

Caucuses & Debatable Section
Parliamentary Section
Room 10

App. No. 25562

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LOK SABHA DEBATES

(Part II—Proceedings other than Questions and Answers)

1749

1750

LOK SABHA

Thursday, 8th December, 1955

The Lok Sabha met at Eleven of the
Clock.

[MR. SPEAKER in the Chair.]

QUESTIONS AND ANSWERS

(See Part I)

12 NOON

BUSINESS ADVISORY

COMMITTEE

THIRTIETH REPORT

The Minister of Parliamentary
Affairs (Shri Satya Narayan Sinha):
I beg to move:

"That this House agrees with
the Thirtieth Report of the Busi-
ness Advisory Committee pre-
sented to the House on the 7th
December, 1955."

Mr. Speaker: The question is:

"That this House agrees with
the Thirtieth Report of the Busi-
ness Advisory Committee pre-
sented to the House on the 7th Decem-
ber, 1955."

The motion was adopted.

CONSTITUTION (EIGHTH AMENDMENT) BILL

The Minister of Law and Minority
Affairs (Shri Biswas): I beg to move
for leave to introduce a Bill further
to amend the Constitution of India.

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Dr. Krishnaswami (Kancheepu-
ram): Sir, I rise on a point of order.

Mr. Speaker: Let me put the motion
before the House. The motion is for
leave to be granted to introduce a
Bill.

Dr. Krishnaswami: I want to raise
a point of order.

Mr. Speaker: The Bill is not yet
before the House; it has to be intro-
duced.

Shri U. M. Trivedi (Chittor): But,
we want to raise our objection before
the introduction.

Shri N. C. Chatterjee (Hooghly):
Sir, the Bill has been circulated and
we know what is the provision con-
tained in it. It is really substantially
identical....

Mr. Speaker: The hon. Member is
perfectly at liberty to point that out.
The Chair will consider that. The
Chair will consider fully whatever
the Members have to say on the dif-
ferent points. But, there is also a
technical point that unless the Bill
is before us how can I hear any points
of order on that Bill. Introduction of
a Bill is merely a formal business.
Introduction does not mean accept-
ance of the Bill by the House.

Shri N. C. Chatterjee: I am sorry,
Sir; if you kindly look at rule 321 it
says:

"A motion must not raise a
question substantially identical
with one on which the House has
given a decision in the same ses-
sion."

What I am point out is.....

Mr. Speaker: Order, order. I quite
agree. But, what is that motion? He

[Mr. Speaker]

wants leave to introduce a Bill to amend the Constitution of India. My question is: what is the amendment that he is seeking? The hon. Members know and the Chair knows.....

Shri Kamath (Hoshangabad): It is a motion for leave, Sir.

Mr. Speaker: A motion for leave to introduce a Bill is made.

Shri H. N. Mukerjee (Calcutta North-East): May I submit, Sir, that for some reason which I cannot exactly fathom the text of the Bill which is going to be introduced has already been circulated to Members—perhaps in order to intimate the contents of this fresh Bill. Usually, after the introduction is over we get copies of the Bill but on this occasion we have already got a copy of the Bill.

That is why these objections are being raised.

Mr. Speaker: Members getting individually a copy of the Bill in advance of a proposal being placed before the House is a different thing altogether. I am not denying that the Members have knowledge about the Bill. I said even the Chair has knowledge of what the hon. Minister is going to introduce. But, if we are going to follow the procedure there must be some proposition before the House and it is therefore that I said that let the Bill be introduced. I shall hear everything and then decide the point of order. After introduction of the Bill the House is in possession of what the hon. Minister is trying to introduce formally and if I come to the conclusion that the point of order raised by Members should be upheld I shall do so and the Bill will disappear. If I do not do it then the Bill will continue.

Shri N. C. Chatterjee: With great respect to you, Sir, we do not want to challenge your ruling in any way. What I am pointing out is that the hon. Law Minister moved a motion which is in contravention of rule 321 of the Rules of Procedure and Con-

duct of Business in the House of the People which says:

“A motion must not raise a question substantially identical with one on which the House has given a decision in the same session.”

What I am saying is that the hon. Minister is moving a motion for the purpose of getting leave of the House to introduce a Bill and I should like to say that, that Bill is substantially identical with a Bill on which the legislative judgment of this House has already been passed. Therefore, I submit that the motion cannot be moved and this motion itself is out of order.

Shri U. M. Trivedi: May I submit, Sir...

The Minister of Defence Organisation (Shri Tyagi): Sir, I want to make a submission.

Mr. Speaker: Let me hear one by one. Yes, Shri Trivedi.

Shri U. M. Trivedi: Sir, under rule 90 it is provided:

“If a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the member who moves and from the member who opposes the motion, may, without further debate, put the question:

It means: “as soon as leave is sought to introduce a Bill”. Then there is a proviso:

“Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon.”

That also is, before leave to introduce the Bill can be given. Therefore, my submission in this case is that by the provisions of our procedural law this is outside the compet-

ency of the House this session or outside the jurisdiction of the present session of Parliament to have a discussion on this Bill. Under the circumstances, Sir, if the Bill is introduced then there would be merely a point of order but this discussion which we are now going to have is a discussion on the opposition to the introduction of the Bill itself.

Mr. Speaker: I see the point? He may raise the point about the Bill being outside the legislative competency of the House—mark the words. As I have understood it, the point that is sought to be raised is—it is not that the Bill is outside the competence of this House—a procedural one that the Bill cannot be introduced in this Session. That is entirely a different point. It is not opposing the motion on the ground of the Bill being outside the legislative competence of the House. I hope the distinction is clear.

Shri U. M. Trivedi: That distinction is clear. What I was submitting is this. There are two stages in this. If the opposition can be made on certain other grounds that is at this stage when leave is sought for introduction of the Bill. In that case you are authorised to follow the path laid down in rule 90 in the first part. The question of the proviso only comes in when this further question is mooted that it is not within the legislative competence of this House to proceed with the Bill. That will be a different discussion. What I want to suggest is that this is the proper stage to raise this opposition. What will be the ground of opposition is a different thing.

Mr. Speaker: If the hon. Member wants to raise a point of order for opposing giving leave to introduce the Bill—and not the Bill to be more exact—he can do so. I have no objection to that. What I was suggesting was that it is better, to my mind, if the Bill is before the House. Then one can decide. At present a decision is sought merely from the title of the Bill. I believe there are other Bills also to amend the Constitution.

One has to be clear as to what specifically the amendment sought is. I am trying to be very clear on the procedural part of it as to when and at what time the objection could be raised. It is not that I am against the objection. I am prepared to hear every thing.

Shri N. C. Chatterjee: The only point on which I felt difficulty was this. If we do not urge this point at this stage it may be said that it would be too late at a later stage because under rule 321 it is laid down that if a matter is, if I may call it *res judicata*, barred by the principle of prior adjudication of this House then it is finished and it cannot be raised at all on the floor of this House. If you read rule 149(1) along with rule 321, it will be clear:

“Where any of the following motions under these rules in regard to a Bill is rejected by the House, no further motion shall be made with reference to the Bill and such Bill shall be removed from the Register of Bills pending in the House for the session:”

— One of the motions is mentioned in sub-rule (ii) which says:

“that the Bill be referred to a Select Committee;”

That means, when the Bill fails to get the requisite majority prescribed by the rules, in the legislative judgment of this House it has been rejected, and therefore the Bill is removed from the Register of Bills. It must be removed.

My point is that having regard to the clear decision of the House, the rejection by virtue of the operational rule 149 is, I submit, perfectly *intra vires* and is in conformity with the Constitution. Rule 321 indicates that this is the proper stage when we should take the point. It is for you to decide.

The Minister of Commerce and Industry and Iron and Steel (Shri T. T. Krishnamachari): If the hon Member

[Shri T. T. Krishnamachari]

wishes to oppose the Bill because he has some knowledge of the contents of the Bill, he is perfectly entitled to do so, and the first part of rule 90 will operate. The Chair will ask the Member who opposes, to make a statement and there will be a statement by the mover of the Bill, and then the House will have to take a decision. No discussion is allowed. If, on the other hand, the Bill is barred because of the rules quoted by my hon. friend opposite—rules 321 and 149—then the question is, there is time to raise the objection or the point of order. The objection or the point of order is to be raised at the consideration stage, saying that the Bill should not be taken up for consideration and that it should be rejected. Then the intricacies and the legalities connected with it cannot be expounded, because we all know and the hon. Members opposite and those here know something about it; that might be a debatable point. But, at the present moment, if I may humbly submit, the Chair is bound by the first part of rule 90. If any hon. Member objects, he can make a short statement indicating the objection and the hon. mover will have to make a statement, and the matter will have to be decided by the House. The point of order at this stage will not arise, because rule 90 is very clear on the point.

Mr. Speaker: I think I am inclined to agree with what the hon. Minister has said about the procedural part of it. I can also assure the hon. Members on the Opposition side who are keen to raise the point, that they will be perfectly at liberty to raise it at the consideration stage. It is not that because they did not raise it at the earliest opportunity, that they will be barred. But the real difficulty which I have been feeling is, what is it that we are going to consider as barred, unless the thing is before the House. As the hon. Minister has said, we know, and as I said, even the Chair knows what it is, but our individual and personal knowledge is

something different from the knowledge of the House when the measure is formally introduced in the House. Lawyers know very well the rule that the judges own knowledge of certain things cannot be taken into account unless that matter is formally before the judge and is proved. That is my difficulty. I think, instead of taking up further time over this point, we may take it up some other time and keep it open. I was suggesting this remedy—that let the formal introduction take place and the point may be argued immediately if hon. Members want. I have no objection to that.

Shri Raghavachari (Penukonda): The whole point is this. Supposing this motion for introduction is carried: then only, the House has knowledge of the Bill and the subsequent objections against acceptance must come. If once the motion for introduction is passed by the House, then there is no more objection to it. Only at the next stage the matter again comes before the House for consideration. That would mean, if we should raise the objection then, the objections which we intend to raise for the very introduction of the Bill could not come there. That stage comes only when the matter is before the House and after acceptance. You are suggesting that though it is introduced now, you will still keep it open and the objections against introduction will be considered afterwards, and then you will relate it back and say that the introduction is cancelled. That means, the House will have to do something which has already been done. Then, at a later stage, after consideration, if you agree with the objections, you are proposing that you will allow the objections to be raised and you will reconsider that has already been done, that is, the motion that is already passed. Therefore, my submission is, there is something like a right—objecting to a motion for leave to introduce the Bill. It is not that such a right is not available and that there should be no discussion. Unless the House gets cogni-

zance of this, how can an objection to the introduction of the motion itself be taken? Therefore my submission is, the point has to be considered now, and then you may give your considered ruling.

