

of billets to the re-rolling Mills in Madhya Pradesh is not being made according to their requirements :

(b) whether there are any re-rolling Mills in Madhya Pradesh which are not being supplied any billets at all ;

(c) if so, their number and quantities demanded by them and the reasons for their non-supply ; and

(d) the quantities supplied to date against the demands made by other mills and steps taken to fill the gap between the demand and supply ?

THE MINISTER OF STATE IN THE MINISTRY OF STEEL AND HEAVY ENGINEERING (SHRI K. C. PANT) : (a)

As the production of billets is not sufficient to meet even one shift capacity of registered re-rollers it is not possible to meet the full requirements of the re-rolling mills.

(b) and (c). Billet allocation are made only to registered re-rollers. Scrap re-rollers who can function on the basis of scrap are not given billets. In the circumstances, not all re-rollers in the country, including those in Madhya Pradesh, receive billet allocations.

(d) A statement showing the billets allocated to the registered. Re-rolling mills in Madhya Pradesh and total despatches made to them from August, 1969, to January, 1970 is placed on the Table of the House.

#### STATEMENT

	Billets allocated per month from August, 1969, in tonnes.	Total despatches from August 1969 to January, 1970, in tonnes.
Indore Steel and Iron Mills.	690 (For export only)	3,893
M.P. Iron and Steel works.	157	751
National Metal Industry.	200	1,170
Digvijaya Industries Private, Limited.	*454	2,387
Apeejay Private, Ltd.	171	1,107
Central India I. and S. Company.	150	1,006

\*They have also got an *ad hoc* allotment of 100 tonnes.

12.00 hrs.

#### CALLING ATTENTION TO MATTER OF URGENT PUBLIC IMPORTANCE

##### Prorogation of J and K Legislature

SHRI HEM BARUA (Mangaldai) : I call the attention of the Minister of Home affairs to the following matter of urgent public importance and request that he may make a statement thereon :

"The prorogation of the Jammu and Kashmir Legislative Assembly by the Governor as advised by the Chief Minister who had reportedly lost Majority in the Legislative Assembly".

THE MINISTER OF HOME AFFAIRS (SHRI Y. B. CHAVAN) : Mr. Speaker, Sir, the Governor of Jammu and Kashmir has prorogued both Houses of the Jammu and Kashmir Legislature with effect from 8 A.M. on 14th March 1970. According to a report received from the State Government, the Order of Prorogation was necessitated on account of the agitation launched in Jammu by various groups and parties which have seriously affected the proceedings of the legislature.

In proroguing the Houses of the legislature, the Governor has acted in accordance with the provisions of the Constitution of Jammu and Kashmir. The Congress Party—this is the more important

[Shri Y. B. Chavan]

paragraph—continues to have an overwhelming majority in the Legislative Assembly.

**SHRI ATAL BIHARI VAJPAYEE** (Balrampur) : Question.

**SHRI RABI RAY** (Puri) : Which Congress ?

**SHRI ATAL BIHARI VAJPAYEE** : How can the Home Minister say that ?

**SHRI Y. B. CHAVAN** : There are, however, some controveris regarding the extent of support enjoyed by the Council of Ministers in the party.

**श्री अटल बिहारी वाजपेयी** : मैं व्यवस्था का प्रश्न उठाना चाहता हूँ। क्या गृह मंत्री महोदय किसी भी असेम्बली पार्टी के बारे में यह फैसला दे सकते हैं कि वह बहुमत में है या नहीं ? कांग्रेस पार्टी की सरकार वहाँ है। कांग्रेस का बहुमत था यह गृह मंत्री ने कैसे कहा ? क्या यह बात गवर्नर की रिपोर्ट पर आधारित है ?

**श्री इन्द्रजीत मल्होत्रा** (जम्मू) : यह बात ठीक है। वहाँ कांग्रेस की सरकार है।

**श्री अटल बिहारी वाजपेयी** : यह बहुत गम्भीर मामला है।

**अध्यक्ष महोदय** : मेरा अपना ख्याल है कि उनके ख्याल से जो वहाँ की पोजीशन है वह उन्होंने दे दी है।

**श्री अटल बिहारी वाजपेयी** : वह पोजीशन उन्हें कैसे मालूम हुई ? क्या गवर्नर की रिपोर्ट में यह लिखा है कि मैजोरिटी कांग्रेस के साथ है ?

**अध्यक्ष महोदय** : हरियाणा की बात थाप लाये, बंगाल की बात थाप लाये। उन में भी इस का जिक्र होता रहा है।

**DR. RAM SUBHAG SINGH** (Buxar) : How was it that the Assembly has been prorogued in the midst of the budget session which was going on ?

**श्री अटल बिहारी वाजपेयी** : मेरा निवेदन है कि आप जरा गम्भीरता से इस पर विचार करें। क्या केन्द्र में बैठे हुए गृह मंत्री को यह अधिकार है कि किस विधान सभा में किसी दल का बहुमत है या नहीं इस के संबंध में वह यहाँ एलान करें ?

**MR. SPEAKER** : How can the Chair pass any remark on that ? Let me study it.

**SHRI HEM BARUA** : From the State of Haryana to the State of Jammu and Kashmir, it is the same unethical and unhealthy pattern. Here is a Chief Minister who has advised the Governor to prorogue the State Assembly in order to defend himself. This is a very unhealthy pattern of things in our country. Jammu and Kashmir has a different Constitution also. That shows that it is yet to be fully integrated with the rest of India. Here is Shri Sadiq who goes on advising the Governor, according to the Constitution of Jammu and Kashmir, to prorogue the Assembly. He did it in 1964 also. He does not enjoy any majority in the House. It is Mir Qasim who enjoy the majority in the House. He has a strength of 35 but Shri Sadiq has only 27. Whatever that may be, are Government going to advise Shri Sadiq, in the interest of our democracy, when he comes and meets spokesmen of Government here to step aside and make room for Mir Qasim who surely enjoys majority in the House ? Will they ask the Governor not to follow the advice of the Chief Minister to prorogue the State Assembly altogether ?

May I submit that internal quarrels of the same party must not be taken as reasons for an onslaught on democracy ? Our democracy must be preserved, and in order to preserve our democracy, may I know from the hon. home Minister whether he is going to advise Mr. Sadiq to step aside so that Mr. Mir Qasim may come in with majority ?

**SHRI Y. B. CHAVAN** : I do not

propose to given any advice about whether he should continue to be the Chief Minister or not.

AN HON. MEMBER : But how does he pronounce his Judgment ?

SHRI Y. B. CHAVAN : The Central Government cannot afford to give any advice like that. But from the statement that Mr. Sadiq made to the press, it seems that he is going to call the Assembly before the end of this month.

SHRI ATAL BIHARI VAJPAYEE : He will have to.

SHRI HEM BARUA : He had prorogued the Assembly before also in 1964. Why did he prorogue the Assembly ?

SHRI SURENERANATH DWIVEDY (Kendrapara) : Where was the need for prorogation. The Assembly could merely have been adjourned, for some weeks. Why was it prorogued ? It had a certain connotation. Let us know whether the prorogation was constitutional and valid.

SHRI Y. B. CHAVAN : I am not talking a position were I can sit in judgment over why he advised so. Possibly, he may not have advised it also. I am not here to justify his advice. My only point is that the Governor had no option but to accept the advice of the Chief Minister.

SHRI BAL RAJ MADHOK (South-Delhi) : How could he justify the prorogation on the ground that an agitation has been going on ? The agitation has been going on for the last 25 days.

SHRI RANGA (Srikakulam) : Have you no role to play when wrong answers are given ?

MR. SPEAKER : My role was only to admit this, and I have done it.

DR. RAM SUBHAG SINGH : Why should the Governor be allowed to act in a wrong why ?

MR. SPEAKER : What can I do ?

SHRI SURENDRANATH DWIVEDY : Arising out of the reply that the Home

Minister has given, he says that he also does not know. I am not putting a question but I only want a clarification from you. The hon. Minister says that he does not know whether the Chief Minister has advised the Governor for praogation.

SHRI Y. B. CHAVAN : I have not said that. Within five minuts if he wants to distort what I had said, I do not know what is to be done. What I said was this.....

SHRI ATAL BIHARI VAJPAYEE : He did say that.

SHRI Y. B. CHAVAN : I shall repeat what I had said.

SHRI ATAL BIHARI VAJPAYEE : Does he approve of the action of the Chief Minister ?

SHRI Y. B. CHAVAN : I said that there was no question of my sitting in judgment over why he advised the Governor or not. That was what I had said. But the reason I have already given. But under the Constitution, once the Governor receives the advice of the Council of Ministers, he has no option but to abide by it.

SHRI NATH PAI (Rajapur) : This is *mala fide* prorogation,

श्री हरदयाल बेबगुण (पूर्व दिल्ली) : हरियाणा के बाद जम्मू और काश्मीर में इस प्रकार से विधान सभा को प्रोरोग किया गया है। यह लोकतन्त्र के साथ बलात्कार है। बजट पर जब बहस हो रही थी और मुख्य मंत्री के अपने विभाग की मांगों पर मतदान होना था, उस समय मुख्य मंत्री का राज्यपाल को परामर्श देना कि इस सदन को प्रोरोग कर दिया जाय और उन का यह मान लेना पोलिटिकली इम्मारल है और लोकतन्त्र के विरुद्ध है। यहाँ भी लोक सभा को प्रोरोग करने समय लोक सभा के अध्यक्ष की सहमति राष्ट्रपति आवश्यक समझते हैं। जब तक आप सहमति न दें, लोक सभा का भी सत्रावसान नहीं होना। परन्तु वहाँ के अध्यक्ष को विस्वास में नहीं लिया

[श्री हरदयाल देवगुण]

गया, और केवल जब मुख्य मंत्री के दल के 32 सदस्य छोड़ कर चले गए और उनको गद्दी खतरे में पड़ गई तब उनके परासर्ष पर राज्यपाल ने विधान सभा का सत्रावसान कर दिया, यह बहाना ले कर कि जम्मू में आन्दोलन चल रहा है और वातावरण शांतिपूर्ण नहीं है। 25 दिन से वहां आन्दोलन चल रहा है...

**अध्यक्ष महोदय :** आप बहुत डिटेल्स में न जायें।

**श्री हरदयाल देवगुण :** उन का स्टेटमेंट है। गृह मंत्री ने कहा है कि वहां स्थिति शांतिपूर्ण नहीं थी। वहां 25 दिन से आन्दोलन चल रहा था। आन्दोलन इसलिए चल रहा है कि जम्मू में खान पीने की चीजें काश्मीर घाटी से महंगी मिलती हैं जो कि दो सी मील आगे है और यहां से इनको वहां भेजा जाता है। पच्चीस दिन से आन्दोलन चल रहा है। ग्यारह सी आदमी उस में गिरपतार हो चुके हैं। इस वास्ते इस वक्त इसको बहाना नहीं बनाया जा सकता है और हाउस को प्रोरोग नहीं किया जा सकता। कहा जाता है कि राज्यपाल को मुख्य मंत्री की सलाह को मान लेना चाहिये था। वहां की संविधान शेष भारत के संविधान से अलग है। अब यह प्रश्न उठता है कि जब भारत का संविधान पचास करोड़ लोगों के लिए हितकर है, उचित है जिस में पांच करोड़ मुसलमान भी हैं तो क्या वह संविधान जम्मू काश्मीर के लोगों के लिए, वहां के लोकतंत्र के लिए वहां के जनाधिकारों की रक्षा करने के लिए क्यों उचित नहीं है, क्या इसको वहां लागू नहीं किया जा सकता है? इसलिये पहली बात तो यह है कि क्या भारत के संविधान को वहां पर लागू करने के बारे में विचार किया जाएगा और अगर नहीं तो क्या वहां के संविधान को इंडियनाइज करने के लिए सरकार कोई पग उठायेगी?

क्या यह सच है कि जम्मू काश्मीर विधान सभा के 32 सदस्य अब दिल्ली में हैं और वे प्रधान मंत्री और गृह मंत्री से मिले हैं? उन्होंने वहां की स्थिति के बारे में आपको क्या बताया है? क्या उन्होंने यह बताया है कि वहां के विधान सभा सदस्यों पर अत्याचार किये जा रहे हैं, उन पर दबाव डाला जा रहा है, उनको खरीदा जा रहा है और वहां के मुख्य मंत्री को सदन में विश्वास प्राप्त नहीं है? वहां लोकतंत्र की स्थापना करने के लिए, लोकतंत्र की परम्पराओं को स्थापित करने के लिए आप क्या कोई पग उठायेंगे और क्या राज्यपाल को ऐसे गाइडलाइज देंगे कि जिन में लोकतंत्र की हत्या न हो?

**SHRI Y. B. CHAVAN :** As far as the Constitution is concerned, the Constitution of Jammu and Kashmir is there ; there is no question of amending that Constitution. As far as the important articles of our own Constitution are concerned, they are applied to Kashmir from time to time. As regards what the Chief Minister there did or did not do, I would like to repeat that I do not think that we can discuss here whether what he did was right or wrong.

**SHRI ATAL BIHARI VAJPAYEE :** Why not ?

**SHRI Y. B. CHAVAN :** At least I do not want to do that.

**SHRI RABY RAY :** The House can discuss.

**SHRI Y. B. CHAVAN :** I am not expressing any view ; I cannot express any view on the affairs of the

**SHRI RABI RAY :** He can, and the House can:

**SHRI BAL RAJ MADHOK :** Is the Governor there bound by the Constitution of India ? Is he a nominee of the President of India or is he governed by the Constitution of Jammu and Kashmir ?

**SHRI Y. B. CHAVAN :** Naturally, when he takes the oath there, he takes the oath to uphold the Constitution of India, and there is no doubt about it, but he is bound by that Constitution also. He takes the oath to uphold the Kashmir Constitution also.

An hon. Member asked me whether the Kashmir MLAs are present in Delhi and whether they have met me and whether I gave them any advice. Fortunately, I can say 'No' because they did not meet me.

**SHRI AHMD AGA (Baramulla) :** On a point of order. Kashmir is an integral part of India, and, therefore, the Constitution of India applies to us. The Constitution framed by Kashmir in respect of this axiom is contradictory to the Constitution of India. Therefore, I feel that the provision that it is obligatory on the part of the Governor to accept the advice of the Chief Minister is not applicable. I, therefore, feel that the Governor could not accept the advice of the Chief Minister.

**SHRI NATH PAI :** Who has lost his majority and who is no longer the Chief Minister.

**SHRI AHMD AGA :** to prorogue the Assembly.

**MR. SPEAKER :** This is no point of order.

**SHRI AHMAD AGA :** My point of order is that the Governor was not bound to accept the advice of the Chief Minister about the prorogation of the Assembly. The Governor again will not be competent because the fact remains that 32 Members have withdrawn their support.

**MR. SPEAKER :** He is expressing his views. It is not a point of order. The hon. Member's name is also not in the list.

**SHRI D. N. PATODIA (Jalore) :** The Assembly of Jammu and Kashmir was prorogued by the Governor on the advice of the Chief Minister only after the Chief Minister lost majority support. My question is whether even after the Chief Minister lost majority support and even after the

Governor is satisfied that he has lost majority support, it is within the competence of the Governor to accept the advice of the Chief Minister in proroguing the Assembly. In this context, it is a fact that the provisions of the Constitution of Jammu and Kashmir are contradictory to the provisions of the Constitution of India and if so, is it permitted on the soil of this country to have two contradictory constitutions, and is the Government going to do anything by which these contradictions in the two constitutions are removed?

**SHRI Y. B. CHAVAN :** The hon. Member has his own constitutional advice. My advice is different from his.

**AN HON. MEMBER :** What is your advice?

**SHRI RANGA :** That is not a reply. Probably he has not studied that Constitution and compared it with ours. If he is not aware of it, let him say he is ignorant of it, he will make a study.

**SHRI Y. B. CHAVAN :** I said my advice is different. There is no inconsistency between the two because even in the case of the other Governors we have taken the position that in matters of prorogation he has to take the advice of the Council of Ministers.

**SHRI D. N. PATODIA :** My question was if there are any contradictions between the provisions of the two constitutions and if so, if they are going to do anything to remove them.

**SHRI Y. B. CHAVAN :** So far as my advice goes, there is no contradiction.

**SHRI E. K. NAYANAR (Palghat) :** The Jammu and Kashmir Assembly was prorogued on the advice of the Chief Minister by the Governor. The Central Government is using the machinery of Governors to prorogue Assemblies when the majority is lost by the Chief Minister or to topple Governments. That has happened during the last few years. It happened in 1967 in Bengal, in 1968 in Haryana and Punjab and in 1969 in Bihar. Either they prorogue the Assembly when they lose majority or they topple the

[Shri E. K. Nayanar]

Government or try to get Aya Ram or Gaya Ram. Such is the method. May I know whether 35 MLAs of Jammu and Kashmir have withdrawn their support from Mr. Sadiq and have arrived in Delhi? This is reported in today's papers. The Sadiq group is in a minority and that is why the Governor has prorogued the Assembly on the advice of Mr. Sadiq. This is murder of democracy so far as Jammu and Kashmir is concerned. If he lost majority in the Assembly, the Governor must take the initiative and convene the Assembly as Mr. Dharma Vira did in Bengal in 1967. Why has the Governor not called the Assembly in Jammu and Kashmir? If Mr. Sadiq has lost majority, he must resign and the person who has majority must be called upon to form the Government. Why is the Central Government siding with the minority faction of Mr. Sadiq in Jammu and Kashmir in proroguing the Assembly instead of convening the Assembly and ascertaining the majority?

SHRI Y. B. CHAVAN: The Government of India is not siding with anybody.

श्री प्रकाशवीर शास्त्री (हापुड़): अध्यक्ष महोदय, जम्मू-काश्मीर के सम्बन्ध में इस सरकार की शुरु से यह आदत रही है कि वह काश्मीर के भ्रवाम के बजाय काश्मीर के एक-दो आदमियों को ही काश्मीर समझती रही है। कुछ दिन तक इस सरकार ने शेख अब्दुला के ऊपर निर्भर किया और वह उन्हीं को काश्मीर समझती रही। उसके बाद कुछ दिन तक वह बरूशी गुलाम मुहम्मद पर निर्भर करती रही और उन्हीं को काश्मीर समझती रही। आज यह सरकार वही गलती सादिक साहब के सम्बन्ध में कर रही है कि उनको काश्मीर समझ रही है और काश्मीर के भ्रवाम की आवाज को नहीं सुन रही है।

जो व्यक्ति इस समय जम्मू-काश्मीर का मुख्य मन्त्री है, उसकी अपनी स्टेट में यह स्थिति है कि 1964 में मुख्य मन्त्री बनने के बाद मे वह आज तक श्रीनगर शहर में कोई सांख्यिक भाषण (पब्लिक स्पीच) नहीं कर

सका है। जनता के साथ उसका कोई सीधा सम्बन्ध नहीं है। जनता की बात तो दूर रही एम० एल० एज० को भी मुख्य मन्त्री से मिलने के लिए छः छः महीने तक इन्तजार करनी पड़नी है। यह सरकार सादिक साहब पर कितना निर्भर कर बैठी है और उनका बचाने और उनकी स्थिति को मजबूत करने की कितनी कोशिश करती रही है, यह सब इस बात से प्रकट है कि जहाँ 1964 तक, सोलह साल में, उसने काश्मीर को 72 करोड़ रुपये की मदद दी थी, वहाँ 1964 से लेकर 1969 तक, पांच साल में, उसने काश्मीर को 175 करोड़ रुपये की मदद दी। इसके बावजूद भी जम्मू-काश्मीर में प्रगति और विकास के कई कार्यक्रम नहीं चल सके।

यह सरकार व्यक्ति को समर्थन देती है, राज्य को नहीं। इसी नीति का दुष्परिणाम यह है कि राज्य और देश के व्यापक हितों की परवाह न करते हुए वह आज भी एक व्यक्ति विशेष को बचाने की कोशिश कर रही है। जम्मू-काश्मीर विधान सभा के 72 सदस्यों में से 10 सदस्य आपोजीशन के हैं। बाकी 62 कांग्रेस के सदस्यों में वे 35 सदस्य आज सादिक साहब का साथ छोड़ चुके हैं और मुख्य मन्त्री के साथ आज केवल 27 सदस्य हैं। दो चार दिनों के बाद वे 27 एम० एल० एज० भी उनके साथ रहेंगे, इसमें मुझे शक है। इससे प्रकट है कि मुख्य मन्त्री विधान सभा में अपना बहुमत खो चुके हैं। स्वयं गृह मन्त्री ने भी कहा है कि जम्मू-काश्मीर विधान सभा में कांग्रेस की मजारिटी तो है, लेकिन इस बारे में सन्देह और मतभेद है कि मंत्रि-परिषद् में कांग्रेस पार्टी की आस्था या विश्वास है या नहीं?

जम्मू-काश्मीर के संविधान की धारा 53 (2) में स्पष्ट रूप से यह लिखा है कि अगर मुख्य मन्त्री कभी हाउस को प्रोरोग करने के विषये या सत्रावसान करने के लिए, राज्यपाल

को कहें, तो राज्यपाल मुख्य मन्त्री की राय पर सत्रावसान कर सकता है। लेकिन इस धारा में "भे" शब्द का प्रयोग किया है, "शील" शब्द का नहीं। मैं गृह मन्त्री से यह जानना चाहता हूँ कि राज्यपाल ने मुख्य मन्त्री की राय जानने के बाद इस सम्बन्ध में अपने विवेक का प्रयोग क्यों नहीं किया।

गृह मन्त्री ने अपने वक्तव्य में जम्मू के आन्दोलन का उल्लेख किया है। यह आन्दोलन चार महीने से चल रहा है और इसके दौरान ही जम्मू-काश्मीर की विधान सभा की बैठक लगातार पन्द्रह दिन तक चली। मैं यह जानना चाहता हूँ कि क्या उस समय वहाँ पर गोली चलाई गई थी? या कोई और भयंकर आपत्ति आ गई थी, जिसको लेकर मुख्य मन्त्री ने राज्यपाल को मदन का सत्रावसान करने के लिए कहा। वह आन्दोलन तो पहले की तरह चल रहा था। लेकिन चूँकि सरकार मतदान में गिरने जा रही थी, इसलिए उस आन्दोलन की आड़ में, उसका सहारा लेकर, सत्रावसान कर दिया गया। क्या गृह मन्त्री को यह जानकारी है?

मैं चाहता हूँ कि अगर विधान सभा में कासिम साहब का बहुमत है, तो सांविधानिक व्यवस्था के अनुसार उनका गवर्नमेंट बनाने का अवसर देना चाहिए। अगर वह विधान सभा की बैठक में अपना बहुमत सिद्ध न कर सकें, तो, जैसी की संविधान में व्यवस्था है, अगला कदम यह उठाना चाहिए कि जम्मू-काश्मीर में राष्ट्रपति का शासन लागू कर देना चाहिए और केन्द्रीय सरकार को वहाँ का शासन अपने हाथ में ले लेना चाहिए। अल्पमत में होकर भी एक मुख्य मन्त्री पूरे राज्य के हितों के साथ खिलवाड़ करे और केन्द्रीय सरकार बराबर उसको संरक्षण देती रहे, यह स्थिति कब तक चलती रहेगी? मैं गृह मन्त्री से यह जानना चाहता हूँ कि वह कब तक विधान सभा की बैठक दे-बारा बुलाकर उसमें मुख्य मन्त्री को अपना बहुमत सिद्ध करने का अवसर

देगे और अगर उनका बहुमत सिद्ध नहीं होता है, तो अगले कदम उठाने के सम्बन्ध में उनकी क्या राय है।

**SHRI Y. B. CHAVAN :** Sir, the hon. Member has raised some points about the history of Jammu and Kashmir administration, and he made a point that the Government of India is supporting some individuals in Jammu and Kashmir. (*Interruption*) I would plead with this hon. House in asserting that it is not a fact. (*Interruption*) The Central Government has to give cooperation and seek cooperation from the State Government, which is headed by the Chief Minister. In the time of Sheikh Abdullah, we were giving cooperation and seeking cooperation from the Prime Minister of Kashmir. So was the case with Shri Bakshi also. It was not Shri Bakshi, the individual, whom we were supporting there, but he was the head of the local administration. At the present moment also, whether cooperation we gave, it was to the Chief Minister of Jammu and Kashmir, not to Mr. Sadiq, the individual.

About the constitutional position, I am afraid, Mr. Shastri, has not taken care to read the article concerned. I will read it for his information. Article 35(2) says :

"All functions of the Governor, except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers."

So, the word used is 'shall', not 'may'.

**श्री प्रकाशचौर शास्त्री :** मन्त्री महोदय आर्टिकल 53 (2) को भी पढ़ें।

**श्री यशवन्तराव खन्हारण :** यह आर्टिकल भी काफी महत्व का है। (व्यवधान)

**श्री रवि राय :** इनको जो कनवीनिएंट लगता है, वह पढ़ते हैं।

**श्री प्रकाशचौर शास्त्री :** पायंट आफ आर्डर, सर। मैंने तो धारा 53 (2) का उल्लेख किया है। गृह मन्त्री महोदय उग को क्यों नहीं पढ़ते हैं?

SHRI Y. B. CHAVAN : I will read article 53(2) also. It says :

"The Governor may from time to time—

(a) prorogue the Houses or either House."

This is the general power of the Governor about proroguing and summoning the House, but where he has to act, he has no option under article 35. You will have to read the Constitution as a whole, not merely take one article out of it and read it.

SHRI D. N. PATODIA : On a point of order, Sir. The Home Minister said in the beginning that according to him, there was no contradiction. But now he says that according to the Kashmir Constitution the word 'shall' appears and the Governor has no discretion, whereas under the Indian Constitution, the Governor has a discretion. Therefore, I would request you to direct the minister to clarify this matter.

MR. SPEAKER : He has already explained it.

SHRI RANGA : Mr. Patodia has raised a point of order and it is for you to give an answer, not for the Home Minister. Earlier, the Home Minister said that there was no contradiction between the Kashmir Constitution and the Indian Constitution. We have always understood that our Constitution is final and superior to everything else and it should hold good. When we asked whether there was any contradiction between the two, he said, no. Now he has made it clear that in one place in the Kashmir Constitution it is 'shall' and in the Indian Constitution it is 'may'. There is a contradiction. It is for you to say whether there is a contradiction or not.

MR. SPEAKER : I am not sitting here to fill the gaps or correct the Home Minister where he is not giving an answer according to your satisfaction. I am very sorry.

SHRI RANGA : If within your knowledge he makes a wrong statement, can you not ask him ?

SHRI Y. B. CHAVAN : I was not

giving any information ; I was giving my opinion.

SHRI RANGA : I am asking the Speaker ; I am not asking any question from the Home Minister.

SHRI Y. B. CHAVAN : I am also saying this to the Speaker.

SHRI RANGA : The Home Minister misleads the House and you are keeping quiet.

MR. SPEAKER : Do you mean to say that I should come up with my personal views on this question ?

SHRI RANGA : Points of orders are being raised because he has given wrong information.

MR. SPEAKER : You have raised a question and the Home Minister has given his reply.

SHRI RANGA : I have drawn attention to the fact that the reply is wrong.

MR. SPEAKER : I appeal to you to be reasonable. You cannot expect the Speaker to fill up gaps here and there in the replies of the Minister.

श्री मधु लिमये (मुंगेर) : अध्यक्ष महोदय, यहां पर जम्मू-काश्मीर की दो दफाओं का जिक्र किया गया। एक प्रकाशवीर शास्त्री ने किया और एक गृह मंत्री जी ने किया। जहां तक प्रकाशवीर शास्त्री जी ने जिस धारा का जिक्र किया उसका सवाल है, वह वही धारा है जो हमारे संविधान में है और चव्हाण साहब ने जिस धारा का उल्लेख किया वह धारा स्पष्ट शब्दों में यह कहती है, जो संविधान को क्वेशन के रूप में प्राप्त मानते हैं। और क्या है वह ? आप ने जो धारा पढ़ कर बताई सिर्फ वही है जिसको कन्वेन्शन के रूप में आपने स्वयं कहा, आप मानते हैं। तो ऐसी स्थिति में भारत का जो पूरा संविधान है और काश्मीर का जो संविधान है उसमें कोई टकराव नहीं है।

लेकिन अब दूसरी बात भी कहना चाहता हूँ कि संविधान की बाकी दफाएँ तो खत्म नहीं हो गईं। इन दो दफाओं के इंटरप्रिटेशन का जहाँ तक सम्बन्ध है, यह मन्त्री जी की बात को हम मान भी लें और मुझे तो कोई एतराज नहीं है मानने में, लेकिन साथ-साथ उनसे पूछना चाहता हूँ आप के मार्फत, या आप जबाब दे दीजिये, क्या संविधान की 355 धारा खत्म हो गई कि हर राज्य का जो कारोबार है, शासन है, वह संविधान के अनुसार चलना चाहिए ? 356 में आपको यह अधिकार है कि अगर कानून के अनुसार, संविधान के अनुसार, हुकूमत नहीं चलती है; राज नहीं चलता है तो राष्ट्रपति शासन लागू किया जा सकता है। अब सवाल इसमें यह होता है कि केवल एक शांतिपूर्ण ढंग से आन्दोलन चल रहा है, क्या इसकी बिना पर विधान सभा को प्रेरोग करना, क्या यह संविधान का पालन है ? यह मेरा सीधा सवाल है ? आपने प्रेस नोट कहा अगर प्रेस नोट नहीं होता तो मैं बिल्कुल नहीं बोलता क्योंकि आप यह जवाब दे सकते थे कि गवर्नर ने किन बहानों को लेकर असेम्बली को प्रेरोग किया, मैं नहीं जानता, मैं उनके दिमाग में, उनके मन में नहीं जा सकता। लेकिन आप ने स्वयं कहा कि मुख्य मन्त्री की सलाह पर प्रेरोग किया गया। मुख्य मन्त्री सरकार का प्रमुख है और सरकार को प्रेसनोट कहता है कि प्रेरोगेशन के लिए और कोई कारण नहीं था, आन्दोलन की वजह से विधान सभा का न चलना, इसका साफ साफ मतलब है कि हुकूमत संविधान के अनुसार नहीं चल रही है और फिर भी मुख्य मन्त्री की सलाह पर यदि प्रेरोग करने हैं तो क्या राष्ट्रपति का गवर्नर को हटाने का या गवर्नर को हिदायत देने का अधिकार नहीं है ? वह भी धारयाँ हैं। वह धारयाँ खत्म नहीं हुई हैं। तो केवल दो दफाओं का जिक्र करना और यह कहना कि हम इसके बारे में कुछ नहीं कह सकते हैं, यह ठीक नहीं है। इसलिए आप निर्देश दीजिए,

अगर इसके लिए तैयार नहीं है तो हमारा जो ऐडजर्नमेंट मोशन है सरकार के फेल्योर के बारे में या जो चर्चा है उसके लिए मौका दीजिए। हरयाना के मामले में आप ने स्थगन प्रस्ताव नहीं माना लेकिन बहस की इजाजत दी। तो इसके बारे में भी हम प्रस्ताव दे चुके हैं। मेरी आप से प्रार्थना है कि या तो हमारे काम रोकने प्रस्ताव पर तत्काल बहस शुरू कीजिए, 50 लोग खड़े हो जायेंगे, या उसके लिए तैयार नहीं हैं तो आप जो चर्चा दी है, उस पर बहस के लिए मौका दीजिए। यह बहुत महत्वपूर्ण मामला है।

SHRI S. K. PATIL (Banaskantha) :  
Sir, I rise on a point of order.

SHRI SURENDRANATH DWIVEDY :  
Is it on the same subject or on some other subject ?

SHRI S. K. PATIL : It is on the same subject. If we simply connive at the argument trotted out by the Home Minister there is a danger to the functioning of democracy in this country. Sections 35(2) and 53( ) of the Jammu and Kashmir Constitution have been quoted. The one referring to under what circumstances that advice should be accepted by the Governor, I can understand. But under the other, which has been quoted by him, there are two functions of the Governor. There are certain activities in the functioning of the administration in which the Governor is bound to accept the advice of the Chief Minister but in an emergency when the Governor is reasonably convinced that the Chief Minister does not enjoy the majority in the House, he has been left the discretion. The word "may" has been used precisely for that purpose. When the Constitution is at stake and the Chief Minister, in self-preservation, is giving wrong advice to the Governor, if the Governor is to accept that advice also, it would only mean when it comes to this House—imagine an emergency when the Prime Minister here knowing that she is not in a majority tenders the advice to the President for the prorogation or anything of this House—that the President will be bound to take that advice. No, Sir. The Constitution of Kashmir and the Constitution of

[Shri S. K. Patil]

India do not differ in this fundamental aspect, namely, that there are certain cases in which the Governor has to exercise his discretion. Taking into account those circumstances did the Governor exercise that discretion and see whether the Chief Minister had a majority or not and whether he was asking, in order to save his skin, that the House should be prorogued ; or, did he merely act on that advice ?

Taking your answer that you are helpless in the matter, you are not helpless in the matter. In the defence of our Constitution—this is the main point that has got to be considered—you have every right to say that that does not apply to this case. Surely, if the Government has given a constitutional reply, I have no quarrel with the Home Minister. But may I say that if it is accepted and goes uncontradicted in this House, it would mean that even the Prime Minister enjoys the same right as the Prime Minister of Britain does under the British Constitution ? But that is not so. I do not go into that because that is not the point at issue. But this is a matter which has got to be taken into consideration.

SHRI AMIYANATH BOSE (Arambagh):

Sir, the Home Minister read two sections of the Jammu and Kashmir Constitution. Section 35(2) reads :—

“All functions of the Sadar-i Riyasat except those under sections 36, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.”

This is a general provision under which the Governor must act on the advice of the Council of Ministers in regard to the administration of the State. So far as the right of prorogation is concerned, the expression used is “may”. In every document particularly a Constitution of this nature, if there is a specific provision dealing with prorogation, it must override the general provision regarding the function of the Governor so far as the advice of the Council of Ministers is concerned. Therefore, when the Home Minister said that the Governor was bound to accept the advice of the Chief Minister regarding prorogation, in my submission he was applying a wrong principle of law in interpreting this Constitution and a wrong section of this Constitution. So far as the power of prorogation is

concerned, it is given in a specific section of the Constitution and that section must prevail so far as the right to prorogue is concerned. Therefore the Home Minister's statement about the Governor's action is defective and wrong. It is for the Home Minister to answer to this House whether the Governor in regard to the situation then existing exercised the right and discretion which he should have exercised under the Constitution under which he is the Governor.

MR. SPEAKER : So many points of order have been raised...

SHRI NATH PAI : Not so many ; only one.

MR. SPEAKER : One point of order by so many Members. I correct myself.

SHRI NATH PAI : I want to submit to you that only a few days back, you were pleased to allow a discussion on this. The issue is whether a gradual, imperceptible, nibbling of the Constitution is to be permitted. When we discussed Haryana issue, this was precisely the same issue as to whether the Governor is not under an obligation to exercise his discretion properly so as the spirit of the Constitution is upheld. It is no use all the while pointing to the letter because the letter can be very often a disastrous guide. It is the spirit of the Constitution that matters. What does it say ? Here, we know the Government is advised by the Chief Minister who has run into troubled waters and the Governor is aware of it. You are aware of it, we are aware of it and the people of Kashmir are aware of it. This Chief Minister gives advice to the Governor. Is it *bona fide* or *mala fide* ? The advice is to prevent the Assembly from exercising its sovereign right to see whether he enjoys the majority or not. When the Governor becomes a party to this, the Governor violates his oath that he has taken to uphold the Constitution.

The point that we are raising is not only about the Kashmir Governor but there are so many Governors Mr Y. B. Chavan, once again, is encouraging a very dangerous practice and he does not like the criticism. I may tell him that he is the Home Minister at a very critical time of our history and he

must see that the Governors do not become rubber-stamps of the Chief Ministers who are in trouble. This is precisely what is happening.

Sir, there is the duty cast upon you. It is not a political point. It is basically a constitutional point. It is not an ordinary point of order. It is a much wider point about upholding the sanctity of the Constitution and the spirit of the Constitution to which we all have taken oath and the Governors have also taken oath to uphold the Constitution. We seek your guidance in this matter.

SHRI INDER J. MALHOTRA : Sir, I would also like to join my other colleagues who have very rightly pointed out constitutional difficulties and all these aspects arising out of them. Keeping in view the situation in Jammu and Kashmir which is going from bad to worse, I would very humbly submit this House should be given an opportunity to discuss all these constitutional points and the issues arising out of them.

SHRI KRISHNA KUMAR CHATTERJI (Howrah) : Sir, permit me to raise my point of order. I will take only a minute. The House is being misled by certain hon. Members by quoting certain articles and provisions in our Constitution as well as the Constitution of Jammu and Kashmir. As to how the Governor functions under the Constitution, I submit, the Governor has got discretionary powers and he can use his wisdom in upholding the Constitution and see that the letter and spirit of the Constitution is carried out. So far as Jammu and Kashmir is concerned, we are convinced that the Governor has used his wisdom and his discretion in full exercise of his functions under the Constitution in seeing that the letter and spirit of the Constitution is carried out (*Interruptions*)

MR. SPEAKER : As one Member sits, two others make up their mind. Now the gentleman at the back has made up his mind. If it is a point of order, I will allow.

SHRI RANDHIR SINGH (Rohtak) : I have something different, something absolutely different, Sir.

SHRI ATAL BIHARI VAJPAYEE (Balrampur) : May I submit, Sir, that you allow a discussion on this.

MR. SPEAKER : Do you say that I should rule out points of order ?

SHRI ATAL BIHARI VAJPAYEE : Sir, you allow a short duration discussion. There is no point of order.

SHRI RANDHIR SINGH : Chief Ministers may come and Chief Ministers may go but the Constitution must be followed. Jammu and Kashmir enjoys a special status not only in our country but the world over. (*Interruptions*)

SHRI BAL RAJ MADHOK : This statement cannot be allowed to go unchallenged. Jammu and Kashmir is an integral part of India. It does not enjoy any special status.

SHRI INDER J. MALHOTRA : We are a part of India.

SHRI RANDHIR SINGH : Jammu and Kashmir is as good a part of India as Delhi is a part of India, as Punjab is a part of India and as Haryana is a part of India. We are seeing here as crystal as daylight that the majority there in the Congress is not with Mr. G. M. Sadiq, it is with the other gentleman, Mr. Qasim. It is an internal matter. What is the harm ? I ask the hon. Home Minister if Mr. Qasim becomes the Chief Minister and Constitution is followed, what is the harm in that ? (*Interruptions*) Mr. Qasim is a much better Congressman than anybody. We unnecessarily create troubles. I hope that the Constitution will be followed there so that we do not bring down the name of Kashmir and our country.

SHRI R. D. BHANDARE (Bombay Central) : Will you please let me speak ?

SHRI SHRI CHAND GOYAL (Chandigarh) : Only one constitutional point, Sir.

MR. SPEAKER : No, please. It is already going to be lunch hour. I think this has taken a long time.

श्री रवि राय : आप काम-रोको-प्रस्ताव मान लीजिये, बहस के लिये अनुमति दीजिये।

SHRI ATAL BIHARI VAJPAYEE : You allow a discussion. We have given notice. (Interruptions)

MR. SPEAKER : I will certainly allow when President's rule is being promulgated.

