

RAJYA SABHA

Saturday, the 11th May, 1968/the 21st Vaiselcha,
1890 (Safcal.

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

CALLING ATTENTION TO A MATTER OF URGENT PUBLIC IMPORTANCE

THE CONSTITUTIONAL CRISIS IN PUNJAB

MR. CHAIRMAN: Before Mr. Bhargava begins I may mention that Shri* Pitamber Das and two others wanted a discussion on the matter.

That is what I would like to mention. Now Mr. Bhargava.

SHRI M. P. BHARGAVA (Uttar Pradesh): Mr. Chairman, I wish to call the attention of the Minister of Home Affairs to the constitutional crisis in Punjab arising out of the judgment of the Punjab High Court holding the two Punjab Appropriation Acts of 1968 and the Ordinance regulating financial business of the Punjab Assembly ultra vires.

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN): Sir, a statement had been made yesterday afternoon regarding the situation arising out of the judgment of the High Court of Punjab and Haryana. Subsequently it was learnt that the High Court had rejected the application moved by the Punjab Government for a stay of the operation of the judgment, but had granted leave for appeal to the Supreme Court. It is hoped that the Punjab Assembly would meet as soon as possible to consider the situation.

SHRI M. P. BHARGAVA: I would know from the Home Minister whether the present Government in Punjab had the mandate of the people, and whether it is not playing with the Constitution of India by keeping that Government in office even after the judgment of the High Court, and any money being spent from the Consolidated Fund being 327 RS—

irregular, to meet the situation it is absolutely necessary that the Punjab Government is dismissed forthwith and President's rule is imposed.

SHRI Y. B. CHAVAN: I understand the hon. Member's point of view. As far as the people's mandate to the Government is concerned, the right forum for a decision on this matter is the Assembly itself. It is hoped that the Assembly would be called.

SHRI DAHYABHAI V. PATEL (Gujarat): All parties on this side, all the opposition parties have been pointing out that the Ministry that is existing today in the Punjab is with the support of the Congress Party and not by itself. The Congress Party is guilty of an atrocity on the Constitution. Does the Home Minister realise his great fault in this and will he make amends to the people of Punjab and the people of this Country for the fault that he has committed, for the injustice to the people of Punjab and to the people of the whole country by this atrocity on the Constitution?

SHRI Y. B. CHAVAN: The hon. Member is free to express his own views. I do not think I have committed any fault, nor has the Congress Party committed any fault.

SHRI GODEY MURAHARI (Uttar Pradesh): The fact that in Punjab the Government exists without a Budget and without any money to appropriate itself is a situation where the Constitutional validity of the existing Government itself is in question.

मैं सरकार से यह जानना चाहूंगा कि क्या वहां इसको उचित नहीं समझती है कि और वहां की जो सरकार है जो मैं कानूनी है, क्योंकि जिस सरकार के पास कोई खस नहीं है जो सरकार पंजाब में अपनी हुकूमत बिना कोई मुद्रा के चलाना चाहती है उस तरह

[Shri G. Murahari]

की सरकार को भंग किया जाय और मेरा यह निवेदन है कि कल जब पंजाब हाईकोर्ट का जजमेंट हुआ गया था उसी वक्त पंजाब की सरकार को इस्तीफा देना चाहिये था, अगर उनमें कोई कांस्टिट्यूशनल प्रोब्लम या कोई शर्म होती, लेकिन अभी तक उस सरकार को रबे हुए हैं और बाद में गृह मंत्री हम से यह बहें : वहाँ की असेम्बली आई They are masters of their own selves.

वह लोग जो भी चाहे अपना इन्तजाम कर लेंगे । यह मुझे ठीक नहीं लगता क्योंकि या तो आप कांस्टिट्यूशन के मुताबिक चलाएंगे अपनी सरकार को और यह सही है कि वहाँ की असेम्बली जो है अपना काम कर सकती है लेकिन जो कोई घाघली हुई है और यह भी असेम्बली के रहने के कारण हुई है और वहाँ का बजट और एप्रोप्रिएशन बिल अभी गैर कानूनी-करार किया गया है, तो इस सिचुएशन में मैं समझता हूँ कि सेंटर की ज्यादा जिम्मेदारी है कि वहाँ की सरकार को खत्म करके प्रेसीडेंशियल कूल लागू करें और वहाँ के बजट की व्यवस्था यहाँ से की जाय । तो मैं यह जानना चाहता हूँ कि क्या गृह मंत्री यह उचित नहीं समझते हैं कि फौरन वहाँ की सरकार को खत्म करके वहाँ के बजट का मामला सेंटर से, जो भी कांस्टिट्यूशनल प्राविजन हो, उसके मुताबिक पास करें, क्योंकि उस के लिये मैं नहीं समझता कि उतनी आसानी होगी, क्योंकि या तो प्रेसीडेंट खुद अपने हाथ में लेकर कांस्टिट्यूशनल के अन्तर्गत प्राविजन को फालो करे या और कोई रास्ता ढूँढ़े ? वहाँ अभी जो परिस्थिति पंजाब में है वह चल नहीं सकती और मैं यह भी बताना चाहता हूँ कि जो भी सरकार वहाँ बँठी हुई है वह सेंटर की जो कांग्रेस पार्टी है उसके सपोर्ट से, उसके समर्थन से, बँठी हुई है और यह सारी जिम्मेदारी कांग्रेस पार्टी पर जायेगी ।

us and certainly there is a first-rate constitutional crisis. I do not deny that position. It is there, But in order to resolve the constitutional crisis we have also to proceed in a constitutional manner. Immediately we cannot rush to any drastic things ourselves because we just cannot do it, *sue moPu* we cannot act in this matter, as long as the Assembly is there and as long as we have not seen what the Assembly's reaction is and what they propose to do; if they reach some deadlock, certainly Government will have to take the whole matter into account. The Punjab Government has approached the Supreme Court But I quite see that the most important actor in this matter is the political aspect of it, and the political aspect can be decided only by the Assembly which is the supreme body as far as the affairs of Punjab are concerned. Therefore, it is hoped that they will meet. If they do not meet or even after meeting if they do not resolve the constitutional deadlock, certainly the other alternatives under the Constitution may assert themselves. That is a different matter. I would make an appeal to this hon. House that I do share their anxiety about the constitutional aspect of it, but at the same time let us not rush in these matters, let us not express extreme views.

SHRI BHUPESH GUPTA (West Beigal): I would first of all invite the attention of the House to the proceedings of the 20th March when we briefly discussed the Punjab situation. The Home Minister in his speech defended the actions of the Gill Ministry, the Ordinance, the enactment of the Appropriation Bills and everything else, certificate by the Deputy Speaker, and so on. When Mr. Kaul pointed out that it was wrong, he said he did not share his views. Air. Kaul's views. Then he said: "So far I do not think anything unconstitutional has happened. Of course unseemly incidents I do not approve of. For the Home Minister it was a cas?

, SHRI Y. B. CHAVAN: I quite agree that the constitutional situation there is certainly of great concern to

of unseemly incidents only. He thought constitutionally nothing wrong had happened. I should like to know after the High Court has said that it is unconstitutional, *ultra vires* the Constitution, in what frame of mind the Home Minister is.

In this connection the statement he has made today does not indicate any awareness of the gravity of the legal and constitutional aspects of the matter. I am not going into the political aspects at the moment. He is aware certainly that the Budget was not validly passed as required by articles 204 and 206 of the Constitution. The Punjab Ordinance was unconstitutional and a fraud on the Constitution according to the judgment. Without an amendment of the Constitution there is no machinery to cure the violations of the Constitution by the Punjab Government. The stay order has been refused by the Punjab High Court. He is aware of that. The High Court has declared that the two Appropriation Acts are invalid, and it is an accepted practice that declarations by Courts are never stayed. Is he aware of that thing and the implications of that? Expenditure of money entrusted under the Constitution in violation of the provisions of the Constitution clearly amounts to breach of trust punishable as an offence of embezzlement under sections 406 and 409 of the Indian Penal Code. I should like to know whether he has considered this aspect of the matter also.

