

*Time allotted*

17. The Gift-tax (Amendment) Bill, 1962 1 hour
18. The workmen's Compensation (Amendment) Bill, 1962 1 hour
19. The All-India Services (Amendment) Bill, 1962, 1 hour
20. Motion regarding measures for maintaining prices of essential commodities at reasonable levels 2 hours

The Committee also recommended that Friday, November 23, 1962, at present allotted for Private Members' business may be allotted for transaction of Government business.

The Committee further recommended that in order to be able to complete the business by November 23, 1962, the House may curtail or dispense with the lunch hour and sit beyond 5 p.m. as and when necessary.

The House stands adjourned till 2.30 P.M.

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

The House reassembled after lunch at half-past two of the clock, THE DEPUTY CHAIRMAN in the Chair.

**THE CONSTITUTION (AMENDMENT) BILL, 1961 (TO AMEND ARTICLES 74, 123, 124, 217 AND THE SECOND SCHEDULE)—continued.**

SHM K. SANTHANAM (Madras): Madam Deputy Chairman, the desire to define precisely the relations between the President, the Cabinet and Parliament is not unreasonable. Many of us in the Constituent Assembly approached this question from that point of view, but after a prolonged discussion we found that under the British system of Cabinet government, it was not possible to define

this relation precisely. If we wanted to define that relation precisely we would have had to adopt the Presidential system, where the executive, the legislative and the judicial powers are more or less wholly separated. My friend, Mr. Bhupesh Gupta, has raised the question of the relation between the President and the Cabinet. If he had thought a little deeper, he would have found that the relations between the Cabinet and Parliament are no less important and no less difficult and delicate than those between the President and the Cabinet. Under the Indian Constitution, the President has a dual role, one is that of a constitutional head and the other that of a guardian of the Constitution. It is as a constitutional head he functions ordinarily. Normally whenever there is a majority party and a Cabinet having the support of that party, the President's function is more or less to advise informally, but to accept the decisions of Parliament and the Government. But even in normal times extraordinary situations may arise when the President may have to come down and say: "I shall not accept your advice and I will take all the consequences, including that of impeachment." For instance, suppose a Government simply because it has got a two-thirds majority resolves to abolish Part III—Fundamental Rights. What is the President as the guardian of the Constitution to do? I think it is his business to advise the Government that it should not do it, it should not misuse its temporary majority for such a vital destruction, as it were, of the Constitution. And I think he will be entitled to tell the Cabinet: "You can go and impeach me. I am not going to agree to it." He may refuse to agree to it and dissolve Parliament and leave it to the people to decide. To say that he must even in such a case simply put his signature, that is, Cabinet advice shall be absolutely binding, will mean that the Constitution will be absolutely at the mercy of a wavering executive. Then, again, let us conceive of a situation where the Cabinet is

[Shri K. Santhanam.] defeated on a no-confidence motion. The Prime Minister refuses to resign and he goes and advises the President that Parliament should be adjourned *sine die* for six months. Meanwhile he is anxious to gather support from independents and others. Should the President agree to such a position? I think he should not. He must be able to say to the Government: "I respect you as the Government so long as you have got the majority in Parliament. On the day you lose the majority in Parliament you cease to be a lawful Cabinet. It is your business to resign. And then let us try others. If others cannot form a stable Government, then we shall dissolve Parliament and the people of India will decide it." Many such occasions may arise. Therefore, while he is normally a constitutional head, the President has got residuary, or you may call it prerogative powers, in order to guard the Constitution. Any such amendment as that of my friend, Mr. Bhupesh Gupta, will make him utterly powerless to come to the rescue of Parliament, to safeguard the Constitution, to defend the rights of the people against Ministers who do not respect the Constitution. Therefore, it will open the floodgates of dictatorship by dishonest Ministers. Now, there can be no dictatorship by the President because Parliament and the Cabinet will stand together against him. Similarly, there can be no dictatorship of the Cabinet, so long as the President and Parliament are against the Cabinet. Therefore, this is a triangular arrangement, in which each part keeps guard over any possible misuse of their powers. Therefore, after a great deal of consideration, it was felt by the Constituent Assembly that this matter should be regulated by convention and as everyone knows this convention is working satisfactorily.

SHRI BHUPESH GUPTA: May I ask one question, because the hon. Member was a member of the Constituent Assembly? It has been suggested that, when it was considered

by the Constituent Assembly, it was only done by way of courtesy and so on. The intention was to make it obligatory on the part of the President to obey or carry out the advice, to comply with the advice of the Council of Ministers. What the hon. Member is saying now is something different, that is to say, according to him it could not be the intention that the advice in all circumstances should be accepted.

SHRI K. SANTHANAM: If he reads the proceedings of the Constituent Assembly, he will find that I made this very point. Dr. Ambedkar explained the normal position of the President as the constitutional head. Soon after him I rose and said I wanted to add these words to what Dr. Ambedkar had said, *i.e.*, in abnormal circumstances, to protect the Constitution, to see that the Cabinet has the confidence of Parliament, in marginal cases, the President will have to interfere and I do not think anybody questioned that position. That is the position even in regard to the British Crown today. Normally the British Crown does not interfere, but if there is no Government, if the Government loses the confidence of Parliament, then automatically the Crown gets some power. The power of the President is in inverse proportion to the confidence of the Parliament in the Cabinet. To the extent the confidence of Parliament in the Cabinet declines, to that extent the President becomes the guardian of the Constitution. When the Cabinet loses the confidence, he cannot rule himself. He will have to dismiss the Cabinet, put somebody else in a new Cabinet and finally dissolve Parliament and inform both Parliament and the people that the Constitution is not working and so you better find some solution. Therefore, any kind of binding provision will do harm to the Constitution and ultimately to the rights of the people and of Parliament. Then again, Madam, there was one other conclusive reason which prevented the incorporation of any

such provision. There were all kinds of suggestions. We considered whether, as in the case of the 1935 Act, something like an Instrument of Instructions could be had, but we found that it was of no use because there were only two possible alternatives; either the advice tendered by the Cabinet to the President and its acceptance or non-acceptance must be made justiciable by the High Courts and the Supreme Court or we should rely only on impeachment. If the advice tendered by the Cabinet to the President and his reactions to it are to become justiciable, then the Government will be in chaos. Daily somebody or other will go to the Supreme Court and everything will have to be brought, all the documents will have to be produced in the Court, and no Government can be carried on in that way. But suppose you incorporate this in the Constitution and the President says I do not care what is to happen, what action can you take? You will have to impeach him. You can now impeach him if he defies the Government having the support of Parliament. Then also you can impeach him. There can be no difference in sanction. Therefore, it was purposeless except for creating some litigation because any citizen may go and make an allegation that in a particular case the Cabinet did not decide of its own free will, that the decision was made under duress or under the undue influence of the President, and then all the Ministers, the Prime Minister and the President will have to be put as witnesses, and the Supreme Court may say: All right this is not a free decision of the Cabinet, and the President did not accept it because though he might bring influence to bear, the original resolution of the Cabinet might have had to be modified in order to secure the acceptance. It may be due to ordinary persuasion, it may be due to what may be called undue influence, but till the High Court or the Supreme Court pronounces a sentence, all actions of the Government may have to come to a standstill. That is why we had to in-

sert a provision that no advice tendered by the Cabinet to the President shall be brought before a court of law. So long as the advice cannot be brought before a court of law, nor can its acceptance or non-acceptance be brought before a court of law, only convention can guide the relations subject to the ultimate sanction of impeachment. When it comes to a question of impeachment, the Members of Parliament will become the judges as to whether the Cabinet was right or the President was right, and that is exactly the position that we want. It is the supremacy of Parliament that is important, not the supremacy of the Cabinet over the President or the supremacy of the President over the Cabinet. So long as the Cabinet is only an instrument of Parliament, the President is powerless. When it ceases to be a proper instrument of Parliament, then it is the President's duty to side with the Parliament even against the Cabinet. That I consider to be the correct constitutional position and I explained it in my own speech in the Constituent Assembly.

SHRI BHUPESH GUPTA: Your speech did not incorporate it.

SHRI K. SANTHANAM: You can see the proceedings. Nobody questioned that in marginal cases, in extraordinary circumstances the President becomes invested with power. For example as somebody said: Suppose that a Cabinet is shot down, who takes charge under the Constitution? Just as in Burma a whole Government might be killed, then who will take charge? It is only the President who can take charge. Suppose the Cabinet breaks inside. There have been cases in the States in which the ruling Party broke into two pieces under two leaders, and then there was a question as to who is to run the Government. Who is to decide? Is he to be guided only by the Chief Minister or the Prime Minister who may be the leader of a small faction, or is he to be guided by the leader of a bigger faction. Fortunately for India, for the last fifteen

[Shri K. Santhanam.]

year, we have been saved all these problems by outstanding leadership. That is a great good fortune, but that good fortune may not last for ever. When that good fortune does not last for ever, assuming that a doubtful person becomes Prime Minister and he wants to manipulate Parliament, wants to deprive the people of their rights, we want some one to say: "I am here as a guardian of the Constitution, you will abide by the decision of Parliament \_\_\_\_\_"

SHRI BHUPESH GUPTA: That manipulator will be defeated in Parliament.

SHRI K. SANTHANAM: Even if he is defeated in Parliament, he can adjourn it for six months.

SHRI BHUPESH GUPTA: In the States this is done, I agree.

SHRI K. SANTHANAM: In Parliament also it can be done. For six months he can adjourn Parliament, and who can say what a man cannot do in six months? Therefore, we must have a reserve power, and that reserve power can be the President and the President only.

SHRI BHUPESH GUPTA: Did you come across the statement of the Law Minister of the Government of India in Madras when this controversy arose? He said that as in England here also the President is absolutely bound by the advice. Therefore, there is a good deal of confusion.

SHRI K. SANTHANAM: There is no confusion. In England also what I have said prevails. So long as there is an effective Government with a majority and having the confidence of Parliament, the Queen is bound, but on the day this situation does not prevail the Queen gets all the powers—you may call it the prerogative power—and she can dismiss the Cabinet and call somebody else to form it. If the new man does not get the confidence of Parliament, then she may

be in trouble; but if the new man gets the confidence of Parliament, her action will be justified. The same position obtains in India. Let him read the latest constitutional literature. The Queen has got reserve powers. The same powers are therein our President.

SHRI BHUPESH GUPTA: In England the Sovereign can never dissolve! or dismiss Parliament without the advice of the Prime Minister. That is the settled convention there.

SHRI K. SANTHANAM: I am afraid your knowledge of constitutional practices is limited.

SHRI P. N. SAPRU: Mr. Bhupesh. Gupta is one hundred per cent, right in his statement.

SHRI BHUPESH GUPTA: You may say that my whole knowledge of it is limited. I am a very limited man. But I also study some books on constitutional law and they bear out the point that the British Sovereign is absolutely bound, their Sovereign has no right either to dissolve the Parliament or dismiss the Government without the advice of the Prime Minister. I refer you to Mr. Ivor Jennings who is one of the living constitutional authorities.

THE DEPUTY CHAIRMAN: You continue, Mr. Santhanam.

SHRI K. SANTHANAM: If at any time the Prime Minister of England is defeated on a no-confidence motion and does not resign, there is no legal power to force him to resign. It is only a convention. If he does not resign, then I have no doubt whatsoever that the Queen's reserve powers will come into operation in spite of what Dr. Sapru says. But normally this convention is so strong that he will resign.

SHRI BHUPESH GUPTA: The public will make him resign.

SHRI K. SANTHANAM: But how does the public act? Is it through law or police or does it lynch the Prime Minister? How does it, act?

SHRI BHUPESH GUPTA: In England the public have acted differently at different times. In England the head of a King had been chopped off.

SHRI K. SANTHANAM: We are peaking of constitutional and legal matters. Public opinion takes time and it has to operate in an amorphous manner. But we are dealing with constitutional matters which can be dealt with in a straightforward manner. Therefore, I say that even here I do not expect that at any time this reserve power will be brought into operation. But it should be there and it is intended to be there and it cannot be taken away. It will be taken away if this provision is inserted. And again, as I have said, even if you insert the provision, what are you to do with a President who says that he would not sign this ordinance or that particular Act?

SHRI BHUPESH GUPTA: It violates the Constitution.

SHRI K. SANTHANAM: You can only impeach him. Therefore, if today he interferes unnecessarily violating the Constitution, he will be impeached- You see, the same penalty is there, and you cannot have any other penalty. Therefore this is harmful in the first instance and in any case, purposeless and futile in the second instance. Therefore I think that this does not deserve to be supported to any extent.

