

formulate the various suggestions and recommendations and then incorporate them or dovetail them into the fourth Plan Programmes and come to us and say, "Here is our railway fourth Plan. We are prepared to examine it" Unless and until that is done, it is difficult for this House to bestow any attention or give any consideration to that part of the programme.

Why? Because as he himself has stated, the railways will have to provide Rs. 940 crores from its finances. Under the present circumstances, it is a point for examination whether the railways can contribute during the period Rs. 940 crores. If it is not possible, then what are the other suggestions? We will have to consider those things also. I have been urging this point which this Ministry time and again, that the enhanced rate of dividend of six per cent is not fair: that the rate of dividend will have to be reduced. Look at this one point. Assuring that every thing go on as usual, mere fact of the dividend payable to the Central revenues keeps on increasing by Rs. 9 crores to Rs. 10 crores every year. The annual increment to officers and staff increases by another Rs. 5 crores. The Railway Minister would be sitting in that Bench. The increase of Rs. 15 crores every year on the expenditure side of the railways is a must and a fact. How far can we keep on tied to this position?

When I took over, the dividend payable was 142. The next year it was 152; in the other year it was 163.

SHRI NAMBIAR : The truth is coming out. I have been criticising you against the increase. You will have to join hands with the Railway Board and see to it.

SHRI C. M. POONACHA : Mr. Nambiar, you are suffering from shortness of memory. I am sorry, The Railway Convention Committee met in 1965. In 1965, the Committee had stipulated a certain rate of interest that is payable to the central revenues. For 3 years we were governed by the recommendations of that Committee. No body can change the Railway Convention Committee's recommendations as approved by this House. Neither the Finance Ministry

nor the Railway Ministry can change it. Only this House can change it. After seeing the railway finances getting into greater strain, I came before the House for the constitution of a Railway Convention Committee.

MR. DEPUTY SPEAKER : You can resume your speech tomorrow ;

15 31 hrs.

MOTION RE: PROROGATION OF THE HARYANA LEGISLATIVE ASSEMBLY

MR. DEPUTY-SPEAKER : The House now will now take up the debate on the Prorogation of the Haryana Assembly. The dividing line between the prorogation of the Assembly and the adjournment of the Assembly is very thing and I would request members not to tread on the toes of the Haryana Assembly. Now, Mr. Nath Pai.

SHRI TENNETI VISWANATHAM (Visakhapatnam): On a point of order, Sir,

MR. DEPUTY-SPEAKER : There is no matter before the House. I have only called Mr. Nath Pai.

SHRI TENNETI VISWANATHAM : You have already introduced the subject and referred to the dividing line, etc. Therefore, I thought this was the time to raise my point of order. But if you ask me to raise it afterwards, I shall do so.

MR. DEPUTY-SPEAKER : That was my general appeal and it is for the members to accept it or reject it. We do not want to discuss the proceedings of another Assembly just as we do not want any other Assembly to discuss our proceedings. That is why I made that appeal.

SHRI DHIRESWAR KALITA (Gauhati): After admitting the motion, our Speaker has said that we should not discuss the conduct of the Speaker of the Haryana Assembly. Now you have appealed that we should not discuss the proceedings of the Assembly. If we cannot do all that what else have we to say here ?

SHRI RANDHIR SINGH (Rohtak) : On a point of order, Sir, on 27th February, at 12.30, the leader of the House, Mr. Bansi Lal, who is the Chief Minister, made a motion that the House should be adjourned *sine die*.

MR. DEPUTY--SPEAKER : This is no point of order.

SHRI RANDHIR SINGH : There was the decision by the Speaker. There was the motion adopted by the Assembly. This House has no *locus standi* to go into that.

श्री रवि राय (पुरी) : उपाध्यक्ष महोदय, जब आप इजाजत दे चुके हैं, तो फिर प्वाइन्ट ऑफ ऑर्डर किस बात का है। ये आपके फंसले को चुनौती दे रहे हैं।

15.34 hrs.

[MR. SPEAKER *in the Chair*]

SHRI RANDHIR SINGH : Sir, I want your ruling on my point of order, which is very pertinent.

SHRI MANOHARAN (Madras North) : I cannot understand the scope for raising a point of order while there is nothing before the House. so, Sir, ask him to sit down.

SHRI RANDHIR SINGH : Sir, I have raised a point of order and it should be given sympathetic hearing. This is something which concerns 10 million people of my State. In the Haryana Assembly a motion was moved by the Leader of the House, who belongs to my party, and that motion was adopted by the House. That motion is about the adjournment of the Assembly. Any motion which is adopted by the Haryana Assembly, any decision taken by the Speaker on that motion, that cannot be a subject matter of discussion here. Further, prorogation of the House followed in the wake of the decision taken by the Assembly. The Cabinet considered that decision and advised the Governor to prorogue the Assembly, which he did. Any action taken by the Assembly, or the decision given by the Speaker cannot be a subject matter of discussion here in this House. And if you

leave that out, what is the subject left for discussion here ?

श्री अटल बिहारी वाजपेयी : (बलरामपुर) : अध्यक्ष महोदय, आप कृपया देने से पहले हम को सुनें। यह पहला मौका नहीं है जब हम ने राज्य की विधान सभाओं के बारे में चर्चा की है। हम पहले भी स्पीकरों के निर्णयों के बारे में चर्चा कर चुके हैं। इस लिये यह प्वाइन्ट ऑफ ऑर्डर रद्द कर दीजिये और डिबेट को जारी रखिये।

SHRI RANDHIR SINGH : Sir, I do not want his interpretation or interruption. I want your ruling on the point of order which I have raised.

SHRI TENNETI VISWANATHAM : On the substance of the motion no member would disagree. But that does not mean that it could be brought here for discussion. Even a right thing done at the wrong place becomes wrong. Even a right thing taken at the wrong forum becomes wrong. The question of the prorogation of the Haryana Assembly is entirely, not only primarily, a matter pertaining to the Haryana Assembly and its own rights. It is true that Parliament is a sovereign body; but within its own sphere Haryana Assembly is also a supreme body, a sovereign body. So, I do not think we will be setting a right precedent if we have a discussion on this Resolution here. It is not that I disagree with the motion. I entirely agree with the substance of the motion. but, it cannot be brought here because this is not the right forum. We are not a reviewing body, we are not a revising body and we are not an appellate body. Therefore, this cannot be brought here.

SHRI MANOHARAN : So, you want Shri Nath Pai to go to Haryana ?

श्री सूरज भान (अम्बाला) : अध्यक्ष महोदय, मुझे इतना अर्ज करना है कि हरियाणा असेम्बली में ता० 3 नो कान्फीडेंस मोशन के लिये फिक्स की गई थी, लेकिन हमारे गवर्नर ने असेम्बली के सेशन को प्रोरोग कर दिया। अगर असेम्बली का सेशन प्रोरोग न होता और

एडजाने होता तो ता० 3 को प्रसेम्बली बैठ सकती थी। लेकिन चूंकि गवर्नर ने प्रोरोग किया है, यह विद इन रूक है कि हम इसको यहां पर डिस्कस करें। यहां इस पर बहस होनी चाहिये।

SHRI GAJRAJ SINGH RAO (Mahendragarh) : I want to raise a point of order. I wanted to raise it yesterday but I was not allowed to do it. If the records are referred to, you have ruled that there will be a discussion this matter. I want to know under what rule this discussion is being allowed. Is it consistent with the provisions of the Constitution and our Rules of Procedure ? Unless we are told under what rule this is being allowed, we cannot say whether it comes within the ambit of that or not. Because, rules 184 and 193 are two different thing.

SHRI S. KUNDU (Balasore) : Sir, you have admitted the motion and it is printed in the List of Business. The Speaker has rightly or wrongly allowed it and no point of order can be raised on the conduct of the Speaker.

SHRI AMRIT NAHATA (Barmer) : Sir, I disagree with the views of Shri Kundu. There are objections even at the stage of Bills being moved on the ground that this House is not constitutionally or legislatively competent to discuss them. On that very ground I raise my point of order, namely, this House is incompetent to discuss this motion constitutionally and legislatively; this House can not discuss the proceedings of a Legislative Assembly and the decision of a Speaker. You in your wisdom, have directed us not to tread upon the rights of the Assembly or of the Speaker. Shri Kalita rightly asked you as to discuss since there is nothing else to discuss. I, therefore, request you to rule this motion out of order.

SHRI DHIRESWAR KALITA (Gauhati) Sir, when you admitted the motion and today also you appealed to Members not touch upon the Haryana Assembly, the Governor and the Speaker. Then why should you have allowed this short duration discussion ? On what will we speak ? Please give us the guidelines so that we can speak

beyond those points. That is my submission.

श्री मृत्युंजय प्रसाद (महाराजगंज) : अध्यक्ष महोदय, मुझे एक ही बात कहनी है। इस मोशन के शब्द इस प्रकार से हैं :

“This House views with grave concern the prorogation of the Haryana Legislative Assembly”

प्रोरोगेशन पर सारी बहस है न कि लेजिस्लेटिव प्रसेम्बली की कार्यवाही पर। प्रोरोगेशन का काम गवर्नर का था और गवर्नर के काम की प्रालोचना हम कर सकते हैं, करते भी आये हैं। इसलिये इसमें कहीं कोई दोष नहीं आता है।

SHRI SRINIBAS MISRA (Cuttack) : Sir, those who are trying to oppose this discussion have missed the distinction between prorogation and adjournment. Prorogation means the end of a session while adjournment is for time being; the Assembly could meet subsequently because the Speaker could summon the Assembly again. But the Governor interfering and proroguing the Assembly is the subject matter of the discussion here. That comes with in articles 256 and 248 (residuary power). The precedent is that we have discussed all sorts of prorogations. This House has discussed Bengal, Punjab, Bihar. So, why should there be objection to Haryana being discussed now ?

MR. SPEAKER : When the hon. Members raised these points of order, they forget the background of the discussion we had yesterday. I received an adjournment motion for discussing the proceedings of the Assembly, the conduct of the Speaker and a number of other things along with prorogation. I rejected that adjournment motion. Then Mr Nath Pai, Mr. Madhu Limaye and some other hon. Members tried to argue in the House that they were concerned only with the constitutional aspect and that they were not concerned with other things, the proceedings of the Assembly, the decision of the House or the ruling of the Chair or anything else. They questioned the power of prorogation

[Mr. Speaker]

and the Home Minister replied, as you know, on the same lines as I had put before the House. We cannot discuss the proceedings of the Assembly in this House. They are sovereign in their own way. The conduct of the Presiding Officer in a State Legislature cannot be the subject of discussion in this House.

Then, later on, after abandoning all these issues, they questioned the power of prorogation and the Home Minister said that the Governor has to accept the advice for prorogation that comes from the Chief Minister. This is the same view that I hold. I have been there when Haryana and Punjab were together. It will be a woeful day when the Governor has to get instructions for prorogation also from the Centre.

They again came and saw me. I asked them to come and discuss with me. I made it clear to them that the subjects that I had mentioned, the proceedings of the State Assembly, the conduct of the Speaker and also the right of the Chief Minister to give advice to the Governor on prorogation, all these things, could not be brought into discussion in this House.

SHRI DHIRESWAR KALITA : What else remains ?

MR. SPEAKER : I am myself at a loss to understand as to what is left after their accepting this position. They accepted this position. You know last time, when the U. P. matter came up how much struggle I had to make in this House because West Bengal was quoted and I had to bring it down to U. P. in a limited way. And then came up Bihar and other matters. That hangover has come over Haryana because of our past discussions.

Now, after they accepted this position, I thought they would give up the motion. But they still persisted in that. My conditions are still there. Let them find out what is left, any other constitutional aspect of it. I will be very strict in seeing the relevance of it. I leave it to the ability of Mr. Nath Pai as to how he keeps aside all the three things that I have mentioned and goes into only the constitutional aspect of it. Shri Nath Pai.

SHRI GAJRAJ SINGH RAO : Please refer to the record of the proceedings. Under what Rule has this motion been admitted ? Is it Rule 18 ? Then, I have got another point of order. The matter has already been discussed. There was a discussion on the admissibility of the adjournment motion and the matter was discussed. So, it cannot be again discussed under Rule 186 (vi). That is a positive provision in the Rules.

MR. SPEAKER : Mr. Nath Pai, you were used to some other atmosphere also in the past Parliament. You should get used to all this noise and shouting now. We must get used to it; otherwise we cannot function.

SHRI NATH PAI (Rajapur) : I have been hearing for the past 20 minutes. Mr. Speaker, I beg to move :

“ That this House views with grave concern the prorogation of the Haryana Legislative Assembly when a motion of no confidence in the Council of Ministers having been admitted, was pending before the House, as a flagrant violation of the spirit of the Constitution likely to undermine our people's faith in the democratic process.”

Mr. Speaker : I should like to begin by assuring you that it will be my serious and earnest endeavour to confine my submissions to you within the general directives which you have issued and I shall not deviate from those directives except when it becomes absolutely necessary (*Interruptions*) in the larger interests of the nation.

MR. SPEAKER : Also keeping in view the assurance you gave me.

SHRI NATH PAI : Mr. Speaker, the Constitution says that Parliament shall consist of the President and the two Houses. May I here, Sir, bring to your notice, though we are absolutely guided by our own rules, ultimately as you yourself pointed a very interesting ruling given on this matter by the Chairman of the Rajya Sabha who said that we shall have to probe deeply into the adjournment of the Haryana Assembly. I just give you the background.

Having read out my motion, I am going to read out something to you. I hope that the debate will be allowed to proceed in a calm manner, limiting interruptions only when they become inevitable. I don't say, 'Don't interrupt me', but only when you have to. I would like to read here something. "Observing that executive authority was exercised in a manner that was not always in keeping with the constitutional propriety so as to inspire confidence in the people." Now, what I have just read sounds identical with the motion I have just moved. What I have just read is not a motion moved by Mr. Nath Pai, but this happens to be the unanimous resolution adopted by the Conference of the Presiding Officers presided by the then Speaker of the Lok Sabha on 7th April 1968.

I re-read it so that members may catch. What I have moved is identical with the decision taken by the Conference of the Speakers of the State Legislatures presided by the Speaker of Lok Sabha :

"Observing that the executive authority was exercised in a manner that was not always in keeping with the constitutional propriety "

My resolution talks also of the spirit of the Constitution.

"...so as to inspire confidence in the people..." My resolution says that what happened there is likely to undermine our people's confidence in democracy.

Here I should like to bring to the notice of the House, since so much has been said against even the introduction of the motion, another motion which was discussed in this House on 15th November 1957. (Interruptions) I cannot proceed if there is a constant interruption, so close, Dadaji. I am sorry. The motion is :

"That this House disapproves of the action of the Central Government in using the institution of the Governors of States not as instruments for proper functioning of the Constitution, but as agent of the party in power at the Centre as exemplified by current developments in Bihar and West Bengal."

I want to point out that the cardinal issue when I moved that motion on the 15th November 1967, the motion I just submitted for the consideration of the House and the resolution of the Presiding Officers have the same thing, the same concern, the same interest and the same resolve to ensure the functioning of Parliament and also of the State Assemblies in a manner that the spirit of our Constitution is upheld. I will not be going into what transpired on that unfortunate day. Here is a statement which is a public property and which you would allow me to read. (Interruptions) My hon friend, Mr. Randhir Singh, should not get excited. I have very high regard for him and I am glad to say that I was most distressed to hear that his house was burnt down in the Haryana riots. Such are the ways of man. If there is an ardent advocate of the cause of Haryana, it was he and it was his house which was set on fire. I felt deeply distressed. It was very unfortunate. Nobody pleaded Haryana's cause, right or wrong, more than Mr. Randhir Singh. It was I think a very strange kind of justice that his house should have been set on fire. I want to say it because this is an extraordinary thing that the house of a Member of this House was set on fire complete ignoring his record as a champion of the cause of Haryana.

I will now proceed to read from a statement of the Speaker. On what transpired in the House, you have put a ban on that and I cannot go into it. But I certainly can quote what the learned Speaker of the Assembly of Haryana wants us to take note of. The object of his statement was that this House takes note during debate and therefore this statement has been released. I cannot be showing deference to the learned Speaker as not to take note of his statement. This is what the learned Speaker says. I do not want to go into details because those details were given to this House by you day before yesterday. But this is what he said :

"Two motions had come before me; one was the Motion for the Adjournment of the House and another was, the Motion of No Confidence in the Council of Ministers in that State."

[Shri Nath Pai]

Now this is what he says :

"Under the circumstances, he consulted the Institute of Constitutional and Parliamentary Studies."

