

the hon. the Defence Minister has declined to answer the question at short notice. I would like to request the Defence Minister through you, Sir, not to stand on formalities but taking into consideration that these people are on hunger strike for seven days now see that something is done to end the situation and redress the grievances of these workers.

MR. CHAIRMAN: Passed on to Defence Ministry.

ALLOTMENT OF TIME FOR THE VOLUNTARY SURRENDER OF SALARIES (EXEMPTION FROM TAXATION) AMENDMENT BILL, 1954.

MR. CHAIRMAN: I have to inform Members that under rule 162(2) of the Rules of Procedure and Conduct of Business in the Council of States, I have allotted 30 minutes for the completion of all stages involved in the consideration and return of the Voluntary Surrender of Salaries (Exemption from Taxation) Amendment Bill, 1954, by the Council including the consideration and passing of amendments, if any, to the Bill.

NOMINATION OF SHRIMATI BEDAVATI BURAGOHAIN TO THE SOCIAL WELFARE BOARD

MR. CHAIRMAN: I have nominated Shrimati Bedavati Buragohain to be a Member of the Social Welfare Board set up by the Planning Commission *vice* Dr. J. M. Kumarappa.

THE PREVENTION OF DISQUALIFICATION (PARLIAMENT AND PART C STATES LEGISLATURES) AMENDMENT BILL/ 1954. •

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS) : Sir, I beg to mpve:

' "That "the Bill to amend the Prevention of" Disqualification (Parliament and' Part C States Legislatures) Act. 1953, be taken into consideration."

This is a very short Bill consisting of just one clause and I hope it will not excite controversy and will be passed by the House without any difficulty. Hon. Members will remember that we passed an Act for the prevention of disqualification for membership of Parliament in certain cases. At the time the Bill was before the House. I said that there were certain matters which required further consideration and one of them was the examination of various statutory bodies. The suggestion I made was that in the case of statutory bodies it would be better to insert the non-disqualification clause in the Acts by which those bodies were set up. Since then, other questions have also been brought to our notice and they also require examination. This will involve reference to various State Governments for collection of information. I had, various queries from various Members of Parliament asking as to whether membership of certain nonstatutory bodies would affect the position. It was not possible for me to give an answer which would satisfy them in the absence of precise information as to the nature of the functions which were exercised by those bodies. Information is being collected; - whatever has been collected is not complete. It will take time to consider these matters and then it will be for Government to bring a Bill which will meet all cases as far as practicable. At one stage I thought of bringing forward a Bill dealing with statutory bodies only and including a clause in the relevant Acts removing the disqualification, but the list was not at all complete. So I thought, instead of proceeding piecemeal in that way, it would be much better to take a little further time to collect all the information available and then to bring forward a larger Bill not merely in respect of these cases, but also of other cases of non-statutory bodies which are now under a ban under the existing Act. except for a blanket cover given up to the 30th April. Now, the 30th of April is near at hand but many Members have not found it possible yet to make up their minds as to whether

[Shri C. C. Biswas.]: first of all they are affected by the disqualification and secondly whether they should resign their membership of Parliament or their membership of those bodies. In view of these facts, I thought the best and the easiest course would be for the present simply to extend the period of the blanket cover, and to obviate my coming before the House again, I thought that if we put the limiting date till the end of the year, it would meet all requirements. Sir, I move.

MR. CHAIRMAN: Motion moved:

"That the Bill to amend the Prevention of Disqualification (Parliament and Part C States Legislatures) Act, 1953, be taken into consideration."

SHRI RAJAGOPAL NAIDU (Madras): Sir, I do not want to oppose this measure but I wish to enter my emphatic protest against the Government finding themselves under the necessity of compelling this House to pass this measure at this stage in such a hurried manner. Hon. Members are aware that the parent Bill was introduced during the December session of the year 1953. That was also introduced in such a hurried manner that when several Members from all sides of the House requested the hon. the Law Minister to refer the Bill to a Select Committee for detailed consideration of the Bill, the request was negated on the ground that there was absolutely no necessity for referring the Bill to a Select Committee, that the measure was comprehensive and that it would not work any hardship on any Member of this House or of the other House.

