

श्री रामेश्वर सिंह : (उत्तर प्रदेश) : मेरा व्यवस्था का प्रश्न है। कल हम लोगों ने अतुले का सवाल उठाया था कि उस पर बहस हो ... (व्यवधान)

श्री उपसभापति : वह तो खत्म हो गया। उस पर नहीं और कुछ कहिये। वह बहस खत्म हो गयी। उस पर बहस की जरूरत नहीं है। आप बैठिये। (व्यवधान)

श्री रामेश्वर सिंह : लोक सभा में स्टैंट-मेंट दिया है ... (व्यवधान)

श्री शिव चन्द्र झा : (बिहार) यहां भी कम से कम स्टैंटमेंट दें।

श्री उपसभापति : पहले इनका सुनिये। He is on a point of order.

श्री रामेश्वर सिंह : कृपा करके हमको बताइये कि उस पर आप क्या कर रहे हैं?

श्री उपसभापति : आप बैठ जाइये, आपने कह दिया है।

श्री शिव चन्द्र झा : मेरा पाइंट आफ आर्डर है ... (व्यवधान)

REFERENCE TO THE LAW AND ORDER SITUATION IN KARNATAKA

SHRI B. IBRAHIM (Karnataka): Yesterday I made a Special Mention on the situation in Karnataka. I mentioned that firing took place and nearly ten people have died. Even yesterday the same thing happened again and several people have died, especially minority community people. I request the Central Government to come to the rescue of the minorities in our State and to make a statement on the subject because we do not have security in our state.

श्री शिव चन्द्र झा (बिहार) : मेरा कहना है कि लोकसभा में यह मंत्री जी ने स्टैंटमेंट भी दिया है एंडी करप्शन एक्ट को अमैंड करने वाली बात को लेकर। इसीलिये आप कम से कम इनका बक्तव्य यहां करवा दें ... (व्यवधान)

Public Importance

SHRI H. HANUMANTHAPPA (Karnataka) : Sir, I support my colleague, Mr. Ibrahim. The people there have lost confidence in the local police there. Everyday they are killing people. Therefore, the Central Reserve Police should be sent there to tackle the law and order situation there. (Interruption)

MR. DEPUTY CHAIRMAN: Order, order, please. Now, we shall take up the Calling-Attention Motion. Yes, Mr. Era Sezhiyan.

CALLING ATTENTION TO A MATTER OF URGENT PUBLIC IMPORTANCE

Resolution passed by the Legislative Assembly of Andhra Pradesh recommending abolition of the Legislative Council of that State

SHRI ERA SEZHIYAN (Tamil Nadu): Sir, I beg to call the attention of the Minister of Law, Justice and Company Affairs to the resolution passed by the Legislative Assembly of Andhra Pradesh recommending abolition of the Legislative Council of that State and the Government's reaction thereto.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI JAGANNATH KAUSHAL): R'T. Deputy Chairman, Sir, according to the communication dated the 7th April, 1983, received from the Chief Electoral Officer and Principal Secretary to Government of Andhra Pradesh, the Andhra Pradesh Legislative Assembly passed on the 24th March, 1983 a resolution under article 169 of the Constitution regarding the abolition of the Legislative Council of the State. The resolution which was passed by the Assembly, as stated in this communication, reads thus—

"Resolution

The Legislative Assembly of the State of Andhra Pradesh resolves that the Legislative Council of the State be abolished."

A request was also made in this communication to the effect that immediate action might be taken "to undertake legislation under article 169 of the Constitution providing for the abolition of Andhra Pradesh Legislative Council" in pursuance of the said resolution. The resolution was passed by the majority provided for in article 169(1) of the Constitution and it has the effect of conferring on Parliament the requisite competence to enact a Bill for the abolition of the State Legislative Council without having recourse to the procedure for amendment of the Constitution provided for in article 368 of the Constitution.

2. The House was informed on the 22nd August, 1983 in reply to Unstarred Question No. 2747 by Shri B. Satyanarayan Reddy that the Government had received the resolution. In reply to Unstarred Question No. 2947 and 2949E by the same Member, the House was informed on the 19th December, 1983 that Government had received the resolution as also certain communications on the subject and that the matter was under consideration. More recently, on the 27th February, 1984, the House was informed in reply to Unstarred Question No. 110 by Prof. Sourendra Bhattacharjee and Shri B. Satyanarayan Reddy that Government had not found it possible to agree to the proposal for undertaking legislation for abolition of the Legislative Council of Andhra Pradesh.

3. The decision of the Government that it had not found it possible to agree to the proposal for undertaking legislation for abolition of the Legislative Council of Andhra Pradesh was communicated by me to the Chief Minister of Andhra Pradesh through my letter dated December 31, 1983. In this letter I also pointed out that the Government of India had come to its conclusion after carefully considering the matter.

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4. The his Lory and wording of article 169 of the Constitution?i leave no scope for doubt with regard to the position that the initiation of any legislation by the Government for the abolition or creation of a State Legislative Council in pursuance of a resoiau--Hon passed by a State Legislative Assembly under article 169 and the passing of any law for the purpose by Parliament cannot be regarded as a mandatory carollary of the pissing of such resolution. The article vests a discretion in Parliament as is clear from the word "may" occurring therein with regard to the passing of a law thereunder. Government in initiating any legislation for seeking the exercise by Parliament of the discretion vested in it under the article is under a duty to move Parliament for the exercise of its discretion only in a case which, in the opinion of the Government, is a fit case for seeking the exercise of the discretion in favour of giving effect to the resolution.

5. Article 169 is based upon section 308 of the Government of India Act, 1935. Whereas section 308 of the Government of India Act casts certain specific duties on the executive, article 169 does not cast anv auch duty. The provisions contained in article 169 of the Constitution were originally inserted in the draft Constitutions by the Const'tuent Assemb'v thr^iiTh, an amendment as article 148A. When arcicle 148 of the draft constitution (which corresponds to tic^e 168 of the Constitution as finally adopted) was discussed in the Constituent Assembly, <ne of the Members, Prof. K. T. Shah, moved

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the resolution of a State Leoislature for changing it into a unicameral legislature binding on Parliament. This amendment was not accepted.

6. T^ th's connection M 's nprHnent to mention that even +h° speeinel procedure which was envisaged by article 304(2) of the draft ConstUut'on with regard *inter alia* to the change in the number of Houses of a State

[Shri Jagannath Kaushal]

Legislature did not seek to make it mandatory for Parliament to ratify a Bill passed by the State Legislature on the subject. The position has also been made clear in the course of a state Bill made in Lok Sabha on the 8th November, 1970 by the then Law Minister. The statement was with re-

ference to the two questions posed by the then Speaker of Lok Sabha. The second of the questions was &s to whe-

whether after they receive the resolution, the Government would be bound to bring forward a legislation or it would be optional with them. It was stated in reply to this question that it would be optional. In actual practice also, as would be clear from the facts, in the case of only three of the six resolutions which were passed earlier under article 169 of the Constitution, Government had taken steps for initiating legislation.

7. Government is satisfied that the reasons which weighed with Parliament in 1957 in giving effect to the resolution passed by the Andhra Pradesh State Legislative Assembly in December, 1956 for the creation of a Legislative Council for the State continue to hold good and Government is unable to find any valid justification for the abolition of the State Legislative Council now.

SHRI ERA SEZHIAN: Mr. Deputy-Chairman, the question that was raised before this House pertains to very serious aspects. We fear there is a violation of the spirit and letter of the Constitution, article 169, which provides for the abolition or creation of a second Chamber in a State. Sir, the Central Government, by taking on its own decision on the issue whether a second Chamber should be abolished in a State or not after a Resolution under article 169 has been passed by the House or the Lower Chamber in the State, is abrogating to itself the powers and functions of Parliament. This is going to affect not only the functioning of this Parliament and its

powers but also affects very seriously the functioning of the basic federal structure in this country. The hon. Minister was pleased to quote something. He referred to the Constituent Assembly debates. I went through the Constituent Assembly debates where Dr. B. R. Ambedkar, while moving this article 14b—and after 148 A was introduced in this House and discussed on the 30th July 1949—said;

"The procedure adopted here for the creation and abolition is that the matter is really left with the Lower chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of the Second Chamber or in the creation of the Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution in order to obviate the difficult procedure which has been provided in the draft Constitution for amendment of the Constitution."

