

PAPERS LAID ON THE TABLE

**The Minister of Commerce (Shri Karmarkar):** I beg to lay on the Table a copy of the Ministry of Commerce and Industry Order No S. R. O. 744, dated the 22nd April, 1953 [Placed in Library. See No. S—63/53].

**The Deputy Minister of Works, Housing and Supply (Shri Buragohain):** I beg to lay on the Table a copy of the half-yearly statement of cases in which the lowest tenders have not been accepted by the India Store Department, London, during the period ending the 31st December, 1952. [See Appendix XI, Annexure No. 57].

VINDHYA PRADESH LEGISLATIVE  
ASSEMBLY (PREVENTION OF DIS-  
QUALIFICATION) BILL

Clause 2 was added to the Bill.

**Clause 3.—(Prevention of disqualification etc.)**

**Shri Madhao Reddi (Adilabad):** I beg to move:

In page 1, line 14, omit "and shall be deemed never to have disqualified".

**Shri Vallatharas (Pudukkottai):** I beg to move:

In page 1, for clause 3, substitute:

"3. *Prevention of disqualification for membership of the Legislative Assembly of Vindhya Pradesh.*—It is hereby declared that the offices of the members of any district Advisory Council are not offices of profit under article 102 of the Constitution, from the date of this Act coming into force."

**Mr. Deputy-Speaker:** Amendments moved:

(1) In page 1, line 14, omit "and shall be deemed never to have disqualified".

(2) In page 1,  
for clause 3, substitute:

"3. *Prevention of disqualification for membership of the Legislative Assembly of Vindhya Pradesh.*—It is hereby declared that the offices of the members of any district Advisory Council are not offices of profit under article 102 of the Constitution, from the date of this Act coming into force."

I would like to point out to hon. Members that there are two points: whether, first of all, Parliament should condone or create such exemption from disqualification; and whether it should have retrospective effect. Both of them have been discussed at length.

If there are any new points, hon. Members may state them to the House in order to persuade the House to accept the amendments.

**Shri Vallatharas:** By my amendment I have proposed a fresh clause to be substituted for Clause 3 of the Bill.

It is quite true that during the last two days arguments in large number and of varied interest have been advanced. One thing is patent. If the mind feels lightly about the situation, we need not probe too much into the affair; but if we want to preserve the honour of this House, we will have to view the matter very seriously. Nothing that we do should cast a deep shadow of regret in the future. What we do, of course, is really supreme. Parliament's powers are unlimited. Of course, everything is subject to limitation, but when I say that Parliament's power is supreme, I do not say that Parliament can pass a legislation that the heads of 35 crores of people can be chopped off. There is a limit, but within that limit, it is supreme. We are representatives of the people, and the popular will we are to execute. With that responsibility I say that we are supreme.

Hearing the arguments put forward so far, I have canvassed a number of points. But my efforts will be to see that I do not repeat them or even try to touch them, and I will be successful if I am able to bring out any new suggestion which may enlighten the consideration of the House. But being a lawyer, I have got a great duty to this House, and I must discharge that duty conscientiously.

Here, the point is that the power of this Parliament is not disputed to pass the legislation. As an English jurist has put it, the House of Commons has got the power to pass a legislation even to boil the Bishop of Rochester's cook to death. We can also boil Ministers, officers, Members, everybody. But all of them are subject to such limitations. We do not boil anybody except boiling ourselves, because, sometimes, we feel so crooked and narrow that we cannot extend our imagination to such unprejudiced heights and fixed principles to be followed in the future.

What is all this calumnious talk during the last two days? It is regrettable that this Bill should meet with so much of opposition or be sponsored with irrational prejudice by the Government side.

Two positions are quite clear. I might put it in unambiguous language. Nobody ever says that a Member of this House or of any Legislature in this country should be disqualified for such silly reasons as the one in this case, viz., office of profit. There is general wish that such disqualifications should be removed. I do not think there is any second view about that position. And the other thing is that Parliament is competent to pass a legislation. Conceding these two points, why such a big, bitter opposition has risen against this Bill is the point in question. I have heard Mr. Shah speaking in a heated manner over this, and I have heard another veteran speaker, Mr. Raghavachari, coming out in his emotional and natural manner. I have also heard the Attorney-General's opinion on the matter, but it is regretful to say that no two lawyers agree. The opinion of the Attorney-General is as good as mine or of any other lawyer in this country. I must say that his opinion, irrespective of the fact that it is entitled to great weight at the hands of those who want it for their support, is highly limited by certain considerations. I put to you one aspect of this question. It is my view that a negligent and rough thinking administration and an imbecile and somnambulistic law-drafting machinery are responsible for all this. If these two institutions had been a bit alert, nothing would have happened, and these two days would have been saved for some other business.

Parliament had come into existence in 1950. In about the same year, Parliament's attempts to remove certain disqualifications were apparent. So far as Parliament Members are concerned, an attempt to remove their disqualifications was embodied in a certain Act. I would like to solicit the consideration of this House to the strong speech made by certain Congress Members who took very keen interest in the debate at that time. To one thing I will refer. It is the speech of Shri T. T. Krishnamachari. Dr. Ambedkar, either in the midnight or mid-day, conceived a doubt whether certain Members would be disqualified for holding certain posts. Obviously, his doubt should have originated from his own difficulties of a certain time before, as the hon. Member on the Government side expressed when Dr. Ambedkar wrote whether he could be a Member

of the House holding some office of profit in some other section. Of course, the Congress itself sponsored the legislation and had the disqualification removed. So, he was over-careful in the matter. That over-carefulness has now ended in over-negligence. Mr. T. T. Krishnamachari opposed that Bill, not on the ground that that Bill should not be passed, but on a question of very good principle. He said that very eminent Members like Dr. Kunzru, Mr. Sidhva and others were all in favour of it. He then said that a small Committee might be appointed and that evidence of important Members might be taken and then a list prepared of the offices which were considered as offices of profit and a common law might be passed. On that principle, he made up his argument, and he emphatically pleaded that the Bill should not be passed.

Now, I ask this Government whether they had forgotten that in all these four years, Parliament is not a forum where emissaries and representatives of Opposition Groups in this country come and express their views; here we come as representatives of the nation; the individual is suppressed. When we make a legislation, we are making it for the entire country and we also make an exception for a person if really that person deserves some concessions at our hands. But here in this case every clause that has been sponsored by this Bill must proceed on a common cause—whether it goes to benefit one man or the entire nation altogether. Now, during these last four years, no attempt has been made, except that some slipshod and piecemeal attempts were made to remove certain disqualifications. One legislation removed the disqualification of about eight offices. Another disqualification which arose is this instance. Why did not the Government during all these four years, make any attempt to formulate a list of all the offices of profit throughout the entire country and then publish it in the form of a regular legislation, so that all persons who hold these offices are exempted? They have not done that. That is why I am inclined to say that an irrational approach in this legislation by the Government has rendered the situation most calumnious. Because if that list had been prepared, it would have been in the interest of the nation and it would have been of a common cause. There would be brevity and a sensible and point-blank approach for a good legislation. But that has not been done. I say that the Government cannot be absolved of that sin.

[Shri Vallatharas]

The second point is, even when this instance came, it is not the legitimate duty of any judicial mind to forget the principle and sponsor this legislation as an independent Act. If you turn to the pages of legal literature, you will find that even delegation of power—retrospective or prospective law—must be taken into consideration on a certain principle. Because we are given a certain occasion to speak, we cannot speak independently of our environments and of our traditional past. We pass this only as a guidance for the present and the future. Whatever our grandfathers do, we reap. What you do, your descendants will reap. This is, after all, the material theory in Marx's theory of thesis, anti-thesis and synthesis. If you have a cool mind in this, religiously and also politically, and see what your forefathers and what your predecessors had done for this country, you are now enjoying or repenting. What you are going to do now, will be a matter for the future. So four years before when a thing had come, that should have been seen in the light of the existing traditional past which governed the growth of legislature in this country and also the legal basis on which parliamentary work had to be done.

