

## COUNCIL OF STATES

*Saturday, 16th May 1953*

The Council met at a quarter past eight of the clock in the morning, Mr. Chairman in the Chair.

### NOMINATION OF MEMBERS TO THE COMMITTEE OF PRIVILEGES

MR. CHAIRMAN: In pursuance of sub-rule (1) of rule 168 of the Rules of Procedure and Conduct of Business in the Council of States, I have nominated the following Members to the Committee of Privileges, namely:

1. Shri C. C. Biswas.
2. Shri V. S. Sarwate.
3. Shri K. P. Madhavan Nair.
4. Shri Akhtar Husain.
5. Diwan Chaman Lall.
6. Shri Bhimrao Ramji Ambedkar.
7. Shri Narendra Deva.
8. Shri Bhupesh Gupta.
9. Principal Devaprasad Ghosh.
10. Shri Amolakh Chand.

Under sub-rule (1) of rule 169 of the said Rules, I appoint Shri C. C. Biswas to be the Chairman of the Committee.

### NOMINATION OF A MEMBER TO THE SOCIAL WELFARE BOARD

MR. CHAIRMAN: I have nominated Dr. J. M. Kumarappa to be a Member of the Social Welfare Board appointed by the Planning Commission.

### DISPLAY OF THE CROWN AT THE ENTRANCE TO THE INDIA HOUSE, LONDON

SHRI B. GUPTA (West Bengal): Before we resume discussion, may I draw your attention to some photographs that I have brought from London with regard to the India House? They show that the India House still retains |

48 C.S.D.

and prominently displays the Crown in its very front wall and front entrance. These are the photographs; they may be seen and Government should explain as to why India House, ' supposed to be an institution of the Republican Government still displays the British Crown. Here are the photographs.

### RETURN OF INDIAN AMBULANCE UNIT FROM KOREA

SHRI B. RATH (Orissa): Sir, I have a submission to make. The Indian 1 Ambulance Unit from Korea has returned losing seven of their men there of whom three were injured seriously by the Army planes of the side with which they were fighting. They have returned and they were there for two years and, as such, they can give a good idea about the affairs there. I would request Government to collect as much material as they can and place it before the Members of Parliament and, further, we would like to know how this Ambulance Unit is being treated in India because 'Juganthar\*' has come out with a report that this Unit is being treated with suspicion in India. We would like to know how this Unit is being treated in India.

### THE VINDHYA PRADESH LEGISLA TIVE ASSEMBLY (PREVEN TION OF DISQUALIFICA TION) BILL, 1953—*continued.*

MR. CHAIRMAN: We revert back to the legislative business. Mr. Gul-sher Ahmed was speaking yesterday.

SHRI GULSHER AHMED (Vindhya Pradesh): Mr. Chairman, I was referring to the sections relating to Part C States in the Constitution of India. Under article 240 Parliament has been given the powers to define the function, power and constitution of the legislatures of the Part C States. I wanted to draw the attention of the House to the fact that so far as Part

C States were concerned, their Legislatures are not the same in respect of their constitution, powers and functions as the Legislatures in Part A and Part B States. The framers of the Constitution were not sure when framing the Constitution as to which Part C States they were going to give a Chief Commissioner's Province without having any Legislature and as to which States they will give Legislatures. They have left that for Parliament to decide. In this connection, may I inform the House, with your permission, Sir, that so far as Part C States are concerned, the legislative power given to these States is very very limited? I would say and even go to this extent that really we are not having the same kind of popular Government as people in Part A and Part B States have got. So, while considering this Bill, we have to keep in mind this thing that the legislative powers given to Part C States are given by Parliament and not by the Constitution as in the case of Part A and Part B States. The powers, functions and privileges of this Parliament and of the State Legislatures of Part A and B States are defined in the Constitution. It is provided in articles 191 and 192 of the Constitution as to who can be disqualified for sitting in Parliament or in the State Legislature but, so far as the Part C States are concerned, provisions of a similar nature have been incorporated in the Part C States Act, 1951. While making this, due to a mistake on the part of Parliament, the following articles of the Constitution, namely, articles 103 and 192, were not incorporated in the Part C States Act, 1951. That is why the difficulty arose as to who is going to decide whether membership of the District Advisory Council was an office of profit or not. Later, in section 43 of the Part C States Act, a provision has been inserted giving power to the President to remove any difficulty arising relating to the Legislature of Part C States, and the President, under section 43 of the Part C

States Act, has assumed to himself those powers which are given under articles 103 and 192, by promulgating an order. The President sought the advice of the Election Commission as to whether Members of the Vindhya Pradesh Assembly who had accepted office as members of the District Advisory Council had accepted an office of profit or not. Now, let me inform the House as to what the principle is which is behind the idea that the Members of Parliament or of State Legislatures should not hold any office of profit. The idea is that Members of Legislatures should be quite independent and free from executive influence so that they may be able to serve the interests of the electorate. If they accept any office under Government, it is most likely that they would support everything that the Government of the day tries to do. That is the main principle behind this prohibition. As I have informed the House in Part C States, we have got very little power of legislation. I would go to this extent to say that nearly every Act, every amendment, has to be approved by the President before it comes to the State Legislature. Actually, the powers of Part C States in so far as legislation is concerned, are being exercised by the President through the Legislative Assembly that he has created under the powers given to him. So, the day has not come yet to apply that very high principle of parliamentary government that is being applied in the U.K. and other democratic countries. And the principle which should be applied to this Parliament and the Legislatures of Part A and Part B States, should not be applied to the legislatures of Part C States.

Then I come to the other point whether it is morally and legally right to make a law to prevent the twelve Members of the Legislative Assembly from being disqualified. Well, as the hon. Home Minister has said, these 12 persons belonged to the District Headquarters where the meeting of the Advisory Council used to take place

and they accepted Rs. 5 as daily allowance. I think that most of the Members of the House would agree with me that Rs. 5 is not such an amount that one can say that by getting this amount the Member of the Legislature will be under the influence of the Government. It is not a very big amount and this was purely an act of the Executive Government. There was nothing deliberate on the part of the Members to become members of the District Advisory Councils. It is something for which the Members were not responsible and it happened without any intention on their part to accept any office of profit. Merely on legal technical grounds, as the Election Commissioner has said in his report, to debar these 12 gentlemen from sitting in the Legislature due to no fault of theirs, is not morally justified. With your permission, Sir, I would like to read the report which is very material. He "has referred to the cases which arose out of the General Election after 1945 where a Member had accepted membership of a certain Committee though the amount was very small but it was decided that it "does not matter whether the amount is small or large. If the Members have accepted that office and have drawn allowance, it becomes an office of profit." The Election Commissioner says, "These cases, in the opinion of the Commission, are far too extreme in nature and there is no justification for adopting such a restricted and technical view of the matter in India." I have said that this is purely a technical thing and on the basis of which it is not generally correct to disqualify them from sitting in the Legislative Assembly of Vindhya Pradesh. In England and other countries during the development of parliamentary government, if any law relating to Parliament was rigorous, they used to remove the hardship by means of a device called 'fictions'. Here we have to do everything according to the law and we have to see whether legally this Parliament is entitled to pass a law like this or not. As I have told

you in the beginning, the legislative powers are given by this Parliament to Part C States and if the same Parliament finds that some wrong has been done to some Members of that Legislature due to a *bona fide* mistake on the part of the Government, then this Parliament can very easily condone the mistake and remove the disqualification attached to those Members. So far as the legal point is concerned, this Parliament is not doing anything which amounts to violating the Constitution and it is not going against the Constitution. This Parliament is quite competent to pass a Bill like this. So legally and morally there is justification for condoning or redressing the wrong that has been done to the Members.

Now I will come to the second point. Most of the hon. Members on the other side of the House may think that this Government is getting this Bill passed because they want to keep the Congress Party in power in Vindhya Pradesh but it is not true. If the position of the different parties in the Legislature is noticed, it will become apparent that there is no such intention at all in the minds of the Government. As the hon. the Home Minister has told the House, out of the 60 Members there are 39 Congress, 11 Socialist, 3 K.M.P., 2 Independent, 2 Jan Sangh and 2 Ramrajya Parishad. So the ratio is this that there are 39 Congress as against 20 Opposition Parties. Against this, one Member out of the 11 Socialists has been disqualified because the Election Tribunal has declared his election invalid. So the strength of the Socialists is 10. Even if the 11 Congress Members disqualified by the Election Commissioner remained outside the Legislature the strength of the Congress Party in Vindhya Pradesh Legislative Assembly would be 29 as against the Opposition strength of 20. Still the Congress Party could command a majority of nine and the Congress Party could very easily remain in power without any crisis and without any fear of the

[Shri Gulsher Ahmed.] Government being voted against. Some may say that Government have brought forward this Bill because the Congress is afraid of fighting re-elections and my friend on the other side may be very optimistic that they would win in all the re-elections caused by the disqualification of 11 Congress Members. Their optimism is a mere delusion. If the worst comes to the worst and if the Congress Party wins at least 3 or 4 seats out of the 12, even then the Congress would command a majority and would carry on the Government in that State. So there is no ground for making any insinuation like that, namely, that this Government is getting this Bill passed because this Government wants the Congress Party to remain in power in Vindhya Pradesh.

Before this Bill was brought forward, and before the problem was created by these 12 Members being disqualified from being Members of the State Legislative Assembly by order of the President, I had the opportunity of discussing this matter with most of the Members of Parliament because I happen to come from that State and most of them were of the opinion that these 12 Members could not be held to have held any office of profit for which they should be disqualified. Of course the Election Commissioner has held so and I do not want to comment on that. Now if we do not remove the disqualification under the provisions of this Bill, what would happen and what is the alternative? We should have re-elections, and re-elections mean unnecessary expenditure both for the candidates and for the Government. As most of the Members of this House are aware, elections are not a pleasant job. It is not only a very difficult job but is also a waste of time and money. Waste of Government money means waste of public money. As my State is a very backward and poor State with no industries, neither the State nor the candidates can afford to fight the elections

twice within the period of five years. It is something beyond our power. So public interest, equity and justice demand that re-elections in the State should not be held.

One of my most learned friends, Mr. Reddy, had said that we were creating a bad precedent by making this law. To this I would say that precedents have been created in England and have got the force of law because in England they have not got any written Constitution and they have developed a kind of system by which the powers and functions of Parliament are governed by usages, customs and conventions of Parliament, created by precedents and they always try to live up to these precedents. We have a written Constitution here. Even if we created a precedent today it will not be binding for ever because any other party if it comes to power may undo the thing that you do today on the ground that the Constitution has given them the power to do so and they may not care to follow the precedent even if it be good. So far as this country is concerned, we have a written Constitution and the only consideration that should be before us while passing this Bill is whether the Bill that we are passing comes within the four corners of the Constitution and whether this House is competent to make a law like this or not. I do not think that there is anything in the Constitution that deters us from exercising the powers given to this Parliament under the Constitution.

With these words, Sir, I conclude..

SHRI H. N. KUNZRU (Uttar Pradesh): Mr. Chairman, generally speaking the trend of the discussion yesterday showed that it was the importance of the constitutional question that was uppermost in the minds of the hon. Members in considering the Bill before us. I shall adopt, Sir, a limited point of view. I do not challenge the right of Parliament to pass a law of the kind before us. But even when that is granted certain other important consi-

derations arise which ought to be fully taken into account both by this House and by Government.

A great deal has been said about the Part C States Act which is a law passed by Parliament and which can therefore be altered from time to time without any constitutional restriction. Now, Sir, the provision of this Act that we are concerned with at present is section 17 which refers to the disqualifications for membership of the Legislatures of Part C States. It says: "A person shall be disqualified for being chosen as, and for being, a Member of the Legislative Assembly of a State if he is for the time being disqualified for being chosen as and for being a Member of either House of Parliament under any of the provisions of article 102." It is necessary therefore to know what article 102 says. Article 102 says: "A person shall be disqualified for being chosen as, and for being, a Member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder." Now what we have to find out—I am not concerned with the other provisions of this article and I shall not therefore quote them—is whether Parliament has passed any law under article 102 defining offices of profit or laying down with reference to particular committees whether their members would be regarded as holding offices of profit. Such a law, Sir, was passed in 1951. The long title of this Act declares it to be an Act to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, Members of Parliament. Section 2 of this Act, declares that the offices of profit under Government mentioned in this section shall not disqualify and shall be deemed never to have disqualified the holders thereof for being chosen as, or for being, Members of Parliament. Now there is a reference to several committees. I shall not

read out the clauses dealing with these committees because they are of no importance at the present time, those committees having ceased to exist. We are concerned only with clause (e) of this section which includes among the offices of profit the office of Chairman or member of any other committee appointed by the Government of India or by the Government of any State, held for any period not extending beyond the 31st March 1952. Here clearly it is this law which has been passed under article 102 that applies to the disqualification for membership in the case of members of legislatures of Part C States. My hon. friend, the Home Minister, referred repeatedly yesterday to the bona fides of the Government in asking Members of the Vindhya Pradesh Assembly to be members of the District Advisory Councils. Now, I do not accuse the Government of Vindhya Pradesh of questionable motives, nor do I accuse the Home Minister of any such motives, but the fact remains, Sir, that there was a law on the Statute Book—a law passed by the provisional Parliament declaring the office of Chairman or member of any other committee, *i.e.*, committees other than those previously referred to—appointed by the Government of India or the Government of any State held for any period not extending beyond the 31st Day of March 1952. They knew this, and presumably the Vindhya Pradesh Government also knew of the existence of this law. In any case, ignorance of law is no excuse for its contravention. If I go to a place and I am not aware of the fact that our Home Minister who seems to be as fond of exercising his powers under section 144 of the Criminal Procedure Code as the British Government was, had had section 144 promulgated in any Central area. I addressed a public meeting, I would not be able to plead in my defence that I was ignorant of the fact that section 144 had been promulgated. The court will hold me guilty of contravening the law and will deal with me accordingly. The punishment may

[Shri H. N. Kunzru.] not be severe, but it will not regard me as innocent.

THE MINISTER FOR HOME AFFAIRS AND STATES (DR. K. N. KATJU): YOU might not be prosecuted at all.

SHRI C. G. K. REDDY (Mysore): That will depend on the party to which he belongs.

SHRI H. N. KUNZRU: Considering, Sir, what has happened during the last few months, to which extent the ideas of authority have supplanted, have got the better of the ideas of political expediency, of moral propriety. I cannot be sure that my hon. friend, the Home Minister, if I contravened the law, would treat me more leniently than he has so far treated the other offenders.

DR. K. N. KATJU: It all depends.

SHRI H. N. KUNZRU: Yes, it all depends on the whim of my hon. friend and that is precisely my point.

SHRI C. G. K. REDDY: And his convenience.

SHRI H. N. KUNZRU: Whether it is convenient for him or not.

SHRI K. S. HEGDE (Madras): It depends on whether it is deliberate or otherwise.

SHRI H. N. KUNZRU: It may be whether it is deliberate or not the law is there. Ignorance of the law, as I have said, cannot be pleaded as an excuse by anybody who acts contrary to its provisions. Whatever the good faith of the Vindhya Pradesh Government and the Central Government might have been, how do they account for the fact that a Central law has been violated and they are condoning this violation of a law passed by Parliament with their knowledge and consent and with their guidance?

SHRI K. S. HEGDE: Where is the violation of the Central law? The protection was only up to 1952. Afterwards there was no protection. There was no violation of the Central law.

SHRI H. N. KUNZRU: People who were members of committees, whose membership extended beyond the 31st March 1952, were disqualified for being elected as and for being Members of Parliament. And under section 17 of the Government of the Part C States Act, this Act applies to these States too. How is it, I ask again, that this law has been violated?

My hon. friend spoke very eloquently about the motives of the Vindhya Pradesh Government, about the matter being a small matter, about there being no constitutional impropriety in bringing forward the Bill that we are considering, etc., but never said a word? about this point.

DR. K. N. KATJU: What point?

SHRI H. N. KUNZRU: My point has been repeatedly stated. As my hon. friend is still unaware of the fact that Parliament passed a law of the kind I have referred to on the 31st October 1951, he should read the law.

DR. K. N. KATJU: I am aware. I referred to it myself.

SHRI J. R. KAPOOR (Uttar Pradesh): It ceased to be law after March 1952.

SHRI H. N. KUNZRU: Where is it said?

SHRI J. R. KAPOOR: In the very-section if the hon. Member would reread clause (e) which he has just read.

SHRI H. N. KUNZRU: In order to enable the House to understand what this clause says, I shall read the previous portion of section 2 of the Act that I have referred to.

SYED NAUSHER ALI (West Bengal): Does this Act apply at all? Article 102 applies. This Act does not apply.

SHRI J. R. KAPOOR: Even this Act is no more in force.

SHRI K. S. HEGDE: The contravention, if at all, is not of this law, but of article 102—if there is any contravention at all.

SHRI H. N. KUNZRU: Clause 1 of this Act says that the Act may be called the Parliament Prevention of Disqualification Act, 1951, and it shall be deemed to have come into force on the 26th day of January 1950. Section 2 says:

"It is hereby declared that the following offices of profit under Government shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being Members of Parliament."

The words "the holders thereof for being chosen as, or for being, Members of Parliament" are important. Then, there are certain committees referred to, which, as I said, are no longer in existence. These committees are the Fiscal Commission, the Film Enquiry Committee, the Working Party of the Coal Industry, and the Railway Local Advisory Committee appointed by the Government of India for the year ending 31st day of March 1950, or for the year ending 31st day of March 1951, or for the year ending 31st day of March 1951, or for the year ending on 31st March 1952. And clause (e) says:

"The office of Chairman or member of any other committee appointed by the Government of India or the Government of any State, held for any period not extending beyond 31st day of March 1952;"

This is perfectly general. It did not apply only to people who stood for election to Parliament in 1952.

PANDIT S. DUBE (Madhya Pradesh): May I say, on a matter of information, that this notification came into force on the 26th April 1952, long after 31st March 1952?

SHRI H. N. KUNZRU: Therefore, that notification is not covered by this exemption granted by clause (e) of section 2 of the Parliament Prevention of Disqualification Act, 1951. For purposes of election to Parliament and for attending the meetings as Members of Parliament, clause (e) of section 2 of this Act will apply. It consequently applies to Part C States also under section 17 of the Part C States Act. If I am wrong, my hon. friend the Home Minister can, by a short explanation, prevent the further discussion of this point. I am quite willing to give way.

DR. K. N. KATJU: I myself referred to this Act for the purpose of showing that such Acts are always retrospective. The great argument against the present Bill was that the Government was starting upon a retrospective legislation, and I myself referred to this particular Act and said that Parliament in 1951 had enacted a retrospective measure. That is quite clear from what was read out just now. So far as the applicability of the Act is concerned, of course, it does not apply, because it exhausted itself by 31st March 1952.

