

ANNEXURE III

Statement showing average prices of hessian 40" x 10 oz and B-twirl, at Calcutta from January 1973 to January, 1974.

Month	Hessian 40" x 10 oz (per 100 yards)	B. Twirl (per 100 bags)
January, 1973	101.00	263.50
February, 1973	103.38	264.25
March, 1973	101.13	261.63
April, 1973	104.88	265.00
May, 1973	102.63	258.63
June, 1973	97.75	247.25
July, 1973	90.25	240.38
August, 1973	97.50	247.75
September, 1973	104.63	263.50
October, 1973	108.77	271.26
November, 1973	115.16	275.73
December, 1973	122.38	270.73
January, 1974	136.40	288.32

13.21 hrs.

ADDITIONAL EMOLUMENTS
(COMPULSORY DEPOSIT)
BILL*—Contd.

MR. SPEAKER: Now, we resume the discussion on Item No. 7—Additional Emoluments (Compulsory Deposit) Bill. Some gentlemen have already spoken. Some others want to speak. I would request them to take as short a time as possible.

SHRI H. N. MUKERJEE (Calcutta-North-East): I would like to exercise my right.

MR. SPEAKER: Did you not speak the other day?

SHRI H. N. MUKERJEE: No.

SHRI DINESH CHANDRA GO-SWAMI (Gauhati): We have also intimated you from this side that we also would like to make submissions

MR. SPEAKER: Yes, I have received that. Shri Atal Bihari Vajpayee Shri Samar Guha, Shri Shyamnandan Mishra, Shri Goswami, Shri Salve and Shri Banerjee—I have their names to-day. Your submission should be very short.

SHRI SEZHIYAN (Kumbakonam): On the day I spoke, I have spoken only on the points of order and the legislative competence is yet to be covered....

MR. SPEAKER: You are raising some procedural point?

SHRI SEZHIYAN: Yes.

MR. SPEAKER: These are in the shape of points of order?

SHRI SEZHIYAN: Yes.

MR. SPEAKER: You are opposing at the stage of introduction?

SHRI SEZHIYAN: Yes, Sir. Before I come to the main point, on that day I raised two points of order on which the Speaker has to give a ruling. One is the corrigendum and the other is the expenditure on the new schemes. I have also written a letter to you.....

MR. SPEAKER: I have received it.

SHRI SEZHIYAN: There is a previous Bill on which I mentioned what is the object of the corrigendum. The Deputy Speaker was pleased to say:

"The only thing here is that the Government has chosen to correct itself and sent that correction to us and the Bill, as corrected by the Government, is now before all of us. We should take it that way.

The only point that Shri Sezhiyan has raised is a very technical point, that these corrigenda also should be circulated to us two days in advance....

*Published in Gazette of India. 19-8-74.

MR. SPEAKER: You have already spoken?

SHRI SEZHIYAN: On this point, Mr. Deputy Speaker said:

"That is a different question whether corrigenda should also be circulated two days in advance or they can be at a shorter notice. I do not know whether we are very clear about it. The House has not made it clear; the Speaker has not given any direction; there are no rules on that."

No ruling is given on this point. The Finance Minister intervened when I raised the point on the present Bill and said:

'Sometimes a mistake is made in the printing press. Do you want to completely rule out the corrigenda?'

I accept the position that the Government can give a corrigenda and also I do accept that when there is a mistake in the printing that also is considered in this way and corrected. I request you that a clear ruling may be given on the scope and limitation of the corrigenda and how they should be circulated. I feel that corrigenda may be for correcting printing or grammatical errors. But it should not be adopted to seek an improvement, however desirable it may be, by way of a new word or arrangement. Substantial modification to a clause of the Bill, if any, should be made by way of amendments only and the Bill which is introduced should be a single entity. It cannot be done in two or three places, corrected by one thing, amended by another etc. Such a thing cannot be a complete one. So, in the corrigendum only these types of mistakes should come in. So, I want to have a clear ruling from you on this point, Sir.

MR. SPEAKER: Mr. Sezhiyan, now you are asking about this particular question and you want my direction. My view is this and I hope you will accept this, that corrigenda

can make only printing corrections, grammatical or arithmetical mistakes or patent errors.

And, if there is going to be some substantial correction or something entirely new, I am not prepared to accept it and they should bring the amendments before the House. You said, the Speaker had not given the ruling. You know, we have been following it in the past. The only thing that I see from the proceedings is this. The Deputy Speaker in that case has referred to one thing that the Bill had not yet come and Government had before that time the right to issue the corrigenda which could form part of the Bill. And it is something which in my own opinion, and I think this is in keeping with the practice we follow should relate to the items which I have just now mentioned. If they want to introduce a new clause, something which should come in the shape of an amendment, they could withdraw that Bill from circulation and get a new printed one. They could do it in time with the special permission of the Speaker. In this case it has not been done. As I said, printing errors, grammatical or arithmetical errors can be removed. But if something is there in the form of completely changing the sense—some substantial addition or deletion etc. they can come only in the shape of an amendment. So, in that case it would have been much advisable if they could take it back, approach the Speaker to allow it to be taken back, with his special permission, giving the reasons why it is being done they can replace it by a newly printed Bill. This is my opinion.

SHRI S. M. BANERJEE (Kanpur): Is that your final ruling?

MR. SPEAKER: So long as you are here, nothing is final.

SHRI SEZHIYAN: I am opposing the introduction of the Bill as this is beyond the legislative competence of this House. I have not repeated

[Shri Sezhiyan]

the arguments here as such. I only wish to bring in a fresh point. We want to know what kind of legislation has been brought here—is it a general enactment or a taxation Bill? We have got a written Constitution. So, it is better that in future such Bills which are being introduced in the House should clearly indicate under what provisions of the Constitution and under what Entry in the List these Bills are being introduced. It is not there in the U.K., because they do not have a written Constitution. We have a written Constitution.

SHRI ATAL BIHARI VAJPAYEE (Gwalior): There is no division of power so far as U.K. is concerned.

SHRI SEZHIYAN: Under Arts. 246 and 247—Lists I and III—Parliament is entitled to make laws. List No. II is the exclusive jurisdiction of the State. In this Bill, because it covers....

MR. SPEAKER: I have not been able to appreciate this practice, because some people have spoken already and some are yet to speak and, in between, you said something about the corrigenda about which only the Speaker can give a direction, which I have done. So far as other matters are concerned, it would be much better that you can say what you want to say at the end.

If you want to speak about the legislative competence of the House, you can do so.

SHRI SEZHIYAN: This Bill covers the employees of the Central Government and State Governments, local authorities and institutions sponsored by the Central as well as State Governments. Therefore, I say there is an inroad to State List. I do not want to go into it as Shri Chatterjee has already made that point. One plea could be advanced that he has indicated that during emergency, Parliament may assume power. He has referred to two types of emer-

gency that is contemplated—under Art. 352, emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, on the basis of which a Proclamation may be made. (Interruptions)

SHRI SHYAMNANDAN MISHRA (Begusarai): Let us hear the hon. Law Minister first

MR. SPEAKER: Please do not interrupt him when I am listening.

SHRI N. K. P. SALVE (Betul): Sir, mine is a valid interruption. For about half an hour we have this type of dialogue. I regretfully submit that in this House if anyone wants to comply with the rules of procedure, the Chair should give absolute freedom. You shut us out. That is we want to rise on a valid interruption. That is what I am submitting.

MR. SPEAKER: Let me know how it is relevant when you are getting up and when I have already asked the other Member to speak.

SHRI N. K. P. SALVE: I must submit that when it is a question of procedure, my submission is that that should be taken up and talked about. We are discussing about the merits.

MR. SPEAKER: I have not allowed anyone. I am now listening to what Shri Sezhiyan says. You get up without my permission. How is it proper? If you get my permission you can also get up. But, in between, how can you get up?

SHRI SEZHIYAN: Now, this Bill makes an inroad to the State Lists—entries 5 and 41. Take for example Art. 360, financial emergency. There it has been stated as follows:—

“Notwithstanding anything in this Constitution—

(a) any such direction may include—

(i) a provision requiring the reduction of salaries and allowances of all or any class of persons serving in connection with the affairs of a State;”

That means if the power has been with the Central Government, that would not have been included in Art. 360 Art. 360 comes in times of emergency and accepts implicitly that the conditions of State employees are under the State List.

I have another basic point to be made. In 1963 when the Compulsory Deposit Scheme was introduced it was limited only to those on which additional surcharge to income-tax was leviable. In 1963 they made a link with the income-tax. Then it was contested in the Allahabad High Court and it was decided:

“Lastly, it was contended that the Compulsory Deposit Act of 1963 which was to.....now applies to those who are subject to additional requirement.”

Then there was a link between the Compulsory Deposit Scheme and the income-tax so it escaped violating the Article of the Constitution but now there is no link. So, it violates and, as such, is beyond the competence of this House and it makes inroads into the entries of the concurrent list.

Mr. SPEAKER: My only point is about the question of constitutional competence. Can the Speaker decide about it?

SHRI H. N. MUKERJEE: If there is a clear-cut violation, then surely the Speaker can without any detriment to the dignity of his office give a ruling.

श्री अटलबिहारी वाजपेयी: मैंने एक प्रस्ताव की सूचना दी है और मांग की है कि इस विषयक क संवैधानिक पहलुओं के बारे में

सदन की सलाह देने क लिये एटर्नी जनरल को बुलाया जाए—

एक नाननीय सदस्य : वह यह द्ये ।
श्री अटल बिहारी वाजपेयी : भग्नी
विधि मंत्री ने कहा है कि यह विधे-यक
(अवधान)

SHRI SHYAMNANDAN MISHRA:
The Chair has to take care of it (24
ruptions).

How are we going to confirm to our oath?

MR. SPEAKER: Everything can be taken to any limit. But after all, can the Speaker decide on the constitutional competency in respect of a Bill? You may call it legislative competence or constitutional competence. Whatever it be, because it is under the Constitution, can the Speaker decide on it?

SHRI SHYAMNANDAN MISHRA:
Why should there be a Chair at all? May I ask you in a humility, whether we are not here to defend the Constitution.....

MR. SPEAKER: Let me know when the Chair ever pronounced on the constitutional or legislative competence.

SHRI C. M. STEPHEN (Marattupuzha): It is for the House to decide. It is not a question which calls for a ruling from you.

SHRI H. N. MUKERJEE: It is only a border-line....

MR. SPEAKER: This is a matter with which the court is concerned, not the Speaker.

SHRI S. M. BANERJEE: Let the House decide, and the House can take a decision on the question whether it is constitutional or not.

MR. SPEAKER: It is for the court to decide. There is nothing else that can be done. I am just putting it in to hon. Members.

SHRI SEZHIYAN: In the Second Lok Sabha, a Bill dealing with Estate Duty came up before the House, and at that time, the legislative competence of the House was questioned and the Speaker held that only after getting the approval of the States, the Bill would be allowed to be passed in this House. So, there is a precedent for this.

MR. SPEAKER: I would invite hon. Members' attention to page 473 of *Practice and Procedure of Parliament* by Kaul and Shakhder.....

SHRI S. M. BANERJEE: Why do you not allow us to finish our submissions?

MR. SPEAKER: The hon. Member has already raised it.

SHRI S. M. BANERJEE: You are giving a ruling on every point as soon as it is raised....

MR. SPEAKER: There, it is stated:

"It is the accepted practice in Lok Sabha that the Speaker does not give any ruling on a point of order which raises the question whether a Bill is constitutionally within the legislative competence of the House or not.

The House also does not take a decision on the specific question of *vires* of a Bill. It is open to Members to express their views in the matter and to address arguments for and against the *vires* for the consideration of the House. The Members take this aspect into account in voting on the motion for leave to introduce a Bill or on the subsequent motions on the Bill."

So, Members can discuss it whether it is or is not within the legislative competence, but no ruling is given. The position is very clear.

SHRI SHYAMNANDAN MISHRA: Then, how does the Chair prohibit us from encroaching upon the jurisdiction of the States? Why are we being prevented from encroaching upon the jurisdiction of the States? You almost every day do say that a particular subject lies in the State List. Do you not say that often here?

MR. SPEAKER: I have quoted the practice and also the precedent. It is not mine. I am led by the accepted precedents and practice.

SHRI SHYAMNANDAN MISHRA: Every day, we are confronted with an observation from the Chair that a particular subject lies in the State List.

MR. SPEAKER: The Chair does not give any ruling on the legislative or constitutional competence. but the House can discuss it and vote against or for it.

SHRI SHYAMNANDAN MISHRA: Let the House decide.

MR. SPEAKER: Any hon. Member is welcome to go to the court and get it declared as ultra vires.

