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Title: Discussion on the motion for consideration of the Uttarakhand Appropriation (Vote on Account) Bill, 2016 and Statutory Resolution regarding disapproval of Uttarakhand Appropriation (Vote on Account) Ordinance, 2016 (Ordinance No. 2 of 2016), (Sstatutory Resolution - Negatived and Government Bill - Passed).

HON. SPEAKER: Now we take up Item Nos. 18 and 19 together. The Minister of Finance Shri Arun Jaitley.

THE MINISTER OF FINANCE, MINISTER OF CORPORATE AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI ARUN JAITLEY):  
I beg to move:

"That the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the State of Uttarakhand for the services of a part of the financial year 2016-17, be taken into consideration. "

SHRI KALIKESH N. SINGH DEO (BOLANGIR): I beg to move:

"That this House disapproves of the Uttarakhand Appropriation (Vote on Account) Ordinance, 2016 (Ordinance No. 2 of 2016) promulgated by the President on 31<sup>st</sup> March, 2016."

Hon. Speaker Madam, I will not take too much time because a large discussion has happened and many points have been covered in the entire discussion. The question remains whether this Central Government has the moral authority or the Constitutional authority to bring in this Appropriation. I have discussed this with the hon. Minister separately but I think it is important that the Chair clarifies this particular issue, that is promulgation of the President's rule is supposed to be ratified by the Lok Sabha and the Rajya Sabha. Is the Government constitutionally enabled to bring in an Appropriation Bill and a Budget before the President is actually got ratified? I know Shri Jaitley thinks contrary to the fact, but I have been informed that this particular move by the Government may be *ultra vires*. Since the President's rule itself has not been ratified by the Lok Sabha and the Rajya Sabha, the Government does not have the constitutional authority or the right to bring in the Budget.

Secondly, I think we need to understand the emotions behind the use of article 356. Article 356 is not something which our Constitutional forefathers thought of. It was an article put by the British and it finds its roots in the British India's Constitution- Section 93 of the Government of India Act 1935. At that time, it allowed a Provincial Governor appointed by the British Raj in Delhi to assume powers of a provisional elected Government, a Government made by Indians, if the administration was not carried out under their Act.

The Congress which unfortunately walked out right now had 1/8<sup>th</sup> of the eleven provinces. At that time, before Independence, they protested very strongly against this. In fact, they refused, under the leadership of Pandit Jawaharlal Nehru to take over the government until they got an assurance from the Lieutenant-Governor that it would not be used arbitrarily. The British Viceroy Linlithgow gave an assurance that this would not be used arbitrarily, this would not be misused; and only after that the governments of the provinces were taken over. Therefore, it is absolutely surprising that the Act to which our freedom fighters, our politicians before Independence objected so strongly, had so much fear and apprehension about, was copy-pasted and put into our Constitution.

There have been 113 such instances as far as my information goes eighty-eight of which have been used by the Congress. But what is more surprising is this. I bear no allegiance to the Congress. I bear no sympathy for their cause as far as use, misuse or abuse of article 356 is concerned. But I do have an apprehension when the NDA or the BJP tries to utilise it for the simple reason that in 1998 the BJP manifesto stated: "Abuse of provisions like article 356 and misuse of Raj Bhawans as extension counters of ruling party at the Centre have defiled the sanctity of the country's Constitution."

The hon. Minister of Finance Shri Arun Jaitley on the 27<sup>th</sup> November, 2015 stated: "These days the fear of article 356 being violated repeatedly or repeatedly being used against the States have disappeared." Yet again, we find the same BJP using article 356. There is no doubt that the use of article 356 has led to disastrous consequences for the Indian polity, the political system, the parliamentary and legislative system as a whole, and for the country.

The hon. Finance Minister very correctly said that in the Kashmir scenario the use of article 356 led to terrorism, a condition which we still battle with. What has happened as a result of the use and misuse? The Courts have got into it. This is something which I personally find indefensible and undesirable. Since it has been used many times and has been misused many times, the SR Bommai vs. Union of India judgement came.

