12.46 hrs.

CONSTITUTION (FORTY-FIFTH AMENDMENT) Bill—*Contd.*

MR. SPEAKER: Now we take up further clause-by-clause consideration of the Constitution (Forty-fifth Amendment) Bill.

(Interruptions).

SHRIMATI PARVATHI KRISHNAN (Coimbatore): Will you please keep those Janata Members silent?

MR. SPEAKER: It is all mutual complements. I cannot help it.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): Before you take up further clause-by-clause consideration of this Bill, I would like to seek your guidance about the time when there may be voting to-day.

Sir, it appears to me from the way the discusion has been going on that perhaps the consideration of clauses..

SHRI DINEN BHATTACHARYA (Serampore): Why perhaps?

SHRI RAVINDRA VARMA: ..... may not be completed.....

SHRI DINEN BHATTACHARYA: will not be completed.

SHRI RAVINDRA VARMA: ..... to-day, and the members of the House are keen to know whether at 3.30 or before 3.30 p.m. to-day.....

AN HON. MEMBER: No, it is 3 p.m.

SHRI RAVINDRA VARMA: Yes, Sir, they want to know whether by 3 or before 3 p.m. the clauses will be put to vote. ....

SHRI HARI VISHNU KAMATH (Hoshangabad): No, No.

SHRI RAVINDRA VARMA: I am only saying that all Members want to know. You differ? The Rt. Hon. Member from Hoshangabad does not differ.....

SHRI HARI VISHNU KAMATH: ..from the Rt. Hon. Member from Ranchi.

SHRI RAVINDRA VARMA: In these cirumstances hon. Members would like to know whether we will vote to-day and if we are not voting to-day, when we will take up the further consideration and voting on this Bill.

Sir, I have had some discussion with the leaders of the Opposition Groups. I think if it is not completed to-day..

SHRI DINEN BHATTACHARYA: It will not be completed.

AN HON. MEMBER: Patience is a very good art. ....

MR. SPEAKER: But very difficult.

SHRIMATI PARVATHI KRISHNAN: That is why there is that saying: it is seldom in a woman and never in a man.

SHRI RAVINDRA VARMA: Especially when lunch is drawing near, it is very difficult.

MR. SPEAKER: I do not find some of the women here.

SHRIMATI PARVATHI KRISHNAN: Exceptions are there. That is why it is seldom in a woman.

MR. SPEAKER: I am only saying some—not all.

SHRI RAVINDRA VARMA: Sir, in that case, we would like to suggest that we complete all that we may be able to complete before the Private Members' Business and we take up the rest on the 21st or 22nd, because many of the hon. Members may like to go out of Delhi during the next week.

PROF. P. G. MAVALANKAR (Ghandhinagar): Let us take it up on Tuesday, the 22nd.

(Interruptions).

SHRI C. M. STEPHEN (Idukki): May I seek a clarification from the hon. Minister.

[Shri C. M. Stephen]

Sir, when this was discussed among the Party leaders there was a suggestion to remit it to a Select Committee and then it was given up on the ground that the Bill must be passed expeditiously. That was the solid ground on which the suggestion to send it to the Select Committee was given up.

Now, I would like to know the idea of the Government about the legislative programme with respect to this Bill. If it is on the 22nd, then the Bill will have to be passed in the Rajya Sabha. Whether the Rajya Sabha will sit long enough to consider this Bill and if, in the Rajya Sabha any clause is opposed—it is now clear about the referendum and all that and there is a stiff opposition—and if something happens to any of the clauses and if, under the law it is permissible, when the Bill comes back will the Lok Sabha be sitting? If the Lok Sabha is not sitting to receive the report of the Rajya Sabha back, it means the Bill is to be taken over to the winter session.

Therefore, the legislative programme of the Government must be made clear. We were told that the Government was very keen to get the Bill through. And all the Members of the Opposition Group also felt that it must be gone through. But, Mr. Samar Mukherjee and others said that it must not go to the Select Committee, because if we are not sending it to the Select Committee, it means expeditious passing of the Bill. The proposal will, in effect, mean that the Bill will stand freezed until the winter session. If they have got another proposal to call the session of the Lok Sabha, whether there is any proposal or suggestion to receive the report back from the Rajya Sabha. Therefore, this is linked with the Legislative programme of the Government with respect to this Bill.

I would like to have a clarification from the Government as to what they think about it.

SHRI RAVINDRA VARMA: Mr. Speaker, Sir, I am thankful to the honourable Leader of the Opposition for raising this question and for giving me the opportunity of reiterating that the Government is keen to see that the Bill is passed by both Houses of Parliament during this session itself.

Now, the question he raised was whether, if the Rajya Sabha rejects one or more Clauses, what would be done. This is a question that Government will take into account in deciding on the legislative programme as well as the sittings of the House.

SHRI SAMAR MUKHERJEE (Howrah): I do support the proposal made by the hon. Minister that the date should be fixed on the 22nd?

MR. SPEAKER: Why not 21st? Because as the legislative programme stands, the last date is 24th. (*Interruptions*) According to the present schedule, the last date is the 24th. Therefore, if you take it up on the 22nd you are cutting it very fine. Therefore, may I appeal to the House to take it on the 21st?

SHRI SAMAR MUKHERJEE: We have no objection.

MR. SPEAKER: So, we take it up on 21st.

चौधरी बलबीर सिंह (होशियारपुर) : अध्यक्ष महोदय, 15 तारीख को इंडिपेंडेंस डे है—

अध्यक्ष महोदय : 15 तारीख को नहीं ले रहे हैं, 21 को ले रहे हैं।

चौधरी बलबीर सिंह : मेरा कहना यह है कि 14 तारीख की छुट्टी करिए।

MR. SPEAKER: That is very good. That will help the proceedings.

चौधरी बलबीर सिंह : 15 तारीख को इंडिपेंडेंस डे है और बहुत जगह लोगों को जाना है। 14 को आकर 15 को वापस जाएंगे, यह ठीक नहीं होगा, इसलिए 14 की भी छुट्टी करिए।

MR. SPEAKER: I will take the general opinion of the House. We will take it up on the 21st.

SEVERAL HON. MEMBERS: Yes.

SHRI HARI VISHNU KAMATH: Sir, I rise on a point of clarification. You have rightly decided that the House will take up the consideration of the Bill on the 21st. The scheduled last date is the 24th for this House as well as the other House.

Now, Sir, if the Bill is not passed by the other House by the 24th, let the Government announce now that this House will sit beyond 24th. It is obvious.

MR. SPEAKER: As things stand, I am informed of course, Government can always change the things—that the last date of the session will be 24th. That is all I can say. Nothing more than that.

SHRI KRISHNA CHANDERA HALDER (Durgapur): Sir, Mr. Balbir Singh said that 15th August is Independence Day. He asked that 14th August also should be declared a holiday. You said 'Yes' to that.

MR. SPEAKER: I did not say. I did not declare any holiday. There will be no holiday at all. My 'Yes' means stop.

There is no amendment to Clause 12. We take up Clause 13.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND LABOUR (SHRI RAVINDRA VARMA): Sir, in order to do some legislative business and not to encroach upon Private Members' time. I move that we skip the lunch hour today.

MR. SPEAKER: Is it the pleasure of the House that we skip over the lunch-hour today?

SOME HON. MEMBERS: Yes.

Clause 13(*Amendment of article* 83)

MR. SPEAKER: All right. There will be no lunch-hour today. So, we are at Clause 13. Let the amendments to Clause 13 be moved.

SHRI A. K. ROY (Dhanbad): I beg to move.

for lines 8 to 10, *substitute*—

'13. (1) In article 83 of the Constitution, in clause (1), for the words "one third of the members thereof shall retire as soon as may be on the expiration of every second year" the words "one-fifth of the members thereof shall retire as soon as may be on the expiration of every one year" shall be substituted and in clause (2), for the words "six years" in both the places where they occur, the words "five years" shall be substituted." (64).

SHRI SUSHIL KUMAR DHARA (Tamluk): I beg to move:

Page 4, lines 13 to 15,—

for "without prejudice to the power to Parliament with respect to the extension of the duration of that House under the proviso to that clause"

substitute "only in etraordinary situation arising out of invasion of our motherland by any country, famine in most of the States and similar other national crisis" (312)

SHRI A. K. ROY: Mr. Speaker, Sir, this Clause 13—it is unlucky thirteen —deals with the life of the House of the people and the Council of States. Here, the hon'ble Minister has made certain correction regarding the life of Parliament which was already reduced to 5 years but, Sir, I move an amendment which is altogether different. It concerns the life of Council of States. This six years' period inspired the previous government to increase the life of the House of the people to six years so let us wipe it out from the Constitution.

Sir, I do not know the rationale or the logic for making the life of Parliament as 5 years and the life of Rajya Sabha, viz., Council of States as 6 years. My point is as the last government increased the life of the House of

[Shri A. K. Roy]

the people to six years let this government decrease the life of Rajya Sabha to five years and here I have put my amendment that instead of having biennial election let one-fifth of the members be changed every year so that at the end of five years the total number of members will be changed.

Secondly, Sir, Rajya Sabha has become an abode of obscuranist politicians and it has become in many cases a stumbling block to have any legislation passed quickly. One of the reasons which prevents passing of any legislation expeditionsly is the longer life of the Rajya Sabha members. So, I move that one-fifth of the members there should be changed every year and at the end of the five years all the members will get changed.

The life of the Council of States should be reduced to five years so that there is symmetry between the House of the People and the Council of States. So, we should not have that difficulty. We need not wait for a long time to get the Council of States changed according to the will of the people. Thank you.

SHRI SUSHIL KUMAR DHARA: Sir, I have already moved my amendment.

Regarding Clause 13(2) there is no specific mention why the House should be extended beyond the duration of five years. I have therefore given this amendment, for the substitution of lines 13 to 15, i.e.

> "without prejudice to the power of Parliament with respect to the etension of the duration of that House under the proviso to that clause"

These lines will be substituted by the following:—

> "only in extraordinary situation arising out of invasion of our motherland by any country, famine in most of the States and similar other national crisis"

Sir, what happened during emergency was this. Taking advantage of the emergency, the term of the House was extended upto 6 years and it was also going to be extended upto the 7th year. So, this is a very dangerous thing. You should have put specific reason for extension of the duration. I don't want to say anything regarding the powers of the Parliament. Parliament is a supreme body. But you have to provide specific reason here. Therefore, for that reason, I have suggested my amendment and I request the Minister to accept it.

MR. SPEAKER: Mr. Law Minister, would you like to say anything?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Sir, I am sorry I am not in a position to accept these amendments. There is no specific reason why the six year term for the Rajya Sabha and the biennial election of1/3 to Rajya Sabha should be changed.

MR. SPEAKER: It is very vague.

SHRI SHANTI BHUSHAN: Yes. It only says, emergency. There is no reason.

SHRI A. K. ROY: *rose*—

MR. SPEAKER: You have mentioned that.

SHRI A. K. ROY: I take objection to his way of dealing with amendments. He actually avoided it. What is the reason of having biennial election and six years? That he should say.

SHRI SHANTI BHUSHAN: May I just say this? I just wanted to say that there has to be a substantial reason for making any change in the original provision. That is what I said. (*Interruptions*)

MR. SPEAKER: Mr. Dhara, your amendment is so vague, nobody knows what this is.

