

16.47 hrs.

[ MR. SPEAKER in the Chair ]

A mention was also made by some Members of the campaign launched by the Vishwa Hindu Parishad (VHP) for the 'liberation' of the shrine at Mathura. Krishna Janma Bhoomi-Shahi Idgah Mosque (KJB-SIM) complex at Mathura is covered under the Places of Worship (Special Provisions) Act, 1991, which provides for maintenance of the religious character of a place of worship as it existed on 15th August, 1947. However, 'liberation' of the KJB-SIM Complex at Mathura has been on the agenda of the VHP for the last few years. From the 10th of March, 1997, the VHP has started a "Sant Yatra" in a few districts adjoining Mathura. The "Sant Yatra" will conclude at Mathura on the 16th of March. In addition to the demand for 'liberation' of the shrine, a demand has also been made for the removal of barricading and withdrawal of the police force. The Government of Uttar Pradesh has been sensitised by us. They have assured us that they are committed to ensuring the security of the shrines and have made all necessary arrangements including deployment of adequate police force for this purpose.

16.49 hrs.

STATUTORY RESOLUTION RE: APPROVAL OF  
CONTINUANCE IN FORCE OF PROCLAMATION BY  
PRESIDENT IN RESPECT OF THE STATE OF  
UTTAR PRADESH

[English]

MR. SPEAKER : We now move on to the Statutory Resolution to be moved by the Minister. As I said in the morning, Justice Lodha has raised a Constitutional point on the issue of extension of the President's Rule. I said that before taking a final decision I will hear the Members. Justice Lodha may speak.

THE MINISTER OF HOME AFFAIRS (SHRI INDRAJIT GUPTA) : Shall I move the Resolution?

MR. SPEAKER : No, he is objecting to the moving of the Resolution itself.

SHRI SOMNATH CHATTERJEE (Bolpur) : Very respectfully I would submit that he has to take objection on certain proposal. Unless it is moved, it is just a paper proposal. It does not become the property of the House. It is entirely up to you. It is not very important but the question is of procedure.

SHRI JASWANT SINGH (Chittorgarh) : Mr. Speaker, Sir, in this context, as mentioned by my leader, Shri Atal Bihari Vajpayee and subsequently executed by Shri Atalji and some other Members, we have actually also submitted for your consideration that for this particular matter, given the constitutional complexity of the situation, given also the fact that the Supreme Court is seized of the matter of President's

Rule in UP and that we are dealing with an exceptional situation, the Attorney General be invited to the House. I would request that this complex situation not be taken up for discussion today at five o'clock in the evening. If at all some business is to be taken up, we could, perhaps, consider the Budget of UP. Then this matter receives due and proper consideration. Otherwise, we will be treating rather perfunctorily what is a serious issue.

MR. SPEAKER : I will read out the notice given by Shri Lodha.

JUSTICE GUMAN MAL LODHA (Pali) : I would complete my submission, Sir.

MR. SPEAKER : Shri Somnath Chatterji has raised a question. Though this notice may not be exactly in appropriate form, Shri Lodha has said:

"The Constitution of India Article 356 or any other Article, nowhere provides for such extension and this Resolution is unconstitutional. The Government should come forward with a Constitutional Amendment if it desired to end the deadlock and Constitutional crisis likely to be created on the 17th of April, 1997, by the expiry of the President's Rule."

SHRI SOMNATH CHATTERJEE : This is an advisory notice. The Member has given advice to the Government. The Government may consider it or may not consider it. What is the point there?

JUSTICE GUMAN MAL LODHA : I have not complete my submission. How can he object to it?

MR. SPEAKER : Let the hon. member make his submission.

JUSTICE GUMAN MAL LODHA : Under Article 356 of the Constitution if has been provided that proclamation by the President can be issued, and thereafter it can be extended for another six months. Under Article 356, Clause (4), if, after that, any further extension is required, the requirement of the law is that there must be a proclamation of emergency and after that proclamation of emergency, there must be consultation with the Election Commission that elections cannot be held, and then only further extension can be made. Clause (5) reads like this:

"Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue of such Proclamation shall not be passed by either House of Parliament unless.

(a) a Proclamation of Emergency is in operation, in the whole of India or, as the case may be, in the whole or any part of the State, at the time of the passing of such resolution, and

(b) the Election Commission certifies that the continuance in force of the Proclamation approved under clause (3) during the period specified in such resolution is necessary on account of difficulties in holding general elections to the Legislative Assembly of the State concerned.

Now, it is not in dispute that after the Government led by the Chief Minister Mayawati went out of power, a proclamation was issued. That proclamation was again extended for six months. During this period, elections were held. On the 16th or 17th of October, when the Assembly elections in Uttar Pradesh have been completed and the results have been declared, the Governor of Uttar Pradesh, instead of calling some of them who enjoy the confidence and who can run the Government to form the Government, on the 16th, sent a report.

On account of that, another extension was given for six months. Now, what I am saying is that, that extension of six months after completion of one year could not have been given because of the requirement of clause 5 which is mandatory. That extension was confirmed by this House also. But the hon. High Court of Allahabad in a writ petition held unanimously, and by a full bench judgement consisting of three judges given on December 19 said - I will read only one sentence, the operative part of it :

"Justice B.N. Lal delivered the judgement in a packed court room at 10.15 a.m.

On behalf of all three judges he said :

"This Court unanimously holds that the impugned Presidential proclamation, dated October 17, 1996 reimposing Presidential rule under Article 356 of the Constitution of India in the State of Uttar Pradesh subsequently approved by the Parliament is unconstitutional, issues in colourable exercise of powers and is based on wholly irrelevant and extraneous grounds and therefore cannot be allowed to stand. Consequently, the same is hereby quashed."

Hon. Speaker, Sir, I would like to repeat the last one sentence in which he has said:

"Unconstitutional, issued in colourable exercise of powers and is based on wholly irrelevant and extraneous grounds and therefore cannot be allowed to stand. Consequently the same is hereby quashed."

