



THE SENATE OF PAKISTAN DEBATES

OFFICIAL REPORT

Monday, November, 17, 1975

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SENATE DEBATES

SENATE OF PAKISTAN

Monday, November 17, 1975

The Senate of Pakistan met in the Senate Chamber, (State Bank Building), Islamabad, at half past five of the clock in the evening, Mr. Chairman (Mr. Habibullah Khan) in the Chair.

Recitation from the Holy Qur'an

Mr. Chairman : Now, we are taking up questions.

STARRED QUESTIONS AND ANSWERS

Mr. Chairman : Well, gentlemen, Khawaja Mohammad Safdar has submitted an application to me for the postponement of his privilege motions, adjournment motions and questions. Well, I will make my decision known to you when the privilege motions and adjournment motions are taken up, but so far as the questions are concerned any other Member can ask question on his behalf. Is there any gentleman prepared to ask questions on behalf of Khawaja Mohammad Safdar ? Yes, question No. 12.

COMMERCIAL BANK DEPOSITS

12. *Khawaja Mohammad Safdar (Put by Mr. Tahir Mohammad Khan) : Will the Minister for Finance, Planning and Economic Affairs be pleased to state.

(a) the total amount of deposits, with the Commercial Banks on 30th June, 1972, 1973, 1974 and 1975; and

(b) the amount of fixed deposits, call deposits and Saving Bank account deposits with the Commercial Bank respectively on the 30th June, 1972, 1973, 1974 and 1975 ?

Rana Mohammad Hanif Khan : (a) The information is as follows :

On 30th June, 1972 Rs. 1665.22 crore.

On 30th June, 1973 Rs. 2061.95 crore.

On 30th June, 1974 Rs. 2261.34 crore.

On 31st March, 1975 Rs. 2118.44 crore.

(b) The information is as follows :

(Rs. in crores)

| As on | Fixed Deposits | Call Deposits | Saving Bank Account Deposits |
|---------|----------------|---------------|------------------------------|
| 30-6-72 | 445.88 | 46.68 | 506.59 |
| 30-6-73 | 490.89 | 72.65 | 743.96 |
| 30-6-74 | 498.69 | 56.06 | 849.43 |
| 31-3-75 | 533.97 | 57.74 | 851.80 |

Mr. Chairman : Next, question No. 13. Mr. Sher Mohammad Khan, are you asking this question?

Mr. Sher Mohammad Khan : Yes, Sir.

COMMERCIAL BANK ADVANCES

13. ***Khawaja Mohammad Safdar** (put by Sher Mohammad Khan) : Will the Minister for Finance, Planning and Economic Affairs be pleased to state.

(a) the total of deposits with the commercial banks in each of the four province separately, on 30th June, 1975;

(b) the amount of advances, both secured and unsecured, made by the commercial banks in each of respective province during the year 1974-75; and

(c) the amount of outstanding advances, both secured and unsecured, made by the commercial banks in each province as on 30th June, 1975?

Rana mohammad Hanif Khan : The information cannot be disclosed in public interest.

Mr. Chairman : Yes, next question No. 14. Any gentleman ? Do you want to ask this question ?

Malik Mohammad Sharif : Yes, Sir.

EXCISE DUTY ON TOBACCO

14. ***Khawaja Mohammad Safdar** (put by Malik Mohammad Sharif) : Will the Minister for Finance, Planning and Economic Affairs be pleased to state :

(a) the amount of excise duty on tobacco collected actual or estimated from the Punjab and the N. W. F. P. respectively during 1972-73, 1973-74, and 1974-75; and

(b) the estimated proportionate departmental expenditure incurred by the Federal Government on the collection of the excise duty mentioned in (a) above, in the Punjab and the N. W. F. P. respectively during 1972-73, 1973-74 and 1974-75 ?

Rana Mohammad Hanif Khan : (a) The following amounts of excise duty were collected on tobacco from the Provinces of the Punjab and NWFP during the years indicated below (These figures are provisional):

(Rs. in lacs)

| Year | Punjab | N.W.F.P. |
|---------|--------|----------|
| 1972-73 | 251 | 222 |
| 1973-74 | 248 | 238 |
| 1974-75 | 269 | 229 |

(b) It is not possible to indicate expenditure incurred by the Federal Government on the collection of excise duty on tobacco separately. Excise duty is levied on 65 items and it is not possible to allocate the expenditure item-wise for the various Provinces.

Mr. Chairman : Yes, now question No. 15, Mr. Ghulam Rasool A. Siddiqui.

COMPULSORY EDUCATION

Mr. Ghulam Rasool A. Siddiqui : Will the Minister for Education, Science and Technology and Provincial Coordination be pleased to state whether the Government intends to introduce compulsory education in Pakistan ?

Mr. Abdul Hafeez Pirzada : No.

However, the Government intends to provide universal elementary education of eight years under a phased programme.

Mr. Abdul Hafeez Pirzada : The answer Sir, is No. However, the Government intends to provide universal elementary education of eight years under a phased programme.

Mr. Chairman : Question No. 16. Again, Khawaja Mohammad Safdar.

DISHONOURING OF PAKISTANI DEGREES

***Khawaja Mohammad Safdar (put by Mr. Tahir Mohammad Khan) :** Will the Minister of Education, Science and Technology and Provincial Coordination be pleased to state :

(a) whether it is a fact that the Government of Saudi Arabia is treating the Pakistanis holding M. A. degrees as B.As., those holding B. A. or B. Sc. degrees as F. As. and similarly those holding school leaving certificates (Matriculates) as only middle pass;

(b) whether it is a fact that Pakistani employees of the Government of Saudi Arabia are thus getting lower grades as regards their pay and allowances, and have in most cases been getting less than two thirds of the pay to which they are entitled in view of their academic qualifications; and

(c) whether it is a fact that the Pakistan Government has officially accepted the position that Pakistani academic qualifications should be treated by the Saudi Arabian Government as one step below what they are in fact ?

Mr. Abdul Hafeez Pirzada : (a) and (b) The exact position is being ascertained through diplomatic channels.

(c) No.

Mr. Chairman : There is also another answer to (c)

Mr. Abdul Hafeez Pirzada : (c) No.

Mr. Chairman : Now, there is an unstarred question and this is by Mr. Ghulam Rasool A. Siddiqui.

Mr. Ghulam Rasool A. Siddiqui : Will the Minister for Education, Science and Technology.....

Mr. Chairman : This is an unstarred Mr. Ghulam Rasool.

Mr. Ghulam Rasool A. Siddiqui : Yes, Sir.

Mr. Chairman : I only wanted to inform you that you need not read. The answer is there available for your information.

UNSTARRED QUESTION AND ANSWER

ARABIC AS COMPULSORY SUBJECT

3. **Mr. Ghulam Rasool A. Siddiqui :** Will the Minister for Education, Science and Technology and Provincial Coordination be pleased to state whether Government of Pakistan intends to introduce teaching of Arabic in schools and Colleges as a compulsory subject ?

Mr. Abdul Hafeez Pirzada : (1) According to the prevalent scheme of studies, Arabic is offered as one of the elective subjects from class VI—onwards. In the new scheme of studies the same position of the subject is retained.

(2) National Curriculum Committees (for Classes VI—VIII and IX—X) have modernized the curricula for making it more effective and meaningful. Textbooks according to new curricula are being prepared by the Provincial Textbook Boards to be introduced in classes VI and IX from the academic year 1976.

(3) In view of the importance and significance of Arabic for Pakistan it is proposed to revise the Scheme of Studies for Elementary stages to give due status to Arabic alongwith other subjects.

(4) A National Committee consisting of representatives of the Provincial Education Departments and Convenors of the National Subject Committees, will meet in the 3rd week of November, 1975 to discuss the matter. It depends upon the decision of the Provincial Representatives whether Arabic should be introduced as a compulsory subject.

(5) Arabic is a compulsory subject in the Madressas Darul Uloom run by Auqaf Department or Educational and Religious organizations.

LEAVE OF ABSENCE

Mr. Chairman : Now, we take up leave applications. There is an application submitted telegraphically by Mr. Niamatullah Khan, Ghaznikhel. He writes :

“Ill, grant leave from 12th to 15th = Niamatullah Khan, Senator”.

Mr. Chairman : Should the leave be granted ?

(The leave was granted)

Mr. Chairman : Leave is granted.

Now, we take up privilege motions.

Malik Mohammad Akhtar : Yes, Sir.

PRIVILEGE MOTION RE : NON—PRESENTATION OF ANNUAL INTERIM REPORT OF ISLAMIC COUNCIL

Mr. Chairman : There is a Privilege Motion No. 2/75 in the name of Senator Khawaja Mohammad Safdar but as I have already informed the House he has sent an application requesting for the postponement of his privilege motions, so, I think, we should have no objection to the postponement.

Do you agree ?

(X) **Voices :** Yes, Sir.

Mr. Chairman : Any objection ?

(Pause)

All right. This privilege motion stands postponed. Any other ?

PRIVILEGE MOTION RE : NON—PRESENTATION OF REPORT ON OBSERVANCE AND IMPLEMENTATION OF PRINCIPLES OF POLICY

Mr. Chairman : There is another privilege motion. This is also in the name of Khawaja Mohammad Safdar. So this is also to be postponed. Should we postpone ?

Malik Mohammad Akhtar (Minister of state for parliamentary Affairs): No objection, Sir.

Sir, instead of asking each, we could postpone all the privilege motions standing in his name. That would be better because there are so many.

Mr. Chairman : No, there is only request from one Senator Khawaja Mohammad Safdar. He wants all his privilege motions to be postponed. But supposing there is another gentleman present here in the House and he wants the privilege motion to be taken up, I cannot postpone it.

Malik Mohammad Akhtar : All right, Sir.

Mr. Chairman : So far as Khawaja Safdar's, privilege motions are concerned, they stand postponed.

PRIVILEGE MOTION RE : SEALING OF THE RESIDENCE OF
SENATOR MOHAMMAD HANEEF RAMAY BY POLICE

Mr. Chairman : There is now another Privilege Motion No. 5/75 in the name of Haji Sayed Hussain Shah, Senator.

Yes, Haji Sayed Hussain Shah. Is he here ?

Voices : No.

Mr. Chairman : Well, he is not here. No application, no request on his behalf, and he is not here.

What is your reaction, Malik Sahib ?

Malik Mohammad Akhtar : Normally, it is dropped out. But if the honourable Chair wants to postpone it, we have got no objection.

Mr. Chairman : I am not interested in postponing or breaking up.

Malik Mohammad Akhtar : Yes, Sir.

Mr. Chairman : There was a request by Khawaja Mohammad Safdar, and out of deference to his request, I postponed it with your consent. Haji Sayed Hussain Shah, Senator, is neither present nor he had the courtesy to send an application.

Malik Mohammad Akhtar : Then, Sir, it may be ruled out.

Mr. Chairman : I can't rule it out because I cannot consider it.

Malik Mohammad Akhtar : All right, Sir.

Mr. Chairman : When a man is absent, and when he is not going to move it, it cannot be considered. Yes ?

Mr. Abdul Hafeez Pirzada (Minister for Education Science Technology and Provincial co-ordination) : The best thing would be an observation from the Chair that the motion was not moved.

