2. Consideration and return of the following Bills as passed by the Lok Sabha:

(i) The Gift-tax (Amendment) Bill, 1962.

(ii) The Taxation Laws (Amendment) Bill, 1962.

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

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): You will continue your speech, Mr. Datar.

SHRI B. N. DATAR: Mr. Vice-Chairman, Sir, I have been dealing with the powers of the President and the obligation of the Prime Minister as laid down in the Constitution. And for that purpose, Sir, I had invited the attention of the honourable House to article 78 of the Constitution. I had pointed out that the wording in article 78 had to be carefully noted. It was stated in clause (a) of article 78:—

> "to communicate to the President all decisions of the Council of Ministers...."

—this is the duty of the Prime Minister—

> "....relating to the administration of the affairs of the Union and proposals for legislation;"

You will kindly note, Sir, that the decision has to be taken by the Council of Ministers headed by the Prime Minister and the decisions have to be communicated by the Prime Minister to the President of the Indian Union.

Now, Sir, the other two clauses also have some bearing on this question, and I am inviting your attention to clause (c):—

> "if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

In other words, Sir, we go further down. Now, either a decision has to be taken by the Council of Ministers, headed by the Prime Minister, or subject to the overriding authority of the Prime Minister and the Council of Ministers it is open to a Minister, Sir, in a number of cases to take a decision himself, and it is open to the President to request the Prime Minister to have this matter considered by the Council of Ministers. Under these circumstances, you will see, Sir, that the function, or rather the privilege of taking a decision rests either with a Minister or with the Council of Ministers, and all that the Prime Minister is called upon by article 75 to do is to communicate the contents of the decision to the President. And this has to be done as the President is the constitutional head of the Indian machinery. Under these circumstances it would not be constitutionally proper to substitute for "the decision of the Council of Ministers" "the decision by any other person including even the President of the Indian Union."

The President, as I have pointed out, is the constitutional head and the Government works through the President and in the name of the President. Under these circumstances, if there are any circumstances where the President, as the constitutional head, desires certain decisions of a Minister to be considered by the Council of Ministers, then he can call upon the Prime Minister to have the matter considered by the Council of Ministers. In other words, Sir, as it was once pointed out, the whole responsibility lies with the Council of Ministers, headed by the Prime Minister, and it is they who have to carry on the executive work of the Government of India and to do so they express themselves through the act of the President. This is how, Sir, our Constitution has made certain provisions so far as the President is

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concerned. Under these circumstances, the question arises whether we can go back upon the constitutional position created for the President and impose upon him certain obligations for which no provision has been made at all.

In this connection, Sir, I should like to read my hon. friend's amendment dealing with the point that I am now discussing. Now, what he desires is this. Article 74 deals with the Council of Ministers, and he wants to add a sub-clause as sub-clause (3) that:—

> "all such advice shall be binding on the President."

So far as this is concerned, Sir, these words are absolutely unnecessary. As I have pointed out, under the scheme of the Constitutional provisions, whatever the Council of Ministers do that has to be expressed through the President. Beyond that there is no question of anything being not binding on the President. All these things are carried on in the Constitutional terminology and expressed through the President. Therefore, Sir, here my hon. friend is trying to make an attempt about certain pieces of advice given to the President and not accepted by him. Such a contingency cannot arise at all, and this becomes clear from one fundamental position which has been accepted by the Constitution.

The Prime Minister and his Council of Ministers are entitled to act so long as they have the confidence of Parliament and the moment, Sir, they lose that confidence, they would be thrown out of office and a new Prime Minister will have to be duly elected by Parliament because the collective responsibility is to the House of the People. Under these circumstances the totality of the collective responsibility has to be taken into account and nothing can be done for derogating from the collective responsibility that the Council of Ministers headed by the Prime Minister owes to the House of the People. Just as it constitutes certain obligations on the Council of Ministers, similarly also, you will understand that it has a bearing on the other questions that have been raised by my hon. friend. Therefore, Sir, if the responsibility towards Parliament has to be discharged by the Prime Minister and his Council of Ministers, then they will be entitled to the totality of all the acts that the Government have to do. This situation will have a bearing on the question even as to the appointments so far as the Supreme Court Judges or the High Court Judges are concerned. And I am merely pointing out here, Sir, that if the Council of Ministers at the Centre has to be responsible to the House of the People, then they are entitled in their turn to claim that all the acts for which this responsibility has to be had will have to be carried on by them and nothing will be done to derogate from their right to deal with the different aspects of the governmental activities. Coming back, here he says:

> "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."

So far as the constitutional structure is concerned, there is no provision at all for the President to disregard the advice of the Council of Ministers and if the Ministers, as have pointed out, forfeit the confidence of the House, then the will have to quit their office. Under the circumstances, when this overriding position is there, you cannot think of a contingency under which ordinarily the advice of the Council of Ministers has to be accepted by the President and in certain cases he need not accept. So this contingency which

visualises cannot arise under the Constitution at all. Secondly there is also another difficulty which might be noted. So far as the Government of India is concerned, the Government is one unit and the head of the Government is the Prime Minister. The Constitutional head is the President. Under these circumstances if for example, as my friend contemplates, there is a position in which the Council of Ministers headed by the Prime Minister take one view and the President takes another view, then according to the amendment of my hon. friend, the President is entitled to disregard the advice of the Prime Minister or the Council of Ministers. Now the question arises, assuming for the sake of argument that such a power is given to the President what is the machinery at his disposal? He has no other machinery at all. It should be very clearly understood. Therefore in the contingency that is visualised by my hon. friend, the President will have no machinery at all for disregarding the advice of the Council of Ministers because such a disregard presupposes the taking of certain other action inconsistent or incompatible with the advice of the Prime Minister or the Council of Ministers. Under these circumstances, the constitutional difficulty or impracticability of the step that the hon. Member wants should also be taken into account. I need not go further into this question because, the President, under the Indian Constitution, is the constitutional head. He is the defender of the Constitution but in effect it should be understood clearly that the Head of the Executive is the Prime Minister and his Council of Ministers. It is through the Council of Ministers headed by the Prime Minister that the Government of India acts and they express whatever they do through the President as the orders of the President. Beyond that the President has no particular function to carry out except to be the constitutional head and the Government would be carrying on all the administration in his name. So if this position is understood very clearly, then no difficulty can arise and we cannot think of taking or having a half-way house between the position created by the Indian Constitution and the position in the U.S.A. in so far as the President there is concerned. There the President is the actual head corresponding say, to the Prime Minister's position under the Indian Constitution. You have got the President of the U.S.A. and he carries on the administration. There are certain checks and balances but you will find that he is the actual head. That is not the position under the Indian Constitution. So we have to be very careful before we make any innovations especially when the whole question was considered very carefully by the Constituent Assembly and they came to this conclusion after laying down certain broad principles as they have done and two of them I have clearly pointed out, how there is collective responsibility on the one hand to the House of the People and how the decision has to be taken either at the Council of Ministers' level or in certain cases at the Ministers' level, this decision has to be communicated to the President and the President can call upon the Council of Ministers to consider or even to reconsider the matter but that is only a suggestion which ultimately has to be considered by the Council of Ministers. If this position is clearly appreciated, you will agree that so far as the first amendment that the hon. Member wants in respect of the President's position is concerned, it is entirely out of place and secondly, it would create certain difficulties. There would be impracticable positions created and, therefore, no further obligations should be placed on the President especially when the Constitution has not provided for any machinery for carrying out what can be called the directions of the Parliament or what can be called the views of the Council of Ministers when he disregards them. There is no such provision as the President diregarding the views of the Council of

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Ministers. Under these circumstances, I submit that so far as the first amendment is concerned, it is entirely out of place. He has tried to hedge it in with certain further constitutional obligations but they are absolutely unnecessary. So long as the Council of Ministers headed by the Prime Minister enjoys the confidence of the Houses of Parliament, they are entitled to carry on the totality of all the governmental activities and they are always accountable for their acts and omissions to the Houses of Parliament, subject to this, they are the head of the executive administration and therefore it would not be proper to bring in the President and to conceive of circumstances where the President can disregard the advice of the Council of Ministers. These words have to be understood very clearly. If this position is properly appreciated, then very little need be said by me as far as the ordinance-making powers of the President are concerned. Article 123 deals with the power of the President to issue an ordinance, when the Houses are not in session. Now certain further safeguards have been laid down. It is open to the President to issue an ordinance but in effect it means that the Council of Ministers headed by the Prime Minister or in other words, the Government of India are entitled to have the ordinance issued in the name of the President. This is where the President comes in and therefore it would not be possible for the President to undertake any responsibility of dealing with the question of ordinance except through the Council of Ministers. As my friend rightly put it, the power of legislation of the Parliament and the extraordinary power of having ordinances when the Parliament is not in session, both have to be treated together and from the point of view that I have already explained, it would be very clear that though the ordinance is issued in the name of the President, still it is the Government of India which takes the fullest responsibility for the issue of the ordinances. In other words the ordinance is something like an act of Parliament when Parliament is not in session, and that is the reason why further safeguards have been laid down, namely, that after the House meets, it has to be placed on the Table of the House and the approval of the House also has to be taken. Under these circumstances, it would not be possible to give over this extraordinary authority for the time being to the President personally. As I have stated, the Government of India have to take the fullest responsibility for the Ordinance issued in the name of the President. Under these circumstances hon. Members can see what an astounding principle it is that the hon. the mover of the Bill wants to lay down here by his amendment. What he wants in this respect is that so far as the Ordinances are concerned "no such Ordinance shall be promulgated". This is a directive according to him. He says here:

> "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."

You can see, Sir, the wide sweep of the amendment that the hon. Member has brought forward. This amendment proceeds on a footing which has absolutely no basis in law, namely, that a strike constitutes a fundamental right of the working people and of the government employees. This amendment has a history of its own. As you are aware, Sir, about three years back a general strike was threatened. When that strike was going to be threatened, the Government of India had to issue an Ordinance known as the Essential Services Ordinance and therein certain special provisions were incorporated. One of those provisions was that it would not be open to the government employees to threaten a strike, much

less to go on a strike. Now, a strike is not, it has to be understood, an ordinary remedy at all. A strike is likely to cause embarrassment of the greatest measure so far as the government machinery is concerned. Therefore, as a result of what was done by the Essential Services Ordinance, the Government of India made a rule so far as the Government Servants Conduct Rules were concerned and one of the rules was to the effect that it would not be open to government employees to threaten a strike or to go on strike. This particular rule was tested by the High Court of Bombay and the Bombay High Court came to the conclusion that there is no such thing as the right to go on strike. Certain fundamental rights, as we are aware, have been laid down in our Constitution. Apart from the fact that such fundamental rights can be suspended during an emergency, normally we have got a number of fundamental rights recognised by the Constitution, the right of free speech, the right to assemble, the right of ownership, and a number of other rights on which I need not dilate here. It was placed before the Bombay High Court in the form of an allied fundamental right and the contention was that the government employees or as the hon. Member puts it sections of the working people are entitled to go on strike as they please. That is how the matter was presented before the Bombay High Court. After considering the matter and in particular all the provisions of the Constitution, the Bombay High Court came to the conclusion that there was no such right at all, much less a fundamental right to go on strike. Therefore, so far as this question is concerned you will find that though the Constitution has recognised and incorporated certain fundamental rights for normal times, there is no such right even in normal times to go on strike. A strike itself strikes at the root of all discipline. That should be clearly understood. Therefore, there can be no question of having the right to strike. This assumption of the hon. Member comes from his belief that all strikes are fundamentally valid. This amendment of the hon. Member proceeds on the footing that whatever might be the circumstances a strike can be threatened either by the workers or the civil employees or any other section of the working people.

