

[Shri Surendranath Dwivedy]

a fact that he has sent a note to you. I do not know how it did not reach you. It is very strange. Now you say "unless I receive the note, I will not permit you". This member has sent a note to you. I want to know why you are not permitting him.

MR. SPEAKER: I am told that it was faulty. That is why it did not come to me.

SHRI HEM BARUA (Mangaldai): Assam is being neglected. He has written a letter to you about the mass killing of minorities..... (Interruptions).

MR. SPEAKER: Unless I receive notices in proper form, how can I allow them? Hon. Members give notice during the question hour and then get up as soon as the question hour is over. How could we proceed in this manner? There is not a single member who will follow the proper procedure.... (Interruptions). Everything should be done through a regular procedure.

SHRI J. AHMED: What about my note?

MR. SPEAKER: I will examine it and let him know.

SHRI J. AHMED: This relates to the question of the minority community. So, I would request you to permit me to raise it.

MR. SPEAKER: When there is some procedure decided by the whole House, we have to follow it.

12.59 hrs.

MATTER UNDER RULE 377

REPORTED REMARKS OF CHIEF JUSTICE OF INDIA
ABOUT NOTICES OF LODGEMENT OF APPEAL
SERVED ON SOME MLPs

SHRI P. VENKATASUBBAIAH (Nandyal): The Chief Justice has made certain remarks.... (Interruption).

13 hrs.

SHRIMATI TARKESHWARI SINHA (Barh): They should know that there is a Speaker. It is for you to decide.... (Interruption).

SHRI S. KUNDU (Balasore): He asked a question.

Mr. SPEAKER: Will you please sit down, whatever it may be? I am not going to allow it unless it comes through a regular motion. Shri Jahanuddin Ahmed sent it to me and has also sent something along with it. I will examine it. But please do not do like this, abruptly getting up and raising anything that comes up.

SHRI SURENDRA NATH DWIVEDY (Kendrapara): I am sorry about the attitude you are taking. There is no question of giving a motion. The Member does not want to give any motion. He has got important information that some members of the minority community have been killed in Goalpara District, Assam. He wanted to make a reference to that by informing you. There is my question of a motion. Such important and urgent matters are referred to in the House.

MR. SPEAKER: Please do not get excited.

SHRI S. KUNDU: You do not listen to anything and when anybody gets up you say that he gets excited.... (Interruption). He comes out with a telegram and wants to bring it to the notice of Government through you. You should give protection to him.

MR. SPEAKER: Shri Kundu, please do not get excited. Have a sense of proportion.

SHRI S. KUNDU: We have a sense of proportion but you must cooperate with us.

MR. SPEAKER: You are almost insulting the Chair. I warn you not to do it. I am not going to tolerate it.... (Interruption).

SHRI K. N. TIWARY (Betiah): Nothing should go on record unless you permit it.

SHRI J. AHMED (Dhubri): **

MR. SPEAKER: You cannot bring up anything, unless I allow it. It will not go on record.... (Interruption). If all of you behave like this, God help you.... (Interruption).

SHRI HEM BARUA (Mangaldai): **

MR. SPEAKER: Shri Jahanuddin sent it to me at 11.40. I will see it. Please do not be under the impression that I will not have a favourable attitude towards it... (*Interruption*). You will have a very sympathetic attitude from me. But please do it in a regular manner. I will see it and then decide about it... (*Interruption*).

SHRI S. M. BANERJEE (Kanpur): **

MR. SPEAKER: You are all forcing yourself on the House.

SHRI SHIVA CHANDRA JHA (Madhubani): **

MR. SPEAKER: I think, we should have one hour in the evening where anything could be allowed without the Chair being there and letting Members say whatever they like.

SHRI PILOO MODY: (Godhra): I want to know whether all this is being taken down.

MR. SPEAKER: No. Please do not make a mockery of it.

