

MR. DEPUTY-SPEAKER: Please sit down.

SHRI DINEN BHATTACHARYYA: I am sitting down. You must hear me.

MR. DEPUTY-SPEAKER: Order, please. Even though it was irregular, I allowed you to make a statement, but you want to make a speech.

SHRI DINEN BHATTACHARYYA: No, Sir.

MR. DEPUTY-SPEAKER: Nothing more. Whatever he has said has gone on record. Nothing more will go on record. He is speaking without my permission.

SHRI DINEN BHATTACHARYYA: "

MR. DEPUTY-SPEAKER: The question is.

"That the Bill be passed."

The motion was adopted

14.21 hrs.

ALL-INDIA SERVICES REGULATIONS (INDEMNITY) BILL.

MR. DEPUTY-SPEAKER: Now we take up the All-India Services Regulations (Indemnity) Bill.

THE DEPUTY MINISTER IN THE MINISTRY OF HOME AFFAIRS (SHRI F. H. MOHSIN): On behalf of Shri Ram Niwas Mirdha, I beg to move:

"That the Bill to grant indemnity in respect of the failure to lay before Parliament certain regulations made under the All-India Services Act, 1951, and for certain other matters connected therewith, as passed by Rajya Sabha, be taken into consideration."

Under sub-section (1) of section 3 of the All-India Services Act, 1951, powers have been delegated to the Central Government to make rules in consultation with the State Governments concerned for the regulation of recruitment and conditions of service of persons appointed to an All India Service. Some of the rules so framed empower the Central Government to make regulations in res-

pect of certain matters. Accordingly, some regulations have been made from 1955 onwards and they have also been amended from time to time.

Sub-section (2) of section 3 of the Act provides for the laying of all rules before Parliament for a period of not less than fourteen days soon after they are made and the rules are subject to such modifications whether by way of repeal or amendment as Parliament may make in this behalf. As the sub-section provides only for the laying of rules before Parliament, the Central Government interpreted this provision to mean that it was not necessary to lay the regulations before Parliament. Accordingly, most of the regulations framed and the amendments made thereto prior to the 1st July, 1967, were not laid before Parliament. Subsequently, in the light of certain observations of the Supreme Court in a judgment, the Central Government were advised that the regulations made under powers available in certain rules should be taken to form an integral part of the rules made under sub-section (1) of section 3 of the Act and hence were required to be laid before Parliament in the same manner as the rules are laid. This is now being done in regard to all regulations and amendments thereto made from the 1st July, 1967 onwards.

In order to validate the regulations which were not laid before Parliament, it was decided to undertake suitable legislation and accordingly the All India Services (Laying of Regulations before Parliament) Bill 1968 was introduced in Rajya Sabha. The Bill provided for the validating of the regulations in spite of the failure of the Central Government to lay them before Parliament and also for certain other matters. The Bill, as passed by Rajya Sabha, was pending in the Fourth Lok Sabha at the time of its dissolution on the 27th December, 1970, and, therefore, lapsed in terms of Article 107 of the Constitution.

It, therefore, became necessary to undertake fresh legislation for the purpose. The present Bill which has already been passed by Rajya Sabha provides for indemnifying the Central Government

and its officials for the failure to lay the regulations before Parliament and for validating the regulations which were not so laid. The Bill also provides for the publication of the rules framed under the Act in the Official Gazette and also for substituting the existing sub-section (2) of section 3 of the Act by a new sub-section containing the standard laying formula now being included in all Acts of Parliament.

I commend the Bill for consideration of the House.

MR. DEPUTY SPEAKER: Motion moved:

"That the Bill to grant indemnity in respect of the failure to lay before Parliament certain regulations made under the All-India Services Act, 1951, and for certain others connected therewith as passed by Rajya Sabha, be taken into consideration."

SHRI DINESH JOARDER (Malda): This is a very important and serious matter. By this Bill the Government now want to exonerate the Central Government as well as its officials from the liability of not having placed the regulations framed under the All India Services Act, 1951, on the Table of this Parliament since a very long time past. The original Act, perhaps the smallest and the shortest Act ever passed by this Parliament, has only one operative and substantive which has delegated all and unfettered power to the Central Government for regulating the services of the All India cadre officers by way of framing rules. The only check is that these rules should have to be placed on the Table of Parliament for discussion and for approval or for rejection. Unless these Rules framed under the delegated power are ratified by the Parliament directly or indirectly—directly means by discussion

and approval or rejection—they are not valid and have no legal effect. That was the intention of the legislators also. It is clearly stated in sub-section (2) of Section 3 of the Act that these Rules 'shall be laid before the Parliament' and shall be subject to such modifications, repeal, amendment, etc. but the Government has not placed or laid any such previous rules or the regulations whatever it may be.

SHRI F. H. MOHSIN: Rules were laid before the Parliament. It was only the regulations that were not placed.

SHRI DINESH JOARDER: You have placed the Rules, not the Regulations. Whenever you had taken recourse to the regulations, you had stopped framing rules....

MR. DEPUTY SPEAKER: How can the regulations be framed without Rules?

SHRI DINESH JOARDER: That is what has happened. The Act delegated power to the Central Government to frame rules and not regulations. But the Central Government officers later on went on framing regulations and stopped framing rules. Anyway, they have not placed the regulations on the Table of the Parliament previously. A very peculiar excuse has been put forward that it was at some time interpreted by some sections of the administration that, according to the Act, only rules have got to be laid on the Table of the Parliament and not the regulations framed under the provisions of the Rules. So, the Government did not lay any such regulations before the parliament for such a long period.

The very stand of the Government is wrong, illegal and motivated. The original Act delegated to the Government the power to frame rules. While framing the Rules, the Government, with a view to flouting the rights and privileges of the Parliament and taking away the minimum power it had, to approve the Rules, sub-delegated a large power to itself to frame

(Shri Dinesh Joarder.)

regulations concerning the same conditions of recruitment and services of the All India cadre officers. Sub-delegation of the delegated power is itself bad in law and is illegal and in fact it was not the intention of the legislators of the original Act. But why this camouflaging recourse adopted by the Government? The main reason was that the officers, the high officials, the bureaucrats, who fall under the scope of this Act and its rules are the top bureaucrats of this country who, in fact, are running the administration and they are even virtually running the Government itself. They do not want that their services should be controlled by the legislators whose life as such in Parliament is temporary in nature, whereas the bureaucrats will stay in the administration and in the Government permanently.

All those officers to their benefit decided that only the rules had got to be laid before the Parliament and not the regulations. They sub-delegated to themselves the powers of framing their own regulations. This was deliberate, this was motivated and these officers had very tactfully befooled the Ministers concerned and taken away the power of Parliament. By this way the Government has deprived the Subordinate legislation Standing Committee of the Parliament from the privilege of going through those rules and regulations and chucking out the illegal part of the same. It is surprising that this default and failure took place in the case of the All India Services Act and Rules and not in any other laws. That is why it creates suspense and doubt in it, in the malafied intention of the Government and its top bureaucrat officers.

Now we are asked to indemnify their deliberate failure and illegal omissions and commissions. This is what has happened.

Now, in this connection, I am constrained to mention that even the Public Service Commission is being flouted in the matter of recruitment and formulating conditions of the All India services. The Service Commission is flouted in the matter of new rules to be framed

under the Act for recruitment, for training, for their payments and for their promotions and other things. They are not consulted at all, as was the case before. These officers do not want that they should have any restrictions in their services and in their movements.

But more strange is the conduct of the Government and more particularly the State Government of West Bengal. Now the West Bengal Government are reported to be going to offer employment to 17,000 unemployed boys and girls. We want employment to be given to boys and girls. The Chief Secretary of the West Bengal Government...

MR. DEPUTY-SPEAKER: How does the State Government come in here?

SHRI DINESH JOARDER: This is regarding conduct of officers.

SHRI S. M. BANERJEE (Kanpur): IAS officers are there all over India, they are there in Punjab, in U.P. etc.

MR. DEPUTY-SPEAKER: You are expanding the scope anyway...

SHRI DINESH JOARDER: The Chief Secretary to the West Bengal Government has very recently announced that in cases of all employment in West Bengal Administration all rules and regulations now in operation will be stopped and made inoperative. We want that employment should be given to all unemployed, but not in this way. In the West Bengal Government, whatever the post may be, from the Secretary down to the Lower Division Clerk, the rules and regulations will be made inoperative. This is the statement made by the Chief Secretary. The Government's top officers are inspiring the other officials and bureaucrats, in violating their own service conditions. This is the conduct of the ruling party, its bureaucratic officers and also their associates.

This is only due to the present set-up of the Government. This is due to the present set-up of the capitalist form of society. This is due to the continuation of the same old colonial and imperialistic

type of administration which we have inherited from the Britishers. This is what is going on in our administration. Unless this is changed and completely overhauled, nothing tangible will come out, no tangible benefit will be derived from the administration. The top officials and the top bureaucrats will be going on flouting the rights and privileges of Parliament and they will do everything according to their whims. These bureaucrats have no knowledge of the missings by the sufferings and their aspirations and they have also no feelings as to how our country could be rebuilt. So, unless the people's representatives are allowed to function and have say in the administration from the block level to the Central Secretariat level, and unless their control is established over the administration, this bureaucratic control of administration will never fetch any benefit to the society and all these big slogans like *Garibi Hatao* or *Bekari Hatao*, socialism etc. will all end in smoke if these bureaucrats are given such powers to flout the provisions of laws made by the elected representatives of the people.

I want to submit that unless these rules and regulations which were not placed on the Table of the House are placed on the Table of the House again and we have an opportunity to go through them, discuss them and reject or amend or repeal them or approve of them, this Bill should not be passed at this moment so hurriedly. We must be given powers and an opportunity to scrutinise whatever rules or regulations were framed by Government regarding the conduct of the IAS and IPS officers but were not placed on the Table of the House. First we should have the scope to peruse them and discuss them and thereafter this Bill may be considered and passed by this House.

Lastly, I want to point out that the Bill seeks only to indemnify what has happened. But there is a technical irregularity in this Bill. This Bill seeks only to indemnify the Government and their officials as described in the Title of the Bill. But it has not been described as an amending Bill as such, because the word 'amendment' is not there. But the main

purpose of the Bill is to amend a section of the original Act. Even though it is not an amending Bill, yet in clause 3 it seeks to amend some vital provisions of the original Act. This is irregular and not in proper form. So, this Bill should fall. Either Government should withdraw the Bill or it should be rejected by the House.

SHRI S. M. BANERJEE (Kanpur): First of all, may I have your guidance, Sir? I have read the proceedings of the other House....

MR. DEPUTY-SPEAKER: Before he goes on with it, may I draw his attention to one matter? According to our rules, the proceedings of the other House cannot be quoted here....

SHRI S. M. BANERJEE: I am not quoting....

MR. DEPUTY-SPEAKER: It applies also to reference to them.

