

I believe, Sir, so far as I can remember, I have referred to most of the points raised in the debate. I should like to express my deep gratitude to the House for the way they have dealt with this motion of mine.

SHRI BHUPESH GUPTA: Sir, I would like to draw the Prime Minister's attention to a telegram which we have received from Mr. Sadiq, President of the Democratic National Conference. In this telegram he complains to the effect that some workers of the Democratic National Conference have been waylaid and robbed by the "Peace Brigades" who have been assisted by the police again. Then again, he goes on to say that similar incidents have created a very great sense of uncertainty and deep feelings amongst the people of Kashmir. I suppose the Prime Minister has got a telegram like this, because it seems that it has been sent to many people. I would like to know from the Prime Minister, since he has not said anything on the Kashmir issue, whether he is going to consider these complaints that are coming from Srinagar from time to time. It affects some vital matters.

SHRI JAWAHARLAL NEHRU: The telegram the hon. Member refers to is apparently about some internal fracas or something that happened there. It is true that I received a telegram or a copy of it, and I forwarded it to the Kashmir Government to enquire what happened.

SHRI BHUPESH GUPTA: My point is—here the telegram says, just in this portion, "how long have we to pay the price of humiliation and dishonour . . ."

(Interruptions.)

MR. CHAIRMAN: Order, order. It is not a question of foreign affairs. It is an internal matter. He has sent it to the Kashmir Government. So, in a foreign affairs debate it does not come.

SHRI D. A. M'RZA (Madras): It is a State subject. It is a law and order question.

MR. CHAIRMAN: Mr. Mirza, it is quite all right.

The question is:

"That at the end of the Motion, the following be added, namely:—

'and having considered the same, this House approves the said policy.'

The motion was adopted.

MR. CHAIRMAN: The question is:

"That the present international situation and the policy of the Government of India in relation thereto be taken into consideration, and having considered the same, this House approves the said policy."

The motion was adopted.

THE PARLIAMENT (PREVENTION OF DISQUALIFICATION) BILL, 1958—continued

MR. CHAIRMAN: Does anybody want to speak on this Bill?

SHRI AMOLAKH CHAND (Uttar Pradesh): I would like to speak, Sir.

MR. CHAIRMAN: Here I have got the name of Mr. Samuel first.

[MR. DEPUTY CHAIRMAN in the Chair.]

SHRI M. H. SAMUEL (Andhra Pradesh): Mr. Deputy Chairman, Sir, this Bill has a vital and significant implication. It relates directly to the functioning of democracy in our country. Therefore, as I read the Bill and listened to the speech of the hon. Deputy Law Minister, I experienced a strange impact on my mind—both good and bad, I must confess—of the play and interplay of the various forces in the functioning of democracy in our country. With democracy in shambles and almost prostrate before military dictatorships all around us—in Thailand, Burma, Pakistan, Iraq, Sudan and Egypt and even to some extent, in Indonesia, with military alliances or military aid backing some of them—our young child of democracy becomes dearer

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and more precious to us, and our devotion to it must compel us to nurture it with all the love and care that we are capable of against all ill-winds—ill-winds even if they are enveloped, clothed, in sweet savours or even winds of apparent or seeming good. That our country now is not only the largest democracy in Asia or perhaps in the World, but also is the only real and successful democracy in Asia amidst an array of military dictatorships and crumbling imitations of democracy has enhanced our reputation undoubtedly in the counsels of the world and that makes our responsibility more important to sustain and nourish our child of democracy. Sir, I approach this Bill against that background and I would urge this House to approach it similarly, against a similar background.

The Greek philosopher, Plato, once described democracy as "a charming form of government, full of variety and disorder, dispensing a sort of equality among equals and unequals alike." That, of course, is an old description given against the background of Greek political thought and environment of that time. But the functioning of democracy even today seems to invest some of those words at least with meaning. Democracy and our Constitution believe in equality of opportunity for every citizen. But let us recognise it straightaway that in practice it does not confer absolute equality on each and every citizen. Democracy is a charming form of government no doubt, and we are charmed by it perhaps; it is full of variety and disorder, as Plato said.

But we have accepted democracy with all its variety and disorder because it is a charming form of government. It presupposes some chinks in its armour and certain pitfalls. That is a successful democracy which closes the chinks in its armour and successfully avoids the pitfalls.

This Bill before us, it seems to me, closes some of the chinks but at the same time opens others. It avoids certain pitfalls but creates others right under our very nose. It enunciates certain healthy principles for the disqualification of Members of Parliament but it introduces others, which I would call, of doubtful quality.

In this general discussion, Sir, I propose to deal with this Bill from a theoretical—and perhaps idealistic, if you like—approach, because with the ideal of democracy before us, we have to be careful about our theories and about our ideals, careful that our theories are not quack, careful that our ideals are not false, that our ideals are not mere idols, not mere golden calves as it were.

Now, it is generally accepted all round—and I suppose there is no one who will demur on this score—that an office of profit must disqualify, and I would like this House not to equivocate at all on this issue in any manner, not even to equivocate in cases of doubtful validity.

The Law Minister, Mr. Sen, said in the other House that he would favour deletions from the Schedule. I prefer, Sir, additions instead. I would like to take a stricter view of disqualification; and even in cases of doubt, I mean, even if there be any doubt in relation to the degree of profit in an office, I would disqualify.

I believe, except the glaring politically and constitutionally incompatible offices, almost any other office is open to some degree of question whether it is an office of profit or not. I know the Constitution has given power to Parliament not to disqualify certain holders of office of profit, but I would like to beg of the House not to exercise this right as a kind of blank cheque, not to take a lenient or

even a liberal view of it, because the consequences of such an action will be very serious and catastrophic, serious not only for the independence of this House but also for the future of democracy in our country. As I said, I would like to take a stricter view of disqualification, even perhaps an over-cautious view, because of several factors. I shall enumerate only one or two of them.

In the first place, an office, whether it is an office of profit or not, carries with it certain power, influence and patronage. A man need not necessarily be a managing director or a chairman or a manager. A Member of Parliament, becoming a member of some statutory, non-statutory or advisory bodies, necessarily acquires there by certain power, influence and patronage. He may not exercise them, but if he does, what happens? Would he be disqualified? What is the penalty for it, or who can prove it? These are very intangible things. Would you allow that to go on, corroding the body politic with corruption, nepotism and extravagance? These are the evils which have destroyed democracies all over the world, and these are the evils that will destroy us too, destroy our democracy, our welfare State and our well-being. It is necessary that we should take into account not only the profit in an office, but also the power, the influence and the patronage in an office.

Secondly, Sir, membership of a statutory; non-statutory or advisory body should not undermine the independence of Members of Parliament. Whether it will not depends on the quality and character of the Member concerned. I will not labour that point very much, and I will leave it to the House to form its own judgment, either in a general manner or in individual cases.

In the third place, the first call of duty for a Member of Parliament is

of Parliament itself and none other; and his time should not be drawn upon for any work, however important it may be, because he cannot do justice to both.

Well, Sir, there are other factors also, but I will not go into them. But allow me, Sir, to get back to this question of office of profit, in regard to which I have got some doubts. In the first place, it is very difficult to define what an office of profit is. It is as difficult to define as the United Nations has found it difficult to define 'aggression' in international affairs. The United Nations has, for several years, tried to define 'aggression', but it has not yet been able to come to any successful conclusion with regard to it. In the second place, will the definition of 'office of profit' be a matter of policy or will it be a matter of interpretation? If Parliament were to be asked what an office of profit means, it becomes a matter of policy. If it is a matter for interpretation, it goes to courts of law and it becomes a justiciable issue.

Now, Sir, some of these doubts that I have raised were mentioned by a former Law Minister, Dr Ambedkar, when he was speaking in Parliament on the same subject, perhaps on the 9th of March, 1950. This is what he stated:

"Membership of Committees or Commissions constituted by a resolution of Parliament or under rules made by Parliament, for instance, the Public Accounts Committee, the Estimates Committee, the Standing Committees attached to various Ministries, etc. . . . I do not feel any doubt would involve any disqualification, for the simple reason that the appointment is made by Parliament either by rules relating to any particular committee or generally by rules framed for the constitution of Committees.

The second class of membership relates to all corporate bodies con-

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stituted by an Act of Parliament, such as, for instance, where an Act provides for the election of Members by Parliament either from among its Members or from outsiders, for example, the Indian Oil-seeds Committee, the Indian Nursing Council, the Employees' State Insurance Corporation or the Central Silk Board. Under the same category are also cases where such Members are appointed by the Central Government, such as, for instance the Coal Mines Stowing Board, the Delhi Transport Authority and so on. I am only expressing here my tentative conclusions and it seems to me that under the first category where Parliament provides for the election to certain statutory bodies, that could not be regarded as an appointment by Government and therefore membership of a committee like that, in my judgment, would not involve any disqualification. But with regard to the second category where such Members are appointed by the Central Government, I feel a certain amount of doubt. I think that that probably might involve a certain disqualification, for the simple reason that although the bodies to which appointments are made are statutory bodies created by a law enacted by Parliament, yet the appointment is by Government..... a Member of Parliament appointed by Government to a statutory body such as under the Coal Mines Safety (Stowing) Act or the Delhi Transport Authority may be paid out of the funds belonging to that particular authority and not from funds belonging to Government: Whether that would be a possible basis for distinction, I have my doubts. I personally think that that would involve disqualification, because it may be regarded and interpreted as a fraud upon the Statute, by getting a Member of Parliament to be appointed but to be paid by somebody else. I think that is a case which must be excluded."

MR. DEPUTY CHAIRMAN: You will continue after lunch. The House stands adjourned for lunch till 2-30 p.m

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

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

SHRI M. H. SAMUEL: Mr. Deputy Chairman, when the House adjourned for lunch, I was speaking of some of my doubts in regard to offices of profit and I quoted a passage from one of the speeches of the former Law Minister—Dr. Ambedkar—made in 1950, in order to show that another person, a person so eminently placed, also had serious doubts in his mind. I am afraid the quotation was rather longish and I apologise to the House for that longish statement. But I have done so because I felt that that passage expressed some of my doubts more admirably. I hope the House will bear with me if I indulged in just one more quotation. This one is from the speech of another former Law Minister—Shri C. C. Biswas—who is still a Member of this House.

AN. HON. MEMBER: Is he?

SHRI M. H. SAMUEL: Yes, the other day the House gave him permission to be absent.

SHRI V. K. DHAGE (Bombay): Yes, he is still a member of this House.

SHRI M. H. SAMUEL: Speaking in Parliament on the same subject, on December 24th, 1953, he said:

"Now, so far as profit is concerned, generally no doubt, profit is interpreted in terms of rupees, annas, pies—it means monetary profit. But

in some cases the view has been taken that office includes something more than that."

And this is exactly what I said, for with it goes power, influence and patronage. Now, I come back to the quotation:

"Even where it is not monetary profit, but other benefits, that also may come within the meaning of the word 'profit'. For instance, if the office is one to which some power or patronage is attached, the office is one in which the holder is entitled to exercise executive functions, an office of dignity, of honour, that might be regarded also as an office of profit, the idea being that Government must not be in a position to seduce a Member of Parliament by placing him in a position where he can exercise authority, where he thinks he is a somebody and either he has got some money or he is otherwise made very important. All these temptations must be removed. That being the object, the word 'profit' has been given a larger interpretation in some decisions. So we have proceeded on this wider basis, so as to remove all possible disqualifications arising from either acceptance of actual money as profit or any other benefits equivalent to money."

This is the opinion of another person having very strong doubts on the question of office of profit.

Recently, Sir, the Chief Justice of a High Court accepted a diplomatic appointment and many persons in this country raised their eyebrows almost in consternation whether such a process was going to affect the independence of the judiciary. I submit, Sir, that Members of Parliament are in no different category. Their independence of judgment is as important as the independence of the judiciary.