MR. SPEAKER: This morning, I have received all these motions under Rule 377 by Sarvashri P. Venkatasubbaiah, Hem Barua, K. L. Gupta, Bal Raj Madhok, N. K. P. Salve and Umanath to raise the matter on the remarks made by the Chief Justice of the Supreme Court about notices served on some Members of Parliament.

SHRI CHENGALRAYA NAIDU (Chittoor): I have also given a Call Attention notice on the same subject.

MR. SPEAKER: These are motions under Rule 377. Of course, your name may also be added. I don't mind. The subject is identical. All these motions are identical.

SHRI S. M. BANERJEE: Because I am affected, my name should also be added.

SHRI N. K. P. SALVE (Betul): I crave your indulgence, Sir. I seek your verdict on the letter I wrote to you on the 16th April that I

want to appear before the Supreme Court and defend myself. (*Interruption*).

MR. SPEAKER: Please sit down. Let me say what I have to say.

SHRI FRANK ANTHONY (Nominated Anglo Indians): Sir, I happened to be in the Supreme Court... (*Interruptions*).

SHRI SURENDRANATH DWIVEDY: Let us first hear the Speaker what he is going to say. (*Interruptions*).

MR. SPEAKER: Regarding some remarks made by the Chief Justice of the Supreme Court, we have utmost respect for our courts and, specially, the Supreme Court which is the highest court in this country. About the observations made by the judges and all that, I would wish, if you want to say anything, that should be said with full realisation of your responsibility as Members of Parliament and with full restraint and only on merits keeping in view the relation between the Supreme Court and this august body so that there should not be any bad precedent created.

SHRI DHIRESWAR KALITA (Gaubati): We should have a full discussion to discuss the conduct of these judges. (*Interruption*).

MR. SPEAKER: Of course, I would request you to be very brief in your observations and to be also with full restraint. Before we come to any conclusion, I will keep all these motions pending. Shri P. Venkatasubbaiah.

SHRI P. VENKATASUBBAIAH: Sir, it is reported in the press what the Chief Justice of the Supreme Court has remarked with regard to your being misled by the Law Minister and that the Law Minister has not taken cognizance about the lodgement of notices or issue of summons. This is what the Chief Justice of the Supreme Court says:

"It is a serious matter if the report in the newspapers is true...."

[Shri P. Venkatasubbaiah]

It also says :

"The Chief Justice told the Attorney-General, Mr. Niren De, appearing on behalf of the Union Government that "lodgement of an appeal in this court by party and giving intimation of the same to the respondents in a procedural work under the civil procedure code and the Supreme Court rules and it is not a summons."

This is what the Chief Justice has stated in this regard. He also said :

"I am constrained to say that even the hon. Law Minister did not clarify the position to the House that a notice of lodgement in appeal is not a summons to the court."

As you have very rightly pointed out, this is a delicate matter and we have to very carefully see that there is not any sort of a confrontation between the Judiciary and the Legislature. The only point is the role of the Law Minister with regard to misleading the House and the Speaker is not informing the Speaker that the lodgement of a notice was not issue of a summons.

Under Art. 145(1) of the Constitution the Supreme Court is empowered to frame its own rules of procedure, but they are approved by the President of India before they are enforced. So this is a matter of Supreme Court framing its own rules which are approved by the President. So, Sir, it cannot be said that the Supreme Court is not aware of the privileges that are enjoyed by the Members of Parliament. Here, the only point is : whether there can be a distinction between 'lodgement of notice' and issue of summons. Lodgement of notice, so far as I can see, is a matter which the parties are informed of it and if they do not attend, there need not be any imposition made on them or any prosecution launched against them whereas the summons enjoins upon the party to appear before the court. So, in this matter I feel that the Law Minister has definitely misled the Speaker and has created this sort of confusion. It will go in the country as if there is a confrontation between the judiciary and the legislature. So I want to know from the Law Minister why he has failed in his duty to inform the Speaker with regard to the correctness of the position.