SHRI H. N. KUNZRU: It exhausted itself by 31st March 1952 in respect of the exemption granted by it, but I take it that a member holding the office referred to in clause (e) of section 2 would not have been entitled to stand for election to Parliament or to continue to be a Member of Parliament.

DR. K. N. KATJU: May I intervene again? Once again I repeat myself. The Vindhya Pradesh Government gave their advice that the membership of this District Advisory Committee was not an office of profit at all, and therefore there was no occasion for making any law.

SHRI B. RATH (Orissa): They gave wrong advice.

DR. K. N. KATJU: I do not know who advised them, but the language of the clause that I have referred to is perfectly clear.

THE MINISTER FOR LAW AND MINORITY AFFAIRS (SHRI C. C. BISWAS): Is it my hon. friend's contention that the Act to which he has referred has been spent out, and it is not open to Parliament to enact a similar law in respect of other committees or other commissions if the occasion arose?

SHRI H. N. KUNZRU: I have put forward no such absurd proposition. My hon. friend is trying to draw me into a trap. He will not succeed there.

SHRI C. C. BISWAS: No. no.

SHRI H. N. KUNZRU: I am not speaking under excitement, as my hon. friend the Home Minister was doing yesterday. I have given adequate thought to this matter and I am speaking calmly and with due deliberation.

DR. K. N. KATJU: Why does the hon. Member say that I was excited? I am always as cool as a cucumber.

SHRI C. G. K. REDDY: That is exactly our complaint—that the hon. Minister is unperturbed under the most exacting conditions.

SHRI H. N. KUNZRU: He was not so unperturbed yesterday. I shall read out clause (e) again in order to satisfy hon. Members that what I have stated is correct:—

"(e) the office of Chairman or member of any other Committee appointed by the Government of India or the Government of any State, held for any period not extending beyond 31st day of March 1952;"

SHRI K. S. HEGDE: If clause (e) were protected, this Bill was not necessary.

MR. CHAIRMAN: Order, order. Mr. Hegde will speak after Mr. Bhupesh Gupta.

SHRI B. GUPTA (West Bengal): The chances should be mutual.

SHRI H. N. KUNZRU: The holders of these offices enjoyed exemption for the purpose of this Act up to 31st March 1952. After that they were disqualified for being chosen as or for being Members of Parliament.

And consequently.....

SHRI J. R. KAPOOR: Probably what the hon. Member means is that the disqualification revived.

SHRI K. S. HEGDE: That is why this Bill is brought.

SHRI H. N. KUNZRU: Well, I am glad that it has been admitted.....

SHRI K. S. HEGDE: That is what we have been saying.

SHRI H. N. KUNZRU: .....that under section 17 of the Government of Part C States Act, 1951, section 2 of the Parliament (Prevention of Disqualification) Act, 1951 applies. This much is clear from the very clever question put to me by the Law Minister. Now, Sir, my hon. friend the Home Minister has said that Vindhya Pradesh Government had advised that the membership of the District Advisory Councils could not be regarded as an office of profit. Now, I should like to know from him again how it was that in the face of the provision in the Parliament (Prevention of Disqualification) Act, this advice was given.

My next point, Sir, is this. The President received a representation in October 1952 drawing his attention to the fact that the people who had accepted—I think that was the contention—the membership of the District Advisory Councils in Vindhya Pradesh had become unfit for continuing as



Members of the State Legislative Assembly. Now this representation lay with the President, which means with the Government, for two and a half months. Then an Order was issued by the President which required him to refer the matter to the Election Commission. In fact, part two of this Order says:

"Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

Now, there being a law on the subject and it therefore being clear, at least to the Central Government, that the membership of the District Advisory Council was an office of profit, why did they refer the matter—why did they ask the President to issue this Order so that the matter might be referred—to the Election Commission? Some explanation must be given to this extraordinary step. A law of Parliament makes the position quite clear and yet the President issues an Order requiring him to refer the matter to the Election Commission and to act in accordance with its decision! Sir, I do not accuse the President of any ulterior motives at all. It would be most improper to animadvert on the conduct of the President here. Besides, as he is a completely responsible President, the responsibility for anything done by him must be borne by the Government of the day. Now, why did the Government have this Order issued by the President? Why did they want that the matter should be referred to the Election Commission? Did they want to ignore the law passed by the Provisional Parliament and get from the Election Commission a verdict different from that given by a parliamentary statute? Sir, it is not in my nature to accuse anyone of acting with an ulterior motive. I regard all people as honest till they show by their conduct that they do not deserve to be regarded as honest. And I regard my hon. friend the Home

Minister as a perfectly honourable man. I am therefore all the more puzzled by the advice given by the Government to the President. Since I am unable to understand this, naturally suspicions arise in my mind and one of these suspicions is that the Government thought that the Election Commission might, contrary to the provisions of the parliamentary statute, say that the membership of the District Advisory Councils was not an office of profit.

SHRI C. C. BISWAS: Sir, in fairness, I might say that that advice was given by the Law Ministry—though it was, at a time when I had not joined the office as Law Minister. All the same I accept the responsibility for that opinion. But it is not fair to accuse my hon. friend the Home Minister .....

SHRI B. GUPTA: Government is collectively responsible.

(*Interruptions.*)

MR. CHAIRMAN: Order, order.

SHRI H. N. KUNZRU: I regard my hon. friend the Law Minister as no less honourable than the Home Minister. The fact that he is willing to accept responsibility for the advice given to the President does not solve my difficulty.

Sir, there is just one more point which I should like to refer to before I sit down. Sir, the parliamentary law to which I have referred, has been so framed as to reduce the opportunities of the executive for offering memberships of committees to Members of Parliament. Its scope is restrictive. It deals with a certain situation which had unwittingly arisen but is anxious at the same time that what had been done should not be regarded as a precedent for the future. It, therefore, validated certain acts that had already been done, but at the same time, disallowed the continuance of such acts in future. But can we

[Shri H. N. Kunzru.] say the same thing of the Bill before us? Now clause 3 of the Bill says:

"It is hereby declared that the offices of members of any District Advisory Council shall not disqualify, and shall be deemed *never* to have disqualified, the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh."

It is not, Sir, trying merely to indemnify the Members who have unwittingly accepted offices of profit. It is the next clause that is an indemnification clause. This clause allows Members of the Vindhya Pradesh Legislative Assembly to accept memberships of the District Advisory Councils so long as these Councils last. It proceeds, if I may say so, on principles which are quite the opposite of those underlying the parliamentary law. If the Government had confined themselves, Sir, to dealing with the cases of the twelve persons who had been declared to be holders of offices of profit by the Election Commission, I could have understood the necessity for the measure before us. But in view of the fact that the Government want to allow members of the Vindhya Pradesh State Legislative Assembly to continue to be members of the District Advisory Councils there as long as they exist, shows that the Bill is open to serious question. The scope of the Bill is not as narrow nor are its provisions, as I have shown, as harmless as the hon. Home Minister pretended yesterday.

If you will permit me, it occurs to me, that I should deal with one more point and that is the line of argument followed by the Election Commission. My hon. friend, the Home Minister, while disclaiming to ridicule the Commission's decision, tried as far as was consistent with his official position to do so. I do not occupy any position of responsibility.

I am therefore freer to express my opinion on this subject than he was. The Election Commission has made a difference between the members of the District Advisory Councils coming from outside the District Headquarters and members residing at the District Headquarters. It has invented a new doctrine that might be called the doctrine of compensation and held in the case of the first category of persons that the allowances which they received should be regarded as a compensation for the expenses incurred by them.

SHRI K. S. HEGDE: Re-imbursement.

SHRI H. N. KUNZRU: We have so far been following the British model both in respect of our procedure and practice. I do not know whether there is any precedent for this distinction in British parliamentary law or practice.

SHRI K. S. HEGDE: There are two decisions of the Election Tribunal on this point. If you want, I can point them out.

SHRI H. N. KUNZRU: The Election Tribunal may have given such decisions, but that does not answer my question. We have also to bear in mind the fact that all that the Commission took into account was that the allowance originally fixed for members of the Advisory Council was, only Rs. 5 per day. On the 20th January 1953 it was raised to Rs. 10 per day. That is why the matter was pending here and why it was not known what the decision of the Election Commission would be. The Vindhya Pradesh Government raised the allowance of the Members of the Vindhya Pradesh Legislative Assembly and thus raised the allowance of the members of the District Advisory Councils too, for the order relating to the establishment of these Councils says that the non-official members of these Advisory Councils some of whom

were not Members of the State Legislative Assembly would receive allowance at the same rate as Members of the Legislative Assembly. Now, the clause of the Bill that I have read out does not even, in order to secure the purity of parliamentary life, fix any emoluments the receipt of which beyond that figure would render the recipient liable to be regarded as holding an office of profit. I consider that the amount of the profit does not matter at all. It is really the occupation of a particular place that matters. There have been cases in England which show that the mere occupation of an office without the receipt of any fees or allowance was regarded as the occupation of a place of profit, because the reason for it seems to me to be academic. The membership of a Committee carries with it a certain position and power, and naturally the British Parliament is anxious that the executive should not be able to affect the independence of Members of Parliament by holding out to them an opportunity of holding an office of profit, *i.e.*, earning anything or occupying places that carry with them a certain amount of prestige.

SHRI K. S. HEGDE: Ambassadors can be Members of Parliament even now.

SHRI H. N. KUNZRU: My hon. friend, Mr. Hegde, will never be convinced. We all know that he is bound to support the Government.

SHRI K. S. HEGDE: Not at all.

SHRI H. N. KUNZRU: His is an unfortunate case .....

MR. CHAIRMAN: Don't bother about him. Please go on.

SHRI H. N. KUNZRU: He need not carry his loyalty as far as he has done.

SHRI K. S. HEGDE: I am only clearing up ignorance.

SHRI H. N. KUNZRU: In view of this fact that in the English parliamentary practice, there is no...

MR. CHAIRMAN: You have already taken a long time. Mr. Kunzru.

SHRI H. N. KUNZRU: I agree, Sir, that time is of some consequence, but I hope that in this House when an important measure like this one is under discussion, the time limit will not be enforced. After all, this is a Second Chamber .....

MR. CHAIRMAN: You have already spoken for 45 minutes.

SHRI H. N. KUNZRU: This is an important measure, and I have never-known that in the old Legislative-Assembly or in the old Council of States there was any limit of time during which a Member can speak on a legislative measure.

MR. CHAIRMAN: So many other Members wish to speak. We must have consideration for them.

SHRI H. N. KUNZRU: Considering the line that the Election Commission has taken, considering the allowance that the members of the Advisory Council will in future enjoy and considering also the British parliamentary practice, I consider it very very unfortunate that Government should have included a clause like clause 3 in the Bill before us. For the reasons that I have given, I regret to say that I am unable to support this Bill.

SYED NAUSHER ALI: Mr. Chairman before I make my observations on this Bill, I should like to refer to some remarks made by Dr. Kunzru. He seems to be under the impression that the Parliament Prevention of Disqualification Act, 1951, has application in the present case. I beg to submit **that it has** got no application whatsoever.

AN HON. MEMBER- **You** have not followed him.

SYED NAUSHER ALI: Maybe; I plead guilty, but I can only talk of what I have understood from his speech. In the first place, the Act was applicable only to Members of Parliament; in the second place, the Act was no longer in force; in the third place, section 17 of the Government of Part C States Act refers only to disqualifications under any of the provisions of article 102.

Now, Sir, the next matter that I should like to refer to is the question of ridicule which is alleged to have been made of the findings of the Election Commission by the hon. Home Minister. I am sorry, Sir, that my esteemed friend should have taken the remarks made by the hon. Home Minister as a ridicule. I found nothing in the remarks of the hon. Minister indicating any ridicule. We are perfectly justified in criticising any finding of the Election Commission.

SOME HON. MEMBERS: No.

SYED NAUSHER ALI: Certainly. We are perfectly justified in criticising the judgments of the highest Tribunal even before that Tribunal itself and certainly in this House.

SHRI C. G. K. REDDY: I am only talking of propriety.

SYED NAUSHER ALI: We can always discuss. Parliament has got the authority to discuss in order not to set aside but to find out what is to be done, what is just, what is reasonable, what is fair and in what particular way, we should proceed in a particular situation.

Now, already much has been said as to the findings of the Election<sup>1</sup> Commission. One may agree or one may not agree but I think we are justified in criticising and criticising with a view to deciding what course we should take. On this question many points have been touched but I

think one point has not yet been touched and that is this. Article 102, in my humble submission, never contemplates that an office should be an office of profit in respect of some holders and should not be an office of profit in respect of other holders. What brings in the disqualification is the office of profit. Now it must be an office of profit irrespective of the holder thereof that brings in the disqualification. You cannot go into the fact whether this office is an office of profit in respect of some and is not an office of profit in respect of some others. If you go into such details, there will be no end of the trouble.

The travelling allowance rules prescribe a limit within which no travelling allowance is permissible. Generally in Bengal, I know, it is 5 miles. Now take a hypothetical case; a Member resides just on the border on this side of 5 miles and another just on the other side of the 5 miles. What happens? They incur the same expenditure and then one gets the travelling allowance and the dearness allowance and the other gets nothing. Therefore it may very well be asked "Well, for whom is it profitable?" I think this sort of distinction without difference was never contemplated by the framers of the Constitution. I don't want to make any further comment on this. As the time at my disposal is very short, I proceed directly to the real points for consideration.

The points for consideration, in my humble submission, are two. One is whether Parliament is competent to legislate as proposed. The second is whether, if so, we should legislate as proposed. Now as regards the point whether we should or whether it is desirable, I think I will have no time to speak. But I will just try to make myself clear with regard to the first point.

Before I proceed to do so, I should like to make one or two preliminary

observations. Now, Sir, in my opinion, precedents and practices in the British Parliament have got very-little bearing on the present question. They are not very helpful and for various reasons. We all know that like British Parliament has got no written Constitution. Their Constitution is unwritten. Their powers are unlimited and unfettered. In fact nothing done by the Parliament of Britain can ever be challenged as *ultra vires*. And it has been very rightly said that the British Parliament can make and unmake anything except perhaps make a man a woman and a woman a man.

SHRI B. GUPTA: That is also possible in law.

SYED NAUSHER ALI: The question will perhaps arise some day in the near future if the Press reports are correct, whether a husband has ceased to be a husband and whether a wife has ceased to be a wife

SHRI B. GUPTA: If the British Parliament says, it will be so in law.

SYED NAUSHER ALI: And its decision will be final. Now, Sir, in our case the position is quite different. Ours is a written Constitution. The Parliament of India is a creature of the Constitution. The powers and functions of the Parliament are prescribed and circumscribed by the provisions of the Constitution. We cannot infringe the fundamental rights; nor can we encroach upon the legislative sphere of the States. So far with regard to the Constitution itself.

Now some precedents have been cited in support of the proposition that this Parliament can legislate with retrospective effect to the extent that a Member who has ceased to be a Member may be put into that seat by an Act of the Legislature without having recourse to election. Now, as for the legality apart from the ques-

tion of desirability or the propriety of such a course, I think the precedents don't seem to support the proposition or at least do not give much assistance to us. I have seen the report of the precedents in May's Parliamentary Practice and Procedure. One distinction appears to be still existing and that is this. It is not quite clear what is the effect of incurring the disqualification. Now under our Constitution it is clear that the seat is vacated, or the seat becomes vacant immediately and automatically as the disqualification is incurred.

SHRI B. K. P. SINHA (Bihar): May I correct that information?

In May's Parliamentary Practice it is given that under the relevant sections of the Act of 1707, sections 25 and 26, a seat is vacated when disqualification is incurred. The effect of these sections is just like our own. The seat is automatically vacated when the disqualification is incurred.

SHRI C. G. K. REDDY: That is what he is saying.

SHRI B. K. P. SINHA: He says it is not clear.

SYED NAUSHER ALI: Personally I am thankful to my esteemed friend for the bit of information but I am still doubtful; I have got my own doubts. If the hon. Member's contention is correct, then my argument falls through at once. I do not want to dilate but so far as that matter is concerned, the precedents in that case may be of some assistance. I think we should not—and we have at least never done so before—ape the technical rules of procedure in other parts of the world. I may submit for the consideration of this House that at the time of the introduction of the Prevention of Disqualification of Members of Parliament Bill in the provisional Parliament, Dr. Ambedkar, the then Law

[Syed Nausher Ali.] Minister, made it perfectly clear that the then Government of India at least did not want to follow these precedents and those rules. However, that is neither here nor there and I leave the point at that.

Now, Sir, precedents and analogy apart and leaving aside for the time being the propriety or otherwise of legislating with regard to the Members who have been found to have been disqualified and unseated, I should like to say at once that Parliament is quite competent to legislate as proposed. Article 240 is clear on that point. The Constitution has made specific provisions with regard to the constitution, powers and functions of Parliament as well as the State Legislatures so far as the Part A and Part B States are concerned. Now, with regard to the Part C States, Parliament has been given power under article 240 for the creation of the Part C State Legislatures under which the Government of Part C States Act of 1951 was passed. It is now clear that this Act is defective, defective on some very important matters. Now, one of these defects has been found out to be an omission of any provision regarding the authority that is to decide whether a particular Member has incurred any disqualification or not. Now, Sir.....

SHRI C. C. BISWAS: May I invite the attention of my hon. friend to article 327 of the Constitution which authorises Parliament, subject to the other provisions of the Constitution, to make laws for matters relating to elections? I venture to suggest, that the Government of Part C States Act, 1951, in so far as it relates to matters concerning elections, was passed under the authority conferred on Parliament by article 327. Just as the Representation of People Act of 1951 was passed in pursuance of article 327, this Part C States Act, as regards election matters, may be regarded as having been

passed on the authority given by article 327.

SYED NAUSHER ALI: Sir, I have not carefully looked into the matter but it struck me too. But I am not inclined to agree with the Law Minister on this point. In the first place, article 240 is the only article that gives authority to Parliament to legislate for the constitution, powers and functions of the Legislatures of Part C States. But, if my hon. friend now brings in the question of election, I am sorry he will find himself in great difficulty. The difficulty will arise because then the operation of the articles relating to the Election Commission will come in. The Election Commission has been vested with extensive powers and, if you make any law disregarding the powers of the Election Commission then you will come into conflict with the provisions of the Constitution. Therefore, I have studiously avoided that course.

SHRI K. S. HEGDE: Article 240 is there.

SYED NAUSHER ALI: In my opinion, Parliament is quite competent under article 240 which gives an extraordinary power—if I may use that expression—to this Parliament to make law relating to the constitution, powers and functions of the Legislatures of Part C States. Article 240 reads thus: "Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—

- (a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State; or
- (b) a Council of Advisers or Ministers;

or both with such constitution, powers and functions in each case as may be specified in the law".

