

d modifications as the Speaker may make; and

that this House recommends to Rajya Sabha that Rajya Sabha do in the said Joint Committee and communicate to this House the names of members to be appointed in Rajya Sabha to the Joint Committee.

The motion was adopted

6 hrs.

PARLIAMENT (PREVENTION OF DISQUALIFICATION) BILL

Mr. Chairman: The House will now up the Parliament (Prevention of Disqualification) Bill, 1957, as reported by the Joint Committee. As the House is aware fifteen hours have been allotted for all the stages of the Bill. I would like to take the sense of the House as to how these fifteen hours should be distributed among the various stages of the Bill.

Shri Naushir Bharucha (East Punjab): I suggest that ten hours be devoted to the First Reading and ten hours for the clause-by-clause consideration as well as the Third Reading.

Shri Morarka (Jhunjhunu): Twelve hours may be devoted to the First Reading. There are only one or two important clauses, so clause-by-clause consideration will not take a long time.

Shri Dasappa: We can devote twelve hours for the consideration stage and six hours for the other stages.

Pandit Thakur Das Bhargava (Bihar): I would like to suggest that we should not take any specific decision about the time on the basis of the number of amendments, because

more amendments will be coming. We did not expect that this Bill would be taken up today. So many more amendments will be coming and we must give more time to amendments because they are very important. The general principles have been discussed many times, but with regard to specific amendments full time should be given.

Shri A. C. Guha (Barasat): There is only one operative clause on which amendments are usually tabled.

Mr. Chairman: And the Schedule also.

Shri Dasappa: Shri Guha's amendments are formidable ones, though they may look very brief. I should think the House would do well to discuss those.

Shri Morarka: That is not an amendment to the clauses.

Shri Dasappa: Therefore, more time should be devoted to the consideration.

Pandit Thakur Das Bhargava: So many items have been mentioned in the Schedule, there will be specific amendments with regard to those also.

Mr. Chairman: I have looked into the Bill and feel that there will be a large number of amendments which will have to be considered very carefully by the House, as such, a certain amount of time will have to be allocated for the Second Reading. Shri Arun Chandra Guha's amendments will come in the consideration stage, although I believe one of them may not be within the purview, because under Rule 341 as yet nothing new has been suggested to warrant a second Joint Committee. In any case a whole review of the matter is going to be suggested by various Members. Therefore, this aspect should have

[Mr. Chairman]

sufficient consideration by the House and to the consideration stage we have to give a certain amount of time.

What time should we allot for the Third Reading?

Shri Naushir Bharucha: One hour.

Mr. Chairman: Then could we suggest as Mr. Bharucha has done ten hours, four hours and one hour.

Shri Naushir Bharucha: Let us not finally decide it just now. Let us have ten hours for the consideration stage and 5 hours as between the clause-by-clause consideration and the Third Reading.

Mr. Chairman: I take it hon Members agree to this?

Several Hon. Members: Yes

The Deputy Minister of Law (Shri Hajarnavis): I beg to move:

"That the Bill to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being, members of Parliament, as reported by the Joint Committee, be taken into consideration".

Madam, this Bill as you very pertinently observed, is a very debatable Bill which is of very great importance not only to Government but to each Member of this House, and on which various views are possible.

Before I deal with the changes proposed by the Joint Committee, I would give a brief *resume* of all the legislation on the subject because it is only when we know what law there is at present operating on the subject that we will be able to know what changes are proposed to be made by the Bill. The first Act was the Act No. 19 of 1950. By that, we had exempted only four categories of offices—the offices of Ministers of State, Deputy Ministers, Parliamentary Secretaries and Parliamentary Under Secretaries. That exemption still stands. The next Act

was Act No. 68 of 1951. That exempted membership of certain Committees. Those Committees have lapsed. Therefore, the Act is also spent. The third Act was Act No. 1 of 1954 which has been extended till the 31st December 1956. That at present is the operative Act by which we have exempted certain advisory committees. Then we have exempted Vice-Chancellors. Dealing with the suggestion that Vice-Chancellors should not be exempted, I might remind the House that Vice-Chancellors are already enjoying the exemption. Then Deputy Chief Whips are exempted; other exemptions are those of officers of the National Cadet Corps and Territorial Army. Some other committees are also exempted.

Now we have come with this Bill in which we proposed to continue the exemption of Vice-Chancellors, officers of the National Cadet Corps, Territorial Army and also exempt the Home Guards. But the most important provision that we had proposed in the Bill was to exempt the office of Chairman or Director or member of a statutory body other than a body connected with a University unless the law under which the statutory body is established otherwise expressly provides. So that wherever there is a specific law dealing with the question of disqualification, we preserve that. We said that subject to that a person would be exempted provided the remuneration that was paid to the holder of this office was not more than the compensatory allowance; and compensatory allowance was defined to mean money payable by way of the usual allowance to the Member of Parliament under the Salaries and Allowances of Members of Parliament Act.

Then we said that Chairmen and members of non-statutory bodies should also be exempted under the same conditions. Thirdly, we said that advisers appointed temporarily for the purpose of advising Government should also be exempted. Then under (j) certain

part-time officers whose offices were themselves exempted from disqualification under the State law for being elected to the State Legislature were also proposed to be exempted from disqualification.

In the Joint Committee, we had long sittings. We gave anxious consideration to the various principles involved in the subject, considerations which ought to guide us, and have now submitted the Report. In clause 1(1), we have made a numerical alteration, from '1957' to '1958'. In clause 1(2), which has met with some criticism from Pandit Thakur Das Bhargava, we have changed the date of coming into operation of the Act from 1st January 1959 to 31st December 1958. The Act which is now in operation runs out on the 31st December 1958. It was proposed that immediately after the Act runs out, the new Act should come into force. As far as I can see, there could be no objection to the new Act coming into force immediately after the present Act expires, but so as to leave no room for doubt, so as to take no risk whatsoever with the seats of hon. Members, we decided, as a matter of extra abundant caution, that this Act should come into force a day earlier by displacing the earlier Act, so that there could be no room whatsoever for argument there is any sort of interregnum between the old Act and the new Act. Personally, I do not think there is any such interregnum, but as I said, by way of extra abundant caution, we have said that the Act will come into force a day earlier repealing the present Act by one day.

