

खड़ा हुआ हूँ—केवल चश्मा बदलने के लिए नहीं। हमारा गृह मंत्रालय हिन्दी के लिए बहुत कोशिश करता है, वह कागजों पर ज्यादा होती है लेकिन कार्य रूप में कम होती है। यह हाई कोर्ट जहां बन रहा है वह हिन्दी का क्षेत्र है, वहां हिन्दी भाषा बोली जाती है। मैं प्रार्थना करूंगा कि इस बात की व्यवस्था की जाय कि यहां पर अगर कोई आदमी हिन्दी में पिटीशन दे हिन्दी में उस पर बहस करना चाहे तो उसको प्रोत्साहन दिया जाना चाहिए, उसको रोकना नहीं चाहिए। इसकी पुष्टि के लिए एक उदाहरण दूं। एक पत्र 'रीवा प्रकाशन' निकलने वाला है। उसका सारा कार्यक्रम, फार्म्स वगैरह भर कर कम्पनी कानून कार्य विभाग को भेजे गए। वह विभाग लिखता है तारीख 3 अगस्त 1966 को—“उपरोक्त विषय पर आपको पत्र 20-7-66 के सन्दर्भ में सूचित किया जाता है कि आप शीघ्र ही उपरोक्त रिटर्न की अंग्रेजी प्रतिलिपि भेजें ताकि यह रजिस्टर किया जा सके। भविष्य में भी जो रूपक भेजें उसके साथ अंग्रेजी की प्रति अवश्य लगा दें।” अब यह जो अंग्रेजी का बन्धन लगाया वह ठीक नहीं। केवल उदाहरण के रूप में मैंने बताया। जो भी आपने आदेश दिए हैं उनके बावजूद उच्चाधिकारी जिन्हें हिन्दी का ज्ञान नहीं है, जो वज्र मुख है, हिन्दी के मामले में वे समझते हैं कि जब तक अंग्रेजी की कापी नहीं आएगी काम नहीं होगा। मैं प्रार्थना करूंगा कि उनकी गलती की सजा उन लोगों को जो हिन्दी को प्रोत्साहन देना चाहते हैं न दी जाय और हिन्दी को प्रोत्साहन देने की दृष्टि से इस हाई कोर्ट में इस तरह की व्यवस्था करने का कष्ट करें।

SHRI JAISUKHLAL HATHI : I will see about it.

THE DEPUTY CHAIRMAN : The question is :

“That the Bill be passed.”

The motion was adopted.

THE PUNJAB STATE LEGISLATURE (DELEGATION OF POWERS) BILL, 1966

THE MINISTER OF STATE IN THE
MINISTRY OF HOME AFFAIRS AND ALSO
MINISTER OF DEFENCE SUPPLIES IN
THE MINISTRY OF DEFENCE (SHRI
JAISUKHLAL HATHI) : I beg to move :

“That the Bill to confer on the President the power of the Legislature of the State of Punjab to make laws, as passed by the Lok Sabha, be taken into consideration.”

[THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) in the Chair].

I do not think I will take much time of the House at all because the House has already approved the Proclamation . . .

SHRI BHUPESH GUPTA (West Bengal) : We did not approve it. The majority of the House . . .

SHRI JAISUKHLAL HATHI : You have approved. You were angry and you did not want to participate and then you began to speak and I said ‘Now Mr. Gupta has again come back in his original form’ and you participated. I know you were in a jolly good mood then . . .

SHRI BHUPESH GUPTA : I voted against.

SHRI JAISUKHLAL HATHI : You did not. Therefore, I say that the House having approved the Proclamation of the President issued under article 356 of the Constitution, this Bill becomes more or less a necessary corollary flowing from that. Having done that, article 357 says :

“Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf”

[Shri Jaisukhlal Hathi.]

Now clause 2 of the Bill says :

"In this Act, 'Proclamation' means the Proclamation issued on . . ."

Clause 3 says :

"(1) The power of the Legislature of the State of Punjab to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President."

Now clause 3(2) is the operative clause and this measure aims at conferring the power on the President and it says :

"(2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact as a President's Act a Bill containing such provisions as he considers necessary."

Therefore the Parliament has to confer upon the President the powers to pass or enact legislation for Punjab.

SHRI BHUPESH GUPTA : On whom ?

SHRI JAISUKHLAL HATHI : On the President to pass an Act but while this is being conferred, we have made a provision like this :

"Provided that before enacting any such Act, the President shall, whenever he considers it practicable to do so, consult a committee constituted for the purpose, consisting of—

(a) thirty members of the House of the People nominated by the Speaker among whom shall be included all members who for the time being fill the seats allotted to the State of Punjab in that House; and

(b) fifteen members of the Council of States nominated by the Chairman among whom shall be included all members who for the time being fill the seats allotted to the State of Punjab".

That means that this Consultative Committee—and this House has the experience of the working of the Consultative Committee for Kerala where it has been working satisfactorily, I should say—will consist of a total membership of 45 out of whom thirty will be from the Lok Sabha

and 15 will be from the Rajya Sabha and will include Members from Punjab. Therefore, all those who are directly affected will be consulted. Now we have further safeguards, and a safeguard is in clause 3, in sub-clause 3(3) :

"Every Act enacted by the President under sub-section (2) shall, as soon as may be after enactment, be laid before each House of Parliament."

Now laying by itself, is not a safeguard, and a further safeguard is provided and that is that, after it is placed here, any modification sought to be made by a Member can be brought before the House, and if the House approves it, then that modification will be the modified Act. I think the House has once seen that in the Kerala Consultative Committee an Act was sought to be modified, which the House later approved, and the Act stood modified to that extent. So therefore the safeguard is that the law will be enacted by the President but in doing so—we thought it necessary and generally the practice is—the President always consults this Consultative Committee, and after that Act is passed, it is laid on the Table of the House. After that, any modification sought to be made by any Member can be brought, and if that modification is approved by Parliament, to that extent the Act stands modified. Therefore, this is a very healthy safeguard which has been provided.

Sir, I commend this measure for the acceptance of the House.

The question was proposed.

SHRI BHUPESH GUPTA : Sir, the only thing we can say about this Bill is that this is a consequential measure, but consequential in a very bad way.

SHRI JAISUKHLAL HATHI : That is right; it is consequential.

SHRI BHUPESH GUPTA : We did not support your Proclamation yesterday, neither do we support it today. Therefore we are consistent in this matter.

As for this business of delegation, we know what a big hoax it is, and the fact that you are associating the Members of Parliament means very little for the simple reason that our experience is this that you

always ignore the opinions of the Members of Parliament in this matter, and whenever there is a conflict of opinion, you utilise, even in that Committee, the party majority and the party whip to get the decisions of the Home Ministry carried. That is how you function. Therefore, it is no use trying to tell us, that all the Members of the Punjab will be associated through this Committee with the exercise of the powers delegated under this law to the President of India, really to the Home Ministry of the country, the Union Home Ministry. Now I could have understood you if you had said that the power shall be exercised under the mandate of the Members of the Punjab Legislature. Why not make the Members of the Punjab Legislature the Consultative body? They are there. You have not dismissed the Punjab Legislature. All those members are there, and Punjab is not very far away from here. Instead of giving us the onerous responsibility of consultations, you can take into confidence, in this matter in a limited way, the Members of the Punjab Legislature, and the Constitution does not prevent you; it is after all a Consultative body. If you like, you can also associate the Members of Parliament hailing from Punjab with that body. I have no objection to that. But the strange thing is this before the House. This is how they are setting an example before the country. Here are Punjab legislators. Members of the Legislative Assembly and of the Legislative Council. They are still there. They are sleeping under the blanket. They are being lulled into sleep by the order or by the Proclamation. None of them is politically dead; they are all there. They will be revived again; we know that, after the reorganisation of the State, they shall come to life again and begin to function in their political life in legislature. Now if they are there, then let them do some useful work. Consult with them. Constitute them as the Consultative body, rather than forty-five Members of Parliament. Now the Constitution does not prevent it, you see. Even if there are technical difficulties, they can be easily circumvented. But it is very bad that Punjab matters should be discussed even at a consultative level where the elected legislators of the Punjab State Legislature will not have any say whatsoever. This is preposterous. On the face of it, it is preposterous. Now Members

from Punjab here will be taken into the consultations; but not those others of the Punjab Legislature, who are elected and still they are all alive, constitutionally speaking.

SHRI JAISUKHLAL HATHI : Members of Parliament are elected.

SHRI BHUPESH GUPTA : I know; how I am elected, I know.

DIWAN CHAMAN LALL (Punjab) : You and I may not be elected, but certainly the Members of the Lok Sabha are elected.

SHRI BHUPESH GUPTA : Dissolve the Legislative Assembly then. I know they are elected, but why those people, whose function it is to apply their mind on State matters, to be preoccupied with the State's affairs, who have not been liquidated yet, they are still Members of the Punjab Legislature, I believe drawing salary and so on . . .

DIWAN CHAMAN LALL : All this for a temporary period.

SHRI BHUPESH GUPTA : Yes, temporary period, temporary pay, but temporary rupee and permanent rupee has the same value.

DIWAN CHAMAN LALL : Not pay, period.

SHRI BHUPESH GUPTA : Temporary period, but they will not lose in emoluments. The temporary period will again enter into the permanent period the moment this Bill is passed, rather the moment the State's reorganisation comes into effect. Therefore, as you know, this is an arrangement for the convenience of the ruling party. How they are behaving, I have here only to expose the Government. You can well understand that I am exposing the Government because, here, the Punjab Assembly Members are not there. My hon. friends are there, members of the existing Legislative Assembly, and why not constitute them into an advisory body for the present? Why we? If you like that we should be there also, all right; let the Punjab Members from this House and the other House come and join that body. I have no objection to that; the more, the merrier, you see. Therefore, I think it is

[Shri Bhupesh Gupta.]

entirely wrong. Now as far as the Government is concerned, the whole business of their taking over of the Punjab issue has left a bitter taste in the mouth. Take for example Kerala. They had exactly a similar arrangement for Kerala but nothing could be changed. They put people in detention without trial. When many of us, of the Opposition side, said, "No, they should be released", the Government ignored them in the Consultative Committee. Well, many other matters came up before the Kerala Consultative Committee, but the Home Ministry ignored them. Now the Home Ministry is becoming dictatorial step by step, it is becoming dictatorial in the country, and the facade of President's authority should not mislead us, because the President makes speeches, a good thing, but the authority is exercised on the advice of the Home Ministry, the President's delegated authority. Today, in this context, we are actually delegating the authority to the Home Ministry although the President's name will be there. Well, therefore, we say that this is entirely a bureaucratic, arbitrary arrangement for the convenience of the party in power, here of the Congress Party. There should be a limit to this kind of thing. I know that your Congress Members of the Punjab Legislature are not in a position to settle one leader for the present—I know that—to elect one. They will come to fisticuffs when they are called upon to elect one. Mr. Darbara Singh will be leading one battalion and Mr. Ram Kishan—I hope he will do well—will be leading another battalion supported by some people of the Kairon group and the other side by other people of another Kairon group. They will be in charge of the Punjab brigade. I know all that. But for that why all this kind of thing, why this kind of arrangement that you are making. What I have been telling in this House is that the Proclamation, in this case, is simply because the Congress Party is not in a position to elect one leader. But sometimes we export leaders also. When the U.P. Assembly was in need of one you exported Shrimati Sucheta Kriplani. First of all you . . .

3 P.M.

SHRI JAISUKHLAL HATHI : How is this relevant here ?

SHRI M. M. DHARIA (Maharashtra) : How can you expect a relevant speech from the hon. Member ?

SHRI BHUPESH GUPTA : First of all you stole her from the Opposition benches. Leaving Acharya Kriplani alone here you stole her away. Then you put her in the Congress benches in the U.P. Assembly and then at the dictation from here you made her the Chief Minister there because the great men there were quarrelling. When that is the position, I say, why not you send somebody from here ? I believe some lady will be available who will be able to settle things there.

SHRI LOKANATH MISRA (Orissa) : Preferably a lady from Bengal.

