

Election and necessary constitutional provision should be made

for President's rule during that period."

*The Lok Sabha divided:*

### Division No.13]

[17·07 hrs.

### AYES

Aney, Dr. M. S.  
Bhattacharya, Shri Dinen  
Chatterjee, Shri N. C.  
Dwivedy, Shri Surendranath  
Kamath, Shri Hari Vishnu  
Kanjappan, Shri S.

Manoharan, Shri  
Mukerjee, Shri H. N.  
Nair, Shri Vasudevan  
Nambiar, Shri  
Ranga, Shri  
Sivasankaran, Shri

Trivedi, Shri U. M.  
Utiya, Shri  
Venkaiah, Shri Kolla  
Vimala Devi, Shrimati  
ishram Prasad, Shri  
Yashpal Singh, Shri

### NOES

Achal Singh, Shri  
Azad, Shri Bhagwat Jha  
Bhagat, Shri B. R.  
Bhanja Deo, Shri L. N.  
Chandrabhan Singh, Shri  
Chavda, Shrimati Jorabehn  
Das, Shri B. K.  
Jadhav, Shri M. L.  
Jagjivan Ram, Shri  
Jyotishi, Shri J. P.  
Kedaria, Shri C. M.  
Kotoki, Shri Liladhar  
Krishna, Shri M. R.  
Kureel, Shri B. N.  
Lalit Sen, Shri  
Laskar, Shri N. R.

Malaviya, Shri K. D.  
Mathur, Shri Shiv Charan  
Mehdi, Shri S. A.  
Mehrotra, Shri Braj Bihari  
Mehta, Shri Jashvant  
Mirza, Shri Bakar Ali  
Mohan Swarup, Shri  
Nanda, Shri  
Paliwal, Shri  
Pandey, Shri R. S.  
Parashar, Shri  
Pattabhi Raman, Shri C. R.  
Ram Sewak, Shri  
Ram Swarup, Shri  
Rane, Shri  
Rao, Shri Jaganatha

Roy, Shri Bishwanath  
Sen, Shri P. G.  
Sharma, Shri A. P.  
Shastri, Shri Ramanand  
Shri Narayan Das, Shri  
Shukla, Shri Vidya Charan  
Siddananjappa, Shri  
Siddhanti, Shri Jagdev Singh  
Sinha, Shrimati Tarkeshwari  
Snatak, Shri Nardeo  
Sumat Prasad, Shri  
Upadhyaya, Shri Shiva Dutt  
Vaishya, Shri M. B.  
Venkatasubbaiah, Shri P.

Mr. Speaker: The result of the division is: Ayes—18; Noes—46.

*The motion was negatived.*

Mr. Speaker: Is there any one of the next two hon. Members whose resolutions are put down for today—Shri Bibhuti Mishra or Dr. Mono Mohan Das? They are not there. Let us go to the next item of business.

17.10 hrs.

### PUNJAB LEGISLATIVE (DELEGATION OF POWERS) BILL (contd.)

The Minister of Law (Shri G. S. Pathak): The point raised by the Opposition has no substance.

Shri Hari Vishnu Kamath: (Hashangabad): Sir, on a point of order. The Minister straightaway says that the point raised by the hon. Members has no substance.

Does he know definitely and categorically the points raised by the Members in his absence?

Mr. Speaker: He will come to that. He must have been briefed by his colleagues.

Shri Hari Vishnu Kamath: But, Sir, then, you did not give us time in the morning to pinpoint the issue. You did not permit a full discussion at that time. There are two articles of the Constitution which are relevant here. I will briefly invite your attention to article 246 read with article 172 of the Constitution. Article 172 says:

"Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years...."

Now, the Punjab Assembly has not been dissolved. So, we presume that it cont.

[Shri Hrai Vishnu Kamath]

nues to be in existence and to be in force. Now, take article 246, sub-clauses (2) and (3) of that very important article, which distribute powers between the Union and the State Legislatures. Sub-clause (2) says:

"Notwithstanding anything in clause (3)" that is, clause (3) of article 246;

"Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule."

Then, clause (3) of the same article 246 says:

"Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule."

The moot point is, unlike Kerala, where the Legislature was dissolved, without any justification, without any validity, purely in the party interest, here in the Punjab the Legislature has not been dissolved, I suppose in the public interest; I do not know whether the party interest also comes into the picture; perhaps, it was done in the national interest. But, be that as it may, the State Legislature continues to be in force under article 172 and, under article 246, as long as the Legislature is there, how can an authority at the Centre constitute itself into a parallel Legislature and arrogate to itself the powers which article 246, by virtue of clauses (2) and (3), confer solely and concurrently on the State Legislature? The very title of the Bill is Punjab State Legislature (Delegation of Powers) Bill. When the Punjab State Legislature is in existence, Parliament cannot arrogate to itself that power, by this Bill, and then to delegate that power further to the President.