In clause 2, we have added certain definitions by way of explanation. We have taken out the definitions from the explanation and made them into a definition clause. That is merely a drafting change. That becomes clause 2.

So far as clause 3 is concerned, we have added (a) by way of clarification

the words 'Minister of State or Deputy Minister' after the word 'Minister'. It is understood that Minister of State and Deputy Minister are included in the word 'Minister'. That, again, is clarificatory.

In (b), we have added the word 'Whip'. In the earlier Act, we had proposed to exempt the Chief Whip and Deputy Chief Whip. Now we also propose to exempt the Whip.

In respect of the provision relating to exemption of the various offices of a University, clause (f) of the original Bill stands unaltered except for this that we propose to exempt any other body, which is of an advisory character, connected with the University. The Joint Committee suggested that such a body should be only an advisory body.

Then original item(j) has been deleted. Then I come to the really controversial part of the Bill, namely (h).

The Joint Committee debated this clause of the Bill for a long time. They thought that instead of giving a sort of a blanket exemption to all committees and leaving it for the courts or for the various authorities to interpret the question as to whether the disqualification has or has not been incurred it would be better to base it on the model of the United Kingdom Act and make two lists, one of offices in which the disqualification is incurred and the other in which there will be no disqualification. The Joint Committee made some sort of attempt to follow that model; with what success. I leave it to the members of the House to judge. I will quote from the report of the Committee itself. But before that I may say that we examined about 1,300 committees. Contained in Part I of the Schedule are 42 Central Government Committees and 55 State Government Committees. These are proposed to be completely disqualified. Members of Parliament will touch these bodies at their peril.

[Shri Hajarnavis]

13.21 hrs.

[SRI BARMAN in the Chair]

In Part II, there are 40 bodies enumerated—28 of the Central Govt. and 12 of the State Governments. Of these, it is proposed to disqualify only the Chairman or the Secretaries and members of the standing or executive committees but not the members. Dealing with this problem, the Joint Committee said:

"This was the most controversial item in the entire Bill as it raised the question of the desirability of appending a schedule to the Bill enumerating the Committees membership of which would entail disqualification. The Committee have given their most careful thought to the question and have come to the conclusion that the law on the subject of disqualification of members of Parliament should be clear and unambiguous. The Committee therefore, decided that on the model of the British House of Commons Disqualification Act, 1957, the Bill should contain a schedule which should enumerate the Committee whose membership would disqualify. The Committee have accordingly attached a schedule to the Bill, Part I of which enumerates the Committees membership of which would entail disqualification and Part II, the Committees in which the office of chairman, secretary, or member of the standing or executive committees would entail disqualification, but not the office of a member only."

13.24 hrs.

[MR. DEPUTY-SPEAKER in the Chair.]

The Sub-Committee of the Joint Committee in paragraph 14 of their report say :

"In categorising the Committees into disqualifying and non-ob-

jectionable ones no single uniform principle has been strictly applied as the Sub-Committee was influenced by the fact that in the peculiar circumstances of our country and the undeveloped state in many respects participation of members of Parliament, many of whom have special knowledge of various subjects would not rigorously be excluded. Thus some balance and compromise has been applied in categorising these Committees, while purity, freedom from influence and independence of members has been the guiding principle in making the choice."

How far we have been guided by these principles and how far they have been actually applied to the various lists, I leave it to the Members of the House to judge.

There are some vital points of difference between the law in England and our Constitution here, which I consider it my duty to place before the House I will read from the Report of the Select Committee of the House of Commons.

"The main object of the Bill is to give effect to Part I of the Report from the Select Committee on Offices or Places of Profit under the Crown and, in making certain amendments to the Bill, Your Committee have had before them this Report, as well as other Reports, and evidences both oral and written. They have also had in mind at all times two principles to which they attach great importance. They first of these is that qualification for membership of the House of Commons should be on as wide a basis as possible: the second is that any restrictions upon membership which may have to be imposed should be contained in legislation which is in a form easily interpreted by, and readily available to, those who may be directly affected.

to achieve these results Your Committee therefore determined, in their deliberations, to make amendments to substitute the general descriptions of qualifying offices, contained in earlier legislation and in Clause (g) of the Bill, a definite and detailed list, to be specified in schedules to the Bill, of offices which Your Committee considered should not or should not, be held by Members of the House of Commons. In compiling this list your Committee have recognised that certain offices are incompatible with membership of the House of Commons, some as involving physical impossibilities of simultaneous attendance in two places, some because of possible overlap and others because of conflict of duties. In some cases your Committee consider that certain offices should carry a complete disqualification, in others they consider that the disqualification should be limited to membership for constituencies in which the offices are exercisable. In both cases they have thought it right to identify these offices by name and, moreover, to make provision for contingencies by providing machinery for the omission of specified offices from, and the inclusion of others in, the schedules from time to time as need may arise. They prefer lists of qualifying offices to reliance on certain general statutory provisions, such lists will, they believe, prove more satisfactory in law, and will, Your Committee believe, remove, or at least reduce to the minimum, the need for separate Committees to enquire into alleged disqualification and also need for acts of indemnity."

In the Bill that we had proposed, if I might say so, from this point, namely that we tried to formulate certain general principles which were to be applied, the attempt of the Joint Committee is to remove

the blemish by making a detailed list giving the specific offices which shall incur the disqualification.

The result was achieved in England by the insertion of section 1(4) in the House of Commons Disqualification Act of 1957. Section 1(1) enumerates what are the offices the holding of which will disqualify a person from being a member of the British House of Commons. In sub-section (2) it has been said

'A person who for the time being holds any office described in Part IV of the said First Schedule is disqualified for membership of the House of Commons for any constituency specified in relation to that office in the second column of the said Part IV.'

Then clause (4) says

'Except as provided by this Act a person shall not be disqualified for membership of the House of Commons by reason of his holding an office or place of profit under the Crown or any other office or place, and a person shall not be disqualified for appointment to or for holding any office or place by reason of his being a member of that House.'

