

JOINT SITTING OF THE HOUSES OF PARLIAMENT

Vol. I

No. I

JOINT SITTING OF THE HOUSES OF PARLIAMENT

Tuesday, May 16, 1978/Vaisakha 26,
1900 (Saka)

The Houses of Parliament met in joint sitting in the Central Hall of Parliament House at Eleven of the Clock.

[MR. SPEAKER in the Chair].

WELCOME ADDRESS

MR. SPEAKER: Members of Parliament, I welcome you all to this Joint sitting of both Houses of Parliament. In the history of our Parliament, this is the second occasion when such a joint sitting has been called.

The first occasion when both the Houses were summoned to a joint sitting, it would be recalled was in May 1961, to deliberate and vote upon the Dowry Prohibition Bill.

The present joint sitting of the Houses, as you all know, is for deliberating and voting on the Banking Service Commission (Repeal) Bill, 1977. This Bill, passed by Lok Sabha on the 5th December, 1977, was rejected by Rajya Sabha on the 8th December, 1977.

Before I ask the Secretary to lay the Bill on the Table, may I say that I look forward to fruitful deliberations, conducted in the best traditions of our Parliament?

11.02 hrs.

BANKING SERVICE COMMISSION (REPEAL) BILL

LAI'D ON THE TABLE AS PASSED BY LOK SABHA AND REJECTED BY RAJYA SABHA

SECRETARY: Sir, I lay on the Table the Bill to repeal the Banking Service Commission Act, 1975, as passed by Lok Sabha and rejected by Rajya Sabha.

POINTS OF ORDER

SHRI K. LAKKAPPA (Tumkur):
Sir, I rise on a point of order.

SHRI S. S. LAL (Bayana) rose (interruptions)

MR. SPEAKER: This is a joint session; nothing can be discussed except the Banking Service Commission (Repeal) Bill.

(Interruptions)***

MR. SPEAKER: Don't record.

(Interruptions)***

MR. SPEAKER: Order, order. Please sit down. I am on my legs.

(Interruptions)

MR. SPEAKER: Nothing other than the business relating to the joint sitting will go on record. There is no point in raising anything other than the business relating to the joint sitting. That is the rule. Mr. Lakkappa.

***Not recorded.

SHRI K. LAKKAPPA: Mr. Speaker, Sir.....

श्री श्याम लाल यादव (उत्तर प्रदेश) :
मेरा प्वाइंट ऑफ़ ऑर्डर है.....।

MR. SPEAKER: I have called Mr. Lakkappa.

SHRI SHYAM LAL YADAV: Please give me the second chance.

MR. SPEAKER: There is no contract.

SHRI K. LAKKAPPA: I am grateful to you for giving me this opportunity. This is the first joint sitting of both the Houses in my experience of Parliament.

MR. SPEAKER: Please formulate your point of order.

SHRI K. LAKKAPPA: My point of order relates to the procedure adopted to convene this joint sitting to consider the Bill to repeal the Banking Service Commission Act, 1975, as passed by Lok Sabha and rejected by Rajya Sabha. It is on two counts.

The joint sitting envisages a special procedure. Most of the points regarding that were raised by hon. Members on the floor of the Lok Sabha, but I take this opportunity to raise this issue on two counts. I would like to mention for the benefit of this session the procedure adopted in 1961. When the amendments to the Dowry Bill were rejected and they were considered in a joint sitting in 1961, both the Rajya Sabha and the Lok Sabha adjourned *sine die* on 5th May, 1961. A joint sitting was held on 6th May and 9th May, 1961. The question is whether a joint sitting can be held when the House or Houses have not adjourned *sine die*. If you look at the records, yesterday you, in your wisdom, have said clearly:

"The House stands adjourned till 11 hours tomorrow when it is to meet in a Joint sitting with the Rajya Sabha."

Again, you have mentioned:

"The House shall stand adjourned *sine die* upon the completion of the business to be considered at the Joint sitting."

But the Rajya Sabha has not been adjourned *sine die*. Therefore, the precedent of 1961 for convening a joint sitting is not being followed so far as this joint sitting is concerned. Therefore, there is a lacuna in convening this joint sitting.

Not only is there a lacuna in convening the joint sitting thus to consider the Bill to repeal the Banking Service Commission Act, 1975, but the joint sitting should not have been called for the reason that the Banking Service Commission Act, 1975, is one of the landmarks of the previous Government. Such a legislation is the landmark of the previous Government.

MR. SPEAKER: Please confine yourself to the point of order. You cannot make a speech.

SHRI K. LAKKAPPA: I am on a point of procedure. Also I am opposing the Bill on the ground that when a progressive legislation was passed in 1975 by the previous Government, the present Government is taking not only.... (Interruptions)

MR. SPEAKER: If you are not on a point of order, I will not allow.

SHRI K. LAKKAPPA: Sir, I am on a point of order.

MR. SPEAKER: No, it is not a point of order. I do not allow it.

SHRI K. LAKKAPPA: I humbly submit to you that there are certain procedural angles. It is not even in conformity with the procedure adopted in the joint sitting to enact whatever the Finance Minister has brought forward. He is not within his rights to pass such a Bill which opposes even

the very basic principles and also the Act passed by the previous Government.

With these words, I oppose this Bill.