Mr. Chairman : Yes, that is why I say it cannot be considered.

Mr. Abdul Hafeez Pirzada : No moved.

Mr. Chairman : It means that the gentleman is neither present nor he has sent any request. Therefore, it cannot be considered because he has not moved, and nobody is to move.

Next I think. This is privilege motion No. 6/75 by Senator Sardar Mohammad Aslam, Yes, it is your privilege motion. Do you want to move ?

Sardar Mohammad Aslam : Sir.

Mr. Chairman : Yes, you move.

**PRIVILEGE MOTION RE : PTV DRAMA 'MEHMAN' WHICH
GAVE IMPRESSION OF CORPORATION AGAINST
MEMBERS OF PARLIAMENT AND
PROVINCIAL ASSEMBLIES.**

Sardar Mohammad Aslam : Sir, I beg to move that the Senate do stand adjourn to discuss the matter of breach of privilege arising out of drama "Mehman" shown by Pakistan Television Rawalpindi-Islamabad on 1st of November in which impression has been given that Members of Parliament and of Provincial Assemblies are corrupt and they try to get themselves elected only to earn money."

Malik Mohammad Akhtar : Sir, it is opposed. At present, I will get the script and consult with the honourable Member, so its admissibility may kindly be deferred because I have not got the requisite record to answer. I have sent for it but it is a lengthy script Sir, and it will be coming in a day or so.

Mr. Chairman : Yes.

Do you agree to the suggestion ?

Sardar Mohammad Aslam : Yes, Sir, I agree.

Mr. Chairman : So, should it be postponed ?

PRIVILEGE MOTION RE : NON-SUBMISSION OF REPORT ON THE DRAFT OF 199
AMENDED RULES OF PROCEDURE AND CONDUCT
OF BUSINESS IN THE SENATE

Sardar Mohammad Aslam : Yes, Sir.

Mr. Chairman : Consideration is deferred.

PRIVILEGE MOTION RE : NON-SUBMISSION OF REPORT ON
THE DRAFT OF AMENDED RULES OF PROCEDURE
AND CONDUCT OF BUSINESS IN THE SENATE

Yes, this is privilege motion No. 8 in the name of Senator Shahzad Gul. Yes, Shahzad Gul. Is he present ? Any application, any request ?

(Pause)

Nothing. It cannot be considered because it has not been moved.

Next please. Now, privilege motions are over.

Now, we take up adjournment motions. The first adjournment motion is in the name of Khawaja Mohammad Safdar.

ADJOURNMENT MOTION RE : LOOTING AND KILLING OF
SECOND CLASS PASSENGERS BY DACOITS IN
MULTAN EXPRESS

Mr. Chairman : Yes, he has made an application for postponing.

Do you agree that it should be postponed ?

(The house agreed)

Mr. Chairman : Consideration deferred.

No other adjournment motion ?

Yes, this is an adjournment motion No. 14.

ADJOURNMENT MOTION RE : FAILURE OF WAPDA TO
SUPPLY ELECTRICITY TO QUETTA AND SUBURBS

Mr. Chairman : It is in the name of Senator Haji Sayed Hussain Shah.

Is he present ?

Voices : Absent.

Mr. Chairman : Sorry. He has made no request. It falls through. It cannot be considered as it is not moved.

Well, this is adjournment motion No. 15 standing in the name of the same Senator Haji Sayed Hussain Shah.

ADJOURNMENT MOTION RE : SUPPLY OF SUFFICIENT CEMENT TO PEOPLE OF BALUCHISTAN AT CONTROLLED RATE

Mr. Chairman : I think he is absent. He has sent no request or application for its postponement. It will be deemed not to have been moved. It falls through.

ADJOURNMENT MOTION RE : RAID BY CUSTOMS ON BOLAN MAIL TRAIN

This is another adjournment motion No. 16/75 standing in the name of same Senator Haji Sayed Hussain Shah. He is absent, as I have already informed the House. He has made no request for its postponement. No reason given, so, naturally, it falls through. It cannot be considered. Not moved.

ADJOURNMENT MOTION RE : ROBBERY AND ABDUCTION BY INDIAN DACOITS IN PAK BORDER TOWNS

Mr. Chairman : This is another adjournment motion No. 23/75. It is again in the name of the same gentleman, Haji Sayed Hussain Shah. Obviously, he is absent. No request for postponement. Not moved. Falls through.

Although time is there but adjournment motions have exhausted.

Sheikh Mohammad Rashid (Minister for Food and Agriculture, Co-operatives, Works and under developed Areas and Land Reforms) : Adjournment motion No. 17, Sir. You have not taken it.

ADJOURNMENT MOTION RE ; MIS-APPROPRIATION OF WHEAT

Mr. Chairman : I do not know. I depend upon my Secretariat. They are not handing over No. 17. I do not know if there is any such adjournment motion.

Sheikh Mohammad Rashid : I got note of this adjournment motion.

Mr. Chairman : Well, I am sorry. I feel I had known this thing earlier. I am told just now by the Secretary that adjournment motion No. 17 is here on the table.

PRIVILEGE AND ADJOURNMENT MOTIONS OF ABSENT MEMBERS

Mr. Chairman : In view of the ruling I have already given, if any gentleman has made any application requesting for postponement of his privilege motions or adjournment motions, they all stand postponed to some other day. The gentlemen who have tabled any but are absent today, and are not moving, as a general rule, all of them are not postponed but deemed to have not been moved and, therefore, fallen through. My general ruling is that all those adjournment motions about which nobody had requested and the movers are not here, or if they are here but not moved them, then all of them are deemed to have been ruled out. That is the general practice.

Some of the gentlemen, as you know, who are Members of this House have been arrested. We have received information from the quarters concerned. So, I will just read these communications to the House.

INTIMATION RE: ARREST OF SENATOR NBABI BAKSH ZEHRI

Mr. Chairman : This is from Karachi, from the Home Secretary, Sind, addressed to the Chairman, Senate.

“In pursuance of case registered against him under sections 212/216/120/124-A. P. P. C., *vide* FIR No. 90/75, Sariab Police Station, Quetta, Senator Nabi Baksh Zehri was arrested by Quetta police within the jurisdiction of Ferozabad Police Station, Karachi, at 11.00 hours on 15 November 1975. This is submitted for the information of the Chairman, Senate of Pakistan.

This is about another gentleman.

Mr. Chairman : This is addressed to me :

“The Superintendent of Police Nazimabad has intimated that Mr. Mohammad Hashim Khan Ghilzai, Senator from Baluchistan, has been arrested by him under section 188, Pakistan Penal Code on 13th November, 1975, at 22.30 hours for violation of section 144, Criminal Procedure Code. He has been lodged in Central Prison, Karachi, and given ‘A’ class.”

This was from the Home Secretary. These are the two Members of this House who have been arrested.

MESSAGE FROM THE NATIONAL ASSEMBLY RE : ADOPTION
OF THE CONSTITUTION (FOURTH AMENDMENT)
BILL, 1975

Mr. Chairman : Now, there is a message from the Secretary, National Assembly, addressed to my Secretary :

“Sir, in pursuance of rule 109 of the Rules of Procedure and Conduct of Business in the National Assembly, I have the honour to inform the Senate that the National Assembly passed the Constitution (Fourth Amendment) Bill, 1975, on the 14th November, 1975. A copy of the Bill is transmitted herewith. Copy is attached.

Now, this brings us to the Legislative Business. Item No. 3, Malik Meraj Khalid.

THE CONSTITUTION (FOURTH AMENDMENT) BILL, 1975

Malik Meraj Khalid : Sir, I beg to move :

“that the Bill further to amend the Constitution of the Islamic Republic of Pakistan [The Constitution (Fourth Amendment) Bill, 1975], as passed by the National Assembly, be taken into consideration”.

Mr. Chairman : The motion made is :

“That the Bill further to amend the Constitution of the Islamic Republic of Pakistan [The Constitution (Fourth Amendment) Bill, 1975], as passed by the National Assembly, be taken into consideration.”

Any amendment ? Any objection ? Any opposition ?

(Pause)

No. Yes ?

ملک معراج خالد (وزیر قانون و پارلیمانی امور) : جناب اسپیکر ! آئین میں چوتھی ترمیم کا یہ بل اس لئے پیش کیا جا رہا ہے ہے کہ واقعات اور تجربات نے ہمارے آئین میں جو چند ایک ترامیم نہایت ہی ناگزیر کر دی تھیں ، وہ اس معزز ایوان سے منظور کروائی جائیں ۔

جناب والا! میں نہایت مختصر طور پر مختلف آرٹیکلز کے بارے میں جو ترامیم کے لئے پیش کئے جا رہے ہیں، عرض کروں گا۔ جناب والا! ان ترامیم کے ذریعے آرٹیکل ۸ میں جیسا کہ آئین کے آرٹیکل ۸ کی کلاز ۴ میں یہ درج ہے کہ تمام وہ قوانین جو کہ پہلے شیڈول میں درج ہیں۔ انہیں اس آرٹیکل کے تحت محفوظ دیا گیا تھا۔ لیکن ان میں کچھ ایسے قوانین تھے جو کہ اقتصادی اصلاحات سے تعلق رکھتے تھے ان کو مستقل محفوظ دیا گیا تھا لیکن یہ فیصلہ کرنے کے لئے کہ کن قوانین کو اکنامک ریفارمز کے تحت شمار کیا جائے۔ اس ترمیم سے ہم نے اس شیڈول کو دو حصوں میں تقسیم کر دیا ہے۔ پہلے حصہ یعنی پارٹ ۱ کی رو سے اقتصادی اصلاحات کے زمرے میں آنے والے قوانین کی نشاندہی کی گئی ہے۔ اس طرح اس شیڈول میں اب پارٹ ۱ اور پارٹ ۲ شمار کئے جائیں گے۔ پارٹ ۱ کو اقتصادی اصلاحات کے زمرے میں آنے کی بناء پر مستقل محفوظ حاصل ہونے کی صورت برقرار رہے گی اور باقی ماندہ قوانین کو فروری ۱۹۷۶ء تک بنیادی حقوق کے تقاضوں کے مطابق ڈھالنا مقصود ہے اور آرٹیکل ۸ کے تحت یہ پہلے سے ہی موجود تھا۔ ہم نے صرف اس کی تشخیص کر دی ہے۔

جناب والا! آرٹیکل ۱۷ میں جیسا کہ درج ہے کہ کوئی ایسوسی ایشن یا یونین ملک کے اندر نہیں بنائی جا سکتی جو کہ پبلک آرڈر یا مراٹھی کے منافی ہو۔ ہم نے اس حد تک اس آرٹیکل میں ترمیم کی ہے کہ

public order or morality

کے علاوہ sovereignty and integrity of Pakistan کے بھی منافی کوئی ایسوسی ایشن اور یونین نہیں بنائی جا سکتی ہے۔

اسی طرح جناب والا! آرٹیکل ۱۹ میں یہ موجود ہے کہ ہر شہری کو آزادی رائے ہوگی، پریس کی آزادی ہوگی ان شرائط کے تحت جن کی نشاندہی پوری طرح اس آرٹیکل میں کی جا چکی ہے لیکن جیسا کہ یہاں درج ہے :

“Every Citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of

Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence."

