of rule 198 of the Rules of Procedure and Conduct of Business in the House of the People, twenty-five members from among their number to be members of the Committee on Estimates for the year 1953-54".

Mr. Deputy-Speaker: The question is:

"That the Members of this House do proceed to elect, in the manner required by sub-rule (2) of rule 198 of the Rules of Procedure and Conduct of Business in the House of the People, twenty-five members from among their number to be members of the Committee on Estimates for the year 1953-54".

The motion was adopted

PUBLIC ACCOUNTS COMMITTEE

Shri Satya Narayan Sinha: I beg to move:

"That the Members of this House do proceed to elect, in the manner required by sub-rule (1) of rule 197 of the Rules of Procedure and Conduct of Business in the House of the People, fifteen members from among their number to be members of the Committee on Public Accounts for the year 1953-54".

Mr. Deputy-Speaker: The question is:

"That the Members of this House do proceed to elect, in the manner required by sub-rule (1) of rule 197 of the Rules of Procedure and Conduct of Business in the House of the People, fifteen members from among their number to be members of the Committee on Public Accounts for the year 1953-54".

The motion was adopted.

Mr. Deputy-Speaker: I have to inform the House that the following programme of dates has been fixed for receiving nominations and withdrawal of candidatures, and for holding elections, if necessary, in connection with the Estimates Committee and the Public Accounts Committee—

(1) Nominations to be filed in the Parliamentary Notice Office upto 12 Noon on Tuesday, the 12th May 1953.

(2) Withdrawal of candidatures will be received in the Parliamentary Notice Office upto 12 Noon on Wednesday, the 13th May 1953.

(3) Elections, if necessary, will be held on Friday, the 15th May, 1953 in Committee Room No. 62, First Floor, Parliament House, between the hours 8-30 A.M. and 11 A.M.

VINDHYA PRADESH LEGISLATIVE ASSEMBLY (PREVENTION OF DISQUALIFICATION) BILL—*contd.*

Mr. Deputy-Speaker: The House will now proceed with the further consideration of the motion moved by the hon. Home Minister 'that the Bill to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh, be taken into consideration'.

Shri Frank Anthony (Nominated—Anglo-Indians): I rise to oppose this Bill. I concede from the beginning that the circumstances under which these Members were disqualified represent a hard case. But it is a notorious legal maxim that hard cases make bad law. I was not in the House when the Attorney-General spoke on behalf of Government. But I read the reports in the press and I have no reason to believe that they do not represent an accurate summary of what happened. And may I say this, with all respect to the learned Attorney-General, that from reading the press reports I felt that he was arguing from a political brief? As a member of the legal profession I know that it is not uncommon for lawyers to resort to casuistry. But I do not think it is necessary for a measure of this kind to be supported by any kind of casuistry.

From the press report I find that some Members raised the issue that in effect this Bill represented an indirect amendment of the Constitution, that in effect the President had exercised the authority under the Constitution, and the Constitution makes his position supreme and final. Not only the Attorney-General but the Home Minister in replying to this argument, I felt, ran away from it. That is a clear cut constitutional issue. He ran away from it and sought to take refuge in a legal quibble. I am not basing my case in an attempt to cross swords with the Attorney-General, but on the purely legal or constitutional position, for what it may be worth, I am giving my opinion here. And with all due respect to the learned Attorney-General I feel that the position which he has taken is not tenable. I have looked at the provisions of the Government of Part C States Act. The Attorney-General has

said that the President acted, not under the Constitution, but under the Government of Part C States Act; that section 17 of this Act sets out the disqualifications for membership, and that it is under section 17 of this Act that the President purported to act. I have here what purports to be a verbatim report of the Attorney-General's case. He seemed to have made this point, and that is that the President acted under section 17, that section 17 was the dominant section and it attracted subsidiarily article 102 of the Constitution which sets out the disqualification which a Member may incur. I beg very respectfully to differ from the thesis of the Attorney-General. I say that the President has acted, and acted categorically, under article 103 of the Constitution. There is no categorical provision by which the President may disqualify a person and his decision shall be final, except under article 103 of the Constitution. I am only making this case.....

The Minister of Law and Minority Affairs (Shri Biswas): That is not so.

Shri Frank Anthony: Well, I hope somebody will reply later. I am not being dogmatic about it. But it is not a question of only attracting the disqualifications. I think the Attorney-General has conceded that the disqualifications, which I referred to, under section 17 attract the detailed disqualifications set out in article 102 of the Constitution. I go one step further. I ask, under what section of Government of Part C States Act does the President exercise his power? There is no reference, direct reference to the President's power to unseat the people. There is no reference at all. I say that section 17 is a subsidiary section which attracts not only article 102 but article 103 of the Constitution, all these articles attracted by the section are super-imposed, and that these are the dominant provisions namely the articles of the Constitution. That the President exercised his power to disqualify these persons under the categorical provisions of articles 102 and 103 of the Constitution is very clear. Under these provisions he makes his decision and his decision shall be final. That is only a point of view. As I said, I am not going to be dogmatic about it. I am not prepared to accept that the point of view of the Attorney-General and the Home Minister is unexceptionable. My point of view, humble though it is, may be equally a valid proposition of law.

But I come now to what I regard as a much firmer stand, and I am taking my stand on commonsense. The Attorney-General and the Home Minister will concede that commonsense is the best yard-stick of any legal axiom. What is it that the House is being asked to accept? Let us assume for the sake of argument that the President has implied powers—which I have not accepted—under the Government of Part C States Act to disqualify and unseat a person. But let us carry this legal argument to its logical conclusion. What, in effect, is the Attorney-General asking this House to accept? It is this. This is the clear implication of his arguments. That is, persons who in the legislative field, belong to superior bodies, Members of this House, and members of Part A and Part B States legislatures are completely governed by the Constitution, that they are removable by the President, and his decision shall be final. We have been asked to accept, that, because they are governed by the Part C States Act, the members of an inferior legislature, in Part C States are above the Constitution. While the Members of this House, and members of the Part A and B States are bound by the Constitution with regard to disqualification, removal, etc. and the President is the supreme authority and final arbiter, members of inferior legislatures are superior to the Constitution and though the President may disqualify them, he has not got the ultimate authority which he has with regard to members of superior legislatures. That is the implication. I respectfully submit that this is a completely untenable proposition in law. It strikes in the teeth of commonsense that you should accept the Constitution as binding and applicable to the superior legislatures and then you seek by a form of casuistical argument to place above the Constitution members of an inferior legislature.

From the newspaper reports, it appears that the Attorney-General had referred to the British precedents. I have not had an opportunity of studying them. But, offhand, I should say that the British precedents are no valid guide to us in this particular case for the simple and very obvious reason that there is no written Constitution for Britain and we are bound here by the categorical provisions of our written Constitution. There cannot be any analogy, express or implied between the British authority and the Indian authority in this respect. There, they are not bound in any way. No authority is given categorically to the King in England to disqualify a Member of the legislature; no finality is given to the authority of the King in England. There is no comparable provision. For that reason, I submit that no British precedents can be attracted to the conditions in India.

[Shri Frank Anthony]

I am opposed to this Bill on the ground of principle. I say this with all respect, but it is inevitable; it is the common point of view. The Government and executive authority which are growing increasingly power-drunk, seek increasingly to disregard the law and bring it into contempt. That is my greatest objection to this Bill. What are we seeking to do here? We are seeking to indemnify or rehabilitate 12 members of a legislature. I am not attributing motives. But, the motives are self-evident. The motives are political. The object is a political object. Let me make my position clear. I do not belong to the Congress Party. I may be an Independent. But, I am not opposed to the Congress Party. Let me say this—may be a left handed compliment if I put it in a negative way—if I have to choose between the Congress Party and any other party, I would choose the Congress Party as the lesser of the two evils. I say there is no political animus in my observations. What I say is this. In attempting to bring this measure, what are we doing? We are jettisoning the principles of the supremacy of the law. As I said, I do not for one moment question the fact that it is perhaps a technical disqualification and that there is no *mala fides* in it. But, can it be said that there are no similar cases, that there are no comparable cases? How then has this House been asked to legislate *ad hoc*? If we legislate, we must legislate on principle and not on any other basis. We are not concerned whether 12 persons are involved or one person is involved. It is a question of principle. Will the Attorney-General, on behalf of the Government, give an assurance to this House that if any other Members of Part C States are found disqualified for similar reasons, he will bring indemnifying legislation? How then are we to justify this measure? It is an *ad hoc* measure inspired by political motives. We are setting aside immediately the principle of equality before law. It is the Congress Party that happens to suffer here; it is not a principle. How are we to distinguish between person and person? If a member of any other Part C State has also acted *bona fide* and has suffered a purely technical disqualification, will the Attorney-General come and say, we want to pass an indemnifying measure? If he is not prepared to say so, how will he justify his attitude in favour of these persons, merely because 12 persons are involved. It is unfortunate that the Congress party is placed in a position of political inconvenience. But, political convenience or inconvenience can never be the main spring or motive for a legislation. What I am fighting for is that we should keep inviolate the fundamental principles of legislation and the fundamental principles of our Constitution. I say, do not do it. This measure represents an attempt to abrogate the supremacy of law. We proclaim equality before law; we say that the law shall be applied irrespective of persons or personality. Yet because 12 persons are involved, merely on the ground of political expediency, you seek to bring this measure. There can be no other motive. Will the Attorney-General do that in a similar case with regard to a single person and will you bring an Indemnity measure?

Pandit Thakur Das Bhargava (Gurgoan): Why not, if the circumstances require?

Shri Frank Anthony: My friend says, why not? They are members of his own party.

He has provoked me to go one step further. Let us assume the validity of the Attorney-General's argument that so far as Members of Parliament are concerned, so far as members of the Part A and Part B State legislatures are concerned, they are bound absolutely by the articles of the Constitution—I think that was the implied thesis of the Attorney-General's argument. If a Member of Parliament, if a member of a.....

Mr. Deputy-Speaker: The Attorney-General said that by virtue of article 102 clause (1)(a) it is always open to Parliament to declare that a *prima facie* office of profit should not be reckoned or deemed to be an office of profit and that from that time it ceases to be an office of profit. There is also nothing preventing Parliament from making such a legislation retrospectively. If the disqualification arises with respect to a Part A or Part B State, the same rule applies. That was his argument.

Shri Frank Anthony: That is precisely what I said. That is what I thought his argument was. The position has been clarified by the Chair. So far as Part A and Part B States are concerned, so far as Parliament Members are concerned, they are governed by the Constitution. But, I said, I do not accept the validity of the proposition put forward by the Attorney-General that so far as Part C States people are concerned, they are above the Constitution and that they are in a position superior to that of the Members of Parliament. I am not prepared to accept that proposition.

The second part of my argument is, accepting that we are now being asked to pass this *ad hoc* legislation because there is a hard case, what about other hard cases? Several members of the Congress party have come to me, members who have been disqualified on entirely technical grounds. There was a lady member of the Congress party. She accepted what was purported to be an allowance as Vice-Chancellor of a University. There was conflicting legal opinion. She was disqualified and the disqualification has been upheld. There is no suggestion of *mala fide*. She said that that was not an office of profit. But, the Election Commission was pleased to hold that that was an office of profit, a case indistinguishable from this case. Was the Attorney-General prepared to seek an amendment of the Constitution in order to indemnify that particular lady member? That is what I am asking. Where will this end? Tomorrow this House will be flooded with people whose cases are indistinguishable from the cases of the members of the Vindhya Pradesh Legislature. How then, on the basis of legal principle, on the basis of natural justice, will anybody be able to deny their right to ask that an Indemnity Bill should be brought in respect of every one of them? That is what I am asking. You are creating a precedent. If you create this precedent, you will not be able to deny an Act of Parliament to any member of a Part A or Part B State legislature who says, I have also incurred a technical disqualification, I want you to bring in an Act of Indemnity. If we attempt to legislate for hard cases, we will have to spend all our time in legislating for hard cases in this House. That is my objection.

Mr. Deputy-Speaker: Was not an Indemnity Act passed in regard to Members of Parliament?

Shrimati Sucheta Kripalani (New Delhi): It was a general act—removal of disqualification.

Mr. Deputy-Speaker: Relating to Members of various Committees.

Shrimati Sucheta Kripalani: It was not in respect of a particular person. It was a general act.

Shri S. S. More (Sholapur): It was for future application.

Shri Frank Anthony: That is my objection, Sir. We have advisedly, as I said, legislated. We have advisedly put certain provisions in the Constitution. My humble opinion is that others must be bound—anybody will maintain that they are bound—at least equally by the Constitution as members of a superior legislature. My objection is this, that we are now seeking *ad hoc* to legislate for a particular hard case. If the Government say that they are prepared, because of this, to legislate *ad hoc* for every hard case, then perhaps I would not have any objection. But I do not think the Home Minister will give me that assurance. If he is not prepared to do that, then I would say that we should only legislate for principles; otherwise, perhaps we will have to be prepared to legislate for every hard case that comes to our notice.

डा० एन० बी० खरे : (ग्वालियर) उपाध्यक्ष महोदय, अभी इस सदन में माननीय होम मिनिस्टर की ओर से जो यह विधेयक पेश किया गया है उसका मैं घोर विरोध करने के लिए खड़ा हुआ हूं। इस देश में जो नवोदित लोकशाही पैदा हुई है यह बिल उसकी भ्रूण हत्या करने वाला है इसलिए मेरा उससे विरोध है।

श्री गाडगिल (पूना मध्य) : भ्रूण हत्या कैसे हो सकती है। वह तो पैदा हो चुका है।

डा० एन० बी० खरे : अगर भ्रूण हत्या नहीं कहना चाहते हैं तो कत्ल कहिये। इससे श्री गाडगिल का समाधान हो जायगा।

तो यह बिल हमारे उस कांस्टीट्यूशन के खिलाफ बगावत या गदर करने वाला है जो कि अभी दो साल हुए बना है। इसलिए मैं उसको गद्दार बिल कहता हूं।

बाबू राम नारायण सिंह (हजारीबाग—पश्चिम) : बहुत ठीक।

डा० एन० बी० खरे : इसके अलावा यह लोकशाही का गला घोटने की हिमाकत करता है इसलिए मैं इसको हिमाकती बिल कहता हूं।

Shri Syed Ahmed (Hoshangabad): Is the word *himaqat* parliamentary?

Dr. N. B. Khare: Absolutely parliamentary.

Shri Heda (Nizamabad): Particularly when Dr. Khare says it.

डा० एन० बी० खरे : मुझे बड़ा दुःख होता है कि ऐसा बिल यहां लाया गया। एक ओर तो मुझे दुःख होता है लेकिन दूसरी ओर मुझे थोड़ा आनन्द भी होता है। वह इस

[डा० एन० बी० खरे]

वास्ते कि यह हमारी सैक्युलर या शेक्युलर सरकार हमारी हजारों वर्षों की पुरानी जो वैदिक संस्कृति है, दन्त कथा है, उसका पुनरुज्जीवन इस बिल को ला कर कर रही है। आप जानते हैं कि वेदों के अन्दर देवों और दैत्यों के बीच घमासान युद्ध की चर्चा है। उस युद्ध में दैत्यों के गुरु के पास, दैत्य गुरु, शुक्राचार्य के पास संजीवनी महा मन्त्र था। उस के द्वारा जो दैत्य युद्ध में प्राण खो बैठते थे, उन को वह जिला दिया करते थे। इसलिये देव बेचारे लाचार हो गये थे।

श्री पी० एन० राजभोज (शोलापुर—रक्षित—अनुसूचित जातियां): दैत्य कौन थे, और देव कौन थे ?

डा० एन० बी० खरे : वह आप समझ सकते हैं, मुझे कहने की जरूरत नहीं है। मैं समझता हूं कि आप में इतना कामनसैन्स है।

तो जैसे दैत्य गुरु ने मरे हुए वीरों को जिलाया था, ऐसे ही फिलहाल इस हाउस में यह प्रयत्न किया जा रहा है कि जिन की सदस्यता मरी हुई है, उन की सदस्यता को फिर से जिलाने की यहां यह कोशिश हो रही है। तो वही पुराने दैत्य गुरु शुक्राचार्य के समान यहां यह दैत्य गुरु हैं।

शुक्राचार्य शराब भी पीते थे। ऐसा तो मैं नहीं कहूंगा कि यह दैत्य गुरु भी शराब पीते हैं, लेकिन यह मैं जरूर कहूंगा कि दैत्य गुरु के दिमाग में पावर एलकोहल चढ़ गया है, इसलिये यह बिल यहां पर लाया गया है। पावर एलकोहल चढ़ गया है, सत्ता का मद चढ़ गया है मैं ऐसा कहता हूं। पता नहीं आप को मालूम है कि नहीं, हिन्दी में एक दोहा है। अमीं हलाहल मद भरे ....

Mr. Deputy-Speaker: Am I to understand that the hon. Member is making all these references to the Attorney-General?

Dr. N. B. Khare: No, Sir. What I say is that.....

Shri Syed Ahmed: He is making a political speech.

Dr. N. B. Khare: I am entitled to.

Mr. Deputy-Speaker: I would tell the House that the Attorney-General is here in a special capacity. He is entitled to give us advice whenever the House seeks it or the Government want his views to be placed before the House. Therefore, no such references need be made to him. Of course, the hon. Member is always entitled to say regarding political parties.

Shri Gadgil: He is not referring to the Attorney-General.

Dr. N. B. Khare: I am referring to the Home Minister, Sir.

The Minister of Home Affairs and States (Dr. Katju): I am always at your disposal.

Dr. N. B. Khare: I am 'Brahaspati" if you are 'Sukracharya'.

हम से कहा गया कि प्रैसीडेंट ने सैक्शन १७, विन्ध्य प्रदेश एक्ट के मुताबिक काम किया है, इसलिये यह विधेयक लाया गया है। उस के ऊपर जब प्रश्न किया गया तो कहा जाता है कि इस में प्रैसीडेंट की कोई तौहीन नहीं होती है। मैं पूछना चाहता हूं कि इंडियन सैण्ट्रल रेलवे के ब्राड गेज पर अगर प्रैसीडेंट सफर करते हों तो उन के ऊपर आप फूल की वर्षा करेंगे और उसी सेंट्रल रेलवे के ऊपर यदि वह उसके विन्ध्य प्रदेश नैरो गेज ब्रांच पर जाते हों तो क्या आप उन पर बम बरसावेंगे।

डा० काटजू : क्या दलील है ?

Shri C. R. Narasimhan (Krishnagiri): On a point of order, Sir. Can the name of the President be used in this manner to influence the debate.

Dr. N. B. Khare: My point is that the President is being derogated by bringing in this Bill. I am entitled to mention it.

Shri C. R. Narasimhan: Not that. He was referring to a bomb being dropped on the President. That was the trend. It is against rules.

Mr. Deputy-Speaker: No reflection can be cast on the President. That is

number one. The other thing is that the President's name ought not to be used for the purpose of influencing the debate. But in this case the President has made an order and upon it the whole debate is now based It is open for hon. Members to say as to how far that order is valid. That is all impersonal.

Shri C. R. Narasimhan: He drew a simile. Can he talk about a bomb being dropped on the President's train. That is the trend of my argument.

Mr. Deputy-Speaker: The hon. Member need not even think of dropping a bomb on the President.