Then again, Madam, regarding the appointment of High Court judges, there is some point in the objections to or criticisms of the present method. But one thing is highly anomalous. On the one hand, Shri Bhupesh Gupta

wants that every advice of the Cabinet should be binding on the President but when it comes to the appointment of High Court judges, he says that advice shall not be called for. He will become a sort of autocrat. In the 1935 Act there were provisions which enabled the Governor-General and the Governors to act in their discretion. But in our Constitution there is no discretionary power given to the President. (Interruption) No, no. He may consult. But the final decision is that of the President on the advice of the Government. Today . . .

SHRI BHUPESH GUPTA: I say, the Chief Justice.

SHRI K. SANTHANAM: The Chief Justice is all right. His advice is only a recommendation. It is not binding. It will be open to the President to set aside the recommendation of the Chief Justice and appoint anybody from the Bar. Normally, for the sake of convenience, he may abide, but there have been cases where even the Chief Justice's recommendations have been discarded. Possibly, we could have had some provision by which this consultation with the executive was substituted by some other device. For instance, if we can set up a Privy Council consisting of retired Supreme Court Judges, retired Governors and such people, fifteen or twenty people . . .

SHRI BHUPESH GUPTA: Why have Governors?

SHRI K. SANTHANAM: What is wrong with them?

SHRI BHUPESH GUPTA: Governors.

SHRI K. SANTHANAM: Why not? Governor is only a President in miniature.

SHRI A. D. MANI (Madhya Pradesh) : Not at all. Some of the Governors do not behave properly.

SHRI K. SANTHANAM: Some Presidents also may not behave properly in future. There is no difference. Whatever that may be, if we had a select Privy Council, it would have been possible for the Constitution to say ...

SHRI BHUPESH GUPTA: Lieutenant-Governors also.

SHRI K. SANTHANAM: Well, we will consider it when the time comes.

We would have provided that the President might be the chief or chair-jnan of that Council and that Council might have to decide. But as things are, to leave it to the pure personal discretion of the President is not good, and as somebody has pointed out, it is better that the executive should come before Parliament and take the responsibility. It is wrong to think that you cannot censure the executive on the appointment of a bad judge. If there is such a strong opinion, it will find its expression some way or the other, and no government can function. Therefore there is no alternative to the present position.

There is one point about consulting the State Governments. In fact, consultation with the State Governments is much more harmless than consultation with the Central executive because you get the opinion of the Chief Justice of the Supreme Court, the opinion of the Chief Justice of the High Court and the opinion of the local government. But a refusal to consult the local government may create a sort of divorce between the executive and the judiciary which may be harmful to the judiciary. By having the judges of the High Court appointed by the President, we have already infringed the federal principle. Normally the State Governments should appoint the High Court judges in the same way as the President appoints the Supreme Court judges. But for various reasons—I think justifiable reasons—we decided that the "High Court judges should be appoint-

ed by the President. If the local governments are not even consulted, then they may declare non-co-operation with the High Court.

SHRI BHUPESH GUPTA: What will be its form?

SHRI K. SANTHANAM: No houses will be available to the High Court judges. First of all . . .

SHRI BHUPESH GUPTA: No houses?

SHRI K. SANTHANAM: Yes. Why not? The local governments have to requisition houses and give them to the High Court judges. Why should they . . .

SHRI BHUPESH GUPTA: Many judges live in their own houses.

SHRI K. SANTHANAM: No, no. Where?

SHRI BHUPESH GUPTA: You can come across some.

AN HON. MEMBER: Calcutta is an exception.

SHRI K. SANTHANAM: There are many judges who have no houses of their own. You know about the rents. Try to get one in Delhi without being requisitioned by the Government. (*Interruption*) I am only saying that all the High Court decrees have to be executed through the agency of the State Government. Of course, the provision is there that the State Government shall execute all laws. But it is one thing to say that it shall execute and quite another thing to make it willing to execute. Therefore some kind of liaison, some kind of goodwill, between the High Court and the State Government is essential for purposes of justice, and the present provision only provides for that minimum consultation. But there is nothing to prevent the President from discarding any bad recommendation and I think that in some cases these recommendations have been rejected also.

SHRI BHUPESH GUPTA: In two cases.

SHRI K. SANTHANAM: As to the clause about salaries, I think it is sheer pettiness on the part of . . .

SHRI BHUPESH GUPTA: Pettiness on my part?

SHRI K. SANTHANAM: Absolute pettiness. He is getting more than Rs. 750 as a Member of Parliament. Why should he want to give the Governor Rs. 750? You must rise above . . .

SHRI BHUPESH GUPTA: You put it at Rs. 1000 or Rs. 1500. He or she gets various allowances, Rolls Royce cars. And you know, even as Lieutenant-Governor, you got so many amenities which you do not get now.

SHRI K. SANTHANAM: Well, you had better keep out personal affairs. I have no objection to discuss my personal role as Lieutenant-Governor. But I do not want to do it. It will be a waste of time. But I think it is absolutely petty for a Member of Parliament to bring in a clause like this. This is wholly ungraceful and I do not think that he will have anybody to support it.

Thank you, Madam.

SHRI A. D. MANI: Madam Deputy Chairman, I should like to say that the Bill, like the curate's egg and the Communist Party's Resolution, is good in parts. There are germs and very good suggestions but the manner in which Shri Bhupesh Gupta presented the Bill to the House with its clauses—the whole Bill—is unacceptable. I should like to ask Shri Bhupesh Gupta to say in reply what special urgency is in existence which motivated the tabling of this Bill before the House. The previous Rashtrapati at that time spoke at the Law Institute. There was a controversy. Shri N. C. Chatterjee support-

838 RS—3.

ed the idea. Shri Rajagopalachari supported the idea. But the controversy has died down. It is no longer a live issue. The fact that a controversy was started on this matter may call for the special attention of the Government to certain conventions which not only the heads of States in the country but also the Rashtrapati will have to observe in their public utterances. This is 3 P.M. a long-range solution which they alone can seek, because we had the other day a Governor declaring that the office of the Governor had no value at all and that he was doing no work. There was another Governor who said that it should be a merging of certain places, for example the State of Himachal Pradesh in Punjab. And all that created a good deal of controversy. It is for the Government to consider whether the time has not come for heads of States to meet together and discuss among themselves the restrictions under which they shall function when they address public meetings.

Sir, I agree with the previous speakers and particularly with my good friend, Mr. Santhanam, when he said that we should not touch those provisions of the Constitution regarding the relationship of the President with his Council of Ministers. Mr. Bhupesh Gupta, under clause 2 of his Bill, would like it to be specifically stipulated as follows: —

"All such advice shall be binding on the President unless each House of Parliament by a motion passed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting, requests the President to disregard the advice."

Madam, as I said, there is no urgency for us to consider the matter. We should also take into account the history of the evolution of the office

[Shri A. D. Mani]

of the Head of the State. Under the Constitution, under the practices under which we are functioning, we have accepted the British parliamentary practice as our model. In Britain, it is not possible to say what exactly is the measure of influence and power which the Monarchy has at a particular moment. Much depends on the Monarch. For example, when King George V was the Monarch, and a National Government had to be formed, he advised the Leader of the Conservative Party, Mr. Stanley Baldwin, to work under Mr. Ramsay Macdonald though he belonged to the Labour Party. All that has come out in the published memoirs of his time. It may be that the President, under our Constitution, may acquire, in course of time, that prestige and influence which may make him counsel the Prime Minister of the day to drop an unpopular Minister from the Cabinet and to that extent reflect public opinion more accurately than the Prime Minister. These things may happen in the future—I am having no particular case in mind. So the way in which the President functions will depend on the President himself, which only shows that when we elect the President of India we cannot follow Gandhiji's dictum, which was laid down in his time, that he would like a sweeper to be elected President of India. That is what he said in one of his meetings. As I said, the Presidential office depends on the President. If he has influence, if he has immense prestige in the country and abroad, the Prime Minister of the day, whoever he may be, will have to consult him and will have to pay heed to his advice. Now I would not like that any stipulation should be put down regarding the obligation of the President to accept the advice of his Prime Minister. Mr. Santhanami mentioned a number of cases in which there may be a breakdown of the Constitution and where the President, to safeguard the Constitution, may have to disregard the advice of his Prime Minister.

Madam, I would like to mention something that happened in Ghana some months ago, where the Opposition Leaders were locked up in prison. Suppose a Prime Minister comes into office in India, in the near future or in the distant future with a precarious majority and he finds leaders of the opposition like Mr. Bhupesh Gupta and his friends, and our good friends of the Swatantra Party to be troublesome . . .

SHRI BHUPESH GUPTA: And you also.

SHRI A. D. MANI: ... all right, me also, he may try to lock up the entire opposition in jail, and have a majority for himself. That would be flouting the very basis of the Constitution, and if there is a lot of discontent against such an action, the President of India would be justified in disregarding the advice of his Prime Minister and take the whole issue to the country.

Madam, I do not know what the powers of the President are at the present moment. The history of the last twelve years has to be written, and it is only when the President who has retired—Dr. Rajendra Prasad—and the Prime Minister publish their memoirs, we shall know what exactly is the position of the President *vis-a-vis* the Prime Minister. So much has been said about the powers of the President; at one time it was said that even with regard to nominations to this House the President was bound by the advice tendered by the Prime Minister though the Constitution puts it very clearly—it is the President who nominates the person concerned. In order to meet Mr. Bhupesh Gupta part of the way I would like to suggest that whatever might have happened in the past, at least in the matter of nominating representatives to the Houses the President should exercise what is called "individual judgment".



SHRI BHUPESH GUPTA: Consult all.

SHRI K. SANTHANAM: And that is against his amendment.

SHRI A. D. MANI: Yes, against his amendment. And I am suggesting his "individual judgment" in this matter. And I am mentioning that this practice should be developed, that in regard to nominations to this House the public should not wonder how this person came in and why; I mean, it does happen, because if somebody is nominated, we ask ourselves, "Is this man eminent in art, letters or social service?" Let us not put ourselves in that embarrassing position by asking how a person qualifies for nomination to this House.

SHRI BHUPESH GUPTA: We know the respective nominations from the Congress offices in the States, as to who is going to be nominated.

SHRI A. D. MANI: The first suggestion that I would like to make is that we should retain the powers of the President as they are and that the Government should make a declaration that at least in regard to nominations the President nominates whom he considers worthy and qualified under the qualifications stipulated in the Constitution.

Madam, there is one other point about the President that I should like to mention. Mr. Santhanam mentioned in his intervention that this is a safeguard against dictatorship. I wish he had spelled out this idea a little further. Let us see what happened in Pakistan; the Presidential office was used to get rid of one Prime Minister—Mr. Nazimuddin; he was removed by an Order of the President. Mr. Iskander Mirza was the President at the time. We do not want any such situation to arise in India where forces of fascism—it is a phrase which Mr. Bhupesh Gupta likes and he knows where the forces of fascism are—might assert themselves and try to subvert

the Constitution. We should like to have somebody at the head of the Constitution who in the final resort will express the will of the people of India, and who knows that if he sets aside the opinion of the Prime Minister on a very vital issue, he will have to face impeachment. If his action is supported by the people and by the Houses of Parliament, it is the Prime Minister who has to go to the wall. I would therefore like the present position to continue and I would suggest to Mr. Bhupesh Gupta not to press this matter, because there is no live controversy; nobody has asked for the definition of the powers of the President.

Madam, I would like to make one further point about the powers of the President, and that is in regard to the suspension of the Constitution in the States. I would not like the Presidents of the future to be bound by the advice of the Prime Minister. Mr. Bhupesh Gupta spoke with justifiable feeling when he referred to the suspension of the Constitution in Kerala. Though he might consider me as a rightist and a reactionary . . .

SHRI BHUPESH GUPTA: No, no.

SHRI A. D. MANI: ... I have always felt that the action of the Government in suspending the Constitution in Kerala was unjustified, that they took note of an external agitation which was not reflected in an adverse vote of the House against the Ministry and it was an attempt to set up a Congress Ministry in that State, to overthrow a Communist Government which had been elected and which enjoyed the confidence of the House at the time. Now in regard to suspension of the Constitution I would like the President to exercise his individual judgment. Since I mention the phrase "individual judgment" I may remark here that this phrase occurs in the Government of India Act, 1935. In the Government of India Act, 1935, the Governor-General and the Governors had powers to exercise in their discretion—

[Shri A. D. Mani] tion, where they need not consult their Executive Council or the Council of Ministers. They had the powers to carry out their intentions in their individual judgment, which means, after consultation with the Executive Council or the Council of Ministers—the consultation was obligatory—they could set aside the advice tendered by the executive of the day. Now I should like, in regard to the suspension of the Constitution in any particular State, that the President should exercise his individual judgement, that is to say, he might ask the Prime Minister to tender his advice, he might study the situation himself and he might consult the Attorney-General of India, and then come to a decision. It is necessary that there should be some safeguard against the arbitrary exercise of power for party advantage as happened in the case of Kerala. I am very sorry for what happened to Mr. Bhupesh Gupta's friends in Kerala. I think the precedent set up in Kerala by the Government of India in suspending the Constitution was a very unfortunate and unhealthy precedent and undermined the basis of parliamentary practices.

