

MR. DEPUTY CHAIRMAN: Order, order.

RAJKUMARI AMRIT KAUR : Sir, I give the assurance that as and when finances permit, as and when the recommendations of the Committee are accepted by the Delhi State Administration, there will be no delay in going forward, provided of course, as I said, we know the financial implications involved and that the requisite finance can be placed at the disposal of the Improvement Trust.

(Shri K. B. Lall *rose.*)

MR. DEPUTY CHAIRMAN : j Order, order. The hon. Member will sit down. I am on my feet.

The House will stand adjourned till 3 P-m. 'J

The Council then adjourned for lunch till three of the clock.

The Council re-assembled after lunch at three of the clock, MR. DEPUTY CHAIRMAN in the Chair.

THE COMMISSIONS OF INQUIRY BILL, 1952—*continued.*

MR. DEPUTY CHAIRMAN: Yes, Mr. Naidu.

SHRI RAJAGOPAL NAIDU : Sir, when the House rose before lunch I was dealing with the privileges of the House as to how both the Houses are given the extraordinary privilege of passing such Resolutions in England and I was also saying as to why that privilege should not be extended to the Council of States, a House of this nature, a House of elders. Though it is a House of a revisory nature yet it can draw upon the exceptional knowledge and experience of its Members to a great extent. Sir, it may be that I am wasting my lungs in arguing this at length but I feel it my duty to bring to the notice of the hon. the Law Minister that the privilege which this House has even under the Constitution is ignored. I was citing the instance of England as to how Enquiry Commissions were constituted there by a Resolution passed by either House or both Houses of I

Parliament. I was also citing the Tribunal Enquiry Evidence Act, 1921 under which all the powers of the High Court were conferred upon the Tribunal by a Resolution passed by both the Houses. I shall also deal with the privilege of the House of Parliament which is laid down under article 105 of our Constitution. Article 105 reads as follows :

"(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be denned by Parliament by law, and, until so denned, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution
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I may say, Sir, that there is no definite provision in our Constitution as to whether both the Houses have got power to constitute such Committees or only the House of the People has got such power. But in the absence of any specific provision in the Constitution, I would urge that we had better follow the procedure which is so very well laid down in our Constitution in article 105 (3).

Secondly, Sir, it may be said that after all the Upper House is only a revising body, that it has no original powers of its own. But I may immediately point out to the hon. the Law Minister article 249 of our Constitution. Article 249, Sir, deals with the power of Parliament to legislate with respect to a matter in the State List in the national interest and there, Sir, exclusive power is given only to the Council of States. That article says :

"Notwithstanding anything in the foregoing provisions of this Chapter, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expe-

dient in the national interest that Parliament should make laws with respect to any matter enumerated in the State List specified in the resolution, it shall be lawful for Parliament.....

Under article 249 it is only the Council of States that has got the exclusive power to pass the Resolution. So it cannot be said that our House is merely the Upper House and it is merely an appendage to the Lower House and it has no powers of its own. It cannot be called just like the sixth finger to a palm which is hanging loose without any purpose. But there are certain specific powers given to us in our Constitution and we cannot ignore those powers.

Lastly, Sir, it may be said that if these powers are given to the Upper House here the various States may also urge that the Legislative Councils of those States should also be given analogous powers. But that should not be the reason, Sir, why that power should be denied to the Council of States. We cannot place the Legislative Councils of the States on a par with the Council of States and argue that if this privilege is given to the Council of States here, that privilege should be extended to the Legislative Councils of the various States. There is some difference between the powers of the Council of States and the powers of the Councils in the State Legislatures. The one difference is—I have already read article 249—there is no such provision at all, no such privileges extending to the Councils of the State Legislatures. There are also various other privileges which we do not find extended to the State Councils.

Well, Sir, I shall now come to certain details of this Bill. I shall deal with clause 3 (2) which says :

"(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof." My only grievance about this is, Sir, you say under clause 4 that the Commission shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 and under clause 5 you say that the Commission of Inquiry will have certain powers

under the Code of Criminal Procedure. Does not the hon. Minister think that to make an enquiry under this Act a person with judicial knowledge is required ? Can a layman with no legal knowledge know anything of the Code of Civil Procedure ? Does the hon. Minister expect any layman to know the provisions of the Code of Civil Procedure ? So my point is this, Sir, that if the Commission consists of only one member, that one gentleman may be a man with legal knowledge or experience and if the Commission consists of two, at least the Chairman of the Commission may be a man of judicial experience, well versed in judicial knowledge. That is about 3 (2).

I have no grievance about clause No. 4. Coming to clause No. 5—additional powers of the Commission. Powers of the Commission are given under clause 4. Additional powers of the Commission are given under clause 5 and these additional powers are to be given by an executive act of the Government. My submission would be that these additional powers which are very extraordinary in nature, namely, a gazetted officer to enter into a house and to make a search and force a person to give certain particulars which are required under law, etc. can be done, only by a Resolution. I do not mind if it is done by a separate statute besides this Act. But I would suggest that a separate Resolution should be passed by either House of the Parliament to enable the officer-in-charge to enter inside a house and hold such enquiries.

Coming to clause No. 11, this contemplates, Sir, some other Committee besides the Committee which is to be constituted under this Bill. That clause says :

"Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the appropriate Government

So when a statute is created for the purpose of constituting such a Commission, why and how does the Minister contemplate some other Committee besides this- Commission which has been

[Shri Rajagopal Naidu.] constituted under a separate Act? So I may submit, Sir, that there should be no other Committee.

One sentence about receiving evidence on affidavit. That is an extraordinary provision and I submit, Sir, that this power should not be given to the Commission. I have no grievance against the various provisions under clause 4 excepting that of 'receiving evidence on affidavits'. The hon. Minister knows how an affidavit can be got and how the signature can be obtained from any person. So I would only submit that this clause should be deleted and if any evidence is to be received, it should be only received by way of oral evidence subject to cross-examination by the opposite party i.e. the man against whom the enquiry is held. A person against whom the enquiries will be made will have no opportunity to cross-examine if evidence is received on affidavit. So I would urge the hon. Minister to delete sub-clause (c) of clause 4 of the Bill.

Lastly, as I said, this measure does not affect only this side of the House. It affects the entire House. It is a question of privilege. I know, Sir, the feelings of the Members on that side also, but unfortunately they are not in a position to express openly. On behalf of the entire House, I would say, Sir, that this privilege which is contemplated by the statute is unnecessarily being taken away by the mover of this Bill.

SHRI KISHEN CH/ND (Hyderabad) : I want to say just a few words on the amendment moved by Mr. J. R. Kapoor.

MP. DEPUTY CHAIRMAN : Not yet moved.

SHRI KISHEN CHAND : On the suggestions made by him, Sir. What I want to say is that our Constitution recognises that there is some distinction between this House and the other House. They are two wings of Parliament and have equal legislative powers except in so far that this House does not have

any power in regard to Money Bills or that the Ministers; are not responsible to this House, which means that in the case of a vote of censure passed by the House of the People, they have to resign, while on the passing of a vote of censure by this House, they are not bound to resign. I realise that this is the distinction between the two Houses; but except for this distinction, the two Houses have exactly equal powers for the enactment of any legislation. I find, Sir, that in this legislation we want to pass a law by which we want to hand over some powers from ourselves to the other House. In this measure that is being placed before the House, it is proposed that only the House of the People will have the right to enforce on the Government that a Commission should be appointed. Normally under the Constitution, either House can pass a Resolution that a Commission should be appointed and it is optional on the Government whether to appoint a Commission or not. The hon. the Law Minister has said in the lobbies that in case the Government does not appoint a Commission on a Resolution passed by the House of the People, the House of the People can bring in a vote of censure against the Government. Well, whatever the position may be in this regard, the point is clear that both the Houses can pass a Resolution recommending to Government that a Commission should be appointed. I submit, Sir, that we should not endorse an Act in which we say that the Council of States do not possess that power. I think we should alter it in this way that a Commission should be compulsorily appointed if a Resolution is passed by both Houses but if a Resolution is passed by one House only, then it should be optional to Government whether to appoint a Commission or not. I know that in case the wishes of the House of the People are not respected by the Government, they can have recourse to a vote of censure. Leaving aside that, when we are enacting a law, I submit that we should add a clause that only if both the House? of Parliament pass a Resolution, only then the appointment of a Commission should be compulsory for the Government.

SHRI J. S. BISHT (Uttar Pradesh) : Now, Sir, there seems to be a misunderstanding with regard to clause 3. Now, all that it says is that when the House of the People passed a Resolution to that effect, the Government is bound to appoint a Commission of Enquiry. Beyond that, it does not curtail the powers of the Council of States to move a Resolution or pass a Resolution to that effect. What happens is that in that case it is optional for the Government to appoint a Commission of Enquiry or not. Ordinarily I believe that, when the Council of States pass a Resolution with sufficient reasons and arguments behind that Resolution, there is no reason why Government will not appoint a Commission of Enquiry or a Committee of Enquiry, but in the case of the House of the people or of the Legislative Assembly in a State, the position is entirely different. The Government is not in a position to resist the will of the popular House, because if it does, it falls, and this is the only reason why this clause has been put in. I submit that there is no invidious distinction meant in this particular clause, and we should leave it to the executive authority to decide how and in what circumstances it is necessary so to do.