SHRI DAHYABHAI V. PATEL:
Abatement.

SHRI BHUPESH GUPTA: I will come to this. The High Court has held it *ultra vires*. The Assembly was not in session and the Budget was not passed by the Assembly. Therefore, all the persons spending money in a concerted manner under the colour and authority of the invalid Appropriation Act will be guilty of conspiracy, of committing breach of trust.

Then, Sir, he said that the Supreme Court may be approached for stay

order to allow the expenditure in violation of the Constitution. He would ask for an order to continue a recurring offence. Sir, the courts do not grant orders authorising offences to be committed. No responsible Government can and must be permitted to ask for such orders if the Constitution is to be respected. It seems the Centre Government is not alive to this aspect of the matter.

SHRI AKBAR ALI KHAN (Andhra Pradesh): What is he reading from?

SHRI BHUPESH GUPTA: Let me finish. Do not disturb me. In any event he has considered this thing. The judgment was delivered on Friday, 10 o'clock. The stay order was refused by the High Court this afternoon. The House is entitled to know whether any money has been spent and would be spent by the Punjab Government on Friday, Saturday and Sunday and in future an order is obtained by the Supreme Court in gross breach of the Constitution by the Punjab High Court when there is no Constitutional sanction for such expenditure. He should explain this point.

Sir, in such a situation, can the President of India, consistent with his responsibility under article 356, sign the unconstitutional acts of the Gill Ministry, and what remedy does Government propose for the breakdown of the Constitutional machinery at least for the period when no stay order is in operation?

Kir, it is not a case of only a Constitutional crisis. The Constitution has broken down. The Home Minister refuses to see it for his own reasons. That is the question. The President is not bound to wait for a report from

the Governor for imposing the President's Rule. Is the High Court judgement and the refusal of the stay order not sufficient to establish a breakdown

[Shri Bhupesh Gupta] of the Constitutional machinery? Will the President not be guilty of encouraging and inciting the expenditure of money in violation of the Constitution by Mr. Gill and his co-conspirators after the High Court has categorically held unconstitutional the nature of the action? There is nothing in the statement.

Then, sir, I should like to point out whether he has realised that the Constitution has been flagrantly violated by the Union Minister himself and the Gill Ministry in the Punjab for the following reasons.

The Ordinance was an attempt to destroy the powers of the Speaker under article 189(4) and Rule 105 of the Punjab Legislative Assembly. Does he realise that if he violated the Constitution then democracy would be reduced to a farce? Therefore, the position now is absolute power has been claimed on behalf of the Governor of Punjab to prorogue the House in order to paralyse the Assembly so that he could assume absolute power under the Ordinance.

Finally, Sir, I should only like to say is that the remedy is this. I have stated certain legal propositions. Retrospectively, the Assembly cannot pass the Budget. The Constitution clearly lays down how the Budget should be passed by the 31st March. There is no provision in the Constitution nor in Parliamentary us that a Budget can be passed after the 31st March. Certainly there is no provision in the Constitution by which the State Assembly or Parliament can retrospectively pass a Budget. Even if the Assembly meets they cannot pass the Budget. That is beyond them. Here it would need a Constitutional amendment. Therefore, the only remedy left to the Government is to take over power by applying article 356 of the Constitution, bring it under the President's Rule, and then invoke article 357 in order to charge the Consolidated Fund of India to meet the expenditure there.

Sir, when the Lok Sabha is not in session, article 357 authorises the Government to use the Consolidated Fund in order to meet such contingencies. There is no other remedy. Therefore, I submit to you, Sir, that Mr. Chavan took a very, very wrong attitude, when we discussed it. All of us pleaded. He ignored. Today we stand vindicated. He does not even congratulate us for helping Parliament. Not only that, he, again shows his tardiness in this matter.

Mr. Chavan, you are guilty of abetment. You are guilty of encouragement of violation of Constitution. You sanctioned something which the High Court has held illegal, unconstitutional, *ultra Vires*. Even now you should bow out of office. Now you try to justify your action by saying that the Assembly should discuss it. How is the Assembly going to discuss? The Constitution has not given power to the Assembly "to pass a Budget after the 31st March. In this matter it has no power. Therefore, do not play any more with the Constitution.

Therefore, Sir, I say, here and now, today, we want the President's Rule. The Gill Ministry should be arrested as a conspirator for embezzlement. Chandigarh is under the Central Government, under Mr. Chavan. The Gill Ministry has committed an offence of embezzlement and is continuing this offence in a territory which is under the Indian Union. Therefore, the Central Government is under obligation to order the arrest of Mr. Gill and his fellow conspirators in the act of embezzlement and continuing in office,

I do not want to say much. Mr. Chavan said in the other House that he was not responsible. He did give any opinion. I have quoted his own speech from the proceedings of the House that he owned up everything that the Gill Ministry was doing, all unconstitutional acts. All that had happened there in M

was Constitutional. I should like to know from you, Sir, if the Home Minister of the country, who is particularly responsible to defend the Constitution, would advise the President to discharge his obligation in accordance with the provisions of the Constitution. If the Home Minister of the country behaves in this partisan manner, brushes aside the Opposition and defends, supports and abets, encourages and incites unconstitutional acts, who is going to defend the Constitution? Therefore, I think Mr. Chavan will be well-advised to tender his resignation. The Gill Ministry should be dismissed. President's Rule should be imposed, and then only you can meet the situation. There is no other remedy at all. Do not wait for the Supreme Court's so-called judgment any more. They are in the midst of the commission of an offence. They have committed an offence. According to the High Court they are embezzlers of public funds. Apart from political considerations, on Constitutional legal ground, Mr. Chavan and the whole lot of them stand condemned. I would like elucidation from the Home Minister.

SHRI LOKANATH MISRA (Or'issa): Ask him whether he will tender his resignation.

SHRI BHUPESH GUPTA: I have asked him. He does not even admit that there is Constitutional breakdown when the High Court has said that it is a Constitutional breakdown.

SHRI Y. B. CHAVAN: I would reply after everyone has expressed his views.

MR. CHAIRMAN: Once a question has been put, let it be answered.

SHRI Y. B. CHAVAN: Sir, heirble Mr. Bhupesh Gupta has not asked *me* any question. He has started to give his own answer to -all the questions he has raised.

SHRI BHUPESH GUPTA: This is arrogance. Now it is for you to say

whether I have asked questions or not, and not for Mr. Chavan.

MR. CHAIRMAN: You had your say. He has replied.

SHRI Y. B. CHAVAN: Naturally when this matter was discussed here it was discussed whether the Governor was right in accepting the advice that was given to him by the Government there. And I was certainly defending the Governor. And there nothing wrong in it. I still stand by my position that when an executive-Council of Ministers gives advice to the Governor, it is the Constitutional responsibility of the Governor to accept the advice.

SHRI BHUPESH GUPTA: But he did not agree to the advice tendered by Shri Ajoy Mukherjee.

SHRI Y. B. CHAVAN: That advice has now been proved by the High Court to be unconstitutional. It cannot be said whether a matter is Constitutional or not. Certainly every one was entitled to his own views. Now subsequently when a matter has been held by the High Court as unconstitutional certainly that decision at the moment holds the ground. I do not deny that position. But as he was entitled to certain views, I was also entitled to certain views. I have not done any activity in issuing the Ordinance. I have not passed that.

SHRI BHUPESH GUPTA: You supported it.

SHRI Y. B. CHAVAN: I was giving the other side of the picture. I was entitled to my own views. I am still entitled to my views.

SHRI BHUPESH GUPTA: You are not entitled to the Home Portfolio

(Interruption)

SHRI Y. B. CHAVAN: Well, that may be your view.