Then comes the most extraordinary provision which says definitely that even the procedure required will not be the procedure for amending the Constitution even if the law contravenes the provisions of the Constitution. Now, clause (d) says this: "Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution". Sir, therefore, this Parliament has got unfettered powers—if I may use that expression—unrestricted powers with regard to legislation relating to the constitution, powers and functions of Part C States. Now, Sir, we made a law and the law has been found to be defective. For that purpose, the Government was advised, and, consequently, the President was advised that the deficiency with regard to the authority not prescribed by the Government of Part C States Act should be provided for by resort to section 43 of the Government of Part C States Act. I am sorry, Sir, that I have a feeling that neither the President nor the Government was well advised or correctly advised on this point. Now, the moment there was omission to provide for the authority ■competent to decide any dispute, the jurisdiction of the civil court came into play and section 9 of the Civil Procedure Code came into operation. I am afraid section 43 of the Government of Part C States Act never •contemplated vesting the President with power to appoint any authority for deciding disputes. Now, Sir, if that is so, then the entire proceedings beginning with the promulgation of the order by the President and the subsequent proceedings relating to the enquiry and the findings of the Election Commission is simply washed out; the whole thing is *ultra vires*, of no effect, invalid, illegal and inoperative. Now, even assuming for the sake of argument that that order was valid, was intra vires, and that the findings of the Commission and the order of the President stand, I

submit with the greatest respect, that even then the jurisdiction of the civil court will not be taken away. We know, Sir, what this word "final" means and how it has been interpreted in respect of the various enactments that are still in force in this country. At least we in Bengal know that the provisions of the Local Self-Government Act and the Municipal Act where similar provisions came in for interpretation the courts held that when the fundamental conditions were not fulfilled the courts had the jurisdiction to investigate and to say that the whole order was wrong. Now in order to oust the jurisdiction of the civil court you have got to make an express provision or if not express what is tant amount to an express provision namely by necessary implication. Now in this case there is nothing like that. So I submit that even assuming that the President had the power to promulgate that order it will not oust the jurisdiction of the civil court. Now, Sir.....

SHRI C. G. MISRA (Madhya Pradesh): May I ask the hon. Member to clear the point whether until this matter has been brought before the civil court, the President's order is not final?

SYED NAUSHER ALI: I have made myself perfectly clear. In my humble submission his order is *ultra vires* and therefore the order of the President is a nullity. It has got no effect whatsoever and the Member or the Members if they be so advised sit in the Assembly. And if the Speaker there holds that the Members had incurred the disqualification and so were not entitled to sit as Members, there will be nothing to prevent him from holding so. But I am not here to give any legal advice to any client.

As already stated I feel that the President had not been rightly advised. The proper course in my humble submission, would have been for the Government to advise the President to set at rest all disputes by referring the matter to the Sup-

[Syed Nausher Ali.] reme Court for its opinion, I think, under article 143. If that had been done there would have been an end of the whole dispute. Unfortunately that has not been done. But why? It is clear that the Government was advised in a different way. Perhaps the opinion given by the Government legal advisers appeared to them to be convincing. Now, Sir, I do not want to enter in detail into the merits or demerits of the case and to sit in judgment on the opinions tendered. I would only say that in *my* humble submission the matter has already been made complicated which could have been solved very easily. It has not been done and I am afraid the complication will not be solved by this enactment. What I would have suggested, if I had an opportunity to do so earlier, would be that the Government should have got the Government of Part C States Act, 1951 suitably amended by making section 17 self-contained. I say by making it 'self-contained' by incorporating the entire corresponding provisions with regard to Parliament and the Part A and Part B States Legislatures in and after section 17.

It appears to me that the omission to provide for the authority for deciding the dispute was intentional and not accidental. The idea perhaps was, as it should have been, that it was for the Legislatures of 'C States as in the case of 'A' States and 'B' States to provide for the exemption. But even in that case that authority should have been given by Parliament to the Part C States by some provision in the Government of Part C States Act, 1951.

Now, Sir, this Bill that is before us is again defective in various ways. I should have thought that the Government would have brought an amending Bill containing provisions for removing the defects in the Government of Part C States Act. But, Sir, that has not been proposed and what is proposed is that they anyway want to remove the disqualifications of the Members—not only to remove their disqualification and

indemnify them for their past but to reinstate, if I may use this expression, Members who have been unseated.

SHRI H. P. SAKSENA (Uttar Pradesh):  
Wrongly unseated.

SYED NAUSHER ALI: Yes; wrongly unseated in my opinion. Even at this stage Parliament could have passed a Bill amending the provisions of Government of Part C States Act, if such an amending Bill were brought forward, and the things that had happened before the passing of the amending law ought to have been left in my humble submission to the civil courts for decision. In that case further complications would not have arisen.

In this connection I may draw the attention of the House to one expression which seems to create a good deal of doubt. Now section 17 of the Act says this. "A person shall be disqualified for being chosen as and for being a Member of the Legislative Assembly of a State if he is for the time being disqualified for being chosen as and for being a Member of either House of Parliament under any of the provisions of article 102". I refer to the expression 'for the time being'. In the provisions in the Constitution with regard to Parliament and with regard to Part A and Part B States, there is no such expression. Now it would be necessary to interpret the expression 'for the time being'. *U* this expression is interpreted in a way which will make the present legislation inapplicable to the Members affected the original provision will apply to their case and therefore practically this Act will be of no use whatsoever to the persons affected by the provisions of the existing Act.

Now, Sir, these are the complications which, I am afraid, should have been decided by a competent court of law, and that would have also taken away a lot of the bitterness that has arisen in this House. I am perfectly certain, Sir, if the question of the reinstatement of the 12 Mem-



bers who have been declared to have lost their seats had not been before this House, there would have been very *little* recrimination with regard to this affair. And in fact in my humble submission, the President's Order passed on the finding of the Election Commissioner is wrong altogether. The disqualification applies to all the Members who had held the office at any time irrespective of the fact whether they were resident Members or whether they were not resident Members. But I *am* inclined to believe that the entire finding of the Election Commission was wrong. As regards the legal aspect, I have already dealt with it. As regards the facts, I find it extremely difficult to come to the conclusion that an *ad hoc* membership of an *ad hoc* Advisory Council which is to meet once in a month could ever be an office of profit. Specially when it carried no remuneration, and whether it was an office at all and that an office of profit—under the Government—all these have got to be gone into and definite findings arrived at before any Member can be found to be disqualified. And I myself feel that tested properly in a court of law this finding of the Election Commission will not stand and, as I have already submitted, there is no finality so far as the jurisdiction of the civil court is concerned. I should have thought that the Government should have come forward with a more comprehensive Bill removing all the defects of the Part C States Act and leaving the present matter for the Members to fight out in a competent court.

Sir, a word about the motive. It is undeniable that the Statement of Objects and Reasons of the Bill supplemented by the facts given in the pamphlet entitled "Documents regarding the Prevention of Disqualification etc.", all amply bear out that the matter has nothing to do with party affiliations. I doubt if, under those circumstances, any motive can be ascribed. But a motive has been ascribed subsequently when it has been found that

48 C.S.D.

the majority of the Members unseated belong to a particular party. I have no doubt in my mind that, if not all, a vast majority of the Members on this side of the House is above party politics on a measure like this. And I have also no reason to disbelieve the *bona fides* of the Government in this respect—the *bona fides* of the Government of Vindhya Pradesh or the *bona fides* of the Government of India. I have not the least doubt about it. But if it is objected to on principle that is quite a different matter. If it is objected to on grounds of undesirability or impropriety, that is quite a different matter. Well, the law provides that you could have exemptions passed and I think no Government can be carried, on without making exemptions. But whether exemptions should be made in the present case or not is a matter of opinion. It is for the House to decide whether it should grant exemption or not.

Now, Sir, I do not think I shall be justified in taking any more time. You have given me indulgence enough and I do not think I should take any more time. But I feel, Sir, that it is desirable in the interests of avoiding further complication that Government should seriously consider the desirability or otherwise of proceeding with the present Bill and of bringing forward a more comprehensive amending Bill as suggested by me.

SHRI RAJAGOPAL NAIDU (Madras): Mr. Chairman, much has been said whether being a member of the District Advisory Council of the Vindhya Pradesh Government would amount to an office of profit or not; whether, first of all, it amounts to an office and if it amounts to an office, whether it amounts to an office of profit. Sir, to speak anything about it would take a very long time and would defeat the very purpose of the debate on a Bill of this kind and I am sure my hon. Mend Mr. K. S. Hegde would elaborately deal with that point.

TMR. DEPUTY CHAIRMAN in the Chair.]

[Shri Rajagopal Naidu.] But my personal opinion is, I may say with respect, that I do not see eye to eye with the decision of the Election Commissioner on this point. Sir, any Member of Parliament or any Member of the Legislative Assembly will have naturally to associate himself with the matters in his district and I do not think, by any stretch of imagination, that being a member of the District Advisory Council would amount to holding an office of profit.

Sir, coming to this Bill, we have naturally to address ourselves, in my opinion, to four aspects. Firstly, is the proposed legislation constitutional? Secondly, will the Bill, if it were enacted by Parliament, be enforced with retrospective effect? Thirdly, can any legislator who has already incurred disqualification and vacated his seat—I stress the words 'vacated his seat'—which has been notified according to law, be reinstated by an Act of Parliament? And lastly, Sir, is it politically and also morally proper to introduce a Bill of this sort? Sir, I may at once state that it is absolutely most improper and most immoral on the part of this Government—a democratic Government of this sort—to come forward and enact a legislation of this kind. It may be legal; it may be constitutional, but I may boldly say, Sir, it is certainly most improper to come forward with a Bill of this kind, especially when it has been declared, by an Order of the President by virtue of the powers vested in him, that these 12 Members had vacated their seats and their vacation of the seats had been notified according to law. To put them back into their seats by an Act of legislation and not by election is certainly most atrocious.

SHRI J. R. KAPOOR: Where is the notification for vacation?

SHRI RAJAGOPAL NAIDU: The question is whether the occurrence of this disqualification, the decision

of the Election Commissioner, the Presidential Order and the announcement of the Presidential decision, whether all these things were done under the Constitution or whether they were done under the Part C States Act, 1951, which is not in the Constitution by itself but a piece of parliamentary legislation. The hon. Attorney-General when he was speaking on the floor of the other House, was in my opinion, arguing a political brief. He was saying that this is not a matter that is done under the Constitution, but it is a thing that is done under the Part C States Act which is not the Constitution but is a piece of parliamentary legislation.

Now, Sir, we are now concerned with two sections in the Part C States Act, 1951, the most important of which is section 17. Under section 17—which applies to Part C States—it defines the disqualification for membership. The equivalent piece of legislation that applies to Parliament is article 102 of the Constitution and the equivalent piece of legislation that applies to Part A and Part B States is article 192. Sir, if we have these three provisions of law, namely, section 17 of the Part C States Act, 1951, and articles 102 and 192 of the Constitution, we find that there is a distinct.....

SHRI C. C. BISWAS: May I interrupt my hon. friend? I wish to draw the attention of the House to the fact that the time allotted by the Business Advisory Committee for consideration of this Bill was 10 A.M. today. As the general sense of the House is that the time should be extended, therefore, Sir, under rule 28H, I suggest to you that you might be pleased to vary the time and extend it to such hour as you may consider proper. But I may tell you that it was agreed in consultation with the Chairman that the time should be extended to half-past twelve today.

MR. DEPUTY CHAIRMAN: The discussion on this Bill will go on till half-past twelve. Hon. Members

should avoid repetitions and stick to this time.

SHRI C. G. K. REDDY: I am sure that even without repetitions that will not be possible, because there are many hon. Members who want to take part in this debate. I am sure new points will be raised. I think it will not be possible to stick to this time.

MR. DEPUTY CHAIRMAN: Is the House prepared to sit in the afternoon?

KHWAJA IN AIT ULLAH (Bihar): No, Sir. We are not prepared to sit in the afternoon.

MR. DEPUTY CHAIRMAN: Unless the House is prepared to sit in the afternoon, we have to close the discussion by 12-30 P.M.

SHRI B. K. P. SINHA: Most of what there was to be said has been said already.

AN HON. MEMBER: Why not take the sense of the House?

THE MINISTER FOR PARLIAMENTARY AFFAIRS (SHRI SATYA NARA-YAN SINHA) : Sir, the time-table is decided by the Business Advisory Committee, on which Members of all groups are represented. Once a decision is taken, the House must adhere to it.

SHRI B. GUPTA: It is possible to vary the decision of the Business Advisory Committee, if the House desires to do so.

MR. DEPUTY CHAIRMAN: If the House desires that there should be more time given an<sup>1</sup> that there should be an afternoon sitting, I will not stand in the way. The rules permit it. If the general sense of the H<sup>1</sup>use is in favour of further extension Of time, I am entirely in the hands of the House.

KHWAJA INAIT ULLAH: We do not want to sit in the afternoon. We can finish this Bill by the time

allotted, otherwise we shall sit on Monday.

SHRI C. C. BISWAS: No, Sir.

MR. DEPUTY CHAIRMAN: There is no question of sitting on Monday.

SHRI C. G. MISRA: I beg to suggest that the approximate number of speakers may be ascertained and in light of that, time may be allotted to every speaker.

MR. DEPUTY CHAIRMAN: There are a large number of speakers. I have got their names here. The time is limited. Either we have to sit in the afternoon, or close the discussion by 12-30 P.M. What is the general sense of the House? (After a count) We have to close the discussion by 12-30 P.M.

SHRI B. GUPTA: This is most regrettable that the majority party .....

MR. DEPUTY CHAIRMAN: Order, order. We will carry on the debate till 12-30 P.M.

SHRI RAJAGOPAL NAIDU: Sir, in view of the restriction of time, I shall try to be very brief. I was trying to point out the difference between section 17 of the Government of Part C States Act and articles 102 and 192 of the Constitution. Section 17 of the Government of Part C States Act says: —

"A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of a State, if he is for the time being disqualified for being chosen as, and for being, a Member of either House of Parliament under any of the provisions of article 102."

But in article 102 we find that clause (1) reads: —

"if he holds any office of profit under the Government of India or the Government of any Stat\* other

[Shri Rajagopal Naidu.] than an office declared by Parliament by law not to disqualify its holder;".

We find that power is given to Parliament to declare under article 102 that such and such office is not an office of profit. Likewise, we find that power is given under article 192 of the Constitution that a particular office shall be declared by Parliament by law not to disqualify its holder with reference to Part A and B States. We find that kind of provision is entirely absent in section 17 of the Government of Part C States Act. If the provisions of section 17 of the Government of Part C States Act have to be applied, they have always to be read with article 102 of the Constitution. It will be seen that the Government of Part C States Act has provisions in sections 16 and 17 similar to those in articles 102 and 103 of the Constitution, with this modification, that a State Assembly in a Part C State is not empowered to declare any office not to disqualify its holder; it has to be done only under article 102 which will have to be read along with section 17 of the Government of Part C States Act. In this particular case, I may say, with respect, that the opinion of the Attorney-General that we have to look at the provisions of section 17 only and we have to ignore completely article 102 is, in my opinion, not correct. There is another provision, article 103, that when a doubt has arisen whether a Member of Parliament is disqualified or not, the matter will have to be referred to the President, who in turn will refer the matter to the Election Commission. The decision of the President is final. There is a lacuna in the Act. There is no provision similar to article 103 in the Government of Part C States Act, 1951. Naturally what the President has done in this case is this. It has been referred to the President under article 103 and the President has issued an order on the recommendation of the Election Commission, which has been referred to by the hon. Minister also. The notification

of the Ministry of States dated, New Delhi, the 10th January 1953, states: —

"Whereas a difficulty has arisen in giving effect to the provisions of clause (a) of sub-section (2) of section 16 and section 17 of the Government of Part C States Act, 1951 (XLIX of 1951):

Now, therefore, in exercise of the powers conferred by section 43 of the said Act, the President is pleased to make the following Order: —

(1) If any question arises as to whether a Member of the Legislative Assembly of a State has become disqualified for being such a Member under the provisions of section 17 of the Government of Part C States Act, 1951 (XLIX of 1951), the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

According to this Order of the President, his decision that the 12 Members of the Vindhya Pradesh Legislative Assembly had ceased to be Members by virtue of their being members of the District Advisory Council had become final. Now, what Government is trying to do is this. Government is now trying to bring forward legislation which says that being a member of the District Advisory Council will not amount to an office of profit. When once it has been declared that those 12 Members have become disqualified so that they cannot hold the office of Member of the Vindhya Pradesh Legislative Assembly, it means that those are to be treated as casual vacancies. Under section 8 of the Government of Part C States Act, we find that excepting Part II of the Representation of the People Act, every other part of the Representation of the People Act applies to Part C States. Now,

under Part IX of the Representation of the People Act we find how the casual vacancies that occur will have to be filled up. Under section 150 of that Act, when the seat of a Member elected to the Legislative Assembly of a State becomes vacant or is declared vacant—in this case it has not only become vacant, but it is also declared to be vacant—or his election to the Legislative Assembly is declared void, the Election Commission *shall*—the provision is mandatory—subject to the provisions of sub-section (2), by notification in the Official Gazette, call upon the Assembly constituency concerned to elect a person for the purpose of filling up the vacancy so caused before such date as may be specified by the notification. Therefore, the only provision under which these 12 vacancies can be filled would be under section 150 of the Representation of the People Act and no other provision—and not by enacting a law of this kind, trying to push in those people by back-door methods. It is only by calling for fresh nominations and by going to the polls under the provisions of section 150 of the Representation of the People Act that those vacancies can be filled. That section is clearly mandatory and we cannot go behind that section at all. Now the Attorney-General, Sir, has been saying that there are certain precedents of the British Parliament. He has quoted a case of Ceylon also which went up to the Privy Council. I may say so, Sir, with respect that in all those cases they had not vacated their seats, though it may technically amount to this, Sir, that by virtue of the disqualification they did not hold the office. But actually they had not vacated the office.

SHRI K. S. HEGDE: What do you mean by "vacating the office"? Legally or physically?

SHRI RAJAGOPAL NAIDU: Physically they had not. In all those cases which the Attorney-General has cited, they continued to remain as Members. They were sitting as Members of Parliament. As my

learned friend has put it, physically they had not vacated. Physically they had not withdrawn from the Parliament Chamber. But here it is a case where they were aware of the disqualification. They had bowed to the decision of the Election Commission. They had bowed to the J decision of the President and by virtue of the disqualification they did not remain as Members. Now they have ceased to become Members.