Therefore, the point that must be answered here by the Government is, first, whether the Punjab Legislature is or is not

in existence, whether it continues to function or does not function under article 172 and, secondly, whether under article 246 this central legislature, when that legislature is in existence, can or cannot exercise the powers conferred upon that legislature by virtue of clauses (2) and (3) of article 246. He should answer both those questions. How can the Parliament at the Centre in a federal Constitution, in a federal set-up, arrogate to itself the powers of the State Legislature when that legislature is in existence and then seek to confer those powers on the President. That is the vital point at issue. I hope the Government will answer the point convincingly, if at all it can.

Shri U. M. Trivedi (Mandsaur): This morning I raised this point and I felt fortified in my arguments after I went through the various provisions of the Constitution. It would have been much better if the Legislative Assembly had been dissolved. The power to dissolve the Legislative Assembly did vest in this Government. On account of the emergency, they could have done it. But they, in their wisdom, thought that the Legislative Assembly need not be dissolved. They have to keep on bribing the various legislators; they must pay them and keep them satisfied. Therefore, the Legislative Assembly continues. But the Ministers do not remain in office. The Ministers are out of the picture; but the Legislators are still there. The Ministers also will receive the salaries of the legislators, as provided in the law.

Under article 172 there is no power to reduce the period of the legislature. If the proclamation of emergency is in operation, the period of the legislature can be extended by Parliament, but there is no provision for curtailing the period of the legislature.

If the legislature is there, it can be extended but the period of the Legislature cannot be curtailed.

Under those circumstances, read with article 246, one fails to find how any law can be made by virtue of a Bill that is

being presented to the House that this House shall legislate for the Punjab State. Punjab State is there; Punjab Legislature is there; only the ministers or Government is not there. The Legislature does exist.

**Mr. Speaker:** Would he kindly look to article 356 (1) (b)?

**Shri Hari Vishnu Kamath:** The various articles do not harmonise well. There is some lacuna in the Constitution.

**Mr. Speaker:** That reads:—

"If the President, on receipt of a report from the Governor of a State or otherwise, is satisfied that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

- (a) assume to himself all or any of the functions of the Government of the State... other than the Legislature of the State;
- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;"

**Shri Hari Vishnu Kamath:** The legislature should be dissolved.

**Shri U. M. Trivedi:** That very thing assumes that the Legislature will not exist. I am at one with you; there is no dispute once the Legislature is dissolved.

**Mr. Speaker:** Let us see what the Minister has to say.

**Shri U. M. Trivedi:** We never raised it at the time of Kerala or Orissa.

**Shri G. S. Pathak:** I support the Government case on two grounds, one on interpretation of the Constitution and the second on the practice of this Parliament.

I may inform the House that the first Proclamation, which was issued in relation to Punjab, had the same situation as we  
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find today, namely, the Legislature was not dissolved and yet an Act, similar to the Bill which is before this House, was passed.

To take up first the question of interpretation, article 246 which has been referred to deals with the distribution of powers. That is the heading of that chapter. Parliament shall have power to make laws with respect to certain subject matters in lists I and III and the State Legislature shall have power to make laws with respect to Lists II and III. This article relates to the question of distribution of powers; it does not relate to the competence of the legislature in all circumstances. When there is competition between the two, whether Parliament would make a law or the State Legislature would make a law, you will have to take recourse to article 246 to see what is the distribution of powers.

This Proclamation is under article 356. It is a special provision which enables the President to suspend or override any part of the Constitution relating to legislature and other relevant matters. Now, I will read to you the relevant parts of articles 356 and 357.

**Shri Surendranath Dwivedy (Kendra-para):** You have committed one mistake so you must commit another.

**Mr. Speaker:** And that always in respect of Punjab.

**Shri G. S. Pathak:** It reads—I will omit the unnecessary parts—

"...the President may by Proclamation—

. . . .

- (b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;"

You have read the expression "power to make laws". Legislature has got the power to make laws... Article 356, clause (1) (b) has drawn a distinction between the legislature and "power to make laws" or "powers of the Legislature".

[Shri G. S. Pathak]

It is only the powers in respect of which the Proclamation may be made. Article 316 (b) does not say that the Legislature of the State shall be dissolved.

Then, article 356 (c) says:

"make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State;"

Therefore, article 356 gives power to the President by Proclamation to suspend in respect of the Legislature which is an authority any provisions relating to that Legislature and it will depend upon the circumstances, upon the convenience, upon the necessity, upon the requirements of each particular case. There may be a case where the Proclamation, which is of a temporary character, may continue or may be expected to continue for a short period. In that case, it is open to the President to say, "I shall not dissolve the Legislature; I shall only suspend that article of the Constitution or those articles of the Constitution which concern the legislative business of the Legislature of the State" so that after the short duration, it may not be necessary to have a fresh election. Here, the Legislature continues but the powers of the Legislature have been taken away from the Legislature so that after the short period, the powers may be revived and this Proclamation may be revoked. There is power for revocation of the Proclamation in clause (2) of article 356.

