

meaning of article 110 of the Constitution of India."

(II)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith a copy of the Prevention of Disqualification (Amendment) Bill, 1958, as passed by Lok Sabha at its sitting held on the 20th December, 1958."

Sir, I lay these two Bills on the Table.

(III)

"I am directed to inform Rajya Sabha that Lok Sabha at its sitting held on Saturday, the 20th December, 1958, has passed the enclosed motion concurring in the recommendation of Rajya Sabha that Lok Sabha do join in the Joint Committee of the Houses on the Cost and Works Accountants Bill, 1958. The names of the members nominated by Lok Sabha to serve on the said Joint Committee are set out in the motion.

MOTION

"That this House concurs in the recommendation of Rajya Sabha that the House do join in the Joint Committee of the Houses on the Cost and Works Accountants Bill, 1958, made in the motion adopted by Rajya Sabha at its sitting held on the 10th December, 1958 and communicated to this House on the 12th December, 1958, and resolves that the following members of Lok Sabha be nominated to serve on the said Joint Committee, namely:

1. Shri Nibaran Chandra Laskar
2. Shri Etikala Madhusudan Rao
3. Shri Bholi Sardar
4. Shrimati Jayaben Vajubhai Shah
5. Shri Radhelal Vyas
6. Shri C. R. Narasimhan
7. Shri S. A. Agadi

8. Shri Satis Chandra Samanta
9. Lala Achint Ram
10. Shri Radheshyam Ramkumar Morarka
11. Swami Ramanand Shastri
12. Shri Padam Dev
13. Shri Sunder Lal
14. Shri Prabhat Kar
15. Shri Rajendra Singh
16. Shri Jaipal Singh
17. Shri Karsandas Parmar
18. Pandit Braj Narayan "Brajesh"
19. Shri Satish Chandra, and
20. Shri Lal Bahadur Shastri."

REFERENCE TO SHORT NOTICE  
QUESTION ABOUT FOOD PRO-  
CUREMENT IN WEST BENGAL

SHRI BHUPESH GUPTA (West Bengal): Sir, I gave a Short Notice question some time back about the food procurement in West Bengal. I have received a letter saying that the hon. Minister has not agreed to answer this question. Unless it is answered in this session, we will not have any answer and the harvest will begin. The matter is important. I do not know how else we can take it up. Why should he not answer?

MR. CHAIRMAN: Yes, yes.

SHRI BHUPESH GUPTA: Therefore, you may kindly reconsider this matter whether this question should not be taken up. I think it is important in view of the fact that procurement of foodgrains has not yet started.

THE HIMACHAL PRADESH LEGIS-  
LATIVE ASSEMBLY (CONSTITU-  
TION AND PROCEEDINGS) VALI-  
DATION BILL, 1958—continued

MR. CHAIRMAN: I think we have got 23 minutes left for the whole Bill. I have three speakers, and therefore, not more than five minutes each.

SHRI ANAND CHAND (Himachal Pradesh): Sir, I request that this time should be extended for this Bill.

MR. CHAIRMAN: You go ahead, and if there is anything very relevant, we will extend it.

SHRI ANAND CHAND: Mr. Chairman, Sir, as I was submitting the other day, in so far as the so-called Legislative Assembly of Himachal Pradesh is concerned, certain difficulties cropped up because something which was envisaged under the Himachal Pradesh and Bilaspur New State Act was not brought into being.

Now, Sir, when this Act was passed by Parliament, the intention was that a new Part C State of Himachal Pradesh be created, and that new Part C State was to consist of the old Part C States of Bilaspur and Himachal Pradesh. Now, Sir, when a State comes into being, there are three organs to be taken into account. There is the legislature; there is the executive, and there is the judiciary. Now what happened about the Legislature? It is quite clear that that Legislature was not a valid Legislature. If it was a valid Legislature, as understood by law and by our Constitution, it would not have been abrogated or declared null and void by the Supreme Court. Now if there was no valid Legislature functioning in that new State, there could also not be a valid Council of Ministers, because there is also a similar provision under section 37(3) of the Governments of Part C States Act, which says that there shall be a Council of Ministers responsible to the Legislature. Now, Sir, if the Legislature was not valid, there was no Council of Ministers acting as such. Therefore, Sir, half of the executive was not there. It is true that the President is the final authority in charge of that territory. The President was there. But what about his agent in Himachal Pradesh? What about the Lieut. Governor? With the creation of that new State, the Lieut. Governor ceased to exist. No

notification, so far as I am aware, was published by the Home Ministry for re-designating the same Lieut. Governor as the Lieut. Governor of the new State of Himachal Pradesh. So, Sir, here also we have a lacuna. There was no validly appointed Lieut. Governor for the new State.

