

[Mr. Speaker]

and are allowing the latter to strengthen their influence and stranglehold on the economy of India.

(3) The House is of the opinion that the Government should, in view of the renewed tensions in international relations prevailing at present, take quick steps to allay all misapprehensions about its foreign policy in this country or abroad, arising from the reasons indicated above."

The motion was negatived.

Mr. Speaker: The question is:

That for the original motion, the following be substituted, namely:—

"This House, having considered the present International Situation and the policy of the Government of India in relation thereto, is of the opinion that—

- (a) the implementation of Nehru-Noon Pact and exchange of territories between India and Pakistan scheduled to be completed by January 15, 1959, in pursuance of the pact, be postponed until an overall agreement is reached between India and Pakistan regarding border disputes;
- (b) issues over which the two Prime Ministers could not reach an agreement be referred to an impartial tribunal for arbitration;
- (c) pending that overall settlement, mutual guarantees be offered, for putting an immediate stop to border raids and shootings; and
- (d) Commonwealth connections be severed, in view of the changing pattern and character of the Commonwealth."

The motion was negatived.

Mr. Speaker: I shall now put Shri Jaganatha Rao's substitute motion.

The question is:

That for the original motion, the following be substituted, namely:—

This House having considered the international situation and the policy of the Government of India in relation thereto, approves the said policy.

The motion was adopted.

Mr. Speaker: All other substitute motions are barred.

13:32 hrs.

HIMACHAL PRADESH LEGISLATIVE ASSEMBLY (CONSTITUTION AND PROCEEDINGS) VALIDATION BILL—Contd.

Mr. Speaker: The House will take up further consideration of the following motion moved by Shri B. N. Datar on the 3rd December, 1958, namely:—

"That the Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Bill, 1958, be taken into consideration."

The hon. Home Minister.

Some Hon. Members: We do not have the Bills

Shri Naushir Bharucha (East Khadesh): On the Bill itself, we want to speak.

Shri V. P. Nayar (Quilon): None of us have spoken on the Bill.

Mr. Speaker: I am not calling the hon. Home Minister to reply. I am calling him for this purpose. The other day, the proceedings were interrupted by a suggestion that this matter, so far as the Bills and others are concerned, might be looked into privately, or at any rate, some copies were said to be

not available in the Library. Now, we have met again to proceed with this Bill—for the further progress of this Bill. The hon. Home Minister wanted to say something in regard to this matter. Of course, on the Bill itself, right of reply will come in after other Members have an opportunity of speaking on the motion for consideration.

The Minister of Home Affairs (Pandit G. B. Pant): Sir, when this Bill was moved on the 3rd of December, a point of order was raised and the Chairman then gave a definite ruling in unambiguous terms holding that this House has full jurisdiction to deal with this Bill. I find that the provisions of this Bill are still being wrapped in a haze.

The Bill by itself is very simple. The circumstances which led up to this Bill have been clearly stated here. Himachal Pradesh had a legislature of its own. In 1954, about the middle of the year, Bilaspur was attached to Himachal Pradesh. Then a Bill was passed by virtue of which the legislature was to consist of the old Members of Himachal Pradesh who were, I think, 36 in number with five more from Bilaspur. The new legislature so constituted was to function from the 1st July, 1954 till the 1st of November, 1956 when the States were reorganised and Himachal Pradesh was again given the status of a Central Territory. Many Bills were passed by this legislature. Recently a decision was given by the Supreme Court to the effect that the Himachal Pradesh legislature was not only duly constituted as the Notification required under the Representation of the People Act had not been published. I may submit that, in fact, so far as practical purposes go, there was no reconstitution of the legislature, but only the addition of five members because it was said there that the old members who had been elected some time ago would continue as members.

Shri Braj Raj Singh (Ferozabad): They were deemed to be members.

Pandit G. B. Pant: of the reformed legislature. Five were to be elected from the Bilaspur area. The terms would be counted from the time when the old members had been elected so that the new members were to serve only for the remaining part of the term of the old legislature. So that, for our practical purposes, it was a continuance of the old legislature with the addition of a few members, the term remaining as it was, the original election being regarded as being valid and the members of the old legislature who were 36 in number continuing as members without any fresh election.

This legislature passed a number of Bills and, as I said, a case went up to the Supreme Court and the Supreme Court held that as the requisite notification under the Representation of the People Act had not been issued, there was a flaw. So, we are faced with a situation which can be easily appraised by everyone. Between 1st July, 1954 and 1st November, 1956, a number of Bills were passed, budgets were passed, grants were voted, a number of other resolutions were adopted and action was taken in pursuance of those resolutions by the State of Himachal Pradesh. If all these Bills, all these resolutions and everything that was done by the legislature there is to be regarded as invalid, then, we are faced with a very queer position. That is, the money has been spent, laws have been passed, they have been acted upon and that legislature has ceased to exist.

