

SHRI A. K. SEN: And also under item 28, Charities and charitable institutions.

MR. CHAIRMAN: Item 28—Charities and charitable institutions, charitable and religious endowments and religious institutions.

SHRI A. K. SEN: And also item 20—Economic and social planning. Social planning certainly comprehends this.

SHRI M. H. SAMUEL: Sir, Mr. Sapru asked whether the State Governments have been consulted on this matter and the Mover of the Bill said that they have been consulted. Could we have the views of each of the State Governments on this Bill before we proceed any further in this regard? Because after all it affects them and they have to implement it.

SHRI KAILASH BIHARI LALL: So far as my information goes State Governments have been consulted and their opinions were published. Many of the State Governments have expressed themselves in favour of this Bill

SHRI M. H. SAMUEL: It is very difficult to proceed with this Bill in the absence of the views of the State Governments, for whom we are passing this Bill.

DR. R. P. DUBE (Madhya Pradesh): They are already there. They have been circulated along with other papers.

MR. CHAIRMAN: The question is:

"That the Bill to provide for the supervision and control of orphanages, homes for neglected women or children and other like institutions and for matters connected therewith be referred to a Joint Committee of the Houses consisting of 30 members, 10 members from this House, namely:—

1. Dr. W. S. Barlingay
2. Shri Deokinandan Narayan
3. Shrimati Savitry Devi Nigam

4. Shri Ram Sahai
5. Shri M. H. Samuel
6. Shri D. A. Mirza
7. Shri N. C. Sekhar
8. Shri Kamta Singh
9. Shri V. Venkataramana and
10. Shri Kailash Bihari Lall (the mover)

and 20 members from the Lok Sabha;

that in order to constitute a meeting of the Joint Committee the quorum shall be one-third of the total number of members of the Joint Committee;

that in other respects, the Rules of Procedure of this House relating to Select Committee shall apply with such variations and modifications as the Chairman may make;

that the Committee shall make a report to this House by the first day of the next session; and

that this House recommends to the Lok Sabha that the Lok Sabha do join in the said Joint Committee and communicate to this House the names of members to be appointed by the Lok Sabha to the Joint Committee."

The motion was adopted.

THE REPRESENTATION OF THE PEOPLE (AMENDMENT) BILL, 1959

SHRI BHUPESH GUPTA (West Bengal): Sir, I beg to move:

"That the Bill further to amend the Representation of the People Act, 1951, be taken into consideration."

[MR. DEPUTY CHAIRMAN in the Chair.]

Sir, by this Bill I want to amend the Representation of the People Act in order to provide for recall of the elected members of the House of the People and of the State Assemblies. Now, Sir, this is a very important political question before us to discuss,

and I think the recent developments in the country, especially in Kerala, underline the importance of this particular issue. This is not the first time that from these Benches we are demanding that a provision for recall be accepted as the law of the land.

We had done it in 1954 and in 12 Noon. Act of December 17, 1954, on

a motion moved by one of our Members, the late Shri Satyapriya Banerjee, we discussed this question. I have in mind the Constitution (Fourth Amendment) Bill, 1954, which he moved in this House, to make a similar provision in the Constitution. But then the Government did not accept it and as a result it could not be passed. Four or five years have passed since we mooted this subject, since we pointed out that the Constitution should provide for recall. Now, in these four or five years, if anything, our arguments have been corroborated by the facts of life. More and more it has become clear that in order to make democracy alive and dynamic and in order to bring it into line with the promptings, urges, and the feelings of the people, which are no static concepts, it is essential that we have a provision for recall in our law. I have not chosen this time the Constitution for amendment because I think that we can do so by simply amending . . .

THE MINISTER OF LAW (SHRI A. K. SEN): Sir, I have a point of order. The point is that Parliament is incompetent to entertain this Bill for recall because under our Constitution the composition of Parliament is fixed. If you look at article 81 of the Constitution, it says:—

“Subject to the provision of . . . article 331, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States.”

So, the composition is fixed. Let us turn to article 331 to which it is subject:—

“Notwithstanding anything in article 81, the President may, if he

is of opinion that the Anglo-Indian community is not adequately represented in the House of the People, nominate not more than two members of that community to the House of the People.”

That is the only limitation. Otherwise, the composition is fixed and to provide for recall we must have an amendment of the Constitution. In fact, at the time the Constitution was debated in the Constituent Assembly, this amendment was sought to be provided in our Constitution, but it was defeated. In fact, if I may give the history of that, I think in the original article 82 . . .

SHRI AMOLAKH CHAND (Uttar Pradesh): Is that on a point of order?

SHRI A. K. SEN: Yes, Sir. I say that he is incompetent to introduce it in the form of a Bill. This was sought to be introduced by Mr. Kamath, in the draft article 82 clause (2), present article 101, clause (3). He sought to provide for recall of a Member for failure to properly discharge his duties. That was negatived. So, unless the power to recall is given in the Constitution . . .

MR. DEPUTY CHAIRMAN: That is what he is seeking to do.

SHRI A. K. SEN: No, Sir. He is not seeking a constitutional amendment. He is seeking to introduce an amending Bill.

SHRI AMOLAKH CHAND: How does it debar the House from considering it at this stage?

MR. DEPUTY CHAIRMAN: How does it affect under this article 81, a member who is a sitting member now?

SHRI A. K. SEN: If he is elected by direct election, he composes the Parliament.

SHRI BHUPESH GUPTA: Sir, I suggest that the hon. Minister finish his arguments. Then, I shall answer

[Shri Bhupesh Gupta.]
them. On a point of order, he is right.