Now, Sir, let us come to the last organ, the judiciary. Under section 25 of the Himachal Pradesh and Bilaspur New State Act, there was to be a new Judicial Commissioner's court which had to be brought into being by amalgamating the then existing Judicial Commissioner's courts of the States of Himachal Pradesh and Bilaspur. Now, Sir, the Judicial Commissioner of the State of Himachal Pradesh, as it existed, was to be the Judicial Commissioner of the new State. Now, Sir, under the provisions of the Act passed by Parliament here in 1950—the Judicial Commissioners' Courts (Declaration as High Courts) Act, 1950—it was necessary for the new Judicial Commissioner to take his oath before entering upon his duties as the Judicial Commissioner of the new State. The provisions of this Act are very clear. Article 219 says that the Judge of a High Court is to take his oath before a Governor. The only modification made under this Act is that in the case of a Part C State, the oath of office will be taken by the Judge of a High Court before the Lieut. Governor or the administrator of the Part C State, whosoever he may be. Now, Sir, so far as I am aware, the new Judicial Commissioner never took any oath, so far as the new State of Himachal Pradesh was concerned. So, I submit that all the three parts, the legislative, the executive and the judicial, were held in abeyance, so far as the new State was concerned. Of course, the Act of Parliament was there. Parliament had integrated these two territories to form a new State. But my submission is that, as a State, it never came into being, irrespective of the fact that the Assembly might be validated. Now, what are we going to do, so far as the

[Shri Anand Chand.]

Judicial Commissioner is concerned, or so far as the new Judicial Commissioner's Court is concerned, where he did not take that oath? What are we going to do about the old Lieut. Governor who was not re-designated as the Lieut. Governor of the State, as the Agent of the President, which was required under article 239 of the Constitution, as it existed on that day?

Then, Sir, I will adduce this a little further and try to show from the Constitution (Seventh Amendment) Act itself how this question of territorial integration of the two States really never came about in the physical sense of the term. If we look at the Constitution, as it exists now, the extent of the Union territory of Himachal Pradesh is defined as the territory which, immediately before the commencement of the Constitution, was administered as if it was the Chief Commissioner's Province of Himachal Pradesh or Bilaspur. Now, Sir, the Constitution (Seventh Amendment) Act does not take into consideration at all the Himachal Pradesh and Bilaspur (New State) Act under which the territories of both these States were amalgamated and brought into being as a new State. Let us take the State of Andhra Pradesh. When, under the 1953 Act, Parliament constituted the new State of Andhra Pradesh, the Andhra Pradesh territories were correctly defined. Now, similarly, Sir, if the Himachal Pradesh and Bilaspur (New State) Act had actually come into being, in the Constitution (Seventh Amendment) Act we would have said that the extent of the territories of Himachal Pradesh would be the territories which, under the Himachal Pradesh and Bilaspur (New State) Act, were brought together. But in defining the territories of Himachal Pradesh, as existing today, this question was never taken into consideration. It only says that the territories of Himachal Pradesh are the territories of the old Chief Commissioner's States of Himachal Pradesh and

Bilaspur. So, I am just trying to bring it to the notice of the House that the territorial integration also, as was envisaged by this Act, was not supported by the provisions of the Constitution. And on account of this serious lacuna, now my submission to you and to the House is that the Himachal Pradesh and Bilaspur New State Act, although it was passed by Parliament, never took effect in the real sense of the word.

