

## RAJYA SABHA

*Friday, the 30th. November, 1962/ the 9th. Agrahayana, 1884 (Saka)*

The House met at twelve of the clock, MR. CHAIRMAN in the Chair.

### LEAVE OF ABSENCE TO DIWAN CHAMAN LALL

MR. CHAIRMAN: I have to inform Members that the following letter dated the 24th November, 1962, has been received from Diwan Chaman Lall: —

"While speaking during the debate on China I suffered a heart attack but considered it my duty to continue and conclude my speech. I am now in the Nursing Home where, I am told, I may have to remain for a total period of three weeks. I should be most grateful if necessary leave of absence is granted to me."

Is it the pleasure of the House that permission be granted to Diwan Chaman Lall for remaining absent from all meetings of the House during the current session?

*(No hon. Member dissented.)*

MR. CHAIRMAN: Permission to remain absent is granted.

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

SHRI K. V. RAGHUNATHA REDDY (Andhra Pradesh): Mr. Chairman, the other day I had been referring to certain aspects of judicial appointments. In this context, Sir, I wish to refer to one of the passages of Professor Harlod Laski's book on

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"Parliamentary Government in England" where he has discussed the role of Parliament and the Judiciary. On page 360 Prof. Laski states as follows:

"Acts of Parliament are not self-operative; they have to be applied by men. And application involve\* interpretation by a Court, since *it* is a principle of the British Constitution that only express and unambiguous words—perhaps not even these—can deprive the citizen of his title to have the meaning of legislative intention settled by a Court of Law, Thereby we have sought to avoid not merely the obvious dangers of unfettered executive discretion in administration: we have sought, also, to assure that the citizen shall have his rights decided by a body of men whose security of tenure is a safeguard against the shifting currents of political opinion. Statutes are not to mean merely what the ministry of the day may be tempted to make them mean. The intention of Parliament is to be discovered by a body of independent persons, free from any direct interest in the result, and trained by long years of practice to standards of judgment by which that intention may be tested."

Sir, similar views have been expressed by the learned Judges of the Supreme Court and various High Courts and recently a publication has been published by the American Judicature Society under the title "Handbook for Judges" and in this book the compiler quotes from the statement made by one of the most illustrious English Judges, Lord Mac-millan, as follows:

"The judicial oath of office imposes on the judge a lofty duty of impartiality. But impartiality is not easy of attainment. For a judge does not shed the attributes of common humanity when he as-

[Shri K. V. Raghunatha Reddy.] sumes the ermine. The ordinary human mind is a mass of prepossessions inherited and acquired, often none the less dangerous because unrecognised by their possessor. Few minds are as neutral as a sheet of plate glass, and indeed a mind of that quality may actually fail in judicial efficiency, for the warmer tints of imagination and sympathy are needed to temper the cold light of reason if human justice is to be done. If law were an exact science, and judgment were to be laid to the line and righteousness to the plummet, then justice might be a machanical product, but amidst the incalculable complexities of human relationship the administration of justice can never be of this character. To quote the ancient and impressive formula, the judge in pronouncing his decision must be rightly advised, and have God and a good conscience before him . . . He must purge his mind not only of partiality to persons, but of partiality to arguments, a much more subtle matter, for every legal mind is apt to have an innate susceptibility to particular classes of arguments."

Then at another place, Sir, there is a modern version of Lord Chancellor Lyndhurst's definition of a good judge:

"First, he must be honest. Second, he must possess a reasonable amount of industry. Third, he must have courage. Fourth, he must be a gentleman. And then, if he has some knowledge of law, it will help."

Then, Sir, at page 158 with regard to The Test of Civilisation' the Chief Justice John Winslow is quoted as follows:

"Bqual and exact justice has been the passionate demand of the human soul since man has wronged his fellow man; it has been the dream of the philosopher, the aim of the

lawgiver, the endeavour of the the judge, the ultimate test of every government and every civilisation."