Therefore, Sir, article 169 was specifically passed so that it will not be deemed to be a constitutional amendment. Once the lower chamber of a State passes a resolution by two-thirds majority of those present and voting then nothing stands between the resolution and the Parliament. The Minister says here in the statement, I do concede on page 3 in para 4 "The article vests a discretion in Parliament as is clear from the word 'may' occurring therein with regard to the passing of a law thereunder". Yes, there is discretion for the House, not discretion for the executive, not for the Central Government. It is for the House to decide. The discretion vests with the House, with both Houses of Parliament, not with the executive. Here he assumes that because there is the word 'may', there is discretion for Parliament and therefore the discretion disposes on the executive, the executive can take a decision, circum-

venting or usurping the powers of this House. No.

Basu's Commentary on the Constitution of India puts it very correctly and clearly. Commenting on Article 169—abolition or creation of the second chamber in a State—he says: "Though the Constitution itself provided a second chamber in six States under Article 168(1) and left the others to be unicameral, it made it possible either to abolish the second chamber in any of the above six States or - reate a second chamber in any of the remaining States without the necessity of going through the process of a constitutional amendment. The only requirement for such a change is a resolution passed by a special majority of the lower house of the State legislature itself as provided in clause (1) of the present Article 169 followed by a law made by Parliament in the ordinary course of legislation making consequential changes as may be necessary." He also says, "The word 'may' in clause (1) shows that Parliament is not bound to make such a law even if such a resolution is passed by the legislative assembly of the State concerned." "Apart from that, the court shall have no power to compel Parliament to perform its constitutional duty, etc." Therefore, this clearly brings out that Parliament has got the discretionary power and Parliament alone can put in the statute book a resolution passed by the Assembly, but not the executive. Now by this process the Parliament is prevented even if the Parliament wants to approve the resolution, by this process of not placing it before both the Houses of Parliament.

The word 'may' gives a discretion to Parliament, not to the executive. Between the resolution passed by the Assembly and Parliament the only requirement for such a change is this: The legislative assembly should pass a resolution; the Houses of Parliament should approve that resolution by a Bill. Between these two if the

executive comes in the way, it means they are usurping Parliament's power and are preventing Parliament from exercising its power. I, therefore, appeal to you. What will happen if the Government refuses to bring forward a Bill? What will happen? I cannot go to the court. The citizen affected cannot go to the court because the court cannot ask Parliament to do a thing. Parliament itself should recognise its own powers and assert itself. Here is a provision of the Constitution wherein discretionary powers are given to Parliament, to both Houses of Parliament. But the Government, (the executive, comes in the way, does not allow Parliament to have its way. In the earlier one, for example, I do not know what are the valid reasons. I am not concerned with that one. They may have their own valid reasons. The House is not concerned with that. The House should be convinced. You can come with a Bill and put all your argument before the House and convince the House, but You cannot usurp the powers of the House. Probably with your majority, your position, you can have a Bill passed by both Houses of Parliament or rejected by both Houses of Parliament. I am not against that. But you are usurping the powers given to Parliament under Article 169.

The power rests only with this House and the lower chamber of the State Legislature. Once the lower chamber passes a resolution there, the resolution directly comes to this House and nobody else can usurp this. See the alacrity with which they acted on two occasions earlier, the alacrity, the urgency with which this Government, that is. the Government of India, acted. In the year 1969 the West Bengal Assembly passed a resolution on 21-3-1969. The Bill was introduced—the Bill was dated 9-5-1969—in Lok Sabha on 13-5-1969 and passed in the same Session.

And the Bill was passed on 16th May 1969. Within two months, the

[Shri Era Sezhiyan] Bill was passed. In case of the Punjab Legislative Council Abolition Bill, the Resolution was passed on 24th April 1969; the Bill was dated 15th July 1969 and it was introduced in the House on 25th July 1969 and passed in the November session. But here, there is a Resolution passed by the State of Andhra Pradesh on 24th March 1983—almost a year now—and on 31st December 1983, they have written to the State Government. I would like to know where exactly has this Government got the powers to write to the State Government. This clearly goes against Article 169. They say: "Government of India have carefully considered the matter. They have not found it possible to agree to the proposal for undertaking legislation for abolition of the Legislative Council." This is a clear usurpation of the power.

While passing the West Bengal Abolition of Council Act, in the year 1969, the hon. Minister of Law and Social Welfare was Mr. Govinda Menon, and he said in the Lok Sabha: "The Resolution of the West Bengal Assembly with two-thirds majority—In this case Unanimous—is only the Conditions' precedent which will enable us to have a Parliamentary Bill under Article 169, but for that, it would have been a Constitutional amendment, because by this Resolution, this House vests authority to pass that Bill, but the decision is of this House." Let it be clearly understood. Therefore, the Minister of Law put it very squarely and clearly on the records that the decision can be taken only by the House, and not by the Government.

In case of Andhra Pradesh, on 24th March, out of 211 members present in the House, 210 members have supported the Bill; only one has opposed. I am not going into the merits whether the State should have a second chamber or not; I may have my own opinion; Mr. Jagdish Kaushal can have his own opinion; Government may have its own opinion but Parliament should

express its opinion. In this case I would like to know how the Government took a decision usurping clearly the powers given under Article 169—a decision which could have been taken only by both Houses of Parliament or by Parliament itself and there was no other option but to bring a Bill before the House. The House may pass it or reject it; that is another matter; they have the majority. Second thing is, why the matter was not placed before us? Such a long time was taken; More than nine months were taken to communicate it, without making this House aware of it. The House is primarily and basically interested; these are the powers of this House, an authority of this House which has come to be eroded. I would like to know from the hon. Minister as to why he has abrogated and usurped the powers of Parliament given under Article 169 and why was the matter unilaterally decided in a very atrocious way by the Government.

SHRI K. MOHANAN (Kerala) : Mr. Deputy Chairman, I fully disagree with the statement made by the hon. Minister...

SHRI JAGANNATH KAUSHAL: 'Disagree' was good enough.

SHRI K. MOHANAN: That is one hundred per cent disagreement. His statement was technical. Not only that, it was against the letter and spirit of the Constitution itself. I would like to approach this issue not from a technical angle but mainly from a political point of view.

AN HON. MEMBER: Moral. SHRI K. MOHANAN: Moral of course, because it involves the question of the relationship between the Centre and the States. And it involves the question whether this country is a federal one or not. Therefore, Sir, in this context, this is relevant. I would not like to enter into a discussion whether this upper House is something useful or superfluous and I do not think, at this juncture, it is so relevant. But in fact, I would like to point out that there was from the very beginning, a controversy among the Constitution-makers, whether the State of a Union

should have a unicameral or a bicameral legislature. The authors of the Act of 1955 had divided the provinces of the country into two categories. Some of them, have both the Houses and some of them have only one House. Following this precedent, the Constitutional Adviser recommended in his memorandum to the Constituent Assembly—

"There shall, for every province, be a provincial legislature which will consist of the Governor and the Legislative Assembly. In the following provinces, there shall, in addition, be a Legislative Council."

He did not name the provinces which would have a bicameral legislature, but left it to be decided by the representatives of the provinces themselves. He wrote, again I quote:

"The question whether there is to be an Upper Chamber or not in any province and if there is to be one, how it is to be constituted will probably be left to the decision of the representatives of that province in the Constituent Assembly."

Then, the Constituent Assembly agreed with the Constitutional Adviser and the Drafting Committee provided accordingly in the Constitution:

"(1) There shall be a legislature which shall consist of the Governor, and

(a) in the States of ...—two Houses.

He did not name the States—

(a) in the States of two Houses—

(2) where there are two Houses of the Legislature in the State, one shall be known as the Legislative Council and the other as the Legislative Assembly and where there is only one House, it shall be known as the Legislative Assembly."

In fact, even Dr. Ambedkar himself was not very enthusiastic about a second Chamber in the States. The

second Chamber in the States was being introduced, he said.

"...purely as an experimental measure."

And he said that there could be sufficient provision for amendment of the Constitution for getting rid of this second Chamber. These were Dr. Ambedkar's words in the Constituent Assembly.