I cannot read into the Constitution the implication that the framers of the Constitution had foreseen the active participation of Members of Parliament in statutory, non-statutory or advisory

bodies for the well-being of the country. If the Members of Parliament have to take part or wish to take part in the activities of these bodies, they can do so either from the floor of this House or from various committees that are already in existence or through election to other bodies by this Parliament, and, let me emphasise, on behalf of this House only and not divorced from it.

Now, therefore, without favouring the active participation of Members of Parliament in the statutory, non-statutory or advisory bodies, I would plead for what I would call a harmonious co-operation between the executive and Parliament in these bodies—not a harmony, as the Law Minister, Mr. Sen, said in the other House the other day, not a harmony between the concept of the independence of Members of Parliament and their duty to actively take part in these bodies for the good of the country. At the same time, Mr. Sen admitted—and I agree with him—that such a harmony is very difficult to achieve; but I hope he will agree with me that what I have suggested—a very simple suggestion—harmonious co-operation between the executive and Parliament on these bodies is not so difficult to achieve. Thank you, Sir.

SHRI T. S. AVINASHILINGAM CHETTIAR (Madras): Mr. Deputy Chairman, this to me is a very important Bill because if the Parliament is to be respected, if the Members of Parliament are to act in a satisfactory measure to themselves and to their constituencies, it is necessary that their independence must be vouchsafed. Any Government, Mr. Deputy Chairman, has got means within its power to attract, to corrupt and otherwise influence Members, maybe inside the legislature, or men outside the legislature. That being the case, if democracy is not to be surfeit, if Governments are not to be kept permanently but as reflecting the views of the people, it is necessary that the independence of the Members from unnecessary influence should be protected. It is from

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this point of view, Mr. Deputy Chairman, that our Constitution has vouchsafed that the Parliament with regard to members elected to Parliament and the local legislatures with regard to membership of those legislatures should bring in legislation to safeguard their independence. This Bill has been waiting for some time now before this House. It has its inherent difficulties; on the one hand, while Members had to be protected from such influences, on the other hand, it is also necessary that the experience that the Members of Parliament have must be utilised for public service, maybe in many committees, for forwarding the accepted basic principles and policies of the Government, the principles and the policies which they themselves have shaped in either of these Houses and so, as in many other cases, in this matter also, we must follow the golden mean. We cannot put a ban of membership by members of all committees which Government is constituting. At the same time, we must see that the membership does not constitute any emolument, that the membership does not constitute giving any influence which will mean that this will be a *quid pro quo* for the members to act in a way as to toe the line of the executive. Considering these basic principles, Mr. Deputy Chairman, it is up to us to examine what is happening. I have had some time to go through the Report of the Joint Select Committee. One thing has pained me. It is true that in a country like India, with fourteen States, with the Government as vast and intricate as any Government can be, committees are constituted almost for everything. It is difficult for us to make a list of the committees constituted by the Governments in the various States. There may be difficulties in getting a list of the committees constituted by the Governments of the States. As far as I can see, while it may be difficult to get a list of the committees constituted by the States, sitting in Delhi, it should not be difficult for us to get the names of committees that are constitu-

ted by the Government of India. I refer, Sir, to page (x) of the Minutes of Dissent. It makes sorry reading when I read this:

"But unfortunately the Central and State Governments did not furnish the lists of all the offices and committees and other requisite material. The present Joint Committee also tried their best to collect the entire material but unfortunately they also did not succeed in their attempt. Even all the Ministries of the Central Government did not furnish the required information. No wonder that the States also did not fully comply with the request of the Committee with the result that the schedule appended to the Report is incomplete and it is apprehended that many other committees may be found whose composition and terms may warrant their being included in the Schedule."

I can understand the difficulties of the States. They are far away. They are not immediately seized of this problem. But I do not think there is any excuse for any Department, for any Ministry, of this Government in not complying with the request. Then, later on, the Chairman of the Joint Committee, the Deputy Speaker, has referred to it that in spite of his best efforts the names of these committees were not forthcoming. This is not the way in which I expect the Government and the Ministries to co-operate with a Joint Parliamentary Committee, a Joint Select Committee, which was selected by this House and the other House together.

Now, let me come to one or two other matters. I come to a few of the clauses. I refer to clause 3(c), which reads:

"(c) the office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, the Territorial Army Act, 1948, or the Reserve and Auxiliary Air Forces Act, 1952."

I understand that these matters were raised in the other House also. I want

one categorical answer from the Minister who is sponsoring this Bill. Are these people being paid regularly from the Central Revenues or not? Are they permanent officers who are receiving a monthly salary from the Government of India or not? May I have a clarification? The office of a member of any force raised or maintained under the National Cadet Corps Act, 1948, the Territorial Army Act or the Reserve and Auxiliary Air Forces Act—are they paid?

THE DEPUTY MINISTER OF LAW (SHRI R. M. HAJARNAVIS): I think the hon. Member will allow me to deal with it some time later, not at this stage. I will deal with it later.

SHRI T. S. AVINASHILINGAM CHETTIAR: This sort of reply does not help anybody. I want 'yes' or 'no'.

SHRI AMOLAKH CHAND: I too was a member of the Joint Select Committee. We looked into the matter. The National Cadet Corps officers do not draw any salary or allowance from the Government of India, except on the days when they act as officers in training. That is the position. They are usually lecturers or teachers in the college and they are given some rank. They only draw an allowance when they are in training or they take out the cadets out of the college premises. And the N.C.C. people also get some daily allowance for their out-of-pocket expense on tour. . . .

MR. DEPUTY CHAIRMAN: No speech now.

SHRI AMOLAKH CHAND: I am not making a speech. I am only replying to the question which has been raised by the hon. Member.

MR. DEPUTY CHAIRMAN: He can advance his arguments.

SHRI T. S. AVINASHILINGAM CHETTIAR: It is unfortunate that the Minister-in-charge has not been able to make a categorical reply to my question.

SHRI R. M. HAJARNAVIS: At this stage, I said. I am not habituated to make a statement without referring to authority; and I did not know, nor did the hon. Member think it fit before he began his speech, to give me notice that he would be asking me this question.

MR. DEPUTY CHAIRMAN: He will reply to all your queries. He will reply to you in the end.

SHRI T. S. AVINASHILINGAM CHETTIAR: That is all right. We know it. I may be corrected and I hope that the proper information will be forthcoming. I am sure that some of the officers of the N.C.C. are people who are drawn from the regular army and posted here as officers and who are on the permanent pay list. And then to me it seems that if these officers are paid—and I presume that the top officers, the people who give the training in those organisations are officers who are receiving pay—if they are allowed to come into Parliament, it is another disadvantage. That is introducing the element of politics into those organisations from which it is better we keep politics away.

SHRI J. S. BISHT (Uttar Pradesh): Those officers of the army who are posted there, are not raised or maintained under the National Cadet Corps Act or the Territorial Army Act or the Reserve and Auxiliary Air Forces Act. They are under the Army Act or the Navy Act or the Air Forces Act.

SHRI T. S. AVINASHILINGAM CHETTIAR: Those people who may be under those Acts may be permanent officers of the National Cadet Corps or the Territorial Army. It may be made clear if they are not permanent officers there; if they are not permanently receiving salary. That is the question.

Secondly, I would like to refer to another matter in clause 3(i). In the Bill there are two parts in the Schedule. These deal with two different types of committees. One part of the Schedule says that if anybody

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has a membership of that committee, he is banned from being a Member of Parliament. The other part of the Scheduled says that when one is a chairman or a secretary of those committees, it is only then, he is banned. I have gone through the lists. These lists cannot be exhaustive by themselves. That is true. I wonder at the way in which, the process in which, the selection was made. One friend asked me: "Why has not that particular Board not been brought under it? Oh, don't bother. He is a good fellow. He is a good friend of ours. Don't bother about it." I do not know whether the lists have been drawn with reference to the particular persons who are holding those posts.

SHRIMATI YASHODA REDDY (Andhra Pradesh): Yes, that is obvious.

SHRI T. S. AVINASHILINGAM CHETTIAR: I hope it is not a fact, but it looks so. It is not quite important. We have got the answer . . .

(Interruption.)

MR. DEPUTY CHAIRMAN: Order, order. No insinuation.

SHRI RAJENDRA PRATAP SINHA (Bihar): The hon. Member is making an imputation. We never considered personalities; we considered it on principles.

SHRI T. S. AVINASHILINGAM CHETTIAR: Sir, no imputation to the members of the Committee. It seems, that is quite a parliamentary way of putting it. Mr. Sinha must have known it by this time. I would like to know and I would much wish it if the Government will accept that a Select Committee from this House also should go through these matters. But normally even as amendments are tabled in this House, I hope the statement that he made that the Government keeps an open mind and will accept amendments if and when found necessary, will hold good at least for certain amendments.

MR. DEPUTY CHAIRMAN: Mr. Sinha was a Member of the Joint Select Committee.

SHRI T. S. AVINASHILINGAM CHETTIAR: I am not talking about Mr. Sinha. I would like to suggest this, Mr. Deputy Chairman. Since the list cannot be exhaustive and the Government will be creating new committees quite often—the State concerns are increasing, the departmental committees are increasing and the work that the Government is taking up is increasing—it is possible that from year to year new committees may be constituted. Evidently, all these committees that may be constituted in future cannot be found in any Schedule like this. So, I should think that there should be a Standing Committee of this House, I mean both the Houses.

SHRI AMOLAKH CHAND: That is the proposal, and the hon. Minister has given an assurance to that effect.

SHRI T. S. AVINASHILINGAM CHETTIAR: Have I not heard the hon. Minister? I do not know if that is the case.

SHRI AMOLAKH CHAND: He said like that.

SHRI T. S. AVINASHILINGAM CHETTIAR: I would like a Standing Committee to be constituted under the very provisions of this Bill. Mr. Deputy Chairman, if the Government concedes that a Committee should sit and go through the names of these committees as and when they are brought to the notice of the Government, the proper way to constitute it is not by an executive order. It may be said that it may be done by a Resolution of the House. But I suggest that, as they have done in many other places, it can be constituted under the clauses of this very Bill. I have tabled an amendment to that effect, that a Committee of both the Houses may be constituted, 10 Members from the other House and 5 from this House who will constitute the Standing Committee, who from time to time will go through the names of the committees that may be formed, that may be set up, by the Government, and then decide. Even Advisory Committees, when greater power is given

to them through conventions, through delegations, become committees vested with much power. There are certain committees which may look for the time being executive, but those Committees never meet, and even if they meet, precious little may be brought before them. But it is necessary that the work that they are doing should be brought before the Standing Committee. Sir, I should think that admittedly this work has not been done properly. It is accepted on all sides that at least many of the names of these committees have not come forward from the States. It is admitted that there are many committees that will be constituted by the Government of India according to the nature and the need of the work. When all this is admitted, Mr. Deputy Chairman, I think it is necessary, it is good, it will be proper, to have a clause under this Bill providing for the appointment of a Standing Committee which will go into these affairs from time to time.

There is one other matter, and it is this. A reference was made a few minutes back by the previous speaker to the appointment of a Chief Justice as a diplomat. In legal circles, in the High Court and in the other courts, I have heard it said, "What has happened to the independence of the judiciary?" If High Court Judges go on functioning with the idea that they will get something after their retirement, if the Chief Justice of a High Court . . .

MR. DEPUTY CHAIRMAN: We are now concerned with Members of Parliament.