श्री अटन विश्वरी बाइजोयी : एकाक्ष महोदय, जो बात संविधान के खिलाफ है, उस को पारित करने में हम भागीदार नहीं हो सकते हैं। हमें संविधान की रक्षा करनी है। अमरीका के राष्ट्रपति ने संविधान की रक्षा नहीं की, और उन का जो हाल हुआ, वह आप जानते हैं।

अध्यक्ष महोदय : जो हमारी परम्परा है, जिस पर हम चल रहे हैं, वह मैंने आप को बता दी है।

श्री मधु लिसये (बांका) : अध्यक्ष महोदय, मेरा पार्यट आफ आर्डर है। नियम 72 में कहा गया है कि अगर लेजिस्लेटिव

काम्पीटेंस का सवाल उत्पन्न किया जाता है, जो मैंने उत्पन्न किया, तो उस पर पूरी चर्चा होगी। जब मैंने यह सवाल उठाया, तो उपाध्यक्ष ने यह निर्णय दिया कि इस पर पूरी चर्चा होनी चाहिए। आप को निर्णय देना है या नहीं देना है, वह तो बाद में होगा। यह तर्क और बहस की जगह है। हो सकता है कि इस बहस के बाद आप इस नतीजे पर पहुँचें कि यह संविधान का इतना स्पष्ट उल्लंघन है, इस लिए मुझे इस बारे में निर्णय देना पड़ेगा। लेकिन वह तो बाद में होगा। आप हमें सुन लीजिए। अगर हमें सुनने के बाद आप का मत-परिवर्तन हो जाये, तो एक नया प्रेसिडेंट हो सकता है।

श्री इन्द्रजीत गुप्ता (अलमपुर) : ऐसा भी हो सकता है कि यह बहस सुनने के बाद श्री चव्हाण इस बिल में तरमिम करके एक दूसरा बिल ले कर आयें।

अध्यक्ष सहोदय : मैं समझता हूँ कि इस में ज्यादा कहने की गुंजाइश नहीं है। मैंने तो फंसला दे दिया है। यह बिल तो चलेगा। कनसिडरेशन के बीच में आप लोग इस के बारे में जो बातें लाना चाहते हैं, उन को लायें।

SHRI S. M. BANERJEE: There is a motion by Shri Vajpayee to the effect that the Attorney-General should be called here. Under the Constitution, he can address this House.

श्री अटल बिहारी वाजपेयी : मैं मोशन की सूचना दे चुका हूँ।

श्री श्यामनन्धन मिश्र : मेरा भी मोशन है।

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, मेरा निवेदन है कि विधि मंत्री

के इस कथन के बावजूद कि बहुत विधेयक प्रापात-काजोन उपाधियों के अन्तर्गत नहीं लाया गया है, स्थिति और अपेक्षा हो गयी है। देश में संकट-काल की स्थिति है। संकट-काल की स्थिति के अन्तर्गत इस सदन को, संसदसद को, अधिकार है कि वह उन विषयों के लिए भी कानून बना सके, जो राज्यों की सूची में आते हैं। लेकिन इस बारे में जो बात कही गयी है, उस में वजन है कि संकट-काल की स्थिति का सम्बन्ध केवल विदेशी आक्रमण, सुरक्षा के लिए छूतरे या किसी राज्य में उपद्रव की स्थिति से है। ऐसी स्थिति इस समय कहीं नहीं है।

फर्निशियल के बारे में जो उपबन्ध है, उस का भी उपयोग नहीं किया जा रहा है। उस के अन्तर्गत भी कानून बनाना इतना सल नहीं है। सरकार राज्यों को निर्देश दे सकती है, लेकिन कोई निर्देश दिया गया है, इस बात का सुबा नहीं है।

हमारा संविधान संघात्मक है, एकात्मक नहीं है। यह फेडरेशन है, युनिटरी स्टेट नहीं है। इस में सत्ता का विकेन्द्रीकरण है। क्या सत्ता के विकेन्द्रीकरण को समाप्त करने के लिए यह सदन या संसद राज्यों और स्थानीय संस्थाओं पर ऐसी बात लाद सकता है, जिसे वे स्वीकार करने के लिए तैयार नहीं है? क्या ऐसे सवाल पर प्रमाणिक मदभेद नहीं हो सकता है कि आज कम्पलसरी डिपॉजिट नहीं होना चाहिए; अगर डिपॉजिट हो, तो वह बालन्टरी हो सकता है? क्या कोई राज सरकार यह नहीं कह सकती है कि केन्द्र ने इस बारे में जो नीति निर्धारित की है, उस से हमारा मतभेद है, हम उस नीति को स्वीकार करने के लिए तैयार नहीं हैं, हमारे कर्मचारियों को आज जो लाम मिलना चाहिए, हम उससे बर्बाद नहीं करेंगे?

संविधान के किन उपबन्ध, किस अनुच्छेद, के अन्तर्गत राज्यों की स्वायत्तता छीनी जा रही

[श्री अटल बिहारी वाजपेयी]

है? इस समय दिल्ली के कार्पोरेशन में जनसंघ का बहुमत है।

मैं यह निवेदन कर रहा था कि दिल्ली म्युनिसिपल कार्पोरेशन में जिस पार्टी का बहुमत है अगर वे बहुमत से फँसला करते हैं कि कर्मचारियों को महंगाई भत्ता दिया जाये, इस समय इस से उन को बचित करना उन के साथ अन्याय करना होगा तो क्या कार्पोरेशन की स्वायत्तता का कोई अर्थ नहीं है?

केन्द्र सरकार उस पर अपना निर्णय कैसे घोषित सकती है?

वित्त मंत्री (श्री यशवत राव चौहान) : कानून से।

श्री अटल बिहारी वाजपेयी : यह कौन सा कानून है? मेरा निवेदन यह है कि अगर एमजॉसी पावर के अन्तर्गत यह विधेयक ही आ रहा है तो फिर इस विधेयक की संवैधानिकता के बारे में हमारा आपत्ति और भी गंभीर बन जाती है। सदन ठीक तरह से इस के ऊपर फँसला कर सके इस के लिए आवश्यक है कि ऐटार्नी जनरल को सदन में उनकी राय जानने के लिए बुलाया जाय।

SHRI SEZHIYAN: The fourth para at page 473 of this book by Kaul and Shakhder says:

"There have, however, been occasions when the Speaker, leaving the ultimate decision on the matter to the House, has expressed his own views on the vires of Bills.

If the motion for leave to introduce a Bill is opposed on the ground of legislative incompetence of the House, a full discussion on the point has been permitted.

Where the fulfilment of a constitutional requirement is essential for the passing of a Bill, the Speaker may permit discussion on the Bill

for the intervening stages and ask the Government to meet that requirement in the mean time."

A specific case has been given:

"On April 25, 1958 when the motion for referenee of the Estate Duty (Amendment) Bill to a Select Committee was under discussion, a member contended that as the Bill proposed to levy estate duty in respect of agricultural and which was a State subject, Parliament could proceed in the matter only after resolution as required under the Constitution had been passed by two or more States.

After hearing arguments on both sides, the Speaker upheld the contention."

In this case also, after hearing us, you can uphold our continention.

SHRI INDRAJIT GUPTA: You can advise Mr. Chavan to back take the Bill, change it suitably and bring it again.

श्री मधु लिमये : अध्यक्ष महोदय आप बार बार यह कर रहे हैं, हमारी बात सुनते नहीं हैं। आप पहले ही अपना दिमाग बना चुके हैं।

अध्यक्ष महोदय : मैं भी बार बार कह रहा हूँ कि आप बीच में मत उठिये, अगर आप फिर खड़े हो जाते हैं। आप तो बार बार बोलते हैं, जब मैं कुछ कहने लगता हूँ तो आप कहते हैं कि आप बार बार मत कहिए। मैं कहता हूँ आप भी बार बार ऐसा मत करिए।

13.53 hrs.

[MR. DEPUTY-SPEAKER, in the Chair]

SHRI SHYAMNANDAN MISHRA: To my mind, there should be no doubt that it is beyond the legislative competence of this House to legislate on matters which are specifically included in the State list. It is clear invasion of the States jurisdiction and it makes non-sense of our federal

[Shri Shyamnandan Mishra]

structure. We have got a three-fold distribution of powers between the Centre and the States and therefore we have got three lists. It highlights a very dangerous trend towards a unitary State and therefore it could not be countenanced with complacency that the Government seems to urge.

The Government has said that it is not taking refuge under the emergency provision of the Constitution nor is it taking refuge under article 249 which gives the Union Parliament the powers to legislate on a subject which is specifically within the States' jurisdiction. That can be done by a special majority in the Council of States. Government is not taking its stand on that also. Therefore, the question is whether items 5 and 41 of the State List do not exclusively lie within the State List or is there an overlapping between the State List and the Union List. If there is overlapping, then, of course, there have been decisions in the past that the powers of the Union Parliament would override that of the State Legislature. But if it is established that these two items, item 5 and item 41—which relate to the public services, and their conditions and also to the local authority, and lie specifically and exclusively within the State List, then it is clearly unconstitutional. By what interpretation the Government would say that there is overlapping on that we are still to hear the Government and, therefore, I am of the view first that the Government should place its own point of view so that we are able to examine it later. Even so, if the Government takes its own stand on this basis.

Now, in my humble opinion, it does not lie in the twilight zone. There is no question of doubt that it is within the State list. If the conditions of service, and the local authorities do not lie within the State sphere, then I do not think that there can be any

State in India worth the name to repeat these two things do not lie within the State sphere, then there is no point in calling the States the constituent units of the federation. So, even by the doctrine of pith and substance these two items clearly lie within the State sphere and, in my respectful submission, there can be no justification for taking it over by the Union Legislature.

It might well be said that according to article 246 there can be some justification for the Union to take over a State subject. But, as I have submitted earlier, this article can figure, can come into play, only when there is a genuine overlapping. Article 246 cannot come into play here because there is no genuine overlapping in this matter. Therefore, I would submit that this measure is clearly *ultra vires* and the Government is indeed showing a very dangerous trend in encroaching upon the jurisdiction of the State Legislature. The State Legislature is not a delegate of the Union Parliament. The State Legislature has got plenary powers. Just as the Union Parliament has got plenary powers within the limitations imposed by the Constitution the State Legislature, too, has got plenary powers, and if the Powers of State Legislatures are sought to be taken over by the Union Legislature, then there can be no sovereign State Legislature in the spirit in which it has been conceived in our Constitution.

Therefore, I would submit that this Bill cannot be considered by this House—this is my clear and strong opinion. Since we have taken an oath under the Constitution, and that oath is included in a Schedule of the Constitution, it is our duty to see whether a law conforms to the Constitution or not. Let the decision be taken by the majority by their own interpretation of the Constitution but we will conscientiously state our own interpretation of the Constitution in the light of the oath that we have taken under the Schedule of the Constitution.

14 hrs.

SHRI N. K. P. SALVE (Betul): Sir, the basic question to be resolved is whether the essentials quality or the pith and substance of this legislation falls either in Entry 5 or Entry 41 of List II or whether it is squarely covered by Entry 97. Even if it remotely falls in Entry 5 or Entry 41, then we could have said that the question of legislative competence is a valid one. I submit, in all humility, the matter of similar legislation has been considered by the Supreme Court. They have examined the pith and substance of that legislation. They have come to a conclusion that that was covered fairly and squarely by Entry 97.

What is the pith and substance of this legislation? The pith and substance of this legislation has so rightly fallen back upon clause 6, as stated by Shri Somnath Chatterjee. That is the right clause and that clause contemplates:

"every employer, who draws, from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly, and disburses as and when emoluments are disbursed by him for any period, deduct from the emoluments so disbursed, the whole of the additional dearness allowance and credit the amount so deducted, in accordance with the scheme, to the Additional Wages Deposit Account and the Additional Dearness Allowance Deposit Account respectively."

Therefore, instead of beating round the bush, because none of them has crystallised what precisely is the pith and substance of this legislation, I submit, the pith and substance of this legislation is simply the deduction of additional wages and one-half of the additional dearness allowance from the wage earners and their compulsory deposit on interest with the Government. In other words, the pith and substance or the essential quality of this Bill is that this is borrowing money by the Government on interest from wage earners to the extent of

additional wages and the one-half of additional dearness allowance as an anti-inflationary measure.

To say that this is covered by Entry 5 or Entry 41 is complete misreading of Entry 5 and Entry 41. Entry 5 refers to the Constitution and powers of local authorities. Does this Bill even touch on the fringe of the constitution of a local authority? Does it touch the powers of the employers of a local authority? In that sense, does not deduction of income-tax at a particular rate cast a burden in the employers, the local authorities, to deduct that at source and pay here? In other words, where a duty is cast upon the local authority to act as an employer *vis-a-vis* an employee, none of their powers so far as the employment of the employee is concerned is at all questioned. They may pay any amount of wages as they like. Whatever may be their emoluments, how much is the increase it is their option.

What is to be the D.A., that is untouched. What is to be the additional increase in the D. A. that is also untouched. What are to be the terms of employment, that is entirely untouched. In other words, whatever may be the contract of employment between an employer and an employee is left entirely untouched, in any manner, except for the purposes of this legislation, that is, the local authority is called upon to deduct the additional wages and one-half of the dearness allowance, deposit it in a particular account and receive interest on behalf of the employees. This is not different in any manner than the deductions contemplated for the purpose of income-tax law.

SHRI SHYAMNANDAN MISHRA:
Yours is a self-defeating argument.

SHRI N. K. P. SALVE: You kindly bear with me.

I was referring to the decision of the Supreme Court in the case of the

Annuity Deposit scheme. What was the pith and substance of the Annuity Deposit scheme? There is no doubt about it. In 1962, 59 ITR 243, in the case of one Shri Hari Krishan Bhargava, the Supreme Court was called upon to adjudicate upon the question of legal competence of Annuity Deposits. In that case they first discussed what was the scheme of Annuity Deposit, and I would submit for the consideration of this House whether there is even a shred of difference between the pith and substance of this legislation which contemplated Annuity Deposit and the present legislation. This is how the scheme was broadly summarised by the Supreme Court. This is what the Supreme Court said. I am quoting from 1966 (59) I.T.R. 243, p. 247:

"Broadly studied, the scheme of Chapter 20A is that certain classes of tax-payers in the comparatively higher income group are required to make out of their total income deposits at the specified rates on the adjusted total income with the Central Government. The amount so deposited is made returnable with interest in ten annual instalments..."