MR. DEPUTY CHAIRMAN: Have you finished?

SHRI A. K. SEN: No, Sir, I have not. The only competence of Parliament is under List 1, item 72: Elections to Parliament, to the Legislatures of States and to the offices of President and Vice-President; the Election Commission. That does not include recall. It relates to elections to Parliament, to the Legislatures, etc. That is the only competence of Parliament. It does not provide for recall. Recall is not election to Parliament, but getting somebody away from Parliament.

SHRI BHUPESH GUPTA: That is true.

SHRI A. K. SEN: Therefore, my submission is that without an amendment of the Constitution this Bill cannot be entertained by the House.

SHRI BHUPESH GUPTA: If any confusion arises, I am prepared to defer the discussion, so that it should be gone into. I have also consulted competent lawyers. I need not go into that. Of course, I have not consulted two lawyers—neither Mr. Asok Sen nor Mr. Akbar Ali Khan. Now, Sir, the position is this. He says article 81 constitutes the Parliament and we are temporarily taking away a Member. What I say in this Bill is that a Member ceases to be a Member of Parliament under certain circumstances. Now, is there any provision in the Constitution or is there any provision in the other law? Now, in the Representation of the People Act itself, in section 7 you will find the disqualifications for membership of Parliament or of a State Legislature:—

“A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament or of the Legislative As-

sembly or Legislative Council of a State . . .”

Let us make the position very clear. As far as section 7 of the Representation of the People Act is concerned, everyone cannot stand for election for being chosen as a Member. Another section says when one ceases to be a Member after he had been elected. We have got here Dr. Kane, National Professor. All to the good. He ceases to be a Member. And, Sir, I am here in Rajya Sabha or Lok Sabha. Some Member is there. He has been elected. Now he is appointed to an office of profit. Then, he goes out of Parliament. He ceases to be a Member of Parliament. That is to say, the Constitution which provides for the composition of Parliament, gives, subject to the law of the land, certain disqualifications. This disqualification operates even after you have been elected, provided you come under the mischief of such disqualification. Now, Sir, here very many things are given. If you read section 7(a) of the Representation of the People Act, it says:—

“(a) if, whether before or after the commencement of the Constitution, he has been convicted, or has, in proceedings for questioning the validity or regularity of an election, been found to have been guilty, of any offence or corrupt or illegal practice which has been declared by section 139 or section 140 to be an offence or practice entailing disqualification for membership of Parliament and of the Legislature of every State, unless such period has elapsed as has been provided in that behalf in the said section 139 or section 140, as the case may be;”

The Election Commission may remove certain disqualifications. Then, Sir, a whole series of things are given, and he is caught here. Now, the hon Law Minister raised this point. Sometimes, eminent lawyers produce fantastic arguments and that is our

experience, exciting, romantic experience in Parliament. Now, if I were to accept his argument, it would come to this. Now, suppose somebody were to be appointed to an office of profit, from Lok Sabha. He cannot be taken away. He continues. He cannot cease to be a Member. Here I provide that under certain circumstances, not merely when you accept an office of profit, but also when you do certain other things, you cease to be a Member of Parliament. Now, is it necessary to amend the Constitution to provide for it? No. The Constitution does not go into this question at all. The Constitution lays down that Parliament or a State Legislature shall consist of so many Members and elected in such and such way. That is all. What happens to them afterwards is a matter for other laws to determine just as we determine from time to time. The other day, Vice-Chancellors were disqualified. We had some other people disqualified earlier. Then we changed the law without amending the Constitution. You took them out of the picture the moment they came under the mischief of the provision. Here I am only adding a disqualifying provision in respect of an elected Member of a State Assembly or the House of the People. Therefore, commonsense, analogy, constitutional prudence, legal precedents and the present Act, all refute rather the specious argument which my esteemed friend, Mr. Sen, has chosen to advance. I think last night he was busy with other things; so suddenly he has jumped into this argument. Let him consult the Attorney-General and let him also think of it, because I am quite convinced . . .

SHRI M. GOVINDA REDDY: (Mysore): Sir, may I interrupt? Does not the power of recall confer a right on the electorate which is not contemplated in the Constitution?

SHRI BHUPESH GUPTA: We do not go into the contemplation of the Constitution. Ours is a written Con-

stitution. We deal with the words of the Constitution, and English words have their natural meaning. If we are satisfied with it, we need not go into contemplation. So many people contemplate so many things.

SHRI P. N. SAPRU (Uttar Pradesh): Sir, may I say a few words? This Bill really amounts to an amendment of the Constitution. The principles embodied in the Constitution are those based on the theory of responsible government. There is an article which says that the President shall be advised by a Council of Ministers. Similar is the case in respect of State Governments also. If the principle of recall which is embodied in this Bill is accepted, then the basic structure of the Constitution will undergo a complete change. You have the recall, you have the referendum, and you have the initiative in Switzerland. The Swiss Constitution is a *sui generis* constitution. It is a constitution based upon the principle in a modified form of direct democracy. Our Constitution is not based on that principle at all. The Bill will alter the relationship between the representative and the voter, because since the days of Burke's letter to his constituents in Bristol a certain view has prevailed as to what the functions of a representative are. If there is to be a recall, then there should be a referendum, and then there should be an initiative. You cannot by a Bill of this character change the very basic concepts of the Constitution which are to be found in the Preamble and in the various articles which follow one another in a serial order in the Constitution. Therefore, Sir, I plead with you in all earnestness that this Bill should be removed on the ground that it seeks to amend the Constitution.