I am not able to understand the necessity of bringing this amending Bill within about less than four months. It was pointed out to the hon. the Mover of the Bill when he moved the parent Bill that it was better to specify by attaching a Schedule to the Bill which will show what offices would amount to offices

of profit, the membership of which would disqualify the Members of this House as well as of the other House. But he came out with certain general principles leaving the entire matter to the election tribunals and to the returning officers to decide what is an office of profit and what is not. It has been stated—unfortunately I have not got a copy of the Bill here—that there are disqualifications of a permanent nature, which had to be removed. Clause 3 dealt with certain disqualifications of a permanent nature. They had also specified certain offices like the office of the Vice-Chancellor, membership of the Territorial Army, National Cadet Corps and all that. It was said that though these were offices of profit, by passing that Act they had removed the disqualification: I remember they had also stated that there were certain offices of an executive nature and certain offices of an advisory nature. We felt then that it was very difficult to make a distinction between an office of an executive nature and an office of an advisory nature, because it was said that office of an advisory nature would only mean certain committees or commissions which are fact-finding in nature and which advise the Government in certain matters. They said that it would not amount to disqualification provided a particular amount is received as compensatory allowance and if any Member receives probably more than Rs. 20, even such advisory committees would amount to offices of profit. It was also stated that there were certain offices of an executive nature, offices which would involve entering into contracts, offices which would involve appointments of certain persons and all that, and that would amount to offices of an executive nature the membership of which would certainly disqualify Members. So a blanket cover was given till the 30th April 1954 and if I remember aright, according to the original Bill it was only up to 31st March 1954, but an amendment was moved by an hon. Member from this side of the House—and it was accepted by the hon. Minister—increasing

the period by one month, *i.e.*, from 31st March to 30th April 1954. It was stated then that within the course of four months the Government would be able to prepare a schedule specifying what were the offices that would be offices of profit, what were the committees that were of an executive nature and what were the committees that were of an advisory nature. It was also stated that if necessary the relevant Acts would be amended exempting the Members of Parliament from being Members if they remained members of a committee which would not amount to an office of profit. I do not know what the Government has been doing all these four months. Now, this amending Bill has been brought forward in such a great hurry that it was not even included in yesterday's agenda. When leave to introduce this Bill was sought for yesterday, most of the Members of this House were taken by surprise. And though according to rules at least two days' notice is required after leave to introduce is given and before it is moved, yet within less than 24 hours this Bill has been brought forward before this House. Of course, I know—I see the Secretary is prompting the Chairman—that the Chairman has got powers in certain emergency matters and with the permission of the Chair, a Bill can be brought forward in this way. But why all this great hurry? What were the Law Minister and the Law Ministry doing all these four months?

The Law Minister awoke only when various applications had been received by him from several Members of this House as well as the other House requesting him to state as to whether his remaining in a particular committee would amount to their remaining in an office of profit or not. He was not able to say that. That is why he was in such a great hurry. About the 30th of April, 1954, God alone knows, how many Members of this House would have suffered under the disqualification knowingly or unknowingly.

It was pointed out during the debate when the parent Bill was moved, that

it was the opinion of this House that it was better to have specified in the Bill itself as to what were the offices, the membership of which would, amount to a disqualification. We wanted that to be done 'on the basis of the English law because it is so difficult to do it otherwise. The word 'office of profit' is not defined under our Constitution. Various tribunals and various law courts in our country have interpreted the office of profit in their own way. To obviate this difficulty it was right that we should have come forward with a measure attaching a schedule to the Bill specifying what were the offices that would amount to offices of profit and what were the offices that would not amount to offices of profit.

I would even now request the hon. the Law Minister to deeply consider this matter and, by the end of December 1954, come forward with a schedule to this Bill specifying that these are the offices that would amount to offices of profit and these are the offices that would not amount to offices of profit, and not leave the matter to the returning officers, the election tribunals and the law courts to interpret this in whatever manner they pleased. With these observations, Sir, I commend this Bill for the consideration of the House.