Now, Sir, I would like to go to the question of retrospective legislation. I will not take very long. As I was saying the other day, to my mind, when we enact any retrospective legislation, we have to consider two points, firstly, we can make a similar provision today, and secondly, our powers are so plenary that we can not only make it for today, but also for any past time. That, Sir, is the basis of retrospective legislation. If this Bill is passed into an Act by the House, it will mean that there was a validly constituted Legislative Assembly of the new State of Himachal Pradesh. Now, Sir, if we create that Legislative Assembly by a fiction of law, we must examine today whether we are competent in this House or whether Parliament is competent, under the provisions of the Constitution, to constitute today an Assembly for Himachal Pradesh, or for that matter, for any Union Territory.

SHRI J. S. BISHT (Uttar Pradesh):  
It is only validating.

SHRI ANAND CHAND: Unless you constitute that Assembly, you cannot validate the laws passed by it. The point is very clear. The wording in the Bill is "for all purposes shall be deemed to have been the duly constituted Legislative Assembly of the new State of Himachal Pradesh."

SHRI J. S. BISHT: That is the usual formula of validating such things.

SHRI ANAND CHAND: My friend's view might be different. But that is my view.

' So, Sir, the question is: Are we, before we legislate, validating the Legislative Assembly which once existed and which is no longer there? Is Parliament competent under the Constitution to constitute, by an Act, a Legislative Assembly for Himachal Pradesh or for any of the Union Territories?

Now, Sir, so far as the governance of these Union Territories is concerned, certain provisions have been made in the Constitution under articles 239, 240 and 241. In none of these articles is Parliament vested with the power to create a Legislature in any Union Territory. Of course, in the old Constitution, which is now not there, there was a provision that Parliament could create a Legislature, with a limited amount of power, in these Part C States, as they were called, but that power is no longer there. Where is that power gone? It could only be under the plenary powers of Parliament under articles 245, 246 (4) and 248. These are the articles which deal with the plenary powers of Parliament. I have read them very carefully and to my mind, I have come to the conclusion that neither of these articles gives sustenance or gives substance to the thought or to the contention that irrespective of article 239 or not taking into consideration article 239, Parliament can, under article 245, pass an Act by which a Legislature can be created in any Union Territory. So my submission is that if today neither under these Constitutional provisions as they are, either under articles 239 and 241, nor under the plenary provisions as they exist under articles 245, 246 or 148, we are competent today to create a Legislature for the Union Territory of Himachal Pradesh or for that matter for any Union Territory, then we would be wrong in validating a legislation which existed some time back because, as I have already submitted, what we cannot do today, we cannot validate for past time. Now I leave that aside. To my mind the new Himachal Pradesh State never came into being as it was envisaged, and secondly that

Parliament, under the Constitution, has not got the plenary powers for passing a retrospective legislation to the effect that it creates a Legislative Assembly when it cannot create today. Leaving both these things aside, let us come to the laws themselves. After all this course of action has been adopted to validate certain laws which have been passed by the Himachal Pradesh Legislature which, the Supreme Court has held, was not a properly constituted Legislature, and the contention on behalf of the Government is that because these laws are essential, they are good laws, which are necessary for the good governance of the territory, therefore by validating the Legislature, we want also to validate the laws passed by it. The point is that if it was a question of only validating a law, why are we going through the cumbersome process of validating the Legislature? That is not necessary. If we want to validate these laws, now that it is a Union Territory, Government has perfect right to bring forward any legislation saying that such and such laws are to be validated by Parliament and I think Parliament has the power to validate them except, if I might again submit, those laws which have some kind of penal or criminal provision in them, because for retrospective legislation also there is a fetter to the power of Parliament. Parliament's power is limited by the overriding consideration that we do not give retrospective life to a measure which in the past had a provision under which a certain person could be convicted. If I might enlarge that point, article 20 of the Constitution says:

"20 (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act . . ."