MR. SPEAKER : I want to make it clear because it is said that it was a matter of misinforming me by the Law Minister. When it came, the Law Minister then requested me that it should be dropped here and he will inquire into it and direct the Attorney-General. (*Interruptions*) I don't think the Law Minister is anywhere in the picture. Mr. Madhu Limaye raised it and I acted on Mr. Madhu Limaye's information.

श्री मधु लिमये : (मुगेर) मैंने सम्मन की बात नहीं की थी, नोटिस की बात की थी।

SHRI S. M. BANERJEE : I have received lodgement of notice. I never said 'summons'.

SHRI HEM BARUA : I don't want an atmosphere of conflict to be built up with the Supreme Court. It is the highest judiciary in the country and there should be no attempt to build up a sort of confrontation between the Indian Parliament and the Indian Supreme Court. If the prestige of the Supreme Court or the Judiciary in this country is undermined, then it will lead to political instability of the country which we see already in the country. If the judiciary is run down like this, that will lead to political instability. But, here the Chief Justice said that no summons was issued to Members of Parliament ; only according to the Rules of the Supreme Court, notice of lodgement of this particular appeal was rather conveyed to the Members and to the hon. Speaker also and the hon. Law Minister should have been in a position to explain the entire position. He has not done it. I think this was a notice to the Government and not to individual Members. This notice was served on the Government.

THE MINISTER OF LAW AND SOCIAL WELFARE (SHRI GOVINDA MENON) : No, no. On the Members.

SHRI HEM BARUA : That might be. This was not a summons. That should have been clarified. I do not want their position to be undermined also. We hold them in high respect. They should make a statement that this was not a summons. We were misled. Therefore, the Supreme Court Chief Justice has said all that.

AN HON. MEMBER : The Law Minister should be taken to task.

श्री मधु लिमये : मेरी प्रार्थना है कि ला मिनिसटर को अगर कुछ कहना हो तो वह पहले कह लें ।

SHRI BAL RAJ MADHOK (South Delhi) : It is a very delicate matter which is coming up in this House again and again. We have three wings of the Government, the judiciary, the legislature and the executive. The judiciary naturally holds a very important place and if the judiciary is not independent, the legislature will not also remain and therefore it is in the interest of all of us, including Members of Parliament to see that the independence of the judiciary is maintained. Now, there are people in this country who want to undermine the democratic institutions. They not only want to denigrate and bring disrepute to Parliament but they want to denigrate and bring disrepute to the judiciary as well. We must make it absolutely clear that we do not approve of such things—a Member here or a few Members there might have said something, but the House does not approve of anything said which is a reflection on the judiciary, which aims at denigrating the judiciary. So far as this matter is concerned there seems to have been some misunderstanding. As Chief Justice has said, it was intimation only. I think whether we are Members of Parliament or not, there are rules, and these rules are for everybody. And if such intimation came there should be no question of raising a hullaballo about it. If there was misunderstanding the Law Minister could clear it up. He is supposed to know law and he should have informed the House and you of this position, so that this awkward situation that has arisen could have been avoided. Even now it is not too late. The Law Minister can explain the position and this matter should not be allowed to carry on any further.

SHRI N. K. P. SALVE : I wrote a letter to you. I want to go and defend myself in the Supreme Court on the merits of the matter without pleading the immunity contemplated under Article 105. I do not want to go into

the question whether or not there was a breach of privilege involved in the issuance of notice. Eminent legal pandits have informed me that this is mere issue of notice of lodgement, and the Supreme Court was in duty bound to issue this so that we are told of the proceedings of the Supreme Court. If it is mere intimation I submit, the language could be a little more temperate and dignified. The notice says :

....“take further notice that in default of your appearance within the time prescribed the appeal will be proceeded with and determined in your absence and no further notice in relation thereto shall be given to you....”

My submission very briefly is this. If you permit me to appear before the Supreme Court, on merits I will do so. Abusive and intemperate language has been used by the appellants in the plant. They have denigrated and ridiculed the House. I have not got anything personally against Shankaracharya. But we are against the cult or the philosophy which is propagated against Harijans.