SHRI B. SHANKARANAND (Chikodi): Mr. Speaker, Sir, I am rising on a point of order about the very validity of this Joint sitting.

You may recall that yesterday in Lok Sabha while adjourning the House *sine die* as per Bulletin Part I of Lok Sabha, you have said: "The House stands adjourned till 11 hours tomorrow when it is to meet in a Joint sitting with the Rajya Sabha. The House shall stand adjourned *sine die* upon the completion of the business to be considered at the Joint Sitting."

That means, the Lok Sabha is still continuing its sitting under the summons under Article 85 of the Constitution. Article 81(1) says:

"The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session."

If the Lok Sabha is sitting under the summon issued by the President under Article 85, then this Joint Session cannot be held because the Joint sitting can be held only under Article 108(3). I will read out that Article also, I quote 108 (1) of the Constitution:

"108(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the Other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill; or

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it."

The next is very important—

"The President may, unless the Bill has lapsed by reason of a dissolution of the House of the people, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill."

Then, this is what article 108(3) says:

"Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the House to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly."

There is a distinction between article 108(3) and clause (1) where a reference is made about the sitting of both the Houses and where the President has to notify the intention. But in clause (3), there is no reference to the sitting of the House. It means that in the absence of the reference of the sitting of the House in clause (3), a joint session has to be convened only when both the Houses are not sitting. This is fortified by the summons issued by the President in 1961 when a similar joint sitting was held.

I would like to bring to the notice of the House what happened in 1961. It is on p. 35 of the *Kaul and Shakhder* on "Practice & Procedure of Parliament". It is mentioned that the President has to issue a Message to the House. Of course, the Message has to be notified. The date of the Message is very important. The Message was notified on 18th April, 1961. The Message reads like this:

"Whereas after the Dowry Prohibition Bill, 1959, has been passed by the Lok Sabha and transmitted to

[Shri B. Shankaranand]

the Rajya Sabha, the Rajya Sabha and the Lok Sabha have finally disagreed as to the amendments to be made in the said Bill;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 108 of the constitution I,hereby notify my intention to "summon the Rajya Sabha and Lok Sabha to meet in a joint sitting for the purpose of deliberating and voting on that Bill."

This is dated 18th April, 1961.

The next is the Order of the President. This is very important. This is the basic on which I am objecting the validity of the joint sitting today. The Order of the President is dated 22nd April, 1961. The form of the Order is as follows:

"In exercise of the powers conferred upon me by clause (3) of article 108 of the Constitution, I hereby summon the Rajya Sabha and Lok Sabha to meet in a joint sitting at New Delhi on Saturday, the 6th May, 1961 at 11 AM for the purpose of deliberating and voting on the Dowry Prohibition Bill, 1959."

This is dated 22nd April, 1961. A Gazette Extraordinary was published giving the text of the Order.

And then there is the summons. This summons is wanting here. This joint sitting is meeting today without this summons. That is why I am taking objection to the sitting of the joint sitting today. The form of the summons given on p. 36. It reads like this:

**JOINT SITTING OF
HOUSES OF PARLIAMENT
SUMMONS**

Parliament House
New Delhi, 27th April, 1961.

"The President, in exercise of the powers conferred by clause (3) of article 108 of the Constitution, having been pleased to direct that a joint sitting of the Rajya Sabha and Lok Sabha be held at New Delhi for the purpose of deliberating and voting on the Dowry Prohibition Bill, 1959, and to appoint Saturday, the 6th May, 1961 at 11 A.M. as the date for the commencement of the said joint sitting, youare hereby summoned to the said joint sitting, at the place and the date aforesaid."

Today, we do not have this summons. The hon. Members may kindly see what they have received in the name of summons. It is not the summons but an order. I have got a copy of the order also. It is not in the form of summons. It gives only the order. No doubt, they have said that it is a summons. But it is not a summons in the form in which it was issued for the first joint sitting held in 1961. This is only an order that has been issued. We have not received the summons, as it was issued on 27th April, 1961.

There are three stages in this. One is notifying the President's intention. That is one stage. Then the President passing the order summoning the joint sitting is the second stage and the third is the summons finally to be issued to the Members of both the Houses. In this case we have not received the summons as is envisaged in the provisions of law.

In the last joint sitting in 1961, both the Houses were adjourned on 5th May....

MR. SPEAKER: You have made the point.

SHRI B. SHANKARANAND: On 6th May he signed the order. Here to-day it is something else. Both the Houses are sitting and a joint sitting to be called under the provisions of

law under Art 108, clause (3). So, under these circumstances I say this joint sitting is invalid, illegal and any deliberation that takes place will not have the support of the Law and any law passed in this sitting will be challenged in a court of law and it will not be held as valid in any court of law.....

SHRI VASANT SATHE (Akola): I am on a point of order.

MR. SPEAKER: Shri Sankar Ghose

SHRI SANKAR GHOSE (West Bengal): The point of order that I wish to raise is that the mandatory provisions of Art. 108 have not been complied with and, therefore, any legislation that may be passed in this "historic sitting" will be struck down by the Supreme Court.

Art. 108 allows a joint sitting to be called only under three circumstances

(1) When there is a disagreement on an amendment. That is not the case here.