Then, you may kindly read it with sub-clause (a) of article 357 which says:

"Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—

(a) for Parliament to confer on the President the power of the Legislature of the State to make laws...."

Now, under this, either the Parliament may do it or under the authority of the Parliament, which is the case applicable to the present case, namely, that the Parliament shall authorise the President to exercise the powers of the Legislature of the State to make laws. Why is it that the Constitution makers did not say, "dissolve Legislature" Why are they talking of the powers of the Legislature and not the Legislature itself, not the extinction of the Legislature or the dissolution of the Legislature? The reason is that discretion is given to the President to decide whether the Legislature shall continue to exist and only it shall be deprived of the powers of legislating which belonged to it. It is for this reason that articles 356 and 357 talk of the powers and the discretion is given to the President under sub-clause (c) of article 356, whether the entire powers of legislation have to be taken away from the Legislature of the State which has been done in the present case. All the other articles which relate to the existence of the Legislature, which relate to the existence of the membership and so on continue. Supposing, in the case of reorganisation, it is decided that there should be some interim provision before the General Elections, how could that object be effectuated if the Legislature itself had been dissolved. That would have necessitated during the short period another election.

Therefore, it is for this reason that discretion is given to the President to decide whether the Legislature itself will be dissolved, that is to say, those Articles which concern the continuance of the Legislature shall be suspended or only those Articles shall be suspended which concern the carrying on of the legislative business of the Legislature, the Legislature continuing. The Articles of the Constitution which relate to the business of the Legislature have been suspended. That is the position.

The Act which was passed and which is similar to the present Act, is Act No. 46

of 1951. The Proclamation that was made was in the year 1951; in the Proclamation which is dated the 20th June 1951, the provisions relating to the existence of the Legislature are not touched; they have not suspended it. It is stated that, while this Proclamation is in force, it shall, notwithstanding anything in any law relating to elections, be unnecessary for an election to be held for the purpose of filling any casual vacancy in the Legislative Assembly of the State. This pre-supposes that the Legislative Assembly continues. There may be a casual vacancy and they say that it shall not be necessary to fill it. These words would be meaningless if the Legislature had discontinued. Therefore, both on the interpretation of the Constitution on the practical aspects of the matter as well as on the precedent, there is no reason to say that this Bill cannot be introduced.

**Mr. Speaker:** Now the question is: *(Interruptions)*.

**Shri U. M. Trivedi:** C You will give me only two minutes. I will not take long. *(Interruptions)*.

**Dr. L. M. Singhvi (Jodhpur):** May I submit....

**Mr. Speaker:** It cannot be debated indefinitely like this.

**Shri Hari Vishnu Kamath:** As a matter of fact, under Rule 76....

**Mr. Speaker:** May be; I have allowed the debate....

**Shri H. N. Mukerjee (Calcutta Central):** The Law Minister has put his case in a particular manner which happens to be very provocative, provocative of controversy and thought. I am merely submitting. I know that you have to give the final word.

**Mr. Speaker:** I am not giving any final word.

**Shri H. N. Mukerjee:** That is the difficulty. On what appears to us—maybe we are very perverse—to be blatantly against the Constitutional provisions, merely because you do not take that much authority in your hands and leave it to the Supreme Court to decide, have we to listen to this

kind of rignarole, which does not make any sense?

**Mr. Speaker:** The difficulty is that if I just give a decision and then some one takes it to the Supreme Court and the Supreme Court differs from me, that would be an awkward position; that would be something that should not be liked. Therefore, in regard to whatever can go to the Supreme Court, it is better that the Speaker does not take any decision at all.

**Shri U. M. Trivedi:** We want our Speaker also to decide.

**Shri H. N. Mukerjee:** Even though the Speaker is a highly talented and legally trained person, the Parliament is a body, generally speaking, of laymen and the Supreme Court in the case of written Constitution has the right of declaring a particular legislation unconstitutional. Because it is very conceivable, and not unlikely by any means, that Parliament, in spite of its being guided by a Speaker of the highest legal eminence might take a laymen's view of the situation the provision is there. Therefore, the Parliament should have the courage from time to time to lay down the law. I mean you are there.

**Mr. Speaker:** The Parliament—all the members—must lay down the law and not the Speaker. Even the laymen, after hearing the legal luminaries can make up their mind.

Now the question is:....

**Shri Hari Vishnu Kamath:** On a point of order. Minus the Rajya Sabha members, there is no quorum in the House.

**Mr. Speaker:** The bell is being rung....

Now there is quorum.

The question is:

"That leave be granted to introduce a Bill to confer on the President the power of the Legislature of the State of Punjab to make laws.

*The motion was adopted.*

**Shri Nanda:** I introduce the Bill.

*The Lok Sabha then adjourned till Eleven of the Clock on Monday, August 22, 1966/ Sravana 31, 1888 (Saka).*