that this again is a large change, for which no justification has been given. No experience has revealed its necessity. Nothing has been shown to us to warrant the change. If you say that your original provision was defective, I am afraid that would be no reason why you should change it, because light has now dawned upon you.

The existing provision in the Constitution on that point says that the houses of Parliament "shall be summoned". This is a perfectly workable proposition in my opinion. Either the date for summoning the next session may be appointed by the Speaker or the presiding authority at the time of prorogation or even dissolution, or arrangements may be made by which, at the time of the dissolution, the date may be fixed by the common concept of the new House meeting for the first time in the new sessions. The upper House, so far as I can see—the Council of States—is by its constitution not ever to be dissolved. It is to be in permanent session, technically speaking. Naturally, then, its adjournment or prorogation should be only from time to time, and ordered by its own motion. Its membership is renewed proportionately every two or three years as the case may be. The House of the People will certainly be dissolved at the end of five years, if not, earlier. Now the amendment wants to put this power in the hands of the President. "The President shall summon" it says. But if he refuses to summon—what will happen? Here is, in my opinion a great danger far paving the way to dictatorship. The President may not summon. There is no power on earth to compel him to do so. Under this provision, as you are changing it now, the President shall summon each House of Parliament to meet at a fixed place and time and so on; and that, more than six months shall not elapse between the last day of the previous sitting of that House "and the date appointed" for the first sitting in the next

sessions. I am not a legal expert. But as a simple man in the street, as a student of this subject, as one who is aware of history elsewhere, I cannot conceal from the House my fear and serious apprehension that this change is not desirable nor necessitated by anything that has happened so far. After all we have, had no experience, of the Parliament being dissolved and summoned. But in the new wording as it is there is an implicit, fear in not vesting it in Parliament, but vesting it in the executive authority to summon either House of Parliament. In America this power is vested in the Legislature. I do not see any reason why we should not have the same provision. Even if the presiding authority of a Chamber refuses to summon, a certain number of Members may requisition that the House be summoned on a given day, at a given place, at a given time, for the business stated in the requisition. There are plenty of ways of avoiding the interposition of the agency of the President for convening Parliament. Personally, I regard it as most dangerous, to arm the President with power such as is mentioned in this amendment. I feel therefore that this amendment, if there were nothing else, at least justifies the remark that the Bill as such is somewhat hastily conceived; that there is no immediate necessity Or justification for several of its provisions; and that, in the sweeping manner in which the changes are proposed, care is not taken, thought is not given to very likely possibilities. Again I beg you not merely to ridicule those who think of long-range possibilities. Do not laugh at those who are afraid of history repeating itself even in our country. Do, please realise that amendments of this character are considered, scrutinised, examined from every point of view, and are made, if you so insist, only with the greatest safeguards.

There is only one more point which I like to add in regard to these remarks that I have been making; and that is with reference to the Schedule attached. A Schedule of Acts attached in this manner to a solemn document like the Constitution and its amendment is not in the best taste, not in the fitness of place. For consider this. Not all of these laws which, are listed in the Schedule have been pronounced upon by the Supreme Court, by that body which we have solemnly invested and charged with the function of interpreting our Constitution. True, we are told that every one of these laws, or almost every one of them has been carefully considered by the President and scrutinised by him. But the President does not act on his own. The President does not

act as the Supreme Court, impartially and independently of the executive. After all, the President is advised by his Ministers; and his Ministers are parties to such legislation, or have party sympathies with such legislation. If you want to uphold the sanctity of the Supreme Court, if you want also to maintain the permanence of laws, if you do not wish it to be a good precedent for your successors to play with the Constitution, as it were, and change it when the slightest difficulty occurs, do not set this precedent. Even if you must validate these laws, do so after they have been considered, on a reference by the President, by the Supreme Court, and pronounced upon by that body. The President has power under the Constitution to make such a reference. Let him make such a reference. A reference has recently been made with regard to the propriety of delegated authority, or the power of delegation. Let a similar reference be made to the Supreme Court. Let the Supreme Court give you its considered judgment whether these laws, or any of them, are inconsistent or incompatible with any of provisions of the Constitution or the rights conferred by it. Where they take away, diminish, abridge the liberties or the rights given there, and if you make this amendment, then by all means validate them. But if they do not, if they are otherwise acceptable, if, as has happened, I believe, in the case of Nagpur and Allahabad High Courts where the laws have been actually upheld, why do you disfigure—I apologize for the word if you feel that the word is too strong— why do you add to this Constitution Schedule, an ad hoc Schedule of eleven laws to say that they shall all be summarily validated, because you say so, though no one has pronounced upon it except the President. Who, after all is advised by you, and who does not function in-dependently or impartially.

That applies to all existing laws, and these have been, particularly mentioned in the Schedule. All other existing laws 'which come in the way of the proposed amendments are sought to be similarly validated in this manner. I suggest that is also detracting from the sanctity, from the stability of the legal system, or rather of the particular law, which should not be undertaken lightly.

I suggest, therefore, that you should accept an amendment, or propose your own amendment, by which some guarantees would be given that the acceptance or validation of these laws shall not be taken ipso facto by the passage of this

amendment; but it should be assured and proved necessary by reference to the Supreme Court, which is our sole judicial authority for this purpose; and only on a decision being given by that body, pronouncing some of this legislation to have actually gone counter to the spirit of the Constitution, or to have taken away from any rights given under the Constitution, and so come up against this amendment, only in that case, if you think it necessary as a matter of policy, should you validate them. Validate them by a special amendment, if you like. Take power in this Act which would permit, on such judgment being given by the Supreme Court, validation of these laws automatically. I have no objection to that; or I would be reconciled to that. But I am afraid that adding a Schedule containing a number of laws being validated without consideration by this House or by the judicial body, is stretching the need and the justification for this amendment much too far in my opinion.

I am not a lawyer myself in the sense of being a practising advocate. I do not know, and I have not considered, the actual technical merits or demerits of the laws hereby intended to be validated. But I do feel, as a general apprehension, that the summary procedure of validating laws, or making laws which are inconvenient in one respect validated by a stroke of the pen, as it were, is not proper.

I, therefore, think that this Constitution (First Amendment) Bill, undertaking, as it does, radical changes in the Constitution. and making also sweeping amendments in existing legislation and validating some laws already passed which might Prove to be inconsistent with the Constitution, without any justification having actually been given, and above all the interference' that it makes with the rights of personal freedom of speech and expression, is objectionable, as a whole, and the several parts that I have mentioned, which I trust, when the time comes will be suitably amended

Shri Naziruddin Ahmad: Sir, I am grateful to you and to the House that I have at last been given an opportunity of raising certain fundamental questions relating to some of the provisions of this Bill. Without going into details I should submit with regard to the amendment of article 15 that though on principle it is very good and an attractive looking thing, yet I believe there is considerable amount of Madras politics behind it. It is an open secret.....

Dr. Deshmukh: It is an all-India problem, my dear friend.

Shri Naziruddin Ahmad: Quite so, but it arose from Madras politics. It is an open secret that there is a good deal of discussion and also passion I attached to this. Though the article as it now stands is not open to much theoretical objection I think the House should express its desire that it should be properly and fairly worked. The objections were so insistent that even the Select Committee has added a note of warning providing some consolation to those who might be affected by it. Things are not what they really seem.

Then I come to article 19. There are one or two important matters in this connection. The first is that Government and particularly my hon. friend. Dr. Ambedkar built up a case for amendment largely on the basis that the Constitution had been misinterpreted by the Courts and the hon. the Prime Minister also gave expression to a similar feeling. I believe the points which I am going to suggest would help them to reconsider their decision in many respects. One difficulty which was felt by Dr. Ambedkar was that sedition under section 124A Indian Penal Code and preaching of class hatred under section 153A Indian Penal Code have been declared ultra vires by the Punjab High Court and the hon. Law Minister confessed that he did not know what to do. He was faced with two alternatives, namely either to scrap sections 124A and 153A and leave a void or to under-take what he considered to be a very laborious and almost super-human task of amending these sections to bring them into conformity with clause (2) of article 19 as it now stands. The other alternative he said the Constitution. Here they found themselves in a dilemma. I should think that there is no such dilemma at all. In fact the results should not have been unexpected. The result brought about by the decision of the Punjab High Court. Namely that the laws relating to sedition and preaching class hatred are ultra vires was a thing really intended by the Members of the Drafting Committee in the Constituent Assembly as also by the Members of that Assembly; they clearly wanted to kill the law of sedition as it then stood, but then no consequential action was taken. Now they are amazed at the result which was arrived at by their own act. They actually wanted to kill and to revive it. (An Hon. Member: How do you prove it?) I will show you. I am grateful for the interruption. It shows that some Members are sceptic about what I am saying but I am armed with original authorities, to prove it. 'Sedition' was explained in the celebrated

Tilak's case. There 'absence of affection' was considered to be 'disaffection'. That was the extreme limit to which Sir John Strachey went in dealing with Tilak's case because Tilak was considered to be a very undesirable person, And so the law was stretched to the uttermost limit to convict him. The matter again came up before the Federal Court, that is before Sir Maurice Gwyer, the Chief Justice of the Federal Court. It was in Niharendu Datta Mazumdar's case. (An Hon. Member. He is now a Minister in West Bengal.) Mr. Datta Majumdar would never have been a Minister if his conviction had been upheld. He was convicted in Calcutta of sedition. He spoke rather too freely, a thing which should now be tolerated by all freedom-loving people, but he was convicted wider the old standards laid down in Tilak's case and the conviction was upheld by the Calcutta High Court. He came to the Federal Court presided over by an English Judge. He had a sense of independence. He explained: We are going to have independence. The old law of sedition in section 124A was in a different context when the British Government did not feel safe from criticism. It was held in that case that mere adverse criticism is not enough. Sedition, he said, is an offence only if the words lead or are likely to lead to breach of the peace or public disorder. He said it 'vas too late in the day to urge now that sedition existed today as it was understood in Tilak's case. So sedition law should have been adapted and it should be brought on a par with the British law, that is any statement should not only be defamatory of the Government but should cause or at least tend to cause grave disorder to the public. That is the law of sedition today. Sir Maurice Gwyer said that the law of sedition cannot be invoked to help the wounded vanity of high officials but there should really be some grave public menace. This case was again reconsidered by the Privy Council. In Sadashiv's case the Privy Council said that the English law was not applicable in India. They said that Tilak's case actually decided the law correctly. So according to this case absence of affection for the Government would, if preached, be punishable. I believe there are many Members in this House who have absence of affection for some members of the Government.

An Hon. Member: May I know if it is necessary to go into the history of all these matters?

Shri Naziruddin Abmad: If the hon. Member will have a little patience, he will find the immediate necessity. The Constituent Assembly of which my hon. friend was not a Member actually considered 'sedition'. They were in a dilemma as to whether they should go by the interpretation of the Privy Council or they should go by the more liberal rule adopted, more in conformity with the new setup laid down by Sir Maurice Gwyer and they deliberately and with the knowledge, adopted the law exactly as it stands in England. The House will be pleased to note that I am particularly grateful to my hon. friend who interrupted me for putting this question. It shows that there is considerable misunderstanding on the subject in the house. In the Draft Constitution, in article 13, which now 'corresponds to article 19, there was clause (2) similar to the one we have now and in that clause 'sedition' was one of the items. The Government would be able to make a law as to 'section' in order to curtail people's right of freedom to speak. That is to be found at page 17 of the Draft Constitution as it was prepared by the drafting Committee which was, again, in accordance with fundamental principles laid down by the Constituent Assembly itself.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

Then, for various reasons best known to the Drafting Committee, a very illustrious Member of the Drafting Committee, who is also a responsible Minister of the House, namely, Mr. K. M. Munshi, undertook the task of putting the law of sedition on a par with the English law, the most hated law and which was declared as the most obsolete law, by Sir Maurice Gwyer. In fact he moved an amendment on behalf of the Government and that is to be found in the proceedings dated the 1st of December 1948 on pages 730 and 731. Mr. Munshi moved an amendment and the effect of the amendment is sufficient for our present purposes. It is found on pages 730 and 731 of the proceedings dated 1st December 1948. He wanted the deletion of the word 'Sedition'. He left the House in no doubt as to his meaning. He spoke in very eloquent terms—I do not wish to read his speech that the law of sedition as explained in Tilak's case was obsolete, and that it is not proper or dignified for India in the present set-up. That argument is to be found on page 731. I do not wish to tire the House by reading the speech. I am absolutely clear and if there is any doubt in any hon. Member's mind, he can refer to it. I have the references with me.

Shri Kamath: Is it too long?

Shri Naziruddin Ahmad: Not very long. However, I do not think it necessary to read it and tire the House. Those hon. Members who were present at that time, could sense an atmosphere of independence and a sense of high aspirations as to our liberties. Many can well recollect that atmosphere. Mr. Munshi gave his arguments and delighted the House and the House cheered him almost madly, if I may respectfully use that word. He said that we do not want the law in Sadashiv's case in the Privy Council and that we want Sir Maurice Gwyer's law, that we want the humanised law of sedition that no one should be convicted of sedition unless he insults the Government and that insult is intended or is likely to cause grave menace to public peace. By Mr. Munshi's amendment the law of sedition under section 124A was rendered obsolete.

After this, I should have thought that Dr. Ambedkar or at least Officers of his Department who are highly paid should have taken up the matter. There is an article in the Constitution which enables or rather enjoins upon the Government the duty to adapt all the then existing laws in terms of the Constitution. There are a few laws which are affected by the Fundamental Rights. Section 124A was one of those which was specifically mentioned as requiring reconsideration. They have absolutely forgotten about it. As a Bengali proverb says, they began to sleep with mustard oil in their nostrils.

Hon Members: What is the Bengali saying?

Shri Naziruddin Ahmad: It is "Nake sorsher tel diye ghumuchhilo"

They were enjoying sleep with mustard oil in their nostrils.

Dr. Deshmukh: Snoring.

Shri Naziruddin Ahmad: Absolutely snoring, forgetful of their duties in this respect. And they are now surprised at what has happened. They themselves had forgotten their duty and they are surprised that the Punjab High Court has rejected sedition in its present form. Their judgment is "utterly unsatisfactory", to quote the words of the hon. Dr. Ambedkar. Not only the judgment of the Punjab high court, but the judgment of the Supreme Court is also "utterly unsatisfactory" according to him but, what have they done? They have only adopted the spirit and intention of the Constitution. The

Constitution was so amended and the house, at the instance of Mr. Munshi, adopted the more humane English Law than the old archaic section 124A. The Punjab high Court, when they gave their judgement, they discussed all these. This matter has been considered by the Supreme Court in two cases. I have the cases with me. The hon. Dr Ambedkar says that he had carefully react them I think the carefulness of a minister who is very hard pressed for time is not the same as the carefulness of a man like me, who has ample time and a desire to read. I submit that this question has been considered carefully those two cases. They have specifically referred to section 124A that the Draft constitution mentioned sedition as one of the subjects under which the Government could cripple the activities of the public, but that was removed and the words 'security of the State' were inserted in article 19(2) and it was held that sedition would be covered by the provision that Government can make laws for the security of the State' or when there is a great danger threatening to overthrow the State. This was the point.

Shri Kamath: What are those two cases?

Shri Naziruddin Ahmad: One is the Ramesh Thapar case. I shall give the other reference also. But, that is not very important.

The history which I have narrated before the House was the reason for the Punjab High Court and the Supreme Court to hold that the law of sedition is void. The hon. Minister the other day said: "What am I to do; are we to allow the law to lapse like this?" In reply, I say: "What is the House to do; what is the Government to do; are we to go back to the old barbaric days of British Imperialism, or are we to stick to the days of independence and the days of realisation of our dreams?" I think the answer is clear. The procedure to have been adopted is so absurdly simple that probably it never troubled bigger heads. The problem was to adapt section 124A and to bring it in conformity with clause (2) of article 19 as it now stands. There is no need for any amendment unless you want to make normal criticism of the Government an offence of sedition. Much of the criticisms in this House, unless protected by the Constitution, would be, offences under the law of sedition, want of affection', I submit that the law of sedition and' 'also, incidentally, section 153A which has also been mentioned in those judgments ought to have been adapted. Not that adaptation was not known to

them. Numerous adaptation orders are being passed. The Constitution gives the Government two years to adapt; by an amendment in this Bill, Government again wants to extend it to three years. What for? To sleep again with mustard oil in their nostrils for one more year. Dr. Ambedkar asked: "How can I undertake to adapt all the laws; is it humanly possible?" The answer is very simple: Sir, if you are asked to draft an adaptation order, you will do it in about half an hour. A lawyer should be careful in his drafting. It may take five minutes. I shall also be able to do it. Give it to any other lawyer Member; he will be able to do it. The question is, are we to adapt section 124A or feel compelled, bound hand and foot, to go back to the old days. The answer is quite clear. The question is how we are to do it. The answer is, go back to the Constitution, do not try to interfere with it. There is no need to interfere with it so far as the Constitution is concerned. In fact, I think it is not necessary to labour this point any further. It comes to this that sedition as an offence has got to be reoriented by adapting the Penal Code. This aspect of the question did not strike the Department and they did look into clause (2) and adapt the law accordingly. If they had done that that would have robbed section 12A and section 153A of all their obnoxious aspects. The Prime Minister asked if they are expected to know all the laws which are affected. He may not, and the Law Minister may not, but the Law Ministry and the Department under it surely know the laws as they are specialists and they are paid and they should look into all the laws affected. Even in the 1935 Act, there was an adaptation Order in 1937 and all the provincial and central laws were accordingly adapted. That order was so thorough that ever since there has not been the necessity for any more adaptations. They had taken a few experts from India to England to find out what were to be adapted and how.

Shri Chaliha (Assam): Do you advise us to send someone to London now?

Shri Naziruddin Ahmad: Yes, if they do not have capable heads here, however much regrettable that may be. But I do not think that is necessary, for you have ample men here, the only thing is to get the work done.

So far as these adaptation orders are concerned, we have been having them almost every day. Every time they are reminded of some lacuna or other, and they come out with an adaptation order.

There was the Press Enquiry Committee's Report, but it has been rendered obsolete by the judgment. Instead of grieving over it, the Government should have welcomed it, and adapted these laws accordingly. But they did nothing of the sort and the Supreme Court is alleged to have committed a grave mistake by doing the thing themselves. They have said: "You have enacted article 19(2) and these obsolete laws are no longer valid in the state that they exist today." They pointed out that the laws have not been properly adapted. I submit that these two sections of the Indian Penal Code and the Press laws should now be adapted.

The vague fear has been expressed that if you do not amend the Constitution, litigations will increase. But I say, litigation will certainly increase if you leave the bad laws in doubt. Of course, Dr. Ambedkar has indicated by his departure from the House that he is not very much interested in this matter. But the Press law.....

Mr. Chairman: The hon. Member may now proceed to some other point. He has sufficiently stressed the matter of adaptation.

Shri Naziruddin Ahmad: Then there is the question of restricting rights of speech and expression in the interest of friendly relations with foreign States etc. The hon. Law Minister made it clear that it is not intended to enlarge the scope of the article, and wanted to penalise defamation of foreign States and foreign officials. I ventured to suggest at the time—though I was summarily hooted out—that the law of defamation amply protected Indians as well as outsiders. The law of defamation is to be found defined in section 499 of the Indian Penal Code, that is, that whoever harms the reputation of another, that another man may be an Indian or outsider—the courts of India have jurisdiction to deal it as defamation and punish the defamer. Therefore, so far as friendly relations with foreign States are concerned, I have a fundamental objection to treating it on such a gigantic basis. I think relations between two States should not be affected by what subjects may say individually. In England there are no restrictions on the Press, and the English Press were criticising the Indian Government. It is well known that the Government of India approached the British Government to do something about the matter and we complained that the English Press was defaming us and that would lead to breach of friendship between India and the U.K.; and the reply of the Prime Minister of England was very characteristic. He

said: "The' Press and the people of England are free and if they do anything wrong, or say anything derogatory to India, it is had taste but we cannot help it." I think apart from defamation, there is no danger of friendly relations between two States being at all affected by private opinion on either side. Why should friendship with a foreign State be affected by the utterances of any individual? Supposing there is friendship between a man and a woman and somebody says something which may endanger their friendship, will that be a good cause of action? Similarly, if there are two States who are friendly and if anyone criticises one of them, is there any danger of the friendship between the two States being at all affected? The question is whether the Government is responsible for any undesirable criticism I think there is no danger of breach of friendship between two independent States by mere criticism by any individual citizen of a country.

On the point of contempt of court the English courts have taken a liberal view. They felt that you must allow people to criticise the court. Their criticisms may be unfair, rude or in bad taste but, provided they are respectful to the court, the court should not be too sensitive. One court in a colony had felt itself aggrieved by a remark which amounted to outspoken criticism. Lord Atkin in the Privy Council said that courts of law should be less sensitive and should rather maintain a dignified aloofness to mere criticism, however bad it may be. There is great value in criticism. It may be that criticism sometimes is offensive. But, if we suppress criticism the result will be that free expression of opinion upon which democracy rests would be jeopardised and injured.

Mr. Chairman: Is the hon. Member averse to the words "contempt of court" being included in the article?

Shi Naziruddin Ahmad: No.

Mr. Chairman: Then he may proceed to the next point. He has already taken so much of the time and there are other hon. Members desiring to speak.

Shri Naziruddin Ahmad: It is relevant to our attitude towards friendly relations with foreign States. The foreign States should not be very sensitive should rather tolerate criticism.

Defamation also applies to foreign States. Suppose I abuse or defame a foreign official, foreign Government or the head of a State, say the Prime Minister of England. Then I shall be open to the charge of defamation. When Dr. Ambedkar was discussing this I pointed out at the time that the law of defamation applies to foreigners. He said: No. He said that the Foreign Relations Act of 1932 applies only to Indian States and neighbouring States but does not apply to all foreign States. My suggestion is that you can extend it. What is the Foreign Relations Act after all? Now look at defamation under the Indian Penal Code. The complainant must come to the court and file his complaint. At that time we were considering the Indian princes and the neighbouring States, It would have been very difficult for them to go to court and thus comply with the Criminal Procedure Code that a complainant must come to the court with a complaint. The Foreign Relations Act enabled an official of the Government of India to complain on behalf of any Indian State Prince or any neighbouring State and that shows that the law of defamation applies also to foreigners. They did get away with the formality of the State before the court to complain. I suggest that this law has not been explored: it has not been properly utilised. We can now extend its scope that if there is defamation of any foreign State or an official of a foreign State, the result would be that the Government of India may authorise an official to make a complaint and then all the difficulty will be got over. The law of defamation will apply in full force. It is said that the phrase "friendly relations with foreign States" has been introduced for some ulterior purpose; but if it is true that is merely to protect foreign States and high officials from defamation, then this provision is not needed. The result of this amendment would be that on the slightest pretext any Government official may prevent any 'one from making a speech and prosecute him if he makes a speech which he considers likely to endanger friendship with a foreign State. The law of defamation has not been affected by clause (2), rather it has been protected. I submit that foreign relations, in so far as they are affected by defamation of foreign States, are amply protected and there is no need for this provision. The danger is that in the hands of some officials this extended law might be utilised to issue an Ordinance or a law or an order penalising people for criticising may be they are honest people said that all black-marketers should be

hanged. Nobody would take it as an incitement to commit a crime of murder, but even though it may have been a casual, rhetorical statement, under the law which you are going to enact it may be construed as an offence. This is the danger which we are committing. Therefore, I submit the people should be trusted. They should be given independence. In our time children were caned to make them conform to rules of discipline. We have been caned but we are not caning our children. The times have changed. It is believed that instead of using the rod you better give them free scope. It may be that they may go wrong in certain cases, but they will have a sense of independence and a sense of propriety and will learn what is good and what is bad, without the use of the rod. Let the people of India be taken just like children; do not use the rod. Though the hon. Prime Minister recognises the futility of using force, I think we are coming to use force even though its futility is quite evident. I submit if people were to be given freedom of speech; the people themselves will set up a high standard, for fear of getting punished if they abuse it. The danger of repressing talks is immense. I, therefore, submit that the best way is to leave the law as it is and not to bother ourselves with them.

Then with regard to public order, through this amendment would the approach, should be not to authorise the government to make any law it likes. Neither the Government nor the legislature should be allowed the power of making even ordinance acts as crimes. I submit that it is possible, especially in our country where there is only one party, so to speak, where the opposition means some stray individuals shouting here or there, that there is a tendency for the House to pass any measure brought before it. I do not wish to cast any reflection on the House. The House is dutiful and faithful to the Government and no body need blame them for passing any law which the Government wants. The other day Dr. Ambedkar described Members as "chorus girls". I think these chorus girls will not make it difficult for Government to pass any law. Therefore, it should not be left to the spur or impulse of the moment, particularly because there is no revising chamber in the shape of an Upper House. Particularly because the election is near, it is desirable to wait. Let an opposition come when there will be real discussion and arguments. Then there will be

ample time to make the law. I do not think therefore, that any law in this direction is needed.

I find from certain proceedings of the Security Council at Lake Success that there was actually a proposal, to include 'friendly relations with foreign States and public order' as legitimate subjects for curtailing the right of free speech. This was opposed by England, America and others. They said if you want to curtail the right of speech so as to maintain friendly relations then democracy will not function. It is by these laws that some of the countries had been converted into dictatorships. They began with repressive laws. First of all they took good care to suppress expression of opinion. This, I believe, is the first step—although I believe and I hope that this is not intended—but this is the first step in that direction. What will happen in the next election? I believe the Congress will come in a large' majority. But yet there will be a minority. Then 'the Congress Government will be faced by an opposition. I do not think the Utopia which many voters would think and expect would be attained.

Shri Kamath: What is that Utopia?

Shri Naziruddin Ahmad: The Utopia that we will get food, clothing ample everything. These nobody can give in the present state of things. The whole machinery of the Government has got to be changed before they can do so. So the new Government would not be in a position to do much, and there will be opposition, and there will be reaction. I believe then the reactionary elements will come in at the subsequent election. In trying to arm yourself with reactionary powers, you are really providing a machinery and hand it to the reactionary forces, when, they come, to use it to their heart's content against you and me. They will make no discrimination. I think that at the impulse of the moment a weak democracy must not try to strengthen itself by any representative laws. The effect of it would be just the reverse. People will try to just the reverse. People will just try to disobey the law and the result will be overthrow of government. And the reactionary forces will put the clock back and take the country centuries behind.

The hon. Prime minister referred to the Weimar Constitution. That was a splendid constitution. And that has been absolutely scrapped but I think instead of the example strengthening the argument of government. It destroys it. How was the Weimer

Constitution destroyed? It was by the help of gradual encroachments on the right of free speech and free action. Freedom of speech is such a necessary thing for the successful working of democracy that the forces of reaction begin the moment that freedom is suppressed. Hitler came into power in a large majority. He was then a great patriot—he has ever been a patriot, but at that time he was a very good man. He was non-violent in outlook. But he took it into his head that a legislature was not at all necessary for the expression of public opinion. So he abolished the legislature and then took power to make laws. We are really going to do it. I say it is far better, instead of arming Parliament with the power, it is better that we scrap the Fundamental Rights. Say you do not want them. Let them be scrapped. You ask for powers to enable Parliament to take away liberties. But instead of allowing Parliament to do the thing for you, why not have the power yourself? Scrap the Fundamental Rights. If Fundamental Rights are to be disregarded with impunity, the result would be that there will be no Fundamental Rights, and this would be the first step towards an authoritarian State or a dictatorship. And I see signs of it already.

Government has no great patience with criticism. With more irritation the people would find greater pleasure in irritating them and the result of all this would be a threat to law and order and then the Government will arm itself with more and more powers and so on.

Mr. Chairman: May I interrupt the hon. Member? This morning the hon. Speaker read out the rules in respect of what could be argued at this stage. The hon. Member is making his speech as if he was speaking on the original motion, that is, reference to select Committee. I would therefore request him to be relevant and take only reasonable time to finish his speech.

Shri Naziruddin Ahmad: The point of view I was placing before the House was that, the Bill' was unnecessary. I have had no opportunity of placing my amendment, although I had one against reference to the Select Committee.

Mr. Chairman: It is unfortunate that the hon. Member did not get any time then. That does not entitle him to behave as if the rules were changed. They are the same for everybody. I would therefore request him to finish his speech within a reasonable time. Otherwise in this way the speech could be prolonged for days.

Shri Naziruddin Ahmad: The relevancy is that I have two amendments to refer the matter to the same Select Committee and one for circulation.

Mr. Chairman: I am very sorry that the hon. Member has not advanced any argument at all so far as those two amendments are concerned. He is really concentrating on the merits of this matter and therefore, I think that he will find himself unable to advance any arguments in support of those two amendments. Those amendments really go to the root of the matter. He wants that the Bill may not be considered and that, it may be circulated. He has all along been arguing that the Bill is bad on merits and thus considering the Bill.

Shri Naziruddin Ahmad: That is why I say that the Bill has not received proper consideration and the aspects of the argument of the Government have not been made apparent. I have no doubt whatsoever that if proper time is given the hon. Prime Minister himself would change his opinion as he had already changed his opinion in respect of the "reasonable restriction" clause. It was only the work of time. I suggest that these arguments which go to the root of the matter should be pondered over by Government. I should suggest that the only clause which we should pass is the Zamindari abolition clause. The others are not urgent. There is no hurry for others. As regards the Zamindari clause the Government is committed and it is a very urgent matter. Let it be passed and let article 15 be amended. My point is that beyond these the Constitution requires no amendment or at least the amendments ought to be carefully considered.

The points which I am urging have not received sufficient and proper consideration. It may have received an ex parte or one sided consideration. Intelligent and educated people like Dr. Jayakar and others have universally condemned this Bill as well as the newspapers who are presumed to reflect public opinion. My point is that though the Bill has many defects and the ordinary law of the country is sufficient, we are going to arm the government with unnecessary powers and in some cases it would lead to mischief. It is a case for reference to the Select Committee or to public opinion. It is one of the matters where public opinion should assert itself on the minds of the

Government and on the Legislature. We cannot pass constitutional amendments of this great magnitude in a hurry and without proper consideration. An hon. Member has suggested that the Prime Minister does not honestly believe in his contentions, but I have no doubt about his sincerity. There is no difficulty about that in my mind. If he gets sufficient time, if he discusses the matters with people thoroughly and not with some of his advisers, he will be unwilling to take such drastic powers. I think he is a thorough democrat. That is the reason why I have been pressing this point. These are the matters which should be considered. We should go to the people, address meetings, write articles and ask people's opinion. After all we are a democratic nation.....

Shri R. K. Chaudhuri (Assam): On a point of order, may I suggest that we adjourn at this stage? The heat has become very oppressive and there is my hon. friend's speech at the back'.

Mr. Chairman: The hon. Member can go on but if he has finished his speech, he may resume his seat.

Shri Naziruddin Ahmad: I have made all these arguments for the purpose of a reference to the public opinion. On constitutional questions, the wishes of the country should be taken into account. I took courage in supporting the hon. Home Minister in his Preventive Detention Bill.

Those provisions, - powers, were necessary. But, I am averse to changing the Constitution. The powers that we have are enough. It is only a weak Government that will devise to arm itself with unnecessary and repressive powers. Repressive powers never succeed. They have an effect opposite to what is intended. I therefore submit that in my amendment requiring a reference to the Select Committee, I only want time. It is not in a light-hearted spirit or in a mood of mere obstructionism that I have tabled the amendments. These are fundamental matters. We may pass those amendments which are not objected to and which are really acceptable and leave the rest for further consideration. There will be no harm if we adapt the laws and see how things shape themselves under our present laws and then ask the opinion of the people and then change the Constitution. After all a democratic Government acts on behalf of the people and on the authority of the people. The elections are coming. There is

nothing urgent in regard to these Fundamental Rights. Therefore, we should wait. The hon. Prime Minister says that the Constitution must grow. Everybody will agree with the fundamental truth of this remark that the Constitution must grow. But, to grow in what direction? In the way of enlarging Fundamental Rights or curtailing them? Is it growth or is it stunting growth? I, therefore, submit that all these arguments have this relevancy. This House has gone too far to the other side and many speeches here are only fulsome adulation of the Ministers. A matter like this should not be discussed, and voted upon on a party basis. No less than 77 Members of the House were of the opinion that they should be given freedom to vote.

An Hon. Member: None now

Shri Naziruddin Ahmad: That is another matter. At that time there were 77 Members.....

Mr. Chairman: Let the hon. Member concentrate his attention on the two amendments. He is digressing.

Shri Naziruddin Ahmad: Same arguments are being repeated. I will therefore request the hon. Member to bring his remarks to a close. The hon. Member has dealt with this point fully and I do not think he need dwell on it any more.

Shri Naziruddin Ahmad: But consider the reluctance of the. House to listen to arguments; the length of the speeches should also be graduated accordingly.

Mr. Chairman: The House should not be treated in this light manner. There is little time left and the time of the House is precious. There are other hon. Members anxious to offer their remarks and so I -would request the hon. Member to bring his remarks to a close.

Shri Naziruddin Ahmad: Therefore, I say that there is a case for reference to the people and.....

Mr. Chairman: The hon. Member has already reiterated this point, and also the cast-iron theory.

Shri Naziruddin Ahmad: The House seems to be in a light-hearted mood. I am not in a light-hearted spirit.

Shri D. D. Pant (Uttar Pradesh): No, it has a heavy heart.

Shri Naziruddin Ahmad: Myself? No.

Now, as regards the decision of the Supreme Court and the.....

Mr. Chairman: I am sorry to interrupt the hon. Member. But he has already referred to the judgment of the Supreme Court and the remarks of the hon. Law Minister at great length. I do not think he need refer to them again.

Shri Naziruddin Ahmad: No, Sir. I am dealing with an entirely different matter. The Hon. Law minister said that the courts were wrong and for a different reason altogether they had.....

Shri Bharati (Madras): No. he did not say wrong, but that it was unsatisfactory.

Shri Naziruddin Ahmad: Yes, he said that....

Mr. Chairman: As I pointed out this matter has already been dealt with by the hon. Member. I do not know why he is so desirous of repeating himself. I have to request him to bring his remarks to a close.

Shri Naziruddin Ahmad: I am not repeating, Sir. The hon. Minister said that Government has certain police powers, which probably mean powers which cannot be expressed in the statute. And he said that there is the American way of interpreting the Constitution.

Mr. Chairman: What has that, to do with his amendment for circulation, of the Bill?

Shri Naziruddin Ahmad: The relevancy is here, Sir. The entire basis of the Government's case is this. They ask: "What are we to do with the Fundamental Rights? We cannot sit idle. We must do something." I feel that the interpretation of the courts was right. There was in the Drafting Committee some discussion and the words "due process of law" were introduced and Dr. Ambedkar in his.....

Shri Bharati: How is that relevant to his amendment?

Shri Naziruddin Ahmad: It is relevant in this way. The due process of law.....

Mr. Chairman: This point of "due process of law" has already been commented upon and it is not necessary for the hon. Member advance the same arguments.

Shri Naziruddin Ahmad: I am giving a different argument, though I refer to the same case, I am arguing in compartments. In article 22, dealing with the Fundamental Rights article, the Drafting Committee introduced the words "due process of law". That expression, due process of law, appears in the American Constitution and it was

held by the Supreme Court of U. S. A. that Government had police powers. But this argument was rejected by our own Attorney General as we had no "due process of law" in our Constitution. Again at the consideration stage of our Draft Constitution in the Constituent Assembly the "due process of law" clause was deliberately rejected by us and the English phrase "procedure established by law" was introduced.

Mr. Chairman: We are now considering article 19 and not 22 where due process of law comes in.

Shri Naziruddin Ahmad: It was in connection with article 22 that the question arose. In fact that arose in Gopalan's case, not in Chiranjit Lal's case as Dr. Ambedkar said and the point arose like this. The accused wanted the Court to assume powers outside the Constitution. Our Attorney General refuted. This argument and said that the American formula was not used. The English formula of "procedure established by law" was introduced and that was fatal to Dr. Ambedkar's contention. The construction of the Constitution by the Supreme Court was after full consideration by each of the Judges—five of them were unanimous.....

Shri B. K. P. Sinha (Bihar): May I point out that my hon. friend is distorting the arguments of the Law Minister. The point at issue is not construction of the article by the Supreme Court whether it was right or wrong. The Law Minister's contention was that in view of those decisions we are faced with a particular situation. How to meet that situation?

Shri Naziruddin Ahmad: My hon. friend is arguing. I do not agree.

Mr. Chairman: The argument of the hon. Member who has intervened is correct. So far as the question of Gopalan's case is concerned, it dealt with a different set of circumstances. Here we are dealing with the Select Committee Report and we are to confine our remarks to what happened in the Select Committee. I would therefore request the hon. Member to be quite relevant. He is traversing a ground which could only have been reversed before reference to the Select Committee.

Shri Hussain Imam (Bihar): On a Point of order. The book that has been circulated refers to Gopalan's case, Article 19 also.

Mr. Chairman: This is not a point of order at all. What has that to do with the present discussion?

The Minister of Home Affairs (Shri Rajagopalachari): In view of the fact that the hon. Member is likely to conclude at one o'clock, we might let him go on.

Shri Naziruddin Ahmad: This is the spirit which runs behind the Bill. Should there be any gagging of Members on a Bill of this magnitude? I ask the hon. Home Minister who is a liberal politician, an able lawyer and an elderly statesman; should he not tolerate a little argument which may be unpleasant?

Shri. Rajagopalachari: Take my tip now. The conduct of the hon. Home Minister is likely to incline Members to curtail freedom of speech.

Mr. Chairman: It is nearly one o'clock. May I enquire from, the hon. Member whether he is proposing to conclude his speech?

Hon. Members: Must conclude.

Shri Naziruddin Ahmad: I would require about half-an-hour more.

Mr. Chairman: I would like to take the sense of the House. Does the House propose to sit for half-an-hour?

Hon. Members: No, Sir.

Mr. Chairman: I hope the hon. Member will conclude his speech in a shorter time—say within ten or five minutes.

Shri Naziruddin Ahmad: I cannot finish in five minutes.

Mr. Chairman: Let him finish in ten minutes.

Shri Naziruddin Ahmad: I know the House has repeated Dr. Ambedkar's dictum. I have a duty to argue this matter fully. I cannot be treated as a chorus girl.

Shri T. N. Singh (Uttar Pradesh): Sir, the hon. Member has made a remark which is very derogatory. He has stated that, this House consists of chorus girls. (*interruptions*).

Shri Naziruddin Ahmad: I utterly repudiate the suggestion. It is not my expression. The protest should be addressed to different quarters and not to me. I have been only a mouthpiece of Dr. Ambedkar. I protest against myself being treated as a chorus girl. I cannot sing the praise of the Government. I have supported the Government on unpopular causes but this is an occasion when I cannot support the Government. I do not like to be gagged in my speech. Because of repeated interruptions I have to pick up my thoughts and Place them for permanent record.....

Mr. Chairman: I gave ten minutes to the hon. Member to conclude his speech. If he is not ready to continue his speech it is a different matter but it is a bad precedent to allow him, as he wants, time to pick up his thoughts and resume his speech again tomorrow. I would request him to finish his speech in ten minutes.

Shri Naziruddin Ahmad: The point is that I do not wish to cover the ground -already covered. I have to pick up some of the points, because my thoughts have been diverted by incessant interruptions. After all I am a small humble individual, a poor lawyer earning his bread and it is only out of accident that I have come here. I am not a professional politician at all. I submit that all these interruptions have to a certain extent disturbed my thoughts. If I am forced to go on today there will be repetition but tomorrow if I am given some time.....

Mr. Chairman: Order, order. I asked the hon. Member to finish his speech in ten minutes. He is unable to do so, as his thoughts are not collected and he is using the time to pass remarks against other people. Under the circumstances I see no alternative but to treat the speech of the hon. Member as closed.

The House will now stand adjourned till 8-30 A.M. tomorrow.

The House then adjourned till Half Past Eight of the Clock on Wednesday, the 30th May, 1951.

THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

PARLIAMENT OF INDIA

Wednesday, 30th May, 1951

The House met at Half Past Eight of the Clock.

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

9-30 A.M.

PAPERS LAID ON THE TABLE

**STATEMENT SHOWING ACTION TAKEN BY GOVERNMENT ON
VARIOUS ASSURANCES ETC. GIVEN DURING THE THIRD SESSION
(Nov.-DEC.), 1950.**

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha): I beg to lay on the Table a statement showing the action taken by Government on

various assurances, promises and undertakings given during the Third Session (November-December) of Parliament 1950. [See Appendix XXVII.]

INDO-PAKISTAN CONFERENCE ON FINANCIAL ISSUES

The Minister of Finance (Shri C. D. Deshmukh): Sir, with your permission I propose to make a brief statement for the information of the House on the discussions which I have been having during the last four days with the Finance Minister of Pakistan on the outstanding financial issues between the two countries

The objective of this conference in which we had the assistance of the Governors of the Central Banks of the two countries, was to attempt a comprehensive settlement of the outstanding financial issues between the two Governments and also to assist in the finalisation of the partition settlement between the two Punjabs and the two Bengals and the clearance of third party claims in these areas.

The various items included in the agenda of the conference—a copy of which has already been laid by me on the table of the House—cover a wide field. The points of view of the two Governments on the various matters were discussed in an atmosphere of the utmost cordiality, and considerable progress was made in the clarification of the issues in the major items. But the discussions revealed that there were some matters on which one side or the other desired further factual information to determine more precisely the dimensions of the outstanding claims. There was also difference of opinion regarding the interpretation of some of the existing agreements. It was not therefore possible to reach an over-all agreement. For this reason it was agreed that the discussions should be adjourned so as to allow time for further examination of some of the more important items which involve questions both of fact and of interpretation. It has also been agreed that instructions should be given by each Government to its officers to begin or continue the detailed examination of the issues in consultation with nominated officers of the other Government and report the result by the end of July or the first week of August. It is hoped to resume the conference between the Ministers at Karachi towards the end of August or the beginning of September next.

The House will appreciate that it is not desirable at this stage to go into the details of the claims on either side or their merits. As I mentioned earlier, we have set before ourselves the task of reaching a broad overall settlement which, when concluded, would leave behind a genuine feeling in both countries that the problems have been dealt with in the best interests of both the countries and in a manner equitable to both. This broad approach to the problems is in my view a valuable outcome of this conference, and when it resumes again in three month's time, having before it the results of the detailed examination which it is proposed to conduct between now and then, the reconciliation of the outstanding differences should prove less difficult. I am sure it will be the feeling of everyone that an equitable solution of these very intricate and important matters is likely to make a major contribution towards better understanding between the two countries, and thus help in the economic advancement of both.

Mr. Speaker: The House will now proceed with the further consideration of the motion moved yesterday by the hon. Leader of the House that the Bill to amend the Constitution of India, as reported by the Select Committee, be taken into consideration. To that the hon. Member Mr. Naziruddin Ahmed has moved his amendments. They are also to be taken into consideration.

Now, before the House begins further consideration of this motion, I would again like to invite the attention of Members to the fact that, at the present stage, it is no use again covering the whole ground which has already been covered at the first stage. Such a procedure will only lead to repetition and unjustifiable waste of time of the House. I am expressing myself a little more strongly today, because I find that in spite of the suggestions which I made, it is sad to note that only two Members occupied the whole time of the House yesterday. That is a very unfair distribution of time to the majority and to all the parties in the House. I had suggested yesterday that the better course would be to discuss the various clauses when the clause by clause stage comes. The principal points of differences and agreement are now practically crystalized. There was enough consideration by the Select Committee, and there was a discussion in this House and if we go on at the rate at which it appears some Members desire to go on from the fact that only two Members occupied the whole time of the House, it

appears we shall have to sit for a number of days beyond the 7th June only for this Bill. It will be agreed to, I believe, by the House that this is not a proper procedure. I shall therefore urge again to-day that Members will keep this in mind that they will only take a short time on the principal points of difference or agreement and not again try to cover the whole question from A to Z as it appears to have been the case yesterday, and I want to leave more time for the clause to clause discussion and therefore I would suggest that we bring this discussion to an end to-day. That means by one o'clock, of course, subject to what Government have to say or what the House has to say. I feel constrained to make these remarks As I felt—maybe my feeling may be Wrong—but I feel that I must try to be just to all sections of the House.

Hon. Members: Yes

Mr. Speaker: The Government, the Opposition, though not very much organised, and numbers of silent Members have to sit here from day to day in view of the peculiar provision or procedure in regard to this Bill. The hon. Members will see that under article 368, a particular procedure, has to be followed and that means Members wishing to oppose or wishing to support 'the Bill have to be careful to be present in or about the Parliament Chamber all the time so that none of the contesting parties may have a snap division. So that also may be kindly taken into consideration and the remarks may be short.

I do not want to place any restrictions, looking to the importance of the Bill; but I think I shall be failing in my duty if I do not again and again urge upon hon. Members the particular points to which I have invited their attention.

Pandit Kunzru (Uttar Pradesh): Sir, I venture to think that, there should be a general debate on the Report of the Select Committee. I think it is possible for hon. Members, notwithstanding the discussion that took place at an earlier stage, to examine the various provisions of the Bill as it has emerged from the Select Committee without repeating what was said before. The amendments will no doubt be moved and will cover all the objections that we have to the Bill as reported by the Select Committee. Nevertheless, in view of the speech made by the Prime Minister yesterday and the observations made earlier by Dr. Ambedkar, I think a general discussion is needed in

order that those who do not agree with the Government's point of view may be able to state briefly what they think of the Bill as a whole.

There remains the question of dealing with the amendments. I understand that your appeal to us not to prolong the debate unnecessarily is certainly worthy of the consideration of the House. But if we have a general discussion till tomorrow and devote two more days to the amendments, I think that the purpose you have in view will be gained. I hope, therefore, that my suggestion will commend itself both to you, Sir, and the Government.

Several Hon. Members rose-----

Mr. Speaker: Let us not take any more time of the House but devote it to the discussion proper.

Personally, it was my intention to allow five days for the discussion of this Bill and I believe the Government were also agreeable to that. Now the only question is as to how we should devote the five days. I was suggesting to hon. Members that instead of having a desultory general discussion for three days, it would be better to have a general discussion on all aspects for two days and on the subsequent three days concentrate upon the various clauses of the Bill. But if it is the desire of hon. Members that they should finish the entire Bill in five days and devote only two days for the consideration of the amendments, I should have no serious objection to it, provided of course the Government are agreeable. But it must be distinctly understood that at one o'clock on Saturday, we put all the remaining clauses to the vote of the House. (An Hon. Member: Could we not have two 'sittings on Saturday?') I have already expressed myself on that. Hon. Members should have some pity, if not on themselves, at least on those who have to work under severe stress. Hon. Member: What about the strain on the Members? They can go out even during the discussions and enjoy themselves: not so with the reporting staff and the other staff of the Parliament Secretariat, who have to be in attendance all the 24 hours practically. Only the other day, when it was decided to have a second sitting in the afternoon and I requested the Deputy Speaker, he tasked to be relieved and some other Chairman put in. He said that he was thoroughly exhausted. That is the position. There is no charm in merely repeating the arguments and having a desultory discussion. That is my point of view, whether hon.

Members agree or not. So, as I have said, if that is the understanding I should have no objection and I leave it entirely to the hon. Members of the House. Does the House agree that it should finish the Bill on Saturday at one o'clock?

Shri Naziruddin Ahmad (West Bengal): It is easy for the members of the Government party to say that they agree but the difficulty is that there are viewpoints of the Opposition and that is more important.

Mr. Speaker: Order order. The difficulty in this House is that the Opposition is not at all organised, with the result that every Member, who differs even by a little, thinks that he must be given a chance to speak. If that is to be accepted, logically it means that there will be an unbalanced distribution of the time. Hon. Members will agree that if they get one hour the other side must at least get one hour, if not more. They can have time only in proportion to their numbers. The convention has been.....

Pandit Thakur Das Bhargava (Punjab): Those who say that they are in Opposition get an undue proportion of time.

Mr. Speaker: I might invite the attention of hon. Members to a convention which we used to follow previously. I quite agree that all viewpoints must be represented but what time should be allowed to them out of the total time for the discussion? Shall there be no proportion at all? If half a dozen Members are opposing a measure, does it mean therefore that they must have a monopoly of the time of the House? That would be unfair to the large majority who belong to another party. In older days we used to ration time according to the strength of the party by agreement, so that no particular Member of any party could claim a weightage for himself. If he did, the time he took was debited to his party's account and the other parties in the House were not affected adversely. What has happened yesterday was that two hours and ten minutes were taken by two Members of this House and if I were to satisfy the desire of every Member to represent his viewpoint, I cannot visualise the near end of the session. In view of the fact that the Bill has been debated on all points for days....

Shri Sidhva (Madhya Pradesh): Yesterday Mr. Naziruddin Ahmad said that he wanted to collect his thoughts and make a further speech.

Mr. Speaker: So there will have to be some balance somewhere. It is not that everyone can be satisfied in respect of his desire to speak. Therefore, if it is agreed

that we finish on Saturday, it is only a question of small adjustment as to whether the House should debate the amendments for two days and carry on the general debate for three days. But there too, I shall leave the matter entirely to the wishes of the House. Which means the substantial wish of the majority.

Shri Shiv Charan Lal (Uttar Pradesh): Today there may be an afternoon session.

Mr Speaker: Order, order. I have now come to believe that it was a mistake to have agreed to any afternoon session at all. Every time when an exception is asked to be made it is urged that it is for that day only. We are now getting into that habit. The real point is that we must try to cultivate the habit of putting forth the real relevant points. If a point has already been covered, Members must restrain their desire to repeat it. The House will now proceed with the general discussion. How do we adjust the business?

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): I am entirely in your hands, Sir, and of the House in regard to this matter. I take it that on your suggestion the House is agreeable to finishing the Bill in five days, that is on Saturday. So far as Government are concerned, anxious as we are to finish the work of this session as early as possible to meet the convenience of Members, we do not wish to cut short the discussion at all, specially in regard to important measures. But you were pleased to remark that the House should see that, may I say, a little justice is done to large numbers of people who never have a chance, because of certain marathon speeches that always take place in the House.

Shrimati Renuka Ray (West Bengal): Can we not fix a time-limit to speeches in the House?

Several Hon. Members: Yes, Sir.

Mr. Speaker: Whatever may be the reactions of the Chair to any suggestion, his best efforts should always be to take the House with him and the House will be with him only if he allows a little longer rope in some matters. I have no doubt that the length of speeches should be curtailed very much, because on that will depend the number of speeches. The point is, do we continue the general discussion tomorrow also? If that is so, we also agree to close the whole thing by one o'clock on Saturday. And by one o'clock tomorrow this motion would be put to vote. (Hon. Members: Yes).

(Interruption). I should be glad if it is curtailed now because so much has been said. Even the proposed amendments have been discussed piecemeal here in the general discussion.

So, then do hon. Members agree to this proposal?

Hon. Members: Yes.

Mr. Speaker: Has the Leader of the House to say anything on it?

Shri Jawaharlal Nehru: We entirely agree with whatever you may suggest.

Prof. S. L. Saksena (Uttar Pradesh): I personally feel, Sir, that to put a limit on speeches in order to finish consideration of this Bill is not proper. It is a very important Bill. We are all anxious to finish the session as early as possible; the season of the year and the length of the session contribute towards this anxiety. Therefore, I think you can take it from us that we shall do everything to proceed quickly. While on the one hand it would be desirable if Members made short speeches, on the other, I think, it is not proper to cut out discussion which is relevant. I therefore request you not to put a time-limit.

Mr. Speaker: Yes. Let there be no further discussion—we have taken so much time in discussion only. Well, I do accept, and I would like and love to accept the decision of Members to finish as early as they can, yet I do feel that the principle of the amendment of the Constitution must be applied here too, that freedom must be restrained just for the purpose of allowing all people freedom. So, from that point of view I am averse to putting any time-limit, but if necessity arises I will put a time-limit over the speeches. And I may say I shall accept closure. If the hon. Minister of State for Parliamentary Affairs moves it, and we shall proceed with the clause by clause consideration day after tomorrow and on Saturday.

Shri Sondhi (Punjab): Will it not be possible to do away with the Question Hour tomorrow morning?

Mr. Speaker: Yes, if the hon. Members are agreeable.

Several Hon. Members: No, no.

Rev. D'Souza (Madras): After this discussion and in view of the length of time to be given to the general discussion of this motion, I shall not unduly tire the patience of the House by a lengthy speech. I come to this task with a sense of the gravity and the

importance of the measure that is before us, and I should like to speak about it both in general and in regard to one or two specific points with all the restraint and the moderation, but at the same time with all the earnestness that I can command.

I have read very carefully the important statement with which the hon. Prime Minister opened the debate on this measure, the very eloquent intervention of my most respected friend, Dr. Syama Prasad Mookerjee, and the interventions of those that have opposed in no uncertain terms these amendments to the Constitution. May I be permitted to say that trying to judge this matter with some degree of detachment and without reference to party alignments and any other such a priori considerations, I feel bound to say that the very grave fears expressed from many quarters of this House regarding the purport, the content and the implications of these amendments do not seem to me to be justified to the extent that has been put forward. I believe that notwithstanding minor reservations, warnings and such other remarks and qualifications that may have to be made, Government have made in all substantial respects a case for these amendments, and that they are entitled from almost all sections of this House to support in passing these amendments.

There is one point on which I think except for some remarks of the hon. Prime Minister on the opening day no great reference has been made, and which I may now in general be permitted to indicate. One of the arguments against these amendments is that we are pressing with these at too early a stage, that too little time has elapsed between the passing of the Constitution and this first amending Bill. In itself, as the Prime Minister has pointed out, there is no great substance in this argument. If something is necessary, it has to be done as soon as possible, and if it is not necessary any lapse of time does not justify its being brought in. But here I should like to bring in another consideration. If an amendment is not, in the very strict sense of the term, a substantial modification or change in the primary document, in the primary Constitution, if we are sure that these so-called amendments are only a clearer and a more definite indication of what was in the minds of the Members of the Constituent Assembly when the Constitution was drawn up, if it is an attempt to enucleate and to amplify what was undoubtedly at the back of their minds when these clauses of the Fundamental Rights were discussed three, four or five years ago, then I would

respectfully say that the sooner this is done the better it is. . The Members who took part in those discussions, who knew the minds of the primary legislators, the first legislators, are still present here in large numbers, and the sooner their evidence, their testimony, their declaration of what was in their minds is brought and placed on record by the different sections of the House the better it is for all of us.

Taking two points—and let me say, speaking not as a politician but having heard them things as it were from the background—I have no doubt whatever in my mind that on two points the Constituent Assembly was absolutely decided and unanimous: In this country there should be a juster redistribution of land to be brought about by the abolition of zamindaries, and, secondly, that none of the egalitarianism or the equality before law which the Constitution promises us would stand in the way of maternal treatment by the National Government of this country of those backward elements who have not yet received social justice from our people. I have no doubt whatever on these two points that the mind of the Constituent Assembly was that no prescription or no expression in the clause on the Fundamental Rights should stand in the way of redistribution of land in the possession of zamindars with the payment, indeed, of equitable compensation. I remember the long and tortuous days of discussion which we had on this point and the agreement, practically unanimous agreement, in regard to compensation that we arrived at. When, therefore, we found later that certain High Courts did not find it easy to approve, in terms of other provisions in the Constitution, of the measures that had been introduced into State Legislatures for the suppression of zamindari, we were surprised and felt sure that matters had to be put right and that this great and outstanding reform which will be one of the elements for social peace in our country, which will be one of the means by which more dangerous revolutionary movements could be avoided in our country, should be carried out peacefully and legally. Therefore, I wish to welcome with all my heart this measure or agrarian reform and this step which has been taken here in order to make possible a juster and a more equitable distribution of land in our country.

Yesterday, I heard with great interest and great attention the remarkable speech of my respected friend, Prof. K. T. Shah. I must say that it struck me as being extraordinarily curious that he should have put forward opposition to this zamindari abolition not

because it was not just in itself out because we must not touch the Constitution now but must treat it as sacred in order that when we do touch it we may touch it completely and destroy it root and branch. I am afraid I am putting it a little too rigorously, but this is what I understood him to say: "You are now abolishing zamindari and distributing this land into the hands of a larger number of owners. But that is not what we want. What we want is a complete agrarian revolution. We do not want smaller vested interests", whereas the intention of those who have brought forward this amendment is that the broad outlines of the spirit of our Constitution should be maintained, that the principle in clause 19 Which guarantees the right to property should substantially remain, and that any amendment should not be brought in such a way as to cancel and nullify altogether the primary condition or the fundamental clause. I think that this is altogether within the spirit of the Constitution, altogether in the spirit of what I may call the distribution view of property which, the Father of the Nation always emphasised. Therefore I say that instead of waiting for that fundamental root and branch agrarian revolution which my hon. friend Prof. Shah postulates and for which he would willingly keep this House waiting, it is now and here that we must decide and remedy and come to that middle way for which India has made a name for herself, a middle way in all respects by which we have gained the respect and reputation of being wise and at the same time progressive.

10 A.M.

I should like to say as a matter of general importance that in regard to this distribution of property, I was struck by a remark which Dr. Ambedkar had made in his opening speech and that was that he or at any rate, as he thought, the makers of the Irish Constitution did not believe that the right to landed property was a Fundamental Right. I am not entering into a discussion about that. What I am clear about here is this. that this amendment, as well as the later amendments regarding the right of the State to nationalise industries which may be in the interests 'of the country, and to nationalise them in such a way as even to prevent competition by private enterprise in order that the beneficent experiment, if judged to be beneficent, may succeed, are consistent with the right to property guaranteed by article 19 as a whole.

But I should like here and now to answer a misgiving of another kind which has cropped up and which has been expressed to me not merely in this House by one or two, and to a considerable extent, outside this House, whether this right of acquiring estates, whether this right of acquiring industries, and the right of acquiring these industries, in such a way as to prevent or keep out altogether the competition of private individuals is not too revolutionary a thing and whether it did not commit our Government to a policy which would not be acceptable to a very large number. I do not really think so. If I thought that it was an expropriatory or a purely socialistic measure, in the sense in which it has been described to be, I must say in all conscience, speaking for myself, I could not conscientiously accept it. But I do not see it as such a measure. I see that the right to property is guaranteed; that compensation is given. It is only to do away with inequalities and the uneconomic way, from the point of view of national interest, in which certain properties are held and in which certain industries are carried on that this measure has been introduced and I see no reason why either from the left or from the right this enabling measure should be opposed, or should be considered to be unduly revolutionary.

While therefore, broadly approving of this principle, let me however, recall here that Government have not always succeeded very happily in their nationalising experiments. And in a new country that is being sent to the school and discipline of democracy the encouragement of individual initiative, and private enterprise, is a necessary part of political and economic education and that we should not launch on those enterprises either partially or in the sense of a monopoly to a degree that would deprive individuals of the opportunities for the development of their own business, for the use of their own talents and, above all, to the securing in a wider and wider measure of that larger or smaller competence—I do not say a large fortune. I will not say a millionaire fortune—but those middle fortunes which are a true protection of individual liberty. Because we support the principle of private property and do not do so in the interest of any selfishness or any sense of rebellion, against the authority of Government, but precisely because a man who depends entirely for the maintenance of body and soul upon some other agency, which has full control of his means of living, is not truly independent: because liberty in a democratic Constitution

receives its guarantee, and confirmation, its basis and its certainties—its insurance if I may say so—by a certain degree of property. But this is only in passing. I am happy that this principle is not violated here and is kept, as it were, implied, throughout, both in the main clauses as well as in the amendments which have been introduced.

I now come to a point of very great importance to those of us who know conditions in the Madras province--I refer to the amendments to article 15 making provision for a certain degree of assistance to backward groups, or as they are called, classes or communities. I have again absolutely no doubt that when the Constitution was framed and discussed and passed, it was the intention of all without' any exception that some provision should be made for the uplifting of backward classes so that they might come to a degree of contentment and live in happy cooperation with those whom they consider to be the more fortunate citizens of this country.

[Mr. DEPUTY-SPEAKER in the Chair]

There was no doubt whatever about what was to be done for what are called scheduled castes and scheduled tribes. Having been in touch with this question—to put it very plainly with the well-known frequently referred to Government Order of the Madras Government—and having had considerable experience of admission in colleges during the last eighteen or twenty years, I was aware of the gravity of that problem and the difficulty of solving it by a very simple formula. Sympathising as I do profoundly with those who maintain that talent should not be penalised that the best brains in the province and in the country should be made available. for professional, for technical or for Government service, nevertheless, I realise that owing to a play of historic circumstances, to the evolution of social history of our country, there were groups, there were classes, there were, maybe, individuals—in whatever manner you may describe them —you may describe them as communities or as castes without bringing in the notion of religion, but only of race —who could not get the chance which they deserved and who in the long run might be deprived of all social and economic equality without which legal equality would be useless.

I realised the difficulty of this and in practice even when the Government Order did not rigidly apply to private institutions, such as those with which .I was associated, we tried to enforce the spirit of it, meeting nevertheless the legitimate demands of the

other school of opinion also. I believe from the example of private institutions a workable solution and a formula could be arrived at in which the difficulties would be overcome and the unacceptable features of the earlier order might be modified.

Therefore, when this discussion took place, some of my Madras friends asked me: "Do you think that this article 29(2) is going to prevent us from applying that Government Order?" My impression was as I told them, that I did not believe that was possible, because the spirit of the Constitution, taken as a whole, whatever may be the wording of this clause, the implication of the Constitution, the general bearing of it, the Directive Principles as well as the specific provisions made for the scheduled castes' and the scheduled tribes, included in its scope the spirit of the Madras Government Order also as it had come to be accepted in its broad outline. I knew there was some difference of opinion in my province in regard to the application of it in this or that particular aspect in which really deserving people were not helped and perhaps less deserving people by a mere mechanical enumeration got the help which was intended to be given to really deserving people. These things can be adjusted. But I believe this amendment which has been introduced does give the hope of what I may call an agreed solution by which the converted portion of the earlier order which were not acceptable to a very large section in the province might be modified, and the just desires and claims, and the need for their satisfaction which the backward elements really do deserve, might be recognised. Before we harden and crystallize and fossilise into a legalistic interpretation of the Constitution, the larger objective of a more homogeneous political community based on social and economic equality, must be achieved. That I understand is the purpose of this amendment and therefore I think that we should subscribe to it, vote for it with full conviction, as I shall certainly do.

One point more I may be permitted to bring out on this important occasion, when by a happy chance I have the good fortune of presenting to a fuller House than I ever remember to have secured on any earlier occasions. Some objection seems to have been raised to the wording of this clause, objection has been made to the wording of this because the word 'communities' comes back. I understand the difficulty. The word 'communities' implies something communal, and in our country the word 'communal' has meant religious differences and animosities. It has been the source of great

suffering and tragedy in the country, and is likely to be a possible source of future tragedies. Therefore it is perfectly right that those who wanted to introduce the amendment should take away all notions of religious differences from it and confine it to the economically backward groups and families. I understand this. I would therefore make an appeal to the House to consider this, although you may use the word 'caste' or 'community' for practical purposes, do not, I pray, use it as implying religious belief? On this subject, I have received repeated representations and I have had the honour and privilege of transmitting these representations to the hon. the Prime Minister and to the President. And we have received the assurance that even among the scheduled castes the mere fact of religion, which does not make any difference in their social and economic condition, should not stand in the way of their receiving the ameliorations which have been promised by the Constitution. And I was proud and happy that the spirit of the Constitution should have been so interpreted by our most honoured leader and by our President. I appeal to this House to see to it that the spirit of those declarations may be applied integrally and sincerely by the Provinces so that this great step forward in the political homogeneity of 'our country may be carried out, that if there are backward classes or minorities, they may be recognised on a linguistic or racial or cultural basis. It is impossible to overlook the fact of "backwardness", it will persist for a long time. But in this matter religious differences and cleavages must be ignored; race or culture may certainly be recognised to determine the groups which need assistance but no distinction should be made in regard to religious conviction which is a matter of personal conscience. I therefore request my respected friends, the representatives of the scheduled castes who are present here not to oppose these concessions and help being given to their kinsmen who till yesterday were with them and who today share the same conditions in regard to social and personal relationships, the same economic and educational conditions as they themselves, not to refuse these concessions and help to those who, by a personal decision have chosen Christianity for their faith. Christianity is one of the religions of our land. It has flourished here for two thousand years, from the very dawn of its history; it has contributed its own share to the culture of our land, an element genuinely Indian and destined to be part of Indian culture till the end of time.

I have said these things with a certain amount of feeling. I wished to have an opportunity of expressing this, and at the same time of expressing my deep satisfaction that it is along the spirit that I have indicated that these amendments have also been framed; and it is my earnest hope that along these same lines this amendment will be interpreted and applied more and more widely as days go on.

Sir, before I conclude, I request you to give me a minute or two to make a few remarks on a third point, namely the question of restriction of liberty of speech. I am not enamoured of any increasing restriction on this liberty of speech. I do not believe that Government themselves are very happy that it has been found necessary to bring in this restriction in the manner that is now contemplated. But, again, as the hon. the Prime Minister himself and other Members and speakers on behalf of Government have pointed out, all Governments impose some measures of restriction on freedom of speech.

And this measure of restriction of speech increases and becomes more stringent in times of emergency. Just as there are limits to other rights, especially political rights, so there must be limits to the right of freedom of speech. I may say that in regard to Fundamental Rights which pertain to the individual conscience, that they are supreme and I cannot imagine a State weakening itself by challenging the rights of individual conscience. It was on the rights of individual conscience that Mahatma Gandhi set up the standard of revolt in this country and won the independence of the country. I cannot think that a time will come when it may be found necessary for the State to control or repress that which, by its very nature, is irrepressible, namely freedom of mind and freedom of conscience. Those rights are indeed inalienable. But as the Prime Minister has pointed out, in times of emergency there is no political right or economic right of a relative importance, though it may be embodied in the Chapter on Fundamental Rights, which may not have to be curbed and controlled in the interests of general order and the security of nation. Discipline requires it.

What are the conditions which should make this larger degree of restriction necessary here and is something new that has cropped up? Members of the House know that it is not something essentially new. It is in a way the enforcement of measures that were already, on the statute book and the enforcement of which was

considered necessary by all Provincial Governments and by public opinion in general. It is the fact that those measures come into clash with the wording of the Constitution that has necessitated the introduction of this amendment in order to validate those measures. It is not as it were, a new emergency that has suddenly an-Pen today. It is rather the continuation of an emergency which was recognised to have been in existence for the last two or three years.

There is however another element in this matter and in his opening speech the Prime Minister made a reference to it. Again and again I have heard in this House references to the manner in which complete liberty is given to the Press in England and that we who have based our Constitution and our traditions upon English political ideas and history should follow the same way and give as complete a liberty as possible to the Press. I was amused to hear this, for this reason if we must follow the English political precedent here, permit me to say and 'do not get angry when I say it, that we must not also forget the phlegmatic English character which is not easily ruffled and does not respond to incitement. I have seen in Hyde Park Red revolutionaries inciting people and I have seen the stolid population smiling and ignoring the incitement. We are here dealing with a young democracy. We see expressions of contempt for high personalities of government, going beyond the limits of democratic criticism, sometimes ridiculing the very nature of governmental authority itself. It is because we have failed to impose some degree of restraint on ourselves that it has become necessary for Government to impose it. One solution is that we could have waited and allowed it to be corrected by legal judgments and by slow process of time. That is one solution. It may have been desirable to seek this solution. But the fact remains that in order to get the complex tasks of democratic Government understood by the people, in view of the need for the spirit of give and take, the need for making a distinction between individuals and the Government which they represent, the need for maintaining in the minds of our vast uneducated masses a sense of confidence in authority without which the Government's food policy, its foreign policy and its internal policy will not succeed—in view of all these, undoubtedly it is necessary that organs of public opinion should be restrained in their criticism. I am not speaking of the great organs of public opinion such as are represented by hon. and respected

Members of this House, but I am speaking of those sheets and pamphlets that are multiplied here, there and everywhere and which have made it a rule to blacken, to pass unfair judgments and interpret unfairly, the motives of high and low alike. Hence some degree of control is necessary. It might not have been necessary if conditions in the international sphere and the internal state of our country were perfectly normal. I say that there is a certain emergency, as the Prime Minister pointed out. We are living in difficult and dangerous times. There is inflammable material in the national as well as in the international sphere and at this time, I sincerely believe that a certain degree of restraint for the sake of discipline is necessary so that the democratic Constitution of this country may be saved by these emergency measures. We hope a time may come when we shall not need any one of these emergency measures. This is only a means by which a really liberal democratic Government can sit firmly in the saddle while passing through a difficult period. The nature of the difficulty of the times is known to us. We have our difficulties in regard to foreign relations, in our relations with our near neighbours: difficulties arising out of the Kashmir situation, the difficulties of the Communist riots in Telengana and elsewhere. We have to deal with all the inflammatory material involved in our communal strife which filled this country with rivers of blood yesterday. Are not these difficult times and times of emergency? I therefore plead with this House that there may be patience with Government in this matter in spite of their deficiencies in so many ways. I believe that the spirit in which these amendments have been brought in, is not intended to break in or cancel the general outline or framework of liberty which is ensured to us by our Constitution. Rather let us look upon them as rigorous, may be painful measures, intended to confirm that liberty, so that after passing through these times with greater discipline, we may walk into the uplands of peace and liberty, when no emergency law, no Press Act, no preventive detention Bills may become necessary in this land which has won its liberty, and which it must maintain at whatever cost now and in the future.

Dr. S. P. Mookerjee (West Bengal): During the, last few days, we have discussed the provisions of the Bill inside the House and outside, in the Select Committee and elsewhere with the greatest amount of frankness. I must say, when going into the

details, while we were working on the Select Committee, every Member got the amplest possible latitude in giving expression to his viewpoint. That is what may be expected in the consideration of a matter of such grave importance to the people of this country. We are in a minority in this House... (An Hon. Member: We means?) Those who are opposing the Bill and not the interrupter. Those who are opposing the Bill are in a minority in this House. Yet, we may not be in a minority so far as this matter is concerned in the country (Hear, hear) (An Hon. Member: Question). That question, of course, cannot be answered inside this House. We must wait for other opportunities.

In any case, what I would like to say with great emphasis is that on this matter we must recognize that there is room for difference of opinion. When the Prime Minister spoke yesterday day I could fully appreciate the depth of his feeling. So also I hope, he and others who are supporting him will also realize that those like us who are opposing the Bill not in its entirety—because we have given our support to some of the provisions—we also feel that, sufficient justification has not been made out for the inclusion of the major provisions, at any rate.

There is no difference of opinion on one point, that the Constitution framed by us two years ago is not the last word on the subject. The Prime Minister tried 'to develop this point as if somebody had suggested that under no circumstance the Constitution can or should be amended. As has been said by a great American leader "a Constitution worth its name is not written in ink but in letters of living light". It must respond to the spirit of the people. Otherwise that Constitution is rigid and is dead. Here is the question of amending a Constitution which we solemnly passed If you look at the preamble, you will see that it was not a particular political party that passed the Constitution. We took upon ourselves the enormous privilege of describing ourselves as the people of India who met, sat and discussed for months and years and then gave a Constitution to the country. That was just as it should have been. A Constitution which was passed with so much care, if it is proposed to be altered in vital respects, a proper case has to be made out to explain why such changes are really called for. The Prime Minister spoke yesterday of ghosts, of phantoms and of so many other things. If the ghosts worry him, the remedy is not to amend the Constitution. You cannot pass or

amend a Constitution for the purpose of fighting with ghosts. In fact, his words reminded us of the tragic role which was played by the Prince of Denmark but there must be other solutions for fighting with imaginary troubles. (An Hon. Member: It is an old story). Old story—yes, but history often repeats itself. We are dealing with the Constitution and you want to amend the Constitution and there, must be real problems which have to be tackled in dealing with such amendments. May I ask in all humility: "Why is it so many people are opposing this move in this country"? The Prime Minister brushed aside the Press of India with one expression, namely that it does not possess any balanced judgment. I know that he could not have meant to make such a sweeping remark against the entire Press of India. In any case, why is it that the vast section of the Press is opposing this Bill? Why is it that so many people who have nothing to do with politics are opposing this move? Is it a vested interest, or is it something more? If we go on throwing motives on each other, we can also say that the Bill has been introduced for the purpose of perpetuating the present Government. (Interruption) I have not necessarily suggested that. It is not desirable that we should throw base motives at each other. (*Interruption*). The stones came to me and I threw them hack at the interrupter. The point is: Has a case been made out for the change of the Constitution? It is on this that I am going to speak mainly today. To my mind there is some misunderstanding, some confusion with regard to one matter. I have talked to many Members in private and they have told me: Why are you opposing the move to give Parliament more powers? After all it is only an enabling power that you are handing over to your Parliament and why should there be any opposition to such a move? I recognize the sincerity of such a question but let me ask you in all seriousness: Have you not dealt with this question finally at least when you decided otherwise, when you framed your own written Constitution? The Prime Minister spoke yesterday of the greatness of the flexible Constitution of Great Britain. Undoubtedly Great Britain has no written Constitution but we deliberately decided that we will have a written Constitution. That was not forced upon us. It was your own decision, I would submit, wisely taken and rightly taken because in a country such as ours and especially in the formative period after the attainment of freedom we cannot possibly leave anything to doubt. We have to decide vital matters concerning the

rights and liberties of the people and embody them in a sacred Constitution. That is what we did. When we decided to have a written Constitution, we also decided to have a Chapter dealing with Fundamental Rights. Many Members will recall that at that time this question was discussed: Was it necessary to have a Chapter dealing with Fundamental Rights? You might not have got such a Chapter; but you decided to have that Chapter. As soon as you made that decision, along with it came the decision that you were deliberately curbing the powers of your Parliament. There is no escaping from this position. If you want to say today that a written Constitution is not good for India and that there should be no Chapter on Fundamental Rights, be logical and proceed accordingly. But, once you have a Chapter on Fundamental Rights, then, along with it proceed certain conclusions, namely, that you are deliberately curbing the powers of your Parliament.

Here, I shall read out only two quotations because I cannot speak in the same clear and precise language as Mr. William Taft observed in America while speaking on this very question:

"No honest, clear-headed man, however great a lover of popular Government, can deny that the unbridled expression of the majority of a community, converted into law Or action would sometimes make a Government tyrannical or cruel. Constitutions are checks upon the hasty action of the majority. They are the self-imposed restraints of a whole people upon a majority of them to secure sober action and a respect for the rights of the minority and others. In Order to maintain the rights of the minority and the individual, and to preserve our constitutional balance we must have Judges with courage to decide against the majority when justice and law require."

And this point was very clearly set out by another person, who was not a politician, but who was a Justice of the Supreme Court of America, in very telling words:

"The very purpose of a Bill of Rights (such as is embodied in the Fundamental Rights) was to withdraw certain subjects from the arena of political controversy, to place them beyond the reach of majorities and officials, to establish them as legal principles to be applied by the courts. One's right to life, liberty and property, to free

speech and a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

This point was again stressed very succinctly:

"There is a limit to your power.

Thus far and no further.

And here shall thy proud waves be stayed."

These observations, I do not wish to multiply them, were made by persons who were also responsible for the administration of their country.

Dr. Deshmukh (Madhya Pradesh): America and not India.

Dr. S. P. Mookerjee: They were not persons who were just political demagogues. They were not persons who just wanted to play with emotions. We also have made a similar decision. Our complaint is that having provided for Fundamental Rights. Yourselves, you are changing them today in an arbitrary and highhanded fashion.

I come now to the next point: Are these really changes or -mere amplifications and explanations? That was the Prime Minister's point, that he was not making any substantial change, that he was just amplifying certain things which were in our minds and which perhaps were not clearly put in the Constitution as we had drafted. Here, I would join issue with him. This is a question of fact: the changes that you are making, are they really amplifications or do they make substantial changes and curb the freedom which you have deliberately given when the Constitution was framed? It is a matter which can be decided and judged in a very cool atmosphere. There need be no hot expressions; there need be no animated scenes. If we go into the details of the changes proposed, it does appear in respect of some of them, especially in article 19(2), that it is a deliberate curtailment of the freedom which was given to the people of this country under the Constitution that we had ourselves passed. (Some Hon. Members: No, no.) Why are these changes necessary? In the Statement of Objects and Reasons, signed by the Prime Minister, he said that difficulties have arisen because of certain judicial decisions. I was one of those persons who wanted to have from Government a list of such difficulties. We wanted to have a statement showing the laws or clauses of laws which according to the Govern-merit had become void and according to the judicial decisions had created difficulties for the Government. One or

two clauses we know and for that we need not ask for information. But, we could not be supplied with such information. The Prime Minister tried yesterday to give an explanation as to why such information could not be supplied. To say the least, the explanation was unsatisfactory.

Now, let me come to the question of judicial decisions. The other day, Dr. Ambedkar made out two points. He said that the High Courts or the Supreme Court in India did not invoke the police power. Then Prime Minister also said that in his reply last week. Now, what is the position? In America, the First Amendment which was made about two years after the Constitution was passed gave unrestricted and absolute freedom to the people of the country. There was no restriction whatsoever on the freedom of expression, freedom of speech and freedom of the Press and so on. Now, when the Congress started passing laws, restricting the freedom in some respect or other necessitated by circumstances, the question arose whether such a curtailment could be lawfully made and the matter came before the Supreme Court. The Supreme Court had before it on the one hand the absolute freedom granted to the people of America under the Constitution and on the other the laws passed by the Congress, which were considered by those who were responsible for the Country's administration as essential for the welfare of the country. In fact, as was said in one of the celebrated speeches they, were necessary for the sake of keeping intact the very freedom which had been provided for under the Constitution. What was the Supreme Court to do? There, the Supreme Court invoked the doctrine of police power: that every State has this police, power, and that the Congress also reflecting such inherent authority, could draw from that police power when necessary. Dr. Ambedkar in his speech the other day, said that he was amazed, surprised, that such police powers were not invoked by our Supreme Court. Here, the best course that I can adopt is to give a reply to Dr. Ambedkar's point in Dr. Ambedkar's own language. The same Dr. Ambedkar who was responsible for placing the Draft Constitution before the Constituent Assembly deals with this very important point. He said:

"In America, the Fundamental Rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these Fundamental Rights by limitations. When the question arose as to the

constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute Fundamental Rights by the argument that every State has inherent in it police power which is not required to be conferred on it expressly by the Constitution.

What the Draft Constitution has done is that instead of formulating Fundamental Rights in absolute terms and depending upon our Supreme Court—(mark these words—and depending upon our Supreme Court)—to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the Fundamental Rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the Fundamental Rights are not absolute."

It was really amazing that the Law Minister, the same Dr. Ambedkar while justifying a different pattern in relation to our Constitution, could have forgotten the things so quietly and conveniently and blamed the Supreme Court for not having invoked the police powers and thereby creating difficulties for the Government and necessitating the amendments to the Constitution.

This really brings me back to the argument with which I started. You deliberately laid down restrictions to the Fundamental Rights in your Constitution. There is no question of invoking any police power at all.

Next I come to the point dealing with the Directive Principles. Now there the Prime Minister pointed out that we have embodied a Chapter on Directive Policy and we want to give effect to it—is the Constitution going to stand in the way? What exactly is the force of these Directive Principles? Now, there also Dr. Ambedkar the other day said that he wanted that the court should invoke its implied powers and support legislation undertaken by Parliament or by State Legislatures which intend to give effect to the Directive Principles embodied in the Constitution. That point also he dealt with very clarity and succinctly in his own speech while moving the adoption of the Constitution. These are his words:

"If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law."

In fact the point which he developed was that the Directive Principles will become like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government. But so far as its legal force is concerned, he admitted that there could be no question of clothing Parliament with authority to give effect to such Directive Principles inconsistent with the provisions of the Constitution. I am not suggesting for a moment that the Directive Principles are not desirable. They are desirable and they are extremely desirable, and it should be the endeavour of any Government to try to give effect to them obviously, if it is to be done by legislation, the legislation must fall within the four Corners of the Constitution. If in any respect it is thought that the Constitution stands in the way of Government giving effect to certain Directive Principles which are vital in character, then on those matters I am quite prepared to concede the case for changing the Constitution also may come. But to suggest that the courts do not draw upon their implied powers and make certain laws which are otherwise ultra vires, good laws, is an amazing statement. In fact Dr. Ambedkar has written a very, able foreword to a commentary on the Constitution of India by a certain lawyer. I do not want to mention his name and give it advertisement. But here this commentator somehow, argued in the same way in which Dr. Ambedkar argued, that if any law is passed by a legislature which is in conformity with the Directive Principles then that law should be good. Dr. Ambedkar commends this book to the public and says it is one of the best commentaries that he has seen, except on one point. He says, "Mr. Basu..." Fortunately there are many Basus in India and perhaps this Basu will not be identified. He says that "If any Bill is passed by the Legislature which is in direct contravention of any of the Directives, the President or the Governor may refuse to give his assent." This is what the commentator says and Dr. Ambedkar comments:

"Many like me will be alarmed by this view." as we were alarmed by Dr. Ambedkar's interpretation here—"It is a dangerous doctrine and I am sure our Constitution does not warrant it. I hope that this is the only doctrine which can be so described and that the rest of his views are safe and sound."