This was applicable then to the employees of the Local Authority—Annuity Deposit—as much as this law is made applicable now. The contention was this. The petitioner submitted:

"...that the scheme of Annuity Deposit incorporated in Chapter 20A is invalid because Parliament has no competence to incorporate in the Indian Income-tax Act a provision which was substantially one relating to the borrowing by the Central Government from a class of tax-payers."

This is how the pith and substance was summarised by the Supreme Court:

"Granting that the scheme of Chapter 20A is for borrowing money by the Central Government from

the taxpayers in the highest income group at the rate prescribed, which is repayable in instruments, the power to legislate in this behalf is still within the competence of the Parliament by virtue of entry 97 of List I of the Seventh Schedule."

Further they have, categorically and in terms, said that what is sought to be achieved by the Act is the twin objective of mobilisation of private savings for public purposes and imposing curbs on the inflationary trends in the economy of our country.

This is precisely what is sought to be achieved by the present legislation. Therefore, my respectful submission is this. Were the employees belonging to the Local Authority not within the purview of the Annuity Deposit? Was it not the duty of the Supreme Court to consider when the legislative competence was challenged whether this is a matter which falls within the realm of the State List and not the Union List? If it is said that this comes under entry 41 of the State List which deals with State Public Services and State Public Service Commission, was not Annuity Deposit equally applicable to State employees? It was equally applicable to them. Therefore, this legislation which immobilises as certain amount of savings in the hands of certain classes of citizens—in this case, the employees—this scheme which requires them to deposit this compulsorily on interest, is squarely covered by entry 97 of List I. And here is the authority of the Supreme Court. Therefore, whatever is being said is contrary to the direct decision on this point given by the Supreme Court. That is one point.

Another point which was sought to be raised by Shri Somnath Chatterjee—I do not know whether that is seriously contended—was this. Money is property within the postulates of article 31(2); since it is property within the postulates of article 31 (2) it cannot be acquired or requisitioned otherwise except as provided under

[Shri N. K. P. Salve]

article 31(2). The entire argument has proceeded on a complete misunderstanding of the decision of the Supreme Court on this point. What the Supreme has held in the case of Ranaji Rao—1968, 4689—is this I am reading from the judgement:

“Though the language of Article 31(2) *prima facie* comprehends all movable property including chose in action and money, there are valid grounds to hold that chose in action and money are outside the reach of Article 31(2)”

Therefore, chose in action and money are subjects which are entirely outside the authority of eminent domain. It is not related to any of the power of the State to acquire private property against compensation because money is what is going to be the compensation. Therefore, the concept of money being acquired or requisitioned under Art. 31 (2) just does not arise. Then the question is: When it falls under 31(2) what is the criteria? All that is required is that no citizen shall be deprived of his property without the authority of the law and the law should conform to the requirements of Art. 95. It is not their case that any of the fundamental rights are infringed. Therefore, money not being a property contemplated under Art. 91 (2), it will only fall under 31(1) and the only restriction on 31 (1) is that the law made under 31 (1) when it deprives of a citizen's property should conform to Art. 95. It is not the case that it does not conform to Art. 95.

There is only one more point and that will be the end of my submission. A case is sought to be made out that, assuming that we are entitled to make this law and assuming that the Parliament is competent to legislate, then, willynilly, we are making inroads into what falls exclusively within the domain of the

State. That seems to be Shri Madhu Limaye's point. If I have been able to understand him correctly, what he has made out is this. Shri Madhu Limaye said: I am reading from the debate of the 16th August, 1974;

“इसमें ग्राय फाइनशियल मेमोरैंडम देविए । उसमें इन्होंने कहा है :

“The cost of collection of deposit amounts, accounting of deposits and repayment, as provided in Clause 9 of the Bill, will be borne by the respective employers including the Central Government and State Governments.”

क्या इस संसद को इस तरह का कोई कानून बनाने का अधिकार है जिस से राज्य सरकारों के ऊपर हम कोई खर्चा लादेंगे ?

“You are imposing expenditure which the State Governments did not want.”

In other words, assuming that this is otherwise within the legislative competence of the Parliament, the question is: whether we can make a law the result of which will be that it may make inroads and may have financial implication so far as the State expenditure is concerned. I have a direct authority....

SHRI SHYAMNANDAN MISHRA: If the main power is there, then the incidental powers are there too.

SHRI N. K. P. SALVE: Are you conceding that it is within the legislative competence? Then whatever might happen to the State does not matter.

श्री मधु लिमये : लेजिस्लेटिव काम्पेटेंस से ही जुड़ा हुआ है ।

SHRI N. K. P. SALVE: It is not stated here.

Otherwise the authority of AIR 37 Federal Court 1950 page 69 is conclusive on the issue. Justice Patanjali Shastri in the classical judgment on prohibition says:

"If you are going to prohibit import of foreign liquor, then that directly affects the customs revenue of the Centre and, therefore, whatever else you can do, you cannot make laws which make inroads into the revenues of the Centre."

There, it is the State and the Centre, here it is the other way. But the principle is the same....

SHRI R. R. SHARMA (Banda): Was it before or after the Constitution came into force?

SHRI N. K. P. SALVE: That was before the framing of the Constitution, but the basic principle is the same.

SHRI R. R. SHARMA: That is another matter.

SHRI N. K. P. SALVE: I am talking about the implications of the exercise of legislative competence by this Parliament if it makes an inroad and requires expenditure to be incurred by the States.

This is the principle enunciated and I submit in all humility that this is the law that we have to take. That has not been reversed and it is:

"It may be that a general adoption of the policy of prohibition will lead to a fall in the import of foreign liquor and the consequent diminution of the central customs revenue but where the Constitution Act has given to the province legislative powers with respect to a certain matter in clear and unambiguous terms then the Court should not deny it to them and impose restriction on its exercise on such extraneous considerations. It is now well established."

It is now well-settled that if an enactment according to its true na-

ture, its pith and substance, clearly falls within one of the matters associated to the provincial legislature it is valid notwithstanding its incidental encroachment on a federal subject."

That is the position which hold good today under our Constitution. We have the requisite legislative competence, to make law. Let us not bring in matters which are extraneous. I would beg of my esteemed friend Mr. Shyamnandan Mishra to bear with me. While determining the essential character or pith and substance doctrine, what is going to be the basic criteria or test you are going to lay down? It is the burden that is going to be caused—burden on the employed to deny himself the additional wages and half of the DA, and to deposit it with the Government compulsorily. That is the pith and substance.

SHRI SHYAM NANDAN MISHRA: Would you not like that the attributes of a State should remain in tact? Why are you thinking only in terms of financial issues? If the State loses its attributes it no longer remains a State.

SHRI N. K. P. SALVE: My hon. friend Mr. Shyamnandan Mishra is an idealist and a dreamer. If he is talking in terms of what would be the ideal conditions to be created for happy and harmonious relations between State and Centre, I will go with him. Here is the Finance Minister faced with an extraordinary situation. In our own Committee of the party we have subjected him to a very gruelling cross-examination and we wanted to know various things, whether this is going to achieve the objects which have been set forth. Whether it is going to really work towards harmonious relationship between States and Centre....

SHRI SHYAMNANDAN MISHRA: States have got certain essential powers. You are taking over their those powers seven on the local authority.

SHRI N. K. P. SALVE: I would request him not to minimise our authority here. The Supreme Court while deciding the case of levy of wealth tax on agricultural land has stated that in accordance with Art. 248 read with entry 97 all that is required to be seen is whether or not strictly anything falls in entry 2 or 3, if granting it does not fall, it is open to Parliament to make any law that it seeks in these regard. Therefore, there is no substance whatsoever in the contention that Parliament lacks legislative competence to make this Bill.

SHRI H. N. MUKERJEE: I have heard the very ingenious speech of my hon. friend Mr. Salve.

I am afraid that this House does not take a merely legalistic view of the provisions of the law but that we have to take as the Parliament of India a view on this matter which is rather different to the kind of exercise to which we have been listening now,

At this stage, I cannot go into the merits or rather the demerits of this pernicious imposition, but the manner of this Bill and its haphazard introduction appears to me to deny the salutary constraints which are there in our Constitution.

I do not want to rub it in. But it does seem to me to be another instance of government's wishing to ride the a high horse in regard to the constitutional principles.

Mr. Salve referred to what Mr. Madhu Limaye had said earlier. He had stated it very cogently, in my estimation, that under this Bill, according to the financial memorandum supplied by Government, if the State Government agencies were to operate the scheme and if the additional cost for the Centre is estimated at Rs. 100 lakhs per annum recurring

and Rs. 29 lakhs non-recurring apparently, unspecified amounts would have to come out of the State exchequer.

Now, whatever he might say, I feel that this is a most unwanted and peculiar thing that the cost of collection on deposit amounts, accounting on deposits and repayment as provided for would be borne according to this Memorandum by the Central and State Governments, that is to say, the State Governments are being given an order 'Do this'. This is a most extraordinary and presumptions and constitutionally impermissible procedure. We have, in this country—whether we like it or not—a federal government. It may not be a decentralised federation, on the contrary, our orientation is in favour of a centralised federation. It is a federation because the first Article says that India, that is, Bharat, is a Union of States, and States rights are a sensitive matter not only because of certain political problems that we have to-day, whether in Kashmir or Nagaland or Mizoram or wherever else you might choose, but because it is a matter of cardinal importance to the functioning of our Constitution and our political life that a balance is kept between the Centre and the States. We have non-Congress Governments, for example in Tamil Nadu. You cannot ask them to ditto what Delhi says. If my recollection is not wrong, the Chief Minister of Kerala has said something which indicated that he was against the acceptance of the financial provisions put forward by the Government of India. Now, if for instance this Government and the State Governments come to have a confrontation in the matter of rights—States *vis-a-vis* the Centre—at least, if Government chooses so, that is a different matter. We have, in this House, got to take into consideration, that States rights are being ridden rough-shod over in spite of whatever provisions there are in the Constitution which could be invoked in order to keep the States at

bay and to get them under the control of the Centre. Those provisions have not been invoked and, on the sly, surreptitiously, by introducing this kind of legislation in this House, States rights are being taken away. Then what is to be said in answer? Parliament is certainly responsible for this sort of thing. Earlier, it was very clearly pointed out that in the State Lists, there are specific references to what is sought to be done in this particular Bill. Public services are actually mentioned and also in so far as the powers of local authority, the municipalities and improvement trusts as well as district boards go. Please see Item V in the State List. That being so, I need not now labour this point because it has already been mentioned. I do not see why Government should try to ignore the rights of the States in this direction.

We have, in our Constitution, certain provisions like Art. 249 which lay down that Parliament, in the national interest, has power to legislate in respect of a matter in the State List. But, that can be a temporary measure. And this Article postulates a simple resolution supported by no less than two-thirds of the Members present and voting in the Rajya Sabha—in the Council of States. If Government wanted to do something which would require a certain impingement into the rights of the State they could easily have brought a resolution or something in the other House where, with a two-thirds majority, they could have brought the support of the State to some impingement of the authority. But, they do not choose to do so.

There is Article 352 under which emergency has been declared. We should like to know whether Government really and truly takes its stand on the position that in view of the emergency and fear of external aggression and internal disorder they are collecting so much more money from the people. They cannot have the moral guts to say so because it is

neither legally nor politically permissible. That is why they are trying to act on the sly.

Reference has already been made how Article 360 could have been invoked. Government has not declared as yet that financial stability and credit of India is threatened and that this Bill is the answer. We have an image to preserve. We talk so much about the image of India and, I am sure, Government does not want to declare that financial stability and credit of India is threatened. Therefore, they are not invoking his Article of the Constitution.

I repeat nothing is more important in our Constitution than Article 1. I would add that this is not the first time in this Session that the Government has been caught in an attempt to do something on the sly perhaps, a combination of guilty conscience, inbuilt ineptitude and haughty indifference to Parliament where they have a brute majority at their bidding, enables them to do what they like and this has perhaps brought us to this position. We have to see that the constitutional provisions that make for genuine harmonious relationship between the Centre and the States are not thrown to the winds and Government does not do something surreptitiously.

SHRI DINESH CHANDRA GO-SWAMI (Gauhati): Mr. Deputy Speaker, Sir, the short point under discussion at the moment here is whether the Bill sought to be introduced is within the legislative competence of the Parliament or not. As regards its legislative propriety that is not under discussion at this stage.

Two points have been raised. The first and the primary point made is that the Bill comes within the purview of Entry 5 and 41 of List II and, therefore, it being within the competence of State legislature, the competence of the Parliament is barred. The second point made is that this Bill is also violative of Article 31(2).

[Shri Dinesh Chandra Goswami]

The point regarding the competence of the State legislatures, so far as this Bill is concerned, has been dealt with by Mr. Salve. He has relied on Entry 97. Apart from that if there is any other Entry under which this Bill can be brought it is Entry 20 of the concurrent list, that is, social and economic planning. If you would be pleased to look at Entry 20 in the Concurrent List; you will find that it reads as follows:

"Economic and social planning".

