DVC generation. That is one of the areas which I can mention.

I am not aware of any Soviet offer of a 500 MW unit. I cannot, therefore, make any comment on this. But we are thinking of doing the basic technological work on a 500 MW unit in the Sixth Plan. It cannot come up now, as such a big unit will also require preparation of transmission lines etc. for taking the power from that unit.

He referred to some project in the British days which seemed to have caught his imagination. I am not very certain about that project. If he sends the information to me. I shall certainly look into it, but I am not aware of it.

On the supply of coal to thermal power projects, I have received complaints from some of the DVC units about the quality of coal supplied to them, and whenever I receive such complaints, I got in touch with the concerned Ministry and they do try to help. They have their own limitations, and at this moment when there are difficulties in the supply of coal to all consumers, I do not want to make an issue of the quality of coal being supplied to power plants.

SHRI BHOGENDRA JHA: It is bad quality.

SHRI K. C. PANT: This is what I am talking about.

About the new generating units, if he refers to the answer to starred question No. 536 answered today, he will get a complete list of the projects.

12.58 hrs.

PAPER LAID ON THE TABLE

IMPORT TRADE CONTROL POLICY

MR. SPEAKER: Now, Papers to be Laid. Prof. Chattopadhyaya.

SHRI SEZHIYAN: May I make a submission?....

MR. SPEAKER: This is some other item.

THE MINISTER OF COMMERCE (PROF. D. P. CHATTOPADHYAYA): I beg to lay on the Table a copy of the Import Trade Control Policy for the year 1974-75—Vols. I & II. [*Placed in Library. See* No. LT-6599/74].

RE: PRESIDENT'S ORDER IN REGARD TO AUTHORISATION OF EXPENDITURE OUT OF CONSOLIDATED FUND OF PONDICHERRY

SHRI SEZHIYAN (Kumbakonam): I have tabled an adjournment motion and that should have been taken up before any other business was taken up.

MR. SPEAKER: Adjournment motion on what?

SHRI SEZHIYAN: On the unconstitutionality involved in passing the Presidential order regarding withdrawal from the Consolidated Fund of the Pondicherry Union Territory.

MR. SPEAKER: If an objection is being raised on constitutional issues, there is no necessity for an adjournment motion; we can discuss it otherwise also; of course, hon. Members can have an immediate discussion even on constitutional issues. An adjournment motion is necessary when something has happened and where the Speaker thinks that there is something on which a certain number of Members are required to rise and ask for a discussion. I do think that this could be discussed. If you like an adjournment motion, I do not mind. But I do not think it is necessary. We can discuss it otherwise.

13 hrs.

SHRI SHYAMNANDAN MISHRA (Bagusarai): All right.

MR. SPEAKER: I see that all your members are not present. I do not want that you should lose the opportunity.

SHRI SEZHIYAN: We went a full discussion.

MR. SPEAKER: I am talking from your point of view and not from any other point of view. If it is lost, it means the subject cannot be discussed. But the subject is so important that we must discuss it. That is why I do not deny you the opportunity to discuss it. One of you may speak.

SHRI JYOTIRMOY BOSU (Diamond Harbour): We have submissions to be made because the matter has already taken place and is causing concern in the minds of all of us. Let Shri Sezhiyan make his submission and then we can also make ours.

MR. SPEAKER: Yes. They have intimated to me—it is put on the agenda today—that instead of the Minister of State for Finance, Shri Ganesh, Shrimati Sushila Rohatgi is laying it on the Table. Before I allow it to be laid on the Table....

श्री मधु लिमये (बांका) : अध्यक्ष महोदय, मैंने नोटिस दिया है कि यह ले नहीं होना चाहिए । मैंने प्वांइट आफ आर्डर उठाने के लिए नोटिस दिया है ।

अध्यक्ष महोदय : आप मेरी बात सुनिये । आप सुनते तो हैं नहीं ।

I was about to say that before I allowed it to be laid on the Table, I would like to hear you on the constitutional aspects of it. This is what I am going to do.

SHRI JYOTIRMOY BOSU: You call all of us. Let us make our submissions.

MR. SPEAKER: I have received notices. These are by Shri Vajpayee, Shri Madhu Limaye, Shri Jyotirmoy Bosu, Shri Sezhiyan. If you like, one of you may raise this question.

SHRI MADHU LIMAYE: Not one. Shri Sezhiyan could begin.

MR. SPEAKER: My difficulty is that you do not allow me to finish my sentence. Since this morning, you do not listen to me and let me reach the end of my sentence.

SHRI S. A. SHAMIM (Srinagar): You are very poor in punctuation.

MR. SPEAKER: If you like, we can hear one of you, then I will call the Minister and then the others can cover the other ground.

SHRI JYOTIRMOY BOSU: All of us.

SHRI INDRAJIT GUPTA (Alipore): Since you are not treating it as an adjournment motion and are allowing a discussion on it, kindly permit one of us to make the main submission and then hear the others also.

MR. SPEAKER: My observation was that instead of all of you speaking together and the Minister being called at the end....

AN HON. MEMBER: Not all together, but one by one.

MR. SPEAKER: Instead of the Minister being called at the end, he may be called in the middle and then others may also speak.

SHRI S. A. SHAMIM: I do not think the Mantri Saheb has anything to say.

MR. SPEAKER: Who will speak first?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Of course, I do not wish to anticipate the arguments to be made on the other side. I will certainly listen to those arguments

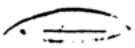
[Shri H. R. Gokhale]

with great care and attention. There is no doubt that the issue which is being raised is of very great importance. I only wanted to submit that subject to the convenience of the House and your convenience, I may be allowed to make a full and elaborate statement on this tomorrow.

SOME HON. MEMBERS: No, no.

SHRI SHYAMNANDAN MISHRA: Then how was advice tendered to the President? Was it done without weighing all the implications of it?

SHRI INDRAJIT GUPTA: Without a full and elaborate appreciation of the issues involved, he could not have advised the President If he had, the President had been wrongly advised. Now he is bothering about a full and elaborate examination.



SHRI SEZHIYAN: It shows the complacency with which Government is dealing with a very grave constitutional issue. Without analysing all the implications, they have advised the President to issue orders which are illegal and unconstitutional.

SHRI JYOTIRMOY BOSU: would you agree to withhold laying it on the Table and defer it till tomorrow?

MR. SPEAKER: Could it be possible for you to come sometime today, say at the end of the day, and make a statement?

SHRI JYOTIRMOY BOSU: No, Sir.

SHRI ATAL BIHARI VAJPAYEE (Gwalior): Here and now.

MR. SPEAKER: I am afraid; everything should not be done in haste.

श्री अटल बिहारी वाजपेयी: अध्यक्ष महोदय, राष्ट्रपति को सलाह दी जा चुकी है । गैर-कानूनी काम हो रहा है और मंत्री महोदय समय चाहते हैं । यह गैर-कानूनी काम करने के लिए समय चाहते हैं ?

श्री मधु लिमये : पहले गलत काम करते हैं बाद में कारण ढूंढने के लिए समय चाहते हैं ?

SHRI JYOTIRMOY BOSU: A contempt of the House has been committed on the advice of the Ministry. (*Interruptions*)

SHRI S. M. BANERJEE (Kanpur): The President is unhappy.