श्री अल्लगुराय शास्त्री (जिला आंचमगढ़ पूर्व व जिला बलिया पश्चिम) : मैं भी कुछ कहना चाहता हूँ। वकीलों की बातें तो आप के सामने आ गईं, मैं लेमेन्स प्वाइंट आफ व्यू (साधारण व्यक्तित्व का दृष्टिकोण) रखना चाहता हूँ। जो बात आप कह रहे हैं अगर वह मान ली जाये तो इस का मतलब यह होगा कि जब किसी बिल के इन्ट्रोडक्शन (पुरःस्थापन) के लिये लीव (अनुमति) मांगी जाती है तो वह इन्फो फॉर्मेटो ग्रान्ट (स्वतः ही मंजूर) हो ही जानी चाहिये। यह जो स्टेज (स्थिति) आती है किसी बिल के इन्ट्रोडक्शन के लिये लीव मांगने की उस स्टेज पर अगर हाउस इस मूड में नहीं है कि उस बिल को इन्ट्रोड्यूस (पुरःस्थापित) करने की आज्ञा दे तो इस हाउस को यह अधिकार होना ही चाहिये और यदि यह कहा जाये कि इस बिल के इन्ट्रोडक्शन के लिये लीव मांगने का प्रश्न उठता ही नहीं तो मैं समझता हूँ कि इस फॉर्मेट (तथ्य) को फेस (सामना) करना चाहिये। माननीय सदस्यों को भी अपने विचार रखने का अवसर देना चाहिये कि वह क्यों इन्ट्रोडक्शन का विरोध करते हैं और माननीय मंत्री को भी अपना प्वाइंट आफ व्यू (विचार) रखने देना चाहिये कि वह जिन ग्रांड्स (आधार) पर चाहते हैं कि उनको इस बिल को इन्ट्रोड्यूस करने की लीव ग्रान्ट की जाये। जो कुछ माननीय मंत्री कहें और जो कुछ सेम्बर चाहते हों उस सब पर बहस कर लेने के बाद जो उचित बात हो, अर्थात् अगर हाउस चाहता है कि लीव ग्रान्ट हो तो लीव ग्रान्ट होनी चाहिये और उस के बाद बिल इन्ट्रोड्यूस होना चाहिये। ऐसा नहीं होना चाहिये कि जब तक बिल हमारे सामने बाजाज्ता इन्ट्रोड्यूस हो कर आ न जाये तब तक रुक

किस चीज को मना करेंगे। लीव मांगी जा रही है इन्ट्रोडक्शन के लिये और हाउस उस को ग्रान्ट नहीं करना चाहता है तो क्या इस के माने हैं कि जब किसी बिल को इन्ट्रोड्यूस करने की आज्ञा मांगी जाये तो वह आज्ञा हाउस को दे ही देना चाहिये और तभी बिल सामने आ सकेगा। मैं इस को समझ नहीं सका।

The Minister of Legal Affairs (Shri Pataskar): May I explain the position? Under rule 90, "if a motion for leave to introduce a Bill is opposed, the Speaker, after permitting, if he thinks fit, a brief explanatory statement from the Member who moves and from the Member who opposes the motion, may, without further debate, put the question". That is part (1). The proviso says:

"where the motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon".

But certainly it is not claimed that the Bill is outside the legislative competence of the House. What is claimed is probably something different.

Shri N. C. Chatterjee: May I point out one thing? I am not arguing the point that the Bill is inherently *ultra vires* of the Constitution. That is not my point. But I am pointing out that under the rules, there is a definite embargo put upon the reconsideration in the same session of the same matter which has been subject to the legislative judgment of Parliament. What I am pointing out is this: it is based on rule 321 and also on the precedents from other Parliaments which more or less have got similar or identical provisions. What I am pointing out is, supposing we allow this motion to go through, would it still be open to us to urge the point at the consideration stage?

Bill

Shri T. T. Krishnamachari: The words used by the hon. Member—"reconsideration" of the matter—actually gives the point away. It is only at the consideration stage that you can urge that the matter should not be considered.

Shri Gadgil (Poona Central): Since Rule 90 provides that the House can oppose a motion, it presumably means that the House must know what it has to oppose. If a statement about the objects is required under your direction from the hon. Member, then the House is in possession of the substance of the Bill. As soon as that is the property of the House, other sections are relevant and if these objections are to be raised at a later stage, it is much better that they are raised now and discussed.

Mr. Speaker: I do not think I will take up time over this point. It is really of a very minor significance as compared to the other point. Personally, I want to know and hear fully on points of merits, namely, as to whether this Bill is barred under Rule 321 or under any other Rule of Procedure. That is the principal point. I have been thinking that that point can be taken up even after introduction. The present question is that the leave of the House is asked for to introduce a Bill. The Bill comes in; it is not that the House is committed to the principle of the Bill. It is not that because the Minister has brought the Bill, therefore it is within the legal competence of this House or the mere fact of leave being granted to introduce the Bill bars any hon. Member to raise the other point, namely, that the Bill cannot be taken in this session. The two are entirely distinct points to my mind. But instead of spending any more time, as we are practically running against time so far as this session is concerned, I am prepared to hear at this stage. That would be, to my mind, somewhat incongruous, as the Bill is not before the House. That is my difficulty. That is why I have

been suggesting let leave be granted; let the Bill be before the House and the point may be urged. I am prepared to hear the objections here and now.

Shri Kamath: I want a clarification. Will it be done only at the consideration stage then?

Mr. Speaker: I can hear the objections immediately, at any time. I don't think I must wait till the consideration period, because hon. Members must have an opportunity of expressing themselves fully, and the Chair also should have an opportunity of studying what the Members say and coming to a considered conclusion.

Sardar Hukam Singh (Kapurthala-Bhatinda): The House should not consider anything unless there is a motion in that respect. When leave is granted, the Bill is introduced. Then, if you want to consider anything in respect of that Bill, there must be some motion which should come either from some other hon. Member or from the Treasury Benches. Otherwise, I find it difficult to understand how we can take it up.

Mr. Speaker: The hon. Member will see that so far as the procedure is concerned, the question is on the grant of leave, whatever the Bill may be. Introduction does not require a vote of this House. The hon. Minister or the hon. Member has only to get up and say "I introduce the Bill" and the Bill is before the House. This point can be raised, even if there is any difficulty of procedure which the hon. Member has in mind, by unanimous agreement of all concerned. I shall hear the points immediately. I have no objection to that.

Sardar Hukam Singh: It would be a different thing for the House to give its unanimous agreement; but certainly there would be that technical difficulty so far as our rules at present are concerned, because no subject can be considered and no

discussion can take place unless there is some motion before the House.

Mr. Speaker: The Bill is before the House and I think the rules are intended for the purposes of facilitating transaction of Business of the House. We may consider the question of changing the rules, if necessary, rather than throttling the business before the House. I am taking that view.

Shri H. N. Mukerjee: We are asked to give leave to the hon. Minister to introduce the Bill. I am not concerned with the merits of the matter; but, rightly or wrongly, a question has been raised about the introducability of this Bill under Rule 321, because it is said that it is substantially identical with the Bill which ought to have been taken off the register of Bills. The question has been raised; we are asked to say "Aye" or "No" to the question whether we should give leave to introduce the Bill. If the rules allow, you may tell us that you are postponing your decision on this issue, but we cannot be asked to give leave to the hon. Minister to introduce the Bill, unless you tell us that he is within his rights for asking leave of the House to introduce the Bill. That is the difficulty which disturbs us. I am not concerned with the merits, but I want you to give a ruling on this point.

Shri Kamath: In Rule 321, the word "motion" is used. After the Bill is introduced, what will be the motion on which we can raise the point of order?

Mr. Speaker: If hon. Members are agreeable, they might argue on a subsequent day when the hon. Minister makes a motion. Or, the hon. Minister may make a motion immediately that the Bill be taken into consideration. Let there be argument over that point as early as possible.

Dr. Krishnaswami: Our objection is to the introduction.

Mr. Speaker: I need not argue this point any further or take more time. The statement is very clear that it is

opposed on the ground that this Bill cannot be introduced in this session. That is the long and short of it. Why it cannot be introduced is another question. I should like to hear the hon. Minister and then put the motion.

Shri Biswas: I take it that under your ruling I am called upon to make a brief statement under the first part of Rule 90; it will then be open to my friend or friends who oppose this motion to state their reasons briefly and the question will then be put by you to the House. Copies of this Bill had been circulated; that is correct. It will appear from the Bill which has been circulated that this is not identical with the other Bill nor does raise questions identical with any which had been raised by the other Bill the consideration motion of which the Deputy Speaker was pleased to declare as "not carried", not that the Bill was "rejected". If you allow me to refer to the provisions of the Bill which is now being introduced, you will see a marked departure from the previous Bill. As a matter of fact, it adds two important provisions, namely that a Bill for the formation of new States or altering the boundaries of States, etc., shall be introduced in either House only after the President has recommended it and secondly, after the President has made a reference to the legislatures of the States concerned for expressing their views, but the Bill does not stop there. Besides stating that the views must be expressed within such period as may be specified in the reference, we have added a few more words of great importance: "or within such further period as the President may allow and the period so specified or allowed has expired." These words were not there before. Under the provisions of the other Bill, it was open to the Government to introduce the Bill even without waiting for the views of the State legislatures, though it is very improbable that the Government should have adopted such a course. Now, it is clearly stated, not

[Shri Biswas]

only must the Government wait till the views are expressed within the time allowed but the President may also extend the time for the expression of views and where the time has been extended, Government must wait till the extended period has expired. These are two important provisos and I submit for your consideration and for the consideration of the House that these two additions represent a vital difference from the old Bill. Therefore, it does not raise an identical question as contemplated in rule 321.

Mr. Speaker: Now, it appears that the debate is taking a turn of discussing this question on merits.

Dr. Krishnaswami: Not on merits.

Mr. Speaker: On merits means merits of the question as to whether the Bill is barred. It is something different from what I was saying. But, instead of taking time, I may say without committing myself or the Chair that the procedure is a proper one, when we are racing against time, let that point be heard at present in the course of opposition to the motion for leave. I shall reserve my decision on that point. But, if I reserve the decision, the question of leave is necessarily to be postponed because the ground urged will be, opposition to the leave motion. I consider, especially because of shortness of time, that both the leave motion and the subsequent motions in respect of the Bill should be discussed on the same day, so that, if I come to the conclusion, after hearing, that the objection is not valid, the House may proceed to grant leave, immediately introduction takes place and, immediately consideration stage and the further stages are gone through. I think that would be the most equitable course.

Some Hon. Members: Yes.

Mr. Speaker: I hear, therefore, these objections on the understanding that all the further processes will take place on the same day provided I do not agree with the opposition view.

Shri Kamath: Time alone will show.

Dr. Krishnaswami: Under Rule 321, it is laid down that a motion must not raise a question substantially identical with one on which the House has given a decision in the same session. A Bill on this very same subject was introduced and leave was granted. The question is whether the House having given a decision on the motion for leave to introduce a Bill, substantially the same as the present one, this motion is barred under Rule 321. Is this Bill substantially identical with the previous Bill? I submit that it is. The only material change that has been made in this Bill is the addition of the words: "or within such further period as the President may allow and the period so specified or allowed has expired". The addition of these words makes no difference at all to the substance of the Bill. What is now sought to be inserted is implicit in the provisions of the Bill. Even in the original Bill, the Seventh Amendment Bill, the power to specify the period by the President carried with it the power to vary it, to extend it and to alter the date. This is so under section 21 of the General Clauses Act which I shall read to the House. Section 21 reads as follows:

"Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

Under this very section 21 it was held that the power to fix a date for election must be taken to include the power to postpone any date so fixed. The leading cases on this point are A.I.R. 1927, 70 Calcutta, 704 (Bhuban Mohan Basak V. Chairman, Dacca, Municipality) and A.I.R. 1937 Calcutta 718 (Subodh Chandra V. Gnanendra Nath). From our point of

view, the General Clauses Act has been made under article 367 (1) to apply to the interpretation of the Constitution. I should like to read the relevant article.