SHRI S. M. BANERJEE: I am quoting only what I have read in the newspapers. It was said that this Bill had been discussed in the Subordinate Legislation Committee of the Rajya Sabha in 1969. There is a Committee on Subordinate Legislation in the Lok Sabha also, and I would like to know whether this was discussed by them also and their views were also obtained. I shall start my speech after getting confirmation from the hon. Minister on this point because I shall base my argument on that.

MR. DEPUTY-SPEAKER: Would the hon. Minister like to reply to this?

SHRI F. H. MOHSIN: I do not think that it was discussed by the Subordinate Legislation Committee of the Lok Sabha. It was discussed only by the Subordinate Legislation Committee of the Rajya Sabha and report was submitted on 19th August, 1968.

SHRI S. M. BANERJEE: Then, I rise on a point of order. This Bill looks very non-controversial, but it is

[Shri S. M. Banerjee]

actually a very controversial Bill, because by this Bill, Government are going to excuse the defaulting officers of the defaulting Government and give them a clean chit for whatever they have done, which might have resulted in immense loss or immense hardship to a Government servant. So, I would seek your guidance in this matter, namely whether this Bill should also not be discussed by the Subordinate Legislation Committee of this House before it is taken up here for discussion. Otherwise, it will be gross discrimination against the elected House. I would like to get your ruling on this point.

MR. DEPUTY-SPEAKER: This is only a matter of procedure. Before permission was given to the hon. Minister to introduce this Bill and to move it for consideration, this should have been taken care of; I do not know how the hon. Member can stop it at this stage.

SHRI S. M. BANERJEE: This can wait for a couple of days and can come up after that.

MR. DEPUTY-SPEAKER: I am concerned only with the procedure just now. I am not concerned with what is more proper or what is not so proper.

SHRI DINESH JOARDER: But the procedure cannot take away the inherent powers of Parliament.

MR. DEPUTY-SPEAKER: I think that it is with the leave of the House that this Bill has been introduced here.

AN HON. MEMBER: It is a Bill as passed by Rajya Sabha.

MR. DEPUTY-SPEAKER: I am sorry. It has been brought to this House after the Rajya Sabha has passed it, by leave of the House.

His point should have been raised at that time.

SHRI S. M. BANERJEE: I am coming to that.

The moment this Bill was introduced in the other place, as I read in the news papers, some members of the other House, as I read in the newspapers, raised certain objections. They not only discussed it in committee but certain amendments were moved and accepted by Government. Why should this House be reduced to a *postmortem* House?

SHRI F. H. MOHSIN: It was not this Bill which was discussed.

SHRI S. M. BANERJEE: 1969

SHRI F. H. MOHSIN: It was the former Bill.

SHRI S. M. BANERJEE: This is an amendment to that.

SHRI F. H. MOHSIN: There are some changes also in it. Formerly another Bill was introduced. It was passed in the Rajya Sabha. Then it came to this House. The Lok Sabha was meanwhile dissolved and the Bill lapsed. Again a fresh Bill was introduced in the Rajya Sabha and it was passed by the Rajya Sabha. It was the earlier Bill which went through that process referred to by the hon. Member.

SHRI S. M. BANERJEE: The Lok Sabha is not going to be dissolved tomorrow.

SHRI F. H. MOHSIN: It was the earlier Bill which was discussed by the subordinate Legislation Committee of Rajya Sabha. The report was submitted on 19 August, 1968. Some of the recommendations made by that Committee have been taken into consideration. They have already been taken up in the Bill itself.

SHRI S. M. BANERJEE: This Bill has been brought forward because of the observations made by the Supreme Court in various judgments. My earnest ques-

tion is why the Subordinate Legislation Committee of this House, which consists of hon. members of this House including eminent lawyers, should be completely ignored. Can we not wait for two or three days and give an opportunity to the members of that Committee? What is the hurry in this? We are continuing till the 22nd.

MR. DEPUTY-SPEAKER: I think we are misconceiving to some extent the functions of the Subordinate Legislation Committee. When a Bill which has been adopted by this House empowers the framing of subordinate legislation, that Committee will go into that question . .

SHRI S. M. BANERJEE: With your permission, I will read from the proceedings of the other House.

MR. DEPUTY-SPEAKER: We are not concerned with that. The other House will do anything according to its wisdom. We shall be functioning according to our understanding.

SHRI S. M. BANERJEE: Is it contended that all the wisdom is contained in the other House?

MR. DEPUTY-SPEAKER: We are not concerned. Let us not say anything in praise of them or anything to run them down.

I think he is aware of the powers and functions of the Subordinate Legislation Committee. It will go into the question whether the subordinate legislation measures framed are in keeping with the principal Act adopted by this House. Here it is not a question of a subordinate legislation to be gone into by the Committee; it is a Bill.

SHRI R. V. BADE (Khargone): All rules and regulations are framed by Government. They have not been placed before the Subordinate Legislation Committee. As a matter of fact, they ought to have been. By this Bill they are indemnifying government officials from all

consequences arising out of the omission to lay these rules and regulations before Parliament. They are now saying that all these rules and regulations shall be deemed to be valid.

MR. DEPUTY-SPEAKER: I have seen his point. I think we are somewhat confused over the whole thing.

SHRI N. K. P. SALVE (Betul): Quite a bit.

MR. DEPUTY-SPEAKER: Here is a proposal from Government in the form of a Bill to validate or indemnify government servants from the consequences flowing from the regulations which were not laid down on the Table. That is all. We are not going into whether these regulations are in keeping with the principal Act or not.

SHRI DINEN BHATTACHARYYA (Serampore): Indirectly we are doing that.

MR. DEPUTY-SPEAKER: Now, it is up to the House to decide this question. You are fully at liberty to criticise the Government for bringing this Bill to indemnify the officers from the consequences of certain regulations. It is up to you and it is for you to decide.

SHRI S. M. BANERJEE: You are absolutely correct. That is our job. But the whole question is, this particular Bill was passed in 1969. Why was it referred to the Committee for discussion and even amendments were moved there? I want an answer from the hon. Minister and nothing else.

MR. DEPUTY-SPEAKER: Do you want to reply to that?

SHRI F. H. MOHSIN: I am not aware of the reasons why the former Bill was referred to the Committee. We are at present concerned with the present Bill. About that, you can ask any question.

MR. DEPUTY-SPEAKER: If I understand his question, why did you agree that this Bill should go to the Subordinate Legislation Committee?

SHRI F. H. MOHSIN: This Bill has never gone to the Subordinate Legislation Committee.

SHRI S. M. BANERJEE: Not this Bill; I mean the 1969 Bill. (Interruptions).

MR. DEPUTY-SPEAKER: Order, please. I am trying to understand him. I am myself a little bit confused, because there are certain things relating to some other Bill and then we are talking on this Bill. I myself am caught by surprise. That is my confusion.

SHRI F. H. MOHSIN: This Bill is of 1972. This Bill has never gone to any Subordinate Legislation Committee, either of the Rajya Sabha or of the Lok Sabha.

SHRI S. M. BANERJEE: I am talking of the Bill of 1969. This flows from that Bill. Can he deny that the 1969 Bill was the same one as this? Is this not the same Bill, or is it an amending Bill whether in relation to the other Bill?

SHRI F. H. MOHSIN: The recommendations of the Rajya Sabha Committee were taken into consideration while formulating this Bill. That is all. (Interruptions).

MR. DEPUTY-SPEAKER: I think the position is clear now. The Bill before us now is as it is; it is the Bill of 1972. Whatever they did or did not do before this, we are not concerned. If you bring in everything now, that will be leading only to confusion. Now, Mr. Banerjee.

SHRI S. M. BANERJEE: I am not at all convinced of his argument. I speak only because you ask me to speak.

MR. DEPUTY-SPEAKER: Then do not speak.

SHRI S. M. BANERJEE: Really, I am not convinced.

Sir, this Bill is not a very non-controversial Bill. There is controversy, because what was the necessity of bringing this Bill? This Bill has been brought to indemnify all the misdeeds, harassments, etc., committed by the highest officials, whether

Secretary, Joint Secretary, Deputy Secretary or anybody else on the other ordinary citizens of the country or the Government employees. It is said that now these rules will be laid on the Table of the House.

Clause 2 of this Bill says:

"The Central Government and all officers responsible for the laying of any regulation made before the commencement of this Act under or in pursuance of any rule made under the All-India Services Act, 1951; are, and each of them is, hereby freed, discharged and indemnified from and against all consequences, whatsoever, if any, incurred or to be incurred by them or the Central Government or any such officer by reason of any omission in this behalf to lay such regulation before Parliament and every such regulation shall for all purposes be deemed to have been duly laid before Parliament and shall have effect and shall be deemed always to have had effect accordingly."

This will be taken as laid retrospectively. I give a bright instance to you. The Supreme Court recently gave a judgment in the case of the Government employees who participated in the strike as temporary employees. The Kerala High Court gave a judgment in favour of those employees and they were to get arrears of pay and allowances for that particular period. The Government went in appeal to the Supreme Court. The Supreme Court, in its wisdom, upheld the judgment of the Kerala High Court. Even after that, rule 5 of the Temporary Services Rules has been amended by this Government shamelessly, retrospectively from 1965. This was raised by me, Shri A. P. Sharma and other colleagues who were members of the JCM at the national level. I want to know whether the rule has been laid here. Parliament has been completely ignored. How can the judgment of the Supreme Court in a particular case be ignored? When we say that it

is contempt of the Supreme Court, they say that the Government has got a right to frame rules and amend them; it was not an Act of Parliament. They have contempt for the Supreme Court and its judgment and amended this rule and thus denied the wages of 4,000 Central Government employees. If somebody did not pay the wages, we may have gone to Court for non-compliance of the court judgment; but they have indemnity here. We cannot go to the Court after the passing of this Bill. These rules have not been laid here; I ask Mr. Mohsin to let me know. We took it up with the Cabinet Secretary in the JCM. After the historic announcement of the hon. Prime Minister when she came from Latin America and granted a general amnesty to the Central Government employees, everyone was excused and taken back but the wages remained unpaid. The services of 4,000 Government employees were terminated in connection with the strike in 1968 in pursuance of instructions issued by the Home Ministry on 24 September, 1968; they are alleged to have taken part in the strike, instigated others, indulged in violence, stone throwing, damaging office building, etc. Following instructions that such persons should be prosecuted for these offences, the departments did not prosecute those persons but some of the officials were vindictive and they took the decision not to pay them their wages against the wishes of the Prime Minister. We hailed the decision of the Prime Minister in the House and outside. As I said, some employees went to the Kerala High Court and won the case. We patiently waited for 90 days to see whether Government went to the Supreme Court in appeal. With meagre resources we fought in the Supreme Court and the Supreme Court also upheld the judgment of the Kerala High Court. Still after that rule 5 has been amended with effect from 1965. I ask Mr. Salve—I am not a lawyer, he is an eminent lawyer—whether it is rape of justice, rape of democratic traditions? Will it be too much to say so? I wrote a letter to Mr. Mirdha and also the Prime Minister, not for me but for those 4,000 unfortunate fellows who were

excused by the Prime Minister. Still the Government shamelessly amended the service rules with effect from 1965. Today we are against it still.