Now, Sir, this unanimous judgement of the Allahabad High Court which has been delivered on December 19 has not been set aside by any appellate forum, that is, the hon. Supreme Court. Now, Sir, the position is that not only according to our logic or our argument or our contention or citing of some precedents, but by a judicial verdict of the full bench of the High Court, it has been quashed and held to be unconstitutional. Therefore, Sir, the question is that another extension of six months which is now sought for is again

another unconstitutional act which has got no bedrock, which has got no basis, no legal foundation and nowhere contemplated by Article 356 of the Constitution.

Therefore, Sir, the first point which I want to raise before your Honour is that, now there is no ground, now there is no Constitutional permissible jurisdiction under which the hon. Home Minister can ask for consideration of this Resolution. It is because this Resolution in turn wants to perpetuate one unconstitutional act by another unconstitutional act. Therefore, I would submit that the Resolution should not allowed to be considered by Your Honour as a guardian of this House. It is because we owe to our oath to the Constitution. We cannot go beyond it. All of us are bound by it. Therefore, Sir, this is one aspect which I want to put it before Your Honour.

Now, Sir, the second aspect is that it may be said that an appeal has been filed in the Supreme Court by the Union of India and that appeal is pending.

1700 hrs.

Now the pendency of the appeal is itself would never mean quashing of the judgement of the Allahabad High Court.

Secondly, if pendency of the appeal is likely to be used by them as an armoury weapon for permitting the discussion on this extension of proclamation then I would submit that it was for the Union of India to file an application before the hon. Supreme Court and obtain an order with regard to the unconstitutionality of the earlier Presidential Proclamation. The matter is pending before the hon. Supreme Court. According to the assessment of the Governor, he has not been able to get any party or any person who can form the Government. But according to my assessment, the party having the majority or having the largest number of Members was entitled to be called and Shri Kalyan Singh should have been called.

This is what was said earlier also. This is what happened in the case of this House when our leader Shri Atal Bihari Vajpayee was called having the support of the largest number of Members. But whatever it may be, it is a matter of debate. There could be two views on that point because Allahabad High Court has taken one view and the other view has been taken earlier. But nonetheless, it was the duty of the hon. Minister of Law, the hon. Minister of Home Affairs and the Union of India to have filed an application before the hon. Supreme Court and obtained a direction and have asked for extending the proclamation which has been quashed for another six months in order to get a decision of the Supreme Court. This they have not done. They can do it even now because the expiry of it would be on 17th of April. It is not expiring today or tomorrow. There is no haste that one fine morning they get up and request Your Honour and put a resolution in the Agenda, of course, with your permission. It is such a serious matter that the fate of fifteen crore people is going to be considered because they are living without

democratic Government in spite of their Members having been elected. The surprising thing is that the Governor has not even notified to the Election Commission for the purpose of given them oath. The Governor has not given them Oath and has not allowed the Government to be formed.

In the Bommai's case it was held that the floor test is the best test. If there is a doubt in the mind of the Governor that who has go a majority then he could have gone into it and obtained it on the floor after getting the Government formed. That also he has not done. Therefore, today, there is nothing to be extended.

The Proclamation issued on 17th October 1996 is *non est*, non-existent on account of being declared as unconstitutional. There is nothing to be extended. When there is nothing to be extended, I would respectfully submit that because of the bar of Clauses 3 and 4 of Article 356, the question of getting this Resolution moved and considered, cannot be and should not be allowed by Your Honour.

One more point I would like to submit before I take my seat. It may be argued that on behalf of the other side, the Government, that not only the appeal is filed but there is a limited Stay Order which has been issued by the hon. Supreme Court. Now that is the point and I must answer this point. That is the point we must know that what is the Stay Order. It would be perfect justification, if the operation, if the operation of the judgement or if this particular operation has been stayed or quashed. Then the consideration should be different.

But I would read the Stay Order which has been issued by the hon. Supreme Court in order to bring home the point that the operation of the judgement has not been stayed.

All that has been stayed in that at the moment the Government and in that respect this judgment would not come into stay for that purpose and then we would hear the case early and till then the matter is before the Government.

Now, I would read this one line Stay. Interim Stay of the High court dated December, 19th say: "In the mean time .....(Interruptions)

Kindly listen It is a delicate legal matter. if I am wrong, I can be corrected .....(Interruptions)

SHRISOMNATH CHATTERJEE: This is a very important point, no doubt .....(Interruptions)

JUSTICE GUMAN MAL LODHA : Hon. Speaker, the legal interpretation of very word is very delicate and it requires some very calm and composed consideration. So, I am praying with them to bear with me for a minute. Interim Stay of the High Court Order dated December 19th, says:

"In the mean time, the Attorney-General assures us that there will be no dissolution of the House...."

Because dissolution of the House was imminent, so the Attorney-General assures us that there will be no dissolution of the House.

It further says:

"We also so direct, however, this will not preclude the formation of a popular Government if possible. Liberty for the petitioner to approach for a date for hearing the petition and the matter will be taken up after the conclusion of the Civil judge, Constitutional Bench."

Therefore, as I respectfully submitted that the judgement and the constitutionality having been adjudicated by the Allahabad High Court Full Bench, that adjudication of the constitutionality of the Proclamation being in violation of Article 346 of the Constitution stands. It would either be confirmed by the hon. Supreme Court after full hearing or they can quash it, either way. Till then, Sir, the Government can be formed. Therefore, I am submitting that this Stay Order is an Order, a limited Order, on account of which the Proclamation, constitutionality has not been revived, has not been put to constitutional what was unconstitutional and, Therefore, Sir, this would continue to be unconstitutional till it is quashed. Of course, if was open to them to move the hon'ble Supreme Court for such directions as they may deem proper, But having not done so, my respectful submission is that Article 356 Clause IV and V read with this judgment and all the orders which are there, the facts and the circumstances, they provide a complete bar for the consideration of any *non est*, non existent proclamation and my respectful submission is that on account of that, I have submitted this constitutional limited aspect and the rest, of course, can be submitted by the other Members.

SHRI SATYAPAL JAIN (Chandigarh) : Mr. Speaker, Sir, I have also given my notice. Please allow me to speak .....(Interruptions)

MR. SPEAKER : It is not a question of a notice.