Now, my hon. friend, Mr. Santhanam, referred to the creation of a Privy Council. This matter was discussed at that time when the Government of the day wanted to strike at the Ministry in Kerala, and was afraid to do so. At that time there were talks about setting up a Privy Council. We can have a Privy Council here too. But unfortunately we have found that retired gentlemen constitute very spurious specimens when they take part in public affairs.

SHRI BHUPESH GUPTA: How can we have a Privy Council in the Indian Republic?

SHRI A. D. MANI: You may call it the Council of the Republic. We need not call it the Privy Council. The Privy Council in England is an ornamental body. It has no powers excepting on the question of investiture *of* a King or the Queen as the monarch

of Britain. It is only on that occasion that the Privy Council has some powers. I would not like a Privy Council to be set up in India because the question of party nomination come\* in. We do not want a National Defence Council to be repeated in a Privy Council to be set up in India. Since a party makes nominations, there is always the tendency to choose party heads and party supporter\*.

SHRI K. SANTHANAM: That is exactly why the people should be defined by their status or office and there should be no kind of party nomination. That is why I said, "the retired Judges, the Chief Justice of the Supreme Court, etc." so that they will come into the Privy Council on their own right and will not be subject to any kind of party favours.

SHRI A. D. MANI: Madam Deputy Chairman, if such a Council has to become unwieldy, why should High Court Judges alone be chosen? Why not take retired Generals and retired Secretaries-General? They are also persons who hold high offices. In any case, at that time when this idea was discussed; we could not reach a conclusion because we did not know what exactly the Privy Council that we had in mind was. But I would suggest this that the Government should, as a matter of rule, not press the President to accept the advice of the Prime Minister in the case of suspension of the Constitution. I hope the diligent mental faculties of my good friend, Mr. Bhupesh Gupta, will be aroused at the next session and that he will try to bring forward a Bill giving power to the President to arbitrate in a dispute between one State and another . . .

SHRI K. SANTHANAM: A Bill to increase the powers of the President . . .

SHRI A. D. MANI: Yes, that is what I am suggesting. And I am going to take the opportunity to express my ideas on the powers of the President.

Now, Madam, there has been a controversy between the Government of Assam and the Government of India on the question of exploitation of the oil resources of Assam. There has been controversy between the Government of West Bengal and the Government of India regarding coal reserves and coalfields, and the West Bengal Government is so confident about the justice of the Government of India that while it has been negotiating this matter, it has filed a case before the Supreme Court. They are going to take the decision of the Supreme Court, on their stand.

SHRI BHUPESH GUPTA: Double barrelled gun.

SHRI A. D. MANI: I would like Mr. Bhupesh Gupta to think of bringing forward a Bill to give the President powers which will go against what he said. (*Interruption by Shri Bhupesh Gupta.*) Yes, I will bring it myself. If he does not bring, I will bring it. He should bring forward a Bill regarding the powers of the President to arbitrate with the consent of both the parties in any dispute between one State and another. Now I am told there has been a satisfactory settlement of the oil royalty dispute between the Government of Assam and the Government of India. We do not want to be in the same position because if Mr. Bhupesh Gupta again comes to power in Kerala, he may not be willing to accept the arbitration of the Government of India. It is better, therefore, that we give the powers to the President and make this office useful.

SHRI K. SANTHANAM: He can go to the Supreme Court.

SHRI A. D. MANI: Now he cannot go because the Constitution is suspended.

Madam Deputy Chairman, I would move on to clause 3 of the Bill where Mr. Bhupesh Gupta wants that no

ordinance shall be promulgated to declare illegal any strike of the workers or the civil employees or of any section of the working people. Madam, I have also been a student of socialism of some kind. And while I was a student, I was very near the Communist point of view. But in the process of gradual evolution I have come to believe in free enterprise. This is what has happened over a period of thirty years.

SHRI BHUPESH GUPTA: You took thirty years to come near the Swatantra Party.

SHRI A. D. MANI: No, no, not very near to the Swatantra Party but a little near the gentleman who was sitting here on this side of the House. Whatever it is, we have been told by Communist theories, by socialist theories that strikes are the weapons by which the working classes protect their rights. Strikes are necessary sometimes. I am also a student of labour movement. But, Mr. Bhupesh Gupta talked about social objectives when he sponsored the Bill. What are the social objectives of our present-day endeavour? Strikes or more production? The emphasis today, not because of the emergency, on account of the Third Plan and our commitments is on more and more production. We have evolved a code of discipline. We have got compulsory arbitration. We have got compulsory adjudication. Sometimes the employers have tried to break all these codes and labour also has tried to break these codes. For example, if the workers want to go on strike in an essential undertaking like the Electric Supply Undertaking, do you think the Government of India can sit still? It has got to put down the strike by clamping an ordinance. An ordinance gives time to Parliament to express its opinion on its desirability or otherwise. How many ordinances have been promulgated, I would ask Mr. Bhupesh Gupta, during the last two

[Shri A. D. Mam.] or three years? For the first time it is on account of this emergency that ordinances have been promulgated. Whatever it is, however weak the Opposition in this House or in the other House may be, the shouting that is being done in both the Houses of Parliament has had the desired effect on the Government of the day. Nobody would like to take extreme measures by clamping ordinances on the people, unless the situation calls for them, and nobody accept the assumption in Mr. Bhupesh Gupta's clause No. 3 that strikes by themselves are a fundamental right. The continuance of work, more production, would convey more meaning in the social objectives of Mr. Bhupesh Gupta and the country than strikes. I would, therefore, oppose clause 3.

In regard to clause 4 about appointment; it says:

"Provided that no advice from the Council of Ministers shall be called for, or otherwise entertained, by the President in the matter of such appointment."

I may mention that, as I said earlier, Mr. Bhupesh Gupta's Bill is like the curate's egg. There are some very good parts. Whatever the Minister of State in the Ministry of Home Affairs might say in reply, there has been a good deal of dissatisfaction about the appointment of High Court Judges in our country. There have been cases where Ministers have become High Court Judges, by what process, I do not know.

SHRI BHUPESH GUPTA: Defeated Ministers.

SHRI A. D. MANI: There have been cases where defeated Ministers have become High Court Judges.

SHRI SHEEL BHADRA YAJEE: Where?

SHRI A. D. MANI: In Andhra Pradesh.

SHRI BHUPESH GUPTA: In Calcutta.

SHRI A. D. MANI: You want me to mention names.

SHRIMATI C. AMMANNA RAJA (Andhra Pradesh): Not defeated Ministers.

SHRI A. D. MANI: It is much worse than a defeated Minister.

On the question of appointment of Judges the Law Commission also mentioned in the Report that there has been some measure of dissatisfaction about appointments to various posts in the judiciary in the country. It is very difficult to discuss Judges in a session like this. But I can say this much that some of the appointments have not commanded universal confidence.

In regard to the appointment of Judges, I would like to repeat the phrase used in the Government of India Act, 1939—the President shall exercise his individual judgment. That is to say, he shall take the advice of the Chief Justice of India, he shall take the advice of his Prime Minister, and if he finds that there is a glaring conflict between the advice tendered by the Chief Justice of India and the Prime Minister, it is for him to make a choice between the two sets of advice; he can accept the advice of the Chief Justice and disregard the advice of the Prime Minister. I agree with Mr. Santhanam that as long as a Government is responsible to the Legislature, we cannot keep out the Government altogether even in the process of consultation. It need not be binding but the advice shall be called for, shall be considered but the President shall exercise his individual judgment That goes for clause 5 of the Bill also.

I would like to mention and I would like the Home Minister to make a statement on this subject in reference to the Judges of the State High Courts. Last week the Chief Justice of India pronounced a judgment in a very im-

portant case relating to Assam. Many of you might have read the report of the case in the papers. I do not have the full text of the judgment because they have to be published in the law journals. In that case a certain matter was heard by the High Court. The order was passed, noted in the Order Sheet. Later, when the judgment had been given, the case was re-heard and an absolutely opposite judgment was given, that is to say, something quite contrary to what they have written. The strictures which the Chief Justice of India has passed on the High Court Judges of Assam are very serious strictures. I do not want to go into what happened which made the Judges re-hear the case. Shri Bhupesh Gupta is right in saying that we do not get an opportunity to discuss the conduct of the High Court Judges. I would like the Home Minister to specially conduct an enquiry into this matter. After all the judgment has been pronounced. He should call for the requisite explanation from the Chief Justice and if he finds that there has been pressure exercised on the Judges, I would like the Government to bring forward a formal resolution for impeachment of the Judges concerned. This is a very serious matter because what the Chief Justice of India has said undermines the confidence of the public in the judiciary that a case is heard, order is passed and the case is re-heard and a different judgment is given. In view of all these things happening . . .

SHRI B. K. P. SINHA: The Judges have retired.

SHRI A. D. MANI: But still in measure we should have some redress. As Mr. Gupta says, we cannot discuss the conduct of a judge in this Chamber. It is very difficult. We can do so only by a resolution of impeachment. Whether they have retired or not, there must be some remedy for this. So I say it is better, in view of these things happening, in view of certain State Governments being

heavily concerned with the question of what is a backward class and more forward class and all sorts of castes and regional considerations playing their part in determining appointments, we should have some provision by which the President exercises his individual judgment again. He should take advice of the Governor, take the advice of the Chief Ministers and come to a decision.

I would like to go on to clause 6 at the Bill. Shri Santhanam said that there was a good deal of pettiness in what Mr. Gupta suggested and Mr. Gupta, with his good humour, remained silent waiting for his salvo when he replies to the debate. I quite agree that there is a good deal of pettiness in our country—I am not saying that Mr. Gupta is petty—that we try to be highly critical of people who bear public responsibility, that we would like a levelling down of comforts for all people so that nobody has air-conditioning when we do not have one. That is the general trend of thinking among our people but I must say that the Bill of Mr. Gupta does make us consider certain problems concerning executive authority in the country. I would like the Home Minister to answer this point that it has been estimated that to keep a Minister in comfort, for example, let alone the President, it costs about Rs. 10,000 a month. There have been cases reported to me that electricity supply for a Minister's\* house costs Rs. 750.

PROF. M. B. LAL: You were ing about pettiness.

(Interruptions)

SHRI A. D. MANI: Whatever it is. I am coming to this. I hope the Home Minister is not dissatisfied with my speech and is going away.

SHRI SHEEL BHADRA YEJEE: Are we discussing the Ministers' salaries?

SHRI A. D. MANI: I am mentioning this with other things. I am quite relevant and I am making a sugges-

[Shri A. D. Mani.] tion. It is only to make a point. There have been cases where the maintenance of a garden or changing of a garden alone has cost Rs. 35,000. I do not want to go into these figures because it becomes highly personal. As far as the President is concerned, I do not agree with Mr. Gupta.

SHRI BHUPESH GUPTA: The Auditor General has said that a Minister now costs more than an Executive Councillor under the British Viceroys. It is stated in the report of the Auditor General.

SHRI A. D. MANI: I do not want to level down the salary of the President to Rs. 2,500 because there are a number of relatives who come and stay with him, a number of old townsmen who expect hospitality at Rashtrapati Bhavan, and all that has to be expected. In the case of the Communist Party it does not matter as the Communes may take care of them but it cannot take care of the guests of the President. I would not like the scaling down of the salary of the Governor or the President but this occasion should be utilised by the Government for appointing a Committee to go into the question of how much the Ministers, the Governors, etc. cost this Government. If we know that each Minister costs Rs. 10,000 we accept the charge very well because they have to answer questions, they have to intervene in debates and all those interventions are full of wisdom and profound knowledge. We have to pay for all these.

SHRI BHUPESH GUPTA: We answered questions in Kerala at Rs. 350 a month.

SHRI ARJUN ARORA (Uttar Pra"-desh): You did not answer properly. That is why you lost.

SHRI A. D. MANI: I would like to make one suggestion that we should not try to reduce the emoluments of the President or the Governor. Shri Santhanam said that a suggestion to reduce it would amount to pettiness.

I would like him to read the Hansard debate on the emoluments of Royalty when Queen Elizabeth came to the throne. There was a free discussion about the matter and somebody said: "Why should we maintain the Duke of Edinburgh?" There was a free discussion of all kinds of personal matters concerning Royalty and how much it costs. It is better therefore that we have a committee to go into this matter for the information of the public and when a Committee is appointed . . .

SHRI ARJUN ARORA: I hope that debate gave the hon. Member some idea of what the Royalty in England costs—a very fantastic figure . . .