[Mr. DEPUTY-SPEAKER in the Chair]

Article 367 (1) reads as follows:

"Unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under article 372, apply for the interpretation of this Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India."

Therefore, I submit that this is within the scope even of the original Bill. I say that it was implicit for the President to extend the period if he so chose.

Now, I pass on to the other words. The words "the period so specified or allowed has expired" are totally redundant, especially as the proviso in the original Bill makes it clear that no Bill can be introduced without obtaining the views of the legislatures concerned expressed within the period specified. The Seventh Amendment Bill itself contains all these things materially. What has been done by the Government is to unsuccessfully dress up the same old Bill and present it in tattered rags to this legislature saying that it is an entirely different thing. It is not a different thing. It is substantially the same thing. Therefore, since it is substantially the same as the previous one, no motion can be made during the current session for leave to introduce this Bill.

I am not going into the merits of this Bill, because, at this stage, it is not necessary for me to go into that. But, I am interested in defending the democratic procedure of this House which it is absolutely important that we should defend. Rightly or wrongly that Bill did not have the requisite majority and therefore it was not carried. The attempt which was

made by the Law Minister to distinguish between a Constitutional Amendment and an ordinary motion does not hold water. I think he suggested that Rule 169 which applies to a Constitutional Amendment Bill reads completely different from what applies to ordinary Bills. Rule 169 reads as follows:

"if the motion in respect of such Bill is that—

- (i) it be taken into consideration, or
- (ii) it be referred to a Select Committee of the House, or
- (iii) it be referred to a Joint Committee of both the Houses with the Concurrence of the Council, or
- (iv) it be circulated for the purpose of eliciting opinion thereon, or

then the motion shall be deemed to have been carried if it is passed by a majority"

[MR. SPEAKER in the Chair]

In contrast it was said in Rule 149 the word 'rejected' is used. I do not think there is my material difference in not using the word 'rejected' in Rule 169 is *in pari materia* with the language of rule 149 and shows and requires that at the various stages of the Bill before it is finally passed, the special majority provision operates. The only difference is that while in rule 149 the expression "rejected" is used, in rule 169 the expression "deemed to have been carried" is used. If the intention is that where it is not carried under rule 169, a procedure different from rule 149 should apply, it should have been clearly stated that a motion not being carried is different from a motion rejected, and therefore the same consequences which arise under rule 149 will not arise under rule 169. But there is no saving clause or reservation under rule 169. In the absence of an express reservation to that effect, it would be illogical and anomalous to hold that a motion not carried is a motion not rejected. Therefore, the procedure under rule 149 applies to rule 169.

[Dr. Krishnaswami]

Besides, if the Government had felt this was the correct interpretation, they need not have tried to make a very great distinction between this Bill and the previous Bill and show that this is substantially different from what was previously introduced.

I therefore submit that this motion is totally out of order and that the Bill cannot be taken up during the current session of Parliament.

Shri Kamath: I will very briefly submit at the very outset that the difference between the Seventh and the Eighth Bills is not a different between seven and eight, but only the difference between seventh and **सातवां**. That is the only difference.

The only difference, the House will note, is the addition of the last bit to the second clause: "or within such further period as the President may allow and the period so specified or allowed has expired." The first part of this change, if change it can be called, in the wording has been dealt with by my hon. friend Dr. Krishnaswami. The second part, the Minister may contend, is really a substantial difference.

On this point—you were not in the Chair at that time—there was a rather heated argument in the House on the 30th November when the Bill was first sought to be referred to Select Committee, and arguments and counter-arguments were heard by the Deputy-Speaker. He himself gave his valuable opinion and guidance to the House, and after that the Minister of law gave his view of the matter. From the official record I shall read out the relevant portion of that debate:

"Mr. Deputy-Speaker: I have heard both sides. I want a clarification from the hon. Law Minister. With the full knowledge of what he proposes under this Bill let it go to the Select Committee.

All that he said is that the intention of the Government is to ask the States to express an opinion with one hand through the President,.....

—this is the Reporters' copy, it may be incorrect—

".....and introduce the Bill with the other hand here before the opinions are received. Or will the Bill be introduced only after the opinions of the States are received so that the Bill might be shaped in accordance with the opinions of the States? Until that time, no Bill will be introduced. Is that the object of the Bill?"

That was a very pertinent and profound question put by the Deputy-Speaker to the Minister, and here is the reply. The Minister disposed of the matter completely once and for all.

"Shri Biswas: Unless the time given by the President in the reference expires, nothing will be done. That is in the Bill itself and I have repeated it several times.

Mr. Deputy-Speaker: The hon. Law Minister is so reasonable and so sweet now and there is no misunderstanding now. Has the hon. Law Minister to say anything more?

Shri Biswas: If my hon. friend only refers to the Statement of Objects and Reasons, he will find that this matter has been put in as clearly as the English language can make it. That is all that I have to say."

So, after having heard this, I do not think any reasonable Member, and of course certainly not you, can hold that this Eighth Bill is different in any way from the Seventh, that these two are not identical at all, not substantially identical. I believe the word

"substantially" has been deliberately introduced in the rule, because identical might mean one thing while "substantially identically" might mean a slightly different thing.

The Minister himself has told the House so clearly that that is the object of the Bill. He has said that the object has been put in the Statement of Objects and Reasons as clearly as the English language can make it. The Minister said:

"Unless the time given by the President in the reference expires, nothing will be done. That is in the Bill itself and I have repeated it several times."

And what does the Eighth Bill say? "within such further period as the President may allow". About that, Dr. Krishnaswami has said that the authority that gives time can as well extend the time. That is a minor thing. The second part is: "and the period so specified or allowed has expired". And the Minister's authoritative view is that it is as clear as the English language can make it—and the Bill is in English. The Deputy-Speaker said after that, that he was very reasonable and very sweet, and after that the motion was put to the House.

I do not think on this point there can be any two opinions that the Eighth Bill is substantially identical with the Seventh.

I would only anticipate one other charge that might be levelled against us, that our contention today is in the nature of a dilatory process. I submit in all humility that it is not so. You will be pleased to note that if we had wanted to adopt dilatory tactics with regard to this matter, which is vital for the expeditious disposal of the S.R.C. Report, if we on this side of the House wanted today it, we could have opposed the Bill on the last occasion. Barring, I suppose, two here, all of us voted for the reference motion.

Shri U. M. Trivedi: The two were not on this side.

Shri Kamath: On any side; it does not matter. Only two against out of 248; 256 voted for it. The charge cannot therefore be levelled by any reasonable person. (*Interruption*).

Mr. Speaker: The hon. Member may address only the Chair.

Shri Kamath: I am addressing him through you.

I would therefore, submit that the motion fell through that day not because the Opposition wanted to obstruct or delay the proceedings, but because some hon. Members, colleagues of mine here, though present in Delhi and present perhaps in the premises of the House, as the later proceedings showed, did not care to take part in the proceedings of the debate. That is why the motion fell through. I am all for expedition in this matter, but I am equally concerned, if not more, with the rights and privileges of the House and a proper Parliamentary democratic procedure to be adopted in this House in accordance with the Rules of Procedure and Conduct of Business that the House has adopted. And I am all against creating a dangerous precedent for the future, a very bad precedent for the future. I would, therefore, submit that this Bill being substantially identical with the Constitution (Seventh Amendment) Bill has no legs to stand upon and cannot be introduced in this House. If it is not the difference between 'seven' and 'saat', it is at the most the difference between Tweedledum and Tweedledee as the English phrase goes. In either case, it is substantially identical, and the motion for introduction falls through and must be rejected by the House.

Shri N. C. Chatterjee: The issue on which your judgment is invited is whether the Constitution (Eighth Amendment) Bill is substantially identical with the Constitution (Seventh

[Shri N. C. Chatterjee]

Amendment) Bill on which Parliament has delivered its judgment. If I may read to you from one of the well-known treatises on statute law by Craies (4th edition)....

Shri C. K. Nair (Outer Delhi): On a point of order. Are these points of order only a monopoly of the lawyers, or are people of commonsense, and laymen also allowed to express their views?

Mr. Speaker: It is the monopoly of none. Lawyers and non-lawyers can argue. But lawyers can spin better perhaps than non-lawyers. Of course, it is expected that everyone will have some proportions and also commonsense.

Shri Kamath: I am not a lawyer.

Mr. Speaker: I may state one thing. I saw a number of Members getting up for advancing arguments. I think it is necessary that the same argument should be repeated substantially, though the wording may be different. I have heard two of the eminent Members of the Opposition. I am hearing Shri N. C. Chatterjee now. I shall hear one or two on this side, and then I shall hear the hon. Law Minister; and there, the matter will end.

Shri U. M. Trivedi: I wanted to make one submission....

Mr. Speaker: He can make it later on.

Shri U. M. Trivedi: The point is this. With reference to what....

Mr. Speaker: Not now.

Shri N. C. Chatterjee: I wanted to invite the attention of the House to some observations of a well-known writer on statute law, Mr. Craies, who is recognised as the authority. He is saying at page 74 of *A Treatise on Statute Law* (the latest edition):

"As Abbott, C. J., said in *Fox V. Bishop of Chester* (a), it is a 'well-known principle of law that

the provisions of an Act of Parliament shall not be evaded by shift or contrivance';"

I am submitting that the same principle should be operative in the case of a rule of procedure which is enacted by the Speaker or by the House. Further Mr. Craies says:

"...as Lord Coleridge said in *Wright V. Davies* (b), if a contract is 'framed so as entirely to defeat the object of an Act of Parliament' such a contract, 'though not within its express prohibition', might very well be held to be impliedly forbidden by it. We accordingly find that a Court of law will not tolerate such an evasion of an Act of Parliament as amounts to a positive 'fraud upon the Act'...."

What I am submitting to you with great respect is that what the hon. Law Minister is going to do, is to commit a positive fraud upon the Rules of Procedure of this House.

"...such an evasion being, Lord Eldon described it in *Fox V. Bishop of Chester* (c), 'a fraud on the law or an insult to an Act of Parliament'".

What the hon. Minister is doing is really not intentional, but really it is a fraud upon the statute. It is an insult to the person who has framed the rules.

"The expression 'a fraud upon an Act' is used with reference to a transaction 'which' as Lord Coleridge said in *Ramsden V. Lupton* (d), 'no Court would give effect to, because it had no legal foundation from the beginning...."

Now, let us test it. What was the Constitution (Seventh Amendment) Bill?

[MR. DEPUTY-SPEAKER in the Chair]

You may remember the language of section 11 of the Civil Procedure Code. What principle are we invoking there? What is the principle behind this rule? The principle is as old as was enacted in the 17th century, and since

them enforced by all parliaments and by all courts of law. That is, you have got to get the adjudication of a forum, may be a tribunal or may be the Parliament. Once that adjudication is made, that is final. If you are defeated, you are defeated, and you cannot trouble the Parliament as the forum again and say that you will bring it up in the same session. I am reading now from May's *Parliamentary Practice* (14th edition). At page 554, this is what we find:

"When a Bill has been brought into the House and rejected, another Bill of the same argument and matter may not be renewed and begun again in the same House in the same session where the former Bill was begun".