While supporting the Bill, I wish to draw the attention of the hon. the Law Minister to some very drastic provisions contained in sub-clauses (2) and (3) of clause 5. Sub-clause (2) of clause 5 lays down that the Commission shall have power to require any person to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the enquiry. Now, these are very wide and very vague terms, as anyone with experience of law will understand. Then sub-clause (3) lays down that any gazetted officer may be deputed by the Commission to come and search and seize documents. What I wish to know from the hon. the Law Minister is this : Supposing a Commission of Enquiry is appointed in the public interests to make enquiries into the working of any chemical industry in this country. Well, there are chemical industries where there are certain trade secrets. Will it be open

to a member of the Commission to force that particular industry to disclose its secrets ? Or, say, there is a Committee of Enquiry into the working of the cigarette industry. They have their trade secrets. Everybody cannot manufacture cigarettes with the necessary blend and flavour. Would it be open to the members of this Commission to force them to disclose the various types of tobaccos that go to make a particular blend, say, Capstan, Navy Cut or Black and White ? Or similarly in the case of an enquiry into the working of the iron and steel industry, would it be open to this Commission to force Tatas for example to disclose their trade secrets as to how a particular type of iron bar or cast iron is manufactured by them ? So, when these very drastic provisions exist in sub-clause (3) of clause 5, I submit that there should be some sort of clause which would not entitle members of this Commission or the gazetted officer deputed by them to force trade secrets from these firms. I know very well that under the Indian Income-Tax Act, for instance, an Income-Tax Officer can always see the accounts of the firms, but under the Indian Income-Tax Act there is also a provision that every Income-Tax Officer is prohibited from disclosing the information that he obtains during the course of his work to the public. There is a penal clause to that effect. Because there is no such clause here, there is no guarantee that the information that is supplied to the Commission of Enquiry or to any member thereof, will not be divulged. Supposing that member happens to be interested in that particular industry. Such a penal provision is very necessary not only in the case of a Commission of Enquiry, because under section 11 that power is being conferred also upon any enquiring authority that may be appointed by a State or by the Central Government. This is a very drastic provision. I should like to know from the hon. the Law Minister how and in what manner the trade secrets of firms are to be protected.

SHRI C. G. MISRA (Madhya Pradesh) : Sir, I have to make one or two suggestions. I would like the House to

[Shri C. G. Misra.] compare sub-clause (2) of clause 3 with clause 8. Sub-clause (2) of clause 3 says :

"The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof."

Clause 8 says :

" The Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private) and may act notwithstanding the temporary absence of any member or the existence of a vacancy among its members."

There will be difficulty in the Commission's work if it consists of only one member and if he is absent. Therefore my suggestion is that the Commission should consist of at least 3 members and then one of them can be appointed as Chairman because the provision for Chairman is made in sub-clause (2) of clause 3. The Commission should consist of at least 3 members, one of whom may be chairman so that in case there is a vacancy, the Commission can go on working.

SHRI RAMA RAO (Madras) ; Mr. Deputy Chairman, Sir, I am generally not interested in these Bills as these obviously belong to the lawyers, but I understand that Government are going to announce a Press Commission as soon as this Bill is passed and the latter will be governed by the provisions of this Bill. In the light of the provisions of this Bill we journalists have been holding discussions among ourselves and certain doubts have arisen. I am therefore requesting the Law Minister to pay more than usual attention to my speech and remove some of the difficulties that are troubling my mind. I consulted a lawyer friend and he told me that for the most part this Bill is modelled on the Civil Procedure Code and referred me to Mulla. I didn't know what Mulla is, but when I looked at the book, it was about five seers in weight and it ran into a lot of pages. I tried to read it and I found one sentence contradicting another and got

confused. I want the Law Minister to just put a little sanity into me and explain some of these points that are troubling me. I refer to clause 5, sub-clause 2. It reads as follows :

"The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for the time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry."

There is the question of privilege. What is this privilege ? So far as bankers, lawyers and doctors are concerned, there are certain laws governing them but I want to know how far the present unfortunate phrase that has been interpolated by the Select Committee is going to be helpful. Banks have laws of their own. Lawyers have their own laws. Doctors certainly have their laws, and doctors never let down one another though they may kill some patients. I suppose the lawyer knows that his client has committed a murder, but will plead his innocence at the bar. So they have all their own laws. I wish to know if you are going to inquire into any particular question, how can you have an honest inquiry if you concede this question of privilege. I think it is a dangerous interpolation made by the Select Committee.

So far as journalists are concerned, we are known to be a lawless tribe. I would like to tell you that even we, journalists have got some conventions which are more formidable, more powerful, more sacred than any law that you have made in this country. It might be like this. The proprietor cannot ask the editor as to who wrote a leading article. I as editor can refuse to answer him. That, being the position with regard to privilege, if tomorrow an editor seeks the protection of his professional privilege ; will it be within the pale of law or outside it if he refuses to answer a question before the Press Commission ? What are you going to do ? The purpose of the Press Commission, I fear, will be defeated if it proceeded along these lines. Then there is the question of protecting the witnesses that appear before the Commission, and particularly also the news-

papers which report its proceedings. When the Visweswarayya Committee was going into the Backbay Scandal in Bombay, we on the *Times of India* began to publish reports of the Committee's proceedings. An English firm of engineers was being exposed day after day. What happened? Week after week we used to get letters from a London solicitor telling the *Times of India* that it cannot print reports of those proceedings, and if it did it would be liable to legal action. We consulted our solicitors in Bombay and they said we had no protection and we had to stop publishing the reports. You appoint a Press Commission, and all sorts of evidence will be given before it. Are you sure that the editors will be free to publish the proceedings of the Commission? There will be hundreds of Commissions coming hereafter. On that side of the House we have already heard complaints against "wide powers", "inquisitorial methods" and so many things. Well, well, vested interests are speaking. Hereafter whenever you appoint a Commission, make sure that the evidence can be freely, frankly and honestly tendered before it and newspapers will be free to publish that evidence. Similarly, what is the protection you are giving to witnesses themselves? You say in clause 6 that there will be a prosecution for giving false evidence etc. I don't know what that means. I go before a Commission and in good faith I give evidence before it. Am I to be prosecuted for it? It is the business of the Chairman of the Commission to stop me at any stage of the evidence, but once I have given evidence, whether the Commission acts on my evidence or not, is not my concern to think about it. If it acts, it is equally guilty.

Then there is this question of victimisation. This is a matter that is troubling us. This morning you must have read a report in the newspapers that the employees of banks asked the Bank Enquiry Tribunal to give them protection against victimisation which has been launched by the employers. The Tribunal says it cannot protect them. How can we go before a Com-

mission and give evidence if we are to lose our jobs? My friends have been asking me to put another question to the Law Minister, "What is the protection that we get? Are you going to have the inquiries, whenever a Commission is appointed, in camera also?" Some people, who will appear before the Press Commission will give evidence only in camera. I don't mind giving evidence openly but there are a lot of others who don't want to lose their jobs.

What is the provision in this Bill by way of punishment of those who refuse to give evidence, who delay proceedings, who paralyse the work of the Commission? I will come to that later. There are forces at work which don't want your Commissions at all.

I have heard the complaint that powers too wide are being given to Commissions. In my opinion for any Commission of Inquiry of the nature we have in mind, the only limit can be the sky and the powers can be as wide as the ocean. What are we going to do in this Republic of India after getting freedom? We want to reconstruct our society into a society that assures the fullest degree of equality. It will be possible only if Commissions of Inquiry are launched one after another to go into every branch of national activity, so that it may be possible for us to understand the position from time to time and rebuild our society. I am not prepared to tolerate any vested interests. The public interest is supreme, and every vested interest will have "to be subordinated to it.

I have heard the complaint that "inquisitorial methods" might be adopted. Well, if this Bill is modelled on our Civil Procedure Code, then that complaint should be directed against the Civil Procedure Code itself.

I am also told that some of the powers which were envisaged in the original Bill were cut down by the Select Committee. The position now is that Government will settle in the case of each particular Commission whether

[Shri Rama Rao.] that Commission should have such and such powers, more or less. I cannot understand how Government can possibly avoid their responsibility and not endow every Commission of Inquiry with all the powers that it is possible to give it.

So far as the question of the States and the Centre is concerned that is, as to who should do what, it is a perennial problem in this country and I am afraid it will never be settled as long as the present set-up remains. Take for instance the question of prohibition. There have been ever so many enquiries on this subject of prohibition. Surely, after having been put in the Directive Principles of the Constitution, this subject need no longer be a matter of enquiry by any local Commission or Committee. Take again, the newspaper industry. The U. P. Government have had their own enquiry-into this subject. The Madhya Pradesh Government have had their own enquiry. I feel that all this is waste. There should have been one national enquiry long ago, and I believe it will be the supreme responsibility of the Centre to hold such enquiries itself.

Incidentally I may add that I support my hon. friend Shri Rajagopal Naidu in what he said about the privileges of this House. I had that paragraph from "The Hindu" with me and was going to quote it but like a super-journalist, he anticipated me and has quoted it himself.

I generally support this Bill, because as I have already said, it serves a useful purpose. Mr. Naidu raised two points. One was that in England the Royal Commissions are appointed by Resolutions of both Houses of Parliament. Here in India the Executive can appoint Commissions on its initiative. What is wrong with that? As Pandit Jawaharlal Nehru has said, we are not going to imitate Englishmen in every respect. His second point was that we shall be giving wider powers

I to Commissions by this Bill than they ' do in England. Why not? Where is the harm if more powers are given here to these Commissions? I may finally tell the Treasury Benches that there are vested interests working to sabotage the purpose of this Bill. They will probably challenge it and also challenge the Press Commission itself. But I am sure if such things come about, the Government will exercise the utmost vigilance and smash the vested interests, because as I have already said the country's interests are much greater than any vested interests.

SHRI B. RATH (Orissa) : Sir, while discussing a Bill of this nature which is practically coming here for the first time, one has to be very cautious, because in the past we have seen that when it was convenient for them the Government used to appoint Commissions of Inquiry and sometimes even when such Commissions were appointed and they had submitted their reports, the Government suppressed those reports. So the labours of those Committees of Enquiry never bore any fruit. When for the first time a Bill like this has come, enabling the appointment of Commissions of Enquiry, we cannot oppose it, for this is something for which we have been long aspiring. Commissions of Enquiry have been a necessity and there have been occasions when the people demanded Commissions to enquire into certain things and these Commissions were not appointed. When the Communist Party in Telangana were maligned, in the other House other places the leaders of that place demanded a Commission of Enquiry; but that was refused. We hope that in future when in Parliament or elsewhere any responsible person accuses any political party or anybody else, they would always see the advisability of first knowing the facts in full before going off on their sentiments.