SHRI BHUPESH GUPTA: It is our view. It is the view of any decent parliamentary democracy.

SHRI Y. B. CHAVAN: I know how you believe . . .

SHRI BHUPESH GUPTA: It does not matter how I believe.

SHRI Y. B. CHAVAN: Here is a person—I do not know what he read, he was reading something, some legal matters; I do not want to convert this place into a sort of battle ground for legal arguments; but I can certainly deal with the arguments that he has mentioned—who has suggested that not only should the Government be dismissed but they should be arrested also . . .

SHRI AKBAR ALI KHAN: Fantastic.

SHRI BHUPESH GUPTA: Embezzlers. (*Interruptions*). But you will arrest Ministers for violation of section 144.

SHRI Y. B. CHAVAN: Of Course, we can do it. Therefore, Sir, again I would like to say that these are very difficult constitutional issues before us. I do not want to rush into expressing my views about it. He is in the habit of rushing into expressing, his views. Even these views that have been expressed have to be considered very carefully. I can only assure the House that we will consider all the constitutional aspects very carefully in this matter and then advise the Government accordingly.

SHRI PITAMBER DAS (Uttar Pradesh): Sir, in spite of there being a Calling Attention Motion, I had given notice for a thorough discussion on this matter, because we cannot do

justice to this subject by only putting certain questions to the Home Minister and getting replies which probably to most of our friends appear to be irrelevant. Now, Sir, it appears, as the Home Minister has said, there are political considerations behind what the Government does. I for one do not agree with the Home Minister in that matter because these are affairs in which the constitutional considerations should come first, political considerations should come later on. Politically speaking, the Home Minister will always want to perpetuate Congress rule in every State, not only in Punjab. But if the Constitution does not allow it, he cannot do it. We in this House have differences of opinion so far as the constitutional aspect of this matter is concerned, and in 10 or 15 minutes, we cannot do justice to that constitutional aspect. That is why I demanded a full-fledged discussion for 2 1/2 hours. After Mr. Bhupesh Gupta has spoken and after the Home Minister has given a so-called reply to the points that he has raised, it has become clear that these issues, as the Home Minister has himself also accepted, are of vital constitutional importance which need more time for consideration than only 10 or 15 minutes of putting questions and getting answers. I have, therefore, requested you, Sir, to fix up two hours ...

MR. CHAIRMAN: You state your views straightway. I will give an opportunity to most of the people who, I feel, are the representatives of their parties and have got something to say. Therefore, you state your view.

SHRI PITAMBER DAS: I have, of course, a right to make my own submission and you have the right to accept it or reject it. But under rules 176 and 177, such matters can be raised and full time allowed for a discussion on those matters . . .

MR. CHAIRMAN: You may say what you want to say.

SHRI PITAMBER DAS: It is for you to allow or not to allow such a discussion. I request you to allow a full-fledged discussion

SHRI BHUPESH GUPTA: That is our Collective view.

SHRI PITAMBER DAS: The questions that have been raised and the answers that have been given

MR. CHAIRMAN: I will give you time to express your views.

SHRI PITAMBER DAS: . . . and the matters that are being pointed out demand a full-fledged discussion.

MR. CHAIRMAN: You state your views.

SHRI PITAMBER DAS: Are you allowing a discussion?

MR. CHAIRMAN: No, you just state your views.

SHRI PITAMBER DAS: I feel, Sir, that in view of the judgment of the High Court and particularly after the stay order was not given, it is not wise, and it is not constitutional for the Government to continue, because every single pie spent after that judgment would be illegal, would be invalid and would be unconstitutional. One could understand all the expenditure till the judgment was not pronounced. It may have been a *bona fide* mistake of views that the Government thought that it had a right to spend the money. But after the judgment has been pronounced, and after the High Court has said that those acts are all *ultra vires*, any expenditure and any pie spent, would be unconstitutional and any number and any type of resolutions passed by the Punjab Legislative Assembly now will not be able to undo this wrong. Therefore, I feel that the only course

left open now is to dissolve the Assembly, to impose President's rule and to have mid-term elections.

SHRI Y. B. CHAVAN; Sir, in my preliminary observations, I did say that that also can be an alternative. I am not expressing any final views in this matter, because the whole situation will have to be examined by us, all these aspects will have to be examined by us and by the Governor also. When the situation is developing, I just cannot express one's view. So that is also an alternative that may possibly develop. I cannot say anything about it now.

SHRI M. R. VENKATARAMAN (Madras): Sir, I will be the last person to ask Parliament to intervene and take up a matter which a State Assembly would rightly be entitled to discuss. I do not want a precedent either of Parliament intervening and usurping the powers of a State legislature. But are we discussing something normal with reference to what has happened in the Punjab Assembly? Can we forget that the Gill Ministry in Punjab was a minority Ministry— a "Sikhandi" Ministry sustained by Congress support, while the Congress itself did not have the courage to form a Government on its own? And friends here have been mentioning about the political aspect and the constitutional aspect. I consider that here is a case in which the constitutional aspect, with which alone I am now concerned in addressing you, happens to be strikingly the political aspect as well. Who can forget that when these two very Bills, which have now been struck down by the High Court, came up, the Speaker said that the Assembly had not been properly convened and that it had been illegally convened? But in spite of that, the objection was overruled and the Assembly proceeded to pass the Bills, and as this House itself knows, that action was justified by the Government here. Now can one say, after all this, that normal Assembly conditions are there and things can

[Shri M. R. Venkataraman] take their own constitutional course? Even now the hon. Home Minister is not prepared to say categorically that the Assembly is going to meet specifically on such and such a date. He only says that if it meets, well, we shall see what is the outcome. That is how I understood him. If it does not meet, then the appropriate provisions would come into operation, he said. But then, the whole thing is so abnormal. One cannot forget the fact that when these very Bills were being passed, the police were called in. That is how the whole matter was sustained. And the Central Government and the ruling Congress Party which mans it, which has condoned and which has approved of all these things and which has tried to sustain that minority Government in office in Punjab, now say that the Constitution has got to operate in the way in which they suggest it should be done. It is all very well now agreeing with Members on the other side of the House to talk of a grave crisis having arisen and all that. But then, the process of subverting democracy and the Constitution itself has continuously been practised by the Congress Party and the Central Government. And I am constrained to say that they have not turned away from that path but are only trying to continue with it. Even now the seriousness of the constitutional crisis which has happened, the breakdown of the machinery, is not realised. That is why I say that this kind of thing cannot go on indefinitely. It is necessary that mid-term elections should follow as quickly as possible. Then I can understand that the Constitution is being respected. If democratic rights are being respected. I would, therefore, say that the demand which has come from the Opposition that there should be an admission of the mistake committed and there should be amendments made is well sustained. I demand that there must be a break with the policies of the past. However much one may say, it has nothing to do with politics, it is the deliberate

design of the Congress Party to act in the way in which it wants. It is expressed here about the constitutional and the political issues involved in this. In this case the constitutional issue is also directly political. I am addressing this House on the constitutional issue alone. Were the Home Minister not a member of the political party, the Congress Party, he would perhaps be trying to act differently in conforming strictly to the Constitution. I can only, Sir, say that the "operation topple" of non-Congress Governments so openly started by a person who is the Chief Minister of a State and the President

the Congress Party is coming here to roost. Now, there is no point in the Government merely trying to say that there is a crisis like any Member on this side of the House. The crisis is of your own making and you have got to face it by breaking from policies which you have been pursuing till now.

SHRI Y. B. CHAVAN: Sir, the hon. Member has certainly raised some constitutional aspects of it and, as I said, they require a very careful consideration. Naturally I agree with him that this is not a normal situation but even then we cannot forget that the Assembly exists and that really speaking is a forum where the fate of the Government should normally be decided. That is why a suggestion was also made in the other House and, Sir, my information is that the Chief Minister has already given his advice to the Governor to call the Assembly. But at the same time one has to consider all the other issues involved in it; they will also have to be carefully considered. Then he that I am not coming forward with any specific suggestion. This is exactly my difficulty. My respect for the Constitution makes me reluctant to express my views, (interrupted); He wants me to work like a dictator. I am not a dictator.

