

Shri Frank Anthony: It was a constitutional committee.

Mr. Speaker: Here it was not a Parliamentary Committee over which I had any control; it had not to make a report to Parliament at all.

Shri Frank Anthony: This is the position I took.

Mr. Speaker: The report also had to be made to the President and not to the Speaker or to Parliament. So, so far as the Rules that we have and we are governed with are concerned, they are about the Parliamentary Committees. According to them,

“Parliamentary Committee” means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat for which is provided by the Lok Sabha Secretariat;”

In that sense it was not a Parliamentary Committee at all and I had no control over it. Though according to normal practices and commonsense it ought to be rather just and fair to the Committee that we should not, even though it may not be a Parliamentary Committee, discuss those things that had happened there, I have no power to regulate that.

Shri Frank Anthony: As I said, I did not want to say that but I just wanted to show our difficulty.

Mr. Speaker: It did not appear dignified that what transpired inside should be disclosed.

17 hrs.

Shri Frank Anthony: We did not function in the open. The press were not admitted there. The party whip did crack loudly. That is my whole reason. What has Home Minister done? His amendment purports now to canvass the views of the State Legislatures. It does not improve the position. The amendment, I say with great respect, does not advance the position by one iota. I say, why short-

circuit Parliament? What was the assurance? It was that the non-Hindi-speaking people will decide it. Now, their views are being taken all round. I am satisfied if the recommendations come from Parliament. The recommendations must be not from the Committee although the report will come. What happened last time? The Report came, but our debates never went to the President. The President's Order was in the precise terms of the Committee's Report. I do not want that I say, when the matter comes to the House, all the proceedings will be open; it will be open to the press. It is much easier in a small committee, I say this with all respect even for hon. Members to be directed and regimented. When it comes to the House, you get a much wider cross-section view and you are not able to regiment Parliament in that way. What is wrong if the matter comes to Parliament and the recommendations go from Parliament with the views of the States?

Mr. Speaker: Yes, Shri Prabhat Kar.

Shri Hari Vishnu Kamath: It is 5 O'clock, Sir. Shall we not switch over to the other Bill?

Mr. Speaker: All right. This we will take up tomorrow at 11 O'clock. We will proceed to the other Bill—The Compulsory Deposit Scheme Bill.

17.03 hrs.

COMPULSORY DEPOSIT SCHEME
 BILL—contd.

Shri Prabhat Kar (Hooghly): Sir, in the morning I wrote to you about this. There was the point raised by Shri Jain yesterday and it was discussed—it was a constitutional point. Apart from the constitutional question, the point was raised that there was a difference of opinion as to whether it is *ultra vires* of the Constitution. Mr. Jain raised a point yesterday and a request was made that on this matter before we proceed

further, it is necessary that the Attorney General be requested to address the House and after hearing the views of the Attorney General the House may proceed in the matter. Mr. Jain also requested you that you were to give a certain ruling on this. Other Members also spoke on this matter. I would request you to decide this particular point before we go further into the Bill because it is a serious situation and there is a sharp division on this and the opinion has been divided on this particular matter. Before we proceed further, we should come to a certain decision.

Shri A. P. Jain (Tumkur): Sir, I wanted to raise a point of order.

Shri Shivaji Rao S. Deshmukh (Parbhani): Sir, I was in possession of the House when Mr. Jain raised a point of order.

Shri A. P. Jain: Sir, I wanted to raise a point of order and you were pleased to observe that I might make it the next day. I interrupted Mr. Deshmukh in his speech. Of course, his speech will continue. My point of order is this that according to a well-established parliamentary practice the Speaker has no eyes and no ears.

Shri Hari Vishnu Kamath (Hoshanbad): Eyes at least he must have (*Interruption*).

Shri A. P. Jain: Have a little patience please. The Speaker's eyes are the eyes of the House and the Speaker's ears are the ears of the House. Now, that was a very healthy parliamentary practice established no less than 300 years ago when King Charles II came to the House of Commons with his soldiers to arrest two Members of Parliament. And when he asked the Speaker to surrender those Members,

the Speaker said* "My eyes are the eyes of the House and my ears are the ears of the House." He did not surrender those Members. What it means is this: that the Speaker is expected to respect the wishes of the House and to act according to them. Now, we have discussed this point yesterday. We have discussed it before. I am only referring to the presence of the Attorney-General: not the other points. Other points might be disputed on merits. My interpretation of article 31A might be different from the Law Minister's or Finance Minister's. I am only referring to one single point, that is the desire of the House to hear the Attorney-General. I feel that the overwhelming majority of the Members of this House are desirous to hear the Attorney-General and to enlighten their souls and ease their conscience before voting.

Now, we have only one way to express ourselves as a House and that is through you. Therefore, it is my submission that you may observe that healthy tradition, that is, be the eyes of the House and be the ears of the House and because it is our desire that we want to invite the Attorney-General.....

Mr. Speaker: Eyes and ears, he has mentioned. What about the tongue that I use?

