

MOTION FOR ADJOURNMENT

**Failure of Government to uphold
provisions of Tenth Schedule of the
Constitution**

[English]

MR. SPEAKER: I have to inform the House that I have received four notices of Adjournment Motion regarding failure to protect and safeguard the dignity and privileges of Parliament, and of the office of Speaker of Lok Sabha from the following Members:

1. Shri Guman Mal Lodha
2. Shri Nathu Singh
3. Shri L. K. Advani
4. Shri Madan Lal Khurana

I give my consent to Shri Nathu Singh who has secured first place in the ballot to move the motion in the following form:-

"The failure of the Government to uphold the provisions of the Constitution in regard to disqualification of M.Ps. contained in Schedule 10 of the Constitution which put the issue outside the jurisdiction of any court."

Shri Nathu Singh.

SHRI NATHU SINGH (Dausa): let Advaniji move it, Sir.

PROF. MADHU DANDAVATE (Rajapur): Sir, when he does not move, the next man can do that.

MR. SPEAKER: Yes, Advaniji.

SHRI L. K. ADVANI (New Delhi): Sir, I seek the leave of the House for moving. The Adjournment Motion regarding failure of the Government to uphold the provisions of the Constitution in regard to disqualification of M. Ps. contained in Schedule 10 of the

constitution which put the issue outside the jurisdiction of any court.

MR. SPEAKER: Is the leave opposed?

THE MINISTER OF PETROLEUM AND CHEMICALS AND MINISTER OF PARLIAMENTARY AFFAIRS (SHRI SATYA PRAKASH MALVIYA): Sir, I oppose the leave.

MR. SPEAKER: Those who are in favour of leave being granted may rise in their places.

PROF. MADHU DANDAVATE: Sir, more than 50 Members are standing.

MR. SPEAKER: Leave is granted.

Under Rule 61 the Adjournment Motion is to be taken up.....

(Interruptions)

SHRI SANTOSH MOHANDEV (Tripura West): Since it is a question of protection of your rights and duties, is it proper for you to be in the Chair when it is discussed? (Interruptions) . I think the Deputy-Speaker should take the Chair. (Interruptions)

SHRI SOMNATH CHATTERJEE (Bolpur): Sir, it is a question of dignity of the House. You have every right to preside over this debate. (Interruptions)

MR. SPEAKER: Since the Question Hour is suspended, the House may take up the Adjournment Motion straight away. Mr. Lal Krishna Advani. (Interruptions)

MR. SPEAKER: I have called Mr. L. K. Advani. Please take your seat.

SHRI A. N. SINGH DEO (Aska): Mr. Speaker, Sir, I am on a point of order.

MR. SPEAKER: Yes. Mr. Singh Deo has a point of order.

SHRI A. N. SINGH DEO: Mr. Speaker,

Sir, when the adjournment motion has been admitted, it is obvious that Members should be free to discuss the motion without hindrance to their freedom of speech. If the Speaker is there, the Members might feel embarrassed as matters may come up which may involve the Speaker. We would, therefore, request the Speaker to withdraw since the Speaker is involved in the whole affair and let the Deputy-Speaker preside over this debate. (*Interruptions*)

MR. SPEAKER: There is no point of order. Please take your seat. Now, Mr. L. K. Advani.

(*Interruptions*)

SHRI L. K. ADVANI: Mr. Speaker, Sir, leave having been granted, I formally move:

"That the House do now adjourn."

It is, I think, unprecedented in the annals of history that an adjournment motion has been taken up by the House by formally directing that the Question Hour be suspended by the Speaker. To the best of my memory this has never happened before and that the Speaker suspended the Question Hour on the motion moved by me and my colleagues here is in itself evidence of the gravity of the situation. The first announcement that you made was made with the full unanimity of all representative sections in this House, the party leaders, and therefore, it has somewhat surprised me when one of the Members stood up to say that you should not be in the Chair when this matter is being discussed because this is not a matter pertaining to any individual, it pertains to an institution. I remember that last week it was on the 27th of December, you had announced in the House, and I quote:

"I have to inform the House that on the 7th December 1990 a notice was received from the Registrar of the High Court of Delhi requiring me to arrange to show cause in connection with the Civil Writ Petition No. 3871 of 1990....."

The writ petition *inter alia* seeks to challenge the validity and constitutionality of paragraphs 6 and 7 of the 10th Schedule to the Constitution 52nd Amendment Act, 1985. Then, you went on the add very rightly, "as per well established practice and convention of the House, I have decided not to respond to the notice." What is more pertinent is the subsequent observation made by you. "I have passed on the relevant papers to the Minister of Law and Justice for taking such actions as he may deem fit to apprise the High Court of the correct constitutional position and the well established conventions of the House."

Sir, when last evening you informed the House about the latest development and about the order issued by the High Court of Delhi, I am sure many people must have been surprised. I was also surprised when I got the information from you personally. But that was just a surprise, but when later on I came to discover that the decision of the High Court has followed an affidavit filed by the Government of India, to whom you have passed on all these papers, I was not just surprised, I was shocked. I would even say, I was outraged that here is a Government upon whom the Speaker casts a duty to protect the dignity of the House and to see that the High Court or any Court does not in any way contravene the provisions of the Constitution, which say that in so far as the 10th Schedule is concerned, jurisdiction of Courts is barred. That is the provision and this was the expectation from the Government. What does the Government do? The Government files an affidavit in the High Court of Delhi which says:

"It is submitted that the powers of the Speaker to disqualify a Member under the 10th Schedule of the Constitution of India is quasi-judicial in nature and is quite different from his powers with regard to regulation and conduct of the business of the House. It may be pointed out that the exercise of powers under the 10th Schedule by the Speaker is outside the House and not within the House. The said power is quasi judicial

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as it affects the rights vested in the Members of the Lok Sabha. This power is, therefore, amenable to judicial review by the High Court and the Supreme Court in exercise of their powers under Article 226 and Articles 32 and 136 of the Constitution of India."

Sir, the last sentence is the key phrase. (*Interruptions*) There have been instances in the past where the Courts have struck down some laws as being *ultra vires* of the constitution; there have been cases in the past where when we have decided here in Parliament that such and such a matter will be non-justiciable, but Court had not agreed with our view and set it down and that is the power of the Court. But, never in these 40 years, has, any Government which has been a party to the enactment of the law, its members or any party, itself gone to the Court and said that the Speaker is not the authority.

You in all earnestness and sincerity entrusted the responsibility to the Government to see that the dignity of Parliament is protected, to see that the law that we have enacted is defended. here, instead of defending the law, the Government itself goes and says and casts doubts on the validity of this law. It has been stated: "So far as the validity of the law is concerned, we will make our submissions later on." It means, they are not going to defend even the validity of this law. But I am amazed that in this cases, it is not merely the question of a law being declared *ultra vires* or *intra vires*. It is essentially the dignity of the Speaker and the dignity of Parliament in so far as the decisions are concerned. I would say that even in the course of the debate, my view was that this law should not be made non-justiciable. Even then, once parliament has passed the law unanimously, it becomes obligatory for the Government to see that the law is defended outside and the courts do not in any way encroach upon what we think is the jurisdiction of Parliament and of the spokesman or the

custodian of Parliament dignity, the hon. Speaker.

In this particular case, I do not want to go into the whole history. But this much is known that this particular provision, that courts are barred jurisdiction in this matter, was questioned in the Punjab High Court. The Punjab High Court declared that particular provision to be *ultra vires* and struck down. The Punjab High Court decision was appealed against by the Government of India and I believe, the Government of India is a continuing institution. And the Government of India went to the Supreme Court in appeal against the Punjab High Court decision and said that the Speaker's jurisdiction cannot be challenged; the Speaker is the final authority; we would not like to undermine this authority. If at all, there is to be a change, the change has to be made by parliament, not by a court of law.

Only yesterday, the hon Minister of Law has referred to the cabinet decision. (*Interruptions*) A reference was made yesterday that a Cabinet decision was taken in August in pursuance of the recommendations of the Committee on Electoral Laws Reforms in which it was said that instead of vesting this authority.....(*Interruptions*)

MR. SPEAKER: Order, Please. Take your seat.

SHRI L. K. ADVANI: Yesterday, it was mentioned that a Cabinet decision taken in August, 1990 has accepted the recommendation of the Committee of Electoral Reforms in which it was suggested that instead of this authority to decide about disqualification being vested in the Speaker, the authority may be vested in the Election Commission. The phraseology of that was, the President would be advised by the Election Commission. I am a party to that recommendation as also my colleagues here, Mr. Somnath Chatterjee, Mr. Indrajit Gupta and many of my colleagues on this side. But if today, the Government moves in that direction, I would regard it as a dubious Government because it would have a very limited context. In this particular case, I would say that this kind of

move cannot be accepted readily today.

THE MINISTER OF COMMERCE AND MINISTER OF LAW AND JUSTICE (SHRI SUBRAMANIAM SWAMY): Do you mean to say that yesterday it would have been accepted?

SHRI L. K. ADVANI: No, I again say 'No'. I stand by what I said here in my recommendation. But today he wants to do it and particularly a Government which has tried to undermine the authority of the Speaker and undermine the authority of Parliament by this kind of affidavit, what is it trying to achieve?. It is preposterous indeed that any Government should go to a court of law and say that my Speaker is not empowered to take a decision on this (*Interruptions*)

MR. SPEAKER: Order please. Shri Ram Dhan.

SHRI L. K. ADVANI: Therefore I say that a mere announcement by the Chair that we are going to disregard this court order would not meet the situation. So far as the court order is concerned, there is no question of taking heed of it. But, what is more important is that his House must today censure and reprimand this Government for this gross misbehaviour, for its total failure to uphold the dignity of Parliament and during this Session whenever this problem of disqualification has been raised, I have always said that this has been hanging fire for a long time. No one knows what is the nature of this Government. How long this Government will be in a majority or even this much majority and how many of its Members are qualified to continue as Members in this House. Therefore, I plead that at least before this Session ends, you must give us final decision on who is qualified. I have been pleading this since the beginning of this Session. Tomorrow, the Session is about to end. What has happened yesterday is that suddenly a court order has been issued restraining the Speaker from going ahead with the defection proceedings before it. You have declared today that Congress party is also in agreement with the announcement. It is in agree-

ment with the announcement made by the Speaker that the court order must be disregarded and, therefore, I am sure that the Congress party also will uphold my contention that hereafter there should be no delay in announcing who are qualified and who who are disqualified. (*Interruptions*) Tomorrow evening when this House adjourns, we should be in a position to know who are its members qualified to be Members of this House and Members of this Government.

SHRI SATYA PRAKASH MALVIYA: I am on a point of order. No Member can force the Speaker to take a decision in a particular case.

SHRI L. K. ADVANI: This is a Government which wants to force the Speaker by using the court authority.

SHRI SATYA PRAKASH MALVIYA: I am on a point of order. Only the Speaker has to give the ruling and no one else.

SHRI L. K. ADVANI: I have to make a submission to the Speaker. (*Interruptions*)

MR. SPEAKER: He has given his opinion. It is for me to decide.

SHRI L. K. ADVANI: My submission is that Parliament's authority vis-a-vis the court has been declared by you very categorically in your announcement. (*Interruptions*)

SHRI A. N. SINGH DEO: Mr. Speaker, I am on a point of order. (*Interruptions*)

MR. SPEAKER: What is your point of order?

SHRI A. N. SINGH DEO: Sir, the hon. Leader of the Opposition has referred to the court order. (*Interruptions*)

I will draw your attention to rule 58 (vii) which says:

"(vii) the motion shall not deal with any matter which is under adjudication by a

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court of law having jurisdiction in any part of India....”

(Interruptions)

MR. SPEAKER: There is no point of order. Please take your seat.

(Interruptions)

MR. SPEAKER: Mr. Singh Deo, I have heard you. There is no point of order. Please take your seat. I have ruled it out of order. Will you please take your seat?

(Interruptions)

SHRI L. K. ADVANI: Sir, the Union Government has relied on Article 226, Article 32 and Article 136 to justify why this particular power of the Speaker is subject to judicial review. When we passed this Bill and converted it into an Act and made it a part of the Constitution it is not merely an ordinary statute—and we said in Section 7 of the Act or Clause 7 of the Schedule that notwithstanding anything in this constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a Member of a House under this Schedule. This is a very specific provision in which it is said that even though there may be other provisions in the Constitution which might give certain authority to the Court, so far as this particular question of disqualification is concerned, the Courts cannot take cognizance of it. I would urge the Government—to whom you have passed on the papers—to immediately go and object, make a preliminary objection not even to entertain the petitions that were filed in the Court and dismiss the petitions *in limine*. Instead of that, what they do is they themselves uphold those petitions because those petitions happen to be of those very defectors whose Membership of the House is called in question. They are the defectors who have gone to Court against the Government decision, against the Parliament decision. Therefore, the Government itself not only does not oppose

it but goes and tells the Court that the Speaker has no jurisdiction in this regard and this will be subject to review. *(Interruptions)* I have seen Governments behaving very badly; I have seen Governments in the past behaving very badly; but I have never seen such an abominable behaviour on the part of the Government. It is obnoxious. It is abominable. It is absolutely indefensible. *(Interruptions)*

MR. SPEAKER: Singh Deoji, please take your seat. *(Interruptions)*

SHRI L. K. ADVANI: Sir, I cannot insist as to who should come to the House to give an explanation for the Government's conduct. But I do feel that this is a matter far too serious and, therefore, in the fitness of things and in deference to the feelings and the strong sentiments in Parliament, I would expect the Prime Minister to come here to defend the decision that has been taken by the Government. We are not concerned with the courts' orders; we are not concerned with the court's decision. And I am sure that had it not been for this particular affidavit filed by the Government of India, the Delhi High Court would never have dared to issue an order of that type. It is only because of this indefensible, preposterous, abominable affidavit that this situation has come about in which the dignity of Parliament and the dignity of the office of Speaker has been so gravely discussed. Therefore, I would seek the support of the House and not merely of sections which are opposed to the Government but even of the ruling party, the Congress Party which has a serious stake in the matter to see that the traditions and values are upheld to reprimand and admonish and censure the Government on this particular issue. *(Interruptions)*

MR. SPEAKER: Motion moved;

“That the House do now adjourn.”

Now, Mr. Dinesh Singh.

SHRI DINESH SINGH (Pratapgarh): Mr. Speaker, Sir, the matter before us is a very

serious one (*Interruptions*)

MR. SPEAKER: When a very serious discussion is going on, I request the Members to keep calm.

SHRI DINESH SINGH: It affects the rights and privileges of this august House and I would beg the hon. Members from all sides to kindly listen to speakers with patience because only then we can put across our views—whether our views are accepted by Members or not is another matter. But if we are not even allowed to put our views across in a measure of sobriety in this House then it will already be a negation of democracy and there will be no point on quarrelling over this paper. Now, Sir, I would also like to say that this matter is not a party matter. This is far too serious. We have to take a view, a view of the House as such. I hope that ultimately we shall arrive at some kind of consensus on this so that the dignity of this House and of the Speaker is maintained in a manner in which there is no dispute between hon. Members on one side or the other. Now, in your decision not to respond to the request of the Court to stay the proceedings that are before you have already take a decision

with the approval of the House which makes this somewhat redundant in its merit as such. I am not talking of what the Government should or should not have done—that I shall come to later. But in effect, this question is now redundant; the authority of the Speaker has been maintained, the authority of this House has been maintained and it has been made quite clear that there cannot be any kind of interference by courts on the judgment that you will make.

Therefore my task has been made very much easier. Advaniji has, if I may say so with respect, very ably put forward a position to preserve the dignity of the House. I should like to say that the position taken in this affidavit that Paragraph 7 of the 10th Schedule is constitutionally valid in as much as the word courts in Paragraph 7 should be read down as excluding High Court and Supreme Court in exercise of its jurisdiction under

article 226 and article 32 of 136 of the Constitution of India, is a stand which we cannot support.

It is unfortunate that this affidavit has been filed in the court. I cannot understand that it would have been the wish of the Government or the Prime Minister to have been taken this view. How we got into it is a matter that the Government will no doubt look into. The hon. Minister for Parliamentary Affairs is here; he will no doubt convey to the Prime Minister that this matter needs to be looked into and this position taken by the Government needs to be reversed. This cannot be the position of a Government responsible to this House.

Therefore I would submit that the position as it contains in the Constitution in the 10th Schedule, Para 7 which has already been read out and I would therefore not like to take the time of the House in repeating it, but it is quite clear that notwithstanding anything in this Constitution—it is not just law, it is the Constitution which is the important one.....

SHRI SOMNATH CHATTERJEE: Including Articles 32, 226.

SHRI DINESH SINGH: All of them because they are part of the Constitution.

SHRI SOMNATH CHATTERJEE: But the affidavit says otherwise.

SHRI DINESH SINGH: Yes, it is regrettable. No courts shall have any jurisdiction in respect of any matter connected with the disqualification of a Member of the House under this schedule. Therefore your authority in this matter is supreme. You are responsible to this House and not to the courts outside.