MR. SPEAKER: My view is that instead of a second mistake also being committed in haste, he should listen to your points—

SHRI MADHU LIMAYE:....and resign.

MR. SPEAKER: He should listen to your points, and consider them. We can give some time for him to consider so that in haste he may not do something else.

SHRI INDRAJIT GUPTA: First of all, there was unseemly haste in toppling the Ministry. Then, there was unseemly haste in ill-advising the President. And now, he says after hearing our arguments, he wants time for full and elaborate consideration of the whole matter. (*Interruptions*).

SHRI H. R. GOKHALE: First of all, the hon. Member's observation that the President has been wrongly advised is not correct. I do not concede that anything illegal has happened. What I said was that it is an important constitutional issue no doubt, and therefore, we cannot deal with it cursorily, and I wanted to give it that much attention which it deserves.

Secondly, my Demands for Grants are also coming up immediately after this.

SHRI SHYAMNANDAN MISHRA: That is quite different. (*Interruptions*).

SHRI JYOTIRMOY BOSU: He should not be allowed to lay it on the Table.

MR. SPEAKER: While I think that he should give a considered reply, not much in haste, I will listen to you, and then see if he is in a position to reply.

SHRI SHYAMNANDAN MISHRA: May I make one submission about the matter? He does not have to find a national about what has already been done. About the future he may have to take sometime to give a considered reply, but about this offence as we see it, he does not made to have time except for rationalising it. He has only to give the reasons which he has tendered to the President. He has to give us the reasons. How did the advise the President to give assent to his act? That is what I wanted to submit.

MR. SPEAKER: After all, he requires time to study this.

SHRI A. K. GOPALAN (Palghat): I want to know why the hon. Minister wants some time for this. This issue has already been under discussion and it has been found that what has been done is illegal. He is saying that he wants time. Why does he want time? No time is necessary. He must submit that it has not been done properly. (*Interruptions*).

MR. SPEAKER: He will listen, so that later on, if he is in a position to reply, I welcome his reply.

SHRI H. R. GOKHALE: I am entirely in your hands. If it is insisted that I must reply today, I will reply today. I only said that in fairness I should get one day's time. But I am entirely in your hands.

SHRI JYOTIRMOY BOSU: Let the laying of the paper be deferred till such time as the Minister gets clearance from the House. It is a very important matter. (*Interruptions*).

MR. SPEAKER: Still, I personally feel that if in the course of your points of order, they are such that he should reply just now, he is very welcome to do so. But if he thinks that certain points are such that they need study, then I will give him that time; Time will have to be given; I will not deny him.

SHRI INDRAJIT GUPTA: After all, the Law Minister is a distinguished and experienced lawyer. If he feels, in view of the arguments advanced from this side, that it is an important constitutional point, that means by implication he admits that there is room for controversy.

MR. SPEAKER: If he thinks that he needs time, personally I think he should be given time.

SHRI INDRAJIT GUPTA: That means it is an open question. What happens to this order, which we maintain is an illegal order?

SHRI SEZHIYAN (Kumbakonam): The order should be kept under suspension.

MR. SPEAKER: If you were to be so rigid as not to give him some time that too will be bad. If after listening to you he thinks it needs a little re-consideration, he may do so.

SHRI H. R. GOKHALE: That is exactly what I meant to say. It after hearing the hon. Members it is found that there is something irregular and something needs to be done, I can advise accordingly.... (*Interruptions*).

SHRI SEZHIYAN: This attitude of the Government was apprehended by some of us in the Opposition on Friday the 29th itself. Myself, Prof. Mukerjee, Mr. Vajpayee and others raised the question on that day itself. We pointed out that the Executive,

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through the President, does not have the power to appropriate funds out of the Consolidated Funds in Pondicherry without ah Appropriation Bill being passed in this House. The Deputy-Speaker who was in the Chair shared our misgivings at that time and wanted the Government to take note of the arguments put forward by us. It is not as if the question is being raised only today. At that time the Government sat in mute silence and they did not come forward till 6 O'clock in the evening to clarify the position and allay our fears. Adding insult to injury and contempt to callousness to the House this order of the President had been issued. We read about the order the next day in the newspapers.

This is the thin end of the wedge and once this type of inroad is allowed, it would take away the very basis of parliamentary democracy in this country. No doubt it is Rs. 5 crores today. It may happen tomorrow that both Houses of Parliament might be put in hybernation and by presidential order they might pass the entire budget of Rs. 5400 crores. A basic principle is involved. Recourse is being taken to methods which are other than constitutional and unacceptable in a parliamentary democracy.

Let me narrate the events as they happened. The Assembly was dissolved and a Proclamation was issued on 28th. In the Proclamation they have cited section 51 and they say: 'In exercise of the powers conferred by section 51 of...." Two sections will be quoted again and again by the Law Minister and the Treasury Benches. They are sections 51 and 56 of the Government of the Union Territories Act, 1963.

Sir, to make things amply clear, I want to quote both these Sections, Section 51 and Section 56. Section 51 says:

> "If the President, on receipt a report from the Administrator of a Union Territory or otherwise, is satisfied:—
>
> (a) that a situation has arisen in which the administration of the Union territory cannot be carried in accordance with the provision of this Act or
>
> (b) that for the proper administion of the Union territory it is necessary or expedient so to do,
>
> the President may, by order, suspend the operation ofa ll or any of the provisions of this Act for such period as he thinks fit and make such incidental and consequential provisions as may appear to him to be necessary or expedient for administering the Union territory in accordance with the provisions of Article 239."

Under this the Proclamation was issued. Under Section 51, the President has got powers to suspend certain provisions of the Act. Therefore, Sir, let us see whether he has suspended any of the vital provisions affecting the voting of the Grants, which is the main question. I do not want to go into other questions. On page 2 of the Proclamation, it has been said, that is, under Section 51 of of the Act....

> "(b) make the following incidental and consequential provisions which appear to me to be necessary and expedient for administering the Union territory of Pondicherry in accordance with the provisions of Article 239 of the Constitution during the aforesaid period, namely:—
>
> (i) the Legislative Assembly of the said Union territory is hereby dissolved;
>
> (ii) in relation to the said Union territory, unless the context otherwise requires, any reference in sections 6, 23, 27, 28, 30 and 49 of the

Act to the Administrator shall be construed as a reference to the President and any reference in sections 23, 27 to 31 (both inclusive), 48 and 49 to the Legislative Assembly of a Union territory by whatever form or words shall, in so far as it relates to the functions and powers thereof, be construed as a reference to Parliament;

(iii) in relation to the said Union territory, the reference to the Legislative Assembly of Union territory in section 26 shall be construed as including a reference to Parliament."

So, these Sections, 23, 27 to 31, 48 and 49, which refers to the powers of Legislative Assembly have not been suspended. They are in force. Rather, the Proclamation affirms that these powers have been transferred to Parliament. Section 51 has not been used to suspend any of then provisions.

What are the effective provisions in relation to a Money Bill? In the Act, Section 27 deals with annual financial statement; Section 29 with Appropriation of Bills; Section 30 with Supplementary additional or excess grants—that is not covered here—and Section 31 with Vote on Account. I will deal particularly with two sections. Section 29 says:

"subject to the other provisions of this Act, no money shall be withdrawn from the Consolidated Fund of the Union territory except under appropriation made by law passed in accordance with the provisions of this section.

