

SHRI RAJIV GANDHI: No. That would not be a party view, and I do not know which party you belong to. (Interruptions) I do not know whether you are from the National Front or Telugu Desam. (Interruptions).

SHRI PARVATHANENI UPENDRA: It is a part of the National Front. You must know that much.

SHRI SUBRAMANIAN SWAMY: Do you want guidelines on how to secure 95 per cent of votes?

SHRI RAJIV GANDHI: I think that was really all that was asked.

SHRI M. S. GURUPADASWAMY: Who was at the back of the coup, if you know that?

SHRI RAJIV GANDHI: I answered that. I said that there are some indications as to who it was, but as the earlier reports coming in were inaccurate in a number of areas I would not like to make a statement on that in the House. We feel that this is not an issue for us to get involved in. It is for the Maldivians to sort out who they were. If they request for our help in anything, we will help. They have asked our help to mop up those people on the islands and to stop the two boats which were there. We are trying to help them to do that. If they want more help we will consider their request and if it is possible for us we will give them more help.

I think I have answered most of the questions. Thank you.

MR. CHAIRMAN: The House stands adjourned for lunch and will meet at 2.30 p.m.

The House then adjourned for lunch at thirty minutes past one of the clock.

The House reassembled after lunch at thirty-two minutes past two of the clock. The Vice-Chairman [Shri B. Satyanarayan Reddy] in the Chair.

ANNOUNCEMENT REGARDING PARLIAMENTARY HOLIDAY ON 14TH NOVEMBER, 1988

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): Hon. Members, as you are aware, 14th November, 1988, is the birth centenary of Pandit Jawaharlal Nehru. A suggestion was made that we may declare it as a Parliamentary holiday on this occasion. I consulted leaders of various groups in the matter. As agreed, there will be no sitting of the House on that day.

This is the announcement by the Chairman.

CONSTITUTION (AMENDMENT) BILL, 1988

[to amend the Tenth Scheduled]

SHRI PAWAN KUMAR BANSAL (Punjab): Sir, I beg to move for leave to introduce a Bill further to amend the Constitution of India.

The question was put and the motion was adopted.

SHRI PAWAN KUMAR BANSAL: Sir, I introduce the Bill.

CONSTITUTION (AMENDMENT) BILL, 1987.—(Contd. from 12th August, 1988)

[Insertion of new article 156A]

THE VICE-CHAIRMAN (Shri B. Satyanarayan Reddy): We will now take up Mr. Chitta Basu's Bill. Mr. Ram Awadhesh is not here. Shri Panwar is not here. Shri Bir Bhadra Pratap Singh.

SHRI BIR BHADRA PRATAP SINGH (Uttar Pradesh): I enquired about the amendment to be inserted in Article 156.

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): You are speaking on the Bill introduced by Mr. Chittā Basu. Have you got a copy of the Bill?

SHRI BIR BHADRA PRATAP SINGH: No. How can I know and how can I speak?

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): You have given your name.

SHRI BIR BHADRA PRATAP SINGH: But the copies are not here.

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): Please give him a copy of the Bill. I will call you name later. Mr. Narayanasamy.

SHRI V. NARAYANASAMY (Pondicherry): Mr. Vice-Chairman, Sir, I have gone through the Bill introduced by hon. Senior Member of this House, Shri Chittā Basu, for impeaching the Governors. Sir, there is a general tendency among the Opposition-ruled States, especially the Chief Ministers of the Opposition-ruled States, that the Governor's post should be abolished. That is their idea. And they are very well telling to the public that the Governors are acting as the agents of the Centre. That is their accusation.

Sir, the Governor is acting as the executive authority. Whenever the elected Government violates the norms and principles of the Constitution, the Governor has to interfere. When the Governor reminds them of their duties, they think that the Governor has interfered in their internal administration. Such a fallacious impression which is in the minds of the Ministers and the Chief Ministers of the Opposition-ruled States should be wiped out of their minds because, Sir, it was discussed even in the Constituent Assembly about the role of the Governors. Apart from that, Sir, even the Sarkaria Commission which was appointed to go into the question whe-

ther the post of Governor should remain and whether the Governors should be impeached, has discussed at length all these issues. The views of the States and the Centre have also been heard. And then it was decided that the Governor's post is a must in terms of any contingency and also when the functions of the State have to continue normally. Sir, when there is a political crisis in a State when the ruling party loses its majority, the Governor has to act according to the Constitution. He has to see which party got the majority, and if he is satisfied that a particular political party is having the confidence of the majority of the Members of the Legislature, then he allows them to form the Ministry. When he finds that there is a grave situation and there is a constitutional breakdown, then the Governor has to recommend to the Centre that President's Rule should be imposed. Sir, a general grievance which is there among the Opposition-ruled States is that the Governors are interfering in the internal administration and that the Governors are not keeping quiet. Why should the Governors keep quiet when the Chief Ministers are violating the Constitutional norms, when they are acting according to their whims and fancies to have their political ends? The Governor has to remind them of their duties and responsibilities as the Head of the State. But it is not being tolerated. And that tendency has to go away from their minds.

Sir, the Amendment which is sought to be inserted is that as provided under article 61, when the President is to be impeached by bringing the Resolution before this House and discussing the matter, the Governors should also be impeached. Sir, the Governors are appointed by the President of India. They hold the office, during the pleasure of the president. When president reposes confidence in them, they hold the office. Sir, that is the Provision

which was contemplated while appointing the Governors in any States. Sir, I would like to say that except on one or two occasions, that too on rare occasions, the Governors have acted in accordance with the Constitution.

But they have not violated the norms. Sir, here and there, there may be some faults and sometimes due to their over-anxiousness and sometimes due to their ignorance they might have incorrectly acted. On two occasions I have also seen that have acted against the Constitution. But they have then resigned and gone out of office. But in normal cases right from the days when the Constitution came into force and when the Constituent Assembly was formed, I did note that the Governors are acting according to the provisions of the Constitution. The normal jurisprudence is that the appointing authorities are to dismiss a person from service. Sir, here the President appoints the Governor in any State. The President alone can decide whether the Governor has to remain in the State or not, if he violates the norms of the Constitution. Why should the issue be brought before Parliament? I do not find any reason for doing that because the purpose for bringing forward this Bill is to have a check on the Governors. I would like to say that that is the intention of moving the amendment before this House. Sir, I would again like to say that the general jurisprudence is that the appointing authority has to dismiss a person from service. Now, Sir, the appointing authority is the President of India and when the President of India feels satisfied about the conduct of a Governor why should the matter be brought before Parliament? And when a Governor feels that he has violated the norms and principles of the Constitution, he has gone out of office, he has resigned his post. In so many cases it has happened that he did not stick to the post. We have two precedents in this connection I do not find any reason for this particular amendment which is sought to be brought

before this House. Sir, If this is allowed, my humble opinion is that it will be resorted to by all the political parties and then the sanctity of the Governor's post will be definitely lost. Therefore, Sir, when the President of India is controlling the Governor and the President of India is supervising his functions and frequently calling the meetings of the Governors and giving them guidelines, when all these acts are being done by him, my submission is that this particular amendment which is sought to be brought before the House for impeaching the Governor is not necessary according to me and the apprehension in the minds of the various political parties that the Governors are not acting according to the principles of the Constitution is only a fallacy because time and again it has been proved by various Governors in various States that they have acted as agents of the Central Government, and they have acted according to the provisions of the Constitution and they have acted according to their conscience and whenever they have felt that they were wrong they have resigned their job and they have gone out of office. Therefore I feel that this particular provision is not necessary. Even if this particular provision is pressed by the hon. Member I feel that the President of India alone can do that and not the Parliament which has to be given the power to do that.

Sir, on several matters, including the powers of the Governors, there are checks and balances provided in the Constitution. Sir, the Governor is not acting independently. Whenever he is in doubt about the constitutional provisions, he gets the opinion of the President of India and on the advice given by the President of India he acts. When that being the case, the provision to be included for impeaching the Governor will not only create a situation which will create crisis in a particular State, but every day we will be seeing in Parliament that Resolutions are being moved for impeaching the Governor of one State or another. Sir, we know and we see in

[Shri V. Narayanasamy]

the newspaper, especially in the opposition ruled States that there are differences of opinion between the Chief Minister and the Governor. The political party which is representing that State in Parliament, if it is allowed to move the resolution, that will create chaos and confusion, and as I said, Sir, the sanctity of the post of Governor will vanish. Therefore, Sir, I feel that this amendment is necessary. Our fore fathers and the Constitutional experts have thought of this and they have found that the President of India is controlling the Governor, and he is the authority to control the Governor. Therefore, this provision is not necessary.

With these words, Sir, I conclude. Thank you.

श्री मोहम्मद खलीलूर रहमान (आन्ध्र प्रदेश) : जन ब व इन चेयरमैन साहब, आनरेबल मੈम्बर जनाब चित वमु ने जो कंस्टीट्यूशन (अमेन्डमेन्ट) बिल पेश किया है उसकी मैं भरपूर तईद करता हूँ और यह बका कानकाजा और हालत भी यही बताते हैं कि यह जो अमेन्डमेंट की बिल में जो बात आई है यह निहायत अहम है और इसे दस्तूर का एक हिस्सा बनना चाहिए। महरिने दस्तूर ने जब दस्तूर बनाया था तो गवर्नर को हैड आफ दी स्टेट की हैसियत से रखा था और इसमें माहरीने दस्तूर की नेक-नीयती थी की उन्होंने यह गवर्नर का ओहोदा कायम किया और देखा यह भी गया कि दस्तूर के निफाज के कोई 10-12 साल तक गवर्नर और फिर गवर्नर को एक्वायेंट करनेवाली अथ रिटी और एजेंसी इंतहई नेकनीयती के साथ और गैर-जानिबदार होकर गवर्नर का एक्वायेंटमेंट करती थी और इंतहई गैर-जानिबदारी के साथ एक्वायेंटेड गवर्नर बिल्कुल इम्पार्शल तरीके से काम भी करते थे और जो उनकी जिम्मेदारियां थीं, जो उनके फरायज थे इंतहई खुशअमलूबी के साथ उन फरायज को अन्जाम देते थे। मगर जैसे-जैसे वक्त गुजरता गया हमने यह देखा कि गवर्नर ने एक मरकजी हुकूमत के एजेंट की हैसियत से काम करना शुरू कर दिया। इसमें गवर्नर से ज्यादा मरकजी हुकूमत का भी कसूर है कि उन्होंने एक सियासी रि हैब्लिटेसन के तौर पर अपनी ही पार्टी के अफराद

को गवर्नर पर तकहर किया और वह गवर्नर अपने आकाओं की खुशनुदीके लिए, मरकजी हुकूमत की खुशनुदी के लिए उनके इशारों पर चलना शुरू किया। चुनचे चन्द मिसालें मैं पेश कर सकता हूँ कि किस जगह गवर्नर ने उनके जो फायज हैं और उनकी जो जिम्मेदारियां हैं दस्तूर के तहत उनकी बिल फवर्जी की हैं।

1984 में हमने आन्ध्र प्रदेश में यह देखा कि उस वक्त के गवर्नर श्री राम लाल ने किस तरह गैर कानूनी तौर पर और गैर दस्तूरी तौर पर आन्ध्र प्रदेश के चीफ मिनिस्टर जनाब एन. टी. रामाराव साहब को उन्होंने बेदखल किया और एक ऐसे चीफ मिनिस्टर का गवर्नर ने तकहर किया जिसकी किसी विस्म की अकतरियते या मैजोरिटी आन्ध्र की अम वली में नहीं थी। यह इंतहई अफसोस की बात है, चुनचे एक महीने के अन्दर ही यह बात मंजरेअम पर आ गई कि गवर्नर राम लाल का जो एकट था वह इंतहई अकंस्टीट्यूशनल एकट था, बिल्कुल गैर कानूनी एकट था और भास्कर राव को उन्होंने जो चीफ मिनिस्टर बनाया था वह बहुत बड़ी गलती थी। चुनचे एक महीने के बाद भास्कर राव की हालत यह हुई कि वह असेंबली को भी फेल नहीं कर सके और वहां से चीफ मिनिस्ट्री के ओहदे से उनको हथ धोना पड़ा और मरकजी हुकूमत मजबूर हो गई कि अक्वाम का एतमाद रखने वाले चीफ मिनिस्टर एन. टी. रामाराव को दोबारा आन्ध्र प्रदेश का चीफ मिनिस्टर बनाया। यह इतनी ग्लेसिंग एवं मिमल है जो हिन्दुस्तान की तरिख में पेश नहीं की जा सकती जो यह गवर्नर की गलती है। तो मैं यह पूछना चाहता हूँ कि राम लाल ने क्यों ऐसा काम किया था ? जाहिर है कि उस वक्त के गवर्नर मिनिस्टर राम लाल का काम सिर्फ उस वक्त की मरकजी हुकूमत को संतुष्ट करना था और उनके इशारों पर काम करना था।