SHRI BHUPESH GUPTA : We have done that. One we have given. Shrimati Sucheta Kriplani is from Bengal. So we have given one. Do not ask for more Bengali ladies.

AN HON. MEMBER : Why not ?

SHRI BHUPESH GUPTA : Because we have seen how things have been messed up in Uttar Pradesh by one Bengali lady. You know what a mess she has made of our Constitution there. Therefore, for the sake of Bengali womanhood, for the sake of the country, please do not trouble our ladies any more. I was saying that you are absolutely wrong in your attitude. The entire attitude is wrong and you Mr. Vice-Chairman, you come from Uttar Pradesh and you know what kind of a mess has been created there.

MISS MARY NAIDU (Andhra Pradesh) : If a man goes, he will make it still worse.

SHRI BHUPESH GUPTA : I am sure we will not go as far as Nellore to find a Chief Minister.

All I want to say is that the entire thing is a colossal fraud on constitutional principles and you are making a farce of our Constitution and making the people a laughing stock. Congress people cannot find a Chief Minister. When they are not in a majority, they dissolve the majority as was done in the case of Kerala. When they are in an overwhelming majority and some two or three factions are quarrelling among themselves with the result that a leader cannot be elected, then you suspend

the Government, keep the members of the Legislature alive. When those members cannot be brought under discipline, then you assume powers for the President, then there is assumption of power by the President and the power is delegated to the Home Ministry and then you carry on the administration like this. Sir, we have heard of men of easy virtues. We are now having a government of loose character, a loose character government, a government with politically loose character. We have known in private life in big cities of street walkers. Now we find a set of people who can be described as constitutional street-walkers. This is how they behave, political and constitutional street-walkers. Diwan Chaman Lall knows that as I do, having had some knowledge of Western affairs, not in the bad sense, of course. Therefore, you are having this. It is a great hoax. The Punjab question will be settled.

But I always feel that we have not done the just thing to the people of Haryana and Punjab. The Congress Party has let them down. I say this because the Legislature is in suspension. Why have this delegation of power when the Legislature is still in existence? I can understand sometimes in an extreme situation you can have delegation of authority when the Legislature is not in existence in a State. But here the Legislature exists in that particular State, but we have divested them of all powers and we are offering and delegating authority to the Executive to the Union Government so that the Union Government can do whatever they like. What I want to say is what happens in Punjab is yet another example of political corruption under Congress rule; yet another example of how unable they are today to manage their own household, yet another example of how they defy the elementary principles of constitutional and parliamentary systems, and it is yet another example of how the Home Ministry encroaches on the domain of a State people and of the State Legislature. Therefore, on no account can this be tolerated, and the sooner it goes the better. As far as the Home Ministry is concerned, as we all know. all that it can do is to indulge in all kinds of intrigues over offices and other facilities that are available to it. That is all.

Before I sit down I say that I pray when the Punjabi Suba and the Haryana Prant

come into existence, they will be saved from this utterly irresponsible, factional quarrelsome Ministers and the whole lot of leaders who even when in a majority did not know even for some two months, to elect one leader. You see the intolerance. It was just a question of two or three months only and even then they could not choose a leader to carry on the administration. Neither Sardar Darbara Singh nor Shri Ram Kishan—or rather, comrade Ram Kishan—could come to an agreement even for a temporary arrangement in order to keep the Legislature going. I do hope that in the coming elections the whole lot of them will be voted out of the legislative scene completely. I do pray for this because I have great love and affection for the people of Punjab and the only way these people, these leaders could be taught a lesson is to tell them: "Even though you were having a majority you could not produce a leader so that the Legislature could function and so you have no right to approach us for votes again, and if we can do it, we shall vote you out absolutely, vote you out of power and authority and vote you out of the Legislature". I do hope that the people will give this verdict in the completest possible manner and defeat the entire lot of those people. They are in a majority in the Punjab Legislative Assembly and they do not know even how to find a leader who can become the Chief Minister and run the government even as a temporary measure for a few months. Such factious, quarrel some horrible lot does not deserve to be placed in positions of authority and power.

DIWAN CHAMAN LALL: Mr. Vice-Chairman, it is always a great pleasure to listen to Shri Bhupesh Gupta, even when he is completely irrelevant in regard to the matter before the House. My hon. friend has been talking about constitutionalism, the task of the Constitution and so on and so forth. Unfortunately he has not read the Constitution, because if he had read the Constitution, he would have known that there is an article.

SHRI SHEEL BHADRA YAJEE (Bihar): He is a Bar-at-law.

DIWAN CHAMAN LALL: He may be a Bar-at-law, but . . .

SHRI BHUPESH GUPTA : You don't take his advice. You are good enough to look after yourself.

DIWAN CHAMAN LALL : My hon. friend should read the Constitution. I say that my hon. friend Shri Bhupesh Gupta has not read article 357 of our Constitution. I will read it out to him so that he may know exactly what it is.

SHRI BHUPESH GUPTA : I read it yesterday.

DIWAN CHAMAN LALL : My hon. friend says he read it yesterday; unfortunately he has not understood it. Article 357(1) says :

"Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

for Parliament to do certain things and that is exactly what we are doing, what my hon. friend, the Minister of State for Home Affairs is doing. My hon. friend there made an electioneering speech. I do not want him to make an electioneering speech. It is for him to act according to his conscience with regard to this particular matter. Now, what are the things that Parliament is competent to do ?

"(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;"

And that is where the consultation comes in, where the Committee consisting of 30 members of the lower House and 15 Members of the Upper House comes in. Then it goes on—

"(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a), to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State . . ."

The local legislature cannot do it. It is only the Parliament or with the authority of Parliament one can do it—

" . . . pending the sanction of such expenditure by Parliament.

(2) Any law made in exercise of the power of the Legislature of the State by Parliament or the President or other authority referred to in sub-clause (a) of clause (1) which Parliament or the President or such other authority would not, but for the issue of a Proclamation under article 356, have been competent to make shall, to the extent of the incompetency, cease to have effect on the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period, unless the provisions which shall so cease to have effect are sooner repealed or re-enacted with or without modification by Act of the appropriate Legislature."

This is the authority, Mr. Vice-Chairman, under which this Proclamation has now come before this House as a Bill moved by my hon. friend, Mr. Hathi, the Punjab State Legislature (Delegation of Powers) Bill, 1966. And nothing could have been done otherwise.

SHRI BHUPESH GUPTA : You can have two bodies.

DIWAN CHAMAN LALL : If my hon. friend had been a Member of the Constituent Assembly he could have moved . . .

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Gupta, you address the Chair.

DIWAN CHAMAN LALL : . . . an amendment to this particular article and had his own point of view accepted by the Members of the Constituent Assembly. Personally I think he would have been wrong to move that. So this particular clause is the authority and in this particular matter there is no other method.

SHRI BHUPESH GUPTA : Mr. Vice-Chairman, is there anything in the Constitution that prevents the Government from constituting an authority or a Committee which may not include Members of Parliament leaving the financial and other matters under the provisions of the Constitution to be determined by a separate Committee of Members of Parliament?

DIWAN CHAMAN LALL : The only trouble, Mr. Vice-Chairman, is this that Mr. Bhupesh Gupta has got certain a priori thinking in his mind and he does not listen to anything that anybody else has to say in a matter. I have read out for his own benefit the provisions or article 357.

SHRI BHUPESH GUPTA : What of that?

DIWAN CHAMAN LALL : And article 357 does not contemplate . . .

SHRI BHUPESH GUPTA : What does it contemplate?

DIWAN CHAMAN LALL : . . . anything except this particular thing that is being sought to be done by my hon. friend. Now, Sir, my friend shakes his head. What am I to do? I ask your advice.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : You continue your speech.

DIWAN CHAMAN LALL : When my learned friend is completely impervious to sense, legal sense, constitutional sense, what am I going to do with him?

SHRI BHUPESH GUPTA : Nothing.

DIWAN CHAMAN LALL : What I am going to do is to ignore him. That is what I am going to do. So this is the particular provision under which my hon. friend, Mr. Hathi, is going to move in the matter and I think that there is no other way in which he can act having passed the Proclamation yesterday. Although it was made clear by my hon. friend that he was opposing this Proclamation, nevertheless having passed the Proclamation by a majority in this House, what is the consequence of it? The consequential legislation has to come before the House and my hon. friend, Mr. Hathi, has brought this consequential legislation before this House. But my learned friend . . .

SHRI BHUPESH GUPTA : I will keep the power here.

DIWAN CHAMAN LALL : My learned friend says he will keep the power here. That is exactly what my hon. friend, Mr. Hathi, is doing. He is keeping the power here in Parliament. According to the Constitution the power of the Punjab Legislature has been taken over by this Parliament and it is this Parliament that is functioning now and will continue to function so far as . . .

SHRI BHUPESH GUPTA : We will not delegate it.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Bhupesh Gupta, only one hon. Member has to stand up at one time, not two.

DIWAN CHAMAN LALL : If I give way to him, he certainly has the right to interrupt me. I don't give way to him because the objections which my hon. friend has been raising are inconsequential objections and they are meant for a particular purpose, that is, to bring the Government down in the eyes of the public. I have no doubt that his friends who sit up there and who report his sayings will necessarily take the hints that he gives them and they will utilise the phrases that he is using for the purpose of denigrating the Government of the day. I do not want my hon. friend to make this the fulcrum of his attack against the Government on the basis of the coming elections. I do not want him to do that. I want him to look at this matter in an objective manner so that he can give his mind to the . . .

SHRI SHEEL BHADRA YAJEE : Then he is useless here.

DIWAN CHAMAN LALL : He is most useful; I can assure my friend that Mr. Bhupesh Gupta is one of the intelligent men that we have got here in this House but unfortunately for us for the sake of the elections that are coming he goes off the rails and he has gone off the rails over this particular matter. Sir, I commend this Bill to the House.

Thank you.

SHRI BANKA BEHARY DAS (Orissa) : Sir, I agree that this is a consequential measure. Diwan Chaman Lall was very

[Shri Banka Behary Das.]

legal in his approach but I will appeal to him that sometimes political aspects also have to be taken into consideration.

SHRI JAISUKHLAL HATHI : Again political ?

SHRI BANKA BEHARY DAS : I have another proposal and in fact I have given an amendment also. In view of the very fact that we have allowed the Punjab Assembly to be kept alive, should we not associate some of the representatives of the Punjab Legislature to be in this consultative body ? I think under article 357 it is not illegal. If this measure is in conformity with the provisions under article 357 of the Constitution there are certain suggestions which are politically very sound and which can be kept within the ambit of the constitutional provisions. Now, what are we doing under clause 3 of this Bill ? After President's rule virtually the Parliament acts as the legislature of Punjab as far as Punjab affairs are concerned. But for whatever might be the reasons the Punjab Assembly has been kept alive and we pay these members salaries and allowances. Now the President is constituting this body under the authority of the Constitution and I am prepared to give power to the President of India to nominate a few members of the Punjab Legislature so that the consultative body when formed will be in a better position to advise the President about the legislation that has to be undertaken. In this connection I want to draw your attention to clause 3 of the Bill :

"(2) In the exercise of the said power, the President may, from time to time, whether Parliament is or is not in session, enact as a President's Act a Bill containing such provisions . . ."

Here I would like to point out that I can understand delegation of powers to the President when Parliament is not in session. I can understand Diwan Chaman Lall's argument. When Parliament is not in session, that the President can be delegated this power to enact some measures and after that they may come before Parliament for approval or disapproval. I agree with it constitutionally, but why is this provision here when Parliament has been given authority for legislation in respect of the State of Punjab, that he can also pass laws when Parliament is in

session ? We know that the President has enough powers for issuing Ordinances when Parliament is not in session. But why are we doing it here ? It is not a question whether this law, which is a consequential measure, conforms to article 357. If there is any other suggestion, which is more sound and still not *ultra vires*, it should be accepted. Here in the case of Punjab I want to give the suggestion that even in the consultative body some Members of the Punjab Assembly should be taken, because they can advise the President better. It is more important because in the case of Kerala or Orissa, where the Legislatures were dissolved, the Legislators were not getting any salaries or allowances. But here, whatever may be the reason, I am not going into it, it has been stated so many times in this House and if it is kept alive, why not take their consultation when you legislate for the State of Punjab ? So, here though I would say that Diwan Chaman Lall, whom I respect very much, is very constitutional in his approach, there is another approach which is constitutional and politically very sound. I would not like to state it just now, but when I move my amendment later on, I shall speak on it. This much I want to say. For better governance it is better for the President not to enact any measure when Parliament is in session. No. 2, when he enacts any measure, the consultative committee, the members of the Punjab Assembly nominated by him—I am prepared to give him that concession—should be taken in that consultative committee—they are still drawing their salaries and allowances—should be consulted.