While supporting this Commission of Enquiry Bill, I have also my apprehensions about it. Some friends have said that because this Bill is based to function on the basis of the Civil Procedure Code, therefore

unless there are Judges or some persons knowing the law, the enquiry will not be successful. There is some force in that. And that is why I cannot agree to the provision for the appointment of one-man Commission made in sub-clause (2) of clause 3 of the Bill. The Government should always see that no one-man Commission is appointed, but that you have at least three persons on the Commission. This is necessary if the Commission is to come to right conclusions after examining witnesses and studying the documents brought before it.

There is another apprehension in my mind. Unless there are members on the Commission in whom the people have confidence, they will not come forward to give their evidence on matters of public importance. In that case you will not know the real truth, however much you may arm the Commission with the wide powers. Therefore it is very necessary that you should have on the Commission only men of integrity. For this purpose, also, I feel that there should be some provision in the Bill to say that there should not be single-member Commissions, but only multi-member Commissions.

I agree with what my hon. friend Shri Naidu said on the provision contained in sub-clause (1) of clause 3 about the appointment of Commissions on a Resolution of the House of the People. But I view it from a slightly different angle. When I read this clause I thought that perhaps this provision had been made because the House of the People sits for longer periods and so all important matters will be coming before that House and so they may have the power to appoint Commissions of Enquiry. There might be other reasons also for providing that the House of the People should pass the Resolution appointing such a Commission. But, then, Sir why should not the same power and privilege be extended to the Upper House although it sits for a fewer number of days? I feel the Law Minister, and since the Home Minister has also come, he also will agree to make a provision that a Resolution of the Council of States also, if it comes

from this Body, will guide the Government in the appointment of a Commission. I am not saying that our demands are satisfied, and therefore, we have not to look for the other people. I feel, Sir, the same privilege should be extended also to the Legislative Councils of the different States wherever they are. The provision here is that the House of the People and Legislative Assemblies, by moving a Resolution will ask the Government to appoint a Commission and I would like that the hon. the Home Minister, after consulting the Law Minister and the Defence Minister—they are combining their heads together—should bring in some amendment even from their side to include the Council of States and the Legislative Councils, wherever they may in clause 3(1).

Then, Sir, my last submission. I do not find any provision to say the findings of the Commission will be published or not. If Government leaves it as has been provided in this Bill, I think that is not sufficient. That is also the view of those who are supporting. Otherwise, a Commission may make enquiries, produce documents which will be in the hands of the Government and they may or may not release them. This may leave them with sufficient authority as not to take the House or Houses into confidence as to the steps they have taken on the report of the Commission. They will also not inform the House whether the recommendations of the Commission have been implemented; if not, why they have not been implemented? The Houses have a right to know such things and there ought to have been some provision with respect to that in this Bill itself. The Bill falls short of such provisions and, therefore, I feel that the Bill is defective to that extent. I request the Law Minister to consider the question of amending clause 3 (1) and also clause 3 (2) by removing the provision of appointment of one-member Commission and substituting a provision for the appointment of a Commission consisting of more than one member, possibly a three-member Commission. For some other provisions that cannot be

[Shri B. Rath.] added here and now, Government could give an assurance that the reports of Commission, whenever they are appointed, will not be withheld if they are inconvenient to them—in some cases they are inconvenient,—and the report and the action taken on the report will be made public.

MR. DEPUTY CHAIRMAN : The Law Minister.

sft ffit Ttt (3-ftt 5T%^T) :

*[SHRI T. PANDE (Uttar Pradesh) : I want to say something.]

MR. DEPUTY CHAIRMAN : I have called the Minister to reply.

SHRI C. C. BISWAS : I will first deal with my friend, Mr. Bhupesh Gupta. I heard from him a most reasonable speech today.

SHRI B. RATH : Because you h&ve never heard him.

SHRI C. C. BISWAS : I had the honour of hearing many of his speeches, but I found him in a very reasonable frame of mind to-day, and I sympathise with the points which he placed before the House. He does not object to the principle of the Bill. He does not object to the main provisions of the Bill, but, generally, he says that there should have been more imagination in Government in framing this enactment, ^n what respects Government have been less imaginative than they should have been, I do not quite follow. Is it lack of imagination to say that the Commission must be constituted with certain powers ? His grievance was that the personnel of the Commission was not indicated in the Bill. Sir, that betrays an utter lack of confidence in Government. I suppose if he could trust Government to appoint a Commission he must equally trust them to appoint the best men available as members of that Commission. If he thought that they cannot be trusted, they cannot be trusted even for the purposes of appointing Commissions or Committees of Enquiry. Will my hon. friend cite any instance where Government have appointed persons En flish translation.

[to Commissions or Committees of J Enquiry, who are not competent and 1 of a thoroughly representative character ? The Commissions which are contemplated under this Bill will be practically fact-finding bodies and not for the purposes of making recommendations. That is the main duty which will be entrusted to these Commissions, and there is hardly any occasion, when a Commission is appointed for such a purpose for showing discrimination or partiality. A fact is a fact whether it is investigated by A or B or C. Facts speak for themselves. The Commissions have only got to collect the facts, marshal them, arrange them in proper order and place them in a clear cogent and concise form before the authorities. Action has to be taken by the authorities upon a consideration of these facts which are placed before them as a result of investigation by the Commission. So, when that is the position, what does it matter whether a person professing the Communist faith or professing any other faith is appointed ? It makes no difference, so far as I am concerned and so far as I can see. It may be accepted that only men of public spirit, who are anxious and willing toco-operate with Government and prepared to render public service, will be put there. Also, people who are interested in the particular question under enquiry or people who may be expected to take an interest in the matter, will be included. From that point of view, I venture to suggest that the hon. Members of the House need not have any apprehensions that Government will appoint a Committee which will not inspire public confidence.

After all what is it that is wanted of them ? The Government want these men to assist them to come to some conclusions which will inspire public confidence. They would not start with something which would place the public against them. Therefore I would say, Sir, trust the Government ; see how they act, and if they act in a way which does not commend itself to the House, the House can always make its will felt by a Resolution. But there is no use saying

in advance that the persons who will be appointed by the Government will be thoroughly unfit or disqualified to do the job ; or will not take a dispassionate view of the matter. Charges of that kind, Sir, do link justice to Government ; do little justice to the persons who will be appointed as members of the Commission. My friend Mr. Rama Rao was referring to the Press Commission that is to be appointed soon. What is the use of condemning in advance the members who will be on that Commission as people who do not deserve public confidence ? I say, wait and see. I do claim on behalf of the Government that they take great care in the selection of members. People outside do not have any idea as to what trouble Government take to get the names of suitable persons. They make enquiries here, there and everywhere. People do not know what pains Government take for the purpose of constituting a Commission of Inquiry. That is not done haphazardly. They have no desire to act as dictators. It is not by totalitarian methods that these things are done, whatever my hon. friends may think about it. That is not the position. I repeat, Sir, every care is taken in constituting a Commission of Inquiry, to see that people of the right type are put in there. So I can assure my hon. friend Mr. Bhupesh D's Gupta that he need have no apprehensions.

SHRI B. GUPTA : Please delete 'Das' from my name.

SHRI C. C. BISWAS : But did you not say something about the personnel of the Commission ?

SHRI B. RATH : The point is, Sir, the hon. Minister referred to my friend as Bhupesh D's Gupta. It is not his name ; he is only Bhupesh Gupta.

SHRI C. C. BISWAS : I ought to have known better; I apologise to you. The fact is, just before I came here I was writing a letter to one Das Gupta and that is why Das Gupta stuck in my memory.

Then, Sir, I come to the other question which was discussed at great length by one of my friends, and that is the question of a Resolution being passed by the House of the People and not by the Council of States, to compel Government to appoint a Commission of Inquiry. The answer is very short. Let me say at once that there is no intention to slight the Council of States—nothing of that sort. It would have been quite sufficient if it was merely provided that Government—either the Central Government or the State Government—might appoint a Commission of Inquiry on a matter of public importance. The Bill might have stopped there, but then it was thought that the additional provision should be there. In the Bill as originally drawn up there was no reference to the House of the People or any other House. Power was given only to Government.

SHRI RAJAGOPAL NAIDU: No, Sir. It is there.

SHRI C. C. BISWAS : I do not refer to the Bill as introduced in the House of the People. I refer to an even earlier stage. In the Bill as introduced in the House of the People there was reference to a Resolution being passed by the House of the People. But earlier than that, the original idea was to leave it entirely to the Government. But then it was felt by the Government that possibly the House of the People should be given a voice in this matter—a determining voice in the matter—instead of leaving it entirely to the Executive. The Executive themselves thought that they should allow the representatives of the people to have a say. If on a matter of public importance the representatives of the people think that a Commission ought to be appointed, they can pass a Resolution to that effect and that Resolution shall be binding on Government. Now, look at the wording of clause 3 : "The appropriate Government *may*, if it is of opinion, that it is necessary so to do, and *shall*, if a Resolution in this behalf is passed by the House of the People appoint a Commission..... " In other words, if there is a Resolution

f Shri C. C. Biswas.] passed by the House of the People, that is mandatory. It is a direction to Government to appoint a Commission and Government cannot say, 'no'. So that was inserted on purpose. But the question is whether the same power should not be given to the Council of States. Unfortunately, the hands of Government are tied by the provisions of the Constitution. If you look at the matter in a dispassionate way, what are the provisions of the Constitution? There is article 75 (3) which refers to the Union Parliament, article 164(2) being the corresponding article for the State legislature. It is provided in express terms that the Council of Ministers shall be collectively responsible to the House of the People. What does that mean? I am trying to explain it as clearly as I can. If the House of the People make a demand, it is difficult, almost impossible, for the Council of Ministers to refuse to fulfil that demand. You do not find, Sir, anywhere in the Constitution any indication that the Council of Ministers shall be collectively responsible to the Parliament as a whole. In that case Government would have certainly asked for a mandate not only from the House of the People but also from the Council of States, or from both the Houses acting jointly. But that is not the position. To have therefore a mandatory provision in the matter of appointment of such a Commission included in a Bill, it is necessary that this should be done in a way which is consistent with the Constitution. We cannot say that a Resolution passed by the Council of States will be as binding as a Resolution passed by the House of the People. We are enacting a statute. The voice of the people shall be the determining voice. Well, the Constitution requires the voice of the people must be expressed by a Resolution of the House of the People. No reference is made to the Council of States.