डा० एन० बी० खरे : यहां एक कविता कही गयी थी, मैं भी एक कविता कहता हूं :

"अमीं हलाहल मद भरे,
श्वेत श्याम रत नार।
जिअत, मरत, झुकि झुकि परत,
जेहि चितवत एक बार ॥"

बाबू रामनारायण सिंह : मतलब कहिए।

डा० एन० बी० खरे : यह जो हमारी कांग्रेस की ब्यूरोक्रैसी है, इस की मैं एक मद भरे नयनों वाली नवयुवती से तुलना करता हूं। उस की आंख में तीन चीजें होती हैं, सफ़ेद, काला, और लाल। सफ़ेद तो अमृत भरा है, जैसे अमीं। काला जो है वह जैसे हलाहल भरा है, विष। और लाल जो है वह जैसे मद भरा हो, मधु। यह ऐसी एक ब्यूरोक्रैसी है। वह जिस की तरफ़ प्रसन्न हो तो, अमृत वर्षा होती है और मरा हुआ आदमी जिन्दा हो जाता है। और हमारे सरीखों की तरफ़ हलाहल की वर्षा होती है तो अगर हम जिन्दा भी हैं तो मर सकते हैं। और किसी दोस्त की तरफ़ जरा टेढ़ी आंख करे, मद भरी, तो वह तो झुक झुक पड़ता है, जैसे शराब के नशे में आदमी झुक झुक पड़ता है। ऐसी यह कांग्रेस की नौकरशाही है। इसलिये मैं इस को बधाई देता हूं, इस बिल को लाने के लिये। बिल का विरोध तो मैं करता हूं, लेकिन जरा मजा भी आता है।

ऐसी हालत में मेरा यह कहना है कि यह बिल नहीं लाना चाहिये। जो बिल कि हमारे प्रैसीडेंट की तौहीन करता है उसको नहीं लाना चाहिये। जो बिल हमारे कांस्टीट्यूशन को ठुकरा देता है, इस को पांव तले कुचलता है, उस को नहीं लाना चाहिये।

मैं अपने ऐटारनी जनरल का सम्मान करता हूं इस लिये मैं उन पर टीका टिप्पणी नहीं करूंगा। उन का हमारा कोई वास्ता भी नहीं क्योंकि वह कोई पोलिटिकल व्यक्ति नहीं है। लेकिन फिर भी मैं इतना जरूर कहूंगा कि जो आर्गूमेंट ऐटारनी जनरल ने हाउस के सामने पेश किये उन को उस दिन हमारे शेरे बंगाल ने तीन सवालों म टॉर्न कर दिया। तीन सवालों में ऐटारनी जनरल को हमारे शेरे बंगाल ने चारों खाने चित्त कर दिया जैसे कि एक सिनेमा है "तीन बत्ती चार रास्ता" ऐसे ही हो गया। हम यह देखते हैं कि सरकार ने पहले ही से पेशबन्दी की थी कि इस बिल का कानूनी तौर पर कड़ा विरोध किया जायेगा, और सरकार तो बड़ी होशियार है, उस ने पहले से ही ऐटारनी जनरल को यहां बुला लिया। लेकिन मैं ऐटारनी जनरल को कोई खास महत्व नहीं देता। वह सरकारी नौकर हैं और उस की ताली जरूर बजायेंगे। लेकिन यह हमारे ऊपर निर्भर करता है कि हम इस के पक्ष में मत दें या न दें।

इतना ही मुझे कहना है और इतना कह कर और इस बिल का घोर विरोध कर के मैं अपना आसन ग्रहण करता हूं।

Shri Raghavachari (Penukonda): I have listened rather carefully to the arguments advanced by the Attorney-General; I have also listened to the introductory speech of the Home Minister. (*Interruption.*) I, for one, feel that when anything has to be buttressed by elaborate legal arguments, that itself is a sure sign that the case has two sides, for and against. And, as lawyers, we often know that the weaker the case the bigger is the Counsel. That is the usual experience.

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Apart from that, in a matter of this kind, what amazes me is not the way in which the Bill is brought before this House to be passed into law, but the circumstances that have brought about the introduction of this Bill. Before I examine the arguments advanced by the Attorney-General, I wish to state certain facts which are very well understood to be correct, and they are these. The Home Minister himself explained that in pursuance of an order of appointment made, the members of the Vindhya Pradesh Assembly were asked to assist that Government in certain committees and they were also allowed to draw some amounts as allowances. In fact, the thing is not in dispute that it is an appointment made by the State and that it is an appointment to an office of profit. Therefore, it is undisputed that there has been an office of profit held by these members of the Vindhya Pradesh Assembly under the State Government, and therefore the disqualification is suffered by them. Then this matter was brought before the President for decision, because, under the Government of Part C States Act, the powers were vested in the President. Unfortunately, the Act did not contain any provision as to the agency by which this doubt of a man having suffered a disqualification or not could be decided. That was a lacuna in the Act. Therefore, the President was approached and asked to exercise the powers that vested in him under section 43 of that Act. Section 43 of that Act empowered the President to pass or make any order to remove the doubts and disqualifications. I shall just refer to the language of the section. It reads:

> "If any difficulty arises in giving effect to the provisions of this Act and, in particular, in relation to the constitution of the Legislative Assembly for any State, the President may by order do anything not inconsistent with such provisions, which appear to him to be necessary or expedient for the purpose of removing the difficulty."

It is under this section that the President has passed that order, viz., of incorporating Article 103 of the Constitution into the Government of Part C States Act under section 17. That means, the President in order to decide this matter had to exercise the powers that vested in him under this section and then amend the Act. He has the powers. But, what I wish to state is this, that the powers of the President exercised under this Act, to my mind, fall under Article 240 of the Constitution. Article 240 of the Constitution reads—

> "Parliament may by law create or continue for any State specified in Part C of the First Schedule..."

It also states in (2)—

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

I wish to emphasise this sub-clause (2). This 240(2) applies to the powers taken over by the President under section 43 of the Act, and therefore, though it has the effect of amending the Constitution—please mark the words, it has the effect of amending the Constitution—the Constitution is nevertheless amended because sub-clause (2) provides that for the purpose of such amendment Article 368 does not apply. In other words, in spite of the special procedure laid down under the Constitution for amending any Article of the Constitution, it is open to the President to pass an order as is done in this case which in fact amends the Constitution. If we accept that, it means that the President has actually passed an order or made a provision which has the effect of amending the Constitution. Now, if you accept that the Constitution has been amended to that extent, then this procedure to amend the Constitution is as good and effective even without the special procedure contemplated under Article 368. It has become part of the Constitution. Therefore, when it has become part of the Constitution, if this Parliament wants to amend the Constitution—it may be supreme and it has powers to amend the Constitution—it has to amend it in a way specifically provided for under Article 368. Therefore, it will not be competent, it is not open to this Parliament unless that procedure is followed, to amend any order of the President, which under Article 240(2) has the effect of amending the Constitution. It might look very strange, it might look to be a matter without any remedy. It is not so; for it is always open to the President, and it is only the President that can alter that thing, under section 43 of the Part C States Act. If Parliament is prepared to amend that and is desirous of doing so it could only do so in pursuance of the requirements of Article 368.

Mr. Deputy-Speaker: Cannot the President acting under Section 43, bring a Part C State into line with the Part A and Part B States? Assuming it to be a Part C State and the disqualification with respect to these members having arisen, is it not open for the Parliament, acting under Article 102(1)(a) to remove such a disqualification for the future. The Attorney-General has said that the President's order is valid. It is an office of profit that these members have held. What the President only does is—acting like a court,—he says these gentlemen have entered a disqualification. The President can act only according to the law for the time being. The Parliament can change the law and say that a particular office is not an office of profit, both prospectively and retrospectively. That is exactly what the Parliament is being asked to do under the circumstances today.

Shri Raghavachari: I shall answer that question. In fact, I was coming to it after establishing the fact that this order of the President under section 43 actually brings Part C States also on a par with Part A and B States. If it comes on par with Part A and B States, it means that that law has become a part of the Constitution. If it has become part of the Constitution and as binding as in the case of Part A or B States.....

Mr. Deputy-Speaker: The President's order only amends that Act of Parliament.....

Shri Raghavachari: I have already stated, Sir, that the effect of the President's order passed under section 43 of the Part C States Act is to make that amendment of the new law, part of this Constitution. It means it is as binding, as valid and as legal as any other article of the Constitution.

Pandit Thakur Das Bhargava: May I enquire from my hon. friend as to whether the President can make any law which makes that law a part of the Constitution?

Shri Raghavachari: Article 240 of the Constitution simply says that any law which the President has made, though it is not in conformity with Article 368, nevertheless does form part of the Constitution, in so far as its effect is concerned. If it is so, it becomes part of the Constitution; I shall now answer the point you raised as to whether Parliament cannot amend or alter that also.

Mr. Deputy-Speaker: I am afraid there are two ways. The article only says that even if it should be an amendment of the Constitution in any part, the procedure laid down for amending the Constitution is not necessary. The converse need not be true. Merely because the President exercises a right it does not necessarily become an amendment of the Constitution and as such inviolable except by amendment of the Constitution once again by Parliament. One thing does not follow from the other.

Shri Raghavachari: The converse need not necessarily follow. I am prepared to concede that position. Such clause (2) of Article 240 says that it has the same effect as if it is part of the Constitution.

I am only contending that it is not that the position is so hopeless in which the law must stand as it is for all time to come. I am only confining myself to the procedure as to who should do it? It is appropriately the privilege of the President himself. For again under Section 43 he may be asked to pass another order if it is not to be in conformity with the procedure laid down under article 368. Once Parliament wants to take this up, it is bound to follow the procedure required by article 368. That is my contention.

Coming to the other part namely, a Part C State has in effect become a Part A or Part B State.....

Mr. Deputy-Speaker: By merely applying one article of the Constitution to a Part A State regulated by an Act of Parliament, does it mean that the Constitution itself is changed, or a Part C State is converted into a Part A State. An article of the Constitution may be applied by an Act of Parliament, in this case by the President under the residuary power (Section 43 of the Act), to remove difficulties. Does it mean that it is a modification of the Constitution?

Shri Raghavachari: It has the effect of the modification of the Constitution because of Article 240(2).

Mr. Deputy-Speaker: Article 240(2) only says even if it should affect or modify the Constitution, the regular procedure need not be followed.

Shri Raghavachari: Without following the procedure of amending the Constitution, it has the legal force of an amended constitution.

Mr. Deputy-Speaker: Does it say an amendment of the Constitution? Even if it happens to be an amendment of the Constitution that procedure need not be followed. Whether it is an amendment of the Constitution or not is not laid down.

Shri Raghavachari: I am endeavouring to point out that when the law or the order that he passes has the effect of an amendment to the Constitution, without following the procedure, we take the legal consequences of that order. That order is valid and enforceable. That order can be altered only legally and there are two ways of altering it. As I said, it is not as if the position is hopeless. But the President only can do that. When an order has been passed by the President, it is equally open to him to pass another order making the removal of disqualification. Government instead of coming before Parliament could have asked him or advised him to alter his previous order.

In this connection I would like to give the House a brief background to this issue. The matter was referred to the President for decision, I think, in October 1952. For about three months or so, the representation was simply put in cold storage. It might be that the Law Ministry and the States Ministry took a different view. The President finally had to exercise his right. But after exercising his right he found the hurdle that there was no provision in the Act for him to prescribe the machinery through which the matter should be decided. Then he had to act under Section 43. He referred it to the Election Commission. The Government was represented before the Commission. They argued the matter; they strenuously wanted to urge that there was no office of profit.

Mr. Deputy-Speaker: It is admitted that it is an office of profit in the Bill itself.

Shri Raghavachari: I am only stating the reason why the Government has not thought it fit to go to the President or advise the President to amend the law. He is competent to do it and it could very well be done easily. But they have taken resort to a cumbersome procedure and now want to buttress the procedure by legal argument. The question is this. When the matter was referred to the Election Commissioner, strenuous arguments were put forward before him, and he gave a decision. Finally, the Presidential Order was passed, and the matter was communicated to the members of the Vindhya Pradesh Assembly. My information is that on the 2nd April they were told by the Speaker of that Assembly that they ceased to be members. Strangely enough, this Bill was introduced here on the 1st April. If we put these two dates together, it resolves into a fight between the power of the President and the power of the Government. It is most unfortunate that this kind of impression should be created in the mind of anybody. What prevented the Government from amending this law in the earlier stages? The matter took three months in 1952 and has taken five months in 1953. It looks to me that during the whole of this time, the Minister and the Ministry concerned thought that this was not an office of profit.

Mr. Deputy-Speaker: Could there not be a *bona fide* doubt as to whether the receipt of Rs. 5 per diem can make this an office of profit?

Shri Raghavachari: In the eye of the law, there can be absolutely no doubt that even if it be a pie that is received it is an office of profit. Legally, there is a disqualification. The quantum of profit is almost immaterial.

Dr. Katju: Was it an office at all?

Shri Raghavachari: Yes, it is an office of profit. When anything by way of profit is attached to an office to be received, it becomes holding an office of profit.

Shri B. S. Murthy (Eluru): A pie is enough.

Shri Raghavachari: I do not feel called upon to address any arguments in respect of the position that this is clearly and conclusively an office of profit. In spite of the contrary opinions that may have been held by the concerned Government officers, the Election Commissioner found it to be an office of profit. I for one feel that the actual benefiting from or participating in the profit is a disqualification.

Mr. Deputy-Speaker: According to the hon. Member, what is final here? Is the decision that it is an office of profit final, or what else is final?

Shri Raghavachari: No, Sir. What is final is not that it is an office of profit. What is final is the incurring of the disqualification and the decision that the member concerned shall not continue to be a Member. Let me read out to you Article 103. It says:—

> "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."

It refers to the disqualifications, and not to the question as to whether it is an office of profit or not.

Mr. Deputy-Speaker: But what is the disqualification here?

Shri Raghavachari: It is the holding of an office of profit.

Shri H. N. Mukerjee (Calcutta North-East): May I point out, Sir, that you are not exactly in the position of a judge in a court and may I submit that it is better that you do not ask these questions from the hon. Member who is speaking?

Shri Nambiar (Mayuram): The Chair is more than a judge.

Mr. Deputy-Speaker: I ask these questions, only so that hon. Members may be able to follow the proceedings.

Shri Raghavachari: I do not mind, and on the other hand I welcome, the Chair's interruptions. I am a lawyer and I am accustomed to them.

My purpose is to convince the House. If there are any doubts in your mind, Sir, similar doubts may exist in other peoples' minds also, so that you may ask me any number of questions and I shall reply to them.

Mr. Deputy-Speaker: He need not expatiate on it, but continue his speech. There is the Attorney-General to answer all points.

Shri Algu Rai Shastri (Azamgarh Distt.—East *cum* Ballia Distt.—West): The Chair's intervention is very helpful, Sir.

Shri Raghavachari: My submission is that what is final under Article 103 is the suffering of the disqualification, and if there has been any decision that a particular person has suffered the disqualification, then it automatically follows, because of Article 102, that he has ceased to be a Member, and that decision is final.

My next point is this. Under the Constitution, the powers are vested in the President in his individual discretion. It is not part of the machinery of Government. Article 103(1) says:—

> "the question shall be referred for the decision of the President..."

So, it is in his individual judgment, as in the language of the old Acts. It is the individual judgment that is mentioned, and it is said to be final, for the words are: "and his decision shall be final". So, the disqualification is final, i.e. the fact that these persons have ceased to be members of that legislature is final and cannot be agitated in this way.

In substance, the Attorney-General's arguments came to this, that the Part C States are governed by the Government of Part C States Act and that Act derives its source of power from parliamentary legislation and therefore anything done in pursuance of that Act by the President can as well be undone by the Parliament. He went further and said that not only was interference at this stage legal but it was constitutionally proper. Speaking subject to correction, I feel that the Attorney-General should have confined his arguments to the legal position. That part of his argument which pertained to the constitutional propriety or otherwise ought not to have been addressed to this House.

Mr. Deputy-Speaker: Is there any restriction on the powers of the Attorney-General?

Shri Raghavachari: Article 88 says that he has the right of speaking. The only restriction is that he cannot vote.

Mr. Deputy-Speaker: He can take part in the proceedings. His powers are as good or as bad as the powers of any Minister to take part in the proceedings.

Shri Raghavachari: If he equates himself to the position of a Minister and wants to press arguments in support of a particular measure, I submit that from that moment he ceases to be the impartial person whose advice the House is entitled to get and weigh. In other words, he descends into the arena. As I was saying, he not only said that this legislation was legal but he quoted precedents in Ceylon and England where the Parliament concerned or the House of Commons had been vested with similar powers. As an absolute proposition of law, I do not wish to contend that it is not open to this Parliament to pass any legislation. All that I am stating is that there would have to be the need to conform to the special procedure prescribed. The other thing is that the precedents of Ceylon or England cannot apply to our legal set-up. In England, they have no written Constitution and only conventions. The House of Commons happens to be the ultimate authority in respect of controlling and conducting the whole process of election, also whereas in our Constitution we have provided for an absolutely independent agency—the Election Commissioner—who is not at all under the control of Government. He is certainly under the control of Parliament. We can impeach him; remove him; question him. But surely, the same thing is not open to the Government.

Here you will kindly appreciate the moment the President's order of final disqualification was communicated to the Members and they walked out of the Legislature on 2nd April, they have ceased to be members of the Assembly. And thereafter, under the Constitution, it is the peculiar and the special privilege of the Election Commissioner to

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conduct the elections and fill those vacancies. By reason of this disqualification having been suffered, and the offices having been vacated, so many of these seats must be filled only by the voters, and that is a right which is vested in the whole body of a population of voters in each constituency. And what is a vote except freedom of expression of opinion which has been guaranteed under Article 19 of the Constitution? We have taken care to provide that no kind of undue influence should be exercised in the elections and on the voter one way or the other. It all becomes a farce when you can now question, or, not even question but ask the Election Commissioner not to exercise the functions which the Constitution vests in him by passing this legislation. These people have been disqualified, and therefore, we have to go back to Adam or the beginning of the world, and say that everything that has been done, though not in conformity with the existing law is perfectly legal, because we want it to be so now.

My anxiety is to impress on the Government that the measure that they have brought forward is a very extraordinary measure, a measure which is calculated not only to drive a nail into the Constitution itself but also into the legal propriety of procedure of law and of the respect for the institutions set up so laboriously after so many months of thought under this Constitution by simply saying that we will bring back a few dead people to life. That is, in other words we say: "I will substitute for election by vote election by legislature". It is most revolting. This right is vested in the voters and cannot be lightly interfered with. And you are also interfering with, as I have already submitted, the sole and exclusive authority of the Election Commission.

The other point I wish to submit is this. So far as the question of legality is concerned, I was asking: "Is it not open to the Parliament, if something wrong happens, to set right or modify it even in the case of the Part A and Part B States?" Article 102 of the Constitution simply says:

> "(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder,"

Though it is not a very strong argument, still I would emphasize the word "declared". It is declared, and not to be declared it is not as if the Government has not given its attention to what are offices of profit and what are not offices of profit. Originally, the Constitution only provided exemption for Ministers. When they wanted Deputy-Ministers, and to expand the Cabinet, they provided other categories into it, and said all these are not offices of profit. So, they can go on adding if they are anxious to prevent all this kind of difficulties and doubts about these matters. What is the Bill that is brought before us? It is not a Bill which is applicable to the whole of India. It is not applicable to any other State. It is not applicable to Part A and Part B States. It is applicable to the 12 people who have somehow caught the imagination of the Government, and they are their pet children. What else is it? If Parliament should be asked to legislate on a matter under Article 102 of the Constitution, that must provide for the whole of India, and it must be a well-thought-out and complete Act. In this Bill which you have brought, you simply say: "I have got 12 children. Please take them as your children". To my mind, it looks to be purely a case where the Government has not thought seriously about the consequences or about the psychological effect it might produce in the country. And after all, are the Heavens going to come down? I have listened to and read the objects and reasons. The two arguments provided there are, firstly, that the Government—the State Government—did it in good faith. I am not inclined to dispute the question of good faith. Let us grant it. To my mind it looks they have acted with negligence, and not in good faith. And you know, Sir, as a lawyer, want of due care and attention is not good faith: it is negligence.

