

[Mr. Deputy Chairman]

that statement, what will happen to the Calling Attention? Therefore, let me conclude the Calling Attention.

**CALLING ATTENTION TO A
MATTER OF URGENT PUBLIC
IMPORTANCE**

**Inadequacies in the Electoral Law in
not providing a specific period for
completion of Bye Election to
Parliament—Contd.**

श्री शिव चन्द्र झा : श्रीमान, मेरा
पाइंट आफ आर्डर है।

श्री उपसभापति: आप इस बहस को
आगे चलने भी देंगे या सारे दिन पाइंट
आफ आर्डर ही उठाते रहेंगे मुझे बड़ा
ताज्जुब है।

DR. RAFIQ ZAKARIA (Maharashtra)
: You need not be apologetic. The rule is
quite clear that when a Minister makes a
statement, no clarifications are to be
sought. That is the rule. (Interruptions)

SHRI SHIVA CHANDRA JHA:
Point of order.

DR. RAFIQ ZAKARIA: That is the
rule.

! SHRI G. C. BHATTACHARYA: The
Minister has gone away without
clarifications. (Interruptions)

MR. DEPUTY CHAIRMAN: Mr.
Dinesh Goswami. (Interruptions)

श्री शिव चन्द्र झा : श्रीमान्, आपने
मुझे पाइंट आफ आर्डर पर बोलने की
इजाजत दी थी।

श्री उपसभापति : बहुत हो गया है,
अब आप बैठ जाइये।

श्री शिव चन्द्र झा : मेरा पाइंट आफ
आर्डर तो सुन लीजिये... (व्यवधान)।

MR. DEPUTY CHAIRMAN: Mr.
Dinesh Goswami: Please be brief.

SHRI DINESH GOSWAMI: Mr.
Deputy Chairman, Sir, at the outset I
must make it clear that I am not pleading
for Mr. Bahuguna, nor have I got any
interest to criticise the U.P. Government,
not will I comment on the conduct of the
Election Commission. If I have given this
subject as a Call-Attention, it is because I
feel that certain fundamental principles
of electoral law in this country are
involved. Let me first understand—
because I do not find the Home Minister
here and the Minister of State for Home
Affairs also evaporated in spite of your
clear directions . . .

SHRI SITA RAM KESRI: He is
coming.

SHRI DINESH GOSWAMI: The
Law Minister has said, if I have
understood him correctly, that because
the Election Commission did not ask for
a police force from the Central
Government—I hope the Law Minister
will also...

SHRI SHIVA CHANDRA JHA: That
is not a point of order.. He is speaking on
the Calling Attention.

श्रीमान् मेरा पाइंट आफ आर्डर है।
मैंने उस विषय पर पाइंट आफ आर्डर
उठाया है जिसके बारे में अभी यहाँ पर
स्टेटमेन्ट दिया गया है।

श्री उपसभापति : वह स्टेटमेन्ट तो
हो गया है? उस पर मैं कुछ नहीं सुनूंगा
उस पर जब बहस होगी तब आप बोल
लीजिये।

श्री शिव चन्द्र झा : श्रीमान्, इस
सदन में यह परम्परा रही है कि जब कोई
स्टेटमेन्ट होता है तो उसपर क्लेरिफिकेशन
पूछे जाते हैं।

श्री उपसभापति : मंत्री महोदय का
स्टेटमेन्ट हो गया है। उस पर मैंने क्लेरि-

फिकेशन की इजाजत नहीं दी है। अब आप बैठ जाइये।

श्री शिव चन्द्र झा : आप यह गलत परम्परा डाल रहे हैं। पहले भी आपने इस तरह की इजाजत दी है।

श्री उपसभापति : परम्परा को तो आप नहीं मानते हैं। आप सदन में कहां परम्परा के अनुसार बोलते हैं ?

श्री शिव चन्द्र झा : श्रीमन्, यह गलत तरीका है। परसों आपने होम मिनिस्टर के स्टेटमेन्ट पर सदस्यों को बोलने को इजाजत दी थी... (व्यवधान)

श्री उपसभापति : मैं सदन को परम्परा के अनुसार ही चला रहा हूं... (व्यवधान)

MR. DEPUTY CHAIRMAN: I don't think anybody is interested in it.

SHRI DINESH GOSWAMI: I do not know where I have landed myself.

श्री शिव चन्द्र झा : कल ही आपने देवली के मामले पर श्री मौय को बोलने की इजाजत दी है... (व्यवधान)।

MR. DEPUTY CHAIRMAN: Don't record anything.

SHRI SHIVA CHANDRA JHA: ♦♦

SHRI DINESH GOSWAMI: I do not know where I have landed myself. But I would like to know because I want this debate to be taken seriously since certain fundamental principles...

MR. DEPUTY CHAIRMAN: It has never been serious throughout the day.

Why are worried about it? (Interruptions)

SHRI DINESH GOSWAMI: If I have understood the Law Minister correctly, when I was listening to hint, he said that because the Election Commission did not ask for a police force from the Government of India, no obligation was cast upon the State Government of U. P. or the Government of India to supply police forces. Is this position correct? If that is the position, then I am rather surprised at the press conference of the Chief Election Commissioner because Mr. Shakhder, in his press conference, has said—I am quoting from the report of his press conference:—

"Mr. Shakhder said U. P. authorities had also informed him that the Centre was not in a position to spare an adequate number of security personnel. In fact, Central forces have been withdrawn from Garhwal in recent times. Mr. Shakhder said there was woeful shortage of police forces all over the country. If a State Government said it had no police force to spare to ensure a peaceful poll and the Centre was net in a position to fill the gap, the Election Commission could do nothing about it."

Well, that is why I wanted the Home Minister to be here, and I hope he is coming from the toilet. It is the case that the Central Government told the U. P. Government that they do not have sufficient police force so spare for the Garhwal poll ? Has the country come to such a position? Are we going to project to the rest of the world that the situation in India is such that there is no adequate number of police forces available in U. P., the most important State in this country, for the Government of India to hold a bye-election in one part of the country? If that is so, I think it is better that the Central Government should admit that they are not in a position to run this country and should resign if the Government of India admits it—and I would like to have

***Not recorded.

[Shri Dinesh Goswami] a categorical answer on it because the answer has come from no less an important person than the Chief Election Commissioner whose conduct I am not supposed to discuss, according to the Law Minister—I take it as such because no contradiction has come from the Central Government as yet. Then what the highest authority has said is correct. I am not prepared to comment on that. You have also not permitted me to comment on that. If the situation is such that the Government is not in a position to supply the police force to hold a bye-election in one part of the country, there is no law and order not only in UP and Bihar but throughout the country and the Government should tender resignation¹. I feel that the statement of Mr. Shakti, one of the top-most persons who under the constitution enjoys some privileges equal to a Judge of the Supreme Court, is one of clear denunciation of the Central Government. If the Law Minister says that the statement of Mr. Shakti is wrong, in that case the premises upon which Mr. Shakti was informed by the Government of Uttar Pradesh is wrong.

There are three very important things. Either the Central Government is not in a position to supply the police force for a bye-election in Garh-wal. In that case, this Government has no right to stay. Or, the Government was in a position to supply the police force, but the UP Government misled the Election Commission by telling him that the Central Government is not in a position to do it. In that case, the UP Government is answerable to this Parliament and to the people of this country. Or, in the third alternative, it may be that the Chief Election Commissioner is speaking a lie. In that case, the Election Commission is answerable to the people of this country. How can he mislead? But, in any view of this matter, either the Central Government or the State Government or the Chief Election Commissioner has to answer: Have

we come to this situation in this country that because of the absence of a police force a bye-election in the country cannot take place? I am shuddered to think about it and I am ashamed to take up this position before the comity of nations to whom we proclaim that we are the greatest democracy in the world. What kind of a democracy have we got if we cannot hold a bye-election in this country? I would request the Home Minister to be here and answer to the points.

Sir, there are certain fundamental questions. I am not pleading the case of Mr. Bahuguna. Mr. Bahuguna resigned on the 25th of May, 1980.

AN HON. MEMBER: On the 20th May.

SHRI DINESH GOSWAMI: On the 20th May, 1980, because he left the Congress (I) Party. All the time we are asking for reform of the electoral laws and say that if a person defects he should resign as a Member of Parliament. One may have a lot of criticism against Mr. Bahuguna, but he set a perfect example in a Parliamentary democracy by resigning his seat when he left the party. Now if you do not hold an election for months and months, are you not creating a situation in which one will resign his seat? Supposing for certain principles I want to resign from a party—I cannot because I am an Independent but supposing a Member wants to resign from his party—if you cannot assure me of a bye-election within one and a half years, how are you going to have electoral reforms? Because one can say: How can I resign if for years together elections will not be held.