(2) When a Bill is placed in the Rajya Sabha for consideration and it is allowed for consideration and then allows clause-by-clause debate and then puts it for passing; at the stage of passing, it is either accepted or rejected. If at the stage of passing it is rejected, then a joint sitting can be called.

(3) A joint sitting can also be called if the Rajya Sabha does not reject the Bill but say that it shall not even consider the Bill, let alone reject it. If it does not consider the Bill and if six months elapse and nothing is passed then, under Art. 108(c), a joint sitting can be called. That six months have not passed, because the Lok Sabha passed the Bill in December. It went to the Rajya Sabha in December itself and it was not considered. Six months have not yet elapsed.

Therefore Art. 108(c) could not lawfully and validity be invoked to call a joint sitting. That time provided has not elapsed. Therefore, Art 108(c) is not attracted and the power to call the joint session cannot be invoked. 108 (a) is palpably not applicable because the Rajya Sabha did not reject the Bill. The Rajya Sabha refused to consider the Bill. The Supreme Court has said that when you are construing the words of the Constitution, you have to give the words the meaning the existing, not what meaning you give in subsequent rules. I shall come to the subsequent rules. They have no validity in construing the words of the Constitution. You are an eminent Judge and you know that fully. Particularly in the *Gannon Dunkerley* case the Supreme Court said 'when the constitution provided that State can tax a sale, then States cannot say, 'I can tax a sale but I will define 'sale' to include something which is not a sale.' The Supreme Court said, 'You cannot do it.' If you have the power to tax 'a sale', you can only tax a sale which was understood as a sale when the Constitution was passed. Therefore if by subsequent legislation you say that an agreement for sale which is not a sale or a works contract which is not a sale

MR. SPEAKER: You are not to argue. You should only formulate your point. That you have done.

SHRI SANKAR GHOSE: I am formulating this point that this notification

SHRI VIREN J. SHAH rose.

MR. SPEAKER: No, please. This is not a debate.

SHRI SANKAR GHOSE: I am glad that he has raised it. I refer to the Rajya Sabha debate of 18th December, 1977. The factual position is this.

"MR. DEPUTY CHAIRMAN: I shall now put the motion by Shri H. M. Patel,

"That the Bill to repeal the Banking Services Act 1975 as passed by the Lok Sabha be taken into consideration".

The motion was negatived. The Rajya Sabha did not reject the Bill: the Rajya Sabha said it will not consider the Bill.

Therefore, Art. 108(a) is not attracted, Art. 108(c) could be attracted if six months had passed which have not. Therefore, this whole sitting will be bad and it will be a shame to Parliament that so many law-makers who are assembled here should pass a legislation which would be struck down by the Supreme Court.

Such a thing happened in the case of Himachal Pradesh. A Notification was issued by the Governor convening a session of the House. But because the mandatory provision was not complied with, the Court said it was not a matter of internal procedure and it was not a matter of rule, and the whole thing was struck down.

You are an eminent judge. This is a legal question: you can call the Attorney General and take his views, because this is not a partisan matter. This session is bad: the whole proceedings will be bad.

SHRI BHUPESH GUPTA (West Bengal): My point of order is simple and plain enough for all to see. It is plain enough for all to see, who are ready to see the point of order.

We have got what is allegedly called 'summons' from the President. If you look at the summons you will find that the wording of it and the presentation of the summons to Members of Parliament is somewhat different from the summons we received when the first session of every year, viz. the budget session starts. Although it bears the heading 'Summons' at the top, we were served with an order of

the President which is supposed to be under Art. 108. Therefore, there seems to be a little irregularity in this matter.

A point has been raised about the Houses not being adjourned *sine die* and about our being called to meet in a joint sitting of the Houses of Parliament. We were called under Art. 108 of the Constitution. I am not disputing the right of the President, even during the session, to summon the two Houses of Parliament to meet in a joint sitting. But then, Sir, the Constitution has grown over the years, associated with conventions and precedents. That is what happens to a written Constitution. Conventions sometimes do acquire the force, as it were, of an associate block of the Constitution. In fact, it is through customs and conventions—and conventions in particular—that we develop our constitutional practices and working of the Constitution. We do not have any precedents in this matter, excepting the one in 1961 when the anti-dowry matter came up before the joint sitting. I had the privilege of participating in the joint sitting. None of us, Sir, then raised a point of order with regard to the joint sitting because it was called after both the Houses had adjourned *sine die* it was not called during the continuance of the sittings of the two Houses.

MR. SPEAKER: Kindly formulate your point and not argue.

SHRI BHUPESH GUPTA: Points get formulated as you speak. Points, like everything else, get formulated as you speak and I am sure you, with your rich experience, both as a judge and person conversant with parliamentary affairs and other things, know how points get formulated.

MR. SPEAKER: That is why I said, you are not to argue: you are only to formulate your point.

SHRI BHUPESH GUPTA: I am beholden to you for your guidance and

I hope you will see the point as it is being formulated.

The point of order is this: precedents have been violated. That is number one and I raised it in the House. We were informed of the joint sitting in the House, even before we received any kind of alleged summons. I do not hold the President responsible; I hold the Government responsible for misguiding and misleading the President by its constitutional advice. This is what I say. The Government is responsible for misleading the President in giving an advice which has led to an act on the part of the President which cuts at the root of the constitutional conventions that we pursued, as I referred to, in 1961.