SHRI AKBAR ALI KHAN (Andhra Pradesh): One word, Sir. The position is that there is a constitutional setup, and recall is one of the fundamental things which come under the

[Shri Akbar Ali Khan.] Constitution. There is a difference between recall of Members and disqualification arising from a person being appointed to an office of profit or arising from his being convicted. There are certain things which relate to the fundamentals of the Constitution, and one of such fundamentals of the constitution so far as I know is prevalent only in Switzerland, a small country, and in no other country.

SHRI A. K. SEN: In some States of America too.

SHRI AKBAR ALI KHAN: My point is, we may agree or we may not agree, and I am not discussing about the merits, but I am requesting you to consider that this is a fundamental thing. This can only be introduced as an amendment of the Constitution and not as a Bill.

SHRI AMOLAKH CHAND: Sir, I would like to raise another point regarding the Constitution itself and would request the House to consider it along with the point raised by the hon. Law Minister. Now if the scheme of the Bill is taken into consideration, what does it say? It says: "A person shall be disqualified for being a member", etc., "if at any time during the term of his office as such member, not less than two-thirds of the number of voters on the electoral rolls of the constituency from which he has been elected demands, in such manner as may be determined by the Election Commission in this behalf, the resignation by the member of his membership and a period of fifteen days has elapsed from the date on which such demand has been notified in the Official Gazette." This comes into conflict with two articles of the Constitution, article 324 which lays down the powers of the Election Commission and article 101(3)(b) regarding resignation. The point which I want to raise is that this Bill seeks to give an extraordinary right to the Election Commission which has not been given to the Commission under article 324 of the Constitution.

DR. W. S. BARLINGAY (Bombay): Mr. Bhupesh Gupta has not finished his speech. Let him continue.

SHRI AMOLAKH CHAND: I am raising a point of order that this House is not competent to consider this.

MR. DEPUTY CHAIRMAN: You are raising another point of order?

SHRI AMOLAKH CHAND: Yes, Sir.

MR. DEPUTY CHAIRMAN: What is that?

SHRI AMOLAKH CHAND: I am trying to explain it. If you look at article 324 of the Constitution, it defines the powers of the Election Commission. What are the powers of the Election Commission?

MR. DEPUTY CHAIRMAN: Superintendence, direction and control.

SHRI AMOLAKH CHAND: Where is this recalling business?

SHRI A. K. SEN: It is for election, not for recall.

MR. DEPUTY CHAIRMAN: This is for election.

SHRI AMOLAKH CHAND: I want to submit that the Election Commission has no such power as that, which the Bill proposes to give it, and therefore that is against the Constitution. That is the point which I want to raise. Am I clear, Sir?

MR. DEPUTY CHAIRMAN: Yes, yes.

SHRI AMOLAKH CHAND: The Election Commission, as contemplated by the Constitution, is for a particular purpose. It is all enumerated here.

"The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every

State and of elections to the offices of President and Vice-President held under this Constitution, including the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with elections to Parliament and to the Legislatures of States", etc., etc.

So, even if you pass this Bill, the Election Commission will not be able to take any action according to it. If it takes action, it will be in violation of article 324 of the Constitution. That is point number one.

Then there is another point about resignation. What does this Bill contemplate further? It says: "... in such manner as may be determined by the Election Commission in this behalf, the resignation by the member of his membership ..." and so on. Now, Sir, the Election Commission or anybody cannot compel a Member to tender his resignation because, as you will find, a Member can only resign in a prescribed manner and not on the direction of any authority, much less the authority of the Election Commission. That is provided for under article 101 (3)(b) which reads as follows:

"If a member of either House of Parliament—

• • • • •

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be,"

If the Election Commission says, "All right. We have made enquiries and two-thirds of the voters wish that you resign", I need not resign, because the resignation has to be tendered in this prescribed manner.

Therefore these two points which arise out of this Bill contravene the provisions of the Constitution, and as such, the Bill cannot be entertained in the House.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, Sir, I feel that

some of the hon. Members who have spoken here have not appreciated the full implications of the word which Mr. Bhupesh Gupta has used—purposely used, it seems to me—in this particular provision. The word is 'disqualified'. Various arguments have been used so far as the word is concerned. I agree with the Law Minister that actually the Bill is unconstitutional. But what I feel is that some of the arguments that have been produced—for instance, those of the hon. Mr. Sapru—would be all right only if there was a provision here for the recall of Members. But Mr. Bhupesh Gupta is very careful in the use of words. He is only prescribing a disqualification. That is only a sort of make-believe, a sort of camouflage, and he is very effectively and legally using that camouflage for doing something very unconstitutional. I want only to help you in your decision, Sir. I want to draw your attention to the word 'disqualified'. The point is that this is not in substance a case of disqualification at all; it is really a case of recall. And Mr. Bhupesh Gupta is really imposing upon us a smoke-screen or a camouflage in order to hide his real intention.

SHRI A. K. SEN: What cannot be done directly cannot be done indirectly.

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Deputy Chairman, Sir, one question has been raised by way of point of order by our esteemed and hon. friend, the Law Minister. His point is that the composition of Parliament will be affected if, in the midst of the term, a certain Member is disqualified. That in substance seems to be his objection. Now, as Mr. Bhupesh Gupta has pointed out, it is only a case of subsequent disqualification that he wants to introduce in the Act. There is a list of disqualifications of a subsequent character after the election takes place. Now this is adding to the list of subsequent disqualifications. As

[Shri Santosh Kumar Basu.]