SHRI A. D. MANI: I am prepared to accept even Rs. 20,000 for a Minister. I am not going to be petty but I want a finding to be made regarding how much these Ministers are costing us, how much the Heads of States are costing so that we say, we pay this price for, we have democracy.

AN. HON. MEMBER: Put question\*

SHRI A. D. MANI: It is very difficult to question how much he spends on electricity. It should be done in a proper way, by a Committee in which Members of the Opposition are also represented and we should have a convention by which there is a Standing Committee of the Government and Members of the Opposition to go into the question of increasing emoluments or conveniences of Ministers. I may remind here that under the old British Government, the Secretary of State had to be consulted whenever the Viceroy wanted to carry out major structural alterations to his building. He could not do it himself. I would not like the Ministers to stay in verandahs and out-door rooms but there should be some kind of machinery by which we can go into this matter. I hope that when the finding says that they cost so much, we should raise no objection whatever because I know what it is to bear responsibility

in public and we cannot expect the Ministers to live on salaries which may appear incredibly small. I know that Mr. Gupta and his colleagues had lived on Rs. 300 in Kerala but they lived for a millennium which is not coming. Nobody lives in hope for ever.

SHRI BHUPESH GUPTA: Here we have seen the President surrender a part of his salary. This only shows that in order to maintain the status and position, he does not require all that money—Rs. 10,000. It is a proven fact

SHRI B. K. P. SINHA: Mr. Gupta has said that his colleagues lived on Rs. 350 or something. It is very good to say all that but we learn something else, that they were getting a lot of money through T.A. and other amenities and in other forms. What did the total come to?

SHRI A. D. MANI: On a point of order. No Member can put questions to an interjector like Mr. Bhupesh Gupta. I am the main speaker. You ask any question of me. You do not have any confusion about what I say. Interrupt him when he speaks.

THE DEPUTY CHAIRMAN: Please continue.

SHRI A. D. MANI: I hope, therefore, that this aspect of the matter will be considered. I would suggest to Mr. Gupta to withdraw this Bill, because the Bill, as it is framed, is uncalled for. It is not required by the necessities of the situation. It contains some very good ideas. Some parts of it, as I said, are good, but some parts are bad. We should try to take the good that is in it and we should try to set up good precedents.

SHRI BHUPESH GUPTA: Such is life.

SHRI A. D. MANI: Yes, such unfortunately is life; but as the Communist Party knows, in this country and in other countries the rough and

the smooth go together. The Bill should be withdrawn and I do hope that the Government would utilise this opportunity to set up very healthy conventions. Thank you.

**श्री शीलभद्र याजी :** माननीय डिपुटी चेयरमैन महोदया, कामरेड भूपेश गुप्त ने संविधान की धारा ७४, १२३, १२४ और २१७ में संशोधन लाने का जो विधेयक पेश किया है मैं उसका विरोध करता हूँ। अभी जो आर्टिकल ७४ है उसमें उन्होंने बताया कि प्रेसीडेंट को विशेष पावर नहीं मिलना चाहिये, जो अधिकार उनको मिला है वह नहीं मिलना चाहिये। हमारा जो संविधान है, दुनिया के जितने संविधान हैं चाहे वह सोवियत रूस का हो, अमेरिका का हो, दुनिया भर के संविधानों को पढ़ने के बाद यह जो खिचड़ी तैयार हुई है उस खिचड़ी में इतनी डिमोक्रेसी है, इतनी आजादी है, इतने फंडामेंटल राइट्स मिले हैं और उसके साथ साथ हिन्दुस्तान की हिफाजत के लिये और डिमोक्रेसी की हिफाजत के लिये जो इसमें धारार्ये दी गई हैं मैं समझता हूँ कि वे दुनिया के लिये आदर्श हैं।

अभी कुछ दिन पूर्व राष्ट्रपति के अधिकार क्या होने चाहियें, कितने होने चाहियें इस पर खामबवाह कुछ खयाल पैदा हुआ, बहस हुई और उसके बाद हमारे कामरेड भूपेश गुप्त को भी जोश आया और उनका दिमाग कुछ दूसरी तरफ था कि एक बार हड़ताल हुई थी, क्योंकि वे स्ट्राइक प्रवीण हैं, हड़ताल प्रवीण हैं और उनके दिमाग में यह बात घुस आई। प्रेसीडेंट को क्या पावर देना चाहिये। साथ साथ वारा १२४ की तरफ उनका खयाल था कि यदि कोई हड़ताल हो तो प्रेसीडेंट उसके लिये आर्डिनेन्स नहीं निकाले। हमारे संविधान में प्रेसीडेंट सिर्फ राष्ट्र के अध्यक्ष ही नहीं हैं बल्कि हमारे सुप्रीम कमान्डर हैं, चाहे वह हमारे राष्ट्रपति कभी बंदूक छोड़े हों या न छोड़े हों। लेकिन खिलने तीन सेना के फोरसेज हैं हमने उनको

## [श्री श्रीलभद्र याज] ]

उनका सुप्रीम कमान्डर इन चीफ भी बनाया । जो हिन्दुस्तान का सुप्रीम कमान्डर हो, अध्यक्ष हो उसके बारे में देश की हालत को देखते हुए मैं उन सब वाद-विवाद में जिससे कामरेड भूपेश गुप्त को हमारे पूर्व-वक्ताओं ने अच्छी तरह से समझाया, उनमें पड़कर और उन सब बातों को दोहरा कर कि किस बजह से राष्ट्रपति को विशेष अधिकार मिलना चाहिये, मैं इस सदन का वक्त बरबाद नहीं करना चाहता हूँ । लेकिन यह जरूरी है कि राष्ट्रपति को विशेष अधिकार मिलना चाहिये और चाहे वह हमले की बात हो या देश में कोई दूसरी परिस्थिति आ जाय—और हमारे पूर्व-वक्ताओं ने भी बताया कि कैसी-कैसी परिस्थिति आ सकती है—तो उस हालत में राष्ट्रपति को विशेष अधिकार मिलना चाहिये । बहुत लोगों ने यह भी बताया कि वे कैबिनेट की बात नहीं मान सकते हैं । नहीं मान सकते हैं का सवाल नहीं उठता है । जिस पार्टी का बहुमत है, उसकी रजामन्दी नहीं होगी, उसकी स्वीकृति नहीं होगी तो वह राष्ट्रपति नहीं हो सकता है । इसलिये वह राष्ट्रपति होने के बाद चाहे किसी पार्टी के हों या न हों लेकिन उस रूलिंग पार्टी के, शासक पार्टी के, बहुमत पार्टी के वही विश्वासभाजन होंगे और होना ही चाहिये, नहीं तो उनका इलेक्शन नहीं हो सकता है, चुनाव नहीं हो सकता है और वे राष्ट्रपति नहीं हो सकते हैं क्योंकि जब बहुमत दल उनको चुनता है तो कुछ भी गुंजायश नहीं कि राष्ट्रपति से और कैबिनेट से और प्रधान मंत्री से आपस में कोई मतभेद हो सकता है । इसलिये धारा १२३ में संशोधन करने के लिये और प्रेसीडेंट को जो यह विशेष अधिकार मिला है उसको छीनने के लिये वे जो संशोधन लाये हैं मैं उसकी सख्त मुखालिफत करता हूँ—देश की बहुबूदी के खयाल से, देश की भलाई के खयाल से और हर तरह से । संविधान के खयाल से, उसकी भलाई के खयाल से भी, कामरेड भूपेश गुप्त को

इस तरह की तरमीम लाने की आवश्यकता नहीं थी ।

अब जो उन्होंने आर्टिकल १२३ में हड़ताल की बात कही है, उसके बारे में मुझे यह कहना है कि जब देश ने, इस सदन ने और उस सदन ने और हिन्दुस्तान की जो मुख्तलिफ पार्टियाँ हैं उन्होंने यह घोषित कर दिया है कि भारतवर्ष में समाजवाद की स्थापना होगी और पार्लियामेन्टरी डेमोक्रेसी से होगी और हमारे कामरेड भूपेश गुप्त ने भी जब रूस की ट्वेन्टियथ पार्टी की कांग्रेस हुई थी और उसमें कहा गया कि अब समाजवाद बुलेट से नहीं होगा, बैलेट से होगा, पार्लियामेन्टरी पद्धति से होगा तो उसके बाद उन्होंने भी अमृतसर कांग्रेस में वायलेन्स और बुलेट का तौबा किया और हमारी पार्लियामेन्टरी पद्धति को मान लिया । कुछ हो सकता है कि रिपब्लिकनरी पार्टीज हैं जैसे जन संघ पार्टी के लोगों में हो, स्वतंत्र पार्टी के लोगों में हो जो समाजवाद को नहीं मानते । लेकिन जब समाजवाद की घोषणा हो चुकी है—और इस सिलसिले में मुझे एक बात याद आई कि नेताजी ने कहा था कि यदि शासक पार्टी समाजवाद की घोषणा करती है तो फिर कोई वर्ग संघर्ष, कोई स्ट्राइक नहीं हो सकती है, उसको इल्लीगल करना चाहिये । हमने अभी तक स्ट्राइक को कानूनन इल्लीगल नहीं किया । हमारी सरकार से शिकायत है कि बात की बात में आज स्ट्राइक होने की बात पैदा होती है । कभी-कभी ऐसे मौके होते हैं कि एक मामूली से मामूली बात में कोई ऐसी पार्टी जो कभी शासन में नहीं आ सकती है, वह स्ट्राइक के जरिये से, हड़ताल के जरिये से इस सरकार को पंगु करने के लिये, पैरलाइज करने के लिये स्ट्राइक का सहारा लेती है चाहे उसमें कोई इकानामिक डिमान्ड हो या न हो । तो इस तरह की हड़तालों को आडिनेन्स के जरिये से रोकने का राष्ट्रपति को जो अधिकार मिला है कि वह उनको इल्लीगल घोषित कर दें, इसका संविधान में



रहना जरूरी है। जो दूसरे समाजवादी देश हैं वहां तो स्ट्राइक का कोई नाम नहीं ले सकता है, स्ट्राइक चलाने की बात तो जाने दीजिए क्योंकि जब हम योजना मानते हैं, प्लानिंग मानते हैं, समाजवाद मानते हैं तो इसका मतलब है कि उत्पादन होना चाहिये। ठीक है, आरबिट्रेशन भी होना चाहिये, सरकार को उसकी मशीनरी भी बनानी चाहिये और उसमें स्ट्राइक की बात तो होती नहीं है। और स्ट्राइक भी फंडामेंटल राइट्स में आती है, इसको मैं नहीं मानता और न हमारे संविधान की किसी धारा में स्ट्राइक करना मौलिक अधिकार में लिखा हुआ है। कहीं नहीं है। लेकिन लोग उसकी दुहाई देते हैं। इसलिये प्रेसीडेंट को पावर है कि इस तरह की स्ट्राइक हो जिससे देश की सुरक्षा खतरे में पड़ जाय इकानामिक व्यवस्था खराब हो जाय तो उसको इल्लीगल घोषित करने के लिये आर्डिनेन्स निकाले।

[THE VICE-CHAIRMAN (SHRI M. GOVIND REDDY) in the Chair.]