That means, no amount can be withdrawn from the Consolidated Fund, without a law being passed in accordance with the provisions of that Section. In accordance with the provisions of that Section, the Legislative Assembly of the Union territory should have passed the law. On dissolution of the Legislative Assembly of the Union territory, Parliament has got the powers vested in and transferred to it. This has not fallen into nullity. If you take Section 31, which deals with Votes on Account, it says:

"Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly of a Union territory shall have power to make any grant in advance in respect of the estimated expenditure for a part of the financial year, pending the completion of..

The words used are 'shall have power'. The Legislative Assembly of the Union territory shall have the power and now on transfer of the functions, the Parliament shall have the power. That has not been taken out of the purview of Parliament.

Why I am laying great stress on this is because the power to withdraw from the Consolidated Fund can only be exercised by Parliament. Whatever may be the Constitution worth the name and whatever may be the ture of Parliamentary democracy whether it is in Great Britain or in India or any other country, it is the highest and supreme prerogative—I can say the unique power—of the Parliament or the legislatures concerned to grant or withhold supplies of sums needed by the executive. By no other device, it can be done. "No taxation without representation and no expenditure without sanction" are the two cardinal principles of parliamentary democracy. In regard to taxation, you may issue an Ordinance and get *ex post facto* sanction. But, in regard to withdrawal nowhere it has been allowed, neither in May's *Parliamentary Practice* nor anywhere unless an Appropriation Bill is introduced and amounts are expressely granted by Parliament. This power cannot be arrogated by the executive. On this power—on this power to control the purse of the Government—

[Shri Sezhiyan]

rests the entire structure of parliamentary democracy.

Over this issue in Great Britain, bloodiest battles were fought over the centuries, from the 13th to the 18th century, to acquire this power. Paul Einzig has said in *The Control of the Purse* at page 17:

> "The House of Commons achieved ascendancy over the hereditary Upper Chamber and eventually gained a virtually complete control over the State, largely through their authority to grant or withhold funds required by the Executive, and through controlling the expenditure of those funds."

So, this was the major point that gave rise to the supremacy of lower House of Parliament, *i.e.* the House of Commons corresponding to our House of the People. Article 114 of our Constitution gives a power which can never be usurped or eroded by anybody else. There are only a few persons in English History like Charles I who claimed divine right and we know what a fate attending them. I do not want the same fate to attend the people here, but they are driving at the same route and erode into the powers of Parliament.

In 1784, the House of Commons made it explicitly clear by a resolution adopted by it that public officers responsible for paying out public money without the authority of an Appropriation Act would be guilty of "high crime and misdemeanour, a daring breach of public trust, derogatory to the fundamental privileges of Parliament and subversive to the Constitution. It is worthwhile noting that this resolution was initiated by the Opposition in the House of Commons and adopted by the entire House.

There can be no two opinions that there is no authority other than Parliament which can exercise this power. This question came up before the Costituent Assembly when draft articles 92 and 93—now 113 and 114—came up for discussion. As you are aware, Sir, under the 1935 Act the Governor General had the power to amend any grants passed by the House. Therefore, a certificate was issued by the Governor General. Though the initial draft article of Constitution contemplated giving a similar power of certification to our President, when the actual discussion took place in the Constituent Assembly, it was asked, "Why allow the President to certify things which have been sanctioned by Parliament? Why not give a statutory recognition to the amounts granted here?" As a result of this, the provision about Appropriation Bill was included. Dr. Ambedkar, the architect of our Constitution, initiating the discussion, said:

> "In the matter of Finance, Parliament is supreme, because no expenditure can be incurred unless it has been sanctioned by Parliament under the provisions of article 93. If Parliament has sanctioned any particular expenditure on any particular head, then the proper authority to certify what it has done with regard to expenditure on any particular head is the Parliament and not the President."

To make the position very clear that the President does not have any power to touch anything that comes within the purview of Parliament, after explaining the position which obtained in the British days when the Governor General had the power to curtail the expenditure sanctioned by Parliament, Dr. Ambedkar further said:

> "Under our new Constitution, the President has no functions at all either in his discretion or in his individual judgment.
>
> "He has therefore, no part to play in the assignment of sums for expenditure for certain services. That being so, the certification procedure

is entirely out of place under the new Constitution. I might also say that the appropriation procedure is a procedure which is employed in all parliamentary Government—in Canada, Australia, South Africa and Great Britain."

Therefore, even when the founding fathers were contemplating on this, they were fully aware that, so far as withdrawal from the Consolidated Fund was concerned, if it was Centre, Parliament had the sole authority and if it was State it was the State Legislature, and if it was Union Territory, it was the concerned Legislature. That has been made amply clear in the several sections of the Constitution and also in the Union Territories Act which I quoted.

I will recall one instance. In the year 1961, the Orissa Assembly was dissolved, and the Governor had earlier issued an Ordinance for withdrawal of certain sums for conducting the affairs of the State. Then immediately the question was raised here by an adjournment motion by Mr. S. M. Banerjee and Mr. Chintamani Panigrahi. Prof. Mukherjee also participated in that. At that time, we had the fortune to have as the Prime Minister, Pandit Jawaharlal Nehru, who was a very respectable statesman who had respect for the Constitution and the parliamentary democracy appreciated and accepted the position of the unconstitutionality of the ordinance. Shri Lal Bahadur Shastri who was in charge of the Ministry of Home Affairs then, made a statement here:

"When the Ordinance was promulgated by the Governor, there was consultation amongest our officers as well as with the Law Ministry. The Governor took this action in consultation with the Chief Secretary and the Law Department of the State Government. H felt that some action was necessary in order to incure some expenditure on the administration. But, as I said, when the Ordinance was passed and it came to our notice the Home Secretary immediately consulted the Prime Minister and later on the matter was referred to the Law Ministry. The Law Ministry's opinion is that the Ordinance promulgated by the Governor is not valid under the Constitution. We immediately informed the Governor about this. Therefore, no action is being taken since then under the Ordinance."

They did not accept the validity of the Ordinance and did not act under it. That exactly what is my friend, Shri Indrajit Gupta, was saying: do not take any action under the illegal order.

One of the reasons put forth for this Presidential order is that both the Houses are not in Session. Afterwards I shall examine the Presidential Order in detail so both the Houses of Parliament were not in session it is agreed that there was the question of expediency and the powers were taken. In 1961 the Rajya Sabha was not in session. Then it was summoned immediately, within 24 hours. Please refer to page 536 of *Practice and Procedure of Parliament* by Kaul and Shakdher. It reads:

"For the appropriation of money for a State the administration of which has been taken over by the President under a Proclamation issued by him, the budget for that State, according to existing practice, is not certified by Ordinance, the underlying principle being that no money can be spent out of the Consolidated Fund without the sanction of Parliament. Hence if a contingency arises for passing an Appropriation Bill regarding such a State and Rajya Sabha is not in session, that House is specially summoned for this purpose."