Then, again, there is an interesting thing about the Bill itself that we will discuss. Clause 5 of the Bill refers to the Banking Service Commission (Repeal) Ordinance, 1977 and it says that this Ordinance 'is hereby repealed'. How are we asked by the President to consider a clause which relates to a non-existent Ordinance? Under Article 123 of the Constitution, the Banking Service Commission (Repeal) Ordinance, 1977 lapsed on the 26th December because six weeks had already lapsed by that time, had expired at that time after the Ordinance had been laid on the Table of Lok Sabha. We are all now asked to consider and vote for a non-existent thing. Where is the Banking Service Commission Ordinance? I ask you to tell me, whether such an Ordinance exists under law. There is no such Ordinance; it is non-existent under law.

Here again, the President has been advised by Shri Morarji Desai, Prime Minister of the country and his Government to call a joint sitting of the two Houses to do the most absurd thing to consider or give our recommendations on non-existent Ordinance, the Ordinance, which has already lapsed. Many strange things have happened. We have been asked to

commit an illegal act. I submit that we are not under obligation, nor is the President under his oath of office called upon to do an unconstitutional act... (Interruptions). The President has called a joint sitting of the two Houses to consider a matter which does not exist; to repeal a law which has lapsed and is dead under Article 123. This is a fraud on the Constitution on the part of the Government, Shri Morarji Desai, the Prime Minister of the country and the Minister who has given such an advice to the President.

MR. SPEAKER: You are going into the merits of the case; I am not going to allow this.

SHRI BHUPESH GUPTA: I want a ruling from you.

MR. SPEAKER: I will give that.

SHRI BHUPESH GUPTA: Sir, my contention is that the summons are valid. The President has called upon Parliament to repeal a law or Ordinance which does not exist. I want to know, whether there exists such an Ordinance which we have been called upon to repeal today. If not, then I would request you to declare this joint sitting as dissolved, it has no *locus standi*.

The final point that I want to make in this connection is this. The normal practice is that when the Ordinance is rejected by the other House, it is reconsidered. The Prime Minister should consider and you should consider, Sir, that we did not vote it out; but we did not accept it for consideration. You have to give a ruling whether having regard to the fact that the Rajya Sabha had not agreed to the consideration, it should not have been remitted to the other House for reconsideration... (Interruptions).

One more point, and this is the final point. This joint sitting could have been called as soon as the Rajya Sabha turned down the consideration motion on 8th December. Why did they wait

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for five or six months? For the biennial Rajya Sabha election? They wanted to wait for the biennial elections....

MR. SPEAKER: You cannot go on like this.

SHRI BHUPESH GUPTA: This again was unprecedented on the part of the Government....

MR. SPEAKER: No more please. That point has been covered.

SHRI BHUPESH GUPTA: The Lok Sabha seems to have a different way of functioning. What I say is that Government should have arranged for the joint sitting earlier instead of waiting for the biennial elections to increase their number in the Rajya Sabha and then come here with this.

MR. SPEAKER: Mr. Stephen.

SHRI VASANT SATHE: I am on a point of order.

MR. SPEAKER: The Leader of the Opposition is here.

SHRI VASANT SATHE: I want to raise a point of order.

MR. SPEAKER: Yes.

SHRI VASANT SATHE: Sir, in all humility I want to point out to this august joint sitting of both the Houses a basic lacuna. The whole thing will become unnecessarily invalid and illegal if we do not overcome this lacuna in terms of the Constitution itself. Kindly see the provisions of article 108(3) of the Constitution. I will read it out for your benefit. There are two stages. Article 108(3) reads:

"Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the

date of his notification summon the Houses to meet in a joint sitting..."

The first stage is that, under article 108(1), the President must notify his intention to summon both the Houses to meet in a joint sitting. That can be done even when the two Houses are sitting. There is no doubt about that. But the first order, the first notification, must be that he intends to summon. Please see this:

"...the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the Houses by message if they are sitting or by public notification if they are not sitting, his intention to summon them...."

I want to know where is this message that he wants to summon the two Houses to meet in a joint sitting. A separate message has to be there in terms of article 108(1). And this is all that we have now—this order. If this order is to be treated as the message in terms of article 108(1), then the next stage will be the provision in sub-clause (3) of Article 108, because two stages must be there. There the President has under clause (1) notified his intention...but the President at any time after the date of notification—after that date, not simultaneously, not suddenly, not at one stroke, after that date the time must lapse and then he can call both the Houses to a Joint sitting for the purpose specified therein.

Now these two stages have not taken place and, therefore, these summons so called ordered here are inherent in terms of Article 108(1) and Article 108(3). I hope you will uphold, otherwise the whole thing will become illegal.

MR. SPEAKER: I have heard enough. I am not hearing any more. (Interruptions).

MR. SPEAKER: Mr. Stephen, I called you but you did not come. I cal-

led you first. You were not willing to come.

