

BHS-HMS/1A/11.00

The House met at eleven of the clock,
Mr. CHAIRMAN in the Chair.

MEMBER SWORN

Shri N. Gokulakrishnan (Puducherry)

**ALLOCATION OF TIME FOR DISPOSAL OF GOVERNMENT
LEGISLATIVE AND OTHER BUSINESS**

MR. CHAIRMAN: I have to inform Members that the Business Advisory Committee in its meeting held on the 26th of November, 2015, allotted time for Government Legislative and other Business, as indicated below:-

<u>BUSINESS</u>	<u>TIME ALLOTTED</u>
1. Consideration and passing of the following Bills, as passed by Lok Sabha:-	
(a) The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Bill, 2015.	four hours

(b) The Appropriation Acts (Repeal) Bill, 2015.	} one hour <i>(To be discussed together)</i>
(c) The Repealing and Amending (Third) Bill, 2015.	
(d) The Whistle Blowers Protection (Amendment) Bill, 2015.	three hours
2. Further Consideration and passing of the Juvenile Justice (Care and Protection of Children) Bill, 2015, as passed by Lok Sabha.	four hours
3. Further Consideration and passing of the Prevention of Corruption (Amendment) Bill, 2013.	three hours
4. Consideration and passing of the Child Labour (Prohibition and Regulation) Amendment Bill, 2012.	four hours
5. Consideration and passing of the Negotiable Instruments (Amendment) Bill, 2015.	two hours
6. Further Consideration and passing of the Constitution (One Hundred and	four hours

Twenty Second Amendment) Bill, 2014,
as passed by Lok Sabha and as
reported by the Select Committee of
Rajya Sabha.

7. Consideration and passing of the Real Estate (Regulation and Development) Bill, 2013, as reported by the Select Committee of Rajya Sabha. two hours

The Committee also recommended that in view of the adjournment of the House for the day on Thursday, the 26th of November, 2015, as a mark of respect to the memory of Shri Khekiho Zhimomi, sitting Member, the Discussion on ‘Commitment to India’s Constitution as part of the 125th Birth Anniversary Celebration of Dr. B.R. Ambedkar’, previously scheduled for the 26th and 27th November, 2015, will now be taken up on Friday, the 27th of November and Monday, the 30th of November, 2015. Accordingly, there will be no Zero Hour, no Question Hour or any other Business on Monday, the 30th of November, 2015.

(Ends)

**DISCUSSION ON COMMITMENT TO INDIA'S CONSTITUTION AS
PART OF THE 125TH BIRTH ANNIVERSARY CELEBRATION OF
DR. B.R. AMBEDKAR**

MR. CHAIRMAN: Hon. Members, as decided yesterday and in view of the adjournment of the House due to the passing away of a sitting Member, the discussion scheduled for November, 26th and 27th will now be held today and on Monday, the 30th.

Hon. Members will recall that in terms of the 'Oath or Affirmation' prescribed in the Third Schedule of the Constitution, they undertake to - and I quote: "bear true faith and allegiance to the Constitution of India". Our discussion today and on Monday will undoubtedly focus on the contribution of Dr. B.R. Ambedkar to the framing of the Constitution.

I now request the Leader of the House to initiate the discussion.

(Followed by VKK/1B)

AKG-VKK/1B/11.05

नेता सदन (श्री अरुण जेटली) : आदरणीय सभापति जी, मैं आपका आभारी हूँ कि आपने मुझे इस महत्वपूर्ण चर्चा में भाग लेने का मौका दिया है। डा. भीमराव अम्बेडकर के जन्म का यह 125वाँ वर्ष है। इस देश में केवल संविधान निर्माता के रूप में ही नहीं, बल्कि एक समाज सुधारक के रूप में, रिफॉर्मर के रूप में उनका

योगदान किसी अन्य से कम नहीं रहा। जिस परिस्थिति में वे पैदा हुए, बड़े हुए, जिस अन्याय का सामना उनको करना पड़ा, लोकतंत्र के दायरे में, लोकतंत्र की संस्थाओं में विश्वास रखते हुए उस अन्याय के खिलाफ कैसे संघर्ष किया जा सकता है और समाज उस अन्याय की परिस्थिति से बाहर निकले, उसके क्या-क्या रास्ते तय कर सकते हैं, वह मार्ग उन्होंने इस देश को बताया है। जिस संविधान की ड्राफ्टिंग समिति के वे अध्यक्ष थे, शायद बहुत कम लोग जानते हैं कि बहुत कम समय में, कुछ महीनों में उस ड्राफ्टिंग कमेटी ने अपनी कार्रवाई पूरी की थी और उसके बाद जब वह संविधान सभा में जाता था, तो जो संविधान का एक-एक अंश होता था, उसके सम्बन्ध में उनकी जो टिप्पणी रहती थी, आज भी उस संविधान की मूल भावना को समझना और उसके पीछे क्या कारण रहे, क्या तर्क रहे, डा. अम्बेडकर के संविधान सभा में जो वक्तव्य थे, वे आज भी समाज के लिए बहुत महत्व के हैं। आज उस संविधान को बने 65 वर्ष हो चुके हैं और जब हम पीछे मुड़ कर देखते हैं कि इस 65 वर्ष के युग में पूरी दुनिया के अन्दर कितने परिवर्तन आए, तो कितने ऐसे देश थे, जहाँ लोकतांत्रिक हुकूमतें समाप्त हो गईं, फौज ने हुकूमत सँभाल ली है; कितने ऐसे देश थे, जहाँ किसी व्यक्ति के आधार पर तानाशाही पैदा हो गई; कितने ऐसे देश थे, जहाँ धर्म के आधार पर कोई तानाशाही पैदा हो गई, लेकिन यह उस संविधान का एक योगदान था और इस देश में जिन लोकतांत्रिक मूल्यों को स्थापित किया गया, उसका एक योगदान था कि जब कभी हमारी किसी संस्था पर या लोकतंत्र पर खतरा भी मँडराया, तो समाज में इतनी ताकत थी कि हम उसके साथ निपट पाए