SHRI PRITHVIRAJ KAPOOR (Nominated)
: Mr. Chairman, I stand to support this Bill to amend the Prevention of Disqualification Act, 1953. I have something to say about it. I am not able to understand why any disability should be attached to the supreme body (Parliament) of this country. I do not know why at all such a disability should, exist. Even now we find that in many small cases, we are not able to send a chit from one House to another. I cannot comprehend why we could not trust each other and why we could not trust the membership of the supreme body. I mean, the House of the People and the Council of States. Both the Houses, in my opinion, should be considered as a composite whole. Otherwise, what I am afraid of is that if we start attaching disability to either-

[Shri Prithv.raj Kapoor.] the one or the other, instead of the brain of the nation, that we find here, we might have only chaff. People who find nothing else to do will come here. So, while I welcome this measure for the prevention of disqualification I would most humbly submit that care should be taken to see that no disability is attached to this supreme body.

SHRI K. S. HEGDE (Madras): Mr. Chairman, I extend my support to the present Bill. But I propose to avail myself of the opportunity to offer a few hints which might assist the hon. the Law Minister in bringing the more comprehensive Bill that he has in mind.

^You will recall that when the original Bill was introduced in this House I invited the attention of the House to the fact that the Bill, instead of being one of removal of disqualification of the Members was one of conferment of disqualification on the Member in question. I have tried forcibly to bring to the notice of the hon. the Law Minister the practice that is prevailing in other countries which are having similar laws. In fact, I have asked him whether any country has enacted a legislation of the type that he was pleased to goad this House to pass. The hon. Minister was trying to do the impossible; he was having an imaginary picture and he was conceiving ideas of executive committees and ad-SOry committees. Even today his only reply, to the question 'what do you mean by an executive committee, and what is an advisory committee', would be. 'I am not clear about executive committees and advisory committees'; beyond that he is not able to advise the Members. I know scores of Members have gone to him for advice whether their being in a particular committee is considered to be their being in an executive one or an advisory one and whether either the one or the other will constitute an office of profit or not. If only the hon. the Law Minister had carried the effect of this legislation to its logical conclusion, the entire Parliamentary system in the country would be reduced to a mockery.

I do not, therefore, think that you are well-advised in bringing the legislation that is before the House. If only he had used his best thought, he would have realised-that this Bill in its present form wktrd work hardship on the Members of both the Houses.

The practice that is being followed in other countries should have been taken note of. The expression 'office of profit' is a very illusive phrase, but at the same time-a very important phrase. These words are not to be found in our Constitution. I am unable to agree with the previous speaker, Shri Rajagopal Naidu, that there should be no limitation. There should be limitation. Either at the time of providing the committee, exemption is given or a schedule is attached to the Bill. When the Bill is introduced in the House, the members of the several committees are not aware that they are incurring a disqualification. Instead of doing the right thing, the hon. the Law Minister has created an extremely difficult situation. He has provided that the members of the executive committees will come within the mischief of this measure while the members of the advisory committees will be excluded from its operation. But who is to say which one is advisory and which one is executive in character? We are very well aware of a recent occurrence; we have been examining a number of witnesses—I am speaking of the Anti-Corruption Committee, set up by the hon. the Railway Minister; we have already spent thousands of rupees on it; as a result of this measure certain members of that committee felt whether they could legally continue on that committee or not. Nobody knew what the position was. And the result was that the whole body had to resign the other day. I am giving this just to illustrate the amount of hardship caused by this Bill, so that at least for the future the hon. the Law-Minister may bestow h's best thought on it. He should not satisfy himself merely by taking advice from whichever corner it comes; he should use his best thought and see whether he could not see his way

to repeal the *am.* I am definitely of the view that this Bill will sound the death-knell of parliamentary practice in this country. Let him take the law as it stands in our Constitution. May I bring to the notice of the House that today he is trying to put a meaning—a meaning which is not acceptable to the courts of law in the country—on the words 'office of profit' I may point out here that in this country the tribunals have held that an office of profit would mean only those offices which involve material gain to the holder; it does not include prestige; nor does it include, as my hon. friend Shri Rajagopal Naidu says, privileges. But the English courts have held contrary views; they hold that even offices involving prestige and privilege should be construed as offices of profit. Indian courts have held that only where material gain is involved, should these offices be considered as offices of profit. The hon. the Law Minister, instead of following the English law in this matter, should have followed the Indian law; he has chosen to discard the entire Indian law on the subject and followed the English law. The English law for historical and other reasons has put that interpretation on those words; if we try to follow that, he will only be creating difficulties which, probably, will become insurmountable. Suppose you follow the interpretation of the English courts and declare each office involving prestige or privilege to be an office of profit, then—I do not know—no Member of this House or the other House will serve on any one of the committees. Would it be ever possible, in the present condition of our country, for Members of Parliament not to be serving on the most important and useful committees of the country? It should not be made a source of profit for them. Visualise for yourself, Sir, that it is one of the dicta of the Planning Commission that Members of Parliament should be members of the Local Development Boards. Now how are we to serve on the Development Boards? They are not statutory committees. But that was the will of the Planning Commission itself that we