SHRI C. M. STEPHEN (Idukki): Mr. Speaker, the point I make is entirely different. The ground is entirely different from the ground so far urged. My difficulty arises from an announcement you made in the House yesterday when the House adjourned. The announcement was—that the House would stand adjourned till 11 A.M. to-morrow and will meet in Joint Session and will stand adjourned *sine die* after the Joint Session. This was the announcement made. To my mind this announcement has created difficulties. The question I am raising is—what is the nature of the Joint sitting? Is it that the two Houses, as two Houses of Parliament come together, just another sitting of the two Houses together, or is it a separate chamber? There is a House of People. There is the Rajya Sabha and there is a third chamber, the third chamber is where the Members of both Houses meet.

Now your announcement has created difficulty—that the Lok Sabha is meeting in the Central Hall with the Rajya Sabha members added on to that, because you said the Lok Sabha stands adjourned still tomorrow 11 A.M. and will stand adjourned *sine die* after the joint sitting. You are the Speaker of the Lok Sabha. The Lok Sabha as per announcement is meeting here in the Central Hall. As the Speaker of the Lok Sabha you are presiding. The Members of Rajya Sabha have joined it. You are calling it a Joint sitting. This is not the correct contemplation. The Lok Sabha and the Joint sitting cannot simultaneously together meet. The Joint sitting has got to meet separately unconnected with the Lok Sabha and Rajya Sabha. This is the concept that I can spell out by reading Article 108(5), which says—

“A joint sitting may be held under this article and a Bill passed thereat, notwithstanding that a dissolution of the House of the People has inter-

vened since the President notified his intention to summon the Houses to meet therein.”

Kindly understand the implication. The President makes a Notification to summon the Joint sitting. After that the House of the People is dissolved. The Article says, although the House of the People is dissolved, although the House of the people does not exist, still as per the original notification, the Joint Sitting can be had. These means the Joint sitting is not a combined sitting of the two Houses, because the House of the People is dissolved. But the joint sitting is a sitting of the Members of the two Houses. This means that the Joint sitting is contemplated by the Constitution as another Chamber even as the Lok Sabha is and the Rajya Sabha is. If Joint sitting is another sitting unconnected with Lok Sabha as such, unconnected with Rajya Sabha as such which it is, because the Constitution contemplates that the Joint Sitting can be there, although there is no House of the People,—if that is the contemplation,—then how can the Lok Sabha meet today at 11 O' clock as per your announcement? You made the announcement that the Lok Sabha will meet at 11 O' clock today. My contention is that it is the Lok Sabha which is meeting here with the Members of the Rajya Sabha added on to it. It is the Lok Sabha which is now meeting as per your announcement. The Lok Sabha is meeting that way. That is not the Joint Sitting which has been contemplated. That is not the Joint Sitting summoned by the President. That Joint Sitting has not taken place here. It is some concocted occurrence that has not been contemplated in the Constitution. Therefore this sitting is invalid. It is not what has been contemplated in the Constitution as a Joint Sitting. It is only the Lok Sabha meeting as per your announcement with the Rajya Sabha Members added on to it. This is not a Joint Sitting, and a Bill passed by this sitting cannot be accepted as a Bill pas-

[Shri C. M. Stephen]

sed by both the Houses of Parliament. That is my submission. Thank you.

MR. SPEAKER: A number of points have been raised.

An hon. Member came to the rostrum.

MR. SPEAKER: I have not called you please. I request you kindly to take your seat.

Now, for understanding the Points of Order raised, it is necessary to quote the relevant provisions of the Constitution as detailed in Art. 108 of the Constitution. Article 108, to the extent it is relevant for the present purpose reads as follows:—

'108(1) If after a Bill has been passed by one House and transmitted to the other House—

(a) the Bill is rejected by the other House; or

(b) the Houses have finally disagreed as to the amendments to be made in the Bill;

(c) more than six months elapse from the date of the reception of the Bill by the other House without the Bill being passed by it, the President may, unless the Bill has lapsed by reason of a dissolution of the House of the People, notify to the House by message.

If they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this clause shall apply to a Money Bill;

Then clause (2) reads thus:

"(2) in reckoning any such period of six months as is referred to in clause (1), no account shall be taken

of any period during which the House referred to in sub-clause (c) of that clause is prorogued or adjourned for more than four consecutive days"

Then clause (3) reads thus:

"(3) Where the President has under clause (1) notified his intention of summoning the Houses to meet in a joint sitting, neither House shall proceed further with the Bill, but the President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly."

Clause (4) reads thus:

"(4) If at the joint sitting of the two Houses the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one House, has not been passed by the other House with amendments and returned to the House in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;....."
(Underlining is by me).

The Bill in question was passed by the Lok Sabha but when it went to the Rajya Sabha its consideration was rejected by the Rajya Sabha. Therefore, in my opinion the Bill was rejected by the other House.

Now, on May 8, 1978 the President sent the following message:

"WHEREAS at its sitting on the 5th December, 1977, the Lok Sabha passed the Banking Service Commission (Repeal) Bill, 1977, and transmitted the same to the Rajya Sabha.

AND WHEREAS the Rajya Sabha at its sitting on the 8th December, 1977 rejected the said Bill.

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 108 of the Constitution, I, Neelam Sanjiva Reddy, President of India, hereby notify my intention to summon the Rajya Sabha and Lok Sabha to meet in a joint sitting for the purposes of deliberating and voting on the said Bill."

This message, I am given to understand, has been read out in both the Houses.

Thereafter on May 10, 1978 the President issued the following order.

SHRI B. SHANKARANAND: When did the President pass the order?