और हर परिस्थिति के उपरांत इस देश का लोकतंत्र और लोकतांत्रिक संस्थाएँ और मजबूत होकर बाहर निकली हैं। कई बार हमें यह सोचना पड़ेगा कि 1947 से पहले यह देश बहुत बड़ा था, 1947 में बँटवारा हुआ, एक ही प्रकार के लोग जब दो हिस्सों में बँट गए, तो क्या कारण था कि हमारे देश में लोकतंत्र मजबूत होता चला गया, पर पड़ोस में ऐसी स्थिति नहीं थी।

(1सी/केएलजी पर जारी)

KLK-KR/1C/11.10

श्री अरुण जेटली (क्रमागत): और शायद हमारे संविधान निर्माताओं ने, जिन्होंने लोकतंत्र की स्थापना की और लोकतंत्र की जो संस्थाएँ हैं, उनको मजबूत किया, उनका भी अपना योगदान था। मैं कई बार सोचता हूँ कि कुछ अंतर ऐसे थे, जो स्पष्ट रहे। हमारा चुनाव आयोग ऐसा था, जो निष्पक्ष चुनाव करवाता था। हमारी न्यायपालिका ऐसी थी, जो स्वतंत्र थी, जो केवल सरकार क्या चाहती है उसको देखकर अपना निर्णय नहीं करती थी। हमारी सेना और फौज ऐसी थी, जो प्रोफेशनल थी, जिसने राजनीति के साथ जो एक फासला होना था, वह हमेशा बनाकर रखा और इन सब संस्थाओं का, जिनको हमारे निर्माताओं ने खड़ा किया, उनका एक योगदान रहा। आज हमारा भी दायित्व है कि एक बार मुड़कर इन सब संस्थाओं पर और जो संविधान डा. अम्बेडकर ने बनाया और हमें दिया, वह कैसे चला है, उसके ऊपर भी विचार कर लें।

सभापति जी, मैं तो स्वतंत्रता के साढ़े पाँच, छह साल बाद पैदा हुआ और इसलिए स्वाभाविक है कि मुझ जैसे लोगों का संविधान बनाने में कोई

योगदान नहीं था। मैं जिस राजनैतिक संगठन से आता हूँ, उसके जो प्रेरक थे डा. श्यामा प्रसाद मुखर्जी, वे उस संविधान सभा के सदस्य थे और उनका भी योगदान अन्य संविधान सभा के महान नेताओं के बीच में एक सदस्य होने की वजह से रहा था। आज एक अवसर है, इस संविधान का विश्लेषण कर लेने का और जहां-जहां हमें लगता है कि इसको मजबूत करने की आवश्यकता है, निश्चित रूप से गंभीरता से उन विषयों के ऊपर चिंतन कर लेने का। इस संविधान की जो मूल ताकत हैं, वे मौलिक अधिकार हैं, जो संविधान निर्माताओं ने हमें दिए। स्वतंत्रता आंदोलन के दौरान जो पंडित मोती लाल नेहरू की अध्यक्षता में एक सर्वदलीय समिति बनी थी, जिसने एक चार्टर बनाया था, ये उसके ऊपर आधारित हैं। मैं मानता हूँ कि जो मूल भावना है, the core values of our Constitution are expressed in them, बराबरी का अधिकार, किसी के खिलाफ भेदभाव न हो, उसकी एक मूल भावना, अभिव्यक्ति का अधिकार, देश में कहीं रहने का अधिकार, जिस मज़हब या धर्म में विश्वास है उसको प्रचलित करने का अधिकार, ये संविधान की मूल भावनाएं हैं। कई बार आज इनके ऊपर भी संकट आया है और मैं दो विशेष उदाहरण देना चाहूंगा, जिसे मैं मानता हूँ कि संविधान सभा में जो यह बनाया गया, उसमें भी कई बार सुधार की आवश्यकता है।

(1डी/एससीएच-केएस पर

जारी)

SCH-KS/11.15/1D

श्री अरुण जेटली (क्रमागत) : संविधान सभा ने यह लिखा था कि जब देश पर गहरा संकट आए, तो मौलिक अधिकारों को सस्पेंड किया जा सकता है। उसकी एक बहुत बड़ी कीमत इस देश को अदा करनी पड़ी थी। जब 1977 में श्री मोरारजी भाई की सरकार बनी, तो उनकी सरकार का लक्ष्य एक बहुत बड़ा सुधार करने का था। The original Constitution provided for article 21 which speaks of life and liberty for every citizen, and that life and liberty cannot be denied to anyone without a due process. The Constitution had used a different language, but the courts have interpreted it more liberally now. During the 1970s, one of the biggest challenges we faced was that article 21 was suspended, and the Government succeeded in convincing the Supreme Court that if article 21 was suspended -- because it was suspendable -- the citizens of India would lose the right to life and liberty. This was dictatorship at its worst. सबसे बड़ा अधिकार, जीने का अधिकार है। आज तो अगर कोई आदमी टेलिविज़न की स्क्रीन पर आकर गैर-जिम्मेदाराना बयान दे दे, तो हम इसको इन्टॉलरेंस मान लेते हैं, लेकिन उस वक्त तो यह स्थिति थी कि अगर नाजायज़ तरीके से आपका जीवन भी छीन लिया जाए ...(व्यवधान)...

SHRI SHANTARAM NAIK: There is no comparison.