SHRI BHUPESH GUPTA: We heard Hitler talking about socialism.

SHRI C. D. PANDE (Uttar Pradesh) : You can talk of democracy also.

SHRI Y. B. CHAVAN: This is exactly what I said that all the three alternatives are there and one will have to give a little time for consideration of these matters in a proper way.

SHRI BANKA BEHARY DAS (Orissa): Sir, the Home Minister says that a political crisis has developed in Punjab, but it is a deep constitutional crisis. It may be a political crisis as far as the Congress Party is concerned because they have buttressed and propped up the minority Gill Ministry there. But we are concerned here with the constitutional aspect of it. If you see the judgement, there are two parts of that judgement. One is that both the Appropriation Acts are *ultra vires* the Constitution but another aspect about the Ordinance is that the Governor tried to clothe himself with powers under article 213, *i.e.* the power to promulgate the ordinance. The High Court has said that the Governor has misused that power because he wanted to take advantage of that power and for that only he prorogued the Assembly, which he is not expected to do under the Constitution. According to article 213 when the House is not in session, then only he can issue an ordinance but here he wanted to issue an ordinance and therefore he prorogued the House. It was just the opposite. That is why the High Court has said that the Governor of the State has abused the power under article 213. So now it is not a question of the Gill Ministry only. The question here is that the Governor should be removed because the protector of the Constitution has been the murderer of the Constitution. I can understand that the Minister might reply that he had no option but to accept the advice of the Ministry to prorogue the Assembly. But I may remind him that the Gov-

ernor has also the power under the Constitution to see that the Constitution in that State is protected and for that he could have advised the Gill Ministry "It would be a wrong step for me to accept your advice." After that he could have come to the President with his recommendation for the President's Rule. In this connection I am reminded of Mr. Mandal in Bihar. He was not given oath by the Governor because he was not a Member of the Assembly. So the Governor also exercises certain powers under the Constitution and he is also a friend, philosopher and guide to the Ministry. Here the Governor of Punjab has misused his power and abused his power. That is the wording in the judgement of the High Court. That is why I am saying that the time has come when the Governor of the state should be removed from that office. Secondly, I want to say that the Congress Party which has already protected this Gill Ministry is also an abettor in this crime and you know that Mr. Gill invited that Rishikesh Guru for transcendental meditation, in Punjab so that all those corrupt officials can at least throw away their corrupt practices and become saints. I would say that Mr. Gill, if he has any honour left in him now, should go to Rishikesh for meditation there instead of carrying on this hasty politics in Punjab. You will see that even after the judgement of the High Court he has tried to defect a member of the Akali Dal. He wanted him to join as a Minister. That is Mr. Gill who has been so much censured here in the House and also by the High Court. So my contention is that the Governor has abused his power under the Constitution and he has no right to continue as the Governor of the State. Therefore he should be removed forthwith. Secondly, whether the

Governor recommends or not, under article 356 the President has power *ipso facto* to impose the President's Rule there and dismiss the Gill Ministry. The Governor has failed in his

[Shri Banka Behary Das]

duty. Mr. Gill should be asked to go 10 Rishikesh for meditation. The, in the interest of the Congress Party I would suggest that they should immediately withdraw their support. The question of convening the Assembly does not arise. Here the question of President's Rule comes in. I would therefore like that the Cabinet should take a decision today itself and the Gill Ministry must be dismissed and also the Governor must be removed, and the Presidents Rule promulgated.

SHRI Y. B. CHAVAN: The hon. Member has expressed, his own view. I do not agree with him in this matter. The judgement of the High Court will have to be very carefully studied. This is all that I can say at this moment because there is no time for studying all these issues. All these issues naturally will have to be taken to the Supreme Court also. So I do not want to express my views on this legal issues. As far as his advice to Shri Lachhman Singh Gill is concerned—taking the advice of some saint j he mentioned—! think he will consi- [der that advice.

श्री राजनारायण (उत्तर प्रदेश) : श्रीमन्, मैं आपके द्वारा इस सरकार से कुछ निवेदन करना चाहता हूँ। इतिहास की पुनरावृत्ति हो रही है। धृतराष्ट्र थे, कौरवों के पिता, भीष्म थे, द्रौपदी का चीरहरण हो गया, महाभारत हो गया। क्या उसी इतिहास की पुनरावृत्ति होगी? चव्हाण साहब इनको सौचकर उत्तर दें। मैं इसके लिए केवल श्री यशवन्तराव चव्हाण को दोषी बनाऊँ तो मैं समझूँगा कि मैं अपने कर्तव्य से च्युत हो गया, फौजला मन्त्रिमण्डल का होता है। सारे के सारे मन्त्रिमण्डल का; अगर एक को ही दोषी बनाना है तो मैं कहना चाहूँगा प्रधान मन्त्री श्रीमन्त्री इन्दिरा नेहरू गांधी। क्योंकि सरकार उनके नाम से चली है, अगर इस सदन में यहाँ श्री यशवन्तराव चव्हाण जवाब दे रहे हैं तो ये ही प्रश्न का उत्तर दें।

क्या हाईकोर्ट में पांच जजों ने सर्व सम्मति से कोई ऐसी बात कही है जिसको इसके पूर्व इस सदन में हम लोगों ने न कहा हो? हमने आज जजमेंट पढ़ा और अपने उस दिन की स्पीच पढ़ी, जिन जिन कांस्टीट्यूशन के आर्टिकल्स को हमने रेफर किया उन्हीं कांस्टीट्यूशन के आर्टिकल्स का भाष्य वहाँ जजों ने किया। श्रीमन्, मैं आपके जरिये नवाब साहब को कहना चाहता हूँ ...

श्री भूपेश गुप्त : कौन नवाब साहब।

श्री राजनारायण : नवाब साहब अकबर अली खाँ से कहना चाहूँगा कि वह अकबर एक वाक्य कह दिया करते हैं कि कोर्ट में जाइये, अगर कोई बोलता है तो कहते हैं कि कोर्ट में जाइये, अगर कोई गड़बड़ है तो कोर्ट में जाइये, तो अब वह इसको कहना बन्द कर दें।

श्री अकबर अली खान : सुप्रीम कोर्ट में जाइये।

श्री राजनारायण : कोर्ट में जाने से क्या हुआ? सीधा देखा जाय। लीगल क्विबलिम्स की कोई जरूरत नहीं है। अगर पॉलिटिकली हम डिस्हानेस्ट हैं, यदि हम मान लें कि आज का कांस्टीट्यूशन श्री चव्हाण साहब हैं और गवर्नमेंट श्री गिल हैं तो फिर कोई बात नहीं, फिर कोई बहस नहीं। क्या चव्हाण साहब वह पोजीशन लेना चाहते हैं कि वह स्वयं कांस्टीट्यूशन हैं और अगर वह स्वयं कांस्टीट्यूशन नहीं हैं तो क्या अब भी उनके ...