MR. SPEAKER: On May 10, 1978 the President passed the following order:

"In exercise of the powers conferred upon me by clause (3) of article 108 of the Constitution, I hereby summon the Rajya Sabha and Lok Sabha to meet in a joint sitting at New Delhi on Tuesday, the 16th May, 1978 at 11 AM for the purpose of deliberating and voting on the Banking Service Commission (Repeal) Bill, 1977."

In pursuance of this order of the President, the Secretary has issued the necessary summons to all the Members concerned.

Now, we shall come to the various objections raised by the hon'ble Members. The first objection raised by Mr. Lakkappa and others is that when the two Houses are sitting there cannot be a Joint Sitting of the two Houses. This contention does not, in my opinion, have any merit in it because Article 108 clause (3) specifically says:

"President may at any time after the date of his notification summon the Houses to meet in a joint sitting for the purpose specified in the notification and, if he does so, the Houses shall meet accordingly."

AN HON. MEMBER: Where is that summon?

MR. SPEAKER: Summons have been issued to each one of the Members. Therefore, in my opinion, the joint sitting of the two Houses has been validly summoned. The question whether any House is still sitting or not is totally irrelevant because the mandatory article is that the President can summon a joint sitting at any time unless before he expresses his intention, the House of the People had been dissolved. That is the only limitation found in Article 108.

The second question that was raised was that there were only summons and there was no expression of intention by the President as contemplated by sub-clause (3) of Article 108. This contention appears to have been made on a mis-apprehension. I have set out earlier that the President had also expressed his intention to summon a joint sitting of the two Houses and it is only thereafter that he has directed the summons for the joint sitting.

Mr. Shankar Ghose contended that the mandatory provision of the Article has not been followed. From the facts I have set out earlier, I am of the opinion that the mandatory provision of Article 108 has been strictly followed. The fact that the sum-

[Mr. Speaker]

mons issued on this occasion differs in its wording from the summons issued in 1961 is not a relevant factor at all. In fact, I am given to understand that as the previous form of summons was not properly worded, a new form was evolved.

Another contention raised was that after the expiry of six months—the six months' time is contemplated in sub-clause (c) of Article 108(1) having not had expired, the President has no right to summon the joint sitting. This again to my mind, appears to be an untenable contention because Article 108(1) provides for three alternatives, namely:—

(a) the Bill is rejected by one of the Houses, or

(b) the Houses having finally disagreed as to the amendments to be made in the Bill, or

(c) more than six months have elapsed from the date of the reception of the Bill by the other House without the Bill being passed by it.

The present case falls within sub-clause (a) of Article 108(1). That being so, the objection raised does not appear to be tenable.

The second contention of Mr. Shankar Ghose is that the Rajya Sabha has not rejected the Bill. To my mind, this contention has no merit at all. When it has refused to take the Bill into consideration, the legal effect is that it has rejected the Bill. This contention, again, is not accepted.

Mr. Bhupesh Gupta has contended that the President has been wrongly advised in summoning the joint sitting and secondly that the President's order is invalid. This is not a matter for decision by me. This is for courts to decide. I cannot go into it. There is a presumption of law that the order made is valid. If it

is invalid, the same must be taken up before courts.

Mr. Stephen contended that as I adjourned the Lok Sabha yesterday to meet to-day at 11 A.M. this sitting must be considered to be a continuation of the Lok Sabha itself. This is an incorrect reading of my yesterday's order. In the order itself I made clear that the Lok Sabha will meet here for the purpose of joint sitting and again his contention that it is not a joint sitting does not appear to be correct from the wording of clause (4) of Article 108 which says:

“(4) If at the joint sitting of the two Houses . . .”.

This sitting is really a joint sitting of the two Houses. I have dealt with all the objections and none of the objections has been accepted by me. Therefore, the Bill is validly taken up for consideration.

The hon. Minister of Finance.
(Interruptions)

12.00 hrs.

MR. SPEAKER: Mr. Madhavan, I have not called you. Please resume your seat. I have dealt with the points of order raised. No further discussion. Please resume your seat.
(Interruptions)

SHRI K. K. MADHAVAN (Kerala): I have a right to speak. I have a right to raise a point of order. How can you deny a Member his right?

MR. SPEAKER: You have not raised any point of order.
(Interruptions)**

MR. SPEAKER: Do not record anything. Mr. Bhupesh Gupta, I have dealt with your point of order I have dealt with all the points that were raised. No further discussion can be there on that.

**Not recorded.

SHRI VAYALAR RAVI (Chirayinkil): He wants to raise a new point of order he must be allowed to speak.

SHRI C. M. STEPHEN: On a point of order. My point of order is. . . . (Interruptions).

MR. SPEAKER: He is raising a new point of order. (Interruptions).

SHRI C. M. STEPHEN: I do not raise a point of order unnecessarily, kindly hear me. (Interruptions).

SHRI K. K. MADHAVAN: I am sorry that the hon. Chair has not allowed my point of order. It was a genuine point of order. I wanted to raise a point of order before the hon. Chair was about to give his ruling. That is why, I wanted to raise it first. Unfortunately, it was not allowed. Without casting any aspersion, with due respect to you, I would like to say that I make a distinction between a judge and a Speaker. From your experience as a Member, as a Presiding Officer. . . . (Interruptions).