Now the Calling Attention to which I objected say that the election law does not provide a specific period for completion of a bye-election. But, supposing the election law provides that it should be within six months, it may not yet be held. Here was a case where the election was notified, but because the State Government said that they could not have sufficient police force. The bye-election could not take place. When in accordance

with article 324 the Election Commission had notified for the election, is there no constitutional obligation upon the Government to create a situation that the election be held? If such a situation cannot be created, does it not amount to be break-down of the constitutional machinery of the State? If the Chief Election Commissioner or the Election Commissioner who has the power—who is given overriding power under article 324, as interpreted even by the Supreme Court—says that an election should be held and if a State Government says that they are not in a position to give the necessary infrastructure for holding the election, does it not amount to a break-down of the constitutional machinery? If it is not, look to the danger. It may be that today Mr. Shiv Shankar is on this side, or somebody else. Supposing tomorrow a Government, whether at the Centre or in a State, finds that they are going to lose power and two days before an election they tell the Election Commission that they are not going to give the police force, will it not mean that the elections shall have to be postponed, with the result that an unauthorised Government will continue to be in power? This is the basic question which I want to ask the Law Minister: Does the Constitution envisage such a situation where the Election Commission decides to hold an election, but the State Government may take up a position to frustrate the decision of the Election Commission? In this case even on the 19th of September, the U. P. Government objected on the ground of law and order on the ground of examinations and road blocks, but the Election decided on that day that the situation did not warrant postponement. I would like to know what further situation did take place that warranted the postponement. My two specific questions on Garhwal will be: One taking this cue to an extreme position, you may say "Even if the Supreme Court gives an order, I am not going to obey it because the infrastructure for obeying it is not there". You may say that you do not have the police force.

Secondly, the Law Minister is taking a dangerous position by saying that it is for the Election Commission to ask for the police force. It is not for the Election Commission. The Election Commission has said that it is the duty of the State Government to provide the police force. But if the police force is inadequate and if the State Government bring in police from outside, the Government must inform and consult the Election Commission before doing so. That is the position. The Election Commission will not know how much police force is necessary. Therefore, I would like to know: Is the Election Commission correct in saying that both the Centre and the State Governments expressed inability?

Because you have extended the scope of the Calling Attention. I will now come to Assam and ask him two questions.

SHRI P. SHIV SHANKAR; I will not answer about Assam.

SHRI DINESH GOSWAMI; Why not? That is the objection I took because the Calling Attention is about providing a specific period for completion of bye-elections to Parliament. In Assam, for two years election has not taken place. A number of seats are vacant. Therefore, I said at the very beginning that this Calling Attention has brought in its fold subjects which the Law Minister is not in a position to answer. That is why I told the Secretariat, "For Heaven's sake, before changing Calling Attention notices, you consult us because there are many issues which we would not like to be brought in". Now that the scope has been extended, we are entitled to ask questions on the issues covered by it. If the Members are entitled to ask on Garhwal, why not I on Assam? If the Law Minister is not in a position to say... (*Interruptions*).

SHRI P. SHIV SHANKAR: What I will have to answer, I will; you may go ahead.

SHRI DINESH GOSWAMI: It is not for him to decide on what he has to answer.

MR. DEPUTY CHAIRMAN: Please conclude now. It is too late.

SHRI DINESH GOSWAMI: Before I ask questions, I would like to know this. The hon. Parliamentary Affairs Minister said that the Home Minister had gone to the toilet. Where is the Home Minister now? I do not like Parliament to be played like this by the Ministers. Where is he?

SHRI G. C. BHATTACHARYA: They are absolutely not serious. They do not respect Parliament.

SHRI DINESH GOSWAMI: Where is the Home Minister?

SHRI B. D. KHOBRA: This is an insult to the House. When you had informed that the Home Minister would be present in the House, why is he not present now?

MR. DEPUTY CHAIRMAN: Mr. Law Minister, please reply.

SHRI P. SHIV SHANKAR: There is no difficulty. If I am not able to answer... *(Interruptions)*.

SHRI DINESH GOSWAMI: You said that the Home Minister would be present.

SHRI ARVIND GANESH KUL-KARNI: You have to protect us from two basic counts. Mr. Dinesh Goswami has the right . . .

MR. DEPUTY CHAIRMAN: Let him complete the debate. *(Interruptions)* I have not stopped him. Let him put the questions. Who is stopping him?

SHRI DINESH GOSWAMI: Where is the Home Minister?

MR. DEPUTY CHAIRMAN: Let him come. I have called him. He might have gone out. He will come. *(Interruptions)* Please make your point.

SHRI DINESH GOSWAMI: I am making, Sir. My point is this. I understand the Ministers have difficulties.

MR. DEPUTY CHAIRMAN: You put your point. Do not anticipate his difficulties, You say what you want to say. He will reply to whatever he wants.

SHRI DINESH GOSWAMI: Who will reply?

MR. DEPUTY CHAIRMAN: The Minister.

SHRI DINESH GOSWAMI: Who is the Minister? Should I ask in the absence of the Home Minister? You said that the Home Minister would be present. Where is the Home Minister? If this is the way the House is treated... *(Interruptions)*.

SHRI P. SHIV SHANKAR: The scope is there. If he wants to ask about other things... *(Interruptions)*.

SHRI DINESH GOSWAMI: You said in the morning and I am only saying what you said in the morning, . . . *(Interruptions)*.

SHRI P. SHIV SHANKAR: You want the entire Cabinet to be here? If I am not competent to answer, that is a different thing. You cannot presume things. *(Interruptions)*

MR. DEPUTY CHAIRMAN: Mr. Goswami, please be not so touchy that a Minister cannot go out for a while.

SHRI DINESH GOSWAMI: I am not saying that.

MR. DEPUTY CHAIRMAN: Then go on. It is 5-30 and throughout the day we have been discussing it-unprecedented in the history of Parliament. Go on.

SHRI G. C. BHATTACHARYA: Their action is unprecedented.

MR. DEPUTY CHAIRMAN: Please put your question, Mr. Goswami.

SHRI DINESH GOSWAMI: Will you allow me one minute?

MR. DEPUTY CHAIRMAN: Yes.

SHRI DINESH GOSWAMI: I know the Minister's difficulty.

MR. DEPUTY CHAIRMAN: Sometimes they have to go out.

SHRI DINESH GOSWAMI: At least he should have told you.

MR. DEPUTY CHAIRMAN: I have said that I have called him.

SHRI DINESH GOSWAMI: He did not tell you that he was going out. (*interruptions*) Well, the Law Minister is saying what, according to him is the constitutional obligation. Can a State go unrepresented for years and years and yet the law will be binding on the State without any representation? I would have liked to have an answer from the Home Minister on this count also.

MR. DEPUTY CHAIRMAN: The hon. Minister, please.

SHRI P. SHIV SHANKAR: Mr. Deputy Chairman, Sir, the first question which has been asked is with reference to the summoning of the police force. A question has been asked about the corrections of the position, whether the Government has to supply the police force if the Election Commission asks for it. In fact, the legal position, according to me, is absolutely clear. The Election Commission, in my view, has no right to ask for any police force. Law and order is entirely a State subject and it is for the State Government to maintain law and order. The Election Commission, in my view, does not come into the picture at all. The question of consulting or informing the Election Commission also does not arise. I am emphatic on that. Elections have been held right from 1952 and on all the occasions police forces from outside or the Central police forces have been deployed. Even in the 1977 elections to the various State Assemblies police forces were deployed from different places in different States. Yet, at no point

of time the Election Commission was ever informed or its permission was ever sought. The whole difficulty has arisen because of the order of the Election Commission in June 1981.

SHRI ARVIND GANESH KULKARNI: Then what is the way out?

श्री प्यारेलाल खंडेलवाल (मध्य प्रदेश) : इसका मतलब यह है कि आप इलेक्शन कमीशन से बदला ले रहे हैं ?