So, Sir, keeping in mind some of these very noble statements made by the noble Lords who presided over the Courts, when we examine the various appointments made to the Indian Judiciary, I must say that broadly speaking we have done well to keep up the traditions of both the Anglo-Saxon and American jurisprudence. The high traditions which have been kept up by the Indian Judges are really remarkable and should be followed by any body else in the world. I must also state in this context, if I am permitted to do so, that the impact of Anglo-Saxon and Indian jurisprudence is being felt even in all the other countries and if we just glance through some of the penal reforms being brought about by Mr. Khrushchev, we see that, though not in the total, at least some impact of Anglo-Saxon and Indian jurisprudence is there in respect of the penal reforms which Mr. Khrushchev has introduced. He says the socialist legality has been violated and that legality must be maintained. In other words, Sir, it only amounts to this that the influence of Anglo-Saxon and Indian jurisprudence maintaining the Rule of Law, which is one of the sacred principles that govern human relations, has to be maintained, and even the Soviet Union we are glad, in a way, though not fully, is realising the importance of the influence of the Anglo-Saxon jurisprudence and Indian legal thought.

Now, Sir, when we go through the pages of the Law Commission's Report, it has been stated there that certain appointments have been made unsatisfactorily. But this is only an exception to the rule, not the rule itself. If a few appointments, according to the Law Commission, have been found to be made unsatisfactorily, it does not mean that the entire system of appointments should be condemned. After all, Sir, to err

is human and as long as man is to judge man, errors cannot be avoided; they can only be minimised and if certain errors have been committed, it does not mean the entire constitutional structure has to be changed. You cannot kill the system for the purpose of curing some disease of a person or persons. The procedure adopted for the purpose of appointment of Judges has stood the test of time and the test of judgment. One question is asked and that is, what exactly is the role of the executive in relation to the appointment of Judges, whether the executive should have any say in the matter of appointment of Judges or whether it should serve as a mere post office to transmit letters from the Chief Justice of the High Court to the President or the Home Minister. In this context, Sir, I am of the view that the Chief Ministers, though they should not ordinarily have a say in the matter of appointment of Judges, they should follow the opinion of the Chief Justice concerned, in certain cases they will have to express their opinion so that even if a Chief Justice errs in assessing the status and stature of a man for appointment as a Judge of the High Court, at least the Chief Minister should be in a position to correct it. Secondly, the Chief Minister and the members of the executive are the persons who go before the people at least once in five years, take the public into their confidence and the public will have to say whether they are desirable persons to be sent back to the Parliament or the State Legislature. The members of the executive go through the ordeal once in five years. Keeping view the social objectives and the ideals of the State, the executive is better able to judge the purpose for which the State stands and the obligations and the ideals that the State wants to fulfil. In that case, as the component limb of the Government, the judiciary should also follow the line and in such cases, the executive should have a say in this matter about the persons who are to be ap-

pointed or at least to the extent of expressing an opinion on the recommendations made by the Chief Justice of the High Court concerned. I may quote in this context Prof. Laski. Dealing with the new appointments, he said:

"The call of our time seems likely to be for the enlargement of an old body of legal doctrine with new faith and new principles. That is never an easy task for a judiciary like ours. The influences which have shaped the new faith are alien from these to which they have become accustomed; the logic upon which it is built is opposed to time-honoured formulae upon which they have relied. The answer to their difficulty is the supreme answer that the successful infusion of the old with the new is likely, as Theodore Roosevelt saw, to be the effective condition of social peace. A judge who rejects, therefore, the call to this attempt is denying the condition upon which his heritage may be preserved."

Keeping this principle in view, it is perfectly justifiable that the executive should have a say in the matter of appointment of Judges and the article which is provided in the Constitution for the purpose of appointment of Judges is a harmonious blending of judicial independence and executive interference.

Coming to the first amendment of Shri Bhupesh Gupta, I must say that when we try to interpret a statute, we will have to remember that the words are temperamental beings. When we look at them, at their face value, they give one meaning and when we try to understand them in historical background, they mean something else and the article of the Constitution cannot be dealt with purely as a grammatical construction or purely at its face value. The article of the Constitution has to be

[Shri K. V. Raghunatha Reddy.]

interpreted in the context of historical tradition, convention and prerogatives and viewed in that context, certainly the interpretation sought to be placed by Shri Bhupesh Gupta is merely temperamental as words are temperamental and not the realistic view and I am not in favour of that amendment.