Then again, some officers may have arrested some people wrongly under the DIR and placed them under detention for years together. Supposing the Supreme Court in its wisdom releases somebody and passes strictures against those officers for wrongful confinement or for illegal detention, nothing will happen to them; he goes scotfree under the shelter of this Bill. I am all praise for IAS and IPS and have nothing against them personally. But some of them have done wrong things; this House must be sovereign and deal with them. Suppose we have taken a decision against some officers. Did we not reprimand a particular officer here for giving some wrong evidence before the PAC? Did we not haul up some police officials for doing something wrong with MPs? Did we not ask Mr. Karanjia to appear here and reprimand him for publishing something against an hon. member of this House? So, when it comes to us, we are touchy and we take action. But when it comes to some others, what happens? This Bill should be properly discussed as to what should be indemnified and under what circumstances the defaulting officers should be indemnified. All these have not been decided. This is a blanket provision that whatever be the circumstances, he will not be held responsible.

I oppose this Bill because it is not as innocent as it looks. I would request Mr. Mohsin not to ask the House to pass this Bill immediately. Let the opposition members and some senior members of the ruling party who are lawyers sit together and discuss it. Sir, some of the officers who did not implement the policies of the Government are today our Ambassadors! Some officers who connived with the American imperialists in so many things have been sent to America on high jobs. If Mrs. Indira Gandhi is serious about implementing the manifesto on which she won the massive mandate, we should help

[Shri S M Banerjee]

only those bureaucrats who help us in shaping the destiny of our country, not those who deprived a handful of Central Government employees of their legitimate dues. That is why I oppose this Bill. That particular rule which was amended from 1965 has not been placed before Parliament. I charge this Government with contempt of the Supreme Court and misleading the House by not laying it on the Table of the House.

*SHRI E R KRISHNAN (Salem)
Mr Deputy Speaker, Sir I rise to say a few words on The All India Services Regulations (Indemnity) Bill, 1972. I am thankful to you for giving me an opportunity to participate in this debate on behalf of my Party, the Dravida Munnetra Kazhagam.

I would in the very beginning say that I oppose this Bill. It is incumbent on the part of the Government that they must place on the Table of the House all the rules and regulations framed under an Act, which will enable the Parliament to scrutinise them to find out whether they have been framed within the powers given to them under the Act and whether they have exceeded the powers granted to them under such an Act. This House has constituted the Subordinate Legislation Committee to do this important work. It is not uncommon that such rules and regulations are placed on the Table of the House long years after the enactment of the relevant Act.

The rules and regulations framed under the All India Services Act, 1951 concern thousands of Central Government employees. Though these regulations framed under this Act have not been placed before this House for years and years by the concerned Officers, their failure to do this is sought to be indemnified through this Bill. It does not end here. It is also stated in the Bill that every such regulation shall for all purposes be deemed to have been duly laid before Parliament

and shall have effect and shall be deemed always to have had effect accordingly, Sir, this procedure is a dangerous portent for the functioning of democratic institutions in our country. By indemnifying the failure of the officials, the failure is not only being condoned but it is also not treated as a failure. Sir I have no hesitation in saying that this is showing complete disregard to this House.

What is the basic necessity for bringing forward this legislation? From 1951 to 1967 the regulations framed under this Act were not placed before this House. The Government are condoning this failure on the part of the officials. It is all right. But I would like to know whether the Government will come forward to condone the failure on the part of other officers also, if they have failed to place on the Table of the House the regulations framed under some other Acts. If the Government do not come forward to do that then they will be accused of being discriminatory. Will it be just and proper if one section of officers is granted indemnity and some other section refused such indemnity?

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As this Bill in its present form shows complete disregard to the Parliament as the Parliament is sought to be bypassed I have to oppose this Bill. It is wrong on the part of the officers to think that there is a distinction between the rules and the regulations. Without rules, can there be regulations? When the Government place before the House the rules, is it not wrong that the regulations are not placed on the Table of the House? This argument advanced by the Government is untenable. For overlooking one mistake another serious mistake is being committed through this Bill which gives indemnity to the officers against all consequences, whatsoever, if any incurred or to be incurred by them by reason of any omission in placing the regulations on the Table of the House. I have to say that the Government are treating this House with contempt.

*The original speech was delivered in Tamil

Before I conclude, I would like to request the Government that they should at least hereafter not allow such mistakes to be committed by the Officers. I also hope that hereafter both the rules and regulations framed under the Act would be laid on the Tables of both the Houses of Parliament. I expect that the Government will take effective steps to ensure this elementary courtesy being extended to the Parliament

With these words. I conclude

श्री मूल चन्द्र झापा (पासी) उपाध्यक्ष
महोदय, इस बिल के मामले में सब से पहला सवाल मैं यह करना चाहता हूँ कि कितने और कौन कौन से ऐसे रेगुलेशन्स हैं जो निकले, और जिन को आप ने नहीं रखा। साथ ही यह भी बतलाइये कि उन रेगुलेशन्स के न रखने का कारण क्या था। यदि कृपा कर आप ऐसी लिस्ट दे दें कि ये-ये रेगुलेशन्स आप ने निकाले और इन रेगुलेशन्स को आपने इस में नहीं रखा—किन किन की गारंटियों को आप छिपाना चाहते हैं—तो ज्यादा मुनासिब था। मैं जानता हूँ कि आप का दिल बड़ा विशाल है, मन भी बहुत बड़ा है। आप यह चाहते हैं कि जो एक्जीक्यूटिव एजेन्सी है, वे लेजिस्लेटिव पर हावी हो जाय। पार्लियामेंट की डेमोक्रेसी पर अगर किसी का एन्कोचमेन्ट है तो वह नौकरशाही का है और अगर नौकरशाही हम पर हावी हो जाय और हम जो चाहे कानून बना दें, रेगुलेशन्स बना दें और रेगुलेशन्स हमारे सामने नहीं आयें और सबी महोदय उन अपने सरकारी कर्मचारियों की रक्षा करने के लिये पार्लियामेंट के सामने आये कि उन्होंने विष्कुल सप्ताह से काम किया है—मैं कहता हूँ बहुत अच्छा है। कृपा कर के

रेगुलेशन्स हमारे सामने लाइये, जिन जिन को आप रेगुलेशन्स करना चाहते हैं। जो गारंटिया की गई हैं या जो पाप किये गये हैं, उन की छिपाने की तरकीब आपने निकाल ली है—यह क्या तरीका है? पहले तो—

“Where a regulation, rule, sub rule bye-law etc framed in pursuance of the Constitution or of the legislative function delegated by Parliament to a subordinate authority is laid before the House, the period specified in the Constitution or the relevant Act for which it is required to be laid shall be completed before the House is adjourned *sine die* and later prorogued, unless otherwise provided in the Constitution or the relevant Act”

आप का कोई रेगुलेशन या कोई रूल बिना कानून के नहीं बना, लेकिन किस कानून के अन्तर्गत कौन सा रेगुलेशन बना और उस रेगुलेशन के अनुसार सरकारी कर्मचारियों ने, नौकरशाही ने कौन कौन सा काम कर लिया उसे हमारे सामने रखना चाहिये था। आज आप एक चीज लेकर हमारे सामने आते हैं और कहते हैं—

“The Central Government or any such officer by reason of any omission in this behalf to lay such regulation before Parliament and every such regulation shall for all purposes be deemed to have been duly laid before Parliament”

आज आप एक ऐसा रेगुलेशन लाना चाहते हैं जिस में कानून ही न रहे कि मदन की टेबल पर रखा जाये और आज से यह प्रिन्सिपल किया जायें कि आप ने उस कानून की पूर्ति कर ली है जो कानून के अनुसार चलना था और वह नहीं चल पाया और अब आप एक ऐसा कानून लाना चाहते हैं कि उस कानून के अन्तर्गत ये-ये बातें पूरी हो गईं।

[श्री मूल चन्द डागा]

मैं इस लिये इस बात पर जोर देना चाहता हूँ कि इस मामले में कई बार सर्वोर्डिनेट लेजिस्लेशन कमेटी ने आप का ध्यान दिलाया है पहली लोक सभा में भी दिलाया, दूसरी लोक सभा में भी दिलाया और यहाँ बारबार बतलाया कि सर्विसिंग क्या गन्तिया करती है, इस लिये क्लर्क, रेगुलेशन और बिल्लू जो बनते हैं वे टेबल पर आन चाहिये। पहली रिपोर्ट के अन्दर यह ध्यान दिलाया गया—

“The Committee feel that reasonable construction of words “as soon as may be” used in the Section should be that there may be a time lag. The Committee, therefore draw the attention of the House to the delay that has taken place in the present case. The Committee wish to emphasize in this connection that the Government should take the very first opportunity of placing the Rules Regulations etc on the Table of the House. The Committee recommend that in future the Minister while laying the relevant rules on the Table explaining to the House any delay which may have occurred in complying with the terms of statutes and their normal interpretation as indicated above.”

This is para 12, First Report (First Lok Sabha)

दूसरी लोक सभा में भी उस की तरफ आप का ध्यान दिलाया कि गवर्नमेंट एजेन्सीज, जो एग्जीक्यूटिव एजेन्सीज, हैं वे कबन में नहीं हैं, मनवाही करती हैं। उन्होंने कहा था—

‘It is surprising to note that it should require so much time—which in some cases, has been over a year—for Government to place these ‘orders’ on the Table. It should not ordinarily be necessary for Government to take more than 7 days after the publication of the rules in the Gazette to lay them on the Table.”

लेकिन ऐसा नहीं हुआ। लोक सभा के क्लर्क के बारे में जो हमारी हिदायतें हैं..

MR DEPUTY SPEAKER Mr Daga, we are not talking about the rules

SHRI M. C. DAGA We are talking about regulations, not about rules. But the Committee has already drawn the attention regarding regulations also. The Committee on Subordinate Legislation is entitled to examine those regulations. But they were not placed on the Table of the House and, therefore, the Committee failed to examine them.

इस का यह मतलब होगा कि जा पार्लियामेन्ट्री—बाडीज है जा लैजिस्लेटिव बाडीज है, उन के ऊपर इन एग्जीक्यूटिव एजेन्सीज या एन्क्राचमेंट हागा

SHRI R. V. RADE In the Statement of Objects and Reasons it is mentioned that the rules also include regulations.

MR DEPUTY SPEAKER That is what they say. It is their point of view that the All India Services Act of 1951 speaks only of the rules to be laid on the Table of the House, not of the regulations. Now it appears and the Government has discovered—whatever reasons they have it is for them to give those reasons—that this is not regular and, therefore they want to make good by laying the rules now but at the same time, they want to grant indemnity in respect of consequences that might flow from the action taken under those regulations which were not placed before the House.