SHRI ARUN JAITLEY: Of course, there is no comparison. The difference is between a mouse and a molehill. ...(Interruptions)...

श्रीमती विप्लव ठाकुर : उस समय उन्होंने....(व्यवधान)...

MR. CHAIRMAN: Silence, please. ...(Interruptions)... Silence please. ...(Interruptions)... Please continue.

SHRI ARUN JAITLEY: So, the argument was that article 21 is suspendable; people lose the right to life; people lose the right to liberty. They can be jailed without reason; they can be killed without reason, and people will have no remedy. And those who now claim to swear by the Constitution supported this position. It goes to the credit of our Prime Minister, Shri Morarji Desai, and his Government... ...(Interruptions)...

श्री मोहम्मद अली खान : अम्बेडकर जी के संविधान ने ...(व्यवधान)...

جناب محمد علی خان: امبیڈکر جی کے سمودھان نے --- (مداخلت)---

श्री शान्ताराम नायक : सर, उस समय की बात ...(व्यवधान)...

MR. CHAIRMAN: Please, please. ...(Interruptions)... शान्ताराम जी, आप बैठ जाइए। ...(व्यवधान)... Please sit down. ...(Interruptions)... Please sit down. ...(Interruptions)... Please allow the discussion to continue. ...(Interruptions)... आप बैठ जाइए ...(व्यवधान)... भाई, आप बैठ

जाइए।...(व्यवधान)... Why are you wasting precious time? Please sit down. ...(Interruptions)... Continue, please. ...(Interruptions)...

श्री प्रवीण राष्ट्रपाल : उनको हटाने के लिए आप लोगों ने क्या किया? ...
...(व्यवधान)..

श्री सभापति : प्लीज़, आप बैठ जाइए। ...
...(व्यवधान)...

श्री प्रवीण राष्ट्रपाल : आप मोरारजी देसाई जी की बात करते हैं, जवाहर लाल नेहरू जी की बात क्यों नहीं करते? ...
...(व्यवधान)..

श्री सभापति : जब आपकी बारी आएगी, तब आप बोलिएगा, अभी आप बैठ जाइए। ...
...(व्यवधान)... बैठ जाइए। ...
...(व्यवधान)... भाई, बैठ जाइए। ...
...(व्यवधान)... Please continue.

SHRI ARUN JAITLEY: Sir, it goes to the credit of the Government -- since that Government comprised mostly of people who had suffered because of the suspension of article 21 -- that they realized this great gap in the Constitution, that the Constitution was amended, and rightly so, and article 21 was made permanently non-suspendable. So, today we are far more safe and far more secure.

Sir, there was one more change. Normally, Fundamental Rights — and this is the wisdom of hindsight — should never so easily be interfered with, getting carried away with the economic policies of that time. Let us just remember -- I am just flagging that point and leaving

it at that — that one of the Fundamental Rights that the Constitution had given to every citizen was also the right to acquire and own property.

(CONTD. BY RL/1E)

-KS/RL-PSV/11.20/1E

SHRI ARUN JAITLEY (CONTD.): It was a Fundamental Right. Since, we were then swayed by a different set of economic policies, there was a big campaign and the only Fundamental Right which has been repealed in India during the 1970s was the Right to Property, to own and acquire property. This was subsequently brought in as an ordinary Constitutional right under Article 300A. I am not advocating anything else. During the last few years, a debate over the Land Bill has taken place in this country. I would just urge all hon. Members and other thinkers in the Indian society to ponder over the fact, just as a part of transient economic thinking at any given point of time, that whether we should get so over-swayed and tinker with Fundamental Rights. I am just flagging this issue and since we are discussing the Constitution, which Dr. Ambedkar had drafted and he had put this as one of the rights, we thought it was progressive enough to repeal it

and then forty years later, we came out with a contrarian argument in the Land Bill. I think it is about time that the last seventy-year debate on this issue, some of us must now try and revisit that shortsighted vision in dealing with Constitutionalism which is not necessarily the correct perspective to have.

Sir, the other high point of the Constitution which we need to, today, analyze is the concept of federalism that Dr. Ambedkar envisaged. संघीय ढाँचे के सम्बन्ध में कई प्रावधान किये गये हैं, लेकिन पहले 20-30 वर्षों में संघीय ढाँचे का इतना महत्व है, यह बात समझी नहीं गयी, क्योंकि उस वक्त लोगों को लगता था कि शायद देश की एकता बरकरार रखनी है, sovereignty and unity is to be preserved और उसके लिए unitary style शायद बेहतर होगा। मैं जिस विचारधारा से सम्बन्ध रखता हूँ, मेरे भी नेताओं को उस वक्त शायद कभी यह विचार आता था, लेकिन जब वह खतरा टल गया, तो हर प्रांत के अन्दर मैं अपने प्रावधान को मजबूत करूँ, अपने क्षेत्र को मजबूत करूँ, यहाँ लोगों का विकास हो, so federal feelings in India have become real and genuine. And, therefore, it is a reality that we have to recognize. More financial power to the States is one high point which we have been evolving over the years. There is a second high point that how many times in the first forty years, when we almost had a one party rule at the Centre, Article 356 was used against the States. The

moment we realize the high importance of federal politics and the federal character of India, you had coalition Governments; you had regional parties emerging; you had regional parties becoming extremely important part of Central Governments. This had led to the strengthening of federalism and that is why, we now proudly use words like 'cooperative federalism' and one great aspect of it has been that after misusing it several times during one party rule at the Centre, the misuse of Article 356 in India has gradually been faced out. And, therefore, these days the fears of Article 356 being violated repeatedly or repeatedly being used against the States have disappeared. There is hardly a regional party here.....

SHRI SITARAM YECHURY: The Judiciary played a role.