SHRI BHUPESH GUPTA: How is that? I say the President should not have the right. Parliament can do it and the matter can be discussed and so on.

SHRI B. N. DATAR: I was pointing out that the President or in other words the Government can do it.

THE VICE-CHAIRMAN (SHRI AKBAR ALI KHAN): In the absence of Parliament.

SHRI B. N. DATAR: Yes, in the absence of Parliament it is open to the Government of India, or to use the language of our Constitution, it would be open to the President to issue an Ordinance. As the hon. Member over there rightly pointed out, the power to issue an Ordinance is the same as the power to legislate and both of them are to be placed on the same footing. Therefore I was pointing out that it would not be open to the President also to deal with such matters in the way that my hon. friend wants them to be dealt with.

PROF. M. B. LAL (Uttar Pradesh): May I ask whether it is not possible for the people to will that the President in an emergency will not exercise as wide powers as are exercisable by Parliament?

SHRI B. N. DATAR: That is, more or less, a hypothetical question. I would like to deal first with this specific question. The President or rather the Government of India—I would purposely put it in as understandable a language as possible—has this power. When Parliament is not

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in session the right to make an Ordinance is vested in the President. That right is of the same nature as the right to make laws which vests in Parliament. The right of Parliament to make laws and also the right of the President to make an Ordinance, are both subject to the Constitution. If the Constitution is changed, then I can understand a different position. If, for example, tomorrow my hon. friend succeeds in incorporating into the Constitution the fundamental right to go on a strike, then a different situation will arise. But so long as the Constitution is what it is, this is the position. The Constitution, according to the Bombay High Court, has not given any fundamental right to go on strike either to the working people or to the civil employees. Then the question arises whether it would be open either to the President under the Ordinance-making powers or even to the Parliament to make a law so far as this particular position is concerned. That is the reason why I was submitting that so far as the making of Ordinances is concerned, it has to be treated or interpreted on the same footing as the power of Parliament to make laws, and in the absence of the Parliament, the President and also the Government of India are governed by the Constitution. So long as the Constitution has not recognised it as a fundamental right—and my hon. friend wants it to be so recognised—I mean this right to go on strike either by the common people or the civil employees—I am afraid it will not be open to them to have any such right, so far as the Ordinances are concerned. What the hon. Member wants us to do is to state that no such Ordinance shall be promulgated to declare illegal any strike of the workers or of the civil employees or any other section of the working people. Therefore, Sir, in the absence of a recognition by the Constitution of the so-called fundamental right of such people to go on strike, if any strike is threatened and if it becomes necessary, the President has to take action by way of the issue of an Ordinance and he is entitled to do so. My submission is that this provision in the form in which it has been been put in by the hon. Member is entirely against the Constitution. In these circumstances, even apart from the constitutional propriety of it, the question arises whether such a right can be recognised at all. The right to strike, as my hon. friend wants us to consider it, is no right at all.

[THE DEPUTY CHAIRMAN in the Chair]

It is an astounding proposition that the government employees should be allowed to go on strike and should be allowed to threaten to go on strike and thereby embarrass the whole government machinery. In these circumstances even apart from the constitutional legality of the position, I am afraid, this right claimed by the hon. Member is entirely against all canons of propriety. No such right can, therefore, be recognised at all.

3 P.M.

After dealing with these two, I should like to deal with the further two amendments together. Now, these two amendments deal with two articles of the Constitution, articles 124 and 217. Article 124 deals with the appointment by the President of the Judges of the Supreme Court. Article 124(2) reads thus:

> "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 . . ."

It will, therefore, be found, Madam, that so far as this question is concerned, the President has to consult such persons as he considers necessary and we have got similar provisions so far as the appointment of High Court

Judges is concerned. Article 217 reads as follows:

> "Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of th High Court . . ."

My friend wants to dispense with the consultation with the Government of India so far as the Supreme Court Judges are concerned and with the State Governments so far as appointments to High Courts are concerned. This is what he wants in clause 4 of the Bill:

> "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;' ".

So far as the appointment to High Courts is concerned, article 217 is sought to be amended to say that the opinion of the Council of Ministers of the State concerned would not be directly or indirectly entertained. Now, let us consider the position that is sought to be created by these two amendments.

Before I deal with this matter, Madam, I should like to point out the exact position in this respect. We had, as you know, the Report of the Law Commission. They dealt with the administration of justice in certain aspects and unfortunately, they made certain observations which had to be traversed by this House and by the other House. They made certain suggestions on matters which were not factual as they had pointed out. We had a long discussion after the Report had been received from the Law Commission. The whole position was clarified in this House and in the other House and it was pointed out to the hon. Members of Parliament belonging to both the Houses that appointments to the Supreme Court and the High Courts were made without any political considerations coming into play. Secondly, all the three authorities that were concerned were duly consulted only for the purpose of finding out who would be the best Judge, the three authorities being the Chief Justice of India, the State Government or the Governors and the Chief Justice of the High Court concerned. These three authorities were always consulted and all but one appointments were made according to the views of the Chief Justice of India. I shall just now place before the House certain figures in this regard. There can be no question of any consideration much less political consideration weighing with us. The views of the Chief Justice of India were accepted in all the twenty-two appointments that were made to the Supreme Court since 1950. This should be understood very clearly. Therefore, the sort of approach that arose on account of certain unfortunate observations in the Law Commission's Report should not be allowed to weigh on the minds of the hon. Members.

SHRI AKBAR ALI KHAN (Andhra Pradesh): That was a recommendation in regard to the State.

SHRI B. N. DATAR: I shall now give the figures relating to the High Courts. Since 1950, 266 appointments were made to the Benches of the various High Courts and out of this number, all but one were made with the concurrence of the Chief Justice of India.

SHRI BHUPESH GUPTA: Does that one relate to the Calcutta High Court?

SHRI B. N. DATAR: So far as this one case is concerned, we had the joint recommendation of the State

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Government and the Chief Justice of the High Court and the Chief Justice of India took a different view. We agreed with the views of the Chief Justice of the High Court and the Government concerned. In the one case quoted above we accepted the unanimous recommendation of the State Government and the Chief Justice of the High Court concerned. Now, in fifteen other cases where there were differences of opinion between the State authorities the decision taken was in accordance with the advice given by the Chief Justice of India. My hon. friend made reference to a particular case and he based all his arguments upon what he thought was a prejudice, the so-called prejudice, of the authorities concerned. But let us take into account the whole picture. If, for example, in a large number of cases so far as appointments to the Benches of the High Court and the Supreme Court are concerned we have accepted, except in one case, the recommendations of the Chief Justice of India and if we have also followed the prescribed procedure, then I fail to understand why my hon. friend is harping on the point that political considerations weigh with the Government of India in the matter of these appointments.

SHRI BHUPESH GUPTA: Was this one case the case of a recommendation for the appointment of a Chief Justice and did it relate to the High Court of Calcutta?

SHRI B. N. DATAR: So far as the appointments are concerned, I have given the figures. If, as I have said, we have accepted the views or recommendations of the Chief Justice in almost all the cases, I think we are on much stronger ground than what the hon. Member thinks us to be. Under these circumstances I do not like this question to be considered in the manner in which my hon. friend desires it to be done.

Now, the Constitution-makers considered the whole question very carefully and after a full discussion they came to the conclusion that so far as the power of making appointments either to the Benches of the Supreme Court or the High Courts was concerned, the authority ought to be the President and if the President has to make the appointments, then naturally he has to consult certain other authorities and those authorities have been mentioned in the two provisions of the Constitution which I read out just now. Under these circumstances if after considering the opinions of these authorities and if, as I have pointed out, generally in accordance with the wishes of the Chief Justice of India in 265 cases—only in a small number of cases, that is, fifteen cases there was difference of opinion when we could not accept the local opinion but still we accepted the opinion of the Chief Justice of India—we have acted, then in all humility may I ask whether there has been anything wrong in all these cases during the last 12 years where so many appointments were made by the Government? I do say that so far as the judiciary is concerned, we have to be extremely careful and on the floor of this House and the other the Government have always expressed their desire that there ought to be complete independence so far as the judiciary is concerned but in respect of the right to make appointments you cannot take away the right from the Government especially when the Constitution gives that right. That is the reason why when I was dealing with the first point I made it very clear that if under the Constitution it is the right of the Government, it is the right of the President, to make these appointments, the President is entitled, the Government is entitled to make these appointments provided they follow the procedure provided for and provided they accept normally—in almost all the cases as I have pointed out we have done so—the recommendations of the Chief Justice of India. Under these circumstances I would deprecate constantly bringing up this question in one form or other without taking

all the facts into account and making certain allegations that political considerations enter into the mind of the Government so far as such appointments are concerned. I would assure hon. Members that the Government are extremely careful to see that all these appointments are made solely on considerations of merit and in fact the appointments are made on the basis of the recommendations of the Chief Justice of India.

Now, under the Constitution it is the duty of the President, it is the duty of the Government to obtain their recommendations or to consult them. Now after such recommendations are received or in other words after they have been duly consulted, if generally their recommendations are followed in most of the cases, then there ought to be no grouse at all and if in a particular case an hon. Member is not satisfied with the appointment, he cannot turn round and make a grievance of it and say that all the appointments proceed on political considerations. That is entirely a wrong approach and here also the hon. Member's approach is thoroughly defective even constitutionally. Now, what he says is this. He has placed before us one ground, namely, that the President, that is, the Government makes the appointments, according to him, on political considerations that is, on considerations other than those of merit. Now the procedure that he wants to be followed is subject to the same objections. You will find in clause 4 he says, "Provided further that in the event of any conflict of views between the President and the Judges...."—he contemplates a conflict of views—".... or where the Judges so consulted cannot agree amongst themselves...."—that means there is a difference among themselves—". . . all the names for appointment under consideration shall be referred to the Houses of Parliament...."

SHRI NAFISUL HASAN: Wonderful.