श्री मूल चन्द डागा आपने जो रेगुलेशन बनाये हैं मैंने उन की लिस्ट मांगी है जिन को यहाँ नहीं रखा गया है और मैं यह भी जानना चाहता हूँ कि जिन जिन आफिसर्स ने नहीं रखा है, उन के खिलाफ आप ने क्या कार्यवाही की है ? जिन्होंने पार्लियामेंट का अनादर किया है, जो हमारी बात को नहीं मान सके हैं, उन के खिलाफ क्या कार्यवाही हुई ? हमारी सर्वोर्डिनेट लेजिस्लेशन कमेटी

ने बारबार आप का ध्यान दिलाया है और यहाँ तक देखा है कि 1970 में जो रूलज पब्लिश होने चाहिये थे, वे 1972 में हुए 1971 में हुए ।

MR DEPUTY SPEAKER You have made your point already Why make it long?

श्री मल चन्द डागा ठीक है । धन्यवाद ।

श्री आर० बी० बड्डे (खारगोन) . उपाध्यक्ष महोदय जो आल इंडिया सर्विसेज रेगुलेशन (इन्डेमिटी) बिल 1972 शासन ने इस सदन के सामने रखा है मैं उसका विरोध करता हूँ । कारण यह है कि जितना ही यह बिल शार्ट है उतना ही डेजरस है । 1951 में जा बिल पास हुआ था उसके अनुसार—

According to section 3 (2) of the All India Services Act

“ all rules made under this section shall be laid for not less than four teen days before parliament as soon as possible after they are made ”

ऐसी मूलन में अभी तक इन्होंने रूलज नहीं रखे और जब हाईकोर्ट में प्रश्न गया तो उन्होंने कहा—

the regulations are included in the rules

तो जब आन्वेषण आ गए तो मंत्री जी ने अपने स्टेटमेंट आफ आन्वेषण के खिलाफ कहा ।

That is regarding rules and not regulations.

उनके स्टेटमेंट आफ आन्वेषण एण्ड रीजन्स में है

‘As however the regulations form an integral part of the rules it was felt that it would be appropriate to lay the regulations before parliament So they have admitted this

जब हाईकोर्ट ने इनके कान खींचे तब मालूम पड़ा कि रूलज और रेगुलेशन में कोई फर्क नहीं है । पार्लियामेंट के सामने रूलज रेगुलेशन रखने चाहिए नहीं तो It has got no force of law

लेकिन कौन कौन से रूलज रेगुलेशन हैं यह बताया नहीं । आल इंडिया सर्विसेज रेगुलेशन में लिखा है

“The Central Government and all officers responsible for the laying of any regulation are and each of them is hereby held discharged and indemnified from and against all consequences whatsoever, if any incurred or to be incurred by them or the Central Government or any such officer by reason of any omission in this behalf to lay such regulation before parliament and every such regulation shall for all purposes be deemed to have been duly laid before Parliament ”

यह जा लीगल टर्म है—

deemed to have been duly laid before Parliament

वह लीगल फिक्शन बड़ा डेजरस है । इसमें यह ता बनाया नहीं गया है कि कौन कौन से रूलज हैं और कौन कौन से रेगुलेशन हैं । इन्हींलिए मैं समझता हूँ कि इसमें यह जो लिखा गया है—

[श्री मूल बन्द बाग]

deemed to have been duly laid before Parliament

—वह बड़े डेजरस गड़द हैं। हमें कुछ पता नहीं कि कौन-कौन से रूल्स हैं और कौन-कौन से रेगुलेशंस हैं, कौन से हाई कोर्ट के सामने गए हैं जो पॉइंडिंग हैं। सरकार इसको रिट्रास्पेक्टिव इफेक्ट देना चाहती है।

इनका दूसरा ब्राञ्जेक्ट है 14 दिन के बजाये 30 दिन कर दिया जाये।

"Every rules made by the Central Government under this section and every regulation made under or in pursuance of any such rule shall be laid as soon as may be after such rule or regulation is made before each House of parliament while it is in session for a total period of 30 days".

पहले 14 दिन था लेकिन अब सरकार तीस दिन रखना चाहती है। इसका मतलब है कि इक्वोरॉन्सी ने जितनी गलतियाँ की हैं रूल्स रेगुलेशंस और नोटिफिकेशंस में उसको लीगल थोप सरकार देना चाहती है। इसलिए यह बिल जो लाया गया है वह बड़ा डेजरस है। इसमें शासन का कौन सा उद्देश्य है? उद्देश्य यही है कि अभी तक जो गलतियाँ हुई हैं, जिनको ये खुद तो मानते नहीं और उसको लीगलाइज करना चाहते हैं। यह भी नहीं बताया कि कौन कौन से रूल्स हैं। इंडियन फारेन सर्विस, इंडियन एजुकेशन सर्विस के रूल्स रेगुलेशंस भी हुए हैं लेकिन वह भी हाउस के सामने नहीं आये हैं। मैंने अभी गए वजेट में देखा था कि इंडियन फारेस्ट सर्विस (पे) फॉर्ब्स प्रमेंडमेन्ट रूल्स तैयार किए 24 सितम्बर को और

29 नवम्बर को उसके रखा है। जो 14 रोज़ जो रखे हैं उनको बढ़ाकर 30 दिन करना चाहते हैं। मैं समझता हूँ इस तरह का बिल सामने लाना और यह व बिल का कि कौन-कौन से रूल्स हैं, यह इस भाग्य हाउस को छोड़ा देता है। वनजीं सभ्य ने जो सवाल उठाया था कि सबोडिनेट लेजिस्लेशन कमेटी के सामने रखना चाहिए जहाँ इस पर विचार किया जा सके और आपने भी कहा कि शायद राज्य सभा में हुआ होगा लेकिन मैं समझता हूँ नकल करने में भी हर्ज नहीं होता है। मैं चाहूँगा शासन इसको वापिस ले ले और उसके बाद मैं सबोडिनेट लेजिस्लेशन कमेटी के सामने उनको रखे ताकि वहाँ पर विचार किया जा सके कि कौन-कौन से रूल्स हैं जो कि हाउस के सामने रखने चाहिए और कौन कौन से रेगुलेशंस हैं जिसके बारे में कोर्ट में मुकदमे पड़िग हैं। वह कमेटी इसका अध्ययन कर सकेगी। मैं सरकार से प्रार्थना करता हूँ कि वह इस बिल को वापिस ले या टाइम लेकर लोकसभा की जो कमेटी है उसके सामने उनको रखें और फिर इसके ऊपर विचार किया जाये।

इन कारणों से मैं इस बिल का विरोध करता हूँ।

SHRI N. K. P. SALVE (Betul): I was deeply anguished at what Shri Banerjee said about the 4000 employees from Kerala and that is why I have decided to make a few observations.

SHRI S. M. BANERJEE: Actually we discussed this notification on the 28th and 29th July 1972 in the JCM. The judgement was delivered in the case of Gopinath vs. the State. The case was that

some of the employees of the Central Government in Kerala went to a court of law saying that under the present rules they were entitled to one month's wages either in lieu of notice or they should be allowed to work for one month before they were actually discharged and the High Court upheld this. The Government went in appeal to the Supreme Court which also upheld the judgement of the High Court. Even after that the Government came out with a notification amending retrospectively saying that unless they demand, they will not be paid. That is the case. You can check it.

SHRI N. K. P. SALVE: The vested right of the employees was circumvented by giving retrospective effect to a regulation that was not laid on the Table of the House. If it is a phenomenon, it is a feature which has anguished me.

I do see the rationale of the Bill because we cannot, and, I am sure, everyone will agree that we cannot allow those officers who in a *bona fide* belief acted under certain regulations though those regulations were not placed on the Table of the House and for non-placing of the regulations they were not responsible, but officers somewhere else whose responsibility it was. But the officers who acted under a *bona fide* belief under those regulations cannot be penalised. Therefore if the Parliament purely afforded protection to the *bona fide* acts of the officers who acted *bona fide* under some regulations which they thought were validly passed regulations, I think the rationality of the law under those circumstances could never be questioned and to that extent *prima facie* the legislation appears to be innocuous and to my mind, it appears to be well called for.

But there are certain aspects of the matter which Mr. Mohsin should properly appreciate and reply. We do not want to lay down dangerous precedents in this House where under the garb of condoning *bona fide* acts, we must not afford protection to *malafide* that might have been taking place. It is in that connection I want to say a few things which, I hope, Mr. Mohsin will take care to reply.

The first and foremost I want to find out from him is: what sort of a Ministry he is running that they drew a distinction between regulations and rules. Times out of number, under hundreds of statutes, rules have been made and regulations have been made and without fail, all of them have been laid on the Table of the House and we had an opportunity to discuss them. But how did it happen that in respect of this only, there was a lapse? He will have to explain the circumstances.

Secondly, we are agreeable to giving the indemnity to the *bona fide* acts. But Mr. Banerjee said—he is correct—is it fair that we should be denied an opportunity to debate those rules? Surely we are willing to indemnify whatever acts have taken place, but this Section goes a little further and it says certain things—there is a fiction in this—to the effect that for all purposes they shall be deemed to have been duly laid before Parliament. That means, without having been discussed, this would be deemed to have been approved by Parliament. This is a situation to which we are not agreeable.

Sir, I am not now going into the merits or demerits of the rules. If they are good, that is all right, we will accept and pass them. We are only willing to condone and indemnify those officers who have acted *bona fide*. In regard to the right which we have got as Parliamentarians to discuss these rules, we are certainly not willing to barter away those rights under any circumstances. On this point whether this would amount to bartering away our right in any way, I hope, Shri Mohsin will try to satisfy us.

I am sure we will have an opportunity to discuss those rules and regulations and I am sure that he will say that the intention is not at all to deprive us of this right. Our intention is only to ensure that the right of this august House representatives of the people, should not be taken away while protecting their interests which he wants to protect. If the interests of bureaucrats is important,—if it is important because they have to run the administration, equally important is

[SHRI N K P Salve]

the interest of the House I would like to know how he is going to protect the interest of the House That is my submission.