If we have any complaint against you, we shall come to you. The House has a right to discuss any issue and if there are differences between us we have a right to approach you and represent to you. But we would not wish to represent outside this House. For us who passed this very Act, how can we not

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abide by the wording of this Act?

[*Translation*]

SHRI RAM DHAN (Lalganj): But your deflection is incorrect Rajiv Gandhi has engineered this deflection.

(*Interruptions*)

[*English*]

SHRI DINESH SINGH: Again I would beg of the hon. Members not to try to derive minor benefits here and there in this matter. There will be in future many other occasions to do so. But on this issue let us have unanimity.

It is my hope that the Government—either the Prime Minister himself or the Minister of Parliamentary Affairs speaking on behalf of the Government would come clarify the position before this House. (*Interruptions*)

MR. SPEAKER: Order please.

(*Interruptions*)

SHRI DINESH SINGH: Sir, let us not break up the responsibility, the collective responsibility of this Government into individuals, as such. As I was saying, it is my hope that the Prime Minister, Minister for Parliamentary Affairs, and of course, the Deputy Prime Minister happens to be here now,—any one of them or all of them—will clarify to this House, as to how this sentence and this stand got to be taken which is incorporated in this unfortunate Affidavit. I do not know what was the occasion to file the Affidavit, in the first place. (*Interruptions*) However, they will explain and I hope that their explanation will be satisfactory to this House and the House will take an unanimous view in this. I am not pre-judging what the Prime Minister or what the Government is going to say. I have no idea as to what they are going to say. (*Interruptions*) After all,

there is a solution to each problem; you are not going to hang anybody in this House. (*Interruptions*)

AN HON. MEMBER: But, will be expelled. (*Interruptions*)

SHRI DINESH SINGH: Even that will require a majority (*Interruptions*) Let us not try to divide this House on this issue. That will be my request. Let us listen to the Government; let us understand their point of view and thereafter we all take a decision.

SHRI INDRAJIT GUPTA (Midnapore)
Are you supporting the adjournment motion?

SHRI DINESH SINGH: That is why I have been trying to say that let us not take a party stand now. Let us listen to the Government, let us have their point of view; then we will decide, 'Who will support and who will not support'.

SHRI BASUDEB ACHARIA (Bankura)
You say whether you are supporting it or not.

SHRI DINESH SINGH: Whether we support it or not will be expressed by a vote in this House. Why do you want to prevaricate just now? May be, you will not wish to support; may be you will wish to withdraw; may be we will join you. I do not know what the Government is going to say. That is why I am saying, "Let us listen to the Government". Thereafter, we will decide as to what we are going to do in this matter. Thank you very much.

PROF. MADHUDANDAVATE (Rajapur)
Mr. Speaker, Sir, at the very outset, let me congratulate you for very categorically declaring, in keeping with the established traditions, the independence of the Speaker's Office and your jurisdiction.

Sir, I just want to remind that the announcement that you have made at the beginning is not some arbitrary announcement by you. I can at least quote ten to fifteen various precedents in this House, where an identical attitude has been taken by the

Speakers under different forms of Government.

Sir, to quote the latest instance, on 27th of July 1988, when Dr. Bal Ram Jakhar was the Speaker of this august House, he had given the ruling:-

"I have to inform the House that on 11th July, 1988 two notices were received from the Deputy Registrar, High Court, Appellate Side, Bombay, requiring my appearance before the Bombay High Court on 19th July 1988, for filing of an affidavit by me or the Secretary-General, Lok Sabha, within three weeks from 28th June 1988, in connection with two writ petitions No....."etc. etc.

"As per well established practice and convention of Lok Sabha, I have decided not to respond to the notices. I have passed on the relevant papers to the Minister of Law and Justice for taking such action as he may deem fit to appraise the Court of the correct constitutional position and the well established conventions of the House".

So, Sir, the announcement that you have made in the beginning is in keeping with the best traditions and well established traditions of this House. That is the point that I would like to point out to you.

At the very outset, I would like to bring to your notice very clear and precise formulation of Paragraph 6 and Paragraph 7 of the Tenth Schedule of the Constitution. Paragraph 6 very clearly says:

"If any question arises as to whether a Member of a House has become subject to disqualification under this Schedule, the question shall be referred for the decision of the Chairman or, as the case may be, the Speaker of such House and his decision shall be final."

Further Sir, Paragraph 7, whose heading is itself is 'Bar of jurisdiction of courts', says:

"Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule."

So, for those who filed the affidavit on behalf of the Government and though they might have extraneous arguments and conclusions, it is made explicitly clear that even if you try to induct various Articles of the Constitution, whatever has been said in those Articles of the Constitution, whatever has been said in those Articles of the Constitution, vis-a-vis, disqualification, Paragraph 7 supercedes all other Articles of the Constitution. This particular Paragraph 7 clearly says 'Notwithstanding anything in this Constitution, no court shall have any jurisdiction in respect of any matter'. Thus, Paragraph 7 supercedes all other Articles of the Constitution and it is again consistent with Article 122 of the Constitution in which the proceedings of the Parliament are completely insulated from the proceedings of the court and the decisions of the court. This particular point has to be taken note of. Sir, in the course of the affidavit, one particular point has been made and I would like to reply to that point on the basis of the provisions of the Tenth Schedule. What is the argument that has been made in the affidavit that has been submitted? It has been pointed out that 'The powers of the Speaker to disqualify a Member under the Tenth Schedule of the Constitution of India is quasi-judicial in nature and is quite different from the powers with regard to regulation and conduct of the business of the House'. So, this affidavit tries to bring a fine distinction between your jurisdiction, Mr. Speaker, outside the House and your jurisdiction inside the House. I need not reply to this point on my own because the reply comes from the formulation of the provision itself. Paragraph 6(2) is very important paragraph 6, sub-paragraph 2 says:

"All proceedings under sub-paragraph (1) of this paragraph in relation to any question as to disqualification of a member of a House under this Sched-

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ule shall be deemed to be proceedings in Parliament within the meaning of article 122 or, as the case may be, proceedings in the Legislature of a State within the meaning of article 212."

Probably, those who prepared this affidavit have read the entire Constitution selectively. Sometimes while studying the work of certain philosophers, we may find certain books which say that they are the selected works of the philosophers. So certain articles are eliminated and they are not taken cognisance of. I would like the hon. Minister concerned to take cognisance of this fact that in the provisions of the Tenth Schedule itself, the distinction which the affidavit seeks to make between your jurisdiction inside and outside the House in relation to disqualification, is totally rejected. And therefore, this is the aspect that has to be taken note of as far as this point is concerned.

There is one more point. It is always said that you have got the inherent power to have a judicial review. Judicial review of what? We have always defined the jurisdiction of three entities in the structure of Parliamentary democracy. Whenever the discussion took place in this House during the 24th and 25th Constitutional Amendments-I was present in the 5th Lok Sabha-I would repeat what I had said then. I had said: Sometimes unnecessary controversy is sought to be made whether people are solving, whether the parliament is supreme or whether the Constitution is supreme. I wish to make it very clear that all these three arms and elements of democracy have their own jurisdiction. People are sovereign in electing the representative Government. As far as Parliament is concerned, it is supreme in enacting the laws and amending and interpreting the Constitution, that too subject to certain restrictions according to the Keshvananda Bharti judgement. As far as the Constitution is concerned, it is supreme. As regards the Supreme Court, it is supreme in interpreting whether the laws enacted by the Parliament and amendments made in the Constitution

are within the framework and the basic structure of the Constitution. All these three jurisdictions are sharply defined. And so long as one does not try to commit an act of aggression or encroachment on other's jurisdiction, there may be no confrontation at all.

Even in this debate, I would say that the courts should show proper respect for the jurisdiction of the Parliament and we on our own have always shown respect for the jurisdiction of the judiciary. Scrupulously, this Parliament has avoided to enter into that particular arena which rightly belongs to the judiciary. For instance, one of the Articles of the Constitution says that no court can interfere with the proceedings of this House and another provision of the Constitution says that this House will not have the jurisdiction to discuss the conduct of the Judges of the High Court or the Supreme Court. The framers of the Constitution have deliberately insulated one particular institution from the other, but the manner in which the affidavit has been prepared, I am afraid, there is sought to be encroachment of one on the other.

I am glad that all the leaders assembled in your chamber have given a total concurrence, including that of the ruling party I must admit, that as far as your jurisdiction is concerned, not even one person in this House disagrees with you that your jurisdiction as laid down in the Constitution even in relation to disqualification is completely insulated from any interference by any court and this is the point to be noted.

This is not to say that as far as courts are concerned, they have no jurisdiction at all on certain matters. We frame the laws. Sometimes they may be *ultra vires* of the Constitution, and, therefore, a Member of Parliament or a non-Member can go to the court and ask for judicial review and they may try to point out that probably they would like to challenge the legislative competence of this particular legislation. They may like to challenge the constitutional validity of the legislation. As

far as that power is concerned, nobody is trying to come in the way.

As far as this House is concerned, we have never tried to encroach on the authority of the judiciary. In the same spirit of reciprocation, we would not like the judiciary to interference with the powers of the Parliament, powers of the Speaker and all those provisions which are clearly adumbrated as far as Schedule Ten is concerned. Therefore, as far as this jurisdiction problem is concerned, it is explicitly clear.

There is one more aspect to which I would like to make a reference. Once you allow by backdoor some sort of encroachment on certain aspects of your ruling or your powers, in that case, it is very likely that there will be a lot of litigation and whatever work we perform in this Parliament, if that is subjected to litigation again and again, even whatever is within your powers and within the powers of Parliament, in that case, it will not be possible for the Parliament, the Supreme Parliament to conduct its proceedings at all. That is why the framers of the Constitution had made this point very clear. We have only to read the speeches made by members like Dr. Ambedkar in the Constituent Assembly and they had warned the Constituent Assembly that unless we are able to insulate one institution from the other, as far as encroachment is concerned, all sorts of complications will take place as far as the functioning of the Parliament is concerned, functioning of the Supreme Court is concerned and functioning of the judicial institutions is concerned.

12.00 hrs.

In this context we have one request to make. Some Members rightly said that we cannot dictate to the Speaker what attitude he should take as far as the problem of qualification is concerned. When we say that it is solely the Speaker's jurisdiction, it will be futile even indirectly to pressurise the Speaker. It must be left to his free will and decisions. Just as in the case of the ruling of the Speaker we cannot challenge it, but at the same time if

you go through the proceedings of the Parliament for the last 7 years, we always have a right to seek clarification from Speaker. We have always the right to make a request. Not only that, even the inherent right of a Member of Parliament to review the ruling is also there provided the Members do not pressurise. You have taken one particular firm attitude at the beginning of the sitting today and declared that you are not going to take cognizance of whatever order has been issued by the Delhi High Court Yesterday. The taste of the pudding is in the eating. Suppose no decisions are taken about disqualification issue, the Parliament Session is over, the proceedings of the court will go on and in the interregnum further mischief might be played on the floor of the judiciary. You have theoretically stated your stand that you are not going to be dictated by the order of the Delhi High Court which was issued yesterday but the taste of the pudding is in the eating. Having stated your jurisdiction and your power vis-a-vis your power to disqualify a Member if you want to see that not only you stake your authority judiciously and also in a theoretical manner-if actually it is to be demonstrated in practice, we would like to make a humble request to you that before the Parliament Session is over according to your jurisdiction and according to your wisdom you please take any decision but take a decision before the end of the Session regarding disqualification so that no further mischief will be played in the interregnum. If we keep the issue pending, it is likely that further complications may take place. Therefore, without trying to pressurise you, without trying to put any pressure on you we have a right to make a request that in order to see that whatever power you have defined in terms of Schedule 10 of the Constitution, in order to demonstrate the validity of that power, it is better that before the end of the Session-tomorrow is the last day-try to give your decision so that the matter is ended once and for all and the entire issue is brought forward properly.

An Adjournment Motion has been moved by Mr. Advani. many of us had given the notices for an Adjournment Motion. Ad-

[Prof. Madhu Dandavate]

Adjournment Motion has an element of censure. I must conclude by trying to tell you Mr. Speaker as to why we are insisting upon some sort of an adjournment motion. Adjournment Motion according to the meeting of the Speakers which was held at Srinagar a number of years back has an element of censure. Since official affidavit has been made in this connection regarding disqualification and powers of Speaker have been challenged, we feel that it is not an individual appearing in the court. If some Member of Parliament were to appear or someone from outside the Parliament were to appear and challenge the position of the Speaker, the question would have been different. But here the entire Government is guilty because the affidavit is made on behalf of the Government. Therefore, we feel that it is the failure of the Government to maintain and protect the dignity of the Constitution and that is why an Adjournment Motion is there.

I had also given a notice on another motion. I don't want to mix it but it makes our position very clear. I have given a notice for a motion under Rule 184 which states that this House is of the considered opinion that in view of the paragraph 6 and 7 of the 10th Schedule of the Constitution regarding disqualification on grounds of defection, the order of the Delhi High Court on 8 January, 1991 to maintain *status quo* in respect of 37 Janta Dal (S) M. Ps. against whom anti-defection proceedings are pending with the Speaker should be totally ignored to uphold the dignity of the Constitution.

I am glad, Sir, even before I moved my resolution and before the House accepted it, you anticipated my motion and implemented it in anticipation. I congratulate you. You tried to peep into our minds and imagined what we are thinking about. You took a firm position Stand by the position and vindicate the attitude of your position before the end of the Session and end this disqualification issued once and for all so that no further mischief will be played by those who want to interfere

and intervene in the process that has been initiated. (*Interruptions*)

THE MINISTER OF TEXTILES AND MINISTER OF FOOD PROCESSING INDUSTRIES (SHRI HUKUMDEO NARAYAN YADAV): Mr. Speaker, Sir, I would like to submit to hon. Shri Ram Dhan that in a democracy I also have a right to put forward my views as he has. This discussion itself relates to rights. It is unethical to talk about protection of one's rights when one cannot protect other's rights. One who infringes upon other's rights has no moral right to cry over the infringement of one's own rights. Only that person who respect other's right can expect his own rights to be respected. (*Interruptions*)

MR. SPEAKER: Please take your seat.

SHRI HUKUMDEO NARAYAN YADAV. Everyone delivers speeches. Is there any Member among you who does not deliver a speech? Then why does it pinch you when I deliver a speech.

SHRI RAM DHAN: Your letter is with me.

SHRI HUKUMDEO NARAYAN YADAV: I acted on the dictates of my conscience, my judgement, my knowledge and my wisdom and voted against the Vote of Confidence sought by Shri V. P. Singh. I may be guilty in the eyes of the people but I am not guilty in my own eyes and this is the reasons that I am laying emphasis on morality I am not one of those who supported the leadership of Rajiv Gandhi inside Parliament and voted according to the whip of the Congress Party, but formed a Morcha and opposed his leader outside the Parliament.

SHRI RAM DHAN: It is under the banner of that Morcha that you have been elected to this House. Your deeds of 1979 have contributed the least to your election. (*Interruptions*)

MR. SPEAKER: Hukumdeo ji, you please address the Chair.

SHRIHUKUMDEO NARAYAN YADAV: Therefore, I would like to submit if you try to press my weak nerve, I too will press your weak nerve. I do not cry when you press my nerve, but why do you cry when I press yours. You should face my verbal attacks with the same fortitude with which I face your pointed and satirical attacks.

SHRI RAM DHAN: Why did you support V. P. Singh on the question of Mandal Commission?

MR. SPEAKER: Ram Dhanji, please do not interrupt time and again.

SHRI HUKUMDEO NARAYAN YADAV: Do not try to remind others. Those who try to remind others, why don't they remember their own misdeeds. I want to ask those who talk of morality immorality, but whom should I put my question to? I would like to humbly submit to hon. Dandavateji, Madhu Limayeji, George Fernandesji, Rabi Ray ji and the entire august House that no doubt Parliament has enacted the anti-defection law under which defection to other party is immoral, but the Lok Sabha of 1975-76 stand testimony to the split of a number of parties. Has Shri Advani escaped from the split of his party? Have Shri Madhu Dandavate and Shri Somnath Chatterjee escaped from the split of their respective parties?.....(*Interruptions*)

MR. SPEAKER: You should listen to the submission of Shri Hukumdeo Narayan attentively.

SHRI HUKUMDEO NARAYAN YADAV: Mr. Speaker, Sir, that is what I say. I want them to listen to my view point. If they listen to me patiently, I shall also listen to them. I want to say when Anti-Defection Law was not there, many hon. Member.....(*Interruptions*)

[*English*]

SHRI SRIKANTA JENA : Sir, I am on a point of order. Shri Hukumdeo Narayan Yadav is a Minister. I want to know whether

he is speaking as a member of the Council of Ministers or on his own behalf. Is he responding as a Minister or for himself. (*Interruptions*)

[*Translation*]

MR. SPEAKER: This is no point of order.