In 1961 it was done. The Law Ministry gave the opinion, and he came and apologised for having issued the Ordinance and taken powers out of Parliament. The Prime Minister came to the House and explained the position. Now a Constitutional dereliction has

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been done, usurpation has been made; dangerous and dubious precedents are being set up. And till the end of the day nothing comes from the other side, not even a clarification. And in complete contempt of the arguments made by us—the Chair also shared our misgivings—they do not care and go on issuing an Ordinance which is illegal unconstitutional, anti-Parliament and anti-democratic.

SHRI S. A. SHAMIM:....and anti-people, in general.

SHRI SEZHIYAN: Now, I come to the President's Order by which they are trying to take as much as Rs. 5.48 crores for defraying the charges. The reasons mentioned are:

> WHEREAS the Legislative Assembly of the Union Territory of Pondicherry has been dissolved by Order dated the 28th March 1974, made under Section 51 of the Government of Union Territories Act, 1963 (20 of 1963)
>
> AND WHEREAS under the said Order the powers of the said Legislative Assembly are now exercisable by Parliament....

They have not forgotten Parliament. It is good, Parliament is still remembered.

> "AND WHEREAS both Houses of Parliament are not in session and there is difficulty in enacting an Appropriation Act before the 1st of April, 1974....."

Appropriation is a power of Parliament. Who are you to say that it is difficult or not? We should say it. You should have come before the House and explained the position and found out a solution. Why not summon the other House also? Nobody can question if the House by itself wants to meet. Within three hours' notice we have met. We have met at ten O'clock in the night. We met and nobody can question and go to the court that the House should not have met, if there are certain Rules, have them suspended. Nowhere in the Constitution is there a requirement of a minimum period for giving notice to summon either House of Parliament. It is for the House to take it up. Therefore, this is a firmly reasons.

As I have referred to earlier, in 1961 within 24 hours' notice the Law Ministry came forward and summoned the other House.

Further on, the Order says:

> "NOW, THEREFORE in exercise of the powers conferred by Sections 51 and 56 of the said Act and all other powers hereunto enabling and in continuation of the Order aforesaid, I, V. V. Giri, President of India, hereby authorise that, pending....."

Now, according to Section 51 it can be only incidential or consequential. Withdrawal of amounts is not incidental or consequential. If you go to any court, they will simply laugh at you if you say that the amount is required for incidental and consequential purposes.

There is Section 56 which is a new factor they have introduced. There it is said that, if any difficulty arises in relation to a transition from the provisions of any of the laws repealed by this Act or in giving effect to the provisions of this Act and in particular, in relation to the constitution of the legislative assembly for any Union Territory, the President may, by order, do anything not inconsistent with the provisions of this Act, which appear to him necessary or expedient for the purposes of removing the difficulty."

Here, three situations are contemplated so that the President may, by order do anything. The three situations are: (1) wherever there is any difficulty in transition from the provisions of any of the laws repealed by the Act. That does not arise here. (2) or in giving effect to the provisions of this

Act. That I will consider later. The third one also does not arise—in relation to the constitution of the legislative assembly of the Union Territory. Only in giving effect to the provisions of this Act, he can do something. Then, there is a rider. It says, 'may, by order, do anything not inconsistent with the provisions of this Act'. Here, other provisions I read—27 appropriation, 29 and 31.

The provisions are therefore, very clear and recourse cannot be had to Section 51 or 56. I feel that the Presidential order that has been issued on 29th March is illegal, does not have a constitutional base and goes against the grain of the parliamentary democracy itself.

One thing more and I will be done. What could have been done? That also they will raise. They could have come to the House to the earlier. *Sno molo* they should have come. Even after we raised our apprehensions and warnings they kept quiet. They might have come here for a grant for assent to the grants be a Vote on Account does not take time. It is always summarily disposed of by this House. We could have appreciated the difficulties and summarily we could have given the sanction, but they are making inroads into our powers, the powers of the Parliament. That is the only power that is left to the Parliament—this one, not our lengthy speeches, not the very many arguments that we make are going to convince them. The only power that the Parliament still holds over the executive is this one. That is why Gladstone, the famous British Prime Minister and parliamentarian once said:

> 'If the House of Commons, by any possibility lose the power of the control of the grants of public money, depend upon it, your very liberty will be worth very little in comparison. That powerful leverage has been what is commonly known as the power of the purse—the control of the House of Commons over public expenditure.'

That is the only power left for the Parliament to control the Executive. By a dubious and insidious order they are trying to divert such amounts. This time it is Rs. 5 crores for Pondicherry; next time they can put both the Houses in hybernation and say, Parliament is not in session, therefore, we are taking Rs. 5,000 crores for the Central Budget. Nothing can prevent this being done once you concede a wrong approach by the same logic they can do anything they like.

Mr. Speaker, you as the custodian and defender of the privileges and powers of the House should be rightly exercised over it and you should give a ruling that this is an order which is illegal and unconstitutional and it should not be laid on the Table of the House. It will contaminate the very system of Parliamentary democracy if it is allowed to be laid. It should not be laid on the Table.

On this question, since a further examination is required, I want that the Attorney General should come and present his point of view. He should assist the Parliament. As per the Constitution he can be directed to assist the Parliament. I appeal to you and to the whole House. What is being done in the House today is not going to set democratic traditions.

Secondly, I wish to submit that this is an encroachment of Government over certain rights of the Parliament in respect of financial control. You as the Speaker, and the whole House should be exercised over it. It is not the job of the opposition alone; the entire House is affected. I would rather be a dog and bay the moon than be a Member of Parliament sitting here, when the House is shorn of the power which is inherent, for the exercise of which power it has been created.

श्री अटल बिहारी वाजपेयी (ग्वालियर) : मैं श्री सेझियान को बधाई देना चाहता हूं कि उन्होंने सारे प्रश्न का गम्भीरता से अध्ययन किया है और उसके सभी पहलुओं को सदन

[श्री अटल बिहारी वाजपेयी]

के सामने प्रस्तुत किया है। खेद का विषय यह है कि जब संवैधानिक दृष्टि से इतने महत्वपूर्ण मसले पर यह सदन विचार कर रहा है तो प्रधान मंत्री सदन में नहीं हैं, सदन की नेत्री हमारी सहायता के लिए यहां विद्यमान नहीं हैं। यहां तक कि गृह मंत्री महोदय भी उपस्थित नहीं हैं। सारा बोझा विधि मंत्री के कंधों पर डाल दिया गया है और विधि मंत्री भी तैयार नहीं है। विधि मंत्री यह नहीं कह सकते हैं कि उन्हें इस मामले की पूर्व सूचना नहीं थी। 29 तारीख को हम लोगों ने यह प्रश्न उठाया था। उन्हें सूचना मिल चुकी थी। वे चाहते तो उस समय सदन के सामने आ कर सारे काम को संवैधानिक ढंग से करा सकते थे। लेकिन सरकार सोती रही। बाद में उसने ऐसा काम किया जिसे संविधान की कसौटी पर खरा नहीं माना जा सकता। राष्ट्रपति द्वारा जारी किया गया आदेश असंवैधानिक है, गैर-कानूनी है, संसद् की अवहेलना करने वाला है और आज तक की सारी परम्पराओं को ताक पर रखने वाला है। जब पांडीचेरी की विधान सभा भंग कर दी गई तो वहां का खर्चा चलाने के लिए जो भी धन की आवश्यकता है उस धन को केवल संसद् दे सकती है, राष्ट्रपति अपने आदेश से कोई भी धन कंसालिडेटिड फंड से निकाल कर नहीं दे सकते। उस दिन भी कहा था मैंने और आज फिर मैं दोहराना चाहता हूं कि विधि मंत्री महोदय अगर संविधान के अनुच्छेद 240 का हवाला दे कर इस असंवैधानिक कृत्य को उचित ठहराने का प्रयत्न करेंगे तो वह संविधान के साथ न्याय नहीं करेंगे। अनुच्छेद 240 के अनुसार ——

The President may make regulations for the peace, Progress and good government of the Union Territory."