Dr. Barlingay has pointed out, if it is a case of disqualification, it is open to Parliament, in my submission, to add to the list of disqualifications, and as soon as it appears to be a subsequent disqualification by Parliament, it attaches to itself all the consequences that flow from a subsequent disqualification. Therefore, so far as the Law Minister's point of order is concerned, I think there is not much substance in it, because as soon as there is a subsequent disqualification, a casual vacancy occurs and that casual vacancy has got to be filled up in the way laid down in the Representation of the People Act. So, from that point of view, there does not seem to be any difficulty so far as the point of order is concerned.

But there is another and more formidable difficulty which has been pointed out by my hon. friend, Mr. Amolakh Chand. He says that the agency or the machinery which is sought to be set up under this Bill for ascertaining the views of the electorate is the Election Commission. Now so far as the Election Commission is concerned, its duties and responsibilities are defined in precise terms in the Constitution, namely, that it can only conduct an election. The process which my friend Mr. Gupta, seeks to set up by this Bill is a double process—first of all, to determine the question of disqualification and recall and secondly, to have a subsequent election which is not provided for in this Bill as election will take place according to the Representation of the People Act. What this Bill seeks to provide for is the question of supervising and arranging the system of recall by the Election Commission. Is it provided in the Constitution? I submit, not. The Election Commission must not be charged with that duty and responsibility and if this additional duty is sought to be imposed upon it, I do not think it can be done by the Legislature by an Act; it has got to be done by an amendment of the Constitution. As it

is intended in this Bill to impose additional duties upon the Election Commission apart from those mentioned under the Constitution, to that extent, I support the point of order raised by Mr. Amolakh Chand.

SHRI P. N. SAPRU: Kindly permit me to advance one argument. I invite your attention to article . . .

SHRI BHUPESH GUPTA: I have provoked all the lawyers.

MR. DEPUTY CHAIRMAN: What is that article?

SHRI P. N. SAPRU: Article 75. Kindly look at article 75(3). It says:—

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

The House of the People here, obviously, means the House of the People as it was constituted on the date when the election was over and if by recall subsequent changes are made in the constitution of the House of the People, the responsibility of the Prime Minister and the Cabinet to the House of the People will disappear. They will become . . . (Interruptions.) Of course, there will be . . .

DR. W. S. BARLINGAY: Will it amount to a change in the constitution of the House?

SHRI P. N. SAPRU: It will amount to a change in the constitution of the House.

SHRI BHUPESH GUPTA: How?

SHRI P. N. SAPRU: Why not?

DR. W. S. BARLINGAY: Mr. Bhupesh Gupta is right. It will only mean a casual vacancy.

SHRI P. N. SAPRU: The Constitution here does not contemplate that there shall be a new House by recalling Members.

SHRI BHUPESH GUPTA: That does not matter. The vacancy will be filled.

MR. DEPUTY CHAIRMAN: I will look into it.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): Mr. Deputy Chairman, Sir, in the Bill introduced by him, Mr. Bhupesh Gupta wants to prescribe disqualifications for being a Member and the question is whether such disqualifications for being a Member can be prescribed by amending the Constitution or by enacting merely a legislation if we look to articles 101 and 102 of the Constitution, we will find that they have prescribed the disqualification for being a Member, and an exhaustive list of disqualifications for being a Member is given there. The question then arises whether we can add any other ground of disqualification for being a Member, to those already enumerated under articles 101 and 102. My submission is, Sir, that adding any one or more disqualifications for being a Member of Parliament can be done only by an amendment of the Constitution—amendment of articles 101 and 102. Article 101(3) says:—

“If a member of either House of Parliament—

(a) becomes subject to any of the disqualifications mentioned in clause (1) of article 102, or

(b) resigns his seat by writing under his hand addressed to the Chairman or the Speaker, as the case may be,

his seat shall thereupon become vacant.”

Then, under sub-clause (4), another thing . . .

SHRI A. K. SEN: Sir, may I point out to Mr. Kapoor that he is overlooking article 102(1)(e)? If it had been merely a question of disqualification, I would have agreed with Mr. Bhupesh

Gupta. But I shall submit that it is not a question of disqualification at all.

MR. DEPUTY CHAIRMAN: You cannot make another reply now.

SHRI A. K. SEN: On a point of order, Sir. I shall add my remark later.

MR. DEPUTY CHAIRMAN: Let him finish.

SHRI A. K. SEN: After he has finished, I shall add my remarks.

MR. DEPUTY CHAIRMAN: No reply to a point of order. Have you finished, Mr. Kapoor?

SHRI JASPAT ROY KAPOOR: What I was submitting, Sir, was this, that unless we amend article 101 or article 102, we cannot prescribe any new disqualification for being a Member of Parliament. So, while the object of Mr. Bhupesh Gupta seems to be a very laudable one, we have to undertake all the trouble of amending the Constitution rather than resort to the easy method of having only a legislation.

SHRI A. K. SEN: May I add one word since I have no right of reply?

SHRI BHUPESH GUPTA: But the addition should not be camouflage again.

SHRI A. K. SEN: I do not resort to camouflage as my friend, Mr. Gupta, does in his Bill. Sir, he is certainly trying to bring it within the purview of article 102(1)(2), if you look at it. If it was a question of pure disqualification, I would have agreed with him that a simple Act of Parliament would have been enough, and that wholly for the purpose of Parliament. You will find that this would have enabled him to legislate only for the purpose of disqualifying Members of Parliament, not those of

[Shri A. K. Sen.]

the local Legislatures. Very well, Sir, but in my submission it is not a question of disqualification at all. Simply by calling it a disqualification it does not become an item of disqualification. Look at article 102, Sir. What is important is:

"A person shall be disqualified for being chosen as, and for being, a member . . ."