SHRI M. C. SHAH (Bombay) : May I ask, Sir,.....

Shri C. C. BISWAS : I maybe

permitted to go on. After I finish you may put your question.

So, nowhere in the Constitution is it said that the Council of States will have a voice in this matter. That explains why, Sir, although there was this desire on the part of Government to ascertain the wishes of the representatives of the people in this matter, they could only mention the House of the People in the Bill. There is no question of excluding the Council of States for the sake of excluding it. It is always open to the Council of States to pass any Resolution. Suppose there is a matter of urgent public importance regarding which the House of the People has not yet taken action, there is nothing to prevent the Council of States from passing a Resolution, and if that is done, it will be focussing attention on that particular matter, and the House of the People will be only too glad to take it up—to take the clue from the Council of States. There is no question of any discrimination against the Council of States and in favour of the House of the People. The main question is whether you want to get the thing done. Suppose there is at present a matter of public importance on which you think there should be a Commission of Inquiry appointed forthwith. Government have not taken action on their own. It is open to the Council of States to pass a Resolution on that. If the matter is really important, you can take it from me that the House of the People will take it up at once. They will say: "Here are powers given to us to compel Government to take action. Unfortunately, under the law the Council of States cannot pass a Resolution which will be binding on the Government. We have got that power and we shall do it for them." And the thing will be done that way. Whether you want that thing done or whether you want just to satisfy your *amour-propre*—that is the whole point. In England, Tribunals of Inquiry are appointed by Resolution of both Houses. Quite true. But then such a Resolution is not of a

binding character. The Government is not bound to carry out the Resolution. Here, on the other hand, the Bill is providing, consistently with the Constitution, that at least one of the Houses of Parliament may by Resolution compel the Government to take action. Which is better—a power like this, or a power just to pass a Resolution which Government will be at liberty to follow or not to follow? Which is better? Will you have a clause in a permissive form? "Government, on a Resolution passed by either House or both

Houses, *may* take action"do you want that? Or do you want "*shall* take action". And if it is "shall take action", is it not much better that, if it is possible, at least one House should have the power to compel the Government in the matter? Let that be done, rather than taking up an attitude where no mandatory direction can be given at all and everything has to be left to Government. That is the plain answer. It is not a question of superseding the Council of States or showing any disrespect to the Council of States. Nothing of the kind. And I can give this assurance on the floor of the House, that if there is a Resolution passed by the Council of States, Government will take that Resolution into their consideration with the utmost respect. And, Sir, this is not such a matter that Government will be unwilling to take action. The Council of States may be depended upon to pass a Resolution which will be reasonable, which will be sound, and which will really require action by way of appointment of a Committee. Why do hon. Members assume that Government will not take action upon such a Resolution? But when it comes to a question of inserting a provision in a Statute, it is very necessary that that must be consistent with the Constitution. Whether hon. Members are satisfied with the Constitution or not, is a matter which it is not for me to go into. We have got to accept the Constitution, with all its defects and imperfections. So long as it is there, you have got to follow it. If you follow that, there can be no room for including the Council of States in this particular clause. 31
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DR. RADHA KUMUD MOOKERJI
(Nominated) : Why should we be consulted at all in this matter, since we are not in the picture?

SHRI C. C. BISWAS : You say that the Government, when it chooses to act *suo motu*, must wait till both I Houses of Parliament are consulted. Is that a practical way of doing things? After all, what is the important thing that is being done? Appointing a few men, or one man, to be a Committee for the purpose of finding out certain facts. If the House so desires, at the time the report is made, or even during the proceedings of the Commission, it can pass a Resolution, so long as it does not constitute contempt of court, because under this Act all proceedings of such Commission of Inquiry are entitled to the same protection as proceedings of a court of law in the matter of contempt. As I said, it is not such a momentous event that unless there is a Resolution passed by both Houses, unless both Houses are formally consulted, no action ought to be taken or can be taken.

SHRI B. B. SHARMA (Uttar Pradesh) : The question has not been answered : If we are to have no voice, if we have no power, in the matter of asking the Government to appoint a Commission, then why has the hon. Minister placed the question before us? Why is our opinion required at this stage?

SHRI C. C. BISWAS : Because the Constitution requires it. A Bill cannot be passed by one House only. It must receive the concurrence of both Houses. That is why it is before this House. So far as the Bill is concerned, the House may deal with it in any way it likes. It can introduce any amendment. If it is accepted, it will form part of the Bill and it **will** go back to the other House with the amendment. That is the procedure. It is laid down in the Constitution. What we have to see is that the provision that is made in the Bill is what the Constitution permits, and nothing more.

SHRI V. K. DHAGE (Hyderabad) : Is this House competent to pass any Resolution ? If the House is entitled to pass a Resolution, what happens to that Resolution ? It may be with regard to the appointment of a Commission to inquire into certain matters— independent of this Bill being passed. What happens ?

MR. DEPUTY CHAIRMAN : Government may or may not take action.

SHRI C. C. BISWAS : It is open to the Council today to pass any Resolution on any subject of public importance. Whether Government will appoint a Committee in pursuance of such a Resolution depends on Government; whereas if a Resolution is passed by the House of the People, it is binding on Government. Government cannot refuse to take action.

SHRI H. P. SAKSENA (Uttar Pradesh) : That shows their superiority.

SHRI C. C. BISWAS : I have in the last few minutes explained why the House of the People has been mentioned, and not the Council of States. It is for hon. Members either to accept the explanation or not to accept it. I cannot add to what I have said. That is the Constitutional position, and I have explained that position.

SHRI B. RATH : The Constitution provides that the Ministers are responsible to the Lower House, and therefore they have made a provision in clause 3 of this Bill that if the Lower House passes a Resolution, it will be binding on the Government. But I do not think the Constitution at all prohibits the making of a provision in this Bill that if the Council of States passes a Resolution, then also it is binding on the Government and they must appoint a Commission. There is no such prohibitory provision in the Constitution.

SHRI C. C. BISWAS : I thought the matter was very simple and could

be easily understood. When it is said that the Council of Ministers shall be responsible to the House of the People, it means that if the House of the People gives a mandate, the Council of Ministers cannot defy it except at their own cost. In other avords, the House of the People can bring a vote of censure against the Council of Ministers. From that point of view the Council of Ministers is bound by a Resolution of the House of the People. That is not the position so far as the Council of States is concerned. That is the Constitutional position. Whether it is right or whether it is wrong—that is another matter. We are not concerned with it here. That is why I say that this provision has been made here with the idea of associating popular representatives with Government in this matter

SOME HON. MEMBERS : We are also popular representatives

SHRI C. C. BISWAS : But it was not possible for Government, as I have explained, to associate both Houses in the matter. Therefore, rather than not associate any, they decided to associate the House of the People, whose voice was in effect binding on the Government. Whether the argument is acceptable, that is entirely for hon. Members to decide for themselves. I can only put my point of view. I cannot force anybody to accept it. Unlike the House of the People which can force Government to act on their decision, I cannot ask my hon. friends to accept my views.

SHRI M. L. PURI (Punjab) : What is the hon. Minister's constitutional objection to the inclusion of three simple words "Council of States". What is his personal objection ?

SHRI C. C. BISWAS : It is not a question of my personal views. As a Member of the Council of States, why should I have a personal view which goes against the Council of States ? But, as I said, only the House of the People had to be mentioned in this Bill because of the Con-

stitution. I have nothing more to add. What h the use of repeating every time I am interrupted?

DR. RADHA KUMUD MOOKER-JI : Sir, the Law Minister proposes to confine this Bill absolutely to the House of the People and therefore we would not at all be figuring in the picture.

SHRI C. C. BISWAS : That is a matter entirely for the House. The Bill is before the House. If the House so wish they may not look at it. I am here before the House and the House will take its own decision. This Bill has got to be considered, it is being considered. The motion for consideration is there and if it is accepted, the House will consider it. If it is thrown out, the House will not consider it. What the legal consequences would be, that is entirely a different matter. But why blame the Law Minister ? (*Interruptions*).

MR. DEPUTY CHAIRMAN : Order, order. Let the hon. Minister finish his speech. Then if there are any questions, you can ask.

SHRI C. C. BISWAS : Sir, it is no use blaming the Law Minister. He is a spokesman of the Government. Action has been taken for some reason. That might be a good reason or that might not be a good reason. That is an entirely different matter. But I am trying to explain why we made this provision in the Bill. That is all.

A reference was made to the practice in England. Here of course there is no objection to following the British precedent but there it is not said that Government shall be bound to appoint a Tribunal whenever there is a joint Resolution of both Houses. This is how that particular matter stands.

Then, Sir, the question of privilege was raised. A reference was made to clause 5(2) and it was asked as to what was the scope and extent of the privilege. Of course the privilege which is referred to here is privilege which may be claimed under any law for the time being in force. Sir, I am not here as a legal adviser to

the Members of the House who may have difficult questions of their own.

Mr. Rama Rao was speaking with reference to the coming Press Commission. The question is, "what is the information that can be demanded or asked for". I do not know whethet it will be inconvenient for some people to disclose any information. We do not know. All that this Bill says is that the power which is proposed to be given to some of these Commissions—not to all, but to selected Commissions—will include a power to require any person to furnish any information which in the opinion of the Committee may be useful for or relevant to the subject matter of enquiry. There are these conditions which limit the discretion of the Commission to ask for the information. Information can be asked for if it is useful for or relevant to the subject matter of the enquiry.

Then, Sir, if that information is asked for, the person from whom it is asked shall be bound to furnish that information. It will not do, as it will not do for a witness in a civil court, to say as soon as he is asked something : "I will not answer the question". There is a section in the Indian Penal Code that you cannot refuse to answer a question which is put to you by the court. Section 179 of the Indian Penal Code says :

" Whoever being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant in the exercise of the legal powers of such public servant, shall be punishable with simple imprisonment"

So a person is bound to answer a question. If he does not answer a question, which he is not justified in not answering, then he is guilty of the penal offence and is punishable under this section. So, Sir, it is obligatory on a perron to answer a question which may be put to him by a court. But he may claim privilege under the provisions which are to be found in the Indian Evidence Act

[Shri C. C. Biswas.] regarding questions which a person may or may not answer. Chapter IX of the Indian Evidence Act deals with the circumstances in which or the grounds on which a witness may not answer a question which he may be asked. Well, if there are any specific questions which my hon. friend has in view, it will be necessary for him to consult a legal adviser, take his advice whether the particular question comes within the protection of any of these sections. I don't know, Sir, but there may be other statutes also which may contain similar provisions regarding privilege. That is a different matter. So this Bill, Sir, gives protection to the person who is called upon to furnish information only so far as he is entitled to claim privilege under any existing law. That is the position.