श्री पी० शिवशंकर : आप जरा सुनिये तो। सवाल पूछा जा रहा है, सवाल का जवाब मुझे देना है या आप जवाब दे रहे हैं।

I am saying that this matter cannot be thrashed out at this stage. This matter will have to be thrashed out only after the declaration of the result in this case because the Supreme Court in Gill's case said, "You cannot do anything at all. You will have to wait till the result is declared, and then it can be an issue". It is rather very surprising and extraordinary in this case that the Election Commission has gone to the extent of saying that the mere presence of forces from outside vitiates the entire election. If this be so, I would make bold to submit that no election from 1952 could be held to be a valid election at all, because in every election police forces have been deployed from outside and without the permission or intimation or consultation of the Election Commission. This is the position of law. But then, having regard to the fact that in this constituency itself, an earlier order had been passed by the Election Commission, I raised this issue that in view of its own order, if it could say "Look, the State Government can get' it from outside or from the Centre", that would be a different issue. That is how I posed the whole problem. Sir, what has also been asked is with reference to the statement of the Chief Election Commissioner who seems to have said that the State Government informed him that the Central forces were not available.

[Shri P. Shiv Shankar]

The fact of the matter is that the Government of U.P. in this case did not requisition any Central force in the context of either the scheduled repoll in Garhwal on the 22nd November, 1981 or for handling the strike by Jails employees or otherwise. They did not ask at all. This is the factual position. It has happened as I said, in June, 1981 when Central forces were not available. It is possible that in a given situation, the Central forces may not be available for being supplied for a particular purpose. It did happen in June, 1981 because the Central forces were deployed in different places as a result of which, at that moment when the State Government requested the Central Government the Centre requested the adjoining States to make available their police force to this State Government for purposes of holding elections. It is not as though that a situation cannot arise where the Central forces are not available. In this case, as I said, the State Government has not asked. In fact, in my submission the State Government could not have asked for the simple reason that they had already an order against them. Now, the position is that if Mr. Shakhder has given some statement, that statement will have to be judged having regard to these facts; and the facts, as I said, were, the State Government did not ask. Who has stated a lie and in what context, has to be seen and I leave it to the House. If the House wants to take action against any particular authority, it is left to the House. I would not like to stand in the way. This is the position so far as the question of supply of forces is concerned. Literally, I understand the language that way what Mr. Shakhder said and what my friend read. I *do* not know the position, but it is possible that at a given time, the Central forces may not be available, but that does not mean that the Centre would not arrange the forces from other States. There does not arise any question of a Government

resigning on this issue, on the ground that it is not in a position to conduct a bye-election. If, having regard to the order that has been passed earlier by the Election Commission itself, it were to ask the States to send forces from outside, and if it were also to ask the Central Government to provide and if we were to fail, then perhaps the charge could have had any basis. The Election Commission in this case has, on the basis of the facts that were urged by the State Government, jumped to the conclusion of postponing the elections. Well, we cannot help in the matter. In fact, the Election Commission has an independent status. My friend also asked a question as to whether elections could go on and they could not be held for more than a year and a half. I must bring to the notice of this House that it is entirely within the arena of the Election Commission. Section 149 is there which does not leave any option either to the State Government or the Central Government. The whole power is vested in the Election Commission. If you read Section 149 read with 30, the position becomes absolutely clear. Apart from that, a whole chapter is there in the Constitution itself. Holding elections is a matter that the Election Commission takes care of. No doubt, the Election Commission also consults. That is a matter which is subservient to the power that it has. They ask, they consult the States whether a particular date is suitable or not. This is a matter where they converse. But the primary responsibility or the sole responsibility go far as the law is concerned, is that of the Election Commission. Even with reference to fixation of dates, it is the Election Commission which has got to notify and say that we have got to proceed with the election. Mr. Kulkarni was right that under Article 324(6) of the Constitution for purposes of holding elections immediately the Election Commission could write to the Centre and the States saying "Look, I am fixing up the dates, you have got to supply these things". and the State

Government and the Central Government were bound to supply; there was no other go. (*Interruptions*) Well I leave it. I do not want to repeat, because I have already said. These were the main issues raised by my friend. It is no doubt true that in some cases some of the constituencies have not been represented in Parliament for more than a year. Circumstances do not warrant elections in those areas. Nothing could be said at this stage. It is a matter which the State Government and the Election Commission have got to go into and find out whether elections could be possible there. It is only a hypothetical issue to which I cannot give a specific answer.

SHRI G. C. BHATTACHARYA: The entire burden of song of the Law Minister is article 324(1) and (6). And of course something has been added to that by my friend Mr. Salve also. The Law Minister's argument is this: After the notification has been issued on 27th September, 1981 for holding the bye-election, the Constitution casts a duty on the Election Commission to write to us. In this case they have not done it. Therefore, we are not responsible. This has been the Law Minister's defence. Let us see what 324(1) says. It reads thus:

The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

324(6) is very important. It says: The President, or the Governor of a State, shall (I lay great emphasis on the word 'shall')—when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the

functions conferred on the Election Commission by clause (1).

Now, on the 27th September the notification ordering repoll was issued. They want us to believe that this has been ordered without complying with the provision in 324(6). Can it be ever thought of or is it ever possible that the Election Commission will notify the repoll without asking either the Governor or the President or both in this case for the necessary staff? The Law Minister explained the election processes. Can the Election Commission complete the election process without complying with 324(6)? Can they show a single instance where this was not done by the Election Commission either after or before they issue the notification? Under what technicality the Government is trying to get out of their responsibility? Therefore, to say that they have not written to you and therefore you are not responsible is not correct.

You kindly see the order of the Election Commission. The Election Commission, after this notification, met all the candidates. I was present there. The U.P. Home Secretary and other concerned officers were there, and the Congress candidate was also represented. They put all these difficulties and after hearing all of us Mr. Shakti said: I will give you two months' time to sort out the difficulties. Two months were given to create such conditions in which the repoll could be held. On the 27th September it was notified that on the 22nd November, a Sunday, the repoll would be held. Thereafter repeated efforts were made to get the repoll postponed. We can say anything here. But the fact is that it is known to the entire press and in the whole country that the Congress (I) from the very beginning wanted to get the repoll postponed, I have got a letter of Mr. Negi which was submitted to the Election Commission saying that it should be postponed indefinitely. Therefore, Sir, to say that there is no responsibility cast is wrong. The

[Shri G. C. Bhattacharya]

Congress (I), both at the Centre and in the State from the very beginning, was trying to get the repoll postponed. Therefore, conditions were created for that one after another. They first created this condition on the 19th September, 1981. On 19-9-81, the notification was issued. After the notification was issued, article 324(6) has to be complied with by the Central or the State Government and you cannot get rid of that. After the notification they will have to write to you separately. I do not know whether he has written or not. Whatever he may be saying, I do not think that the State Government or the Union Home Ministry was not contacted after the notification. Then, what happened? Twenty-seven days thereafter, a note was sent to the Election Commission saying that it was not possible. Then, Sir, the Congress (I) High Command hatched a conspiracy. They say that there was a plot, there was a conspiracy, with regard to the date. They had decided that it should be done at such a time when Mr. Bahuguna would have exhausted all his resources and they had also decided that the Prime Minister should be absent from this country, should be on a foreign tour. Then, Sir, what happened? (*Interruptions*). On the 9th, the Union Home Minister, Mr. Zail Singh, the Chief Minister, Mr. V. P. Singh. Mr. Rajiv Gandhi, and Mr. Arun Nehru, all conspired and decided that ways and means should be found to thwart the Election Commission order notifying the repoll on the 22nd, to see that it was defeated. Now, what was the conspiracy and what were the ways and means? You go there, pass a resolution, have a resolution passed by the U.P. Cabinet, declare an emergency in U.P. and cancel all the leave of the police forces, the PAC, the Home Guards etc. Not only that. When Mr. Lookpati Tripathi was negotiating with the jail strikers, he was called back and the negotiations were broken. Then, Sir, they came out

with the theory that there was a law and order situation which was so bad and that there was an emergency. Then what happened? On the 14th morning, the Chief Secretary, Mr. Thakru, the IG, Mr. Naresh Kumar, met him. Before that the Chief Minister also met Mr. Shaktiher on the 13th evening. What did they say? "Look here. We have given you everything. We will not be able to give you any police except the 320 policemen who are there in Garhwal itself". After hearing them he said to me and Mr. Bahuguna, who was in crutches then, that it was not correct that 320 policemen were there. Even if they were there, since 1952, the only people who were in the Garhwal constituency were a Chowki-dar, a Home Guard and a pat-wari, only two or three people, who were there to manage. Even if these people were there, it was only to intimidate the voters, to rig the elections. So, no amount of jugglery will satisfy the people. Now, Sir, the cat is out of the bag. The election was postponed and it was announced on the radio on the 14th evening. But, on the 15th morning, the Chief Minister says, "I do not know. We have sent already three thousand policemen and three hundred sub-inspectors". Later on, Sir, he said, "Five thousand we have already sent". From where did these people come? From where this police force came? Is it not a clear lie? And is not a conspiracy to have the election postponed? On the 15th morning you are saying that you have already despatched them and on the 14th morning you are saying that you have no police force! Now, Sir, what is the Election Commission saying? The Election Commission is saying that if the State Government was not able to ensure the basic condition for the peaceful and orderly conduct of the poll, as in the present case, then it is the duty of the State Government to make conditions conducive to such a peaceful conduct of the poll and the Com-

mission would not be in a position to create on its own violation such conditions. Then who is at fault? (*Time Bell rings*) Mr. Shiv Shankar has been misleading the House since morning. He should have disclosed all the facts, what the Haryana Police did. The Election Commission should have said that these things have been done. They raped; they beat our workers . . . (*Interruptions*).