SHRI T. S. AVINASHILINGAM CHETTIAR: I am presently coming to that. When the independence of the judiciary for which we stand, even if that can be affected by an executive act—I know, Mr. Deputy Chairman, we are concerned with the disqualifications in respect of membership of Parliament; but the point that I am raising is that indeed it is a bad precedent. Such bad precedents are being created with regard to the judiciary. High Court Judges

have expressed to us in private as to what will happen to the independence of the judiciary if the members of the judiciary can be made to expect that will get something after they retire. That way independence of the judiciary goes. Even so, Mr. Deputy Chairman, it is up to us to be jealous, to take care that the Act is such that, while giving a fair amount of latitude in respect of getting the services of important people for public work as may be considered necessary by the Government, it makes sure at the same time that these are not gifts under the executive, gifts which may dilute the independence of the legislature. So, I consider this Bill to be one of vital importance, also for another reason. This Bill affects, under article 102 of the Constitution, only the Members of Parliament. Under article 190 the State Legislatures will have to pass legislation in respect of membership of their own Legislatures. And the State Legislatures normally take the cue from the Central Government. Though technically we are legislating only for Members of Parliament, through that we will be held out as an example to many of the State Legislatures. So, I am anxious that Parliament, this House in addition to the other House, should go into the matter more carefully, very seriously. The most important aspect is the Schedule, and to me it seems that the Schedule can never be made complete within this short time, and hence the importance of a Standing Committee of both Houses of Parliament.

Sir, I hope that this Government, as nobody else, is anxious that we should come to proper decisions on this matter, and I should think that the constitution of a Standing Committee under this measure will be the essence of the provisions of this Bill.

Thank you, Sir.

SHRI H. D. RAJAH (Madras): Sir, I am not very happy about this Bill being introduced in Parliament now. From the very beginning I was feeling that it is very difficult to define what is meant by an office of profit. I am reinforced in the argument by the

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first paragraph of Chapter III of the Report of the Committee on Offices of Profit. They say quite correctly that "According to one of the terms of reference the Committee have studied the various matters connected with the disqualification of Members to be able to recommend to Government the lines on which a comprehensive legislation could be brought before Parliament. The Committee cannot fulfil their task unless they attempt to define what is office and what is profit." Therefore, from the very beginning we have been finding it very difficult to define what is meant by an office and what is meant by an office of profit, and much more so under the present circumstances.

Somehow, rightly or wrongly, we have entered into what is called a public sector and a mixed economy. A mixed economy is always like a mongrel, but still the economy is there, and the Government of today is committed to implement that mixed economy. I take a very serious view of the sovereignty of this Parliament, unless of course something happens like what happened in Pakistan and we are all wiped off the board. But I do not expect that kind of thing to happen in this country. I expect a decent government to do decent things, and that under it people would be pleased in some way or other, and that all sections of society would remain as a democratic force carrying on the work of their nation. Therefore, when that sovereignty is imbedded in us through the people to whom we have given the adult franchise, various sections are represented in this sovereign Parliament and we exchange words, give advice to each other, and carry on the administration. In this set-up we have got to enter into commercial activities and so many developmental activities. In regard to these developmental activities which are coming under the public sector, the eyes and ears for those developments are the sovereign Members of Parliament. They represent the quintessence of wisdom. They have to make a report

to the Government, they have to report to their constituencies, and they have to report to the nation their performances and their duties. So long as that concept is there, the statutory bodies' representation is absolutely necessary in Parliament. Only one condition must be there, namely, that a Central Government servant or a State Government servant or a municipal servant or some other servant of any denomination or nomenclature should be barred from membership of Parliament, because their duty is to serve and they are employed by the Government for that kind of service. Except that, 3 P.M. all other definitions become meaningless. So far as office of profit is concerned, I am amazed to find that at times the Members of Parliament are asked to go and broadcast on the radio. The radio in this country is a controlled institution, solely and exclusively intended for Government propaganda; unlike any other democratic country, it is not privately owned.

Means of communication through radio are absolutely controlled by the Government. Even at times Members of Parliament are invited to make a speech on the radio. They pay a grand sum of Rs. 25 or Rs. 21—I do not know what exactly it is.

SHRI RAJENDRA PRATAP SINHA: It is Rs. 25.

SHRI H. D. RAJAH: Under the present Bill, that chance of speaking on the radio for a Member of Parliament has ceased to exist. It is now termed as an office of profit. That simple thing of speaking on the radio about some political or economic event of the country is deemed to be an office of profit.

SHRI N. M. LINGAM (Madras): Not that the allowance is reduced to Rs. 21.

SHRI H. D. RAJAH: The question.

MR. DEPUTY CHAIRMAN: What is the clause you are referring to?

SHRI H. D. RAJAH: The clause? It is in the Schedule. It gives other things also. Now, suppose . . .

MR. DEPUTY CHAIRMAN: Which Schedule and which clause in the Schedule are you referring to?

SHRI H. D. RAJAH: What I mean to refer to is . . .

SHRI RAJENDRA PRATAP SINHA: What the hon. Member is saying is quite correct. A doubt may arise that that is an office of profit.

MR. DEPUTY CHAIRMAN: Let him explain.

SHRI H. D. RAJAH: The Schedule here is a crucial one. What are the things which come under office of profit are yet to be seen. That is a test case which I am saying—about a radio speech. If you will kindly bear with me, you will know. Suppose it comes like that. Suppose some man goes . . .

MR. DEPUTY CHAIRMAN: You should not speak on supposition, Mr. Rajah.

SHRI H. D. RAJAH: Why not? How do you say that? Are you confident to tell me that this list is comprehensive and that there is no more item to be added to it? What I am saying is by way of illustration.

MR. DEPUTY CHAIRMAN: You suggest that such people would be excluded. That means they are already in the Schedule.

AN HON. MEMBER: No, no. It is not like that.

MR. DEPUTY CHAIRMAN: Please do not speak on airy things.

SHRI RAJENDRA PRATAP SINHA: Mr. Rajah is right.

SHRI H. D. RAJAH: I am right. Therefore, if it is not mentioned, it is likely to be mentioned. You can take it for granted that any flimsy excuse can be found with regard to the defi-

nition of 'office of profit'. I can tell that the election of a Member may be involved. What will be his fate at the court is another matter.

MR. DEPUTY CHAIRMAN: Now, in this Bill, we are concerned with definite Schedules.

SHRI H. D. RAJAH: Not only the Schedules. 'Office of profit' means what? I started my speech by quoting to you that it is very difficult to define what is meant by an office of profit. Therefore . . .

MR. DEPUTY CHAIRMAN: How can you say that?

SHRI H. D. RAJAH: We go under a presumption. I give an illustration of this nature.

MR. DEPUTY CHAIRMAN: Even if it is not found in the Schedule?

SHRI H. D. RAJAH: Therefore, what I mean to say is, how you should consider every aspect and make the law.

SHRI N. RAMAKRISHNA IYER (Madras): May I know whether receiving payment from the All India Radio for a speech will amount to an office of profit? Is it called a profit?

SHRI RAJENDRA PRATAP SINHA: The court has to decide it.

MR. DEPUTY CHAIRMAN: Mr. Sinha, he will explain it; he is capable of explaining it.

SHRI H. D. RAJAH: If hon. Members will bear with me and know the trend of the discussion and then answer, it will be worth while for us to consider.

DR. W. S. BARLINGAY (Bombay): May I submit respectfully to my hon. friend that even if an item is included in the Schedule, that would not necessarily mean that it is an office of profit under the Constitution.

AN HON. MEMBER: Correct.

SHRI H. D. RAJAH: Therefore, I am just making out a point in this way that even such trivial matters as getting an allowance of Rs. 25 for a speech made on the radio may become an office of profit.

MR. DEPUTY CHAIRMAN: You have to declare it so.

AN HON. MEMBER: It may be.

SHRI H. D. RAJAH: It may be. Therefore, the point is, our litigant-minded people who want to see that an elected Member is challenged at every step may take it to the court by telling that on such and such a day, this friend spoke on the All India Radio and received Rs. 25 and here is the evidence for it. So, he is unfit to be a Member of Parliament. Now, after having spent time, energy and money for getting elected, I must face the music of challenge in a court of law and try to prove and establish that that is not an office of profit. What I am saying is that this definition and these exclusions have no meaning and when they have no meaning, the Bill has no meaning. And when the Bill has no meaning, our debate is becoming infructuous and academic. That is exactly the point I wanted to bring to your notice.

Now, we shall go a step further in the matter. Having accepted this premise, what are the positions which are defined as such? I have been very reluctant, and I do not understand why these people insist on excluding certain items and including some more items. Sir, take the sheriff. Who is the sheriff? The sheriff is a person who is a glorified policeman to attend on the Sessions Judge for carrying out his obligations and duties in the High Court. That sheriff is appointed by the Government of a State. Now, we have come all the way to remove this disqualification of a sheriff from being a Member of Parliament. Imagine the ridiculous position—a Member of Parliament, a man who is legislating for the entire nation, a member of a sovereign body,

becoming a sheriff, a glorified policeman in the High Court. What are his functions? And who is appointing him? The Government of the State. Now, we say in the Bill that the sheriffs post will exclude him from being disqualified and he is entitled to become a Member of Parliament. And look at the other things to which I strongly objected in the Select Committee. This is that provision—*'lambardar, malguzar'* or what *'dar'* I do not know. These words are not known in Tamil Nad or in the South. Mr. Hajarnavis will bear out when I object to this. "The office of the village revenue officer, whether called a *lambardar, malguzar, patel desh-mukh* or by any other name . . ." I cannot even pronounce them.

SHRI RAJENDRA PRATAP SINHA: It is all over India.

SHRI H. D. RAJAH: That is not so. These words are not known there.

MR. DEPUTY CHAIRMAN: They will come under any other name.

SHRI H. D. RAJAH: They will come under any other name. What are their functions? Village *patel, gram munsiff, vettiyan* . . .

SHRI RAJENDRA PRATAP SINHA: What do you call them?

SHRI H. D. RAJAH: We call them village *munisiff, vettiyan*. *Vettiyan* is more or less a man

MR. DEPUTY CHAIRMAN: Gounder.

SHRI H. D. RAJAH: Yes, *gounder*. Whatever it is, such kinds of names are not known everywhere. These words are not known all over India. I strongly pleaded with the Law Minister, "you dispense with these names in a Bill." A Bill of this Parliament should be understood by every man throughout India. You must define their functions and duties. You define them by their functions and duties, not by this kind of names. Certain names are known in certain areas; certain names are not known in certain other areas. Therefore, you should

define them by their functions and such functions must be there in order to know who they are. But never make mention of these names. If I understand correctly, what is the function of a village revenue officer? Now, I think, there is a design in this clause. If these people are allowed to represent the people in Parliament, they are an addition and an acquisition to any party in Parliament because, naturally in village politics, these people count a good deal—because they collect the revenue and out of the revenue a share is paid to them, and they are bound to collect revenue according to the revenue records. The villagers are all obliged to them. It is carrying influence through these people, and the voting is arranged in such a way that a contesting candidate can go and fix it up with a thousand rupees for a village, and the village munsiff accepts it. And when he himself stands he has to see that others act similarly, and this fraternity will work together. So, it is a combined political motive by which these clauses are introduced in this Bill, which are the antithesis of democracy. You can go and canvass votes; you cannot vote for these officers, in whatever name they are, when they are functioning on behalf of the State Government or the Central Government, to be excluded from the purview of disqualification.