Under the Constitution, the entire power with regard to Himachal Pradesh, as it is, is vested in Parliament. The Parliament has the exercise powers not only under List I, but also under List II and under List III and also if anything remains over, the residuary powers. So that, Parliament has absolutely plenary and complete powers with regard to the affairs of Himachal Pradesh. It is

[Pandit G. B. Pant]

obvious that such a technical flaw cannot be allowed to upset anything that has been done and to create anarchy and chaos in Himachal Pradesh. So, a remedy has to be found. What can that remedy be? It is a simple remedy and it is this. This Validating Bill in pursuance of the Ordinance has been introduced here. It says that the Himachal Pradesh legislature in spite of the flaw that there was, should be regarded as having been a valid legislature. The Himachal Pradesh legislature was a creature of this House. It was by virtue of a law passed by this House that the Himachal Pradesh legislature was brought into existence. It was by virtue of another law passed by this House that a few more Members were added to that legislature. At that time Himachal Pradesh had its own legislature, when the new Act was passed by this House, but now Himachal Pradesh has no legislature. The entire power is vested in this House. We have time and again passed laws here, validating Acts which were passed long ago and which had been in operation, but which had been declared to be invalid. Because a certain notification that had to be issued after the passage of that Act had not been issued, we hold here that although a notification had not been issued, yet we should validate the Act and all that had been done under the Act. That is all that is being said now. This House has ample powers. It can pass any law, but here is something which is obviously within its authority and competence, and for which there is a compelling necessity. I do not see how there can be any objection. In fact, I had never anticipated, or even dreamt that there would be any objection to this Bill.

There is one point. Some suggestions have been made that the Acts should be examined and then some may be adopted and some may not be adopted. That is not possible, because you have to decide today whether this legislature is to be regarded as being

a duly constituted legislature in spite of the flaw that has been revealed in the course of the proceedings, and whether the acts that were done by this legislature are going to be validated now or not. This Bill does not go beyond that. If you kindly refer to clause 4, it clearly says

"No court shall question any Act passed, or any grant, resolution, proceeding or thing made, passed, adopted, taken or done, by or before the new legislative Assembly merely on the ground that the new legislative Assembly had not been duly constituted or on the ground that a person who was not entitled so to do presided over, sat or voted or otherwise took part in the proceedings of the new Legislative Assembly"

The only thing that we cure by virtue of this Bill is the defect that has crept in on account of the failure of the issue of the required notification. It is merely on that ground that these proceedings are not to be questioned. If any person has any grievance on any other ground, if it can be proved that the law was vulnerable not on this but on other grounds because it goes against fundamental rights, because there is something which cannot sustain the law, it is open to any one to take objection to that, and it does not cure those defects. It only places these Acts in the same position in which they would be if that legislature had not been the subject and the victim of this small technical flaw. So if there is any Act to which there is any objection on the part of any one on any other ground, he can go to the Supreme Court, to any other court, to whichever court he likes, but there cannot be any distinction between one Act and another. Either this legislature was competent, or is now going to be declared to have been competent, or we are not going to make such a declaration, but nothing more is going to be done. If there is any defect, if there is any shortcoming, if it is assailable on any other ground,

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Proceedings) Validation

Bill

that ground will still be available in the same manner as it would have been otherwise. In the circumstances, all that this House is being requested to agree to is the removal of the difficulty that has been created by the decision of the Supreme Court, and I do not see how this House can possibly refuse to accede to this request for everything would be thrown into a cauldron.

Shri Naushir Bharucha: Do we know the contents of the Acts?

Pandit G. B. Pant: The contents of the Acts are altogether immaterial and irrelevant.

Shri Naushir Bharucha: That is your way of parliamentary democracy?

Pandit G. B. Pant: That is my approach, and I hope that you will agree to a reasonable approach though I know sometimes you can be unreasonable too, and most unnecessarily, but I hope you will be reasonable enough to accede to my request and to appreciate the reasonings that I have ventured to place before you.

Shri Naushir Bharucha: I appreciate your embarrassment.

Pandit G. B. Pant: I do not see how there can be any objection to a Bill like this. I say the compulsion of facts by itself would leave no option to any one, but in law it is a perfect Bill and there can be no objection to it. So, I submit that the Bill be approved and passed.

Shri Braj Raj Singh (Firozabad): Before we proceed further, may I enquire from the hon Home Minister of his reaction to the suggestion thrown out by you the other day of sending the Bill to a Select Committee?

Pandit G. B. Pant: My submission is this, that so far as this Bill goes, it seeks only one remedy from this House, and it is to say that the flaw that was created by the non-issue of the notification be kindly removed. You remove the flaw, and all the Acts

and other things become valid of themselves. You do not remove the flaw, and then everything falls to the ground. Having done that, it is not possible for us to examine every Act and say this amendment be made in this Act, or that this Act be rejected or that Act be accepted. I say all these Acts should be treated as though they had been passed by the Himachal Pradesh legislature on the assumption that that legislature was duly constituted. If you do not accept that, then the whole thing falls down.

Shri Easwara Iyer (Trivandrum): May I ask for a clarification? I am also as anxious as the hon Home Minister that some of these very vital enactments are validated, particularly the progressive land reforms contained therein.