With this clarification, Dr. Ambedkar moved his amendment saying that Parliament may, by law, provide for the abolition of the legislative Council etc. But in his amendment, the stress was given on this point. ... If the Legislative Assembly of the State passes a Resolution by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of the Assembly present and voting ...; the stress was given on this point. It was specially mentioned. It was completely left to the concerned Legislative Assembly to decide whether they will have a second Chamber or not. This is my point. Even on the recommendation of the Assembly, Parliament was to be empowered to create or abolish an Upper House. There was also a provision for the consent of the Parliament in that amendment. But in spirit, it was obligatory on the part of Parliament to give assent to the decision of the people of a particular State. Sir, the Minister has mentioned the word 'may'. Yes, it is there in the Constitution. But it was the spirit of the amendment that it should be left to the concerned Legislative Assembly of a particular State to decide whether they should have a second Chamber or not.

An HON. MEMBER: 'May' is 'may'.

SHRI K. MOHANAN: 'May' means 'shall' in many cases. I would like to quote Dr. Ambedkar again. In the discussion, he replied:

"The procedure adopted here for the creation and abolition is that the matter is really left with the

[Shri K. Mohanan]

lower chamber which by a resolution may recommend either of the two courses that it may decide upon."

These are the words of Dr. Ambedkar. So, throughout the discussion and the reply of the founding fathers of the Constitution and the Constitution Advisers, every where it was clear that it was left to the people of the particular State to decide whether a second chamber is necessary or not. (Time bell rings). I will take little more time because this is a very important issue.

MR. DEPUTY CHAIRMAN: You have made very good points.

SHRI K. MOHANAN: Now, Sir, so far we have followed the spirit of the discussion of the Constituent Assembly and many of the upper houses were abolished on the recommendation of the Legislative Assemblies without any problem, but in the case of Andhra Pradesh the Union Government has rejected the recommendation even without discussing it in this House. My esteemed colleague, Mr. Era Sezhiyan, has already made this point and so I will not go into it any more. But I have no hesitation in saying that this was done purely on partisan and political considerations, to embarrass the Government of Shri NTR in Andhra Pradesh, which is a non-Congress (I) Government. It is your declared policy to play all kinds of n against the non-Congress (I) Ministers in this country. Shri NTR is not acting at the behest of your know that. If Shri NTR gets prepared to support you and your authoritarian way of dealing with the things, if he is prepared to compromise with you, I am sure you will agree to the recommendation of the Andhra Pradesh Legislative Assembly.

Sir, it is clear from the provision in the Constitution itself that the founding fathers of the Constitution have given special emphasis on the will of the people of the particular State.

1 That is why it has been written that if a State passes a resolution, etc, I am not elaborating that point. This is not a technical issue, but it gives rise to the question of Centre-State relations. The present Constitution itself gives paramount authority to the Union Government over the States. Even with the enormous powers vested with the Union Government in the Constitution, it is not satisfied. It has a continuous greed to encroach upon the minimum powers as are given to the States in the field of legislation, administration, finance, etc. The Andhra issue is one of the glaring examples. There are three major areas of Centre-State relations. The first is the area of Legislative authority, the second is the financial authority and the third is planning. As far legislative authority of the State Legislatures is concerned, there is a provision in the Constitution for sending the Bill passed by the State Legislature for the consideration or assent of the President. The Bills which are included in the State list are passed by the elected representatives of the people of the State. If any provision of the Bill is violative, the judiciary is there to look into it. Then, what is the justification for the executive at the Centre to interfere in the name of the President?

No justification, Sir, During the conference of the opposition parties in Kashmir, these parties have adopted a resolution in Srinagar. In addition 1 things they have demanded, I quote: "The State Legislature must be supreme in the sphere of legislation on matters pertaining to the State list and no interference of the State or the centre or the Governor should be allowed on any account in the case of ' which affect the powers of the High Court".

The present issue involves the question of Centre-State relations and that is why I am quoting all this. This demand is relevant in this case also.

When Shri Ambedkar moved his amendment regarding the future of the

Upper House in the States it was crystal clear that it was left to the concerned State to decide upon this matter. Here in this case also neither the Union Executive nor the Parliament has any moral or legal right to reject the recommendation of the Legislative Assembly because it is against the letter and spirit of the Constitution. So in this regard I once again urge upon the Government that on this issue there is an imminent need for reconsideration of the Centre-State relations on democratic basis and with a spirit of federalism.

Now I would like to ask my questions :

My first question is whether the Union Government accepts the principal that creation or abolition of the Upper House in the State is entirely an issue which should be decided according to the will of the people of that State. My second question is, whether the Central Government considers that a Second Chamber is a must in the States. And if so, what is the justification for the same?

Thank you.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): Mr. Deputy Chairman, Sir, as the Minister himself has stated the Legislative Assembly of Andhra Pradesh has passed the Resolution for the Legislative Council on 24th March, 1983 and the same has been sent to the Central Government requesting it to place it before Parliament. So far as article 169 is concerned, it is very clear; and I will read the relevant provision. This article is regarding "Abolition or creation of Legislative Councils in States". It says:

"Notwithstanding anything in article 1(38) Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the state passes a reso-

lution to that effect by a majority of the total membership..."

MR. DEPUTY CHAIRMAN: Don't read the whole of it. Every body knows it.

SHRI B. SATYANARAYAN REDDY: So this condition of article 169 has been fulfilled by the Andhra Pradesh Legislative Assembly. It is the will of the people of Andhra Pradesh to have no State Legislative Council. That has been made very clear. So the decision of the Union Government or the Law Ministry not to accept the Resolution of the State Assembly amounts to disrespect of the people of Andhra Pradesh and to the Legislative Assembly of Andhra Pradesh. I would like to warn the Law Minister and also the Union Government that the 6 crore people of Andhra Pradesh are not going to forgive them. If you disrespect the will and wishes of the people of Andhra Pradesh, they are not going to keep quiet; they will simply give a fitting lesson to you when the occasion comes. I am giving this warning.

Sir, earlier also there were certain instances where the West Bengal and Punjab Assemblies passed such a Resolution for abolition of State Council. Those Resolutions were given effect to, they were placed before Parliament and Parliament approved them. So, there is no reason why a similar Resolution adopted by the Andhra Pradesh Assembly is placed before Parliament. The reply which the hon. Minister gave here earlier while answering questions is that it is under process; twice he said it. The correspondence between the State Government and the Union Government also shows that number of times he stated in his letters to the State Government—to the Chief Minister, Mr. N. T. Rama Rao—that it is under process. At no time he stated that they are not considering it. Always he said that it is under process. After nine months he has come with a two-line letter addressed to the Chief Minister, stating that the Government of India had carefully

[Shri B. Satyanarayan Reddy]

considered the matter but they have not found it possible to agree to the proposal for undertaking legislation for the abolition of the Legislative Council in Andhra Pradesh. This is the letter from the Law Ministry to the Chief Minister of Andhra Pradesh, Mr. N. T. Rama Rao. But no rule or no reason has been given in that letter as to why the Government of India has not found it possible to agree to the proposal for such a legislation. So, no reason has been given. If the Union Government or the Law Ministry thinks 'that they can suppress a Government in a State which the people have elected, a Government which they brought through their verdict and wishes can be suppressed. Is it possible? I want to know whether the Union Government are going to discriminate between a Congress Government and a non-Congress Government. It is the will of the people. This is a democracy and people have got the right to have a Government which they want. The people of Andhra Pradesh have chosen a Government which they wanted and they want to have the necessary changes and reforms which are needed for the development of the State and the country as a whole. The people of Andhra Pradesh found that it is not necessary to have a Legislative Council. Therefore, I request the Union Government and the Law Ministry to give careful consideration to the matter and respect the wishes of the people of Andhra Pradesh. Otherwise, you will not be forgiven.

MR. DEPUTY CHAIRMAN: Mr. Lai. K. Advani. (interrupted) j.....

SK SHRIDHAR WASUDEO DHABE (M -a): Sir,...

MR. DEPUTY CHAIRMAN: Mr. Dhabe, you also want to speak?

S^ SHRIDHAR WASUDEO DHABE: Mr. Shariq was not there; so I give him time. Now he is here.

MR. DEPUTY CHAIRMAN: If a Member has a question, he should be

there... (Interruptions) ... All right Mr. Shariq. Put only additional questions. Please do not repeat the questions.