डा० कौलाश (बम्बई दक्षिण) : उपाध्यक्ष महोदय, मैं इस बिल पर बोलना नहीं चाहता था, लेकिन जब मैंने यह देखा कि इस बिल के अनुसार कुछ अधिकारियों को, जो रूल्स और रेगुलेशन बनाने समय अपने अधिकारों से बाहर चले गये थे छोड़ा जा रहा है तब मेरी भी अपने विचारों को व्यक्त करने की इच्छा हुई ।

आप ने विरोधी पक्ष के भाषणों को भी सुना और हम ओर के माननीय सदस्यों के भाषणों को भी सुना । उन की बातों को सुन कर मुझे ऐसा लगने लगा कि इस बिल को हमें सेलेक्ट कमेटी में जरूर भेजना चाहिये । आप ने अपना निर्णय भी यह दिया कि इस बिल को जब पेश किया जा रहा था तब ही हम को यह आब्जक्शन रेंज करना चाहिये था कि इस को सबमिटेड लेजिस्लेशन कमेटी को भेजा जाय । उस समय तो हम वह नहीं कर सके लेकिन अब यह समझ में आ रहा है कि इस बिल को सेलेक्ट कमेटी में जरूर भेजना चाहिये ।

श्री डागा ने अपने भाषण में पूछा कि जिन अधिकारियों ने गलतियाँ की उन के खिलाफ क्या एक्शन लिया गया । दूसरे माननीय सदस्यों ने भी यह आवश्यक बतलाया कि जिन लोगों ने गलतियाँ की हैं उन को क्षमा न किया जाये । हम भी उस कदम को क्षमा नहीं करना चाहते जिससे कि इस लोक सभा के अधिकारों का हनन होता हो । इस

लिये मैं सिर्फ इतना ही चाहता हूँ कि इस बिल को सेलेक्ट कमेटी में भेजा जाय । इस में कोई भी जल्दबाजी नहीं करनी चाहिये ताकि यह बिल पूरी तरह से निखर कर के लोक सभा के सामने आये ।

SHRI M. RAM GOPAL REDDY (Nizamabad): Mr. Salve has provoked me to speak. He used the word *bureaucrat* Officers are coming from the same community from which we are coming. They are Mr S M Banerjee's kith and kin

MR DEPUTY-SPEAKER This is something which has nothing to do with the present Bill

SHRI N K P. SALVE: Is 'bureaucrat' a non-Parliamentary word I would like to know

MR. DEPUTY-SPEAKER We are not here to discuss about bureaucrats. Let the hon Member come to the Bill now

SHRI N K P. SALVE: I referred to the Government officialdom by the word 'bureaucrat'.

SHRI M. RAM GOPAL REDDY. He can say that he meant Government officials, but here I want to know....

SHRI S. M. BANERJEE: We are not here to criticise bureaucrats by saying that they are bad people. This is Parliament, and not a matrimonial bureau where marriage alliances are arranged..

MR. DEPUTY-SPEAKER: That has nothing to do with the Bill.

SHRI M RAM GOPAL REDDY: I have heard the speech of my hon. friend Shri S. M. Banerjee with great attention. He was more concerned about the Congress election matters rather than with making his own speech. We know how to execute our own policies....

MR. DEPUTY-SPEAKER: The hon. Member has nothing to say on this Bill. So, he may kindly sit down. He has nothing to say on the Bill. He is saying all sorts of things which are irrelevant.

SHRI M. RAM GOPAL REDDY: Shri S. M. Banerjee has said....

SHRI S. M. BANERJEE: Let him not waste the time of the House by referring to it now, but he can tell me all this outside the House.

MR. DEPUTY-SPEAKER: If the hon. Member has nothing to say on the Bill, he may kindly sit down.

SHRI M. RAM GOPAL REDDY: Since you have called me....

MR. DEPUTY-SPEAKER: I had, called him to speak relevant things, not irrelevant things.

SHRI M. RAM GOPAL REDDY: After all, we have passed the Bills and they have been enacted, and the rules and regulations are only the subsidiary products of the Acts. If with good intentions somebody thought that the method that he had been following was the proper method and then the court had pointed out....

SHRI S. M. BANERJEE: May I point out, Sir....

MR. DEPUTY-SPEAKER: Let the hon. Member have two or three minutes, and then conclude. Let not Shri S. M. Banerjee interrupt now. I shall control the hon. Member.

SHRI S. M. BANERJEE: I do not want to say anything. I only want your guidance. Can you not tell the hon. Member that even if he does not speak, he is still entitled to his allowances?

MR. DEPUTY-SPEAKER: Now, let the hon. Member conclude.

SHRI M. RAM GOPAL REDDY: There are so many Acts that have been passed by Parliament. In good faith,

the officers have got their own type of explanation and they have been working these rules and regulations, and when the court finds it to be....

MR. DEPUTY-SPEAKER: Has the hon. Member read this Bill? Does he understand the purport of this Bill?

SHRI M. RAM GOPAL REDDY: Let me say that....

MR. DEPUTY-SPEAKER: Now, I shall make use of the rule. I have called his attention repeatedly to the fact that he is irrelevant. Now, let him not continue. Now, Shri C. M. Stephen.

AN HON. MEMBER: Expunge all that he has said.

MR. DEPUTY-SPEAKER: I have not said 'expunge', but I have only said, let him not continue.

SHRI C. M. STEPHEN (Muvattupuzha): Going through the text of this Bill, I must confess to a feeling of reservation and considered reservation at that, in the matter of giving my support to this Bill, not because it seeks to indemnify anybody or validate any regulations which would otherwise be invalid, but because of the way the Bill has been brought forward here and the way the clauses have been framed.

It is a preptory provision that when a Bill is introduced, there must be a Statement of Objects and Reasons appended to that. What exactly do we mean by that? Is it enough if anything is stated therein? Or is it meant thereby that the House should be given sufficient data to guide it in evaluating the need for the Bill and the need for a legislative enactment? In the Statement of Objects and Reasons appended to the Bill as originally introduced, this is what Government have stated, namely:—

"Sub-section (2) of section 3 of the said Act provides only for laying of rules before Parliament. Consequently, regulations made up to the 1st July, 1967 were not laid before Parliament.

{Shri C M Stephen}

As, however, the regulations form an integral part of rules, it was felt that it would be appropriate to lay the regulations before the Parliament in the same manner as the rules are laid.

My submission is that there is *suppressio veri* in this statement because what they have stated is that as a matter of fact, regulations may be framed *suo motu* but they now feel that as a matter of propriety they may be laid before the House. Is that the real fact? Or is it that any regulation was struck down by the court and now Government seek to regularise it? If it has not been struck down by the court and if no regulation has been held invalid then is it necessary or proper that the time of this Parliament be taken for the purpose of passing an Act? If the Supreme Court or any other court has intervened in the meanwhile is it not necessary while introducing the Bill that the entire facts should be brought before the House and we should be told that the regulation had been struck down by the court and therefore revalidation is necessary? That is not how he has placed it before us. He has just stated that under the Act it is not necessary to lay the regulations on the Table but now it is felt that in proper thing is that it should be done, not as a legal requirement but as a matter of propriety.

What is the provision? It is all-encompassing.

'The Central Government and all officers responsible for the laying of any regulation made before the commencement of this Act under or in pursuance of any rule made under the All India Services Act, 1951, are, and each of them is hereby freed, discharged and indemnified from and against all consequences whatsoever if any incurred.'

The first question is, is there any thing from which they are to be indemnified? If non-laying of the regulations is not a violation of law or legal obligation, there is nothing from which

they are to be indemnified. Is it or is it not so? Or is it only a matter of propriety? So this has got to be clarified as to what is it that they are to be indemnified from. What is the penalty they are going to be faced with?

These are facts which must be placed before us so that the House may decide whether it should take this not ordinary step of retrospectively regularising all acts of commission or omission and saying whoever might have done it or not done this or not at any time he will completely stand indemnified. This is a very serious thing.

We are prepared to take this step provided they tell us that it is absolutely necessary. But they did not tell us. This is not being just to us. They should place the entire matter before us.

Secondly I do underline what my learned friend Shri Salve said. They are not attempting merely to validate legislation. They are playing with Parliament. They say for all practical purposes these regulations be deemed to have been laid before Parliament when it has factually not been done. How can that be done? Before a sovereign body something is stipulated to be done it must be done. I can understand that although it was not done the law must be deemed to be regular. But to come and tell us that although this has not been laid on the Table it must be deemed to have been laid is something I cannot understand.

SHRI R V BADE It is very strange.

SHRI C M STEPHEN I can understand importing a legal fiction into it but not a factual fiction. There is nothing like a factual fiction. They say it must be deemed to have been laid. What should be deemed to have been laid? That I did not do it, it must be forgotten must be deemed to be that this non-doing must be deemed to be taken as done. How is this possible? If it is said that although it has not been done it will nevertheless be legal, I can understand it. But here they want

Parliament to swear to an untruth. I humbly submit it is absolutely wrong. This Parliament must not be asked to swear that although it was not laid before us, it must be taken as laid before us. It is absolutely wrong and is playing with this sovereign body. Even if this has to be achieved, it must be achieved in the proper form by a proper clause, by a proper provision, briefing us as to the necessity for bringing in this extraordinary legislation. We should not be taken for granted. Merely because a law can be enacted, the responsibility on Government is all the greater and higher and there should be a proper sense of responsibility.

I therefore submit I cannot support this Bill in the way it has been framed. Let them spell out the aims and objects. If some regulations have to be regularised, as my learned friend said let those regulations be brought before the House for regularisation. If they are not prepared for that, even for regularising the law and if it is said that it should be deemed to have been regularised, it is something which is impossible to be deemed. Therefore, the matter will have to be reconsidered. If the Minister is not prepared to withdraw the Bill, I submit it is a fit case for reference to a Select Committee for a deeper and closer look.

MR DEPUTY-SPEAKER: Before the Minister replies, I also feel that the House should take up the Bill with a little more of seriousness. There are a number of questions for which the House is entitled to get an answer. Firstly, whether it is only a question of propriety or there are other reasons; as for example, the striking down, by the courts, of those regulations, that has motivated the Government to come forward with this Bill. I think the House is entitled to know that.

Secondly, whether there have been acts of grave irregularity under these regulations for which the Government now seeks to indemnify the officers. That also, I think, is important.

Thirdly, whether this Act, if passed, will deprive the Parliament of the right

to discuss these regulations and these rules. I think these are the questions to which the House is entitled to get the answers.

श्री नाथू राम सिर्वा (नागौर) सदन में जो कानून पेश है और जिस पर चर्चा चल रही है वह इस बात को मान कर चलना है कि सरकार की तरफ से इस बात की भूना हुई कि कुछ रेग्युलेशज आदि जिन को सदन पटल पर रखना जरूरी था उनका रखा नहीं गया। जब यह सवाल मुझीम कोर्ट में उठा ता उसने कहा कि इनको सदन पटल पर रखना जरूरी था। उस काम की पूति हो सके और पुराने वक्त से हो सके, इसके वाम्ते यह कानून लाया गया है और इस सदन को इस कानून को पास करना है। इसको पास करने के पहले जो बातें उठी हैं मैं समझता हूँ अगर उनकी सफाई दे दी जाती और बना दिया जाता कि कौन से रेग्युलेशज इस दौरान में पास किए गए और जिन का यहां पर रखा जाना उचित था और थोड़ी सी डिटेल्ज दे दी जाती तो शायद इतना कुछ माननीय सदस्या को कहने का मौका नहीं मिलता। अच्छा हा अगर उप मंत्री महोदय उन डिटेल्ज को अब भी सदन के सामने रख दें। स्टैंडिंग रेग्युलेशज को यहां न रखने की वजह से किन लोगों पर किस तरह के असरगत हुए, उसका ज्ञान इस सदन का न हो और गदरा ने कहा जाए कि वह प्रवेश में इन बिल को पास कर दें तो यह म्पिरा बात होगी। मैं समझता हूँ कि यह बोना-फाइड मिस्टेक हुई है। इनका रखने में कोई दिक्कत नहीं थी। लेकिन उनका रखा जाना नहीं गया कि समा समझा गया कि उनको रखना जरूरी नहीं था या जो संभवतः भविष्य में इस सबजेक्ट के साथ डील करती हैं उन लोगों का इस प्रकार का सोचना रहा कि रखने की जरूरत

[श्री नाबू राम मिश्रा]

नहीं है। मैं समझता हूँ कि इस झूल की बाड़ी भी मफाई सामने आ जाए तो अच्छा होगा। इसको पाम करना तो मदन के लिए लाजिमी है।

साल्वे जी ने कहा कि उन कानूना को या पुराने कानूना को मदन पटल पर रखा गया ममझा जाएगा ता उन म सुधार करने वा माननीय सदस्यों को अवसर नहीं मिलेगा। लेकिन मैं समझता हूँ कि उनका ऐसा मानना ठीक नहीं है। अब भी इस सदन को उन पर मोक्ष विचार करने और मशोधन करने की आवश्यकता हो तो मशोधन करने का मौका मिल सकता है। वह अवसर मदन के पाम अब भी है।

SHRI N. K. P. SALVE: There are the rules. Those rules have to be laid on the Table of the House. And when they are laid on the Table, before the end of the session, within a certain period, we have to move a motion. And if that is not done there is no occasion. I am only giving this as a matter of information to the hon Members.