मेरा निवेदन है कि जो आदेश जारी किया गया है, वह राष्ट्रपति को दिए गए इस अधिकार के अन्तर्गत नहीं आता है। विधि मंत्री महोदय को यह भी मानना पड़ेगा कि यह आदेश रेगुलेशन नहीं है। राष्ट्रपति को यह भी मानना पड़ेगा कि यह आदेश रेगुलेशन नहीं है। राष्ट्रपति को अधिकार है कि वह संघ राज्य-क्षेत्र की शान्ति, प्रगति और अच्छे शासन के लिए रेगुलेशन बना सकते हैं ——रुपया नहीं निकाल सकते हैं। लेकिन किसी भी कसौटी से यह रेगुलेशन नहीं माना जा सकता है। राष्ट्रपति ने आदेश दिया है, भारत की सुरक्षित निधि से धन निकाला जा रहा है और संसद् को बिना विश्वास में लिये हुए यह काम किया गया है।

मेरा निवेदन है कि विधि मंत्री महोदय सदन से क्षमा-याचना करें। यह सदन संविधान की तोड़-मरोड़ बर्दाश्त नहीं करेगा। संविधान की धाराओं की व्याख्या में भी अन्तर नहीं है। अगर विधि मंत्री महोदय कोई ऐसा स्पष्टीकरण देंगे, जो हमारे गले के नीचे नहीं उतरेगा, तो मैं चाहूंगा ——और मैं श्री मेज़ियान की इस मांग से सहमत हूं—— कि इस मामले पर और अधिक गहराई से विचार करने के लिए एटार्नी जेनेरल को निमंत्रित किया जाये और वह हमें किसी निर्णय पर पहुंचने में मदद दें।

लेकिन मैं समझता हूं कि यह निर्णय करने से पहले भी सरकार ने एटार्नी जनेरल की राय ली होगी। अगर उन की राय ली गई है, तो विधि मंत्री महोदय बतायें कि वह क्या है। और अगर उन की राय नहीं ली गई है, तो क्या यह केवल विधि मंत्रालय का फैसला है? विधि मंत्रालय पहले भी ऐसी गलतियां कर चुका है और आज वह फिर कटघरे में खड़ा हो गया है। राष्ट्रपति को गलत सलाह दे कर सारी सरकार दोषी सिद्ध हो गई है। मेरा निवेदन है कि विधि मंत्री महोदय इस भूल का प्रायश्चित कर सकते हैं त्यागपत्र दे कर जैसाकि श्री मधु लिमये ने कहा है और इस सदन को विश्वास में ले कर कि जो परिस्थिति

पैदा हो गई है उस का निराकरण करने के लिए कौन से कदम उठाये जाने चाहिए ।

हम यह नहीं चाहेंगे कि पांडीचेरी में सरकारी कर्मचारियों का वेतन बन्द कर दिया जाये । अगर उन का वेतन बन्द कर दिया गया और वहां धन का ख़र्च रुक गया तो जो कठिनाइयां पैदा होंगी हम उन का अनुमान लगा सकते हैं । लेकिन इस का अर्थ यह नहीं है कि संविधान पर कुठाराघात कर के, और लोकतांत्रिक मर्यादाओं की अवहेलना करके, ऐसा काम किया जाये । इस के लिए रास्ता निकाला जा सकता है, लेकिन रास्ता वह नहीं है, जो राष्ट्रपति महोदय को सलाह दे कर निकाला गया है । एक गम्भीर सांविधानिक परिस्थिति पैदा हो गई है और मैं समझता हूं कि विधि मंत्री महोदय अभी भी अपनी गलती स्वीकार कर सकते हैं, और फिर सदन से सलाह मांग सकते हैं कि उस भूल का परिमार्जन करने के लिए क्या किया जाये ।

SHRI A. K. GOPALAN (Palghat): As far as the constitutional points are concerned it has been very elaborately explained here, and I entirely agree with those points. There is contempt of Parliament. This is not the first time that it has been shown. This time it is very serious. It was pointed out on the 29th by some hon. Members of the Opposition that this was a very serious issue. But, the thought came to the Minister only to-day that something certainly could have been done. There was enough time to put that before Parliament.

This is not the first time that there is an utter contempt of Parliament being shown. Parliament is considered only as an ornament. This is the parliamentary democracy that we have in this country.

The other day it was also pointed out that when there was a drastic reversal of certain policies of Government, there must be some discussion in Parliament as far as the wheat trade take over, as also the take-over of foodgrains trade by Government, is concerned. We also represented to the Prime Minister not to do it. The Members of the Opposition enquired as to why there was no discusion on this. This is not like that. This is an unconstitutional and illegal thing When it was pointed out also, there was no consideration given to the demand that there must be a discussion or even to the fact that there was some lacuna in it and the matter had to be placed before Parliament.

If this is the way in which Parliament is going to function, because they have a majority it is better to dissolve the Parliament and have President's rule and have ordinances and other things so that there is no waste of money, and so many crores of rupees could be saved. There should not be a mere cover of parliamentary democracy saying that there is an Opposition and there is a discussion here. Why should that farce be there? Let them do away with this farce and this expenditure of so many crores of rupees. It is better to dissolve the Parliament and say that President's rule will be there. If there is Parliament, there are certain procedures to be followed and those procedures that are very serious should not be violated. But now they have gone to the extent of doing illegal and unconstitutional things. It is an utter contempt not only of the Opposition but also of the whole Parliament and also of the procedures of Parliament, and, therefore, we very strongly condemn it.

SHRI INDRAJIT GUPTA (Alipore): There is only one point which I would like to emphasise. The case has been argued very ably and cogently by Mr. Sezhiyan. I find from the proceedings that on the 29th of last month, almost all the arguments which he has submitted just now were adduced; they were adduced perhaps not so extensively because of shortage of time, but anyway it runs into half a dozen pages of the proceedings. All the arguments were adduced by him by Mr

[Shri Indrajit Gupta]

Limaye and others. Instead of paying any heed to them, on that very day, this Government and the Law Ministry busied themselves, I presume, with the drafting of this order which as promulgated the same day.

What I would like to say is that actually the cat is out of the bag land the game is given away by the third reason which is adduced in the order. The first one only says that the Legislative Assembly of Pondicherry has been dissolved. The second one says that the powers of the State Legislative Assembly are now exercisable by Parliament. That is also all right. But the third and crowning argument of all this is:

> "Whereas both Houses of Parliament are not in session and there is difficulty in enacting an appropriation Act before the 1st day of April, 1974, now, therefore I, V. V. Giri.."

