

"Historic" Bill on statute change moved

"The Times of India" News Service

NEW DELHI, August 3.

"TIME and tide wait for no man," said the Law Minister, Mr. H. R. Gokhale, in the Lok Sabha today while moving for consideration the Constitution (24th Amendment) Bill, 1971.

Seldom had the attendance in the House been so large as it was today.

Mr. Gokhale was greeted with loud desk-thumping as he stood up to move the Bill soon after question hour.

"When this amendment is carried, I dare say it will be a landmark in the legislative and constitutional history of our country," he said, amid cheers.

The Law Minister argued that the directive principles superseded the Fundamental Rights.

The 24th amendment seeks to make it clear that Parliament has the power to amend all parts of the Constitution, including the Fundamental Rights.

The fear that Parliament would "misuse" the power to curtail Fundamental Rights once it acquired the power to amend them was unfounded, Mr. Gokhale said.

As a matter of fact, before the

Supreme Court's judgment in the Golaknath case in February, 1967, Parliament did possess the power to amend the Fundamental Rights.

But it was not "misused." On the other hand, the Fundamental Rights Chapter was amended only twice — once to enlarge the protection given to the minorities, and again to preserve the security of the State.

GOLAKNATH DECISION

Mr. Gokhale said the Supreme Court, in the well-known Golaknath case, reversed, by a narrow majority, its own earlier decisions upholding the power of Parliament to amend all parts of the Constitution, including Part III relating to Fundamental Rights.

The result of the judgment was that Parliament was considered to have no power to take away or curtail any of the Fundamental Rights even if it became necessary to do so for giving effect to the directive principles of State policy and for the attainment of the objectives set out in the preamble to the Constitution.

It was, therefore, considered necessary to provide expressly that Parliament had the power to amend any provision of the Constitution to bring Part III within the scope of the amending power.

The amending Bill also provides that when a Constitution Amendment Bill is passed by both the Houses of Parliament and presented to the President for his assent, he must give his assent, Mr. Gokhale said.

MANDATE CITED

It was also proposed to amend Article 13 by laying down that nothing in that article shall apply to any amendment of Article 368. Article 13, as it stands at present, says: "All laws in force in the territory of India immediately before the commencement of the Constitution, in so far as they are inconsistent with the provisions of this part (Fundamental Rights) shall, to the extent of such inconsistency, be void."

Mr. Gokhale said the Government had a massive mandate from the people to carry out its socio-economic programme.

The Constitution was only a means for the achievement of certain goals and not the end in itself. The Con-

stitution was not immutable. If it were so, it would stagnate and perish.

The amending process was only a safety valve so that the Constitution could be saved from stagnation by making it an instrument for—and not an impediment in—bringing about rapid socio-economic changes.

"PARLIAMENT SUPREME"

The power of Parliament to amend all parts of the Constitution was supreme. The amendment sought to remove the distinction that had been made between the constituent power and legislative power of Parliament. Parliament alone would be supreme so far as the amendment of the Constitution was concerned.

The Law Minister pointed out that the directive principles were a part of the Constitution, though they could not be enforced in a court of law.

But the directive principles were fundamental to the governance of the country. The directive principles were not a mere ornamentation or articles of beauty. If there was a conflict between the directive principles and Fundamental Rights, the former must prevail.

At this stage there was some commotion in the House when the nominated Anglo-Indian member, Mr. Frank Anthony, rose on a point of order.

He pointed out that the 24th Amendment Bill made no reference to the directive principles. The Law Minister was actually arguing in favour of the 25th Amendment Bill, Mr. Anthony said.

ASSURANCE GIVEN

Mr. Gokhale said the crux of the matter was that Parliament must have the power to amend any part of the Constitution. He went on to quote what Mr. Jawaharlal Nehru had said during the debates in the Constituent Assembly—that if there was a clash between the Fundamental Rights and directive principles, the latter must supersede the former.

After the Supreme Court's judgment in the Golaknath case, the static element had got the better of the dynamic element. The directive principles, the Law Minister said, must be more effective as time passed by and as necessity arose.

The predominance of the static element over the dynamic had really blocked the way to progress.

Mr. Gokhale said he was sure Parliament would not go about curtailing the Fundamental Rights the moment it again acquired the power to amend Chapter III of the Constitution. Those who thought so were arguing out of "sheer nervousness."

Parliament did, in fact, possess the power to amend the Fundamental

Continued on Page 11 Column 1

SMOOTH PASSAGE LIKELY FOR 24th AMENDMENT

Continued from Page 1 Column 3

Rights before the Golaknath judgment. But it did not trim them in any manner whatsoever.

Amid cheers, Mr. Gokhale said: "The question is: How much faith do we have in ourselves? The present amendment is only to assert Parliament's right to amend all parts of the Constitution. The actual amendment is still a matter before this Parliament... This power will never be misused, because we have faith in the people, faith in Parliament and faith in the democratic process."

"India is at the cross-roads, and millions of people steeped in poverty and backwardness are demanding rapid socio-economic changes."

MANY AMENDMENTS

The Speaker, Dr. G. S. Dhillon, said there were a host of amendments which fell into three categories: (1) for referring the Bill to the Supreme Court for its opinion; (2) for circulating it for eliciting public opinion; and (3) for referring to a select committee.

The PTI cheers: The Bill seeks to amend Articles 7 and 368. Article 7 lists the Fundamental Rights as: right to equality; to freedom of speech, association and union; movement throughout the Union of India; acquire, hold and dispose of property; and practise any profession, or to carry on any occupation, trade or business.