दूसरी मिसाल हम कश्मीर में भी देखते हैं कि उसवक्त किस तरह से फारुख अब्दुला को जगमोहन सहाब ने बेदखल कर दिया और उसकी जगह एक कटपुतजी जी० एम० शाह को वहां का चीफ मिनिस्टर बनाया और कितने दिन

तक जी० एम० शाह हुकुमत कर सके ? क्या वह उसे अमेम्बली कोफेश कर सके । यह सब बात जो, ग्राम है और यह जाहिर है कि मिनिस्टर जगमोहन ने फास्क अम्बुल्ला को चीफ मिनिस्टरों से जो बेदखल किया था, वह बड़ी गलती थी, और गैर-दस्तुरी बात थी । चुनाचें अभी इसी माल हम नागालैंड और मिजोरम में देखते हैं कि वहाँ के गवर्नर ने भी इस्तिहा गैरजानिबदारी के साथ काम लेते हुए वहाँ के मुनतेखिबा चीफ मिनिस्टरों को बेदखल कर दिया और उनकी जगह या तो सदर राज्य कायम किया या और, किसी कठपुतली चीफ मिनिस्टर का उन्होंने वहाँ पर तकरूर जो है, किया है ।

तो हालात यह बताते हैं कि यह जरूरी है कि गवर्नर का जो ओहदा है, जो एक इनिशई मोहज्जवतरीन ओहदा होता है, वह स्टेट का हैड होता है, मगर इस किस्म के अफराद, जो मरकज के इशारों पर काम करते हैं और मरकज के एजेंट की हैमियत में काम करते हैं, उनका जो है दस्तुर वालाए ताक रखकर मजाक उड़ाते हुए अपनी आकाओं की खुशनुमी हामिल करना की खातिर दस्तुर की जिनाफवरजी करते आ रहे हैं ।

इन तमाम चीजों के बावजूद हमारा दस्तुर में कोई इन किस्म की गुंजाइश नहीं है कि किम तरह से एक गवर्नर को जो है अलहदा किया जा सकता है । अगर वह दस्तुर की खिलाफ-वरजी करे । जब तक हिन्दुस्तान के सदर के तालुक से दस्तुर में आर्टिकल 61 में यह गुंजाइश मौजूद है कि अगर वह दस्तुर की खिलाफ-वरजी करता है तो उसे इम्पीज किया जा सकता है उसी तरह से यह भी जरूरी है कि गवर्नर को हटाने के लिए भी, अगर वह दस्तुर की खिलाफ-वरजी करे, तो यह दफा और आर्टिकल होता चाहिए कि इनको भी इम्पीज किया जाएगा ।

इन्हीं लफ्जों के साथ मैं जनाब चित्त बसु माहब की विल, जो अमेडमेंट दस्तुर का, पेश है, उसकी भरपूर ताईद करता हूँ और इतना कहते हुए जो आने वाले वक्त दिया है उसके लिए आपका शुक्रिया अदा करना करता हूँ ।

آشوری محمد خلیل الرحمان
(آندھرا پردیش) : جناب وائس
جیمہ بین صاحب - آئر بیل ممبر
جناب چٹا بسو نے جو کنستٹی ٹیوشن
”ایمڈ ملٹ“ بل پیش کیا ہے
اسکی میں بھرپور تائید کرتا ہوں
اور یہ وقت کا تقاضا ہے اور حالات
بھی یہی بتاتے ہیں کہ ایمڈ ملٹ
میں شکل میں جو بات آئی ہے یہ
نہایت اہم ہے اور اسے دستور کا ایک
حصہ بنانا چاہئے - مہربین دستور
نے جب دستور بدلایا تو گورنر
کو ہیڈ آف دی اسٹیٹ کی حیثیت
سے رکھا تھا اور اسمیں مہربین دستور
کی ٹیک نیٹتی بھی کہ انہوں نے
یہ گورنر کا عہدہ کا قائم کیا اور دیکھا
یہ گیا کہ دستور کے نمائند کے کوئی
دس بارہ سال تک گورنر اور پھر
کو اپائنٹ کرنے والی اتھارٹی اور
ایجنسی اتھارٹی ٹیک نیٹتی کے
ساتھ اور غیر جانبدار ہو کر گورنر کا
اپائنٹمنٹ کرتی تھی - اور اتھارٹی
غیر جانبداری کے ساتھ اپائنٹمنٹ گورنر
بالکل امبارشل طریقہ سے کام
کرتے تھے اور جو انکی ذمہ داریاں
تھی جو انکے فرائض تھے انتہائی
خوش اسلوبی کے ساتھ ان فرائض کو
انجام دیتے تھے - مگر جسے جسے
وقت گزرتا گیا ہم نے یہ دیکھا کہ
گورنر نے ایک مرکزی حکومت کے
ایجنٹ کی حیثیت سے کام کرنا

Transliteration in Arabic script.

کر دیا۔ اس میں گورنر سے زیادہ مرکزی حکومت کا بھی قصور ہے۔ کہ انہوں نے سیاسی ریپریزینٹیشن کے طور پر اپنی ہی پارٹی کے افراد کو گورنر کے عہدے پر تقرر کیا اور گورنر نے اپنے آغاؤں کی خوشامدنی کیلئے۔ مرکزی حکومت کی خوشامدنی کیلئے ان کے اشاروں پر چلنا شروع کیا۔ چنانچہ چند مثالیں میں پیش کر سکتا ہوں کہ کس جگہ گورنر نے ان کے جو فرائض ہیں اور ان کی جو ذمہ داریاں ہیں دستور کے تحت ان کی خلاف ورزی کی ہے ۱۹۸۲ء میں ہم نے آندھرا پردیش میں یہ دیکھا کہ اس وقت کے گورنر شری رام لال نے کس طرح غیر قانونی طور پر غیر دستور پر آندھرا پردیش کے چیف منسٹر جناب این۔ ٹی۔ رامارائو صاحب کو انہوں نے بے دخل کیا اور ایک ایسے چیف منسٹر کا گورنر نے تقرر کیا جس کو کسی قسم کی اکثریت یا معجوریتی آندھرا پردیش کی اسمبلی میں نہیں تھی یہ انتہائی افسوس کی بات ہے۔ چنانچہ ایک مہینے کے اندر ہی یہ بات منظر عام پر آ گئی کہ گورنر رام لال کا جو ٹیکٹ تھا وہ انتہائی انکانستٹی ڈیوشن ایکٹ تھا۔ بالکل غیر قانونی ایکٹ تھا اور بھاسکر راؤ کو انہوں نے چیف منسٹر قرار دیا تھا وہ بہت بڑی غلطی تھی۔ چنانچہ ایک مہینے کے بعد بھاسکر راؤ کی یہ حالت ہوئی کہ وہ اسمبلی کو بھی فیس نہیں کر پائے اور وہاں سے چیف منسٹری کے عہدے سے ان کو ہاتھ دھونا پڑا اور مرکزی حکومت معجور ہو گئی کہ عوام کا

اعتماد رکھنے والے چیف منسٹر این۔ ٹی۔ رامارائو کو دوبارہ آندھرا پردیش کا چیف منسٹر بنایا۔ یہ اتنی کلیرنگ ایک مثال ہے جو ہلدوستان کی تاریخ میں پیش نہیں کی جا سکتی جو یہ گورنر کی غلطی ہے۔ یہ میں یہ پوچھنا چاہتا ہوں کہ رام لال کے کہیں ایسا کام کیا تھا۔ ظاہر ہے کہ اس وقت کے گورنر منسٹر رام لال کا کام صرف اس وقت کی مرکزی حکومت کو خوش کرنا تھا اور ان کے اشاروں پر کام کرنا تھا۔

دوسری مثال ہم کشمیر میں بھی دیکھتے ہیں کہ اس وقت کس طرح سے فاروق عبداللہ کو جگموہن صاحب نے بے دخل کر دیا اور اس کی جگہ ایک کٹھ پتلی جی۔ ایم۔ شاہ کو وہاں کا چیف منسٹر بنادیا اور کتنے دن تک جی۔ ایم۔ شاہ حکومت کر سکے۔ کیا وہ اسمبلی کو فیس کر سکے۔ یہ بات جو عام ہے اور ظاہر ہے کہ منسٹر جگموہن نے فاروق عبداللہ کو چیف منسٹری سے جو بے دخل کیا تھا۔ وہ بڑی غلطی تھی اور غیر دستوری بات تھی چنانچہ ابھی اسی ہم ناگالینڈ اور مژوم میں دیکھتے ہیں کہ وہاں نے گورنروں نے بھی انتہائی غیرجانبداری کے ساتھ کام لیتے ہوئے وہاں کے منتخب چیف منسٹروں کو بے دخل کر دیا اور ان کی جگہ یا تو صدر نے قائم کیا یا اور کسی کٹھ پتلی

چیف منسٹر کا انہوں نے وہاں پر
تقرر جو ہے کیا ہے
تو حالات یہ بتاتے ہیں کہ یہ
ضروری ہے کہ گورنر کا جو عہدہ - جو
ایک انتہائی مہذب ترین عہد
ہوتا ہے - وہ استعیت کا ہیڈ ہوتا
ہے - مگر اس قسم کے افراد ج
د. کے اشاروں پر کام کرتے ہیں اور
مرکز کے ایجنٹ کی حیثیت سے
کام کرتے ہیں - انکا ج ہے دستور
بالائے طاق و کھکر مذاق اڑاتے ہوئے اپنے
آٹاؤں کی خوشبودی حاصل کرنے کی
خاطر دستور کی خلاف ورزی کرتے
آ رہے ہیں -

ان تمام چیزوں کے باوجود ہمارے
دستور میں قطعی اس قسم کی
گنجائش نہیں ہے کہ کس طرح سے
ایک گورنر کو جو ہے علیحدہ کیا
چا سکتا ہے - اگر وہ دستور کی
خلاف ورزی کرے - جب تک
ہندوستان کے صدر نے دہلی سے دستور
میں آرٹیکل 61 میں یہ گنجائش
وجود ہے کہ اگر وہ دستور کی
خلاف ورزی کرنا ہے تو اسے امبیج
کہا جا سکتا ہے - اسی طرح بہ
یہی ضروری ہے کہ گورنر کو ہٹائے
کر لئے بھی اگر وہ دستور کی خلاف ورزی
کرے تو یہ دفعہ اور آرٹیکل 61
چاہئے کہ انکو بھی امبیج کیا
جانے کا

انہوں الفاظ کے ساتھ میں جناب
جناب یسو صاحب کا بل - جو

امند منٹ دستور کا پیس ہے - اسکی
بھرپور تائید کرتا ہوں اور انکا کہتے
جو آپ نے مجھے وقت دیا ہے اسکی
لئے آپ کا شکریہ ادا کرتا ہوں -

SHRI SHANKARRAO NARAYAN-
RAO DESHMUKH (Maharashtra):
Mr. Vice-Chairman, Sir, I rise to op-
pose the Bill. The Bill, which seeks
to amend the Constitution is miscon-
ceived and it appears the move has
not properly understood the provi-
sions of the Constitution. There is
same confusion in the mind of the
mover.