Now I shall only briefly refer, Sir, to some cases and I will only take three or four minutes more. I will try to controvert what the Attorney-General has been referring to. The Attorney-General has been referring to the case of Arthur Jenkins and the case of Arthur Jenkins is certainly distinguishable. He never vacated his seat and he was indemnified by an Act, called the Arthur Jenkins (Indemnification) Act, 1941. Then with regard to the other two cases, Captain Hamilton's appointment was on the terms that he should be reimbursed for the amount actually spent or lost by him. He was not to be paid for the services he rendered. He had to submit his actual accounts. And therefore that case has no bearing on the present case. Then the circumstances with regard to the other case, Sir, also, in my opinion, may not be applicable to the facts of the present case. I wanted to speak a few words about the powers of the House of Commons and the powers of the Parliament in this regard, but I do not think, Sir, time will permit me to do so. It may take some time and therefore I do not want to go into them. And I may say, Sir, that the provisions of the Representation of the People Act are definitely applicable to the Part C States Act. Here the seats of these twelve Members will have to be treated as casual vacancies now and casual vacancies can be filled up only by election and by no other method under the provisions of the Representation of the People Act. And as such, Sir, the seats of these twelve Members cannot be filled up by any piece of legislation. They have to

(*Prevention of Disquali-*[Shri Rajagopal Naidu.] be filled up only by election and I may say, Sir, that it is most improper on the part of the Parliament to enact this kind of legislation, which, in my opinion, is a shame to democracy.

SHRI K. S. HEGDE: Mr. Deputy Chairman, the debate in the course of this Bill has raised some extremely important points both as regards the constitutionality of the Bill and the constitutional appropriateness of the Bill. Let me at the outset tell the House that I am entirely in agreement with my friend Mr. Reddy when he said that the role that this Parliament is playing is of an extremely important character. We are today building up traditions for the future and what we build up today will have an important bearing and will have its repercussions on the future. As such, we must be cautious in taking any and every step in building up that tradition. And let me also tell my friend and tell the House that no party consideration should play in deciding the constitutional propriety of the passing of this legislation. I would request my friends of the Opposition not to just make it a big stick to beat the Congress Party with and not even to lose faith in the electorate and I would request them to imagine that at one time they might be coming into power and occasions might arise for them for considering similar measures.

With this background, Sir, I would invite you to the question of the constitutionality of the Act. Now so far as the constitutionality of the Act is concerned, it may be examined from two points of view. One is: Is it opposed to the provisions of article 103 of the Constitution or article 191 of the Constitution? And secondly, is it opposed to section 17 of the Part C States Act? I would examine the latter position first.

Let me tell the House, Sir, that in so far as the Constitution is concerned, we created rather four classes of States—classes A, B, C and D.

*fication) Bill, 1953*

Each one of them, within *its own* ambit, had certain powers that were conferred upon them. Now so far as Part VI of the Constitution is concerned, it applies to Part A States; and Part VII applies to Part B States and Part VIII applies to Part C States. The Part C States were placed in a different category from the Part A and Part B States. None of the provisions of Part VI or Part VII of the Constitution is applicable to Part C States. They were left as a trust in the hands of the Parliament. No Legislature was created; no privileges were created; no franchise was created for them and the Parliament was given the entire power and it was entirely within the jurisdiction of the Parliament to give them a Legislature or not to give them a Legislature. The composition of the Legislature, the nature of the Legislature and their rights are all within the legislative rights of the Parliament and not within the constitutional limitations. I would therefore invite my friends to examine the position of Part C States from this point of view. Whatever we could do about these States, was only under the Part C States Act, 1951; we could amend it; we could enhance it; we could reduce it. There is hardly any legal doubt that this Parliament is supreme in acting so far as the Part C States are concerned and there are no constitutional limitations whatsoever. Whether it is correct or not, I shall come to it at a little later stage.

Now, under section 17 of the Part C States Act it is laid down that there shall be a Legislature. Now what they further did is that instead of elaborately copying the provisions of article 102, a cryptic reference is made for the sake of legislative brevity. I may emphasise it, Sir, that it is merely for the sake of legislative brevity and for nothing else. They said that the provisions of article 102 shall apply. Now thereby the Constitution is not made applicable.

SHRI RAJAGOPAL NAIDU: Kindly read article 192.

(Prevention of Disquali-  
 SHRI K. S. HEGDE: They did not want to give that power. They wanted to retain that power in the hands of Parliament. That is why a reference was made to article 102. Now again I may invite my friend Mr. Rajagopal Naidu's attention to article 191. That article applies only to Part A and Part B States. It does not apply to Part C States. That is why they made article 102 applicable. You kindly make this distinction. Coming to the Part C States Act, under section 17 certain disqualifications are fixed, and there is no doubt whatsoever at all that we can both prospectively and retrospectively amend that piece of legislation or the disqualifications in question. There is hardly any doubt, Sir, that so far as section 17 of the Part C States Act is concerned, this Parliament has every right to amend it in whatever manner it pleases. All that is being done now is that we are removing certain disqualifications which by reading section 17 of the Act along with article 102 of the Constitution has imposed on Members of the Vindhya Pradesh Legislature.

SHRI RAJAGOPAL NAIDU: My friend does not tell us that article 102 will have to be amended.

SHRI K. S. HEGDE: We are not amending article 102. We are amending only the reference to article 102 in section 17. Section 17, by a reference to article 102, does not become a constitutional provision. It is only a legal provision. There is no doubt that in so far as the C States are concerned, we can remove all disqualifications.

Then I come to article 102, which is rather more important. I would suggest, Sir, that even if a disqualification is incurred by Mr. Rajagopal Naidu or myself, this Parliament has the right to remove the disqualification either prospectively or retrospectively. Article 102 is more or less a copy of the English provisions -under sections 25 and 26 of the statute of 1702. I would invite the

) attention of the House to the particular sequence of the sentences or rather to the manner in which the article itself has been drafted. In article 102 there are certain disqualifications mentioned:

"A person shall be disqualified for being chosen as, and for being, a Member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder ....."

This proviso applies only to sub-section (a) and not to the other subsections.

"(b) if he is of unsound mind and stands so declared by a competent court ....."

This House has not got the right to remove that disqualification.

"(c) if he is an undischarged insolvent ....."

This House has no right to remove the disqualification. Similarly in the case of (d) and (e):

"(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament."

These are the disqualifications set out, and so far as sub-section (a) is concerned, this Parliament has been given the right to remove the disqualifications in question. Now, sub-section (a) says "other than an office declared by Parliament by law". Should it mean declared prior to the election or after the election? The word used here is in the present tense. That is the normal manner in which a statute is worded, and in fact the wording of the English statute of 1702 is the same as the

[Shri K. S. Hegde.] wording of the present article. In this connection, I have to refer to two things for your consideration. My learned friend, Dr. Kunzru, was very particular about English precedents. I am also a believer in English jurisprudence and I would invite the attention of my learned friend to the discussion on this subject by Erskine May in his 15th Edition, at page 213. This refers to the case of Mr. Jenkins. One Mr. Jenkins was appointed as Chairman of a Committee in 1941. He was given what is called subsistence allowance. It was thought that he had incurred disqualification. A Committee was appointed. That committee reported that he had incurred disqualification. That Committee also recommended that the disqualification was a technical one and must be removed. Kindly mark, gentlemen. The report of the Committee was accepted and then the disqualification was removed.

SHRI RAJAGOPAL NAIDU: Did he withdraw from the House of Commons?

SHRI K. S. HEGDE: Physical presence or absence is immaterial. Mark this. The report of the Committee was accepted so far as the disqualification was concerned and then an Indemnity Act was passed. Similarly, there are a number of other cases, where disqualification was incurred, the disqualification was accepted by the House of Commons and then an Indemnity Act giving retrospective effect was passed. My learned friend, Mr. Rajagopal Naidu, is very much enamoured of physically sitting in the Parliament. My learned friend who is a very good lawyer, I hope, will not make this mistake. We are now considering pure and simple a question of law so far as constitutionality is concerned. Actually, what happens is that a disqualification is incurred as soon as the man concerned accepts an office of profit, and not when the disqualification is declared. When a man accepts an office of profit, it is not a question of his incurring the disqualification on

the date that it is declared but it is a question of incurring it on the day he accepts an office of profit. You are not a Member of Parliament even if you continue to sit here after the date on which you accept an office of profit. So, in every case of disqualification the Indemnity Act must be a retrospective legislation necessarily and not a prospective legislation. In 1951, Sir, Parliament passed an Act. I am not going to take you through the entire Act. I would only request you to consider section 2 of the Act. It is specifically stated in the Preamble: "An Act to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, Members of Parliament." Sub-section (2) of section 1 says, "It shall be deemed to have come into force on the 26th day of January 1950." It was a retrospective legislation. Certain Members had incurred disqualification and the disqualification was removed by that Act.

SHRI RAJAGOPAL NAIDU: It does not apply here.

SHRI K. S. HEGDE: I am really amazed that a lawyer of my friend's calibre should look to the form of the thing and not its substance. It is not the vacation that makes the seat vacant, but it is the very acceptance of an office of profit. It is for this purpose the Constitution has made provision to the effect that either House of Parliament shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in Parliament shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do voted or otherwise took part in the proceedings. It is not the presence or the absence of a person which is material. It is the legal disqualification that matters.

My learned friend, Dr. Kunzru, who has a sense of frustration and desperation as well, was talking to the House about the provisions of the Act of 1951. He was reading



sub-section (e). It is merely a protective section and not a section that conferred any right or removed any right. For the information of the House, I may cite the case of K. S. Karanth Venkatarama Gowda and others. In that case, the Tribunal considered the effect of this Act. They said that it was merely an Act of abundant caution and that it was not an Act which either created disqualifications or put in limitations on the qualifications of the Members. They said that the Act simply laid down that up to a particular date certain offices shall not be deemed to have been offices of profit. My hon. friend who has not much experience of practising in courts of law attempted to read it in a manner not in accordance with law. In fact, if you kindly examine the report of the Election Commissioner, he himself considers that out of the 59 members 47 had not incurred any disqualifications whatsoever. If you consider sub-clause (e) of section 2 of this Act as one of imposing disqualifications, then the whole argument and the whole judgment of the Election Commissioner will be found to be entirely invalid.

Another objection was taken by Dr. Kunzru: He asked 'Why did you refer the matter to the Election Commission at all?' In fact if the Congress Government was acting for party purposes, there was enough lacunae in the Act and there was legal advice that there was no disqualification whatsoever. They could have simply advised the President that there was no disqualification. I would invite the attention of the doubting Thomases about the bona fides of the Congress Government to the action taken by the Congress Government; in spite of the advice of the Attorney General, who said that these were not offices of profit, in spite of the fact that there are no provisions under which it could be referred to the Election Commissioner, still they wanted to show the bona fides of the Government and they referred it to the Election Commissioner so that they could have the best opinion in the matter, so

that they could have all the constitutional restraints that are placed in the section. Is it not sufficient for you to show the bona fides of the Government? Now, you remember that it may be the task of the Congress Government today, it may be the task of another Government which may be in office tomorrow and from that context you should examine the whole case. Now I would again invite attention to the point so far as the constitutional propriety is concerned. There is a good deal of misconception about this constitutional propriety. This office of profit is a vague idea that has got a historical bearing in England. It originally started as a privilege question. The House of Parliament and the King were always at logger-heads. The Members of Parliament did not want that anyone of their Members should be useful to the King. They said if you take up any job under the King, you will not be able to give time for this House. As such we are not going to spare your services to the King. It is only from that point of view that this question of office of profit came in.

SHRI C. G. K. REDDY: Where is the King here?

SHRI K. S. HEGDE: Then a time came when the question of what is called "corruption period" arose. When the Parliament became important either in fact or in law, the King who had all the executive powers began to purchase the Members of Parliament by offering jobs. Then came the stage of Ministerial responsibility. This doctrine has two aspects—one is the doctrine of separation of powers and the other is the doctrine of tempting the Members by the executive. This doctrine of separation of power is an exploded myth so far as democracy is concerned. America not being fully conversant with the implications of a legislative democracy tried to separate the executive from the legislature. They put them into two different watertight compartments and said the executive shall not touch the legislature and the legislature shall not touch the executive. Even in practice

[Shri K. S. Hegde.] America has been finding it almost impossible to implement that doctrine to a substantial extent. But so far as this country is concerned, we have not accepted that doctrine whatsoever. Ours is a Cabinet which is selected from the legislature. The Cabinet is merely the representative of the legislature. They are discharging administrative functions as you and I are representatives. In fact we are running the administration through a Committee of our own. There is no separation whatsoever at all.

SHRI C. G. K. REDDY: It is theory.

SHRI K. S. HEGDE: There is close relationship between the executive and the legislature. I will leave the question of separation of powers. Let me come to the question of tempting the Members of the Houses. Here you look at the realities. I want you to decide here and now whether you want the Members of this House to take an increasing interest in the administration of this country or not? Are you merely going to come and discuss legislative measures or are you going to take part in your constituencies and districts for the administrative advantages of your constituencies. You may visualize that in your constituency there are Community Projects. Necessarily I cannot imagine of Community Projects having Advisory Councils without your being in it.

SHRI C. G. K. REDDY: Why can't we protect them before appointment?

SHRI K. S. HEGDE: I shall come to that. Now you consider whether you are going to tempt the Members by offering them jobs. In all these matters the Members of the Legislature must necessarily and increasingly take a share in the administration. We are today legitimately claiming to be in the several Committees be it in the Railways or be it in the Irrigation or in any other field. It is our legitimate share that we shall take an increasing interest in the administration

SHRI C. G. K. REDDY: Nobody on-tests it.

SHRI K. S. HEGDE: If that is so, why argue with me that these cannot be deemed to be offices of profit but I agree with you that if supposing a big job is offered to me of Rs. 500 or Rs. 1,000 thereby getting my allegiance purchased, then.....

SHRI C. G. K. REDDY: I only gave certain examples. My contention was if you accept the principle of the Government deciding the merits of the case, it does not prevent Government from supporting a Member who was a contractor or a man who was already offered an office of profit.

SHRI K. S. HEGDE: I am saying that it is distrust in the legislature. My friend has lost all faith in legislatures. He thinks that he is going to be in a state of perpetual minority. He should know that if we start suspecting like this, then we cannot have faith in democracy. Otherwise these are decided by the majority verdict of the Parliament. It may be that the majority may be of the Congress today. If you behave well, probably it will be yours in the future. Look for that day and don't be desperate for the present. Su my first argument is that there is nothing wrong or any constitutional impropriety in creating offices where the Members of the Legislature are taking an increasing interest in the administration of the country. But my learned friend said "Well, you must do it before you incur the disqualification and not after you incur the disqualification". My friend has little experience either of law or of parliamentary practice. In every country wherever they are having this sort of legislation they have found it almost impossible to define what exactly is an office of profit. It is a relative thing. You can never decide beforehand what is an office of profit. You have to give some time before deciding whether it can be brought within the nature of any big office whatsoever.....

SHRI RAJAGOPAL NAIDU: You can say what is not an office of profit.

SHRI K. S. HEGDE: The Chairmanship of the FiJm Enquiry Committee was declared to be an office of nonprofit though I understand that a handsome daily allowance was given. Sir, it is extremely difficult to decide beforehand what is an office of profit. Naturally you must wait for some time. When you create an office, you may not be aware that it is an office of profit. I would ask my friend Mr. Reddy to go through page 193 of Erskine May wherein is cited the cases of Jones and Jenkins. In all these cases the best legal brains in England themselves differed and they did not know and often times they were saying this in passing as a matter of abundant caution. My learned friend was good enough to say, "Are you not nominating to a seat which is already vacant"? I am afraid it is a confusion of ideas. As soon as the Member incurs disqualification, retrospectively the seats are deemed to have been vacated. My friend Mr. Naidu was harping on the point that once there is a vacancy, instead of re-electing a man, you are re-filling it almost by a nomination. We must try to think in a legal manner, not in an ordinary commonsense way which my hon. friend Mr. Reddy claims to have in abundance. These are aspects that they may not be able to comprehend completely by commonsense.

SHRI C. G. K. REDDY: I did not go into the legal question at all.

SHRI K. S. HEGDE: The word 'vacancy' is a term of law and is not a term of ordinary commonsense.

SHRI C. G. K. REDDY: Everything is law. Law is all-pervasive.

SHRI RAJAGOPAL NAIDU: I want to know whether this amounts to a casual vacancy or not.

SHRI K. S. HEGDE: Mr. Naidu wants to know whether it amounts to a casual vacancy or not. If the disqualification is not removed, it amounts to a casual vacancy. If it is removed, there is no vacancy whatsoever at all.

SHRI C. G. K. REDDY: What is it today?

SHRI V. K. DHAGE: Before this law is passed, what is the position today?

SHRI K. S. HEGDE: If the Parliament is not pleased to pass this legislation, these Members, as the President's orders stand, have ceased to be Members.

That is so not only here, but that is so in every case that came up before this Parliament.

SHRI P. V. NARAYANA (Madras): How do you know that?

SHRI K. S. HEGDE: That is so in the legislation that we passed in 1951. In every one of the cases, he ceases to be a Member in the eye of the law.

SHRI RAJAGOPAL NAIDU: Technically.

SHRI C. G. K. REDDY: Simultaneously.

SHRI K. S. HEGDE: It was simultaneous. That is why I say, in the eye of the law, he ceases to be a Member.

I am afraid, it might take me too long to teach my friend Mr. Reddy law because it took me too long to learn.

SHRI C. G. K. REDDY: I do not want to get into his frame of mind, Sir.

SHRI K. S. HEGDE: What I am saying is this: first visualise that the disqualification was incurred on the day he ceases to be a Member. Ever since, he is not a Member in the eyes of the law. Now, in any case, you have to restore him back to the position. So, if you accept that position, I do not find any incongruity whatsoever at all. From the day the Member accepted office, he is liable to pay Rs. 500 every day, not on the day the seat was declared vacant. There is another piece of evidence to convince yourself that the office had become vacant in the eyes of law when he accepted it.

SHRI C. G. K. REDDY: There is no doubt at all about it.

SHRI K. S. HEGDE: If that is so, you must give retrospective effect to every legislation, every piece of legislation. Then another thing that my learned friend Mr. Reddy misses is in the present context of things, in a Parliamentary democracy, where the Cabinet is ruling and the Cabinet is recruited from a majority party, even speaking practically, the chance of influencing a Member by offering him an office is of very remote consequence. The Party has always got its majority and my learned friend is not tired of saying every now and then "You have got a brute majority. Whether they agree with you or not, they vote with you". He and the hon. Dr. Kunzru monopolise for themselves all political integrity and repeatedly tell us and tell me particularly that, "you are under orders".

SHRI C. G. K. REDDY: Of course, you are.

SHRI K. S. HEGDE: My learned friend, Dr. Kunzru, is in a very happy position. He does not belong to any Party. He is in happy isolation and is the remnant of a dying liberalism of the 19th Century. Well, it is good for a political museum; it does not serve any political purpose in the present day context. So far as my learned friend Mr. Reddy is concerned, he finds no conscience existing in the whip of any other party excepting his own. That conscience is manufactured in the Socialist factory.

SHRI C. G. K. REDDY: I did not say that; why put an interpretation which I never meant.

SHRI GOVINDA REDDY: There is no whip at all in their Party.