Kindly see the language, namely 'the same argument and the same matter'. Is there any possible doubt that this Bill is of the same argument and the same matter?

Now, what is the language of our rule? Our rule says that if it is substantially identical, then it must be rejected. Now, what is the meaning of the expression 'substantially identical'? You may remember our well-known definition of *res judicata* in section 11 of the Civil Procedure Code. If a matter concerns directly and substantially an issue which has already been adjudicated upon, then there is a positive bar upon every court to consider that matter again. 'Directly and substantially an issue' does not mean 'absolutely identical', for then it can be got round by simply drafting a plaint and saying, there is a little change here or there. You have to look to the substance of it.

I have been looking into the dictionaries, and I find that 'substantially identical' means—I am quoting from the *Oxford Dictionary*—

"essentially agreeing in material construction or properties or equalities or meaning."

So, the meaning of the expression 'substantially identical' is that in es-

sence, it is the same thing or material.....

Mr. Deputy-Speaker: What is 'essence'? After all, in the English dictionary, where one expression is sought to be explained by other expressions, we must stop at some fundamental expression. I cannot go on asking what is the meaning of each expression. If you say 'substantially' we generally understand it.

Shri N. C. Chatterjee: The very fact that the word 'substantially' is used shows....

Mr. Deputy-Speaker: Not 'identical', but 'substantial'. A word or two words need not be there. That is what possibly the hon. Member says. I do not know yet.

Shri N. C. Chatterjee: What I am pointing out is this. The word 'substantially' is there in very well-known statutes, for instance, in section 11 of the Civil Procedure Code, which deals with *res judicata*. And we know that it will be a mere fraud on section 11, if you say that you have changed the sequence or the reliefs have been altered, and therefore you must have another adjudication from a court of law.

Now, the question is this. In material particulars, is it to the same thing? Or it is materially the same thing with regard to qualities or meanings? Let us now look at the Constitution (Seventh Amendment) Bill and the Constitution (Eighth Amendment) Bill. The operative provision in the Constitution (Seventh Amendment) Bill read as follows:

"Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President, and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views within such period as may be specified in the reference."

[Shri N. C. Chatterjee]

Look at the quality. Look at the substance of the matter. Substantially what does it may? It says three things. Firstly, a Bill which comes within the scope of article 3 of the Constitution shall not be introduced unless three conditions are satisfied, namely (i) President's recommendation, (ii) reference to a State in case of alteration of name, boundary or area, and (iii) fixation or prescribing of some time for the expression of views. What I am pointing out is that essentially that is the provision. Now, look at the Constitution (Eighth Amendment) Bill. It is exactly the same. The President's recommendation is essential. Then, there is reference to a State in case of alteration of name, boundary or area. Formerly, it was 'names', but here it is only 'name', but I take it that the hon. Law Minister will not say that it is different on that score. Thirdly, the fixation of a time-limit is also there. So, I would like to point out that in the Constitution (Eighth Amendment) Bill, they have simply added the following words at the end.

"or within such further period as the President may allow and the period so specified or allowed expired".

1 P.M.

You may remember—you were in the Chair—that Shri Kamath just now read out that portion of the very clear enunciation of the meaning and object and intent of his amendment by the hon. Law Minister. He said, it is there. It means that. You said in your very reasonable and very sweet way, it is there; we need not discuss it. After such a sweet and reasonable interpretation put upon this clause, I submit that this is simply making it bitter and unreasonable, just putting in these words. But the words are already there. As you know, Dr. Krishna-swami read out to section 21 of the General Clauses Act, and the General Clauses Act is applicable for interpretation of the Constitution. Under

Section 21, he has given two quotations. I need not multiply authorities. It is perfectly clear that if you give power to anybody to issue a notification fixing time, he has got the power to extend the time. That is nothing new. Therefore, this power is already there. Therefore, by trying to put in these words, you are not adding anything; substantially, you are repeating that thing. Therefore, I submit it is not only substantially identical, but it is identical. According to the interpretation by the Law Minister, on his own handiwork, he has made it perfectly clear.

Mr. Deputy-Speaker: According to rule 321, a motion must not raise a question substantially identical with one on which the House has given a decision in the same session. Here, it cannot be said that there is any rejection. We have not reached that stage. What is the previous decision on account of which this is barred? Now, we are on the introduction stage.

Shri N. C. Chatterjee: The Seventh Amendment Bill has received the legislative judgment of this House and has been rejected.

Mr. Deputy-Speaker: The hon. Member will kindly see that the motion must not raise a question. Here the motion is for leave to introduce the Bill. Then it must relate to a question substantially identical with one on which the House has come to decision in the same session.

Shri N. C. Chatterjee: Taking that the Seventh and the Eighth Amendment Bills are identical or substantially identical, now, in this very session, a motion was moved by the hon. Law Minister, that leave be given to him to introduce it, and that was passed. Therefore, you cannot have the same Bill again. You cannot stand up and say, I again move for leave to introduce a Bill which is substantially identical. Therefore, rule 321 bars that. We are taking exception to his moving it.

Mr. Deputy-Speaker: Decision does not apply to an adverse decision.

Shri N. C. Chatterjee: Even if that is granted, he cannot stand up, or another Minister cannot stand up, and say: 'I do not like that Bill. I will just move the Ninth Amendment Bill'. Or another Member of this House cannot say: 'I will move the Eleventh Amendment Bill'. What I am saying is that he has got that power. Secondly—I am saying it not merely on technicality—if you look at rule 149, you find that we have carefully prescribed the procedure with regard to a situation which has happened.

"Where any of the following motions under these rule in regard to a Bill is rejected by the House, no further motion shall be made with reference to the Bill and such Bill shall be removed from the Register of Bills pending in the House for the session".

Mr. Deputy-Speaker: When a Bill is rejected. This is a new Bill.

Shri N. C. Chatterjee: What I am pointing out is....

Mr. Deputy-Speaker: Apart from the question of rejection—that is a different matter for consideration—rule 149 only refers to a motion for Select Committee. Assuming the motion is rejected, then it shall be taken away from the Register and no other motion—whether for Select Committee or for anything else—shall be made with respect to that Bill because it is no longer in the Register of Bills. But this is a new Bill.

Shri N. C. Chatterjee: That means that that Bill is dead.

Mr. Deputy-Speaker: That Bill is dead. This Bill is alive.

Shri N. C. Chatterjee: What I am pointing out is that you cannot procreate another Bill during the same session. The combined effect of rules 149 and 321 is this: that he cannot resurrect the same Bill which has been killed by the legislative judgment of this House in the same session.

Babu Ramnarayan Singh (Hazari-bagh West): Hear, hear.

Shri Pataskar: Let him proceed. I will reply to it.

Mr. Deputy-Speaker: 'Hear, hear' is a non-lawyer argument.

Shri N. C. Chatterjee: I read *Craies* for the purpose of showing to you that it is only question of really trying to evade the real purport, the real object, the real intent of the rules by contrivances, by shifts, by some kind of device to frustrate the object. What is the object? The plain, clear object is this.

Mr. Deputy-Speaker: Why should not this rule have said that not only will it be removed from the Register but no further motion shall be made to it either with respect to the Bill or any other Bill on the same, substantial subject?

Shri N. C. Chatterjee: Rule 321 is there. Unless you get leave to introduce, you cannot go on....

Mr. Deputy-Speaker: The main objection of the hon. Member seems to be under rule 321.

Shri N. C. Chatterjee: Yes, I am submitting for the consideration of the hon. Speaker—he is not here; you are the Speaker for the time being—

Mr. Deputy-Speaker: For the time being.

Shri N. C. Chatterjee: It is substantially identical.

Mr. Deputy-Speaker: It applies to the Speaker also.

Shri N. C. Chatterjee: In order to find out whether you are really circumventing the statute or the rules, you have got to understand and appreciate the object of the statute. The intent of the rule-making authority was that it is *res judicate* for the particular session and it shall be precluded from being placed before the House again for the purpose of receiving the adjudication of the House. That being a clear embargo, a fetter, that cannot be evaded by this kind of contrivance of just putting in something which is already there, which was implicit. I read to you that portion of the judgment in a celebrated case. I ought to tell you that in the Darbangha case, the Zamindari Abolition Act was struck down as

[Shri N. C. Chatterjee]

illegal by the Patna High Court. It came before the Supreme Court and the Supreme Court struck down two sections of Bihar Land Reforms Act because it was a fraud on the statute. The Court held that it was really a contrivance to which the Bihar legislature resorted. What they did was this: they could not take away compensation. They simply said: 'We will assume that the zamindar was under the obligation to provide irrigation and certain other amenities'. Therefore, for that imaginary irrigation, they deducted something from the compensation payable. The Supreme Court said, 'No; this kind of fraud, this kind of device, this kind of shift, this kind of contrivance cannot be tolerated'. They quoted this particular passage from Craies' *Statute Law* and said even if a thing tended remotely to defeat the object of statute, though not within the express prohibition, still it may well be held to be impliedly forbidden by it and the court will not tolerate such an evasion. I am submitting that Parliament should in no way be inferior to a court of law and should not tolerate any such evasion or device.

Several Hon. Members rose—

Mr. Deputy-Speaker: I will call upon a non-lawyer.

Shri C. K. Nair: I am not going to make a long speech like a lawyer. I would like to appeal to commonsense—of course, if there is any place in the law books for commonsense. Otherwise, there are many big jurists sitting here. There will be no value for their arguments.

The point is this. Now, I am afraid that this august assembly is being to a reduced to a debating society by these arguments.

Several Hon. Members: No, no.

Mr. Deputy-Speaker: Order, order.

An Hon. Member: Withdraw it.

Mr. Deputy-Speaker: He does not want to do it; he does not want it to

be turned into a debating society. There is no good making aspersions. I wanted to know what exactly was the attitude of a non-lawyer Member to this. He has also to vote; otherwise, I would not have called upon him to speak. Essentially, this is a matter of interpretation of the rules of law. If a particular person is a chemist and is here as a Member of the House and something relating to chemistry comes up for discussion, even though other people may say, 'No, no, it is not chemistry; it is food', even though it may be poison, we cannot say it. Therefore, it is a question of law. All the legal talents are here. We have got the Law Ministers, both of them here. Why should not the Commerce Minister take this up instead of it being taken up by the Law Minister? Therefore, it is a question of law. There is no good making aspersions like that, that we are turning the House into a debating society. If he has anything to contribute regarding this argument so as to enable the hon. Speaker to come to a conclusion, he may say so. Other remarks are out of place.

Shri C. K. Nair: It has been said 2,000 years ago that the letter of the law killeth. That is what is happening here today, in this House. We all know how the amending Bill was lost. It was a sheer chance not more than 2 voting against and every one of us knows in his conscience that that was only a chance and for that we are raising a hue and cry. After 2,000 years even we have not evolved that much spirit even to understand the spirit of the law and the spirit of the word. But, we are being killed here by words, words and words. When quotations from law books have been exhausted, even dictionaries are being quoted. How long can we stand this sort of interpretation of law wasting the time of the nation. I wonder.

Several Hon. Members: No, no.

Shri C. K. Nair: We are here in the interest of the nation to discuss

Bill

problems about our country but we are wasting time in hair-splitting arguments. That is what I deplore and I sit aghast here hearing such arguments. It may be put an end to.