MR. SPEAKER : I will ask those members who have sent notices of the motion to speak. I will also ask the Law Minister.

SHRI KANWAR LAL GUPTA : I have given notice, Sir.

SHRI N. K. P. SALVE : Sir, will you not permit me to continue? I would like to have your categorical ruling as to whether this is a decision that I can take on my own or whether it is a matter for the decision of the House.

SHRI S. KUNDU : Sir, I rise on a point of order. The point that has arisen before the House, after the Law Minister has explained, the matter. The only thing that we have to decide is whether this notice should be considered as a summons or not. In what form the notice should have come is a different matter. The lengthy discussions on this should be shortened. After all both Members of Parliament and the Supreme Court enjoy certain rights and privileges.

श्री कंबरलाल गुप्त (दिल्ली सदर): अध्यक्ष महोदय, मैं समझता हूँ कि यह बहुत गम्भीर मामला है। यह ठीक है कि सदन के कुछ एन्सोल्यूट राइट्स हैं। लेकिन कुछ एरियाज में सुप्रीम कोर्ट के भी कुछ राइट्स हैं। उन दोनों के क्लैश होने का सवाल नहीं है और वह क्लैश होना भी नहीं चाहिए।

हाई कोर्ट ने जो सम्मन दिया था, वह तो ब्रीच आफ़ प्रिविलेज था। लेकिन अब सुप्रीम कोर्ट ने केवल नोटिस दिया है, सम्मन नहीं दिया है। उसमें केवल यह इनफार्मेशन दी गई है कि फलां आदमियों ने अपील की है, आदि। उसमें कानून यह मांग नहीं करता है कि जिन चार सदस्यों को नोटिस दिया गया है, वे वहां जायें। उनको बुलाया नहीं गया है; उनको केवल इनफार्मेशन दी गई है।

श्री स० भो० बनर्जी: माननीय सदस्य इसको पढ़ें तो सही।

श्री स० कुष्ण: वह नोटिस किसलिये आया है? क्या सुप्रीम कोर्ट ने इन सदस्यों को डिनर खाने के लिये बुलाया है?

श्री कंबरलाल गुप्त: मेरा कहना यह है कि हाई कोर्ट ने जो भेजा था, वह तो सम्मन था, लेकिन जो सुप्रीम कोर्ट ने भेजा है, वह एक नोटिस है। उन दोनों में फर्क है। जिस मेम्बर को नोटिस दिया जाता है, अगर वह नहीं जाता है, तो उसके लिये कोई सजा नहीं है। एक जज ने यह भी कहा कि ला मिनिस्टर को यह कानूनी पोजीशन सदन के सामने रखनी चाहिए थी।

मैं समझता हूँ कि सुप्रीम कोर्ट और पार्लियामेंट के क्षेत्र अलग अलग हैं। उन दोनों का कन्फ्लिक्शन होना गलत होगा। इस सम्बन्ध में एक कैंलकुलेटिड एटैम्ट की जा रही है। उसको एवायड करना चाहिए। हमें सुप्रीम कोर्ट को मर्यादा को भी कायम रखना चाहिए और इस