Pandit G. B. Pant: That is really the thing which people want to kill.

Shri Easwara Iyer: For my part, I am only asking for a clarification of this question. The legislature has been declared to be not duly constituted by the Supreme Court a decision with which, with great respect, I do not agree, and now we seem to be validating with retrospective effect matters contained in the State List as it then was. As to how far Parliament can derive that power under the Constitution is a matter which requires investigation.

A similar condition arose when we had to deal with the acquisition of zamindari estates and we had to bring in article 31B of the Constitution, whereby the Constitution itself gave power to Parliament to validate those laws, and a schedule was attached to article 31B of the Constitution, so that the validation was given constitutional sanction by attaching a schedule of the State laws that had been enacted.

I am really serious that these laws have to be validated and I certainly agree with the hon Home Minister that these laws have to be validated, but finding that even the very ordi-

[Shri Easwara Iyer]

nance has now recently been questioned before the Supreme Court,—that is what I am told—is it not necessary for us to examine very anxiously whether we should amend the Constitution so as to put beyond doubt the validity of these enactments and so that Parliament may have constitutional power also and do away with this doubt. This is a matter which I humbly placed before the hon Home Minister for consideration.

Pandit G. B. Pant: I may submit that we have obtained the highest legal advice. We have consulted the Attorney-General after the point had been raised here, and he is fully satisfied that Parliament is competent to pass this law. He also knows that there is a petition pending in the Supreme Court, but he feels that there is absolutely no ground for questioning the validity of this Bill.

As to the question put by the hon Member I may tell him that this Parliament has today plenary powers. I think that cannot be disputed. Whatever powers the Himachal Pradesh Legislature as a Part C State Legislature had till the 31st of October, 1956, have now vested in this Parliament. So even with regard to State matters this Parliament is now competent to legislate in relation to the affairs of Himachal Pradesh. So, whether it was a State or whether it was a territory or whether it was a piece of another State is immaterial.

Shri Easwara Iyer: I leave it to the Home Minister. Of course, I have also got great respect for the opinion of the Attorney-General, but I do not certainly agree with him, because the validation cannot be with retrospective effect with respect to matters enacted by the State Legislature and within the absolute competence of the State Legislature. Of course, I leave it to the Home Minister. But we are also naturally anxious about this matter.

Mr Speaker: Let me dispose of one thing first. The whole thing has arisen on account of some remark which was made here the other day, that copies of the Acts were not there in the Library of the House and were not available for hon Members to look into. Five copies have been kept in the Library, and notice also has been issued accordingly. So that matter is over.

Inasmuch as a number of Bills were the subject-matter of legislation there, I thought then, in pursuance of the desire of hon Members that since we were thirsting for time and this Bill sought to replace an ordinance and this should go before the other House also, and this whole matter has to be disposed of within this Session, therefore, hon Members might sit together either in a Select Committee or privately with the Home Minister and then look into this matter. But in view of what the Home Minister has said just now that we are not going into the details of anyone of these Bills, the only point is whether this House has got a right, and whether it is proper to validate. These are the only two points that have to be decided.

Today when we are passing this legislation let us say, the other legislature is still continuing. Then, today are we competent to say that we are entitled to validate that legislature, in spite of the arguments or the decision of the Supreme Court? That is the first point. Secondly, if so, if it is in existence today, and if we are entitled to validate it, the constitution notwithstanding, and treating that portion as an irregularity that the notification has been issued under section 9 of the previous Act, are we entitled to push it in point of time a little earlier and then say, from its inception, it is valid? If it is valid, then not only the Bills but the other things also would become valid. If this related only to Bills, I would certainly have suggested once again to the Home Minister to go into this matter. But

mere validation of the Bills alone is not enough; there is the question of validation of every proceeding, including the passing of the budget an every other act; there are many other acts which might have been done. We cannot go back now. Therefore, by this legislation, it is sought to validate not individual acts of that legislature, but the late legislature as a whole

Validating that legislature, and validating all that it has done must be kept separately. Validating one piece of legislation or any act done by that legislature is one thing, and validating that legislature as a whole saying that it is legally constituted and that it must be deemed to have been legally constituted is another thing. If the latter is passed, then the other things will flow from it. Therefore, these must be kept apart. And if the House agrees with the Home Minister's statement that individual cases do not arise for consideration here, then the main thing is whether we are going to validate the legislature or not, whether we are right from the constitutional point of view, and whether it is proper, that we should do so or not

These are the only two things that the House has to take into consideration. Therefore, I thought it was unnecessary to press on the Home Minister to go into the details of these Bills. Bills alone are not the acts done by them; there are many other things also

In view of this, I would allow the previous proceedings to go on. Whoever has spoken already need not speak again. Whoever else wants to speak now may do so, and I shall give him an opportunity

Let this matter go on. It is for the House to decide. It is not for me to decide this as a point of order.

Now, Shri V. P. Nayar. We have already exceeded the time. So, I shall give ten minutes to each hon. Member.

Shri V. P. Nayar: You said.....

Mr. Speaker: All right, he will have fifteen minutes.