AN HON. MEMBER rose—

MR. DEPUTY-SPEAKER: Order, please

SHRI CHAPALENDU BHATTACHARYYA (Giridih): Mr. Deputy-Speaker, Sir, it appears that the opportunity goes to the persistent speakers and not to those like us who sit in the back benches.

In addition to your summing up, I would like to submit that there may have been, and in fact, there are cases where the rules and regulations under the Act have gone beyond the scope of the Act itself. I would like to draw your attention to the drift towards what Lord Hewett had called the new despotism. Subordinate legislation, through administrative laws, could very well lead us to a new despotism of which Parliament may not be aware. This motion,

although it does not look so, cuts very deep. In fact I submit that the Ministry concerned should give an in-depth look to the whole question and if they want to validate or revalidate their omissions and commissions, then time will not be lost; a Select Committee may very well go through it and the whole issue may come up during the next session.

SHRI S. M. BANERJEE: Sir, under rule 109 at any stage of a Bill which is under discussion in the House a motion that the debate on the Bill be adjourned may be moved with the consent of the Speaker. May I seek your consent to do so, because my apprehensions have been shared by my learned friends, and so may I beg you to allow me to move the motion:

"That the debate on this Bill be adjourned".

SHRI F. H. MOHSIN: Let me clarify

SHRI S. M. BANERJEE: I want to know whether the document which had been amended in 1965, has that been laid on the Table of the House or not?

SHRI F. H. MOHSIN: As regards that, it does not pertain to the All India Services Act at all

SHRI S. M. BANERJEE: After the Supreme Court judgment, rule 5 was amended. Was it not?

MR. DEPUTY-SPEAKER: Before you reply, may I say this? Almost all Members have raised serious doubts about this Bill. I also summarised certain questions to which answers are called for. I think the doubts are serious enough for the Chair to consider this motion by Shri Banerjee. I do not say I have given my consent. I should like you first to answer that point, whether a situation has arisen that calls for an adjournment of this debate.

SHRI F. H. MOHSIN: I do not think it is necessary; let the House hear me on all the points which have been raised and

if the House then decides that it should be adjourned, I have no objection.

SHRI S. M. BANERJEE: I rise on a point of order. When I put the question whether the Subordinate Legislation Committee of the Lok Sabha considered the whole question when the Bill of 1969 was passed, he said Rajya Sabha considered it. I have information that the Lok Sabha subordinate legislation committee in its 6th report has reported on the old Bill. The Minister said: no I can produce that; It is something surprising; the Minister says no, without knowing what has happened. He is a very good friend of mine, but that does not mean that this should be allowed to go on like this. I want an adjournment of the debate till he is properly briefed.

MR. DEPUTY-SPEAKER: I have here the report of the Committee on Subordinate Legislation and it appears—I do not know under what circumstances—that the All India Services—(Laying regulations before Parliament) Bill, 1969 was considered by the Subordinate Legislation Committee of this House. As I said, I do not know the background but it appears from the record that the Subordinate Legislation Committee did go into this question

SHRI F. H. MOHSIN: I am sorry if that is so; I did not have that information.

SHRI S. M. BANERJEE: Why should he speak, then?

SHRI F. H. MOHSIN: I have all the information about the present Bill. The previous Bill according to my information was considered by the Rajya Sabha Committee on Subordinate Legislation and the recommendations are also with me. I thought the Lok Sabha Committee on Subordinate Legislation might not have gone into it. Otherwise, I would have had that information also. If the facts are otherwise, I regret it.

MR. DEPUTY-SPEAKER: I have this report with me.

SHRI F. H. MOHSIN: I regret it.

SHRI DINESH JOARDER: This is the way the officers have prongly briefed him and it is those officers whom this Bill seeks to indemnify.

SHRI F. H. MOHSIN: As regards the other points raised by hon. members and by you also, I may state that section 3 of the present Act regarding Regulation of Recruitment and Conditions of Service reads thus:

“3. (1) The Central Government may, after consultation with the Governments of the States concerned including the State of Jammu and Kashmir make rules for the regulation of recruitment and the conditions of service of persons appointed to an All-India Service.

(2) All rules made under this section shall be laid for not less than fourteen days before Parliament as soon as possible after they are made and shall be subject to such modifications, whether by way of repeal or amendment, as Parliament may make on a motion made during the session in which they are so laid.”

So, according to sub-section (2), what was necessary was to lay before Parliament rules made under sub-section (1). It is nowhere stated that the regulations made under this rule shall be placed before Parliament. This point was examined by the Ministry of Law and they also interpreted it at that time to mean that it was not necessary to lay the regulations before Parliament. The Lok Sabha Secretariat also gave the same advice. Accordingly, the regulations were not laid before Parliament prior to 1st July, 1967. But after 1st July 1967 the regulations also have been laid. It was in pursuance of a judgment of the Supreme Court in *Narendrakumar vs. Union of India*. The judgement was not in respect of this particular Act but some other Act. Later on, the Ministry of Law advised in March 1965 that in view of the observations of the Supreme Court in this case, the regulations made by the Central Government should be taken to form an integral part of the rules made under sub-section (1) of section 3 of the Act and as such they were also required to be laid before Parliament. According to that advice, we have been laying not

(Shri F. H. Mohsin.)

only the rules but the regulations also after 1st July, 1967 up to this date. This Bill deals with only those regulations which were made prior to 1st July, 1967 and provides that these regulations shall be deemed to have been laid before Parliament.

The Ministry of Law have also advised us that a failure in this respect did not affect the validity of the regulations, in view of the fact that the provisions relating to laying of rules and regulations before Parliament was directory and not mandatory. We are not basing our judgment only on the advice of the Law Ministry. We are fortified by the opinions of legal and constitutional expert on this point. A constitutional expert like Craies in Statute Law makes the following observations on page 317:

"It would seem, therefore, that the better opinion is that directions for laying are only directory in spite of the fact that the Indemnity Act was passed to absolve the forgetfulness of a Minister who had neglected to lay it before the House"

He was commenting on some English law. A close parallel to this Bill is also found in the two British Acts, namely, the National Fire Service Regulation Indemnity Act, 1944 and the Price Control Order and other Orders Indemnity Act, 1951. Hood Phillips, another constitutional expert and expert on administrative law observes at page 581 of his book:

"Is it mandatory so that the instrument is invalidated, if the requirement is not fulfilled or merely directory imposing on a public officer a duty?... It seems that so far as it concerns instruments subject to negative resolution and probably also those which are subject to affirmative resolution, the requirement is directory."

Again, C. K. Allen, another constitutional expert, makes a similar observation.

SHRI N. K. P. SALVE: We are not saying that the regulations are void *ab initio*. We are only referring to our right to discuss them.

SHRI C. M. STEPHAN: If I may be permitted to say, the hon. Minister is labouring a point about which there is no dispute. It is not necessary to quote so many authorities to prove that merely because a paper was not laid on the Table, so it would not become *ab initio* void.

SHRI F. H. MOHSIN: I would clarify all the points hon. Members raised. But let them have some patience.

MR. DEPUTY-SPEAKER: Let us hear him to the end.

SHRI F. H. MOHSIN: Our Supreme Court had an occasion to consider this negative provision also. In *Jan Mohd. Versus, the State of Gujarat*. (Air 1966 SC at page 385) it says:

"It was in accordance with section 65(5) of the Bombay Act, which provided that the rules made under section 26(5) shall be laid before each House of the Provincial/State legislature at the sessions thereof.... In this connection, the Supreme Court observed section 26(5) of the Bombay Act (Act XX of 1939) does not prescribe that the rules acquire validity only on the date on which they were placed on the House of the legislature. It is true that the legislature has prescribed that the rules shall be laid before the Houses of legislature, but the failure to place the rules before the Houses of the legislature does not affect the validity of the rules, "merely because they have not been placed before the Houses of Legislature Granting that the provisions of sub-section (5) of Section 26 by reason of failure to place the Rules before the Houses of Legislature were violated, we are of the view that sub-Section (5) of Section 26 having regard to the purposes for which it is made and in the context in which it occurs cannot be regarded as mandatory. The Rules have been in operation since the year 1941 and by virtue of section 64 of the Gujarat Act 20 of 1964, they continue to remain in operation".

So, it is clear that in spite of the fact that regulations were not laid before the Parliament, they continue to be valid. It is only to remove the doubts....

SHRI S. M. BANERJEE: Nobody has said that.

SHRI F. H. MOHSIN: If nobody has said it, it is still better.

Now, it is clear that in spite of the fact that regulations framed prior to 1st July, 1967 were not laid before Parliament, they continue to be valid. During this period, as many as 118 regulations have not been laid before Parliament. If the House desires, I may quote the Regulations, but in spite of the fact that they were not laid before the Parliament, they continue to be valid. This is fortified by the expert opinion and also by the Supreme Court judgment which I have just quoted.

SHRI DINESH JOARDER: About the expert opinion and the Supreme Court judgement that the hon. Minister quoted, we are challenging that and saying that Parliament is supreme. As expert opinion cannot override the rights and privileges of Parliament.

SHRI S. M. BANERJEE: The hon. Minister himself said that there are 118 regulations which were not laid before the Parliament. We do not know the contents of those regulations. If any officer has done anything under any of those regulations which now the Government wants to indemnify by passing this Bill, are we not supposed to know what are those regulations?

SHRI F. H. MOHSIN: As I have already stated, there are as many as 118 regulations which have been in force now and which have not been laid before Parliament so far. If the House desires, we will place them before Parliament.

MR. DEPUTY-SPEAKER: If you say that they will now be laid on the Table of the House, how will you then conform to the provision of your bill that they shall be deemed to have been laid?

SHRI F. H. MOHSIN: For the information of the House.

MR. DEPUTY-SPEAKER: Not for any information. Once you lay them on the Table of the House....