जिस तरह से दुनिया की और समाजवादी पार्टियों ने स्ट्राइक को खत्म कर दिया है वैसा हमारे देश में अभी नहीं हुआ है क्योंकि हमारी सरकार फूक फूक कर चलती है और हमारी सरकार इस मामले में जरा कुछ कमजोरी भी दिखलाती है इसलिये हिन्दुस्तान में कभी कभी गड़बड़ भी होती है तो हमारी शिकायत है कि जब आपने समाजवाद की घोषणा कर दी है तो दूसरे समाजवादी देशों का कुछ अनुकरण करें। आरबिट्रेशन होना चाहिये, ठीक है। सरकार के बीच में, मैनेजमेंट के बीच में जो झगड़े हैं उनके लिये आरबिट्रेशन होना चाहिये, ट्राइब्युनल होना चाहिये, लेकिन हड़ताल नहीं होनी चाहिये। लेकिन अभी हमारे यहां यह व्यवस्था नहीं हुई है। इसलिये यदि हमारे देश की आर्थिक व्यवस्था को खराब करने के लिये या देश का सुरक्षा को खराब करने के लिये कोई ट्रेड यूनियन या कोई राजनैतिक पार्टी स्ट्राइक की घोषणा करे

तो उस समय आर्डिनेन्स निकालकर उस स्ट्राइक को इल्लीगल किया जाय, गैर कानूनी किया जाय। यह व्यवस्था जो आर्टिकल १२३ में है वह भी रहनी चाहिये।

इसके बाद मिस्टर भूपेश गुप्त ने जजेज के एपॉइन्टमेंट के बारे में कहा है। और मुल्कों में जो पार्टियां होती हैं वही जजेज को एपॉइन्ट करती हैं लेकिन यहां हमने हाईकोर्ट को, जुडीशियरी को पार्टियों से बहुत दूर रखा है। यहां पब्लिक सर्विस कमिशन वगैरह के जरिये नियुक्तियां होती हैं लेकिन दूसरे देशों में तो जज का भी पार्टी के द्वारा एपॉइन्टमेंट होता है। यह तो हमारे मित्र देखते नहीं हैं।

राष्ट्रपति के बाद और सुप्रीम कोर्ट के चीफ जस्टिसेज के बाद बीच में गवर्नरों की बात आई और यहां तक कि मंत्रिमंडल की भी बात हुई। हमारे भूपेश गुप्त को यह बात समझनी चाहिये कि हिन्दुस्तान में रीजनलिज्म है, प्राविन्शियलिज्म है और तरह तरह की बीमारियां हैं। यह बीमारी ऐसी है कि बड़े बड़े लीडरों में भी आ जाती है और लोगों में भी आ जाती हैं। हमारे एक पूर्ववक्ता ने कहा था कि जजों की जो नियुक्ति होती है वह पार्टी के लिहाज से की जाती है और प्रान्तों में जो चीफ मिनिस्टर और गवर्नर होते हैं वे पार्टी के ही आदमी होते हैं और वे अपने ही आदमियों के नामों का सुझाव केन्द्रीय मंत्रिमंडल को भेजते हैं और फिर केन्द्रीय मंत्रिमंडल राष्ट्रपति को एडवाइज करता है। लेकिन मैं उनसे कहना चाहता हूं कि इसमें पार्टीबाजी का कोई सवाल नहीं है जब किसी जज की नियुक्ति की जाती है तो उसके बारे में चीफ जस्टिस और गवर्नर की राय ली जाती है। मैं जानता हूं कि जब हमने कांग्रेस छोड़ी थी और फार्वर्ड ब्लाक पार्टी अलग चलाते थे तो हमारे एक मित्र श्री पी० के०

तक्री ने कांग्रेस सदस्य के खिलाफ लोक सभा की सीट के लिये चुनाव लड़ा था। वे चुनाव में हार गये थे लेकिन एक महीने के अन्दर ही वे जबलपुर हाईकोर्ट के जज नियुक्त हो गये। अगर वह कांग्रेस के सदस्य न होते हुए भी जज नियुक्त किये गये तो यहां पर जो यह बात कही गई है कि पार्टी के आभियोगों को जज की पोस्टों में नियुक्त किया जाता है, बिल्कुल कपोल-कल्पित है। अगर कोई अच्छा वकील है चाहे पी० एस० पी० का हो, चाहे कांग्रेस पार्टी का हो या किसी और पार्टी का हो अगर वह काबिल है, उसमें जुडिशियरी की काबिलियत है तो उसको जज नियुक्त करने में किसी पार्टी का खयाल नहीं किया जाय चाहिये और न सरकार इस बात को देखती है। सरकार इस बात का खयाल नहीं करती है कि वह किस पार्टी से सम्बन्ध रखता है, वह किसी सीट में हारा है या जीता है, वह तो सिर्फ काबिलियत को सामने रख कर जज नियुक्त करती है। यहां पर और मुल्कों की दुहाई दी जाती है कि वहां पर इस तरह से जजों का चुनाव किया जाता है। जहां तक अमेरिका का प्रश्न है वहां पर प्रेजिडेंट जजों की नियुक्ति करता है और सेनेट के एप्रूवल के लिये भेजता है। लेकिन यहां पर हम उस तरह का पद्धति चलाना उचित नहीं समझते हैं। यहां पर तो चीफ जस्टिस और गवर्नरों को राय से जजों की नियुक्ति की जाती है और उन्हीं आदमियों को इन पदों पर रखा जाता है जिन्हें जुडिशियरी के बारे में काफी अच्छा ज्ञान हो, जो एडवोकेट रह चुके हों या इसी तरह की दूसरी पदवी रखते हों। हम यह नहीं चाहते हैं कि पार्लियामेंट में जजों की नियुक्ति के बारे में राय मालूम की जाय। इसका नतीजा यह होगा कि यहां पर भी जजों की नियुक्ति के बारे में काफी तू-तू और में-में होगी और यह चीज न्याय के लिए अच्छी नहीं है और एक गलत चीज होगी। इसलिए सुप्रीम कोर्ट या हाईकोर्ट के जजों की नियुक्ति के बारे में जो मौजूदा प्रणाली है वह ही उचित है। कामरेड गुप्त को इस बारे में जो अंदेश

है, डर है कि इसमें पार्टीबाजी होती है और दूसरे तरह की बातें होती हैं वह मुनासिब नहीं है। श्री सन्तानम् जी ने इस बारे में प्रिवी कौंसिल बनाने का जो सुझाव दिया है कि इसमें पुराने खूंखार आदमियों को रखा जाना चाहिये जिन्हें जुडिशियरी का काफ़ी ज्ञान हो। मैं समझता हूं कि उन्होंने जो इस तरह का सुझाव दिया है उसकी भी आवश्यकता नहीं है। इसलिए मैं फिर कहना चाहता हूं कि सुप्रीम कोर्ट और हाई कोर्ट के जजों की नियुक्ति के बारे में जो मौजूदा प्रणाली है वह उचित है और उसी को कायम रहना चाहिये।

अभी सदन में शिडियूल की बात कही गई कि उसमें प्रेजिडेंट को दस हजार रुपया मासिक वेतन देने की बात है और गवर्नरों को ५,५०० रुपया देने की बात लिखी है। इस सम्बन्ध में भी उन्हें कम से कम वेतन देने की बात कही है। इससे पहले एक वक्ता ने कहा कि शिडियूल में तो राष्ट्रपति को १० हजार रुपया देने की बात है लेकिन हमारे देश में राष्ट्रपति ने २,५०० रुपये से ज्यादा नहीं लिया। हमारे जो मौजूदा राष्ट्रपति हैं उन्होंने तो आते ही अपना वेतन घटा दिया। इस सिलसिले में जो डिसपैरिटी की बात कही गई है उसके सम्बन्ध में मैं यह कहना चाहता हूं कि आप किसी भी मुल्क में देख लीजिये वहां जो हैड ऑफ़ दी स्टेट होता है, या प्रेजिडेंट होता है, उसकी एक खास इज्जत होती है और वह मुल्क का सब से बड़ा आदमी माना जाता है। यू० एस० एस० आर० में ही देख लीजिये, वहां भी प्रेजिडेंट की एक खास हैसियत है। समाजवाद के यह माने नहीं हैं कि हम एक सेर खाते हैं तो तुम्हें चार सेर नहीं खाना चाहिये। इस तरह से समाजवाद नहीं होता है। दुनिया के जो बड़े बड़े समाजवादी देश हैं उनमें भी पचास गुना डिसपैरिटी है और बहुत डिसपैरिटी है। हमारे यहां पहले जो वायसरॉय होते थे उन्हें करीब २१,६८६ रुपया मिलता था। यह वेतन ब्रिटिश

राज के जमाने का है और अब उसको आधा कर दिया गया है। हमारे यहां राष्ट्रपति का वेतन १० हजार के करीब है वह देश की हालत को ध्यान में रख कर किया गया है क्योंकि ज्यादा वेतन देने की जरूरत नहीं थी। हमारे यहां जो पहले राष्ट्रपति हुए उन्होंने स्वयं अपनी तनखाह घटा दी थी और केवल २,५०० रुपया ही लिया था। इसी तरह से जो मौजूदा राष्ट्रपति हैं, उन्होंने भी अपना वेतन कम कर दिया है। मेरे कहने का मतलब यह है कि हमारे यहां राष्ट्रपति जितना वेतन से रहे हैं उसमें कमी करने की जरूरत नहीं है और न इसके सम्बन्ध में कोई कानून बनाने की आवश्यकता है। गवर्नरों को जितना वेतन मिलता है उसी तरह से दूसरे मुल्कों में भी प्रान्तों के हेड्स आफ़ दी स्टेट को मिलता है। इसमें भी डिसपैरिटी की कोई बात मालूम नहीं देती है। कामरेड भूपेश गुप्त को कुछ न कुछ तो कहना ही होता है इसलिए वे सदन में समय समय पर घड़ियाल के आंसू बहाने रहते हैं और इस तरह की बातें कहते रहते हैं। इस तरह की बातें सभी मुल्कों में होती हैं। रूस में भी एक्सपर्ट और इंजीनियरों को अलग अलग तनखाह दी जाती है। जो जिस क्वालिटी का आदमी होता है उसको उसी हिसाब से वेतन दिया जाता है। किसी को एक हजार रूबल मिलता है तो किसी को ३५० रूबल मिलता है। इस तरह से वहां पर किसी न किसी रूप में डिसपैरिटी मौजूद है। अगर कामरेड गुप्त इस तरह का सुझाव श्री स्टुशेव को देंगे तो वे इसको नहीं मानेंगे। वे अच्छी तरह से जानते हैं कि कितना देने से एक आदमी अच्छा काम कर सकता है। इसलिए कामरेड भूपेश गुप्त ने शिडियूल में राष्ट्रपति और गवर्नरों के वेतन के सम्बन्ध में जो संशोधन दिया है, उसकी मैं सख्त मुखालफ़त करता हूं।

कामरेड गुप्त ने जो चार संशोधन रखे हैं उनकी कोई जरूरत नहीं थी। लेकिन उन्हें प्रोपेगन्डा करने के लिए कुछ न कुछ कहना ही चाहिये, जो वर्किंग क्लास है उसके सामने

घड़ियाल के आंसू बहाने के लिए कुछ न कुछ कहना ही होता है, और इस वजह से वे बीच-बीच में कुछ न कुछ बोलते ही रहते हैं। इसलिए जैसा मैंने शुरू में कहा कि हमारा जो संविधान बना है वह डेमोक्रेसी के आधार पर बना है लेकिन हमारे कामरेड गुप्त जी हैं, वे इसको मौबोक्रेसी में बदलना चाहते हैं। हमारे संविधान में राष्ट्रपति देश के राष्ट्रपति हैं, सुप्रीम कमान्डर-इन-चीफ़ हैं और उन्हें जो अधिकार देने की हम जरूरत समझेंगे वे देंगे। चीनी आक्रमण की वजह से इस समय मुल्क में जो हालत पैदा हो गई है अगर हमारे कामरेड गुप्त जैसे टाइप के लोग स्ट्राइक करें, देश में गड़बड़ पैदा कर दें तो उसके लिये राष्ट्रपति को विशेष अधिकार होने चाहिये। जजों की नियुक्ति के बारे में गवर्नरों, चीफ़ मिनिस्टर्स तथा मंत्रिमंडल की राय होनी चाहिये। आज देश की जो परिस्थिति है, जो हालत है उससे देखते हुए जो केन्द्रीय सरकार है, प्रान्तीय सरकार है वे पार्टी से 'अबव' हैं। आज हम देखते हैं कि हमारे देश में तरह तरह की बीमारियां हैं, साम्प्रदायिकता, भाषावाद, जातिवाद और इन्हें चैक करने के लिए यह जरूरी है कि जजों की नियुक्ति का इस समय जो प्रबन्ध है वही कायम रहना चाहिये। राष्ट्रपति और गवर्नरों को वेतन देने की जो प्रणाली है उसको भी कायम रहना चाहिये। इन शब्दों के साथ मैं कामरेड गुप्त का जो बिल है उसकी सख्त मुखालफ़त करता हूं। जय हिन्द।

Shri M. P. BHARGAVA (Uttar Pradesh): Vice-Chairman, I am one of those who believe in the sanctity of the Constitution and I am firmly of the opinion that no amendment of the Constitution should be brought in this House or in the other House unless a firm opinion of the public gathers and it becomes, absolutely necessary to make such changes. The Constitution has been drafted after very mature deliberations in which the cream of the country took part and then they evolved the Constitu-

[Shri M. P. Bhargava.]

tion. In practice there are so many things which are not always written in the Constitution but which develop by conventions as time passes.

Now, if we examine the aims and objects of the Bill as mentioned by Shri Bhupesh Gupta, we will only come to one conclusion and that is that he has brought this Bill before the House because he feels that there has been some criticism in certain quarters about these provisions. This is what he has said about the first amendment:

"Article 74 does not make it clear that the advice of the Council of Ministers headed by the Prime Minister is binding on the President"

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And in the next line what he says is:

"Of late, some controversy has arisen as a result of this vagueness and it is sought to be made out that such advice need not be taken as binding on the President. That such a confusion should have arisen after ten years of working of the Constitution over so vital a matter in itself would justify the present amendment proposed in this Bill."