SHRI K. S. HEGDE: I do agree to a large extent, Sir, in minor matters we subordinate our individual will for the party will. If we assert our individual will in every minor matter there will be no democracy whatsoever at all but let me also assure him that in all main?

matters we give our utmost consideration and unless we think it is a proper measure, we certainly try to influence the decision of our Party to come to an agreed conclusion. Now, I have absolutely no doubt at all and I can assure my hon. friend Dr. Kunzru that we are as much anxious to serve the nation as he is; our methods may be different but let us not attribute motives to each other.

Again, Sir, in concluding, I would appeal to this House to consider this matter in a very dispassionate manner. Don't think the Members in question are Members of the Congress Party but consider what is constitutionally proper, what is necessary for the future set-up of our country. Could we, if we deny ourselves the right to have a legislation of this type.....

SHRI RAJAGOPAL NAIDU: Have elections by legislation.

SHRI K. S. HEGDE:...be said to govern the country in a manner that we are expected to do because, after all, in an increasing measure the Members of the Legislature will have to associate themselves with administrative activities which may be technically called offices of profit. I am not going into the question, Sir, whether the decision of the Election Commissioner was right or wrong, though, as a lawyer, I have grave doubts as regards the decision of the Election Commissioner. My learned friend Mr. Naidu said the Election Commission was trying to make a distinction without difference. Well, it looked to me a very strange reason for, he repeatedly said, "I will not accept the technical reasoning of the English decision" but ultimately, Sir, he unconsciously, without being aware of it, practically followed the Jenkins' case while repeatedly saying "I am not following the Jenkins' case". He is in a happy position but for the Members of the Parliament, it is rather different. Morally and legally a mistake has been committed and it is in the interests of the Commission that we set matters right and thereby we are not only doing justice

to the 12 Members, we are setting up a very good precedent for the future and I can assure you. Sir, that what is good for the Congress Party shall be good for them in the years to come.

SHRI K GUPTA (West Bengal): Mr. Deputy Chairman, this measure which has given rise to quite a lot of controversy no doubt has two aspects, constitutional and political. When we are up against such a measure, it is not merely the constitutional aspect that has to be taken into account, but the political aspect has also got to be taken into account. Now, it would be idle to expect that Members of this House should altogether leave out politics and deal with this measure as if it is a matter of legal niceties which could be discussed by a very eloquent discussion and discourse of law. Yet, Sir, I concede that there are certain points of legal and constitutional importance which have got to be seriously taken into account and exhaustively discussed. But, time weighs heavily on us and, therefore, it would not be possible for us to go into the details\* Also, I know that on the other side there has been arrayed a very formidable lawyer who, with his advancing age, has travelled from the defence of peoples' rights to denial of peoples' right, from the Meerut Trial to the Preventive Detention Act but, nonetheless he is a formidable lawyer. Now, it would be somewhat impertinent on my part to confront him with *my* legal knowledge. Law, Sir, has become by now a very distant echo as far as I am concerned.

*How*, the first point that I would like to discuss is the constitutional point and the legal point. Here, Sir, it has been contended by the sponsors of the Bill on the other side of the House with some force that this measure is constitutionally valid. I do not deny the plausibility of the argument that they have advanced but, at the same time, there are other arguments which need to be given attention to. First of all, Sir, we have to consider whether it is an office of profit or not. Office of profit is not fully defined and

much has been left, at least in some cases, to the decision of the Election Commissioner and those who have referred to the British Constitution and English Parliamentary practices will do well to remember that Englishmen do not have a written Constitution nor do they have any office of Election Commissioner. The office of Election Commissioner in our Constitution is somewhat of a new creation precisely with the object of preventing or forestalling certain machinations and sharp practices that may be committed by the ruling party or some party which may enjoy certain advantageous position at a given point of time. Now, when you discuss the British practice, British Parliamentary methods and British precedents, you will also keep in view the position of the Election Commissioner.

Now, Sir, as far as the point whether it is an office of profit or not is concerned, since it has been declared to be an office of profit by the Election Commissioner, it is so. It has been stated in the Statement of Objects and Reasons of this Bill as follows:

"As the Vindhya Pradesh Government set up these Advisory Councils in perfectly good faith, and as the Members in question have incurred disqualification for no fault of theirs, it has been decided,....."

Now, Sir, it is not a question of good or bad faith.

SHRI RAMA RAO: What is it then?

SHRI B. GUPTA: I am coming to that; listen, kindly. We have to see whether it is relevant for our purposes here or not. The material question to which you applied your mind is the Question whether it is an 'office of profit'. Once it is an office of profit, then the question of good faith or bad faith becomes irrelevant. We cannot probe into the question whether those who accepted that office of profit did so in good faith or bad faith. The other point is that they accepted this thing for no fault of their own. That is no defence either. Even if I concede the

[Shri B. Gupta.] point that they accepted this office for no fault of their own, the fact still remains that they did accept this office. This is also very important. Therefore it is useless, Sir, to bring in this question of *bona fides* or *mala fides* on the part of one or the other party in this matter. It does not arise at all. All that we are concerned with is whether it is an office of profit, and once it is an office of profit the Members concerned become tainted with the disqualification. You cannot get away from it by raising the question of their 'intention'.

Now it has been also suggested some what *cfaildaWy* that the benefit was very little if at all. The gain from that 'office of profit' may, in arithmetical calculations, work out at 2 rupees or 3 rupees or something less. Now here again it is not a question as to how much you got. Eveu ' "ot a pice, it would be deemed to be an office of profit. It is not the extent of the amount derived from an office that makes it an office of profit. The amount is also in this case absolutely immaterial. Now if it were a question of imposing penalty and there was a wide range of penalties, in such cases of course the *mala fides* or *bona fides* could be gone into and also the benefits that accrued from the office could be relevantly discussed for the purposes of penalty. But here we have got only one mandatory action enjoined by the law of the land and that punishment is 'disqualification'. Now the main thing is that that 'disqualification' has been pronounced in this case by an order of the President and the President in so doing has acted upon the advice of the Election Commissioner, the matter having been referred to the Election Commissioner. Now article 103 of the Constitution says, "If any question arises as to whether a Member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final". Now I would emphasize the word

'final' and it has to be taken into account. Now here is an important article of the Constitution relating to the authority of the President. Had the Constitution-makers thought of such things, they would not probably have advised the incorporation of the word 'final' in this particular article. Nov\*. Sir, when you construe such measures you have to go by the words and expressions that occur. If these are vague then of course you can discuss other extraneous matters and also go into the question of the intentions of the Constitution-makers. But here it is 'final'. Now the President acted on the advice of the Election Commissioner. In this Constitution there is no mention whatsoever of the Election Commissioner. It is the President v/ho seems to be the ultimate repository of power in such matters and whose decree here is to be 'final'. It is not restricted by any other provision whatsoever of the Indian Constitution. Therefore he acted in a manner which should be considered final. Now the point has been raised again without foreseeing its implications that the President could have been advised by the Government if the Government wanted him to do something else—not to take such steps. Now those hoi? Members who advanced such argu ments probably wanted to score a debating point. But imagine what it means in effect. It amounts in effect to saying, "We are the party in majority and we can advise the President even in such matters in which, to a certain extent, the Election Commissioner has to be consulted, and even in respect of matters which do not come within the ambit of party politics. We can act in any manner as we like". Now it is rather unfortunate\* that the Members of the Government Party should have flaunted the power of their majority in dealing with the question of the President's power even in this respect.

Then there is another implication. As it is. Sir, this Bill you pass. And then suppose the President does not give his consent to this measure, what

happens? All these questions become very relevant. We know, Sir, that in the present case there will not be any constitutional conflict because the House is set well in order and the Members on the other side all dance to the same orchestra and tune. That I understand but they may well remember that a contingency may arise where a constitutional deadlock might follow from a procedure like this. That is also to be remembered.

Then, Sir, mention has been made by Mr. Nausher Ali of article 240. Now article 240 reads as follows: "Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State; or (b) a Council of Advisers or Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law". Then subclause (2) of the same article says, "Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution". Mark the words "Any such law", that is to say the law that has been described in subclauses (1) (a) and (b). Therefore, Sir, Parliament can pass measures under this article but not relating to other laws than have been mentioned here. Therefore, Sir, how you can take your stand on article 240 in regard to this matter and build up your case is very hard to say. The hon. Home Minister, being a very good lawyer, may probably advance very good arguments and effective arguments. I concede that point but it is to be seriously remembered that a constitutional question cannot be just brushed aside by a sort of exchange of mere legal arguments in this matter. Other matters have to be taken into account.

Now, Sir, the question has been raised whether retrospective legislation could be passed or not. Nobody is contesting that the Parliament can pass retrospective legislation but whether retrospective legislation is permissible in this case or not is something which we have to discuss. Merely basing your standpoint on the constitutional provision.....

SHRI B. K. P. SINHA: May I point out that it is not retrospective legislation in the strict sense of the term. There is distinction between retrospective legislation and legislation *ex-post facto*. It is really legislation *ex-post facto*.

SHRI C. G. K. REDDY: So far as indemnifying is concerned, it is retrospective.

SHRI B. GUPTA: My contention was that. In this case I say you cannot pass retrospective legislation to validate the members of the legislature. That is my point. I am coming to that. You hold your patience a little and you will see. Grey hairs should be a little more patient, I am also growing; one or two hairs have grown grey. In this particular case I say the President has declared certain seats vacant. The effect of the declaration has been that certain Members have been declared disqualified and finality has been reached in the matter and this finality cannot be disturbed. I am not suggesting that physical presence is important. I am also aware that when they took office they had become disqualified. But the question is that the law is such that one does not become disqualified in law until and unless he is declared to be so in a manner consistent with the provisions of the Constitution just as a Member who may have been wrongly elected to the legislature does not lose his seat until and unless he has been declared to be so by the Tribunal. That point has to be remembered. Therefore it is not irrelevant. The President's Order—I am not just talking in the air—puts the stamp of law and authority under the Constitution on the disqualification of the Members concerned. Now, once it has been done. I think you are

(*Prevention of Disquali-*[Shri C. G. K. Reddy.] absolutely helpless in this matter. These seats are vacant. Those who were elected have ceased to be representatives for the purposes of law. That should be clear. Now. Government has only one remedy in such cases—to go in for another election. I know election is a costly affair, but to toy with the Constitution may in the long run prove to be a costlier affair. Now. these are my main points.

About C States, A States and other -things. I do not go into those details. The law relating to the administration of C States did not envisage a position different from the basic provisions of the Constitution. That has to be remembered. Therefore in deliberations of this kind we should be guided by the fundamental articles of the Constitution and we should not depart from them in order to establish something which is neither available in the Constitution nor expressly contained in any other statute consistent with the provisions of the Constitution.

The hon. Home Minister has given a number of arguments. He has apprised us of the advice he has received from the learned Attorney-General of India. Of course, Attorney-Generals are always legally very able persons, we know that and their advice has to be given due deference, but here is an interesting argument advanced by the Attorney-General. The hon. Home Minister quoted an article of the Constitution to say: "A person shall be disqualified for being chosen as, and being, a Member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State other than the office declared by Parliament by law not to disqualify its holder." I cannot interpret it in a manner as if you can give retrospective effect to certain Membership of Parliament even after it has been nullified by a valid order of the President. Here the language used is—"if he holds any office of profit under the Government of India or the Government of any State other than the office declared by

*fication) Bill, 1953* Parliament by law not to disqualify its holder." Now if this particular office had been, previous to their being elected, declared to be not one of such offices which disqualified Members, the position would have been tenable. Now after the election has been declared void and the seats have been vacated as a result of the order of the President, to come forward to invoke this provision and to say on the basis of that that they are not deemed to have been disqualified is something extraordinary. If that were to be the case a certain proviso to the article of the Constitution might have been added, but it is not so. So on the strength of that the Attorney-General cannot justify the retrospective operation of the law. This is a point which has to be taken into account.

With regard to politics, we are all politicians after all, not constitutional lawyers. Many of us, including our hon. Home Minister whom we found more useful in courts of law than in different other capacities have left law long time back. It has been sought to be made out by some speaker that even if there were by-elections, the Congress would get a majority and that the Congress had no fear on account of that. Now, Sir, first of all, I would not take it for granted that if there were by-elections they will have a majority. It may well be that you will not have a majority that you are expecting to get. After all, people have got an year's experience since you, after having made many promises, got their votes. It may be that people may become a little wiser by experience and find different ballot boxes to put their votes in next time. And the possibility is there. Secondly, it is very clear according to him that the majority will be very small. There is that fear also. You cannot run the administration with a four or five majority, when dissenting voices are heard even in this Parliament and when disciplinary action is sought to be taken against Members of long standing in Congress politics, one cannot be so sure. We on our side of the House have every reason to expect



that you are called upon to take this step, not in the spirit of Constitutional propriety. We know what has prompted you to rush through with this measure. It is fear. If these persons had accepted office and if they had been put in that position by the party in power as a result of which they have been thrown out of the legislature and their seats declared vacant, we should have another election whatever may be the costs. Issues can be discussed there and let us see what the verdict is. After all, when a constitutional crisis takes place—and there is some sort of a constitutional crisis inherent in this matter—it is not fair for a Government which swears by constitutional propriety to come forward with such measures and get things done in a very cavalier fashion. It has to be remembered that when constitutional issues come up like that, they should not be pressed to a point when people would lose all confidence in our sense of constitutional propriety. It is very important. If you pass this measure, what is the guarantee that such retrospective measures to validate invalid elections, to subvert the President's Order, to get round whenever the Election Commissioner goes against them, will not be passed? And what will be the result? The country will draw certain lessons from it. The country will feel that after all the Election Commissioner provided by the Constitution is not any guarantee against interference by the party in power and they would not be unjustified in having such apprehension. This is something which wise men, and there should be some wise men in the Government, should keep in mind. After all, you have at your discretion, agreed to a rigid Constitution; we should uphold such values, create certain precedents, certain procedure which should establish the democratic *bonafides* of Parliament, so that people can feel somewhat secure against such interference now and then. These are very important matters. I do not know how the Americans or the British would have treated such matters if they had been asked in the 19th century to agree to such things. I am 48 CSD

not talking about Eisenhower and Dulles, because they have subverted the American Constitution and ridden roughshod over the Bill of Rights. If this question had been before the American people in the 19th century, they would have found out ways of meeting the situation. If this question had come up before even the British Parliament or the British people, they would not have probably dealt with this matter in this way. Now, our people's sentiments, our people's feelings, our people's misgivings and suspicions and doubts are not irrelevant when you are dealing with this question in this way. Therefore, this consideration cannot be kept totally out of our mind. Suspicion has arisen in the country. Suspicion has arisen even in the ranks of the Congress Party. The voice of so eminent a Congressman as Shri Balkrishna Sharma was heard. He has after all been in the Congress much longer than the hon. Mr. Hegde. He has been there for a number of years. Everybody knows today that the axe of disciplinary action is hanging over him like the Sword of Damocles. Nobody knows what will happen.

SHRI K. RAMA RAO: What about the discipline in the Communist Party? They hang people!

SHRI B. GUPTA: The hon. Member has been condemned by the hon. Minister. He has been dubbed fellow-traveller by the Minister. I respect him. I do not disrespect him like the hon. Minister.

Therefore, these things are very important. The hon. Member mentioned about discipline in the Communist Party. Certainly we have got discipline. But the point is, our party is based on a very sacred, honourable, honest people's policy. Hitler had his discipline also. The Nizam had his discipline also. Maxwell had his discipline also. We are not talking about that kind of discipline. This is not under consideration at the moment.

Sir, we have every reason to fear whatever may be the intentions of the

[Shri B. Gupta.] hon. Home Minister that he has been forced into that position because of the situation that obtains in Vindhya Pradesh. He has to manage a number of Part B and Part C States. And all is not well in those kingdom of Denmark. We know that many things are happening—constitutional, political, factional, etc. Seats are going out of their hands. Their authority is being shaken by the impact of events, including internal troubles in the Congress. Therefore, an attempt is being made to stave off the danger at least for the time being and keep the party in power, keep it entrenched in position of power. This is the thing which the country will suspect. I do not say that this must be the case here, but there is every plausible ground for entertaining that suspicion, just as there is plausibility in the arguments of the hon. Home Minister. Therefore, such a proposal should not have been brought forward before this House. After all, you can manage an election of 12 Members. It can be easily managed in a vast country like India. We should have gone to the people and should have settled it that way. May be, people would not like such people to be nominated that way and to remain in that position. They might have voted differently. If there had been elections, they might have done that. However that would have been a fair course to take. Now, the hon. Minister said: "If we did not like to draw the people of Vindhya Pradesh into a vortex of miniature general election." I find that he also used similar expression in connection with PEPSU—there will be necessity of miniature general election. We have our reason. You have your reason also. We know miniature general elections in this country may be necessary. You should not grudge this. This happens. This is all in the game of bourgeoisie democracy itself. Since we are to play the game, let us play it well. Let us put all the cards on the table. Of course there is the question of costs. But compared to the cost, compared to the money that is being drained away through other channels, this will not

be very much. Certainly considering the money that you will be spending for the Coronation and other things, this will not be much. What you are spending for various other things are no small sums. Much money is being wasted in the Indian High Commissioner's office, and you are not stopping that. When it comes to the question of keeping on the democratic track, you always fight shy on the ground of paucity of funds. Funds are abundant when it comes to other things. You should not be so niggardly, when it comes to such matters.

In conclusion, I have to say that it is most unfortunate that by a stroke of the pen an order of the President of the Indian Republic should be nullified representing him to the outer world as if the President had acted in a manner which was improper; it is most unfortunate that by a stroke of the pen the Election Commission should be represented to the world as if it has real powers. If this House passes this legislation, it will be established that the Election Commissioner has hardly any powers and his powers may be easily interfered with. The hon. Home Minister was very careful, and in a very subtle way, too, not to say much about the Election Commission. But the little speech he made and the artful manner in which he chose his words left no doubt at all that he wanted to reflect on the judgment of the Election Commission. Now, Sir, in a country where you have got constitutional provision for an Election Commission and where the Home Minister gets up and says things like that, confidence is shaken immediately. I do not know whether people would like to have this Election Commission in the future. Or, it may be, certain Election Commissioners may feel frightened, because, after all, the Home Minister, the Cabinet, the Attorney-General, and the Law Minister are all powerful factors to be reckoned with. A small person like the Election Commissioner, who may have some inhibitions, some ambitions, may be a little frightened and may not behave in the just and fair way in which he should behave.

Therefore, that implication has also to be taken into account. I do not say that the Home Minister is frightening the Election Commissioner. But that is bound to be the consequence of this measure.

(Time bell rings.)

We must keep in mind these implications. If he comes forward with measures like this and makes speeches, however guarded, like the one he has made, there is every likelihood of the Election Commissioner being frightened, influenced and bullied, and that will spell dangerous consequences for the future. Therefore, the hon. Minister would be well advised to retrace his steps and order the Government of Vindhya Pradesh to get ready for bye-elections. Call it a miniature general election if you like. But that will be politically and constitutionally much more honourable than the course that is sought to be taken under this Bill.

