

[Shri M. R. Krishna]

1st October, 1968 to 30th September, 1969.

- (ii) Annual Report of the Hindustan Salts Limited, Jaipur, for the period from 1st October, 1968 to 30th September, 1969 along with the Audited Accounts and the comments of the Comptroller and Auditor General thereon. [Placed in Library. See No. LT-4501/70].

**DELIMITATION OF COUNCIL CONSTITUENCIES  
(BOMBAY) AMENDMENT ORDER**

THE DEPUTY MINISTER IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI P. PARTHASARATHY) : On behalf of Shri Jaganatha Rao, I beg to lay on the Table a copy of the Delimitation of Council Constituencies (Bombay) Amendment Order, 1970 (Hindi and English versions) published in Notification No. G. S. R. 1821 in Gazette of India dated the 22nd October, 1970 undersub-section (3) of section 13 of the Representation of the Peoples Act, 1950. [Placed in Library. See No. LT-4503/70].

12.44 hrs.

**ARREST OF MEMBERS**

(SHRI JANESHWAR MISRA AND SHRI ARJUN SINGH BHADORIA)

MR. SPEAKER : I have to inform the House that I have received the following wireless message, dated the 7th December, from the Additional District Magistrate, 1970, Lucknow :

"Sarvashri Janeshwar Misra and Arjun Singh Bhadoria, Members, Lok Sabha, were arrested under Section 189, Indian Penal Code, today, the 7th December, 1970, at 11:30 hours and detained in Lucknow-Jail."

SHRI SURENDRANATH DWIVEDY (Kendrapara) : By their own Government,

SHRI S. M. BANERJEE (Kanpur) : We want a repeal of that ordinance. I congratulate those leaders. (Interruption)

12.45 hrs.

**PETITION RE. SCHEDULED CASTES  
AND SCHEDULED TRIBES ORDERS  
(AMENDMENT) BILL, 1967**

SHRI LOBO PRABHU (Udipi) : I beg to present a petition signed by Shri B. Ramchandra Tandurker, Gulbarga, relating to the Scheduled Castes and Scheduled Tribes Orders (Amendment) Bill, 1967.

**STATEMENT RE. CONSTITUTIONAL  
IMPLICATIONS OF RESOLUTION  
PASSED BY STATE LEGISLATIVE  
ASSEMBLY IN PURSUANCE OF ARTICLE 169**

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI K. HANUMANTHAIYA) : Sir, In connection with my reply to starred question No. 302 answered in the Lok Sabha on 24th November, 1970, dealing with the abolition of the Legislative Council in Bihar you had desired to know the legal position on two points—

- (1) once a resolution is passed by a State Assembly and sent to the Lok Sabha, are there any constitutional provisions by which by another resolution rescinding the same, they can withdraw this from the Lok Sabha when it is already seized of it ?
- (2) after they received the resolution are the Government bound to bring forward a legislation or is it optional with them ?

The matter has been further examined in the Law Ministry. The only provision which deals with the subject matter of the questions is article 169 of the Constitution and Clause (1)

of the said article dealing with the abolition or creation of Legislative Councils in States reads as follows :

"Notwithstanding anything in article 168, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council or for the creation of such a Council in a State having no such Council, if the Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the Members of the Assembly present and voting."

The phraseology of article 169 clearly shows that the framers of the Constitution have chosen to clothe Parliament with the requisite power in this behalf either for the abolition or for the creation of a Legislative Council on the fulfilment of a prior condition, namely, the adoption of a resolution to that effect by the concerned State Legislative Assembly with the requisite majority. Once the condition precedent is fulfilled, by virtue of operation of the provisions of article 169, Parliament gets clothed with the necessary power.

Besides, the two types of resolution referred to, the Constitution does not contemplate any other type of resolution by the passing of which the State Legislative Assembly would be able to withdraw an earlier resolution of which the Lok Sabha is seized. This is the answer to the first question.

So far as the second question is concerned, article 169 does not mention Government as such. Parliament, if it so chooses, may exercise the power with which it gets clothed on the passing of a resolution by a State Legislative Assembly. The machinery of Parliament may be set in motion by Government or by a Private Member. What is more, whether the necessary action is taken by the Government or it is sponsored by a Private Member, the ultimate say in the matter is that of Parliament itself.

But, Parliament has to exercise its discretion and judgment; for, the word used in the

Article is "may" and not "shall". The wording is significant since in the Article in the first part (1) the word "may" is used and in the second part (2) the word "shall" is used. "May" denotes discretion and therefore Parliament is not bound blindly to implement the State Assembly resolution. The Parliament cannot only choose the time for implementation of the resolution but also decide against it. The answer to the second question is therefore, that it is optional.

However, before Parliament makes a law in pursuance of the provisions of article 169, if the Legislative Assembly of the State concerned were to revoke or modify its earlier resolution, it would be more appropriate for Parliament not to invoke the provisions of article 169 in this regard.

12.50 hrs.

RE: ALLEGATION BY MEMBER

SHRI MORARJI DESAI (Surat) : Sir, I have written a letter to you. Mr. Shashi Bhushan is here.

MR. SPEAKER : About your son ?

SHRI MORARJI DESAI : Yes.

MR. SPEAKER : I sent that to Mr. Shashi Bhushan. He wrote to me saying that he is going out for a week.

SOME HON. MEMBERS : He is here.

श्री शशिभूषण ( खारगोन ) : अध्यक्ष महोदय, मैंने आपको लिखा था कि मैं इस हफ्ते में आप से मिलने वाला हूँ और आप से इस सिलसिले बात करूँगा। अब यह मैं नहीं समझता, हफ्ता तो अभी खत्म नहीं हुआ तो मैं खुद मिलने वाला हूँ और इस सिलसिले में बात करना चाहता हूँ क्योंकि उसमें बहुत-सी चीजें उससे सम्बन्धित हैं, तो उस सिलसिले में मैं डाक्यूमेंट्स इकट्ठे कर रहा हूँ और उसके लिये इजाजत चाहता हूँ आप से मिलने के लिये।