Article 368 lays down the procedure to be adopted for effecting changes in the Constitution.

PARTY STANDS

All parties, except the Jana Sangh and the Swatantra Party, fully supported the measure.

Supporting the amending Bill, Mr. A. K. Gopalan, leader of the CPM group in the House, said the present Constitution was "a bundle of contradictions" and reiterated his party's view that it should be changed lock, stock and barrel as it was framed by "representatives of princely houses and big business."

Mr. R. K. Sinha (new Congress) said the Bill sought to assert the sovereignty of the people and their elected representatives, which was challenged by the judiciary in the Golaknath case.

Mr. Sinha quoted the Thomas Jefferson to drive home the point that no generation had the right to bind successive generations to certain laws and conventions.

"REAL ROADBLOCK"

Mr. Indrajit Gupta (CPI-West Bengal), welcoming the measure, paid a tribute to the late Mr. Nath Pai for focussing the nation's attention on this important issue soon after the judgment in the Golaknath case.

The ruling party, he said, had not shown any sense of urgency at that time but adopted a leisurely attitude towards Mr. Nath Pai's Bill. The roadblock was not the Supreme Court but a section within the ruling party in the last Parliament.

Mr. Gupta said the Constitution had several contradictions, especially where the directive principles were concerned.

There could be no Fundamental Rights for ten per cent. at the cost of 90 per cent.

Mr. Darbara Singh (new Congress-Punjab), supporting the Bill, criticised the Supreme Court judgment in the Golaknath case.

Mr. A. B. Vajpayee, leader of the Jana Sangh group, said the Golaknath ruling had raised many important and

vital points. He was not prepared to accept the verdict as the last word.

He felt that if after the Golaknath case decision, the Government had referred back the issue to the Supreme Court for its opinion under Article 143, the Supreme Court might have reversed the decision.

Mr. Vajpayee had an amendment to suggest that there should be a referendum to decide the question of curtailment of Fundamental Rights. If the Government was prepared to accept the amendment, he said, he would support the Bill.

Mr. Vajpayee said the last election was not fought on one issue. "There were various issues, pressures and counter-pressures."

If the ruling party claimed that the people were with it, why should it not agree to go to the people on the issue of curtailment of Fundamental Rights?

OTHER RIGHTS

Mr. Vajpayee said that if in order to bring about economic changes, the liberties of the people were curtailed, it would lead to the loss of political freedom.

The Supreme Court was not opposed to enlarging the Fundamental Rights, he said. If certain rights, which were the basis of democracy, were curtailed it would lead to totalitarianism.

Mr. Vajpayee said his party was not opposed to limiting the right of property. But the amendment brought forward could also affect other rights.

Mr. Chandrajit Yadav (new Congress-U.P.) said the question of constitutional changes had been put squarely to the people in the recent election, quoting the ruling party's election manifesto.

Mr. Frank Anthony said he would not oppose the 24th Amendment and the 25th amendment if they did not come in the way of Articles 26, 29 and 30, which relate to the rights of religious minorities.

Deploping the rancour displayed during the debate, Mr. Anthony reminded the ruling party members that what was sovereign and supreme was not Parliament but the Constitution. Parliament was only a creature of the Constitution.

By the present amendments Parliament was seeking to do the very thing which the Supreme Court in the Golaknath case felt it could not. This would bring Parliament into direct confrontation with the Supreme Court.

Mr. Anthony also regretted what he called the direct attempt by some ruling party members to intimidate the Supreme Court through a tirade of vilification and force it to toe the ruling party's political line.

He described as monstrous the proposition that the judiciary should change its interpretation.

Mr. H. M. Patel (Swatantra-Gujarat) said the matter should be discussed in all seriousness. One should not be intolerant to dissenting views.

"POWERS EXCEEDED"

Mr. Jagannath Rao (new Congress-Orissa) said Parliament, and not the Supreme Court, had the power to amend the Constitution.

The Golaknath ruling was, in effect, an amendment of the Constitution. The Supreme Court had thus transgressed the limits of its jurisdiction and power in delivering this judgment.

Mr. Tridib Chaudhury (RSP-W B) said right to property should not have the status of a Fundamental Right. Other Fundamental Rights, however,

should be treated as sacrosanct and must not be whittled down.

Mr. Madhu Dandavate (PSP-Maharashtra) said amid cheers from the new Congress benches that as "a committed radical socialist" he fully supported the Bill.

The adoption of this Bill would be the most fitting tribute to Mr. Nath Pai's memory.

The ruling party benches were packed to capacity in response to a three-line whip. No difficulty is expected in the passage of the Bill, which is scheduled to be completed tomorrow.

The Speaker extended the debate by over an hour so that more members could speak.

LEAGUER'S STAND

Mr. Muhammad Ismail (Muslim League) also opposed the measure. Mr. Anthony and Mr. Ismail wanted to remove from the scope of the amendment the articles relating to minority rights.

The UNI adds: Before the debate on the Bill began, Mr. Dandavate raised a procedural point of order reminding the House of a Bill he had introduced earlier on the same lines. He wondered whether the House could take up consideration of the present Bill without disposing of the earlier Bill.

He, however, made it clear that he was not standing in the way of consideration of the 24th Amendment Bill. He was only trying to expedite its adoption and he was ready to withdraw his own Bill if this would help.