And this preface was signed by Dr. Ambedkar on October, 23, 1950—not an ancient document. I do not wish to develop this point. What I have said has made it sufficiently clear that whatever, we wish to do, we can—not blame the court for having respected the provisions of the Constitution.

On this question of Fundamental Rights, I came across a very interesting quotation from the proceedings of the Joint Select Committee in Parliament when the Government of India Bill of 1935 was under consideration. One mistake which we have done is this. My friend Rev. D'Souza spoke just now and he tried to justify the laws which restrict freedom on the ground that they are nothing new, that they have been in existence in this country for such a long time and all that the Government is doing is to continue such laws. It is nothing new—apart from any emergency consideration, for which specific provisions exist in the Constitution. Our foreign rulers had put on the statute book a number of repressive laws. I do not want to deal with the point as to why such Laws were necessary. Obviously they were necessary to stifle Indian freedom. But the laws were there. They were on the statute book. We have not disturbed them. We have not modified them. We have not amended them. But over and above them we have super-imposed the fundamental Rights. And then, when the matter comes before a court has a law, what is the court going to do? On the one hand the court has the Chapter on Fundamental Rights. On the other there are these repressive or rigorous laws which were put on the statute book by the foreign rulers who were then in charge. Naturally the court says that some of the provisions of these laws are inconsistent with our Constitution which enshrines freedom in its pages and therefore, they are void. What we are doing to-day is this. There is no attempt to modify those laws. The laws are there. But we are restricting freedom. We are giving more powers to Parliament to enact more laws restricting freedom, and thereby trying to cover as much of these nauseating laws as possible. I submit that this is a completely wrong approach to the problem. I was glad the Prime Minister said

yesterday as he did also at the Select Committee that it was his intention to have a review of all these repressive laws, and perhaps it may be possible to bring back only such laws as are really consistent with the needs of the country. I hope that will be done. But in any case the power which you are now taking is not power which is necessary for any emergency that has arisen in the country, but for perpetuating certain lawless laws which our British masters had forged for the purpose of curbing freedom in India. That is what we are doing. This point was really dealt with by Sir Samuel Hoare at the Joint Select Committee in London. There some Indian representatives pressed that there should be a Chapter dealing with Fundamental Rights, in connection with the Government of India Act of 1935, and Sir Samuel Hoare expressing both the views of his Government and that embodied in the Simon Commission's Report said.....

An Hon. Member: That is all old history.

Dr. S. P. Mookerjee: Yes, but sometimes old history has to be repeated because you are perpetuating old lawless laws.

Well, this is what he said:

"Indian delegates were anxious to have some declaration on Fundamental Rights. We are aware that such provisions have been inserted in many Constitutions. Experience, however, has not shown them to be of any great practical value. Abstract declarations are useless unless there exists a will and the means to make them effective". (Hear, hear).

A will to recognise India's birth right which the British rulers did not have: I hope the hon. Member will repeat "hear hear."

"But there are also strong practical arguments against the proposal which will be put in the form of a dilemma; for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind or its legal effect will be to impose restrictions on the powers of the legislatures to create a grave risk that a large number of Indian laws may be declared invalid by the courts because of being inconsistent with one or the other of rights so declared."

The hesitation of Sir Samuel Hoare to give Fundamental Rights to the people of India was thus due to the fact that. He feared that such Fundamental Rights would render

impossible the continuance of these lawless laws under the authority of the Court. He also referred to another point:

"An examination of the lists to which we have referred shows very clearly indeed that this risk would be far from negligible. There is the further objection that Indian States have made it abundantly clear, that no declaration of Fundamental Rights is to apply in State territories".

Of course the last point is eliminated so far as our Constitution is concerned.

These are the reasons which I am advancing in order to appeal to Government that they should examine this matter in a more realistic manner. If there is any real need for change, justify it—and I shall presently state where such changes may be necessary—but only to ask for absolute powers to legislate in any manner you like to restrict the liberty of the people will be something which will be completely arbitrary and reactionary.

I have been trying to follow the speeches of the Prime Minister, the documents which have been circulated to us and going through some of the judgments which our Courts have delivered and there are two points which come out very prominently. The one is that we are hastily proceeding with the task of amending the Constitution without waiting for the Supreme Court to give its verdict. Some High Court here or some High Court there has expressed some opinion and immediately you rush on and go to amend the Constitution. Here the obvious course for any prudent Government having any respect for the Constitution would have been to wait till a decision from the Supreme Court was obtained. If the decision of the Supreme Court went contrary to what were matters of grave public policy, matters on which Parliament alone will be the supreme judge, then Government could have come forward and after giving full facts and reasons proceeded to amend the Constitution. That has not been done. Secondly, even if we take the judgments which have been given, what is the main decision which has disturbed the Government or disturbed others. In every speech supporting Government it was mentioned that incitement to violence does not fall within the scope of 19(2). Somebody goes on to say 'go and commit murder or go and loot or plunder'; if no overt act takes place, you cannot deal with such expressions of opinion. Here as I had previously suggested and I would do even at this late stage, you

may amend the Constitution so as to provide clearly that incitement to violent crimes falls within 'the restriction of 19(2). There will be complete unanimity not only here but also outside and if there be any section of people who oppose such inclusion on the ground that they would like to incite people to commit violent crimes against persons or property, there will be solid public opinion against such sections of people. That is the only lacuna which may be pointed out in view of the judgment of the Supreme Court in Ramesh Thapar's case but beyond that so far as 19 (2) is concerned, not one single judgment has been delivered which may be trued as having done so thing which necessitates the change in the Constitution as proposed. Now, what are the changes that you are proposing? Here, if I take 19(2) first, you have dealt with the security of the state. The language given previously was that anything which tends to undermine the security of the State or to overthrow of the State will come within the purview of 19(2). Now there the restriction is limited and as in some judgments it has been pointed out that unless a particular speech really tends to undermine the security of the State, such speech will be permissible. Now, there you have widened it to include just simple- interest of the security of the State. There you have taken wide powers. Suppose you take that power which means.....

Pandit Thakur Das Bhargava: May I correct the hon. Member?

Dr. S. P. Mookerjee: Let him do so when he speaks.

Pandit Thakur Das Bhargava: It is only 'undermines' and not 'tends to undermine'.

Dr. S. P. Mookerjee: Very well, the word is 'undermines'. Let us underline it. So far as the change is concerned, you have broadened it completely. Anything that tends to affect the security of the State is now within your purview and what may not come within this category? The Prime Minister said yesterday and quite rightly that he hates section 124A but he automatically revives section 124A; the thing which he hates becomes law as soon as you amend the Constitution in this way.

Pandit Thakur Das Bhargava: It can never be revived by the present Bill.

Dr. S. P. Mookerjee: If he may go to the Supreme Court, he will get the answer. Now public order also is another such wide term. I do not want to read the judgments etc. because when you discuss this Bill clause by clause, we will have an opportunity to

discuss it, but it has been interpreted that public order includes everything—public safety, health laws and whatever that you can imagine. It all comes under public order. Then you have said about friendly relations with foreign States. Now that also is sufficiently wide in description. The Prime Minister said the other day that he and Dr. Ambedkar were thinking of defamatory statements or similar acts affecting heads of States or other representatives. This is no secret and the Prime Minister himself admitted it that the government agreed to amend these words and to be satisfied only with defamatory statements affecting heads of foreign states and other similar acts concerning such friendly relations. Now, if that had been done, the objection would have been much less because then People would have known exactly your meaning. It is no use the Prime Minister saying here that he has no intention to curb freedom in any other respect, at the same time asking for the widest possible powers under this category. Here again I must say—Dr. Ambedkar is not in this House—so far as friendly relations with foreign States are concerned, you may remember that I made a statement on the first day of the consideration of the Bill that there is no Constitution in the world where such a provision exists. Dr. Ambedkar contradicted me and when I asked him to specify whether he could point out any Constitution in any part of the world, he said 'No, but there were many countries that have passed laws of various kinds' and he said Canada has done it, U.K. and America have done it. So far as Canada is concerned, I have not been able to trace any law. I tried to contact the Canadian Embassy and no such enactment is available. I asked for a copy from Dr. Ambedkar but he has not supplied me one and he made the statement that he has seen it. So far as American law is concerned, what he read out in the House was something entirely different from what is actually to be found in the body of the law. This is what he said. This is the authenticated speech of Dr. Ambedkar which has been circulated to the House. He said:

"The first clause says that anybody wilfully and knowingly making any untrue statement, either orally or in writing, about any person shall be punished by imprisonment for not more than ten years and may, in the discretion of the court, be fined not more than five thousand dollars".

11 A.M.

Then he said: "I want him to compare the punishing clause of our law with the punishing clause of the American law."

Section 1 of the American law is extremely restrictive in character. I am sorry I have to trouble the House with reading it but it is necessary that I should put it on record that the law as it was represented to be by the Law Minister on that day is different from the law which is actually existing. This is a quotation from the book *United States Statutes at Large*, which was available in the Library of our Parliament.

Pandit Krishna Chandra Sharma (Uttar Pradesh): What is the year of its publication? It might have been amended subsequently.

Dr. S. P. Mookerjee: This is the only copy available in Delhi. The year of publication is 1919. I am open to correction, if it is proved that the law has since been changed. This is the only book available in the Parliament Library and no such change has presumably been made. If anyone can say that a change has been made I shall stand corrected. It is rather interesting to know what the American law has provided quite apart from what Dr. Ambedkar has said. The American law is certainly relevant, and we should have a look into it for the purpose of extending our own bounds of knowledge.

This is what it says:

Section 1. Whoever, in relation to any dispute or controversy between a foreign Government and the United States, shall wilfully and knowingly make any untrue statement, either orally or in writing, under oath before any person authorized and empowered to administer oaths, which the affiant has knowledge or reason to believe will, or may be used to influence or the measures or conduct foreign government, or of any officer or agent of any foreign government, to the injury of the United States, or with a view or intent to influence any measure of or action by the Government of the United States, or any branch thereof, to the injury of the United States, shall be fined not more than \$ 5,000, or imprisoned not more than five years, or both."

It will thus appear how restrictive the law is. Another section does not really relate to anything said with regard to foreign relations but if anyone poses as an ambassador, if there is a mad man who moves about Delhi posing as the ambassador of Kamchatka obviously you can arrest him and put him in jail. The definition of a government given

is not necessarily a de jure government; it may be a de facto government also like the Nationalist Government of China, which the U.S.A. recognised. Anything affecting either government will come within the purview of this law. In any case I do not like to pursue this matter. So far as this provision is concerned it is clear that we have not been able to find any country at all where such wide powers have been given to restrict the freedom of speech as has been proposed in the amendment to the Constitution before us.

Shri Bharati (Madras): You are referring to the law but this is an enabling measure.

Dr. S. P. Mookerjee: There was no enabling measure in the Constitution. The law was passed by the Congress and the Supreme Court held that the law passed by the Congress was valid.

The Minister of States, Transport and Railways (Shri Gopaldaswami): The 'Bill we are considering is merely an enabling measure.

Dr. S. P. Mookerjee: Is it necessary to put it in the Constitution?

Shri Bharati: Otherwise you, do not have the powers.

Dr. S. P. Mookerjee: You are extending the scope in such a way that it will make it possible for you to restrain freedom of speech in respect of any matter which may concern the relations with any foreign State; it is not a friendly foreign State but any foreign State.

There is one very great point which arises in connection with article 19(2). The laws may be passed by any State Legislature. I was glad to hear the Prime Minister say that he has every sympathy for the proposal that such powers curbing the Fundamental Rights should be exercised only by Parliament and not by the State Legislatures. If this is done, I believe it will be a very important change. You are giving these wide powers to any and every State Legislature and there may not be any uniformity. There is no guarantee that all State Legislatures will be controlled by one and the same political party. It may create such serious difficulty in relation to the exercise of the Fundamental Rights by the citizens that there will be no power under the Constitution for anybody to, control it. Even at this late stage I would suggest to the Prime Minister, either give the power to Parliament or at least, as he agreed to an amendment in respect of proposed article 31A, no such law so far as it affects the exercise of

Fundamental Rights shall be put into operation unless it has been placed before the President and the President has assented to it and certified it. That will be at least some guarantee that some uniformity will be observed and some check will be provided.

So far as the other clauses are concerned I shall not dilate on them. I shall speak on them when the Bill is taken up clause by clause. The only Point to which I shall refer is the one mentioned by the previous speaker Rev. D'Souza. While referring to proposed articles 31A and 31B he rightly referred to the need for effecting land reforms so that the great agrarian problem may be properly and effectively tackled before things become too serious for the country. There is no objection to that. But what is it you are doing? I do not know whether Rev. D'Souza has very carefully applied his mind to articles 31, 31A and 31B. He said that he stood for the sacredness of private property and he wanted that its sacredness should be preserved. He also said that compensation maybe given. But what is it that you are doing under article 31A? You have said in article 31 that compensation shall be given in accordance with the law. The Legislature will have to decide what will be the compensation and the manner in which payment will be made. In article 31A you say that in future any law passed by any Legislature in respect of acquisition of estates will become good law' notwithstanding the fact that it contravenes any provisions of the Constitution, so far as the Chapter dealing with the Fundamental Rights is concerned. If you want to say that with regard to the acquisition of estates you do not wish to give compensation or deliberately take away the powers of the court, I can understand the logic of the argument. There may be differences of opinion but I can understand the straightforwardness of the logic. But you pass your Constitution, provide for certain safeguards and then say that you can pass a law and even though that law is inconsistent with the provisions of the Constitution, still it will become good law. That is something which is entirely unprecedented. If you desire that in order to effect land laws no compensation should be paid and there should be no respect for private property, take the opinion of the people and decide accordingly and face the people in a straightforward manner. I can understand the logic of it. But for Heaven's sake do

not have in your Constitution a compensation provision under one article and at the same time validate a law which is against the Constitution and call it also good law.

Shri Bharati: That is only with respect to zamindari.

Dr. S. P. Mookerjee: Whether it is with respect to zamindari or anything else, the Constitution whether good or bad, must be respected so long as it stands. On that point we can agree to differ.

With regard to article 29(2) I do not wish to speak in detail. The Prime Minister said yesterday and we all agreed with him that there is complete unanimity of Opinion inside this House and in fact in the country as a whole that everything possible should be done to give the fullest possible facilities to the backward classes. That is a principle on which we stand. There can be no question or dispute about it. If we allow the backward, classes or those who are educationally, socially or economically far behind other classes of people to continue as they are, it will be disastrous, not for them but for the entire country. But that has to be done and in a manner which will obtain the utmost support of the entire people of this country. The fear is that if you amend article 15 in a way which will make it possible to make discrimination or discriminate in a way which may not really help those who are backward but may do something else or prevent people who belong to some castes, who are more intelligent or advanced, from. Getting what is due to them, then difficulties and controversies are bound to arise. Here is a question of arriving at some such formula which will make it possible for us to help the backward people as also to see that it is not abused. The Select Committee in its report has mentioned this point, but I would like if the clause can itself be amended in an agreed manner so that this point of view can be specifically mentioned there. Unfortunately, it has been left in the hands of any State. If the power could have been given to the President to see to it that this is not abused, well, that would have been some guarantee; or, if you say that reasonable provision should be made—not a question of special provision—then also no State will venture to go out of its way and do something which will be against the interest of the general public as a whole.

Yesterday, the Prime Minister said that Constitutions do not matter, that you can frame a Constitution as perfectly as you like but even such a Constitution may be

exploded completely. And most unfortunately he cited the instances of Germany and of Spain. I was reading his own book last night where—I do not wish to read those quotations, but would just refresh his memory by referring him to his own book—he has pointed out why these Constitutions failed: the Constitutions do not fail because there was anything wrong in them but the freedom that was given, the liberties which were ensured and the powers which were given, were abused, by whom? by tyrants, by despots, by dictators, by the ruling power who did not wish to respect the Constitution; they came forward and said, "We will take the power in our own hands and we will do whatever we like." (An Hon. Member: That was not the case with Spain.) Spain was worse; foreign powers helped to crush the Constitution. In any case we do not want such tyranny or dictatorship to raise its ugly head in India. Therefore, it is much better that while we constantly watch the provisions of our Constitution and see to it that nothing is done which may stand in the way of the fulfilment of the right aspirations of the people of this country—we will do that by all means—we will not at the same time disrespect or repudiate our Constitution. We will not treat it, I repeat what I said on the first day, as a scrap of paper. If we ourselves show this disrespect to the Constitution, or proceed to amend it because there is some small attack from this quarter or some suspicion thereon from that quarter, because of embarrassment caused to the powers that be, then we shall be sounding the death-knell of democracy in this country.

I wish to conclude by quoting, not from books relating to the French revolution or the American Revolution, but I shall conclude by reference to what a great English constitutional lawyer said with regard to the respect which should be given to the Constitution of every country. This is what Allen said quoting from Junius's *Dedication to the English Nation*:

"Let me exhort and conjure you never to suffer an invasion of your political constitution, however minute the instance may appear, to pass by without a determined, persevering resistance. One precedent creates another. They soon accumulate, and constitute law. What yesterday was fact, today is doctrine. Examples are supposed to justify the most dangerous measures, and where they do not suit exactly, the defect is supplied by analogy. Be assured that the laws, which protect us

in all our civil rights, grow out of the constitution, and that they must fall or flourish with it. This is not the cause of faction, or of party, or of any individual, but the common interest of every man in this country."

Pandit Thakur Das Bhargava: I have heard with great interest the eloquent speech of Dr. Syama Prasad Mookerjee. 80 per cent of his speech was devoted to expounding the doctrine of a written Constitution and I must say that all of us agree, if not with more at least with 80 per cent of what he has said about the utility and sacredness of the Constitution. And perhaps Government agree with him to the extent of 90 per cent of what he has said. We framed this Constitution in no light spirit, and Dr. Mookerjee, I am very glad, wants to stand by this Constitution. There are parties outside in the country who say that the Constitution is not right and that as soon as they come into power they will scrap it, but I am very glad that Dr Mookerjee stands by the Constitution and is zealous to maintain it.

The only point of difference between his point of view and that of others who also stand by the Constitution, is this, that he is agreeable, so far as this Bill is concerned, to more than 50 per cent of what this Bill says. He has just stated that so far as incitement to an offence is concerned, he is agreeable that the Constitution may be changed. He is also agreeable, so far as the question of maintenance of friendly relations with foreign states is concerned, to a certain extent. But may I ask him humbly, what is the use of reading out these Constitutions to us and reading out the opinions of those Americans or Englishmen who stand by their own Constitutions? This House and the whole country is committed to this Constitution and I for one can say that the charge against the Government that it is not committed to the Constitution is absolutely unjust. On the contrary, what do we find? We find that in the Chapter on Fundamental Right when we enacted the Constitution we accepted certain propositions. It is quite true that we took our clue from the American Constitution, but the American Constitution also is not a written one in the sense ours is. That by itself imposed a certain kind of restriction upon us and I agree with Dr. Mookerjee when he says that our Supreme Court and our High Courts are perfectly right that we are not in a position to invoke "police powers" or "implied powers". I do not agree with Dr. Ambedkar that our Supreme Court should have or could have invoked "police

powers" or "implied powers". As a matter of fact, it is human nature that it wants to lay the blame on others and not confess its own shortcomings or guilt. As a matter of fact, we must confess that we made a great mistake when we were enacting article 19(2). The mistake was this that we wanted to see that the word "sedition" was taken away from our Constitution. And are never substituted anything to take its place. We ought to have put the words 'endangering public order' instead. Yesterday Mr. Naziruddin Ahmad read out from the debates in the Constituent Assembly when Mr. Munshi moved an amendment to that effect. I also had the honour of moving an amendment for the deletion of the word "sedition". Because under the old Government sedition though technically a crime, was really a duty and consequently many Congress men had committed it. Under the new conditions, every Member of the Constituent Assembly wanted that the word "sedition" should not be there. It is not surprising therefore that we omitted the word "sedition". And I make bold to say that even now the position is the same. Dr. Mookerjee will kindly forgive me if I differ from him in the opinion which he expressed before the House. According to the change which we are making my claim is that sections 153A and 124A of I.P.C. cannot be revived.

Shri Goenka (Madras): But the Law Minister differs from you.

Pandit Thakur Das Bhargava: The Law Minister has a right to his own opinion. I am only submitting my own opinion. I submit that not only sections 153A and 124A of I.P.C. cannot be revived, but also that many of the provisions from the Safety Acts and other Acts which are not consistent with the provisions which we are now making will be bad law and they will not be revived. Because under the provisions of the Constitution only such laws will remain alive as are consistent with the amended provisions. (An Hon. Member: Question). Some of my friends question this. Let me put it straight to Dr. Mookerjee and those of his view: do they want that in this country the law of sedition, the law about dissemination of hatred and enmity between different classes may be the same as in Britain and America, or do they want it to be different? My humble submission is that unless the words "public order" are there, our law can in no case be on the same level as the law at present in force in England and America. If the words "public order" are not there it is likely to create difficulties for

us. Dr. Mookerjee and Mr. Naziruddin Ahmed themselves know and maintain that it has been held by the Supreme Court that incitement to commit offences, as well as making speeches or publishing anything which may even lead to. Disorder will not be covered under any law made under present article 19(2). After the judgment of the Punjab High Court, the position is that any- person is at liberty to make any speech, to publish anything which he chooses and even if disorder results as a result of that, he cannot be held liable under any law. My humble submission is that with the present law it is impossible to go on with the administration of the country. I can understand some politicians may not realise it; but I am rather surprised that some lawyers also do not realise the present position.

In my district a notable politician went and delivered a lecture the purport of his lecture being that the Central Government was weak. He exhorted the people to take La this with them, proceed to Delhi and rapture the Red Fort and kill such of the Congressmen as are to be found here. That man could not be proceeded with. It may perhaps be said that a person like him could be detained. But no Government could be carried on with detentions without trial. It is true that the law of detention is there. This also brings into relief the fact that whereas Parliament has given power to the executive to detain people without trial in respect of certain matters, and in respect of those very matters Parliament thinks twice before arming the executive with power to punish the persons committing the same offences. In the present state 'of the law, be must he a bold man who claims that the law is sufficient and no change is necessary. In fact, whatever others might say Dr. Mookerjee has today admitted that the change in the law is necessary. The only question is to what extent it is necessary and how far the present provisions are able to answer our needs.

In regard to this Bill there has been great agitation in the Press. The Press people have taken an attitude which to start with could he regarded s just as they were not consulted. But since this Bill has emerged from the Select Committee my humble submission is that the Press people have not realised that a great change has been made. After all the liberty of the Press is based on the liberty of the individual and it is not that the Press people alone should he anxious about the liberty of the Press. All right minded people should be equally anxious. If not more anxious about the question

of the liberty of crores of people. And he must be a dishonest man who does not care for the abuse of liberty if he is to discharge his duty as a representative of those millions. Therefore I submit that the question is not only about the liberty of the Press: it is equally about the liberty of the people. I would submit with all the emphasis at my command that the amendments now made in the Bill go sufficiently far to protect those liberties.

It is not realised that the change now made has not only protected us, but has even enlarged our liberties. It was said that two years after the American Constitution was drawn an amendment was brought not only to protect but also enlarges our liberties. Previously, as you are aware, Sir, in article 19 the word "reasonable" appeared in all the exceptions relating to the article except clause (2). The provision was this:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation, contempt of court or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State."

The word "reasonable" was not there, which means that so far as those laws went, they were not justiciable as they have become today. Now every item of 19(g) has become justiciable and amenable to the jurisdiction of the Supreme Court. Even in regard to contempt of court or defamation, the executive cannot make a law which cannot be scrutinised by the Supreme Court. So to the extent of adding this word "reasonable" we have enlarged the liberty of the people. As the liberty of the Press is based on the principle of the liberty of the individual, the liberty of the Press has also been enlarged. It is true that three words have been added to this clause and they are important words. May I submit that the words "public order and incitement to violence" should have been added even previously. We made a mistake in not doing it then. In this connection I must congratulate the Law Minister and the representatives of the Press also, because they exercised their influence in getting this word "reasonable" inserted in the clause. I do not know how far their pressure has brought about the change. At the same time I cannot conceal the great service they have done in getting this word into the Constitution. I must also congratulate the Government for their spirit of accommodation and responsiveness to public opinion.

Dr. Mookerjee and others of his way of thinking complain that the present Government want to perpetuate themselves and it is for that these changes have been made in the Constitution. I must humbly submit that when Government have accepted the insertion of the word "reasonable" they have shown that they are open to conviction and do not want to curb the liberties of the people or the authority of Courts of Law. Government could have carried the Bill through without inserting the word "reasonable" if they so chose.

In regard to article 19(2), previously we only indicated the limits up to which the Legislature could go to enact the relevant Law. By the insertion of the word "reasonable" we have now enlarged the liberties of the people. Therefore, if you look at the Question from the lawyer's point of view, you will be satisfied that the change is for the better. I have no quarrel with the politicians. But the difficulty is that politicians look at the; matter from a point of view of sentiment, while lawyers see it from the point of view of reasonableness.

Shri Kamath (Madhya. Pradesh): What about lawyer-politicians like yourself?

Pandit Thakur Das Bhargava: Every Member of the House is presumed to be something of both, though in everyone there is some preponderance of one element or the other. My submission is that I want to look at it from the point of view of reasonableness. On the previous occasions we failed to but the word "reasonable" and the other necessary words. At that time it was not realised that the words "security of the State" would be interpreted in a rather limited way and would not include "public order". An. amendment was moved to include "public order" but was negatived.

I do not agree that the Supreme Court has not interpreted these words. I must pay a tribute to the independence of our Supreme Court which has given right decision. And I must say that in the light of those decision, we have no other alternative but to make the necessary amendments. This is admitted by my hen, friend Dr. Mookerjee and others. The only point of difference is that they do not want the words "public order". But if the words "public order" are not there we will not be able to control the situation. Because in the American Constitution. The danger to public order is the basis on which they have proceeded and held sedition law to be valid which otherwise could not have been so held. Accordingly to the law in England and America in both

the places the term "public order" is the only basis on which their laws are founded in regard to sedition. Without these words we will not be able to control the situation. These words are absolutely necessary. I would rather like that these words are circumscribed by the words maintenance of or by the word "endangering" or "undermining". But even if they are not circumscribed in that manner. I will certainly submit that as a matter of fact in the absence of these words no liberty can be secured .no peace could be maintained and no order could be established. Without order and peace I need not say there will be no liberty left.

Considering the present situation in the country I was of the view that we should have added some more words to article 19(2). I wanted the addition of the words "dissemination of hatred and enmity between different classes inhabiting the Republic of India". But the Select Committee did not agree because the Select Committee people were more democratic and they did not want the revival of section 153A of I.P.C. And I congratulate them for not agreeing to include these words, because the inclusion of these words would have circumscribed our liberty to an extent but I wanted those words. Our country has been under autocracy for thousands of years and communal tension has been rife in the country. The restraints and discipline which are acquired by free countries by long exercise of freedom have yet to is fully enshrined in our people. The population is ignorant and illiterate and it is very easy to mislead our people as they are apt to believe readily whatever appears in print. It is difficult for any Government to controvert and contradict all that is down in the papers. I submit that in a country like ours the Government should have more ample powers than there are in other countries. But my humble submission is that the powers which are taken by the Government are certainly not more than what are enjoyed by free countries; they may be less. And I am still apprehensive that the Government may find that they have not got sufficient powers to grapple with the situation. This is all that I have to submit so far as article 19(2) is concerned.

With your permission I would only refer to the word "reasonable" once more so as to emphasise its true worth before the House. It is true that every person cannot go to the courts. But do we not know that it is not necessary to go to the High Court so far as Fundamental Rights are concerned before going to the Supreme Court? The word

"reasonable" is an insurance and a guarantee against the vagaries of any executive or the tyrannical law of any majority. With your permission I would submit how this word "reasonable" was introduced in regard to those five other clauses. The House will pardon a reference to a personal matter as I happen to be the author of the word "reasonable" in article 19. I was very much anxious when we were framing the Constitution to find a solution. On the one hand in article 19(1) (a) we had these liberties full expatiated. But in the other clauses (2) to (6) of the article we had all the restrictions and restraints which took away that liberty and reduced it to a mere skeleton. When I was so anxious I was trying to find out a solution and at about one in the night after I had retired to bed it struck me almost instinctively that it could be solved by the inclusion of an adjective here. In the morning I went to Dr. Ambedkar and submitted to him that the word "necessary" or "proper" or "reasonable" may be put in here, and he was pleased to accept it. When Sardar Hukam Singh went to the rostrum and said "Here is a skeleton, there is no life in the Constitution and the Fundamental Rights" I had then the courage to point out to him that the word "reasonable" was the soul of these. Fundamental Rights as it made them really justiciable. Unfortunately we did not then succeed in putting this magical word "reasonable" in clause (2) of article 19. Now we have succeeded, and to the extent of our success we feel that the liberties in this country of the common man as well as the press have been enlarged. With this word "reasonable" as our armour we can go anywhere with all these items and file our petitions, and the Supreme Court is there to protect the liberties of the people. And Government which accepted it at the last minute is certainly to be congratulated on their right decision. If the Government persisted in only enumerating the subjects in respect of which it could enact any Law, no liberty would have been left. Therefore I maintain that the inclusion of the word "reasonable" in this context shows as a matter of fact that we stand by the Constitution and that the Government regards it as sacred as any Member of the Opposition thinks it to be so.

It is said that it is only for sixteen months that the Constitution has been there. May I humbly ask, as Prof. Shah put it yesterday, if it had been for sixteen years what difference could it make? Is it not true that as a matter of fact the law in regard to

these matters is lacking? I have not heard even a single Member saying that there is no need for a change of the law, unless he is totally unmindful of the real situation in the country. The situation demands that the law should be changed and without this change it will be most difficult to grapple with the situation in the country. From whatever standpoint you may look at it, this law was overdue.

Government, apart from article 19, has chosen: amend certain other articles. In regard to article 15, I would submit that that change which Government has made is also a salutary one: We in this House made provisions in regard to scheduled castes and scheduled tribes and backward classes, and we want that all these people may come up to the standard of the rest of the country. How can that be done unless they get educational facilities and seats in the Universities? That is the only ladder by which they can get up to the coveted place. If a special provision is made for securing seats to these people, article 29(2) will not be offended. Suppose 25 per cent of the seats are secured to the scheduled castes and scheduled tribes and backward classes. Out of the rest 75 per cent no distinction will be made between the other classes. That is the right view, I think. I am rather afraid that this provision may be misused by non-backward people to get into reserved seats. But I should trust to the sense of the Central Government and the Local Governments in this respect. I was anxious and I proposed while I was in the Constituent Assembly that 'backward classes' should be defined in a manner that scheduled castes and scheduled tribes and some of those who were just above the level of the scheduled castes and tribes were included in it. But at that time I did not succeed. I hope that the definition now given in this clause will be taken as a good one, because it indicates only socially and educationally backward classes coming under article 340 of the Constitution are to be included and no others.

I am rather doubtful whether you will be able to do much, and I am rather critical of the action of the Government in this respect. My own feeling is that Government has done very little for the scheduled castes and backward classes during the last four years. I wish something more were done. I wish that all that they can possibly do was done. The period provided for achieving the object is ten years and if during four years we have not done anything how will we succeed in seeing that they rise up in the social and educational standard of this country? My submission is rather than

fighting for words let us all try and let the whole country declare that all the jobs in this country for the coming five years will be given to such deserving people belonging to the scheduled castes, scheduled tribes and backward classes as can be found, That seems to me to be the way to do it. I wish that the Commissioner was at once appointed and that he began to function. I am glad to find that something has been done in the States, but whatever we wanted has not been done so far.

In regard to article 31, I am very sorry I have to strike a somewhat discordant note. When we accepted that the zamindari should be abolished, we wanted that compensation should be paid and we passed article 31. But article 31A is going to change the law to this extent that whatever little justiciability there was in article 31 is sought to be taken away. I have no quarrel with that. My opinion is the same that when a country has to deal with large problems it cannot be too critical whether A gets full compensation or B gets a bit lesser compensation. I support article 31A but while we are all agreed on the abolition of zamindari, we should not go further. In regard to Punjab which is a land of peasant proprietors with no intermediaries between the state and the peasant proprietors, I am afraid the lands belonging to them will also come under the mischief of article 31A if it is not changed to a certain extent. I do not want that Punjab or some other province should be discriminated against and not be treated on the same level as the other provinces of India. In 187, the word "Estate" was defined to include areas of land for which separate record of right was framed. There is no justification for punishing the people of the Punja¹³⁷ on account of this definition of 1887 and enacting a law for them which will be different from the law for the rest of the country. We know where we stand in the whole of India. The Government is committed to the abolition of zamindari and we are all committed to it but we wish nothing more was done to prejudice the position of the peasant proprietors in Punjab.

I have only one word more to say and that is in regard to the Judges of the High Court—four English Judges. In regard to that, I recognize that Government want to be just to them. I have no quarrel with that. At the same time my national honour is touched when I find that someday some non-Indian could become the Chief Justice of the Supreme Court. If there had been a, higher court, I, would not mind. Hence I

would respectfully submit that Government should take care to see that so far as the post of the Chief Justice of the Supreme Court is concerned, it must always be filled by an Indian. I submit that so far as this Bill is concerned, it is certainly a piece of legislation which is called for, proper and just; the Select Committee have effected such changes in it that it has become fully acceptable.

One word more about the question of 'reviving' those old laws and 'retrospective effect'. When the Bill was referred to the Select Committee, I complained in this House that as a matter of fact, all these laws will be revived. But since the word "reasonable" has been put in there, my fears have been set at rest. All the same, my view is that the Government Under article 372 should adapt these laws. I quite, see that the adaptation of laws involves much expense and much industry. All the same the adaptation must be undertaken under article 372. So far as the period is concerned from two years now, it is going to be extended to three years. Some of the old laws have been declared ultra vires. There are others which though not so declared are ultra vires and will not be able to live under the amended law and unless the adaptations are made, the country will not know what the actual state of the law is. We can have recourse to article 143 also in this connection and if any Opinion is to be taken from the Supreme Court under article 143, the President is capable of taking that opinion. We should see that these laws are adapted and the public fears are laid at rest and sections 153A, 124A and other obnoxious provisions of the Press Emergency Law and Safety Acts are buried fathoms deep. The people do not know that they cannot be revived unless the adaptation is made. It is necessary that it should be made as soon as possible and their extinction notified. Article 13 and the liberty securing and levelling axe of "reasonable" could still be used in regard to the adapted laws even. But I hope the use of this weapon will hardly be necessary as the Government will rightly adapt these laws. I, therefore, have great pleasure in supporting the motion for consideration.

Acharya Kripalani (Uttar Pradesh): It appears that it is superfluous to speak at this stage. Government seem to have made up their mind and they have a solid majority behind them, and whatever is proposed will be carried out. Sometimes it becomes one's duty to raise a voice of protest when things that we never imagined before are done. I can understand that there be constitutional changes. Nothing in the world is

stationary; nothing can be stationary; but where a law is changed, much more so when the basis of a law is changed in a democracy people must be consulted. There was one thing about which we have been educating the public for years and to which we were pledged. Everybody knew our minds about the abolition of zamindari. In this enough propaganda has been carried on and public opinion was in our favour. So if only an amendment had been brought to the effect that nothing in the Constitution should debar the Legislature from abolishing the zamindari system, I would have understood it. We were pledged to that but along with it has been brought something against which we were pledged. We were pledged to freedom of speech and freedom of expression (Hear, hear). We were pledged against their abrogation. The deprivation of the freedom of speech and expression had been our greatest handicap in our struggle for freedom. We struggled against it and we have suffered in order to assert the right of freedom of speech and freedom of expression. Putting those two things together is really a sort of strange jugglery which only the present Government is capable of.

Now, what is sought to be done? It is said that it is possible to legislate against incitement to offence. Why? Because some High Court or the other has said that even if you preach and propagate violence, but if you do not commit an overt act, that is allowable and is covered by freedom of speech guaranteed in the Constitution. This was recognised in the 19th Century and late 18th Century; it is not recognised now. If the amendment had affected only incitement to violence and incitement to murder, I could have understood. I think those who incite to individual murder must be mad people and may be sent to the lunatic asylums than to jails. But, this Bill says 'offence'. What is not an offence? As a matter of fact, during all our struggle we were preaching against what was considered by the State laws as offences. The whole of our satyagraha movement was to break the law, to break such provisions of the law that created offences. Today, if you pass this amendment, even satyagraha can come to be legislated against. Our Home Minister has told us that satyagraha now a days is pseudo satyagraha. I do not know a time when any satyagraha was very real except in the case of Mahatma Gandhi and some of his few non-political disciples. But, you must recognise the fact that, whether it was real satyagraha in the spirit of Gandhiji or it was pseudo-satyagraha it saved the country from great bloodshed. Sometimes, even

pseudo things have their value. Therefore I say that this word 'offence' is too wide to be included in this Bill. The better way would have been to lay down that against incitement to violence and murder, the State can make laws.

Then, the phrase public order. This is another vague thing. We know how public order is disturbed in this country under the present regime. If a procession is taken out public order is disturbed. If some students want some facilities in their schools and colleges, public order is disturbed. If there is a hunger-march and people want food, public order is disturbed. When public order is thus disturbed, what do the Government do? They have ample powers. They use the police. Our police are very good at shooting. They shoot to kill. It does not matter whether it is women or children that they shoot. There is therefore ample power with the Government to shoot even peaceful hunger strikers. What more is needed, I do not understand.

Then, it is said that laws in consonance with the amendment may be made by Parliament or by any provincial Legislature. You must remember that elections are coming. It is not unlikely that in some provinces a Government might be put in power which may not be quite in tune with the Centre. In that case a State will have one set of laws and the Centre another. This is a sure way of creating confusion. If such extraordinary powers are to be given, then, I submit they must be given to the Central Parliament alone.

[SHRIMATI DURGABAI in the Chair]

We have not been told why these amendments specially about public speech and expression, are introduced. The Prime Minister says that it is said that these amendments have something to do with the coming elections. It is very, natural that he is surprised when people talk that he is thinking in terms of the elections. I am afraid the Prime Minister does not think of everything. There are many around him who think of many things he never thinks of. Our trouble is that he does not think about everything and he allows others to think about what he does not think that it is admitted that it is quite possible that there may be confusion in the coming elections. I also think that there is a possibility of confusion in the elections. But, I think if confusion comes, it will come from the dominant party and it will also come because the dominant party has control over the administration. The bye-elections that have

been conducted in some provinces clearly show that the Government machinery has been used to influence votes.

Pandit Krishna Chandra Sharma: Have any election petitions been filled against those elections?

Acharya Kripalani: Yes.

We have heard much about Fundamental Rights. The Prime Minister talked of the French revolution and the American revolution when this idea of Fundamental Rights arose. I was the Chairman of the Fundamental Rights Committee. As we sat, I told my colleagues that there were no such things as Fundamental Rights nowadays and that every right is so hedged in that it disappears. Yet, the Government wanted to make itself respectable. It is considered respectable to have these Fundamental Rights in your Constitution. England has no Fundamental Rights. It goes on quite well enough. But if you have Fundamental Rights you must make them respectable and constitutionally scientific. The report that we gave was not accepted. Other Committees were appointed to water down these Fundamental Rights till we came to the minimum that could be allowed as Fundamental Rights. Having done that, you want again to tamper with them. I can understand and I would be one with the Government and I will vote with the Government if they say, that there is no need for fundamental Rights. It is an old and antiquated 19th century idea which took its rise from what are called natural rights. We have no more any need for natural rights and we should attach no value to the idea of Fundamental Rights. If you want to keep an antiquated thing to make yourselves respectable, keep it in a proper way, do not tamper with it as you are trying to do now.

Then, the Prime Minister waxed eloquent—I am sorry he is not present. He has a way of doing things which is peculiarly his own. He uses eloquence, passion, sentiment, reason, threats, and bullying (interruption).

Several Hon. Members: Question.

Several Hon. Members: No.

Acharya Kripalani: All these things were combined together in his speech yesterday. He told us that there was no sanctity attaching to the Constitution. Let us analyse who

give this sanctity to the Constitution. It is the Government itself. They made it into a special document.

Shri Joachim Alva (Bombay): Madam, may I interrupt the hon. speaker and ask whether the phrase 'bullying' is correct and parliamentary, and that in relation to the Leader of the House?

Several Hon. Members: No. no.

Mr. Chairman: I do not think it is unparliamentary.

An Hon. Member: Perhaps the hon. Member is not happy.

Acharya Kripalani: I was not at all happy; we are all not very happy. If 'bullying' offends anybody, I withdraw it. Will it satisfy? Will it make it less the bullying?

We were told that we should consider the Constitution as sacrosanct and we thought that it must not be tampered but, how did this Constitution come to occupy such a sacred place? It is the Government that wanted to give it this sacredness. What did they do? They put it in a volume. The volume was illuminated. Everyone of us had to sign it. Then, the President of the Republic swears that he will keep the Constitution. Every Minister swears that he will keep the Constitution. But if they change the Constitution so easily and so quickly I do not know what they have sworn to. It is absurd to swear by something which you can change the next day.

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And then we are accused of being idol worshippers. By whom are we accused? By the beneficiary of this sentiment. I am sure the greatest beneficiary of this idol worship is Our Prime Minister and also, may I add, his Government. But for this idol worship this Government would have fallen at least twenty times during the course of the last few years. It does not lie in our mouth to take advantage of the idol worship of the people and complain of idol worship when it happens to contradict what we for the time being consider to be very necessary and essential. May be that this Government has a very high opinion of itself, and also, maybe that those from outside who are invited have a high opinion about it. Those who come as our guests do not come to criticise. But I say the common man has not the same idea of this Government. And if it remains in power, it is because our people are idol worshippers. And were they not idol worshippers it would not have been necessary for the Prime Minister to bring this

measure. There was the Law Minister. Of course, I know he is very hard worked, but yet he could have brought this measure before the House. And there is the Home Minister who is much more affected by this and in whose department it falls, than the Prime Minister. What has the Prime Minister to do with this? In history there are cases of certain sacred totems placed before an army so as to avoid being attacked. I will not name them. Anyway, if it were not for idol worship either the Law Minister or the Home Minister would have introduced this measure.

Then the Prime Minister gave us examples in history of Constitutions that have been destroyed. He talked of the Weimar Constitution and of the Spanish Constitution. By whom were they destroyed? I do not think they were destroyed by the authors of the Constitutions. They were destroyed by those who were their enemies. But here it is supposed to be the right of the mother to destroy the child, though generally it is considered a heinous crime.

The Prime Minister said we are confused in this war-and-violence-haunted world. Yes, we are confused, and it is because we are confused that we must take more time. It is not good to do things when you are haunted. First of all take away the ghost that is haunting you. When the ghost is taken away, you can think quietly and cogently and you can measure things properly.

And because the Prime Minister spoke of a haunted world, Dr. S. P. Mookerjee thought of the ghost in that drama of the Prince of Denmark. But I feel he was doing injustice to the Prince of Denmark. The Prince was only thinking aloud and therefore he seemed to be undetermined; but before for a year or so he had gone and killed a few persons. I think the world has done a great deal of injustice to this poor Prince of Denmark when it said that he was not determined. He was a very determined person and I wish there were more determined people like him. He was determined, though not in his speech, but in his action. But here we have determined speeches, but the action is unlike Hamlet. The speeches here are like the end of Hamlet and actions are like the speech of Hamlet. We should no more do injustice to poor Hamlet. After all, he was determined to do something and he did not take much time to do it either.

The Prime Minister says he cannot allow the country to go to pieces, Constitution or no Constitution. If that is so, if he has power enough, if Government has power

enough, to see that Constitution or no Constitution, Government will not go to pieces, then why tamper with the Constitution at all? The Prime Minister himself gave us an example. During the communal riots, he was not thinking of the law and the Constitution. He took action. So Government has ample power to take action in emergencies. That is already provided for in the Constitution. Then why bring in a measure like this? It is vague to talk of law and order. The Prime Minister says that it is not the freedom of speech or of the Press that he is thinking of, but the freedom of the country. We are all thinking of the freedom of the country. The difference arises as to what constitutes this freedom of the country. Does it consist in abrogating the Constitution so carefully made? Or does it consist in tackling the anti-social forces about which nothing is done—the antisocial forces in commerce, in industry, in the administration and in other high places? These are a great danger to the unity and safety of the State, and not freedom of speech or the freedom of expression. And 'then, so far as the Press is concerned, I do not think the Press has in any way misbehaved. I know that there are certain irresponsible papers and they do write things which they should not. But you have the laws of libel and defamation. I know of a paper that day in and day out makes defamatory statements. But why do you not haul it up? You never do that. I read of some mystery or something in a pamphlet where a big merchant was maligned along with the Provincial Government and the Central Government. The name of the person is given and yet nothing has been done. You do not tackle these things as they ought to be tackled, and then you want general powers. These general powers, I say, will not do you any good.

An. Hon. Member: What paper is that? Is he afraid of giving out the name?

Acharya Kripalani: About some mystery or other it is. It is not necessary for me to give the name here. If the hon. Member is so interested in the mystery of that house, he will get its name.

And we are told that these amendments are only permissive. But what do they permit? They permit section 124A of I.P.C. to come back. They permit the Press laws to come back. They permit all the nefarious things that were covered by the Constitution to come back. It was said that the laws abrogating these will be made afterwards. If these nefarious Acts had not been abrogated by the Constitution you

would certainly have repealed them. You could not have kept section 124A; you could not have, allowed taking from Presses and so many other things. But you did not repeal any of these laws because they were covered by the Constitution. Now you are going to change the Constitution and you say it is only permissive—permissive of everything that is nasty that was covered by the Constitution. That, I say, is not just. It is not proper. Even then I would be very willing to give extraordinary powers to this Government if it were a fact that because they have' no power, they cannot act. But I know from experience that when people who are weak are given power, they use their power to theft own injury. A Government that cannot dismiss a peon in office wants to clothe itself with extraordinary powers! I submit, these extraordinary powers will be used to your injury; and who will use them? It will be they that will come after you. You are not going to be eternal -- no Government is going to be eternal. The Prime Minister says the primary and greatest question is that of bread. It is written in the Bible 'He is a foolish father who, when his children ask him for bread, gives them stones'. But now we are living in modern times and when children ask us for bread, we give them bullets. Because in those days bullets were not there, poor Christ thought of stones only. In modern scientific age, we do not talk of stones but of bullets. I remember in Bengal there was a demonstration and instead of bread the demonstration's got bullets. I say if you want to make this Government stable, the remedy is with you. For food the remedy is with you, for cloth, the remedy is with you, for housing the remedy is with you. Talking of food, some seed merchants came to one of our Food Minister and they were talking of vegetable seeds. The cabbage grown in other countries is four times the size of that grown here and so they thought cabbage seeds may be brought from outside. The Food Minister very pertinently asked: 'Are cabbage seeds needed every year'? He thought cabbages are grown on trees. Another instance of a Commerce Minister. He went to a meeting of commercial people and asked: "Does India really export cloth"? Well, if you want to bring about the stability of this Government, first of all you have to see within. The kingdom of Heaven is within you. If you want to go further, you have to seek it in your administration which is inefficient and corrupt. Then you have to seek in black market, in the hoarders' camp. These conditions create agitators. We used to tell the

British repeatedly that we are not the agitators but the conditions that you have produced in this country create the agitators. After all the agitator plays with his life and he is not going to play with his life for nothing. He has a certain kind of idealism. Take away the cause of discontent and the agitator will disappear. The Prime Minister very pertinently said, the question in Asia is one of bread. In the Christian prayer, what do they want first? Bread—Lord. Give us our daily bread—because without bread, spirituality will not prevail. Gandhiji preached spirituality. He said 'I can carry spirituality to the poor only in a bowl of rice'. Want of food is the cause of your troubles. Solve the food and the cloth problems. We produce much more cloth than we can consume and yet with the system of controls and permits and all that, we find that we cannot get cloth at all. We cannot get cotton. I am a producer of khadi but if I go to the market, I cannot get cotton even for production of khadi. We want to encourage khadi industry. But what has happened. A flourishing industry like the handloom weaving industry has been destroyed. Who has destroyed it? Not nature but men. Improve those industries, improve your administration make it efficient and all the power that you want from us, we will give you. For tackling antisocial forces, we will willingly give you the power you need. Whom do you want to tackle?—the agitator. The agitator is not the trouble but the trouble is the conditions in this country. Improve those conditions and all the power you want we will give you. I say we will give you dictatorial powers, though. I say you have dictatorial powers already. What are dictatorial power? What is dictatorship today? The days of military dictatorship are gone. Today there is only one dictatorship in the world. This is a dictatorship of a single party. Wherever there is a single party there is dictatorship. You have the dictatorship that Hitler had, that Mussolini had, that Stalin has, that Lenin had, the dictatorship of a single party. A single party is behind you and you have dictatorial powers. You may bring in any measure in this Parliament and it will be assented to; but, unfortunately, you are not dictators. It is just putting sharp instruments in the hands of people who cannot use them—they will only cut themselves. We have given you power enough but you have not the ability because you are not made in the mould of powerful people. What can we do? More power will only injure you. So please be satisfied with the limited power because your capacity is very very limited indeed.

Prof. S. N. Mishra (Bihar): I rise to support this measure but I shall do so with certain qualifications to which I propose to refer appropriately at a later stage of my observations. It is remarkable that although India and Pakistan both commenced the work of Constitution-making almost simultaneously, Pakistan still finds herself a Dominion, and she has not yet been able to give herself, a Constitution whereas India, having declared herself a Republic, having given herself a Constitution, is now in the stage of amending the Constitution for satisfying the dynamic urges of the people. It is indeed a very pleasant spectacle now in this House to find a constant tug-of-war between the forces of conservatism and the forces of dynamism. It is not very surprising, 'because, whenever new ideas come up before the people, there are some, who from behind the cloak of a philosophy masquerading for certain conservative idealism, come to attack the very growth of them. These conflicts notwithstanding, I would like you to consider what is there that distinguishes the working in Pakistan and the working in our country that we are now a Sovereign Democratic Republic with a Constitution and they are still a Dominion without any Constitution. There are certainly some ideals and objectives which have always inspired and guided us to keep pace with events and the spirit of the times. I would particularly like to remind the House of those ideals and objectives which guided us in our freedom struggle on the revolutionary crest of which came the Constituent Assembly. Unless we keep these ideals in mind, I do not think we can properly appreciate the spirit of our Constitution or the amendments that have been placed before the House. It is necessary to be conscious of the ideological heritage of our freedom struggle, otherwise we get confused and lose perspective.

This amending Bill raises two points of considerable significance in regard to our domestic and foreign policy and sets a new tone to them. From these two aspects if we consider the amending Bill we shall certainly feel that the epoch of the common man is going to be inaugurated in this country by introducing these amendments to the Constitution. It is from this point of view that I would urge consideration, firstly, in regard to our domestic policy or social approach. By introducing amendments to article 31 we are going to bring about the liquidation of the intermediaries between the tillers of the soil and the state and the parasitic system of feudal land tenure that

prevails in our country and, I think, this is a step, which leads us towards the equalitarian society to which we have been pledged all these years. By introducing an amendment to article 15 we are in a way giving formal recognition to the sublime ideal of Sarvodaya, according to which those who are on the lowest rung of the social ladder must be helped towards progress and advancement in different spheres of life. Lastly, by amendment to article 19(6) we pave the way for nationalisation, if and when that policy becomes desirable and feasible.

From these points of view, I find a definite design or pattern behind the amendments. As you see, they relate to a programme of economic and social life and it is, therefore, no strange that those who cannot appreciate the spirit behind it come and criticise it. I would also like to submit that altogether they make a complete organic whole, not that certain loose amendments have been put in juxtaposition to each other. While saying so I leave aside the minor amendments that are also there. There is a certain pattern of life and society at the back of the amendments and therefore those who believe in this pattern must give, their support to this measure.

Coming as I do from a State which has been bled white under a feudal system of landlordism, I speak with a certain amount of relief as also warmth of feeling, when I find that the liquidation of this system is now in sight. There is, therefore, a special emotion that attaches to what I say in this connection. It is difficult to calculate exactly the loss in terms of agricultural productivity and efficiency and consequently in terms of human misery and starvation which this parasitic land tenure has brought about in this country.

I think, the amendment to article 31 will be in a sense unique in history, analogous to the amendment of the American Constitution in 1865, which abolished slavery in that country. It opens out a new epoch for the common man. Like the amendment of 1865 in U.S.A. abolishing slavery, this amendment of article 31 in the year 1951 is going to rank in history as an important landmark.

After the liquidation of the feudal rule in 500 and odd pockets of India it was but natural that the relic of feudalism should be wiped out from other sectors also. It inaugurates, in the same way as the liquidation of the feudal rule in 500 and odd pockets of India did, a bloodless revolution in the economy of the country. It is indeed

a bloodless revolution, the significance of which may be lost upon those who suffer from certain amount of wilful blindness because of their vested interests. But I feel that it will augur well both for the tenants and the vested interests. It gives me a little surprise that these vested interests, who have their champions both inside and outside the House, are unable to develop the requisite perspective or adaptability, as was evident from the speeches of hon. Members like the Maharajadhiraj of Darbhanga, Shri Sahaya, Shri Srivastava and others. I think it is high time that they develop the requisite adaptability to catch up with the times: otherwise they will find it difficult to get on and square with the situation that is fast developing.

Speaking in a rather positive way I feel that the amendment to article 31 clears the ground for progress and we all hope that it will extend its frontiers and make for greater agricultural productivity, efficiency, co-operative farming, and for the better distribution of land which we all stand for.

There are those who feel that the land reforms as at present conceived, do not go far enough and I want to say a few words to them. There are some people who want to keep their heads high in the stratosphere but do not keep their feet firmly planted in reality. What we have done is that we have been keeping pace with the spirit of the times and at the same time not ignoring the practical implications of any proposal that we have been placing before the country.

I am, however, sorry that although Government is in a unique position to do so, it has not evolved a uniform post-abolition agrarian pattern for the whole country. It is in a unique position in the sense that Congress Government is functioning at the Centre and in all the States and it would have been very easy for the Government to evolve a uniform agrarian economy for the whole country.

A complaint has been made that the jurisdiction of the courts is being completely ousted in this matter. One cannot feel very happy when circumstances forge compromises for such a step. But it is not a matter of ousting the jurisdiction of the courts for nothing—it involves a Social Objective which has given meaning and vitality to our Programmes all these years. We all have great respect for the courts and although it is very difficult for them to get rid of the class consciousness altogether, I feel that our Judges have acquitted themselves very well and we have reasons to be

proud of them, we have always to remember their limitations. They have to interpret the law within the four corners of the Constitution and they must -feel helpless if they cannot move forward. It cannot, however, be gainsaid that in the extremely formal and technical adjudications it is impossible to realise the urgency of progressive measures that we would like to launch. Judges in the United States have admitted in so many words that it is difficult for them to have a complete picture of the social reality through isolated peeps in. different litigations. In our country when the Judges, in a way, confess helplessness in certain respects, those who are advocates of this feudal system or any other system in which they have vested interests, feel like advocating the cause of the Judges themselves! In this connection it would not be out of place to say a few words as to how the courts within their own framework cannot keep pace with the spirit of the times.

The House may remember how most of the New Deal measures of Roosevelt could not be given effect to because of an adverse Supreme Court striking down one measure after another. I do not want to go into the details of those New Deal regulative measures. They were mostly propounded in a progressive spirit. I want to remind the House of what President Roosevelt was constrained to remark at one time that the Judges were living in a sort of "horse and buggy days". In our own country no one has said anything like that. On the contrary, our Prime Minister, though he has a fear of lawyers, has a great respect for the Judges. And we who belong to the party which is in Government have always been deferential to them and I say we are also proud of them.

Now, I want to draw your attention to the judgment of the Patna High Court holding the Bihar Land Reforms Act ultra vires on the ground of equality in the eyes of Law. This caused a certain amount of surprise and feeling among the people. Zamindars on their part think that since the Patna High Court has already decided in their favour and the case has not been taken to the Supreme Court, it is not proper for the Government to proceed with this amendment. It is difficult for us to appreciate, with all respect to the Judges, their Conception of equality. What do they mean by equality? Do they mean arithmetical equality? Even in mathematics, all zeros are not identical or equal. If the Judges had in their mind, the arithmetical equality, it is difficult for us to see

their point of view and adapt ourselves to it. What I want to emphasise is that when courts fail to perform a historical function and respond to an urgently felt social need, those who have their hands on the pulse of the nation must come forward and perform the function that is demanded of them. They cannot just hold their soul in peace, until they have done the task assigned to them and redeemed the pledges they have made to the people.

I must also refer in this connection to certain misconceptions that might have been created by the incorrect statements made by some hon. Members in regard to compensation under the Land Reforms Act in Bihar. It was said that the Dharbanga estate which is certainly one of the biggest Zamindari estates in the country would get only rupees three lakhs. I would like to submit to you that it would in fact be getting not less than Rs. 48 lakhs. I do not want to go into the details of payment of compensation, but I have it on good authority that the Dharbanga estate would not be getting anything less than Rs. 48 lakhs. Similarly the Nazarganj estate, of which so much was said and it was said that it would be left with encumbrances, would be getting rupees four lakhs by way of compensation. It is no use creating misconceptions about certain progressive land reform Acts that have been passed by the States. If anything these State have erred on the side of practicability and liberalness.

Then I come to article 15. Let us not forget that there are millions of people submerged in poverty, filth and squalor, and something special and urgent has to be done for them if they are not to remain like that forever. But when we proceed and want to do something, the doctrine of 'non-discrimination' or the doctrine of equality begins to operate. That is what we are faced with at the present moment and what the Government of Madras was faced with in many cases. But I would like to ask the House as to what exactly is the meaning of equality? What exactly is the meaning of non-discrimination? Does it mean that there should be absolutely no distinction between the sick and the healthy and that we should not accord special treatment and special diet for the return of the sick to normalcy of health? A certain amount of suspicion has been aroused in this connection, however. And probably not without reason. That suspicion is that the remedy may degenerate into the disease itself And

those who are real claimants may be elbowed out of the queue and ulterior considerations may prevail. As the Prime Minister referred yesterday there is just a possibility, if we are not very careful, just and cautious, that the accentuation of class distinction or caste distinction might take place. But if we have our standard as vigilant as the Prime Minister who always thinks about a just and equalitarian Social order, there need be no apprehension on that score.

About article 19 there has been a certain amount of controversy and a good deal of comment. There has been a great deal of anxiety also. It is perfectly natural that there should be anxiety when people feel that the most cherished things of their life, namely the freedom of speech and the freedom of expression, are in jeopardy in any way. It is a very –natural anxiety and I think all those who even support this article 19(2) have the greatest amount of sympathy with that point of view.

But firstly I would like to ask: What do they exactly mean by the freedom of speech and expression? When people speak of freedom of speech and expression I would request them to be clear in their mind as to what their conception exactly is about it. I have always a feeling that people begin talking about it without understanding its exact implication. Do they feel that by freedom of speech and expression what is meant is speaking or writing a thing without any sense of responsibility to the society? Those who believe in progressive ideology will say, with me that it is only through society that freedom of speech and expression can be achieved. What is the distinction between the animal world and the human world? It is that we act through society; the animals, the bovine species, have no society to act through. It is through society, through the co-operation of society, that freedom of speech and expression can be achieved and can have any meaning. Here, what happens is that people do not know their own minds but they go on talking vaguely about certain indefinite things being sacred to them.

I would like to ask in this connection whether it is not a fact that in different social situations men have different conceptions of the freedom of speech and expression? Whether it is not a fact that the freedom of one is the cause of un-freedom of many? So what we have at the present moment is a vocal section coming forward with a particular conception of freedom of speech and expression. And when a particular

section speaks loudly about freedom of speech and expression let us entertain a certain amount of apprehension. It may be a sort of class freedom, a certain sector and concept which they have in their mind. I am not one of those who want curbs on freedom of speech and expression. But I am one of those who say, let us always be aware of what may be at the back of the mind of those who have been loudly advocating it. Let us not speak in the general fashion as we have been accustomed to. Liberty or freedom in my opinion is one of the most generalised goods like beauty, truth and justice. People have been talking of all these things in a peculiar fashion, everyone meaning different things with the same set of words. They must be very definite and precise in the connotation that attaches to these words. When Government have brought forward these amendments, I think they have not only the freedom of speech and expression of a particular section or class in mind, but they have in mind the big and all embracing freedom of the entire community that inhabits this country. It is in that larger perspective. I think, that we have to appreciate the spirit of the amendment which apparently seeks to put some curbs on the freedom of speech and expression but really does not.

Here I shall be going into certain details about some of those expressions which have evoked a certain amount of controversy. The first is in regard to 'friendly relations with foreign States'. Apparently it is a fact that this expression does not find mention in the Constitutions of other countries of the world. But one thing must be taken into account. India has taken a certain stand in this respect in some of the international bodies. If we go into the details of the proceedings of those, International bodies we will come to the conclusion that India has always taken this stand, not in a solitary fashion, but in Combination with other countries which are generally known to be progressive. Russia, Yugoslavia and some other countries have always supported India in this respect. I would also remind the House that recently Russia passed a law prohibiting all sorts of war propaganda within its territory. What was the object behind? In the present history of Russia, what distinguishes the approach of Stalin from that of Trotsky? The difference of approach of Stalin from that of Trotsky consists in the fact that the former wants that the world revolution and conclusions should be utilized for stabilizing the Soviet State instead of Soviet State directly acting

for international communism. Obviously it would have been to their advantage if they carried and utilized war propaganda but Russia recently put a law on its statute book prohibiting all war propaganda within its territory. I do not deny that there may be more in it than meets the eye. I want to invite the attention of the House to the fact that India has always taken up a certain stand in international bodies on this issue. Recently India took a stand in the U.N. Committee on the Draft Convention on Freedom of Information and on that issue was supported by progressive countries like Russia, Yugoslavia and others. With this amendment India is beginning the charity at home; she is acting in consonance with the stand she has taken up in international bodies. Nevertheless, I would like to ask whether it is proper for us to incorporate that in the Constitution. Now it may be urged that it is a very critical time in the history of the world. India believes in a policy of peace and not only a policy of peace by words, but a policy of peace by deeds. There was also a resolution in one of the bodies of the United Nations called "peace through deeds". So if India comes out with an amendment in pursuance of that stand and if it purports in a way to put a curb on all those propaganda which may strain relationship with a friendly State inevitably having its repercussions elsewhere also, it will be in keeping with that way of thinking. I would therefore like to know whether Minister that that could have been done in another way and probably better on the basis of reciprocity. I would submit to the lion. prime this could not have been left out or whether certain qualifying clauses could not have been advisedly attached to it. I have certain things in my mind and if I get an opportunity at a later stage, I shall explain them to the House. At the present moment I simply want to refer to the discussions that took place in the Committee on the Draft Convention on Freedom of Information. Ultimately, as you know, Resolution A was passed and that resolution recommended the constitution of a committee of legal experts who were asked to give their opinion whether a particular section could have been added to the draft that was prepared; it runs as follows:

"False or distorted reports which undermine friendly relations between peoples and States and matters likely to injure the feelings of the nationals of a state".

I think, if an amendment to that effect could have been adopted, it would have been very proper. But it was not right to put this amendment in a hurry, particularly when a

body of legal experts is considering this matter at the present moment this Resolution A which has a direct bearing on the subject. In a way, it may be said to have a certain significance also and that is that India by so equipping herself is exerting moral pressure on the issue she had been always raising in international conferences in the interest of "good neighbourly policy" and the promotion of international understanding. Although agreeing in substance with the sentiments behind it, I leave it to the Prime Minister to judge whether it was proper, when the resolution known as Resolution A was being discussed by a body of legal experts, for us to hasten this amendment to the basic Constitution. Nevertheless, it is true that we must back up all our professions with solid actions. It is time that we go forward resolutely and firmly in that direction. We stand for peace and within our borders we would not like anything to happen in a direction which is contrary to peace. But here a distinction must be made between information and propaganda. That was also a distinction made by some countries in the United Nations bodies. There were many countries which agreed that there should be absolutely no embargo on information but there should be a certain amount of curb on propaganda. A poor country like India does not like that there should be done anything by way of propaganda to strain the relations between the nationals of one country and another, and between one State and another State. In no sense it was conceded, however, that there should be an embargo on free and honest communication of news and views; but it was to some extent felt that there should not be any nefarious propaganda which may strain the relations between two States. Here, we had a certain amount of suspicion also that many rich and prosperous countries who are always out to inundate other countries with their propaganda, may embark upon it and try to overwhelm us. We should completely guard ourselves against such things.

Mr. Chairman: May I suggest to the hon. Member that he may go into all these details when the relevant clause is taken up, because a number of Members want to speak. All these details can be taken up when the appropriate clause is under consideration.

Prof. S. N. Mishra: Our misfortune is that those of us who want to support this measure have had no opportunity and time at the initial stage. If an opportunity is not given to us now, I think it would be very unfair to us.

Mr. Chairman: The hon. Member has already spoken for 30 minutes.

Prof. S. N. Mishra: I have.

Mr. Chairman: I think that the effect of a speech will not be judged by its length, but by its quality.

Prof. S. N. Mishra: I would have liked to refer to some of the criticisms. I have just now finished a detailed discussion of some of the clauses. I would also like very much to take up some other expressions to which exception has been taken. First, there are the words 'public order' and then, there are the words 'incitement to offence'. So far as the words 'public order' are concerned, I think that they are, as has been suggested by some hon. Members, really vague to some extent. This subject had also been discussed in some of the bodies of the United Nations. There, America came out with the suggestion that the idea should be negatively phrased and the same object would be better achieved. The amendment that they suggested was: 'in the interests of the prevention of disorder'. They said that that would be more precise and more definite in its connotation than 'in the interests of public order'. When the critics say that these two words are very wide in their connotation and therefore too wide by way of restrictions, I think there is a certain amount of ground for their misapprehension. The better thing would have been to put it negatively as America had suggested in one of the United Nations bodies.

Then, I come to 'incitement to an offence'. This phrase is also wide same sense and it should be subject to 'clear and present danger' test. So in this connection also, certain qualifications are needed. But, having said that, I would like to say that I am really very glad that the whole clause has been made justiciable and some of the lacunae that have been disclosed by some of the judicial pronouncements and interpretations, have disappeared with the amendment. What I have in my mind is what an Executive officer recently said to us in one of the discourses. He said:

"Look at the anomaly that prevails at the present moment when I find that a particular man has not been behaving in the interests of society, when I find that his

utterances are creating bad blood and disaffection between communities, what course is left to us? We cannot say to him 'shut up' in the interests of society; we can only put him behind the prison bars; that is, whereas total deprivation of liberty is possible, partial deprivation of liberty is not".

That is what we find at the present moment. A man may be locked up behind the bars under the Preventive Detention Act for a very minor utterance that he might have made because a particular executive officer thought that that man has not behaved well in the interest of society. But he cannot be asked to 'shut up', not served with a notice or warning. He can only be detained. This is an anomaly with which Government was faced and this has been removed by the present amendment. And this is quite necessary and desirable not only from the point of view of the administration but also from the point of view of the society as a whole.

In conclusion I would like to say that this amendment of the Constitution gives economic content to our democracy and provides for freedom which in my analysis is really economic in nature. By this amendment we give larger freedom which is really economic and which affects productive relations of society. Our Constitution and our democracy are at the present moment being invested with rich economic content and let us be happy about it.

We can also now say to the whole world that India has done everything in her power to promote peace and understanding, amity and good relationship between herself and other nations and now it is for others to come forward and reciprocate.

Lastly, about some misgivings, our Prime Minister has given repeated assurances to remove all possible misapprehensions and I think they remind us of a few words of Madison uttered on the occasion of the first amendment of the American Constitution: "It will be desirable to extinguish from the bosom of the community that there are those among their countrymen who wish to deprive them of the liberty for which they valiantly fought and freely bled."

I do not think with the repeated assurances of the Prime Minister in the same strain, we can have any reason to believe that these amendments are conceived in any but the best interests of society and the country.

Shri Deshbandhu Gupta (Delhi): I have listened to the speech of the hon. Prime Minister yesterday with all the respect and attention that it deserves. I have also listened to the speeches that have since been delivered. I fully agree with the Prime Minister that the amendment made by the Select Committee so far as article 19(2) is concerned—which is to be replaced by clause 3 of the Bill—is a major change. In fact, I go to the extent of saying that it has considerably removed the sting which the original draft had and inasmuch as all laws which will be revived and which will be made hereafter in respect of the exceptions which are contained in this amending Bill, have been made justiciable, this is a very substantial gain and we cannot under-rate or minimize the importance of this change. It will also set at rest the doubts which have been raised in the public mind that the Government had an intention of bypassing the judiciary. This is a very important change and I congratulate the Select Committee on this no small achievement. I wish this change had been introduced at the very outset. If it had been done, much of the criticism which has been evoked in the country would have been avoided. But unfortunately we are generally not very careful at the drafting stage. We bring forward measures without due and careful consideration which unnecessarily creates misgivings in the minds of the public and in this particular respect did in the minds of the Press. The hon. Prime Minister also deserves the appreciation of the Members of this House and particularly of the Press who do not see eye to eye with him in respect of this Bill for the spirit of accommodation which has been shown by him in agreeing to this 'major change', as he has rightly described it. More so, perhaps the hon. Home Minister deserves congratulation because it is common belief that it was he who was persuaded after a great deal of argument, to agree to the introduction of the word 'reasonable'. The Prime Minister has justified the claim which he made that his approach in the Select Committee while considering this important measure was a nonpartisan one. The tribute that has been paid by the hon. Dr. S. P. Mookerjee in that respect also deserves notice. I feel the Press of India and particularly those Members of this House—I refer specially to Congress Members of this House who had openly supported the stand taken by the Press in this respect—deserve some credit for this improvement in the Bill and I take this opportunity on behalf of the Press to congratulate and to express my thanks to those Members who

had the courage to assert themselves and openly advocate a change in this respect. But the point is, the amendment, so far as it' goes, is good and we are all grateful to the Government and to the Select Committee for that. But the fact remains that it does not go far enough. The changes that have been made no doubt will improve the Bill considerably but the objections that were taken were of a fundamental nature.

Mr. Chairman: May I enquire how long the hon. Member is likely to take?

Shri Deshbandhu Gupta: I will take at least three quarters of an hour.

Mr. Chairman: The hon. Member took a long time in the Select Committee and now it is only to congratulate the select Committee that the speech is necessary and so if the hon. Member can finish in ten minutes, we may continue sitting today.

Shri Deshbandhu Gupta: 'Congratulation' is only the prelude. I cannot finish in 10 minutes.

Mr. Chairman: Then the House will adjourn now till 8-30 A.M. tomorrow.

**The House then adjourned till Half Past Eight of the Clock on Thursday, the 31st
May 1951.**

**THE
PARLIAMENTARY DEBATES**

(Part II—Proceedings other than Questions and Answers)

OFFICIAL REPORT

PARLIAMENT OF INDIA

Thursday, 31st May, 1951

The House met at Half Past Eight of the Clock.

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(See Part I)

9-30 A.M.

LEAVE OF ABSENCE FROM THE HOUSE

Mr. Speaker: Before the House Proceeds with any other business,. I would like to inform hon. Members that Shri Sardar Singhji has requested for leave of absence under article 101 (4) of the Constitution 'as he has gone abroad for the sake of health.. Is it the pleasure of the House to grant him leave?

Leave was granted.

CONSTITUTION (FIRST AMENDMENT) BILL—contd.

Mr. Speaker: Before we go to the further consideration of the motion that the Bill to amend the 'Constitution of India, as reported by the Select Committee, be taken into consideration, I would like to place before the House some points with reference to the timetable for the present Bill.

As agreed to yesterday, we finish the present consideration stage by one o'clock today. This means that I shall be calling upon the hon. the Leader of the House to reply at about 12 o'clock. Hon. Members will know that under article 368, a certain majority is required for the passing of the Bill and its provisions. That means the majority voting, if at all they choose to, has to be a majority of the total membership of the House and a majority of two-thirds of the Members present. That being the case, I think in this case, rather than go by voices, it is necessary for me to have the voting by the division' of the House, not only in respect of the present motion, but even in respect of each clause and perhaps in respect of each amendment which is going to be sponsored, if at all, by Government for acceptance, or by private Members which is going to be accepted by Government. Of course, in respect of other amendments they have got to be decided only by voices I need not even ask hon. Members to stand and then count. Well, this means that this procedure will require a long time, because each time a motion comes, a division will be necessary. Therefore, in this case also some time has to be left for divisions and also time for reply.

Now, I find that only nine speakers have taken part and a large number of Members 'are still waiting to express their views. But it is physically impossible to meet the wishes of each and everyone who wishes to speak. Therefore, if the House is agreeable—I do not want to put it myself—I can lay down a limit of 15 minutes for each speaker. Is the House agreeable?

Hon. Members: Yes.

Mr. Speaker: Very well. Then.....

Shri Deshbandhu Gupta (Delhi): But, that would be very unfair to those who have not so far participated in the debate.

Mr. Speaker: Maybe but it is the result brought about by those who have spoken for a longer time. Anyway, irrespective of the time that the hon. Member has taken yesterday, I shall take into consideration this fact and not deduct the whole of the time

he has already taken, from his fifteen minutes today, but a substantial portion of it. We must give an opportunity to all in a fair and square manner. This time-limit, of course, does not apply to the hon. Ministers of the Government who wish to participate in the debate. So that is one thing.

As regards the next stage—which comes up tomorrow, I do not want to make any suggestion now but shall place before the House my own reactions. Hon. Members have the whole of to-day to consider it and then we shall decide finally to-morrow.

I should think that in the clause by clause stage it would be better if we have a timetable for each clause. Now there are in all thirteen clauses.

Shri Kamath (Madhya Pradesh): Fourteen, Sir.

Mr. Speaker: Hon. Members may allow me to finish. They need not anticipate me. There are fourteen clauses—not thirteen. Now my idea is looking to the subjects with which these clauses deal we should reserve more time for clauses of an important nature and very little or none even for the matter of that, for clauses which are absolutely of a formal nature. The division to me appears to be somewhat like this.

Article 15 may be taken to be important. The order of importance may be settled to-morrow. And then there is article 19. It would certainly require more time. Then there is clause 4 which deals with article 31A and then clause 5 dealing with article 31B and clause 14 which deals with the addition of a Schedule is also one of the important clauses and that may take some more time. It appears that clauses 6, 7, 8, 9 and clause 12 dealing with article 372 are more or less formal ones and for these we do not require to say something in respect of them. And then, I am not quite sure of clauses 10 and 11 dealing with articles 341 and 342; it is possible that there may be some arguments on the, Then comes clause 13 dealing with article 376 and that may be considered somewhat important.

So, looking to the comparative importance of these clauses we may fix the time for each of them. Unless we do that it will not be possible for us to finish this Bill according to the schedule.

And it has also to be remembered that in respect to each clause and each amendment, separate voting will have to be there, which means as many divisions as there are clauses, unless the House agrees that some clauses may be put together as they have

the unanimous support of the House, though even then division will be necessary. Of course, the clauses can be taken together. In the cases of clauses in which there are dissensions, each clause and each amendment has to be voted upon separately. If there is less of difference of opinion and more of unanimity, we shall be saving a substantial amount of time so far as the divisions are concerned.

These suggestions may please be borne in mind and we shall decide the matter tomorrow. I shall give my second reactions also tomorrow without taking much time, because I do not want to spend much time of the House in these preliminaries.

Shri Kamath: On a brief point of clarification, Sir.....

Mr. Speaker: Let us have it tomorrow. Today we shall conclude the consideration stage.

Shri Sidhva (Madhya Pradesh): Are we to understand that to-day's division will take place after the hon. Leader of the House has completed his speech, even if it goes beyond one o'clock?

Mr. Speaker: No, it cannot go so far. I hope the Leader of the House and other hon. Ministers who may participate will not take much time so that we may have the division by one o'clock and not later.

That is how the programme goes on.

Shri Hanumanthaiya (Mysore): Sir, article 368 demands that the Bill has to be passed with a certain majority. Whether this majority has to be adhered to at each stage of the Bill or at the final stage is their question. Your observations, Sir, seem to denote that it is necessary to have this. Majority at each stage of the Bill, that is to say every clause and every amendment has to be passed with this majority. Since we are dealing with the matter for the first time in this House it is going to create a precedent. And so this has to be decided carefully. I personally think that the 'word "passed" need not be construed as referring to every stage of the Bill, but it has to be construed as referring to the final passing of the Bill.

Mr. Speaker: I can assure the hon. member I have myself very carefully considered this provision and in order to strengthen my own view, or have it corrected if I am wrong. I have also had the benefit of the opinion of the Attorney General and what I

expressed in the House now is the opinion both of myself and Attorney-General. That is in reference to the first part of the question. There is the other aspect. The hon. Member will remember that this is important legislation and whatever our own feelings in the matter may be about the interpretation of what is meant by "majority" and what is meant by "passing", it will be taking too much of a risk to stick to our interpretation and leave the whole legislation open to challenge in judicial courts; and therefore we shall be erring on the safer side in having the division and voting record on each amendment and that is the procedure which I am going to follow as is said in legal parlance *ex majoricautela*, as a matter of extra caution, apart from the interpretation which I have given.

Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru):

Naturally, Sir, we accept your ruling in this matter generally speaking but I am not quite clear as to what you said about the amendments. Are we still to vote in that way even in regard to minor amendments or verbal amendment? I can understand of course that in the case of each clause as that is the real amendment of the Constitution. But in dealing with the clause if minor or major amendments come in before the whole clause is put, will that also undergo the 'same process'?

Mr. Speaker: About that point, I have indirectly touched it when I said a few things here. Minor amendments, really speaking, ought not to matter but when incorporated in the clause itself they become amendments of the Constitution to that extent. For example, the amendment the Select Committee has made now, it is not coming here but the word 'reasonable' is added. I am merely illustrating. Suppose some amendment requires addition of the word 'reasonable', it gives a different colour.

Shri Jawaharlal Nehru: If they come up as a clause.

Mr. Speaker: I am going through this with extra caution to leave no room for arguments later on and what I have in mind is this, that I do not want that all amendments or each amendment as it is moved or accepted should be immediately put to vote. But with regard to the accepted amendments—I mean accepted by Government—what I propose to do is this. Let all amendments which Government want to have to a particular clause be 'moved and debated and I shall ask the House to divide only in respect of all the amendments put together. That means there need not

be a division on each amendment. I shall put them to vote together and let them' be adopted. I do not think there will 'be many amendments.

The Minister of Home Affairs (Shri Rajagopalachari): Without making the debate take any substantial part of the time we have, I would like to mention to you with reference to the last point that we know the procedure as to amendments and it would be impossible if any particular procedure is to be followed for each amendment for this reason that the net result on the amendment to the constitution proposed in a particular clause would depend very much on the form which the clause takes by various amendments. Therefore, the reasonable interpretation with regard to quantum of voting would be, I submit, to record the votes on the clauses and not on each particular fraction of it, which may have contrary and counter effects: on one another because each amendment has its own value in-its place, but the totality of the clause would have to be voted upon in the form in 'which it takes after the amendments are passed. I wonder whether it would be more reasonable and convenient and also fulfil the purpose in full measure. If we take it that each clause should have the majority that is prescribed.

Mr. Speaker: Let us not have this debate further. That is what I was suggesting a little differently. Therefore I said that all amendments which the Government are going to accept; will be put together instead of each- amendment being put to vote separately.

Shri Jawaharlal Nehru: With the clause?

Mr. Speaker: Not with the clause. I am not clear on that myself.

Shri Rajagopalachari: I quite appreciate the policy that we should err on the safe side but we need not err unnecessarily all the same. What I submit is it may be quite a contradiction if you follow this procedure. For instance, the large majority of the House may be in favour of an amendment or may be against it but they may have quite a different view when the amendment is incorporated in the clause. Therefore, instead of having split votes, so to say, could we not take the issue on each 'clause' as a whole? But I do not want to further argue the matter. I leave it to the Chair.

Mr. Speaker: I shall consider the matter. Therefore, I was suggesting the procedure that I have explained. To my mind it would not mean more than two or three divisions at the most.

Shri Rajagopalachari: True. It will save the time of the House if we follow the procedure I have suggested. The real point is whether an amendment to a clause should be voted upon in a particular way separately, or whether the clause as amended whether the House is free to consider the whole picture and vote for or against.