MR. DEPUTY CHAIRMAN; Please conclude now.

SHRI G. C. BHATTACHARYA: Whatever he was saying about it is utterly wrong and incorrect information. He is misleading the House. The actual fact is that the Central and the State Governments have entered into a conspiracy, and they owe a duty to this House and to the people of this country and they should now give an assurance that they will hold the poll . . . (*Interruptions*). He will say, I know, that it is not his job. But, no, Sir, they will not do it. It is for them to ask for the re-poll in Garhwal as soon as possible. They should also give an assurance to the House that they will not resort to such sort of mean tactics in future and kill democracy, murder democracy, in this country. (*Interruptions*).

MR. DEPUTY CHAIRMAN: The Law Minister . . . (*Interruptions*). You have replied to most of his points. Do not repeat those points. (*Interruptions*).

SHRI HAREKRUSHNA MALLICK: I will demand a special rule there to enable the elections to be held there and I (*Interruptions*).

MR. DEPUTY CHAIRMAN: Order, please.

SHRIMATI USHA MALHOTRA: I know what happened there. I am a witness to what happened in Garhwal, how my workers were attacked (*Interruptions*).

MR. DEPUTY CHAIRMAN: Please take your seats.

SHRIMATI USHA MALHOTRA; I know what happened there. You has not been there. (*Interruptions*).

MR. DEPUTY CHAIRMAN: Please take your seat. (*Interruptions*). Order, please. (*Interruptions*). This will not go on record.

SHRI HAREKRUSHNA MALLICK: *

SHRIMATI USHA MALHOTRA:*

SHRI P. SHIV SHANKAR; I must submit that the arguments of my friend with reference to article 324, are based on improper appreciation of what I said and the language of the article itself. The position is that for the purpose of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections . . . (*Interruptions*) Clause 6 is ery specific. Clause 6 says:

"The President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission . . . for the discharge of the functions . . ."
(*Interruptions*)

Sir, for the purpose of discharge of its duties, the Election Commission . . . (*Interruptions*) Mr. Bhatta-charya, you are not interested in my answer. In that case I will sit down.

MR. DEPUTY CHAIRMAN; He is not interested in the answer. He is interested only in allegations.

SHRI G. C. BHATTACHARYA: I am sorry. Please go ahead.

SHRI P. SHIV SHANKAR: In the due discharge of its functions, the Election Commission, from time to time, requires certain staff and that staff has got to be made available either by the President or by the Governor, as the case may be. But the whole point is whether the main-

*Not recorded.

[Shri P. Shiv Shankar] tenance of law and order is the function of the Election Commission. That is the main question. Up to June 1891, it was not his function. When the elections take place, the maintenance of law and order is a matter which has to be looked after by the State. I said that because this order had been passed in 1981 saying that the police force itself per se had vitiated the entire atmosphere, it was the duty of the Election Commission because it was the same constituency where the election was being held, to say: Look, we require the police force and you supply because of the earlier order. I am not prepared to concede and I will never concede as long as I continue to be in this office that the Election Commission has ever the power to maintain law and order. But the whole difficulty has arisen because of this observation of the Election Commission. That is why I am quoting Article 324(1) *vis-a-vis* Article 324(6) to make the position clear. Otherwise I am not interested in that aspect. My friend is very much right in saying that when once the announcement is made, the machinery moves automatically. Now, the Indian democracy is aware what the Election Commission requires and what staff, polling officers, etc. they need. All these arrangements are made *ipso facto*. If they require more personnel, then the Election Commission always asks and they are at liberty to do so. That is why, according to Article 324(6), there is an obligation on the President or the Governor to provide them with staff. This whole case has taken a new dimension because of the order that has been passed in June, 1981. As regards the police force, I was confining myself only to this narrow aspect that if the Election Commission had said that there was a lack of police force and that they required a little more for the purpose of maintaining law and order, they should have sent this request either to the President or the Governor. That is my argument.

In this context, I would also like to make one point clear. I have both the letters which have been addressed by the State Government to their Electoral Officer. The Government first addressed to the Chief Electoral Officer who, in turn, passed on this letter to the Election Commission. One is dated the 9th November and the other is dated the 10th November. The letter addressed by the Chief Electoral Officer to the Secretary, Election Commission, reads: I send you a copy of the above letter along with enclosures for consideration of the Election Commission of India and prompt decision.

"This letter has been necessitated due to developments which have been noticed since I wrote to you last and also invites attention to certain points which require directions and guidance of the Commission or those that did not exist at that point of time."

What has been sought is guidance and direction. It does not say, you postpone the election; you say that the elections are not going to be held. There is nothing of that type. These facts have been brought to the notice of the Election Commission for its direction and guidance. The other letter is of the 10th—this is the last letter—where the Chief Electoral Officer writes again to the Election Commission:

"I send you a copy of the above in continuation of my letter No. so and so dated 9th November, 1981. These are the matters which require immediate consideration and consequently I have to request that the Election Commission of India may very kindly be moved to give such directions and guidance on the points raised as they may be pleased to consider necessary."

Sir, at no point of time either the State Government . . . (Interruptions) .

SHRI G. C. BHATTACHARYA: Shri Shakti told me that if the senior officers are saying that, how

can I have confrontation? That is what Mr. Shaktidher said.

SHRI P. SHIV SHANKAR: What I "am saying is . . . (Interruptions) Kindly listen to me.

SHRI B. D. KHOBRAGADE: You have quoted from the letter of the Chief Electoral Officer of UP.

SHRI P. SHIV SHANKAR: That is correct.

SHRI B. D. KHOBRAGADE: We would like to know the contents of the letter that the State Government wrote to the Chief Electoral Officer.

SHRI P. SHIV SHANKAR: You can read it freely because it runs into pages. Sir, what I am trying to say is that the State Government always brings to the notice of the Chief Electoral Officer the facts. The Chief Electoral Officer in turn writes to the Election Commission . . . (Interruptions) . . . and seeks guidance and direction. Now what I am submitting is that these are the last letters—letters of 9th and 10th. There are no other letters. What has happened after the authorities came and explained is a matter which the Election Commission has also written in the order. Therefore, that part of it is separate. I am saying that even the Election Commission has also observed which is reported in the papers, that at no point of time the State Government sought the postponement of the elections. They had to only place the facts. It is for him to consider. Supposing, notwithstanding all that, the Election Commission. (Interruptions) Notwithstanding all that, if the Election Commission were to say that you have to proceed with the election, the elections would have gone on. That is the position which I said. My friend has surmised . . . (Interruptions). Sir, I am not yielding. And if you want to establish his type of new parliamentary procedure, I cannot help it.

MR. DEPUTY CHAIRMAN; Please go on.

SHRI P. SHIV SHANKAR: If they don't want to hear, I will not answer. (Interruptions).

MR. DEPUTY CHAIRMAN: Mr. Salve, please.

SHRI P. SHIV SHANKAR; If you do not want to hear me, how can I proceed?

SHRI G. C. BHATTACHARYA: We are only requesting you to place those letters on the Table.

DR. M. M. S. SIDDHU (Uttar Pradesh): Sir, I am on a point of order. If an extract is read from any document, the text of the document should be placed on the Table.

SHRI P. SHIV SHANKAR: I have no objection to place these two letters.

AN HON. MEMBER; Two letters along with the recommendatory letter.

SHRI N. K. P. SALVE: Sir, the Law Minister has very ably dealt with the entire debate. And in view of the answers which he has given not much remains to be said so far as I am concerned.

SHRI B. D. KHOBRAGADE: Then why do you stand up?

SHRI N. K. P. SALVE: Sir, I expect the hon. Member to be sober at least in the House.