(Followed by VK/1F)

VK/1F/11.25

SHRI ARUN JAITLEY: I think the Judiciary played an important role. I think the emergence of regional parties as part of the Central Government played a role, and the fact that this misuse is counterproductive, also played a role.

Sir, the important aspect, I think, we need to seriously introspect is also our strength of democracy, the Constitution and the

institution of free and fair elections. The Election Commission has become a very professional and a competent institution. The largest global election it can conduct with utmost ease. There was violence, there was booth capturing. The Election Commission has now devised methodologies to overcome it. Now for the last ten to fifteen years, we don't hear about booth capturing. But there is one challenge that we have to seriously introspect, that is, the excessive use of money power. That is the challenge to which we still have to find a solution.

This brings me to two important issues. One, relating to the separation of powers and the second relating to the independence of Judiciary. The separation of powers between the Executive, the Legislature and the Judiciary, I think, was one of the core ideas Dr. Ambedkar gave to us. Independence of Judiciary, I straightaway concede, as part of the basic structure is absolutely essential. But there are two points which need to be flagged. If there is a dilution of separation of powers which is taking place, the dilution is not coming from either the Executive or the Legislature; it is not coming from the Central Government; it is not coming from State Governments. In fact, what started as a positive note in terms of activism by courts, at

times, a question is raised that does it cross the Lakshman rekha of separation of powers? The argument given is, if the Legislature and the Executive don't act, we have a power to interfere. Well you have a power to direct, but power to assume the function of the Legislature or the Executive, I think, is something which goes beyond the concept of what Dr. Ambedkar in the separation of powers envisaged. Therefore, today, as we pay our tributes to Dr. Ambedkar, we require judicial statesmanship, and an equal amount of statesmanship and vision by the Executive and the Legislature to maintain this delicate balance is required. No law can maintain this balance. It is an element of self-disciplining which is required to maintain this balance because once this delicate balance is upset, the constitutional balance itself will be upset. Therefore, I can count hundreds of illustrations and people who are more experienced than me in State Governments will give many more. How many calories are to be fed to the terrorists when a security operation is on? There are no judicially measurable standards by which it can be determined. It is for the security forces to decide. How many bullets are to be fired in an encounter, can't be determined by courts. How are our town planning schemes and clearances to be done? Are people going to be uprooted completely overnight? The

social responsibility of looking after them also belongs to the States. These are factors in the separation of powers which we will have to keep in mind.

(Contd. by 1G)

-VK/OM-VNK/1G/11.30

SHRI ARUN JAITLEY (CONTD.) I don't think there is any section of this House, which would ever say that independence of Judiciary is not a part of the basic structure. But, Sir, I have said it outside and I have no hesitation in repeating it out. The spirit of the original Constitution in matters relating to the Judiciary, today, the absolute contrary of what Dr. Ambedkar had envisaged and stated, is happening. In respect of Articles 124 and 217, which deal with the appointment of Judges of the Supreme Court and the High Courts, Dr. Ambedkar, in his intervention, said, in the Constituent Assembly, "Is this power to be left to the Judiciary alone?" And, he said, the answer is 'No'. "Is it to be left exclusively? Is it the last word to be of the Executive?" The answer is 'No'. It has to be done by a consultative process." And, therefore, the Constitution, that he framed clearly, said that President of India will appoint, in consultation with the Chief

Justice. And today, we have reached a situation where the Chief Justice of the Collegium will appoint and everybody else is irrelevant. Can the Constitution ever be interpreted to mean the opposite of what the Constitution says? No principle of interpretation of law can ever justify that. Secondly, the rationale on which it is based is that independence of Judiciary is a part of the basic structure of the Constitution. Of course, it is. But then, Parliament is also a part of the basic structure and elected Council of Ministers and the Prime Minister are also a part of the basic structure. The Leader of the Opposition, expressing the alternate view in Parliament, is also a part of that basic structure. Now, to say only one basic structure will prevail and the others become irrelevant, again upsets the delicate constitutional balance that Dr. Ambedkar gave to this country. And, I think, it is extremely important, while we pay tribute to him, that we, certainly, discuss and ponder over these ideas that he gave, and to the extent that we have deviated away from them. Sir, improvement in the ideas was always welcome like, decentralized democracy, in terms of Panchayats and Municipalities and regional democracy evolved, an experiment which has served us well. I think the most important is the whole concept of affirmative action. Affirmative action was not creating

a preferred class. संविधान ने यह कहा है कि सबको बराबरी का अधिकार है। जाति, धर्म, मजहब, कास्ट, क्रीड के आधार पर कोई भेदभाव नहीं होगा, लेकिन जो सामाजिक या शैक्षणिक दृष्टि से पिछड़े हैं या जो एससी या एसटी हैं, उनके लिए विशेष कदम उठाए जाएंगे - यह संविधान ने कहा। And the object behind this was that whereas all human beings were created as equals, a social structure has made some as unequal and, therefore, affirmative action is required to bring them to the level of equality. That is the concept of Article 15(4) that he introduced and, I think, it is the spirit of that Article which we have to continue to honor and respect. Sir, a large part of the debate, -- I have read in the newspapers about what is being debated in the other House and elsewhere -- is also on this concept of the freedom of religion, the right to practice and propagate your religion.