The second aspect of the matter is again I want to refer to the case of Punjab. The day before yesterday Mr. Hathi dismissed my allegation saying that it was irrelevant in the present context.

SHRI JAISUKHLAL HATHI : I did not dismiss it. I said, you can give this to me in writing.

SHRI BANKA BEHARY DAS : Outside the House.

SHRI JAISUKHLAL HATHI : Here I spoke. I had even mentioned it to the Governor when he was here yesterday. You give those instances in writing. I

have dismissed it as an irrelevant matter, but not dismissed it.

SHRI BANKA BEHARY DAS : I am happy that he has not dismissed it, but why should he insist that I should give it in writing, when I had given those facts, with all responsibility, in this House? Of course, letters can be written, but that is a different thing. I want to convey to him this. The other day I gave the details and everything and I said 'subject to correction'. But today, within two days I am so much convinced about the case that I am not going to say that I am speaking subject to correction. Just after the debate I got a letter from Jullundur where it has been stated that all those persons who were arrested on that day on the plea of anti-hoarding have been discharged by the magistrate on the ground that the police could not make out a case. I stated here that they could not find anything incriminating from the arrested men. There was nothing in the documents or in the vouchers or bills. They fabricated certain charges and wanted to prosecute them, in spite of the fact that the Governor was satisfied and the Home Secretary was also satisfied, but pressure was brought to bear from Delhi, so that those officers though were again posted to Chandigarh. One of them is the Director of Food Supplies and the other is the Vigilance Officer. Here I want to state this. I referred yesterday to the Report of the Commission of Enquiry on alleged police excesses in Punjab during the anti-Suba agitation in March, 1966. It is not by any Opposition Member. The report has been published by the Bar Association of India and here I want to refer to those particular officers. Though this report is in connection with the anti-Suba agitation, they have come to certain conclusions, after going into the cases in Jullundur, Amritsar and other places. I am not going to state those things elaborately, but I am only giving the conclusions, because the two persons are also involved here. The conclusion of the Committee on page 46 is as follows :

"Sixthly, the police, in order to put down the demonstrations acted unlawfully in that—

(a) In dispersing lawful and unlawful assemblies, the police did not

observe the requirements of law as laid down in sections 127 and 128 Cr. P.C. and resorted to unjustifiable violence;

(b) They beat persons mercilessly, not only on the roads but also in their private residences at times taking advantage of curfew orders and not sparing even women and children;

(c) They confined persons in Kotwali, without giving them food or water to drink or providing medical aid to the injured, even when the injuries were serious.

(d) They desecrated a sacred Hindu temple;

(e) They looted and destroyed private property;

(f) They treated women contrary to all sense of decency; and

(g) they resorted to wanton firing, causing serious injuries to some and killing others without justification."

Here when I mention this thing, Jullundur is included. I do not want to take up the time of the House, but this is what is stated in the report particularly about these officers :

"All the persons so far arrested were later on discharged as the cases against them were withdrawn. This evidently shows that their arrest and beating was unwarranted and illegal. The arrested persons were defended by Sri Man Mohan Kalia and Sri Narendra Verma, advocates of Jullundur. Sri Ram Lal Bajaj and Sri Ram Lal Gupta, Municipal Commissioners, used to attest the bail bonds of the accused persons. The said Municipal Commissioners were arrested on the 13th March along with Sri Narendra Verma, advocate and detained under the Defence of India Rules . . ."

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Das, is this all relevant to the Bill under discussion?

SHRI BANKA BEHARY DAS : I want to state this that after the President's Rule has been in force in Punjab, this House and the Governor are responsible for whatever is happening in Punjab. If anything goes there wrong then this House will be put into a difficult position

[Shri Banka Behary Das.]

and this Government, which is responsible for whatever is happening in Punjab, will have to take its share. When we are going to give power to this Government, to the President, to the Home Department, then they have some responsibility in the matter . . .

SHRI JAISUKHLAL HATHI : We are giving legislative powers. You are talking of some executive acts and we are concerned with legislative powers.

SHRI BANKA BEHARY DAS : As you know, when we give any legislative power, we discuss whether those officers, who are given these powers to execute, do their work properly or not. In that context it comes in, because the same D. C. and S. P. have been promoted—or whatever it may be—and placed in very responsible positions in Chandigarh. Therefore, the relevance comes in. I am not going to take much more time of the House. It says here :

"When Sri Man Mohan Kalia, advocate, went to the office of the Deputy Commissioner in order to meet him and to get a curfew pass, he was taken into custody there and then and formally arrested under the D.I.R. Later on, Sri Lal Chand Sabharwal, advocate who was defending the arrested persons was also arrested on the 17th March from his house at 2 A.M. under the Defence of India Rules. All these advocates and Municipal Commissioners were placed in 'C' class in the district jail when all of them were entitled to a better class under the rules. All these advocates were released after a period of fortnight, on or about 27th March, 1966. It would appear that the arrest of these gentlemen was effected in order to deprive the members of the public of the services of these lawyers and helpers and shows a deliberate misuse of the Defence of India Rules by the authorities. The Commission takes a very serious view of the conduct of those concerned in this case."

In this connection I want to state that all these persons who were responsible for this vandalism are there and are running the show in Chandigarh. I want to remind the hon. Minister when he is taking these legislative powers which will be implemented there by these officers, is he pre-

pared to take any action against those officers, or is he going to interfere from here and see that those officers are posted at better places so that in spite of those wrongs which they have committed they will have a good day under President's rule ?

With these words, I know that it is a consequential measure and though I broadly support it, I will again appeal to him that the members of the Punjab Legislature who are still continuing as such should be associated when questions of legislation come up.

श्री बी० एन० मंडल (बिहार) : वाइस चेयरमेन महोदय, जो यह पंजाब स्टेट लेजिस्लेचर (डेलिगेशन ऑफ पावर्स) बिल आया है उसमें सिर्फ तीन आर्टिकल हैं, देखने में बहुत छोटा है और मिनिस्टर साहब ने कहा है कि बहुत निर्दोष बिल है। लेकिन मैं समझता हूँ कि इस बिल के जरिए सरकार जिस बात की मांग कर रही है वह मांग मंजूर होने पर शासन और आने वाले आम चुनाव में कितनी गड़बड़ी पंजाब में होगी मैं नहीं कह सकता। जिस ढंग से शासन अभी तक चला है और उसमें एक पार्टी की मेजारिटी 18-20 साल तक रही है और उसके जरिए पावर का जो कर्प्टिंग प्रभाव शासन करने वालों के दिमाग पर पड़ा है उस बुरे प्रभाव ने शासकों के दिमाग को बिलकुल सड़ा दिया है। उसी के कारण आज इस तरह का बिल-आया है।

प्रोक्लेमेशन के बाद पार्लियामेंट का हक है कानून बनाने का, पार्लियामेंट अभी सेशन में है, पार्लियामेंट नवम्बर महीने में भी सेशन में रहेगी, इसलिए पंजाब के बारे में जो कुछ भी कानून बने वह पार्लियामेंट के जरिए बने यह मैं चाहता हूँ। मैं नहीं चाहता कि पार्लियामेंट कानून बनाने की पावर राष्ट्रपति या किसी और को दे। यद्यपि संविधान में इस बात की गुजाइश है कि राष्ट्रपति को पावर दिया जा सकता है, लेकिन मैं नहीं चाहता कि राष्ट्रपति को पावर दिया जाये। जिस ढंग से इस बिल की ड्राफ्टिंग हुई है उसमें

[श्री बी०एन०मंडल]

यह भी कहा गया है कि राष्ट्रपति अगर चाहे तो जो कमेटी बनेगी पंजाब के पार्लियामेंट के मेम्बरों की उस कमेटी से सलाह ले या न ले यह प्रेज़िडेंट की इच्छा पर निर्भर करेगा, प्रेज़िडेंट को बांधने का कोई प्रावीजन नहीं किया गया है। इसका मतलब होगा कि जो अपोजीशन के आदमी उस कमेटी में रहेंगे उनकी राय नहीं भी ली जा सकती है। पंजाब के पार्लियामेंट के मेम्बरों में अधिकांश कांग्रेसी ही होंगे तो भी दो-चार अपोजीशन के मेम्बर होंगे, उनकी राय से भी कानून जनतांत्रिक बनता है लेकिन जैसा इसमें प्रावधान किया गया है—wherever he considers it practicable to do so. इसका मतलब है कि वह प्रैक्टिकेबल न समझे तो उस कमेटी को कन्सल्ट न करे। इसका मतलब यह होगा कि बिना अपोजीशन की राय जाने हुए वहां कानून बनेगा। मैं समझता हूं कि यह जनतंत्र के लिये बहुत खतरनाक बात है। इसके अलावा जनतंत्र में पावर का सेपरेशन है एक्जीक्यूटिव, जूडिशियरी और लेजिस्लेचर में। पावर में यह जो अलगाव किया गया है कुछ समझ-बूझ कर किया गया है जिससे एक जगह पावर केन्द्रित न होने पाये। एक जगह केन्द्रित होने से वह पावर टिरैनिकल हो सकती है। इसी बात को मद्देनज़र रख कर इस तरह का प्रावधान जनतंत्र में किया जाता है। इसलिये पावर का सेपरेशन होता है। इस बिल के जरिये ये पावर का केन्द्रीयकरण करना चाहते हैं। प्रेज़िडेंट के हाथ में पावर आने का मतलब है सेन्ट्रल गवर्नमेंट के हाथ में पावर आना। सेन्ट्रल गवर्नमेंट कांग्रेस पार्टी की गवर्नमेंट है। इसका मतलब है कांग्रेस पार्टी के हाथ में गवर्नमेंट आना, उसके जरिये शासन होना, उसके जरिये कानून बनाना। मैं इस बात को एकदम पसन्द नहीं करता।

अभी जो कुछ पूर्व-वक्ता ने कहा है उससे मालूम पड़ता है कि अभी भी वहां की जो स्थिति है उसमें हाई हैन्डेडनेस चल रही है।

जब इस तरह के कानून में हम राय देते हैं तो इसका मतलब होगा कि जो कुछ आगे वहां होगा, जो हाई हैन्डेडनेस होगी उसके लिये हम ज़िम्मेदार होंगे। यद्यपि हम लोगों की संख्या कम है, कांग्रेस वाले जो चाहें कानून को पास कर लें, लेकिन हम उसमें शरीक नहीं होना चाहते। मैं समझता हूं कि जो घाघली चल रही है उसमें कांग्रेस के लोगों का ही हाथ है। इसलिये मैं इसका विरोध करता हूं। मैं यह भी महसूस करता हूं कि पार्लियामेंट को किसी भी कीमत पर अपनी पावर दूसरे को नहीं देनी चाहिये। यह प्रकृति का नियम है कि जो अंग काम नहीं करता वह अंग खत्म हो जाता है। आज की परिस्थिति में जो सेपरेशन आफ पावर है उसमें एक्जीक्यूटिव बहुत बलशाली हो गया है। ऐसी हालत में जबकि एक्जीक्यूटिव की चलती बनती है, लेजिस्लेचर उसके सामने फीका हो गया है हम लोगों के जरिये राष्ट्रपति को पावर देकर सेन्ट्रल गवर्नमेंट के एक्जीक्यूटिव के हाथ में पावर देना जनतंत्र विरोधी काम है। इसलिये मैं इसका घोर विरोध करता हूं और चाहता हूं कि यह बिल पास नहीं हो।