सदन की मर्यादा को भी कायम रखना चाहिए। जैसा कि आप ने उस दिन कहा था, कुछ मामलों में हमारा हाउस सुप्रीम है और हमारे राइट्स और प्रिविलेज एन्सोल्यूट हैं। नोटिस मिलने के बाद एटार्नी जनरल को कहा गया था कि वह कांस्टिट्यूशनल प्राविजन्स के बारे में सुप्रीम कोर्ट को बतायें। लेकिन उन्होंने ऐसा नहीं किया। बल्कि जब सुप्रीम कोर्ट के चीफ जस्टिस ने अपना आबसर्वेशन किया, तो एटार्नी जनरल ने कहा, "आई एम नाट हियर टु डिफेंड दि एक्शन आफ पार्लियामेंट"। इस का मतलब है कि एटार्नी जनरल ने भी पूरी तरह से अपनी जिम्मेदारी को नहीं निभाया है। मैं समझता हूँ कि जब यह केस फिक्स होगा, तो एटार्नी जनरल यह सारी पोजीशन सुप्रीम कोर्ट के सामने रखेगा, और उसके बाद सुप्रीम कोर्ट उस केस को डिस्मिस कर देगा। उसमें पहले कोई प्रिविलेज का सवाल नहीं उठता है, न सुप्रीम कोर्ट की और न इस सदन की मान-हानि का सवाल है। मैं इस सदन से और सुप्रीम कोर्ट से भी यह प्रार्थना करूंगा कि दोनों अपने अपने स्फीयर में रहकर काम करें, वे ऐसी स्थिति न पैदा करें, जिसमें इन दोनों का कन्फ्लिक्शन हो और कुछ लोग देश में जो ऐसा वातावरण बनाना चाहते हैं, उसको एवायड करें।

श्री मधु लिंगये (मुंजर): अध्यक्ष महोदय, चूंकि यह सवाल यहां पर मैंने उठाया था, इस लिये मैं कुछ सफाई देना चाहता हूँ। मैंने स्वयं यह कहा है कि मैं पार्लियामेंट और सुप्रीम कोर्ट के बीच में कोई झगड़ा उत्पन्न नहीं करना चाहता हूँ। कोई भी मेरे भाषण को देख सकता है। मैंने समन्ज की बात नहीं की थी; मैंने नोटिस की बात की थी। (व्यवधान) सुप्रीम कोर्ट के चीफ जस्टिस ने यही कहा है। कम से कम वे भी तो हमारी प्रोसीडिंग्स को पढ़ें। जिस तरह हम सुप्रीम कोर्ट के जजमेंट्स आदि को पढ़ते हैं, वैसे ही पार्लियामेंट के बारे में कोई

आक्षेप करने से पहले, यहां पर क्या कहा गया है, उसको वे पढ़ें।

श्री स० मो० बनर्जी : वे तो सिर्फ न्यूज-पेपर की रिपोर्ट्स पढ़ते हैं।

श्री मधु लिमये : स्वयं मैंने कहा है कि यह नोटिस सर्टिफिकेट आफ अपील में से निकला है। मैंने यह भी उम्मीद प्रकट की थी कि शायद सुप्रीम कोर्ट इसको खारिज कर देगा।

लेकिन मेरा आक्षेप यह था कि जो सूट पेटन्टली इनकाम्पीटेंट है, उसके बारे में हाई कोर्ट के द्वारा सर्टिफिकेट आफ अपील देना, और उसके ऊपर सुप्रीम कोर्ट के द्वारा आटोमेटिकली नोटिस जारी करना, अच्छा नहीं लगता है। इसके बारे में मैंने टाइम्स आफ इण्डिया में एक लम्बा पत्र भी लिखा है। इसमें सबाल यह आता है कि चूंकि यह पच्चीस हजार का मामला है, इसलिये क्या संविधान की बाकी धारारें खत्म हो जाती हैं। जब संविधान के अनुच्छेद 105 (2) में साफ कहा गया है कि हम इस सदन में जो कुछ कहते हैं, या वोट देते हैं, उस के बारे में किसी भी अदालत में कोई लायबिलिटी नहीं है, तो क्या सुप्रीम कोर्ट को अपने नियमों में परिवर्तन नहीं करना चाहिए ?