(Contd. by RG/1H)

RPM/RG/1H/11.35

श्री अरुण जेटली (क्रमागत): सैकुलरवाद क्या है, संविधान में था या नहीं, इसे लेकर बहुत बहस हो सकती है, लेकिन मैं इस बहस में नहीं जाऊंगा। मैं केवल इतना विषय उठाना चाहता हूं कि संविधान में, चाहे इस शब्द का प्रयोग वर्ष 1950 में हुआ या नहीं, कल्पना क्या थी, what the concept was. Article 14 said, "The State shall not discriminate against anyone". Article 15 went a

step further and said that on the basis of caste, creed, religion, etc., you will not discriminate. And, I think, this was fundamental to the Constitution. Article 25 said, "Every man has the right to practise and propagate his religion". Articles 29 and 30 gave some special rights for minorities. What do we conclude from this? The Constitution, envisaged by Dr. Ambedkar, was not anti-religion or irreligion. It rejected theocracy. The State will have no religion; the State will not discriminate on the basis of religion; the State will have a non-discriminatory attitude, but everybody will have the right to propagate his religion. Now, let me tell you three or four illustrations how, in the last 65 years, we have somewhat subverted this whole thought.

MR. CHAIRMAN: Arunji, may I just take a minute?

WELCOME TO PARLIAMENTARY DELEGATION FROM SLOVENIA

MR. CHAIRMAN: Hon. Members, I have an announcement to make. We have, with us, seated in the Special Box, Members of a Parliamentary Delegation from the Republic of Slovenia, currently on a visit to our country under the distinguished leadership of His Excellency, Dr. Milan Brglez, President of the National Assembly of the Republic of Slovenia.

On behalf of the Members of the House and on my own behalf, I take pleasure in extending a hearty welcome to the Leader and other Members of the Delegation and wish our distinguished guests an enjoyable and a fruitful stay in our country. We hope that during their stay here, they would be able to see and learn more about our Parliamentary system, our country and our people, and that their visit to this country will further strengthen the friendly bonds that exist between India and the Republic of Slovenia. Through them, we convey our greetings and best wishes to the Parliament and the friendly people of the Republic of Slovenia.

(Ends)

**DISCUSSION ON COMMITMENT TO INDIA'S CONSTITUTION AS
PART OF 125TH BIRTH ANNIVERSARY CELEBRATION OF
DR. B.R. AMBEDKAR - Contd..**

श्री अरुण जेटली: सर, अगर संविधान की religious freedom के बारे में यह कल्पना थी, तो पिछले 65 सालों में क्या परिवर्तन हुआ है? मान लीजिए, आज यह सदन दुबारा संविधान सभा बन गया होता और डा. अम्बेडकर इसमें खड़े होकर, उन्होंने 25 नवम्बर, 1949 को जो कहा, संविधान को प्रपोज करते और डा. अम्बेडकर इस संविधान सभा में, आज 2015 में कहते। आर्टिकल 44, यह

कोई हम नहीं लाए हैं- "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India".

(Continued by SSS/1J)

SSS-SC/1J/11.40

SHRI ARUN JAITLEY (CONTD.): So, if Dr. Ambedkar had today stood up and proposed this provision, how would this House have reacted? अगर डा. अम्बेडकर आर्टिकल 44 को 1950 के स्थान पर 2015 में प्रपोज़ करते तो आपकी क्या प्रतिक्रिया होती? अगर डा. अम्बेडकर ..(व्यवधान)..

SHRI SITARAM YECHURY: These are Directive Principles. You know as much as I know. These are Directive Principles. Do not stretch that argument to such a level.

MR. CHAIRMAN: Let the hon. Speaker continue.

SHRI ARUN JAITLEY: We will go beyond Directive Principles now.

अगर डा. अम्बेडकर संविधान की धारा 48 को 2015 में प्रपोज करते, जिसमें लिखा है — मैं पढ़ देता हूं, शायद आप भूल गए होंगे — "The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle." So if Dr. Ambedkar had

proposed Article 44 and Article 48 today, how many of you would have accepted it, as Shri Sitaram Yechury says, even as a Directive Principle? और केवल यह डायरेक्टिव प्रिंसिपल नहीं था। सीताराम येचुरी जी, मैं आपको बताना चाहता हूँ कि इसी भावना के तहत, जब पंडित जी प्रधान मंत्री थे, इंदिरा गांधी जी प्रधान मंत्री थीं, तब आर्टिकल 48 के तहत उन्होंने राज्यों को लिखा कि कानून बनाओ और पूर्वोत्तर बंगाल और केरल को छोड़कर इस देश के हर राज्य ने कानून बना दिया। ..(व्यवधान).. चूंकि सीताराम येचुरी जी बहुत प्रगतिशील हैं, उन्होंने कहा कि ये डायरेक्टिव प्रिंसिपल्स हैं, मैं इससे दो कदम ..(व्यवधान)।

श्री सीताराम येचुरी : सर, मैंने नहीं कहा। यह कॉन्स्टीट्यूशन कहता है।..(व्यवधान)।

श्री अरुण जेटली : इसलिए मैं थोड़ा आगे बढ़ता हूँ। सर, मैं केवल 65 वर्ष की जो वैचारिक यात्रा हुई है, उसका जिक्र कर रहा हूँ। मैं आपको एक बहुत सरल प्रावधान बतलाता हूँ। डा. अम्बेडकर ने संविधान में एक प्रावधान डाला, जिसका बहुत कम जिक्र होता है, आर्टिकल – 13 और आर्टिकल 13 यह कहता है कि संविधान में जो मौलिक अधिकार दिए गए हैं, Fundamental Rights दिए गए हैं - Article 14-equality, Article 19-freedom, Article 21-liberty, life, dignity - ये सारे सर्वोच्च हैं, सुपीरियर हैं और इस देश का कोई कानून ऐसा नहीं बनेगा जो इनका उल्लंघन कर सकता है। अगर कोई पुराना कानून है जो इनका उल्लंघन

करता है तो वह कानून समाप्त हो जाएगा। Dr. Ambedkar gave primacy to equality, life, liberty and dignity, the Fundamental Rights.