So, the law in England as it obtains today says that except for offices enumerated every other person is qualified. Is it possible for us to do so? I will read to the House article 102 of the Constitution. I submit that this article, as it is worded, uses a phrase exactly opposite to that which has been used in the British Act. It says

'A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament—

(a) if he holds any office of profit under the Government of India or the Government

[Shri Hajarnavis]

of any State, other than an office declared by Parliament by law not to disqualify its holder,"

So, what the Constitution requires is to make a list of those offices which will not disqualify. The Constitution says that we can come to the conclusion that a certain office is an office of profit, or the authority which has considered the question of disqualification comes to the conclusion that a certain office is an office of profit and disqualification is incurred unless that disqualification has been removed.

Shri Morarka. How is your Schedule consistent with article 102?

Shri Hajarnavis: The Schedule must be regarded as an exception.

Shri Naushir Bharucha (East Khandesh). It is part of clause 3.

Shri Hajarnavis: It can be regarded as an exception to clause 3. Of course I must submit that the general pattern of the scheme of article 102 is opposed to that which we find in the UK model. But that does not mean that the Act as at present drafted is not workable. The question then will still be as to whether we have been able to achieve that amount of precision and freedom from ambiguity which we sought to achieve.

There are three things which I might observe. The legislature cannot define the word 'office of profit'. For, whenever a question arises as to whether an office is an office of profit or not, whether the court interprets it or an authority interprets it, it will interpret it as it occurs in the Constitution, unfettered by any definition made by the legislature for no legislature has by its own definition

power to add to or detract from the powers given by the Constitution. That, I submit, would be the first point of distinction between the UK Act and our Act.

Secondly, as I have already mentioned, what article 102 requires us to do is to make a list of those offices which are exempt whereas under the English Act we find—there is no distinction between constitutional law and ordinary law—the position is the reverse. Unless a disqualification is incurred every person is free to be a Member of the House of Commons.

The third vital difference is this, which is likely to be of a considerable source of difficulty to us. We have not only to exempt the offices created by the Government of India; we have also to exempt the offices created by the Governments of all the States. You know, Sir, how difficult we found in spite of repeated efforts to keep abreast of the information regarding all the offices that were created by the various State Governments. In order to meet the difficulty, the Joint Committee suggested that we might have a Parliamentary Sub-Committee. This is what they say.

"The Committee are fully aware that in the very nature of things any schedule of the nature now attached cannot be exhaustive or complete at any time. The Committee, therefore, recommend the constitution of a Standing Parliamentary Committee composed of members of both the Houses of Parliament which will undertake the work of continuous scrutiny in respect of all existing and future committees with a view to recommending to the Government which of them ought or ought not to disqualify so that legislation for amending the schedule may be brought forward by Government from time to time."

Now this again takes us after the pattern of the UK Act. In UK they have taken power to either add to the list or subtract from the list by an Order in Council, that can be done in England because the Parliamentary Act gives that power. Here I am afraid that cannot be done because article 102 says that whatever disqualification is incurred must be removed by an Act of Parliament. It is not suggested that the Joint Committee has said so. But let us realise that, a mere recommendation of the Subcommittee will not relieve Parliament of the necessity of enacting a law. The question would then be: Could the Legislature consider at every session what committees have come into existence and what bodies, statutory or non-statutory, have come into existence as a result of the action of the Government of India or the State Governments and devote certain part of their legislative time to their removal?

Shri Tangamani (Madura): It will be session after session.

Shri Hajarnavis: Another difficulty would be this. These various bodies which would be created would be or at least many of them would be created by executive orders or their names and constitutions may be changed. Those which are not unexceptionable may develop some objectionable features.

These are some of the difficulties which we would have to meet. In these circumstances, we do not think it necessary to have any sub-committee because it would almost be a fact-finding body and not relieve Parliament of the necessity of expressly legislating for the purpose. As my hon friend Shri Tangamani has said this kind of an arrangement would preempt a large part of the legislative time which we can ill-afford.

So far as clause 3(1) is concerned, we have made a change in it. We have said that wherever there is a village revenue officer who has, as part of his duties, to discharge the functions of the police officer, he will be disqualified.

This, in short, is the report of the Joint Committee. The subject is exceedingly difficult. What is involved is the adjustment of various principles maintaining the purity of Parliament and at the same time maintaining enough parliamentary control over the various organs created. Government thought in the light of the experience that they had gained in the last five years of association of various Members of Parliament with the autonomous organisations that it is something which will serve a useful purpose and may be continued whereas there may be apprehensions that it might amount to patronage. We can go by the experience obtained by us during the last five years.

But then, as I said, the Joint Committee came to certain conclusions. I am not suggesting that this is an ideal Bill. We would very patiently and attentively listen to the debate and I am sure that as a result of the collective wisdom of the House we may be able to frame a better Bill than has been possible so far. We have an open mind on the subject and will give anxious consideration to every suggestion that comes from every section of the House. This is not a partisan measure at all. It is something which does not affect one group or the other but all of us and therefore I leave it to the collective wisdom of the House.

Shri Morarka, Sir, before the consideration of the Bill is taken up, may I seek one clarification from the hon. Mover? It has got something to do with article 102 of the Constitution.