Shri Braj Raj Singh: We have not discussed anything up till now.

Mr. Speaker: There are three or four Members who have spoken already.

Hon. Members will have ten to fifteen minutes each.

Shri V. P. Nayar: I appreciate the anxiety of the Home Minister, and I do feel . . .

Mr. Speaker: What I have said will apply to the amendments also.

13.56 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

Shri V. P. Nayar: I do feel that something is necessary in order to clear the position. I am conscious also of the fact that Government are in an embarrassing situation. There is no doubt about it.

But that does not mean that in order to save Government from an embarrassment, we should put ourselves into a greater embarrassment, because I feel that if the matter is again decided by the Supreme Court that some of these Acts are *ultra vires* of the Constitution, none of us will be saved from an embarrassment. We want to make that position clear. Although we have raised the point of order from this side of the House, it was only with the intention of cautioning Government about possible difficulties. None of us for a moment thought that we should delay the passage of this Bill for the reasons which the Home Minister now seems to attribute. We are always anxious, and especially when we know the contents of certain laws, to pass this Bill.

But this raises a very different proposition altogether. The Home Minister cannot say that because we

[Shri V. P. Nayar.]

have plenary powers or because this parliament has enough powers, we can pass this revalidating Act

In this context, the provisions of the Acts which he was kind enough to place at least in the Library need to be looked into, because I find that Parliament, in so far as the power to revalidate is concerned, must distinguish between revalidation of Acts which have criminal provisions and Acts which create civil rights. I submit that in the matter of civil rights, this House has unfettered powers. But what is the position in so far as we revalidate an Act which has certain provisions imposing penalties? That is a question which we have to consider. Here, I might say that my reading of the various provisions in the articles of the Constitution suggests that this House has no power to pass a legislation which violates the Fundamental Rights.

I shall read out some of the provisions of the Acts in question, because I need not go into all the penal provisions—and this is exactly why Dr. Krishnaswami and I wanted to have copies of the Act. Unfortunately, some of the Acts are only in Hindi, and although I have a reading knowledge, I cannot understand them properly. From the English copies which we have, I have certain doubts.

Here is an Act called the Himachal Pradesh Livestock Improvement Act. I never thought that that will have a penal clause. Section 162 prescribes a penalty.

"If any person without lawful authority brands or causes to be branded any bull with any mark prescribed under this Act or with any mark resembling such prescribed mark, he shall be liable to imprisonment which may extend to three months or with a fine which may extend to Rs 500 or both."

So, the question whether at the time this was passed this was an offence or not is not the question before us.

I want to read out some other provisions also, because they are very relevant when we consider whether we have powers, and whether the plenary powers can be used in such a way as to create criminal responsibilities or criminal liabilities at a time when it was deemed to be.

Mr. Deputy-Speaker: I might say one thing. The Speaker has just now said that we cannot go into those Acts or the contents of those Acts, and that it would not be necessary to place in the hands of Members those Acts. So, should we again continue to labour the same point now? He has given his ruling.

Shri Nausahir Bharucha: I do not think there was a specific ruling on the point. It was only an *obiter dictum*.

Mr. Deputy-Speaker: It was in the nature of a ruling, and I take it that he was delivering a ruling. I was hearing him. He has given a ruling.

Shri V. P. Nayar: No, Sir.

Mr. Deputy-Speaker: He has given a ruling that we should not go into the details of those Acts that are involved in this revalidating Bill.

Then again, he has said that even if there were a flaw, he would not take it upon himself, that is, the Chair, would not take it upon itself to decide whether this also would be invalid or not, but he would leave it to the House to decide whichever way it liked. This is what he said just now.

Shri V. P. Nayar: Therefore, I am submitting certain difficulties so that the House may come to its own conclusions whether in the exercise of those powers we are justified. I am not going into details of the provisions of the various Bills.

14 hrs.

Ch. Ranbir Singh (Rohtak) What is the point?

Shri V P Nayar: In several other Acts, there are certain provisions which impose punishment. Let us look at article 20 of the Constitution and try to distinguish whether the words used in that article are different from other articles. Article 20 says

"No person shall be convicted of an offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force "

The words used are 'law in force'. The words 'or deemed to be in force' are not used. The Constituent Assembly wanted to make a distinction between law in force and law which has to be deemed to be in force. Later on in article 31A(1)(e), for example, we find the expression being used 'shall be deemed to be void'. It was enough to say 'to be void'. But why was it necessary for us at that time when an amendment was brought, to say that 'it must be deemed to be void'?