The word is 'and', that is to say, it must be a disqualification which must attach to the person, which should have prevented him from being chosen initially and then from continuing. So it must be there initially, and the wording in clause (e) is:

"if he is so disqualified . . ."

That means, if the disqualification is for being chosen as a Member of Parliament and for continuing. The words "so disqualified" are very important, Sir. The wording is not "if he is disqualified"; the wording is "if he is so disqualified"; it imports what is in clause (1) in the beginning of article 102, namely,—

"A person shall be disqualified for being chosen as, and for being, a member . . ."

It must be that vice which prevented him from being chosen a Member of Parliament. Here, Sir, that vice is sought to be introduced, not for being chosen as a Member of Parliament but for his only continuing as a Member of Parliament. In other words he is seeking to graft a new species of disqualification which article 102 does not contemplate at all. He is wanting, in fact, recall in the guise of disqualification.

SHRI AKBAR ALI KHAN: May I ask through you, Sir: Is there any such provision in any of the countries to which he has great love and affection?

MR. DEPUTY CHAIRMAN: It may be either before election or after election.

SHRI A. K. SEN: Nevertheless it must be one which should have prevented him from being chosen.

MR. DEPUTY CHAIRMAN: There is a comma after "as"; it may be after election.

SHRI A. K. SEN: But it must be a disqualification which would have prevented him, if that was there at the time of election, from being chosen as a Member. That is the point. That disqualification may come later on. I agree. Take this as an example, Sir. I am being chosen, but later on I happen to hold an office of profit. It will be a disqualification. But that disqualification must have been there, must be one which should have prevented me . . .

MR. DEPUTY CHAIRMAN: Suppose after election some person is disqualified. Can he continue as a Member?

SHRI A. K. SEN: No. But at the time of election . . .

MR. DEPUTY CHAIRMAN: Then this is distinctive.

SHRI A. K. SEN: It is distinctive. Possibly I have not made myself clear. What I am saying is: It may be distinctive but . . .

MR. DEPUTY CHAIRMAN: He need not be necessarily disqualified at the time of election.

SHRI A. K. SEN: That is not my point. It must be a species of disqualification which, if present at the time of election, would have prevented me from being elected. That is the point. That is why the wording . . .

SHRI AKBAR ALI KHAN: If the same thing appears after election . . .

SHRI A. K. SEN: I do not know if I have made myself clear.

SHRI JASPAT ROY KAPOOR: It is a very subtle point.

SHRI A. K. SEN: May I make myself clear? I am not saying that that species of disqualification must necessarily be at the time of the election. It is far from my contending that. I am quite prepared to concede and in fact I am with you that that species of disqualification, if it happens after my election, will also disqualify me though it is not there initially. Take for instance the case of a person whose election is valid. Later on he accepts an office of profit, and he is disqualified from that point of time, but nevertheless the species of disqualification must be one which would have prevented him from being chosen a Member at the time of the election if he had that disqualification. Here the species of disqualification that is sought to be introduced is one which would have never prevented him from being chosen. It is not one which happens later on which might have happened earlier.

DR. W. S. BARLINGAY: Disqualification is a quality that attaches to that person . . .

SHRI A. K. SEN: It must be that species which, if there, would have prevented a person from being elected at the time of the election. That is what is meant by the words, "if he is so disqualified". I am not saying that it must necessarily be one which must be present at the time of election. No. But that quality is one which would prevent him from being elected . . .

SHRI SANTOSH KUMAR BASU: Whenever re-election takes place.

SHRI A. K. SEN: . . . whenever re-election takes place. Let us take now the species of disqualification, a

contract of profit, an office of profit, or insolvency, this, that and the other. In each case, if it is there at the time of my election, it would disqualify. But here, Sir, it can never be there at the time of my election.

SHRI BHUPESH GUPTA: Sir, let me just try to explain some of the points made. We have heard ancient lawyers, middle-aged lawyers and young lawyers.

SHRI A. K. SEN: Anyway, it is the power to recall he is trying to introduce under the guise of disqualification.

SHRI BHUPESH GUPTA: So many people do so many things in the guise of other things.

SHRI JASPAT ROY KAPOOR: Before the discussion proceeds further, may I suggest that it is a fit case where we may have the advantage of the views of the Attorney-General, and he may be requested to present his viewpoint.

MR DEPUTY CHAIRMAN: Let us hear Mr. Gupta now.

SHRI BHUPESH GUPTA: That may be considered. I make it very clear that I am not in a hurry although I would like some people to be recalled, people like Mr. P. C. Sen in West Bengal as Food Minister. I am not in a hurry even so. If you like, you may refer the issue to the Attorney-General.

SHRI A. K. SEN: I am very sorry. May I apologise? As I said, even if it were a disqualification under article 102(1), it can only legislate for disqualifying a Member of Parliament. He is seeking to disqualify the Members of a Legislative Assembly in a State as well. That falls within the purview of State Legislatures.