Sir, after all we have a democracy. And what is this democracy? It is money democracy. A man who wants something to be done pays fabulous amounts to any party, to the party especially in power, because they depend upon this party in power to dispense patrimony to them in the form of export licences and import licences Rs 50,000, Rs 1,00,000 and so on and so forth are the huge contributions made by these companies and others, who are indebted to the Government and who are obliged to them, and when that is the way in which moneys are collected, they are let loose on the country. Our Representation of People Act which was recently amended by our Parliament says

that a man can spend Rs 20,000 for a seat in Parliament and Rs. 7,000 for a seat in the State Assembly. Now what does it amount to? What is the average income of a citizen in this country? Rs. 30 a month, Rs. 360 a year, and if you can allow a candidate to spend Rs 20,000 to contest a seat in Parliament, and his friends to spend as much as they like and the party to which he belongs to spend as much as they like, an election will cost not less than 50 to 60 thousand rupees per seat. And from where all this money comes? So, it is money democracy. I would suggest to you to remove that bogus nomenclature 'election' so that you may nominate everybody, who, you think, should come to Parliament. But if you really want election, make one position clear, that is, any man is entitled to stand for election. And the moment he declares that he is standing for election—to whichever party he belongs—he must be put under house arrest so that he will not play hanky-panky game to the electorate, so that he will not go on spending fabulous sums of money either collected from the public or drawn from the Congress funds or for that matter from Communist funds or any personal or private funds, and the people should be allowed to elect a man on the basis of the confidence the people will have in that man.

SHRI J. S. BISHT: What about his party and his friends?

SHRI H. D. RAJAH: His party and his friends will simply say that he has been so and so; he has been working for the benefit of the people and he should be elected. But then, these propaganda vans, engaging cars in hundreds, and bribing the voters out of the moneys which they have squeezed from the companies and other individuals, the rich millionaires, and getting themselves elected with a margin of one vote is not the way in which democracy can function. Therefore, it is all the more the reason that in our sovereignty, which we are so much proud of and which so zealously we want to

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guard, we have to see that corrupt and undesirable elements do not come in, and when it happens it is immediately reflected on the elections to corporate bodies and other statutory bodies.

As I said, this election to the membership of these statutory bodies is indispensable; it is necessary in order to see that democracy functions. Now, Sir, unless we have all the controls and all the aspects of our national economy, we are not competent to talk in this House about the progress that the nation is making. So, Parliament Members must be represented on the statutory bodies; they must be represented there but, mind you, I must say very emphatically here that all the public corporations we are having in this country must have Members of Parliament, not nominated by Government but by election by both the Houses. That is the fundamental principle to which we must adhere, and when we do that, the lesser becomes the evil, and the integrity of every Member of Parliament is subject to question and debate in our Houses if you have a Bill of that nature.

SHRI R. M. HAJARNAVIS: May I interrupt the hon. Member? As we read the Constitution a Member who has been elected by Parliament is not affected by article 102, as I have indicated in my opening remarks. The disqualification attaches when an office of profit is held under the Government. "Under the Government" has been interpreted to mean appointment has been made by the Government or Government retain the power to remove him. Where appointment is owed to the election by this House and may be continued by a mandate of the House I do not think article 102 is in any manner attracted.

SHRI H. D. RAJAH: I appreciate the hon. the Deputy Minister for making that position clear, but I wish to emphasise this fundamental fact, namely, that any appointment to any

statutory body must come under the election by this House and that House. This is one premise and a fundamental principle to which I adhere, and I want this House to accept it. That is all my position with regard to this.

Now comes another important point. The High Court Judges and the judiciary as a whole are not excluded. They must definitely choose between the judiciary and the sovereignty of this House, and those learned men who are appointed to the judiciary to function there, to interpret the laws which the sovereign Parliament makes, they should be content with that position and that alone; nothing more. They cannot aspire to become politicians after they have retired from the High Courts and the Supreme Court; they cannot aspire to become something else when their duty and function are fearlessly to discharge them in their High Courts, and so I want a specific provision, in any law that we make, that the judiciary and judicial officers are excluded from becoming Members of Parliament. I have no other grievance against them. No doubt there will be able and talented people who will aspire to become Members of Parliament but they have to choose between the judiciary and our Parliament.

DR. SHRIMATI SEETA PERMANAND (Madhya Pradesh): What about members of the executive?

SHRI H. D. RAJAH: Members of the executive become members of the Government in the sense that they draw their pension and other benefits from the Government and therefore they are totally debarred from being Members of Parliament. There is no question of their contesting for a seat so long as they draw any pension, even a farthing from the Government coffers, from the public exchequer.

Now, Sir, having said that as the fundamental, now I will go into the details with regard to the emoluments of Members of Parliament. This, as I said, . . .

MR. DEPUTY CHAIRMAN: A separate Bill is coming, the Salaries and Allowances of Members of Parliament (Amendment) Bill. You can say all this on that.

SHRI H. D. RAJAH: Very Well, Sir; let it come.

Now, with regard to this allowance for the Members of Parliament that they may draw, namely, the travelling allowance or the allowance for stay in a hotel connected with the discharge of their functions in statutory bodies on behalf of Parliament, well, that is welcome; it is not an office of profit, and they cannot draw twice, the daily allowance. For example, we get Rs. 21 here as allowance for every day for the meeting that we attend here. But when we go to attend a meeting elsewhere, say, in connection with the Bhakra-Nangal project—a Member of Parliament is a member of the board of management thereof—well, he goes and when he comes back he draws the railway fare and draws the other expenditure incurred by him during his stay at Bhakra or Nangal on that particular day the meeting is held. For that day he does not draw our allowance. Therefore, there is no duplication of allowance or double payment to the Member of Parliament. He is doing that function of Parliament there as a representative of ours, and that is a point which you have to take into account. Therefore, such allowances or payments made for duties which he is discharging in such bodies instead of the duty which he discharges here, well, that cannot be treated as emoluments or an office of profit. Therefore, that position must be made clear.

Now, Sir, what business have these University Chancellors and Vice-Chancellors to meddle in politics?

MR. DEPUTY CHAIRMAN: They are not there now.

SHRI H. D. RAJAH: I am happy that they have been debarred from being Members of Parliament. What I say is that anybody belonging to an academic body which gets a subsidy from

the Government—'Government' means ourselves—should not be allowed to become a Member of Parliament. This is a set of people whose duty is only to make laws, a set of people whose duty is to educate the young children of our country, and a set of people who should see that these laws are judicially, impartially and properly administered. Let us have separate departments like that. A man cannot meddle in everything. If he says "I am this, I am that and I am everything else", it is a menace and a danger for the proper existence of a decent democratic Government. Therefore, Sir, let us consider this question in its proper perspective. I would earnestly request the Law Minister to withdraw this Bill, and let us have a Bill in which 'office of profit' is defined only in this particular way that those who are Government servants, those who are in the judiciary and those who are in the education department or the army and navy department—of course, they all come under the heading of 'Government servants'—should not be Members of Parliament. Excepting all these categories, the rest can contest and come into Parliament. And make the expense zero. If anybody gets into Parliament by spending vast sums of money, make that as an offence. Well, Sir, these are some of my suggestions, and I would request the Law Minister to take them into consideration. Thank you.

SHRI P. N. SAPRU (Uttar Pradesh): Mr. Deputy Chairman, Sir, perhaps you will allow me to present a point of view which is somewhat critical of this entire business with regard to an office of profit. I do not wish, Mr. Deputy Chairman, to go into the question of the office of profit, except to say that it had its origin in the reign of James I, when there was an effort to have the King's Party. It was thought important to preserve the independence of Parliament. I think we are not at all living in the days of James I, and nor are we living in the spacious days of Queen Victoria. We are living in the twentieth cen-

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tury, with new concepts of a Welfare State, and therefore we have to view this problem from a new angle.

Mr. Deputy Chairman, Sir, a great deal has been said about the independence of Parliament. I do want Parliament to be effectively independent. But can we honestly say that Parliament is effectively independent, when we as members of political parties vote, not as our conscience dictates, but as the three-line whips of our party dictate? I am not suggesting that in a democracy you can do away with the party system of Government. But I am just mentioning this thing to point out that this talk about the independence of Parliament has rather been overdone. Can we be effectively independent when the executive Government—Ministers and other high executive officers—has so many gifts to offer? And what is after all the patronage that we as Members of Parliament, if placed on certain boards, can exercise? Is it not a fact that Members of Parliament, by virtue of their being Members of Parliament, exercise a certain amount of influence, in their constituencies, with Ministers? Is it not a fact that as members of many standing committees of Parliament and of Joint Select Committees of Parliament we exercise our patronage or we exercise our influence? Therefore, Sir, let us see these things in their proper perspective. I can understand the viewpoint that persons who are in the Government as its employees or persons who are salaried servants of the Government should be excluded. The words 'office of profit' are there in the Constitution. It is not for the Law Minister or for me to define that term. The power of interpretation resides elsewhere.

Now, Mr. Deputy Chairman, Sir, much has been said about the British Constitution and the British Act of 1957, on the lines of which this Bill has been drawn up. May I point out that there are some grave dissimilarities

between our republican and quasi-federal Constitution and the British Constitution and those who talk about this matter are apt to forget those dissimilarities? Take for instance the British Constitution. There you have got two chambers, the House of Lords and the House of Commons. Now in the House of Lords not only Lords Temporal but also Lords Spiritual sit. Now these Lords Spiritual are Members of Parliament and they take an active part in the debates of Parliament. On one occasion, Sir, the Archbishop of Canterbury of the day, Dr. Davidson, said that the words 'Dominion Status' should be avoided with reference to India. Now the Lords Spiritual . . .

SHRI BHUPESH GUPTA (West Bengal): What are we—Lords Temporal or Lords Spiritual?

SHRI P. N. SAPRU: My hon. friend will kindly listen to what I am saying. I am supporting his viewpoint. So, Sir, the Lords Spiritual take part in the actual proceedings of Parliament. They exercise vast influence, vast prestige and vast patronage. Take again this question of separation of judiciary from the executive and also the theory that no member of the judiciary should ever be a Member of Parliament. May I remind those who talk about democracy that the position of the Lord Chancellor in England is a very anomalous one? He is the head of the judiciary; he is the head of the House of Lords; he is a member of the Cabinet, and as a member of the Cabinet, he is the Minister of Justice responsible for the appointment of High Court and County Court judges—a person who exercises vast patronage. May I point out that Law Lords have a life tenure in the House of Lords? They sit in the House of Lords: they are part of the House of Lords and they take part in the debates of the House of Lords?

I will just remind you of the speech which Lord Sumner made on the Amritsar massacre. (Interruption) I

agree. But we have been arguing that because there are certain things in the British Constitution and in the British Act, here also we must have those things in our Act. And that is the argument which I am trying to refute. I think, Mr. Deputy Chairman, Sir, it is not correct to say that there is no public sector in Britain. There is a public sector there, as we have got it here. And in an empirical manner the British Labour Party is wedded to the principle of nationalisation of the means of production and distribution. The Labour Party, as a party, takes an empirical view in regard to this matter. (*Interruption*) I say that broadly speaking, the picture that I have given is correct. But we have a Constitution and we have what they in Britain have not, we have certain Directive Principles of State Policy. As you go through these Directive Principles of State Policy, you find that the entire philosophy of the Welfare State is enshrined in them. You will find that they visualise the interventionist State, that they visualise a State in which the means of production shall be so controlled as to secure the maximum benefit for the people of the country. Now, if that is the position, is it not desirable, in the larger interests of the public, that Parliament should find some representation on these statutory bodies, on these public bodies, on these boards of directors of nationalised or semi-nationalised industries? Where is the objection to it? We find and we have no objection to a director of one of our great industrial concerns sitting in this House. We are glad and I am very glad that we have some representatives of big business and small business in this House. Why should we not have some representatives of, shall I say, the commonsense of the country, as represented in Parliament, on these bodies? Why should we leave these bodies to be manned exclusively by civil servants who have many virtues but who have no idea of how a Welfare State runs or should be run? Why should we leave these bodies to be run by directors of com-

mercial concerns who know what profits mean but who do not necessarily know what welfare means. Well, Mr. Deputy Chairman, I think for these reasons, it is important, it is desirable and it is in the public interest, that Parliament should be represented on these boards, that Members of Parliament should not be excluded from these boards. But he, as a member of that body, should not get more than the compensatory allowance which is permissible to him as a Member of Parliament. He must not get the extravagant payments which other directors get. He must be content with his Rs. 21 or Rs. 20 a day, plus such travelling allowances as may be permissible to him.