We now move on to the next Clause, Clause No. 14.

Clause 14

(*Substitution of new article for article 103*)

MR. SPEAKER: Mr. Patwary is not here. Mr. Parulekar are you moving?

SHRI BAPUSAHEB PARULEKAR (Ratanagiri): I am moving amendments No. 40 and 41.

I beg to move:

Page 4, line 21,—

for " the President and his" *substitute*—

"the Supreme Court and its" (40)

Page 4,—

omit lines 23 to 25. (41)

SHRI A. K. ROY: I beg to move:

Page 4,—

for lines 23 to 25, *substitute*—

"(2) Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission which shall be placed before the Joint Session of both the Houses of Parliament and shall act according to the majority decision of the Joint Session."(65)

MR. SPEAKER: Mr. Dajiba Desai; your amendment is the same at that of Mr. Parulekar. So, this cannot be moved.

Mr. Venkataraman, are you moving?

SHRI R. VENKATARAMAN (Madras South): Yes. I beg to move:

Page 4,—

after line 25 *insert*—

"(3) The question as to whether a person, found guilty of corrupt practice at an election to a House of Parliament under any law made by Parliament, shall be disqualified for being chosen as, a Member of either House of Parliament, or of a House of the Legislature of a State, or as to the period for which he shall be so disqualified, shall be decided by the Court finding the person guilty of such corrupt practice."(164)

MR. SPEAKER: Mrs. Jeyalakshmi is not here—It cannot be moved. It is the same thing which has already been moved.

SHRI VINAYAK PRASAD YADAV (Saharsa) : I move amendment No. 251

Page 4,

for lines 23 to 25 *substitute*—

"(2) Before giving any decision on any such question, the President shall obtain the opinion of the Supreme Court and shall act according to such opinion." (251).

AN HON. MEMBER: Is there no lunch hour today?

MR. SPEAKER: No lunch. If there is no lunch, we do better work.

No. 271-Mr. Suman—not here.

SHRI HUKMDEO NARAIN YADAV (Madhubani): I beg to move Amendment No. 291.

Page 4, line 24,

after "and shall" *insert*—

"use his discretion and" (291)

SHRI SUSHIL KUMAR DHARA: Sir, I beg to move:

Page 4, lines 21 and 22,—

for "for the decision of the President and his decision shall be final"

substitute "for the majority decision of the Parliament and its decision shall be final"(313)

[Shri Sushil Kumar Dhara]

Page 4, lines 24 and 25,—

for "and shall act according to such opinion"

substitute "and shall refer such opinion to the Parliament for final decision"(314)

MR. SPEAKER: Amendment No. 334 is not moved?

DR. RAMJI SINGH (Bhagalpur): I am not moving it.

MR. SPEAKER: All right. We will go one by one. Mr. Parulekar.

SHRI BAPUSAHEB PARULEKAR: I have given two amendments to this Clause No. 4. One is for deletion of sub-clause (2) and one is for deletion of the word 'President' and for substituting the words 'Supreme Court'. The amendment regarding deletion of Sub-clause (2) suggested by me is an important amendment.

13.05 hrs.

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

Mr. Deputy-Speaker, Sir, the amendment suggested by Clause 14 is akin to the one suggested by Clause 11 to Article 74 curtailing the powers of the President. The amendment suggested by Clause 14 is, in my respectful submission, an insult to the high office of the President and it amounts to humiliation of the President. It is not only the President, but all the Members of Parliament are concerned with this particular amendment. By this amendment, the point as to whether a Member of Parliament has become an undischarged insolvent or whether he has become of unsound mind etc., the disqualifications contemplated under Article 103, has to be decided by the President. The proposed amendment suggests that before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act accordingly. I do not understand the wisdom of this particular amendment with reference to sub-clause (2).

The entire powers are given to the Election Commission and we are making the office of the President a rubber stamp. If the Election Commission commits an illegality or an irregularity, the President will have to accept it and that illegality or irregularity goes in the name of the President. Therefore, in my respectful submission, clause (2) should be entirely deleted and the President should be free to decide with respect to the disqualifications under Article 103. If this is to be deleted, I submit that in sub-clause (1), instead of the words 'the President and his', the words 'the Supreme Court and its' should be substituted.

I do not understand the wisdom as to why we are taking away the jurisdiction of the court in such important matters, with reference to disqualification and giving this power to the President, who cannot independently take any decision; he has to abide by the decision and ruling given by the Election Commission.

Sir, we had a bitter experience during emergency as to how the higher officers behaved and how they danced to the tune of the Ministers. Under the circumstances, I feel that it would not be safe to give this power in the hands of the Election Commission and make the President a rubber stamp.

I would, therefore, suggest that sub-clause (2) should be deleted. And if that clause is to be retained, I would submit that the original clause which is there and which says that the President may refer the matter to the Election Commission can be restored.

Coming to the second submission, I may again reiterate that the Supreme Court being the highest tribunal in the country, and as the hon. Law Minister has repeatedly said in his submissions on various clauses that

we have to trust the judges and we have all trust in the judges. I do not know the reasons as to why this power is not given to the Supreme Court. I would, therefore, submit that my amendment that clause (2) be deleted and instead of the word 'President', the 'Supreme Court' should be substituted should be accepted. In view of the submissions made by the hon. Law Minister, that he is not for accepting any amendments, and I am sure, he will not, I would urge upon him to consider this seriously, as we ourselves are concerned and we do not want to submit ourselves to the jurisdiction of the Election Commission who can take a decision which would be binding. I do not, however, mean any distrust in the Election Commission. In view of this, I would request that he may consider at least this amendment and accept it.

SHRI DAJIBA DESAI *rose*—

MR. DEPUTY SPEAKER: Mr. Desai, your amendment is barred, because it is the same as that of Mr. Parulekar.

SHRI P. VENKATASUBBAIAH (Nandyal): I have moved an amendment, which reads as follows:

> "The question as to whether a person found guilty of a corrupt practice at an election to a House of Parliament, under any law made by Parliament, shall be disqualified for being chosen as a Member of either House of Parliament, or of a House of the Legislature of a State or as to the period for which he shall be so disqualified, shall be decided by the Court finding the person guilty of such corrupt practice."

By an amendment to Article 103 of the Constitution, the Law Minister has brought forward a provision that it is mandatory for the President to consult the Election Commission, and that the decision of the Election Commission shall be binding on the President. This is the sum and substance of the new Article that is being substituted by the Law Minister. My hon. friend who spoke earlier, has very clearly pointed out that in this new Article, the Law Minister is making the President ineffective; and the President will not be able to exercise his own discretion, and the matter will be referred to the Election Commission, and their decision will be final.

Article 103(2) says, as a result of the 42nd Amendment :

> "Before giving any decision on any such question, the President shall consult the Election Commission; and the Election Commission may, for this purpose, make such enquiry as it thinks fit."

The 42nd Amendment does not bind the President to accept the decision of the Election Commission. These are the two matters that are before the House; but my contention is that the Law Minister, being a very eminent advocate, has got Supreme confidence in the impartiality of the judiciary—so also many of us. He has taken the extraordinary step of referring a bill to the Supreme Court for a decision, even before it is discussed on the floor of the House. And he is trying to make this Parliament subservient to judiciary. This is an extraordinary act that the Law Minister has chosen to do. The Judiciary and the Legislature are two independent organs; and now he wants to have a pre-emptive decision of the Supreme Court by making this reference, and he has made this Parliament a laughing stock. He has taken Parliament for a ride. My contention is that instead of burdening the President, we leave it to the judiciary, to the court where the person was disqualified and was tried, and where he was found guilty of some charges. The trial court and the judge who had tried him, will be in a better position to fix the disqualification. There are many technical grounds,

[Shri P. Venkatasubbaiah]

according to the Representation of the People Act. Even on a technical ground, if a man is found disqualified, he will run the risk of disqualification under corrupt practice. He will automatically run the risk of incurring the disqualification for 6 years. Here, we have sought this, in this amendment. It depends upon the Law Minister. The trial court or the trial judge will be in a better position. He will be able to know what really are the corrupt practices which the Member has indulged in, and whether they require some drastic action and whether in such cases corrupt practices are different from illegal practices. Those matters will be well gone into by the judge. I think this will be a sort of via media, we will be doing justice to the person involved in the election petition and also given the discretion to the judge in whom all of us have got supreme confidence; we abide by the verdict of the judge. I feel that my amendment will satisfy all the shades of opinion in this House and will really do justice to the members so involved. I request the hon. Minister to accept my amendment.

श्री विनायक प्रसाद यादव (सहरसा) : मान्यवर, जो मैंने संशोधन दिया है वह इस प्रकार है:—

"Before giving any decision on any such question, the President shall obtain the opinion of the Supreme Court and shall act according to such opinion."

उपाध्यक्ष महोदय, यह 103 (2) में प्रावधान किया गया है। इसी में हमारा अमेन्डमेन्ट है। 103 (1) को पढ़ा जाय :

"If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final."

102 में जो डिसएबिलिटीज हैं उनको जो थामलीय सवस्य इन्कार करेंगे तो यह मामला प्रेसीडेंट के सामने लाया जायगा और उनका फैसला अन्तिम होगा। यह (1) में कहा गया है, और (2) में कहा जाता है कि प्रेसीडेंट को कुछ फैसला नहीं देना है। प्रेसीडेंट भेज देंगे इलेक्शन कमीशन को और वह जो कुछ कहेगा वही फैसला प्रेसीडेंट का होगा। यह तो मजाक है 103 (1) का। हम लोग चुनाव लड़ते हैं और हमें जानकारी है कि अगर हमें ऐप्रीहेन्शन होता है कि किसी बूथ पर बलवा होने वाला है या रूलिंग पार्टी का कैंडीडेट इलेक्शन को रिग करने वाला है तो हम इलेक्शन कमीशन को तार दे कर उसके रिप्रेजेंटेटिव को बुलाते हैं। कहीं कहीं तो इलेक्शन कमिशनर खुद जाता है और जा कर के रूलिंग पार्टी जिस तरह से रिग करना चाहती है उसी की मदद करता है। तो या तो प्रेसीडेंट को ही पावर दे दी जाय, उनको रेफर कर दिया जायगा और वह जो फैसला कर देंगे वही ठीक होगा। क्या प्रेसीडेंट को इतना भी ज्ञान नहीं है जितना इलेक्शन कमीशन को है? हमको लगता है कि कानून के जरिये प्रेसीडेंट को पंगु बनाकर छोड़ा जाता है। हर तरह की पाबन्दी लगाकर प्रेसीडेंट को गिरफ्त कर दिया जाता है। मतलब या तो प्रेसीडेंट पर विश्वास ही नहीं है या समझा जाता है कि उनको कोई अकल ही नहीं है। उनके स्वविवेक पर कुछ छोड़ा ही नहीं जाता है। इसलिये या तो प्रेसीडेंट पर छोड़ दिया जाय, नहीं तो जो हमने संशोधन दिया है कि इलेक्शन कमीशन को यह अधिकार न दे कर सुप्रीम कोर्ट को दिया जाय। जब राष्ट्रपति के पास कोई डिसक्वालिफिकेशन का मामला जायगा तो वह सुप्रीम कोर्ट को रेफर करेंगे और सुप्रीम कोर्ट जो कुछ राय देगा उसके मुताबिक राष्ट्रपति निर्णय करेंगे, न कि इलेक्शन कमीशन। इसलिये हम हाथ जोड़ कर के कानून मंत्री से कहते हैं कि इसको मान लें, इसमें कोई हर्जा नहीं है। प्रेसीडेंट को अपने स्वविवेक पर छोड़ दिया जाय।