SHRI HUKUMDEO NARAYAN YADAV: The Congress Party has split a number of times in this House. The very people who split the party in this House in 1979 under the leadership of Ch. Charan Singh and rose in revolt against the party leadership are today teaching me lessons of morality saying that splitting a party is a guilt. It was not the party of Hukumdeo Narayan that split in 1979, it was Janata Party that was split and the people who split the party under the leadership of Late Ch. Charan Singh are today sitting on that side and giving sermons of morality. If I am guilty of splitting the party today why are the people who were instrumental in splitting the party in 1979 not admitting their guilt?

[*English*]

SHRI SHIKIHO SEMA (Nagaland): Sir, my point of order is that under Rule 378, a member has to keep orderliness in the House. The matter is serious. They remained serious when members on their side spoke. But they are not serious when members on this side are speaking. I draw your attention to Rule 378.

MR. SPEAKER: I am regulating the House. Please sit down.

[*Translation*]

(*Interruptions*)

MR. SPEAKER: Shri Hukumdeo Narayan Yadav is competent.

SHRI HUKUMDEO NARAYAN YADAV: Sir, I am saying so because in this very Parliament Lok Dal was split into two parties

[Sh. Hukumdeo Narayan Yadav]

namely, Lok Dal (A) and Lok Dal (B). We may or may not remain in power, but what I say is based on morality. When Lok Dal (A) and Lok Dal (B) were formed after split, anti-defection law was not in force. Where was your morality at that time. In this very House the split took place. When Janata Party, split, Lok Dal came into being, When Lok Dal split, Lok Dal (K) and Lok Dal (C) came into being. (*Interruptions*)

MR. SPEAKER: Paswanji, what is your point of order?

SHRI RAM VILAS PASWAN (Hajipur): Mr. Speaker, Sir, my point of order is that the subject of discussion right now is not whether this Government is of defectors or not or whether defection has taken place or not. This is not the subject matter. (*Interruptions*)

MR. SPEAKER: He is coming to the subject.

SHRI RAM VILAS PASWAN: You please listen my point of order. The subject right now is not whether they are defectors or not, or whether defection is right or wrong (*Interruptions*). The point is whether anybody can go in for appeal in the court against the power of the Speaker under the Anti-Defection Law. I think, it would be better if the hon. Minister, or the hon. Members confine themselves to this issue while speaking instead of dwelling on the issue as to who is the defector and who is not.

SHRI HUKUMDEO NARAYAN YADAV: I would like to tell my dear brother Ram Vilas Paswan ji that Prof. Madhu Dandavateji used the word "anti-defection", and 'defection' repeatedly and insisted on the Speaker's ruling to be given by tomorrow. (*Interruptions*) Please listen I say that Hanuman had gone (*Interruptions*)

MR. SPEAKER: Mr. Yadav, you please address the Chair.

SHRI HUKUMDEO NARAYAN YADAV:

Mr. Speaker, Sir, I am saying so because when Shri Advani was speaking, the Member of his party were saying that it was a Govt. of defectors. I want to ask as to who is defector? They were elected in 1980 on the symbol of Janata Party, but they split the party under the leadership of Advaniji and formed Bhartiya Janata Party, was it a defection or not? (*Interruptions*) At that time, hon. Shri Chandra Shekhar was the President of the Janata Party. Janata Party was in existence and it had its leader of Parliamentary Group. Since you were not satisfied with the internal functioning of the party, you parted ways with it. Your parting ways with the party was ethical whereas my leaving the party is unethical? (*Interruptions*) I want to ask the congressmen who are sitting in the House whether at the time of division of the Communist Party, the Members belonging to that party did not split into two parties, namely C.P.I. and C.P.I. (M) in this House? At that time, your split was ideological whereas our split is personal? (*Interruptions*)

I would like to request the hon. Members that (*Interruptions*) yes, I did get ministership. I admit that I am guilty of getting a ministerial berth through the split of the party, but V. P. Singh also deserted Congress Party for the sake of coveted chair and you made him your leader. Was this an act of morality on your part? Just try to remember that (*Interruptions*). Mr. Speaker, Sir, today if I form the Government with the support of the Congress party, they say that I am doing something immoral. (*Interruptions*) It is said.....(*Interruptions*)

MR. SPEAKER: Let him speak, he has right to speak.

(*Interruptions*)

SHRI HUKUMDEO NARAYAN YADAV: It is said by them that we have formed our Government with the support of Congress and have gone against our principles. But they forget that the Marxists and the B.J.P. always followed two different lines and opposed each other inside as well as outside the House but both stood together on the

same platform with Shri V. P. Singh to run the Government. You may deceive the world but you cannot convince me on this point. The leftists and the Bhartiya Janata party used to call each other untouchable but such a peculiar circumstances arose in the Parliament of India that both, the leftists and the Rightists joined hands together and supported a persons to form and run the Government. Therefore, I ask you to make introspection first and then call us right or wrong. (*Interruptions*) Before criticising others you should look within yourself first, I am saying this.....(*Interruptions*)

MR. SPEAKER: Take your seat please.

SHRI HUKUMDEO NARAYAN YADAV: Mr. Speaker, Sir, they should understand the implication of any question before raising it. They have raised the issue of judiciary versus Speakership. Mr. Speaker, Sir, once when 'Hanuman' had gone to Lanka to trace out Sita he destroyed the whole defence of 'Ravana', killed Akshay Kumar and made Meghnath unconscious. After that Ravana's men realised that it was very difficult to control Hanuman. So 'Meghnath' used "Brahamastra" on him "Gyani Naam Agraganyam". Hanumanji said at that time that is he wished he could have made it ineffective but that would have amounted to an insult to the weapon of Brahmaji. So he instead of making the weapon of Brahmaji ineffective surrendered himself before the Ravana's men for arrest.

Mr. Speaker, Sir, today almost same situation has been created in the Houses. Let it be decided on the roads by the people as to whether this Government is wrong or right and whether I am defector or anything else. I consider the chair of the Speaker as the 'Brahamastra' and a weapon of 'Brahmaji'.

(*Interruptions*)

MR. SPEAKER: You please sit down. Devendra Yadavji you too please resume your seat. No, No, please take your seat. Yes, what is your point of order?

(*Interruptions*)

SHRI NITISH KUMAR (Barh): Mr. Speaker, Sir, my point of order is that the hon. Minister, Shri Hukumdeo Narayan Yadav in his speech has just stated that the issue such as whether he and his Government is defectors or not, let it be decided by the people on roads. He has just stated this..... (*Interruptions*)But in fact, it is you who is to decide this issue..... (*Interruptions*)

MR. SPEAKER: Has Hukumdeoji used unparliamentary language?

SHRI NITISH KUMAR: Mr. Speaker, Sir, which road he is talking about? Is it the road of Sitamarhi in Bihar? He knows well, how was he treated when he, after becoming a Minister, went there.....(*Interruptions*).....

SHRI GANGA CHARAN LODHI (Hamirpur): Mr. Speaker, Sir, I am on a point of order.

MR. SPEAKER: Under which Rule?

SHRI GANGA CHARAN LODHI: Sir, under rule 376, the hon. Minister..... (*Interruptions*)

MR. SPEAKER: Take your seat.

SHRI HUKUMDEO NARAYAN YADAV: Mr. Speaker, Shri Nitish Kumar has asked me as to at what place I would like the issue to be decided? Sir, I am a weak person from power, money, muscle and manpower point of view, yet I would like to say, Shri Nitish Kumar.....(*Interruptions*)

MR. SPEAKER: I request the Hon. Members to listen him peacefully. ...(*Interruptions*)

SHRI MADAN LAL KHURANA (South Delhi): Mr. Speaker, Sir, through you, I would like to know from the hon. Minister whether he is speaking as a Minister or in any other capacity? Does he know the issue for which the Adjournment Motion has been moved

[Sh. Madan Lan Khurana]

here in the House? Is it about the defection or about the court's decision? On which issue is the hon. Minister speaking on?.....(*Interruptions*)

SHRIHUKUMDEO NARAYAN YADAV:
Mr. Speaker, Sir, I want to speak on that issue. This is the age of By-pass, so he wants me to take the by-pass. I am prepared to contest anywhere whether it is on the By-pass or main-road or in the field or in the Parliament. Shri Nitish Kumar, once you were also treading the same bath. It is a different thing that we have changed our path today. I want to say that our journey has not ended yet. We have to walk further in search of our goal. do not challenge me. Mr. Speaker, Sir, through you, I want to say that I am prepared to decide the issue anywhere they like whether it is Fatehpur or Sitamarhi. Let both of us, Shri V. P. Singh and myself resign from Fatehpur and Sitamarhi, respectively and contest again from these places. It should be decided as to where Shri Hukumdeo Narayan Yadav and Shri V. P. Singh stand? It must be decided on the same soil.

(*Interruptions*)

SHRI DEVENDRA PRASAD YADAV:
Mr. Speaker, Sir, I am on point of order. Shri Hukumdeo Narayan Yadav in this House has challenged Shri Nitish Kumar, a member of our party. Hence I accept his challenge to contest election against him..... (*Interruptions*)

MR. SPEAKER: This is not a point of order, take your seat please.

(*Interruptions*)

SHRIHUKUMDEO NARAYAN YADAV:
I am consistently saying to the hon. Members that the composition of the Parliament is totally different this time, by the grace of God. The party with 220 Members..... (*Interruptions*)

SHRI RAM DHAN: You were defeated in 1980 and 1984. After 1979.....(*Interruptions*)

SHRI R. N. RAKESH (Chail): I am on a point of order. Hon. Minister has said that he is prepared to contest election against Shri V. P. Singh. I declare tat I am prepared to contest against him.....(*Interruptions*)

MR. SPEAKER: Take your seat. I have called Hukumdeo ji.

(*Interruptions*)

SHRIHUKUMDEO NARAYAN YADAV:
Mr. Speaker, Sir, I am, therefore requesting all the Members to consider all the aspects of the issue tat is before the House. If any person's ego, dignity and self-respect is hurt by any hon. Member continuously then he would certainly react. This House greeted both Shri Rajiv Gandhi, the leader of the 215 to 220 Members and Shri V.P. Singh the leader of 141 to 143 Members. And it happened in this very House that the former took the position of the opposition leader and the latter became the leader of the House. How did it happen? How did it become possible? The incident was surprising in itself. Moreover, the people called it surprising. This House is witness to what I had said at the First President's address in this House. At that time speaking on the President's address I had said that the future course would be a bit different. Wheel of Fortune has turned in such a way that the persons having 63 members only has become the leader of the House whereas those having more members with them are sitting in the House as the leaders of the opposition. India democracy is progressing step by step ad its outcome will be quite different. I want to say that the democracy of India would take a disastrous turn if the leaders of the political parties as well as the other democratic forces do not shun their ego and do not stop to interpret the laws in their own ways ad do not put an end to the tendency to respect the chair of the Speaker at their own will and convenience.

Those who are sitting on that side today

are showing great respect to the Speaker but how much respect they had paid when Shri Jakhar Saheb was occupying the Chair and there was Congress Government and they happened to sit on this side. I do not want to go into the attitude they had adopted towards this Chair at that time. I would like to say only that the Chair of the Speaker is supreme. *(Interruptions)*

SHRI RAM DHAN: Mr. Speaker, Sir, I am on a point of order. Hukum Deoji has put the matter wrongly. He may go through all the documents and proceedings of the House which are available in the Library pertaining to the last Parliament. His incorrect statements should be expunged from the record of the House.

MR. SPEAKER: This is no point of order.

SHRI HUKUMDEO NARAYAN YADAV: One can show disrespect to the other person not only through speech or words but also through one's conduct and behaviour. Where was the respect for the Speaker when he was saying to them time and again that he considered the issue of Shri Subramaniam Swamy as closed but they bluntly said that they did not consider that issue as closed despite his saying so. What I have understood in this House is that these leaders, whether big or small, do not go deep into the matter. If Chair's decision is according to their wishes then it is correct and just and if it is against their wishes when it is not correct and just. They want that decision of the Chair should be according to their wishes and if it is against that, then it cannot be called impartial. I view the chair of the Speaker as supreme and very high and I am ever ready to accept all his orders. I shall not hesitate in obeying his order even if he orders my hanging. Every person has the right to express his feelings and views openly before the supreme chair and supreme body. We in order to protect the dignity of 'Brahamastra' had bowed our head in respect before it. In democracy the chair of the Speaker has the same respect as 'Brahamastra' had. We, bow our head in respect before the decision

of the Speaker. We accept his decision without any ifs and buts. His decision to us is like Brahmastra. Although Hukumdeo Narayan has the power to make this Brahmastra futile but he won't do it. He will always respect the decision of the chair. We are even prepared to give supreme sacrifice for the cause of democracy but we shall never show any disrespect to the order of the Speaker. But at the same time I would like to say that if some one with a view to meet one's selfish ends and in the name of democracy insists upon the Speaker, who is well acquainted with his powers, to use the Brahmastra then they should not forget that though Hanuman would be tied, would be arrested yet the fire emanating from his tail would burn the whole of Lanka into ashes. We respect the dignity of chair.....*(Interruptions)* bow our heads in respect before it. As Shri Madhu Dandavate was saying that the Legislative, Executive and Judiciary are the three organs of democracy they should have respect for one another. What is the meaning of Sam-Maan (respect) after all? My teacher had taught me the meaning of Sam-Maan..... *(Interruptions)*

MR. SPEAKER: Subhasiniji, everyone has his own style of speaking. Hukumdeoji has a special style of speaking. Listen to him. Please take your seat.

(Interruptions)

SHRI NITISH KUMAR: Mr. Speaker, Sir, he is threatening you.....*(Interruptions)*

SHRI HARIN PATHAK (Ahemdabad): One should talk here relevantly, not irrelevantly.....*(Interruptions)*

SHRI PHOOL CHAND VERMA (Shajapur): Mr. Speaker, Sir, the hon. Minister has talked of setting Lanka on fire. Which Lanka does he want to burn? *(interruptions)*

MR. SPEAKER: Vermaji, please resume your seat.

SHRIKUKUMDEONARAYANYADAV:
Mr. Speaker, Sir, I was saying that 'Sammaan' means Sam-Maani i.e. equal respect for every one, same behaviour with one and all. In democracy all three organs i.e. the Legislative, Executive and Judiciary must have equal respect for each other. If any one of these organs will ever try to surpass the other, there will be a confrontation of powers and the term 'equal respect, will receive a serious jolt. Therefore, the judiciary also should consider that the Legislative i.e. the chair of the Speaker is as respectable as the judiciary itself(Interruptions)so the Legislative should also consider that the legislative.....(Interruptions)

PROF. RAMGANESH KAPSE (Thane):
I am on a point of order. Shri Hukumdeo Yadav yesterday gave a statement. I will read it out.....

MR. SPEAKER: What is point of order?

[English]

PROF. RAMGANESH KAPSE: He said: "The Anti-Defection Law has already been challenged in the court Why should any one be called upon to give any explanation?"

[Translation]

This was published yesterday in the 'Times of India'. So far as the powers of the Speaker are concerned.

[English]

"It will be in vain."

[Translation]

He has stated this yesterday. And now he is speaking about the respect of the Speaker. My point of order is that either he should speak on the lines of his statement he made yesterday in the Times of India or he should say that he did not give that statement.

SHRIHUKUMDEONARAYANYADAV:
Listen to whatever I am saying here before

Mr. Speaker. I cannot say anything about what was published in the News paper.

PROF. RAMGANESH KAPSE: Did you say it or not. (Interruptions)

SHRIHUKUMDEONARAYANYADAV:
I am saying this that the judiciary while interpreting its rights and powers should not overlook that both the Legislative and the Executive possess the same respectable position as that is possessed by the judiciary itself. Similarly the Legislative will also have to take care that other two organs are equally important and respectable. None of these is superior to the other rather these are the three branches of the same tree. If any branch is attacked or there is a clash among these branches, the tree would suffer. I want to say that all these three organs have got powers and rights of their own. If all these three organs decide to remain within their jurisdiction and not to interfere in each others, jurisdiction then there cannot arise any tussle between Judiciary and legislative and there won't be any weed go in the court. It appears that an atmosphere of fear and greed is prevailing in the country and that is why the questions of the rights and duties are often raised here.

'Sachiv, Vaidya, Guru Tinin jo,
Priya Bolahin Bhayas Aas'

One can draw a conclusion only when a principle is interpreted without any fear and expectation (Interruptions) Khurana Saheb, the Hon. Member of your party was asking me where Lanka is? BJP does not know where Lanka is? They are seeing it in Awadh. The Bhartiya Janata Party in its whim of converting Ayodhya into Lanka has forgotten where Lanka is. (Interruptions) Mr. Speaker, Sir, all these three organs will have to confine to their jurisdiction. In the judiciary, if an advocate is humiliated by a judge, the whole court goes on strike.