SHRI F. H. MOHSIN: That is why I was saying if the Members so desire, that I should lay them before the House, I will lay them before the House. But it is not necessary.

MR. DEPUTY-SPEAKER: The moment you lay these regulations on the Table of the House, they come within the purview of the House and the House can change them or it can decide that these regulations should not be accepted.

SHRI F. H. MOHSIN: These are the regulations which have been issued earlier than 1st July, 1967. All those regulations which have come in force after 1st July, 1967 have been duly laid before Parliament as per the advice given by the Law Ministry. So, there is no question about regulations which have been passed after 1st July, 1967. The matter that we are referring to is only about regulations which were in force before 1st July, 1967. At this late stage, I do not think that we may refer to Parliament to go into them.

SHRI S. M. BANERJEE: On a point of order, Sir. When I moved a motion under Rule 109 that the debate be adjourned, my point was that about those regulations which have not been laid on the Table of the House under which action might have been taken against some people wrongly or rightly, and for which parliament's indemnification is sought, (*Interruption*). The regulations may be laid on the Table of the House. Parliament is not going to adjourn tomorrow or the day after. We should be allowed to have a glimpse of those papers before we possibly pass the Bill. I say this with all seriousness.

16 hrs.

SHRI C. M. STEPHEN: I am sorry I did not get the reply to the point I raised.

MR. DEPUTY-SPEAKER: I am myself also a little confused.

SHRI C. M. STEPHEN: The point I raised was this.

These regulations are either invalid or valid. If they are valid which is the point the hon. Minister was pressing, then there is no question of penalty attached to any officer, there is no question of indemnification for anybody and, therefore there is no need for this Bill at all. That was my point. The Minister is saying that, in spite of the fact that they were not laid before the House, there is nothing affecting their validity, it is only a question of propriety. Then the point that will have to be considered is this. In a situation in which no penalty attaches to any officer, in a situation in which no regulation stands invalid because of not presenting it before the House, is it necessary at all that we should take this extraordinary step wherein this 'deeming' thing is coming? My submission is that this Bill is absolutely unnecessary. Extraordinary provisions are being written into this Bill. Therefore, the Minister must give a second thought whether this is absolutely necessary. To that point, he has not replied.

SHRI F. H. MOHSIN: As I have said, in spite of the fact that they were not laid before parliament, they continue to be valid; they were valid before. It is only to have the validity beyond any doubt that we are taking this cautious step. Merely because we are bringing this Bill, it cannot be inferred that some invalid things are being made valid now. As I have already stated, the expert opinion is that they were valid then and they continue to be valid even today. But it is only to take away all the doubt that we are bringing this Bill.

MR. DEPUTY-SPEAKER: I am myself getting a little confused and I do not know how to guide the proceedings. The first question is why is it necessary to seek indemnification for certain actions under these regulations if they were so innocent. This should be clarified to the House.

Secondly, I am a little confused about the Bill also. Here it is a Bill to seek indemnification and at the same time to amend the previous Act. I do not know

whether these two can be combined. If it is an amending Bill to the previous Act by which you seek this, I think, there should be a separate Bill to amend that. From now on, regulations should be laid. Here you are combining two things which, it seems to me, cannot be combined. I will be guided by the wisdom of the House. But it appears to me to be a combination.

SHRI F. H. MOHSIN: The indemnity is also in respect of this. We want to amend the Bill only in respect of the period in which we have to lay the rules and regulations before parliament. Formerly, the time prescribed was only 14 days; now it is being raised by this Bill to 30 days.

MR. DEPUTY-SPEAKER: Before, only rules were to be laid. Now you want to mention also 'regulations'. That is another amendment.

SHRI F. H. MOHSIN: Yes. That is another amendment.

SHRI S. M. BANERJEE: Are you convinced, Sir?

MR. DEPUTY SPEAKER: I am confused, not convinced.

SHRI S. M. BANERJEE: My confusion has been confounded.

SHRI F. H. MOHSIN: We had a thorough look and perhaps some Members are confused about it, but, absolutely, there is no confusion. The point is very simple. The previous law was only in respect of the rules which were required to be laid before the Parliament and hence the Rules were continued to be laid before the Parliament and, later on, the Law Ministry advised because of a decision of the Supreme Court in some other case, that the regulations framed also become an integral part of the rules and that it is better that we place the regulations also before Parliament as a measure of precaution after July 1967.

SHRI N. K. P. SALVE: I want to cut short his predicament. We have understood the position that in some other

case the Supreme Court held that the regulations form an integral part of the rules and, therefore, there is an apprehension now in their minds that may be on some day because some regulations have not been laid on the Table of the House, a difficulty might arise and that the validity of these regulations might be impugned on the ground that they were not laid on the Table of the House, as they have been equated with the rules. We appreciate that. There is no dispute. The question is very simple as I put it to him. You are putting them on the Table of the House. When you are agreeable to putting them on the Table of the House commensurate with the Bill without violating the requirements of the Bill in terms of which you want to give indemnity—do give indemnity by all means—but give us the right to examine those regulations and we have a right to pass the regulations retrospectively. What prevents us from passing them retrospectively. If necessary, that will doubly assure the matter.

SHRI F. H. MOHSIN: That may create complications because these regulations are even of the date....

SHRI S. M. BANERJEE: Can he name one or two officials who are likely to be hanged if this Bill is not passed to day but passed tomorrow or the day after? Why can't he wait? The entire House will get sufficient time. What is the point in hurrying this Bill?

SHRI F. H. MOHSIN: I would like the House to appreciate the difficulties or the confusion that might be created if the House is given the right to amend those regulations which were passed in 1957-58 or 1962-64. If an amendment is made, it would have retrospective effect.. (Interruptions).

SHRI S. M. BANERJEE: I rise on a point of order. You should protect our rights. This House can amend the rules and rules have been amended.

MR. DEPUTY-SPEAKER: I think it is a very unfortunate statement the Minister has made that confusion will arise if this House is given the right to go into those regulations....

SHRI F. H. MOHSIN: I have not completed.... (Interruptions).

MR. DEPUTY SPEAKER: Order, please. I think this sentence is unfortunate.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K. C. PANT): I have been listening and I have not studied the Bill, but, listening to the exchanges, it seems to me that the anxiety of the House is to see those regulations because those regulations which were made before 1967 are to be validated or are to be given indemnity and when the House is to give indemnity in respect of those regulations, the House is naturally anxious to see what they are about. One can understand that. But, to think in terms of amending them and what problems may arise, may be premature. After they are seen, if they call for some action, at that stage we can consider. We can see whether we can cross the bridge when we come to it only. At this point the issue is only this. There is need, and obvious need, to indemnify, there is a lacuna, there is a gap; and the House agrees with this position. Secondly, the House wants to have a look at that. You were good enough to say that since the regulations should be deemed to have been laid, how can they be laid. Therefore, Sir, I would request you to find a way out of this technical difficulty and to allow the Members to have a look at the regulations so that they can see them for themselves and they can come to their own judgments on the basis of what they have seen and what they have studied. I wish to assure hon. Members that there is no intention on our part to conceal anything from the honourable House. We want the House to see them, but if there is a technical difficulty, I would request you to use your good offices to see that we can get round the difficulty. We can pass the Bill now and we will deal with it when we come to it. At the stage to participate difficulty, and not to pass the Bill, does not seem reasonable.

MR. DEPUTY-SPEAKER: Mr. Pant's request only makes my position a little more difficult. In effect he admitted, there might be some difficulty and then we can sit round and resolve that difficulty later on.

SHRI K. C. PANT: You have made my position a little bit difficult. I said, to anticipate difficulty at this stage is not correct. I am going to step further and I am meeting those points that have been raised so that in case Members have anything to see, we will consider it at that stage. That is my submission.

SHRI C. M. STEPHEN: Having heard Mr. Pant, I think, I should give expression to certain conscientious difficulty which some of us here feel. The Bill is before us. I will explain why it is objectionable. The provision of the Bill says that these regulations must be deemed to have been placed before Parliament. That is one provision against which there are practical conscientious difficulties. There cannot be a factual fiction. There can be a legal fiction. It cannot be deemed to have been placed before Parliament. It was never placed before the House. You can take the Bill out of the consequences of non-placement of the Bill before the House. That is a different thing. You can regularise the Bill although it was not placed before the House. You should not say something which is not factually correct. It is against factual fiction that I am pleading for. Mr. Mohsin said, although it is not placed before the House, the regulation is perfectly valid. I have repeatedly put forward the argument that if it is so, why is the need to indemnify, which is what is being sought in this Bill. For whom? How? From what do you indemnify? These are the points which struck me and hon. Members who have spoken have also expressed reservations and I would appeal to the Government to have a second look at it study it further and tell us what the position is. All the facts are not placed; all the data are not placed before us. Under these circumstances what I would plead for with the

Government is that they might have a second look, a second scrutiny. That is what I would respectfully plead for.

SHRI R. D. BHANDARE (Bombay Central): I have heard what hon. Members have said. I have also heard the hon. Minister. These are the four points which emerge....

MR. DEPUTY-SPEAKER: You need not make a speech. Only, point of order.

SHRI R. D. BHANDARE: I am only dealing with the points which have arisen out of the discussion over the Bill. The majority of the Members have agreed to indemnify the officers for their acts and actions. Now, what are those acts and actions done or taken under the regulations? It appears that there was a difference made between rules and regulations. After the Supreme Court judgment, now the rules and regulations cannot stand on the same basis and between the same parallels. Therefore, even regulations must be placed on the Table of the House. Since the House is now agreeing to indemnify the officers for acts and actions done under those regulations too, there can be no difficulty now since it has agreed to indemnify the officers in accepting those rules and regulations as valid. Once we indemnify the officers for their acts and actions done under the regulations, it is but natural as a consequence to incorporate in the Bill this phraseology that these regulations have been deemed to have been laid on the Table of the House. Otherwise, we cannot indemnify the acts and actions of the officers.

The question has been raised by Shri C. M. Stephen and Shri N. K. P. Salve, namely whether, if the regulations are laid on the Table, the House is not entitled to discuss and modify or amend them. To that question the answer is that once the acts and actions are indemnified, those rules and regulations are deemed to have been passed and laid on the Table of the House, today. That is the sum and substance of the whole Bill.

SHRI S. M. BANERJEE: May I make a submission in all humility? I would invite your attention to the clauses of the Bill which my hon. friend Shri C. M. Stephen has very ably argued about. The operative clause of this Bill says:

"The Central Government and all officers responsible for the laying of any regulation made before the commencement of this Act under or in pursuance of any rule made under the All India Services Act, 1951, are, and each of them is, hereby freed, discharged and indemnified from and against all consequences whatsoever, if any, incurred or to be incurred by them or the Central Government or any such officer by reason of any omission in this behalf to lay such regulation before Parliament and every such regulation shall for all purposes be deemed to have been laid before Parliament and shall have effect and shall be deemed always to have had effect accordingly."