Our Constitution is a quasi-federal
Constitution. It is unitary and cen-
tralised. If you go through the pro-
visions of the Constitution, concerning
the President and the Governor, you
can realise the whole thing. I would
like to draw the attention of the
House to articles 52 and 53. Article
52 reads as follows:

"There shall be a President of
India."

Article 53 says:

"The executive power of the Union
shall be vested in the President...

Therefore it is unitary and conse-
quently becomes federal—

...and shall be exercised by him
either directly or through officers
subordinate to him in accordance
with his Constitution."

Therefore, the President delegates his
powers. The Constitutional head is
the president. In order to adminis-
ter, govern the country in accordance
with the Constitution he appoints the
Governor directly or through officers
subordinate to him. Therefore all these
Governors are appointed by him
under article 156. But before that,
I will draw the attention of this
august House to article 155 about
appointment of Governor. It says:
"The Governor of a State shall be ap-
pointed by the President by warrant
under his hand and seal." This is how
the power is delegated under article

[Shri S. N. Deshmukh]

155. Then the procedure is laid down. The Governor shall hold office during the pleasure of the President. This is about the term of office of the Governor. That is very important. In order to run the country, administer about the country properly, the constitutional head is the President and the Governor shall remain in office at his pleasure. If there is any complaint made to the President, certainly he can take action. Even if Shri Chitta Basu desires to make any complaint, he can approach the President. He is not at all prohibited. Therefore, the provisions of the Constitution are quite clear. The President being the executive head appoints the Governor to administer the State. Therefore the whole scheme of the Constitution is well-balanced. The State is not independent, it is a part of the Union. This balance is necessary. The power of the Parliament is balanced by providing the office of the Governor and his appointment shall be through the President. It is a balancing thing. It is not as if the State or the Parliament is everything. President is the head. If you want to remove the President, you have to impeach him. Here the appointment of the Governor is through the Constitutional head. It is a delegated thing. Therefore no such power can be withdrawn under the present scheme of the Constitution. If you do that, you will be curtailing the power of the President. The Parliament will then have to amend the whole scheme of the Constitution cannot be disturbed by making such constitutional amendments which are not consistent with other provisions of the Constitution. If any person, any authority has any grievance against the Governor it is quite open to him to approach the President. The President will certainly take action because he is the appointing authority of the Governor. It is the appointing authority which can remove him, punish him or disturb him not any other authority. This power cannot be

given to the Parliament under the present scheme of the Constitution I, therefore, feel that there it is something wrong in interpreting the provisions of the Constitution by the hon. Member. I know it for certain that these two appointments are 3.00 P.M. quite different. The President is elected and his appointment is under the Constitution. There is a vast difference between the post of the President and the post of the Governor. The Government's post is created by a political party and by Government and he is appointed by and he holds office during the pleasure of the President, while the President holds office under the Constitution. Therefore if you want to remove the President, there is a provision for his impeachment under the Constitution. Therefore there is a clear distinction and such a scheme, which is balanced regarding the Centre and the States and appointment of the highest authority, may not be disturbed. If the Mover of the Bill desires to do something against the Governor, he can even now move the President and have his intention done. Thank you very much.

✦

श्री ईश दत्त शर्मा (उत्तर प्रदेश) :

माननीय उपसभाध्यक्ष जी, मैं बहुत आभारी हूँ आपका कि इस महत्वपूर्ण बिल पर आपने मुझे बोलने के लिये समय दिया। मान्यवर, माननीय चित्त बसु जी ने भारत के संविधान में एक उपबन्ध 156-ए जोड़ने का जो प्रस्ताव किया है, यह वत महत्वपूर्ण है, जनहित में है और इस देश के प्रजातंत्र को कामयाब बनाने के लिये, मजबूत बनाने के लिये बहुत आवश्यक है। इसलिए संविधान में जिस संशोधन का माननीय चित्त बसु जी ने प्रस्ताव किया है, मैं इसका समर्थन करने के लिये खड़ा हुआ हूँ।

मान्यवर, व्यक्तिगत रूप से मैं तो इस विचार का हूँ कि इस देश में राज्यपाल का पद ही नहीं रहना चाहिये, इस तरह का संविधान में संशोधन हो जाना चाहिये क्योंकि मान्यवर...

SHRI V. NARAYANASAMY: Then who will be there?

SHRI ISH DUTT YADAV: You will be there.

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): Let him have his say. Please do not disturb him कहिए, आप कहिए ।

श्री ईश दत्त यादव : मैं निवेदन कर रहा था कि मैं इस विचारधारा का हूँ कि इस देश में राज्यपाल का पद ही नहीं रहना चाहिये, क्योंकि मान्यवर, अभी माननीय सदस्य जो सत्ताधारी पक्ष के बोल रहे थे कि दो पद्धतियाँ हैं यह एम्बाइंट किया जाता है कि यह नियुक्त किया जाता है। कैसा आदमी नियुक्त किया जाता है, जो रिजर्व हो जाता है, राजनीति में कहीं किसी काम का नहीं रह जाता है। काम उसे किस प्रकार का दे दिया जाता है कि केन्द्र की सरकार की राय जो हो उस केन्द्र की सरकार की राय के अनुसार तुम चलो। इसका एम्बाइंटमेंट मान्यवर, संविधान के आर्टिकल 156 में होता है और 156 में सब क्लॉज में प्रोविजन है इनके अधिकार का

The Governor shall hold office during the pleasure of the President.

जब तक भारत के महामहिम राष्ट्रपति महोदय प्रसन्न रहेंगे, तब तक वह उस पद पर कार्यम रहेंगे और मैं बहुत ही आदर रखते हुए, हृदय से, इस देश के राष्ट्रपति पद के लिये निवेदन करना चाहता हूँ मान्यवर कि इसी संदर्भ में संविधान की आर्टिकल अगर 74 पढ़ी जाए तो महामहिम राष्ट्रपति महोदय के अधिकार क्या हैं :

There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice.

महामहिम राष्ट्रपति महोदय भी काउंसिल आफ मिनिस्टर्स की राय के मुताबिक ही काम करेंगे। यह जरूर अधिकार उन्हें संविधान में दिया गया है कि काउंसिल आफ मिनिस्टर्स के पुनः विचार के लिये उस विषय वस्तु को वह लौटा सकेंगे।

लेकिन मान्यवर जब लौटा देंगे तो क्या परिस्थिति होगी? पुनः जब उनके पास जाएगा तो वे बाध्य हैं हस्ताक्षर करने के लिए जिसका उल्लेख आर्टिकल 74 के प्रावियों में है—

“Provided that the President may require the Council of Ministers to reconsider... and the President shall act in accordance with the advice tendered...”

तो क्या स्थिति होगी यह आप जानते हैं। कोई राज्यपाल का विवेक नहीं होता। राज्यपाल अपनी इच्छा में कुछ नहीं कर सकता। वह करेगा प्रेमिडेंट के प्लेजर पर और प्रेमिडेंट काम करेगा काउंसिल आफ मिनिस्टर्स की राय पर। मान्यवर, इस सदन के माननीय सदस्य श्री खलील उर-रहमान माहव ने बहुत अच्छा उदाहरण दिया रामलाल जी का कि किस तरह से उन्होंने वहाँ पर गड़बड़ी की थी, संविधान की अवमानना की थी और मान्यवर मैं साहस कर रहा हूँ यह कहने के लिए कि इस पूरे देश में जहाँ जहाँ भी राज्यपाल हैं वे केन्द्र सरकार की कठपुतली हैं।

मान्यवर, इसी सदन में महम हो रही थी दो दिन से—कल पंजाब के बारे में और परसो मिजोरम के बारे में। दोनों जगहों में राज्यपालों की रिपोर्ट आ गई। एक जगह राष्ट्रपति मनन की पुष्टि के लिए और दूसरी जगह राष्ट्रपति का शासनकाल बढ़ाने के लिये वे अपने आप रिपोर्ट नहीं भेजते हैं यह सरकार उन्हें डाइरेक्ट करती है, उन्हें निर्देश देती है कि इस तरह की आख्या भेजो इसलिये जब राज्यपाल अपने विवेक से काम नहीं करेंगे उनको स्वाविकेक से काम करने का अधिकार नहीं करेगा तो वह गलतियाँ कर सकता है और करता है, इसीलिये माननीय चित्त बसु जी ने जो संविधान संशोधन विधेयक रखा है उसमें एक अनुच्छेद जोड़ने के लिये तो वह बहुत सही प्रस्ताव है अगर संविधान 156-ए जोड़ दिया जायेगा तो इसका प्रभाव यह होगा कि राज्यपाल अपने विवेक से काम कर सकेंगे वे संविधान की मर्यादा के तहत काम करेंगे, वे कायदे कानून के अनुसार काम

[श्री ईश दत्त यादव]

करेंगे और उनको केन्द्र सरकार की कठपुतली बनकर काम नहीं करना पड़ेगा इस प्रकार जब से संविधान के अनुसार काम करेंगे, जब कायदे कानून के अनुसार काम करेंगे तो यह देश के लिये प्रजातंत्र के लिये और जनहित के लिये बहुत अच्छा होगा।

इसलिये मैं अधिक समय न लेते हुए बहुत जोरदार शब्दों में माननीय चित्त बसु जी को जो संविधान संशोधन विधेयक विचार के लिये आया है, इसका हृदय से स्वागत करता हूँ और प्रार्थना करता हूँ कि इसको पास किया जाए।

SHRI ALADI ARUNA alias V. ARUNACHALAM (Tamil Nadu): Mr Vice-Chairman, Sir, I wholeheartedly support this Bill moved by our hon. Member, Mr. Chitta Basu. It is an important Bill. The amendment is quite essential to protect our democratic norms and values and the constitutional position.

[THE VICE-CHAIRMAN, (SHRI SATYA PRAKASH MALAVIYA) in the Chair.]

The office of the Governor is the only office which is free from scrutiny. We can impeach the President. We can impeach the Chief Justice of the Supreme Court. We can impeach the Judges of the High Court. We can remove the Prime Minister by passing a no-confidence motion. We can remove the Chief Minister by passing a non-confidence motion. But neither Parliament nor the State Assembly has the right to remove the Governor.

Why is the Governor entrusted with such exemption? I would like to know the answer, the answer from the Treasury Benches. It is necessary because, if you go through the powers of the Governor and powers of the President, the Governor is entrusted with more powers than the President? For example, you take giving assent to a bill. According to the Forty-Seventh Amendment, the Presi-

dent has to give assent to the bill. But, as far as the Governor is concerned, he can give assent or he can refer the bill to the President for consideration. So, it is left to the Governor. So, the Governor is entrusted with more power.

At the same time, when the Governor breaches the faith of the House, when the Governor violates norms of democracy, when the Governor does something against the will of the House, the State Assembly is not in a position to arrest the unlawful, illegal activities of the Governor.

What is the remedy available under the present Constitution? If there is an impeaching clause, there will be a moral fear on the part of the Governor. But now the Governor is free from that fear. That fear is necessary to protect the federal element and to protect democracy at the State level.

The Governor holds the office during the pleasure of the President. What do we mean by the pleasure of the President? In reality it is not the pleasure of the President, it is the pleasure of the party in power. If the Governor acts against the pleasure of the party in power at the Centre, the next moment he will be removed. Therefore, he is not carrying out the executive functions. He is not defending or protecting the constitutional functions. He is not protecting the interest of the State. Rather he is always protecting the interests of the Centre and is a stooge of the Centre or the party in power at the Centre. There is no exception. Even during the Janata rule, the Governors were acting in that manner. I am not willing to narrate what the Governors are now doing. Wherever other parties are in majority, they are engineering defection or are creating controversy against that State Government. So they are very particular about the interests of the party at the Centre and not to protect the interests of the State. Therefore,

what is the remedy available to arrest this type of attitude of the Governor?