Mr. Speaker: I have no doubt on that point that, if the clause as amended is put and is accepted by the House, automatically the House accepts the amendments. That is clear to me. On that there is no doubt. As I said, I was just considering from this point of view as to what possible objection could be raised and to meet that possible objection. I thought we might have just a few minutes more. After all it does not matter—we have spent so many days over the discussion of the Bill and we may as well spend a few hours more in going through the formality of a couple of divisions but on the substance I am clear.

Shri T. T. Krishnamachari (Madras): The provisions of article 368 will be attracted only by what we are altering in any article of the Constitution. It is only in the finality of the process, after the various stages which it passes through, that the provisions of 368 are to be observed—not in regard to an amendment to a particular clause that Government propose.

Mr. Speaker: That need not be argued now. I have not yet made up my mind on that aspect. So far as the clause is concerned, I am very clear. We will consider it further and see what can be done.

Shri Rajagopalachari: The matter is in your hands.

Pandit Kunzru (Uttar Pradesh): You proposed to put all the amendments to a clause to the vote at one and the same time. I would like you to consider whether this is possible under this procedure. It is quite possible that two-third majority may be obtained for one amendment but not for another but if you force the House to take all the amendments together and decide in that case, even the amendments that would not have been accepted had they been put singly to vote, would have to be accepted by the Members of the majority party. I do not think, therefore, that all the amendments should be put to vote together. Each amendment should, according to our usual procedure be put to vote separately.

Mr Speaker: I will see what the position is and decide about it. Let us now proceed to the business on hand.

Shri Hanumanthaiya: Sir, I have a suggestion.....

Mr Speaker: Not now.

Shri Deshbandhu Gupta: In my opening remarks yesterday, while complimenting the Select Committee and the Government on seeing the reasonableness of introducing the word "reasonable" before "restriction" in clause 3 of the bill and thereby improving that part of the Bill considerably, I had said that the Press of India was still opposed to this part of the Bill and some of their objections were of a fundamental nature.

Before dealing with such objections, I would like to answer some criticisms which have been levelled on the floor of the House against the Press. Some hon. Members have suggested that the Press is opposing the amendment of article 19 (2) because of selfish reasons. One such insinuation was made yesterday by Prof. Mishra. I would like such hon. Members—luckily their number is small—to remember that newspapers have no rights or claim no rights which are not guaranteed to all citizens of the country. The freedom of expression is not a special privilege of the newspapers but a right of all citizens. This is so in all democratic countries and more so in our country, where in the Constitution there is no specific clause guaranteeing the freedom of the Press as exists in the Constitution of the U.S.A. Let there be no mistaken notion on this point. Some criticism has also been levelled against the tone of certain newspapers. I am sorry to admit that there is some justification for this criticism. The A.I.N.E.C. has itself more than once deplored such writings and have even condemned some journals which indulged in such writings, but there again I would say that while considering the important Fundamental Right of freedom of speech and expression, the House should not be swayed by any such consideration. I may also remind hon. Members, particularly those sitting on the Treasury Benches—who also share some of this criticism—that a country gets the Press it deserves. If today independent newspapers like the Independent of Lucknow, the Swarajya of Madras, the New India of Madras, the Forward of Calcutta are not in existence, it is not because they were not fighting the cause of freedom or because they were not

maintaining a high standard, but because public opinion in this country was not sufficiently educated to back such papers and allow them to flourish. Therefore I would like you to distinguish between the responsible, journals and irresponsible journals. The number of irresponsible journals in our country is very small and let us not exaggerate that side of it. (*Shri Sidhva*: It is growing.)

The Prime Minister also has personal experience of some newspapers and I am sure he knows from what an amount of handicap important newspapers, which try to be independent and which are not in any way associated with the capitalists suffer. Therefore let such newspapers which maintain a high standard of journalism be encouraged and let not all papers be dubbed as irresponsible papers. The fact of the matter which should be recognised by Government is that unfortunately there is such an amount of discontent today in the country against the manner in which the Government is conducting its affairs that a large section of the people like to reach such journals and newspapers which indulge in downright abuse of the Government. The way to curb such papers is not to seek to abridge then freedom of the Press and thus offend' even the friendly Press which has, all along been supporting the cause of the country. I would suggest that the best way to handle this matter is first of all to improve the tone of the administration (*Babu Rain Narayan Singh*: Hear, hear) and secondly to create a strong public opinion against their objectionable writings. The question which I would like our leaders to address to themselves is: Why is it that these very people who till yesterday were prepared to lay down their lives at their back and call and who used to swear by them, have today turned so hostile as to patronise such journals which indulge in such downright abuse of the Government? This is a serious question which can only be answered by those who adorn the Treasury Benches. My only submission is that the way to deal with such papers is not to curb the freedom of the Press Statesmanship requires that instead of seeking to curb the freedom of the Press we should go deeper into it and try to remove the real causes of discontent.

The other day, while replying to the debate at an earlier stage, the Prime Minister had referred, to a new development in Indian journalism, that is, the growth of chain papers. He had hinted that these chains constitute possibly a greater threat to the

freedom of the Press. I have no difficulty in agreeing with him on that point; but this is a development which is by no means confined to our country, it is a development which we find in other countries particularly in the U.K., U.S.A., where perhaps they are more in existence today. Therefore this constitutes, an entirely different problem and the Government will have to solve it one day. Personally speaking, I would be very happy if this tendency can be checked. I would like to say one word more about this.

If you will go into the history of the development of these chains, you will find that the Government itself cannot be absolved of its responsibility in this matter. It was during the war that this growth started. I am sure if you will refer to the criticisms of the newspapers at that time you will find that strong exception was taken by responsible newspapers to this tendency. But what happened? Instead of taking any steps to curb or check that tendency, our leaders—and I am sorry to say, some of the ministers—started patronising even more those capitalists who hid the advantage of controlling the newspapers. I say so with the fullest sense of responsibility that I command. The result was that other people who had got ill-gotten profits during the war tried to copy that. (*Interruption.*) I say that it is to our shame: The result was, and I am sure the Prime Minister will agree with me, that other chains started. When one chain started it was followed by others. This is the history of this rot. This is a very serious problem and as I said the Government cannot be altogether absolved of its responsibility. I might add that even today newspapers which are not connected with any capitalistic chain suffer under a disadvantage. I know it and the Prime Minister knows it. I am not therefore happy, about this development in Indian journalism and I am at one with the Prime Minister that the sooner we can check it the better it will be for the country and as well as the Press. But here again I would say it is no reason for curbing the freedom of the Press and it is no use calling names to the papers on that account.

10 A.M.

Now I come to the main fundamental objection to which, I had referred yesterday. I would deal later with other objections that the Press has to the revised draft which has come before the House; the main objection that we have against the proposed

amendment is this: Let me first tell you that since I spoke last on the Bill I had called an emergent meeting of the Standing Committee of the Newspaper Editors' Conference. They gave careful consideration to this amendment and went into the full details and implications of the amendment. The conference was attended by a large number of leading editors of important newspapers of the country. The Prime Minister, Sir, was also good enough to grant two interviews to the representatives of this body. Subsequently some correspondence also took place which has already been published. I do not wish to take the time of the House by referring at length to that correspondence, but I would like to refer to one passage from the Prime Minister's letter of 20th May to me. In that letter Sir, the Prime Minister said:

"I told you and your colleagues this morning that in proposing an amendment to article 19(2) we were not thinking of the Press at all. We had certain other considerations in mind affecting the law and order situation in the country and both the domestic and international, situations. I recognise that even though we do not have the Press in mind, the Press might be affected by this amendment. Because of that I made it clear to you that we were prepared to ensure, so far as we could, that no adverse effect was produced on the Press by this amendment. It was also proposed that legislation should be brought in Parliament as soon as this can be conveniently done, to replace such laws as could be presumed to continue to exist, by 'a wider and more comprehensive approach to the question. This legislation would form the freedom of the Press and we intended consisting responsible newspapermen in regard to it."

He went further and said:

"But the intervening period, so far as we are concerned, need not be long. This matter will be dealt with by Parliament, not by State Legislatures."

These were the assurances which the Prime Minister gave in his letter which he was kind enough to write to me on the 20th May. And he was good enough to repeat these assurances while supporting the suggestion made by Shrimati Durgabai in her dissenting note that instead of the word "State" the word "Parliament" may be substituted so as to make it the exclusive jurisdiction of Parliament to frame laws relating to freedom of speech and expression.

The Standing Committee of the Newspaper Editors' Conference took note of all, that but found itself Unable to agree to the proposal of amending article 19 (2). They hold the view that it was uncalled for and unwarranted. They pleaded that this part of the Bill should, at any rate, be postponed till the next session and public opinion might be elicited on same. They have not said in their resolution that they do not recognise the difficulties of Government. All that they have asked for is a little time to think. I still hold that this is the right course for the Government to follow. The reason is simple. As, I have pointed out, the Prime Minister has very kindly undertaken to bring forward a comprehensive legislation dealing with the various laws relating to the Press. He has expressed himself strongly against the retention of section 124A of the Penal Code on the statute. In one of his letters he has, gone to the extent of saying that the said Bill will seek to enlarge the freedom at present enjoyed by the Press. He has said that some of the recommendations of the Press Laws Enquiry Committee did not go far enough. When such is the intention of the Government, may I ask: Will it not be better for the Government to bring forward that proposed Bill and thereby set at rest the fears and apprehensions that have been raised by this Bill' in the mind, of the Press, and then amend article 19 (2) if they must do it? If no other argument appeals to them, I ask: Is it not pure and simple expediency to adopt such a course? Today I am sorry to say that the country and the Press have not got the same amount of confidence in the word of the Government which it had before. This is 'unfortunate. But as realists and legislators we have to take note of this fact, howsoever much we may dislike at the Government has, therefore, duty to give an assurance but, in order to win back the confidence of the people, do something more, and it is for that reason that I feel that it would have been better if Government had laid its cards on the table and at least introduced the contemplated comprehensive Bill dealing with the Press laws. It did not matter if it could not be passed—we would have at least known what the comprehensive Bill was. That would, have created an. amount of good will for the Government and a better atmosphere for the consideration of the amendment of, the Fundamental Rights in respect of freedom of speech. I feel it is still the best course to follow. Nothing would be lost if this part of the Bill is postponed and brought later in a separate Bill....

Shri D. D. Pant (Uttar Pradesh): Sir, is it permissible for the hon. Member to read his speech and bore the House?

Shri Deshbandhu Gupta: I am very sorry, Sir, the ears of my hon. friend are very delicate although he claims to be the editor of Shakti. Let him take some *chandrodaya*.

I was submitting that that was still the best course for the Government to follow—nothing will be lost if this is postponed till the next session. Let them pass the rest of the Bill unanimously and with the wholehearted support of all the sections of the House. If I mistake not, such a course was suggested also by a State Government, and if my information is correct it was no other Government than the Government of Uttar Pradesh which is the biggest State Government in India today. If that Government in its wisdom had advised the Government to confine the Bill to abolition of zamindari, may I know how is it unreasonable on my part or on the part of those who are very anxious to see that the liberty of the Press and the freedom of speech and expression are in no way thwarted, to ask the Government to postpone this part of the Bill for another two months? Some hon. Ministers also, 'I understand, hold the same view. It is never too late to do the right thing, and I appeal to the Prime Minister for whom the Press of India have the highest regard and who we still believe is the best friend of the Press, to accept my suggestion. I repeat nothing would be lost, and everything would be gained, by following this course. You will be able to retain the goodwill of the entire Press of the country and make the passage of this amendment much easier and smoother if the Government were keen to have this amendment.

I do not propose to enter into a detailed examination of clause 3 at this stage. I will do so when I move my amendment for its deletion. Nor do I wish to burden my speech with any quotations from foreign writers and leaders of thought on the importance of the liberty of the Press and the inadvisability of tampering with the Fundamental Rights. I am sure the Prime Minister knows much more on the subject than anyone else in this House. And if there was need for that, my hon. friend Dr. Syama Prasad Mookerjee, in his eloquent speech yesterday, has fulfilled that need. I only wish to point out that the most serious and fundamental objection which the Press has to this amendment is that of imposing a previous restraint which it seeks to impose on the

editors of newspapers. Newspaper editors do not mind being punished for their writings. If they transgress the, law of the land, punish them by all means—hang them if you like—but for God's sake do not impose any restraints on their pen. Do not inflict on them the indignity of submitting their copies to a magistrate for censorship, a magistrate who may not even know how to distinguish between a leading article and a news item. This was all right in the old days. We have had enough of it. It does not behove the present Government, a Government headed by our respected leaders who have brought freedom to this country, to employ the same methods which were employed by a foreign bureaucracy. This is one of the greatest objections, the most serious objections the Press have and up till now in the speeches delivered by the Prime Minister and others who support this Bill no assurance has been forthcoming that Government does not intend to impose previous restraints on the newspapers. If this is not the intention, why take the odium?

I have read the judgments of the Supreme Court in the *Organiser* and *Crossword* cases. These judgments have only held the security and censorship sections as ultra vires of the Constitution. I am not concerned here with the offence involving violence or, murder which the Patna High Court has dealt with I am concerned with the Supreme Court judgments in the *Organiser* and *Crossword* cases and as I said they have only held that imposition of censorship or asking for security is repugnant to article 19 (2). If this is all, and if the intention of the Government is not to have a regulated Press, and I know it is not, if the Government do not wish 'to impose any fresh restrictions on the Press, as has been said I want to know what exactly do they seek to do? What then is the obstruction which the Supreme Court judgments have created, so far as the Press is concerned? If they do not propose to arm themselves with these powers, what would be lost if this part of the measure is postponed? I would respectfully submit to the hon. the Prime Minister that we would be placing ourselves in the wrong not only in India but in foreign countries as well, if we pass this part of the Bill. Yesterday a reference was made to an international organisation dealing with freedom for information. The one thing they have strongly advocated is that there should be no censorship. It is a straight question and I want to have a straight answer. Do or do not Government by having this amendment, propose to arm

themselves with the power' of censorship? If that is not the intention, then that should be made perfectly clear.

My attention has been drawn to certain writings in foreign papers. Foreign papers, as is usual with them, have taken advantage of the situation. One responsible newspaper of America has devoted two columns to saying that the Government has brought forward this measure just to crush or kill one news-weekly of Bombay.

Shri Feroz Gandhi (Uttar Pradesh): It was published by mutual arrangement.

Shri Deshbandhu Gupta: I want to make it perfectly clear, Sir, from this place that the Press of India which has always stood by the side of the country is not going to be a party to such campaigns of falsehood, vilification, or malicious propaganda against the Prime Minister. I also want to make it clear that if the forces of reaction feel that if they make out that the Press of India is offended against the Government and that they do not see eye to eye with the Government, the Press of India will support them in their designs, they are completely mistaken. The Press of India, in its own humble way has rendered some little service to the cause of the country. They would like to maintain that distinction. With all earnestness that I command, I once more make a last minute appeal to the Prime Minister, the Home Minister and other Ministers to please realise the importance of this question. Do not offend a friendly Press. The Press is always with you; the Press has always helped and stood by you, whenever the country's needs demanded it, even going to the extent of proposing punishments for their own papers.

That being the background, is it right to ignore the entire opinion of the country's Press to ride rough-road and just go on with this amendment? I assure you, Sir, if a comprehensive Bill, as is proposed by Government, is brought forward even in this session, and we are assured that Government does not really mean to curb the freedom of the Press, I have no doubt about the intentions of the Prime Minister. I have the greatest regard for him, the country has the greatest regard for him and the Press has the greatest regard for him. That being the case, I want to urge on him, please for God's sake do not rush through this part of the Bill, but postpone it to the next session. Do not offend a friendly Press on this account.

With these words, Sir, I am sorry, I have to say with deepest regret, that I am not in a position to support the consideration motion.

Shri Rajagopalachari: My desire to intervene was not very strong, but in view of the particular connection which my function in the Government has with the criticisms that have been offered, I consider it incumbent on me to intervene, though I value the time of the House at this stage far too greatly to do it with pleasure.

My hon. friend Shri Deshbandhu Gupta has been very reasonable in his appeals, whatever the reasons may be. His appeal I do not say is wrong; but his reasons one cannot accept. With all respect, I wish to say that this scare that the Press has gone into is wholly unnecessary and there was no cause for it whatsoever. I can only think for comparison of recent scares about children being kidnapped! There is hardly any reason whatsoever for the fears expressed and for the manner in which these fears have been expressed. At the same time while logically admitting that any general law made would apply to the Press as much as to others, what I object to is the unnecessary application they have made to themselves of a proposal that has been made. Is it perhaps due to the fact that the Press is far too conscious of their own black-sheep that they got into this scare? I do not at all mean anything against what has' been termed the responsible Press. But I think, it is probably a fact that there are far too many irresponsible—I do not say the majority, let the words not be misunderstood expressions in the Press now and then which perhaps make the Press as a whole rather too conscious of the fact that this proposal might be aimed at them. But I once again assure my hon. friend Mr. Gupta and all those who stand behind him that this was not intended as a weapon against the Press and this is not going to be intended as a weapon against the Press. Nor indeed, let me say, is this a weapon at all. This amendment as well as all the amendments that have been proposed in this Bill—none of them is a weapon. It is no laws that we are enacting. It is only a permission out of the constitutional restrictions placed in certain respects that we are seeking. Now the question is very obvious to those who have thought about it. But I am afraid there are many who do not see exactly this difference or at last do not remember it even if they have grasped it in the course of a particular discussion.

I shall not deal with any other Part of the bill except article 19 (2), that is to say, clause 3 of this Bill. Article 19 (2) as proposed to be amended would run thus:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the security of the State friendly relations, with foreign States, public order decency or morality, including in particular any existing or other law relating to contempt of court, defamation or incitement to an offence."

Now, what is this right that we are discussing? This right that we are discussing is a natural right the right of freedom of expression and speech. It is a natural right. No one can claim that a natural right is like a right given in a clause of a lease or an insurance policy to be enforced like Shylock's pound of flesh. According to the letter of the law, a natural right should be subject to natural restrictions. Therefore the proper way of approaching the question is whether the amendments that we propose do away with any natural and proper restrictions, whether the proposals that we make only refer to such unnatural things and abuses that everybody must agree to prevent. Was it the intention of any hon. Member who was party to the Constitution was it the intention of any freedom of speech should allow anybody to act adversely by sneaking or writing, to the security of the State or to friendly relations with foreign States or to public order or decency or morality or that the law of contempt of court should be abolished or that the law of defamation should be abolished or that incitement to offence should become part of the charter of freedom of speech? It is a perversion of logic to say that is natural right which has been acknowledged in the constitution as binding should be so interpreted by reason of its specific insertion in the constitution. As if it were a legal document by which a man can claim his pound of flesh under it whatever the injurious consequences.

Judges have given their opinions with reference to the facts in each case, and they generally express their opinion carefully and after much consideration. What have they said in this case? I need not waste the time of the House by repeating everything, word for word. But it has been clearly pointed out and eminent Judges have held that the language as it stands permits, and Parliament cannot pass any law and Government

cannot deal with any man who makes speeches, writes pamphlets and distributes literature, inciting people to murder—that is to say the extreme case. If a law has been adopted as a part of the Constitution by which such a thing according to an eminent Judge is allowed, is there any time to be wasted in showing or in demonstrating that we must clarify the position? It is absolutely essential that the law must be clarified after what eminent Judges have pointed out in this regard, as I have just now said.

Dr. Mookerjee has said in the course of his speech, "Well, I have no objection to remove the doubt and clarify the position so as to avoid any incitement to violence and to offence involving violence. True. It is a very easy position to grant. But I want him to consider his position from that point where he has reached. If one has to admit that the law is not laid down in clear terms so that it has become necessary to remove this defect namely, that even incitement to murder incitement to grave violence would be covered by the protection given for freedom of speech if it is admitted that article 19(2) was open to that construction by a court of eminence, where then is the objection?"

The point was generally raised: "once the Constitution has been made do not interfere with it." It is obvious that this has to be amended. Now the question is how it should be amended. The general proposition raised, that Constitutions having once been made they should not be touched in manner hastily, falls to the ground as I have just now explained. If it has to be admitted even by the worst opponents of this Bill that attempts to incitement to murder and violence would be included in the protective clause of article 19 as it stands, the argument that no amendment is necessary falls completely to the ground because eminent courts have raised. It as a bar even to interfere with incitement to violence.

Then the question is where we shall stop in defining the amendment that we have introduced now Dr Ambedkar's speech was quoted by Dr. Mookerjee in a very relevant way, and I propose to deal with it immediately and briefly. Dr. Ambedkar's speech was quoted to show that the specific exceptions that have been adopted in our Constitution are a ground for arguing that no more can be added to them. It is a perfectly right argument—that certain specific exceptions having been admitted in

article 19, no more can be added. That is just the reason why we have to add now certain specific exceptions which have been lost sight of and which were not there.

One very patent illustration of which is incitement to murder being covered by this protection. Therefore, the argument that was raised on a quotation from Dr. Ambedkar's speech, far from supporting Dr. Mookerjee's position, I submit, makes it clear that an amendment is necessary.

Then the question is what are the objectionable points. Now, I shall deal only with the incitement to offence clause to which great objection has been taken. What is the clause relating to incitement to offence? Hon. Members agree that violence should be kept out. But do hon. Members want that other forms of crime should be encouraged or allowed to be encouraged? If Parliament gravely sits down to pass a law that people should not sell wheat or gram at above a certain price, if hon. Members make a law that people should not commit theft, if hon. Members make a law in any other matter which does not involve violence, is it to be conceived that the freedom of speech granted by the Constitution should go to the extent of encouraging or inciting people to commit those very crimes which we have defined after deliberation and put into the statute book? It is not between great and small that we should distinguish what we should distinguish is between crime or no crime. If Legislatures have decided that certain things are bad for society that they should be punished, then I say that freedom of speech should not cover incitements to committing those very things that have been forbidden. The ordinary way would be that if a prosecution is to be launched in any matter, trifling things may be ignored. Probably Government have, to ignore various things, trivial or big. But the question is what should the law and Constitution be? We cannot be contradictory in our attitudes though we may be contradictory in our arguments for the time being. Our attitudes must be consistent. Do we want certain things to be crime or do we want them to be not crimes? If they are not bad do not make the law of crime cover such things. But once you make up your mind that they are important and a certain thing should be treated as a crime and punished, then there is no sense in allowing people to use their freedom of speech for the purpose of incitement to that crime.

Then the question is raised—it works that way in the minds of lawyers—that there is the law of abetment. That is, you can proceed if the man abets a crime and you need not curb his freedom of speech. I want to know whether courts would hold that an abetment which is only an exercise of the right of freedom of speech would be admitted as a crime once this article stands here. It is absolutely necessary and hon. Members may consult any lawyer of any eminence. If it is necessary to pass a law that certain acts are to be punished, as offences in order to govern our country, then: incitement to such crimes should not be encouraged. An incitement to offence is not necessarily an abetment. An abetment has to be directed to a particular offence and it should be proved in a particular manner, but surely we do not want people to say on the one hand, there should be no black-marketing and on the other hand say, people should be allowed to write and freely circulate statements and expressions saying: we honour men who break this law and we want you to break the law so that the law itself may be changed. We do not want that kind of contrary attitude with regard to crime. Let us pass laws with reference to crime with all the care that we can. But having passed that law once, let us not stultify ourselves by saying that freedom of expression must be any man may circulate stuff inciting people to break that law and reduce it to nullity. Take the very popular measure with regard to prohibition of drink. Suppose we make laws that drink should be prohibited. May we at the same time allow the people to write:

“It is a noble thing to break this law. Carry bottles in your trouser pockets. Try to smuggle wherever you can?” If we really mean governance, we should uphold the law of crime that we put into the statute book. We cannot allow the freedom of the Press to run counter to the law of crime. A restriction in this respect is necessary. Therefore with respect to any offence so far as it is admitted as an offence by any Legislature, we must guard that law properly. If you pass this law, it does not make incitement to offence as such a crime. What this clause allows is for Legislatures and Parliament to pass laws which would take notice of such incitements to offence in a suitable manner. It does not mean that every incitement to crime becomes a crime by itself, apart from abetment. This clause only permits Legislatures to take notice and take due measures to prevent such incitement to offence and that is the reason behind this

clause and not any intention to curb the freedom of speech. 'Freedom of speech' put most briefly is a thing to be used and not to be abused. Of every natural right there can be use as well as abuse and Governments and Parliaments and Legislatures have to prevent abuse and it is not interference with that freedom if we prevent that abuse.

Mr. Deshbandhu Gupta on behalf of the Press spent a great deal of energy and time on the Press laws as such. I have said before, and I say so again, that it is the intention of Government to replace what had been declared by the previous decisions based on article 19 of the Constitution to be void and of no effect. We will have to reframe the laws so that they may be consistent with the Constitution, as it stood and as it will now stand if this amendment is accepted and that law will have to be introduced and I promise on behalf of Government that it will be drawn up and after due consideration will be placed before the country and before the House and will be passed in due course. Thereafter no other law by any other Legislature would be entitled to go in contradiction to that law and it would be a sufficient way of conformity to the principles on which we should deal with the Press as such.....

Shri Deshbandhu Gupta: May I interrupt the hon. Minister. When he is thinking of that law, is it the intention of the Government not to revive section 4 of the Press (Emergency Powers) Act?

Shri Rajagopalchari: It would have been more gracious for me to be allowed to say without being asked but the hon. Member has taken that grace out of it. I was going to say something more which the hon. Member has not in his mind and which will certainly be welcomed by him. We are not only going to bring a comprehensive measure, dealing justly, and properly with all those questions which arise in that connection and in consonance, with the spirit of the Constitution and not only the letter, but also the removal of all things that have been felt to be bad. Certainly censorship is bad and it is open for the House at that time when that law is introduced, if Government still persist in bringing such a measure to oppose it. It is not the intention of the Government to bring, such a proposal at all. Such things as are considered by the Press to be wrong would not be there. I may as well assure the Members who speak on behalf of the Press that the time will come when that law is taken up and we shall justify the statements that we have made at that time I have no

doubt about it. Go further and since the hon. Member was so particular about the details in that connection, I say that I for my part—I have not consulted any of my colleagues or the Government as such—would agree that contrary to and differing from all other trials, every dispute with regard to such matters in which the Press is interested in any particular case shall be decided by a jury, composed of Press men editors, etc., as such. Let them decide it. I have seen how the Press associations have failed to curb their own individual members. Who have gone wrong and therefore, it is that I am proposing it. Let them be sworn into the jury box, let them hear the evidence and let the verdict come from the mouth of the members of the Press. I would like such a procedure to be adopted. I shall press with all the power that I can command, If I continue here, that such a tradition should be accepted. There can be no complaint. Let an editor be tried by his own peers. I have no objection at all. Let us see how the peers will work. It will be open to the public to decide who is right and who is wrong fairly easily when any matter appears before them. I think the Government would be well advised in putting this system to work.

I will carry my point with reference to this incitement to offence a little further by an illustration. What I said is not mere theory. There are some people who are obsessed by the thought that this would prevent a method of agitation to which we are used, namely, agitation by disobeying the law which we do not like. Now I want you to clearly understand that there is no point in adopting that method of agitation if there is no penalty behind it. It is like my trying to learn to ride on a wooden horse. It must be a real - horse; it must kick and throw out, if I am to learn riding and in the same manner if any citizen dislikes a particular law and wants to adopt an attitude of opposition today to the extent of disobeying it for the purpose of getting the law annulled, not only criticise but actual disobey the law to get it annulled, surely if there is no penalty for that kind of conduct, then there is no efficiency at all in your medicine. Therefore I say it is necessary to make laws with the full purpose of punishing those who break the law. It is necessary for those who want to annual the law to criticise, to agitate to demonstrate and even disobey but also take the penalty so that the point of their agitation may have point and go home. Therefore, there can be no objection to this from any party. Now am I saying all this merely from the book? I

want to bring to the notice of the House that in Sweden—not an old charter of the 18th century of Washington's time, but in 1949—a whole chapter of laws with regard to the freedom of the Press in particular was adopted and in sub clause 4 of chapter 7 provisions corresponding to what we propose are there printed. After laying down the general doctrine that in Sweden every Swedish citizen shall have the right of the freedom of expression and speech, these restrictions are laid. Apart from graver things:

"Libel or other defamatory act against the King or other member of the royal family."

"Affront to a Government administration acting in place of the King or to the Riksdag, its departments or committees or to flag or shield of Sweden or any other symbol of Swedish sovereignty".

is excepted from the, freedom of speech.

Flag apart:

"Incitement to criminal acts, neglect of civil duties or disobedience to authority."

A little wider than we have made.

Dr. S. P. Mookerjee (West Bengal): It applies to Ministers also.

Shri Rajagopalachari: Yes, yes. What I said was if a Minister is acting in place of the President of the Union, he is somebody entitled to some respect. But, I am not proposing the laws which, I want you to make; I am reading from the Swedish law. The law of freedom of the Press there is restricted among other things against incitement to criminal acts in general; not only that; neglect of civil duties or disobedience to authority. This is not mere autocracy. I shall explain what it means. Supposing the newspaper make up their mind that there should be no electric supply in the city of Delhi and they write, "Well, we have tried our best to reduce the taxes, Government have refused; we must see that this government goes; therefore, let there be no electric supply for one week." It may not be a criminal act; but it is neglect of civil duty and disobedience to authority. There is no violence about it. They have simply not to go to the power house. They have only to stay in-doors and allow everything to go wrong without committing a single act of violence. The pointsman in a railway may be asked not to be at their points without any disturbance of public

order. All you say is “Do not commit any act of violence; we are true Gandhites; remain at home; do not attend to the points”. That is all.

Shri Deshbandhu Gupta: Is it not covered by the Essential Services Act?

Shri Rajagopalachari: The Essential services act cannot go against the constitution, if it stands as such. A man who does something can be punished; but a man who sits in his home or newspaper office cannot be touched. That is the difference. They escape. We want to provide, not by punishing these people. I do not want to punish them. I want to make it clear that they have not got the right to do such a thing. Let us deal with them as things arise. If they are very serious things, they will be punished also. If they are trifling, they will be treated as trifling. But, it should not be thought that is a right: ”Just as a man has a right of way to a well and draw water this right of mine has been put in this constitution of India, and therefore I am entitled to do it. I shall do it whatever anybody might say; and the courts have said that one can say anything even inciting to murder.”

Then:

“Dissemination of false rumours or other false statement with the intention of endangering the security of the kingdom, public welfare or public order and security or of undermining respect for authority or other bodies with the right of decision in public matters.”

Once you give A, B or C the right to decide things in public matters, you must support that man’s authority. It does not lie on your part rightly to say: “Oh, he is only a minister; he need not be respected; you condemn that Minister”.

Shri Goenka (Madras): However he wrong may be.

Shri Rajagopalchhari: However wrong he may be. Dismiss him in the elections when you have the chance: however wrong he may be is not the claim that I make. If he is very wrong, the Prime Minister will dismiss him, before you come and interrupt. If a thing is very wrong the law does not permit it. If it is wrong, the courts will not execute that order. There are other things which are very wrong which cannot come under the right of freedom of speech if the law is not amended as I propose it should be.

I have taken the time of the House over this only to show, that it is not mere theory that I am putting forward and that it is not mere logic that I am putting forward. It is the experience of modern people, modern times, and modern statesmen. Perhaps Sweden has one of the best forms of Government that the world can possibly frame. The Swedish people as well as the Swedish Government and the Swedish laws, I may tell you, of the most civilised pattern. Therefore, it is a good thing that I am quoting from it and not from some retrograde group which has made certain laws.

Then:

“Threats, calumnies or libel against groups or people because, of their origin or religion.”

There, the freedom of speech does not include this. Let me take the time of the House usefully. Threats, calumnies or libel against groups or people because of their origin or religion are debarred from the freedom of speech that is granted to them under the Swedish Constitution. We want that kind of thing to be debarred here also.

Much stress has been laid on the word violence by hon. Members violence is used in a vague and general way. Violence has a definite legal meaning. Bribing is not violence. Suppose the newspapers in Bombay write, "The prohibition department is an ass; everybody should try to show them up; let us offer them bribes and exactly place them where they are, such a thing is absurd, no doubt. But such absurd things are being written, let me remind hon. Members. Take the counterfeiting of coins. No violence is involved. There is nothing in it to associate it with violence. But, would Gandhiji approve of counterfeiting coins; because no blood is shed? He used to use the word violence in a free way. He used to condemn many things as violent which have nothing to do with bloodshed. It would be wrong to introduce legal phraseology bound down with the word violence.

The same is the case with false weights suppose Mr. Munshi's department has law. People may say levies should not be accepted and no procurement should be allowed because the administration is going wrong and the law is wrong. I can understand satyagraha being organised that way. If you like you may encourage it and we may have to bear the difficulties consequent upon it. What I say is it is not a legal attitude to look upon things in that way. We cannot permit incitement to breach of the laws

that we have ourselves made. This is not a new thing. If you like, you may read Mill, written long ago. Every word of it is true today as if it had been written for the time being. He was an extraordinary man. You may read Socrates, he pleaded, "Well, I must obey the law at the end of it". When his friends asked him to escape, 'he said- no, I cannot escape; have not the laws supported me throughout my life? Have they not supported my father, my family, my parents? Every inch of my body can be traced to the support that law has given; therefore, I must be true to the last; I cannot escape." That is the respect which we should pay to the laws that we have made.

Everybody rises against black marketing. Does freedom of speech cover that also or not as it stands? If a man incites others to do what you call black-marketing, a felicitous and free phrase, he goes scot-free. What, we want is that all that should be guarded against. We cannot allow article 19 to become a handy weapon to incite people to break our laws.

Criticism has nothing to do with this. Criticism is not incitement to break. Therefore criticism is not covered by anything that we propose to get power for here. I have explained as to what we propose to do with reference to the Press and I do hope that the Press will drop this scare that it has taken unnecessarily in this matter.

I understand their difficulty. It is not as if our law is so bad and therefore the Press has got disturbed. The Press has now become a costly investment. A paper which had a circulation of 5,000 has today a circulation of 100,000. They have to have a Rotary and lakhs of rupees are invested. The obligations that have arisen in recent times with reference to the investment necessary to run a newspaper have increased their fears. I assure them on behalf of the Government that this "measure will not touch adversely, but will improve the position of the Press.

[Mr. DEPUTY-SPEAKER in the Chair]

Shri D. D. Pant: I would have been the first man inside this House to oppose this Bill if I had the slightest fear that it was in any way going to curtail the freedom of speech or the freedom of the Press. I am myself an editor and the editor of a paper that has fought successfully for years with the mightiest imperialism in the world. I genuinely feel that this measure intends to secure real freedom to the Press, and I support it After all what is the Press in India today? How many people are controlling it? Not more

than five or six. These men are on the All India Newspaper Editors' Conference as managing editors, they are not editors, they do not put their pen to paper, but they are the people who represent the Press in these conferences. If it were not unparliamentary I would have said that they are not editors but imposters. And then there are the newspaper societies. There these same persons go and defend the interests of the proprietors, so that they may continue to make as much money as possible. They also create the maximum tension inside the country through their newspapers so that the hands of the Government may be quite full with maintenance of law and order and these newspaper men could do what they liked. And then, these very gentlemen are the directors of the PTI also and censor the news. Do they not know that they signed away the freedom of the Press when they put their signatures to that agreement with Reuters? Unfortunately these are the very people who oppose this measure and take upon themselves the responsibility to speak on behalf of the Press in India.

My submission is that this amendment which we are now considering will go to liberate the Press from the present chains put round it by these Press lords. The real people who have built up the Press in India are the working journalists and these working journalists know their interests and they know that this measure is going to safeguard the real liberty of the Press.

Shri Deshbandhu Gupta: Has not my hon. friend read the resolution passed by the All India Federation of Working Journalists condemning this part of their Bill?

Shri D. D. Pant: My submission is the working journalists who have built up the Press know full well what exactly is the freedom of the Press. We know how they have been put into chains so that they may not be able to present the true state of affairs to the world. As I said, if the Government had been doing anything which would go against the freedom of speech or expression, I would have been the first to oppose it and to speak against it and would even give my life to save' it. As the House will remember, I was one of the very few people here who opposed the Preventive Detention Bill and I said that I opposed it not because I distrusted Rajaji, but because I had the fear that the administrative machinery might abuse the powers given under this Act. But at that time these very same men who are now opposing this measure and claim to represent freedom supported that measure. These lovers of freedom then

supported the Preventive Detention Bill and wanted it to be even more stringent. I can say on behalf of the small journalists and those who edit the local papers that they do not fear anything' from the Government. If the Government goes against them, they have the support of the people behind them and will change the Government. They will get the support of the people and not the support of those so called capitalists and black-marketers. I am glad Shri Rajaji intends to bring in a set of laws to see that the journalists really get freedom of expression and freedom from the chains of black-marketers. That is what is needed. These people all the time talk of democracy and freedom, try to make a fetish of it to safeguard their own interests. There is always full freedom to write and to express provided we know what is freedom. Everyone is free to walk on the road but not to do dirt on it. Let us not make a fetish of freedom and democracy, but see whether we have real freedom of the Press or not. And as I said, this measure is not opposed to freedom of expression or the freedom of the Press. It will actually liberate the Press from the chains of the black-marketers and profiteers. And it gives freedom not only to the Press but also to the zamindars -- these zamindars who actually are like a fly sitting on the hind quarters of a bull and fancy they have a right to suck the blood of the animals. But they should know that if only the bull whisks its tail, they would be no more. And to them this measure gives liberty and protection.

If the Press had done its duty to India properly, we would not have had this black-marketing even in newsprint. As we know, we do not get even newsprint and there is black marketing in this also. This measure is really for the sake of the freedom of the Press and I do not know why so much of the time of the House should have been spent on this discussion. So much time has been wasted because the measure is going to affect some who feel that if this Bill is passed into law all their would vanish and so they howl against this Bill. But let me assure them all the Pressmen of India are not going to howl after them. They know better what constitutes real freedom of the press and they do not get into the chains of the black marketers and profiteers. I hope the Government will pass this measure and see that the Press is really liberated for the sake of those who sweat and work for it. With these words, I support the Bill.

Dr. Deshmukh (Madhya Pradesh): At this stage, I believe that most of the arguments which were advanced against the Bill have been satisfactorily met. I have been, I am sure, regarded as a very hard critic of the Government and I would not be surprised if many Members of the House expect me to condemn this certain respects at least. But I am sorry I have to disappoint them, because I am going to welcome this Bill wholeheartedly and not one clause or the other of it, but every clause of this Bill.

A great amount of criticism has been levelled against this measure and one of them is that it is too early to amend the Constitution. That has already been disposed of by the Prime Minister and my friend Rev. D' Souza. There cannot be, a time-limit fixed for doing the right thing and I think it is perfectly opportune to amend the Constitution at the present moment because we should realise the difficult that are likely to face us if we delay the amendment, any further.

11 A.M.

Then the other argument used against this Bill is that there is no sufficient urgency. There also both Prime Minister and Dr. Ambedkar have advanced convincing arguments to show that the matter is urgent and it cannot be delayed. The first urgency that has been pointed out is that there is no law at present which it would be possible to use so far as many desirable restrictions on freedom are concerned. There is also imminent need of changing the laws so as to get the abolition of Zamindari passed and enforced. It has been argued that the Supreme Court has not yet given a decision on the validity of the Zamindari act and therefore we should have waited till then. This would be a strange advice. If a house is on fire some portion of it has caught fire should the members of the house assemble together and decide that the fire not being very serious would be left alone and that they should till it assumes any serious proportion, till then no action should be taken for collection of water or any steps taken to distinguish it? This would be counsel of the nature. Secondly, the importance we attach to the abolition of Zamindari is so great that government is quite correct in not waiting for the Supreme Court's decision for the amendment of the act. The other amendment that is sought by the bill is respect to reservation of seats for those who are educationally and socially backward. The

amendment is not coming a day too soon because there have been difficulties for governments and it is necessary if we want to act upto the constitution and to give effect to the various provisions of it, to pass this amendment of article 15. I would like very much to congratulate the hon. Prime minister because of the courage he has shown in bringing forward this amending bill in spite of the protest and condemnation all over the country. I offer congratulation also because we not only owe the constitution to our own strenuous efforts and endeavours but much of it we owe to the noble idealism of the Prime Minister himself if this is a fact, it is put proper that he should have taken upon himself to remove all impediments which he thought are likely to come in the way of proper operation of the constitution. I would like my friend who opposes the bill to consider for a moment what would happen if the Constitution were not amended at this stage at least in respect of the abolition of the Zamindari. Does anybody imagine that it would be possible to get two third majority in such a fashion and with such little effort after next election? I do not think so if this does not happen and the Zamindari abolition is impeded or prevented from taking place, what would be the remedy? We are all convinced that the Zamindari system must be abolished and if those impediments were there, what would be the remedy left to the people because it would impossible for us to bring about the desirable change in the laws of the country. The only alternative that will be left would be either to set the Constitution at naught or to smash it by a bloody revolution and to bring about the desired change. I therefore think that it is eminently prudent of this Government and the Prime Minister to have thought of bringing this bill so as to remove the impediments from their way. I was also surprised that that two conflicting interests should have combined to condemn the Bill-- the interests of Zamindars and those who want untrammelled freedom of speech and expression. I personally think one is perfect anathema to the other. The food of one is really poison to the other. We are going to curb or investing ourselves with authority to curb the freedom of the people of expression and the Press—in whose interests? No doubt to a certain extent in the interests of peace and tranquility in the country and the interests of the administration both in the States and the Centre.

Shree Deshbandhu Gupta: May I remind him that so far as the Press is concerned, they have not opposed that part of the Bill and they have made it abundantly clear that they are not opposed to the part which deals with article 16 or 31 regarding abolition of zamindari, etc. There seems to be some misunderstanding about it.

Shri Venkataraman (Madras): The Hindu has opposed even that.

Dr. Deshmukh: I do not intend dividing hon. Members into two camps but many Members have advanced both arguments. I was referring particularly to the advocacy which was wasted here on the part of the zamindars speaking in favor of freedom of expression. I was not referring to my hon. friend or his colleagues. So if we want to curb lawlessness, if we want to put restraint on our people, in whose interest are we trying to - do it? It is only to protect those interests which if not protected, will be smashed to pieces. If these laws are not there, they—the vested interests, the zamindars and big- proprietors—are likely - to be the first to suffer. From that point of view I would have expected that the zamindars should have been the first to say that if it is possible at the present moment to preach -murder and yet escape scot-free. This was a desirable amendment of the Constitution and they should- have welcomed it.

So far as article 31 is concerned, there was an imminent need and the Government cannot delay the amendment even by a single day. There was also need so far as 19(6) was concerned because many difficulties were being experienced both by the States as well as by the Central Government and so far as article 15 was concerned, it should not be understood that the situation has arisen only in Madras and the amendment has been proposed only to remove those difficulties. If what has happened in Madras can be any lesson to us, it will have to be realised and borne in mind that similar difficulties are bound to rise in other parts also. It may be that people in other parts—the backward classes—are not yet so conscious, as to assert their wishes and are prepared to put up with a whole-sale exploitation on uncertain grounds of merit denied any opportunity of education and advancement. But that cannot remain so very long. Thanks to the freedom we have attained people are getting - conscious of their rights and in the name of justice and equality that we have preached in the Preamble and our desire to help the weaker and backward classes to come forward, it is very

necessary that adequate chances should be afforded to these people at least to get education. If we want them to do this, if we have sympathy for them—and it has been now fairly established in the House that every Member of the House has great sympathy for the backward elements in - the society--then it is our duty to see that they get a chance to go to the best institutions and receive education which will put them on certain level of advancement and progress. I hope there will be no speech which will try to minimize the importance of this amendment or try to take away the force of it. I would have certainly liked a little stronger expressions used so as to obviate any fear or suspicion that this again may be questioned and there might be delay in enforcing what we have agreed to. My intention in proposing certain amendments or suggesting certain other phraseology was merely intended to see that a difficulty which has arisen in the past will not recur and the desirable facilities which we want to convey to these classes will not be denied to them. I would also like to say that the suspicions of the Select Committee expressed in the Report are absolutely -ill-founded. I think many people also not know what is exactly happening regarding backward classes. There have already been schedules prepared by each State Government and if we compare them you will find that the social advancements and educational progress of these people is in no way better than the castes and communities which are included in the scheduled castes and scheduled tribes. If anything, they are more backward in some respects at least. I quite realize that a caste here or there might have got certain advantages which they do not deserve. For that the remedy is not to condemn what is being done for a larger number of people who deserve it. The remedy is to take out those castes and deprive them the facilities. But if we try to oppose this amendment, then you are undoing something for which you have sympathy, which would not be a proper thing to do. I do not wish to illustrate the matter in any detail for want of time. If one looks at the schedules prepared by the State Governments at the instance of the Central Government a cursory glance will convince one that the facilities afforded to these classes are amply deserved. I have been a member of the scheduled castes, scheduled tribes and backward classes scholarship board for two years and I know from experience that the people who are getting the scholarships amply deserve them. Along with me on the board were the

representatives of the scheduled castes and scheduled tribes and backward classes and they also know and are convinced that these boys -who belong to the other communities were fully deserving of such facilities along with the scheduled castes and tribes. I hope therefore that there will be no criticism so far as this amendment is concerned. I also express the hope that this amendment will fully meet the requirements of the situation. In fact so far as the other backward classes are concerned very little has been done for them so far. I am very glad to say that people are becoming more and more eager to help the scheduled castes and tribes but the same eagerness is unfortunately wanting with regard to the other classes. I must express my gratitude to Maulana Azad because it was he who took a decisive - stand and gave scholarship facilities to these backward classes for the first time in the history of India. These castes never organised themselves as separate entities from the Hindu community and they did not form their Own Depressed Classes League. It was -for this reason that they have been left behind. Much has yet to be done for them and I hope by this amendment we will start doing something more for them than has been done so far.

So far as article 19(2) is concerned I hope my friend- Mr. Deshbandhu Gupta will admit that he is fully satisfied with the assurance given by Mr. Rajagopalachari, the Home Minister.

Shri Deshbandhu Gupta: We are being asked to forget all that we were taught so far.

Dr. Deshmukh: So far as this article is concerned there has been much ado about nothing. I fully believe the Prime Minister's words when he said that what they are trying to do by amending the Constitution is only to enable the Government to pass enactments which will be considered desirable. I believe his contention that by this amendment we are only empowering Parliament to pass suitable legislation so far as this point is concerned. The Prime Minister has repeatedly given the assurance that it was not his intention to bring into force all those laws which conflict with the Constitution nor to use them so long as fresh laws are not brought before Parliament, and Parliament has had an opportunity to have its say upon them. With this assurance I hope not only the Press in India but everybody should be satisfied.

I am amazed that the Bill has been looked at from a very suspicious point of view, as if the British Government of old had brought forward this bill. The freedom of the country and the fact that a popular Government is in charge of the administration have not unfortunately made any difference to these gentlemen of the Press or the sponsors of the zamindar interests. Ours is a free country and the Government of a free country has brought this Bill. Unfortunately the bias which used to exist in the days of the British regime is being imported and the words and expressions similarly those which were used then are being profusely and want only used. I know that there are certain good reasons why this should be so. We have unfortunately not secured an administration in which we can put our implicit faith. My friend Mr. Deshandhu Gupta is correct there. I know that many provisions of the law in the States are abused, I would like very much to urge both the Press, and other leaders of public opinion in India that they should try their best to curb and even curtail our freedom to keep the vultures away from the infant freedom of India. That is a supreme responsibility that rests on our shoulders and in bringing this amending Bill forward it is intended to cope with the dangers that are likely to imperil the freedom of the country. With that end in view and with that intention I believe the government has brought this Bill and hence I am in complete agreement with it.

A lot of time has been spent in quoting from the U.S.A. Supreme Court's decisions. By now the whole of the Supreme Court's decisions have probably been fully ransacked by the learned Members of the House. I think it was, totally unnecessary to go so far. It is out-doing America itself in quoting the Supreme Court's decisions to the extent we did, without understanding the circumstances of the time when the First Amendment or there and saying this has not lapsed and without trying to understand the situation in India and the times we are living in. There is lot of difference between the two. Merely taking out a word or a sentence here or there and saying this, has not happened in America and how can it happen in India, as if the conditions in both countries are identical will not do. We are living in different and difficult times; we have to deal with and govern a different kind of people, we have very large territories to administer' and then there is the present world situation—all of which make a considerable difference. Being free citizens of a free India and ruled by a popular

Government we should be more ready to put restraints upon ourselves and we should be prepared voluntarily to put more checks on our own freedom. We should not mind it. Since we have now adult franchise the remedy is in our own hands. The elections are not very far and if any Government misbehaves they can see to it that such a Government does not come into power once more. With all this guarantee I feel unnecessary time has been taken in the condemnation of this amending Bill. I would much rather that the opponents of this Bill had shown a little grace, a little forbearance. If their desire is that these provisions may be there that have only want that they should not be misused one could understand the criticism. After all they are at perfect liberty to condemn the Government if it misbehaves and can aspire even to take their place in time to come.

Shri Hussain Imam (Bihar): What about the existing litigations in which these Acts are being pressed by the government against the public?

Dr. Deshmukh: I am prepared to admit that there may be one or two instances of the sort my friend refers to. I do not know which particular Act my friend means am prepared to concede that there may be instances in which such things might have happened although I have no positive case before me. But it does not mean that this Parliament should not have the capacity or authority to lay down the laws. It is nobody's contention that, as soon as this amendment is passed all the laws are going to come into force and will be utilised on the contrary the Government have given the solemnest possible assurances that not a single provision of the laws will be used long as Parliament does not authorise them to do so that assurance everybody should feel satisfied and there should be no more opposition or heart-burning. Otherwise we would be correct in concluding that the freedom that we have now has made no difference to our people. We are treating our own administration as if they have come from England and trying to rule the country in the manner as the British did in the past. If we compare the debates on this Bill with the debates on, similar Bills in the days of the British government, you will find very little difference. We were suspicious of every word and everything that they said: we had no faith in them. We had the utmost contempt for anything that they tried to do. Is it correct to exhibit the same attitude today? There should be, in my view, a fundamental change in our

approach to the whole question. We should not be so suspicious of everything that the Government says or does. We are dealing here with the Fundamental Rights. I for one was never in favour of the Fundamental Rights being incorporated in the Constitution, because I was a believer in the sovereignty of Parliament. But having the Fundamental Rights as we do, they should not be so fundamental as to weaken the freedom of the country. That is all that the Bill attempts to do. Though I have many other points to urge but, since there are, many more Members who are anxious to speak, I will conclude, by giving my wholehearted support to the Bill.

Pandit Kunzru (Uttar Pradesh): It was a surprise to most of us that the hon. the Home Minister, who was principally concerned with the Bill before the House, should not have spoken at an earlier stage. We wondered why it was that he was resolutely maintaining silence. He has however chosen to speak today. He has made a very important speech and I welcome many features in it. He has assured us that the laws would be revised in accordance with the provisions of article 19(2). This should have been done under article 13 of the Constitution long ago. But I am nevertheless, glad that Government have at last made up their mind to give effect to this article of the Constitution. He also referred to the apprehensions of the Press regarding the manner in which the increased power that the amended clause (2) of article 19 would confer on the State might be used against the Press. He said the Prime Minister has said before him repeatedly that it was not intended to place any further restrictions on the liberty of the Press. He also said that the press laws too would be revised in accordance, with the assurance given by him just as the other laws would be and he said that there was no reason why after this announcement any objection should be made to the language of the amended clause (2). He further said that this was only an enabling measure, Parliament was not passing a law but was only amending the Constitution in order to get the power to pass laws. Well. I shall deal with both these points in the order in which i have mentioned them.

The Home Minister, after making observations which must have pleased the representatives of the Press, expressed the opinion that after what he had said there was no room left for any legitimate apprehensions. Now, it seemed to me that when he said this and also when he said that the Bill before us was only an enabling measure,

he showed a misapprehension of the true character of the Constitution. The Constitution is not based on a single set of principles it looks two ways: while in Part III it adopts the American system, in respect of the rest of its provisions it follows the English system. And when my hon. friend said that the Bill was only all enabling measure he forgot this important distinction between Part III and the rest of the Constitution. Part III has been put in the Constitution in order that Parliament may not have certain powers. But as regards the steps that Government have taken to allow the apprehensions of the Press, I should like the House to understand what the Home Minister's position is. He does not deny the amendment of article 19 would legalise censorship and bans on the entry of newspapers into a State. Parliament would get that power, in fact, the States have that power. And unless the public security Acts are so revised as to take away this power from them, they will continue to enjoy that power and there will be the fear of its exercise. The Home Minister's position seems to be this: "We have a law but it depend on us whether we shall enforce it or so to say, detain the offender without trial. Let the law relating to detention remain on the statute-book, or let Parliament have such a power in respect of the Press, but we assure the Press that this power will not be used. I ask him to fair and say whether this is a satisfactory position in view of the importance accorded to part III in our Constitution. No man that understands the constitution on, can ever argue in the manner that my hon. friend the Home Minister has done.

Now I came to that part of his speech in which he spoke about the suggestion made by Dr. Syama Prasad Mookerjee that the last part of clause(2) should be so amended as to make incitement to crimes of violence only punishable. He placed before us a lurid picture of what might happen if Dr. Mookerjee's suggestion were accepted. If I am not mistaken, there was a stage when my hon. friend was prepared to accept this suggestion. Had he not taken all the grave dangers that he referred to into account.....

Shri Rajagopalachari: May I explain, Sir, since the hon. Member speaking says I accepted a particular suggestion at one stage. I think he referred to me when he used the words "my hon. friend". It is not accurate. The suggestion then was a little different from what he is now quoting. It included many more things besides violence and it excluded the "reasonable" clause.

Pandit Kunzru: It is true—I am not going to forget the other conditions. Had my hon. Friend had a little patience he would have found that I would not have omitted to refer them. The other conditions were "Public disorder" and 'sabotage". Now, he also said that the word "reasonable" was not there. But does the insertion of the word "reasonable" make it necessary for the Government to make incitement to crimes that do not involve violence punishable? I do not see the connection between the two, between the insertion of the word "reasonable" and the retention of the words "incitement to offence". My hon. friend said: Are we to do nothing if some people preach the advantages of black-marketing? Let anybody try to tell- the public how beautiful a thing black marketing is and he will soon know to his cost that this is not as good a pastime as he thought it to be.

Shri Rajagopalachari: Does the hon. Member mean that the citizens will take the law into their own hands or does he mean that the law is against it?

Pandit Kunzru: No audience will be prepared to listen to such nonsense. That is what I mean; and- my hon. friend the Home Minister knows it his heart of hearts.

Shri Rajagopalachari: The hon. Member does not know that black-marketing in liquor is being preached.

Pandit Kunzru: I have never heard it being preached in public. Government may have received information that people are privately advising their friends to break the law relating to prohibition. But this was not the only instance that my hon. friend gave. He asked us to consider what would happen if farmers were advised not to part with their food-grains, so that the procurement policy of the Government might be a failure, or if points-men on duty were asked to remain away from their places of duty. He even referred to the Swedish Constitution where disobedience to authority is made a crime.

Shri Rajagopalachari: It is not made a crime what I quoted was that it was not provided by the freedom of Speech clause.

Pandit Kunzru: That is exactly what I mean. Disobedience to authority is not a speech; it is an action and it will be as much punishable in India as it is in any other country.

Mr. Deputy-Speaker: Incitement to disobedience to authority for instance, asking civil servants not to work, etc?

Pandit Kunzru: The Constitution makes a difference, a distinction between freedom of speech and freedom of action. If anybody asked, the farmers not to part with their food grains, Government will obviously have to enforce the law against them, as otherwise it will lead to a disturbance of the public peace. It is obvious that such conduct would be liable in that case to punishment. Similarly, if railwaymen were asked not to discharge their duty, unless Government wish to be quiet and allow the railwaymen to do as they liked, the law would be enforced against them, as there would be an apprehension of a disturbance of public tranquillity or a danger to the security of the State. If the precise words of the amendment are not accepted, there is no reason to suppose that any of the dreadful consequences pictured by my hon. friend the Home Minister would befall the country. I do not want to dwell unnecessarily with this aspect of the Home Minister's speech, but I should like to point out, before I pass on to another point, that the words "public order" increase considerably the authority of the Government. I am sure that what Government mean is that they should have the power to check public disorder and if that is their intention as I feel persuaded from the speeches of the Prime Minister it is, then I think their purpose will be served instead of using the words "public order" they use the words "prevention of public disorder." I think that everyone here has to bear in mind that the security of the State is paramount. We can go about and discharge our daily duties only while the Constitution survives. Nobody, therefore, would like to denude the Government of the powers necessary to preserve tranquillity in the country, nor would anybody like so to amend clause (2) of article 19 as to leave the Government without any authority to deal with such actions as incite to violent crimes or create disorder. We are all on here in helping the Government and will try to strengthen the hands of the Government in respect of these purposes. But we feel that the words of clause (2) are even now unnecessarily widely worded. I recognise the important, the very important change introduced in clause (2) by the insertion of the word "reasonable". It may be thought that this places our Constitution, of our Supreme Court on par with the Supreme Court of the United States of America. But I am afraid I cannot agree with that view. In the United States, for instance, the Supreme Court has declared, that censorship of the Press is inconsistent with the terms of the First

Amendment to the Constitution. Now by validating' these parts of the public security Acts that have been rendered void owing to the decisions of the supreme Court we are taking power to do the very things that the Supreme court of the United States considers to be inconsistent with the Constitution.

Shri P.Y. Deshpande (Madhya Pradesh): Will not the insertion of the word "reasonable" prevent it?

Pandit Kunzru: I am asked whether the word "reasonable" will not prevent it. The word 'reasonable' will give the court authority only to decide whether its exercise in any particular case is reasonable. But I doubt whether, in view of the validation of the public security acts intended by the amended clause (2), the courts will be able to declare that anything relating to what is not called pre-censorship of the Press in India is void. This one illustration will suffice to show that in spite of the insertion of the Word "reasonable", that introduces a very important change, it has not placed us in the same position in which the United States is today.

There is one more point which I want to make before I sit clown. The hon. the Law Minister speaking at an earlier stage referred to those decisions of the Supreme Court and the High Courts that had rendered the amendment of clause (2) of article 19 he drew the attention of the House to the elect of the judgment of Allahabad High Court in a case popularly known as the Motor Transport case. He gave a history of the case and then tried to make out that the amendment of clause(6) had become necessary because the Allahabad High court had made certain steps taken by the U.P Government invalid as involving discrimination. He then asked us to consider how the policy of nationalisation is going to be achieved if a government like the U.P Government is hampered in the manner that the judgement of the Allahabad High court would hamper it in respect of nationalisation of road transport. I do not think that my hon. Friend, the Law Minister, gave a correct account of the judgement of the Allahabad High court of issue licences to motor buses only in accordance with the provisions of the Motor Vehicles Act passed by the Indian Legislative Assembly in 1939. It pointed out that those provisions had been disregarded and that consequently the action taken by the U.P Government was invalid not under the constitution but according to a law passed by the Indian Legislative Assembly. Then as regards

nationalisation all that the court said was that nationalisation could not be carried out by an executive order. In its opinion legislation would be necessary for this purpose, and that legislation it said would presumably have to be in accordance with the provisions of clause (6) of article 19 of the Constitution. The House will therefore see that there is no substance in what the hon. the Law Minister said regarding the necessity for an amendment of clause (6) of article 19 of the constitution.

There is another point too that I should like the House to consider. For, though clause (6) of article 19 has not received the attention that it deserves in view of its importance, it relates to a very important matter. The amendment of the latter part of clause (6) provides for any restrictions that the State may place on trade, business, industry or service in order to carry it on itself or have it carried on by corporation owned or controlled by it. These provisions do not really mean nationalisation so much as the creation of a State monopoly. Suppose Government start a cotton textile mill of their own in Delhi and they issue an order to the Delhi Cloth Mill to cease working. I suppose such an order would, if the necessary, legislation were passed, be valid. And, as the government would not merely by issuing the order, be acquiring a property, their action I suppose would not fall under article 31 of the constitution. I should like to know from the prime minister what is the exact intention of the Government in respect of this matter. How do they propose to use the amendment to the latter part of clause (6) of article 19? I am sure the house will agree that if it is used in such a way as to give no compensation to people whose property is rendered valueless then, although they might not come under the operation of article 31, they would nevertheless be committing a grave injustice. I do not want that this amendment should be used to circumvent article 31 in respect of trade and industry in the same way as the proposed articles 31A and 31B would be used in respect of agricultural estates. I hope that my hon. Friend, the prime Minister, would be able to throw light on this matter be able to throw light on this matter and to assure us that Government want to do nothing contrary to the spirit of the Constitution and have no intention of setting at naught in an indirect way the provisions of article 31 in respect of trade and industry.

Shri Frank Anthony (Madhya Pradesh): I rise to support the amendments as finally introduced by the hon. the Leader of the House. I hope my friends will continue to applaud me as my line of reasoning unfolds itself. Like so many members of this house. I have given very considerable thoughts to these amendments. Quite frankly I have wrestled with conflicting emotions and conflicting thoughts. I now realise that my first approach was an approach perhaps dominated by sentiment, by a certain amount of legalism. I think the final position which I have arrived at is a position which is as objective as it can humanly be a position that squares with the needs of the country, that squares of realism to which the Prime Minister has made an appeal.

I confess that my first reaction to these amendments was one of the opposition. Perhaps it would be more proper to describe it as one of righteously indignant opposition. I felt that the amendments were wanton and gratuitous. Without being offensive I think I can say that I was left quite unconvinced by the arguments of the hon. the Law Minister. No one has been more solicitous than myself in urging everything possible to suppress anything that is directed against the security of the state. And my original impression was that the first clause with regard to the security of the state was ample in order to suppress anything which did constitute a direct threat to the security of the State or tended to undermine it. The original clause attracted the clear and present danger rule, a salutary doctrine subscribed to and observed by all democratic countries. I also felt I am talking of my past feeling, I am yet to come to the point of my conversion—that the effect of the clause relating to 'public order' was a blanket clause giving wide and unfettered discretion to the executive, which would be abused. At that time I saw in these amendments what I thought was an attitude of impatience by the executive, an attitude of chafing, finding irksome judicial interpretation which came down on the side of individual liberty. I must make myself clear. I am talking of the amendments to article 19(2). I may concede that the other amendments by and large have my support and my blessing but with regard to the amendments, to article 19 (2), I felt that they represented a dangerous precedent. I felt that the arguments advanced even by the hon. Law Minister, the technique adopted, were of so far reaching character which could at some future date be used to throttle our democracy and although I know that the

executive would repudiate any suggestion of conflict between the executive and the judiciary, I felt that in spite of their protestations, these amendments represented a widening gulf between the executive and the judiciary. I felt they underlined an increasing struggle between the executives and the judiciary. And I say with all respect to Dr. Ambedkar for whom I have the greatest respect that his remarks with regard to the judiciary, to put it mildly were unfortunate. I felt that these amendments represented the first assault on the final bastion of individual liberty—the judiciary. But as I have said, the more I thought of it, the more objectivity I looked at the whole problem, the more I began to realise that my fears were the fears of a theorist of a democratic visionary or perhaps of a doctrinaire legalist. I recalled what I read fairly recently by one of India's eminent jurists. He analysed our fundamental rights he said that in spite of solemn professions, measured against a juridical or legalistic yardstick, our fundamental rights are not so fundamental. Let us not delude ourselves, he said. Our fundamental rights can be changed as easily as the rights in any part of our Constitution, unlike the fundamental rights in the American constitution which can only be changed by an elaborate difficult strict procedure. Our Fundamental Rights can be changed by the simple majority rule. He went further to say that anyone who is a lawyer or a jurist who analyses our Fundamental Rights will find that they are hedged around with so many restrictions, so many limitations that then Part on Fundamental Rights is a misnomer; that jurist said that that Part would be more appropriately designated as a part of denial of fundamental rights. When I began to look at it objectively from this point of view and when I recalled the opinion of this jurist that our rights are not so fundamental, that with the various restrictions this Part can be appropriately designated "a Part on a denial of fundamental rights" I said to myself: Why bother if one or two more restrictions are added to this chapter of denials?

Then, as I looked around mentally and took stock of the position, a sense of realism bore in on me. I was warned about democracy; I was worried about democracy: I was worried about negations of democracy and then I asked this question: why should we worry about democracy? Do the people want democracy? Is democracy suited to India? And in answering these questions, this truth dawned upon me and I state it

without offence. I personally, rightly or wrongly, I believe rightly, felt that the people do not want democracy. I believe democracy is not suited to the genius of people of India. Probably in another 200 years, the glimmering of the first elements of democracy may be borne in on the political consciousness of the masses, but we cannot wait for 100 years; we cannot wait for even 10 years.

(Mr. Speaker in the chair)

Events and time are racing against us. Because the masses of India do not understand democracy, do not appreciate its significance, that by itself is no reason not to try to build up democratic traditions in India. After all the masses have to be trained. At some point of time our people must be taught, who is going to train them? And the awful truth dawned upon me that our leaders are incapable of thinking and practising in terms of democracy. I say it without offence, the structure of Indian society is such that our leaders, not for decades, not for generations, not for centuries, and perhaps aeons, have been nurtured in traditions of oligarchy, of anarchy and despotism (*Interruption*). You may say but look at the way we talk in this house, look at the way the Press fulminates. Yes. The British occupation taught us something, a respect for the forms and trappings of democracy but the spirit and content of democracy have escaped the people, and they have escaped our leaders. Until we change radically the structure of Indian society, the content and the spirit and the significance of democracy will always escape the leaders of this country.

An Hon. Member: Including yourself.

Shri Frank Anthony: Probably including myself. Perhaps I am a little more qualified to practise the part.

Mr. Speaker: The hon. Member will address the Chair.

Shri Frank Anthony: I am sorry. I beg your pardon. The previous speaker took thirty minutes but I am, trying to cover my speech in 15 minutes' time. The hon. Leader of the House reminded us of an inescapable truth. He said that elaborate documents and written constitutions are no guarantee of individual liberty. I agree completely with that statement. No one was more enthusiastic about our Constitution no one was more prepared to apotheosise our Constitution. Let me tell the hon. Leader of the House

what has been my experience. No one was more 'grateful' to the Congress Party for the safeguards which were 'incorporated in the Constitution on behalf of the minorities. But any document, however perfect, after all is a dead meaningless thing. It is not worth the paper it is written on unless the people who interpret it infuse life and meaning, body and flesh into it. But because people have not got that spirit, many parts of the Constitution today are dead. I said to myself as a realist: If the Constitution largely dead, if it is largely still-born why worry about making an excision? Even if the excision is in respect of the heart or a major part of the body, after all, it is an excision in respect of something which is dead or dying.

That does not mean that I am in favour of anarchy or chaos. I believe firmly that India can only achieve unity, that India can only achieve strength and cohesion through dictatorship. I know that this doctrine of mine will sound a little novel and it may strike a discordant note. But I believe that we can only hammer' something out of the present lack of cohesion, a shiftlessness, laziness, even lack of elementary civic-values, that we can only hammer something out of it' under dictatorship. My own conviction is that sooner or later dictatorship is going to supervene in this country, I say it is going to be. (*Interruption*). My hon. friend is not going to stop it. I say inevitably there is going to be a dictatorship of the proletariat: that dictatorship will probably improve the country and may give it a gentle of unity but I have one objection to dictatorship of the proletariat. Heads may roll; my head may roll but it will roll in good company along with those of my hon. friends. Because of that I feel, I am quite convinced, that wishy-washy, middle of the way parties are not going to stop the dictatorship of the proletariat. I feel that even the democratic socialism of the Congress Party under Jawaharlal Nehru is, not going to stop the supervening of a dictatorship by the proletariat. But I do feel that this will be a later dictatorship and the only way to stop it is the sooner dictatorship. I say that without any sense of flattery. I know the Leader of the House and I can trust him. I say that the only way to stop the inevitable, ultimate dictatorship, communist dictatorship, is a dictatorship of Jawaharlal Nehru. Perhaps Jawaharlal Nehru will say: God save me from my friends who thrust dictatorship on me. I know that absolute power will corrupt but still I firmly feel that ultimately there will be a hard core of fair play, decency, of

democratic instinct. And that is why I am prepared to give blanket powers, arming the Government with excessive powers which by a democratic yardstick I am not prepared to give. But because I believe that a dictatorship today is the only way to prevent a later dictatorship I am prepared, to give blanket powers to Jawaharlal Nehru. That is my only reason for supporting these amendments completely. But I must also make this very clear, while I am prepared to give blanket powers, I am not prepared to accept the argument that these amendments are only an amplification a clarification. That is not so. They are a revolutionary, radical change in the original article 19(2). But, I am prepared to give these blanket powers. But I am prepared to give them only to Jawaharlal Nehru. I am not prepared to give these blanket powers to every Tom, Dick and Harry in the political field.

12 Noon

Dr Deshmukh: There are too many of them.

Shri Frank Anthony: I am not prepared to give these blanket powers, to the State Legislatures in spite of any assurances given by the Leader of the House and the hon the Home Minister. I have the greatest regard for their integrity and their sense of proportion but as soon as we give State Legislature these blanket powers, they will be abused. In the name of public order, in the pre-election period, the State legislatures, some if not all, will bring in oppressive, malafide legislation to disable political rivals, crush and silence all opposition and the Press. It may be argued against that that we have got the Supreme Court. But political rivals will be in jail and the Press will be silenced by the, time the Supreme Court is seized of it. It will take a year and the elections will have been fought and concluded. So I say that I am prepared to give complete blanket powers to the Leader of the House, if possible through Parliament. As I have already said, I believe democracy is unsuited to India; more than that, at this stage, it is almost a crime to talk in terms of democracy. Our concept of democracy is peculiar. I am not convinced even with the concept of democracy as advocated by the Press. I think it goes so far and no further. The concept of democracy with most of us is to think in terms that your doxy is heterodoxy and my doxy is orthodoxy. That is the extent to which our democracy goes. So I say this, if the Prime Minister is prepared to bring in an amendment so as to bring these blanket powers within the

exclusive legislative control of Parliament, I will support it. If there are some insuperable constitutional difficulties against that, I would plead with him at least to reserve State Legislation for the certification of the President. Then, whatever potential mischief there is, that will be largely qualified.

Shri Jawaharlal Nehru: I confess that the last speech of the hon. Mr. Anthony has somewhat diverted me from my normal line of thought. It was not my intention in these closing remarks of mine to say much, because, I think almost every aspect of this matter has been very fully discussed and anything that I could say would be more or less a repetition. I did not wish to trouble the House any more by any lengthy speech. All I wished to say was to explain one or two simple matters. But, Mr. Anthony has discussed wide and grave problems. I do not wish to go into them and I do not believe that it will be good for this country if any individual or any small group has any blanket powers given to it. A grave emergency, if it arises, naturally has to be met by grave measures. If a grave emergency arises in this country, then Parliament will have to meet it and decide how to meet it, even according to the Constitution, as the Constitution provides very special measures.

For the moment, we are not thinking in terms of such grave emergencies although we cannot completely put them out of our because we- do live, if I may repeat a trite phrase, in strange and moving times and no man can say when that grave emergence may come. In a great country, famous for its history of freedom, France, developments are taking place which might in the next few weeks mean very great, basic constitutional changes: no man knows. France is today facing in some ways a greater constitutional crisis than at any time since this republic came into existence in the seventies of the last century. France is a great liberty loving, highly cultured, stable country. So, if any of us imagine that we are safe from having to face these grave emergencies, then we are mistaken.

But, let us forget it except to keep it at the back of our minds, except to prevent ourselves from becoming complacent and static in outlook and talking only of the petty troubles of the day or thinking only of the elections that are to come. I attach importance to these elections obviously because Parliament and Provincial Assemblies emerging from these elections will naturally play a highly important part

in the future of India for the next few years. But, I do not attach importance to these elections so much as to forget that they are only a small part of this big moving scene of India in the world.

Coming to the particular amendments that are proposed, various criticisms and attacks have been made upon them. In the main, the attacks are concentrated upon clause 3 or article 19 (2), and in the main that attack has also been on the part of the Press or some of those who represent the Press here or outside. When we said that this is an enabling measure, and that we were not passing any actual Law, that was criticised partly rightly and partly, if I may say so, not rightly of course, even an enabling measure has to be looked into and scrutinised to see that not too wide and unlimited powers are given so far as Fundamental Rights are concerned. At the same time, you cannot, in the very nature of things, limit that enabling measure very greatly. I should like to give an example. There is this question of incitement to an offence which is very wide and which may mean anything and everything. Some people say, make it incitement to violent offence. My hon. colleague the Home Minister has dealt with this, matter, how violence, if I may say so, is sometimes infinitely preferable to many other things which are not violent. There are many other things which degrade humanity, degrade the community and degrade the individual and do more serious harm without indulging in any physical violence. How are you going to limit this? It is very difficult. Again, suppose you describe actually the serious offences. Immediately, you inferentially arrive at the conclusion that the newspapers or people speaking in public can incite for everything except what is mentioned actually in the Constitution. This is a ridiculous position. Therefore, it becomes difficult to limit these things. Ultimately, you have to rely on Parliament and if you like, the judiciary.

Now, as this clause is amended, Parliament of course comes into the picture; the judiciary also comes in. So that, if you do not trust them now, it means that you neither trust Parliament nor the judiciary, nor the two put together. What then are we going to trust? Whom do we trust? In our fear to trust this or that, we try to disable ourselves and put ourselves in a position when we may not be able to meet a particular contingency when needed. According to our thinking, we cannot meet wholly the present contingency. Let me be frank with you, we do not want every single thing that

has been put down in this amendment. For my part, speaking as the Minister of foreign affairs, I want no law from you for the present moment restricting in the slightest degree criticism of foreign countries or their policies. But, I do not know how far and when an occasion may arise when the actual possibility of our relations being disturbed so much as to threaten war or something like that may arise, when we may have to be a little more careful. But for my part I do not want any law and I am not coming to you so far as I can envisage, for any law flowing from the words "friendly relations with foreign States." But I have put that in because even though we do not want it now, it is something which may be necessary in the scheme of things in the world and we cannot come to the House repeatedly to amend the Constitution. When we are doing it now it is as well that we put it in although it may not be necessary now. We have come to the House with this Bill because in other matters urgent amendments were required, and also to be frank, as far as this particular matter goes, it might be necessary for the future. We have to trust Parliament in certain things and we have to trust the judiciary, and ultimately you have to trust yourself and the people. There is no other way. If our people or if we as Parliament do not function as we ought to, or go to pieces—if I may use a colloquialism—then no amount of Constitution will save us, no provision or anything.

Mr. Anthony pleaded for Parliament to deal with this and not so much the State Assemblies. Now for my part, I think there is a great deal in that argument, and I would have gladly accepted that change or alteration in this clause, but for certain difficulties that arise. I would have accepted it not so much because I distrust the State Assemblies, but rather because I feel that in matters of this kind there should be some uniformity and not variety. When I say that I do not distrust the State Assemblies I do not mean to say that I trust them entirely. I think it is possible for a State Assembly sometimes, to go beyond the mark. It is quite possible to do something which you and I might not approve of. But it is in the very nature of democracy that we should take that risk. And if you do not take that risk and try to stop them or impose yourself on them then things begin to go wrong at the bottom and it does not help you much, except for a little while. Nevertheless I would have liked the word "Parliament" here instead of the word "State" in clause (2). But after a great deal of consideration and

enquiry we are told by those who ought to know and those who dabble in these high legal matters, that this is not possible, without upsetting the whole scheme of things, because it means interfering with the powers of the States as laid down in the Constitution. What the interpretation of judicial courts might be later on if we changed it this way I do not know, but there is grave fear that it might be challenged and challenged with success, and when such advice is given to us, we cannot possibly take the risk of changing the word there.

Then Mr. Anthony said if that is not possible then as an alternative we might have some clause about having the President's assent to such laws as may come under clause 19(2). In fact, I think there is in article 31A some such clause. For our part, we are completely agreeable, to that, largely for the sake of uniformity and for knowing what is happening and for keeping together. We have always to consider this question of the cohesiveness of India, apart from other things. Each State or Province should not walk along its own path farther and farther away from the others. So this is desirable and so far as we are concerned, if the House so wishes, we are perfectly agreeable to have that. But apart from this, whether you have that or not, please remember that any matter coming under this, comes in the concurrent legislation of Parliament and the States Now, it has become a convention—I cannot immediately say whether it is anything more and whether it is in the Constitution itself—that anything coming under the concurrent list of legislation, any law passed by a State Assembly, has to come up here for examination and for the President's approval. Is that so?

An Hon. Member: Not until this House has passed a law.

The Minister of Law (Dr. Ambedkar): If it is inconsistent.

An Hon. Member: Not until this House passes a law.

Shri Jawaharlal Nehru: What I meant was, if there is obvious repugnance then, of course, it does not come into effect. That is obvious. But in order to examine that there is no repugnance, in order to see that it is what the legislative lists contemplate, it comes up here for the President's assent. Therefore, in effect.....

Shri Bharati (Madras): Not necessarily.

Shri Jawaharlal Nehru: I do not say it is necessary, in the sense that the law does not take effect. But I am told that it is practically automatic and anyhow it has been in practice automatic. And such laws have to come up here, every one of them, for they come up daily, first of all to the Home Ministry to examine and to the Law Ministry also to examine and it comes before the President to see whether he expresses his approval or not. So it can be taken for granted that, especially in a matter of this kind it must inevitably come. I go beyond that and if the House wishes I am perfectly willing to add that clause about the President's assent to article 19. It is for the House to decide.

Now, of course, we have not arrived at the stage of amendments, but I have seen a large number of amendments of which hon. Members have given notice. I think after all this discussion and after all the careful scrutiny in the Select Committee, we do not feel that any amendment would improve the wording. It may be that there might be one or two minor verbal amendments put forward by Government itself. But that will not change the real meaning of the article.

One thing has been mentioned and I might mention it now too, that there is a certain slight doubt or confusion about the description or definition of the word "estate" more particularly in regard to jagirs and the like. We think it would be desirable to clear that up and mention them, if necessary, by name or otherwise, so that there might be no doubt left about it.

I must confess that with all my, if I may say so, instinctive sympathy for the Press and for the reaction of the Press, I do feel that the hon. Members who have spoken on behalf of the Press have rather over-reached themselves, have over-shot the mark. We have been told that this Government is riding roughshod over the entire Press. I put it to this House, is that correct?

Several Hon. Members: No, no.

Shri Jawaharlal Nehru: It amazed me. Therefore, I say vague language, after all, comes out of vague thought or the lack of thought. People get lost in the phrases they use and do not connect them with any consistent or logical thought. The result is many phrases are hurled at us about curbing the freedom of the Press, riding roughshod and all that, and I have been totally unable to connect them with any reality in this

amendment or elsewhere. It is true that by bringing forward this amendment, Parliament is given certain powers to deal with certain matters affecting the Press. Therefore, there is a certain risk involved in the minds of journalists, pressmen and the like that Parliament may exercise them to their disadvantage. I recognize that, I recognise that it is legitimate for them to try to check or limit this or to try to prevent this power being exercised to their disadvantage. Apart from the high-sounding phrases like the freedom and liberty of the Press which are important in the sense that they represent important ideas, in the ultimate analysis we come across, in every phase of social activity, vested interests. Now, vested interests may be good or bad. One can easily understand a vested interest trying to protect itself and they are justified in doing that. Today the whole question of the Press which we have sometimes on a high level and sometimes on lower levels is something entirely different, completely different, from what it was when these great judgments which often are quoted, are placed before us, were given or when those arguments took place in the nineteenth century in regard to the freedom of the Press. Generally speaking, the idea of freedom of the Press is admitted. It was not admitted in the authoritarian countries, whether they were on the one side, the Communist side, or the Fascist side. They deliberately do not allow it. There the matter ends. There is no argument. So far as other countries are concerned, they accept it or admit it. Admitting it, they come up against certain inevitable restrictions, whether they are unwritten in the common law or written or judicial as the case may be, but meanwhile strange things have been happening and the Press today is something entirely and absolutely different from what it was—let us say 50 years ago. It has no relation to it. The great newspapers of the world are mighty organs representing an enormous financial strength behind them. I am not referring to the Indian papers—none of them is quite so big though they hope to become big. No person today can start a daily newspaper, say in England or America unless he is a multi-millionaire. Therefore there is the freedom of the Press so far as big newspapers are concerned. You cannot take economic advantage of it—you may do it by issuing a small weekly paper or something like that in a limited sphere—but you can never compete with those great national organs with vast circulations and money power behind them because no man and no group of persons without that great money power

can start a newspaper today in those countries. The position is not quite the same in India but it goes in that direction and it is bound to go in the nature of things.