SHRI SATYA PAL JAIN : Sir, I am opposing the introduction of the Bill .....(Interruptions)

MR. SPEAKER : It is not a Bill that we are introducing.

SHRI SATYA PAL JAIN : Sir, I am sorry. I am opposing the introduction of this Statutory Resolution. Sir, I have also given a notice in writing.

MR. SPEAKER : Please do not come individually on serious issues like this.

SHRI SATYA PAL JAIN : Sir, I have a right to say my point of view. Kindly give me some time to speak. I have given it in writing also .....(Interruption)

SHRI SOMNATH CHATTERJEE : Sir, my intervention in this discussion my not be treated that on principle, I approve of the application of Article 356.

Earlier when this Resolution had come up, I said that in the context of the situation prevailing in the State of Uttar Pradesh, we had decided reluctantly to support that Motion. But now we do not want that there should be a genuine Constitutional chaos in Uttar Pradesh. Therefore, it is our duty to see now as to what should be done and what the House should do in view of the state of affairs as they prevail today in the absence of any likelihood of a Government being constituted in Uttar Pradesh.

I have heard very, very attentively to former Chief Justice and our distinguished Member, Shri Guman Mal Lodha's submission. I do not say he has laid down a Lodha's jurisprudence. But it is some what surprising to hear from a distinguished jurist who occupied the position of the position of the Chief Justice of a High Court. Be it of Assam!

DR. MURLI MANOHAR JOSHI (Allahabad) : Sir he is referring to Assam .....(Interruptions)

SHRI SOMNATH CHATTERJEE : No, that is for Shri Sontosh Mohan Dev. That is not for you.

DR. MURLI MANOHAR JOSHI : Or for anybody.

SHRI SONTOSH MOHAN DEV (Silchar) : We were very happy with him. I have nothing against him. He was a very good judge of High Court. I have nothing against him. I feel proud of you. Why are you annoyed?

SHRI SOMNATH CHATTERJEE : He should have gone to the Supreme court. He was a very distinguished judge as Chief Justice of a High Court. I am sure he would, as a former Chief Justice, never say that once a matter has been decided by a trial court, subordinate court, although an appeal is pending and where the appeal court has intervened as it has done here, therefore, that the subordinate judge's decision is the final to the extent of no question can be asked on that, I do not think that he could have passed that judgement. It is a question of *subjudice*. It is well-known that whatever order is passed, the earlier lower courts order will merge in that. The theory of merger is very well-known. There obviously, he has to adopt 'mix politics with law.' This is the trouble. One thing is very clear.

JUSTICE GUMAN MAL LODHA : Either of us is mixing.

SHRI SOMNATH CHATTERJEE : Then you admit about yourself. It is good.

JUSTICE GUMAN MAL LODHA : No, this is what I am saying that you are doing it.

SHRI SOMNATH CHATTERJEE : If I follow a distinguished jurist like you, but I hope not to follow you. It has been said that the High Court has held that there was a colourable exercise of power which has been commented on by the learned hon. Member here, is that as there was no reason for imposition of the President's Rule, the Governor should have continued in making efforts, the Governor could

have called Shri Kalyan Singh as Shri Atal Bihari Vajpayee was called here even if that Government has lasted for 13 minutes or I do not know-it lasted here 13 days - and that exercise should have gone on. Well, this is what has been argued. Is it a colourable exercise of power? Obviously 'No' Sir. That has no relation to the objects. That is, there is no nexus. So far as Article 356 is concerned, the basic nexus has to be that it is not possible that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of the Constitution.

What the High Court has presumably held is that such a situation has not arisen. Not that in no circumstances, the President's Rule could have been imposed. If there have been grounds, it could have been.

Kindly appreciate under Article 356, time is being stressed on. The language is very clear :

"Notwithstanding anything contained in clause (4), a resolution with respect to the continuance in force of a Proclamation approved under clause (3)...."

What we had approved about six months earlier was not a Proclamation that has been earlier approved. It was not a case of continuation of a Proclamation issued under Article 356 (1).

It was a fresh proclamation that had been issued. You may say that there was a fraud on the Constitution, or fraud on the Statute. But if it was a fraud on the Statute, I am sure that the Honourable High Court would have decided straightaway and the Supreme Court would not have kept it pending, if it was so palpably a fraud on the constitution a fraud on the powers of the Government. It would not have kept it pending for hearing on merits and in the meantime may have granted a stay - may not be an absolute stay - but what had happened? The honourable Supreme Court expressly permitted the Governor to continue with his efforts. The Governor was to continue with his efforts for the formation of a popular Government and he had to continue with his efforts until the matter was heard and the Governor's rule could be kept pending.

Therefore, there was no finding, not even an implied finding by the Supreme Court that the proclamation was necessarily ultra vires the Constitution of India and a colourable exercise of power is not to be equated with a lack of constitutional authority or jurisdiction.

What had happened in this case is this : Of course, nobody has been able to find or give an answer. A former Chief Justice says that an amendment to the Constitution is required. Even they are not able to affirm categorically that they are able to form a Government. They want to have an amendment of the Constitution as if just to show that what has happened earlier by the steps taken by the House was not constitutionally possible so that it could bolster the arguments of those who are appearing before the Supreme Court and to oppose the Governor's action in the proclamation or issue of a fresh proclamation.

Therefore, I respectfully submit at this stage as necessarily we do not decide the vires of this action, the vires is to be decided by the courts of law ultimately and the case is pending before the highest court of the land. Actually, we cannot deliberate when the honourable Supreme Court will take up the matter; we cannot bind then as to the date of disposal of the matter.

On the 17th of April this Proclamation is coming to an end. There will be total chaos in Uttar Pradesh if there is no extension, or a Government cannot be formed. Getting a judgement in the meantime is not at all possible. This House is going on recess on the 21st of March and it is not going to sit till the 20th of April and that means that the House has to be called again for the purpose of a decision. In the meantime we cannot guarantee that the Supreme Court decision will come. Therefore, who benefits by this? Nobody benefits. There will be more and more uncertainty leading to a possible constitutional crisis in Uttar Pradesh; it is not for the benefit of either the people of the State or for the benefit of the administration there or the benefit of the country as a whole.