Then, Sir, to conclude my speech, I must say that the monstrous and brutal aggression by those who seem to believe in the philosophy of sword committed against our country wed-ded to peace and Parliamentary democracy and social equality and social justice, where the noblest of mankind, the heirs of civilization, have developed their character, their arts and literature, has made us now a nation awakened to the realities of life and situation and a new consciousness, is prevailing with unabated tempo. This very consciousness, Sir, will be a standing guarantee to protect the Constitution and the people themselves are the guardians of the Constitution. Hence this amendment may not be necessary.

The other amendments, Sir, are too small and are not important. I do not propose to take the valuable time of the House.

SHRI NAFISUL HASAN (Uttar Pradesh): Mr. Chairman, I rise to oppose the motion which has been moved by Shri Bhupesh Gupta for taking into consideration the Constitution (Amendment) Bill. This Bill deals with a number of amendments. The first amendment proposed is in regard to article 74. It seeks to insert a new clause after clause 3 of article 74, viz.—

"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 the House present and voting

requests the President to disregard the advice."

I think, Sir, that it is under a misunderstanding that Shri Bhupesh Gupta has moved this amendment. To my mind, it is clear, absolutely clear, that the President is the constitutional head and he has to accept the advice tendered by the Ministers. Our Constitution has been worked for the last fourteen or fifteen years and no such question of difference of opinion has arisen, neither here nor in the State\* where also the Governors are constitutional heads and have to accept the advice tendered by the Ministers.

There is one other provision in the Constitution, article 163, which deals with the State subjects. Clause (1) of this article reads as follows:

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Excepting those functions which he has to discharge in his discretion, he is bound by the advice of the Ministers.

SHRI K. SANTHANAM (Madras): It does not apply to the President

SHRI NAFISUL HASAN: It does not apply to the President. This is provided in article 163 because there may be some emergency and so on where the Governor has to use his discretion but the President cannot exercise his discretion. He has to accept the advice of the Ministers. A novel thing is being suggested by Shri Bhupesh Gupta. He says that the advice of the Ministers may be rejected by the President—but I do not contemplate that eventuality because he is bound to accept it—if both Houses of the Legislature by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members of each House present and voting request the

President to disregard the advice. I do not know how the administration can be carried on if certain actions are to be postponed till they are considered by both the Houses and then will the Government continue when it loses its majority in the Houses? The Government continues only as long as it enjoys the confidence of the Legislature. How is it possible? If two-thirds of the Members present or even if at least half the total number of Members vote against the advice given by the Ministers, no Government can continue.

Now, an amendment is suggested to clause (1) of article 123 of the Constitution and it is proposed to add a proviso, 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."

In the Statement of Objects and Reasons it is stated:—

"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."

Article 13 of the Constitution provides:—

"(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

Further on, in clause (2) it says:—

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of

this clause shall, to the extent of the contravention, be void."

And further clarification is made in clause (3) as to what "law" includes. It says:—

" 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;".

Then, in article 123 itself there is a provision in clause (3) which says:—

"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."

These provisions clearly indicate that an Ordinance in order to be valid must be on a matter on which Parliament is competent to legislate. Now, any law which was existing at the time this Constitution came into force and which is inconsistent with the Constitution is void to the extent of its inconsistency. Similarly, Parliament is not competent to make any law which may be inconsistent with the provisions of the Constitution, *e.g.*, which may go against the Fundamental Rights. Therefore, if there is any fear in the mind of my friend, Shri Bhupesh Gupta, that an Ordinance can be promulgated which curtails the Fundamental Rights, he is absolutely mistaken. Neither Parliament can make any law to curtail the Fundamental Rights, nor can an Ordinance having similar effect be promulgated. I do not find in the Constitution any Fundamental Right which gives to the workers the right to strike. Therefore, if Parliament makes any law banning strikes under certain circumstances, it is not void. In the present situation even talk of a strike is out of question. I think that the workers, as everybody else in this country, are prepared without any condition to work even late hours, double shifts, and on holidays. Those who had been inciting the workers to go on strikes, if today they try it, I am positively certain that they

[Shri Naflsul Hasan.] will fail. Therefore, I oppose this proposed amendment also.