I will give another instance. Now, it has happened in the case of 12 or 13 Members. There is nothing to prevent the matter being carried to the Supreme Court. The disqualification is "holds an office of profit", not derives profit. The man may not have drawn his pay, but holds office. To a legal mind, it is sufficient disqualification. Therefore, the matter can be carried to the Supreme Court. The opinion of the Election Commission is only an opinion. Under the Constitution, the President has to accept it, but the opinion can be questioned by anybody interested in a Court of Law as not being consistent or just and proper. I am perfectly satisfied that the Election Commission has given the right finding that it is an office of profit, but they appear to have erred when they went into meticulous mathematical calculations of headquarters—residents and those coming from outside, the amount they got and if they engag-

ed a "Jutka" or if they made a profit of 8 annas. That portion looks to me not to be justifiable. If that is not so, the matter may be agitated in the Supreme Court. Supposing other people are later held to be disqualified, then you will bring in another legislation to remove their disqualification and so on.

And then, in a matter of this kind we must have a legislation which is comprehensive, which is complete, not this kind of thing.

Then, as regards good faith, I feel the opinion regarding good faith is rather shaken badly when I read the papers which were circulated to us as important papers. The matter was to be discussed on Saturday, and on Friday night at about 10-30 we get these important papers circulated. There was hardly any time. However, I went through it and I found there the Vindhya Pradesh Government has taken some trouble to make out a case for many of these people not having held an office of profit by trying to amend their original order as: "Whoever has not accepted in writing". That phrase they wanted to add by way of amendment to the old order. Most of these people were appointed, and there is no need for them to give any acceptance in writing. And then they have sat in the meetings. They have given advice. They have drawn the *bata* and held the office. And then they wanted to say "Whoever has not accepted in writing". In other words, they wanted to nullify the objection petition filed. That again shows how the wind is blowing. The question of *bona fides* is a bit shaken by that.

Then, the other point I wish to submit is this. My complaint is that the energy and the time and all this effort invested upon the removal of this disqualification, calling the Attorney-General and introducing the Bill at the fag end of the session—all this is not worth the trouble. After all, let an election take place. If there is one more election and the Congress candidates win, you can well taunt us saying "We have the confidence of the people". Why do you allow us to say "You have fears about the confidence of the voters in you and therefore you want to avoid the election". The way in which the Government is dealing with this is very unsatisfactory.

Government is trying to overcome the effect of the procedure—the legal procedure, the procedure adopted under the Constitution—and the power exercised by the President in issuing final orders, and all that without reference to the President and in spite of those orders. This looks to me to be a business with which the Government ought not to be found to be associated. To my mind it is a business with which the Government ought not to proceed. I may not be quite wrong. Probably they feel that the President has exercised his judgment, he wishes to see that it is final and he does not wish to do anything. Otherwise why can they not go to the President under section 43 of the Part C States Act. That would have been very well. Suppose the same precedent is set up in the case of other legislatures or in respect of Members of Parliament, what absurdity will it lead to if the Government can legislate and say an office of profit is not to be treated as an office of profit though the Constitution has provided for it? The Legislature took care to enunciate a principle of law, a very healthy principle, that the Government should not have any kind of influence over the judgment of a particular legislator. That is an important thing and that important thing has been incorporated in the Constitution. There may be some, for instance Ministers, Deputy Ministers and other categories which have been included. Now you want to legislate that every office is not an office of profit even where the treasury money goes into the pockets of the legislators. It appears to me to be most improper. It is impropriety of the highest kind: because the final orders of the highest officer, the officer of the highest respectability under the Constitution, should be converted into orders that are not final. In regard to Part C States the Constitution provides all powers, even amending the Constitution, to the President because we have absolute confidence in his use of his powers of discretion. Because he has done something which is not acceptable to you, you want to say it is not an office of profit. It is setting at nought the whole machinery of the law and the procedure in the country and it will create a very very bad precedent, not to speak of the incomplete and the haphazard manner in which Parliament's time is taken to resuscitate or restore the twelve people whose life as legislators is at an end.

Therefore this is a matter which should be opposed and my respectful submission to the Minister in charge of the Bill is that this is not a matter that should be pressed. They can get it corrected through the authority of the President himself rather than force it down the throat of this House because they have a majority. I only wanted to suggest that the use of the majority of the Government which they possess must not be made for forcing a legislation of this kind which goes against the accepted principles of law and procedure and all the conventions. Legality and constitutionality may be matters of opinion. Even there, there is another side to it as I have strived to submit for the consideration

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of the House. And surely, on the question of propriety there is no doubt left in my mind that it is most improper that a legislation of this kind should be forced down the throat of the country.

Dr. Krishnaswami (Kancheepuram): When the Home Minister introduced this Bill I obtained the impression that he could not make out a case. Naturally we are not surprised to find the learned Attorney-General coming to his rescue and attempting to bolster up an indefensible case, with all the legal artifices, that he has at his command. What does this Bill seek to do? It is necessary to bear in mind the salient features of this Bill so that we might not be inveighed into the meshes of legal controversy, so that we might not forget the essentials, so that we might not run away from the question that stares us. This Bill seeks to remove the disqualification of twelve hon. Members of the Vindhya Pradesh Legislative Assembly who had been declared ineligible to sit in the legislature and whose disqualification had been notified in the President's Order. The learned Attorney-General points out that Parliament has a right to remove any legal disqualification. I am willing to concede the position that Parliament can of course cure any legislative disqualification. Article 102 of the Constitution is unambigously clear on this point. But in the maze of legal arguments and counter-arguments that have been propounded with such felecity from different sections of this House we are in grave danger of accepting the proposition that parliament because it has the power, can exercise it at any point of time. When should Parliament remove a legislative disqualification? Should it remove a legal disqualification before elections are held or should it remove a disqualification after elections are held and after the Assemblies have been constituted? This is a fundamental issue which we cannot seek to avoid or evade, and which we have to think over seriously For if we subscribe to this proposition —I am not going into the question whether a legislative enactment is retrospective or prospective—that Parliament is morally justified in removing the disqualification after the assemblies have been constituted, we would be opening the door for grab, for political corruption, and we would be sanctioning a licensed system of granting spoils of office and then curing any consequent qualifications by subsequent legislation. This is the main political objection to this type of legislation.

But the Attorney-General points out that in the United Kingdom there were numerous instances of legislative disqualifications having been cured by the British Parliament. I too claim some acquaintance and some knowledge of the constitutional history and law of the United Kingdom. My analysis of the constitutional history of the United Kingdom has revealed the fact that before offices of profit are held by members of parliament, debates take place in the House of Commons, arguments for and against are canvassed, and eventually the House of Commons votes almost unanimously to remove the legislative disqualification. The House of Commons is sovereign, but it exercises its sovereignty with wisdom and restraint. I remember during the war the Prime Minister of the United Kingdom, moved a resolution asking the House to allow Mr. Malcolm Macdonald to remain a member of the House and yet be free to accept the High-Commissionership of Canada. It was in a spirit of entreaty that he appealed to the House to waive the disqualification, and the House after a prolonged discussion taking into account the times of stress through which the country was passing, voted in favour of the Prime Minister's proposal.

But there is another argument which I would like to advance, with due respect to the Attorney-General, and it is this that in this matter British precedents and British practice are not very helpful. The Constitution of the United Kingdom is an unwritten Constitution. Parliament is the final arbiter. There are no limitations at all on the law makers. But in our Constitution there is a Chapter relating to Fundamental Rights which has to be borne in mind. I was surprised that the Attorney-General in the course of his arguments did not advert to this aspect of the question. This Bill attempts to cure the disqualification of a specified class, namely of twelve people. The question which will be asked from various public forums and possibly in the Supreme Court of this land is whether this legislative enactment should it be passed does not come within the taint of discrimination prohibited under article 14. Are we not trying to do something which is forbidden by the Constitution? Are there not instances of individuals who have been disqualified for holding similar offices of profit and thus have been prevented from contesting the elections? Are we not in effect denying equal protection of the law to all the citizens of India? Are we to pass an enactment which is likely to be agitated in the Supreme Court

and which will open the door for further litigation and controversy?

But the Attorney-General has a ready answer for every argument propounded by us on this side of the House. He suggests that although the President has passed an Order, that order is not final and that Parliament has the power, the legislative power to override the President's decision. Is there any warrant or authority for this proposition? Having read article 103, I have come to the irrefragable conclusion, that once the President has acted, the Constitution decrees that his decision is final. This particular provision making the President's decision final contains no saving clause, reserving the power to Parliament to undo what the President has done. This omission is particularly significant when we consider that the power of removing legislative disqualification has been confined expressly to the clause dealing with office of profit under article 102. This Bill therefore is *ultra vires* and repugnant to the Constitution.

Let me consider the other arguments advanced by the Attorney-General. A great play was made of the fact of the legislation relating to Part 'C' States. Once a power has been given, once a power has been exercised to constitute a legislature by Parliament, does it not follow that article 102 is straightaway attracted to it? Immediately we have decided to constitute a legislature in a Part C State, we have also decided to bring it within the ambit of the Constitution. With what shadow of constitutional justification can it be maintained that such a Part C State is outside the ambit of the Constitution, so that at every stage Parliament can pass laws which are, in effect, against the provisions of the Constitution? What authority is there for either the Attorney General or the Home Minister to point out that Parliament enjoys unlimited authority, at every stage to pass legislation? From this point of view, this Bill I repeat is illegal and *ultra vires* of the constitution.

There is another aspect which I would place before my hon. friends for their earnest consideration. Let them remember that in this particular instance the twelve members who have been disqualified are members of the Congress party.

An Hon. Member: It is not so.

Dr. Krishnaswami: My hon. friend after having made considerable research, has found one socialist out of the 12.

Dr. N. B. Khare: A chip of the same block.

Dr. Krishnaswami: That, I am not prepared to accept. I should like to point out that the majority of them—I accept my hon. friend's amendment—are members of one particular party. What happened in the Vindhya Pradesh Assembly was that a complaint was made by a Member that certain Members had incurred a legal disqualification, by accepting offices of profit. The matter was referred by the President to the Election Commission. The merits and demerits of the case were canvassed and a final recommendation was given by the Election Commission and the President then passed an Order. When all this has been done, with what face does the Home Minister come to this Parliament and suggest that we should pass a law removing the disqualification? What will be the effect on public opinion, and what value will be attached to our protestation that we believe in democracy? This is a fundamental issue which hon. Members have to ponder over deeply. I am not for the moment concerning myself with the question whether this particular measure is *ultra vires* or *intra vires* of the Constitution. Granting that it is *intra vires* of the Constitution, how does it follow that you are justified in bringing this measure before this House? Does it not really give a very bad order to the very working of our constitutional machinery and institutions, I ask this House to realise that this is a measure which effects not merely one particular party, but all parties as well. In the formative stages of democratic evolution in our country, when we are busy attempting to build up conventions, it is not right to undermine public morale and I ask this House to consider, wisely, deeply and well and reject this measure which apart from infringing the fundamental rights of our constitution is totally opposed to constitutional decencies and the proprieties of a democratic way of ordering our affairs.

Shri K. K. Basu (Diamond Harbour): We had, the other day, the unusual spectacle of the Attorney General being brought in to support a measure while the Government, themselves, by their own showing, feel to be shaky. Possibly, this is the second occasion when the Attorney-General had to address the House to justify a measure which a democratic mind has considered to be illegal and undemocratic. We know that the Attorney-General gave his stamp to the legislation, the Preventive Detention Act, 1950 and said that it was perfectly legal and constitutional and we also know that immediately thereafter, the Supreme Court invalidated the most important

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section of that particular Act, i.e. section 14.

I do not propose to go in detail into the facts of the case; the facts are too well known. Therefore, I concede that Government has accepted the position that there has been a disqualification. Our President in passing the order that he did, has acted within the bounds of constitutional propriety that is demanded of his high office. He got the advice of the Election Commission, an independent body, and acting on its advice, declared such members of the Vindhya Pradesh legislature as disqualified to be members of that body. Now, the Government proposes to undo the decision on the ground that they consider the matter as trivial. Government has also accepted the *bona fides* of the persons who are involved in this particular action.

If we analyse the legal advice that the learned Attorney General gave here, the sheet anchor of his case is that article 240 of the Constitution is the guiding article, which determines the functions of Part C States, the manner in which the legislatures of those States should work, what should be the qualifications of the Members, etc. In this connection you have also been connected with the Constitution in its preparation stage. I would like to refer to the scope of this article 240. May I for the recollection of the House read the article which says:

> "Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant Governor—

I ask the House to mark these words—

> (a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State; or
>
> (b) a Council of Advisers or Ministers...."

What can Parliament do? Parliament, under this article, could create a body as a legislature—the members may be elected or they may be nominated—or those States could have a Council of Advisers or both. The power of Parliament under this particular article is restricted to the creation of a body of legislature and nothing more. Because, as you know, Sir, unless the Legislatures are created, the Part C States will have to be guided and ruled by Parliament under special provisions. In creating such legislatures, what they can do is to lay down the powers and functions in each case as may be specified in the law. And sub-section (2) says that in doing so, it shall not be deemed to be an amendment of the Constitution for the purposes of article 368 even if it affects or abridges article 368.

Therefore, my contention is that article 240 is a very circumscribed article, limiting the powers of Parliament to the creation of a Legislature, which Parliament under the Constitution is competent to do.

If the Parliament wants to delegate its powers, it might be on the principles of delegated legislation and that is not always good law. Therefore, a specific provision has been made that in the case of Part C States, without violating the Constitutional provision without amending the Constitution, Parliament may by law create a legislature, either a nominated body or an elected body or a partly nominated or a partly elected body, and also a Council of Ministers. It may be both or it may be either. But the power under this provision is limited to this; I would like to emphasise this point.

We know that under certain schedules the functions of the Union and the States are absolutely circumscribed. We know that there are three lists—one exclusively the Union List, one exclusively the State List and one the Concurrent List. Therefore, I beg to say that under this provision Parliament is not competent to delegate to a legislature of a Part C State which, under the Constitution only Parliament can deal with, the powers under List 1 of the Schedule. It can only give power either wholly or partly in respect of what are provided in the State List and possibly some in the Concurrent List. That is why this provision is specifically made and I submit that this provision does not go farther than what is provided for under article 240. We cannot extend the power given in article 240 to give Parliament such sovereign power, irrespective of the provisions of the other article.

In this connection, the Government on the advise of the Attorney General tried to say that the President acted under section 43 of the Part C States. If it had gone further and the Act had provided that certain offices of profit should not be deemed to be disqualifications as offices of profit, I would have understood it. You know under article 102 we have a list which under the Constitution is considered to be disqualification, that is constitutional disqualification to the

Member of Parliament. So my submission is that Parliament is not competent, under article 240, to say that so far as the Part C States are concerned, the disqualification provided in article 102 has no application. Under article 102 Parliament has certain powers; they can declare by law certain offices of profit as not offices of profit. But once it is considered to be an office of profit, the Constitution lays down clearly and categorically that that should be a disqualification either for membership of Parliament or of the State legislatures. So under article 240 Parliament has not such power to delegate authority to enact legislation for the Part C States which abridges the specific provisions contained in article 102 of the Constitution.

Therefore, I submit, that I cannot, in this connection, agree with the reasoning given by the learned Attorney General that this article 240 gives wide and comprehensive powers. It has only a very restricted power and it relates only to the creation of a legislature and a Council of Ministers in two ways—either by nomination or election or partly by nomination and partly by election. And they might also say in that what should be the power of the particular legislation. Therefore, had there been under section 17 of the Government of Part C States Act such a provision which affects or abridges the provisions of article 102, I would submit that it would have been *ultra vires* of the Constitution and that part of the law would have been a bad law. Fortunately, it seems they have just adopted such a provision with the necessary changes.

Then, it is being put forward by the sponsors of this Bill that the President has acted under section 43 of the Part C States Act. Take a hypothetical case. Suppose there had been no article 43. Even then, the President is competent under article 103 of the Constitution to decide on the issue of disqualification. I again submit that the Government of Part C States Act cannot make such a provision which abridges the authority of Parliament. What they could have done in this case was, without invoking this power under article 102, to delegate the power, when the law created the legislature of the State, to the Chief Commissioner or Lieut.-Governor to act in the same manner as the Governor of a Part A State or the Rajpramukh of a Part B State would be called upon by the Constitution to act.

Mr. Deputy-Speaker: 102 relates only to Members of Parliament.

Shri K. K. Basu: My point is that in the case of the Part C States this might have been provided as in the case of Part A and Part B States, and the Chief Commissioner or Lieut.-Governor clothed with the power...

Mr. Deputy-Speaker: 102 relates to the Houses of Parliament. The hon. Member may kindly refer to it.

Shri K. K. Basu: My position is that even if section 43 had not been there, the President is competent to act in that particular manner.

The other point I wanted to emphasise was the provision so far as the Election Commission was concerned. I shall subsequently compare it with the British precedent and the British rules. Our Constitution has categorically decided certain functions of the State. They say that once any law of Parliament decides that there should be an election, the manner in which the election should be conducted should be left to the Election Commission. It is not competent even under article 240 for Parliament to say that so far as election to the legislature of a Part C State is concerned, it should not be done by the Election Commission. This should be done by officers of the Election Commission so far as the Constitution is concerned. They might very well have said that there should be nomination. There is no harm in it. There is power under Article 240. But, once they decide that there shall be election, directly or indirectly in a manner specifically mentiond, then immediately the authority of the Election Commissioner comes in. It is provided for in our Constitution. Without amending the Constitution, even the provision in Article 240 cannot give Parliament the same power to amend the Constitution so far as Part C States are concerned. Therefore, my point is that when you have accepted the position that there should be election to the Legislature of Part C States, immediately the Election Commission comes into force. By taking powers under Article 240 of the Constitution, you cannot create such provisions as abridge the provisions of our Constitution. In our Constitution we had confined nomination to two specific categories, one in the case of non-representation of the Anglo-Indian community and the other in the case of the Council of States and the State Councils on certain specific grounds. There are specific provisions in the Constitution whereby there can be cases of nominated members. Therefore even under Article 240, even in the case of Part C States it cannot be decided that the members shall be nominated because

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it may not abridge the other provisions of the Constitution; because, we have not, in our Constitution, visualised any other cases of nomination than those specifically provided for. Therefore, this power to amend the Constitution is restricted.

Then I would like to discuss the position of Part C States under the Constitution. In this connection reference has been made to the cases in British Parliament and in the Colonial Legislature of Ceylon. Unfortunately I have not got he case that was referred to by the Attorney-General. Our Constitution specifically visualises two kinds of vacations of seats. You yourself the other day drew a distinction between the two. Suppose a member is absent for more than 60 days. That does not *ipso facto* terminate his membership of the House. The Legislature is competent to condone his absence or it may say, 'we do not condone'. Then his seat is declared vacant. But, when the disqualification is declared by the President or by the Governor in the case of a State, in a particular manner provided for in the Constitution, on the advice of the Election Commissioner immediately the declaration of disqualification is made, the seat of the person so disqualified is *ipso facto* vacated and there is no alternative for that. In this connection, the British procedure is different. There the Committee decides and on the issue which is brought before for decision who may decide by resolution in the Parliament whether such and such a member may be debarred from membership or not. But, here, our Constitution makes deliberately made a distinction that in the case of absence they can condone and the seat shall not *ipso facto* be vacated but in the other case, where the disqualification is provided for in the Constitution or where the disqualification may be provided for by any law, the declaration of the incurring of the disqualification *ipso facto* renders the seat vacant. It is quite true that Parliament can legislate prospectively or retrospectively. This cannot be done when once the President's powers are invoked under Article 103 of the Constitution or the corresponding section of the Part C States Act wherein they have decided on the advice of the Election Commission that it is a disqualification, for there the seat is *ipso facto* vacated and there is no alternative. Parliament cannot condone it. Therefore in this case the distinction has to be borne in mind. Under our Constitution, the Election Commissioner has certain functions which could not be found even in the American Constitution. We have provided the Election Commissioner with the status and position which is similar to that of a Supreme Court Judge; and, even if we have subordinates like the Assistant Regional Commissioners, they are only removable on the advice of the Election Commissioner by the President. Our constitution makers deliberately created an institution to conduct our elections which should be completely independent and free from the influence of the Executive or even of the Legislature, for the time being. We can make laws so far as the manner of election is concerned, but once we say that such and such election shall be conducted in the manner laid down, it is the Election Commissioner alone who can conduct the elections. Therefore, in this case, immediately on the declaration of the disqualification, the seats are vacated and the Election Commission has to decide and issue notices for the general election. We cannot today resurrect these persons. The vacuum has already been created immediately on the declaration of the particular disqualifications.