I think it is a shame when you as the leader of the House, as the custodian of the House have the full power, authority and confidence of the House to adjudicate on matters or disputes, the fact that our behaviour and our political parties' behaviour have led to such grey cloud surrounding the use of article 356 that the Courts have found a leeway to get into this. I think, it is a matter of shame for us. हिन्दी में एक कहावत है - अपने पैर पर खुद कुल्हाड़ी मारना। Forgive me, my Hindi is not very good.

A number of hon. Members have said this and I reiterate it that allowing the Courts to get in, allowing the Courts to challenge the supremacy of the Speaker is not desirable for any political party. I find it ironical when my friends from the Congress Party have objected so strongly to this matter because only yesterday or day before yesterday in Odisha they were themselves demanding President's rule. So, I bear no allegiance with them but I do repose my faith in the political democratic system.

If the Speaker is supreme, do we have a right to question the Speaker? The Government of India has in its wisdom thought of the matter which has happened in Uttarakhand as a break-down of Constitutional machinery. There is some merit in the argument. I would agree when Shri Arun Jaitley

says that if the nine MLAs in Uttarakhand were to be disqualified that means, they must have gone against the whip and voted against the Government. Therefore, they are disqualified. If they are disqualified, the Government must fall. I completely agree with him. However, the larger point is whether we can sit in judgement over the provincial speakers, over the Speakers of the Assemblies?

Madam, tomorrow, I may not agree with you on certain subject, does that give me the right to pass judgment on you? Madam, what we need to do is to re-look at the way we frame our rules. I agree some level of unfairness could possibly have happened in Uttarakhand. We need to look at the rules and see how we, as a whole – Speakers, Members of the House included, conduct our business within the House. We have to ensure that the business is conducted within the parameters of rules. If we are unable to do that, we will go on inviting High Courts and Supreme Courts to enter our space to take away our privileges and ensure that we, as a political establishment, are looked down upon by the nation.

The Government has talked many a times about cooperative federalism. Cooperative federalism should not only be shown in words but also in spirit. We, in Odisha, have raised this issue many a times and I hold strong grudge with the Government. Whenever we talk about getting our fair share of funds, one thing is said on the floor of the House, however, when it comes down to actual translation into action, that is severely limited. I do not want to go into the details of that. But I will ask the question that a day before majority was to be proved in Uttarakhand what was the need to bring this Bill today? You could have brought it tomorrow by the evening. You could have brought it the day after once the majority was tested in the Houses. What was the need to bring it today? I fail to see the logic in that. Almost one month and a half has gone from 1<sup>st</sup> of April. If one month and eighteen days have gone, what was the urgency in the matter? How would it impact the people of Uttarakhand or the Government of Uttarakhand? इस आर्डिनेंस को पलोर टेस्ट के बाद लाने।

Madam, I would not like to speak too much on the subject. Now I want to seek my last clarification ...(*Interruptions*). आपको समर्थन किया है लेकिन आर्टिकल 356 का विरोध किया है।

Madam, I think there is an opportunity for us to ensure that the rules which are in grey come into black and white so that the people of India know the rules in which the politicians have to conduct themselves and we, as a House, act responsibly. The discretionary power should be limited to the extent of what the rules allow. I would like to reiterate whether the Government has the constitutional authority to bring in an Appropriation Bill and a Budget when the President's Rule itself has not been ratified by both the Houses.

Madam, with that I rest.

SHRI ARUN JAITLEY: Madam, my colleague, Shri Kalikesh Singh Deo has very eloquently put his four points in opposition to the Ordinance. I will just answer each one of the four.

The first point is that under article 356 the ratification of the proclamation by both Houses of Parliament is to take place. After the Bommai judgment, you are no longer allowed to dissolve the Assembly straightaway. It can only be put in an animated suspension and the dissolution will come after both Houses of Parliament have approved it. Mr. Kalikesh Singh says that this Bill can come only after the Centre gets jurisdiction over the affairs of the State and therefore, this Bill should have come thereafter. With utmost respect to the entire industrious research that he has done, this view may not be accurate.

### **19.00 hours**

The reason is, the consequences of a Proclamation under Article 356, whether it is for an animated suspension or a dissolution, are identical. If it is under an animated suspension, there is an eclipse over the State Assembly. Therefore, the powers of the State Assembly vest in the Centre. That is the language of Article 356. If a complete dissolution takes place, the effect is the same.