Now, Sir, there is an amendment suggested to article 124 (2), and to article 217 a similar amendment has been suggested. These amendments relate to the appointment of Judges of the Supreme Court and of the High Courts. The suggestion is that the Council of Ministers at the Centre and the Governor, as far as the appointment of Judges to the High Court is concerned, should neither be consulted, nor their advice considered by the President when making an appointment. This question has been elaborately dealt with by the hon. Member who preceded me and I am not going to take much of the time of the House. The only thing which I submit is that it is the Government or the Council of Ministers who are responsible to the people through the Legislature and any action of theirs, whether it be the appointment of Judges or any action whatsoever, is subject to scrutiny by the people who are sovereign in this country. Therefore, the ultimate responsibility of doing anything, be it the appointment of Judges, rests entirely on the Ministers and the Government. Of course, during the past, as far as I know from what has been stated here in this House by the Home Minister, in practically every case, as far as the appointment of Judges is concerned, the opinion of the Chief Justice of India has prevailed. Then, in the case of Governors—of course, when we say "Governor" we mean the Government of the State—they are only to be consulted, their opinion has got to be considered and there may be occasions when the President may be inclined to accept that opinion for certain reasons given. I think the present system has worked very well and there is absolutely no occasion for any change\*. Our Judges, both of the Supreme Court and of the High Courts, enjoy a very good reputation, and the public has full confidence in the administration of justice. The last proposed amendment is to the Second Schedule lowering the sala-

ries of the President and of the Governors from Rs. 10,000 and Rs. 5,500 to Rs. 2,500 and Rs. 750 respectively. We know that our present President and our former President did not accept the whole salary allowed under the Constitution. They made a sacrifice in the interests of the country. I think this opportunity! of making sacrifice should not be denied to future Presidents. There is no reason for any amendment.

For all these reasons, Sh, I think that none of the proposed amendments has any force and I oppose the motion for consideration. Thank you.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATTA) : Mr. Chairman, the present debate on the motion by my hon. friend, Shri Bhupesh Gupta, has extended over two or three sessions of the Rajya Sabha and has gone on for a number of days. This motion I shall endeavour to point out to you. Sir, is a jumble of incompatible provisions and has been made for the purpose of upsetting the Constitution and introducing therein a number of elements of instability. The Constitution, as you are aware, was prepared after labours extending over four years, and from January 1950 to date this Constitution has worked fairly well. Under these circumstances a question of a preliminary nature arises as to whether it requires any amendments at all especially of the disturbing nature which the hon. Member or the mover of the motion wants to incorporate in the provisions of the Constitution.

Secondly, Sir, you will also find that he deals, as I have pointed out, with a number of subjects which are not organically connected with each other. In the first place he wants an amendment in article 74 of the Constitution with a view to introducing certain elements which are against the position that has been assigned to the President under the Constitution. Then he has introduced certain elements according to which on certain

occasions it might be open to the President to disregard the advice of the Council of Ministers without any attempt made by the hon. mover to find out whether apart from the Council of Ministers there is any machinery for the purpose of the President to carry on the administration after disregarding the advice of the Council of Ministers. This question also requires to be considered very carefully before we proceed to deal with the various points that the hon. Member has placed before us. So, apart from this constitutional position of the President, he has also brought in what can be called the special powers of the President under the Constitution but which are really of the Government of India, that is, so far as the powers of issuing Ordinances are concerned. As the House is aware, as an hon. Member just now pointed out, an Ordinance can be issued by the President when Parliament is not in session, and the power of issuing Ordinances is in the same position as the power of making legislation so far as Parliament is concerned. So under these circumstances and in particular with regard to this particular amendment the hon. mover has brought in what can be called entirely political considerations and he has tried to introduce into the Constitution certain rights which have not been given at all, which have not been recognised at all, especially what he calls the rights of the workers to call a strike. So far as this right is concerned, as I shall endeavour to point out presently, this right was never recognised by the Constitution and, may I also add, has been turned down by the Bombay High Court. Under these circumstances I submit, Sir, with due deference to the hon. mover that entirely out of political considerations this particular amendment has been brought forward.