11 A.M.

Then, the Election Commissioner holds a position which cannot be compared with that in other countries, as Great Britain or even America which has a written constitution for such long years. The Attorney-General just tried to draw a parallel between this House and the House of Commons. He also gave reference to some case law in the Dominion Legislature of Ceylon. The Dominion Legislature of Ceylon had something like the 1935 Act. Under the 1935 Act, the Governor used to act in his individual judgement. That means he could act in an arbitrary manner. But now the President or the Governor is bound under the Constitution to act in a particular manner and decide whether that disqualification has occurred or not. So, we have got to distinguish between the two, the disqualifications incurred under our Constitution and the disqualifications under the British law or Dominion law or the Canadian Constitution.

In this connection I would like to discuss one thing. I feel it will affect provisions regarding equality in the matter of exercising the right of franchise. Every one must have the right to exercise his franchise. Because of this legislation, we have a queer position. Supposing there are

two members in a Constituency. The constituency has the right to elect the two members. One member is elected and the other member in the constituency has been seated by an Act of Parliament without going through the process of election. It is quite true that at the initial stage the law can provide for certain elections and certain nominations. Therefore, I submit that it affects the very basis of the provision in Article 15 of our Constitution.

Then the question comes about retrospective legislation. I do not propose to go into detail about retrospective legislation. It is true that the Parliament is sovereign and it has the right to make laws either prospectively or restrospectively.

[SHRI PATASKAR *in the Chair.*]

It is an accepted canon of law, constitutional law, that a law can be made definitely retrospective if it is in the interests of the society. Therefore, when we are making a law to be retrospective, we must judge what are the social necessities, what are the conditions in which we want such retrospective legislation. I have considered this point. Here it is not a relationship between two persons A and B. Here the right of a person to be a member of the Legislature is completely extinguished on the declaration of the disqualification which he had incurred under the provisions of the law and the Constitution. These facts will have to be considered. On this ground, I say that this particular legislation affects and abridges the provisions of the Constitution and so it is illegal. This is so far as the legality of the provisions is concerned.

Now, I would like to deal at some length with the constitutional propriety of such a legislation. It is really unfortunate that the Attorney-General should have also supported this. I wish that the Attorney-General, as the highest law officer of our Union had been asked to send his opinion as an independent legal person. Of course, I do not say that he has no authority; but he is only trying to justify an action of the party in power.

What is the constitutional propriety of this legislation? The mover of the Bill, Dr. Katju, says that the members who incurred the disqualification and ceased to be members of the Vindhya Pradesh Assembly acted *bona fide*. It has also been said that the remuneration they received was a trivial amount, a few coppers, and as such it should not be treated as an office of profit. We should not therefore take it seriously and therefore pass this legislation removing their disqualification.

Let me now try to analyse the dangerous possibilities and potentialities of our acceptance of this proposition. We are told that they acted *bona fide*. Of course, the Attorney-General has elaborated on the constitutional propriety of this legislation. We all know how in 1950 the Preventive Detention Act was justified as a perfectly valid piece of legislation. We just went about two hundred yards from this Chamber and the highest judicial tribunal in the country decreed that it was *ultra vires* of the Constitution.

It is no use trying to justify the propriety of a piece of legislation. We have to see whether the legislation is in conformity with the spirit of the Constitution which the people have given unto themselves, as to infuse confidence in the mind of the people. The mover of the Bill tries to put the case in an over-simple manner—they acted *bona fide*, what is wrong in it. We know of several instances where on the ground that nomination papers were rejected on purely technical grounds, re-elections have been ordered. On the same analogy, even assuming or conceding for a moment that these members who have acquired a disqualification and have ceased to be members of the Assembly, have acted *bona fide*, there is no alternative but to go to the electorate. What is the harm if you go back again to the electorate and decide the issue? If we concede to this proposal, we will be parties consciously to an amendment of the Constitution, against the spirit of it. I, therefore, feel that the argument of the mover of the Bill is completely baseless.

Then I come to the question of triviality. We have established an Election Commission, an independent body which is not influenced by the executive and presided over by an officer of vast experience and standing. His position is on a par with that of a Judge of the Supreme Court. He has acted independently and has decided that these members who have incurred the disqualification have acted in a manner contrary to the provisions of the law and the Constitution. Our friends opposite are so keen on giving analogies from Britain. In Britain the principle accepted is that it is not the quantum that counts, but the quality. What we have to decide is whether by accepting an office of profit—leave alone the quantum of remuneration, it is immaterial—they have incurred a disqualification. On this the verdict of the Election Commission is clear. It is a principle that is involved. With-

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in three years after the passing of the Constitution we are asked to pass a legislative measure which deliberately and intentionally gives a go-by to some of salient provisions embodied in that super-legal document. Therefore, I feel that the constitutional propriety of this measure has not been justified.

Then again, we are asked to give retrospective effect to the removal of disqualification. I can understand a measure of retrospective effect in the interest of social justice or in the interest of the community at large. In this case Government probably feels that they might have to spend a few thousand rupees for re-election.

Shri B. S. Murthy (Eluru): They cannot get even a single seat there.

Shri K. K. Basu: I can understand the necessity for such a measure if the entire constitutional machinery of the State is collapsing, or collapsed. The disqualification of these twelve members has not made any difference. The only explanation I can think of for this measure is that you have got the majority and you want to amend even the Constitution, so that you may continue to run the Government for all time to come.

I would, perhaps, have accepted this measure, if there had been any expediency. What expediency is there? You are running the administration. You can have the elections tomorrow, if only you wish. After the last general elections, the election of several of the candidates has been held to be void. The nominations of several of our friends have been rejected on flimsy and technical grounds. Some of these make very hard cases. Do you mean to say that this Parliament should legislate removing their hardship? Here is a Constitution which embodies certain principles and lines on which the elections will be held. Those are principles which the constitution makers have deliberately put in the Constitution. It is in that context that we have to consider the constitutional propriety of this measure. I feel that this argument that it is a *bona fide* doubt and it is a trivial thing is no argument when you consider the constitutional propriety. Our Constitution is only three years old. We have adopted it and we want to work it in the manner the Constitution-makers had in mind. Parliament must not consciously act in a manner which may be against even the spirit of the Constitution, leaving aside the letter of the Constitution. I would tell the hon. Members opposite that there is no point in proceeding with this legislation. I would ask them to withdraw it. Let them go and face the electorate, if they are really for serving the people. Let them get the verdict of the electorate and if that is not done, I am afraid that when the Constitutional history comes to be written, the first three years of our Constitution would be a blot. The British thrust some kind of constitution upon us, but we have adopted, after a good deal of deliberation by the constitution-makers, a written Constitution in which we have incorporations which are not to be found even in the American Constitution. We have said that the elections in our country would be under the control and powers of a person who is completely free from the influence of the executive—a completely independent entity. Today, we are indirectly attempting to undo that independent expression of opinion which the Election Commissioner has given and which the President, with perfect constitutional propriety, has accepted. He has declared these persons as being disqualified for holding the membership of the Vindhya Pradesh Legislature. In view of this, I would ask the Mover to withdraw this Bill. Let these persons go and face the electorate. Whatever we do today should be considered in the context of posterity. Let it not be said that the first elected Parliament of India acted in a manner which went against the very basis of the Constitution and the salient features which the constitution-makers deliberately and consciously adopted. Let us not be carried away by arguments like this matter being treated as a trivial one. We have to act in a manner which will not affect the future of our nation. Let it be said of us that we have acted with perfect constitutional propriety, and in a manner which consciously goes to improve and preserve the foundations of our Constitution, which the constitution-makers, who were representatives of the people, passed after a good deal of deliberation. With this appeal, I resume my seat.

पंडित बालकृष्ण शर्मा (जिला कानपुर दक्षिण व जिला इटावा पूर्व) : सभापति महोदय, जिस समय मैं ने यह निश्चय किया कि मुझे इस विधेयक के सम्बन्ध में इस भवन के सम्मुख अपनी कुछ बातें रखनी हैं उस समय मेरे मन में नाना प्रकार की शंकायें उठीं । मैं यह जानता हूं कि मैं जिस दल में अपने आप को पाने का सौभाग्य प्राप्त कर रहा हूं .....

बाबू रामनारायण सिंह : दुर्भाग्य ।

पंडित बालकृष्ण शर्मा :.....उस दल के कदाचित बहुत से सदस्य इस विधेयक के पक्ष में हैं और मैं यह भी जानता हूं कि यदि यहां मेरे मुख से कोई ऐसी बात निकल जाय जो कि मेरे दल को रुचिकर न हो तो कदाचित् उस के लिये मुझे कुछ परिणाम भी भुगतना पड़ेगा ।

श्रीमती सुचेता कृपालानी (नई दिल्ली): सच बात कहियेगा ।

पंडित बालकृष्ण शर्मा : मैं अपनी भाभी सुचेता से केवल इतना ही कहना चाहता हूं कि मैं कभी भी किसी प्रलोभन के कारण.....

श्री नम्बियार (मयूरम्) : अंग्रेजी में बोलें ।

पंडित बालकृष्ण शर्मा : मेरा अनुमान है इतना तो आप समझ ही लेंगे । मैं ने किसी प्रलोभन के कारण अपने विचारों को दबाने में विश्वास नहीं किया है और इस कारण से उन को इस बात से आश्वस्त रहना चाहिये कि जो कुछ मेरी बुद्धि के अनुसार मुझ को दिखाई देगा उसी को मैं इस भवन के सामने रखने का प्रयत्न करूंगा ।

डा० काटजू ने कल मुझ से यों ही उपहास में पूछा कि भाई, ऐटारनी जनरल के भाषण का तुम्हारे मन पर क्या प्रभाव पड़ा ? मैं ने उन से कहा कि महानुभाव, यह मेरा दुर्भाग्य रहा है कि आप के ऐसे सन्तों का समागम मेरे जीवन में कम हुआ है। विद्वज्जनों के चरणों में बैठने का और विशेषकर विधान के विद्वज्जनों के चरणों में बैठने का अवसर मेरे जीवन में कम आया है और इस कारण से जो बहुत सी उलझी हुई बातें सुलझाव के रूप में आप मेरे सम्मुख प्रस्तुत करते हैं, कदाचित् उस को ग्रहण करने का अधिकारी मैं नहीं हूं । मैं ने समझने का प्रयत्न किया और समझने के उपरान्त इतना भी मैं समझा, ऐटारनी जनरल के भाषण के सम्बन्ध में, कि जिस विधेयक को आज हम अपने बीच में पा रहे हैं, जिस पर हम विचार कर रहे हैं वह केवल मात्र एक इस भवन के द्वारा पास किये गये दूसरे विधान का संशोधन मात्र है, इस का हमारे राष्ट्रीय शासन विधान से कोई सम्बन्ध नहीं है, इस कारण से हम इस पर विचार कर सकते हैं और इस का भविष्य और भूत सब प्रकार का रूप हम यहां पर बना सकते हैं । ऐसा रूप जो भविष्य के लिये भी और भूत काल के लिये भी स्थायी हो और प्रभावोत्पादक हो । प्रास्पेक्टिव और रिट्रास्पेक्टिव सब प्रकार की वस्तुयें हम इस में कर सकते हैं । इतना तो मैं समझा । परन्तु एक बात मेरी समझ में नहीं आई । मैं इस प्रश्न पर किंचित विधान के परे की दृष्टि से विचार करना चाहता हूं, इस भवन के सम्मुख में केवल थोड़े से शब्दों में यह विवरण रख देना चाहता हूं कि कब तो यह वस्तु राष्ट्रपति के सम्मुख आई और कितने दिन उन को इस निर्णय में लग गये । इस के पीछे क्या बात थी ? यह मैं जानना चाहता हूं । २६ अप्रैल, १९५२ को ये डिस्ट्रिक्ट ●●●इजरी कमेटीज या जिला परामर्श दात्रि समितियां बनीं और मेरे मित्र सरदार नर्मदा प्रसाद सिंह ने ३० अक्तूबर, १९५२ को राष्ट्रपति के सम्मुख यह बात रक्खी कि इस प्रकार से विन्ध्य प्रदेश में जो जिला परामर्श-दात्रि समितियां बनाई गई हैं उन के सदस्यों ने जो कि ऐसेम्बली के सदस्य हैं एक आफ़िस आफ़ प्राफ़िट, जो कि गवर्नमेंट की गिफ़्ट में है, स्वीकार कर लिया है । और इस कारण से वह विन्ध्य प्रदेश की ऐसेम्बली के सदस्य होने के उपयुक्त नहीं रहे । मुझे यह जान कर के आश्चर्य हुआ कि ३० अक्तूबर से लगा कर के अब तक राष्ट्रपति ने इस बात की

[पंडित बालकृष्ण शर्मा]

आज्ञा नहीं दे दी कि यह वस्तु-विषय एलेक्शन कमीशन के पास भेजा जाय, उसमें तीन, चार, पांच महीने का गड़बड़ झाला रहता है । इतना समय कहां चला गया ? यह मेरे मित्र का कहना है, मैं इस कथन की पुष्टि में कोई प्रमाण नहीं उपस्थित कर सकता, किन्तु सरदार नर्मदा प्रसाद का यह कथन है कि पहले पहले ला मिनिस्ट्री और स्टेट्स मिनिस्ट्री दोनों इस बात की कोशिश करती रहीं कि वे यह प्रमाणित कर दें कि यह जो पद है वह आफ़िस आफ़ प्राफ़िट है ही नहीं ।

पहले तो इस बात का प्रयत्न चला और जब कदाचित इस बात के प्रयत्न में उनको विशेष सफलता प्राप्त होती न दिखायी दी तब यह बात कही गयी कि विधान की जिस धारा के अनुसार राष्ट्रपति को इस प्रकार के मामलों में हस्तक्षेप करने का अधिकार है विधान की उस धारा के अनुसार भी राष्ट्रपति महोदय एक कांस्टीट्यूशनल हैड है, एक वैधानिक प्रमुख के रूप में कार्य करते हैं । इस कारण से जो कुछ भी सरकार की ओर से, शासन की ओर से उनके पास परामर्श जाय उसी परामर्श के अनुसार उनको काम करना चाहिए । इस प्रकार की बात हुई । और यदि ऐसी बात हुई तो यह एक चिन्तनीय बात है क्योंकि हमने अपने विधान की धारा में इस प्रकार के विषयों में जो हस्तक्षेप करने का अधिकार अपने राष्ट्रपति को दे रखा है वह उनके वैयक्तिक रूप में हमने उन्हें दे रखा है । उनके कांस्टीट्यूशनल हैड या वैधानिक प्रमुख होने के नाते हमने उनको वह अधिकार नहीं दिया है और इस कारण से यदि प्रारम्भ से ही इस प्रकार के विषयों में हमारे शासन का ऐसा मनोभाव रहा है तो मेरे मन में यह सन्देह अवश्य उत्पन्न होता है कि हमने इस प्रश्न के ऊपर मुक्त हृदय से, मुक्त दृष्टि से और तमाम झंझटों से मुक्त हो करके विचार करने का प्रयास नहीं किया । हमने इसमें गड़बड़ शुरू की और अब जब कि राष्ट्रपति ने हम को इस बात की आज्ञा दे दी है कि ये जो १२ आदमी थे वे सदस्य नहीं रहे और जब स्वयं वहां के अध्यक्ष ने, अर्थात् विन्ध्य प्रदेश की विधान सभा के अध्यक्ष ने यह कह दिया कि आप अब सदस्य नहीं रहे और जब वह १२ आदमी स्थान छोड़ कर चले आए, तब अब यह कहना कि वह १२ आदमी जिनका स्थान रिक्त हो गया है फिर से सदस्य हो सकते हैं, यह वितण्डावाद है जो बुद्धि के परे है, फिर चाहे कितना ही प्रयास मुझे कानूनी दृष्टि से यह समझाने का किया जाय कि यह बात ठीक है । वैधानिक दृष्टि से आप यह कर सकते हैं । जो कुछ हमारे और कानून बने हुए हैं उनके अनुसार भी हम यह कर सकते हैं किन्तु यह बात वास्तव में समझ में नहीं आती । एक साधारण बुद्धि की बात है । विशेष बुद्धि जो कि कानून की बुद्धि है और जो बुद्धि मेरे मित्र डाक्टर काटजू के पास है वह मेरे पास नहीं है । वह तो दूसरी बात है । किन्तु साधारण बुद्धि का थोड़ा बहुत अधिकारी मैं भी हूं । मेरी समझ में नहीं आता है, सभापति महोदय, कि जब एक आदमी जो अपने स्थान को रिक्त कर चुका है और उस रिक्त हुए स्थान को भरने के लिए उसी विन्ध्य प्रदेश के विधान में एक धारा विद्यमान है और यह उसके कांस्टीट्यूशन में है कि इलेक्शन कमिश्नर उसको भरने का प्रयास करेगा, फिर हम पार्लियामेंट में बैठ कर के उन जनों को फिर से उसी आसन पर आसीन कर दें, यह मेरी समझ में नहीं आता । वैधानिक दृष्टि से सम्भव है ऐसा उचित हो किन्तु मैं समझता हूं कि साधारण बुद्धि की दृष्टि से यह अनुचित बात है ।

बाबू रामनारायण सिंह : हियर हियर ।

श्री बी० ऐस० मूर्त्ति (एलूरु) : उसको कहते हैं त्रिशंकु का स्वर्ग ।

पंडित बालकृष्ण शर्मा : प्रश्न यह है कि ऐसे विषयों पर विचार करते समय हमें इस भवन के सदस्यों को अपना निर्णय केवल विधान या कानूनों पर आधारित करना उचित है या इसके अतिरिक्त जो इस विधान से परे वास्तविकता है उसकी ओर भी हम देखें । यदि आप देश की जनता के सामने यह प्रश्न लेकर जायें कि भाई यह १२ आदमी मर तो चुके थे और उनको जिलाने का एक मात्र मंत्र शुक्राचार्य के पास था, इस समय शुक्राचार्य हमारे इलेक्शन कमिश्नर हैं, वह डिकलेअर कर देते, वह चुनाव कराते, वह आदमी फिर खड़े होते और फिर आ जाते । उनको जीवित करने की संजीवनी बूटी केवल उनके पास थी । किन्तु स्वयं भारतीय संसद् ने अपने आपको उसका अधिकारी मान लिया और उसने उनको पुनः जीवित कर दिया । तो मैं कहूंगा कि जनता को यह बात समझ में नहीं आयगी और मैं यही समझता हूं कि हमने यह अनुचित बात की है और हमको ऐसा नहीं करना चाहिए था ।

इसके अतिरिक्त भी आप देखिये । इस प्रश्न पर विचार करते समय हमको किंचित अपनी दृष्टि को विशद करना होगा । हमें यह देखना है कि सार्वजनिक रूप में जनता के मनोभाव की क्या प्रतिक्रिया होती है, पबलिक माइंड का साइकालाजीकल रिऐक्शन क्या होता है । यह हमको देखना होगा । यदि हमने और आपने ईमानदारी से, सदाशयता पूर्वक यह प्रण किया है कि इस देश में हम जनतन्त्रात्मक शासन की स्थापना करेंगे और जनतंत्र के सिद्धान्तों को चलाते रहेंगे, यदि हम और आप अपने भीतर यह उद्वेलन अनुभव कर रहे हैं कि कदाचित समूचे एशिया भर में हमारा ही देश ऐसा है जो जनतंत्र के इस महान् प्रयोग को इस भूमि में कर रहा है, तब हमको अपने व्यवहारों में बहुत सावधानी बरतनी होगी । बहुमत के द्वारा कोई भी काम कदापि ऐसा नहीं होना चाहिए कि जिसका प्रभाव इस देश में और एशिया पर ऐसा पड़े कि बहुमत एक बार जनतंत्र के सिद्धान्त को भी पलट सकता है ।

एक माननीय सदस्य : जनतंत्र है कहां ?