Shri A. P. Jain: He should also be the tongue of the House. (*Interruption*). There is always scope for improvement. One great Speaker laid down two traditions of ears and eyes. You as another great Speaker may lay down the tradition of the tongue? It will go down in history.

* In 1642, in the British House of Commons, Mr. Speaker Lenthall replied to King Charles I as follows:—

"May it please your Majesty,

"I have neither eyes to see, nor tongue to speak in this place, but as the House is pleased to direct me, whose servant I am here; and I humbly beg your Majesty's pardon, that I cannot give any other answer than this, to what Your Majesty is pleased to demand of me." [*Vide* Dasent's "The Speakers of the House of Commons from the Earliest Times to the Present Day" (1911), P. 193]-*Ed. of Debates.*

You have ascertained the wishes of the House. I want a ruling from you whether you are going to be the eyes and ears and tongue of the House, invite the Attorney-General and perform a function which honourably belongs to the Speaker.

Mr. Speaker: Would the hon. Minister like to say....

The Minister of Finance (Shri Morarji Desai): Should I speak only on the question.....

Mr. Speaker: On the question of this Attorney-General: because, he has also seen that widespread desire has been expressed on all sides. Yesterday's discussion showed that there was a desire from all sides that the Attorney-General be summoned to the House: even from the Congress side and others. Only on that question.

Shri Morarji Desai: I have the greatest respect for the hon. Members of the House, for the House and if it can be greater, for you. But, that does not mean that I should accept every desire even if it is unanimous. There are some things where one has to do one's duty. I cannot be a party to having a wrong convention or a wrong tradition. The Attorney-General is an officer of the Government. It is only the Government who can call him. I do not think it would be for the House to call him. There is no provision in the Constitution whereby the House can call him. (*Interruption*).

Mr. Speaker: Order, order; let us hear him.

Shri Morarji Desai: I believe I have a right to put my point of view. Ultimately it is for the Chair to accept it or not to accept it. I cannot dispute it at any time. His ruling is final for anybody.

I think it is only on one or two occasions he was in this House. That was also at the instance of the Government. It was not at the instance of anybody. He is an Adviser to Gov-

ernment, not an Adviser to Parliament. The Government, when it wants him, certainly invites him and he has a right to speak in the House as it is given by the Constitution. If that right of speaking had not been given by that article then, the Government could not have invited him here also. Because the Government was to be enabled to do so, that right has been given and nothing else has been mentioned in that article. Therefore, I would urge that it is for the Government to do so.

I do not think that it would serve any purpose to invite the Attorney-General here to give an advice. Because, the Attorney-General also is an advocate. An advocate has one view. The court can have another view. That is final for us. But, advocates differ. My hon. friend is a very able advocate even though he says that he has gone rusty. I have better appreciation of his advocacy which I found excellent yesterday though I do not agree with him. Two advocates differ from each other entirely. And both of them think that they are right in the matter of law point or interpretation of law. Ultimately, it is the judge that prevails. In fact, it is even the judge who does not prevail always. It is only the Supreme Court which is the final authority which prevails....

An Hon. Member: Why do you not refer it to the Supreme Court?

Shri Morarji Desai: Even judges differ and they are overruled. Therefore, even the Attorney-General's coming in here and saying that this matter may come in or may not come in would not decide the issue.

Therefore, with all my respect for the desires of the hon. Members, either from this side of the House or from that side of the House, I am very sorry that I cannot accept it.

Shri A. P. Jain: Is he being called for the first time? Has he not been called before? Has he not appeared here before?

Shri Hari Vishnu Kamath: I wish to challenge the statement made by the hon. Minister on two grounds. First, he said that Government only had the right to call him before the House. May I remind him of the observation or the ruling that you gave yesterday, when I put the question in all humility to you, 'Can he appear *suo motu*? I have just checked the records, because I returned it to the Editor of Debates, only about five minutes back after seeing it and after correction. I put this question in clear terms: Can the Attorney-General appear *suo motu* in Parliament? And you said 'Yes, he can appear *suo motu*.' The hon. Minister's statement is in flat contradiction of the ruling that you gave yesterday or the observation that you made yesterday in your profound wisdom, and he has no business to question the ruling that you gave yesterday after due consideration.

Shri Morarji Desai: I had not this in mind at all.

Shri Hari Vishnu Kamath: That is one aspect of the matter.

Another flagrant *faux pas* that he has made is his reference to us when he said that the Attorney-General has no function of advising Parliament. Yesterday, I quoted two articles, namely article 76 and article 88. Article 76 is with reference to the duties and functions of the Attorney-General *vis-a-vis* Government. The chapter heading of that article is 'The Executive', because in Part V dealing with 'The Union', we find the following words:

"Chapter I.—The Executive."

There, article 76 deals with the Attorney-General's capacity or functions or duties *vis-a-vis* Government or the executive.