[Shri Morarka]

which the hon Minister has just now read out Article 102 says

'A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament, if he holds any office of profit under the Government of India or the Government of any State other than an office declared by Parliament by law not to disqualify its holder "

So, unless it is declared by Parliament by law not to disqualify a person, the holder thereof will be disqualified from being a Member. That is the requirement of the Constitution. In other words each office must be examined and the Constitution enjoins upon this Parliament a duty to exempt each office

Mr Deputy-Speaker. What is the clarification? When he is given the chance and he makes a speech he can raise all these objections

Shri Morarka The clarification which I seek is this. Since each office must be examined by Parliament before it can be exempted our Schedule must specify only those offices the holding of which will not disqualify a Member. This Bill as it has now come from the Joint Committee

Mr Deputy-Speaker. That is exactly the matter for consideration now. All those things that the Schedule is not complete, it is not correct, it is not exhaustive and all that can be raised then

Shri Morarka My point is not about the complete or exhaustive nature of the Schedule. My point is that the Schedule as appended to this Bill is not the type of Schedule which is contemplated by article 102

Mr Deputy-Speaker: Let me place the motion before the House and then he can raise his objection, there is no question of any clarification. I find that he only wants to point out that it is not according to the Constitution

Shri Morarka Yes, Sir, that is the point

Mr. Deputy-Speaker. He can do so after I have placed the motion before the House

Motion moved

'That the Bill to declare that certain offices of profit under the Government shall not disqualify the holders thereof for being chosen as, or for being members of Parliament as reported by the Joint Committee be taken into consideration

There are two amendments tabled to this motion, both in the name of Shri A C Guha one for re-committal to the same Joint Committee and the other to refer the Bill to a new Committee. May I know whether he alleges that new or unforeseen circumstances have arisen since this report was made?

Shri A C Guha I think Sir, you are referring to rule 341(3) in which it has been stated

"If the Speaker is of opinion that a motion for re-committal of a Bill to a Select Committee of the House or a Joint Committee of the Houses or circulation or re-circulation of the Bill after the Select Committee of the House or the Joint Committee of the Houses has reported thereon, is in the nature of a dilatory motion in abuse of the rules of the House

inasmuch as the Select Committee of the House or the Joint Committee of the Houses, as the case may be, has dealt with the Bill in a proper manner "

My contention is,—there may not have been new circumstances created after the report of the Joint Committee—the Joint Committee has not dealt with the matter in a proper manner. Moreover, Sir,—of course, I am not quite definite about it—after this report of the Joint Committee, there might have been some new bodies created by the State Governments or the Central Government, which also should have been considered by the Joint Committee. Therefore, my emphasis, firstly, is on the point that the Joint Committee has not dealt with the matter in a proper manner. Secondly, as has been mentioned by my hon friend Shri Morarka, this will not satisfy the provisions of article 102 of the Constitution. They have not been able to examine all the committees, and the Schedule that they have attached is not exhaustive. It is exhaustive only for disqualification and not exhaustive for purposes of giving exemption from disqualification.

Therefore, my objections are firstly, the Joint Committee has not dealt with the matter in a proper manner, secondly, some other committees might have been created by the Central Government or the State Governments after making this report. The hon Minister can tell us if he is sure that no such committees have been created after the report of the Joint Committee.

Mr. Deputy-Speaker: As far as these two amendments are concerned, I consider that they are of a dilatory nature. Two objections have been taken by the hon Member. Shri A C

Guha, who has tabled these amendments. One objection is that it is just possible that since this report was made some other committees might have come up into existence and they have not been dealt with by this Committee. If we re-commit it and a report is made, before it comes up for consideration there would be other committees that might have been constituted. Here it is not a question only of any new committees having been constituted during this interval, but the Committee could not get hold of all those committees in existence then in spite of their best efforts, as would be seen from this report. The Joint Committee was constituted in December last and the Committee took as many as nine months to consider the Bill. They had asked all the State Governments to send them the list of committees as well as their constitutions, but they failed to get all those lists. This is the remedy that they could find at that time. It may be wrong or it may be right, that is a different thing. The House has every right to revise it, over-rule it or make any amendments in it, that would be a different thing altogether. But they have proceeded in the manner that was left of them. There was no other manner in which they could proceed. The hon Member has also not suggested that any other course was open to them. He has only said that all committees have not been considered. That was the difficulty that they also experienced. Even if this Bill goes back to the same Committee or to a new Committee, there is no chance that all the committees shall come before them for consideration. This Committee tried to meet their difficulty in a different manner and that would be before the House, whether it approves of that or just suggests another manner in which all these issues can be dealt with is a different thing. But, for the present I do not think there is any use.

Shri A. C. Guha. If the Committee had proceeded on the line as the

[Shri A. C. Guha]

Constitution would require it, if they had put a Schedule which would give the exemptions, I think it could have dealt with the matter in a proper and better manner. In that case the list would have been exhaustive giving the exemptions and all other bodies would have come under the ban. The Committee has not done that. It was open to the Committee to give a list where exemptions would operate.

Secondly, if the Government have not co-operated with the Committee, is it that the House should be asked to pass a Bill where even the Government have not co-operated? Is it the obligation of the House to pass a Bill where even Government have not co-operated with the Joint Committee of both Houses? I take it, Sir, as a question of the dignity of this House, and I hope you will see to it that the Government should be made to co-operate with a Joint Committee of both the Houses. Sir, it is admitted in the report that neither the Central Government nor the State Governments co-operated with this Committee. I consider this as an insult to this House. I think the Committee should not have taken up the Bill, the Committee should have returned the Bill, to the Ministry which introduced it in the House. It is up to that Ministry to make its sister departments and other State Governments to co-operate with the Committee. If that has not been possible, I think the House cannot be asked to pass a Bill which is illogical, irrational and which is also not consistent with the provisions of article 102 of the Constitution.

Pandit Thakur Das Bhargava: Sir, I would like to say something on this. I think the argument of my hon.

friend that this Committee has not considered the committees that had not come into existence then is not good. On the contrary, as you have been pleased to point out, there is no point of time when the State Governments and the Government of India will not be appointing their committees. Therefore, it is impossible to draw a Bill in which all the present committees and the future committees are considered.

At the same time, there is good force in the argument of my hon. friend when he says that in regard to the committees which existed then—committees of the Central Government as well as of State Governments—this Joint Committee should have been enabled by the Government to consider them all so that they could express their opinion about all the committees which were in existence. Now, I quite see the difficulty. I was a member of the Joint Committee. I find that in spite of the best efforts of our Chairman as well as the best efforts of the Law Minister and the Deputy Minister we were not able to get hold of all those committees.

Shri A. C. Guha: They could withdraw the Bill, instead of asking this House to pass it.