Then, Sir, about the powers of search and seizure of books of account and documents, the Bill says that :

" The Commission or any officer, not below the rank of a gazetted officer, specially authorised in this behalf by the Commission may enter any building or place...may seize any such books of account or documents"

The mention of 'gazetted officer' in place of 'police officer' need not be objected to. Whoever the officer is, he must be authorised by the Commission in th's behalf. Now if you do not trust the Commission, then of course everything vanishes. You trust the Commission to make this inquiry but you will not trust the Commission to depute somebody to go and make a search ! If you start with the presumption that members of the Commission are interested in suppressing truth, then of course we are nowhere. The Commission is nowhere. You must not, Sir, forget that the Commission is given power by clause 8 to make rules for regulating its procedure. Many things may be included in these rules but that will be done by the Commission. You must trust the Commission. The powers taken by Government are first the power, of appointing a Committee. Then (certain powers are given to the Commission itself. Those powers must belong to every Com-

mission under this Act. Then power is taken to give certain additional powers to a Commission in particular cases, not in all cases.

Then, Sir, so far as the statements made by witnesses before the Commission are concerned, they are fully protected. No action in any court of law against any person can be taken for giving such statements except where he makes a false statement. Proceedings can be taken for giving false evidence. If he gives any true statement, he will not be exposed to the risk of any proceedings for defamation or anything of the kind. He is fully protected.

The question was raised about trade secrets. What if trade secrets are divulged or required to be divulged by the Commission ? If a member of the Commission does disclose these secrets to others, well it will be a case of "If the salt itself should lose its savour, with which shall it be salted ?" We are proceeding on the assumption— and I have got every right to assume— that the members of the Commission will be honourable men and will appreciate and realise the responsibilities of their position. I hope they will not be men who would disclose the secrets which come into their possession in the course of their official duties. You ask, "Why not require them to be put on oath ?" If a member of a Commission of Enquiry cannot be trusted, possibly a day may come—and I hope that day will not come so long as the present Government is in power ; it may come when other Governments are in power— when even members of a Commission of Enquiry will have to be put on oath. But if they are not people who can be trusted, merely putting them on oath will not help very much. It all depends upon the men you take on the Commission of Enquiry. You take it that none but the very best will be taken, and they can be depended upon to keep those secrets to themselves, but I don't for one moment support the view that any person who has any secrets may not be required to disclose those secrets.

They may have to. Supposing there is an investigation regarding a matter which requires the disclosure of secrets, do you mean to say that the Commission will not be entitled to call for information regarding these secrets? How is the enquiry to be conducted if this is to be excluded? Merely because a secret is a very valuable thing to a particular man that is no reason why, if he has done something with the help of that secret, which he ought not to have done, he should be allowed to retain that secret for his own purposes. I cannot agree that a secret may not require to be divulged before the Commission, but certainly everyone has a right to demand that the Commission shall not disclose that information to others.

Then objection has been taken to clause 11, as to why these powers should be given to any other Committee of Enquiry other than a Commission appointed under this Act. This question was considered in the Select Committee. Their view was this. The powers which are given in this Bill are these. First of all, it is only as regards a matter of public importance that Government is empowered to take action and appoint a Commission, but it may be that some Committees will still be appointed by Executive Order. Should it however transpire in the course of the enquiry by such a Committee that its scope should be extended, and that the matter is such that further powers like those referred to in the Bill ought to be given, then it is no use starting *de novo* scrapping what has been done by the Committee, and re-appointing it as a Commission of Inquiry under the Act, to begin from the beginning. That will only create complications. You just say the Committee of Inquiry will be treated as a Commission of Enquiry under the Act, and any or all the powers, which it is proposed to give to a Commission of Inquiry, under this Act, should be given to this Committee of Inquiry. That is the object of this clause. It provides that a Committee of Inquiry appointed, otherwise than under the Act, i.e., by Executive Order, may be treated as a Commission of Inquiry

having all these special powers—ordinary and special. That is the provision made here.

SHRI RAMA FAO : I raised the point about the privileges of the Press.

SHRI C. C. BISWAS : Yes, he raised the question of the Press publishing the reports of the proceedings of the enquiries. That, I think, is a matter for which the Press itself must be responsible. There is the law of defamation. There is the law of slander and there are other laws, and the Press must take all these into account and decide on its own course of action. There may be enterprising newspapers who may be prepared to take risks and publish certain things. As I mentioned only yesterday, there were some vernacular papers, in Calcutta which took the risk. They were threatened, but no action has been taken. You forget that in these matters, suppose there is an enquiry against somebody for corruption. He dare not appear in the box as a plaintiff. He will be cross-examined up and down, and the scandal for the publication of which he may take action may turn out to be very much less than the bigger scandals which may come out in the cross-examination. This will keep such persons back from figuring as plaintiffs. Whether a particular newspaper ought to take courage in both to tend and publicise a thing in the interest of the public, that is entirely for that newspaper to consider and decide for itself. There are exceptions provided in the sections of the Indian Penal Code dealing with defamation. It is I think section 500. I need not discuss the provisions of these sections, and the huge body of case law that has gathered round these sections. I need only say that the exceptions are very wide and they afford protection in all foreseeable cases. The section is 499 and not section 500.

MR; DEPUTY CHAIRMAN : No, it is not necessary to quote them.

SHRI C. C. BISWAS : No, I am not going into them. The sections are there and the hon. Member can?

[Shri C. C. Biswas.] consult his lawyers about them. What was the other point he raised ?

SHRI RAMA RAO : About examining witnesses *in camera* and also victimisation.

SHRI C. C. BISWAS : Yes, as regards examining witnesses *in camera*, we have clause 7 of the Bill, and that will be a matter for the Commission to determine. They will have their rules of procedure and these will contain rules as to whether all witnesses shall be examined *in camera* or in public. That is a matter for the Commission to decide. As a matter of fact, in connection with the enquiry we had about the Calcutta Corporation, I issued a press statement that if anyone wanted to give his evidence *in camera* that will be granted to him ; and I know several witnesses—employees of the Corporation—came and gave evidence *in camera* and their confidence was strictly respected. As a matter of fact, we did not want that any employee should suffer for giving evidence against the employers. But as I said, this is a matter which the Commission has to decide.

MR. DEPUTY CHAIRMAN : Clause 8 provides for it.

SHRI C. C. BISWAS : As regards victimisation, I do not know what protection a Commission can give to the witnesses. Clause 6 says :

"No statement made by a person in the course of giving evidence before the Commission shall subject him, to, or be used against him, in any civil or criminal proceeding except a prosecution for giving false evidence by such statement".

I think that is sufficiently provided for here, provided the statement is made in reply to a question and is related to the subject-matter of the enquiry. If a person still feels that his employers might deprive him of his job, that is a matter which the Commission will have to deal with. There is no provision here.

SHRI RAMA RAO : Can't we do something ?

SHRI C. C. BISWAS : I don't know. I have not seen any statute to say that if a person makes a statement in a court and loses his job elsewhere, he should be reinstated at the cost of the Government. I have not found any provision of that kind in any of the statutes. That may be very desirable, but unfortunately, this Bill cannot accept that. So, the Bill as drawn up is as good as such a Bill could ever be and I commend it, confidently for the acceptance of the House.

SHRI J. R. KAPOOR : May I enquire whether it is acceptable to the Government that when a Resolution is passed by the House of the People, it shall, thereafter be placed on the Table of the Council of States and an opportunity given to this House to consider that Resolution on a motion moved by a Minister of the Central Government ?

SHRI C. C. BISWAS : All that I can say is this. If a Resolution is passed by the House of the People asking Government to appoint a Commission, it may be placed on the Table in the Council of States. There is no objection to that, but, it is, probably asking me too much that I should bring forward a substantive motion in order to get the concurrence of the House to the Resolution that has been passed by the House of the People. It is not provided in the statute, and that is exactly what we have been discussing. We cannot expect Government to take any action which will be tantamount really to disregarding the provisions of the statute. But, I am quite sure that if a Resolution is placed on the Table of the House, there is nothing, to prevent any Member of this House from bringing forward a Resolution. That Resolution, if passed, will certainly strengthen Government's hands all the more. The difficulty will arise only when the Resolution runs counter to that passed by the other House. In such a case the Resolution passed by the other House would be binding upon Government, and not the *om* passed in this House.

SHRI J. R. KAPOOR : I have been misunderstood. My suggestion was not that the Minister should bring forward a Resolution seeking the concurrence of the House. My only suggestion was that the Resolution, as passed by the House of the People, may be placed on the Table of the House and the Minister of the Central Government should give us an opportunity of discussing that on a motion to be moved by him. This is only to enable us to express our views on the Resolution and not to adopt or reject it.

SHRI RAJAGOPAL NAIDU :
Why this compromise ?

SHRI J. R. KAPOOR : I am not compromising. I only want to know the reactions of the hon. the Law Minister.

SHRI C. C. BISWAS : All that I need say is that the initiative for this must come from the hon. Members of this House.

(Shri T. Pande stood up)

MR. DEPUTY CHAIRMAN :
Enough has been said on this point. Have you got any enquiries to make ?

SHRI T. PANDE : I want to speak, Sir.

MR. DEPUTY CHAIRMAN :
No, no speech.

SHRI RAMA RAO : I do not understand the legal points. I am putting a blunt question because this is uppermost in our minds. What I want to know is this. You are appointing Statutory Commissions and say that they will observe the rules laid down in the Civil Procedure Code. Does the Civil Procedure Code give any protection to witnesses, provided the evidence tendered is in good faith and honest ? That is what I want to know.