पंडित बालकृष्ण शर्मा : मेरे मित्र यह बात नहीं मानते कि यहां जनतंत्र है । यह अलग बात है कि वह अल्पमत में हैं लेकिन उनका अल्पमत में यहां होना ही इस बात का प्रमाण है कि इस देश में जनतंत्र है । तो उस जनतंत्र को चलाने के लिए मेरा यह निवेदन है कि हमको कोई भी बात ऐसी नहीं करनी चाहिए कि जिससे जनता में यह बात आ जाय कि जो उसका अन्तर्हित अधिकार है जो उसका मूल अधिकार है उस पर किसी प्रकार का आघात हो रहा है । यहां पर प्रत्यक जनतंत्र के शासन का शास्त्री इस बात को मानता है कि जिस समय भी कोई स्थान कहीं भी किसी भी रूप में रिक्त हो जायगा उस स्थान का भरना एक विशेष प्रकार से होगा जिसमें कि स्थानीय जनता को भी अपनी सम्मति प्रकट करने का अवसर दिया जायेगा । यहां पर आप उस प्रथा को छीन रहे हैं और मैं चाहता हूं कि मैं निवेदन करूं कि यह एक बड़ी भयास्पद और शंकास्पद स्थिति उत्पन्न कर सकता है । जिस समय भी देश की जनता को यह विश्वास हो जायगा कि हमारा बहुमत रहते हुए भी हम शक्ति में नहीं आ सकते, क्योंकि जो शक्ति में पहले से हैं वे कोई न कोई चाल ऐसी अवश्य कर लेंगे कि हमारी बात का कोई मूल्य नहीं रहेगा, आज देश में यह विश्वास नहीं है, लेकिन जिस दिन यह विश्वास जनता को हो जायगा, तब as soon as ballot boxes fail, the bullets will come to

[पंडित बालकृष्ण शर्मा]

take their place यह मैं भय खाता हूं । जिस समय मतदान पर्कों का मूल्य कम हो जायगा उस दिन उस समय उन के स्थान में शतघ्नी का रव गूंज उठेगा । इस कारण मेरा आपसे यह निवेदन है कि आप शासन से कहिये कि इस दिन को वह हमारे सामने न आने दे । मैं इस बिल को, बहुत स्पष्टतापूर्वक आप से निवेदन करना चाहता हूं, एक निर्लज्ज विधेयक समझता हूं । यह हमारे उपयुक्त नहीं है । हमारे बहुमत के उपयुक्त नहीं है । मेरे मित्र कदाचित मेरी बात को नहीं मानेंगे किन्तु यदि मेरे शब्दों में बल होता तो मैं सब से प्रार्थना करता कि इसके विरुद्ध अपना मत देकर इसको यहां समाप्त कर दें अथवा और शासन को विवश कर दें कि वह इस बिल को उठा ले । मैं कानून का पंडित नहीं हूं इस कारण किसी प्रकार के कानूनी दांव पेच में पड़ना मैं अपने अधिकार के बाहर मानता हूं । किन्तु मैं केवल मात्र एक सार्वजनिक सेवक होने के नाते जिसने अपने जीवन के ३२ वर्ष इस प्रकार के कार्यों में लगा दिये हैं आपसे निवेदन करता हूं और इस भवन से निवेदन करता हूं कि इस भयानक विधेयक को पास करने के पहले दस बार वह सोचें क्योंकि मेरी समझ में यह विधेयक एक प्रकार से इस देश में जन सत्तात्मक प्रणाली के दफनाने का प्रथम चरण है ।

श्रीमती सुचेता कृपालानी : बिल्कुल ।

Shri C. C. Shah (Gohilwad-Sorath): The Bill which we are now considering is the first of its kind so far as we are concerned, and it is therefore important that we should clearly understand the issues underlying this Bill and the principles underlying it. I would request my hon. friends to consider this Bill above Party considerations. The speech of the last speaker showed that Party considerations should not apply to this Bill, because this Bill will be a precedent. If I were satisfied that this measure is unconstitutional or that this measure is against constitutional propriety or that the facts of this case do not justify the Parliament passing such a measure, I would not hesitate to oppose it. It will be my respectful endeavour to satisfy the House, in spite of all that my hon. friend Pandit Balkrishna Sharma has said, that this Bill is neither unconstitutional nor constitutionally improper and that the facts of the case justify that we should pass this Bill, and in passing it we shall not be violating either the letter of the law or the spirit of the Constitution, nor shall we be setting a wrong precedent. It will be my endeavour to satisfy the House, if I can, that this Bill endeavours in its own way to uphold the democratic principle and not kill it. (*Interruption*). Yes. You will say "no, no". I remember it, but I will say with all the emphasis at my command that it is so.

The Attorney-General has addressed us. Three issues arise on this Bill. The first issue is: has this Parliament constitutionally the power to pass this Bill? The second issue is: even if it has the power to do so, is it right and proper for this House to exercise that power? (*Babu Ramnarayan Singh*: No). I shall say, yes. The third issue is: if it is right and proper to do so, do the facts of the case justify that we should exercise that power? The Attorney-General has properly and rightly addressed us on the first two issues, namely whether we have the constitutional power and whether it is constitutionally proper.

Shri B. S. Murthy: And told us that the President is a stamping authority.

Shri C. C. Shah: I will answer that charge also.

Mr. Chairman: Order, order. Up till now so many speeches have been made. It is a very important measure, and both sides have been listening very patiently. Hon. Members may differ from the hon. speaker in the arguments he advances. But they may listen patiently and not interruot

Shri Nambiar: Let him speak well, Sir.

Shri C. C. Shah: The Attorney-General has addressed us on the first two points, namely, that it is constitutionally within the power of Parliament to pass such a law and that it is constitutionally proper and does not violate the spirit of the Constitution. Some of the hon. Members have taken exception that the Attorney-General should have addressed

us on the constitutional propriety of this Bill. And one hon. Member has stated that the Attorney-General was arguing a political brief. I regret that he should have used that expression. The day we being to attribute motives to the highest law officers of the Government, I think it will be an evil day for us. We may or may not agree with their opinions, but it will be up to us to uphold the dignity of that high office and not to attribute motives.

Shrimati Sucheta Kripalani: Remember that in the case of the President also.

Shri C. C. Shah: Yes. I shall also answer that.

So far as the present incumbent of this office is concerned none can but have the highest respect for him and it will be something extraordinary if any man dare say that he is arguing a political brief.

Now, I will only briefly touch the constitutional part of it. I will lay more emphasis on the second part of it namely the constitutional proprietry of it and the third part of it namely that the facts of this case justify that we should pass this Bill.

It is the constitutional propriety part of it which is in my opinion more important than anything else, because that is a wider issue. As regards the first part of it, namely of its being within the letter of the law and within the power of Parliament to enact this legislation, I have no manner of doubt in my mind, in spite of what all Members of the Opposition have said, that it is within the power of Parliament to pass such a law. Article 102 of the Constitution expressly authorises Parliament to pass such a law. I do not want to lay much stress on the fact that this Bill concerns a Part C State. Articles 101, 102 and 103 on the one side, and articles 191 and 192 of the Constitution on the other, relate to the Parliament and to Part A and Part B States. Article 102 specifies the disqualifications that can attach to a Member. Clause (3) of article 101 says that as soon as a disqualification is incurred, has seat becomes vacant. And article 102(1) (a) authorises Parliament to declare that in spite of the fact that certain offices are offices of profit they shall not be deemed to be 'offices of profit'. Exactly similar power is conferred upon the Legislatures of Part A and Part B States by articles 191 and 192.

As regards Part C States no such power is conferred upon the Legislatures of Part C States to declare that certain offices of profit shall not be deemed to be 'offices of profit'. Article 240 empowers Parliament to legislate in respect of Part C States, and clause (2) of that article expressly provides that any legislation under clause (1) shall not be deemed to be an amendment of the Constitution. Therefore, so far as Part C States are concerned, while the legislation provides what the disqualifications are and what the qualifications are, the legislature of a Part C State has no power to remove the disqualification. It is only Parliament that could remove the disqualification, acting under article 240 read with article 102(1) of the Constitution. Therefore, so far as Parliament is concerned, it can do it under article 102(1). So far as the legislatures of Part A and Part B States are concerned they can do it under article 191 and so far as Part C States are concerned Parliament can do it.

There is no manner of doubt that if Parliament can do an act prospectively, it can do it retrospectively. No lawyer can dispute that proposition.

The only argument advanced is—and that is where the name of the President is brought in—that article 103 says that the President's Order shall be final and that, therefore, we are doing something which casts a slur upon the President and that we are doing something which sets at nought the Order of the President. Now, let us clearly understand what it means. I respectfully submit there is some confusion of though:

Babu Ramnarayan Singh: In which you are.

Shri C. C. Shah: It may be you are. Article 101(3) says that when a Member incurs a disqualification his seat shall become vacant. Article 102 defines what the disqualifications are. Now, there must be some machinery to decide whether a disqualification has been incurred or not. A Member may have incurred a disqualification. It must be decided by some authority whether a disqualification has been incurred. Ordinarily speaking, on the question whether an offence is committed or not, whether a breach of contract has taken place or not, it is the courts that decide. The machinery we have provided under the Constitution to decide whether a disqualification has occurred or not is that the President shall decide it on the advice of the Election Commission. And we have provided that any decision by the President shall be final. By making it final we do not mean that Parliament cannot legislate about it. By making it final we only mean that no appeal shall lie in a court of law

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against it—nothing more, nothing less. Let us understand what the "final" means. "Final" means that the President's Order is final so far as a court of law is concerned. It cannot be challenged in a court of law. It cannot be disputed. But so far as the authority of this Parliament is concerned, it is supreme, even against the President's Order.

But there is some confusion still further. It is, in fact, not an Order of the President in that sense at all. Let us clearly understand what it is. Article 103 says that the President shall be bound to decide and give his decision according to the opinion of the Election Commission. No option is left to him. It is not that the President has exercised any discretion in coming to that conclusion. The President has not considered the matter at all. The learned Attorney-General said that the President is a stamping authority. He meant no disrespect. All that he said was that there is an obligation upon the President, under the Constitution, to accept the opinion of the Election Commission. He does not exercise his discretion. It is not an action done by the President either in his individual capacity or in the exercise of his discretion. If the President has done something in the exercise of his individual discretion or individual judgment and then Parliament sits in judgment upon it, I can understand it would be derogatory to the dignity of the President. Every decree of the courts runs in the name of the President. Every writ runs in the name of the President. Every order is issued in the name of the President. The President, as the executive head of the State is a signing authority. But that does not mean that these orders cannot be amended by us. It does not mean that those orders cannot be changed by us. Every Act of Parliament is signed by the President. Does it mean that this Parliament cannot change any Act? It is a misconception. So, the executive head of the State is entirely different from what we may call the President as a dignitory of the State. Therefore, I submit that it is not disrespectful to the President if we do something to nullify the effect of an order which he has passed on the advised of the Election Commission. For example, the Supreme Court passes a decree. It is the highest court in the land. Its decision is final. It cannot be challenged anywhere in any court of law. Yet, this Parliament has the power to pass a legislation to nullify the effect of a judgment of the Supreme Court. The House of Lords the other day passed a judgment; nine Law Lords sitting in the Admiralty case gave a unanimous decision. Parliament passed a law to nullify the effect of that. It does not mean any disrespect to their Lordships. It would be no disrespect to the Supreme Court if we pass a law to nullify the effect of a decision of that Court. Because, the court is bound to interpret the law as it stands; but the Parliament is concerned with the policy underlying that law. It may be that the law does not carry out the policy. If the letter of the law, as interpreted by the Supreme Court is contrary to the policy which Parliament wanted to lay down, it is not only, right, but it becomes the duty of the Parliament to pass legislation to override the effect of the decision. In fact, it is not any reflection. Their Lordships themselves have said in some cases that they would wish Parliament to take this into consideration and amend the law. Let us therefore shed ourselves of all these ideas of dignity of the President, dignity of the President being wounded, and so on. Nor does it mean finality in the sense that Parliament cannot touch it. I say it is also no disrespect to the Election Commission. The Election Commission is not higher than the Supreme Court. If this Parliament can pass a legislation overriding the effect of a judgment of the Supreme Court surely, this Parliament can pass a legislation overriding the opinion of the Election Commission. The Election Commission at best stands on a par with the Supreme Court; I will take it not higher than that.

Pandit Thakur Das Bhargava: Its decision has been accepted as final for the time being.

Shri C. C. Shah: That is why we have got to pass legislation. Therefore, it is to disrespect even to the Election Commission if we pass this legislation.

Now, I shall deal with the constitutional propriety; that is the more important aspect. When a seat becomes vacant in a legislature, the natural reaction is that election is the normal method of filling that seat. That was the reaction of my hon. friend Mr. Balkrishna Sharma. He thought that we were doing something extraordinary in not holding an election, and in saving that a Member who has ceased to be a Member shall be deemed to continue to be a Member. I concede this is something extraordinary. That is where the question of constitutional propriety comes in and that is where the Attorney-General

has made the position clear. Some Members have said that we are not bound by the British Parliamentary practice. When it suits them, they quote the House of Commons practice *ad nauseum*. When it does not suit them, they say the House of Commons practice does not help us. It may be their way of democratic life. I do not know. The House of Commons practice is based on a very sound principle. There is no doubt in my mind that election is the normal method of filling a vacancy, and that if we pass a law that no election shall be held, and that the Member shall be deemed to have never incurred the disqualification and shall continue to be a Member, it is something extraordinary that we do. What are the principles that apply in considering this constitutional propriety? I have seen the cases which have been cited in May's Parliamentary Practice. The principle can be stated in this way: when the disqualification incurred is only technical and is incurred unknowingly, acting in good faith, without any intention to make a profit, and in fact, no profit is made or the profit made is trivial, it may be right and proper to remove such disqualification even retrospectively.

Shri Nambiar: Why not in all cases?

Shri C. C. Shah: Every one of these elements has been explained. If he has not examined these cases, I cannot help him.

Shri Nambiar: Apply this principle to all the one hundred and one cases, not only in these cases.

An Hon. Member: If they fit in.

Shri C. C. Shah: It is not as if this Parliament has not passed such a kind of legislation before. We have got Act LXVIII of 1951 which declares certain offices which are offices of profit not to be offices of profit. Let us study the terms of that Act. It was passed on 31st October, 1951. What does sub-clause (2) of clause 1 say? It says, it shall be deemed to have come into force on the 26th day of January, 1950, that is with retrospective effect. This is not the first time that we are doing it. The Act passed on 31st October 1951 by this Parliament stated that it shall be deemed to have come into effect on 26th January 1950. What does the operative part say? It says:

> "It is hereby declared that the following offices of profit under Government shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of Parliament:—".

There were several Members of Parliament sitting in this House at that time who had incurred the disqualification. It was with a view to remove their disqualification that that Act was passed. I shall give you only one instance.

Shri U. M. Trivedi (Chittor): No finality attached to it.

Shri C. C. Shah: I shall answer that point. Your notion of finality is entirely misfounded.

The Deputy Finance Minister Mr. M. C. Shah was a Member of a Bombay Revenue tribunal and was receiving a salary. He was a Member of Parliament. He had incurred the disqualification. His seat would become vacant. Yet we made the declaration. I do not find any Member of the Opposition here then objecting to what we were doing then.

An Hon. Member: Was the seat declared vacant?

Shri C. C. Shah: No, it was not declared vacant. Let us understand the position. My hon. friend asked, was it declared vacant? We have a wrong notion as to when a seat becomes vacant. The seat becomes vacant as soon as the disqualification is incurred. It does not become vacant on the declaration of disqualification. The declaration of disqualification is only when a doubt has arisen or a question has arisen. But, the vacancy occurs the moment the disqualification is incurred. One hon. Member stated that the House of Commons practice is different. He said that a Select Committee investigates and then declares a vacancy, and the House of Commons then passes an Act before the seat becomes vacant. It is a wrong notion. In England as well as in India, there is no difference between the two. The seat becomes vacant as soon as the disqualification is incurred. Only a machinery is provided to decide in case of doubt whether the disqualification is incurred or not, and as soon as a declaration of disqualification is made, as has been made in this case by the President, it relates back to the date of the disqualification and the vacancy is deemed to have occurred when the disqualification was incurred. There is no relevancy in this point.

Now, having dealt with the constitutional propriety of it, I will deal with the facts of this case. Let us not forget them. Do the facts of this

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case justify that we should pass this legislation? What are the facts? I understand, and I agree, that legislation of this character must be rare; it cannot be frequent. Some Members have complained: 'Why only for these 12 members?' But it can be only for individuals; it cannot be general. If we have to pass a general Act declaring certain offices of profit to be not offices of profit, that we have already done. (*Interruptions*). It is only when a certain office has not been declared an office of profit but subsequently the Election Commission holds it to be an office of profit and such an Act becomes necessary; otherwise no such Act would ever become necessary. Therefore, an Act of this character can only concern individuals and can never be a general Act.

Take the English precendents. Every one of those Acts is an individual Act—for Mr. Jenkins, or Mr. Jones or Mr. so-and-so. This is for 12 members. What are the facts of this case? The Vindhya Pradesh Government created District Advisory Councils, and by its order provided that all members of the Vindhya Pradesh Assembly, all members—irrespective of the parties to which they belonged—shall be *ex officio* members of the District Advisory Council. Before taking that step, the Vindhya Pradesh Government had taken legal advice and was advised that that was not an office of profit and the members would not incur any disqualification. Surely the Vindhya Pradesh Government did not want that the entire legislature should incur a disqualification and that the entire House should become vacant. Surely they did not want it. Therefore, in good faith, having been advised that this was not an office of profit, they made all the members *ex officio* members of the District Advisory Councils. The members themselves acted in good faith. They never dreamt that this would be considered to be an office of profit. Having done that one member takes the view that this is an office of profit. He makes a representation to the President, as he is entitled to. The President, as he is bound to, refers the matter to the Election Commission. The Election Commission gives the opinion and the President is bound to pass the order that a disqualification has been incurred. I would invite the attention of hon Members to the opinion of the Election Commission. The Election Commission has come to this conclusion, as I will presently point out, most reluctantly. If it had the choice, if it had the option, it would not have come to this conclusion. But it is said—to use the words of the Election Commission's opinion—"we have no alternative but to come to the conclusion that these members have incurred a disqualification", however trivial may be the amount of profit. If you read the opinion of the Election Commission, you will find that it has done its best to eliminate out of that disqualification as many members as possible. It has eliminated the members who did not attened the meetings; it has eliminated members who were non-resident members; but it had reluctantly to come to the conclusion that as regards the resident members, a small amount of profit, a trivial amount of profit is there. Therefore it says, 'So far as we are concerned, we cannot help except to advise the President to say that this is a disqualification'. Were it left to the Commission to decide otherwise, I have no doubt that it would have decided that this should not be considered an office of profit.

Now taking it in a general way, assuming that we are passing a general law, apart from these 12 individual members, and we put into this general law a clause to the effect that membership of District Advisory Councils shall not be deemed to be an office of profit by reason of the fact that the members receive a halting allowance of Rs. 5 per day, would any Member of this House have objected that it shall not be deemed to be an office of profit and declared this to be an office of profit? It is unfortunate that in the list of offices which we had declared under Act LXVIII of 1951 we did not include this.

If you apply the principles which I have enunciated above, you will find that where a disqualification is incurred and is only technical, no moral turpitude attaches to this disqualification. None of the members knew that it would be deemed to be an office of profit. Then it is incurred unknowingly. Neither did the Government know that it is an office of profit. It is incurred in good faith; it is incurred without any intention to make a profit. In fact, no profit is made. Therefore, I say it is not only right and proper, but it is our duty to pass this legislation and remove the disqualification. I go further and say that we would be falling in our duty if we do not do that. It is not any act of those 12 members by which they have incurred a disqualification: it is not the members who

have voluntarily done that. It is the act of the Vindhya Pradesh Government which has placed them in this unfortunate position. Whose fault is that? Suppose, for example, this Parliament passes an Act inadvertently, which by some technical error disqualifies all the Members, would you penalise the Members for a disqualifiaction which has been incurred by the inadvertence of the Government and not by an act of the Member himself? I respectfully submit that whatever one may talk of democracy and the democratic way of life, it is upholding the principles of democracy when you stand by these members and allow them to continue. Because only recently the electorate has given its verdict and elected them. You cannot unseat them by an act of the Government only, and this Parliament is only doing the right thing in removing this disqualification.

12 Noon

पंडित ठाकुर दास भार्गव : चेयरमैन साहब, इस बिल के बारे में जो तकरीरें मेरे अपोज़ीशन के दोस्तों ने की हैं उनको सुनकर मैं बहुत एम्यूज़ हुआ हूं। मैं चाहता था कि वह कोई ऐसी तजवीज़ तो पेश करते, कोई ऐसी दलील तो देते कि जिसके ऊपर किसी जवाब देने की ज़रूरत होती। मुझ को वह सिर्फ़ प्लैटीट्यूड्स ही कहनी पड़ेंगी क्योंकि इस वक्त तक एक भी दलील ऐसी नहीं दी गयी है जिसका जवाब देने की ज़रूरत होती। इसमें शक नहीं है कि बड़े बड़े माकूल अल्फ़ाज़ इस्तैमाल किये गये हैं और कुछ नामाकूल अल्फ़ाज़ भी इस्तैमाल किये गये हैं और मुझे अफ़सोस है कि इस हाउस में देवता और दैत्य और इस तरह की बातें कही गयीं। मैं चाहता था कि इस मामले को हर एक आदमी बिल्कुल डिसपैशनेट तरीके से देखे। मैं ने जो अपने दोस्त बाल कृष्ण शर्मा की तक़रीर सुनी मुझे उससे बड़ा इत्मीनान हुआ। मैं चाहता हूं कि हर एक मेम्बर ख्वाह वह अपोज़ीशन का हो या कांग्रेस पार्टी का हो इस नुक्ते निगाह से इस सवाल को देखे कि जिसमें पैंशन बिल्कुल न हो।

बाबू रामनारायण सिंह : हियर हियर।

पंडित ठाकुर दास भार्गव : मैं साथ ही यह चाहता हूं कि जो लोग हियर हियर कहते हैं और जो ठेकेदार बने हुए हैं मैं इस सारे कांस्टीट्यूशन के और इस बात के ठेकेदार बने हुए हैं कि सचाई उन्हीं के साथ है, उनको खुद अपने गरेबां में मुंह डालकर देखना चाहिए और वह सुनें इत्मीनान के साथ कि वह क्या कहना चाहते हैं। वह यह समझते हैं कि उनके पास कानसेंश मौजूद है और हम सब ने कांग्रेस में शामिल होकर अपना कानसेंश बेच दिया है। मुझे याद है कि पहले एक मौके पर हमारे एटारनी जनरल तशरीफ़ लाये थे।

Shri K. K. Basu: Lent your conscience to the Whips.

Pandit Thakur Das Bhargava: My friend belongs to a party and party discipline requires him also to vote in certain matters in accordance with the party's decision. But at the same time, let him understand that at least Congress people have not sold their conscience.

हमने इस हाउस में ऐटारनी जनरल साहब के मुंह पर उनकी राय को नहीं माना। हमने रोज़ इस हाउस में उनके बख़िलाफ़ मुबाहिसा किया। मैं डाक्टर काटजू साहब की बहुत इज्ज़त करता हूं और दूसरे मिनिस्टर साहिबान की भी बहुत इज्ज़त करता हूं, लेकिन जब मौका पड़ा हमने उनको रोज़ क्रिटिसाइज़ किया और उनकी राय को नहीं माना और हम अपने ईमान और धर्म के मुताबिक हर काम करते हैं। जहां कहीं भी देश के हित का सवाल होता है और जहां भी कानसेंश का सवाल होता है हम ईमानदारी से अपना काम करते हैं। हमने जो यहां कसम खायी थी वह कांस्टीट्यूशन की तरफ़ कसम खायी थी। तो अगर यह चीज़ कांस्टीट्यूशन के खिलाफ़ है तो मैं पहला आदमी हूंगा जो इस बिल के खिलाफ़ अपनी राय दूंगा।

[पंडित ठाकुर दास भार्गव]

लेकिन आप यह कहते हैं कि आपने ही ठीक कहा है और आप समझते हैं कि आप ठेकेदार हैं सारी लियाकत के और सारे कानून के और जो आदमी इसके बखिलाफ राय देता है वह ईमानदार नहीं है । मेरी नाक़िस राय में यह बिल बिल्कुल कांस्टीट्यूशन के मुताबिक है और कांस्टीट्यूशन की पूरी इज्जत करता है । इतना ही नहीं यह हमारे प्रेसीडेंट साहब को और हमारे इलेक्शन कमिश्नर को जो अख्तियारात हैं उनकी इज्जत करता है और सबसे बढ़कर जो इस कांस्टीट्यूशन के अन्दर आखिरी चीज़ है जो इस के प्रिफ़ेस में लिखी है कि हम चाहते हैं कि इस देश में जस्टिस हो उसकी इज्जत करता है ।

जनाब वाला, कहा गया है कि यह कांस्टीट्यूशन ला के खिलाफ़ है और मुझे बसु साहब की तकरीर सुन कर बहुत ताज्जुब हुआ । वह फरमाते हैं कि दफा २४० के मुताबिक इस पार्लियामेंट को अख्तियार नहीं कि सी० स्टेट की कांस्टीट्यूशन को किसी तरह से वह तबदील कर सके ।

Shri K. K. Basu: Limited power.

पंडित ठाकुर दास भार्गव : मेरी अदब से गुजारिश है कि आप इस सारे कांस्टीट्यूशन को देखें । इसमें कानून मौजूद है कि सी० स्टेटस के कांस्टीट्यूशन में पार्लियामेंट चेंज कर सकती है । वह कांस्टीट्यूशन को क्रियेट कर सकती है और उसको कंटीन्यू कर सकती है । मैं अदब से पूछना चाहता हूं कि जो पार्लियामेंट उसके कांस्टीट्यूशन को क्रियेट कर सकती है और उसको कंटीन्यू कर सकती है क्या वह उसमें तबदीली नहीं कर सकती । यह निहायत नामाकूल चीज़ होगी अगर यह कहा जाय कि पार्लियामेंट को यह अख्तियार नहीं है । मैं पूछता हूं कि फिर किसको यह अख्तियार है या, किसी को भी, यह अख्तियार है या नहीं । हम अपने कांस्टीट्यूशन को भी ढेर दफा ३६८ तबदील कर सकते हैं तो क्या यह कहा जा सकता है कि हम सी स्टेट्स के कांस्टीट्यूशन को क्रियेट कर सकते हैं और कंटीन्यू भी कर सकते हैं । लेकिन यह पार्लियामेंट उसको तबदील करने में बिल्कुल असमर्थ है ।

एक माननीय सदस्य : आप अंग्रेज़ी में बोलिये ।

पंडित ठाकुर दास भार्गव : मुझे उन लोगों के ऊपर बड़ा अफ़सोस है जो मेरी हिन्दी को नहीं समझ सकते । वह कांस्टीट्यूशन को क्या समझेंगे । मैं सरल हिन्दी बोलता हूं । जो हिन्दी नहीं समझ सकते हैं उनको चाहिए कि वह यहां आने से पहले कहीं जाकर हिन्दी सीखें । किसी आदमी को यह कहना कि वह हिन्दी में न बोलें उससे एक ऐसी बात कहना है जो कि नेशनल नहीं कही जा सकती । इस वास्ते इस बिन्दु को छोड़ कर मैं अब (*Interruption*).....

Mr. Chairman: It is an agreed fact that any Members can address the House in Hindi or in English. My point is that supposing there are some Members who do not understand Hindi very well there are others who understand it correctly and are not able to understand English so well. So, if a Member is developing his arguments in the course of his speech and if others try again and again to raise this question then it will only disturb the proper course of the debate. Therefore, I appeal —it is not a question of argument, and I can decide it if I want to—to the Members that if a Member chooses to speak in one of these two languages in which he can speak, it is much better and much more decent that we should listen to him and not disturb him. It is unfortunate that some Members are not able to follow him but they must allow him to carry on the debate. Therefore, in the first

place, I would request that they should not interfere with that Member.

पंडित ठाकुर दास भार्गव : मैं इस बारे में बहुत अदब के साथ, मैम्बर साहबान की खिदमत में अर्ज करूंगा कि अगर मैं हिन्दी में बोलता हूं तो मैं कोई जुर्म नहीं करता हूं। मैं जिस तरह बोलता हूं उस को आप समझने की कोशिश करें। मैं यह अर्ज कर रहा था...

Shri V. G. Deshpande (Gunu): It is neither Hindi nor English, Sir.

Mr. Chairman: It is not the question; I think it is our duty to listen to him.

Shri U. M. Trivedi: May I request the hon. Member that instead of using Persian and Arabic words the *makool* and *namakool*, he can use the words *yukt* and *ayukt*.

पंडित ठाकुर दास भार्गव : It is a Hindi word. मुझे कोई ऐतराज नहीं है अपने लायक दोस्त के इस ऐतराज पर कि मुझे और सलीस हिन्दी बोलनी चाहिये। लेकिन लफ्ज माकूल और नामाकूल आज हिन्दी में हर एक चीज में लिखे जाते हैं। लेकिन मैं इस बात पर झगड़ा नहीं करता। इस वक्त फाइलालाजी का कोई इम्तिहान नहीं हो रहा है और मैं अपने इस मजमून से बाहर नहीं जाना चाहता। मैं निहायत अदब से अर्ज करूंगा कि जो कुछ मुझे कहना है उस को समझने की कोशिश की जाय।

मैं एक वाकआ इस हाउस में अर्ज करता हूं और वह वाकआ सुनने के काबिल है। एक मुकद्दमे में दो तीन आदमियों को फांसी की सजा हो गयी। हाई कोर्ट तक वह हुक्म कायम रहा। लेकिन कितने ही लोगों को मालूम था कि फिलवाकै अदालत का फैसला गलत है और वे लोग बिल्कुल बेगुनाह हैं। उन में से एक बदकिस्मत शख्स में था जिस को यह मालूम था जो जानता था कि अदालतों ने बड़ी सख्त गलती की है कि फांसी की सजा दे दी। हाई कोर्ट तक वह सजा कायम रही। हम लोगों को यह मालूम था कि एक ताकत इस देश में ऐसी है कि जो इस कानून से बालातर है, एक ताकत ऐसी है जो बेइन्साफी को इन्साफ में तबदील कर सकती है अगर उस को मालूम हो कि दर अस्ल इन्साफ दूसरी तरफ है। चुनांचे हम ने कोशिश की और जा कर हमने अपने प्रैसीडेंट साहब और जो एग्जीक्यूटिव गवर्नमेंट थी उस जमाने में वहां जा कर कोशिश की। उन को हम ने अपने हलफनामें भेजे। जिला के मैजिस्ट्रेट को और सुपरिंटेंडेंट पुलिस को जा कर बताया और उन को कहा कि इस केस में बड़ी सख्त नाइन्साफी हुई है। उन को भी यकीन हुआ। उन्होंने इस की तहकीकात की। तहकीकात करने के बाद चूंकि उस जमाने में गवर्नर जनरल साहब थे इसलिये उन गवर्नर जनरल साहब ने और हमारे देश के बड़े नेता जो उस जमाने में सप्रू साहब थे, उन्होंने इस चीज को देख कर उन लोगों की छोड़ दिया, कतई छोड़ दिया। उन को बिल्कुल एक्विट कर दिया। ऐसे केसेज एक दो नहीं हैं, सैंकड़ों केसेज हैं। मुझे अपने प्रैसीडेंट साहब के बारे में भी मालूम है कि उन्होंने एक ऐसे केस में जिस में सख्त बेइन्साफी हुई थी उस के अन्दर भी यही काम किया, उस को ठीक किया। मैं आप से कहना चाहता हूं कि जरा मुझे आ कर कोई बतलाए और कहे कि हम ने क्यों बेइन्साफी को हटने दिया, कानून क्या कहेगा, देश की अदालत क्या कहेगी। देश की अदालत ने जब फैसला दे दिया तो एग्जीक्यूटिव क्यों दखल देती है। तो मेरा जवाब यह है कि जस्टिस के अगराज में सब से बड़ी बात इन्साफ करना है, वह सब चीजों से बालातर है। अगर किसी एक शख्स के साथ भी बेइन्साफी हुई है तो हम सब का फर्ज है कि चाहे हमें कोई बुर

[पंडित ठाकुर दास भार्गव]

कहे या भला कहे, हम इन्साफ़ ही करें। मैं सिर्फ़ इसी एक बात से इस चीज़ को जज कराना चाहता हूं कि १३ आदमियों के साथ इन्साफ़ नहीं हुआ तो मैं बावजूद इस के कि मेरे दोस्त मेरी सब बातों पर नुक्ताचीनी करते हैं, मैं अदब से पूछना चाहता हूं, निहायत अदब से पूछना चाहता हूं कि आप सब साहबान की राय में क्या इस बेइन्साफ़ी को क़ायम रखना चाहिये, ख्वाह वे कांग्रेस पार्टी के हों या किसी और पार्टी के हों, मुझे इससे कोई मतलब नहीं है कि यह काले हैं या पीले हैं, मैं उन की शक्ल की तरफ़ नहीं देखना चाहता। क्या यह सारा कांस्टीट्यूशन इसी ग़रज़ के लिये नहीं है कि बेइन्साफ़ी को दूर किया जाय। क्या एक अंग्रेज़ ने, सब से बड़े जज ने, ब्लैकस्टन ने नहीं कहा है कि यह सारा प्रोसीज्योर जो कुछ है यह एक ग़रज़ के वास्ते है कि इससे इन्साफ़ किया जाय। जब एक प्रोसीज्योर इस क़िस्म का बन जाता है कि जो बेइन्साफ़ी को परपीट्रेट करने में और परपीचुएट करने में काम देता है तो ऐसे प्रोसीज्योर को फाड़ कर फेंक देना चाहिये।

इसलिये मैं इस सारी चीज़ को एक ही नुक्ते ख्याल से जज करना चाहता हूं। मुझे मालूम है कि जहां तक क़ानून का सवाल है अटार्नी जनरल साहब ने कल बहुत कुछ फरमाया। मैं ने भी उसको देखा है। मुझे कहना तो नहीं चाहिये, लेकिन मैं चैलेंज करता हूं कि कोई शख्स साबित कर दे कि कांस्टीट्यूशनली पार्लियामेंट यह अख्तियार नहीं रखती है कि इस क़ानून को पास कर दे। मेरे सामने एक ही जवाब है कि यह बिल्कुल दुरुस्त है और पार्लियामेंट को इस का पूरा अख्तियार है। बहुत से दोस्तों ने जिन्होंने बहस की है माना है कि पार्लियामेंट को इसका अख्तियार है। जिस बात का उन को उज्र है वह यह है कि आया यह कांस्टीट्यूशनली प्रापर है या नहीं। जब हमारे प्रैसीडेंट साहब ने एक बार दस्तख़त कर दिये, इलेक्शन कमीशन ने इजाज़त दे दी, उन की सब की सब सीट्स खाली हो गईं, तो फिर ऐसा क्यों करते हो, नये सिरे से मुर्दों को ज़िन्दा करते हो, हालांकि मैं बतलाऊंगा कि वह मुर्दा नहीं था। लेकिन इस बात पर ठंडे दिल से ग़ौर कीजिये और मुझे बतलाइये कि दर असल अगर यह केस बेइन्साफ़ी का है तो क्या इस पार्लियामेंट को, जिस को बेइन्साफ़ी को दूर करने का अख्तियार है, क्या उस बेइन्साफी को दूर नहीं करना चाहिये? मैं इस झगड़े में नहीं पड़ता कि क्या हुआ और क्या नहीं हुआ। मैं इसका जवाब बाद में दूंगा।

बाबू रामनारायण सिंह : एक बात आप से पूछना चाहता हूं।

पंडित ठाकुर दास भार्गव : फ़रमाइये, एक नहीं, दो।

बाबू रामनारायण सिंह : आप कहते हैं कि उन्होंने क़सूर नहीं किया। लेकिन मैं पूछता हूं कि क्या पार्लियामेंट एक दो आदमियों के लिये क़ानून बनायेगी?

पंडित ठाकुर दास भार्गव : अब आप तशरीफ़ रखिये, मैं बताता हूं। मैं अदब से अर्ज़ करना चाहता हूं कि किस का मत है कि किसी आदमी के साथ बेइन्साफ़ी हुई है उस के साथ इन्साफ न किया जाय। यह किस ने कहा? मिस्टर अन्थानी साहब बड़े जोर से बहस कर रहे थे कि इतने आदमियों के साथ इन्साफ़ हुआ और दूसरों के साथ क्यों बेइन्साफ़ी होती है। मैं कहता हूं कि कांग्रेस का एक एक मैम्बर मेरे साथ होगा और साथ देगा कि आप हम को बतलायें कि फ़लां केस में इन्साफ़ नहीं हुआ है तो उस के साथ इन्साफ़ किया

जाय । आप अगर बतलावेंगे कि किसी के साथ बेइन्साफ़ी हुई है तो हम उस को ठीक करेंगे । हम ने सन् १९४८ में एक ऐक्ट पास किया था । मैं भी उन लोगों में से था जिनके वास्ते डिसक्वालिफ़िकेशन इनकर होता था । मेरी बहन सुचेता कृपलानी पर भी वह डिसक्वालिफ़िकेशन इनकर होता था । क्यों ? इस वास्ते नहीं कि हम ने सरकार का रुपया खा लिया । हम आनरेरी ऐडवाइज़र थे । अपना वक्त खर्च कर के हम देश की सेवा करने जाते थे । गवर्नमेंट ने हम को आनरेरी एडवाइज़र्स मुकर्रर किया, गवर्नमेंट ने डिप्टी मिनिस्टर्स मुकर्रर कर दिये । उस वक्त तक कोई आफ़िस आफ़ प्राफ़िट करार नहीं दिया गया था ।

श्रीमती सुचेता कृपलानी : मैं यह कहना चाहती हूं कि रिमूवल आफ़ डिस्क्वालिफ़िकेशन ऐक्ट में रिमूवल आफ़ डिस्क्वालिफ़िकेशन किसी व्यक्ति के नाम से नहीं किया गया था । उस में कुछ पद (सर्टेन आफ़िसेज़) डिस्क्वालिफ़िकेशन के दायरे से निकाले गये थे । आप के पीछे जो लोग हैं वह लोग मिसेज़ कृपलानी के नाम से बात करते हैं, इस में मेरा अपमान होता है ।

पंडित ठाकुर दास भार्गव : मैं सुचेता कृपलानी जी का कितना मान करता हूं उन को खुद अपने दिल में इसका एहसास नहीं है । हम लोग आप की बहुत इज्जत करते हैं । सन् १९५१ में हम ने क्या किया ? हम ने किसी आदमी का नाम नहीं रक्खा । आज क्यों १२ आदमियों के नाम रक्खे गये ? क्यों 'मेम्बर्स आफ़ दि विन्ध्य प्रदेश ऐसेम्बली' नहीं रक्खा । आप नाम न रखिये, मुझे कोई एतराज़ नहीं है । इतने मेम्बर्स हैं ऐसेम्बली में पार्टी का नाम रखने की ज़रूरत क्यों पड़ी ? अच्छा यह था कि जितने मेम्बर्स उस ऐसेम्बली के हैं उन सब के वास्ते यह होता कि जो इस पोस्ट को लेगा वह डिस्क्वालिफ़ाई नहीं होगा । यह हमारा फ़र्ज़ है कि आर्टिकल १०२ के मातहत हम डिस्क्वालिफ़िकेशन को रिमूव करें, जैसे कि सन् १९५१ में हम ने किया था कि ऐसे ऐसे अश्खास जो फ़लां फ़लां पोस्ट में थे हम ने हमेशा के लिये उन की डिस्क्वालिफ़िकेशन को हटा दिया, उसी तरह से यहां भी रखना चाहिये था । लेकिन यह नाम क्यों लिखे गये ? जिस वक्त यह मामला एलेक्शन कमिशन के रूबरू आया तो उन्होंने एक नया उसूल कायम किया । उन्होंने देखा कि वह अश्खास जो कि हेड-क्वार्टर्स में नहीं थे, दूर से आते थे, उन का खर्च भी शायद पांच रुपया या उस से ज्यादा होगा, तो उन्होंने यह समझा कि दरअस्ल अगर किसी ने कुछ पैसा लिया है तो उस को डिस्क्वालिफ़ाई किया जाय और अगर किसी ने नहीं लिया है तो उस को डिस्क्वालिफ़ाई न किया जाय ।

Shri B. S. Murthy: On a point of order: are we entitled to discuss the decisions given by the Election Commission—that they have disqualified some and have not disqualified others?

पंडित ठाकुर दास भार्गव : मैंने अब तक अपने दोस्त के प्वाइन्ट आफ़ आर्डर को नहीं समझा । क्या मैं यह बतलाने के काबिल नहीं हूं कि किस आइडिया से एलेक्शन कमीशन ने किस को डिस्क्वालिफ़ाई किया और किस को नहीं किया और क्यों नहीं किया ? और क्यों यहां पर उन के नाम दर्ज हैं ?

Mr. Chairman: It is not a point of order.

पंडित ठाकुर दास भार्गव : मैं निहायत अदब से अर्ज़ करना चाहता हूं कि बहुत से आदमी ऐसे निकले जो डिस्क्वालिफ़ाई नहीं हुए । जिन को डिस्क्वालिफ़िकेशन ऐप्लाई ही नहीं हुई । सिर्फ़ वही अश्खास रह गये जिन

[पंडित ठाकुर दास भार्गव]

को डिस्क्वालिफ़िकेशन लागू हुई। इस वजह से यहां नाम देने की जरूरत पड़ी। अगर आप नाम से इतने नाराज़ हैं तो मैं अर्ज़ करना चाहता हूं कि आप इन नामों के बजाय 'मेम्बर्स आफ़ दि विंध्य प्रदेश ऐसेम्बली' कर दें। मुझे इस में कोई एतराज़ नहीं है। मैं आप को बतलाना चाहता हूं कि जिस वक्त यह सन् १९५१ का ऐक्ट बन रहा था और डा० अम्बेदकर के पास जिस वक्त ला मिनिस्ट्री का चार्ज था, मैं ने उन से कहा कि आप एक उसूली गलती कर रहे हैं। आप अगर उस जमाने की मेरी इस बिल पर दी हुई स्पीच को देखें तो आप को मालूम होगा कि मैं ने उस वक्त डा० अम्बेदकर साहब से अर्ज़ किया था कि हम नहीं चाहते कि गवर्नमेंट इन्फ़्लुएन्स में किसी ऐसेम्बली का मेम्बर आये। हम चाहते हैं कि इस हाउस या किसी और ऐसेम्बली के मेम्बर बिल्कुल ऐडमिनिस्ट्रेशन के इन्फ़्लुएन्स से अलग हों। मैं ने उस वक्त अर्ज़ किया था कि आप जो उसूल कायम कर रहे हैं वह ग़लत काम कर रहे हैं। हमारे ला मिनिस्टर ने यह उसूल उस वक्त कायम किया कि जिस आदमी को किसी कमेटी की मेम्बरी के लिये अगर ४० रुपये से कम आमदनी है या उस को जो ट्रेवेलिंग एलाऊंस मिलता है वह उस से कम होता है जो यहां पर पार्लियामेंट का मेम्बर लेता है तो वह आफ़िस आफ़ प्राफ़िट नहीं है। मने कहा कि आप की राय दुरुस्त है लेकिन अगर कानून की राय में कुछ और समझा गया तो क्या होगा इसलिये आप इस को कानून के अन्दर ला दें और केवल एडमिनिस्ट्रेशन रूल न बनावें। यहां देश में बड़ी बड़ी कमेटियां हैं, पार्लियामेंट में और दूसरे लेजिस्लेचर्स में हैं। अगर उस कमेटी की आमदनी जो हम को रोज़मर्रा मिलता है उस से कम है, या जो ट्रेवेलिंग एलाउंस हम को मिलता है उस से कम है, अगर उस को आफ़िस आफ़ प्राफ़िट न माना जाय तो फिर क्या वजह है कि विंध्य प्रदेश की ऐसेम्बली ने यह समझा कि यह आफ़िस आफ़ प्राफ़िट नहीं है और गवर्नमेंट आफ़ इंडिया यह समझे कि यह आफ़िस आफ प्राफ़िट है और वह भी तब जब कि हमारे ला मिनिस्टर साहब ने यह उसूल कायम कर दिया था। मैं ने उसी वक्त अर्ज़ किया था कि आप की एग्जिक्यूटिव रूल के मातहत जब तक यह ला नहीं बन जाता उस वक्त तक यह चीज़ काबिल पाबन्दी नहीं होगी। लेकिन उन्होंने फ़रमाया कि हम ने यह कायदा बनाया है कि कौन डिस्क्वालिफ़िकेशन इनकर कर रहा है और कौन नहीं। प्रेज़ीडेंट आखिर किस को अख्त्यार देंगे कि कौन यह देखे कि इस पर अमल होता है या नहीं। मैं कहता हूं कि उस वक्त की प्रोसीडिंग्स उठा कर देख ली जायें कि यह दुरुस्त है या नहीं। ऐसी सूरत में विंध्य प्रदेश ऐसेम्बली ने अगर ऐसे आदमियों को जो वहां के मेम्बर थ ऐडमिनिस्ट्रेशन के साथ ऐसोशिएट किया तो यह दुरुस्त काम किया या गलत किया। मैं तो कहता हूं कि यह बड़ी अक्लमन्दी का काम था। इस के लिये हमारे बाबू रामनारायण सिंह रोज़ हाउस में कहते हैं कि जो यहां के मेम्बर हैं वह जनता की सेवा करें और ऐडमिनिस्ट्रेशन का साथ दें। तब अगर हम वह करते हैं तो क्या कोई गुनाह करते हैं। हमारे मेम्बरान के लिये पांच रुपये की तन्ख्वाह रख दी गई, अगर कोई बाहर जाता है और उस को कोई ट्रेवेलिंग एलाउंस दिया जाता है तो क्या उस ने सरकार का पैसा खा लिया। आखिर इसमें उस का क्या कुसूर है कि उस को डिस्क्वालिफ़ाई कर दिया गया ?

बाबू रामनारायण सिंह : कोई कुसूर नहीं।

पंडित ठाकुर दास भार्गव : मेरे दोस्त फरमाते हैं कोई कुसूर नहीं । मैं उन के एक एक लफ्ज़ से ऐग्री करता हूं । कोई कुसूर विंध्य प्रदेश की ऐसेम्बली ने नहीं किया, कोई कुसूर इस पार्लियामेंट ने नहीं किया, कोई कुसूर प्रेज़ीडेंट साहब ने नहीं किया । उन्होंने कानून के मुताबिक अमल किया । शिकायत पहुंची तो उन्होंने उस पर एलेक्शन कमिशन से फैसला करवाया । हमारे प्रेज़िडेंट साहब ने बिल्कुल ठीक और जायज़ अमल किया मौजूदा कानून के मुताबिक । एलेक्शन कमीशन से भी मुझे कोई शिकायत नहीं, उन्होंने ठीक फैसला किया और जब तक कोई इस तरह का जनरल कानून हम ने आर्टिकल १०२ के मातहत नहीं बनाया था उन के वास्ते चारा ही क्या था ? उन्होंने बिल्कुल ठीक किया और लिख दिया कि उन लोगों को डिस्क्वालिफ़ाई किया जाय ।

लेकिन अब मैं आप से पूछता हूं, मैं उसी उसूल पर वापस आता हूं कि अगर किसी को फांसी का हुक्म हो गया और प्रेज़ीडेंट ने उस को छोड़ दिया क्योंकि वह बेगुनाह है तो उसमें क्या खराबी है ? एलेक्शन कमीशन और प्रेज़ीडेंट साहब दोनों ने ठीक किया, सब ने यही कहा है । लेकिन अगर हम बेइन्साफ़ी को नहीं हटाते तो हम गलती करेंगे । छोटे छोटे उसूलों की फ़ज़ूल चीज़ों को जो कि इस ऐक्ट के अन्दर नहीं हैं हम अहमियत देते हैं । मैं कहता हूं कि जब गवर्नमेंट आफ़ इंडिया के सामने यह सवाल आया तो गवर्नमेंट आफ़ इण्डिया ने क्या किया ? मैं गवर्नमेंट आफ़ इंडिया की भी दाद देता हूं कि उन्होंने ठीक किया । लेकिन मैं हमान्दारी के साथ उन से कहता हूं कि वह गलती करती अगर वह ऐसा बिल न लाती । उन के पास दो रास्ते थे । पेश्तर इस के कि प्रेज़ीडेंट साहब इस मामले को एलेक्शन कमीशन के पास भेजते जो कानून था उस को निहायत खूबी के साथ पहले ही इस ऐक्ट में ला देते । जिस में वह लोग डिस्क्वालिफाई ही नहीं होते । दूसरा रास्ता यह है प्रेज़ीडेंट साहब के हुक्म को भी मानते, एलेक्शन कमीशन के हुक्म को भी मानते । दोनों को सर माथे पर रख कर उस ताकत से जो कि हर एक लेजिस्लेचर और पार्लियामेंट के अन्दर मौजूद है बेइन्साफ़ी को दूर करने के लिये, उस से फ़ायदा उठा कर जैसा अभी मेरे बम्बई के लायक दोस्त श्री शाह ने फरमाया है, कि हर एक हाउस को यह ताकत है, सारी बेइन्साफ़ी को दूर करते । हम ने अपने कान्स्टिट्यूशन के दीबाचे में पहली चीज़ यह कही है कि हम इस देश के अन्दर इन्साफ करेंगे । मैं अर्ज़ करना चाहता हूं कि हम क्या करते ? क्या हम आंखें बन्द किये बैठे रहते और अपने आदमियों से कहते कि सारे विंध्य प्रदेश को चौपट होने दो । यह सब से बड़ी गलती होती । मैं अदब से अर्ज़ करना चाहता हूं कि जहां तक २४० आर्टिकल का सवाल है इस के अन्दर किसी क़िस्म की बन्दिश नहीं । हर आदमी को अख्त्यार है कि वह अपने यहां की ऐसेम्बली में जो कानून चाहे पास करायें । मैं अपने दोस्त और बुज़ुर्ग श्री बालकृष्ण शर्मा की खिदमत में अर्ज़ करना चाहता हूं जिन्होंने अपने दिल के ख्यालात का इज़हार किया कि उन का यह ख्याल दुरुस्त नहीं है कि जैसा कि मेरे एक और लायक दोस्त मूर्त्ति साहब ने कहा कि क्या प्रेज़ीडेंट को रबड़ स्टेम्प बना दिया जाय । मैं अर्ज़ करना चाहता हूं कि यह खयाल गलत है । प्रेज़ीडेंट का इस से ज्यादा सम्मान नहीं हो सकता कि प्रेज़ीडेंट के फैसले को गवर्नमट आफ़ इंडिया अपने सर पर रक्खे । मगर इस के बावजूद अगर यह दिखाई पड़े कि और कोई तरीका इन्साफ करने का नहीं सिवा इस के कि इन लोगो की मेम्बरशिप को जायज़ करार दिया जाय और उन्होंने यह फैसला किया कि हम

[पंडित ठाकुर दास भार्गव]

इस तरीके से इन्साफ दिलाते हैं जो कि पार्लियामेंट का काम करने का आम तरीका है तो यह कहना गलत है कि हम ने प्रेज़ीडेंट साहब के हुक्म को नहीं माना। फिर आखिर यह कानून कहां जायेगा ? यह इस हाउस में ही नहीं रहेगा या दूसरे हाउस में ही नहीं रहेगा। यह कानून उन्हीं प्रेज डेंट के पास जायेगा और उन के नाम व मर्ज़ी से ही यह कानून बनेगा, वरना नहीं बन सकता। मैं कहता हूं कि यह कहना गलत है कि इस तरह से प्रेज डेंट का फैसला सेट-ऐट-नाट किया जा रहा है। वह प्रेजीडेंट साहब का फैसला नहीं था। इस में तो यह है कि दफा ३ के मातहत उन को इस पर मुहर लगानी पड़ती है। वह इसलिये नहीं लगानी पड़ती कि प्रेज़ीडेंट साहब उस को चाहते हैं। हमारे कांस्टीट्यूशन की दफा १०३ के मातहत यह करार दे दिया गया कि इस बारे में जो फैसला एलेक्शन कमिशन का होगा उस को प्रेज़ीडेंट को मानना पड़ेगा।

अब एक इलेक्शन कमिश्नर के फैसले को मेरे दोस्त ज्यादा से ज्यादह यह कह सकते हैं कि वह सुप्रीम कोर्ट के जज की हैसियत रखता है। तो सुप्रीम कोर्ट के जज के फैसले को और उनके कानून को रोज हाउस रद्द करता है। वह हमें यह बतलाते हैं कि तुमने यह गलती की। हम उस को दुरुस्त कर देते हैं। वह लिख कर भेजते हैं कि इसको ठीक करो। हम ठीक करते हैं। कानून बनाने का मन्सब इस हाउस का है। उनका काम उसको इटरप्रेट करना है। अब जहां तक सवाल इन्साफ का है मैं यह अदब से पूछना चाहता हूं कि क्या यह बहस जायज़ है कि हम प्रेसीडेंट की आथारिटी को नहीं मानना चाहते या इलेक्शन कमिश्नर को ह्यूमिलियेट करना चाहते हैं। मैं निहायत अदब से अर्ज़ करना चाहता हूं कि बजाय इसके कि हाउस में यह कहा जाता कि हम ने उनके हुक्म को नहीं माना और उनको ह्यूमिलियेट किया, यह कहना चाहिए था कि पार्लियामेंट ने न सिर्फ़ उनकी आथारिटी की रिकागनाइज किया बल्कि उनके सारे इख्तियारात की इज्ज़त की। अगर सरकार इस हुक्म के पहले ही इस कानून को ले आती तो यह प्रेसीडेंट की कंटेंप्ट हो सकती थी। लेकिन सरकार ने उनके फैसले को मंजूर किया और अब हम इन्साफ करना चाहते हैं। मैं अदब से अर्ज़ करना चाहता हूं कि मैं ने अपने दोस्त कृष्णस्वामी की स्पीच सुनी जिन्होंने कांस्टीट्यूशन की दफा १४ का हवाला दिया। मैं अदब से अर्ज़ करना चाहता हूं कि ऐडवाइजरी काउंसिल्स २६ मार्च सन् १९५२ को बनी। और इससे पहले जो वाकयात हो गये वह दफा १४ को किस तरह से इफैक्ट करते हैं। हम क्या कानून बनाते हैं। हम यह कानून बना रहे हैं कि जो ऐडवाइज़री काउंसिल का मेम्बर होगा वह कानूनन डिस्क्वालिफ़ाई नहीं होगा। मैं अदब से पूछना चाहता हूं कि इसमें दफा १४ के खिलाफ क्या चीज़ है। अगर हमने यह लिखा होता कि जो कांग्रेस पार्टी के मेम्बर होंगे वे तो डिस्क्वालिफाई नहीं होंगे और बाकी सब डिस्क्वालिफाई होंगे तब तो ऐसा दफा १४ के खिलाफ होता। कानून का इतना लम्बा चौड़ा उसूल यहां पर बयान किया गया है। मैं हैरान था कि कैसे ये होशियार लोग और कानून को समझने वाले इन छोटी छोटी बातों का बतंगड़ बना कर हमारे सामने एक हौआ पेश करना चाहते हैं।

मैं ने जिस वक्त अपने दोस्त बसु साहब की तकरीर को सुना तो मैं ने देखा कि वह कितनी ऊंची उड़ान भर सकते हैं। लेकिन साथ ही मैं इस से खुश नहीं हुआ कि उन्होंने बहुत बड़े ऐलीमेंट को छोड़ दिया उन्होंने

अपनी स्पीच बड़े जोर शोर के साथ दी लेकिन दलील का उसमें कहीं भी दखल नहीं था। उन्होंने एक बड़ी अजीब दलील दी कि ला तो ठीक है लेकिन इसमें कांस्टीट्यूशनल प्रोप्राइटी नहीं है। क्योंकि पहले किसी केस में गवर्नमेंट आफ इंडिया नें एसो नहीं किया था। लेकिन यह तो कोई उसूल नहीं हो सकता कि अगर किसी वक्त एक बेगुनाह आदमी को फांसी लग गई तो आयन्दा हर एक बेगुनाह आदमी को फांसी लगा दी जाय। या अगर किसी आदमी का नुकसान हो गया और वह रिड्रेस नहीं किया गया तो उसी तरह की बेइन्साफी होती रहे। मैं अदब से अर्ज करना चाहता हूं कि यह उसूल ठीक नहीं है। हमको देखना यह है कि जो कानून हम बना रहे हैं वह ठीक है या नहीं। अगर किसी आदमी के साथ बेइन्साफी हो रही है तो हमारा फर्ज है कि हम उसको नुकसान न होने दें और उसके साथ इन्साफ करें।

मैं अदब से अर्ज करूंगा कि सारे हालात को देखते हुए मैं बिना किसी डर के यह अर्ज करना चाहता हूं कि मैं इस बिल को पूरी तरह सपोर्ट करता हूं क्योंकि मैं समझता हूं कि यह जस्ट है और बिल्कुल कांस्टीट्यूशन के मुताबिक है, और बिल्कुल कांस्टीट्यूशनल प्रोप्राइटी के मुताबिक है। लेकिन मैं यह भी कहूंगा कि अगर डाक्टर काटजू साहब यह बिल न लाते यह समझ कर कि कहीं दूसरे लोग यह न कहें कि अपनी पार्टी वालों के लिए यह किया जा रहा है और अपनी पार्टी के १२ मेम्बरों को नये सिरे से कायम किया जा रहा है तो मैं इसको उनकी कमजोरी समझता। मैं चाहता हूं कि किसी शख्स के साथ बेइन्साफी न हो। अगर कोई शख्स कांग्रेस का है तो इसी वजह से उसके साथ बेइन्साफी नहीं होनी चाहिये। मैं अदब से अर्ज करना चाहता हूं कि हमको परमेश्वर को हाजिर नाजिर समझ कर फैसला करना है। मैं समझता हूं कि इसी उसूल पर इसको जज किया जाय और जो फिजूल चीजें हैं उनका लिहाज न किया जाय।

Shri Velayudhan (Quilon *cum* Mavelikkara—Reserved—Sch. Castes): I was closely following the debate and the many points urged both by the Opposition and Congress Party Members. I must tell you frankly that I have my own views regarding this particular legislation. The Home Minister, while introducing the Bill, made certain observations. But I felt unconvinced by the arguments put forward by him in support of this Bill. The Government were particular enough even to arrange for the presence of the Attorney-General to intervene in the debate; but I submit that his arguments also were not convincing as far as the Government case presented through the Bill was concerned. At the same time, it is my firm belief that the Government is justified in bringing forward this legislation for indemnifying the twelve Members who had incurred a sort of legal or nominal disqualification. Many and varied legal points were brought forth from both sides of the House. But when there is a perversity noticed in a law. It is the responsibility of Parliament to step in and enact a suitable legislation.