SHRI M. H. SAMUEL: May I ask the hon. Member whether he has considered.....

MR. DEPUTY CHAIRMAN: Order, order.

SHRI M. H. SAMUEL: Sir, I am only asking him whether he has considered what will be the effect of it on Parliament itself.

SHRI P. N. SAPRU: I have been trying to point out that the participation of Lords Spiritual and such others as Law Lords in the House of Lords has not diminished the independence of one of the component parts of the British Parliament. I am pointing out that the British Prime Minister has vast patronage. The British have got their Orders of Knighthood which we have not got and if a Member of Parliament or a Member of the Opposition has been rather prominent, he can be created a Privy Councillor or he may be made a G. C. M. G. They cannot now make him a G. C. S. I. He may be made a Knight of the Garter or a Knight of the Thistle and so on. All this has not affected the independence of the British Parliament. Why should it affect the independence of our Parliament here, unless we think that we as a people are weak in national character?

SHRI BHUPESH GUPTA: We can have Padma Vibhushans.

THE MINISTER OF LAW (SHRI A. K. SEN): They are not titles, they are decorations.

SHRI P. N. SAPRU: Yes, there is that distinction which the Law Minister has pointed out just now, between Padma Vibhushan and these Orders of Knighthood.

Therefore, Mr. Deputy Chairman, I suggest that the opportunities for exercising patronage, the opportunities for exercising influence are there already and all that you are doing is not to attack these opportunities of patronage, the opportunities for exercising patronage or influence, all that you are doing is to deprive men who may be believing in the philosophy of the public sector from sitting as members of bodies which will control the policies of the public sector. Sir, I am surprised that men who call themselves Socialists, Members of the Praja Socialist Party and others, men who call themselves socialists, should take such a narrow view of what the public welfare and the independence of Parliament require in the Twentieth century and in the year of Grace 1958. Therefore, my personal preference is for a drastic cutting down of the list of exemptions.

SHRI H. N. KUNZRU (Uttar Pradesh): Reduction of the exemptions?

SHRI J. S. BISHT: No, reduction of the exclusions.

SHRI P. N. SAPRU: May I say one or two words about certain high functionaries who have been excluded? Take for example the Vice-Chancellors of Indian Universities. I can very well understand the point of view of Mr. Rajah. But I hope he would like to have a literate Parliament. Probably, he has his own views, because he gave a list of exemptions and he gave a list of those who should not be qualified for membership of Parliament. If we examined this list carefully we will find that everybody who has anything to do with educa-

tion or culture is to be excluded. But I would point out that in our constitutional arrangements, there are provisions for teachers constituencies in State Legislatures. Teachers can send representatives to the State Legislative Councils. Every teacher, be he a professor or a schoolmaster or a primary schoolmaster, will be eligible to be elected as a member of the State Legislative Council. But the Vice-Chancellor cannot stand. Why? Because he is at the apex. He is at the head of, shall I say, the teaching profession so far as university education is concerned in his State. You, therefore, deprive the best talent from serving in Parliament. You want to have a Parliament of, shall I say, not mediocres, but of nonentities. That is not the way to build up a healthy parliamentary life. May I also refer to another class of persons to be excluded from membership of Parliament?

DR. W. S. BARLINGAY: What would the hon. Member say to the case where the office of the Vice-Chancellor was held to be an office of profit under the Government as was done in the Baroda case?

SHRI P. N. SAPRU: I do not know. The Universities are autonomous bodies. The Chancellor, not as the Governor but as the Chancellor, has the power to approve of the appointment of a Vice-Chancellor and the answer to the point of law is that the appointee in an autonomous body like a University is not a salaried officer of the Government.

SHRI SANTOSH KUMAR BASU (West Bengal): May I point out one thing so that he may clarify it at this stage? It is quite clear from the Bill itself that all Vice-Chancellors are not excluded. If the Vice-Chancellors are Chairmen of the Syndicate and of the Executive Council, they are included in the exemption.

SHRI J. S. BISHT: No

SHRI BHUPESH GUPTA: No, no.

DR. SHRIMATI SEETA PAR-
MANAND: No, all Vice-Chancellors
are excluded.

SHRIMATI YASHODA REDDY: All
the Vice-Chancellors are excluded.

SHRI R. M. HAJARNAVIS: Only
those Vice-Chancellors who receive
profit.

DR. SHRIMATI SEETA PAR-
MANAND: What is profit? It is not
only the money but the office itself.

SHRIMATI T. NALLAMUTHU RAMA-
MURTI (Madras): What is meant by
"profit", Sir?

MR. DEPUTY CHAIRMAN: Go on,
Mr. Sapru.

SHRI P. N. SAPRU: There is a little
confusion here, Sir. Take, Mr. Deputy
Chairman, the question of the mem-
bership of special recruitment boards.
Members of the special recruitment
board are to be excluded from mem-
bership of Parliament. I am rather
sorry for this suggestion. I have
served on a special recruitment board.
I am no longer connected with it and,
therefore, there is no personal interest
attached to this matter so far as I am
concerned. Recruitment boards should
not be regarded as boards for the
exercise of influence or patronage. I
think it is a horrible conception. A
member of such a board has to judge
candidates on merits; he has to exer-
cise his judgment not patronage or
influence. I do not think it is a good
suggestion to make that members of
special recruitment boards should be
excluded from Parliament on the
ground that they exercise patronage or
influence. I think it would be a sorry
day for this country when we begin to
look upon our Public Service Commis-
sions or recruitment boards as sources
of influence or patronage.

SHRI RAJENDRA PRATAP SINHA:
Would the hon. Member like the
Members of Parliament to act on the
U.P.S.C.?

SHRI P. N. SAPRU: That is a dif-
ferent matter. The U.P.S.C. is a con-
stitutional body and it will not be
consistent with the position of a ser-
vant of the Constitution to serve on
Parliament as well.

DR. W. S. BARLINGAY: May I at
this stage ask the hon. Member a
question for the sake of clarification?

SHRI P. N. SAPRU: The hon. Mem-
ber always asks questions for the sake
of clarification.

DR. W. S. BARLINGAY: I want a
clarification from my learned friend
because I respect his views.

My point is this: Are we, by virtue
of these schedules, not virtually defin-
ing offices of profit under the Consti-
tution?

SHRI P. N. SAPRU: No.

SHRI D. A. MIRZA (Madras): Not
defining but describing them.

SHRI P. N. SAPRU: The term "office
of profit" cannot be defined by us
under the Constitution. We have
been given power under article 102 of
the Constitution to declare that certain
offices shall not be offices of profit
notwithstanding the fact that they may
be regarded as offices of profit. That
is what we have got to do. I would
like to make it clear that it is not my
suggestion that executive directors
or managing directors or chairmen of
boards who exercise functions which
give effective control, should be
allowed to stand for election, but I
think a mere membership of any of
these bodies should not disqualify a
person.

I would like then to say one or two
words about certain other offices. I
am, generally speaking, in favour of
the view that members of the Terri-
torial Army should be permitted to
stand for election to Parliament. In
some countries, you have conscription;
in our country we have no conscrip-
tion. In countries where you have

[Shri P. N. Sapru.]
conscription, I have yet to learn that persons who are eligible for conscription are ineligible to stand for election to Parliament. I do not see why a man should be penalised for acting in a patriotic manner; it would be a patriotic thing indeed to serve in the Territorial Army of this country and I do not see why he should be penalised.

SHRI AMOLAKH CHAND: May I point out that under clause 3(c), the Territorial Army people are exempt?

SHRI RAJENDRA PRATAP SINHA: He is supporting that view. That is all.

SHRI P. N. SAPRU: I am supporting it but I am not supporting the view that members of the Home Guard should also be eligible for election to Parliament.

SHRI H. P. SAKSENA (Uttar Pradesh): Is it because they are smaller people?

SHRI P. N. SAPRU: I make a distinction. It may be a patriotic thing for a person to serve as a member of the Home Guard but it is not consistent with the dignity of this House that a member of the Home Guard who is subject in standards of discipline to the orders of a Superintendent of Police should find a place in this House.

Then I come to the question of the sheriff. I am on the whole inclined to the view that a sheriff should not be eligible for membership of the House. The sheriffs, as far as I know, are not eligible for membership in the House of Commons.

SHRI SANTOSH KUMAR BASU: That is a different kind of sheriff.

SHRI P. N. SAPRU: We have no institution of sheriffs in our State and so I do not exactly know what the functions are that a sheriff performs but I think he rather waits upon the

High Court Judges, executes decrees and so on. I have no very definite or clear views on the point but I do not fancy the idea of a sheriff serving in Parliament.

Then I come to the question of *lam-bardars*, *malguzars*, *patels* and so on. The clause says that they may be eligible if their functions do not involve police duties. The phrase "police duties" is rather a hard one to define and I think that it will lead to a lot of complications if we are to leave that clause as it is. I would, on the whole, like to say that they should not be eligible for election to Parliament. I do not have any positive views on this matter but this is my present inclination.

I would like to say that the suggestion of the Joint Committee that there should be a standing committee of Parliament to review the list of exemptions from time to time is a good one and it should be given effect to. Finally, Mr. Deputy Chairman, I would like to emphasise that one way in which the independence of Parliament can be strengthened is by laying it down as a convention that members of these boards or bodies shall be elected by Parliament itself. I quite agree with Mr. Hajarnavis that that will be possible even if the lists are allowed to go through, because election by Parliament cannot constitute an office of profit. A member elected by Parliament is not the holder of an appointment by the Government of India. But I would say that as a matter of convention it should be left to each House to decide as to who shall be its representatives on these bodies. I think that it will save Ministers also from criticism in the House and elsewhere, if they accept this principle. Further, I would like a convention to be developed that, where possible, members of these bodies should be appointed by the Chairman of the Rajya Sabha or the Speaker of the Lok Sabha, as the case may be. Now, with these healthy checks and with a strong public opinion, which believes in democracy

as a way of life, which believes in the Welfare State as an article of faith, with these vital safeguards, there is no reason why the independence of Parliament, such as it is, should suffer if we liberalise the list. Thank you very much.

SHRI RAJENDRA PRATAP SINHA: Mr. Deputy Chairman, the question that is before us has been engaging the attention of Parliament for some time. It was in 1954 that a Joint Committee of both Houses was appointed by the Speaker to go into this question in great detail, as it was felt by many Members of Parliament that the law on the subject was not very clear and it ought to be more comprehensive.

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This Committee examined this question in great detail and submitted the report after a deliberation of fourteen months. A Bill was then presented to Parliament and it was found lacking in many respects and, therefore, it was referred to a Joint Committee. The Joint Committee also went into this question in very great detail and produced a report which was submitted to both Houses.

Now, Sir, you will find from the trend of discussion in this House and also in the other House that the Bill that we are discussing today has not met with a large measure of unanimity. You will notice that even the Members of the Joint Committee were not unanimous in producing their report, because there were six Members who had appended lengthy Minutes of Dissent, running into a total of 14 printed pages. As you have seen and as you have yourself stated in this House, the Bill, which we are considering, still suffers from many of the lacunae and ambiguities which it was the original intention to remove and for which the Committee on Office of Profit was appointed. What was the real purpose in appointing that Committee? It was this that the Members of Parliament or persons intending to contest elections to the

Houses of Parliament should not be left in doubt, and should not be left at the mercy of the law courts, to decide whether a particular office was an office of profit or not. The intention was to make the law as precise, as clear, and as unambiguous as possible, so that a Member or an intending candidate does not get into any difficulty. Now, you will find that all those ambiguities still continue and most of the recommendations that this Committee on Office of Profit made in order to remove the ambiguities have not been implemented. I am very doubtful whether you yourself may not be put into great difficulty even after the passage of this Bill.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Why?