श्री शरीफुद्दीन शरीफ (जम्मू और काश्मीर) : जनावेवाला, हमारे सामने इस वक़्त यह रिजोल्यूशन जैसा बहस है जो आन्ध्रप्रदेश के कानून सचिवालय ने भारी अक्सरिडत के साथ पास किया और मुताबिक़ा किया है कि उस रियायत की लेजिस्लेटिव असेम्बली को एवालुएशन किया जाय। जहाँ तक जम्मूख़ियत के फंडामेंटल्स का ताल्लुक है, भरकजी सरकार पर यह एक फर्ज आयद होता है कि वह वहाँ के आवास की ख़ाहिशत, असेम्बली के पासकुदा रिजोल्यूशन के एहतराम में उस रिजोल्यूशन को पार्लियामेंट के सामने लाकर पार्लियामेंट की मंजूरी ले। जनाव आनरेबल बजारे, कानून जो फरमाया है —

*In this letter, I have also point-it that the Government of India had come to this conclusion carefully considering the matter

यह बहुत बेग़ लफ़्स है। 'कंसिडरेशन' क्या है, उस के स्टैंडर्ड क्या थे, उस में किस चीज़ को कंसिडर किया गया, किस को मुताबिक़ा समझा गया, किस को गैरमुताबिक़ा समझा गया, इस बारे में इस स्टेटमेंट में कोई जिक़र नहीं है। और जब पंजाब और बंगाल में पहले ऐसा किया गया है तो इस बात में कौन सी रुकावट हो सकती है कि आज के इस रिजोल्यूशन को हम मान लें। अगर हम इस रिजोल्यूशन पर अमल नहीं करेंगे और उस राय का एहतराम नहीं करेंगे जो उस रियायत की तरफ़ से पार्लियामेंट को

गवर्नमेंट आफ इंडिया को आई है तो इस
इस का बाहर नियमों और पर भी नलत
तसल्लुस लिखा जायेगा और शाब्द लोग
यह सन्तर्भ में या कुछ लोगों को यह सन्त-
भान में कामकाज हो सकते हैं कि इस
मुम्तारी बात को नहीं माना जाता
है क्योंकि सरकार में कांग्रेस की सरकार
है और रियासत में तेलगूदेश की सरकार
है, निहाजा वह लोग नहीं चाहते कि अपने
मुखालिफ की राय को मान लें जिस के
लिए हमारी सरकार काफी बदनाम हो
रही है। तो मैं, जताबवाला, कोशल से
यह अर्थ कहूंगा कि वह इस बात पर
दोबारा गौर कर लें और अगर फिनकाये
इस में कुछ दिक्कतें हैं तो वह दिक्कतें
हाउस में रखने में कोई रुकावट नहीं
होनी चाहिए। और कैबिनेट और गवर्न-
मेंट लेवल पर जो बहस हुई थी उस की पूरी
कार्रवाई वहीं होनी चाहिए थी ताकि उसे
देखकर मेम्बर मुन्सिफ हो जाते और अपने
मुताबक से हट जाते। कांस्टीट्यूशन के
169 आर्टिकल में लिखा है कि गवर्नमेंट
को कंसिडरेशन का अधिकार नहीं है
अधिकार है तो पार्लियामेंट को है।
इस तरह इन इज्जतों की वजह से हमारी
हुकूमत बाइपास कर रही है कांस्टी-
ट्यूशन को भी और पार्लियामेंट को भी,
जो हमारी जम्हूरियत के लिए अच्छा नहीं
है।

इस सिद्धिअर्थ को दूर करने के लिये
एक और जरूरत भी हो सकती है मैं
जताब कौशन को बिदमत में एक मूतारिज
और भी कर सका हूँ अगर आप मुता-
सिल नहीं समझें और तेलगूदेश की
असेम्बली मुतासिल समझती है तो फिर
वह तसदार की बात हो जाती है और
फिर कैबिनेट एक विस्तर को करना चाहिये।
तो मते घर में अगर आप इन रिजि-
लेशन को फार कंसिडरेशन मुफ्रेम कोर्ट
को पेश दें, जहाँ आर्टिकल 143 मुफ्रेम

कोर्ट की राय इन पर तबका कर लें तो
यह गवर्नमेंट दूर हो सकती है। मैं
इसी पर जोर दूंगा और वजारे कानून और
मरकजी हुकूमत को नेकतीयती पर तब
तक मुवह्ला नहीं करूंगा अगर वह मेरी बात
तो तस्लेम कर लें। जय हिन्द।

[شوری شریف انڈین شاری]

(چمن و کشمیر) : جناب والا -
ہمارے سامنے اس وقت وہ ریزولوشن
زیر بحث ہے جو آدھرا پردیش کے
قانون سازان نے یہاں اکثریت کے
ساتھ پاس کیا اور مطالبہ کیا ہے کہ
اس ریاست کی اسمبلی اسمبلی
کو ایڈلٹس کیا جائے - جہانگیر
جمہوریت کے فلڈامینٹلس کا تعلق
ہے - مرکزی سرکار پر یہ ایک فرض
عائد ہوتا ہے کہ وہ وہاں کے عوام
کی خرابیہات اسمبلی کے پاس شدہ
ریزولوشن کے احترام میں اس
ریزولیشن کو پارلیمنٹ کے سامنے لائے
پارلیمنٹ کی منظوری لے
جناب آریمل وزیر قانون نے جو
فرمایا ہے

"In this letter, I have also pointed out that the
Government of India had come to this conclusion
after
carefully considering the matter."

یہ بہت "یک لفظ" ہے -
کونسلڈیشن کیا ہے - اسے اسٹیڈیڈ
کیا ہے - اس میں کس چیز کو
کونسلڈ کیا گیا - کس کو سامنے
سمجھا گیا - اس کو غیر سامنے
سمجھا گیا - اس بارے میں اس
اسٹیڈیڈ میں کوئی ذکر نہیں ہے -

[Translation in Arabic Script]

[شری شریف الدین شازلی]

اور جب پلنچاک اور بنگال میں ایسا کیا گیا ہے تو اس بات میں کون سی روکاوٹ ہو سکتی ہے کہ آج کے اس رزلوشن کو ہم مان لیں - اگر ہم اس رزلوشن پر عمل نہیں کریں گے اور اس رائے کا احترام نہیں کریں گے جو اس ریاست کی طرف سے پارلیمنٹ کو "گورنمنٹ آف انڈیا" کو آئی ہے تو اسکا باہر سیاسی طور پر بھی غلط تصور لیا جائیگا اور شاید لوگ یہ سمجھیں گے یا کچھ لوگوں کو یہ سمجھانے میں کامیاب ہو سکتے ہیں کہ اس لئے تمہاری بات کو نہیں ماننا چاہتا ہے کیونکہ مرکز میں کانگریس سرکار ہے اور ریاست میں نیلگو دیسم کی سرکار ہے - لہذا وہ لوگ نہیں چاہتے کہ اپنے مخالف کی رائے کو مان لیں جس کے لئے مرکزی - ریاستی کا فی بدنام ہو رہی ہے - تو میں - جناب والا کوشل سے یہ عرض کروں گا کہ وہ اس بات پر دوبارہ غور کریں اور اگر فی الواقع اس میں کچھ دقتیں ہیں تو وہ دقتیں شازلی میں رکھنے میں کوئی روناوت نہیں ہوئی چاہئے -

کیبنیٹ اور گورنمنٹ ایڈل پر جو بحث ہوئی تھی اسکی پوری کاپی یہاں ہوئی چاہئے تھی تاکہ اسے دیکھکر ممبر مطمئن ہو جائے اور اپنے مطالبہ سے ہٹ جائے

کانسٹیٹیوٹن کے ۱۶۹ آرٹیکل میں لکھا ہے کہ گورنمنٹ کو کنسٹیٹیوٹن کا اختیار نہیں ہے - اختیار ہے تو پارلیمنٹ کو ہے - اس طرح ان اقدامات کی وجہ سے ہماری حکومت بالی پاس کر رہی ہے کانسٹیٹیوٹن کو بھی اور پارلیمنٹ کو بھی - جو ہماری جمہوریت کو بچانے چاہتا ہے -

اس کفرتور ورسی کو دور کرنے کیلئے ایک اور ذریعہ بھی ہو سکتا ہے ... میں جناب کوشل کی خدمت میں ایک گزارش اور کر سکتا ہوں ... اگر آپ مناسب نہیں سمجھتے اور اور ٹیلگو دیسم کی اسمبلی مناسب سمجھتی ہے تو پھر یہ سرکار کی بات ہو جاتی ہے اور پھر فیصلہ کسی تیسرے کو کرنا چاہئے - تو میری رائے میں اگر آپ اس رزلوشن کو فائر کنسٹیٹیوٹن سپریم کورٹ کو بھیج دیں انڈیا آرٹیکل ۱۴۳ سپریم کورٹ کی رائے اس پر طلب کر لیں تو یہ غلط فہمی دور ہو سکتی ہے - میں اسی پر زور دیتا ہوں - اور وزیر قانون اور مرکزی حکومت کی نیک نیتی پر تب تک شہید نہیں کروں گا - اگر وہ میری بات کو تسلیم کر لیں - جے جے -]

SHRI LAL K. ADVANI (Madhya Pradesh) :
Mr. Deputy Chairman, Sir, I had expected a statement which would make the debate purposeful. But I am sorry that these four pages

do not convey to this House anything other than the constitutional position which is known. After all, these entire four pages could have been just compressed in one line that the Government does not agree with the proposal of the Andhra Assembly. If he had given us, enlightened us, as to why the Government does not agree, perhaps there could have been a purposeful debate. He could have told us that today in the Andhra Council the Telugu Desam does not have a majority whereas in the Assembly it has a majority and that, therefore, they think that it should not be dissolved.