I will give you a short extract of the terms of interpretation that we should have. You may take it for a specific admission of mine that I do not oppose the removal of disqualification. Parliament has got power subject to one limitation. This Parliament cannot assert itself or arrogate to itself any position over that of another Parliament of which the personnel is the same and the forum is the same. Parliament in general occupies a dual status. It is an anachronism of this country's legislature that we people should appear in the form of *ardhanarishwara*—with the right part as a man and the left part as a woman. It is such a thing that we are now having. In one position, we dominate as the superior legislature; in another as an inferior legislature deriving powers from the other. This is the dual status that we have. End it soon; you will be absolved of so many difficulties in the future; or else it is the breeding ground for many an ill over which our House will be subjected to much dispute and much controversy. This is the season over which the seed has been sown by the Government itself. I say it would take a long root, but do not allow long lest the branches should spread so much as to overwhelm and envelop us all. This dual

status, I will describe for convenience's sake, the Constitutional Parliament, that is the Parliament Extraordinary....

**Mr. Deputy-Speaker:** We are going into a general discussion.....

**Shri Vallatharas:** I may submit for your information, Sir, that I have studied everything and I am within my limits. If you find that I repeat anything what others have said, then I stop.

**Mr. Deputy-Speaker:** This is confined only to retrospective effect being given to this legislation. So far as the retrospective aspect is concerned, he may say whether it ought to be done or ought not to be done. But going generally into the nature of this Parliament, as to what it should do and what it ought not to do is not in order.

**Shri Vallatharas:** My objection is on two points. I question the delegated authority for this Parliament. The other is an incidental reference. The delegated authority has not been talked about *in extenso*.

**Mr. Deputy-Speaker:** The hon. Member is willing and has not raised any objection that this disqualification may be removed for the future. Therefore, this Parliament has got the right. (*Interruption*). Then hon. Member is a lawyer.

**Shri Vallatharas:** That is my submission. To substantiate it, I will have to give my own argument.

**Mr. Deputy-Speaker:** The point is whether retrospective effect can be given. Otherwise this Parliament has got jurisdiction. So, whether retrospective effect can be given by an Act of Parliament is number one. Then about the removal of disqualification. Both these matters have been discussed at length.

**Shri Vallatharas:** My position is that this Parliament ordinary, as an authoritative body that derives its power from another superior Legislature, that is, the Parliament extraordinary, has exceeded its bounds in this legislation, particularly clause 3, to have retrospective effect. That is my position. Of course, you as a lawyer understand our difficulties. In the course of our arguments we drift high and low and far and wide and then come to the point. (*Interruptions*).

**Shri S. V. Ramaswamy (Salem):** The hon. Member is referring to Parliament extraordinary and Parliament ordinary. That is not so. There is only one Parliament.

**Mr. Deputy-Speaker:** Why let him explain it and take the time of the House?

**Shri Vallatharas:** I will accept my hon. friend's suggestion if any other name is to be given for convenience of understanding.

**Shri B. S. Murthy (Eluru):** His arguments are not bald, Sir.

**Shri Vallatharas:** I have got full-grown black hair to attract any person.

I request this House not to make any distinction upon these names. The best of my imagination has only made me think of these two names—extraordinary and ordinary. If you can suggest any other name, I will adopt it. There is no question about it. Now, this constitutional Parliament is what I term as 'extraordinary' having extraordinary powers, and then, the general Parliament which is having ordinary general powers. Now, by the Constitution the extraordinary Parliament has specified that certain powers will be exercised by it. There are the constitutional safeguards. The difference lies in the procedure—that votes should be recorded and the voting will be on a separate forum. Apart from that there is no difference. But this is the vital factor. Of course, Mr. Ramaswamy touched that point yesterday and I was happily listening to him. But somehow or other that argument drifted into some other point. But anyway I will have to say that this power to legislate is only a delegated authority from a superior House which is the Parliament extraordinary. Or else you have no power. That is the position. But for article 240, you cannot legislate in respect of the Vindhya Pradesh Legislature. That is the position.

There were a number of references, interpretations and also quotations on that matter. I would ask each and every one of you to apply your judicial mind, not the partisan mind, not the self-seeking mind, not the future-interested mind or the perverse mind, I want you to apply your mind free from all these prejudices. (*Interruption*). Yes; perverse is a strictly legal term. Even the judgment of a court can be described as perverse in the appeal petition or the revision petition. Article 240 says:

"Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purpose of article 368....."

I wish you to carefully follow this. I could expect more impartial con-

sideration of this matter from the Home Minister, but he happens to be entrenched in the Government. He is circumstanced as such and he is over-engrossed by the environments and could not have any time to think about it in a more independent manner and in an impartial and conducive spirit.

**Mr. Deputy-Speaker:** This matter was also previously referred to.

**Shri Vallatharas:** Of course, with great respect to the time of the House and with your anxiety to see through the business of the House.....

**Mr. Deputy-Speaker:** I am anxious that the business of the House should not be unnecessarily prolonged a great deal.

**Shri Vallatharas:** What is the definite interpretation?

I am not able to ascertain from any of these references made so far. That is my difficulty. If I am able to say this is the interpretation which must be placed on it and it has been expressed by anybody, I would not have touched on it; because it is a different matter whether we agree or not.

I put this proposition to you. If you incorporate in this Bill provisions which have the effect of amending the Constitution, whether it amends or attempts to amend the Constitution, will it not be considered as an amendment, whether it is tolerated, adopted or acted upon? That is a point I want to know. Here the first portion of article 240 says:

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

But are they valid, are they enforceable? That is the point, I ask.

Here, rightly or wrongly, I presume that there are certain provisions in this Bill which really offend the Constitution and they must come in the form of amendments to the Constitution and not as ordinary legislation. Even though those provisions operate as amendments of the Constitution, they will not be considered as amendments for the purpose of article 368. I think that is the view. If that is the view, I will put the question for the sake of perspicuity. You may legislate in any way; it may be an amendment in reality, it may be an attempt to amend, but it is your discretion.

[Shri Vallatharas]

It will not be valid, it will not be law and it will not operate as an amendment under article 368. That is one point of view.

Another view is this, that these extraneous provisions are provided in the Bill; even though they cannot operate as amendments, yet we delegate you the power by which your suggestions will be considered as amendments to the Constitution. These two points may be appreciated by the Law Minister as well as the Home Minister in a judicial manner, because one is a Minister who had the benefit of his experience of sitting in judgment, hearing both sides or various sides, and passing decisions, and the other is a lawyer of great reputation and great experience. So, my position is, if that latter view prevails, you may have any provisions in the Bill and we will have to acquiesce in them. Which of the two views do you take? It is only this that makes me think too much over this matter. Now, it is a definite thing that when a charge is delegated by a superior power, you cannot exceed the limits of delegation. There is a limit up to which the delegation vests power in you.

**Shri S. V. Ramaswamy:** On a point of information.....

**Mr. Deputy-Speaker:** Let him alone; the hon. Member need not interrupt him.

**Shri S. V. Ramaswamy:** I cannot understand what he is driving at.

**Mr. Deputy-Speaker:** Let him say what he wants to say. If the hon. Member does not understand him, he need not vote with him.

**Shri Vallatharas:** If this question had really been referred to the Supreme Court by the President, then we do not know what things would have happened. Here a lawyer or some authority expresses his view and that is considered to be good and it is acted upon. Who is to pass the decision? Are we the 500 Members sitting here to pass a judgment? Can anybody feel impatient over that matter if it is raised here? We know, as a matter of fact, that points which we feel are very strong are discredited by judges of the court and points which we feel very weak and which we do not at all want to put forward are acted upon by the judges *suo motu*. Nobody can assume that his view will be accepted or rejected. This is a case in which we are only concerned with the prestige of the House. I am not

at variance with the underlying principle of the Bill. My point is this; the delegated authority given under article 240 of the Constitution should not have the effect of dwarfing the parent. That is, the parent authority which gives you the power, should not be dwarfed by you. Then, the authority which delegates power to you does not delegate it under any circumstances thinking that it should be rejected from existence so far as that aspect of it is concerned.