SHRI B. D. CHATURVEDI (Vindhya Pradesh):

श्री बी० डी० चतुर्वेदी (विन्ध्य प्रदेश): श्रीमान् उपाध्यक्ष महोदय, मैं तीन चार मिनट में अपनी बात कह देना चाहता हूँ। एक साहित्यिक की हँसियत से ही जो कुछ मैं चाहूँगा, कहूँगा। कांग्रेस का मेम्बर बने मुझे एक वर्ष और दो महीने हुए हैं, और उसके प्रति मेरी भक्ति इतनी दृढ़ नहीं है कि अगर कांग्रेस अन्याय करे तो मैं उसका समर्थन करूँ लेकिन इस मामले में मैं कह सकता हूँ कि कांग्रेस या समझिये गवर्नमेन्ट न्याय ही कर रही है। जिस प्रदेश में यह घटना घटित हुई है उसी प्रदेश का मैं रहने वाला हूँ। यदि विन्ध्य प्रदेश सरकार ने कोई अन्याय किया है तो उसके लिए वे गरीब आदमी और विन्ध्य प्रदेश में जो गरीबी है उनका अनुमान आप शायद नहीं कर सकते— वे क्यों इस पचड़े में पड़े? अगर विन्ध्य प्रदेश गवर्नमेन्ट ने गलती की है तो वे इसके

कारण क्यों दंडित होने जा रहे हैं? अगर गवर्नर साहब ने गलती की है तो उन्हें उसकी सजा मिलनी चाहिये, लेकिन इन गरीब आदमियों को, जो १२ आदमी वहाँ से खड़े हुये हैं, क्यों दण्डित करने की बात कही जा रही है? दूसरी बात मैं यह कहूँगा कि जिस भाषा में हमारे ये ब्यक्तियान हुए हैं, ६० प्रतिशत आदमी जिनके चुनाव अयोग्य करार दिये गये हैं उन की समझ में ही वह भाषा नहीं आवेगी। इसलिए मैं यह कहूँगा कि भविष्य में जिनके बारे में कहा जाय कम से कम उनकी भाषा में उन तक पहुँचाने का प्रयत्न तो अवश्य किया जाय। इससे अधिक मैं कुछ नहीं कहना चाहता।

[For English translation, see Appendix IV, Annexure No. 219.]

SHRI B. N. DUBE (Vindhya Pradesh):

श्री बी० एन० दुबे (विन्ध्य प्रदेश): माननीय उपाध्यक्ष महोदय, यह प्रणाली सी चली आ रही है कि शासक सच्चाई को हमेशा छिपा कर, जाल फरेब पर शासन करता है। माननीय काटजू जी ने कल कहा था कि हमें इस बात का ज्ञान नहीं, कतई ज्ञान नहीं था कि कितने सदस्य कांग्रेस के हैं और कितने अन्य पार्टियों के हैं।\*\*\* इसके अलावा विन्ध्य प्रदेश के मुख्य मन्त्री काटजू जी के पास आवेशे \* \* \* यह कैसे कहा जाय कि उनको इसका ज्ञान नहीं था। इसके अलावा मैं आपको बतला देना चाहता हूँ कि विन्ध्य प्रदेश की सरकार इस वक्त बालू की भीति की तरह खड़ी हुई है, उसे बचाने के लिये मुख्य मंत्री ने परामर्श किया था और यह बिल भी उती उद्देश्य से लाया गया है। इसके अलावा इसके अन्दर एक और रहस्य की बात है।

\*\*\* Expunged by order of the Chair.

[ श्री बी० एन० दुबे. ]

उसे मैं श्रीमान् के सामने रख देना चाहता हूँ। जबकि बारह आदमियों की अयोग्यता का सवाल उपस्थित हुआ तो उसको लाकर के प्रजा सोशलिस्ट पार्टी के चेयरमैन सरदार नर्मदा प्रसाद सिंह जी ने राष्ट्रपति जी के सामने रखा। जब राष्ट्रपति के सामने यह सवाल रखा गया तो उन्होंने उसे चीफ इलेक्शन कमिश्नर को विन्ध्य प्रदेश भेजा और उसके बाद यह निर्णय किया है कि बारह आदमी इसके लिए अयोग्य हैं, जिसमें ११ कांग्रेस पार्टी के आदमी हैं और एक प्रजा सोशलिस्ट पार्टी का आदमी है।\*\*\*\* राष्ट्रपति ने न्याय किया और उन्होंने १२ आदमियों को अयोग्य करार दिया।\*\*\*

श्रीमान्, मैं एक बात और आपसे कह देना चाहता हूँ कि कांग्रेस के लोग ही इसको बुरा मानते हैं। यह सही बात है, कोई सुनी सुनाई बात नहीं है कि माननीय बालकृष्ण शर्मा ने इसका विरोध किया है इसलिये पार्टी से उनको अलग किया गया है।

SHRI B. K. P. SINHA:

श्री बी० के० पी० सिन्हा : नहीं किया गया है।

SHRI B. N. DUBE:

श्री बी० एन० दुबे : एक आदमी जब अपने विचारों की स्वतंत्रता के साथ प्रकट करता है तो ऐसी हालत में एक पार्टी उसको अपनी संस्था से अलग करती है। इसका मतलब यह है कि एक पार्टी चाहे न्याय हो या अन्याय हो अपने बहुमत के जोर पर शासन करना चाहती है। इसका यही सूत्र है कि इसके अन्दर कोई रहस्य की बात है और उस रहस्य को छिपा करके हाउस के माननीय सदस्यों को धंका दिया

\*\*\* Expunged by order of the Chair.

न्, माननीय होम मिनिस्टर साहब मौजूद हैं, वह बतलावें कि विन्ध्य प्रदेश के मुख्य मंत्री से यह बात हुई या नहीं और उन्होंने कहा कि नहीं कि जाओ हम यहाँ मौजूद हैं तुम्हारा कुछ नहीं होगा। मैंने इस बात की जानकारी की है। वही होम मिनिस्टर साहब यहाँ कहते हैं हमें कोई जानकारी नहीं थी। इसलिये मेरा कहना है कि सत्य पर पर्दा डाल कर यह बिल लाया गया है। अगर इस बिल को पास ही करना है तो आज की तारीख से इस बिल को मानना चाहिये, पहले से नहीं मानना चाहिये। मैं मानता हूँ कि इसमें ११ आदमी के बचाव का सवाल है और जैसा कि हमारे साथी बनारसी दास जी चतुर्वेदी ने कहा है कि सदस्य गरीब आदमी हैं। तो इस बिल के पास करने में ६० हजार से ज्यादा रुपया खर्च हो गया है इसलिए अगर चार चार हजार रुपया उन साथियों को दे कर भी कांग्रेस एलेक्शन (election) लड़वा देती तब भी ४४ हजार रुपया ही खर्च होता और १६ हजार रुपया बच जाता। अगर यह बिल यहाँ लाती कि कांग्रेस उन सब को चार चार हजार रुपया दे रही है इसलिये गवर्नमेंट दे दे तो यह बिल भी पास हो जाता क्योंकि आपका बहुमत है। ऐसी हालत में ४४ हजार रुपया उनको दे सकते थे और ६० हजार रुपये में से कुछ रुपया सरकार का बचा सकते थे। इस छोटे से बिल को पास करने में राष्ट्र का लाखों रुपया खर्च हो गया है। ऐसी हालत में मैं यही कहूँगा कि सच्चाई पर पर्दा डालकर बहुमत के जोर पर यह सरकार चाहे जितने दिन तक चली जाय वह दूसरी बात है लेकिन यह बिल अन्याय पर आधारित है।

[For English translation, see Appendix IV, Annexure No. 220.]

SHRI J. R. KAPOOR (Uttar Pradesh): Mr. Deputy Chairman, this Bill has evoked considerable controversy for which there was absolutely no justification.

SHRI RAJAGOPAL NAIDU: Why?

SHRI J. R. KAPOOR: I will just tell you why. I must admire the ingenuity and the boldness with which attempt has been made by many hon. Members to make the worse appear the better reason. While I admire this ingenuity, I cannot congratulate them on their performance. I submit that there was no justification for this controversy because the Constitution makes ample provision for the enactment of such a law, the law allows it and the circumstances warrant it. At the very outset, Sir, I would like to mention—which has been mentioned already by the hon. Dr. Katju—that this disqualification comes within the purview of the Part C States Act. I would not repeat those arguments, but I would only mention one little point, which is of substance, and that is this that if section 17 was not there in the Part C States Act, no question of disqualification would have arisen. If section 17 were not there in the Part C States Act, then anybody holding any office of profit would have been eligible to be a Member of a Part C State Assembly and would have been entitled to continue to be so, which means that even a District Magistrate, apart from the Service Rules, so far as the legal provisions are concerned, would have been entitled to be a Member of a Part C State Legislature. So, there should be absolutely no doubt about it that it is only because of the incorporation of section 17 that this question of disqualification arises; and obviously we can amend section 17 either by an Act specifically saying that section 17 is amended or by any other Act as the present one under consideration which indirectly has such an effect. So much with regard to that aspect of the question.

I will now deal with an important point raised by my hon. friend, Dr.

Kunzru. It is of considerable importance. His contention seems to be that there was never any doubt as to whether membership of the Advisory Council was an office of profit or not, because of the fact that the Government or rather the Provisional Parliament passed this Act of 1951. It had expressed its view according to that Act that the membership or the Chairmanship of any Committee whatsoever is an office of profit. Now, Sir, *prima facie* this is a very valid argument, and if it were really a valid argument, not merely *prima facie*, I certainly would be one with him in submitting that it was not in ignorance of the law that the Members of the V.P. Advisory Councils held those offices, but I should think that that interpretation cannot be put on the Act of 1951. I am amazed that of all the persons my hon. friend, Dr. Kunzru, should have tried to put this interpretation on that Act, because he was himself a party to the enactment of that Act. We all know very well that he was a Member of the Provisional Parliament then and we know it very well too that this enactment was brought before the Provisional Parliament in order to remove doubts as to whether certain offices held by some of the then Members of Parliament were offices of profit or not. This sub-section (e) of section 2 of the Act was not there originally in the Bill, but was introduced at a very much later stage when Members raised many doubts as to whether this was an office of profit or that was an office of profit.

SHRI K. S. HEGDE: As a matter of abundant caution.

SHRI J. R. KAPOOR: An exhaustive list of offices held by the then Members could not be drawn up; therefore, Sir, an omnibus provision was put in in that clause to be in force upto 31st March 1952, the very phraseology of that clause should obviously suggest that the interpretation that is being put by my friend, Dr. Kunzru, is not tenable. If it is really so, Sir, it would come to this that the membership of any Committee whatsoever, whether

*(Prevention of Disquali-**fication) Bill, 1953*

[Shri J. R. Kapoor.] that membership carries with it any profit or not, would disqualify such a Member after of course 31st March 1952, and in that event, I think that even my hon. friend, Dr. Kunzru, and many others who have been nominated to various Committees after 31st March 1952 are subject to this disqualification. The Chairmanship of the Faridabad Improvement Trust which office is adorned by my hon. friend would also then be considered to be an office of profit, and in that view, Sir, I think my hon. friend, Dr. Kunzru, according to his own interpretation is knowingly and willingly participating in the proceedings of the Parliament, but I submit that that interpretation, with all due respect to Dr. Kunzru, is not only untenable but if he will forgive me for saying it, is an absurd one.

Now, I will deal with one more aspect of the question which has been raised by several hon. Members and that is that we are trying to undo what the President has done or the Election Commission has done. It is nothing like that, because what has the President decided? He has decided that the membership of these Councils are offices of profit. Now, by this enactment, we are nowhere declaring that these offices shall hereafter not be offices of profit. The President has declared these offices to be offices of profit and we are accepting that proposition.

SHRI RAJAGOPAL NAIDU: May I point out to the hon. Member that the President has declared that these members have become subject to the disqualifications under section 17 of the Act?

SHRI J. R. KAPOOR: My point is that we stand by that decision. We take it as the final and unalterable position that these are offices of profit. Now, what is the implication of the word 'final'? It does not mean that it is final for all good time to come. That decision is final so long as the present law is in force. Article 103 must be

*so read as to be in consonance* with article 102 of the Constitution. Now so long as this Parliament has not enacted a law declaring that such and such office of profit shall not disqualify the holder of that job, so long as we don't enact such a law, the decision of the President is final. The moment Parliament enacts a law under article 102 declaring that such and such office, even though an office of profit, shall not disqualify the holder thereof from being elected and from continuing to be a Member of Parliament, the moment we have enacted such a law, that finality goes and we shall be subject to that new enactment.

SHRI K. S. HEGDE: Finality within the law. That is all.

SHRI J. R. KAPOOR: My hon. friend Mr. Hegde has put it so briefly and so nicely.

SHRI RAJAGOPAL NAIDU: In that case nothing would be final.

SHRI J. R. KAPOOR: Of course, nothing is final. Final for a certain period, final under certain given conditions, final so long as certain provisions are in force or in the absence of any law to the contrary—not beyond that. This Bill can be easily divided into two parts—*one* prospective and one retrospective. So far as the prospective nature of the Bill is concerned, no objection has been raised. It is only with regard to the retrospective nature that objection was taken. The retrospective part is that we are indemnifying those Members who have been declared to have been subjected to this disqualification. Now indemnifying enactments are not new. I don't think anybody will question the right of this House to pass indemnifying acts. What are we indemnifying? We are indemnifying two things. We are firstly indemnifying them against the pecuniary penalties and secondly we are indemnifying those Members against the loss of their seats. The first relates to money and the second relates to the vacation of seats. There is no limit to the extent

to which we can indemnify any particular person who acts in a *bona fide* manner and therefore there is no force in the contention that it is not open to us to declare that the disqualification to which these Members were subjected to under the existing law or rather in view of the absence of any law shall not be subjected to those disqualifications after we have enacted the provisions of this Bill. Sir, one point has been raised times out of number and that is, in the case of English precedents we don't find it specifically mentioned anywhere that a person in respect of whom an indemnifying Act had been passed had physically vacated the seat. I submit that in every one of those cases the seats had in fact been physically vacated not only because of the fact, as has been pointed out by Mr. Hegde and many others that in point of law a seat became vacant as soon as the person concerned occupied an office of profit, not only because of that, but because of the fact that as soon as the Select Committee gave out its verdict that the person was subject to the disqualification, that very moment the seat became even physically vacant. Thereafter no Member of Parliament attended any one of the sessions of the House of Commons. The indemnifying Act in every case was passed by the House of Commons very many days after this report. It is not the law there that the report of the Select Committee is considered by the House and formally accepted. Nothing like that exists. That report stands accepted even without any formal acceptance by the House of Commons. All that the House of Commons thereafter does is, after some days, in some cases after many months, indemnifying and validating enactments are brought before the House of Commons and then passed. Therefore there has always been a gap and in some cases a considerable gap of days and months between the date on which the person ceased to be Member of Parliament and the date on which the validating and indemnifying Act was passed. So the answer to that question is obvious. One point more

to clarify this position. It has been

mentioned in May's Parliamentary Procedure that whenever a Member of the House of Commons wants to resign or vacate a seat, what has he to do? It is not open to him there to formally resign. We have here a specific provision to the effect in the Constitution that if a Member wants to be relieved of his responsibilities as a Member of Parliament or of a Legislature, he has to put in a formal resignation. Nothing like that is permissible under the English Constitution or even under the English Conventions. He cannot resign. Resignation of his seat is supposed to be an offence and affront to the Parliament and therefore he never resigns. If he wants to get away from the responsibilities, he applies to the Government for his being appointed to some post so that automatically he becomes subject to disqualification and *ipso facto* the seat is vacated and there have been very many cases in England where if a person wanted to vacate his seat in the House of Commons, he applied to the Government to be given a certain post.....

SHRI K. S. HEGDE: Usually the Governorship of Shelton Islands.

SHRI J. R. KAPOOR: That post has been specifically reserved in order that Members of Parliament may shake off the responsibility of the Membership in the House of Commons. So when the House of Commons is not in session and if a Member applies for this post and he is given that post, automatically without any further overt act on the part of the House of Commons or without any order by somebody else, he ceases to be a Member of Parliament, and what happens then? If the House of Commons is not in session for 2 or 3 months, then that seat remains vacant because it is only the House of Commons that issues the writ for the elections. So it is crystal clear that the seat becomes vacant the moment the person occupies an office of profit. That being so, the doubt that has been raised on this subject by many hon. Members should be easily removed.

[Shri J. R. Kapoor.]

One more point must be taken into consideration while we are at this, that is, in this case the President or the Election Commission has not declared these posts to be vacant, although the President has said that these persons are subject to disqualification. These seats here have become automatically vacant as they become automatically vacant even in the U.K. If we read the order of the President, Sir, it would be clear that he has not made any such declaration nor was there any necessity for him to make that declaration. He has said that under the existing law or in the absence of any law to the contrary—that is the implication of it—these persons are subject to a disqualification. Having been subject to this disqualification, of course, under the Constitution, these seats become automatically vacant on the very date, eight months ago, when these Members occupied the office of profit. So, it is no use saying that though the Election Commission and the President have declared these seats vacant yet we are going to fill them up by this legislation. Nothing of this sort, Sir. In this view of the thing, Sir, I submit that there is no force in the legal or constitutional arguments that were advanced by my hon. Mend.

One last word, Sir, with regard to the propriety of the thing. I will not speak much on it but I would only submit, Sir, that this House must express its appreciation of the conduct of the Vindhya Pradesh Government in having appointed local advisory councils and having given the Members of the Legislature opportunity to associate themselves with the administration of the District though only in an advisory capacity. I hope and trust, Sir, that this very good and laudable example set by the Vindhya Pradesh Government would be followed by other State Governments also and they will also appoint District Advisory Committee in the same manner in which the Vindhya Pradesh Government has done, taking, of course, jolly good care to see that the Members thereof may not be subjected to the disqualification of

which the Members of the Vindhya Pradesh District Advisory Committees have now been subjected to.

SHRI K. S. HEGDE: For the information of my hon. friend, I may say that the Five Year Plan definitely recommended that the Members of the Legislatures should be associated in the Development Councils of the District.

SHRI J. R. KAPOOR: That is exactly so and, in pursuance of that directive-of the Planning Commission, Sir, almost all the State Governments have appointed District Planning Advisory Committees in one of which Membership is held by my hon. friend Dr. Kunzru also and, if some such interpretation is to be upheld as has been suggested by the hon. Dr. Kunzru, every one of the Members of Parliament will stand disqualified because everyone of us is a Member of the Advisory Committee in our own District. I was submitting, Sir, that it was such a good thing that the Vindhya Pradesh Government did and that it must be followed by other State Governments, of course, with the necessary precaution by enacting a law on this subject declaring that Membership of those Committees shall not involve any disqualification. Not only those State Legislatures should do that, but it is necessary for us here in Parliament also to do it and I would very much like, on this occasion, to have a categorical answer from my hon. friend Dr. Katju -to the question as to when he is bringing forward in Parliament a comprehensive legislation on this subject so that these questions may not arise from time to time because, Sir, according to this interpretation of the Election Commission we are all, everyone of us, probably the 700 Members of Parliament, are running the risk of being disqualified. I, therefore, submit, Sir, that it is a very important question to which Government must give its serious consideration and I would like to know as to what the Law Ministry or the Home Ministry is doing in this matter. This is an urgent question, Sir, to which they must apply themselves.