For example, Telengana or this and that, so many arguments have been advanced earlier. I am sure he must have gone through the debate which took place in 1969 when there was a proposal to abolish the West Bengal Legislative Council or the Punjab Legislative Council. There were Members from the Congress Party itself, who opposed the legislation. From among the Opposition Members, the Swatantra Party was the only party which opposed it. All other parties in the Opposition including my party—I was in the Bharatiya Jana Sangha at that time—supported the resolution for abolition of the Punjab Legislative Council or the West Bengal Legislative Council. And I would say that the arguments put forth or the reply given by the Government at that time in 1969 was perfectly in accordance with the Constitution. It was in symphony or in conformity with the spirit of the Constitution.

After all, article 169 in which the Andhra Assembly has passed this Resolution, is a remarkably unique provision of the Constitution. There is no other article like that. It is an article of its own kind. After all, abolition of the Legislative Council which is an important institution, is a major change in the Constitution. It is a major alteration in the Constitution. And even then the Constituent

Assembly has provided that this would not be deemed an amendment of the Constitution in terms of article 368. Therefore, two-thirds majority is not necessary. For minor matters, even if you try to change a comma or a full stop of any other article, the Government must have to muster two-thirds majority in both the Houses of Parliament, whereas in this case the provision simply says that under article 169 if there is a resolution of the State Assembly, then, Parliament can by law enact and dissolve the Legislative Council.

Now, Sir, I am referring to the scheme of the Constitution-makers. It was a long debate which went on. You go through the Constituent Assembly debates. You go through the notes of the discussions that took place in the various meetings of the drafting committee. You will come to the conclusion that after all that discussion on what our Legislatures should be, whether they should be bicameral or unicameral, they came to a conclusion, and that conclusion was, number one, at the Centre, Parliament will be a bicameral legislature. On that there may be some differences. Those differences have continued right up to this day. But by and large it was agreed that it would be bicameral and so much so that not even the Lok Sabha can dissolve Rajya Sabha. If Rajya Sabha is to be dissolved, it has to be a virtual *hara-kiri* by Rajya Sabha itself. When Rajya Sabha resolves by two-thirds majority dissolution of itself, it will be dissolved. But in the case of the Legislatures in the States, the general opinion was that it was not necessary that there should be no Legislative Councils in the States. That was the general trend of the discussion. But ultimately they came to the conclusion not to take a very hard and fast line, that they should give scope for trial and that the scheme for trial should be given to the representatives of the States. This is the important part of the scheme accented by the Constituent Assembly. And

[Shri Lai K. Advani]
thereunder article 169 was framed and the creation of a Legislative Council as well as its abolition was left to the States right at the outset. Even then they were all called: all right, get together people from U.P.; get together people from West Bengal; decide whether you want to have a Legislative Council or you do not want to have a Legislative Council. In the beginning there were few Legislative Councils. Later on there were more Legislative Councils. Subsequently in 1969, the first test came for the Government. Sir, in 1969—the Law Minister is aware of it—there* was a Congress Government at the Centre here, and for the first time, some non-Congress Governments were formed in the States. For example, in West Bengal a non-Congress Government came into office. In Punjab a coalition between the Akalis and the Jana Sangh came into office. And all these parties had, in their manifesto, told the people, "If we come to power, we will abolish Legislative Councils". They went ahead with it. And the Government at the Centre was never committed to the abolition of the Legislative Councils. The Central Government was not committed to it; the Congress Party at no time in its manifesto had said, "If we come to power, we shall abolish the Legislative Councils". Therefore, they were perfectly within their rights to say, "We did not say that; we do not agree with this proposal". But they adhered to the spirit of the Constitution, and said, "In article 169 it has been stated that if the Assembly passes a resolution that the Legislative Council be dissolved, then whether we agree with it or we do not agree with it, we have to do it. Only because we are in power at the Centre or we have a majority at the Centre, we are not going to nullify the wishes of the people of the State." Sir. Mr. P. Govinda Menon was the illustrious predecessor of Mr. Jagannath Kulkarni. You read his entire speeches in the course of these debates: you read Mr Yunus Saleem's speech in

the Rajya Sabha itself where Mr. Arjun Arora had strongly opposed it. He said, "Arjun Arora may oppose it, but I am not concerned with the views of individuals. I may agree with him". In fact, Mr. Govinda Menon went on to say in the Lok Sabha, "I am personally of the view that all Legislative Councils should be abolished." He said, "But so far as I am concerned, I merely concern myself with the fact that under article 169 a resolution passed by the State Assembly is a condition precedent for enabling me to move this Bill which, I think, is in accordance with the wishes of the people of the State. I honour their wishes." I would like to know from the Law Minister what is the difference between 1969 and today. What is the difference? The only explanation that has been given is in the last paragraph of the statement :

"Government is satisfied that the reasons which weighed with Parliament in 1957 in giving effect to the resolution passed by the Andhra Pradesh State Legislative Assembly in December, 1955 for the creation of a Legislative Council for the State continue to hold good" That is the only explanation.

"...and Government is unable to find any valid justification for the abolition of the State Legislative Council now."

Sir, in this very paragraph the Law Minister has told this House that in 1957, the Assembly of Andhra Pradesh passed a resolution that a Council be created and, therefore, they initiated a Bill for the creation of a Council. The argument that has been given in the last paragraph is simply that the Assembly passed a resolution that a Council be created and, therefore, we created a Council. And today when the Assembly has passed a resolution that the Council be abolished, he gives no explanation why they do not adhere to it. Let him say, "Because it is a Telugu Desam Government there which does not see eye to eye with the Central

Government, therefore, we are not going to do it."

Sir, the Sarkaria Commission has been appointed to examine the entire gamut of Centre-State relations. It is my strong view and I would reiterate it today that fundamentally, basically the provisions of the Constitution are sound. There may be need for rearranging them, particularly in so far as financial powers are concerned. But in regard to administrative powers and, political relations, the provisions are, by and large, sound. In the implementation of those provisions the Central Government has gone so wrong from time to time that great strains and stresses have been created and everyone wants greater powers for the States, greater autonomy for the States. Right from Jammu and Kashmir and Punjab to the other parts of the country, there is a demand for greater autonomy. Sir, my submission is that in the interest of unity, we should adhere to, abide by, not only the letter of the Constitution but also the spirit of the Constitution. You are floating the wishes of the Andhra Assembly. I was not in favour of abolition of the Council. My party also in that Assembly itself did not support it. My party has several members in the Council there. So politically I stand to lose if the Council is abolished. When I view this matter—I viewed it in 1989 also and I do it today also—I do it from the point of view of purely constitutional propriety and correctness and also that the country's unity would be strengthened if the wishes of the Andhra Assembly, as reflected in the Assembly, are adhered to. I wish in his reply to the Law Minister would be more enlightening and he would explain to us the rationale of the Government's attitude on this question more fully. I have hardly any little time, but I would strongly feel that if at all a decision on the Andhra Assembly resolution is to be taken, it can only be taken in this House and the Government would do well to move a Bill and leave it free; even all Mem-

bers may be given a free vote, and if Parliament decides to reject the views of the Assembly, Parliament is certainly sovereign. Therefore, when you emphasise the word that the provision says 'may'—Parliament may abolish—I think that it is reading too much into the Constitution. Even Parliament would be inclined to uphold the wishes of the Assembly. But the Government in between cannot scuttle the Assembly's resolution and cannot even fail to move a resolution. This is a grave violation for which there is no explanation. I am not going into the privilege issue and all those issues that have been raised here. This is not the forum for it. I hope that in his reply the Minister would come forth more fully and elucidate and clarify Government's position clearly.