I am to remind the House that during the discussions of the Constituent Assembly, three methods were discussed. First, it was discussed whether the Governor must be elected as done in the United States. If you go through the modern Constitution submitted by Mr. B. N. Rao, it has been clearly said that elected Governor is necessary, but it was opposed by the Congress leaders saying that there cannot be two elected heads at the State level. Chief Minister is an elected head. So, the Governor cannot be an elected head. But I am to remind the House that it was at the national level where we are having the elected heads—the Prime Minister is an elected head and the President is an elected head. President is not nominated. There is an Electoral College and the President is elected. Then what is wrong to amend the Constitution so as to elect the Governor with some Electoral College arrangement? But the Government was not willing to accept that. The argument put forth by the Government is not fair and acceptable because the principle of election of executive heads is accepted at the national level. Therefore, that should be extended to the State level also. But, Sir, the idea of elected Governor was dropped.

Then they adopted the panel system. They said there will be a panel of names of Governors. The State Government can prefer any one of the persons from that panel. That too was not followed.

The last method was consensus between the Centre and the States. For the last 20 years, after 1967, the principle of consensus was not at all followed by the Centre. Now, the Centre in an arbitrary manner is nominating a person who is totally against the ideology and principle of the party in power in that State. Is that the object of the Centre now? If there is any non-Congress (I)

State, they do not want any judicious man; they do not want to have an impartial man. Rather they want a hard-core party-man so as to remove that Government from power. This arbitrary manner of appointing the Governor must be curbed.

What is the remedy available? Either we must amend the Constitution to impeach the Governor, or we must amend the Constitution to provide for election of the Governor. Sir, I would like to remind the House that during the freedom struggle the Congress party was dead against the institution of the Governor itself. They said "it is a colonial institution, it is a reactionary institution, it is an undemocratic institution and it should be abolished." They assured the public that they will get this post abolished. But what is more pathetic is that the present Governor is conferred with more powers than the imperialist Governors during the British period. Even during the British period there was an Instrument of instructions which party which group should be allowed to form the Government. There were some guidelines to the Governor to be followed in the Act of 1935. There is an Annexure to this Act known as "Instrument of instructions", that is, guidelines. I think the Administrative Reforms Commission has stated that the guidelines are necessary to guide the Governor and to protect the interests of the State Government. But our Government has so far not come forward to frame any guidelines or Instrument of instructions. What is more pathetic to say is that the Governors themselves have submitted the report to the Government in which they have stated that there is no need of changing the Constitution.

Sir, after 1967, the democratic picture of India has changed. Now, more than 9 States are ruled by non-Congress Governments. So, some rapport is necessary between the Centre and the States. We cannot expect the same position that was at the beginning of independence. So, some change is necessary. In the past Governors

[Shri Satya Prakash Malviya] have acted in the interest of the Centre. They have neglected the interest of the State. They were the stooges of the Centre. These allegations have been proved beyond reasonable doubt. Then, what is the way?... (*Interruptions*)... It is my opinion. You have every right to differ. It is not only my opinion but it is the opinion of the public also. You know about this very well. My point is how are you going to protect the interests...

SHRI PAWAN KUMAR BANSAL (Punjab): We know the public opinion. Do you know of the opinion about yourself.

SHRI ALADI ARUNA *alias* V. ARUNACHALAM: You will know about it very soon. My point is that there are no remedial measures to the State Government when there is a violation on the part of Governor. There is a remedial measure against the Chief Minister, Prime Minister, Chief Justices and other Judges. So, it is unfair to allow the Office of the Governor to be free from the power of scrutiny. Therefore, what I suggest is that the amendment of the Constitution is necessary. More than that I demand an elected Governor. There is nothing wrong at all. There should be some electoral college by which we can elect a Governor. Of course, in the federal systems, Governors are elected but there is no election of Chief Minister as such. As I said earlier, the election of the executive head is accepted at the national level. There is nothing wrong, it is within our reasonable system to have an elected Governor within the State. I would remind the House that as far as the Anna DMK is concerned, we have submitted a report and our programme... (*interruptions*)... You have no philosophy. You have no programme. You have no ideology except usurp of power. Don't try to teach me. I know every thing. ... (*Interruption*)... That is our parent party. Philosophy of DMK party is the philosophy of Anna DMK party. In the programme there may be some difference.

In 1954 there was a conference at Palaymkottai in our district. In that conference during the period of Dr. Anna, a resolution was moved and passed that the Office of the Governor must be abolished and this post is not at all necessary since it is extravagant, since it is undemocratic and since it functions against the interests of the State. That was our decision. Then, Sir, on the basis of that when the DMK first entered into the Assembly in 1957 it boycotted the Governor's Address. Then, a point was raised in the House whether a political party has a right to boycott the speech of Governor. Then, a ruling from the Chair was that it was the constitutional right of a political party to participate in any functions of the Assembly or hear any speech. Then, Sir, what I want to say is that right from the beginning, we are aware of this dangerous institution. The Congress Party was also aware of this dangerous institution but now, this Congress Party is also having the imperialistic character. That is why, they are for nominated persons. They are for party people to be appointed as Governors. To curb this practice, to defend the federal principle, to protect the interest of the State, the amendment given by Mr. Chitta Basu is essential, eminent and is the need of the hour. With this, I conclude my speech.

श्री भंवर लाल पंवार (राजस्थान) :
उपमहाध्वक्ष महोदय, माननीय कृति बसू जी द्वारा प्रस्तुत संविधान संशोधन विधेयक का मैं कड़ा विरोध करता हूँ और विधेयक के संबंध में निम्न तथ्य प्रस्तुत करना चाहता हूँ। महोदय, हमारा जो संविधान है यह एक यूनिक संविधान है जो विश्व में अपने आप में एक अलग महत्व रखता है। यह संविधान जब बना तो उस समय इसमें जो मूलभूत बात रखी गई वह था चैक एण्ड बैलेंस। भारत की विशेष परिस्थिति को ध्यान में रखते हुए और भारत की चार सौ पांच सौ सालों की दामता के बाद जो स्थिति बन चुकी थी उसको किस प्रकार में संजोया जाय, इन बातों को ध्यान में रखते

हुए हमारे संविधान निर्माताओं ने बहुत सोच विचार कर ये सब प्रावधान किये थे। मान्यवर, भारत के संविधान में शासन के संचालन के तीन मुख्य स्तम्भ हैं। एक एक्जीक्यूटिव, दूसरा लेजिस्लेटिव और तीसरा जूडिशियरी। इन तीनों को एक दूसरे में बांधा गया है और इसका समावेश संविधान में किया गया है। श्री चित्त बसु ने जो इम्पीचमेंट की बात कही गवर्नर के लिए तो इन तीनों स्तम्भों के लिये इम्पीचमेंट का प्रावधान संविधान निर्माताओं ने किया है। इससे विलकुल स्पष्ट होता है ऐसी व्यवस्था संविधान में है। संविधान के पार्ट 5, चैप्टर 1 में, एक्जीक्यूटिव का जो हेड है, प्रेसीडेंट, उसके इम्पीचमेंट के लिये धारा 56 में इसका प्रावधान किया गया है। संविधान में हर स्तम्भ को चेक करने का प्रावधान है। इसी तरह से लेजिस्लेचर्स में जो कांफिडेंस रखने वाली सरकार है वह तभी तक चल पायेगी जब तक कि लेजिस्लेटिव का उस पर कांफिडेंस है, तभी तक वह चल पायेगी अन्यथा नहीं चल पायेगी। इसी प्रकार से लेजिस्लेटिव विंग के लिये भी प्रावधान रखा है। इसका जो तीसरा स्तम्भ है, जूडिशियरी उसके लिये भी धारा 124(4) में, यद्यपि प्रेसीडेंट द्वारा सुप्रीम कोर्ट के चीफ जस्टिस को नियुक्त करने का अधिकार है उसमें भी राइट आफ अप्वाइंटमेंट बाई दि प्रेसीडेंट है। इसमें भी यह चैक और बैलेंस की बात है। लेकिन अगर वह संविधान की धाराओं के विरुद्ध काम करने लगें तो उसका भी पार्लियामेंट द्वारा इम्पीच किया जा सकता है। तो तीनों विंगों को चेक और बैलेंस के आधार पर काम करने का प्रावधान संविधान में किया गया है। जो एक्जीक्यूटिव हेड हैं, प्रेसीडेंट, गवर्नर, उनके द्वारा नियंत्रण रखने का प्रावधान संविधान में रखा गया है। उसको इम्पीच करने का प्रावधान फिर से रखने से, क्योंकि इस के लिये कांस्टिट्यूट असेंबली ने सिमिलर प्रोविजन धारा 131 और 132 में किया है उसको अगर चित्त बसु जी पढ़ें तो वे इस तथ्य से परिचित हो जायेंगे कि उसमें संविधान के निर्माताओं ने इसका उल्लेख कर दिया है। 131 में जब उन्होंने देखा कि जो गवर्नर है उसको अप्वाइंट

किया जाए या इलेक्ट किया जाए, इसके बारे में बहुत चर्चा चली और समय की नज़ाकत को देखते हुए हमारे भूतपूर्व प्रधानमंत्री माननीय जवाहरलाल नेहरू ने उस समय यह कहा कि जिस समय इस प्रावधान को 131 में जोड़ा गया था उसका समय की परिस्थिति के साथ वापिस देखना पड़ेगा और डा० अम्बेडकर ने धारा 132 में यह अमेंडमेंट ला कर यह कहा कि यह गवर्नर की पोस्ट इलेक्टेड पोस्ट नहीं होगी यह अप्वाइंटेड बाई दी प्रेजीडेंट होगी। उस बात को धारा 132 को अमेंड कर के इस गवर्नर की पोस्ट को प्रेसीडेंट के द्वारा नियुक्त करने का प्रावधान किया गया और प्रेजीडेंट के प्लेजर पर रखा गया। यह प्रावधान किया गया और यही समय का तकाज़ा था। उस में यह ग्राउंड दिया गया था अगर एक ही स्टेट के दो इलेक्टेड पर्सन होते हैं गवर्नर और चीफ मिनिस्टर तो कनफ्लिक्ट होगा और कनफ्लिक्ट होने से भारत की यूनिटी को खतरा पड़ेगा और सभी स्टेट्स को गवर्न करने के लिए एक बड़ा क्योस पैदा हो जाएगा। इसलिए इस बात को उस समय बड़े ध्यान से विचार कर के ही धारा 132 को अमेंड किया गया जो कि वर्तमान में धारा 156 में वैसा का वैसा रखा गया। धारा 156(ए) के जोड़ने से विलकुल गड़बड़ हो जाएगा और इसके समानान्तर प्रोविजन जो धाराओं में हैं उनमें भी बगैर संशोधन किये यह प्रावधान जोड़ा भी नहीं जा सकता है इससे कनफ्लिक्ट हो जाएगा। उस समय यह भी रखा गया था कि इम्पीचमेंट के द्वारा स्टेट के स्वयं के सही रूप से संचालन में भी बाधा आ जाएगी क्योंकि इस प्रकार का प्रावधान होने से उस पोस्ट पर प्रेजीडेंट के द्वारा नियुक्त किये गये व्यक्ति को जो प्रेजीडेंट पूरे हिन्दुस्तान की आशाओं का प्रतीक प्राइम मिनिस्टर की सलाह पर काम करता है, पूरे हिन्दुस्तान की आवाज़ को ले कर चलता है, हिन्दुस्तान की यूनिटी को कायम रखने के लिए, अखण्डता को कायम रखने के लिए होता है उस सेकेंड एक्जीक्यूटिव पोस्ट का इम्पीचमेंट करने से प्रथम पोस्ट के उस निष्पक्ष और पूरे हिन्दुस्तान की आवाज़ को परिणित करने वाले व्यक्ति

[श्री भंवर लाल पंवार]

में शंका पैदा करने वाली बात हो जाएगी। इसलिये मैं इस विधायक का बिलकुल घोर विरोध करता हूँ। धन्यवाद।