श्री अकबर अली खान : इंटरप्रेट करते हैं।

श्री राजनारायण : ... समझने में कोई परेशानी है।

श्रीमन्, मैं बहुत दुखी हूँ। मैं इसकी कानूनी की बारीकियों को भी अपने पक्ष में

पाता हूँ। तो चव्हाण साहब आर्टिकल 174, आर्टिकल 204, आर्टिकल 289, आर्टिकल 213, इन तमाम आर्टिकल्स को पढ़ डालें। यह संविधान बिल्कुल क्लीयर, साफ है। कि राज्यपाल ने जो अध्यादेश जारी किया वह उसकी क्षमता के बाहर था। कांस्टीट्यूशन कुछ जिम्मेदारी स्वीकार को देता है और अगर उस जिम्मेदारी को राज्यपाल अपने अध्यादेश के द्वारा छीनने लें तो संसदीय परम्परा और संविधान नष्ट हो जायगा। यानी संविधान के साथ पंजाब के राज्यपाल ने जिस गहराई के साथ बलात्कार किया है इसके पूर्व मुझ को ऐसा देखने को नहीं मिला था और संविधान के साथ वह बलात्कार हो रहा है और चव्हाण साहब, घर मन्त्री, ने अपनी दोनों आँखों पर दोनों हाथ थोप लिये हैं। यही तो स्थिति है। इसके विपरीत कोई स्थिति नहीं है।

अब उन बातों पर जाने से कोई फायदा नहीं। जब हम छोटे छोटे बच्चे स्कूल में पढ़ते थे तो एक कहानी थी कि किसी ने कर्जा लिया और उसको दे-से मना कर दिया, अदालत में मामला गया, तो उसको बताया गया कि जो कुछ भी मजिस्ट्रेट पूछे उसके लिये सब जगह "न" कह देना तो मजिस्ट्रेट जो कोई भी सवाल पूछे वह "न" कहे। अब उसी कर्जा खाये हुए की हैसियत श्री चव्हाण साहब लेना चाहते हैं, जितने सवाल हम लोग पूछ रहे हैं सबका "न" में हमें उत्तर दे दिया या कहा कि अब इस पर कुछ नहीं कहा जा सकता, गम्भीरता से अध्ययन हो रहा है, गहराई से खानबीन हो रही है, क्या हम लोग कोई बेवकूफ हैं कि किसी अच्छे नतीजे पर जल्दी से पहुँच जायें।

श्री अकबर अली खान : हम कैसे पहुँच सकते हैं।

श्री राजनारायण : यही तो उत्तर है। यह क्या हो रहा है। मैं सही जानना चाहता

हूँ। आप तो, श्रीमन्, हर पद पर रह चुके हैं, राज्यपाल भी रह चुके हैं, मजदूर नेता भी रह चुके हैं, इस मन्त्रिमण्डल के सम्मानित सदस्य भी रह चुके हैं, विधान सभाओं में और लोकसभा में भी रह चुके हैं, आप अगर समझना चाहेंगे तो आपको समझने में कोई क्या दिक्कत है? मैं समझता हूँ कि यदि आप वहाँ राज्यपाल होते तो ऐसा काम न करते। सही समझ रहा हूँ न? सीधी बात है।

THE MINISTER OF DEFENCE
(SARDAR SWARAN SINGH): N»
question to the Chair.

श्री राजनारायण : तो फिर ऐसी स्थिति में उस राज्यपाल को हटाने में क्यों दिक्कत है? राज्यपाल संविधान का संरक्षक होता है। उसकी तीन हैसियत हैं, इस सदन में यह मैं पहले भी कह चुका हूँ लेकिन स्मरणार्थ फिर कह दूँ। राज्यपाल की तीन हैसियत है। एक हैसियत तो है कि वह राष्ट्रपति का एजेंट, प्रतिनिधि है, दूसरी हैसियत है उसके स्वविवेक की और तीसरी हैसियत है उसके मन्त्रि-परिषद् की सलाह से काम करने की। यह तीन हैसियत किसी भी राज्यपाल की है। उसमें जो स्वविवेक है वह उसका सबसे बड़ा अधिकार है। तो उस स्वविवेक को उन्होंने रख दिया गिरवी श्री गिल के पास, यों हम यह भी कह सकते हैं कि उन्होंने अपने स्वविवेक को केन्द्र सरकार के पास गिरवी रख दिया। जहाँ मन्त्रियों की भूकुटि-विलासिता संविधान की जगह ले ले वहाँ अनर्थ होता है। मैं जानना चाहूँगा कि क्या चव्हाण साहब चाहते हैं कि वही अनर्थ हो? क्यों लातच में पड़े हो, 20 साल तक कांग्रेस सत्ता में रही, 20 साल का तक उसने इस मुल्क को क्या क्या मजा चखा दिया, अब 10 महीने या एक साल में इतना घबड़ा गये, इतना छाती पर साँप लोटने लगा कि हर मर्यादा को तोड़ कर, हर मर्यादा को भंग करके आज केन्द्र की कांग्रेस सरकार चाह रही है कि जिन जिन राज्यों में कांग्रेस सरकार रह सके वह किसी भी तरीके से रहे, चाहे

[श्री राजनारायण]

जो कुछ भी संविधान की धज्जी उड़े उसे उड़ा करके अगर कहीं गैर कांग्रेसी सरकार तोड़ी जा सकती है तो उसको तोड़ा जाय। यही इनके दो रास्ते हैं, इन दोनों रास्तों पर श्री चव्हाण और श्रीमती इन्दिरा नेहरू गांधी चल रही है।

मैं अदब से कहना चाहता हूँ कि चव्हाण साहब इसका उत्तर दें। वह मुख्य मन्त्री रह चुके हैं। न मालूम कितने व्यापारी हैं, कांट्रैक्टर हैं, न मालूम किन किन लोगों ने स्टेट से फाइनेंशल कांट्रैक्ट किया। अब उन लोगों का कहना है कि पता नहीं हम कहाँ हैं, अब हम उस कांट्रैक्ट को चालू रखें या नहीं रखें। उनकी हैसियत क्या है? जब हाईकोर्ट ने जितना विनियोग विधेयक था उस सब को गैर कानूनी करार दे दिया तो वहाँ आज का शासन कैसे चलता है? सरकार के जितने वित्तीय मामले हैं उन मामलों में जो पेचीद-गियां होती हैं उसका निराकरण कैसे होगा? मैं हैरत में था। कितने लोगों ने मुझ से बात की। मुझ में परेशान था जब हमने यह पड़ा कि गवर्नमेंट ने फैसला किया है कि वह श्री गिल को कहे कि वह असेम्बली को बुलावे। कारण क्या है, परपत्र क्या है? असेम्बली बुलाने का उद्देश्य क्या है? केन्द्र ने यह सुझाव क्यों दिया? अब कहा जा सकता है, चव्हाण साहब कह सकते हैं कि श्री गिल ने तो पहले ही इस नतीजे पर अपने को पहुंचा दिया था और उन्होंने राज्यपाल को खबर दे दी थी। भंगर केन्द्र का भी तो वही फैसला हुआ न। आज जो अखबारों की रपट है उसमें यह बात आई है कि केन्द्र ने यह कहा कि विधान सभा की बैठक बुलाई जाय। कहीं भाई, विधान सभा की आज क्या स्थिति रह गई है? जो एप्रोप्रियेशन बिल पास शुदा माना गया उसका हाईकोर्ट ने...

SHRI BHUPSEH GUPTA: They expect the Speaker to give the right ruling.