The Supreme Court only wanted to be sure that in the case of a wrongful invocation of a proclamation under Article 356, the Assembly should not be dissolved in the first instance. The Assembly should not be dissolved in the first instance because it may be difficult to revive a dead man and it may be difficult to revive a dead Assembly. But if it is an Assembly under an animated suspension, it is possible to revive it in case either the Court decides to the contrary or either of the two Houses of the Parliament refuses to ratify it. But then the constitutional effect of dissolution or animated suspension is the same. In any case, the power of the State Assembly would vest in the Central Government. The moment a Proclamation comes, the effect of the Proclamation is to keep the Assembly in suspended animation. Therefore, the power vested on the 28<sup>th</sup> March itself in the Central Government, whether it is only a suspended animation leading to a dissolution or a suspended animation leading to a revival, that situation can disagree.

Now, irrespective of what happens tomorrow – and this is my answer to your fourth point as to why do not we wait – the expenditure which has incurred from 1<sup>st</sup> April onwards is under this Ordinance and irrespective of whatever is the result of the floor test tomorrow, that expenditure needs to be ratified. So, whether you do it today or whether you do it tomorrow, the ratification will be required even if there is a popular Government.

Shri Kharge is not here. He had raised this question and this would have been my response to his question.

Your second question is tracing out the history of Article 356 and the genesis lies in the Government of India Act, 1935.

We are not in the process of writing a column or an essay on Article 356. Because it is politically always correct not to have a Proclamation under Article 356. But there are various situations. I would invite you to give me an answer. What if a State Assembly passes a Resolution that we decide to secede from India? हम इस देश को छोड़ने के लिए प्रस्ताव पास करते हैं। Will Article 356 be justified or not justified? Then should we say that we made a fatal mistake? Obviously, in that extreme case, Article 356 would be justified. What if there is a constitutional deadlock in terms of arithmetic and nobody is able to form a Government?

An Assembly can be elected where nobody has a popular mandate. बिहार में वर्ष 1999 और वर्ष 2000 में हुआ। उसके बाद वर्ष 2005 में हुआ। So, as a result of a

constitutional deadlock, you will have to have Article 356 and then go back to the people for an election.

Therefore, there may be several situations. However bad Article 356 or politically incorrect Article 356 is, Article 356 would always be required.

Your third question is, the Speaker must always be respected. You have two arguments. On one, I agree with you. I agree with your general proposition that Speaker must always be respected.

Your second argument where I agree is, that a Speaker's ruling is not challengeable in a court of law. That is the mandate of the Constitution. If we try and have a Speaker's ruling subject to judicial review, then the concept of separation of powers which is a part of the basic structure will be completely destroyed. And you are absolutely right, that an initiation to the judiciary that a Speaker's ruling is subject to your power to overrule a Speaker would be extremely dangerous for Indian democracy.

Madam, if such a situation were to happen ever, I think, we have the age-old practice that the legislators follow that Speakers ignore the summons of the court. You had a situation like this in 1963 in the Keshav Singh case where courts summoned the legislators and the legislators summoned the judges. Then the full bench of the Supreme Court had to sit to decide the issue. Therefore, the recent move by some friends in the Congress Party to invite the judiciary and tell the judiciary that you have the power to review the Speaker's rulings, augurs of dangers to India's legislatures and to the separation of powers.

I am sure such a situation would be avoided. There is some element of statesmanship, and institutions that India have and they would continue to respect that.

But I disagree on the second leg of your argument. While we respect the Speaker, I am still waiting for an answer – the Congress did not give that answer and they walked out instead of giving the answer – that democracy envisages rule by majority. If Speaker regularly says, 'I treat the minority to be a majority'. कल को वोट ऑफ नो कॉन्फिडेंस होता है, तो वह मेजोरिटी को माइनोरिटी कर देता है और माइनोरिटी को मेजोरिटी कर देता है, यानी रिजल्ट गलत डिवलेयर कर देता है, Will democracy be held to ransom by such a *mala fide* rulings?