This is all that I have to submit in this connection, Sir.

CAPT. A. P. SINGH (Vindhya Pradesh):

**कैप्टन ए० पी० सिंह (विन्ध्य प्रदेश) :**  
 उपाध्यक्ष महोदय, मेरी इच्छा इस बिल पर पहले बोलने की नहीं थी, परन्तु चूंकि यह विन्ध्य प्रदेश का मसला है और मैं विन्ध्य प्रदेश से आता हूँ इसलिए मैंने यह आवश्यक समझा कि मैं अपने विचारों को आपके समक्ष रख दूँ। अभी मझसे पहिले हमारे विन्ध्य प्रदेश से जाये हुए श्री बंजनाथ दूबे जी ने इस विषय में कुछ बातें कही हैं, मुझ अफसोस है कि वे इस समय यहां पर उपस्थित नहीं हैं, यदि होते तो मैं उनकी सब बातों का ठीक ठीक उत्तर देता। फिर भी मुझे दुःख के साथ कहना पड़ता है कि उन्होंने अकारण ही हमारे गृह मंत्री जी के विरुद्ध कुछ बातें कह डाली जिनकी कि यहां पर बिल्कुल ही आवश्यकता न थी। उन्होंने जो बातें कहीं चाहे वे सच हों या झूठ हों परन्तु मैं यह समझता हूँ कि वे झूठ हैं। अगर ये बातें सच भी हों तो अनावश्यक हैं। यहां पर प्रश्न तो यह था कि इस समय जो बिल लाया जा रहा है वह उचित है अथवा अनुचित है। मैं इस बिल की कानूनी बातों के सम्बन्ध में कुछ नहीं कहना चाहता क्योंकि कानूनी बातें यहां पर बहुत सदस्यों द्वारा कही जा चुकी हैं।

सब से पहिली बात तो यह है कि पार्ट सी स्टेट्स ऐक्ट में एक कमी थी, लैकुना (lacuna) था जिसको प्रेसिडेन्ट ने पूरा करके और इलेक्शन कमिश्नर (Election Commissioner) की राय लेकर अपना निर्णय दे दिया। अब

सवाल यह उठता है कि क्या यह पार्लियामेन्ट इस निर्णय के बाद भी उसमें सुधार कर सकती है या नहीं, इस डिसक्वालीफिकेशन को हटा सकती है या नहीं? मैं तो यह समझता हूँ कि जिस तरह से प्रेसिडेन्ट ने इस लैकुना को अपना निर्णय लेकर पूरा कर दिया था उसी तरह से उनको चाहिये था कि वह दूसरे आर्डर द्वारा डिसक्वालीफिकेशन (disqualification) हटाने के सम्बन्ध की कमी को भी दूर कर देते, परन्तु नहीं किया। डिसक्वालीफिकेशन को दूर करने के लिए जिस तरह से पार्ट 'ए' और 'बी' स्टेटों की लेजिस्लेचरों को अपने यहां के मंत्रियों के सम्बन्ध में ताकत है, उस तरह की ताकत 'सी' स्टेट की लेजिस्लेचरों को नहीं है। इससे प्रकट होता है कि ताकत सिर्फ पार्लियामेन्ट को ही है और इसीलिये यह बिल यहां पर आज पेश किया गया है।

SHRI H. P. SAKSENA:

श्री एच० पी० सक्सेना : प्रेसिडेन्ट को करने की जरूरत नहीं है।

CAPT. A. P. SINGH:

**कैप्टन ए० पी० सिंह :** वही तो मैं कह रहा था कि उन्होंने इस तरह की कार्रवाही नहीं की। मैं यह समझता हूँ कि उन्होंने यह समझ लिया कि विधान की धारा १०२ में यह दिया हुआ है कि अगर इस तरह की कोई समस्या आ जाय तो पार्लियामेन्ट उसका निर्णय कर दे। यही कारण है कि प्रेसिडेन्ट ने कोई आर्डर निकालना उचित नहीं समझा।

जहां तक इस बिल का कानूनी दृष्टिकोण है इस विषय पर बड़े बड़े धुरन्धर और विद्वान लोगों ने अपने

कैप्टन ए० पी० सिंह

विचार प्रकट कर दिये हैं उसके सम्बन्ध में मैं अधिक नहीं कहना चाहता हूँ, परन्तु औचित्य और अनौचित्य के विषय में कुछ कहना चाहता हूँ; यह जो बिल आया है उचित है अथवा अनुचित है, न्यायपूर्वक है अथवा अन्यायपूर्वक है ?

मैं अपने मित्र दुबे जी से यह पूछना चाहता हूँ कि क्या इन १२ सदस्यों में एक प्रजा सोशलिस्ट का सदस्य नहीं है ? फिर वह कैसे कहते हैं कि सरकार अपनी पार्टी के आदमियों के लामार्थ यह बिल पास करने जा रही है ? यह बात स्वयं उनके लीडर ने अपनी पिटीशन (petition) में लिखी है कि जिस दिन से इन १२ आदमियों के एडवाइजरी कौंसिल में नियुक्ति का आर्डर निकला है उस दिन से उनको ५०० रुपया प्रति दिन के हिसाब से देना पड़ेगा। अब आप स्वयं समझ सकते हैं कि इस आर्डर को निकले हुए करीब साठ भर हो चुका है। अगर एक आदमी को ५०० रुपया प्रति दिन के हिसाब से देना पड़ेगा तो इस तरह से तो एक आदमी को १५ हजार २० हजार और ३० हजार तक देना पड़ेगा। क्या दुबे जी की पार्टी यह रुपया दे सकती है ? जब तक पार्लियामेंट की ओर से यह कानून पास नहीं हो जाता तब तक इस झगड़े का अन्त नहीं होता।

SHRI C. G. K. REDDY:

श्री सी० जी० के० रेड्डी : विन्ध्य प्रदेश की असेम्बली कंडोन (condone) कर सकती है।

CAPT. A. P. SINGH:

कैप्टन ए० पी० सिंह : विन्ध्य प्रदेश की असेम्बली को कंडोन करने की ताकत नहीं है। इस बिल के द्वारा

हो वह कंडोन हो सकता है। आप इस बिल को ध्यानपूर्वक पढ़ें तो आपको मालूम हो जायेगा कि सेक्शन १८ आफ दी गवर्नमेंट आफ पार्ट सी स्टेट्स ऐक्ट, १९५१, द्वारा जो उनको ५०० रुपया प्रति दिन देना पड़ेगा वह कंडोन हो जायेगा। मैं आपसे पूछता हूँ कि आप अगर इस कानून द्वारा कंडोन की स्वीकृति विन्ध्य प्रदेश स्टेट को नहीं देते हैं तो क्या आप यह समझते हैं कि इतनी भारी रकम बे मेम्बर अदा कर सकेंगे और क्या विन्ध्य प्रदेश सरकार के लिए यह उचित है कि इन मेम्बरों से इतनी भारी रकम वसूल करे। यह बात उचित नहीं मालूम पड़ती है जब कि यह बात साफ तौर से मालूम है कि इन मेम्बरों का किसी प्रकार का भी कर्म नहीं था। वे लोग तो सेवा भाव से अपना कार्य कर रहे थे। अगर आप लोगों ने इस तरह की कानूनी विषमता को दूर नहीं किया तो सारे देश में एक भयंकर परिस्थिति पैदा हो जायेगी। हर एक आदमी किसी भी कमेटी में सेवा भाव से जाने में डरेगा। उसे हमेशा यही भय रहेगा कि कहीं मैं कानून के झगड़े में न पड़ जाऊँ, और धोखा हो जाय। इस तरह से लोगों के दिलों में यह भय बना रहेगा कि अगर इस तरह के कानून के झगड़े में वे पड़ जायेंगे तो उनको बहुत अधिक जुर्माना देना पड़ेगा। इसलिए यह आवश्यक है कि इस तरह की कानूनी कमी को दूर किया जाय जिससे कि कोई भी सदस्य जनता की सेवा निर्भय होकर कर सके।

SHRI B. N. DUBE:

श्री बी० एन० दुबे : मैं पूछना चाहता हूँ कि अगर पांच आदमी जिन्हें कि यह

मालूम नहीं है कि चोरी करना, डकैती करना जुर्म है किसी का धन छीन लें तो वह मूलजिम होंगे या नहीं। अगर पांच आदमी मिलकर कैप्टन साहब का धन छीन लें और उन्हें यह मालूम नहीं है कि यह जुर्म है वैसे हालत में इनके ऊपर जुर्म लगेगा या नहीं लगेगा ?

CAPT. A. P. SINGH:

कैप्टन ए० पी० सिंह: यह तो बिल्कुल साफ है कि "ignorance of law is no excuse" यह मैं नहीं कह रहा हूँ कि न जानने के कारण वे दंड के भागी नहीं हैं परन्तु मैं यह कह रहा हूँ कि जितना अपराध हो उस हिसाब से दंड दिया जाय। "यथापराधदण्डानाम्"। यह नहीं कि जितना अधिक से अधिक हो सके उतना दंड दे दिया जाय। अपराध के अनुसार उचित दंड उनको इस वाद विवाद ही में हो चुका अब आगे उचित दंड यह होगा कि चूंकि वे नहीं जानते थे इसलिये उनको क्षमा किया जाय। अपराध से अधिक उनको दंड देना उचित नहीं है। इसके अलावा उनका दोष भी नहीं है। जैसा कि मेरे मित्र बनारसी दास चतुर्वेदी जी ने कहा कि अगर हमको दंड देना है तो हमें गवर्नमेंट को दंड देना चाहिये। उन लोगों को वहां पर क्यों मेम्बर बनाया गया इसकी एक हिस्ट्री (history) है और आपको उस पर ध्यान देना चाहिये। वहां पर यह अन्दोलन था कि चुनी हुई म्युनिसिपैलिटीज होनी चाहियें और चुने हुये डिस्ट्रिक्ट बोर्ड्स होने चाहियें म्युनिसिपैलिटीज वर्तमान मिनिस्ट्री के आने से पहले ही चुनी हुई हो चुकीं अब चुने हुये डिस्ट्रिक्ट बोर्ड्स न कर के यह कौंसिलें बनाई गईं। जो असली चीज है उस पर तो ध्यान नहीं है। असल चीज यह है कि ये जो डिस्ट्रिक्ट एडवाइजरी कौंसिल्स (District Advisory Councils) कायम हुई हैं वे अनडेमोक्रेटिक (undemocratic)

कायम हुई हैं जिस के लिये लग बार बार चिल्ला रहे थे कि यह अनडेमोक्रेटिक हैं। कांग्रेस वाले और नानकांप्रेस वाले इसका आन्दोलन कर रहे थे कि एक डेमोक्रेटिक चीज कायम हो इसका काफी शोर मचा हुआ था लेकिन उस चीज को न करके एक डिस्ट्रिक्ट एडवाइजरी कौंसिल बना दी गई। लोगों ने विरोध भी किया कि डिस्ट्रिक्ट एडवाइजरी कौंसिल ठीक नहीं है, वह एलेक्टेड होनी चाहिये क्योंकि आज डेमोक्रेसी के जमाने में बहुत कम चीजें रामिनेशन से होनी चाहियें। खैर, अब भविष्य के लिये हमें सोचना है। डाक्टर कुंजरू ने ठीक ही कहा है, उन्होंने बात को समझ लिया और कहा है कि भाई पिछले के लिये जो चाहो कर दो हम उसके लिये कुछ नहीं बोलते लेकिन भविष्य के लिये ऐसा नहीं होना चाहिये कि यह चीज होती चली जाय। मैं होम मिनिस्टर साहब से प्रार्थना करूंगा कि भविष्य के लिये अवश्य कुछ न कुछ प्रबन्ध होना चाहिये कि डिस्ट्रिक्ट में जो कौंसिल या बोर्ड हो वह प्रजा की चुनी हुई होनी चाहिये न कि इस तरह के नामजद लोगों की। यह करना आवश्यक है और भविष्य के लिये ऐसा कर देना उचित भी है।

मेरा यह भी कहना है कि हमको तो इस दृष्टि से देखना चाहिये कि विध्य प्रदेश की जनता के ऊपर इस कानून का क्या असर पड़ेगा। विध्य प्रदेश की जनता समझेगी कि कानून बहुत उचित हुआ क्योंकि ऐसा तो होना नहीं चाहिये कि "और करे अपराध को, और पावे फल भोग"। अपराध तो करे विध्य प्रदेश की सरकार और दंड मिले १२ आदमियों को। इस चीज को जनता समझती है परन्तु साथ ही वह देख रही है कि प्रजा की चुनी हुई एडवाइजरी कौंसिल्स होती हैं या नहीं। मैं होम मिनिस्टर साहब

का इस बात पर ध्यान आकर्षित करना चाहता हूँ कि भविष्य के लिये वे इस पर ध्यान दें। मैं कहता हूँ कि दंड तो विध्य-प्रवेश की गवर्नमेंट को देना चाहिये और उनको यही दंड दिया जाये कि वे एलेक्टेड कौंसिल बनावें और नामिनेटेड (nominated) न रहें। यही दंड उनके लिये काफी है। दंड कई प्रकार के कहे गये हैं जैसे :

परित्यागस्तु नारिणां,  
ब्राह्मणानां मान खण्डनम्  
आज्ञाभंगो नरेन्द्राणा-  
मशस्त्रवध उच्यते ॥

ब्राह्मण, स्त्री या राजा अर्थात् हैं इसलिये अगर इनको दंड देना है तो तरीका यही है कि "परित्यागस्तु नारिणां" स्त्री का परित्याग कर दे, इसी तरह ब्राह्मण के लिये दंड है कि "ब्राह्मणानां मान खण्डनम्" मान भंग कर दे और राजा के लिये दंड यह कि उसकी आज्ञा को रद्द कर दे, आज्ञा को भंग कर दे। इसीलिये महात्मा गांधी ने सिविल डिस्ओबिडियेंस मूवमेंट (civil disobedience movement) चलाया था कि हम हिंसा न करें लेकिन राज्य की आज्ञा को भंग करें और गवर्नमेंट को खत्म कर दें। इसलिये जैसा कि उन्होंने किया कि आज्ञा भंग करके विजय प्राप्त की उसी तरह मैं होम मिनिस्टर से कहूंगा कि वहाँ की गवर्नमेंट को आर्डर दे दें कि आप अब कृपा करके एलेक्टेड (elected) कौंसिल बनायें और इस तरह के झगड़े में न पड़ें।

(Time bell rings.)

मैं सिर्फ़ दो, तीन मिनट और लूंगा, क्या मुझे मिल सकता है? मेरे मित्र दुबे जी यह समझ रहे हैं कि सरदार नर्मदा प्रसाद सिंह जी को, उनके नेता को ही यह सब कानूनी मसला पहिले मालूम था और

दूसरे लोग विन्ध्य प्रदेशके अनभिज्ञ थे। यह बात नहीं है। यह बात बहुतों को मालूम थी और मंत्रों ने शोर मचाया कि इसमें हम नहीं जायग क्योंकि यह आफिस आफ प्राफिट (office of profit) है। हां कुछ लोग कहते थे कि यह आफिस आफ प्राफिट है और कुछ लोग कहते थे कि यह आफिस आफ प्राफिट नहीं है। वहाँ भी इस १९५१ क एक्ट को कोट (quote) किया जाता था और लोग कहते थे कि १९५१ का एक्ट बन चुका है और उसमें यह आ जाता है कि कुछ लोग यह भी कहते थे कि उसमें नहीं आता है। यह कहना कि काफिस वाले इसको नहीं समझते थे कि यह आफिस आफ प्राफिट है, गलत है। यह बात नहीं है लेकिन फिर ज्यादातर लोग उसमें चले गये अब सवाल यह है कि चले क्यों गये? वहाँ बाद विवाद यह हुआ कि १९५१ में जब यह एक्ट बना था तो ले० गवर्नर साहब सेंट्रल के मिनिस्टर थे और जो इस समय चीफ मिनिस्टर हैं वे प्राविजिनल पार्लियामेंट (Provisional Parliament) के मेम्बर थे, तो ये लोग तो गलती कर नहीं सकते इसलिये ज्यादातर सदस्य उसमें चले गये, नहीं तो जाते नहीं। तब भी कुछ लोग नहीं गये, उन्होंने कहा कि हम हर्गिज हर्गिज नहीं जायेंगे क्योंकि १९५१ का एक्ट बन गया है और उसके मुताबिक व आफिस आफ प्राफिट से मुक्त नहीं होते। सरदार नर्मदा प्रसाद सिंह के पहिले ही लाल बिहारी सिंह ने एडवाइजरी कौंसिल से इस्तीफा दिया है, जिसे इलेक्शन कमिश्नर ने भी माना है।

अभी माननीय डाक्टर काटजू ने कहा कि विन्ध्य प्रदेश सरकार ने राय ली थी परन्तु वह हम लोगों को मालूम नहीं हुआ कि राय कब ली गई और किससे ली गई।

अगर वह मालम हो गया होता तो शायद  
 मामला कुछ ज्यादा साफ हो गया होता।

(Time bell rings.)

मैं और ज्यादा बत आपका  
 नहीं लूंगा। मुझे कहना तो  
 बहुत था लेकिन समय नहीं है। मैं बहुत  
 कम बोलता हूँ इसलिये जब मैं बोलू तो  
 कुछ न कुछ समय मिलना ही चाहिये।  
 क्या मुझे और समय नहीं मिल सकता ?

MR. DEPUTY CHAIRMAN: Your time is  
 up.

CAPT. A. P. SINGH:

Thank  
 कैप्टेन ए० पी० सिंह : तो खत्म  
 करता हूँ। 'थैंक यू'  
 you.

[Tor English translation, see Appendix IV,  
 Annexure No. 221.]

DR. K. N. KATJU: Mr. Deputy Chairman,  
 if I may be permitted to say so, the  
 discussion, learned as it has been, has taken  
 the expected lines and I am glad—if I am not  
 mistaken—from every part of the House,  
 from almost every part of the House, it was  
 said that the legislation was within the  
 competence of Parliament. Doubts have been  
 raised as to its constitutional propriety. Now,  
 I do not want to detain the House for long  
 and to repeat myself merely. I will only just  
 deal with one or two points.