جناب والا! صرف اس حد تک ترمیم ہے کہ defamation کی بجائے کمیشن کر دیا ہے۔ کیونکہ defamation بجائے خود ایک offence ہے۔ incitement to an offence کے ساتھ پہلے ہم نے کمیشن کر دیا ہے تا کہ incitement بھی cover ہو جائے اور commission of offence بھی cover ہو جائے صرف اس حد تک ترمیم کی گئی ہے۔

جناب والا! آرٹیکل ۵۱ میں ہم نے جو ترمیم تجویز کی ہے۔ اس کی رو سے ہم نے اقلیتوں کے لئے قومی اسمبلی میں چھ سیٹوں کا اضافہ کیا ہے جیسا کہ آئین کی رو سے صوبوں میں پہلے سے اقلیتوں کے لئے سیٹیں محفوظ کر دی گئی ہیں اور اسی طرح قومی اسمبلی میں ہم نے چھ سیٹوں کا اضافہ کیا ہے اور ان اقلیتوں کے نمائندوں کے انتخاب کے لئے نیشنل اسمبلی کو Electoral college قرار دیا ہے۔

جناب والا! آرٹیکل ۴۵ میں صرف یہ ترمیم کی گئی ہے کہ وہاں ورکنگ ڈے کی تشریح کی گئی ہے، definition کی گئی ہے اور اس میں ان دو دنوں کا وقفہ بھی شامل کرنے کے لئے کہا گیا ہے۔ جب یہ اسمبلی کام کر رہی ہو تو اس کے بعد جو دو دن ہیں انہیں ورکنگ ڈے تصور کیا جائے۔

آرٹیکل ۱۰۶ میں ہم نے صوبہ پنجاب میں جہاں پہلے اقلیتوں کے لئے تین سیٹیں تھیں۔ وہاں ہم نے تین کی بجائے پانچ سیٹیں مقرر کی ہیں۔

جناب والا! آرٹیکل ۱۱۹ میں ہم نے جو امینڈمنٹ تجویز کی ہے وہ خصوصی طور پر آپ کی اور اس معزز ایوان کی توجہ کی متمنی ہے۔ اس کی رو سے جناب والا! ہم نے آرٹیکل ۱۹۹ میں کلاز (۳) کے بعد (۳-اے) کا اضافہ کیا ہے۔ جس کے الفاظ یہ ہیں۔

“(3A) A High Court shall not make an order under clause (1)—

(a) Prohibiting the making of an order for the detention of a person, or

(b) for the grant of bail to a person detained under any law providing for preventive detention.”

اس کے بعد کلاز (م) میں ہم نے جو (۳-اے) کا اضافہ کیا ہے۔ اس کے متعلق میں بعد میں عرض کروں گا۔ ابھی میں (۳-اے) کے بارے میں عرض کرتا ہوں۔ امتناعی نظر بندی کے سلسلے میں ایسے قوانین موجود ہیں جو کہ پہلے دستور کے منافی نہیں ہیں۔ امتناعی نظر بندی کا یہ قانون آئین میں موجود ہے کہ اگر ایک شخص کو یہ اختیار ہے کہ امتناعی نظر بندی کے قانون کے تحت کسی شخص کو نظر بند کیا جا سکے۔ اس لئے سب سے پہلی بات جو قابل غور ہے وہ یہ ہے کہ امتناعی نظر بندی کے قوانین موجود ہیں اور وہ اس لئے موجود ہیں کہ یہ دستور ان قوانین کے نفاذ کی اجازت دیتا ہے اس سلسلے میں میں جناب والا! آئین کے آرٹیکل ۱۰ کا حوالہ دینا ضروری سمجھتا ہوں۔ جس کی رو سے تمام وہ امور اور تمام وہ عمل جو کہ اس دستور کی روشنی میں باوجود بنیادی حقوق کے قابل گرفت قرار دیئے جا سکتے ہیں۔ ان کے تحت امتناعی نظر بندی کے قوانین کا جواز ملتا ہے۔ اس لئے ملک کے اندر اس دستور کے تحت امتناعی نظر بندی کے قوانین موجود ہیں۔ اس لئے اگر ایک شخص کو اختیار ہے اور وہ اس اختیار کو استعمال کرنے میں بالکل حق بجانب ہے کہ کسی شخص کو نظر بند کیا جا سکے۔ اب جناب والا! اس ترمیم کے ذریعے صرف اتنا کہا گیا ہے کہ عدالت عالیہ آرٹیکل ۱۹۹ کے تحت اگر ایک شخص کو اس بات سے منع نہ کرے کہ ان قوانین کے تحت وہ امتناعی نظر بندی کا حکم جاری کر سکے صرف اس حد تک یہ ترمیم ہے کہ اگر ایک شخص کو ان قوانین کی رو سے یہ حق پہنچتا ہے۔ کہ ایسی اطلاع اور ایسے مواد کی بناء پر جو کہ اس کے پاس موجود ہو اور وہ ہمیشہ اگر ایک شخص کو پاس موجود ہوتا ہے اور ایک شخص کو نظر بند کرنا لازم آتا ہو تو اسے نظر بند کر سکتے۔ اس کی نظر بندی کا حکم جاری کر سکتی ہے۔ اس لئے صرف اس حد تک میں اس کی تشریح کروں گا کہ یہ کیا گیا ہے کہ ہائیکورٹ اس آرڈر کو مسترد کرنے کے لئے کوئی آرڈر جاری نہ کرے۔ ہم نے یہ کیا ہے کہ وہ ان قوانین کے تحت اس آرڈر کو جاری نہ کر سکے۔

جناب والا! دوسری بات یہ ہے کہ جو شخص کسی امتناعی نظر بندی کے تحت نظر بند کیا گیا ہو اس کو ضمانت پر رہا نہ کرے بلکہ وہ حکم اگر غلط ہو اور وہ امتناعی نظر بندی کے تقاضے پورے نہ کرتا ہو، malafide ہو تو وہ اسے رہا کرنے کی بجائے اسے جھوڑ دے۔ میں خاص طور پر اس بات پر

زور دینا چاہتا ہوں کیوں کہ قومی اسمبلی میں تقریروں کے دوران بلکہ اس سے پہلے اہل وطن کو اور ان عناصر کو جو کہ وکالت کے پیشے سے خصوصیت سے تعلق رکھتے ہیں۔ ان کو اس texts کے پیش کئے بغیر یہ تاثر دینے کی کوشش کی ہے کہ آرٹیکل ۱۹۹ میں عدالت کو پہلے جو آزادیاں دی گئی تھیں، جو بالا دستی دی ہوئی تھی، اس میں اس کو ختم کر رہے ہیں۔ اس لئے میں خاص طور پر اس بات پر زور دینا چاہتا ہوں کہ عدالت عالیہ کے اختیارات اسی طرح ہیں۔ اور اگر اس قانون کے تحت کسی شخص کی نظر بندی کا حکم جاری کیا گیا ہو تو عدالت اسے bail پر رہا کرنے کی بجائے اس حکم کو کالعدم قرار دے دے۔ صرف اس حد تک اس کی وضاحت نہایت ضروری تھی اور اب جناب والا! آرٹیکل ۱۹۹ میں کلاز (م-اے) جو ہے اس کو ملاحظہ فرمائیے۔ اور جناب والا! میں ضروری سمجھتا ہوں کہ آرٹیکل ۱۹۹ کی کلاز (م) جو ہے اس کو آپ کی خدمت میں پیش کیا جائے اور وہ یہ ہے :

Mr. Chairman : Article 199 clause (4) ?

Malik Meraj Khalid : Yes, Sir. It reads :

“199. (4) : Where—

(a) an application is made to a High Court for an order under paragraph (a) or paragraph (c) of clause (1) : and

(b) the making of an interim order would have the effect of prejudicing or interfering with the carrying out of a public interest or of impeding the assessment or collection of public revenues,

the Court shall not make an interim order unless the prescribed law officer has been given notice of the application and he or any person authorised by him in that behalf has had an opportunity of being heard and the court for reasons to be recorded in writing is satisfied that the interim order—

(i) would not have such effect as aforesaid; or

(ii) would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction.

اب جناب والا! صرف اس حد تک پڑھنا چاہتا تھا۔ اس لئے کہ پہلے دستور میں موجود ہے کہ پبلک ریونیوز اسسمنٹ اور اس کی وصولی کے لئے واضح طور پر یہ تحفظ دیا گیا ہے اور احتیاط کی گئی ہے کہ اسسمنٹ کی جا سکے اور پبلک ریونیوز کی وصولیاں کی جا سکیں۔ اب جناب والا! تجربہ سے ثابت کیا ہے کہ وہ یہ ہے کہ پبلک ریونیوز عوام کے ذمے نہیں ہیں، عوام الناس کے ذمے نہیں ہیں۔ ان کے ذمے واجب نہیں ہیں۔ یہ ان لوگوں کے پاس ہیں جو کہ بزنس اینڈ ونچر کرتے ہیں، رسک لیتے ہیں، کروڑوں میں کھیلتے ہیں، اربوں میں کھیلتے ہیں، اور یہ ان کا شغل ہے۔ یہ ان کے ذمے ہیں۔ ان کے بارے میں اسسمنٹ کی جاتی ہے۔ یہ جو رقوم ہیں، ان کے ذمے ہیں۔

جناب والا! میں یہ عرض کرتا ہوں کہ ایک عام محتاط اندازے کے مطابق کم از کم ڈھائی سو کروڑ واجب الادا ہیں۔ وہ جب عدالت عالیہ کے سامنے جاتے تھے تو عدالت عالیہ کو اپنے تمام اختیارات کو سامنے رکھتے ہوئے اکثر حالات میں اسے آرڈر دینا پڑتا تھا۔ لیکن جیسا کہ جناب والا! آپ آگاہ ہیں یہ کام اتنا زیادہ ہے کہ یہ کام سال ہا سال تک ان اسٹے آرڈرز کی وجہ سے نہیں کیا جا سکا۔ اسی بناء پر اب تک واجب الادا رقوم کی وصولی نہیں کی جا سکی۔ میں ذاتی طور پر جانتا ہوں کہ ایسی رقم جن کے متعلق کسی صورت میں نہیں کہا جا سکتا تھا کہ حکومت نے ناجائز اسسمنٹ کی ہے، ناجائز طور پر حکومت وصولی کر رہی ہے۔ وہ واجب الادا بقیہ جات وصول کئے جانے تھے۔ نو دس سال ہو گئے ہیں ان اسٹے آرڈروں کی وجہ سے ان کی وصولی نہیں کی جا سکی ہے۔ اب جناب والا! ہم نے اس حد تک ترمیم کی ہے کہ اگر اس سلسلے میں کم از کم انڈیرم آرڈر دیا جائے تو اس کی مقررہ مدت کے اندر فیصلہ کیا جائے۔ اگر کسی حکیم اسسمنٹ یا مطالبہ کے متعلق اسی مدت میں فیصلہ نہیں کیا جاتا تو عدالت عالیہ کا وہ اسٹے آرڈر خود بخود بے اثر ہو جائے گا۔

جناب والا! میں عرض کرتا ہوں کہ وزیر اعظم جناب ذوالفقار علی بھٹو نے قومی اسمبلی میں تقریر کرتے ہوئے یہ کہا ہے کہ ہم نے جو بھی ترمیم