(Followed by NBR/1K)

-SSS/NBR-GS/1K/11.45.

SHRI SITARAM YECHURY: Mr. Jaitley, if you don't mind, I wish to make a point.

You see, you have quoted article 44. You just go to article 43A. It says, '...by suitable legislation...to secure the participation of workers in the management of undertakings,...' Has that been done?

Look at article 45. It says, 'The State shall endeavour to provide early childhood care and education...' Has that been done?

Then, go to article 46. It talks about promotion of educational and economic interests of SCs, STs and other weaker sections...(Interruptions)...But, you choose one article 44 and another article 48...(Interruptions)...What about providing special care? What about providing all these?

MR. CHAIRMAN: Sitaramji, please, do it when your turn comes. ... (Interruptions)...

SHRI SITARAM YECHURY: So, don't pick and choose. That is what I am saying...(Interruptions)...

SHRI ARUN JAITLEY: I think, I am glad that my friend Sitaram's best argument is that we must have equality in the matter of not following the law, because one provision has not been followed the other should not be followed.

SHRI SITARAM YECHURY: Sir, I am saying you should follow the entire law...(Interruptions)...No, you are not following the entire law. ... (Interruptions)...

MR. CHAIRMAN: I would request all the concerned to allow the discussion...(Interruptions)...

SHRI SITARAM YECHURY: Why are you picking and choosing, Sir? That is my point...(Interruptions)...

MR. CHAIRMAN: You can speak when your turn comes. ... (Interruptions)...Mr. Tapan Sen, please.

SHRI ARUN JAITLEY: Sir, let me make a suggestion. I think, Mr. Yechury will agree with me on his last suggestion.

Dr. Ambedkar brought article 13 to say that no law can violate the Fundamental Rights. Let us forget article 44 and Uniform Civil Code for the time being. So, I am not going so far. We still have personal laws, across religions, which violate the Fundamental Rights. Sir, sixty-five years after he framed the Constitution, all of us ready to

say that all personal laws must be compliant with the Constitution. My point, therefore, is look at the ideological journey that we have had in the last sixty-five years. What did the Constitution says? The Constitution says, 'no theocracy', 'no State religion', 'no discrimination on grounds of religion.' But, then, the Constitution says that there are certain aspects which may have either economic or social rationale will have to be preserved. The Constitution said that all laws must be compliant with the Constitution. And, because we have subverted our ideological thinking, we are embarrassed about article 44. We are embarrassed about personal laws being Constitutional compliant. We are embarrassed about article 48. I will give you another illustration.

SHRI SITARAM YECHURY: No, no. I am saying what about others.

SHRI ARUN JAITLEY: I will give you another illustration. मैं चाहूंगा कि आपके साथ, जो हमारे साथी शरद यादव जी बैठे हुए हैं, बहन जी बैठी हैं, ये इस पर विशेष रूप से ध्यान दें। यह बहुत गंभीर विषय है। संविधान में दो वर्गों को दो सुरक्षाएं दी गई हैं। एस.सी./एस.टी. को और socially, educationally backward को आर्टिकल 15 के तहत विशेष अधिकार मिले और उन विशेष अधिकारों का हम आदर करते हैं। ...(व्यवधान)... आर्टिकल 15 के तहत एक पैकेज एस.सी./एस.टी. और socially, educationally backward के लिए बना और socially, educationally backward में किसी भी धर्म के लोग आ सकते थे।

एस.सी./एस.टी. का एक विशेष दर्जा था। आर्टिकल 29 और आर्टिकल 30 अल्पसंख्यकों के लिए बना कि उनको अपनी संस्कृति, अपनी भाषा, अपना धर्म, उसको प्रोटेक्ट, प्रिजर्व करने का अधिकार है, अपने शैक्षणिक इंस्टिट्यूशन्स को प्रिजर्व करने का अधिकार है, उनका प्रशासन करने का अधिकार है। सुप्रीम कोर्ट ने आर्टिकल 15 के अधिकार के बारे में कहा कि 50 फीसदी से ज्यादा रिजर्वेशन नहीं होगा और आर्टिकल 29 और आर्टिकल 30 के बारे में कहा कि जो माइनारिटीज़ एजुकेशनल इंस्टिट्यूशन्स चलाएंगी, वहां 50 परसेंट उनको अपने बच्चे दाखिल करने पड़ेंगे। इस तरह से दो अलग-अलग पैकेजिज दे दिए गए। आगे नई सोच आ गई कि एक वर्ग को आर्टिकल 15 का प्रोटेक्शन मिलेगा, एक को आर्टिकल 29, 30 का मिलेगा। अब राजनीति की मजबूरी यह थी कि जो धर्म परिवर्तन कर ले, उसको आर्टिकल 15 का प्रोटेक्शन भी दे दो और आर्टिकल 30 का भी दे दो।

(HMS/1L पर जारी)

-NBR-KGG-HMS/1L/11.50

SHRI ARUN JAITLEY (contd.): I hope, I am clear in what I say. Article 15 was meant for SC/ST and educationally & socially backward classes, Article 29 & 30 were meant for minorities. So, you can choose which package you are in, but if you convert your religion, you are entitled to both! Justice Ranganath Misra Commission, which the UPA appointed said so. We have not been able to implement it. Was it

ever Dr. Ambedkar's thinking that such a perversion in the Constitution process be brought about that you will create a category which takes the advantage of Article 15(4) reservation and Article 30 reservation, and hence incentivize the conversion and change the demographic character of India without going into the seriousness? My point is, we stand for a Constitution where there is no State religion, where there is no theocracy, where there is no discrimination. But, please seriously introspect the subversion in the ideological thinking, which has been brought about in the last 65 years, which has actually brought these changes. As far as the thinking is concerned, 65 years later, we have to stand up and say that we honour the spirit of what Dr. Ambedkar drafted. We must honour every aspect of it.