Now, Sir, please be so good as to turn to article 88. That article 88 figures under another chapter of the same Part, namely Part V which is entitled 'The Union'; it figures in

Chapter II which bears the caption 'Parliament'. There again, the Attorney-General figures.

Therefore, it is too late in the day for my hon. friend the Finance Minister to argue that the Attorney-General has not got dual functions, one of advising the Government and the other of advising Parliament.

I distinctly remember that in the Provisional Parliament, when the preventive detention law was on the anvil of the House, which was being piloted by Sardar Vallabhbhai Patel, the first Home Minister of the Union, many Members of the House on the opposite side as well as on this expressed a desire to hear the Attorney-General on the issue, and I believe, in deference to the wishes expressed by both sides of the House, the then Home Minister, who was more responsive to the wishes of the House than the present Finance Minister is, decided that the Attorney-General should be summoned, should be invited and should be called to give his views.

Therefore, on this occasion also, when both sides feel inclined that way—I am sure that if there is no Congress party whip in this matter . .

Shri A. P. Jain: It is not a question of party whip.

Shri Hari Vishnu Kamath: . . . all Members of the House present here today, except the Finance Minister and his Deputy, and perhaps the Works, Housing and Rehabilitation Minister, except these two or three, all the Members of the House present here will support this demand for calling the Attorney-General to the House, to address the House—I appeal to you, as my hon. friend, Shri A. P. Jain has already appealed to you, as the eyes and ears of the House,—I do not know about the 'tongue'; at any rate, I would say, as the eyes and ears of the House,—with all earnestness to convey the near-unanimous desire of the House,—because of respect to the

Finance Minister, I say 'near-unanimous' and not 'completely unanimous',—to hear him, on this subject, and we shall feel deeply grateful if you set up a very high precedent in this respect, in keeping with the highest traditions of Parliaments all over the world, and respect to wishes of Parliament, and be pleased to call the Attorney-General to the House tomorrow so that he can address the House on this matter.

Shri Kapur Singh (Ludhiana): I just want to add a word to what has already been said.

Shri Morarji Desai: My hon. friend, Shri Kamath, is not correct in saying that there is 'near' unanimity' in the House on this point. On this side of the House, only two or three Members have spoken. Out of three who have spoken, one has said 'no'. So it cannot be presumed that all the other Members on this side of the House also are agreeing with him.

Shri Hari Vishnu Kamath: I said 'near unanimity'. I did not say 'complete'. 'Near unanimity' means 60 per cent, 70 per cent, the majority.

Shri Morarji Desai: He is wrong in saying that. It is not a majority at all.

Mr. Speaker: Order, order.

Shri Hari Vishnu Kamath: Have the vote of the House. (*Interruptions*).

Shri Priya Gupta (Katihar): Even now the House is unanimous on that point. That is the point.

Mr. Speaker: Order, order. Should there not be some code of conduct? Or has everybody got the free right to say anything and I should allow a free-for-all thing here?

श्री प्रिय गुप्त : जब भी मैं खड़ा होता हूँ, तब आप इस तरह से कह देते हैं ।

प्रद्यक्ष महोदय : तब कह रहा हूँ जब कि आप के लीडर खड़े हुए हैं और बोल रहे हैं ।

Shri Priya Gupta: I seek your protection. As an M.P., I am equal to Shri Kamath. He cannot ask me not to speak.

Mr. Speaker: I had allowed him. After he finished...

Shri Priya Gupta: Why do you mention that he is my party leader? I have got every right to speak here.

Mr. Speaker: That liberty does not extend to this that he may speak at any time he likes.

Shri H. N. Mukerjee.

Shri H. N. Mukerjee (Calcutta Central): I think we are discussing a matter which might have very important parliamentary implications and that is why I make my submission in all humility.

The Attorney-General, irrespective of what the Finance Minister or any of his colleagues may think, has the right, under the Constitution, to address Parliament. He can do so on his own volition. He is an independent officer—I underline the word 'Independent'. Recently the country has prevented the Law Minister from gobbling up the office of the Attorney-General because that office is...

Mr. Speaker: Why go into that? We can confine ourselves to what is before us.

Shri H. N. Mukerjee: Here is the most important law officer in the country who has an independent status, who has been given by the Constitution, the right, of his own volition, if he wishes to do so, to address Members of Parliament.

Now, Parliament happens to feel, in regard to a particular measure, in something like a constitutional quandary, and whatever the whip that the Congress Party might indicate, there is no doubt about it that different Parties represented here feel rather strongly that a certain position has

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arisen where, legally speaking, a decision has to be taken and things should not be done in a huff. We are only suggesting that you, as representing Parliament, can very well send out a letter of request to the Attorney-General which, I am sure, he would consider in the manner which is indicated. When almost everyone in Parliament—I suppose Shri A. P. Jain represents the Congress Party to a certain extent, apart from the whip—when all Parties in Parliament seem to be agreed that here is a matter with certain legalistic complications which have got to be unravelled before the Finance Minister can go ahead with his proposal, certainly it stands to reason that the independent services of the Attorney-General, which are available under the Constitution to Parliament, should be requisitioned.