MR. SPEAKER: Please formulate your point of order.

SHRI K. K. MADHAVAN: I am raising it. (Interruptions)

MR. SPEAKER: Please allow him. What is your point of order?

SHRI K. K. MADHAVAN: My point of order is that this sitting, because of the objections already raised by the foregoing speakers, of the House or the Houses as the case may be, is *ab initio* void not only that, since the legality and the Constitutionality of the issue of summons itself has been questioned, this is not a joint sitting at all. I presume to say that we are sitting here just as we sit in the Central Hall for taking tea. I differ from Mr. Stephen. It is not a sitting of the Lok Sabha where the Members of the Rajya Sabha have been invited. We are not such loafers here. Therefore, this is neither a sitting of the Lok Sabha nor the Rajya Sabha. If it is a

sitting of the Lok Sabha, it must sit there in the other hall. This is not the venue for the Lok Sabha to sit. I question the legality of this sitting. Having sat on the highest judicial body of the country. I am sure, you will understand that the full implications of what we are called upon to do today will be disastrous. Not only that. You are creating a paradise to the Constitution lawyers. One more point of order. I want to know whether this Assembly or Assemblies, as the case may be, is or are called upon to deliberate and conceive and deliver a still born baby, that is, a constitutionally still born baby. That is my point of order.

MR. SPEAKER: The point of order raised by Shri Madhavan is covered by my order.

Shri Stephen.

SHRI C. M. STEPHEN: Sir, I rise on a point of order. Under the rules governing joint sittings of Houses, at any joint sitting, the procedure of the House shall apply with such modifications and variations as the Speaker may consider necessary or appropriate. So, the procedure of the House in the matter of passing a Bill is to apply here. The passing of a Bill has got three stages. One is the introduction stage. The other is the consideration stage. The last is the stage of passing the Bill. What has now happened is, we are now proceeding straight to the consideration of the Bill without seeking leave of the House to introduce the Bill. This is absolutely necessary under the rules. Under the Rules of Rajya Sabha. Rule 120 says:

"Where any of the following motions under these rules in regard to a Bill originating in the Council is rejected by the Council, no further motion shall be made with reference to the Bill and such Bill shall be removed from the Register of Bills pending in the Council:—

(i) That leave be granted to introduce the Bill,

[Shri C. M. Stephen]

(ii) that the Bill be referred to a Select Committee....

(iii) that the Bill be taken into consideration" etc.

In Rajya Sabha, the motion that the Bill be taken into consideration was rejected. Therefore, under this rule, the Bill was taken off the Register of Bills as far as Rajya Sabha is concerned. Therefore, in Rajya Sabha, there is no Bill pending and the Bill was not placed on the Table of Rajya Sabha. As far as Lok Sabha is concerned, Lok Sabha passed the Bill. After that, it went to Rajya Sabha. Lok Sabha has ceased to be in seizing of the Bill.

There is a definition as to what are the Bills pending before the House. A Bill pending before the House shall include (i) a Bill introduced in the House, (ii) a Bill transmitted to the Council and returned by the Council with amendment, (iii) a Bill originating in the Council and transmitted to the House and (iv) a Bill returned by the President with a message under Article 111 of the Constitution. This does not come under any of these. This means that the Bill is neither in Rajya Sabha nor in Lok Sabha.

Now the House has assembled. The question is, how are we to come in seizing of the Bill? Is it enough that you place it on the Table of the House? My humble submission is, the rules which are to govern—this joint sitting should be the same as the rules governing the House. The Bill has got to be introduced. Leave has got to be sought for it. Merely laying it on the Table will not bring it under the cognizance of the House. This gives us a valuable opportunity. If we have to raise any question with respect to constitutional validity or jurisdiction, it is at the stage of introduction that we can raise it. This opportunity is being denied to us. Therefore, if we proceed to the consideration of the Bill

without formally introducing it, we will be violating the rules. Therefore, my point of order is that leave must be sought for introduction of the Bill.

SHRI BHUPESH GUPTA: Sir, I have heard your ruling, I am not questioning it. With regard to the joint sitting, you have given the ruling. Being a loyal parliamentarian, the matter rests there. I may disagree, but it is settled.

My point of order now relates to the motion of Mr. H. M. Patel. Sir, we have been asked by his motion to repeal, *inter alia*, a particular measure, namely, Banking Service Commission Ordinance of September 1977. Clause 5 of the Bill says this. Is it proper, in order, for the hon. Minister to call upon the Parliament, either House or joint sitting, to repeal something, a law or an ordinance which does not exist? In this connection, I beg to invite your attention to Article 123 which relates to the power of the President to issue Ordinances. Clause (2) of that Article says:

"(2) An Ordinance promulgated under this article shall have same force and effect as an Act of Parliament, but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President."