Before a person is punished, it has to be for the violation of a law which was in force at the time of the commission of the offence. Now the Supreme Court has said that some

[Shri Anand Chand.]

of these laws have criminal provisions; punishment and imprisonment are provided in some of them. Now the Constitution says that, if there was a law which was a valid law, then only a person is to be punished, but the Supreme Court has declared that this Legislature was not competent to pass the law. Therefore these laws, which we are now trying to validate were not in force on the day on which the commission of a certain offence took place. Are we competent under the overriding provisions of article 20(1) to today validate a law, which has a criminal provision, with retrospective effect? Because the words here are very clear—a 'law in force—not 'the law deemed to be in force'. If we are today legislating retrospectively and we say that these laws shall be deemed to be in force on that day and if the words of article 20(1) were 'deemed to be' then my objection would not be sustainable, but the words are 'law in force' and I submit that on that day when the Himachal Pradesh Legislature passed those laws, there were no valid laws, and even in retrospective legislation our powers are limited to the validation of only those laws which have no criminal content in them; otherwise we would be going against the Fundamental Rules as contained in article 20(1) which we are not competent to do.

Therefore I gave notice of a motion and my submission is that this Bill be referred to a Select Committee. It is not, I may submit, a question of dodging a measure, it is not a question of trying to see that it drags on when important things are at stake. I am not here pleading that a particular Act is there and so it should not be done. What I submit is that there are certain things which should be 'looked at from the constitutional point of view and therefore my motion is that it may be referred to a Select Committee, where the whole thing may be gone into. Of course, in my motion the period of time for reporting was placed as 22nd, but today is 22nd, and so it may come on

the 23rd, but some time should be given to this House so that these points may be considered, and after they are considered, the Bill may again be brought before the House for such action as it may deem fit to take.

**श्रीमती लील देवी (हिमाचल प्रदेश) :**

सभापति महोदय, इससे पहले कि मैं कुछ कहूं मैं आपको धन्यवाद देना चाहती हूं कि आपने मुझे इस मान्य सदन के सामने बोलने का मौका दिया। आज हमारे सामने हिमाचल प्रदेश वैलिडेशन ऐक्ट है जिसके ऊपर हमने गौर करना है। यह मान्य सदन के सामने क्यों आया इसकी व्याख्या सदन के सामने डिप्टी होम मिनिस्टर साहब ने बहुत अच्छी तरह से कर दी है। मैं हिमाचल प्रदेश की रहने वाली हूं और इस ऐक्ट के यहाँ आने में पहले वहाँ पर क्या कुछ हुआ और वहाँ के लोग क्या चाहते हैं, उन सब चीजों को बयान करने के लिए मैं सदन के सामने खड़ी हुई हूँ।

[Mr. DEPUTY CHAIRMAN in the Chair.]

उपसभापति महोदय, हिमाचल प्रदेश जिस की जनसंख्या करीब ११ लाख है और जिसका रकबा ११ हजार चौराबाई मील है, इस वक्त यह सेक्टर के अधीन है। इसकी अपनी कोई लेजिस्लेचर नहीं थी लेकिन सन् १९५३ के अन्दर हिमाचल प्रदेश की अपनी लोकप्रिय सरकार बनी और उसका अपना लेजिस्लेचर बना। उसने लोगों का जीवनस्तर ऊँचा करने के लिए कई तरह के विधेयक पास किये जैसा कि पंचायत ऐक्ट बना, कोऑपरेटिव ऐक्ट बना, लैंड रिफार्म ऐक्ट बना, भाषा के लिए विधेयक पारित हुआ तथा ट्रांसपोर्ट को नेशन-लाइज किया गया। सन् १९५३ में हिमाचल प्रदेश असेम्बली में ३६ मेम्बर थे और चार जिले माने जाते थे। सन् १९५३ के अन्दर बिलासपुर स्टेट जो अभी तक हिमाचल प्रदेश से अलग था हिमाचल प्रदेश के अन्दर मिला