SHRI AKBAR ALI KHAN: It is then that political considerations will come in.

SHRI B. N. DATAR: That is what I was going to say and I am glad that you have said that. If, for instance, it is to be referred to the Houses of Parliament—Houses of Parliament mean members of both the Houses—on what basis will they decide? That is a question which has to be taken into account. That is the reason why, as I stated this morning, so far as Parliament is concerned, we are accountable to Parliament for every act of commission and omission and the Parliament's privilege is to supervise every act of ours but with due deference I must say that you will have to leave the executive act to ourselves. You can call us to account whenever we go wrong, whenever, according to you, we misbehave but in the absence of any evidence of that, all these acts will have to be left to the Government as it is constituted for the time being. That is the reason why I pointed out this morning that if the Council of Ministers has to be responsible to the House of the People collectively, then you cannot take away certain acts to yourselves or even give them to the President. That is taking away, as I stated, from the totality of the acts which constitute Government activities. As I was pointing out to you, the President has the right to make these appointments but he has also to follow a certain procedure, a certain salutary procedure of consultation. That we have done. And if we have done it properly as I have endeavoured to point out that we have done so, then there ought to be no grouse at all. Therefore, under these circumstances, it would not be proper to take away these powers or to proceed on what can be called a sense of mistrust so far as either the Central Council of Ministers is concerned or so far as the Council of Ministers at the State level is concerned.

Now, you can look at it from another point of view. Either the Council of Ministers at the Centre or the

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Council of Ministers in the States are responsible for carrying on the Administration. It is they who place the whole budget before the Parliament or before the State legislatures and therefore they are entitled to claim that if the budget that they had presented is to be implemented after the Parliament or the legislatures have set their seal of approval, then nothing should be done by way of taking away whatever they are called upon to do under the provisions of the Constitution. If that is so, as an hon. Member rightly pointed out, you cannot take away the power of making appointments. All that is necessary to be seen is that the appointments are made properly in accordance with the provisions of the Constitution. The question therefore is whether during the last twelve years we have done anything which goes counter to the spirit of the constitutional provisions. If not, then it would not be proper . . .

SHRI BHUPESH GUPTA: How do we know?

SHRI B. N. DATAR: . . . to introduce some provisions on the basis, as I have said, of mistrust of the Council of Ministers either at the Centre or in the States. So far as the Ministers are concerned, they are, as I have stated, accountable to Parliament here and accountable to the local Legislatures in the States. Under these circumstances, if a Minister misbehaves or a Council of Ministers misbehave, or if they do not act properly, then the sovereign remedy is there of throwing out the particular Council of Ministers. In the absence of that this is what has been provided for in the Constitution. Now, my hon. friend, if I may say so in all humility, wants to go at a tangent. He wants to take the views of the High Court Judges like those of the Chief Justice of India and he contemplates a difference even there. And then he wants that the difference or conflict between certain authorities should be resolved by a Committee of Parliament or the Legislature concerned. That is not provided for in the Constitution and this is a function which should not be thrown on Parliament or the Legislature. This is exactly what he wants to be done:—

> "Provided that the opinion of the Council of Ministers of the State concerned shall not be . . .

The hon. Member's, what can be called, mistrust against the Ministers is complete. He says:—

> " . . . directly or indirectly sought."

Why should it not be sought? They are the persons who place the Budget before the Legislatures. They are the persons who have to implement the Budget or the persons who have to carry out the policies of Parliament or the local Legislatures. And why should there be this mistrust?

SHRI BHUPESH GUPTA: Even so we have got the Public Service Commissions.

SHRI B. N. DATAR: If you have got any mistrust, it is open to you to throw them out. In the absence of that power you cannot go on merely putting it in the Constitution with such an eternal sense of mistrust, so far as the elected representatives of the people are concerned. That is entirely against the constitutional provisions. This is what he wants:—

> "Provided that the opinion of the Council of Ministers of the State concerned shall not be directly or indirectly sought or otherwise entertained, and that in the event of any conflict of opinion between the President and the Chief Justice of India or the Chief Justice of a High Court, all names under consideration shall be referred to the Legislative Assembly of the State concerned for opinion before arriving at a final decision."

As I have pointed out, here also if Members of the Legislative Assembly of the State concerned come in and if they have to decide, then, similar results are bound to follow as the one which the hon. Member wants us to avoid. As I have stated, the final decision has to be that of the President. Under the Constitution it is the privilege of the President to make appointments to the Bench of the Supreme Court or to the Benches of the High Courts and that power has to be exercised in the manner pointed out in the two provisions of the Constitution. Under these circumstances, it would not be proper to proceed with what you call a constitutional mistrust of the Council of Ministers and then bring in Parliament or the Legislature in an indirect manner. That is not the function of Parliament or the Legislature. They have got other more important work to do and, as I pointed out, the powers of legislation and the powers of supervision are complete so far as Parliament and the State Legislatures are concerned. And, therefore, within the ambit of their power and supervision, it is open to Parliament or the Legislatures to criticise the Government, to call the Government to account and I am quite confident that if there is any wrong done, it will certainly be remedied. I have endeavoured to point out till now that so far as appointments to the High Courts or the Supreme Court are concerned, they are made not only in accordance with the provisions of the Constitution, but also in accordance with the spirit of the Constitution and all these appointments have been such that no exception can be taken thereto. Under these circumstances, I would deprecate the raising of such questions on insufficient material off and on, especially when the whole question was considered and the Government's position fully elucidated on the floor of this House and the other. When the Report of the Law Commission was discussed, it was pointed out how they proceeded on certain misapprehensions of the position on which they had relied. Under these circumstances, I would submit that what the hon. mover desires to be done in the case of either appointments to the Supreme Court Bench or to the High Court Bench, is entirely misconceived.

Then, the last point is regarding the pay of the President and the Governors. So far as the present position is concerned, under the Constitution the President is entitled to Rs. 10,000/- as pay. Now, the President's pay is subject to income-tax. Once upon a time, when this question was considered, the last Governor-General of India wanted a pay which was free from income-tax. That was calculated and the pay was given. Ultimately the question was considered by the Constituent Assembly. They stated that so far as the laws regarding taxes were concerned, all the persons in the land, whatever may be the dignity of the office that they hold, ought to be subject to the tax laws, income-tax, super-tax or whatever it was. The whole question was considered and then the Constituent Assembly fixed the pay of the President at Rs. 10,000/- per mensem and the pay of the Governor at Rs. 5,500/- per mensem. Now, so far as these two posts are concerned, my hon. friend desires to reduce the pay of the President of India to Rs. 2,500/- and the pay of the Governor to Rs. 750/-.

SHRI BHUPESH GUPTA: You may make it more, if you like.

SHRI B. N. DATAR: Let not the Governor depend upon the charity of my hon. friend. Now, Rs. 750/- is the pay.

SHRI BHUPESH GUPTA: He seems to be shocked at the figure of Rs. 750/-. All right, you may make it Rs. 1,500/-.

SHRI B. N. DATAR: The amount of Rs. 750/- is the pay which our Section Officers get. Now, my hon. friend possibly wants to reduce it to a position of absurdity. Now, so far as this is concerned, in the States as also at the Centre, they are the highest

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dignitaries. They have to carry out certain functions. And that is the reason why this question was fully considered at the time by the Constituent Assembly. After considering all the circumstances and especially the the point that I made, namely, the pay of all the dignitaries ought to be subject to taxation, the pay of Rs. 10,000/- in the case of the President and of Rs. 5,500/- in the case of the Governor is subject to the payment of income-tax, super-tax, surtax, whatever it is. That means, the taxation laws apply in their cases. So, it is not the case that they get exactly Rs. 10,000/- or Rs. 5,500/- each month as the case may be. As a matter of fact, may I point out that the retired President of India had, by a voluntary act of self-renunciation, been taking only a little of this? So far as the present President is concerned, may I point out that he has already cut down 75 per cent of his pay? He is actually taking only 25 per cent of his pay. Seventy-five per cent of it has been cut down by him, by what can be called the doctrine of self-surrender. This is what the President has done. Now, so far as the Governors are concerned, all the Governors have accepted a cut of ten per cent in their pay. In particular, the present Governor of Orissa has gone still further and I may say it to his credit that it is not only a ten per cent cut of his whole pay, but he is not taking his pension at all. He is entitled to a pension of Rs. 790/- per mensem. That also he is not taking, the Governor of Orissa. In addition to this he is surrendering during the present emergency Rs. 1000 per month. Under these circumstances I would submit that the hon. Member's provision in this respect for reducing the pay from Rs. 10,000 to Rs. 2,500 and from Rs. 5,500 to Rs. 750 borders on what can be called the principle of absurdity. So far as the President is concerned, the President is the highest dignitary of the land. He is entitled naturally to a number of benefits, and he ought to remain in a position of normal comforts. If, for example, his pay has to be reduced in the manner that the hon'ble Member wants, as we know, 75 per cent of his pay he has forgone by his own act of self-surrender. That is the way in which the question has to be approached and not in the way of legal compulsion in which my friend wants it to be done.

So far as the Governors' pay is concerned, you are aware, Madam, that Governors have certain duties to perform. In certain cases when emergent conditions arise, they have to take over the administration also as the Governor of one of the States had to do. Under these circumstances, to reduce their pay to Rs. 750 a month is, with due deference to my friend, the height of absurdity. You cannot go further down so far as such an approach is concerned. I deprecate this approach of the hon. Member. So far as this question is concerned, the President and the Governors are carrying on very important functions. As I have stated, within the constitutional set-up they have to carry on their functions. They are doing the work in so good a manner and a number of them are doing also with the highest measure of self-sacrifice. Under these circumstances I am extremely sorry that, astounding as my hon. friend's other proposals are, he has reached the height of absurdity so far as the pay of the Governor is concerned.

SHRI BHUPESH GUPTA: May I ask you a question? You were good enough to tell us what we know, namely, that the President has voluntarily made a cut of 75 per cent bringing it down to an actual payment of Rs. 2,500. We all appreciate it. Why should the Governors in that case not made a voluntary cut of at least 50 per cent and bring it down from Rs. 5,500 to Rs. 2,750? Why should it not be possible? Why is it in that case only 10 per cent?

SHRI B. N. DATAR: It is because there is a difference between my hon.

friend's approach and that of ours. Our approach is one of what we can call voluntary surrender so far as such persons are concerned. The hon. Member's approach is one of constitutional compulsion which we are not prepared to accept.

SHRI BHUPESH GUPTA: The position remains therefore as it is today that the President of India in fact, not in law but in fact, gets much less than what the Governor of a State gets in point of fact after deducting 10 per cent. Now that is also something which should cause a little worry.

THE DEPUTY CHAIRMAN: It is a voluntary surrender.

SHRI B. N. DATAR: I have dealt with all these points.