So, the interpretation over the delegation is highly important. I expected some sort of clarification on this point from the Attorney-General. He simply referred to this aspect but did not go into it in great detail. I do strongly protest against some of the views held in favour of this legislation on this point. Legitimately, I feel if the Government were not embarrassed by a party feeling in this matter, they would have proceeded on rational lines, which would have disarmed every Member of this House from opposing it. That is my view. Because, you have got a background in all this legislation. It does not come as a bolt from the blue. There is always a background and a motive behind all legislation. So, talking on that basis, a little thing that the Parliament Extraordinary or the Constitutional Parliament could have done at the time of passing the Constitution by providing in detail for the Part C States also, they handed it over to you simply because you have come in as the son to a father. Do you think of throwing away the traditions of the family, and all the traditions of environment? It is only commonsense and nothing else. So, when the power is delegated to you by the superior House, they had confidence in you that you will do this work in conformity with the intention and the spirit with which the delegation is made. Here the intention is very great. According to that intention, when the Constitutional Parliament legislated for A and B class States—I do not know for what reason they omitted C class States—it gave you the power to provide for a legislature there. I do not go beyond it, whether it is nominated or elected or any such thing. You were given the power to provide for a Legislature for the Part C States and you were not given the delegated power to challenge the principle of the entire Constitution which the Parliament extraordinary itself passed. If it is a question of principle that has been delegated to you, I can understand. It is a question of procedure. It is a question of doing—a *karmic* act—that is being

given to you. It is not the power of that delegated authority to change the principle, to challenge the principle, to go against the delegating authority and to act in a derogatory fashion. That is the position. So, did it give them the power to revive dead beings? No; it gave them the power to think of facts, to think of circumstances which would be felt unnatural or even unmoral under circumstances.

Here two questions arise; one question is not dealt with at all by hon. Members. On the date when the 12 members became disqualified, the entire electorate of the Vindhya Pradesh, not only the Vindhya Pradesh but in the whole of this country of 35 crores, had a right to contest for those seats and get themselves elected. This aspect is very important. This is a right, a vested right that I have by the Constitution and you deprive me of that right. It is not the question of the removal of a person: it is not the question of the action of the Commissioner; it is not a question of confirmation by the President. I learn with regret that the President was termed a stamping authority. There is a way of putting things. Of course, the President has no other option than to sign. But in *mangala vazhakku*, even if a bad thing happens, you must describe it in a fashionable and cultural tone. I feel that there was lack of culture in the statement that he was a stamping authority, that he put the stamp to it.....

**Mr. Deputy-Speaker:** Let us not talk of an individual's culture or the culture of any hon. Member. It is not right to say when a person says something which is in bad taste that he was wanting in culture.

Attributing want of culture to any Member, either on this side or the other, is not right.

Moreover, I find that the hon. Member is only repeating what has been said during the first stage of the discussion of the Bill. He must be aware that a repetition of the points made during that stage is not permissible during the clause-by-clause discussion.

**Shri Vallatharas:** Has anybody referred to this point?—not to my knowledge.

**Mr. Deputy-Speaker:** I have been here throughout and this point was actually made.

**Shri Vallatharas:** Now is there any delegated authority to deprive the

electorate of this vested right? In a case in the Privy Council regarding the property and the rights of the chieftains of Oudh—I do not remember the citation. I am prepared to give it later—it was decided that though the contents of the document, the instrument, in that connection, warranted the interpretation with retrospective effect, the Privy Council refused to do so on this fundamental principle that some of the chiefs were dead, some have undergone so many changes; can anybody expect the Privy Council to go and undo those things which will affect the right of even deceased people. Here it is a question of legal death, though it is not a question of physical death. Can you reopen the question in such a manner as to affect the vested rights of the electorate. My humble submission is that under this clause we are not given powers to legislate over and above what is delegated to us; we are not given the right to act in a retrospective manner, overlooking the Constitution.

I will submit for your consideration one or two legal maxims. Prof. Puffendorf in his *Law of Nature and Nations* has stated:

"The law itself may be disannulled by the author; but the right acquired by virtue of that law, which whilst in force, must still remain, for together with a law to be taken away with all its precedent effects would be a high piece of injustice."

This is a fundamental thing, which has to be taken into consideration in connection with this Bill.

**Dr. Lushington,** a great authority says:

"No one denies the competency of a legislature to pass retrospective statutes, if they think fit, and many times they have done so. Philosophical writers have denied, it is true, any legislature ought to have such a power and if it is undisputable that to exercise it under ordinary circumstances must work great injustice."

I can quote so many authorities. A famous saying of Edmund Burke, which everyone of you must have read, but of which I should remind them, is this:

"Parliament is not a congress of ambassadors from different and hostile interests. It is a deliberating assembly of one nation with one interest, that of the

[Shri Vallatharas]

whole, where not local purposes, not local prejudices, ought to guide, but the general good resulting for the general nation as a whole."

10 A.M.

In this fundamental maxim the emphatic element is the general good and the exclusion of all local purposes and local prejudices. What is this Bill except that it is for a local purpose and born out of local prejudices. So, this measure comes in conflict with all the legal maxims.

Another quotation which I should give the House is this:

"The sole purpose of the Parliament—that is the House of Commons—"on nine occasions when it passed modern enactment under delegated powers was to enable minor adjustments of its own handiwork to be made for the purpose of fitting its principles into the fabric of existing legislation... We doubt however whether Parliament itself has fully realised how extensive the practice of delegation has become or the extent to which it has surrendered its own functions in the process, or how easily the practice might be abused."

The experience of more than hundred years in the House of Commons is embodied in the Select Committee's report that delegation of power may lead to abuses which must be prevented.

Again when an opposition voices its feelings based upon felt pulses, it cannot be easily disregarded. The Members of this House are not members of a mutual admiration society. The Opposition is not here to admire the Congress, nor is the Congress here to admire us. But we will have to speak conscientiously what we feel and there is no point in calling some of us as Communists or Communalists and styling Members on the other side as Nationalists. In this case we must rise above all these things. It may be that one single Opposition voice makes out a point. They have a right to be heard by all of you and to be judged.

In this case a point was raised which—I am speaking subject to the Chair's correction—was not answered, by anybody. That was that only the case of persons who have been in office has been considered right through and they were exempted, but not the case of people who have been removed and gone into extinction. I have not heard any answer to this proposition.

My submission is that this legislature is not a court. We are here to act with a human mind and in such a manner as to infuse confidence in the mind of the people. We should approach questions without any party bias. Where is the ground for this legislation to be supported on legal grounds? None. Instead of replying on the opinion of the Attorney-General, for whom I have the greatest respect and on whom it is not my idea to cast any reflection, it would have been better if Government had referred this matter to the highest judicial tribunal provided under the Constitution, that is the Supreme Court. It would have been decided by a Bench of Judges, before whom the parties could have appeared and also the Attorney-General. The decision of the Court, would have been accepted by all. But now we find that we are rushing to pass a general legislation. We have not taken a list of all offices of profit in the country. We confine it to Vindhya Pradesh, and that too to the case of twelve members. I have no grievance against these individuals. They need not be sent out. I am against that. They must be there at any cost. But the way to proceed about it is what I have suggested and not this Bill. This is a way in which a local interest is sought to be served by a piecemeal legislation.

**Mr. Deputy-Speaker:** He must close now.

**Shri Nambiar (Mayuram):** We want to hear him. Very good arguments are being advanced. He must be heard.

**Mr. Deputy-Speaker:** Let there be no discussion over that.

**Shri Velayudhan (Quilon cum Mavelikkara—Reserved—Sch. Castes):** Who says that he should not be heard?

**Mr. Deputy-Speaker:** The hon. Member need not get encouragement from another hon. Member.

**Shri Vallatharas:** I never lose my equilibrium. Otherwise, I cannot be a lawyer. Even money cannot influence me when I am on my legs. But I am very happy that a lawyer occupies the Chair.