—poor man who has been ill-advised by this Government and the Law Minister. The crux of the argument is that both Houses of Parliament are not in session, because the Rajya Sabha had adjourned three days earlier and there is difficulty in enacting an appropriation Act before the 1st day of April. This is not a constitutional argument. It is not a legal argument by any standard whatsoever. It is just a question of expediency. We are now being told or rather reminded about the precedent which took place in 1961 when the situation was much more difficult in the sense that while on this occasion the Rajya Sabha has adjourned only two or three days earlier, on that occasion it had adjourned some time previously, if I remember aright. Even in that case, when the matter was raised, the then Prime Minister and the Government had the good grace to come forward and admit their mistake and say that steps would be taken to redress it and Parliament would be called into a session again. But, here there was no difficulty whatsoever.

Even assuming for the sake of argument, although such an assumption is unwarranted that the Opposition would have opposed any appropriation Bill for a vote on account, because it is never done and it is never opposed like that, even if we wanted to oppose it, Government has got a huge majority, and, therefore there is no danger and no risk and the appropriation Bill could have been carried within half an hour or one hour and the matter would have been over. So I do not understand how this argument holds water. This is nothing but a sheer determination and cussedness on their part that they would by pass Parliament and appropriate to themselves powers which they were not entitled to do under any clause or any provision.

I do not know if he is going to rely, as Shri Vajpayee apprehended, on art. 240. I think we need not anticipate him. But if it is so, in any case, there should have been some mention here that in accordance with the provisions of art. 240 they have done this. The article says that in case the Legislature of Pondicherry is dissolved, the President has the power under art. 240....

SHRI ATAL BIHARI VAJPAYEE: To make regulations.

SHRI INDRAJIT GUPTA: It says that during the period of such dissolution or suspension, the President may make regulations for the peace, progress and good government of the Union Territory. I do not know if has wants to rely on this. I think it will be stretching the elastic a bit too far. In any case there should have been a specific mention of it. The President has issued the order. Now by an after thought, this cannot be inserted. No such thing has been done.

I do not wish to take more time. The whole thing is palpably a fraud on the Constitution, an attempt to by pass and undermine the powers of Parliament. Therefore, some way must be found to retrieve this wrong which is attempted to be done here. Normally,

I would have said that the operation of the order could be kept in abeyance until this matter is decided and you give your ruling. But there is this practical difficulty pointed out that already it is the second of April. It might mean that certain innocent people there would be deprived of their salaries and so on. I do not know what is going to happen.

In any case, I also support the demand that the Attorney General should be summoned to the House to advise us. In no case should Government be allowed to get away by making a statement in reply, unless, of course, you choose to support them and give your ruling accordingly.

SHRI SHAYAMNANDAN MISHRA (Begusarai): We grant that a situation had arisen in which certain steps had to be taken in order to keep the Government functioning and to prevent the business of government from coming to a standstill. But what were the courses open to Government in the circumstances? Was this the course Government had adopted, the only course or was there a different course indicated by the Constitution? That is the important point for us to consider.

To my mind, the step Government has taken *ab initia* illegal. That is why I say that it is against the Constitution. The Constitution has indicated a certain procedure to be adopted for authorisation out of the Consolidated Fund. That procedure has not been followed in this particular case.

The Order says that the Appropriation Bill could not be passed in the given circumstances. Probably what they had in mind was that since the Rajya Sabha was not in session, it would not have been possible for getting it passed. But may I submit that the mention of the Appropriation Act in the particular circumstances is not quite apt, because when the local Assembly was dissolved, it was considering the Vote on Account. What should have been considered there fiine was the vote on account and what the Order should have mentioned was the vote on account and not the Appropriation Act. For the 'Vote on Account' too the other House was necessary—for the Act to be passed. But in the first instance, assent had to be given by the House of the People. If the House of the People had accorded assent to it, the Government could even have come forward with an Ordinance which would have the force of legislation.

Now anything could be done only through a legislation. If the House of the People had given initial assent to the vote on account Government would have been in order if it issued an Ordinance for keeping the business of government in Pondicherry going. But the Government has not taken that step.

I think, therefore, that this particular step of the Government shows that there is a kind of creeping authoritarianism and Government is callously ignoring the rights of this House particularly. It does not pertain so much to the rights of the other House as it does to the rights of this House. Therefore, we are very clear in our mind that the Government has committed a crime against the Constitution in respect of this matter. It is also a contempt of the House, as has been rightly emphasised by some hon. Members.

Now I come to the next step that may be necessary in the given circumstances. I find myself completely at sea in face of an irregular act which is required to be legalised now. This illegal act has been committed against the Constitution; how is it going to be retrospectively legalised? Is it possible for it to be done? That is a point which is very much in our mind. But before I come to that—which is indeed a very difficult and complex thing—I would like to stress that the Attorney-General's attendance in this matter is necessary. Here, I

[Shri Shyamnandan Mishra]

would particularly appeal to you to consider that whenever we make any demand for the attendance of the Attorney-General, that is not being granted by the other side of the House. Should it be left to the sweet will of the Government or the other side of the House to secure the attendance of the Attorney-General? I ask this because the Attorney-General as Mr. Setalvad has always maintained is an independent, constitutional adviser who should be able to give advice both to the Government and to Parliament. Therefore, at one time when the merger of the office of the Attorney-General with the office of th Law Minister was mooted; it was not granted. That was a serious suggestion made which was very seriously mooted when Pandit Jawaharlal Nehru was the Prime Minister of our country.

We find that we are not able to secure the advice of the Attorney-General in many matters. Therefore, we demand that the Attorney-General's presence must be secured in this matter.

So far as the further step to be considered is concerned, I should think that the Rajya Sabha should be immediately summoned—there is no escape from it. The Rajya Sabha has to go into it in order to complete the procedure that would enable the Government to authorise the particular amount to be paid out of the Consolidated Fund.

श्री मधु लिमये (बांका) : अध्यक्ष महोदय, इन्होंने बताया कि चूंकि दोनों सदन इस वक्त नहीं चल रहे हैं इसलिए अप्रोप्रिएशन बिल पास करने में दिक्कत है, लेकिन इस तरह की दिक्कत का राज्य सभा ने पहले ही विचार किया है और मंत्री महोदय को इस की जानकारी होनी चाहिए थी कि राज्य सभा का जो नियम 3 है उस में स्पष्ट शब्दों में कहा गया है कि :

"When a session is called at short notice or emergently, the announcement of the date and time of the session may be made in the press and Members informed by telegram or otherwise."