The learned Home Minister has told us yesterday and I will quote him where he said that all the constitutional authorities are on his side. That was not his position in 1967. In 1967 the position was--I have the debate before me--the Governor was absolutely right in ignoring the advice of a Chief Minister. I want Mr. Chavan to bear this in mind, I am not trying to score a point, because that is an art in which you cannot be beaten by anybody. That I readily concede. But Mr. Chavan is the Home Minister of India. When we are passing through very great crisis the pronouncement he makes are likely to have very far-reaching consequences and even influence. Therefore when he makes statements at critical times he may sometimes forget that he is a congressman, but that he may remember that he is the Home Minister of India whose pronouncements will have far-reaching consequences. In 1967 your position was totally different from the position you thought it fit to adopt day before yesterday. I am coming to my position about this; between the extreme position that the Governor of a State will have unfettered discretion and the other extreme of saying that the Governor of a State shall be rubber-stamp, the Constitution of India envisages that the Governor of a State will be a discerning instrument of the Constitution of India. The Office of Governor has been created not to act as stand-by guest available to any one at any time anywhere to inaugurate maternity homes or to act as chief guest of honour on the annual day of some school. The justification of the Governor's office is this, that he has to be an agent of the Indian constitution, the link between the Union and the State. It is this thing that has to be borne in mind by everyone who talks of the office of the Governor. This is the point which is at the very root of today's debate.

The oath of the office of the Governor is...

"I will faithfully execute the office of the Governor and will, to the best of my ability .."

I am moving for a Constitution amendment for deleting the words 'to the best of'. There is no question of 'to the best of one's ability'. He must uphold, preserve, protect and defend the constitution and the law and devote himself to the service and well being of the People. Now, the later part is not very material. The main part is that 'I will preserve, protect and defend the constitution and the law of India'. This is the oath that the Governor has taken. He has to take such oath before entering the office of Governor.

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN): May I just interrupt for a minute? You said that I had taken certain position in 1967 contrary to what has been taken now. Will you quote me please?

16 hrs.

SHRI NATH PAI: I will. It will be very embarrassing for all of us.

SHRI Y. B. CHAVAN: I would like to know in what context.

SHRI NATH PAI: I have the right of reply.

SHRI Y. B. CHAVAN: Explain all the facts and then quote.

SHRI NATH PAI: That is a fair enough suggestion. Let us have a more decent debate. Shri Chavan was answering two questions that day: the manner of appointment of the Governor and the exercise of the power of the Governor in certain States.

There was the question of the Governor of West Bengal ordering the Assembly to be called ahead of the earlier decision of the Chief Minister and the Council of Ministers. He justified that action of the Governor. Shri Chavan's position was;

"I completely disagree with my friend, Shri Nath Pai. The Governor has the discretion to ignore the advice

of the Chief Minister and call the Assembly".

Shri Dandeker was his lone supporter in the House at that time.

The other question as to who should be appointed Governor. He was at that time proposing to appoint Shri Kanungo as Governor of Bihar. They said that they did not want him. Shri Chavan was saying that this was the prerogative of the Union Government and 'I shall not be deterred'. Basically this was his position.

Now let us see what has happened in the Haryana Assembly.

SHRI Y. B. CHAVAN : Has he quoted me ?

SHRI NATH PAI : I have quoted him. (Interruptions)

SHRI TULSIDAS JADHAV (Baramati) : He has not.

SHRI NATH PAI : Let him not be more loyal than Shri Chavan. I am replying to him. On the 16th November while replying to the debate, Shri Chavan's position was exactly what I have just said. It is in the proceedings of the House.

SHRI MANOHARAN : Let him please read it.

SHRI NATH PAI : I will at the appropriate stage. I do not want to be diverted.

SHRI Y. B. CHAVAN : May I say about my position ? I will repeat what is my position. The Governor is certainly entitled to disregard the advice of a Chief Minister who has lost majority.

SHRI NATH PAI : No, no.

SHRI ATAL BIHARI VAJPAYEE : How does he know ? How did the Haryana Governor know that Shri Bansi Lal has the majority ?

SHRI RANDHIR SINGH : We are 46 out of 79.

SHRI GAJRAJ SINGH RAO : I request that the record may be referred to,

Is he not going beyond what you had allowed ?

SHRI NATH PAI : I do not want to go into the details.

श्री अटल बिहारी वाजपेयी : प्राप रिप्लाय में इसका जवाब दीजिये ।
(Interruptions)

SHRI NATH PAI : I have studied his speech the whole night. I will not be cowed down by the interruption.

Shri Chavan does not say it just once. In his reply on 16th, from col. 1175 onwards, he repeatedly repeats his position. His position has been one in Bengal and another in Haryana day before yesterday. I have the same consistent position. I take the consistent position that the Governor does not have unlimited discretion, nor can the Governor be a rubber stamp. This is a very important distinction.

We have to begin from what happened according to the Speaker. Having admitted two motions, both of which were valid according to the Speaker of the Haryana Assembly, he proceeded to ask the advice of the Institute of Constitutional and Parliamentary Studies. And what was the advice given ?

MR. SPEAKER : I read the Speaker's statement. It is very unfortunate that the Speaker went to the press and that has given you a handle to attack him.

SHRI NATH PAI : I did not. I am quoting him. This is very unfair. I said I was going to quote him.

MR. SPEAKER : What I saw in the press was that the Speaker about six months ago consulted the Institute about such a situation and then he remembered that and utilised his knowledge on this occasion.

SHRI RANDHIR SINGH : I must tell the House that he is the most competent man in the country, a real patriot.

SHRI M. L. SONDHAI (New Delhi) : On a point of order. Is it the spirit of the rules of this House that this House is to be

[Shri M. L. Sondhi]

used to promote a cult of personality ? No individual is too great and has to be brought down wherever he has failed. That is the basis of democracy.

SHRI RANDHIR SINGH : You do not know how intelligent he is, I know.

SHRI NATH PAI : I do not know much about the learned Speaker of the Haryana Assembly. I am prepared to share the enthusiasm of Shri Randhir Singh. Since I do not know, I am prepared to take his word about the competence of the Speaker.

This is what the Speaker disclosed in the statement which has appeared in every daily in Delhi. This is the reply given to him by the Institute of Constitutional and Parliamentary Studies.

MR. SPEAKER : But I again tell you that he did not consult the Institute for giving this ruling.

SHRI NATH PAI : I am saying that this is a public document which I am not precluded from quoting. If at every stage you also participate, with due respect to you it becomes difficult.

This is what the Speaker himself says :

"Under the circumstances stated by you, when a motion for adjournment of the House *sine die* has been carried by the House, the no confidence motion cannot obviously be taken up the same day."

This is the opinion of the Institute.

MR. SPEAKER : I hope you will kindly excuse my interruption. I want to correct you again. Let me make it clear—I am quoting from the same thing—that for the sake of giving this ruling he did not consult on this particular occasion. Visualising such a situation about six months ago he had taken the advice of the various State Legislatures and also the Institute of Constitutional and Parliamentary Studies. That was in a casual way, not for giving this ruling.

SHRI NATH PAI : I am not saying so. What is the objection to reading what the Speaker has given as a public statement ?

MR. SPEAKER : I am asking you to avoid reflection on him.

SHRI NATH PAI : I am constrained to say that I have not said one word about him. This is extraordinary, with all my regard for you, for you to insinuate that I have reflected, I have not said one word. I am quoting him. This is a public document, public property, this is meant to be used. This is what the Speaker of the Haryana Assembly says. You can stop me if I criticise him. But I am entitled to quote him, especially when the statement has been given by him for publication in the papers. He says:

"Luckily for me, visualising such a situation about six months ago, I had sought the opinion of .."

A situation, where two motions would come, one of no-confidence and one of adjournment of the House.

".. various State Legislatures and the Institute of Constitutional and Parliamentary Studies. The Institute had advised as follows :

"Under the circumstances stated by you, i. e. when the motion for adjournment of the Assembly *sine die* has been carried by the House, the no-confidence motion cannot obviously be taken up the same day. However, if proper notices for both the adjournment motion and the no-confidence motion are received in time and the Speaker finds them both in order, the motion for no confidence should have precedence over the adjournment motion because it is a well established convention that when such a motion is received, the earliest possible opportunity should be given to the House to consider it."

I shall not go into anything further at this stage. It is constitutional opinion that when there are two motions, one for adjournment of the House and one of no-confidence, the no-confidence motion must receive precedence .. (Interruptions).. Provi-

ded that it is duly introduced and it is in order. It was duly introduced under rule 65 which is the relevant rule of the Haryana Assembly. It is identical with your rule regarding the no-confidence motion. Here more than fifty Members should rise; there more than sixteen Members stand; that is the only difference.

I shall not be saying more about it. But I shall read something from the resolutions, once again, of the Speakers' Conference. What do they say? This is what I should like Mr. Chavan to bear in mind; "It is imperative to view the problem in an integrated manner so as to cover the whole range of relationship as envisaged by the Constitution between the Governor and the Council of Ministers, the President and the Governors, Governors and the Presiding Officers, Presiding officers and the Chief Ministers and the Presiding Officers and the Houses." This is what they say. The whole picture, as I said the day before yesterday, needs to be taken in its totality. We must take a view of the whole thing, not in isolated incidents. Yesterday, when I submitted for your consideration the same request on the situation, I was making the same plea for which here is the authority. The resolution of the Presiding Officers' Conference goes on further :

"Considers that it is the duty of the Presiding Officer to allow the House to function inspite of any obstruction;

and further that the rules of procedure of the Houses of legislatures may be so amended as .."

as to do what ?

".. as to Provide that a resolution for the removal of a Presiding Officer from his office shall be brought before the House notwithstanding an adjournment made by a Presiding Officer contrary to the rules."

MR. SPEAKER, this is the most important thing. Even when the Speaker adjourns the House, if there is a motion of no confidence against the Speaker, the House must meet to consider and debate the matter and dispose of the matter. The Speaker represents the whole House. If

there is a motion of no-confidence against him, the mandatory recommendation is that the House will have to continue. There was a no-confidence motion against the Chief Minister belonging to a party. Can we give the Chief Minister what is denied even to a Speaker ?

From this, I want to go to some very important questions of law. You may later on score a point by saying that I had not quoted from these recommendations an important part. I shall quote that also and that was the position that you took the day before yesterday and it is this : "The Governor shall summon or prorogue the legislature on the advice of the Chief Minister." That is to be read, in case you read, with the earlier opinion that if there are two motions, the motion regarding no-confidence shall not be defeated by adjourning the House.

Where as it is true that we do not want to do This is what I am bringing to Mr. Chavan's serious consideration.

Now, I come to the role of the Governor. I have quoted this part because that is also in the recommendation. I am fair enough; if it goes against me, it has to be read along with the earlier part.

I have been submitting, since the day before yesterday, that there has been a fraud on the Constitution. I know the meaning of the word "fraud." I claim your indulgence briefly because it is a serious charge to be brought light-heartedly anywhere. I have very high regard for the intelligence, integrity and competence of Mr. Chakravarty but, nonetheless when something goes wrong; when the man tries to get into this kind of very turbulent situation, often the best competence does not prove adequate. I know he is not here to defend himself, and I know my responsibility. Therefore, I have proceeded by saying that I entertain a very high degree of respect for him.

Now, what is "fraud" ? Fraud does not mean necessarily lying and getting money by deceit. This is the meaning given by Kerr on *Fraud and Mistake*. He says, "Fraud is infinite in variety." "The fertility of man's invention in devising new

[Shri Nath Pai]

schemes of fraud is so great, that the Courts have always declined to define it .." But we are going to see how there has been fraud here. He further says : "Fraud in all cases implies a wilful act on the part of any one, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled to." The Members who moved the motion of no-confidence were entitled to have a discussion and debate, perhaps defeating the House, we do not know, but they were entitled under the Constitution of India and the rules of procedure. (Interruption) Rules 16 and 65 taken together of the Haryana Assembly are subject to the provisions of the Constitution of India. I will be coming to that, where by the Governor has gone wrong. What is the essence of the Constitution of India ? Answerability of the executive to the legislature is the cardinal point of our democracy : that the executive shall continue to function so long as it enjoys the confidence of the legislature, and this confidence must be available all the time, and when challenged, the executive must prove that it has a majority. It was this thing that was at issue and the no-confidence motion was given. These are wide issues which we must try to examine, rising above party affiliations.

In the same book the distinguished author says : "Fraud consists on the one hand in one man's endeavouring by deception to alter another man's general rights." These are general rights of the Members of the Assembly of Haryana to see that the executive is all the time, perennially, constantly and under all circumstances, answerable and responsible to them. That is what the Constitution says : that the collective responsibility and answerability of the Council Ministers to the legislature, and in this House, of this Ministry to the House, must be there.

Mr. Speaker, finally I want to stop here and continue with another aspect of it. "Fraud" vitiates. What does it vitiate ? If there has been fraud, I say in this case there has been what is called judicially colourable fraud, constructive fraud, and colourable exercise of power. How, I will submit to you. "Fraud vitiates everything, even judgments and orders of the Court."

This is the most important point. Mr. Chavan took the very technically correct stand that day. I was endeavouring, and I did not succeed, to persuade him to rise above the technicalities and go to the essence, the very heart, the lifebreath of our Constitution. Technically, it is true that the House is competent but something had happened there, and then of course the Governor has a responsibility. But here, the author says that it is possible to commit fraud within the law, but the court shall strike it down even if it is within the law if it is inequitable. You, as a distinguished lawyer, know this, Sir. "Fraud", he says, is everything. Even judgments and orders of the courts are covered, Is not the Governor of the State required to see that it is upheld ?

Now, the man who has made or who has done a colourable exercise of power—"his fault is that he has violated, however innocently because of his ignorance, an obligation which he must be taken to have known" The Governor of a State is taken to know his obligations that he must constantly see that the spirit of the Constitution prevails. That is the obligation. He is supposed to know, and if he is innocent of it, is ignorant of it, "his conduct in that sense has always been called fraudulent even in such a case as a technical fraud on a power." I do not want to go on any further in this regard. Having said this, I want to take up a very important point.

How is this power to be exercised ? I have some profound differences with Justice Kokha Subba Rao, which are fairly well-known to this House. But on many occasions, he has delivered Judgments which are among the soundest Judgments this country knows. In the case Baburam Upadhyaya Vs U. P. decided by the Supreme Court in 1961, what did he had hold ? There he held that article 310 has to be read like articles 174 175 and 176. That means, they must act by exercising their discretion, by remembering that there is loyalty to the Constitution and the pledge to uphold the Constitution. If they deviate from that, they have failed in their office. I have been trying to make this point that in the case of the Haryana, the Governor came to know that there was an adjournment motion.

When he was asked to prorogue the House, he knew that a no confidence motion was pending before the House. It was the bounden duty of the Governor of a State not to adjourn the House, knowing that a no confidence motion is pending before the House. The Constitution is very clear. I will tell Mr. Chavan how his responsibility arises. Let him read the latter part of article 356. It says :

"If the President, on receipt of a report from the Governor"--

in this case the Governor did not report-

"or otherwise, is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation--

assume to himself all or any of the functions of the State and all or any of the powers vested in or exercisable by the Governor . "

The power of the Governor in this case was to tell the Chief Minister, "Since there is a no confidence motion pending, under the Constitution, you can continue to exercise your power as Chief Minister only if you are prepared to face the legislature of your State." The Governor must know what the whole country knew, namely, there was a no confidence motion pending when the House was adjourned. When therefore prorogation was sought which under article 174 is absolutely within his power, he ought to have thought three times before agreeing to it and depriving the Haryana Assembly of its legitimate right to express its confidence or lack of it in the Council of Ministers. Can we say honestly that the Governor discharged this function? I am afraid the conclusion is irresistible and inevitable that the Governor in this case has failed in his basic duty of seeing that the spirit of the Constitution is upheld. I have referred to articles 160, 213 and 356. I would beg of the Home Minister to read them together and in their totality. I have pointed out that the no confidence motion was pending. It was duly admitted and then the House was adjourned with the knowledge on the part

of the Governor that such a motion is the cardinal weapon of democracy. The no confidence motion, the answerability to the people, is the cardinal weapon, the sword, the shield of democracy and if somebody tries to blunt it, it is nothing short of violation of the Constitution. I submit in all humility that the Governor of Haryana did not remember his duty under the Constitution to uphold the spirit of the Constitution.

We are passing through a very critical period. The Constitution will be the radar by which we should try to steer the ship of our nation. Utmost care will have to be taken and greatest restraint exercised in interpreting it. Sometimes it is interpreted by the Supreme Court, sometimes by Parliament and sometimes by the Home Minister. The Constitution is not to be treated like the Cattle Trespass Act. As Sir Maurice Gwyer has said, it is the Constitution with which we are concerned not an ordinary Act, nor an ordinary resolution, and in bringing interpretation it will not be loyalty to this group or that group but the binding oath which we have taken, that the will of the people shall not be defeated, shall not be thwarted. I want to make an appeal to Shri Chavan to bear these words in mind when he gives a reply.

MR. SPEAKER : Motion moved :

"That this House views grave concern the prorogation of the Haryana Legislative Assembly, when a motion of no-confidence in the Council of Ministers having been admitted was pending before the House, as a flagrant violation of the spirit of the Constitution likely to undermine our people's faith in the democratic process."

SHRI GAJRAJ SINGH RAO (Mahendragarh) : At the outset I have to point out that you have given the ruling in clear terms that the proceedings of the Assembly, the motion adjourning *sine die* and the conduct of the Speaker are not to be discussed here. So, what is the basis of this discussion and the arguments we have heard again and again from the hon. Member who preceded me? Do you want an abstract proposition of constitutional law

[Shri Gajraj Singh Rao]

as an expert ? Then he could have frightened us or enlightened this House. It is not as if we are all ignorant of law or we do not know the Rules of Procedure and constitutional provisions and they are the prerogative of my hon. friend. It is a question of propriety. Suppose our speeches here are discussed in the Assemblies of the various States, what would be the position ? So, are we making the constitution or demolishing the constitution by discussing these things here.