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): I am happy to hear my learned colleague, Mr. Advani, when he says that his own party members did not vote for the resolution that was passed by the Andhra Assembly. I would also remind him when that party gets a majority to what extent it can go to curb opposition. In 1977, when his party came to power, they summarily dismissed our party Governments in all the States. Was there any justification for that dismissal (Interruptions) What did they do in 1973? They dismissed all the Governments in which were in majority in the Assemblies, and everything was democratic. • (Interruptions) When it came to implement the resolution of this House—a resolution was passed in this House against their leader, and he as a Minister said, I am not going to implement that resolution of Rajya Sabha in which his own leaders, Mr. Rajji Desai and Charan Singh, were indicated. That is the type of propriety. Now coming to the constitutional aspect, there is a second House in J&K. Have they abolished it? Have they come forward with a piece of legislation, with a resolution, to us? (Interruptions)

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): What is the relevance of it here?

SHRI HANSRAJ BHARDWAJ: This is their face. Now I am reminding of another thing. When this actor assumed power in Andhra, people expected he will do something for the people. But he did not build anything. The Law Minister was right when he said th it we have taken the proper decision... (interruptions).

MR. DEPUTY CHAIRMAN: Please ce. Please sit down, Mr.

i. (Intern Mr. Reddy, -ten. Here you criticise the ig j arty. But where yo.u are the i g I arty you have to listen to the other si.le. Whatever you wanted to say, yov have said; now have patience and he ir the other side also. You are thf^d ruling party in the State.

1 P.M.

श्री ज इवा मोहन निवार (मन्त्र प्रदेश) :
उत्तरांचल प्रदेश में जिन कमलों की सेवा को
व दे में (अवधान)

श्री उत्तरांचल : सारी बातें कह दी,
नहीं तो बात कहते हैं। यदि बैठ जायें।

SHRI HANSRAJ BHARDWAJ: I speak of the realities. What were the decisions taken by the Chief Minister? After all this Government re presents the people of India. They have to take decisions in consonance with national unity and integrity. (In terruptions). When the Chief Minis ter demolishes all democra tic institutions, the Government of India has to, take a correct decision. Kindly see what decisions he has taken. First he decided to reduce the age of retirement of Government servants from 58 to 55 because we had taken the other decision. Then he said that all zila parishads should be abolished. Now Now he says that the Second Chamber should be abo lished. ... (Interruptions).

SHRI ERA SEZHIYAN: On a point of order. The Hon'ble Member can

say anything. But he cannot use those words while speaking about the Chief Minister.

MR. DEPUTY CHAIRMAN: When you criticise, some Members are restrained; others are not. I have already said. Do not take down those references which he has made to the Chief Minister.

SHRI HANSRAJ BHARDWAJ: People of this country must know where they are leading the country today. Whoever is opposing us is approached, throwing the ideology to the wind. Any Party opposed to the Congress (I) Party is approached. There is no question of ideology. Whether it is Lok Dal or BJP or Janata where is the commitment to ideology? All joined together. Now they are talking of Centre-State relations. I wish they could project their case before the Sarkaria Commission. We will welcome that because we have appointed that Commission. But they are not moving the Commission, but are moving Calling Attention Motions here. Do they forget that we have the majority of Members of Parlia ment from that very State?

Their will should be reflected in the decision taken by this Government. Are we not representatives of Andhra Pradesh? Do you want the MLAs to-be supreme and 42 MPs to be nobody? (Interruptions). Today they decide abolition of State legislature. Tomorrow they will decide not to send their representatives here. But instead, they will say; "We will send our Ambassadors to New Delhi". And these Ambassadors will be living in Andhra Embassy, Mysore Embassy and West Bengal Embassy. This is what they want. They want this country to disintegrate. That is why they have all come together.

Now coming to the Constitutional aspect, the Legislative Assembly can % certainly move a Resolution as they have done. But the legislative competence lies only with the Parliament. A decision cannot be dictated by the Assembly. I would, therefore, urge

*** Not recorded.

upon the Law Minister to treat their decision as *mala fide*. The Janata Party and the BJP have no following of the people there and that is why they are touching the feet of NTR.

SHRI R. RAMAKRISHNAN (Tamil Nadu): Mr. Deputy Chairman, this is a matter for very calm consideration. It is not a matter on which we should get emotional. This is a matter which, as my friend Shri Mohauan said, affects the powers of the SI *vis-a-vis* Parliament and the Central Government. It is very clearly enshrined in the Constitution that a State Assembly by a Resolution under articles 168 and 169 of the Constitution can seek abolition of the Legislative Council and the Legislative Assembly has passed such a Resolution. It also says, "Parliament may ____". It is a matter only for the legal and Constitutional experts to say whether "may" will also mean 'shall'. In my opinion, the word "may" has been interpreted by the courts as "shall". But, in this particular context, whether "may" will also mean "shall" is a matter for being settled by some courts or by some Constitutional authority. But the entire controversy is such a delicate one that it should be rather sorted out by direct talks either by the Government with the Chief Minister of Andhra Pradesh or by some other method rather than taking these issues to the streets or something like that.

Sir, during the discussion on this Calling-Attention Motion, I thought that larger issues like the bicameral system, which is there in our country, will figure in the debate because this is a matter which was discussed in detail by the founding-fathers of our Constitution and they have found that the bicameral system is eminently suited to our country and, therefore, our Constitution itself says that Parliament means both the Houses, that is, Rajya Sabha or the Council of States, and Lok Sabha or the House of the People. But, as far as this

issue of having a Council in the States is concerned, I think that this is a matter which should be best left to the State itself. There are several reasons why there should be two Houses and, Sir, as far as our State is concerned I would like to state that even our respected leader, the late Perarignar Anna, who was a Member of this House, had, no more than one occasion, expressed his opinion that there should be two Houses of Legislature. Even in the States, Sir, particularly in the local bodies, the teachers, graduates special interests, all these are represented, and whatever arguments will hold good for them will also hold for this. Farther, there are many other reasons also for having this which I will not enumerate in detail here. The din and bustle of debate in one House will give a different direction to the issue under consideration and a new interpretation will be given. But I think the House can be a protective armour for special interests and there are other reasons also. But one thing is there which is not clear from the honourable Minister's reply, particularly para 7 on page 4. I think the reply should have been more specific. There were certain reasons, in December, 1956 when the Andhra Pradesh Legislative Assembly passed a resolution or in 1957, when Parliament passed the Bill for the creation of the Council, for this and these were the reasons which he has mentioned for the creation of the Council. He has said that these reasons hold good. But he should have been more elaborate and. I wish his advisers had gone through the Constituent Assembly debates carefully and they would have been able to incorporate them in this statement here for the benefit of all the Members of the House. However, Sir, I would conclude by quoting what Sardar Hukam Singh, who was the Speaker of the Lok Sabha and one of the Members of the Constituent Assembly, said in regard to article 148. When it was introduced, he brought forward an amendment and I will just read out the relevant por-

[Shri R. Ramakrishnan]

tion which will settle the matter. He has said:

"Now, with this clause, I must point out, large discretions for the Parliament or for the party/'—I am quoting him, Sir— "...in power for using this procedure capriciously and at any time it likes is not warranted. Why should this be left to the whims and caprices of the party that whenever it sees that the Legislative Assembly is not- suitable to it, it may eliminate or abolish the Second Chamber and whenever it sees that it is desirable, or that the Legislative Assembly is not-prepared to co-operate with it then it may create a Second Chamber so easily as is sought to be done?"

Then, Sir, the most important thing is this which I would like to quote: "In my opinion, we should not allow these changes to be made so easily. Once a Second Chamber is created, it should not be easily abolished."

This is what Sardar Hukam Singh, as a visionary, had seen and had said.

Before concluding, Sir, I would like to say one thing. The people of Andhra Pradesh voted a certain Government to power and they have a very massive majority. Even there, I think, it is only because of some obstructionist tactics which were there in the Council that this has been resorted to and even the Congress (I) Members, who are in a majority in the Legislative Council there, have said, "We will not make it a House of permanent obstruction, but we will co-operate with you." And it is very clearly enshrined in our Constitution that where both the Houses do, not agree on an issue, by means of a joint sitting of both the Houses, it can be settled where the Lower House's will automatically prevail. But Sir, when this cooperation is coming forward, I think, perhaps there is reason for some rethinking on this issue. I think it is purely a matter for the people of Andhra Pradesh to consider.