SHRI CHENGALRAYA NAIDU (Chittoor) : Please allow a three-hour discussion on this matter.

SHRI R. D. BHANDARE : It is a question of interpretation of the Constitution. It is after all interpretation of the constitutional provisions and in a temporary phase which has arisen in Jammu and Kashmir... (Interruptions)

MR. SPEAKER : Will you please sit down. (Interruptions)

SHRI R. D. BHANDARE : I obey you; I don't disobey you, Sir.

MR. SPEAKER : You are openly disobeying me and still you say, you are obeying me!

SHRI R. D. BHANDARE : I obey you.

AN HON. MEMBER : If he says he obeys you, he must sit down.

SHRI PILOO MODY (Godhra) : I wish to say something...

MR. SPEAKER : You have thought about something?

SHRI PILOO MODY : Occasionally these thoughts come to me, Sir.

AN HON. MEMBER : These are stray thoughts.

SHRI BAL RAJ MADHOK : What is your ruling, Mr. Speaker?

MR. SPEAKER : Recently we have started discussing these adjournments, prorogations and also in spite of that, whatever be the guidelines fixed, we could

not help making references to the decisions of the Houses, the Speaker and the Governor. But I do feel this. In all the cases whether it was Bengal or U. P. or Bihar or Haryana or Punjab, I allowed it. Why? Because, I thought there was something there deeply concerned with the Constitution, the Constitutional position. And, in this case also, you are asking for my interpretation. The very fact of my having allowed this shows that I too had certain doubts about it. That is why I allowed it. Otherwise, I could have easily said 'No'. But I allowed it. But the second point is this. Now that we have started making references to the Governors... (Interruption)

SHRI SURENDRANATH DWIVEDI : I will only seek a clarification whether constitutional doubts can be clarified through Calling Attention Motions or by allowing a regular discussion. (Interruption)

MR. SPEAKER : I allowed discussion because there was a Calling-Attention Motion. You cannot have both. (Interruption) You can't have both. I allowed it because there were Adjournment Motions.

Secondly, you are asking my opinion and I think that as Speaker of this House I should not sit in judgement over decisions and conduct of the Governors. Now, we have already started sitting in judgement over certain issues. You have expressed your view; Government have expressed their view.

SHRI PILOO MODY : I have not expressed my view.

MR. SPEAKER : The only thing I could do is this. Where I thought something wrong is going on, or something doubtful is there regarding the observance of the provisions of the Constitution... (Interruption)

SHRI BAL RAJ MADHOK : The House is very much concerned about it.

श्री मधु सिमये : पूरे सदन की मांग है कि इस पर बहस होनी चाहिए।... (स्थगना)

श्री रवि राय : सरकार के दल और विरोधी दलों की ओर से यह मांग है कि इस पर बहस होनी चाहिए।... (व्यवधान)...

SHRI PILOO MODY : In the present political situation in the country where this thing is happening almost every week it is needless to say that the last resort that we have got is at least to discuss it threadbare in Parliament, whatever the rights or wrongs in the situation may be. When we see that Assemblies are dissolved or prorogued in order to suit the convenience of the majority of the ruling party, I think, it is high time that this Parliament took very serious note of it, no matter how much of the business there is before Parliament ; I think they should all be suspended and these things should be discussed. The condemnation that should normally come from the Press is not forthcoming when such blatant violations of the Constitution are taken place. Therefore, I beg of you and I entreat you not to thwart this Parliament from discussing these problems whenever they arise and as many times as they arise.

SHRIMATI SUSHILA ROHATGI (Bilhaar) : May I express my point of view also ?... (Interruptions)

MR. SPEAKER : Personally speaking, I also view it with great concern. I also view everything that is going on about prorogations and adjournments with grave concern.

12.55½ hrs.

#### PAPER LAID ON THE TABLE

Statement Re : Correction of Date in Notification

THE MINISTER OF STATE IN THE MINISTRY OF INDUSTRIAL DEVELOPMENT, INTERNAL TRADE AND COMPANY AFFAIRS (SHRI RAGHUNATHA REDDY) : I beg to lay on the Table a statement (Hindi and English versions) regarding correction of date in Notification No. S. O. 4665, laid on the Table on the 9th December, 1969. [Placed in Library. See No. LT-2886/70]

#### ESTIMATES COMMITTEE

Hundred and Sixth, Hundred and Seventh and Hundred and Ninth Reports

SHRI THIRUMALA RAO (Kakinada) : I beg to present the following Reports of the Estimates Committee :—

- (1) Hundred and sixth Report regarding action taken by Government on the recommendations contained in their Seventy-fourth Report on the Ministry of Shipping and Transport—Inland Water Transport.
- (2) Hundred and seventh Report regarding action taken by Government on the recommendations contained in their Eighty-third Report on the Ministry of Health and Family Planning and Works, Housing and Urban Development (Department of Works, Housing and Urban Development Department of Printing and Stationery (Printing Wing).
- (3) Hundred and ninth Report regarding action taken by Government on the recommendations contained in their Seventy-eighth Report on the Ministry of Home Affairs—Central Bureau of Investigation.

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12.56 hrs.

#### PERSONAL EXPLANATION BY MEMBER

SHRI S. K. PATIL (Banaskantha) : Mr. Speaker, Sir, when I was not here yesterday, some charges and some allegations were made by some Members against me. I wrote to you a letter which I am reading out for the sake of brevity. It reads thus :

"I am sorry ...

श्री जार्ज फरेनेन्डीज (बम्बई दक्षिण) : अध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है। नियम संख्या 357 के अन्तर्गत मेरा व्यवस्था का प्रश्न है। आप उसे सुनिए।... (व्यवधान) ...कल जब इस सदन में... (व्यवधान)...