SHRI BHUPESH GUPTA: Now, Sir, so many arguments have been

[Shri Bhupesh Gupta.]

put forward. I am almost in a jungle of arguments and a poor chap like me finds it very difficult to discover where we stand. Anyway the first position is this—I meet the Law Minister's point; what he said towards the end of his speech after shifting the ground merits a little attention since the other ground is gone, composition. Now he made much of the words "so disqualified". Now, Sir, the other day we were discussing the Representation of the People (Amendment) Bill; we were discussing the amendments to the Act. The amendments were a comprehensive thing. We were discussing in fact item by item and were going into what should be a disqualification and what should not be, what disqualified a person from being elected to or from continuing to be a Member after election to a legislature. Now, Sir, we were not thinking in terms of amending the Constitution then. We proceeded on the basis and assumption that the Constitution lays down very broad principles and it is more interested in laying down the composition of a particular House, the number of Members and so on. The rest is left to legislation by Parliament. Therefore we could discuss. You will remember that in the Select Committee certain disqualifications were thought of. When they came here we changed them. In the other House they also made the changes. Nobody even remotely suggested that all these things related to the Constitution. Nothing. We thought that we were competent, within the broad framework of the Constitution, to legislate in this matter. We did it. Now I do not know why that argument is brought in. Now the question arises: Can we create a disqualification? Yes. Suppose a person commits murder. The Election Commission has got the power to remove that slur of disqualification in him. He is liable to stand for election. For instance, suppose Mr. Asoke Sen, in a fit of temper, kills his servant. He goes to jail. He is disqualified.

SHRI AMOLAKH CHAND: He is not likely to do that.

SHRI BHUPESH GUPTA: He is disqualified then and there. Here, we can enumerate "killing the servant, cheating, holding an office of profit, holding of contracts" and things like that. We are laying down a whole number of things.

Sir, other species have been brought in. I do not know whether conviction for murder stands in the same category and in the same species as an acceptance of office of profit. Therefore, do not bring in species. Lawyers have a knack of confusing things. That is my difficulty. Why bring in species? They do not fall in the same species. It is conceivable that different species, different types of disqualifications, different circumstances are created. Parliament has got jurisdiction, in view of the changing circumstances, to lay down disqualification. That is what I am doing.

Now, an hon. Member discovered "camouflage". What is the camouflage in it. The Indian Constitution says that we go by the context of the situation, and I have proposed something. I am not saying "provide for a camouflage". I shall disqualify. This is one of the grounds of disqualification. Why call it camouflage? Some Vice-Chancellor may say, "You are using 'camouflage' because you are disqualifying me from becoming a member". Let us not go into extraneous subjects. Therefore, that argument does not hold.

Let me come to Mr. Amolakh Chand's point. He made a rear-guard expression as he sits in the rear benches by saying that the Election Commission has power. Am I taking away the powers of the Election Commission? I am not.

MR. DEPUTY CHAIRMAN: You are giving them additional powers.

SHRI BHUPESH GUPTA: I am giving procedural power. He may

not exercise his power. (*Interruptions*). I am giving him procedural power.

SHRI AMOLAKH CHAND: How can an Election Commission exercise a power?

SHRI BHUPESH GUPTA: I am coming to your point. Sometimes you give very intelligent points although you sit in the back. Election Commission is an institution created under the Constitution. It is given independent authority—how to conduct the election, how to do this thing and that thing. It is given power under that chapter on Election Commission. I say, let the Election Commission remain a repository of such powers. I am not touching it with the longest pole.

SHRI AMOLAKH CHAND: Which Article is the hon. Member referring to where repository powers have been given to the Election Commission?

SHRI BHUPESH GUPTA: I have not said repository powers have been given. I say let the Commission remain the repository of all the powers it has got under the Constitution. Neither you nor I are touching them with the longest barge-pole. The Commission remains there with all the constitutional sanctity. I say that the law of the land—Representation of the People Act—has provided a disqualification. Now, it is a question of ascertaining whether it is tangible or not. I say, let this gentleman, the Election Commissioner, help in the procedure. I am not touching that Article at all which deals with the Election Commission. I have not touched it. If I had done that, you would have said I am impinging upon the Constitution.

SHRI SANTOSH KUMAR BASU: It is not a question of impinging upon the Constitution. You are seeking to give them additional powers, powers in addition to those which are enjoyed by them under the

Constitution. It may be possible to do so by amending the Constitution and not by amending the Act.

SHRI BHUPESH GUPTA: Therefore it is additional power. But what type of powers?

SHRI P. N. SAPRU: May I intervene? In the case of delegated legislation, a majority of the Judges of the Supreme Court have held that in considering whether a power could or could not be delegated, the scheme of the Constitution could be looked at. The scheme of the Constitution was based upon the principle of responsible Government. In fact, this view was forcefully expressed by Justice Evatt in a leading Australian case. I think if Mr. Bhupesh Gupta's amendment is accepted, the entire structure of the Constitution will go by the board. It is not a question of one Article or a question of another Article. It is a question of the basic structure, basic theory, which underlies the Constitution. All that will be affected if this provision is accepted. Therefore, you cannot just argue this matter as if you are arguing the provisions of the Agra Tenancy Act or the Agriculturist Relief Act. The whole Constitution has got to be looked into.

MR. DEPUTY CHAIRMAN: He is now replying.

SHRI BHUPESH GUPTA: Sir, I was just coming to the point of my esteemed friend and philosopher, Mr. Sapru. He said about the basic structure. Let me touch that point since he intervened to raise that point. Because you would not like to change the structure of the Constitution, that is no ground why you should object to it. At this stage you can oppose the Bill. I can suggest an amendment to the Constitutional provision which goes against the structure of the Constitution. I said, therefore, it is irrelevant. It is a matter of opinion. According to me, it strengthens the structure of the Constitution. According to you

[Shri Bhupesh Gupta]
it is contrary to the structure of the Constitution. But that would come after we have discussed it. At voting time you can express your opinion and give your argument.

SHRI AKBAR ALI KHAN: We discuss....

MR. DEPUTY CHAIRMAN: Order, order. Let him go on.