दिया गया और इस तरह से हिमाचल प्रदेश में पांच जिले हो गये। वहाँ भी इलैक्शन हुआ और वहाँ से हिमाचल प्रदेश असेम्बली के लिये पांच मेम्बर चुने गये। इस तरह से हिमाचल प्रदेश असेम्बली की मेम्बर संख्या ३६ से ४१ हो गई। हिमाचल प्रदेश असेम्बली के स्पीकर और डिप्टी स्पीकर का चुनाव हुआ और उन्होंने ओथ ली तथा जो वैधानिक कार्यवाही की जानी थी वह सब कुछ वहाँ पर की गई। मन् १९५४ में जब बिलासपुर स्टेट हिमाचल प्रदेश के अन्दर मजं हुआ और वहाँ पर इलैक्शन हुए। पांच मेम्बर वहाँ से चुन कर असेम्बली में आये और उन्होंने ओथ ली। जिस तरह से हिमाचल प्रदेश असेम्बली को काम करना चाहिये था उसने ठीक ढंग में काम किया। उसने कोई गलत कार्य किया है इस तरह की आवाज वहाँ की जनता से सुनने में नहीं आई बल्कि मैं तो यहाँ तक कहूँगी कि उस समय हिमाचल प्रदेश असेम्बली ने जो कार्य किया वह बहुत ही सराहनीय काम किया। अगर उसे वैसा ही काम करने दिया होता तो मैं समझती हूँ कि हिमाचल प्रदेश ने अभी तक काफी तरक्की की होती। हिमाचल प्रदेश की असेम्बली ने वहाँ की हालत को देख कर एक लैंड रिफार्म ऐक्ट बनाया। उपसभापति महोदय, हिमाचल प्रदेश के लोग बहुत गरीब और पिछड़े हुए हैं। असल बात यह है कि ज्यादातर हिमाचल प्रदेश में दो तरह के व्यक्ति हैं। एक तो काश्तकार हैं और दूसरे लैंड लार्ड्स हैं। जहाँ तक काश्तकारों का सम्बन्ध है उनके पास अपनी कोई जमीन नहीं है लेकिन वे मालगुजारों से जमीन लेकर काश्त करते हैं और उसका ५०वां हिस्सा अपने लैंडलार्ड को दे देते हैं। एक तो वहाँ की जमीन पथरीली है और कड़ी मेहनत करके भी उन लोगों को न पेट भर खाने को मिलता है और न पर्याप्त कपड़ा ही पहिनने को मिलता है। इस स्थिति को सामने रखकर हिमाचल

प्रदेश की असेम्बली ने यह फैसला किया कि जमीन उनकी है जो खुद काश्त करता है और इस उद्देश्य से वहाँ लैंड रिफार्म ऐक्ट पास किया गया।

उपसभापति महोदय, एक बात मैं आपको और बताऊँ कि हिमाचल प्रदेश असेम्बली ने पांच एकड़ जमीन अर्थात् २५ बीघा जमीन लैंड लार्ड्स के लिए रख दिया ताकि अगर वे उस पर खुद काश्त करना चाहें या बागीचा वगैरह लगाना चाहें तो वैसा कर सकें। एक बात हिमाचल प्रदेश असेम्बली के ध्यान में हमेशा से थी कि ये लैंड लार्ड्स पढ़े लिखे हैं, नौकरी कर सकते हैं, व्यापार कर सकते हैं, दूकानदारी कर सकते हैं अर्थात् जो कुछ भी करना चाहें वह कर सकते हैं। लेकिन जो काश्तकार हैं उनके पास मित्राय लैंड लार्ड्स की जमीन के ओर कोई भी जरिया जीवन निर्वाह का नहीं है। इसीलिए इन सब बातों का ध्यान में रख कर हिमाचल प्रदेश असेम्बली ने यह ऐक्ट बनाया। लेकिन जैसा कि होता है, लैंड लार्ड्स को इससे बड़ा अनंतोष हुआ और उन्होंने बड़ा ही हल्ला मचाया, और इस लैंड रिफार्म ऐक्ट को सुप्रीम कोर्ट में चालू कर दिया। आज मुझे इस ऐक्ट के बारे में यहाँ कुछ नहीं कहना है। मैं बड़ों की बातें नहीं कहती हूँ, लेकिन हाँ मकना है कि छोटे लैंड लार्ड्स को कुछ नुकसान हुआ हाँ और उनका अपना जीवन निर्वाह करने में काफी परेशानी का मुकाबिला करना पड़े। जब समाज का कोई वर्ग उड़ता है तो कुछ लोगों को कुर्बानी करना ही पड़नी है, चाहे वह जबर्दस्ती से हो या किसी तरह से हाँ। ऐसा ही हिमाचल प्रदेश के अन्दर हुआ। मैं अब इस ऐक्ट के बारे में यहाँ ज्यादा नहीं बोलूँगी।

हमें यह देखना है कि सुप्रीम कोर्ट में जब यह ऐक्ट पहुँचा तो वहाँ पर क्या हुआ।

(Time bell rings.)