**Shri B. S. Murthy:** An eminent lawyer too.

**Shri Vallatharas:** So, we must concentrate on these points. As one jurist has said, equity, good conscience, fairness and impartiality are not the chief objects when the counsel

sits to deliberate. Only considerations of party are relied on, and only that is regarded as good and fair. In this House, neither side realises the duties and functions of the Opposition. Sometimes, we are despised as people having not even a modicum of intelligence. That is a different thing altogether, but the Opposition must be heard. It cannot be treated lightly. The greatest weight should be given to its views, irrespective of differences of opinion. Supposing the Opposition had 40 per cent. strength in this House, would such things take place? Would this matter be treated so lightly or with such lack of seriousness? There will be a gravity of an intense type. But today the Opposition is only a small percentage. Despite that, I ask you: can it be treated lightly? My submission is that some of the feelings, some of the views of the Opposition on the question of the honour of this House have not been properly treated. That is my grievance.

Things should be done beyond suspicion. In Tamil, there is a saying, *Panamarattadiyil palai kudittalum kallai kuditta endra pazhi varum*. It means: even if you drink milk standing under a palm tree, you will get the bad name that you drink toddy. You may have been actuated by the best of motives, but you stand under the palm tree unfortunately. You must free yourself from public calumny. A judge interprets a matter not independently, but he takes the Constitution, he takes this legislation and the previous legislation, and considers the entire form. Then he goes into the intention of the delegator and finds out what powers he intended to delegate. Even though the words may not lend themselves easily to his interpretation, he will put his interpretation considering everything. If this legislation had gone to the Supreme Court, my submission is that this legislation would be considered improper. A judicial interpretation will not be an isolated interpretation. It would take into account the chief Constitution, the authority which delegated the powers and also the attendant circumstances. Under these circumstances, it is better that this Bill is withdrawn. You may pass this Bill thinking, "It is no use trying to convince the House. We have a majority. We will pass it."

**Mr. Deputy-Speaker:** The consideration stage is over. The House has accepted the principle.

**Shri Vallabharas:** Even the rejection of this clause means the rejection

of the Bill. My submission is that it is only under the notion of your majority that you should pass this Bill. We on this side never become nervous about the overwhelming majority on the other side. We are alive to the situation. We only want that we should legislate in a proper manner. We are not legislating injustice. Our legislation must be acceptable to the popular will. They should accept it as an honest legislation.

In this case, there is a clear background in which this Bill is identified with party interest. Parliament can pass a general amendment to article 102 and give a list of all the disqualifications in respect of all the offices of profit. I am the chairman of an educational advisory council in my place. I have neither accepted nor rejected, because I know the nebulous position here. But there are many people whose services are required for the proper administration of the country. They should get such chances. Piecemeal legislation is never the criterion for a good legislation, because the drafting machinery has no fear of the public will; it has no fear of the public remarks and criticisms. It simply says, "Oh, you want a Bill for this purpose? All right. I will at once prepare it." And it prepares the Bill without reference to anything. Now, if this machinery is a living and continuing institution, it should have concentrated its attention from some four years ago and prepared a list for all India. Why did it not do it? So, it is not a question of these twelve members. I am only saying that it is more desirable, more honourable, that instead of persistently and dogmatically sticking to a situation which you want to perpetrate by asserting your power, this power can only be established by a division and not by the concentrated consensus of opinion in this House—instead of doing that, let us revert to the other method of a constitutional amendment of article 102. When articles 242 and 102 were enacted, it was never the intention that this authority should be available retrospectively to serve some local interest, which interest is subjected to question in this House. Nobody can say that the background is unreal. It is real. If your intention is *bona fide*, why do you not do it in respect of all and why do you take only these 12 people in Vindhya Pradesh? So, let us go on under the strict terms of the Constitution. Otherwise, let this matter be referred to the Supreme Court, whose decision, whatever it may be, will be welcome.

[Shri Vallatharas]

Here, you have not reached finality. You will not reach finality. You have not got the capacity to do it. It is a matter of the honour of Parliament for the future. Simply because you have the majority, do not try to carry this Bill through. If that be your attitude—I am sorry, I should not say 'your attitude'—if that be the attitude of a section of this House, then, it is unfair. It will create a bad precedent. Let us not have an *ardhanarishwara*—some change here and there. Let there be a common consideration of a common national thing.

**Mr. Deputy-Speaker:** He is merely repeating his arguments.

**Shri Vallatharas:** I have come after thirty-five Members. It is a great ordeal for me to steer through all the criticism.

**Shri C. D. Pande** (Naini Tal Distt. cum Almora Distt.—South west cum Bareilly Distt.—North): It is a great ordeal for us too.

**Shri Vallatharas:** This matter must be considered in a fair light. Now, regarding my amendment, I welcome the prospective part. I do not agree about the retrospective part. I do not want a legislation to serve a local interest. Even supposing these twelve members have to stand for election, it may be that nobody may contest. In Andhradesa, some members resigned on a question of principle and when the nomination papers were filed, many people refrained from opposing them. Common people want common justice which is justice unadulterated and uncontaminated without importing passion and heat, just as some Members experience in respect of these matters.

I submit my amendment for the consideration of the House which, if accepted, would totally annul this piece of legislation.

**Shri Nambiar:** I was also trying my best all this time to speak on this, but I could not get an opportunity. This should not have any retrospective effect, nor should it give back those twelve people to the Legislature of Vindhya Pradesh.

My argument is this. I do not want to enter into a legal quibbling. I am not accustomed to that and I am not a lawyer.

**Shri B. S. Murthy:** Only underground!

**Shri Nambiar:** I can reflect the point of view of the ordinary man in the

street, the commonsense point of view. Here are twelve persons in the Madhya Pradesh Legislative Assembly. —I am sorry, in the Vindhya Pradesh Legislative Assembly.

**Shri B. S. Murthy:** God save Madhya Pradesh!

**Shri Nambiar:** On a particular day the Speaker of that House announces that these twelve hon. members are no more members of the House by some disqualification. They accept it and gently go out of the House. From that time these men ceased to be members of the House. This is the position to start with. Whatever might have happened prior to this, let us not enter into any legal quibbling. But the whole country, and not only India but the whole world knows that these twelve members on a particular day ceased to be members of that House. Everybody knows it. One year has passed since. Now we come to this Parliament and say: no, these people who have ceased to be members, on and after that particular day, of the Vindhya Pradesh Legislative Assembly must be treated as members continuously, even prior to the date of the order. This is the position we are coming to. Let us see this. The President through his announcement says on 31st March 1953 that these people are no more members of that Assembly. Now we come back and say: no, from the 26th April 1952 we must treat these people as members of the Assembly. Whatever happened in the interval, we want that these twelve people are to be physically taken back from outside the House and put in their seats. This is what we want to do. This is how the common man looks at it. Are we justified in doing so?

Then the question arises: it is only by a technical error that these people were disqualified, are we to follow the technical error? I will submit to you that a question of technical error arises not only with respect to these twelve people. Technical errors were there in hundreds of cases and I can pose before the House a particular question. Suppose a candidate files his nomination and files it with *bona fide* intention. And in the election he succeeds. Suppose the nomination of another rival candidate, by a mistake of the Election officer, or the Election Commission or a particular person in charge of the election, is invalidated and the election is set aside after the

election is over. Can it be said by any stretch of imagination that the first person who had a *bona fide* intention and was elected was responsible? You speak of morality. Morally speaking, the first person who has been elected is not responsible for the disqualification of another person, which was due to the error of an election officer. If morality is there, all frivolous rejection of nominations should be on a par with this and these twelve people should not be distinguished from the rest. That is my submission. They do not apply their mind, they say it is a trivial reason or a technical reason. That must apply to all concerned and not only to these twelve people. What is the speciality for these twelve people?

I may be permitted to say that behind this there is a motive. The motive is that these Congressmen, on account of their factional troubles and quarrels in Vindhya Pradesh, wanted to give some crumbs to certain individuals. They wanted to get the help of certain members for the Government or the party in power and so they started a unique procedure of District Advisory Council which is not to be found in any other part of India.

**Shri Altekar (North Satara):** It is there in so many provinces.

**Shri Nambiar:** For this reason they thought that might give them some sort of job. They cannot give them Collectors' jobs. The Collectors are already there, and the I.C.S. men will protest. So they made them members of the District Advisory Councils, they wanted to make them equal to a Police Superintendent or Collector, make a show, and give them a share in the administration so that they can get their permits, put through their men and get them promotions. All this will go on in the District Advisory Councils. So these people think that by doing so they can solve the problem of the internal factional quarrels of the Congress Party which is the ruling party\* \* \* \*.