اس مقدس دستاویز ، اس دستور میں کرنی ہے ، وہ بنیادی حقوق کو محفوظ رکھتے ہوئے کرنی ہے اور فنڈامنٹل کی انہوں نے تشریح فرما دی تھی کہ پارلیمانی کریکٹر ، اس کے وفاق کریکٹر ، بنیادی حقوق کی ضمانت کے تقاضوں کو محفوظ رکھتے ہوئے مکمل تحفظ دیا جائے گا عدلیہ کی آزادی اور بالادستی کو محفوظ رکھتے ہوئے پورا پورا تحفظ کیا جائے گا۔ باقی جوں جوں تجربہ ہمارے لئے لازم قرار دے جو ترامیم عوام کے ، قوم کے مجموعی مفاد میں ہوں گی ، جنہیں تجربہ ناگزیر قرار دے گا۔ ان میں تبدیلی کرنا ، ترمیم کرنا کوئی عجب بات نہیں ہے۔ جناب والا ! ایک خاص مفاد رکھنے والے طبقہ نے ، عناصر نے اس ملک کے اندر ایک ایسی فضا پیدا کرنے کی کوشش کی ہے کہ یہ ملک کا سب سے بڑا ادارہ کوئی کام نہ کر سکے۔

جناب والا ! میرا اپنا ذاتی تاثر ہے اور میں سمجھتا ہوں کہ یہ طبقہ اس ایوان کے معزز دوستوں کو اور اہل وطن کو یہ تاثر دے رہا ہے کہ ہم ہائی کورٹ اور سپریم کورٹ کے وجود کو ختم کر رہے ہیں اور ان کے اختیارات چھین رہے ہیں تا کہ حکومت پر سے اعتماد اٹھ جائے کہ ہم نہایت ہی قابل احترام اداروں کو ختم کر رہے ہیں۔ جناب والا ! دوسرا تاثر وہ یہ دینا چاہتے ہیں کہ اپنی ان حرکات سے جو کہ عمل میں آئی ہیں کہ اب یہ ادارہ بھی قومی مفادات کی پاسداری نہ کر سکے اور وہ اس سب سے بڑے ادارے کو عوام کی نظروں میں خدانخواستہ ذلیل و خوار کرنا چاہتے ہیں تا کہ ان کے جو ادارے ہیں کہ ملک میں غیر آئینی فضا پیدا ہو اور یہ اپنے مذموم اداروں کی تکمیل کر سکیں یہ صاف نظر آرہا ہے کہ وہ ایسا کرنا چاہتے ہیں۔ میں سخت الفاظ استعمال کر رہا ہوں لیکن بد قسمتی سے جو کچھ آیا ہے اس سے منتفی نتیجہ یہی نکلتا ہے کہ عوام اسی نتیجے پر پہنچیں۔

اب جناب والا ! میں کلاز ۱۹۹ کے بارے میں جس میں ہم ترمیم کر رہے ہیں۔ عرض کرتا ہوں۔ آپ جناب والا ! ملاحظہ فرمائیں۔ ہم نے آئین کے کلاز نمبر ۲۷۱ ، ۲۷۲ ، ۲۷۳ میں قومی اسمبلی اور پراونشل اسمبلیوں کے موجودہ ممبران کو اگست ۱۹۷۷ء تک رکنیت کا پورا پورا تحفظ دیا ہوا ہے۔ اس ترمیم کے ذریعے بھی یہ تحفظ بزر قرار رکھا گیا ہے ، لیکن اس آرٹیکل میں صرف ایک ابہام تھا ، تضاد تھا ، اس کو دور کرنے کی کوشش کی ہے۔ مثال

کے طور پر میں عرض کرتا ہوں کہ آرٹیکل نمبر ۲۰۱ کو ملاحظہ فرمائیں - اس میں جناب والا! یہ کہا گیا ہے -

“(1) Notwithstanding anything contained in the Constitution, but subject to Article 64 and Article 223,—”

۶۳ میں یہ ہے کہ کوئی استعفیٰ دے جاتا ہے یا کوئی دوسری چیز ہو جاتی ہے، اس کی ممبر شپ ختم ہو جاتی ہے۔ اس لحاظ سے تحفظ تو ہے، کمپوزیشن تو اس حیثیت سے نیشنل اسمبلی کی ہے۔ لیکن اگر صورت یہ ہو جائے تو اس صورت میں وہ متاثر ہوگی۔ اسی طرح ۲۲۳ میں پراونشل یا نیشنل اسمبلی میں اگر وہ دونوں کی رکنیت رکھتا ہے تو اسے ایک رکنیت چھوڑنی پڑے گی۔ اس لئے وہ اس حد تک متاثر ہے اب یہ آرٹیکل ۶۳ ہے۔ آرٹیکل ۶۳ کے بارے میں، میں عرض کرتا ہوں۔ اس کا متن یہ ہے :

“A person shall be disqualified from being elected or chose as, and from being, a member of Parliament, if—

- (a) he is of unsound mind and has been so declared by a competent authority; or
- (b) he is an undischarged insolvent; or
- (c) he ceases to be a citizen of Pakistan, or acquires the citizenship of a foreign State; or
- (d) he holds any office of profit in the sevice of Pakistan other than an office declared by law not to disqualify its holder; or
- (e) he is so disqualified by Act of Parliament.”

اب اس میں یہ ترمیم طے کی گئی ہے کہ ایک شخص insane ہو جاتا ہے یا جیسا کہ انڈسٹریل انسالونٹ ایکٹ آف پارلیمنٹ کے ذریعے ڈسکوالیفائیڈ قرار دیا جا سکتا ہے اب یہ آرٹیکل ان پر اپلائی نہیں کرتا اس لئے جناب والا! اس ابہام کو دور کرنے کی خاطر جہاں ۲۳ اور ۲۲۳ subsist کرتے ہیں وہاں ۶۳ کا آنا ضروری تھا لیکن میں سمجھتا ہوں کہ یہ ایک omission تھی جسے پورا کیا گیا ہے لیکن اس وقت جو صورت حال پیدا ہوئی وہ یہ ہے کہ ملک کی سب سے بڑی عدالت نے ایک پارٹی سے تعلق رکھنے والے ممبروں

کے بارے میں فیصلہ کیا ہے۔ اس فیصلے کی روشنی میں یہ لازم آتا ہے کیونکہ وہ فیصلہ نا قابل تبدیل ہے، اسے بدلا نہیں جا سکتا، وہ موجود رہے گا، اگر اس کریکٹر کے لوگوں کو جن کے بارے میں فیصلہ کیا جا چکا ہے ہے کہ وہ وطن دشمن ہیں تو ایسے وطن دشمن عناصر اس معزز ایوان میں بیٹھ کر قومی اسمبلی یا پراونشل اسمبلیوں میں بیٹھ کر وطن کی خاطر قانون کی ترتیب و تدوین میں کیا کردار ادا کر سکتے ہیں اور اس کی کیسے اجازت دی جا سکتی ہے؟ جب تک کہ ایکشن لینے کے لئے - ۶۳ کے تحت ایکٹ آف پارلیمنٹ نہ بنے آئین یہ قرار نہیں دیتا کہ ۶۳ بھی applicable ہو گا۔ ہم آگے نہیں چل سکتے۔ سپریم کورٹ کے فیصلے کو عملی جامہ نہیں پہنا سکتے۔ اسی طرح کل کو سپریم کورٹ کوئی اور فیصلہ کرتا ہے اور ہائی کورٹ کوئی اور فیصلہ کرتا ہے اور یہ معزز ایوان یا قومی اسمبلی کوئی دوسرا قانون بنا دیتے ہیں تو اس لئے ۶۳ کی application بھی لازمی تھی۔

اب جناب والا! حزب اختلاف آئین کے بارے میں غلط فہمیاں پیدا کرنے کی کوشش کر رہی ہے۔ ہم نے جناب والا! فرسٹ شیڈول میں ترمیم کی ہے جیسا کہ پارٹ ۱ اور پارٹ ۲ میں لکھا ہے۔ لہذا اب وہ شیڈول پہلی صورت میں نہیں رہے گا بلکہ پارٹ ۱ اور پارٹ ۲ کی صورت اختیار کرے گا۔ لہذا اس امینڈمنٹ بل کی ایک کلاز یہ بھی ہے۔ اسی حد تک ہم نے اوقاف کو کنکرنٹ لسٹ میں شامل کیا ہے اس کی کلاز ۵ تھی۔ ہم نے صرف یہ کیا ہے کہ جب تک آرڈیکل ۱۹۹ کے تحت جو اسٹے آرڈر دئے جا چکے ہیں، اسمنٹ کے بارے میں یا پبلک ریونیوز کے بارے میں، جو فیڈرل گورنمنٹ کے ہوں، پروونشل گورنمنٹ کے ہوں یا لوکل اتھارٹی کے ہوں، جو اسٹے آرڈر دے جا چکے ہیں اس امینڈنگ بل کی منظوری کے بعد ساٹھ دن شمار کئے جائیں گے اور ان پر بھی اسی طرح اطلاق ہوگا جیسا کہ ان آرڈرز پر اطلاق لازم ہے جو عدالت عالیہ اس کے بعد جاری کرے۔ تو جناب والا! یہ مختصر سی تشریح توضیح ہے ان ترمیم کی جو کہ اس بل کے ذریعے لانا مقصود ہیں۔

میں جناب والا! اس مرحلے پر صرف اتنی گزارش کروں گا کہ ادلیا کے ہر آئین میں ہر دستور میں حالات کے مطابق، تجربات کی روشنی میں ترمیم کی جاتی ہیں اور ایسی بے شمار مثالیں یہاں پیش کی جا سکتی ہیں۔ یہ مقدس

دستاویز ہے۔ ہم نے اس کی روشنی میں اپنی معاشی اقتصادی، معاشرتی اور سیاسی زندگی کو ایسی شکل عطا کرنی ہے جو کہ اس چیز کے بنیادی تقاضوں کو مکمل کر سکے اور ہمارے لئے اپنی کلی زندگی کو تبدیل کرنے کے لئے اور اس میں انقلاب لانے کے لئے اتنا وسیع میدان ہے کہ سال ہا سال تک بھی بھی ہم لگے رہیں تو وہ ختم نہیں ہوتا لیکن آج چند ناگزیر ترامیم کی بناء پر جو شور مچایا جا رہا ہے اس بناء پر جناب والا! میں ذاتی طور پر یہ تاثر رکھتا ہوں کہ ہمیں نہایت دور رس اقدامات کرنا پڑیں گے اور عوام کو اپنے اعتماد میں لینا پڑے گا تا کہ اس معزز ایوان کے اندر، قومی اسمبلی کے فورم پر وہ عناصر جو کہ ان تبدیلیوں کو دراصل اپنی ہلاکت جانتے ہیں ان کی وہ کوشش کامیاب نہ ہو سکیں۔

جناب والا! ان تشریحات کی روشنی میں ہم یقین رکھتے ہیں کہ جہاں تک عوام کا تعلق ہے، محب وطن عناصر کا تعلق ہے جو ملکی سلامتی اور قومی بقاء کے لئے ہر قربانی کرنے کے لئے تیار ہیں وہ لازمی طور پر ان ترامیم کی حمایت کریں گے۔ یہاں بھی اور ایوان کے باہر بھی اور تمام ان حرکات پر جو کہ ان اداروں کی فوقیت ان کے وقار، ان کی عظمت اور ان کے تقدس کو نقصان پہنچانے کے لئے کی جا رہی ہیں، ان کو بری طرح ناکام بنا دیں گے۔
شکریہ، جناب والا!