There is another thing. We talk about freedom of Press and freedom of opinion. Now strangely enough there is a new development of our mechanical civilization. I am not talking about Fascism and Communism because they are based upon regimentation deliberately. I am talking of democratic countries which have constitutional freedom guaranteed in the Constitution or otherwise. In those States the whole nature of the development of their mechanical civilization is such that the mind of the people becomes mechanized and regimented and you find, therefore, great countries moved by mass hysteria because the newspapers help them or for other reasons and the poor non-conformist is as badly off as if he had no Fundamental Right or freedom of the Press or anything. There are these great tendencies. I am merely pointing it out to the House because the problem becomes more and more dictum and more intricate and complicated. Ultimately this problem, as any other problem, depends upon the quality of the human beings and of the community at large. If in India the quality is good, it is well with us. If it is not, then it is not well with you whatever constitutional guarantee we might have or not have.

Take again the Press. What is the Press? There is the enormous variety from the well-known great daily newspapers or weekly newspapers going or shedding off step by step to enormous number of news-sheets and the like. I mentioned, in one of my speeches in this House in regard to this Bill, my deep distress at certain tendencies in what I suppose is called the Press of India because there are some news-sheets, views-sheets and other kinds of sheets. The other day I was looking through a large number of cuttings from the Urdu and Hindi Press. I cannot tell you how thoroughly ashamed I felt, I blushed with shame to read that such things should be printed day after day, cartoons and letter Press and the rest. I could not imagine anything more disgusting and obscene and vile. I am not talking about political criticism. People seem to think that we are dealing with political opposition. Nothing at all so far as I am concerned, and so far as I have any say in the matter, there should be no curb to the most extreme political criticism of any country—foreign or of any party in India. But there is something else—not political at all, although it affects politics because it degrades

politics, because it affects all our public life by degrading it and there is this new tendency in not a very small number but a very large number. Mr. Deshbandhu Gupta said it was a small minority. I say it is a very large number. Small sheets come out—it is easy to print them—that does not require much capital even. I saw them—Hindi and Urdu. Hindi and Urdu are languages with which I am partially acquainted I cannot speak for other languages in the country. In English too I have sometimes seen the same but I take it that there is no great difference and I was astounded to see the extreme descent into obscenity and vulgarity applied to politics. It is bad enough without and I wonder if this thing went on, what the poor villager or townsman or anybody, or our soldier who reads them would feel about it. His morale will go down and his standard will go down. What do we do and what can we do about it? You can tell me, "Why do you not take action against it because it contains defamation?" One can and should do that but it is not so very easy. Do you expect me to go and put in some-kind of a petition or start a suit for defamation against, every petty paper and waste my time and energy and give the wretched paper publicity and all that—the Prime Minister going into a court of law? So we ignore them and yet there is this danger of ignoring them. Because they go on step by step and get worse and worse. It astonishes me. So then, what is the Press? Let us agree to it completely that every type of political criticism, as extreme as possible, must have the most absolute freedom in opposition anywhere. Wherever it may be, but are we going to agree to obscenity having freedom as this kind of utterly degraded criticism bringing in the personal life of individuals and so on? Obviously not—nobody will say 'yes'. These two things get mixed up completely.

As I said on an earlier occasion, we did not think of the Press especially when we brought this amendment. I am mentioning these matters to you not really in connection with this Bill but because there has been so much talk of the Press. Therefore I am referring to it. I would invite the All India Newspaper Editors' Conference to appoint—and I am prepared to appoint a Committee or a Commission myself on behalf of Government and I am prepared to put in persons chosen by the All India Newspaper Editors' Conference—to examine the state of the Press today in

India. Let them examine the state and the content of the Indian Press today and report to us.

My hon. colleague made another suggestion, which I forget for the moment. (*Hon. Members: Trial by Jury.*) Yes trial by jury. I can understand our newspapers themselves assisted by one or two others examining the state and the content of the Press, meaning thereby all types of Press—big, small and middling—and report to us what they consider to be right or wrong in it. I shall be prepared to accept their judgment in this matter.

Therefore, it is not a question of putting any curb on the Press because a curb on the Press presumably is and is meant to be on the political aspects of this question.

Some people, I think it was Mr. Anthony, who mentioned something about the General Elections, etc. Mr. Anthony is a seasoned campaigner, I suppose. Does not Mr. Anthony realise that the most effective way to lose an election is the use of those powers by any Government or any Minister or any person connected with the Government? If any Government or any person connected with the Government uses Governmental powers against his opponent too much—he may perhaps do so in secret a little—the public reaction against that would be so great as to injure him infinitely more than any help he can get thereby. That is inevitable: we have known that all the time. Even in the days of the British rule it was so. In this matter there is no half way house, because constituted as we are as a democratic society and democratic Government—we may misbehave, some district magistrate or Provincial Government may misbehave here or there—either way you have either to go full steam towards repression or coercion of your opponents. Or if you remain in the middle then you fall between two stools. Either you adopt the full democratic process completely taking all the risks and dangers involved in it, hoping that ultimately truth will survive or you adopt the normal autocratic process of coercion, coercing your opponent or those whom you do not like or who go against you, which normally a foreign Government does. Even they cannot go beyond a certain limit. I can understand either of these courses. You cannot have extremes and to some extent a middle course has to be followed. In any attempt really to mix the two you perhaps lose the benefit of either and you fall between two stools. It is obvious that whatever sins the Central or

Provincial Governments may suffer from or indulge in it is not possible, in the nature of things, for them to function as complete autocrats. They just cannot do it. Howsoever evil their intention may be, in the very nature of things they cannot go far in that direction without creating a great deal of trouble for themselves. So you have to rule out that extreme step. If they do adopt it, red revolution may follow. So that I would like you to consider that all this talk of Government curbing the Press is normally speaking, physically impossible, for a Government cannot go far in that direction, even if they wanted to. Government can go far if it can adduce adequate reasons for going far and if they can satisfy Parliament and the judiciary. If conditions become very bad, whether in relation to the Press or the public order that Government has to adopt some extreme measures and Parliament and the judiciary approve of it, then there it is. But if the people disapprove of it completely then the people will show the way either normally in an election or abnormally in other ways by riots and the like. This is how democratic Governments function. They have to take the middle path somewhat. Now these amendments are an attempt at keeping alive that democratic process and yet slightly taking the middle path so as to avoid danger to that very democratic process. Because if you do not allow yourself that flexibility it is possible that the democratic process itself may be uprooted and the very freedoms that we are so anxious to preserve may themselves fade away before some other attack.

Therefore, I beg the House to consider these amendments from this wider point of view and to accept them. If the House thinks that there is some malafide intention on the part of Government which they have not disclosed, well, then I have nothing further to say and my words cannot carry any weight. But if they trust, if they think that the words mean just what they say and nothing more, and that we felt that in the existing situation in the country some such power should vest in Parliament, or, if you like some such power which we had thought had vested in Parliament but which had been doubted by judicial decisions should be clarified, whichever way you look at it, we thought this necessary and we have brought this up before Parliament for it to put a seal on it, relying on the wisdom of Parliament in future to use this right properly, rightly and wisely, then I see no difficulty in the way of anyone, whether he represents the Press here or any other cause, to be at all anxious or worried about it. Parliament, I

tell it, represents and will represent in future the general sense of the community in India, that is of the great majority of the Indian population. It will be an unfortunate thing if the Press comes into some kind of conflict with the public—it is not a contingency that can be ruled out. It is a very strange thing and you may have noticed it in the highly developed countries like the United Kingdom and the United States of America with powerful organs of public opinion, that although the Press may say one thing, yet some election takes place and it is completely contrary to the opinion, of the Press. It is happening there in spite of the great power of the Press there and, generally speaking, the high standard of the Press there, because a hiatus is developing between what is called public opinion and the Press which is presumed to represent that public opinion. Now if that kind of thing happens here it would be unfortunate, it would be undesirable. Even the Press cannot live in an ivory tower of the All India Newspaper Editors' Conference. It has to come down; it has to come down first of all to the ordinary journalist and the sub-editor and the editor and all that. It has to come down, next, to the compositor, the pressman and the other people. And finally it has to come down to the man in the street, in the field, and in the factory.

These are odd considerations which I have put before the House and, personally, I do feel that this debate has clarified the atmosphere greatly—if I may say so with all respect, clarified the atmosphere completely in favour of this amending Bill that I have moved.

Mr. Speaker: To the original motion there are two amendments moved by Mr. Naziruddin Ahmad.

Shri Naziruddin Ahmad (West Bengal): I wish to press only the first amendment.

Mr. Speaker: So, I shall put his first amendment to the House.

The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the first week of the next session of Parliament."

The motion was negatived.

Mr. Speaker: What about his other amendment?

Shri Naziruddin Ahmad: Probably, I may not move it.

Mr. Speaker: It is already before the House. He must either withdraw it, or I shall have to put it to the House.

Shri Naziruddin Ahmad: I ask for permission to withdraw it.

The amendment was, by leave withdrawn.

Mr. Speaker: I am now putting the original motion to the House.

The question is:

"That the Bill to amend the Constitution of India, as reported by the Select Committee, be taken into consideration."

As I said in the morning I am calling for a division of the House. On this motion the House will divide.

The House divided:

Ayes, 246

Noes, 14

AYES

Achint Ram, Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva, Shri Joachim

Ambedkar, Dr.

Amolakh Chand, Shri

Ansari, Shri

Anthony, Shri Frank

Arya, Shri B.S.

Ayyangar, Shri M.A.

Asawa, Shri

Baldev Singh, Sardar

Balmiki, Shri

Barman, Shri

Barrow, Shri

Beni Singh, Shri

Bhagat, Shri B.R.

Bhagwant Roy, Kaka

Bharati, Shri

Bhargava Pandit M.B.

Bharagava, Pandit Thakur Das

Bhatkar, Shri

Bhatt, Shri

Bhattacharya, Prof K.K.

Biyani, Shri

Borooah, Shri

Brajeshwar, Prasad Shri

Buragohain, Shri

Chaliha, Shri

Channaiya, Shri

Chattopadhyay, Shri

Chaudhri, Shrimati Kamla

Chaudhri, Shri R.K.

Chittiar, Shri Ramalingam

Das, Dr. M.M.

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Shri Kanhaiyalal

Desai, Shri Khandubhai

Deshmukh, Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh, Dr

Dharam Prakash, Dr.

Diwakar, Shri

D'Souza, Rev.

Durgabai, Shrimati

Dwivedi, Shri

Fiaznur Ali, Maulvi

Gadgil, Shri

Ghalib, Shri

Ganamukhi, Shri

Gandhi, Shri Feroz

Gautam, Shri

Ghose, Shri S.M.

Ghule, Shri

Goenka, Shri

Gopaldaswami, Shri

Gopinath Singh, Babu

Govind Das, Seth

Guha, Shri A.C.

Guha, Shri G.S.

Gupta, Shri Deshbandhu

Gurung, Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hasan Shri M.A.

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jhunghanwala, Shri

Jnani Ram Shri

Joseph Shri A.

Jogendra Singh Sardar

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kameshwara Singh, Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Kazmi Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Kunzru, Pandit

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Malviya Pandit

Mallaya Shri

Massey Shri

Meeran,Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Mishra Shri S.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgil,Shri

Munshi Shri K.M

Munshi Shri P.T.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naik Shri M.

Naik Shri S.V.

Narayan Deo,Shri

Nathwani, Shri

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande, Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Pillai, Shri Nadimuthu

Poonacha Shri

Pustake Shri

Rahman Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Sahaya, Shri Syamnandan

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya, Shri

Shara, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. R.U.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Siva Dr. M.V. Gangadhara

Sivaprakasam, Shri

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sundarlal Shri

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda, Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma Shri M.L.

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Birua, Shri

Das, Shri Sarangdhar

Hussain Shri Imam

Hukam Singh Sardar

Jaipal Singh Shri

Kriplani, Acharya

Kriplani, Shrimati Sucheta

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Saksena Prof. S.L.

Seth Shri D.S.

Shah Prof K.T.

Subbiah, Shri

The motion was adopted.

Mr. Speaker: Therefore the motion is carried by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

**The House then adjourned till Half Past Eight of the Clock on Friday. The 1st
June 1951.**

**THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers)
OFFICIAL REPORT
PARLIAMENT OF INDIA
Friday, 1st June, 1951
The House met at Half Past Eight of the Clock.**

[Mr. Speaker in the Chair]
**QUESTIONS AND ANSWERS
(See Part 1)
9.30 A.M.**

DEATH OF SHRIMATI PURNIMA BANERJEE

Mr. Speaker: Before we proceed further, I have to inform the House of the sad and premature demise of Shrimati Purnima Banerjee who died in the Ramsay Hospital, Nainital, on the 31st May, 1951.

She was forty-one years of age and was one of the foremost women workers in social and political fields in Uttar Pradesh. She was elected to U.P. Legislative Assembly in 1946 and was a Member of the Constituent Assembly.

I am sure the House will join with me in conveying our condolences to her family. The House may stand in silence for a minute and express its sorrow.

CONSTITUTION (FIRST AMENDMENT) BILL.—Contd.

Mr. Speaker: Now the House will proceed with the clause by clause consideration of the Bill to amend the Constitution of India.

In this respect I had informed the House yesterday of the procedure which I want to follow as also the time-table for it. I may again repeat that this Bill has been dealt with thread-bare on three different occasions—once at the first stage when the Bill was referred to the Select Committee, then in the Select Committee which consisted of

different elements taking different views over Bill and which sat for a sufficient long number of hours and again we spent three days for the consideration motion. Now we are coming to the clause by clause consideration.

Here the scope for discussion is strictly limited though, of course, the matter lends itself to long argument within the scope of a particular clause, Therefore I would request hon. Members, who wish to speak on the clauses, not to try to cover the ground already covered and use this opportunity as a further occasion for speaking on the entire Bill. The timetable which I propose is as follows:

The idea is to divide the Bill into two parts. Some of the clauses are important on which there has been an amount of discussion and now Members will naturally apply their minds to the wording of those clauses which it is perfectly competent for them to improve by suitable amendments. The other clauses are more or less of a formal character which will not require, I believe, any discussion at all, or only very small or little discussion.

Now the clauses which, to my mind, appear to be important are: clause 2 dealing with article 15; clause 3 dealing with article 19 of the Constitution; clauses 4 and 5 which seek to include new articles 31A and 31E; which are allied clauses—the Schedule which is given in clause 14 goes with these two articles. That is the most important part of the present Bill. The other articles, as I was saying, are purely more or less of a formal, and I believe, of a non-controversial character, There is one which I perhaps missed to mention and that is clause 13 relating to article 376. Some brief discussion may be possible on that, Therefore, I wish to allot time follows:

I am proceeding on the basis of the understanding that we sit for two days. That was the understanding on the basis of which one further day was allotted for the general discussion. I propose to allot, on the basis of six and a half hours of sitting, one hour to clause 2, two hours to clause 3, the most contentious clause relating to article 19, and one and a half hours for clauses 4 and 5 along with clause 14 relating to the Schedule which is a part practically of clauses 4 and 5.

Then I allot sometime, say about half an hour at the most for clause 13 relating to article 376 and about half an hour just to adjust between the boundaries of one discussion to go into another and so on.

Then we have to reserve a substantial time for the voting. I had stated yesterday the way in which I propose to put the amendments and certain arguments were urged in respect of that by the hon. the Leader of the House and the hon. the Home Minister. I then stated that, I agreed with them in substance, but my idea was to proceed by way of extra caution. I have considered the matter again and I think the chances of anything being challenged are so small that I need not be so over-cautious about it. Therefore all amendments that come before the House will be decided by voice. There is not even the necessity of asking Members to rise in their seats and marking their numbers, because that Process by itself will take a long time. If someone chooses to challenge the decision of the Chair on some amendment, then it may be worth considering whether a division should or should not be granted. Ultimately any amendment that is accepted is again going to be voted on by the requisite majority of the House when the clause, as amended, is going to be put to the House.

The other course is that as we take each clause and after we finish the time-limit we immediately put it to vote. This means that there will be a number of divisions taken. One of the ideas which was passing in my mind was if the House was agreeable that after disposing of the clauses by way of discussion and amendments, I was just considering whether all the clauses could be put together for voting by division. That was purely with a view to saving time in the mechanical act of recording divisions. I find some heads are shaking as a matter of non-concurrence with what s passing in my mind.

Dr. Deshmukh (Madhya Pradesh): Not shaking correctly.

Mr. Speaker: I quite realise the theoretical position that it may be possible for some Members to agree to a particular clause as amended and yet not agree to a particular clause as it stands, and, therefore, it will be desirable naturally to have separate voting in respect of each clause. I am perfectly willing to do that. My first proposal, if the House finds itself in agreement, is intended only to save time. But if the House is not agreeable and wants a separate voting on each, I have not the least objection and we shall go on.

But I put this point of view because I have not yet lost hope that there will be some clauses on which there will be no difference of opinion, for exam-ode the technical

clauses relating to the two sessions of Parliament or two sessions of the Legislatures in the States. These are all formal clauses and if therefore the house finds itself in agreement that all these clauses should be put together I shall do so because that will save the time of, at least, I think, three to four hours.

I am placing both these proposals before the House so that they may do as they like. If they want a separate division on each of these clauses, whether they are importance or not, I shall have no objection. But our practice in legislation has been that in the case of clauses on which there is not much controversy or amendment, we put all the clauses together, All that is needed is that the clause put to the House must be decided by a particular majority and we must have a record about the majority which voted for or against. That is why I am making these proposals.

Now, in view of the time to be taken up for the divisions I think we must sit even in the afternoon today and tomorrow. I propose that we shall disperse at one o'clock after finishing such of the work according to the time-table and not according to the trend of discussions or the desire to discuss or talk more, then we meet, if the House is agreeable to that proposal, at 3-30 P.M. and we go up to 6-30 P.M.—not beyond that. That means three hours. Tomorrow also we may sit for those hours so that we can finish the whole Bill, including the third reading thereof, which to my mind ought not to take any substantial time at all because, all that could be said has been said, and will be said during the course of this discussion, and practically nothing but repetition will remain to be said. Of course, the words and phraseology will be different, but what can be said in the third reading may possibly be only a paraphrase of the speeches that have already taken place and no new arguments.

So, that is the time-table and instead of taking up any more time in having suggestions and agreeing or disagreeing with this, if there is a substantial agreement I will now proceed.

Prof. S. L. Saksena (Uttar Pradesh): On a point of order, may I know whether the rules of the House permit muzzling of discussion in this manner? I personally feel that this Bill is a fundamental Bill.

Mr. Speaker: He need not repeat the argument. I know the importance of the Bill. What the hon. Member calls "muzzling" is muzzling of a big majority just for the

benefit of a few who want to speak. That is my whole impression about it the hon. Member may not like it, but any Member who wishes to speak any longer will perhaps serve round those who are differing from the hon. the Leader of the House in respect of the liberty of speech to go of the lobby with him That will be the effect of long speeches Liberty has a meaning. There is no muzzling. If every Member wants to talk for an hour or over, is it reasonable to expect the whole House to sit and to hear him? In a House like this it is not possible to give every Member a chance of sneaking, for the sake of speaking. I would therefore appeal to hon. Members to see whether the arguments which they propose to advance are covered or not. We have had speeches here—two speeches from the hon. Member Dr. Syama Prasad Mookerjee dealing with the matter threadbare and we had speeches twice from the president of the All-India Newspapers Association, and' speeches from a number of other people. Therefore, to say that this is "muzzling" is something which is not really fair to the House. I do not think it is muzzling at all.

Prof. S. L. Saksena: I wanted to finish my speech on the point of order.

Mr. Speaker: No, no. I do not permit it. No speeches are necessary.

Prof. K. T. Shah (Bihar): I would like to have some clarification in view of what you have stated that some of these amending clauses seem to be only technical such as those relating to the two sessions and so on. There is in my opinion, a very substantial change in the, amendment of article 87 which is not merely consequential. I wanted to know for clarification whether any amendment on those clauses will not be allowed.

Mr. Speaker: Perhaps there is some misapprehension. Amendment to any clause, including an amendment of a comma or a semi-colon, is perfectly competent. My only point was that hon. Members may themselves take that into consideration and restrict their remarks. I treat some of them 'as of a formal character. But it is possible that some hon. Members may 'treat them as matters of substance. But in. that case, we shall have to appreciate the balance. If more time is to be taken on that, it will mean less time here. Because we want to finish, everything by 6-30 P.M. tomorrow. That is the whole position. And that too, divided between from now to one o'clock today and 3-30 P.M to 6-30 and tomorrow from 9-30 A.M. to one o'clock and from 3-30 P.M. to 6-30 p.m. including the time required for voting.

Shri Kamath (Madhya Pradesh): May I suggest for your consideration and for the consideration of the House that all the clauses except clause 3, which is most controversial, may be taken up and disposed of first in the order appearing in the Bill, and that clause 3 can be reserved last so that all the available time can be devoted to that clause?

Mr. Speaker: I am afraid that will perhaps leave a greater ground for the complaint that there is "muzzling" on that clause. The point is that if we sit up and take the more important things and if we have to make a change few minutes, no one need feel that he did not get a sufficient opportunity. After all, if the other clauses are of a formal character they can be put through at the end without any further discussion; I am trying to take up the clauses in the order of their importance.

Shri Kazmi (Uttar Pradesh): So far as the voting on some of the clauses is concerned may I suggest that the record of voting in respect of every clause may be separate but we may do it at one division? That is, we may go and have our vote recorded in respect of the various clauses separately but we will have to go only once to the lobby.

Mr. Speaker: That is exactly what say. In the proceedings when I say that clauses, for example, 6 to 10 be taken together and the voting is there, it is that the voting is in respect of each of the clauses. That is how the proceedings will go.

Pandit Balkrishna Sharma (Uttar Pradesh): In regard to voting on amendments, I want to submit one thing. You were pleased to say that all the amendments will be either accepted or rejected by 'Ayes' or 'Noes'. I wish to suggest that such of the amendments as may be accepted by the Government may be voted upon by our going to the lobbies.

Mr. Speaker: Order, order. The hon. Member did not either listen carefully or was not present when the matter was thrashed out yesterday and when I again referred to that matter. Yesterday, though I shared the view of the hon. the Home Minister and the hon. the Leader of the House, I still was of the view that we might perhaps take these amendments by separate vote in the lobbies just to err on the safe side. But on considering the matter further I find that I need not be so nervous about the interpretation of even if the matter is challenged in the court of law for the simple reason then after the amendment is carried the clause, as amended, is going to be

put the house. Therefore, if the House is not agreeable to the amendment being incorporated in the clause, it is perfectly competent for them to reject the clause. That is the view. Therefore we need not take more time in the technicalities.

Shri Amolakh Chand (Uttar Pradesh): May I know whether there will be Question Hour tomorrow or not?

Mr. Speaker: If hon. Members are agreeable, I shall certainly drop the Question Hour.

Several Hon. Members: Drop it, Sir.

Shri Sidhva (Madhya Pradesh): No, Sir.

Mr. Speaker: Order, order. I cannot make head or tail.

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha): The Question Hour tomorrow may be taken up on the 9th as there is every likelihood of the House meeting on the 9th just as we have transferred for the 8th, let tomorrow's questions be transferred to the 9th.

Mr. Speaker: Order, order. I think if we go on like that we would be on very, slippery ground, that is, from 9th to 10th and 10th to 11th. (*Interruptions*) Order, order. Let us first of all be determined that, come what may, we finish on the 7th. If the hon. Minister makes a declaration that, we go up to the 9th. I am sure it will have bad repercussions on the length' of discussions. Let us follow that with determination and if the whole House is so agreeable, we might have a programme and a time-limit definitely to every proposal coming before the House in the general interests of debate as also the convenience of Members and the desire of the House. So, I should not promise that tomorrow's questions will be transferred but if hon. Members who are having questions for tomorrow are willing to drop them.....

Shri Sidhva: It is not going to make any change.

Mr. Speaker: Why do they not hear me completely? If they are so keen, I am prepared to say this much that if the Question Hour is dropped tomorrow and in case the House sits on the 9th—there is one percent chance then I should have no objection to those questions being put on the 9th. We have already taken half an hour over this.

Pandit Munishwar Datt Upadhyay (Uttar Pradesh): If you drop the Question Hour tomorrow, there should not be an afternoon sitting.

Mr. Speaker: Let us proceed with our business. For clause 2, I have given one hour, that means it has to be finished by seven minutes to eleven, to be more exact about it. I think the Leader of the House may take about ten or 15 minutes.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Probably five minutes, Sir, if at all; even that might not be necessary.

Mr. Speaker: I shall call upon the Prime, Minister to reply on clause 2 at quarter to eleven.

Clause 2.—(Amendment of article 15)

Shri Naziruddin Ahmad (West Bengal): I would like to know whether all amendments relating to one clause should be taken separately or they should be grouped together. I think if they are grouped together the discussions would be shorter.

Mr. Speaker: The position now is that amendments standing in the names of Prof. S. L. Saksena, Sardar Hukam Singh, Dr. S. P. Mookerjee, Prof. K. T. Shah, Shri Hussain Imam, Shri Naziruddin Ahmad and Shri Kamath are to be moved. No other Member wishes to move any of his amendments. They can be taken to have been moved and then about the time-limit on speeches in repeat of these amendments

Dr. S. P. Mookerjee :(West Bengal) One hour will start from now.

Mr. Speaker: The discussion will go on for one hour from now.

Prof. S. L. Saksena: I beg to move:

(i) In page 1, omit clause 2.

(ii) In Page 1, line 8, for "socially and educationally backward classes" substitute "socially, economically and educationally backward classes".

(iii) In page 1, line 9, add at the end, "during the first ten years since the commencement of this Constitution."

Sardar Hukam Singh (Punjab): I beg to move:

(i) In page 1, line 6, omit "or in clause (2) of article 29".

(ii) In page 1, lines 8 and 9, for "any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes" substitute "such backward classes as are referred to in articles 340, 341 and 342 of the Constitution".

(iii) In page 1, line 8, after "socially" insert "economically".

Dr. S. P. Mookerjee: I beg to move:

In page 1, line 7, for "special" substitute "reasonable".

Prof. K. T. Shah: I beg to move:

(1) In page 1, line 7, after "provision for the" insert "economic, social, educational".

(ii) In page 1, line 8, after "socially" insert a comma and "economical, or".

(iii) In page 1, line 8, for "classes of" substitute "or deficient".

(iv) In page 1, line 9, for "or" substitute "and".

Shri Hussain Imam (Bihar): I beg to move:

In page 1, line 8, after "advancement" insert "employment and reservation of seats in educational institutions".

Shri Naziruddin Ahmad: My amendment is the same as the second moved by Prof. S. L. Saksena.

Shri Kamath: I beg to move:

(1) In page 1, after line 9 add:

"Provided that such provision does not impose unreasonable restrictions upon the right to equality of opportunity guaranteed to all citizens by the Constitution."

(2) In page 1, after line 9 add:

"Provided that such provision doesn't entail undue or unreasonable discrimination against other classes of citizens."

Mr. Speaker: Prof. S. L. Saksena's first amendment is out of order as it is the negative of the original. I will place the remaining amendments before the House.

Amendments moved:

(1) In page 1, line 8, for "socially and educationally backward classes" substitute "socially, economically and educationally backward classes".

(2) In page 1, line 9, add at the end "during the first ten years since the commencement of this Constitution."

(3) In page 1, line 6 omit "Or in clause (2) of article 29".

(4) In page 1, lines 8 and 9, for “any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes” substitute “such backward classes as are referred to in articles 340, 341 and 342 of the Constitution”.

(5) In page 1, line 8, after “socially” insert “economically”.

(6) In page 1, line 7, for “special” substitute “reasonable”.

(7) In page 1, line 7, after “provision for the” insert “economic, social, educational”.

(8) In page 1, line 8, after “socially” insert a comma and “economically, or.”

(9) In page 1, line 8, for “classes of” substitute “or deficient”.

(10) In page 1, line 9, for “or” substitute “and”.

(11) In page 1, line 8, after “advancement” insert “employment and reservation of seats in educational institutions”.

(12) In page 1, after line 9 add:

“provided that such provision does not impose unreasonable restrictions upon the right to equality of opportunity guaranteed to all citizens by the Constitution”.

(13) In page 1, after line 9 add:

“Provided that such provision does not entail undue or unreasonable discrimination against other classes of citizens”.

Shri M. A. Ayyangar (Madras): I shall only say a few words both on the clause as also on the amendments. In my opinion, backward classes must be a first charge along with Scheduled Castes and Tribes on the attention of the State as a whole and on the Government. If in the original Constitution as framed all those provisions have not been introduced which have been intended for safeguarding and uplifting the Scheduled Castes and Scheduled Tribes, we thought that a Commission would be appointed by the President and in accordance with the recommendations of the Commission steps would be taken as early as possible. I am sorry to note that still no Commission has been appointed by the President. Till such a Commission is appointed, various steps have to be taken. The courts have found that there are some difficulties not only with respect to the Scheduled Castes but also in respect of other backward classes. In so far as there are any restrictions on the powers of the

Government under the Fundamental Rights preventing any special provisions being made for the uplift of the backward classes, I entirely agree with the Government that the provisions ought to be relaxed and there must be sufficient latitude for the State Governments to introduce provisions so as to enable the backward classes, as early as possible, to come up to the level of the other classes.

Now, it is suggested that this might introduce religion, caste and other things by the back door. On that score, I felt at one stage that article 15 need not be amended and that it would be better to amend Article 29 relates to special provisions may be made for the reservation of seats in schools and colleges, etc. In article 16, there is already provision for the reservation of posts for backward classes wherever in the opinion of the State they are not adequately represented. So far as article 340 is concerned, the President can appoint a Commission to investigate into the social and educational backwardness of these communities and to make adequate provision for bringing up these to the level of the others. Therefore, I thought that 'these three provisions in articles 16, 29 and 340 were sufficient, and that article 15 need not be touched because article 15 says that no discrimination shall be allowed on grounds of religion, race, caste, creed, etc. and this amendment might indirectly bring In once again race, religion, caste, etc. As soon as the President appoints the Commission and the Commission reports, I am sure that these backward classes would be such as are indicated by the commission report or the President's order. That is what is also referred to in the Report of the Select Committee. Therefore, there need not be any apprehension on the ground that indirectly other communities, castes and creeds will be brought in and that these provisions will be enlarged or circumvented so as to benefit any privileged classes that do not require any special treatment. I am satisfied that that recommendation in the Select Committee Report will be followed by the State Governments. There is no good in making aspersions on the State Governments. These are provincial subjects and therefore the State Governments have to be relied upon to carry out these behests and the directions in the Constitution.

I would have liked that so far as this provision in article 15(4) is concerned, the word 'reasonable' might have been put there. But, whether the word 'reasonable' is there or not, this provision cannot be a cent per cent provision for the backward

classes ignoring the claims of all the others. In the very nature of things, these must be reasonable provisions. I am sure the courts will interpret, whether the word 'reasonable' is there or not, that provision means reasonable provision, not leaving out the rest. So, I am not very particular that the word 'reasonable' should be added.

So far as social and educational backwardness is concerned, I thought 'economic' might be added so that rich men may not take advantage of this provision. In my part of the country there are the Nattukkottai Chettiars who do not care to have English education, but they are the richest of the lot. They have all the business houses and factories. You can compare them to the Marwari community in the north. If these people do not want English Education, should there be special reservation for them? Therefore, I thought the word 'economic' should also be added. Both the hon. Prime Minister and Home Minister thought that this provision should be brought in line with article 340 and therefore used deliberately 'socially and educationally' and 'avoided the word 'economic'. I am sure this will serve the purpose. I am happy at the clause as it has emerged from the Select Committee, though I would like to have some changes here and there. I hope the clause will be interpreted in the light in which it is intended and in the light of the directions given in the Report of the Select Committee.

Mr. Speaker: Prof. Shibban Lal Saksena. I am going in the order of the amendments.

Shri J. R. Kapoor (Uttar Pradesh): I believe some of the hon. members who have not moved any amendments will also be given an opportunity.

Mr Speaker: I cannot be sure. I do not think anybody really needs any opportunity now. But, an opportunity has to be given to those, who wish to make some changes. It is not now an occasion to speak again. It is an occasion for going into the lobbies and deciding. The matter has been thoroughly discussed. I do not think any occasion for any speech arises.

Prof. S. L. Saksena: My second amendment is that for "socially and educationally backward classes", "socially, economically and educationally backward classes" be substituted.

Mr. Speaker: The time at the disposal of the hon. Member is very short. He need not read the amendments. He may refer to the numbers and advance arguments.

Prof. S. L. Saksena: Then I have another amendment that the words “during the first ten years since the commencement of the constitution” be added at the end.

This amendment I consider to be a most dangerous amendment,

An Hon. Member: Dangerous?

Prof. S. L. Saksena: Yes, a dangerous amendment.

Mr. Speaker: Let him not be interrupted.

Prof. S. L. Saksena: It cuts at the very root of the principles which we have accepted to be the basis of our democracy. Equality has been the one important principle which we have adopted. We have also set ourselves against untouchability. But, I think through this clause we are introducing a new kind of untouchability—untouchability of those who so far were the backward classes. That is the result of this amendment. I feel that this Constitution should not be disgraced by having such an amendment as this. I feel that there is nobody in this House today who does not want that the backward classes, who are low in the scale of education, to be brought up. I am in full agreement with them. But what I feel is that this amendment will be used for people who are neither backward nor who need any special provisions.

The Minister of State for Finance (Shri Tyagi): Will my hon. friend speak slowly? He is committing so many spelling mistakes in his speech.

Mr. Speaker: Order, order. The hon. Minister knows that it is the Chair that has to be addressed by a Member and the Member has not to be addressed directly. That is the first mistake that the hon. Minister has committed. Then, if he permits me to point out, I may say while speaking there are mistakes of pronunciation and not of spelling.

Prof. S. L. Saksena: So far I had thought that Mr. Naziruddin Ahmad was the only grammarian in this House. I am glad that the hon. Minister there is also the Minister for spelling.

Mr. Speaker: The hon. Member need not reply to that. He may proceed.

Prof. S. L. Saksena: I was surprised when the Prime Minister said that this amendment would bring some people up.

[Mr. DEPUTY-SPAKER in the Chair]

I thought that the real purpose of this amendment is to nullify the judgment of the Supreme Court. The House will realise that the article, as it is in the Constitution, enunciates a very salutary rule. I do not think that an amendment of the Constitution is the proper method of circumventing the judgment while I know that the House is going to pass the amendment, I have suggested two amendments: one that the word "economically" be added and another that the operation of this provision may be limited to ten years. We all want that the really backward classes who are poor and who cannot get opportunities to come up and raise themselves should all be helped. And for this it is very necessary that the word "economic" should be there... There classes which taken as a whole may be backward, but the individual who claims these privileges or benefits may be a millionaire and have all the opportunities he wants by reason of his wealth. But still this clause will help him. If you want that these benefits or privileges should go to those who are really in need of them, then you must have the word "economic" in this clause. I do not understand the objection to this addition of the word "economic". It is said that in Madras there are very rich people who call themselves backward classes or sub-castes at some castes and who get all these benefits to themselves. I think the clause should not be allowed to stand as it is, otherwise it will be a dangerous thing. If it is allowed to pass in its present form, it will mean that any class which has entrenched itself in power may use this clause to advance as own particular class and I do not think our Constitution should be burdened with such privileges to particular classes. I personally think that if the word "economic" is there it will serve to benefit those who are really backward and who need to be helped; I do not know why this healthy amendment is not being accepted by the Government. Mr. Ananthasayanam Ayyangar himself has just now said that the word "economic" should be there, the purpose being that those who will benefit from it should be the persons who are really backward, and who without this provision, will not be able to come forward. I think this word should be added and if that is done, the sting will be taken away from this clause.

I have also suggested that the duration should be limited to ten years only. Our Constitution also provides safeguards for Scheduled Castes and backward classes and these safeguards have all been limited to only ten years.

Dr. Deshmukh: If their backwardness disappears, the concessions will also disappear.

Prof. S. L. Saksena: If you continue these privileges, these disabilities or this backwardness will never disappear, because crutches will never enable the backward classes to come up. At present they need to be helped because they are backward and so our Constitution has wisely provided that these privileges or concessions should be there for ten years to enable them to rise up. But we should not perpetuate these inequalities. Unless we place such a time limit it will be nothing but perpetuation of these inequalities forever in the Constitution. I, therefore think the period should be limited to ten years as I have suggested and it should be extended only to those who are socially and economically backward.

I think these are healthy amendments which I hope the Prime Minister will accept.

Prof. K. T. Shah: My amendments are also on the same lines as those of Prof. Saksena and will not repeat the arguments that he has already advanced, except in two particulars which he has not touched. I am quite certain that the backwardness which really needs to be remedied is backwardness of an economic character. This affects a very large proportion of the people of this country and we hope they will be affected and helped by the so-called Chapter on Directive Principles. If for instance the article in the Constitution which assures compulsory universal elementary education is implemented, then many of these questions would not arise. Therefore I feel that the most important thing to do is to implement our Chapter on Directive Principles and not because you are not able to do so, to revive that which we had sought to abolish by our Constitution. I say that because the definition of classes will be really nothing but a definition of birth. It just happens that you are born in a certain class or group and that class is regarded as a backward class, no matter what its advancement may be in social or other respects. I think we have some experience, for instance, of the Punjab Land Alienation Act where agricultural classes are defined. And the Punjab Members will perhaps tell the House how that has worked. Classes are called by a particular name not because they carry on this occupation or profession but because they happen to be born in certain families or certain groups. Therefore the retention of this word "class" would mean, in my opinion, the negation of the spirit of the Constitution, and

amendment, therefore, seeks to substitute the word "citizen" for it and also the word "deficient".

Another point that I would like to bring to the notice of the House is that nothing in this will prevent the State from making special provisions. Under article 29 you have not debarred anybody from any educational institutions on the ground of birth or sex and so on. And that will still stand, in spite of this amendment. You have to make adequate arrangements for effectively bringing up the backward classes and you have to define these classes according to articles 340, 341 and 342. Unless and until you take precise measures to bring up these backward classes, they will remain where they are. Therefore I have suggested in my amendment that the words "backward classes" should be eliminated and they should be substituted by the word "deficient". I have also suggested that as an alternative, rather than a conjunctive expression should be there. That is to say, for "Scheduled Castes and Scheduled Tribes", I would have "Scheduled Castes or Scheduled Tribes". The spirit of the Constitution has to be maintained and also the intentions of the Chapter on Directive Principles which you are now trying to side-track, or you are, at any rate salving your conscience and putting them aside on the ground of inability, for the time being. You tell the so-called backward classes that special arrangements will be made to them though actually your ability to do so is very limited. Let us be honest. Let us accept this amendment. We must remove the backwardness. Especially backwardness arising out of or created by social customs and traditions and our history. Every effort must be made to remove this sort of backwardness. But this clause does not work in that direction. That is not the direction in which this clause will lead you. Therefore I have proposed my amendments and I commend them for the acceptance of the House.

Sardar Hukam Singh: In the time allowed to me, I will briefly try to refer to my amendments. It is not possible to develop any one of these and I would not make an attempt. We were told by the hon. Speaker that the House is not inclined to listen and I am not also very keen to make myself felt. Therefore, my reference would be very brief.

So far as my first amendment is concerned, my objection is rather technical. I find that reference has been made to article 29 as well now and this has been done by the Select

Committee. The hon. Prime Minister said that even in the first instance this was kept in mind and it was only an error that it was not included. Whatever that might be, my fears are that in an implied manner we are going to amend clause (2) of article 29 as well because under the present amendment the application of article 29(2) is being restricted. So even if we did not say expressly, that article is also sought to be amended. I fear that would be out of our scope and would not be permissible.

As for my second amendment, it has also been argued by two friends of mine who have preceded me. So far as the idea underlying the clause is concerned, I am in perfect agreement. I also find that there is need that those backward classes should be brought up to the standard of average citizen. They need our sympathy and support. But the difficulty is that with the amendment—we are not defining who will be eligible for this support—it would be possible for the State legislatures or the executive to corrupt those lists as they want. We have defined what our intention was when we made the Constitution that the Scheduled Castes, Scheduled Tribes as well as other backward classes, who were suffering from such disabilities, socially, economically or educationally, should be helped and I support that whole-heartedly but the clause as it stands now and as emerged from the Select Committee does not make it clear and my apprehension is that it will be left to the party in power in the various States what lists they prepare and perhaps it might be used for political purposes as well. The real needy might not be given the assistance that they deserve and others not backward in one respect or other may be aided under that guise. So we have articles 340, 341 and 342. If we adhere to them—and they lay down that the President has to declare under articles: 341 and 342 the lists of Scheduled Castes and Scheduled Tribes and backward classes and an officer has to be appointed to prepare the lists—then the various Legislatures and the executives in the States might confine themselves to aiding really persons who might deserve the aid.

In my third amendment I have said that the word 'economically' should be inserted. You yourself, Sir, have argued that there may be persons who may be educationally and socially considered to be backward and yet they may be very advanced economically. In that prospect we should not deprive those who are really

economically backward and if my amendment is accepted, the scope would be limited to helping the really needy.

I, therefore, commend my three amendments for the acceptance of the House.

Dr. S. P. Mookerjee: The amendment which I have moved seeks to substitute the word 'special' by the word 'reasonable'. With regard to this matter, there is complete unanimity in the House that adequate provision must be made for the advancement of the interest of those who are today backward but the question is how to make a suitable provision in the Constitution which will prevent an abuse of such a provision. Now this point has been touched in the report of the Select Committee and it has been suggested there that it is hoped that nothing will be done which may lead to an abuse of this clause. As you are aware, this matter came up in connection with the recent judgment of the Supreme Court with regard to what is called the communal G.O. of Madras. Now the communal G.O. has been quoted in the text of the judgment and it appears there from that this was really not a provision for the advancement of the educational interest of backward communities as such but there was a provision for non-Brahmin Hindus -- six, backward Hindus — two, Brahmins -- two, Harijans — two, Anglo-Indians and Indian Christians — one, Muslim -- one. This was the ratio to be followed every 14 seats to be filled for admission to Medical College and the Engineering College. In other words, supposing for every 14 seats there are more than two capable and qualified Harijan candidates, even they would not be admitted and they will have to make room for others who come under this category of backward Hindus or non-Brahmin Hindus. From my discussion with Members I gathered that it was nobody's intention to justify the communal G.O. That is good. That is reassuring but the amendment which is sought to be made today in the Constitution leaves scope to the State Government to pass a similar provision like the communal G.O. of Madras if it so chooses. No doubt the Select Committee says that this should not be done and there should not be any abuse made, and that those who are really backward should be helped in every possible way. There is no objection to that. In fact the more we give them educational facilities, the greater will be the chance of doing away with these artificial barriers.

Mr. Deputy-Speaker: Have they not already committed themselves to

what classes' come under 'backward classes' in the communal G.O.?

Dr. S. P. Mookerjee: That may not be covered under the amendment which we are passing. At any rate, that is a debatable point. One 'attempt we made in the Select Committee was to confine the definition of backward classes to article 340. There a procedure had been laid down indicating that the President would appoint a Commission and the Commission would enquire into the conditions of certain classes or castes of people in the country and if after a comprehensive report it was thought necessary that certain facilities should be given, such facilities could be provided for. But that reference has been omitted from the clause as it is now before us today. What I seek, therefore, to do is practically to implement the spirit of the observations which are made in the Select Committee Report. No doubt the Government of India may in a friendly way suggest to the State Governments that they should not proceed in a particular way which may mean abuse of the powers which are being given to the State Governments. But there will be no legal force behind it. On the other hand if you say that the provisions made shall be reasonable, that will act as a very salutary check in respect of any efforts which may be made by any State Government. The provision should be so made that it would not take away the legitimate rights of others who may be more qualified but who may not get opportunities, or extend the facilities to such sections of the people who are not really backward but who, for political reasons, have got to be supported and strengthened. Now that is a dangerous tendency. I know that this is a delicate matter and I do not wish to say anything which may give the impression that any section of the House is opposed to the central idea of providing facilities to those who are backward. If my amendment is accepted in the form in which I have moved it or in the form of Mr. Kamath's amendment, I do not think there will be any objection from any quarter except from those who may in their heart of hearts consider it desirable that a provision like the Madras communal G.O. should be revived. If you say "reasonable" the communal G.O. cannot apply. If you do not want to see it revived, then why not accept my amendment and set all doubts at rest? That is the object of my amendment.

Shri Hussain Imam: I am a believer in being explicit and perfectly clear about my intentions. The law and especially the Constitution should not be ambiguous and

capable of interpretation in different ways. It is because of this that we have today to face this amending Bill. Had we made our intention clear in the way in which we wanted it there would have been no need for this measure.

I entirely agree with the Prime Minister that in order to establish equality it will be necessary to deny certain privileges to those who are in enjoyment of them. It is on this basis that the Zamindari Abolition Act is being passed. If so, I ask why should it not be perfectly all right that those who are educationally or economically or due to statutory actions backward, things should be reserved for them? I feel that the intention of the Government, however laudable it may be is very much clouded by non-explicit words. I am afraid it will again lead to litigation and the judiciary will have to interpret it with the result perhaps that the intention of the Government may not be carried out. For, this purpose I have tried to clarify the matter by providing for reservation as apart from rotation. The difficulty with the Madras G.O. was that it provided for a system of rotation. Instead of that what we might do is to reserve something for those who are backward and the rest should be open to competition in which both the backward and forward will come in according to merit. It is for this purpose that I have moved my amendment so that you may provide for the minimum by means of a statutory guarantee both in appointments and educational Institutions and for the rest in order to avoid discrimination you may throw it open to everybody on sheer merit. There should be no rotation but reservation cum open competition. I therefore appeal to the House to modify the wording in whatever manner they think proper so that the intention of the Government may be explicitly indicated and all ambiguity removed and thus obviate the necessity for further amendment.

Shri Kamath: Let me make it clear at the very outset that I yield to none in my desire to see that the backward classes and the Scheduled Castes and Tribes attain a high level in educational and economic standards in this country and I would even look forward to the day when the stigma attaching to Scheduled Castes and Scheduled-Tribes or backward classes will disappear for ever from our constitutional vocabulary and parlance.

The Idea underlying this amendment to article 15 is laudable and unexceptionable but, I am afraid, in practice, if left to the State Governments without central direction, the

power is likely to be abused. The Prime Minister himself in his speech the other day appeared to labour under an apprehension when he said that the High Court of Madras was perhaps after all not wrong in holding the communal G. O. of the Madras Government as Invalid and ultra vires of the Constitution. He said:

“I do not for an instant challenge the right of the High Court of Madras to pass the order. Indeed, from a certain point of view it seems, if I may say so with all respect, that their argument was quite sound and valid. That is to say, if communities as such are brought into the picture, it does go against certain explicit or implied provisions of the Constitution.”

Then he went on to say that conditions have brought about this amendment and how certain classes have been kept in a certain state of depression, if I may say so. I am against dubbing a class wholesale as a backward class just as I have objections to listing certain castes or tribes as Scheduled and placed in a separate-category. Circumstances may justify this provision, but on grounds of principle it is open to objection.

The Prime Minister was right in saying the other day that it would be more proper to refer to backward individuals and not classes as a whole or in a lump. Consider my friend Dr. Ambedkar. Will anybody dare say that Dr. Ambedkar is a backward individual or belongs to a backward class? Latterly he has been crusading for Buddhism.....

Dr. S. P. Mookeree: That is a sign of being forward.

Shri Kamath: My friend Dr. Mookerjee says that it is a sign of being forward. Dr. Ambedkar is educationally, socially and economically far more forward than myself.....

Shri J. R. Kapoor: Those who do not belong to the Forward Bloc are backward!

Shri Kamath: The Scheduled Castes under the Constitution are entitled to protection. Will anybody say that Dr. Ambedkar needs protection at the hands of anybody?

Shri Rathnaswamy (Madras): We do not go by individuals but by community.

Shri kamath: Dr. Ambedkar, if he will pardon me for saying it, is so aggressive that others may need protection from him. Fortunately his aggression is confined so far to worth and not to deeds.

Dr. Dehmukh: Deeds he has left behind.

Shri Kamath: Consider again my friend Dr. Deshmukh, who is the president of the All India Backward Classes Association. I do not know whether he styles himself as a member of the backward classes. But I will yield to him any day as regards intellectual superiority, social charm or educational qualifications.

I agree with the Prime Minister's remark the other day that it is wrong to dub or brand a whole class as backward. Dr. Deshmukh is the President of the Backward Classes Association and yet he may not belong to the backward classes.

Look at the other aspect of the problem. The Brahmins are supposed to be very forward, at any rate not backward. Dr. Ambedkar said the other day that every Hindu has got a caste—but I do not think that is why he has embraced Buddhism where all classes and even Scheduled Castes disappear. That apart, the Brahmins are supposed to be the most superior among the chaturvarnas, though what Dr. Ambedkar said the other day is not quite correct, that the Hindu smritis and shastras perpetuate this chaturvarna. Even, the Gita which he quoted perhaps mentions only guna and karma and not janma. Anyway, that is beside the point. But today you will find many Brahmins who are cooks and even chaprasis, and Scheduled Caste and backward class individuals occupying the position of Ambassadors and Ministers and political leaders, presidents of various political organisations, and high posts in Government.

Dr. Deshmukh: What is the percentage?

Shri Kamath: What is the percentage of Brahmins too? How many Brahmins work as cooks and chaprasis all over India today? How many Brahmins are also illiterate today?

Therefore, my point is this. I am for making provision for backward classes wholeheartedly in favour of making provision for backward classes and Scheduled Tribes. Let me make it quite clear. But in practice this might lead to abuse unless it is laid down as you, Sir have suggested, that the provision made for them should be reasonable—Dr. Mookerjee also supported that idea or as I have suggested in my amendment that such provision does not impose unreasonable restrictions upon the right to equality of opportunity guaranteed to all citizens by the Constitution. or If that

is not acceptable the other one which suggests that such provision shall not entail undue or unreasonable discrimination against other classes of citizens.

The Home Minister answering a question the other day in the House about Scheduled Caste appointments. I have said appointments are made consistently with the necessity to maintain efficiency in the services. And even our Constitution provides for that Article 335 says that consistently with the maintenance of efficiency of administration, members of Scheduled Castes and Scheduled Tribes should be given their due share in the making of appointments to services and posts wider Government. If this clause be accepted as it is. It is likely that premium may be put upon a caste or a community as against efficiency or merit of an individual. I am sure the Prime Minister, the Home Minister and even Dr. Ambedkar, all of them, and the whole House, are anxious to avoid that premium should be put upon a caste or a community or a class. Merit or efficiency must be the guiding consideration -- not the sole, but the main consideration. But nevertheless it may happen, if this clause is accepted as it is, that you might introduce what, I might call 'caste-ism' or class-ism'—if communalism is not acceptable -- by the backdoor, and that might lead to various irregularities, to use the mildest word, so far as admission to educational institutions or appointment to Government posts are concerned. Therefore, I would plead with all the earnestness at my command, that the clause be accepted with a qualifying proviso that this will not militate against the right to equality- of opportunity guaranteed to all citizens not merely in the Preamble but also in article 16 and several articles of the Directive Principles of State Policy. If that is not done, I am afraid that this clause again may be challenged in a court of law, and owing to mutual inconsistencies of the various articles of the Constitution-15, 16, 29, etc.—I for one am afraid that even this clause may be held invalid and ultra vires of the Constitution.

Shri Naziruddin Ahmad: Sir, I have only a few words to say because my most important arguments have already been given to the House by you in better words than mine. We want really to help the backward people but it is necessary that, they should be socially, educationally as well as economically backward. If they are merely socially backward or educationally backward, they may not be economically. So I submit that these three words should be used cumulatively and not disjunctively. Then

I would also support your suggestion. Sir, that the word 'economically' should also be there.

Coming to the amendment of Prof. Shah, I think instead of the word "class" the word "citizen" should be more appropriate. We want to help the really backward persons. We should not have the term backward "classes". It may be that if we characterise a particular class as backward. There may be a case of two brothers of that class one of whom may be advanced and the other backward. So, the approach should rather be from the individual than from the class. Therefore, I would place the word "economical" in addition and also substitute "citizen" in place of "classes".

Shri Jawaharlal Nehru: I regret that I am unable to accept any of the amendments put forward—not that I do not sympathise with the great deal that has been said. Indeed, I think it might well be said that with the object of this amendment of the constitution there is practically unanimous agreement here. The only difference comes in sometimes, to a slight extent about its scope, and to a greater extent in regard to certain apprehensions that it arouses. It was for this reason that even in the select Committee's Report we drew attention to these fears and apprehensions and said that we were quite sure that the Select Committee is of the view that this provision is not likely to be, and cannot indeed be misused by any Government for perpetuating any class discrimination or for treating non-backward classes as backward for the purpose of conferring privileges on them. I realise that by putting in a paragraph in a Select Committee Report we do not necessarily legally or constitutionally govern anybody or prevent anybody from doing something. That is true, but in the nature of things you have to give a certain latitude in certain directions.

One of the main amendments or ideas put forward is in regard to the addition of the word "economical". Frankly, the argument put forward with slight variation, I would accept, but my difficulty is this that when we chose those particular words there, for the advancement of any socially and educationally backward classes", we chose them because they occur in article 340 and we wanted to bring them bodily from there. Otherwise I would have had not the slightest objection to add "economically". But if I added "economically" I would at the same time not make it a kind of cumulative thing but would say that a person who is lacking in any of these things should be helped.

"Socially" is a much wider word including many things and certainly including economically. Therefore, I felt that "socially and educationally" really cover the ground and at the same time you bring out a phrase used in another part of the Constitution in a slightly similar context. Therefore, we adhered to that, although I entirely agree with what Prof. Shah and Prof. Shibbanlal Saksena said about people who are economically backward being helped.

Prof. Shah said something about our approaching this question in a more positive way that is to say, by implementing the Directive Principles of Policy and by try into uplift backward classes in the sense of nurturing them by special treatment. I completely and wholeheartedly agree with that -approach and that is the only correct approach to this problem laid down by the Constitution and laid down by common sense. The only difficulty again arises that many correct things cannot be done suddenly and normally. Take this matter of educational advancement. The obvious way to proceed is to build more educational institutions and to give admission to every person who-wants that particular type of training and who is competent to profit by it. It is quite desirable, but for lack of room in our colleges and other institutions for that higher education, we are not able to do it. We want every person to have a house to live in. But unfortunately, let us say in the city of Delhi or elsewhere, we have to apportion houses and give priority to some people. Some people have to live in tents for some time, or some people have to live even in the open for some time. But the object is that everyone should have a house and everyone should have a place in an educational institution to be trained up to the limit of his or her capacity.

Again I think it was Dr. Syama Prasad Mookerjee who said that these provisions should be used in reasonable manner. Yes, undoubtedly, of course. I do not know how the putting in of those words here is going to help, because the idea is bound to be there. If a thing is used unreasonably, then it is wrong—if it is used merely to perpetuate, to give unfair advantage to some. After all the whole purpose of the Constitution, as proclaimed in the Directive Principles is to move towards what I may say a casteless and classless society. It may not have been said precisely in that way; but that is, I take it, its purpose, and anything that perpetuates the present social and economic inequalities is bad.

So, I would beg the House not to accept the amendments to the amendment suggested to this article, because while there is much in them with which we agree they do not really clarify or help the situation. It is one of a slight conflict between existing things and what we want them to be. We want to approach that ideal. If we merely talk of the ideal we do not deal with the practical; if we merely talk of the practical and forget the ideal we become static and forget the Directive Principles of Policy. We have to aim in that direction and move towards it keeping our feet on the ground. I think after careful consideration that the words that the Select Committee has recommended to this House are appropriate for the occasion and the House will accept them as such.

Shri J. R. Kapoor: May I ask one question of the Prime Minister?

Several Hon. Members: No questions now.

Mr. Deputy-Speaker: The hon. the Prime Minister's speech is crystal clear—I do not think any further explanation is necessary.

I shall now put the amendments to the House, except those which are withdrawn.

Dr. S. P. Mookerjee: I beg leave to withdraw my amendment.

The amendment was, by leave withdrawn.

Mr. Deputy-Speaker: The question is:

In page 1, line 6, omit "or in clause (2) of article 29".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1 line 7, after "provision for the" insert "economic, social, educational".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 8, after "advancement" insert "employment and reservation of seats in educational institutions".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, lines 8 and 9, for "any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes" substitute "such backward classes as are referred to in articles 340, 341 and 342 of the Constitution".

The motion was negatived.

Mr. Deputy-Speaker: The question

In page t, line 8, for "socially and educationally backward classes" substitute "socially, economically and educationally backward classes".

The motion was negatived.

Mr. Deputy-Speaker: As Sardar Hukam Singh's third amendment is identical to the one just now negatived by the House, that amendment is barred.

Prof. K. T. Shah: Sir, I beg leave to withdraw my second amendment.

Amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: The question is:

In page 1, line 8, for "classes or substitute "or deficient".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, line 9, for "or" substitute "and".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1 line 9, add at the end, "during the first ten years since the commencement of this Constitution."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 1, after line 9 add:

"Provided that such provision does not impose unreasonable restrictions upon the right to equality of opportunity guaranteed to all citizens by the constitution".

The motion was negatived.

Shri Kamath: Sir, I beg leave to withdraw my second amendment.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: Before I put the clause to vote I may inform the House that yesterday we experienced some difficulty and spent a lot of time in the division, because there was only one lobby. Now we have got three lobbies. Hon. Members will kindly remember their division numbers. Nos. 1 to 100 will go into the original lobby; Nos. 101 to 200 will go into the second lobby and Nos. 201 to 325 will go into the third lobby--if they are all voting 'Ayes'. 'Noes' will go into the original 'Noes' lobby. As soon as hon. Members have finished voting they will come back to their seats, as otherwise the lobbies will be crowded.

Shri Naziruddin Ahmad: The 'Ayes' have three lobbies, while the 'Noes' have only one lobby. This is discrimination.

Mr. Deputy-Speaker: The question is:

"That clause 2 stand part of the Bill."

The House divided: Ayes, 243 : Noes, 5

AYES

Achint Ram, Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva, Shri Joachim

Ambedkar, Dr.

Amolakh Chand, Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat, Shri B.R.

Bhagwant Roy, Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava, Pandit Thakur Das

Bhatkar, Shri

Bhatt, Shri

Bhattacharya, Prof K.K.

Birua, Shri

Biyani, Shri

Borooah, Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das Dr. M.M.

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Shri Kanhaiyalal

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dholakia, Shri

Diwakar, Shri

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Guha Shri G.S.

Gupta, Shri Deshbandhu

Gupta, Shri V.J.

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hasan Shri M.A.

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda Shri

Himmatsinghka, Shri

HimmatSinh Ji, Major General

Hiray, Shri

Husain Shri T.

Hyder Husain Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain, Shri A.P.

Jain, Shri N.S.

Jajoo, Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jhunghanwala, Shri

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Kazmi Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran,Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Mishra Shri S.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgil,Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naik Shri M.

Naik Shri S.V.

Nand Lal Master

Nathwani, Shri

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Oraon, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Pillai, Shri Nadimuthu

Poonacha Shri

Pustake Shri

Rahman Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar,Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh, Ch

Ranjit Singh, Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Sahaya, Shri Syamnandan

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Shara, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Sidhva Shri

Singh Capt. A.P.

Singh Dr. R.U.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Siva Dr. M.V. Gangadhara

Sivaprakasam, Shri

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sundarlal Shri

Swaminadhan, Shrimati Ammu

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma Shri M.L.

Velayudhan, Shri K.

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai, Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hussain Shri Imam

Hukam Singh Sardar

Seth Shri D.S.

Shah, Prof K.T.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 2 was added to the Bill.

Clause 3— (*Amendment of article 19 etc.*)

Shri Syamnandan Sahaya (Bihar): In clause 3 there are two parts: one relates to sub-clause (2) and the other to sub-clause (6) of article 19. I think it would be better to take them separately, as they refer to entirely different matters, namely, freedom of trade and commerce and freedom of speech and expression.

Mr. Deputy-Speaker: A suggestion has been made that out of the time allotted, namely, two hours for consideration of all the amendments to clause 3, as amendments to clause (2) of article 19 and amendments to clause (6) of that article stand on a different footing, that is, one relating to freedom of speech and the other to trade or business, we may apportion the time, that is one hour for each of them.

Shri Hussain Imam: One hour additional for article 19(6).

The motion was adopted.

Mr. Deputy-Speaker: An hour is good enough for clause (6) of article 19. I am unable to do anything. The hon. Speaker has already said that it is only two hours for both.

Pandit Kunzru (Uttar Pradesh): If you give one hour for the discussion of the amendments to clause (2) of article 19, you put it on an equal footing with the amendments that we have already disposed of. Anybody can see that the amendments that we are going to discuss are of immensely greater importance than the ones we have disposed of, and yet we are to have no more time than we had for the discussion for the last clause. I do not think that this apportionment of time is suitable and I request you, therefore, to reconsider this allotment and do justice to the importance of the clause.

Mr. Deputy-Speaker: It is after all the main clause that is engaging the attention of the House. I am not able to assess the superior importance attached to this particular clause, against the other clauses. So far as the fixation of time, that is, two hours is concerned, it is a suggestion made and accepted by the House as a whole and unless the House as a whole is prepared to change it, I am not in a position to change it. I would like to point out to the House and the hon. Member who has just spoken that 25 hon. Members spoke on the previous occasion on this very matter and another 15 or 16 hon. Members have spoken after the Report from the Select Committee. In the Select Committee, much attention has been paid to it. Yesterday attention was paid to this still; the complaint is that there is no time. I do not know what else is to be said except a repetition. Our experience has been that one hour was granted for amendments to article 15 (2) and all the points raised had already been placed before the House. No doubt elaboration of what has already been said may be possible. Hon. Members may go on speaking. I do not feel satisfied that the discussion will not be adequate. I find that sufficient time has been allotted and more than two hours is not necessary.

I only wanted to know the wish of the House whether hon. Members would like to apportion the time between clauses (2) and (6) of article 19. (*Several Hon. Members:* No) There is no agreement upon that Therefore I will proceed.

Pandit Kunzru: If the matter is left to the House, I am sure ultimately the House will be fair enough to give more time for the discussion of clause 4(2) of article 19.

Several Hon. Members: No, no.

Several Hon. Members: Yes.

Pandit Kunzru: I am sure if you put it to the House seriously, a large majority of the Members will have the fairness to agree to what I have said.

Mr. Deputy-Speaker: I am only sorry that the hon. Member with all his experience has used the words which ought not to be used. Certainly, I am always serious when I put questions to the House. I know what the House thinks. I am able to gauge the wishes of the House. I am sure, if the question is put to the House, 99 per cent of the Members will be against the proposal that has been made. Therefore, the hon. Member

must leave it to the Chair to judge what exactly is the wish of the House. I am not going to ascertain the wishes of the House separately.

Shri Naziruddin Ahmad: The Speaker gave two hours for amendments relating to article 19. I have noted it.

Mr. Deputy-Speaker: Let us not curtail the two hours by our speeches.

Prof. S. L. Saksena: I beg to move:

(i) In pages 1 and 2, omit clause 3.

(ii) In page 1, line 16, for "prevent the State" substitute "prevent the Parliament".

(iii) In page 1, lines 19 and 20, omit "friendly relations with foreign States".

(iv) In page 1, lines 19 and 20, omit "friendly relations with "Public order"

(v) In page 1, line 20, omit "public order".

(vi) In page 1, line 22, for "an offence" substitute "violence".

(vii) In page 1, after line 22, insert:

"Provided that in sub-clause (2) of this article, the word 'law' shall mean 'laws made by Parliament'".

(viii) In page 1, after line 22, insert:

"Provided that when such law is a law made by the legislature of a state, the provisions of this sub-clause(2) shall not apply thereto unless such law having been reserved for the consideration of the President, has received his assent."

(ix) In page 2, omit lines 1 to 7.

(x) In page 2, omit sub-clause (2) of clause 3.

(xi) In page 2, line 4, omit "or ever to have become void".

Pandit Thakur Das Bhargava (Punjab): I beg to move:

In page 1, lines 20 and 21, for "including, in particular, any existing or other law relating to" substitute "or, in relation to".

Shri Syamnandan Sahaya: I beg to move:

In page 1, after line 35, add:

"Provided, however, that where such exclusion results in the displacement of citizens or otherwise from pursuing their normal avocation, the State shall either take over

their property affected by such exclusion or shall compensate them to the extent of their loss due to such displacement."

Prof. K. T. Shah: I beg to move:

(i) In page. 1, lines 18 and 19, for "in the interests of" substitute "for safeguarding and maintaining".

(ii) In page 1, lines 19 and 20, omit "friendly relations with foreign States".

(iii) In page 1, lines 19 and 20, for "friendly relations with foreign States" substitute "amicable and peaceful relations with friendly foreign States, who have made treaties with the Government of India in that behalf on a basis of reciprocity".

(iv) In page 1, line 20, for "public order" substitute "internal peace and the security and integrity of the State".

(v) In page 1, line 20, for "decency or" substitute "public".

(vi) In page 1, line 21, for "existing or other law relating to" substitute "law which, under article 372 of the Constitution, has been adapted and kept alive by an order of the President, and which relates to".

(vii) In page 1, line 22, after "defamation" insert a comma and "attempts at overthrowing or destroying the State or endangering its integrity and independence".

(viii) In page 1, line 22, for "offence" substitute "any crime of violence against person, such as murder or against property, such as arson, sabotage, and the like".

(ix) In page 1, line 27, for "existing law" substitute "law which has been adapted and kept alive under article 372 of the Constitution, by an order of the President".

(x) In page 1, line 33 for "industry" substitute "profession, industry, public utility".

(xi) In page 1, after line 35, add:

"Provided that, in any case of a partial undertaking, taking over, or carrying on by the State of any trade, business, profession, industry, public utility or service, where private enterprise continues to function side by side with the State enterprise in the same trade, business, profession, industry, public utility or service, no discrimination shall be made in the conditions of carrying on that trade, business, profession, industry, public utility or service, against or in favour of the State enterprise, or vice versa."

(xii) In page 1, after line 35, add:

"Provided that any law which is passed hereafter, and which imposes or tends to impose any restrictions on the Fundamental Right of the citizen to freedom of speech and expression, shall be introduced, in the first instance in the House of the People and passed by both the Houses of Parliament not withstanding anything said in this part of the Constitution or any Schedule to it."

Shri Deshbandhu Gupta (Delhi): I beg to move:

In page 1, omit lines 12 to 22.

Shri Nazruddin Ahmad: I beg to move:

(i) In page 1, line 12, omit from "and" to "form" in line 14.

(ii) In page 1, line 20 for "public order" substitute "prevention of public disorder".

(iii) In page 1, line 20, for "public order" substitute "prevention of present danger to public order".

(iv) In page 1, line 22, for "defamation" substitute "defamation including defamation of foreign Governments or their officials".

(v) In page 1, line 22, for "defamation" substitute "defamation of heads, or officials of foreign States".

(vi) In page 1, line 22 for "defamation" substitute "defamation including, defamation of any person residing outside India".

(vii) In page 1, line 22, insert at end:

"In so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause".

(viii) In page 1, for lines 12 to 22 substitute:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as it relates to or prevent the State from making any law relating to defamation including defamation of any foreign State or any head of such State contempt of court; or any matter which offends against decency or morality; or which constitutes present danger to public order; or which constitutes incitement to murder or any offence involving violence or sabotage; or which undermines or tends to undermine the security of the State or which tends to overthrow the State."

(ix) In page 1, line 34, after "service" insert:

"relating to public transport, public communications, broadcasting and to defence industries".

(x) In page 1, after line 35, add:

"Provided that compensation shall be paid by the State under article 31 for losses, if any, to any citizen caused by such State trade, business, industry or service."

(xi) In page 2, omit lines 1 to 9.

(xii) In page 2, for lines 1 to 7 substitute:

"(2) All laws in force in the territory of India immediately before the commencement of the Constitution which took away or restricted the right conferred by sub-clause (a) of clause (1) of article 19 of the Constitution and the operation of which was not saved by clause (2) of the said article as originally enacted, shall stand revived and be deemed to be valid but only in so far as they are not inconsistent with clause (2) of the said article as amended by subsection (1) and with effect from such date or dates when such laws are adapted by the President under clause (2) of article 19 of the Constitution as amended by sub-section (1) or he declares by notification in the Official Gazette that such adaptation is not necessary."

(xiii) In page 2, line 1, for "law in force" substitute "laws in force".

(xiv) In page 2, line 2, for "which is" substitute "in so far as such law is".

(xv) In page 2, line 4, after "become void" omit the comma.

(xvi) In page 2, line 5, for "abridges" substitute "restricts".

(xvii) In page 2, line 7, for "sub-clause" substitute "clause".

(xviii) In page 2, line 7, insert a full-stop at the end.

(xix) In page 2, line 8, for "law in force" substitute "laws in force".

Shri Sarangdhar Das: I beg to move:

In page 1, line 22, add at the end:

"if the incitement is such as to cause a serious and imminent danger".

Sardar Hukam Singh: I beg to move:

(i) In page 1, line 22, for "incitement to an offence" substitute "incitement to violence".

(ii) In page 1, line 22, add at the end:

"which undermines the security of, or which tends to overthrow the State".

Shri Hussain Imam: I beg to move:

In page 1, line 20, after "foreign States" insert "grave danger to".

Dr. S.P. Mookerjee: I beg to move:

(i) In page 1, line 16, for "the State" substitute "Parliament"

(ii) In page 1, after line 35, add:

"Provided that where any such law affecting clause 6(ii) is a law made by the Legislature of at State, the provisions of this article shall not apply thereto unless such law, having been reserved for the, consideration of the President has received his assent."

(iii) In page 1, after line 22, insert:

"Provided that where such law is a law made by the Legislature of a State the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President has received his assent."

Prof. K. K. Bhattacharya (Uttar Pradesh): I beg to move:

(i) In page 1, omit clause 3.

(ii) In page 1, lines 19 and 20, for "friendly relations with foreign States" substitute "defamatory statements against the heads of the friendly States".

(iii) In page 1, line 22, add at the end, "involving violence or murder".

Shri Kamath: I beg to move:

(i) In page 1, lines 12 to 14, omit: "and the said clause shall be deemed always to have been enacted in the following form".

(ii) In page 1, line 20, omit "public order".

(iii) In page 1, line 22, for "incitement to an offence" substitute "incitement to grave disorder or murder or violence".

(iv) In page 2, line 4, omit "or ever to have become void".

(v) In page 1, lines 19 and 20, "for friendly relations with foreign States" substitute "peaceful relations with foreign States".

Shri Goenka (Madras): I beg to move:

In page 1, line 22, add at the end "involving violence".

Pandit Kunzru: I beg to move:

(1) In page 1, for lines 18 to 20, from "in the interests of the security"

to "morality" substitute:

"in the interests of the security of the State, decency or morality or for the prevention of defamatory attacks on heads of foreign States or public disorder".

(ii) In page 1, line 22, for "incitement to an offence" substitute "incitement to an offence involving violence".

(iii) In page 1, after line 22, insert:

"Explanation—The pre-censorship of news before their publication in a newspaper or other document or the banning of the entry of newspapers and other documents into any part of the territory of India shall not be deemed to be reasonable restrictions imposed within the meaning of this clause".

Shrimati Durgabai (Madras): I have given notice of an amendment but I do not propose to move it; I would however, like to speak on it.

Shrimati Renuka Ray (West Bengal): Similarly I too have an amendment which I do not propose to move, though I wish to speak on this clause.

Mr. Deputy-Speaker: It all depends on the time available.

Shri Damodara Menon (Travancore--Cochin): I have given notice of an amendment which another hon. Member has moved. Will I be getting a chance to speak?

Mr. Deputy-Speaker: I cannot say. Hon. Members will have to take their chance. I do not want to stand in the way of anyone taking his chance.

Well, the amendments that have been indicted are taken as moved and the general discussion both on the clause and the amendments will follow.

Shrimati Durgabai: I will be very brief in my observations as I will confine myself to the point which I have raised in my minute of dissent appended to the Report of the Select Committee. I am not really justified in going over the same points which I have raised and fully discussed in that minute of dissent. The point that I have tried to stress is that legislation in a matter relating to article 29(2) should be done exclusively by Parliament and my reasons for maintaining this stand I have explained in my minute of dissent and I need not repeat them here. In article 19(2) we have such items like public order, friendly relations with foreign States, security of the State and so on. As the House is fully aware, all these are matters imposing restrictions on the freedom of the individual and these are matters which are all common to all the citizens of India

arid not particular to any particular State in India. Therefore these matters should be legislated on by Parliament and it is only then that we can have some kind of uniformity in these legislations. Moreover, in the different States there may be conflicting approaches to the same subject and there may be encroachments. And the legislation in one State may be influenced by local considerations or by the will of the majority party there. It is just to avoid these difficulties that I have suggested that exclusive power should be given to Parliament, that being the only remedy to allay the fears and apprehensions that exist at present.

The argument has been advanced that if this power is given to Parliament we will be curtailing the powers of the States or stultifying their importance. Those who advance this argument also ask us whether we are distrusting the States. May I ask them whether they are distrusting Parliament in this matter? They have no reason to, for after all Parliament consists of you, me and all of us who are representatives from the Provinces and States. I do not say that Parliament has superior wisdom, but at least they have their collective wisdom, the collective wisdom of all the representatives from the different States and this wisdom can be brought to bear on legislations touching upon article 19(2). Therefore I do not see any reason why there should be any distrust of Parliament in this matter.

Another argument that was advanced is that there are legal difficulties, that if you disturb something here, if you add a word or take away a word from here or there, you will be disturbing the whole arrangement. The critic who advanced this argument was mainly Dr. Ambedkar. He said that there will be legal difficulties; but he has not taken pains to tell us what are those legal difficulties and how they cannot be removed and whether they are insuperable. I wish he had explained this matter to the House. In the case of the clause relating to property it has been found possible to have an amendment. Can we not do the same thing here by bringing in suitable amendments in the Concurrent and State Lists? Dr. Ambedkar has not explained the nature of this difficulty and how it cannot be overcome and so this argument is under a handicap. I may mention that amendment in respect of article 29(2) was not contemplated originally, but it has been brought in later. Similarly this amendment can be made in the State and Union Lists and these difficulties avoided.

The Prime Minister was good enough to tell us and assure the House yesterday that exclusive power to Parliament cannot be given to Parliament in this respect due to these difficulties—which by the by, were not explained—but that a safeguard can be provided by saying that such legislation should come up for the President's consent. I do not know what safeguards are going to be put in and whether they will be accepted or not. It was also explained that it may not be necessary to provide such a safeguard because many of these items automatically are sent to the Centre for consultation. But apart from the moral obligation of sending them to the Centre, have you provided anywhere that these Bills should be sent to the Centre before they are enacted? Therefore even at this last minute I would appeal to the House and to the Prime Minister that at least this kind of safeguard should be accepted and provided for. It will not be difficult because you have already provided a proviso to article 31A. You have beautifully safeguarded the right to property by bringing a proviso to 31A. You have said any legislation by State will not come into operation until it comes to the President with regard to property. If right to property is so sweet, is it not right to safeguard the right of freedom of the individual? If you have provided for that, can you not have provided with regard to freedom or liberty of individuals? Is it for us to ignore this and say this might be done or that might be done?

The Press was assured yesterday by the hon. Home Minister that they will bring some comprehensive legislation and the Press seems to have been supremely satisfied. They are satisfied when they are given an assurance that a comprehensive Press Bill will be brought. What about the important matter affecting international relations or the security of the State? Are not individuals more than the Press and should you not do the same? Is it your intention to bring a comprehensive legislation at a later stage on every matter covered by article 19(2)? Why do you start the mischief and then try to rectify it? So, I would appeal that this safeguard at least should be provided—it would not be difficult and it would satisfy the House, and the public who have every reason to fear that the powers given might be abused and therefore I commend this proposal again to the hon. Prime Minister, the hon. Dr. Ambedkar and the hon. Home Minister.

Pandit Kunzru: I shall first deal with the words 'friendly relations with foreign States' in sub-clause (2) of clause 3 of the Bill. These words seem to me to have an

interesting history. India was a member of the Committee on the Draft Convention on Freedom of Information which met at Lake Success in January and February 1951. The text of the draft permitted restrictions on freedom of information so far as it related to the communication of information affecting foreign relations. This was strongly opposed by the United Kingdom delegates and also by the United States but India supported it. When the objection of the U.K. and U.S. Delegations prevailed the Indian delegate deplored the deletion of the provision relating to this matter and said: "It considered these provisions vital to a good neighbourly policy and the promotion of national understanding". It is not surprising in view of this that we should find these words in the Bill before us. We have been repeatedly assured that all that the Government desired is to prevent defamatory attacks: on the heads of foreign States. With that desire we all concur and it should be a very easy matter indeed then for Government to accept my amendment which would enable them to deal with all cases involving defamatory attacks on heads of foreign States. They can, if they like, expand this-provision and punish those who defame the diplomatic and consular staff of a foreign nation. But there is no reason why the language should be as broad as it is in the Bill. In view of the repeated statement made by the Prime Minister and the Law Minister that all that was desired was that the heads of foreign States should not be vilified, I would ask the House to consider how these words may be construed. When the Foreign Relations. Bill was introduced in the Indian Legislative Assembly in 1931, it contained a clause which ran as follows:

"Whoever makes, publishes or circulates any statement, rumour or report with intent to promote or which is likely to promote unfriendly relations between His Majesty's Government and the Government of any foreign State shall be punishable with imprisonment which may extend to two years or with fine or with both".

Can a Bill containing these provisions be introduced or not in this Parliament if the words in the Bill are accepted? If it can be, then it is obvious that the power that we are giving to Parliament may be used for a purpose Other than the prevention of defamatory attacks. It may be used for-instance to stop criticism of foreign policy which appears very harmful to our External Affairs Ministry. The Prime Minister spoke with great vehemence on this subject the other day and said, rather asked us

whether we were to sit with folded hands when something was being done that was imperilling good understanding between two countries and tending to create hostility between them. I should like him to remember that the relations between Hitler's Germany and the United Kingdom were not very cordial. Hitler repeatedly complained to the British Government of the criticism of his policy in the U.K. Press but the reply that the U.K. Government uniformly gave to Hitler was that their Press was a free Press and that they could not undertake to regiment it in any way. The opinion of the Press was not the opinion of the Government of the United Kingdom. And that should be enough to satisfy the German Government. I am not certain in spite of the assurances given by the Prime Minister that he would not regard strong criticism of the policy of another State so harmful as to require his intervention. There is in any case, the danger that later on some other Government may utterly misuse the power that is being conferred by Parliament today. I therefore strongly press for the deletion of the words in the Bill and the substitution for them of the words I have suggested.

Now I come to the words "public order". They too have an interesting history. When the Draft Convention on Human Rights relating to freedom of information was discussed last year in the United Nations, it was found that it allowed restrictions on the freedom of expression for the protection of public order. The representative of the U.K. strongly opposed this provision and said:

"In view of the recorded expressions of opinion by the Human Rights Commission as to the wide meaning to be given to the term 'Public order', the article with the limitation allowed affords no guarantee of the freedoms which are its subject."

But India on this occasion too was in favour of retaining these words.

It cannot be said that the Government of the U.K. is not anxious to maintain public order in its territories or is careless about its relations with foreign States. Why should it then be necessary for us to cling to the words which other countries, which have for a longer time than India been in touch with foreign States and are perhaps affected in a greater degree by matters concerning foreign relations than India, have objected to and considered unnecessary?

The hon. Law Minister in his speech the other day told us why in his opinion the use of the words "public order" was necessary. He referred to the judgments of certain High Courts in this connection. These Judgments related to Master Tara Singh's case and two cases involving section 4 of the Press (Emergency Powers) Act. So far as Master Tara Singh's case goes the view taken by the Punjab High Court was that sections 124A and 153A of the Penal Code were so worded that they were not saved by clause (2) of article 19 of the Constitution. They therefore held that the action taken under these sections of the Penal Code for the maintenance of public order was not justified under article 19. I am glad that the Punjab High Court took this view. Had it not done so, as the U.K. representative said during the discussion of the Draft Convention on Human Rights in respect to the freedom of information, the rights of freedom of speech and expression would have been completely nullified. I gather from the report of the Press Laws Enquiry Committee that the position approximately in U.K. is that convictions for sedition are not obtained unless disturbance of public tranquillity is involved. So far as U.S.A. goes we all know that the Supreme Court follows the clear and present danger rule. In other words it does not merely see whether a technical offence has been committed, when any law restricting the freedom under Fundamental Rights is before them, but it also asks itself whether there is a clear and imminent danger of public disorder, if the conduct under its consideration were permitted. If we adopted the same course, I have no doubt that sections 124A and 153A of the Indian Penal Code would become consonant with the freedom of speech and expression conferred on all citizens by the Constitution.