It is not for us to say whether there is some lacuna somewhere or not. I also admit that there is something improper, something irregular. But they should be set right under the rules, according to the Constitution. If the rules are defective, then the State Assembly is sovereign and it has the right to change the rules. Or they can go to the supreme master the public. They can expose the wrongdoers there. That is the remedy. I do not know how far it is correct for us to suggest quack remedies from here.

Coming to prorogation, you may refer to any document. You can see the proceedings of the Constituent Assembly, this Parliament or even the House of Commons. In the matter of prorogation the Governor has to go by the motion adopted by the House. Otherwise, on some other occasion my hon. friend will come before this House and say that the Governor has acted in a partisan manner. Is it proper for us to question the action of the Governor in proroguing the Assembly ?

Then, I may be permitted to ask under what rule of our Rules of Procedure this motion has been admitted. Is this consistent with the provisions of our Constitution and our Rules of Procedure ? If it is so I am not a lawyer, I do not know any law and you may be knowing the whole law then I would raise my second objection. Rule 186 (vi) says that a motion shall not revive discussion of a matter which has been discussed in the same session. There was even a remark from the opposite Benches that it has already been discussed. It may have been discussed on an adjournment motion or in any other manner. There

was a reply from the Home Minister even that prorogation is a natural and legal consequence of adjournment *sine die*. Was it not discussed here ? If it was discussed it cannot be discussed again in the same session. That is my humble submission.

Then, there was a reference to the interview by the Speaker that has appeared in the press today. Is there anything in the motion about the Speaker's conduct or any speech or interview that he gave ? There is none. That has been wrongly referred to.

After the motion for adjournment *sine die*, there was an occasion for a trial of strength. Leaving that aside when the motion for adjournment *sine die* was adopted, the motion for no-confidence was put forward in the House. That cannot be in the air or in the chamber of my hon. friend. Automatically, there could be no no-confidence motion. Their friends were there; they could say, "Do not adjourn *sine die*."

I do not know what Constitution they have got in their minds when they say that the motion for adjournment *sine die* is adopted but still the House is in session and it can take up that motion; that the Governor and everybody is wrong. If there is anything wrong, let them go to the public and let them have their say there. If the Constitution has been violated, let them go to the Supreme Court or to the High Court. There are so many remedies open to them.

Then, he says that the Constitution has been violated by the Governor by not acting under article so-and-so. Let me read his motion. He says :-

"flagrant violation of the spirit of the Constitution".

Is he discussing the spirit of the Constitution or is he arguing that the constitutional provisions have been violated ? What is his position ? If the spirit has been violated, then so many things by so many parties are being done. Where is the definition of the spirit of the Constitution ? Let him consult a lawyer about that. If he is an eminent lawyer himself, why was he then arguing that the Constitution was violated by the Governor ? I would not say

how you are quoting the law. The words of his motion are "spirit of the Constitution" and, therefore, the Governor must be condemned by this House. Is there any provision in the Constitution that when the spirit is violated by any Member, this side or that side, you will bring forward a motion expelling him and turning him out of Parliament? The spirit of the Constitution is violated because they are sitting here and you do not like them.

SHRI TENNETI VISWANATHAM (Visakhapatnam) : Sir, I think that this is not a proper place to discuss this motion though with its substance I agree. I agree that the Governor should have exercised some discretion. But the real trouble is that the Governor has taken the oath of office, as he said, but so also others have taken the oath of office. This oath of office does not give him greater powers than a constitutional governor. The oath itself is under the Constitution. Therefore he has done something and the people there are aggrieved. Certainly, we as democrats, are also aggrieved. We are aggrieved with the procedure adopted by him but the remedy is not here. The whole point is that there is nothing which we can do. Even if tomorrow we pass a Resolution upon this motion - supposing, we even say that this House disapproves - will it have any effect?

SOME HON. MEMBERS: Yes, yes.

SHRI TENNETI VISWANATHAM Whether you use the word "disapproval" or even a stronger word or a lighter word, the substance is the same. Have we got any power to review or to revise or to seek an appeal over the discretion of the Governor? It may be that he has acted wrongly. Without any offence to you, supposing we feel that you have given a wrong ruling, we have to obey. We have no power to review or to revise it. The Governor has got certain powers. That is our trouble. He has done something and, as democrats, we do not like it and it may have a far-reaching consequence . . .

SHRI ATAL BIHARI VAJPAYEE : He should be recalled.

SHRI TENNETI VISWANATHAM: We can, certainly, raise the question only if the

Centre has got certain powers, if the Constitution has given certain powers to the Home Minister of superintendence over Governors' activities, certain disciplinary jurisdiction over Governors. I would like to have it. But would the States like it? The States would like the Governors to act under their directions. No State would like that the Central Government or the Home Minister should have any power of appeal or of review or of reprimand over the Governor.

Now, the argument is brought that under certain circumstances, the Central Government has got the power. When? Mr. Nath Pai referred to articles 356 and 359. With due respect to him, I am afraid, these articles do not come within the area of our discussion. Therefore, the Central Government has no right to interfere with his discretion. It may be that he has used the discretion wrongly. This is all I have got to submit in regard to that.

Then, Sir, you say, we should not go into what has happened in Haryana. The whole discussion has gone on what has happened in Haryana because the motion itself mentions Haryana. If the hon. Member had brought a general proposition about the powers of prorogation, that would have been better. It is not so easy to disassociate Haryana from the so-called constitutional discussion. The Governors have got certain powers of prorogation and they have got to act on the advice of the Chief Minister. The Chief Minister might have made a mistake. Let us assume, not Haryana, it has happened in some other State. In that case, supposing the Chief Minister under the terms of the Constitution like that of ours has given an advice and under the terms of the Constitution like that of ours, the Governor accept it, can some other body sit in judgment over it? That is the position. I submit, with great respect to Mr. Nath Pai and others who are supporting the motion, while agreeing with them in substance that they have offended the democratic spirit, we have no power either to express our concern or deep concern or even disapproval for they might do the same thing again tomorrow.

MR. SPEAKER: Shri Randhir Singh.

SHIR RANDHIR SINGH (Rohtak) Mr. Speaker, Sir, before I take the legal view of the matter, on prorogation . . .

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, किस तरह से बुलाया जा रहा है। हम लोगों ने भी नाम भेजे हुए हैं।

SHRI RANGA (Srikakulam) : When we stand up in our seats, you don't call us; when we send our names, you don't go by, that. You should follow some procedure.

श्री रणधीर सिंह : उपाध्यक्ष महोदय, राई को पहाड़ बनाया जा रहा है। बात मामूली सी है, लेकिन उस को फसाना बना दिया है। 13 ता० को असेम्बली बुलाई गई। वहां पर जो पहलवान अपोजीशन में हैं, उन्होंने कहा कि हम इन को निकाल कर बाहर करेंगे। हमारे लोगों ने कहा—आओ भाई, कुश्ती कर लो। 7 दिन का नोटिस राव वीरेन्द्र सिंह ने दिया। 13 ता० को गवर्नर का एड्रेस हुआ। 13 ता० को गवर्नर के ड्रेस में अपनी हालत को देख कर ये लोग में बोल गये। 16 ता० को, स्पीकर महोदय, इन के अपोजीशन लीडर मंगल सैन ने कहा कि मैं ना—कान्फिडेन्स मोशन को विदड़ा करना चाहता हूँ . . .

SHRI SEZHIYAN (Kumbakonam) : You said that nothing that transpired on the floor of the Haryana Assembly should be brought in the discussion here. Now, Mr. Randhir Singh is making references to what happened previously in the Haryana Assembly and what the Leader of the Opposition said there. All these things will open the flood gates to the opposition to refer to them which you have specifically forbidden. (Interruptions)

SHRI RANDHIR SINGH : My hon. friend there is feeling agitated. For the convenience of the House I was narrating the facts in two minutes.

MR. SPEAKER : You need not go into the facts. You only reply to the arguments raised.

SHRI RANDHIR SINGH : Since you said that I need not narrate the facts and I should reply to my friends there, I will submit on prorogation. Art. 174 refers to prorogation by the Governor. It says that the Governor may from time to time prorogue the Houses or either House. The Governor, if at all he has to prorogue the House, has to act on the advice of the Council of Ministers. (Interruptions) I must confess I was most disappointed to hear him to-day. He gave me nothing absolutely requiring a reply from me. Since prorogation is one of the subjects mentioned in the resolution, I would like to quote article 163. Now under Art. 163 the Governor is to act on the advice tendered by the Chief Minister or his Cabinet or he has to act in his own discretion. Art. 163 is very clear on this. It further says :

"If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question...."

SHRI NATH PAI : In a court of law, in Parliament it can be questioned.

SHRI RANDHIR SINGH : The validity of any action of the Governor whether he has done that in his own discretion or whether that action emanated from the advice tendered by the Chief Minister of the Cabinet cannot be questioned. That is something that is binding. That is something which is final. Are we competent to discuss it here, Sir? If you kindly go through Art. 163, you will find that this is something absolute. It cannot be looked into either by this House or by any court of law.

My second point is : that there was a session of the Assembly on the 27th and a resolution was passed by the House by a majority. Because the Cabinet is responsible to the legislature and a resolution is passed by the legislature that the House be adjourned *sine die* , that resolution is binding on the Cabinet and the cabinet is just a post office and passed it on to

Governor to act. Why should the poor Governor be blamed in this case ? I am amazed to hear my hon. friends say that the Governor has flouted the constitution. Has the Governor done something contrary to the resolution passed by the Assembly ? Has he done something contrary to the decision of the Cabinet ? Then against whom something could have been said ?

Another thing I want to mention is about the no-confidence motion. That no-confidence motion, as a matter of fact, should have been thrown out because you know our rules so also the Rules of Haryana Assembly prescribe that a no-confidence motion should be moved before the session of the Assembly or the session of the House commences. It should come before the Question Hour. No-confidence motion should be taken up immediately after Question Hour.

AN HON. MEMBER : Why did he allow it ?

MR. SPEAKER : It was a decision of the Speaker—if you are so keen.

SHRI RANDHIR SINGH : I am supporting the Speaker. (Interruption) There were two motions. (Interruptions)

SHRI SURAJ BHAN : On a point of order, Sir.

SHRI RANDHIR SINGH : I am not commenting on the decision of the Speaker. I am saying something which puts a sort of approbation on the action of the Speaker. I have to say it because directly and indirectly some reflection has been thrown on the Speaker by my hon friend Shri Nath Pai. I have to say this : There were two motions before the Speaker; one was this *sine die* motion; another was the no-confidence motion. That was to be taken up but everybody protested, what can the poor Speaker do .. (Interruptions)

अध्यक्ष महोदय : श्री नाथपाई ने बड़ी होशियारी से इधर उधर बचाव किया, फिर आप इसमें क्यों फंस रहे हैं।

SHRI DATTATRAYA KUNTE (Kolaraba) : If he says something in approbation

of the action of the Speaker then he would open up the flood-gates; somebody may say something in disapprobation of the conduct of the Speaker.

SHRI RANDHIR SINGH : I will not create any chaos or trouble in the House. Something was said by Mr. Nath Pai by way of reflection on the Speaker. Sir, the Speaker is one of the most competent persons in the country. I know him personally. He says, about 6 months back, he sought advice from somebody. What is the harm ?

SHRI RAM KISHAN GUPTA : (Hisar) He is most incompetent

SHRI RANDHIR SINGH : A case is being made out that the Opposition is a majority in Haryana and that the ruling party is in a minority. This is absolutely wrong. From 13th February till 27th February, as many as a dozen opportunities were offered to these people, on the budget on the Governor's Address, on various occasions but these people were not trying to face the House. What I submit is this .

श्री सुरज भान : यहाँ पर दावतों की गई हैं और मेम्बरों को शराब पिलाई गई है।
... (अवधान) ...

श्री राम कृष्ण गुप्त : चारों तरफ सी० आई० डी० लगा दी गई मेम्बरों के पीछे !
... (अवधान) ...

MR. SPEAKER : The point allowed for discussion was the constitutional position. The point made was, the House was prorogued and the no-confidence motion was accepted. Beyond that what happened and all that is a different thing, and we had agreed not to make reference against the Speaker, never to discuss the Speaker's action, nor the decision of the House. You can take the constitutional aspect.

SHRI RANDHIR SINGH : I agree with you, Sir. Kindly hear me. What I submit is this. When that no-confidence motion was accepted, ample opportunity was given to the opposition to test their strength with the ruling party. The opposition said, why do you revise your decision. Sir, here also you revised your decision today. You can do it. You have the

[Shri Randbir Singh]

power and you have your discretion. What is the harm in the Speaker revising the decision? First it was fixed on the 3rd. But he revised the decision and he said: I will give opportunity on that very day, 3 hours or 4 hours or 6 hours; you go ahead with it. They just walked out. They are just taking the position that the constitution has been flouted, that the power of the office of the governor has been misused, that the Governor is trying to hoodwink the Speaker, this is what their charge is. I submit that they are in a minority; they are hardly 33 out of 79.

SHRI SURAJ BHAN : Then why were his partymen afraid ?

SHRI RANDHIR SINGH : There were at least ten opportunities to measure strength with the government party. But they did not avail of them. Only in order to attract the attention of the country they have brought forward this Motion. They are fishing in troubled waters. It is unfortunate that when peace and tranquillity is needed in Haryana, these members opposite are creating unnecessarily a short of uncongenial climate in the country.

Thank you for the opportunity given to me.

SHRI SHANTILAL SHAH (Bombay North West) : I rise to support this Motion expressing grave concern at the prorogation of the Haryana Assembly. I do not propose to refer to the decisions of the Assembly or the Speaker and will not offer any comments about their being right or wrong. I do not also propose to impute any motives or *malafides* to the Governor, though I will have to comment on the action of the Governor in another way. Therefore, if I use any harsh expressions I wish to say that I do not impute any motives or *malafides* to the Governor.

In this case the prorogation order was passed by the Governor. This order is bad because it is tainted by fraud. What fraud is, I am going to elaborate in a few minutes. The fraud in this case is double one is a fraud on the Constitution and another is a fraud on the part of the

Governor. Fraud has been defined in the standard work *Kerr on Fraud*.

It was the duty of the Governor in this case to preserve, defend and protect the Constitution. In *Kerr on fraud*, it is stated that a man may misconceive the extent of his obligations. His fault is that he has violated however innocently the obligations which he must be taken to have known. In this case, having taken an oath, he knew his obligation to protect and defend the Constitution. Constitutions are not physically attacked like a foreign army attacking a country. The attack on the Constitution will be subtle, may be insidious. In all these cases, it is the duty of the Governor to defend and protect the Constitution

My submission, therefore, is that there being an obligation which he must have known his conduct in that sense can be called fraudulent. When I say that the conduct of the Governor in issuing this order was fraudulent, the only meaning which I put on it is that however innocently he may have acted, he has acted in violation of his obligations under the Constitution. This is my first point.

The second point is that this is a fraud on the Constitution. What is a fraud on law or on a statute has been defined in that standard work to which I had referred. Fraud may be of two types. One is misuse of the statute altogether, that is to say, under a land acquisition law property may be acquired for the purpose of selling it and making a profit. That is obviously a misuse. It is also a fraud on the statute, to utilise its procedural powers, its form, its appearance, for undermining the substantive purpose of the law. In this case, the substantive purpose of our Constitution, the whole substratum of our parliamentary democracy, is that the executive shall be responsible to the legislature and through them to the people. That is the basis of our democracy. In this country, the Council of Ministers, it is agreed on all hands, is responsible to the House.

What happened was that a no-confidence motion was tabled and admitted and a date fixed. Then the House was adjourned *Sine die*. Was the Governor right in proroguing the House? I will state the difference

between an adjournment and a prorogation. Adjournment means the House is still in session. When it is prorogued, the House is not in session.

Now, when the House is in session, the Governor has certain right. When the House is prorogued, he may or may not have those rights. Take this case. The House was adjourned. At a point of time before the prorogation, the Governor knew or ought to have known—unless he was a simpleton or ignoramus—that a no-confidence motion against the Ministry had been admitted and a date fixed for discussion. It was to thwart that Motion that the House was adjourned *sine die*. What then is the remedy? What ought he to have done? Under article 175 the Governor has the right to address either House and he may for that purpose require the attendance of the Members. This power of the Governor under article 175 is different from the power of the Governor under article 176 where he addresses the Houses at the opening of the session. This is a power to be utilised even at times other than the opening of the session and the right here is that for that purpose he may require the attendance of the Members. What the Governor, in my submission, ought to have done is to have used this right.

SHRI Y. B. CHAVAN : You are a very learned lawyer and I would like to be convinced about this. The Governor has the power either to summon or prorogue. Can a Governor summon a House which is adjourned? This is a specific question, I personally feel that the Governor cannot summon the House. Whether he should have prorogued or not is a matter of discretion, but you are saying that instead of proroguing the House, he should have summoned it. When the House is adjourned, the Governor has no right to summon it.