After all, the doctrine of pith and substance is that we must look to the substance that this Bill seeks to achieve, and we can see that or we shall have to see that from the totality of the Bill and also from the Long Title of the Bill itself. You will be pleased to see from the Long Title of the Bill that this is a Bill which is not affecting the service conditions of the employees in the State service or public service but it is a Bill to provide in the interests of national economic development by way of compulsory deposit of additional emoluments, and, therefore, it is a Bill for national economic development, and from that point of view it comes under Entry 20 of the Concurrent List.

I am strengthened in this argument by the view expressed by one of the most eminent jurists of this country, Mr. C. K. Daphthary, the former Attorney General. He gave his views in this House on the Compulsory Deposit Scheme Bill on an identical question. This question was brought up in this House and the Attorney-General was called upon to express his opinion in this House on the Compulsory Deposit Scheme Bill, 1963. With your permission, I would like to refer to some of his views. I am reading from Lok Sabha Debates, (Third Series), Vol. XVII, 25th-30th April, 1963, cc. 12753-54. He said:

"The questions that were asked of me in regard to this Bill were two. The first was whether this Bill was legislatively competent, that is to say, whether Parliament had the legislative authority to make this into an Act. The second question was whether if it had, the Act would, when passed, conflict with any of the matters in Part III of the Constitution, that is to say, the Fundamental Rights Chapter."

So, an identical question had been raised at that time also. He further said:

"As to competency, I have put it or have considered that it would come under Entry No. 20 of List III, that is the Concurrent List. That Entry runs as follows. May I be permitted to read it? That entry is: 'Economic and social planning'. And in connection with that, I might call of attention to the Long Title of the Bill which runs this way..."

If you will be pleased to see the Long Title of that Bill and of this Bill, you will find that the long Title of that Bill was word by word the same as this, namely "A Bill to provide in the interest of national economic development for compulsory deposit and for the framing of a scheme in relation thereto". The long Title of the present Bill is also "to provide in the interest of national economic development for compulsory deposit of additional emoluments and for the framing of a scheme in reaction thereto".

Of course, the Attorney-General had also gone through the question that even if it did not come under Entry 20, it would still be covered by Entry 97 in List I. Even when that Bill was discussed, the question was raised that it came within the purview of the State Legislature because by that compulsory deposit scheme what was sought to be achieved was deposits from land revenue from persons who were earning above a certain amount, to the tune of 50 per cent. The question that had been raised was that

since the deposit was from land revenue and land revenue fell within the State List, that came within the purview of the States. The Attorney-General's reply was:

"May I say to the hon. Member that the matter has to be approached by looking at the substance of the legislation? That is the test which has always been applied or as it has been called, the pith and substance of the measure. The pith and substance of this measure is compulsory saving and the making of a deposit. The pith and substance is not land revenue. Therefore, it cannot fall within the State List where there is the item relating to land revenue.

The reference to land revenue in this Bill is for two purposes. One is to indicate a kind of person who will be liable to make the deposit..".

And then he went on to anumerate the purposes.

Therefore, my submission is that it comes within either entry 20 of List III or the residuary power of Parliament. The learned Law Minister has already said that he is not taking recourse to the emergency provisions, but since an argument has been made that the emergency provisions are not applicable in this case because the emergency that has been declared is under article 352 relating to external aggression and not to the economic emergency contemplated in the Constitution, I would refer, even academically if necessary, to article 250 and say that we have the power under article 250. Article 250 says as follows:

Article 250 says:

"Notwithstanding anything in this Chapter, Parliament shall, while a Proclamation of Emergency is in operation, have power to make laws for the whole or any part of the territory of India with respect to

any of the matters enumerated in the State List".

This articles does not make it a condition precedent that you will have the power of economic legislation only when an economic emergency is declared or some other type of legislation when an emergency is declared against external aggression. It says whatever may be the nature of the circumstances for which an emergency is declared, whether under article 352 or otherwise, the power to legislate is automatically extended under article 250, to legislate even on matters under the State List.

Therefore, the question is not whether under what contingency an emergency has been declared. The moment an emergency is declared, Parliament's power to legislate under art. 250 is enlarged to cover the State List irrespective of the fact that the emergency was declared under art. 322 and not under other provisions relating to financial emergency.

Therefore, my respectful submission is that if we take that aspect also into consideration, this matter becomes absolutely academic in nature, though as I have submitted, we have the legislative competence so far as it comes directly under the purview of Entry 20, and even assuming it is not, then it is covered by the article relating to residuary powers.

As for the other point about property, Shri Salve has replied that money is not property. Probably we would have liked, or at any event some of us would have liked, that money comes within the purview of property under art. 31(2) because that would give us the power to acquire liquid cash of certain rich type of persons without giving compensation. But I will submit even assuming, and not admitting, that money is taken to be a property for purposes of art. 31(2), which I say it is not, even then Parliament has the power under art. 31A (b) Assuming that you go to

[Shri Dinesh Chandra Goswami]

the extreme case when money is considered as property because it says:

“taking over the management of any property by the State for a limited period either in the public interest...”

Even assuming money to be property, which I say for the purpose of art. 31(2) one cannot contemplate, it comes within art 31A (b) because in the public interest for economic development and for checking inflation at this crucial moment, obviously we can take over the management of money for a limited, temporary period.

Therefore, I submit that the two points raised so far as legislative competence is concerned, have no substance. If there is any political argument, like the one aduced by Shri H. N. Mukerjee, this is not the stage to discuss it; because we will be discussing all the aspects when we come to the consideration stage.

MR. DEPUTY-SPEAKER: The Law Minister is intervening; he is not replying.

SHRI MADHU LIMAYE: Let him speak afterwards.

MR. DEPUTY-SPEAKER: No, I can call anybody.

SHRI S. M. BANERJEE: The Law Minister's reply is final.

MR. DEPUTY-SPEAKER: No, he is only intervening.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I crave your indulgence to allow me to intervene at this stage only for the reason that I have to move a Bill in the Rajya Sabha and I may be called any moment.

Most of the major points have already been made. I have read very carefully the debate which took place on Friday although I was not present here.

SHRI MADHU LIMAYE: On a point of order. He cannot speak at this stage.

उन का कहना है कि चूँकि उन को राज्य सभा में जाना है, इसलिए वह इस समय बोलना चाहते हैं। क्या उन के डिप्युटीज नहीं हैं? कितनी गम्भीर चर्चा चल रही है और वह कहते हैं कि मैं बाक-आउट कर के चला जाऊंगा।

श्री एच० आर० गोखले : मैं बाक-आउट कहां कर रहा हूँ ?

SHRI MADHU LIMAYE: He is walking out to the Rajya Sabha.

SHRI H. R. GOKHALE: I began by saying 'I crave your indulgence'. There is no question of walking out.

श्री मधु लिमये : उपाध्यक्ष महोदय आप नियम 72 देखिये। सदस्यों के द्वारा आक्षेप उठाने के बाद अन्त में मंत्री महोदय को जबाब देना है। इस का मतलब यह है कि जो मैं, बोलूंगा, उन का जबाब वह नहीं देने वाले हैं। मैं श्री सोमनाथ चटर्जी के लिए यील्ड कर गया, क्योंकि उन को जाना था अब मंत्री महोदय मुझे भुने बिना ही जाने वाले हैं मैंने ही लेजिस्लेटिव काम्मिटेस का सवाल उठाया था। यह क्या तरीका है? मैं इस पर आपत्ति करता हूँ।

MR. DEPUTY-SPEAKER: Now I have said that he is only intervening. He is not replying to the debate.

SHRI S. M. BANERJEE: Who will reply?

MR. DEPUTY-SPEAKER: The Minister-in-charge, the Finance Minister.

Some members expressed an opinion that they would first like to hear the Law Minister, so that they may be able to meet his points. In any case, it is up to the Chair to call anybody.

श्री मधु लिमये : आप चाहते हैं कि
: रो बातों पर वह गौर न फरमाएं ?

श्री एच० झार० गोखले : आप तो बोल
चुके हैं ।

श्री मधु लिमये : वह तो मैं ने श्री सोमनाथ
चटर्जी के लिए ईल्ड किया था, उन को
था, इसलिए मैं ईल्ड कर गया था ।

उपाध्यक्ष महोदय, इन्होंने जो कारण दिये हैं
वे बहुत फिलम्बी हैं । जो सीधे चुनाव
से सभा जीती है उस के प्रति तो इन्हें कोई
आदर नहीं है, यह जा रहे हैं राज्य सभा
में ।

Have we no self-respect as a collective
body?

MR. DEPUTY-SPEAKER: It is for
the Chair to decide whom to call and
at what time.

SHRI H. R. GOKHALE: I have read
carefully the speeches made on Fri-
day, although I was not personally
present, and I have heard the speeches
made today. Although the debate has
been long, ultimately it boils down
to a very few major points relating
to the legislative competence of Par-
liament to enact this legislation. Some
other points were also raised on Fri-
day with regard to excessive delega-
tion etc., to which I will come later.

The main argument was that this
legislation impinges on the powers of
legislation of the States as conferred
on them by List II of the seventh
schedule. Particular reliance was
placed on entries 5 and 41 of that list
to show that certain provisions of this
Bill impinge on these entries, in res-
pect of which only the State legisla-
ture has the power to legislate. I
submit that none of these entries is
really impinged on by this legislation.
Entry 5 says:

"Local government, that is to say,
the constitution and powers of

municipal corporations, improve-
ment trusts, district boards, mining
settlement authorities and other
local authorities for the purpose of
local self-government or village
administration."

None of these has been affected by
the legislation under consideration.
Entry 41 says:

"State public services; State Pub-
lic Service Commission" This
legislation does not legislate in res-
pect of State public services and
certainly not in respect of State
Public Service Commission. On
Friday, my learned friend for whom,
as a lawyer, I have great respect, Mr.
Somnath Chatterjee, referred to some
decisions—one Bombay High Court
decision and one M.P. High Court
decision. He referred to a judgment
given by Mr. Justice Chainani, C. J.
in which I was a concurring judge. I
have gone through that judgment and
also the M.P. judgment. So far as en-
tries 41 and 5 are concerned, the pro-
position that the State has power to
legislate is unexceptionable. There-
fore, there is no reason for saying
those authorities go counter to the
proposition that these entries are not
impinged.

I do not want to load the House
with authorities but anyone who has
dealt with this matter knows that
whenever you construe any entry,
whether it is of List I, List II or List
III, you do not consider it in isolation,
but you consider it along with the
other entries and find out what is the
ultimate purpose and intent of a par-
ticular entry, in conferring compe-
tence on the State Legislature or on
Parliament itself. This is the well-
accepted theory known as the theory
of pith and substance of a legislation,
to which my hon. friend, Shri Salve,
made a reference. It is impossible
that a law can be so much in water-
tight compartments that even inci-
dentally it will not affect one or the
other entries of the other Lists. That
is why the pith and substance doc-
trine, which is well-known in consti-

[Shri H. R. Gokhale]

tutional jurisprudence, is invoked repeatedly by our courts and courts all over the world where they have similar systems of jurisprudence.

We have to find out what is really the pith and substance of this legislation. Is it to legislate in respect of local self-government or the panchayats? As has been repeatedly held, you are entitled to look at the long title to know what is the purpose of the legislation. Here the purpose is, broadly speaking, economic development. I need not read the entire Bill because the long title in terms says that it is in the interest of national economic development. I do not read the whole of it even though we are entitled to read the long title, we are entitled to read the various provisions of the Bill, the Statement of Objects and Reasons, to find out what is the pith and substance of the legislation which is under consideration.

This has been considered not for the first time when this Bill was brought. A similar measure was there in 1963; I have checked up that measure and it was for two major purposes. It was identical with the measure which we are now considering. A challenge was made to that also that time in the House, and outside, in the courts. I will come to the challenge in the House where the then Attorney-General was invited to come and give his opinion. He gave his opinion on the points raised and expressed the view that it does not really fall in any of the entries of the State List. He clearly stated that none of the entries in the State List would specifically cover this piece of legislation. According to his opinion, as was mentioned by Shri Salve in his speech, this was covered, firstly by Entry 20 of the Concurrent List. Then he said that even if it is not specifically covered by entry 20, you can invoke entry 97, which is the residuary entry, or you can invoke article 248. I am not referring to article 249, to which a reference was made, but to article 248,

which covers residuary matters in respect of which there is no specific provision.

This pith and substance doctrine is not something which has been propounded for the first time here. It has been invoked in the past and the courts have considered the pith and substance of a particular legislation to find out the legislative competence of the law. I submit that if you consider the whole Bill, the purpose of the Bill, the object of the Bill, the provisions of the Bill, I have personally no doubt in my mind that the pith and substance of the legislation is not covered by entry 5 or entry 41 of the State List.

SHRI SEZHIAN: Which is the entry on which you are replying?

SHRI H. R. GOKHALE: By asking this question you are really supporting me. Probably, my hon. friend did not hear me when I said that the then Attorney-General gave the opinion that it really falls under entry 20 of the Concurrent List. He also said that assuming that you do not want to invoke entry 20, you can invoke entry 97 and article 248 of the Constitution under which no one else but Parliament would have legislative competence. Entry 20, social and economic development, is the one on which the then Attorney-General relied. Then this matter was taken to the courts. A reference was made to a judgment of the Allahabad High Court where a challenge was made. But it was not mentioned by the hon. Member that the challenge had failed. The question of legislative competence was also there and the challenge failed.