श्री हुकम देव नारायण यादव (मधुबनी) : उपाध्यक्ष महोदय, मुझे इतना ही कहना है कि जहां अदालत से किसी आदमी को अयोग्य करार दे दिया जाता है, इतने आरोप प्रत्यारोप को सिद्ध करने के लिये इतने गवाह और सबूत जुटाये जाते हैं उसके बाद किसी आदमी को जनप्रतिनिधित्व कानून के अन्तर्गत अदालत से अयोग्य साबित कर दिया जाता है और चुनाव से वंचित कर दिया जाता है फिर किसी भी व्यक्ति को यह अधिकार नहीं होना चाहिये कि अदालत के उस आदेश को सस्पेंड कर दे। यह एक बुनियादी प्रश्न है। अगर न्यायपालिका के किसी भी आदेश को कोई आदमी निलम्बित करता है तो न्यायपालिका की स्वतंत्रता की बात करना बिल्कुल बेकार है। यह कब और कैसे हो जाता है? जब कोई चुनाव के लिये अयोग्य साबित हो जाय तो चुनाव आयोग की सिफारिश पर राष्ट्रपति आचरण करेंगे और उनके ऊपर यह बन्धन है कि

उनको चुनाव आयोग की सिफारिश माननी ही होगी, क्योंकि चुनाव आयोग चुनाव के मामले में बहुत जानकारी रखता है। लेकिन चुनाव आयोग का संचालन भी एक ही व्यक्ति के द्वारा होता है, उसमें 1 के बजाय 3 होते तो मान सकते थे क्योंकि एक की राय के बजाय 3 की राय ज्यादा कीमती है। अगर एक आदमी का चुनाव आयोग राष्ट्रपति को राय दे कि इस बात को मान लीजिये तो इसमें खतरा है। हमने पीछे चुनाव कमिश्नर के आचरण को देखा है, जब श्री राजनारायण के केस में इलाहाबाद हाई-कोर्ट से फैसला होकर सुप्रीम कोर्ट में अपील की गई तो बिना किसी पैटीशन के ही चुनाव कमिश्नर ने कह दिया कि चुनाव कमिश्नर को यह अधिकार है कि वह किसी की अयोग्यता को हटा दे। यानी वादी 12, पंच 18, कहने का मतलब यह है कि चुनाव कमीशन ने यह पहले ही घोषणा कर दी कि कोई अयोग्यता को हटावे या न हटावे, इन्दिरा जी को अदालत ने जो अयोग्य करार दिया है उसको हम हटा देंगे।

इसलिये चुनाव कमीशन के काम के बारे में भी शंका पैदा हुई है। इसीलिये मैं इन सवालों को उठा रहा हूं कि चुनाव कमीशन जो सिफारिश दे, तो उसे राष्ट्रपति पर छोड़ दिया जाय कि वह स्वविवेक से काम करें। बुनियादी रूप से हम इस बात के विरोधी हैं कि न्यायपालिका के आदेश को किसी एक व्यक्ति के जरिये निलम्बित किया जायेगा। ऐसा करने का किसी एक आदमी को हक नहीं होना चाहिये। अगर ऐसा होगा, तो हम साधारण लोगों का या किसी छोटे आदमी को किसी आदालत ने अगर अयोग्य साबित कर दिया जायेगा तो न तो चुनाव कमीशन और न राष्ट्रपति उसकी अयोग्यता को समाप्त करेंगे बल्कि जो एक नम्बर की प्रधान मंत्री की कुर्सी पर बैठेगा उसकी अयोग्यता को समाप्त करेगा। कानून से उसी के हर दुराचार और अनाचार को संरक्षण मिलेगा। मेरा निवेदन है कि ऐसी तानाशाही प्रवृत्ति के कानून को किसी तरह भी कानून में नहीं रहना चाहिये।

SHRI SUSHIL KUMAR DHARA (Tamluk): Sir, my humble suggestions in regard to clause 14(1) and 14(2) can be taken together. The cases of disqualification of a member after election in the country are very few. This election disqualification can be for various reasons. A single case of personal corruption came in the House regarding Mr. Mudgal. There have been other cases of election corruption. When we leave it to the judiciary, it takes a long time. I have my experience that it even took such long time that the entire period of the life of the Assembly passed and then the judgment came. So, the member concerned enjoyed the full period of tenure in the House. On the other hand, if the Election Commission becomes the supreme person, there is also danger. He is an individual, a human being and he may be influenced for one reason or the other. With the recommendation of the Election Commission, if it is given to the President himself, he is also an individual. For various reasons I am not in oneness with the Law Minister that the President should be given the supreme authority in this matter.

The President is the constitutional head.I have no dispute, but he is not the life of the Constitution. The Constitution has been framed by this House and the Constitution is going to be amended, has been amended, and will be amended by this House. So, Parliament is the supreme body, and Parliament must keep this power in its own hands, and that is why I have given this substitution that the words "for the decision of the President and his decision shall be final" be substituted by the words "for the majority decision of the Parliament and its decision shall be final." Parliament will be the proper authority to decide whether a sitting Member has fallen into corrupt practice and whether he will be disqualified or not.

In the same way in clause 14(2) I want the words "and shall act according to such opinion" to be substituted by the words "and shall refer such opinion to the Parliament for final decision." The President will refer it to Parliament and Parliament will finally decide whether the member concerned disqualified or not.

SHRI DAJIBA DESAI (Kolhapur): The new article 103(1) involves the disqualification of a Member after his election. The question is that if a sitting Member is to be disqualified, who is to declare him disqualified. Here, there are a number of questions of fact and law. Article 102 deals

[Shri Dajiba Desai]

with disqualification on account of holding an office of profit, being of unsound mind etc. There are also cases of disqualification arising out of corruption. If a Member is to be disqualified after he is elected, it involves investigation and collection of evidence. In that case, points of fact and law have to be gone into and if the President is required to do this with the consultation of the Election Commission, that will mean the ruling party will have to decide it. In this matter, the Supreme Court's jurisdiction should not be taken away. The Supreme Court should be the final authority. Therefore, I support Mr. Parulekar.

SHRI SHANTI BHUSHAN: A few points have been made with regard to the amendments which have been moved. One is that it would be better if this power, instead of being given to the President to be exercised according to the opinion of the Election Commission, is given to the Supreme Court or in any case the courts. May I point out that so far as the position of the election petition is concerned, when the disqualification arises out of the finding of a corrupt practice in an election petition, obviously it arises from the finding that the person is guilty of a corrupt practice? That, of course, is recorded by the court dealing with the election petition. The disqualifications under article 102 are of a simple nature, namely holding an office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder; being of an unsound mind and standing so declared by a competent court; being an undischarged insolvent; not being a citizen of India etc. These are facts which do not involve decision of very highly disputed questions or on which there is a lot of sensitive material etc.

SHRI BAPUSAHEB PARULEKAR: The hon. Minister knows that the various decisions of the various High Courts have complicated the issue. Does he think that this should also be left to the jurisdiction of the Election Commission?

SHRI SHANTI BHUSHAN: Yes, that is what I think, for this reason, that so far as an office of profit is concerned, it has been made clear in case after case by the Supreme Court and the High Courts. So far as the application of those principles to an individual case is concerned, if a person is a sitting Member of the House and the question arises whether he is disqualified or not whether he can participate in the debates or not, then it should be decided with despatch, with speed.

Considering the nature of the findings which have to be recorded, it is really a question of ascertaining a fact: is he an undischarged insolvent or not? You have only to gather facts, namely, get appropriate orders from the court, which has declared him an insolvent, that he has not been discharged so far. Similarly, if he is a person of unsound mind or so declared by a competent court is only a question of ascertaining and getting the necessary material. Similarly, if he has been appointed to an office of profit, he has only to secure the order of his appointment. So far as the nature of the office is concerned, in so many other cases the same questions would have been decided by the Supreme Court and High Courts in election questions. So, the principles would have been laid down. It is then a question of ascertaining the facts and then, thereafter, applying them. Yet, there can be some room for a little manoeuvring and there was some suspicion. That is why the Election Commission has been interposed. In fact, this amendment has been made only in order to restore the provision, as it was enacted in the original Constitution. A change had been made by the 42nd Amendment Act, which was a change of principle. The change of principle was that the power was given to the President, which means the Govern-

ment consisting of political parties. But, so far as the original provision in the Constitution was concerned, the effective decision-making power was not given to the Government, it was given to the Election Commission, because the Election Commission is regarded by the Constitution as an independent authority. By the 42nd Amendment Act, this position was changed and, even though there was an obligation to consult the Election Commission, the effective power of deciding was given to the President, namely, the Government which consisted of the ruling party, who could disagree with the views of the Election Commission and decide the matter itself, which was not quite proper.

Now a question might arise; all right, why introduce the President at all, why not directly give the power to the Election Commission and say that the decision of the Election Commission will be final? Apart from the fact that this is how in the Constituent Assembly the provision has been drafted, there appears to be some historical reason for it. Firstly, we have inherited these institutions and the provisions from the British Parliament, where at one stage it used to be said that any question of disqualification should not be disposed of by an outsider, it must be disposed of by the Parliament, by the House itself and so on. Now, so far as the President is concerned, of course, he is part of the Parliament, because Parliament consists of the two Houses and the President. So, President is a part of Parliament. But it does not make any difference, so far as the practical application is concerned. It is only a question of form as to how you put it, whether you directly give power to the Election Commission, or give the effective power to the Election Commission but formal power to the President, who is part of Parliament. It appears that the Constituent Assembly, for good reasons, adopted this pattern, which is being repeated. Apart from that, it was also convenient for this reason that the Government can collect the necessary material, because it has the means of getting the necessary facts, orders, etc. So, whenever any point is raised, the point can be referred to the Government, who will get the necessary material. Then the issue will go to the Election Commission for their opinion, which would be binding on the Government. So, we are restoring a provision which was there in the original Constitution.

Here I would like to say that Shri Venkatasubbaiah said something and he chose to make a reference to the reference which has been made to the Supreme Court on a legal question. It is being said that what can be referred for advice of the Supreme Court can only be a question of law and not a Bill. It is all a question of form in which you refer a certain question of law. The question which has been referred to the Supreme Court is whether the provisions of the Bill, if enacted, would be constitutional, would be in accordance with the Constitution, would they be constitutionally valid. This is the question of law which has been referred to the Supreme Court. If you spell it out in various ways, then one may say "you should have spelt out this aspect of the question" and another may say "you should have spelt out the other aspect of the question".

To make the reference comprehensive, so that it would embrace all the questions which could possibly be raised in regard to the validity of a Bill, if enacted, so that that is just a form of referring certain questions of law, viz., questions about the application or interpretation of the Constitutional Provisions, that is a form which has been adopted; it is not...

SHRI P. VENKATASUBBAIAH: Is Parliament not competent to make a law or enact a law?