SHRI SHANTILAL SHAH : The Home Minister will please try to follow what I am saying. I am not suggesting that the House has to be summoned again. The House has been adjourned and therefore is in session. It is a House in session, and if it adjourns *sine die* it may not meet for two months or more, but it is still in session. Therefore, it need not be summoned again. But it is the Governor's

right to address the Members and require them to attend the House, not to summon the House.

SHRI Y. B. CHAVAN : He can only summon the House and then require attendance.

SHRI SHANTI LAL SHAH : What has now been done is a fraud on the Constitution. A procedural power has been used to subvert the substantive content of our democracy. There is ample authority on this that it is a fraud on the statute, on the Constitution. I am suggesting that the Governor has also been guilty of fraudulent conduct, however innocent he may be, in the sense in which I have read out. His act of prorogation and other acts also are tainted with fraud and can be set aside. Unfortunately, the action of an Assembly cannot be tested in a court of law, the action of a Governor cannot be taken to a court of law. What then is the remedy?

I would submit to the Home Minister that he should put these questions to his legal advisers and if he chooses, to the Attorney General or the previous Attorneys General, Shri Setalvad or Shri Dasgupta. The points which I formulate for their consideration are these. Is this adjournment, when a no-confidence motion has been admitted, and the subsequent advice of the Chief Minister or the Cabinet to prorogue the House, tainted by a fraud on the Constitution? If the answer is in the affirmative, is the prorogation still valid? If the answer is either affirmative or negative in either case is it not the duty of the Governor to revoke and rescind that order? Wherever there is fraud, may be in a marriage the highest judgment passed by the judiciary, anything tainted by fraud will never be allowed to stand because fraud will not be allowed to prevail. In this case, therefore, if the Governor sets aside, revokes and rescinds his own order if he is satisfied that a fraud has been committed, he will be within his rights. I do not blame the Government in not having advised the Governor in advance. They may not know what would happen. If they were consulted, they ought to have advised. If they were not consulted, I would not blame them. Now that this matter has been brought to his notice, I would request the

[Shri Shanti Lal Shah]

Home Minister in all sincerity to see that this is not a small matter when a fraud has been committed on the Constitution. There are rules of the parliamentary game. Some will play it more cleverly than others; cleverness is anybody's right but fraud is not. If, therefore, fraud has been committed and I say a fraud had been committed, then let the matter be examined and let remedies be found; remedies must be found. The House and the Central Government cannot say : we agree there was a fraud, but what can we do ? We are helpless. If the highest orders of the judiciary can be set aside, this order of the Governor for prorogation should be set aside and rescinded. Article 175 applies whether the House in session or is not in session; it does not deal with the summoning of the assembly; it is done under a later article, 176. My submission is that irrespective of all these things, what happened in Haryana should be examined in the interest of our Constitution so that further frauds of this nature may not be played on the Constitution; it is necessary that these matters be examined very closely without any bias by competent legal officers. If they do that, I am sure that the two points which I had placed before the House would be upheld by them. I hope the Home Minister will not be content with his opinion versus my opinion; we are not legal experts. He must certainly take advice from the Attorney General or from Mr. Setalvad or Mr. Daphtry; the House will accept that. I am not saying anything about the Governor's powers. I am merely saying that a fraud vitiates everything from the beginning to the end.

17 hrs.

SHRI R. D. BHANDARE (Bombay Central) : We have heard two speakers from the other side. Mr. Nath Pai roved the motion and played the role of the opposition, while Mr. Shantilal Shah spoke as a lawyer interpreting the Constitution.

Had the motion been moved in a form different from which it has been moved here, I would have supported it. As it is worded and moved and in the spirit in which it had been moved, I cannot agree with him and I cannot support it. As a

person belonging to the party in power, I also consider it my duty to uphold the sanctity of the Constitution.

The point is very simple. What should be the solution when there is a conflict between the rules framed by the legislature under the Constitution and between the provisions of the Constitution itself. Under the rules of the House the adjournment motion was accepted by the House. Under the same rules the no-confidence motion was also admitted. According to the rules the no-confidence motion must have precedence over any other motion that may be brought forward in the House. Therefore, there is a conflict in this matter, in the prorogation of the House by the Governor and the resolution passed by the House in adjourning the House when a no-confidence motion was pending, which was accepted by the Speaker and for which a date was also fixed. What is the way out ? That is the question to which we should apply our minds. For the future guidance of this country we should try to solve this question ; for the future guidance of democracy in this country we have to solve this problem. For this purpose, I raise the question, what should be the duty of the Governor. Mr Shantilal Shah has spoken about the rights of the Governor. Under the Constitution, the Governor has certain constitutional functions, and certain constitutional duties. When we refer to article 174, we talk of the functions of the Governor, but there are certain duties imposed on the Governor under article 167. I draw the attention of the House and move especially the attention of the Home Minister to article 167: the duties cast on the Governor. What are the duties cast on the Governor ? I shall not take the time of the House in reading the whole of it, but I shall refer only to sub-clause (b) of article 167 which says :

"to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Governor may call for ; .."

This is the duty cast on the Governor. I will explain. Kindly bear with me for a few minutes. I will explain the real meaning and connotation of sub-clause (b) of article 167.

Let us go to the framers of the Constitution. When this article was framed, certain duties of Governor were explained by the founding fathers of the Constitution. I shall read out first, only one sentence from Mr. Munshi's observations. He says it is not the function or the duty of the Governor to attend only parties, playing host at supper and give lunch and dinners to persons in society. Then, Dr. Ambedkar at page 455, Vol. II, of the Constituent Assembly debates; May, 1949, speaks of the duties of the Governor, and in view of the duties assigned to the Governors, we have to judge the action of the Governor in accepting the resolution on the adjournment of the House passed by the House and proroguing the House. Therefore, I am reading from Dr. Ambedkar's statement. He says :

"A distinction has to be made between the functions of the Governor and the duties which the Governor has to perform."

My submission is that although the Governor has functions under article 174, even then, a constitutional Governor as he is, has certain duties to perform. His duties, according to me, may be classified into three classifications. First, the Governor has to see that there is a Government constituted according to the wishes of the people. Secondly, -I am specially laying emphasis on this second duty and am drawing the attention of the House and the attention of the Home Minister to this-the second duty which the Governor has, and must have, is to advise the Ministry, to warn the Ministry to suggest to the Ministry an alternative and to ask for-I am laying more emphasis on these words-a *reconsideration*. Why is it that I am emphasising these words? It is because the Haryana Assembly was summoned on 13th February, 1970. Then, on the 27th, it was adjourned; it was originally to continue up to 4th March. Under article 167, sub-clause (b), the Governor has to see to the work that has to be carried on, the legislation that could be passed by the legislature. According to article 167, the procedure was laid down. An agenda was fixed. The timings were fixed and the Assembly was to continue up to the 4th of March. All of a sudden on 27th February, the House is sought to be

adjourned *sine die*. In that event, the Governor should have certainly asked the Chief Minister to reconsider the question, because the Governor is not the representative of any one party, but of the people of the State as a whole. It was his constitutional duty to ask the Chief Minister to reconsider his decision for a *djournalment* of the Assembly. I am not reflecting upon the Governor; I am more concerned with future actions. Suppose in a State a party which has extra-territorial loyalties comes into power and the opposition decide to move a no-confidence motion against the Government, which is accepted by the Speaker. Then very cleverly the Government can have a motion adopted for adjournment of the Assembly *sine die* and with impunity and it can carry on for six months. What will happen then? That should be the serious consideration to which we should apply our mind.

I cannot be a party to Mr Nath Pai's motion because it seeks to condemn the Government. But I would certainly ask the Home Minister to educate ..

AN HON. MEMBER : Educate the Governors

SHIR R. D. BHANDARE : .. because more education is necessary under the Constitution. During the last three years, we have been watching the performance of the Speakers and Governors of different States. Therefore, my speech must be taken as having an educative value and not condemning anybody. Mr. Nath Pai has moved a substantive motion. If it had been a motion under rule 193 to be talked out, I would have supported it. But as it is I cannot be a party to his motion.

SHRI RANGA (Srikakulam) : Sir, I am inclined to agree with my friend, Mr. Shantilal Shah in the suggestions he has made to the Home Minister that these matters should be referred to some jurists and also with Mr. Bhandare that the Home Minister as well as ourselves should try to educate ourselves and the Governors also should try to educate themselves and see that they do exercise their powers in a more sensible and democratic manner which would redound to the credit of the institution of Governorship and which would

[Shri Ranga]

be useful to the observance of constitutional propriety. I am not a lawyer and I am thankful to our lawyer friends who have spoken. But I do wish to plead guilty for having done something wrong along with some other members of the Constituent Assembly.

At the time the Constitution was framed there was a proposal that the institution of Governors should be thrown open for election and that Governors should be elected by the people in the respective States. I was also a party in making that move. But then it was urged—and we accepted that—that, in that case, the integrity and unity of this country would be in danger, we must be prepared to place some confidence in the Union Government, and the President above it, and see that these Governors would not be merely tools in the hands of the Chief Ministers, because who knows who would be the Chief Minister and what sort of a person a Chief Minister would be. And we have come to have a lot of experience of the Chief Minister also. Therefore, we agreed that the Governors might be appointed by the President.

Now what is the position of the poor Governor? He has been given so many powers; he has got his discretion which cannot be challenged. But is he really free to exercise his discretion? No. My hon. friend the Home Minister had said that he must accept the advice of the Chief Minister. But, at the same time, the same Home Minister was also responsible for saying— I speak subject to correction—when he was quoting something from the Constitution, that the Governor alone has the right to appoint the Chief Minister and, on the advice of the Chief Minister, he has to appoint the other Ministers. Then he said that whoever has that right has also the right to dismiss the Minister. Then he smiles and laughs and thinks he has scored a debating point. Very well, the Governor has got this right as well as the other right. But if the Governor has got the right to dismiss a Chief Minister, on whose authority does he do it? On the authority of the President. Through whose advice? The advice of the Home Minister. Who appoints the

Governor? The President, but on the advice of the Home Minister.

Then, whenever the Governor wants to summon the House, has he to wait until the Chief Minister allows him? That is the Constitution, so say the Home Minister. But in actual practice what happened in West Bengal? Some people questioned whether the Chief Minister had lost his majority. Therefore, the Governor said "look here, this is the demand; therefore, you must call the Assembly as soon as possible". A date was fixed by the Chief Minister. But, according to the Governor, that was too far. So he told the Chief Minister "you must fix an earlier date". The Chief Minister did not agree. Then the Governor himself indicated a date on which, he said, the Assembly should be called. The Chief Minister was not agreeable. Therefore, he was dismissed.

So, where is the helplessness of the Governor? The Governor became all Powerful. He was acting in his discretion and not on the direction or decision of the Chief Minister. He was behaving as if he was acting on the advice of somebody else. Who is that somebody else? There is the poor President, who is over everybody, and through the President acts the Home Minister. Therefore, the Governor has come to be a kind of toy in the hands of the Home Minister and the Government at the Centre.

If everything goes well and if the Home Minister is a conscientious man, and he is not too much troubled over the party affiliations in the various States, and if he behaves in a statesmanlike manner and conscientiously with due regard to the provisions of the Constitution and also the spirit of the Constitution, as my hon. friend Shri Nath Pai had referred to, it would be all right. That is what we also thought in our common sense when we placed all these powers in the hands of the institution of the Home Minister. Unfortunately, this institution of the Home Minister has also become a useless one, a powerless one, an impotent one.

We know what is happening in West Bengal and various other States. Whenever it suits him, he comes back into light,

then he says "I am the monarch of all that I survey". But when it does not suit him or when he finds himself completely helpless, either because he does not enjoy the confidence of the Prime Minister, or because he does not find it convenient to topple a Ministry which ought to be toppled anywhere, in any State, then he says "I am helpless, who am I, it is the Governor, it is the President ; you look at the Constitution".

That is why I am unhappy over the suggestion made by Shri Shantilal Shah, an excellent suggestion as it is that there should be a Committee of jurists. Did we not have a committee of jurists to go into the question of defections ? What has been the fate of their recommendations ? Afterwards, did we not have a committee of all parties, the highest powered committee, on defections ? What has been the fate of their report ?

What is happening everywhere ? There are Ayarams and Gayarams. These Ayarams and Gayarams started from Haryana and, unfortunately, it has gone back to roost. What is happening in Haryana, God only knows. Who has got the majority and who has not, we do not know. They have adjourned themselves.

In certain areas in my part of the country, somebody wants to commit a murder and, therefore, he arranges everything in the hospital with the doctors, the nurses and everybody. He is supposed to be a sick man in the hospital. He remains there but overnight he goes over to his place of residence or somewhere where he wants to play mischief, gets the murder committed and then afterwards he goes back and the alibi is accepted.

17. 21 hrs.

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

In the same manner a few months before what had been imagined and offered as a poser has come to happen in Haryana. A poser was placed not only before the poor Institute of Constitutional Studies but also before all the Speakers all over India and they were all made to commit themselves to some particular

line of action keeping that before themselves. The politicians who were interested in this have enacted this drama. Unfortunately, your friend, Randhir Singhji, the most brilliant man, now comes into trouble unnecessarily and he finds himself in the position of the Speaker. All this is done in spite of himself.

Now what is to be done ? There Shri Bhandare's advice comes in. What is the use of Shri Bhandare quoting that the Governor has the duty to ask Chief Minister to reconsider his action when the Home Minister is not prepared to act, allow, prompt, advise, help the Governor from behaving in that manner ? The Home Minister is not prepared to act on that advice. Why ? He keeps his own counsel. Only he quotes lots of laws here in a very glib manner. He must have done it in the same manner in the courts also. I pity the judges who have had to deal with him because he does it in such a clever and cute manner that anybody can be taken in by his easy eloquence.

But that is not the way in which this country is to be governed, and this Constitution is to be implemented. This is not the manner in which the Home Minister has got to behave. This institution of Home Minister is very exalted one. We wanted it to be one like that when we formulated the Constitution and placed all this power in the hands of the President and the Governor.

The Chief Minister is not free to choose his own Governor. Quite rightly so because today there is one Chief Minister, another day another Chief Minister and God only knows the third day the earlier man may come back again. Therefore we did not want to give that power to him. We wanted to have a convention and Pandit Jawaharlal Nehru agreed with us when we were working together in the inner councils of the Congress. He was good enough to consult the Chief Ministers before he made up his own mind ; therefore, he used to ask for a panel of names and so on.

SHRI SEZHIAN : Even now that is done.

SHRI RANGA : All that has been dispensed with. Only one ministry has been obliged and that is the West Bengal Ministry. They have got their own man who is prepared to do whatever they want. But in all other cases the Home Minister is the intermediary instrument because the final instrument, I think, is the Prime Minister. The Home Minister has got to stand all the criticism but he is helpless to do anything.

I want to give the present Home Minister some advice. Let him resign and ask for another ministry. Then he will be able to retain his reputation. It is a very unenviable position that he is holding. He is obliged to take so many wrong decisions, so many unwholesome and immoral decisions. But what can he, poor man, do? He has got to remain as a minister. Therefore he must accept the decision of the Prime Minister.

SHRI MANOHARAN : Unconstitutional and not immoral.

SHRI RANGA : "Immoral actions" I am saying. He is not immoral.

If he wants to continue to be a minister, let him ask the Prime Minister to shift him to some other ministry which would be less onerous and which would not oblige him to go on doing these things which are not consistent one with the other. When all these action that he has taken over all these various States in regard to this institution of Governorship were to be reviewed very carefully—let him review them himself not as Home Minister but as Shri Chavan the patriot—he would be able to see that it does not redound to the credit of the institution and position of Home Ministership of this great country.

श्री श्रीचंद गोयल (षण्डीगढ़) : उपाध्यक्ष महोदय, चूंकि अध्यक्ष महोदय ने इस विवाद पर कुछ मर्यादाएं लगाई हैं मैं उन मर्यादाओं को थोड़ा पार करने के लिए दो चीजों की तरफ ध्यान दिलाना चाहता हूँ। पंजाब का मामला जब भारतवर्ष के उच्चतम न्यायालय में गया था तो उन्होंने अपना यह निर्णय दिया था कि किसी भी अध्यक्ष का कोई

फैसला कोई ऐसा अंतिम फैसला नहीं है कि जिस को कर्तों पर चुनौती नहीं दी जा सकती। इस कारण मैं यह कहना चाहता हूँ कि अगर किसी अध्यक्ष ने भी कोई इस प्रकार की रूलिंग दी है जो अनुचित है या गलत है तो उस को सुप्रीम कोर्ट के निर्णय के अनुसार चुनौती दी जा सकती है। उस के लिए इलाज ढूँढा जा सकता है। इस के साथ साथ मैं यह भी कहना चाहूँगा कि हमारे अध्यक्ष श्री गुरदयाल सिंह दिल्ली ने परसों जब हरयाना का मामला उन के सामने आया तो उन्होंने स्वयं यह बात कही :

"The adjournment of the House after a date had been fixed for No-Confidence motion was not proper at that time."