We do so with all deference and due respect to the office of the Attorney-General which we want to keep in a particular category and not to be confounded with the legal advice which might be purchased by the Government. That is why I feel that you should, representing Parliament, issue a letter of request to the Attorney-General to address us in regard to the legality of the measure which the Finance Minister has espoused.

Shri Sonavane (Pandharpur): He cannot say that Government is purchasing legal advice from him.

Mr. Speaker: Order, order.

Shri Morarji Desai: The Attorney-General is appointed under article 76. His duty is to advise the Government upon such legal matters, and to perform such other duties of a legal character as may be referred or assigned to him by the President. Therefore, there is no question of his being independent or advising me as he likes whenever he wants; it is only on matters which are referred to him that he can advise me.....

Shri Priya Gupta: On a point of order.

Mr. Speaker: Order order. Let him finish.

Shri Priya Gupta: When Parliament is not in session, the Government functions in the Cabinet. But when Parliament is in session, the Ministers are here and Government includes everybody here. Therefore, the Government should consult everybody in Parliament.

The Deputy Minister in the Ministry of Finance (Shrimati Tarkeshwari Sinha): Do not raise such points of order.

Shri Morarji Desai: Therefore, it is not a matter that the Attorney-General can come here of his own accord if he wants to advise on something, unless the matter is referred to him by Government and he is briefed. Of course, when he is briefed or asked his legal advice, he gives his independent view. I will not say then he should give his view as suggested by Government. That would be wrong. That is not the position Government can take at any time. But in this particular matter, I have got to consider the Constitution itself. I have the greatest respect for the Constitution, and therefore I cannot agree.

Some hon. Members rose—

Mr. Speaker: If every line is to be challenged, we cannot continue incessantly.

Shri Daji (Indore): No challenge, Sir. We want to explain our position.

Shri S. M. Banerjee (Kanpur): You give us two minutes each.

Mr. Speaker: If they allow me to say a few words.....

Shri Radhelal Vyas (Ujjain): The view of one side has been expressed. The Finance Minister has spoken on the other side. If you just allow me one minute, I will finish.

Mr. Speaker: Why should I allow him?

Shri Radhelal Vyas: I am representing the other side. One side of the picture has been represented to you, but the other side has not come to you.

Mr. Speaker: If he is the other side, I will allow him an opportunity.

Shri Radhelal Vyas: I will be very brief.

Mr. Speaker: I only asked him to resume his seat.

Shri Radhelal Vyas: I will, if you do not permit me. If you permit me, I will clarify it. I have also to say something with regard to the ears and eyes and all that. If you do not permit, I cannot.

Mr. Speaker: I am again and again telling him that I will permit him, but I am asking him to resume his seat. I will permit him, but he is persistent.

What does Shri Daji want?

Shri Radhelal Vyas: I am sorry.

Mr. Speaker: I will permit Shri Vyas because he may have to say something against what he says also.

Shri Daji: I am sorry the Finance Minister read article 76(2) only half. I will do nothing more than read from where he left.

"It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President,....."

He stopped there. It continues:

"... and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force."

This portion the Finance Minister forgot to read.

Shri Hari Vishnu Kamath: It does not suit him.

Shri Daji: When you read the whole thing, the powers of the Attorney-General are to advise the Government on matters referred to him by the Government and to discharge the functions conferred on him by or under the Constitution.

Article 88 also has to be read— with this. Therefore, the true position in a nutshell is this. I do not say we can summon him, but I would respectfully disagree with the proposition laid down by the Finance Minister that only the Government can summon him.

Here is a new position before the House and before you, and the new position is this: can the House, which ultimately after all votes the money and sanctions the Budget, in view of articles 88 and 76(2), have the right to get the advice of the Attorney-General or not, if the Speaker and the House so desire? This is a novel constitutional point which has arisen. There is no precedent. There is no precedent to say that Government alone can summon him. It is for us and for you to lay down the precedent.

The point is: after all, what are we demanding? We are not expressing ourselves on merits. If the law ultimately is declared to be unconstitutional by the Supreme Court, to a certain extent the entire House is also held up to ridicule, because it would be said that something came up before the House on which strong views were expressed and we wanted legal opinion before we proceeded with it but we did not get it.

Mr. Speaker: If the Attorney-General has given his opinion and then the same thing happens?

Shri Daji: We would have made our best efforts. To refuse to put in our best efforts is not proper.

Shri S. M. Banerjee: I have heard the hon. Finance Minister who said that after all the Attorney-General was also an advocate. The Finance Minister has said that the Attorney-General is, after all, an advocate. It is a reflection on the Attorney-General. When there was the question of merging these two posts, the only one argument which was advanced against it was that the merger of those two posts would take away the independent character of the Attorney-General, and the President will have nothing to consult. The Law Minister was going to pilot the Bill.

Mr. Speaker: Whether he is independent or not, or whether the posts are combined or not, it cannot be denied that he is an advocate.