SHRI SHANTI BHUSHAN: The Constitution itself lays down certain restrictions on the powers of Parliament, the restrictions are of various kinds, they are of legislative compe-

[Shri Shanti Bhushan]

tence, the fundamental rights themselves impose certain restrictions on the powers of Parliament and so on. Parliament, in so far as the legislative powers are concerned, it has not been contemplated as a sovereign body, it is a limited legislature viz., a legislature with limited powers. The limits rise from more than one way viz., legislative competence, then restrictions of fundamental rights and the third restriction viz., that it should not be in conflict or repugnant with any other provisions of the Constitution also. So, these are the various kinds of restrictions on the powers of Parliament. True, if something is within the competence of the Parliament, whether such a thing should be enacted or not obviously, it is for the Parliament to decide. But whether something is within its powers or competence or not is not a matter for the Parliament to finally decide, the Constitution has delegated that power to courts and finally to Supreme Court. Therefore, the question of law on which the Supreme Court has been asked to give their opinion, viz., if such provisions are enacted by the Parliament, whether those provisions would be within the competence, legislative competence from every angle of the Parliament or whether they would be beyond the legislative competence of the Parliament, from various ways, not merely this, but fundamental rights and other things. Therefore, a question of law has been referred, but the question of law, instead of being spelt out in one manner, has been spelt out in another manner, it is also a known method of spelling out a question. viz., if such is a thing is done, would this be Constitutionally permissible. I do not think that any apprehension in that regard is justified.

Then there was, perhaps, some misapprehension that this Article 102, when we are restoring it to the original form that the election petitions would also be decided in the same manner. That is not the position, because so far as any law, Representation of People Act is concerned when it imposes a disqualification, it imposes the disqualification not on the basis of commission of a corrupt practice, but on the basis of finding being recorded so that this Article 102 would not be attracted unless a finding has been recorded by a competent court to dispose of and decide the election petition. So, once that election petition has been decided and a finding has been recorded, then only the matter will go to the President and the President can then obtain the opinion of the Election Commission.

Then the other question is about the period. Even though there may be in certain cases a question of period of disqualification, the Election Commission, obviously, although a finding of a corrupt practice may be recorded by a court, but yet there can be one corrupt practice, corrupt practice committed under one set of circumstances and corrupt practice committed under another set of circumstances, so, obviously, there should be some impartial agency. But to send everything to the court, even ordinary things to the court, means the court has a certain procedure.

SHRI P. VENKATASUBBAIAH: I am not suggesting that. When the court decides the disqualification of a particular Member for a corrupt practice, the Court should be given the power of fixing the disqualification period also. That is my suggestion.

SHRI SHANTI BHUSHAN: There, I might just point out that the Court is seized upon the matter from the legal point of view, viz., it is concerned with the controversy which arises in the election petition, the circumstances in which the election was fought, what happened, what corrupt practice was committed in what circumstances it was committed; its real function is to record a finding on this question. Of course, incidentally that might raise a question of disqualification. Now when a question arises as to whether the period should also be finally left to the decision of the Court or some other agencies, it

would also be...I would just ask the hon. Member to ponder that sometime in deciding the period of disqualification, the supervening circumstances also becomes relevant. The original period of disqualification was six years. Why was the period of six years contemplated? It was because the life of a House was five years and the idea was that he should miss at least two elections. Maybe that after two years, itself, he has missed an election and after another two years, another election has taken place, and he has missed that also. Now, a question might arise, in view of the supervening circumstances, would it be good, proper and justified that he should be made to miss a third election also. If a person has sufficiently suffered by having to miss two elections, then a question might arise because this might be a continuing process.

In the light of the facts as may be at a particular moment, some authority may have to decide as to whether the period of disqualificatoin requires to be reduced or waived, etc. Obviously, the court cannot be expected to perform this function, to take note of supervening circumstances, the new facts, which have intervened and so on which might alter the equities of the matter and so on. That is why an independent authority, the Election Commission, has been conceived for the purpose.

Another amendment which has been moved is by Shri Hukmdeo Narain Yadav. He wants the words "use his discretion" to be added which would mean that both the expressions would be there, that is, "he would act according to the opinion of the Election Commission" and "use his discretion". How the two things can simultaneously co-exist I have not been able to understand. Apart from that, his objective was that the President should have a final power to decide and that the Election Commission's opinion should not be taken as final. It would be subject to criticism. The President means the Government and the Government obviously, is formed by a political party. Therefore, one political party would be given the power to decide the fate of members of other parties and its own party and so on in such a sensitive matter on which democracy is dependent. Hence, it would not be fair to give this final power to the President.

Then, Shri Dhara's amendment was that this power should be given to the Parliament to be decided by a majority. Now, I am reminded of the fact that in regard to such a power of deciding even the election petitions or questions of disqualifications, at one time in the British constitutional history, this power used to be exercised by the House. There is a very telling expression in *May's* Parliamentary Practice about it as to why it had to be given up because it was found that the power was being exercised on partisan considerations irrespective of the merits of the case. The Election Commission cannot be equated with the party in power. One may not agree that the Election Commission is an ideal body. Therefore, there may be attempts made to impove the functioning of that body to enhance the confidence of the people in that body.

There are several proposals which are pending consideration so far as the question of electoral reforms is concerned. There was a Joint Committee of the two Houses which had made certain recommendations. There have been other bodies which have gone into that question. That has to be settled separately as to how greater confidence can be produced in the functioning of the Election Commission. But the Constitution does conceive of an Election Commission as an independent body and an impartial body which should have lots of powers in regard to elections. Therefore, it would not be right to take away the power from the Election Commission and give the power to the Parliament in which case a political party would be deciding the fate of all the people.

Clause 15—(*Amendment of article 105*)

SHRI A. K. ROY: I beg to move:

Page 4, lines 31 and 32,—

for "section 15 of the Constitution (Forty-fifth Amendment) Act, 1978" shall be substituted.'

substitute "internal Emergency of 1975" shall be substituted.' (66)

SHRI EDUARDO FALEIRO (Mormugao): I beg to move:—

Page 4, line 32,—

after "1978" *insert*—

"and as may be evolved by such House of Parliament from time to time" (98)

SHRI SHANTI BHUSHAN: I beg to move:

Page 4, line 31,—

for "Forty-fifth" *substitute* "Fourty-fourth" (205)

SHRI KANWAR LAL GUPTA: I beg to move:

Page 4,—

after line 32, *insert*—

'(b) after clause (4), the following clause shall be inserted, namely:—

"(5) Members of Parliament shall have the right and privilege of attending the meeting of the House of which they are Members except when they are prevented from doing so under the order of the Court of competent jurisdiction".' (239).

SHRI RAM JETHMALANI: I beg to move:

Page 4,—

after line 32, *insert*—

'and (b) in clause (3), the following proviso shall be inserted, namely:—

"Provided that if within two years from the date on which this act comes into force the powers, privileges and immunities are not defined by parliament by law the said powers, privileges and immunities shall be subject to the provisions of part III of the Constitution.".' (260)

SHRI A. K. ROY: This particular clause is concerned with the rights, powers and privileges of the parliament. It is good that formally in the Constitution we have given up aping any foreign institution or any foreign Parliament. Though we say that our entire Constitution is on the model of the United Kingdom, actually our Constitution is a mixture of various experiments and experiences. It has got its own history of evolution, and its root can be traced even from the British days, from the Government of India Act of 1935. So, it was actually surprising why and how we could tolerate the particular clause that on every issue where things would remain undecided, we will follow the conventions, examples and traditions of the British Parliament. Here, one thing I could not understand. Convention is also a law; sometimes, convention becomes a better law than even written law. But conventiones can only be built up through practice over a long time. Here it is said, 'immediately before the coming into force of section 15 of the Forty-fifth Amendment', *i.e.*, this particular Amendment, whatever was the practice in this House will be referred to. This is something very fallacious. It should be that we will follow whatever traditions were followed by this House and the different rulings and various other things adopted by the Speaker, whatever was the procedure that was followed by this House since our Constitution came into force, that is, from 1950 to 'before the internal Emergency of 1975' because if we also include that period, the traditions and different rulings and procedures followed during the internal Emergency, and if those procedures

also become a part of the convention to be followed later on, it will be a very dangerous thing. So, we want to take out that particular portion of the period. The rest of our experiences may be summarised, condensed and processed for being followed in future. In this way, we will be guided by our own experiences and by our own procedures. That will be good.

SHRI EDUARDO FALEIRO (Mormugao): Mr. Deputy-Speaker, Sir, to my mind, the privileges of Parliament and of its Members are not benefits given to either Parliament or to Members for their personal benefit or personal enjoyment; they are powers given to Parliament and to its Members to properly discharge their variegated and complex duties. I do agree with the Government that it was a very good thing to abolish the reference to the House of Commons. After all, it is the sovereign power of the people that is concentrated in Parliament, and it would not be in the fitness of things to refer, at every stage, to the powers and privileges of a foreign Parliament.

Then, since privileges and powers are given to Parliament for particular purposes, for the purposes of enacting laws and since, as we have seen from time to time, it has been found necessary to evolve fresh privileges and powers so that new and unforeseen problems may be solved and the duties of Parliament properly discharged, I do not agree that the privileges of Parliament should be frozen at a particular date. I do submit, and very strongly, that the powers and privileges of Parliament must be codified, must be recorded in writing, so that every one knows what actually these powers and privileges are, so that these powers and privileges are not even unwittingly infringed. It is also equally important that they should not be frozen at a particular period of time because, if they are so frozen, a situation may arise, an event may arise, when Parliament may not be able to discharge its functions because it has no powers to do so or it has no privileges to do so. Again and again we do find that reference is necessary to May's Parliamentary practice. Why? Because, our conventions are not there for all types of situations. In future, if this law is passed, May's Parliamentary Practice becomes a forbidden thing, a thing of the past; it will not come into the picture at all.

Therefore, my amendment is to the effect that the privileges will be those which are evolved by either House of Parliament from time to time—there must be confidence in the Members of Parliament—and, secondly, these privileges must be codified.

SHRI KANWAR LAL GUPTA (Delhi Sadar): I have moved the following amendment:

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after line 32, *insert*—

'(b) after clause (4), the following clause shall be inserted namely:—

"(5) Members of Parliament shall have the right and privilege of attending the meeting of the House of which they are Members except when they are prevented from doing so under the order of the Court of competent jurisdiction."'

What is our function as a Member of Parliament? It is to take up the causes of the people, to air their grievances and to see that they are removed. There are many problems of the country and we place them before the Parliament. Every Member tries his best to take up the cause of the people and see that their grievances are removed. So, there is a basic right of a Member of Parliament to attend the Parliament to raise the issues facing the people. That is the basic right, besides other rights. For that some privileges are required though I must agree that they must be specified. Everybody should know that these are

[Shri Kanwar Lal Gupta]

the privileges of Members of Parliament. But what happened? Our experience in the past during the emergency period—I think Mr. Shanti Bhushan knows it very well—was that a large number of Members of Parliament were put in jail and they made a plea to the government and to the Speaker that they should be allowed to attend the Parliament and the Speaker said, 'I am helpless. I cannot do it. It is not your privilege. You are not privileged. It is not your right to attend the Parliament." So, they could not attend the Parliament and if I am not mistaken, it was Mr. Shanti Bhushan who argued this case. Am I correct?... Yes. He said that the Members of Parliament who were in detention were many in their number. Then how could it be a legally constituted Parliament? It is only a captive Parliament and whatever that Parliament enacted is not legal. At least the spirit of that was that it was not proper to detain the Members of the Parliament in such large numbers....