Why? Now-a-days struggle for equality is going on throughout the World, inside and outside the Parliament. Everybody wants get that all the persons should the right to

equality. Nobody wants if a person gets a higher post it is his privilege, and if we don't have that post we lack privilege. This is the only dispute and is the basis of struggle. If you say that judiciary should not interfere in the functioning of Parliament and vice versa and no other agency should interfere in the functioning of judiciary, I would like that the shape of Indian Parliament and the shape of Indian democracy should be defined once again in the light of the present changed situation and changes in Indian economic, social, political, administrative context. One section of the society is in favour of one thing while the other is opposing the same. If the elevated class of the society wants more elevation, the upper class people suppress them. Is it a violation or not? Somebody takes recourse to law, but judiciary should maintain its tradition.

So far as the honour of the Speaker's Chair is concerned, he is not merely a person occupying the chair of the Speaker but he is much more than that. If he would not have been a Speaker even then. I would have respected him because I have got a great opportunity to participate in Political struggle under his leadership. Prior to this, under his leadership we had to take the most difficult decision under difficult situation. We have worked together. Our aim is one. We have rebelled against injustice, atrocity, oppression and we have worked against seditions. At that time also, Janata Party was divided and there was also an issue on which division took place. I say that Janata Party was divided because of Chaudhury Charan Singh's insult and this time Janata Dal was divided due to Ch. Devilal's insult. If at that time he was insulted, you don't accept... (*Interruptions*)... because you don't know what is insult... (*Interruptions*) ...you may, no doubt, clap in applause but it is fact whether he may be Ram Vilas Paswan, Sharad Yadav, Nitish Kumar or Hukam Dev Narain Yadav, everyone of us faced insult in Janta Dal. May be Madhu Dandavate may not cry of insult because he is still in Janta Dal, but even today, Nitish Kumar, Ram Vilas Paswan and Sharad Yadav are crying. Today I am crying, you also cry and will

continue to cry in future also. So please rise as a rebellion against this insult. If a person does not rebel against an insult, he can't be called a man. If Shri Devi Lalji was insulted, only Hukumdeo Narayan Singh stood up against it. Mr. Speaker, I bow before the Chair. (*Interruptions*) I had spoken on the Mandal Commission also. If you talk about Mandal Commission, Mulayam Singh Yadav and all of us under the leadership of Shri Devi Lal were against Mandal Commission. Please don't instigate me, I have been compelled by the events. At times, circumstance force a man to honour even a sinner as a saint. When Shri Devi Lal ji went to the President, Shri Sharad Yadav, Ram Vilas Paswan, Madhu Dandavate, alongwith 6 thousand people including father, grandfather i.e, elderly people were mentioning the names of the persons who were killed in police firing while Shri Vishwanath Pratap Singh was mentioning the names of the people who killed the backward people. That day Shri Devi Lal was with us, so it is better not to discuss these things. There is a vast difference between Shri Devi Lal and Shri V.P. Singh (*Interruptions*)

I conclude my speech with these words that history is full of such events. Whenever anybody is insulted or his soul is hurted... (*Interruptions*) Due to this insult and assault on soul, warriors assembled in Kurukshetra. This insult led to Mahabharata war on Indian Soil. Only to take the revenge of this insult, their was bloodshed on Indian Soil. That is why I am saying that this has been the trend for centuries. One should not tolerate insult, one should fight it even up to death. Janata Dal was divided because of this insult. (*Interruptions*) Both V.P. Singh and my self are guilty. In the eyes of Hon. Speaker I am also a guilty under the anti-defection law. If we have committed any disgraceful deed I too am guilty certainly. Mr. Speaker, Sir, if you feel that we have assaulted you in any way, I would a hundred lac times beg pardon not only from the House or Shri Ray, but also from my position and I would bow my head and will follow your orders. I shall always maintain the sovereignty and decorum of this House with all my hu-

[Sh. Hukumdeo Narayan Yadav]

military. Mr. Speaker, Sir, but I want to tell those people, that a decision will definitely be taken and coming Parliament will decide the real position of everyone.

12.54 hrs.

SHRI SOMNATH CHATTERJEE (Bolpur): Mr. Speaker, Sir, at the outset, I must congratulate you for your decision to uphold the dignity and prestige of this great institution.

Sir, the prestige and dignity of Parliament is neither negotiable nor justiciable. One of the basic objectives or requisites of the system of parliamentary democracy is the supremacy of Parliament in its own sphere and, Sir, our Constitution has made it amply clear that within its own areas of functioning, the Parliament is supreme and the Constitution of our country which is our organic law contains specific provisions to make it beyond any doubt that so far as the Parliament is concerned, its functioning is concerned, its procedure is concerned and the Speaker's position particularly is concerned, it is not a matter of any challenge before any authority including a court of law.

Sir, the speech that we just now heard from the Treasury Bench very conspicuously avoided referring to the issue that that is before the House and we heard a sermon on the benefits of defection. Hukumdeo Narayanji has referred to the expulsion of Devi Lalji from the Government and said that was the reasons for the ultimate break-up of the Janata Dal. I would like to know—why did he not resign from the Janata Dal when Devi Lalji was expelled? Why was there no Janata Dal (S) when this action had been taken by Mr. V.P. Singh? It is because, at that time the BJP had not withdrawn the support from the V.P. Singh Government and there was no possibility of forming another Government by a handful of people with the support of Congress. Therefore, when defection becomes useful and ministerial *gaddis* may be available, then defection takes place. There-

fore, until the withdrawal of support by the BJP, we never heard of formation of a splinter group in Janata Dal. (*Interruptions*)

MR. SPEAKER: I am not permitting you. Mr. Balgopal Mishra, please take your seat.

SHRI SOMNATH CHATTERJEE: I did not disturb Mr. Hukumdeo Narayan Yadav at all. He has spoken on behalf of the ruling party, but he is also a Minister. He has chosen not to answer the points. He says, the issue has to be decided on the streets. I take it, he meant by election. The Government, specially after the speech of Hukumdeo Narayanji, I take it, has no answer to the points that have been raised and their only answer is that they want the issue to be decided by election. Is the Government going to advise the President to hold elections now immediately for the purpose of deciding whether defection would continue or not? I would also like to ask—if you do not think that this is a proper provision which has been enacted in the Constitution, why did you not take a straight forward path of trying to amend the Constitution instead of flouting the Constitution? They have neither the political courage, nor the moral courage, nor the support, because without the Congress support, they are nobody in this House. So far as the Ministers are concerned, they have to take on oath of allegiance. The oath of allegiance is:

"I will bear true faith and allegiance to the Constitution of India... and I will do right to all manner of people in accordance with the Constitution..."

Sir, what is provision in the Constitution? There is no ambiguity in our constitutional provision. Today, we have to abide by this whether one likes it or not. He may, today, eulogise defection. But he has to implement the provision of the Constitution of India, to which he has borne allegiance. It says:

"Notwithstanding anything in this Constitution, no Court shall have any jurisdiction in respect of any matter connected with the disqualification of a

Member of a House under this schedule."

or under the authority of either House of Parliament..."

Sir, he has been speaking of the Chair's position, your position and your dignity. If that is his response to this subject matter, then why has he gone to Court? Why has he not left it to you, specially when such a provision has been made?

13.00 hrs.

Today we have no doubt in our mind that this is a feeling of insecurity and panic in the Government. That is why, we find a concerted move is going on. We have seen how even the Speaker of this House has been threatened with arrest by the Minister. Since the coming of this Government we are hearing of bringing a motion of no-confidence against the Speaker, Now we find that the Government has taken this ruse. A subterfuge has been adopted without trying to amend the Constitution of India, of going to the court of law, utilising the law officers, the first law officer of this Government to take up a stand which is exactly contrary to the Constitutional provisions in this country.

Sir, I appreciate the speech of Mr. Dinesh Singh. He has said, so far as paragraph 7 of the X Schedule is concerned, it is not open to second interpretation and that the courts have no jurisdiction. I would request him to say what logically follows from that. During the Congress-I regime, this issue has been brought before the court and specific stand has been taken by the then Government also represented by the present Attorney General who was then one of the Additional Solicitors General, that the Court had no jurisdiction in the matter. Sir, this is not the first time this issue is coming up. If you look at article 105(2) of the Constitution which is very very clear, it says:

"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 liable in respect of a publication by

It is in respect of anything said or done. Now, the Supreme Court has held as early as 1965 that this completely ouster the jurisdiction of the court because what happens inside the house cannot be a subject-matter of any judicial decision and that is the ouster of the court jurisdiction. It has been held "in respect of anything said" means, in respect of everything said or done. Therefore, the same interpretation has to be given in paragraph 7 of the X Schedule. In respect of any matter means, in respect of every matter connected with the question of disqualification. If that is so, where was the ambiguity? The question is very serious and the question is a matter of principle. Can a Government of the day take up an attitude which is contrary to the Constitutional provisions of this country? This is a basic issue and the Government must answer. The Minister has spoken for more than half-an-hour. He has not even touched the point. He is not only a Member of the House only but he is a Cabinet Minister also but he does not answer this question. I would like to know whether that was a decision of the Government as a whole or this was the decision of the Law Minister which was said by the Attorney General. We find, in the year 1991, an affidavit is being filed on behalf of the Government of India when this issue has been raised. It says, this power (that is, the power under the X Schedule) is, therefore, amenable to judicial review by the High Court and the Supreme Court in exercise of their powers under articles 226, 32 and 136 of the Constitution of India. This Government wants to survive not on the basis of its merits and strength inside the House but it wants to survive with the help of other agencies which are not allowed to interfere in the functioning of this House and the decisions that can be taken by you, Mr. Speaker. We are not on what decision you will take. We are not on the merits of the dispute before you. It is entirely your jurisdiction. You may take whatever decision you in your wisdom think best. But the question is your right to take that decision and whether that right is sub-

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ject to any other compulsive reasons or provisions which will inhibit you from discharging your powers and functions.

So far as the situation that has arisen today is concerned, we find that the Government owes an explanation. How, in what, circumstances a Deputy Secretary to the Government of India, Ministry of Law, Justice and Legislative Department, could take up this attitude in an affidavit? At what level it was decided that such a stand would be taken and what action the Government propose to take now? The Government has also accepted the position that the Speaker is not bound by any Order that is passed by the High Court of Delhi. Once the Government has admitted that the Speaker's power is supreme in the matter of 10th Schedule, what is the necessary corollary? What the Government would do now? Will it insist on taking up that stand in the court of law? I believe it is being heard today. What is the Attorney-General doing there? Is he upholding the Constitution or trying to wreck the Constitution on behalf of the Government. This Government owes an explanation.

So far as the Order which seems to have been passed yesterday is concerned, it is almost, what you call in law, in *invitum* or an invitation, the Attorney-General standing before the Court of Law on behalf of the Government of India which is responsible for upholding and implementing the Constitution and saying:

"Well, it is a matter which we shall argue later on."

"Certainly courts have power to go into this question."

But, he says:

"Whether the 52nd Constitution Amendment is valid or not, we shall argue later on."

He says:

"It is submitted that since the challenge to the validity of certain paragraphs of the Tenth Schedule stipulates beyond question of law, the counsel for Union of India shall make submission with regard to the validity of the Tenth Schedule at the time of argument."

Has the Government of India made up its mind now? Is there any occasion for the Government to have a second thought on this, I would like to know. When the Government takes up an ambivalent stand, only then such an affidavit can be filed.

I charge that this Government has taken up a dubious stand, only for the purpose of some of them remaining in power, having possibly anticipated adverse decision from you.

Is this the way this Government should function in India when we have sworn allegiance to the Constitution of India?

Is remaining in power by any method to be adopted as the basis of governance of this country?

An ordinary functionary like a Deputy Secretary is being misused for this purpose and the Office of Attorney-General is being polluted. I am very sorry. I do not want to say anything. He is obviously carrying out the instructions of the Government of India. But, I would like the Prime Minister to tell us who has been responsible for giving this instruction to the Attorney-General of India and to the Deputy Secretary and he should be taken to task. If he is a Minister who has instructed, it is the minimum need that he should resign and apologise to the House. *(Interruptions)*

Mr. Speaker, Sir, instinct to survive is good. But instinct of survival cannot be at the expense of some of the basic tenets of the Parliamentary democracy in this country. If the position of this House is ridiculed, if the Speaker's position is diluted for the sake of

remaining in power, then it is the duty of this House to stand as one—I particularly request Shri Dinesh Singh when you have taken up that attitude—then the logical action must be taken on this. Either the Government should withdraw and apologise or otherwise this Government has no right to stay a minute longer than it has done so far. Now, the test is for the Congress (I) Party. The law has been enunciated by them.

SHRIVASANT SATHE (Wardha): Don't cross your limit. Don't bring politics in this matter.

SHRISOMNATH CHATTERJEE: It was conceived by them. They brought it. Therefore, I have not made any allegation against you. In this House, in your wisdom, you have brought this legislation. It was passed in the House. Then, I would try to find out from the Congress (I) party whether they would be still a party to its implementation or not.

SHRIVASANT SATHE: You have heard Shri Dinesh Singh's speech. We have said that we stand by it.

SHRISOMNATH CHATTERJEE: I would demand of this Government that they should absolutely make it clear that whatever may be the action of their individual Members supporting the Government, the Government's stand is unequivocal. They must immediately go to Delhi High Court and withdraw their affidavit. They must make it specifically clear that the Speaker's jurisdiction cannot be challenged as is sought to be challenged and that order must be vacated. It is very easy for Shri Hukumdeo Narayan Yadav to say there should not be any conflict between the judiciary and the legislature. We also do not want to have any conflict. But who is the cause of the conflict? Who has brought about this conflict? If they have a little faith in the position of the Speaker, in the dignity of the House and the prestige of the Speaker, then they would not have gone there; they would not have gone to the Press saying: What is there for the Speaker to decide, for the matter is already before the Court. He has not denied that statement.

Sir, the fundamental issue is whether the Speaker, in the matter of deciding the Tenth Schedule proceed with an unrestricted authority or not or whether you are subject to the jurisdiction of the High Court or the Supreme Court. In such a matter will the Government, with no majority support, a minority Government, a hopeless minority Government surviving on the support, no doubt, of the biggest party in this Parliament, take recourse to methods or methodologies for the purpose of continuing in power by whatever means it can? Therefore, I would request the Government that at least they should make retribution for this. They cannot continue with this stand. I know how repeatedly attempts have been made in this regard. Recently, it has come out in the paper. It says: "JD (S) may petition President—dated 8th January, *The Hindustan Times*" I quote:

"The Janata Dal -S leadership is likely to petition the President that the question of whether the 37 MPs, who are alleged to have defected acquiring disqualification, should be decided by him in consultation with the Election Commission under Article 103 of the Constitution."

Therefore, I find a concerted move, a calculated move either to put pressure on you or to dilute your position, denigrate the Speaker's position, denigrate the Parliament's position even to the extent of saying that powers would be taken from your hands and then going to court, obtaining an order almost *ex concessis* through their law officer. And now it is very easy for them to stand up and say, "we have respect for the Speaker." This Government has neither any constitutional basis nor majority strength to survive in this country. Now it has taken recourse to procedures which are politically puerile, ethically immoral and constitutionally impermissible. Therefore, I support this Adjournment Motion. And the Government must make its position very very clear and withdraw this affidavit and tenders apology to you and to the House and person responsible should

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be proceeded against and action should be taken against the person responsible by the Prime Minister of India, if he has any faith in the principles of parliamentary democracy.

SHRI VASANT SATHE: I am on a point of order. While we are discussing this very important matter, I am told that some arguments are going on in the court. Now our whole discussion can get frustrated if supposing, behind our back, the High Court passes some order. Therefore, I would request the Government, the Law Minister or the Deputy Prime Minister, whosoever is here, to at least—have they done it and if they have done it, it is well and good—inform our counsels there not to rely on the affidavit given or to postpone arguments there till we discuss this matter because I hope, nothing will be done to frustrate the discussion. If tomorrow the House comes to take a unanimous decision about this affidavit, we should not have a confrontation with the High Court. That is why, having due respect to the High Court in the interest of judiciary, I think, the hearing should be put off. This is my submission.(Interruptions)

SHRI AJIT PANJA (Calcutta-North East): This is a recess time in the High Court and there is no argument going on. If argument is closed and this admission made therein in the affidavit of our Govt. is finally put before the judge, then it will be a useless discussion here. Therefore, if this is the consensus, then the Government must make submissions that they are withdrawing the whole affidavit and they will make the arguments that the Parliament is supreme, which is the law of the land.

SHRI L.K. ADVANI: Mr. Sathe has made a very valid point. This means a near unanimous view of the House. In case the Government does not agree with it, I would plead to the Chair to issue the directives to the Government to have this particular affidavit immediately withdrawn or at least to suspend the arguments that are going on, on the basis of this affidavit. This affidavit is

totally indefensible according to the entire House. This is a direction that must go to the Government from the Chair.(Interruptions)

SHRI GUMAN MAL LODHA (Pali): I want to inform you that this morning this request was made to the Law Minister. The Law Minister has said, "we stand by the affidavit and we also feel that the provisions of Clauses 6 and 7 have not been rectified by the assemblies earlier and, therefore, it is *ultra virus*. And therefore, we are making submissions to the High Court." It is a very serious matter. The Law Minister and the Law Secretary were there. The Law Minister and the Law Secretary have said, "we are going to stand by this affidavit." And they are not withdrawing it. Therefore, kindly issue directions.