Shri S. M. Banerjee: Is that an argument?

Mr. Speaker: There is no reflection whatever. After all he is also an advocate.

Shri S. M. Banerjee: You remember in this very House, when there was actually an argument advanced against a particular provision in regard to the law about land acquisition, what happened. No amendment was being accepted by this House and naturally a committee was formed and certain amendments were discussed.

Mr. Speaker: It is not relevant.

Shri S. M. Banerjee: He could be called by you. That is my point.

Shri Kapur Singh: I wish to make one simple submission by way of addition to what has already been stated on this subject. It has been contended whether constitutionally the Attorney-General can be summoned to this House by Parliament or he can come here only with the consent of the Government. I leave that aside.

Another point has been raised as to whether it is the general wish of this House that the Attorney-General should be sent for. You have also certified that such is the wish. It has been contended by the hon.

Finance Minister that if votes are taken, it will be found that this is not either a near-unanimous wish or a general wish. I leave that aspect of the matter also aside.

There is a third aspect of this matter, another facet of this problem. It is this: a large number of Members in this House feel genuinely concerned that this is a matter on which they cannot exercise their judgment with independent and impartiality unless they have heard expert advice of the Attorney-General. They want, and they have prayed to you, that that expert advice should be made available to us. Now, if that advice constitutionally can be made available to us, if that advice is at all available, then, to try to prevent the availability of that advice to this House by the Government, either through a fiat or even through a whip, I can only say, has grave and far-reaching implications. It has an ominous penumbra encircling it. It emits an ill-odour which if properly expressed, ultimately amounts to preventing this House from discharging its duties with impartiality and with utmost care. That is my submission.

Shri Radhela Vyas: Mr. Speaker, Sir, the point has been raised here in the form of a point of order. We are not to look to the propriety of the question whether the Attorney-General should appear here or not, but we have to look at it from the point of view whether, by way of a point of order, if there is a general wish of the House, he can be compelled or asked by you, as the Speaker of this House, to appear here or not.

Now, under article 76, as read out by the hon. Finance Minister, it has been clearly stated that "it shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President, and to discharge the functions conferred on him by

or under this Constitution or any other law for the time being in force." Now, which are the functions conferred on him by this Constitution? No hon. Member has referred to it. So, unless his function comes under this Constitution or under any other law, he is not supposed to tender advice to the Government or to discharge that function.

Article 88 also has to be referred to. What does it say? It says that the Attorney-General has got a right to appear in this House. It is his right. If he wants to exercise that right, it is open to him. This House cannot compel that he should appear here. It has been suggested that it is the general wish. Suppose it is the unanimous opinion of this House, then, I would submit to you that still, you cannot do it, because you are guided in the discharge of your duties by the rules of procedure and the Constitution. If the rules of procedure do not allow it, then even if the whole House agrees to one thing, I think you will never be a party to it and you will rule it out of order even if the whole House agrees. Here the point of order raised is not according to the Constitution and even if all of us unanimously agree, we cannot ask or you cannot issue any direction to the Attorney-General or to the Government to ask the Attorney-General to be present and address this House.

Shri Shivaji Rao S. Deshmukh: I was in possession of the House when Mr. Jain rose on the point of order, Sir.

Mr. Speaker: We have continued this for long, I think.

Shri Shivaji Rao S. Deshmukh: I want to submit something in connection with the point of order.

Mr. Speaker: He has expressed himself on this point also.

Shri Shivaji Rao S. Deshmukh: No, Sir; I was speaking when Mr. Jain raised the point of order.

Dr. M. S. Aney (Nagpur): Before you give your ruling, may I submit...

Mr. Speaker: I have just stopped Mr. Deshmukh.....

Dr. M. S. Aney: It is a very important thing I want to submit, Sir.

Mr. Speaker: Then I will have to allow Mr. Deshmukh also.

Shri Shivaji Rao S. Deshmukh: Mr. Speaker, Sir, the eye of the Speaker, the ear of the court and the hands of the law are supposed to be the three most elusive organs human ingenuity could invent. I think the eye of the Speaker is as much public property as this House itself. Therefore, every Member of this House and this House collectively has got full and unfettered demand on the eye of the Speaker. It is because of this that whatever the Speaker wants to say, he is the combined and collective wish of this House.

With deference to Mr. Radhelal Vyas who has just now made a submission, I think there cannot be a more blatant misinterpretation of the Constitution so far as article 88 is concerned, if Mr. Vyas is allowed to go with his view that article 88 merely confers the right of audience on the Attorney General. The subject matter of article 88 is not only conferring the right of audience, but is conferring the constitutional obligation on the Attorney General. The wording of article 88 is quite clear. It says:

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

So, article 88 equates the position and authority of the Attorney General to that of a Minister of this House. A

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Minister who does not happen to be a Member of this House can ordinarily be summoned by an ordinary Member of this House by giving a calling attention notice "I call the attention of the Minister to the following matter of urgent public importance and request that he may make a statement thereon". Similarly, article 88 specifically equates the position of the Attorney General to that of a Minister. So, I think it is fully justified that the House can request, every Member can call the attention of the Attorney General to the debates in this House and request him not only to guide the House, but even to take part in the proceedings of the House. The material part of article 88 empowers him to take part in the proceedings. An authority who is empowered to take part in the proceedings can naturally be summoned by the authority of the House wherein he is supposed to take part.