DR. YELAMANCHILI SIVAJI (Andhra Pradesh): Hon. Vice-Chairman, Sir, a lot of interesting discussion had taken place throughout the country in the recent past about the role of Governors. Even during the framing of the Constitution interesting debates took place in the Constituent Assembly. No other issue attracted such a wide discussion as the role of Governors. Eminent personalities and founding-fathers of the Constitution like Jawaharlal Nehru, Vallabhbhai Patel, Dr. Radhakrishnan, Dr. Ambedkar, Alladi Krishnaswami Iyer, J. B. Kripalani and others contributed for the framing of the office of the Governor. Altogether, 7635 amendments were proposed about the role of the Governors, among which 2473 amendments were accepted after discussion. On 6th December 1946, the first meeting of the Constituent Assembly took place and on 30th April 1947, two committees were appointed from the Constituent Assembly, one headed by Jawaharlal Nehru to frame the Union List and the other headed by Sardar Patel to chalk out the State List. On 5th May, 1947, the first meeting of these two committees took place. And from 6th to 9th June, 1947 the item of Governor was discussed. The discussion mainly centred on the role, on the office, of Governor, whether it should be as it was obtaining in USA or whether Governor should be held responsible to the Assembly. Some others suggested that the role of Governor was that of a coordinator between the Union Government and the State Government. A lengthy discussion like this took place on 7-6-1947 and a joint meeting of both the above committees took place and they decided that the Governor should be elected directly from the people. On 27-6-1947 Sardar Patel submitted a report to the

Constituent Assembly stating that the Governor should be elected directly from the people. While finalising the Draft Constitution, Sir, B. N. Rau, speaking on Article 131, suggested two alternatives. First, that the Assembly should draw up a panel of four names from among whom the President would choose one; the second alternative, let the Governor be elected directly by the people. Some people suggested if the Governor was elected directly by the people, a confrontation might take place between the Governor and the Chief Minister. So to avoid that a sub-committee was appointed on 10-4-1948 and that sub-committee proposed that the Governor should be appointed by the President. Again on 30th May the Constituent Assembly discussed the matter and in this meeting, Sir, Alladi Krishnaswami Iyer said before finalising the name of the Governor the State Cabinet should be consulted. On 31-5-1949 Pandit Jawaharlal Nehru said, the Governor should always act above regional political considerations. This was the background while finalising the office of Governor in the Constituent Assembly. Several legal battles also took place in various High Courts as well as in the Supreme Court. On 4-5-1979 in Hargobind Pant v Raghukul Tilak case, in 1955 Raju Namdhar v State of Punjab, in 1971 in E. M. Rao v Madame Gandhi, in 1971 in Shamsher Singh v State of Punjab and in 1971 in K. N. Ragagopalan v Karunanidhi, the Supreme Court held that the Governor should act only according to the decisions of the Council of Ministers. But what is the track record that is obtaining in the country now? This should be examined carefully. Governor is the constitutional head of a State. But nowadays the office of Governor is becoming more and more controversial: it has become a challenge, it is endangering the federal structure of the country. When Mrs. Gandhi was the Chairman of the AICC, Namboodiripad was thrown out of office in Kerala on the report of the Governor. During January,

1966 when Lal Bahadur Shastri died, a dialogue was going on in the country as to who should occupy the office of Prime Minister. Shri A. P. Jain was the Governor of Kerala at that time. He canvassed directly for Mrs. Gandhi's candidature. The press criticised him and he resigned from the office of Governor. During March, 1965 elections took place to the Kerala Assembly. CPI(M) was the single largest party. Mr. A. P. Jain was the Governor at that time. What did he do? Even without convening the Assembly, he dissolved the Assembly. In 1966, Sardar Ujjagar Singh was the Governor of Punjab. Even without completing his term of five years, he had to go because he was replaced by another Governor, by name Mr. Dharmavira. Immediately after taking over office, the next day, he recommended the dissolution of the Assembly in that State.

During 1971 elections took place to the Kerala Assembly. The Governor was Mr. Dhawan. He invited the single largest party, the CPI(M), to form the Government. But even without doing his job, he went on leave and then resigned and no Government was formed.

On 4th March, 1967, in Rajasthan, Shri Sampurnanand was the Governor. Out of 183 people, the Congress was having only 83 in the Assembly. He invited Shri Mohan Lal Sukhadia to form the Government on 12th March, 1967.

SHRI DHULESHWAR MEENA (Rajasthan): Even then he formed the Government there.

DR. YELAMANCHILI SIVAJI: I am coming to that point. Don't worry. I am coming to that only.

Mr. Sukhadia expressed his inability to form the Government. The Assembly was to be convened on the 14th. But, surprisingly, on the 13th March, the Assembly was suspended. Maharani Gayatri Devi, Ma-

harawal Laxman Singh and other people led a group of MLAs consisting of 93 people to the Rashtrapati and to Mr. Y. B. Chavan, the then Home Minister, and demonstrated their strength in the streets of Delhi. But nothing came out and, on the 28th April, 1967, again Mr. Sukhadia was sworn in as Chief Minister. The Assembly was not dissolved, but it was only suspended and suspended only to gain strength for Mr. Sukhadia.

On the 11th February, 1970, Mr. Nityanand Kanungo was the Governor of Bihar. He recommended President's Rule for six months, stating that there was no possibility of a stable Government being formed in Bihar. This was on the 11th of February. But within three days, on the 14th of February, he invited Mr. Daroga Prasad Rai, the leader of the Congress (I) Party to form the Government there. Mr. Rai submitted a list of 172 names. Surprisingly, this list contained 17 names which were mentioned by the Governor as doubtful. From among those 17 people, 12 people were inducted into the Cabinet. However, that Government lasted for a short while only which was natural.

Again, on 2nd October, 1970, Mr. B. Gopala Reddy—he hails from my State—was the Governor in Uttar Pradesh and he submitted a report to the Rashtrapati stating that no party was capable of forming a Government in U.P. But within a fortnight, on the 17th October, Mr. T. N. Singh was inducted as the Chief Minister.

In November, 1967, Mr. B. N. Chakravarty was the Governor in Haryana. Rao Birendra Singh was the Chief Minister. The Governor recommended President's Rule stating that out of 81 MLAs, since 16 MLAs of the Congress had crossed over to the other side, the strength of the Congress had dwindled. So, floor-

[Dr. Yelamanchili Sivaji]

crossing took place and defections took place. Somehow, on the 29th January, the Government was formed and he was inducted and within six months, to fulfil the Constitutional obligation, the Assembly met, but within one day, it was postponed.

Again, in Kerala, in 1967, Mr. E. M. S. Namboodiripad was the leader of the largest single party and he approached the Governor and said that as the leader of the single largest party he should be asked to form the Government there and he asked him to give a chance to him to form the Government. But no answer was given. Neither was the Assembly suspended. Totally the Assembly was dissolved.

In Tamil Nadu an interesting situation developed during 1976. Mrs. Gandhi, during the Emergency in 1975-76 when we were inside the prison, was telling that there were two islands in the entire country: One is Gujarat and another is Tamil Nadu where the benefits of the Emergency could not be percolated. She was telling this day in and day out. On 29th January, 1976 Mr. K. K. Shah, the then Governor of Tamil Nadu, sent a report stating that the Government headed by Mr. Karunanidhi was with corruption and nepotism. Within two days President's rule was imposed and Justice R. N. Sarkaria was appointed to head the Commission to inquire into the corruption and nepotism charges against the Karunanidhi Government. They stated that on 4th November, 1972 the late M.G.R. submitted a Memorandum charging the Karunanidhi Government with this. That is all right. That Memorandum submitted during 1972 was pulled off from the armoury during 1976, four years later. But, surprisingly, during 1979, during the 1980 elections, both Mr. Karunanidhi and Madam Gandhi fought elections in alliance. Mrs. Gandhi was addressing

a public meeting on the 30th September 1979 at Madras. She told at Madras: Only due to the report of the Anna DMK as well as the CBI, I appointed this Commission and I dissolved that Government but it was not my intention. That was the remark passed by Mrs. Gandhi. This shows that Mr. K. K. Shah as Governor submitted a concocted report only to appease the higher authorities in New Delhi. During 1982, on May 22nd, Mr. Tapase was the Governor in Chandigarh, of Haryana. Election took place and out of 90 only 31 people got elected from Congress (I). Naturally, Lok Dal got one, BJP got 6, Cong. (J) 3, Janata got 1, and among 12 independents four people supported Ch. Devi Lal. Mr. Tapase on the 22nd May asked Ch. Devi Lal to prove his strength at 10 A.M. on the 24th May. But surprisingly on 23rd May Bhajan Lal Saheb took office as Chief Minister. On the 24th May exactly at 10 A.M. Ch. Devi Lal went to Raj Bhavan and met Mr. Tapase along with his battalion of supporters among MLAs. But he was not given the opportunity. Some re-election took place. Even late Ch. Charan Singh found fault with Mr. Devi Lal: he should not lose temper, he should not misbehave with the Governor, this and that. I hope Ram Nareshji knows better and Malaviyaji also knows better about it.

In Assam, for three years no Government was allowed to be formed there. On the 12th December, 1980 President's rule was to end there. But, on 17th November, the then Home Minister, Giani Zail Singh, told the Lok Sabha that the Congress Party was in a position to form the Government. What was the track record of Mr. Talyarkhan as Governor in Sikkim? What happened in Orissa during 1973? 23 Congress M.L.As. defected to the other side and Mrs. Nandini Satpathy was to resign as Governor. Out of 140 M.L.As., there were 72 people on Mr. Biju Patnaik's side. On 6th March, elections took

place to the Rajya Sabha. Congress got 60 votes, whereas the opposition got 72 votes. Shri B. D. Jatti was the Governor at that time. Shri Biju Patnaik was not given an opportunity to form the Government. President's rule was imposed on 5th March. This was the track record. Not only that. What happened during 1973? Biju Patnaik challenged this act in the High Court and the High Court also found fault with the Governor. Later, Shri B. D. Jatti was the Vice-President of this nation. For some time, he was acting as President too. What happened in Travancore and Cochin in 1954? What happened in Kerala during 1970? What happened in Bengal and Bihar during 1981? What happened in Kurnool in Andhra during 1954? What happened in Pondicherry during 1968? What happened in Manipur during 1969? What happened in Andhra Pradesh during October and November of 1972? At that time, our hon. P. V. Narasimha Rao was the Chief Minister in Andhra Pradesh. So, the office of the Governor was not only used to destabilise the non-Congress Governments, but the office of the Governor was used to adjust their internal struggles in the legislature party. Shri P. V. Narasimha Rao was enjoying full majority in the Assembly. But the Governor submitted a report that Shri P. V. Narasimha Rao was not in a position to run the Government in Andhra Pradesh. So, the President's rule was imposed and the Assembly was suspended for the time being. Later, our hon. Industries Minister, Shri J. Vengal Rao, was inducted as the Chief Minister after six months in Andhra Pradesh. This was the track record in Andhra Pradesh.

What is going on now in Andhra Pradesh? During 1984, a person named Ram Lal was the Governor in Andhra Pradesh. He thought that number 163 was less than the number 52. So, he asked Mr. Bhaskar Rao, with the support of 52 M.L.As, to form the Government. He inducted

Mr. Bhaskar Rao as the Chief Minister. He never thought that number 52 was less than number 163. Mr. N.T. Rama Rao, with the support of 163 M.L.As, was thrown out of office by Mr. Ram Lal. But the people of Andhra Pradesh rose to the occasion and brought Mr. Rama Rao again into office. What happened in Srinagar? A mid-night murder took place. Mr. Jagmohan was the Governor at that time. Not only that. What is going on now in Andhra Pradesh? There is a Governor named Mrs. Kumudben Joshi. (Interruptions) I don't know whether she is Miss or Mrs. Some times she is reported as 'Miss' and some other time as 'Mrs'. It is not a point to be discussed and we are not bothered much about it. She participates in every Congress meeting or most of the Congress meetings. She attended the Congress meeting on the 1st of this month here in Delhi. On the same day, the Andhra Pradesh State formation day was being celebrated in Andhra Bhavan. She could attend only for a while with a lot of persuasion. But she can spend days and days in the Congress meetings. A lot of chat was going on for some time in Andhra Pradesh to appoint an APCC President.