AN. HON. MEMBER: He is not in the House now.

SHRI B. N. DATAR: Then there are two amendments which are analogous

in nature: one regarding the appointment of Judges to the Supreme Court, and the other regarding the appointment of Judges to the various High Courts in the States. Therein also . supreme effort is made by the hon. mover to have the advice of the Government both at the Centre and in the States completely disregarded, and he has brought in against the provisions of the Constitution certain other matters with which I shall be dealing presently. Here also may I point out that the hon. Member made reference to one or two cases without fully appreciating all the facts in connection therewith? I shall point out how the very danger that the hon. Member seeks to avoid is inherent in the very proposal that he desires us to accept for amending the Constitution.

The last amendment that he wants is what you can call the perfection of the counsel of despair. What he desires is that the pay of the President and of the Governors should be substantially reduced to an extent which borders almost on absurdity. Therefore, Sir, you would find that I purposely dealt with all the amendments together to show now they are mutually incompatible with each other and how all of them could not be jumbled up together. I was reminded of the famous saying in Sanskrit, how Panini brought in certain elements together:

“श्वानं युवानं मघवानम्”

He brought these three words together only because they were analogous so far as grammar was concerned. But here in this particular case none of these provisions has anything to do so far as the others are concerned. That is the reason why I started by saying that all the amendments are entirely absurd in nature and will have to be thrown out unless we want to disturb the stabilising forces that have been created in the country by the inauguration of the

[Shri B. N. Datar.] Constitution. Therefore, I shall now deal at some length, Sir, with the five points that the hon. mover has placed before us. Before I do so I should like to pay my tribute to number of constitutional pandits of this House who have dealt with the matter from all points of view, firstly, from the point of view of the Constitution, secondly, from the point of view of advisability or rather inadvisability and in particular the mischievous nature of the various amendments that the hon. Member has brought. Now I shall first deal naturally with the question of the position of the President. So far, as the President's position in the Constitution is concerned, we have got one of the longest debates in this respect before the Constituent Assembly. The question that was then under consideration and which was dealt with at great length was about the position that the President as the Constitutional head ought to occupy under the Indian Constitution. Now, we have two analogies in this respect. One is that of the President of the United States of America. There you will find that he is not merely a constitutional head. He is the executive head and all the powers under the Constitution of the United States are vested in him. This was one analogy which had to be considered. The other was the constitutional position of the Crown under the British Parliament. As was very wisely pointed out by an hon. Member of the Constituent Assembly who happily for us is also a Member of this House today, in England so far as the constitutional rights were concerned, a long struggle went on between the Crown on the one hand and the people on the other. And ultimately he pointed out how the Crown had to lose all the powers but was allowed to maintain all the forms. That is how the British Constitution was developed, and all of us are aware that long ago, about thirty years ago, a question had arisen as to whether it was open to the King to veto the desire of the

Parliament, whether it had that power, and it was pointed out that the King, under the unwritten Constitution of England, would not dare oppose or veto the desire of the British Ministry. Now that question has to be understood very clearly. Therefore the Constitution-makers considered all the questions and they felt that, so far as India was concerned, so far as the model that we had to follow was concerned, it was better to have an analogy with the British Parliament than with the United States of America. Under these circumstances, generally, the model or the pattern that is followed is the British Parliament subject, of course, to certain changes that had to be introduced in view of the fact that our Constitution has to be federal to a certain extent because, you are aware, Sir, in England they have a unitary form of Government in the sense that there are no States as such, but in India we had a number of States, and powers had to be given to the various States also. To that extent our Constitution was federal. But after making a provision for the federal set-up of the Constitution, ultimately the President's powers had to be defined, and the whole thing was considered very carefully by the Constitution-makers, and may I point out to the hon. House, Sir, that there were certain amendments moved by the hon. Members of the Constituent Assembly for making certain provisions precise in so far as the exercise of the powers of the President was concerned? There was a long debate, and ultimately it was considered that the powers should remain as they were under the Constitution but so far as the actual exercise of the powers was concerned, it might better be left to conventions, and here, Sir, we have got a number of conventions, which naturally will have to be taken into account. And a question arises whether any difficulty had been experienced by us so far as the exercise of the powers either by the Prime Minister and the Council at



Minister was concerned, or by the Chief Ministers and the Ministries in the various States was concerned.