Pandit Thakur Das Bhargava: Sir, it is most unfortunate. This is not the first time that I am pointing this out. I submitted this when I was in the Joint Committee. I have put it in the Note of Dissent. I also join with my hon. friend in saying that this is not a happy position in which the Joint Committee found itself or this House found itself. When even the

Ministries of the Central Government did not co-operate with the Joint Committee. After all, this is a Joint Committee of the Houses and the Law Minister himself and the Deputy Minister of Law were there, I cannot conceive of a more authoritative Committee, and at least in such a body this thing should not have taken place. I understand that in regard to the States also the position is the same. I feel ashamed to say that the Law Ministry or even this Parliament, represented by the Deputy-Speaker and this authoritative Committee set up by the Parliament at the instance of Law Ministry could not force the States to send all the materials here. If that is the case, I fail to see how the Government of this country can be carried on. As a matter of fact I am ashamed to say it and I feel that we have had such handicaps in our efforts to find a right solution for this difficult question.

Supposing we accept the schedule, what will happen? If we accept the principle of clause 1 of the House of Commons Bill, it means that all those committees which are not entered in the schedule are not objectionable and yet if any person becomes a member, then article 102 of the Constitution comes in and he may be enmeshed.

Mr. Deputy-Speaker: Pandit Thakur Das Bhargava has very much to say on this point, but he should be brief at this moment. I am certain that the objection is whether this Bill should be committed back or should be committed to a new Committee, and that is the only point for consideration now.

Pandit Thakur Das Bhargava: I am only coming to that. My point is this. As I have already proposed, there is no difference if we accept the principle of the House of Commons Bill, viz. that offices not included in

the schedule are unobjectionable and make a schedule, that schedule may consist of one part only and not two parts. It may be only one schedule. If there is a disqualifying schedule every other membership not included therein should be taken as one that is qualified and not objectionable provided we accept the principle of clause 1 of the House of Commons Bill. If there are two schedules they will serve the same purpose. When we say that one Bill disqualifies and the other qualifies, they mean the same thing if we accept the principle that those which do not qualify come within the other Bill. If we do not accept that principle, then two schedules are necessary. Therefore, I do submit that if we accept the schedule, as has been framed by the Joint Committee, the difficulty will be that all those committees which are not mentioned here may be treated as, and be taken to be committees, the membership of which will not be objectionable. Therefore, it is quite necessary that if we accept that principle, we must have a complete and exhaustive schedule. Otherwise, there is no meaning in having a schedule.

As a matter of fact, we have been treating our Constitution with contempt. We could not make a complete and exhaustive schedule in regard to committees which exist and in regard to the committees which do not exist. Therefore, it was quite necessary for us to have a complete schedule. But unfortunately we could not make one. The Joint Committee and the Chairman of the Committee and the Law Minister alone are not to be blamed for this. If the material is not here, we could not deliberate upon that material. In my humble submission, this objection is well-founded. Before we can take up this matter, an attempt should be made to have a complete schedule showing what committees should be there. Without that, my own difficulty and feeling is that we will not be doing full justice to the principles of the proposed Act.

[Pandit Thakur Das Bhargava]

Supposing we pass this measure into an Act, will it be said that we have done our duty? Not at all. We will be stultifying ourselves. As regards these committees which are not examined, they will all be taken, from the principle of clause 1 of the House of Commons Bill, to be unobjectionable. If they are not taken to be unobjectionable, then every Member who accepts any office in any such committee will come under the purview of article 102 of the Constitution.

My humble submission is that this argument is well-founded and nothing will be lost if we allow time for the purpose of determining what other committees out of existing committees should be included in the schedule after going into the composition, etc. of the committees. That will also take some time, say, three months. By the time that report is made by the proposed Standing Committee we will be able to have a full schedule and a comprehensive amending Bill. That is to say, part of the work may be done here in regard to the amendments, and the other part of the work could be done there, by the Standing Committee within three months so that there could be complementary amendments to the Act. I think this is the only solution. Otherwise, I fail to see how we can resist the argument of Shri Guha when we do not have a complete schedule.

Shri Morarka The report of the Joint Committee itself says—a portion of which was read by the hon. Minister—that “the Committee therefore recommends the constitution of a Standing Parliamentary Committee composed of Members of both the Houses of Parliament” etc., to be constituted for examining the corporations and other committees. The Minister for very good reasons, has said that such a committee cannot be constituted or should not be constituted. That leaves the whole scheme of this Bill incomplete. The Joint Committee has said that they could not examine all the committees and the corporations because, by the nature of

the thing, it is not possible, and therefore they have recommended a Committee of the House should be constituted. But even if we did constitute such a committee, it would still not comply with the provisions of the Constitution. For other reasons also, it is not desirable to constitute such a committee. Thus the whole scheme of the Bill is left incomplete.

The Joint Committee says one thing. The Minister, when he comes before the House, says another thing though he does not go far enough as far as the Committee wanted. I think, therefore there is some confusion. What would be the position of these other corporations which would be created or the corporations which are already there but which have not been examined by the Joint Committee?

I do not want to take much time of the House. I must, however, give one example. In the schedule, they have mentioned very small bodies like the Advisory Committee for some telephones education, and so on and so forth. At the same time they have not included in the schedule the Hindustan Steel Corporation, the biggest corporation in this country. The directorship of the Hindustan Steel Corporation will not disqualify, whereas the membership of some advisory committee somewhere in Madras State or Bombay State will disqualify. I think apart from the objection which one can take on the facts, the whole scheme of this Bill is incomplete and there is a lot of force in the argument of Shri Guha that this Bill should be recommitted to the Joint Committee.

Shri Dasappa (Bangalore) I do not want to say anything on the merits of the contention of my friend Shri Guha. What I say is, we may take up the discussion of the whole subject when we come to the general discussion. The question of its being dilatory or not may not be decided upon at this stage, but it is open for us to hear the arguments in favour of Shri Guha's amendments, and then it is for the House and for the Chair to decide.

whether the Bill is of such character that the House is not enabled to consider the amendments. This is a suggestion which I make.

Shri A C Guha rose—

Mr Deputy-Speaker: He has already spoken. He need not reply to what others have said now.