Sir, one of the dangers...

SHRI JESUDASU SEELAM: Sir, I just seek a clarification. Justice Ranganath Misra Commission was asked to look into the social discrimination of the Dalits even after getting converted into Christianity. In that context, the recommendation was to make reservation religion-neutral as they had gone into empirical evidence where certain atrocities were committed on the Dalit Christians not based on their Christianity, but based on their social status. This is my

first point. Secondly, even our friends from the Ruling Benches say that the reservation should not be based on religion. That is fine. But, when you are a Hindu, you get reservation and when you are a Dalit of another religion, you don't get reservation. In that context, Justice Ranganath Misra Commission...

MR. CHAIRMAN: You sought a clarification, let him give it.

SHRI JESUDASU SEELAM: It is not correct to say that you give both advantages. No, you don't. You give only one advantage and that is the social and economic backwardness.

MR. CHAIRMAN: You have made your point; thank you. आपका क्या पॉइंट है?

श्री अली अनवर अंसारी : सर, आर्टिकल 341 पर 1950 में जो कैप लगाया गया, मूल संविधान में उसकी व्यवस्था नहीं थी। तो जो बाद में सिख भाइयों को भी उस में जोड़ा गया और बाद में वी०पी० सिंह जी की सरकार के समय Neo Buddhists को जोड़ा गया - क्या आप इसे गलत मानते हैं?

श्री सभापति : आप अपनी बात, आपकी बारी आने पर कहिएगा। Please continue.

श्री अरुण जेटली : सर, आज इस देश में और पूरे विश्व में सब से बड़ी चुनौती, जो किसी भी संवैधानिक व्यवस्था को है, वह आतंकवाद है और यह आतंकवाद सीमा पार से लोग आकर फैलाएं या देश के भीतर से हो, हमें उस चुनौती का

सामना करना है। कई बार, वोट की राजनीति के लिए किस की कितनी निंदा की जाए, हम इस पर संकोच करते हैं। यह इन्हीं 65 वर्षों का एक परिणाम है। जिन्होंने संसद पर attack किया, जिन्होंने मुंबई में attack किया और यह तो एक विडम्बना है कि हमारा संविधान दिवस भी 26/11 को पड़ता है और मुंबई attack भी 26/11 को हुआ था। जिन्होंने ट्रेन पर attack किया, in Mumbai, a serial blast took place when the accused was being punished; and, the manner in which some segments passed in, somebody who virtually massacred Mumbai, claiming him to be a martyr, what were...(Interruptions)..

MR. CHAIRMAN: Please sit down...(Interruptions)..

(Followed by DC/1M)

-KGG/DC/ASC/11.55/1M

SHRI ARUN JAITLEY: Sir, what would ...(Interruptions)...

श्री सभापति: दलवाई साहब, आप बैठ जाइए। जब आपकी बारी आएगी, तब आप बोलिएगा। ...(व्यवधान)...

श्री हुसैन दलवाई : आपने जो कहा, मैं उसको कबूल करता हूँ।(व्यवधान)...सर, मैं यह जानना चाहता हूँ ...(व्यवधान)... यह क्या बात है ?(व्यवधान)...

MR. CHAIRMAN: Please sit down. ...(Interruptions)... Please sit down. ...(Interruptions)... When your turn comes, speak. बैठ जाइए।.....(व्यवधान)... दलवाई साहब, जब आपकी बारी आएगी, तब आप बोलिएगा। दलवाई साहब, प्लीज़।(व्यवधान)... जब आपकी बारी आएगी तब बोलिएगा।(व्यवधान)... इस डिबेट के लिए बहुत समय है। Please continue.

SHRI ARUN JAITLEY: Sir, how would Dr. Ambedkar have reacted to this? Sir, one of his most important speeches...(Interruptions)... Sir, one of his most important speeches...(Interruptions)...

MR. CHAIRMAN: Hon. Members, please. Order in the house. ...(Interruptions)...

SHRI ARUN JAITLEY: Sir, one of the most important speeches of Dr. Ambedkar is the one he delivered on 25th November, 1949 while proposing the Constitution document. It was quoted yesterday in the other House that the success of the Constitution, ultimately, depends on the men who administer the Constitution. He had also in the same speech said कि पॉलिटिकल डेमोक्रेसी जब तक सोशल डेमोक्रेसी नहीं बनेगी और ईक्विटी और न्याय नहीं आएगा तब तक purpose serve नहीं होगा। But there was a third thing that he said in that speech also, and I don't know why people leave out that third thing. And this is in the context

of the point I was making, that is para two of his speech and I quote it: "My mind is so full of the future of our country that I feel I ought to take this occasion to give expression to some of my reflections thereon. On 26th January 1950, India will be an independent country." He actually meant republican -- the Constitution. "What would happen to her independence? Will she maintain her independence or will she lose it again? This is the first thought that comes to my mind. It is not that India was never an independent country. The point is that she once lost her independence she had. Will she lose it a second time? It is this thought which makes me the most anxious for the future. What perturbs me greatly is the fact that not only India has lost her independence, but she lost it by the infidelity and the treachery of some of her own people. In the invasion of Sindh by Muhammad-Bin-Qasim, the military commanders of King Dahar accepted bribes from the agents of Muhammad-Bin-Qasim and refused to fight on the side of their King. It was Jaichand who invited Muhammad Ghori to invade India and fight against Prithvi Raj and promised him to help of himself and the Solanki Kings. When Shivaji was fighting for the liberation of Hindus, the other Maratha noblemen and the Rajput kings were fighting the battle on the side of the Mughal emperors. When the

British were trying to destroy the Sikh rulers, Gulab Singh, their principal commander sat silent and did not help to save the Sikh kingdom and it goes down." What do these views indicate? When countries are challenged, the countries have to speak in one voice and, therefore, those who seek to destroy sovereignties, the countries cannot be seen to be ever supporting them, and this country's history ...(Interruptions)....