SHRI RAJENDRA PRATAP SINHA: Well, it will have to be decided by the President or the Election Commissioner whether a member who is drawing a pension . . .

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Oh!

SHRI RAJENDRA PRATAP SINHA: . . . is holding an office of profit.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Is that your interpretation of law?

SHRI RAJENDRA PRATAP SINHA: The point is this that this point has not been made clear in this Bill.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): I see you would like it to be made clear. You can advise your friends.

SHRI RAJENDRA PRATAP SINHA: That is exactly the point. I do not want to . . .

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): I think the point is—if you will pardon my saying so—unarguable.

SHRI SANTOSH KUMAR BASU: May I just ask my learned friend one question: Is a Government pensioner holding an office?

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): What is the office he is holding?

SHRI RAJENDRA PRATAP SINHA: That is a debatable point.

SHRI SANTOSH KUMAR BASU: Not at all.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): And what is pension?

SHRI RAJENDRA PRATAP SINHA: Here is an Act of Parliament of the United Kingdom. Now, they have specifically removed the disqualification which may be attached to a Member drawing a pension. Now, whatever the decision of the court, I may drag a Member to the Court on this issue that he is holding an office of profit. It is for the court, it is for the Election Commissioner—whatever may be the provision for making the decision—to decide whether a Member is holding an office of profit or not, so long as he is drawing a pension.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Anybody can go with a petition to a court on any matter and the procedures of the court allow special costs to be given in those matters.

SHRI RAJENDRA PRATAP SINHA: Exactly. It is to save you from that. That was the purpose.

SHRI LAVJI LAKHAMSHI (Bombay): He is getting profit, but what office is that?

(Interruptions)

SHRI RAJENDRA PRATAP SINHA: No decision has been taken by the Election Commissioner here. What we
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wanted was to make it a foolproof law. Let Parliament decide this question so that the Members may not remain in suspense.

DR. SHRIMATI SEETA PARAMANAND: Why do you not bring in an amendment yourself?

SHRI RAJENDRA PRATAP SINHA: I will come to that later. It is still not late, we can bring in amendments.

The hon. Member, Mr. Rajah, referred to the question of a Member speaking on the radio. It is a doubtful point whether that is an office of profit or not. Similar is this question of pension. I do not want to keep such Members in suspense.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Sir David Maxwell Fyfe was paid £24,000 as fees for the Nuremberg Trial. He was a member of the Opposition; still he did not lose his seat in the House of Commons.

SHRI LAVJI LAKHAMSHI: Duty of a casual nature does not entail any office of profit.

SHRI RAJENDRA PRATAP SINHA: Nowhere has office of profit been defined.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): How can it be defined?

SHRI RAJENDRA PRATAP SINHA: That is what I say. Then I can take any Member to the court on that point. That is what I wanted to be removed.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): That cannot be removed.

SHRI RAJENDRA PRATAP SINHA: If it is stated in this Bill that the pensioners are exempted, the matter ends. If you speak on the radio and draw only Rs. 25 as allowance, you are exempted but not disqualified. (Interruptions). My hon. friend does not understand it. The point is this. Parliament is not taking any decision on these questions. I want Parliament to take a decision on these specific questions. I do not want that a Member of Parliament should be dragged to the court on these issues. That was the intention of having a Joint Select Committee to examine these questions and to make the law foolproof. That we are not doing, that is my submission. For example, there

are other instances: the examiners in universities, the question of engagement of part-time lawyers, and so on, and on all these questions we are not making the law unambiguous. That is my submission, Sir.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): It could be a casual engagement as lawyer.

SHRI RAJENDRA PRATAP SINHA: Sir, your opinion as expressed here cannot be accepted by a court of law. I can always take any person to the court, and the whole purpose of my submission is to save that Member from harassment in a court.

SHRI SANTOSH KUMAR BASU: Can any law stop anybody from being dragged to court?

SHRI RAJENDRA PRATAP SINHA: Sir, these are the specific offices to which exemption is granted. In such cases he cannot be taken to court. When an office of profit is in doubt, then only I can take him to the Court. That is my submission.

Now, Sir, questions have been raised about the schedule appended to this Bill. A point was made and discussed in these two Committees that the best way to produce a very clear and unambiguous Bill was to append two schedules, one giving the disqualifications and the other giving the exemptions. We came across difficulties in accepting this view. There were inherent difficulties in accepting the notion of appending these two schedules. The difficulties were there, but at any point of time such schedules will never remain exhaustive and comprehensive, because both the Central Government and the State Governments are creating and abolishing committees and commissions,

Then, Sir, the functions of these committees and commissions may also change. These difficulties stood in the way of the Joint Committee recommending the appending of two schedules which, theoretically speaking, of course, would have made the law very clear on this point. Anybody could refer to them and find out whether he came under either of these schedules. Therefore, for the reasons stated, we could not possibly append a schedule giving the exemption lists.

Now, Sir, in order to appreciate the difficulties and the various points that we have to consider on this Bill, we must be very clear on the conception of office of profit. Our difficulty, as stated by the Law Minister himself, was that this phrase "office of profit" has not been defined by the Constitution, and we in this Parliament are not competent enough to define it, and even if we attempt to do so, the courts are not liable to accept it.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The Supreme Court is the only final authority which can decide this point.

SHRI RAJENDRA PRATAP SINHA: Quite right, Sir. We are not in a position to do that. Even then we have got to have some concept of what is an office of profit before we could decide the various issues involved in this question. Now, the two Committees went into this question in very great detail. It was difficult also because no authoritative pronouncements even in other countries were available to these Committees on the basis of which they could make up their mind on this concept. Even then we found some references in one country or the other from which we could arrive at certain broad principles as to what should constitute an office of profit.

DR. W. S. BARLINGAY: Was it open to you to define an office of profit?

SHRI RAJENDRA PRATAP SINHA: It was not one of our terms of

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reference because it was felt not necessary to define an office of profit. But we could not proceed even a step without having some concept of what is an office of profit, and that is what I am submitting to you for consideration. Sir, the word 'office' is easy of being understood. If it is an office of regular employment under the Government like the civil servants or the army personnel or Ambassadors now or the members of the judiciary, there is no dispute.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): At one time Ambassadors were not regarded as coming within the category of those holding an office of profit.

SHRI RAJENDRA PRATAP SINHA: Historically speaking, they were not.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): They used to stay at home.

SHRI RAJENDRA PRATAP SINHA: But now when the Ambassador's job became a full-time job, it was regarded as an office of profit. From these historical events we could not have some principles about the office of profit. I am glad, Sir, that you have mentioned that. I will come to the position of Ambassadors a little later.

What I was saying was, there is no dispute about a member of the civil service or the judiciary or the armed forces. There is also a popular meaning attached to the word 'office', that is to say, holding an office in the different committees or commissions. That is the popular meaning. Should it constitute an 'office' or not? The only issue involved is, positions in these committees or commissions whether statutorily created or created by the executive are 'offices' or not. That is the real point on which we have got to make up our minds.

Then comes the question of profit. We went into very great detail to search what the different concepts or

ideas of the word 'profit' are in different countries. The conclusions to which we came are that a profit necessarily does not mean a pecuniary profit. If it is a pecuniary profit, the quantum of profit should not be the criterion; it cannot be the criterion. Then again, referring to pecuniary profit, whether you draw it or not, being attached to a particular office cannot be the criterion. Even if you do not draw that profit attached to an office, we found, it was held that that amounted to an office of profit. On this issue we were lucky in that we found even the decisions of the Indian Election Commissioner in the case of the members of Vindhya Pradesh Legislature. When that Bill was before this House, it was definitely decided that the quantum of profit—whether you draw that profit or not—will not entitle you to exemption. Now, it is a well-recognised fact not only in India, but in all the countries where parliamentary form of government or democracy functions, that profit is something much more than a pecuniary gain.

SHRI R. M. HAJARNAVIS: I have asked this question in the Select Committee. I have raised it again. Will you please draw the attention of this House to any authority except, of course, Mr. Biswa's speech which takes the view that the hon. Member has just now repeated? The Bhargava Committee takes the view but it is directly in opposition to what the Supreme Court has said.

SHRI RAJENDRA PRATAP SINHA: Sir, I appreciate it. I know that the hon. Deputy Minister raised this question in the Joint Committee also. But I would like you to appreciate that we could not get the judgement of any court whether in India or outside to substantiate the point of view that I am putting to you. But this is from our studies and from the literature on the subject. This is not something which we have produced of our own.

We can produce this concept ourselves. What you have to see is whether this is original or not, whether it is a good concept or not. From our studies and from our own deliberations, we came to the conclusion that profit should not be limited only to pecuniary ideas.

DR. W. S. BARLINGAY: Otherwise, they would have said 'pecuniary gain.'

SHRI RAJENDRA PRATAP SINHA: Otherwise, they would have said that. You are right. 'Profit' should be taken in a much broader sense. That is to say, as Mr. Biswas has very eloquently explained in one of his speeches in this very House—I remember that—if a Member is placed in a position to exercise influence, if he is placed in a position from where he could feel that there is something important if his friends and the public could feel that he is an important person . . .

SHRI R. M. HAJARNAVIS: Again, Sir, may I interrupt my hon. friend? In the deliberations, certainly they came to the conclusion that 'office of profit' involves something more than pecuniary gain. As I said, this is something contrary to what the Supreme Court itself has said. But the hon. Member also referred to certain books and certain authorities. May I have those authorities?

SHRI RAJENDRA PRATAP SINHA: As I said, I cannot give you anything off-hand. I have not referred to all those authorities. But I remember that after a deliberation and after a study of this question, we came to this conclusion, and this is the view accepted also in England and other countries wherever parliamentary form of government is in existence I can give you the authorities which were consulted to arrive at this view, to substantiate the point of view which the Committee took. The hon. Minister was part of that Committee, not on the first one, but on the second one.

As I was explaining to you . . .

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): But in England, as far as I know, the appointments included in Part I are paid appointments. Those directorships are paid directorships.

SHRI RAJENDRA PRATAP SINHA: I will come to that Committee later. Here, my arguments are very limited. I am merely explaining the concept of the word 'profit.' We will come to this when we go to the particular clauses. It is very difficult for me to remember, but there are one or two offices to which there is no pecuniary gain attached. But even then, if we accept those offices, in England, you are disqualified.

SHRI R. M. HAJARNAVIS: May I explain? That is not because it is an office of patronage but because in the earlier times, a salary was attached to it and because salary was once attached to it, although not drawn now, it is always regarded as an office of profit. So far as I have been able to see, there are three categories of office of profit. One is that to which there is a salary attached. There is no question about that. The other is one to which salary was at one time attached, but no salary is drawn. Yet, that is regarded as office of profit. There is the third category of offices which, by virtue of the rulings or the decisions of the House of Commons, have been regarded as offices of profit. Following precedents, they are regarded as offices of profit. There is no fourth category as far as I know. But I am willing to learn.

SHRI RAJENDRA PRATAP SINHA: Sir, what I am saying is that this is the view-point of the two Committees which considered the matter in great detail and on which eminent Members of both Houses of Parliament sat. The hon. Minister was also a member of one of those Committees. And we came to the conclusion that 'profit' should not be limited, we should not use the word 'profit' in a limited sense, but we should use it in a broad sense. I will explain it. Where there is a position of patronage or influence, where you feel something of import-

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ance, all these factors should be taken into consideration.

Another point I would like to refer to also in the concept of office of profit. The manner of appointment is also an important factor which must be taken into consideration while considering the concept of an office of profit. Now, you may be holding an office of profit, but if you are elected by the Houses of Parliament, as the hon. Minister himself suggested, that will not entail a disqualification if it be for that limited purpose, and that post will not be taken to mean that it is an office of profit. It is the manner of appointment; the restriction is only on the appointments made by the executive. This is an important point that must be remembered while considering this question.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Have elections by Parliament, that is what I said.