Sir, at the outset, however, I must lodge my very serious protest against the spurious manner in which this debate has been allowed. Something else was asked for by the Members concerned. They never wanted this. Nobody has made any serious grievance excepting that they have made some passing reference about the inadequacy in the electoral law. This was a *via media* which seems to have commended itself to the authorities 6 P.M. WHO ALLOWED this debate. Now, this *via media*, without getting the consent of the parties, means that the parties are left to settle the account

[Shri N. K. P. Salve]

between themselves and it is impossible to carry out any orderly debate where the subject-matter of the Calling Attention itself is so nebulous. As a result of that, Sir, to repeat the words of the hon. the Law Minister, speeches after speeches have been made which were not only irrelevant, but were also incoherent, and some of them were totally indecent. I hope Sir, that we will not be subjected to this sort of a torture and that something comes in as a via media.

SHRI HAREKRUSHNA MALLICK: If any speeches were irrelevant, will the House discuss them?

MR. DEPUTY CHAIRMAN: Dr. Mallick please have mercy on the House. We are sitting for four hours now. *(Interruptions)*.

SHRI HAREKRUSHNA MALLICK: The word "irrelevant" should not be on the record. He should withdraw this word.

SHRI N. K. P. SALVE: If anything, a case has been made out that there were adequate powers so far as the Election Commission was concerned. The gravamen of the charge appears to be that the U.P. Government so engineered the entire matter there that the Election Commissioner was forced to postponing the elections. That appears to be the gravamen of the charge and that has fortunately or unfortunately nothing to do with the subject or the object of the debate. That is my complaint so far as this aspect of the matter is concerned.

Now, Sir, the crucial question which arises for consideration is what was the assessment of the Election Commission which is vested with the power and authority under article 324 of the Constitution for superintendence, direction and control of the election? They determined the date of the election. They set in motion the process of election and they are supposed to superintend, direct and control the entire election as such.

They have adequate power and authority under that very clause, under that very clause, to commandeer such services of such people as is necessary. The crucial question so far as Mr. Shaktidher is concerned, I want to repeat, as someone has said, I am the one who will vouchsafe for the integrity and impartiality of Mr. Shaktidher, but that does not mean that everytime an order which is written is the correct order, and I am not going to repeat again and again that the entire difficulty arises on account of the fact that the Election Commission itself has made an observation that the mere presence of the police of a different State is likely to vitiate or will vitiate the elections. Now, that takes you naturally into the realm of the law and order situation. The law and order is entirely a State subject. And if it does happen that the law and order has not been adequately and properly safeguarded and the election as a result of that has been adversely

affected, there are two remedies. One, Sir, is that the Election Commission has to make a report about this to the President. Apart from that, the election itself will be challenged in a court of law and as a result of that appropriate remedy would come about in the court of law itself. Now, Sir, I, therefore, leave this position at that. But there are certain political overtones in the matter. It is said that we have done this and we have scuttled the democracy. I was waiting to hear at least one sentence in their speeches that there is anything where we scuttled the democracy. Every time there is some issue, we are scuttling the democracy. I am unable to understand the logic of what they say. Out of 34 years that we have been independent in the post-independence period, we have been in power and authority for 31 years. Only for three years, or to be exact, two and a half years, any other party came and it was weeded out as undesirable party as a set of people who were unreliable, unscrupulous, etc. etc. *(Interruptions)*.

MR. DEPUTY CHAIRMAN: Dr. Mallick, you are unnecessarily disturbing the proceedings; you are not satisfied with anything.

SHRI N. K. P. SALVE: I want to make it clear categorically and emphatically. When it is my party and my leader who is the direct beneficiary of the processes of democracy, are we going to scuttle the very processes? Are they the beneficiaries or are we the beneficiaries of the Processes of democracy? Therefore,...

SHRI HAREKRUSHNA MALLICK: These are all false claims.

SHRI N. K. P. SALVE: Therefore, these are self-deception slogans that we are destroying or scuttling the democracy. We want the highest values of democracy to remain. But how will you run it? The founding fathers of our Constitution gave law and order subject to the State Government. And if a certain view is taken and that is creating, some diffi. culties, these are difficulties for them as they are for us, and a way has to be found out. But nothing has been said as to how a way can be found. We are not afraid of Garhwal elections, nor are we worried as to what happens. We have no doubt that the people of Garhwal are possessed of their rational faculties and they know which side to vote, how they would be served better, which way they vote that they would be served better. But one thing I wish to make clear. The hon'ble leaders of some of the opposition parties themselves have called—we have not called him, they have called—Mr. Bahuguna as a very highly undesirable politician who changed parties six times. So, they should first settle amongst themselves rather than saying that we should settle things amongst ourselves. Mr. Rameshwar Singh who made one of the most abusive and undesirable speeches and made certain allegations, behind him sits a man of his own party whom I mistook as a very mature person... (Interruptions)

1411 RS—12.

MR. DEPUTY CHAIRMAN: Dr. Mallick, why are you disturbing every time?

SHRI N. K. P. SALVE: Sir, when they talk nonsense and when they rebuke and abuse us... (*Interruptions*).

SHRI HAREKRUSHNA MALLICK: Have I uttered wrong?

MR. DEPUTY CHAIRMAN: Please allow him to speak.

SHRI N. K. P. SALVE: They said that Mr. Bahuguna is an undesirable man, he is an opportunist, he is not a politician who should be given a place in the party. Amongst themselves, they ... (*Interruptions*).

SHRI HAREKRUSHNA MALLICK: I protest very strongly.

SHRI N. K. P. SALVE: It is absolute truism that a very strong agitation has been going on against the elections. Sir, I shall not take long, only two lines I will read out of the pamphlets which they circulated, and this is what they said in a pamphlet issued by Chhatra Sangharsh Samiti:

“शिक्षा सत्र भी इस बार 6 महीने देर से प्रारंभ हुआ। इस माहौल में चुनाव की घोषणा करना छात्र हितों के ऊपर सीधा आक्रमण है। गढ़वाल विश्वविद्यालय का छात्र इस आक्रमण का जवाब आक्रमण से ही देगा।”

This is what the student said. Then, another pamphlet was issued:

“हम चुनाव प्रचार करने वाले दलों के किसी भी लाऊडस्पीकर को नहीं बजने देंगे। देहरादून के छात्र किसी भी कतिता पर अपना एक बवं खराब नहीं होने देंगे। क्या एक लोक सभा सदस्य के चुनाव के लिये 6000 छात्रों का भविष्य खराब होने दिया जायेगा। एक सदस्य के चुने जाने से लोक सभा पर कोई फर्क नहीं पड़ने वाला है। परन्तु 6000

[Shri N. K. P. Salve]

छात्रों का वर्ष खराब होता है तो उनके जीवन का एक महत्वपूर्ण वर्ष व्यर्थ जायेगा। हम किसी भी हालत में ऐसा नहीं होने देंगे। अन्त में हमारा जिला प्रशासन से अनुरोध है कि वह छात्रों को परीक्षाओं में होने वाले किसी भी विघ्न को रोके ...।”

Sir, they burnt the effigy of Mr. Shakhder on 4-11-1981. Did they go and stop them? Did anyone of them had the courage to stop them? They held demonstration on 6-11-1981 in front of our Congress House, we tried to pacify them. We said, elections are to be held but we have to duly comply with the processes of election, and there is nothing else that we can do. There was an agitation of the employees' union and you see what militant attitude the entire union was adopting. I now refer to only two lines more in a challenge which was issued by the Rajya Karmachari San-gharsh Parishad:

“14 नवम्बर 81 को मुख्य मंत्री जी स्वयं देहरादून आ रहे हैं यदि उन्होंने हमारी मांगों के आधार पर घोषणा कर कर्मचारियों के साथ न्याय प्रदान नहीं किया तो 18 नवम्बर से बर्कट टूटल अपनाया जायेगा और 20 नवम्बर से अनिश्चित काल के लिये आन्दोलन शुरू कर दिया जायेगा और गढ़वाल संसदीय उपचुनाव का बहिष्कार किया जायेगा जिसका पूर्ण दायित्व शासन और प्रशासन पर होगा।”

This is the fact. This is the reality. Now, in the midst of this agitation...

SHRI HAREKRUSHNA MALLICK:
What is the date?

SHRI N. K. P. SALVE: This is dated 14-11-81.

MR. DEPUTY CHAIRMAN: Please do not reply to him. You make your point.