Now, where is the confusion and what is the confusion? It is not very clear to me. In his opening speech he has cited one or two speeches as the cause of confusion. Now, if speaking at some meeting or other creates confusion. I am afraid that we will have to change the various articles of the Constitution every now and then and that is exactly what I find from the attitude of Shri Bhupesh Gupta. During the last few years he has been bringing amendment after amendment of the Constitution. Sometimes it is one article, at another time it is another article, and that way at least ten amendments of the Constitution are pending before this august House moved by my friend, Shri Bhupesh •Gupta. Now, he goes on to say:

"Supremacy of Parliament and the constitutional position of the President in that context should be left in no doubt. Hence the amendment to article 74."

This is the reason for his amendment of article 74.

Then we come to the second paragraph of the Statement of Objects and Reasons. He says:—

"The Ordinance-making power of the President has been a subject matter of strong public criticism, more especially, when such power is liable to be exercised in the curtailment of the fundamental and democratic rights of the citizens. Amendment to article 123 accordingly seeks to restrict this power and ensure the right to strike."

Here again I have not been able to follow either now or at the time when the notice of the strike was given where this criticism was except perhaps by those who wanted to create confusion and chaos in the country. While I was speaking on the motion moved by Shri A. B. Vajpayee regarding the strike, I had conclusively proved how the Resolution passed by the Communist Party at that time and the objects of the strike given to the Government by the strikers were almost the same. So if there is any confusion, if there is any criticism, it is only by a minority section, a very small minority. It is not criticism coming from the general public or from those who count as far as the intelligentsia is concerned.

Now, about the question of appointment of Judges, he says:

"In the matter of appointment of Judges, the Executive represented by the Council of Ministers should have no scope for interference. The power of appointment should be exercised by the President only on the advice of the Chief Justices and other Judges."

Now, let us closely examine what Mr. Bhupesh Gupta says in para 1 and para 3. In para 1 he wants the power of the President to be limited; he wants that the President should act on the advice of the Cabinet— on the advice of the Prime Minister— and he should go on doing that so long as Parliament meets in this House and the other House and gives a mandate by a two-thirds majority that the President is free to disregard the advice given by the Cabinet or the Prime Minister. And in para 3 he wants the relevant power to be exercised only on the advice of the Chief Justices and other Judges. How inconsistent is the stand which he takes in para 1 with that which he takes in para 3? At one place he pleads for more powers to the President and at another he wants to pin him down to the Cabinet. So far as the appointment of Judges is concerned he says that the Government should have nothing to do with it and that it should be the prerogative of the President. He says:

"The power of appointment should be exercised by the President only on the advice of the Chief Justices and other Judges."

He wants a direct link between the Judges and the President without going through the Prime Minister. He wants the Prime Minister and the Cabinet to be absolutely in the dark as to what is happening about the appointment of Judges. I do not know how things can work in the way Mr. Bhupesh Gupta wants them to function. Then he goes on to say:—

"This is essential for ensuring absolute independence of the Judiciary from the Executive at the 'highest levels.'"

Well, we are all for the independence of the Judiciary and if Mr. Bhupesh Gupta remembers right, when I had the privilege of moving a motion for consideration of the Fourteenth Report of the Law Commission, I myself had pleaded that there should be

separation of the Judiciary from the Executive and that more care should be taken regarding the appointment of Judges. I had myself pleaded like that but there are ways and ways of doing things. You cannot come and say, 'Take away the powers from the Cabinet; let the Government not have any hand in the matter of appointment of Judges. Leave it to the Chief Justices and the President'. That attitude, you cannot certainly take.

He says further on:—

"In the event of conflict of opinions between the President and the Judges only the Parliament and the State Legislature, as the case may be, should be consulted. The proposed amendments to articles 124 and 217 seek to make provision accordingly."

Now, if we examine this provision enunciated by my friend, Shri Bhupesh Gupta, it will become absolutely impossible to get any self-respecting man to come forward for being appointed to the Supreme Court or

the High Court. In the case 4 P.M. of any difference of opinion,

the whole matter comes up here. Each Member is free to express his opinion about particular persons who will be in the field for appointment as Judges, and how ridiculous it would be to talk here about persons and their qualifications, or disqualifications of persons who are being considered for appointment to the Supreme Court or the High Court or who are aspirants for judgeships. It will become impossible for any self-respecting man. This is about his third amendment.

Now, in his fourth amendment he says:—

"In view of the fact that the State is committed to the removal of income disparities it is necessary to set the example at the highest level, where the disparity happens to be very great. Experience further

[Shri M. P. Bhargava.] shows that the President and the Governors do not require such high emoluments as are now provided for. The Bill seeks to reduce these emoluments in conformity with the declared public policy."

Now, I shall deal with it when I come to amendment No. 4. Now, if Mr. Bhupesh Gupta was very keen that all these things should come up before the public, then the *modus operandi* should have been different. I would have supported it if he had moved a motion for eliciting public opinion on the four items he has proposed in this Bill. That would have been the proper course. He would have been stronger if he had come here after getting public opinion.

SHRI BHUPESH GUPTA: Why do you not give an amendment?

SHRI M. P. BHARGAVA: Why should I? You are moving the Bill and you want that it must be considered and passed. But I am afraid it will not be passed. It will be thrown out and your purpose will not be served.

SHRI BHUPESH GUPTA: The hon. Member can certainly give an amendment that the Bill be circulated for eliciting public opinion and then ask whether I accept that amendment or not.

SHRI M. P. BHARGAVA: I have my own method of doing things. I would rather debate it outside Parliament. I would like to gather opinion on these things outside Parliament and when I find that the time has come that an amendment to the Constitution should be moved, then only I would move it here. I am not in the habit of rushing through any legislation. I spoke about it the other day also. It is very wrong to rush through legislation in haste. The purpose which Mr. Bhupesh Gupta has in mind is very clearly indicated in his speech itself. Now, I will lead out what he had to say.

SHRI BHUPESH GUPTA: I remember it.

SHRI M. P. BHARGAVA: I will quote what you have said, in your own words, from your own mouth.

SHRI BHUPESH GUPTA: That is all right.

SHRI M. P. BHARGAVA: You said:—

"The fight for principles is a continuous process and it must go on. There is no end to that fight. Maybe today we are wrong, maybe today you are right but how will it be determined unless there is debate and discussion, unless there is controversy, unless contrary points of view are placed before the nation and we go back to the nation to seek their wisdom, judgment and experience in order to arrive at a correct democratic solution of the problem facing us?"

May I ask Mr. Bhupesh Gupta where he has gone before the nation?

SHRI BHUPESH GUPTA: May I tell the hon. Member that at the time of the general elections and earlier we went to the people and included in our manifesto similar demands. This was done by other Opposition Parties also, not exactly in these terms, but in the spirit. And we got a tremendous amount of response from the public when we spoke of reduction of salaries in high places, the independence of the judiciary and also measures for establishing the supremacy of Parliament. Therefore, we took the wisdom of the people into account and hence we are.

SHRI M. P. BHARGAVA: Well, the argument put forward by Mr. Bhupesh Gupta does not convince me. If you speak before a crowd and put forward your proposition, you do not know what effect you are creating actually. It is only you who think that you have created the effect and that the people are with you. Hav«

there been any resolutions passed by any bodies? Has there been any mass opinion being taken by anybody? Have there been any demands for changes in these articles? From where has he got the idea, I would like to know from him, that the necessity has come that these articles of the Constitution should be changed? Has he any documentary proof with him?

SHRI BHUPESH GUPTA: One is by the Law Commission.

SHRI M. P. BHARGAVA: I will come to the Law Commission also. Just bear with me. I am just dealing with your intention only. I fail to understand from where he got that opinion. Then, he goes on to say:—

"That is why I have placed before you the question of the supremacy of Parliament."

Here again may I respectfully ask Mr. Bhupesh Gupta, who raised this question about the supremacy of Parliament? Has there been any doubt on any single occasion when the supremacy of Parliament was not brought into force?

SHRI BHUPESH GUPTA: May I respectfully observe that when that speech was made in the Law Institute in Delhi in September, 1960, a number of articles were written about the supremacy of Parliament, some questioning it directly and indirectly, and others upholding it? Eminent men in public life had to make pronouncements on the subject and I am sure the hon. Member who reads many things would be aware of the simple development.

SHRI M. P. BHARGAVA: Well, I am not quite in agreement with what Mr. Bhupesh Gupta has said. The President was invited to the Law Institute to give his views and he put forward a certain proposition which he felt should be considered by the people of India. Now, that is all.

888RS—4.

After that, as Mr. Bhupesh Gupta says, there were some letters to the editor in the papers, some siding this view and some siding that view. Then, there were pronouncements by other leaders. Mr. Munshi came out with a very long statement. Rajaji had also an opportunity to express some views. And there were all kinds of views, sometimes diametrically opposed to each other. Does it take you anywhere towards a decision? I express a view. You express a view. I cannot convince you and you cannot convince me. Then, what is to be done? The forum is not Parliament. Let us debate it outside. Let us come to a decision. When I have convinced you or when you have convinced me, then we can come to Parliament and take the time of the House. Otherwise, it is, in my humble opinion, a wastage of the time of Parliament by bringing forward such measures before the House unless they are mature enough. Then, he says:—

"The supremacy of Parliament has to be maintained in the Constitution, in the House, in the Lobby, outside the House ....."

Now, it has to be maintained in the House. Shall I put one question to Mr. Bhupesh Gupta? Where was it in doubt, the supremacy of Parliament, inside the House at any time? Can he cite a single occasion?

SHRI BHUPESH GUPTA: Yes, if you will kindly refer to the Constitution of India, you will find that the President features there when we describe the President as the President and the two Houses of Parliament; and the President himself went to the Law Institute in order to make out that he did not understand the supremacy of Parliament as some others would understand it. In any event he was in doubt about it. If that is so, are we not involved in this matter? Here the President is a constituent of Parliament. He was himself in doubt to say the least, and should we not in that case discuss and set the controversy at rest?

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) : It was a thoroughly academic discussion.

SHRI BHUPESH GUPTA: No.

SHRI M. P. BHARGAVA: Mr. Govinda Reddy and myself have the privilege of presiding over this House sometimes, and suppose we make some pronouncement here, that cannot be taken outside that that is the view of the Chair. That is a particular occasion in which we in a certain capacity said . . .

SHRI BHUPESH GUPTA: When you are in the Chair, you only give rulings against me.

SHRI M. P. BHARGAVA: As the occasion demands, sometimes there are rulings in favour of 'you also. So, the President is not speaking every time in the capacity of President only. The Prime Minister does not always speak in the capacity of Prime Minister also. They are individuals also, they are private individuals also. The President Dr. Rajendra Prasad was Dr. Rajendra Prasad also, and the Prime Minister is Pandit Jawaharlal Nehru also. So, in their capacity as Dr. Rajendra Prasad and Pandit Jawaharlal Nehru they have every right to express their views, and they are not binding on the Government

SHRI BHUPESH GUPTA: Yet, in that Law Institute the President was also welcomed as the President of India before he made his speech, and the vote of thanks that was given was also extended to him as President of India. Individual capacity came nowhere in the picture.

SHRI M. P. BHARGAVA: Well, I am not very sure about that and I will have to check that up.

SHRI BHUPESH GUPTA: Kindly do it.

SHRI M. P. BHARGAVA: "Then the supremacy of Parliament has to be maintained in the lobby." From House he goes to the lobby.

SHRI BHUPESH GUPTA: The very next step.

SHRI M. P. BHARGAVA: That is what I say, that you are moving out and out, from the lobby to outside the House.

SHRI BHUPESH GUPTA: That comes at 5 o'clock.

SHRI M. P. BHARGAVA: I am just requesting you that you should have reversed the process, first outside, then in the lobby, and then in the House.

SHRI BHUPESH GUPTA: That is how I have come. First Law Institute, then in the lobby when I gave the motion, and now in the House.

SHRI M. P. BHARGAVA: You might say anything, but the words are speaking for themselves: first in the House, then in the lobby and then outside.

Then, "in our public life, in the fields and factories we must not keep any loopholes in the Constitution"—as if there are plenty of loopholes with which Mr. Bhupesh Gupta has to deal with—"whereby some malevolent force of counter-revolution might rear its head and seek to subvert the Constitution, do away with the supremacy of Parliament and install in its place a regime of arbitrariness and authoritarianism." This is his fear and, if I may very mildly put it, this fear can come from his Party alone and from nobody else.

SHRI BHUPESH GUPTA: Therefore accept it.

SHRI M. P. BHARGAVA: That is where it stands. Now we do not want such things. There is a warning also. "We want to mould the thinking of the nation, to direct the thoughts of the nation along the lines on which parliamentary institutions shall prosper and progress. That is why we say, make it obligatory on the part of the President to respect the advice



of the Council of Ministers, place him under the mandate of the nation." I will not read any further from the speech because I have made clear what are his intentions in bringing these amendments.