श्री निरंजन वर्मा (मध्य प्रदेश) : माननीय उपाध्यक्ष जी, अभी पंजाब के विषय में एक बिल लाया गया है और हमारे योग्य मित्र ने उसे प्रस्तुत किया है। पंजाब दिनोंदिन छोटा होता चला जा रहा है, जो 18वीं शताब्दी में पंजाब था वह 19वीं शताब्दी में नहीं रहा और जो 19वीं शताब्दी में था वह 46 में नहीं रहा और जो 46 में था वह 47 में नहीं रहा और जो 47 में था वह 66 में अब नहीं रहा, लेकिन इसके बारे में जितने कानून हैं वे बड़े-बड़े और लम्बे-चौड़े कानून बनते चले जा रहे हैं। जब यह बिल सदन के सामने आया तो हमारे योग्य मित्र श्री भूपेश गुप्त ने इसके बारे में कुछ टिप्पणी कीं। हमारे योग्य मित्र विद्वान् दीवान चमन लाल ने इसके बारे में दो बातें बताईं। एक तो यह कि जो कुछ भी भूपेश गुप्त कह रहे हैं वह इलैक्शन

[श्री निरंजन वर्मा]

के कारण ही कह रहे हैं। दूसरे, उन्होंने धारा 357 कांस्टीट्यूशन आफ इंडिया पढ़ कर सुनाई। हम समझते थे कि धारा 357 के अन्तर्गत कोई बड़ा ध्येय लेकर वे आयेंगे जिससे हम लोग हतप्रभ हो जायें और शायद उनको उत्तर न दे सकें, लेकिन धारा 357 जो उन्होंने पढ़ कर बताई वह बहुत साधारण बात है, कोई बड़ी बात नहीं है। धारा 357 के अन्तर्गत पार्लियामेंट इस बात की साधिकृत है कि वह प्रेजिडेंट के लिये किसी प्रकार के अधिकार प्रदत्त करे। कर रही है अधिकार प्रदत्त। इसमें कौनसी बात है। हमारे योग्य मित्र श्री चमन लाल कौनसी ऐसी नई बात ढूँढ कर उत्तर देना चाहते थे हम समझ नहीं सके, और हम समझते हैं कि वे उत्तर दे भी नहीं सके।

तीन बातें हमारे योग्य मित्र मंत्री जी बतलाने का कष्ट करेंगे। भारतवर्ष में यह पहला उदाहरण है पंजाब के विषय में और वह यह कि असेम्बली जिन्दा नहीं है लेकिन असेम्बली के मेम्बर सारे के सारे जिन्दा हैं। हमारा जो खजाना, कोष है, उसके पास रुपया बहुत पड़ा हुआ है, वेतन वहाँ की असेम्बली के मेम्बर प्राप्त कर रहे हैं, लेकिन ऐसी असेम्बली के मेम्बर जिनके लिये कोई अधिकार नहीं है। विश्वामित्र ने एक दूसरा स्वर्ग बनाया था। ऐसा मालूम पड़ता है कि घरातल का पंजाब तो समाप्त हो गया लेकिन पार्लियामेंट का ऊपर का स्वर्ग पंजाब सामने आ गया। वहाँ के जो अधिकृत चुने हुए व्यक्ति हैं जो कानून बनाने के लिये साधिकृत हैं उन लोगों को कानून बनाने के अधिकार से वंचित किया गया और यहाँ पर एक बिल लाकर पार्लियामेंट के द्वारा प्रेसिडेंट महोदय को अधिकृत किया गया कि वे इन दोनों सदनों में पंजाब के जो भी व्यक्ति हैं उनकी राय से कानून बना सकते हैं। तो हमारे योग्य मंत्री जी इस बात का क्या उत्तर दे सकते हैं, पहली बात तो यह कि पंजाब के लोगों का अधिकार, जो वहाँ असेम्बली

थी जो वहाँ के एम० एल० एज थे और वे एम० एल० एज आज भी जीवित हैं कानूनी दृष्टि से और राजनैतिक दृष्टि से तो उनका अधिकार क्यों छीना गया। इस एक बात का वह उत्तर दें।

दूसरी बात यह कि उनको लेजिस्लेशन का जो अधिकार था उसको छीन कर के प्रेसिडेंट के हाथ में यह अधिकार क्यों प्रदत्त किया गया।

तीसरी बात यह कि राष्ट्रपति के लिये जब सब अधिकार थे तो यह बात क्यों नहीं की गई कि पार्लियामेंट के मेम्बरों के साथ पंजाब विधान सभा और पंजाब विधान परिषद् के सदस्यों को भी इसमें शामिल किया जाता और उनके साथ और इस सदन के जो आन-रेबिल मेम्बर्स हैं वे एक साथ बैठते और बैठ कर के किसी प्रकार की मंत्रणा होती कि पंजाब के लिये किस तरह से लाभदायक कानून बनाये जायें।

ये तीन बातें ऐसी हैं जिनके विषय में माननीय मंत्री महोदय को जरूर उत्तर देना चाहिये। हम समझते हैं कि पंजाब के बारे में अगर पंजाब के लोगों को ही कानून बनाने के लिये समुचित अधिकार नहीं दिया गया तो बहुत भारी अनर्थ होने की सम्भावना है उस दिशा में जब कि पंजाब एक ऐसा प्रान्त है जिस पर सारे भारतवर्ष की नज़रें लगी हुई हैं और वहाँ पर एक-एक क्षण में परिस्थिति बदलती हुई चली जा रही है। ऐसे समय में अगर दुर्भाग्य से पंजाब का बट-वारा हो गया तो हो गया लेकिन उससे भी बड़ा दुर्भाग्य यह होगा कि वहाँ के लोगों को वहाँ की स्थिति समझने का, शेष भारत की जनता को वहाँ की स्थिति समझाने का और पंजाब में क्या-क्या वस्तुओं की आवश्यकता है उनको समझ कर उनके तदनु रूप कानून बनाने का अवसर प्रदान नहीं किया जा रहा है।

इस प्रकार आपसे निवेदन है कि यह कानून अपने आप में सफल नहीं है, जो बिल हमारे

योग्य मंत्री जी लाये हैं यद्यपि वह प्रस्तुत होने के बाद पास तो होगा, कोई बहुत बड़ा बिल भी नहीं है, बहुत साधारण-सी बातें हैं लेकिन प्रेसिडेंट के जो अधिकार हैं उसके लिये 30 सदस्य लोक सभा के और 15 सदस्य राज्य सभा के चुन कर उनके द्वारा वहां के लिये जो कानून बनाने का एक नया ढंग बनाना चाहते हैं वह हम समझते हैं कि सवथा अनुचित है।

इसके अतिरिक्त एक बात और भी निवेदन करनी है और वह यह कि अगर हम इस हाउस के सदस्यों के द्वारा और लोक सभा के सदस्यों के द्वारा किसी प्रकार का कानून बनाते हैं या उस मोडिफिकेशन पर प्रेसिडेंट महोदय की छाप लग जाती है तो इस बात का क्या उत्तर है कि वहां की लेजिस्लेटिव असेम्बली और लेजिस्लेटिव कौंसिल जिसके वर्तमान सदस्य वहां पर बैठे हुए हैं यदि बहुमत से वह नहीं चाहते हैं कि यहां पर मोडिफिकेशन हो अथवा जो हमने कानून बनाया है वह बने तो बहुमत से वह न चाहने पर भी जो कानून के रूप में उन पर लादा जायेगा उसकी क्या प्रतिक्रिया होगी। दोनों बातें अपने-अपने स्थान पर अलग-अलग हैं, हम कानून वहां पर लादना चाहते हैं, वह उसे पसन्द नहीं करना चाहते, इन दोनों में दो बातें भिन्न हैं। इसके पश्चात् एक ही परिणाम पर पहुंचा जा सकता है और वह परिणाम यह है कि असेम्बली को तो वहां पर दफन कर दिया और सदस्यों को इसलिये जिंदा रखा—श्री दीवान चमन लाल के शब्दों में भूपेश गुप्ता ने एलेक्शन का कोई प्रश्न नहीं उठाया तो वहां पर हमारे मंत्रिमंडल ने एलेक्शन का प्रश्न उठाया—ताकि जब आवश्यकता पड़े और चुनाव का समय आ जाये तो मंत्रिमंडल को जिंदा कर दिया जाये, कन्निरस्तान में से निकाल कर के ऊंचे स्थान पर उसे बिठा सकें

श्री अर्जुन शरोड़ा (उत्तर प्रदेश) :
कन्निरस्तान से नहीं अस्पताल से।

श्री निरंजन वर्मा : हमारे योग्य मित्र ने जो बात कही वह भी अच्छी है, अस्पताल में घायल पड़े हैं बेचारे, तो वहां से निकाल कर वहां मंत्रिमंडल को बिठाये और मंत्रिमंडल को बिठाने के बाद जब एक महीना चुनाव को रह जाये तो वह उसमें ज्यादा-से-ज्यादा हस्तक्षेप करें। इसके सिवाय और कोई दूसरा उत्तर दिया नहीं जा सकता और न इसके सिवाय कोई दूसरा उत्तर हो सकता है। यही कारण है, यही बेईमानी की भावना है जिसके कारण सब जगह उनकी आलोचना हो रही है। अगर मंत्रिमंडल को जिंदा करने की बात न होती, अगर वहां पर फिर दुबारा लेजिस्लेचर को जिंदा करने की बात न करनी होती तो कोई कारण नहीं था कि इस प्रकार का बिल इस सदन में आता। भावना बिल्कुल स्पष्ट है। पंजाब के ऊपर ऊंचे इस सदन को लाना चाहते हैं और पंजाब के मूल भूत अधिकारों का वहां के व्यक्तियों के द्वारा हनन करके उसका नाश करना चाहते हैं। यह बात आज सहन की जा रही है लेकिन पंजाब के लोगों में जब इसकी प्रतिक्रिया होगी, भगवान जब उन्हें सद्बुद्धि देगा, आपका अंकुश जब वहां से हट जायेगा, जब कांग्रेस वहां पर नहीं रहेगी, तब इसकी प्रतिक्रिया कितनी जबरदस्त होगी इस बात को देखने के लिये आपको सतर्क रहना होगा। इसलिये मैं समझता हूं कि इस बिल का व्यापक विरोध किया जाना चाहिये और इन शब्दों के साथ मैं इस बिल का विरोध करता हूं।

श्री शीलभद्र याजी : माननीय वाइस-चेयर-मैन महोदय, हमारे गृह-मंत्री जी ने जब इस विधेयक को प्रस्तुत किया तो उन्होंने साफ-साफ कहा कि यह बहुत सीधा-सादा विधेयक है लेकिन भूपेश गुप्त जी और जो हमारे विरोधी दल के लोग हैं उनके लिये जो चोर की दाढ़ी में तिनका वाली कहावत है वह चरितार्थ होती है, उनको सब चीज़ बुरी ही मालूम पड़ती है। हमारे भाई दीवान चमनलाल ने उनसे कहा कि हैं तो बैरिस्टर लेकिन कानून

[श्री शीलचन्द्र याजी]