Then again in article 31B we find

"Without prejudice to the generality of the provisions contained in article 31A, none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void "

Why does the Constitution make this distinction? Because, this being a fundamental right, the Constituent Assembly in its wisdom chose to use this particular expression, because it did not also want to create a criminal responsibility or liability with retrospective effect. If it was a case of a similar law in U.K. or in any one of

the Dominions, I could have understood it because there they have enough powers to enact a statute with retrospective effect even as regards a criminal matter. I find there were two or three cases in which the Privy Council held that during wartime certain Acts which were passed by the British House of Commons could be justified because they had necessary authority. In India, even before the passing of the Constitution, this was justified because the 1935 Act did not exclude the exercise of such power in the matter of retroactive legislation. But after the coming into force of the Constitution, my submission is that we have not the power to do so. It is not as if I do not appreciate the difficulties of Government. I do appreciate their difficulties. If it were said in article 20

"No person shall be convicted of an offence except for violation of a law in force or deemed to be in force",

I would not have any argument

Therefore, Sir, examining the various provisions of the various Acts which are now sought to be revalidated, some of them being penal provisions which impose a punishment of six months to one year's imprisonment and a fine of Rs 1,000 or Rs 2,000, I feel that if we revalidate them at this time in the manner it is sought to be done it will necessarily have to be held *ultra vires* of the Constitution, because it constitutes a specific infringement of the provisions of article 20.

I appreciate the stand of the hon. Home Minister. But the trouble is that when a lawyer becomes a Minister, he conveniently forgets what he has learnt in law and is keen only on administrative matters. There is perhaps an exception in the case of the Law Minister.

[Shri V P Nayar]

For, Shri Datar knows that it is unusual that any legislature passes any law with retrospective effect in the matter of crimes. Here we are faced with this very difficult position that despite a strict prohibition in the Constitution, we are now seeking to revalidate certain Acts which prescribe certain penalties and punishments when it has been held by the Supreme Court that the legislature which passed these Acts did not have the status of a legislature.

I submit that this position needs looking into, because we on this side do not want that the legislation which we pass now should be challenged again.

Mr Deputy-Speaker: What about penalties already undergone?

Shri V. P. Nayar: That is different.

Mr. Deputy-Speaker: Would they not be entitled to sue for damages?

Shri V P. Nayar: That is a moot point. But my difficulty is this. No one can say that all the trials that have been going on for acts committed in contravention of an Act would have been completed at a particular time. I do not know—it is for Government to say—whether every act in respect of which a punishment has been prescribed under the various Acts has been inquired into and the trials are all over. But I feel that some cases will still be pending. In such cases, the plea could be raised, and very justifiably too, because there is a complete restriction on the exercise of our jurisdiction in passing laws which offend fundamental rights. In so far as the Constituent Assembly did not choose to have in its wisdom the words 'deemed to be void' or something like that to distinguish one from the other, I submit that this will create greater conflicts especially in view of the fact . . .

Shri Naushir Bharucha: Even assuming that the penal provisions are invalid, there are other separable

provisions. So, the whole of the Act would not be invalid.

Shri V. P. Nayar: In so far as civil rights are concerned, I do not at all question the power that is exercised by Parliament. But I was referring to the impact of the legislation on other rights than civil rights and I was trying to distinguish between what is in force and what is deemed to be in force.

Mr Deputy-Speaker: But the hon. Member knows that even there the actual content of the provision has been held to be *ultra vires* the Constitution.

Shri V P. Nayar: In case the law as in force on that particular date had also to be deemed to be valid, the Constituent Assembly would not have forgotten to use those words specifically.

Mr. Deputy-Speaker: If these Acts or any one of them are declared invalid or *ultra vires* the Constitution again by the Supreme Court, perhaps we might require consideration again.

Shri V P. Nayar. I submit that it need not again go to the Supreme Court. The hon. Deputy Minister of Law raised the question of legal fiction. Under legal fiction, we can understand a civil right being created. But I cannot understand for a moment a criminal responsibility or liability being created by legal fiction. As far as I know, none of the systems of jurisprudence would tolerate such a creation of a statute with retrospective effect, fixing people down to certain acts which normally would not have been crimes, long after such acts were committed.

Shri Naushir Bharucha: There are judgements of High Courts to the effect that the legislature has power to create penal offences retrospectively. It is held that this is undesirable, but there are judgements to that effect.

Shri V. P. Nayar: I do not think there would be any such judgment after the Constitution come into force. I have got two cases noted down here in which retrospective effect given to statutes especially with regard to crimes has been upheld. I would like the hon. Members, Shri Naushir Bharucha, to go through them. They are *Gnan Prasanna vs West Bengal (AIR 1949 Cal)* and *Gadia vs Emperor, (AIR 1943, Patna)*.

Shri Naushir Bharucha: I am going to point out more defects

Shri V. P. Nayar: Those questions were considered on the basis of powers derived under the Government of India Act, 1935, which did not have a stipulation like this. The point is that this Parliament, unlike the British House of Commons or the Australian Parliament or the Canadian Parliament, functions under very strict limitations in regard to passing legislation with retrospective effect in so far as criminal liabilities are concerned. That is a very important proposition which I want the House to consider, because I do not want or desire or wish that the matter is again agitated in a court of law. It need not go to the Supreme Court again. What is the test which has to be applied by a court? The test will only have to be whether on the particular date on which the offence was alleged to have been committed the act was justified or not.

Mr. Deputy-Speaker: I thought the hon. Member had concluded

Shri V. P. Nayar: There are other points also.