शुद्ध हमारे अध्यक्ष महोदय ने यह कहा है कि जो हरयाना के अध्यक्ष थे उन्होंने ऐसी सूरत में जब कि अविश्वास का प्रस्ताव विचाराधीन था उस समय सत्रको स्थगित करने की अनुचित कार्यवाही की। मैं यह भी कहना चाहता हूँ कि कुछ समाचार पत्रों ने इस पर कुछ लेख भी लिखे हैं। ट्रिव्यून जों पंजाब और हरयाने का प्रमुख अंग्रेजी का अखबार है उस ने लिखा है कि जो कुछ हरयाने में हुआ है वह सब अनुचित है और अनैतिक है। मैं यह भी कहना चाहता हूँ कि आज समय आ गया है कि हम इस सारे प्रश्न पर संवैधानिक दृष्टि से विचार करें क्यों कि मुझे श्री चव्हाण साहब का यह तर्क समझ में नहीं आया, श्री चव्हाण ने परसों इस सदन के अन्दर जो पोजीशन ली उस में उन्होंने यह कहा कि आखिर जब हरयाने की विधान सभा इस प्रस्ताव को पास कर चुकी थी तो फिर गवर्नर के लिए और कौन सा रास्ता बचा था? मैं याद दिलाना चाहता हूँ, जब हरयाने का मामला दिसम्बर 1968 में इस सदन के विचाराधीन आया था तब श्री चव्हाण ने यह कहा था कि अध्यक्षों के सम्मेलन के अन्दर जो यह निर्णय लिया गया है कि इस बात की परीक्षा कि किसी भी दल के साथ बहुमत है या नहीं है वह सदन के अन्दर होगी और

एक सप्ताह के अन्दर होगी। क्या मैं चम्हारण साहब से पूछ सकता हूँ अध्यक्षों के उस निर्णय को कार्यान्वित करने के लिए और संविधान की रक्षा करने के लिए अपना जोर देंगे या नहीं या अपनी नई रवर स्टैम्प थ्योरी के अनुसार केवल उस में से अपने दल के लिए कोई रास्ता और उपाय खोजना चाहते हैं? मैं उन को याद दिलाना चाहता हूँ, पब्लिक मेमोरी शाट होती है तो इस सदन को भी उन्होंने समझा कि शायद इस की भी मेमोरी शाट होगी, लेकिन वह इतनी शाट नहीं है जितनी कि वह समझे बैठे हैं। उन्होंने स्वयं स्वीकार किया था कि अध्यक्षों का यह जो निर्णय है कि किसी दल के साथ या सरकारी पक्ष के साथ बहुमत है या नहीं, उस का परीक्षण सदन के अन्दर होगा और एक सप्ताह के अन्दर होगा। मैं कहना चाहता हूँ, दोहाई इस बात की दी जा रही है कि राज्यपाल महोदय ने जब यह सदन का सत्रावसान किया है तो क्या विधान की धाराओं को उन्होंने पूरा किया है या नहीं किया है? मैं पूछना चाहता हूँ कि आखिर जब कोई सदन अनिश्चित काल के लिए अपने को स्थगित करता है तो क्या उस का अर्थ यह है कि गवर्नर के ऊपर इस बात की कोई पाबन्दी आती है कि वह निश्चित रूप से सत्रावसान करे? धारा 174 को पढ़ने से यह बिलकुल कहीं नजर नहीं आता कि किसी भी राज्यपाल के ऊपर इस बात की पाबन्दी है या उन के लिए अनिवार्य है की वह सदन के अनिश्चित काल के लिए स्थगित होने के बाद तुरंत सत्रावसान करें? बल्कि मैं तो कांस्टीट्यूट असेम्बली की डिबेट पढ़ रहा था जिस में श्री कामत ने इस बात पर अपना सन्देह प्रकट किया है कांस्टीट्यूट असेम्बली में जब इस धारा पर विवाद चल रहा था, उस समय श्री कामत ने इस के सम्बन्ध में वहाँ पर जो कहा था उस को मैं यहाँ पर उद्धृत करना चाहता हूँ। मैं कांस्टीट्यूट असेम्बली की डिबेट के बोल्यूम 8 सफा 556 से उद्धृत कर रहा हूँ। उन्होंने कहा था :—

“This is a fairly serious matter in all democracies. There have been instances

in various democracies, even in our own provinces sometime when a cabinet seeking to gain time against the motion of censure being brought . . .”

“When a cabinet seeking to gain time against a motion of censure being brought against them . . .”

उस समय श्री कामत ने कांस्टीट्यूट असेम्बली में इस बात पर सन्देह प्रकट किया था कि जब किसी दल के साथ बहुमत नहीं रहेगा, अपनी अनमरियत को वह गंवा बैठेगा तब वह गवर्नर के इस अधिकार का कि वह सत्रावसान कर दे दुरुपयोग करेगा। उपाध्यक्ष महोदय, मैं यह कहना चाहता हूँ कि आज समय आ गया है जब हम राज्यपालों के इन अधिकारों के बारे में विचार करें”

श्री रामावतार शास्त्री (पटना) : उपाध्यक्ष महोदय, आधा घंटे की बहस का समय हो गया है।

MR. DEPUTY SPEAKER : There is an half-an-hour discussion listed for 5.30, but we cannot leave this discussion inconclusive.

श्री रामावतार शास्त्री : आप बराबर इस को साढ़े पाँच बजे से लेते आये हैं। अगर आज नहीं लेना चाहते हैं तो इस को किसी दूसरे दिन के लिये रख दीजिये।

SHRI NATH PAI : Why not postpone it ?

MR. DEPUTY SPEAKER : Kindly bear with me. I am sorry. I looked into the order paper. The half-an-hour discussion has not been fixed at 5.30. It will only be taken up at the end of the present discussion. Therefore, I think we should conclude this debate to-day and after that take up the half-an-hour discussion.

SHRI RAMAVATAR SHASTRI : At what time will the half-an-hour discussion be taken up ? You can postpone it to some other day.

श्री श्रीचन्द्र गोयल : उपाध्यक्ष महोदय, मैं निवेदन कर रहा था कि हमें संविधान की धाराओं पर विचार करते समय क्या केवल उन के शब्दों पर जाना है, या उस की भावना पर भी विचार करना है। मैं चव्हाण साहब से पूछना चाहता हूँ कि संविधान की धाराओं के अनुसार अगर कोई भी सत्र 6 महीने के बाद बुलाकर 5 मिनट के अन्दर समाप्त कर दिया जाय और फिर 6 महीने के अन्दर दोबारा बुलाकर 5 मिनट के बाद उसको स्थगित कर दिया जाय तो वह संविधान के लैटर के अनुसार शब्दों के अनुसार तो हम उस की धाराओं का पालन करेंगे लेकिन क्या उसके पीछे जो भावना है, उसके पीछे जो स्पिरिट है, उस का पालन करेंगे। जब हरियाणा विधान सभा के अन्दर अविश्वास का प्रस्ताव विचाराधीन था, स्वयं वहाँ के अध्यक्ष महोदय ने दोनों दलों की सह-मति के साथ उसको न केवल स्वीकार किया था, बल्कि उसके विचार के लिए 3 मार्च की तारीख तय कर दी थी। तब मैं जानना चाहता हूँ कि क्या यह अध्यक्ष का कर्तव्य नहीं था या राज्यपाल का कर्तव्य नहीं था कि वे इस बात को देखते...

SHRI RANDHIR SINGH : Point of order, Sir. Can he cast aspersion on the conduct of the Speaker of the Haryana Assembly ?

श्री श्रीचन्द्र गोयल : मुन्नीम कोर्ट ने यह कहा है कि रूलिंग को चैलेन्ज किया जा सकता है।

उपाध्यक्ष महोदय, मैं यह निवेदन करना चाहता हूँ कि क्या किसी भी सदन के अध्यक्ष का या किसी भी राज्यपाल का यह कर्तव्य नहीं है कि वह यह देखे कि संविधान की धाराओं के ऊपर ही नहीं, बल्कि उसकी भावनाओं के ऊपर भी पूरी तरह से प्रमल किया जाता है। आखिर अविश्वास प्रस्ताव लाने का क्या उद्देश्य होता है, किस प्रकार की स्थिति के लिए इस नियम को बनाया गया है ? जब विरोधी दल इस बात को चुनौती देता है कि जो राज्य करने वाला

दल है वह अपना बहुमत गवां बैठा है-भूल जाते हैं मेरे दोस्त चौधरी रणवीर सिंह कि हरियाणा विधान सभा में चौधरी रणवीर सिंह जो पहले इस सदन के सदस्य रहे हैं, उन्होंने यह कहा कि मैं इस दल से अपना नाता तोड़ रहा हूँ, उन के साथ उनके अनेकों साथी नाता तोड़ रहे थे, रूलिंग पार्टी के 12 सदस्य उस समय रूलिंग पार्टी को छोड़ कर विरोधी दल में शामिल हो रहे थे—क्या यह बिल्कुल साफ दिखाई नहीं देता था कि जो राज्य करने वाला दल है, वह अपना बहुमत गवां बैठा है...

SHRI RANDHIR SINGH : He is still in the Congress. He is still in our party.

श्री श्रीचन्द्र गोयल : जब उन्होंने यह चुनौती दी, तो यह दलील नहीं दी जा सकती कि उन्होंने पहले अविश्वास के प्रस्ताव के अधिकार को वापस ले लिया था। वापस लेने का उन को अधिकार था, वह वापस ले सकते थे और सदन की मर्जी से उन्होंने वापस लिया था। यह भी सत्य है कि अनेकों इस प्रकार के प्रसंग आये होंगे जिन पर शक्ति परीक्षण हो सकता था, लेकिन स्थिति हर मिनट और हर क्षण बदलती रहती है। उस समय यह स्थिति बन गई थी जब कि राज करनेवाला दल अपने बहुमत को गवां बैठा था और उस समय वे दोबारा अपने अविश्वास के प्रस्ताव को लाये। क्या यह अध्यक्ष या राज्यपाल का कर्तव्य नहीं था कि जब वह प्रस्ताव विचार के लिए आता है और उस पर निर्णय होता है—मैं यह नहीं कहता कि वह प्रस्ताव पास होता या फेल होता, मेरी जानकारी के अनुसार तो वह निश्चित रूप से पास होता, फिर भी इस बात को छोड़ दीजिये, प्रश्न यह है कि जब एक अविश्वास प्रस्ताव आता है इस बात की चुनौती देने के लिए कि वहाँ पर राज्य करने वाला दल अपना बहुमत गवां बैठा है तो कोई कारण नहीं था कि उस को न लिया जाता। आज हम यह आसरा लें कि गवर्नर के लिये कोई चारा नहीं बचा था, चव्हाण साहब इस बात को न भूलें कि उन के अपने दूसरे राज्यपालों ने— बंगाल के

राज्यपाल ने जब वहाँ के अध्यक्ष श्री बनर्जी ने वहाँ के सदन को स्थगित कर दिया और उसी प्रकार जब पंजाब में जोगिन्द्र सिंह मान ने जब वहाँ के सदन को स्थगित कर दिया-उस के बाद वहाँ गवर्नरों ने विपरीत कार्यवाहियाँ कीं, उन दोनों सरकारों को डिस्मिस किया। तब भी उन्होंने यही कहा था कि गवर्नर के लिए और क्या चारा बचा था।

आखिर में, मैं यह कहना चाहता हूँ कि दो तराजू या दो बाट समय-समय पर चीजों के नाप के लिए इस्तेमाल नहीं की जा सकतीं। आज समय आ गया है कि जब हमें अपने राज्यपालों की भिन्न भिन्न स्थितियों के अन्दर कार्यवाहियों पर विचार करना होगा। आज दुर्भाग्य से वह स्थिति आ गई है कि जो हमारे राज्यपाल हैं, उन के क्या अधिकार हैं, उन का क्या स्थान है, उनकी बांह कितनी लम्बी है, उन की डिस्क्रिमीनेरी पावर्स की व्याख्या का समय आ गया है।

आपने देखा कि अभी हाल में राज्यों की विधान सभाओं में राज्यपालों ने जो भाषण दिये, उन में से तीन राज्यपालों ने-पंजाब के राज्यपाल ने, मैसूर के राज्यपाल ने और मद्रास के राज्यपाल ने केन्द्रीय सरकार की कड़ी आलोचनायें की हैं। आज हम यह कहते हैं कि वे केन्द्रीय सरकार के प्रतिनिधि हैं, केन्द्रीय सरकार के प्रतिनिधि हो कर वे केन्द्रीय सरकार की कार्यवाहियों की आलोचना करें, इस चीज के बारे में हम को तय करना होगा कि वे केन्द्र के प्रतिनिधि हैं या जिस राज्य के राज्यपाल हैं केवल उन्हीं के प्रति उनकी जिम्मेदारी है। आपको याद होगा, उपाध्यक्ष महोदय, पंजाब के राज्यपाल ने यह कहा है कि भारत सरकार ने चण्डीगढ़ का निर्माण देने में देर तक लटका कर पंजाब के साथ ज्यादती की हुई है। इसी प्रकार मैसूर के राज्यपाल ने यह कहा है कि महाराष्ट्र और मैसूर के विवाद को इतनी देर तक लटकाये रखने में उन के साथ ज्यादती की गई है। इसी तरह से मद्रास के राज्यपाल

ने यह कहा है कि उन को उचित वित्तीय सहायता नहीं दी जा रही है, भारत सरकार उन के साथ भेद-भाव की नीति रखती है। इस लिए मैं यह कहना चाहता हूँ कि इन के जो अधिकार हैं, आज उन को नियमबद्ध करना होगा। जब तक हम उनकी पावर्स की डेफीनीशन नहीं करेंगे तब तक काम नहीं चलेगा। आज बहुत से प्रदेशों में दूसरे दलों की भी सरकारें हैं जो केन्द्र की सरकार से भिन्न हैं, इस लिए उन की शिकायतें भी उचित हो सकती हैं।

इसलिए मैं निवेदन करूंगा कि अगर राज्यपाल महोदय ने गलती की है, सत्रावसान किया है तो अपनी गलती का मुधार करें, वहाँ की असेम्बली के सेशन को दोबारा बुलाकर अविश्वास के प्रस्ताव पर बहस करायें। इस के साथ साथ मैं एक और मुझाव देना चाहता हूँ-हमारे संविधान के अनुसार जो 6 महीने का समय है, एक सत्र और दूसरे सत्र के बीच में 6 महीने का समय रह सकता है, इसके सम्बन्ध में श्री मधु लिमये का संविधान में संशोधन करने का बिल इस सदन में आया हुआ है, मैंने भी इसी आशय का एक बिल दिया हुआ है कि यह 6 महीने का समय घटा कर 2 महीने कर दिया जाय ताकि अल्पमत की सरकारें भिन्न भिन्न राज्यों में बहुत अधिक समय तक न टिक सकें और संविधान की धाराओं का दुरुपयोग न कर सकें। इसलिए मैं चाहता हूँ कि हमारे संविधान के अन्दर दो संशोधन करने की आवश्यकता है- एक तो 6 महीने का समय कम करके दो महीने का समय बनाने की आवश्यकता है और दूसरे राज्यपालों के अधिकारों की व्याख्या करने और उनको नियमबद्ध करने की आवश्यकता है। और इसके साथ साथ में समझता हूँ वहाँ पर गवर्नर को तुरन्त सत्र बुलाकर अविश्वास के प्रस्ताव पर बहस का मौका देकर विरोधी दलों की जो शिकायत है उसको दूर करना चाहिए वरना हमारे चव्हाण साहब के ऊपर यह इल्जाम लगेगा कि वे संविधान की रक्षा नहीं कर रहे हैं, संविधान की हत्या कर रहे हैं।

MR. DEPUTY--SPEAKER : Shri Ramamurti.

AN HON. MEMBER : This side also.

MR. DEPUTY--SPEAKER : The government side has exhausted its time and the Home Minister would reply on their behalf.

SHRI BEDABRATA BARUA : (Kal-labor) : The time may extended, in which case our quota will also increase.

MR. DEPUTY--SPEAKER : We shall see.

SHRI P. RAMAMURTI (Madurai) : While moving his Motion, Shri Nath Pai talked of the spirit of the Constitution. I would also agree with the spirit of his Motion I do not think there will be two opinions in this country that the action of the Chief Minister of Haryana and ultimately of the ruling Congress party there in getting the Assembly prorogued is something very very reprehensible. I do not think the ruling party here itself can justify that action in any way at all. It goes against all conscience that when a no-confidence motion is pending, the House should be prorogued.

SHRI RANDHIR SINGH : It lapsed; it was not pending.

SHRI PRAMAMURTI : The Speaker had admitted it and had also fixed a date for discussion, on the 3rd March. If the motion had lapsed, the question would have been entirely different. Fortunately, the Speaker had fixed a date also, March 3, for discussing it. So it was extremely wrong and reprehensible—my vocabulary does not give me a stronger word—for them to get the House prorogued. That is one thing.

But the question with which we are now concerned is not the action of the Chief Minister which we cannot question here because it falls within the confines of the Legislative Assembly; the people there are sovereign in this matter; if they get rid of the Chief Minister that is entirely a different matter. It is not for us in Parliament to do anything about it.