THE VICE-CHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): Please try to conclude.

DR. YELAMANCHILI SIVAJI: I am concluding, Sir. I advised Mr. Vengal Rao one day: "Why don't you appoint Mrs. Kumud Joshi as PCC President? She can jolly well do that job there instead as a Governor". He laughed away. And that is the track record of the Governor of Andhra Pradesh. Not only that. Several people who were found guilty by the courts by the law of the land, they vacated the posts of Ministers and they were appointed as Governors, like Dr. M. Chenna Reddy, who was found guilty by the Supreme Court and he resign-

[Dr. Yelamanchili Shivaji]

ed as a Minister at the Centre, and he went as Governor, Sir, to your State of Uttar Pradesh. And Mr. Ram Lal who was found guilty in that timber case, was appointed as Governor in Andhra Pradesh. I am not blaming this thing. There was a Governor from our State at Maharashtra, at Bombay, by name Mr. Kona Prabhakar Rao. He was defeated in our State as MLA. He went as Governor. That is all right. But he was found fault in meddling with marks...

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI HANS RAJ BHARDWAJ): I don't think, Sir, these are the matters which he can refer to because he is making some insinuations against...

DR. YELAMANCHILI SIVAJI: Not insinuations.

SHRI HANS RAJ BHARDWAJ: You are coming to that. Before that, I want to draw the attention of the Chair. The Member has the liberty to mention the names. But no insinuations should come on record...

THE VICE-CHAIRMAN (SHRI SATYA PRAKASH MALAVIYA): I will go through the record.

DR. YELAMANCHILI SIVAJI: It is not an insinuation. Mr. Prabhakar Rao as Governor was found guilty for his acts by the High Court. And he resigned. Why insinuation?

SHRI HANS RAJ BHARDWAJ: You go ahead. I have drawn the attention of the Chair.

THE VICE-CHAIRMAN: You continue and try to conclude.

SHRI HANS RAJ BHARDWAJ: You have not spoken on the Bill...

DR. YELAMANCHILI SIVAJI: It was the track record. Not only that. Several people that were in

the office of the Governor like Mr. R. D. Bhandare, Mr. Joginder Singh, Mr. Biswanath Das, Mr. K. K. Shah, resigned their jobs as Governors and went for the polls. Of course, most of them lost in the polls. But that is a different story. We know specially Mr. D. K. Borooah as Governor. He resigned his job and went for the polls. And he gave wonder slogans to this nation to be remembered for a long time. This is the track record of the Governors. And recently we came across Gen. Krishna Rao and as to what he did in Nagaland. And this thing is going on.

Therefore, Sir, I wholeheartedly support the Bill introduced by our senior colleague, Chitta Basu. Unless some check is there, I am very much afraid that this nation, the public as a whole may feel that the post of the Governor is not needed and that it endangers the federal structure of this country. Therefore, Sir, I support the Bill introduced by Mr. Chitta Basu. Thank you, Sir.

SHRI BIR BHADRA PRATAP SINGH: Mr. Vice-Chairman, Sir, the entire argument of the Member just preceding before me and most of the arguments advanced from the other side pertain to Article 164 of the Constitution of India whereas this Amendment is sought to be inserted in Article 156, and this is a wonderful logic. If there is some lacuna, some short-coming, some defect in Article 164, then why an attempt be made to amend this Section which is, according to them is the cause of the mischief? Why have you made so much home-work and laboured so much for a Bill which is not pertaining to...

DR. YELAMANCHILI SIVAJI: Are you finding fault with my home-work?

SHRI BIR BHADRA PRATAP SINGH: I very much appreciate your futile attempt. It is a futile exercise and wastage of your valuable energy—so and so Chief Minister is

appointed by the Governor. Is there a single example other than this question of appointment from the other side in support of the insertion of an Amendment in Article 156? Whatever examples came from the other side are that this particular Governor did not appoint this particular man as Chief Minister and he appointed this man or that man was there a single other argument? But when there is trouble, you want to operate these ideas. You have never attempted to find out the real reason. If this is the argument, I say this is the fallacy of the argument. This is the fundamental mistake in the argument that you should have made an attempt. If, according to you, there is a fallacy in the section, in the provision of the Constitution, that the Governors in regard to article 164 of the Constitution, in the case of appointment of Chief Ministers, do not act impartially or that they act with partiality, then the amendment should have been sought there. But why do you want to amend an innocent provision of law, article 156, for that extraneous consideration? This is the most extraneous reason advanced and your argument is in no way connected with it. It is so remote in the chain of reasoning for the amendment which is sought to be moved, for which, I say, there is no justification.

Now, I did not hear Mr. Chitta Basu. The people whom I have heard so far have not given us a single cogent reason in support of amending article 156 of the Constitution, for a mischief which, according to me is committed by article 164 of the Constitution. So, the right approach was, it is not my advice to you, that you should have tried to amend that article. Therefore, withdraw this ill-conceived Bill, which is not at all relevant, because you do not have a single argument other than that which could be advanced on the appointment of the Chief Ministers.

Now, what are you asking for? You are asking for the impeachment of

an elected authority. This I am advancing as a legal proposition, asking for the impeachment of an elected authority. It should have some rational basis, because the person is elected. If he has not discharged his functions and duties faithfully as vested in him under the Constitution, therefore on relevant basis he should be impeached. But I have yet to find an argument relevant under the law on which basis a nominated authority should also be impeached. Could you give me any example anywhere legally or constitutionally where for a consideration which is provided only for an elected officer, that could also be extended to a nominated man? Then why should we not concede the fact that every subordinate bureaucrat should be impeached? Let the Constitution make a provision for impeachment of every abuse of power or misuse of power or usurpation of power or negligence of duty. That will be a preposterous thing. I very humbly submit, because the high office of President being an elected office, was sought to be the subject-matter of impeachment. But, we cannot extend that logic by any reason to an office which is, piece of the parent part, the President of India himself. The only remedy is that you ask the President of India to remove him, and if the final authority is the President of India, then you cannot insert a revengeful appointment in the appointing article itself, and that you are not doing. So, I say that the best remedy lies in that when there is an appointing office to ask the appointing authority to remove the man. Now the Indian Constitution is an amalgam of two systems. Why there is a fallacy in your argument? Why have you not tried to amend the section in which lies the true mischief? Why have you jumped to the irrelevant provision to the amendment of another section which is in no way

Mr. Chitta Basu, this argument is for you, because I am trying to appeal to you to withdraw this ill-conceived Bill go in for a useful legislation. Indian Constitution

[Shri Bir Bhadra Pratap Singh]

is an amalgam; it is both unitary and federal. So far as the exercise of executive power for the purpose of unitary part of the Constitution is concerned, namely, the Centre, the President under his authority is entitled to appoint Governors to respective states to discharge certain Constitutional obligations. I will come to the nature of the power subsequently. What is the nature of the power? You read article 163. If that is the scope of exercising power conferred on a Governor who is a person appointed by the President under his seal and writing and he holds office during his pleasure, then the scope of power to be exercised, apart from article 164, is under article 163, and I have been all along labouring to impress upon Mr. Chitta Basu not to be so irrelevant, because it is not trying to amend a law; it is a suggestion to amend a Constitutional provision which is much more sacrosanct and much more important and for which the Constituent Assembly had long deliberations and long consideration took place and each article was considered for long duration of time with the entire wisdom of the Constituent Assembly members, irrespective of party affiliations. That is why I say that a Constitutional amendment is much more important than an ordinary piece of legislation. Now, what is the scope and extent of the powers that the Constitution has vested in the Governor? Along with article 164, you will have to read article 163, and I am all the time impressing upon this fact that by the nature of appointment of a Governor by the President and the power that is conferred on a Governor as a creature of this Constitution, there is a limitation, and you never thought of that limitation because once you accuse a Governor, you are guided by your own political considerations. You have never considered his position on the basis of the Constitution because you are not in power; and even when you were in power, did you not change

Governors? Did you not make a shift? So please consider the arguments that I am advancing with regard to article 163 also. "There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his function, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion." What are the who powers? Certain powers concerned upon him under this Constitution, and certain powers which can be exercised by the aid and advice of the Council of Ministers. Now, this Constitution has never envisaged anything beyond article 163. There is no other scope. And I will come to interpretation of article 164. It is either the advice of the Council of Ministers or whatever has been said under the Constitution. Where is the third category of powers? The Constitution has made only one distinction. I would request Mr. Chitta Basu to kindly listen to me. His fallacy will be removed in a moment if he listens to my argument. There are only two types of powers with the Governor. Certain powers are laid down in the Constitution. The Chief Minister shall be appointed by the Governor. This is not new in our Constitution. I had been to Switzerland. There, it is not the Governor but it is the Speaker of the Assembly who will appoint a person as the Prime Minister of the country. That is why the office of the Speaker in Switzerland is the most powerful office in the sense that he can ask any member, without asking him to seek majority vote, without asking him to seek a vote of confidence to become the Prime Minister of the country he can appoint any person as the Prime Minister of the country.

SHRI GHULAM RASOOL MATTO
(Jammu and Kashmir). In Switzerland?

SHRI BIR BHADRA PRATAP SINGH: What is required to be done is that later on, subsequently, when

the Parliament is summoned, he will seek a vote of confidence.

As I said, one power of the Governor is that the Chief Minister shall be appointed by him. This is the provision laid down in the Constitution, power conferred under the Constitution. Then, under article 163, in the exercise of his function, the Governor shall take the aid and advice of the Council of Ministers. Where is the third category of power? Therefore, do not advance ill-conceived arguments.

The Governor is appointed by the President. If there has been any misuse of power in this regard, the President could be impeached. How can you by any stretch of imagination extend this provision of impeachment in the case of the Governor? The Governor is invested with only two types of powers as I have pointed out. Apart from these provisions in the Constitution, there is one overriding consideration. In the case of the discretionary power of the Governor, the final judgement will be that of the Governor. I am referring to article 163(2) which says:

"If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final...."

This is the overriding provision in the Constitution which says that where there is a dispute about the exercise of the power by the Governor, he will be the judge, he will decide that this was his discretion. Even the Supreme Court has said that in the case of a discretionary power, there is limitation in challenging that power. Discretionary powers are not interfered with as in the case of the executive powers. They could be interfered with only in a limited manner. I would ask Mr. Chitta Basu,

where is the third category of power for which you are trying to get article 156 amended. Most of the examples which have been cited are only in relation to article 164 which relates to the appointment of the Chief Minister by the Governor. No other examples have been given. Therefore, I say, there is no justification for amending article 156.

Sir, when you are talking about a Constitutional post, it has to be understood it must be understood, in conformity with the frame and spirit of the Constitution. There is the federal part also. The Constitution of India is an amalgam of both the unitary and the federal concepts. It is unitary in the sense that only the President has the power to appoint Governors. But you cannot say that Governors are acting as agents of the Government. You are advancing the argument that the office of the Governor has been denigrated so much so that Governors are acting as agents of the Government. If they start acting as agents of State Governments, then you are happy but your argument is that they are acting as agents of the Centre and that is why it is very bad. In both the cases the argument cannot hold good. The President is the appointing authority of the Governor and after the Governor is appointed he discharges the functions of the federal structure. He safeguards the federal structure, he looks after the structure of one or the other State. So, where is the scope of any misuse or abuse of power on your own analogies? So, do not advance ill-conceived arguments. The provisions of the Constitution are well-thought of, they are sacrosanct because they are part of the Constitution. Do not advance flimsy arguments to get the Constitution changed. This is a fundamental law of the country. You have not advanced any cogent, legal or constitutional arguments excepting stating a few examples which are irrelevant to the article to which you want to seek an amendment. At the most if you seek

[Shri Bir Bhadra Pratap Singh]

an amendment to article 162, it can be considered.

SHRI GHULAM RASOOL MATTO...

Mr. Vice-Chairman, I am a little on the horns of a dilemma...

SHRI N. E. BALARAM (Kerala):

That you are always.