SHRI R. S. KHANDEKAR (Madhya Pradesh): I want to ask the Minister one question. The hon. Minister said that all appointments to the Supreme Court and to the High Courts are made with the recommendation of the Chief Justice of India. I want to know what is the agency for the Chief Justice of India to know regarding each and every appointment about which he makes recommendations, or has he to depend on the State Government's recommendations or the Chief Justice's recommendations? I want to know whether there is any separate agency for the Chief Justice to know for each and every appointment or he has to depend on the recommendations of the State Government. If that is so, then it is only a post office, and it loses all its value.

SHRI B. N. DATAR: The general line that we follow is that when an appointment is to be made to the Bench of a High Court, the initiative lies with the Chief Justice of the State High Court. Then his recommendations come to the State Government. They consider them and if they agree, well and good. In any case even if they differ, the correspondence between the State Government and the Chief Justice of the State High Court is forwarded to us here. Then we forward all the material that we have to the Chief Justice of India. After we receive his recommendation, the Government takes further action and the President passes final orders. I have finished, Madam.

SHRI BHUPESH GUPTA: Madam Deputy Chairman, I think the purpose for which I brought forward this Bill in March last has been at least partly fulfilled in the sense that there has been fairly exhaustive discussion on the various propositions of this Bill. I had no illusion when I sponsored this measure that it was a highly controversial one and that hon. Members would discuss it from various angles and from different standpoints in regard to each of these propositions. Therefore, I have no complaint against any hon. Member who has spoken on the subject even when he has very strongly disagreed with me, because I want such matters to be discussed on the floor of the House in Parliament from time to time, for such public debate helps the country to consider the various aspects of the problems, constitutional and political, facing us. I think that way we can help the people and the people also by reflecting on these matters can help us in shaping our point of view by reflecting the popular mind. Unfortunately we do not have much opportunities of discussing such matters except by sponsoring Private Members' Resolutions and Private Members' Bills, and when it comes to the question of the Constitution, we naturally have to bring forward a Constitution (Amendment) Bill. It was in this spirit that I launched on this subject, and I am very grateful to hon. Members in the House especially those who have disagreed with me and spoken sharply for participating in this debate because I wanted the matter to be debated and discussed in a very sharp manner. We have just now Mr. Pathak here, an eminent advocate of the Supreme Court,

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who brought his erudition and learning to bear on this subject and tried to make out as if I had made out no case. Naturally he has his own line of reasoning and arguments, and again I am sure he went from this House with the complete satisfaction that he had vanquished me and had completely quashed my case.

AN HON. MEMBER: You will not admit it.

SHRI BHUPESH GUPTA: He is entitled to have the satisfaction for the simple reason that he spoke from his point of view pretty ably and gave his arguments; but in doing so Mr. Pathak forgot for a while, it seems, that it was not so much a Supreme Court in which he was arguing but was arguing before the Members of Parliament, in a House of Parliament, where legal casuistry should be as little as possible and bold enunciation of policies and principles should be as much as possible. I think that despite all his acumen and ability, he could not always keep a proper balance between what we call logic-chopping in the law courts and bold thinking and argumentation on the floor of Parliament. Yet I think that one should consider his points of view. But if I consider his points of view, I am driven to the conclusion in spite of myself, in spite of my own regard for him, that if this line of reasoning is so readily stressed, then one might some day arrive at a stage when what we precisely provide today, because of a certain lacuna in our Constitution, might work in reality to the detriment of the entire nation. That is my fear. I hope my fear will not come true. But then when we deal with law and the Constitution, we want to safeguard before it is too late, in fact, well ahead of time we seek to create safeguards.

Very many other hon. Members spoke on this subject and some hon. Members were good enough to say that my Bill was good in parts and bad in parts like the mixed economy of the Congress, part of which is in the public sector which is good and part of which is in the private sector which is not so good. I can understand that also because, as I said, it is a controversial proposition that I brought up and in this situation I would not have brought it up but for the fact that this matter has been pending since the beginning of this year.

The first amendment is about article 74 of the Constitution which simply seeks to make the advice of the Council of Ministers or the Prime Minister binding on the President or make it mandatory. Many eminent speakers in this House have tried to approach this problem and explain their position from somewhat contradictory angles. For example, there was a point expressed by some hon. Members as to why I should have this amendment and that it is taken for granted that the advice which is given by the Prime Minister to the President is binding and the President shall, in point of fact, be bound by his advice. They also made out the legal arguments for it. I think that more or less Mr. Pathak belonged to that school of thought which could understand and interpret the existing article 74 of the Constitution as something which is mandatory. I also would like to interpret it in this manner. In fact, if I were to be asked today, "How would you look upon this article? Would it be questioned in a court of law or elsewhere?", I would certainly say, "To my judgement, article 74 makes it obligatory on the part of the President to accept the advice of the Prime Minister or the Council of Ministers." But then the trouble arose—and this trouble will still arise in future—when such dignitaries as the Presidents themselves began to question as to what the legal position was. The September, 1960 speech at the Law Institute of the former President was a pointer because he himself raised this question. That is why we took up

this matter to be discussed in Parliament to thrash it out, to see where we stood. In fact, he advised the lawyers to go into this question, discuss it and examine this proposition and come to their conclusion. When the highest in the land, the President, who is supposed to be the keeper of the Constitution and the protector of the Constitution does not have a very clear and definite idea as to what article 74 means, is it not proper for us, in situations such as this, to be seized of this matter afresh and discuss it in the House in order to clarify the position and set the proposition beyond the pale of controversy? Therefore, the controversy did arise. Mr. Bhargava in his speech wanted to say as to who raised this point. Well, not only the former President raised it at that time but many others—jurists, lawyers and politicians—also raised it. The moment the President made that suggestion at the Law Institute, you know how quick enough was Mr. Rajagopalachari to jump at the idea and then more or less support the view that the President was not bound by the advice of the Prime Minister. Here again, the person involved was the last Governor General of India who just by fluke missed to become the first President of India. This is the position.

The controversy resounded in the High Court Bars, in other places, in newspaper columns. Articles were written, editorials were written and this was also debated in law journals and things like them as it ought to be. Obviously, a vigilant Parliament could not sleep over this matter and ignore the whole episode as it developed following the speech made by the President of India at that time at the Law Institute. Therefore, Mr. Bhargava will be doing less than justice to himself and to his colleagues if he were not to take into account the public controversy which had already arisen over this matter before I gave notice of this Bill.

Now, if you examine the three days' debate that had taken place in this House, you will find that here again, we are still divided, that we are not at one mind. Mr. B. K. P. Sinha and some other friends here—Mr. Santhanam also who was a Member of the Constituent Assembly—took up the position that there might be circumstances in which the President did not accept the advice of the Prime Minister or the Council of Ministers. It is quite clear that Mr. Santhanam reiterated what he had said more or less in the Constituent Assembly, and when I asked by way of interruption as to what exactly they meant, they said clearly, "Yes, we envisage a situation when the President need not be bound by the advice of the Council of Ministers," whereas certain other hon. Members of this House maintained that the President was always, in all circumstances, bound by the advice of the Council of Ministers. Here, we are less than 250 people, knowledgeable, many big and learned men. But we are divided, we are not at one mind. Therefore, don't belittle the controversy that is there. That is not something which exists outside, that is also here in this House. Now, what will the people think of us or of the law or of the Constitution when on the floor of Parliament it is understood and interpreted in different ways as regards this particular article 74?

Therefore, Madam Deputy Chairman, it would not be right to take things for granted, or to take a facile view of this matter as if the whole issue is beyond all controversy and does not leave room for a diverse or even contradictory interpretation. We had a demonstration of this contradictory interpretation in this every House in the course of the debate. My proposition therefore is simple—make it explicit. Those who think as I do, that the President should be and is bound, it is their task to join hands to make it absolutely explicit, to put it down in express terms, clear categorical words, so that it admits of no two interpretations. This is all that I say. We can make a united front over this matter if hon. Members opposite think that this is what should be, and since

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some other hon. Members do not share this view but would like it to be something vague and ambiguous and open to rejection of such advice by the President when it comes from the Prime Minister, well in such a situation I think we should set the whole thing beyond the reach of controversy. Either say this is the interpretation, that he need not necessarily be guided by the advice, or he is bound by the advice, one of the two. If the latter position is the correct interpretation, then it stands to reason that we put it down in this way. This is nothing new. In other constitutions we find this kind of provisions. It is not always left to conventions, and conventions are easily breakable; conventions can be easily twisted, and conventions very often create confusion unless the political situation is stable and steady. This is what we have seen also. Today hon. Members have mentioned—and rightly so—that we have a Prime Minister of his stature, and two Presidents, the one that we had before and the one we are having now, men of great stature. I agree. Difficulties may not arise today. But what is the guarantee that difficulty may not arise tomorrow also, or the day after? When difficulties arise over such a matter, you cannot expect a situation when you can easily amend the Constitution. Suppose we are in the midst of a situation when the President has decided to do such a thing, obviously there will be certain changes in the political life of the country, and such changes may be reflected inside the Parliament as well, when you may find it extremely difficult to amend the Constitution and just on the spot bind the President to the position that you would like him to take. It may be difficult. Therefore it is better to make the safeguards in time before contingencies and eventualities overtake us. This is how I view this matter. Therefore my argument in this context is borne out by the very fact that we find ourselves here rather divided as to how this particular article 74 should be interpreted— let alone the division outside. It is necessary for Parliament to interpret it in a manner in which many of us, the majority of us, like it to be interpreted, namely that the advice of the Prime Minister is obligatory for the President to accept. And that can be done by a simple amendment, as I have suggested.