Now I shall refer to the cases under the Press (Emergency Powers) Act. The retention of this Act does no credit to the Government of India. My hon. friend the Home Minister referred with approval to certain provisions of the Swedish Constitutional Law. I do not know where he got his information from for I could not find it in the Library. But the Constitution of Sweden contains a provision prohibiting the censorship of the Press or any action against the Press except after a prosecution. If my hon. friend, the Home Minister regards the Swedish Constitution as a model, may I invite him to follow it in respect of the Press and do away with laws which

enable the Government to demand security from the Press before trial and conviction in a court of law?

12 Noon

Coming to the cases to which Dr. Ambedkar referred. I find that the Madras High Court held that even a single incitement or encouragement to violence might be punishable notwithstanding article 19 of the Constitution. The Bihar High Court took a different view. The Punjab High Court, while expressing an opinion on this matter, held that the book to which objection had been taken did not come within the purview of section 153A of the Penal Code. In view of this decision, any opinion expressed by it in respect of section 4 of the Press (Emergency Powers) Act can only be regarded as an obiter dictum. Thus we have here two High Courts expressing contradictory opinions. Was this not a suitable case for reference to the Supreme Court? Could not the President under article 143 of the Constitution refer the matter to the Supreme Court for its opinion? But this was not done and now we are asked to agree to a form of words that would make every provision in the Press (Emergency Powers) Act valid. For the reason that I have given I cannot agree to the phrase "public order" used in the Bill and I should like it to be replaced by the words, "prevention of public disorder". For that would clearly indicate that-, where the freedom of speech and expression was in question the Court should consider whether the matter complained of was of such a character as to create the likelihood of leading to public disorder. If other countries, not less responsible than India, follow such a provision there is no reason why India should be nervous about it.

Lastly I come to pre-censorship. I have already referred to the Swedish constitutional law on this subject. The Position in the United States too is well-known. There pre-censorship of the Press has been declared to be inconsistent with the first amendment to the Constitution. If the Press offends against any law, if it is guilty of conduct that leads to the subversion of public order or in any way to jeopardise the security of the State, let action be taken against it by all means. The powers that Government have at their disposal, and the powers that they will have if proposed clause (2) of article 19 is passed in the restricted form advocated by me, will be quite enough to enable them to deal with such cases promptly. In any case there is no justification whatsoever in

normal times, that is when a proclamation of emergency is not in force, for the pre-censorship of news before their publication in a newspaper or for placing restriction on the circulation of a paper in any territory. For these reasons I have tabled an amendment that this explanation be added at the end of the clause:

"The pre-censorship of news before their publication in a newspaper or other document, or the banning of the entry of newspapers and other documents into any part of the territory of India shall not be deemed to be reasonable restrictions imposed within the meaning of this clause."

This relates to newspapers published here. The powers of the Government to deal with emergencies under the Sea Customs Act and the Indian Post Office Act remain. In an emergency they can take action under these Acts and submit the case then to the appropriate judicial authority for decision, but the clause as it is so wide that a Government may, use it with the consent of Parliament to stifle public discussion, to place serious restrictions on the liberty of the Press and to impose any restrictions impose they like, generally speaking, on the freedom of speech and expression.

For these reasons, I commend once more the amendments that I have moved. In view of what the Prime Minister said yesterday, there cannot be the slightest hope that any of them will be accepted, but I am certain that those Members of the House who do riot belong to the Congress Party will fully agree with me in what I have said and will do what they can to press on Government the desirability, nay the necessity, of accepting the suggestions that I have ventured to make.

Mr. Deputy-Speaker: I would like to remind the House that so far as this clause is concerned, a number of Members are desirous of speaking. Therefore, I would request that those gentlemen who have already taken part in the debate during the motion for reference to Select Committee, then in the Select Committee, then during the general discussion on the motion for consideration of the Select Committee's Report may how some concession to the others who have not taken part far.

Dr. S. P. Mookerjee: But there are those who have given notice of amendments. However, I will not take long, I will not repeat the arguments which I advanced on the last two occasions. The amendments which I have moved seek to confer the power of making laws in respect of article 19(2) on Parliament and in case that is not acceptable

to lay down a clause that all laws which may be framed by the States will be subject to the President's assent and only after such assent has been given will such laws become valid.

Both the Prime Minister and the Home Minister have generally agreed with the soundness of these amendments. So far as I could gather from the Prime Minister's speech yesterday, all that stood in his way was any possible legal difficulty. I was, therefore, rather surprised to find from the reports in the newspapers this morning that a decision has been taken that neither of these changes will be accepted. Mine is, therefore, almost a last-minute appeal to Government to accept this very important and necessary change.

It was pointed out by the Prime Minister himself—I was reading his speech—that it is necessary that in respect of laws which may be passed restraining freedom of speech or expression, there should be some uniformity in the whole country. How is that uniformity to be obtained? It may be argued that executive directions might be issued by the Central Government which may be in the nature of requests. Well, such requests may be made; but it has been our experience also that in many cases such requests are not kept. Even so, it may be possible that there may be some States which may not be under the control of the same all-India political party. That all the more necessitates that such a restrictive clause should be embodied here.

Dr. Ambedkar, I am told, was the principal person who opposed it on technical grounds. Now you have seen, Sir, in the body of this Bill in a number of places the phraseology "notwithstanding anything contained in the particular Chapter of the Constitution" or "notwithstanding anything contained in the Constitution such and such a thing can be done" is used. Now I do not see what conceivable difficulty can there be to provide for this in the, same manner. If we have the will to do it, well, we can always find the way for giving effect to it. The Prime Minister has been eloquent a number of times regarding the need for looking at the substance of things and not at mere words of the Constitution. Now here is a test case. For the interest of the country such a provision should be made. Are we to be told that although we are all agreed on the general desirability of this change that this great power should be vested in Parliament, or at least some power of check should be left in the hands of the

President, we are unable to accept such a change? I really am not prepared to accept that line of argument. I do not want to pursue this point further. But I would repeat to the hon. Prime Minister that if this change is made, it should make a very substantial difference. I am prepared to concede that by adding the word "reasonable" to restriction a big change has been made. And that in fact is the triumph of those who either opposed the Bill when it was originally introduced whether inside the Congress party or outside or those who criticised its provisions. I am quite prepared to admit that Government has made a very big change which has made the entire 19(2) clause justiciable. How the Supreme Court will function, or how far the future Parliament or Legislatures will function is not a matter on which I can digress, but here again let us make ourselves quite clear on one point. We have achieved quite a substantial thing, but there is still a big gap.

What has been done is that the restrictions, whether they are reasonable or not, will become justiciable, but whether restrictions can at all be imposed on some offences or not, or in the preparation of the list of offences, any offence has been wrongly included or not, are outside the court's jurisdiction. That was our objection and that is still our objection to make the expressions so wide, such as, in the interest of the security of the State or friendly relations with any foreign State, or public order and last, but not the least incitement to any offence. Now no court will be able to say that incitement to a particular offence is barred; it may say if any restriction is imposed, whether that restriction is reasonable or not. That grave limitation is there. But even then we have achieved something.

About the danger of State Governments proceeding in any way they like, I shall illustrate by giving only two examples. I have got here the papers. Only last week in Jullundar (Punjab) a convention was held for the establishment of a new political party which has been announced in the papers—the Bharatia Gana Sangh. A week earlier the organisers of that meeting wanted to make necessary arrangements for that purpose. They were told that section 144 was then in operation in Jullundar and that no meeting could be organised without permission. I shall be glad to have the ear of the hon. the Home Minister. His eyes are on me, but I would like to have his ear also. I was referring to a meeting which was proposed to be held in Jullundar a week ago.

The Minister of Home Affairs (Shri Rajagopalachari): It need not be repeated. My right ear was there.

Dr. S. P. Mookerjee: I want the hon. Minister's ear, eye and heart.

They were told that necessary permission has to be taken before the meeting could be held. They sent an application and only the day before the meeting permission was refused. Why?—in the interest of maintenance of public order! A convention which was proposed to be held in a closed hall to which admission was limited only to about 200 persons to whom cards had been issued was not permitted—for the maintenance of public order.

The Home Minister said yesterday that some people may misbehave, and that he will see that no abuse of such authority is made. Here is a specific instance, not from ancient history, but something that happened only four or five days ago. Two days later the Congress party wanted to hold a Conference in the same city of Jullundar for which permission had to be obtained and the permission was readily and willingly given.

This is a clear case of discrimination for political purposes done by a district magistrate, whether by himself arbitrarily or under the orders of any Minister or the Government I do not know. But the facts are here and the hon. the Home Minister can certainly enquire into them. But his enquiry will not lead us anywhere, because you are giving powers to State Legislatures and Governments to impose restrictions on a very wide scale and if they misbehave, if they abuse, you have no remedy for protecting the freedom of the people.

Take another illustration which arises out of the judgment of the Supreme Court. The Bombay Prohibition Act was declared valid by the judgment of the Supreme Court a few days ago, but some sections were declared voids I do not wish to go into details, but there are two or three sections in the Bombay Prohibition Act which not only prohibit doing of any act which will lead to the violation of the prohibition laws, but also indirectly prohibit any criticism against the policy of prohibition. That is in the Bombay Law. I have got here extracts from the judgment of the Supreme Court. The Supreme Court held that on account of the provisions under article 19(2), which we

are proposing to amend today and to restrict people's rights such a prohibition is unconstitutional and ultra vires.

Yesterday the Home Minister argued very eloquently, but not faultlessly, on the desirability of checking the tendencies of people when they incite others to commit offences. Here, under the Bombay Prohibition Act, certain offences were created by statute, and one of those offences practically meant that you could not even go and agitate against the prohibition law. But suppose some people are against the principle of prohibition, are you suggesting that you will make it impossible even for such persons to do so? In regard to openly encouraging any illicit manufacture of liquor, I can understand. Up to that I am prepared to agree with him. But not to allow anything to be said with regard to this policy of prohibition is certainly completely arbitrary and totalitarian in character. But here is this particular law.

Shri Rajagopalachari *rose*—

Dr. S. P. Mookerjee: I can assure the hon. Home Minister that I am a teetotaller completely.

Shri Rajagopalachari: I rise not to suggest that. I would be grateful to the hon. Member if he quotes the passage from the prohibition law, because I really wish to understand whether such a provision has been made about criticism. I think he is mixing up with advertisement.

Dr. S. P. Mookerjee: I am not mixing up with advertisement—I am not so slow as that. The sections are here. I thought I might shorten my speech. I shall read them. These are sections 23 and 24 of the Bombay Prohibition. Act, 1949. Section 23 says "No person shall commend....."

Shri Rajagopalachari: Comment or commend?

Dr. S. P. Mookerjee: Commend. "No person shall commend, solicit the use of, offer any intoxicant or hemp,"---so far as the first portion is concerned it is all right—"or incite or encourage any member of the public or any class of individuals or the public generally to commit any act which frustrates or defeats the provisions of this Act, or any rule, regulation or order made thereunder". The Supreme Court said that this is so wide in character that it cannot be held to be justifiable under article 19(2) of the Constitution.

Shri Rajagopalachari: Is it the hon. Member's contention that frustration of the Act should not be prohibited?

Dr. S. P. Mookerjee: What is my contention I shall discuss with the hon. Minister later on, but we cannot on this conversation. The Home Minister is an astute parliamentarian and I am sure he knows that we can-not carry on a conversation like this.

In the opinion of the Supreme Court, it is extremely wide in character. There is another section in the Bombay Prohibition Act which provides that it will be open to any police officer to arrest anyone who violates any of the sections of the Bombay Prohibition Act and keep him in detention without producing him before a magistrate for a period of fifteen days. That has also been declared ultra vires because it is an unwarranted, interference with the liberty of the people.

Mr. Deputy-Speaker: Does it say "no comment" generally?

Dr. S. P. Mookerjee: Anything which may frustrate the provisions of the prohibition law.

Shri Rajagopalachari: My interruption would have been of no value if it could not produce this much. It was not fair on the part of the hon. Member to say that the Bombay Government had in that Act prohibited criticism.

Dr. S. P. Mookerjee: What I said was that the wording is so wide in -character that prohibition of criticism may be included in it. That is the trend of the Supreme Court Judgment also and this whole section has been declared ultra vires.

Later on, section 24 says that "no person shall print or publish in any newspaper, news-sheet, book, leaflet, booklet or any other single or periodical publication or otherwise display or distribute any advertisement or other matter—which is calculated to encourage or incite any individual or class of individuals or the public generally to commit an offence under this Act, or to commit any breach of the provisions of this Act or to violate any of the conditions under this Act. You see, Sir, that the wording is so wide here that it may well mean that even criticism of the policy of prohibition may come under this clause. In fact it has happened and a warning has been given to many people. But I need not go into those details. I am just giving you illustrations. By making your wording so wide you will make it possible for State Legislatures to pass

laws which may completely take away even the freedom of individuals to criticise State policy in respect of matters where honest difference of opinion can legitimately be held and should be expressed.

Yesterday the hon. the Home Minister referred to Swedish law. We have been roaming so much throughout this. civilized and uncivilized, world—United States, England and France, China, Russia, Spain, Germany and everywhere—that it was left to the Home Minister to come to Sweden yesterday! And he read out some extracts from some laws which introduced great restriction on the freedom of the Press. And he, rightly or wrongly, pointed out that the Government of India was extremely cautious and its provisions were not so wide as in the Swedish law. But the hon. the Home Minister forgot. I take it, to place before the House the wording of section 86 of Swedish Constitution. What he read out yesterday were, I take, it—I could not get those laws—laws passed by the Swedish Legislature in 1948. But I do not know whether actually that is the law or that is the draft of a law, because the actual Press law which has been passed in Sweden is not incorporated in this latest book. Whether the hon. Home Minister has access to the latest law is more than what I can say. I could not lay my hand on it. In any case it would be relevant to refer the Home Minister to the provision in the Swedish Constitution and I for myself would be quite prepared if a similar provision is made in our own Constitution. I do not know whether the Home Minister will be prepared to stand by it, but I am prepared to stand by Sweden along with the Home Minister if he is prepared to stick to what he said yesterday. Section 86 of the Swedish Constitution says:

"By freedom of the press is understood the right of every Swede to publish his writings without any previous interference on the part of public authorities:"

This is unrestricted, absolute right; any pre-censorship is completely prohibited and banned. I wish a similar provision had been made in our Constitution.

Hon. Members: He has already assured that.

Dr. S. P. Mookerjee: The value of verbal assurances is known to the hon. Members who are interrupting me.

Shri Rajagopalachari *rose--*

Dr. S. P. Mokerjee: I do not like to be interrupted. He will speak later on.

Shri Rajagopalachari: Assurance only was possible yesterday. We could not make a law yesterday.

Dr. S. P. Mookerjee: If the hon. Minister pleads his inability to pass the law, why not amend the Constitution today and accept it? If the will is there that will be done.

What is it that the Swedish Constitution lays down? A part of the freedom is unrestricted. No Legislature has a right to abridge it. It continues:

"that of only being prosecuted afterwards before a regular court on account of the contents of his publication, and that of not being punished unless such contents are in conflict with a law enacted to preserve public peace without restricting public enlightenment".

These are very enlightened words, that the right of the Legislature will undoubtedly be there to secure the interests of public peace but that it will not abridge the right or restrict in any way public enlightenment.

It is no use our quoting foreign laws. (*Interruption*). This is not my copy. This is from the Parliament Library. If the hon. Minister is prepared to amend it now I am certainly prepared to hand it over to him. In any case I felt rather perturbed, I must say, by the way in which the Home Minister developed this question. He referred to some Swedish law which I could not lay my hand on, which apparently lays down that even Ministers or their activities may not be criticised or in any case there must not be a disobedience of authority, including the authority of Ministers. That will be a most dangerous principle for anybody to lay down, and the hon. Minister said.....

Mr. Deputy-Speaker: I understood him to say that there ought to be no incitement asking people to disobey civil laws or military laws.

Dr. S. P. Mookerjee: He came to the question of Ministers and, when he was interrupted he said that Ministers may be removed at the time of election and when somebody said "suppose that does not take place", then he said "the Prime Minister can remove him, but so long as the Minister is there, obviously the orders which he passes have got to be obeyed". That is supposed to be the Swedish Law. But that certainly must not be the Indian law. We do not want that that sort of privilege should be claimed by Ministers or by Government. As the Prime Minister put it yesterday, there should be no ban to public criticism. Really the restrictions should come when

there is any clear danger of public disorder, where there is a menace to the security of the State. Unless we keep this border line very clear in our minds, what is it that we will succeed in doing? Criticism will be made and you can make as many offences as you will under the law. You can make it penal. You can say that incitement to any offence will be punishable but you will practically be encouraging people to commit offences, which, obviously is not the intention of the Government or of Parliament. If we lay down specific restrictions within which freedom of speech and expression is to be exercised, reasonable restrictions which will prevent disorder or endangering the security of the State, we can understand. But the very broad way in which this has been out is certainly most disturbing.

Then, I come to foreign relations. I do not know if the Prime Minister's attention has been drawn to a Press message which has been published in a Delhi journal today. It reached my hands only this morning. This relates to a message which was sent by Mr. Shiva Ram who belongs to the P.T.I. and who lived in China. In November 1950 he sent a message which was factual, stating the conditions then in existence in China, of course, criticising in many places the way in which the Communist Government was conducting itself and how its activities might not only threaten the peace of Korea but may also affect world peace, but this was not complimentary to the Chinese Government. This message came to India and a clear allegation is made in this newspaper that it was at the instance of the Prime Minister or of the Cabinet Committee or of somebody in authority that this particular message was not allowed to be published. Of course, the Government viewpoint was communicated to the P.T.I. and the P.T.I. representatives who sit here valiantly fighting for their rights are supposed to have succumbed to the suggestion made by the Government and the entire message was suppressed. Now, here, I am not concerned with the details of this message but here was a criticism which was made by an Indian who was in China with regard to affairs in China, may be not complimentary to the Chinese Government.....

Shri Jawaharlal Nehru: May I say that the statement is roughly speaking 99.9 percent completely wrong.

Dr. S. P. Mookerjee: I am glad to hear that the statement is wrong. I cannot possibly take the responsibility of making any reflection on anybody. This came to my hands only last night and what I felt was that if any attempt is made by Government in the name of maintaining friendly relations with foreign States.....

Shri Rajagopalachari: We have not interfered with that kind of stuff even.

Dr. S. P. Mookerjee: Now that the Prime Minister has contradicted this, perhaps he will say more about it in his reply when the time comes. I shall hand over this copy to him. I do not know whether he has seen it. In any case so far as the friendly relations with foreign States is concerned, the Prime Minister and the Home Minister agree that their intention was only to restrict to defamatory statements affecting heads of States and we also were agreeable to accept that position. In fact the Select Committee also agreed to it. But then later on the Select Committee agreed to add the word 'reasonable' before "restriction". And these amendments were withdrawn by Government. This matter, I submit, should not be treated as a matter of bargain. It is not a question of the Government once agreeing to concede something and later on because the Government conceded to give something else, the first concession should stand withdrawn. These are vital questions of principle on which there is a genuine doubt in the minds of many people who are opposing the Government today. They may be abused especially because they will be kept in the hands of the State Legislatures. We wanted to restrict the application of all these categories to cases which were genuinely needed for the protection of civil liberty or the real interests of the country.

The other day, I was interrupted by an hon. Member when I referred to the American law and he asked to which year that law referred, and whether the law I quoted was the same as it stands today. I have been told the American law as it stands today is the same, and the extract which I read out the other day still continues to be good law in America, which means that there is no such drastic power given under the American law to deal with criticisms against foreign States.

Before I take my seat, I once again request the Prime Minister to consider the main purpose of my two amendments with regard to the substitution of the word 'Parliament' in the place of 'State' or if that is not possible, at least to provide that the

laws passed by the States in this behalf will be subject to the President's assent. If that is done, it will, to a great extent, remove the difficulties which stand in our way:

The Minister of Law (Dr. Ambedkar): My only excuse for intervening in this debate is to clear certain points which relate to the constitutional provisions which are necessarily involved in the amendments which have been tabled. In the first place, I propose to deal with the two amendments together: the first amendment is that Parliament should have the exclusive power to make laws under the provisions which are now being introduced in the proposed clause (2) of article 19 and the second is that, if that is not possible, the President should have the power to give his assent to any law made under this new proposed clause, and unless that assent was given, that law should not be deemed to be valid.

With regard to the question of bringing in Parliament, there are two aspects to the matter which, I think, it is desirable to consider carefully. One is this: Is it possible to give exclusive power to Parliament to make a law in a field which is covered by the new clause (2)? On this matter, I should like to invite the attention of the House to article 368 which deals with the amendment of the Constitution. That article specifies certain classes of amendments to the articles of the Constitution which would require the ratification of the States before the amendments could be deemed to have been validly passed. I do not propose to go over all the different categories that have been set out in article 368. I content myself by reference to only one and I refer to Chapter I of Part XI. Article 368 says that if any article which forms part of Chapter I of Part XI is amended, then such an amendment will require the ratification of the States. It will be noticed that article 246 Clause (3) falls in Chapter I of Part XI. That article says that the States shall have the exclusive power to make laws in relation to any entry in List II, which means that Parliament shall not have the power to make laws with regard to any item in List II. If Members of this House would refer to List II, they will notice that Entry 1 in that List refers to public order. Public order is one of the categories of heads of legislation which we are introducing for the first time in clause (2) of article 19, by this amending Bill: It is therefore quite clear that if you were to give Parliament power to make law in respect of public order which is included in List II, and which according to article 24(3) confers exclusive legislative jurisdiction upon

the States, then it is obvious that such an amendment would require the ratification of the States. Now the intention of the Government as well as of this House, I think on this point is quite clear, namely, that we do not propose to make any amendment to any clause which would require the assent or the ratification of the States. From that point of view, I think, all those who have tabled this amendment would agree that it is not possible to accept that amendment without involving this particular Bill in a great difficulty which it would not be possible for this House to overcome within the time within which we propose to carry through this measure.

As the Prime Minister said yesterday, all of us have sympathy with the proposal, namely, that if it were possible Parliament should be given the power to legislate. We have also sympathy with the suggestion that the President may have the right to give his assent before the Bill becomes law. But the question that has to be considered is, is such a thing necessary? Is it not contained in the very provisions of the Constitution? Now, let me refer hon. Members to the heads of legislation we are introducing in the present clause and the place they have in the various entries in Schedule Seven.

Take the security of the State. There is no particular entry of this nature—security of State—for the simple reason that the security of the State can be affected by a variety of entries and the power is necessarily distributed under different heads. At the same time hon. Members will see that entry I of List I is a very relevant entry so far as the security of the State is concerned. Take the second head—friendly relations with foreign States. That is covered by entries 9, 10 and 14 in List I. Take the third head—public order, decency and morality. That is in entry 1 in List II.

Dr. S. P. Mookerjee: What entry?

Dr. Ambedkar: It is entry 1 in List II to some extent. And so far as newspapers, books etc. are concerned, it is also related to entry 39 in List III. Contempt of court comes in entry 95 in List I and also in entry 14 in List III. Defamation is in entry 1 in List III. Incitement to an offence is in entry 1 in List III.

Now having had this information before the House, I think the House will understand that in the large majority of the cases since the entry either falls in List I or in List III, Parliament has in some cases the exclusive authority to make law, in some cases concurrent authority to make them.

Dr. S. P. Mookerjee: Will the hon. Minister be more specific? Where is the concurrent power to pass laws regarding public order?

Dr. Ambedkar: With regard to public order, there is another entry 39 in List III—which speaks of books and newspapers. Newspapers are very much concerned.

Dr. S. P. Mookerjee: The hon. Minister is arguing that with regard to certain matters—in fact with regard to all the matters either Parliament has concurrent jurisdiction or has exclusive jurisdiction. I would like him to be more specific.

Dr. Ambedkar: I am giving the entries.

Dr. S. P. Mookerjee: Public order?

Dr. Ambedkar: The large head for public order is entry 1 in List II. Newspapers may also come under public order.

Dr. S. P. Mookerjee: It is not.

Dr. Ambedkar: The point is this. Some law has to be related to some entry. How is the authority of Parliament or the authority of a State to be determined to make a law?

Dr. S. P. Mookerjee: Will the hon. Minister admit that parliament has no concurrent jurisdiction in respect of laws relating to public order except newspapers? Let us have it clearly.

Dr. Ambedkar: Yes.

Mr. Deputy-Speaker: The hon. Minister does not say that every item is in the Concurrent List.

Dr. Ambedkar: A large majority of them is exclusively in the jurisdiction of Parliament and in some cases the jurisdiction is also concurrent. Therefore my submission to the House is this that nothing is necessary for the purpose of investing Parliament to make a law in the fields which are mentioned here as exclusive right of legislation. Parliament has, in certain cases, got also concurrent power so that it can check any abuse that the Provincial Legislatures may make of the power that we are conferring.

Dr. S. P. Mookerjee: What is the power regarding incitement to offence under the Concurrent List?

Dr. Ambedkar: It comes under the Penal Code. Incitement to offence is a specific offence in the Penal Code.

Dr. S. P. Mookerjee: The hon. Minister should read to the House entry 1 of.....

Dr. Ambedkar: I cannot yield to him just like he did not yield to the hon. Home Minister. This is not a lecture room and I am not lecturing to the students, either. I am making my point. If my hon. friend wants an exposition we can meet somewhere in the Constitution Club—and I shall be prepared to lecture to him.

Mr. Deputy-Speaker: All that I can say is the hon. Member contends that, entry 1 in List II—State List—only relates to public order and this is not covered. Incitement to offence is in the Penal Code. If he is not satisfied, he can draw his own inferences.

Dr. Ambedkar: It is open to you to say that this does not cover public order.

Mr. Deputy-Speaker: All that I can say the hon. Minister wants to show is that with respect to the majority of the offences, they are either in the Union List or in the Concurrent List. The minority may be more important than the majority.

Dr. S. P. Mookerjee: The hon. Minister stated that incitement to offence comes under entry 1 in the Concurrent List but that item reads like this:

"Criminal law, including all matters included in the Indian Penal Code. at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power".

Dr. Ambedkar: I will not give in. I would like to finish my speech before one o'clock.....

Dr. S. P. Mookerjee: It means that there will be no incitement to any offence which comes under public order in List II.....

Dr. Ambedkar: I am not running away from that point. I am very much interested in it.

Dr. S. P. Mookerjee: I know you are.

Dr. Ambedkar: Yes, I am.

I now come to the President's assent. Under article 200 of the Constitution the Governors or the Rajapramukhs of the different States are empowered to withhold their assent from any particular Bill and refer it to the President. That provision already exists. Naturally the Governor has to act on the advice of his Ministers and if he felt that a measure should be reserved for the consideration of the-President, the

power is already there. No new power is required. But it may be argued that this power is in a sense nugatory, because it depends upon the advice given to him by the Ministry and the Ministry which has been a party to a measure cannot be expected to give their advice to the Governor to refer the matter to the President.

There is also another article 254, which deals with the laws in the Concurrent field and that article says: that if there is any inconsistency between any law made by Parliament and a similar law on the same subject made by a State Legislature, then to the extent of the repugnancy and inconsistency the law of the State shall be void. There is in addition to that a further provision in clause (2) of that article that if such a law, which is inconsistent with the law made by Parliament on the subject, is reserved for the assent of the President and the President gives his assent, notwithstanding the repugnancy the law shall remain valid so far as that State is concerned. So far as our experience in the Law Ministry goes almost every State has got the fear that their law may be declared to be inconsistent and hence void. In order to prevent this contingency the States have always taken the safest course to refer all these measures to the President for his consideration and assent and his assent has generally been given either in the form in which the Bill stands or with some modifications. Therefore my submission is that so far as the Constitution is concerned, articles 200 and 254(2) contain enough safeguards to see that such measure do reach the President and receive his consideration and assent.

Shrimati Durgabai: Under what procedure?

Dr. Ambedkar: I was just referring to it. Under article 254(2).....

Shrimati Durgabai: How?

Dr. Ambedkar: I know some people have got a bee in their bonnet. On all these three counts I submit that all these amendments are quite unnecessary.

I propose to deal with some of the points raised by my friend Pandit Kunzru. So far as his amendment dealing with change of words is concerned, his words I suppose are merely poetical alliterations and I do not think there is any substance in them, whether you call it friendly relations or by some other words: the substance and the head of legislation remains what it is. I am therefore not prepared to spend my time in dealing with them.

But he has been making a great deal of capital with regard to the American case which he can never forget namely *Near versus Minnesota*. It is true that the U.S. Supreme Court nullified a law which had made previous restraint as unconstitutional. But with regard to that case I think it is not desirable to fix our banner and standard by the decision that was given, because I would like to draw my learned friend's attention to some of the incidents with regard to that particular case. I have a book with me and I shall give the name. I know that Dr. Mookerjee is very careful in pursuing these matters. The book is *Free Speech in the United States*. There are various other books also which he must have known. Now with regard to this particular case the first point which the American writers have themselves noted is that, it is a decision which was arrived at by a bare majority of one single judge; it was a decision which was given by five to four. The second thing is that at page 380 the writer himself has said that on account of this very narrow majority-

"The *Near* case had no immediate effect beyond voiding the Minnesota statute, which is said to have grown out of a nasty local situation."

I would also like to read to him a portion of the judgement delivered by the chief of the dissenting judges which I think is worth quoting. This is what Mr. Justice Butler who headed the minority said:

"It is well known..... that existing libel laws are inadequate effectively to suppress evils resulting from the kind of business and publications that are shown in this case. The doctrine that measures such as the one before us are invalid..... as previous restraints..... exposes the peace and good order of every community and the business and private affairs of every individual to the constant and protracted false and malicious assaults of any insolvent publisher who may have purpose and capacity to contrive and put into effect a scheme or program for oppression, blackmail, or extortion."

That also is a demand which must be taken into consideration in dealing with the liberty of the Press. The other thing which my friend has been harping upon all along is the phrase used by Justice Holmes in dealing with cases relating to freedom of speech which is called "clear and present danger". I have been trying to find out whether that is a very new doctrine so far as we are concerned. I suppose our judges

also adopt the same doctrine. Supposing, for instance, a professor delivered a lecture on communism in the Delhi University to the students, I do not suppose, although he may mention to them, the violent methods that the communists adopt in order to achieve their object that anybody would hold that merely because he delivered a lecture to the students he was guilty of any offence. There was no "clear and present danger" and I have no doubt about it that our judges also would uphold the same line of reasoning. Therefore, as I said, I do not understand why our friends are abiding so much by certain catch phrases and certain decisions of the courts in the United States.

I will now deal with the question of confining "incitement" to violence and I want my friends, Dr. Syama Prasad Mookerjee and also Pandit Kunzru to pay some attention to what I am saying—and I will take some very particular cases. First of all, I would like to know whether they are in a position to give a precise definition of the meaning of the word "violence". What is "violence"? Is it to be confined merely to physical violence?

Dr. S. P. Mookerjee: Violent words are excluded.

Dr. Ambedkar: I am not talking of violent words. Have they been able to give us any precise definition which would enable the legislature and the court to know that this is violence and this is not violence? I cannot find any.

Shri Kamath: Put it as "as defined by law".

Dr. Ambedkar: It is only postponing the trouble. Some day when we make the law we shall have to give the definition of "violence".

I come now to specific instances. Supposing, for instance, there is trouble—I am giving some concrete cases—which have happened—and there is trouble between the Scheduled Castes and caste Hindus in a particular village and the caste Hindus conspire together to proclaim a social boycott on the Scheduled Castes, preventing them from obtaining any kind of supplies, preventing them from going into the -fields, preventing them from going in the jungles to collect fuel, then I want to know from Dr. Syama Prasad Mookerjee and Pandit Kunzru whether they want this, as an offence, to be regarded by the State as such or not.

Shri Naziruddin Ahmad: Doctors differ in this respect.

Dr. Ambedkar: I shall give another illustration which was recently reported in Bombay. In a place near Thana there was trouble going on between caste Hindus and the 'Scheduled Castes over the taking of water from a particular well. With the help of the police the Scheduled Castes there were able to secure their right to take water from that well along with the caste Hindus. The caste Hindus did not like the matter. They wanted the well to be exclusively used by them. Two days ago there was a report in the Bombay Press wherein it was stated that some caste Hindus incited some of their men to drop into it some kind of poisonous weeds. The result was that the whole water was poisoned and some of the Scheduled Caste people who drank the water suffered from the effect of the poison. I want to ask both of them whether they would limit their definition of incitement to violence, or whether they would extend it to cover where one community does something' in order harm and injure another community.

Dr. S. P. Mookerjee: In such a case you and I will go there to prevent it.

Dr. Ambedkar: You and I cannot go everywhere. You will be engaged in fighting the elections and I may be doing something else and we will have no time to go to the rescue of those people. It is no use taking the responsibility on our shoulders. It is much better that the law provides for it.

Then, with regard to particular laws, I and my colleagues on the Treasury Benches have been shouting time and over again that in this Bill what we are doing is to merely confer capacity on Parliament to make laws for certain purposes. We are not enacting particular laws. We are, not even protecting the laws as they exist today. But somehow Members who are determined to oppose, Members who are determined to take the opposite view--if they will forgive me —out of pure obstinacy are not able to make this distinction between capacity to legislate and making a particular law.

Dr. S. P. Mookerjee: The obstinacy is yours not to understand.

The House then adjourned till Half Past Three of the Clock.

The House reassembled at Half Past Three of the Clock.

[MR. SPEAKER in the Chair]

Shri Kamath: Sir, before the House resumes the debate may I request you or the Leader of the House through you to arrange that in view of the importance of this particular clause the Attorney-General may be present in the House so as to enable him to participate in the discussion on the clause, as was done on the occasion of the Preventive Detention Bill last year?

Secondly, may I request you to extend the time allotted for the discussion of this particular clause?

Dr. S. P. Mookerjee: One of the main questions raised today was whether power should be given to Parliament or whether the President should be given the power to give assent to the Bills which may be passed by the States under article 19(2). The Leader of the House generally agreed with the soundness of the principle but the difficulty has been pointed out with regard to the legal implications of it. Therefore, if the Attorney-General is here and if he helps us in arriving at some decision, perhaps that will be helpful to all concerned.

Mr. Speaker: I do not know, but so far as I believe the Attorney-General is in Bombay. Is he here in Delhi?

Shri Jawaharlal Nehru: The Attorney-General is in Bombay. But I need hardly say, Sir, that every step that we have taken in this or any legal matter is after consultation with the Attorney-General.

Shri Kamath: There was a Press report that the Supreme Court Bar Association presided over by Mr. Setalwad has passed a resolution against this Bill.

Mr. Speaker: Whatever it may be, in any case the request is coming too late.

As regards the extension of time, I am afraid it will upset the entire time-table. I had put the proposition to the House informally when the question of extending the debate by one day was taken into consideration, and I take it that the House was in substantial agreement that two days should be sufficient. Now if we extend the time for this it means the extension goes further and we extend the time of the whole discussion. That is how it stands.

Dr. S. P. Mookerjee: No. The suggestion is that we finish tomorrow by 6-30 P.M. as we have decided, but the discussion on clause 3 of the Bill may continue for the rest of

the day and we deal with the remaining clauses tomorrow and we finish the whole thing by 6-30 P.M. tomorrow. We do not change the time-table.

Mr. Speaker: The position then will be that if the time is extended on this that means a curtailment of the time so far as the other clauses and the third reading are concerned. I do not know whether hon. Members would all agree to that.

Hon. Members: It will upset the programme.

Shri Hussain Imam: It is possible to redistribute the time.

Mr. Speaker: I quite agree. But this means an undue proportion of time to this particular clause. There may be many hon. Members who wish to talk with reference to clauses 4, 5 and 14 which deal with the acquisition of property. There are many things of that type. I am afraid the best course will be not to press upon the extension of time and speak according to the timetable so that we may come to the end of the whole Bill according to the time-table.

There is also another proposition to the one in my mind. I do not know whether clauses 4, 5 and 14 can or cannot be put together for voting.

Shri Hussain Imam: That is what I was saying. By that we will get half an hour or more by avoiding two divisions if we combine the three together. We will be quite prepared for it.

Mr. Speaker: I am not quite sure about that, because when I made a suggestion, a point was made and I have promised already that even if a single Member wants that the clauses should be put separately, in respect of these particular clauses, because they are important,—not as regards the other clauses which I call formal but which others do not choose to call formal—I shall do so. I do not think I can refuse the request if anybody presses it. But is the House unanimous on this point?

Shri Hussain Imam: Yes, we are.

Mr. Speaker: I am asking the House. Who wants extension of time? I do not think a good number is agreeable. So I have to call upon the hon. the Leader of the House to reply and I shall put all the amendments taking them as having been moved.

Prof. S. L. Saksena: May I know whether those who have moved amendments will not be allowed to speak on them? Will no time be allowed to them to speak on their amendments?

Mr. Speaker: Not on this clause now. The time-limit for this clause is finished.

Shri Kamath: His point, Sir, is, will not those who have moved amendments get a chance to speak on them?

Mr. Speaker: Moving an amendment does not give an absolute chance to speak.

Shri Kamath: Not absolute, but reasonable?

Mr. Speaker: My difficulty is this. If it is a case of one Member I could have considered the extension by ten minutes. But I have here eleven hon. Members in whose names someone or other amendment stands. And I cannot pick and choose.

Shri Kamath: You may give five minutes each.

Mr. Speaker: Even that means one hour. The view which I am taking is and I was saying it from the very beginning, let the remarks be restricted strictly to the particular point in respect of the amendment. But now I find that one hour and thirty-eight minutes were taken between four speakers. How is it possible to go at that rate? I should not mind some extension just to give a chance, but I am sure and I have no doubt in my mind that out of those eleven speakers I will not be able to deal with even four—even if I extend the time by one hour. That is the difficulty. And apart from the repetition of arguments, I think, it is unfair that only a few should get a chance. If all are to be given a chance it is physically impossible to reach the target. That is the position. Members may agree to five minutes, but it is never adhered to. I do not think I should accept that. The best way therefore is not to disturb the arrangement. I shall call upon the hon. the Leader of the House.

Shri Jawaharlal Nehru: This particular clause has been considered and debated at various stages of this measure, so that I do not think I can say anything more or throw any further light on it. There are only two or three points which I might mention. The first point on which stress has been laid by some hon. Members and colleagues is about this question of Parliament dealing with this matter and not the State Legislatures. Well, my colleague, the Law Minister, has dealt with this matter at length. I will put it even lower than he has done and say this that if there is any doubt about the matter, even so we should not do something which involves that doubt. It is not the principle I am against, as I said previously, but rather the fact that we might do something which might be considered doubtful or which might be challenged as not

right in terms of the Constitution. I do not think it will be right for us to take such, a step which may create an unpleasant situation, at any rate, in certain circumstances. Why we decided, so far as I am concerned, against my will, if I may say so, not to have this word 'Parliament' there instead of 'State' and as regards the President's assent the difficulty was not so great and Dr. Ambedkar has dealt with that matter fairly thoroughly. In effect, as he pointed out, all such matters which deal with concurrent legislation, and I think all such matters as are at all likely to come under these amendments, are bound to come here and so far as we are concerned, we shall see to it, in so far as friendly and executive direction goes, that they do come here, to avoid any conflict of laws or any lack of uniformity or anything being done in a hurry. We certainly intend taking that step and I am quite sure that all State Governments would readily agree to it.

Then, this clause has been chiefly dealt with in regard to the freedom of the Press. For my part, I am exceedingly glad that these debates have taken place on this subject which I consider of the highest importance; not only that, but from a relatively limited point of view, which has been expressed by some of the representatives of the Press here, and even wider point of view, because the Press is bound to continue to be a very important organ of public life and it is right that we should understand it in all its implications, we should give it not only freedom but understand that freedom and understand how that freedom is exercised. I suggested yesterday that it might be desirable for the side of the Press to be examined by representatives of the Press as well as others. And thinking about it this idea developed in my mind and I think it might well be desirable, and now I am referring not to the immediate issue about what is sought to put restraints on the Press, which as I said, we have no intention of bringing about, but the larger issue of the Press, and something, some kind of enquiry such as takes place in England by a Royal Commission there which might be productive of good for the Press and good generally or the development of this very important aspect in public affairs. That is something which deserves the consideration of this House and the Government will also consider it from this larger point of view. So I shall not say anything more about the Press except again to say that these various references to foreign affairs, I confess, have seemed to me to be very much beside the

point. It is perfectly true that the phrase we have put in—friendly relations—is a wide phrase. We put it in because we thought it might serve our purpose and any other phrase it seemed to us not quite proper in the sense that it was far better to talk about friendly relations here and lay stress on a positive aspect of policy rather than the negative of it that we shall stop that and so on and so forth. I can assure the House that in regard to foreign affairs there has been and there is going to be, so far as I am concerned, not the slightest interference with any expression of opinion or criticism of our internal policy or external policy or the policy of any other foreign power. Dr. Mookerjee referred to a recent issue of a weekly which apparently is published in Delhi. I saw that too, I think, yesterday and I was greatly surprised to read it because many of the facts contained in it were completely new to me. In fact they were no facts at all. I shall briefly refer to that. I shall read what it says:

"The Press Trust of India losing their nerve at an Indian journalist's daring to paint a picture different from that officially prescribed by Mr. Nehru referred the message, before releasing it, to the Foreign Affairs Sub-Committee of the Cabinet. Mr. Nehru and Mr. N. G. Ayyangar, it is believed, favoured suppressing it; Sardar Vallabhbhai Patel and Mr. Rajagopalachari considered that it should not be concealed from the Indian public and the world's Press. The dissenting views were conveyed to the Press Trust of India, who decided on suppression. Reuters abided by this suppression and a message sent by an Indian journalist to the Indian public was released for publication only in Australia."

This apparently presumes that there is intimate contact between the Press Trust of India and the Foreign Affairs Sub-Committee of the Cabinet and that the Press Trust of India refers matters to the Foreign Affairs Sub-Committee of the Cabinet. So far as I am concerned, this particular message, I have read for the first time in this issue of this periodical. I have never seen it previously. I had heard of it but I had not seen it. Of course, we had had nothing to do with this or any other message. I never heard of it. So far as I know my colleague the Home Minister never heard of it. I am quite certain that Sardar Patel knew nothing about it and so far as any consultation with Mr. Gopaldaswami Ayyangar is concerned, it has never taken place. The whole thing is a tissue of untruths but what happened not in regard to this but generally about this

matter, I shall place before the House. In regard this message I enquired today. What happened was this: A representative of the P.T.I. went over some time to our Foreign Office and consulted the Secretary General there about it. The Secretary General sent a note to me. I shall use his own words: It is absurd to talk of censorship. "On receipt of this message Mr. so and so of the P.T.I. saw me and sought my advice as to whether publication of it would be helpful. I told him that I did not think it would and he went away. It was for him to decide to publish it or not. Then so and so advised his General Manager accordingly and so on." He decided not to publish it. Then I know nothing about it nor any Member of the Cabinet or of the Government.

Normally, and it is quite natural everywhere I suppose, every Foreign Office tries to keep in friendly contact with the Press to give them information and not to get information from them or stop it. In fact at the instance of Mr. Deshbandhu Gupta some kind of liaison committee with the Foreign Office was instituted by the All India Newspaper Editors' Conference. I welcome that and sometimes we meet together and we discuss matters and we tell them things which do not normally appear in the Press; we give them background etc. to add to their own information and they rightly treat that information as confidential except for the background purpose. Apart from this, to the Foreign Office sometimes the journalists come, the newspaper-men come to talk with the Secretary General or Foreign Secretary or some other Secretary; sometimes my colleague, the Deputy Minister meets them to discuss these various matter. In the course of these talks apparently, this representative of P.T.I. placed his message before the Secretary General and asked his general opinion as to what he thought about it and the Secretary General then said that he did not consider it helpful in the circumstances, whether rightly or wrongly is immaterial. I did not know But a number of messages appeared and a little after, in the Press from the P.T.I. correspondent about conditions in China. Some of these messages seemed to me not to be quite balanced judgement. I do not stop them; I am only stating my opinion to the House and it seemed to me particularly unfortunate that anything that the correspondent wrote should have been written not from to China itself but after coming to a place like Hong Kong which is a very peculiar place today, a hotbed of the opponents and enemies of the Chinese Government collected there together

and naturally full of rumours, and I thought that was not a very good place to write these messages. Of course a man need not be affected by these, but the mere fact that message emanated from there would be criticised I thought by people. Hon. Members may remember long ago there was that place on the Russian border—Riga—from which all kinds of messages came. Recently all kinds of messages used to come from Kalimpong about Tibet, exaggerated messages from all kinds of people. We amongst ourselves expressed this view that this method was not a very helpful or a desirable one. For the rest, as I said, the matter never came to the Government or the Cabinet or any individual member of the Cabinet. It did, go to the Secretary General who was consulted and he gave his opinion as I have stated.

Coming back to this clause, as my colleague the Law Minister has already said, we are accepting. Pandit Thakur Das Bhargava's amendment which also stands in the name of the Law Minister, that for the words "including, in particular, any existing or other law relating to", the words "or in relation to" be substituted. This simplifies or makes it more concise and the meaning clear. Apart from this, I regret, I am unable to accept any other amendment, and I hope that the House will adopt this clause in this slightly amended form unanimously or practically unanimously.

Shri Syamnandan Sahaya: I have some amendments to clause (6).

Mr. Speaker: We are not dealing with that now.

Shri Hussain Imam: Clause (6) of article 19.

Mr. Speaker: Let me just see. I am just now taking the amendments which are taken to have been moved.

Prof. K. T. Shah: They were not formally moved; they were taken as moved. Could they not be once read in the House?

Mr. Speaker: I shall read them again if necessary. I am told that some of them were read. I was not present at the time and so I could not say. Would the hon. Members like me to put the whole group in the name of one Member together?

Prof. K. T. Shah: I am sorry to stand up again. What I meant to say was that the text of these amendments has not been read at all. Merely the numbers were read.

Mr. Speaker: As I said, I am going to read them.

Prof. K. T. Shah: I thought you were going to put the whole group by Members.

Mr. Speaker: Shall I take the amendments according to the order or sequence in which they fit with the text of the clause or shall I take the together for vote? That is the only point.

Some Hon. Members: Any way.

Pandit Thakur Das Bhargava: May I submit, Sir, that the amendments as they are put, should be voted upon. Otherwise, if there are six amendments, those who have to vote for them at one time may not even remember them. It is better that each amendment is put to vote.

Mr. Speaker: Yes; I am taking them according to the Members.

Prof. Shibban Lal Saksena's first amendment for omission of clause 3 is out of order. He can vote against the clause. I will put his other amendments to vote.

The question is:

In page 1, line 16, for "prevent the State" substitute "prevent the-Parliament".

The motion was negatived.

Mr. Speaker: The question is:

In page 1. line 20, omit "public order"

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, for "an offence" substitute "violence".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, after line 22, insert:

"Provided that in sub-clause (2) of this article, the word 'law' shall mean 'laws made by Parliament'.

The motion was negatived.

Mr. Speaker: The question is:

In page 1, after line 22 insert:

"Provided that when such law is a law made by the legislature of a State, the provisions of this sub-clause (2) shall not apply thereto unless such law having been reserved for the consideration of the President, has received his assent".

The motion was negatived.

Mr. Speaker: The question is:

In page 2, omit lines 1 to 7.

The motion was negative.

Mr. Speaker: The question is:

In page 2, omit sub-clause (2) of clause 3.

The motion was negatived.

Mr. Speaker: The question is:

In page 2, line 4, omit "or ever to have become void".

The motion was negatived.

Mr. Speaker: Then Pandit Thakur Das Bhargava's amendment.

The question is:

In page 1, lines 20 and 21, for 'including, in particular, any existing or other law relating to' substitute "or in relation to".

The motion was negatived.

Mr. Speaker: Then Shri Syamnandan Sahaya's amendment.

The question is:

In page 1, after line 35, add:

"Provided, however, that where such exclusion results in the displacement of citizens or otherwise from pursuing their normal avocation, the State shall either take over their property affected by such exclusion or shall compensate them to the extent of their loss due to such displacement."

The motion was adopted.

Mr. Speaker: Then Prof. K. T. Shah's amendments.

The question is:

In page 1, lines 18 and 19, for "in the interests of" substitute "for safeguarding and maintaining".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, lines 19 and 20, omit "friendly relations with foreign States".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, lines 19 and 20, for "friendly relations with foreign States" substitute "amicable and peaceful relations with friendly foreign States".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 20, for "public order" substitute "internal peace and the security and integrity of the State".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 20, for "decency or" substitute "public".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 21, for "existing or other law relating to" substitute "law which, under article 372 of the Constitution, has been adapted and kept alive by an order of the President, and which relates to".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 22, after "defamation" insert a comma and "attempts at overthrowing or destroying the State, or endangering its integrity and independence".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 22, for "offence" substitute "any crime of violence against person. such as murder, or against property, such as arson, sabotage, and the like".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 27, for "existing law" substitute "law which has been adapted and kept alive under article 372 of the Constitution, by an order of the President".

The motion was negated.

Mr. Speaker: The question is:

In page 1, line 33, for "industry" substitute "profession, industry, public utility".

The motion was negated.

Mr. Speaker: The question is: In page 1, after line 35, add:

"Provided that, in any case of a partial undertaking, taking over, or carrying on by the State of any trade, business, profession, industry, public utility or service, where private enterprise continues to function side by side with the State enterprise in the same trade, business, profession, industry, public utility or service, no discrimination shall be made in the conditions of carrying on that trade, business, profession, industry, public utility or service, against or in favour of the State enterprise, or vice versa."

The motion was negatived.

Mr. Speaker: The question is: In page 1, after line 35, add:

"Provided that any law which is passed hereafter, and which imposes or tends to impose any restrictions on the Fundamental Right of the citizen to freedom of speech and expression, shall be introduced, in the first instance in the House of the People and passed by both the Houses of Parliament notwithstanding anything said in this part of the Constitution or any Schedule to it."

The motion was negatived.

Mr. Speaker: Now the amendment of Shri Deshbandhu Gupta.

The question is:

In page 1, omit lines 12 to 22.

The motion was negatived.

Mr. Speaker: Now the amendment of Shri Naziruddin Ahmad.

The question is:

In page 1, line 12, omit from "and" to "form" in line 14.

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 20, for "public order" substitute "prevention of public disorder".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 20, for "public order" substitute "prevention of present danger to public order".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, for "defamation" substitute "defamation including defamation of foreign Governments or their officials".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, for "defamation" substitute "defamation of heads or officials of foreign States".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, for "defamation" substitute "defamation including defamation of any person residing outside India".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, insert at end;

"In so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause."

The motion was negatived.

Mr. Speaker: The question is:

In page 1,—for lines 15 to 2 substitute:

"(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law in so far as 'it relates to, or prevent the State from making any law relating to', defamation including defamation of any foreign State or any head of such State, contempt of court; or any matter which offends against decency or morality; or which constitutes present danger to public order; or which constitutes incitement to murder or any offence involving violence or sabotage; or which undermines or tends to undermine the security of the State, or which tends to overthrow the State."

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 34, after "service" insert:

"relating to public transport, public communications, broadcasting and to defence industries."

The motion was negatived.

Mr. Speaker: The question is: In page 1, after line 35, add:

"Provided that compensation shall be paid by the State under article 31 for losses if any to any citizen caused by such State trade, business, industry or service."

The motion was negatived.

Mr. Speaker: Shri Naziruddin Ahmad's amendment for omission of lines 1 to 9 in page 2 is in substance the same as Prof. Shibban Lal Saxena's amendment for omission of sub-clause (2) of clause 3 which has already been negatived. I am therefore not putting that to the House. I will now come to his other amendments.

The question is:

In page 2, for lines 1 to 7 substitute:

"(2) All laws in force in the territory of India immediately before the commencement of the Constitution which took away or restricted the right conferred by sub-clause (a) of clause (1) of article 19 of the Constitution and the operation of which was not saved by clause (2) of the said article as originally enacted, shall stand revived and be deemed to be valid but only in so far as—they are not inconsistent with clause (2) of the said article as amended by sub-section (1) and with effect from such date or dates when such laws are adapted by the President under clause (2) of article 19 of the Constitution as amended by sub-section (1) or he declares by notification in the Official Gazette that such adaptation is not necessary"

The motion was negatived.

Mr. Speaker: The question is.

In page 2, line 1, for "law in force" substitute "laws in force".

The motion was negatived.

Mr. Speaker: The question is:

In page 2, line 2, for "which is" substitute "in so far as such law is".

The motion was negatived.

Mr. Speaker: I am not putting to the House his amendment for omission of the comma after "become void" in page 2, line 4. The Draftsman will consider it. Now his next amendment.

The question is:

In page 2, line 5, for "abridges" substitute "restricts".

The motion was negatived.

Mr. Speaker: I am not putting Shri Naziruddin Ahmad's remaining three amendments as they relate to punctuation etc.

Then Shri Sarangdhar Das's amendment.

The question is:

In page 1, in line 22, add at the end:

"If the incitement is such as to cause a serious and imminent danger".

The motion was negatived.

Mr. Speaker: Then Sardar Hukam Singh's amendments.

The question is:

In page 1, in line 22, for "incitement to an offence" substitute "incitement to violence".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, in line 22, add at the end:

'Which undermines the security of, or which tends to overthrow the State.'

The motion was negatived.

Mr. Speaker: Shri Hussain Imam's amendment.

The question is:

In page 1, line 20, after "foreign States" insert. "grave danger to".

The motion was negatived.

Mr. Speaker: Then Dr. Syama Prasad Mookerjee's amendments.

The question is:

In page 1, line 16, for "the State" substitute "Parliament".

The motion was negatived.

Mr. Speaker: The question is: In page 1, after line 35, add:

"Provided that where any such law affecting clause 6(u) is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

The motion was negatived.

Mr. Speaker: The question is:

In page 1, after line 22, insert:

"Provided that where such law is a law made by the Legislature of a State the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President has received his assent." The motion was negatived.

Mr. Speaker: Now the amendments of Prof. K. K. Bhattacharya. His first amendment for the omission of the clause is out of order as being the negative of the original. I will put his other two amendments to vote.

The question is:

In page 1, lines 19 and 20 for "friendly relations with foreign States" substitute "defamatory statements against the heads of the friendly States".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, add at the end, "involving violence or murder."

Mr. Speaker: Then Shri Goenka's amendment.

The question is:

In page 1, line 22, add at the end, "involving violence".

The motion was negatived.

Mr. Speaker: Now Pandit Kunzru's amendments.

The question is:

In page 1, for lines 18 to 20, from "in the interests of the security" to "morality" substitute:

"in the interests of the security of the State, decency or morality or for the prevention of defamatory attacks on heads of foreign States or public disorder."

The motion was negatived.

Mr. Speaker: The question is:

In page 1, line 22, for "incitement to an offence" substitute, "incitement to an offence involving violence".

The motion was negatived.

Mr. Speaker: Shri Kamath's amendments. His amendments for omission of "public order" in page 1, line 20 and "or ever to have become void" in page 2, line 4 are

identical to two of Prof. Shibban Lal Saksena's amendments which have already been negatived. I will put his other amendments to vote.

The question is:

In page 1, lines 12 to 14, omit "and the said clause shall be deemed always to have been enacted in the following form".

The motion was negatived.

Mr. Speaker: The question is:

In page 1, after line 22, insert:

"Explanation.—The pre-censorship of news before their publication in a newspaper or other document or the banning of the entry of newspapers and other documents into any part of the territory of India shall not be deemed to be reasonable restrictions imposed within the meaning of this clause."

The motion was negatived.

Mr. Speaker: Now that concludes all the amendments.....

Mr. Speaker: The question is:

In page 1, line 22, for "incitement to an offence" substitute "incitement to grave disorder or murder or 'violence".

The motion was negatived

Prof. K. T. Shah: Sir, what about amendment No. 51 in List 2? Was it put to the House?

Mr. Speaker: When the amendment was called out the hon. Member did not say that he wanted to move it. That is what I find from the record.

The question is:

Mr. Speaker: The question is:

"That clause 3, as amended, stand part of the Bill."

The House divided: Ayes, 228; Noes, 19.

AYES

Achint Ram Lala

Ahammedunni,Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirakar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh, Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jaipal Singh, Shri

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran,Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishthir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal,Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The motion was adopted.

Mr. Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 3, as amended, was added to the Bill.

Clauses 4, 5 and 14

Mr. Speaker: We will now take up clauses 4, 5 and 14. Clause 14 is the Schedule, there being no separate, Schedule to the Bill. They are all alike and we shall have a common discussion, on the amendments and clauses together, and the voting, if the House is so agreeable, will be together on all three. If any person wants separate voting on each clause

I have no objection to doing that.

The time allotted is an hour and a half and we sit up to 6-30 P.M. at the latest, today, and then of course tomorrow. I will first go through the amendments. I will call out the names and hon. Members who wish to move their amendments may please indicate it.

Clause 4—(Insertion of new article 31A)

Prof. K. T. Shah: I beg to move:

- (i) In page 2, line 14, for "the foregoing provisions of this Part" substitute "article 31".
- (ii) In page 2, line 25, for "local area" substitute "area or in relation to any form of property referred to in article 31".
- (iii) In page 2, line 27, for "existing law" substitute "existing laws or customs for the time being in force, or judicially recognized, and relating to inheritance under testamentary or intestate succession".
- (iv) In page 2, line 30, after "any right insert "as to personal or movable property, in the shape of shares, stocks, securities, debentures, cash at bank or in hand, or goodwill, copyright, patent right, and all other rights of ownership, survivorship, coparcenary, and the like, and as regards rights".
- (v) In page 2, after line 32, insert:

(3) All estates in land, or any rights therein, or in regard to any personal or movable property mentioned in the next preceding sub-clause. If and when taken over by the State, or by any Corporation owned by or working under the control of the State, shall be so organized, formed or operated as to avoid the creation of any rights of full and permanent ownership in such estates, and the rights incidental thereto or consequent thereon, in any private individual:

Provided that notwithstanding anything in this sub-clause, it shall be open to any State, to organize cooperative cultivation and farming of lands thus taken over, on the basis of compulsory cooperation for all purposes and activities in connection with the cultivation of such lands allowing such limited rights of ownership to the cooperators for their life only, so organised and working such lands:

Provided further that a definite maximum limit shall be imposed on any individual holding in such compulsory universal cooperative associations for farming."

Shri Naziruddin Ahmad: I beg to move:

- (i) In page 2, line 18, for "abridges" substitute "restricts".
- (ii) In page 2, line 19, after "provisions of this Part" add "except that relating to compensation".
- (iii) In page 2, omit lines 20 to 23.

Prof. S. L. Saksena: I beg to move:

- (i) In page 2, omit lines 24 to 32.
- (ii) In page 2, line 27, for "existing law" substitute:
"existing laws or customs for the time being in force, or judicially recognized, and relating to inheritance under testamentary or intestate succession".
- (iii) In page 2, line 31, after "any rights" insert:
"as to personal or movable property in the shape of shares, stocks, securities, debentures, cash at bank or in hand, or goodwill, copyright, patent right, and all other rights of ownership, survivorship, coparcenary and the like, and as regards rights".
- (iv) In page 2, after line 32, insert:

"(3) All estates in land, or any rights therein, or in regard to any personal or movable property mentioned in the next preceding sub-clause, if and when taken over by the State, or by any Corporation owned by or working under the control of the State, shall

be so reorganized, formed or operated as to avoid the creation of any rights of full and permanent ownership in such estates, and the rights incidental thereto or consequent thereon, in any private individual:

Provided that notwithstanding anything in this sub-clause, it shall be open to any State, to organize cooperative cultivation and farming of lands thus taken over, on the basis of compulsory cooperation for all purposes and activities in connection with the cultivation of such land, allowing such limited rights of ownership to the cooperators for their life only, so organised and working such lands:

Provided further that a definite maximum limit shall be imposed on any individual holding in such compulsory universal cooperative associations for farming."

Dr. Ambedkar: I beg to move:

In page 2, line 28, after "area" insert:

"and shall also include any jagir, inam or muafi or other similar grant".

Ch. Ranbir Singh (Punjab): I beg to move:

In page 2, after line 28, add:

"Provided that such meaning shall in no case be taken to include lands, or rights therein possessed, belonging to the proprietor thereof without any intermediary between the proprietor and the State".

Shri Hussain Imam: I beg to move: In page 2, line 32, add at the end:

"but shall not include the right to receive arrears of rent and cesses accrued before vesting order".

Clause 5— (Insertion of new article 31B.)

Shri Naziruddin Ahmad: I beg to move:

(1) In page 2, for lines 35 to 43 substitute:

"31B. (1) The President shall as soon as may be appoint a Commission consisting of a Judge of the Supreme Court or of a High Court who shall be its chairman, a Member of Parliament and an officer of the Central or a State Government with revenue experience to examine the provisions of the Acts specified in the Ninth Schedule and report as to the justness and propriety of the said Acts with particular reference to the

compensation provided for, and may determine the limits and scope of such examination, the procedure to be followed by the Commission and also prescribe a time limit for the report.

(2) The President shall consider the report and may make such adaptations and modifications in any of the said Acts whether by way of repeal or amendment for the purpose of bringing the provisions of any of the Acts into accord with the provisions of this Constitution, as he deems fit and proper, and the Acts as so adapted or modified if any shall notwithstanding anything in this Part be deemed to be valid and their validity, propriety or sufficiency shall not in any way be questioned in any court on any ground whatsoever."

(ii) In page 2, line 39, for "abridges" substitute "restricts".

Prof. K. T. Shah: I beg to move:

(i) In page 2, line 38, omit comma and "or ever to have become void,".

(ii) In page 2, line 40, for "this Part" substitute "article 31".

(iii) In page 2, after line 43, add:

"Provided that, before the Acts listed in the Ninth Schedule can be afforded the protection of this article, they shall all be referred to the Supreme Court, under article 143 of the Constitution, and only such of them, or such parts of any one Of them, as are declared, on such reference to the Supreme Court, to be consistent with, or taking away, or abridging any of the rights conferred by article 31 of the Constitution, shall be deemed to be, and always to have been, valid."

Shri Hussain, Imam: I beg to move:

In page 2, after line 43, add:

"Provided that the President shall have power within twelve months of the passing of this Act to require the State Legislature to modify the Act in a manner specified to bring about uniformity and remove discrimination. And if the State Legislature fails to do so within ninety days the President shall make such amendments and the Act shall be deemed to have been always so amended."

Shri Syamnandan Sahaya: I beg to move:

(i) In page 2, after, line 43, add:

“Provided that nothing in article 31(a) shall be deemed to preclude any person from asserting his rights under this part if such rights are affected by any of the provisions of the Acts specified in the Scheduled, not being provisions relating to the acquisition of Estates, to the amount of compensation or to the method of fixation thereof.”

(ii) In page 2, after line 43, add:

"Provided that where the right of the State to acquire or deal with an Estate under the provisions of any of the Acts specified in the Ninth Schedule is not in question, nothing in articles 31A and 31B shall be deemed to preclude the Courts from adjudicating upon claims to the compensation fixed by the State and mode of distribution thereof as between the various claimants whether such claims are based upon the rights conferred by this Part or the general law governing the parties."

Clause 14.—(Addition of Ninth Schedule.)

Shri Naziruddjn Ahmad: I beg to move:

In page 4, omit clause 14.

Shri K. Vaidya (Hyderabad): I beg to move:

(i) In page 4, after line 33, add:

"12. The Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli. No. LXIX of 1358 Fasli."

(ii) In page 4, after line 33, add:

"12. The Hyderabad Jagirs (Commutation) Regulation 1359 Fasli, No. XXV of 1359 Fasli."

Mr. Speaker: The amendments will be taken as moved and placed before the House. I might clarify one impression on the part of hon. Members, that some seem to be under the Impression that when an amendment is referred to here by number only the number of it is referred to or mentioned in the regular proceedings. That is not so. Even if I mention only the numbers here, just for the sake of saving some time, in the regular proceedings of the House, the actual amendments are put-down. The whole of it goes into the proceedings.

No one need be under the impression that only the number is put in.

Now I will come to the amendments. It is probably too early to say what time the hon. Minister will require. Anyway, I find there are eight hon. Members who have moved amendments. We have now one hour and forty minutes of which I shall reserve about 20 minutes for the hon. Prime Minister to reply to the points raised.

An Hon. Member: He said he may not require so much, or may not even have to reply.

Mr. Speaker: Anyway he will have to make some statement by way of reply.

Shri Jawaharlal Nehru: I do not think I will exceed fifteen minutes. I may take about ten minutes.

Mr. Speaker: All the same, I will reserve twenty minutes, to be on the safe side. It may be that some arguments are advanced which require a more elaborate reply.

Well, if hon. Members are agreeable I, propose to call all those who have moved amendments to restrict their remarks to ten minutes. Fortunately we have roughly eighty minutes and so ten minutes each will be all right. Actually it may come to only nine minutes for a little time is spent this way and that. So I call on Prof. Shah now.

Shri Gautam (Uttar Pradesh): And no time for any other Member?

Mr. Speaker: No.

Shrimati Durgabai: I would like to get one or two points clarified, though not now, but under the relevant clauses.

Mr. Speaker: I do not think it is possible now. Let us not have anymore discussion now.

Shrimati Durgabai: But the hon. Minister has agreed to.....

Mr. Speaker: Let us not spend any more time on this. Perhaps it will be better if the Prime Minister is contacted in regard to these points so that he may clarify them during his reply. It is better to send him a written intimation.

Prof. K. T. Shah: Sir, after the clarification you have given me, that the text of the amendments is being recorded in the proceedings, I do not think I need read out their text. I will not take up the time of the House by reading them out.

The four points which I am trying to make by these various amendments are as follows.

First of all, the attempt to extend this article 31 to the entire Part, including all the Fundamental Rights, is, in my opinion, unnecessary; and is an unjust extension. It should be confined only to the articles actually affected.

The second point is that we can extend the principle of this amendment to the personal property also, not merely to landed estates. Equality of treatment should be maintained in this regard as between personal property and real property.

The other points are relatively minor, and I do not want to take up the time of the House by dwelling on them.

The more important points are as regards the personal property, and the reorganisation of agricultural land after the ownership rights are abolished or taken over, and the desirability, from a variety of points of view, of reconditioning our agrarian economy so as to meet both the food problem and the production problem in general. It is on that point that I propose to concentrate in this connection.

I do not want to read out the text of the amendment which is No. 66 in List No. 2. In short it says that when the estates have been taken over, they should, instead of being given over to small peasant proprietors, be reorganised and reconditioned, in such a manner that all the handicaps of the small holdings of to-day, with their inability to utilise better technique of cultivation, better instruments or better irrigation manure, or marketing, should be avoided. I, therefore, suggest that, since we do maintain and keep up under the Constitution rights to property, we should reorganise these holdings into a cooperative system. In that system the right of property will not be absolutely denied; but property rights, being kept intact, the holdings would all come within the pool, so to say. There will be no exceptions. The holders will be able to contribute everything they have besides land, that is to say, cattle, their labour, their tools and implements, and also even hire other tools and instruments for mechanised cultivation and for large scale farming. By this means, they would be able, to utilise better seed, better water supply, and so on. In this way, also the yield per unit from the combined and cooperating holdings in the country may be increased substantially.

I hold that, while theoretically it is not impossible for ambition of self-sufficiency in the matter of food or in the matter of raw materials of industry, to be realised, I am very much afraid that, neither within the next year nor for many years to come shall

we be able to achieve that ambition, unless we recondition our agrarian economy somewhat in the manner I am suggesting. I am suggesting a reorganisation of land wherein, the ownership rights of present day Zamindars and their intermediaries have been taken away, or are taken over with or without compensation, as the case may be. These estates should be made into large-scale cooperatives which would dispense with innumerable boundary marks and the other defects that the small landholders suffer from. There must, however, be limits prescribed to the size of the maximum holding by any particular individual. That would not go against the principle of cooperation. After all, if you wish to create small peasant proprietors, and make them work cooperatives, then you must see to it there is no means of exceeding certain maximum limit. For my part, I would like to restrict it only to the life tenure of the peasant holders, and at the end of the present generation, so to say, the land could be easily collectivised. That does not happen at the present time but as you take over these landed estates, they should be made into cooperatives so that the difficulty of small holdings may disappear.

This, as I said, should apply also to movable property according to one of my amendments, and, therefore, I commend them to the House.

Shri Naziruddin Ahmad: After having witnessed the slaughter of numerous important amendments without argument, without debate and without anybody knowing what was happening, it is somewhat of a poor consolation to me to be able to speak on a comparatively unimportant amendment. But I shall make the best use of the opportunity that has now been offered to me.

Regarding the abolition of zamindari the whole question is supposed to rest on the answer to one question. Are zamindari to be abolished? But as soon as an affirmative answer is given what shall we do? Some seem to think that once we agree to the abolition our task is finished. I however, believe the real question has not been answered; the question has only begun. The real question is whether we, should pay any compensation and if so what would be the standard of compensation. The Constitution says that we may abolish zamindaris on payment of compensation. The word compensation was left beautifully vague. I tried during the consideration of the Constitution in the Constituent Assembly to clarify the meaning of the word

compensation—that is adequate or fair compensation. The word compensation has a clear legal meaning—it is fair compensation. I said at the time that if, we did not clarify it, the State Legislatures would be tempted to pay inadequate compensation or even no compensation at all. The crucial question is whether compensation of the kind which we thought at the time and as the plain meaning of the word suggests, has been paid, offered or provided for.

Now as-to the meaning of the word compensation the weighty words of the Prime Minister may be usefully recalled. When he was speaking on an earlier occasion, when Mr. Hussain Imam suggested that zamindaris could be abolished only after payment of sufficient compensation. With this the Prime Minister agreed. I base my entire arguments on this statement that something like adequate and proper compensation should be paid.

I fully know that zamindaris have no legs to stand upon. They were the creation of certain administrative exigencies of the Moghul days. During the Hindu period there was nothing like zamindaris. During the Moghul period they wanted revenue to be collected, and they did not know what to do. So they appointed high military officials and others to make collections in distant parts. They were allowed some remuneration for making collections. There were various adjustments as to the expenses of the army and so forth. That was the nucleus of the zamindari system in India. In fact the State having the prior right of revenue that was allowed to be collected by certain persons who were later on described as zamindars. This led to the creation of zamindars of various degrees down to the individual above the actual cultivator. So, historically as well as on grounds of ethics and on grounds of policy the zamindars have no legs to stand upon

But there is one aspect of the question which must be viewed from the humanitarian standpoint.

[MR. DEPUTY-SPEAKER in the Chair]

The zamindars of today have, some of them, purchased their zamindaris as if they were property which could be transferred. The British Government which stepped into

the shoes of the Moghal Government admitted the transferability of the property of zamindaris. The Government in order to ensure the amount being realised annually by order made zamindaris saleable. For its own interest in the regular realisation of the revenue, Government itself declared that zamindaris are saleable for realisation of arrears. Therefore, although the zamindars had no title to land except that they were holders of office of collectors. Government in order to safeguard quick and regular realisation of the revenue made them proprietors for the interest of the Government itself. Now centuries have passed and this system has continued and by law and usage, zamindars have now come to be regarded as proprietors. We know that if a man holds any property to the exclusion of others for a period of twelve years, he acquires an indisputable title. So, by long usage the zamindars acquired some kind of proprietary rights.

I rely on the Prime Minister's clarification that some formula has to be evolved by which the zamindars may be paid a fair compensation. Therefore the whole question reduces itself as to the sufficiency or propriety of the compensation as we understand it or let us say, as the Prime Minister understands it. Although the Constitution provides for it, although the hon. Prime Minister admitted it, still we are asked to validate certain Acts, without considering whether the standard of compensation laid in them is fair or adequate. The Acts have not been examined. Nobody knows whether the standard of compensation in these provincial Acts is fair or not. It has been disclosed in the Patna High Court case that before acquiring zamindaris there have been a lot of deductions from the actual valuation. First of all a high tax on agricultural income was allowed. There were then other deductions. The result was very little was left and there were cases where nothing was left. (*An Hon. Member*: That is not true.) There are even cases where the zamindars had to pay something in order to get rid of his land. (*An Hon. Member*: That is wrong.) I do not know whether it is right or wrong. I would welcome an enquiry into the matter. I do not like the interruption of a friend to be taken as gospel truth. I know he is young and enthusiastic and full of high hopes and he is known to be ready to ride roughshod over rights of property which he may consider to be too archaic and too unimportant to be troubled about.

An Hon. Member: These are to be examined by the President.

Shri Naziruddin Ahmad: The President has certainly powers to do that. But the President does not himself examine them. The Law Department or some other Department does that for him. There are often pitfalls in an Act which may not appear on the face of the Act, and the matter has to be considered as to concrete cases. This cannot be done by the President. The question is whether anything satisfactory and acceptable to the House has been placed before us and whether we should accept it. I urge that you validate the law subject to the payment of proper compensation, whatever that may be. That is one of my amendments and if we validate them subject to compensation, then I think the matter may be considered by some authority and the authority may examine each case with a view to find out any possible hardship and if that is done, I will be satisfied. After all we are taking away somebody's property and it is not a good thing to take away anybody's property without fair compensation or with inadequate compensation. I may make it quite clear that I am not a landlord nor am I a tenant. I am absolutely walking about with almost all my properties about me and so I have no special interest in the tenants nor any personal interest in the zamindar. I am only interested in fair principles, which have been recognised by the Constitution, being applied and justice being done.

Prof. S. L. Saksena: I am glad that these amendments have been brought before the House. I wish to point out that when article 31 was under discussion at the time of Constitution-making, we had urged that that article would stand in the way of zamindari abolition, if our views had been accepted then and the article amended properly, probably many of the Acts which have been declared to be ultra vires in Patna and at other places would not have happened. We do not know how much mischief has been caused by delay in bringing this measure. In my province, the delay has given zamindars an opportunity to turn to cash whatever they could and the delay has been due to the Government not accepting the amendments which we had then suggested. Only in one case the High Court has, of course, held that our Act in the U.P. was valid. I am therefore glad that clause 5 of this Bill will now stop all litigation. It will become an Act with no further right of appeal anywhere and that I think is the main part of this amendment. Article 31 only said about the zamindari

property. Here also we are only talking of that property. I think a time will come very soon when we might have to nationalise the industries and then again we will have to amend the Constitution. I would suggest that we may do it here now itself and avoid any litigation. The rights we are taking here, I do not think, are ideal. I therefore think that there should be some further amendment in the Constitution with wider powers and I have therefore suggested amendments in that direction.

My contention is that the present zamindari Bills only create better conditions for the zamindars than there are today. In our province by abolition of zamindars, there have come into the scene bhoomidars and that means that instead of about a few million zamindars today there will be 100 millions of bhoomidars. This, I think is not a healthy change. I would have wished that all these people—the village communities in the State were able to co-operate and start cooperative farming and enjoyed the rights of the land. In that way, there would be more standard cultivation and the people would be able to solve their food problems. At present, it is not possible to do so because the small holdings of the tenants cannot be cultivated on modern lines. In my district the average holding is less than an acre. You can imagine that in a population of 40 lakhs the holder or less than one acre cannot cultivate his land on scientific lines and the result is that these people are very poor. They go all over the country and they cannot make both ends meet. If there is co-operative farming and the whole villages combined into one, then there would be better co-operative farming and farming on scientific lines and we could produce much more grain and much better results would be obtained if the whole village is collected together as a co-operative farm. Surely the produce will be several times more than the produce which single farms of half an acre of land will produce. You cannot really put the manure, the organised facilities and all those things for half an acre. If the whole village is one, you can afford tube wells, new seeds, etc., which will bring in greater production. Unless such a thing is done, I am sure, you cannot solve the food problem. It can only be solved when the land in the country is cultivated on scientific lines and more modern methods. My view therefore is that the new Bill, which had been passed in our province will not really solve the real problem. It will only create a larger number of small zamindars and bhoomidars, holding half an acre. What does this actually amount to? Of course,

he is the owner no doubt, but he can-not do anything with it. He is as bad as he was. Probably the number of these big zamindars will be less but worse conditions would follow. I think the present reform is not a reform in the real sense and I have therefore suggested these amendments and if they are accepted, it will enable the Government to co-ordinate the agricultural properties in a better and more scientific manner. Then only we shall be able to produce all the grain that we require in this country. Unless a scheme which envisages that the whole country is cultivated on modern lines and the results of scientific research are taken to the fields is adopted, we shall not be able to produce enough grain for our consumption. It is therefore necessary that we must have better methods of agriculture. That would only be possible by making agriculture more scientific. I am afraid the present amendment will not be able to give us that advantage. Therefore I suggest that my amendments should be accepted by the House.

Shri Hyder Husein (Uttar Pradesh): Being a lawyer myself, I wanted to participate in the general debate on the Bill: but unfortunately, I did not get a chance. Therefore, I have to renounce the character of a lawyer and speak as a zamindar. I am a zamindar and I may say an old one also. My family has lived in one particular village for 15 generations and we have held this zamindari for the last four or five generations. I say for the last four or five generations because before that period, in the province of Awadh, it is not possible to say what the state of affairs was. In spite of being a zamindar, I have never allowed my personal interest to influence my opinions on public matters. In the matter of the abolition of zamindari, I have reconciled myself to the position that it must go. We cannot blind ourselves to the realities of the situation. When we find that kingship has gone, the Czar is no more and the present kings are kings merely in a different sense of the word, constitutional heads or symbols, the great dukedoms and earldoms are a matter of history and even our great and pompous ruling chiefs are gone. How can the poor zamindars expect to hold on to their little kingdoms? Moreover, the urge of the times is that it should go. The country has been waiting for agrarian reforms for the last quarter of a century. The question of abolition of zamindari has been proclaimed from the housetops for the last decade and a half. The modus operandi has been before the country for the last four or five years, and if I may say so, the exemption of the Zamindari Abolition Acts from the Constitution,

before this House for over two years. There is a clear indication of the policy in the old Act, article 31 of the Constitution. That provision was intended to give exemption to the Zamindari Abolition Acts from the operation of the Constitution as a whole. Unfortunately, we find that that provision has proved ineffective as we can see that even where the Acts have been upheld they cannot be enforced. In the Uttar Pradesh the State from which I have the honour to come, we have had a decision of a Full Bench of five Judges at Allahabad upholding the Act, yet, it cannot be enforced for the simple reason that the stay order is still there. The same is the case in Nagpur, the Nagpur High Court has upheld the validity of the Act; yet the stay order is there. Under these circumstances, there is no option but to expand the provisions of the old article 31. For these reasons I would like to support the Bill.

With regard to compensation, a good deal has already been said here. But, my approach is entirely different. There is a principle of law known as *quid pro quo*, and that principle is applied to properties acquired under the Land Acquisition Act. I beg to submit that that principle is wholly inapplicable to the case of the acquisition of zamindaris for the simple reason that it is in the nature of nationalisation of estates. Unfortunately, there is no provision in the Constitution with regard to nationalisation. But, the form of nationalisation differs in the case of various kinds of properties. In the case of zamindaris, I submit that this is perhaps the only way in which it would be possible to nationalise the estates. Therefore the principle of *quid pro quo* is not applicable. Some compensation has got to be paid. The hon. Prime Minister used the word 'adequate' and that has been repeated by several speakers. With regard to adequate compensation, I beg to submit that the question of the adequacy of the compensation must depend upon the standard from which we have to judge it. For instance, the question is whether we are going to judge the value of a zamindari from what it was half a century ago or value of the zamindari on the date of acquisition. I submit, according to all principles of jurisprudence and law, the date of acquisition is the only date on which the adequacy of the compensation can be taken into consideration. It is very well known that zamindaris have lost practically all value these days and therefore, we have to be content with what we get. Apart from that, there is one other question: Compensation can be paid only having regard to the

resources of the State and the requirements of those who are getting it. My submission is that whatever the zamindars are getting is quite enough for the present generation. The future generations must earn their livelihood and they have no business to live on unearned incomes. For these reasons I beg to support the Acts which have been passed by the various States and they are detailed in the Ninth Schedule.

Shri K. Vaidya: I have moved two amendments for the inclusion in the Ninth Schedule of the Hyderabad (Abolition of Jagirs) Regulation, 1358 F. and the Hyderabad Jagirs (Commutation) Regulation, 1359 F. So far as the abolition of jagirdaris is concerned, it was considered to be a very benevolent act on the part of the Government after the Police Action. Everybody in the State appreciated it very much. The conditions were such that nearly a quarter of the territory of Hyderabad was held by these feudal lords. Nearly a fourth of the population was living there. The annual income from these jagirdaris was about 25 lakhs or even more. Now, from the jagirdaris that have been taken under the administration of the Government, the total income is more than Rs. two crores. Of course, excluding the jagirdari of His Exalted Highness which comes to nearly about Rs. two crores a year. Of course, the Nizam himself has surrendered his jagirdari and the administration is in the hands of the Government there. This step was very much appreciated by the people there and they were very grateful to the Government of India. The conditions in the jagirs there were peculiar. In addition to the usual revenue taxes, they had several other forms of taxes which they used to collect from the ryots. Hon. Members will be surprised to learn that they had a tax on tails, that is to say, they used to count the number of cattle by the number of the tails and levy a tax on the number of tails for horses. And they have a tax on horns.....