SHRI RAJENDRA PRATAP SINHA: That is a very good suggestion you put forward.

Now, I am just telling you for your consideration, I am making out the point, that in the concept of an 'office of profit' the element of the manner of appointment has to be taken into account. So, even if there is an office of profit, if the appointment to that office is not made by the executive Government, then it may not be regarded as an office of profit which will entail disqualification for being a Member of Parliament, that is to say, in order to preserve the independence of the Members of Parliament, in order that the executive may not seduce the Members of Parliament, this concept was brought in in the concept of an office of profit, in the concept of the manner of appointment.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): You will have to go a little further and say that the executive should not issue any party whips for supporting one or opposing another

candidate if there is to be election by Parliament.

SHRI RAJENDRA PRATAP SINHA: What is the whole idea of independence? Independence from what? That is why we have to see into this. Now, we can say independence from party whips, but that has not been referred to and covered in any parliamentary form of Government. It is a very important concept you have referred to. Independence from what? The idea is independence from the inroads of the executive into the legislature. The idea is not the independence from party whips or party discipline—that is not brought in. As you know, Sir, in England . . .

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): With the growth of the inner cabinet the inroad of the executive on the legislature has become increasingly great. The executive decides and the legislature puts the rubber-stamp.

SHRI RAJENDRA PRATAP SINHA: Yes, Sir. If you look at the historical background—this will also help us to understand the concept of an office of profit—in the very early ages when there was a fight going on between the King and the Parliament—it was known as the privilege phase, that is, before 1640 . . .

SHRI R. M. HAJARNAVIS: My hon. friend is mixing up.

SHRI RAJENDRA PRATAP SINHA: Because my hon. friend referred to this question I am just saying how the concept developed.

Then came the question of the corruption phase in 1660. At this stage it was felt that Members of Parliament should not be corrupted by the Crown. I am talking of the English institution, of the development of this idea and concept in England. Now this lasted till 1660 when the supremacy of Parliament was established. Then from 1705 onwards it was felt that the members of the executive must sit in the legislature, in the House of Commons itself, and therefore they had to pass a law in order to exempt Members of Parlia-

ment from getting disqualified when they accepted ministerial posts. But you will remember, Sir, that in this law also, which is known as the Statute of Anne, 1707, they had a provision that Members of the legislature will only have so much of ministerial offices, that it cannot exceed a certain percentage, 10 per cent or so of the Members.

DR. SHRIMATI SEETA PARMANAND: 70.

SHRI RAJENDRA PRATAP SINHA: That is, about 60 or 70 Members only can hold ministerial offices, and if that number was exceeded, they incurred a disqualification. Now here we have not got any of these things and I would like you to appreciate the fact that the idea was always that the influence of the executive should never spread over the Members of the legislature.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): I was not opposed to this idea. I was on a different point and I said that the executive were becoming all-pervasive in the modern world.

SHRI RAJENDRA PRATAP SINHA: Therefore, it is all the more important, Sir, that we must preserve the independence of our Members from the inroads of the executive. Otherwise Parliament will cease to function in the manner they are functioning today.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Some re-thinking has to be done on that point.

SHRI RAJENDRA PRATAP SINHA: Now, you will see, Sir, that the Committee considered this question with that background of the concept of an office of profit. You will find, Sir, that article 102 very clearly says that a Member or a person can hold an office of profit provided the exemption is granted by Parliament. Now, it is an office of profit; you cannot deny that it is an office of profit. But you can hold an office of profit, any office of profit. For that the exemption must be given

by Parliament. Now what was at the back of the mind of the Constitution-makers while they framed this article 102? We must go into that. The whole idea was of keeping the Members of both Houses of Parliament independent of the executive; the whole purpose of incorporating this article 102 was this, that Members of Parliament may not be corrupted—pardon my using this word—by the executive. Therefore, this article 102 was provided. If it was the intention of the Constitution-makers that a Member of Parliament can be placed in any office of profit by the executive and in that event they will not incur a disqualification, they could have provided like that here; there was no necessity to say that the disqualification must be removed by law. I would like my hon. friends to appreciate the point I am making now. Article 102 says; Yes, you can occupy any office of profit provided Parliament, by law, declares that that office will not disqualify you. If the intention of the Constitution-makers was to give that power to the executive, that could have been very well provided in this article 102 itself. But no; the Constitution-makers were wise people, and they thought that democracy in this country can only flourish if we have independence in the Houses of Parliament.

Sir, I do not want to cast any aspersions—far be it from me—on any Member of Parliament. They are an honest set of people; I know that the Ministers are also an honest set of people.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): The whole difficulty is that under the party system as it obtains in parliamentary democracies today the executive ultimately controls Parliament. It can have its own way unless there is a revolt in the party.

SHRI RAJENDRA PRATAP SINHA: Sir, I grant that. Even then, even under the party whip it is important that there should be independence for the Members of Parliament. I know that under the system that we have

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now evolved of parliamentary democracy, the executive does control through the party machine their independence, rather curbs the independence of Members of Parliament, under this parliamentary system. Even then, granting that the Constitution-makers knew all that, even then it was provided—because it is important—that there must be a measure of independence even under the party system. I admire the way in which our parliamentary form of Government is functioning. The Members are independent; the Treasury Benches are mortally afraid of criticisms of the Members of Parliament, whether the criticisms come from the opposition benches or from their own benches. I would like this to be preserved. I would not like anything to happen which may, in the long run, go to affect the independence of Members of Parliament, even the Members of the ruling party itself. Today, Sir, what we are saying is that even the Members of the Congress Party show a large measure of independence, and they criticise the Government. Now, should we do anything which will curb this independence of the Members of Parliament? That is the point at issue.

SHRI N. M. LINGAM: The only way is to declare all offices of profit . . .

SHRI RAJENDRA PRATAP SINHA: My hon. friend has not appreciated the point, Sir. It is not for Parliament to declare whether it is an office of profit or it is not an office of profit. What you can only do is to remove the disqualification that may be there. The Constitution-makers have given you that power to remove such a disqualification. I would not like, Sir, that we should be robbed by the executive of this power that we enjoy. What this measure is doing is that it is denuding Parliament of its inherent rights conferred by the Constitution. Well, Sir, I am not a legal authority. You are a better judge than myself. But I can say with great confidence

that such a Bill can be challenged as *ultra vires* the Constitution.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): May I know how, under the present Bill, the executive is being given that authority to remove this disqualification?

SHRI RAJENDRA PRATAP SINHA: Sir, my hon. friend, who is an eminent lawyer, can understand it even better than myself. I have only to draw his attention to the point that I am making. What we are trying to do is that under clause 3(h) we are giving a blanket power to the executive to the effect that if a Member of Parliament is put on such and such committees, then it will not be tantamount to a disqualification.

SHRI JASPAT ROY KAPOOR: Because we are enacting here like that?

SHRI RAJENDRA PRATAP SINHA: Now, Sir, this is what the executive Government is asking for. It is trying to take away the powers which are rightfully given under the Constitution. It is we who must remove that disqualification and not the executive. What is happening is that the executive is taking away the powers of the legislature in its own hands under the party whip.

SHRI JASPAT ROY KAPOOR: Where do you find that?

SHRI RAJENDRA PRATAP SINHA: This is what I am submitting.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Delegated legislation is permissible under our Constitution.

SHRI RAJENDRA PRATAP SINHA: That is what I am objecting to. Parliament must jealously guard this particular right which it possesses.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): That is a political right, not a legal right.

SHRI RAJENDRA PRATAP SINHA: Sir, it amounts to this that they are

robbing Parliament of the privileges given under article 102 of the Constitution.

DR. W. S. BARLINGAY: Your point is that those particular offices will not necessarily disqualify. Is that the position?

SHRI RAJENDRA PRATAP SINHA: Quite right. My hon. friend has very correctly put it. So, Sir, I object to this type of legislation that is before us today. Well, what are we going to do? What are we exactly doing? We are giving a blanket power to the executive to place any Member of Parliament anywhere it likes. Please do not misunderstand me when I say all this. I do not object to the Members of Parliament going and occupying offices of profit. I do not object to that at all. But I seriously object to permitting the executive to place the Members of Parliament into any such offices.

SHRI N. M. LINGAM: Suppose power is given to Parliament itself. What will happen then?

SHRI RAJENDRA PRATAP SINHA: Parliament does not need such a power. The hon. Minister has very clearly differentiated it. If a Member is elected by the House to any office, then that office does not constitute an office of profit. You must remember that what is important is the manner of appointment. By all means you can have Members of Parliament on any committees which have been tabooed here in this Bill, but do not do so by seeking any favour from the Ministers. That is my point. Sir, it is dangerous to permit Ministers here to place the Members of Parliament in any position from where they can bestow patronage, from where they can exercise influence, from where they can grant big contracts and from where they can distribute the Government funds, and also, Sir, from where they can sit in judgment on the various issues that may be brought forward before them. What I mean to say is that Members of Parliament

should not be placed on tribunals and things like that. If they have at all got to be appointed to such tribunals, it is only we who must send them, and not the Ministers.

SHRI AMOLAKH CHAND: Is it the contention of the hon. Member that on such tribunals Members of Parliament may be appointed by the Houses of Parliament?

SHRI RAJENDRA PRATAP SINHA: If that is the majority view, I cannot help it. If it is the wish of the House, as it appears to be, that many Members would like to serve on many committees, let the House send them there, and let not the Minister do it.

SHRI N. M. LINGAM: But your objection seems to be to the manner of appointment. You were not objecting to the Members of Parliament serving on commissions and committees.

SHRI RAJENDRA PRATAP SINHA: Sir, let the hon. Member listen to the whole of my speech. I am, at the moment speaking no doubt about the manner of appointments.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Are there many other points?

SHRI RAJENDRA PRATAP SINHA: Yes, Sir. I would like to speak about a few more points. But this is a very important factor to which I wanted to refer.

DR. W. S. BARLINGAY: That is not, however, what the Constitution says.

SHRI RAJENDRA PRATAP SINHA: Yes, that is very clear from article 102 of the Constitution. That has been indirectly referred to. And I am only deducing from that.

Now, Sir, certain criticisms have been made that we draw up or cate-

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gorise these commissions and committees without any principles. Sir, I must submit with all humility that we are entitled to differ from the views which the Joint Committee took, but we cannot say that they had no principles on which they made these categorisations. Now I would like to refer to the basis on which the Joint Committee made these categorisations.

DR. W. S. BARLINGAY: Have you written a Minute of Dissent?

SHRI RAJENDRA PRATAP SINHA:
Yes, I have.

Sir, we felt that those committees which were exercising judicial functions should be tabooed for the Members of Parliament to be appointed to them. The other point was that the committees which exercised vast executive powers or which disbursed large amounts of money should not have these Members of Parliament on them.

SHRIMATI YASHODA REDDY: Sir, is there any time-limit?

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): No time-limit. This is a Bill . . .

SHRI RAJENDRA PRATAP SINHA:
Offices which are compatible with the membership of Parliament . . .

SHRI LAVJI LAKHAMSHI: Any time-limit for the consideration and passing of this Bill?

THE VICE-CHAIRMAN: (SHRI P. N. SAPRU): The Business Advisory Committee has not fixed any time-limit.

SHRI LAVJI LAKHAMSHI: What I wanted to know, Sir, was whether the Chairman had fixed any time-limit for the consideration and passing of this Bill.

SHRI RAJENDRA PRATAP SINHA:
Under the rules, Sir, the Chairman

can fix such a time-limit only for Money Bills, and it is for the Business Advisory Committee to fix a time-limit for other Bills.