جناب چیئرمین : مس آصفہ فاروقی -

مس آصفہ فاروقی : جناب چیئرمین! دنیا کے ہر ملک کے آئین میں اتنی گنجائش ضرور ہوتی ہے کہ جب بھی اس میں ترمیم کرنا مقصود ہو جو کہ کہ ممالکی مفاد میں ہو تو اس میں ترمیم کی جا سکے خواہ وہ آئین اس ملک کا تحریری ہو یا غیر تحریری۔ ایسی مثالیں ہمارے پاس موجود ہیں کہ دنیا کے ایسے آئین جو تحریری نہیں تھے مگر جب ان میں ترمیم کی گئیں تو وہ تحریری طور پر کی جاتی رہی ہیں اسی طرح اگر پاکستان کی قانون ساز اسمبلیوں میں اقلیتوں کو نمائندگی دی جاتی ہے تو یہ ہماری حکومت اور وزیر اعظم جناب ذوالفقار علی بھٹو کا ایک عظیم کارنامہ ہے۔

جناب چیئرمین صاحب ! اور بھی جو ترمیم کی جا رہی ہیں وہ بھی ماکی مفاد کے لئے اہم حیثیت رکھتی ہے۔ ابھی چند روز ہوئے ہمارے وزیراعظم نے چھوٹے کسانوں کے لئے اور غریب کسانوں کے لئے جو جرات مندانہ فیصلہ کیا ہے، سر چھوٹو رام سے لیکر تاریخ میں آج تک جتنے لوگ بھی غریبوں سے ہمدردیاں جتاتے رہے، وہ یہ قدم نہ اٹھا سکے جو کہ اس عوامی وزیراعظم نے جو کہ عوام کے ووٹوں سے منتخب ہوا تھا اس نے یہ قدم اٹھایا۔

جناب چیئرمین صاحب ! جس پارٹی نے، جس ملک کے وزیراعظم نے برسر اقتدار آتے ہی اس ملک کے عوام کو ایک جمہوری آئین دیا ہو، وہ اس آئین میں ایک غلط ترمیم کیسے کروا سکتے ہیں۔ اس ملک کے عوامی نمائندے جنہوں نے اس ملک کو عوامی اور جمہوری بنیادوں پر استوار کیا ہوا، آئین دیا ہو، ان سے کبھی یہ توقعات نہیں کی جا سکتیں کہ وہ اس آئین میں ایسی کوئی ترمیم کریں گے جن سے پاکستان کے عام شہری کے جو حقوق ہیں ان کو نقصان پہنچے۔

جناب چیئرمین صاحب ! دنیا کے مختلف ممالک کی مثالیں ہمارے سامنے ہیں کہ ان ملکوں میں حالات کی تبدیلی کے ساتھ ساتھ ضروری ہو گیا تھا کہ جو آئین میں ترمیم کی گئی ہے میں سمجھتی ہوں کہ جب تک اس ملک کے وزیراعظم جناب ذوالفقار علی بھٹو ہیں کو بڑی ترمیم جس سے عام پاکستانی شہری کو نقصان پہنچے کبھی پیش نہیں کی جا سکتی کیونکہ انہوں نے بار بار فرمایا ہے کہ جب تک میں اس ملک کا وزیراعظم ہوں، جب تک بھی میرے جسم میں خون کا ایک قطرہ باقی ہے میں کوئی ایسا قدم نہیں اٹھاؤں گا جس سے اسلام جمہوریت اور اس ملک کے مفاد کو کوئی نقصان پہنچے اور ہمیں پورا یقین ہے کہ جب تک وہ اس ملک کے وزیراعظم ہیں اور اس سرزمین پر غریب عوام کی خدمت کے لئے مامور ہیں، اس پارلیمنٹ میں آئین میں کوئی ایسی ترمیم نہیں ہوگی جس کو ہوا بنا کر غلط انداز میں عوام کے سامنے پیش کیا جائے اور اس سے غلط عناصر غلط فائدہ اٹھائیں شکریہ۔

جناب چیئرمین : شکریہ راؤ صاحب، آپ کچھ کہیں گے ؟

راؤ عبدالستار (قائد ایوان) : جی ہاں -

جناب چیئرمین : ہاں ضرور کہیں ، میں آپ کو خوش آمدید کہتا ہوں -

راؤ عبدالستار : جناب چیئرمین ! محترم وزیر قانون نے آئین کا چوتھا ترمیمی بل جو اس معزز ایوان میں پیش کیا ہے ، میں اس کی پرزور تائید کرتا ہوں - یہ وقت اور حالات کا تقاضا تھا کہ یہ قانون آج پیش کیا جائے - اس قانون میں چند معمولی سی ترامیم ہیں لیکن افسوس کے ساتھ کہنا پڑتا ہے کہ حزب اختلاف نے ان کو حواء بنا دیا ہے - اس کے خلاف بہت زیادہ پراپیگنڈہ کیا جا رہا ہے اور اس میں الجھاؤ پیدا کرنے کی کوشش کی گئی ہے اور ہمارے شہریوں کو یہ تاثر دینے کی کوشش کی گئی ہے کہ خدا نخواستہ اس ترمیمی بل کی منظوری کے بعد اس ملک میں جتنی آزادی ہے وہ سلب کر لی جائے گی - جناب چیئرمین ! ہماری پارٹی کا منشور اور پروگرام بھی یہ ہے اور قائد عوام نے بھی کئی دفعہ یہ کہا ہے کہ ہم اس ملک میں جمہوریت کو پھلنا پھولنا دیکھنا چاہتے ہیں اس کے لئے انہوں نے نہایت دشوار وقت میں کوششیں کیں اور کٹھن مرحلے سے گزرے اور پھر وہ آج اس مقام پر پہنچے ہیں انہوں نے اس آئین میں عدلیہ کو زیادہ سے زیادہ آزادی دی ہے اور تحفظ بھی دیا ہے - جناب والا ! اس ترمیمی بل میں اگر دیکھا جائے تو اس کے آرٹیکل ۸ میں جو ترمیم ہے اس کے شیڈول کو دو حصوں میں تقسیم کر دیا گیا ہے اور اس کے اکنامیکل ریفارمز کو مستقل تحفظ دیا گیا ہے - اس عوامی حکومت کے پروگرام اور منشور میں بھی یہ تھا کہ عوام کے لئے اصلاحات نافذ کی جائیں اور اس کے لئے ضروری تھا کہ انہیں آئینی تحفظ دیا جائے تاکہ خدا نخواستہ کل ایسے حالات نہ ہو جائیں کہ ہم اپنی منزل مقصود پر نہ پہنچ سکیں اور اصلاحات پر مکمل طور پر عملدرآمد نہ ہو سکے -

اس کے بعد جناب والا ! دوسرے آرٹیکل جو زیادہ وجہ نزاع بنے ہوئے ہیں ، ان میں آرٹیکل ۱۹۹ ہے - اس میں جناب والا ! یہ غلط تاثر دیا گیا ہے کہ عدلیہ کی آزادی سلب کر لی گئی ہے - جناب والا ! اس سارے آرٹیکل کو پڑھنے کے بعد اور ترامیم کو دیکھنے کے بعد یہ پتہ چلتا ہے کہ معمولی قسم کی ترمیم کی گئی ہے جو کہ نظر بندی کے متعلق ہے - اگر کسی آدمی

کو نظر بند کر دیا جائے تو اس کی ضمانت کے متعلق جناب والا! عدالت کو یہ اختیار دیا گیا ہے کہ وہ اس کیس کا فیصلہ تو کر سکتی ہے لیکن وہ اس آدمی کی نظر بندی نہیں روک سکتی۔ اس کو چھوڑ سکتی ہے، اس کی نظر بندی کو غیر قانون قرار دے سکتی ہے۔ اس لئے جناب والا! اس کی آزادی پر اس امینڈمنٹ کی رو سے کسی قسم کی زد نہیں پڑتی کہ عدالت عالیہ کے اختیارات لے لئے گئے ہیں۔

دوسری ترمیم اس میں جناب والا! یہ ہے کہ جتنے بھی بقایا جات ہیں ان کی وصولی کے متعلق اس میں جناب والا! یہ اختیار دیا گیا ہے کہ ساٹھ دن کے اندر وہ کیس ڈیسٹائنڈ کر سکتے ہیں لیکن اس میں یہ نہیں ہو سکتا کہ ٹائم لمٹ نہ ہو اور گورنمنٹ کے جو مالیہ کے بقایا جات ہیں یا اور کوئی بقایا جات ہیں وہ صداہا مال سے وہ لوگ جو ہیں جو عوام کے خلاف ہیں جو عوام دشمن طاقتیں ہیں جو اس ملک کو خوش حال اور طاقت ور بننا دیکھنا پسند نہیں کرتے وہ اس قسم کی حرکتیں کرتے ہیں۔ اور وہ ایسے کیس زائد کرتے ہیں اور اس کے بعد آرام سے بیٹھ جاتے ہیں اور گورنمنٹ کے جو بقایا جات ہیں جن کی وجہ سے گورنمنٹ نے اصلاحات کرنی ہیں ان اصلاحات پر عملدرآمد کرانا ہے ملک کی خوشحالی اور ترقی کے لئے کام کرنا ہے اس کے لئے اشد ضروری تھا کہ یہ ترمیم لائی جائیں۔ اور ریگوریاں کی جائیں گورنمنٹ نے اس ترمیم سے عدالت عالیہ کو یہ اختیارات دئے ہیں کہ وہ ساٹھ دن کے اندر یہ فیصلہ کرائیں اور اس کے علاوہ کوئی اختیار نہیں لئے گئے ہیں یہ غلط تاثر دیا گیا ہے کہ عدالت عالیہ کے اختیارات چھینے جا رہے ہیں۔ کاش ایوزیشن کے ممبران آج یہاں تشریف لائے اور محترم وزیر قانون نے جو اپنی مدلل تقریر میں پوائنٹس بتائے ہیں مجھے امید ہے کہ اگر وہ حاضر ہوتے تو کم از کم ان پوائنٹس سے ضرور متاثر ہوتے اور اس قسم کا غلط پروپیگنڈہ بھی نہ کرتے ان کا اصل مقصد یہ ہے کہ عوامی حکومت اس ملک کو ترقی یافتہ اور خوشحال بنانے میں کسی طرح کامیاب نہ ہو سکے۔

لیکن جناب چیئرمین! قائد عوام نے تمہہ کہا ہوا ہے اور یہ پارٹی کے منشور اور پروگرام میں ہے کہ جمہوریت سوشلزم اور اسلام یہ چارے

fundamentals ہیں۔ یہ بہاری پارٹی کے پروگرام اور منشور کے جز ہیں ان کو علیحدہ نہیں کیا جا سکتا۔

جناب والا! اس کے علاوہ اس آئینی بل میں ایک چھوٹی سی ترمیم یہ ہے کہ جو ورکنگ ڈیز ہیں ان کو کوئی curtail نہیں کیا گیا ہے وہ کوئی کم نہیں کئے گئے ہیں اس میں صرف یہ کیا گیا ہے کہ دنوں کو پورا کرنے کے لیے اگر درمیان میں دو دن کا وقفہ ہے saturday اور sunday دو دن چھٹی ہوتی ہے تو انہیں ورکنگ ڈیز شمار کیا جائے۔ ایسے ہی جناب والا! سپریم کورٹ اور ہائیکورٹ میں بھی پروسیجر ہے کہ وہ ورکنگ ڈیز کاؤنٹ ہوتے ہیں۔

چوتھی بڑی چیز اس میں جناب والا! اقلیتوں کی نشستوں کے تعین کے متعلق ہے کہ نیشنل اسمبلی اور صوبائی اسمبلیوں میں ان کو کتنی کتنی نشستیں دی جائیں اور اس کا طریق کار کیا ہو۔ یہ جناب چند معمولی سی ترامیم ہیں جن کو اپوزیشن نے پریس کے ذریعے عوام کو غلط تاثر دینے کی کوشش کی ہے۔ جناب والا! آپ کا بہت بہت شکریہ۔

Mr. Chairman : Thank you very much.