Shri Syamnandan Sahaya: Do horses there have horns?

Shri K. Vaidya: I mean on cattle with horns, they had a levy on them by counting the horns. And they had taxes on choolas or hearths. The officers of the jagirdar entered the house, counted the number of choolas and levied a tax accordingly. And they had a cradle tax. When a child is born in the house, there is a cradle and they used to assess the tax according to the number of cradles in the family. Also when a child is born in the jagirdar's family, some tax is collected. Similarly there is a tax when there

is a marriage in the family of the jagirdar. And so the people were being oppressed all along in these various ways. Now all these things have been abolished and the people are very happy on that count.

The question now is this. After the abolition of the jagirs, a few months after the Government had to consider the question of commutation and therefore they passed a regulation regarding the commutation of jagirs. There are now these regulations relating to this, I want that this should also be included in the Schedule. I say this because these jagirdars are trying to form associations and collect funds and considering the question of raising this matter in courts of law. Of course, they have suffered badly and therefore naturally they are trying to dispute this matter in a court of law. I therefore say that this thing should be included in the Schedule as items 12 and 13. That is the purpose of my, amendments. I hope everybody will agree with my suggestion. Everyone agrees with the proposition that jagirs should be abolished. Some people want that compensation should be paid to them and there are the regulations relating to that matter. I only want that these should be included in Schedule Nine.

I also want to bring to the notice of the House the other question which is important especially in Warangal district, where there are a large number of people who have patta lands. They are not jagir land. But a family may have as much as sixty or seventy thousand acres of land. Of course, now they have divided the land among the members of the family. I have suggested some amendments. But I do not want to move them now. There are also sowcars with as much as 1,000 or 2,000 acres of land which they have acquired by lending money to cultivators on interest. And slowly the land has come under the ownership of the sowcar. But it is not properly looked after. Of course, now there is the Tenancy Act by which Government has the power to take over the land which is not properly cultivated and handing it over to other tenants.

I request that those Regulations be included in Schedule Nine. These are my amendments and I think they will be unanimously carried.

Shri. T. Husain (Bihar): I think as a zamindar I should oppose this Bill and the article 31. But I stand up now to support the Bill and also article 31. My only source of income is from zamindari and if this article 31 is passed and it is bound to be passed,

my income will become one-tenth of the present income. I will nearly become a pauper and zamindars will become paupers. The reason why I support this measure is obvious.....

Shri Hussain Imam: To pauperise the people.

Shri T. Husain: One reason is that it is in the interest of the people and it is for the good of the people and therefore, as a citizen, I must support it. My hon. friend to my left says that I am pauperising the people. We have pauperised the ruling chiefs and we are going to pauperise all the vested interests, because we want equality in everything. If it is in the interest of the country, it does not matter whether certain sections are pauperised or not.

My second reason for supporting this article is that I believe in the dictum that half a loaf is better than no bread at all. The present Government are going to pay us something, may be a tenth or a twentieth, but something is going to be paid to us, either cash or in bonds, or partly in cash and partly in bonds. And it may be paid in annual equal instalments for forty years. But it is certain that something is going to be paid to us. It may come.....

Shri Hussain Imam: Very shortly.

Shri T. Husain: Well, I do not know what my friend to my left means by "very shortly". I am sure he is not a Socialist nor a Communist or a Congressman. I do not know what he is.

Shri Hussain Imam: A democrat.

Shri T. Husain: If he had been a democrat, he would have been a member of the Congress party to which I belong. Well, I am afraid the time may come when the Socialist party may come in power and when that happens we all know what they will do to us. If the zamindaris are abolished at that time, they will not give us anything, on the other hand, they will ask us to pay them something instead. Well, these are the reasons for which I support this Bill and this article.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

Shri Hussain Imam: I wish to draw the attention of the House that no zamindar in his senses objects to the dictum laid down by the Constitution or by the hon. the Prime Minister. The whole quarrel arises whether the intention of the Constitution is carried out- or something is being foisted on us in the name of the Constitution which is not covered by the terms of the Constitution as embodied in the Constitution Act. And secondly.....

An Hon. Member: We are amending the Constitution.

Shri Hussain Imam: No. What we are doing is, according to the Prime Minister, to carry out the intentions of the Constitution which, our wording had failed to do. And there I am at one with him, that as a Member of the Constituent Assembly, I am as much a party to this—though I was not present on that day—as anybody else is. There were two cardinal principles of the Constitution----firstly about the Acts which are passed after the Constitution came into effect and those Acts which were passed upto 18 months before the Constitution was brought into effect. Now I ask you, the House and the Law Minister to certify that the eleven Acts are covered by these two categories. Only four Acts come under the category that were passed after the Constitution and had received the assent of the President. Seven Acts are not covered by this.

Dr. Ambedkar: They were assented to, I understand.

Shri Hussain Imam: None, except the four. They are the Bihar Act, U.P. Act, Madhya Pradesh Act and one other Act. All the rest have not been assented to.

Shri Bharati (Madras): Madras Act has been assented to.

Shri Hussain Imam: Madras Act I 1950 has been assented to, not the 1948 Act. I refer to this fact because in the beginning I spoke on the subject and suggested that ample time should be given to the House and to the Select Committee to examine these thoroughly. My complaint is that neither the Law Ministry performed its function nor was this House allowed to go deeply into the matter due to hustling. I had been to the Library and I was ashamed to learn that very few copies, if any, have been taken from the Library by the Members for reading. I had to hang my head in shame.

The other thing to which I would like to draw attention is to the dictum laid down by the hon. Prime Minister that we must pay fair, adequate compensation and not too

much and I agree with that dictum. But do consider the things as they are existing. The whole thing is this that at the moment we have said that the compensation will be paid in forty instalments. In the Bihar Act it is given yearly. I am one with the Government in abolishing zamindari but on fair terms.

Dr. Ambedkar: The words 'fair compensation' do not appear in article 31.

Shri Hussain Imam: It was the wording of the hon. Prime Minister. As far as article 31 is concerned, my charge is that the seven Acts that you are thrusting down our throats are not covered by the original provisions of article 31.

Dr. Ambedkar: They are governed by new article 31A.

Shri Hussain Imam: I was referring to the fact that we must face the facts. The Socialist party says that they are not going to honour the instalments that are going to be fixed by the Congress Government. The Communists have declared from the housetops that they are not going to honour it. Why be in a fool's paradise and believe that it will be paid in 40 years? Half a loaf is better than nothing and if you have to give, you should give now. You should realise the plight of small landholder or zamindar who has an income of 500 or 600 or 1,000 rupees. He is not a bloated capitalist. I aver that at least the lower income group should be given compensation in lump sums so that they may start some business.

My greatest complaint against the Bihar Act is that it is so framed that it allows discrimination at the sweet will of the Government of the day. For instance, whereas in the U.P. Act the provision is that the Act will be applied to the whole State or, part of the State, the Bihar Act does not contain these provisions. It lays down that notified estates will be taken up. Now the notification will be issued and is likely to be issued with a bias and favouritism.

My second charge is that in the Madhya Pradesh Act I was simply scandalized to find that in that State the system of payment of compensation is of two kinds. I would refer you to pages 41 and 42 of their Act. The amount of compensation will be ten times the net income determined according to the rules therein contained. For Berar and C.P. it is ten times but for the unfortunate merged area, those who were formerly parts of the Indian States, you will be surprised to learn that the compensation as laid down on page 42 varies from two to ten times. Where the net income exceeds Rs. 2000 it will

be two times. Can you imagine any one State having this discrimination? Is this fair? I ask you in all humility that where is the good of having a Central Government if it does not function. Let us look at the four Acts to which the President has given assent. To none of the Acts was there any amendment made. I shall give the differences in compensation: Two times in Madhya Pradesh as the minimum, three times in Bihar as the minimum, and eight times in U.P. as the minimum. For God's sake leave these talks and come down to brass tacks. Look at the reality and sympathise with these small men. I am not concerned with the bigger man but even the big, man deserves some justice at your hands if he is a citizen of India, he should get fair and adequate compensation and he should not be penalized because of the misfortune of living under one State Government and not having the good fortune to be under the other State which is more kind.

Shri Biswanath Das (Orissa): My hon. friend just now stated in the House that he hung his face in shame for the fact that none of the Members of the House cared to take books of those local Acts on loan from the Library to read and know what they are doing. I want him to know and, I make this statement that there are hon. Members in this House who not only have studied these books—without caring to go and take loan of books from the Library but have paid for the books, purchased them and studied them just to keep themselves informed of the local, legislative measures, especially regarding tenancy and land reforms.

Mr: Chairman: No.

Ch. Ranbir Singh: I hope everybody in this House is agreed on this point that article 31A is an enabling clause for the abolition of jagirdari and zamindari, etc. but the reason for my moving the amendment is that in the Punjab the definition of the word 'estate' is a different one and differs in many respects. Some people may apprehend that it may cover the rights of the peasant proprietors who may be holding one or two acres. That was the idea behind my amendment. When the Prime Minister replies to the debate I hope he will be good enough to remove the apprehension that this clause will affect the small landholders of the Punjab in any way adversely.

I want to take this opportunity to lodge a grievance also. The Bombay Act according to the Schedule will be validated. There was a similar Act in the Punjab known as the

Land Alienation Act, under which an agriculturist was not allowed to sell his land to a non-agriculturist. I may point out that the same provision is there under the Bombay Tenancy and Agricultural Lands Act, 1948. Under this clause that Act is being validated whereas the Punjab Land Alienation Act has been repealed on the ground that it contravenes the provisions of the Constitution. The apprehension that this may be exploited by many interested parties may be removed. I am of the view that this clause is not against the interests of the tiller of the soil, rather it is in their interest and is definitely going to safeguard the interest of the poor peasant.

Shri Syamnandan Sahaya: It is exceedingly difficult to speak on a subject when you have the prospect facing you of being reduced from the position of a prince to a pauper. But even so there is nothing better in this objective world than to accept and go by the maxim "what is, is". The fact remains that either today, tomorrow or the day after the concentration of anything in the hands of a few will be an impossibility. I have therefore no complaint or grouse against the attempt that is being made to abolish the system of 'land tenure and revenue known as the zamindari or jagirdari system.'

Perhaps it has not been realised in this House that the two amendments, one of which we have accepted already and the other which we are in the process of accepting, makes large inroads on the concept of property and private property at that, which we had come to entertain as a result of several articles in the Constitution. The question of the State taking part in trading to the exclusion, partial or complete of private enterprise, was completely lost in the humdrum exchange of batteries between the hon. Law Minister and Dr. Mookerjee on the question of the freedom of speech and expression. This House, I submit, was not able to give consideration to what that change actually involved. We know that the amendment to article 19 (6) lays down that the State can take up trading or business to the exclusion, partial or complete of a private citizen. That in my opinion was not the thin end of the wedge but the thick end of the wedge, so far as the nationalisation of industries is concerned.

Then we have articles 31A and 31B. By these two provisions we have given a change in the concept which we had so far held regarding private property and the policy of the Government with regard to it. I do not contend that the change in the concept

which is proposed is wrong. In this world of today both the concepts or ideologies, namely respect for private property and no respect for private property, are followed by different Governments. Therefore, I do not quarrel with those who feel that the position, which we have been giving to private property in this country need not be continued. What I submit is that this matter, in my opinion, should be carefully considered and finally decided, so that the citizens of the country may know how to proceed under the circumstances. As it is, though there are the Fundamental Rights in the Constitution, the right to acquire and dispose of property or the right of private trading and opportunities for trading, actually with these measures, though it may be without the intention of the framers of the amendment, we are—not slowly—but swiftly drifting away from a policy of respect for private property.

With regard to the amendments to articles 31A and 31B here again we are laying down an unprecedented principle, that is we are validating Acts as such. Perhaps in the exigencies of the situation such a procedure may be called for and I am not disputing it. I am only submitting that in considering the amendments to the Constitution the House has indeed taken an intelligent interest in the matter but the same amount of interest has not been displayed in seeing to it that the precedents which we are establishing may not be all too good or necessary. With great difference to the Government I submit that with regard to the Acts abolishing zamindari the Central Government has unfortunately not been quite as active in the matter as it should have been. If you refer to the Constitution you will find in the Concurrent List item 42, under which the Government of India could have laid down the principles on which compensation for property acquired or requisitioned for purposes of the Union or the State Government should be determined. If such a course had been taken by the Central Government it would have removed many of the anomalies between province and province. The matter should have been discussed on an all-India scale and the decision then reached by the Government of India might perhaps have given some satisfaction to the same class of people all over the country. Whether we consider this Government as a Federal or Union Government the fact remains that the country today knows one Government and that is the Congress-Government, whether in the Centre or in the States. As such, I ask my 6 P.M. friends in this House how they

would feel when the minimum compensation payable in Bihar comes to three times the net income or the zamindar, in the neighbouring State it is eight times, and in another neighbouring State it is eight times. I submit these things apart from the inequity and injustice and hardship they entail, also create a bitterness in the mind. Because after all this is an action which is being taken in pursuance of the Congress policy which was decided long ago and therefore it was only proper that when that policy was going to be translated into action the Central Government should have given the time necessary to so decide matters of principle that there may not have been these apparent and obvious inequalities in the different parts of the country. So far as Bihar is concerned, I feel that perhaps it may be possible now to smoothen out the difficulties which were faced by the zamindars as also by the State Government. The Prime Minister, in his speech the other days made a kind reference about how he States should behave after this amendment to the Constitution is passed. He also assured us that as far as possible he will also try to give some time to it and to consideration of the matters which we shall raise. I can only hope that he will, in the midst of his many busy preoccupations, be able to find the time to devote to this matter which, I must submit, does not merely control the destinies of a few but of nearly fifty lakhs of people in the State of Bihar alone, which would be about one-eighth of the total population of that State of four crores.

I have nothing more to add except to conclude with the hope that this matter, with the intervention of the Prime Minister and also with the consideration that the State Government will show in the matter, will come to a close which will be to the satisfaction of those who are concerned.

Mr. Chairman: The hon. Law Minister.

Dr. Ambedkar *rose-*

Shrimati Durgabai: May I seek clarification on a point before the Law Minister speaks, Sir? I had given notice of an amendment which I have not moved. I find that the total effect of article 31B is to validate the Acts which are included in the Ninth Schedule and also to take them away from the purview of the courts, but there are certain matters which have arisen under the other provisions of the local Acts, such as section 45 of the Madras Act which is one of the Acts included. Now under this Act

there are certain claims, not between a party and a State, but between parties inter se, and these claims have been challenged in the courts. I would just like to know whether such cases also have been sought to be excluded from the jurisdiction of the courts because the language of this particular article reads:

"...none of the Acts, specified in the Ninth Schedule nor any of the provisions there of shall be deemed to be void..."

I realise that that particular section provides for tribunals and it is for the tribunals constituted under that section to deal with the matter of distribution or the manner of compensation. But I would like to have a clarification from the hon. Law Minister as to whether the jurisdiction of the tribunal over the courts in this particular matter of dealing with the claims of parties inter se is sought to be taken away.

Dr. Ambedkar: As to my own amendment I do not think that any argument is necessary in order to support the same. The amendment is merely an amplification as to the meaning of the word "estate". Some people felt that while we had taken note of the laws that prevail in Part A States with regard to the definition of the word "estate", we had not taken sufficient notice of the definition of the word "estate" operating in Part B States. In order to remove that doubt I felt that it was necessary to take note I of it and to amplify the definition of the word "estate" which I propose to do by my amendment.

My principal ground for rising to take part in the debate is to deal with the point that was raised by my hon. friend, Ch. Ranbir Singh. His argument, if I understood it correctly, was this that while in some States in India the word "estate" is used in a limited sense so as to include only what we call intermediaries but not to include what we call the ryotwari estates, that is, people holding it in their own right without there being any intermediaries between them and the State, it is quite true that there are some States where the definition of the word "estate" is a wide one and might possibly include holders under ryotwari or occupants under the Bombay Land Revenue Code or ryots in other parts of India. At one time I thought that it might be possible to give a limiting effect to the word "estate" by the addition of an explanation, but on further consideration I find that it is more or less impossible to give an explanation which would cover the point. But I would like to say this, that there is no intention on the

part of Government that the provisions contained in article 31A are to be employed for the purpose of dispossessing ryotwari tenants.

Shri Hussain Imam: However big they might be?

Dr. Ambedkar: Well, that is a different matter. We are making a distinction between intermediaries and ryotwari holders.

Now, that is certainly not the intention of the Government; I know that friends who are interested in this matter would hardly be satisfied with any expression of intention on the part of Government, but I think there is much more than mere intention in the Bill itself. If my friend, Ch. Ranbir Singh, would refer to the provision attached to article 31A which requires that every such Bill shall be reserved for the consideration of the President, I think he will see that there is a certain amount of safeguard in it, and, as I hope the Prime Minister in his speech in reply to this debate will also make it clear, there is no such intention on the part of Government and I believe that whenever any such measure comes before the President for consideration, the undertaking given in this House would be binding upon the President in giving his sanction so far as any such measure is concerned. Therefore, I submit there is no ground for any fear of any such thing happening and I believe that there is also no justification, for any kind of propaganda that may be carried on by interested parties that this Bill proposes to give power to Government to expropriate everybody including the ryotwari tenants. I hope that this will satisfy my friend, Ch. Ranbir Singh.

With regard to the question that has been put to me by Durgabai...

Shri R. K. Chaudhuri (Assam): Shrimati Durgabai.

Dr. Ambedkar: These encumbrances I do not think are very necessary. I feel terribly embarrassed when somebody calls me Shri. Shri means wealth—I have none of it.

Shri R. K. Chaudhuri: May I mention that sufficient mischief has been caused by my friend, Dr. Ambedkar, calling me by my short name the other day?

Dr. Ambedkar: I thought you agreed that that did not change your sex?

Shri R. K. Chaudhuri: That is how jealousy has been created in the minds of some sections of the House.

Shrimati Durgabai: At least not in my mind.

Dr. Ambedkar: Now with regard to that, the relevant provision in the Madras Act is section 45. That section 45 deals with impartible estates. It does not deal with ordinary estates and the provision, so far as I understand it, is that the matter of deciding whether and how the compensation is to be distributed is left to a tribunal. This Bill does not add to the powers of the tribunal: this Bill does not take away any of the powers that are given to the tribunal for that particular Act. I think within that ambit things will proceed in the way the Madras Act has determined.

Dr. Deshmukh: May I ask a clarification of the hon. Law Minister? The hon. Doctor has told us that there is no intention to dispossess or limit the ryotwari tenures. There are six Acts of Bombay in the Schedule. If any of these Acts do limit the ryotwari tenure, how far would it be proper to add those to the Schedule and how far does it cover the intention of Government not to bring in the ambit of this amending Act the ryotwari tenure or to limit their extent?

Dr. Ambedkar: I know something of these Acts, coming from Bombay as I do and having practised in the High Court. Having had to deal with many cases, I have no doubt about it that the Khoti Abolition and other Acts to which my hon. friend has referred deal only with what we call intermediaries.

Shri Jawaharlal Nehru: My colleague the Law Minister has dealt with many of the points that have been raised, but as the time fixed and fairly rigidly followed today allows me a few minutes I am taking advantage of it to put a few points before the House. The House will forgive me if I indulge in some repetition.

First of all, listening to the speeches made here today and on earlier days in regard to this particular clause, it was obvious that there was a very, very large, consensus of opinion in favour of it. There was criticism on some minor points here and there, but there was a general acceptance of it. As there is now a very large and general acceptance in the country of the principle of abolishing these big zamindaris, we started this with a great measure of agreement.

There are two types of criticism which have been made or amendments put forward, or intended to be put forward. One was—I think it was Prof. Shah—who wanted to extend this to cover practically, all other kinds of property other than land. Some other Members also put similar amendments forward, but subsequently did not pursue them.

Prof. Shah objected strongly to our aiming or trying to bring about small holdings, on the ground that this will come in the way of any real land reform in the future.

[MR. DEPUTY-SPEAKER in the Chair]

Now that may be so. Nevertheless, if Prof Shah thinks or anyone else thinks that any other course is practicable, today I think he is completely out of touch with realities. Or, in the alternative we arrive at the strange conclusion—following Prof. Shah's argument—that we should, not touch this big zamindari system, because in converting it into small holdings and peasant proprietorships and the like we do not go really towards our goal, but possibly get stuck up there. In other words, we should leave the big zamindari system to continue till with one sweep of some big broom, we can change it into some other form of tenure either collectivised or cooperative large-scale farming, etc. Now it is perfectly true that logically and scientifically considering, ultimately large-scale cooperative farming will be necessary. What type of cooperative it should be is another matter—because a large number of small farmers can cooperate together or there might be big farms; there might be State farms or dozens of variety of such cooperative farms. I am not going into that question. But the point is that at the present moment for us to think of bringing that about is completely out of the realm of reality.

May I, in this connection, give the House an instance which should make us pause and think. That is the instance of China where there are no Fundamental Rights to come in the way, where there is no compulsion of paying any compensation to anybody, where one might almost say they had a clean slate to write upon and where there is an urge towards taking to some kind of Socialist or Communist society. Nevertheless, in spite of all this the land reforms they have indulged in have resulted in the creation of millions of smaller farmers, which normally speaking should be opposed to the ideal they are aiming at, because where you have Socialism or Communism or any other 'ism' you cannot get rid of or by-pass or ignore the feelings of millions of people in your country and especially the people who are attached to the land and in whose blood there is something of that land. Therefore, the Chinese

Government eager and keen to bring about basic agrarian changes, nevertheless have created a very large body of peasant proprietors. What the future will be there, I do not know.

Now for anyone in India at the present moment to talk about change, which might be said to go beyond what the Chinese Government of the day have brought about does seem to me completely lacking in understanding of the situation in India. Now it is true that of all the subjects and all the problems that we discussed, ultimately and finally the biggest problem is that of land, and it has to be partly because land is there and you just cannot bypass it, and partly because we are fundamentally an agricultural country and however much progress we might make in big industry, or the like, nevertheless agricultural land will continue to play a dominant part in India. That is because a vast proportion of our population is engaged in or dependent on agriculture. Therefore land problem is today and will continue to be the biggest problem—whether you look upon it from the point of view of the large number of people engaged or of food production which is vital and of high priority, or any other way. Now this whole concept of the abolition of the zamindari system came up before us, because we felt this inner urge of our people, because we heard the cry of millions of people and sometimes those deep murmurs and rumblings, which it not listened to and if not answered create big revolutions and changes in the country. So we took this step rather slowly and hesitatingly and it has taken a mighty long time. Nevertheless we are on the way. Therefore it became of the highest importance and urgency that we should do something in this Parliament to remove any other obstructions that might remain, whatever they might be. Because the problem we deal with is ultimately something bigger than the Constitution, and Constitutions are upset if that problem is not dealt with properly. They are upset not by your vote and mine but upset by those big Upheavals that have taken place from time to time in countries and that are taking place in the greater part of Asia today.

I lay stress on this because of the deep significance of this problem which is something much more than legality and constitutionalism or compensation or the like. We have tried to deal with this problem in a democratic way, in as reasonable a way as possible, so as to avoid injustice as far as possible. But then what is the measure

and yardstick of your justice and injustice in this matter? If you bring me some article in the Constitution to say that so much compensation should be paid because of something there about non-discrimination or equality, well, that may be perfectly right; but if it leads you to the conclusion that if that is strictly followed no major agrarian reform can take place, then obviously that article in the Constitution is wrong, because it comes in the way of something that is important and urgent and of the most vital significance, and that article has to be amended or changed or done away with, as you like. But the major thing is you have to keep going in regard to land. Whatever your policy, you have to change the present system which is an out-of-date system, which is against progress etc. Nobody can tell me that it involves an upset. Of course it involves an upset. But it involves a lesser upset, and you will find that we are proceeding slowly, gradually, weighing things, so that there is less of injustice and upset than what you will find in any country that has dealt with this problem.

Compensation. Yes, and I have been reminded again and again in the course of the last two or three days of a certain word I used—adequate compensation. Of course, adequate. But the opinion of Mr. Hussain Imam and my opinion may differ vastly as to what 'adequate' is. Because, as I said in my speech when this article was being adopted in the Constituent Assembly, we have to balance two things all the time, the rights of the individual and the rights of the community. We do not want to crush the individual even for the sake of the community. I agree. But we cannot allow the individual to override the rights of the community. And the rights of the community in the final balance are more important, because ultimately they affect the rights of the individual too.

Criticism is made of a lack of uniformity, of the variety of these Acts etc., of the approaches to the problem in various States and Provinces. Perfectly true. But conditions differ in these various States and Provinces. It is possible that there might have been a little more uniformity and perhaps some things that seem odd might have been corrected too by a little care. But then you have to deal with the democratic process as it functions. You have to deal with each individual State and its Assembly and its people and its peasantry and all the others as they are. It is not right, except in

the most extreme cases, for the Central Government to intervene and interfere in these things.

Shri Hussain Imam: It has the power of certification.

Shri Jawaharlal Nehru: I know it has the power of certification. The power of certification, so far as I understand, does not mean that you can change laws and evolve new laws. It is intended to see that nothing absolutely wrong is there and, if it is there, to take it out and cure injustice and the like. It is not a radical kind of second chamber looking into it and changing everything. The House knows very well that in all federal Constitutions there is an inherent conflict between the State and the federal Centre, each being jealous of its rights and all these difficulties arise. The way to deal with it and I think it is more or less Open to us even in regard to these laws which have been passed and which we seek to validate here is that first of all, we have to validate them and go ahead because nothing is more dangerous than delay in this matter. At the same time as we do that, I would appeal and request the State Assemblies which have passed them to look into them carefully, to remove any injustice that they can by executive action where necessary, by some amending measure, out they can only do that once they get going with this. Up till now, they have been checked and hampered: they do something and either by judicial decision or something else they are hampered and all kinds of injunctions come out and all kinds of lawyers flood the land and prevent any decent person from doing anything. What is one to do about it? One must get rid of this mischief. Then only you can improve what you have done. Otherwise your energy and time is taken up in meeting other Peoples obstruction. You can only look into these injustices when this major injustice and obstruction is removed. You cannot expect us to waste our time over petty injustices when this major injustice, a thing which we have been arguing for the last generation is stopped by people, who have no conception of the reality in the Indian scene today. Those who think in legalistic terms, do they know that millions of people are on the move? So this is the first fundamental thing. These laws must go and must be effective. Having done that then we will look into the injustices and so far-as I am concerned and my Government is concerned, I shall, request each States

Government which is concerned in this matter to look into this deeply and carefully and to remove any injustices.

My friends from Bihar, my zamindar friends and colleagues here were good enough to point out what they thought were injustices and hardships which the people suffer from. I have no opinion about them; I do not know but I promised them that I would look into the matter and I am glad to say—that the representatives of the Bihar-Government who were here promised to look into the matter, so that we might remove them in so far as we can, but we can do that only—I would beg of you to remember—if we are not continually entangled in law courts and' litigation, because when a challenge comes that challenge is met in other ways. No Government will listen to me. If a provincial Government has to fight that case in a law court, do you think they are going to listen to me to look into this injustice and that?' They will not be in a mood; I would like to be listened to but the mood will be absent, the mood of trying to do that. That is the major approach to this problem. Obviously the whole of the Constitution, of this law, of this amendment, this particular article and all these zamindari legislation is to deal fundamentally with what is called the zamindari system, by whatever name you may call it. I am glad that the words jagirs, inams, etc. are included because some people thought they may not be sure and jagirs are more important than zamindaris and talukdars are more important than zamindars. It is perfectly true, if I may say so, a still more out-of-date form of land tenure or no tenure, whatever it is, will have to be included. It is but essentially a major obstacle. It is not meant to affect the tiller of the soil except to improve his condition. Now, of course, the abolition of the zamindari system is not the end of the story. What must follow it is the land reform. Otherwise it is only half way but we have got stuck up in this; we could not go far in that matter. It has to follow.

Some of my friends from the Punjab -were very anxious not to be misunderstood in their province because the word "zamindar" has a somewhat different meaning there than normally in some of the big zamindari provinces. We of course know that and whenever we talked in the past—10, 15 or 20 years—of the abolition of the zamindari system, those who did not like us or our policies in the Punjab immediately took advantage and went to the poor zamindars of the Punjab and succeeded in telling

them: "they are going to abolish the zamindari system" which is absurd. We are talking about something entirely different. Nobody is going to touch that kind of zamindar in this land. That was made quite clear. So that, normally speaking, of course, this does not refer to the ryotwari system. I think it was Mr. Hussain Imam or someone else who interrupted Dr. Ambedkar and said something about the so-called peasant proprietors or ryots who may hold very large acreage of land: may be a thousand acres. Such things do happen. Technically they may come in; but that is unjust. What we should aim at ultimately is to bring about as much, measure of equality about this as possible; no perfect equality, I mean; but these big differences should go. So far as this particular matter is concerned, it deals for the present with the zamindari, jagirdari etc. systems. The rest will no doubt follow.

Now, there are one or two points. I think Mrs. Durgabai was rather worried about...

Shrimati Durgabai: My point is answered.

Shri Jawaharlal Nehru: I am glad.

As Dr. Ambedkar has said, we have sought to change this article with a few words I of clarification. I think Mr. Kashinath Rao Vaidya has proposed the addition of two Hyderabad Acts which we are prepared to accept.

One hon. Member referred to the concept of property. I do not wish to take up the time of the House; but the subject is a fascinating one. The concept of property at one time included human beings as slaves. The concept of property included all land, including every man, woman and animal as being the personal property of the King or ruler of the time. Kings waged wars to get more and more personal property and everybody conquered was a slave. From those days to this, the concept has changed considerably. To imagine that the present stage or yesterday's stage is static is as wrong to imagine that the age when human beings were considered as property was right. It is a changing concept. In fact, in the modern age, in the more developed countries, the concept of property has almost ceased to be material: not quite, but almost. Property becomes credit more and more, in the highly developed and industrialised countries. Anyway, this concept of property is a completely changing one and the concept of property in the rights of the community becomes more and more important. I am merely touching the point. It is not such a simple matter for a

person to say that my property is being invaded. Property is being invaded all the time today: not in the Communist countries like Russia and China, but in the highly Capitalist countries like the USA, this thing is happening. This is inevitable in the modern age. So, if it happens here, it is not surprising. Therefore I hope—not a question of hoping—I am sure that this House will adopt these clauses 4 and 5 and the Schedule. (Ninth Schedule) attached, practically unanimously, because there is no way for us. I would beg those who may differ with a word here or there even to consider that their disagreement or wanting us to go a little further does not help at all. It only keeps you from going thus far. It is a strange impulse which wants to go farther, which gets hold of you and does not want to move at all. I do not understand that. So that, if you really accept this, what I consider, axiomatic truth that the temper of the age and the position today in Asia and India requires rapid agrarian changes, and if you want these changes to come democratically, peacefully and with as little injustice as possible, then, we have to follow some such path and try to remove the injustices, and try to lessen wherever we can. But, it is no good one trying to stop that, because in trying to stop it and in trying to perhaps grab something more, it is quite possible you may lose all, by other forces coming into play, forces other than Parliament Constitution and laws. We do not want these forces to come in and upset the whole apple-cart. Therefore we proceed with care and also we must proceed with rapidity.

Mr. Deputy-Speaker: Shall I put all the amendments together?

Some Hon. Members: Yes, let us finish them to-day.

Some Hon. Members: No, no.

Mr. Deputy-Speaker: Order, order.

Shri Hussain Imam: All the amendments standing in the name of the same Member may be put together.

Mr. Deputy-Speaker: I think that will be better. I shall first put the amendments to clause 4, then the amendments to clause 5 and lastly the amendments to clause 14. I will put each Member's amendments to each clause together. Now clause 4. Prof. Shah's amendments.

The question is:

In page 2, line 14, for "the foregoing provisions of this Part" substitute "article 31".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, line 25, for "local area" substitute "area or in relation to any form of property referred to in article 31".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, line 27, for "existing law" substitute "existing laws or customs for the time being in force, or judicially recognized, and relating to inheritance under testamentary or intestate succession".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, line 30, after, "any rights" insert "as to personal or movable property, in the shape of shares, stocks, securities, debentures, cash at bank or in hand, or goodwill, copyright, patent right, and all other rights of ownership, survivorship, co-parcenary, and the like, and as regards rights".

The motion was negatived.

Mr. Deputy-Speaker: The question is: In page 2, after line 32, insert:

"(3) All estates in land, or any rights therein, or in regard to any personal or movable property mentioned in the next preceding sub-clause, if and when taken over by the State, or by any Corporation owned by or working under the control of the State, shall be so reorganized, formed or operated as to avoid the creation of any rights of full and permanent ownership in such estates, and the rights incidental thereto or consequent thereon, In any private individual:

Provided that notwithstanding anything in this sub-clause, it shall be open to any State, to Organize cooperative cultivation and farming of lands thus taken over, on the basis of compulsory cooperation for all purposes and activities in connection with the cultivation of such lands, allowing such limited rights of ownership to the cooperators for their life only, so organised and working such lands:

Provided further that a definite maximum limit shall be imposed on any individual holding in such compulsory universal cooperative associations for farming."

The motion was negatived.

Mr. Deputy-Speaker: Now Shri Naziruddin Ahmad's amendments.

The question is:

In page 2, line 18, for "abridges" substitute "restricts".

The motion was negatived,

Mr. Deputy-Speaker: The question is:

In page 2, line 19, after "provisions of this Part" add "except that relating to compensation".

The motion was negatived

Mr. Deputy-Speaker: The question is: In page 2, omit lines 20 to 23.

The motion was negatived.

Mr. Deputy-Speaker: Now Prof. Shibban Lal Saksena's amendments. His second and fourth amendments are the same as Prof. K. T. Shah's third and fifth amendments which have already been negatived by the House. I will put his other two amendments to the vote of the House.

The question is:

In page 2, omit lines 24 to 32.

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, line 31, after "any rights" insert:

"as to personal or movable property in the shape of shares, stocks, securities, debentures, cash at bank or in hand, or goodwill, copyright, patent right, and all other rights of ownership, survivorship, coparcenary and the like, and as regards rights".

The motion was negatived.

Mr. Deputy-Speaker: Then Dr.

Ambedkar's amendment.

The question is:

In page 2, line 28, after "'area" insert:

"and shall also include any jagir, inam or muafii or other similar grant".

The motion was adopted.

Ch. Ranbir Singh: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: Shri Hussain Imam's amendment.

The question is:

In page 2, line 32, add at the end:

"but shall not include the right to receive arrears of rent and cesses accrued before vesting order".

The motion was negatived.

Mr. Deputy-Speaker: That finishes the amendments to clause 4. Now I will take up amendments to clause 5.

Shri Naziruddin Ahmad's amendments.

The question is:

In page 2, for lines 35 to 43 substitute:

"31B. (1) The President shall as soon as may be appoint a Commission consisting of a Judge or the Supreme Court or of a High Court who shall be its chairman, a Member of Parliament and an officer of the Central or a State Government with revenue experience to examine the provisions of the Act specified in the Ninth Schedule and report as to the justness and propriety of the said Acts with particular reference to the compensation provided for, and may determine the limits and scope of such examination, the procedure to be followed by the Commission and also prescribe a time limit for the report.

(2) The President shall consider the report and may make such adaptations and modifications in any of the said Acts whether by way of repeal or amendment for the purpose of bringing the provisions of any of the Acts into accord with the provisions of this Constitution, as he deems fit and proper, and the Acts as so adapted or modified if any shall notwithstanding anything in this part be deemed to be valid and their validity, propriety or sufficiency shall not in any way be questioned in any court on any ground, whatsoever."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, line 39, for "abridges" substitute "restricts".

The motion was negatived.

Mr. Deputy-Speaker: Now the amendments of Prof. K. T. Shah.

The question is:

In page 2, line 38, omit comma and "or ever to have become void,".

The motion was negatived.

Mr. Deputy-Speaker: The question is

In page 2, line 40, for "this Part substitute "article 31".

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 2, after line 43, add:

"Provided that, before the Acts listed in the Ninth Schedule can be afforded the protection of this article, they shall all be referred to the Supreme Court under article 143 of the Constitution, and only such of them, or such parts of any one of them, as are declared, on such reference to the Supreme Court, to be consistent with, or taking away, or abridging any of the rights conferred by Article 31 of the Constitution, shall be deemed to be, and always to have been valid."

The motion was negatived.

Mr. Deputy-Speaker: Shri Hussain Imam's amendment.

The question is:

In page 2, after line 43, add:

"Provided that the President shall have power within twelve months of the passing of this Act to require the State Legislature to modify the Act in a manner specified to bring about uniformity and remove discrimination. And if the State Legislature fails to do so within ninety days the President shall make such amendments and the Act shall be deemed to have been, always so amended".

The motion was negatived.

Shri Sramnandan Sahaya: Sir, I beg leave to withdraw my amendments.

The amendments were, by leave, withdrawn.

Mr. Deputy-Speaker: That disposes of amendments to clause 5. Now clause 14.

Shri Naziruddin Ahmad: Sir. I beg leave to withdraw my amendment.

The amendment was, by leave, withdrawn.

Mr. Deputy-Speaker: Then, amendments of Shri K. Vaidya.

The question is:

In page 4, after line 33, add:

"12. The Hyderabad (Abolition of Jagirs) Regulation, 1358 Fasli, No. LXIX of 1358 Fasli."

The motion was negatived.

Mr. Deputy-Speaker: The question is:

In page 4, after line 33, add:

"12. The Hyderabad Jagirs
(Commutation) Regulation, 1359 Fasli, No. XXV of 1359 Fasli."

The motion was negatived.

Mr. Deputy-Speaker: That disposes of the amendments to clauses 4, 5 and 14. Now, I would request hon. Members to consider the fact and advise if I can put all these three clauses 4, 5 and 14, containing the Schedule together.

Hon. Members: Yes.

Mr. Deputy-Speaker: Clauses 4, 5 and 14, including the Schedule, will be put together as amended. That means that a Member who records his vote in the 'Ayes' lobby will be recording his vote in favour of all the three clauses and similarly a Member recording his vote in the 'Noes' lobby will be recording his vote against all the three clauses.

Shri Rajagopalachari: Sir, we have been following very strictly, not at the request of any Member of the House but because of the Constitution, the practice of every clause being put separately to the House. I think it is but right that we should follow the same procedure here.

Some Hon. Members: Postpone, postpone.

Mr. Deputy-Speaker: The business will take only 15 minutes more and we will finish it.

Shri Husain Imam: Perhaps the Home Minister said it as a matter of precaution, being a lawyer.....

Mr. Deputy-Speaker: I say as a lawyer that each clause must be put separately.

Shri Jawaharlal Nehru: Sir, may I submit that clauses 4 and 5 should be taken separately and the Schedule may be attached to clause 5. I do submit that joint voting on these clauses is not desirable.

Mr. Deputy-Speaker: I intend putting them separately, because I have my own doubts and particularly because certain amendments have been adopted in respect of two of the clauses.

The question is:

"That clause 4, as amended, stand part of the Bill".

The House divided: Ayes, 239; Noes, 6

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Ambedkar, Dr.

Amolakh Chand, Shri

Ansari, Shri

Arya, Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Diwakar, Shri

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jaipal Singh, Shri

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar,Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Sarwate, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 4, as amended, was added to the Bill.

Mr. Deputy-Speaker: I shall now proceed to put clause 5 and clause 14 separately. No amendments to clause 5 have been carried.

The motion was adopted.

Shri Ramalingam Chettiar (Madras): Why not put both together?

Mr. Deputy-Speaker: It is better to put them separately.

The question is:

"That clause 5 stand part of the Bill."

The House divided: Ayes, 238; Noes, Noes, 7.

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jaipal Singh, Shri

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran,Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal,Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam, Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri M.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Husain, Dr.

NOES

Birua, Shri

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The motion was adopted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 5 was added to the Bill.

Mr. Deputy-Speaker: I will now put clause 14 to the House.

The question is:

"That clause 14, as amended stand part of the Bill."

The House divided: Ayes, 233; Noes, 7.

AYES

Achint Ram Lala

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva, Shri Joachim

Ambedkar, Dr.

Amolakh Chand, Shri

Ansari, Shri

Arya, Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash Dr.

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam,Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda, Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri M.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma, Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav, Shri

Yashwant Rai Prof.

Zakir Hussain, Dr.

NOES

Das, Shri Sarangdhar

Hussain Imam, Shri

Mookerjee, Dr.S.P.

Hukam Singh, Sardar

Kunzru, Pandit

Naziruddin Ahmad, Shri

The motion was adopted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 14, as amended, was added to the Bill.

BUSINESS OF THE HOUSE

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha): Sir, I had requested the Speaker earlier to put before the House that the Question Hour may be dispensed with tomorrow and that if the House is meeting on the 9th those questions may be taken up on that day. I submit this because we want to finish the clauses of the Constitution (First Amendment) Bill by tomorrow forenoon so that the third, reading may be taken up in the afternoon. Then it will be suitably adjusted. Otherwise there will be much confusion tomorrow.

Shri Kamath (Madhya Pradesh): If the House is meeting on the 9th, I shall agree. Otherwise it will be difficult for me to agree.

Shri Satya Narayan Sinha: Does it mean that only for the sake of the Questions the House should meet on the 9th even if the other business is finished?

Mr. Deputy-Speaker: I think almost all except Mr. Kamath are agreed. Hon. Members were anxious to have more time on the Constitution (First Amendment) Bill. If that is so then the Questions can certainly stand over. If there is a meeting on the 9th and no questions have been tabled for that day, naturally tomorrow's questions can be taken up on that day. But to ask that there should be a special sitting only for dealing with the Questions, if the House has otherwise finished the business, does not seem to be quite fair.

Shri Kamath: We have already transferred the Questions of the 29th May to the 8th, and now there is the proposal to transfer tomorrow's Questions to the 9th if—a big 'if' is there—the House sits on that day. The Speaker has already said that, so far as Questions are concerned even if there is one dissentient voice he would not agree to postpone or drop the Question Hour. I may submit further that Mr. Anthony Eden when he was here last year told us that during the Whole period of war, 1939-45, not for one day was the Question Hour suspended in the House of Commons.

Shri Hussain Imam (Bihar): May I just draw your attention to the fact -that if the programme of the Government is known it will be better. If the Government could indicate what are the Bills which they wish to proceed with, and if we are not going to sit in the afternoons, then the House can be perfectly sure that the work of the Government cannot be finished on the 4th, 5th, 6th and 7th. There is likelihood that we will continue till the 9th. Of course it is perfectly correct that the House should not sit only for dealing with Questions. But if the programme of work is known the House will be able to judge the position better.

The Leader of the house (Shri Jawaharlal Nehru): Sir, so far, as the Government is concerned, the urgent measures which should be passed during this session, apart from the present Bill which we are dealing with, are the Representation of the People (No. 2) Bill, the Government of Part C States Bill, and finalising the delimitation of constituencies. We would not like the session to be prolonged for any other purpose. But if by any chance we have half a day to spare or some time, we can take some other work. That is a different matter. It is difficult for me to calculate how long all this would take. But I imagine that all this would take us to the 10th June probably.

(Hon. Members: 10th is a Sunday). Well, then, the 9th. I think it is highly likely that we shall have to work till Saturday afternoon.

Hon. Members: Suspend the Question Hour.

Mr. Deputy-Speaker: The Question Hour will be suspended tomorrow and the Questions will be postponed to the 9th June.

The House then adjourned till Half Past Eight of the Clock on Saturday, the 2nd June, 1951.

THE
PARLIAMENTARY DEBATES
(Part II—Proceedings other than Questions and Answers.)

OFFICIAL REPORT
PARLIAMENT OF INDIA

Saturday, 2nd June, 1951

The House met at Half Past Eight of the Clock.

[MR. SPEAKER in the Chair]

QUESTIONS AND ANSWERS

(No Questions: Part I not published)

Shri Rajagopalachari: I introduce the Bill.

CONSTITUTION (FIRST AMENDMENT) BILL—concl'd.

Mr. Speaker: The House will now proceed with the further consideration of the Bill to amend the Constitution of India, as reported by the Select Committee. In this connection I have to reiterate the time-table and the programme to the House again. Yesterday clauses, 2, 3, 4, 5 and 14 were disposed of. Today we have at our disposal nearly 7 hours-4 hours in the morning and three hours in the afternoon. If the House agrees, the following time-table may be followed:

Clauses 6, 7, 8 and 9 of the Bill refer to the two sessions of Parliament and two sessions of States Legislatures. As I said yesterday, though it appears to me that they are formal, still I understand some people have to say something about it. Therefore, for all these clauses, we shall have one hour. These clauses can also, I believe, be put to vote together.

Clauses 10 and 11 refer to articles 341 and 342. I do not know what time they will take but I understand that there is a desire on the part of Members to say something on this though it appeared to me that prima facie they are also of a more or less formal character.

Shri Kamath (Madhya Pradesh): They may take 45 minutes.

Mr. Speaker: I would have 45 minutes if the House is agreeable to that. I shall restrict it to 45 minutes.

Then clause 13 relates, I believe, to the Chief Justice and that will take some time. So, I propose to allot one hour to that. Then voting on this clause will take place independently by itself.

Clauses 12, 1, the enacting formula and the long title are more or less formal matters. They should not take any time and in any case, whatever time is taken, I propose to call upon the Prime Minister to reply to these clauses, if any reply is necessary say at about 12-30 P.M. or so, because the division will take some time.

The Prime Minister and Minister of External Affairs (Shri Jawaharlal Nehru): Each one separately?

Mr. Speaker: For each clause I shall call him separately.

Shri Jawaharlal Nehru: I shall reply separately. But there is not very much to reply to and I will take about five minutes for each reply.

Mr. Speaker: What I was contemplating was this. For clauses 6, 7, 8 and 9 we have now allowed one hour inclusive of the reply of the Prime Minister. Similarly, with the other clauses which are taken and before they are put to vote, he should reply in respect of those clauses, if he chooses. If he has to say nothing, he can say that he has nothing more to add.

The Minister of Home Affairs (Shri Rajagopalachari): I am afraid, Sir, I have not understood your programme in one respect correctly. Although the discussion may take place with reference to clauses in an accumulated way, I think it would be better if we follow your own ruling in regard to voting. Each clause has been separately voted upon, not because the House wanted it, not because of any sense of the House having been taken on that matter, but on account of the Constitution and the interpretation arising therefore apart from any question of convenience or consent of

the House, or expediency. I suggest that we should put the vote on every clause separately, following the rule that you have laid down by way of interpretation of the Constitution because the procedure herein arises not on account of the opinion of the House, but on account of the Constitution and its interpretation.

Mr. Speaker: I have no objection in following that course. That will mean taking time but it does not matter.

Shri Rajagopalachari: You have laid down the rule yourself. We have to follow the rule in the Constitution, because we are now dealing with people who can raise such points at any time.

Mr. Speaker: Very well.

Prof. K. T. Shah (Bihar): I was making a similar statement though for-different reasons, because there is really a difference between clause and clause 7. Clause 6 mentions a matter of serious principle Clause 7 is something with which I might agree, whereas I cannot agree with clause 6, as well as the other clause dealing with the local Legislatures in clauses 8 and 9. Therefore, these cannot be put together.

Mr. Speaker: That is why I said that I shall put the clauses together, in case all the hon. Members agreed to that proposal. Here the hon. Home Minister says that in spite of the agreement, it is better that they should be put separately. So, there is no question now.

Is there any objection to have a common discussion on all these?

Shri Jawaharlal Nehru: No.

Shri Naziruddin Ahmad (West Bengal): May I suggest that clause 12 may be taken separately?

Mr. Speaker: I am not referring to clause 12. I am taking it independently and along with that I am having clause 1, the enacting formula and the long title.

Shri Naziruddin Ahmad: I should like to take five, minutes on clause 12.

Mr. Speaker: I am putting that at a later stage and if the hon. Member wishes that to be taken separately. I shall do so.

Now one hour of the discussion will end at, say, 9-40 A.M. and I shall reserve ten minutes for the hon. Prime Minister.

Shri Jawaharlal Nehru: Yes, Sir.

Clauses 6, 7, 8 and 9

Mr. Speaker: At 9-30 A.M. the discussion will end and hon. Members will, of course, limit their speeches now to about at the most ten minutes so as to give a chance to other people to have their say.

We shall take up clauses 6, 7, 8 and

9.

Clause 6.— (Amendment of article 85).

Mr. Speaker: Clause 6. Coming to amendments, the amendments by Prof. Shibban Lal Saksena and Mr. Naziruddin Ahmad that the clause be omitted, are out of order. They can oppose the clause if they like.

Prof. K. T. Shah: I beg to move:

(I) In page 3, lines 3 and 4, for "The President shall from time to time summon each House of Parliament" substitute:

"In accordance with the rules of procedure made by each. House of Parliament in that behalf, either House of Parliament shall be summoned from time to time".

(ii) In page 3, line 5, for "as he thinks fit" substitute "as may be provided for in the rules of procedure in that behalf".

(iii) In page 3, after line 7, insert:

"Provided that, on the occasion of the first summons to the Members of the House of the People elected at a general election, and if the Speaker of the House of the People at the time of the dissolution of that House, before the general election, not being available for any reason, and the rules of procedure not providing for such a contingency, the President shall summon each Member of the House of the People, elected at the general election, to meet at such place and on such date and hour as are specified in the summons.

Provided further that the rules of procedure mentioned above shall make provision for summoning the House of the People on requisition signed by a number of Members

not less than the number described under the rules as the quorum required for the valid transactions of any business of the House".

(iv) In page 3, line 6 and 7 omit "the date appointed for".

Shri Kamath: I beg to move:

In page 3 Line 7, for "appointed for" substitute "of".

Clause 7— (Amendment of article 87).

Mr. Speaker: Prof. Shibban Lal Saksena's amendment is out of order. He can oppose the clause.

Dr. Deshmukh (Madhya Pradesh): I beg to move:

In page 3, for clause 7, substitute:

"In article 87(1) of the Constitution, substitute the word any for the word 'every' and the word 'may' for the word 'shall'".

Shri Kamath: I beg to move:

In page 3, omit lines 16 and 17.

Clause 8— (Amendment of article 174).

Mr. Speaker: Prof. Shibban Lal Saksena's amendment for the omission of the clause is out of order.

Shri Kamath: I beg to move:

In page 3, line 24, for "appointed for" substitute "of".

Clause 9— (Amendment of article 176).

Mr. Speaker: Prof. Shibban Lal Saksena's amendment for the omission of the clause is out of order.

Shri Kamath: I beg to move: In page 3, omit lines 34 and 35.

Mr. Speaker: The amendments will be taken as moved and clauses 6, 7, 8 and 9 along with the amendments will be considered now.

Shri Kamath: One hour from now, Sir.

Mr. Speaker: Yes, inclusive of reply.

Prof. K. T. Shah: Sir, may I take it that the text of the amendments I propose, being on the order paper, I need not read them just now, and simply commend the substance of them? That would save time.

Mr. Speaker: That is all right.

Prof. K. P. Shah: The purpose of the change that I am proposing is to keep the power in Parliament for its being summoned, instead of vesting the power, as now proposed in the Bill, in the President.

The original Constitution, as you know, Sir, does not state anything as to who shall summon Parliament, in article 85, which is proposed to be amended; it leaves Parliament to be summoned, without stating by what agency. I think that is really a wise and farsighted provision, which does not make it impossible in the manner it is stated for any agency like the President or the Speaker for the time being summoning. But, at the same time, it does not make it compulsory categorically for one specified authority to summon Parliament. By the amendment I am proposing, I suggest that the words that the President shall summon either House of Parliament should be omitted.

I am making this suggestion for three main reasons. One, of course, is that the Upper House, the Council of States, is in permanent session and it is never dissolved. It should, therefore, make its own rules, and fix its own days for holding its sessions from time to time, whether adjourned or prorogued. The question of a new summons will arise only in the case of the House of the People; it cannot arise in the case of the Upper House, the Council of States for the reason I have just stated. As Parliament consists of both Houses, the language of the amending clause is inappropriate and inapplicable.

Then, again, Parliament has Unquestioned right to make its own rules. Either House has the power to make its own rules, not only for its internal conduct of proceedings—those rules are sacrosanct, and no authority can enquire into those rules—but, what is more, it is also entitled to make its own rules for adjournment and so on. I admit that the English practice is for the king to summon Parliament at not only each new Parliament, but also every yearly session. That, however, is a matter more of the historic tradition peculiar to the English Parliament. It's origin and growth. But these reasons do not apply in this country, and therefore. I see no reason why we should follow the British practice in this regard, and require the President to summon Parliament as if he was a complete prototype of the English king. This right, for instance, in the American Congress is fixed by the constitution. The dates are fixed,

and each House of the Congress has to make its own rules for being summoned from time to time, whether it is after a dissolution, adjournment or prorogation.

A still more important reason to my mind is the recent history of certain countries, where, in spite, of provisions in the Constitution, dictators have managed to usurp power. And here also I see the possibility of a danger that in the event of the President refusing to summon Parliament, there will be no authority, if this clause is accepted, which could then force him to summon Parliament.

True, it is stated that more than a certain period shall not elapse between two sessions; but when a contingency of the kind that I am thinking of arises, such provisions would become ineffective. If once the President, whether independently of his Government or in collusion with the Government, ignores or overrides this provision, on the ground that he is the sole authority or has the sole authority to convene Parliament, the rest of the provisions will not help us. I fear, therefore, in this amendment is implicit the danger of autocracy or dictatorship which I trust this House will not accept.

This fear is substantiated, in my-eyes, at any rate, by the further provision whereby you also fix or only lay down that not more than six months shall lapse as between the last date of the previous sessions and the date fixed for the next sessions. Now the date may be fixed, but the sitting may not take place. I, therefore, fear that these words will only lend colour to my apprehension that the change proposed here is liable to pave the way to dictatorship, which none, I hope, will welcome.

The amendment that I have proposed is that the power should be inherent in Parliament. If you do not fix the date as in America, in the Constitution itself, when the new annual session should begin, or a new Parliament should begin, it should at least be right and proper that the programme of the House of the People should be somewhat flexible, and the date should not be fixed too rigidly. It is, however necessary and proper in my opinion that the authority of the House itself, namely, the Speaker of the preceding Parliament, or of the continuing Parliament should have the right to fix the date when the next session will be held. Of course, while he remains Speaker he would have the authority to convene Parliament, so to say, on his own.

There ought to be no difficulty at all in regard to annual sessions. In case, however, the Speaker should, for any reason, be not available, then I would like to vest the

power in a proportion of the House, or in a certain number of Members of the House whatever may be the figure, that being immaterial. The principle is that it should not be left to the President or the Prime Minister to convene Parliament. I have, therefore, suggested in my amendment that the power should be given to the Speaker of Parliament to convene it, whether after a prorogation, or even after dissolution; and in the event of the Speaker for any reason not being available, there should, be the right inherent in Members of the House to requisition a sitting of Parliament.

I consider that the change here proposed is very different from the spirit of the Constitution as it stands today, and I am trying to restore the original spirit of the Constitution by the amendment that I have suggested.

I am in agreement with the idea behind the amendment in clause 7 that, for reasons both of convenience and of principle, it is but right that the business of the House should have precedence over any message that the executive head of the State would have to lay before Parliament. In fact, that is the practice in England, that even if there is an address from the throne, the House of Commons always takes up some unimportant business first before the motion for the vote of thanks for the address is tabled. It may be the introduction of a Bill for the first time, or some such unimportant thing; but it comes before the business of voting on the address.

In so far, therefore, as the words proposed to be omitted are concerned, I am in agreement. But it should not be utilised to stifle general debate on the state of the country, which, I take it, would be incorporated in the address from the President at every session. I am not sure that the wording of the proposed amendment of the Government would not lend itself to this danger, not only that the occasion for a general debate on the entire state of the country being minimised, but being negated altogether.

While, therefore, in sympathy with the intention implied in the matter of this amendment, I am not sure that I can support the general amendment as now proposed, for the reasons that I have given. As for the consequential or parallel amendments in regard to local Legislatures or State Legislatures, the same reasoning will follow, though perhaps on a somewhat minor scale. Therefore, trust that for the reasons that I have given, my amendments will be accepted.

Shri Kamath: The Prime Minister has not told the House why this change in the articles is at all contemplated, particularly the change relating to the President's summoning Parliament and the Governor summoning the Legislature. May I ask, whether it is a sudden love for the active voice and dislike for the passive voice, which is the language of article 85 and the corresponding article relating to the State Legislatures? If that be so, I can understand it. The Prime Minister, being a lover of the English language, he might have thought that the active voice is better. Moreover, being a very active person himself and a dynamic person, he might have preferred the active voice to the passive voice. But if there is any other reason I would request him to enlighten the House on this point.

I do not want to repeat the arguments advanced by Prof. Shah but would only like to add one or two points. If hon. Members will read the original article 85 and the proposed article 85 they will see that the summoning of the Houses of Parliament and the States Legislatures was mandatory "shall be summoned" are the words—and the President or the Governors are only enabled by the wording "may from time to time summon Parliament or the Legislature." Here the change contemplates that the President or Governor shall summon. There the vesting of the power in Parliament is inherent, that Parliament shall be summoned even by the Speaker or some other, authority—say the Deputy-Speaker but the summoning of the Parliament was absolutely necessary and mandatory. Prof. Shah suggested various ways in which this could be implemented. Therefore, in my humble judgment article 85, and the corresponding article relating to States are all right, and may I say, fool-proof and knave-proof as they stand, and no change is necessary.

Then Prof. Shah referred to the apprehension that the President or the Governor may not summon at all. He may appoint a date for the session of Parliament or the Legislature, but Parliament or Legislature may not meet at all. Now it may be argued that if the President does not act in a particular way, he might be impeached in the terms of the Constitution. But if the House would read the article relating to impeachment of the President, they will see that unless Parliament meets, there cannot

be any process of impeachment initiated. Therefore, this amendment of mine seeks to get over the difficulty if not entirely, at least to a certain extent, by stating that in view of the changed language of the article the interval of six months, at the maximum, ought to relate to the last sitting in one Session and the date of the sitting in the next session, not the date appointed. The article as it stood originally did not require this language. But as it is sought to be changed, we must make it clear that not merely does it relate to the date appointed—because Mr. Shah said that Parliament may be summoned to meet but may not meet actually—we must safeguard against that—and therefore we must see to it that an interval of six months must not elapse between the date of the last sitting in one session and the date of the first sitting in the next session. Coming to my amendment to clauses 7 and 9, Prof. Shah said that it is likely that other business may suddenly supervene and may have to displace discussion on the President's address from the business of the House at the very start. I am not quite inclined to agree with him in this matter. As the House knows or the last one year, we have been having this ceremony of the President coming to the House in State and delivering his address to Parliament and every time we have noted that the address contained an outline of Government's policy, of what Government has done in the past and what they propose to do in the particular session. That gives a bird's eye-view of Government policy for those few months. I therefore feel that the House must be entitled to discuss this policy of Government at the very start before it launches upon its other work for the session. Discussion of Government policy in general must take precedence over other work. I do not think any other work will be so important that it need take the place of discussion on the President's address. If at all there is such a need about some particular business, then I think the process of adjournment motion might provide the necessary method of discussing that particular matter, but as it is I think it will be, showing I will not say insult or contempt some sort of disregard for the President's address if the House does not discuss that address which embodies Government policy, before the House commences any other business. I therefore commend my amendments to the House for acceptance.

Dr. Deshmukh: The reason why I have proposed the amendment standing in my name is because it is the simplest that could be thought of and it is also one which

meets the requirements of the case adequately. As has already been pointed out, there is provision in article 86 that the President may address either House of Parliament or both Houses assembled together and, for that purpose require the attendance of Members. All we sought to do by article 87 was to provide that at the commencement of every session, the President shall address both Houses of Parliament assembled together and inform Parliament of the cause of its summoning. Even at the time when this article was under discussion in the Constituent Assembly, I had opposed the inclusion of article 87 because I advanced the argument that it was unnecessary in view of article 86. In the alternative I had also argued that the word 'shall' should be changed into 'may' so as to give the President the latitude to choose whether he wishes to address or not. Unfortunately, that was not accepted at that time and we have now found ourselves in difficulty. If we merely change these words 'every' into 'any' and 'shall' into 'may', the whole difficulty would be solved. Originally the proposal was to substitute for the words 'every session' the words 'first session of each year'. It was at the Select Committee stage that further addition of the following words was made viz., "the first session after each general election to the House of People and at the commencement of". If we merely want that the President should address at the commencement of only the first session once after the elections and later on at the first session in every year, I think the wording I have suggested would meet the requirements of the case most adequately. After all we really want that in case there are more than one session, it shall not be necessary for the President to address twice. I also do not like the omission of the words and for the precedence of such discussion over other business of the House. The provision as it stands lays down that the, procedure and the precedence shall be regulated by rules framed. Now if we leave the choice to the President and do not make it compulsory for him to address at the commencement of every session, I do not see why the rules for precedence should not be there. After all laying down rules for precedence does not mean that it must have the first place. We can lay down any rules that we consider proper and say that there should be such precedence for the discussion of the address as is desired. I think everybody would agree to this. I therefore think that the amendments I have suggested should be acceptable and we would then avoid the long phraseology that has been

used here. After all we are born in a country where brevity was taken to the utmost extremes and superfluous addition of any words was discounted by our grammarians and other learned ancestors. In such a country I do not think we should err on the side of using more or less meaningless words when the purpose can be served by much fewer. Mere change of two words would really give us the necessary result and would also obviate omission of the words laying down rules for precedence etc, which I very strongly object to. I think it would be necessary to have those words there and in any case, there would be no harm done. I therefore suggest that the Law Minister, although he did not see his way to accept my amendment in the Constituent Assembly, and all these troubles would have been avoided if he had accepted it then—consider my amendment more favourably this time and accept it without any further discussion because if he does so, there will be no difficulty hereafter.

Shri S. N. Das (Bihar): If the amendment proposed to article 87 is accepted some of the words in the article would become superfluous. The marginal note to article 87 is "Special address by the President at the commencement of every session". By the amendment proposed there will be no address of the President at every session. I think the words "every session" should be changed to "certain sessions". That is the purpose of my amendment, though I have not moved it.

The same is the case with article 176. There is a provision that there will be a special address by the Governor at the commencement of every session. Now there will be no address at every session, according to the proposed amendment. Therefore, the marginal note should be changed to "Special Address by the Governor at the commencement of certain sessions."

In article 87 there is a provision that at the commencement of every session the President will address both 'Houses of Parliament together and inform Parliament of the causes of the summons. The amendment proposed "in the Bill involves no address at every session. Therefore, the purpose of the address will not be for giving the reasons for calling the Parliament -but some other reason. Therefore, the words "inform the Parliament of the causes of its summons" are superfluous. That is the

purport of my amendments. The Prime Minister may consider them and if necessary these amendments may be made.

Shri M. A. Ayyangar (Madras) The four articles cover two matters one is the summoning of Parliament and the other is the address by the President. Article 85(1) says, "The Houses of Parliament shall be summoned". Under the rules at present it is the Secretary to Parliament that summons on the advice of the Speaker. Of course, they consult the Government as regards the business.

Mr. Speaker: I am afraid I will have to correct it. It is the President who orders the summoning and when his order is received then the ministerial work of issuing the summons is done by the Secretary. If the hon. Member reads through the summons he will find that the order of the President is referred to in the summons also. It is not only the convenience of the Speaker but the convenience of the Members also that is taken into consideration.

Shri M. A. Ayyangar: Rule 3 says "The Secretary shall issue a summons to each Member specifying the date and place for a session of Parliament." In article 85(1) it is not stated, as it is done in clause (2), that the President may summon. In the same article there is a difference made in clauses (1) and (2). Under clause (2) it is open to the President to summon from time to time the Houses or either House in the normal course. Clause (1) is passive and for this reason: We will assume that there is a motion of no-confidence against the Ministers. Under the Act of 1935 the Governor-General was entitled to exercise certain powers in his discretion and in his individual judgment but there are no such powers which the President can exercise in his discretion. Whatever the President does is on the advice of his Ministers. If there is a motion of no-confidence against the Ministers it is open to the Ministry to advise the President not to summon the Parliament for six months or more. Are they to be judges in their own cause, when the majority of the Members of Parliament want to get rid of the Ministry? I am not talking of the present Ministry: I have great respect for it. But we are legislating for all time. We do not know what will happen in the next elections but

I believe there will be a substantial Opposition. Only the election after the next is an unknown factor, for it is in the hands of the people entirely. So far as the amendment of the Constitution is concerned I am anxious that we should be very careful. Under article 85(1) it is open to the President to summon and it is open to the Speaker also to summon. Under clause (2) it is open to the President to summon as often as he likes and the Speaker can adjourn from time to time according to convenience. These are the lines of demarcation. It is not stated in clause (1) that the President shall summon. Such controversies may arise that there may be a conflict between the President and the Ministers on one side and Parliament on the other, in which case are we to put up with an unwanted set of Ministers and not move a motion of no-confidence against them? Formerly a certain number of Members 25, 30 or 50 per cent could ask for the summoning of Parliament at any time. There is absolutely no such provision now. Under the circumstances I believe that it is good to leave the wording as it is making it flexible so far as summoning is concerned.

As regards prorogation and the address by the President I agree that existing clause in the Constitution has led to many inconveniences. After the election when the Houses of Parliament are summoned in the beginning it might be necessary for the Government to lay down its policy. But as we go on there will be nothing for the Government to come out with a statement of policy. The House will remember that last time instead of prorogation the other device adjourning was adopted. Let us validate all such things and say that at the beginning of each session the President shall address or immediately after the elections the President shall address, to give an indication as to what are the measures Government is going to bring forward. That avoids the unnecessary waste of the time of the House and repeating things over again.

As regards the other amendment I am not prepared to accept it. I would request the hon. Minister to consider if the language of article 85 need not be left as it is at present.

Shri Rajagopalachari: I think we are fighting only about drafting matters and not at all about the substance of the matter. No difficulty has been felt so far with regard to

the summoning by the President. The passive and the active voice do not really differ very much from one another as has been imagined. It is the same thing whether we say the President shall summon the Houses of Parliament or whether we say the Houses of Parliament shall be summoned. The English language has a passive voice but what is the complete passive form? It would be "shall be summoned by somebody"; "Shall" applies to that authority, that is to say the obligation is cast upon the person or authority which is authorised and which is obliged to summon. So, there is no real difference -at all between the active and the passive forms so long as we look to the

Word "Shall" which remains in either case. The President shall summon: that is the active form. The Constitution lays an obligation on the President to do a certain thing. The Houses of Parliament shall be summoned. That means that somebody who is authorised to do it is bound to summon the Houses of Parliament but the person is not specified. According to our Constitution, the only authority that is given the facilities and the duties as well to summon is the President; the Speaker is not given the office that is necessary to summon; it is the Government that is the President who is the executive head of the Government, who is bound to summon.

I think it is only a question of form and, if I may say so, a drafting accident—it is possible the drafter might have started on one style instead of another, but really there is no difference whatsoever. I may say that the active is involved explicitly in the passive in the word "shall".

Regarding some other amendments proposed to the marginal note, I think it is well-established that the marginal notes do not form part of legislation and they follow a consequential rule as to modification.

Then, it was said that "shall" may be substituted by "may" in the two articles dealing with the address. That is not quite a matter of form only—it is a matter of substance also because, I must point out to Dr. Deshmukh, if the provision is that the President may address, it follows that the President may not address. It follows then that there can be no discussion whatsoever on the general policies except when he chooses to address.

Dr. Deshmukh: Should we not leave something for the traditions and conventions being built up.....

Shri Rajagopalachari: If reliance were placed on convention rather than the Constitution it is a different matter altogether, but since we seem to believe in statutory obligations laid down by the Constitution more than on convention in so many matters, the "shall" that is already there need not be altered. That is what I say. As regards the difficulty that has actually arisen, it was pointed out by the Deputy-Speaker in his speech that the difficulty has arisen that when each time a session starts, a general discussion on the President's address has become necessary.

Shri Jawaharlal Nehru: Mr. Kamath seemed to hint that there was some deep design or conspiracy about this attempt to amend the Constitution in this matter, and he said that the Prime Minister Owed it to the House—I am quoting his words taken down verbatim—to say why these changes are proposed. Well, I thought the Prime Minister had tried to do his duty by the House in explaining this matter when he first moved the motion on this Bill. Of course, it is a very simple matter; either the hon. Member was not present here, or was not paying heed to what the Prime Minister was saying.

Shri Kamath: This particular matter was not referred to in his opening speech.

Shri Jawaharlal Nehru: However, it is a very simple matter. If you read this article 85, it says the Houses of Parliament "shall be summoned to meet twice at least in every year". Now according to one interpretation this House has not met at all this year; although hon. Members may have been sitting continuously for six months or thereabouts and working as hard as possible, according to the strict meaning of article 85 Parliament has not met at all because it was last summoned in October last and not this year. So, this peculiar difficulty arises, that even if we meet once more if we are prorogued now to meet in, August or so—in no event can we meet twice this year, and

there is a breach of the Constitution if that interpretation is put on the article, which is obviously not meant by the framers of the Constitution.

Dr. S. P. Mookerjee (West Bengal): You may have prevented it by proroguing earlier. It was in your hands.

Shri Jawaharlal Nehru: In other words, we can prevent it by not working at all but by coming for a week twice a year—there are so many ways of getting over the difficulty. But the main difficulty is: are we working according to the Constitution the more we work the less we do according to the wording of this Constitution which is obviously, if I may say so, an absurdity. The Constitution wants us to work, riot to play, to meet frequently enough, not to keep away from meeting; and if we meet continuously but the meaning becomes that we do not meet at all, there is something wrong about the Constitution. If we met, as we might very well meet, continuously for the whole year barring small periods, as any working Parliament means, there may be no prorogation or no summoning in the course of that year at all as the Constitution wants. The question only arises when you think of the old tradition, of the old Assembly which met casually for a few weeks a year and may be twice a year, and did some odd work and then went, home, and it is because of that, presumably, that this has been put in. But any working Parliament cannot just keep away from meeting because work accumulates and suffers. It was because of this actual difficulty, that it was thought that this article might be changed so that this question of being summoned twice a year need not be there, because if we are meeting all the time, then are we to break up simply to be summoned again? Of course, we may be summoned twice a year or more.

Then we come to the active and the passive. I do not know much about grammar, but I know something about common-sense and the English language, and I just do not understand this interpretation that if you say, "the President shall summon", you hand over yourself with a rope around your neck to the President, that you may hang whenever the President pulls the rope or does not pull the rope. On the other side it is suggested that if you say, "the Houses of Parliament shall be summoned", obviously

the question arises: by-whom? But if you took the trouble to take over page 36 of the Constitution in article 85 you are told that the President will summon.....

Shri Kamath: May summon.

Shri Jawaharlal Nehru: There is no "may" about it—he is the only authority that can summon, there is no other authority. That is to say this article 85 actually deals, in the passive and the active, in both the voices; with who should summon, who can summon and who only can summon—there is no other authority which can summon, unless of course there is a breach of the Constitution and other things come into play. Therefore, as the Constitution is, it is only the President who can summon: it, and if the President does not do his duty then other consequences may well arise. It is conceivable—I do not say it is out of the question—as Prof Shah pointed out, that the President and the Government of the-day might conspire together behind the Constitution to set up a dictatorship or an authoritarian regime. All these things are conceivable—anything is conceivable in the modern world. But my point is if such a conspiracy can take place it can take place whether you write your Constitution in the active voice or the passive it makes not the slightest difference which voice you choose, if people want to do it and take the risk of doing it. As a matter of fact, our saying, "the President shall summon" is much more mandatory on the President than saying, as it is said here, "The Houses of Parliament shall be summoned" and the President shall do so. The meaning is the same but if the President does not summon within six months it is a deliberate breach of the Constitution by the President and the Government of the day. It does not require any argument—you catch him immediately he has riot done a duty laid down, which is here an indirect duty. May be some minor excuse the President may advance, or not. Therefore, in a sense you bind down the President—and when I say the President I mean the Government of the day which is also bound down by the Constitution to do a certain thing. If they do not do it then other consequences follow. They have deliberately flouted the Constitution. What happens then? Well, many things may happen. Parliament then presumably comes into conflict with the usurping Government, or the Government that carries on without the goodwill of Parliament and the people. Well, a conflict occurs. That kind of a thing would, if it occurs, presumably be decided by the normal constitutional means—

other means may come into play, one does not know. But to suggest a variety of means of convening Parliament—that if the President fails the Speaker might summon, or if the Speaker also fails fifty Members may ask for the summoning of Parliament—would create all sorts of complications. Suppose you say that fifty Members may summon: suppose the President summons on a particular day and the fifty Members on some other day later: or suppose two sets of fifty Members summon on different dates—all kinds of confusing situations may arise.

After all you have ultimately to have some final authority which you presume will function according to the Constitution. If it does not then you pick the axe and cut off the head, whether he is a President or anybody. That is the normal practice in Constitutions: that is the normal practice in revolutions. I do not understand the middle practice of confusing a Constitution with a revolution and a revolution with a Constitution. I therefore, submit that the wording suggested is the right wording. It does not endanger the Constitution; it does not give any special or additional powers to the President to come in the way. Such powers as he gets, such mischief as the future President might do, is always inherent in the nature of things and inherent also in the power of the people to put an end to the President who does that mischief.

Now there is another point that Mr. Kamath seemed to suspect—again some intrigue in the suggestion of the address to the President. What is suggested here is merely that it should not necessarily have precedence. The difficulty is this that after the President has delivered his address it is right that the Members should have two or three days to consider it and to propose motions and not immediately to have to deal with it. Otherwise two or three days may well be wasted and we will be doing nothing. So, the idea is not to postpone consideration of that address, but not to waste those two or three days. You may well do something else in those two or three days, fix a date for the consideration of the President's address three or four days later and come well prepared with your motions and arguments. It would be absurd, of course, to try to discuss the President's address long after it is delivered. To get over the difficulty of waste of time it was done. I understand that in the House of Commons of the United Kingdom it is deliberately laid down- I am speaking subject to correction—that it will not have precedence. It is deliberately laid down to preserve the right of Commons not

to be hustled by the king. You need not go quite so far, but you should reserve the right yourself to consider it when it suits the convenience of the House, two or three days later. It is naturally for the Speaker and the House to consider it. Certainly, it should be soon after, it was delivered, though not immediately after.

Then Dr. Deshmukh went in another direction and asked—why have all this troublesome business at all? If it is the pleasure of the Government and the mood of the President he might do so. If not, why should we force him to do so. Leave it to their pleasures and their moods. And make it "may" instead of "shall".

Well, I may say I do not think it is right to leave a thing of this kind to the moods or dispositions of the President or the Government of the day. It is right that we should not compel him to speak every time the House is summoned, but I think it is right to have a convention or a rule for the President to address the House at least once a year. He may do so more often—that thing may be left to convention. But let him address the House once a year and certainly at the beginning of the new Parliament. That is what is suggested. It is a very simple proposition. I do not see why Dr. Deshmukh should be afraid of the word "shall" in that connection.

The real difficulty of course is that this involves a certain preparation outside this House which is troublesome. Members are aware that when a coach and six come all kinds of things have to be done for that purpose. Anyhow that trouble does not fall on the House or Members thereof, but on the administration of Delhi.

I suggest that the amendments proposed are not necessary, that the wording originally suggested and which has emerged from the Select Committee does meet the situation and get over the minor difficulties that have arisen without endangering the Constitution.

Mr. Speaker: So, I shall first dispose of all the amendments to the various clauses. Clause 6 Prof. K. T. Shah's amendments.

The question is:

In page 3, lines 3 and 4, for "The President shall from time to time summon each house of parliament"

Substitute:

“In accordance with the rules of procedure made by each House of parliament in that behalf, either house of parliament shall be summoned from time to time”.

The motion was negative.

Mr. Speaker: The question is:

In page 3, after line 7, insert:

“Provided that, on occasion on the first summons to the members of the House of the People elected at a general election, and if the speaker of the house of the people at the time of the dissolution of that house, before the general election, not being available for any reason, and the rules of procedure not providing for such a contingency, the president shall summon each Member of the House of the People, elected at the general election, to meet at such place and on such date and hour as are specified in the summons.

Provided further that the rules of procedure mentioned above shall take provision for summoning the House of the People on requisition signed by a number of Members not less than the number described under the rules as the quorum required for the valid transactions of any business of the House”.

The motion was negated.

Mr. Speaker: The question is:

In page 3, lines 6 and 7, omit "the date appointed for".

The motion was negated.

Mr. Speaker: Shri Kamanth's amendment.

The question is:

In page 3, line 7, for "appointed for" substitute "of".

The motion was negated.

Mr. Speaker: Now amendments to clause 7.

Dr. Deshmukh: Sir, I beg leave to withdraw my amendment.

The amendment was, by leave withdrawn.

Shri Kamath: Sir, I also beg leave to withdraw my amendment to clause 7.

The amendment was, by leave withdrawn.

Mr. Speaker: Now clause 8.

Shri Kamath's amendment.

The question is:

In page 3, line 24, for "appointed for" substitute "of".

The motion was negatived.

Mr. Speaker: Now Shri Kamath's amendment to clause 9.

Shri Kamath: Sir, I beg leave to withdraw it.

The amendment was, by leave, withdrawn.

Shri Ramalingam Chettiar (Madras): May I suggest that four officers may be put in the booths and Members may pass through all the four, each one of them making a mark for each clause?

Some Hon. Members: Yes, that will save time.

Mr. Speaker: Hon. Members need not be so anxious about the time. Now the division takes place in ten minutes or less than ten minutes. There has to be a record. Let us go through the formal procedure of recording each vote separately so that the whole list of Members may go in the Debates.

The question is:

"That clause 6 stand part of the Bill."

The House divided: Ayes, 229; Noes, 7.

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh, Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jaipal Singh, Shri

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar,Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The Motion was adopted.

Mr. Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 6 was added to the Bill

Mr. Speaker: I am now putting to the house Clause 7. The question is:

“That clause 7 stand part of the Bill”.

The House divided: Ayes, 225; Noes 7.

AYES

Achint Ram Lala

Ahammedunni,Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Diwakar, Shri

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jaipal Singh, Shri

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar,Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Sarwate, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The Motion was adopted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 7 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 8 stand part of the Bill."

The House divided: Ayes, 228; Noes 8.

AYES

Achint Ram Lala

Ahammedunni,Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Barrow Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirakar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jaipal Singh, Shri

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran,Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal,Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam,Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri M.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

NOES

Birua, Shri

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The Motion is adopted.

Mr. Deputy-Speaker: The motion is

adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 8 was added to the Bill.

Mr. Deputy-Speaker: The question is:

"That clause 9 stand part of the Bill."

The House divided: Ayes, 229; Noes 8.

AYES

Achint Ram Lala

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva, Shri Joachim

Ambedkar, Dr.

Amolakh Chand, Shri

Ansari, Shri

Arya, Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant, Roy, Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash Dr.

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishthir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar,Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam,Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Tekchand, Dr.

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri M.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma, Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain, Dr.

NOES

Birua, Shri

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

Mr. Deputy-Speaker: The motion adopted by a majority of the Total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 9 was added to the Bill.

Clause 10 (Amendment of article 341.)

Mr. Deputy-Speaker: Clause 10 relates to Scheduled Castes and clause 11 relates to Scheduled Tribes. The procedure and the language are the same. I think it is the general desire that clauses 10 and 11 should be discussed together, though separately put to vote.

I see there are no amendments to be moved so I will put clause 10 to the House.

The Minister of Works, Production and Supply (Shri Gadgil): There should be a division.

Shri Gautam (Uttar Pradesh): Even if there is nobody against, there might be some neutrals. Let there be a count.

Mr. Deputy-Speaker: Yes, there will be a division.

The question is:

"That clause 10 stand part of the Bill."

The House divided: Ayes, 227; Noes, 7

AYES

Ahammedunni,Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Alva,Shri Joachim

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash Dr.

Diwakar, Shri

Dixit, Shrimati

Durgabai Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jnani Ram Shri

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath, Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran,Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal,Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam,Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sunder Lall, Shri

Swaminadhan, Shrimati Ammu

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri M.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Verma, Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The motion was accepted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 10 was added to the Bill.

Clause 11 — (Amendment of article 342.)

Mr. Deputy-Speaker: The question is:

"That clause 11 stand part of the Bill."

The House divided: Ayes 232; Noes 6

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva, Shri Joachim

Ambedkar, Dr.

Amolakh Chand, Shri

Ansari, Shri

Arya, Shri B.S.

Asawa Shri

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deogirakar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash Dr.

Diwakar, Shri

Dixit, Shrimati

Durgabai Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri, V.J.