should be there and we should be the connecting link between the local ideas and the experience of Parliament. Now, I would not like to take the time of the House on this subject, but I would implore the Law Minister to give his best consideration to this matter and not to treat this matter in a light manner as has been done in the past. It deserves very serious consideration. It means the privilege and the usefulness of the Members of Parliament, and it must be taken in the spirit in which it has been taken in other countries. With this remark, Sir, I support the Bill.

SHRI C. C. BISWAS: Sir, my friend, Mr. Naidu, raised his protest against the hurried manner in which this Bill has been brought forward. Government has acted in complete and good faith.....

SHRI RAJAGOPAL NAIDU: I only wanted to

SHRI C. C. BISWAS: When the Bill was brought before the House, Government took the view, and gave its reasons for it, that it would be much better, if possible, to express the Government's intention in the shape of a formula which would be applicable to all cases. I can appreciate that it would be much better if we could specify in a schedule the number of committees, the membership of which would be granted exemption. But although this might be possible in the case of statutory committees, it might not be so in the case of non-statutory committees. Therefore, the attempt we made was to devise a formula and we took legal opinion and we consulted the law in other countries, and we came to the conclusion that it would be possible to express it in the form of.....

SHRI K. S. HEGDE: If I am not interrupting, what is the law in other countries? Is there any such formula in any other country?

SHRI C. C. BISWAS: I cannot say that, but this is based on English

LShn-C. C. Biswas.J law. But we took legal opinion and we did not act hastily. And, therefore, in order to avoid the difficulty of having to specify all existing and future committees, we thought we could devise a formula. All these questions were debated on the floor of the House on the last occasion. But now some actual difficulties have been presented to Government. The number of complaints that I have received shows that Members were not quite certain about the nature of the committees on which they were serving. Having regard to the large number of such complaints we received, we thought that the matter required further clarification, I am not committing myself to the position which Mr. Hegde has suggested to me. It is not that as a result of this we shall discard this formula system and adopt the other system of specifying these committees, unless it is forced upon us. There are certain inherent difficulties; I know that. And remember that there is no prestige involved here. We want to do the thing in the best way possible. My friend over there was asking: What was the Government doing so long? Four months have elapsed. Government were not inactive. They contacted all the Ministries and tried to find out from them the committees to which they had appointed Members of Parliament and the functions of these committees. Now, so far as the statutory committees are concerned, it is not very difficult to get their specification. There is no difficulty about them. But the question arises in connection with non-statutory committees in respect of which we have granted exemption but only where they are discharging advisory functions. Whether the functions are purely advisory or executive to some extent, that is a question, the answer to which will depend on the nature of the function which are actually being discharged by those committees. We have no information about them. I would like to have that information. Well, if somebody

says "I am a member of such and such committee appointed by a State Government" without specifying the functions of that committee, the Law Minister cannot do anything. Therefore, all these things require further clarification. Now if you say, "In every case have a Bill", then that is, no doubt, the simplest way. But you will be flooded with Bills. On the other hand, if the other suggestion which was made by my friend over there is accepted, *i.e.* Members of Parliament should, like Caesar's wife, be regarded as above suspicion, that would have been a different thing.....

SHRI K. S. HEGDE: There is the constitutional limitation.

SHRI C. C. BISWAS: That is so. Following a well-established precedent in England, more than 200 years old, we have made a provision in our Constitution which expressly imposes disqualification upon a Member of Parliament if he holds an office of profit under the Government. The same article, it will be seen, also gives power to Parliament to make relaxations in certain cases. And it was in pursuance of this power to exempt that the present Act was brought before the House and passed. So if there is to be a disqualification, the only question is: What is the law that Parliament should pass in order to prevent or remove the disqualifications provided for in the Constitution? And it is a question of procedure, whether we should have a Bill in every case where we propose to grant exemption or we should have a Bill which will lay down in general terms, the conditions under which exception could be made. We tried the latter expedient. If that fails, there is no reason why we should not try to evolve some other procedure—possibly midway between the two. The ultimate conclusion will depend on the facts that we have to collect.