MR. DEPUTY CHAIRMAN : You have to look into the Civil Procedure Code.

SHRI C. C. BISWAS : The Civil Procedure Code does not give any such protection. The only protection is that given in clause 6.

SHRI C. G. MISRA : On a point of information, Sir. Sub-clause (2) of clause 4 says "The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof. If there is more than one member, the second member may act if one member is absent." What will be the position if there is only one ?

SHRI C. C. BISWAS : One-man Committee—that is not unusual. We do find one-man Committees.

SHRI C. G. MISRA : If that member is absent, then the Commission cannot function, is it not ?

MR. DEPUTY CHAIRMAN : Order, order. I am putting the motion to the House.

The question is :

That the Bill to provide for the appointment of Commissions of Inquiry and for vesting such Commissions with certain powers, as passed by the House of the People, be taken into consideration.

The motion was adopted.

MR. DEPUTY CHAIRMAN : We will now take up the clause by clause consideration of the Bill.

Clause 2 was added to the Bill.

Clause 3 : Mr. Rajagopal Naidu, are you moving your amendments ?

SHRI RAJAGOPAL NAIDU :
Yes, Sir. I am moving my amendment. Sir,

MR. DEPUTY CHAIRMAN : I think you have spoken sufficiently on this point. I suggest you move the amendment.

SHRI RAJAGOPAL NAIDU : I should like to say a few words.

MR. DEPUTY CHAIRMAN : If there are any fresh points, you may make. I suggest you first move the amendment.

SHRI RAJAGOPAL NAIDU : I have already moved that, Sir. Anyway I will read out the amendment.

That in page 1, line 25, for the words-----

MR. DEPUTY CHAIRMAN : Which is the amendment that the hon. Member is moving ? There are two amendments in his name to clause 3.

SHRI RAJAGOPAL NAIDU : I am moving the first amendment, Sir.

MR. DEPUTY CHAIRMAN : Then are you not moving the second one ?

SHRI RAJAGOPAL NAIDU : It will depend on the result of the first, Sir.

Sir, I move :

That in page 1, line 25, for the words 'the House of the People' the words 'either House of Parliament' be substituted.

Now this is my amendment, Sir. I have already said that the Royal Commission Act of England provides for a Resolution being passed by both the Houses of Parliament. I had also said how a Committee of Inquiry is constituted in England. It is constituted by a Resolution of either House of the Parliament. Either House may set up a Committee for Inquiry into any matter of public importance and any Resolution of such an inquiry may be an expression of no confidence in the Government of the day. I had also said that the Tribunals Enquiry Act provides that 'both Houses of Parliament will have to pass a Resolution for the appointment of such Inquiry Committees. Now there is absolutely no provision anywhere in our Constitution that it is only the House of the People that has power to pass such Resolutions and that

the Council of States has no such power. The hon. Minister was saying that if this power is given to the Council of States to pass a Resolution of this sort, it will be inconsistent with the provisions of the Constitution. Now I would straightaway ask the hon. Minister to lay his finger anywhere in the Constitution and show any provision which says that the Council of States will have no power to pass such a Resolution. On the contrary we find a provision that if there is no such provision in the Constitution, we have to follow the procedure of the House of Commons in England. Now, there is no such provision in our Constitution as to whether this Resolution is to be passed by the House of the People or by the Council of the States and in the absence of that I would request the hon. Minister to follow the procedure that is followed in England in the House of Lords and the House of the Commons.

Now the hon. Minister quoted article 75(3) of the Constitution. I was astonished as to how the hon. Minister can say that he is responsible only to the House of the People and not to the Council of States. I was really surprised that that reply has come from the hon. Minister. Article 75(3) says that the Council of Ministers shall be collectively responsible to the House of the People. Does that mean that the Minister individually is not responsible to the Council of States ? Apart from that, article 75(2) says that the Ministers shall hold office during the pleasure of the President. Does it follow that the Minister will ignore both the Houses of Parliament and say that he is responsible only to the President ?

SHRI C. C. BISWAS : Why argue on a statement which I have not made ?

SHRI RAJAGOPAL NAIDU : Then, Sir, I shall proceed with *the* other arguments. Probably there is some idea uppermost in the hon. Minister's mind that if this amendment is accepted, it will have to go back to the other House ; that means that the proceedings will be delayed

SHRI C. C. BISWAS : No, that is not in my mind.

SHRI RAJAGOPAL NAIDU : I am glad. Another feature is that not even one hon. Member—not even a Member belonging to the Congress Party—has said anything against my amendment. This amendment should be accepted with one voice.

AN HON. MEMBER: No.

SHRI RAJAGOPAL NAIDU : At any rate, those Members who spoke have not spoken against my amendment.

Sir, we are now concerned with the privilege of this House. As long as there is no specific provision in the Constitution that no such Resolution can be passed by the Council of States, my interpretation would be that this House is competent to pass such a Resolution. After all, what is the use of a Second Chamber ? Has it no power ? If that is so, why not have the Constitution amended and bid goodbye to the Council of States ? Certainly we cannot derogate ourselves to this position.

Lastly, Sir, we have got Members with exceptional knowledge and experience. Certainly I would appeal to the Minister to see that this amendment is accepted. Prestige should not stand in the way.

MR. DEPUTY CHAIRMAN : The hon. Member Mr. Kapoor has an amendment.

SHRI J. R. KAPOOR : I am not moving it, but I would like to speak on the clause.

MR. DEPUTY CHAIRMAN : The hon. Member has already spoken on the same point.

SHRI J. R. KAPOOR : Not on this clause.

MR. DEPUTY CHAIRMAN : He should be brief. No repetitions.

SHRI J. R. KAPOOR : No repetitions at all. Sir, after having heard the hon. the Law Minister on the subject, and having given some more thought to the subject, I have come to the conclusion that it is absolutely improper and undemocratic to insist that either this House or even the other House should have the right to pass a Resolution which automatically thereafter should have binding effect on the Government. I make this submission in all seriousness for the earnest consideration of the Government. I do not think anywhere in any democratic country it is open to any Parliament to pass a Resolution which would automatically become binding on the Government. It is absolutely undemocratic. The Government is no doubt responsible to Parliament.

MR. DEPUTY CHAIRMAN : Is the hon. Member supporting the amendment or opposing it ?

SHRI J. R. KAPOOR : I am speaking on clause 3 as it is worded. I am speaking on the clause, not on the amendment. I said I did not want to move my amendment.

MR. DEPUTY CHAIRMAN : The amendment of the hon. Member Mr. Naidu is before the House.

PROF. G. RANGA (Madras) : Amendment as well as the clause.

MR. DEPUTY CHAIRMAN : Be brief.

SHRI J. R. KAPOOR : I am putting it, Sir, very seriously for the consideration of the Government that this is a very undemocratic way of doing things. No doubt, the Government is responsible to the Legislature, but then a Resolution by a Legislature must be passed only in a recommendatory manner. Now, may I enquire of the hon. the Law Minister whether it is open to the House of the People, apart from the provisions of this Bill, to any non-official Member of that House, to bring forward a Resolution that he was of such and such opinion and calling upon the Government to do such and such a thing and making it obligatory

[Shri J. R. Kapoor.]
 ©n the Government to accept it ? It should always be open to the Government to act or not to act up to the Resolution. Well, if a Resolution is passed and the Government does not agree to it, then of course, it is open to the Legislature to throw out the Government, but then the Government should never bind itself by any specific law to accept eny Resolution passed by the Parliament. If the Government is not agreeable to act according to a Resolution, it should be open to it not to act according to it and if it does not tnd if such an omission on the part of the Government is not to the liking of the Legislature, it is open to them to bring forward a motion of no-confidence to throw out the Government, but I have not known, Sir, of anywhere in the world—of course my knowledge is limited and I speak subject to correction; I must bow to the superior knowledge of my hon. friend the Law Minister and the Leader of the House.....

SHRI C. C. BISWAS : The Law Minister does not claim that knowledge.

SHRI J. R. KAPOOR : If the Law Minister does not claim that knowledge, I very much wish then, Sir, that this subject should be gone into thoroughly before we commit ourselves to this procedure. I do seriously contend that I have not come across any provision in any law in any part of the world whereby the Government binds itself specifically to the effect that a Resolution passed by the legislature shall be binding on it. I am making this suggestion in the interests of the Government. It is in the interests of democracy, in the interests of the proper functioning of democratic government. Such a thing should not be allowed to happen here. This is a point, Sir, of much wider importance. This is not limited to the provisions of this Bill. That is my earnest submission Sir, and I do feel, having given more thought to the subject, that not only should we not

I have the right to pass a Resolution i which will be automatically binding, but even the House of the People should not have that right. We should have a right to pass a Resolution only of a recommendatory nature and not of a binding nature at all.

Another aspect which is a very important aspect is this : I would once again, even at the risk of repeating

MR. DEPUTY CHAIRMAN : No repetition.

SHRI J. R. KAPOOR : Even if I run the risk of repeating.

MR. DEPUTY CHAIRMAN: I am saying no repetition.

SHRI J. R. KAPOOR : There is another aspect of the matter and that is' this : Even if these words " and shall, if a resolution in this behalf is passed by the House of the People or, as the I case may be,....." and so on are deleted, the clause would simply stand, " The Appropriate Government may, if it is of opinion that it is necessary so to do, appoint a Commission of Enquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notifica-tion, and the Commission so appointed shall make the inquiry and perform the functions accordingly : " Now the question arises as to whether, if we have this clause only in this limited form, it will be open to the House of the People or to this House to pass a Resolution or to appoint a Committee of Inquiry or not. So far as the question of Resolution is concerned, admittedly every House has a right to pass any Resolution it likes, and apart from that I think it is the inherent right of each House of Parliament to appoint a Committee on its own motion. This is the inherent right of both Houses of Parliament. I am strengthened in this view by what is contained in this book "Constitutional Law" by

E. C. S. Wade and G. Godfrey Phillips, where we find that :—

" Either House may set up a Committee of Inquiry into any matter of public importance, and a resolution to set up such an inquiry...." and £0 on and so forth.