से इनको कोई मतलब ही नहीं, वह कांस्टी-ट्यूशन को पढ़ते ही नहीं, जब धारा 357 पढ़ कर उनको बताया तब भी नहीं समझने की उन्होंने कोशिश की। तो एक बैचलर होने के नाते जो दिमाग की हालत रहती है वही चीज है, हमारे भूपेश गुप्त जी को वही बीमारी है, उनका इसमें कोई कसूर नहीं है, वह सब कुछ जानते हैं केवल यह एक दोष है और उसका इंतजाम भी बाद में हम करेंगे जिसमें वह दोष भी इनका खत्म हो जाये। वह बेशहनाई का बाजा बजाने लगे और वर्मा जी भी उसी तरह की बात करने लगे, बांका बिहारी दास भी उसी तरह से बात करने लगे, एलेक्शन का जो समां है वह सब पर सवार हो गया। शिकायत तो कांग्रेस वालों को होनी चाहिये लेकिन ये घड़ियाल के आंसू बहाने वाले जबरदस्ती आ गये। कह रहे हैं कि संविधान की हत्या हो गई है। संविधान की हत्या नहीं हुई, कोई और चारा नहीं था। हरियाणा और पंजाब का विभाजन हो रहा है, यों तो हम लोगों की समझ में नहीं होना चाहिये था लेकिन हो रहा है और जब विभाजन हो रहा है तो फिर होम मिनिस्ट्री और इस संसद् के लिये कोई चारा ही नहीं है कि इस तरह का प्रेजिडेंट का शासन नहीं हो और धारा 357 के मुताबिक काम नहीं हो, क्योंकि चीजों का जो बंटवारा है और लेजिस्लेचर्स की तादाद इतनी इतनी होनी चाहिये इन सबको करने के लिये यह जरूरी है। जब 2 नवम्बर को या नवम्बर में दोनों प्रान्त बन जाते हैं तब जिनका बहुमत है वह रहेगा और जैसा कि मैंने सुना है और सही सुना है कि कांग्रेस पार्टी का बहुमत है और बहुमत रहेगा। हमारे कुछ साथियों को स्वप्न हो रहा है कि पंजाब में कांग्रेस के लोग अकसरियत नहीं रखेंगे, यह तो एक स्वप्न मात्र है। पंजाब के लोग बड़े देशभक्त रहे हैं, बहादुर रहे हैं और वह फिर कांग्रेस को शक्तिशाली बनायेंगे, भूपेश गुप्ता को जितना वोट मिलता है उससे उनका कम ही रह जायेगा, हालांकि वह

बहुत लेक्चर दे रहे थे कि कांग्रेस वाले क्यों नहीं मिले दरबारा सिंह से। मैं उनको चैलेंज करता हूं, चुनौती देता हूं कि उनके बगल में कामरेड नीरेन घोष हैं उनसे वह मिल जायें, आप अपने घर को ठीक करें, आप और वह पहले मिलिये तब हमारे सामने एकजाम्पुल रखिये। वह तो मिल नहीं सकते, जो थोड़े-से हैं वह मिल नहीं सकते। कांग्रेस जो है उसमें कोई 10, 5 आदमी तो हैं नहीं; हमारे यहां तो हजारों लाखों आदमी हैं और यहां विभिन्न मत होते रहते हैं, यों तो मियां बीबी का झगड़ा भी होता ही है . . .

श्री निरंजन वर्मा : रूस में भी होता है।

श्री शीलभद्र याजी : लेकिन रूस में होता है तो उसका इलाज दूसरा होता है, यहां जो बैठे हुए हैं उस तरह का इलाज नहीं होता। इसलिये मेरा कहना है कि यह तो सीधी-सादी बात है इसको मान लेना चाहिये था। तो मैं यह कह रहा था कि यह कोई इलेक्शन की बात नहीं। अब जरूरी बात है कि जब दोनों प्रान्तों का निर्माण हो जाता है, तो यह जो हमारे पंजाब के कांग्रेस के जो लेजिस्लेटिव असेम्बली के मेम्बर हैं उनकी मांग भी सही है। यह नहीं है कि उनके भीतर कोई मतभेद है। रिइलेक्शन की बात नहीं है। शासन को कंट्रोल करने के लिये जब हमारा बहुमत रहा है, अक्सरियत है, तो क्या प्रेजिडेंट साहब यह नहीं समझते कि इस तरह की परिस्थिति पैदा हो गई है कि वहां पर कोई सरकार बन सकती है। केरल में सरकार बनाने की बड़ी कोशिश हुई। वहां का हवाला बराबर दिया जाता है। लेकिन वहां कोई एक सिग्नल पार्टी मैजोरिटी में कभी नहीं हुई, कम्युनिस्ट पार्टी भी नहीं हुई। तो बराबर केरल का हवाला करके पंजाब से उसका मिलान किया जाता है, यह शोभा की बात नहीं है। तो मैं यह कह रहा था कि 357 आर्टिकल में यह स्पष्ट है। इस तरह की परिस्थिति आ गई है। जब तक सब चीजों का बंटवारा नहीं हो जाता, दोनों लेजिस्लेटिव

असेम्बली नहीं बनती हैं तब तक वहां कोई कानूनी असेम्बली नहीं रह सकती है। लेकिन दो महीने के बाद प्रेज़िडेंट को वह देना पड़ेगा अगर दो महीने के बाद प्रेज़िडेंट का शासन समाप्त होता है और फिर हरियाणा और पंजाब प्रान्त का निर्माण होता है। फिर वे अपना कानून बनायेंगे। तो यह अस्थायी प्रबंध है और संविधान के मुताबिक करना जरूरी है नहीं तो इस तरह की बात हो नहीं सकती। कोई परिस्थिति ऐसी उत्पन्न हो जाती कि शून्य जगह हो जाती, और कोई कुछ नहीं कर सकता था। हमारे सभी लोगों ने कहा ठीक ही हुआ है, यह तो संविधान के मुताबिक करना निहायत जरूरी था। न इसमें आपस में झगड़ा था जिससे यह बात की गई। कांग्रेस में झगड़े रहते हैं लेकिन हम जितने डिजिप्लिन्ड हैं उतने और कोई नहीं हैं अगर भूपेश गुप्ता की पार्टी हमारी जितनी होती तो आप देख लेते क्या होता। अभी वह कम हो गये, राइट और लेफ्ट बन गये। उसी तरह पी० एस० पी० और एस० एस० पी० दो पार्टियां बन गईं, सब में ऐसा हो रहा है, यह हिन्दुस्तान की भूमि में है। लेकिन आप हमारा नमूना देख लेंगे कि किस तरह से हमारी यूनिटी रहती है। यह जो आप स्वप्न देख रहे हैं—घड़ियाल के आंसू बहाकर भूपेश गुप्त ने अपील की कि उनको इस तरह से सजा क्यों दी जा रही है—इसलिये कि इलेक्शन में उनकी नजर है। इलेक्शन में उसका असर पड़ने वाला नहीं है। जो संविधान में विश्वास रखने वाले हैं उनको इस विधेयक को बहुत खुशी से स्वीकार करना चाहिये। हमारे सामने, संसद् के सामने, इसके सिवाय कोई चारा ही नहीं है। इन शब्दों के साथ मैं इस विधेयक का स्वागत करता हूं।

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Arjun Arora. You were not there at your time.

SHRI ARJUN ARORA : I am sorry I was not here. Sir, I rise to support this Bill. But I have two reservations about it.

I think this Bill should not have a long life.

SHRI JAISUKHLAL HATHI : It cannot have.

SHRI ARJUN ARORA : I am glad the Home Minister says it cannot have. But this was one of my reservations because when we hand over legislative power to the executive we have to be careful that that power is not perpetuated.

My second observation, if not reservation, is that this Bill should not be used unless its use becomes absolutely unavoidable. The people through their elected representatives should have the power to make laws for themselves.

As far as the reorganisation of Punjab is concerned, it is an act of justice, rather belated justice. The principle of the linguistic States in the country was accepted by the framers of our Constitution, and in 1956 we took steps to reorganise our States on a linguistic basis. In 1956 itself the States of Maharashtra and Gujarat should have come into being as separate States and the Punjabi Suba should also have come into being in 1956 itself without agitations and without bloodshed. Justice was done in the case of Bombay in 1960 when on May 1 Maharashtra and Gujarat came into being as separate States. After that was done, there was no justification whatsoever for delaying the formation of a Punjabi-speaking State. Anyhow, in 1966 we have done what should have been done in 1956.

There is one thing about the formation of the Punjabi-speaking State of which we must be conscious and every one must be careful. There are some elements who identify the Punjabi-speaking State with a communal State, a Sikh-majority or a Sikh-minority State. I think this is something contrary to our Constitution, something contrary to the spirit in which the States in the country have been organised. This is something inimical to the interest of the country. There can be no question of turning one of the two States, which are coming into being, as a Sikh State or a communal State. Sikhs themselves should not demand it. They should not accept the idea. They should controvert it.

[Shri Arjun Arora.]

Sir, we know that the people of Punjab are hardworking people and among them Sikhs have a tradition of which every one of us is proud. After the partition of the country we have seen that the people from Punjab, particularly Sikhs, went out of Punjab homeless and, in many cases, penniless and now they have become prosperous through their sheer persistent endeavour. If there are any leaders among the Sikhs who want to convert the Punjabi-speaking State into a Sikh State, they are not serving the true interest of the Sikhs at all. We in Kanpur, for example, have a Municipal Corporation which had a life of six years. Out of these six years, for two years one distinguished Sikh leader, Sardar Inder Singh, was our Mayor in a Corporation of 80 members which had only 2 Sikh members. Still the people of the city honoured an old citizen. This should be the spirit in which those responsible for leading the Sikhs in the Punjabi-speaking State should act on the formation of the Punjabi-speaking State.

Mr. Vice-Chairman, the Government can be praised for many things but I cannot praise it for consistency. In the case of Chandigarh its decision has not been consistent with the well-accepted and well-defined principles. Converting Chandigarh into a Union territory is creating a situation in which issues are not solved; they are put in cold storage. Similarly, there is the question of Himachal Pradesh. There is no justification for keeping Himachal Pradesh as a Union territory. Himachal Pradesh should be given full Statehood. Statehood does not depend upon numbers. Statehood does not depend upon viability. Statehood does not depend upon finances. Statehood depends upon certain other things and if the same principles, which are responsible for the formation of so many States, are applied logically in the case of Himachal Pradesh, it will lead us to only one conclusion that Himachal Pradesh should cease to be a Union territory and it should be given full Statehood.

SHRI SHEEL BHADRA YAJEE : Why not Manipur and Tripura ?

SHRI ARJUN ARORA : I do not know much about the problem of those areas. My friend visits them frequently and pro-

bably knows more about them but when he spoke a little while ago, he ignored this vital question. Next time when he speaks on a subject like this, he will have plenty of opportunity to speak about it.

When we discussed the earlier legislation, the Constitution (Amendment) Bill, which will make it possible for us to reorganise Punjab, two or three Members unnecessarily brought in the question of U.P. I do not know why, on what basis people stand up and when they have nothing else or nothing wiser to say they attack U.P. All over U.P. we speak only one language—Hindustani—and if the question of a linguistic State is properly applied, Bihar, U.P., Madhya Pradesh and most of Rajasthan should be one State.

SHRI SHEEL BHADRA YAJEE : Himachal Pradesh.

SHRI ARJUN ARORA : Of course. Those who may call it one continent probably should go back to school and learn their geography afresh. There is among some people some prejudice for nothing against U.P., because they are small, they cannot see big things, because they are small-minded, they cannot imagine big States. In the Soviet Union . . .

SHRI BHUPESH GUPTA : A weak State has a Congress leader for whom Rs. 65 lakhs have been collected.

SHRI ARJUN ARORA : U.P. has many leaders and has produced big leaders but it is not a question of only leadership. If it is a question of leadership, we will do well.

SHRI BHUPESH GUPTA : But people do not know the name of that leader.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Order, order.

SHRI BANKA BEHARY DAS : You produce leaders whose cheques are not honoured.

SHRI R. T. PARTHASARATHY (Madras) : If it is a question of leadership, we all have been accepting the leaders from U.P. but once, for a change, you may accept the leadership from others.

SHRI ARJUN ARORA : You should go on repeating the performance. The size of U.P. or the size of the linguistic States is many a time mentioned against U.P. In

no part of the world they organise States on the basis of area. If the country decides that all States will have the same area as Kerala, there will be hundred of States in the country. We will not mind it. The principle that the country has accepted is the reorganisation of the States on a linguistic basis. In the Soviet Union they have a federal State, they have 16 or 17 republics, then they have autonomous regions and autonomous republics and they have many other variations but their biggest State, the Russian Socialist Federation of Soviet Republics—R.S.F.S.R.—is almost as big as India itself. The size of a State does not make it a continent. A continent is supposed to have certain adjuncts which I learnt as a school-boy in Class V.

SHRI M. M. DHARIA : We have not.