This is a fiction really. It is not a fact. Now, the hon. Minister has agreed that these regulations can be laid. According to him—I do not know whether this number is right or wrong—the number is 118. They are supposed to be laid. If they are not supposed to be laid, then he says that there would be confusion.

A similar question arose in the House of Commons when a similar Bill came up there. The British Government had agreed to place on the Table of the House all the regulations passed even two decades earlier, and it was only when they were laid that the Bill was passed. This is not a fiction but a fact. If we were following the procedure of the House of Commons, can we not wait for two or three days, and can the Government not give us an opportunity to have a look at them? As I have pointed out already from the Supreme Court judgment, they have been amended retrospectively from 1965. If the House of Commons in its wisdom could wait for four or five days or even a week and the British Government had agreed to do so in deference to the wishes of the hon. Members here, not only of the Opposition, not only of

Shri S. M. Banerjee but of the entire House consisting of all Members, our Government can also agree to wait. The entire House has a feeling that these regulations should be placed on the Table and the Members should get an opportunity to have a glance at them.

In all fairness, I appeal to your sense of justice and fairplay and impartiality to adjourn this debate and keep it over till next week; I agree that we may pass it next week in five minutes, but let us be convinced. Let us not do something against our conscience when certain points have been raised and when there are precedents in other places, for instance, in the House of Commons; I would, therefore, request you to adjourn the debate on this Bill till next week.

SHRI N. K. SANGHI (Jalore): I do not agree with what Shri S. M. Banerjee has said. What this Bill seeks to do is to say that these regulations which have not been laid on the Table are deemed to have been laid. As has been suggested by the hon. Minister, he is going to see how these regulations can be made available for the information of members. Even if the regulations are laid on the Table after the passage of the Bill, what debars Parliament from going into them and taking them up for modification? Parliament is supreme and it has right to change or modify any law with retrospective effect. So there is nothing which debars us from proceeding with this Bill now.

श्रीभार० बी० बडे० (खरगोन) उपा-
ध्यक्ष महोदय, जो 118 रेगुलेशन है वह
हाउस के सामने आने चाहिए। जैसा
श्री स्टोफेन ने कहा, अगर हम उस को डीमड
टु हैव बीन लेड, मान लें तो वह कैबिनेटली
मलत बात होगी। उस को यहाँ पर रक्खा
जाना चाहिए जिसमें किसी को जरूर भी
सन्देह न रह जाये। मैं श्री महोदय से कहना
चाहता हूँ कि वह रेगुलेशन को हाउस के
सामने ले कर आये, तब हम यह बिजने पास
कर देंगे।

SHRI F. H. MOHSIN: My senior colleague, Shri Pant, has already said: let us pass the Bill now and if members want to see the regulations....

SHRI S. M. BANERJEE: You pass the Bill. We are going.

SHRI DINESH JOARDAR: It is most shameful on the part of the Minister to say that we must pass this without looking into those acts.

SHRI S. M. BANERJEE: We have become suspicious that gross misdeeds of certain officials are being hidden.

MR. DEPUTY-SPEAKER: We are not at the stage of passing the Bill; we are only at the stage of considering the Bill. So that question does not arise.

SHRI F. H. MOHSIN: It was only an interpretation given to the provisions of the Act. The regulations were not laid on the Table. It was never the intention to bypass the authority of Parliament by not complying with the provisions of the Act.

Many things have been said about the bureaucracy, the *mala fide* intentions of the officers concerned and all that. I have to reply to that. There was nothing *mala fide* on their part. It was only as per the interpretation of the law then in force that the regulations were not laid before the House. That is why we have come before the House to indemnify the acts of the officers for not laying....

SHRI S. M. BANERJEE: What acts?

SHRI F. H. MOHSIN: Or omissions.

SHRI S. M. BANERJEE: What omissions, in which case?

SHRI F. H. MOHSIN: Omission to lay before Parliament the regulations, though we were not required to do so. Any way we have taken the advice of the Law Ministry and according to their advice, we have come before the House to indemnify the officers.

By this law we want to make it more clear that it is not only the rules but also

the regulations which have to be laid on the Table. Secondly, the time given for laying these on the Table was only 14 days; now we want to extend it to 30 days.

SHRI S. M. BANERJEE: Did you lay everything on the Table on the basis of the Supreme Court judgment with retrospective effect from 1965?

SHRI F. H. MOHSIN: About that particular thing, I have no knowledge now.

SHRI S. M. BANERJEE: Why?

Just to deprive the just rights of the Government employees, the Government, on the face of the Supreme Court judgment, amended the rule. The Kerala High Court's judgment was in favour of the Government employees; the Supreme Court upheld that judgment. The Minister did not place those rules here, from 1965 to 1972. It is a shame. How can we allow this?

SHRI F. H. MOHSIN: One matter was referred to by Mr. Banerjee, and that was about the temporary Government servants' rules. They were not made under the All-India Services Act of 1951 nor have they any bearing on the Bill under consideration. They were made by the President under the proviso to article 309 of the Constitution.

SHRI S. M. BANERJEE: Kindly hear me.

SHRI F. H. MOHSIN: We have heard you for long, so many times.

SHRI S. M. BANERJEE: I have also heard you so many times. Kindly hear me once again. In this particular case, where certain Government employees went in appeal, in the Kerala High Court they got a judgment in their favour that under rule 5, if anybody's service is to be terminated, he has to be given the salary or he should be allowed to work for one month. They won the case. Then the Government went in appeal to the Supreme Court. I think it was Gopinath vs. State and the Supreme Court upheld the judgment of the Kerala High Court which gave

relief to the Government employees who were involved in the strike. After the Supreme Court judgment, rule 5 was amended with retrospective effect from 1965 by this Government. Is it correct or not?

SHRI F. H. MOHSIN: As for my information, that matter did not arise out of the All-India Services Act.

SHRI S. M. BANERJEE: Please say yes or no to my question. The whole country knows. After the Supreme Court judgment, the Government amended the rule. And they all talk of the judiciary and its rights. The high court of Kerala gave the ruling which was in favour of the Government employees. The Supreme Court upheld it. And this Government without referring it to this Parliament, amended the Act of 1965. It is a shame, when they deprived the right of the Government servants this way. Let them say whether they did it or not.

SHRI F. H. MOHSIN: That was not in reference to the All-India Services Act.

SHRI S. M. BANERJEE: You amended the rules which are supposed to be laid on the Table of the House.

SHRI F. H. MOHSIN: The matter to which he referred in the course of his main speech was only (Interruptions).

SHRI S. M. BANERJEE: Did you amend rule 5 or not?

SHRI F. H. MOHSIN: If you go on interrupting, how can I proceed? I was saying that that was in respect of the rule made by the President under the proviso to article 309 of the Constitution. It was not concerned with the All-India Services Act at all.

Now, I have clarified all the points that have been raised by the hon. Members of the House and I appeal to the hon. Members to give their consent to the motion for consideration of the Bill.

SEVERAL HON. MEMBERS: rose—

MR. DEPUTY-SPEAKER: Order, please. In view of a certain amount of confusion that prevails over this Bill and the serious doubts mentioned by some hon. Members, I think there is some force in the request that the debate should be adjourned. But I will have to put it to the House and I will have to go by the pleasure of the House. (Interruptions). Order, please. I think I should give my consent to the motion by Mr. Banerjee.

SHRI N. K. P. SALVE: I request the Minister to accept it without that motion.

SHRI F. H. MOHSIN: If it is the desire of some hon. Members, we will adjourn the consideration of the Bill by about a week, and in the meanwhile, they can go through the regulations.

MR. DEPUTY-SPEAKER: I will have to put it formally, because under the rule, since you have signified that there should not be any difficulty, (Interruptions)—and the Minister has generously responded to our desire—

SHRI S. M. BANERJEE: Without any motion.

MR. DEPUTY-SPEAKER: It cannot be. There must be a motion. A motion has to be made under the rules. Therefore, I accept his motion and I am putting it to the House formally, as a matter of formality, that the debate on this Bill be adjourned.

SHRI N. K. P. SALVE: *Suo motu*, when it is being postponed, where is the need for a motion?

MR. DEPUTY-SPEAKER: I have to do it under the rules.

SHRI N. K. P. SALVE: If he does not seek leave to withdraw—(Interruptions).

MR. DEPUTY-SPEAKER: Let me draw your attention to the rules. Rule 109 says that at any stage of a Bill which is under discussion in the House—and this Bill is under discussion—a motion that the debate on the Bill be adjourned may be moved with the consent of the Speaker. If you move it I shall accept it.

SHRI S. M. BANERJEE: I withdraw it then.

SHRI F. H. MOHSIN: I beg to move:

"That the debate on the Bill be adjourned for a week".

SHRI S. M. BANERJEE: I accept it.

MR. DEPUTY-SPEAKER: The question is:

"That the debate on the Bill be adjourned for by a week."

The motion was adopted.

COAL MINES LABOUR WELFARE FUND (AMENDMENT) BILL

THE DEPUTY MINISTER IN THE MINISTRY OF LABOUR AND REHABILITATION (SHRI BALGOVIND VERMA): Sir, on behalf of Shri Khadilkar I beg to move:*

"That the Bill further to amend the Coal Mines Labour Welfare Fund Act, 1947, be taken into consideration."

Sir, the Bill provides for the increase in the rate of levy and collection of cess on all despatches of coal and coke for financing the activities to promote the welfare of persons employed in coal mines and to change the apportionment of the proceeds between the General Welfare Account and the Housing Account.

As the Honourable Members are aware various welfare measures have been undertaken to ameliorate the living conditions of the labour employed in

coal mines. These are being financed by the Fund set up under the Coal Mines Labour Welfare Fund Act 1947. At present the Fund is fed from the proceeds of the cess levied on all despatches of coal and coke at a rate of fifty paise per ton. This rate has continued since 1st January, 1961. The total proceeds are apportioned between the Housing Account and the General Welfare Account in the ratio of 5:7. The money in the Housing Account is utilised to supplement the efforts of employers and State Governments in providing housing accommodation. The money in the General Welfare Account is similarly utilized for medical, water supply, educational and recreational facilities for coal-miners. The present annual receipts in the Housing Account are about Rs. 1.10 crores. But this amount falls short of the growing requirements of houses for colliery labour. This would not be sufficient even for completing the schemes already sanctioned. At present, almost the entire receipts in the General Welfare Account are consumed by the existing medical services. In fact, there is already a deficit of Rs. 2.93 crores in the General Welfare Account. Therefore, there are no resources left for improvement or extension of these facilities any further.

Under the Act the Central Government have set up a tripartite Advisory Committee for the Fund. This Committee had been unanimously recommending an increase in the cess. Considering, however, the effect of any such increase on the price of coal, we have limited it to about 25 paise per tonne. As is explained in the Financial Memorandum to the Bill, at the existing level of expenditure it would be possible to place the General Welfare Account on an even keel after about 6 years.

16.55 hrs.

SHRI N. K. P. SALVE in the Chair.

I would like to take this opportunity to restate the position that this Welfare Organisation is not intended to be a substitute either for the employers or the State.

*Moved with the recommendation of the President.