Therefore, I respectfully submit that what is being done today is a questions of the continuation of a proclamation which has been issued only six months back. It is not only some proclamation which was issued initially a year and a half back when it was passed. That is what is interdict in sub-article (5) of Article 356 of the Constitution.

If I may, with greatest humility, submit, sitting there you will decide the question whether prime facie there is a constitutional question to the extent of invalidation the very objective of the Resolution namely, that there is a case for the extension of the President's Rule in Uttar Pradesh in spite of kindly see, Sir - what is provided in Article 356(5) :

"Notwithstanding anything contained in clause (4) a resolution with respect to the continuance in force of a Proclamation approved under clause (3) for any period beyond the expiration of one year from the date of issue....

Let us see what the Motion is.

It says '.....for a further period of six months, which was issued on the 17th October, 1996'. Therefore, my submission is that Article 356(5) does not come into play at the moment unless the Supreme Court decides that the proclamation of the 17th October, 1996 was bad. That has not been decided by the Supreme Court.....(Interruptions)'

SHRI JASWANT SINGH : That , precisely, is my point.

MR. SPEAKER : You can answer that later. I will allow you.

SHRI SOMNATH CHATTERJEE : Sir, I am already on the verge of completion of my submission.

Realising this point, realising this difficulty, what Justice Lodha has said was something which was not there. Why does he like to perpetuate that? It is because he has assumed that the proclamation of the 17th October, 1996 will necessarily be set aside by the Supreme Court .....(Interruptions)

SHRI I.D. SWAMI (Karnal) : It has been set aside.

SHRI BHAGWAN SHANKAR RAWAT (Agra) : Sir, he is a legal luminary.

[Translation]

If you go to the chamber of Shri Chatterjee and ask him, he will also say that this proclamation is illegal, since he is in the House, he has to say this, otherwise this is the reality.

[English]

SHRI SOMNATH CHATTERJEE : Sir, this is a reflection of my behaviour and on my character. Of course, to be blamed by the BJP friends is no real reflection.

AN HON. MEMBER : But they are blaming in reality.

SHRI SOMNATH CHATTERJEE : Maybe, it is a compliment let us not have double standards here. I can assure them that even if they paid me fees, I would not, on this score, go against what I am saying here. This is a very important matter; not a matter of levity. But there are certain basic laws. The basic law is when the matter is pending before the Supreme Court, everything is open. If the hon. Speaker today says that is pending before the Supreme Court. can we, here, with all humility per-empt the Supreme Court from taking a decision? Therefore, let the Supreme Court do its duty and let us do our duty. Our duty is to see that there is no chaos in the country and that there is good governance in this country, whatever may be the position there. The Krishnjanamboomi and so many other targets are there which could be attacked. So, it is all the more necessary that this Resolution is passed.

SHRI JASWANT SINGH : I will make a very small submission. It is really only to clarify the position.

It is indeed incumbent on this House to do its duty. In the performance of our duty, as the light that guides us, we should be guided and we should not deliberately and knowingly commit an act which is likely to be called 'unconstitutional'. Our opposition is not to the principle of the extension of the President's Rule. I think, the hon. Member, Shri Chatterjee, was misplacing the issue. The objection is not to the principle of the need or the necessity as it has arisen today.

There is no Government in Uttar Pradesh. President's Rule has to be extended. That is the reality. All that we are saying is that if it is extended through the device of a simple Resolution, we are likely to be committing a grave error. Therefore, we are likely to on account of a particular persuasion

or a temporary convenience, land this Assembly in a situation of deliberately and knowingly committing a constitutional wrong. Therefore, there are two suggestions.

The first suggestion is this. Either this extension should be treated as a constitutional requirement or a constitutional amendment. This is the second suggestion. Shri Atal Bihari Vajpeyee has move that motion and I have also moved it. What is says is this. 'Considering the extraordinary constitutional complexity of the question of President's Rule in the State of Uttar Pradesh. taking serious note of the issue already being examined by the hon. Supreme Court and mindful of the implications to the Republic of our determination on the subject, therefore, this House do now resolve to request the Attorney-General to attend the House during discussion on this subject.' The Government can, either on its own, take a decision and say, 'Out of abundant caution, we will go down the path of the Constitution Amendment'. Or, mindful of what we are submitting - we have submitted this Resolution for your consideration - say, 'No, we will also call the Attorney-General'.

It is because, after all there is a Constitutional provision whereby the Attorney-General has a seat in this House, and is entitled to attend the House, it is precisely for such occasions. The eminent jurists, Shri Somnath Chatterjee and Shri Lodha, would argue the points. The Attorney-General could well hold a view. The Attorney-General thereafter can say on his own, in substance that this House is entitled to go down the path of Constitutional Amendment. The question. Sir, is not of conniving with furthering the chaos in U.P. The question is attempting to minimise the existing chaos in U.P. The question and the responsibility with which we are seized is not to further contribute to the Constitutional complexity of the situation. That is the submission I would like to make.

SHRI SATYA PAL JAIN : Sir, I would not like to repeat the points that have been raised by Justice Lodha. Before I come to Article 356, I would like to draw your attention towards Article 163 and 164 of the Constitution of India. Article 163 says:

"There shall be a Council of Minister with the Chief Minister at the head to aid and advise the Governor in the exercise ...."

So, Sir, Article 163 is mandatory. There has to be a Council of Ministers. But Article 356 deals only with certain situation. When, it is not possible to form the Government or run the Government as per law, then, certain situations have been given. Then, you can suspend the Assembly, you can dissolve the Government or you can dissolve the Assembly or you can impose the President's Rule. Now, under Article 356, the maximum period prescribed for imposing President's rule is one year. I heard Shri Somnath Chatterjee with rapt attention. With respect, I would like to submit that from the legal point of view he has tried to place the cart before the House. You cannot say that earlier Proclamation passed was different Proclamation and today we are extending a

different Proclamation. The intention has to be seen, the content has to be seen and the consequences have to be seen. Otherwise, tomorrow what would happen is that one Home Minister would say extend the President's rule for six months and next time, another Home Minister would come and he would also extend the President's rule. If the present argument is accepted then for all five years, you can extend the President's rule on the ground that 'A' has mentioned this, 'B' has mentioned this, the Member was different etc. That is not the question. The intention of the Constitution makers was that under no situation, you can have President's rule beyond a period of one year. If Shri Indrajit Gupta is allowed to move this resolution, then this would be a plain fraud on the Constitution of India, if not a rape on the democratic working and democratic tradition of the country. What would happen is, one fine morning, in the name of President of India, you would say, 'We extend earlier Resolution'. Practically, it is the continuation of the same Proclamation. Therefore, if this Resolution is allowed to be moved, it would be in utter violation of Article 356 of the Constitution of India.