Gupta Shri Deshbandhu

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda, Shri

Himatsingka, Shri

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri T.

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain, Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jnani Ram Shri

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath, Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Misra, Shri S.P.

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moulvi

Mudgal,Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal, Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha, Shri

Pustake Shri

Rahman, Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch.

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Sahaya, Shri Syamanandan

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam,Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra, Shri

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma Shri K.C.

Shiv Charan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Sivaprakasam, Shri

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sunder Lall, Shri

Swaminadhan, Shrimati Ammu

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Verma, Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Das, Shri Sarangdhar

Hukam Singh Sardar

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

The motion was adopted

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 11 was added to the Bill.

Clause 12. — (Amendment of article 372.)

Mr. Naziruddin Ahmad: Sir, I want to speak on clause 12.

Mr. Deputy-Speaker: Let me first see if there are any Members who want to move any amendments.

I see that there is none who wants to move any amendment. Let there be a general discussion on the clause.

Shri Deshbandhu Gupta (Delhi): What is the duration of the speeches?

Mr. Deputy-Speaker: Not more than ten minutes.

Shri Naziruddm Ahmad: This clause is a very important one, as I shall show if you will bear with me for a few minutes. The Constitution came into force from the 26th January, 1950, and by that Constitution we repealed the Government of India Act. By clause (1) of article 372 we say that all laws in force for the Govern, merit of India shall, notwithstanding the repeal of the older Act, continue to be in force.

I come to clause (2) of article 372 which is as follows:

"(2) For the purpose of bringing the provisions of any law in force in the territory of India into accord with the provisions of this Constitution, the President may by order make such adaptations and modifications of such law, whether by way of repeal or amendment, as may be necessary or expedient, and provide that the law shall, as from such date as may be specified in the order, have effect subject to the adaptations and modifications so made, and any such adaptation or modification shall not be questioned in any court of law."

The whole purpose of this clause was that as the Constitution created a new set-up, we have adopted the Fundamental Rights, we have changed the outlook of the law in so many ways—so, the existing laws should be subject to adaptations and modifications to bring them into accord with the Constitution. And clause (3) of article 372 gave the Government a long period of two years to adapt them. Clause (3) says:

"Nothing in clause (2) shall be deemed—

- (a) To empower the President to make any adaptation or modification of any law after the expiration of two years from the commencement of this Constitution;"

The Constitution came into effect on the 26th January, 1950. We may adapt the laws up to 25th January, 1952. So, we have yet another eight months left in our hands to adapt the laws to suit the Constitution. The object of adaptation is to make immediate changes which are necessitated by the change in the outlook of the Constitution on account of the new Constitution. I find that the President has adapted, by an order with effect from the 26th January, 1950, that is the day on which the Constitution came into force, not only Central but also State laws. The reason for this adaptation is so as to leave people in no doubt.

The question is whether the Government should be allowed to sleep off for another year even beyond the eight months which we have already under the article. They want another twenty months instead of the eight months available, to adapt the law. The very purpose of such adaptations is to bring the law immediately into conformity with the Constitution and not to leave people in doubt. After all, the existing laws are valid to the extent to which they are consistent with the Constitution, but in order to make them up to date and to bring them into conformity with and on the same lines as the Constitution, adaptation has to be resorted to. But then what is the purpose in delaying? The law Department has already failed in its duty - in the matter of adaptations. Why is it that they will not do the adaptation within the long eight months that still remain unexpired? Why should it be that they require another one year? I will cite only one instance of how delay in adaptation will put the whole country into ruinous litigation. Take the case of "sedition". "Sedition" as it was understood under the old British law was changed by the Constitution, but the old definition of "sedition" still remains in the Penal Code. The law of sedition as contained in section 124 A of the Penal Code has been dealt with in the Adaptation Order in some minor respects, but it has not been brought up-to-date in view of the new constitutional set-up, that is the provision contained in article 19(2). Well, there was the case of Master Tara Singh who was prosecuted for sedition; he had to go to the High Court of Punjab and that High Court acquitted him and declared that if there had been adaptation there could have been no prosecution. The Government has left the law of sedition Unadapted and the subordinate magistracy and the police officers, oblivious to the constitutional change, thought the law stood as it was in the Penal Code and prosecuted this gentleman in ignorance; and the High Court had to declare that law to have been ultra vires. It was mainly because the Law Department did not function thoroughly in the work of adaptation that there was this harassing litigation and consequent disappointment on the part of the Government. They blamed the Punjab High Court for coming to a wrong decision. As a matter of fact, the whole trouble was due to a failure to adapt the law. I ask you, Sir, is not the work of adaptation important and urgent? If you do not adapt the laws at once numerous complications will arise. Adaptation is therefore very urgent, it cannot brook any delay. There are still eight

months left. Why not the Law Department do it within this time? The Law Department says: "We have no time to do the adaptations. Let the people suffer. Let the law remain inconsistent with the Constitution. Let millions come to courts and let there be millions of suits and prosecutions and let some of them come to the Supreme Court, and let the Supreme Court tell them what the law is". All this for your failure to adapt! I refuse to agree to give the Law Department another year's time. Let them do it at once or let them refuse to do it. The hon. Law Minister once declared, "How can I undertake adaptation? I have simply no time for it." Well, then it is better for the Law Department to abdicate. May I draw his attention to the Government of India Act, 1935, in which there was a similar adaptation section and to the fact that the Adaptation Order under that Act was passed by the King under that section. That order came into effect on the first day of April, 1937, the date on which that Constitution came into effect, and it was final and complete and there was no clamour for time to - think and wait. I think the Law department should wake up from their sleep and adapt the law, or refuse to do it. Why should the people be kept hanging without any adaptations? I claim the Law Minister's personal attention to these matters of enormous importance. If there are difficulties in the way of Governmental work let them take the help of experts, Pandit Bhargava and I would be willing to give our help.

But if you do not adapt the laws effectively you must not blame lawyers for going to court and taking advantage of these deficiencies in the law. I think we should reduce litigation by undertaking adaptation at once. I think the urgency of this problem does not require to be stated any further.

Shri Shiv Charan Lal (Uttar Pradesh): While supporting clause 12, I have to make just a few submissions. It is certain there are many laws to be changed, many laws to be adapted; but these have not been brought up-to-date. I know that there is so much work for the Ministry of Law that it is not easy to tackle all the necessary legislation work. But in the matter of bringing our laws in conformity with the present position, or with the present Constitution it is very necessary that Our Law Ministry should move more quickly and bring the laws up-to-date.

I may just refer to one or two instances. Under the Constitution, Parliament has to give certain inherent powers to the Supreme Court, but so far, no Bill has been brought forward to give the inherent powers to the Supreme Court. The High Courts have those powers under section 561A of the Cr.P.C., but no such section has- been put in the Cr. P. C. by Parliament. So far in order to give those inherent powers to the Supreme Court Sometimes, in some cases the Supreme Court may-find it difficult to exercise its powers and justice may be denied to the people.

In the same way there are Other Acts to be amended, for example the Copyright Act. We have been a free country for nearly two years now, but we are still being-governed by the Copyright Act of the U.K. There might be certain changes necessary to bring it in conformity with our present needs and with our - present conditions. There may be many similar Acts relating to the various Departments of Government, which have to be brought in conformity with the Constitution. I, therefore, request Government that they should devote more time and more attention to bring these in conformity with the present position.

Pandit Thakur Das Bhargava (Punjab): While supporting this clause I beg to submit one or two things. We have already passed the clause 2 of this Bill and it lays down that all the previous laws will remain in force to the extent they are consistent with the new amendment which we have passed. It is essential in this connection that the whole country should know that in fact, we have given retrospective effect to this law to such an extent that all the past Acts which are not consistent with this provision would be superseded by it. Even in this House many a member -objected that the Sedition Laws such as 124A and 153A and a few other -similar laws which are not liked by the whole country would be revived -as a result of this amendment being accepted. I say this contention is -totally wrong. But the question is how can a person know about the mistake, how can it be found whether they have been revived or not. There are only two methods by which we can know about this development; one of them is that a person, who is involved in a case and is sentenced by a lower court, approaches the Supreme Court or the High Court and they declare that a particular law has become null and void as was done in the case of Master Tara Singh. You can know about it either by this method or the other method is that hon. Dr. Ambedkar

while sitting here should tell us that according to the section 372 such and such a law has been superseded. Its advantage would be that if in a six months period the adaptation of this Bill takes place and the purpose of the section 2 is fully materialized, then the people in the country could be told that in fact this Bill, about which we all wrongly calculated that it would take away the freedom of the people, would on the other hand increase the scope of freedom. It can be conveyed to the people that sections 124A and 153A would come under its purview in the same manner as others have come before. People are not aware of their being in purview of this law, and so they, think that all those laws, which were not at all liked by them, have been revived by this Bill. My submission is that the people should be saved from litigation by adapting the special powers which the Parliament has given to the President under section 372, and it is not at all necessary that the matters should be got decided in the Supreme Court. For instance, I would like to refer to the advantages that we have derived from - section 372 so far. Sir, you know that there was an Act in the Punjab known as the Punjab Land Alienation Act. It was in force right from the year 1900. Most of the non-agriculturist population used to agitate against it saying that it authorized persons of particular communities or castes to purchase lands while at the same time it debarred others from doing so, with the result that in the year 1926-28 when I came to this House I raised this question and in the year 1946-47 when I came here again I raised this question once again for the untouchables of Delhi; and in this way tried to get it rectified by and by. But now our President has with the kindness of hon. Dr. Ambedkar, who is our Minister of Law, repealed that Act all at once. It affected the whole of Punjab and people thought that our rights have increased under the new Constitution and all the discrimination based on birth has been removed. I would like to say if sections 124A and 153A, the Punjab Safety Act and some sections of the Press Emergency Act are removed soon, the result would be that a kind of fear which is existing in the minds of - people would vanish and they would congratulate you saying that the work of Constitution-making, which has been carried out by you, has in fact removed all the black laws from this country. The Government have given an assurance to the Press that they want to bring forth a comprehensive press legislation for them, and for this too it is necessary that all the provisions which

would not be consistent with this section, should become in-effective. The assurances that have been given to Press by our hon. Prime Minister and hon. Minister of Home Affairs are all right, but 35 crores of people of this land too have some hopes from you. No doubt, you should give concessions to the Press, we too are interested in it, but the 35 crores of people of this country too have high hopes that our President will adapt it as soon as possible. I have given notice of an amendment which is mentioned under item No. 41 in List No. 3, in which I have requested that

"Provided that all existing laws enacted by the legislature of the States in regard to matters referred to in sub-clause (2) shall be adapted and made consistent with the provisions of the amended clause within a period of six months from the passing of this Act by the President....."

I did not move it. But I beg to submit, and earnestly hope from the House, that it should be adapted as soon as possible. I know the work of adaptation is not an easy one. Whatever laws we and the legislatures make, we hold only Ministry of Law responsible for their adaptation; and there is no doubt in it that law-making is a very tedious job. I want that so far as this Bill is concerned, the work of its adaptation should take place within six months and also the sooner the other laws are adapted the better would it be. Up till the time we do not do so we do not fulfil our duty which we owe towards the public. You are going to extend the period of section 372 from two to three years. We should have this assurance that this law would be adapted as soon as possible for the good of the country.

Sardar Hukam Singh (Punjab): I consider the whole trouble has arisen because the Government slept enough and did not move as was required of them under article 372. It was anticipated that certain Acts would come in conflict with the spirit of the Constitution and everybody; knew that some adaptation shall have to be made. Because that adaptation was not made all the difficulties arose. To conceal that default on their own part the Government has thrown the whole blame on the judiciary "that they have come to certain decisions which have created difficulties and we cannot move forward". Be it the case of Master Tara Singh under sections 124A and 153A of the Indian Penal Code which were declared ultra vires, or belt Shaila Bala's case of

Sangram under section 4 of the Press (Emergency Powers) Act, and in all other cases as well, the judiciary have only held that the laws as they stood were wide enough to cover any cases of offences which could not be according to the spirit of the Constitution. These laws were so wide that they covered certain things which were allowed and permitted by the Constitution. Their scope was much larger and could include other minor offences as well which were not intended to be punished according to the spirit of the Constitution. So, the whole trouble was that the modification was not made, that adaptation was not resorted to, and the time was, allowed to pass. Therefore, naturally those laws came into conflict with the Constitution. Instead of changing or adapting those laws according to the spirit of the Constitution, as was intended, we are hastening towards this amendment of the Constitution and we are seeking that another year should be given.

I do not agree with Pandit Thakur Das Bhargava when he says that section 124A and others would not be revived. They would be revived. They are laws conceived for the security of the State and as other laws, like the Press (Emergency Powers) Act, they would also be revived. It is a different thing that we have put the word, "reasonable" and the courts shall have to decide whether the limitations imposed in these laws are reasonable restrictions or not. But with the passing of this amending Bill we are restoring all those laws. The courts shall have to decide, there will be litigation, and unless the Government proceeds to adapt these laws and to modify them according to the present amendment, the same difficulties would arise. Therefore, I am not in favour.....

Pandit Thakur das Bhargava: If the Government do not consider an legislation reasonable can it not be adapted or modified.

Sardar Hukam Singh: I am opposing on that ground. Unless the Government moves in the matter they will all be revived. The Government has not done that and has thrown all the blame on the judiciary. I am bitterly opposed to this extension of time by another year and, I would ask the Government to move in the spirit as was intended in the Constitution to adapt these laws and to see how they can fit in with the amended

provisions of the Constitution. That is the remedy and not this one extending the time for modification.

Sardar Hukam Singh: It can be done only when the Government take any step. This is my grievance also. First of all, these will be revived, after that the Government will take some steps in this matter. For two years the Government did nothing in this matter and even now if they keep mum how this matter will be dealt with. The Government will revive them, that is why I oppose this measure.

I am opposing on that ground. Unless the Government moves in the matter they will all be revived. The Government has not done that and has thrown all the blame on the judiciary. I am bitterly opposed to this extension of time by another year and I would ask the Government to move in the spirit as was intended in the Constitution to adapt these laws and to see how they can fit in with the amended provisions of the Constitution. That is the remedy and not this one extending the time for modification.

Shri Kamath: I disagree with my friend Sardar Hukam Singh that Government has gone to sleep. I do not think it is so fast asleep as he Imagines it to be. I do hope that the discussion of this particular clause, clause 12, will have at least one salutary effect today, and that is, I hope it will bring the Law Minister to his feet and that we will have the pleasure of listening to his stentorian voice which has not been heard so far today in the Parliament Chamber. He has been silent and I hope he will reply to this clause at least.

I would only request him to throw light on one or two points—that is all—and give us some information if that be in his possession today. Articles 372 and 392 confer certain powers upon the President to adapt and modify either orders or laws in force. Article 392 is safeguarded by a provision and that is that the President shall have no power to modify or adapt any order or law with a view to removing defects, after the first meeting of Parliament duly constituted under Chapter II of Part V. Here though there is no such provision or no such safeguard, Parliament or the competent Legislature has been empowered to repeal or amend any law which is modified or adapted by the President. So, I suppose in effect there will not be any real harm or disadvantage if the power conferred upon the President by article 372 remains. But what the House would desire to know today is how far this process of adaptation and

modification has proceeded, how many laws, major or minor or both, have been, modified by the President so far and how many are still outstanding, especially major laws, and what have been the reasons or not getting these laws examined to see if any modification or adaptation is necessary.

My hon. friends who preceded me have referred to the need for appointing a Committee of the House, if necessary to examine this particular matter. If the Law Minister and his Ministry and his advisers are busy otherwise, I think it will be desirable for the House to appoint a Committee to examine this whole matter and finish this matter once for all as soon as possible. Let us not drag it on indefinitely as there is a tendency to drag on certain other matters. This matter can be settled easily. There are very competent and renowned lawyers in the House including yourself and other friends. There are barristers and lawyers and advocates of the Supreme Court who are vitally interested in this matter, and they will lend a helping hand very willingly and readily to the Law Minister. The will is perhaps lacking on the part of the Law Minister to take their help in this matter. He was talking of "bee in the bonnet" yesterday. I do not know how many of them are buzzing in the House or outside or in his own Ministry. But I do hope that he will take a very liberal and very reasonable view of this matter, and not decline the help that will be forthcoming from eminent lawyers in the House on this subject.

Article 392 provides that every order made by the President under clause (1) of the article shall be laid before Parliament. I do not know I speak with trepidation on this point—I do not know whether, in spite of the fact that article 372 has no such provision that the President shall lay, whether the copy of the order shall be laid before Parliament, and whether the practice has been that every such -order is laid on the table of the House. If that is being done, then of course this point has no force. But if that is not being done, I would request the Law Minister to apply his mind to this matter and see that every law modified or adapted by the President under article 372 is brought before the House. I know it is published in the Gazette, but every one of us is not so vitally interested in every page of the Gazette, and so some things escape our notice. It will be helpful to all Members—I am not speaking -for myself in this matter—I am sure all will agree in this matter that every law modified or adapted by

the President must come before the House. Even now it is not too late, if not by amendment of the Constitution at this stage but at least bearing it in mind and issuing an order or otherwise, to see that every law modified or adapted under article 372 is brought before the House and a copy there of is laid on the Table of the House so that the provision of the other clause in the Constitution, that is clause (2), in regard to the power vested in the Legislature to amend or to repeal -that law modified or adapted by the President may take effect. Otherwise, if the Legislature is ignorant of the matter, it may not proceed in the matter at all. Therefore, it is very necessary that this also should be borne in mind and all such laws modified or adapted brought before the House. Further, I shall be grateful if the Hon. Law Minister can throw some light as to how many laws have been modified so far and how many laws still remain to be modified, whether most of them have been modified or the majority of them are still outstanding.

Shrimati Durgabai (Madras): While supporting the amendment, which only seeks to extend the term from two to three years, that is, another year, I would like to make a few submissions. I too have got a complaint that the Law Ministry has not moved quickly enough to bring all laws into the spirit of the Constitution. Article 13 says:

"All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

So, we all reasonably expected after the Constitution was adopted and the Fundamental Rights were guaranteed in this Constitution, that those laws which are now in force would be adapted, modified or amended, so as to be brought within the spirit and letter of the Constitution. But the Law Ministry has not moved so quickly as to do that. Sometime ago a Law Revision Commission was also suggested on the floor of this House, but Dr. Ambedkar was not pleased to accept it. The object of that suggestion was to see that such laws, which are inconsistent with the spirit of the Constitution be brought within the spirit of the Constitution. He has not adopted that suggestion and the Law Ministry has not moved quickly so as to do this work, which he assured the House then would be taken up, with the result that the laws which are now in force are so inconsistent. For instance, I would mention for the benefit of the

House the laws relating to inheritance and succession which create inequalities between the share of a daughter and a son. Such laws are still in force. How does Dr. Ambedkar justify that these laws are consistent with the spirit of the Constitution? I do not want to be pessimistic about these matters just as other hon. Members are but another year which we are giving by this amendment will be wasted and not fruitfully utilised in bringing all such laws within the spirit of the Constitution. I only hope that care will be taken to see that the laws now in force which are absolutely inconsistent are brought within the spirit of the Constitution.

Mr. Deputy-Speaker: This does not prevent the Provincial Legislature from adapting or modifying. It only enables the President to do so.

Dr. Deshmukh: He refers to the consequences of giving and extending those powers.

Mr. Deputy-Speaker: It does not stand in the way of the Provincial Legislatures making another law. They can do so.

Mr. Deputy-Speaker: There is no vacuum in that.

Ch. Ranbir Singh (Punjab): I had submitted an amendment for the Omission of this clause, which I did not move in this House. My purpose in submitting that amendment was that the Government have repealed an Act in two years time, which in my opinion should not have been repealed. In this matter I do not agree with Pandit Thakur Das Bhargava when he says that the people will welcome its being repealed. I do not know who are these people about whom he has stated that they would welcome this move. If he means thereby the twenty-five percent of the people residing in the cities of Punjab, then it is all right and the masses of Punjab also want it to be so. But 75 per cent people in Punjab live in the villages and most of them are peasants. Fifty-five to sixty per cent, of the present population of the Punjab consists of peasantry. Moreover, when this Act was repealed the Harijans and the backward classes of the Punjab were included in the agricultural classes. I am not sure whether the agricultural classes will approve of this measure. Fortunately, the Act was repealed at a time, when considering the economic condition, the times were not so bad, otherwise a great trouble might have arisen. At that time the economic condition of the peasants was fairly good and their lands could not be taken possession of by the non-agriculturists.

I will not discuss it at length. What I mean to say is that the way this Law is intended to be repealed is not proper. Had there been any such thing in this law which the hon. Minister did not consider proper, that could have been modified. Moreover, I know that the Bill which we are going to pass today contains such provision as the hon. Minister has already repealed. In Bombay that law is being passed. It has been laid down in the law which has been enacted there that the agriculturists can transfer their lands to agriculturists only. I want to know what was there in the Land Alienation Act?

Pandit Thakur Das Bhargava: That Act mentioned only some particular castes of the agriculturists and not them as a whole.

Ch. Ranbir Singh: I want to tell my hon. friend, that considering the social structure of India, no one can deny the fact that the people of a particular caste take to a particular profession. Is it not a fact that the Mahajans in India are generally businessmen and the people of some particular castes are agriculturists? Today we are making provision in this Bill that the legislation can be enacted for the protection of the interests of the backward classes. For this purpose, discrimination will be made, and the same could have been allowed under this Bill. But as he accepts this Bill, if he accepts that too, even then I think there was no necessity to repeal it, it should have only been modified. I have taken the time of the House only to explain that the power, to modify or repeal is a very vast power. It is not proper to delegate such a vast power to be exercised for a very long period. This power should be vested either in any legislature or in the Courts. In the period of next six months, new State Assemblies and the new Parliament will be elected. This matter should have been left for them and this period should not have been extended. As I have already stated that in a democratic set-up, it is generally believed that howsoever efficient a king may be and however well disposed his intention, yet he is prone to commit mistakes and that explains why Democracy is preferred to any other form of Government, because with the increase of number of persons more and more thought is likely to be given to any matter. This is why I have already stated that by repealing the Act neither justice has been done to the people nor have we acted in accordance with our Constitution.

Mr. Deputy-Speaker: This does not prevent, the Provincial Legislature from adapting or modifying. It only enables the President to do so.

Dr. Deshmukh: He refers to the consequences of giving and extending those powers.

Mr. Deputy-Speaker: It does not stand in the way of the Provincial Legislatures making another law. They can do so.

Ch. Ranbir Singh: Sir, either I could not express myself correctly or you could not understand what I was submitting. I stated that in this way a vacuum is created. Fortunately, the people of Punjab were economically well off, otherwise if conditions were not so, no one knows what would have happened there. All the land in Punjab would have been transferred to those who had nothing to do with agriculture.

Mr. Deputy-Speaker: There is no vacuum in hat.

Ch. Ranbir Singh: Since enacting law will take five or six months, some provision should be made for the, intervening period. I want to submit that those people in Uttar Pradesh who wanted to purchase land during the period when the Zamindari Abolition Act was passed and when it was declared valid, paid very large amounts to the big land lords. I, therefore, say that because of this vacuum much confusion is likely to prevail and I think that you are also not opposed to my view.

The Minister of Law (Dr. Ambedkar): On listening to the debate, I believe the House desires that the powers of adaptation vested in the President should continue and that it is a very useful instrument which has been forged by the Constitution for the purpose of bringing the laws already passed into conformity with the provisions of the Constitution. On that, I do not see any kind of difference of opinion. The only question that has been raised is this: why is it that the President has not been able to make modifications in the laws that appear to be inconsistent with the provisions of the Constitution during the period that has elapsed between now and the passing of the Constitution and why is it that further time is necessary. That seems to be the only point which requires clarification.

It has been stated that the Law Department has been very lax. Some friends have said that it has gone to sleep.

Babu Ramnarayan Singh (Bihar): That is right.

Shri Hussain Imam (Bihar): Dozing.

Dr. Ambedkar: I do not know whether such statements are mere matters of imagination or whether there is any substance behind them—I think all hon. Members will agree that the Law Department is the smallest Department in the Government of India.

Babu Ramnarayan Singh: Why?

Shri T. Husain (Bihar): There is the Department of Parliamentary Affairs.

Dr. Ambedkar: The Department of Parliamentary Affairs has nothing to do with the Law Ministry; it is quite separate from it.

I should like to say that in the Law Ministry there are only three draftsmen. I have pressed on the Finance Ministry the necessity of increasing the number of draftsmen; but I have failed.

Shri Kamath: A Deputy Minister?

Dr. Ambedkar: A Deputy Minister cannot do anything in this matter, because no Minister can do drafting.

The House also will remember the amount of legislation that is being put forth before it ever since the Constitution came into existence. I believe, I am speaking from memory that in each session there are something like 30 or 40 Bills which are presented. Some of them are carried through and some of them are left over. Out of those that are left over, some are converted into Ordinances and the House again sits to convert the Ordinances into laws. Now, it might well be imagined whether it is possible for three draftsmen to draft 40 or 50 Bills for each session, and yet have spare time for doing something else. That is a point which I think the House should consider in judging the work.

Shri P. Y. Deshpande (Madhya Pradesh): Who is responsible for there being only three?

Shrimati Durgabai: May I ask a question? Is it only a question of drafting or changing the substance of the laws?

Dr. Ambedkar: I am coming to that; please do not be in a hurry. Therefore, the normal work of the Law Ministry is so heavy and it is very difficult to cope with it. The adaptation work is something abnormal and something that is new that has been thrown upon the Law Ministry. There has been no expansion of the staff to cope with

this new work. That is one point which I think the House will remember when criticising the Law Ministry for not completing the work of adaptation.

The work of adaptation obviously falls into two categories. There are adaptations which are merely of a formal character. For instance, in the existing laws, the expression used is 'Provincial Government'. Today, the expression that is used for the corresponding purpose is "State Government". These are formal amendments. These amendments have already been carried out and I do not think any part of that work remains. But, the other part of the adaptation work, namely, making substantial modifications in the existing laws in order to bring them into conformity with the provisions of the Constitution is a totally different business from the formal kind of adaptation to which I have referred.

Now, let us consider how it is possible to proceed methodically with regard to making modifications of a substantial character in the existing laws of the country, in order that they may be brought into conformity with the provisions of the Constitution. Obviously, there must be some officer somewhere at the Centre whose duty it would be to, what we call, note on the Acts in the various States and Acts made by the Centre, in order to ascertain for himself whether there is anything in any of the existing laws—whether they are made by the Centre or by the Provinces—which he thinks at the initial stage requires consideration from the point of view of adaptation. After that work is done, the matter may come to the Law Ministry for further examination whether there is any substance in the note made by that particular officer. There again the matter cannot end. Obviously, there must be further correspondence between the Law Ministry and the Law officers in the States in order to find out, whether they agree with the view that certain of their laws are inconsistent with the provisions of the Constitution. If they agree, well and good; action may be taken. But, if they do not agree, then, obviously, the matter has to be referred to the Advocate General of the State and also the Attorney-General of the Government of India, because, in this matter, they are the final advisers of the Government and on whose advice alone the Government could act. The number of Acts in the Provinces are legion: the number of Acts made by the States are equally large. One can well imagine the amount of time which would be necessary in order to go through the process

which I have detailed here before the Central Government could come to the conclusion that a particular law must be declared to be null and void or must be modified in certain parts in order that it may be brought into line with the Constitution and the President may accordingly issue an Order. It is therefore not quite so easy as some people in the House seem to think it is a very elaborate and laborious process.

After all, what is the President in this matter? The President is a law-making authority. His authority is practically- co-extensive with the authority of Parliament. But, in order that it may be done in an expeditious manner, we have vested the President with this particular power. I am sure that so important and so crucial a power of law-making practically could not be exercised in a hurried manner and to make some kind of a change may be absolutely inappropriate and quite unjustified. These are the reasons why it has not been possible for the Law Ministry to complete the task and why the Law Ministry thinks that perhaps one more year may be necessary. It should also be remembered in this connection that the Law Ministry has been now for the last three months practically busy with the work of elections, preparing the two Representation of the People Bills, delimitation of constituencies considering the amendments that are coming to the Order of the President delimiting the constituencies etc; They will also be busy with making rules and all, sorts of other things relating to the elections and these are matters which are now outstanding before the Law Ministry. And especially in view of the limited staff of the Law Ministry, I cannot see how any spare staff can be found or how time can be found to be devoted exclusively for the purposes of carrying out the object laid down in article 372. Therefore, further time is necessary. And that is the reason why this amendment has been moved.

With regard to the point made by my friend Ch. Ranbir Singh relating to the declaration that the Punjab Land Alienation Act is invalid and inconsistent with the provisions of the Constitution, I should like to say this. The point that he raised was that it was wrong on the part of the Government of India to have abrogated the whole of that legislation that has been operating there. Well, this matter also was considered in the Law Ministry, whether it was possible to modify some of the provisions of that Act and leave the rest intact. But I should like to tell the House that with all the

goodwill in the world, so far as that Act was concerned, both the Attorney-General here and, if I remember correctly, the law officers of the Punjab Government agreed that every one of the provisions of that Act was inconsistent with the Constitution. Therefore, we had no remedy left except to declare the whole Act invalid.

Now, I have given the justifications to the House why this amendment is necessary and I hope the House will be satisfied with the explanation that I have given.

Shri Kamath: What about the suggestion to have a Committee of this House to help the Law Ministry?

Dr. Ambedkar: Yes. With regard to that, there again, as I said, a Committee of the House might help at a much later stage. But unless I am in a position to place before any Committee of this House material which has already been examined by somebody, the Committee, in my judgment, could not come to any conclusion. Preliminaries will be necessary and I myself have got an idea in my mind that it may be desirable to appoint a small Committee of some retired High Court judges to examine the matter and report to us as to what are the laws which require consideration from the point of view of article 372.

Shri Kamath: Members of the House?

Dr. Ambedkar: I thought my friend said lawyer Members. Yes, they may be co-opted. After the report is received, they may be taken into confidence and the matter may be decided.

Shrimati Durgabai: I would like to get one point cleared by the hon. Law Minister. We have been told that whenever a law is made by a State Legislature on any item in the Concurrent List, it would come to the Centre automatically for consultation, advice and all that. I would like to know when such a proposed legislation is sent to the Centre, whether the matter is left to the draftsmen to decide whether the law, is inconsistent or not?' What is the procedure?

Dr. Ambedkar: The lady is thoroughly confused, I am sorry to say.

Shrimati Durgabai: That does not matter. The Law Minister may clear up the confusion.

Dr. Ambedkar: Adaptation applies to existing laws. It does not apply to future laws. All the laws that come to us for such consultation are future laws. The article deals with the existing laws which were made when there was no Chapter on Fundamental Rights anywhere in the Government of India Act and which have now become subject to the Fundamental Rights, and therefore inconsistent. So, the inconsistency has to be removed.

Mr. Deputy-Speaker: The point is, with respect to any law that is being now made if it is in the Concurrent List, it is reserved for the President's consent. When such a law comes up, it is left to the draftsmen to find out whether it is inconsistent or not?

Dr. Ambedkar: The draftsman certainly plays his part; but the Law Ministry takes the responsibility and the Cabinet also takes the responsibility.

Shri Husain Imam: May I know what is the position with regard to those Acts that are in the Schedule? Have they been adapted or are they proposed to be adapted? For instance, the Bombay Act LXVII has certain reservations on the lines of the Punjab Land Alienation Act which has been declared ultra vires. Do Government propose to modify this Act? It is item 2 in the Ninth Schedule. The Bombay Tenancy and Agricultural Lands Act, 1948 does not deal with abolition of zamindaries, but says that transfer shall not take place between certain classes.

Dr. Ambedkar: The answer of the House is that these Acts shall be validated by the Constitution without the necessity of adaptation. I am bound by the decision of the House. This point should have been raised yesterday.

Shri Naziruddin Ahmad: I raised that very point yesterday, but you rejected it.

Shri Rajagopalachari: Further questions may be postponed to the interpellation programme, and the present clause may be got through.

Mr. Deputy-Speaker: We have had sufficient discussion.

The question is:

"That clause 12 stand part of the Bill."

The House divided: Ayes, 22: Noes, 9.

AYES

Achint Ram Lala

Ahammedunni,Shri

Alagesan, Shri

Alexander,Shri

Ali,Shri A.H.S.

Alva,Shri Joachim

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Baldev Singh, Sardar

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram, Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash, Dr.

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri Deshbandhu

Gupta, Shri V.J.

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda Shri

Himmatsinghka, Shri

HimmatSinh Ji Major General

Hiray Shri

Husain Shri T.

Hyder Husain Shri

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kamath Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Malviya, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Mishra Shri S.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishthir

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgil, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Pillai, Shri Nadimuthu

Poonacha Shri

Pustake Shri

Rahman Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar,Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Shiv Charan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Siva Dr. M.V. Gangadhara

Sivaprakasam, Shri

Snatak Shri N

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sundarlal Shri

Swaminadhan, Shrimati Ammu

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Birua Shri

Das, Shri Sarangdhar

Hussain Shri Imam

Hukam Singh Sardar

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Seth Shri D.S.

Shah Prof K.T.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House kind by a majority of not less than two-thirds of the Members present and voting.

Clause 12 was added to the Bill.

Clause 13. — (Amendment of article 376)

Mr. Deputy-Speaker: Hon. Members wishing to move their amendments may kindly rise in their seats.

Prof. K. T. Shah: Mine are Nos. 99, 100 and 101 in Supplementary List No. 2. But in No. 101 there is a serious omission or mis-type, which I would like to request you to correct but I will do it when I move it.

Mr. Deputy-Speaker: Even at this stage I would point out to the hon. Member that it appears that he said yesterday that it was a printing mistake; but I am sorry to say that it is his own mistake and not that of the printer. I have the original here.

Prof. K. T. Shah: Surely, it is certainly not my intention to suggest that anyone who is not an Indian should be appointed Chief Justice. It may be my error.

Mr. Deputy-Speaker: The office has put what the hon. Member has tabled. That appears to be a typist's mistake.

Prof. K. T. Shah: I am not blaming any officer at all. There is an omission and that is all I have to say.

Mr. Deputy-Speaker: All right. The word 'not' has to be added after the word 'is' and it will read 'who is not a natural born citizen etc.' He may move it in the modified form:

Prof. K. T. Shah: I beg to move:

- (i) In page 4, line 8, omit "as Chief Justice or".
- (ii) In page 4, lines 8 and 9, omit "Or of the Supreme Court".
- (iii) In page 4, after line 9, add:

"Provided that such Chief-Justice or other Judge of a High Court shall acquire citizenship of India within three months of such appointment; and provided that no one who is not a natural born citizen of India shall be appointed Chief Justice or Judge of the Supreme Court of India."

The motion was adopted.

Prof. S. L. Saksena (Uttar Pradesh): I beg to move:

In page 4, after line 9, add:

"Provided that before such appointment he shall renounce his foreign citizenship and obtain Indian Citizenship."

Shri Kamath: I beg to move:

- (i) In page 4, line 8, omit "as Chief Justice or other".
- (ii) In page 4, lines 8 and 9, omit "or of the Supreme Court".

Mr. Deputy-Speaker: Amendments moved:

- (1) In page 4, line 8, omit "as Chief Justice or".
- (2) In page 4, lines 8 and 9, omit or of the Supreme Court".
- (3) In page 4, after line 9, add:

"Provided that such Chief Justice or other Judge of a High Court shall acquire citizenship of India within three months of such appointment; and provided that no one who is not a natural born citizen of India shall be appointed Chief Justice or Judge of the Supreme Court of India."

(4) In page 4, after line 9, add:

"Provided that before such appointment he shall renounce his foreign citizenship and obtain Indian Citizenship."

(5) In page 4, line 8, omit "as Chief Justice or other".

(6) In page 4, lines 8 and 9, omit "or of the Supreme Court".

Prof. K. T. Shah: The substance of my amendments is necessitated because of the nature of the amendment proposed by Government. The amendment proposed by Government seeks to facilitate the appointment of certain persons who at present are not citizens of India to high judicial offices. An article of the Constitution—either 21 or 217—requires the Judges of the High Courts and of the Supreme Court to be Indian nationals. I understand that there are four persons at present in our judicial service serving as Judges of the High Courts somewhere in India, who are likely to be promoted to higher posts, either in the Supreme Court, to the Chief Justiceship of High Courts, or even the Chief Justiceship of the Supreme Court.

[PANDIT THAKUR DAS BHARGAVA in the Chair]

I do think that it is not desirable that non-Indians should occupy this high position. This is not with a view to emphasise a narrow nationalism, or to exclude people who have otherwise served satisfactorily, merely because of the accident of their birth. I have, therefore, suggested, in one of my amendments, that, if those persons have served satisfactorily, and if they are in the ordinary run eligible for promotion to higher posts in the judiciary, let them be appointed after giving them a chance to acquire Indian citizenship. Article 5 of the Constitution enables them to acquire such citizenship. Though Parliament may not have made any detailed or specific law for the acquisition of citizenship, the principle has been laid down and they might be allowed

three months to become naturalised Indian citizens and as such be qualified. I trust therefore that no charge would be levelled, so far as this particular amendment goes, of a spirit of narrow nationalism, which would bar public servants from higher judicial posts than the one they enjoy at the moment. It is, in my view, stretching it too much to undertake the amendment of a whole Constitution or an article therein for the sake of four persons and that too only for a limited period.

Speaking for myself, I see no objection why we should not confine certain offices only to natural born Indian citizens. In as much however, as this is a very- limited number and for a limited period, I am prepared to say that, provided these people acquire Indian citizenship, there should be no bar to their promotion. If, however, after being offered the facility to acquire Indian citizenship, they do not care to acquire it, and prefer their own citizenship by birth, as being so superior that they would not care to acquire Indian citizenship, then they would bar themselves by their own act by refusing to take the choice we offer them.

I may further add that the choice would not be an eternal, perpetual or lifelong choice for them, because the laws now permit citizenship to be acquired or relinquished, if and when they retire and return to their own native land, and wish to resume their natural citizenship. I would not stipulate, nor the law we might make on citizenship would place any bar in the way of their resuming their natural citizenship. Just as we expect from all such officers an oath of loyalty to the Constitution and the country, I do not see any objection to such persons acquiring Indian citizenship, if they are not born citizens of India, to be qualified for certain posts.

There is only one exception which I would like to make, and that is with regard to the Chief Justice of the Supreme Court of India. That office is, like the office of the President, or the Prime Minister; and should certainly be reserved for Indians, natural born Indians, and not those who have acquired citizenship. A similar provision is there in the U.S.A. so far as the President is concerned. About the Chief Justice there I am not quite sure for the moment. It must be required by our Constitution that no one who is not a citizen of India by birth shall be qualified to be the Chief Justice of India.

Here may I remind the House that our law of citizenship is far more liberal than the law of other countries, in that we regard those people to be natural born citizens of

India who are themselves born in India, or whose parents, or grand-parents, or either of them on either side may be born citizens of India, unless they had in the meantime relinquished their citizenship. With the liberal law that we have adopted, we should say definitely in the Constitution, while making the amendment, that anyone to be appointed Chief Justice of the Supreme Court must be natural born citizen.

I hope I would not be misunderstood in this. We have not yet reached a stage of catholicity, where world citizenship is accepted by all, and any human being is equal to any other human being for any post. I am not advocating any spirit of inequality or discrimination. I am only saying that people who are not born natives of this country may not be familiar with the laws and customs, and with the whole background on which these laws and customs are administered. Speaking for myself, the administration of the personal law of large communities, as given by the foreigners in the early days of the British administration in India has resulted in a distortion, perversion and misunderstanding - of the texts of the Hindu law, which would not have happened had the native of the soil administered it. I therefore, trust that at least with regard to one highest judicial office, namely that of the Chief Justice of the Supreme Court, we must make this reservation, that it should be open only to natural born citizens. As regards the others they may acquire citizenship. But citizenship is a qualification I would insist upon—whether natural or acquired.

Prof. S. L. Saksena: It hurts me very much that this amendment should be made to our Constitution. After all, when we framed our Constitution we were very careful to see that our judiciary is above suspicion and that it is independent and able to interpret the Constitution in the best manner possible. Still we have found the Law Minister accusing the Supreme Court the other day of having wrongly interpreted the purpose of one of the provisions. The Prime Minister also has been saying that the intention of the makers of the Constitution has not been brought out by the interpretation of the Judges of the Supreme Court and of the High Courts. I think this is a very unfair criticism; if the Supreme Court Judges who have given these rulings were foreigners probably there might have been some suspicion that they were not patriotic and therefore did not interpret our laws correctly. I personally feel that if you...

Dr. Ambedkar: I should like to repudiate any such suggestion as my hon. friend is making. We impute no bad motives to the Judges.

Prof. S. L. Saksena: I am glad that he has said it today. The House had on a former occasion protested against his remarks about the Supreme Court. But I feel that if a foreigner were in the seat of the Chief Justice, he himself would feel rather, diffident and would not have the same sturdy independence in interpreting our Constitution as an Indian would have. Therefore, apart from the reasons given by my friend, Prof. Shah, that we should not change the Constitution for the sake of four persons, still even on principle I think that a foreigner sitting in the place of the Chief Justice will not have the independence and courage to give a judgment which will be above suspicion. The Law Minister said that nobody has cast an aspersion on the Judges. I have carefully read the speech of the Prime Minister.....

Mr. Chairman: May I just remind the hon. Member that the point at issue is not what the Law Minister or the Prime Minister has said in some other connection? We are considering this clause and their view is not relevant to its consideration. The only point relevant is whether this clause should be accepted. I would beg of the hon. Member to confine his remarks to this question alone.

Prof. S. L. Saksena: The relevance of my remarks is this. If you put in this clause then a foreigner also becomes entitled to occupy high places and I say that in that position he will not have that sturdy independence which an Indian in that position can have. I am therefore per relevant when I oppose this clause on that ground. I also feel that there is a reason for this fear because, as I said, it has been stated in this House that we are amending the Constitution because the real purpose of the framers has not been brought out by the judgments of the courts. I say, when our own Indian Judges, appointed by the Government, have interpreted it in the manner they have, I think there is no reason to Question their judgment. If we framed our Constitution and put it into a certain form of wording and that wording has been interpreted by the Judges, I think we should accept their judgment. If not, we have not put it in proper words. Therefore, I say that this amendment will take away the independence of the Judges. Otherwise too, it would be a blot on our Constitution that we should have this

provision. I feel it is very easy for a person who wants such a position to renounce his citizenship and acquire Indian citizenship. My amendment says that because that person has served here for so long we do not want to deprive him of anything; let him be there, but let him be there as a citizen of our country so that he may feel, and we may also know, that he loves India as much as any other person. I do not know whether a person who is not prepared to renounce his citizenship should still be made a High Court Judge or a Supreme Court Judge.

I consider this clause should not be adopted. It will be a bad thing to -incorporate it in our Constitution, and to amend the Constitution for the sake of four persons is wholly wrong.

Shri Kamath: Article 376 which this particular clause seeks to amend is one among the temporary and transitional provisions of the Constitution. My amendments to this clause 13 are, the Prime Minister will please note, not a mere question of grammar but they go farther than mere grammar. The Prime Minister is an acknowledged master of English, from grammar to syntax, language and style, and his mastery is acknowledged all over the world; in his writings and speeches he runs the whole gamut of language and style, from ordinary conversational style to the highest flights of rhetoric; he was too modest in saying that he did not know much of English grammar. That apart, these amendments of mine are more than what can be described as commonsense or uncommonsense to which he referred in his previous utterance. Anyway, who am I, a mere common man, to sit in judgment on the commonsense of the Prime Minister? and I would not venture into that field at all. I would only refer to the political or constitutional sense of my amendments, because very few can define what common or uncommonsense is.

The point at issue which you referred to a little while ago is whether these Judges who occupied such offices at the commencement of the Constitution and have been enabled to continue as such under article 376 of the Constitution, can fill that capacity even though they may be non-citizens or non-Indian nationals. The first objection of mine is very fundamental, that is to say, constitutionally fundamental. The Constitution lays down in article 217 and in article 124 that a person shall not be qualified, mark the words, shall not be qualified for appointment as a Judge of the

Supreme Court or of the High Court unless—in both cases—he is a citizen of India. I do not know how the length of this transitional period is computed, but I suppose after the first Parliament is elected and meets under the new Constitution the transitional period will come to a close, but this amendment to article 376, if carried and put into effect, will mean that even after the expiry of this transitional period, such a Judge who has been enabled to hold that office during the temporary and transitional period will continue in that capacity (under this new amendment) after the expiry of that temporary and transitional period. Therefore, it may happen that a non-Indian citizen, a non-Indian national will continue as a Judge or Chief Justice of the High Court indefinitely—there is no time limit prescribed. Last year one of the Acts passed by this Parliament referred to non-Indian dentists all over India. There it was laid down that no dentist could practise anywhere in India unless he takes Indian domicile or Indian nationality. If that was done in the case of such a simple thing as a dentist who pulls out our teeth or fills them, or cleans them, I would suggest that where such a fundamental thing as the judiciary of the Union or the judiciary of the States who handle cases relating to life and property, and such other vital and fundamental matters, is concerned it is incumbent upon Parliament to see that no non-national is allowed to occupy that post and if a non-Indian is kept on occupying that post he should be asked to acquire Indian nationality or Indian citizenship.

The other part of the amendment refers to the Supreme Court which came into being on the commencement of the Constitution. This amendment will permit non-Indians to occupy the office of Judge or Chief Justice of the Supreme Court. The Home Minister or the Law Minister the other day told the House that only four Non-Indian Judges are at present functioning in the High Courts of India. This amendment will permit those Judges to be appointed as Chief Justice or Judge of the Supreme Court. There is no reciprocity at present between India and other parts of the Commonwealth in this regard; that is to say, no Indian can be appointed a Judge either in the United Kingdom or in any other part of the Commonwealth. Formerly, of course, Indians could be appointed to the Judicial Committee of the Privy Council. But that Council is gone now and no Indian can fill the position of a Judge in England or in any other country of the Commonwealth. Strictly, therefore, on the basis of reciprocity, I would

suggest that no non-Indian Judge, unless he has chosen to acquire Indian Citizenship, as suggested by Prof. Shah, should be allowed to continue as Judge of The High Court or Supreme Court or Chief Justice of either.

Last year one of the Acts passed by this Parliament referred to non-India Dentists all over India. There it was laid down that no dentist could practice anywhere in India unless he takes Indian domicile or Indian Nationality. If that was done in the case of such a simple thing as a dentist who pulls out our teeth or fills them, or cleanse them, I would suggest where that where such a fundamental thing as the Judiciary of the union or the Judiciary of the states who handle cases relating to life and property, and such other vital and Fundamental matters is concerned it is incumbent upon parliament to see that no non-national is allowed to occupy that post and if a non-Indian is keen on occupying that post he should be asked to acquire Indian Nationality or Indian citizenship.

As the amended article is before the House, I feel that such a provision will militate against the spirit of the constitution. As remarked by some friends, just as in the case of the President and the Prime Minister, it would be improper for a non-India to occupy the Office, the High office of the Chief Justice of the Supreme Court. The Chief Justice, we are well aware, administer the oath of allegiance to the Constitution to the President when he is elected. How absurd not merely in the Indian eyes but in the eyes of the world—will it look when a non-Indian should do this duty of administering the oath to the President?

Shri Lakshmanan (Travancore-Cochin): The Chief Justice himself has taken the oath of allegiance to the Constitution.

Shri Kamath: When the President takes office, the Chief Justice administers oath to him and if a non-Indian does it, it will look very improper, in my eyes, unless he has acquired Indian citizenship.

Therefore, I would commend my amendments and if the first one is not acceptable at least the second.

Shri Hussain Imam: May I ask a question of the hon. the Law Minister. There is nothing in articles 124 and 217 to say that a non-Indian could not be eligible to be

appointed Chief Justice of either the Supreme Court or of the High Court. The prohibition is only for appointment as Judge. Therefore, I should like the hon. Minister to enlighten the House as to under what article of the Constitution a non-Indian is debarred from being a Chief Justice of either the Supreme Court or of the High Court.

Shri Rajagopalachari: The hon. Member wants to know what prohibition there was which we are trying to remove. Article 217 contains the prohibition against any Judge being a non-citizen. All the Judges would be covered by that provision. That is sought to be removed by a transitory provision.

Mr. Chairman: If a person cannot become a Judge of a High Court how can he become the Chief Justice?

Shri Shiv Charan Lal: Transfer is covered by article 222. Therefore, for transfer it is not necessary that the Judge should be a citizen and it is not necessary to have this amendment.

Dr. Ambedkar: Sir, if it satisfies the House I would like to propose an amendment to clause 13 which would read thus:

In page 4, lines 8 and 9, omit "or of the Supreme Court".

Shri Kamath: That is one of my two amendments that I have moved:

Dr. Ambedkar: Well, I am prepared to accept yours, if you like. I do not think any further reply is necessary from me if the House is satisfied with the deletion of the words "or of the Supreme Court".

Mr. Chairman: I shall now put the amendments to the House Prof. Shah's amendments. The question is:

In page 4, line 8: omit "as Chief Justice or".

The motion was negatived.

Mr. Chairman: The next is seeking to omit the words "or of the Supreme Court". It is the same amendment that Dr. Ambedkar has proposed.

Shri Jawaharlal Nehru: It is exactly the same.

Shri Kamath: But I have moved it and Prof. Shah has also moved it.

Mr. Chairman: The amendment is there and I am bound to put it to the House.

An Hon. Member: It may be withdrawn.

Prof. K. T. Shah: Why should I withdraw it?

Mr. Chairman: The question is:

In page 4, lines 8 and 9, omit "or of the Supreme Court".

The motion was adopted.

Mr. Chairman: The question is in page 4, after line 9, add:

"Provided that such Chief Justice or other Judge of a High Court shall acquire citizenship of India within three months of such appointment; and provided that no one who is not a natural born citizen of India shall, be appointed Chief Justice or Judge of the Supreme Court of India."

The motion was negatived.

Mr. Chairman: Now, Prof. Shibban Lal Saksena's amendment. The question is:

In page 4, after line 9, add:

"Provided that before such appointment he shall renounce his foreign citizenship and obtain Indian Citizenship."

The motion was negatived.

Mr. Chairman: The next one is Shri Kamath's amendment.

Shri Kamath: Sir, I would like to withdraw it.

The amendment was, by leave,
withdrawn.

Mr. Chairman: Then, his second amendment.

Shri Kamath: It is the same which has already been adopted

Mr. Chairman: The question is: "That clause 13, as amended stand part of the Bill."

The House divided: Ayes, 234: Noes. 12.

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali,Shri A.H.S.

Alva,Shri Joachim

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Baldev Singh Sardar

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chttiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal, Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash, Dr.

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Fiaznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri Deshbandhu

Gupta Shri V.J.

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda Shri

Himmat SingKa

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram

Jain Shri A.P.

Jain Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kanaka Shri

Kamath Shri

Kapoor Shri J.R.

Karmakar Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshaman Shri

Lal Singh Thakur

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Malviya Pandit

Mallaya Shri

Massey Shri

Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Mishra Shri S.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Shri

Mudgil, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir Giani

Musafir Shri P.T.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal Master

Nathwani Shri

Nausherali Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha Shri

Pustake Shri

Rahman Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shakaraiyya

Shara Pandit Balkrishna

Sharma Pandit Krishnachandra

Sharma Shri K.C.

Shivcharan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri S.N.

Sinha Shri Satyanarayan

Siva Dr. M.V. Gangadhara

Sivaprakasam, Shri

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sundarlal Shri

Swaminadhan, Shrimati Ammu

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Birua Shri

Das, Shri Sarangdhara

Hukam Singh Sardar

Hussain Shri Imam

Man, Sardar B.S.

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Saksena Prof. S.L.

Seth Shri D.S.

Shah Prof K.T.

Sinha Shri M.P.

The motion was adopted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 13, as amended, was added to the Bill.

Mr. Deputy-Speaker: Then clause 1, the Long title and the Enacting Formula remain. I shall put all of them together.

Shri Naziruddin Ahmad: There is a small amendment of mine about the deletion of a full stop. It appears under the heading which is the long Title; and it is well known that headings do not need any fullstop. This can be taken care of by the draftsman.

Mr. Deputy-Speaker: Yes, certainly Parliament will never stop on account of that.

The question is:

“That clause 1, the Title and the enacting formula stand part of the Bill.”

. The House divided; Ayes, 234: Noes, 12.

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva,Shri Joachim

Ambedkar,Dr.

Amolakh Chand,Shri

Ansari,Shri

Arya,Shri B.S.

Asawa Shri

Baldev Singh Sardar

Balmiki Shri

Barman Shri

Beni Singh Shri

Bhagat Shri B.R.

Bhagwant,Roy,Kaka

Bharati Shri

Bhargava Pandit M.B.

Bharagava Pandit Thakur Das

Bhatkar Shri

Bhatt Shri

Bhattacharya Prof K.K.

Biyani Shri

Borooah Shri

Brajeshwar Prasad Shri

Buragohain, Shri

Chaliha, Shri

Chandrika Ram Shri

Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chttiar, Shri Ramalingam

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai, Kanhaiyalal, Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash, Dr.

Diwakar, Shri

Dixit, Shrimati

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Fiaznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Goenka Shri

Gopaldaswami Shri

Gopinath Singh Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri Deshbandhu

Gupta Shri V.J.

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda Shri

Himmat SingKa

HimmatSinh Ji Major General

Hiray Shri

Hussein Shri

Hyder Hussein Shri

Iyunni Shri

Jagjivan Ram

Jain Shri A.P.

Jain Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Joseph Shri A.

Kala Venkatrao, Shri
Kaliyannan M. Shri
Kanaka Shri
Kamath Shri
Kapoor Shri J.R.
Karmakar Shri
Keskar Dr.
Khaparde Shri
Krishna Singh Thakur
Krishnamachari Shri T.T.
Krishnanad Rai, Shri
Kumbhar, Shri
Kunhiraman, Shri
Lakshaman Shri
Lal Singh Thakur
Mahtab Shri
Mahtha Shri S.N.
Maitra, Pandit
Malviya Pandit
Mallaya Shri
Massey Shri
Menon Shri Damodara Shri

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Mishra Shri S.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Shri

Mudgil, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir Giani

Musafir Shri P.T.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal Master

Nathwani Shri

Nausherali Syed

Nehru Shrimati Uma
Nehru Shri Jawahar Lal
Nijalingappa Shri
Obaidullah, Shri
Pande Dr. C.D.
Pannalal Bansilal Shri
Pani Shri B.K.
Pant Shri D.D.
Parmar Dr
Pattabhi Dr.
Poonacha Shri
Pustake Shri
Rahman Shri M.H.
Raj Bahadur Shri
Raj Kanwar Lala
Rajagopalchari, Shri
Ramachar,Shri
Ramaswamy, Shri Arigay
Ramaswamy Shri Puli
Ramdhani Das Shri
Ramaiah Shri V.
Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Shiva

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shakaraiyya

Shara Pandit Balkrishna

Sharma PanditKrishnachandra

Sharma Shri K.C.

Shivcharan lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri S.N.

Sinha Shri Satyanarayan

Siva Dr. M.V. Gangadhara

Sivaprakasam, Shri

Snatak Shri

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Sundarlal Shri

Swaminadhan, Shrimati Ammu

Tewari, Shri R.S.

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shri

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Birua Shri

Das, Shri Sarangdhara

Hukam Singh Sardar

Hussain Shri Imam

Man, Sardar B.S.

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Ramnarayan Shri Babu

Saksena Prof. S.L.

Seth Shri D.S.

Shah Prof K.T.

Sinha Shri M.P.

The motion was adopted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

Clause 1, the Title and the Enacting Formula were added to the Bill.

Mr. Deputy-Speaker: The clause by clause consideration; that is, the second reading is over.....

Shri Kamath: We have received amendments by Dr. Ambedkar today.

Mr. Deputy-Speaker: They will be considered at the third reading stage which will start after the House reassembles at 3-30 P.M. today.

The House then adjourned till Half Past Three of the Clock.

The House re-assembled at Half Past Three of the Clock.

[MR. SPEAKER in the Chair]

Shri Jawaharlal Nehru: I beg to move:

"That the Bill, as amended, be passed".

There are a few minor consequential amendments which my colleague the Law Minister will move.

Mr. Speaker: Motion moved:

"That the Bill, as amended, be passed".

Clause 5— (Insertion of new article 31B)

Dr. Ambedkar: I beg to move: In page 2,

(i) Line 35, after "Acts" insert "and Regulations",

(ii) Line 36, after "Acts" insert "and Regulations",

(iii) Line 39, after "Act" insert "Regulation",

(iv) Line 42, after "Acts" insert "and Regulations".

Mr. Speaker: I think I shall put all the amendments together. Amendments moved:

In page 2,

The questions are: In page 2,

(i) Line 35, after "Acts" insert "and Regulations",

(ii) Line 36, after "Acts" insert "and Regulations",

(iii) Line 39, after "Act" insert ", Regulation",

(iv) Line 42, after "Acts" insert "and Regulations".

Dr. S. P. Mookerjee: This, as the Prime Minister has said, is a consequential change. Apparently, it refers to the Hyderabad Regulations which the House incorporated on an amendment moved on the floor of the House. What about the last part of the clause? It says:

“.....each of the said Acts (and Regulations, if this is accepted) shall, subject to the power of any competent legislature to repeal or amend it, continue in force.”

So far as these Regulations are concerned, they cannot be repealed or amended by any Legislature when there is no Legislature in Hyderabad. There also, it should be altered by saying 'legislature or other competent authority'.

Dr. Ambedkar: Whatever legislature there is, it will have the right to amend.

Mr. Speaker: There is confusion about the meaning of the word 'legislature'. A legislature is conceived as consisting of a Chamber with elected representatives and so on. I believe the legislature here means, the Rajpramukh who is himself the legislature. That I think is the constitutional meaning.

Dr. Ambedkar: Yes.

Mr. Speaker: If that is so, there is no difficulty.

The questions is:

In page 2,

(i) Line 35, after "Acts" insert "and Regulations",

(ii) Line 36, after "Acts" insert "and Regulations",

- (iii) Line 39, after "Act" insert ", Regulation",
 (iv) Line 42, after "Acts" insert "and Regulations",
 The motion was adopted.

Shri Kamath: Is it not necessary to put this clause, as amended, to the House?

Mr. Speaker: Is it really necessary? The position will be like this. "That the Bill, as amended, be passed" will be the motion which I am going to put to the House. There is no particular clause again to be put to the House. The hon. Member will note that clause 5 was voted upon and the House has assented to it. Votes were taken separately on that clause. This amendment comes in as a consequential amendment.

Dr. Ambedkar: Under rule 94.

Dr. S. P. Mookerjee: It is for you to consider this with regard to clauses, you have ruled deliberately for the sake of safety that every clause should be put separately and the votes of two thirds of the Members present and voting should be recorded. Now, clause 5 has been passed in accordance with that direction. Now, we are amending clause 5. It is not desirable and safe that clause 5. Is it not desirable and safe that clause 5, as amended should be put separately and votes recorded?

Mr. Speaker: That would be an irregular procedure. That clause, in the clause by clause consideration at the second reading, has been already accepted by the House. The proposition before the House is that the entire Bill, as amended be passed. The amendment is merely a consequential or verbal amendment, which is permissible at this stage. No substantial amendment is permissible at this stage.

Shri Kamath: Consequential upon what?

Mr. Speaker: Consequential upon the House accepting an amendment to a subsequent clause. After clause 5 was passed, the House accepted to introduce certain Regulations. So far as clause 5 is concerned, it does not make any substantial change. The substantial change was made in the other clause, clause 14, I think. That change having been made, it becomes necessary to say "Acts and Regulations" instead of merely saying 'Acts'. This is entirely a verbal and consequential amendment. I believe

I am clear. It does not require to be put again. Otherwise, in the third reading, I shall be putting again a clause to the House. That is an anomalous procedure

Shri Kamath: Clause 14 came after clause 5. Clause 14 was passed after clause 5 was passed. If this is consequential upon clause 14 which was passed subsequent to clause 5, is it not necessary for this to be adopted as amended?

Mr. Speaker: No; not necessary now. There is no amendment of substance so far as that clause is concerned. It is only bringing it in line with the other clause.

Dr. S. P. Mookerjee: In accordance with rule 94, Dr. Ambedkar's motion really should have been moved before the Prime Minister moved that the Bill, as amended, be passed. Rule 94 says:

“(1) When a motion that a Bill be taken into consideration has been carried and no amendment of the Bill is made, the member incharge may at once move that the Bill be passed.

(2) If any amendment of the Bill is made, any member may object to any motion...”

Mr. Speaker: I may tell the hon. Member the scheme of this rule. The scheme of this rule is that you should not take up the third reading immediately in cases where some amendments are made. The House has to be given some time to consider the amendments. But, it is for the speaker to waive that rule. I believe, before this motion was made, a request was made to the Deputy-Speaker by the hon. Prime Minister saying that he may be permitted to move the third reading at this stage. That is what he did lest some Members raise an objection. The hon. Member may read sub-rule (4) of that rule, which says:

"To such a motion no amendment may be moved which is not either formal, verbal or consequential—the matter is clear—upon an amendment made after the Bill was taken into consideration".

The motion comes first. The House is seized of it. Then only, the amendment comes.

I was just thinking of the programme. I think according to the agreement, I shall have to call upon the Prime Minister to reply at how long is the Prime Minister likely to take?

Shri Jawaharlal Nehru: That depends upon what is said previously. I hope not to take too much of the time Of the House. I take it that The House is supposed to finish its business if possible by half past six.

Mr. Speaker: We have given two Hours. If the House chooses to sit till 6-30 P.M. I should have no objection.

Shri Jawaharlal Nehru: If I may suggest, the general debate may go on for two hours.

Mr. Speaker: It is now 20 minutes to four. That comes up to a quarter to six.

Shri Jawaharlal Nehru: Then if I have anything to say, I shall say. Thereafter, the motion may be put.

Mr. Speaker: I shall reserve half an Hour or so.

The Minister of State for Parliamentary Affairs (Shri Satya Narayan Sinha)
: Two hours may be given for discussion and voting will have to be after six o'clock.

Mr. Speaker: It is now 20 minutes to four. They get nearly three hours. Our agreement has been two hours. We are exceeding the agreement by 40 minutes.

Shri Satya Narayan Sinha: You were pleased to say that that 7 hours would be allotted today. That can only be by giving three hours in the afternoon.

Mr. Speaker: The hon. Minister is only supporting my argument. Let us not be strict about the hours. I said 7 hours. Let it be eight hours. It does not matter After all, Members who wish to speak, let them have the pleasure of speaking. So, I shall call upon the hon. Prime Minister at six o'clock to speak, and we proceed up to six o'clock. There should be a strict time-limit because a large number of Members wish to speak and we should allow just fifteen minutes to each and not more than that.

Prof. S. L. Saksena: This Bill is going to be the first amendment of the Constitution and it will be law after three hours. I am very sorry that the first amendment of our Constitution should be a retrograde measure.

An Hon. Member: Question.

Mr. Speaker: Order, order. Let him proceed.

Prof. S. L. Saksena: The first amendment of the American Constitution extended the limits of freedom and ours is going to restrict them. Now, after having debated each clause we have to consider whether we should support the Bill as a whole or reject it. I

have supported three of its clause, those relating to the Zamindari abolition and have opposed the remaining ones. It is sometimes difficult to decide, but on the balance, I think there was no occasion for an amendment of the constitution at this stage. Zamindari abolition, no doubt, is a thing to which country and this House is committed. But I do not think that Zamindari abolition acts have been invalidated. In our state we have passed a very comprehensive measure for the abolition of Zamindari which, though challenged in the High Court, was upheld by the High Court. Of the acts mentioned in the schedule, only one has been rejected by the High Court---the Bihar Act and on that the Supreme Court has not yet pronounced its verdict. If the Supreme Court has upheld the decision of the Patna High Court, there would have been occasion to bring forward this amendment. But that is not so. The Supreme Court has not yet heard the appeal. Besides, I do not agree that on every adverse judgement of the High Court, the Constitution should be amended. I therefore think that we have taken up this amendment of the Constitution in undue haste and therefore I am going to oppose the third reading of this Bill.

The Prime Minister in his speech said that there were great difficulties and these had compelled him to bring forward this measure. But he did not take the House and the country into his confidence and tell them what these difficulties were that had compelled him to bring forward this constitution (Amendment) Bill and to curtail the Fundamental Right of Freedom of speech and expression. The Prime Minister told that we should not treat the Constitution as sacrosanct. I agree with him and I think that the Constitution should be changed when there is need for it. But in the very next breath he said that he is not really changing the Constitution, but only bringing out explicitly what is implicit in the Constitution. That is something that I cannot follow. After all we all participated in the passing of the Constitution and we did it after close deliberation of three years. Many eminent lawyers like Dr. Ambedkar were there and they drafted it and I do not think they could have been guilty of wrong phraseology or of not being able to express what was intended to be expressed. I think they expressed themselves quite correctly. And I also feel that the Supreme Court has interpreted those expressions in the correct manner. Therefore, it is not what was implicit in the Constitution that is now being brought out, but something that is quite different.

Views have changed and therefore I think this change has been brought forward in the Constitution. Knowing the Prime Minister as I do, I fear that the reactionaries in his Cabinet have bargained with the Prime Minister. He must have wanted only the Zamindari abolition amendments. But probably they were agreed to by his Cabinet colleagues provided that -these curbs on the freedom of expression were included along with them in the Bill. Throughout his speech he was apologetic for amending article 19(2) and article 15 as well as the other articles. He has tried to say that he does not mean what is being read into these amendments; but the law courts will not take his meaning into consideration. They will consider the letter of the law and therefore, though he may mean well, I am sorry to say, they will interpret the law against the freedom of the people. I -do not like his attempt to create a sort of antagonism between the Supreme Court and the "will of the community". The Prime Minister says that the will of the community must be supreme. I agree. But is not the Supreme Court there to interpret "the will of the community" as embodied in the Statutes and the laws of the country? After all, the Judges of the Supreme Court have been appointed by you. You choose the very best persons in the country and when they interpret the law, they interpret it according to canons which are recognised all the world over to be correct. And when they interpret the law, I think we should abide by their interpretation.

If you say that the interpretation by the Supreme Court of the Constitution which you framed as embodying the "will of the community" as represented by you at that time is something different from the "will of the community" as you now think you had then intended it, then I think you are doing injustice to your own Supreme Court. The will of the community, you can say, has changed. You may say that when the Constitution was framed, those who represented the will of the community thought in one way and now they feel differently. But when you say that you had intended the Constitution to mean what you now say was your meaning and not what the Supreme Court has interpreted your words to mean, then you are telling something which is untrue, and no one can believe you. Besides, you were not the only maker of the Constitution. When the constitution makers themselves differ, your case becomes extremely weak. So far as I remember Acharya Kripalani was then the President of the

Fundamental Rights Committee and he was also the then President of the Congress. But he has come forward in this House to say that this amending Bill does not represent the "will of the community" and that the constitution correctly represents the "will of the Fundamental Rights Committee" over which he had the honour to preside and whose recommendations in this regard were accepted by the Constituent Assembly, and which therefore must be accepted as representing the "will of the community" at that time. The Prime Minister's case is therefore very weak. But the Prime Minister may say that the will of the community is now different. The best way even to determine that was to wait till the new elections. We could also hold a referendum on the clauses in this Bill. If that is done, I am definite that the whole Bill would have been thrown out. The whole Press has unanimously condemned the amendment of article 19(2) and I am sure the whole country too would have given the same verdict. You have changed your ideas and so you say that the "will of the community" is what you say now. This is not correct. I say the 'will of the community' has not been judged after the last election. The best thing would have been to wait for the new elections and then to see whether the country wishes to change the constitution as you have suggested in your amending Bill. Then, another important argument of the Prime Minister and in fact his main argument in support of his Bill was that this was Only an enabling Bill and was intended only to widen the powers of Parliament to make laws. I think it is not correct. The Bill gives powers not only to Parliament to make laws but to each single legislature in the country to make laws affecting this Fundamental Rights of the people. My amendments to confine this power to Parliament were rejected by the House. Besides, as soon as these, amendments are passed, hundreds of very obnoxious laws become resurrected. They become laws by the backdoor without even coming before this Parliament. This Bill says that even those laws which became void under the original article 19 will be "considered not to have become void". This shows that this Bill is also an enacting Bill and is not merely an enabling Bill. By passing this measure you will have enacted all those highly obnoxious laws like section 124A of the Indian Penal Code which were dead according to the old law. I was a Member of the Constituent Assembly as well as of the Congress Party when this article 19 was considered and I clearly

remember that the House was jubilant when that obnoxious word "sedition" was deleted from the original draft. Section 124A, I.P.C., under which the Father of the Nation, Mahatma Gandhi and Lokamanya Tilak were each convicted to six years on different occasions—that section is being resurrected and it is something that is shameful for all of us to resurrect all such obnoxious laws by the backdoor. The Prime Minister said that he has no intention to impose any restriction on the Press. He said he has no intention to stop criticisms of foreign countries. But another Prime Minister may come who will like to use all those powers. This Bill is, therefore, very dangerous. In fact, the Prime Minister gave up his whole case when he said that he does not want to use these powers. He said, "whatever changes we may make in the Constitution to-day, it is highly unlikely that the Government or Parliament will take advantage of them by passing laws to that effect unless a very severe crisis arises". Therefore, these amendments are not of any use. There is no urgency about them. Why could we not have waited for the new Parliament to be elected. He said he wants to hand over to the new Parliament something which will make their work smooth. The new Parliament will not be composed of children and they can amend the Constitution as they like. They do not want this sort of help from the Prime Minister today. I therefore think there is some fear in the mind of the Prime Minister—I know him very well—he seldom has fear and I am therefore surprised at this. Does he feel that in the new Parliament he will not have a two-thirds majority? I am surprised. I am therefore very sorry that he should have hurriedly brought these amendments of the Constitution at this stage. It is quite possible that there will be some effect on this Government on account of the volume of opposition to this Bill which has been seen in the Press. But what about other Governments which may follow? The Constitution as such has been amended for all time and any dictator or tyrant may come and take advantage of the changes. I therefore think that it has been a wrong thing and it is something for which we shall repent.

It has also been argued that power taken in this Bill will be used only in emergencies. But does not the Constitution already provide for emergencies? In fact, when we made the Constitution we took care and provided for every contingency. The Prime Minister mentioned the Telengana area. But he can declare that area as disturbed area, if

conditions there are really so bad. Why then for that one district, you should amend the whole Constitution. I think this is not fair at all. Mahatma Gandhi the great Father of our Nation, had taught us civil disobedience and satyagraha and here we are passing a Bill that every law made by Parliament will be sacrosanct, howsoever unjust it may be. If he were alive, he would probably be the first person to be put under jail under this new Act. I am very sorry that this Bill is being passed by this House. We cannot help it but certainly we can record our protest against the enactment of this measure and therefore I shall oppose the Bill.

Seth Govind Das (Madhya Pradesh): I support this Bill for the very reasons for which my friend Prof. Shibban Lal Saxena has opposed it. And when I support it, I do so fully aware of my responsibilities. If we look to what is being said in opposition to this Bill since its introduction in Parliament, it becomes clear that this is due to three or four reasons. The first thing said against it is that we are bringing so soon a change in the Constitution which we had approved only a few months before. I want to say that this was quite natural. We had adopted a new Constitution. What results would follow was not before us then. During the course of these few months we saw what things were necessary to be changed therein. Since we were adopting such a big Constitution for our country, there should be no reason to oppose this Bill if we have been obliged to amend it so soon.

Then, we also see how rapidly changes are going on in the world. What it was yesterday is not so today, what it was the day before yesterday was not so yesterday and what is today will not be so tomorrow. Therefore, if in this changing world, where changes at present are occurring very rapidly, we have been obliged to change our Constitution, there should be no surprise for it.

My friend Prof. Shibban Lal Saxena has called this Bill retrograde. I have to say that if we want to do constructive work in our country—after achievement of freedom and framing our Constitution our greatest need is of construction—we would require a strong and organised Government. If we keep that in mind we would realize that this Bill is not a retrograde but a progressive one. If you will only have an eye upon what is happening in the country, you will find that there has been a confusion in the

country from one end to the other following our newly-gained freedom and newly-framed Constitution. Nowhere is seen a stability—either in ideas or among parties or in our future programmes. If we want to do constructive work in our country under the conditions obtaining and the trend of time as it is, a stability is required and that stability is to a great extent achieved by this Bill.

What we hear everywhere reflects three things—scepticism, suspicion and fear. Just now my friend Prof. Shibban Lal Saxena said that those who were bringing forward this Bill have a lurking fear in their minds. I want to tell him that the fear is lurking in the minds of those who are opposing this Bill. There is no fear, no suspicion, no scepticism in the minds of its sponsors. Scepticism, suspicion and fear are in the minds of those who are opposing the Bill. I do not understand why we should be so sceptic and so suspicious of our Government and why should we have fear from our own Government. The thing is that we have come to look upon our own Government with that demur which we have gathered during our continuous slavery of centuries and the English domination of nearly 175 years. This tendency does in no way help us in our progress or in our constructive work. This is not going to be an aid in the formation of a strong Government as is needed in our country.

Now, if we look to the various things dealt with in this Bill we find, firstly, that something has been said for the backward classes. Everything can have both good and bad aspects. We shall be able to go ahead a great deal if confiding in the assurances given to us by hon. our Prime Minister we try to work into action this clause without any scepticism, without any suspicion and without any fear. Fears have been expressed here, and they have been expressed by several of those belonging to upper classes, that the State Governments would not properly observe it and would misuse it. After all, the State Governments are also your own Governments. Why should you have such scepticism, suspicion and fear from the State Governments? I am sure our State Governments would make proper use of this clause.

The other clause has been incorporated in view of what is happening in the country at present. Just see what type of newspapers, magazines and pamphlets are being published from a number of places and what is said therein. I am really surprised why our State and Central Governments do not take any action against such papers,

magazines and pamphlets so that the moral standards of our country may not at least be lowered down.

Making of men and of institutions is a hazardous task. Building takes time, breaking up is done in no time. Creation takes time, destruction is done in no time. By spending time and making sacrifices we made men and institutions. It would not be in the good of the country to break up and destroy what has been created under such hardships. Therefore, I contend that the second clause of this Bill is also necessary.

Now I take the third clause relating to Zamindari abolition. We have seen what difficulties cropped up before us in this connection. Abolition of Zamindari is only the first step so far as the question of our land reorganisation is concerned. When difficulties appear to us even at the first stage who knows what and how many difficulties would come up at the second stage? Indeed, Zamindari Abolition should have taken place much earlier. If it has taken and is taking so much time, some effective steps must be taken. I myself belong to the class called the Zamindar class and want to tell my Zamindar brethren that Zamindari for them has become a golden gun by which they themselves are being fired upon. No good is going to accrue to them by this Zamindari. Do people think that only the cultivators are in misery? I say whatever may be the miseries of the cultivators, those of Zamindars are much more. I ask the Zamindars: can anybody attain real happiness by resorting to intrigues, by sucking the blood of some people and by usurping their honest earning for their own ends? Can real happiness be achieved only by accumulating wealth? I want to tell my Zamindar friends that it would have been better had they not put in the impediments that they did in the way of the abolition of Zamindari. They went to the High Courts and now they want to go to the Supreme Court. I have heard that they are endeavouring to get it declared ultra vires even after the adoption of this Bill. No benefit is going to come out of this impediments that they did in the way of the abolition of Zamindari. I would utilize this occasion to tell them that if any such activity is resorted to buy them, we shall again bring forth a new amendment to amend this Bill during the next session of Parliament which is going to be held in August. In no case are we going to let Zamindari survive in this country. Whatever impediments would be brought in our way in this respect will be dealt with full force and absolute

determination and before the commencement of the next elections there would not exist here anything like Zamindari. This is the third clause embodied in the Bill. I have so much emphasized it for the fact that I come from the same class that has been so much oppressing it.

So, if we pursue this Bill carefully it will be impressed upon us that the main clauses in it are these three about which I have just spoken. All the three clauses were absolutely essential. One thing more and I shall take my seat. My friend Shri Shibban Lal Saxena talked of referendum. Well, I am neither a foreteller, nor an astrologer, nor do I know the art of geomancy, still one thing I want to foretell, that the matter of referendum will be made clear in the next elections. The party which is now present here in Parliament will emerge successful and come here again in the same strength after the next elections and he will then realise that we got a sort of referendum in support of the Bill we have passed because the return of the party implies the Bill getting full support. Therefore, I foretell that the referendum he talked of will be had in five or six months' time.

With all my heart, with all the force at my command, I support the Bill.

Shri Gautam.: My friend Prof. Shibban Lal Saxena has just made his speech opposing the whole Bill, or say the entire decisions that we have taken in the course of the last so many days. His argument is that there was no hurry and necessity of all this. I would like to ask him whether he is in favour of abolishing the Zamindari or not? If he is in favour, I ask him whether any difficulties have arisen or not in the period between now and the time when the Constitution was framed? And if they have arisen, what remedies does he propose for them? Another strange thing which he told is that the will of the community has changed. I do not know what he meant by this. But one thing is clear that when the Constitution was framed and even before that it was the definite desire and intention of the Constituent Assembly to abolish the Zamindari system in the country and that we were prepared to make any provision in the Constitution to achieve that end. We saw that the clause in the Constitution in respect of property provided as to how property could be acquired and also that the

laws enacted in connection with the acquiring of properties, could be challenged in the courts. But then many a member expressed the fear that if the right of taking the question of the abolition of Zamindari to the courts is given to the Zamindars it would mean much delay in abolishing the Zamindari System. Therefore, even at that time it was clearly said and provided in Article 31 that the laws that will be framed to end Zamindari system cannot be challenged in the courts. But we found that the language used by our scholars at that time was not enough and it led to a number of difficulties. Then it was felt that it should be amended in such a way that our desire and our decision to abolish Zamindari and achieve all other things we wanted, must be carried out if they are being delayed or challenged on account of any inaccuracies of language it should better be amended. So, a major part of this amendment to Article 31 expresses this desire, and is in accordance with the same desire and decision which was taken at the time of framing the Constitution. It is not anything new. It is only to try to do away with certain difficulties that have arisen in this period. But I wanted to go a step further even at that time and still I feel we must go a little further. This method of amending the Constitution whenever a problem presents itself does not take us any far. Such a procedure leads to difficulties and at the same time seems to be improper. I do not think it is proper to validate those eleven or twelve Acts that have been held ultra vires by certain High Courts, or are still pending with them, without previously considering them clause by clause. Amending the Constitution in such a way does not seem proper to me because these laws have not been thoroughly examined by us. Another point is that the portion which we wanted to amend in these laws was one relating to Article 31. But their legal and certain other aspects are not concerned with this clause. If we validate them also and do not give the right to challenge them in the courts it would amount to our going farther than its very intentions. Hence, I think, foresightedness lies only in our amending the Constitution in such a way that we might solve all difficulties arising in future and thus carry out all our intentions and plans without any obstruction.

Only the other day, our Prime Minister said, that he wants to build a classless society. But I want to ask whether Article 31, in respect of which we have already been faced with many difficulties in such a small period, would enable us to reach our goal with

its present form? Therefore, instead of making amendments off and on or amending the Constitution whenever a difficulty arises, I think the better course would be to amend it once for all so that there may not be any necessity of revising or improving upon it in future. I submit that I was of this view at the time when the Constitution was framed and I still hold the same opinion that the provision in it to acquire properties, whether landed or otherwise, that is, to acquire any property in the national interest should not be made justiciable. There are not two opinions with regard to compensation. Anybody who says that compensation should not be given is wrong. We find that what is given in the Constitution is that compensation will be paid for acquiring any property. The Constitution is very clear on this matter but the trouble arises on the question whether the law that would be framed in regard to compensation should be made justiciable or not and whether it can be brought to the courts for decision or not? Therefore, I think it should be amended once for all in such a way that it may not be necessary to amend it every time even when any small problem arises. If payment of compensation for acquiring property is not made justiciable, all difficulties and problems will be solved. If we choose to proceed further amidst difficulties, that we can see ahead, the result will be more difficulties and still more hardships. The will of the people may require something more and it is likely that the Parliament may or may not be able to meet the demand to that extent. And then difficulties may arise in the courts resulting in prolonged delay of the reforms and after that delay, the real thing to be solved might get lost and which—may— create further troubles. Therefore, I would once again submit that may it take a long time just at present but this Article 31 should be amended at the earliest opportunity in such a way that all difficulties likely to arise in future, may be done away with.