श्री सभापति : आप लोग बैठ जाइए, बैठ जाइए।....(व्यवधान)... Please, he is not conceding. All right...(Interruptions)...

SHRI ANAND SHARMA: He has yielded.

MR. CHAIRMAN: Okay; all right.

SHRI ANAND SHARMA : He has yielded. I would like the Finance Minister to please elaborate and be specific as to what he means by 'those who want to destroy the sovereignty of India.' Please inform this House and be clear about it.

MR. CHAIRMAN: Thank you. ...(Interruptions)... Thank you. ...(Interruptions)... Dr. Mungekar, please sit down ...(Interruptions)... Please sit down. ...(Interruptions)...

(Followed by TDB-1N)

TDB-AKG/1N/12.00

DR. BHALCHANDRA MUNGEKAR: Since he is elaborately quoting Dr. Ambedkar because Dr. Ambedkar is the hero of 27th and 30th of November, so far as the debate is concerned, whatever he was talking about, the danger of losing the independence, and whatever paragraph now the hon. Finance Minister has quoted, what is the relevance of that quotation in the context of the point he was making?
...(Interruptions)...

MR. CHAIRMAN: All right. Thank you. ...(Interruptions)... Arunji, please resume.

SHRI ARUN JAITLEY: I think I have no hesitation in saying this. I think I was absolutely clear. I was referring to acts of terrorism. I was referring to acts of terrorism... ...(Interruptions)...

DR. BHALCHANDRA MUNGEKAR: It was internal terrorism.
...(Interruptions)... All he has... ...(Interruptions)...

MR. CHAIRMAN: Okay; you will have your chance. ...(Interruptions)...
Dr. Mungekar, please.

SHRI ARUN JAITLEY: Sir, I was referring to acts of terrorism when I referred to the attack on Parliament, I referred to the attack in Mumbai on 26/11. ...(Interruptions)... And I said we should all be in one voice

in condemning them. And you and me being on the same side in that, I have absolutely nothing to say in this regard. I was absolutely clear. It is in that context that nobody in this country should ever be seen as soft on that kind of terrorism which led to that situation. Therefore, I supplemented it by saying... ...(Interruptions)...

MR. CHAIRMAN: Please. ...(Interruptions)...

SHRI ANAND SHARMA: When the attack on Parliament took place, you were in power, and the House spoke in one voice.

SHRI ARUN JAITLEY: Of course, you did. ...(Interruptions)...

MR. CHAIRMAN: Please allow the speaker to conclude. ...(Interruptions)... Sharma Saheb, please allow.

श्री अरुण जेटली : आप ऐसे एतराज कर रहे हैं जैसे मैं इस हाउस में किसी की तरफ इशारा कर रहा हूँ। ...(व्यवधान)... मेरा यह इरादा नहीं है। ...(व्यवधान)... मैं आतंकवादियों की तरफ इशारा कर रहा हूँ। ...(व्यवधान)...

श्री सभापति : प्लीज़ आप बैठ जाइए। ...(व्यवधान)...

SHRI ARUN JAITLEY: Therefore, I thought this is one issue on which probably the Congress Party and we have normally been on the same side. Therefore, I am supplementing my point and...(Interruptions)...

MR. CHAIRMAN: Sit down, please.

SHRI ARUN JAITLEY: I am supplementing my point against terrorism and what is happening all over the world by quoting Dr. Ambedkar. Therefore, this is one aspect of his important Speech of 25th...
...(Interruptions)...

SHRI ANAND SHARMA: Dr. Ambedkar did not refer to terrorism.
...(Interruptions)...

SHRI ARUN JAITLEY: Sir, that takes me to one of the final points I wish to make. When we say that there are dangers to the Constitutional order, there can be. And dangers to the Constitutional order can come when constitutional systems are used in order to subvert the Constitution. It is not unknown that this has happened. You don't have to bring a military dictatorship; you don't have to bring an individual dictatorship. There are illustrations in history, and I think the most glaring example of the last century is what happened in Germany in 1933. A Constitution and its provisions were used to subvert democracy, and show to the world the worst kind of dictatorship.

SHRI SITARAM YECHURY: That is our fear. ...(Interruptions)...
Thank you for reminding us. That is our fear. ...(Interruptions)...

SHRI ARUN JAITLEY: Sitaramji, if you...

SHRI SITARAM YECHURY: I am sharing it.

SHRI ARUN JAITLEY: If you save your remarks for the next five minutes, you will find yourself in bad company.

SHRI SITARAM YECHURY: I thought you were good company. Why should I be in bad company? ...(Interruptions)...

SHRI ANANDA BHASKAR RAPOLU: Mr. Chairman, Sir,...

MR. CHAIRMAN: No; I am sorry. You speak when your turn comes. ...(Interruptions)...

SHRI ANANDA BHASKAR RAPOLU: Sir, I have nothing to add. ...(Interruptions)...

MR. CHAIRMAN: No, please. ...(Interruptions)...

SHRI ANANDA BHASKAR RAPOLU: We could sit in a classroom in which Shri Arun Jaitley and Shri Sitaram Yechury were there.

MR. CHAIRMAN: Please sit down. Arunji, please conclude.

SHRI ARUN JAITLEY: Sir, I think, and this would be our final tribute to Dr. Ambedkar and the Constitution that he drafted, that we block all systems by which Constitution can be used and Constitutional provisions can be used to subvert democracy.

(Contd. by 10-USY)