Mr. Deputy-Speaker: Fifteen minutes were given to him.

Shri V. P. Nayar: True, Sir; but I happen to be the only spokesman from my party. Therefore, I would like the hon. Minister to examine this. The hon. Law Minister is also here.

I want to distinguish the conduct of the Government in so far as this Bill is concerned from what we in this House have been told by the hon. Minister on a previous occasion. This raises the question of the functioning of an Assembly. You know that when the new State was carved out, a certain portion of another State also had to be merged with that and five members had to be chosen from that portion. All the trouble has started from that. You can visualise the situation when the Kerala Assembly was defunct. Here in this House, from these very places we said that if Parliament have powers then they should reconstitute the Assembly so that the Assembly can function as on the date of the reorganisation of the States. Then the hon. Home Minister said that Parliament has no power, although it was clear that in this House.....

Mr. Deputy-Speaker: Then, at least the hon. Member should stick to his old position.

Shri V. P. Nayar: I am sticking to my old position. That is a different matter altogether. In that case he objected to the creation of an Assembly merely on technical grounds because there were political considerations. I do not want to go back to that. It was not at all bad in so far as we were concerned. But I only want to impress upon the House that at that time when it was open to the House to exercise powers under the Constitution no step was taken despite that being urged from this side of the House. Now, we want to give a status to this Legislative Assembly. There may be political reasons for this also. I do not worry about it. The point is that when we apply our mind and pass this legislation—about 32 or 33 Acts are to be revalidated.....

Shri Naushir Bharucha: Thirty-seven.

Shri V. P. Nayar: It is very dangerous to take this course. I cannot suggest because I am not competent to suggest to Government in

[Shri V P Nayar]

what way it ought to be done But we are very keen on this side that something should be done If there is any technical defect we should not be told later on by the Supreme Court that Parliament did not apply its mind to these provisions and therefore, once again, this is held invalid Probably, the Constitution may have to be amended, as suggested by Shri Easwara Iyer or a Schedule added to it I do not know, I cannot suggest that also

In concluding, I would request the hon Minister once again to examine this position I would assure him that we are all as eager, perhaps more eager than the hon Minister himself, in seeing that at least some of the enactments are put through and that there should be no difficulties in so far as matters referred to therein are concerned

Shri Naushir Bharucha: Mr Deputy-Speaker, I really pity the position in which the hon Home Minister finds himself today I am sure I would not like to be in his shoes He is under the impression that if the Bill is passed now all the technical difficulties are solved I am going to point out to him that even if the Bill is passed, even if it is held valid by the Supreme Court, still, he does not get over the difficulties and the difficulties which I desire to point out are as follows

In the first place, let us look briefly into what happened Whatever might be the view which the Lieut Governor of Himachal Pradesh held when he summoned the new Legislature or purported to summon the new Legislature, today the fact is that according to the judgment of the Supreme Court there was created a completely new State Therefore, a new State Legislature came into being If a new Legislature came into being, it is immaterial whether the personnel constituting the Legislature was mainly the same or even exactly the same. The first point was

that the legislators had to take an oath under article 188 That is a mandatory provision of the Constitution which this Parliament has no right to gloss over or violate Therefore, even if you assume that the Legislature is deemed to have been validly summoned, what about the oath? What the Bill says is that in view of what has happened—without taking the oath that is constitutionally provided—let us validate the session. I say you can validate anything you like but not against specific provisions of the Constitution Therefore, your first stumbling block will be that the members have not taken the oath, and until oath is taken which is a mandatory provision of the Constitution you cannot validate anything that that Legislature has done. That is the first point

Secondly under article 178 it is obligatory that a Speaker and a Deputy Speaker must be elected. Nobody can say, 'Oh' never mind, whether they were elected or not, we shall validate all the proceedings without that election' Both Articles 188 and 178 are obligatory and mandatory in the Constitution I will read article 188 It says

"Every member of the Legislative Assembly or the Legislative Council of a State shall, before taking his seat, make and subscribe before the Governor, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule"

Even if any other type of oath is administered that is invalid There is no administration of any oath whatsoever and you cannot subsequently validate that part of the proceedings

Then under article 178 the Speaker and the Deputy Speaker have to be elected

"Every Legislative Assembly of a State shall, as soon as may be, choose two members. . ."

You cannot ignore that provision either. Until the Speaker and the Deputy Speaker are constitutionally elected, the Legislature cannot come into being. What you purport to do by this Bill is this —

“the body of persons summoned to meet from time to time as the Himachal Pradesh Legislative Assembly shall be deemed for all purposes to have been duly constituted”

You cannot do that for the simple reason that it violates particular articles of the Constitution and this House is not sovereign so far as the Constitution goes. The Constitution is sovereign and not this House. Therefore, a statute of Parliament cannot override the Constitution. These are the difficulties.