So the motive behind this action was to bring certain members of the Congress Party and to associate them with certain administrative machinery there so that their quarrels can be ended. This was the idea. But unfortunately they sowed the wind and are reaping the whirlwind. They made a mess of it. The mess is that the Election Commissioner and the President of India have said: this is absurd, you cannot do this. And they got disqualified. So the whirlwind is

on them and the factional quarrel has increased all the more. They want to solve it.

If there was an illegality committed, here is the Supreme Court. Let these twelve people go before it and say "the decision of the Election Commission and the President is *ultra vires*, therefore we must be given a chance to go back to the Assembly". They should have gone to the Supreme Court but they know that the Supreme Court will not accept that position. They have at least that much of legal brain in them to know that the Supreme Court will not accept it.

Therefore, they had to find a way out. The whirlwind has started; the Supreme Court's assistance can also not be invoked. So they thought of this idea of coming before this Parliament where they command a majority, where they can take disciplinary action against such of their Members who differ from them—about which we learn from today's papers. They have a steam-roller business here and they thought they can get those members back to the Assembly and thus solve their factional quarrels. But another faction is starting. They want to correct a wrong by an illegal Act. Thereby more wrongs will occur, they will be repeated, it is a vicious circle. They must study it. Not only the people of India but the whole world are laughing at them. But they cannot understand. A person who sees nothing but power and the shares and spoils of office cannot understand commonsense. That is why they call the Attorney-General, everybody, and eminent lawyers—I will not say eminent within quotation. And they argued. But a common man like me who is not a lawyer cannot understand their argument at all. The difficulty is that those who are in power and who do not understand the commonsense point of view will resort to legal quibblings and quotations. The quotation goes to Ceylon. We are in India, and what is Ceylon when compared to India? And we are having a so-called Republic and a Constitution. And we are quoting what happened two hundred years back in Ceylon\* \* \* \*.

**Dr. Suresh Chandra (Aurangabad):** On a point of order, Sir. The hon. Member said "the so-called Constitution". When he has taken allegiance to the Constitution, how can he say like that?

**Shri Nambiar:** You are not going according to the Constitution. I want to stand by the Constitution. You say

\* \* \*Expunged as ordered by the Chair.

[Shri Nambiar]

that you will put it in cold storage because it suits you. You want the Constitution to be interpreted in such a way that it must suit your party politics and it should not suit the general necessity of the common man in this country. There you and I differ. That is the difference. Here my contention is that from a common man's point of view this present legislation is absurd, absurd morally and in content. You can put it in any constitutional phraseology but this is what the common man thinks. Otherwise what is the necessity for us to oppose this measure. Is it only for the purpose of opposition? No. When Government brings forth certain legislations which are in the interests of the people, we have not hesitated to support them. There are occasions—you can see this from the proceedings of the House—when we have supported you when you were sane. But when you are not sane—I do not mean, you Sir, I mean the Government—when a thing goes wrong we, of course oppose you. We do not oppose for opposition sake. At the introduction stage of this Bill, we opposed it. Yesterday, twice you had divisions. We have no malice against these 12 gentlemen. I only pray God that these 12 men may come back after the elections. I will even support them. I am of opinion that these 12 men must have the benefit of coming back to the Assembly because these 12 men have been cheated by the Government. I want them to come back. I will go, if necessary, to Vindhya Pradesh and canvass for them if there is any election but unfortunately there is no election, unfortunately that right of election is being denied by you, by the Government of which Dr. Katju is the supreme authority here. I appeal to him to use his legal brains and his old age for the cause of democracy and not to stifle democracy. He may be here for long or he may not be here and I also may be here or may not, but one thing will remain in this House and that is this legislation which is anti-democratic in character. This will be a very bad reputation for this House. I would submit to Dr. Katju to use his old age, his knowledge and his legal brain as far as this Bill is concerned. Let him take the sense of the common man and act in time. I support this amendment with the object that giving effect to retrospective legislation might end.

**Mr. Deputy-Speaker:** We have had enough discussion. I will call the hon. Minister now.

**Shri Frank Anthony** (Nominated—Anglo-Indians): I had made two specific constitutional issues and I regret to say in his reply the hon. Home Minister has sidetracked both these issues. That is why I am going to underline these. You give me four minutes. If the hon. Minister satisfies me on these two constitutional issues, I will be the first person to support the Government.

**Mr. Deputy-Speaker:** They have been raised.

**Shri Frank Anthony:** They have been categorically shirked by the Home Minister.

**Mr. Deputy-Speaker:** If they have been raised and not answered the House will take notice of it.

**Shri Frank Anthony:** There is another point of view. You give me three minutes. I would request the hon. Minister to tell me under which section of the Part C States Act, the President had exercised his authority to disqualify these members; There is no authority given in this Act to the President to disqualify these members.

**The Minister of Law and Minority Affairs (Shri Biswas):** It is not in the Act. Let me state the fact for your information. An Order was promulgated by the President in exercise of the powers conferred upon him by section 43 of the Act. That order provides categorically that if any question arises as to whether.....

**Mr. Deputy-Speaker:** Difficulty arises.....

**Shri Biswas:**.....a member of the Legislative Assembly of a State has become disqualified for being such a member, under the provisions of section 17 of the Government of Part C States Act, 1951, the question shall be referred for the decision of the President and his decision shall be final. Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion. These two clauses are exactly in similar terms as you find in the Constitution—article 103, clauses (1) and (2) in respect of Part A and Part B States and in respect of Members of Parliament.

**Shri Frank Anthony:** I am grateful for the clarification. There is another question which I want to ask the hon. Finance Minister. The hon. Home Minister dwelt at length with article 102. I am inclined to agree with him

that this House cannot only prospectively but retrospectively do what it likes with those qualifications. In support of that not only the hon. Home Minister but also another hon. Member spoke who seemed to speak well but later on I considered his propositions to be untenable. He said they could remove them. They quoted the instances of Members of Parliament who had suffered disqualifications where they had brought an indemnifying Bill. I was rather surprised that while the hon. Home Minister dwelt at length on article 102, the disqualifications, the capacity of Parliament to add to these disqualifications and to remove them, I only regret that he did not deal, as he must do, with article 103 or in this case with the special rules.

I distinguish the case in this way that if these cases of Members of Parliament had been referred to an Election Tribunal, if the Election Tribunal had said that they incurred these disqualifications, if the matter had gone to the President and he had declared the seats of members vacant under article 103, as was done in this case. I say with all respect that this Parliament could not have intervened. We could not have passed an indemnifying clause. That is an important point. The President has acted. They have been disqualified.

**Mr. Deputy-Speaker:** This was argued at length saying that the President's Order is final and, therefore, Parliament has no jurisdiction. That has been answered.

**Shri Frank Anthony:** It has not been answered.

**Mr. Deputy-Speaker:** The hon. Member does not see the answer. What can I do?

**Shri Frank Anthony:** May I make a submission? It has not been answered. The hon. Home Minister did not answer it. He complimented the younger man but I submit that the proposition put forward by that younger man is a preposterous one. I want the hon. Minister to tell me what is meant by the word 'finality'. I say with all respect that this House is not a sovereign body. This is the cliché. We have to accept that this Parliament is not a sovereign body. It is the Constitution that is sovereign. We have seen that the Constituent Assembly has deliberately prescribed an abridgment of sovereignty. It has deliberately sought restrictions on the sovereignty of this House. This House, acting as a constitution-making body, not as a Parliament, may supersede this Constitution under certain

specific conditions. We are not a sovereign body in the sense of the House of Commons. There, by a bare majority, it can say that it consists only of lunatics. We cannot say that. We could do it but we cannot say that. My friends say the word 'finality' vis-a-vis the courts...

**Mr. Deputy-Speaker:** The hon. Member is arguing.

**Shri Frank Anthony:** When in the Constitution we use the word 'final', I say it is final with regard to Parliament, with regard to every body formed under this Constitution. You cannot supersede the complete and unqualified finality unless you bring in an amendment of article 103 of the Constitution, and get a two-thirds majority, and say that this shall not be final. It is only then, and then only that you can do it. That is the question that I want the hon. Home Minister to answer.

