

SWATANTRA PARTY



NATIONAL HEAD QUARTERS

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1162
Sri M.R.Masani,
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Dear Sir,

*for
the day
to see
to John F. Kennedy
20/10*

I thank you very much for sending me a copy of "Freedom First" together with your short note.

The Conference went off nicely but the attendance was thin due to the highly inclement weather that prevailed in Madras for over 4 days. Even the large number of posters we had put up were washed out.

I enclose herewith a copy of the report ~~of the~~ submitted by the Committee of lawyers and a copy of the resolutions adopted by the Conference for your perusal.

Thanking you once again,

Yours truly,

V.S. Srikumar
(V.S.Srikumar)

Jt.Secretary.

Enc: 1.

Copy of resolutions will be sent separately.

Report of the Committee of Lawyers set up by All India Swatantra Party

ON 44TH CONSTITUTION AMENDMENT BILL

COMMITTEE MEMBERS

Sri R. M. SESHADRI, I.C.S. (Retd.).

„ GIRISH MUNSHI

„ HARIHAR PATEL

„ S. PICHAI

„ N. RAMANATHA IYER

Mr. PEPPIN FERNANDO

Sri NARAYANA RAO

„ K. C. KADIRVELU

„ R. KRISHNAMURTHY

„ V. PADMANABHAN

Mr. AJMAL KHAN

Sri GOPALAKRISHNAN

„ SANKARANARAYANAN

„ G. SUNDARAM

„ APPAVOO

„ K. V. RAMAMURTHY

„ S. N. SADASIVAM

Report of the Committee of Lawyers set up by All India Swatantra Party

The Swatantra Party of India has carefully considered the Constitution 44th Amendment Bill, 1976. As the amendments have been on a large scale, it was decided to place on record the views of the party and to communicate them for necessary action to the concerned authorities.

2. This party which, in its dedication to the welfare of the people is second to none, fully appreciates the need to secure the objectives of a welfare state. It would welcome every attempt to implement all the directive principles of the constitution and also realises the need to eliminate all the blocks and sufferings of the people.

3. While stating its view broadly in the above manner, it cannot help feeling apprehensive about the method adopted to secure the objectives in question.

4. This party shares the view expressed by the eminent jurists in the country that all the objects sought to be achieved could be done within the frame work of the present constitution itself with perhaps minor changes and that if the Government feels frustrated or helpless in this regard, it is mainly because of hasty legislation and because of lack of proper application of mind in making the several laws.

5. This party feels that any amendment to constitution in a large scale manner which unquestionably alters the basic structure, will constitute an unhealthy precedent and will be an invitation to the successor Governments.

6. This party feels there can never be any guarantee against alterations and amendments either in fragments or in wholesome manner by the succeeding Government. As a consequence the constitution of India which on all hand will lose its prominent status and assume the character of ordinary piece of legislation alterable at the will of every succeeding legislators.

7. The Swatantra Party does not and cannot believe that such is the intention of the Government; but nevertheless the Government not having such an intention, the result in the course of time will be to make the constitution an ordinary piece of legislation.

8. However, well intentioned the Government may be, in its statement that there will be a wide spread debate throughout the length and breadth of the country regarding the proposed amendment, the fact is that such a wide spread debate is not possible under the present circumstances because of the stringent press censorship, lack of facility for communicating the views of the party to its members and also because large number of leaders being detained in prison without trial. It is, therefore, felt that this is not appropriate time for a large scale amendment of the constitution because the pre-requisites for such amendment, viz. open debate among the people, is non-existent. Secondly, the fact that the life of the parliament, itself is one on sufferance and, therefore, does not have the moral-if not legal-authority to effect a large scale amendment to the constitution, cannot be easily forgotten. This is the view expressed by eminent jurists and leaders of public opinion on the matter.

9. Therefore, this Party strongly feels and recommends that the best and safest course in the context of the present situation will be to constitute an Expert Committee consisting mostly of jurists to examine whether the broad objectives intended to be secured through the proposed amendments could be secured within the frame work

of the constitution itself and what steps could be taken to ensure that within the present constitution the objectives in question could be implemented, leaving it to the Committee to suggest changes in the constitution, if necessary, for purposes of bringing about the desired objectives.

10. Without prejudice to the objections as stated above and while expressing the genuine alarm and apprehension of the party that such changes would virtually make the constitution a minor piece of legislation and tempt the succeeding Governments to tamper with it as and when they like, the party wishes to draw the Government's attention to certain provisions which in its considered opinion are wholly undesirable and unnecessary.

Clause 2. This party feels there is no need to add the words "Secular" and "Social" in the preamble. When the objects are clear in the constitution itself, it will be redundant to add this.

The addition of these 2 words will cause difficulties as the precise scope and meaning of the words "Secular" and "Social" have never been precise and cannot be precise.

The preamble is drawn up for interpreting a provision in the event of any ambiguity in the provision and if the words themselves are not capable of precise meaning, the interpretation will become more difficult than otherwise.

Clause 4. Art. 31 (c)

This amendment is drastic and excessive. To proclaim immunity from judicial scrutiny and adjudication, any act or step purported to be taken in pursuance of part IV of the Constitution will be virtually to remove all executive act from judicial scrutiny. This will mean a negation of Rule of Law and the purpose of Constitution is to secure a citizen against unlawful, arbitrary and excessive acts of the executive will be defeated.

Clause 5. Art. 31D

There should be more precise definition of "anti-national activities". While this party feels that anti-national activity cannot obtain protection under the cover of fundamental rights, unless the scope and content of anti-national activity is strictly defined, the Proposed amendment will lead to abuse.

Clause 6. Art. 32 (A)

This makes justice not available to poor people and sets at nought the object of the Govt. to make justice easily and unexpensively available to every citizen in the country.

Clause 10. PART IV A

While the party welcomes the definition of fundamental duties, the definition as appears in the Bill is vague and more of pious wishes than of practical use. The party suggests that to make the duties categorical and obligatory, a Committee should go into the contents of the scope of duties and reframe this article.

Clause 13. Art. 74

This amendment seriously detracts from the status and the privileged position that the President of India enjoys and has been enjoying. Neither is there need for the Govt. to bring in a provision compulsorily to make the President to go on the advice of the Cabinet. Experience has shown there have been only a very few occasions of the President acting against the advice of the cabinet. Even then, he had eventually accepted the advice of the cabinet. This provision is neither necessary nor is in conformity with the dignity and the prestige of the President.

Clause 42. Art. 228A

Fixation of numerical proportion in the Bench of the Supreme Court for declaring a law invalid is opposed to prevailing practice, and this party feels it is unfortunate that the Government instead of improving its legislative drafting should attempt to seek refuge in numerical proportion for the purpose of saving the laws made by it or under its guidance.

Clause 51. Art. 357

This amendment continues the life of a law passed under extraordinary power even after the cessation or withdrawal of the extraordinary power under which the law is made. In other words, this party is of the opinion, when a provision is made under extraordinary situation for invoking an extraordinary power, there will not be justification or equity in continuing the provision for extraordinary circumstances beyond the continuance of those circumstances.