Shri U. M. Trivedi: Sir, I am raising a point of order.

Mr. Deputy-Speaker: I may give him a chance after the hon. Minister answers. It is not going to conclude the debate. The hon. Minister might intervene if he wants to do so and if, according to him, he can set at rest this argument.

Shri U. M. Trivedi: I will have a different argument, if you will kindly.....

Mr. Deputy-Speaker: I will allow him afterwards.

Shri Bhagwat Jha Azad (Purnea cum Santal Parganas): The Speaker has said that he has heard two Members from the Opposition and after hearing a third Member he will call a Member from this side.

Mr. Deputy-Speaker: After hearing the hon. Minister, if any hon. Member wants to be heard, I will call him.

Shri Pataskar: The matter has been unnecessarily made or has probably become a little complicated. What happened was that there was a Bill to amend article 3 of the Constitution, called the Constitution (Seventh Amendment) Bill. That was introduced in the House on the 28th of November, 1955. Then, subsequently, a motion was made that the Bill be referred to a Select Committee. At that stage, that motion required a particular kind of majority in order that it may be carried. And, the motion did not get that majority. But it has to be noted that even on that occasion, I think, 246 voted for and 2 voted against.

According to the rules which you have framed, under rule 169 the motion in respect of such a Bill—in this case, it was that the Bill be referred to a Select Committee of the House—shall be deemed to have been carried if it is passed by a majority
447 LSD.

of the total membership of the House and by a majority of not less than two-thirds of the members present and voting. You, Sir, then declared that the motion was not carried.

Under rule 149, when such a motion is rejected, by the House, no further motion shall be made with reference to the Bill and such Bill shall be removed from the Register of Bills pending in the House for the session. Under Rule 149, as a matter of fact, when such a motion is rejected—I do not know whether it can be called rejected—the only consequence is that the Bill shall be removed from the Register of Bills pending in the House for the session.

Firstly, my submission is that the motion to refer to a Select Committee cannot be said to have been rejected at all. What happened was you declared that it was not carried. And, in order to import the idea of a fraud on the Rules you have to add something to what was declared. According to these rules there is clearly a distinction. What happened was that the motion was not carried. Can we say with any amount of propriety that in the case of a motion which was not carried for want of a few votes that it was really rejected? (*Interruption*). I would like to say in this particular case, at any rate, 'not carried' cannot both factually as well as according to the terminology of the Rules of Procedure be said to have been rejected at all.

Shri Kamath: Has it been accepted then?

Shri Pataskar: But some of my friends, confusing 'not carried' with 'rejected' have advanced these arguments. According to me, in the first place, the Bill never became liable to be removed from the Register. However, what happened is a different matter. What is the question today? There is a Bill for which leave to introduce is being asked. This Bill also, no doubt, deals with article 3 of the Constitution. The main question to be argued patiently and calmly is whether that Bill is really identical or substantially identical with the

[Shri Pataskar]

former Bill. What is the former Bill? Whatever was said by whomsoever in the course of the discussion of that Bill is hardly of much significance.

Shri V. G. Despande (Guna): Accha.

Shri Pataskar: What was the Bill has to be examined. Clearly it is like this:

"Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States specified in Part A or Part B of the First Schedule, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference."

The only thing required was the reference by the President to the Legislature of that State for expressing its views thereon within such time as may be specified in the reference.

Mr. Deputy-Speaker: The hon. Minister referred to rules 149 and 169. The word in rule 149 is 'rejected'.

Shri Pataskar: My submission is it is not rejected at all.

Mr. Deputy-Speaker: In rule 169 the word 'rejected' is not used. We will assume that under rule 169, that motion, instead of being a motion for reference to Select Committee is a motion that the Bill be passed. We will assume that it is not passed. Still does it continue on the Register?

Shri Pataskar: I will deal with it when I come to 321.

There is another rule on which the argument is based that the motion cannot be made. In the first place we are trying to introduce a Bill here and it has to be ascertained whether it is substantially identical or different or whether it is some fraudulent attempt on the part of anybody to try to bring the Bill before the House.

My learned friend, Shri Chatterjee, no doubt referred to eminent judges who did comment in certain cases that it was a fraud on the statute or a fraud on the Constitution and what not. But what are we doing here? So far as the Seventh Amendment Bill is concerned, it only laid down that "The Bill should be referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference". It was only to be referred by the President to the Legislature for expressing its views during a particular period, and I think very rightly some hon. Members really were perturbed with the provision so that somebody may say: "The State did not give its view in time and so the Bill was introduced here". That was a legitimate doubt and fear expressed by those who are the guardians of the authority of this House as well as the guardians of the interest of legislative work in the country. Whatever it is, certainly it was not free from doubt and I do not know whether it could not have been challenged. It would have been quite open to anybody to do so, but nobody might have done it. All the same it was a legitimate fear of some Members of the House that the Bill, as it was worded, was capable of such possibility. It is not a mere cover. In the present Bill the position has been made perfectly clear, namely, that no Bill in Parliament shall be introduced till after the expiry of that time.

My friend, Dr. Krishnaswami, argued with respect to the other provision where we specifically say that in certain cases it may be that a State Legislature is asked to express its opinion within one month and it may not be possible for various reasons for it to do so and there might be a justifiable reason for the time to be extended so that it may express its opinion. Under those circumstances, naturally, in view of the nature of the discussions in this House it was thought desirable that we should make a further provision that the

President should have the authority in proper cases to extend the time.

[Mr. SPEAKER in the Chair]

That again has been added to the provisions of this Bill. I would, therefore, say with due respect to those hon. Members who vehemently argued that there was no difference between the Constitution (Seventh Amendment) Bill and the Constitution (Eighth Amendment) Bill, that, whatever might be said by any hon. Member of the House, the provision as it was was certainly not as clear as it ought to be (Interruption).

Mr. Speaker: Let us hear the hon. Minister first.

Shri Pataskar: I have made it clear that so far as that section was concerned, it was perfectly clear and it was open to the Government to introduce a Bill in the House even before the time, which was given to the Legislature, expired. It is, therefore, a fundamental thing of great importance, and in deference to the wishes expressed during the course of the debate on the last Bill that this provision is made now.

Similarly with respect to the question of the extension of time, my hon. friend, Dr. Krishnaswami, argued that there is a General Clauses Act and probably under the General Clauses Act it would have been open for some lawyer to argue that if, as I said, in a particular case the Legislature wanted some time, and that the time should be extended, then there was a power for the President to extend it. This I have carefully read and I think it is needless for me to go into the rulings which he has pointed out. But clause 21 for the present purposes is quite clear. It says:

"Whereby any Central Act or Regulation a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions if any, to add to, amend, vary or rescind any notifications,

orders, rules or bye-laws so issued."

I would submit that this generally is too broad and too vague a power. Whatever might have been the decision in a particular case with respect to that power, whether it was inherent or otherwise in respect of some date which was fixed, there is no question of fixing a date here; it is a question of providing a period during which that act has to be done and it was open to anybody to argue it in spite of the ruling in that case and in spite of the provisions contained in section 21 of the General Clauses Act. In this Constitution Amendment Bill we say that within such a period as may be specified, it must be complied with. At any rate it would have been doubtful whether the President had or had not the power to extend the period in proper cases.

Therefore, on account of these two important points of view it was thought desirable not to leave the matter open for discussion or for any court and they have been brought out clearly in this Bill. I would submit that this Bill, therefore, is neither identical nor in any case substantially identical with the former Bill. I would not like to use too strong a language, but it is out of place to describe what the Government has been trying to do with a view to meet the wishes of the House, as a fraud on the Constitution or as an attempt to cheat the statute. It is something which I think a reasonable man will not easily appreciate. That is the only thing that I can say about it.

I have already made my submission about rule 149. I would now turn to rule 321. Rule 321 lays down:

"A motion must not raise a question substantially identical with one on which the House has given a decision in the same session."

[Shri Pataskar]

What had happened in this case is that the motion to refer the Bill to a Select Committee, a different Bill, was not carried. Can we say that by the introduction of this Bill we are raising a question which is substantially identical with the one on which the House has given a decision? The House gave a decision at any rate only to the extent that the motion to refer the Bill to the Select Committee was not carried. That was the only decision of the House. What followed was that on account of certain other provisions, as a result of that motion not being carried, the Bill has been taken out from the list of pending Bills. Now can you put something in rule 321 which was intended entirely for a different contingency? Supposing there was a motion that the Bill be passed, and an identical Bill was again tried to be introduced, it would be open to anybody to say that the matter had been decided once in this House and at any rate, during the same session we need not agitate the same matter again. That, Sir, is the underlying object of this rule, and so far as I find the rule is clear enough in its expression. Therefore, to my mind, rule 321 is not at all applicable for this purpose. Apart from all these things, what we are trying to do is to introduce a Bill of a substantially different nature. I would like to draw your attention to an event of similar nature which happened in 1950, in respect of some other Bill.

An Hon. Member: What is that Bill?

Shri Pataskar: In 1950, Shri M. A. Ayyangar had already introduced a Bill the title of which was 'Hindu Mutts Bill'. In regard to the same subject matter and with the same title, Shri Jhunjhunwala—I do not know whether he is here today—on the 12th of December 1950 introduced another Bill but with a small addition in respect of the powers and duties of the head of the Mutt and of his agent regarding the manage-

ment, etc. Here, in this case, it is much more different than what was there. As I explained earlier we are going to make two fundamental changes so far as this Bill is concerned. I will just read out what the decision given by you then was:

"I may inform the House that although the title of this Bill is the same..." (here even the title is not the same; that was Constitution (Seventh Amendment) Bill and this is Constitution (Eighth Amendment) Bill.) and for the most part the subject matter also is the same as that of the other Bill introduced earlier by Shri M. A. Ayyangar, there is one small addition in this Bill and this is in respect of the powers and duties of the head of the Mutt and of his agent regarding the management of the endowment fund of the Mutt which shall be deemed to be the same as the powers and duties of a trustee under the Indian Trusts Act. This is a new provision which makes this Bill distinguishable from the other Bill."

The question that leave be granted to introduce that Bill was put and the motion was then adopted.

Therefore, in this case, I would submit that this Bill is entirely different from the one which—I do not say—was rejected but which could not get through on account of certain difficulties which I have already explained. Therefore, in view of this precedent as well as facts, which I have already mentioned, rule 321 is entirely inapplicable. The present motion is for leave to introduce a Bill; there are some modifications. Rule 321 says that the motion must not raise a substantially identical subject. Rule 321 says:

"A motion must not raise a question substantially identical with one on which the House has given a decision in the same session."

What was the decision given by the House? Supposing there was the same or similar motion on which the House has already decided, the same motion cannot be made. If the hon. Law Minister were to make a motion that this Bill be referred to a Select Committee, I do not know what objections will be raised. So far as the present motion is concerned, I would submit that no decision was given with respect to the merits of this Bill. No decision that such a Bill cannot be introduced was given and so that rule is inapplicable. Even rule 149, as I said, does not help my friends.

Strong language has been used; some people say that it is a fraud on the Constitution and what not. What is being done? Let us dispassionately consider; let us find it out. They say that they are as anxious as anybody to see that a measure of this kind is there; that proper safeguards are there in the Statute Book. I would therefore submit that this motion is perfectly in order both on the grounds of the precedent and also on a strict and proper consideration of the various rules contained in the Rules of Procedure.