On final point, which is a Wechaical point, I would like to submit. I would like to know whether the Resolution of the House was communicated by the Chief Minister only to the Government of India or whether the Speaker of the Andhra Pradesh Legislative Assembly also communicated it to the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha. Thank you, Sir.

SHRI INDRADEEP SINHA (Bihari): Mr. Deputy Chairman, Sir, the very fact that the Legislative Council has not been provided in the Constitution for all the States of the Union, this states that a Second Chamber or a Legislative Council was not thought to be an unavoidable part of the system, of parliamentary democracy at the State level. The State Councils with the Rajya Sabha because our Rajya Sabha is a Council of States. Here representatives of the States are elected and they constitute a Second Chamber of Parliament. Now, our States are mostly unilingual, of people speaking one language. There a Second Chamber like the Rajya Sabha is not all necessary. As a matter of fact, constitutional experience not only in our country but the world over shows that Second Chambers, unless they are constituted on the basis of giving representation to States— unless this basis is adjusted—Second Chambers tend to be conservative and they tend to delay or thwart progressive legislation. That is why, democratic opinion all over the world demands the abolition of the Second Chamber where a second Chamber is not considered necessary in the case of multilingual or multilingual composition of the State.

Now, going through the statement placed here by the Law Minister, and particularly listening to what he has just delivered by my friend, who has not thought it necessary to stay in the House to listen what others have to say, now they betray a

very, I should say, disquieting trend. The trend is that the ruling party does not want to tolerate any opposition. The trend is one of authoritarianism. My friend referred to the Janata Government dismissing State Governments even where those Governments had a majority in the Assembly. That was a wrong step. Our party opposed it even at that time. But may I remind my hon. friend on the other side that the first crime of this type, the first mistake of this type, was committed by them when they dismissed the Government of Kerala which had a majority in the Assembly of Kerala in 1959. In 1959 they dismissed it. They started this undemocratic practice. The Janata Government, unfortunately, followed suit. They should not have done so. And then in 1980 they did the same thing. Again, the Assemblies were dissolved. So this is a growing trend towards authoritarianism.

Now, in this case we are particularly concerned about Andhra Pradesh, because here the State Assembly has almost unanimously recommended the abolition of the Legislative Council. And if that Assembly were sovereign by itself, it would have abolished it. Now it is for Parliament to honour it, to respect the opinion of the State Assembly. And, I think, democratic, constitutional practice demands that the Government should not stand in between Parliament and the Assembly of Andhra Pradesh. The Government should place the matter before Parliament and let the Parliament discuss and take a decision. It is very unfortunate that the Government of India and the Law Minister have taken upon themselves the responsibility to reject that Resolution. (Time bell ring ■) It cannot be rejected this way. I dare say that the rejection by Shri KausV, is not the final rejection, and the final verdict in this case also will be given by the people of Andhra. Our friends on that side are saying that they have with them the majority of the members of the Lok Sabha elected from Andhra Pradesh. Tomorrow

they may not be there. If this is the attitude of the Government towards the people of Andhra Pradesh, towards the opinion of their elected representatives, towards the Government which they have put in power, then certainly the people of Andhra Pradesh will see that they do not send representatives to Parliament who will support such a wrong stand, such an undemocratic stand. So, I would request the Law Minister to give a second thought, to reconsider the issue. If it cannot be decided today, let him take time. Let him discuss it with the Prime Minister or with his Cabinet. But, in no case, the recommendation of the Andhra Legislative Assembly should be rejected.

MR. DEPUTY CHAIRMAN: Mr. Minister.

SHRI SHRIDHAR WASUDEO DHABE: I wanted to speak. The convention is that one person is allowed from each group.

MR. DEPUTY CHAIRMAN: I am following the practice.

SHRI SHRIDHAR WASUDEO DHABE: So far as the other group is concerned, they will be allowed. An additional person from this group is also allowed, as per the arrangement as there are different political parties in one group.

SHRI JAGANNATH KAUSHAL: Mr. Deputy Chairman, Sir, I have heard with great attention the remarks made and the observations made by various hon. Members. I am drawing the attention of the House to this matter that the Calling Attention was only for one purpose because Mr. Sezhiyan wants only one question to be answered. Shri Advani wants exactly that matter to be answered which Shri Sezhiyan does not want to go into. Various Members speak and they have their own manner of saying things. May I say what the Calling Attention is? The Calling At-

[Shri Jagannath Kaushal]

tention is to draw the attention of the Minister to the Resolution passed by the Assembly and the Government's reaction "thereto. That is why Shri Advani said that I could say, "Yes, know that a Resolution has been passed and our reaction is that we do if You think that that is the only way of drafting a statement, I do not mind.

SHRI LAL K. ADVANI: I wanted something, much more. But that is the precis of it.

SHRI JAGANNATH KAUSHAL: Let me start with what the first speaker Mr. Sezhiyan said. He said that I have only one question to

vex. He was not concerned with the reasons which weighed either with the Andhra Assembly or with the Government. He said, "No, I am not concerned." He said, "I want to ask only one question. Read the Article. The Article talks of Parliament only. Where have you come in?" This is the

• tion he wants me to answer. I thought I had given a categorical answer to this very question in the four pages which have been drafted by me and the answer is obvious and I repeat it. After passing the Resolution, the Chief Electoral Officer and the Principal Secretary of Andhra Pradesh approached us by saying. I have quoted it in • my statement. "It is requested that immediate action may please be taken to undertake legislation under Article H59." So, the Government of India has to undertake legislation. That is why the Government of India comes in. What my friend is suggesting simply passes my comprehension completely. The Government should undertake a legislation in which the Government does not believe. I should, draft a Bill with which I do not agree. I should

draft a Bill and bring it before Parliament saying. "Please kill this Bill. I am not agreeing." We have to be practical.

How are legislations brought before Parliament? The Legislative List says: "These entries confer power on Par-

liament to pass legislation." Now, how does a legislation come before Parliament? It is either by a non-official Bill or by an official Bill. Similarly, I have said so and you have all agreed that the only way when Parliament could get power to either create or abolish a legislative council that firstly the Assembly of that State should pass a Resolution. The moment it passes a Resolution, the power comes to Parliament to initiate legislation. Now, for initiating legislation, either the Government has to come forward or the non-official Members have to come forward. When they approach the Government, the Government will look into the whole matter, and we thought that we don't agree, it is still open it is still open to any of you bring forward a legislation. And for the information of the whole House one non-official Bill has already been introduced in this House for this very purpose; most probably, my friend. Shri Satyanarayan Reddy has himself introduced it.

SHRI. ERA SEZHIYAN: It will come five years later.

SHRI JAGANNATH KAUSHAL: How am I concerned? (Interruptions). I am not yielding. I am on a very trite question of law, propriety and how the Constitution is working, how the Parliament functions, because the whole argument of Mr. Era Sezhiyan was that we are coming in between the Assembly and the Parliament, I say, all right; the non-official Bill is with you: pass it.

SHRI- SHRIDHAR WASUDEO DHABE: Have you the executive power to reject a Resolution?

SHRI JAGANNATH KAUSHAL: Of course, yes, that is our stand.... (Interruptions). If you go on interrupting me how can I proceed? My respectful submission to the House is it is open to hon. Members to have their own views; and it is also open for me to have my own views. Would you permit me to express my views you may not agree; it is your right not to agree; you don't agree mostly with what I say and I equally don't agree

with what you say, and the reason is too obvious. We are sitting on opposite benches. Therefore, what I am trying to put before the House is my point of view, the Government's point of view, and the Government's point of view is, undoubtedly, by the passing of a Resolution by the Andhra Pradesh sembly, Parliament was clothed with, the authority to pass a legislation if Parliament so liked—the words are 'Parliament may' and they have asked Government to initiate legisla-1. We have told them: "Sorry, we don't agree with you; therefore, we will not initiate It." But we never objected to the introduction of non-official Bill either in this House or in the other House. Again, the House may ee but I never objected to it. I could have said: What is the use of this Bill; we have already rejected it; ; we have the majority why are you wasting the time of the House?" I didn't take up that attitude, nor have I taken that attitude in the Lok Sabha where also a non-official Bill is introduced. My respectful submission to the House is, we have not usurped any power which does not belong to us. We are only exercising the power which vests with us, and the power is, if we agree with a Resolution, we will come forward with necessary legislation; If we don't agree surely we cannot come with a legislation with which we don't agree. It passes my comprehension as to how aftiall I come with the Bill with which I don't agree. I don't agree with rationable of the Bill: I don't agree with the philosophy of the Bill. Therefore, I cannot come.