एमर्जेंसी मीटिंग के लिए जब राज्य सभा का नियम है तो केवल अखबारों में ऐलान करके राज्य सभा को बुलाया जा सकता था। अब राष्ट्रपति का आदेश निकालने में 28 तारीख को और जब इन्होंने पांडिचेरी की विधान सभा को बरखास्त करने का निर्णय किया उसी समय सभी पहलुओं पर कानून मंत्रालय को विचार करना चाहिए था। यह कोई नई बात नहीं है। आपको मैं 1967 की मध्य प्रदेश की बात याद दिलाना चाहता हूं। मध्य प्रदेश में जब शिक्षा मंत्रालय की मांग पर बहस हो रही थी तो अध्यक्ष को ऐसा लगा कि उस दिन उस मंत्रालय की मांग को पराजित किया जायगा। तो मुख्य मंत्री के आदेश पर वहां के अध्यक्ष ने विधान सभा की बैठक को स्थगित किया और हम लोगोंने उस दिन कहा था कि आप की डिमांड पास करने के लिए हम लोग तैयार नहीं हैं संविधान को तोड़ कर। नतीजा यह हो गया कि तत्काल विरोधी दल के नेता को उस समय नया मंत्री-मंडल बनाने के लिए बुलाया गया। 28 तारीख को जब इन्होंने फैसला किया कि विधान सभा बरखास्त हम करेंगे तो उसी समय इन सारी चीजों के बारे में इन को सोचना चाहिए था जो कि उन्होंने नहीं सोचा। उस के बाद 29 को हम लोगों के द्वारा इन बातों को रखा गया। उस के बाद भी यह सदन के सामने आ सकते थे, इन मांगों को रख सकते थे, सदन में बहस हो जाती अप्रोप्रिएशन बिल पास हो जाता, राज्य सभा को नियम 3 के अनुसार बुलाया जाता और 31 के पहले यह सारा काम हो सकता था। कुछ लोगों ने यह कहा कि यहां पर मांग पास करने के बाद राष्ट्रपति अध्यादेश के द्वारा एप्रोप्रिएशन बिल पास कर सकते हैं लेकिन उससे मैं सहमत नहीं हूं।

अध्यादेश के बारे में जो संविधान है वह बिल्कुल साफ है :

"If at any time except when both Houses of Parliament are in session....."

इसलिए अध्यादेश के जरिये यह काम करना सर्वथा अनुचित होता । इसलिए मेरा यह पहला निवेदन है कि इन्होंने जो कारण दिए हैं वह बिल्कुल निराधार, बे मतलब और बोगस कारण हैं—इसको कभी स्वीकारना नहीं चाहिए ।

14 hrs.

आगे यह कहते हैं कि किन अधिकारों का इस्तेमाल करके हम लोगों ने किया है । 51 और 56 के बारे में मेरे लायक दोस्त सेझियान साहब ने बहुत साफ बताया है लेकिन मैं दो तीन बातें उसके अलावा कहना चाहता हूं । अभी इन्द्रजीत गुप्त और अटलजी ने यह सन्देह प्रकट किया कि क्या 240 के तहत यह काम करेंगे तो मेरी राय में 240 का इससे कोई सम्बन्ध नहीं है क्योंकि 240 को आप देख लें :

"The President may during the period of such dissolution or suspension make regulation for the peace progress and good Government of the Union Territory."

आगे (2) क्या है :

"Any regulation so made may repeal or amend any Act made by Parliament or any other law which is for the time being applicable to the Union Territory."

एप्रोप्रिएशन ऐक्ट में कोई अमेण्डमेन्ट किया नहीं जा सकता । डिमाण्ड के ऊपर, मांगों के ऊपर एप्रोप्रिएशन ऐक्ट आधारित है इसलिए जहां मांगों का सवाल आयेगा 113 और 114 से आपको छुटकारा ही नहीं है । उसी के ऊपर 28 और 29 सेक्शन यूनियन टेरिटरीज का आधारित है, 113 और 114 में एप्रोप्रिएशन इसलिए 240 का कोई सवाल नहीं है । जहां तक 56 का सवाल है, सेझियान साहब ने स्पष्ट शब्दों में कहा है उनको ऐसा काम करना चाहिए अड़चनों और दिक्कतों को दूर करने के लिए भी

"which is not inconsistent with the provisions of this Act."

तो धारा 29 का अपमान करके राष्ट्रपति किसी तरह का काम नहीं कर सकते हैं । जहां लेजिस्लेचर नहीं हैं विधान सभा नहीं है उनके बारे में होम मिनिस्ट्री की डिमाण्ड है, जैसे नं० 51 डिमाण्ड है देहली के लिए और दूसरे केन्द्र शासित प्रदेशों के लिए मांगें रखी गई हैं, गृह मंत्रालय की मांग में उसका समावेश है । लेकिन पांडिचेरी में चूंकि एक दफ़ा विधान सभा का निर्माण हो चुका है इसलिए अलग से ही इन मांगों को यहां पर लाना अत्यावश्यक है ।

दूसरा सवाल यह पैदा होता है — कल मैं राष्ट्रपति जी से मिलने के लिए गया था—राष्ट्रपति जी कहते हैं और सभी लोग कहते हैं कि राष्ट्रपति जी को सरकार की सलाह पर चलना है लेकिन अगर सरकार असंवैधानिक गैर-कानूनी सलाह राष्ट्रपति को दे तो ऐसी हालत में राष्ट्रपति जी का क्या कर्त्तव्य है — यह सवाल भी उत्पन्न हो जाता है । आज अगर कोई आदमी यह कहे कि मैंने खून किया है और सरकार के आदेश पर किया है तो क्या उसको माफ किया जायेगा । उसी तरह से गोखले साहब ने राष्ट्रपति जी को कहा कि संविधान का खून कीजिए पार्लमेन्टरी डिमोक्रेसी का खून कीजिए और राष्ट्रपति जी ऐसा काम करते हैं तो यह एक नया प्रश्न उपस्थित हो जायेगा । क्या राष्ट्रपति जी गैर-कानूनी और असंवैधानिक सलाह को मानकर कोई आदेश जारी कर सकते हैं— इस के बारे में भी इस सदन में पूरी बहस होनी चाहिए । मेरी राय में राष्ट्रपति जी का यह कर्त्तव्य था कि गोखले साहब से कहते कि आप गलत रास्ते पर जा रहे हैं

[श्री मधु लिमये]

आपके सामने एक ही रास्ता है कि राज्य सभा को जल्दी बुलायें लेकिन मुझे पता नहीं उन्होंने वह कहा या नहीं और गोखले साहब ने वह माना या नहीं। ऐसी हालत में उड़ीसा के साथ डांग करने से कोई नतीजा नहीं निकलेगा यहां इस सदन में बैठने वाले इस सरकार के कानून मन्त्री जब इस तरह संविधान का अपमान करते हैं तो उसका एक ही प्रायश्चित हो सकता है कि यह अपना इस्तीफा दें। यह क्या स्पष्टीकरण देते हैं इसके ऊपर आप सोच सकते हैं लेकिन इनका कोई संतोषजनक स्पष्टीकरण नहीं आयेगा और ऐसी हालत में और इनको थोड़ी भी मर्यादा है थोड़ी भी लज्जा है तो स्पष्टीकरण के साथ साथ अपने इस्तीफे का भी एलान करें। इतना ही मुझे कहना है।

SHRI S. A. SHAMIM (Srinagar): Mr. Speaker, Sir, you have heard the related arguments showing clearly that there has been a violation of the Constitution. I was surprised to see my friends surprised at what has happened. In a country, where a private individual can draw Rs. 60 lakhs from the State Bank without any authority, without any cheque, anything can happen in this country. The ony suddening feature of the situation is, the President has been made to do what Nagarwala did some years ago. This is the only saddening feature of the situation. I am not drawing a parallel.