Then, some reference was made to clause in the Bill that the States will have to function and, naturally, they will have to incur expenditure; the local authorities will have to function for implementation of the Act and will have to incur expenditure and other employers on whom such an obligation is cast will have to incur

expenditure for the deduction of these amounts by way of deposits and crediting them to the respective accounts. The State Government as an employer, the local authority as an employer, the Central Government as an employer, is required to collect these deposits according to the provisions of the Act. Even otherwise, even on the constitutional position, it is well-known—I am not invoking any thing new; it is already there—that no special authority or direction is necessary to the State Governments to do it. Even under the existing provisions of the Constitution, the executive power of the State has to be used by the State for implementation of laws made by Parliament. Even if no direction is given, under article 256, the executive power of the States will be so used that they will implement the laws made by Parliament. So, the question of competence is clear.

The question of requirement of expenditure, etc. assumes subsidiary importance altogether. Take, for example, an ordinary law. If a new piece of criminal law is passed by which certain new offences are created, the execution of the criminal law is always done by the States. The State does not come and say, "This is a law passed by Parliament. We are not going to take cognizance of it unless you pay for implementing it." The Constitution contemplates that the executive power of the State will be so utilised as to implement the laws made by Parliament.

Now, I would submit with great respect to you that these are matters which are really decided by the courts which are constituted by the Constitution. It is open to the persons opposing the Bill to go and challenge it before a court of law. But, if on the other hand, you say that Parliament has no legislative competence, there is no remedy. There can be no writ issued by the court of law against

Parliament to hold it otherwise. Therefore, it is but proper that, ultimately, after all the things are considered, the House considers both the points of view and come to a decision as to whether they consider it as an obstacle for the introduction or consideration of the Bill.

The other matter which had been referred to, not today, but on the previous day, was with regard to clause 17 of the Bill. I think, Mr. Limaye raised that question. His argument was that this is a case of excessive delegation of legislative powers. I would submit that it is not a clause on delegation of powers at all.

Clause 17 reads as follows:—

"Where the Central Government is of the opinion that it is necessary or expedient so to do either in the public interest or having regard to the peculiar circumstances of any case, it may, by notification, and subject to such conditions, if any, as it may specify in the notification—

(a) exempt any establishment or category of employees working in any establishment from the operation of all or any of the provisions of this Act;

(b) exempt, in the case of extreme hardship to any employee, from crediting any amount in relation to such employee to the Additional Wages Deposit Account...."

The point was two-fold, as far as I could understand it. One was, the power of exemption is given to the Government and this power was—I do not remember whether that particular expression was used; what he meant was this—untrammelled; there were no guidelines as to under what circumstances, what peculiar circumstances—for example, this power may be exercised. This would, no doubt, have been very relevant if it was delegation of legislative power. But

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there is a well recognised distinction between delegation of legislative power and what is recognised in law as 'conditional legislation'. I can cite various instances where the clauses so even wider than this, but I am mentioning only two cases because I do not wish to take much time of the House. It has been held—I am talking of the Supreme Court....

SHRI MADHU LIMAYE: I am concerned here with the rules of the House and not with the Supreme Court.

SHRI H. R. GOKHALE: That is completely a different matter. Here I am on the question whether it is delegation of legislative power at all or whether it is only a conditional legislation.

Take, for instance, the bonus case. *Jalan Trading Company* went to the Supreme Court where the provisions of the Bonus Act were challenged; section 38 enabling the Government to exempt establishments from the operation of that Act was challenged in the Supreme Court on the ground that it was excessive delegation of legislative power. The Supreme Court said that it was not a case of excessive delegation of legislative power but it was a case of conditional legislation.

15 hrs.

Another instance that I would cite is the Bombay Prohibition Act. In the Bombay case which ultimately went to the Supreme Court, the Supreme Court upheld the Bombay view. The clause was very wide. I would read out the clause to make my point:

"Notwithstanding anything contained in this Act or the rules made thereunder, the State Government may be general or special order exempt any person or institution or any class of persons or institutions from all or any of the provisions of this Act or from all or any of the rules or regulations or orders made

thereunder or from all or any of the conditions of any licence, permit, pass or authorisation granted thereunder, under such conditions as it may impose."

I cannot visualise anything wider than this, whereby by way of conditional legislation, power has been given to the Government to exempt certain categories of persons, not to make the Act applicable to certain areas, to extend it to certain areas and to grant exemptions and so on. This was challenged in *Bulsara's* case in the Bombay High Court and the challenge did not succeed and the Supreme Court upheld the judgment saying that it was a valid clause because it was not a case of excessive delegation. If authorities are needed, I can refer to them.

Only one more and that is in *Globe Theatres* case where the Madras High Court ruled on Section 13 of the *Madras Buildings (Lease and Rent Control) Act, 1949*:

"Notwithstanding anything contained in this Act, the State Government may, by notification in the *Fort St. George Gazette*, exempt any building or class of buildings from all or any of the provisions of this Act...."

I cannot visualise anything which did not contain a guideline anything more than this. Yet it was upheld even by the Supreme Court. As against that, in the present provision, there is some guideline. It is not as if there is no guideline at all. First of all, there is the guideline of public interest. It is a well-recognised guideline. The second one is the peculiar circumstances which has also been held following the doctrine accepted in the American courts that even the legislature in certain matters cannot visualise all the circumstances. Therefore, it has the power to make provision as and when circumstances arise. So the power is given to legis-

late and to frame rules so that as and when circumstances which cannot be foreseen arise, the law can be made applicable or exemption can be granted from the application of the law.

Here, what I was submitting for the consideration of the House is that in our view in clause 17 there are some guidelines. Public interest is a guideline and secondly, the peculiar circumstances which may appear. Now, I agree if, for example, under this Act the Government acts later on and exempts certain categories of employees say in a particular area and suppose it is sought to be discriminated or suppose it is arbitrary or capricious, nobody can say that that cannot be challenged, but the power given here at that time cannot be challenged. It is a power which is well-recognised. I have a very long list made out and I want to mention only some because I do not want to take the time of the House, where such power has been given to the executive for granting exemption.

I would only point out the general power of exemptions contained in section 12 of the Petroleum Act, 1934. I am talking about the Central Acts. It says:

"The Central Government may, by notification in the Official Gazette exempt any petroleum specified in the notification from all or any of the provisions of this Chapter."

Then, section 14 of the Industrial Employment (Standing Orders) Act, 1946 says:

"The appropriate Government may, by notification in the Official Gazette exempt, conditionally or unconditionally, any industrial establishment or class of industrial establishments from all or any of the provisions of this Act."

Then, there is the Weekly Holidays Act. There is also the Minimum Wages Act. I have given the Madras Rent Control Act. There are a large

number of central legislations where such power is found. I have mentioned two instances where such power was challenged and the challenge did not succeed and the provisions were upheld as fully constitutional because it is wrong to believe that they were cases of delegated legislation. If the legislature abrogates its own functions altogether and says, 'I will not legislate whatever be my intention but I may ask somebody else to legislate.', then, of course, it is a case of excessive delegation of legislative power. But when the legislature legislates on a certain matter and then says by way of conditional legislation that such and such authority, in this case, may be Government or some other authority, will decide when the law will be extended, where it will be extended, where it will be exempted and what are the categories to which it will apply and what are the categories to which it will not apply, that cannot be, in my view, any excessive delegation of legislative power. I am not making it exhaustive, it is only illustrative. Therefore, my submission is that the argument that this was an excessive delegation of legislative power and, therefore, clause 17 is bad, in my respectful submission, is not correct.

These were the main points that were raised

SHRI DINESH CHANDRA GO-SWAMI: What about Article 31(1)?

SHRI H. R. GOKHALE: I thank him for reminding me. I think it is Shri Somnath Chatterjee who raised it. He said that money is property. I do not want to make any quarrel with the proposition for the purposes of this debate that money is property. I will assume that money is property. Why to go into the theoretical aspect of money being property at this stage? But the whole argument was that if money is property, on the assumption that money is property, Art. 31(1) is attracted and 31(2) is also attracted and basis of this argument was that 31 (2) is attracted because 31 (1) says

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that nobody can be deprived of his property without the authority of the law. I fully agree that the extent the employees are not permitted the use of their money which I assume is property, for a limited period there is deprivation, but it is not without the authority of law. Therefore, Article 31(1) would not be vitiated and the second thing, I think it was also said by Shri Chatterjee that you have to test it on the anvil of reasonableness under Art. 19 with regard to the question of possession and deprivation of property. This question was examined at that time. The then Attorney-General stated this . . .

SHRI N. K. P. SALVE: He did not put it on the application of Fundamental rights.

SHRI H. R. GOKHALE: Then I need not deal with it. There is no question of acquisition here. Article 31(2) does not arise. There is no acquisition. Acquisition proceeds when you divest the title of the interest to the property and provide for investing it in the State. When we acquire property the title and ownership of that person is lost and it vests in the Government. In the present legislation the title is not lost. The title continues to belong to the employee and he is entitled to recover when the time comes. He gets quite a high rate of interest on return, that is 2½ per cent more than the bank rate. Therefore, it is not a case of acquisition. It would be at the most, as has been pointed out, be a case of compulsory loan or compulsory borrowing which power is inherent with reference to Entry 97, residuary power, and under Article 248 of the Constitution. That is the only point which I wanted to submit. Thank you.

SHRI SHYAMNANDAN MISHRA: The Hon'ble Law Minister relies on two things. These are Entry 20 in the concurrent list and Entry 97 in Union List. Entry 97 says, any other matter

not enumerated in List 2 or list 3. But these are specifically enumerated.

SHRI H. R. GOKHALE: I have dealt with them.

SHRI SHYAMNANDAN MISHRA: I know you will rely only upon your majority. These items are enumerated specifically in List 2. He cannot rely therefore on this Item 97 of the Union List. The Hon'ble Law Minister said that he was competently advised by the Attorney-General to take recourse to item 20. I wonder how economic and social planning could be used as an argument for making a non-sense of State's powers. Even the Planning Commission is not an executive body.

SHRI N. K. P. SALVE: What he said was, this compulsory deposit scheme is covered by Entry 20 in the Concurrent list and if not it is completely Covered by 97.

SHRI SHYAMNANDAN MISHRA: What I am saying is this. Under the huge umbrella of economic and social planning all powers of the States cannot be wiped out. Now, planning is the main responsibility of the Planning Commission. Yet, The Planning Commission does not happen to be an executive organ. This is my point.

श्री मन्त्री लिख्यते: उपाध्यक्ष महोदय, अगर मन्त्री महोदय थोड़ी देर रुकेंगे तो बहुत ही मुक्तसर में मैं अपनी बात कहूँगा। ऐसा लगता है की मन्त्री महोदय और कांग्रेसों मित्त आज फिशिंग एक्सपेडिशन पर हैं, सबिधाम के सेविय शब्दुल में जो जो किमिन्न एन्टीज हैं वह एक के बाद एक वे कोट करते जा रहे हैं। इस में 97 भी है और 20 भी है इन्होंने जो निर्णय सुप्रीम कोर्ट का इस सदन के सामने रखे उसी में कानकारिंग ओपीनियन हिदायतुल्ला की है, फिशिंग एक्सपेडिशन के बारे में वे क्या कहते हैं वह ध्यान में रखने लायक है। वे कहते हैं :

I agree that this petition should be dismissed with costs. I agree generally with the reasons given by Mr Shah but I wish to say that I do not rest my decision on Entry 97 of the List I.

आज जो कानकरिंग है वह कल सुप्रीम कोर्ट का निर्णय हो सकता है इसलिए, उच्च के अपील को तो मीट करना चाहिए। अमेरिकन सुप्रीम कोर्ट ने जो कुछ निर्णय दिया है उस में माइनारिटी ओपीनियन साइट की है जो कि बार में मेजरिटी ओपीनियन भी हो सकती है। तो जो दलील मैं उच्च का जवाब दिया जाये। हिदायतुल्ला साहब कहते हैं ।

"It was argued that Entry No. 97 of List I must, in any event, cover this tax even if the Entry relative to income-tax was inadequate to cover it. The very frequent reliance on Entry No. 97 makes me say these few words."

बार बार जो 97 का ये आधार ले रहे हैं, वह कह रहे हैं। ये 97 का आधार नहीं ले सकते हैं।

"That Entry no doubt confers residuary powers of registration or taxation, but it is not an Entry to avoid a discussion as to the nature of the law or of a tax with a view to determining the precise Entry under which it can come. Before recourse can be had to Entry No. 97, it must be found as a fact that there is no entry in any of the three Lists under which the impugned Legislation can come."

उन का कहना बिल्कुल कामनसेंस को जानने वाला है कि तीनों सूचियों को देखने के बाद जब तक आप इस मतीजे पर नहीं पहुँचते कि 97 के अलावा कोई धारा नहीं है तभी

जा कर यह किया जा सकता है। सब से पहले मैं सवाल उठाना चाहता हूँ वह जिस का इन्होंने कोई जवाब नहीं दिया है। मजदूरों का अतिरिक्त वेतन या अतिरिक्त बोनस या दूसरे जो उनके एमाल्युमेंट्स हैं वे आप टैक्स के नाम पर लेना चाहते हैं या बारोइज के नाम पर लेना चाहते हैं? इस का आप खुलासा करें।

चूँकि यह वेतनों का सवाल है इसलिए लोकल आथारिटी के निर्माण वाली जो पांचवी एंटरी है उस के तहत वेतन, बोनस आदि का सवाल आता है। मैं आप को ब्रम्बई म्युनिसिपल एक्ट दिखा सकता हूँ। क्या म्युनिसिपलिटिज को यह अधिकार नहीं दिया गया है कि वे मजदूरों के वेतन निर्धारित करें। अगर वह अधिकार लोकल बाडीज को है तो आप जब मजदूरों के वेतन के एक हिस्से पर डाका डालते हैं तब क्या उस से एंटरी 5 के साथ उसका टकराव नहीं होता है? इस का कोई जवाब नहीं आया है ?