Secondly, Sir, this Proclamation has already been declared null and void by the High Court judgement. I am surprised how Shri Somnath Chatterjee was talking about the theory of merger. The question of theory of merger comes in only when the final judgement is pronounced by the Supreme Court. Then, the High Court judgement would merge into Supreme Court's judgement. I am also a small lawyer. Simply because the judgement is pending before the Appellate authority and the Appellate authority has granted an interim and discretionary stay, you cannot say that the judgement merges with the interim order.

SHRI SOMNATH CHATTERJEE : I have never said that.

SHRI SATYA PAL JAIN : You did talk of merger. The question of merger comes only when the final judgement is pronounced. Today, as it is this Proclamation which Shri Indrajit Gupta wants to get extended is *non est* in the eyes of law. The full-bench judgement of the Allahabad High Court has not set aside that part of the judgement. The Supreme Court only said that :

"Pending appeal, you will not be stopped, you will not be debarred from exploring the possibilities of forming the Government."

I would like to remind Shri Somnath Chatterjee about his own statement. On 18 December, 1996 while speaking in this House on the same type of Resolution, he said :

"I want to appeal to all secular forces that let us form the Government in U.P."

What stopped the secular forces to form the Government in U.P. within four months? Even today you can form the Government. You cannot have the best of both the worlds. There, we are claiming a chance to form the Government, but

you are not allowing us. You claim that you are all secular forces, but you are not able to unite. In that context, you cannot be allowed to violate the provisions of the Constitution of India, Particularly Article 356 and Article 163.

Sir, this House has frame certain rules. I would like to draw your kind attention to Rule 352 of the Rules of Procedure:

"A Member, while speaking, shall not refer to any matter of fact on which a judicial decision is pending."

Now, he wants this Resolution to be moved; he wants this Resolution to be discussed. But Rule 352 says that we cannot even make a reference. Then, what type of discussion would take place in this House? This matter is pending before the Court.

So, I would like to submit to the hon. Speaker that if this Resolution is allowed to be moved, it is in violation of Article 356 of the Constitution of India and it is in violation of Article 363 and 364 of the Constitution of India.

Now, there are two options available before the Government. That is the view expressed by almost all the legal jurists. Under Article 175 of the Constitution, if there is any doubt, he can call the Session of the Assembly; he can send a message to the Assembly to elect a leader. If the leader is elected, he may be invited to form the Government. If the leader is not elected, then he can resort to other means. But he is not doing that also.

Lastly, I would just reply to Shri Somnath Chatterjee's point and then I would conclude my argument on this point. He says that there must be some nexus with the object that is sought to be achieved. The object is very clear; the nexus is very clear and the purpose is also very clear. The object sought to be achieved is to deprive the BJP from coming to power and to achieve that object, they are using the Governor also; they are violating provisions of the Constitution and they are resorting to all undemocratic, illegal and unconstitutional ways.

Therefore, I oppose the introduction of the Resolution.

SHRI PRAMOTHES MUKHERJEE (Berhampore) (WB): Sir, I have the highest regards for the Supreme Court and generally for the whole judicial system. I also have the highest regards for the supremacy of the Parliament because I do believe in the structure of democracy. I do not believe in the imposition of President's Rule in any State. But the compulsion of the situation commands my conscience to say that the extension of President's Rule or even moving the Resolution for extension of President's Rule in U.P. is highly justified; and in support of my statement, I will refer to two valuable documents in this regard.

I will quote what Dr. D D Basu, the famous commentator on Indian Constitution, says regarding the imposition of President's Rule in a State in federal structure of India. This

is said in one line and in another line, he says about the improper use of the imposition of President's Rule under Article 356 of the Constitution in any State under the federal structure of the Indian Constitution.

I would now quote Dr. D D Basu. He says:

"The only way to save the Constitution from an indiscriminate and politically motivated invasion of the Union to supersede the State Government would, therefore, be to point out what would be a proper of improper ground for the use of this extraordinary power."

The most important thing is that it can be used which is a proper use. He says:

"Where, after a general election, no party is able to secure a working majority in the Legislative Assembly".

In this case only, Article 356 can be imposed in a State.

Sir you already referred to the judgement of the Court. I would like to refer to the 'Kerala case of 1965'. That case was : K K Aboo, Petitioner Vs. the Union of India and others, Respondents. I will quote that case.

MR. SPEAKER : You are going out of the way.

SHRI PRAMOTHES MUKHERJEE : Please let me be allowed to say this in a minute. I will finish. I will quote that case where there was an imposition of the President's Rule in Kerala and during the imposition of the President's Rule in Kerala, a General Election was held to constitute a separate Legislative Assembly. What was the result? The result was that no party could obtain an absolute majority to for the Government. At this stage, the President of India was pleased to impose Article 356 of the Constitution and the President's Rule was imposed in Kerala. I will read out that judgment with you kind permission :

"Consequent on the resignation of the ministry that caused a breakdown of the constitutional Government in the State of Kerala, the President dissolved the Legislative Assembly and assumed the executive powers of the State to himself by a Proclamation dated September 10, 1964, which was approved by the Parliament by a resolution on September 30, 1964. A general election was held thereafter in February/March, 1965 for the purpose of constituting a new Legislative Assembly in the State;"

MR. SPEAKER : I do not know where you are going.

SHRI PRAMOTHES MUKHERJEE : It further states :

" and the names of members elected for the various constituencies where notified under Section 73 of the Representation of the People Act, 1951, in the Kerala Gazette. ... (Interruptions)..