SHRI BHUPESH GUPTA: It is difficult to handle Mr. Akbar Ali Khan when he is with his ally. I am not amending the Constitution. Why do you say that? I could have given an amendment if I wanted to. Therefore, Dr. Sapru's point need not be considered at this stage at all. I say these are the feelings. We can take opinions; we can discuss later on.

Sir, I was touching Mr. Amolakh Chand's point. I am arguing that the Election Commission should do something which, under the relevant chapter of the Constitution, it is not doing. I know it. Suppose I pass a law that a Hindu marriage shall be performed in such and such a way. Let us say, for argument's sake, that Mr. Amolakh Chand, being a Hindu, is liable to marry in that particular fashion. I say Election Commission under that law should be present in that marriage. You cannot say I am going against the Constitution. Not at all.

SHRI AMOLAKH CHAND: The position is that the Election Commission is not something independent or anything else other than created by the Constitution itself. The Constitution has given it some specific rights and duties to perform. By any legislation, you cannot add to his rights or liabilities or duties. What you can do is to amend the Constitution itself and give the Commission more powers for specific purposes. That is the point which I have raised.

SHRI BHUPESH GUPTA: The Election Commission's powers relate

to the conduct of elections and other related things.

SHRI AMOLAKH CHAND: It does not come within the conduct of elections. As soon as an election has been completed, he becomes a member of the House. Then you say, at a particular date he may just fall foul of the electors. If two-thirds of the electors convince him that the Member has to be recalled the Commission has to move for the resignation of the Member. This power is not vested in the Election Commission by any legislation. You cannot give these powers to the Commission. That is my objection.

SHRI BHUPESH GUPTA: First of all let him concede one point. I am not contravening any of the powers given to the Election Commission.

SHRI AMOLAKH CHAND: I do not concede that. The Commission has not got that power nor can we give the power.

SHRI BHUPESH GUPTA: Am I giving the Commission? I am not a lawyer, I am a layman, very much of a layman. Can Parliament call upon the Commission to do certain other things, X, Y or Z . . .

SHRI AMOLAKH CHAND: No.

SHRI BHUPESH GUPTA: ... unconnected with what is provided by the Constitution? I say that Parliament has got that power. The Constitution does not debar Parliament from giving certain responsibility to offices other than those which are provided, provided they are not contradictory. Supposing a district magistrate has got power or a judge of the Calcutta High Court or Supreme Court has got power but we also give them other powers and sometimes we appoint them as commissioners, etc.

SHRI AMOLAKH CHAND: There is a proper procedure for it. You amend the Constitution.

SHRI BHUPESH GUPTA: You understand the Constitution and the powers provided for the judges. The things are laid down but sometimes we pass laws in which we say that a judge shall be the tribunal under the Industrial Tribunal Act. Sometimes, we do it by executive order. We give him additional powers.

SHRI SANTOSH KUMAR BASU: That is in the Constitution.

SHRI BHUPESH GUPTA: That is not expressly provided for in the Constitution.

SHRI A. K. SEN: Whenever additional duties are contemplated, as in the case of Public Service Commissions, they are provided for in article 320 which says:

"It shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the President, or, as the case may be, the Governor or Rajpramukh of the State, may refer to them."

But in the absence of such delegation, how can Parliament delegate more powers?

SHRI BHUPESH GUPTA: Parliament is not delegating more powers. I am not giving the power to the Commission. I am saying that it fulfils certain functions which are of a procedural nature and which are not in its substantial power. I make it very clear. I am not giving the Commission any substantive power. If you read the Statement of Objects and Reasons, you will see the procedure. I have created a disqualification . . .

MR. DEPUTY CHAIRMAN: Can there be a procedure without a substantive law?

SHRI BHUPESH GUPTA: There may be. It is true. You shall see.

Supposing I pass a Bill here that every Friday there shall be sports in the Gymkhana Club and I say that Mr. A. K. Sen will be present ~~there~~ or the Law Minister will be present there, it is a procedural thing. It is not a substantial power to him to say that he will determine the game. The Constitution does not prevent me from doing it. In fact you will see it, I can recall some things. If he had given me a little notice of his first, unexploded bomb and second, his exploded bomb, then I would have found out many cases of offices mentioned in the Constitution with powers enumerated which had been called upon under legislation to do a few other odd things. It is done from time to time. It is nothing absolutely unheard of. This is what I say. If he thinks that the Election Commission should not be given powers, that is a different matter. You can say "somebody else". I say that he should see that the disqualification had taken place, as I have provided for in the Bill. The question is, how do I ascertain it? I have asked the Election Commission to help me to ascertain it. I might have asked as well, shall we say, the Finance Minister to do it. For the present I have asked or given preference to the Election Commission. This is all that I want. How I am doing something here or suggesting something unconstitutional, for the life of me I cannot understand. I will give an analogy. You are Chairman or Deputy Chairman we have in the House. The powers are stated in the Constitution but supposing we pass a law and sometimes we see that executive order is given and then a delegation goes. The Deputy Chairman leads it. Where is the Constitution coming in? Is it in the Constitution? Nothing. Somebody says: 'You are giving more power to the Deputy Chairman, giving more authority and also sanctioning more money from the exchequer for it because of this trip and other things'. Where do I stand? Nowhere. Therefore these are pueril arguments, if I may say so. You can be given power.

[Shri Bhupesh Gupta.]