(Parliament and
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SHRI K. S. HEGDE: Don't you realise that the experiment has failed?

SHRI C. C. BISWAS: As a matter of fact, if you will read the speech that I made on that occasion, you will find that I made it perfectly clear then that so far as the statutory bodies were concerned, Government would examine the cases of all those bodies and then try to meet the situation in the best way possible. As regards other bodies also, we did not shut ourselves out from re-examining the question about them. My hon. friend asks, "Why didn't you refer the Bill to a Select Committee?" You will remember that if we had referred the Bill to a Select Committee, the chances of getting the Bill through would have been very much reduced. And then again as to the period of blanket cover, it was three months in the Bill, but was extended, at the request of the Members of this House, to four months. That was done in the hope that this extended period would be sufficient for coming to a decision as to the best way of dealing with the matter.

The Law Ministry circularised all the Ministries and tried to collect information on these subjects. Information has come but it is not yet complete. Therefore, although I had actually drafted a Bill containing a schedule of the statutory committees regarding which we had obtained information, still I thought that that would not be a satisfactory way of dealing with the matter. In fact, even as regards statutory bodies, questions were raised regarding three or four of them which required special consideration. Having regard to all these facts and having regard to the further fact—as I have already said—that the cases of non-statutory bodies were also brought to our notice, I thought that the best way would be for the present to introduce a simple measure which would extend the period of temporary exemption from the 30th April to the 31st December. There is no use, as I

have already said, repeating what Members had said during the last occasion and raising the whole question of principle as to whether there should be disqualification or not, and so on and so forth. So, I hope that Members will support this Bill and enable us to get it passed here today, so that it can be taken up in the other House tomorrow and passed. My object in introducing this Bill is to see that the whole process is completed before the end of this month. That is the urgency and that is why I begged for special leave to waive the usual notice period. If my hon. friends are not satisfied, I am quite willing to drop the Bill and let things remain as they are and let all Members go out of these Committees on the 30th April. That will not affect me at all.

SYED NAUSHER ALI (West Bengal) : May I just ask a question of the hon. the Law Minister? Today is the 27th of April and the Act expires on the 30th. Now, only three days remain. Does the hon. the Law Minister know that some Members of this House have already submitted their resignations? What will happen to those resignations?

SHRI C. C. BISWAS: This question is not for me to answer. But I am quite sure that after this Bill is passed in this House, it is likely to be passed in the other House and the President's assent also obtained before the 30th. They could, therefore, withdraw their resignations and I am quite, sure, the bodies to which the resignations have been addressed will permit such withdrawals, or, if necessary, they may be re-appointed to those bodies.

SHRI K. S. HEGDE: Why create all these difficulties?

SHRI C. C. BISWAS: I have explained what the Government has done in the meantime, and if you are not satisfied, the only way is to leave things as they are.

MR. CHAIRMAN: The question is:

"That the Bill to amend the Prevention of Disqualification (Parliament and Part C States Legislatures) Act, 1953, be taken into consideration."

The motion was adopted.

MR. CHAIRMAN: We will now take up the clause by clause consideration. There are no amendments to clause 2.

Clause 2 was added to the Bill,

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

SHRI C. C. BISWAS: Sir, I move: "That the Bill be passed."

SHRI RAJAGOPAL NAIDU: Sir, I do not want to inflict a speech on the third reading. I only want to point out certain information to the House which is contrary to the facts as the Law Minister stated them. I remember, the Law Minister was saying that the list of various Committees was not available, that only a few Ministries had sent up lists, and that the delay was only due to that. When the parent Bill was moved, an hon. Member put the question to the Law Minister:

"If I may interrupt the hon. Minister. May I have from the hon. Minister under clause 4 a list of the Committees? For instance, we should like to know which are the Committees which are in existence now. If he could tell us the Committees which are supposed to be exempted till March 1954, it would help. Has he a "list of those Committees?"