The hon. mover of this Bill has not directly brought in the question of the Governor and the Council of Ministers in the way in which he has brought in the question of the President and the Council of Ministers headed by the Prime Minister at the Centre, but all the same, Sir, you will And that we have to take into account the position of the President under the Constitution and the Prime Minister as the head of the Council of Ministers here. Therefore taking all these circumstances into account, considering also the manner in which two great Presidents of India have functioned since 1950, the point that arises before us is as to whether there is any need at all for making a change in the manner in which we are governed by the Constitution. Now before I deal further with this point, may I point out, Sir, one more serious misapprehension that the hon. mover has in his mind? And oftentimes similar questions are raised here. Now so far as Parliament is concerned, the House of the People and the Council of States, both together, they are the legislative body of the land. They have also the powers of supervision over the Council of Ministers headed by the Prime Minister. Under these circumstances I would submit to this hon. House in all humility that we ought to understand the scope of the functions of Parliament so far as the day-to-day administration of the various items of Government activity is concerned. As I have stated, Parliament is the supreme Legislature of the nation. Secondly, Sir, on account of a number of provisions which have been introduced in the Constitution on account of the evolution of the law of Parliamentary Government, Parliament has also been vested with the powers of full supervision over their agent, namely, the Government of India or the Council of Ministers headed by the Prime Minister, Under

these circumstances, there is, what we can call, the executive function vesting in the Government, and the supervisory function along with the legislative function vesting in the Parliament. Now *it* we understand this position very clearly, Sir, no difficulty would arise at all. It *i*\* always open to Parliament to call the Council of Ministers to account, and I shall be pointing out very presently how a provision has been made that ultimately the Prime Minister and his Council of Ministers are responsible to the Lok Sabha, that is, to Parliament, and for that purpose, Sir, I would invite your attention at this stage to two articles of the Constitution, which make the position clear. One is article 75, sub-clause (3). Article 75 deals with the provision\* relating to Ministers, and therein it has been pointed out:—

"The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister."

So far as the expression that is used here is concerned, now the President is the constitutional head—let us understand it very clearly. He is not, in a sense, any other except a constitutional head and therefore the expression, "that he makes the appointments", and other expressions, such as, "Council of Ministers headed by the Prime Minister has to aid the President", are to be understood, Sir, in the diplomatic manner in which these words have been used. "Aid the President" means this. Ultimately it is the Government of India; it is the Prime Minister with his Council of Ministers who is responsible to the Parliament, and whatever has to be done, is expressed to be done, as it has been pointed out in the Constitution in article 299, in the name of the President. That is what has been very clearly pointed out; article 299 makes it clear, and that again maintains the nature of the power<sub>3</sub> that the Council of Minister\*

[Shri B. N. Datar.] headed by the Prime Minister has in reality but everything has to be carried on in the name of the President, and that is the reason why in article 299 it has been made very clear.

"All contracts made in the exercise of the executive power of the Union" . . .

Let us understand it very clearly— the executive power of the Union vests in the Government of India, and here it has been stated:—

"... shall be expressed to be made".

in the name of the President. Therefore let us take into account this expression, Sir.

Now let me come back to article 75, where it has been very clearly stated—

"The Ministers shall hold office during the pleasure of the President."

It means the pleasure of the hon. Houses of Parliament—let us understand it very clearly. And then—

"The Council of Ministers shall be collectively responsible to the House of the People."