If the argument had been that the Joint Committee could not consider the cases of other committees—of course, there was some difficulty then—that difficulty has now been overcome, and if it is desired that it shall have all the committees now, I could very well appreciate that there was some benefit in sending it back to the Committee or constitute a new Committee. The whole argument, as has been pointed out by Pandit Thakur Das Bhargava, is that in spite of best efforts we were not able to get all those lists from even some Ministries of the Central Government. Now, it is said that that is a blot on us or the Bill must have been thrown out by the Joint Committee. But that has not been done by the Joint Committee. This House is a sovereign body and it can throw it out. All these arguments that have been advanced are for this purpose, and they pointed out that this Bill should not be taken into consideration. When this motion is before the House, we will debate it and then the House can take any decision that it likes. If it feels that really the material available is not enough to pass this legislation, it can refuse to take the Bill into consideration.

Shri Punnoose (Ambalapuzha) A point for clarification. If the Joint Committee wants an important information and the Ministry concerned does not give it, is there any remedy? Is the Joint Committee entitled to make a complaint to Parliament? What is the position?

Mr Deputy-Speaker: Yes, there are many remedies, but the recommendal is not the remedy. I can only say this much for the present.

Shri A C Guha: We can expect that after this debate the different Ministries of the Government and the State Governments may have a better sense and may co-operate with the Joint Committee.

Mr Deputy-Speaker: Then, if it happens, we can amend the schedule here. There would be amendments coming, and we can amend the Bill. But there is no reason now for reconstituting the Committee because no new material has come. No unforeseen circumstances have happened. Even now, we do not suppose that if a new Committee is constituted or the Bill recommitted to the same Committee, the evil that existed then would not be present or whether we would be able to overcome that. Therefore, in these circumstances, I am constrained to rule these amendments as dilatory. We will proceed with the discussion.

14 hrs

Shri Tangamani: May I make a submission? It would be rather very unfair to say that this is of a dilatory nature because, as you yourself observed, the Select Committee has taken nearly ten months.

Mr Deputy-Speaker: After I have given my ruling, should that not be the end of it?

Shri Tangamani: I would like to make a submission on that ruling.

Mr Deputy-Speaker: When a ruling has been given, it is not fair to do that. It would not be fair for the Chair. He has certainly the right to speak, but not after the ruling has been given.

Shri Tangamani: I was trying to catch your eye.

Mr Deputy-Speaker: I looked twice to see whether any hon. Member wants to say anything. Then he did not rise. Now we will proceed with the discussion.

Shri A C Guha: Mr Deputy-Speaker, if I am not allowed to move my amendments, I think I shall have to

[Shri A. C. Guha]

accept your decision in this matter. But, as I have stated, this is a very defective Bill and we shall be stultifying ourselves to pass a Bill of this nature

What are the criteria for disqualifying a member from holding some posts? It has been stated in the Note of Dissent by Pandit Thakur Das Bhargava that the basis of exclusion should be the confirmation of power, position, influence or patronage for grant of scholarship, land etc. If that be taken as the basis, I think all the bodies constituted by the Government should come under the ban. There should not be any exemption for those bodies if we take that as the basis for deciding whether it will disqualify a person from being a Member of the House.

From a common sense point of view I can say that there should be three criteria rather, there can be three criteria only. Firstly, a member should have the undivided attention for Parliament work. There should not be any other diversion so that their whole time and energy may be given to the work of this House. Parliament is very jealous of its rights and it wants to see that the members devote their time and energy for its work. There should not be any other work which may divert their attention, at least during the period of parliamentary sittings.

Shri Naushir Bharucha: On that basis, we will all be disqualified, because we have got our own professions to offer.

Shri A. C. Guha: Yes, I agree, so that should not apply. Secondly, there should not be any extra remuneration. We should not get anything more than what is fixed by Parliament even if we serve in any committee of the Government. This has been taken care of by fixing the remuneration in the Bill to what has been termed compensatory allowance. Thirdly,

there should not be any opportunity to distribute patronage. This point covers a wide range.

I can assure you that this House is quite conscious of its dignity. A few years ago, even before the Constitution was framed, a member who was not a member of any statutory or non-statutory body, was suspected to have misbehaved. Immediately there was a commission of enquiry and that member was removed from the membership of this House. If any member misbehaves, this House is strong enough and conscious enough to take steps against that member. So, it should be left to the discretion of the House to see that no member is allowed to use his position as a member of the House or member of any other body of government for any sordid purpose which is not in the interest of the nation.

Then mention has been made of the UK Act. I am not a lawyer. So, I shall not be able to meet the arguments on the legal analogy of the UK Act. But I can say that we should not follow it just as a parallel case. We are not on par with UK on many matters. Our declared and avowed policy is to have a socialist pattern of society. UK has not made any such policy declaration. That is not the policy of the UK Government. If we have to have a socialist pattern of society, then naturally Government enterprises, industrial and commercial, should expand. The social service organisations of the government should also expand, and they are expanding. A committee presided over by an important member of this House, when dealing with the working of the Community Projects, recommended that panchayats should be formed and all development works of the Community Development areas should be entrusted to the panchayats, moreover, there should be a consultative council of the two Houses on the Community Development Projects. The consultative committee of the two Houses on

the Community Projects recommended that more power and authority should be given to the members of the advisory committees on Community Projects and NES Blocks. That recommendation has practically been accepted by Government and they will be in charge of development works, allotment of money etc. There we have to function as members of the advisory committee. I can very well be accused of distributing patronage through the allocation of funds of the NES Blocks and Community Project works. The only alternative is to retrace our steps and say that all welfare works would be done simply by the bureaucracy. But, if we want to work for a socialist pattern of society, then it will be incumbent on the members of this House to take more and more active part in governmental and semi-governmental bodies and they will have to use government funds, in a sense. But, on that ground, can anybody suspect them of distributing patronage in their local areas?

I think two or three days ago the Estimates Committee recommended that even for the distribution of advertisements to newspapers the local legislators should be consulted. There was a previous recommendation of the Estimates Committee on this. The Government did not accept that recommendation and the Estimates Committee reiterated its recommendation that in the case of giving advertisements to newspapers the local legislators should be consulted. That is also a sort of distributing patronage.