श्री राजनारायण : . . . अस्वीकार कर दिया। तो विधान सभा को क्यों, किस लिए बुलाया जा रहा है? चव्हाण साहब की यह बात है, एक बात से उन्होंने हमको यह समझाया, उन्होंने कहा कि विधान सभा अपनी मास्टर है वह खुद अपना निर्णय लेगी। क्या निर्णय लेगी? हम भोग कोई बुद्ध हैं। निर्णय तो यही लेगी—चव्हाण साहब समझते होंगे इनको किसी कानूनी सलाहकर ने सलाह दे दी होगी कि असेम्बली को पूरा अधिकार दे वह एक प्रस्ताव पास करके फैसला ले सकती है—कि फलां फलां समय जो विनियोग विधेयक पास हुआ था उसको पास माना जाय। फिर यह डबल हत्या होगी, संविधान की। अभी तो हत्या हुई, अभी तो संविधान को श्री गिल ने और पंजाब के राज्यपाल ने झटके से काटा है लेकिन चव्हाण साहब और श्रीमती इन्दिरा नेहरू गांधी उसका हलाल करवाना चाहती है, यह फिर हलाल होगा। इतना गलत काम, चव्हाण साहब, न होने दें। बहुत जबर्दस्त अनर्थ होगा। मनुष्य एक गलती कर लेता है तो उस गलती को छिपाने के लिये नाना प्रकार से और गलतियां करता जाता है।

एक झूठ को छिपाने के लिये इन्तान अनेक झूठ बोलता है वह झूठ को छिपाने पर आरूढ़ होता है इसलिये जो असत्य है उसका असत्य मानें और वह कहे वह असत्य है यह गलत है। कांस्टीट्यूशनल प्राविजन है और कांस्टीट्यूशन की तह में वहाँ की असेम्बली हो सकती है वहाँ की सरकार हटाई जा सकती है राज्यपाल वापस बुलाये जा सकते हैं। यह तो पूरा पूरा हो। जो राज्यपाल संविधान को न समझता हो, जो सरकार इतनी गलत सलाह देकर राज्यपाल से काम करवाती हो कि अप्रोप्रियेशन सरोखा बिल जिमके बारे में कांस्टीट्यूशनल प्राविजनम आदिलेजन्म हैं उनके लिये एक तुंगली फरमान निकाल दिया और कहा कि पास करो। वह तमाश हो रहा है यह नोटकी हो रहा है जनत इसको जाने। मैं चव्हाण साहब की इज्जत

करता हूँ मैं सही कहता हूँ और मैं कहना नहीं चाहता कि कहीं फंसे हैं बल्कि फंसाये गये हैं दलाल में हैं अपनी गर्दन तक फंसे हैं मारा शरीर उस भ्रष्टाचार और असंवैधानिक स्थिति के दलदल में चला गया है केवल ताक बाकी है थोड़ी साँस लेने के लिये। अगर कहीं उन्होंने फिर वहाँ को विधान सभा को बुलाया और फिर इतको रेड्डीकिट्टव इरुक्कट से पाम करवाया तो जनाक में थोड़ी थोड़ी साँस संविधान की बाकी है वह भी छेद बन्द हो जाय और इन बीच में चव्वाण माहव चले जायें। मैं अपने मित्र धारिया माहव से कहूँगा कि जब चव्वाण का अकेला अदमी नाम लेता है तो उनके दिल में डेम घाती है इस सदन में कई बार मैं कह चुका हूँ कि चव्वाण माहव को सिगल आउट नहीं किया जाय और मैं समझता हूँ धारिया मरीखें जो सम्मनित सदस्य हैं वह हमारे मतलब को नमस्ते। हउने संविधान के प्रति बरुदारी की शपथ ली है और हम खुद संविधान को तोड़ रहे हैं हम खुद इसी हत्या कर रहे हैं। यह मानूनी बात नहीं होगी। फिर तीकरशाही मर उठा रही है, इसी कारण सारे राज्य और सारे राष्ट्र में आज तीकरशाही बितांडा करेगी, संविधान की धज्जी उड़एगी कानून तोड़े जायेंगे और ला एण्ड आर्डर के नाम पर अराजकता चारों तरफ व्याप्त होगी।

श्रीमत् एक सवाल मैं आपसे पूछना चाहता हूँ क्योंकि कल जब हमने निवेदन किया था कि इस सदन की भाना राष्ट्रपति जो के पाम पहुँचाई जाय कि वह फंरन वहाँ पर राष्ट्रपति शासन लागू करे और द्वितीय व्यवस्था को कानूनी ढंग से लागू करें। आपने कहा था। जो मैं उचित समझता उसको मैं कह दूँगा। मुझे मालूम नहीं आपने उनको कुछ सलाह दी है या नहीं। क्योंकि मिडान्त की बात है, मैं आज भी कहना चाहता हूँ चाहे इस सदन के कार्यशाही बन्द हो जाय कोई हर्ज नहीं होगा, इसकी चर्चा दो दिन के बाद ही, कोई हर्ज नहीं होगा मगर अभी यहाँ

संश्रा चव्वाण माहव उठें, अभी हमारे विद्वान् और अनुभवी जो चेयरमैन माहव यहाँ बंठे हुए हैं वह उठें, सारे राष्ट्र के संविधान का सवाल उठा हुआ है और तनिक उंगली दबने पर अगर संविधान की हत्याएं होती रहेंगी, कानून तोड़े जायेंगे, स्वच्छाचारिता का प्रसारण होगा तो देश डूब जायगा; देश डूब ही रहा है शायद ही कोई बचा सके और दुर्भाग्य में देश टूट जायेगा। तो इस घड़िले के साथ संविधान की हत्या संविधान के साथ खिलवाड़ नहीं किया जाय। उस राज्यपाल को बपम किया जाय। वहाँ की सरकार और असेम्बली भंग की जाय, और बाकायदा निश्चित रूप से राष्ट्रपति का शासन लागू कराया जाय। फिर से वहाँ अन्तरित चुनाव कराये जायें, सारे मसले का हल सर्वेय निक, माधु ढंग से, जनतन्त्रीय ढंग से चलाया जाय, स्वच्छाचारिता का से नहीं चलाना चाहिए देश में संविधान की हत्या करके नहीं, कानून तोड़ कर नहीं यहाँ, हमारी विनती है श्री चव्वाण से। मुझे नहीं मालूम हमारी बात का क्या अरर पड़ा है। यह जाने और भगवान् जाने।

MR. CHAIRMAN: I am here, as Chairman of this House, and as far as Vice-President is concerned, you can leave that matter to me.

SHRI Y. B. CHAVAN: Sir, I have heard with respect what Shri Raj-narain has said, and the only point that I would like to make in this matter is that I have not expressed the view whether the Legislature can pass the Act with retrospective effect or not.

SHRI BHUPESH GUPTA: But why did you ask for the summoning of the Assembly?

SHRI Y. B. CHAVAN: Sir, it is not a question of my asking. Again the hon. Member immediately rushes into asking me about something. It is a matter of fact and as I said, this view was expressed in the other

[Shri Y. B. Chavan] House. It is not a question of my asking anybody about it. This is very wrong; this is not very fair.

SHRI BHUPESH GUPTA: Mr. Chavan has definitely given the opinion that the Legislature should be called, and in fact he was persuading us to accept this thing.

SHRI Y. B. CHAVAN: Well, Sir, I do not know whether we can discuss the other House. Really speaking, the speaker of the Lok Sabha expressed that view, and I subscribed to that view. Since that possibility is there I merely mentioned it as an alternative. I am not expressing any view whether that Legislature can pass those Acts again. It is a matter which needs to be very carefully examined. That is why I said that all the problems have arisen and it is a first class constitutional difficulty.

श्री राजनारायण : जब समिति आफ द हाउस होता है तो उसको काम बताया जाता है। मदन को क्यों बुलाया जा रहा है इस समय इसका क्या कारण है राज्यपाल को बताना होगा। नियम के मुताबिक जितनी तिथि होगी मदन बुलाने की उतनी तिथि देकर मदन को बुलाया जा सकेगा। यह क्या हो रहा है ?

SHRI Y. B. CHAVAN: Sir, again now they are asking me to give my opinion about the constitutional position. And then they will say, "You have expressed a view. Why did you express the view?" The point is this; when the Government advises (the Governor to summon a session of the Assembly, naturally they will have to think about the business, what they want to place before the House. I do not know for what purpose they are going to...

(Interruptions)

SHRI BHUPESH GUPTA: Session means money, and where does the money come from, and who has summoned it. Even if you send the summons, the Governor's summons

has to be charged on the Budget. Where the money comes from and where is the sanction for it now?