Shri Nath Pai had recourse to interpretations of various provisions of the Constitu-

tion. He talked of the spirit of the Constitution, fraud on the Constitution. He said he was not questioning the conduct of the Chief Minister, but that of the Governor. I am glad the Home Minister has taken up the position that the Governor of that State acted on the advice of the Chief Minister, and so long as the advice of the Chief Minister is within the confines of the letter of the Constitution, he has no other option.

SHRI MADHU LIMAYE (Monghyr) : He did not add that rider; his statement was absolute.

SHRI P. RAMAMURTI : That is what it means. So long as the Chief Minister was tendering advice within the letter of the Constitution, the Governor had no option but to accept and act on it. I agree with that position. I only wish the Home Minister had taken the same position when it came to the question of West Bengal where the Chief Minister had tendered advice that the Assembly should be called on a particular day—I believe on the 9th November—but the Governor said, 'No, if you do not call the Assembly on a date before that date, then I will dismiss you, I wish he had taken up the position which he now takes then also. Anyway, he has now become wiser by events.

The other question is that we have been seeing so many interpretations of the Constitution by various friends. Shri Nath Pai was going into panegyrics on the various provisions of the Constitution, on the spirit of the Constitution and all that. Unfortunately, I am not in a position to go into panegyrics over this Constitution. After all, let us remember that it is this very Constitution that is the cause of all this confusion. On the one side there is a provision that there should not be an interval of more than six months between two sessions of an Assembly. Another provision is that the Governor has to act on the advice of the Council of Ministers. Did not the framers of the Constitution know that this Constitution can be used as an instrument of convenience? I dare say that the framers were very wise people. They were not unintelligent people. Extraordinarily intelligent people were there. I say they deliberately framed this Constitution, knowing that

these things would happen. After all, we must remember what the Constituent Assembly was. It was not elected by a sovereign people. It was a Constituent Assembly accepted by the British Government, elected not on the basis of adult suffrage, but on the basis of indirect election by the Assemblies, which themselves were elected on the basis of property rights and literacy qualification. We know also how they were biased, what exactly their class attitude was, all these things we know. That is why I am not able to go into panegyrics over this Constitution as Mr. Nath Pai has done.

After all, we are concerned with the prorogation of the House. The prorogation of the House is not the act of the Governor alone. The Constitution says that the Governor has got to prorogue the House on the advice of the Chief Minister. Therefore, it is not a unilateral action of the Governor himself. How are you going to separate these two things and express concern only over the action of the Governor when he had to act on the advice of the Chief Minister? I do say that the Chief Minister did not act properly, he did not act democratically, all that is true, but I do not think that it is possible for us to separate these two aspects. That is why I say that the proper forum is the Assembly itself. If that forum is not immediately available to the people, the proper forum is the people of Haryana. Let them go to the people of Haryana and let them agitate against this action of the Speaker.

SHRI RAM KISHAN GUPTA : There is section 144.

SHRI P. RAMAMURTI : Even where there is section 144 we are conducting movements in spite of that, in spite of police raj, in spite of military raj and all that. Therefore, they should bring such pressure over the Chief Minister to revoke this order or mend his ways, otherwise the avalanche of the people's anger will fall upon him and drown him. That is the proper forum. Why should this Parliament be brought into this question? Therefore, while I am all for condemning the Chief Minister, I will choose the forum of the Haryana people and not the forum of Parliament.

Previously when questions of Bengal and other things were discussed here, we

agreed to it lest it should be said that we were shirking a debate, but even at that time we were of the opinion that these are questions which could not be discussed on the floor of this House. That has been my consistent position. Therefore, I am not prepared to support this motion.

SHRI BEDABRATA BARUA (Kaliabor): Mr. Nath Pai in his opening remarks said that it was a fraud on the Constitution and that what the Governor went against the spirit of the Constitution and the acceptance of the advice undermined people's faith in democracy. I should like to quote from *Hindustan Times* today :

"The attempt to overthrow the Bansal Ministry last week had all the elements of a thriller—knocks on the door, shades in the night, cries, confession, promises and concessions."

It is in this context that we are discussing the whole issue. The candid statement of the Haryana Speaker which has been quoted by Mr. Nath Pai ought to have set at rest all controversies about the legality or the constitutionality or otherwise of what the Speaker did. He admitted a motion of no confidence; he also admitted an adjournment motion. Mr. Nath Pai usually quotes from *May's Parliamentary Practice*; I had never had any occasion to quote from that book till now. I take this opportunity to do so. It says on page 35, Sixteenth Edition :

"Adjournment is solely in the power of each House respectively; though the pleasure of the Crown has occasionally been signified in person, by message, commission or proclamation that both the Houses should adjourn; and in some cases such adjournments have scarcely differed from prorogations. But although no instance has occurred in which either House has refused to adjourn, the communication might be disregarded."

The effect of prorogation is to suspend all business until Parliament shall be summoned again. I do not think that this includes anything except impeachment. So, it suspends the business before the House including the no confidence motion. In fact Mr.

[Shri Bedabrata Barua]

Nath Pai is aware of this fact and that is why he has taken shelter under the powers of the Governor, the President or the authority of Parliament.

The point that I should like to stress is tohis. The Governor of a State is a symbol and an agent of the Central Government. Under article 163 he is to function on the advice of the Chief Minister and the article also speaks about the exercise of discretion by the Governor. My respected colleague Mr. Bhandare says that he has powers similar to the British king and he says that it is also a quotation from Dr. Ambedkar .(*Interruptions.*) I do not know. Can the Governor require the Chief Minister to do certain things ? I do not find any mention of it in the Constitution. The State Assembly is not a local body ; it is also part of the sovereignty of the people of India. Anything done in the state legislatures must not be debated here. That point had been stressed by many Members. The role of the Central Government has been criticised for the action of the Governor or the absence of action as in this case. Any action or absence of action by the Governor is bound to be criticised by one party or the other; no action can be neutral. Such actions affected us also. Our party in U. P. requested the Governor to ask Mr. C. B. Gupta to face the Assembly at an early date but Mr. Gupta insisted that it would be on the 11th February. The Governor's decision was against my party, at that time. My party did not come here and shout, and it did not do all the type of things that some Members on the other side have done. But it has happened in any case. (*Interruption*)

MR. DEPUTY--SPEAKER : There is very little time left.

SHRI BEDABRATA BARUA : So, the only position is, when the adjournment motion was passed by the Assembly, by implication it means that there was the majority ; it was an expression of confidence in the Government ; it was the leader of the House who proposed it, and I do think that if there is a possibility of misuse of authority, certainly we will lay down rules by which we can restrict this power for

proposing an adjournment. But once something has been recommended and the Chief Minister has proposed it and it was carried out in the House, I do not see how the head of the State, the Governor, can compel the Chief Minister to refuse it. In any case, it was not the decision of the Chief Minister. It was a decision of the House. It was a decision of the Haryana Assembly that the House be adjourned. It was passed by a majority vote. How can a Governor go against the Assembly and say that this adjournment was not in order and ask them to continue with the House ? It would be creating a first-rate constitutional crisis. So, I think that this motion is not in order.

SHRI SEZHIAN (Kumbakonam) : Sir, the motion moved by Shri Nath Pai raised a very pertinent and urgent constitutional question on the role of the Governor and the powers vested in him. Often times, we have found that the office of Governor has been misused and abused, That is an advantage of the ruling party here. On many occasions, persons who have been shunted out of politics, who should be in a retired stage, who were to be sent to the sanatorium, came to occupy gubernatorial positions in various States.

Coming to the constitutional position, Prof. Ranga began his speech by saying that as a founding father of the Constitution, he felt very sorry of the powers given to the Governors. He said that at that time they were not aware of the powers that they had given to the Governor. At that time, Dr. B. G. Kher, speaking in the Constituent Assembly on the 30th May, 1949, sounded a note of warning and said:

"I want to submit to the House that a Governor can do a great deal of good if he is a good Governor and he can do a great deal of harm if he is a bad Governor in spite of the very limited powers given to him under the Constitution we are now framing. The powers that we propose to give him and the functions that we assign to him are very few, such as summoning and dissolving the Assembly, to give consent to the Bills, to act as representative of the State, to nominate the Premier after the general election ..."

The powers that were given were those of summoning and dissolving the Assembly, nominating the Premier, that is, the Chief Minister, and so on were thought to be few then. Those powers are very large and very huge nowadays. It is one thing to say that a thing is unconstitutional, and it is another thing to say that it is undemocratic. Most of the verdicts given by the Governors are constitutional, but they are undemocratic. Where does the mistake lie? It lies in the very Constitution itself, because the Constitution provides so much power which is arbitrary, powers which are not being defined. The functions and the guidelines for the Governors have not been defined so far. Therefore, there is discretion left to the Governor on these points. This is the position we have consistently held; that is, the Governor should not be allowed to use his arbitrary powers, whether it is constitutional or otherwise. That is the safeguard for Indian democracy.

Even at the time when the West Bengal situation came to be discussed in this House, my party and I took the very strong position that we should not discuss what had happened inside the Assembly of a State, otherwise, the Assembly may also take up the discussion of what is happening here in this House.

Now, Mr. Chavan said that the Governor has got the power to dismiss the Chief Minister if he is satisfied that he does not command the majority. Even then, I raised the question, who is to test whether the Chief Minister has lost the majority? Is it the legislature or the Governor in his Raj Bhavan? Any number of signatures by legislators also does not help. It is the properly constituted legislature alone that can decide it. Since we are forbidden to discuss Haryana Assembly, I will take a hypothetical case where a Chief Minister is about to lose his majority or is conscious that he has lost the majority. Or, during the inter-session period, he feels that he has lost the majority but refuses to summon the Assembly. This is a great lacuna in the Constitution which only says that after the end of one session and the commencement of another, more than six months should not elapse. We should plug this loophole.

18 hrs.

The Assembly functions under two things: its own rules of procedure and the Constitution. As long as they act under these two things, we cannot question any decision of the legislature even if it is bad. It is for the legislature to undo the mistake they have done. The rules of procedure should be amended and the Constitution also should be amended.

Mr. Nath Pai quoted what happened at the Speaker's Conference. There, Mr. Sanjiva Reddy said:

"The Constitution gives a right to a Chief Minister to recommend to the Governor the date on which the House should be summoned. This right of the Chief Minister or the Cabinet is absolute. I understand that in some States, as in Lok Sabha, the Chief Minister fixes the date after consulting the Speaker. I should like this convention to be extended to other States where it does not exist at present.

The Governor may suggest an alternative date but it should be left to the Chief Minister or the Cabinet to revise their decision or not. It may be argued that a Ministry which has lost its majority in the Assembly may try to avoid the summoning of the Assembly for the maximum period of six months allowed to it under the Constitution and both the Governor and the Assembly may find themselves powerless to intervene in the matter. To overcome such a contingency, as arose in West Bengal, I feel that a convention should be adopted that in case a majority of Members make a request in writing that the Assembly should be summoned on a particular date, the Chief Minister shall advise the Governor accordingly."

But I do not believe in the strength of conventions. It should be made a statutory obligation. Whenever a majority or even 30 or 40 per cent of the legislators want the Assembly to be convened, it should be convened within a week. I do not accept the plea that the Governor should act against the advice of the Chief

[Shri Sezhiyan]

Minister. In this case i may be all right, but it will not be right in very many other cases, because otherwise the Governor may act against the wishes of the elected representatives of the people. Therefore, the rules of procedure and the Constitution should be amended to remove these lacunae. We should make a constitutional reappraisal of the functions and powers of Governors and define constitutionally those functions and powers precisely. The Constitution should also be amended to the effect that whenever the requisite number of legislators want it, the Assembly should be convened within a specified short interval. We should also have definite provisions about prorogation, dismissal, etc. It should not be left to the whims and fancies of the Governor, As Dr. B. G. Kher said in the Constituent Assembly, a Governor can do a great deal of good if he is a good Governor and he can do a great deal of mischief if he is a bad Governor. As long as this arbitrary nature of the Governor's powers continues, this question is bound to arise again and again. On the first day of this session we discussed the role of the Governors of UP and Bihar. Today on the tenth day of the session, we are discussing it again. Therefore, again and again this question is going to come before the House. Unless we constitutionally define the functions and powers of the Governor, there will be no end to these things and they will come up again and again, because the welfare of the State, the decision of the Assembly or, for the matter of that, of the Chief Minister, cannot be left to be decided at the discretion of the Governor.

Coming to the particular problem of Haryana, I do not know what the Governor should have done. If he had not accepted the advice of the Chief Minister, then also there would have been cor complaints. Whether the Chief Minister commands the majority or not is another question. That can be tested and decided only by the legislature. If the Chief Minister tries to postpone the decision by adjourning the House, it is very undemocratic and it is against the spirit of the Constitution.

Unless we amend the Constitution suitably and also the rules, the arbitrary

nature of the powers of the Governor will be an open question and these difficulties will continue. Meanwhile, we should not over-step into the domain of the State legislature. While I am very much concerned of the constitutional position, I am more concerned with the sovereignty of the States and their legislatures.

SHRI VASUDEVAN NAIR (Peermade):
If the office of Governor is under fire the hon. Home Minister has to hear a part of the blame. In fact, a major part of the blame for the present state of affairs will lie at the door of the Home Minister. It is a fact which cannot be denied that at the time of the crisis in West Bengal the Central Government definitely tried to make use of the institution of Governor for its partisan ends.

Now my hon. friend, Shri Nath Pai, is trying to give a definition to the role of the Governors. We politicians, would like the Governors to act in a way which will suit us. Whenever there is a political crisis we want the Governor to act in a way which will help our respective parties. We have, unfortunately, come to that pass.

My hon. friend, Shri Barua, referred to the crisis in UP. For nearly two months, my friends on my right went on paying compliments to the Governor of UP for helping Shri C. B. Gupta to continue in office. I would say that the Governor of UP was well-advised at that time to accept the advice of the Chief Minister of Uttar Pradesh in spite of criticism from various political circles. Because, the position of my party is that the Governor is only a figurehead. The Governor should not take up any other role to himself. Under the Constitution he is not expected to do that. Whenever he was expected to do that, from whatever quarters he was expected to do that, he ran into trouble. When the government tried to make him do that, the government ran into trouble. When the other political parties wanted to make use of him, they were liable to criticism.

I hope my hon. friend, Shri Nath Pai, did not want the Governor of Haryana to play a political game. After all, in Haryana a political game is going on. Everybody knows that. It is all part of the political

game and it is as clear as day light. But if Shri Nath Pai wanted the Governor also to play that game, we cannot agree with him. I agree with my friend, Shri Ramamurti, that what the Chief Minister of Haryana did was politically a very shabby thing. The image of the ruling party in Haryana has suffered tremendously because of that. No ruling party should resort to such mean tricks. There is no doubt about that ... (Interruption). But, at the same time, I should tell Shri Sheo Narain's party and others on the right that there is no use blaming the poor Governor there.

SHRI SHEO NARAIN (Basti) : We will never appoint such men as Governors.

SHRI VASUDEVAN NAIR : Because their difficulty was that they did not have sufficient numbers by the 27th they wanted to gain time till the 3rd. They thought, they would be in sufficient numbers by the third. That was their difficulty.

SHRI RANGA : The Speaker had fixed the date.

SHRI VASUDEVAN NAIR : I am not speaking about the Speaker at all. He fixed the date but, at the same time, the Speaker made another offer, namely, that he would take up the no-confidence motion on the 27th itself. That could not be discussed as there was no use discussing it because the numbers were not there. That is quite obvious. Naturally, some people are being disappointed. For the time being Shri Bansi Lal may have a little relief. The game will go on. Political chess is being played by everyone. The result will be out after some days. But as long as the Chief Minister, as long as there is no resignation of MLAs from the ruling party at least in West Bengal there was such a report in the newspapers; in the case of Haryana we have not even seen such press reports (interruption).

SHRI SHRI CHAND GOYAL : There was.

SHRI VASUDEVAN NAIR : That is for others to say.

As long as that is not there, that Governor, according to our way of thinking, had no business to meddle into it. Of course, in between the Governor and the Chief Minister, privately they can discuss; the Governor can advise and he should, of course, advise; he should use his wisdom and good sense and all that to persuade the Chief Minister to do the correct thing. But more than that the Governor should not proceed. That is very clear. A Governor has no business to discard the advice of a Chief Minister in any State in India. The Government of India, whether it is a Congress government or the ruling party or a Congress government of the Opposition or any other government of any shape, at least let us make it sure that the Governor should only accept the advice of the Chief Minister who is in control of the situation. If that proposition is accepted, I think, there will not be any trouble and the Governors will be safe from all kinds of abuses that are hurled at them today.

SHRI RANGA : It will apply to their successors also.