41 एंटरी के बारे में जो राज्य सरकारों के अधीन कर्मचारी हैं उन के वेतन आदि के बारे में निर्णय करने का अधिकार राज्य सरकारों का है। इस के ऊपर भी आपने डाका डाला है और किस एंटरी के तहत, इस के बारे में भी आपका दिमाग साफ नहीं है

SHRI KARTIK ORAON (Lohardaga): I rise on a point of order. What about the word used 'daka'? This is a dacoity. This money is not being taken forcibly from any person or not even without the knowledge of that person. Therefore, this is not daka. Government is a bailee and not even a part owner. It is not converting the same to the use of any person other than the owner. That is why this is not daka.

श्री मधु लिमये : जहां तक सोशल और इकोनोमिक प्लानिंग का सवाल है, इस से उस का कोई सम्बन्ध नहीं है। क्या इस से आर्थिक विकास होने वाला है। इस साल खती का उत्पादन पांच प्रतिशत घटने वाला है। इन्होंने औद्योगीकरण के बारे में खुद कहा है

The prospects of Industrial development are uncertain.

यह इन्होंने सप्लीमेंटरी बजट में कहा है। तो आर्थिक विकास वगेरह कुछ नहीं है। राज्य सरकारों, लोकल अथॉरिटी आदि के जो कर्मचारी हैं उन के वेतनों के ऊपर डाका डालने का यह विशुद्ध प्रयास है। जब इसको कानून बनाने का ही अधिकार नहीं है तो राज्य सरकार के ऊपर खर्चा लादने का कहां से अधिकार आया? क्रिमिनल प्रोसीजर कोड में या इस तरह के किसी नए कानून में अपराधों की जांच करने के लिए या अपराधियों को सजा दिलाने के लिए कुछ खर्चा करना पड़ेगा तो उस की चर्चा मैं नहीं कर रहा हूँ। आपको चूँकि क्यों वे कानून आप बना सकते हैं! यह कानून बनाने का अधिकार नहीं है इसलिए संविधान की धारा 203, 204 और 205 का उल्लंघन हुआ है।

डलीगटिड लेजिस्लेशन के बारे में मैंने जो कुछ कहना चाहा था उस को कानून मंत्री ने तोड़ मरोड़ कर पेश किया है। मैं इलीगलिटी की चर्चा नहीं कर रहा था। कानून मंत्री को मालुम होना चाहिए कि सबअडिनेट लेजिस्लेशन के ऊपर विचार करने के लिए हमारी कमेटी है और इस कमेटी के सामने ये मामले जायें इसलिए आप को देना पड़ता है अपने ममोरेंडम में किन किन धाराओं के तहत इस तरह के अधिकार आप को दिए गए हैं। चाहे डलीगटिड लेजिस्लेशन की बात आप करें य कडीशनल लेजिस्लेशन की करें, जरूर कुछ तो नोटिफिकेशन निकलेगा, आर्डर निकलेगा। क्लॉज 17 के तहत जो भी कार्यवाई होगी उसके ऊपर निगरानी रखने का अधिकार हमारी

सबअडिनेट लेजिस्लेशन कमेटी को मिलना चाहिये। यह मेरा कहना है और इस के बारे में भी आप को आदेश देना चाहिये।

मेरे और आक्षेप हैं। इन पर रूलिंग आने के बाद मैं उनको उठाऊंगा। वे बिल्कुल अलग हैं लेजिस्लेटिव कम्पीटेंस से उस का कोई सम्बन्ध नहीं है।

श्री अटल बिहारी वाजपेयी : इस विधेयक के बारे में इन्होंने वर्तमान एटर्नी जनरल की राय ली है यदि हां तो वह क्या है ?

MR. DEPUTY SPEAKER: If Mr. Limaye does not proceed with his speech, I would take it he has concluded.

श्री मधु लिमये : इस के ऊपर मैंने खतम किया।

SHRI C. M. STEPHEN (Muvattupuzha): Sir, I would not like to take much of the time of the House. The question for consideration is extremely limited. The only thing we have to consider at this stage is whether under the proviso 272 there is a violation or a trasgression of the powers vested in the State legislature. My submission is burden is heavily on the part of those who plead that the Parliament has no jurisdiction. They will have to prove that this particular piece of legislation comes under any one of the entries under list No. 2. If it comes under list No. 3 then this Parliament has got jurisdiction. If it does not come under list No. 2 then also this Parliament has got jurisdiction under Entry No. 97. The two entries they are relying on are Entry No. 5 and Entry No. 41.

Entry 5 in List II has been referred to. It reads thus: 'Local government'. But it does not stop with that. It further says:

"that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local-self-government or village administration."

So, what exactly is meant is completely clarified by the words following the phrase 'local government' So, it has nothing to do with salaries etc. Entry 41 says:

"State public services; State Public Service Commission."

The entry immediately preceding that, namely entry 40 reads:

"Salaries and allowance of Ministers for the State."

Entry 38 reads:

"Salaries and allowance of members of the Legislature of the State, of the Speaker..."

Therefore, where it is a question of the salaries, remuneration and all that of the employees, they would have been specifically mentioned. Where the Constitution-makers had in their view this particular aspect of the fixation of salaries, regulation of salaries and all that, they had specifically mentioned it in the Constitution in the respective entries. Here, they have only mentioned "State public services; "State Public Service Commission." So, my humble submission is that not a single word of this legislation would come under any of those two entries.

No other entry has been pointed out or even hinted at. So, so long as it has not been proved to the satisfaction of the House that this legislation would come under any one of the entries in List II, under the residuary power or jurisdiction of Parliament, this Parliament has certainly got the jurisdiction to take this matter into consideration.

Then again I do completely support Mr Goswami who had pointed out that it would come under entry 20 of List III. So, we need not go into that question. Entry 97 will take care of it.

The Supreme Court ruling which has been quoted here has completely established the case. Justice Hidayatullah, supporting the judgment, put forth another dimension to the whole thing. He said, after all, on all income a certain deduction and deposit had been ordered. He was of the view that could be classed as a tax on income, and the mere fact that the money would have to be returned with interest would not denude it of its character as a tax coming: under that particular entry in List I; therefore, he said that he would support the measure not under entry 97 but as a tax on income, and on that ground he said that particular legislation was particularly within the competence of Parliament.

The legislation that we are discussing is certainly comparable to the legislation that was there before. The only difference is that whereas it was a compulsory deposit which had to be voluntarily done on that occasion here it has got to be deducted and deposited with the nominated authority. Deduction is contemplated under the Income-tax Act. My hon. friend H. N. Mukherjee was asking whether the State Government would not incur an expenditure as a result of this. I would submit that under the Income-tax Act, if a person came within the taxable bracket, the deduction will have to be effectuated and the money will have to be paid. That would not make Parliament any the less competent to effect rate that legislation. All that has been done is that out of the income, with certain limits and by a particular standard, an amount is ordered to be deposited. That comes perfectly within List I both under the residuary jurisdiction and also as a tax on income, going by the view

[Shri C. M. Stephen]

of Mr. Justice Hidayatullah in the Supreme Court judgment that has already been referred to here.

The question is: What is the pith and substance? The question is how to handle a particular income. Income is the basic thing. Income other-wise than agricultural income is certainly under List I and comes within the purview of Parliament. This is so clear a position, upheld by Parliament, upheld by the Supreme Court and supported by the Attorney-General at that time who addressed Parliament. So, everybody has supported this completely. My submission, therefore, is that in these circumstances, to prolong the discussion is an exercise in futility. It is so clear a position that I submit that this Bill must be permitted to go through.

Rule 72 is perfectly clear. We are now only at the stage of the hon. Minister's asking for the leave of the House. Leave has been asked for, and the only way to decide it is for the House to decide it, and no question of ruling comes in here at all.

When the question of legislative competence arises, we have got the jurisdiction to go into all these matters, and you may give full opportunity for a full discussion. That right has been given. But the final decision has to be found under rule 72 of the Rules of Procedure.

SHRI S. M. BANERJEE: At the every outset, I rise to oppose the Bill even at the introduction stage because according to me, this Bill is a Bill for a wages freeze. That is why I oppose it legally, socially and morally.

AN HON. MEMBER: Physically?

SHRI S. M. BANERJEE: Physically later on.

MR. DEPUTY-SPEAKER: I hope that is not a threat.

SHRI S. M. BANERJEE: I have heard with rapt attention the arguments advanced by Shri Salve who very well argued certain points though some of his arguments were self-defeating. I also heard the very eloquent argument of my hon. friend, the Law Minister, when he referred to what the Attorney-General had said about the Compulsory Deposit Bill when it was introduced in the House. I happened to be a member then, and I know only the point of legislative competence was there. But when we argued that you are depriving the employee—it is a question of deprivation—the Attorney-General, Shri Daph-tary said this was not deprivation, but this was a reasonable restriction. And he defined reasonable restriction: we are not depriving any government or other employee; Government has every right to place a reasonable restriction. They wanted to rob or pickpocket the government and other employees in the name of reasonable restriction. 'You are left with liquid money in the form of DR or wage increase. You do not know to spend it. You will spend too much. We as your guardian want to place some reasonable restriction on you to curb inflation'. At that time, the then Finance Minister did not much use the word 'inflation'; it was in the name of boosting the economy, for the success of the Plan. This time it is to fight inflation. There is hardly any difference.

I would invite your attention to page 2. What are the provisions?

"any increase in wages sanctioned in pursuance of the recommendations made (a) by the third Central Pay Commission, (b) before the appointed day, by any Pay Commission appointed by a State Government, in relation to the employees of that Government."

Many State Governments have appointed Pay Commissions and they have submitted reports. Those reports are likely to be implemented now. Before that could be done fully and finally, this will become an Act

and they will deduct those wages according to the various provisions of this Bill.

Then (c):

by any committee constituted before the appointed day by Parliament, Supreme Court or any High Court in relation to any employee of Parliament, Supreme Court, High Court, as the case may be".

The hon. Speaker appointed a committee in this House to deal with the question of the wages and service conditions of the employees working in this House. Then we raised certain questions about those employees. We have been prohibited from doing so; at least this is what the hon. Speaker said: 'For God's sake, spare the Speaker'. I am sorry he is not here. The Deputy-Speaker is here. They do not want to spare him....

THE MINISTER OF FINANCE
(SHRI YASHWANTRAO CHAVAN)
You have not understood the clause. These are some exemptions given.

SHRI S. M. BANERJEE: That will come later.

MR. DEPUTY-SPEAKER: I have never asked to be spared.

SHRI S. M. BANERJEE: I will only make this request. This is a simple wage-freeze Bill which is being brought because of the bankrupt policies of the Government. They want to come under the shelter of this. See the statement of object and reasons. I was surprised to read it.

"Controlling inflation is today the single most important task facing this country".

After 27 years of freedom, they have realised it now. But who brought the country's economy to shambles.

If the Speaker cannot decide about the legislative competence of this House to enact this Bill, why not refer this matter to the Supreme Court for its opinion? For instance the question whether Presidential election can take place when there was no Assembly in Gujarat was referred to the Supreme Court.

MR. DEPUTY-SPEAKER: That was done by the President himself.

SHRI S. M. BANERJEE: Then there are instances where the Attorney General was summoned to this House. Why can't this be done in this case? I have already given notice of a motion that this matter should be referred to the Supreme Court whether this legislation is actually not against the interests of the employees and against the rights of the States. There are various corporations under various political parties. What will happen if they resist this legislation? Are you going to force the municipalities and corporations or local bodies to implement a thing which is the result of the sinister design of this Government cover up its failures?

Please give a ruling which will go down in the history of Parliament. You kindly put my motion for referring this to Supreme Court to the vote of the House. Let this country know that a motion for obtaining the opinion of the Supreme Court was defeated by the brute majority of the ruling party.

SHRI P. G. MAVALANKAR (Ahmedabad): Sir, the Law Minister's explanation is far from satisfactory and even less convincing. While discussing the legislative competence of this House, I want to draw attention to an anomaly. In Gujarat, a pay commission has been appointed under the chairmanship of Justice Desai, which it is reported, will give its report sometime in October. In between, here is this legislation which has come from the Centre. In the name of economic development, they

[Shri P. G. Mavalankar]

are trying to stangulate the States and the wage-earners. Will the same rule apply to the State pay commissions which applies to the Central pay commission and will their recommendations be exempted?

SHRI YASHWANTRAO CHAVAN: Before you start opposing this Bill, or consider the merits of the Bill, I would have thought that you would have read the Bill completely. I was rather surprised to listen even to Shri Banerjee. Because, if you see clause 2 (c) it says:

"but does not include....

(v) any increase in wages sanctioned in pursuance of the recommendations made—

- (a) by the Third Central Pay Commission;
- (b) before the appointed day, by any Pay Commission appointed by a State Government, in relation to the employees of that Government;
- (c) by any committee constituted, before the appointed day, by Parliament, Supreme Court or any High Court in relation to any employee of Parliament, Supreme Court or High Court, as the case may be."