PROF. MADHU DANDAVATE: What Shri Sathe has suggested should be communicated as your direction. Otherwise, like us, if they are also missing their lunch, there will be a problem. Therefore, it should be communicated as early as possible.(Interruptions)

SHRI SOMNATH CHATTERJEE: You cannot direct the Attorney General. The Government has to direct.

[Translation]

SHRI L.K. ADVANI: Mr. Speaker, Sir, unless the Parliament takes its decision in this regard (Interruptions)

[English]

MR. SPEAKER: The Government is there, it is taking note of it.

SHRI GUMAN MAL LODHA: The Government is going to get this provision declared invalid. So the matter is serious.

PROF. MADHU DANDAVATE: Sir, Somnathji is right. Your direction may go through the Government only. You must direct the Government so that they can communicate it further.

SHRI SRIKANTA JENA: The Law Minister is here. He is silent inspite of repeated requests. That means the Government stands by the affidavit.

DR. DEBIPROSAD PAL (Calcutta North West): The Government should give direction to its counsel before the Delhi High Court not to rely upon the affidavit filed by the Government, to withdraw the affidavit and to make oral submissions before the Court. (*Interruptions*)

SHRI VASANT SATHE: Don't involve the Speaker in this.

SHRI INDER JIT (Darjeeling): I would like to appeal to the treasury benches and the Law Minister personally through you to seek adjournment of the matter in the High Court till the matter is discussed here. (*Interruptions*)

[*Translation*]

MR. SPEAKER: All of you have a strong opinion, and Government is also listening to it. Honourable Minister is present.

SHRI GEORGE FERNANDES (Muzaffarpur): Mr. Speaker, Sir, you said in the beginning that you have invited all the leaders.

MR. SPEAKER: Yes, I had said. (*Interruptions*)

[*English*]

SHRI GUMAN MAL LODHA: The matter is more serious than what has been debated because the Law Minister wants Clause 6 and Clause 7 to be struck down as *ultra virus* through the Attorney General.

PROF. MADHU DANDAVATE: There is a way out. As Mr. Sathe has suggested, if the Government spokesman gets up and say that he will communicate, that is sufficient. In that case we need not bring in your name. But let him say that that they will definitely

withdraw the affidavit. Let him get up and say that. (*Interruptions*)

SHRI SAIFUDDIN CHOUDHURY (Katwa): The point is, in the morning you had a meeting with political leaders. The common feelings were known to the Government. The Law Minister is here; he is mute and not responding to anything. This point has to be clarified first; what did he understand from the meeting in the morning and the discussions that have taken place here so far. What is the Government doing? We don't have any reaction from the Government so far. (*Interruptions*)

[*Translation*]

MR. SPEAKER: I am listening to your unanimous views and the Government too is listening it.

(*Interruptions*)

MR. SPEAKER: What can I do in this case.

SHRI GEORGE FERNANDES: Mr. Speaker, Sir the question is of our unanimous views. Our views, views of the House, views of the majority, and views of the Government are not known. When the sitting of the House began this morning you told that you had invited the leaders of all the parties and got their views. You are not going to listen to the verdict of the court. (*Interruptions*) If the ruling party also joins us, all the people will have the same views.

SHRISATYA PRAKASH MALVIYA: We agree with the views that the post of the Speaker of the House is supreme. (*Interruptions*)

SHRI GEORGE FERNANDES: Then why the case is in the Court. Please listen to me seriously after the clarification of the honourable Minister. You and all of us have unanimously decided that we are not going to accept the verdict of the Court. Then why the Government is adamant in the court and is trying to convince the court to give such a

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verdict as it can enable it to stand against the Speaker of the Lok Sabha. It is very dangerous situation prevailing in the House today. You have told not to accept the verdict and you are asking the court to give such a verdict What a mockery it is?

(*Interruptions*)

[*English*]

MR. SPEAKER: Shri Advani.

(*Interruptions*)

SHRI L.K. ADVANI: Sir, this is a very serious matter. What Shri Guman Mal Lodha told the House just now, adds a new and disturbing dimension to the whole problem because according to them, the Consultative Committee of Law and Justice was told this morning that the Government is of the opinion that these two provisions, these two clauses—six and seven—are invalid and *ultra vires*. (*Interruptions*) The Speaker's decision is final; it shall not be subject to the decisions of the Court. These two paragraphs of the Schedule are *ultra vires*. This is the Government's opinion. (*Interruptions*) If this is the instruction given to the Attorney-General, then, the entire debate which is going on here will lose the meaning. Therefore, it is imperative that on behalf of the House, Sir, you give a direction to the Government to stop the argument in the Court because those arguments are on the basis of this affidavit on the one hand and on the assumption that the paragraphs six and seven are *ultra vires* on the other hand. This House cannot accept it. (*Interruptions*)

DR. DEBI PROSAD PAL: Mr. Speaker, Sir, I think the Office of the Speaker should not get involved in this. Let the Government give a direction to the Counsel that they will not rely upon the affidavit, withdraw it and make their oral submission before the Court. Sir, you yourself should not get involved in this matter. Let the Government give a direction. (*Interruptions*)

MR. SPEAKER: The Law Minister wants to speak.

(*Interruptions*)

SHRI AJIT PANJA: Sir, we should not lose time. Upto 2 O'Clock, there is the recess. (*Interruptions*) If the Hon'ble judges insist on affidavit for withdrawal the Deputy Secretary has to it and file it. Kindly ask the Govt of expedite (*Interruptions*)

MR. SPEAKER: Now, the Law Minister. (*Interruptions*)

MR. SPEAKER: Order please. Please give a patient hearing to the Law Minister. (*Interruptions*)

SHRI SUBRAMANIAM SWAMY: If they do not want to hear me, then, I will not speak. (*Interruptions*) Sir, on this issue, if everyone has spoken, then I can respond.

SEVERAL HON. MEMBERS: Why?

SHRI SUBRAMANIAM SWAMY: No, on this issue only. (*Interruptions*)

PROF. MADHU DANDAVATE: Please clarify the affidavit. (*Interruptions*)

AN HON. MEMBER: You withdraw the affidavit. (*Interruptions*)

SHRI SUBRAMANIAM SWAMY: Prof. Madhu Dandavate has filed a similar affidavit in the Bombay High Court. (*Interruptions*) Sir, if they interrupt, then, I cannot speak. (*Interruptions*) There was no insinuation against Prof. Madhu Dandavate. He filed a petition in the Bombay High Court, arguing exactly the same point. So, we will quote from it very soon. (*Interruptions*) Sir, today I have asked the Attorney-General to come and meet me. He must be waiting for me. (*Interruptions*)

MR. SPEAKER: Let us hear the Law Minister with patience and order. Mr. Subramaniam Swamy.

(*Interruptions*)

SHRI SUBRAMANIAM SWAMY: Sir they must have the capacity to listen before they react... (*Interruptions*) ... Is the Speaker sitting here or sitting there? ... (*Interruptions*) ... sir, according to my information, arguments were being made by Mr. Ram Jethmalani and along with him, the side of Mr. V.P. Singh also. In view of what was being said in the House, from almost all sections, I will immediately call the people concerned to the Court and convey to them the need to take an adjournment till the Parliament has come to a decision.

(*Interruptions*)

SHRI JASWANT SINGH: (Jodhpur): Sir, I would like to make a simple submission.

(*Interruptions*)

SHRI VASANT SATHE: You give us an opportunity to discuss and then come to a decision. (*Interruptions*)

MR. SPEAKER: Mr. Debi Prosad Pal.

(*Interruptions*)

SHRI JASWANT SINGH: If you permit me to make a submission, I would say that it was the collective opinion of the leaders of the House. It was not a simple Adjournment Motion that was being discussed; it was the directive of the withdrawal of the affidavit. (*Interruptions*)

SHRI VASANT SATHE: Withdrawal of the affidavit will come after we have fully discussed the Adjournment Motion. It comes after we take a decision. So, have the discussion till then. (*Interruptions*)

SHRI JASWANT SINGH: Till the time Parliament comes to a decision, the question of withdrawal of the affidavit, the position of the Government and the case shall stand adjourned.

MR. SPEAKER: Yes.

(*Interruptions*)

SHRI DINESH SINGH: Mr. Speaker Sir, the time has come for us to adjourn for lunch also. (*Interruptions*)

MR. SPEAKER: Let us hear Mr. Debi Prosad Pal.

DR. DEBI PROSAD PAL: Sir, the issue now before the House...

(*Interruptions*)

[*Translation*]

MR. SPEAKER: Mr. Pal, you may speak after lunch.

[*English*]

We will now break for lunch and meet again at 2.35 PM.

13.33 hrs.

The Lok Sabha then adjourned for Lunch till thirty-five minutes past Fourteen of the Clock

The Lok Sabha re-assembled after Lunch at Thirty-eight minutes past Fourteen of the Clock

[MR. DEPUTY-SPEAKER *in the Chair*]

MOTION FOR ADJOURNMENT

Failure of Government to uphold provisions of Tenth Schedule of the Constitution—Contd.

[*English*]

THE MINISTER OF COMMERCE AND MINSITER OF LAW AND JUSTICE (SHRI SUBRAMANIAM SWAMY): Sir, before lunch, I had said that I would inform the Attorney General to go to the court and seek an adjournment till Parliament has completed its discussion. Accordingly, the Attorney-General went to the court and the sought an

[Sh. Subramaniam Swamy]

adjournment, but Shri Ram Jethmallani, advocate for Shri V.P. Singh, Shri Arun Jaitley and Shri Shanti Bhushan opposed the adjournment request of the Attorney-General and so, the court has decided to continue with the arguments.

SHRI L.K. ADVANI (New Delhi): The Minister of Law and Justice has told the House that while the Attorney-General sought adjournment in accordance with the decision taken here, the counsels for the other side opposed it and, therefore, there was no adjournment. I would like to know whether it is not true that the adjournment was opposed because the stay order against the Speaker would remain and their insistence was that the stay order be vacated, otherwise it would have meant compromising with the stay order. Did the Attorney-General press for the vacation of the stay order? *(Interruptions)*

DR. SUBRAMANIAM SWAMY: I am afraid, every time you bring up a new point. Matters are closed and you reopen them. ... *(Interruptions)*

SHRI BASUDEB ACHARIA (Bankura): How is it closed? Who said that? ... *(Interruptions)*

SHRI SUBRAMANIAM SWAMY: I did not say that this matter is closed. I said that every time the matter is closed, it is brought up again.

Now, let me tell you that before Lunch the only thing that was agreed to was that the Attorney General will go and seek an adjournment. There was no question of vacating the stay. *(Interruptions)*

MR. DEPUTY SPEAKER: I have allowed Mr. Fernandes only.

(Translation)

SHRI GEORGE FERNANDES (Muzaffarpur): Mr. Deputy Speaker, Sir, the matter raised in the morning that the case

which has been pending in the court should be discussed in the House and the leaders of all the parties have asked the speaker not to comply with any order of the court in this connection. Later on, hon. Member Shri Vasant Sathe also expressed his views and said that we should discuss this issue in the House. All the parties have expressed their views in the House but the ruling party has not clarified its opinion so far and the party supporting the ruling party has said that the role played by the ruling party in the court is not acceptable to it. There is no question of any ambiguity in this regard. All of us are very clear in our minds that the stand taken by the ruling party in the court is not acceptable to us. Shri Dinesh Singh has said this thing in very unequivocal terms. The Members in this section of the House had never been in two minds about this issue. It was decided that the Attorney General will ask some more time from the court. That time was not asked to stop the on going discussion, but was asked because, the court can not give any directive to the House or the speaker, while the discussion is going on. Shri Ram Jethmalani, Shri Arun Jetly and other advocates, who are pleading their case in the court has opposed this point. They are not opposing the adjournment. They are opposing that the court should to be allowed to put restrictions on the powers of the Speaker. Therefore, it is necessary that the stay should be vacated. Otherwise this House will have to ask the Government to withdraw their affidavit to finish this issue.

(English)

SHRI VASANT SATHE (Wardha): Sir, I think we were really going well with this discussion. We know the spirit of the entire House. From our side Shri Dinesh Singh made it very clear that as far as constitutional provision is concerned, we are firmly of the view that the right of the Speaker shall not—as the law stands today—be questioned. Having said that, I think the discussion was going on well. Adjournment motion was to be discussed fully. One Minister did speak but he did not say anything about this matter. We have to hear the official view of the Gov-

eminent either from the hon. Minister of Law or from the Prime Minister. That would have clinched the matter. But while the discussion was going on we were told that the Court is also hearing the matter. Arguments are going on in court. That would have created a very peculiar situation of confrontation later on. That is why I point out to the Speaker and other hon. Members also agreed, that we must have the hearing of the argument adjourned till this House takes a final decision on the adjournment motion. I think that was the spirit. Now what happened? According to the Law Minister, the Attorney General did seek an adjournment. This question of a stay is neither here nor there. The stay is about the finality. It will be decided whether arguments take place or not. We are also not here on the question of *vires*. *Vires* can always be questioned by anybody. It is the fundamental right of any person to question the *vires* of this Act or the Constitution or even the Government. People have that right to question. Now all that I am saying is that as far as this matter is concerned, let us not bring in the question of stay. I really do not know why those honourable lawyers have raised this point. All that we are asking is that today it should be adjourned so that by that time this matter would have been decided here. The stay is not going to adversely affect in any way. I do not know how they were advised to continue there and oppose the adjournment by bringing in an extraneous matter of vacation of stay. I think they have not helped. All I can say again is that they have not helped the House in continuing with this. I have no doubt in my mind, at present as the discussion stands, at least on our side we are absolutely clear that this affidavit that has been filed deserves to be withdrawn because it is violative of the provisions. Of course, we have to hear the Government's view too. But this is our view and this is what Dinesh Singhji said. Now, why are you frustrating the discussion and a final decision till we hear the Government? Now that the lawyers have opposed an adjournment and arguments are going on there, the best way for us is to continue with the discussions and conclude this matter as early as we can. Otherwise we will derail the

whole thing.

SHRI JASWANT SINGH (Jodhpur): Mr. Deputy Speaker Sir, I am entirely in agreement with my hon. friend Shri Vasant Sathe. Admittedly we have to hear the view point of the Government. But I submit to you that this stay is not an extraneous matter. When the hon. member Shri Vasant Sathe and others including Shri Advaniji recommended that the court must adjourn, the spirit and purpose behind seeking an adjournment and directing the Government to seek an adjournment was to see that there would not be a confrontation between the legislature and the judiciary. But the judiciary in pronouncing the stay has already brought about a situation of confrontation. It was precisely because of that only, in the morning all parties unanimously agreed that the Speaker shall not take note of whatever judicial pronouncement that might have taken place. Requesting the Government to have the stay vacated is an extension of the same philosophy. That is all.

SHRI SAIFUDDIN CHOUHDURY: (Katwa): It is a matter of common sense that when in the morning in the leaders' meeting, it was unanimously understood that the Chair should ignore the order of the court, it was for the Government to spontaneously ask for the vacation of the stay.

Secondly, this is not the question at that time. At that time the Law Minister was intervening and he wanted to speak but the adjournment for lunch was announced. At that time we wanted to say that there is no question of seeking an adjournment of the court but the affidavit has to be withdrawn. We are unanimous. This is the common feeling. Now there should not be any dubious play. We should not leave the question of affidavit with the passing or defeat of the adjournment. This is a serious matter. Please do not play any mischief. This is a wrong thing on the part of the Government. (*Interruptions*)

MR. DEPUTY SPEAKER: This was a discussion on what was said by the Law

Minister with respect to the adjournment of the proceedings of the Court. I think all the Members in the House are interested in a discussing the Adjournment Motion itself. I think those Members who want to say something on this point also may be able to say when they get up to speak on the Adjournment Motion also. Why I am saying this is that generally, the time allotted for discussing the Adjournment Motion is only two hours and we have taken more than two hours. I think, at least, the Leaders of the Parties, who would be interested in speaking on this interesting technical issue, they should get the time. If we discuss something which is not really the heart of the issue, then we are deflected. So, I would request the hon. Members to make their points on this point also when they get up to speak an Adjournment Motion.

So, I would request, please to bear with us and allow the regular discussion to continue.

DR. DEBIPROSAD PAL (Calcutta North West): Mr. Deputy Speaker, Sir, the issue for today's debate which is before the House is not only for upholding the dignity of the Office of the Speaker but also for upholding the supremacy of the House. This question has arisen because of the Stay Order which was issued by the Delhi High Court. The question which has come up before this House for consideration is whether the Speaker will accept this notice and comply with it. It is a matter of grave concern to this House majority. Every Member is also equally concerned for upholding the majority dignity and supremacy of the House and also of the Office of the Speaker. It is because the Speaker is the guardian and the custodian of the privileges of this House and any encroachment upon his powers will ultimately undermine the prestige and privilege of this House.