Then, about other amendments, I must say that I am not one of those who argue that they take us back or they curtail our liberty. Obviously, rights entail certain duties also. The rights of a person end where the rights of the other begin, and when there is a conflict between the rights of one person and those of the other, there can be no full rights for anybody. The apprehension and fear, which is being shown with regard to the amendment of Article 19(2) and which is also being emphasized by the Press, is that possibly the various States might enact such laws as may curtail their rights. But I

submit they would make only such laws which do not go against the laws made by us or say by the Parliament. Therefore, I think the solution of the problem is that a law should be made by the Parliament which may give enough liberty to the Press and the individual as well so that all these things that have been provided in Article 19(2) may be safeguarded, and after that the States may not enact any legislation which might go against that law, with the result that all our fears regarding this matter may disappear. I do not think our States would make such laws as may curtail our liberty. After all there are also the same people who fought for the freedom of the country. It is improper to have doubts about them. Therefore, we should not look upon Article 19(2) with the same feeling of apprehension and fear with which we are looking at it at present.

With these words, I give my wholehearted support to this amendment and hope that the House will also accept it:

Shri Mirza (Hyderabad): I rise to speak to a tired House and I will be brief. Prof. Saksena and Dr. Mookerjee both have been insisting on the view that the amendment of the Constitution is not a proper thing. Dr. Mookerjee went so far as to say that it is a tyranny of majority and a scrap of paper and words like that. He praised the American Constitution and also had a great deal to say about the American Press. Just because the American Constitution was not changed, or the method of change was different from what we have adopted, he desired that we should do likewise.

While he was speaking of the American Constitution the fervour of his oratory was so great and the current was so strong that it actually lifted a rock and placed it so as to act as a dam to its own current. He admitted that after two years of the birth of the American Constitution, it was amended and amended vitally. I do not see why our Constitution should not be amended when we had made specific provision therein to make such a change.

That matter was settled. We are now in the third reading of the Bill; but I would like to say a few things about remarks that came from him about the freedom of the American Press. He went around to the library and hunted for volumes and quoted from learned Judges of sacred memory and it seemed to us that the only place where

there is freedom of expression and freedom of speech is that land of promise! But, I confess that I cannot agree and I will not admit that freedom of Press even in this country is anything less than what is in the United States of America. I hope he knows the activities of the Civil Liberties Union in America; I hope he knows the commentaries that are made by that organisation; I hope that he also knows the checks and the difficulties in the way of any activity which has any communist tinge. I challenge him to get some of the matters that are published in the Press of India, published in any paper in the United States, even in the advertisement columns.

While I do not grant that our Press is any way less free than that of America, still I will not say that we are the model. But I am not prepared to accept America as the model. I hope he would have heard of that old story about the statue of liberty. When an American showed it to an Englishman and said: "Look here, this is our statue of liberty: have you anything like that?" the Englishman replied: "Yes, Sir, this is very fine. We also raise monuments to our dead." So, while freedom in this country is no less, still we are not the model and I am not one of those who are prepared to pooh-pooh the protest that has come from one section of the Press. Whet-ever might be its capitalistic nature, whatever the composition of the people that run it, still the protest that came from that quarter, is a wholly healthy sign. They are alert, they are working as watch-dogs. But granting that, I would ask them to consider this for a moment. They are thinking the amendment that we are making to article 19 (2) as a store of atomic energy. But let them not confuse a store of atomic energy for an atomic bomb. When the bomb gets manufactured, or if it is manufactured at all, then the question will arise as to whether this weapon, or this power that we are giving to Government is being utilised beneficially as atomic energy can be, or is being abused. And after the assurances that have been given by the Prime Minister and the Home Minister, I think the Press ought to be satisfied that these powers are required for the good Government of the country and not for curbing the liberties of the people or of the Press. We know our leaders and I think we-are justified in trusting them.

A good deal has been said by my hon. friend Mr. Pant. I will not speak on that line, but the Press that is so anxious about its freedom must try and see to put its own house

in order. Can there be freedom, when the owner of a Press is also an owner of a textile mill? You may compare a textile worker with a working journalist. There is less security of tenure for a working journalist than for an ordinary textile worker. His wages, or whatever you pay him, are so inadequate that he has to go around to make deals with politicians who want to hunt for publicity. That being the case, the Press by not paying him adequately and by not giving him security of tenure is not only curbing the freedom of the Press, but also corrupting the political life of the country. While they are anxious to get freedom for themselves, let them see that their limbs are also free, and that those who work with them feel that consciousness that they are working for a big country and for a big cause. But the real reason for this change in the Constitution is not any real conflict with the Press or anything like that. The real conflict is that on the one side there is the people's will have expressed through Parliament and that on the other side there is the interpretation of that by the courts. When a conflict develops it is very well to say that the judges are good, that the court's judgment should be respected. But when conflicts develop what really happens is that the court itself gets corrupt. That being the case you corrupt justice at its very source, and just for these legal fineries you will find that the whole range of your justice which affects millions of your people is affected. Let us go an honest and straightforward way. My hon. friend Dr. Mookerjee was very eloquent about the Supreme Court and said that there should be no change. It is because of this conflict between the executive and the courts and the conditions or other reasons that compel courts to discover new sophistries like 'police power', and so on. What is it, if not the change of the Constitution in a very indirect way and in a way that takes a very long time? A small State like Kashmir with all its political difficulties has been able to implement a change in the land tenure system. Four years after our getting freedom we are still considering whether this thing is legal or is not legal. How long are we going to wait? Is time going to wait for you, or are the currents that are sweeping the world going to stop because of some legal difficulties? That is not going to happen. One thing more I would like to say and that is this, that when people compare America with India, whatever the constitutional aspect, they forget that the conditions are different. Things that are true for America really do not apply to India. America

has a straight road and there is no need to change your gear. But the condition in our country is such that when we are turning, every now and then you have to change your gear. America has been following a policy of laissez-faire, free expression and expansive economy, because the conditions are such that all this was possible. So, there is no basic change in the condition to require a change in the Constitution or the economic setup. But when America reaches, the limits of her expansion then you will find the conflict arising, and that will be the time to judge whether the American Constitution can outlive the demand of time. Here we have not only communal, sectional, linguistic differences and so on, but our people in every section of these are living, some in the sixteenth century, some in the seventeenth century, some in the eighteenth century and so on, and some like my hon. friend Prof. Shah are living partly in the nineteenth and partly in the twenty first century. Every little change, I want to stress, alters the whole pattern. A change in America does not alter the pattern of life, either economic or political life. But every little change in this country changes the whole pattern and requires new instruments, new powers and new ways of dealing with it.

And here we require also a leadership not only of the present day; he must have a bit of himself in every part, in every age. And we are proud and lucky that we have one such in our leader. Because to my mind it seems that he is ancient in his humanity and culture, modern in his realism and futurist in his ideologies. Because of this complex concept in our lives you find that foreign countries find it so difficult to handle our affairs. That being so, not, only the leader but the instrument he handles should also be elastic and flexible, though not pliable. And that is the instrument that we by this Bill are getting today.

One word about foreign policy. My friend Pandit Hirday Nath Kunzru said the other day that before the war when Hitler asked Britain to see that their Press did not say anything about him, the British Government said "Oh, they are free". But I want to give another illustration. After the first world war there was a trade agreement with Russia. Russia was not recognised then, and one of the clauses of the agreement with England was that each country will do no propaganda against the other. There was no question of freedom of the press and when once the agreement was made the Press

automatically followed it. It is not the case in this country. There can be situations when you make some agreement and the Supreme Court may say that you cannot do it under the Constitution. That being so, especially when conditions abroad are so difficult, when in the capitals of Europe whisperings are going on that August and September are going to be difficult months, when you are suddenly faced with a situation, a Government, if you trust that Government, must be equipped with powers to meet an emergency. If you do not trust that Government you have got every right to throw it out.

So I submit finally that, though I recognise all the political, arguments about freedom and so on and so forth, the realities of the situation and the requirements of this country now require that people who are trusted with authority should be given also the proper instrument to function.

Shrimati Ranuka Ray (West Bengal): I rise to support this measure which is reaching the final stages of enactment. But in so doing I am constrained to say that there are certain matters which I think have not been dealt with adequately and that there is one very important lacuna with which I shall deal later.

There is a good deal of misapprehension in this country regarding this first amending Bill. I think that the actual motives behind these amendments have not been understood, as they have been deliberately explained in such a way that ordinary people are bewildered and seem to think that there is something in this which is really going against the liberty of the people. But the underlying trend which is discernible in the many amendments in this Bill shows that it is with the idea of restoring to Parliament and the State Legislatures, which express the will of the people, certain rights which were, I think, curtailed, inadvertently by the Constitution-makers that this Bill is before us. Some of us pointed out when the Constitution was in the making that in our desire to include Fundamental Rights, which, of course, we must have and to curtail the right of the executive, which, of course, must be done, we have curtailed far too much the powers of Parliament as also of the State Legislatures. I (An Hon. Member: Have we?) The courts must have every right in regard to the applications of the laws, but surely the validity of laws which are enacted by the sovereign Parliament

should not be questioned in the courts of law. The Select Committee has made one very important change and that is the introduction of the word 'reasonable' in clause 3 which again curtails the powers of Parliament. I consider that the best way out would have been to have taken the suggestions made by my hon. friends Shrimati Durgabai and Dr. Syama Prasad Mookerjee and lay down precisely that these powers should belong to Parliament alone. When we have introduced into this Bill the words 'friendly relations with foreign States', 'public order' and 'incitement to offence' I do agree with all those who have misgivings in regard to every State Legislature having the power to enact legislation on this account. I consider that it was very desirable and necessary that such powers are confined only to Parliament. Apart from this, uniformity could only be achieved in this way. We shall now have varying legislation in various States which will not be uniform and surely in the over-all interest of the country, this should have been done. I am sorry and I regret to say that I am not at all convinced by the argument that the hon. Law Minister advanced in regard to this. He said that 'public order' comes within the powers of the State List and therefore, it was not possible for the right of the States to be curtailed. But the Fundamental Rights chapter is only within the purview of Parliament and not of the State Legislature. Therefore, this argument, I do not think holds sway, but even so if the Government felt that it was taking a risk, I cannot for the life of me, understand why they did not at least introduce the amendment moved by Dr. Mookerjee regarding obtaining the President's assent to such legislation. Some of us had also tabled such amendments providing for the President assent to this clause; at least that would have secured some uniformity. It is a great pity that we have not done so. We are now in the last stages of enactment and I do not know if it is still possible, and if it is, I would suggest that this should be incorporated.

A great deal has been said about the Press. It has been held that the powers of the Press are being taken away. It was I think yesterday that my hon. friend, Mr. Pant made a very effective speech in this regard. According to some important Press men the freedom of the Press has been attacked by this legislation. I think that the freedom of the Press is already in great danger in this country. Apart from countries which have authoritative Governments under communistic sway where there is no freedom

of the Press, there are other countries which are the so called great democracies of the world where today freedom of the Press has become a will-o'-the-wisp, because we know that the Press combines and the cartels that have grown up in those countries have made it almost impossible to have real freedom of the Press. I would further add that this ugly thing is rearing its head in our country too and it is very necessary to curb it. I do not want to reiterate all that has been said by Mr. Pant, but I do think it is very necessary that when a comprehensive law is to be drawn upon this matter, as the Prime Minister stated, we would like an assurance that there will be provisions in that Press law to see that cartels and Press combines are discouraged effectively. I do hope that the Prime Minister, when he replies will give an assurance to the House that the freedom of the Press about which we have talked so much is really assured by not allowing the further growth of these cartels and Press combines.

I now want to say a few words about article 31, about which my hon. friends Prof. K. T. Shah and Shri Mohanlal Gautam have already spoken. I have also spoken about this article during the first reading of the Bill and I only want to point 1 out that it is a matter of infinite regret that the amending Bill did not make a change in clause (2) of article 31. That was the way the amending Bill should have made the change. It is no use arguing that this was beyond the intention of the Constitution makers. If this was beyond the intention of the Constitution makers then other things that have been done could also be argued to be beyond the intention of the Constitution makers. Certainly, we have in clause 31(4) of the Constitution made some escape provisions regarding certain Zamindari legislation which was before the courts of law but we did not extend this to all 'estates'. Therefore, in this amending Bill there is an extension and as such if this extension could be there, then certainly clause 31(2) could have been changed or at least at a later stage this extension could have been made in the case of all property, that has to be taken over or acquired in the national interest. There is no question of expropriation.

Shri R. K. Chaudhuri: (Assam): On a point of order, Sir.

Mr. Speaker: Let her finish. There is no point of order.

Shrimati Renuka Ray: I am not giving way. No question of expropriation or in adequate compensation arises. The question is that the enabling power of Parliament

which is the undenying motive of this amending Bill should be restored. I do not even suggest that such powers should go to the State Legislatures. In fact we are so careful in regard to property rights that we have, as my hon. friend Shrimati Durgabai pointed out yesterday, put in a clause that the President's assent is needed for such property at least about which Parliament and the legislatures powers cannot be challenged by courts of law regard to liberty of expression or thought or any other right, that is a Fundamental Right, it is not considered necessary to do the same and accept the amendment that Dr. Mookerjee had brought forward. Right through the Constitution and this amending Bill, we find the recognition of this great sanctity of property rights. Now as the hon. Prime Minister pointed out yesterday. Time was when slaves were property; time was when women were property; those times were gone and today we are living in other times when great changes are sweeping over this country and the world. If today we deprive Parliament which represents the Supreme will of the people from having the rights to take over property and decide what is the amount and the principles of compensation then surely this Constitution will become a scrap of paper. Yesterday the hon. Prime Minister was saying that it's not possible as yet, it is not practicable to take over in the national interest certain other forms of property and particularly he said this in regard to collective farming. I agree with him. It is not practice able to bring in everything that we want today. But, that does not that parliament of tomorrow should be curbed also. That is, in fact, what we are doing. I do not want to say anything more on this point except to say that when posterity judges us, they will say that, in spite of the Directive Principles of State Policy, which, as Mr. T.T. Krishnamachari aptly pointed out, in the constituent Assembly, was "the dust bin of our sentiment", in spite of the preamble, which we have written in beautiful language, we have not included any economic right for the people except the right of inherited property, as a justiciable right.

Before I conclude, there is one other point to which I want to refer. Much has been said about the motives of the Congress Government in bringing this amending Bill. It has been said that this has been done for have not many months to go, its own self-aggrandisement, and to help the Congress. I do not think that anything can be more untrue and fantastic. Today we are going to face general election in a few months'

time and the Government in power today. It is not in their interest therefore to bring forward a measure which is termed unpopular when they are going to face the General Elections. I should say rather that had the Prime Minister of this country been concerned only with the General Elections, which he is not, he would not have brought forward this measure today. On the other hand, he would have let it remain the parliament of tomorrow when an amendment would have become most difficult, with many political parties. But he and the Congress Government is much more interested in doing what is in the best interest of the country. It is for that reason that this measure has been brought forward. I do not understand what the people of this country are being confused on this issue. I think that has been deliberately done. I am not talking of the press, it is being deliberately done by the political parties who are against the Congress. Naturally, they will take any stick to beat the Congress with and this will be one of them. I think, at least, that if the present does not realise, the future at least will realise that it was a bold and courageous step that the Prime Minister of India took in bringing an amendment of this nature Today, In spite of its unpopularity, when the country is facing General Elections, he has taken the right step with the full support of the Congress Member of Parliament.

Mr. Speaker: Mr. T.N. Singh.

Shri R.K. Chaudhari: Sir, I rose on a point of order and my point of order still holds good. The hon. Member who has spoken just now supported the motion, but she attacked every provision of the amending Bill.

Shrimati Renuka Ray: No: only regarding the extension of article 31.

Shri R.K. Chaudhuri: It is only misguiding the House.

Mr. Speaker: Order, order. In the guise of raising a point of order, he wishes to pass strictures and perhaps partially reply to the arguments of the previous speaker. The raising of the point of order is not in order.

Shri R. K. Chaudhuri: I am not trying to meet those arguments.

Mr. Speaker: Order, order.

Shri T. N. Singh (Uttar Pradesh): We have now debated this Bill for a very long time and it is perhaps not much necessary to say anything more about it. All the same, if we analyse the various criticisms made in this House in respect of the provisions of this

Bill, we find that the greatest attention has been paid to the amendments proposed to article 19 of the Constitution. I want to ask the House, what are the rights of freedom of speech that are being taken away by this amendment and in what specific manner our right of freedom of speech and expression being curtailed?' That is the first thing that we should examine before we go on to criticise this proposed amendment.

I would draw your attention to the way and the manner in which we have, ever since we attained freedom three years ago, been exercising this right. I would invite our friends who have waxed eloquent on behalf of the Press to have a look at the various language papers that are being published day after day, week after week, containing such material of which, I say, any decent journalist would be ashamed. Yet, by an irony of fate, these persons have come within the fraternity of journalists and they belong to what is called the Press. I have come across reports of scandalous news items in the papers of which I will give just one or two instances. Not tired with opposing or criticising their political opponents, their activities have gone far beyond. One paper, which happens to be published from one of the principal cities of Uttar Pradesh, says thus. The editor seems to have taken offence against a petty revenue official. What he does is this. He publishes a report in which he says that the wife of so and so is not of proper decent moral character. This is published in the faith, in the hope that no official will dare to bring such a matter to the court because, in that case, he will have to produce his wife and his sister and other members of his family in the court. I want to know what is the culture and tradition of India in this respect. Even if there is something wrong with a neighbour's sister, in our villages, our people say deliberately, there is nothing wrong about her. That has been our culture. We not only hesitate but oppose any attempt at defamation of our neighbour's brother or sister or anybody. Here, openly, in the Press, these things are published. This is what is called Press in certain sections.

There is not one paper like that; there are several. It is not a stray example. There are instances where a reporter or a Press magnate takes offence at the behaviour of a particular officer. He says.....

Mr. Speaker: Order, order. I may invite the hon. Member's attention to the fact that if he yields to the temptation of giving instances, he may be losing his substantial arguments. There is a time-limit of 15 minutes

Shri T. N. Singh: This is the only second instance that I am giving.

Mr. Speaker: He may go on; I do not mind.

Shri T. N. Singh: Apart from other instances in which a person's character is impugned, on account of political animosity, certain things are said in which a man's character and his behaviour in his administrative post are brought in and sought to be defamed. I want to know whether you would like to permit that.

As a matter of fact, the article as amended says that the Government will have the authority to impose reasonable restrictions on the rights conferred under part (a) of this article. The article only confers freedom of speech and expression subject to certain limitations which have already been explained in the article. This is only a new addition, to that. I want to know in what way this is exceeding the limits of restrictions that should be reasonable. After all freedom of speech and expression is not meant to be absolute.

[MR. DEPUTY-SPEAKER in the Chair.]

There are always legitimate restrictions which have got to be imposed and which are imposed in every society or State. This is what has been done; this is what is expected of any State Legislature which makes laws under this article.

As regards the various things said about the Press in general, I do not think anything more need be said. I need only add that there is a dangerous tendency in some quarters of the Press and the Press itself is passing into capitalist hands. From my experience as an ordinary proof-reader; and also as a reporter and sub-editor and assistant editor I can tell you that the poor working journalist has not much of freedom left to him. To give my own experience, in Delhi city I was working as a sub-editor and I was also the secretary of a labour organisation. But the proprietor of the paper asked me to choose either to be secretary of the labour organisation or be in his paper. Naturally I had to go out of the paper and you can imagine what freedom is left to the poor

working journalist in the matter of expressing his opinions or comments. With such things going on, I say we have every reason-to be cautious in seeing that the freedom is properly used. Today we are passing through a great crisis and we do not know how we are going to develop and how we are going to make our country stronger and stronger. Hardly three years have passed after freedom was won after centuries of slavery. Are we going to fritter away all the good things that we have got, by adhering to formulas which lead us nowhere? Are we going to let fissiparous tendencies weaken the country? We should not be led away by catch words which have, been the ruination of many a people.

The article has been properly amended and we should strive our best to maintain the real freedom of the Press. As regards the other amendments, we have only conferred on the Legislatures of the various States the right to bring in the very necessary land reforms, namely the abolition of zamindaris, or the abolition of intermediaries. These intermediaries have been living as parasites on the land. There may be a few exceptions, but the majority of them have not justified the position they have been enjoying so far. Not only so, our economic conditions have been going down because of these people. The Congress has for so many years past repeated that these intermediaries should be removed. And this Bill is only giving the power to give effect to this policy of removing the intermediaries, so that the law courts or quibbles of a legal nature may not stand in the way. This is what has been done with regard to article 31.

The third important point in this Bill relates to backward classes. I do not know why any heat need be created on this account. After all the Constitution has provided that those who are backward should be allowed to come up the scheduled Tribes and scheduled Castes and the backward classes. They have been kept back for long due to customs and habits and traditions and to enable them to make up the leeway, they must be allowed; special facilities. But it has been found that the Constitution itself stood in the way of this being done, in the matter of educational facilities and the like and so the necessary changes, have now been brought about.

I will not take up any more time. I will only appeal to newspaper men and journalists and to all my friends of the Press here and outside not to be carried away by mere emotion or by mere phrases. It has been said that there is threat to the Press. But we should not forget that today there is threat to the freedom of the individual in this country by people who are unscrupulous and by people who want to exploit the situation for their own political ambitions. And it is but fair and proper that they should be prevented from doing so. It is our duty to see that the Swaraj that has been won after years of sacrifice and toil is kept intact and the country is allowed to grow from strength to strength. Any tendency that stands in the way of such progress should be guarded against and in this work, I would invite the co-operation of journalists who are champions of freedom and who have all along been the champions of Swaraj. Their fair name-should not be allowed to be sullied. They should see that they do not become tools in the hands of people who have been rightly dubbed capitalists. Let us see that the Press does the right job as it has been doing so far.

Shri Joachim Alva (Bombay): There is one small point which seems to have escaped the attention of the House; but it is of enormous significance; On this point, I would like to congratulate the Prime Minister, the Home Minister and the Law Minister-On the deletion of the words "of the' Supreme Court" in clause 13 which amends article 376, though they first appeared in the Bill. Only a citizen of India shall now be the Chief Justice of the Supreme Court. This is a very important point. We are an independent country now and we do not want a European to administer the oath to the President of India or occupy any other high position. If we had missed this point and if it had escaped our attention, it might have landed us-into a lot of difficulty. A European may hold the position of Chief Justice of a High Court and may even become the Judge of the Supreme Court; but thereafter he shall not become eligible Chief Justice of the Supreme Court. However, I shall not fail to pay tribute to the manner in which European judges have administered justice in this country fearlessly and with honour. All the same this deletion made in clause 13 was very important and necessary.

As regards article 31A, I remember saying in the speech that I made on the first budget that he who solves the land problem will become master of the land. It may be the present Prime Minister, it may be the present Government. But whoever it may be that solves this problem becomes the master of the land. I say this because this problem bristles difficulties. We have to solve this it may be that we have to adopt the pattern of land reform that Russia has adopted for solving this problem. But whatever we may do, we have to see that the tiller becomes the owner and the land does not come under the hands of people who are sharks and prey upon the land. In regard to the amendment of article 19 of the Constitution. I, who have been a journalist, will make a few humble observations. In 1947 when India achieved independence, the Indian Press breathed a sigh of relief. Until Independence came, the Indian Press had the nightmare of the British regime for nearly 30 years. We had so many chains, the chains of the vernacular Press etc. When presses were confiscated, and journalists were put in jail. In fact I term that age as the golden age of Indian journalism when men and-women fought for the freedom and honour of the country for the prestige of their country. They were ready to face imprisonment and allow their presses be confiscated. They were really the good old golden days. This continued till the Second World War came when the Press barons entered and took over considerable portions of the Press, when journalism assumed the colour of gold, of the yellow metal, when money entered the soul of journalism. The golden period has gone! We did heave a sigh of relief that the restrictions on the Press were also gone. However, the present Bill will usher in many restrictions, penalties, pre-censorship and several other things which, when worked in actual practice will thrust great difficulties on us. The orders that will come as a result of this legislation will be administered by petty officials and by those who may not be able to separate the goats from the sheep; the right type of papers may have to suffer with wrong journals.

The Prime Minister said a day will come when our newspapers will be great engines of publicity like those existing in the United States of America or the United Kingdom. I shall not look forward to those days. Let our Press be dominated by men of idealism, by men of character, by men who shall not attack the son for the father, the sister for the brother or the wife for the husband who shall not be defaming

the national leaders but men who shall perhaps in days of crisis help the army or the police when the security of the State shall be in jeopardy. These are the grave dangers that face us today. Today great men do not come to teach at the Universities because the pay is not attractive and the young men in our universities are falling a prey to the yellow Press. The yellow Press is fostered by men who claim to be Oxford men but who have no compunction in their writings. They had contempt for the first Home Minister of the National Cabinet, the present Home Minister here and also in Bombay. What can you say when thousands of sheets are circulated that 'C.R. is a serpent' in big sign bold type or when they write of 'Morarji' and the 'Prostitute'. These are the people who should never have entered our journalism. Up till 1947—for 80 years—we fought the battle of freedom but these despicable things never crept into our journalism. The All India Newspaper Editors' Conference had not done anything effective in the matter. When the elders in the profession have no power to exercise over the youngers, the State has got to come in; otherwise the police will be tampered with, the army will be tampered with and the security of our infant State will be endangered. These are the points which I wish to warn the House about. The golden age of our journalism has passed away and it has passed into rupees, annas and pies; into a mere machine which is moving with gigantic speed. We will see the day when Hindi journals will claim a circulation of five or even fifty million. Perhaps this country will claim the biggest circulation of millions, which no other country will have achieved when these are the checks you are imposing on this fast expanding Press.

Sir, one more point. These are the days when even the law courts shall not be able to do justice to the litigants. Twelve out of thirteen complainants refuse to lodge complaints for defamation.

They get no relief and wronged people feel it is better to keep quiet than file defamation suits. Hence the arch defamers in yellow journalism get away. In the olden days we worshipped the leaders of the Press and those lords of the Press were filled with the fire of patriotism. But who are the new apostles of the Press? They are people who licked the boots of the British and they were not seen anywhere inside the prisons

and they never saw what was the lot of a 'C' Class prisoner, who never got milk or butter, rice or cheese, tea or coffee. These are the people who now seek to be the barons of the Press. Hence, we do not want to move on the lines of gigantic machinery like the United States of America nor do we want to be like U.K. Perhaps a day might come when the State will have to run its own papers as in Soviet Russia—I am not an admirer of any system—but these are facts that must be faced. Beautiful periodicals are printed in Russia and perhaps the lords of the Press will have to wait for the day when the Indian Government in a democratic and socialist way, will have to run their own Press for the benefit of all.

One word more, and that is in regard, to the hon. Dr. S. P. Mookerjee. I have personally known Dr. S. P. Mookerjee. I have had the highest respect for his character, patriotism and ability. But I always felt that he was a first-class man devoted to a wrong cause; that he was a first-class man in a wrong party and the only time that he was at his best was when he was a member of the Government. There he felt uncomfortable and went away. But when the hon. Dr. Mookerjee quoted Sir Samuel Hoare, it made my inside upside down. For Sir Samuel Hoare was the worst Secretary of State for India—the most notorious oppressor of India who laid many Members of this House in jail, who laid Pandit ji in jail before Mahatma Gandhi landed in Bombay from the Round Table Conference in 1932. Dr. Mookerjee quoted Hoare on this subject of liberty. Hoare, I felt, was the devil himself, quoting the scriptures. That is the least I can say. Otherwise how dare Hoare speak on liberty which he crushed in India. I felt that Dr. Mookerjee and Acharya Kripalani were making pure election speeches. Dr. Mookerjee was running on principles. Acharya Kripalani went on personalities trying to tear up the character of this or that person. He need not have struck at the idols for the simple reason that he is an idol lacking worshippers. I think both the opposition leaders had their eyes on the coming elections.

This is a great Bill and all of us have taken it with the spirit of responsibility. Some people, no doubt, have said that three journalists have remained neutral. As against them nearly a dozen- journalists, mostly from the Indian languages section of the Press, have voted for the Bill. It would be strange if they had voted otherwise. You

must know that now people are after the Indian language Press: and we should not ignore the Indian language Press which will soon be the master of the situation. We should not be overtaken by those who only write English journals and run away with it. Hence they think they are the real lords! The real people concerned are found in the Indian language Press and if their voice is not heard, it will be ruinous for the motherland.

Shri Haniunianthaiya (Mysore): Very learned and impassioned speeches have been made on this Bill. From my point of view, I look at it as a charter of liberty for the underdog To begin with it has given scope for the backward classes to come up to the level of others more advanced so that there may be real equality in the country as contemplated and guaranteed by the Constitution. The 'peasants' interests have been safeguarded as against the big landowners. It has been apparent that the working journalists are wholeheartedly at one with this measure as against, the few who control the Press in the country.

This measure, as the Prime Minister said in his first speech, is a liberalising measure. Dr. Mookerjee challenged that and said that this Government has taken the power in its own hands. This Bill only empowers Parliament in a greater measure, it has power in the field of legislation than it had before. To put it in homely phraseology it is merely a case of anyone of us transferring his money from the fixed deposit to the current account for purposes of trade or domestic expenditure. I do not know why merely because a man out of his need transfers his money from the fixed deposit to the current account, there should be so much hue and cry about it. We had deposited the power in the Constitution. We now find it necessary to take some of the powers in our hand to see that the interests of the underdog, the peasant, the backward classes and the man in the street are safeguarded. It is from this point of view that the Bill is a real boon to the peasant, the worker, the working journalist and the backward classes in the country.

Much was made on the ground that we are taking away the powers of the court. There is an unhealthy tendency in some quarters to see that there is a kind of rivalry in the matter of power and prestige between the judiciary and Parliament. It is a very wrong

psychology to be encouraged. It is an undoubted fact that even according to the Constitution Parliament and the executive are the supreme authority. The judiciary is merely the interpreter of the law. Parliament and the executive have the power of appointment, the power of dismissal, of determining the pay and the emoluments of the judiciary. How then can the judiciary claim equality with Parliament or the executive.

The independence of the judiciary should be properly understood. Independence means that Parliament and the executive do not interfere in the day to day discharge of the functions of the judiciary. They should not influence the decisions or judgments of the courts behind scenes. They are given unfettered discretion to decide and interpret the law as they think fit. That is the real meaning of the independence of the judiciary. To say that they are rivals in the matter of the exercise of power with Parliament or the executive is to misunderstand the position thoroughly and it will not help anybody. If certain people impute a wrong psychology to Parliament or the executive, that they want to take away powers from the judiciary, it is because some people want to put the Judges on a superior pedestal to Parliament, which represents the will of the people. The Judges themselves ought to know their own limitations. Many a time it has so happened that the judges have passed unsavoury remarks against Parliament in their courts. I was very happy to see the other day the speaker piling up some Member who made a somewhat disparaging remark against the Judges. That is the restraint with which Parliament is working. In contrast to this what do we find in some courts? When we read in the newspapers the remarks they make against Parliament and the Member of this House.

Mr. Deputy-Speaker: Is it necessary at the third reading or even earlier to go into what the judges have said in their courts? It is better to avoid all such references. -

Shri Hanumanthaiya: Certainly, Sir. It is my opinion that the independence of the judiciary should not be understood literally but has a definite meaning attached to it. Independence means freedom in the matter of the interpretation of the law. It is not a

question of sitting in judgment as to whether a law is just or unjust: it is not the business of any other authority except Parliament to decide.

I have to say a few words in regard to certain remarks made by certain hon. Members. There is a tendency in this House on the part of a few individuals to cast aspersions against State Governments and Legislatures. My friend Mr. Anthony is not here and he used words which are almost unparliamentary and objectionable. I do not want to speak the same language. To bring about a kind of misunderstanding between the Central Government and the Government of the States, between Parliament at the Centre and the State Legislatures is a very unhappy thing to do. Each Legislature, the State Government and Parliament and the Central Government have their own duties to perform under the Constitution in their respective spheres. They are discharging the onerous tasks imposed upon them by the Constitution. To claim superiority and disparage others is not the happy way of building up the country into one solid whole. I very much wish that that psychology is given up. After all the Members of the State Legislatures are elected just as the Members of this House. They are as much patriotic and responsible as anyone here. I hope -this House will not allow the habit of attacking State Legislatures and State Governments for extraneous reasons.

As I said, this measure is a boon to the underdog, the peasant, the backward classes, the working journalists and the people at Large, because the major vests in Parliament greater powers, which means vesting those powers with the people.

Mr. Deputy Speaker: Shri Venkatraman. (*Interruption*). The opponents of the Bill have had opportunities day in day out...

Babu Ramnarayan Singh: I have had no opportunity.

Shri Venkataraman (Madras): Sir, I thank you very much for giving me this opportunity to place a few facts on what I consider to be the merits in the legislation which the House will just now pass.

Some people want to put the judges on a superior pedestal to Parliament, which represents the will of the people. The judges themselves ought to know their own limitations. Many a time it has so happened that the judges have passed unsavoury remarks against Parliament in their courts.

Shri Venkataraman (Madras): Sir, I thank you very much for giving me this opportunity to place a few facts on what I consider to be the merits in the legislation which the House will just now pass.

There is the amendment to article 15 which has been made at the instance and is very largely due to the pressure or influence from Madras. There is a feeling both in this House as well as elsewhere that by this amendment we are trying to get over the decision of the Supreme Court. If we carefully analyse the facts relating to the communal G.O., its history and its past, we will realise that this amendment is necessary in the interests of the social welfare of all the people in that State. In the year 1926 the independent ministry of Madras introduced this communal G.O. It was then supported by two members who were originally in the Congress but who had crossed the floor. But then for nearly fifteen or twenty years it has been in existence and our concept of social justice has been changing in the meanwhile. When the hon. Home Minister was the, first Premier of Madras under the first Congress Government, he extended this principle of the communal G.O. to recruitment to the judiciary. I am sure you will agree, Sir, that the hon. Home Minister is perhaps one of the rarest men who has the courage of his conviction, and if he did not feel that, that principle was true reflection of social justice I am quite positive he would not have extended it to recruitment to the subordinate Judiciary.

Subsequently when we were framing the Constitution we thought it was no longer necessary to have any provision for the advanced classes, and that it would be quite sufficient if we made provision only for the backward classes. If you look into article 16 you will find that provision has been made for reservation of seats for the backward classes in the matter of appointments to services. Article 16(4) makes it possible for the State Governments to reserve seats for these backward classes in the services. But when we come to article 29, clause (2), we find such a reservation has not been made—either by oversight, or—I do not know why. Nobody would deny that it is absolutely necessary to make some provision for the purpose of giving adequate educational facilities 'to the backward classes and provide reservation of seats for the purpose, 'but when we actually come to article 29 we find that clause (2) of that' article makes it almost impossible for the State to reserve seats for the backward

classes. The present amendment brings the law under article 9 on the same par with that under article 16(4) where we have accepted the principle. Therefore, this amendment makes no further change and there is absolutely no need for apprehension of any kind. In the case which came up before the Supreme Court—not the one which most of the Members have read and quoted from, but the other one of Venkataramana versus the State of Madras, (No. 318 of 1950), --the Supreme Court said that in the circumstances it is impossible to say that classes of people other than Harijans and backward Hindus can be called backward classes. Therefore, there is no need for either the members of the Select Committee or even the Prime Minister to give an assurance in this House that this provision cannot be abused. There is a decision of the Supreme Court and if it is abused by the Government of Madras it will certainly be questioned before the Supreme Court. Therefore, to raise imaginary fears and imaginary doubts and then to cast a slur or aspersion On the State Government is wholly —unnecessary, because you have adequate protection, even as the law now stands and even according to the judgment delivered by the Supreme Court, to prevent any abuse of this clause.

I have found considerable difficulty in following the argument of some of my very good friends. I am sorry my friend, Prof. Shibban Lal is not here, but may I say that every legislation of the middle-of-the-road or moderate kind is liable to attack from both sides —from the one side that it does not go far enough, from the other that it makes a change in the status quo? But if the same person attacks the legislation from both the angles it becomes rather difficult to understand what it is. Take the case of voting by Prof. Shibban Lal Saksena against article 15. According to his claims that he stands for the backward classes, for the downtrodden, and for labour in this country, I thought he should have been the most robust champion of article 15, clause (4). Similarly, even with regard to article 31, I cannot understand how he could oppose it. Maybe be a technical error or through an oversight we may have passed a zamindari abolition measure which does not conform to the provisions of the Constitution, nevertheless we stand committed to the principle. Therefore, people like Prof. Shibban Lal and myself should, notwithstanding any defect in the manner and method of the legislation, so long as we believe in the principles embodied in it, do all that we can to

give legislative sanction to see that it is made legal and enforced. Prof. Shibban Lal pointed out that there is no hurry for this amending Bill. To my mind it seems it is most urgent. Admissions to the colleges in Madras will begin next month and if this measure is not carried through before the colleges reopen we cannot make adequate provision for the backward classes and the backward Hindus. Therefore, it is absolutely necessary and very urgent that we should have brought this measure now and see whether we pass it now. As regards the abolition of Zamindari, to keep the tenants in suspense, in doubts and fears for a long time is to demoralise them; having pass the legislation the legality if which is under doubt, it is likely to cause greater harm to the tenantry of the country than if we had not passed it. I remember an incident which happened some years ago in Madras when my friend, Mr. Kala Venkata Rao who was then the local Revenue Local Minister toured the agricultural areas of Tanjore and delivered speeches in support of the abolition of the Zamindari Bill which he had just introduced in the Legislature. I happened to go with him translating his speeches into Tamil. Well, after he left my own If we are going to take this matter to the courts and delay it we are not only causing great harm to the legislation itself but irritate other people to such an extent that they will have no faith whatsoever in the legislation you are bringing forward, they will have no faith whatsoever in the courts and in the sanctity, of law. Therefore, it is absolutely necessary and also very urgent that when these matters are questioned before the courts, when the - validity of these measures is in doubt, this great Assembly of ours, this sovereign body-of this country should come to their succour and see that their doubts are set at rest.

I do not want to say anything about article 19 because it has already been discussed sufficiently. Dr. Mookerjee has quoted a number of decisions. I can also do it, but as a lawyer I know it is useless to quote decisions on particular issues. Every enunciation of the law relates to the facts of the particular case. In the ultimate analysis you will find that the precedent just revolves round the particular facts of that particular case. There are legal observations, if necessary I will read out only one of them, in which they say that under the guise of freedom of the Press you cannot preach anarchy. This is what Justice Robert H. Jackson said in the latest case of this kind in the U.S.,

judgment on which was delivered on the 8th May, 1950. My friend, Dr. Syama Prasad Mookerjee must have seen it. The case was of the American Communication Association vs. Douds. This is what Justice Jackson said:

“But I have protested the degradation of these constitutional liberties to immunize and approve mob movements, whether those mobs be religious or political, radical or conservative. Liberal or illiberal, or to authorize pressure groups to use amplifying devices to drown out the natural voice and destroy the peace of other individuals. And I have pointed out that men cannot enjoy their right to personal freedom if fanatical masses, whatever their mission, can strangle individual thoughts and invade personal privacy...”

Quotations like this can be multiplied. It all depends on the facts of a particular case to say whether the freedom of the Press is ennobled in that case or the restriction has been emphasised. Now the final opinion is very interesting. This is what it says:

"The task of this court to maintain a balance between liberty and authority is never done".

It is a continuing process. The Supreme Court and other High Courts exist in this country for the purpose of seeing that neither under the guise of liberty of Press license or incitement to violence or offences is allowed to be preached, nor on the other hand under the guise of security of the State the individual liberty is curbed. The balance cannot be determined by law. The balance must always be determined by courts and that is why courts exist. What Dr. Mookerjee has tried to preach to this House is to see that by legislation that balance is achieved. I venture to submit that as far as my small knowledge goes, it is impossible to do it by legislation; it must always be left to courts. What we are now doing under article 19(2) is only to give that authority to the courts to see that a just balance is maintained between those relating to individual freedom and the necessities of the security of the State.

Dr. S. P. Mookerjee: Today after so many days debate the curtain will soon be drawn over a matter which has excited comments not only inside this House but throughout the country. The Bill as it stands amended contains a few changes which, as I have

said before, have made considerable improvement on the original provisions of the Bill. I was reading the way in which the majority and the minority discuss matters in Parliament in an authoritative book *Reflections on Government* by Barker and in two sentences he has described the spirit in which discussions should take place.

"Discussion implies a spirit and can only be in a spirit of mutual giving and taking. Discussion is not only like war; it is also like love. It is not only a battle of ideas; it is also a marriage of minds".

Shri D. D. Pant (Utter Pradesh): Better late than never.

Dr. S. P. Mookerjee: It is both a battle of ideas and also a marriage of minds. So far as the Opposition is concerned, we expressed our viewpoint forcibly and so far as the Government is concerned, its view-point was also expressed without any hesitation. The Bill, though it has been amended in some respects is still unacceptable to us, and we, therefore, feel it our duty to oppose the Bill as it stands. It does not mean that we are opposed to all its clauses, but on the whole, we are not prepared to accept it.

I shall not go into details now, but one factor stands out prominently and that is the manner in which the amendment has been made. This is the first amendment to our Constitution. Although legally Parliament was entitled to pass a Bill amending the Constitution, yet it would have been better if Government had established a healthy convention and circulated the Bill for eliciting public opinion, so that the view point of the people who are outside this House would have been more effectively known. It has been said by one hon. Member that an overwhelming majority of this House has supported this Bill. But let it not be forgotten that the overwhelming majority of this House consists of members of one party and one organisation.

An Hon. Member: Representatives of the people.

Dr. S. P. Mookerjee: In fact, if you count the heads—it is not always possible by counting heads to count the brains—you will find that more than 95 per cent, of the people who have voted for the Bill are all subject to the whip of one political party. So, it would not be wrong to count them as one vote, the vote of the Leader of the House. And if you calculate the vote of 19 independent Members who have voted against the Bill, perhaps morally speaking, we have won and not the Government.

Seth Govind Das: You are not a good accountant.

Dr. S. P. Mookerjee: In any ease, why is it that we are passing this Bill? Now various reasons have been advanced why the Bill is necessary. It is most unfortunate that unnecessary bogeys have been raised in connection with the debate. One of my hon. friends from Bombay speaking today referred to the yellow Press. Another referred to the scurrilous writings appearing in some sections of the Press—abuses which are vulgar, obscene, indecent. No one defends them. But your present law is competent enough to deal with such offences. The Prime Minister also spoke-yesterday, and spoke very vehemently, about the shock which he received from time to time when he goes through the vernacular newspapers—all cases of personal abuses, filth, venom, etc. Even if you amend the Constitution, as you propose to do, how are you going to deal with them? Are you going to attach a Schedule to the Constitution consisting of names of certain newspapers which shall not be published in India? All that you can do is to prosecute them. Prosecute for what? For vulgarity, for obscenity, for indecency, which are already covered under article 19(2) today. If your present Indian Penal Code is not sufficient to cover such acts of omission or commission, by all means amend the Indian Penal Code; but what is your justification for restricting the freedom of the Press generally, because you failed to tackle some sections of the yellow Press? Similarly, with regard to incitement to offence like murder, etc, it has been repeated ad nauseam that there are some people who are inciting others to commit murder, to commit violence. No one supports them. If you have not the authority, we are all agreed to that extent the Constitution might have been amended. But what is your justification for wholesale restriction? Have you given an iota of evidence before the House justifying- the inclusion of such a broad category as incitement to any offence? Then again, you have created history by giving retrospective effect to the changes which curtail freedom.

Take again your zaminndari abolition. Now naturally Zamindaris have to be abolished. That is more or less the accepted programme of everyone. You have already passed your Constitution and provided for it. You have said that it will be done in accordance with the provisions of article 31. If you feel today that zamindaris should be abolished without compensation, be straightforward and say so and amend article 31. But you do not do so. You leave article 31 as it is and you include an article

31A and also an article 31B which are nothing but instances of "constitutional monstrosity", What is it that you say—that any State might pass any legislation for acquisition of estates and even though the provisions of such laws are inconsistent with the provisions of the Chapter dealing with Fundamental Rights in the Constitution, still they will be good laws. You have included a Schedule to the Bill. Today under article 313, sitting on the floor of the House you suddenly added two Regulations from Hyderabad. I ask how many Members who support the inclusion of these Regulations had seen those Regulations? No one has seen them. If the order comes to include the Regulations, they have to be included. If the order is given to omit the Regulations, the same will not be included. It depends on the master's wish. (Interruption). The President has not certified them.

The Minister of States, Transport and Railways (Shri Gopaldaswami): They have been certified. The hon. Member will take it from me, and I assure him, that both these Regulation have received the certificate of the President.

Dr. S. P. Mookerjee: If the President has certified them why include them in the Constitution?

An Hon. Member: By way of abundant caution.

Shri Rajagopalachari: And one of them is in the court.

Dr. S. P. Mookerjee: If the President had certified them and if the courts had upheld them, why stigmatize the Constitution and make them part of the Constitution?

Shri Gopaldaswami: My hon. Colleague did not say that the courts had "upheld" it. He said that one of them was in the courts.

Dr. S. P. Mookerjee: It makes it still worse. Have you ever heard of such a thing that a particular Regulation is now a subject-matter of dispute before a constituted court of law, and here we are sitting as a solemn Parliament and, without waiting for the decision of the court, we are saying that that law is valid and is in accordance with the Constitution? I used the language "Constitutional monstrosity" with some hesitation, but I have no hesitation in using it now. It is absolutely unprecedented. Even the British Government would not have ventured to deal with any court in the manner in which this Government is dealing with the judiciary.

Take article 19(6). What is it that the Allahabad High Court had said with regard to the State transport—that such orders creating a monopoly, wholesale or partial monopoly, should not be passed by executive order. That is all that the Allahabad High Court said. What is it that you are doing under the Constitution? It is not nationalisation. Some Members spoke glibly about nationalisation. I understand that. It is a clear straightforward act by which you acquire private property or private undertaking for State purposes. Give it compensation and be done with it. But here what you say is that the State may enter into the field of business, trade, commerce, industry, automatically and prevent private enterprise either in whole or in part. What does it mean? It means that if a particular State Government.

Mr. Deputy-Speaker: Was he not a party to this resolution as a member of the Cabinet?

Dr. S. P. Mookerjee: This was not there at all. Nationalisation is all right. This is not nationalisation. This is through the back door, preventing private enterprise from playing a natural part. This is no question of nationalisation at all. I have every sympathy with the clear-cut proposal for nationalisation. But I ask the Finance Minister who is sitting here: what sort of confidence will be crated in public mind by such a provision in the Constitution? If, suppose, a State Government passes a law or by an order decides that it will establish a factory, automatically it may debar the existing factories in the same field within that particular area from functioning. If you want to do it, do it consistently. Let there be consistency. But whatever has been done by you is nothing but a display of dynamic inconsistency. At every stage you proceed from one inconsistency to another, and you do not know where exactly you will be landed.

Shri Joachim Alva: My hon. friend was a member of the Central Cabinet when the Bombay State took over the transport.

Dr. S. P. Mookerjee: The hon. Member always makes a mess of everything whenever he speaks on any subject.

Shri Joachim Alva: I am giving out facts.

Dr. S. P. Mookerjee: One of my friends has said that with regard to the freedom of the Press, the working journalists welcome this particular measure. Only yesterday I

saw in the papers an announcement that the Federation of Working Journalists in India, which represents all the working journalists, has condemned this Bill. I do not know which working journalists have come privately to Mr. Hanumanthaiya to announce that they support the provisions of this Bill. The Working Journalists Association in several Provinces have unequivocally condemned the Bill. And yet we hear that the working journalists consider that this is a charter of their liberty!

Two of my friends, said the other day—and I was surprised at their remarks—that really India is not fit for democracy yet, that Indians cannot be trusted with all these rights and liberties which our Constitution has clothed them with. I was really amazed to hear these two statements coming from two respected Members of this House. I could have understood such a statement coming from our old British masters who always proceeded on the assumption that Indians would never be fit for democracy. But for the Members of Parliament of Free India to say that we are not fit for democracy or not fit to exercise our rights and liberties which were given to us under our own Constitution passed sixteen months ago is something which we are not prepared to accept. Even take England. One of my friends said they know how to behave. But did they behave in a docile manner throughout the chequered history of England? How did they get powers? How did they get their rights and liberties? They did not get them by mere petitions? Rights and liberties in England were wrung out of unwilling diehard masters who ruled over the destinies of that country. They even sent one of their kings to the gallows, and one was forced to sign the Bill of Rights, the Charter of Rights which Englishmen treasure even today.

So let us not talk about England. We have proceeded on a different plane, through a different line of action altogether. And we got our liberties. What is my complaint against this Bill? That without assigning reasons, without adequate reasons you are deliberately curbing the rights which you yourselves gave to the country sixteen months ago. That is the sum and substance of my charge against this Bill. If reasons had been given I could have understood, as reasons had been given with regard to one or two other points. But with regard to the main propositions, I think this is an entirely wrong approach and this is not going to help Government at all. The Prime Minister gave verbal assurances which satisfied a number of Members, including some of the

distinguished journalists who are Members of this House and who therefore abstained from voting yesterday. No doubt verbal assurances from the Prime Minister are valuable. Everyone should treasure them. But what can, the poor Prime Minister even do? Did he not give a verbal assurance on the floor of the House yesterday on one particular clause on which we were very emphatic that he should be prepared to accommodate the House and accept its suggestion, namely with regard to article 19(2)? We said if Parliament would not frame the laws, at least the President would be given the power of giving the final assent to the laws made by the State. He made that statement here on the floor two days ago, but ultimately, he failed to fulfil the promise which he had given. So far as this question is concerned, the giving of the assent by the President was quite possible, legally, constitutionally, and the House could have agreed to it—as indeed has been done with regard to article 31A, yet this was not done. I am not going to discuss the reasons. The fact remains that even verbal assurances given by the Prime Minister on such fundamental matters cannot be given effect to for one reason or other.

I shall conclude by referring to one aspect of all matter which really worries many of us. We are not here to quarrel with each other. The Country is passing through a great crisis. Very often the Prime Minister refers to emergencies. When you have to deal with an emergency you have ample provisions in the Constitution. That is another bogey which is created for the purpose of misleading people. You have ample provisions for that. You can go and suspend any part of Fundamental Rights in respect of any part of the territory of India, if you so desire, if there is a real emergency. We are not discussing emergency here. If an emergency comes, an emergency which will call forth the combined efforts of all sections of the people, I have not the least doubt that the vast majority of the people of India will rally to the call of the Prime Minister, because no one wants that this country should be bartered away to our enemies. But what we are really afraid of is that provisions of so drastic a nature are liable to abuse and misuse in ordinary times. It is not a question of casting motives on State Legislatures. You will not be able to get uniformity of laws; when your party machinery or party Government works, a natural tendency comes to obstruct and to make it impossible for those who politically may not see eye to eye with you to

function independently or to proceed in the way in which they would like to proceed. Here it is that the possibility of curbing the inherent rights of individuals exists, and it exists very much so. Let the Prime Minister bear this in mind. Why is it that there is so much discontent in the country? Many of us have been moving about in different parts of the country and we mix with people of various classes and conditions. Why is it that today that feeling of adoration, that feeling of confidence and that feeling of affection has disappeared? Why should there be so much criticism against the Government? I believe my hon. friend Seth Govind Das got up and said: Well why cannot the Government be trusted? Perfectly true, and my answer to him is: Why cannot the people be trusted by our own Government? Why should it be necessary for you to forge such weapons for crushing the rights and liberties of the people? There is something wrong somewhere. The real fact is that the impression is gaining ground amongst large sections of the people in the country that the Government has failed to deal with some of the vital matters which concern the daily welfare of millions of people. There has been maladministration; there has been failure; there has been inefficiency; there has been ineffective working of the administration and that is why popular discontent is rising. The answer to that popular discontent is not by passing repressive measures. That was done by the British Government. I did not quote Sir Samuel Hoare for the purpose of praising him but I warned the House that it should not proceed on the same lines that Sir Samuel Hoare proceeded which ended in abject failure. He was not prepared to give Fundamental Rights to the Indian people because he knew that they would stand in the way of the British Government in India from continuing the repressive laws which were then on- the statute book and today you are also curbing the Fundamental Rights which were given in the First Constitution because you are not prepared to trust the people of this country. The answer to this present attitude of discontent in the minds of the people can only be fruitfully given, if Government approaches the problems constructively. It must enter the minds and hearts of the people and not intensify the fear of repression, through Bills, creating new offences and sending them to jails. How many jails would be needed for this purpose in the whole of India? There will be a physical limitation to your capacity to accommodate all the people who are going to fill the jails of India. You cannot do it

without courting disaster. The Prime Minister said the other day and I was glad that he touched the point, he said that if the situation comes to that stage, then there will be one and only one solution, namely, there will be revolution in the country. Do we want to create conditions which will lead to revolution in India? I would therefore appeal to the Prime Minister even at this stage—of course, you have got your majority; you will carry this Bill through; you carry it through—but in giving effect to it you must not be guided merely by a sense of intoxication of the power that is in your hands because you have 240 supporters inside the House. Outside the House there are millions who are against you and you will have to remember how you will be able to placate them properly... (Interruption). You may protest as much as you like but the fact remains there.

I would end by saying that here is a situation which has arisen in the country when we should be able to put our heads together—no matter whether we are in different camps—and decide how to tackle these grave and urgent problems, on the right solution of which the future welfare and destiny of this country lies.

Shri Jawaharlal Nehru: We have arrived at the end of a long debate which has lasted for many days and on several occasions I have had occasion to intervene in this debate and now that we have nearly come to the end of it I thought that you might call upon me to speak and I was wondering what I could say, because I thought we had explored every aspect of this question and I had said whatever I had to say and in the course of this long debate sometimes warm words had been exchanged, nevertheless on the whole, I thought I might say that it is true that this debate had been carried on a fairly high level. There were lapses, of course, but still on the whole, I felt that this debate has not only been a good experience for all of us in this Parliament but also for the country (Hear, hear). It is not so much because of the matter in the debate, that is, the amendments moved on our behalf to the Constitution, and the way all the issues were debated; nevertheless some issues were raised which were not related directly to those amendments but which happened to be in peoples' minds owing to their fears or suspicions or which perhaps they brought in because they wanted to bring them in whether they had any reason for that or not so that we have had a great debate. Until a few minutes ago, I did not quite know what to say, but I am grateful to the hon.

Member who preceded me for having given me some ideas on the subject, some thoughts on the subject and to have shown to me more vividly than I realised in the course of the last ten or twelve or 15 days what the real motive of this opposition has been (Hear, hear), because I say this opposition is not a true opposition, is not a faithful opposition, is not a loyal opposition. I say it deliberately. Dr. Mookerjee objected strongly when he was interrupted. I do not object to interruptions. I invite him to do so.

Dr. S. P. Mookerjee: I say yours is not a true Bill.

Shri Jawaharlal Nehru: I say that Dr. Mookerjee's statement is a false statement. I say it deliberately.

Dr. S. P. Mookerjee: Your statement is absolutely false.

Shri Jawaharlal Nehru: I know that Dr. Mookerjee has said that. By saying that, it will not make any difference, but the kind of statements that my hon. friend has made in his last speech and the previous speeches is scandalous. I say that because...

Dr. S. P. Mookerjee: Because your intolerance is scandalous.

Shri Jawaharlal Nehru: The country will judge, not only this House but the country will judge and it has become the fashion in this country for some people to go about in the name of nationalism and in the name of liberty to preach the narrowest of doctrines, of communalism and those things which restrict the liberty (Hear, hear). (Dr. S. P. Mookerjee: You are an arch-communalist, responsible for the partition of the country.) The hon. Member need not get excited and he is going to hear many more truths before I have done with it.

Dr. S. P. Mookerjee: You will also hear many truths.

Shri Jawaharlal Nehru: We here have had to put up with much from a few Members in this House who have challenged.....

Dr. S. P. Mookerjee: That is dictatorship and not democracy.

Pandit Malaviya (Uttar Pradesh): Sir, may I raise a point of order? May I submit that though every hon. Member has no doubt the right to interrupt another, but can there be a running commentary from one Member upon another's speech all the time?

Shri Jawaharlal Nehru: I do not mind that. I have invited it because I know.

Pandit Malaviya: You may not mind it but I do not want this running commentary all the time.

Shri Jawaharlal Nehru: I only wanted to just see how much restraint Dr. Mookerjee had.

Dr. S. P. Mookerjee: What restraint have you shown?

Shri Jawaharlal Nehru: Let us examine these ten days debate and the truth behind it. Here we were putting forward some amendments, amendments dealing with important matters because anything dealing with the Constitution is important, but nevertheless, what were they? We are told: You are curbing, you are destroying the liberty etc. I say any man who says, any group which says, any newspaperman who says that, lies, and knows that he lies, and I challenge every one of them.

Shri Hussain Imam: The word 'lies' is not parliamentary.

Shri Jawaharlal Nehru: Any person who says that these amendments of mine curb the liberty of the Press, I say, he utters an absolute untruth and I challenge him. (*Hear, hear*). We have put up and restrained ourselves during these many days with having two or three Members of this House who have brought this again and again and I challenge them again. They are repeating an untruth and they will have to stand by the untruth not only here but in the public market place and everywhere; we challenge them to combat everywhere, intellectually or any kind of combat on this and every other issue.

Dr. S. P. Mookerjee: Except physically.

Mr. Deputy-Speaker: I would like the hon. Prime Minister to be allowed to go on without interruption.

Shri Jawaharlal Nehru: The hon. Member is used to other types of conflicts.

Dr. S. P. Mookerjee: Not cowardice.

Shri Jawaharlal Nehru: Look at these amendments that we have moved and the House has passed by vast, tremendous and stupendous majorities. Hon. Members who are in a small minority and two, or three other Members, who, I am glad to say, have drifted away from us,—and I welcome the fact that they have drifted away from us elsewhere; may they be welcome elsewhere because we are happy without them (Several Hon. Members: That is right)—have come here and instead of reasoning with

this House, instead of arguing with it, instead of bringing forward arguments to advance the subject of the debate, tell us that the country is against us, that they are 90 and we are ten, and that we are tied up on account of the party whip. I ask, is this the stuff that the hon. Member thinks can be doled across in this way and listened to and accepted by us? If the hon. Member wishes to challenge us, I accept the challenge here, in the country, and everywhere.

Dr. S. P. Mookerjee: Why not have a referendum on this Bill?

Shri Jawaharlal Nehru: I accept it everywhere: not only of the hon. Member, but of every person who wishes to challenge. We accept it, I say.

Dr. S. P. Mookerjee: Mutual acceptance.

Shri Jawaharlal Nehru: We have had enough of soft dealing. If there is to be hard dealing, there are going to be hard blows all round.

During the last fortnight, in the Select Committee and outside, we have dealt with this measure as softly, as gently and in as friendly a way as possible, to meet every argument. We tried to discuss this in a way which sought to find common ways of agreeing to things. We agreed to some things; we could not agree to others. Anyhow, our method was one of friendly agreement in so far as we could. Nevertheless, we find here charges being flung at us, insinuations being made, and things said which have not the faintest substance in fact. If that is said, we can fight both here and outside. We are not going to tolerate this kind of business. I want to make it perfectly clear to everyone. We have put forward deliberately these amendments to the Constitution. We have gone through them patiently, trying to convince and we have convinced a great majority in this House and I believe we can, convince and we have convinced a great majority in this country. I shall tell you why.

What are these amendments? Some hon. Members who are advanced socialists and the like have spoken, one or two of them, against the amendments. They have informed us that they are going to vote against them. What are these amendments? The major amendments are in regard to article 19 and article 31. In the last speech that we heard, we were told how we were running amuck through this Constitution because of some Acts that we had put in at the end of these amendments. What do these Acts deal with and what is the purpose of article 31? When I find those gentlemen, Members of

this House who presume themselves to be socialists, speak in the manner they have done, when we bring forward such amendments, all I can say is that there is very little of socialism in them, if there is any sense at all in them. Here is a proposition—a major proposition—the land problem with which we have been wrestling for years and years. We have come up against difficulties, legal difficulties and the rest. But nothing can be allowed to come in the way—I say nothing,—in the way of effecting a solution of the land problem in India which is the major problem of our country. If the courts come, we respect them. We obey them. But the Courts have to carry out the Constitution and if the Constitution comes in -the way, it is this Parliament and no other that can change the Constitution of India. Are we to submit to things and wait till some great revolution comes to change the condition of things? Land reform has become absolutely essential and we have been yearning for it for generations and we have been working for it. We have to give effect to it without let or hindrance. If anybody comes in the way we have to remove him. There is no other way, because millions wait and millions have been waiting for decades for this. Do you think that lawyers or any petty legal arguments are going to come in the way of these millions? I am amazed at the arguments that have been advanced by some people here. They seem to live in some distant age which has passed: But we have lived in the past and we have worked for these changes. We can say with pride that we have brought about these major changes and not these petty critics of the Government and it is we who are going to bring about major changes in this country. We are not going to allow petty critics and others to stop changes. They advance arguments which might have had some relevance some hundreds of years ago but which have no relevance in India today.

In this matter we have been asked many things. Prof. Saksena said, referring to me, that I had been bargaining with reactionary elements to get something which I wanted. Let me assure him that I have been amazed at his reactionary attitude in this whole debate. Reaction is not necessarily concerned merely with words which denote reaction. If Prof. Saksena knows anything about revolutionary technique and revolutionary history and revolutionary literature, he will know that the greatest reaction is the reaction that presumes to talk in revolutionary language and acts

differently. Prof. Saksena informs us that he is compelled by circumstances, by his conscience or heavens to vote against this measure, and therefore he is going to vote against the measure as a whole, even though the major part of it and the most important part of it deals with this land business and agrarian legislation. Let him realise that this is the major aspect of the measure and he is going to vote against it; Why? I do not know, except that he has not given enough thought to it, that he has been talking so much about it that he has not sufficiently thought about it. But really, I wish the House would realise and hon. Members on the other side should realise what we are talking about. Have they a sense of reality and a grip on the reality? Or are they living in a world divorced from realities? When they talk, they confront us with something that was said in the middle of the eighteenth century in America or in the nineteenth century in some other country. But we are now in the middle of the twentieth century in India and we have to face the problems that confront us here in India and in the present world. Let us realise that. We should not forget all that has passed. They have got their lessons for us. But it is impossible to solve present problems under conditions which somebody mentioned some one hundred or two hundred years ago. And I say to you, take this question of land reforms in this country which is the major question, which is the important question before which every-other question is irrelevant. In this, question of land reform here, we are year after year held up—I do not blame the courts. The Courts are functioning as they should in interpreting the laws and we respect their interpretations and abide by them. But we also have the power to change the law if they construe a law in, a way which does not fit in with our intentions because it is a major thing in India that the land reform must come and zamindari system must go and everything that pertains to it. It has been held up long enough and the process that some of our friends opposite suggest means holding it up longer and longer still till this court decides and that court decides. We have had enough of this holding up, business and if you and I hold it up, there will be marching in the fields which will not help either the hon. Members or the country. There is the strange method of some people who tell us "Oh, what you do does not go far enough. Therefore we will oppose it". That is an argument which has been raised on one or two occasions in connection with this Bill. They say "if you of course went

in for full-blooded socialism, we will support you and because you are going only 25 per cent, therefore we will not support you". This argument can only come out of a person who has nothing to do with reality, who lives in a world of ideas or in some secluded chamber or tower. We, I hope, have some relation to this world we-live in. We have lived in the world, of ideas and we have some relation to the world of facts. Both these impel us to go ahead as far as the Indian people permit us to go ahead. What is the good of any person telling-me that peasant proprietorship is something reactionary. It comes in the way of full-blooded socialism. Of, course it does. It comes in the way of all kinds of socialistic or communistic experiments. It comes in the way-of even efficient production; I admit that. Nevertheless admitting it, I say, as I said in the earlier stage, that that is an inevitable thing for us to do. We can experiment with large-scale farming, we can experiment with State farming and socialistic and cooperative farms and all manner of things, we can experiment but in the state of affairs today, it is not possible as it was not possible even in a country like China with a clean slate to write upon, to go on with what might be called socialistic farming. Because we cannot do that, therefore do not go in that direction at all that is not an argument which can be intelligently put forward or intelligently accepted. We have been told repeatedly about the restraints and curbs we are putting on the Press. I have listened to this again and again and I have reminded hon. Members and I have asked them to point out what the restraints and curbs are. Yet the phrase has been repeated. I say it is completely and absolutely devoid of truth that phrase. All you might say is that you have taken some power under the Constitution which might enable you in future to put some restraint and curbs. Possibly there might be some truth in that, and I admit it will enable this Parliament to do something. The fact of the matter is people talk of fear. Those hon. Members who propose these amendments are full of fear in their hearts. They are afraid of Parliament, they are afraid of this House and they are afraid of the Indian people. They try to seek shelter in some paper enactments, etc. against their own people and against this Parliament. It is right that we should give them shelter. It is important to give them shelter, not to them but to the country, so that it may not act rashly on them. I admit that. But remember when times are changing and revolutionary processes are working in a country, any rigidity means the

breakdown of that system. You must have flexibility, you must have adaptability to changing social and economic, conditions and changing ideas. Any system which is rigid cannot survive today. In bringing forward these amendments to the Constitution—they do not go far, only hon. Members speeches appeared to make them go far—we are doing, if I may say so, a very important and vital task. People have said, "You cannot touch the Constitution". It is of the utmost importance that people should realise that this great Constitution of ours, over which we laboured for so long, is not a final and rigid thing, which must either be accepted or broken. A Constitution which is responsive to the people's will, which is responsive to their ideas, in that it can be varied here and there, they will respect it all the more and they will not fight against it, when we want to change it. Otherwise, if you make them feel that it is unchangeable and cannot be touched, the only thing to be done by those who wish to change it is to try to break it. That is a dangerous thing and a bad thing. Therefore, it is a desirable and a good thing for people to realise that this very fine constitution that we have fashioned after years of labour is good in so far as it goes but as society changes, as conditions change we amend it in the proper way. It is not like the unalterable law of the Medas and the Persians that it can not be changed, although the world around may change.

Therefore, it was a right thing that when we felt that some parts of the Constitution, as the judiciary interpreted them, were coming in the way of social or other progress, it was the right thing and the inevitable thing for us to come to this House and ask this House to approve of certain changes. The changes are not great or vital.

A great deal has been said about those changes and yet I do say, as I said at an earlier stage, that every change that is referred to here is implied in the Constitution itself. Take article 31A or 31B dealing with land reform or the abolition of the zamindari. The Constituent Assembly took great and considerable care to lay down that these changes should not be challenged in a court of law. In spite of this care, perhaps the language was not clear enough. That was our fault and so it has been challenged and these reforms have been in consequence delayed. Now, are we to wait for this

delaying process to go on and for this process of challenge in courts of law to go on month after month and year after year?

Some hon. Members opposite have said, "Why not wait for this court or that court to decide?" I want to tell them that a few million people have waited for too long a period. There is not going to be much more waiting by these 1 millions outside. And these people who talk about waiting do not know what is stirring the hearts of those millions outside.

The Hon. Member opposite referred to the discontent against the Government. Maybe he is right and there are many matters over which the people are discontented with the Government, but the Government is discontented with itself also. But I can tell the hon. Member that in this matter of the abolition of zamindari the Government is dead right and the various State Governments are dead right, whatever else may be said to the contrary. And if this reform does not go through quickly enough then there will be trouble for those who delay.

Therefore we have to understand realities and deal with them understand not only realities but the justice of the cause. It is true that in doing these things on a vast scale you come up against difficulties and injustices. You cannot help it when you are dealing with vast social reforms and changes. You can try to remedy them and so I have suggested to the State Governments to look into the matter and remedy them, if necessary, by additional legislation. But the thing must go through: you cannot stop it. Nor stop for the law courts to declare whether the law is right or wrong. So also in regard to the amendment to article 19(2). It is an amendment in regard to certain matters which widens the scope of law-making undoubtedly so—partly because that scope had been narrowed too much, more particularly in regard to communal matters, communal discord and the rest of it. And that is a matter which we cannot leave to chance easily the risks are too great.

My friend, Prof. Shibban Lal Saksena said something about my suddenly experiencing fear, a great deal of fear. Well, it is difficult to judge one's own fear or one's own lack of fear. I do not think I am terribly frightened about this or any development in this country, but sometimes I am a little frightened of the narrow-mindedness that begins to prevail in this country, of the lack of vision that spreads among people, because that

is the thing which stunts our growth, which will prevent us from doing what we want to do, because neither a fine Constitution nor anything else that we may do will help us much if we are limited of mind and small of spirit. Therefore, it has become necessary to make these changes in the Constitution which by themselves do not do anything except, to give certain powers to Parliament; except to validate some laws, except to enable you to go ahead on the road of your choice. What that road is I do not know-it may vary. One sees ahead rather dimly, because many things happen today which we cannot control and which we cannot foresee. Therefore, we shall have to grope our way from day to day, week to week and year to year; if we think it is a clear way then we are mistaken.

The difficulty arises not in these amendments that we have moved and That you have passed in the second reading with such great majorities; the difficulty is not in them but somewhere behind them, hidden behind them some ideas that fill people's minds of elections, of the General Elections that are coming, and everybody judging this from the standard and the yardstick of that election. Well, the election as I said is important in many ways, but if my word has any value: I can assure the House that I did not have the election at all even remotely in my mind when I put these amendments forward. I have the election in mind for other reasons. I want this election to be a well-ordered election. I want it to bring out the wishes of the people of India whatever they may be. And I can tell you quite honestly that it does not matter to me over much ultimately, what those wishes are, how they are expressed, who comes out at the top. Because, I might regret some development—well. I cannot help it, if I regret it I dislike it and I should oppose it so far as I can but I should like this country to develop the democratic process and grow on democratic lines. But we talk so much of democracy and of liberty. And those words are dear to us because most of our lives we have fought for freedom and liberty; and yet when you talk of democracy it means some kind of ordered liberty because a disordered liberty is not democracy, and it leads ultimately to the suppression of that liberty. We have seen those of us who are acquainted with recent history—how too much talk of liberty has led to licence and has led to the suppression of that liberty. The history of Europe will show that; the history of other countries too. So, let us not be too sure of the liberty and freedom we

possess. Let us cling to them and guard them jealously. But we will not guard them or preserve them by loose talk or loose action. Only by stern discipline and sternly understanding the limitations of freedom can we preserve them, for everything has its limitations, even freedom and even liberty. Without those limitations we endanger the very thing we stand for.

I need not say much about these amendments that this House has been considering for a number of days and has passed clause by clause. But nevertheless I would say that they have not been thought of or brought forward before this House with a view to restricting liberty or freedom in the slightest or with a view to restricting the freedom of the Press or expression in the slightest, but certainly with two points of view. One is to restrict certain forms of unbridled licence which has little to do with political opposition so far as I understand it, and also to preserve that very freedom, because we are quite convinced that unless you have this ordered preservation of freedom, that freedom will go, and it will be very difficult for you to get it back. Therefore, after serious and full thought we brought this forward. It is no good considering this in the air. Hon. Members tell us: "You have not shown, or proved to us the dangers of the situation--what are the dangers?" Well I do not quite know what to reply to that. If hon. Members are not in full possession or fully acquainted with what is happening in the world today or in the India of ours, what can I tell them? When I said I am not afraid of any violent revolution breaking out, of course, Dr. Mookerjee said that if such a thing happens, we have the emergency powers and the rest. But the House does not expect Government to use those emergency powers at the slightest provocation. They are not meant for that. It will be a bad thing for any Government to use emergency powers and get used to them. Therefore, we must normally create conditions which do not require the use of emergency powers at all. It is not a good thing to advise any Government to use those powers and I do submit that the amendments that we have put before this House and which the House has accepted more or less are amendments which do not—so far as Governments are concerned—give any special powers to the Governments. Maybe slightly for the present they do give some powers; maybe later when Parliament considers this matter, they may give

those powers or take away, very likely, some of the powers that Government might possess today. Indeed some powers and some of the old laws should be put an end to. In any event these measures that We have suggested to the house, do not directly have a bearing on the great issue that we have been debating. At any rate, I welcome this debate, not because of its intimate connection with these issues, but because it is good for us to talk about great matters, about the freedom of the Press and the freedom of the people and to educate ourselves and, our people in the process. Unfortunately, our politics in this country gradually drift away from great public debate: it is becoming or tends to become a parlour variety of debates. That is a bad thing for democracy. Let us have great debates on a high level, let, us discuss the bearings of each problem and then come to decisions, so that the public may know our minds. Therefore, although this particular issue did not to my thinking raise these grave issues, nevertheless I have welcomed this great debate, because it has been good for us generally.

Mr. Deputy-Speaker: The question is:

"That the Bill, as amended, be passed".

The House divided: Ayes, 228; Noes, 20.

AYES

Achint Ram Lala

Ahammedunni, Shri

Alagesan, Shri

Alexander, Shri

Ali, Shri A.H.S.

Alva, Shri Joachim

Ambedkar, Dr.

Amolakh Chand,Shri
Ansari,Shri
Arya,Shri B.S.
Asawa Shri
Baldev Singh, Sardar
Balmiki Shri
Barman Shri
Beni Singh Shri
Bhagat Shri B.R.
Bhagwant,Roy,Kaka
Bharati Shri
Bhargava Pandit M.B.
Bharagava Pandit Thakur Das
Bhatkar Shri
Bhatt Shri
Biyani Shri
Borooah Shri
Brajeshwar Prasad Shri
Buragohain, Shri
Chaliha, Shri
Chandrika Ram, Shri
Channaiya Shri

Chattopadhyay Shri

Chaudhri Shrimati Kamla

Chaudhri Shri R.K.

Chettiar, Shri Ramalingam

Das,Dr. M.M.

Das, Shri B.

Das, Shri B.K.

Das, Shri Biswanath

Das, Shri Jagannath

Das, Shri Nandkishore

Das, Shri S.N.

Deo, Shri Shankar Rao

Deogirikar, Shri

Desai,Kanhaiyalal Shri

Desai, Shri Khandubhai

Deshmukh Dr.

Deshmukh Shri C.D.

Deshpande, Shri P.Y.

Devi Singh Dr

Dharam Prakash,Dr.

Diwakar, Shri

Dixit,Shrimati

D'Souza Rev

Durgabai, Shrimati

Dwivedi, Shri

Faiznur Ali, Maulvi

Gadgil Shri

Ghalib Shri

Ganamukhi Shri

Gandhi, Shri Feroz

Gautam Shri

Ghose Shri S.M.

Ghule Shri

Gopaldaswami Shri

Gopinath Singh, Shri

Govind Das Seth

Guha Shri A.C.

Gupta Shri Deshbandhu

Gupta, Shri V.J.

Gurung Shri A.B.

Haneef Maulvi

Hanumanthaiyya

Haque Shri

Hathi Shri

Hazarika Shri J.N.

Hazarika Shri M.

Heda Shri

Himmatsinghka, Shri

HimmatSinh Ji Major General

Hiray Shri

Husain Shri T.

Iyunni Shri

Jagjivan Ram, Shri

Jain Shri A.P.

Jain Shri N.S.

Jajoo Shri

Jajware Shri Ramraj

Jangde Shri

Jayashri Shrimati

Jnani Ram Shri

Kala Venkatrao, Shri

Kaliyannan M. Shri

Kanaka Sabai, Shri

Kannamwar, Shri

Kapoor Shri J.R.

Karmakar Shri

Kazmi, Shri

Keskar Dr.

Khaparde Shri

Krishna Singh Thakur

Krishnamachari Shri T.T.

Krishnanad Rai, Shri

Kumbhar, Shri

Kunhiraman, Shri

Lakshamanan Shri

Lal Singh Thakur

Mahata, Shri Kshudiram

Mahtab Shri

Mahtha Shri S.N.

Maitra, Pandit

Malviya, Pandit

Mallaya Shri

Massey Shri

Meeran, Shri

Menon Shri Damodara

Menon Shri Karunakara

Mirza Shri

Mishra Shri M.P.

Mishra Shri S.P.

Misha Shri Prof S.N.

Mishra, Shri Yuddhishtir

Moinuddin Shaikh

Mookerjee Dr. H.C.

Moidu, Moualvi

Mudgal, Shri

Munshi Shri K.M

Munshi Shri P.T.

Musafir, Giani G.S.

Naidu Kumari Padmaja

Naidu Shri Ethirajulu

Naidu Shri S.R.

Naik Shri M.

Naik Shri S.V.

Nand Lal Master

Nathwani, Shri

Nausherali, Syed

Nehru Shrimati Uma

Nehru Shri Jawahar Lal

Nijalingappa Shri

Obaidullah, Shri

Pande Dr. C.D.

Pannalal Bansilal Shri

Pani Shri B.K.

Pant Shri D.D.

Parmar Dr

Pattabhi Dr.

Poonacha Shri

Pustake Shri

Rahman Shri M.H.

Raj Bahadur Shri

Raj Kanwar Lala

Rajagopalchari, Shri

Ramachar, Shri

Ramaswamy, Shri Arigay

Ramaswamy, Shri Puli

Ramdhani Das Shri

Ramaiah Shri V.

Ranbir Singh Ch

Ranjit Singh Sardar

Rao Shri J.K.

Rao Shri M.V. Rama

Rao Shri Thirumala

Rao Shri Kesava

Rathnaswamy Shri

Raut, Shri

Ray, Shrimati Renuka

Reddy Shri P.Basi

Reddy Shri Ranga

Reddy Shri V Kodandarama

Reddy Shri K.V. Ranga

Reddy Dr. M.C.

Rudarppa Shri

Saksena Shri Mohanlal

Samanta Shri S.C.

Sanjivayya Shri

Santhnam Shri

Sarwate, Shri

Satyanarayan, Shri

Satish Chandra

Sen Shri P.G.

Shah Shri C.C.

Shah Shri M.C.

Shankaraiyya

Sharma, Pandit Balkrishna

Sharma, Pandit Krishnachandra

Sharma, Shri K.C.

Shiv Charan Lal, Shri

Shukla Shri S.N.

Shukla Shri A.C.

Singh Capt. A.P.

Singh Dr. Ram Subhag

Singh Shri B.P.

Singh Shri T.N.

Sinha Shri Aniruddha

Sinha Shri A.P.

Sinha Shri B.K.P.

Sinha Shri K.P

Sinha Shri S.N.

Sinha Shri Satyanarayan

Siva Dr. M.V. Gangadhara

Sivaprakasam, Shri

Snatak Shri N

Sochet Singh Sardar

Sohan Lal Shri

Sonavane Shri

Sondhi Shri

Sri Prakasa Shri

Subramanian , Dr. V.

Subramanian, Shri C.

Subramanian, Shri R.

Swaminadhan, Shrimati Ammu

Thakkar, Dr. K.V.

Thimappa Gowda,Shri

Tiwari, Shri B.L.

Tripathi Shri Kishorimohan

Tyagi, Shree

Upadhyay, Pandit Munishwar Dutt

Upadhyay Shri R.C.

Vaidya, Shri K.

Vaidya, Shri V.B.

Vaishya, Shri M.B.

Varma Shri B.B.

Varma Shri M.L.

Velayudhan, Shrimati

Venkataraman, Shri

Vidyavachaspati, Shri Indra

Vyas, Shri K.K.

Vyas Shri Radhelal

Wajed Ali Maulvi

Yadav , Shri

Yashwant Rai Prof.

Zakir Hussain Dr.

NOES

Bhattacharya, Prof K.K.

Birua Shri

Das, Shri Sarangdhar

Hussain Shri Imam

Hukam Singh Sardar

Jaipal Singh, Shri

Kamath, Shri

Kriplani Acharya

Kriplani, Shrimati Sucheta

Kunzru Pandit

Man Sardar B.S.

Mookerjee, Dr. S.P.

Naziruddin Ahmad, Shri

Oraon, Shri

Ramnarayan Shri Babu

Saksena, Prof S.L.

Seth Shri D.S.

Shah Prof K.T.

Sinha, Shri M.P.

Velayudhan, Shri R.

The motion was adopted.

Mr. Deputy-Speaker: The motion is adopted by a majority of the total Membership of the House and by a majority of not less than two-thirds of the Members present and voting.

The Constitution (First Amendment) Bill, 1951, as amended, is passed.

BUSINESS OF THE HOUSE

Mr. Deputy-Speaker: I would like to make an announcement regarding the work on Monday. On Monday the Government of Part C States Bill will be taken up. The general discussion has been finished and the clause by clause discussion has to take place. Time has been allowed to hon. Members to sit along with the hon. Minister to iron out differences and bring forward, as far as possible, agreed amendments. Therefore, if possible the Bill must be finished on Monday. Otherwise, if something stands over, we can have a short time on Tuesday.

Shri Hussain Imam (Bihar): With regard to the delimitation of constituencies, the time is restricted by the statute. Anything that is to be done - must be done within twenty days of laying the orders.

Mr. Deputy-Speaker: The matter may be raised on Monday. On Monday this will be the business.

*The House then adjourned till Half Past Eight of the Clock on Monday the 4th
June, 11.*