SHRI RAM JETHMALANI: Now, he would not accept that argument.

SHRI KANWAR LAL GUPTA: Let him say that. But, Sir, I do not want to differentiate between a Member of Parliament and an ordinary citizen. Suppose a Member of Parliament breaks the law, then he is arrested and detained by a competent Magistrate. That is a different thing and if he is detained that way, I do not mind, because you cannot discriminate. Suppose I murder a person and I am arrested under Sec. 302, I cannot claim that I should be immune from this. If another person commits the same offence, he will be in jail but I cannot be in jail? But in the case of detention, a Member of Parliament should have the right to attend Parliament if there is a session of Parliament and I think....

MR. DEPUTY SPEAKER: The hon. Member's time is up.

SHRI KANWAR LAL GUPTA: I am winding up.

This is a very important privilege and I think Shri Shanti Bhushan was arguing it for days together and not only he, Sir, but Mr. Vajpayee and many other leaders and all the senior leaders and practically everybody on that side have been arguing that they should be allowed to attend the Parliament and say what they wanted to say, but they were not allowed.

Now, it is time, Sir and it is a test for this government and particularly, the Law Minister who himself argued this case to accept my amendment and see that only during the period of detention—it may be a dead letter, then I will be happy—a member will have a basic right and privilege to attend the Parliament.

This is my submission.

SHRI RAM JETHMALANI (Bombay North-West): This subject is of vital importance both to the Members of this House as well as every citizen and particularly to brave and intrepid journalists.

Considering the importance of the subject and seeing the somewhat chilling indifference of both the Members of this House and the Press as well, I think it is a very disconcerting and rather discouraging experience. It is only matched by the stonewall with which we are faced by the Janata Law Minister.

Sir, when Article 105 and the corresponding Article relating to the State Legislatures was being debated in the Constituent Assembly, Mr. Kamath was present and the question had risen then as it has arisen for the last thirty years that the Law of Privileges is a form of Criminal Law, that a citizen and his fundamental rights constantly clash with the dignity of the oversensitive Legislatures and the citizen often finds himself hauled up before the bar of the Legislature. The essence of Criminal Law is that it must be easily ascertainable and must be knowable. How could a citizen know this one? How is he to act in a particudar contingency? What is the conduct from

which he is to refrain unless there is some available document to which he can run and at which he can glance for the purpose of finding out his duties?

The present Clause which is sought to be put in place of the old one by an amendment is no improvement at all on the former. On the contrary, it increases the burden of the poor citizen. He must first find out what are the rights and privileges of the Legislature on the date of the coming into force of Clause 15 of this particular Bill. When he addresses his mind to this question, he will find that he draws a blank; there is no material to which he can resort for the purpose of finding that out. He is shunted back to the previous law. The previous law again sends him to the House of Commons and if he has to go back to the House of Commons, he has to go to May's Parliamentary Practice and other publications. May's Parliamentary Practice has not been translated into all the regional languages. It is not easily available. If it is easily availabe, then it is not easily intelligible to most people.

Therefore, Sir, when Members in the Constituent Assembly raised this problem, I wish to remind the Law Minister what, on behalf of the Drafting Committee, was the assurance given by Sir Alladi Krishnaswamy Iyer. He told the Constituent Assembly that 'This was only a temporary measure; we expect that the Legislatures will legislate; they will pass a regular law in which they will formulate those privileges and those privileges will not be easily ascertainable but they shall be in conformity with the citizens' fundamental rights. The lines of conflict between the two and the lines of reconciliation between the two will be drawn by the judges of the country.' This was what he said in May 1949 when the drafting Committee's report was being considered by the Constituent Assembly. The question again arose when the final Bill was being considered in the Constituent Assembly. I would like the Law Minister to know that a very distinguished Member of the Constituent Assembly, Mr. R. K. Sidhwa got up and said that:

> "When this Article was discussed last time we were not certain of what were the privileges of the Members of the Commons, I have tried to find out from May's Parliamentary Procedure. But, I could not. So, let us know something as to what the privileges of the Members of the House of Commons are. Otherwise, a conflict will arise in Parliament."

Sir Dr. Ambedkar responded and said:

> "Sir, I might, with your permission, inform my friend, Shri Sidhwa that since the time that the discussion took place, I have made a little researched and I find that the South African Parliament has passed an Act defining the immunities and privileges. I have got a copy. If he wants, I can transmit it to him for his study. It might be possible for Parliament later on to embody the privileges."

13.59 **hrs.**

[MR. SPEAKER *in the Chair*]

The President of the Constituent Assembly then assured the Assembly:

> "This is exactly what the Article says. The Parliament will define the powers and privileges. But, until Parliament has undertaken this legislation and passes it, the privileges and powers of the House of Commons will apply. So, it is only a temporary affairs. Of course, Parliament may never legislate on that point. Therefore, it is for the Members to be vigilant."

Such, however, is the phenomenon of power. When you get power, the power corrupts. Absolute power corrupts absolutely. I was hoping at least that our Janata Law Minister will try and prove that he is an exception to the rule. But, I am afraid that, for the last thirty years, the Legislatures have avoided the task of grappling with the problems of the citizens'

[Shri Ram Jethmalani]

rights. And, Sir, they have refused to legislate and subject their own dignity to the rights of the common man whose servants they are when functioning in this House.

14.00 hrs.

Sir, yesterday somebody unconsciously called Mr. Shanti Bhushan Mr. Gokhale. I would not do that but let me tell Mr. Shanti Bhushan that on 23rd March, 67 the then Union Law Minister, Mr. Govinda Menon on the Floor of this House when asked by the Members about defining the privileges of this House made a statement: 'I agree that the law in Article 105 is undefined'. He said that legislation was necessary for defining the privileges and I shall be happy to take steps in that direction. I hope the Janata party Law Minister will at least show that much of sensitiveness as was shown by Mr. Govinda Menon in 1967 otherwise we will draw our own inferences. Sir, Mr. Justice Subba Rao in a lecture which he delivered in Madras said that sooner the law was codified the better it will be for all concerned. He pointed out that the law of privileges was an unpardonable curtailment of the freedom of Press. For 30 years we forgot to do our duty and my amendment says that in the next two years let us sit down and grapple with this topic and formulate what exactly are the rights of the citizens and what exactly are the rights of legislaters. However, our Article be worded. We have to refer to and study British Convention and British law. Let us see what Britishers themselves think about this problem. Britishers themselves are dischanted and disatisfied with the state of law of Privileges. They appointed a Select Committee of Parliament to report on this and that Select Committee of Parliament has made a report. I would request the Law Minister to ponder on what that British Select Committee has said on the question of privileges:

> "The Committee was fully satisfied that the complaint of uncertainty which was most generally made is justified and is indeed the natural consequence of the piece-meal development of law and practice relating to Parliament's penal jurisdiction. They do not think that the criticism of uncertainty is in any way inconsistent with the further criticism that the House relies too heavily upon precedent and particularly on what is called archaic precedent. Any apparent inconsistency between these criticisms is rather an illustration of another criticism that of 'arbitrariness'."

Sir, I am the Chairman of the Bar Council of India and I share also the views of the General Council of the Bar in England. The Bar of England has gone on record to say that the best solution to this problem would be to codify the law and practice relating to parliamentary privileges. But, Sir, when the Select Committee of Parliament considered the suggestion of the Bar it went further and said it is not enough that one House should codify its privileges. It must be done by a statute which is passed by both Houses of Parliament. So, I suggest that we must pass a regular statute because the statute would be subject to the fundamental rights of the people.

Sir, it is a vain argument to say that the legislatures cannot do without priviliges. The American Congress effectively discharges its duties and it has never claimed any privilege except one, namely to punish people who refused to testify or produce documents which testimony and documents are necessary for the performance of its legislative functions. Civilised legislatures give up powers. In stable democracies the legislatures respect the rights of citizens. And, today, the American legislature has given up even that power. It does not punish by itself. It reports to the District Attorney and the District Attorney files a complaint in the Federal Courts.

Therefore, I appeal to this House that we must codify things. Everytime

it has been the poor journalist who has suffered. In all the reported cases it is the freedom of the press which has clashed with dignity of the legislature. Freedom of the Press is essential to democracy and if we are to preserve the freedom of the press I suggest that we must do something to codify these privileges.

Sir, though we copy the British House of Commons. yet, we only copy the letter of the law and not their actual practice. See the kind of freedom which they exercise over there in criticising Parliament of England. Sir, I only want to take half a minute more. Mr. Atkinson, a Labour Member of Parliament, in a message to his constituents said on July 19, 1966:—

> 'I am ashamed of Parliament and want sincerely to apologize to my constituents and the country. They elected me to do a serious job, not to be part of an idotic circus. It is beyond my comprehension that Parliament should spend 13 hours debating whether or not an additional six hours should be given to the Selective Employment Payments Bill.'

The British Parliament did not punish this Labour M.P. for having said this about his Parliament.

Whatever be the law, the spirit of freedom prevailing in England is noteworthy and this is the extent of criticism which they tolerate.

We only copy their law but we do not follow their spirit. And therefore, Sir, if we have any concern for fundamental right and human dignity, and for freedom of the Press, I say to the Law Minister: Please do something; accept this. I am a senior Member of the Bar and on behalf of the Bar I say this. The least that the Law Minister could do when I say anything to him is to go home and consider this. Read the report of the Select Committee in England and then come and talk to us. Do not present us with a stone wall saying that you will not accept anything that we have to tell you in this House.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): Sir, four hon. Members have given amendments to this clause. I will take them up one by one very briefly of course, I cannot be that brief in regard to the amendment of my hon. friend Shri Jethmalani. Now, Sir, the hon. Member, Raja Ram Mohan Roy who yesterday misidentified me as Gopal Krishna Gokhale, said that the date...

SHRI A. K. ROY: I identified you as the other Gokhale.

SHRI SHANTI BHUSHAN: Oh, I am sorry.....

SHRI RAM JETHMALANI: I knew what he meant.

SHRI SHANTI BHUSHAN: Now, Sir, he has suggested a formal amendment, which of course would not have any effect on the substance of the provision, namely, that the date which has been mentioned in the clause as the date of the commencement of the Constitution should be substituted by the date, namely, the commencement of the national emergency of 1975. That suggestion was also contemplated at one time. But it was felt that the commencement of the internal emergency in this country was a matter of shame for the whole country. Therefore, would it be right that we incorporate something which is a matter of shame for the whole country in a solemn document like the Constitution of India? As somebody said, it would be a Second Republic—I think Mr. Kamath has said that. Whether it is the Second Republic or not, it would certainly be the commencement of a new chapter in the history of our country. And therefore we should incorporate something of which we can be proud rather than something of which the whole country has good reasons to be ashmed of. That is why it was felt that it would be much better to write down the date of the commencement of the section after

[Shri Shanti Bhushan]

this Constitutional Amendment has been passed.