SHRI GHULAM RASOOL MATTO...

in the case of the amendment propounded by Shri Chitta Basu. On the one hand, it is a fact that the Governors have misused their powers. My friend, Dr. Sivaji, has done a good home work and he has given umpteen instances which clearly show that the Governors have not acted according to the Constitution. There is no doubt about it. But I am also impressed by the argument advanced by Shri V. Narayanasamy. (Interruptions). May I have the attention of the Minister?

SHRI HANS RAJ BHARDWAJ:

I am very much attentive, he is in a dilemma.

SHRI GHULAM RASOOL MATTO:

So, on the one hand umpteen cases can be quoted when the Governors have not acted according to the Constitution, and on the other hand the arguments advanced by Shri V. Narayanasamy hold good, where he has stated that when the appointing authority of the Governor is the President, how it is possible to go to a third party for impeachment proceedings bypassing the appointing authority.

SHRI CHITTA BASU (West Bengal): Chief Justices are also appointed by the President.

[The Vice-Chairman (Shri B. Satyanarayan Reddy) in the Chair]

SHRI GHULAM RASOOL MATTO:

So, my personal opinion is, President is an elected authority, he can be

removed, he can be impeached. Similarly, there are provisions for the removal of Chief Justices, Attorney General and others. (Interruptions). Please bear with me. So, the fact remains, if the Governor has acted in a way which is not in accordance with the provisions of the Constitution and we bypass the authority, that is the President, and go to impeach him, it looks illogical. It is also a fact that Governors have committed mistakes. Mr. Vice-Chairman, the other day we were discussing Mizoram, how double standards are being used by Governors. Now on the midnight of 2nd July, ten people go to Mr. Jagmohan in Srinagar and tell him that they have defected from Dr. Farooq Abdullah's party and in support with the Congress they wanted to form the Government. There the Governor in his discretion, as mentioned by my friend, Shri Bir Bhadra Pratap Singh, gave powers to Shri G. M. Shah to form the government. An analogous position was created in Mizoram where eight or nine people, as the case may be, defected and Mr. Lalthanhawla had a majority in the Assembly. Out of 40, he had 23 members with him. But there the Governor said: "No, you cannot form the government. It will be under President's rule". I cannot understand why in the case of Jammu and Kashmir the Governor acted in one manner and in an analogous situation in Mizoram, he acted just the other way.

The simple proposition now would be that we have to see it from this point of view. Governors can commit mistakes, just as the President can commit mistakes, the Prime Minister can commit mistakes, the Attorney-General can commit mistakes, the Judges of the Supreme Court can commit mistakes, but the Constitution gives remedy to act against them and even against the President and the Judges of the highest court. What is the provision when a Governor does not act in accordance with the Constitution? This is my simple proposition

The remedy suggested by my friend, to my opinion, is not correct because I have been impressed by Shri Narayanasamy's argument that the appointing authority in the case of Governor is the President and hence bypassing the appointing authority and going to any other forum—be it legislature or Parliament or any other forum—will not be in accordance with natural justice. To my mind, Mr. Bhardwaj, you have some thinking in your Department that such a provision must be made. I do not know what shape it will take. Maybe it will be in the shape of a petition to the appointing authority—i.e. the President—where an ample opportunity should be given to the aggrieved party or political party which is aggrieved and the Governor himself also, to present their cases, through lawyers if need be, and the President may decide whether the Governor has acted in the correct way or not.

If this proposition is not acceptable to the hon. Minister, which is a very sanguine and genuine proposition, I will refer him to Article 143. Article 143 has a different scope. But I find one word in it which can be of some help to me. That is, "if at any time it appears to the President that a question of law"... actually that article is for that—"...or fact has arisen, or is likely to arise" and if there is a dispute about that, it may be referred to the Supreme Court. But there is one saving factor—i.e. "of law or fact". I say that this is a fact that the Constitution of India gives powers to impeach the President, to remove the Chief Minister or Prime Minister, to remove the Supreme Court Judges, to remove the Attorney-General and to remove the other functionaries, but it does not provide for removing or doing something to the Governor in case he has really acted wrongly. It is all the more necessary when in the Constitution itself, it is clearly given under Art. 159 that the oath or affirma-

tion by the Governor will be as under:

"...that I will faithfully execute the office of Governor... and will to the best of my ability preserve, protect and defend the Constitution and the law."

This is the oath or affirmation that the Governor has to take before he assumes office. This provision is included in article 159. My simple question would be, if the exercise can be done in the Ministry of Law, I would not mind, but if the Minister may think it proper, he may refer this question of fact—it is not question of law—that others can be impeached, can be removed, but not Governor. He may refer it to the Supreme Court for its opinion on how the Governor can be treated if he violates the oath or affirmation which he has taken under article 159. In this connection I have also been impressed by the argument advanced by my friend, Mr. Bir Bhadra Pratap Singh in relation to articles 163 and 164. If in the opinion of the Ministry of Law a provision has to be made for helping those who want that the Governor should be tried and if in that process articles 163 and 164 may also have to be amended, that may also be taken into consideration. But the argument advanced by Mr. Bir Bhadra Pratap Singh is also sound because they have given unlimited powers to the Governor. For instance, under article 163 it has been provided:

"If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion."

[Shri Ghulam Rasool Matto]

This is a very arbitrary power given to the Governor. If this arbitrary power has been given to the Governor, there is nothing left. He can do anything. Nobody can touch him when he does anything against article 159.

I personally feel that the Amendment put forth by Mr. Chitta Basu is well-intentioned, well-meaning. But that is not the remedy towards the problem. Therefore, I request the hon. Minister that he should have an exercise in the Ministry of Law on how a situation like this can be tackled when the Governor has really violated the Constitution and what treatment can be meted out to him. In this process, if he has to get the opinion of the Supreme Court also under article 143, he may seek the opinion of the Supreme Court also.

But the malady is there. There is no doubt about it, and the malady has to be remedied. It is for the Ministry of Law to think in terms of necessary measures to remedy this malady.

With these observations, I conclude my speech.

SHRI HANS RAJ BHARDWAJ:
Hon. Vice-Chairman, Sir, the Constitution (Amendment) Bill, 1987 moved by Shri Chitta Basu aiming at amending article 156 of the Constitution of India, reads as under:

"Notwithstanding anything contained in this Constitution, the Governor may for violation of the Constitution be removed from the office by impeachment by Parliament in a manner provided in article 61 for impeachment of the President."

Sir, a bare reading of this Bill reflects the intention of the mover that a provision should be inserted in the Constitution of India for impeachment of the Governor. Several

speakers have highlighted that in the scheme of the Constitution there is no provision for removal of the Governor but that there are provisions for removal of the Judges, for impeachment of the President and others.

But, Sir, if you kindly look at article 156 itself, it provides that the Governor shall hold office during the pleasure of the President. This is where I would like to draw the attention of the hon. Members to the scheme of our Constitution and to the efficacy of the office of the Governor. Unless all these issues are understood in correct perspective, it will be difficult to understand the whole scheme of the Constitution, barely in isolation and with motive something should be found to strengthen rather than to destroy an institution, which has stood the test of time, it will not help to understand the situation.

If you look at the Constitution of India, I would first submit that it is a Union of States. When people say it is federal or unitary, they must have one thing in their mind that India is not like the United States, because India was born free as one country. It is the people of India who achieved independence and out of that independent India States were created. It is not that several states were in existence like they were combined for certain reasons or compulsions. It is one country which fought for the freedom of the country and brought freedom to itself unitedly as a whole. And then the whole history of the States Reorganisation will reflect that on linguistic basis the States were created. Even now the Constitution has provisions which can enlarge the area of a State and which can diminish the area of a State. These issues are within the competence of the Parliament.

But if you look at the office of the President he is head of the nation. I will just remind the hon. Members, when we elect him what office does he take and what oath is administered to him. It will be easier to understand the role of the President, if you kindly look at the oath which the President is administered. I will read Article 60, which says:

"I, so and so, solemnly affirm or swear in the name of God that I will faithfully execute the office of President (or discharge the functions of the President) of India and will, to the best of my ability, preserve, protect and defend the Constitution and the law and that I will devote myself"—this is very pertinent—in the service and well-being of the people of India."

Therefore, as head of the nation, as head of the State, he has to look to the entire country. He cannot be expected to be parochial. He cannot be expected to have a lop-sided thinking. He is the head of the nation as a whole, not of a part of the State. So when the President performs certain functions, there is a presumption that the President acts in the interest of the nation. If there are any other interpretations of this, they should not be accepted, because the oath which is administered to the President says that the President acts for the nation. He has to see the well-being of the nation, the well-being of the people of the nation as a whole.

See the Governor. What oath is administered to him? Similarly you will find that the Governor has to say that he has to be faithful to the oath which he is administered. He says:

"I will faithfully execute the office of Governor and to the best of my ability, preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well-being of the people of the State concerned."

He takes the role of the Governor with this oath. He has to preserve the interest of the people of that State. So, when the President appoints the Governor, he has to see that the State flourishes according to the rule of law. And the President has to keep in touch with the Governor and that the State is run in accordance with the Constitution. Then, Sir, you will kindly see there is a duty cast on the Centre under article 352 of the Constitution which says, I quote briefly, I am not entering into any argument that in democracy elected representatives and views have to be taken into consideration while deciding the issues. Article 355 of the Constitution says "It shall be the duty of the Union to protect every State against the external aggression and internal disturbances and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution." Then article 356 of the Constitution relates to where the Presidential rule is imposed. So it is within the scheme of the Constitution. The role of the Governor is very important. Nobody can deny this. Wherever there is an internal disturbance or there is a failure of machinery and the administration cannot be run, the Governor has to step in; otherwise there will be anarchy. The Union is duty-bound to see that the State runs according to the Constitution. It is a Constitutional mandate. So these institutions have been created with a sacrosanct idea that rule of law prevails, the law and order is maintained, public order is maintained and the Government is run according to the Constitution—a very holy concept. There should be no controversy about it so long as we are interested in the welfare of the nation and the welfare of the people. But I also have the views from other Members. One hon. Member has quoted instance after instance where he found fault with the functioning of the Governor. Well, when a Governor takes a decision, he is not like a Chief Minister who is acting in the interest of his party.

[Shri Hansraj Bhardwaj]

The Governor acts in the interest of the State as a whole and the people as a whole of that State and with that view if a decision is taken and a stable Government is formed, well, many people will dissatisfied, many people may be satisfied. The decision may be controversial but the Constitution permits it that if a stable Government is found and the Governor has taken a decision which is, according to him, in the best interest of the people and in the best interest of the State as a whole, well, there is bound to be some controversy in one camp or the other. Therefore, it is not correct to repeat and say that these decisions which were taken, all of them were wrong or all of them were biased and the Governor has acted with some motive. This is wholly incorrect and I refute these allegations because several names of the Governor have been mentioned by the hon. Members. They have been men who have made great sacrifices in the freedom movement. They were great freedom fighters. The hon. Member is sufficiently mature now of age and he must have known them. Some of them have made great sacrifices from their childhood to their adulthood and entered into the older days and then they came into this public life. They have that maturity of understanding maturity of thought, maturity of legal knowledge. When they acted like this, it may not have been to the liking of some political party, this party or that party. But the question is you cannot impute motives because on the whole it is a question of the institution of the Governor. Some people have been very frank in saying that the institution or the office of the Governor is no more necessary. Well, that may be one view but this is not an occasion on this small issue that we should discuss such an important matter. The Centre-State relations has been discussed in the Sarkaria Commission and various views have been reflected. Some of the views have been attacked on the financial side and the ad-

ministrative side. Those issues have been studied in detail. But the question is that you look into the complete scenario of the country and the post-independence history whether the politicians have acted wisely. The State of Haryana at one point of time was known for Aya Ramas and Gaya Rams. If certain people defect and go to this side and some people went to that side, morning and evening if they defect and then you put guards over the MLAs and MPs and see that they do not move around, what type of freedom is this? Do you think the Governor should sit idle and see the game going on freely or horse-trading or whatever it is? In a particular State if the Governor feels that the administration is not functioning according to the Constitution, he is duty-bound by his oath. He is not there to serve the interest of any ruling party, either at the Centre or at the State but he is essentially, according to my humble thinking, duty-bound to the people of that State where he is functioning as a Governor and that is the holy task before the Governor because there may be a lot of internal disturbances. So, the Governor has to act swiftly, without leaving much scope for some of the issues getting complicated. Well, politicians as we are, we will always think in those terms that it should suit our convenience, it should suit our party convenience and the judgement must go according to this way. That is the difficulty which makes us say so many things against some distinguished persons. I have worked with some of the persons whom you mentioned. We have never thought that you can have better people in future. You could have better people in the past. They have a record of administration, record of public life and if you cannot expect that better performance in future, well, you have gone into the past. Their decisions have been very wise and according to the time and they have served the country. Even if something happens at a particular time, only the history tells what had happened at that time and

what should not have happened at that time. I think, I have almost gone through all the decisions which you mentioned. Barring a few, I think, the people involved were great men of this great country and we should not comment irresponsibly on such public figures.