Now, Sir, my point here is that this Ordinance was laid in the Lok Sabha in the last Session of the last year, I think in the beginning of October. A

Bill was passed to give effect to this Ordinance. The Bill as passed came to Rajya Sabha. The Rajya Sabha rejected it, or whatever you call it, on the 8th of December. Counting from the first day, the day on which the Ordinance was laid in the Lok Sabha, six weeks passed and it expired. This Ordinance was disapproved in our House. Therefore, Sir, under Article 123, the so-called Ordinance of September 1977 which was sought to be given legal status by an Act of Parliament has lapsed. Yet, we are, in this Bill that has been given to us, asked to entertain this particular clause 5, which says, 'The Banking Service Commission (Repeal) Ordinance is hereby repealed.' What you are repealing? You repeal something which exists either as an ordinance or as a law, either as an Act of Parliament or as an Ordinance. But the Ordinance has already lapsed under Article 123. I, therefore, say that this particular Bill is illegal and invalid and it has called upon the Parliament, all Members are called upon, to entertain a provision in the clause which is patently unconstitutional and illegal. Therefore, I say, you kindly declare this particular Bill illegal, invalid, improper and not liable to be considered by the two Houses of Parliament. And I hope the Government will surely show the necessary respect to the Constitution and to the Rule of Law. They are asking us to entertain an illegal provision of the law. This is dismantling of the Emergency and the restoration of the rule of law.

MR. SPEAKER: Two points of order have again been raised: one by Mr. Stephen and another by Mr. Bhupesh Gupta. So far as Mr. Stephen's point of order is concerned, his contention is that the Bill before the House, the Bill which has been placed on the Table of the House, must first be sought to be introduced in the House. It is only thereafter that it can be taken into consideration if the House permits, allows and approves the introduction stage. His contention appears to be that this is a new measure which has been introduced

in this House. Otherwise, that contention will have no basis.

So far as Article 108 is concerned, it is made clear by clause (1) of Article 108 that the President may summon a joint sitting for the purpose of deliberating and voting. In the Constitution, 3 different stages are contemplated viz. (1) introduction (2) consideration or deliberation and (3) voting. In all the bills which do not come within Article 108, these 3 stages have to be gone through but in the case of a bill which comes up for consideration under Article 108, only two stages are provided for viz. deliberating and voting. The introduction part is not there. This is so for obvious reasons, because the very bill which has been introduced, which was under the consideration of the Lok Sabha and thereafter under the consideration of the Rajya Sabha, is before this House. It is not at all a new bill that is being introduced. This is made clear by two provisos to clause (4) of Article 108 which places limitations on the right to move amendments. If this is a new Bill, then the Members would have had full right to move amendments. Such a right is not available under Article 108. That being so, I reject the contention of Mr. Stephens that there should be an introduction stage.

Now coming to Mr. Bhupesh Gupta's contention that the Ordinance which was passed on 19th September, 1977 is no more in force and, therefore, the present attempt to pass the Bill is an exercise in futility, this contention again, does not appear to me to be correct. The Ordinance was issued on the 19th September 1977, as mentioned earlier. Article 123 of the Constitution provides as to what should be done with reference to Ordinances issued by the President. Article 123(1) says-- and I quote:

"If at any time, except when both Houses of Parliament are in session the President is satisfied that circumstances exist which render it necessary for him to take immediate

[Mr. Speaker]

action, he may promulgate such Ordinances as the circumstances appear to him to require."

Clause (2) of this Article is important. It provides—and I quote:

"An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament but every such Ordinance—

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions;"

The Ordinance was placed in the Lok Sabha on 18th November 1977, i.e. within six weeks of the meeting of the Lok Sabha. Therefore, it continues to be valid till a resolution as contemplated under clause (2) of Article 123 is passed. No such resolution has been passed; and, therefore, the Bill before the House is in order; and does not violate Article 123 of the Constitution.

12.25 hrs.

**BANKING SERVICE COMMISSION
(REPEAL) BILL**

**THE MINISTER OF FINANCE
(SHRI H. M. PATEL):** I beg to move:

"That the Bill to repeal the Banking Service Commission Act, 1975, as passed by Lok Sabha and rejected by Rajya Sabha, be taken into consideration for the purpose of deliberating on the Bill."

Mr. Speaker, Sir, the Banking Service Commission (Repeal) Bill, 1977 is before this Joint Sitting of both the Houses of Parliament for consideration.

This Bill was considered and passed by Lok Sabha on 5th December, 1977. Rajya Sabha, however, did not favour this Bill and rejected the Bill on 8th December, 1977.

Government are firmly of the view that a system of recruitment of personnel in public sector banks based on the concept of a single centralised recruitment agency will make the recruitment process inefficient, unwieldy and cumbersome, with serious consequences for the public sector banks. It is also our view that such a system would seriously affect fair and balanced representation of rural areas, particularly of persons belonging to the more vulnerable sections of our society, for employment in the banking industry.

It has also to be borne in mind that the bulk of the officers are drawn by selection from amongst the ranks of clerks. It is, therefore, most essential that the process of selection of clerks right from the beginning is such that it enables us to draw into the banking industry persons who offer promise as officers of the future. To ensure that they discharge their social and economic functions effectively, moreover, we have to ensure that all regions and all language groups in the country have the opportunity to be recruited in the banks. Having regard to the vast extension of branches in the rural areas—there are today something like 11,000 rural branches and their number is growing—we have to take the utmost care to see that our rural branches are staffed by clerks and officers who are proficient in the language of the area they are working in. All this can only be ensured if the recruitment arrangements are fully decentralised.

It was for this reason that Government decided to abolish the Banking Service Commission by seeking to repeal the Banking Service Commission