Here, Madam Deputy Chairman, Mr. Datar brought in so many other things. In fact he took us through the entire process of how the mechanism works. Collective advice he referred to. Who says that the Ministry should not function as a collective body? Who says that the decisions of the Council of Ministers should not be collective? We are for it. Only we wish it were a little more collective in point of fact as far as the Government of India is concerned. The trouble, as far as the Government of India is concerned, is that, when they have a very large collection of Ministers, there is very little of collective functioning. The trouble with our constitutional practice is this that the Ministers function individually tied up with the big officers, Secretaries and other officials, and the collective body of Ministers does not function as it ought to. For example, why should there not be a regular meeting of the entire Council of Ministers, where the initiative is not always with the Prime Minister but other Ministers too, where a mutual exchange of opinions takes place, where notes are compared amongst them and then where, after a thorough discussion, a decision is arrived at? The Prime Minister must naturally have the initiative, generally speaking, but we would like also the others to take it. Therefore I am not opposed to such a thing. But after the collective decision is taken in this manner under our Constitution, it is the Prime Minister in whose name and under whose authority it goes to the President for his acceptance and consideration. Now should we leave the President free to deal with it as he likes? No. I think we should not leave it. After the collective decision has been taken in this

manner by the Council of Ministers, well, the President should be satisfied that the wisdom of the Cabinet has been applied in this matter, and then he should function truly as a constitutional head, that is to say, he gives his sanction or puts his seal of approval to do such a thing, as a matter of routine. This is what I want. This is what is called supremacy of Parliament; nothing less than that would be regarded as supremacy of Parliament. Supremacy of Parliament is not divisible. Supremacy of Parliament is not something which can be put under reservations. Not at all; then it would not be supreme; it would be something less than supreme. Supremacy of Parliament presupposes that there the matter ends, and there is no other vetoeing or overriding authority as far as this is concerned. Well, certain laws are passed and if they are rejected, on interpretation, on legal grounds, by the Supreme Court as *ultra vires* the Constitution, then the Parliament can again pass another amending Bill, amending the law in order to set aside the position taken by the Supreme Court. Such is the authority of Parliament, and this authority should be absolutely unchallenged as far as the advice of the Council of Ministers to the President is concerned. I would not like the supremacy of Parliament to be made a negotiable commodity under any circumstance, or a thing which can be questioned. This goes against the very concept of supremacy of Parliament. It is said that the conventions are there. Yes, the conventions are there. We have created conventions also during the last twelve or thirteen years of our Constitution. Well, it is good. But then we have a written Constitution. England does not have a written Constitution. Some constitutional practices and laws are undoubtedly incorporated in the Acts of Parliament, but England does not have a written Constitution like the one which we have. Once you have a written Constitution, the logic follows that important matters are all put down categorically in writing.

SHRI AKBAR ALI KHAN: In written constitutions also the words, "aid and advise" have been used, meaning thereby that it is compulsory.

SHRI BHUPESH GUPTA: Yes, "aid and advise", "will aid and advise". Aid what? Aid is something which I cannot define here, but Mr. Sapru in this connection said—well, he thinks that the President is bound. Then he wants to console himself with the interpretation that the words, "aid and advise", have been put in as a matter of courtesy, and Mr. Akbar Ali Khan nods his head in approval. But there are other colleagues in the profession in this very House who would not like to nod their heads in the same way as the hon. Mr. Akbar Ali Khan is doing, and they say that the President has powers, under certain circumstances, to reject that advice also. Therefore why leave it at that? Make it absolutely clear. I am sure Mr. Akbar Ali Khan is of the view that it should be compulsory, that it should be binding. If that is so, then let us put it down in this form.

Mr. Datar brought in, needlessly, the question of the Council functioning, and so on. I think all these things were not very relevant in this connection, because my amendment does not relate to them. You cannot stress the interpretation of those articles to dispose of the controversy that remains on article 74. You can elaborate those articles; you may say that these processes are such that it means binding and so on. But then article 74 does not say so. It is possible for one to interpret article 74 as a self-contained article, quite separately, without taking into account the other articles as well. It is possible. They are related but they are separable also. That is why I say that these articles can come as a persuasive factor when you interpret article 74. But these articles cannot be brought in under this section of the Constitution, cannot be brought in to import into this article 74 the interpretation as readily as I would like it to

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be brought in—that is, the President is absolutely bound. It does not follow that way. I wish it was so.

4 P.M.

Now, Mr. Sapru, who is not here, brought in the question of Gladstone, of Hindenburg and Labouchere He is very fond of, as you know, the English constitutional history. In fact, he lives with it. Personally speaking, he is a very learned man and a thoughtful man, as I always consider him to be. But that Gladstone affair and the Hindenburg affair do not come in at all. What happens there? Gladstone wanted to give some post to a person who was a Member of Parliament. That person had spoken against the Queen's Civil List. Queen Victoria did not like it and, therefore, wanted the name to be dropped from the list of appointments. When Gladstone faced Parliament, he said he was responsible for it. We can discuss this as students of law and history. But it hardly meets the needs of the present situation.

As far as the Hindenburg thing is concerned, well, I think the experience of Germany and the Weimer Constitution should open our eyes to the imperative need for making things very clear an explicit when it involves questions of vital constitutional importance. What happened under Hinderburg? Well, Dr. Sapru seems to think that there was no public opinion in Germany at that time, and that was why it was possible for one Hindenburg to invite Hitler and make him the Chancellor of the Reichstag. Well, it is not so. Public opinion was very, very vigilant. Social Democrats and the Communists got tens of millions of votes. I cannot say now the exact number; maybe 20 million votes together they got, and it seemed that the ruling classes, the propertied classes, and their parties were threatened at the time. Hitler had already staged his Beer Hall uprising in 1923. The Nazi Party was trying to capture power by foul means. Now, these demonstrations took place in the streets and so on. It was found out that normally the constitutional power would pass into the hands of the parties of the working class, namely, the German Social Democratic Party and the Communist Party. If they had united together at that time, probably we would not have had the ghastly tragedy of Fascism or Nazism in Germany. But when it seemed that the working class force was so strong as an electorate, as a political force, and so many members had been returned to the Reichstag, only then Hindenburg, who represented the militarists in Germany at that time, who was connected with the Kaiser and Krupp companies and so on and the Nazi Party, because he had received Nazi leaders earlier, seized upon a flaw in the Constitution and invited Adolf Hitler and gave the power to him on a silver platter disregarding all that was there in the Constitution. Therefore, it is not as if, as Dr. Sapru suggested, the German people were not vigilant. They were exceedingly vigilant, politically active, and they wanted the power to be in the hands of the working people in Germany. Because there was division on the one hand among the working class parties, namely, the Communist Party and the German Social Democratic Republic he was in a position at that time to do this thing, give power to Adolf Hitler. What happened and what followed we know. Therefore, the analogy that Dr. Sapru gave, well, should make us wake up to the need for an amendment of the kind that I have suggested.

And, Madam, it is interesting that those who are, broadly, progressive in the country, whether they belong to the Opposition or belong to the Congress Party, they take a common position. Therefore, the position is, irrespective of party affiliation, that the President is bound by the advice of the Council of Ministers. Those who are not progressive, those who belong to the parties of right reaction, as we call it, they are agreed on a point of view and it is this that the President

should not be bound by the advice of the Council of Ministers. The line is drawn and today it is a political line, and how to settle this problem is for the hon. Members to decide. But, please for Heaven's sake, do not leave it till the day when you will see some President, maybe in the distant future, utilising this lacuna in our Constitution and flouting the wishes of the Council of Ministers, their decision, and imposing ultimately upon the country and Parliament a Government which is of his liking or a Government which is nothing but an enlarged body of the President's men. It may happen. It has happened in other countries. It happened in Pakistan not very long ago. Let us not imagine that such a thing may not happen in our country at all under any circumstances. Therefore, I think the progressive and democratically-minded people, who take a liberal and progressive view in this matter, should consider this proposition and come to their conclusions for an amendment of this type. If not today, tomorrow it will be necessary. Maybe, we shall again be creating political conventions and, yes, we shall be creating such conventions where the President is bound.

Then, our friend, the Home Minister, said—I do not know if he is a Constitutional fortune-teller or an astrologer—he made bold to say that such an eventuality could never arise when a conflict would be there between the Council of Ministers and the President. Is it theoretically established in the Constitution? Is it practically impossible? Now, if he says that it is theoretically established in the Constitution, I can understand. And if he also says that it is practically impossible, then he has to give more convincing reasons than he has given. In fact, we have seen that such contingencies had arisen in other countries when a conflict took place between the advice of the Council of Ministers and the line of action on he part of the President.

Now, Madam, many questions had been brought in. Yes, that is a valid question, I agree, that if for example, a President does not accept the advice of he Council of Ministers, the Council of Ministers will see to it that Parliament does not sanction any Budget. Well, I can well understand that argument. But what happens in between? Does it not lead to a Constitutional crisis? And why, when we have a written Constitution, must we leave it to that kind of remedy instead of having a simple amendment? If the President wants to suffocate Constitutional processes and Parliamentary supremacy, Parliament can undoubtedly hit back by exercising its financial power against the President over such matters. But what happens? It means a Constitutional crisis and the Constitutional crisis may get involved in all kinds of political development and a crisis outside when things may become very difficult. Why must we bargain for a situation of this kind? Why must we not ensure against a situation of this kind where we may have to face such a crisis? Therefore, that argument does not seem to be a very solid argument. I realise that this argument has been taken from the 'British Constitutional Practices' because the Parliament is very conscious of its monetary powers but we have a written Constitution and our powers are not exactly the same as the powers as defined in the 'British Constitutional Practices'. Therefore, I think we should be very clear and explicit in such matters. Therefore I do not agree with the argument of the hon. Minister when he overemphasised the aspect of the financial powers in the hands of the Parliament and of the Government. I think hon. Members would kindly consider this thing. We are living in times, let there be no mistake about it, when parliamentary supremacy is frowned upon by influential and

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powerful sections of the country's political life. Have not we seen in these days even voices being raised that Parliament should not be there, Assemblies should not be there, that these are wasteful institutions and so on, that the difficult situation in the country cannot be met with such institutions and so on? Have not we heard the Prime Minister defending the position of the Parliament and saying that we must display to the world that parliamentary institutions can stand any test or any challenge? Why all this has become necessary if there was no direct or indirect attack on the very concepts of our parliamentary institutions and their supremacy? Why did it become necessary for the Prime Minister to come and defend it in this country? Therefore let us not be guided by certain illusions, specially because, have not we seen parliamentary institutions, because of weakness in the political institutions and because of weakness in the Constitution, had tumbled down in a number of countries beneath the blows of the counter-revolutionists and rightist reaction? If that is so in other countries, why should we think that we are absolutely immune from such dangers? I think it will not be a wise way of looking at things.