I would like to quote some figures. Sir, please allow me. What was the Position? I may be allowed to quote from the judgement :

"No party was able to secure a working majority of seats in the Legislature. The Party position among the elected representatives was thus:

Communist Party of India (Marxist or Left) -	40
Indian National Congress -	36
Kerala Congress -	23
Samyuktha Socialist Party -	13"

MR. SPEAKER : I do not think we are going into all those things. Ours is a very limited question.

SHRI PRAMOTHES MUKHERJEE : Under these circumstances, the Vice-President of India declared the imposition of President's rule in the State and that was granted as valid. Therefore, I put this document before you for your consideration while moving the Resolution of the extension of President's rule in U.P.

[Translation]

SHRI SUNDER LAL PATWA (Chindwara) Hon'ble Speaker, Sir, I will be very brief.

I am astonished to see this and I am feeling pity too. Two lions roared in this jungle of politics against Article 356 throughout their life. The lions who roar in the jungle how become pitiable in the cage of circus. One lion opposed the Article 356 throughout his life, he is the Home Minister of India by fate. The second lion is lending his hand to him from outside, supporting him.

Mr. Speaker, Sir, there is one example, which I would like to put before the House. In this case President rule was imposed in Madhya Pradesh. I was the Chief Minister. That Government was brought down. We moved to the High court, the High Court declared it unconstitutional and gave judgement to revive the Assembly. The Government appealed. Appeal was pending. One year of President rule was completed. If it was to be extended, constitutional amendment was necessary. The Government was not in a position of effecting constitutional amendment, it could not do so and therefore there was compulsion of holding election. Both parties the Union of India, the Appelant and we, Sunder Lal Patwa Respondent, approached the Supreme Court and by the constent of both this case was decided that elections should be held, we had no objection.

[English]

The election was held by order of the Supreme Court.

[Translation]

Here I see, there is no need to move the Supreme Court, no need to call the Attorney General and by manipulation in

the constitution through a short cut should not let BJP come to power, from that angle I want to appeal to my learned friends, senior colleagues ... (Interruptions)

SHRI BASU DEB ACHARIA (Bankura) : You don't have a majority, how can you form the Government? .... (Interruptions)

SHRI SUNDER LAL PATWA : You have time to say your mind. You just listen to what a small man a new man like me says instead of making this running commentary.

MR. SPEAKER : You are not small man, you are a new member.

SHRI SUNDER LAL PATWA : I am a new member.

MR. SPEAKER : We do not presume that you are a small man.

SHRI SUNDER LAL PATWA : This Government is by accident, I am also by accident. Hon'ble Speaker, Sir, I want to appeal to the Home Minister of the Government of India Hon'ble Gupta ji and senior member Shri Somnath Chatterjee that whether we remain or not, any Government could come or go but this constitution will remain. What example you want to present about the constitution sitting in this House, you are in power. As Jaswant Singh ji said either approach the Supreme Court or discuss the matter with the Attorney General. There is no other way out. If you try to avoid this, it is just for petty ends, political ends, you are playing with the Constitution.

SHRI RAMSAGAR (Barabanki) : Mr. Speakrer, Sir, two proposal have been forwarded here just now to extend this period of the President rule. One party has said it is an unconstitutional task of the Government and does not honour the Courts, the second party say, they honour the constitution and the Courts as well. Hon'ble Lodha ji gave many reasons. I want to give an example. When there was a Government in Uttar Pradesh, the then Chief Minister has submitted an affidavit in the Supreme Court.... (Interruptions)

SHRI RAJENDRA AGNIHOTRI (Jhansi) : He is unburying the buried.

SHRI RAJESH RANJAN ALIAS PAPPU YADAV (Purnea) : Just listen what he says.

SHRI RAJENDRA AGNIHOTRI : Is this a thing to listen? Again we would like to say that during the tenure of one Chief Minister there was sudden spurt in the incidents of looting.... (Interruptions)

SHRI RAM SAGAR : If you are the protagonist of the Constitution and honour the Courts then why this affidavit was filed in the Supreme Court..... (Interruptions) Two things were mentioned in the affidavit..... (Interruptions)



[English]

SHRI RAM NAIK (Mumbai North) : Sir, I am on a point of order.....(Interruption) If any Member speaks on an issue which is irrelevant to the subject-matter, he should not be allowed to speak...(Interruptions)

MR. SPEAKER : Please forget it

...(Interruptions)

[English]

MR. SPEAKER : Do not go strictly about these things.

[Translation]

SHRI RAMSAGAR : I want to say that this is constitutional and we also honour the courts...(Interruptions)

[English]

MR. SPEAKER : Shri Agnihotri, why are you unnecessarily wasting your time?

.....(Interruptions)

[Translation]

MR. SPEAKER : You have said whatever you wanted to say, now please take your seat.

SHRI RAM NAIK (Mumbai North) : There are certain constitutional facts regarding introducing in the proposal, they have now come before the House. I do not know about jurisprudence, but those which are the conventions of the House, I know a few of them. There are certain rules and conventions of this House. As per them whatever statutory resolution is moved is first published in the bulletin for the information of the members. After publishing in the bulletin when such resolution appears in the list of business, it could be discussed to some extent. The information about this statutory resolution does not figure in the bulletin which we have received today. If it is published in the bulletin in this manner, we can persuade them to some extent therefore only prior notice should be given, that has not been given, We cannot discuss this atleast today. That's why you should not give permission for discussion on this matter.

[English]

Why? Do you not want follow the convention and practices? ....(Interruptions)

[Translation]

SHRI RAJESH RANJAN ALIAS PAPPU YADAV : What about Maharashtra? ....(Interruptions)

[English]

MR. SPEAKER : Let him conclude now.

SHRI SOMNATH CHATTERJEE : Sir, he should have made this point at the beginning...(Interruption) Sir, this is about Shri Sunder Lal Patwa's intervention to uphold the Constitution.