Then, Sir, the reason for bringing this clause in this Bill was that the original provision—there was no escape from it—had referred to the British House of Commons. Now, a proud country like India would like to avoid making any reference to a foreign institution, in its own solemn constitutional document. Therefore we have utilised this occasion to remove that reference to the British House of Commons and to substitute it by other words, although, that would also not affect the substance of the matter, for the reason that the privileges which were created by the original constitution were those which the British House of Commons had on the date of the commencement of the Constitution. Thereafter, the procedure which was contemplated by the Constitution for any change in those privileges was the enactment of a positive law on the subject, an enactemnt, of a positive law on the subject an enactment of Parliament, which was never done, with the result that those privileges which were there on the 26th January, 1950, have continued all along. Even the change which has been made in the Forty-Second Amendment Bill, of the new concept of the House evolving new privileges, was not brought into force. That provision of the Forty-Second Amendment had not been brought into force with the result that the privileges continued as they were before. Therefore, this verbal change is being introduced by this clause so that there may not be any longer any reference to a foreign institution.

Shri Eduardo Faleiro's amendment seeks to continue or introduce, because that provision was not brought into force, this concept of new privileges as may be evolved by the House. The hon. Members would appreciate that in the matter of the privileges of the House —I share some of the thoughts which Shri Jethmalani has chosen to express —that there should be certainty, the people should know as to where they stand. Of course, his difficulty has been that certain documents, books etc. are not available in different languages and that is the difficulty. Even when enactments are passed by this House or the Parliament, sometimes so far as the laymen are concerned, they come across great difficulties in ascertaining as to what the law is. Even if the documents become available to them, they are given the text of the enactments, it becomes difficult for them to interpret them and they have perforce to take the advice of the lawyers. Shri Jethmalani happens to be the Chairman of the All India Bar Council. I hope, he would not make a suggestion which might wipe off and make this legal profession absolutely redundant.

SHRI RAM JETHMALANI: I have now become a politician.

SHRI SHANTI BHUSHAN: A lawyer politician.

The law will have to be acertained, but it should be clearly ascertainable by a person who is properly trained in the task of determining as to what the law is. Therefore, in fixing this date, one has to find out—it might require study, understanding and comprehension—what the privileges of the British House of Commons were just before the 26th January, 1950, so that that certainty is there. If this vague concept of new privileges being evolved without legislation on the subject—legislation would be definite—then evolution can be very risky and can be very dangerous, and, therefore, the people of this country would not know exactly what the privileges are at a particular moment. Therefore, I am unable to accept that amendment.

Shri Kanwar Lal Gupta has referred to a very important aspect. He has referred to an argument which I in another capacity happened to advance in a different place. I would for the purpose of record indicate what was the argument advanced in that case. It was a very important argument. When the President summons a session of the House, because it is the function

of the President to summon a session of the House, summoning the session means that the President gives an opportunity to the Members of the House to attend the House in pursuance of the summons and participate in the deliberations of the House. If the same President whose function is to summon a session of the House illegally puts people under invalid detention and also sees to it by issue of a Presidential order under Article 354 that they would not have any recourse against the illegal detention, because the illegal detention cannot be questioned on account of the Presidential Order, then it has to be considered whether the session is at all valid. If the purpose of the session is to give an opportunity to the Members to participate in the deliberations, if the person who summons the Members also illegally prevents them from participating in the session, whether the session can be regarded as validly convened and whether any Act adopted in such a session can be regarded as having legal validity. That was the question. I am sorry that the contention was not accepted.

SHRI KANWAR LAL GUPTA: I want a clarification.

SHRI SHANTI BHUSHAN: I am not really controverting what yau said.

SHRI KANWAR LAL GUPTA: Agreeing to what you said is correct, suppose there is a person, I do not say that he is in custody on account of some criminal charge etc, if he is under detention, the question is whether he will be allowed to attend the Parliament session. That is why, my question.

SHRI SHANTI BHUSHAN: I am in entire sympathy with the feelings you have expressed. It was only for the purpose of record that I wanted to spell out exactly what I had argued. I am not differing from what he says, viz. that there should be a provision, by which a new privilege should be given, viz. that a Member of Parliament, except in certain circumstances, shall not be prevented from attending a session of the House. This is an important matter—which he has raised. All that I am saying is that he should consider whether a constitutional provision is the place for it, or there should be an Act, because new privileges can be evolved by legislation. This very Article permits it. This is a matter which must be closely considered. I also have it in my mind. It is a matter which requires a very anxious consideration, viz. as to whether it should at all be possible for a Government, to do something and prevent people from coming to the House because they want a particular kind of vote on a particular situation. But how exactly it is to be done, and what would be the proper mode of giving that protection etc. are to be considered. It is an important protection which is required. But how exactly it is to be done—I am not quite clear at the moment on this and on whether it should be done here because new privileges can be evolved by suitable legislation which is permitted by this very Article, and on whether some legislation should be brought in, in that connection, or whether some other constitutional provision should be there. This will require a more careful consideration. I would not at the moment be in a position to accept this amendment, while respecting the sentiments which have impelled the hon. Member to move it.

SHRI KANWAR LAL GUPTA: But will you do something?

SHRI SHANTI BHUSHAN: Yes. I have said that this matter should carefully considered, and I will see what can be done in this regard.

AN HON. MEMBER: Why don't you take the present opportunity?

SHRI SHANTI BHUSHAN: As I have said, there are limitations, because this is a constitutional subject and is particularly delicate, and it requires widespread consultations with

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Opposition, and all parties, and it has its implications.

I now come to my very great friend Shri Ram Jethmalani. He has moved an amendment, saying that the privileges which have not been codified so far, must be codified within the next 2 years, and that if they are not codified within the next 2 years, even the existing privileges must become subject to fundamental rights laid down in the Constitution. He has also said that in the matter of privileges, there should be certainty. Perhaps he would ponder over a suggestion, viz. whether it will bring about certainty, or introduce an element of uncertainty. So far, during the last 30 years, after a lot of study and so on, parliamentarians have been able to come to a conclusion as to what were the privileges of the British House of Commons on 26th January 1950, and what exactly are the privileges of the House or of its Members now. If we introduce an element now, viz. that even the existing privileges will be subject to fundamental rights, what will be the impact of the fundamental rights on the existing privileges? This would again be a matter of contention. Therefore, it would introduce an element of uncertainty, as to whether a privilege which was there survives on its being subjected to fundamental rights, or it does not survive, or to what extent it survives. Therefore, instead of making the privileges certain, the existing privileges which have become certain would become most uncertain. So far as these privileges are concerned, I think the House and its Members have shown that they are pretty zealous about their privileges. And there is no reason—and the Constitution itself contemplated that new privileges can be evolved. Legislation was permissible. But as far as the existing privileges were concerned, there was no reason why they should be put into a realm of uncertainty, by making them subject to fundamental rights. I see no reason. Of course, Alladi Krishnaswami Ayyer regarded this as a temporary thing, but when we consider the Constitution, something which is temporary in one context, does not remain so in another context. What is temporary in one's life is quite different from what is temporary in the life of a Constitution. A Constitution is expected to be there for thousands and thousands of years. Therefore, 30 years is still a very short period, as far as the life of a Constitution is concerned.

SHRI RAM JETHMALANI: Do you completely reject any scope for codification.

SHRI SHANTI BHUSHAN: No, no. I am only saying that this imposing of restriction, viz. issuing an injunction by the Constitution to Parliament that unless the latter does it within 2 years, even the existing privileges will become subject to fundamental rights, is not correct. It is open to them. After all the Constitution amendment is also being considered by the two Houses of Parliament. If the two Houses of Parliament are agreeable that the privileges should be codified, it is open to the two Houses to codify them. But why is it necessary for the two Houses to tell the two Houses: you must do it within 2 years? If the two Houses are prepared to do it within two years, it is open to them, it does not require any constitutional provision to tell them.

SHRI RAM JETHMALANI: Why mislead the House? Ultimately it is the Cabinet that brings legislation before the House. Can it be a private Members' Bill?

SHRI SHANTI BHUSHAN: That is not the position.

MR. SPEAKER: Discussion on that clause is over and we take up the next clause—clause 16. There is no amendment to clause 16. So, we go to clause 17.

Clause 17

(Amendment of article 132)

SHRI BAPUSAHEB PARULEKAR: I beg to move amendment No. 42

Page 4,—

after line 37, *insert*—

'(aa) after clause (1), the following proviso shall be inserted, namely:—

"Provided that in cases of capital punishment where the High Court has refused to give such a certificate, the Supreme Court may grant special leave to appeal from such judgment or order if it is satisfied that the case involves a substantial question of law as to the interpretation of this Constitution or of any other law and in such cases the party has a right of appeal to the Supreme Court." '(42)

SHRI SAUGATA ROY: I beg to move amendment No. 107.

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omit line 38.

SHRI R. K. MHALGI: I beg to move amendment No. 174.

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for lines 38 to 41, *substitute*—

'(b) in clause (3), the words "and, with the leave of the Supreme Court, on any other ground" shall be omitted.'(174)

SHRI BAPUSAHEB PARULEKAR: I oppose the suggestion made by clause 17 by which sub-section 2 of article 132 is deleted. I am not in favour of retaining the entire article and therefore I have suggested a proviso that in certain cases the principle laid down in sub-section 2 of article 132 may be preserved. Article 132(2) gives the right to a citizen to go to the Supreme Court by way of writ if leave is rejected by the High Court. If that leave is granted that person is entitled to file an appeal. You were a Judge of the Supreme Court and the hon. Law Minister is a very emient lawyer of the country, both of you know that at least in 90 percent of the cases the High Court Judges refuse leave to go to the Supreme Court....(An Hon. Member: in 100 per cent of the cases). I did not want to use 99.9 per cent, I gave ten per cent concession to High Court Judges. As human nature goes, every person feels that the judgement given by him is so correct that it needs no reconsideration and therefore they do not grant any leave. That provision has been refused. That means we are curtailing the rights of a citizen. I am sorry to mention that in the 45th amendment, clause after clause rights of persons are being curtailed. In articles 11 and 14 we have curtailed the rights of the President. In clause 25 we are curtailing the rights of the Governor. Here we are curtailing the right of the citizens to go to the highest tribunal. We find that in the case of capital punishment only one appeal is available, after the judgement is given by the Sessions Judge, he has to go to the High Court. Once the High Court gives a Judgement that decision will be final. In my respectful submission, an exception should be made when a person is sentenced to death. As far as capital punishment is concerned, the provision should be retained as provided for in sub-section 2 of article 132.

PROF. P. G. MAVALANKAR: Capital punishment itself must go.

SHRI BAPUSAHEB PARULEKAR: I am for that. But so long as that is it does not go, if we delete article 2, it would mean that a person whose sentence is confirmed by the High Court has no right to go to the Supreme Court. Therefore, I have suggested this proviso :

"Provided that in cases of capital punishment where the High Court has refused to give such a certificate, the Supreme Court may grant special leave to appeal from such judgement or order if it is satisfied that the case involves a substantial question of law as to the interpretation

[Shri Bapusaheb Parulekar]

of this Constitution or of any other law and in such cases the party has a right of appeal to the Supreme Court."

In Original section 2 of article 132 the words 'or of any other law are not there; I have purposely introduced them because sometimes a person is convicted and sentenced to death only on the evidence, discovery under section 27 of the Evidence Act. If the appeal is provided only with reference to the Constitutional point, that man will not get the right to go to the Supreme Court. I believe this amendment is in the interest of every citizen in the country and there should be no objection as to why this should be deleted. I have gone through the reasons but I do not find that any substantial reason has been given as to why the hon. Minister felt that sub article 2 should be deleted. I would request that he should at least be pleased to accept this amendment and not go on saying that this is not acceptable, this is very necessary in the interest of the people.