My submission, Sir, is that so far as the appointment of a Committee or a Commission of Inquiry is concerned, it is the inherent right of every House of Parliament to appoint such a Committee of Inquiry or Commission, and while appointing such a Committee or Commission of Inquiry, it can lay down that such and such shall be the procedure of that Committee or Commission and such and such shall be its powers. Even now, we know, Sir, that the other House has appointed a Committee of Privileges. It has authorised that Committee of Privileges to call witnesses and to examine them. Similarly, Sir, it is always open to that House and to this House also, under our inherent right to appoint a Commission or Committee of Inquiry on any particular occasion, vesting that Committee or Commission with such powers as we consider proper to give to it. These are the two points that I want to make, but my first point, I submit, is one which must be very carefully looked into, because a precedent like this has far-reaching consequences.

PROF. G. RANGA : Mr. Deputy Chairman, I fail to understand why my hon. friend the Law Minister feels and talks in such strong terms against the suggestion that is made in this amendment. After all the Constitution has placed this House under certain specified disabilities when compared to the House of the People—that is in regard to the Money Bills. In regard to everything *else*, the Constitution seeks to treat both the Houses on a par and makes no distinction at all. I should correct myself to this extent that the Constitution also says that the Ministry should be responsible to the House of the People. Subject to these two disabilities, in regard to everything else, these two Houses are supposed to have and are given equal powers. Why is it that my hon. friend had got into a bit of a temper and said that he was responsible only to the

House and therefore it was not incumbent on him.....

SHRI C. C. BISWAS : On a point of personal explanation. My friend is wholly wrong. As a Law Minister it is my duty to put the matter before the House as I understand the Constitution. I must explain the Constitutional position and it is not a question of my having an animus against this House. I am a Member of this Council. I cannot disclose to my hon. friend my attitude in regard to parity of the two Houses in regard to Bills and other matters but that is another matter. Here I am explaining exactly how the matter stands in the Constitution. If that goes against this House, I am not responsible. But it is my duty to explain it.

SHRI RAJAGOPAL NAIDU : It is a painful duty.

PROF. G. RANGA: Painful or not, he has given his explanation and we cannot say that it is not satisfactory because it is in conformity with the Constitution. He is responsible to that House both individually and also with his colleagues. In regard to all other things, is there any provision anywhere justifying the kind of discrimination that Government has sought and seeks to make or create by a Statute like this and why should they go out of their way to create a precedent like this? Where is the guarantee that hereafter, on various other occasions, for similar things, Government might not come forward with similar propositions where in these two Houses will be placed in this very unhappy position? We have had this experience recently when the motion for Joint Select Committee was made. It could be made here, we were told, it could be initiated in the other House too. But the other House anyhow, whatever it might be, has to concur in it before that Joint Select Committee comes into existence. Now, is it possible for Government to contemplate the possibility of getting a Resolution like this passed in that House if they wished to initiate it there, bring it over here and get it passed here?

[Prof. G. Ranga.] I am sure Mr. J. R. Kapoor must have advanced the view that in both the Houses the Government of the day is bound to have a majority. I am conscious of two special features of this House. One is that the Members of this House are not elected by the direct vote of the people. Therefore it is quite possible that the political colour of this House might be different from that of the other House. It is quite possible. The other one is that there is a nominated element in this House. It may not be quite clear in future how this nominated element is likely to act in this House, whether it would act in favour of the Government or against the Government. It is quite a considerable number—I think about 12. I see that there is considerable force in that. It is their will and pleasure but in regard to all other Members, they have to be elected and they are being elected by proportional representation by all the M. L. As, in the different States. We expect that the people who wish to give a majority vote in favour of a particular leadership at the Centre would also generally give a similar vote of confidence to those who follow that leadership in almost all the States. But it may not happen. In that case, of course there will be a certain amount of difficulty. But, is that again to be such an insuperable difficulty? That is what I want the Government to consider. Let them give as much thought as they possibly can to this particular matter and see whether they cannot, considering all these things, possibly accede to the feelings and the request of this House that they should not make this invidious distinction as it appears to us and they should on the other hand agree to treat these two Houses on a par. Then there is one other point that has been advanced by my hon. friend Mr. J. R. Kapoor. But I was not quite sure, when he was making that one, whether he was supporting it or later on he was negating it. He said either of these Houses has an inherent right to appoint a Commission. If it has an inherent right, then Government has no option at all. But my

hon. friend rightly wants the Government to have an option.

SHRI J. R. KAPOOR : My point was we have a right to appoint a Commission but neither this House nor the other House has the right to compel the Government to appoint a Commission.

PROF. G. RANGA : I stand corrected. I agree with him on one point, that is, although both the Houses ask for the appointment of a Commission, we should not insist that it should become absolutely binding on the Government. Now, there is some history behind it. In those days when we were not free, we used to insist that the Government should always accept our Resolution but nevertheless the Government would not accept that because it used to say that it would not forfeit its right to decide what is best in the interests as it had considered at that time, of the Government and of the State.

Now that we have a responsible Government, it is not all right if we were to ask the Government to accept the advice given by Shri Kapoor that they should not make it absolutely binding on the Government, but on the other hand, give a certain amount of latitude to the Government as well as to Parliament to discuss certain of these matters as and when they arise and then decide upon the appointment of the Commission in the House and later on give to Government the option whether or not to appoint that commission in the light of what might come to happen, what might take place soon after the Resolution is passed? It is not beyond all possibilities of practical politics that even within a few days after the Resolution comes to be passed in this House or the other House things might happen, a state of emergency might take place in the country sufficient to disable the Government from giving effect to such a Resolution. Therefore, I think it would not at all be derogatory to our sense of self-government in this country to give some more consideration to this matter and see whether it is not possible to drop the word "shall" and use the word "may".

SHRI J. R. KAPOOR : I say, drop the whole of it.

PROF. G. RANGA : I am putting it at the smallest. If they drop the word ' shall' and consider the rest of it, they might not be doing any violence to our conception of self-government or our conception of parity between the two Houses. Now that there has been so much heat generated over this matter, may I suggest in all seriousness....

SHRI C. C. BISWAS : No heat, all light.

PROF. G. RANGA : There is plenty of light coming from above ; let us see if we can have some light in our minds and thought. In all earnestness I would request the hon. Law Minister to be good enough to show some consideration to this House and to those who spoke on behalf of this amendment and agree to postpone the further consideration of this question till tomorrow and thus give himself and also hon. friends here a little more time; for them to consider this matter and come back again tomorrow with fresh minds. Then it is quite possible that Government might find some formula acceptable to us all.

SHRI N. GOPALASWAMI : May I just intervene with a few words ? I do not propose to go into the constitutionality of the provisions in the Bill or the different views that have been expressed as to the responsibility of a Ministry to a particular House. These have been fully dealt with by my hon. colleague and I have little to add to what he has said. I am trying now to put before the House some practical considerations, with a view to seeing whether it could not persuade itself in favour of what is provided in this particular clause,— considerations which are entirely practical in character. Now, what is it that is at the back of the minds of the Members of this House in all that they have been urging ? They want that if this House has any view as regards the appointment of a particular Commission, it should have full influence on the decision which Government might take as to whether such a Commission

should or should not be appointed. Now, the Council can have one of two views in regard to any concrete suggestion in this regard. Either it thinks that a Commission should be appointed, or it thinks that it should not be appointed. Now, let us take first a case where the Council wishes to take the initiative, that is to say, it expresses its view in the form of a Resolution moved in this House.

Let us take it that that Resolution recommends the appointment of a Commission for a particular purpose and that Resolution comes before Government. If Government accepts it then, under the first part of clause 3 it can appoint a Commission without reference even to the other House. • Suppose, on the other hand, Government is unable or refuses to accept the Resolution of the Council, what is the procedure which can be adopted for compelling Government to give effect to this Resolution? It can, according to the provisions of clause 3, be only in the direction of getting a Resolution moved in the House of the People supporting the Resolution of the Council of States which will compel Government to appoint a Commission. That is what would happen. I took the case of a particular matter in respect of which the Council wanted that measure. Now, if the Council does not want a Commission* you hardly expect a Resolution to be moved in this House to say that no Commission shall be appointed in respect of this particular matter. That is not practical sense.

Now, take the other case. Suppose the House passes a Resolution in favour of a Commission or, before taking that, I will take the contrary case. Supposing the House does not want a Commission, it cannot bring forward a Resolution saying that no Commission shall be appointed just as the Council of States cannot pass a Resolution to that effect. But, if it keeps quiet, it is open to Government to appoint a Commission without reference to either House. Assume that the House of the People wants Commission to be appointed in respect:

[Shri N. Gopaldaswami.] of a particular matter. Now, what is the position in that case? Government feels compelled to appoint a Commission and that appointment will be fhade without the Council of States having pronounced itself upon the matter. Now, you take the case of the Council of States not having pronounced itself upon that matter in the absence of a Resolution by the House of the People. The Government would then be free to appoint the Commission. But, what is the practical inconvenience that is caused by the provisions of clause 3 ? If you want to assert your way to see that whatever you say has its influence, take the bull by the horns and pass a Resolution here. Either Government accepts it or it does not. If it does not accept it, your fate hangs on the view that the House of the People might take on such a Resolution. If you are unable to get the House of the People to pass a Resolution of that sort, then you cannot influence Government at all. I have been trying to see what practical inconvenience is caused by the present provisions. There is, of course, this small modicum of difference in the connection of either House to this particular matter. That is to say, if the House of the People passes a Resolution, the Government has got to appoint a Commission, whereas in the case of the Council, if it passes a Resolution, Government is not bound to appoint a Comirission. But there are other ways in which the Government could be compelled to appoint a Commission and, after all, it is not the case of the critics of this particular clause that Government must be compelled to appoint a Commission if the Council of States wants one and the House of the People does not want. Sir, it seems to me that if you analyse the provisions in that way, there is no practical inconvenience caused to the Council in accepting the particular procedure which my hon. colleague has sponsored.

PROF. G. RANGA : *Why make any mention of either of these Houses,

when Government themselves are powerful enough to appoint a Committee or Commission on their own? They are likely to do it themselves. Why should they go to the House of the People at all?