I come to the other point about the ordinance-making powers to which objection has been taken. What did I say? I said that the President should not have the power of ordinance-making with regard to strikes. I never said, make the right to strike a fundamental right. That is not the amendment anyhow today. I have said that the President cannot declare a strike illegal. Parliament can declare a strike illegal. All I have said is that the President should not have the power to issue an ordinance to declare the strike illegal. Please do not bring in the question of fundamental rights here. The right to strike is a sacred right of the working class. It may or may not be exercised prudently, that is a different matter. I am also conscious that this right is not included in the Chapter relating to Fundamental Rights in our Constitution. Yet the industrial laws and the labour laws of the country recognise that right, although it is not recognised as a fundamental right, justiciable in the Supreme Court of law, whenever it is encroached upon. If I take the judgment of the Bombay High Court, I am prepared to concede that point for argument's sake for the present but here we are not concerned with the bigger aspects of the proposition All I am suggesting is that the President, that is, the Government, should not have the power of ordinance-making in order to declare a strike illegal. Should a situation arise—as far as the emergency is concerned, all powers go—but we are not dealing with the emergent situation of today. We are dealing with the normal situation when all the provisions of the Constitution are in operation. If in such a situation a contingency arises that a strike has to be dealt with and declared illegal, the best course would be for the Parliament to be summoned to discuss this matter and then decide the right course of action. Alternately, it will be for the Government to use its machinery of the Labour Ministry and other machinery available to it in order to settle the strike in a peaceful, amicable manner and avert the strike taking place. Suppose it fails in doing so and it feels that a strike has got to be declared illegal or prevented by putting a ban on it, the Parliament should be called. I say this because the right to strike even if it is not incorporated in our Fundamental Rights Chapter, is regarded today, in modern times, as a fundamental right of the working people in point of fact and it has become a part of our social ethics today in modern civilisation. How to exercise this right is a different matter. Coming to the right to strike, the Government should not have the peremptory power, arbitrary power,

of declaring any strike illegal without consulting the Parliament, without taking into account the views of the country and the Parliament coming into the picture; it means that the Parliament is given an opportunity to tackle the strike situation before the strike takes place not only by a ban but by other means as well, by exploring possibilities of settlement. It may be that a Government which is arbitrary in its outlook or oppressive in its character would like to see every single strike struck down, suppressed, without reference either to the working class or the Parliament. Why should the Parliament abrogate this authority because the ordinance-making power of the President is really the arbitrary power of the Government to act at its will. This is all that I want to take away from the Government. It has nothing to do with the Fundamental Rights and so on. Let them remain as they are. I only want the Government not to behave in this maner in normal situations. We have seen how the Government behaved when the Central Government Employees' strike took place on a very minor matter. When the Dowry Bill question came, it summoned a special Session of both the Houses of Parliament for a Joint Session but when the matter was pending as far as the Government employees were concerned for months and months, the Government refused to come to an amicable settlement with the legitimate demands of the working people or pay any heed to their sound arguments and then suddenly the President's power was utilised to ban the strike, arrest 20,000 Government employees all over the country and create a situation as if a civil war was on when in fact there was nothing of that sort. We do not like a comparable situation to be created in our country. This is all that we want. We want the Parliament and the Government to consider this in a different way, with a better outlook over such matters. Therefore, I cannot agree with Mr. Datar's interruption in regard to this matter. *(Interruptions)*

SHRI JOSEPH MATHEN (Kerala): You are speaking about fundamental rights of the working classes to strike. Is that fundamental right sanctioned in the Communist countries?

SHRI BHUPESH GUPTA: Well, for whatever reasons, we are not discussing this in a Communist Parliament. We are discussing this matter in the Parliament of the Indian people and we need not discuss Timbuktu or any Communist country in this context.

(Interruptions)

PROF. M. B. LAL: Is the hon. Member equating Communist countries with Timbuktu?

(Interruptions)

SHRI JOSEPH MATHEN: Do you mean to say that they do not enjoy those fundamental rights in those countries?

SHRI BHUPESH GUPTA: I do not mean to say anything. We are not dealing with that. We are discussing in the Indian Parliament our domestic affairs. Now the position therefore is, I cannot accept it. Mr. Datar, in his argument, said that what the Parliament can do, the Government of India can do. Well, it is very interesting thing. We know it very well but even so the Parliament does not give you powers to do everything on your own that the Parliament can do. Can the Government amend the Constitution by an ordinance?

No, you cannot. Only Parliament has the power to amend the Constitution and in a particular way. Therefore, do not try to take away the power or presume to take away powers which do not belong to you as a Government. Government has wide powers, we know. We know that the Government has the backing of the majority in the House when it functions. Even so, in certain matters the Government does not have all the powers of Parliament. I gave one example only. One can think of many examples. You have got legislative powers. We want to restrict this

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power. It would be ultimately the legislative power and when you bring forward a Constitution (Amendment) Bill, it will be legislation. Therefore, do not mix up legislative power with that. Legislative power, in so far as it relates to amending the Constitution, is not within your power regardless of Parliament. You cannot by an Ordinance amend the Constitution. I think Mr. Datar forgot that particular thing perhaps, because he is so much influenced by the way of thinking in the Home Ministry.

Now, Mr. Datar said that the Government can never allow it. I thought he was talking like an emperor rather than a Minister of the Government when he said Government could never allow the government employees to go on strike. How does the question of your liking or not liking it come in here? The government employees like other employees have the right to strike. It may not be a Fundamental Right, but government employees under the industrial law, have the right to give notice and so on and if they go through the process, they have the right to give notice of a strike and even go on strike, however much you may dislike it or in whatever manner you may deal with it. We are concerned with that aspect of the matter now. Government may not allow it, but that is a different matter. It depends on which Government it is and where you are. Suppose you do not control a particular State Government and suppose you want to overthrow that State Government. Then you may start your direct action as you did in Kerala, to bring about and to encourage a strike by the government employees. All the same the Government here may be against strikes in other places.

SHRI JOSEPH MATHEN: But the people of Kerala endorsed it in the general elections.

SHRI BHUPESH GUPTA: The hon. interrupter is magnificent because of his irrelevance. I will deal with that point. The government here would not like a strike, but the same government may like a strike in another place because some other party is in control of that State Government and the party which controls the Central Government may not like that State Government to continue. I think the hon. Member comes from Kerala and he may be more familiar with their direct action.

SHRI JOSEPH MATHEN: Yes, I am from Kerala and I have explained the s and of the Kerala people.

SHRI BHUPESH GUPTA: You have explained nothing. Instead, you have reminded me more of Kerala.

SHRI JOSEPH MATHEN: That direct action was approved by the people of Kerala in the immediate general elections held there.

SHRI BHUPESH GUPTA: You encouraged strikes including strikes by government employees. Though here you may vote against it, you favoured it there. Let us deal with the theoretical thing now, without any acrimony. You are a Congressman and I am a Communist. That is the point and we understand it. But we are dealing here with a certain theoretical and constitutional position. I say there may be another party in power in a State. There may be such a situation. It is possible for the Government to have in a Federal Republic one set of ideas with regard to its own sphere and yet another set of ideas on a comparable subject, when it relates to another sphere. Therefore, Mr. Datar need not have brought in that question. The position is that the workers have got this right. Though not as a Fundamental Right, they have the right and when they comply with the law of the land and give strike notice, they can go on strike. You may advise them. You may even suppress them. But your law, as it stands at present, recognises this thing as a right—I am not using the words "Fundamental Right". When that is so, I think the President should not be given the power to

issue Ordinances and take away that right unilaterally. That is to say, the Government should not be given the power to arbitrarily set aside this right and kill it straightway, without reference to Parliament or the Legislature.

Somebody asked me the question: Why use the word "workers" here? Well, because they are workers. Mr. Sapru, I think, did not like the word and asked: Why this discrimination among the citizens of India? You know why. Somebody may be a Judge or a former Judge, another is a worker, an employee. This is a fact of life which can hardly be ignored and today in our society workers mean something. Workers are the producers of wealth for the nation, as you know, and so the words working people" and "workers" can be there.

SHRI AKBAR ALI KHAN: We are all workers.

SHRI BHUPESH GUPTA: You are a landlord, not a worker. Shri Akbar Ali Khan, if he had been a worker, would have understood my point better. He has been a landlord and a flourishing one at one time and perhaps not so flourishing now. But then landlords die hard.

I am dealing with these workers and, therefore, I have mentioned them here. If landlords go on strike, I don't know how to deal with them, but that is a different matter. Let us deal with the workers now. It is not a discrimination between citizens and citizens. It is just a question of accepting the facts of society.

Then I come to the next item—the appointment of Judges. There our judge and lawyer friends were not quite sure as to what they were speaking. Shri B. K. P. Sinha is a parliamentarian-*cum*-lawyer, although he spends most of his time in Parliament. He takes it for granted that everything is all right and wrong appointments have taken place because of the Judges, that the Chief Justice made it possible, not the Government. He is more loyal than even the Government. The Government did not say that wrong appointments took place because of wrong decision of the Chief Justice. But Mr. Sinha who is excessive in his support of the Government would out-Herod Herod in such matters, and he went to the length of making such a reflection on the Judges or the Chief Justice of our land when he said that certain abuses had taken place due to the Chief Justice and not due to the Government. Well, I don't know whether Mr. Datar appreciates this remark or he does not appreciate this remark. *But it does no good to us or to the* judiciary.

Now, on this point Mr. Datar was at pains to explain to me so many things. But my suggestion was quite a simple one. I say, please get out of the picture. Leave it to the Judges to appoint their brother Judges. Why must you have so much on your hands? I think the Judges can do it. What was his argument? His argument was that the Government as a whole is responsible and therefore, the Government should be responsible for this matter as well. Well, I say the Government is responsible for so many things, but still you have got your Public Service Commissions which make appointments, or rather make recommendations which are absolutely final, in most cases, for appointments to various important posts. Government does not appoint them, though nominally they do the appointing, the Public Service Commissions make the selection and the Government is not there in the picture. The Constitution places the Public Service Commissions, whether in the States or at the Centre, in an independent position, to apply their mind to the selection uninfluenced by the Government. After that, the Government may go into that question. If this is the case with regard to very many important appointments, why when in the case of the appointment of High Court Judges we cannot leave it to the Chief Justice of India or the Judges themselves to settle their matters? I do not think,

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as far I am concerned, the point has been correctly understood by my hon. friend, the Minister.