[श्रीमती लीला देवी]

इसके बारे में जैसा कि हमारे माननीय होम मिनिस्टर साहब ने पहले ही बताया है कि वहां पर उन्होंने इस ऐक्ट को गलत नहीं बताया बल्कि सुप्रीम कोर्ट ने उस सारी का वाही को गलत बताया जो कि सन् १९५४ से लेकर सन् १९५६ तक हुई थी और वह भी इस बिना पर कि जब बिलासपुर के पांच मेम्बर चुन कर आये तो उन सारे ३६ जमा ५, ४१ मेम्बरों को दुबारा आर्थ लेनी चाहिये थी, दूसरे स्पीकर को चुना जाना चाहिये था, दूसरे डिप्टी स्पीकर को चुना जाना चाहिये था और दुबारा यह घोषित किया जाना चाहिये था कि यह इस असेम्बली का पहला सेशन है । उसभाषति महोदय, यह टेक्निकल गलती थी । वैसे जैसा कि मैं आपसे पहले निवेदन कर चुकी हूं, वहां पर स्पीकर थे, डिप्टी स्पीकर थे और जो कुछ कार्यवाही हुई अर्थात् ३७ ऐक्ट बने थे ४१ मेम्बरों के द्वारा बने । यह एक टेक्निकल गलती थी कि उन ४१ मेम्बरों ने दुबारा आर्थ नहीं लिया । जब सुप्रीम कोर्ट ने अपना फैसला दिया और जब तक राष्ट्रपति का आर्डिनेंस नहीं निकला, हिमाचल प्रदेश को हालत काफी पेचीदा हो गई थी और हो सकता था कि हिमाचल प्रदेश के लोगों को काफी परेशानी उठानी पड़ती । इसके लिए मैं अपने होम मिनिस्टर साहब का और गृह मंत्रालय का बहुत बहुत धन्यवाद करती हूं कि उन्होंने बड़ी सूझ बूझ के साथ ऐडमिनिस्ट्रेशन की परेशानियों को बचाने के लिए और लोगों की कठिनाई को दूर करने के लिए राष्ट्रपति का आर्डिनेंस कुछ देर के लिये निकलवा दिया । मैं अब इस माननीय मदन से प्रार्थना करूंगी कि इस समय हिमाचल प्रदेश के अन्दर कोई अपना लेजिस्लेचर नहीं है और यह माननीय मदन हिन्दुस्तान की सबसे बड़ी बाड़ी है, मार्बलूम है, सब कुछ कर सकता है और इसको फुल पावर है कि यह स वैलिडेशन

बिल को पास करे । मेरे ख्याल के मुताबिक इस बिल का अवश्य पास हो जाना चाहिये ताकि वहां के लोगों को इससे राहत मिले और हिमाचल प्रदेश के जो गरीब लोग हैं वे मन्तोष को साम ले सकें । न्यवाद

SHRI V. K. DHAGE (Bombay): How many minutes can I have please?

MR. DEPUTY CHAIRMAN: Ten minutes

SHRI V. K. DHAGE: Mr. Deputy Chairman, I have to raise only two points. I generally support the arguments advanced by my hon. friend, Shri Anand Chand.

Sir, the Supreme Court in their decision has stated that the Legislative Assembly of Himachal Pradesh was not duly constituted and so it could not pass the laws that the Himachal Pradesh Legislative Assembly did. This new Bill has been brought forward by the hon. Minister in order to validate the constitution of that Assembly. This is being done under clause 3 of this Bill which reads as follows:

"Notwithstanding anything contained in any law or in any judgment, decree or order of any court,—

(a) the body of persons summoned to meet from time to time as the Himachal Pradesh Legislative Assembly (Himachal Pradesh Vidhan Sabha) during the period commencing on the 1st day of July, 1954."

and so on:

"in the exercise or purported exercise of the powers conferred on him by section 9 of the Government of Part C States Act, 1951, shall be deemed for all purposes to have been the duly constituted Legislative Assembly of the new State of Himachal Pradesh formed under section 3 of the Himachal Pradesh and Bilaspur (New State) Act, 1954;"

Now, this Bill is validating the constitution of that Assembly under section 3 of the Himachal Pradesh and Bilaspur (New State) Act, 1954. And this Himachal Pradesh and Bilaspur (New State) Act, 1954 is subject to the provisions of the Government of Part C States Act, 1951. You will see that in the Government of Part C States Act, 1951, it has been laid down how the Legislative Assembly shall be called and how it will be constituted etc. My point is this. The Reorganisation of States Act in section 130 says:

"The Government of Part C States Act, 1951 is repealed with effect from the appointed day."