SHRI VASUDEVAN NAIR : As far as this motion is concerned, my only difficulty is that, although my hon. friend has framed it as carefully as possible, in spite of that, if the House adopts such a motion, it will set a bad precedent because the spirit of that decision—again the spirit comes in—will be an encroachment on an entirely State sphere and a reflection on what happened in the Legislature of Haryana. We do not want to be a party to that kind of an encroachment on the work of any Legislature in India and we should not award any kind of reflection on the work or decisions of the Legislature. As Shri Ramamurti has said, the people of Haryana have to agitate against this. The people of UP had to agitate against the decision of the UP Government or the Governor of UP when the Assembly was convened after two months or something like that. It is entirely a matter left to the people of the State and their MLAs and their Assembly. This is not the forum to settle their scores. So, this is not a fortunate precedent that we will be setting up if we are going to take a decision on a matter like this.

****SHRI J. H. PATEL (Shimoga):** Mr. Deputy Speaker, Sir, we are now discussing in this House certain important matters relating to the situation in Haryana. Two points are involved here. Firstly, the Speaker's decision to adjourn the House *sine die* without allowing the no-Confidence motion to be taken up in the House for discussion; secondly the Governor's improper action in agreeing to the prorogation of the Assembly.

Now, when we are discussing these matters, I would like to state that for the last 20 years the Central Government have not been following the provisions of the Constitution in letter and spirit. This has created an adverse effect on the people inasmuch as the common people are losing faith in the democratic set-up.

I am reminded in this connection of the ex-Speaker's observation that it was the paramount duty of the Speaker, whatever be the subject matter under discussion, to place the entire issue before the House for its decision rather than himself taking an arbitrary decision in the matter. He made this observation in the context of happenings in Madhya Pradesh and West Bengal Assemblies in 1967. At that time Shri Chavan interpreted the provisions of the Constitution to suit his convenience and held that the Governor or the Chief Minister was all powerful in these matters.

I would like to quote, in this connection, Article 163 (1) of the Constitution which reads as follows :-

"There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

I would like to ask why the Governor of Haryana had not used his discretion in strict conformity with the provisions of the Constitution. It is for the reason that Mr. Chavan wanted Mr. Bansilal's Ministry to continue? It is not only the Judiciary or

the Legislature which has to uphold the Constitution, but the Executive also has the paramount and sacred duty to act strictly in accordance with the provision of the Constitution. There have been in the recent past, many occasions when the Executive violated the Constitution. This is abundantly clear from many judgements of the Supreme Court.

I do not say that the Constitution is absolutely perfect in all respects. There are many shortcomings in it. But whatever the case may be, it is our duty to act within the ambit of the Constitution for the good of the common man. If we do not do so we should be taken to task for the infringement. At present, what actually happens is that if a powerful man commits a wrong, he claims protection under the Constitution; but on the other hand, a weak man even if he speaks the truth does not get justice. This is due to certain drawbacks in the Constitution itself.

In Haryana the Governor had not done the right thing in not exercising his discretionary power. The Speaker was also equally wrong in adjourning the House *sine die* thereby shutting out the discussion of the No-Confidence motion in order to save Mr. Bansilal's Government.

I would therefore suggest that the office of Governor should be abolished. Secondly another Constituent Assembly should be convened for the purpose of revising the Constitution with a view to removing its shortcomings. With these words I support the motion moved by Shri Nath Pai.

SHRI DATTATRAYA KUNTE (Kolaba): Sir, we are discussing a grave situation that has arisen in Haryana because of the conduct of the Governor there. Before he prorogued the House, the position was that by a resolution of the Assembly, the Assembly was adjourned *sine die*. It does not mean that the business before the House was disposed of. There must be some Government business and the Government must be interested in disposing it of. But, as far as the no confidence motion was concerned, it was admitted by the Speaker under the Rules of the House and

it was fixed for 3rd March for discussion. Therefore, the result of the prorogation was that all this business which was before the House has been disposed of by the order of prorogation and in doing this, it is patent that the Governor has impinged upon the right of the Assembly to discuss the matters that were supposed to be there. In case, if the Governor had not prorogued the Assembly and the Assembly adjourned only *sine die*, then it should have been called for some other day to discuss the remaining business before the House. That was not done. We must consider as to what was the result of the conduct of the Governor in proroguing the House. Has he upheld the oath which he has taken that he will protect the constitution and that he will stand by the Constitution? He has not done that. Taking for granted what my hon. friend, Shri Viswanatham, said that we have no remedy, we are not asking for remedy as such. We are trying to indicate what our feelings are in this matter. If it is a serious matter, the House ought to express its opinion about the conduct of the Governor because the Governor is appointed by the President on the advice of the Government here. Therefore, the conduct of the Governor is a concern for this House itself. Shri Bhandare tried to say something. He referred to Art. 167 and Art. 167 (2) (b) under which, he said, the Governor can ask for information. If he has not asked for information, there again it is very clear that the Governor has not acted as he ought to have done. Under these circumstances, to say that we are discussing something that has happened in a State legislature is not correct. We are discussing exactly how the Constitution is being worked. Very recently when we were discussing the President's Address, some friends pleaded for amendment of the Constitution. We find that there are many a lacuna in the Constitution which lead to these things. It is not merely a lacuna in the Constitution. The point is really whether the Governor has acted in a manner he ought to have acted. His first duty is, when he takes the oath of office, to uphold the Constitution. His duty is very clearly to abide by the very letter and spirit of the Constitution, but he has not done that.

MR. DEPUTY-SPEAKER : You had 2 minutes for your party. Kindly conclude.

SHRI NATH PAI : He may be given some time. He is also ex-Speaker of a great Assembly.

SHRI DATTATRAYA KUNTE : This is an important matter.

MR. DEPUTY-SPEAKER : I know, but we can drag on ..

SHRI DATTATRAYA KUNTE : I am not dragging on, Sir.

MR. DEPUTY-SPEAKER : But then we have a limit to time...

SHRI DATTATRAYA KUNTE : When the Governor takes his oath, his oath is that he has to abide by the constitution, to stand by the constitution, to protect the constitution in spite of whatever may be the advice of the Chief Minister. That is his first duty. Therefore, while discharging that duty, if he comes to the conclusion that Chief Minister's advice is something against the Constitution, the Governor has to humbly tell the Chief Minister: "I am placed in a very anomalous position I am supposed under the Constitution to abide by your advice, no doubt; but my duty under the Constitution requires that I must stand by the Constitution and therefore I cannot accept your advice." He could as well have created a constitutional deadlock. He could have referred the matter to the President for his advice saying, the Chief Minister is giving me this advice, this is against the Constitution; what should I do? Instead of that, what does he do? He humbly submits to the advice of the Chief Minister. In humbly submitting to the advice of the Chief Minister, he has given a go-by to the constitution and this is a thing which we, sitting in this Parliament, cannot possibly tolerate and this has got to be taken note of. Even the Home Minister when he said something about West Bengal said, the Governor has the authority in case the Chief Minister has lost majority. Well, Whether the Chief Minister has lost his majority, on that point, the Presiding Officer's Conference has given a very clear ruling that whether the Chief Minister has got a majority or

[Shri Dattatraya Kunte]

not has got to be decided on the floor of the House and not elsewhere. As far as I see this has not been challenged by anyone. And whether the Chief Minister had the majority or not was exactly going to be decided by the no-confidence motion. Therefore, if the argument of Mr. Chavan about the authority of the Governor and not the unlimited aspect of it which he wants to point out is accepted the Governor should have taken that position; but by proroging the Assembly he has done disservice to the democratic right of the people of the State.

18.29 hrs.

[MR. SPEAKER in the Chair]

Therefore, Sir, this House has the authority to express its grave concern about it.

श्री यशपाल सिंह (देहरादून) : अध्यक्ष महोदय, मैं अगर भारत का गृह मन्त्री होता तो एक मिनट यह वेंकायदगी न चलने देता। पहले चेंलेंज कबूल किया। चेंलेंज कबूल करने के बाद मैदान छोड़कर भाग गए।

अध्यक्ष महोदय : आप के आने से पहले कुछ गाइड लाइन्स तय हुई हैं, उन पर ही चलना है।

श्री यशपाल सिंह : जो कुछ भी है, इस वक्त अगर वाकई वहां रूलिंग पार्टी की, चव्हाण साहब की पार्टी की मेजरिटी है तो उन को इस वक्त दोबारा असेम्बली काल करने के लिए गवर्नर को कहना चाहिए और अगर उन की मेजरिटी है तो उन्हें कोई खतरा नहीं है। अगर उन का बहुमत वहां नहीं है तो वेंकायदगी से थोड़े दिन के लिए सरकार को इस तरह से चलाने से गांधी जी के नाम पर कलंक आता है और भारत के कांस्टीट्यूशन पर कलंक आता है। कौन इतनी बात को मान लेगा? अध्यक्षता आप भी यहां करते हैं। आप जिस वक्त मोशन कबूल करते हैं, मोशन कबूल करने के बाद आप

अपोजीशन को मौका देते हैं। वहां स्पीकर साहब यह कहते हैं कि दो घंटे में कर लीजिएगा। दो घंटे के माने क्या होते हैं? आप यहां तीन तीन चार चार दिन का टाइम देते हैं। मैं आप के द्वारा सरकार से यह आग्रह करना चाहता हूँ कि फौरन इस बात का इलाज करें और हरयाना असेम्बली दोबारा बुलाई जाय। अगर उन की वहां मेजरिटी है तो उन्हें कोई खतरा नहीं है और अगर मेजरिटी नहीं है तो एक अनंतिकता के साथ सरकार को थोप देना भारत की जनता का अपमान करना है।

श्री राम किशन गुप्त (हिसार) : अध्यक्ष महोदय, मैं सिर्फ आप के जरिए होम मिनिस्टर की नोटिस में यह बात लाना चाहता हूँ कि जिस रोज यह तमाम चीज हुई उस रोज एक डेपुटेशन भी इस बात के लिए गवर्नर से मिला। (व्यवधान) ... मैं आप को विश्वास दिलाता हूँ कि जो आप ने निमित्त मुकर्रर की है उस से बाहर नहीं जाऊंगा। वह डेपुटेशन गवर्नर से मिला और गवर्नर को वह सारी बातें बतलाई गई और उन से यह रिक्वेस्ट की गई कि इस कार्यवाही के अन्दर आपको दखल देना चाहिये। मैं इस जगह यह भी बतलाना चाहता हूँ कि कांस्टीट्यूशन के अन्दर प्रोरोगेशन के बारे में जो रिलेवेन्ट आर्टिकल है उस में वर्ड "मे" यूज किया गया है। "मे" का मतलब है कि गवर्नर की इच्छा है चाहे वह प्रोरोग करे या न करे। इसलिए मैं समझता हूँ कि गवर्नर ने जो अनकांस्टीट्यूशनल एक्ट किया है, होम मिनिस्टर को उस में दखल देना चाहिये और एक हफ्ते के अन्दर हरियाणा असेम्बली को बुलाना चाहिये। मेरी इस बात की तात्पर्य टाइम्स आफ इन्डिया ने भी की है—उन्होंने कहा है—

"Mr. Bansi Lal has forfeited his moral right to stay on as Haryana Chief Minister".

इस लिये मेरी यह प्रार्थना है कि जब तक दोबारा असेम्बली नहीं बुलाई जायगी वह मौरली हरियाणा के चीफ मिनिस्टर नहीं हैं।

इस लिये जल्दी ही हरिद्वारा का सेशन बुलाने का प्रबन्ध किया जाय।

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : I will confine myself to the relevant issues raised in the debate. As you have very rightly pointed out, whatever happened in the Assembly should not be criticised. But what happened in the Assembly provides some background to what the Governor did or the Chief Minister advised.

There are certain things which the Speaker has done. I am not criticising it. There are certain decisions he took. Then there are certain things which the Opposition and the party in power did. Ultimately there is something that the House did. After that, the Chief Minister gave a certain advice to the Governor, and the Governor ultimately acted on it. This seems to be the sequence of events.

In this whole set of things we are not supposed to discuss what happened in the Assembly. We are not supposed to criticise or judge what the Speaker did. I do not think what the Chief Minister did is a relevant issue for discussion here. It may be discussed I do not say that it cannot be. Therefore, the only question that is very rightly raised by Shri Nath Pai is whether what the Governor did is constitutionally correct. I will confine myself to that constitutional position.

When Shri Kunte spoke, he made some general observations with which I entirely agree. It is the duty of the Governor to act according to the letter and spirit of the Constitution. If he does not do that, he has failed in his duty. I accept it. But what is his constitutional duty, what is the letter and spirit of the Constitution that really speaking, has to be gone into. For that, one has to be completely objective. Let us all forget we belong to any particular party (*Interruptions*) I want to forget it.

AN HON. MEMBER : No he does not.

SHRI Y. B. CHAVAN : That is because he thinks as a party man and does not forget his own party.

SHRI MANUBHAI PATEL (Dabhol) : He first took up another position.

SHRI Y. B. CHAVAN : I have taken this position for the last three years. I am consistent in my position about the role, status and functions of the Governor.

I am glad Shri Nath Pai reminded me of what I had said in 1967. I have got here what I had said. Shri Nath Pai said he would quote me.

SHRI NATH PAI : I have to reply.

SHRI Y. B. CHAVAN : I am going to read what I had then said.

SHRI NATH PAI : Meanwhile, would he persuade Tulsidasji that he can look after himself?

SHRI Y. B. CHAVAN : I hope Shri Nath Pai will help him to do that.

श्री तुलसीदास जाधव : यह बात नहीं हो सकती। जब एक सभामद पार्लियामेंट में कहते हैं कि मैंने ऐसी बात नहीं कही, तो जो बार बार उस पर डिबेट चलाते हैं, तो हर एक मेम्बर का फर्ज हो जाता है कि वह देखे कि कोई मेम्बर किसी पर गलत इल्जाम न लगाये मेरे पास वोल्यूम है, मैं आपको साबित कर सकता हूँ कि उन्होंने ऐसा नहीं कहा।

SHRI Y. B. CHAVAN : We should be clear as to what the role of the Governor in the whole set up of the Constitution is.

I entirely agree with the point made by Shri Nath Pai in the beginning that the Constitution will have to be interpreted as a whole. You cannot take an article out of context and try to interpret it. When we are trying to understand the role of the Governor, we will have to understand the role of the Governor in a federal type of Constitution. Such as we have, the role of the State Legislature, the role of the Chief Minister and how all these things are related to the president and the Centre. These are some of the things that we have to take into account.

I would like to state what I stated in 1967 that the Governor is the Head of

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the state and he functions as the Head of the State except in three matters. In these three matters which are referred to by very eminent commentator on the Constitution, Mr. Seervai, Advocate General of Maharashtra, in his famous volume, the Governor acts as the agent of the President. Firstly, under article 239 (2) when he is also appointed the Administrator of a Union Territory, he acts on his own. Then, under article 200 he can withhold his assent to a Bill which is likely to derogate the powers of the High Court. And thirdly, when he makes a report under article 356 he acts on his own. These are the three articles under which he acts as an agent of the Centre if I may say so. But in other matters he functions as the Head of the State. If we accept this position then let us not take into consideration the manipulations of A, B or C party. Because when a person becomes the Head of the State, his relations with the Chief Minister are very important. I would say they are very sacred relations, if we want the federal structure to work properly. If we think that the Governor can be dictated to by anybody from here in the name of the Constitution it will be the end of the federal structure of this country.

SHRI P. K. DEO (Kalahandi) : It has been done.

SHRI Y. B. CHAVAN : That is exactly what you are trying to do. I am claiming that it is not done. Merely allegations do not become the truth.

Let us come back to the stand that the Governor has taken in Haryana. A point was made that prorogation is something different from adjournment. I quite agree that they are two different things. But what is the effect of this adjournment *sine die* in the Haryana Assembly? Whether one likes it or not, it is a fact of life that the Haryana Assembly adjourned the House. Are we taking any objection to that position? Let us see what is the effect of this adjournment. The effect of the adjournment is practically as good or as bad as that of prorogation.

SHRI MANUBHAI PATEL : Expansion of Ministry.

SHRI Y. B. CHAVAN : In the case of the Lok Sabha for example, the Speaker has the authority to adjourn the House even *sine die*. It is your pleasure, under the rules of Lok Sabha you can adjourn the House *sine die*, but what is the position in Haryana? I would like to read rule 16 of the Rules of Procedure and Conduct of Business of the Haryana Assembly. Here it is stated :

“Subject to the provisions of the Constitution and these rules, the Assembly may be adjourned from time to time by its own order.”

It can be adjourned only by itself. That means the majority of the House decides whether the House should be adjourned or not. After the House is adjourned, in the case of Lok Sabha, it is your privilege to call the House again. You can certainly call it, as you called the other day in an emergency, even before the time indicated while adjourning the House. But not so in Haryana. The Haryana rule further says :

“Provided further that the Speaker may if it is represented to him by the Minister that the public interest requires that the Assembly should meet on an earlier date ...”

SHRI SEZHIAN : Minister or Chief Minister ?

SHRI Y. B. CHAVAN : That means Council of Ministers, that means the Chief Minister again. Therefore, once the House is adjourned on the motion of the Assembly, the speaker cannot re-summon it. That has the same effect as prorogation. Mr. Na'h Pai says that the Governor should have refused to prorogue because by not proroguing he would have given an opportunity to the Assembly to consider the no confidence motion. I should like to ask him how? Even if he had not prorogued the Assembly, unless the Council of Ministers were to request the Speaker to call the House, the House could not be called. (An Hon Member: Six months rule) That rule is applicable even now, even after prorogation. How can you hold the Governor responsible and that he refused to give the House an opportunity to express its confidence or no

confidence in the Ministry. What is the essence of any no confidence motion ?