In a parliamentary democracy, we have to accept that the supremacy of the people is reflected in this House. The Members represent the people. Therefore, the supremacy of the House cannot be called into question,

cannot be interfered with by any authority, executive or judiciary, outside the House. It is one of the basic features of our Constitution; it is one of the corner stones of our Constitution. In a Parliamentary debates, when the Constitution was adopted, there was a point made, as to whether the judiciary or the Court should have a final say over the decision taken by this House.

At that time, Pandit Jawaharlal Nehru, in clear terms expressed the will of the House that there cannot be a super body or a super power over the House which represents the sovereign will of the people, that is the basic feature of our Constitution as much as the supremacy of the rule of law. Just as, if a Court decides a particular Statute or strikes down a particular law, the Parliament or this House, will not sit over the decision concerning the validity of that judgement. Parliament may amend the law; the House may amend the law, the House cannot consider whether the decision is a valid one, or not. That is the supremacy of the rule of law.

Similarly, when the House has taken a decision, the proceedings of the House are not subject to control and jurisdiction even of the Judiciary, however supreme they may be in the judicial sphere. That is the basic feature of our Constitution, and that has been embodied in Article 105 of our Constitution. We have adopted as the privileges of this House and the powers of the Speaker—until the law is codified by law or rules—the same privileges and powers as the House of Commons enjoys. Therefore, there is no denying the fact that the Speaker represents this House. His majesty and supremacy has to be accepted by all other authorities, so far as the proceedings of this House are concerned. No authority outside this House can question such validity. That is the law which has been embodied in our Constitution.

When we introduced the anti-defection law, the Government of Rajiv Gandhi introduced the tenth Schedule to the Constitution in order that the purity of our constitutional democracy can be maintained, in order that parliamentary democracy cannot be tar-

nished by the opportunists on grounds of expedience or personal interest, if I may say so, by defection. It was a scheme of our Tenth Schedule, it was a part of our Constitution that if any question does arise regarding whether there has been any breach, whether any particular Member is disqualified because of defection, the decision of the Speaker shall become final; and paragraph 7 of the Tenth Schedule to the Constitution speaks in clear and unequivocal terms that notwithstanding anything in this Constitution, the decision of the Speaker regarding the disqualification of a Member under the Tenth Schedule cannot be called into question in any court of law. Therefore, it has been the spirit and also the scheme of our Constitution that the question regarding the disqualification of a Member because of breach of the provisions of the Tenth Schedule to the Constitution is to be decided by the Speaker. This is notwithstanding anything in this Constitution. In other words, the different organs of the Government derive their power from the Constitution itself. If the High Court exercises its supervisory jurisdiction under Article 226 of the Constitution for the enforcement of its fundamental rights and other legal rights, if the Supreme Court exercise sits supervisory jurisdiction for protection of the fundamental rights under Article 32 of the Constitution, that power is derived from the Constitution itself. And when the Constitution itself provides in the Tenth Schedule that notwithstanding anything in this Constitution, the decision of the Speaker regarding the disqualification of a Member under the Tenth Schedule cannot be called into question by any court, it envisages that the over-riding power has been given, has been vested in the Speaker, irrespective of, and notwithstanding any other provision in the Constitution.

15.00 hrs.

If therefore, the decision of the Speaker, whatever may be the decision, the House has to accept it, has to bow down to it. That is the supremacy and the dignity of the House and Office of the Speaker. If therefore, there is any interference with that power,

undoubtedly, such an interference cannot be tolerated; Unfortunately, when my left friend, Mr. Chatterjee was speaking, I found a spectra of the Congress haunted him every time; and whenever he spoke, he cannot complete his speech without accusing Mr. Rajiv Gandhi and the Congress.

SHRI SOMNATH CHATTERJEE
(Bolpur): When did I do that?

DR. DEBI PROSAD PAL: Yes, you said so. The question we are debating affects not any particular political party; it affects everybody in the House. But the dignity of the House is to be protected; that is the constitutional democracy which we have to uphold.

There is an affidavit to which a reference has been made by my learned friends on the other side. I have gone through the affidavit. I must frankly confess that the paragraph 4 of the affidavit which says that the jurisdiction of the court, particularly of the High Court and the Supreme Court is not excluded by the introduction of paragraph 7 of the Tenth Schedule. I think that this submission is not correct and I am of the view that the affidavit should be withdrawn; the affidavit should not be relied upon in the course of the hearing before the Delhi High Court. The Government has to make its own oral submission without relying upon this affidavit. This affidavit in my submission undermines the prestige and the dignity of the Office of the Speaker because it accepts that it is subjected to the jurisdiction under Article 226 of the Constitution. In a matter like this, I am sure, it is not the intention of the Government to undermine the prestige and the dignity of this House, and of the Speaker. If any affidavit has been filed, which is not in consonance with the spirit and the letter of the Constitution, that affidavit has to be withdrawn; that affidavit cannot be relied upon. But that does not mean that the Government has any intention to undermine the prestige of this House, to undermine the prestige and dignity of the Office of the Speaker. (*Interruptions*) You can read it from the sense of the House itself. Sir, I must say so far as my party is concerned, it had always defended the supremacy of

[Dr. Debi Prosad Pal]

this House. It has always upheld the prestige and the dignity of the office of the Speaker. We do not mind what decision the Speaker will take regarding the issue which is now pending before Speaker but certainly it is our view that under no circumstances, the Constitution as it is today, the office of the Speaker and the dignity of this office can be undermined or can be whittled down by any interference or any authority even the judiciary itself. That will undermine the basic structure of our Constitution.

MR. DEPUTY-SPEAKER: You must conclude now. There are others to speak.

DR. DEBI PROSAD PAL: Therefore, Sir, in my submission, that if the affidavit is withdrawn or it is decided to be the censure motion cannot be supported. With this, I thank you.

SHRI INDRAJIT GUPTA (Midnapore): Mr. Deputy-Speaker, Sir, now this House has been debating this question since Eleven O' Clock in the morning and we are nowhere nearer any solution. I am glad, the Prime Minister is present now because it might expedite the process of reaching some decision on this issue. If what Mr. Lodha had told us earlier is correct, about what transpired in the meeting this morning of the Consultative Committee of the Ministry of Law,...

MR. DEPUTY-SPEAKER: That is not to be referred to in the House. We do not refer to it here.

SHRI INDRAJIT GUPTA: It has already been referred to. I cannot ignore it now. It should have been denied or contradicted. The Minister, according to him, said that we stand by it.

PROF. N.G. RANGA (Guntur): We need not depend on it now.

SHRI INDRAJIT GUPTA: All right, how can you get out like this, I do not know.

PROF. MADHU DANDAVATE (Rajapur): You can say, "through a reliable source".

SHRI INDRAJIT GUPTA: Anyway, Sir, now, we want to know and the long and short of it is, there is no need, in my humble opinion, for a very long and detailed discussion to continue on the same points over and over again, because an overwhelming majority of the members of this House, I do not say it is the unanimous view because the Government side has not spoken but the party which is supporting the Government, and without whose support the Government cannot exist, that party through its spokesman has made it abundantly clear that they are disassociating themselves most emphatically from that perverse document which is known as the affidavit. So, on this side of the House, of course, everybody is unanimous. Now, what requires to be found out and you should intervened for that purpose, is whether the Government should clarify its position regarding this affidavit. If it is their considered view that the affidavit is one which should be sustained, they stand by it, then, of course, this House will be faced with a completely new and critical situation and we will have to decide what to do. But if the Government is prepared to admit that the contents of that affidavit go against the whole letter and spirit of the Constitution and therefore constitute an assault on the supremacy of the House, and on the dignity and status of the Speaker, then a way-out has to be found and the Government has to find a way-out. I think it should not stand on prestige, if somebody has made a mistake, I believe, there has been a collusion. Who are the colluders in that, I do not know. Mr. Chatterjee referred to it as a concerted action. I am saying, there has been a collusion between some people, certain people—I do not suppose the Prime Minister is involved in that collusion. But a collusion has taken place to utilise the machinery of the Delhi High Court and one petty officer—junior officer, I do not mean petty in any bad sense—a junior officer of the Ministry, to file an affidavit which obviously he could not do without the express instructions of the Gov-

eminent. That has been done.

And then, in the morning we had this unedifying spectacle of this House having to decide and supporting the Speaker in deciding that we would completely ignore any order or any stay order, anything which has been transmitted to the Speaker by the High Court. That is in keeping with all the traditional and norms of Parliament. It is true that during the tenure of the previous Speaker, on two or three occasions I remember, order came summoning him by the courts. He was ordered to appear before a court and rightly on those occasions also, the House decided and the Speaker decided that we will ignore those summons. But here something much more than a summon has been done. Here an order has been passed by the High Court imposing a stay order on the Speaker and asking him not to proceed further with the investigation into those cases which are pending before him and which, according to the law, he is the sole authority who is empowered to deal with that matter. I do not understand what the Government's stand is. If the Government feels that this Act requires an amendment, they should have brought in an amendment. They could bring a constitutional amendment saying that the real authority should not be the Speaker but somebody else, may be the Rashtrapati or the Election Commissioner or somebody, not the Speaker divesting him of the power. They have not done that. They have gone to the Court and through an affidavit filed on their behalf by the junior officer, they are seeking to challenge the very powers of the Speaker, which certainly the House is not going to tolerate. By "the House" I mean both sides of the House. I do not know how to call them, mini Government or Defectors' Government... (*Interruptions*) I do not want to speak for them because they have to said anything except one Minister has spoken, and he spoke for one hour, totally an irrelevant speech, nothing to do with what is being debated here absolutely and then throwing out challenges to everybody. "Challenge to Mr. V.P. Singh. Let him resign. I will resign. We will fight each other." That is not the issue here. 'Let us go and fight on the streets.'

Well, we may have to fight on the streets. At least I went to Sitamarhi. I know what will happen there. I hope he does not refer to Sitamarhi. Anyway, this is not the way to debate this very serious issue here.

Sir, the Prime Minister is here. I do not want to prolong my remark. I think by now they must have come to some decision, some conclusion and there is nothing wrong in admitting that this affidavit, whoever may have been behind it,—I do not know whether we will ever come to know who was really behind it unless somebody cares to admit—a wrong judgement was made. If that affidavit is withdrawn, then I am sure this House in its magnanimity will not pursue this matter further... (*Interruptions*)

SHRI GUMAN MAL LODHA (Pali): The Government should oppose the writ application.

SHRI INDRAJIT GUPTA: They have to oppose this writ application. I think, this is the most serious attempt that has been made in the history of Parliament, to mount an attack on the supreme rights of the Parliament, on the dignity of the Speaker and his status. Never before this type of thing had happened. It is a kind of an attempt by the back-door to bring about a constitutional coup. Somebody is trying to bring about a coup. Nobody has ever blatantly like this tried to divest the Speaker of the powers which are given to him and everybody in this House has no option but to say that the dignity and rights of the Speaker have to be upheld; otherwise the Parliamentary institution will be finished. Nothing will remain of this institution. Somebody has thought it fit to challenge this. Who is behind it? We want to know that also. We were given to understand that this was not a collective decision of the Cabinet. The matter did not go to the Cabinet. Somebody who is an authoritative person in the Government told us. We asked him, was it discussed in the Cabinet? He said: "no". Then, who took the decision. This decision was taken outside the cabinet by somebody else or some members of the Government or a member of the Government, who has landed

[Sh. Indrajit Gupta]

the whole country into this mess and made a ridiculous exhibition of the whole Parliament's privileges. Who is responsible for it? Somebody is playing a game of wrecking. He wants to wreck and scuttle the whole basis, the fundamental basis of parliamentary dignity and rights of the Speaker. If you do not want to reveal who it is, it is upto you not to reveal. People will come to their own conclusion and the matter will go on circulating throughout the country. It will not help the Government because if you do not admit what happened, when you give credence to all kinds of rumours, all kinds of stories and newspaper reports, which will go on all around the country and people will come to their own conclusion. It is far better to make a clean breast of the whole thing and admit how this thing came about and be frank enough now to say, we are prepared to withdraw that affidavit, and then the matter can be settled. So, I do not want to prolong my remark because my friends on this side have given detailed arguments.

I support fully the Adjournment Motion moved by Mr. Advani. We want to censure the Government for having done something which is very opprobrious and wrong. I hope that in case the Government is not prepared to meet us half way on this question, then that Adjournment Motion will have to be passed by this House.

THE MINISTER OF STATE IN THE PRIME MINISTER'S OFFICE (SHRIKAMAL MORARKA): Sir, at the outset, I wish to state that since morning this debate has been going on in this House. Far too many issues have got mixed up. As I understand, the limited issue was an affidavit filed by this Government in a case pending in a Delhi Court. On that issue, there can be two views. One view can be that there need not be an affidavit by the Government on an issue which has been essentially raised by certain M. Ps. fearing that they may lose their seats in Parliament. That is one extreme view. There is another view that an affidavit has to

be only concerning facts of case and not on an interpretation of law. There need not be any affidavit and any affidavit which is filed should not contain interpretations of law, as this affidavit contains. But far more fundamental issues have been raised by the Leader of the Opposition and by Dandavateji, whom I hold in high respect. From the limited issue of this affidavit, they have gone on to the anti-defection law and to the supremacy of Parliament and the authority of the Speaker. Sir, I am a very junior member of the Government and not even a Member of this House. I have been in that House only for two years. Certain colleagues of mine—Juswant Singhji is here—they will bear me out. At the outset, let me tell you on my own behalf that as far as the supremacy of Parliament is concerned, as far as the privileges of an individual M. P. are concerned, let there be no doubt in anybody's mind that the privileges and supremacy are not at the mercy of the Government in power—neither this Government nor any other Government. Parliament is higher than the Government. I do not understand why they should be unnecessarily exercised. You are crediting as if this Government has got the right to abridge the powers of Parliament. It does not have it. If an affidavit is filed in a court of law, the propriety of that affidavit can be certainly discussed. But this is a totally unfounded fear that the judiciary can take that into account. I do not understand this commentary on judiciary. I am confident that no matter whichever Government comes, no matter whatever Government tries to take away the authority, the judiciary is very much there to protect the rights of the citizens and to interpret the Constitution correctly.

As far as the supremacy of Parliament is concerned, I do not think that this Adjournment Motion brought on this limited point should be expanded as if the supremacy of Parliament or the authority of the Speaker is in danger.

The second question is the anti-defection law. The fine distinction which is not realised is that the Speaker is supreme and the Parliament is supreme so far as its own functioning is concerned. Even the speeches

made by individual Members here enjoy the immunity. The newspapers publishing those speeches also enjoy immunity. All that is beyond the purview of the court. It is a sacred position in law. But, Sir, as far as the 10th Schedule of the Constitution is concerned, it is under challenge in at least two courts of law.....(*Interruptions*) Please have the patience to listen to me.....(*Interruptions*) I only beg of you to listen to me; you need not agree with me. Sir, the anti-defection law has been unanimously passed by both the Houses of Parliament. All the parties are a party to the passing of that law. But it is also a well-known position in law that even an Act of Parliament unanimously passed can be declared *ultra vires* by the Supreme court. Many past Acts, even Constitutional Amendments have been struck down. Prof. Dandavate referred that Parliament's exercise of power is absolute. I remember I was very young in those days. I had just come out of the college and I was a great votary of Mr. Nath Pai's Bill to make Parliament's power absolute. Mr. Nath Pai had moved a Bill, which was in public debate for a long time, that article 368 should be amended to make Parliament's right absolute. Subsequent amendments in 1974 and 1975 were made. There was a very famous Supreme Court case—and that is the last settled law as laid down by the Supreme Court in the Keshavanand Bharati case—that Parliament's power is absolute, except that Parliament does not have the right to change the basic structure of the constitution. That is a settled law. I do not see how that position can change. Howsoever we may debate, howsoever we may feel that Parliament has an absolute right, but the settled position of law is that the basic structure of the Constitution is beyond the amending power under article 368.

Sir, the Supreme Court has also held in other cases that a judicial review is an inherent basic structure of our Constitution. I can do no better than quote what Prof. Madhu Dandavate said in the Writ Petition which he had filed in the Bombay High Court in the case Prof. Madhu Dandavate Vs the Union Government.

SHRI GUMAN MAL LODHA: Sir, I am on a point of order. Prof. Madhu Dandavate cannot be an authority on this point. (*Interruptions*)

SHRI KAMAL MORARKA: Sir, I quote:

"The petitioner submits that it is well settled that judiciary is a basic and essential feature of the Constitution and no law passed by Parliament in exercise of its constituent power can abrogate it or take it away. The Petitioner submits that it is a basic principle of the rule of law that the exercise of power by any authority must not only be conditioned by the Constitution, but also be in accordance with law, and it is the judiciary which has to ensure compliance with the requirements of law by the other authority."

"By the impugned clause 7, the jurisdiction of all courts is barred in respect of matters connected with the qualification of the Members and at the same time no alternative Constitutional mechanism or arrangement for judicial review has been provided for. The impugned clauses 6 and 7 are accordingly violative of the basic structure of the Constitution. Clause 7 has, in fact, been declared as unconstitutional by a Full Bench of the Punjab and Haryana High Court."