So I cannot understand how this Act can validate certain proceedings being taken under section 3 of the 1954 Act when the Government of Part C States Act, 1951 is repealed? There is no law now in existence under which this validation is required to be done. You will also have to create another fiction probably and say that the Government of Part C States Act, 1951 will be deemed not to have been repealed. Unless you do that, to my mind this Bill, if passed, will probably not be valid. I am shortening my arguments without going into too many details.

Secondly, upon the reorganisation of States, the Constitution also is amended, and as my hon. friend has stated, what had been united was not the State of Himachal Pradesh as constituted by the Act of 1954, but what existed before the Constitution came into existence. I may make my point clearer. You will see in the Schedule to the States Reorganisation Act that the area defined about Himachal Pradesh is as follows:

"The territories which immediately before the commencement of the Himachal Pradesh and Bilaspur (New State) Act, 1954 were comprised in the States of Himachal Pradesh and Bilaspur."

The entry in the Constitution reads:

"The territories which immediately before the commencement of this Constitution were being administered as Chief Commissioners' Provinces."

The present position is this. The State which was envisaged by the Act of 1954, that is, the Himachal Pradesh (New State) Act, is no longer there. That has become a Union Territory and the Himachal Pradesh (New State) Act is not existing. So now can you say that that Assembly shall be duly constituted? To me the thing appears incongruous and I should like the hon. Minister to say if that would be constitutionally correct. My point is, since the State itself is not in existence, it is rather very difficult to say that that Assembly shall be constituted on that date. The second point is, the Act of 1951 has been repealed by the States Reorganisation Act, and therefore, you cannot say that that Assembly will be deemed to have been duly constituted.

These are the points which I wanted to raise and I fully support the move of my hon. friend Shri Anand Chand for the appointment of a Select Committee to consider this Bill.

SHRI V. PRASAD RAO (Andhra Pradesh): Mr. Deputy Chairman, I do not want to deal with any posthumous validation of a particular Assembly. I only want to assure the House that we from this side are no less eager to see that some of the good measures that were adopted by the erstwhile Himachal Pradesh Legislature are not declared null and void. I say this because the Himachal Pradesh Abolition of Big Landed Estate and Land Reforms Act, in spite of its limitations did some good service in order to enable the tenants to acquire some *patta* rights. So, I want to assure the hon. Member that it is not dilatory tactics or in order to evade a particular social land reform measure enacted by the Himachal



[Shri V. Prasad Rao.]

Pradesh Assembly that we are saying this. We want the full constitutional propriety of it to be discussed in a Select Committee. That is why the mover has specifically said that the report should be ready by the 22nd December. Today is 22nd and we can have the 24th as the date by which the report should come to the House so that within this time the full constitutional propriety of the problem could be gone into. We do not doubt for a moment the necessity for validation of the acts themselves. We do not want these acts to be nullified.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI B. N. DATAR): Mr. Deputy Chairman, I have heard very carefully the ingenious argument that my hon. friend from the other side, the Raja Saheb of Bilaspur, has advanced but may I point out in all humility that there is absolutely no substance in any of the contentions that he has raised. It is not necessary in this case for us to go into the merits of the various enactments though I was very happy to find an hon. lady Member from this side, Shrimati Lila Devi, supporting the Bill not only on the grounds that we have taken up but also on the grounds of merit. Now, the question of merit, as I have stated, need not be gone into and the point that arose was only on account of the decision on one point by the Supreme Court to the effect that on account of the omission to issue a particular notification under the Representation of the Peoples Act, the Himachal Pradesh Legislative Assembly had not been duly constituted. That was the only question that was raised and here also, at this stage, we are seized of only that question.