**Shri V. P. Nayar (Chirayinkil):** I want to point out certain special aspects regarding the retrospective nature of this measure.

**Mr. Deputy-Speaker:** I would allow the hon. Member to speak. He will please state his points for the purpose of eliciting answers, points one, two, three and so on.

**Shri V. P. Nayar:** I wish to refer to the inapplicability of certain citations given by the learned Attorney-General. This aspect has not been referred to in detail in this House. I will be very brief, especially as I heard you saying a few minutes ago, that we have had a long discussion on this aspect of the matter.

The Attorney-General referred, in the course of his arguments, to the Ceylon case reported in 32 *Appeal Cases* 260. I have not been able to get the particular volume of *Appeal Cases*. But, I have a report of the same case here *Abayasekhara Vs. Jayahlake: Times Law Reports* at page 71, report dated Friday, December 4, 1931. This is not a case which can be followed here for very obvious reasons, because you find that the ruling there was—I am reading from the ruling in that case:

"Held that the Order-in-Council of 1928 was a valid exercise by the Sovereign of the legislative powers inherent in him by his title derived from the conquest and cession of Ceylon."

So, the Privy Council held that it was in virtue of the powers vested in the Sovereign of the United Kingdom by conquest or cession that this law became applicable. That is not

[Shri V. P. Nayar]

the case in India. Is it the contention of the Government that our legislative powers are derived by conquest or cession? I hope the hon. Home Minister will not go to this extent.

You also find that this case does not apply for another reason. It is stated in the course of the judgment of Lord Darling:

"Certain interlocutory matters were decided in the action, but before the action came on for trial an Order-in-Council, the Ceylon (Legislative Council) Amendment Order-in-Council, 1928, was passed on November 1, 1928 and came into force on December, 14, 1928."

We find it was not actually a question of applying retrospective legislation as we are doing today. Action had started. And the law was passed *lis pendens*, as it were. That precedent cannot be invoked as a precedent for this House.

There is another aspect. You find that the learned Attorney-General quoted the case of Jenkins also. That also is not applicable here for obvious reasons. This Parliament and the British House of Commons are not on an identical footing. You know that there are some differences in the traits of parliamentary sovereignty in the United Kingdom and in this country and this has to be kept in view when we take into consideration whether the Jenkins case is applicable or not. The House knows that the British Parliament has powers to amend or alter any law. We do not have such powers. We are on a different footing altogether. As you know, the Constitution here limits our jurisdiction in the matter of legislation. In the case of the British House of Commons, there is no limitation prescribed.

Here, we transgress that limit—the limits of legislative jurisdiction. The position is not the same as in the case of the British House of Commons. In this case, you cannot rely on a precedent in the British House of Commons which has unlimited powers to change any law or amend any law. We are not competent to do so. The Attorney-General's reliance upon that case of Mr. Jenkins is not therefore correct. I submit that the Attorney-General was defending a measure which I

would call a hideous outrage on democracy.

I heard some hon. Members lamenting that this Government was violating the principles of democracy. I wonder whether they were absolutely correct, because I do not think it is precisely a question of violating any principles. They, the Government do not have any principles whatsoever, let alone principles of democracy.

I have only one word more to say. The hon. Minister must bear in mind that for those who are power drunk, where law ends, tyranny begins and so here we have this Bill.

**The Minister of Home Affairs and States (Dr. Katju):** I do not know whether I can with profit or advantage contribute anything to the debate at this stage. I read long ago in Boswell's *Life of Johnson* a very famous remark in the course of a conversation. This remark can be appropriately used by every Member of the House, by me, by hon. Members opposite. When he was told by some one, "I do not understand you, Sir", the answer came in a flash, "I am bound to give you the reason, Sir, I am not bound to give you understanding". Of course, hon. Members can retort that I am unable to understand what they say. I can say that I find myself in that difficulty, that I do not know how their mind is working.

My hon. friend who started this debate this morning delivered a very long speech. If he had delivered it in a court of law, I am certain that he would have been pulled up within five minutes and the Judge would have said, please make yourself clear or sit down. As they say, you should know three things in a court of law as to when you should do them: shut up, speak up and sit down or something like that. Then, he talked about many things like a babbling brook. He talked about delegation of powers, delegated legislation, reference to the Supreme Court, etc.

My hon. friend Mr. Anthony in a very childlike manner said, "there are just two questions which I wanted to be cleared up and if I am satisfied, I would go into the Ayes Lobby and vote with the hon. Minister". I was delighted. But, I do not know how to satisfy him. That is my difficulty.

The whole proposition is this. So far as Part C States are concerned, they are governed by the Act of Parliament. If we start with this proposition, rightly or wrongly, by mistake—I am not concerned with that—Legislatures in Part C States have been created by an Act of Parliament. Parliament can destroy them, can put an end to them, can do anything in regard to them. It is not a question of supremacy of Parliament in general. We are thinking in terms of supremacy of Parliament in regard to part C States that supremacy having been conferred upon Parliament by this Constitution. The Constitution most clearly and most meticulously says this. In regard to Parliament, you have got these provisions, articles 101, 102 and 103, etc. They only concern the Members of Parliament. Then, we come to another Chapter, which deals with members of legislatures of Part A States. Then, you have another Chapter dealing with Part B States, where there is a provision that all that is applicable to Part A States will apply to Part B States with certain modifications. So far as Part C States are concerned, the law is quite clear that Parliament may come in and make law about that. Nothing applicable in terms to Part A States or Part B States or Members of Parliament is applicable to Part C States. If that proposition is granted, then as the Attorney-General advised us and stated before this House as his legal opinion—you may attach whatever weight you may like to it; you will not attach any weight to me, though I suppose I was a lawyer at one time, but we are all bound to attach weight to the opinion of the Attorney-General. He said the proposition was quite clear. These are Part C States, and Parliament has got the authority, the constitutional authority. He made it quite clear. He said:

"I am not concerned with the propriety of the action, the policy of the action. That is a different matter. That is a political question. But, in so far as the legality of the action is concerned, there cannot be any manner of doubt."

The second thing that I want to say once again here is this—because all sorts of things were said against those 12 members and democracy and party politics and the desire of the Congress who were power-drunk to send those 12 members there—that this thing was done in perfect good faith in April 1952; it was a sort of general rule, it made no difference. The entire members of the provincial Legislature were tried to be associat-

ed with the district administration in a purely advisory capacity so that they might tell the district authorities what should be done, and what should not be done. The rules provide that you are not to interfere with the daily administration, with the transfer of officers—what they should do or what they should not do; you should only consider questions relating to the public welfare of the district as a whole apart from all personal questions of any kind of difficulty. That was done.

The whole question at once arose was that an office, and if so, was it an office of profit? These were the questions which at once came up, and the House would know—I made it clear in the beginning, but it is worth repeating—that the poor Vindhya Pradesh Government, before they did this, before they constituted these Advisory Councils and thought of associating the members, took legal opinion, and they were advised by competent people that it would not be an office of profit at all, and therefore no question of disqualification would arise.

Having done that, they *en masse* associated all the members. These members came along. They became members at the time willy nilly because Government said so. The question arose in October 1952 when the matter was again raised in an informal manner by one of the members in the Vindhya Pradesh Assembly.

I should like to make a correction here. I find it has been reported in the newspapers that we were advised when this question arose that this was an office of profit. That is not correct. I did not say so yesterday. I said what we were advised was exactly the contrary. When this representation of one of the members of the Vindhya Pradesh Assembly came, we were advised here that it was not an office of profit at all, and instead of giving our decision, we thought we had better follow the procedure laid down in regard to members of Legislatures in Parts A and B States and refer it to the Election Commission. The whole matter goes before the Election Commission, and the Election Commission gives a certain decision, and we are quite clear in our mind, on legal advice given to us, that the law has not been properly understood, or whatever it may be, or something should be done to rectify the error.

My hon. friend said Parliament has delegated powers. I do not understand it. I am therefore unable to answer this particular proposition.