He did not take kindly to the recommendations or observations made by the Law Commission. The Law Commission made very devastating observations and I do not know of any revised edition of the Report of the Law Commission in which these devastating observations about Government interference in the appointment of the High Court Judges or the Supreme Court Judges had been deleted. They stand; they remain. It is true Government tried to explain away its position, absolved itself of the responsibility and I am sure the Government would have taken a few dips in the Ganges in order to get rid of the sin but they have not been erased because what is there on record is on record and there is substance behind them. The Law Commission does not merely make observations; they give in the Report the quotations of all the people, their findings and they are very exact, more exact than Mr. Datar has been in the course of his entire speech. Now, how can you disprove the observations of the Law Commission? Mr. Datar called them unfortunate observations. Well, whatever is palatable to you is fortunate and whatever is unpalatable to you seems to be unfortunate. This is not the right way for the Government to deal with its own Law Commission, high bodies like this. Now, there will be certain unpalatable critical observations when this body is going through such matters. It is your task to draw the lesson from that and see where you have gone wrong, to critically review the matter and set things right instead of coming down upon them with sweeping remarks that the observations are unfortunate. Well, I cannot feel that every single remark that has been made is a fact but the fact remains that the Law Commission appointed by the Government and consisting of, among others, the Attorney-General of India, and very many other great jurists of the country, came to this conclusion and they came to this conclusion with a sense of responsibility. After this, is this the way to treat them? You describe whatever does not suit you as unpalatable and you discard it; you had discarded the Communists a long time ago and you want the Law Commission's Report to be discarded now, the moment it does not suit you. That is not right. Now, he gave figures of the number of appointments made. He said that excepting in one case, they had taken the advice of the Chief Justice of India. Now, let me turn this argument against you. Since their view is so infallible, so universally acceptable to you, why not for goodness' sake get out of the picture and leave it to them? Nothing will be lost. If, in your own words, in such a situation in point of fact, you only endorse the advice, if you are satisfied that the advice is rightly given in 99·99 cases, then why not accept my advice and leave it to the Judges? You have very many other things to do. You can handle them. Why go into this? I say that in point of principle this is not right; it is not right that the judiciary should be involved in this matter with the executive or the executive should poke its nose into the affairs of the Judges or the appointment of Judges, and it is no good telling us that everything is pure and white in such matters because we know how the Judges are appointed. I know that on the telephone is discussed the question of appointment of Judges and I know of cases when the prospective appointees to Judgeship meet the Home Ministers and sit in their ante-rooms waiting for an interview expecting that some day in the future this might bear fruit. Now, such a situation has been created in the country. We also know how certain other considerations sometimes come in in the matter of appointment of Judges irrespective of what the other people on the Bench feel. Now, these are questions raised even by the Law Commission. Why should you not clear yourself from that position when you yourself are satisfied from experience that generally the advice is

right. Leave it to them. Madam, this is a vital consideration for us. The independence of the judiciary must begin with the very appointment itself. Judges must know that the political party in control of the Government for the time being would not have any say in the matter of appointment. This assurance should be given to them. The Judges must know that the appointment comes from their fellow Judges or from people who are on the Bench, the Chief Justice. Some hon. Member raised the point that the other aspect of the Judges' character may not be known to the Judges. Which other aspect are you having in mind? The police report? I would like to know. A lawyer has to be judged by his performance in the court of law and if he is a bad man, he can come under the conduct rules of the Bar Councils and so on. The fact that one is a practising lawyer or is a prosperous man does not mean that he is absolutely a pure man. I do not say this but then the Judges and the lawyers are in a position to know exactly what sort of a man he is. For example, when a Chief Justice of a High Court selects a person from the bar for appointment as a Judge, he will always be bearing in his mind the reactions that his appointment will cause among the members of the Bar and the public. This would be a deterrent for him and he would take into account the other aspects of his character. Now, if you think that the secret police report is an important matter, then you can voluntarily send it, even though I am not in favour of it but please do not come into the picture. Canvassing goes on and you know even in the Bar today there is a feeling that one's future on the Bench or one's promotion to the Bench depends on who becomes even within the Congress Party the Judicial Minister or the Home Minister. Why should I leave it to them? Why should it be that someone who is expecting to be appointed as a Judge should look forward to the pleasures of the Home Minister or the Judicial Minister? I have known of cases where the fortunes of such aspirants had varied with the fortunes of certain politicians of the Congress Party. They have fallen and risen with the fall and rise of certain individuals in the Ministry. These are important matters from the point of view of public morality and that is why I say you should not be there but should leave it to the Judges themselves. We should develop an independent system of judiciary in every way, right from the appointment to promotion, transfer, etc. The judiciary should not be interfered with and when you interfere at the very stage of appointment then so many other things go wrong. How does the advice come? It comes from the Chief Minister or the Governor. We know what our Governors are. We like them. They are nice people and when we meet them they are nice and affable but at the same time we know that beside the all-powerful Chief Ministers, they are nothing. Today, our Constitution has made them figureheads and everybody knows the equation of powers between the Chief Ministers and the Governors. Therefore, what the Chief Minister says goes. The consultation with the Governor means acceptance of the advice of the Chief Minister. We want the Governor and the Government to go out of the picture leaving it to the Bench and the Judges themselves to determine. Therefore I think that here I should not be misunderstood.

Exception has been taken to my suggesting that in case of conflict between the Chief Justices the matter should come to Parliament. It was said, how on earth can we in Parliament discuss the Judges? Why should we think that the honourable Judges would open themselves to such discussion in this manner? I think this is not right. There are countries where in the Senate or in the Upper House the appointment of judges is discussed. Here we cannot do so. And when will it come to us? It will come only in the event of a controversy. It is not that every single appointment will be referred to Parliament. Suppose a

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conflict arises and it comes to us and suppose the candidate does not like his person or his work being discussed here, he can go out of the picture. Why should we be afraid of discussing that or why should they be afraid of being discussed? We should discuss such matters with a sense of responsibility and they should look forward to a public discussion when a controversy arises between the Judges and the President who are engaged in making the appointment. I do not think that if you give us the power of discussing the question of appointment of Judges, we would be so irresponsible as to discuss everything about the Judges and bring their name into mud. We shall not do so. On the contrary there will be restraint in such discussions. The hon. Minister said that since the Government is responsible for the appointment, Parliament is also in the picture. I cannot accept that argument. The rules of the House prevent, the Constitution prevents, the conduct of the Judges being discussed. Suppose I think that a particular appointment of a High Court Judge in a State has been wrong, has been motivated by certain other extraneous considerations, I cannot discuss it in Parliament in the ordinary course because I am prevented from discussing this matter for the simple reason that I cannot discuss the conduct of a Judge or otherwise his affairs. I cannot even ask a question. Hon. Members know that when we send in notices of such question to the Ministry, they are not admitted on the ground that the conventions do not allow Judges to be discussed. How then can we discuss the responsibility or otherwise of the Government in the matter of appointment of Judges? The present position is, that whatever may be the fictional idea about our participation in this matter, we have no say whatsoever. The Judges are appointed as the Government likes, maybe on the recommendations of other Judges, and the Parliament has to accept those appointments. It has no other go in the matter, even though Members may feel that a particular appointments needs to be questioned and discussed in Parliament. Therefore it is not right for Mr. Datar to console us by saying that since he is responsible, since they are there, therefore we are in a position to discuss this matter. It is factually untrue; it is constitutionally not permissible and anyway by convention it is disallowed. Therefore we cannot have any say in this matter. I would leave it at that and I think that the suggestion should be be accepted.

Now the Law Commission and other bodies also have suggested that the independence of the judiciary is very very important. If you have to establish the rule of law, then it is necessary that we guarantee the fullest measure of independence to our Judges and the judiciary. And where can we ensure it most unless we ensure it at the highest level of the judiciary in the High Courts and the Supreme Court in the country? Madam Deputy Chairman, I do not want to go into this question. I have the greatest regard for our judiciary. There may be reservation with regard to this or that aspect of the matter but by and large our Judges are good; by and large they are diligent people; by and large they try to function in an independent way but then they function under certain inhibitions and these inhibitions start from the time of their appointment. And you offer all sorts of jobs to them after their retirement. And hon. Member said that this should be given up. Well, it has to be considered. We find that the Judges are appointed to so many jobs and what happens? Objectively it is a temptation. The prospect of an appointment to certain lucrative or prominent position after retirement as a Judge is an objective inducement to please the Government. Whether a particular Judge or Judges are induced by it or not, it is a different matter. There is a temptation here. I may not be tempted but the fact of temptation has to be noted. When this practice is there, when the Judges can look forward to certain other appointments after their retirement,

the objective fact of temptation and inducement is there irrespective of the fact whether any Judge is tempted or induced or not. Why must we keep this element of temptation and inducement as an objective factor at all? We can remove it. Therfore I am in agreement with the suggestion that was made. The Judges should be absolutely pure in such matters. It should never look that the Judges can have any ambition; it should never look that way at all. If it is there, then the party comes in. Party means groups and groups in point of solid facts and crucial facts means *certain individuals in the Government;* not all the Ministers are concerned with the appointment of Judges. They are only one or two. The Chief Ministers of course are there. Therefore, Madam Deputy Chairman, I want these things to go.

And I am surprised that the Home Minister does not have much faith in them. Have the Judges been asked about their opinion in regard to this matter? Have they told the Home Minister that they would like the present arrangements to continue? Have they told him that they are not in a position to make their own selections without the assistance of the Government and appoint Judges on their own? Well, as far as I know, the matter has never been referred to them. The opinion of the Judges of the the High Courts or the Supreme Court has not been made available to the Government despite the fact that in principle we stand for the indepedence of the judiciary and despite also the fact that we gave notice of this Bill almost a year ago. After this the Government could certainly have referred this matter to the Judges of the High Courts and the Supreme Court to find out their reaction and the hon. Minister would have been on a much safer and stronger ground if he had rejected my suggestion for amendment on the basis of what the Judges say. On the contrary what we find is, the lawyers and the Judges feel somewhat inhibited because of the appointments being made by the State and Central Government in point of fact. I hope therefore this point will be understood by the hon. Minister.

Now, about the budget. The hon. Minister said that since they present the Budget therefore they should appoint the Judges. No; I cannot accept it. You may present the budget. The presentation of the budget is an executive and legislative function and you can certainly do it. I am not questioning it but how does it entitle you to also make the appoinment of Judges as a logical corollary? Is it *that you should appoint Judges simply* because you present the budget in the House? There are countries where it is provided that the Government does not make appointments in this manner, where Judges appoint their brother Judges and those Governments do present their budgets to their Parliament in those countries. Therefore do not raise it to the pedestal of a theory or a constitutional principle. You may practise it for the sake of expediency but it would not be right to suggest that this is a matter in which one follow the other. Therefore, this argument seemed to me, if I may say so, to be a little infantile. Certainly it was a very wise argument given by the hon. Minister, but I have not been quite receptive enough, wise enough to understand it and, therefore, it struck me as being somewhat of a logic chopping infantilism in matters of constitutional importance. He says: "Why do you distrust us? We appoint the Judges." Now, if I ask the Judges to appoint their Judges, the hon. Minister says it is a complete distrust of the Council of Ministers. Why do you take the blame? Have I said it? I have very great faith in you. Anyhow, your majority has faith in you. That is why you adorn the Treasury Benches. It is not a question of trust or distrust. It it is question of division of functions. It is a question of separation of the realm of judiciary form the realm of executive and legislature. Here the question of trustfulness or distrustfulness never

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arises. I can have full confidence in you, yet I may not allow you to do certain things. For example, as the dence—not I—one may have confidence in Mr. Datar that once he gets powers under the Defence of India Rules he will arrest almost everybody, but I may not have full confidence in him as a Judge.

AN HON. MEMBER: He is not touching you.

SHRI BHUPESH GUPTA: Therefore, it is a relative matter. One does not preclude confidence in the other case. It is possible that we have the fullest confidence or lack of confidence, but it is an independent proposition as to who shall make the appointment of Judges. I think this argument was given in order to frighten the supporters of the Congress Party, because if Members opposite support me, then, Mr. Datar would seem as if he is understanding them to be expressing no confidence in the Government. Not at all. Mr. Akbar Ali Khan may have the fullest confidence, love and affection for this Government and yet may feel that the appointment of Judges should be left to the Supreme Court Chief Justice or the Chief Justice of the High Court. Therefore, Mr. Datar, with all his goodness in this House, was not very kind to the proposition that I placed here.