SHRI SAUGATA ROY: Sir, two things have been done in this by the Government. One is limiting the appellate jurisdiction of the Supreme Court in regard to criminal matters. Another is, taking away the right of the citizens to apply directly to the Supreme Court even in case the High Court refuses to certify that the question involves a substantial question of law with regard to the interpretation of the Constitution. I say that it should be open to any citizen of the country to go in appeal to the highest court of the country in order to seek justice. Any effort to curtail the right of a citizen to go to the highest court is an effort to curtail the freedom of that man. I am quite aware that not all poor people in the country who can go upto the High Court are able to go to the Supreme Court. Most of the provisions in the Constitution are to that extent theoretical because as has been said in other places, in a class society justice is bound to be class justice. But even with regard to this limited class justice that the State can offer to the citizens, if there are restrictions, I do not think it will be proper. That is why I have given an amendment to omit sub-clause (b) in clause 17 of this Bill, which takes away the right of a citizen to go in appeal to the Supreme Court even in a case where the High Court refuses to certify.

Article 132(1) says that an appeal shall lie to the Supreme Court from any judgment, decree or final order of a High Court if the High Court certifies that the case involves a substantial question of law as to the interpretation of this Constitution. Here again another limitation is sought to be made, namely, in place of "if the High Court certifies", the power of the High Court is limited by referring to article 134A.

On both these grounds, I oppose this clause. I think there is no necessity why this particular amendment should be brought about. This is of a trival nature and the law as it exists today should be maintained with regard to the appellate jurisdiction of the Supreme Court.

SHRI R. K. MHALGI: Sir, my amendment reads thus:

Page 4, *for* lines 38 to 41, *substitute*—

(b) clause (3), the words "and with the leave of the Supreme Court, on any other ground" shall be omitted.'

I support the contentions of Mr. Parulekar *in toto*, but at least my amendment should be accepted. The views and opinions of the judges are so divergent and conflicting that it is hardly advisable to allow the decisions of the High Courts in cases involving substantial questions of law as to the interpretation of this Constitution to rest there. Even in ordinary cases the Supreme Court has had on many an occasion to express disapproval of the gross errors committed by High Courts. The interpretation of this paramount document, the Constitution,

is too important for us to afford such errors to be left uncorrected for long. Hence my amendment. I request that at least my amendment may be accepted. If not Parulekar's, at least my amendment should be accepted.

SHRI SHANTI BHUSHAN: Perhaps the object of this amendment has not been appreciated by the hon. Members. No right of the citizen is being curtailed, I would like to assure the hon. Members.

SHRI R. K. MHALGI: No question of assurance. What is the actual position? It is a matter of provision, not assurance. Why don't you give provisional assurance?

SHRI SHANTI BHUSHAN: That is exactly what I am trying to give. The right of any citizen to go to the Supreme Court in any case in which he was entitled to go to the Supreme Court is not being taken away. He would have the same right to go to the Supreme Court.

So far as Clause (2) of article 132 was concerned, it was wholly redundant when article 136 was there. Article 136 gives the power to the Supreme Court to grant special leave against the judgment, decree or order of any court in any case of any ground. That is left to the Supreme Court. Therefore, so long as article 136 is there, it is always open to the Supreme Court to grant special leave to appeal against any order, whether it is civil, criminal, any judgement, any decree of any court, including a High Court. Therefore, that right is there. Article 132(2) was wholly superfluous. Therefore, that superfluous provision which was unnecessary has been deleted. It does not curtail any right of any person.

The whole purpose of this amendment is this. So far the procedure was that after the High Court had decided a case, within a couple of months or so, whatever was the period of limitation prescribed, it was open to a party to make a written application before that High Court to certify the case as a fit one for appeal to the Supreme Court. Notice had to be issued of that application to the other party. Then the other party will come and another hearing would be fixed, and after a few adjournments the matter used to be heard and then either the certificate would be granted or refused. If the certificate was granted, the appeal was filed. If it was refused, before the period of limitation, application under article 136 for special leave could be filed. In order to curtail this unnecessary delay between one stage and another, we are making a provision like the one under the Government of India Act, 1935, in the matter of certifying cases as being fix for appeal to the Federal Court. As soon as the judgment is rendered by the High Court, because at that time both the parts know what the questions are the court also knows what the questions are as also its own decision, the importance of the question without insisting on the formality of a written application, at that very time it should be open to a party to ask for a certificate of fitness for appeal to the Supreme Court, and the High Court should take a decision quickly either to grant or refuse the certificate, so that the person can go under article 136 for special leave to appeal. This is only good for the litigants except those whose interest may be in delaying cases. Otherwise, it does not curtail any right. It only means that the cases will reach the Supreme Court both promptly and quickly. That is all.

MR. SPEAKER: Clause 19.

Clause 19 (*Amendment of article 134*)

SHRI RAM JETHMALANI (Bombay North-West): I beg to move:

Page 5, line 4,—

after "Constitution"; *insert*—

'(a) in sub-clause (a) of clause (1), for the word "death", the word

[Shri Ram Jethmalani]

"imprisonment" shall be substituted, and (b)' (261).

I have always believed that a person must have at least one right of appeal on facts and law. The appeal must be a right and not discretionary. The Enlargement of Jurisdiction Act in criminal matters has now given the right to people who are convicted and sentenced to seven years, but I have found that it is very unfair to people who are for example sentenced to six years or less. I think this is very artificial, and we must have a constitutional provision for at least one right of appeal to the Supreme Court for anybody who is convicted for the first time by a High Court or whose acquittal is reversed or who is tried for the first time by the High Court itself. One appeal is a must according to me.

SHRI SHANTI BHUSHAN: The matter has been considered on earlier occasions. Of course, the law requires that there should be one right of appeal in a case in the sense that after one court has gone into a matter the matter should also be reviewed by another court, so that one right of appeal is there. What my learned friend contemplates is that if he happens to be acquitted by the trial court and a High Court convicts him, he should have the right of appeal against that for a third court to look into it. My respectful submission would be that under article 136, the Supreme Court has the discretionary power in appropriate cases to look into it. That power is there.

But, apart from that, even within the existing jurisdiction, it is becoming impossible to perform it, in the sense it is now taking 6 or 7 years. Then, if the jurisdiction is further extended, one can only imagine what is likely to happen.

Clause 21 (*Amendmentment of article 139A*)

SHRI ANANT DAVE: I beg to move:

Page 5, line 29;

for "may" *substitute* "shall" (361)

MR. SPEAKER: There is a Government amendment. He may move it.

SHRI SHANTI BHUSHAN: Sir, I beg to move....

AN HON. MEMBER: There was notice.

SHRI SHANTI BHUSHAN: Hon. Members will be happy that I am moving this amendment. If I do not move it, they will say "no, move it". Now there are several cases pending in the different High Courts, involving identical questions. A provision was introduced earlier....

MR. SPEAKER: He should move the amendment. He is very enthusiastic.

SHRI SHANTI BHUSHAN: I just wanted to explain it. I beg to move:

Page 5,—

after line 31, *insert*—

"Provided that the Supreme Court may after determining the said questions of law return any case so withdrawn together with a copy of its judgment on such questions to the High Court from which the case has been withdrawn, and the High Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgment." (366).

There is an amendment to article 139-A in the original Bill. I am making a further amendment. Under the provisions of article 139-A, if different cases were pending in different High Courts, involving the same or identical questions, then the power was given to the Supreme Court, on the application of the Attorney-General or *suo-motu* to withdraw those cases to itself, so that those cases could be disposed of by the Supreme Court, and then they could be sent back. That was the power which was given to the Supreme Court. Now the

original Bill contemplated giving this power, so that this power could be exercised by the Supreme Court either *suo motu* or on an application by the Attorney-General. Now by this Bill this power is sought to be given to the parties also; that is to say, if the Attorney-General does not take the initiative and if the Supreme Court does not take the initiative, if the parties feel that there are common or identical problems which can be decided by the Supreme Court, they can move the Supreme Court. This amendment that I have moved is for this purpose. The language of article 139-A has been kept in tact; we have not tried to tamper with it, the power of withdrawing a case and then disposing of it. But then a doubt has arisen, that it may very well arise that apart from one common question of law, there can be other questions of fact etc. When the Supreme Court is exercising the power of withdrawing a case, will it have the obligation not merely to dispose of that question of law and send the cases back, but to hear all the cases and dispose of them. Therefore, it has been said they may decide the cases or decide the questions and then return the cases. That is the only point.

श्री अनन्त दवे (कच्छ) : अध्यक्ष महोदय, मेरा सुझाव है कि may withdraw the case or cases pending before the High Court...." वहां may की जगह shall करना चाहिये क्योंकि जब यह प्रोवीजन किया गया है प्रिवेंटिव डिटेंशन के संबंध में कि Advisory Board shall consist तो सभी जगह पर shall होना चाहिये । जो प्रिवेंटिव डिटेंशन और इन्टर्नल इमरजेंसी का क्लाज रखा गया है और जिसका कई माननीय सदस्यों ने विरोध किया है, मैं भी उसके खिलाफ हूं । जब जनता ने हमको मेन्डेट दिया है फिर भी हम इस कांस्टीट्यूशन अमेंडमेंट में प्रिवेन्टिव डिटेंशन और इन्टर्नल इमरजेंसी का प्रोवीजन ला रहे हैं जो कि मेरे ख्याल से ठीक नहीं है। इसके अलावा जब क्लाज में लिखा है कि Supreme Court is satisfied तो सुप्रीम कोर्ट के सेटिसफाई हो जाने के बाद may शब्द यहां नहीं रखना चाहिये बल्कि shall रखना चाहिय । अगर may रखेंगे तो टैक्नीकैलिटी में पड़ जायेंगे। जब एक बार सुप्रीम कोर्ट को सेटिसफैक्शन हो गया तो shall withdraw होना चाहिय ।

SHRI SHANTI BHUSHAN: The power has to be only discretionary because, obviously, there will be thousands and lakhs of cases in which identical questions would be pending before so many High Courts and if in each case, merely because a common question was pending in different High Courts whatever the importance of that question may be, if the Supreme Court is necessarily to withdraw those cases and decide upon itself, then it would make the whole provision unworkable. That is why, the discretionary power is sought to be given for the purpose that it also considers the importance of the question, is it such a question which is so important that it should be quickly decided at the highest level, so that unless it is retained as a discretionary power, it would be unworkable.

MR. SPEAKER: Now we take up clause 22.

Clause 22 (*Amendment of article* 150)

SHRI NARENDRA P. NATHWANI: I beg to move:—

Page 5, line 33,—

for "with the concurrence of" *substitute*—

"on the advice of" (149).

MR. SPEAKER: You may speak on your amendment.