Mr. Chairman : Do you want to speak, Mr. Pirzada ?

Mr. Abdul Hafeez Pirzada : Yes for about ten minutes, with your permission, Mr. Chairman.

Sir, I am not going into the details because the Bill has also been discussed in the National Assembly. I intend to deal very briefly with the three principles that are involved in the amendment to the Constitution.

No. 1 is amendment of Article 17 (1) of the Constitution. Sir, 17(1) deals with the fundamental right of freedom of association, Article 17(2) deals with fundamental right of formation of political parties in pursuance of the right of formation of associations.

Sir, as you would recall that in February 1974 at the time of the second amendment of the Constitution, clause 2 of article 17 was amended by Parliament and certain restrictions were imposed on this fundamental right of association of formation of political parties in as much as the political

parties which were to operate in a manner prejudicial to the sovereignty and integrity of the country or in any anti-national manner were not to enjoy the fundamental rights of formation of political parties. Due to some oversight this limitation which was placed on the more important right of formation of political parties was not introduced into clause 1 of Article 17 where the right is merely of freedom of association. In the present Bill nothing more is being done except removing this anomaly in as much as fundamental right of the formation of political parties is also being introduced in the fundamental right of the freedom of association. Originally, the restriction was that parliament could make law and through that law impose reasonable restriction on the freedom of association in the interest of public order or morality. Now, public order and morality are at a much lower pedestal or platform than the national integrity and sovereignty of the country. So, all this is being done. No freedom of association should be permitted if it is against the integrity and sovereignty of the country. This is the only object and this was the anomaly which is being removed.

Now, I come to the second principle. The spirit underlying the amendment in Article 19 of the Constitution, which is before you, there is freedom of press, freedom of speech, but there are a number of impositions or restrictions on this fundamental right :

“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relation with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.”

Now, incitement to an offence which is not as serious as actual commission of offence is one of the restrictions on the freedom of speech and the freedom of the press. Similarly, a number of offences have been omitted and less serious offences have been included, like defamation, etc. etc. One would start wondering as to why legislature is assuming to itself the power to impose restrictions on freedom of speech and freedom of the press for certain actions which are less objectionable and not assuming to itself this right to impose restrictions in respect of more serious matters. This incitement to an offence can be curbed by law and this would not be violation or derogation of fundamental rights. What about the actual commission of offence? Some of the offences are mentioned, but I point out to you that some of the offences which normally occur through speech or *mass media* newspapers, can be more serious than defamation and people have no redress. Parliament cannot make laws putting any restrictions. Now, sedition may be one of them and extortion and black mail can be other examples between the two swings of the pendulum, one concerning the subjects and one concerning the State.

Now, this anomaly which is left in Article 17 is being removed; one, odd offence of defamation as mentioned there, we are removing that and

just we are bringing the blanket provision that law can impose restrictions on the right of speech, right of the freedom of the press and prevent the press and prevent the actual commission of offence in the speeches or through the press, are omitted again. Now, the freedom of speech or freedom of the press, these functions can be very serious, these functions can be very minor. But, Sir, the Constitution already enjoins upon the legislature to impose restrictions on the provision of commission of some of the offence which are not very serious in nature like defamation. We are not taking away the basic rights. This is my second submission so far as Article 19 was concerned.

Lastly, I would come, Sir, to the controversial, so called controversial, Article 199 which is being amended. The amendments that are being brought into Article 199 of the Constitution, Mr. Chairman, are three. I will take the last one first, in respect of which the Law Minister has also made very elaborate submissions before the House. In countries which have practised parliamentary practices or the country to which we look often as far as precedence and conventions are concerned, where parliamentary democracy has been in existence for centuries, the courts do not grant any injunctions against the Crown. There the injunctions to be granted by the Courts in England against collection or recovery of public revenues is non-existent. The Crown Proceedings Act is very clear in this regard. Here in this country during the course of years the practice has developed slowly but consistently to impede the task or the process of recovery of public revenues. Development within an under development country depends on a large scale and to a large extent on speedy and expeditious collection of public revenues. The Law Minister has informed the House on the strength of the information supplied by the Ministry of Finance that today more than 200 crores of rupees are outstanding as dues against various persons by virtue of the operation of one or the other provision of the Constitution or law where by the Federal and the Provincial agencies and autonomous bodies are restrained under interlockery order from courts of laws to make these recoveries. Ours is a poor country. We have got financial constraints. We have got limitations on our resources. At the same time. Mr. Chairman, the country has to develop. As I have submitted to you earlier on that, in a very very few countries it will be difficult to find parallel or equal where so frequently through the intervention of the courts recovery of public revenues is impeded or stopped. We are not depriving the judiciary of applying its mind to the actions taken by the executive, to strip down any action at any time provided that they are satisfied that the action has been taken wrongly or contrary to the spirit and letter of the law or the Constitution. All we are saying is that in case you grant an injunction restricting the recovery of public revenues or you grant an injunction in respect of action taken under law, the spirit of which is to introduce economic reforms within the country then the injunction should not last for more than 60 days. Therefore, indirectly to indicate the wishes of the legislature to the judiciary that in such cases where you consider it necessary to impede the task of the recovery of the revenues or stop the process of economic reforms then it is incumbent upon you either to dispose of the case within 60 days or reconcile to the fact that this process cannot be delayed beyond a particular period

which, now, in order to remove the ambiguity and doubt is being fixed within the Constitution as a period of 60 days. Nothing will prevent the Court to take up the matter and dispose it of. It is not the fault of the court. Often you have seen in your long experience as a Judge of the High Court that once an interim order is granted which benefits an individual at the cost of the State that means indirectly to the people of the country that litigation is protracted and protected and protracted. In order to discourage this practice this amendment is absolutely necessary. There is no basic fundamental curb on the jurisdiction of the courts.

Sir, the second is even far more fundamental amendment. From the point of view of delineation of power made by the Constitution the second amendment which is two-fold; number 1, not to stop the executive from passing the orders of detention and to inform the superior courts in respect of orders for preventive detention, the courts should not be authorised to grant bail. This is far more fundamental as far as division of power between the executive and the judiciary as laid down by the Constitution is concerned. It is a curb or check on the jurisdiction of the courts but further strengthens for the sake of strengthening of the institutions within the country as provided by the Constitution that this is the delineation of power between the judiciary and the executive, and must be clarified in the Constitution, so that there should be no scope at all for encroachment either by the executive on the side of the judiciary or by the judiciary on the side of the executive.

As you know, Sir, you have also held the high office of the Interior Minister, preventive detention is different from an accusation of a person in respect of commission of offence. Preventive detention authorises the executive, under its executive authority, to take action against a person if it is satisfied, on the basis of material, that is placed before the executive, to prevent a person from committing an offence in the future.

The Constitution and the laws lay down that this is a matter of the satisfaction of the executive. I don't say it. The Law Minister does not say it. It is common sense as well as the requirement of the law as well as of the Constitution because the executive has the necessary intelligence agencies before it on the basis of which it collects some material to satisfy itself whether the case called for a preventive action to prevent a person from committing an offence, committing a murder, committing breach of peace, inciting people to violence, violating the Constitution, committing subversion of the Constitution, abrogation of the Constitution, committing an anti-national activity and committing an activity striking at the roots of the integrity and sovereignty of the country. So, on the basis of certain material placed before the executive, the Constitution authorises the executive to take preventive action against the person. If the courts under this Constitution were to be given the authority or had been given the authority to substitute itself and its own satisfaction, for the satisfaction and the actions pre-emptive actions, of the executive then the courts will be converted into an enquiry office, and then the courts should have been given the executive functions by the

Constitution and not the judicial functions. The object of giving powers under Article 199 is not that the judiciary should substitute itself in place of the executive. How can a court of law without the assistance of intelligence agencies, how can a court of law without that executive appreciation which is available to a government come to the conclusion whether the State is justified in taking action of preventive detention against a person or not unless it has had a look at the material that is before the executive? Therefore, the jurisdiction that is given to the judiciary under Article 199 is of the nature of review of administrative action and not supplanting itself to take original executive action instead of the executive. How can a court of law review an action unless the competent authority under the Constitution has taken that action? The court cannot become the original authority, original executive authority, and decide for the Government whether a particular preventive action should be taken or not. If the courts were to do it, and unfortunately I have to state on the floor of this august Senate that in a few cases this has happened, then this will be an encroachment on the part of judiciary on the lawful and Constitutional functions of the executive. If we are bringing this amendment whereby we make it clear to the courts that the executive authority is clearly vested in the Federal Government in the Federation and the Provincial Governments in the Provinces we are doing justice and we are coming to aid and assist the proper implementation and enforcement of the Constitution. Yes, the supervision power is there. Supervision can only take place once an action has been taken. Then, the corrective jurisdiction in the High Courts is still there. Suppose, according to the dictates of my conscience as the Minister Incharge of a particular field in the Federal Government, I come to the conclusion and I am satisfied that an action is to be taken against a particular person to prevent him from committing any act against the integrity and sovereignty of Pakistan, and I have got all the material before me, how can I be stopped under Article 199 by the judiciary or the High Courts of judicature from taking that action unless that material on the basis of which I have taken that action is placed for review and scrutiny before the superior courts of law? Nowhere in the world will you see the exercise of this power by the judiciary until the executive has acted and the matter has gone for review and scrutiny of administrative actions of tribunals and the governments. So, let there be no misunderstanding. This delineation, demarcation of authority between the judiciary and the executive was axiomatic and understandable within the Constitution. All that is being done is to remove any confusion which might have occurred in the past or which is likely to occur in the future.