SHRI ARJUN ARORA : If you had bad teachers, what can I do ? I feel that while we are generous and we Hindi-speaking people do not advocate an immediate merger of all the Hindi-speaking States into one, some people who time and again stand up and curse U.P. because of its bigness and because of its large-heartedness and because of its big resources and because of its big population and because of the big and high quality of leadership that it has given to the country . . .

SHRI BANKA BEHARY DAS : And the Prime Minister . . .

SHRI ARJUN ARORA : That is the leadership we have given to this country. They should learn some elementary geography and some political science and then come forward and advocate anything for U.P. which they like.

With these words I support the Bill with the hope that the life of this Bill will be short, that it will be a shortlived baby and the two States will be reorganised by 1st November and the Legislatures will be brought back from the nursing home into active life.

SHRI BANKA BEHARY DAS : The question of U.P. has been raised. It is not irrelevant. It should be replied to.

SHRI JAISUKHLAL HATHI : I will reply to that in the beginning. In fact I

am starting with that. I heard all the speeches and if I were to draw any lessons of importance and utility, of brevity, relevancy and precision, I think I can draw my lessons from Diwan Chaman Lall and Mr. Mani. If I want to learn lessons about election speeches, about talking of their own States, about saying good things about their own States . . .

DR. B. N. ANTANI (Gujarat) : You do not have to fight the elections soon.

SHRI JAISUKHLAL HATHI : I can draw lessons from the other speakers. From both sets of speakers I have drawn lessons, one lesson about brevity, relevancy and precision and the other as to how to make electioneering speeches, about praising their own States, bringing all matters which we want to get published, whether relevant or irrelevant, on all these I have drawn lessons from the speeches, but my duty is something more than that. It is not only to draw lessons but further to understand them.

SHRI BHUPESH GUPTA : You speak a little less and we speak a bit more. I understand your problem. I see the 'Treasury Benches' difficulty.

SHRI JAISUKHLAL HATHI : There is no question of anybody, at least the Treasury Benches being in difficulty.

SHRI BHUPESH GUPTA : Then I will move for closure.

SHRI JAISUKHLAL HATHI : There is no question of any difficulty. We are sailing very smoothly and with your co-operation we shall be able to sail still more smoothly. It is only when you do not cooperate, then sometimes the sailing becomes difficult but with your cooperation we are quite safe.

SHRI SHEEL BHADRA YAJEE : It is against his religion.

SHRI JAISUKHLAL HATHI : I do not know what his religion is.

SHRI BHUPESH GUPTA : My religion is to finish the Congress Party as a party and oust you from power.

SHRI JAISUKHLAL HATHI : If that is your religion, I think you have adopted . . .

SHRI BHUPESH GUPTA : I think the gods will bless me, gods of all the continents and all the religions.

SHRI JAISUKHLAL HATHI : If that is Shri Bhupesh Gupta's . . .

SHRI M. M. DHARIA : That is the reason why he is a constant preacher only.

SHRI JAISUKHLAL HATHI : If that is the religion Mr. Bhupesh Gupta has adopted, I think he is mistaken; he will never be able to reach that goal of destruction of the Congress. I do not think that . . .

SHRI SHEEL BHADRA YAJEE : He will have to come to this side . . .

SHRI JAISUKHLAL HATHI : For that he will have to work and work, and work not only for this, but the next general election if he believes in that. Anyway I will not go into all these details, but for generations . . .

SHRI BANKA BEHARY DAS : It seems you have started the election propaganda here and now.

SHRI JAISUKHLAL HATHI : Now Mr. Bhupesh Gupta, he is certainly a very intelligent senior Member of Parliament, has good eloquence, has good command of the language and could argue his brief as a very able advocate. He can do it but, as I said, the difficulty is that, very often, he conveniently misses all the points and sticks to the one which he wants to hammer in and out of season. Now for example, when he talked about the Consultative Committee, he said that this is a hoax, that because the Members of Parliament are there, they will be in a majority and they will be able to do whatever they like, and that the views of the opposition will not be taken into consideration. Now if he wants to say that, if by a majority a measure is passed there, it is a hoax, does he mean to say that measures passed in this House, where we have a majority of the Congress—you cannot deny that, and many Bills are passed by a majority even where you oppose them—does he mean to say that it is a hoax? I think he did not mean it and he would never mean that it is a hoax.

SHRI BHUPESH GUPTA : I did not mean it in some cases; I meant it in other cases.

SHRI JAISUKHLAL HATHI : I do not think Mr. Bhupesh Gupta will say that a Bill passed by this House by a majority is a hoax. I do not think.

SHRI BHUPESH GUPTA : You had the devaluation passed by a majority where I say, constitutionally it is right, but from the point of view of public morality and public policy the thing was a damned hoax.

SHRI JAISUKHLAL HATHI : I know parliamentary procedure, parliamentary language and parliamentary business. Therefore, whatever is done in Parliament according to the well laid procedure of Parliament, getting a Bill passed by a majority, whether it may be of the opposition—maybe—or otherwise, well, if it is passed you cannot help it. So therefore you cannot say that any Bill that is passed by a majority is a hoax.

SHRI BHUPESH GUPTA : If it were so, we would have moved a Bill to permanently retire the Treasury Benches and the Council of Ministers from public life.

SHRI JAISUKHLAL HATHI : That you could have done provided you had a majority.

DIWAN CHAMAN LALL : What happened to the Special Marriage Act?

SHRI BHUPESH GUPTA : You did not vote for it.

DIWAN CHAMAN LALL : We voted.

SHRI JAISUKHLAL HATHI : So Mr. Gupta could have done it if they had a majority. Unfortunately they have none, and let them not hope to get it ever.

SHRI SHEEL BHADRA YAJEE : Never, never.

SHRI JAISUKHLAL HATHI : Then a second thing he talked about this business of the Consultative Committee. He has no experience of any such Consultative Committee. Here there are those Members, and the Vice-Chairman is one of such Members of the Kerala Consultative Committee, and those who are on the

Committee know how this Committee functions in all legislation that are brought before them. A measure is discussed threadbare and many suggestions from the opposition are taken into consideration. They are considered and then they are accepted. Therefore, to say that a Consultative Committee of this kind is a hoax is not at all proper.

SHRI BHUPESH GUPTA : Is a facade. All right. You go on.

SHRI ARJUN ARORA : Ignore him.

SHRI JAISUKHLAL HATHI : I do not want to ignore anybody. Why should I ignore him? I do not want to ignore him. He is a very learned senior Member and it is no use ignoring him.

SHRI BHUPESH GUPTA : I shall be happy if you ignore me.

SHRI JAISUKHLAL HATHI : Then he said about the existing Punjab Assembly. Now this was a point which was raised by many Members asking, "Why do you not associate with this Committee Members of the Punjab Legislature when the Legislative Assembly exists? Now the first thing is, we have to understand, as my hon. friend, Diwan Chaman Lall, has very ably and rightly said, we have to read firstly article 356 where it says that the President may by Proclamation—

"declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;"

Therefore the power of the Legislature now vests in the Parliament, and not in the Legislative Assembly.

The second thing is that under article 357—

"it shall be competent for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf;"

Now here the power to legislate primarily vests in Parliament. Then the Parliament

confers the power of the State on the President. Now in this scheme of having the Consultative Committee, Members of the Lok Sabha from Punjab, and Members of the Council of States from Punjab are on the Committee. The question is asked: Why not the Members of the Legislative Assembly when the Assembly is functioning? The Assembly is not functioning. If the Members read the Proclamation . . .

SHRI BHUPESH GUPTA : They have not ceased to be Members. May be alive, but they are not functioning.

SHRI JAISUKHLAL HATHI : The Assembly is suspended.

SHRI BHUPESH GUPTA : Many Ministers do not also function that way. The point is that they have not ceased to be M.L.As.

SHRI JAISUKHLAL HATHI : The Assembly is suspended and, therefore, secondly when a committee is appointed from among the Members of Parliament, we have also to look to another position, which I may say. Some Members said that we do not want to give the President this power. Why should he legislate? When the Parliament is not in session, he may legislate, when it is not in session, while in session it should come here. Now we know that this Parliament has work and much work, which even otherwise we are not able to cope with, and to bring all sorts of legislation relating to Punjab will be adding to the already heavy business that the Parliament has. At the same time let us understand by the help of this Committee we are not giving unlimited power to the President to legislate. This point no hon. Member seems to have noticed. Whenever the President enacts any Act, that Act is not a final Act. It has to be placed on the Table of the House and when it is placed on the Table, then any Member can move a Resolution for a modification of that Act and if the House approves of that Resolution then that Act will have to be modified accordingly. Perhaps hon. Members will remember how in the case of Kerala, one Act, the Education Act there was modified as a result of such a Resolution brought forward by a Member which was approved

[Shri Jaisukhlal Hathi]
by the House. To that extent that Act got modified. So any Act passed by the President also will be modified in the same manner if such a Resolution is approved by the House. So let it not be understood that after this Committee is consulted and the President enacts an Act, that Act will be final. That Act has to be brought here and laid on the Table of the House and on that Act also, if any hon. Member moves a Resolution for modification then it will be discussed in the whole House. Therefore the power to Parliament is not at all taken away. Parliament retains its power to modify any such legislation.

DIWAN CHAMAN LALL : In other words, what you have done is to hand over the power to the President under some conditions.

SHRI JAISUKHLAL HATHI : Yes, subject to some conditions. We have seen how under article 357 the President can enact, subject to the condition that any Member can bring a Resolution to modify that. And if the House decides to modify it, it can be modified.

SHRI BHUPESH GUPTA : We know that.

SHRI JAISUKHLAL HATHI : If you know that, then you missed it when you were speaking. I know you know things, but you conveniently forget at that time. So to think that this is an absolute power given to the President is not correct. It is subject to that condition.

Then the question was asked : Why not have the Members of the Legislature also? I say that even the Members of this Consultative Committee do not vote and pass Acts. It is only an advisory body. It is an advisory committee. It is not as if votes are taken in that Committee and then measures are passed by that body. No, that is not the position. It is only an advisory committee. I do not understand why Members of Parliament, Members of Rajya Sabha and the other House cannot in consultation with their counterparts in the Legislature make suggestions in the Consultative Committee. Those suggestions can be considered. Moreover it is the business of Parliament and you cannot introduce any element from any

outside body into a Committee of Parliament. It is not a general committee. All I can say is that it is a Committee of Parliament, a Parliamentary Committee and you cannot bring in others. It would not be proper also. It is not as if we do not want their cooperation. The point is in a Parliamentary Committee you cannot bring them. It is only a Parliamentary Committee and that is what is provided for.

SHRI BHUPESH GUPTA : I dispute that. It is not a Parliamentary Committee. It is a committee of Members of Parliament constituted under a Statute of Parliament.

SHRI JAISUKHLAL HATHI : Yes, yes. You are right. It is a committee of the Members of Parliament. I agree. I perfectly agree with my hon. friend.

The other question that was raised was about the Jullundur cases. I said it yesterday and I repeat it today, it is not relevant to this matter. But I will not say it is irrelevant, though I will maintain that it is not relevant to the present Bill. If some act is done by the Executive in Punjab under President's Rule, that has no bearing on this legislation.

SHRI BHUPESH GUPTA : Under the Nanda rule, euphemistically called President's Rule.

SHRI JAISUKHLAL HATHI : It is President's Rule. It is neither Nanda rule nor Gupta rule.

SHRI BHUPESH GUPTA : Gupta rule it is not, that I know.

SHRI JAISUKHLAL HATHI : The point is, these acts of the Executive have no bearing on this legislation. Even if the Members of the Legislative Assembly of Punjab were to pass a legislation, it is the Executive there that will be doing the implementation of it. The execution part of it will have to be with the executive officers. That does not, therefore, make matters any the better or worse. But I would still not dismiss that on that ground and say that I will not listen to it or take it into consideration. My object in requesting the hon. Member to give me in

writing what he mentioned yesterday, something he mentioned subject to correction was to have something specific. I cannot take things subject to correction. I should have definite and precise information.

SHRI BHUPESH GUPTA : You are correct under subsection.