मेरा अपना अनुभव है कि मैंने कई रिट्स फाइल किये हैं और जब किसी रिट पेटिशन में खामियां रहती हैं, तो खुद रजिस्ट्रार बुलाकर कहता है कि इन खामियों को दूर करो। अभी अभी जो मेरा रिट पेटिशन एडमिट हुआ है, उसके बारे में रजिस्ट्रार ने मुझे बुलाकर कहा कि इसमें इस बात का कोई उल्लेख नहीं है कि मैंने इस के बारे में हाई कोर्ट में अपनी याचिका फाइल की है या नहीं। उन्होंने मुझे इसकी सफाई देने के लिये बुलाया। मैंने कहा कि इसका उल्लेख है। उल्लेख होते हुए भी सफाई देने के लिये उन्होंने मुझे बुलाया।

जैसा कि मैंने कहा है, हम कोई झगड़ा नहीं चाहते हैं। मैं यह मानता हूँ कि जजिज को बिना पूछे रजिस्ट्रार ने नोटिस दिया है। लेकिन सुप्रीम कोर्ट और हाई कोर्ट को सोचना चाहिए कि जो सूट पेटन्टली इनकाम्पीटेंट है, उसके बारे में सर्टिफिकेट आफ अपील देना और नोटिस सर्व करना कहां तक उचित है। कोई नहीं कह सकता है कि अनुच्छेद 105 (2) में किसी तरह का सूट हो सकता है। चाहे 25 हजार हो और चाहे 25 लाख हो, अगर कोई केवल पैसे वाली बात को लेकर कहता है कि अनुच्छेद 105 खत्म हो गया है, तो मैं उसको मानने के लिये तैयार नहीं हूँ। एटार्नी जनरल का भी इस सदन से सम्बन्ध है। वह इस सदन में आकर बैठता है। हमको जो इम्युनिटीज प्राप्त हैं, वे एटार्नी जनरल को भी प्राप्त हैं। ऐसी हालत में उनके यह कहने का क्या मतलब है कि आई एम नाट हियर टु डिफेंड दि एक्शन "आफ पार्लियामेंट" ? तो फिर वह काहे के लिये हैं ? एटार्नी जनरल का यह कर्त्तव्य था और उनको कहना चाहिए था कि मधु लिमये ने कोई झगड़े की बात नहीं की थी, समन्ज की कोई बात नहीं की थी।

मैंने उस समय भी यह आशा प्रकट की थी कि सुप्रीम कोर्ट इसको खारिज कर देगा, लेकिन अगर सुप्रीम कोर्ट के नियमों में, और सर्टिफिकेट देने के बारे में हाई कोर्ट के नियमों में, कुछ खामियां हैं, तो उनको दूर करना चाहिये। मैं आपको मार्फत कानून मंत्री से विनती करूंगा कि एटार्नी जनरल इस स्थिति को सुप्रीम कोर्ट के सामने पेश करें।

लेकिन साथ साथ मैं यह भी कहना चाहता हूँ कि जहां जजिज के बारे में हमको कोई बुरी बात नहीं कहनी चाहिए, वहां उनका दृष्टिकोण भी यही होना चाहिए। एक भूतपूर्व हाईकोर्ट के जज, श्री वी० एम० तारकुंडे, ने पार्लियामेंट के मेम्बरों को इर्रेसपांसिबल कहा है। इस बारे

[श्री मधु लिमये]

में राष्ट्रपति गिरि ने हमारे सामने बड़ा अच्छा आदर्श पेश किया है। वह साधारण नागरिक के नाते सुप्रीम कोर्ट के सामने गये। उन्होंने सुप्रीम कोर्ट की इज्जत बढ़ाई और सुप्रीम कोर्ट ने भी राष्ट्रपति की इज्जत बढ़ाई। अगर यह सदन और सुप्रीम कोर्ट एक दूसरे के बारे में इसी तरह का रुख अपनायेंगे, तो दोनों की इज्जत बढ़ेगी और लोकतंत्र मजबूत होगा।

SHRI S. M. BANERJEE : Our speeches have been quoted ; please read it. I want to say a few words. I have to face consequences.

MR. SPEAKER : Please resume your seat.