The Finance Minister's contention, if accepted, would mean that article 88 is fettered by article 76 or, in other words, article 76 is the controlling provision of article 88. In interpretation of the articles of the Constitution, it is a settled law that every article has to be independently appreciated in its own right and no provision can have any controlling effect on another. In spite of this, when in the wording of article 76 the President has been expressed as the nominating authority of the Attorney-General, the Attorney-General does not and cannot become the officer of the Government. He is still an independent authority.

Mr. Speaker: I have heard him. He should conclude now.

Shri Shivaji Rao S. Deshmukh: If it is the President's pleasure, the Attorney-General can enjoy his office.

Mr. Speaker: Dr. Aney.

Dr. M. S. Aney: Sir, I want to bring only one point to your notice. The position of the Attorney-General has

been clearly defined by many. The question is, how to secure his presence here, in case we want him to come and give any advice. He can come here and address the House also. But that he can do only if he is named a Member of this House. Who will do that function? Who can name him a Member? You cannot name him as a Member. Unless he is a Member he cannot have any audience here and nothing can be done. Therefore, the consent of the Government is necessary. The Government must agree to this position. (*Interruptions*).

An Hon. Member: Only for a Committee he has to be named.

Dr. M. S. Aney: The article says:

"Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any Joint sitting of the Houses, and any committee of Parliament of which he may be named a member....."

Yes, Sir, I agree with the hon. Member; it is only in the case of a Committee that he has to be named. I have nothing more to say.

Shri Tyagi (Dehra Dun): In the Constituent Assembly days once the Attorney-General was called and he also addressed the House. It was on the advice of the Government.

Mr. Speaker: This question has been raised many a time throughout the discussion that we had on this Bill. I might be accused, rather, that I have been too indulgent in that and I continued the discussion. Though I had expressed it, not only once but twice, that is was not my job to call him or summon him, even then it has been pressed again and again because the Members felt so strongly on it. Therefore, I suffered that to be discussed so thoroughly as has been done here.

Though my eyes, ears and tongue have all been taken away, even then I can say—I agree, I do not contradict it—

Shrimati Vimla Devi (Eluru): In return for those of the 499 here.

Mr. Speaker: That is quite all right. The Speaker has no independent opinions of his own. He cannot just go by what he has seen or heard and make his observations. He has to be guided by the will of the House. That is quite all right.

But, so far as this is concerned, article 76 has been read again and again. It lays down how he has to be appointed and what are his duties that he shall perform. In order to enable him to perform his duties, he has been given this right under article 88 that the Attorney-General of India shall have the right to speak and otherwise take part in the proceedings of either House. If this right had not been conferred on him he might not have been able to discharge his duties. Therefore, this right also has been given to him. It is not correct to say that it has been given just because the Minister also has that right. The Minister has got other functions also which the Attorney-General might not have got.

What the hon. Members want is that they should have the benefit of the advice of the Attorney-General. That is the only question that is before the House, and because the Government does not ask him or advise him to come over here I am being told that I should exercise this discretion, though so far no hon. Member has guided me in that respect that there has ever been a precedent where the Speaker has asked the Attorney-General to come and advise the House.

Shri Kapur Singh: Let this be the precedent.

Shri Shivaji Rao S. Deshmukh: Let a new precedent be created.

Mr. Speaker: Whether we should proceed one way or the other, I am asking for the guidance of the House whether at any time the Speaker has done it and whether there is any authority to the Speaker which he can exercise in this matter.

Shri S. M. Banerjee: May I point out....

Mr. Speaker: Order, order. I want to know whether there is really any authority for the Speaker which he can exercise under the Constitution, or under any other provision, whereby he can summon the Attorney-General. I have been asking again and again this question, and no hon. Member has been able to give me any clarification.

The second question is the negative approach. I am being asked whether there is any bar against the Speaker doing it. I think it would be a difficult question for me to answer, though I have not found any bar anywhere against my asking him to come. I would like to exercise the powers that are given to me. I should not see whether I am precluded from acting and assume all the rest of the powers.

Shri Shivaji Rao S. Deshmukh: Sir, it can be done under rule 389.

Mr. Speaker: Order, order. He had his say twice or thrice. He should not do it again.

So far as this matter is concerned, in all democracies, as far as I can see, though I do not claim that I have very wide knowledge about it, it has always been left to the House to decide it. If the Government is not responsive, then the House can throw out that Government.

Shri A. P. Jain: There is no question of throwing out the Government.