SHRI N. K. P. SALVE: Despite that, on 23rd November, 1981, there is a report which has come from Lucknow which will completely testify to the fact that so far as the U.P. Government is concerned, it was not at all interested in the postponement of the election. They only pointed out the difficulties which they were duty bound to point out. It would have been the easiest thing for the Election Commission to have said 'All right, we do not know where your police force is employed; we want the police force from Madhya Pradesh to come'. They could have asked for the police force from Maharashtra, which is one of the best, to come. He could have directed 'Bring it from Andhra Pradesh' (from where the Law Minister comes). They could have said 'Send CRP' and Government would have been duty bound to comply with such a demand and request in terms of article 324(6) of the Constitution. But despite that, to show their *bona fides*—nobody seems to have referred to this—this is what they said. 'The State Government has asserted that at no point, even remotely, did it suggest the postponement of the November 22 poll, in any of its communications to the Election Commission.' 'In fact, on November 14, the date when the Election Commission announced its decision, the State Government had, through a communication, apprised the Commission of the deployment of more than 4,000 policemen in addition to 18 CRP battalions; some of them had already reached their posts'.

Despite the difficulty, everything was being done by the State Government to ensure that the election is conducted in a peaceful manner so that they do not face this difficulty again. Now, Sir, it has complained to us that this sort of thing has happened. A person, out of certain qualms of conscience, has resigned his seat, because he was no longer in agreement with my party leader. This is a good thing which he has done. He has gone out. So much the better

Now, the question is being raised that when such a person has resigned for moral values, if you delay the election, what will be its impact in the total democratic set-up? This is something which should be posed not to us, but somewhere else. We conducted the June election. The election was held. The only allegation was that election in some 56 polling stations had been rigged. Assuming for a moment, assuming, while not conceding, that there was rigging in the 56 polling stations, would it have affected the result of the election itself? What warranted the Election Commission to conclude, except that it is a question of prestige, that the mere presence—I am not in any manner criticising the Election Commission as such, but I am certainly entitled to make my observations on a certain view of the law which the Election Commission has taken—the mere presence, the mere presence of a police party, the deployment of a police party from Haryana was good enough to vitiate the election? Are we responsible for the delay? The delay is certainly not what we contemplated ever, in any manner whatsoever. In regard to what has happened, I have only one thing to submit. It is the Election Commission which has given this judgement. We are utterly helpless in the matter. The motives which have been attributed to us of scuttling democracy or rigging the election or manipulating the election are utterly untrue, incorrect and motivated.

Sir, in the end, there is only one question which I would like to ask. He may reply to it in the affirmative or in the negative. He need not give a long answer to this. The question is whether the postponement of the election on the facts of the case could be considered of having been forced on the Election Commission, engineered by the U.P. Government, or, the U.P. Government acted *bona fide*, according to the law?

SHRI P. SHIV SHANKAR: There is no question of the postponement having been engineered by the U.P.

Government in any form. This was a *bona fide* act on the part of the U.P. Government.

MR. DEPUTY CHAIRMAN; Mr. Kalyanasundaram. Please be brief.

SHRI M. KALYANASUNDARAM (Tamil Nadu): When I am raising, you are asking me to be brief.

MR. DEPUTY CHAIRMAN: Everything has been said. Add something fresh.

SHRI M. KALYANASUNDARAM: Now, the wording of this Calling Attention has been changed to 'Inadequacies in the electoral law'. Not only in respect of holding by-election but even with regard to our electoral system, there is need for electoral reforms and all parties are applying their mind to it. When the appropriate time comes, on behalf of our party we shall certainly make our proposals for electoral reforms. But the Garhwal byelection situation had happened not for want of any appropriate electoral laws. It is not because of the inadequacies in our electoral laws, but it is a reflection on how the State Governments administer their States. The State Government is not able to ensure peaceful, free and fair elections to a Lok Sabha constituency—that is what is reflected in this. Whatever may be the motive of the Chief Election Commissioner or the Election Commission—we have all known that person also as a person—I think in these two orders, that is the order he passed in June countermanding the poll for the entire constituency of Garhwal, he has brought to the notice of the nation how elections could be rigged, how booths could be captured with the aid of the police. Secondly, with these orders he has also brought out to the nation not the inadequacy in the electoral laws but how the Election Commission and its directives, instructions and demands are belittled by the State Government. That inadequacy has been brought out so far as these two orders are concerned. I think he should be appreciated be-

[Shri M. Kalyanasundaram] cause he has brought out the serious weaknesses in the electoral practices of the State Governments, using the administrative machinery, particularly the police, in their favour.

Now with regard to the deployment of outside police forces, the Chief Election Commissioner confined himself only to the deployment of outside forces, and by that he has raised certain valid points. Were these forces posted there with the knowledge of the Election Commission? It may be a valid point or a debatable point according to the Law Minister. The ruling party was happy with the Election Commissioner when he held that the Congress (I) was the real Congress. When the order is favourable, you appreciate it, but when it goes against you, you condemn him—that should not be the attitude. You should not take such a position. The independence of the Election Commission should be respected just as we should respect the independence of the judiciary. We have heard the replies of the smiling Law Minister. He is capable of smiling even when he drives a knife against an opponent. I get the impression that he is preparing, the Government is preparing for a confrontation against the Election Commission. Already there is a mood of confrontation with the Supreme Court. Now the mood of confrontation against the Election Commission is also developing. Now, did he not say that the presence of the force from outside, particularly from Har-yana and Punjab, vitiated the free and fair elections? They aided booth capturing and whom would the police force have aided? Would it have aided our Bahuguna's party? It is obvious. The reports are there. He has also complained that the team of the Election Commission which went there to supervise the elections was not even provided with a helicopter for visiting certain centres. He has made so many allegations. He has made so many allegations and come to the conclusion that the election has not

been free and fair. Therefore, he countermanded it. The present instance of indefinite postponement also reveals more or less the same thing. Now the Government has taken a revenging attitude: "Election Commission, you had the audacity to say that outside police force should not be brought in without your knowledge. Now go on, we will not supply you the police". That seems to be the attitude. That is why I said that you are heading for confrontation with the Election Commission. The Government could have refuted the statement of the Election Commission Particularly the Home Minister could have written to him. "we can ensure free and sir elections, we can provide any kind of *bandobast* for conducting the elections, any kind of other administrative facilities can be provided." If the Government of India had written to the Election Commission like that, let them produce the letter here. What is clear is that inwardly they are happy about both—about countermanding and the re-poll also—because they do not want to hold the election at all. It is not directed against one person-Mr. Bahuguna. Mr. Salve is not here. Whatever may be the defects of Mr. Bahuguna, he had in this period of opportunism, in this period of corruption and careerism in political life come out. When he left the ruling party, he resigned his seat and sought re-election. That is an example for others. Now there are people who will come out any moment and also wait for home-coming. In this situation, here is a man who has set an example. So don't blame him like that.

I would like to know what action the Government of India is going to take against the State Government which failed to provide police *bando-bast*. which has failed to maintain law and order. So many people have written that the law and order situation is not good. They cannot save the society from dacoits, they cannot. save the society from those commit-

ting atrocities. The State Government cannot give protection to the Harijans against attacks. Such is the nature of the State Government in U.P. What action the Government of India propose to take. Of course, the Chief Minister has come out very bravely saying that he will resign within a month if the dacoities etc. do not end. That does not mean anything. Here is a Government which has failed to maintain law and order in every sphere of life. So suitable action is necessary against such a Government.

Secondly, when is the re-poll to be ordered? Has the Government of India at least applied its mind and represented to the Election Commission that it should be expedited? What action has the Government taken to expedite the re-poll which has been indefinitely postponed? If the Government of India disagrees with the action of the Election Commission, it is for them to come out and press the Election Commission that it should be expedited. I want reply to these two points.

SHRI P. SHIV SHANKAR: At the outset, my hon. friend made certain observations about the State Government not having been able to maintain law and order. That was not the question. The question was that before the Election Commission, certain grounds were raised and the facts were brought to the notice of the Election Commission so that the Election Commission may decide, having regard to those facts, what approach should be taken. The State Government had not even suggested to the Election Commission as to what course had to be followed. It brought to the notice of the Election Commission the difficulty by the students of the University of Garhwal who were threatening to take action and who were not prepared that their examination be postponed. Their examinations were to be held between November 9, 1981 to December 19, 1981. They felt that their examination will be disturbed and these facts were

brought to the notice of the Election Commission by saying that the careers of about 8,000 students will be affected, and they were taking this line. This was one factor. The other factor was the strike of the jail employees and the threatened strike against the Pay Commission's recommendations by the various service personnel. It was also said then, "Look, they require an additional force of 7,700 civil police for manning 781 polling stations besides a lot of other officers like Sub-Inspectors and so on." Because of the difficulties created by the Shia-Sunni problem in Lucknow, they said that certain forces had to be deployed in Lucknow. They also brought to the notice of the Election Commission the general situation in the Aligarh Muslim University and their commitment in Deoband where the Darul Uloom was causing anxiety and the anti-dacoity operations within the State. These were the different problems which were brought to the notice of the Election Commission for the purpose of a proper decision in the matter. It was not as though they said that they were not in a position to handle the situation. They said these are the difficulties you have to take into consideration.