Then, he deprecated the raising of such questions. Well, you can deprecate it, but this is nothing new. These questions have been raised by others, by constitutional lawyers, by jurists, by eminent lawyers and these prevail in certain other countries as well. Therefore, why did he deprecate it, simply because I raised it? You may disagree with me. He said that I have suggested this amendment on insufficient material. But what sufficient material has Mr. Datar given to rebut my argument or to rebut my amendment? Nothing else He said: "In 226 cases we have appointed, in all cases, except one, we have taken the advice of the Chief Justice." It only proves my case. Therefore, at least when Mr. Datar rebuts, he should rebut with more cogent logic and more solid facts and evidence than a humble man from this side of the House has given. I think he has not had the time to marshal all his powerful forces in order to demolish my arguments in this particular case.

Now, let me come to the question of salary, the last point. Mr. Datar was shocked. He said it was absurd. He is a very moderate man Therefore he used the word "absurd". Perhaps he could have used other words, because it is possible for a man when he is shocked out of his wits to use such hyperboles and superlatives. It is possible. Therefore, I have no quarrel with him on that score. But here again it is Rs. 10,000 salary for the President and he admitted that the President had made a cut of 75 per cent. of it. He gets Rs. 2,250 or Rs. 2,500. Very good Make it his salary. This is all that I say. Accept what has been proved in practice as reasonable, as decent and as something which meets the requirements of that office and functioning of that office. Why then hark back to the past, to the days of the Viceroys, or when under the shadow of a Viceroy you fixed a salary of Rs. 10,000? Do it. The very fact that the present President is not taking this salary himself —voluntarily, to the great acclamation of the whole country, he has made a cut to the extent of 75 per cent. and is taking only Rs. 2,500—not only should be taken as a tribute to his own patriotism, sacrifice and wisdom, but should also be a lesson for the Government to learn and to incorporate this noble, this great and this sacred practice of the President of the day as a constitutional provision in the law of the country. This is what I want. Why cannot you do it? Now, am I to understand that the mere announcement that the President of our country gets Rs. 10,000 per month is something which is needed to up-

hold his dignity and prestige? I can understand Mr. Jaipuria in this House thinking in those terms. Millions count with him. The power of money is a force of prestige with him. But the Presidents of our Republic are not to be measured in terms of their pay packet. They are to be measured in terms of the position which they occupy, in terms of their personality, in terms of their achievement and distinction, in terms of their character, integrity, wisdom and statesmanship. These are the appurtenances of a President to the world at large. We do not flaunt our pay packets to tell the world how dignified and great are our honourable Presidents. This is an argument which could have been understood in the days of the Moghul empire or perhaps in the days of the British when the Viceroy's stature was judged by the umbrella which was spread over his head or the number of elephants which followed him when he went in a procession. Well, we have outlived those days fortunately. Our President today is a man of the people, sprung from the people, elected by the people—maybe indirectly—carrying out the wishes and the mandates of the people, reflecting the thoughts, expressions and urges of the people. Such a President should not be tied to the measurement of salary. This is all that I say.

Then, I cannot understand why it should not be done and there again he said that all the Governors had made a cut of ten per cent. How much do they get? They get, after making a ten per cent cut, Rs. 4,950 net, almost twice as much as what the President actually gets. The actual pay packet of a Governor is Rs. 4,950 after making a deduction at the source of ten per cent. and the pay packet of the President, who sits in Rashtrapati Bhavan, after making a deduction of 75 per cent., is Rs. 2,500. Here is an anomaly. Therefore, I ask, why should this anomaly remain? He said our Section Officers are getting Rs 750. Well, the Prime Minister of the country gets Rs. 2,250, I think, and your senior IAS Officers get that amount. The heads of departments and some officers in certain companies get twice as much as this amount. Do we measure them by the amount they get? Therefore, do not bring in this point. We do not judge that way. What is needed to maintain them in a position of dignity should be considered. Everything is all-found in Rashtrapati Bhavan or Raj Bhavan, Rolls Royce car and everything. Very good. After that, gift if you like Rs. 1,500. I am prepared to accept an amendment if you are so generous. I do not mind it. But why bring it in this form? I cannot understand it. This amount has been mixed up with the functions of the Governor. We know, for example, when you want to get rid of a certain Chief Minister of a State, what you do. You secretly tell him: "Are you prepared to accept Governorship? Then, leave that place. In that case, we are prepared to offer you a Governorship." Immediately it is done behind the back of his colleagues, behind the back of the Party, behind the back of everybody. In a trunk call the deal is settled and suddenly an announcement comes from the Chief Minister that he has accepted the Governorship of a particular State and that he would be moving to that State. And another person steps into his shoes. In order to settle the domestic problems of the Party in power all unholy alliances are entered into. You do this thing. (*Time bell rings.*) Then I will continue in the next session, Madam.

5 P.M.

THE DEPUTY CHAIRMAN: You may finish it.

SHRI BHUPESH GUPTA: It is a very interesting subject and so I require time.

THE DEPUTY CHAIRMAN: How much more time you require?

SHRI BHUPESH GUPTA: I would need one hour.

SHRI B. N. DATAR: Let him finish. We will sit for some time more.

SHRI BHUPESH GUPTA: I think we had better leave today.

THE DEPUTY CHAIRMAN: Please wind up. You have spoken for an hour and a half.

SHRI BHUPESH GUPTA: Is the House prepared to sit longer? I do not think the House is prepared. I will not tire the House.

THE DEPUTY CHAIRMAN: You can speak for five minutes.

SHRI BHUPESH GUPTA: The subject of Governors is rather important and delicate.

THE DEPUTY CHAIRMAN: You have touched on many delicate matters. You can touch on this one also.

SHRI BHUPESH GUPTA: Those were delicious, but this is delicate.

THE DEPUTY CHAIRMAN: You continue for another five minutes.

SHRI BHUPESH GUPTA: All right, Madam. We say that in order to set certain standards and principles the removal of disparities is an objective of the Plan. It is something in your Constitution, in the Directive Principles. I say, practise it here. Let charity begin at home. In fact our President has begun it. He has displayed it. And why are you so much concerned about the Governors? I am not sure whether all the Governors are giving it. As I said, for political expediency a Governor is appointed. I do not say anything, but what should I say of a Chief Minister becoming a Governor? Is it the climate of Punjab or is it somthing else? Or is it the climate of a particular, if you like—I am not naming anybody. Well, conceivably . . .

SHRI AKBAR ALI KHAN: You are not naming anybody. You are obsessed by that incident.

SHRI BHUPESH GUPTA: I am not obsessed. You are upset by my utterances.

DR. SHRIMATI SEETA PARMANAND (Madhya Pradesh): When the climate of Punjab is mentioned in this case, it is as good as naming the person.

SHRI BHUPESH GUPTA: All right, climate of Delhi or the climate of the State in which Dr. Seeta Parmanand lives. What was the case? We find that it is a hell of a job, Madam Deputy Chairman, to become a Chief Minister. You see what fight goes on. Once you are Chief Minister you suddenly quit it without the knowledge of your colleagues, creating a crisis in that particular Party and forcing the Party Executive to meet and pass a resolution condemning this thing. Why was that done? It was done because of certain other reasons. What reasons? Governorship does not bring very great authority, and our constitutional practice proves it. Governorship does not bring certain very great responsibilities as in the case of a public man. In point of fact our Constitution shows it. Governorship brings certain other things. Apart from the Raj Bhavan and the carriage pulled by 10 or 12 or 15 horses plus the cars and so on, it brings a fat salary and a comfortable life and retirement. If, for example, I am an old man and I feel that I am in trouble as a Chief Minister, somebody may come and tell me: "All right, you give it up, we will give you a comfortable life, a fat salary and many other things to be very safe, and you enjoy your life." Yet you are in the limelight. But what happens then? I say in such a case the high positions of States are simply prostituted for the political expediency of a particular Party. That is what has happened,

and that is what may happen in future, because the high salary is the factor that attracts people in such situations when such a good calling as the Chief Ministership can be easily given up in order to assume the role of a Governor. Therefore, I come to this conclusion that Rs. 5500 can be utilised also for other purposes.

After the particular appointment in the country of a Chief Minister as a Governor, many papers wrote editorials, papers supporting the Congress Party wrote strong editorials about such practices. The Amrita Bazar Patrika, the Times of India, and I think various other papers in the country one after another came out with editorials that the Governor's post should not be so utilised in order to settle the internal problems of a coalition Ministry or of the Congress Party. It would be a sad thing for our constitutional principles and our parliamentary institutions if such posts which carry with them considerable honour and dignity were to be used in this manner in order to accommodate some people whom the Congress Party or the ruling Party wants to get rid of in order to find place for men of its own choice. Therefore, I say that from whatever angle you judge, it is not good.

Madam Deputy Chairman, since you ask me to stop, I make no personal reflection whatsoever on the Governors. Many of them I know personally, they are good people. I am not quarrelling with individuals. I am quarrelling about certain norms and principles in public life and I am quarrelling about certain arrangement which is open to question and doubt not only from the point of view of economic considerations or principles connected with social and economic objectives but also from the point of view of public morality, as has been in this particular case. Therefore, Mr. Datar can, if he likes, enhance the salary a little more but not Rs. 5,500 which is twice as much as the Prime Minister of India gets. Who is more important? The Prime Minister of India or the Governor? Who represents India more? Is it a Governor of a State—we have got 16 of them—or the Prime Minister of India? Which office carries with it the greatest authority, weight and moral stature? Is it the office of the Prime Minister or that of the Governor? Madam, if the Prime Minister could function in the country with a salary of Rs. 2,250, if, for example, the President could forgo 75 per cent. of his salary and take only Rs. 2,500, should the Governors not be satisfied with a lesser salary under the Constitution? That is all that I would like to say.

Madam Deputy Chairman, these are questions of principle that I have raised before the House and the country and I think these will be discussed. Now this matter has been discussed and I hope this will be discussed also later in different ways. In view of all this I would seek your leave to withdraw this measure in the present situation. I say this because my purpose in this thing was not to press the House into a position of vote and controversy needlessly. I am surprised that Mr. Datar did not appeal to me as he usually does. Perhaps he forgot. Still I do not want to press these controversial measures, and I would like the hon. Minister to think about them, to consider them, and let us carry this debate wherever we are and discuss it and at our convenience we can return to it in this House or in the other House later on. But for the present since we are not so minded in sponsoring very many controversial things and dividing the House over such matters, I reciprocate this gesture and sentiment, after having had a full discussion over this matter on three days, by seeking your leave to withdraw this Bill.

The Bill was, by leave, withdrawn.