One was raised, to my surprise, by my  
 hon. friend Dr. Kunzru and it was based on  
 the language of Act XLVIII of 1951. The  
 House has heard the history of that legislation  
 from another speaker, my hon. friend Mr.  
 Kapoor who was in the House when it was  
 passed, but assuming that we do not know  
 anything about the history of it, what does it  
 matter? The importance of the Act lies in two  
 ways. First, it is a clear precedent that  
 Parliament can pass an Act declaring an  
 office not to be an office of profit and  
 removing any alleged disqualification retros-  
 pectively. That is a matter of tremendous  
 importance.

The other argument that was advanced on  
 the basis of the Act by my hon. friend Dr.  
 Kunzru was that the language of clause (e) of  
 section 2 indicated that Parliament had  
 almost decided that in future beyond 31st  
 March 1952 it would never enact any such  
 legislation at all.

SHRI H. N. KUNZRU: I did not say that. I  
 said that so long as this law stood, its  
 meaning was clear. I never questioned the  
 right of Parliament.

DR. K. N. KATJU: I am glad to hear that  
 because that would cut short my work, if it  
 were conceded that this Act only went as far  
 as it purported to. Then he said: "Well, there  
 have been numerous committees." As Mr.  
 Kapoor said, nobody knows how many  
 committees there had been; what was their  
 nature, what was their description? And the  
 House was only concerned with a particular  
 date, namely, the 31st March 1952, and the  
 House *en bloc*, that is, in a sort of a general  
 way, in a sweeping way said if any  
 disqualification had been caused by the  
 membership of any committee, then that  
 disqualification is removed, and the Act  
 would function retrospectively. Now, what is  
 the further argument then, I am unable to  
 follow? Because, as I said, the argument of  
 Dr. Kunzru was that anyone, whether the  
 Vindhya Pradesh Government or any  
 Member of the Vindhya Pradesh legislature,  
 should have said; "Here is this Act and this  
 Act only limits it up to 31st March 1952 and  
 if I am going to accept a membership of this  
 District Council, it would not do." If the  
 Vindhya Pradesh Government were to  
 constitute such Councils they should have  
 thought that they were going clearly against  
 the law. The question does not arise. This  
 matter was not before Parliament at all. And  
 if once conceded, as my hon. friend has now  
 conceded that he does not contest the power  
 of Parliament in this year 1953 or in  
 succeeding years whenever a suitable case is  
 made out to pass indemnifying legislation of  
 this description, then, as I said, it is a matter

[Dr. K. N. Katju.] of each individual case to be judged on merits.

Now, I ventured to inform the House in the beginning that when the Vindhya Pradesh Government formed these District Advisory Councils, they took legal advice from high quarters to find out whether this was an office of profit. Here please remember one thing. There was some observation made either by Dr. Kunzru or by some other hon. friends, namely: "Well, every office created by Government, as for instance, the membership of a committee conveys a sense of power, a sense of prestige, a sense of glory and therefore it is likely to interfere with the independence of a Member of the Legislature." The basic principle is that every Member should be completely independent in the discharge of his duties to his country and to his constituents and should be above all in influence exercised or thrown over him indirectly by Government by throwing something in his way in the way of membership of some committee, this, that and the other. Now this argument may be valid, may be invalid. It may carry some weight, it may not carry some weight. But I only want to say to you that so far as the Constitution is concerned, it has nothing to do with political power, political prestige or political glory. You had access to Ministers, access to District Officers, so it must be an office of profit, it was said. Profit means in terms of cash. If there is no cash .....

SHRI K. S. HEGDE: Material gain.

DR. K. N. KATJU: Well, as my hon. friend puts it, material gain. If it does not carry that material gain in terms of cash, well, it is not an office of profit at all. You may make me or any hon. Member of this House an Honorary Governor of—somebody said —Faridabad Township or any other thing. It just does not matter to me. It is not an office of profit. It may involve enormous prestige, enormous power, enormous patronage, but then it is not an office of profit in any case.

So the question that arose before the Vindhya Pradesh Government was whether they were creating an office of profit and it never struck them that they would be making any distinction between a resident member and any other member, and they got the advice. The advice may have been wrong. I am not saying that every legal advice is correct. You go to a court and there the two Judges differ from each other on the Bench. No legal advice is infallible. It may turn out to be wrong. They had this advice that making a membership of this District Advisory Council where nothing was being given excepting travelling and halting expenses was not giving the members any profit and they proceeded on that basis. And I venture to repeat once again that at the time they started, they made no difference between one party member and another party member. They did not confine this Advisory Council to any particular groups or parties. What they said was, here is the District Advisory Council and every single Member elected to the Vindhya Pradesh Assembly from a District irrespective of his party affiliations would automatically become a Member. Now it may be that this matter was talked about in Vindhya Pradesh and opinion was divided. It must have been, because a representation was made. I repeat once again, Sir, that this Act XLVIII of 1951 is really not of any assistance in the way in which my hon. friend Dr. Kunzru brought it forward. It is of course of great assistance to us when it is argued by anyone that Parliament has no power to intervene. Parliament has always the power to intervene in individual cases, in group cases, and I say .....

SHRI H. N. KUNZRU: Is that Act still in force or has that expired?

DR. K. N. KATJU: The Act is in force in this way. It was passed in the year 1951 and it has expired because it is of no consequence to anybody now. It is in force in this way because it creates a precedent, namely, that whenever there is a case of this

description, whenever a technical mistake, a *bona fide* mistake is made either by a particular Government or by an individual, the whole Parliament will intervene. That is the importance of that Act. Otherwise the answer is obvious, namely, the committees probably are finished, the membership is finished and reports have been made. I really do not know what were the profits. I do not know whether this question was considered or not.

Now, I was struck by what my hon. friend said. He referred to the extent of profit. I quite concede, Sir, that the extent of the profit is not material in terms of the Constitution. If you make it an office and if you say that the salary is going to be four annas, or even half an anna, then in terms of the Constitution it becomes an office of profit. But when we are considering the question of *bona fides*, whether the Vindhya Pradesh Government was acting rightly or wrongly, then the question of the extent of the profit is material. I do not want to travel over this ground again. It comes to really Rs. 5. My hon. friend said, "Look at that. They have now actually increased the allowance from Rs. 5 to Rs. 10. Therefore, they have brought all the Members under their control." I say with all due respect to him that this is really driving an argument to death, because the question of the extent of the profit, from the legal point of view, is of no consequence.

Then, Sir, my hon. friend from Bengal—I do not know his constituency—it is of course Bengal—argued.....

SHRI B. GUPTA: Not nominated!

DR. K. N. KATJU: What he said was this. "It is final. It clinches the matter." I really do not know what he means. I understand that "final" means this. There is a particular proceeding started. It has got to come to an end, and it comes to an end with the advice given by the Election Com-

(Prevention of Disqualification) Bill, 1953 mission, which advice is accepted by the President. And there the chapter closes. That means that so far as that proceeding is concerned, there is no further legal proceeding obtainable. You cannot go to the Supreme Court. I am speaking only generally—I may be wrong. You cannot go and move for a writ of some sort in the Supreme Court or in any other court. That particular proceeding is closed, namely, the advice is given by the Election Commission, and the President accepts it—he is bound to accept it—and the doubt is settled whether the disqualification has or has not been incurred. If it has been incurred, it goes back for necessary further action; if it has not been incurred, the chapter is closed. But this word "final" has got nothing to do with the competence of Parliament to consider whether it should intervene or should not intervene. The two things are not parallel.' My hon. friend's argument, as I understood it, is that it is final even for Parliament. Parliament is a representative body which represents the people. They say "minority" and "majority". It is a platitude to say this, that you represent a particular section of people. It is the essence of a democratic institution that the people who are in a majority carry on the administration of the day. If you win over the majority of people to your side, then you form the Government and carry on the administration. So far as this Parliament is concerned, it does not cease to be a democratic Parliament because a particular group or a particular party is in a minority. You cannot say that you are the repository of all the democratic conceptions and democratic traditions and that the party similarly elected is a sort of oligarchy or a sort of autocracy. We have got to carry on our functions. Supposing Government does not matter which—has received a representation from the Vindhya Pradesh Legislature. "Here is this thing which has resulted in all this misfortune." It is purely technical. The Members are not at all at fault. They are rendering the same public service as we are required to render. And I

[Dr. K. N. Katju.] repeat once again: it is not only a question of the Members; it is a question of the electorate also. I think they are entitled to be saved from the trouble and from the enormous excitement of a general election. People have got to be saved from all that. When the representation was made to the President, the representation was that inasmuch as every Member had become a Member of the Advisory Council, the whole of the legislature—30 or 40 Members—was dead and gone. My hon. friend Dr. Kunzru can speak with greater freedom, but I venture to say that if he had been in the place of the electorate, probably he would have given effect to that contention and the result would have been that all the 51 or so seats would have been vacated and there would have been a general election. But just consider this. I think the electorate is entitled to say that they should be saved from such a calamity if it is possible. Please re-matters, 'tie, jGbe.ES, arc two^ different This Government has not interfere'e?; cannot interfere, and has not the remotest intention of interfering with what happens in the course of a «en-eral election. You have had numerous election tribunals. Decisions have been given in favour of the Congress party, and against the Congress party. Somebody succeeds; somebody does not succeed. Who interferes? Nobody interferes. But here it is a case in which something else has happened. Some council has been appointed. They say, here is a disqualification. Before a casual vacancy can arise, there must be a decision whether there is an office of profit or not. That matter may be decided in the first instance by the Election Commissioner and, I say, in the second instance by Parliament itself. Parliament intervened in 1951.

SHRI J. R. KAPOOR: May I interrupt my hon. friend? I do not think it is open to us to declare that an office is not an office of profit. We can only lay down that though it is an office of profit, yet it involves no disqualification.

DR. K. N. KATJU: If I may say something personally. I have spent 40 years in law courts, and my mind is not a very subtle mind. Mine is a very practical mind, and the language in the Bill—you take it in any way you like—is the exact language of the British Acts and of Act XLVIII, of 1951: "It is hereby declared that the offices of members of any District Advisory Council shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of the Legislative

Assembly....." Well, some people might argue on the basis of that that it is not an office of profit and therefore disqualification is not incurred. Or you might say that it continues to be an office of profit and yet there is an exception. It is a question of how you look at it.

SHRI B. GUPTA: May I know whether those candidates for the last General Elections whose applications for nomination had been rejected on the ground of their being members of similar councils, etc.—holders of offices of profit—would be justified in now claiming that they were wrongly rejected after the Bill is passed? Will it create a precedent?

DR. K. N. KATJU: The question does not arise, because it is purely hypothetical, because the Councils in this case came into existence after the general elections were over. So far as that point is concerned, I think it is a matter deserving consideration and we shall deal with it. It may be that there may be some general legislation required for the purpose of clarifying the whole situation. But in this particular case that question does not arise.

SHRI B. GUPTA: That will have serious consequences.

DR. K. N. KATJU: In this case it does not arise. Secondly, Sir,—

SHRI H. N. KUNZRU: Sir, my hon. friend has not dealt with one material point. The Act 48 of 1951 being still in force, what was it that the Election Commission was asked to decide?



DR. K. N. KATJU: There is no question of the Act 48 of 1951 being still in force. It referred only to particular committees and particular dates. If it only covered certain committees which were functioning up to the 31st of March 1951, then this question as to whether the District Advisory Council was an office of profit or not is an independent question and cannot possibly be deemed to have been dealt with by this Act.

SHRI H. N. KUNZRU: Does the Act say or not that the holders of certain offices of profit would not incur any disability upto the 31st of March 1952, thereby implying that they would incur some disability after that date?

DR. K. N. KATJU: No. no. I deny the implication. I deny the applicability of the Act to the membership of these District Advisory Councils.

In the end, Sir, I think some question was put and I do not want to raise it because I said that the Attorney General had referred to that, but as a matter of curiosity, if the Members want to add to their information as to the number of Acts which have been passed in England on this point, they may refer to page 213 of the leading authority, May's Parliamentary Practice, where they would find that during the last 15 years at least 4 or 5 Acts were passed for individual cases in which reference was made.

SHRI C. G. K. REDDY: But they are not strictly relevant here.

(*Interruption.*)

DR. K. N. KATJU: I am always tempted to repeat some observations. A very learned Judge used to tell me sometimes: "What is the good of your arguing, Dr. Katju? Please remember that repetition does not add to the strength of the argument." Therefore, I am not repeating over and over again and I would respectfully request the other hon. Members here in the Opposition not to do so because it does not add to the strength of the argument. You may be right and I may be 48 C.S.D.

wrong. That does not matter. (*Interruption*) I can give you my reasons but I am not bound to give you an understanding. You can also do the same thing.

SHRI B. GUPTA: Obviously, we have failed in doing that.

DR. K. N. KATJU: I only wish to read this, because in drafting this piece of legislation we have been guided -by the other Acts and the one Act which has been considered to be the leading one, I shall read that. It only concerned one individual and there is no indication whether he was a Member of the Liberal Party or the Conservative Party. It only concerns the right of that individual. This is the 1941 Act and it said:

"Arthur Jenkins shall be and is hereby freed, discharged and indemnified from all penal consequences whatsoever incurred by him by sitting or voting as a Member of the House of Commons while holding the office of Chairman of the Local Appeal Board for Royal Ordnance Factory and shall be deemed not to have been or to be incapable of sitting or voting as a member of that House by reason only of his having held that office at any time before the passing of this Act."

Sir, I therefore would beg the House to pass this Bill.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill to declare certain offices of profit not to disqualify their holder for being chosen as, or for being, Members of the Legislative Assembly of the State of Vindhya Pradesh, as passed by the House of the People, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We will now take up clause by clause consideration of the Bill. There are no amendments.

[Mr. Deputy Chairman.]

Clause 1, the Title and clauses 2, 3 and 4, the Schedule, the Enacting Formula were added to the Bill.

DR. K. N. KATJU: Sir, I move that the Bill be passed.

MR. DEPUTY CHAIRMAN: The question is that the Bill be passed.

The House divided:

AYES—105

Abdul Shakoor, Molana.  
Abid Ali, Shri.  
Agnibhoj, Shri R. U.  
Agrawal, Shri A. N.  
Ahmad Hussain, Kazi.  
Ahmed, Shri Gulsher.  
Aizaz Rasul, Begam.  
Akhtar Husain, Shri.  
Alva, Shrimati Violet.  
Amolakh Chand, Shri.  
Anant Ram, Pandit.  
Barlingay, Dr. W. S.  
Bhuyan, Dr. S. K.  
Bisht, Shri J. S.  
Biswas, Shri C. C.  
Biswasroy, Shri R.  
Borooah, Shri L.  
Budh Singh, Sardar.  
Chaman Lall, Diwan.  
Chandravati Lakhanpal, Shrimati.  
Chaturvedi, Shri B. D.  
Chauhan, Shri N. S.  
Das, Shri Jagannath.  
Deogirikar, Shri T. R.  
Deshmukh, Shri R. M.  
Dharam Das, Shri.  
Dinkar, Prof. R. D. Sinha.

Doogar, Shri R. S.  
Dube, Shri B. R.  
Dube, Dr. R. i'.  
Dube, Pandit S.  
Faruqi, Moulana M.  
Gupte, Shri B. M.  
Hardiker, Shri N. S.  
Hegde, Shri K. S.  
Hemrom, Shri S. M.  
Hensman, Shrimati Mona.  
Inait Ullah, Khwaja.  
Jafar Imam, Shri.  
Jain, Shri Shriyans Prasad.  
Jalali, Aga S. M.  
Kapoor, Shri J. R.  
Karayalar, Shri S. C.  
Khan, Shri Barkatullah.  
Khan, Shri P. M.  
Khan, Shri Samiullah.  
Kishori Ram, Shri.  
Lakhamshi, Shri Lavji.  
Lakshmi Menon, Shrimati.  
Lai Bahadur, Shri. Lall,  
Shri K. B.  
Leuva, Shri P. T.  
Madhavan Nair, Shri K, P.  
Mahtha, Shri S. N.  
Maithilisharan Gupta, Shri.  
Maya Devi Chetty, Shrimati.  
Misra, Shri S. D.  
Mitra, Dr. P. C.  
Mohta, Shri G. B.  
Mookerji, Dr. Radha Kumud.  
Mukerjee, Shri B. K.  
Narayan, Shri D.  
Narayanappa, Shri K.

Obaidullah, Shri.  
 Pattabiraman, Shri T. S.  
 Pawar, Shri D. Y.  
 Pheruman, Sardar D. S.  
 Pillai, Shri C. N.  
 Podar, Shri R. A.  
 Prasad, Shri Bheron.  
 Pushpalata Das, Shrimati.  
 Pustake, Shri T. D.  
 Raghbir Singh, Dr.  
 Rajagopalan, Shri G.  
 Rao, Shri Rama.  
 Reddy, Shri Govinda.  
 Saksena, Shri H. P.  
 Sarwate, Shri V. S.  
 Savitry Nigam, Shrimati.  
 Seeta Parmanand, Dr. Shrimati.  
 Shah, Shri M. C.  
 Sharda Bhargava, Shrimati.  
 Sharma, Shri B. B.  
 Shetty, Shri Basappa.  
 Sholia Bala Das, Shrimati.  
 Shrimali, Dr. K. L.  
 Singh, Capt. A. P.  
 Singh, Shri Kameshwara.  
 Singh, Shri Kartar.  
 Singh, Shri R. K.  
 Sinha, Shri B. K. P.  
 Sinha, Shri R. B.  
 Sinha, Shri R P. N.  
 Srivastava, Dr. J. P.  
 Surendra Ram, Shri V. M.  
 Swaran Singh, Sardar.  
 Tajamul Husain, Shri.  
 Tamta, Shri R. P.  
 Tankha, Pandit S. S. N.

Tayyebulla, Maulana M.  
 Thanhlira, Shri R.  
 Vaidya, Shri Kanhaiyalal D.  
 Valiulla, Shri M.  
 Venkataraman, Shri S.  
 Vijaya Raje, KunwaranL  
 Vyas, Shri K.

NOES—20

Abdul Razak, Shri.  
 Angre, Col. C. S. R.  
 Basavapunnaiah, Shri M.  
 Deshmukh, Shri N. B.  
 Dhage, Shri V. K.  
 Dube, Shri B. N.  
 Ghosh, Principal Devaprasad.  
 Gour, Dr. R. B.  
 Gupta, Shri B.  
 Kishen Chand, Shri.  
 Kunzru, Shri H. N.  
 Manjuran. Shri M.  
 Mann, Lt.-Col. J. S.  
 Mathur, Shri H. C.  
 Misra, Shri C. G.  
 Naidu, Shri Rajagopal.  
 Narayana, Shri P. V.  
 Ranawat, Shri M. S.  
 Rath, Shri B.  
 Reddy, Shri C. G. K.  
 The motion was adopted.

THE SPECIAL MARRIAGE BILL, 1952

THE MINISTER FOR LAW AND  
 MINORITY AFFAIRS (SHRI C. C. BISWAS) :  
 Mr. Deputy Chairman, it is a matter of great  
 regret to me that the