My hon. friend, while referring to the previous order of the Election Commission, said that so far as the police from Haryana and Punjab were concerned, the presence of the police had vitiated the previous election in helping to rig the elections. This is not a correct statement of facts. Even the Election Commission has not said this.

SHRI M. KALYANASUNDARAM: I have not said that. I said that even the district authorities were not aware of the fact that the police was present there.

SHRI P. SHIV SHANKAR; That I am coming to. That is a different issue, you were saying a different point which I am trying to meet. What the Election Commission said was that the mere presence of the

[Shri P. Shiv Shankar]

outside forces has vitiated the election. Well, Sir, I may also bring to the notice of the House a report which has also come—part of it has also come in the papers—on behalf of the Citizens for Democracy, New Delhi. This is dated the 22nd October, 1981. This committee consists of persons like Mr. Tarkunde and others who, in any case, could be said to be unsympathetic to us. They are more sympathetic towards that side. I will read part of paragraph 88 where they have said.

"We have no conclusive evidence to say that the Haryana and other outside police were misused or misbehaved."

It is they who are giving a clean certificate to us—they, who are expected to speak against us. So, this substantiates the point of the election Commission also. The Election Commission also has said that the presence itself has vitiated the entire election. So, it is not as though the police have done anything beyond their presence. That is the point which I thought I should mention. It is true, as my friend says, that the Election Commission has said that the District Magistrate, who is also the Returning Officer, was not informed of the force; But the point is, as I said, there is no obligation for information. Law and order is a State subject. It is the State which has to maintain law and order even if elections are being held. During elections law and order does not shift as a subject to be administered by the Election Commission or its proteges at the lower level be it the Returning Officer or the Chief Electoral Officer or anybody else. Therefore, as I said, the assumption on which the Election Commission proceeded, was not proper. The only approach I was taking with reference to the order. We never said that these orders were in our favour. It is the other side and, so far as the June order was concerned, they were very happy. In fact they

should have said that we have asked only with reference to 56 booths. The Citizens for Democracy committee goes to the extent of saying that Mr. Bahuguna's case that in 56 polling booths there was rigging was also not correct. Therefore, what I am trying to say is that the other side should have said that they only asked for 56 polling booths and the Election Commission was not right in setting aside the entire election and the Election Commission should have...

SHRI M. KALYANASUNDARAM:

Where is that point?

SHRI P. SHIV SHANKAR: There is that point. All of you were happy at that moment. You accused us and you were so joyous because the Election Commission set aside the whole election. Now when it has postponed it on the grounds that have been furnished by the State Government, you are unhappy. If it suits you, you say that the Election Commission is good and if it does not suit you, you say that it is bad.

SHRI M. KALYANASUNDARAM: We are not blaming the Election Commission. We are only blaming the Government.

SHRI P. SHIV SHANKAR: Mr. Kalyanasundaram, you are indirectly saying that. Indirectly you are blaming the Election Commission. It is not far to fathom the intentions behind what you are trying to say,

SHRI M. KALYANASUNDARAM: On the contrary, we are thankful to the Election Commission that it has exposed it.

SHRI P. SHIV SHANKAR: Supposing the Election Commission were not to postpone the election, none of these people would have said a word and they would have said: It is O.K. Because this contingency has arisen, they want to take refuge behind it by saying that it is the State Govern-

ment which is responsible and that they are not saying anything against the Election Commission. Well, this is the approach that they are taking.

My friend has lastly asked a question as to whether the Government would ask the Election Commission for a date.

SHRI M. KALYANASUNDARAM:
And all facility.

SHRI P. SHIV SHANKAR; I may tell you that under the law the Government does not come into the picture at all. Section 149 is absolutely clear.

SHRI M. KALYANASUNDARAM:
But, where is the dispute? The Election Commission is blaming the Government. The Government must say that there is no basis for blaming them.

SHRI P. SHIV SHANKAR: The Election Commission has not blamed the Government.

SHRI M. KALYANASUNDARAM:
Indirectly, it has.

SHRI P. SHIV SHANKAR: As I said, they should have said: Look, you requisition the forces from the Central Government. The matter would have ended. Why they have postponed is a matter I cannot explain. Our friends are internally happy that it is postponed, so that they can say whatever they like. (*Interruptions*). What were these speeches this afternoon? Is this the way in which the matter should be debated? Except that it was giving a sadistic pleasure to them in the order that has been passed by the Election Commission, I have not been able to see anything.

SHRI B. D. KHOBRADE; The hon. Minister has made two points. One is that the Election Commission did not ask for any kind of staff from the State Government. It has been

mentioned that on the 19th September, 1981 a meeting was held of all political parties and the representatives of the State Government were present there and a discussion was there. The whole point was discussed whether the election can be held or not. There, the Chief Election Commissioner had said that the election will be held after two months and the State Government had to make all kinds of arrangements. When it was decided that the election will be held after two months and the State Government was informed about it, what is the kind of other request the hon. Minister wants under section 324? That is my point.

The second point is that the hon. Minister has said that there was no request from the Chief Election Commissioner to deploy the Central Reserve Police Force or the police force from other States. May be they did not make that request. One contention is that perhaps the Chief Election Commissioner might have been pressurised. The hon. Minister has quoted the statement of the Chief Election Commissioner in which he has said that he was never pressurised; and I think he was not pressurised, perhaps. The better interpretation is that the State Government had created such circumstances where it was impossible for the Chief Election Commissioner to hold and conduct the election. It has been pointed out that the Chief Election Commissioner had said at a Press conference that the State Government had refused to give the police force and even the Central Government had refused to give the Central Reserve Police Force. I do not know what the correct position is. The hon. Minister can explain.

MR. DEPUTY CHAIRMAN: He has already explained all these things.

! SHRI B. D. KHOBRADE: The hon. Minister stated, "Once beaten, twice shy".

MR. DEPUTY CHAIRMAN; That is all right.

SHRI B. D. KHOBRADE: I am making a new point. He said that the Chief Election Commissioner had cancelled the elections on the pretext that outside police force was summoned there and that if again outside police force would be summoned, then, the Chief Election Commissioner might cancel the polling. My question is: Was it not possible for the State Government to deploy necessary State police force in one constituency? Whatever was required, the State police force could have been summoned and stationed in the constituency, and to deal with the students agitation, the jailors agitation, the Central Reserve Police Force should have been deployed. Then, there was no necessity to get permission from or make request to, the Chief Election Commissioner to deploy the Central Reserve Police Force or the police forces from other States. Why was it not done? That is my question.

MR. DEPUTY CHAIRMAN: I think he has already replied to all the points,

SHRI P. SHIV SHANKAR. Only one point is there. On the question of request, I may say, my friend says that in the meeting that was held in September...

SHRI B. D. KHOBRADE: One minute Sir. One small point. You have just now said, "It is not the concern of the State Government; it is the concern of the Chief Election Commissioner to order the election, to fix the date of the election." That is what you replied to him. That is not the question. Supposing immediately the Chief Election Commissioner fixes a date, is the State Government willing to deploy the police force, make available the staff and make necessary arrangements and if so, whether, it will be possible for it to make those arrangements?

SHRI P. SHIV SHANKAR: Firstly the hypothesis is that the Election Commission must decide. After it decides...

SHRI B. D. KHOBRADE: The same thing will be repeated.

SHRI P. SHIV SHANKAR: I am saying that either it must withdraw its previous order about the presence of the police force from outside or it must make an arrangement by saying that this is the type of force that you can get for the purpose of elections, Then, there should be no difficulty. Why should there be any difficulty about it? These are hypothetical questions.

SHRI B. D. KHOBRADE; Why can you not have the State police force for the constituency and the CRP and the police forces from other States for other purpose?

SHRI P. SHIV SHANKAR: On the question of request I may say that even as late as the 9th and the 10th the State Government explained the situation. Whatever the difficulties were there, they explained. What prevented the Election Commission at that stage? I do not know what happened in the September meeting. He has referred to the September meeting, which I am not aware of. But at the latest moment, on the 9th and the 10th, the Election Commission could as well have said, "You ask the Centre for the purpose of deployment of the police forces." There was no difficulty for it. My friend is asking me the question: "Why is it that all your forces cannot be removed from other parts of the State and put in Garhwal? So far as the other parts of the State are concerned, you bring police forces from the Centre." These are matters which are not practical. To what extent can the entire police forces be uprooted?