SHRI NARENDRA P. NATHWANI (Junagadh): My amendment is a minor one but it is necessary. It relates to Article 150. This article provides that the accounts of the Union and the States shall be kept in such form as the President may, after consultation with the Comtproller and Auditor-General of India, prescribe. Now it merely requires the President to consult the Comptroller and Auditor General of India, so far as prescribing the form of accounts is concerned. An independent authority like

[Shri Narendra P. Nathwani]

that of Comptroller and Auditor General should have more voice, his view should weight heavily; he should also have the initiative. But the Government proposal, clause 22 seeks to provide that instead of the words "after consultation with the Comptroller and Auditor General of India", it should be "the President should act in this matter with the concurrence of the Comptroller and Auditor General of India". This is, inappropriate, because to say that the President should act in a certain manner and that also in a matter of prescribing a form, which is comparatively a minor matter, with the concurrence of this authority, seems to be rather improper and ineligant. Therefore, I have suggested that the President should act in this matter on the advice of the Comptroller and Auditor General. Therefore, the initiative would be with the Comptroller and the President will act on his advice. With these words, I commend my amendment to the Law Minister and the House.

SHRI SHANTI BHUSHAN: I am grateful to the hon. Member and I do wish that it would be more appropriate to have the words 'on the advice of rather than 'with the concurrence of' because after all, when we are giving a power to the President, the language also is important and to say that the President shall act with the concurrence of an authority, even though a very important Constitutional authority, a much better language waould be, 'on the advice of the Constitutional authority'. So, I accept this amendment.

MR. SPEAKER: You don't say that he has not accepted any amendment.

Now, we take up clause 25.

Clause 25 (Substitution of new artice for article 192)

SHRI BAPUSHEB PARULEKAR: I beg to move.

Page 6, line 29,—

for "Governor and his" *substitute* "High Court and its," (43).

Page 6,—

omit lines 31 to 33. (44).

SHRI DAJIBA DESAI: I beg to move:

Page 6, line 29,—

for "the Governor and his" *substitute*—"the appropriate High Court and its." (120).

SHRI ANANT DAVE: I beg to move:—

Page 6, line 31,—

after "question," *insert*—

"the member shall be heard personally or through his legal adviser, then" (362).

SHRI BAPUSAHEB PARULEKER: Mr. Speaker, Sir, this amendment is again to the amendment that is suggested by clause 14. I had made my submission about that and I will not repeat that.

Here again, the opinion of ths Election Commision will bind the Governor and he will have no discretion in the matter of disqualification under article 102 with referrence to the members of the State legislature. When, I made my submission with respect to the Members of Parliament and the power given to the President, the hon. Law Minister said that the question of disqualification would arise only when a competent court has given a finding with reference to a particular corrupt practice. In this case, I may invite the attention of the hon. Minister to the wording of article 102 which lays down:

> "A person shall be disqualified for being chosen as end for being a member...."

That is, if there is a subsequent disqualification, then that has to be decided by the Election Commission. The hon. Law Minister said that the question of

taking evidence would not arise. But in cases of subsequent disqualification the question of taking evidence will arise as far as article 102 (d) and (e) are concerned which I quote:

"(d) if he is not citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament."

In such cases, the member will have to need evidence. Therefore, I suggest an amendment here that the power should be given to the Supreme Court and, as far as the State is concerned, to the High Caourt and the President and the Governor respectively should not be made bound by the decision of the Election Commission. So, the reasoning given by the hon. Law Minister that the question of taking evidence would not arise is not correct. Therefore, I submit that this amendment may kindly be considered.

श्री अनन्त दवे : इसमें मैंने यह संशोधन दिया है कि—

"the member shall be heard personally or through his legal adviser"

जो पुराना सेक्शन था उस में यह था कि प्रेसीडेंट एलेक्शन कमीशन को यह रेफर करेगा और एलेक्शन कमीशन एन्क्वायरी करेगा। उस एन्क्वायरी में तो कमीशन को सुनने का चांस रहता है लेकिन अभी जो अमेंडमेंट किया है उस में यह है कि

"Before giving any decision on any such question the Governor shall obtain the opinion of the Election Commission and shall act according to such opinion."

जो कहीं भी जो एग्रीव्ड पार्टी है उस की बात सुनी जाय, इस का चांस रहता नहीं है। तो मेरा ऐसा सुझाव है कि इस में जो एग्रीव्ड पार्टी है उस को भी परसनली या उस के लीगल ऐडवाइजर के जरिए सुना जाना चाहिए क्योंकि ज्यों ज्यों इस के सैक्शन बढ़ते जाते हैं त्यों त्यों हमारे एक एक राइट कर्टेल होते जाते हैं जैसे अभी प्रिवेंटिव डिटेंशन का आ गया या और दूसरे इस तरह के सैक्शंस आ गए। ऐसा होना नहीं चाहिए। कुडशियरी के पास किसी भी पार्टी को सुनने के लिए पूरा चांस या हक होना चाहिए।

SHRI SHANTI BHUSHAN: I would only add to what I had said earlier in connection with clause 14. So far as Mr. Parulekar's objections are concerned, I had not said that a question of act cannot possibly arise. What I had said was that the nature of questions which arise under article 102 or the corresponding provisions are of a they affect the rights and liabilities of controversial questions which arise in election petitions, so that it was not necessary to involve High Courts and the Supreme Court; particularly because the time which is spent in those courts is much more, and in the case of a sitting Member or otherwise, the question needs to be very promptly decided.

So far as the other point is concerned, that the Member should be given a hearing either personally or through a counsel obviously, the principles of natural justice would be applicable. Therefore, without conceding some kind of an opportunity, it would not be possible to exercise this power. So, it would not be necessary to expressly provide for that.

Clause 26 (*Amendment of article* 194)

SHRI SHANTI BHUSHAN: I beg to move:

Page 6, line 39,—

for "Forty-fifth" *substitute* "Forty-fourth" (206).

SHRI RAM JETHMALANI: I beg to move:

Page 6,—

after line 40, *insert*—

'and (b) in clause (3), the following proviso shall be inserted, namely:—

"Provided that if within two years from the date on which this Act comes into force the powers, privileges and immunities are not defined by Legislature by law the said powers, privileges and immunities shall be subject to the provisions of Part III of the Constitution.".' (262).

[Shri Ram Jethmalani]

I am only moving the amendment. I do not want to address the House because it is a corollary to Amendment No. 260.

SHRI SHANTI BHUSHAN: Mine is a formal amendment. This Constitution (Forty-Fifth) Amendment Bill, after it is passed, it is possible, will have to be the Forty-Fourth Amendment Act because, so far, the Forty-Fourth Amendment Bill had become Forty-Third Amendment Act. This is only a formal amendment.

MR. SPEAKER: Clause 27. There is no amendment given notice of.

Clause 28. Mr. Hukmdeo Narain Yadav.... Not here.

MR. CHANDRA SHEKHAR SINGH ....Not present. Mr. Ramjiwan Singh.... Not present.

Clause 29. There is no amendment given notice of.

Clause 30. Mr. Vayalar Ravi.... Not present. Mr. Saugata Roy.... not present.

Clause 31 (*Amendment of article* 227)

SHRI ANANT DAVE: I beg to move:

Page 8, line 15,—

after "tribunals" *insert*—

"all Commissions of Inquiry or other Commissions set by the Central Government as well as the State Government" (363).

अध्यक्ष महोदय, मेरा बहुत छोटा सा संशोधन है। इसको सुप्रीमकोर्ट के नीचे लाना चाहिए, ऐसा मेरा सुझाव है।

SHRI SHANTI BHUSHAN: The purpose of a Commission of Inquiry is very different from the purpose of courts and tribunals because courts and tribunals are adjudicatory bodies; they decide the rights and liabilities of the parties; their decisions are final; they affect the rights and liabilities of the parties. But so far as Commissions of Inquiry are concerned, they are only fact-finding bodies; they do not adjudicate over the rights and liabilities of the parties or determine or affect those rights and liabilities. So, it is not necessary that over mere fact-finding Inquiry Commisions, whose findings are not operative of their own force, there should be any supervision given to the High Courts.

32

Clause 33 (*Amendment of article* 239B)

SHRI A. K. ROY: I beg to move: Page 8,—

for clause 32, *substitute*—

'32. In article 239B of the Constitution, in clause (4), the words "except by majority in both the Houses of the Parliament" shall be added at the end.' (71).

I oppose any move or any design of our 'Legal Minister' to make our Constitution a lawyers' paradise. As you will see, in this Amendment, at least in four places, he has brought courts into the arena of Parliament. The whole design of this Constitutional Amendment is not to enlarge the powers of the Parliament, is not to enlarge the powers of the citizens, but to criple the Parliament and enlarge the powers either of the Election Commissioner or of the Judges or of any other officials except the powers of the people's representatives. Out of fear and apprehension this whole amendment has been drafted. So, this particular clause 32 deals with the powers of an administrator to promulgate any ordinance in case of emergency. You know our administrators and Governors. They are also wonderful people. They are declaring some area as a disturbed area without even taking permission or informing the Central Government and we are taken aback in this Parliament and you felt very difficult to control the Parliament also. ....

(*Interruptions*).

AN HON. MEMBER: You are also a wonderful man.

SHRI A. K. ROY: I tell you that if some administrator declares some

sort of an emergency or semi emergency or mini emergency or something like that in some Union Territory, in any remote Union Territory, then the provisions are very good because he has brought his lawyers into the picture, things can be challenged or contested in the courts of law but nowhere Parliament is in the picture. It is that they can promulgate it only subject to the satisfaction of the President and the Home Ministry, but the Parliament is nowhere. Even the administrator of a Union Territory, when its legislature is not in session, can promulgate and its life is only 6 weeks. It is all right. But where does the Parliament come into the picture? If some ordinance or a frightening ordinance or some ordinance of legal consequences is promulgated, are we to be simply silent spectators to that? That is why I have said, 'except by a majority of the Parliament in both Houses'. My whole contention is this: keep it away from litigation and enlarge the powers of this Parliament. You know, Sir, the angry words of President Roosevelt, 'Save the Constitution from the court'. If it is true for America, it is doubly true for India.

SHRI SHANTI BHUSHAN: The hon. Member is apprehensive that if this Bill is accepted, the paradise shall belong to the lawyers and he would be afraid to go to such a paradise. I can assure the hon. Members that the lawyers will never have the monopoly over the paradise and it shall be available and open to other members also.

This clause 4 in this Art 239B did not exist in the original Constitution and its absence never presented any difficulty because the courts had ever exercised a power for sitting in judgment over the subjective satisfaction of either the President or the Governor or even administrators in the matter of issuing ordinances. Therefore, it did not call for any such amendment to expressly say that the satisfaction of the appropriate authority shall not be questioned on any ground. That was not called for. The courts themselves had exercised their powers with a sense of responsibility and, therefore, to say that even in an extreme case, the power would be expressly excluded, I submit, was not a desirable amendment and, therefore, the original provision is being restored by this amendment and it is not necessary to involve the two Houses of Parliament in this.

MR. SPEAKER: Clause 33—Shri Shambhu Nath Chaturvedi. Now it is 3 O'clock. The discussion on the Constitution Amendment Bill stands adjourned to 21st August.

15.00 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

TWENTY-SECOND REPORT

MR. SPEAKER: Now we take up the Private Members' Business. Shri Gomango.

SHRI GIRIDHAR GOMANGO (Koraput): I beg to move:

> "That this House do agree with the Twenty-secoud Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 19th August, 1978".

15.01 hrs.

[SHRI RAM MURTI *in the Chair*]

MR. CHAIRMAN: Now, the question is:

> "That this House do agree with the Twenty-second Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 9th August, 1978".

The motion was adopted.