SHRI N. GOPALASWAMI : They need not. This clause does not require them to go to the House of the People. It only says that Government may appoint a Commission on their own and if the House of the People passes a Resolution, it shall appoint a Commission.

That is all that it says. It does not compel Government to go to either House for its imprimatur for their proposal to appoint a Commission.

SHRI J. R. KAPOOR : Must Government appoint a Commiss'on evens if it feels otherwise ? That is the question. Even if the House of the People passes a Resolution, must Government necessarily appoint a Commission, if the Government feels otherwise in the matter? What shall the Government do in such a case?

SHRI N. GOPALASWAMI : I quite see your point. That provision in this particular clause is much more democratic than the one which my hon. friend tried to support during his previous speech. In his previous speech he seemed to urge the view that a Resolution should after all be recommendatory and therefore democracy requires that Government should be at liberty to accept it or to reject it. On the other hand, where you have got a House to which the Council of Ministers is collectively responsible, if it passes a Resolution, and that Resolution is by statute declared to be obligatory on the Government, then that is much more democratic than what you had tried to advocate.

SHRI J. R. KAPOOR : Is there any precedent anywhere like this ?

. SHRI N. GOPALASWAMI : I think you can find one, if you rummage. I believe my hon. colleague will support me that we can find any number

of examples in our statutes saying that Government may do so and so and if somebody else wants that it should be done, it shall do so. That is a very common thing in our statutes.

SHRI B. GUPTA : I would like to say a word or two on the constitutional implications of that amendment. I do not see, Sir, how it becomes undemocratic if the Government binds itself even to the House of the People indirectly. For instance, if it were not provided here and if the Government disregards the Resolution of the House of the People, the House of the People could have used its other powers compelling the Government to do so or even throw the Government out of office. Therefore if this Government assumes that position where it will be bound by a Resolution of the House, I do not see how it is becoming undemocratic. Therefore I cannot share the point of view * expressed by my friend there. Now, probably, he has in mind the British Constitution. Under the British Constitution the House of Commons can always invoke certain other provisions with a view to compelling Government to abide by a Resolution of the House of Commons. There is nothing in the Constitution of England which as such binds the Cabinet or the Ministry to the decision of the House of the Commons. However, I think it would be better if my hon. friend did not rigidly stick to that particular tradition.

I think that, in so far as it goes, it is more democratic than the British convention. Now, what I cannot quite appreciate—and I have my difficulties in this matter—is this. How does it affect the constitutional provision of collective responsibility of the Ministers to the House of the People? Now, assume that both Houses are mentioned in this provision. Assume that the position is that we pass a Resolution here that Government shall appoint a Commission. Suppose the Government defies it. We will have no power to compel Government. The hon. Leader of the Council made it clear that they are all responsible to I

the House of the People. That is constitutionally the correct position. Now, suppose the House of the People passes a Resolution and the Government disregards it. There is nothing in the Constitution as such preventing the Government from disregarding a particular Resolution. But Government cannot disregard such a Resolution because it knows that the constitutional position is such that the House of the People can compel the Government otherwise: it can make them resign or abide by the decision of the House. It does not follow automatically that the Government is bound to resign or is bound by the decision of this House. In the case of the House of the People it arises because there it is a question of collective responsibility and also because the House of the People has certain powers which it can invoke to force such a situation. We do not possess those powers. Therefore, I say that even if this amendment were accepted, it would only mean that the Government adopt a convention a convention which it need not necessarily follow, but a convention which, step by step, would enable us to be placed for all practical purposes on the same footing as the House of the People, as hon. Prof. Ranga pointed out. The constitutional position is not thereby in the least affected. The position as regards collective responsibility is not in the least undermined thereby. Nothing is detracted from the constitutional position that the House of the People enjoys in regard to these matters. I think the amendment can be easily accepted without making any encroachment on the Constitution or even without making the Government open to any kind of criticism that it has become undemocratic or that it is giving away to this House what belongs exclusively to the House of the People. I would ask the hon. Leader of the House to consider this point. In neither case does the Resolution bind the Government to the extent of immediate resignation. That is the point. Resignation or compulsion comes in through other ways. Therefore, I think the amend-

[Shri B. Gupta.] ment can be accepted. I agree with the suggestion- made by hon. Prof. Ranga that the Government should come tomorrow with a fresh mind, so that the matter can be discussed again. I think the Government should really consider the matter. Many things that we do here would go on creating conventions. We should try and create a convention that is in accordance with the spirit of the Constitution in so far as the Constitution tries to put both Houses on the same footing except in two matters, as has been pointed out by Prof. Ranga.

SHRI TAJAMUL HUSAIN (Bihar): Sir, the Leader of the House has explained to us that we are morally impotent so far as the Government is concerned. I need not repeat his argument, Sir, I entirely agree with it. Therefore it is absolutely use less and meaningless to put the words "the Council of States" in clause 3 along with the words " the House of the People". The two amendments that have been moved, I am supporting neither of them. My point is this that every Resolution by any Legislature is always in the form of a recommendation. It is always a request. It is never an order. Whether it is the House of the People or the Council of States or whether it is the State Assembly or the State Council it says : " That this House recommends". I have not seen anywhere in the world.....

MR. DEPUTY CHAIRMAN : Now it is not 'recommends' but 'The House is of the opinion'.

SHRI TAJAMUL HUSAIN: My point is that any Resolution moved by the House of the People is in the form of a request and not in the form of an order. But what will happen if a Resolution is passed by the House of the People ? What do the Government do ? Can they dare not to accept it ? They are bound to accept it. If they do not accept it, they will raise objections. If they do not

accept it, the House of the People can turn them out by a vote of censure. Therefore I say that although it is in the form of a request, the Resolution is binding on Govern-ent. It shall be accepted and will be accepted. The Government dare not oppose it unless it wants to go out of office. Therefore, I submit, Sir, that the words in this clause 3 to the effect that the Resolution moved by the House of the People shall be binding is absolutely redundant, absolutely unnecessary. I am only making a suggestion that it should be deleted. The Government have got the power. The Government may, if it thinks that a Commission should be appointed, appoint it. Nothing about the House of the People, nothing about the Council of States. If the House of the People wants to move a Resolution, the Government is bound to accept it. My only submission or suggestion to the hon. Minister is that the mention of the House of the People in the Bill is absolutely unnecessary.

SHRI M. VALIULLA (Mysore) : Sir, it is against the spirit of the Constitution. We have passed and are going to pass many laws. Now this appointment of a Commission is not so important as passing a Bill or making it a law. The Constitution it therefore definitely says that for all important laws the consent of the Council of States must be obtained. For the appointment of a Commission it seems that we are going to take away the power which has been given to us by the Constitution of India.

SHRI C. C. BISWAS : I will say, Sir, that my hon. friends are under a mistaken notion, that there is an attempt to encroach on the rights of this House. Nothing of the kind. The House can pass a Resolution. That right is there and nobody is taking that right away. So is the House of the People competent to pass a Resolution. All that this clause provides is that if a Resolution is passed by the House of the People that shall be binding on the Government. That is about all. And I have given

my reasons why the Council of States] should not be mentioned in the clause. So I have nothing to add. Because you cannot be given that right—some difficulty is there—therefore you also want to debar the House of the People obtaining that right. That is not proper.

MR. DEPUTY CHAIRMAN : I will put the amendments to the vote.

The question is:

That in page i, line 25, for the words 'the House of the People' the words 'either House of Parliament' be substituted.

The motion was negatived.

MR. DEPUTY CHAIRMAN : Then the alternative amendment.

SHRI RAJAGOPAL NAIDU : I am not moving the amendment.

MR. DEPUTY CHAIRMAN : Then amendment No. 2 in List No. 2.

SHRI RAJAGOPAL NAIDU : I am not moving the amendment. I am moving the next amendment.

Sir, I move:

That to clause 3 of the Bill, the following new sub clause be added:—

" (3) If the Commission consists of only one member, he shall be a person with judicial knowledge or experience and if the Commission consists of more than one member, the Chairman thereof shall be a person with judicial knowledge or experience. "

I would like to explain it before it is put to the vote. I will be very brief, Sir.

SHRI C. C. BISWAS: Let him have his say.

SHRI RAJAGOPAL NAIDU : The amendment is very simple. The powers of the Commission are very clearly given in clauses 4 and 5. They are vested with powers under the Civil Procedure Code and also the Criminal Procedure Code. 31 esc

MR. DEPUTY CHAIRMAN : In view of the assurance given by the hon. Minister, is it necessary to press this amendment ?

SHRI RAJAGOPAL NAIDU : In judicial proceedings, what is the use of appointing a man who does not know anything about law?

SHRI C. C. BISWAS : If that is necessary, it will be done.

SHRI RAJAGOPAL NAIDU : If the hon. Minister will give an assurance.....

SHRI C. C. BISWAS : I will not give any such assurance. There may be an enquiry into the, say, chemical industry, requiring knowledge of science. As a lawyer, if I were to be offered an appointment as a member on such a Commission, I will say, " Thank you".

MR. DEPUTY CHAIRMAN : If it is necessary, it will be done.

SHRI RAJAGOPAL NAIDU : If the Commission consists of only one member, then he should be a man with judicial experience. If the committee consists of more than one member, at least the Chairman of the Commission should be a judicial man.

SHRI C. C. BISWAS: Having mentioned as a judicial officer, I say I am not enamoured of a judicial officer presiding over such Commissions.

SHRI RAJAGOPAL NAIDU : I will withdraw the amendment, Sir.

MR. DEPUTY CHAIRMAN : Does the House give him permission to withdraw the amendment?

The *amendment was, by leave of the House, withdrawn.

♦For text of the amendment, see column SJ81 *ante*.

Ma. DEPUTY CHAIRMAN : The question is: tomorrow. We will have afternoon session also from 3 to 6. The House stands adjourned till 8.15 a.m. to morrow.

Tbat clause 3 do stand part of the Bill.

The motion was adopted.

Clause 3 was added to the Bill

MR. DEPUTY CHAIRMAN : We will take up the rest of the clauses

The Council then adjourned till a quarter past eight of the clock on Thursday, the 7th August 1952.