SHRI JAISUKHLAL HATHI : And you speak subject to correction. Therefore, I still say let the hon. Member give me those instances. I have talked to the Governor yesterday and I have told him that I can pass on this information to him. Therefore, he need not think that I am not going to attend to what he said. I will carefully look into it and I have already taken some action.

Then my hon. friend Shri Arjun Arora wanted that the life of the legislation should not be long. My hon. friend is not here now. As the House knows, the Proclamation will last only for six months unless it is again brought before the House and approved. Therefore, if the Proclamation is not approved, then this legislation will not be there.

SHRI BHUPESH GUPTA : The Proclamation of Emergency continued for so many years. Here I agree and if it continued after the reorganisation, then both Darbara Singh and Shri Ram Kishen will go on a joint hunger strike.

SHRI JAISUKHLAL HATHI : Mr. Gupta, I was not replying to you. I was replying to the observations of Shri Arjun Arora. Let my hon. friend not play the role of Mr. Gupta and Mr. Arora. Either he is Mr. Gupta or he is Mr. Arora, not both together. To Mr. Arora's point that the life of this legislation should not be long my reply is, as I said, the Proclamation is subject to the approval of the House. So it cannot be long.

SHRI BHUPESH GUPTA : There I agree.

SHRI JAISUKHLAL HATHI : Thank you.

SHRI BHUPESH GUPTA : You know why it should be short.

12) RS/66

SHRI JAISUKHLAL HATHI : I know it cannot be more than six months, unless Parliament again approves of an extension. If the Parliament does not approve of it, then there will be no case for this having a longer life.

Some other hon. Members referred to power being given to the Executive. There is no question of any power being given to the Executive under this measure. This measure is only to give the power to legislate, to delegate the power or to confer that power on the President which power is with the Parliament. And it is subject to this condition. The condition is very clear namely, that there will be a committee of Members of Parliament and the enactment will be laid on the Table of the House and will be subject to modification by Parliament. Therefore, I think there should be no apprehension whatsoever that the power that we are offering or conferring on the resident will be exercised in a manner which will not be proper. It is not going to be final either. It is subject to the condition that both Houses of Parliament can modify the Act, if ever anybody wants to do it. As I have pointed out, it has been done in the past and our experience has been that the Consultative Committee works very well and in a very cooperative manner the Members have worked. From my experience I can say that there need be no fear whatsoever and there should not be any apprehension about this conferring of this power on the President in the manner in which it has been envisaged here.

Sir, I do not think I should take more time of the House as I think I have covered almost all the points that were raised. I commend the motion for the acceptance of the House.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That the Bill to confer on the President the power of the Legislature of the State of Punjab to make laws, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3—Conferment on the President of the power of the State Legislature to make laws

SHRI BANKA BEHARY DAS : Sir, I beg to move :

"That at page 2, after line 19, the following be inserted, namely :—

'(c) ten members of the Legislature of the State of the Punjab nominated by the President.'

Mr. Vice-Chairman, I will briefly explain my amendment. From whatever the hon. Minister said, I find he does not object to my proposal from the point of view of the Constitution because as he has clearly stated, this Bill gives power of legislation to the President and in order to advise the President this Consultative Committee is being formed. So if we want to bring anybody into that consultative committee it would not be *ultra vires* the Constitution nor will it be illegal. So my point is, if it is constitutional, if it is not illegal, and if there is a proposal which is politically sound, I think the Minister should accept it. One thing I have to point out to the hon. Minister. Although the members of the Punjab legislature are not functioning, under the Constitution they have not ceased to exist. For all practical purposes they exist and the hon. Minister himself said that they can be revived after November. So they can be in this committee. That is my suggestion and if it is legal, if it is constitutional, and if it is politically sound, I appeal to the Minister that the members of the Punjab legislature should be associated in the matter of advising the President about how legislation for Punjab should be enacted. I have nothing more to add; if it is feasible, it should be accepted.

The question was proposed.

SHRI BHUPESH GUPTA : Sir, I fully support this amendment. In fact, that was my main contention that instead of Members of Parliament, the members of the Punjab legislature be substituted.

SHRI JAISUKHLAL HATHI : Instead of ?

SHRI BHUPESH GUPTA : That is to say, this advisory committee should be constituted by the members of the legisla-

ture from Punjab. The Punjab legislature is in existence at least in law though not in fact. Those people are still members. In any case anybody can be included in it and it is for making this suggestion.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Bhupesh Gupta, it means that you have shifted your ground; from purely members of the legislature from Punjab you have come to a mixed committee of both Parliament Members and those members.

SHRI BHUPESH GUPTA : I have no objection to it being a committee of their own. If they like, they can take some of us but the point is, they should be brought in. Now for making this suggestion my esteemed friend here, Diwan Chaman Lall, mounted almost a howitzer at me. He started attacking me right and left and he said I had not understood the Constitution even if I had read it. The trouble is I read it last night and at least a few hours have passed by now but Diwan Chaman Lall seems to misunderstand the Constitution even as he is reading it and I will presently show how.

Now I am strictly on legal and constitutional aspects and I hope I will not digress to other things, political matters. First of all, what is there in this Bill ? Here under a proviso a committee is constituted to advise the President. The President may consult or shall consult, in whatever way you put it, this committee. First of all this committee is not in the first instance provided for by the Constitution. The Constitution does not provide for such a consultative committee. It is for Parliament to decide whether such a committee should be there or not. This Bill would have been perfectly valid within the meaning of this Constitution even without this proviso. We are dealing with a separate proposition of a consultative committee which is constituted not *ipso facto* on the basis of the provisions of the Constitution, but certainly as any other law even though any law passed by Parliament must necessarily conform to the Constitution. But that is a matter for the Supreme Court to decide whether any particular law we pass is within the four corners of the Constitution or not. Now my esteemed friend, Diwan Chaman Lall,

invited my attention—and very rightly so—to articles 356 and 357 of the Constitution. We are here concerned with article 357. Article 356 we have done with yesterday when we passed the Proclamation part of it. Now we are concerned with the consequential arrangements, arrangements consequent upon the Proclamation. And we have this measure here which makes an arrangement for a consultative committee. Now it is true that powers are being delegated. But who gets those powers? Under the Constitution we are delegating the authority to make laws for Punjab not to this consultative committee but to the President of India. That is the requirement of the Constitution. The Constitution says here :

“(a) for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose, the power so conferred to any other authority to be specified by him in that behalf.”

If you see the Bill, it says in clause 3 :

“The power of the Legislature of the State of Punjab to make laws, which has been declared by the Proclamation to be exercisable by or under the authority of Parliament, is hereby conferred on the President.”

So we give the powers to the President and nobody else. What the President will do is none of the business of the Constitution. What the President will do, in which arrangement he will function in this matter, is to be settled by Parliament and that is what we are doing here now. I would invite your attention to this; even this clause was misunderstood by my esteemed friend, Diwan Chaman Lall. It says clearly :

“for Parliament to confer on the President the power of the Legislature of the State to make laws, and to authorise the President to delegate, subject to such conditions as he may think fit to impose”

Agreed. And then it goes on :

“ . . . the power so conferred to any other authority to be specified by him in that behalf.”

If it meant only Members of Parliament, then certainly the Constitution would have itself said, “the power so conferred to a Committee of Members of Parliament”. Here the expression used is very wide ‘any other authority’; that authority has to be specified by him in that behalf.

DIWAN CHAMAN LALL : I am afraid, Mr. Vice-Chairman—if my hon. friend will give way to me now—that Mr. Bhupesh Gupta is reading a little more into this particular power that has been conferred on the President than is actually available. If he reads the first three lines or so of article 357, he will realise that is as far as we have gone; we have not gone beyond that and it is under the authority of Parliament alone that this can happen.

SHRI BHUPESH GUPTA : I just made the position clear that even in regard to this thing it is very widely stated. Yes; you are right because it says, “Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament.” That means it is by or under the authority of Parliament that the power shall be exercised but it does not say by Parliament or by a special committee of Members of Parliament or any such thing. Now we have to define what is meant by ‘by or under the authority of Parliament’. Quite clearly we are providing for a situation when Parliament will not be directly in a position to exercise this power. I concede this point, that the question is when Parliament is not in session how this power is to be exercised. But what is said is ‘by or under the authority of Parliament’. And here we are creating that authority. Here we are investing someone with that authority of Parliament and whom are we investing with this authority of Parliament? It is the President of India. Now when this law is made, when we go into recess the law-making authority under this particular Act will be the President of India and nobody else. Well, the President under the constitutional convention of parliamentary system will of course act on the advice of the Council of Ministers but constitutionally and legally the law-making authority is the President of India and nobody

[Shri Bhupesh Gupta.]

else. That is the position. Having settled that question of giving the power or authority to legislate for Punjab to the President we are now passing a law in order to give this power. We are doing not only that but saying :

"Provided that before enacting any such Act, the President shall, whenever he considers it practicable to do so, consult a committee constituted for the purpose."

So we are providing here for a committee to be constituted. This committee has *locus standi* under this Bill which we are passing. This committee does not follow *ab initio* from the constitutional provisions. The Constitution has left it open. That is why I said even without this particular proviso this Bill would have been perfectly valid. The President is perfectly entitled to exercise this legislative authority without consulting anybody, without consulting this committee or any other body. Having come to this position, we suggest that this advisory committee should be constituted of members of the Punjab legislature. Well, there is nothing wrong there. It would be a perfectly valid committee. Whether you like it for political and other reasons or not, it is a different matter. Now, am I to understand that if I say, accept that amendment, it will be unconstitutional? No, it will not be unconstitutional, because that body is not a law-making body. Power is not being delegated to that body at all. That body is supposed to be consulted by the President and it is a consultative committee. It is a consultative body and nothing more. Here I can say the President shall consult Diwan Chaman Lall. It would be perfectly right.

DIWAN CHAMAN LALL : I am a Member of Parliament.

SHRI BHUPESH GUPTA : No. You are a practising lawyer. I have never been that. Let him say here that a committee cannot be constituted of others. I am prepared to go to the Supreme Court, no, I am prepared to go to the Attorney-General and I am sure Mr. Hathi knows it. I am saying suppose you are not a Member of Parliament. I can say here that Parliament is sovereign in

this respect. I am bound by the Constitution. I can say, provided the President consults the esteemed Member, Diwan Chaman Lall, from Punjab. It is perfectly all right.

DIWAN CHAMAN LALL : I am a Member here.

SHRI BHUPESH GUPTA : Provided the President consulted Mrs. Chaman Lall. She is not a Member of Parliament. That is perfectly all right.

DIWAN CHAMAN LALL : You think that she is a little more intelligent than I am.

SHRI BHUPESH GUPTA : I know she will come here much better than you do. Since you said Member of Parliament, it may not be confused that way. Therefore, I say that it is absolutely all right, no difficulty at all. Therefore, our suggestion you must accept. You may find it inexpedient or you may think it is impracticable, but there is nothing in the constitutional provision to stop it. Here again if you refer to the Constitution, Diwan Chaman Lall has invited attention to the scheme of the Constitution. Yes, it is precisely the scheme of the Constitution, which tells me that I am perfectly in order. It says here :

"(b) for Parliament, or for the President or other authority in whom such power to make laws is vested under sub-clause (a) . . ."

It is vested in Parliament directly or in the President also or any other authority, provided the requirements of the constitutional provision are observed. Then it says here :

" . . . to make laws conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties, upon the Union or officers and authorities thereof;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament."

Here we are not concerned with it. This body which is being formed does not

authorise expenditure from the Consolidated Fund. It may make a recommendation. It can be consulted and so on, but here only the President is authorised, when Parliament is not in session to sanction expenditure from the Consolidated Fund. It is for the President under this Bill to consult the Committee. That is all. Therefore, this clause should not at all be mixed up with the scheme of the Bill. The scheme of the Constitution is fundamental. The scheme of the Bill is incidental. The scheme of the Constitution is substantial. The scheme, as far as this particular provision of the Bill is concerned, is procedural. We would not like the President to function in this matter. We are telling him of certain arrangements for him. Therefore, I think it is perfectly right and Mr. Hathi, I hope, will not get up to say this. He will not get up to say that only Members of Parliament must be in this committee. I hope he will not say that, because Diwan Chaman Lall has the advantage of being a non-official Member of the Congress Party. You occupy the Treasury Benches. Your words will be the words of the Government. The moment you do this thing, I will immediately write to the Prime Minister.