Sir, after he lost his job as the Chief Minister he went to Calcutta and in a meeting there he said that if contractors had been engaged to demolish the Babri Mosque then it would have taken three months but our Karsevaks have done it in five hours. That is the credit he claims; that is his commitment to the Constitution and he is lecturing us on the Constitution.

[Translation]

SHRI SUNDERLAL PATWA : Mr. Speaker, Sir my name has been mentioned. I respect Somnath Chatterjee very much.

SHRI SOMNATH CHATTERJEE : We also respect you very much. You are doing wrong to side with the B.J.P. ....(Interruptions)

SHRI SUNDER LAL PATWA : You say that I am doing wrong to side with the B.J.P. I say that you are doing wrong thing by supporting this Government. This lion of forest has been trapped in the circus cage. That's why it is wagging its tail pitifully. What I speak in Calcutta....(Interruptions) listen to that ..(Interruptions) are you not in the habit of listening? ..(Interruptions) I cannot make Pappu Ji understand my point even if I were to take seven births.

SHRI RAJESH RANJAN ALIAS PAPPU YADAV : Yes you could not. You are talking about the lion living in a cage. Talk about the constitution regarding Bal Thakare Ji. If you dare arrest him. There is no discussion on that ... (Interruptions)

[English]

MR. SPEAKER : Please stop now. Where are we heading to? Shri Pappu Yadav, please stop now. Why are you taking name like this? It is not correct.

...(Interruptions)

SHRI RAM NAIK : Sir, this reference should be deleted.

SHRI MADHUKAR SARPOTDAR : Sir, this reference should be deleted.

MR. SPEAKER : I would certainly go through it.

...(Interruptions)

[Translation]

SHRI SUNDER LAL PATWA : Hon'ble Speaker, Sir, I request you all that I do not feel bad of children's is talks. I invite Shri Somnath ji that bring in a proposal for discussion on that entire speech and on that entire matter. We would

welcome that. After full discussion and the conclusion drawn out of that discussion if you are in the wrong, you regret and tender apology. If we are in the wrong we will regret, and tender apology. You bring in proposal for complete discussion on the matter. I invite you. I challenge you.

[English]

SHRI PRAMOTHES MUKHERJEE : That is a separate thing ..(Interruptions)

[Translation]

SHRI SUNDER LAL PATWA : That is a separate issue. I have no hesitation. You bring in a proposal. Why feel uncomfortable about it? ....(Interruptions)

[English]

MR. SPEAKER : I think you have said enough. We shall stop there ..(Interruptions)

[Translation]

SHRI SUNDER LAL PATWA : I have no hesitation. What I have said today, I have no hesitation in that ..(Interruptions)

[English]

MR. SPEAKER. I do not know. I have to give some time to the Home Minister also. We have to dispose it of today before 6 O' Clock. ..(Interruptions)

SHRI RAM NAIK : Sir, they have intervened. ..(Interruptions)

[Translation]

SHRI SUNDER LAL PATWA : You please bring it for discussion....(Interruptions)

[English]

MR. SPEAKER : Please conclude now.

....(Interruptions)

[Translation]

MR SPEAKER : Now it is enough. Please conclude.

..(Interruptions)

SHRI RAM NAIK : Mr. Speaker, Sir, what I said, Somnath ji said this only about that I should have said earlier. The Children who have less knowledge of legal matter, you understand their point at last. I want to say it is 10 minutes to 6 o' Clock. The notice above the statutory resolution which

should have been received earlier as usual, we have not received that. It does not figure in today's bulletin also. Therefore, there should be no discussion on matter today and discussion should be held tomorrow about its merits. That's all .....(Interruptions)

[English]

MR. SPEAKER : In this way, how can we finish it?

SHRI P.C. THOMAS : Sir, this House is duty bound to safeguard the Constitution. We are also duty bound to see that the Constitutional crisis does not arise in the way of administration of the Union as well as the State.

As far as the proclamation is concerned, there was proclamation and a court order at a later stage which purported to have the effect that proclamation was not pending before the court. But as far as the interim stay order is concerned, we are quite sure that there has been an order allowing the Governor to continue his efforts as a Governor and as a person who has to represent the Union of India and as a person who has to represent the President of India.

At this stage, I would submit that we, as Members of Parliament and as the Parliament of India, are duty bound to see that the Constitutional crisis does not arise. I would like to submit that nothing has been mentioned as to how to come out of this impasse, if there is any. The only point mentioned is, whether to invite or not to invite so and so. That is not the way to solve the impasse we are in. Suppose, at this stage it is found that it was not Constitutional. What was the position two or five days before? We should think of that. This has been continuing and this was being atoned. I am sure there is no way to move out of this impasse. I would like to submit that there is no impasse. I think I should just say a word like to submit that there is no impasse. I think I should just say a word with regard to Rule 352?

MR. SPEAKER : I don't think it has got any relevance here.

SHRI P.C. THOMAS : What has been said about Rule 352?

MR. SPEAKER : You need not reply that. Everybody understands it.

SHRI P.C. THOMAS : It says that a Member while speaking shall not refer to any matter or fact on which a judicial decision is pending. That is you cannot mention any fact on which a judicial decision is pending but can mention the fact that a judicial decision is pending. We can mention that. If we cannot mention that then there is no question of this Resolution or even your objection. I think that is how it would be taken into account.

MR. SPEAKER : We have got only six minutes. My appeal is, let the Law Minister have his view and then I will give my ruling.

THE MINISTER OF STATE OF THE DEPARTMENT OF LEGAL AFFAIRS, LEGISLATIVE DEPARTMENT AND DEPARTMENT OF JUSTICE (SHRI RAMAKANT D. KHALAP) : I have heard this debate with rapt attention and I think it is my turn now to express that I am really surprised to hear hon. Member Justice Lodha that the order passed by the Supreme Court—you may call it an interim order - does not have the effect of reviving the proclamation which was struck down by the Allahabad High Court. This does not need any legal wisdom but it is common understanding that if any judgement, of any court, sets aside or declares a particular situation and the higher court pending appeal passes an interim stay order, that interim order revives the original situation.