SHRI GOVINDA MENON : I would request you to allow me to explain what happened with respect to this matter. On the day on which it was discussed in this House this was not in the list of business so that I could know what the matter was. Hon. Members, particularly Mr. Limaye, raised the issue and said that he had received this notice and that under Article 105 there was absolute immunity so that the Court could not decide anything on this matter. When the matter came as from the High Court I submitted that what I should do was to request the Attorney General to appear in the High Court and point out to the Court the import of Article 105. In order to enable the Attorney General to do so in the High Court what was done was to implead the Union of India also for which a petition was filed by the Government advocate. That is how the Union of India became a party to the proceedings in the High Court. The High Court decided that they were aware of it that under Article 105 there was absolute immunity for members of Parliament with respect to what they said in the House. That contention was upheld by the High Court. Now the plaintiff in that case wanted to file an appeal to the Supreme Court and for that a certificate from the High Court was necessary. The certificate simply states that this case involves a question which in money value would be more than Rs. 20,000 ; otherwise no certificate is necessary. Because the Union of India was a party in the

High Court, in the Supreme Court also the Union of India became a party. On that day what I had suggested in substance was that you should not give any ruling or take any decision on this matter because in the Supreme Court also I would request the Attorney General to appear and point out this matter to the Supreme Court. Accordingly, yesterday the Attorney General,—I am informed, addressed the Court on this matter and the case has been posted for the 29th April for final disposal.

There has been some confusion regarding summons and notice of lodgement. I have not a copy of the notice with me. Whether it is called notice or summons, it is the same thing. Summons which issue from the courts also say that the case is posted on such and such date ; if you want to appear, you may appear ; if you do not appear the matter will be decided *ex parte*. That is exactly the notice which was read out by Mr. Madhu Limaye. I had a dual role on the occasion when I spoke in this House. As a Member of Parliament it is my duty to see that the privileges of member of Parliament are preserved ; as a Member of the Government it is my duty to see that no confrontation arises between Judiciary and Parliament.

SHRI P. G. SEN (Purnea) : On a point of order. He says that the Attorney General has been given power to attend this House. The Constitution has given the power ; we can call him. The House can seek his clarification from him. He becomes the *via media*. It is the Law Minister and yourself ; through whom he can do it on behalf of the House.

SHRI SONAVANE (Pandharpur) : Under the guise of a point of order, they are allowed to speak.

SHRIMATI TARKESHWARI SINHA : He is only saying that it is the authority of the House to call the Attorney General. First understand and then speak.

SHRI P. G. SEN : That power is given under the Constitution.

SHRI GOVINDA MENON : The question of calling the Attorney General has not been

raised. I was referring to the fact that I would request the Attorney-General to appear in court and point out the provisions of the Constitution so that the privileges of this House will not be in any way affected. There was no question of calling the Attorney-General to Parliament; nobody wanted it; nobody raised it.

SHRI MADHU LIMAYE : He can come on his own; he has every right.

SHRI GOVINDA MENON : He has the right, and when the occasion arises he will come. Therefore, today, there is no difference of opinion between me, on behalf of the Government, and the Members of the House and Mr. Venkatasubbaiah and you, Sir, that so far as Article 105 goes, it gives an unlimited, absolute immunity to Members of Parliament. I said that. I suppose there is a consensus in the House on that matter. I further said that this matter would be brought to the notice of the Supreme Court, and accordingly the Attorney General yesterday did that, and the case has been posted as the first case to be heard on the 29th April.

Now, the question has been raised by Mr. Kundu and others as to whether the Supreme Court itself should not have looked into the matter and refused to issue notice or summons. A notice which issues from the Supreme Court may be either after a judicial decision or a routine, procedural matter. Now, as soon as the appeal memo is filed in the Registrar's office and the proper court-fee, etc., has been paid, as a matter of routine the notice goes out, and on that occasion also

SHRI SURENDRANATH DWIVEDY : Can a wrong notice be given as a matter of routine?

SHRI GOVINDA MENON : On that occasion, I had said: "I do not know whether the summons which issued is a judicial order or a ministerial order." I did say that. If a ministerial order is issued from the Supreme Court, I do not think there is any scope for any complaint on the part of Members of Parliament. A judicial order comes this way. There are certain matters which have to be decided

by the judges where a notice should go or not. I do not know that; I have no copies. In the morning's newspapers I find that this was a notice of lodgement of the appeal. But even so, what I said was relevant: whether it is a judicial order or a ministerial order, I said that our immunity is absolute with respect to Article 105. In the high court, the Attorney-General made that representation and he did it again yesterday in the Supreme Court.