So, we cannot just now say that wherever there is any scope for distributing patronage, no Member of Parliament should be there. That would mean the scrapping of the entire nature of the welfare State. That would mean the dropping of the socialist pattern.

What is the alternative way of running these socialised commercial and industrial units? Either these will be run by public men among whom Members of Parliament and members

of local legislatures are surely important component parts or these can be simply left to bureaucracy or we can hand over those bodies to people drawn from the private sector. I think between these three, the first one would be preferable. If we cannot trust ourselves, I do not know whom we can trust. I do not think anybody would like that these big industrial units set up by the Government should be handed over to people drawn from the private sector. Are we to say that we have greater confidence in them than in ourselves or is it the idea of this House that all these bodies should be handed over simply to bureaucracy? Are we to run a bureaucratic State or are we to run a democratic State? I think the preference will be for a democracy and the members of the different State legislatures, and those of the Parliament, are important component parts of our democratic set up and its institutions. We cannot debar them from taking an active interest and playing an active part in these matters.

In this list there are about 137 bodies mentioned. In Part I, I think, there are 97 bodies, including the Centre and the States, and in Part II there are only 40 bodies or near about that. It is stated in the Report that the Committee have examined 1,200 bodies. I think the hon. Minister has stated that 1,300 bodies have been examined. Anyhow, between 1,200 and 1,300 there is not much difference. Out of these 1,200 bodies, the Joint Committee has thought it wise to ban only just about 137 bodies. But that also not on any definite principle.

What is the nature of these bodies? Some of them are quite innocuous. Some of them are those commodity committees on which, I think, it was a convention—I am not sure if it was a statutory obligation—to have some hon. Members of this House. Most of these committees handled only a few lakhs of rupees. Not much patronage has to be distributed through these

[Shri A. C. Guha]

committees and the Members can do useful work in these committees.

In the list I also find the Industrial Finance Corporation and the Rehabilitation Finance Administration. A few years ago I had an occasion to speak against the Industrial Finance Corporation in this House. I was not a member of this body but there were other hon. Members of this House in the Industrial Finance Corporation. Then allegations were against the Directors from private sector—not against the M.P.'s. They are keeping a watch over the working of that body on behalf of this House. It was the practice and the convention that whenever Government money has been invested—of course, then the number was not so large and the volume of money also was rather meagre compared to the volume now, but even then it was the convention and a practice that some representatives of this House should be there on each body to watch the working of those bodies on behalf of Parliament. I do not know what is the urgency now to reverse that policy. I think it will lead us to some unhappy experience.

Then, as has been pointed out, this Bill does not satisfy even the provisions of the Constitution. I should not like to say that it is *ultra vires* of the Constitution, but if we were to pass a Bill in obligation of Article 102 of the Constitution this Bill would not satisfy it. Here the Article has asked us to enumerate the bodies whose membership would not disqualify anybody to be a Member of this House. But what has been done in this Bill? This Bill has enumerated about 140 bodies the membership of which would disqualify. So, I should say that if we are to pass a Bill in obligation of the responsibility of article 102 of the Constitution, this Bill would not satisfy that. We would not be doing our duty and discharging our obligation to the Constitution by passing this Bill.

Sir, your note, attached to this Bill, and the note of dissent given by Pandit Thakur Das Bhargava are sufficient condemnation of this Bill. You have overruled my objection that the Joint Committee has not done its duty properly. I can understand the handicap under which the Joint Committee was working.

Mr Deputy-Speaker: How can I say that it has not worked satisfactorily? When I presided over it, could I say that it has not done its work properly?

Shri A. C. Guha: Surely you cannot say that. But even by reading between the lines of the note signed by you one can easily get this idea that you were also feeling that the Committee did not function properly or did not have an opportunity to function properly. Of course, Pandit Thakur Das Bhargava, as an ordinary Member, could have been more frank and his note is a complete condemnation of this entire Bill.

I can understand the handicap under which the Joint Committee was working. But as suggested by some hon. Members from that side, the Joint Committee should have refused to proceed with the Bill unless an exhaustive list was offered or the Law Ministry should have withdrawn the Bill. Instead of asking Parliament to pass an illogical, irrational and an incomplete Bill, it was better for the Law Ministry to have withdrawn the Bill and say that the Government was not yet ready to frame a Bill in satisfaction of article 102 of the Constitution. But nothing of that kind has been done. It is no fault of this House that the Central Government ministries or the State Governments did not cooperate. I should lay the blame on the Law Ministry which has been sponsoring this Bill. It was up to them to make the different ministries of the Government comply with the request of the Joint Committee.

may also humbly suggest that the Committee should have been more vigilant about the dignity of this use. They should have declined to proceed with this Bill unless the Government in all its departments would operate with the Joint Committee properly. It would have been more appropriate for the Joint Committee to drop this Bill and report to the Government that the Government have not been co-operating. That would have been the upholding of the democratic principles of this House.

Mr. Deputy-Speaker: The same portunities are here before the use.

Shri Braj Raj Singh (Firozabad): throw the Bill out.

Shri A. C. Guha: Yes.—Moreover, I am rather puzzled about these non-statutory bodies. The Joint Committee has put in a list of non-statutory bodies. The departments may change the names from what has been put in this list. There is no statutory obligation to keep these names. If they change the names, exemptions will be granted to many persons to be Members of this House. The change of names of non-statutory bodies would require a mere office order from that particular department or particular ministry and the House will be faced with a very awkward and insulting situation. The list of non-statutory bodies, I think should altogether be dropped. You cannot give a list of non-statutory bodies by name. No name is obligatory for a particular body. Any of these bodies can change names overnight. Central Silk Board: think it is a non-statutory body if there is no statutory obligation to keep its name, the Commerce and Industry Ministry may change this name into Central Silk Committee and membership of that Committee would be exempted. What is the utility of giving a list of non-statutory bodies, here the names are not fixed by any statute of this Parliament or of the State legislatures?