[Dr. Katju]

Then the second question was: refer it to the Supreme Court. I say that it would be highly undesirable to refer any matter regarding the supremacy of Parliament or competence of Parliament to enact a certain legislation to the Supreme Court, because the Supreme Court has got its own functions to discharge. Undoubtedly, there is an article which says that the President may refer any particular point for the consideration of the Supreme Court, but when we have got a Bill before us, Parliament must take the responsibility. And please remember that in the vast majority of cases—I quite agree we are laymen—we will not say so, but if we think that the law has not been properly interpreted by the Supreme Court, we may amend the law.

**Shri Frank Anthony:** Amend the Constitution?

**Dr. Katju:** Take the Transfer of Property Act.

**Shri Frank Anthony:** In this case you will have to amend the Constitution.

**Dr. Katju:** We will come to it later.

There is nothing in the Constitution which says that Parliament cannot pass any legislation. There is the Union List. The Union List gives certain items. Parliament is entitled to make laws in regard to those items. Supposing one of those laws is the Indian Penal Code, and the particular question comes before the Supreme Court, and the Supreme Court takes a particular view of it, and interprets the section in a particular manner, it is open to the House—it will not say so, it will not start off saying the Supreme Court is wrong or right—to say that the law is this. I can quote lots of instances. My hon. friends who are lawyers know it that in the past laws have been enacted which say that the law shall be understood to be this, that the law shall always be understood to be this right from the beginning. Therefore I say as a matter of principle we must take the responsibility upon ourselves. We are not going to hold up legislation because there is that article under which the opinion of the Supreme Court can be taken. The Supreme Court functions in its own way. It has got to issue notices to all the States. It may take one year. The law may be of great urgency here. Do you mean to say we are going to hold up the law till the Supreme Court gives its answer?

Then comes the question that this should not be retrospective. That is the very object of the legislation. That is what we have been discussing for the last two days. The retrospectiveness is this. Please remember again that if that was an office of profit, then the very day that the notification was issued by the Vindhya Pradesh Government, viz., April 1952, these 12 members became disqualified, completely disqualified. You may bring a suit against them for the recovery of Rs. 500 for each day they attended or they may not have attended, but they made themselves liable. It is not a question of conferring any particular benefit upon them. If you ask me not to make it retrospective, you may as well ask me not to make this legislation. The gist of the law is that it should be made retrospective and I cited yesterday a precedent. It was not enacted by this House. This House came into existence in 1952. I quite realize it. But in 1951, Act LXVIII of 1951 was passed which named certain commissions which were offices of profit. In some Commissions, I think, there were Members of the Opposition parties. I am told that in one particular Commission, the lady Member who is now acting as the Leader of the Praja-Socialist Party, was also there.

**Dr. Lanka Sundaram** (Visakhapatnam): She is not acting. She is the Leader.

**Dr. Katju:** But it was removed. The disqualification was removed. The only question is whether it is a technical thing, whether it is a just thing or not. And the precedents are so many.

**Shrimati Sucheta Kripalani** (New Delhi): My seat had not been declared vacant.

**Dr. Katju:** This is one of the grossest mistakes that the hon. lady Member is suffering from. Article 104 does not say that there should be a declaration by the Election Commission. If you read it, article 102 says that the moment you accept an office of profit, you are disqualified, you are finished as a Member of Parliament. And the Lady Member did not then rise and say: "I do not want to interfere with the sacred right of my electorate to elect a new Member. I have become disqualified. I am finished now. Therefore, I would rather like....."

**Shrimati Sucheta Kripalani:** You were free to raise it. There were 50 others who were Members of the

same Commission who belonged to the Congress Party. I would welcome you to raise that issue again. Again and again my name is being brought into the picture which I consider rather vulgar. There are plenty of others, 60 or 70 Members of the Congress Party who belonged to that or other Committees, and this matter has come up again and again. I do not like the personal manner in which this is done because I happen to sit in the Opposition. At that time when I was in that Committee, I was in the Congress.

**Dr. Katju:** I have not the slightest intention to make any personal observation of any kind. The hon. lady Member knows in what respect I hold her. But the question in an impersonal one. My hon. friend, Mr. Anthony, put to me a question in an oratorical manner: 'Are you going to do this if there is any Member of the Opposition?' I say: 'Yes, any time'. If there is any Member of the Opposition who suffers from this particular law in a *bona fide* manner, in a technical manner, we will bring in a Bill. But I only intended to give an illustration. That is all. I was not saying that we conferred any great personal benefit upon the hon. lady.

**Sardar A. S. Saigal (Bilaspur):** Even there, of the 12 members one is a Socialist.

**Shrimati Sucheta Kripalani:** I said  
so

**An Hon. Member:** There is already one Socialist.

**Dr. Katju:** The point is that the retrospective removal of the disqualification is from the day that they became members. Nobody will say that the disqualification only arises from the date that it is declared by the Election Commission. The disqualification arises from the past and the Election Commission only says that members have become disqualified from the date that they accepted the office of profit.

I do not want to repeat myself over and over again. I humbly submit that we have discussed all these matters yesterday at great length and the House has declared its opinion that this thing should stand.

**Mr. Deputy-Speaker:** The question is:

In page 1, for clause 3, substitute:

"3. Prevention of disqualification for membership of the Legislative Assembly of Vindhya Pradesh.—It is hereby declared that the offices of the members of any district Advisory Council are not offices of profit under article 102 of the Constitution, from the date of this Act coming into force".

The motion was negatived.

11 A.M.

**Mr. Deputy-Speaker:** The question is:

In page 1, line 14. omit "and shall be deemed never to have disqualified".

Those hon. Members who are in favour will kindly say 'Aye'.

**Some Hon. Members:** 'Aye'.

**Mr. Deputy-Speaker:** Those against will kindly say 'No'.

**Several Hon. Members:** 'No'.

**Mr. Deputy-Speaker:** The 'Noes' have it. The 'Noes' have it.

**Some Hon. Members:** The 'Ayes' have it.

**Mr. Deputy-Speaker:** All hon. Members who are in favour will kindly rise in their seats. I will go on counting bench after bench.

**Shri K. K. Basu (Diamond Harbour):** This is a double effort—mental and.....

**Mr. Deputy-Speaker:** Those in favour are 67.

**Dr. Lanka Sundaram:** I hope you have not counted me twice.

**Shri Gadgil (Poona Central)** Does not matter.

**Sardar A. S. Saigal:** Count even four times.

**Mr. Deputy-Speaker:** Those hon. Members who are against the amendment will kindly rise in their seats. An overwhelming majority is against. So the amendment is lost.

**Mr. Deputy-Speaker:** The question is:

"That clause 3 stand part of —the Bill"

The motion was adopted

Clause 3 was added to the Bill.

**Clause 4.—(Indemnity etc.)**

**Shri Nambiar:** I beg to move:

In page 1, lines 24 to 28, omit:

“and they shall be, and are hereby, freed and discharged and indemnified from all penal consequences incurred by them by sitting or voting as members of the said Assembly while holding offices of members of any District Advisory Council at any time before the passing of this Act”.

I move this amendment for this reason, that these people should not be protected from any penalty that may arise out of their seats being declared vacant and their subsequently going and sitting in the House.

**Mr. Deputy-Speaker:** Are there any cases where they did so? Is the hon. Member aware of any case where they went and sat there?

**Shri Nambiar:** That we are not sure. That is why, to be on the safe side, we want it.

**Mr. Deputy-Speaker:** I will ascertain from the hon. Minister. The point is that the hon. Member does not want that this indemnity clause should apply to persons who after their seats having been declared vacant still persisted. That is, before the Act is passed, whether in the inter-regnum those members who lost their seats have continued to sit in the Assembly.....

**Dr. Katju:** I did not understand the question.

**Mr. Deputy-Speaker:** The question is whether after they incurred disqualification, any of those members have sat in the Assembly, in which case the hon. Member does not want the indemnity clause to apply.

**Dr. Katju:** Why, that is the essence of the matter.

**Shri Biswas:** They have not sat in the Assembly since the date of the promulgation of the President's Order, but they probably sat a few days before that.