Now, my hon. friend, Shri Dhage, contended that in as much as the Part C States Act had been repealed,

therefore, there was no point at all now in validating this Act. May I point out that this Parliament in this respect is absolutely a sovereign body. Under the Constitution, Sir, Parliament has full powers. May I invite attention to article 245(1) according to which especially in these territories, Parliament has absolute legislative and other powers. Now, even under the Part C States Act, as it was in operation between 1951 and 1956, the hon. Member will find that Parliament had the residuary powers to make laws for Part C States also in spite of the fact that there were Legislative Assemblies in certain States. Now, what is sought to be done is not to revive the Legislative Assembly as such but to validate certain acts passed by the Himachal Pradesh Assembly. Certain acts had been passed by the Himachal Pradesh Assembly but on a technical objection, it has been held that the acts passed by that Assembly are invalid. What we are doing now is to validate the particular acts that had been passed and the action that had been consequently taken by the Government. The expression used is, "... shall be deemed for the purpose to have been duly constituted Legislative Assembly. . ." The one point with which we are now dealing is that that ought to be considered duly constituted only for the purpose of validation of these acts. There are also subsequent action taken either by the Government or by the officers concerned that is, as a result of the passage of the various measures, Government had to take certain action, they had to spend money and certain grants had to be made on the basis of acts which now have become invalid not on account of the merits of the particular measures but solely on one technical ground that the particular notification had not been issued which resulted in the Supreme Court declaring that that body was not duly constituted.

Lastly, may I point out, that whenever there is a sovereign body, a

legislature as Parliament, then it has the authority to make the acts not only prospective but retrospective also and here this Act has been made retrospective only for the purpose of covering the defects which were only of an absolutely technical nature. Therefore, I submit that the Bill as it has been placed is perfectly all right.

**SHRI ANAND CHAND:** May I ask one question of the hon. Minister? Is he sure that under article 245, this Parliament has the power to constitute today a Legislature for a Union Territory?

**SHRI B. N. DATAR:** That does not arise at all. It is a hypothetical question. Under the Constitution, the Parliament is seized of all legislative powers so far as the State list is concerned and, therefore, it is open to Parliament to pass measures so far as the retrospective aspect is concerned. What is done is that this defect has been covered as from the date when the Bills were passed.

**MR. DEPUTY CHAIRMAN:** The question is:

"That the Bill to validate the constitution and proceedings of the Legislative Assembly of the New State of Himachal Pradesh formed under the Himachal Pradesh and Bilaspur (New State) Act, 1954, be referred to a Select Committee of the Rajya Sabha consisting of the following Members, namely:

Shri V. K. Dhage  
Shri Bhupesh Gupta  
Shri P. C. Bhanj Deo  
Shri H. D. Rajah  
Shri Faridul Haq Ansari  
Shri Rohit M. Dave and  
Shri Anand Chand.

With instruction to report by the 22nd day of December, 1958."

The motion was negatived.

**MR. DEPUTY CHAIRMAN:** The question is:

"That the Bill to validate the constitution and proceedings of the Legislative Assembly of the New State of Himachal Pradesh formed under the Himachal Pradesh and Bilaspur (New State) Act, 1954, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

Clauses 2 to 5 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

**SHRI B. N. DATAR:** Sir, I beg to move:

"That the Bill be passed."

**MR. DEPUTY CHAIRMAN:** The question is:

"That the Bill be passed."

The motion was adopted.

# THE SALARIES AND ALLOWANCES OF MEMBERS OF PARLIAMENT (AMENDMENT) BILL, 1958

**THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI SATYA NARAYAN SINHA):** Sir, I beg to move:

"That the Bill further to amend the Salaries and Allowances of Members of Parliament Act, 1954, as passed by the Lok Sabha, be taken into consideration."

The Bill, Sir, seeks to remove certain difficulties which have been experienced in the court of the operation of the Act, fill certain lacunae in it and provide for the issue of a first class railway pass to every Minister and officer of Parliament, other than the Chairman of the Rajya Sabha, which will allow them to travel by railway in the same way as hon. Members are entitled to do.