Mr. Speaker: That is the only thing. Here it has been stated that the House is unanimous. If the House is unanimous, or even a preponderating majority of the House desire that,

[Mr. Speaker]

Government has to respond to the wishes of the House. There are some words spoken by the hon. Finance Minister to which I take exception. He said that even if the House was unanimous, he would not succumb to it. That is rather not fair to the House.

Shri Morarji Desai: May I say a word? I am very sorry. I am either misunderstood, or I have expressed myself wrongly.

Mr. Speaker: I may have understood him wrongly. That is also possible.

Shri Morarji Desai: I do not want to bring in that kind of thing. I would like to say that I have only said that I cannot fall in with that desire myself, because I consider that it would be wrong for me to do so under the Constitution. That is what I said.

Shri Hari Vishnu Kamath: That is the same thing.

Mr. Speaker: Even if the House was unanimous?

Shri Morarji Desai: Even if the House is unanimous, if it is outside the Constitution, it is my right and duty to say that I do not agree with it.

Mr. Speaker: If theoretically it has to be so construed, then I would just put it up again to the Finance Minister that if it is a responsible government, and this government is responsible to this House, then it should not be said that even if the House is unanimous, the Government would not do it. (Cheers) But there ought not to be so many cheers, because what follows might not be pleasant to those who cheered me. (Interruptions).

We are seriously discussing these things because we have to lay down certain conventions. I am very clear in my mind that I cannot take upon myself the responsibility to make a

request to the Attorney-General to address the House. It is for the House to express its opinion. After the House has expressed its desire, it is for the Government to respond to it. If the Government thinks that there is no necessity, and the majority of Members feel that there is no difficulty in calling him and he should be called, then it would be for the Members to exercise their vote as they like. There is no opportunity for me just to call or ask the Attorney-General to come over here, and I am not going to exercise those new powers that I do not think are vested in me.

Shri Hari Vishnu Kamath: Sir, on a point of clarification on the ruling which you have given, for future guidance, I hope you would not endorse the Finance Minister's view that only the Government can call him to Parliament to express his views. I hope, Sir, you still stand by the ruling or observation you made yesterday that he can appear before Parliament *suo motu*.

Mr. Speaker: That is under article 88. Under that article, a right is given to him, just as the Ministers, to come and speak here. Yesterday I was speaking on that article. He has the right to come and take part in the proceedings.

Shri Hari Vishnu Kamath: In clarification of that, if tomorrow the the Attorney-General expresses his wish that he wants to appear before the Parliament and address the Members, can the Government prevent him from appearing?

Mr. Speaker: That is hypothetical. (Interruption). Order, order, we will proceed with the debate now.

Shri A. P. Jain: I want to make a motion . . . (Interruption).

Mr. Speaker: There ought to be some end to it. I will not allow any further discussion.. (Interruption).

An Hon. Member: I want to make a motion.

Shri A. P. Jain: I want to make a motion.

Shri Priya Gupta: On a point of order, Sir. The hon. Finance Minister says that the Attorney-General will advise the Government if the Government requires his advice. Then the Government may take his advice outside the House. When the power is there for him to appear before the House, whom shall he advise? Will he advise the Members or the Government? That is my point.

Mr. Speaker: Where is the point of order in it. What shall I answer?

Shri Daji: I want a clarification.... (Interruption).

Mr. Speaker: There ought to be some end to it. We should not ceaselessly go on. There ought to be some limit to it. We have discussed it for three days.

Shri Daji: We want to seek your permission to move a formal motion saying that the House is of the opinion that the Attorney-General be called to give his opinion to the House. I seek your permission for moving a formal motion.

Shri Tyagi: As it is an important matter, I would request you to give Government a chance to consider over the problem and then decide. We should not take a hasty decision. I propose that this may not be put through. Let the Government consider and let them themselves make.... (Interruption).

Mr. Speaker: That is for the Government to consider.

श्री शिव नारायण (बंसी) : मैं यह कहना चाहता हूँ कि लीडर आफ दी हाउस को भी कंसल्ट करना चाहिये ।

We should consult the Leader also. He has the supreme power of Government.

439 (A) LSD—9.

अध्यक्ष महोदय : यह कहने की हमें क्या ज़रूरत है ? जो मिनिस्टर इनचार्ज हैं उनका काम है कि वे ऐसा करें ।

Shri Shoe Narain: This House is supreme.

अध्यक्ष महोदय : हाउस सुप्रीम है इसका क्या मतलब है ? कोई यहां काम कर रहा हो उससे कहा जाये कि लीडर को कंसल्ट करके आये ? यह क्या बात है ?

Now, we should proceed.

Shri Ranga (Chittoor): Shri Jain wanted to move a motion. Therefore I was persuading our hon. friend here not to go ahead with his own proposal or motion.

Shri A. P. Jain: You have been pleased to observe, Sir, that you are not going to exercise that power by yourself, but that if you are vested with those powers you will request the Attorney-General to come and express his opinion. I make a formal motion. Sir, I move:

"This House desires that the Attorney-General be heard on the point.... (Interruption).