These are simple things. You do not try to read the Bill and then oppose the Bill. That is the tragedy of it.

SHRI P. G. MAVALANKAR: I am obliged to the Minister for his explanation. I was illustrating that the legislation which you are seeking to introduce is coming in the way of the rights of the States. Therefore, the question is whether we are competent to do it. Even assuming that the solution suggested is good, can you thrust it on the States or the local authorities? Have you got that power? If it is a pure taxation proposal, I

concede that the Union Government have a right to do it. But here you are regulating certain things in the interest of economic development, which really means national economic crisis. Then don't you say national or financial emergency and take powers? Now, under this blanket phrase "social and economic planning", to which the Law Minister made a reference, can you do anything and everything merely because in the Centre you have got two-thirds majority and, therefore, you can amend even the Constitution?

I am not bothered about the goodness or badness of the legislation. If you are doing something with regard to taxation proposals, it is all right. But here you are doing something in the name of social and economic planning and development.

Our Constitution has undoubtedly envisaged a federal scheme wherein the States have certain rights. Shri Vajpayee referred to the phrase "Vikendrit". Under our Constitution it is a federation or a quasi-federation. Even so our State Governments are not subordinate governments; they are coordinate authorities in their respective fields. In their fields they are completely free to do as they like. It is not that one is superior and another is subordinate. If the State Governments are not subordinate or servile governments, how can you do this?

Therefore, when constitutional questions are involved, where questions of States' rights or State autonomy is involved, I would like the Law Minister to assure us that the Government have brought this Bill after having consulted the Attorney-General. Since he has not done it, let us have the privilege of listening to the Attorney-General on the floor of the House. Let us invite him and let us hear his independent view.

The question is not whether a particular measure of the Government is right or wrong. But, in order to meet a

particular economic difficulty, let us not do things which are not within the constitutional powers of this House. If you do that, even if the emergency is very grave, you are attacking the foundations of the Constitution, which are very well laid down, where the State Governments are coordinate authorities and not subordinate on subservient authorities.

SHRI YASHWANTRAO CHAVAN: About the legislative competence and constitutional points raised by the hon. Member, all the points have been very ably answered by my colleague, the Law Minister and also by some of the Members of my party on this side of the House.

The only point that was raised besides constitutional points, was about the question of excessive delegation in clause 17 of the Bill to which also the Law Minister has given a very extensive reply. Clause 17 deals with the exemption given under the law for the moment. It does not give any delegated powers as such. He, therefore, tried to describe it as a conditional law, not as a delegated law. These were the basic points raised at this stage and, I think, they have been ably answered.

In addition to that, I may say, this is not an occasion, this is not the time, to take the view on the constitutionality or the legality of the things....(Interruptions) As a matter of fact, we are here for discussing matters which we discussed. We are here for deciding matters. I am only trying to point out the conventions of this House. I am one of the conventions of the House. I am not expressing only my views on this matter. Therefore, I suggest that we proceed with the Bill.

MR. DEPUTY-SPEAKER: Besides regulating and guiding the proceedings of the House, I think, the important duty of the Chair is to act as a catal-

yst for the formulation of thoughts and ideas. I think, this debate has served a very useful purpose. As Mr. Stephen said, very rightly, it is not the duty of the Chair to pronounce on the legislative competence; it is the House to decide it after it has heard various opinions on it.

Now, before I put the question to the House....

SHRI ATAL BIHARI VAJPAYEE: What about my motion?

SHRI SHYAMNANDAN MISHRA: Why does the Chair often tell us, "You don't speak about the subject that lies in the States' sphere"?

MR. DEPUTY-SPEAKER: Specifically because of that I allowed this discussion. Everybody had a say on it.

Before I put the question to the House, I must say, in all fairness to Mr. Vajpayee and Mr. Banerjee, that they have given notices of two motions. Mr. Vajpayee's motion is to call the Attorney-General to give his opinion on the Bill in this House. Although I personally feel, after hearing the arguments, that there is hardly any necessity for the Attorney-General to come here--that is my personal opinion.....

SHRI ATAL BIHARI VAJPAYEE: Why was the Attorney-General not consulted by the Government?

MR. DEPUTY-SPEAKER: I do not know.

SHRI ATAL BIHARI VAJPAYEE: The Law Minister quoted the opinion of the ex-Attorney-General. But the present Attorney-General was not consulted.

SHRI SHYAMNANDAN MISHRA: Only one humble submission, a point of order. Don't you think that some of the points that have been raised by us have not been met. I ask you

(Shri Shyamnandan Mishra.)

specifically: Have they met all the points that we have raised? If they have not met all the points that we have raised, then we have to have the opinion of the Attorney-General. I want your guidance in the matter—Why is the Attorney-General remaining Pardahnasin? Why is the Attorney-General not being made available to us? Should it be left to the vast majority on the other side decide whether the Attorney-General should be made available to the House or not? Should it not be the House or not? to make the Attorney-General available to us, to assist us in sorting out the complex legal issues which confront us? This is my point of order to which you should be pleased to address yourself.

MR. DEPUTY-SPEAKER: In the first place, whether the points raised by the various members have been adequately or effectively answered by the Ministers, it is for the House to decide.

SHRI SHYAMNANDAN MISHRA: No. It is for the Chair to decide. The Chair is the guardian.

MR. DEPUTY-SPEAKER: I am here to guide the proceedings.

SHRI ATAL BIHARI VAJPAYEE: Is it to be decided by majority?

MR. DEPUTY-SPEAKER: I think, that is the Parliamentary practice. Do not give more powers to the Chair than what should be given, and do not encourage the Chair also to do that. Now we have had a debate.

SHRI SHYAMNANDAN MISHRA: Then we can put a computer there.

MR. DEPUTY-SPEAKER: I am here to guide. The Chair should be a sensitive instrument. When Shri Somnath Chatterjee raised all these legal and Constitutional questions, I saw that there was some cogency in it and I thought that the House should have the opportunity to discuss it. It is necessary also for the country to

hear the various view-points why this Bill has been brought forward. I think, we have had this discussion enough. But it is not for the Chair here to pronounce what is right and what is wrong. I am only to give you this opportunity.

SHRI ATAL BIHARI VAJPAYEE: You can advise the Government to call the Attorney-General. That is within your powers.

MR. DEPUTY-SPEAKER: I will come to that. Mr. Mishra has referred to certain quotations made from the opinion of the Attorney-General. But those were opinions which were already given under certain circumstances. They can be quoted to help us in the formulation of opinion. The question now is whether in this particular instance the opinion of the Attorney-General is needed or not. Now Mr. Vajpayee has come with a motion before the House. I will accept this motion because I think it is quite proper and, therefore, it is for the House to decide.

About the motion given notice of by Shri S. M. Banerjee, I cannot accept because this is within the competence of the President. It is for the President to refer to the Supreme Court to ask for opinion and not for this House.

SHRI S. M. BANERJEE: Then I would change the wording as: "This House requests the Government."

MR. DEPUTY-SPEAKER: The Constitution is very clear on this.

The President, in his opinion, if he thinks that he should seek the opinion of the Supreme Court, can do it.

Therefore, I admit the motion given notice of by Mr. Vajpayee. He can move it.

श्री अटल बिहारी वाजपेयी : अध्यक्ष जी, मुझे एक बात कहनी है। एटार्नी जनरल के बुलाने का मामला कोई पार्टी का मामला नहीं है। मैं इस मीशन को पेश करूँ और आप उसे बहुमत से अस्वीकार कर दें—यह कोई अच्छी बात नहीं होगी। यह बात बोट से तय नहीं होनी चाहिए। अगर ला-मिनिस्टर यह कह देते कि वर्तमान एटार्नी जनरल को कन्सल्ट किया है

एक माननीय सदस्य : क्यों ?

श्री अटल बिहारी वाजपेयी : एटार्नी जनरल किस लिये हैं ? अगर किसी बिल की बंधानिकता को चुनौती दी जाती है और आप उस का फंसला बहुमत से करना चाहते हैं, तब बहुमत तो इन के साथ है। जब तक सरकार एटार्नी जनरल को बुलाने का फंसला नहीं करेगा, तब तक एटार्नी जनरल सदन में सलाह देने के लिए नहीं आ सकते।

SHRI B. V. NAIK (Kanara): I want to make one point....

MR. DEPUTY-SPEAKER: On what?

SHRI B. V. NAIK: On the same question in which you are thinking of calling the Attorney-General. Kindly go through Entry 43 of the Concurrent List which says, 'Recovery in a State of claims in respect of taxes and other public demands . . .' That is in Concurrent List.

MR. DEPUTY-SPEAKER: You are going back.

SHRI B. V. NAIK: What I am trying to submit is that Shri Madhu Limaye has made a very valid point. It is a public demand . . .

MR. DEPUTY-SPEAKER: He does not seem to know what was the point raised.

My job here is only to admit this motion of Shri Vajpayee . . . (Interruptions). I can admit it. I can admit notice of any motion. What do you want to be done?

SHRI SHYAMNANDAN MISHRA: Such a matter should not be subject to voting. Then, my submission would be that when some complex Legal confront the House, then it should be the concern of everybody in the first instance and ultimately of the Chair, to assist the House by an expert legal advice to sort out these issues. It should not be subject to any voting. Please do not take every decision by physical forec of numbers.

SHRI C. M. STEPHEN: Under what Article you have the competence to summon the Attorney-General over here?

SHRI SHYAMNANDAN MISHRA: I will cite Mr. Setalvad on the subject.

SHRI C. M. STEPHEN: Article 88 says:

"Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote."

My submission is that when Mr. Mishra asked for a particular step whereby the Attorney-General could be summoned over here, there must be some provision under which it can be done. I am not aware of that provision.

MR. DEPUTY-SPEAKER: I will tell you.

SHRI S. M. BANERJEE: You are a new Member.

MR. DEPUTY SPEAKER: As far as I understand Mr. Mishra, he is making

(Mr. Deputy-Speaker.)

a very fervent appeal. That is all that he has done. To clear your doubt as to whether and when the Attorney-General can be asked, there are well laid procedures and these have been resorted to in this House on many a occasion. I am reading from this Book on *Practice and Procedure of Parliament* on page 132.

"When the attendance of the Attorney-General is considered necessary . . .

in the House, if the House considers necessary,

"... his presence is generally arranged by the Government...."

That is No. 1 and they have given here the instances when this was done....

SHRI C. M. STEPHEN: That is all right.

MR. DEPUTY SPEAKER: Then it says:

"However, on three occasions it was arranged for by the Secretariat, the reason being that the Government was not directly involved in these cases; . . .".

In this case also, instances have been given here when it was done.

The position is that the Attorney-General may attend the House on his own. Then, at the request of the Government he can also come and then on a motion passed by the House or in response to a request by the Speaker . . .

SHRI MADHU LIMAYE: You may request him.

SHRI ATAL BIHARI VAJPAYEE: You can call him. Please do not depend on the Government.

SHRI N. K. P. SALVE: On a point of submission. Bringing this motion at this stage is not fair. The other

day when they raised the question of legislative competence, at that stage itself they could have brought this motion.

श्री मधु लिमये : मैंने जबानी कह ही दिया है, वह रिकार्ड पर है। मोशन की क्या जरूरत है ?

SHRI N. K. P. SALVE: Having debated the motion and having enabled the Members of this House to make up their mind on this question, now a motion to be brought abruptly, I submit, is very highly improper and unfair to the House.

SHRI ATAL BIHARI VAJPAYEE: I gave notice of the motion in the morning.

श्री मधु लिमये: यह दिन की प्रोसीडिंग है, मैंने कहा था : क्या एटार्नी जनरल को सदन में नहीं बुलाया जाये।"

श्री अटल बिहारी वाजपेयी : मैंने उस दिन जब स्पीकर साहब बंटे थे, मैंने बात शुरू की तो यह जिक्र किया था कि मेरा मोशन आपके पास पहुंच चुक है, उसमें एटार्नी जनरल को बुलाने की बात है। अब हमारे मित्र, साल्वे साहब कहते हैं कि चर्चा हो गई इसलिए बुलाने की जरूरत नहीं है। पहले इसलिए नहीं बुलाया गया कि चर्चा हो जाये तब विचार करेंगे कि बुलाना है या नहीं। इसलिए मेरा निवेदन है आप उन को बुला लीजिये।

I beg to move:

"That the Attorney-General be summoned in advise the Lok Sabha on the question whether the House is competent to consider the Additional Emoluments (Compulsory Deposit) Bill, 1974 in view of the Constitutional objections raised by Hon. Members."

THE MINISTER OF PARLIAMEN-
TARY AFFAIRS (SHRI K. RAGHU
RAMAIAH): You in your wisdom
ordered for clarification and discussion
in the House, and this has been done
abundantly; we are very much be-
hind schedule. The discussion is over.
May I request you to take a quick
decision and proceed further in the
matter?

SHRI SHYAMNANDAN MISHRA:
What is implied by this word 'quick'
decision? Who is the hon'ble Minister
to advise you to take quite decision?
16 hrs.

MR. DEPUTY-SPEAKER: I will
decide. And, my decision is that I
will put Shri Vajpayee's motion to the
vote of the House.

SHRI S. M. BANERJEE: I have an
amendment.

MR. DEPUTY-SPEAKER: No
amendment now. Order please. The
question is:

"That the Attorney-General be
summoned to advise the Lok Sabha
on the question whether the House
is competent to consider the Addi-
tional Emoluments (Compulsory
Deposit) Bill, 1974 in view of the
Constitutional objections raised by
Hon. Members."