**Shri Nambiar:** When once a penal offence is committed, they must undergo the punishment. Even after ten years or fifteen years, no Act of the Legislature or Parliament can protect them. They have committed an offence and by the rule or law prevailing at that particular date, it was an offence. They committed that offence knowing that it was an offence. They have committed serious crime against the Constitution and against

the country and they must undergo the punishment. I can understand that on a particular day, a particular gentleman might have committed a murder.....

**Mr. Deputy-Speaker:** Let us not go into murder.

**Shri Nambiar:**.....a penal offence, whether it is a murder or beating or rioting—we are not worried about it. The point is, supposing he commits a murder and he is to hang for that or be transported for life, can you by an Act of Parliament say that he should be deemed not to have committed that murder?

**Shri B. S. Murthy:** This is a murder of the Constitution.

**Shri Nambiar:** Therefore, this is all the more wrong. I will quote the authority. Article 103 states as follows:

“If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final.”

So, this article 103 makes it very clear that if there is a disqualification, the matter must be referred to the President and the President's verdict is final. On this matter, the President has issued his final verdict, namely that they have incurred the disqualification and that must be considered as final. There cannot be any reason why we want to protect them from the consequences of this penal offence. This is unheard of. This cannot be understood. How can this Parliament go into the question of the commission of certain penal offences? I feel you cannot waste the time of the House on a matter of Protecting half a dozen or a dozen people who have committed penal offences. Otherwise, we will do no work other than picking up holes and seeing who all have committed offences and who are to be protected, whether he is a Congressman, whether he is a Communist or whether he is a Socialist. If he is a Congressman protect him, if he is a Communist, hang him. This is the work that Parliament can do. The forum of Parliament should not be resorted to protect party members. This cannot be understood. This is a sort of penal offence. For every day

of his sitting he has to pay a fine of Rs. 500. You want to save these people from that offence. (*Interruption*). This portion of the clause must be deleted, so that they may come under the provision of the penal clause. This is my point. Nobody can undo a mistake, an offence that has been committed. If we set up such precedents, then there will be no end to it. Parliament is an august body representing the whole of the country (*Interruption*) and it should not go to the extent of protecting a dozen people. This looks ridiculous. Let them pay the fine; let them enjoy in future. We have no objection. So, the hon. Minister should not go to this length; it is most ridiculous. We are tired of this sort of legislation.

**Shri Bhagwat Jha** (Purnea *cum* Santal Parganas): We are also tired of such speeches and such repetition.

**Mr. Deputy-Speaker:** Having received five rupees they must pay five hundred rupees?

**Shri Nambiar:** Have no party bias. So he must certainly accept this amendment at least. I know he will not accept this.

**Dr. Katju:** So far as I know after the promulgation of the President's Order in pursuance of the decision or the advice of the Election Commission, namely, as from the 2nd April, 1953, these 12 members have not attended the Assembly. But, before that it was a matter of doubt and controversy and they were taking part in the Assembly. But, I am advised that in cases of this description, it is a matter of drafting and all these enactments almost invariably insert such a provision. We have followed the precedents of the House of Commons, the cases that were referred to by the Attorney-General and the Act which was passed in this House in 1951. It is harmless provision. I do not want that there should be any controversy in regard to this matter. May I just read here Arthur Jenkins' case, which was referred to by the Attorney-General. The Act went by name.

"Be it enacted as follows:

Arthur Jenkins shall be and is hereby freed, discharged and indemnified from all penal consequences whatsoever incurred by him by sitting or voting as a Member of the Commons House of Parliament while holding the office of Chairman of the Local Appeal Board of the Royal Ordnance Factory and

shall be deemed not to have been or to be incapable of sitting or voting as a Member of that House by reason only of his having held that office at any time before the passing of this Act."

It is really a harmless measure and the language followed is a matter of consequence, the drafting language.

**Mr. Deputy-Speaker:** The question is: In page 1, lines 24 to 28, omit:

"and they shall be, and are hereby, freed and discharged and indemnified from all penal consequences incurred by them by sitting or voting as members of the said Assembly while holding offices of members of any District Advisory Council at any time before the passing of this Act".

The motion was negatived.

**Mr. Deputy-Speaker:** The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

The Schedule was added to the Bill.

Clause 1.— (*Short title etc.*).

**Shri Nambiar:** Sir, I have an amendment to clause 1.

**Mr. Deputy-Speaker:** It is barred in view of the decision which the House has just now taken.

The question is:

"That clause 1 stand part of the Bill."

The motion was adopted.

Clause 1 was added to the Bill.

The Title and the Enacting Formula were added to the Bill.

**Dr. Katju:** I beg to move:

"That the Bill be passed."

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill be passed."

**Shri Raghavachari** (Penukonda): I do not want to touch upon or refer back to the arguments already advanced against the validity of this Bill. I would be pointing out to one circumstance which is made perfectly clear by the Home Minister and it is this. At that stage when this dispute was

[Shri Raghavachari]

raised by a member of the Vindhya Pradesh Assembly, the Government was advised by their legal advisers that the particular office which was in dispute was not an office of profit. Therefore, they allowed the whole thing to continue and they wanted the Election Commissioner to decide that matter. They did not want to decide it themselves. Therefore, they decided to advise the President to amend the Government of Part C States Act. The Election Commissioner was asked to give an opinion and he gave the opinion which was to be accepted under the provisions of the Constitution and it turned out to be contrary to the advice which the Government had received before. Government was advised by their legal advisers that a particular thing is the correct position under the law. The constituted authority whose verdict is final comes to a different decision. Therefore, there is a conflict between the advice which the Government had got and the decision of the constituted machinery. Because the verdict is inconsistent with the advice they got, and because they have got power and the majority, they want to set it aside.

If this is the basis on which this Bill is brought, I would very humbly submit that this Parliament should not be expected to be a party to a piece of legislation which is calculated to set at naught the solemn decisions of an authority constituted under the Constitution, simply because it is not in conformity with the advice which the Government might have got. This would be a very dangerous precedent. This Bill is mainly based upon the feeling that the constituted authority's verdict is incorrect and not in conformity with the advice the Government got; therefore, they do not want to accept that decision. In other words, it simply comes to this: whatever is our opinion the country must accept; the court must act according to that decision or that opinion. This is a very dangerous precedent. Therefore, I oppose it.

**Dr. Katju:** The objection raised by my hon. friend has really no substance and—if I may say so—no merit. Very often when any decision is taken by a court—and in the olden days by the court which was then considered to be supreme, namely the Privy Council—Government takes legal opinion as to whether that judgement carried out the intention of Parliament or not. It is not done every day. We are all most anxious.....

**Shri Raghavachari:** You did not put it in that light at all.

**Dr. Katju:** We do not do it every day. We accept the decision of the judiciary on ordinary matters. But it may be a question of very great importance, general importance; it may be a question of substance. If that is so, then a contrary Bill is promoted in order to nullify the decision.

But I am not proceeding on that basis at all. The learned Attorney-General said that there are numerous precedents where disqualification is incurred according to a constituted authority—may be Election Commission here, may be a Committee of the House of Commons there; then the question arises as to whether it is an office of profit. Supposing it is, then the question arises—has the man acted in good faith; does he deserve the disqualification. The bogey that the Election Commission having decided in a particular manner, having given a particular advice, this Parliament, democratic Parliament representing the voice of the people of the whole of India, is, so to say, impotent and cannot do anything to nullify the mischief, to rectify any error, or to do justice to the electorate is a proposition which I cannot subscribe to. I should tell hon. Members with all the weight or authority that I possess that we should not labour under an impression that we are creating a bad precedent or that we are in any way going against any of the provisions of the statute or the spirit of the statute, or the letter of the statute, or undermining the authority of any authority created by the Constitution.

**Mr. Deputy-Speaker:** The question is:

"That the Bill be passed."

The motion was adopted.

#### ESTATE DUTY BILL

**The Minister of Finance (Shri C. D. Deshmukh):** I beg to move:

"That the Bill to provide for the levy and collection of an estate duty, as reported by the Select Committee, be taken into consideration."

The Bill was referred to a thirty-five man committee in November last and during the course of the discussion on the motion to refer the Bill to a Select Committee a number of Members made certain suggestions for the consideration of the Committee. Two points in particular which were strongly urged by a number of Members were that the exemption limit—that is, clause 34—up to which no estate duty,