Now, coming to the last provisions in Article 199, Mr. Chairman, I would like to submit that bail and preventive detention normally would not go together. Preventive detention of a person is not an accusation of a crime against him, is not an accusation of an offence against him. For the same reason the judiciary should not have the power to prevent an executive action of preventive detention by the Government. For the same reason, the entire provisions contained in fundamental rights, Article No. 10, would be nullified and negated if this position was not to be made clear. What is the basic jurisdiction of the courts of law

under Article 199 in respect of detention? Sir, Article 199 of the Constitution provides as under :

“199 : Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law :

(b) on the application of any person, make an order.

(i) directing that a person in custody within the territorial jurisdiction of the Court be brought before it so that the Court may satisfy itself that he is not being held in custody without lawful authority or in an unlawful manner.”

A person in custody should be brought before the Court, so that the Court should satisfy itself that he is not being held without lawful authority or in an unlawful manner. This is the jurisdiction given to the High Courts of judicature under Constitutional Article 199. There is no infringement of this right. No restrictions are being placed on this right. The Opposition have done a great dis-service in trying to mislead the people. Today if the executive authority is exercised by the Government and a person is detained under the preventive detention laws and a writ of habeas corpus is filed, there is nothing to prevent the judiciary from striking down that action of the Government tomorrow morning. However, Sir, this jurisdiction is subject to some other provisions of the Constitution. This is what Article 199 says. Now, there are some provisions of the Constitution which may be interpreted in letter as well as in spirit. This Constitutional while giving the fundamental rights of freedom of persons in Article 10, authorises the Government, and this fundamental right or provision in Article 10 of the Constitution is not an innovation which has come by virtue of some amendment but it is an original provision which was passed by the National Assembly on the 10th of April, 1973. This very fundamental right puts certain restrictions and curbs on the right to be enjoyed by individuals, and it says that the Government shall have the right to order preventive detention of a person and that person shall remain in preventive detention, and 15 days may be taken by the executive to supply him the grounds on which he has been detained. Then, within a period of three months that means that for three months he may be in detention, his case is to come up before an appropriate Review Board in case of any order passed by the Federal Government. That appropriate Review Board is to consist of Judges of the Supreme Court to be nominated by the Chief Justice of that Court and every three months this appropriate Review Board has to satisfy itself on the basis of the material placed before it by the Government that the order of detention that has been passed is appropriate or not. I can cite before you a number of cases and examples in which the preventive detention action taken by the Federal Government or the Provincial Governments, when it has gone before the appropriate Review Boards in the last two or three years, has been struck down, and the people have been released from preventive detention.

But even the appropriate Review Board which gives an alternate remedy to the person who is detained is enjoined by this Constitution to have a look at the order that is passed to examine the grounds of detention, to see the materials that are placed by the Federal Government or the Provincial Governments before the appropriate Board before it can make an order. Without seeing the detention order, without seeing the grounds of arrest, with seeing the other material which might be placed, which might be classified privileged or non-privileged or non-classified which may be produced in a court of law, may not be produced in a court of law in respect of which the Government may claim privilege or exemption from public exhibition of that material, would it be fair to encroach upon this executive function of the Government and say that without seeing all this material we order that this person should not remain in preventive detention. As I submitted to you earlier that there is a basic distinction between a person detained for the purposes of prevention of crime or offence and a person detained in custody as a result of his arrest in pursuance of a suspicion that he has committed a crime. In one case there is a distinct accusation that a person has committed an offence, in other case there is no accusation that he has committed an offence. In the other case the accusation or the apprehension is that if this person is permitted to remain free he will indulge in activities which might be criminal in nature, which might be offences, which might be so serious as to amount to striking at the roots of national integrity or national sovereignty. In such cases, would it not be the duty of the judicature or the judiciary that they should look at the material, and if they think that any excess has been committed by the executive, strike that action down, and release the person because in matters of preventive detention, Mr. Chairman, there is no difference between a final order and an order granting bail in respect of a person who is accused of a crime. Grant of bail is only a transitional matter which takes him closer to his fate because he is to be tried and he is to be convicted. A person who is detained for preventive detention purposes, there is no trial against him. In respect of a person accused of an offence there is a *prima facie* presumption of his in no sense until he is convicted. In respect of preventive detention when there is no accusation of a commission of a crime, there is only the basis of the apprehension, and that is going to be for a limited period of time until the appropriate Review Board has authorised it within a period of three months. Would the grant of bail within such a short period not amount to something as setting aside the order of detention? Would it not, therefore, be appropriate that the court of law were to look on each case of preventive detention and if they found any excess committed, then it will be better to order the quashment of the proceedings of detention and release that person on bail. Without coming to the conclusion that the order of the executive is without lawful authority, how would it be fair in case of preventive detention to release a person and to completely negate the entire action that has been taken. Kindly see the precedent elsewhere. As far as England is concerned, if you want to look at the Preventive Detention Law then, Sir, all that you require is that an order should be passed to detain a person. You are not even required to serve on the detenus the grounds of his arrest. The Court cannot even go into this matter whether the order has been correctly passed or not. Honour it that is issued and all that is stated on behalf of the Attorney General that such and such a person is being detained in accordance with

such and such order that is passed. That is the end of all, and the matter of habeas corpus fails.

Here the most revolutionary provision to empower the Judiciary exists in our Constitution that it is to the satisfaction of the court in respect of these matters whether a person is properly detained or not. You will not find such a provision in any other Constitution. Why do we go far? Why don't we look at the Constitution of the neighbouring country which claims to be the largest democracy in the world. The case has not proceeded in that country as far as habeas corpus is concerned beyond Leverjis case. There is no such power to the court as in our country. I am astounded to see the distortion that has been brought about. These are normal provisions which should be understood under the Constitution. The intention of the Constitution is to be clarified. There is no impediment of the rights of judiciary. There is no impediment of the rights of judiciary. The continue to exercise all the right that are given to them under article 199 but subject to the Constitutions. Therefore, Mr. Chairman, Sir, let me thank you very much for giving me this opportunity. I would like to submit that there is no monster hidden in this Bill. It is an ordinary Bill. There were certain distortions and anomalies in the Constitution which have to be corrected at the moment. Thank you.

Mr. Chairman : Malik Mohammad Jafar.

Malik Mohammad Gafar (Minister of state for Minorities Affairs and Tourism) : Sir, a debate has taken place in the National Assembly, and also here the Law Minister and and the Education Minister has explained elaborately the various provisions of this Bill. I would not repeat those things but I would like to ask for your permission to say few words about just two amendments, one is of Article 8 and the other of Article 199.

Now, Sir, there were laws specified in Article 8, clause 4 which the legislatures were not required to amend so as to bring them in conformity with the fundamental rights, and the phrase used was laws dealing with Economic Reforms. Now what has been done, Sir, is that instead of leaving this matter to the appropriate legislatures to decide as to which of those laws mentioned in the Schedule relate to Economic Reforms and which do not, the Constitution itself makes a clear division. But the point that I want to make, Sir, is this that if you kindly see at that division what you find is that Part II is the category about which the appropriate legislatures have constitutional obligation. In respect of part II, which is now mentioned in this amended Schedule, Sir, the legislature is under obligation to make amendment in general category of laws, and just a few have been selected which, according to the Constitution, relate to Economic Reforms. Kindly see most of the laws mentioned in part II. In respect of them it can justifiably be contended even before a court of law or legislatures that they do relate to Economic Reforms. For instance the Minerals (Acquisition and Transfer) Order is No. (1); the Companies (Managing Agency and Election of Directors) Order is No.

(2); the Co-operative Societies (Reforms) Order is No. (3); the Life Insurance (Nationalization) Order, and so on. These laws could very well be considered as directly or indirectly relating to Economic Reforms. But what has been done? Now, all these laws are placed in Part II with the result that the appropriate legislature is now under a constitutional obligation within a period of two years or, if the period is extended by six months, within that period to reform all these laws. Now, Sir, the point is does this amendment advance the achievement of the objects, facilitates that object or does it retard? Obviously, Sir, it advances and facilitates the achievement of that objective in two ways. Firstly, Sir, now the appropriate legislature is not required to first of all look into laws and decide as to which relate to the Economic Reforms and which do not. That matter has been settled by the Constitution Second is that in respect of many of the laws perhaps the legislatures may have decided and the court may also have decided that they relate to Economic Reforms and therefore, they are excluded from that category of laws and are placed now in the category where all laws have to be reformed. So, my submission is that this advances the achievement of the object which clearly states that all laws should be so amended, so reformed that there is no conflict between those laws and fundamental rights. So, this is Sir, my submission with respect to amendment to Article 8.

Now, about Article 199 Sir, a great agitation is being raised in the country and lot of misgivings and erroneous impression is created on this account that has been explained, that how limited is the scope of the curtailment of the High Court's power which is being done by this amendment. But, Sir, I want to invite your attention to another Article. Sir, would you kindly refer to Article 184 of the Constitution? As you are aware that generally a matter is taken to the Supreme Court as an appeal against an order of the High Court but the Constitution makers were so jealous of the fundamental rights of the citizens that an original jurisdiction has been given to the Supreme Court, and kindly examine the scope of that original jurisdiction. Article 184 clause (3), says:

“Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of part II is involved, have the power to make an order of the nature mentioned in the said Article.”

It means Article 199. Sir, Article 199 gives power to the High Court to make three kinds of orders—one is directing a person to perform certain things; the other is directing him not to do a certain thing and a direction to release a person who is detained. These are three categories of orders mentioned in Article 199 and Article 184 Sir, and the words subject to Constitution and so on are not used. This gives an original jurisdiction to the Supreme Court that in a proper case where the question of a fundamental right of citizen is involved and the matter is of public importance, without going to the High Court a citizen can directly make

a petition to the Supreme Court, and the Supreme Court can pass any of those orders which are mentioned in Article 199. The orders are of primary jurisdiction and in most of the petitions which are made under Article 199 some question of fundamental right is involved. As you are aware, Sir, Fundamental right with respect to property, with respect to freedom of association, freedom of expression or in any case of the general equality before law if a question of that nature is involved and a matter is really of a public importance then the Supreme Court also has original jurisdiction. Sir, how is it possible if the intention of the Government was to curtail fundamental rights or curtail powers of judiciary to have those Articles untouched. So, my submission is besides the very limited scope and the restrictions placed on the powers of the High Court under Article 199 and Article 184, the Supreme Court can also give relief to the citizens when the Fundamental Rights are infringed.

Mr. Chairman : I think, we have heard sufficient debate over the question. I do not think there is any other gentleman, who wants to speak.

Voices : Nobody.

Mr. Chairman : Then, I will put the motion to the House. Gentlemen, as you are aware Khawaja Mohammad Safdar had moved an amendment but since he is not present, his amendment was not moved and it cannot be moved now, so we will go on with the consideration of the motion.

Now, I put the question to the House.

The question before the House is :

“That the Bill further to amend the Constitution of the Islamic Republic of Pakistan [The Constitution (Fourth Amendment) Bill, 1975], as passed by the National Assembly, be taken into consideration.”

You were on a point of order, Mr. Rafi Raza.

Mr. Rafi Raza : No, Sir.

Mr. Chairman : Only voice vote is sufficient.

(The motion was adopted)

Mr. Chairman : The motion is carried.

Now, we start with the second Reading, clause by clause reading, of the Bill.

We take up Clause 2.

There is an amendment in the name of Khawaja Mohammad Safdar. Khawaja Safdar is not here so the amendment is not moved. I will put the question with regard to Clause 2.