The third article it contravenes is article 193 which refers to Money Bills. It relates to the special procedure in respect of Money Bills. There is no doubt that in these 37 Bills there are any number of Money Bills. What is the pre-requisite of a Money Bill? The Governor of the particular Legislature must recommend consideration. The recommendation must be there. Therefore, by passing this Bill, what you purport to do is, ‘Never mind recommendation or no recommendation we do say that this is valid.’ Could you validate a Money Bill passed either by yourself or by any other legislature without the recommendation of the President or the Governor? It just cannot be done. So, in passing this Bill, you are violating a third article of the Constitution, namely, article 198.

Then, we are violating article 199. As you know when a Money Bill is passed, the Speaker has to certify that this is a Money Bill. What the present Bill seeks to do is whether the Speaker certifies or does not certify, it is a Money Bill. That cannot be done. The procedure laid down by the Constitution has got to be followed, because these are things enjoined by the Constitution itself.

That is not the whole thing. Apart from this article 200 comes in. That is also violated. When a Bill is passed it has got to go to the Governor for assent. That is why I say this. Even if the Supreme Court holds that this piece of legislation is valid, all may not be well, all that the Bill says

is

“any grant made, resolution passed or adopted, proceeding taken or any other thing done by or before the new Legislative Assembly shall be deemed to have been made, passed, adopted, taken or done in accordance with law”

But it is not in accordance with the Constitution because after a Bill is deemed to have been passed by the legislature it has to go to the Governor for assent, till then it does not become law. It is an obligatory provision which this House cannot scrap. What the hon. Home Minister wants us to do is to scrap all constitutional provisions relating to passing of Bills and then say all the Bills or Acts are validated!

Now, let us see the provision in clause 3(c)(i). It says

“(1) any Bill passed by the new legislative Assembly (whether the Bill was introduced in the new Legislative Assembly or was introduced in the Legislative Assembly of Himachal Pradesh functioning immediately before the 1st day of July, 1954) and assented to by the President shall be deemed to have been validly enacted and to have the force of law.”

Sir, I should like to know, how can you take it for granted that the assent of the President is there? What they want us to do is to take it for granted that the assent of the President has also been given. What you are validating today is the assent of the President. You have got no right to touch the assent of the President. It is his exclusive prerogative.

An Hon. Member: It has been given.

Shri Naushir Bharucha: It has been given and it has been nullified by the judgment; nothing exists in the eyes of law now. Therefore, what the Bill seeks to do is that it also presumes the President's assent on it. Can that be done? Sir, this Bill is full of difficulties, and even if it is held valid there will be other difficulties.

In the present case also we have been asked to validate many Bills. There are many money Bills in that, but there is no President's recommendation even now for this Bill. Sir, we are told by the hon. Minister—and that is a correct statement—that this House has full power to enact any legislation in connection with Himachal Pradesh. I have no dispute with that proposition. But does that imply that this House has got power to dispense with President's recommendation under article 117 also? The President's recommendation under article 117 is also not here. How can this House pass any money Bill or Bills some of which may impose a liability to spend out of our Consolidated Fund?

Mr. Deputy-Speaker: I do not quite appreciate the point of the hon. Member with regard to the assent of the President.

Shri Naushir Bharucha: The Bill presumes that the assent has been given. Even for introduction of this Bill there is no recommendation of the President. What I submit is that even for introduction of this Bill in the Lok Sabha there has got to be a recommendation of the President, because what we are validating includes some money Bills some of which definitely entail probably some expenditure from our funds—I am not sure....

Mr. Deputy-Speaker: In cases where that recommendation was required, that has been obtained.

Shri Naushir Bharucha: When?

Mr. Deputy-Speaker: At that time.

Shri Naushir Bharucha: I am not referring to that. There is no recommendation obtained for this Bill.

Mr. Deputy-Speaker: It has been obtained.

Shri Naushir Bharucha: For this Bill?

Mr. Deputy-Speaker: Yes, it has been circulated.

Shri Naushir Bharucha: I do not know how it has been circulated. Here I may say that the procedure of circulating through our Bulletins is incorrect. If a Bill has got the President's recommendation....

Mr. Deputy-Speaker: That would be a different matter, but here it has been brought to the notice....

Shri Naushir Bharucha: But unless that recommendation forms part of the proceedings of Parliament that is no recommendation. So long as the recommendation has been given and kept in the pocket of the President, it is no recommendation; if it is communicated to the Secretary it is no recommendation; if it is published in newspapers it is no recommendation; only if it is produced before the House it becomes a recommendation and it becomes part of the proceedings of the House. The Bill, as it has been circulated, does not contain the recommendation of the President. I do not know whether it has been circulated through the bulletins.

Mr. Deputy-Speaker: Yes, it has been.

Shri Naushir Bharucha: Bulletin does not form part of the proceedings of the House, let it be understood.

Mr. Deputy-Speaker: This was included in *Bulletin-Part II* dated Monday, November 24, 1958. Here it is said:

"The Himachal Pradesh Legislative Assembly (Constitution and Proceedings) Validation Bill, 1958:

(Constitution and
Proceedings) Validation
Bill

was introduced in Lok Sabha today. The President had recommended the introduction of this Bill under Article 117(1) of the Constitution."