SHRI B. D. KHOBRADE: You do not need the entire force for one constituency.

SHRI P. SHIV SHANKAR: Mr. Khobragade, outside forces cannot man the police stations because the spots are only known to the police men who are there, the officers who are there, who know who is who and what is what. These are matters in which you just cannot say, "Look, I get off." . These things are not possible.

SHRI PATTIAM RAJAN: What about Mr. Ghosh?

MR. DEPUTY CHAIRMAN; I have not got his name? Who has given?

SHRI PATTIAM RAJAN: I have given his name.

MR. DEPUTY CHAIRMAN: Where is his name? All right, Mr. Ghosh.

PROP. SOURENDRA BHATTACHARJEE: I have not been called. You assured me. I gave my name.

MR. DEPUTY CHAIRMAN; It is not possible now. Excuse me.

PROF. SOURENDRA BHATTACHARJEE: Will you do it like this? How is it?

MR. DEPUTY CHAIRMAN: Mr. Ghosh, please put our questions.

PROF. SOURENDRA BHATTACHARJEE; I have also to put questions.

MR. DEPUTY CHAIRMAN: You thank the other opposition parties for this. What can I do? You cannot go on like this throughout the day. Everybody cannot speak. we will have to revise the rule. (*Interruptions*).

SHRI DIPENDRABHUSAN GHOSH (West Bengal); Mr. Deputy Chairman, Sir, article 324 of the Constitution enjoins upon the Election Commission to hold the elections and also upon the Central and State Governments to make available the neces-

sary staff for the same. These vital constitutional duties, which are the cornerstone of the process of election, cannot be by-passed or ignored by any Government, as I have understood the implications of article 324, because I am not a lawyer. But here is a State Government which has created a situation, and the Central Government has abetted to create that situation, whereby these fundamental constitutional duties have been by-passed or ignored. Our country is called the largest function at democracy, but the irony is that there is a State Government in U.P. which could not hold a single bye-election on one alibi or the other; and yet that Government is being allowed to remain in office. I have already stated that I am not a lawyer. But I can well appreciate any good argument. Our hon. Law Minister since morning has been harping on one particular issue that is. had the Election Commission not objected to deployment of the CRPF of the Police of other States in Garhwal at the time of the first poll and cancelled the election on that ground the Centre would have sent the CRPF or other police forces to help and aid the UP. Government to conduct the repoll as scheduled on the 22nd November. My point is that Garhwal is a constituency consisting of some 'thanas' or some areas and same local police is there for the constituency for normal days. But the CRPF or other police, if necessary, could have been deployed in other parts outside the Garhwal constituency and some U.P. police could have been brought to the Garhwal constituency to help and aid the local police for holding the election. So, I want to put a specific question to the hon. Law Minister. What prevented the centre. . (Time-bell rings I have listened to all the speeches here and I have been sitting here up to 6-45 only to make my points clear. You must give me at least two or three minutes.

MR. DEPUTY CHAIRMAN: Please conclude now.

SHRI DIPENDRABHUSAN GHOSH; What prevented the State Government from asking for, and the Centre from sending the CRPF or other police to places outside the Garhwal constituency and from sending the U.P. police posted elsewhere outside the Garhwal constituency to the Garhwal constituency for holding the election? It is a specific question.

The second point is that it is not a question of sophistry which our hon. Law Minister has sought to resort to since morning. It is not a question of just a bye-election. Mr. Deputy Chairman, Sir, if you go into the situation, you will see and you will observe that as the ruling party at the Centre is being isolated more and more from the people because of their anti-people policies, they are fighting shy of holding not only bye-elections but also the entire election. In Kerala they are not holding the election. In West Bengal they are getting plans ready for postponing the election when the tenure of the present Assembly ends. So this is a trend which, we are observing the ruling party at the Centre is resorting to. So I urge upon the Union Law Minister to ensure either by bringing a law or by bringing a modification to the Constitution or by any other method—that no Government can get away from fulfilling the obligations as contained in Article 324.

MR. DEPUTY CHAIRMAN: Now, Prof. Bhattacharjee. The Minister will reply to tooth of you together.

PROP. SOURENDRA BHATTACHARJEE; Mr. Deputy Chairman, I do not know whether it was just accidental that on the birthday of Jawa-harlal Nehru came the postponement of Garhwal election. The Law Minister said he was trying to deal with gross facts. Therefore, I would request him to answer my gross point. Did the framers of the Constitution intend that a bye-election to a particular constituency, or representation of the people of a particular constituency, will be denied indefinitely? I ask whether the Government of the coun-

try has any obligation to see that elections are held more or less regularly and properly. Here the Law Minister is replying on behalf of the Government of India. In his reply, he has cast aspersion by implication sometimes explicitly, on certain discretionary powers of the Election Commission while enjoining that we should not bring the Election Commission into the controversy. Then, how did he himself bring it in? One: The June decision of the Election Commission that outside police cannot be deployed in Garhwal was responsible for the subsequent shyness on the part of the U. P. Government. Once bitten twice shy. But so far as I remember, the Election Commissioner at that time thought that outside police was brought in without the knowledge of the Returning Officer. That was the reason for not bringing in the police from outside the State. Secondly, the Law Minister has himself given an argument in reply to Mr. Khobragade, if people from other parts of U. P. were brought to Garhwal, they would be acquainted with the area; then, what about the police force from other States? Would they be more acquainted? The question is whether the Government of India has any responsibility in the matter. The inadequacy is clear in this respect. The point raised by my friend, Mr. Dipen Ghosh, is the West Bengal Left Front made a demand that elections should be held in the month of March instead of June which is a more congenial period of the year. In any case, by June the term of the West Bengal Assembly would be over. Now, where is the guarantee that elections will be held before the tenure of the West Bengal Assembly is over? The situation as has been explained by Mr. Shiv Shankar has left us in complete confusion as to who is responsible for ensuring that elections will be held according to the schedule in the country. And I think breakdown of the Governmental machinery, the law and order machinery or the constitutional machinery, has an importance in the background of such a situation. If a bye-election in a constituency out of

eighty-five constituencies cannot be ensured by a particular state, where is the guarantee that other elections will be held or will be held properly, and who will be answerable for that?

SHRI P. SHIV SHANKAR: Sir, Mr. Ghosh's first question is with reference to the use or supply of Central force at the instance of the State Government and to deploy the same in the other parts of U. P., other than Garhwal. I have already answered that. I need not answer it again.

My friend has also said that no Government should get away by not fulfilling the obligation cast on them under article 324 of the Constitution. Nobody has said that anybody has got away. This argument would have been proper if the Election Commission were to demand and notwithstanding that the State Government or the Central Government which has got to act through the State Government has not fulfilled it. At this stage that question does not arise.

My other hon. friend asked whether the representation of a particular constituency will be denied indefinitely. The answer is no. That is why the framers of the Constitution have left this entire matter in the hands of an independent body.

He was harping on the question that the Election Commission had said that without the knowledge of the Returning Officer the Police was deployed and that was the objection last time. There is no question of giving informations to the Returning Officer.

PROF. SOURENDRA BHATTA-CHARJEE: I said only what the Chief Election Commissioner had said.

SHRI P. SHIV SHANKAR: I think I have answered all the questions raised.

MR. DEPUTY CHAIRMAN: The Secretary-Central to read the message from Lok Sabha.

MESSAGE FROM THE LOK SABHA

The Oil Industry (Development) Amendment

SECRETARY-GENERAL: Six. I have to report to the House the following message received from the Lok Sabha signed by the Secretary 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 herewith the Oil Industry (Development) Amendment Bill, 1981. as passed by Lok Sabha at its sitting held on the 23rd November, 1981.

The Speaker has certified that this Bill is a Money Bill within the meaning of article 110 of the Constitution Of India."

Sir, I lay a copy of the Bill on the Table of the House.

ALLOCATION OF TIME FOR DISPOSAL OF GOVERNMENT AND OTHER BUSINESS.

MR. DEPUTY CHAIRMAN; I have to inform Members that the Business Advisory Committee at its meeting held on the 24th November, 1981, allotted time for Government Legislative and other Business as follows;—

Business	Time Allotted
1. Further discussion on the 29th and 30th Reports of the Union Public Service Commission.	3 hrs.
2. Consideration and passing of:	
(a) The Pharmacy (Amendment) Bill, 1981	1 hr.