SHRI KANWAR LAL GUPTA : No.

SHRI GOVINDA MENON : He had to make it clear as to whom he was appearing for, and he said, "I am appearing for the Union of India."

SHRI RANGA (Srikakulam) : That is a mistake.

SHRI GOVINDA MENON : Because a notice has gone to him and the Union of India has been made a party. It was done by the high court. If that were not there, the Attorney-General will be able to appear in the Supreme Court only if you authorise him to do so. At that time, the matter was referred to the High Court, I was permitted by the then Deputy Speaker

श्री मधु लिमये : माफ कीजिये, मैं इंटरप्ट नहीं कर रहा हूँ। आपने कहा कि एटार्नी जनरल को नोटिस नहीं जाता है यूनियन का तो वह आपकी एघारिटी के बिना नहीं जाता, यह आप गलत कह रहे हैं। मैं आपका ध्यान खींच रहा हूँ आर्टिकल 76 (3) और 88 की तरफ। एटार्नी जनरल एक ऐसा अफसर है कि जिसको दो अधिकार प्राप्त हैं। 76 (3) में कहा है :

"In the performance of his duties, the Attorney-General shall have right of audience in all courts in the territory of India."

और 88 में कहा गया है कि पार्लियामेंट के प्रति भी उनका अधिकार है।

"Every Minister and the Attorney-General of India shall have the right to speak

[श्री मधु लिमये]

in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote."

वह केवल वोट नहीं दे सकते हैं, वना आप में और उनमें कोई फर्क नहीं है। आप इस बात का खुलासा कीजिए कि एटार्नी जनरल ने क्यों कहा कि मैं यहाँ पार्लियामेंट का डिफेंड करने के लिये नहीं आया हूँ? इनको किस लिये ये सारे अधिकार दिये गये हैं?

SHRI GOVINDA MENON: What I understood from the note which I got from the ministry is that the Attorney-General said that he is there on behalf of the Union of India, of which Parliament is an organ.

SHRI KANWAR LAL GUPTA: Mr. De said, "I am not here to defend the action of Parliament."

SHRI SURENDRANATH DWIVEDY: Parliament is not an organ of Government; Government is an organ of Parliament.

SHRI GOVINDA MENON: I said "Union", not "Government". Parliament is one of the limbs of the Union and it is the interest of the Union to see that these various agencies do not act against each other.

SHRI VASUDEVAN NAIR (Peermade): You need not defend the Attorney-General here too much.

SHRI GOVINDA MENON: I am not defending the Attorney-General. I said, no question of Attorney-General appearing in Parliament was raised the other day or today. I raised the point that I would request the Attorney-General to appear in the Supreme Court and show to the Supreme Court the provisions of Article 105. When a ministerial order is issued, as was done in this case, I do not think any of our rights have been invaded. At least to dismiss this suit and to proclaim that the immunity of Article 105 is unlimited, the

court has to look into this matter. We should not take any exception to that. We want a decision that there is no right for any citizen to file a suit against any one of us for what we say in Parliament. That can be done only by a judicial order. Therefore, accordingly the matter is being placed before the Supreme Court. (Interruptions) Neither any of us nor the Speaker committed any mistake on the previous day. You, Sir, accepted my suggestion that the matter may be explained to the Supreme Court by the Attorney-General. The House also agreed with that suggestion.

SHRI KANWAR LAL GUPTA: He did not explain it. That is our charge against him.

SHRI GOVINDA MENON: That occasion will arise on the 29th. (Interruptions)

MR. SPEAKER: I am not allowing any debate on this.

SHRI S. KUNDU: The point not is as simple as pointed out by Mr. Menon. