

13.06 hrs.

## GOVERNMENT OF UNION TERRITORIES BILL

**The Minister of Home Affairs (Shri Lal Bahadur Shastri):** Sir, I beg to move: \*

"That the Bill to provide for Legislative Assemblies and Councils of Ministers for certain Union territories and for certain other matters, as reported by the Joint Committee, be taken into consideration."

I am glad to move this Bill before the House as it should be most welcome to the Union Territories. Some important changes were made in the Joint Committee. In fact, I had gauged the feeling of the Members of this House and of the other House when the Motion for reference to the Joint Committee was under consideration. In the light of the discussions further held in the Joint Committee, I myself moved for the amendment of some of the clauses of the Bill. I am sure, with these changes, the Bill should commend itself fully to this House and it would receive general support.

I know there is a strong opinion in this House as well as outside that these areas should be merged in the neighbouring States. It is felt that it would be economically useful especially for the territories themselves. If they merge the composite State will be in a better position to develop its trade and commerce and these units which are not economically viable at present, would become economically viable and it will lead to a reducing of the burden on the Central Government which exists at present. I personally feel that there is a good deal of substance in this argument. But, it has to be realised as to what we should do in the existing circumstances. We have to remember that

these territories were more or less autonomous, or in a sense free before 1947. Himachal Pradesh, Manipur and Tripura were mostly princely States, small or big.

**Shri Hari Vishnu Kamath (Hoshangabad):** Don't call them free.

**Shri Lal Bahadur Shastri:** Free means that they were autonomous. Most of the areas were not in the British territories. They were autonomous. What kind of autonomy it was, is a different matter. But, they must have had the feeling that they had their own Assemblies, etc. Similarly, Pondicherry and Goa were also under foreign rule and they had their own legislatures and their own Cabinets.

It may not, therefore, be advisable to consider their merger immediately into the neighbouring States. As the House knows, even Himachal Pradesh, Tripura and Manipur were treated as Part C States, and that arrangement continued for a number of years. Later on, of course, during the last five years, they just functioned as Union Territories, and there were Territorial Councils only. Still, I must say that we should avoid separatist tendencies, and even if we agree to have these smaller territories as separate from the neighbouring States, we do want that they should have before them the picture of an integrated India, and I think that if they will do so, it would be in the best interests of the Union Territories as well as the country as a whole. I do not rule out the possibility of the merger of these areas into the neighbouring States. But I do not suggest it just at present, so that it might not cause any misapprehension. However, as an ultimate objective, as I said, it should not be ruled out. Whenever we take that step, we shall see to it that the Union Territories themselves realise that it is in the best interests of their own territories.

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\*Moved with the recommendation of the President.

We have given necessary and adequate powers to the Union Territories in accordance with the provisions of this Bill. I do not think that the representatives of the Union Territories will get a better opportunity to serve their area in a better way, because if they get these powers, they get ample opportunities to serve their areas in the best possible manner, and I feel sometimes that they might be better off than what they were when they functioned as Part C States. It is true that the President cannot absolve himself of his responsibilities for these areas, and Parliament also cannot absolve itself of its own responsibility. It should have the concurrent power to make laws which naturally will supersede laws, if any, on the subject, made by the Legislative Assemblies of the Union Territories. To my mind, there is nothing in this Bill which can really be objected to in regard to this particular matter. As I said, the new set-up would give great opportunities to the representatives of the people to carry on the administration as they consider best in the interests of their own people.

Now, I shall say a few words about the important changes made in the Joint Committee in this Bill. I remember that there was a good deal of criticism made in regard to the Administrator, in fact, to the word 'Administrator' used in the Bill. It was said that the Administrator had been made all-powerful and it was felt that he would in a way reduce the autonomy of the representatives of the people or the powers which were being given under this Bill. It is needless to make it clear that in fact, this word 'Administration' was used in its generic sense. It does not in any way mean that the President could not designate him in any other way or could not give any other designation to the Administrator, for example, that of the Chief Commissioner, or Lieutenant-Governor, and so on. It is entirely at the discretion of the President to give any designation to the person who is put in charge of these

Union Territories. Further, clause 2 (1) (a) has been further amplified to make it clear that the word 'Administrator' means the Administrator appointed under article 239 of the Constitution.

Another important matter is regarding reservation of seats for the Scheduled Castes and Scheduled Tribes in these territories. We had provided in the Bill for reservation for Scheduled Castes and Scheduled Tribes in two territories, namely Himachal Pradesh and Pondicherry. No such reservation was made in the other territories, namely Goa, Manipur and Tripura. We did so because the population in Himachal Pradesh and Pondicherry was fairly sizable, whereas in the other territories it was not so. Secondly, in these areas, they do not live in compact areas, and, therefore, it becomes difficult to delimit constituencies, as we do here in other States. Hon. Members are aware that Scheduled Castes constituencies are generally formed where there is bulk of Scheduled Castes living. So, we had not provided for reservation in other Union Territories. However, in the Joint Committee, various Members pressed for it, and we agreed that there should be reservation for Scheduled Castes and Scheduled Tribes both in Manipur and in Tripura.

In regard to Goa, we have not done so. The Joint Committee did not agree to it. We did not do so because no census had been taken of Goa so far, and we did not exactly know the number of Scheduled Castes living in that territory. Besides that, one can only guess. If we see the neighbouring areas, we find round about Goa that the percentage of Scheduled Castes is very small or very low, and if we could make any assessment on that basis, we feel that it may not perhaps be advisable to make any reservation. However, we shall have to depend on a census report or wait till the census is completed in that area. In any case, we have not provided for any reservation. And the

[Shri Lal Bahadur Shastri]

Joint Committee did not agree to this also because it would have delayed the elections in Goa, and the new set-up would not have come soon. In these circumstances, I think that the Joint Committee took the right decision in not giving reservation to Scheduled Castes in Goa.

I might also add that an important section of Tripura also met me, and they felt that no reservation should be given to Scheduled Castes and Scheduled Tribes in Tripura also. The reason given by them was that the Scheduled Tribes were fairly represented already in the Territorial Council in Tripura. Without any reservation, they have got their due in the last elections both in the Tripura Territorial Council and, of course, in Manipur. The House will be interested to know that in Manipur, the scheduled tribes members elected are 9 and nominated, one—out of 30. In Tripura, 10 scheduled tribes members and 2 scheduled caste members have been elected in the Territorial Council. This is a fairly satisfactory position. It is good that the scheduled castes and scheduled tribes members are elected from the general constituencies as such and no separate reservation is given. It is good in principle, but, as I said, the Joint Committee took the decision with which, I think, we have to agree and this will naturally continue till the general reservation continues in the whole country, not beyond that. I might add that in case of Goa, if no scheduled caste is elected, we have the provision for nomination, and we would certainly like to nominate at least one of the scheduled caste members.

The other important changes made were in regard to the Administrator having some special powers. Firstly, it was provided that the Administrator will have the power to address the Assembly or to take part in the proceedings of the Legislative Assembly. The Joint Committee decided that the Administrator will not take

part in the proceedings. But the natural corollary follows that the subject with which the Administrator will have to deal exclusively will not be discussed in the Assembly, because he would not be present to take part in the discussions. The second thing proposed in the Bill was that the Administrator might preside over Cabinet meetings. It was felt that the Administrator would not be presiding always, but whenever he happened to be present or when he goes there to have a discussion on any important matter, he might preside over the Cabinet meetings. We have dropped that proposal, and the Cabinet will now be presided over by the Chief Minister. Of course, in his absence, he will have to delegate that authority to one of his senior colleagues. Another change made in the Joint Committee was in regard to increasing the number of nomination. The Joint Committee decided that instead of 2, not more than 3 should be nominated.

I have seen some of the amendments and also minutes of dissent. I am surprised that objection has been taken to the proposal in clause 54 which empowers or suggests that the present Territorial Councils should be converted into Legislative Assemblies. Legal and technical objections have been raised or were raised, but as far as I can see, there can be no legal or constitutional objection raised against this matter. I do not want to go into details, but perhaps Shri Kamath will remember . . .

**Shri Hari Vishnu Kamath:** I was not a member of the Committee.

**Shri Lal Bahadur Shastri:** He was a member of the Constituent Assembly.

**Shri Hari Vishnu Kamath:** Yes.

**Shri Lal Bahadur Shastri:** Even the Constituent Assembly decided that during the interim period it will function as a legislature. So, there are many such examples and what

has been suggested in clause 54 is nothing new.

**Shri Hari Vishnu Kamath:** Not on all fours with this. But does not matter.

**Shri Lal Bahadur Shastri:** Besides, it would be unfair to hold fresh elections so soon after the last general elections, which were held about a year or so ago. The franchise, adult franchise, was exactly the same. The constituencies will be more or less the same.

**Dr. L. M. Singhvi (Jodhpur):** On a point of clarification which would, I think, help us to understand the nature and the import of clause 54. It appears that under the Act under which elections were held, even a person of 21 years of age could become a member of the Territorial Council. Under the Constitution, State legislatures should not have members whose age is less than 25 years. That is a difficulty which has been bothering some of us in the constitutional perspective.

**Shri Hari Vishnu Kamath:** By now they will be above 25 perhaps.

**Shri Lal Bahadur Shastri:** I do not really want to enter into legal niceties.

**Shri Hari Vishnu Kamath:** That can be done later on.

**Shri Lal Bahadur Shastri:** The minimum age limit for the members of the present Territorial Council is no doubt 21 while that for Assemblies is 25. Therefore, there may be cases where persons of less than 25 years of age become members of the first Legislative Assembly. I would like to say that clause 54 has overriding effect on other provisions. That is clear from sub-clause (2) thereof.

13.28 hrs.

[SHRI THIRUMALA RAO *in the Chair*]

Therefore, it is felt that even if there are any members of the Terri-

torial Councils whose age is below 25, they have to continue to be members of the provisional Legislative Assemblies constituted under clause 54. The whole body is deemed to be a Legislative Assembly. Any distinction made between elected and nominated members or between 21 and 25 years will not be valid. As I said, the whole of the Territorial Council will be deemed to be the Legislative Assembly of that particular area. This is the legal opinion given to us. In the circumstances, I feel that even this difficulty regarding difference in age should not come in the way. I do not think it would be justified. It is obvious that the whole Legislative Assembly for the time being will continue as such till the next elections are held, and the same members, whatever their position or age, will be deemed to be members of the Legislative Assembly.

As I said, it is not advisable in present circumstances to hold fresh elections. It will mean additional expenditure and a great strain on the electorate itself. So the present Territorial Councils should become Legislative Assemblies.

**Shri Hari Vishnu Kamath:** Economy during the emergency.

**Shri Lal Bahadur Shastri:** Naturally, our people in those territories are very keen that these Councils should be converted into Legislative Assemblies, so that they can form their own Government, and carry on their own administration.

Some other points were also raised, but they have been raised in the Minutes of Dissent. I merely wanted to say a few words about what Shri H. N. Mukerjee has said about the truncation of powers. In his Minute of Dissent, he has said that the legislative powers and the legislative assemblies are drastically truncated. Specific reference has been made to clauses 18 and 21.

[Shri Lal Bahadur Shastri]

Clause 18 affirms that Parliament will continue to have powers to legislate in respect of any matters for the Territories, and Clause 21 provides that future parliamentary legislation shall override the laws enacted by the legislative assembly. In consequence of the enactment of the Constitution (Fourteenth Amendment) Act, Parliament can by law establish legislatures and councils of Ministers in the five specified Territories. It cannot, however, altogether disown legislative authority nor can the President divest himself of the responsibility in respect of the administration of the Union Territories. It is, of course, obvious that normally Parliament will not undertake legislation in relation to Union Territories in the field in which the legislatures of these Territories are competent to operate. In fact, there is a provision in the Bill authorising the legislatures of the Territories to amend or repeal Parliamentary enactments which came into force before the establishment of the legislative assemblies in these Territories. If, however, Parliament decides to enact any law in the delegated field, this should be, of course, a rare occurrence, but that, however, should not mean that the powers of the legislative assemblies are drastically curtailed.

It is said that the Administrator can dissolve the legislative assembly at his will any time. That also is not quite correct. Under clause 6(2) it has been provided that the Administrator can dissolve the Assembly, but naturally, it is obvious that in these matters he takes his decisions in consultation with and on the advice of the Government there and the Ministers. It will thus mean that the Assembly will be dissolved either on the advice of the Ministers or on the direction of the President as is the case in other States also.

Clauses 22 and 23 of the Bill provide for the Administrator's sanction

or recommendation to certain Bills. Clause 22 in particular relates to the Court of the Judicial Commissioner. Such courts exist only in Himachal Pradesh, Manipur and Tripura. The Court of the Judicial Commissioner, although it is not a High Court for all purposes of the Constitution, has been declared to be a High Court for certain purposes. It is, therefore, necessary to ensure that matters relating to these courts are dealt with after careful thought, and there is nothing wrong in providing for the previous sanction of the Administrator in respect of Bills relating to these Courts. Here again, in giving the sanction, the Administrator is advised by his Council of Ministers, and he does not exercise this power in his discretion.

The provision of clause 23 follows the provisions of article 191 read with article 207(1) under which in a State the Governor's recommendation is necessary to financial Bills.

There has been some talk about discretionary powers having been given to the Administrator, and perhaps it was felt that it was not quite justified. I only wanted to say that there are only two main matters in which this discretionary power has been given to the Administrator. One is issue of directions or taking of measures necessary for the security of the border. This applies only in the case of Himachal Pradesh, Manipur and Tripura. Its importance has considerably increased in the changed context of things, and therefore this special power has been given to the Administrators of Manipur, Tripura and Himachal Pradesh only.

The other thing is securing the proper functioning of the Standing Committee of the Manipur legislature. This applies only in the case of Manipur. There will be a Standing Committee of the scheduled tribes elected to the Legislative Assembly, and this Standing Committee will deal with

various matters concerning the scheduled tribes. Their customs, their laws etc., will have to be considered in the Standing Committee first, and then taken to the legislature. Differences might crop up between the Members of the Standing Committee and the Government. So, it will be good that the Administrator is there to settle those differences, sometimes if necessary to arbitrate. So, the Administrator would be playing an important role, and it is only desirable that this discretionary power should be given to the Administrator in so far as Manipur is concerned.

I do not want to take more time of the House. I have only to say at the end that I have briefly tried to explain the provisions of this Bill, and I am quite sure the intentions of the Government of India to give the Union Territories necessary powers to manage their own affairs will not be misconstrued in any way. Our intentions are, I believe Shri Kamath will agree, absolutely pure.

**Shri Hari Vishnu Kamath:** Good intentions. I agree with you as far as that goes.

**Shri Lal Bahadur Shastri:** May I add that the Central Government have never shirked to give such powers and responsibilities to small areas where it has been found necessary, and I agree that it is better to give adequate powers when an area is to be properly administered by the representatives of the people. There is, of course, one condition. I mentioned about that in the beginning also. We must not lose sight of the integrated picture of our country, one India. That is absolutely important.

May I convey my goodwill and good wishes to the representatives of these Territories who will soon become Members of the Legislatures and form their own Governments?

**Shri Hari Vishnu Kamath:** And the people of the Territories.

**Shri Lal Bahadur Shastri:** And the people also. May I humbly submit that they will have considerable responsibility towards helping the common man in their Territories? It should be their main concern, and I have no doubt that they will discharge their responsibilities to the satisfaction of all. I hope this measure will receive the general support of this House.

Thank you.

**Mr. Chairman:** Motion moved:

"That the Bill to provide for Legislative Assemblies and Councils of Ministers for certain Union territories and for certain other matters, as reported by the Joint Committee, be taken into consideration."

**Shri Hari Vishnu Kamath:** On a point of order, Sir. As I develop my point of order, I shall endeavour to the best of my ability to convince you and my colleagues in the House, including the Rt. Hon. Minister, that the Bill before the House . . .

**Shri H. N. Mukerjee** (Calcutta Central): Right Honourable?

**Shri Hari Vishnu Kamath:** I am sorry. The "right" may be deleted.

**Shri Lal Bahadur Shastri:** Not even "honourable".

**Shri Hari Vishnu Kamath:** Somebody objected, that is why.

**Shri Lal Bahadur Shastri:** The hon. Member can delete "honourable" also.

**Shri Hari Vishnu Kamath:** . . . is unconstitutional, and accordingly, the motion made by the Minister is wholly out of order.

I would have been happy if the Bill that has been brought before the House was truly the fruit or the outcome of the Bill that was passed in this House in September last and the people of those Territories had really been granted the substance and the

[Shri Hari Vishnu Kamath]

soul of democratic government, but under this Bill what they have got is only a travesty and a mockery. As the Sanskrit saying has it:

विनायकम् प्रकृवीर्णो, रचयामास वानरम् ।

श्री बड़े (खारगोन) : इसका मतलब भी बतला दीजिए ।

**Shri Hari Vishnu Kamath:** I believe it is easily understood by all.

I will invite your attention to the Constitution (Fourteenth Amendment) Act of 1962. People of these five territories, Himachal Pradesh, Tripura, Goa, Daman and Diu and Pondicherry have been looking forward to this welcome measure in its reality, not its mockery, not a travesty of it, like the fabled chataka bird.

**Mr. Chairman:** I would request the hon. Member to confine himself to the constitutional point.

**Shri Hari Vishnu Kamath:** That is what I am doing. Have you got a copy of the Constitution (Amendment) Act?

**Mr. Chairman:** I will get it now. Apart from the various things which the hon. Member is saying . . . . .

**Shri Hari Vishnu Kamath:** I say so that you may grasp the point better; otherwise it would be difficult to grasp the point.

**Mr. Chairman:** If the hon. Member comes to the point, it will enable me to grasp it better.

**Shri Hari Vishnu Kamath:** It cannot be said in one sentence. You have been in the Constituent Assembly, Sir; you have laboured there and you know very well how difficult it is to set forth the constitutional point. . . (Interruption).

**Shri Bade:** It is relevant to the question, Sir and so it is admissible.

**Shri Hari Vishnu Kamath:** The Bill before the House—have you got a copy of the Bill with you?—contains several clauses; clauses 3, 4 and 54 are pivotal clauses of the whole Bill and if I convince you that these three clauses together form an unconstitutional whole, the whole Bill will fall to the ground and cannot be sustained.

The Home Minister will remember very well the 14th Amendment Bill that he brought before the House to provide for something and had the House approved of it, it would have made the position easy today. Unfortunately, the House did not approve of the Bill as it was brought before the House and a very vital change was made before the House passed that Bill. It was my amendment which was accepted, Sir. Have you got a copy of the Bill as introduced? It was brought here in September 1962 and I refer to clause 4 of that Bill which inserted article 239A. That clause 4 of that Bill—not of the Act—read as follows:

“Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry a body, whether nominated . . .”

Had this been retained in its entirety in its pristine impurity, imperfection, then his way would have been clear and easy. But the House thought better of it; the House was wiser than the Minister and deleted the word ‘nominated’. Instead of reading: “. . . a body whether nominated or elected or partly nominated and partly elected, to function as a Legislature for the Union territory . .” in the Act that was passed the word ‘nominated’ was deleted by the wisdom of the House, perhaps much to the chagrin of the Minister. I thought that he also approved of the amendment at that time when I moved it and ultimately it was passed. Later on he might have thought about it and he might have felt that if the word ‘nominated’ had been retained it would

have been better. However, in the Act, in the Bill when it was passed by the House, that word had been deleted.

I come to this clause in the light of this very significant and very vital change made by the House to the effect that there shall be no nominated body; none of these assemblies shall be completely nominated but they shall be either elected or partly elected and partly nominated. The cent per cent, whole hog, total nomination principle was not accepted by the House.

Now, what do we find in the Bill before the House, please refer to clauses 3, 5 and 54. Clause 54 is linked up inextricably with clauses 3 and 5. What does clause 3 say?

"There shall be a Legislative Assembly for each Union Territory."

Well and good. Now, clause 5 says:

"The Legislative Assembly of a Union territory, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly."

May I now request you to turn to clause 54(2):

"... Notwithstanding anything in this Act, until the Legislative Assembly of each of the Union territories of Himachal Pradesh, Manipur, Tripura and Pondicherry has been duly constituted. . ."

Goa and Daman and Diu had been excluded from this clause. Now, these assemblies will function as duly nominated, duly constituted assemblies. The clause reads:

"... has been duly constituted and summoned to meet for the first session under and in accordance with the provisions of this Act, the following provisions shall

apply in relation to the Legislative Assembly of each of those Union territories, . . ."

Later on the clause says:

"Every person who immediately before the commencement of this Act is a member . . . shall . . . represent the assembly constituency.

On that point, the Minister has made a detailed statement. The Territorial Councils shall function as legislative assemblies under this Act. But for what period? It is not merely one or two months, Clause 54(3) enumerates this. In the case of Himachal Pradesh, it is five years from 3rd August, 1962; so also in the case of Manipur. In the case of Tripura, five years from 1st August, 1962 and in the case of Pondicherry five years from the 25th of August, 1962.

Can you, Sir, or any of my colleagues accept the position? These territorial councils were formed, elected and constituted under an old law, Territorial Council Act of 1956. Now, the Constitution (Amendment) Act was passed after the elections were held. I refer to the 14th Amending Act of which this Bill is the fruitful outcome, but a shoddy outcome, shoddy stuff, doled to the people, not the genuine article. This amendment provided for an elected legislative assembly or partly elected and partly nominated body. Now, what is being done is that the territorial councils, elected on the basis of an old, moth eaten Act of 1956 . . . (Interruptions.)

**Shri C. K. Bhattacharyya** (Raiganj): Old, older, oldest.

**Shri Hari Vishnu Kamath**: I accept the professor's amendment. I was saying that the old, moth eaten Act of 1956 is taken wholesale and the body is nominated. How can the Minister or this House or this Bill say that some people who were elected under the old Act shall be deemed to be elected under the new Act. It is wholly unconstitutional as article 239

[Shri Hari Vishnu Kamath]

has done away with the nomination principle. Now, he has not nominated only one member but the whole body is nominated. There too, I am told in the old council there were some members who were nominated and others who were elected. That means to say, now, the elected members are nominated and the old nominated members are re-nominated. This principle that has been introduced in this Bill is most repugnant and abnoxious.

Can the Minister lay his hand on his heart and seriously tell the House, "I am giving these people this Bill?" These are the people who have been eagerly awaiting the dawn of true democratic Government, parliamentary government, in their States. Can the Minister go to those people and tell them: "Ye, take this Bill, and this is the same thing as was envisaged in the Constitution (Amendment) Act, 1962." This was not the thing for which the people really hungered. I, therefore, submit that these territorial councils that have been embodied in this Bill, these new legislative assemblies, are nothing but nominated bodies, completely nominated by the Government, because it is just like treating a child born in 1957 as a child born in 1963. Nobody can do it; even God cannot do it, once when he has brought the child into the world; the House cannot do it. Some elections took place five or 10 years ago before this Constitution (Amendment) Act was passed by this House. Under this Act this Bill has come. This Bill is not a product of the old Act. This Bill before the House is a product of the Constitution (Amendment) Act, 1962—September, 1962. The election took place under the old Act completed in August, 1962, before the amended Act even came into operation, was assented to by the President, before the amendment Act was discussed by the House. The Minister had the temerity—I use the word advisedly—to come and tell the House that this is an elected body, or partly elected

and partly nominated body which he promised to the Union territories. I say this is a monstrosity, and this is not the way to treat the oppressed people of the Union territories, who have hungering for freedom and democracy and democratic government. I therefore submit that the Bill before the House is contrary to the provisions of the Constitution—article 239A. This is repugnant to the letter and spirit of the article and the motion made by the Home Minister is wholly and completely out of order.

**Shri Lal Bahadur Shastri:** I am sorry that Shri Kamath should have taken so much time of the House....

**Shri Hari Vishnu Kamath:** It is not for you alone to take the time; other Members can also take. The time is not yours. It is the Members' time.

**Shri Lal Bahadur Shastri:** Yes; Members' time and that of the House also.

**Shri Hari Vishnu Kamath:** I resent this, when he says that I took the time of the House. I resent this; I protest against this. I rose to a point of order and spoke. He says I am taking the time of the House. What does he mean by this?

**Shri C. L. Chaudhry (Mahua):** Sit down. आप बैठ जाइये ।

**Shri Hari Vishnu Kamath:** You shut up there. The Chair is there to guide the House; not you.

इस के लिए चेयरमैन साहब बैठे हुए हैं, यह आप का काम नहीं है ।

**Mr. Chairman:** Order, order.

**Shri Raghunath Singh (Varanasi):** You have no right to tell another hon. Member to sit down.

**Shri Hari Vishnu Kamath:** I have got every right. You do not butt in now. You keep quiet.

**Mr. Chairman:** Order, order. There is no point in your losing temper.

**Shri Hari Vishnu Kamath:** You could ask me to sit down; not they.

**Mr. Chairman:** I am asking you.

**Shri Hari Vishnu Kamath:** That is all right.

**Mr. Chairman:** He should resume his normal temper. The hon. Minister has started replying. Please resume your normal temper; why do you spoil the discussion with all this interlude? I request you not to.

**Shri Hari Vishnu Kamath:** I may submit, Sir, that it is not for the Minister to say that I am taking the time of the House. I was speaking on a point of order. I can say he is taking the time of the House by making a speech, but I did not say that when he made a long speech. This is not parliamentary manners. (*Interruption*).

**Mr. Chairman:** The hon. Member should not lose his temper. I request the hon. Member to bring in a sense of humour about these things. You do not take it seriously. (*Interruption*). I am not arguing. The hon. Minister was simply saying that this is a simple point about which so much has been said.

**Shri Hari Vishnu Kamath:** He did not say.....

**Mr. Chairman:** Do not interrupt. Even at the beginning, I wanted to understand the point before he began to refer to the injustice to the people, etc. You are bringing in an argument whereas a simple point has to be raised. That has been referred to by the hon. Minister. There is nothing in it. There is nothing for anybody to lose temper.

**Shri Hari Vishnu Kamath:** He said I took the time.

**Mr. Chairman:** That is all over.

**Shri Hari Vishnu Kamath:** What is all over? (*Interruption*). I bow to your ruling willy-nilly.

549(Ai) LSD—5.

**Shri Lal Bahadur Shastri:** I am sorry that Shri Kamath, who has been such an experienced parliamentarian, who has been a Member of this Lok Sabha for sometime previously also, and also a member of the Constituent Assembly, should lose his temper in this way over only a few words used by me which were not in any sense derogatory. I am indeed surprised—I shall again say—at the way he lost his temper and dealt with other colleagues was something beyond my imagination. I could never imagine that—I can understand a new Member doing that—such an experienced Member, as Shri Kamath, with all his experience and knowledge, should deal with the matter in this way. I leave it to him, and it is for you to decide.

**Shri Hari Vishnu Kamath:** I am surprised that a senior Minister like him should use those words.

**Shri Lal Bahadur Shastri:** I never meant to suggest that what the hon. Member said was irrelevant or something like that. I never meant that. I only said that perhaps this matter could have been finished in a short time. That was the only thing that I wanted to mention. But, however, if he does not like it, I am very sorry.

**Shri Hari Vishnu Kamath:** That is better.

**Shri Lal Bahadur Shastri:** I do hope that he also sometimes realises that he commits mistake. Obviously . . .

**Shri Hari Vishnu Kamath:** You point out; I am willing to correct myself. (*Interruption*).

**Shri Lal Bahadur Shastri:** Shri Kamath even now has committed a great error in the way he spoke to the other hon. Members in this House.

**Shri Hari Vishnu Kamath:** You have closed the matter.

**Mr. Chairman:** Order, order. I cannot allow this running commentary.

**Shri Hari Vishnu Kamath:** You cannot call me alone to order. The others are there.

**Mr. Chairman:** I am sorry to say this: when an hon. Member is on his legs, it is not proper for another Member to have a running commentary. I will give you time if you want to say anything.

**Shri Hari Vishnu Kamath:** It is not a running commentary at all.

**Mr. Chairman:** I take objection to that. (*Interruption*).

**Shri Hari Vishnu Kamath:** I am confident; you are equal to all Members.

**Shri Lal Bahadur Shastri:** Shri Kamath has also said that he will also, or he is also prepared to accept the mistake; that he will do so; but as soon as it is pointed out, he gets upset. Then there is no point in pointing out or making any suggestion. I really expected better response from him.

However,—I am again making a reference to him—I am amazed at the way he was referring to this matter. He referred to my accepting the amendment he had moved in the Constitution (Amendment) Bill. He even objects to that and he criticised me.

**Shri Hari Vishnu Kamath:** I did not object.

**Shri Lal Bahadur Shastri:** He said that it was accepted perhaps with great hesitation and something like that. In fact, perhaps he was not fully satisfied.

**Shri Hari Vishnu Kamath:** What is wrong in that?

**Shri Lal Bahadur Shastri:** Please permit me to proceed. I did not disturb the hon. Member at all when he was speaking. It is very unfair on the part of Shri Kamath to suggest

that the House, in its wisdom accepted it and the Minister did not want it and all that. Certainly, the House in its wisdom did accept it. But it was accepted by me first when the amendment was moved by the hon. Member. In fact, he had expressed his thankfulness for the same. Now, perhaps he may completely forget it. But I did accept it, when I found that there was substance in what Shri Kamath had said.

However, in that connection, it is clearly provided as he himself has said, that the legislative assemblies in these territories may be partly elected and partly nominated. Now, Shri Kamath wants to suggest that this is wholly a nominated body; that this could be only a wholly nominated body. I am sorry I do not agree at all with this. I was trying to explain in brief as to why it would not be a nominated body. I said that even from the practical point of view and consideration, it was essential that the present territorial councils should be converted into legislative assemblies as early as it could be done. However, may I say that during the period of transition from the provisions of one statute to those of another, such legal provisions are commonly made. There does not appear to be any legal objection to this. The provision in clause 54 is nothing but incidental and ancillary provision to the main provision in Part II and Part III of the Bill. By article 239A, power has been conferred by the Parliament to create a legislative body for a Union Territory. By this Bill provision has been made for the creation of such legislative body and it is only incidentally provided that for a temporary period mentioned in clause 54, the Legislative Assembly of the Union Territory shall be deemed to be constituted in the manner indicated in that clause.

14 hrs.

As I said sometime before, even in the Constitution of India, temporary

and transitional provisions similar to clause 54 were made. It was provided by article 379 of the Constitution that until both Houses of Parliament had been duly constituted and summoned to meet for their first session, the body functioning as the Constituent Assembly of the Dominion of India would function as the Provisional Parliament, and exercise all the powers and perform all the duties conferred and imposed by the Constitution on Parliament. Similar provisions were contained in article 382 in relation to a State Legislature. So, in the Constitution itself, this kind of interim arrangement was provided.

In regard to nomination, etc., I do not want to take much time of the House, but the process of nomination of members is entirely different to what is being proposed in this, in so far as the formation of the Legislative Assembly is concerned. Nomination is done by the executive and it is done by individual names. If Members are nominated to any Legislative Assembly or to any elected body, the State Government or the Central Government does it. Every person is selected by name and then nominated. So, there is a clear distinction between nomination and election. As I said, the Territorial Councils were elected by adult franchise. It is an elected body, which can never be termed as a nominated body. Only for an interim period it is being provided in clause 54 that this Territorial Council should be deemed as Legislative Assembly till the new general elections are held.

I do not want to say more, but I would very much like Mr. Kamath to go and face the people of those territories. There are Members sitting here from those territories—Members of Parliament. They have a much greater right to speak on behalf of these territories. I have no manner of doubt that each and every one of them will feel exceedingly sorry if the objection of Mr. Kamath is upheld. They will feel sorry because they will not be able

to form their own Government and carry on the administration in a manner they consider best. I have no doubt that Mr. Kamath will be ruled out in no moment as soon as he goes to that area. I personally feel he will not dare to go and visit that area.

**Shri Hari Vishnu Kamath:** Don't make a mockery of the Constitution. (*Interruptions*).

**श्री चे० ला० चौधरी :** जनाब चेयरमैन साहब, मेरी दरखास्त है कि कामत साहब मेम्बरों को कहते हैं "शुट अप"। "बेइल्मे नातमा खुदारा खनात"। उन को यह मालूम होना चाहिए कि अगर वह किसी भी मेम्बर को लियाकत से नहीं देखना चाहते, तो और मेम्बर उन को पानी की तरह देखेंगे। इसलिए उन को बड़े अदब के साथ अपने लपज विदड़ा करने चाहिए।

**श्री हरि विष्णु कामत :** स्पीकर साहब, श्री अग्र्यंगार, ने उस को पार्लियामेंटरी रूल किया है।

**Mr. Chairman:** I thought I would not take cognizance of it since we were passing on to the next item. But since the hon. Members affected have raised this point, I have no other alternative but to request you, Mr. Kamath, that this is not a proper term to use against a fellow Member. I heard the words 'shut up'. You are a gentleman and you are very careful in your language; in spite of a little heat in the expression, I do not think you intended to use the words 'shut up' against a fellow Member.

**Shri Hari Vishnu Kamath:** All are gentleman here; none of us non-gentleman. I may bring to your notice—you were not in the House in the first Parliament—this point was raised by me in the first Lok Sabha when Mr. Ananthasayanam Ayyangar was in the Chair. Another Congress Member used the words 'shut up' and I raised the point. He said, it is perfectly parliamentary, because 'shut up' only means 'keep quiet'. Therefore, I do not see any reason why I should

[Shri Hari Vishnu Kamath]

withdraw those words. The records will bear me out. You can over-rule that; that is a different matter. But the Speaker has ruled that.

**Mr. Chairman:** After all, such rulings are not always case-law.

**Shri Hari Vishnu Kamath:** I go by that ruling.

**Mr. Chairman:** I can only express my opinion that it is not fair on the part of Mr. Kamath to use such expression. Now, on the merits of this proposition Shri Gauri Shankar.

**Shri Gauri Shanker Kakkar (Fatehpur):** Sir, I stand to support the point of order which has been raised by Mr. Kamath. As a Member of the Joint Committee, I also hammered the same thing. His appreciation are quite genuine. The hon. Home Minister has taken shelter under article 379 of the Constitution saying that this is only for the transitory period. The period of five years which has been given can never be construed by any stretch of imagination to be covered under a transitory period. Under the present Bill, which is under discussion, the Territorial Councils are to be converted into Legislative Assemblies for a period of five years, full long five years. Five years are the life-time of Parliament. So, it would hardly be a transitory period.

The objection can be raised that according to the Constitution, the present Assembly is not elected or partly elected and partly nominated. When the Territorial Councils were elected, they had very restricted and limited powers and so, naturally, persons with merit and other status could not come forward to contest the election or to be nominated to the Territorial Council. Now by this enactment such persons are being debarred for five years, because the Territorial Council is quite different from a full-fledged Assembly. A person may not come forward to contest the election for a Territorial Council, but

he may have an aspiration and desire to become a member of the Assembly. If this is to be allowed to be done in this manner, it means there is certainly a breach of the fundamental rights of many such persons.

For the Territorial Council, the age was 21. According to the Representation of the People Act, it is 25. If the Congress Party of the Home Minister has taken it into his head to convert persons of 21 into persons of 25, I have nothing to say. But I submit this is not possible and feasible to convert a man into a lady. I would call it like that, because a person of 20 years who was eligible for standing for election to the Territorial Council is not at all eligible to become a member of the Legislative Assembly. He is being allowed to enjoy that privilege now. I have got a genuine apprehension this this piece of enactment is against the spirit of the Constitution, against the specific provision of article 239A of the Constitution, which was passed here in 1962. So, this should be seriously looked into. I would even say that it would be in the best interest if the Attorney-General is consulted on this point, because it is a very serious matter and it would not be proper and decent if this is challenged in a court of law and set aside.

Sir, I support the point of order raised by Shri Kamath.

**Dr. L. M. Singhvi:** Mr. Chairman, Sir, it appears, I am sorry to say, that there was undue heat generated, and I think the constitutional issue which is before us perhaps tended to be under-emphasised or clouded. I do, however, feel that the issue that was raised by Shri Kamath immediately after the motion moved by the hon. Minister has considerable force. As a matter of fact, it was this very issue which I had sought to raise during the speech of the hon. Minister. He was good enough to yield then and explain as to why the Government considered the Bill constitutional. He even cited legal opinion obtained by the Government on this particular issue.

It seems that article 239A which was the provision of the Constitution sought to be inserted by a constitutional amendment has a *non-obstante* clause 239A(2) which says:

"Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending this Constitution."

Now, of course, there is no doubt that this was a piece of circumlocution, a piece of going round and round a particular provision of the law because here it is said that any law which is enacted in pursuance of this constitutional amendment may actually have the effect of amending the Constitution but not have the form and status of a constitutional amendment. As my hon. friend, Shri Kakkar said, it is not possible for this Parliament to convert a man into a woman. But I would certainly say that it is perhaps possible for this Parliament to call a man into a woman.

The question is not only this, that that we are trying to describe Territorial Councils as councils constituted under the constitutional amendment, under article 239A. There is, apart from the question which I raised, the question of legality and propriety of continuing the present Territorial Councils which were elected under a specific piece of legislation, for a specific purpose, under specific circumstances, before this enactment came into force, before this constitutional amendment came into force. It would, of course, be a travesty of law and an example of retrospective thinking.

The whole thing is this. These Territorial Councils were constituted in fulfilment of the assurance of giving them, giving the people of these territories, all the incidents of self-government; not the extrinsic paraphernalia only, not the outside mechanism only, but the reality of self-government. I quite agree and con-

cede the point of the Home Minister that the people of these areas are very anxious for self-government. But even while sympathising with their anxiety, we cannot act in a manner which is not in consonance with the provisions of the Constitution. That is the point I raise before you, Sir, and I will read to you, therefore, article 294A(1). It says:

"Parliament may by law create for any of the Union territories of Himachal Pradesh, Manipur, Tripura, Goa, Daman and Diu, and Pondicherry—

(a) a body....." (this is to be marked ".....whether elected" (that is one category) ".....or partly nominated and partly elected" (that is another category) "to function as a Legislature for the Union territory,"

That is to say, this constitutional provision postulates only two categories of legislature, two kinds of legislatures, which we may by law create. These two categories adumbrated in the constitutional amendment are: (i) elected, which means only elected....

**Mr. Chairman:** What do you say to the contention of the Government that the present Territorial Councils are elected on universal franchise?

**Dr. L. M. Singhvi:** I will submit to that also. I was saying that article 239A(1)(a) postulates only two categories of legislature, either only elected territorial legislatures or a legislature which is partly nominated and partly elected. Now, Sir, I suppose you agree with this.

**Mr. Chairman:** Elected or partly nominated; it may be either or both.

**Dr. L. M. Singhvi:** Now, if the body is to be wholly elected, of course, the existing Territorial Councils do not fulfil the requirements of that law, and wholesale conversion which is sought to be attained by clause 54 of the Bill before us will be *ultra vires* of the Constitution. Therefore, we

[Dr. L. M. Singhvi]

would revert to the second category postulated in article 239A. The second category of legislature is one which is partly elected and partly nominated.

**Mr. Chairman:** There is no expression "partly elected and partly nominated"; it is only "elected or partly nominated".

**Dr. L. M. Singhvi:** If you read the next phrase you will find that there is also "partly elected". When I say, this, I am fully fortified by the text of the Constitution as amended by the Fourteenth Amendment Act. I will read it again. It says:

"Parliament may by law create....."

(a) a body, whether elected or partly nominated and partly elected...."

The word "or" is interposed here to signify the second category. This is how it will have to be read. I am referring to the second category, which means that the body should be partly nominated and partly elected.

In this particular case it would be futile to argue that the bodies which are sought to be converted, the existing Territorial Councils which are sought to be converted in a blanket way are bodies which are partly elected and partly nominated. If that were so, as a matter of fact, which is the elective element and which is the nominated element, because elective elements and nominated elements should refer not to earlier nominations or earlier elections but to elections and nominations under the enactment which is authorised under article 239A. Any earlier enactment of this sort would actually have been *ultra vires*. That is why Government were impelled and persuaded to bring about this constitutional amendment. If this Fourteenth Constitutional Amendment is to have any relevance we must recognise that before this amendment

came into force we could not have given a legislature to these territories which is actually permitted only by the amended article of the Constitution.

There is another matter, whether it is correct legally and constitutionally to say that these legislatures which are existing and the elections or nominations to which were held under the Territorial Councils Act, 1956—not under this legislation, not under the Representation of the People Act, which seeks to impart a sense of uniformity to all our elective institutions under the Constitution in all the States and leaves outside its pale only the local government institutions—are relevant for the purpose of constituting State legislatures under the present enactment. These are State legislatures. If it is to be a State legislature, there is no reason, no rhyme in the argument that you can create a legislature outside the pale of the Representation of the People Act, because that is one machinery which is sought to ensure impartiality of elections. The Election Commission is the one machinery through which all elections are supposed to be held, and any elections which may have been held to a municipality by the State Government or to a panchayat will not be valid, will not be relevant for the purpose of constituting a State legislature under the present enactment authorised by article 239A.

In that context, I would like to submit that the objection which I earlier raised also becomes relevant. If it does not raise a complete legal barrier, at least it becomes relevant as an example for showing why the present legislation before us is not in consonance with the Constitution. The Territorial Councils which exist today were constituted under a different Act. Persons of less than 25 years of age could become members of those Territorial Councils. Persons who were interested only in certain restricted confined affairs of the State sought

elections to it. Now, naturally, when we are in the threshold of giving them the promised self-government, we are bound to give them the reality and substance and not the shadow. If we have to give them the substance and reality, then it is quite evident that the elections, in the first place, should be held under the Representation of the People Act.

Then, the Minister said two matters on which I want to dilate a little. The Minister has said that it is only a transitional arrangement. This is not sanctioned under any of the provisions of the Constitution. I would like the learned Home Minister, or the learned Minister of State in the Ministry of Home Affairs, who is himself a lawyer, to tell us under which constitutional provision is such a transitional arrangement sanctioned. Secondly, is an arrangement which is to last for the entire duration of five years or four years to be described as transitional? That would be a travesty of its ordinary, common sense dictionary meaning. Transitional is a shorter duration than the routine, normal tenure. And a legislature would not in any way live beyond five years, ordinarily, under our Constitution. So, it is wrong to argue that this is a transitional arrangement.

Another argument raised by the Home Minister was by referring to clause (b) of article 329, which does not hold water. Because, in all these matters, the courts in this country and we in this Parliament, upon whom falls the responsibility of preserving and maintaining the constitution in all its strictness, will be bound to take a restrictive interpretation of the constitutional terms in so far as it comes to restrict democratic institutions, and this is one of those provisions which will restrict, at least for the time being, and when the "time being" is being extended for a period of five years or four years, we are bound to interpret this as not in consonance with the spirit and the letter of the Constitution. Therefore, I submit that under our Rules of Procedure this is

a measure which does not fall within the legislative competence of this House, because it is not in consonance with, and is clearly contrary to, the provisions of the Constitution. That is my submission.

**Shri Bade:** I fully support Shri Kamath in his objection. According to the Constitution, the present assembly is not fully elected or fully nominated. It is partly elected and partly nominated, according to fiction. The main objection to clause 54 is this. According to clause 54, every person who, immediately before the commencement of this Act, is a member elected from a constituency to fill a seat in a territorial council shall be deemed to have been elected to the Legislative Assembly. This is a legal fiction. My submission is that this legal fiction is against the Constitution. The legal fiction must be according to law. The moment it goes against the spirit of the Constitution, it ceases to be a legal fiction. The wording of the clause clearly shows that it is a legal fiction which this Bill wants to provide.

Secondly, as the hon. Minister has stated, according to them this is a provisional arrangement. So far as Parliament is concerned, there was a specific provision for the provisional period. But, so far as the union territories are concerned, no provisional arrangement is specifically provided in the Constitution itself. Therefore, the argument of the hon. Minister that this provisional arrangement is according to the analogy of the provisional arrangement for Parliament under the Constitution is not valid.

The clause says that every person who, immediately before the commencement of the Act, was a member elected from a constituency should be deemed to have been elected to the Legislative Assembly from that constituency is something absurd, because it goes against some provisions of this Bill, as there are some provisions

[Shri Bade]

here for qualification and disqualification of members. According to the Bill, a person who wants to stand for election must be 25 years of age. Suppose there is already a member who is below 25 years of age. Then, by this legal fiction, he will be entitled to have a seat in the Legislative Assembly.

**Shri Hari Vishnu Kamath:** Preposterous.

**Shri Bade:** So, it goes against the spirit of some clauses of the Bill. Therefore, I submit that what Shri Kamath says is quite correct, and if this Bill goes to the Supreme Court, quite likely that it will be declared ultra vires. So, I feel that this requires very careful consideration. I fully support Shri Kamath in the objection which he has raised and again submit that there can be no legal fiction which goes against the spirit of the Constitution.

**Mr. Chairman:** Does the Minister want to say anything in reply?

**Shri Priya Gupta (Katihar):** Before that, may I seek a clarification? What is the projection of political strength in the present composition of the territorial councils? Or, do you want to keep this out in the background?

**Shri Bade:** That is our objection. Other political parties may not get representation.

**The Minister of State in the Ministry of Home Affairs (Shri Hajarnavis):** May I add something to what has fallen from the Home Minister, though I have very little to add? First of all, I will read the relevant words from article 239A.

“Parliament may by law create... a body, whether elected or partly nominated and partly elected, to function as a Legislature....”

Now, assuming that this body is limited by the expression “whether elected or partly nominated and partly elected”—I am not conceding this

point; I think it is only illustrative; a third alternative is not necessarily debarred; that is how I feel—assuming that these are the two ways in which the body can be constituted, that is, “elected or partly nominated and partly elected” what is the constitutional requirement? The constitutional provision requires that the members who constitute the body should be elected and, as Dr. Singhvi was constrained to observe, the word “elected” is not qualified by any phrase as to whether elected....