Shri U. M. Trivedi: As already pointed out, I will not traverse the ground which has already been covered on the question of this motion being substantially identical. A good deal has been said about it and I endorse every word that has been said about it. I come to the second portion of rule 90—the proviso.

It has been said very casually by you that the question of legislative competency does not arise and my very learned friend, Shri Chatterjee, has also said that he is not raising the question whether this is *ultra vires* the Constitution.

My contention is this. This Bill is certainly out of the legislative competence of this House. Legislative competency flows from the powers given under the Constitution; it also flows from the powers described in the

various schedules attached to our Constitution. Under article 118, it has been provided that a particular procedure has to be followed. If that particular procedure is not followed, the effect will only be—though you cannot challenge the validity of the proceedings—that you can challenge the validity of the law that is being made. If this procedure is not followed, then my submission is this that the question of competency of this House does arise.

There are two types of competencies. We have got in our Civil Procedure Code different types of competencies. There are cases where the question of pecuniary jurisdiction arises, where the question of territorial jurisdiction arises, where the question of special jurisdiction arises. In this particular instance, the point that arises is like this. By virtue of the rules of procedure that are there in existence under article 118, it is provided that a Bill of this nature cannot be brought before this House in this session. This Bill which is being brought is entirely identical with the Bill which was then presented under the name of the Constitution (Seventh Amendment) Bill.

Mr. Speaker: Let me be clear about one point. Is he referring to any provision in the Constitution or is he referring to the rules?

Shri U. M. Trivedi: I am referring to the Constitution governed by the rules.

Shri Kamath: The rules cannot govern the Constitution.

Mr. Speaker: Order, order. Let us be clear about this so that we may not take more time in repeating the same thing. His argument seems to be this: under article 118 or whatever article that may be, the House has the authority to make certain rules for its own conduct of business. It is under one of these rules that the present Bill is opposed. It is not that the Constitution itself provides like this that when the House has decided substantially on one point, that point cannot be raised in the

[Mr. Speaker]

same session. That is not the provision in the Constitution itself. Am I clear on that point?

Shri U. M. Trivedi: Yes, Sir. It is there in the Constitution....

Mr. Speaker: I have understood his argument. Let him proceed.

Shri U. M. Trivedi: The Constitution provides for the rules and the rules are there. These rules put an embargo. By virtue of these rules, an embargo is put upon the introduction of this Bill during this session. It is just as in the Civil Procedure Code, all civil rights can be determined by the civil Courts, yet there are certain provisions, however, made under the Revenue Act—or any other Act called a Special Act—whereby points arising out of that cannot be decided by these courts. Therefore, the competency of the court to decide that point also arises there.

Similarly, my submission here is this. The legislative competency of this Parliament is the widest; yet there are limitations put upon it by the Constitution. The Constitution provides that there must be a procedure and that procedure lays down certain things. Therefore, my submission is that under this procedure we cannot bring this Bill before this House during this session. If we cannot bring it before the House in this session, then the legislative competency is challenged by virtue of a further provision in article 122.

Article 122 says:

"The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure."

It does not say that the validity of the law cannot be challenged on account of this. Therefore the *ultra vires* nature of the law will still re-

main and I say, Sir, that by virtue of the provisions laid down in rule 149, rule 169 and rule 171 read with rule 321, as this Bill which is now being discussed is an identical Bill and as an identical Bill cannot be introduced in this session, the question of legislative competency of this House does arise and this Bill should be thrown out.

Mr. Speaker: I only want to put one question and I do not want any further arguments from the hon. Member. I believe he will concede that this House is competent to make rules for its own procedure.....

Shri U. M. Trivedi: Yes.

Mr. Speaker:and, whatever may be said in respect of the rule under which this argument is being advanced, it is perfectly competent for this House to change the rule.

Shri U. M. Trivedi: That is true, Sir.

Mr. Speaker: I just want to go to the root of the question as to how far the question of *ultra vires* comes in. Then I believe one of the rules also says that the House may suspend any rule any time. That power also is there with the House. If these two are conceded then of course I do not want to express any opinion. I shall hear further arguments but hon. Members will bear these fundamental things in mind and then shorten their speeches. The point is very short. It is only a question of interpretation of the rule,—that is one—interpretation of the two Bills and then coming to a conclusion as to whether the two Bills are substantially identical.

Shri N. C. Chatterjee: That is the issue, Sir.

Mr. Speaker: So, the arguments may be limited only to that question and time may be saved. Before I call upon other hon. Members I

should like to hear Shri M. S. Gurupadaswamy, a Member of the Opposition, and then I shall call others who want to represent their points of view.

Shri M. S. Gurupadaswamy (Mysore): I only want to remind you, Sir, about certain things that happened in 1952. One Member from this side tried to introduce a Bill for the abolition of privy purses of princes. An exception was taken to that and many Members belonging to the Majority Party.....

Dr. Ram Subhag Singh (Shahabad South): Those Members who have spoken.

Shri M. S. Gurupadaswamy: ... objected to the very introduction of that Bill. Only after the intervention of the Prime Minister the Bill was introduced. Now you were pleased to say in your remarks that voting is not necessary for the introduction of a Bill. So, if precedent were to guide us, voting is absolutely necessary for the introduction of a Bill.

Mr. Speaker: It is for leave to introduce a Bill. He will make that distinction and bear that in mind.

Shri M. S. Gurupadaswamy: Secondly, there was another Private Member's Bill—a Bill by me—to amend the Constitution in respect of the appointment of Governors. At that time the Bill was referred to the Committee on Private Members' Bills and Resolutions, and the Committee said in its report that the Constitution is such a sacred and important document that a Private Member should not frivolously bring a Bill amending the Constitution and so the introduction should not be allowed on that account. Though I insisted on that occasion that the right of a Member for introducing a Bill should not be taken away by the House it was not done and I was not able to introduce the Bill.

Sir, what is the meaning of introduction? Once a Bill is introduced it

has to be taken into consideration. There is no other alternative for the House. The right of introduction means the right to demand for consideration. It is inevitable, it has to be followed up either now or afterwards. So, I feel that introduction is very important. Sir, you were pleased to take the view that introduction is a formal affair. But, I humbly submit that introduction leads to so many consequences and after the introduction stage the next stage is only the consideration stage. There is no other stage in between the introduction and consideration stages.

Last time what happened was this. The hon. Minister had two alternatives before him. He could have straightway said: "I am moving the Bill for consideration." That was a right royal road provided in the rules. In the alternative he could have made a motion for referring the Bill to a Select Committee. He chose the second alternative. May I submit that reference to a Select Committee is a part and parcel of the consideration stage. It cannot be treated as separate from the consideration stage. When a motion for referring the Bill to a Select Committee is not carried then it means the Bill is not at all supported by the House and for all practical purposes we may take it that the Bill was rejected.

Another point is whether the new Bill that has been brought is really a new Bill or it is the same old Bill with some changes. My hon. Friend Shri Kamath read out to you the remarks made by the hon. Minister and it was pointed that the Bill which is being brought forward now is exactly the same Bill. It is not even substantially the same but it is completely identical. Maybe, there is difference in words, or the language might have been changed here and there, but it is essentially the same which conveys the same meaning. So, I would submit that the legislative competence of this House is infringed in the sense that in the

[Shri M. S. Gurupadaswamy]

present session we cannot debate upon it. To that extent the legislative competence of the House is abridged. Therefore, I would beg of you, Sir, being the supreme custodian of the rights and privileges of his House that this Bill should not be allowed to be introduced.

Pandit Thakur Das Bhargava (Gurgaon): In regard to this Bill, various questions have been raised. I do not know whether strong language has been used or mild language has been used. What I know is, the moot question in this Bill is whether it is a substantially identical Bill or not. This is the main question. When we go into the history of this matter, we could know what has taken place. I may read out some extracts from the proceedings of 30th November, 1955, when this subject came up. At page 2181 of that day's proceedings Shri Jaipal Singh asks:

"May I just seek a clarification? I did not want in anyway to interrupt the hon. Minister. But I am a bit confused by his legal logic".

At that time, Shri Biswas replied that as a matter of fact, the Government "need not wait" for the opinions of the States to arrive. According to the plain words of the clause in the Bill, the Government was in a position to say, that they were perfectly justified in bringing a Bill without waiting for the opinions of the States. That was the point that the Minister was making. On the same occasion, he said something further about it. I happened to be in the Chair then and I put this remark:

"The position of the hon. Minister is quite plain. The Government need not wait for the expression of the view and they are entitled to bring in a Bill as soon

as the reference has been made".

Shri Biswas replied:

"I will answer the first point raised by my hon. friend. Government are under no statutory obligation to have obtained the views of the various State Governments; but, that is what they have done with reference to the SRC Report. What does that show? That shows the anxiety of the Government to consult all possible interests. They summoned a conference of the Chief Ministers of the States. They want to know the opinion of the States. As a matter of fact, we have actually seen the State Legislatures considering the SRC Report and expressing their opinions. What does that show? Government wants these opinions. So far as the question of the formal reference is concerned, we are doing the necessary things. But, we need not wait till all the opinions have been obtained from all the States".

This was the stand of the hon. Minister.

When I came down from the Chair, I felt that this was not right—that the Government should bring in a Bill in which they are enabled to say that, as a matter of fact, they need not wait for the opinion of the legislatures, because, as you may also be pleased to remember, in article 3 of the Constitution, it was absolutely necessary for the President to see that the opinions of States legislatures were ascertained by him before such Bill was brought in. Unless the opinions are ascertained, he was not in a position to allow any Bill to be brought. So, the real point was, whether the Government were bringing in a Bill by virtue of which the Central Government could see that the legislatures may or may not express an opinion. Only a

reference could have been made and they need not have waited. This was the point, and Shri Biswas made out that so far as the apparent tenor of the Bill was concerned, it was quite clear that the Government need not wait—not that they are not anxious to obtain the opinions. That was his stand.

It was also argued in connection with this Bill that it may be that the Government feels that the legislatures may be cheated out of their right to express their opinions. This was quite possible under the Bill. He will be a bold man who would say that, after reading clause 2 of the old Bill, this was not possible. It is perfectly possible that when a reference has been made to the legislatures, the legislatures could not express their opinions and Government could proceed without waiting for the opinions. My submission is, we should find out whether this is a substantially identical Bill. We have to look to two things and nothing else,—the present Bill and the old Bill. All other arguments that have been made are absolutely extraneous. This is the rule to find out the scope of the Bill. You need not go to the arguments of Shri Chatterjee or to the statements of the hon. Minister himself. His sweetness and reasonableness as interpreted by the Deputy-speaker are absolutely out of the question. We must see to the Bills and the Bills alone.

Shri N. C. Chatterjee: Am I to understand that the hon. Member does not agree with the interpretation which is put upon the Bill by the hon. Law Minister?

Pandit Thakur Das Bhargava: The question put to me is absolutely irrelevant. I may agree or I may not agree. This is not the point. I am only pointing out that the Speaker has to see these two Bills, only, and nothing else, to find out whether the Bills are substantially identical or not. When I came down

from the Chair, I made a statement here from my seat. I said:

“This is a very important matter which I wish to bring before you. When a motion for reference to the Select Committee is there, we have understood from what we have seen in the Statement of Objects and Reasons and the debate here that all the States will be afforded an opportunity to express their views. What the hon. Minister seeks to lay down is that the Bill will be introduced before they are allowed to express their opinions. In that case I would not vote for reference to the Select Committee”.

This was the submission that I made. Actually, I would not have voted for the reference to the Select Committee if I knew that this Bill was capable of being interpreted that way, though there is no doubt, legally speaking, that this clause in the Bill is capable of being interpreted in that way, namely, that the Central Government need not wait.

An Hon. Member: Why have you voted then?

Pandit Thakur Das Bhargava: An hon. Member asks, “Why have you voted”? That is beside the mark. I might have been led away by the sweetness and reasonableness of the hon. Minister. I might have been led away by what the Deputy-Speaker said.

Sardar Hukam Singh: Where is the guarantee that you are not being led away now?

Pandit Thakur Das Bhargava: The guarantee is the intellect of the hon. Member himself. If he believes that what I am saying is reasonable, he may be led away by that thought, and if he believes that what I am saying is wrong, he may not be led away by it. Whether he is led away or not by a particular thing depends upon the honesty and the integrity of the hon. Member.

[Pandit Thakur Das Bhargava]

My humble submission is that all those arguments about the number of votes—246 Ayes and 2 Noes—are absolutely irrelevant. Shri N. C. Chatterjee said such introduction was a fraud on the Constitution. Quite true, and I say that it is a fraud on the 380 million countrymen of ours who want to see this Bill through as expressing their vote for the measure. At the same time, I could see the point of the Opposition. I certainly welcome their criticism when they urged the point regarding the Constitution. But what I am submitting is that there are two great points of difference between the old Bill and the new Bill. When I spoke on the Bill the other day, I submitted that you must make this period a reasonable one. Unless you make it reasonable, the opinions of legislatures may not come in time. The Centre should not be put in a position to 'cheat' the legislature. I submitted further that within a certain period, the opinions should be submitted or received. Supposing a legislature is not able to meet on account of certain reasons, say snow in the mountains, in which case Members from Kangra cannot go out, and supposing there are hundreds of such reasons,—it is quite likely that there will be very many reasons—then the State legislatures may not be able to meet. I submitted on the last occasion that you must extend the period so that it may not be in your power to say that the State legislatures did not give their opinions. They must be afforded sufficient time for sending their opinions.

Some reference was made to the General Clauses Act. I am not affected by such references. Where a time-limit is provided for a particular thing, it must be done within that particular period, and it is not right to obtain any extension. It may be that the President might extend the period or the Central Government may extend the period, but is it the right of the legislatures

to ask for or get the period extended? That is the crux of the question. The Government should stand on its own rights and say, "We are not extending the period".

Suppose we throw out this Bill, because, as a matter of fact, it would not provide an opportunity for the legislatures to express their opinions after the time has expired. Suppose on this basis we reject the Bill and a new Bill is brought in saying that the legislatures afforded an opportunity but yet, during that period, they did not express their views, then, what is the position? The Government could stand on their own rights and say that as a matter of fact, "We do not want to extend the period". Supposing, on this basis, the Bill was thrown out by the House, what would happen? If a new Bill comes, would it be the same or will it be different? My submission is, it would be an absolutely different Bill. It could not be the same Bill at all, with the two provisions added to it, which do not give the power to the Government to behave as they could—not that they would behave like this—but they could behave like this. They should see that as soon as a reference was made, they could bring in a Bill according to the old Bill. It is not within the power of the Government, now, during the period fixed, to bring in the Bill. Even supposing my amendments are accepted, would it not be an amending Bill? An amending Bill is not substantially the same Bill as the previous one. My humble submission—quite apart from what transpired thus far in connection with the original Bill—according to the general rule of interpretation is that the scope of the Bill is to be determined by the words used in those clauses. All other extraneous things need not be considered. For this interpretation of statutes the rule is when language is clear debates proceedings are irrelevant. If you are pleased to consider

all the extraneous things, I would submit that the appeals made by my friends, particularly Shri Nair, appear to be very reasonable. As a matter of fact, when you are going to give your interpretation and allow or disallow this motion, you should see that the will of the 246 Members out of the 248 Members who voted on that day must be carried. So far as the question of interpretation is concerned, it is doubtful in a matter of this kind and the benefit of the doubt should be given to those who expressed themselves unequivocally on that occasion. But I do not want to rely on the question of doubt. With your permission, Sir, I shall refer to section 91 of the Indian Evidence Act, which says that, when there is something documentary before us, only the words can be interpreted and nothing else; the wishes of the Members, criticism etc. are all out of question. If you really see these two Bills, my humble submission is that they are substantially different, because the Government do not have the same powers now and the powers of the legislatures are enlarged. I would submit that in regard to this matter, we should only go by these two Bills. If you consider the two Bills, you will find that under the new Bill, the specified or extended period must expire and the Government would be bound not to bring the Bill before the period expired. Under the old Bill, the Government would not be bound to wait. Therefore, the position is quite different.

2 P.M.

Then, I am sorry I do not agree with my hon. friend, Shri Pataskar that no decision has been given on the merits of the Bill. A decision was given about the question of leave on the first occasion. On the first occasion leave was asked for and we allowed leave to be given. So, we gave a decision. It is not that the decision must be adverse etc. The Bill may be referred to a Select Com-

mittee or not; that is an entirely different matter. But the real simple question is whether the Bills are substantially identical, and if the decision on this question is in favour of those have argued like this, the other question does not arise, namely, that the decision has not been given. I would, therefore, submit with all the force at my command, that only the two Bills must be seen as the language is clear and plain and according to me, they are substantially different.

Mr. Speaker: I would like to ascertain from the hon. Member just to see whether I have understood him correctly. In his opinion, the provision in the new Bill which says that the period specified or extended must expire before a Bill is introduced in this Parliament, is a substantial change, because under the old Bill, the Government was not bound to wait, for that period to expire. His contention is that that particular point distinguishes this Bill materially from the first Bill.

Pandit Thakur Das Bhargava: Yes.

Shri Altekar (North Satara): It is contended that the introduction of this Bill would be a fraud on the Constitution. So far as the amendment of the Constitution is concerned, the important article is article 368 which says:

"An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House..... etc."

So, the two-thirds majority is required for the passing of the Bill. When we are framing rules for carrying out purposes of the Constitution, the rules will have to be in

[Shri Altekar]

conformity with the wording and spirit of the Constitution. In the case of a Bill for amending the Constitution, two-thirds majority of the Members present and voting and a majority of the total strength of the House will be necessary for the purpose of passing the Bill. But what Rule 169 says is:

"If the motion in respect of such Bill is that—

- (i) it be taken into consideration, or
- (ii) it be referred to a Select Committee of the House, or
- (iii) it be referred to a Joint Committee....
- (iv) it be circulated for the purpose of eliciting opinion thereon, or
- (v) it be passed,

then the motion shall be deemed to have been carried if it is passed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting."

I would like to submit that this particular rule goes over and above what is stated in article 368 of the Constitution. According to article 368, only for passing the Bill, two-thirds majority is necessary; but under Rule 169, for all the four or five purposes stated therein, two-thirds majority is necessary. That is over and above what is required by article 368. The question now is about introduction of the Bill. For this purpose, I beg to submit that it will not be in any way going away from the spirit and even the letter of the Constitution, if you suspend Rule 321, as provided in Rule 402. I submit that in following such a procedure, we will be doing absolutely nothing against the Constitution, because according to article 368, two-

thirds majority is required only for the passing of the Bill. What is provided in Rule 169 is over and above what is provided in article 368. Therefore, for the purpose of introducing the Bill, under Rule 402, you may suspend Rule 321 and thereby we will be doing absolutely nothing against the wording or the spirit of the Constitution. I am putting this point before the House for its consideration and also for your consideration.

Shri Radhola Vyas (Ujjain): I just want to explain further what my hon. friend has just now stated. According to article 368 of the Constitution,

"...when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, it shall be presented to the President for his assent....etc"

That means, a Bill may be passed by even a majority. But, if it is passed only by a majority and not by two-thirds majority, then it will not be presented to the President for assent. This article does not say that a motion will not be carried if there is only a majority. This article provides that a motion can be carried by a nominal majority; if it has been carried by a majority of two-thirds of the members present and voting, then you will send it to the President for his assent. Otherwise, you will withhold it. Looking to this motion also, it was not defeated. Therefore, I submit that these rules should be interpreted in conformity with the provisions of that article.

Shri Dhulekar (Jhansi Dist.—South) rose—

Mr. Speaker: The hon. Member should be very short in his speech.

Shri Dhulekar: I will take only two minutes.

Mr. Speaker: The hon. Member should stick to it.

Shri Dhulekar: My submission is that this is an entirely new Bill. When the former Bill was introduced, I submitted that it was not an improvement upon the language which was contained in the Constitution itself. In that Bill which was defeated, it was said that a new Bill can be introduced here and it can also be passed without waiting for the opinions of the legislatures. I submit that the words in the Constitution are very important. The words are, 'unless the views have been ascertained by the President'. Now, this Bill which has been introduced today is a clarification of the Constitution and also the spirit of the Constitution that the President should ascertain the views of the legislatures, and explanatory words have been given here by saying that the President should specify some time and if the views are not ascertained, the President has powers to extend that time. Therefore, I submit that this Bill is certainly an improvement upon the former Bill and that it is in consonance with the spirit of the Constitution. The former Bill was against the spirit of the Constitution. Therefore I would say that this is an entirely new Bill. It provides that the views should be ascertained before any Bill is taken for consideration in this House. I submit that the arguments made by the opposite party are far away from the discussion in the House and that the arguments which have been put forward are fallacious and superficial.

Shri H. N. Mukerjee: I shall be very brief. I cannot, even if I try, resurrect my vanished entity as a lawyer. I would not have spoken unless my hon. friend Pandit Thakur Das Bhargava, whose opinions I value highly, had spoken in the way that he has done. I was not at all impressed by the argument of my hon. friend the hon. Minister for Legal Affairs and I was rather intrigued when he tried to find a distinction

between 'not carried' and 'rejected'. My feeling is that if there was such a distinction, then, surely, for the connotation of the expression 'not carried' the rules would have made some provision.

Now, I turn to what my hon. friend Pandit Thakur Das Bhargava has said. In regard to that, I wish to say that it is not necessary for us in Parliament to take a purely technical and legalistic attitude in regard to this matter. I know that in the interpretation...

Mr. Speaker: That argument may cut both ways. The hon. Member is pleading that I should look to the substance of the transaction.

Shri H. N. Mukerjee: I am not going into the substance. My hon. friend Pandit Thakur Das Bhargava pointed out that there is definite difference in point of substance between the Bill as it was introduced last time, and on which the reference to the Select Committee was voted upon, and the Bill as sought to be introduced at present. He said that if we examined the literary text of either of these Bills, we shall find a substantial difference. I wish to put before you this poser. Last time, when the consideration motion was being discussed, some of us actually put this question in a very straightforward fashion, including Pandit Thakur Das Bhargava, regarding the significance of the Bill, purpose of the Bill and regarding the terms of reference to the Select Committee. I had even gone to the extent of saying that "my name has been proposed for Membership of the Select Committee, but I can only act on my understanding of the Bill and my understanding of the Bill is different from what the Law Minister is saying." At that point of time, the Minister for Parliamentary Affairs as well as the Law Minister, both came forward to give a definite assurance that there was no difference between the attitude that I was taking up and Pandit Thakur Das Bhargava had taken up, of the Bill and their own. Therefore, in interpreting the sense

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of the original Bill, we have to proceed not exactly according to what Maxwell told us, but in accordance with our own idea of what should be done.