I can describe this as a *Sanjivani* where a man is declared to be dead but some higher authority says, "You shall not be dead till the final decision is taken, you inject some life into it." So, when the Allahabad High Court declared that this proclamation was invalid, that the President was not entitled - for the reasons cited there - to pass that proclamation and impose Presidential Rule, the very fact that the higher court, the Supreme Court, passed an interim order staying the operation of the judgement, automatically revives the proclamation and the President's Rule remains in force ... *(Interruptions)* I will read those two orders of the court and Supreme Court. For this purpose, I will first read the order of the High Court itself. The High Court, in its order of 19th December, 1996 says:

"For the reasons recorded separately, this court unanimously holds that the impugned Presidential proclamation dated 17.10.96 reimposing Presidential rule under Article 356 of the Constitution of India in the State of Uttar Pradesh, subsequently approved by the Parliament, is unconstitutional, issued in colourable exercise of powers, and is based on unholy irrelevant and extraneous grounds and, therefore, cannot be allowed to stand. Consequently, the same is hereby quashed."

Further, the same court says:

"However, to avoid any Constitutional deadlock.. These words are very very important".

"However, to avoid any constitutional deadlock or crisis resultant to the quashing of aforesaid proclamation, we direct, by applying the doctrine of prospective overruling, that this judgement shall come into operation with effect from 26.12.96."

So, although it was held that the proclamation was bad, the same Court said that by applying the principle of prospective overruling, till 26.12.96, their judgement shall not come into operation.

Then we went in appeal before the Supreme Court and the Supreme Court in its order dated 20.12.96 said this:

"The petitioner is permitted to amend the petition. Special Leave granted. Additional documents may be filed brief

written submissions which would facilitate expeditious disposal of the matter, There will be a stay on the operation of the impugned order dated 19.12.96 pending appeal."

Mr. Speaker, Sir, let me know from Justice Lodha now the meaning of these words pronounced by the Supreme Court — "There will be stay on operation of impugned order dated 19.12.96 pending appeal." This order has been passed before the order of the Allahabad High court came into operation because it was to come into operation only from 26.12.96.

It further says :

"The learned Attorney General assures us that there will be no dissolution of the Assembly during the pendency of this appeal. We also so direct. This will not preclude the formation of a popular Government, if that is possible, nor will it preclude the Governor from exploring the possibility of formation of a popular Government."

Now this is so very apparent, so very clear, Though the judgement was passed by the Allahabad High Court, they said that it will come into operation on a prospective date and before that judgement came into operation the Supreme Court gave its stay. So, what remains now? In effect, there is no judgement which holds that the proclamation is bad. This is the situation.

Let us go back to the other aspects, since points have been raised.

SHRI SOMNATH CHATTERJEE : Why should you go into all that?

Mr. Speaker, Sir it is entirely for you to decide. I did not have a copy of the judgement. Only a portion was read out to say that there was an outright stay. I did not recall.

1800 hrs.

It was not stated on the floor of the House on the other hand, it was construed. What is the meaning of this 'limited stay'? What was the effect of this limited order of the Supreme Court? Now it appears that there was a total stay.

This is the legal situation ... *(Interruptions)*

SHRI NIRMAL KANTI CHATTERJEE (Dumdum) : Justice Lodha started by saying that no special legal ability was required and it was a matter of common sense. It also implies that even with his uncommon sense he has not been able to understand it! That is the problem.

SHRI G.M. BANATWALLA (Ponnani) : Sir, retired Justice should not mean injustice!

SHRI RAMAKANT D. KHALAP : So, there is a Proclamation in force. What we are trying to do by this

Resolution is to extend that Proclamation for another period of six months. This is the legal situation.

I will only mention one point. The question was that the single largest party should have been called. If this is the argument, then the same Allahabad High Court had said that the Governor was justified in not inviting the largest Party to form the Government after the election results were declared on the 10th October. That is what I want to say.. *(Interruptions)*

MR. SPEAKER : Do not worry I am not going to give a long ruling on this. I have heard the hon. Members, particularly, Justice Lodha, who has raised objection to the moving of the Statutory Resolution. I think the position is that on 17.10.1996, there were two Proclamations issued, one revoking earlier Presidential Proclamation of 18.10.1995. I am not going into the election results and constitution of the Assembly by the Election Commission. I am not going into all the details at all. After having revoked the earlier Presidential Proclamation of 18.10.1995, there was another Proclamation imposing President's rule in Uttar Pradesh under Article 356 of the Constitution. Now this Proclamation of the President's rule was challenged which has been stated very clearly by the Law Minister himself. In fact, he had challenged the Constitutional validity of reimposition of the President's rule. The matter went up to the Supreme Court. The Law Minister today, tells us that there is a clear cut stay order of the Supreme Court. Even if Justice Lodha had not specifically mentioned it, the fact is that Justice Lodha also pointed out that the Supreme Court did impose two condition. One condition was that there shall be no dissolution of the Assembly and that continuance of President's rule shall not preclude the possibility of formation of a popular Government.

You know the word "preclude", what will not preclude, means the continuation of the President's rule. Therefore, the President's rule in Uttar Pradesh was temporarily stayed by the Supreme Court and till today the Supreme Court has not disposed of the case. The point to decide is that whether the present President's rule which is going on, which is to expire only on 16th April is in operation. The President's rule is in operation in Uttar Pradesh by the stay order issued by the Supreme Court. There is no doubt about this. The President's rule is now in operation and if it has to be extended, the question of validity of the imposition of the President's rule has not been disposed of by the Supreme Court.

I think the Government is perfectly in order in seeking extension of President's Rule by a resolution. Therefore, I do not agree to what he has said. The Minister may now move the resolution.

SHRI INDRJIT GUPTA : Sir, I beg to move :

"That this House approved the continuance in force of the Proclamation, dated the 17th October, 1996 in respect of Uttar Pradesh, issued under article 356 of the Constitution by the President, for a further period of six months with effect from the 17th April, 1997."

MR. SPEAKER : Now the House stands adjourned to meet again tomorrow the 14th March 1997 at 11 a.m.

1806 hrs.

*The Lok Sabha then adjourned till Eleven of the Clock on Friday, March 14, 1997/ Phalgun 23, 1918 (Saka)*

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