The question before the House is :

“That Clause 2 forms part of the Bill.”

These in favour may rise in their seats)

(The Hon'ble Senators rise in their seats)

Mr. Chairman : There are 26 votes in favour.

So, Clause 2 forms part of the Bill.

All right. This complies with the requirements. All those who were sitting are not members of this House. There was not a single Member who was sitting. So, I think nobody is against it. Clause 2 is carried.

Now we move on to Clause 3.

There is an amendment in the name of Khawaja Mohammad Safdar. He is not present. The amendment is not moved. So, I have no alternative but to put Clause 3 to the vote of the House.

The question before the House is :

“That Clause 3 forms part of the Bill.”

You are to rise in your Seats.

(The Hon'ble Senators rise in their seats)

Mr. Chairman : Thank you. Resume your seats. These who are against Clause 3 may rise in their seats.

(Pause)

Mr. Chairman : None. So, there are 26 in favour of it.

Clause 3 forms part of the Bill.

Next Clause 4.

Again there are two amendments No. 4 and 5 given notice of by Khawaja Mohammad Safdar. He is not here. So, the amendments are not moved, I go straight to the Clause.

The question before the House is :

“That Clause 4 forms part of the Bill”.

Those who are in favour of it may again kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may rise in their seats.

Mr. Chairman : None.

So, there are 26 in favour, the motion is carried.

Clause 4 forms part of the Bill.

Now, clause 5.

Again there are amendments in the name of Khawaja Mohammad Safdar. He is absent. Not moved. I put the clause.

The question before the House is :

“The Clause 5 forms part of the Bill”.

Those who are in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may rise in their seats.

Mr. Chairman : None.

There are 26 in favour of this Clause. So, the motion is carried.

Now, we move on to Clause 6.

Again there is an amendment in the name of Khawaja Mohammad Safdar. He is not present. He does not move this amendment. So I have to put the question.

The question before the House is :

“That Clause 6 forms part of the Bill”.

Those who are in favour of it may kindly rise in their seats,

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

As there are 26 in favour of the clause, so the motion is carried.

Clause 6 forms part of the Bill. Now we take up clause 7. Again there is an amendment in the name of Khawaja Mohammad Safdar. He has not moved because he is absent. So I will put the question.

The question before the House is :

“That Clause 7 forms part of the Bill.”

Those who are in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

There are 26 in favour. The motion is carried.

Clause 7 forms part of the Bill.

Next is clause 8.

Again there are amendments standing in the name of Khawaja Mohammad Safdar who is absent. They are not moved so they can be safely ignored. I will put the question.

The question before the House is :

“The Clause 8 forms part of the Bill”.

Those who are in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

So, there are 26 in favour of Clause 8. The motion is carried.

Clause 8 forms part of the Bill.

Next is Clause 9.

Similarly there is an amendment in the name of Khawaja Mohammad Safdar. He does not move because he is absent, I put the question.

The question before the House is :

“The Clause 9 forms part of the Bill.”

Those who are in against may kindly again take the trouble of rising in their seats.

Mr. Chairman : 26.

Those who are in favour may kindly rise in their seats.

Mr. Chairman : None.

There are 26 in favour of the motion. The motion is carried.

Clause 9 forms part of the Bill.

Next is Clause 10.

Similarly an amendment has been tabled by Khawaja Mohammad Safdar. He is not present, he does not move so it falls through. I put the question.

The question before the House is :

“That Clause 10 forms part of the Bill.”

Those in favour, of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

The motion is carried by 26 votes.

Clause 10 forms part of the Bill.

Next is Clause 11. Similarly notice has been given of an amendment by Khawaja Mohammad Safdar. He is absent, he cannot move it. So I put the question.

The question before the House is :

“That Clause 11 forms part of the Bill.”

Those in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

26 are in favour of this clause. So the motion is carried and Clause 11 forms part of the Bill.

Now, next is Clause 12.

Happily there is no amendment. So, I put the Clause straight to the House.

The question before the House is :

“That Clause 12 forms part of the Bill”.

Those who are in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

There are 26 in favour. The motion is carried.

Clause 12 forms part of the Bill.

Now, we move on to Clause 13.

Again there is an amendment tabled by Khawaja Mohammad Safdar. He is absent. So, the amendment will be deemed not to have been moved and it falls through. I put the question.

The question before the House is :

“That Clause 13 forms part of the Bill.”

Those in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

There are 26 votes in favour. The motion is carried and Clause 13 forms part of the Bill.

Next is Clause 14.

There are two amendments in the name of Khawaja Mohammad Safdar. He is absent. Not moved. We can ignore them. Now, we go straight to the clause.

The question before the House is :

“That Clause 14 forms part of the Bill.”

Those who are in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against the question may kindly rise in their seats.

Mr. Chairman : None.

So, the motion is adopted by 26 votes.

Clause 14 forms part of the Bill.

Now, we are at the end of this physical exercise. Almost at the end. Now, we come to Schedule. I don't think there is any amendment to the Schedule.

So, the question before the House is :

“That Schedule forms part of the Bill.”

Those who are in favour of it may kindly rise in their seats.

Mr. Chairman : 26.

Those who are against it may kindly rise in their seats.

Mr. Chairman : None.

There are 26 votes in favour of the Schedule. So, the question is carried and Schedule forms part of the Bill.

Now, we are left with only one the last.

There is no amendment to it. So, I put the question.

The question before the House is :

“That Title, Preamble and Clause 1 form part of the Bill.”

Those who are in favour of it may kindly rise for the last time in their seats.

Mr. Chairman : 26. Thank you.

Any gentlemen who are against may please rise in their seats.

Mr. Chairman : None.

There are 26 votes in favour. So the Preamble, Title and Clause 1 form part of the Bill.

Mr. Chairman : Now, we take up the last item with regard to this Bill. Yes, Malik Meraj Khalid. It is item No. 4.

Malik Meraj Khalid : Sir, I beg to move :

“That the Bill further to amend the Constitution of the Islamic Republic of Pakistan [The Constitution (Fourth Amendment) Bill, 1975], be passed.”

Mr. Chairman : The motion moved is :

“That the Bill further to amend the Constitution of the Islamic Republic of Pakistan [The Constitution (Fourth Amendment) Bill, 1975], be passed.”

Do you want to say anything. Any objection? Any Opposition? Any amendment? Anybody can move an oral amendment if he want, None?

Voices : No.

Mr. Chairman : I give opportunity to everybody. Even a member of your party is welcome if they want. Yes, I will put the motion. Don't you want to make any speech ?

سلاک معراج خالد ! صرف ایک منٹ لینا چاہتا ہوں کہ یہ تاثر پیدا ہوتا ہے کہ پانچ ، چھ ، سات ، آٹھ سال سے ایسے کیسز ہیں جن کی ابھی تک ریکوری نہیں کی جا سکی اور اس طرح اب عدالتوں پر بوجھ پڑے گا اس سے پیشتر ہی حکومت نے ایڈمنسٹریشن آف جسٹس کے مطالبات پورے کرنے کی یقین دہانی کرا رکھی ہے اگر زیادہ بوجھ ہوا تو حکومت بخل سے کام نہیں لے گی۔

Mr. Chairman : Thank you.

Gentlemen, as you are aware on a motion for the passage of the Bill when it relates to the amendment of the Constitution, there is to be a division vote. So, we have now to take the vote by division. So, let the division bell be rung for two minutes.

(The division bell was rung)

Mr. Chairman : Now, I call the House to order.

Thank you.

Now, we are proceeding for the division.

Ayes to my right and noes to my left.

(Division took Place)

Mr. Chairman : Mr. Sher Mohammad Khan, will you kindly resume your seat.

(Pause)

Mr. Chairman : Yes, now the result has been received, and I have to announce it. There are 26 in favour and none against. So, the motion is carried and the Constitution Fourth Amendment Bill, 1975 stands passed.

Mr. Chairman : Now we take up next Bill.

THE LAND REFORMS (AMENDMENT) BILL, 1975.

Mr. Chairman : Sheikh Sahib, I think, the consideration of the motion was still under discussion when the House rose the other day. Well any gentleman taking part ?

Voices : No, Sir.

Mr. Chairman : Nobody to speak. Then, I have to put the motion. Mr. Rafi Raza has come just now I will ask him. You are going, all right.

Mr. Chairman : No gentlemen taking part ?

Voices. No

Mr. Chairman : All right. I have no alternative but to put the question before the House.

Now, the question before the House is :

“That the Bill further to amend the Land Reforms Regulation 1972 [The Land Reforms (Amendment) Bill, 1975], as passed by the National Assembly, be taken into consideration”.

Mr. Chairman : Now, we take up clause by clause, the Second Reading of the Bill.

Yes, Clause 2.

Well, again there was an amendment tabled by Khawaja Mohammad Safdar, the gentleman who is not present. He is absent, so the amendment is not moved. You can ignore it.

We come straight to the Clause.

The question before the House is :

“That Clause 2 forms part of the Bill.”

(The motion was adopted)

Mr. Chairman : Those who are against it may say ‘No’.

Mr. Chairman : Clause 2 forms part of the Bill.

Then, we take up Clause 3. Repeal. There is no amendment tabled against it.

So I put the question before the House is :

“That Clause 3 forms part of the Bill.”

(The motion was adopted)

Mr. Chairman : So, Clause 3 forms part of the Bill.

Now, we are left with Preamble, and Short Title in Clause 1.

The question before the House is :

“That preamble, Title Clause 1 forms part of the Bill.”

(The motion was adopted)

Mr. Chairman : Short title preamble in Clause 1 forms part of the Bill.

Yes, Sheikh Mohammad Rashid.

Shaikh Mohammad Rashid : Sir, I beg to move :

That the Bill further to amend the Land Reforms Regulation, 1972 [The Land Reforms (Amendment) Bill, 1975], be passed.”

Mr. Chairman : The motion made is :

“That the Bill further to amend the Land Reforms Regulation, 1972 [The Land Reforms (Amendment) Bill, 1975], be passed.”

Would you like to say anything? Nothing. Any gentleman participating in the debate? Yes, Mr. Qamaruz Zaman Shah Don't you say anything? Don't you support him? Why don't you get up and support him? But I can allow you to go to your seat.

All right, gentlemen none of you is willing to participate. So I have to put the question.

Now the question before the House is :

“That the Bill further to amend the Land Reforms Regulation, 1972 [The Land Reforms (Amendment) Bill, 1975], be passed.”

(The motion was adopted)

Mr. Chairman : The Bill stands passed unanimously.

There is nothing else.

So, we meet tomorrow. How in the morning ?

Malik Mohammad Akhtar (Minister of state for parliamentary Affairs): Because in the evening we have to receive some guests.

Mr. Chairman : In the evening ?

Malik Mohammad Akhtar : Yes, Sir, some Head of State of from Turkey.

Mr. Abdul Hafeez Pirzada : Sir, in the evening the President of Turkey is coming.

Mr. Chairman : O', I see.

So, we meet in the morning.

Would you mind if we meet a bit earlier at 9.30 ?

Voices : At 10 00.

Mr. Chairman : No, no, at 9.30.

The House adjourned to meet again at half-past nine in the morning on Tuesday, Nov. 18, 1975.