The reply of the hon. Minister was:

"I believe I have got it."

Then the hon. Member concerned asked:

"If the hon. Minister could kindly give us, then we will be able to decide whether it is only temporary

removal or such Committees should also come in under clause 3."

The Law Minister replied:

"As a matter of fact, I have got a list. In fact, we asked the various Ministries to give us the names of persons who have been appointed to different Committees Names of persons and the Committees to which they were appointed."

This was the information offered to us when the parent Bill was moved. At least, the Law Minister could have given a schedule by way of illustration, though it would not be exhaustive.

SHRI C. C. BISWAS: The list which was the"; was given to the Members. Nothing v.as kept back.

SHRI B. GUPTA (West Bengal): Sir, this is a subject which calls for very serious discussion not only in Government circles but also amongst other sections of the public who may be interested in this matter. I do realise the difficulty in drawing the line between executive and advisory bodies in many cases. Since our Parliamentary system is construed in a particular way, that line has to be drawn. Otherwise, it would prejudice the freedom of the Members of Parliament and also of the future aspirants and in the end it may affect our public life to an extent. Whenever we are confronted with such problems, the hon. Minister and the Government always consult the States. We have no objection to the States being consulted. They should be consulted, but they have a curious definition of States. By States, they mean only the Governments for the time being in power in those States. In our case, for instance, by State they mean the Government of West Bengal. When any proposal is sent to them, they would discuss it amongst themselves as if it is a domestic matter for the Government there and will communicate recommendations or suggestions to the Union Govern-

ment here. On the basis of those recommendations or suggestions which are at best partial and which by no means represent the other points of view that may be there, the Government here would develop its own case and formulate its measures. This is a very very harmful practice. In such cases, I think the Government should direct the State Governments that they should take into confidence at least the major Opposition parties in those States, so that mutual discussion can take place and the common experience of the people and the problems that they are facing may be taken into consideration. Otherwise, the consultation with the States becomes a farce and a misnomer—to say the least. Therefore, this should be done. They should consult not only the Opposition parties in the local legislatures but also those outside in the country. Some of them may not be there in the local legislature. They should also be consulted, so that the wisdom of various parties and groups may be pooled. That is the practice that we should adopt.

As far as the Law Minister is concerned, he said he would not be affected, whatever happened to the Act. He feels he is very secure. He is a very likeable person, all the more likeable when he gets excited. But he should not think of his own security as the only test. There are many others who feel insecure in such matters. He should have sympathy and consideration for them and see that their interests also are safeguarded.

MR. CHAIRMAN: Has the Law Minister anything to say?

SHRI C. C. BISWAS: No.

MR. CHAIRMAN: The question is:

“That the Bill be passed.”

The motion was adopted.

THE CHILDREN BILL, 1953—
continued.

MR. CHAIRMAN: Mr. Kishen Chand to speak on the Children Bill.

SHRI KISHEN CHAND (Hyderabad) : Mr. Chairman, it is several days back that we were discussing the Children Bill and I was pointing out that the objection raised by hon. Members was based on an insufficient study of this Bill. I maintain that the Select Committee made every effort to make this a model Bill and I will specially recommend the various clauses therein. Here I will say that the Chairman of the Select Committee and other Members of the Congress Party showed a cooperative spirit, so that every good suggestion was accepted by them and I do hope that in this House also if every Bill is referred to the Select Committee and the matter is thrashed out, it will be far better and far easier for the passage of Bills. In this Bill, every effort has been made that a juvenile delinquent is not made into a confirmed criminal, that from the first stage, though he is taken into custody by the policeman, it should not amount to an arrest, that he should not be kept in the police lock-up and he should not be sent to jail, that he should not be tried in the ordinary criminal court. All these steps have been taken to give him a feeling that it is a psychological mistake and if proper precautions are taken, he can be reformed and made into a good citizen.

An hon. Member raised the objection that if a juvenile delinquent is helped in escaping from the special school, no punishment has been provided for in this Bill to that person who is helping that delinquent child. I may point out that there is a common law of the land and under the Criminal Procedure Code due punishment can be awarded to the abettor of that crime. Similarly, objection was raised **that the parents who ill-treat their children are not liable to**