Shri Morarji Desai: May I know, Sir, under what rule it is being moved?.... (Interruption).

Some Hon. Members: Please do not interrupt.

Shri A. P. Jain: "Whether the whole or any part of the Compulsory Deposit Bill is *intra vires* of the Constitution."

Shri S. M. Banerjee: I support it.

Shri Shivaji Rao S. Deshmukh: I support the motion.

Shri Kapur Singh: I support it.

Shri Tyagi: I suggest that the Government .. (Interruption).

Mr. Speaker: Is that the manner in which it has to be conducted . . . (Interruption). Order, order. I cannot conduct the proceedings in this

[Mr. Speaker]

manner. If every hon. Member from every side stands up, shoots up something... (*Interruption*). Order, order. This is the motion that has been made by Shri A. P. Jain.

Shri Radhelal Vyas: On a point of order, Sir.

Mr. Speaker: The hon. Finance Minister has asked me as to under what rule this motion is being moved. Can Shri Jain help me in answering that?

Shri A. P. Jain: A Member has always a right to move a motion on a matter under discussion. This matter has been under discussion. You were pleased to observe that you are not going to exercise these powers unless you are vested with the authority. I have moved this motion in order to vest you with that authority.

Shri Tyagi: As the whole House is not acquainted with this motion and as it has not been on the agenda, my submission is that it cannot be decided today. Other hon. Members who are not here must also get a chance.

Shri Ranga: May I make a suggestion? Why not the House be adjourned now and the hon. Finance Minister as well as all the hon. Members may have time enough to think about it... (*Interruption*) and decide tomorrow in a calmer manner.

Mr. Speaker: Order, order. Probably that is the best escape for me at this moment. (*Interruption*).

Shri Radelal Vyas: Unless you suspend the rules of procedure, this motion cannot be raised so long as one business is not over. (*Interruption*).

Mr. Speaker: Order, order. Would the hon. Minister like to say anything?

Shri Morarji Desai: If I am allowed to make my submission, I would certainly like to do so. May I say that

if I say anything it should not be presumed or should not be argued or inferred that my respect for this honourable House and its powers is anything less than that of any other Member of the House. The moment that is said, it means that I am not allowed to function as a Member of this House within my rights. How can there be a motion about this House doing something which is not within its powers? In the Constitution there is nowhere stated, the House can say anything that it likes and that it will be done. After all, I am told today that I cannot pass, I cannot enact this law because it is not within the Constitution. It is argued... (*Interruption*).

Shri Ranga: How can he use such words, "I cannot pass"? Who is he to pass it? The whole House has to pass it. (*Interruption*).

Mr. Speaker: Order, order.

Shri Morarji Desai: Let my hon. friends... (*Interruption*).

Shri Ranga: He takes it too literally in a personal manner with the result we are faced with this trouble.

Shri Morarji Desai: I am not doing it. I am neither doing it personally. If I have erred in making the use of language, I am sorry for it. Let my hon. friends have some commonsense about it and not attribute unnecessarily any motives... (*Interruptions*).

Shri Ranga: There should be commonsense from their side. You cannot pass a law. I take exception to this. (*Interruption*). He cannot pass anything. He can only get it passed. Why did he talk of commonsense? (*Interruption*).

Mr. Speaker: The hon. Member may kindly resume his seat. I would ask both sides to exercise greater restraint.

Shri Ranga: No, no. Where is the question?

Shri Morarji Desai: It is not possible to bear me down like this by raising arguments on something which I do not mean. I can never say that I can pass any law here. How can I? Neither I nor any member can pass a law. It is only the House which can pass anything. If any Member supposes I am capable of saying that, then I am very sorry. That is all I can say. (*Interruptions*). Even if I have made a mistake, it would be a mistake. It would be nothing else. All hon. Members make mistakes like that for which you cannot hold them to ransom. (*Interruption*).

Shri Ranga: You find it difficult to correct yourself.

Shri Morarji Desai: I am very sorry to say that heat is being generated in this manner. I am not going to be involved in that. I am only saying, this was what I was told that I cannot move it, that this law cannot be enacted. That is what I was told. That is how it has been argued on which I have still to argue. But this is a matter on which it is argued like that. Now, why can this House not pass a law if this motion can be made?

How is this within the competence of the House to call the Attorney General? If it is not within the competence of this House to call the Attorney General who is a limb of the Executive Government, I do not see how a motion can be allowed. (*Interruption*).

Shri Shivaji Rao S. Deshmukh: The hon. Minister presupposes . . .

Mr. Speaker: Now, the thing is, the hon. Minister has said that because he feels that it is not within the competence of the House to summon the Attorney General, such a motion is not admissible at this moment. But at this time, I have only to consider whether really such a motion that has been made before me is admissible and I can allow it. I am not prepared to answer that just now. Therefore, I adjourn the House to meet again tomorrow.

17.55 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Saturday, April 27, 1963|Vaisakha 7, 1885 (Saka).