SHRIGUMAN MAL LODHA: Which you have challenged in the Supreme Court. (*Interruptions*)

SHRI KAMAL MORARKA: Sir, Dandavateji has been my leader for a long time. I can do no better than quote him. I am in agreement with him. We have all passed the law, we are all party to the decision. It was discussed in this House even when the Bill was under debate, as to whether the final authority should be the Speaker or the Election Commission or the President of India or the court of law. And the collective wisdom at that time said that the power should be left with the Speaker and it should

[Sh. Kamal Morarka]

be unfettered. Even after passing the law, not only the ordinary citizens, but Dandavateji, who in the course of the debate had supported this Bill, he himself had thought it fit to challenge this law in a court of law. The matter is still pending. So, to get exercise over a matter which is *sub judice* is not proper. As the law stands, as this House is committed, the Speaker's powers are unfettered. But it is also equally a fact that proceedings are pending in two High Courts and after that in the Supreme Court, and I don't think it is the intention of this House to enter into confrontation with the court, which is germane to the problem which has arisen today.

Sir, the other feature that I would like to point out is, Mr. Hukumdeo Narayan Yadav made a speech which has been referred to by honourable Shri Indrajit Gupta and he said that the speech did not answer any of the issues. I agree with him, but what Hukumdeoji answered was not the adjournment motion, but the speeches that went before he spoke. The whole issue, the parliamentary supremacy, and then on Anti-Defection Act, they were all discussed. The matter is *sub judice*.

Sir, one final thing before concluding. If the Anti-Defection Act is to be implemented, if the power of the Speaker which we all cherish has to be kept in tact, leaders of Parliamentary parties and Legislature parties have also to behave with restraint. Sir, I have to humbly submit that the sudden expulsion of 25 Lok Sabha Members and five Rajya Sabha Members was not only arbitrary and capricious, but it was a highly irresponsible act on behalf of.....(Interruptions) Sir, listen to me. (Interruptions)

Sir, I was a Member of the Parliamentary party, I am yet to fathom what was wrong with the 25 which was not wrong with the other 32.

Sir, Mr. Indrajit Gupta says, a Constitutional coup was in the making. If there was an

attempt to scuttle the Tenth Schedule and the Anti-Defection Act, it was by this irresponsible action—I am using the most charitable expression. The design was much greater. There has been a deep calculation by expelling so many Members so that the others cannot call themselves a split. I want to conclude by saying that from this side of the House, there will be absolutely no problem as far as implementing constitutional provision is concerned. But those who have criticised us, please note that if the Anti-Defection Act was ever breached, the most shameless breach was by an animal called the 'Jan Morcha' which came out of the Congress party. (Interruptions)

[Translation]

SHRI RAM DHAN (Lalganj): You have been born out of it and now you are abusing it. You are abusing your own father. Once you used to request us to include you in the Jan Morcha, and you have been elected only due to it and today you are abusing it. He was afraid of losing the contest. So, he fought election from two constituencies. Ballia and Maharajganj and won the election under the leadership of Shri V. P. Singh. (Interruptions)

[English]

SHRI KAMAL MORARKA: I conclude by saying that if the Anti-Defection Law, in its present form, has to be implemented, we have tried to legislate people into morality; we have also provided by numbers whatever the rationale, we have provided that if 'one-third' of the people disagree, they can form a split.

Sir, no leader of any party has any business to use in a colourable exercise of his power to see that 'one-third' does not take place by expelling people arbitrarily. This cannot be done. If this Act has to be implemented, the leaders of the parties have to behave more responsibly. The leader who could form 'Jan Morcha' with seven Members out of 400 Members is objecting to this one-third. With these words, I submit that on the issue of parliamentary supremacy, there

should be no controversy and we all agree with it.

MR. DEPUTY SPEAKER: I would like to bring to the notice of the hon. Members here in this House that we are discussing a very important issue—the powers and the jurisdiction of this House, the powers and the jurisdiction of the hon. Speaker and the powers and the jurisdiction of the judiciary. This is a very delicate area and we shall have to traverse it very very carefully. I do not think that the Members have committed any mistake in speaking, but if there are any oblique references which could not have been made, they would be examined with respect to the Speaker's jurisdiction, with the House's jurisdiction as well as the jurisdiction of the Court also and we will take an appropriate decision.

SHRI KHEMCHANDBHAI SOMABHAI CHAVDA (Patan): Sir, I am on a point of order. Those who are accused under the Anti-Defection Act and against whom case is lying before the Speaker, should not be allowed to take part in this debate.

SHRI KAMAL MORARKA: Sir, I have been relieved of that burden by Mr. V. P. Singh because I have been expelled by him.

[*Translation*]

SHRI GEORGE FERNANDES (Muzaffarpur): Mr. Deputy-Speaker, Sir, while commenting on the debate, which has taken place till now, you said that a situation of confrontation has arisen between the Judiciary and the Parliament.

Today morning, the Speaker said that he is not accepting the decision given by the court. But in my opinion, at present the situation of confrontation is more between the Executive and the Parliament than between the Judiciary and the Parliament because the affidavit which is being discussed here and on the basis of which the judiciary has given a verdict, was filed by some Executive body only. This issue has brought an important question before us, because this

is not the first time that such an issue has come before the Executive. Just now, an hon. Minister said how a Government or a person can give separate opinions on such issue. He also said that he has been actively associated with the Parliament and the Government for the last two years only. This question was raised earlier also when this issue was raised in Punjab just after an amendment was made in the Constitution. When this issue of Punjab came to the High Court, the Government took a stand that the court has no right to interfere in the matter. All the issues were under consideration there. The High Court took a separate stand on the issue and gave its decision accordingly. The Government has appealed to the Supreme Court in this regard and the case is pending there. Now these people have filed an affidavit in the court and their role in the High Court and after that in the Supreme Court is totally contradictory on the issue of Punjab. The lawyers are same. As Shri Morarka has just said that we are new in the Government and so have no experience. But how can it be so that the persons elected have no experience. Just some days.....(*Interruptions*)Excuse me. I agree with you that you are less experienced. In spite of having less experience, a stable Government is there and we will like to know about stand of this Government regarding the matter pending in the Supreme Court as the Hon. Prime Minister is also present here. The affidavit filed yesterday will be brought before the Supreme Court. The Government will say that their opinion has changed because they are less experienced. The court has the right to encroach upon the powers of the Parliament, it can usurp the rights of the Speaker of this House. Has the Government formed this opinion? I would like to know the Government's stand on this issue? It would have been better if the Minister, who had brought this amendment in the Constitution, while he was the Law Minister in the Cabinet of the former Prime Minister, was present here today to take part in this debate. I mean Shri A. K. Sen, who is a member of the present Cabinet also. He had moved that amendment, but it was presented to defuse those situations which were mentioned in

[Sh. George Fernandes]

the President's address, on which our friend Shri Hukumdeo Yadav gave a powerful speech here. During the President's address, it was expressed by the Government that it is going to formulate an Act to mulity such encroachments.

In 1985, the Bill which defined the powers that were to be conferred upon the Speaker of the Lok Sabha, had been presented in this very House from the same seat by the then Minister of Law, Shri A. K. Sen, The Bill contained the views of the then Government, not merely of an individual. He had said that time.

[English]

Shri Ashoke Kumar Sen: With these words, I recommend this Bill with the further clarification that there may be disputes as to whether a man is really elected on a party ticket or whether he has really voted contrary to the mandate or, whether the mandate had reached him before he voted. All these decisions are being left, not in the hands of the court or the Election Commission, or the Governor, the President, as the case may be, but in the hands of the Speaker, or the Chairman of the particular House concerned, so that it will mean...

[Translation]

On this point he was interrupted also by Shri Jai Pal Reddy. He further said,

[English]

Shri Ashoke Kumar Sen: Once it goes outside the control of the House, it will take years and years, for the court to come to a decision, because there will be appeals and further appeals and the matter will be forgotten, like the Anti-defection Bills of the past. Therefore, if we mean business, they must give authority to decide this matter to the Speaker or the Chairman, of the House concerned, who has been elected by the majority voter of the House concerned.

With these words, I commend to the House the unanimous acceptance of this Bill.

[Translation]

Mr. Deputy Speaker, thus the discussion on that that Bill was over. I would like to read here the few lines that had been expressed about the Bill by the then Prime Minister before the discussion on that was over. He said that—

[English]

The Prime Minister (Shri Rajiv Gandhi):

"This Bill is the first step towards cleaning our public life."

"We will be taking other steps, electoral reforms and other reforms and you have my assurance, Sir, that we will carry the whole opposition with us in these forthcoming decisions that we will have to take."

[Translation]

The main sentence is that

[English]

"The Prime Minister (Shri Rajiv Gandhi): This Bill is the first step towards cleaning our public life."

[Translation]

I would like to read here the sentences that had been spoken regarding the powers of the Speaker by the then Minister of Law after the discussion on that Bill was over. I am doing this because we must be aware of the opinions in this House at the time of passing this Bill.

[English]

"Shri Ashoke Kumar Sen: The other questions are about the Speaker's authority."

[Sh. George Fernandes]

[*Translation*]

[*Translation*]

The statement goes on:-

Since on this issue different views had been expressed during the discussion here in the House, a statement was made on behalf of the Government:-

[*English*]

[*English*]

Shri Ashoke Kumar Sen: The other questions are about the Speaker's authority. It was our clear intention from the very beginning that we are not going to allow this matter to be dilly-dallied and tossed in the courts of law or in the Election Commission's Office.

"Shri Ashoke Kumar Sen:- On this hallowed day, we are passing this great Bill. It will guide for ever the destiny of our democracy. If this Bill is passed, surely and surely, only a decent political life shall thrive in this country of ours for all times to come. It is extremely remarkable that this measure has gone through absolutely unanimously. It shows the strength of our nation and the strength of our solidarity and the resolve of our people, that, at all times of need, when the country needs the united effort of all of us, we forget our boundaries, we bury our hatchets and we cut across the party barriers and through the entire national life, one golden thread runs namely, this country shall not perish nor our democracy."

"If this Bill is to be effective and its deflection is to be outlawed effectively, then, we must choose a forum which will decide the matter fearlessly and expeditiously. This is the only forum that is possible.

[*Translation*]

"With these words, I commend the motion for consideration."

Mr. Speaker, Sir, this law, this amendment has got its importance.

[*Translation*]

[*English*]

Mr. Deputy speaker, Sir, what about this the opinion of the House is quite clear. I would like to read out those few words which were said by the then Minister of Law before placing that Bill for the final voting in the House, to the knowledge of the hon. Members as we are sitting here today to decided this issue. He says that:-

PROF. MADHU DANDAVATE: He paid homage to the law and went there.

[*Translation*]

Shri Ashoke Kumar Sen:- "On this hallowed day....."which was that one?

SHRI GEORGE FERNANDES: Mr. Deputy Speaker, Sir, the importance of this law is obvious from this Government's ill-efforts to amend it in its own interest. I am not surprised over this Government's act because we know that the affidavit filed in the court by Shri I. Babu Lal, the Deputy Secretary in the Ministry of Law, does not contain his own views. Rather the Suggestion had come from somewhere else. Some one went to the Chamber of the Speaker and threatened him to arrest if he did not give his decision in their favour. This game started with the Attorney General's appearance in the court to give his opinion about it. And thereafter an affidavit through a lower officer was filed in the court.

"The hallowed day—that was the martyrdom day of Mahatma Gandhi."

Shri Ashoke Kumar Sen:- "On this hallowed day....."

The hallowed day—that was the martyrdom day of Mahatma Gandhi.

[Sh. George Fernandes]

In fact, the Government is in great trouble. We were very happy when the hon. Member, Shri Dinesh Singh on behalf of the Congress party made it clear here in the House that they would not do away with that law which they had passed in 1985 to use it as a great weapon not only to maintain the dignity of the House but also to safeguard democracy in the country. We were of the view that the Government would not dare to pull on this issue any longer, because we know that this Government can not remain in power without the support of its supporting party. It had been officially declared by that party but even then this Government has drifted the issue to reach the present state and made it more complicated. What would have happened in the Court, if an hon. Member of Congress party, our friend Shri Vasant Sathe had not pointed out this in the morning. Neither you nor we had in our minds that this issue is still pending in the court. Shri Vasant Sathe raised this point in the House and drew the attention of the Government towards this case which is still pending in the court. I want to congratulate Shri Vasant Sathe for pointing out this fact before the House. (*Interruptions*) Mr. Deputy Speaker, I know that it will be embarrassing for them. What can I do if Shri Sharad Pawar is still haunting their memory...(*Interruptions*)

Mr. Deputy Speaker, Sir, I would not take more time now, but I would like to say that all these things are being done to save the Government. The news about the intention of the ruling party which has been published in yesterday's 'The Hindustan Time', that the J. D.(S) will submit a petition before the President, is ample evidence of Government's motive. I know that someone from the ruling party will deny this charge by saying that this is not an official statement and it is simply a newspaper report. But my friend Shri Satya Prakash Malviya always tries to defend his party. As soon as this news appeared in the newspapers that President is being consulted regarding the powers of the Speaker, they started their efforts. It may be correct that they dare not go

to the President, but the letters have been sent by the Ministers to the President, at least I know about one such Minister who in his letter to the President has tried to win him over in his favour.....(*Interruptions*).....

SHRI RAM DHAN: Shri Bhagey Gobardhan.....(*Interruptions*)

SHRI GEORGE FERNANDES: I do not know as the Janta Dal (S) did not do all this openly. But I would like to know as to why they did not contradict the news if it was not true? Why did not they make it clear that they were not in a dilemma regarding the responsibilities and powers of the Speaker in the House? Why did they not claim that they respect the Speaker by their words as well as by their deeds? Why this was said by them?. Mr. Deputy speaker, in our opinion, all these things are taking place in a planned way. Just now, my friend Shri Indrajit Gupta used the word, "Collusion" for this planning. But I am going a step further and would like to call it a "conspiracy.".....

Mr. Deputy Speaker, this is clearly a conspiracy under which the Speaker was threatened at first and after that they took it to the court of law and when their purpose was not served by all this they threatened to approach the President. All these efforts are aimed to get a favourable decision from the Speaker. This is least important whether the Government remains or not. I want to quote the remarks of a former Prime Minister and later leader of the Opposition. When he was in power, he once said to the Opposition that these days were over and they would never be elected again. But in a few years what happened to him, you know it very well. I am not saying this with any wrong motive as it is of no significance as to which party is in the Government but what is more important is that some basic principles which are associated with the Constitution to protect the cause of democracy in the country should never be violated by anyone. Mr. Deputy Speaker, Sir, we expect from this House to take some decision on this issue.

At last, I would like to draw attention to

Rule 7 in the Tenth Schedule of the Constitution of India.

[English]

SHRI VASANT SATHE: Nothing against the judges should go on record.

[English]

"Bar of jurisdiction of courts-Notwithstanding anything in this Constitution.....

MR. DEPUTY SPEAKER: We will examine it.

[Translation]

(Interruptions)

Be it article 105, 108, 32, 226 or any other Article.

[Translation]

[English]

SHRI GEORGE FERNANDES Please examine. My request is that action should be taken in this matter under the rules treating it as a breach of privilege. I support this Motion. (Interruptions).

....."Notwithstanding anything in this Constitution no court shall have any jurisdiction in respect of any matter connected with the disqualification of a member of a House under this Schedule."

[English]

[Translation]

SHRI RAJIV GANDHI (Amethi): Reference to the judges may please be removed.

The matter ends there. I am quoting the Rule 8(3) which is related with it:

MR. DEPUTY SPEAKER: I have said that we will examine it. I have already said that please let us not make references which will create complications.

[English]

(Interruptions)

"The Chairman or the Speaker of a House may, without prejudice to the provisions of article 105 or, as the case may be, article 194, and to any other power which he may have under this constitution direct that any willful contravention by any person of the rules made under this paragraph may be dealt within the same manner as a breach of privilege of the House."

SHRI SOMNATH CHATTERJEE (Bolpur): The question of privilege does not go up to the judges.

(Interruptions)

[Translation]

MR. DEPUTY SPEAKER: I agree with you. That will not form part of the record.

Mr. Deputy Speaker, Sir, there has been a breach of privilege of the House. Law Minister, Attorney General and the person on whose behalf the documents are presented are responsible for it and ** I demand from this House that for the breach of privilege of this House.....(Interruptions)

SHRI SAIFUDDIN CHOUDHURY (Katwa): We shall have a discussion on the judicial reforms later.

[Translation]

SHRI NATHU SINGH (Dausa): Mr. Deputy Speaker, Sir, Honourable Senior Members of this House have expressed

[Sh. Nathu Singh]

their views on this serious issue, but the subject which is being discussed here, has already been discussed many a time in various houses, inside and outside the House also. (*Interruptions*) After the discussion the supremacy of the Parliament has been maintained which has been accepted unanimously because our democracy is a Parliamentary one and in a Parliamentary democracy Parliament is important and powerful. So nobody can challenge the supremacy of Parliament and in this context honourable Mr. George has given the reference of a famous case of Keshav Singh. In this case the Judges gave a notice to the Speaker. Just now an honourable Member said that nothing should be said about the judges here. But in that case the notice have been served to judges for serving a notice to the Speaker, and they had been summoned after the sitting of the House.