MR. SPEAKER: This is a serious matter. Do not go beyond that.

SHRI S. A. SHAMIM: Various provisions, relating to the withdrawal of funds from the Consolidated Fund of India have been referred to. They have referred to article 240 of the Constitution and other relevant provisions of the Union Territories Act. To my mind, the only provision which can warrant this and this is what the Law Minister has used, is Section 420 of the Indian Penal Code. It is a clear fraud on the people of India, on the Parliament and on the parliamentary democracy. Therefore, I think, he can take refuge only under Section 420 of the Indian Penal Code. Mr. Limaye has mentioned rather briefly about the role of the President. It is presumed that on either the advice of the Ministry of Law, or for that matter, any other Department, the President applies his mind. The presumption is he applies his mind. In this case, either President has not applied his mind or he has applied his mind and then contravened the Constitution. I do not feel hesitant to say that this is a fit case if the logic is taken to its ultimate conclusion, where, we must seriously consider the question of impeachment of the President. If the President had been a party to this, why should the President be spared? The President is the guardian of the Constitution. If the President has violated the Constitution willingly, then it is a fit case for considering the impeachment of the President. Once we allow this practice, as my friend Mr. Sezhiyan has clearly stated once we accept his position, then there is no end to it. I would suggest that the role of the President should seriously be discussed, whether he has applied his mind. If he had, then, he is a party to this.

SHRI SOMNATH CHATTERJEE (Burdwan): I am thankful to you for giving me an opportunity. I shall confine myself only to the provisions of Sections 51 and 56, to which reference has been made in the order of 28th March. Section 51 says:

> 'If the President, on receipt of a report, from the Administrator of a Union territory or otherwise, is satisfied—
>
> (a) that a situation has arisen in which the administration of the Union territory cannot be carried on in accordance with the provisions of this Act or
>
> (b) that for the proper administration of the Union territory it is necessary or expedient so to do,

then, what he can do. He may, by order, suspend the operation of all or any of the provisions of this Act. Now, Sir, the President has not suspended the relevant provisions dealing with the financial matters. Only such incidental and consequential provisions can be made by the President which arises out of the suspension. No incidental and consequential provisions can be made which is not related to the suspension of any of the provisions of this Act. That is how, Government have construed this Section while issuing the order of 28th March. Sir, if you have that Order you will kindly see that the President, in sub-clause (a), suspended some of the provisions of the Union Territories Act, 1963, but, not those Sections—at least Sections 27 to 31, which relate to financial matters. By sub-clause (a), what had happened? Some of the provisions have been suspended and the consequential provisions are contained in sub-clause (b). Sir, this is very important. After suspension of some of the provisions of the Union Territories Act in sub-clause (b), the President makes certain incidental and consequential provisions which appear to be necessary and expedient for the administration of the Union territory of Pondicherry'. What is the nature of the incidental and consequential provisions? It is that the Legislative Assembly of Pondicherry is dissolved and Parliament is now being treated as the Legislative Assembly of the Territory. This is the consequential power which is exercised under section 51 because of the suspension of certain provisions of the Act.

The 29th order purports to proceed to lay down certain incidental and consequential provisions. It does not follow any suspension of any other provisions of the 1963 Act. Those incidental and consequential powers cannot be exercised which are not connected with the suspension of any particular provisions of the Act. Therefore, kindly consider whether, in exercise of an incidental and consequential power which is unconnected with the suspension of any particular provision of the Act, this order is constitutional at all. Because of the 28th order, the Legislative Assembly of the State is very much alive in the sense that Parliament will exercise all those powers which the Legislature could have exercised. This Parliament has been expressly authorised by the Presidential Order to exercise each and all the powers of the Legislative Assembly of Pondicherry including the powers contained in sections 27 to 31 which have not been suspended. Those provisions not having been suspended and Parliament being very much in existence in the garb of incidental and consequential powers, this sort of power cannot be exercised, which is contrary to sections 27 to 31. Therefore without going into any other question, I submit this on the face of it cannot be an incidental or consequential power because it does not follow the suspension of any particular provision.

SHRI SHYAMNANDAN MISHRA: Article 357(c) of the Constitution says:

> "Where by a Proclamation issued under clause (1) of article 356, it has been declared that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament, it shall be competent—
>
> (c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament."

Here specific mention is made of the House of the People, not of Parliament as a whole. Therefore, by way of elucidation of what I submitted earlier, I would further submit that the assent of the House of the People is extremely necessary. If this assent were secured, even an ordinance that would have been passed later would have been quite in order.

MR. SPEAKER: Has the minister anything to say?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I would like to reply tomorrow.

SHRI H. N. MUKERJEE (Calcutta-North-East): Sir, it is a matter of propriety and grace. We are discussing this matter and the Law Minister is not ready with his reply. The Prime Minister, who is the channel of communication, is not here. Should the House continue to be treated with this kind of contempt and indifference? The Treasury Benches are empty. Nobody cares. Is this the way in which we propose to carry on parliamentary democracy?

MR. SPEAKER: I have heard all your points with great respect and care, and also the precedents quoted by Shri Sezhiyan about the 1961 case when Mr. Banerjee and Mr. Panigrahi raised this question here and Prof. Mukherjee participated, and again in 1961 when Rajya Sabha was called immediately into session.

I would advise the Government always to think twice before suspending or dissolving any Legislature nearabout 1st April. It is a very risky matter. They should have done it earlier or should have waited for some time. Therefore, for future guidance, the Government should start thinking about it a week earlier, before 1st April, as to what is to be done. Personally I am not allowing this item to be laid on the Table for the present, until I hear the Law Minister. And I should tell the Law Minister that these people are prepared to go in for impeachment of President, then they will not leave the Speaker also. So, I will also apply my mind very seriously to it....

SHRI JYOTIRMOY BOSU: The displeasure of the House should be communicated to the President.

MR. SPEAKER: The President is advised in this matter by the Council of Ministers. Please do not go to the extreme.

The Law Minister may consider the precedents and also the points raised by the hon. members that the Lok Sabha could have been seized of it immediately after the Government was duly warned about it in the morning of 29th March. But the situation grew worse because Saturday, Sunday and Monday happened to be holidays ...

SHRI ATAL BIHARI VAJPAYEE: We could have met on Saturday.

SHRI SHYAMNANDAN MISHRA: Instead of coming with an order like this, they could have come with something else.

MR. SPEAKER: That is why I have advised them that, in future, they should not take any steps like suspending the Constitutional provisions, dissolving Assemblies, etc. with out going into each and every detail.

SHRI SHYAMNANDAN MISHRA: What about calling the Attorney-General?

MR. SPEAKER: We shall first hear the Law Minister.

SHRI ATAL BIHARI VAJPAYEE: After hearing the Law Minister, if necessary, the Attorney-General should be called.

MR. SPEAKER: After we have heard the Law Minister, we can consider it. But I would advise the Government not to stand on prestige on this matter. If something wrong has been done, it can be rectified, and leave it to parliament to rectify it.

PROF. MADHU DANDAVATE (Rajapore): I have given notice of a very important issue....

MR. SPEAKER: I have not had the time to study other motions.

PROF. MADHU DANDAVATE: It will take just one minute....