In regard to difference in substance between the two Bills, I feel that there is no difference in substance between the two. I feel, at the same time, that there may be very valid reasons for the Government to come forward and ask this House to expedite the passage of legislation of this sort. I say that, in that case,—I do not want to hinder the Government—I suggest that the Government be more honest about it. Let somebody on behalf of the Government propose that the rules be suspended for the time being. We can then proceed smoothly and expeditiously to a consideration of the motion which he has sought to make. From the discussions so far, what has emerged is that there is no substantial difference between the Seventh Amendment and the Eighth Amendment proposed. Therefore, the Eighth Amendment as it is, cannot be permitted to be introduced in this House except on the supposition that there is a motion for suspension of the rules and that motion is carried by the House.

Mr. Speaker: Shri Raghavachari. I think I have sufficiently allowed this discussion. I shall call upon only one person more, Shri A. M. Thomas, who has been trying to catch my eye for a long time, and then close.

Shri Raghavachari: In this matter, though I am a lawyer and a lawyer can spin, I submit I want to take a very fair view of the whole thing. What I feel is this. The first and foremost question is whether the present Bill is identical with the one that has already been disposed of.

Mr. Speaker: That is the only question.

Shri Raghavachari: On that matter, before I submit my opinion, I would

add for your consideration two other phrases contained in the Rules, namely 'Substantially the same' and 'spirit of the Rules. These are the two things that should be taken into consideration. My hon. friends quoted some portions of the speech of the Law Minister last time when the Bill was introduced in the House. I would respectfully submit that in the earlier part of his speech, he had definitely stated about the scope of the Bill and that was certainly different from the scope of the present Bill. I for one, would humbly submit that the question whether that Bill and this Bill are identically the same, does not depend upon the interpretation that the Law Minister puts on it, but on the interpretation that you can put on it or any reasonable man can put on it from the language that is contained in the Bill. In fact, on that very day, I perfectly agreed with the Law Minister's earlier interpretation that the language as couched in that Bill was simply that there were two conditions necessary: (i) that the President must have recommended and (ii) that the matter should have been referred to the legislatures for expressing opinion. The Law Minister was perfectly right, from the language used then, that the two conditions were the recommendation of the President and the reference to the legislatures. He was absolutely correct when he said that one need not wait for any opinion to be received because the word 'ascertain' in the original article of the Constitution was changed to 'time for expression'. That was his first interpretation and I perfectly agree with him. That is the only sensible and reasonable interpretation that can be put on the language of that Bill as it stood. Now, they have really added what was intended even under the old Bill as per the Statement of Objects and Reasons. There was a provision that a certain time-limit should be fixed so that they might express their opinion. But, the language in which it was clothed did not require waiting till the opi-

nions came. Now, they have added in this Bill two new factors, that the original time fixed by the President may be extended and also that till that time expires, originally stated or the extended period, there can be no introduction. To that extent, there has been really a change.

As I submitted, if we look only these two factors, it can be said that this is not identical with the previous Bill. As I submitted in the beginning the question is whether it is substantially the same or whether in spirit we are offending by going too much into a legalistic way in interpreting the language.

In addition to the substance and the spirit of the Constitution and the rules, I am also interested in submitting for your very careful consideration that if we should allow a thing like this to happen by spinning or hairsplitting or any kind of interpretation, that it is not identical, the result will be that almost every day, even after a thing is decided by this House, the next morning the thing can be brought in again by adding a comma or a phrase. We are anxious to lay down correct procedure and a democratic way of looking at it. You will also appreciate that the whole House was in favour of the Bill going through. Nobody wanted to oppose it barring one or two individuals. Therefore, it is not with the intention of obstructing the progress of the Bill that arguments are made on this or that side. If any man says that the other people are arguing with a particular motive, I humbly protest that that is not so. We are only stating that the correct procedure will have to be laid down by you. Under your distinguished Speakership we have always submitted and expected a careful consideration of the points of view before precedents are created. Therefore, my submission is that though it is possible, as I myself did, to interpret that the present Bill is something different from the previous one, except from the point of view of substance and spirit, the precedent that will be created might lead to

dangerous consequences. That is one thing.

Another thing I wish to submit is this. A friend of mine was interpreting that the language of the article in the Constitution uses the word "passing", and therefore it contemplates only the last stage and not all the stages. I respectfully wish to submit for his consideration and yours too, that this interpretation is not new. We are perfectly aware of this interpretation and you have already given very careful thought also to that. The real point for the gentleman who advanced that argument to consider is: what is the meaning of the word "passing". The word "passing" does not mean the final stage, but it has got a number of stages—the introduction stage, the clause by clause stage and then the third reading, and then it becomes 'passed'. What is exactly the meaning of the word "passed"? It is not the last stage. It is every stage that is involved in it. Therefore, if you put such legalistic interpretations, it leads to confusion. Further, my submission is so long as the rules framed by this House, so long as the rules contained in the Rules of Procedure do prescribe that every stage must be with a particular majority, it is not open to any individual now to interpret and say: mine is the correct interpretation, therefore give the go-by to the rules.

Therefore, as we are at present, if you should accept that scope of the present Bill though not identical but substantially the same, then it will be for you to say whether you would permit the introduction or not.

But there is another point they have been submitting, and that is, if there has been a request for your suspending certain rules as an extraordinary measure, surely nobody can say it is against the rules or the procedure or the Constitution except that it has to be considered whether in a matter of this grave consequence, of an amendment to the Constitution, the Government should request you for suspending the rules and whether you should exercise your rights to suspend the

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rules. That is a matter for your consideration.

Therefore, I wish to conclude by saying that I am prepared to say that this Bill is not identical but when you take the substance of it and the spirit of it it would be the same, and in the interests of proper precedents and procedure that we should lay down for future guidance and for avoiding frequent inconveniences and awkwardness these matters may be kindly considered by you very carefully.

Pandit K. C. Sharma (Meerut Distt.—South): I want to make a submission.

Mr. Speaker: I find that the same arguments in other words are being repeated. The point is short, and we have taken nearly two hours. I do not think it is proper on our part to have further arguments.

Shri K. C. Sodha (Sagar): One minute.

Mr. Speaker: Everybody says one minute and he carries on for ten minutes. That has been my experience. I do not propose to allow any further argument. Only, as I said, Shri Thomas will say whatever he has to say.

Shri A. M. Thomas (Ernakulam): I do not think there is any necessity for suspending any of the rules of our procedure, but that suggestion put forward by my friend Shri Mukerjee is a complete answer to the point that has been raised by Shri Trivedi as well as Shri Gurupadaswamy. That question was raised by you also from the Chair. There is absolutely no substance in the contention that it is not within our legislative competence to pass this during this session. The Bill is within the legislative competence of this House. We are entitled to amend the Constitution if a Bill for that purpose comes in. Legislative competence arises only in cases such as when a Bill legislating for matters in the State List is brought before this House. Such a contingency has not arisen, and I do not think the ques-

tion of legislative competence at all arises.

With regard to the other matter, I should think that the Bill is substantially different from the Seventh (Amendment) Bill. The various points arising out of that question have been already referred to and I completely agree with the arguments which have been put forward by my friend on the left, Pandit Thakur Das Bhargava.

My friend Dr. Krishnaswami stated that under the General Clauses Act the President was entitled to give an extension of time. I humbly beg to differ from him. I think, if you read the clause of the Seventh (Amendment) Bill, you will find there is no scope for any such argument. I say the President has no power to extend any time, because you will find from the clause of the Seventh (Amendment) Bill that it reads: "the Bill has been referred by the President to the Legislature of the State for expressing its views thereon within such period as may be specified in the reference." So that, there are two conditions prescribed. One is that there must be a reference, and the other condition is that the time must be fixed in the reference itself. So that, my submission is that the President has, after making the reference, no power to extend the time. That extended time will not be the time fixed in the reference at all.

My friend was also quoting article 367. Article 367 itself says:

"Unless the context otherwise requires, the General Clauses Act, 1897, shall apply."

So, according to the context of this Bill, my submission to you is that the President has absolutely no power to make any extension of the time, and if any extension of the time is made, it would be beyond his power to do so.

The other point that has been raised is with regard to the fact that it was

not incumbent on the part of the Government to wait for the introduction of the Bill. The Hon. Mover of the Bill himself made it abundantly clear when the Bill was moved that the Government was not bound to wait for bringing the Bill, and any assurance or any other comment by any other Member or by any other Minister I do not think will help us in putting an interpretation against the clear words of the section. We have to go to the clear wording of the section, and according to it the Government was not bound to wait till they got the views of the legislatures and it was open to them to bring forward the Bill at any time as it pleased them.

Mr. Speaker: I have heard, I believe, almost all kinds of views on this important question, and I must take time. I cannot immediately come out with what I have to say. I shall carefully go through the proceedings, refer to the authorities quoted and then give my ruling on this question.

Shri Kamath: Is the Minister not saying anything?

Mr. Speaker: I do not think he has to reply. One of the Ministers has already replied. It is no use taking up the time of the House. I have been saying that we are racing against time, and we have taken $2\frac{1}{2}$ hours over this when we are so much short of time that even in respect of Bills we are not allotting more time.

Shri Kamath: He seems eager to speak.

Mr. Speaker: No explanations are needed. The point, to my mind, is very simple. It ought not to have taken so much time at all. However, as it is an important point, I thought I must be patient and give a hearing to all friends who wanted to say something. So, as I said, I shall be able to give my ruling on Monday, the 12th. In case I come to the conclusion that this is not a substantially identical Bill, and therefore should be permitted, then as I have already made it clear to the House, all further stages

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of the Bill, including the introduction, the consideration stage, the clause by clause reading, and the third reading stage, will be put through immediately that day, because on the 14th we are taking up the Report of the States Reorganisation Commission for discussion, and I do not want that any time should be taken up from that discussion. After all, it is a technical point. The substantial point is the discussion on the Report of the States Reorganisation Commission.

Shri Kamath: On a point of clarification. If the ruling goes in favour of the introduction of the Bill in the House, will other pending business be interrupted for the sake of this Bill?

Mr. Speaker: I cannot say that. If there is any pending business, it may go on, and then the rest will come. Or this Bill may be taken up first and intervened, and then the other business may go on.

Dr. Lanka Sundaram (Visakhapatnam): May I just ask you a question? Has any formal request been made to you by Government for the suspension of the rule so far?

Mr. Speaker: It is for Government to consider. At least I do not know what mind they have in this matter. But it is open to them to make the request any time.

Dr. Lanka Sundaram: May I have your indulgence before you give your ruling? Has any request been made to you so far, that is, up to the moment?

Mr. Speaker: Not so far. But there are three or four days between now and the 12th. I do not know how they will make up their mind and how they will act; Government know best.

DELHI (CONTROL OF BUILDING
OPERATIONS) BILL—contd.

Mr. Speaker: The House will now proceed with the further consideration of the following motion moved by Rajkumari Amrit Kaur on the 7th