Mr. Deputy Speaker, Sir, this unfortunate situation has arisen because our Government committed a minor mistake but in my opinion it is not a minor but it is a major blunder. Our Government submitted an affidavit in the court through the Attorney General and while submitting the affidavit he said that it was not his personal opinion. He said that it was not his personal opinion. He said that this was the opinion of the Government. He called the opinion as the opinion of the Government.

Honourable Prime Minister is present here. I would like to ask him if it was the opinion of the Government. If it is so, there can be no big crime other than that. If it was the opinion of your Law Minister, the Prime Minister should at once remove him, otherwise the Minister will spoil your entire Government. I am saying these words because issuing a court notice to the hon. Speaker has a great significance. This notice is not served to the speaker alone, but it should be treated to the whole of Parliament as well as to all the Members who are the representatives of the people. Thus this Notice should be treated as a Notice served to the people of the whole country. There can be no court

above the people in this democratic country. No court is above Parliament. So the notice has got no meaning for us. Therefore, I would like to demand that the judges who have challenged the Supremacy of the Parliament by serving notice to the Hon. Speaker, whether they have done so on the advice of the Government or not, they should.....as in U.P.(*Interruptions*)

[*English*]

MR. DEPUTY SPEAKER: Mr. Nathu Singh, I very respectfully submitted to the Members that let us not carry on the debate in such a manner that this matter will be further complicated. This House and the Speaker's position is very supreme. It has to be protected. At the same time, the position of the judiciary is also supreme. It is also our duty to see that their position is also to be protected. So, please refrain from making references in such a manner that I would be required to remove it from the records.

(*Interruptions*)

[*Translation*]

SHRI NATHU SINGH: Mr. Deputy Speaker, Sir, that is why I am saying this because we have got a separate spares of activity for the Judiciary and the Legislature. (*Interruptions*)

[*English*]

MR. DEPUTY SPEAKER: The Constitution is very clear on that point. There is no ambiguity. Please do not refer to that.

[*Translation*]

SHRI NATHU SINGH: That is what I am saying. So I would like to speak regarding the contempt of the House which has been caused by the Court's notice, and the House should take it seriously. It has become our convention whenever the Speaker, Parliament or State Legislative passes any law the court has power to challenge that law. If there is a case relating to the fundamental

rights of some person, the court can hear such a case.

This matter does not relate to anybody's fundamental rights. It is an internal matter relating to the Members of Parliament and the Speaker and no court on earth can interfere in this matter. My only submission is that no court can interfere in the jurisdiction of Parliament. It is an old convention that no court can interfere in the jurisdiction of functioning of Parliament. So the present Parliament should decide once for all that no such notice should be served to Speaker, Parliament or Legislature in future. We should make a decision today in this regard. Mr. Deputy Speaker, Sir, I would like to know whether the Government wants to withdraw the Anti-defection Act which was passed unanimously. Does the Parliament consider that law as wrong? If it is so, then who is responsible for this?

Mr. Deputy Speaker, Sir, today this is the crucial time for every Member of this House and today it has to be decided that nobody can challenge this House and no court can interfere in its jurisdiction. So I appeal to every member of the House to stand in support of the Speaker and we should think seriously about the conduct of the minister who has committed this blunder by getting submitted such an affidavit. The Minister has done so against the spirit of the anti-defection law and against the constitution. I feel that the Prime Minister is surrounded by "Swamis" now-a-days, and as long as he continues to be surrounded like that the Government will remain in trouble. *(Interruptions)*

Mr. Deputy Speaker, any Report is published in the newspapers today, the Government says that the Speaker will decide in the light of Anti-Defect on Act but some persons what that this right should be given to the President and tomorrow you will say that this right may be given to the Prime Minister, this is the tendency of the Government. Today the Government says

something and the next day device it How many times the statements will be re reputed are? I appeal to the Prime Minister to dismiss that Minister immediately who is responsible for the whole issue relating to the questioning of the supremacy of Parliament. I wont ask for any Privilege Motion against him, I would only request to dismiss the concerned Minister. I request the entire House to break the Party barriers and support Mr. Speaker. I would request the Prime Minister that the affidavit should be withdrawn and an announcement may be made in the House that nobody would be allowed to interfere in the jurisdiction of the Parliament and the Government will have to agree to the decision of the House.

[English]

SHRI INDER JIT (Darjeeling): Mr. Deputy Speaker, Sir, what has happened is something very grave. Nobody is questioning the supremacy of the Supreme court and its rights to review various Acts passed by this parliament. But, what has been done amounts to**** *(Interruptions)*

MR. DEPUTY SPEAKER: No, this will not form part of the record.

(Interruptions)

MR. DEPUTY-SPEAKER: Please be careful.

(Interruptions)

SHRI INDER JIT: Sir, I have said, what it amounts to. What has happened amounts to monstrous assault on the supremacy of Parliament, its esteem and its powers. Therefore, in my brief submission, I would merely like to say this that the Prime Minister should seriously consider withdrawing the affidavit, take a fresh look at it and make adequate amends. This is my first proposition.

My second brief proposition is that, in

[Sh. Inderjit]

view of the situation which has developed, when this House adjourns, it should not be prorogued. In view of the fact that the case is pending before the High Court, a situation of confrontation could possibly emerge. Therefore, I would seriously propose that the House should not be provoked so that one does not have to go through the formalities of summoning the House again.

This is a very serious matter. I am glad that in the morning, the Speaker made a very clear statement of the decision of the Chair to ignore the stay order. The fact that the stay order has been ignored shows that the Government itself recognises the supremacy of Parliament and something wrong has been done. Therefore, I would appeal to the Prime Minister through you, Mr Deputy Speaker, to take the earliest opportunity today itself to take a fresh look at the affidavit, make adequate amends or withdraw it totally.

DR. THAMBI DURAI (Karur): Mr. Deputy Speaker, today we are discussing about the dignity of the Speaker of this House. Our party is always consistent in respecting the dignity and decision of the Speaker. Whatever he says, we are always abiding by it. Recently also, we met our Speaker. One of our colleagues in our party defected to some other party. We approached our Speaker and sought the permission to take the necessary action. We never Janata Dal put any condition to him that within a certain period he has to take action as other parties like are now raising. It is left to the Speaker's discretion. We are always having faith in the wisdom of the Speaker and his decision. Whether you are calling us after some other time, how you are calling us, what is the procedure followed, whether our party gets priority now or it gets afterwards, we are not questioning including the time given by our party. We are always abiding by your decision and accepting your decision. We express our views.

Secondly, I want to say about the Anti-

Defection Law that the same House enacted this law giving the power to the Speaker to take a decision on the disqualification of the Member of this House. We are having full faith in him. Some Members from the Treasury benches mentioned about his decision regarding 25 Members. It is left purely to the Speaker's decision. We cannot question it. In the same way, how he is going to take a decision on this issue we cannot question it. Whatever he spells out, we are accepting that. We are not going to the court. Whatever stand we are taking here, we our party are taking the same stand in our legislature in Tamil Nadu. Our party is consistent in that. We are not having double games telling some Members to go to court as in Tamil Nadu and after wards on the pretext of the decision of the court, saying the Presiding Officer should take certain decisions according to the convenience of the Government of Tamil Nadu. I expected Mr. Kamal Morarka would tell us what their line of thinking was. He only spelt out certain things regarding the individuality of the Members going to the court. He has the fundamental right. We cannot question the Member's right. Any member can go to the court. But we want to know the stand of the Government. That is another thing.

Regarding the Anti-Defection Law, one of our Members said, why are we giving so much power to the Speaker to take an early decision. It must not be prolonged. The spirit of the law, when enacted, was to see that democracy survived in our country. The democracy is more important. Indian democracy is the biggest democracy in the world. In order to strengthen democracy, we are having three tiers, that is, legislature, judiciary and executive. One cannot encroach on another. They have to see that everybody has his own way of functioning. That is the spirit of our democracy.

When Members are changing the side and if they are having one-third of the membership, we cannot call it a defection. It is a difference of opinion. In democracy, we have to respect the difference of opinion. If we want to force certain things, that cannot

be democracy. Minorities also have respect. When some members have difference of opinion, there is a provision of a split in the Act. Based on that provision, they may form their own group. And for this, we cannot say that they have defected. I am once again insisting that our party's stand is always consistent and we are not having double standards. As a Member of this House, I will see to it that the dignity of the Speaker is maintained. The Speaker has already said before the House that he is not going to take a serious note about the notices given by the Delhi High court and we thumped and encouraged him. We are not second to anyone to see that the Speaker's power will be taken away. There is no bar even now. He can take his decision in his own way and spell it to the House. Nobody is going to take the decision given by the judiciary seriously. But my only request is, as other Members have also requested, we want to know the stand of the Government as to what they are going to do in this matter. If there is any defect, as other Members are feeling, let them amend it and rectify it.

PROF. SAIF-UD-DIN SOZ (Baramulla): Mr. Deputy Speaker Sir, I feel that I have a via media. But before that, I want to say that so far as anti-defection law is concerned, there can be no fetters for the authority of the Hon. Speaker and thus, I am happy that in keeping with the dignity of the House, he has decided not to take any notice of the orders of the Court. But I want to remind that in this august House, Jawaharlal Nehru who was the leader of this House for 17 long years wanted to establish a convention. Regarding the supremacy, *vis-a-vis*, the judiciary, it is known to everybody that this is the highest forum for making laws. This House is the law-making authority. Therefore, its supremacy is established, *vis-a-vis*, judiciary. I have seen in the debates that on many occasions, Pandit Jawaharlal Nehru reminded this House that the spirit of the Constitution does not want any confrontation between the judiciary and the Legislature and we cannot afford to have such a confrontation. Now, there is a question for us. By convention, we must not create conditions of

confrontation and therefore, I may request the hon. Prime Minister to amend the affidavit. As far as the question of split is concerned, I am convinced that it was a split. There is no question of defection. I am clear on that point. But my via media is that-I will not suggest that the affidavit should be withdrawn-the Prime Minister must respect the convention and confrontation should be avoided. I would appeal to the hon. Prime Minister to rise in his seat and tell us or rather, assure us that he will amend the affidavit in such a manner that the question of confrontation will not remain and the authority of this House and the Speaker will be maintained.

SHRI RAJIV GANDHI (Amethi): Mr. Deputy Speaker Sir, such questions have been coming to this House almost right from the First Lok Sabha and I would like to join the hon. Member in

16.09 hrs.

[MR. SPEAKER *in the Chair*]

Suggesting that these questions should not become confrontations whether they are between this House or the rights of this House and the judiciary or for that matter, between different sections of the House. These are issues on which unanimity is required. When we go back to into these 40 years of our democracy, we will find that right from Panditji's time, Indiraji's time and even during our Government, we had a clear division and we did not allow these issues to become grim. And if, at any point of time, we felt that the supremacy of the House would be encroached upon, we stood as one to protect it. We did not allow a third chamber to develop as Panditji had said.

Sir, this House represents the will of the people and the will of the people must be supreme in the functioning of this House. Nothing else must be allowed to come in the way.

The Bill that we are talking we are talking about was brought by our Government, but

[Sh. Rajiv Gandhi]

we had extensive discussions with all the opposition parties at that time and the Bill was suitably changed.....(*Interruptions*), and the form that came to the House was the form that was unanimously accepted by all sections of the House. We were very clear that the main thrust of the Bill was to bring about higher ethical and moral values into the functioning of our political system; it was to enforce some political morality and to bring about political stability. The Bill was unanimously passed. Today, there are questions raised, because a lot has happened since then. One learns from what happens in between and if there are doubts about the functioning of the Bill, the Bill should be changed, if required, but pending that change, we must stand with what is on the Statute Book and what is in the Constitution and there should be no change.

There are parts in the affidavit placed by the Government in front of the High Court which we believe are not according to the letter and spirit of the Anti-Defection law as we had passed in this House, and I am sure that the Prime Minister will look into this and whatever needs to be rectified will be rectified by the Government.

We should keep in mind once again the very delicate situation between the judiciary and the House and nothing that we do should look to the judiciary as if we are encroaching into their areas. Once more, I appeal that we do not divide the House on this issue; we stand as one and the dignity of the Speaker must be upheld. Sir, you are the custodian of the rights and privileges of this House, of all the Members and through the House, of the democratic system in our country.

Once more, I appeal to the Prime Minister to look into this in depth, rectify whatever needs to be rectified and I appeal to all sections of the House to stand together and help the Prime Minister to close this issue.

THE PRIME MINISTER (SHRI CHANDRA SHEKHAR): Mr. Speaker, Sir, I

have listened carefully to the speeches of the hon. members on this important issue. It has been a very useful debate; all aspects of this matter have been debated. I shall not like to go into the various points that have been raised. I shall only confine to the point that is vital in this debate.

I would like to make it clear at the very beginning that I am as much concerned as any other Member of this House to protect and safeguard the dignity and privileges of the Parliament and of the office of the hon. Speaker of Lok Sabha.

I entirely agree with the hon. Members that the Parliament is the supreme authority to decide its own proceedings and no court can have any jurisdiction or authority over the supremacy of the Parliament. This is not a matter on which there could be any difference of opinion. Mr. Speaker, Sir, it had never been the intention of my Government to lower the dignity and supremacy of this House. The Government will take all steps necessary to uphold the supremacy of the Parliament and will not yield to any interference with such supremacy. Mr. Speaker, I assure you, Sir, that necessary modifications will be made in the affidavit that is under question.

Mr. Speaker, Sir, Mr. Madan Lal Khurana should not have any doubts. The modification will be made and he should not have any doubt that there is any intention to interfere in the authority and dignity of the Office of the Speaker or that of the Parliament. (*Interruptions*)

SHRI NIRMAL KANTI CHATTERJEE: That is not at all important. Who is responsible for this? Why are you silent on that point?(*Interruptions*)

SHRI L. K. ADVANI: Mr. Speaker, Sir, at the very outset I must thank all the participants in this debate who broadly speaking have endorsed the pivotal point that I have made while moving this motion, namely that the affidavit filed by the Government of India before the Delhi High Court in respect of

*Failure of Govt. to uphold provision
of 10th Schedule of Constitution*

disqualification issue was highly objectionable and it undermined the authority of parliament and dignity of the Office of the Speaker. I regard it as significant that two participants apart from the Prime Minister, who spoke on this issue did not refer very much to the affidavit because the other issues are not very germane and connected with the debate that we are having today. Had it not been for this affidavit, the whole issue may have been closed after the announcement made by the Speaker right at the outset that this House was not going to take cognizance of the Court order issued.

I wish the Prime Minister has been most explicit when he responded to the debate. But in view of the fact that it has been communicated to him—the offensive portion of the affidavit will not be allowed to remain—In this particular affidavit there is one clause which has not been referred to in the course of the debate which even goes on to insinuate that may be if the law stands today as it is, there may be an arbitrary decision. The word arbitrary has been used in one way. It is submitted that no organ of the State can be allowed to act arbitrarily under the provisions of the Constitution of India. Observations of this kind have naturally evoked a very strong reaction from all sections. I was re-assured when Shri Dinesh Singh spoke and later on when Shri Rajiv Gandhi spoke. I found that two senior leaders of the party which sustains this Government have an equally strong view about what I have said and they also feel that unless this particular affidavit is either withdrawn or suitably amended there will be no satisfaction.

Therefore, on the basis of the assurance given by the Prime Minister that the Office of the Speaker and his authority will in no way be undermined, will in no way be denigrated or devalued and the supremacy of the Parliament in so far as legislation is concerned will be preserved, in view of this categories assurance, I do not press my Adjournment Motion.

MR. SPEAKER: Has the hon. Member,

Shri Advani leave of the House to withdraw his motion?

SEVERAL HON. MEMBERS: Yes.

The motion was, by leave, withdrawn.

16.20 hrs.

PAPERS LAID ON THE TABLE

Reviews and Annual Reports of the National Handloom Development Corporation Ltd. Lucknow, North Eastern Handicrafts and Handlooms Development Corporation Ltd. Shillong for 1989-90 etc.

[*Translation*]

THE MINISTER OF TEXTILES AND MINISTER OF FOOD PROCESSING INDUSTRIES (SHRI HUKUMDEO NARAYAN YADAV): I beg to lay on the Table:-

1. A copy each of the following papers (Hindi and English versions) under sub-section (1) of section 619A of the Companies Act, 1956:-
 - (a) (i) Review by the Government on the working of the National Handloom Development Corporation Limited, Lucknow, for the year 1989-90.
 - (ii) Annual Report of the National Handloom Development Corporation Limited, Lucknow, for the year 1989-90 along with Audited Accounts and Comments of the Comptroller and Auditor General thereon. [Placed in Library, See No. LT—1925/91]
 - (b) (i) Review by the Government on the working of the North