Now, let us examine the various amendments. His clause 2 says:—

"In article 74 of the Constitution, after clause (2), the following clause shall be inserted, namely:—

'(3) All such advice shall be binding on the President unless each House of Parliament by a motion passed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of that House present and voting, requests the President to disregard the advice.'"

Before I comment on this, I would like to read article 74 as it stands today, and how it will be inconsistent with article 74 of the Constitution if Mr. Bhupesh Gupta's amendment is accepted. Article 74 reads:—

•(1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advice the President in the exercise of his functions.

(2) The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court.'

Mr. Bhupesh Gupta will probably agree with me that this is very essential, the second part, if the Government has to function from day to day. If the secrecy of the Cabinet, if the secrecy of what transpires between the Ministers and the President cannot be kept, it will be impossible for Government to function from day to day.

SHRI A. D. MANI: Papers publish it.

SHRI M. P. BHARGAVA: That is a different thing. We can debate it

outside. I am only dealing with Mr. Bhupesh Gupta's amendments. If Mr. Bhupesh Gupta's amendment is accepted, what does it come to? The Prime Minister decides in his Cabinet something and goes to the President and says: This is our view and this is what we would like you to do. The President does not agree to this request and he differs. The provision sought to be made by Mr. Bhupesh Gupta is that in that case the matter should be brought to Parliament before 750 Members, 500 there and 250 here, and discussed as to what advice was given by the Ministers to the President, how the President reacted to it, and so on; he wants the whole thing to be debated here. Then it immediately becomes a matter for law courts also.

SHRI BHUPESH GUPTA: Why?

SHRI M. P. BHARGAVA: Because anybody is free to go to the law court after the whole thing is made public. Where is the secrecy about it? The whole thing is made public, what the President said, what the Prime Minister said, what was the advice, on what ground it was rejected, and so on. We debate the whole thing here. The whole thing becomes absolutely public. Then if the court could play with the everyday working of Government, this provision under article 74(2) will become infructuous, because there we have said: "The question whether any, and if so what, advice was tendered by the Ministers to the President shall not be inquired into in any court." That we will have to remove if Mr. Bhupesh Gupta's amendment is to be accepted. I am just showing how inconsistent is his stand.

SHRI BHUPESH GUPTA: What can you do?

SHRI M. P. BHARGAVA: What we can do is a different matter. I am only taking your stand in the various provisions of this Bill. So, that is what it comes to. Now, if Mr. Bhupesh Gupta's amendment is to be accepted, there is another very fundamental thing which arises. And that is, Mr.

[Shri M. P. Bhargava.] Bhupesh Gupta has confidence neither in the President nor in the Prime Minister. And the President is the elected, head of the State and the Prime Minister is the chief executive of the State. And if every day we show a sense of no confidence in their discretion and want to dictate to them that the advice of the cabinet has to be obeyed by the President and that in case of differences they have to rush to Parliament, I clearly see that Mr. Bhupesh Gupta is showing complete lack of confidence in the discretion of the President and the Prime Minister, and that is a very serious thing for any country. No country can function if every day there is lack of confidence in the discretion of the two highest dignitaries.

SHRI BHUPESH GUPTA: Where is lack of confidence?

SHRI M. P. BHARGAVA; Therefore I strongly oppose amendment number one of Mr. Bhupesh Gupta. It is unnecessary, it is irrelevant and it is, if I may be allowed to say so, mischievous. Therefore, I will beg of the House to throw out amendment number one of Mr. Bhupesh Gupta.

Nov/, I come to amendment number two. There, he says;—

"To clause (1) of article 123 of the Constitution, the following proviso shall be added, namely: —

'Provided that no such Ordinance shall be promulgated to declare illegal any strike of the workers or of the civil employees or of any other section of the working people.' "

Now, what is article 123? Let us examine that. Article 123 reads: —

"(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such

Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under the article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, Or if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President."

And then Explanation is given.

"Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact it shall be void."

This is what is said in article 123. Now, the provisions of the Constitution are not made for any particular occasion. They should be such provisions as will cover all cases of exigencies. Now, if Mr. Bhupesh Gupta's provision is incorporated—I put one case before the House—it will be seen how difficult it will be to function. Suppose a strike notice is given by the workers) and they take upon their heads to be mischievous also and they tamper with the lines of communication. The railway lines are disrupted, the means of communication are disrupted. And now, according to what Mr. Bhupesh Gupta desires, if any ordinance has to be passed by the President, he has no power. He is sitting helpless. He cannot pass any

ordinance unless Parliament comes to his rescue and gives him a mandate.  
And such, and such . . .

SHRI BHUPESH GUPTA: Why?

SHRI M. P. BHARGAVA: Please listen to me first and then you can comment.

Now, Members of Parliament are scattered all over the country to the east, to the west, to the south and to the north, everywhere. Suppose there are no means of communication from the South to Delhi, from Bengal to Delhi or from Gujarat to Delhi and •suppose the Members cannot assemble and Parliament cannot be in session. What is to be done? The workers have given notice of a strike. What is to be done? Let Mr. Bhupesh Gupta now answer me.

SHRI BHUPESH GUPTA: Yes. It is a simple thing. Either we are going to settle it by conciliation or by arbitration. The ordinary law, every law, provides you with ample powers to deal with a situation of this nature. In many cases where there is a strike or a strike notice is given this is done. It is very rare that the President is called upon to issue an ordinance to deal with a strike situation. It is done by the Labour Department of the Government by settling the matter by conciliation or arbitration or by other proceedings according to the ordinary law.

SHRI M. P. BHARGAVA: Yes. On the one side, in the instance that I have cited, I have said that the workers have become mischievous and they tamper with the means of communication. Do we expect the workers to be in that mood to have arbitration at that time? And they want to disrupt the communications, want to bring the country into a chaos and Mr. Bhupesh Gupta says, "You go to them for arbitration." Is that the time for arbitration when the workers are mischievous?

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) : And who is to arrange that?

SHRI M. P. BHARGAVA: And who is to arrange for arbitration? Who will listen to what you say? Sense has gone at that time, the workers are in a frenzy, they are in no mood to listen to you. Then, what is to be done?

SHRI BHUPESH GUPTA: Very well. On one occasion an ordinance was issued. The dispute between the Government of India and the Central Government employees was pending for a long time. There was ample time for the Government to settle the dispute or to deal with it in any other manner than in which it was ultimately dealt with by the issuance of an ordinance.

SHRI M. P. BHARGAVA: Well probably, Mr. Bhupesh Gupta has forgotten what I said a little while ago. I have conclusively shown that the resolution passed by the C. P. I. on the demands of the workers and then the notice issued to the Government were almost the same. It was an impossible situation and the President had to deal with it.

SHRI BHUPESH GUPTA: The C. P. I. did not pass any resolution. It was the resolution of the Central Government employees that was passed and after that, many organisations supported that.

SHRI M. P. BHARGAVA: That was passed primarily by whom?

SHRI BHUPESH GUPTA: By the Central Government employees.

SHRI M. P. BHARGAVA: By unions controlled by whom? Who were the leaders there?

SHRI BHUPESH GUPTA: Unions controlled by the workers employees.

SHRI M. P. BHARGAVA: I will request you to refresh your memory to what I said in the debate on the strike

[Shri M. P. Bhargava.] question and then you will know the position.

SHRI BHUPESH GUPTA: Certainly. I would very much like to refresh my memory. It is very refreshing to hear what you say. You know very well how the strike came about.

SHRI SHEEL BHADRA YAJEE: It is just like . . .

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): The hon. Member has yielded.

SHRI M. P. BHARGAVA: So, that was the position. And what was actually the motive of the strike? They wanted to bring disorder in the country, complete chaos, complete 'stand-still, stop all progress in any sphere. That was the object of the strike. And if the President issued an ordinance, it was perfectly justified, it was nothing wrong. And that action has been amply proved correct by the happenings in the two Houses thereafter.

SHRI BHUPESH GUPTA: The Second Pay Commission has justified it.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY): Please proceed, Mr. Bhargava. He has the right of reply.

SHRI BHUPESH GUPTA: In the case of the workers and the employees . . .

SHRI M. P. BHARGAVA: So, that is as far as the ordinance-making power of the President is concerned. I am firmly of the view that the present provisions are absolutely correct and there is no room for the proviso sought to be inserted by Mr. Bhupesh Gupta.

Therefore I will again request the House to throw out amendment No. 3 suggested by Shri Bhupesh Gupta in his Bill.

Now coming to Bill clause 4 about the Judges he says: —

"In clause (2) of article 124 of the Constitution, before the first proviso, the following provisos shall be inserted namely: —

"Provided that no advice from the Council of Ministers shall be called for, or otherwise entertained, by the President in the matter of such appointment:

Provided further that in the event of any conflict of views between the President and the Judges, or where the Judges so consulted cannot agree amongst themselves, all the names for appointment under consideration shall be referred to the Houses of Parliament for opinion, before arriving at a final decision:".

This is what he wants to be added, and now let us see what is in the Constitution article itself and whether any modification is necessary. Now article 124 reads: —

"(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

(2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted:

Provided further that—

(a) a Judge may, writing under his hand addressed to the President, resign his office;

(b) a Judge may be removed from his office in the manner provided in clause (4)."

Now what Mr. Bhupesh Gupta wants is already provided in the Constitution. The President has to consult the Chief Justice of India in the case of the appointment of Judges of the Supreme Court and the Governor has to consult the Chief Justice of the High Court in the case of appointment of Judges of the High Court. Now this has to be done through some medium, and the medium provided for is the Government in both cases, the Cabinet in the State or the Cabinet in the Centre. What quarrel can he have with that? I see no reason why there should be any departure from the present Constitution and if, as he cited, there have been some appointments which he did not like, well, there could be an error here or an error there. But that does not mean that for an error here or an error there the Constitutional provisions should be revised; I see no justification in that. I myself was not very much satisfied with one or two appointments and I had pointed it out when I moved the consideration of the Fourteenth Report of the Law Commission. I might take the House into confidence and say that the then Home Minister called me and explained to me the various reasons, and I was perfectly satisfied. And it is just possible that Mr. Bhupesh Gupta might also be having some sort of doubts for want of clarification or for want of explanation from the side of the Government. That does not mean that we should change the Constitution, because Mr. Bhargava or Mr. Bhupesh Gupta has some doubts about the appointment of certain Judges. That obviously cannot be provided for in the Constitution. There is the forum; if you have any doubts about any appointment, you are welcome to go to Home Minister; you are welcome to tact the Chief Minister of the concerned and bring those things to their notice. The Legislature is there to see that nothing wrong is done regarding the appointment of

Judges. The Parliament is here to see that nothing wrong goes as far as the appointment of the Supreme Court Judges is concerned. But we cannot obviously make a provision like what Mr. Bhupesh Gupta wants, namely discuss the merits and demerits of every Judge to be appointed in the two Houses.

SHRI BHUPESH GUPTA: No, no; I never said.

SHRI M. P. BHARGAVA: If there is difference of opinion between the Governor and the Chief Minister, the forum suggested by you is the Legislature. If there is difference of opinion between the President and the Chief Justice of India, the forum provided is Parliament. Is it practical, is it feasible? You want things to be brought into the Constitution which are impracticable, which cannot be . . .

SHRI BHUPESH GUPTA: According to you there are no differences; that is what you said; at least you made out that there is no difference of opinion in this matter between those who advise and the President or the Governor in the case of States. I suppose, therefore, very few cases, if at all, will come here to be discussed and debated upon by Parliament or the State Assembly.

SHRI M. P. BHARGAVA: Mr. Bhupesh Gupta, I am against even one case coming here and I have said earlier how its coming here is injurious. We will not get any self-respecting man to offer himself for appointment to the Judgeship of the Supreme Court or the High Court if he knows that his merits and demerits, his qualifications and disqualifications will be discussed in the two Houses of Parliament.

SHRI BHUPESH GUPTA: No.

SHRI M. P. BHARGAVA: No Judge will come forward.

SHRI BHUPESH GUPTA: Why do you take that way?

SHRI M. P. BHARGAVA: That is because the human mentality is such.

SHRI BHUPESH GUPTA: Human mentality may be like this also. Suppose a person who has offered himself to be appointed as a Judge finds that a difference has arisen! between the Government and the President with the result that the matter may come up before Parliament, he can say then; "I do not want to offer myself any more; I am out of the picture."

SHRI M. P. BHARGAVA: Then whom will you appoint? Third-rate people? By our amendment you want that right type of Judges should be appointed.

SHRI BHUPESH GUPTA: Yes.

SHRI M. P. BHARGAVA: That is the object with which you want this to be brought, but that very object is not granted to you by the method you wish to follow.

SHRI BHUPESH GUPTA: My method ensures it, because the Chief Justices only will be consulted. They will apply their mind from the judicial point of view without any extraneous consideration whatsoever and the advice they will be giving will be competent, instructive and informed advice and we take it that in such a situation a reasonable man, a more reasonable man who may be the President will generally go by that advice.