So let us understand what the position is so far as the President is concerned, so far as the Council of Ministers is concerned, and eventually so far as the House of the People is concerned. And here the House of the People or the Lok Sabha was especially mentioned because it was a body that consisted of Members who were directly elected by the people of the land, and therefore it has been stated here—

"The Council of Ministers shall be collectively responsible to the House of the People."

So this is so far as the responsibility of the Council of Ministers headed by the Prime Minister to the Lok Sabha, that is, to the Parliament, is concerned. Now, as against this provision we have got also the other provision which makes the position of the President very clear. The President is not there to take any decision—let us understand it very clearly. The President is the constitutional head and in article 78 it has been clearly pointed out—

"It shall be the duty of the Prime Minister ..."

The Prime Minister as the head of the executive administration of the Government of India has to owe certain duties to the President and therefore the position has been made clear.

"It shall be the duty of the Prime Minister—

(a) to communicate to the President ..."

Let us understand the words very clearly.

"(a) to communicate to the President all decisions of the Council of Ministers ..."

So if we take this into account, Sir, very little remains of what can be called of an ambiguous nature, so far as my friend is concerned. The decision has to be communicated to the President—let us understand it very clearly, The decision will be the decision of the Council of Ministers headed by the Prime Minister. The decision would not be of the President, nor can it be of any other body of functionaries.

SHRI BHUPESH GUPTA: This point is all right. Now will he be bound by the decision?

SHRI B. N. DATAR: It is not a question of being bound. It shall be the duty of the Prime Minister to communicate to the President—let us

understand the question. I speak with the highest deference to the two Presidents whom we have had the fortune of having, the first President as also the present second President, and I am speaking here with due deference to the high personality of "both the Presidents, but I am making the constitutional position clear without in any way compromising their position under the Constitution.

MR. CHAIRMAN: Mr. Datar, I dare say you have much more to say, but an important statement the Home Minister has to make now. So I would like you to stop at this stage and continue when we meet after lunch,

#### STATEMENT ON INDIA-PAKISTAN RELATIONS

THE MINISTER OF HOME AFFAIRS (SHRI LAL BAHADUR) : Mr. Chairman, Sir, the Prime Minister is making a statement in the Lok Sabha and he has asked me to place the same statement here. So on his behalf I am reading out this statement.

"As the House is aware, we have recently had visits from Mr. Duncan Sandys, Minister of Commonwealth Relations in the United Kingdom, and Mr. Averell Harriman, assistant Secretary of State in the United States. We had long discussions with them about the Chinese invasions of India and our need for various kinds of equipment to meet this attack on our country. I am glad to say that these discussions were fruitful and we hope to get much of the equipment required from the United States and the United Kingdom as well as some other friendly countries. I am grateful to these countries for the help they are giving us in this crisis that we have to face.

In the course of my talks with Mr. Duncan Sandys and Mr. Harriman the question of our relations with

Pakistan was raised. I told them that it had always been our policy to have friendly and co-operative relations with Pakistan because this seemed to us essential not only because of geography, but because of our joint history, culture, language, and the many bonds that had arisen between us during the long years, we had always aimed at that and we are sure that that is the only proper relationship that should subsist between two neighbouring countries and peoples which have had such close bonds in the past. The question of Kashmir was referred to and we explained to them our position in regard to it and pointed out that anything that involved an upset of the present arrangement would be very harmful to the people of Kashmir as well as to the future relations of India and Pakistan. We were, however, always ready to discuss this, as other matters, with representatives of the Pakistan Government at any level desired. In fact, we had suggested meetings at various levels in the course of the last few months, but no positive response had come from them.

Mr. Sandys and Mr. Harriman appreciated our position but still suggested that a friendly discussion about these matters between India and Pakistan might be helpful. I was agreeable to this, as indeed we have been ourselves suggesting some such meeting for some time past. I explained to them again, however, our basic principles and how it was not possible for us to bypass or ignore them.

Mr. Sandys thereafter went to Pakistan and came back yesterday after consultation with President Ayub Khan suggesting that a joint statement should be issued on behalf of both the Governments stating that a renewed effort should be made to resolve the outstanding differences so as to enable India and Pakistan to live side by side in peace and friendship, further stating that dis-