You are Chairman or Deputy Chairman, Speaker or Deputy Speaker of the House. They are offices stated or set forth in the Constitution with powers clearly demarcated but even so, under some resolutions or decisions, they perform various other functions and powers are given to them from time to time, sometimes by the Parliament, sometimes they themselves take it and sometimes otherwise. Why do you bring in that argument? Therefore that argument does not hold water at all. I hope I am not adding to the confusion. Now I do not know about it. I must deal with what Mr. Basu said. He is very correct. He said that it is very simple. But Mr. Amolakh Chand's argument he has adopted; I don't know why he took a fancy for it. When he abandoned the Law Minister's argument, he might have abandoned Mr. Amolakh Chand's argument also for a change but he took up his argument. He is quite right. He said that all that the gentleman is doing here is creating a disqualification and the disqualification can be created from time to time by Parliament without reference to the Constitution provided it is not contrary to any provisions of the Constitution. What have I provided? Is it contrary to the provisions of the Constitution? If you can show that, by all means say that this Bill has to be turned out at this stage.

SHRI SONUSING DHANSING PATIL (Bombay): May I point out to the hon. Member that it is part of the Constitution of Russia to call back? Why do you want to have this back-door method of introducing a substantial law in a procedural law?

SHRI BHUPESH GUPTA: The difficulty with the hon. Member here is that he has not read the Constitution of India but he has heard about Russia. That is his trouble. Naturally I cannot answer him at this stage because he has made no point whatsoever except saying that Russia is to the north of India and it has a Consti-

tution. This is not because of Russia or any such thing. It is a political bogey you raise. Don't bring in the political bogey. You accept the Bill for discussion. You need not support it. Give your arguments and mention Russia, China, Timbaktu, Argentina and everything, I do not mind but at this stage I do not see such things. Now I think I have met almost all the point made.

The other point regarding articles 101 and 102 does not come in here in this context at all. When we discussed the Representation of the People Act, we also mentioned many things like Vice-Chancellors and various other people. We have powers. The Parliament has powers. The Representation of the People Act has given power to say what will happen in a State. The disqualifications will come. How some of the disqualifications with regard to the State Legislature must come? Not from any Act of the State Legislature concerned but from other Acts of Parliament. Now we have created an office of profit. So many things we are doing. So, do not bring in that argument. I am very sorry if I have abetted Mr. A. K. Sen in trying to create confusion in you, I am sorry; I am only an abettor because he started it. I would therefore suggest that. I am prepared because I may go to the Supreme Court to see whether it was right for this Bill to be turned down or not. I do not know whether I have that remedy but I can consult Mr. N. C. Chatterji to see if you turn it down, if I can go to the Supreme Court to ascertain if the ground on which it is turned down is correct. Therefore let us not proceed with this. I am prepared to wait, just as on the other occasion the hon. Minister took a little time to ponder over the matter as he was confused first, and then he came to the conclusion that there was no difficulty. First he thought that there might be difficulty. Then today he came in regard to Mr. K. B. Lall's Bill and stated that there was no difficulty and then we proceeded with it.

SHRI SANTOSH KUMAR BASU: It will be better if you withdraw the Bill and ponder over it.

SHRI BHUPESH GUPTA: I can wait—I will withdraw it the next day. Mr. Basu, you gave a very good argument. Let him think over it. Next day we can discuss it. I can also consult lawyers and certainly I would not like to sponsor a Bill which I know, is contrary to the Constitution. Sir, I do not believe in entering anywhere by the back-door. That is for Mr. Akbar Ali Khan and others. I always enter places by the front door . . .

(Interruptions.)

SHRI AKBAR ALI KHAN: It is trying to enter by the back-door by this Bill.

SHRI BHUPESH GUPTA: I want to enter by the front door.

DR. W. S. BARLINGAY: You are entering by the back-door.

SHRI AKBAR ALI KHAN: Then you come through amending the Constitution straightway.

SHRI BHUPESH GUPTA: I am brutally frank but you have mounted guard, Shri Akbar Ali Khan and Shri A. K. Sen, by the front door. I want to enter by the front door. Therefore I say it is recall and it is a suggestion of . . .

(Interruptions.)

SHRI SANTOSH KUMAR BASU: This is an attempt to have another election in Kerala through the back-door.

SHRI BHUPESH GUPTA: Do not bring in Kerala. He brings in Russia, you bring in Kerala and I can bring in West Bengal. What is the use of that geographical survey here in this Constitutional matter?

DR. W. S. BARLINGAY: May I say something?

SHRI BHUPESH GUPTA: I think you can now adjourn the House.

1 P.M.

ANNOUNCEMENT RE: GOVERNMENT BUSINESS FOR THE WEEK COMMENCING 7TH SEPTEMBER, 1959

The DEPUTY MINISTER of LAW (SHRI R. M. HAJARNAVIS): Sir, on behalf of Shri Satya Narayan Sinha, I beg to announce that the Government business in this House for the next week, will consist of—

1. Further consideration of the Government Savings Certificates Bill, 1959, as passed by Lok Sabha.

2. Consideration and passing of the Public Debt. (Amendment) Bill, 1959, as passed by Lok Sabha.

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

(1) Kerala Appropriation Bill,

(2) Appropriation (No. 7) Bill,

(3) Travancore-Cochin Vehicles Taxation (Amendment and Validation) Bill.

4. Consideration and passing of the Miscellaneous Personal Laws (Extension) Bill, 1959.

5. Discussion on the decision of the Government of India on the findings of the recent inquiry into certain affairs of the Life Insurance Corporation, as embodied in Government Resolution dated 27th May, 1959, on a motion to be moved by Shri T. S. Pattabiraman.

6. Discussion of the Report of the Committee of Parliament on Official Language on a motion to be moved by the Minister for Home Affairs on Wednesday, the 9th September.