SHRI Y. B. CHAVAN: Naturally these matters have to be considered but, as long as the Assembly is in existence, just as this House has the right to discuss this crisis, has not that House at least the right to discuss this crisis? They may pass the Acts or they may not pass the Acts.

SHRI PITAMBER DAS: That is why we wanted the dissolution of the Assembly.

SHRI Y. B. CHAVAN: No, no. I do not

श्री राजनारायण : श्रीमन् जग कौल साहब को भी बुलाने का हमें मौका दें।

SHRI Y. B. CHAVAN: No, no, does he mean to suggest...

श्री राजनारायण : चन्द्रहाण साहब जरा बताएं कि मदन को क्यों बुलाया जाय ?

understand this question. Just as here we are discussing this new situation that has arisen in that State, they can also discuss it there. Can't they do it? Are they not competent, to do that?

SHRI BHUPESH GUPTA: The position is that a situation has arisen where the Assembly cannot even be summoned.

SHRI Y. B. CHAVAN: Mr. Bhupe Gupta, I am not taking the position that merely calling a session will fully meet the situation. I have merely said that; I am not taking that position, but situation can be conceived and where the Legislature can be made to consider this position. Whether it is proper or...

SHRI M. N. KAUL (Nominated): It is most proper to call a session of the Assembly.

SHRI Y. B. CHAVAN: Just this House wants to discuss this thing,

if the elected members of that State Assembly are thinking of discussing this matter, can we refuse that right to that House?

SHRI BHUPESH GUPTA: Where is the money or travelling allowance, etc?

MR. CHAIRMAN: I have given enough opportunity to you to put your points of view.

SHRI BHUPESH GUPTA: The money is finished and not a pice can be spent further by him.

(Interruptions)

SHRI Y. B. CHAVAN: If they want to call a session but they cannot hold the session, they won't spend the money. I am not saying that they can spend the money; I am not taking that position, but then certainly there comes a final deadlock and that certainly will have to be taken into account.

SHRI BHUPESH GUPTA: Under the Rules the House cannot consider the Budget; the Speaker will immediately come and say..

MR. CHAIRMAN: You have put all your questions from all points of view. -

SHRI Y. B. CHAVAN: He perhaps wants me to say 'yes' to what he suggests, but I cannot do that.

SHRI M. R. VENKATARAMAN: Will the Assembly be dissolved? Is it in the thinking of the Home Minister?

MR. CHAIRMAN: Mr. Dharia.

SHRI M. M. DHARIA (Maharashtra): Mr Chairman Sir, there is no doubt that a constitutional crisis has arisen after the decision of the High Court. Mr. Chairman, Sir, I do con-

cede that the Constitution and the democracy in this country are on trial and everybody shall have to think of the issue in a more dispassionate and also in a more calm and cool atmosphere. Sir, even if the Assembly is called, there are several issues that shall have to be discussed by the Assembly, and also, I feel, by the Central Government, for example the issue whether that Assembly is entitled under the present circumstances to give retrospective effect to any Finance Bill or the Appropriation Bills that were enacted. Secondly, Sir, this matter is likely to go to the Supreme Court. If the Supreme Court upholds that decision of the High Court, then what will be the situation? If the Supreme Court, says, if it says—I am just contemplating a situation—that the very Acts, that these Acts are not valid, and the decision of the High Court is correct, in that case, even if the Assembly meets, how can it give retrospective effect, and

how can it further pass those Appropriation Acts? So under these 12 NOON circumstances, may we know

from the Home Minister whether he is seeking to have advice from the Law Ministry in this matter to see what are the constitutional difficulties and how are going to meet those difficulties?

There is one more point and that is whether this Assembly should be convened or not. Even the calling of the Assembly, the posting of a letter, taking up a telephone and making a call, everything that will be done will be without any financial sanction.

SHRI BHUPESH GUPTA: All illegal.

SHRI M. M. DHARIA: It may be illegal. Up to this point and prior to the decision of the High Court the matter was one for interpretation. I do not agree with Shri Bhupesh Gupta about any breach of trust. I have gone through the Indian Penal Code and the relevant sections in it and I would like to say that there is

[Shri M. M. Dharia] no question of any criminal breach of trust or embezzlement. The intention is an important ingredient.

SHRI BHUPESH GUPTA: Why not?

SHRI M. M. DHARIA; Their bona fides is not in doubt. Mr. Gupta may say what he likes but here there is no question of the bona fides being doubted.

SHRI BHUPESH GUPTA: Sir,

SHRI M. M. DHARIA: I am not yielding.

SHRI BHUPESH GUPTA; If I am caught in an act of alleged embezzlement I am taken to court and it is for the court to decide about the bona fides, whether I was doing it under dementia, when I was mentally deranged or not.

SHRI M. M. DHARIA: I would like to urge here that there is nothing like criminal breach of trust because the intention is quite clear and the bona fides is clear. After all, if you go to court the benefit of the doubt is always given to the accused. There is no doubt about that.

SHRI BHUPESH GUPTA: That is not so at the moment.

MR. CHAIRMAN: He may be wrong from your point of view of the law. I may have my view and you may have your own view. But let him express his view.

SHRI M. M. DHARIA: I am not wrong. There is this summoning of the Assembly. So many things have already been done illegally. Up to this day several acts have been illegal. They have taken place. Even this interpretation and the very summoning of the Assembly may be an

additional illegal matter. But it is for the representatives of the people to decide. It is likely that the Assembly may meet and this constitutional point may be discussed and the Assembly may also come to that conclusion, that they have no right to give measure retrospective effect. Naturally it is for them to decide the matter. So many illegal things have taken place. But why should we take away the right of the representatives of the people to meet, discuss and decide? There may be a lacuna in the Constitution. But it is for the Assembly now to have a constitutional amendment. But to refuse the right of the elected representatives to think over these matter will not be fair. When matters have gone so far, let them think about it. and I do not think that those who believe in democracy should oppose this democratic act of the Assembly thinking over this matter and deciding. Many other important points may come up. The desire expressed by the hon. Speaker and by several hon. Members is and my own desire also is, that the elected representatives in the Assembly should meet. Let them know what all they have done and let them think and ponder over the matter and give their interpretation of the Constitution. They may come to the conclusion that whatever they have done so far is not correct. Basically the summoning of the Assembly may not be correct. But I would like to know from the hon. Home Minister whether he would seek the advice of the Law Ministry on this point and whether the Law Minister has given his views. I have heard the Home Minister and he has not said anything about his view of the matter.

SHRI BHUPESH GUPTA: Once bitten twice shy. He was bitten once on the 20th of March.

SHRI M. M. DHARIA; May I say that I will not support any unconstitutional act? Anybody who has done

anything against the Constitution should be criticised and his action should be condemned. But I feel that whatever the hon. Home Minister has done is absolutely in accordance with the Constitution and he has done nothing against the Constitution. Therefore the demand for his resignation is not proper. It is most improper and it is not a proper demand. After all, this is a constitutional crisis and the Constitution itself is on trial. If any lacuna is there it is for all of us to ponder over the matter and rectify any de-facet or lacuna and make the Constitution perfect. In the light of this, may we know the views of the hon. the Home Minister?

SHBI Y. B. CHAVAN: Sir, the only question that he has asked me is whether the views of the Law Ministry would be enough. Naturally the hon. Member has expressed his views with some of which I certainly agree. When this very difficult question has arisen naturally we will be consulting the Law Ministry and the law experts on the matter. It is a matter which needs very careful consideration. I can understand the anxiety of hon. Members, including Shri Bhupesh Oupta and Shri Rajnarain. I can assure them that all aspects of the matter, the political propriety, and the constitutional propriety of the matter will be very carefully considered.