SHRI JAISUKHLAL HATHI : Please do not warn me. I know my responsibilities.

SHRI BHUPESH GUPTA : I know. Immediately I will write to the Prime Minister and I shall test your statement in various ways. Therefore, I know it. After all, have I not read the article which the "Statesman" wrote 'The importance of being Mr. Hathi'? How can I forget that article? Therefore, you will see it. Now, we support it. Why? That is the constitutional position. Diwan Chaman Lall need not bother about it. He missed his mark. He misfired. He started shouting and we hauled him up. After all, his voice is pleasant. When he is argumentative, he is even more fascinating and when he gets up always we hear him. After all, his is a distant echo from the past. It is an echo from the old days of our Legislature. That echo will be needed for a long time to come. Therefore, I like it. But the trouble with him is that he functions in a Legislature where things are a little

different. Here we know that he belongs to the ruling Party. There, in the old Legislature, before independence he was fighting the ruling authorities at that time. In that he had to be more alert, more equipped and apply his intelligence and wise mind more effectively in matters like this. But here he has to get up and help the Government in distress. That is his duty. It is really his function, the function of a nominee of theirs. Here we are in the role of attackers. Diwan Chaman Lall can at best lead an ambulance corps and should not engage himself in fighting us. The ambulance should be non-combatant. It is not an election propaganda at all. After all, who will be in this committee? The majority of them are Congress members and the committee will be filled by these very men, who can be defeated in elections. You are saying that I am indulging in electioneering. It is not fair, because I am not suggesting a thing which goes against my grain. I have to put up with Congress members, a majority of them, in a committee of this kind, if it is formed with members of the Punjab Legislature. Therefore, I stand by certain principles. If it is a choice between principles and Congressmen, sometimes I have to give preference to principles. Therefore, I am making the suggestion and we would like the Punjab people to know that at least the Opposition Members remembered them. Again you will bring in the election campaign, I know, but we would like the Punjab people to know that these people who sit in the Opposition remembered them in their hour of distress and sorrow. They had faith in them, faith in the members of the Punjab Legislature. When a matter like this was being discussed we stuck to the principle and we remembered the members of the Punjab Legislature. We are very sorry for them. If they are represented by very bad people, evidently, what can they do? Therefore, we want to make this suggestion. I do not think that Mr. Hathi will accept it. We do not believe that they will accept it.

SHRI ARJUN ARORA : It would only show something very sensible.

SHRI BHUPESH GUPTA : I know that here is a government which encourages blackmarketeers . . .

SHRI ARJUN ARORA : No, not at all.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Order, order.

SHRI BHUPESH GUPTA : Therefore, I say, before I sit down that I have no illusion. I do not think that my friend, Mr. Das, has any illusion either. But all that we wish to make it clear is that even at this late hour, when this Bill is going to be passed by this House, we remembered it for the sake of the people of Punjab and for the sake of the Punjab Legislature. I think those people should have been easily brought into, at least for the purpose of consultation, the picture, more especially when they are so near to us. They can be easily called to Delhi for consultation. Anyhow the power should not be used arbitrarily. (*Time bell rings.*) One thing more. Now, the strike is going on.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : Mr. Bhupesh Gupta, do not forget that you are speaking on an amendment.

SHRI BHUPESH GUPTA : The power will be used. I know you will understand it. Here is an advisory committee being formed. My request to the Advisory Committee is this. I suppose this amendment will not be accepted, I am very sorry. But I would ask them immediately to take up the question of the strike going on near Chandigarh of the H.M.T. workers. Many workers are on strike. Bonus has been denied to them and an industrial dispute has been forced upon them by the authorities. I am told that the Labour Department is in favour of giving the bonus to them and something has got stuck up in the Industries Department or the Department concerned.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : On what are you talking now ? Now is it relevant to this Bill ?

SHRI BHUPESH GUPTA : I think you are forming an Advisory Committee. Therefore, we are telling what the Advisory Committee should do. The Advisory Committee need not be docile. The Advisory Committee should meet immediately and look into this matter.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : You are asking a body to meet when it is not even formed.

SHRI BHUPESH GUPTA : It will be formed, to my regret, without the Punjab Assembly people. Anyhow I appeal to the Government that the Chandigarh strike of the H.M.T. workers should be looked into. I was there last weekend. An industrial dispute has arisen there. The matter should be looked into by the Government and certainly the workers' demand should be met. They should not be forced into a situation for which the authorities there alone are responsible, and Government should itself observe these rules regarding the bonus.

Thank you very much. I would ask Diwan Chaman Lall to speak on this. If he speaks I will be very happy. But he may not speak on this.

SHRI JAISUKHLAL HATHI : I have heard all the arguments of Shri Bhupesh Gupta. He said he was confident that I would not accept his amendment. In Sanskrit he knows where this is said :

यादृशी भावना दस्य सिति भवति तादृशी

It means a man gets the fruit according to his own wish.

You wish and you express your hope that I will not accept it.

SHRI BHUPESH GUPTA : Your Cabinet Ministers are getting their fruits from Aminchand Pyarelal.

SHRI JAISUKHLAL HATHI : Even without hearing my argument if he comes to his conclusion that I am not going to accept, I do not think I can convince him. But I say that under the scheme as it is, it is going to be really the power of Parliament to legislate. All the Bills could have come to Parliament. If we had not delegated the power to the President, they could have come here. The Members of the Legislature could not have discussed them. Moreover, as I said, it is not functioning. They are stopped from legislating even for their own State, in their own field. So, how can they be brought here on this Committee ? Therefore, in this

scheme it is not acceptable. I do not accept the amendment.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That at page 2, after line 19, the following be inserted, namely :—

'(c) ten members of the Legislature of the State of the Punjab nominated by the President'."

SHRI BHUPESH GUPTA : Sir, we want to record our vote. I want a division.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : I will take a count. The question is :

"That at page 2, after line 19, the following be inserted, namely :—

'(c) ten members of the Legislature of the State of the Punjab nominated by the President'."

(After a count was taken)

The Noes have it.

The motion was negatived.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRI JAISUKHLAL HATHI : Sir, I move :

"That the Bill be passed.

SHRI NIREN GHOSH (West Bengal) : Sir, I oppose the passing of the Bill. It has been said that it is a consequential Bill following from the Proclamation. But I ask the question, is it inevitable or is it compulsory ? It is not. Things could be arranged in this way that the Parliament retains the power of legislation and does not delegate it to any person or authority, and when you say that the reorganised States are coming into being from November 1st and the Legislatures of the two States are going to function, it is a matter of one month and a few days. Why for a month and a few days do you want to pass such a consequential Bill ? As regards

the financial matters, you could have asked for a certain sum of money from Parliament and that would have been sanctioned. How it is that as a sort of inevitable corollary it must be passed or otherwise everything becomes impure—that I cannot understand. The affairs of the Punjab Legislature in connection with the reorganisation have really become a labyrinth for the common man. The common man would not know how to wend his way through this labyrinth. As far as the political beings are concerned, they will understand the whole scheme of this legislation, this and every other thing that have been put on the Statute Book, except the question of reorganisation, the way and method in which these things are being arranged, the territories are being distributed and all that. That is to suit the exigencies of the ruling party. It is simple and clear.

I will ask you one question and I hope you will answer it straight. Here you say that the Assembly is suspended. In Kerala it was dissolved. Why is it suspended here and there it had been dissolved ? What is the reason behind it ? Why could not that Assembly be suspended for an indefinite period of time or some such thing ? Why have you hit upon these two methods in dealing with two States ? That is a relevant question and I hope you will clarify it.

Another thing I want to ask. A legislature is there to deliberate and legislate. If the power of a legislature to deliberate and legislate is taken away, that legislature is dead. *Ipsa facto* it becomes dead. Now you say that that legislature will be revived again. I think that what is dead cannot come to life.

AN HON. MEMBER : It is not dead.

SHRI NIREN GHOSH : How I interpret is this. The powers of a legislature to deliberate and legislate are the *raison d'être* for its existence. If they are taken away, then it is dead and gone. It ceases to exist. It cannot be merely suspended, it ceases to exist. That Legislature ceases to exist. It cannot be brought back to life again if these fundamental powers of the Legislature are taken away. I put it—

[Shri Niren Ghosh.]

what you have done is an objective contradiction and a legal fiction. A legal fiction like this will not be tenable. Now, I would ask you : Under what provision of the Constitution are you doing this ? If the entire powers of the Legislature are taken away, can that body be revived again ? That also I would like to know. I raise the question whether it is constitutional in the strict sense of the letter and spirit of the Constitution. There is a provision for a whole or part of the thing. But you have taken the whole of a Legislature. If you take the whole of the thing, then that Legislature goes and it goes for good. It cannot be alive. So, I think it is unconstitutional as far as the letter and the spirit of the Constitution go. But whether it would be legally sustainable or not, I do not know. I am not a legal pundit. Nor am I a barrister at law or anything like that. I am an ordinary person. I speak more from common sense and experience.

SHRI AKBAR ALI KHAN (Andhra Pradesh) : Legally it is alive.

SHRI NIREN GHOSH : Legally it is not alive. By this Bill they exercise in constitutional acrobatics.

Another suggestion made was that Parliament has not divested itself of its authority. Any enactment, any law, passed by the President will come again before Parliament. That is true. But it will come as a *fait accompli*. The President will make the law, it will operate, certain consequences will follow, and after that, it will come, before Parliament, if it ever does come. So, why do you go in for such sort of things and if it ever happens that Parliament enacts it, then, legally and constitutionally, a very serious crisis can arise. So, I say that I am against such sort of delegation of powers to a single body, all authority, and I oppose the Bill.

SHRI JAISUKHLAL HATHI : Sir, I am only worried at the way in which the arguments are advanced. The Proclamation has been approved yesterday, the whole House has approved it and that Proclamation is now being discussed. It clearly says :—“...the operation of the

following provisions of the Constitution in relation to that State is hereby suspended.” Now that Proclamation we have approved. I do not know the parliamentary procedure whereby after having approved a particular thing we can go on talking of the same thing and here in the suspension the articles mentioned are articles 163 and 164 and then articles 174, 175, 176, 17 . . .

SHRI BHUPESH GUPTA : Yesterday only we passed the Proclamation in the House. It does not follow that today you delegate the authority.

SHRI JAISUKHLAL HATHI : I am not replying to you, I am replying to him. He says how this can be suspended. I say that you have already approved the Proclamation of the President wherein he has suspended these articles of the Constitution relating to the Assembly. Therefore, once having approved that, you cannot go on asking, why did you suspend it ? Today is the question of the delegation of power. I am not replying to Mr. Bhupesh Gupta, I am replying to him. He asked, how can you suspend it ? You yourself approved it yesterday . . .

SHRI BHUPESH GUPTA : We do not give it the power.

SHRI NIREN GHOSH : The law is not there.

SHRI BHUPESH GUPTA : Implications have got to be there. When the need for legislation comes Parliament will have to be summoned. The implication is that when the need for legislation comes under the Proclamation, instead of the President legislating, what will happen now is, we will ask you and Parliament should be summoned by the President.

SHRI JAISUKHLAL HATHI : It is the exigency. You could have taken all the powers with Parliament itself. But it is not necessary from a practical point of view that all legislations for Punjab should come here. Secondly, Ordinances have been passed in the past by the Governor when the Assembly was not in session. They will go on being enacted and I do not think that this Parliament will have time in the next two months to enact all those legislations. And they would have

lapsed. So, that exigency is also there. It is on that ground that this has to be done.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The question is :

"That the Bill be passed."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA) : The House stands adjourned till 11.00 A.M. tomorrow.

The House then adjourned at six minutes past five of the clock till eleven of the clock on Tuesday, the 6th September, 1966.