SHRIMATI YASHODA REDDY: Whether any time-limit will be placed tomorrow when other Members may have to speak, that is what we want to know.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Well, I cannot say what will happen tomorrow. But no time-limit has been fixed by the Business Advisory Committee so far for the consideration and passing of this Bill.

DR. SHRIMATI SEETA PARNANAND: The Business Advisory Committee is meeting tomorrow at 12:15 and a time-limit will apply to everybody after that.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): I cannot give you a safeguard against that.

SHRI RAJENDRA PRATAP SINHA:
I am sorry if I have exhausted the patience of hon. Members here.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): I would appeal to the hon. Member to be short.

SHRI LAVJI LAKHAMSHI: No, no. We only wanted to know the information.

SHRI RAJENDRA PRATAP SINHA:
Thank you. We will fight it in the Business Advisory Committee and get more time for the consideration of this important Bill.

SHRI LAVJI LAKHAMSHI: It is a very interesting speech and I am greatly interested in hearing it. It is not a question of anybody's patience being exhausted.

SHRI RAJENDRA PRATAP SINHA:
As I was saying, the Committee felt that offices which were incompatible with membership of Parliament should not be given exemption.

The other point was about dignity. If an office was such that it would be derogatory for a Member of Parliament to hold, we considered that that office should not be granted this exemption.

Sir, these were the broad principles on which we considered the various committees to which Members of Parliament could go or could not go. You will find that even in the Select Committee stage, there was difference of opinion with regard to these principles and I quite see that this difference of opinion may exist in this House or the other House also. But there should be a measure of unanimity of opinion as to what we consider an office of profit and if we want to send a Member to a particular office we should not leave it undecided, but we should take a decision. That is number one. The second thing is that if we want to send him to a committee, we must decide the manner in which the Member should be sent to this committee or that.

You will find that we took a very liberal view on these things. We took note of the fact that Government today is Government by committees, that there is a growing importance of these committees, these statutory bodies and commissions in our developing economy. We took all these factors into consideration and we agreed that Members of Parliament should know about the things happening in these corporations and other bodies and they should, in some cases, take part in those corporations. All these facts were taken into consideration. And even then we made these recommendations. As you will find by reading the Report, there was difference of opinion and there was a majority view and a minority view. So to say that blindly we have categorised these committees is not a correct statement, and it will be rather uncharitable to this Committee.

You will find that we considered that the committees and commissions which dealt with things like health,

education, and those connected with these developments, bodies like the different development councils in the districts, or those connected with planning and so on, should be open and we should not stop Members from going on such bodies even if they exercised a certain amount of executive functions, and even if the Members could be placed in a position from where they could exercise some influence or patronage. So, we broadly differentiated between committees to which the Member could go, on the advice or nomination of the executive, and the committees or corporations or commissions where he would exercise great power, where the exercise of power was of a very vast nature, where he would be placed in a position from which he could, say, give vast contracts on behalf of the Government and so on, where he could distribute large funds, like for example, the Industrial Finance Corporation. Of course, there was difference of opinion and the University Grants Commission was excluded. We said that this body dealt with education and a Member could go to it even if he is appointed or nominated there by the Government, that is to say, by the Ministry. Of course, I have the greatest regard for my esteemed friend Dr. Kunzru. But I was not considering the question keeping any personalities in view. I felt that here was the distribution of large funds and therefore I would not like a Member of Parliament to be placed on the University Grants Commission by the Minister.

SHRI R. M. HAJARNAVIS: May I ask precisely what exactly the hon. Member means by executive functions? The same thing I heard—and I could not exactly grasp its significance—both during the deliberations of the Select Committee and now. Secondly, let us remember that so far as the University Grants Commission, is concerned, it only distributes grants to colleges or universities.

SHRI RAJENDRA PRATAP SINHA: The majority view was that that

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should not be entered as a disqualification. The point I am trying to state is—and you will find I have given notice of amendments—even though it is connected with universities, you are placing that Member of Parliament in a position from where he could give large sums of money to the universities.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): What is the harm?

SHRI RAJENDRA PRATAP SINHA: I don't say there is any harm. We can place a person like you, Sir, or Dr. Kunzru on such bodies. But I am a very weak person and I would not like my hon. friend the mover for whom also I have great respect, to place me on such a body. I do not mind if a person like you, Sir, or Dr. Kunzru is there. But certainly if a person like me is placed on such a body, I am likely to be influenced by my hon. friend over there and I would be having a feeling that I am being obliged by him. Persons like you, Sir, and Dr. Kunzru are very great persons and they will never feel that way. But we are legislating for all. We are not legislating for individuals. We are legislating considering everyone, neither moral nor immoral.

SHRI LAVJI LAKHAMSHI: Nor are we legislating for very weak persons either.

SHRI H. P. SAKSENA: Will you kindly revise your opinion about your own good self?

SHRI RAJENDRA PRATAP SINHA: Thank you. So, that was the consideration.

The hon. Deputy Minister just now raised the question of executive functions. He knows better than I do, though he tries to get it out by putting me this question, what executive functions are.

SHRI R. M. HAJARNAVIS: I will certainly deal with this point when I

come to reply but I just wanted to know whether the hon. Member's idea coincides with mine.

SHRI RAJENDRA PRATAP SINHA: The executive functions are that he manages the committee, exercises executive functions on behalf of the committee and if a Member joins as a director in the board of directors, there is the joint responsibility jointly carrying on the duties of the company. If, however, the functions of the executive are vested in the chairman and the secretary, then the Members can go there. The hon. Minister can place on such bodies Members of this House. There are bodies like the Air-India International, the Transport Council, the boards of directors of these public corporations and we have not the slightest objection to Members of Parliament being sent on to such bodies. My point is that they should continue to be disqualified unless they are placed there by the Parliament itself. Members are slightly not understanding the significance of having these schedules. The significance is that so long as the disqualification is either not removed by the Parliament or if they are not elected by Parliament, Members will incur a disqualification. I would also like to understand another point. A vast number of corporations and committees are going to be created. What is going to happen to this Parliament if the 700 Members of both the Houses are to function on one or two boards? I think it will take away the very life of this body, the Parliamentary institution. If we have to consider as to how many Members have to go to this committee or that committee, then we will have to balance everything. Everything must be done with a balance. We will have to see how many Members belonging to this party or that party are going and how many are not going. This is another point my hon. friends sitting on my right do not understand. I would be the last person to go and say to a Minister that the Members of the Opposition are not sent to such and such committee or committees and that they have sent

all the Members of the Congress Party. Certainly, in regard to this matter, the Whip of the Congress Party and the Whips of other Parties can sit together, talk on this issue as to why they have sent so many Congress Members and not Members from the Opposition. I will feel hurt and my self-respect will be touched if I have to go and ask these questions which are decided in the office room of the Minister as to who will be put on which committee. Therefore, I hope I will get the support of the Members sitting to my right, the Members of the Communist Party. I do not object to Members going on to these boards.

SHRI N. M. LINGAM: Suppose Members are elected to the University Grants Commission?

SHRI RAJENDRA PRATAP SINHA: You can send them; I will have no objection if any Member is elected by the House.

So, hon. Members should support me. We can always have consultations with the Whip of the Congress Party as to how the different sections of this House should be represented on these various boards.

DR. W. S. BARLINGAY: Is it suggested that if a Member is elected by a House of Parliament . . .

SHRI RAJENDRA PRATAP SINHA: He does not incur the disqualification.

DR. W. S. BARLINGAY: Even though it is an office of profit, he will not be disqualified. Is that the suggestion?

SHRI RAJENDRA PRATAP SINHA: Yes, and that is what article 102 says. The disqualification must be removed by law. If you want to send anybody, it is quite likely that the disqualification may be removed by law.

DR. W. S. BARLINGAY: What the hon. Member says is that merely because they are elected by Parliament, they are not disqualified.

SHRI RAJENDRA PRATAP SINHA: That is what I say.

SHRI JASPAT ROY KAPOOR: Obviously, if anybody is elected by Parliament, he incurs no disqualification for the simple reason that he is not holding an office of profit under the State or the Central Government. That cannot be the case.

SHRI ABDUR REZZAK KHAN (West Bengal): Yes, yes.

SHRI JASPAT ROY KAPOOR: If he is sent to the committee by virtue of his being a Member of Parliament and not appointed by the Central or the State Government then it is not an office of profit which entails a disqualification.

SHRI RAJENDRA PRATAP SINHA: The whole idea is that the office must be under the control and under the thumb of the Government. Take the case of the Vice-Chancellors. Many of them are appointed and are removable by the Governors or by the Central Government.

SYED MAZHAR IMAM (Bihar): These are all the hon. Member's suggestions. They are not in the Bill.

SHRI RAJENDRA PRATAP SINHA: I am not going to read out all this. Certainly, all these are suggestions; what else could they be? I am defending my view. The manner of appointment is also important. In regard to the Vice-Chancellors, I would beg to differ from you.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): If I were a Vice-Chancellor, I would not seek election to Parliament because the work as Vice-Chancellor is very heavy but it should be permissible if one wants to because after all, it is for the electorate to decide.

SHRI RAJENDRA PRATAP SINHA: That is my personal view which I am placing before the House. This also appears to be the majority view of

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Lok Sabha. On three grounds, we should debar the Vice-Chancellors. One is their incompatibility that is to say, they have got a full-time job in the Universities and they have got a full-time job as Members of Parliament. Therefore you see most of the Vice-Chancellors never attend this House regularly. Number two is....

SHRI H. N. KUNZRU: I will ask my hon. friend to consider carefully whether all other Members attend Parliament regularly.

SHRI RAJENDRA PRATAP SINHA: Sir, that is hard to say but by virtue of his office, he is forced and I want to give him this liberty.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): We have got businessmen as Members and others also as Members; we have got lawyers as Members.

SHRI RAJENDRA PRATAP SINHA: He will refuse to take a brief and be in the Parliament but a Vice-Chancellor cannot say that he will refuse to function as a Vice-Chancellor. The other point is that most of the Vice-Chancellors draw fat salaries. I know of Vice-Chancellors drawing Rs. 2,000 and yet continue here also. From these two points also, we object to Vice-Chancellors being made eligible to be Members of Parliament.

SHRIMATI T. NALLAMUTHU RAMAMURTI: The Universities are autonomous bodies and the Vice-Chancellors are not appointed by the Government as such.

SHRI RAJENDRA PRATAP SINHA: We are legislating for the Vice-Chancellors as such and are not differentiating between them. In the case of 90 per cent. of the Vice-Chancellors, they are appointed and are removable by the Government. Now, that is an office of profit and we would not like to have them here.

The other point I would like to make is about the Home Guards. You have very correctly said, Sir—and we examined the constitution of the Home Guards very thoroughly—and we also found—that is the minority view, of course, like yours which I am representing here—that they are directly controlled by the police.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): By the Superintendent of Police.

SHRI RAJENDRA PRATAP SINHA: In Bombay, they are under the control of the Superintendent of Police of each district and they actually carry on traffic duty and the duties of a prohibition officer. Now, these duties are not, I will not say compatible but are derogatory to the duties of a Member of Parliament.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): Inconsistent with.

SHRIMATI YASHODA REDDY: The Vice-Chancellors are appointed by the Governor not in his capacity as the Governor but in his capacity as the Chancellor. So, where does the question of Government controlling the appointment arise?

SHRI RAJENDRA PRATAP SINHA: I am not going into this question because the time at my disposal is limited. It may be correct but I am not going into that.

In regard to the Home Guards, what I was saying was this. The Territorial Army and the Auxiliary Force are constituted in an emergency when it becomes the duty of every citizen to help the State but the Home Guards are not constituted in an emergency. They continue to be members of that force from day to day.

THE VICE-CHAIRMAN (SHRI P. N. SAPRU): I suppose the hon. Member will continue tomorrow.

SHRI RAJENDRA PRATAP SINHA: Yes, Sir. Thank you, Sir.