You are absolutely right that the courts cannot go into it. The House has to assemble. But you had Speakers who say, 'I will lock the House and not the House to reassemble. I will change the floor. I will wrongly count the floor'. Then the question is: Is democracy remedyless? Are we without a remedy or will such actions of the Speaker constitute a break down of the constitutional machinery because the action of the Speaker is allowing a minority to sit in Government and a majority to sit in opposition?

That is the question which I had posed before them. If somebody has an answer, please tell me as to how to deal with such a Speaker. The House deals with such a Speaker but then the Speaker does not call the House. He changes the floor. He wrongly counts the numbers and creates a deadlock. I agree that article 356 has to be used in the rarest of rare cases. Some such situations can arise where the power, however much we dislike article 356, has to be considered in situations of this kind. Thank you.

SHRI KALIKESH N. SINGH DEO: Madam I have the right to reply to the hon. Minister under the Motion. Since he has addressed specific questions I will take two minutes.

HON. SPEAKER: It is already seven o'clock. We will complete this business and then adjourn the House. So, we are extending the House to complete the business.

SHRI KALIKESH N. SINGH DEO : I think the hon. Minister may be a little pained by the fact that I have compared his use of article 356 with that of the British Raj. I belong to a regional party. Decades of misuse and abuse of this article had happened. So, I speak on the use of this article with that apprehension.

Hon. Finance Minister has given a few scenarios which he has posed to me. I will pose one scenario back to him. As he has suggested in his speech that one State might just vote to go away from the country, in which case it is justifiable to use article 356 to stop them. Tomorrow the country may decide to throw a State out. This is a hypothetical situation. I mean in extreme cases you can always justify extreme action. We have to look at that extreme action in the circumstances which exist today.

I agree with you and I am as much pained as you are with the courts interfering in our parliamentary system. The antidote to that is, we conduct ourselves properly. We have seen as you have stated that it has not happened in the past. Maybe, we can have, amongst the Speakers throughout the country – 30 Speakers, I think – maybe you can put this particular question, headed by you, Madam, and under your leadership, 30 Speakers of the country take a decision of something like this. If one Speaker being errant, then 30 Speakers of the country take a decision, rather than allowing the courts to intervene.

My colleague and I still tend to agree, you could have waited for two more days before tabling of the Appropriation Bill. With that, Madam, I thank you for allowing me to speak.

THE MINISTER OF URBAN DEVELOPMENT, MINISTER OF HOUSING AND URBAN POVERTY ALLEVIATION AND MINISTER OF PARLIAMENTARY AFFAIRS (SHRI M. VENKAI AH NAIDU): As a Parliamentary Affairs Minister, I am compelled to say this. My friends always make some charges, then, use some slogans and go away. They have got every right. But using slogans and accusing, I would just quote a thing. They were preaching us about how sacrosanct the Speaker's ruling is, how the Speaker has to be respected, etc. A senior Congress leader, Shri Jairam Ramesh has moved the Supreme Court, challenging the decision to treat Aadhar Bill as a money Bill which was passed during the Budget Session in March, 2016. इन्होंने 91 स्टेट गवर्नमेंट्स को डिसमिस किया। 'नौ सौ चूहे खाकर बिल्ली ढंज को चली', ऐसा इनका व्यवहार है।

HON. SPEAKER: Shri Kalikesh Singh Deo, are you withdrawing your Statutory Resolution?

SHRI KALIKESH N. SINGH DEO: No, Madam.

HON. SPEAKER: Okay. I shall now put the Statutory Resolution moved by Shri Kalikesh N. Singh Deo to the vote of the House.

The question is:

"That this House disapproves of the Uttarakhand Appropriation (Vote on Account) Ordinance, 2016 (Ordinance No. 2 of 2016) promulgated by the President on 31<sup>st</sup> March, 2016".

*The motion was negatived.*

HON. SPEAKER: The question:

"That the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the State of Uttarakhand for the services of a part of the financial year 2016-17, be taken into consideration."

*The motion was adopted.*

HON. SPEAKER: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 4 stand part of the Bill."

*The motion was adopted.*

*Clauses 2 to 4 were added to the Bill.*

*The Schedule was added to the Bill.*

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

HON. SPEAKER: Now, the hon. Minister may move that the Bill be passed.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill be passed."

HON. SPEAKER: The question is:

"That the Bill be passed."

*The motion was adopted.*