SHRI P. K. DEO : After the prorogation the motion of no-confidence will lapse.

SHRI Y. B. CHAVAN : I am not yielding. What happened to the no-confidence motion is the responsibility of the House and the Speaker and we are not supposed to discuss that. The Governor has to see whether the Chief Minister commands the majority in the House or not. Here was an opportunity. As far as we know the Speaker also asked the Members to discuss the no-confidence motion that very day. I do not know why they refused it. If they had the majority with them and if they had the courage, they should have shown that they had the majority with them.

SHRI NATH PAI : Mr. Speaker, you are permitting the Home Minister to go into matters which I never did, I am constrained to say this. You laid down a standard and you applied it, rightly to me, but you are not applying it to the Home Minister. He is going into what was happening in the House. I did not say even one word about it. I began with prorogation and he admitted that I began with prorogation.

SHRI Y. B. CHAVAN : I also began with prorogation.

SHRI NATH PAI : You are going beyond it.

MR. SPEAKER : You too had some-time to make a reference to it.

SHRI NATH PAI : I referred to the published statement, and not to what happened in the House.

SHRI Y. B. CHAVAN : I am not referring to any statement in the House. I am merely speaking of a fact. When the Governor was applying his mind to the prorogation, he had to see certain things. I am only mentioning that the Governor did not act in a vacuum, but in the light of certain things that took place. One of those things was that by a majority the Chief Minister had demonstrated that the House was with him. Was he supposed to

neglect this fact ? That is the main point. Was it not the duty of the Governor to satisfy himself whether what the Chief Minister claimed was proved by a demonstration that he commanded majority in the House. The question is whether the Governor has failed to act in his duty or not.

AN HON. MEMBER : He has failed.

SHRI Y. B. CHAVAN : There is no doubt that the Governor did apply his mind to this question when he saw that even by not allowing prorogation there was no remedy open unless the Chief Minister agreed to recall the session. At the same time he had seen that the Chief Minister had demonstrated that the majority of the House was with him, when he adjourned the House. Was it within the power of the Governor to refuse prorogation when that was the advice given by the Chief Minister. In those circumstances it was his duty to accept the advice of the Chief Minister. The matter is very simple; unfortunately it has been made more complicated than it deserved. Whether the Chief Minister should have advised the Governor to prorogue the House, or whether the Chief Minister should have insisted on putting that motion for *sine die* adjournment or not are all matters of opinion. I do not want to hold any brief for anybody. (Interruptions). Probably Mr. Vasudevan Nair would have taken another position if he were in that place. If some other Member from this side would have been there he would have taken a different position; if I had been there possibly I would have taken a different position, I do not deny that. But once the Chief Minister taken up the position, our main duty is to see how the Governor reacted to it. I personally feel that the Governor had no other alternative in this particular case than to accept the advice of the Chief Minister, and from that point of view, I am personally convinced that the Governor was within his rights. I think it was his constitutional duty to accept the advice of the Chief Minister. Some hon. Members, for political or subjective reasons, think that he should have refused and as he has not refused they say that even the Central Government has made a mistake in not directing him to refuse that prorogation. If they expect us to take such a position they

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are asking the Central Government to subvert the Constitution, I would very humbly submit that it is my duty which I owe to this hon. House to say that we cannot accept such a proposition.

SHRI NATH PAI : Mr. Speaker, Sir, I shall be very brief in my reply. We had a fairly long and exhaustive debate and I am constrained to say that the basic issue remains somehow unanswered. It is seen that Mr. Chavan has conceded many points, but on the main issue of the debate I am afraid he did not try to agree or to see the strength behind it.

What was the main point ? All kinds of things have been said about the rights of the House : I respect them; about the sanctity of the office of the Speaker of the State Assembly : I am second to none in upholding it. My friend Mr. Vasudevan Nair was saying that we should not be a party to the encroachment on the rights of the State. I fully endorse that plea. But what was the issue in the debate all the time ? One was, how should the Governor function within the framework of the Constitution of India: what is the role, what is the duty, what is the discretion allowed to him, Mr Chavan said. "I have not changed the position." He made three pieces of reference. He quoted from my reply to Shri Dandekar quoting from Seervai. It is in the book; there is nothing a wrong about it. That is what I said. Earlier on, he had taken pains to pay a compliment to Mr Dandekar by saying. "I fully agree with Mr. Dandekar." What was Mr. Dandekar's position ? "I completely agree with Mr. Nath Pai that the discretion of the Governor is limited." That was Mr Dandekar's position. I do not want to go on with that aspect.

Here, the basic issue remains undecided. The Speaker gave a direction, and I entirely uphold the suggestion, the direction given by you. We do not want to go against it, but the position remains. There was a major thing which the House is concerned with : that is the no confidence motion. There is now a vital difference between the adjournment of the House and its prorogation. Had the House been adjourned,

the business before the House does not become dissolved; but had the House been prorogued, even the motion of no-confidence lapses. This is a very vital difference. What was the main, elementary, basic, fundamental, powerful thing ? (*Interruption*) I do not want to repeat them.

I have been accused. Mr. Bhandare spoke; I think that he is a scholar; at least I still remain under that illusion, perhaps. He said I would agree with Mr. Nath Pai, but Mr. Nath Pai condemned it." Where is the word "condemn" used ? I expressed only grave concern. I am not passing any judgment. We do not condemn anybody. I am raising this issue which is of great importance and that was my plea. During the time of my submission, he nodded and said that "you are right." Later on, he thought that perhaps he cannot concede. What is the issue ?

I am sorry to say-even at the risk of slight repetition-that it is not correctly quoted by my friend from the DMK party. He quoted the speech of Speaker Sanjeeva. Reddy I am quoting the resolution of that conference. That was the speech of an individual, though he held an exalted position. What was the resolution ? The resolution is the essence of my submission today : that the Assembly shall not be prevented, when there is a no-confidence motion, by bringing in an adjournment motion. It is trying to nullify the very existence, and on this point perhaps we disagree. I think even now-I want to conclude with this submission-Mr. Chavan says let us not subvert the Constitution. With his tremendous skill in oratory, yesterday Mr. Chavan won applause by saying subtly, "I am not going to be a party to the breaking of the Constitution." Consciously he will not be, but Constitutions have been known to be eroded. One can go on nibbling at the Constitution and weakening it. When the spirit of the Constitution, the sovereign will of the people which alone is the sanction and justification for the so-called responsible Government, is violated, then there is subversion of the Constitution. One does not have to commit subversion by proclaiming, "Today I hereby subvert the Constitution". You can go on swearing by the Constitution and still subvert it by den-

ouncing the spirit of the Constitution. This is the only point before the House.

Sir, I make an appeal to you. Suppose there is a motion in this House expressing want of confidence in the Council of Ministers of the Union Government. You have admitted it and the date has also been fixed for its discussion. I know you have a right under rule 15 to adjourn the House and call the House. I know that rule 16 of the Haryana Assembly Rules is different. But is it conceivable that because you have the right to adjourn the House, a situation can arise that the Speaker of the Lok Sabha having duly admitted a motion for no confidence against the Council of Ministers under the rules and have also fixed a day for its discussion, you will adjourn the House *sine die* because you have the right to do so under rule 15? If you adjourn it, what will be the duty of the President of India? He knows his duty. This is the issue now. On the 28th February night, you called us and we came. I raised the issue then, "Will you call us back at 5.30 morning because under rule 15 you have that right?" We know you will not use that power indiscriminately. It is this subtle discretion that the Governor should have exercised.

Sir, I fully agree that we do not want a meddling Governor. Mr. Vasudevan Nair's colleague, Mr. Indrajit Gupta, in a brilliant peroration, on the 15th November 1967 upheld every point on the same issue when I disapproved of the use of the office of the Governor not as an instrument of the Constitution but as an agent. But this time it did not happen.

Mr. Speaker, this generation is called upon to take a very close view of this Constitution. There are some lacunae and weaknesses in it. But by and large we should not tamper with it, particularly so far as its basic, guiding inspiration is concerned. It is that which is in danger in Haryana now.

Can anything be done now? Mr. Tenneti Viswanatham, with all his sobriety and sagacity, raised the issue and said, "Mr. Nath Pai, what you say did happen. Assuming it is wrong, what can we do here?" In the first place, if a wrong is committed anywhere, to say it is wrong is an achievement in itself. To take note of an achievement is to

see that that it is not repeated and a check is put on those who are likely to commit it again. There is no higher authority than Parliament which can do it. To say this is not to encroach on anybody's basic rights but to exercise our elementary right. We shall not be a party to any encroachment on the States' rights, but shall we sit idly when there is encroachment on the spirit of the Constitution of India? This then is the question which you, Sir myself and Mr. Chavan should answer.

Yesterday for the benefit of Mr. Tulsi-das Jadhav, Mr. Chavan said, "Opinions on Constitutions can differ. Mr. Nath Pai has given one opinion and I have given another opinion. We can disagree." Yes, I submit we humble politicians can disagree on it when even Judges disagree. But can we disagree on this thing? I do hope that you have a remedy, if, you want, if there is a will, if there is a conviction if there is a feeling that whatever other things we may be doing, so far as our guiding principle of upholding the sanctity and authority of the Constitution, which is the will of the people is concerned, whatever may be the party to which we may belong, if our oath is true, then we shall see to it that our Constitution is preserved. That is why I point out to you article 356 of the Constitution under which the President can act if he is satisfied that there is a violation of the spirit of the Constitution, for which he does not need a report. If he is satisfied, he can act and it is Shri Chavan's job to satisfy him and it is our job to satisfy Shri Chavan. Then, what the Governor has declined to do, the President of India can do.

I want to make a plea that even today it is not late, the President of India should be persuaded that the Governor of Haryana should be directed that the people of Haryana, through their chosen representatives, exercise their basic right to decide whether that government enjoys the confidence of the majority. I appeal to Shri Chavan that we have to see that the spirit of the Constitution shall prevail and not merely its letter. All along he did not emphasise the spirit of the Constitution so much as its letter.

I commend my Motion for the acceptance of the House because I feel that Parliament is called upon, not to violate any-

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body's rights but to uphold the healthy conventions and to give guidance to the rest of the country. It is with this end in view that we listened to the speech of the Home Minister and after hearing it I am unable to withdraw my resolution. I plead with the Members to be guided not by their loyalty to their parties but their loyalty to the Constitution and support my Motion.

19 hrs.

MR. SPEAKER : The question is :

“ That this House views with grave concern the prorogation of the Haryana Legislative Assembly, when a motion of no-confidence in the Council of Ministers having been admitted was pending before the House, as a flagrant violation of the spirit of the Constitution likely to undermine our people's faith in the democratic process.”

The Lok Sabha divided :

Division No. 12] AYES [19.01 hrs.

Berwa, Shri Onkar Lal
Deo, Shri P. K.
Desai, Shri Morarji
Ghosh, Shri Bimalkanti
Goyal, Shri Shri Chand
Gupta, Shri Ram Kishan
Kachwai, Shri Hukam Chand
Kedaria, Shri C. M.
Khan, Shri Ghayoor Ali
Kripalani, Shri J. B.
Kripalani, Shrimati Sucheta
Krishna, Shri M. R.
Kundu, Shri S.
Kunte, Shri Dattatraya
Mehta, Shri Asoka
Mehta, Shri P. M.
Mirza, Shri Bakar Ali
Misra, Shri Srinibas
Mohinder Kaur, Shrimati
Mukerjee, Shrimati Sharda
Nath Pai, Shri
Nayar, Dr. Sushila
Nihal Singh, Shri
Parmar, Shri Bhaljibhai
Patel, Shri Manubhai
patel, Shri N. N.

Poonacha, Shri C. M.
Ram Subhag Singh, Dr.
Ranga, Shri
Ranjeet Singh, Shri
Ray, Shri Rabi
Shah, Shri Shantilal
Sheo Narain, Shri
Singh, Shri D. N.
Suraj Bhan, Shri

NOES

Ahirwar, Shri Nathu Ram
Awadesh Chandra Singh, Shri
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Barua, Shri Bedabrata
Barupal, Shri P. L.
Besra, Shri S. C.
Bhagat, Shri B. R.
Bhakt Darshan, Shri
Bhandare, Shri R. D.
Bhanu Prakash Singh, Shri
Bhattacharyya Shri C. K.
Bist, Shri J. B. S.
Brahmanandji, Shri Swami
Chanda, Shri Anil K.
Chandrika Prasad, Shri
Chaturvedi, Shri R. L.
Chaudhary, Shri Nitiraj Singh
Chavan, Shri D. R.
Chavan, Shri Y. B.
Choudhary, Shri Valmiki
Choudhury, Shri J. K.
Dalbir Singh, Shri
Dasappa, Shri Tulsidas
Deoghare, Shri N. R.
Dhuleshwar Meena, Shri
Dinesh Singh, Shri
Dwivedi, Shri Nageshwar
Ering, Shri D.
Gajraj Singh Rao, Shri
Gandhi, Shrimati Indira
Ganesh, Shri K. R.
Gautam, Shri C. D.
Gavit, Shri Tukaram
Ghosh, Shri Parimal
Govind Das, Dr.
Iqbal Singh, Shri
Jadhav, Shri Tulshidas
Jadhav, Shri V. N.
Jagjivan Ram, Shri
Kamble, Shri
Kamala Kumari, Kumari
Karan Singh, Dr.
Kasture, Shri A. S.
Kavade, Shri B. R.

Kesri, Shri Sitaram
 Khadiolkar, Shri
 Khan, Shri M. A.
 Khanna, Shri P. K.
 Kisku, Shri A. K.
 Kotoki, Shri Liladhar
 Krishna, Shri S. M.
 Krishnan, Shri G. Y.
 Krishnappa, Shri M. V.
 Kureel, Shri B. N.
 Kushok Bakula, Shri
 Lakshmikanthamma, Shrimati
 Lalit Sen, Shri
 Lutfal Haque, Shri
 Mahadeva Prasad, Dr.
 Mahida, Shri Narendra Singh
 Mahishi, Dr. Sarojini
 Mandal, Dr. P.
 Marandi, Shri
 Melkote, Dr.
 Mishra, Shri G. S.
 Misra, Shri S. N.
 Mohammad Yusuf, Shri
 Murthy, Shri B. S.
 Nanda, Shri
 Oraon, Shri Kartik
 Pabardia, Shri Jagannath
 Palchaudhuri, Shrimati Ila
 Panigrahi, Shri Chintamani
 Pant, Shri K. C.
 Partap Singh, Shri
 Parthasarathy, Shri
 Patil, Shri Deorao
 Pradhani, Shri K.
 Qureshi, Shri Mohd. Shaffi
 Raghu Ramaiah, Shri
 Ram Dhan, Shri
 Ram Sewak, Shri
 Ramshekhar Prasad Singh, Shri
 Randhir Singh, Shri
 Rao, Shri Jaganath
 Rao, Dr. K. L.
 Rao, Shri K. Narayana
 Rao, Dr. V. K. R. V.
 Raut, Shri Bhola
 Reddi, Shri G. S.
 Roy, Shri Bishwanath
 Sadhu Ram, Shri
 Saigal, Shri A. S.
 Saleem, Shri M. Yunus
 Sankata Prasad, Dr.
 Sayeed, Shri P. M.
 Sen, Shri Dwaipayan

Sethi, Shri P. C.
 Shambhu Nath, Shri
 Sharma, Shri Madhoram
 Shashi Bhusan, Shri
 Shastri, Shri Raghuvir Singh
 Shastri, Shri Sheopujan
 Sher Singh, Shri
 Shiv Chandika Prasad, Shri
 Shukla, Shri S. N.
 Shukla, Shri Vidya Charan
 Siddayya, Shri
 Siddheshwar Prasad, Shri
 Sinha, Shri Mudrika
 Sinha, Shri R. K.
 Snatak, Shri Nar Deo
 Sonar, Dr. A. G.
 Sonavane, Shri
 Surendra Pal Singh, Shri
 Sursingh, Shri
 Swaran Singh, Shri
 Tarodekar, Shri V. B.
 Thakur, Shri P. R.
 Tiwary, Shri D. N.
 Viswanatham, Shri Tenneti
 Vyas, Shri Ramesh Chandra
 Yadav, Shri Chandra Jeet

MR. SPEAKER : The result* of the division is Ayes: 35; Noes: 124.

The motion was negatived.

MR. SPEAKER : I am very much satisfied that there was such a brilliant discussion on this subject. This has removed many misunderstandings, both constitutional and otherwise. Before admitting this there was something in my mind on which I was very hesitant. Therefor I had to lay the guidelines. But from this discussion I have learnt as much as I could not learn during the last ten years. I can say that the Governor and the Speaker should always be alert and very vigilant. That is the lesson I have learnt from you.

As decided earlier, there would be no half-an-hour discussion today. It has been postponed to Monday.

19.03 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Thursday, March 5, 1970/ Phalguna 14, 1891 (Saka).

*Shri G. C. Dixit also voted for NOES.