**Shri Bade:** Elected under the Bill?.

**Shri Hajarnavis:** Shut up.

**Shri Hari Vishnu Kamath:** Sir, this is very wrong. The hon. Member was telling me something. Now the Minister has thought it fit.....

**Mr. Chairman:** I very much disapprove of this. It is not fair. It should not be done.

**Shri Hari Vishnu Kamath:** Sir, can you please ensure that healthy traditions....

**Mr. Chairman:** Whoever it is, such words should not be used on the floor of the House. They are not respectful.

**Shri Hari Vishnu Kamath:** May I again submit....

**Mr. Chairman:** There should be no retaliation.

**Shri Hari Vishnu Kamath:** It is not a question of retaliation.

**Shri Hajarnavis:** Sir, I express my regret for using that term.

**Mr. Chairman:** If it is used a second time, I will expunge it.

**Shri Hajarnavis:** I will not repeat it. I only request hon. Members that while I am arguing rather an important and difficult point, I ought not to be disturbed.

**Mr. Chairman:** That is all right. Let him proceed. Why should he be interrupted.

**Shri Hari Vishnu Kamath:** Why did he interrupt us?

**Mr. Chairman:** Please do not provoke him.

**Shri Hari Vishnu Kamath:** I was only telling my colleague something.

**Mr. Chairman:** Let us hear what the Minister has to say.

**Shri Hajarnavis:** The only constitutional injunction is that it ought to be elected. If there is any doubt anywhere, or if there is any contention raised anywhere, that the constitution of the legislature is simultaneous with the elections, let us go to section 73 of the Representation of the People Act. General election follows the dissolution of the legislature. The legislature have ceased to exist. Then, one by one, the elections are announced. Then, what happens? There is publication of the results under Section 73. There is a general notification, and upon the issue of such notification the House or the Assembly shall be deemed to be duly constituted. So, the election of the members always precedes the constitution of the House. What the interval should be will depend upon the facts of each case. Here, there has been an election four, five or six months back. Now, what the law tries to say or do is that those elected members shall constitute the legislature, a provision which copies the exact words of section 73 of the Representation of the People Act. Therefore, there is complete compliance with article 239A. Secondly, as regards the main objection that has been raised regarding nomination, as the hon. Home Minister has explained before me, the members are not nominated at all. Nomination is the act of selection by the executive of an individual. In this case what has happened is that the members who are elected by a provision of the law....

**Mr. Chairman:** The hon. Minister might resume his argument tomorrow. Now it is 2:30; the House will take up the non-official business.

**Shri Lal Bahadur Shastri:** Sir, this may be finished.

**Mr. Chairman:** I think, there is a lot of argument about it.

**The Minister of Law (Shri A. K. Sen):** What is the argument? Your ruling is necessary.

**Shri Hari Vishnu Kamath:** Let us take up the non-official business. We held it over last week. We did not have it last week.

**Mr. Chairman:** If the House so desires, we will continue it for another five minutes.

**Shri A. K. Sen:** If I may say so, I will not be here tomorrow, because I have to leave the station, in case my assistance is necessary.

**Shri Hajarnavis:** I will finish it just now.

**Shri Indrajit Gupta (Calcutta South West)** rose—

**Mr. Chairman:** I have extended it by five minutes. It will be over very soon.

**Shri Hajarnavis:** I will meet Dr. Singhvi's objection by pointing out to him that here is a legislature not constituted under the Constitution; therefore, the provisions of the Constitution do not apply. This legislature is being constituted under an Act or law where we can prescribe any qualifications for the members or electors. Therefore the Constitutional question does not arise.

Now "deemed to be" is a well-known provision by which legal fiction is created and no one can say that that is not the reality because even if it is not the reality the law bids us to imagine that the legal fiction exists.

**Shri Bade:** I want one clarification, namely, whether there can be any member of the Council who is below 25 years of age. If he can tell us that, we will be highly obliged and then I will shut up.

**Mr. Chairman:** What I feel is that there are certain finalities about the law. Once an election is declared

[Mr. Chairman]

valid, even if a member is elected under a wrong age, one cannot question that. Once you have reached the highest court and your election is upheld even though your age is wrong, there is no remedy. So also here they have made a provision for these old territorial councils to continue until a specified period approved by law. Nobody has contended that these territorial councils are not elected. The Government's contention is that they are elected bodies and their life is prolonged by the sanction of the legislature. I do not want to enter into the question whether there is any provision which is contrary to the Constitution. If that is the case, that has to be decided elsewhere. I put it to the House whether the House accepts that this Bill be put through and I will abide by the decision of the House

**Shri Hari Vishnu Kamath:** On a point of clarification. You just now held about the age.....

**Mr. Chairman:** I gave an example.

**Shri Hari Vishnu Kamath:** But there have been reported cases of the Supreme Court where the election is set aside on the ground of being under age, that is, less than 25 years of age.

**Mr. Chairman:** After the process of law is exhausted, that is final.

**Shri Hari Vishnu Kamath:** You may hold over this point for the hon. Speaker's ruling. That is much better. Moreover, time is up.

**Shri A. K. Sen:** Your ruling is good enough for us.

**Mr. Chairman:** I put it to the House whether we should proceed with this Bill.

**Shri Hari Vishnu Kamath:** There is a point of order to be decided.... Is there no point of order?

**Mr. Chairman:** Yes. I want the opinion of the House whether we should proceed with this Bill.

**Some Hon. Members:** Yes.

**Mr. Chairman:** Then we will proceed with this tomorrow.

14.35 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

TWENTY-FIRST REPORT

**Shri Hem Raj (Kangra):** Sir, I beg to move:

"That this House agrees with the Twenty-first Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 1st May, 1963."

**Mr. Chairman:** Motion moved:

"That this House agrees with the Twenty-first Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 1st May, 1963."

**Shri Hari Vishnu Kamath (Hoshangabad):** Mr. Chairman, the Twenty-first Report of the Committee has got four items and may I invite your attention to item No. 4 where Bills shown therein have been listed in category 'B'. One is the Bill introduced by Shrimati Lakshmikantamma and the other is my Bill, the Constitution (Amendment) Bill, 1963 regarding amendment of the article enabling Parliament to amend the Constitution, which I introduced a fortnight ago, on the 19th April.

Article 368 empowers Parliament to amend the articles of the Constitution as detailed therein. I have introduced the Bill seeking to amend that article so as to provide for a two-thirds majority of the total membership of the House and a three-fourths majority of the Members present and voting. That Bill has been classified as a Bill falling under category 'B'. I would submit for your consideration that the Bill is very important because if it is adopted by the House at the earliest possible opportunity, it will do away with all kinds of partisan amendments to the