Looking at the background of this legislation, we find that twelve persons have incurred disqualification without in any way being responsible for it by themselves. When that is so, it is the responsibility of this House to see that justice is done to them. It is not a question of the number involved. It is not a question of party affairs. It is a question as to whether they have incurred this disqualification of their own accord, or whether it is by accident or through ignorance.

Shri Raghavaiah (Ongole): Providential.

Shri Velayudhan: I remember, when the former Law Minister, Dr Ambedkar, spoke in the Constituent Assembly about Articles 102 and 103 of the Constitution which were being framed, with a definite purpose. The purpose was that the executive should not go against the interests of Parliamentary democracy. In my State, an instance happened. A member of the local Legislature accepted a job under the Government with payment of a thousand rupees, as Agricultural Development Officer. He continued in this post for about one year, I think. Then it was brought to the

[Shri Velayudhan]

notice of the local Legislature as well as the lay Ministertry here. The Government of India deemed it an office of profit, and therefore, that member had to resign from that post altogether. There, we all felt that the State Government had taken advantage of its position to keep him as an officer and at the same have his service as one of their topranking leaders for a political purpose. Immediately the Law Ministry intervened and said he should not continue in his dual capacity, *i.e.*, both as member of the Legislature and as Development Officer.

The question here primarily involved is whether the Executive has in any way flouted the spirit of the Constitution contained in clauses 101, 102 and 103. This is the most important point here. My humble opinion is that the Government have not flouted that spirit of the Constitution. Of course, we can bring in so many arguments. It is said that the Government was afraid of an election at the Vindhya Pradesh. I do not think that the Congress Government with a huge majority is afraid of facing an election there. The Treasury Benches can bring the same argument against the Opposition also. Are they, the Opposition Members, prepared to resign their seats and contest an election again. Therefore, that is not the matter to be argued here. The question here is whether democracy has been in any way flouted. It is not a question of legality. It is not a question for constitutional experts to consider. It is a question of convention, it is a question of Parliamentary practice. In this particular instance, there was no desire on the part of the Government to flout democracy.

The State Government have got a good majority. Even if these 12 people go out, I do not think that the Ministry is going to be thrown out. I am not concerned much about the legal position of it. I know, the Government itself have failed to bring forth this particular point. Therefore, I do not question the *bona fides* of the Government. I do not think that the Government was in any way wrong in bringing forward this legislation.

Of course, similar things have happened here too. So many people who are smiling about this, here also incurred disqualification in the Parliament. I need not mention names. Why do they not see that they themselves incurred disqualification by receiving remuneration by way of T.A. and D.A. both from Parliament (*Interruption*) and outside at the same time. I must tell frankly this is not a very serious question. It is a small question. If similar thing happens in Parliament and some of us are disqualified by the Election Commission, certainly we would try to justify our position and should try to continue in Parliament as Members of this House. But the Bill concerns certain poor M.L.As. in a State Legislature, not Members of Parliament.

Shri Nambiar: How are they poor?

Shri Velayudhan: They are of a category along with us. They cannot be discriminated from Members of Parliament. Their case should be considered on a par with us.

Shri R. N. Singh (Ghazipur Distt.—East *cum* Ballia Distt.—South West): In spite of its illegality?

Shri Velayudhan: I accept it. Illegality cannot be always justified. Take the example of the President's power. Is the President's power sacrosanct? I do not accept it. Parliament is a supreme, sovereign body. It can legislate over any subject independently. The President is only the constitutional head according to the Constitution. His decision can certainly be changed or annulled by Parliament. It has got the power. But we have to come to the question whether Parliament with a majority party in power is justified in bringing legislation like this, whether it is transgressing the characteristics of democracy or Parliamentary democracy. It may be a matter of opinion. It is my opinion that by this particular legislation no democratic principle has been transgressed so far as the democratic system of Government or Parliamentary system of Government is concerned. This is my opinion regarding this particular legislation.

Shri M. D. Joshi (Ratnagiri South): This morning debate has been a somewhat unusual experience for us. Member after Member of the Opposition came forward as champion of democracy, champion of constitutional propriety and political morality. They cited authority after authority. Mr. Frank Anthony said that we are jettisoning the supremacy of the law. They were champions of the law and they were afraid that this Government was sacrificing law to its desire to favour its own Party Members. Another hon. Member questioned the good faith of Government—hon. Member Mr. Raghavachari, I believe. Dr. Krishnaswami, the great constitutional scholar as he is, said we were discriminating between member and

member. All sorts of motives have been attributed to Government for bringing this measure which, in my humble opinion, is not only proper, but absolutely necessary. What surprised me most was, however, the adjective, or rather, the two adjectives given by two Members of two extremities. One was the adjective used by hon. Member Dr. Khare, who said that it was a *Himaqati* Bill. Objection was not taken to it, or if it was taken, it was not seriously followed, that it was an unparliamentary expression. I would not pursue this matter because of the age of the hon. Member.

"वृद्धास्ते न विचारणीय चरिता: ।"

Shri K. K. Basu: Let that be reduced by Parliamentary legislation.

Shri M. D. Joshi: But I would not pursue that line further.

Shri Nambiar: Let the experts also get some excuse like that.

Shri M. D. Joshi: What surprised me most was the expression used by hon. friend Pandit Balkrishna Sharma. It was most unfortunate. It was used in the heat of the moment, which was I suppose, the result of extreme emotion on his part. There is no other explanation possible in my humble opinion.

After the brilliant exposition given by Mr. Shah, and also the determined defence put up by Pandit Thakur Das Bhargava, not much need be said.

However, one or two points I shall try to clarify. After all, what is it that this Bill is seeking to do? What is the favouritism? Here are twelve members of the Vindhya Pradesh Legislative Assembly who have incurred a disqualification. Ten of them are Congress Members, two are Socialists. All these members of the Vindhya Pradesh Assembly were appointed members of District Advisory Councils or Committees, whatever they are, to which certain travelling allowances and daily allowances have been attached. If we look into the remarks of the Election Commission, what is it that the Members of the Opposition seek to defend? That is mentioned here in one sentence:

"Undoubtedly", says the Election Commission, "the intention is to keep the legislatures independent of the executive"—page 8 of the report.

So the anxiety of Members of Parliament should be that the members of the legislature will not be subservient to the executive.

Mr. Chairman: Shri Namdhari.

Shri Namdhari (Fazilka-Sirsa): You want English or Hindi?

Some Hon. Members: Hindi.

Some Hon. Members: English.

श्री नामधारी : सभापति जी.....

An Hon. Member: We may adjourn for a few minutes.

Mr. Chairman: I thought the hon. Member, Shri M. D. Joshi had concluded his speech.

Some Hon. Members: He is not well.

Mr. Chairman: I adjourn the House for ten minutes.

The House then adjourned for ten minutes and re-assembled at One of the Clock.

[MR. DEPUTY-SPEAKER *in the Chair*]

Mr. Deputy-Speaker: Any hon. Member who want to speak?

Shri Namdhari: I was on my legs, Sir.

Mr. Deputy-Speaker: Does the hon. Member want to continue now?

श्री नामधारी : जी हां । माननीय उपाध्यक्ष जी, मैं ने जिस वक्त शुरू में अपोजीशन के महान व्यक्ति श्री एन० सी० चटर्जी की स्पीच सुनी तो मुझे ऐसा मालूम हुआ कि जो चीज़ वह फरमा रहे हैं वह सोलहों आने यथार्थ चीज़ है । और मैंने समझा कि प्रेसीडेंट की आथारिटी को फ्लाउट किया जा रहा है । उनकी हर एक दलील इतनी मुकम्मिल थी कि हमें इस बात का फ़ख्र है कि हिन्दुस्तान में हमारे पास एक ऐसा लायक इन्सान मौजूद है । लेकिन जब मैं ने एटारनी जनरल साहब की तकरीर सुनी तो न सिर्फ उनके आरग्यूमेंट टुकड़े टुकड़े हो गये बल्कि पिसे हुए नज़र आये । और मैं ने कहा कि प्रोपेगेंडा में तो यह कम्युनिस्टों के भी बाप हैं । यह बड़े ही लायक आदमी हैं ।

मैं एक मोटी बात अर्ज़ करना चाहता हूं दलील में पीछे जाऊंगा । इस पार्लियामेंट की सारी बिल्डिंग में बिजली लगी हुई है ।

[श्री नामधारी]

अगर एक जगह फ़्यूज उड़ जाता है तो तमाम बिजली चली जाती है । अब उसका इलाज यही है कि आप उस फ़्यूज को लगा दें यह इलाज नहीं है कि सारी बिजली को फिर से लगाया जाय और उसके लिए नया कंट्रैक्ट दिया जाय । कहा जाता है कि मर गया । कोई भी नहीं मर गया । यह तो बिजली का फ़्यज उड़ा है । फ़्यूज लगाने से फिर बिजली आ जायगी । कोई झगड़ा नहीं है । हरएक बात की नीयत को देखना पड़ता है । एक आदमी कत्ल कर देता है अगर इंटेंशनल मरडर है तो उसका दफा ३०२ में चालान किया जाता है । नतीजा तो उसके काम का मौत होता है लेकिन सजा फांसी की होती है । दूसरा आदमी मोटर ऐक्सीडेंट म एक आदमी को मार देता है । नतीजा मौत होता है लेकिन सजा ६ महीने की होती है । एक तीसरा आदमी एक डाकू को गोली से मार देता है । नतीजा वहां भी मौत होता है लेकिन उसको गवर्नमेंट की तरफ से इनाम दिया जाता है और तमगे दिये जाते हैं । देखना यह चाहिए कि जो १२ आदमी विंध्य प्रदेश के मेम्बर हैं उन्होंने क्या कहीं से रिश्वत ली है या गवर्नमेंट का खजाना लूटा है । किस बात पर वह डिसमिस हुए हैं । मैं जो सारी बात समझता हूं वह तो मैं यही समझता हूं कि उन्होंने निहायत नेकनीयती से और शुद्ध भाव से पबलिक की सेवा करना मंजूर किया और इसी वजह से वह डिसमिस किये गये । तो यह जो डिस्क्वालीफिकेशन है यह अन-इंटेंशनल है और गवर्नमेंट को भी इसका पता नहीं था । ऐसी हालत में उन को सेफ़गार्ड करना गवर्नमेंट का फ़र्ज है और ऐसा न करना हिमाकत होगी । सिर्फ़ फ़्यूज लगाने की जरूरत है और बिजली आ जायगी । यह सवाल तो पैदा ही नहीं होता कि कोई मर गया है । प्रेसीडेंट साहब ने जो कुछ हुक्म दिया है वह भी ठीक है । लेकिन सोचना यह चाहिये कि क्या इस जगह प्रेसीडेंट साहब का जो आर्डर था वह इम्पैरेटिव था । मैं समझता हूं कि हमारे प्रेसीडेंट साहब इतनी काबिल हस्ती हैं कि अगर यह मामला उनके डिस्क्रीशन पर होता तो भी वे इस तरीके से फैसला न करते ।

बाकी रही अपोजीशन की बात तो उनकी बात यह है कि वह इस वास्ते यहां पर तशरीफ नहीं लाये हैं कि आपको सीधे रास्ते पर डालें । वह तो आप की हर बात को बिगाड़ेंगे यही उनका प्रोग्राम है और वह बड़े होशियार हैं । मुझे एक छोटी सी मिसाल याद आती है । एक बड़ा होशियार आदमी था । उसने बहुत पाप किये थे । वह जानता था कि मौत के वक्त फिरिश्ते मुझे पकड़ेंगे । वह किसी बड़े लायक वकील का मुन्शी था । उसने अपने मरने से पहले वसीयत की कि मुझे कीड़ों का कटा हुआ पुराना कफन दिया जाय । लिहाजा उस को उसी तरह कब्र में रखा गया । लेकिन उसके बच्चे इसका मतलब नहीं समझे । उनको सपने में इसका मतलब मालम हुआ । उसका मतलब यह था कि जिस वक्त रात को फरिश्ते उसको लेने आये और उससे पूछा कि बता तूने क्या पाप किये हैं तो उसने कहा कि म तो बहुत पुराना मरा हुआ हूं मेरा कफन भी पुराना हो गया है । तुम मुझ को धोखे में पकड़ रहे हो । अगर अपोजीशन वालों ने हमारे किसी आदमी पर असर डाल दिया है तो वह कुछ वक्त बाद हमारे पास फिर आ जायगा । दुनिया की कोई ताकत उसको हम से जुदा नहीं कर सकती । मेरा अर्ज करने का मतलब यह है कि जैसे सिविल के प्रोसीड्योर कोड में प्रिएम्पशन ऐक्ट के दफा ४ में गवर्नमेंट के नोटीफ़िकेशन से मुकदमा रुक सकता है और बाद में गवर्नमेंट के नोटिफ़िकेशन से फिर बहाल हो सकता है, वैसा ह. यह मामला है । हमारे बुजुर्ग ठाकुर दास जी ने फरमाया कि जब हमारे प्रेसीडेंट

साहब यह महसूस करते हैं कि किसी बेगुनाह को फांसी होने जा रही हो तो वह उसको छोड़ देते हैं। इसी तरह यह बिल है। इन लोगों ने नेकनीयती से काम किया था। किसी ने कोई डिसआनेस्ट काम नहीं किया। जो कुछ किया पबलिक की सेवा करने के लिये किया। इसलिए सिर्फ़ फ़्यूज़ लगाने की ज़रूरत है। सारी बिजली को फिर से लगाने की ज़रूरत नहीं है।

Shri U. M. Trivedi: I have listened with great attention to the speeches that have been made on this Bill.

Mr. Deputy-Speaker: I wanted to call Mr. Velayudhan.

Some Hon. Members: He has spoken already.

Shri U. M. Trivedi: A point has been raised by Pandit Thakur Das Bhargava. His allegation is that we have not said anything new and that what we are saying is merely a repetition of the arguments that have been going on. The point for consideration of the House is, as has been put very properly by the Attorney General, whether the Bill that we are bringing before the House is constitutionally correct or is it unconstitutional. The other point that arises before us, whether we are acting with propriety or not, is entirely without the province of his opinion, I should say. We have to examine whether we are acting constitutionally or not. Unfortunately, some heat has been generated by the fact that the Members who have been so disqualified happen to be Congress members.

Dr. Katju: Not all of them.

Shri U. M. Trivedi: I do not know; it is just possible that they are not all Congress members. I have absolutely no grouse against any one of them.

An Hon. Member: Much less have we.

Shri U. M. Trivedi: I accept this proposition that they are just members, whatever their colours may be. Yet, we have once provided that under article 240 a particular law was to be made and in that, particular principles were enunciated. In the enunciation of these principles, we reached a finality. The whole point for our consideration is this: after having reached that finality, after having reached a position that the seats have become vacant, can we now by this backdoor method, follow a particular form of election, whereby we can say that this Parliament, however competent it may be, can just put again those members into the Legislative Assembly?

I will draw the attention of the House to article 327 of the Constitution which says:

> "Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State....."

I lay emphasis on the last clause, 'either House of the Legislature of a State, including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses'. The only method, therefore, I say, is this, that wherever you find that seats have been vacated in any House, be it in an 'A' State, be it in a 'B' State or be it in a 'C' State, you have to look to this particular provision of article 327, that the method of sending members into that House can only be by this procedure and by no other procedure, not by just putting like this 'Although you are no longer members, we say that you are members'. Why then give this excuse of suggesting that those who are disqualified may just be indemnified? I say one of the weakest parts of the argument of Pandit Thakur Das Bhargava was that he wanted it to be compared with the right of prerogative to be exercised by the President, where the residuary power of exercising the right of prerogative and mercy is vested in him and he acts on the opinion of the Home Minister where such a prerogative is to be exercised. If that is to be compared with the present position, I say that the analogy given is very very unfair and very weak. I do not know how Pandit Thakur Das Bhargava, a very learned lawyer indeed, could get it that we have imposed a sort of Constitution on Vindhya Pradesh by virtue of the exercise of certain powers vested in us by the provisions of article 240. I do not know that a Constitution can be imposed by any method. He went on repeating the word 'Constitution' five times—we have given a Constitution, we have given a Constitution. Where is that Constitution? Article 240 does not give any Constitution or give any

[Shri U. M. Trivedi]

powers of imposing a Constitution to us. Article 240 only says this much:

> "Parliament may by law create or continue for any State specified in Part C of the First Schedule and administered through a Chief Commissioner or Lieutenant-Governor—
>
> (a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State;"

Whatever powers are given to us are only for the creation of or continuation of a body, whether nominated, elected, or partly nominated and partly elected.

> "(b) A Council of Advisers or Ministers, or both with such constitution, powers and functions, in each case, as may be specified in the law".

Therefore, to suggest that we gave a particular Constitution and therefore, we are powerful enough to take away and destroy that Constitution is wrong. There was no question of giving a Constitution. The fundamental principle that has to be borne by all of us in mind is that reading from article 101 to article 103—which were somehow or other embodied in the Part C States laws,—it is very clearly laid down there that when a particular disqualification is incurred, it certainly will disqualify the member from remaining a member. That is a very fundamental point.

One great thing that is to be observed is this. We have got the saying:

> *'Interest Republicai ut sit finis litium'*—i.e. "It is to the interest of the public that litigation must be ended".

It is to the interest of the public that we must set it at rest; otherwise it will go on agitating and agitating. Therefore, we have come to this principle that a certain power was given to our President; and a certain power having been given to the President, this matter was before the President and before those who could advise the President for nearly 12 or 13 months. Why was the Government not well awake then? Why only when the finality was reached, it wakes up and says 'All right. We will now set this finality at nought'. The power was there to have this declaration before the finality was reached. It is only against the finality, militating against all ordinary principles of law, that the agitation is there. It is against this only that the agitation is there. It is not because they happen to be congressmen. Let there be anybody. What we require is this; we have to keep up the prestige of our Constitution; we have to keep up our dignity.....

Mr. Deputy-Speaker: The hon. Member may continue his speech tomorrow

The House then adjourned till a Quarter Past Eight of the clock on Tuesday, the 12th May, 1953.