The Lok Sabha divided:
Division No. 6) (16.01 hrs)

AYES

Agarwal, Shri Virendra

Bade, Shri R. V.
Banera, Shri Hamendra Singh
Banerjee, Shri S. M.
Bhagirath Bhanwar, Shri
Bhattacharyya, Shri Dinen
Chavda, Shri K. S.
Chowhan, Shri Bharat Singh
Dandavate, Prof. Madhu
Deshpande, Shrimati Roza
Gowder, Shri J. Matha
Gupta, Shri Indrajit
Joarder, Shri Dinesh
Joshi, Shri Jagannathrao
Kalingarayar, Shri Mohanraj
Kathamuthu, Shri M.
Limaye, Shri Madhu
Manjhi, Shri Bhola
Mavalankar, Shri P. G.
Mishra, Shri Shyamnandan
Modak, Shri Bijoy
Mukerjee, Shri H. N.
Mukherjee, Shri Samar-
Narendra Singh, Shri
Panda, Shri D. K.
Pradhan, Shri Dhan Shah
Saha, Shri Ajit Kumar
Saha, Shri Gadadhar
Sambhali, Shri Ishaque
Sezhiyan, Shri
Sharma, Shri R. R.
Shastri, Shri Ramavtar
Vajpayee, Shri Atal Bihari
Yadav, Shri Shiv Shanker Prasad

NOES

- Ambesh, Shri
 Ansari, Shri Ziaur Rahman
 Bajpai, Shri Vidya Dhar
 Barman, Shri R. N.
 Barua, Shri Bedabrata
 Barupal, Shri Panna Lal
 Bhattacharyya, Shri Chapalendu
 Bist, Shri Narendra Singh
 Brahmanandji, Shri Swami
 Buta Singh, Shri
 Chandrakar, Shri Chandralal
 Chandrashekharappa Veerabasappa,
 Shri T. V.
 Chavan, Shri Yeshwantrao
 Chawla, Shri Amar Nath
 Chhotey Lal, Shri
 Chikkalingaiah, Shri K.
 Choudhary, Shri B. E.
 Daga, Shri M. C.
 Dalbir Singh, Shri
 Darbara Singh, Shri
 Das, Shri Anadi Charan
 Das, Shri Dharnidhar
 Dasappa, Shri Tulsidas
 Daschowdhury, Shri B. K.
 Deshmukh, Shri K. G.
 Dhamankar, Shri
 Dharia, Shri Mohan
 Doda, Shri Hiralal
 Dube, Shri J. P.
 Dumada, Shri L. K.
 Engti, Shri Bisen
 Gandhi, Shrimati Indira
 Ganesh, Shri K. R.
 Gavit, Shri T. H.
 Gopal, Shri K.
 Goswami, Shri Dinesh Chandra
 Hansda, Shri Subodh
 Hari Singh, Shri
 Ishaque, Shri A. K. M.
 Kadam, Shri J. G.
 Kailas, Dr.
 Kagoti, Shri Robin
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Kotoki, Shri Liladhar
 Kureel, Shri B. N.
 Laskar, Shri Nihar
 Malaviya, Shri K. D.
 Mirdha, Shri Nathu Ram
 Mishra, Shri G. S.
 Mohan Swarup, Shri
 Mohapatra, Shri Shyam Sunder
 Murthy, Shri B. S.
 Naik, Shri B. V.
 Negi, Shri Pratap Singh
 Oraon, Shri Kartik
 Oraon, Shri Tuna
 Painuli, Shri Paripoornanand
 Pandey, Shri Damodar
 Pandey, Shri Narsingh Narain
 Panigrahi, Shri Chintamani
 Paokai Haokip, Shri
 Parashar, Prof. Narain Chand
 Pratap Singh Shri
 Patel, Shri Arvind M.
 Patil, Shri Anantaro
 Patil, Shri Krishnarao
 Peje, Shri S. L.
 Radhakrishnan, Shri S.
 Raghu Ramasiah, Shri K.
 Rai, Shrimati Sahodrabai
 Rajdeo Singh, Shri
 Rani Singh Bhai, Shri
 Rao, Shrimati B. Radhabai A.
 Rao, Shri Jagannath
 Rao, Shri Nagawara
 Rao, Shri P. Ankinedu Prasada
 Rao, Shri Rajagopala
 Reddy, Shri P. Ganga
 Reddy, Shri P. Narasimha
 Rohatgi, Shrimati Sushila
 Roy, Shri Bishwanath
 Sadhu Ram, Shri
 Salve, Shri N. K. P.
 Samanta, Shri S. C.

'Sanghi, Shri N. K
 Sangliana, Shri
 'Sarkar, Shri Sakti Kumar
 'Savant, Shri Shankerrae
 'Savitri Shyam, Shrimati
 Shankaranand, Shri B.
 Sharma, Shri Nawal Kishore
 'Shashi Bhushan, Shri
 'Shastri, Shri Sheopujan
 'Shetty, Shri K. K.
 'Shivnath Singh, Shri
 'Singh, Shri Vishwanath Pratap
 Sinha, Shri R. K.
 'Sokhi, Shri Swaran Singh
 'Stephen, Shri C. M.
 'Surendra Pal Singh, Shri
 'Tayyab Hussain, Shri
 'Thakur, Shri Krishnarao
 'Tula Ram, Shri
 'Uikey, Shri M. G.
 'Unnikrishnan, Shri K. P.
 'Vidyalankar, Shri Amarnath
 'Virbhadra Singh, Shri

The Lok Sabha divided.

Division No. 7] *AYES* [16.00 hrs.

Ambesh, Shri
 Ansari, Shri Ziaur Rahman
 Bajpai, Shri Vidya Dhar
 Barman, Shri R. N.
 Barua, Shri Bedabrata
 Barupal, Shri Panna Lal
 Besra, Shri S. C.
 Bhattacharyya, Shri Chapalal
 Bist, Shri Narendra Singh
 Brahmanandji, Shri Swami
 Buta Singh, Shri
 Chandrakar, Shri Chandulal
 Chavan, Shri Yeshwantrao
 Chawla, Shri Amar Nath
 Chhotey Lal, Shri
 Chikkalingaiiah, Shri K.
 Choudhary, Shri B. E.
 Daga, Shri M. C.
 Dalbir Singh, Shri
 Das, Shri Anadi Charan
 Das, Shri Dharnidhar
 Dasappa, Shri Tulsidas
 Daschowdhury, Shri B. K.
 Deo, Shri S. N. Singh
 Deshmukh, Shri K. G.
 Dhamankar, Shri
 Dharia, Shri Mohan
 Doda, Shri Hiralal
 Dube, Shri J. P.
 Dumada, Shri L. K.
 Engti, Shri Biren
 Gandhi, Shrimati Indira
 Ganesh, Shri K. R.
 Gautam, Shri C. D.
 Gavit, Shri T. H.
 Gopal, Shri K.
 Goswami, Shri Dinesh Chandra
 Gotkinde, Shri Annasaheb

MR. DEPUTY-SPEAKER: The result* of the division is:

Ayes: 34, Noss: 108

The motion was negatived.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide, in the interests of national economic development, for the compulsory deposit of additional emoluments and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto."

*Kumari Maniben Patel and Shrimati Parvathi Krishnan also voted for AYES:

- Gowda, Shri Pampa
 Hansda, Shri Subodh
 Hari Singh, Shri
 Ishaque, Shri A. K. M.
 Jadeja, Shri D. P.
 Kadam, Shri J. G.
 Kailas, Dr.
 Kakoti, Shri Robin
 Kavde, Shri B. R.
 Kedar Nath Singh, Shri
 Kotoki, Shri Liladhar
 Kureel, Shri B. N.
 Kushok Bakula, Shri
 Laskar, Shri Nihar
 Malaviya, Shri K. D.
 Mirdha, Shri Nathu Ram
 Mishra, Shri G. S.
 Mohan Swarup, Shri
 Mohapatra, Shri Shyam Sunder
 Murthy, Shri B. S.
 Negi, Shri Pratap Singh
 Oraon, Shri Kartik
 Oraon, Shri Tuna
 Painuli, Shri Paripoornanand
 Pandey, Shri Damodar
 Pandey, Shri Narsingh Narain
 Pandit, Shri S. T.
 Panigrahi, Shri Chintamani
 Paokai Haokip, Shri
 Parashar, Prof. Narain Chand
 Partap Singh Shri
 Patl, Shri Arvind M.
 Patil, Shri Anantrao.
 Patil, Shri Krishnarao
 Peje, Shri S. L.
 Radhakrishnan, Shri S.
 Raghu Ramaiah, Shri K.
 Rai, Shrimati Sahodrabai
 Rajdeo Singh, Shri
 Ram Prakash, Shri
 Ram Singh Bhai, Shri
 Rao, Shrimati B. Radhabai A.
 Rao, Shri Jagannath
 Rao, Shri Nageswara
 Rao, Shri P. Ankineedu Prasada
 Rao, Shri Rajagopala
 Reddy, Shri P. Ganga
 Reddy, Shri P. Narasimha
 Reddy, Shri Sidram
 Rohatgi, Shrimati Sushila
 Roy, Shri Bishwanath
 Sadhu Ram, Shri
 Salve, Shri N. K. P.
 Samanta, Shri S. C.
 Sanghi, Shri N. K.
 Sangliana, Shri
 Sarkar, Shri Sakti Kumar
 Savant, Shri Shankerrao
 Savitri Shyam, Shrimati
 Shankaranand, Shri B.
 Sharma, Shri Nawal Kishore
 Shashi Bhushan, Shri
 Shastri, Shri Sheopujan
 Shetty, Shri K. K.
 Shivnath Singh, Shri
 Singh, Shri Vishwanath Pratap
 Sinha, Shri R. K.
 Sokhi, Shri Swaran Singh
 Stephen, Shri C. M.
 Surendra Pal Singh, Shri
 Tayyab Hussain, Shri
 Thakur, Shri Krishnarao
 Tombi Singh, Shri N.
 Tula Ram, Shri
 Uikey, Shri M. G.
 Unnikrishnan, Shri K. P.
 Vidyalankar, Shri Amarnath
 Vinhadra Singh, Shri
 NOES
 Agarwal, Shri Virendra
 Bade, Shri R. V.
 Banera, Shri Hamendra Singh
 Banerjee, Shri S. M.
 Bhagirath Bhanwar, Shri
 Bhattacharyya, Shri Dinen
 Bhaura, Shri B. S.
 Chavda, Shri K. S.
 Chowhan, Shri Bharat Singh
 Dandavate, Prof. Madhu

337 Addl. Emoluments SRAVANA 28, 1896 (SAKA) Scheme (Income-tax 338-
(Comp. Deposit) (Payers) Bill
Bill

Deshpande, Shrimati Roza
Gowder, Shri J. Matha
Gupta, Shri Indrajit
Huda, Shri Noorul
Joarder, Shri Dinesh
Joshi, Shri Jagannathrao
Kalingarayar, Shri Mohanraj
Kathamuthu, Shri M.
Krishman, Shrimati Parvathi
Limaye, Shri Madhu
Manjhi, Shri Bholu
Mavalankar, Shri P. G.
Mishra, Shri Shyamnandan
Modak, Shri Bijoy
Mukerjee, Shri H. N.
Mukherjee, Shri Samar
Narendra Singh, Shri
Panda, Shri D. K.
Patel, Kumari Maniben
Pradhan, Shri Dhan Shah
Saha, Shri Ajit Kumar
Saha, Shri Gadadhar
Sambhali, Shri Ishaque
Scindia, Shrimati V. R.
Sezhiyan, Shri
Sharma, Shri R. R.
Shastri, Shri Ramavtar
Vajpayee, Shri Atal Bihari
Yadav, Shri G. P.
Yadav, Shri Shiv Shanker Prasad

MR. DEPUTY-SPEAKER: The result of the division is: Ayes 116; Noes 40.

The motion was adopted.

SHRI YESHWANTRAO CHARAN:
Sir, I introduce ** the Bill

16.07 hrs.

STATEMENT RE ADDITIONAL
EMOLUMENTS (COMPULSORY
DEPOSIT) ORDINANCE, 1974.

THE MINISTER OF FINANCE
(SHRI YESHWANTRAO CHAVAN):
I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Additional Emoluments (Compulsory Deposit) Ordinance, 1974, as required under rule 71(1) of the Rules of Procedure and Conduct of Business in Lok Sabha.

COMPULSORY DEPOSIT SCHEME
(INCOME-TAX PAYERS) BILL*

THE MINISTER OF FINANCE
(SHRI YESHWANTRAO CHAVAN):
I beg leave of the House to introduce a Bill to provide, in the interest of national economic development, for compulsory deposit by certain classes of income-tax payers and for the framing of a scheme in relation thereto, and for matters connected therewith or incidental thereto.

MR. DEPUTY-SPEAKER: The question is:

"That leave be granted to introduce a Bill to provide in the interest of national economic development for compulsory deposit by certain classes of income-tax payers and for the framing of a scheme in relation thereto and for matters connected therewith or incidental thereto.

The motion was adopted.

SHRI YASHWANTRAO CHAVAN:
I introduce ** the Bill

*Published in Gazette of India Extraordinary Part-II, section 2 Dated 19-8-74.

** Introduced with the recommendation of the President.
18-8-1974.