Now, Sir, coming to another point, a point was made about the conflict between the Governor and the Chief Minister. Sir, it is bound to be there. When we become free, there was one party, that was Congress Party and whenever there were elections, right from 1952 onwards, this party alone contested elections and there was hardly any other party for four General elections. I quite remember since my childhood that they were always in power at the Centre as well as in the States. But later on, several groups within the Congress Party emerged on the basis of ideology. Within Congress, there were splits. I remember 1969 split quite clearly. There was ideological conflict within the Congress, right side and left side or centrist and a split took place and we went to the polls and the people decided whom they liked. They brought Shrimati Indira Gandhi in 1971 as the Prime Minister after split. Similarly, later on, in 1978 also, there was a split within the Congress Party. There have been splits in D.M.K. party. The hon. Member was speaking. Who can understand the politics of DMK or AIADMK? I do not think anyone of you appreciates it. There is hardly any policy or programme involved. But this is their private matter. Why the Governor should be brought into it? Do you like the scenes which occurred in the Tamil Nadu Assembly? Was the Governor not justified in imposing President's Rule when your MLAs and MPs were being beaten up within the House? Could you expect any other course for the Governor to follow? These are the issues which you have to consider without any emotional touch into it. The public life has become very tense. Yes, I quite

see that in a democratic set-up, any party can come into power in the State or at the Centre because it is after all the people of India that matter, the people of the State that matter, and I quite agree with you that once the people elect a Government, it should be allowed to function and that is the democratic way of life. There should be no interference except that on the floor of the House, we should argue our policies.

SHRI SATYA PRAKASH MALAVIYA (Uttar Pradesh): Unless the Government goes out the Janata way.

SHRI HANS RAJ BHARDWAJ: Malaviya Ji, well, I tell you, what was Janata? It was a part of the Congress which went to the other side and other people joined them and came to power in 1977 because most of the Janata stuff was from our party. They went out of our party. There was a conflict. Most of the Janata ... (Interruptions).

SHRI ASHIS SEN (West Bengal): This is one of the reasons why people have gone away from your party. What you are pronouncing now is the reason why people have gone out.

SHRI HANS RAJ BHARDWAJ: I am making my statement with full responsibility and I will not say a word to hurt the sentiments of any political party because I am alive to the fact that in a parliamentary democracy various political parties must thrive on ideological programmes, on thinking that is acceptable to people. Wherever people elect them, they think that it is in their interest. I am telling you splits do take place. There was the Communist Party of India, your party. It split. I remember, in 1950s it was one party. But later on, out of considerations best known to them, it split into two, the CPI and the CPM. Out of the CPM also several parties have been formed, Lenin-Marxist or Marxist-Lenin or whatever they are. And in your own party, Telugu Desam.

[Shri Hansraj Bhardwaj]

Bhaskar Rao was not a Congressman. He was a Congressman when Chenna Reddi was the Chief Minister. Why did you give him ticket in your party? I know he was the Law Minister in Chenna Reddi's Government. Seventy to eighty per cent of the MLAs of the Telugu Desam came over from the Congress. Satyanarayan Reddiji may hear with me. Several of them came over from the Congress. Therefore, if you say that Bhaskar Rao was evil, he was your evil, not ours. And if Ram Lal was unwise, there is an answer already.

DR. YELAMANCHILI SIVAJI: At every time, people have to come to the streets for the act of the Government.

SHRI HANS RAJ BHARDWAJ: That is your method. Our method is constitutional. People answer in the elections. (Interruptions). Please, let us not enter into arguments. We are not contesting an election here. I am making a statement for your kind consideration. The Governor's action is under the Constitution. Wherever the Governor has acted wrongly or grossly unconstitutionally, he has not stayed as Governor. That is my humble submission before the House. It is the people who govern this country indirectly because when people feel something wrong has been done, there is countrywide resentment over it and that is the success of the democracy in India. If a palpable, wrong decision is taken on any issue—I have been in political life like you—I have seen that people have answered. Now we are mature as a nation. Please don't say time and again that we are that bad stuff in the country, we are that bad political guys in the country, that we are not fit to govern this country. This is a country which has fully matured as a democracy. We are proud of it. We have shown time and again that the biggest political personality can be defeated and can be returned to power, as Malaviyaji says, if you run the affairs in the Janata style. Elections are the

only answer. If you grab power by manipulation, that will not be accepted by the people. If somebody did something wrong, he paid the price later on and people answered. I will not name individuals. I am only giving an answer to several instances which my friends from this side gave. But let us not blame the institutions. The Constitution was made by the founding-fathers with the consideration that this country as a whole must survive, this nation as a whole must survive and the States which we have constituted must flourish. Under the scheme of the Constitution, they have given Lists I, II and III. Therefore, the areas are demarcated. If you go into List II, you should come to the Council of States. Article 249, or you have to amend the Constitution which is a very difficult procedure. All these things are well-defined. But our lopsided vision or consideration or thinking makes us completely blind to the pragmatic situation of the time. You may blame the Governor. What happened in 1977? The moment there was a change of the Congress Government, several Governments were dismissed by these Governors. Did you mention those instances now in your speech? I was surprised, we went to the Supreme Court and the Supreme Court gave a ruling in Union of India v. State of Rajasthan. Kindly read it. They gave a ruling. The issues were decided and those decisions are very vital. I am deriving my submissions before this House from that very case, especially Justice Bhagwati's observation that when the people answer a situation, we must also accept them. Therefore, people as a whole are relevant. People as a whole are the only beneficiaries of the country's programmes and policies. Our party, other political parties, all of us brought the anti-defection law. All of us, in this House and in the other House, agreed. But is it not a fact that today several political personalities have challenged that very law, that it is a bad law? I tell you, important leaders from the Opposition

have challenged it and they are very happy if some of our party people defected, they are saying they are the best leaders in the country today and we are nothing. Is this not true? What is the standard of your public life? What are you teaching us? This very House has passed that Bill unanimously. What is the occasion to challenge it? Because you do not want that the Congress Government should survive its full term, somehow or other there should be defections and you feel very happy if some defections take place. Should we not honour the spirit of what we ourselves did in the House? The Fiftysecond Amendment was a unanimous decision of both the Houses of Parliament. Therefore, I am only submitting that political opportunism is the biggest danger whether the Governor is involved or the Chief Minister is involved or any political party is involved or this or that is involved. We must adhere to these principles and we must be sincere to what we have passed in the House and we must be sincere to the Constitution, to the oath that we take in the name of the Constitution and the people. Therefore, if there is a decision taken by a constitutional authority, that decision must be accepted. If it is a palpably or grossly wrong decision, the country, the people, will answer it. Whoever is at the back of that decision, the people will answer that authority. I am not suggesting for a moment that this country should go to the streets. This is not the democratic way of doing things. If somebody wants to go to the streets, then he does not understand the Constitution. We have to survive as one nation and this administration is only for the sake of convenience of governance. It is not to derive power for selfish ends. We have seen in one State there is a Government by one party, in another by another party, almost seven or eight States have been under the rule of different Opposition parties. They had their problems there. I do not deny it. They have problems because their philosophy

is different and our philosophy is different, as a ruling party each has its problems on various issues like financial arrangements and administrative arrangements. There is a separate Commission for it and it will go into it. If there is any problem, there is always a method to solve it. You can have a dialogue. After all, nobody alien is ruling the country at the Centre. We are all brothers. We will not go into any controversy to such an extent as to say 'abolish the Governor's post'. Tomorrow you may say 'abolish this', 'abolish that' institution. Wherever you find the Congress in power, you may demand 'abolish that'. You may even say 'abolish the High Courts', 'abolish the Supreme Court', if they are not to your liking. No. Our democratic institutions must be strengthened and nurtured and we should create an atmosphere where the institution remains healthy and in the service of the nation, in the service of the people in whose name you take the oath. Therefore, I am not subscribing to this philosophy that it is entirely the role of the Governor that has been wrong. Politicians have also been wrong. You mentioned the case of Haryana. What did the Opposition leader do? He caught hold of the collar of the Governor. Was he exhibiting a sense of civilised society? Certainly not. (Interruptions). I am not naming any person . . .

DR. YELAMANCHILI SIVAJI: I said Choudhury Charan Singh admonished Devi Lal at that time.

SHRI HANS RAJ BHARDWAJ: I am only drawing a comparison. If that action was wrong, was that action appreciated?

SHRI N. E. BALARAM: Do not quote Haryana at all. Quote some other areas.

SHRI HANS RAJ BHARDWAJ: O.K., O.K.

SHRI N. E. BALARAM: Why 'Aya Ram and 'Gaya Ram'?

SHRI HANS RAJ BHARDWAJ: All right. Sir, I feel that the power of appointing the Governor is with the President and within the scope of the Constitution, the President is the competent person because he appoints the Governor who holds office during the pleasure of the President. Therefore, there is no necessity to have a provision for impeachment.

In view of this, Sir, I would like to request the honourable Member to withdraw his Bill.

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): Now, there is a Message from the Lok Sabha.

MESSAGE FROM THE LOK SABHA

Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1988

SECRETARY-GENERAL: Sir, I have to report to the House the following message received from the Lok Sabha, signed by the Secretary-General of the Lok Sabha:

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose the Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1988, as passed by the Lok Sabha at its sitting held on the 4th November, 1988."

Sir, I lay the Bill on the Table.

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): The Salary, Allowances and Pension of Members of Parliament (Amendment) Bill, 1988, as passed by the Lok Sabha, will be taken up for consideration today at 5.00 P.M.

SHRI N. E. BALARAM: Sir, it is not on the agenda... (Interruptions) It is not on the agenda.

THE MINISTER OF STATE OF THE MINISTRY OF FOOD PROCESSING INDUSTRIES (SHRI JAGDISH TYTLER): Sir, he should be happy about it.

SHRI N. E. BALARAM: Sir, it is not there on the agenda today.

THE VICE-CHAIRMAN (SHRI B. SATYANARAYAN REDDY): The Chairman has permitted it.

Now, Mr. Chitta Basu will reply.

CONSTITUTION (AMENDMENT) BILL, 1987—(INSERTION OF NEW ARTICLE 156A)—(Contd.)

SHRI CHITTA BASU: Sir, as a matter of fact, I have spoken about the amendment when I was moving it on the last occasion.

Sir, as the Minister and many other Members have taken a lot of time on this and since I am also interested to see that one of our colleagues, Sri Satya Prakash Malaviya, is able to move his Bill, I should not like to discuss much about my Bill. Only one thing I want to make clear and it is this that the arguments that have been advanced are not convincing. The only point on which this Bill has been brought forward is the accountability of the Governor and there is no provision in the Constitution which safeguards the concept of accountability of the Governor. My only object was to see that a provision is made for having some accountability on the part of the Governor. That is all.

SHRI HANS RAJ BHARDWAJ: Sir, I have already mentioned that this power to appoint the Governor resides with the President and there is no need for any provision for impeachment because his office is not an elective one.