You have stated in your note that the law should be clear and unambiguous. But, that has not been done. It is neither clear nor unambiguous. Rather it is very much ambiguous and very much confused. You suggested also a Standing Parliamentary Committee to go on with running scrutiny of the different bodies. The Law Minister has said that such a body is not possible under the Constitution. Whatever remedy you suggested is not possible under the Constitution. Moreover, there is no provision for that in the Bill. What is the statutory position of the Standing Parliamentary Committee to have a running scrutiny over the different bodies of the Government, even if it is set up? Of course, the Law Minister has said that it cannot be set up.

Shri Hajarnavis: It can be set up. But any report that it makes will have efficacy only when it is passed by Parliament. It can be set up.

Mr. Deputy-Speaker: May I also enquire, the Law Minister has given the impression that he does not feel the necessity of constituting a Committee?

Shri Hajarnavis: I am sorry, Sir, if I have given that impression, I must correct it immediately. Such a Committee can be constituted.

Mr. Deputy-Speaker: And whether the Government is in favour of constituting it or not?

Shri Hajarnavis: The Bill does not include any provision for that purpose.

Mr. Deputy-Speaker: The Bill may or may not contain any provision. The specific understanding was, the two things were taken together. We agreed to this Schedule only on the understanding that a Committee would also be set up. If the Committee is not coming up, this Schedule certainly would also be of no avail. The two things were taken together.

Pandit Thakur Das Bhargava: Am I to understand the Law Minister to say that they do not propose to set up this Committee?

Shri A. C. Guha: I have said that the Law Minister has stated that under the Constitution, this Standing Committee . . .

Mr. Deputy-Speaker: At least this is the impression that has been created on some Members as well as myself.

Shri Braj Raj Singh: There was an understanding perhaps.

Shri Hajarnavis: I will make a statement about that later on. But, as I said, speaking merely on a point of law, such a Committee can surely be set up. But, it will have no effect in terms of article 102 unless the recommendation of that Committee passes into law by Parliament. That is the only point.

Mr. Deputy-Speaker: This was on the specific understanding that the Government would make a motion and the Committee would be set up. These two things have to go together. When this report was adopted, this was the understanding so far as I can recollect. Anyway, we will see and proceed further.

Shri A. C. Guha: The position is, there is some difference between the Chairman of the Joint Committee and the Government. The Bill is becoming more confused.

Mr. Deputy-Speaker: Therefore, all confusion would be resolved by the Members here.

Shri A. C. Guha: By throwing out the Bill.

Mr. Deputy-Speaker: Or by creating more confusion.

Shri A. C. Guha: I do not know exactly what is in the mind of the Government. I cannot understand that even the different Ministries in the

Central Government would not co-operate with the Joint Committee and would not send a complete list of the bodies under them. Is it that the Government has also got a divided mind in this matter? That is the necessary conclusion one would make. I can understand about the State Governments not complying with the request of the Joint Committee. I can't understand how the Central Government Ministries were not complying with the request of the Joint Committee. The Law Minister is available here. The Prime Minister is available here to make the different Ministries comply with the request, I should not say request, I should say, the mandate from the Joint Committee. Joint Committee is an epitome of Parliament and it carries all the authority of Parliament. How can any Ministry dare disobey its mandate, it passes my understanding, when the Prime Minister is also available here. It is suspected that the Government has also got a divided mind in this matter, I am not sure. Whether the Government is really eager about this Bill in this form or what is really in their mind, I am not sure.

Mr. Deputy-Speaker: Let there not be two speeches simultaneously.

Shri Narayanankutty Menon: Divided speeches.

Mr. Deputy-Speaker: Still another?

Shri A. C. Guha: I would suggest that the Government should really make up their mind and come before the House with a better Bill, with a more logical Bill. That Bill should comply with the obligation of article 102 and must give an exhaustive list which will give exemption, which will not disqualify; not a list which will disqualify. You can never have an exhaustive list of disqualifications because new bodies are cropping up. You cannot put an exhaustive list of non-disqualifications to fulfil the obligations of article 102. The Bill should

contain a list which will not disqualify, so that all other bodies will come under the ban That should be done

Sir, you have ruled my amendment as dilatory

Mr. Deputy-Speaker. That is history now

Shri A. C. Guha: History also repeats itself, so if I repeat

This matter has been before this House for a number of years The Constitution was passed in 1950 For eight years, we have been able to do without passing an Act of this sort If there is some more time taken to have a more logical, more rational, more perfect Bill that would fulfil the obligations of article 102, we should wait for that and the House will surely welcome such a Bill But, the Bill as it is, I think, should not be proceeded with This Bill does not fulfil the obligations of article 102 This Bill will not give any clear direction to the Government and will not give any clear indication of the policy of the Government even to the Members There are so many other Committees I do not know which of the Committees will come under the ban Somebody may say that it is a banned body As you have stated in your note, the law should be clear and unambiguous This is not a clear and unambiguous Bill So, I request the hon Minister in charge of the Bill to withdraw it and come before the House with a more logical and more practical Bill, so that the Members also may get real guidance and the House may also give proper guidance to the Members

In conclusion I wish to say that in framing this Bill we should not follow the pattern of the UK Our economy is of a different pattern from that of the U.K We cannot just follow their pattern. If we are really to

have a welfare State, surely Members of Parliament and Members of the legislatures will have to participate in different bodies for social work, for educational work, for health work, and they will have to be members of statutory and non-statutory bodies Moreover, if we are to have a socialist pattern of society, a number of Government enterprises will have to come into being and there also it is better that we depend on the legislators and public men rather than on the bureaucracy and men from the private sector That would be a worse remedy So, I hope Government will withdraw this Bill or radically amend it and come before the House with a realistic attitude and a properly framed Bill

Mr. Deputy-Speaker. This will be continued on Monday Now we take up Private Members' Business

14.32 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

TWENTY-NINTH REPORT

Sardar A S Saigal (Janjgir) I beg to move

"That this House agrees with the Twenty-ninth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 19th November, 1958"

Mr Deputy-Speaker. The question is

"That this House agrees with the Twenty-ninth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 19th November, 1958"

The motion was adopted