The other thing, probably, which I had mentioned. There' was a deliberate drafting of the present Constitution no duty was cast on the executive as it was east in the predecessor of cJe 169. I had mentioned that in the predecessor of this article, a ' was cast on the Secretary of Srate to come to the House of Commons and tell them what they are going to do. No such duiy is cast on us. The only duty is, if we agree we will come forward. If we do not agree, we will intimate them. We told them,

we are not in agreement. But I am prepared to concede that the Resolution of the Andhra Pradesh Legislative Assembly has not been exhausted. by the mere refusal on the part of the Government of India. That Resolution holds good. Parliament has the power. Parliament can, if they like, on the basis of this Resolution, vote for the abolition of the Council. But I must say .to Parliament 'We are not coming forward because we are not in agreement.'

I never wanted to go into these matters. But one hon. Member said 'I impute motives to the Central Gove rnment'. I am sorry, if motives have to be imputed, I think, these motives we should impute to ihe Andhra Pra desh Government, to the majority part there, Otherwise,—my friend, Mr. Advani was very fair; he said,' al though, I am a loser; I want something more, some more light, some sons and so —I think, it will be very interesting to know the composition of the Legislative Council there. It is very interesting. It is wrong to say that we are trying to have a mala fide motive and so on. In fact, the shoe is on the other foot. And may

I mention now-----*(Interruptions)*
Please have the patience to listen to me — I am not yielding.

As I said, the position in the Legislative Council is: Congress 1, 56, Bharatiya Janta Party 6, Telugu Desam 5, Independents 5, Progressive Democratic Front 4 C.P.I. 2, National Democratic Front 4, C.P.I. 2, National Demo-1. The total is 82. Eight seats are vacant. Nobody would say that this is a very innocuous Resolution which they have passed. Bringing forward of the Resolution is politically motivated. *(Interruptions)*

SHRI B. SATYANARAYAN REDDY: It is the right of the Assembly. The Assembly has the right to pass the Resolution. *(Interruptions)*

SHRI LAL K. ADVANI: At least, the Telegu Desam Party has this in its favour that it. was committed to the electorate in his manifesto. It said-in its manifesto that if they come to power.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH): It is not there in the manifesto.

SHRI JAGANNATH KAUSHAL: I should correct Mr. Advani. It was not there in their election, manifesto.

SHRI LAL K. ADVANI: I stand corrected there.

SHRI JAGANNATH KAUSHAL: I never wanted to go into these matters at all.

(Interruptions)

SHRI DINESH GOSWAMI (Assam): Sir, the hon. Minister has said that the Resolution of the Assembly is motivated.

SHRI JAGANNATH KAUSHAL: I have not said so.

SHRI DINESH GOSWAMI: It is there in the record. I am sure, ...
(Interruptions)

MR. DEPUTY CHAIRMAN: You have not heard him properly.

SHRI JAGANNATH KAUSHAL: It is far from me. ..(Interruptions) May I have the attention of the House? It is far from me to cast any reflection on the Assembly.

SHRI DINESH GOSWAMI: That is true.

SHRI JAGANNATH KAUSHAL: But it is always open to me to say that the ruling party there in bringing this forward... As I said, I did not want to go into the reasons. In this respect, Shri Sezhiyan said 'I am not concerned with the reason'. (Interruptions)

SHRI B. SATYANARAYAN REDDY: You must respect the wish of the Assembly. You are the Union Law Minister. Why do you cast aspersions on the sovereign wish of the people?

SHRI JAGANNATH KAUSHAL: In regard to the sovereignty part I will

come in a second. As I said, I never wanted to go into the reasons, because I say 'The Resolution has been passed; we do not agree with the Resolution and, therefore we will not bring forward any Bill'. As a matter of fact, the argument is much simple. We are not agreeing. If somebody...

SHRI B. SATYANARAYAN REDDY: What is the reason?

SHRI JAGANNATH KAUSHAL: I can go on and on because hon. Members have spoken on many matters. But I think I should concentrate only on the salient points.

Now somebody read here, where a second House is created that stands on a different footing from that House which was not created in pursuance of the resolution of the Assembly. You know, what has happened? There are six instances, I have mentioned them. Now I will only mention them in little detail for the benefit of the House.

West Bengal Legislative Assembly passed a resolution for abolishing the Upper House, Central Government agreed.

SHRI K. MOHANAN: Why?

SHRI B. SATYANARAYAN REDDY: Give reasons.

SHRI JAGANNATH KAUSHAL: Is that the way to listen? The Punjab Legislative Assembly passed a resolution please abolish it, we agreed. The Andhra Pradesh Legislative Assembly passed a resolution in 1956, please create a House for us, we said all right, and created a House. Then U.P. Legislature passed a resolution, abolish the Upper House, we did not agree. Bihar Legislature passed a resolution, please create a House, we did not agree. U.P. passed a resolution, we did not agree. Punjab again passed a resolution, please create, we did not agree. The reason is quite obvious. (Interruptions). Please do not confer such a power on anybody howsoever sove-

reign it may be to create a House or to destroy the House. That is why the founding fathers said: Powers will be with that Assembly to clothe Parliament to pass a law, but finally the Parliament will decide and Parliament will only decide by way of either a non-official Bill or an official bill, but please, do not tell me that I should bring a Bill and I should kill the Bill, that I should ask the Parliament that I am bringing the Bill but you please outvote it. I am afraid, this will be totally an unacceptable proposition, but now I need not go into other matters. One Law Minister has said that he agreed with the policy, another Law Minister said that it is totally optional, but nobody is now disagreeing that it is not obligatory on us to come to the Parliament if we do not agree with their reasons. And we have been trying to find rational reasons in order to agree, but we have not been able to do so. Thank you.

STATEMENT BY MINISTER

Re. Attempt on the Life of Shri Darbara Singh former Chief Minister of Punjab

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. VENKATASUBBAIAH): Mr. Deputy Chairman, Sir, I am extremely sorry to inform the House that a cowardly and dastardly attack was made on the former Chief Minister Shri Darbara Singh.

Shri Darbara Singh had gone to Kasha Ghat at Nangal, Ropar District, Punjab, in connection with the immersion of the body of Sant Har-keval who had recently passed away. About 400 to 500 persons had reportedly collected for the ceremony.

One person fired at Sardar Darbara Singh but the latter escaped unhurt. His gunman and another policeman of the escort party opened fire. A police Inspector who had apparently seen the assailant, fired as a result of which the assailant was injured and his

weapon fell to the ground. The assailant was overpowered and arrested. It is reported that six persons have been injured including the assailant.

Sir, Shri Darbara Singh escaped unhurt and the whole House will join me in condemning the dastardly attack made on Shri Darbara Singh.

SHRI ERA SEZHIYAN (Tamil Nadu): Sir, I unequivocally and strongly condemn the attempt at assassination. . . (Interdisruptive). Yes> yes, I am saying the attempt. We condemn very strongly this move to assassinate the ex-Chief Minister and we are very happy that he was saved.

But, Sir, this raises the whole question of law and order situation in Punjab and Haryana where violence has become a way of life and the respective Governments have not yet been able to bring normalcy and peace and harmony among different sections in Punjab. It has been allowed to go adrift for quite long. Anyhow whosoever has been made the target, the Government should take very strong measures to bring normalcy and harmony and ensure safety and security not only to the politicians and ex-Chief Minister but to the entire people of Haryana and Punjab who desire better harmony and peaceful conditions.

Therefore I condemn this attempt at assassination and I join the Home Minister and also feel happy that his life was saved.

SHRI K. MOHANAN (Kerala): Mr. Deputy Chairman, Sir, my party also unequivocally condemns this treacherous attempt to murder Mr. Darbara Singh. Last day there was an attempt on the life of the Deputy Speaker of Haryana. We condemn all these attempts and this type of assaults on respectable leaders of our country. I join in the concern expressed by the hon. Home Minister in this House and ask the Government to take stringent steps against the miscreants without delay and without any loopholes.