Shri Naushir Bharucha: Still, legally, there is no recommendation of the President here. May I point out, Sir, that in the Bombay Legislative Assembly whenever a Bill requires a recommendation, as soon as the Minister introduced the Bill he read out the recommendation in the open Legislature, because till then it does not form part of the proceedings of the House. Our Bulletin does not contain so many information on a variety of interesting subjects. They do not constitute part of the proceedings here. Therefore, even today the Bill suffers from that infirmity, and I would request the hon. Home Minister at least to declare on the floor of the House that the recommendation is there.

Mr. Deputy-Speaker: As a matter of fact, it has to be seen whether that recommendation has been made or not, whether it is in the bulletin or elsewhere.

Shri Naushir Bharucha: It has to become part of the proceedings of the House; at least that is what I feel.

Now, assuming for a moment that we say here that any Bill passed by the new Legislative Assembly and assented to by the President shall be deemed to have been validly enacted, it brushes aside, as I said, so many articles of the Constitution. It cannot be regarded as validly enacted and to have the force of Law. Then, sub-clause (c) (ii) says:

"any grant made, resolution passed or adopted, proceeding taken or any other thing done by or before the new Legislative Assembly shall be deemed to have been made, passed, adopted, taken or done in accordance with law."

The words are: "grant made, resolution passed, proceeding taken". It may be proceedings which relate to Demands for Excess Grants, Demands for Supplementary Grants and so on. If that happens, the question will again be, can a House presume an assent to a sort of omnibus proceedings or is a recommendation or assent required for individual cases? In this list there are 37 Bills. If there are 10 money Bills in this, we are presuming that the recommendation shall be given to all those 10 money Bills at one stroke. Could you presume that? What the Constitution requires is recommendation in respect of specific Bills, assent in respect of specific Bills. This omnibus business is not permitted under the Constitution.

Therefore, Sir, taking all these things into consideration, I have not the slightest doubt that this Bill will be sent back by the Supreme Court.

There is another aspect of it, which I think I can raise in the form of a point of order, namely, whether this House can be invited to validate any Bill the contents of which the House does not know. Why? It cannot be done for this reason, that under various rules of procedure I have got a right to raise points of order even at the introduction stage of a Bill. Formerly, when it was the habit of this Government first to introduce the Bill and then circulate copies to Members, I raised a point of order in this House and said that unless the Bill is in the hands of the Members of Parliament, unless they know the contents and from there find out whether there is legal competence of the House to begin with or not, no Bill can be introduced in the House. The Chair was pleased to uphold that point of order and order that Bills should be circulated at least two days before they are introduced. Why? Because my right under rule 72, by this sort of procedure, is taken away. Rule 72 reads thus:

"If a motion for leave to introduce a Bill is opposed, the

[Shri Naushir Bharucha]

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:

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."

So, this procedure of not supplying us the Bill is effectively taking away my right under rule 72 to raise the question of legislative competence of the House in respect of each Bill.

Mr. Deputy-Speaker: But copies were supplied when this Bill was introduced.

Shri Naushir Bharucha: It is true, but it validates 37 other Bills. I am, therefore, asked blindly to validate 37 Bills, the contents of which are not furnished to me.

Mr. Deputy-Speaker: Does he contend that in validating the Bill, the Members would be authorised to accept some portions of it and throw out the others?

Shri Naushir Bharucha: In the first place, they cannot validate so many Bills by an omnibus clause in this Bill. They have got to put down the titles of the Bills and the clauses. However, since we are looking into the constitutional aspect of it, let it not be said outside that though there were 150 lawyers in the House, nobody took objection to a piece of legislation which, on the face of it, is thoroughly unconstitutional. That is the reason why we are opposing the Bill.

Pandit Thakur Das Bhargava
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Mr. Deputy-Speaker: We have to take up the other discussion.

Pandit Thakur Das Bhargava: It means that when this Bill comes up next time, we will be entitled to speak on this?

Mr. Deputy-Speaker: Yes; I am not closing it.

14.33 hrs.

DISCUSSION RE: REPORT OF ORGANISATION AND METHODS DIVISION

Shri Harish Chandra Mathur (Pali):
Mr. Deputy-Speaker, I beg to move:

"That the Fourth Annual Report of the Organisation and Methods Division for the year 1957-58 laid on the Table of the House on the 4th September, 1958, be taken into consideration."

I am so grateful to you for allowing me to raise this discussion, which is of far-reaching consequence to the administrative machinery. It was sometime in January, 1953 that Dean Appleby had recommended to the Government, while submitting his first report, the establishment of some sort of an organisation which will look into the administrative structure of the present set-up and also advise the various Ministries regarding the administrative methods and manners. This division was created in March, 1954, about a year after that, as a part of the Cabinet Secretariat with this aim: I would like to draw attention to what has been stated in the first report as the aim of this particular division:

"(1) Initiating and sustaining a concerted effort to improve administrative efficiency in all branches of the Government of India".

I think this is wide enough scope, though it does not take within its purview what was also recommended by the originator of this idea, so far as we are concerned, and that is the