SHRI M. P. BHARGAVA: Well, as far as the present system of appointing Judges is concerned, I am afraid your suggestion will not work. If you have some other system in mind, election of Judges, that is a different thing. If it is election of Judges, then they can be debated outside, their merits and demerits, and it happens in certain countries where there are elected Supreme Court Judges. But here we follow a certain procedure which is not election; it is selection on the recommendation of the Chief Justice of India or the Chief Justice of the High

Court, and if we wish to follow that procedure, I do not think the proposition is a workable proposition.

Now clause 5 deals with the same subject, about the Governor of a State and that I have dealt with.

Lastly, coming to the sixth clause about emoluments, well, there may be much in what Mr. Bhupesh Gupta has said about the emoluments. But there are several considerations in fixing the emoluments of various posts. You cannot go by sentiment in these cases; you cannot simply say that if the public wants that you should live on 500 rupees you are bound to live on 500 rupees. It will be an absolutely unworkable proposition. Can Mr. Bhupesh Gupta say with confidence that what he recommends for a Governor—750 rupees—is sufficient? Is it humanly possible for a Governor to live on 750 rupees these days? Is it possible? If it is possible, if you can say, "yes", then I will have nothing to say.

SHRI BHUPESH GUPTA: Yes, personally I think so and this side, if you want to see, will do with it. Anyway, if you think that it is too little, you can increase it, make it Rs. 1,500. But do not make it Rs. 5,500. Now you can debate, I agree. The Governor has his residence in Raj Bhavan and has various other amenities.

THE VICE-CHAIRMAN (SHRI M. GOVINDA REDDY) : The hon. Member has not yielded.

SHRI M. P. BHARGAVA: As far as that question is concerned, you know, Mr. Bhupesh Gupta, that our earlier President, Dr. Rajendra Prasad, was never drawing the full pay.

SHRI BHUPESH GUPTA: I know that

SHRI M. P. BHARGAVA: And so many of the Governors are not drawing their full pay.

SHRI BHUPESH GUPTA: About that I am not sure.

SHRI M. P. BHARGAVA: So we should leave it to the good sense of the holders of these high offices to offer such cuts as they themselves think fit. We cannot hind these things in a Constitution that the Governor shall be paid this and that only. That is not a workable proposition and I again request him to give a second thought whether the proposition which he has placed in the clause is a feasible one.

Thank you.

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh): Mr. Vice-Chairman, before I deal with the various clauses of the Bill let me first of all dispel the impression that might have been formed by one of the statements made by my friend, Mr. Mani. In reference to the various appointments made to the judiciary, Mr. Mani has referred to one or two appointments, and in that context he has referred to the State of Andhra Pradesh where a particular Judge of the High Court has been appointed. I am afraid, Mr. Vice-Chairman, the facts regarding that matter have not been correctly told, or at least understood, by Mr. Mani. The person concerned was not continuing as a Minister. He is an active lawyer though incidentally he might have been a politician. He is known for his integrity, talent and capacity as a lawyer, and one must feel grateful if such persons accept appointments as Judges. I hope the unfortunate impression, if it had been created, would be dispelled.

Mr. Vice-Chairman, in connection with this controversy I may mention that I am one of those persons who feel that the present context of conditions in the country is not suitable • the purpose of discussing a Constitution (Amendment) Bill, which should be given necessary thought in a very calm atmosphere, and the democratic norms, which are held very high in our mind, should be the guiding principles. At the present moment when the very democratic ideals are

being; attacked and obstructed from outside, it may perhaps be not possible to consider these matters in a very detached and calm atmosphere. For that purpose I should have liked if this Bill had been postponed or withdrawn from discussion.

Sir, under article 53 of the Constitution the President is the executive head of the State, and under article 74 the Prime Minister is appointed and the Council of Ministers is appointed on the advice of the Prime Minister. In denning the relationship between the President and the Prime Minister and the Council of Ministers, the words used are, "to aid and advise". I have been of the opinion, having listened to Mr. Pathak and Mr. Sapru, who is an hon. Member of this House, and having read some of the commentaries about the British Constitution, that the position occupied by the President or the British monarch is more or less the same. It has been the opinion expressed by various jurists not only in this country but outside also. If I had not listened to the speeches of Mr. Santhanam and Mr. Sinha, I could have, without the least hesitation, said that probably the amendment proposed by Mr. Bhupesh Gupta was uncalled for. But having listened to these two speeches, irrespective of the merits to be considered, there seems to be some controversy or at least some difference of opinion in interpreting a particular statute.

It has been even told that once a statute is passed by Parliament or a Legislature and it is placed in the hands of the lawyers who are to interpret it before courts, the intention of the statute, the purpose with which it is passed is completely forgotten, and in relation to interpretation you find something else interpreted and decided by the courts, other than what has been sought to be passed by Parliament or a Legislature. And being a clever lawyer—and Mr. Sinha is one of the clever lawyers—he has given an interpretation in relation to the prerogative of the President or the Crown or the Head of the State

[Shri K. V. Raghunatha Reddy.] and the powers that would exist in relation to the President. Therefore, the concept is divided into prerogatives on the one side and the powers on the other side. When once we take into consideration the question of prerogatives, the prerogatives are not defined under the Constitution. The prerogatives come into existence only under a convention but not under the Constitutional powers that have been so far defined.

As far as the Constitutional power is concerned, I am one of those, Sir, who believe that as far as the articles of the Constitution and their interpretations are concerned, the position of the President of India cannot be other than the position of the British monarch, in England. Therefore the opinion of the Council of Ministers is binding on the President as it is binding on the monarch of England.

Coming to the question of legal interpretation, two views have been definitely expressed as to how articles 55 and 74 have to be interpreted. One view is that the position of the President cannot be considered apart from the position of a monarch in England. The other view is that there is a difference between prerogatives and powers. Therefore, the prerogatives under certain conditions are different and, therefore, they will have to be taken into consideration.

Certain very concrete illustrations have been cited by a number of speakers who have spoken on the subject. Mr. Santhanam and Mr. Mani had given very concrete illustrations. Suppose, after the general elections Parliament assembles, then the President is to call somebody from the parties to form the Government. In clear cases where parties have got absolute majority, probably it leaves no doubt. But in cases where sometimes—as used to happen in the French Parliament: you must be knowing—the parties are so delicately balanced that the President is not in a position to make out

which party has the majority, there would always be members going from one side to the other, changing the fortunes of the parties to which they belong. In such cases what is the role of the President? Is the President to call somebody within his discretion or leave the matter to Parliament itself? The convention so far known to the Constitutional democracy is that the President or the Governor, by their own subjective opinion on objective considerations, if they came to an opinion that a particular party had got majority, used to call the leader of that party and ask him to form the Government subject to approval by Parliament later on. If the party has a majority, the Government would go on, otherwise the Government would fall.

Again, they have raised certain questions about emergency, when there is, what is called, Constitutional vacuum in relation to the executive, whether in such cases the President is to act or not. All these, no doubt, are highly debateable points. But normally speaking, as far as the interpretation of the Constitution is concerned, it is one of the attributes of law that there must be a certainty in interpretation. If Mr. Bhupesh Gupta has raised the question of certainty of interpretation, I am one with him. But if he has raised the question of interpretation in a different way, where it gives some other interpretation. I am not one with him. If a particular article, for the purpose of certainty and clarity, will have to be drafted or framed in a particular way, I will certainly support his amendment. But if a different interpretation is sought to be given, I am not one with him because the interpretation of the statutes in relation to the Constitutional history, which we have inherited from Anglo-Saxon jurisprudence, would certainly help us to interpret the statutes in a particular way. Now I leave the question of article 123 which deals with the emergency provisions because it is the proper time to discuss it



The third is the question of appointment of High Court Judges. When we deal with this question, one is struck with a certain amount of sadness when one reads the report prepared by the Law Commission dealing with the appointment of Judges. The rule of law is one of the heritages both of Indian culture and Anglo-Saxon jurisprudence and there is, no doubt that having taken an oath under the Constitution, having expressed our belief in parliamentary democracy, we believe that the rule of law must be supreme. Now when the rule of law is to be supreme, the rule of law is not made a mere abstract thing. The parliament, under the Constitution, has got power to make laws. How is the law to be interpreted and how is it to be enforced? It is a matter for the judiciary to interpret the laws and it is for the executive to enforce the law. The executive and the judiciary are the two limbs of the same process of parliamentary democracy in which the judiciary is left with the purpose of interpretation. When once we come to interpretation we need judges of a very high standard who will not only be impartial, who will be able to understand laws, but also who will be able to understand the social processes, the psychological needs and economic or social objectives for which this country stands. In this context again referring to Mr. Mani's argument, I must say that if a person who had been a politician is appointed to a Bench of the High Court, it is certainly not a wrong proposition. I consider it as a welcome thing because he is one who had been with the people, who had understood the people unlike many others because it is said: 'Justice is not a cloistered virtue but justice is something which the judges should understand from the motivations, from the feelings and from the psychological aspects of human beings.' Without this process, especially in criminal matters or constitutional matters, a judge will not be able to give a decision where he has to adjudicate between the two persons and between State and a citizen,

where he has to keep the social objectives of the Constitution in his mind for the guidance of his own. In such cases there is nothing wrong in appointing a politician to a Bench provided other qualities are there, provided a person is able, a person character and can deliver the goods. But the appointments no doubt have given rise to certain public and cynical approach to the people have got a feeling that if local people are appointed as judges, they will not be able to get out of the milieu or the surrounding atmosphere from which they have sprung. There is a certain justified criticism in that aspect of the problem because Mr. Datar having been a very experienced lawyer, must have known from the bar that a person, when a leader of the bar—he may not be even the leader of the bar—is appointed to the Bench, there is a feeling, sometimes justified, sometimes unjustified, that probably he might show some favour to the people who have worked with him or he might be a little considerate in certain matters where certain aspects of local problems are involved and this would be the feeling. That is why it had been suggested that at least one-third of the judges should be transferred or should be recruited from outside each State. It could have been a very healthy convention because if a person is brought from outside, at least he will not develop any local interests. Therefore to that extent the problem may be solved. I must say in this context, having worked under the Constitution of India for the last 10 or 12 years, the Indian judiciary had acquitted themselves very highly and they have never disappointed anybody and having regard to the British system of jurisprudence, I must pay my homage to the British judiciary which had developed very high traditions in England which we have inherited. The Indian judiciary had proved the trust of the people, which the people have placed

in them and they have discharged their duties to the best of their ability.

[Shri K. V. Raghunatha Reddy.]

lity and to the full satisfaction of the Indian people. But here and there there may be some disappointments. There may be people who perhaps should not have been appointed to the Bench. Mr. Gupta's amendment raises a very pertinent point. Probably having regard to the statement made by the Law Commission in their report, Shri Gupta naturally must have felt so, because the Law Commission report is based on evidence. They have gone round the various States, they have collected evidence. Therefore I do not think for a moment that the Members of the Law Commission would have made any irresponsible statement without proper evidence before them. Obviously after having studied the entire evidence placed before them which they have gathered at various places, having interviewed judges, lawyers, politicians and everybody who could go before them and give evidence, they had made the statement in their report that in certain cases it is the Chief Minister who appoints the judges and not the Chief Justice. In this context I would like Mr. Gupta to consider one point of view in this matter. I am in particular agreement with him that the judiciary must be absolutely and any impediment in it could be removed either by appointments or in the if other facilities. It had always been troubling me and which I hope Mr. Gupta would be able to answer, that the judges are not elected judges. The judges need not worry about public opinion. When once they are appointed to the High Courts, they need not bother about public opinion. When once they are appointed to these high posts, the Constitutional guarantee is there and except the question of misconduct, nothing else can be discussed. Either the Members of Parliament or the Members of a Legislature can only discuss the judgments of the High Courts or the Supreme Court in the same way as any other citizen of the country has a right to discuss, and not beyond that. Only

when the question of misconduct comes in case of proved misconduct, the Parliament or Members of Parliament would get a right to discuss the same on a motion for impeachment.

THE VICE-CHAIRMAN (SRI M. GOVINDA REDDY) : You will have to stop here. There are some Messages.

### MESSAGES FROM THE LOK SABHA

#### I. THE APPROPRIATION (RAILWAYS) No. 5 BILL, 1962

#### II. THE COMPANIES (AMENDMENT) BILL, 1962

#### III. THE ELECTRICITY (SUPPLY) AMENDMENT BILL, 1962

SECRETARY: Sir, I have to report to the House the following in stages received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

(I)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Appropriation (Railways) No. 5 Bill, 1962, as passed by Lok Sabha at its sitting held on the 16th November, 1962.

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

(H)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the