SHRI K. CHANDRASEKHARAN (Kerala): Sir, many things have happened recently in the country which make large sections of the population think that the Constitution is in its twilight. The present impasse in the State of Punjab, I submit, is possible of solution by a constitutional amendment and only by a constitutional amendment. Whether it be at the Centre or in the State the Constitution has envisaged the passing of an Appropriation Bill before amounts can

be appropriated. But now amounts have already been appropriated and the legal position after the judgment by the Punjab High Court is—and if it were to stand in the Supreme Court also—that there is no law enabling the appropriation and there is no provision in the Constitution enabling the Legislature or Parliament to retrospectively legislate on an appropriation which is already made. So the impasse can be resolved only by a constitutional amendment and I would very respectfully and seriously suggest that this amendment, if at all made, should be made for this specific purpose only and not by way of a general amendment. I say this because otherwise it would enable in future appropriations of a large nature to be made by the State to be set right by subsequent legislation. I submit when this impasse first appeared it was discussed in both the Houses and it was suggested that illegal action was being done and that article 356 ought to have been applied at that stage. Now the position is clear. Under the Constitution there is no certification for Appropriation Bills envisaged in it, under article 194. No Governor of the State with a sense of responsibility and legarknowledge and a minimum of constitutional knowledge would certify the Bill under article 200 of the Constitution. I submit, Sir, that I would not charge the Governor for the sin. I submit, Sir, that the Governor has certified the Bill while the last session of Parliament was going on and the matter was being discussed here only because he had the necessary instruction from the Home Ministry to certify that Bill. It was absolutely political and such a political approach is being repaid with political penalty. The hon. Home Minister has stated that he has not defended the actions of the Ministry but he defended only the action of the Governor in accepting the advice of the Ministry. May I ask the hon. Home Minister on how many occasions previously he has said that the Governor is not liable to accept the advice, the illegal advice the unconstitutional advice of his Ministers and the Chief Minister? In

[Shri K. Chandrasekharan] this particular case it was clearly an unconstitutional and illegal advice which the Governor ought not to have accepted and by accepting that illegal and unconstitutional advice we are having all the troubles. I submit that the convening of the Assembly—it appears to be a suggestion at this stage that has been thrown up— would not solve the problem. The Assembly has no power to retrospectively legislate so far as the money appropriated is concerned because there is no provision in the Constitution and there is no provision in the Rules of Procedure of the Assembly because those rules are all in consonance with the provisions of the Constitution. Therefore, I submit that the only way in which one can get out of this constitutional impasse is by the dismissal of the Gill Ministry and the application of the provisions of article 358.

SHRI Y. B. CHAVAN: Again the hon. Member has expressed his views. My difficulty is no new question has been asked which calls for an answer.

MR. CHAIRMAN: I think the matter has been sufficiently discussed. My advice to Government is that they should carefully consider all the aspects that have been put before the Government in this House and I do hope that the Government will consider all aspects.

SHRI BHUPESH GUPTA: Sir, I have a submission to make to you. You are the Chairman of the House. The Lok Sabha is not in session but the Rajya Sabha fortunately is in session. Therefore, we have been in a position to discuss this matter today and I believe in the course of the discussion this House has made some contribution to the thinking of this country over this matter.

MR. CHAIRMAN: Certainly.

SHRI BHUPESH GUPTA: I think, Sir, quite apart from what the indivi-

duals have said, collectively we have done that job. Our responsibility today is all the greater. Therefore, I suggest to you till the matter has been settled one way or the other, till the constitutional tangle has been solved and a way out has been found we should be in continued session. The Rajya Sabha may be in continued session because we cannot have the spectacle of things being left in the hands of Mr. Gill and Mr. Chavan. I think Parliament should be seized of this matter and since we have not yet adjourned I would request you not to adjourn the House *sine die*. You act on your own; just adjourn the House to some day. If you adjourn *sine die* they may prorogue. Therefore, you should adjourn only to a certain day, say, Monday, Tuesday or Wednesday like that. It is for you to do that. A heavy responsibility is devalued on you not only as Chairman of this House but also in certain other capacity. I need not go into all that. We would certainly like that this matter should be discussed and thrashed out. When grave constitutional issues have arisen when there is such strong controversy between the Government on the one hand and the entire Opposition on the other, I think it is but meet and proper that the Rajya Sabha, at least when the Lok Sabha is not in session, remains constantly seized of this matter and plays its role for finding a solution. I support the demand made from here. Next week there should be a general discussion. We discussed briefly what happened on the 18th March in Punjab Assembly. Is it not necessary now— 100 times more necessary—to discuss this matter which has arisen in this form and which affects not only Punjab and the Centre but the very foundations and future of our Constitution and our parliamentary system? Sir, it would be wrong if we went into recess without having tackled this matter— it would not be expected of us by the people of the country and certainly not by the people of the Punjab, Sir, you have expressed noble sentiments

and we share your sentiments. Sir, our experience with the Government has been that the Government has disregarded the entire Opposition contention. Despite all our differences we were unanimous in saying that what was being done in Punjab on March 18 and thereafter was illegal but we had been brushed aside. We have been shown scant regard in this matter. (*Interruptions.*) I know you will not like it, but I hope the Congress Members too will like to share their thoughts and ideas with us on this matter and work for a democratic solution and find a way out of the constitutional deadlock. There is nothing wrong in it. I, therefore, appeal to you that we should have a discussion and the session should not be prorogued till a solution has been found.

SHRI GODEY MURAHARI: The Rajya Sabha is the custodian of the States and therefore it is only right and proper that we should sit throughout.

PAPERS LAID ON THE TABLE

I. SUMMARY OF BUDGET ESTIMATES (1968-69) OF AIR INDIA

II. SUMMARY ACTUALS (1966-67), ETC. OF AIR INDIA

III. SUMMARY OF BUDGET ESTIMATES (1968-69) OF REVENUE AND EXPENDITURE OF THE INDIAN AIRLINES

IV. SUMMARY OF ACTUALS (1966-67), ETC. OF INDIAN AIRLINES

THE DEPUTY MINISTER IN THE MINISTRY OF TOURISM AND CIVIL AVIATION (SHRIMATI JAHANARA JAIPAL SINGH): Sir, I beg to lay on the Table, under sub-rule (5) of rule 8 of the Air Corporations Rules, 1934, a copy each of the following papers—

(i) Summary of Budget Estimates of Revenue and Expenditure of Air India for the year 1968-69.

(ii) Summary of Actuals for the year 1966-67, Budget Estimates and Revised Estimates for the year 1967-68 and Budget Estimates for the year 1968-69 under Capital of Air India.

(iii) Summary of Budget Estimates of Revenue and Expenditure of the Indian Airlines for the year 1968-69.

(iv) Summary of Actuals for the year 1966-67, Budget Estimates and Revised Estimates for the year 1967-68 and Budget Estimates for the year 1968-69, under Capital of the Indian Airlines.

[Placed in Library. See No. LT-1270|68 for (i) to (iv).]

MINISTRY OF FINANCE (DEPARTMENT OF REVENUE AND INSURANCE) NOTIFICATIONS

THE DEPUTY MINISTER IN THE MINISTRY OF FINANCE (SHRI JAGANNATH PAHADIA): Sir, I beg to lay on the Table—

(a) a copy of the Ministry of Finance (Revenue and Insurance) Notification G.S.R. No. 763, dated the 27th April, 1968, publishing the Central Excise (2nd Amendment) Rules, 1968, under section 38 of the Central Excises and salt Act, 1944. [Placed in Library. See No. LT-1240|68.]

(b) a copy of the Ministry of Finance (Department of Revenue and Insurance) Notification G.S.R. No. 796, dated the 4th May, 1968, under section 159 of the Customs Act, 1962. [Placed in Library. See No. LT-1275|68.]

(c) a copy each of the five Notifications (G.S.R. Nos. 791 to 795), dated the 4th May, 1968, of the Ministry of Finance (Department of Revenue and Insurance) under section 159 of the Customs Act, 1962, and section 38 of the Central Excise and Salt Act, 1944. [Placed in Library. See No. LT-1274|68.]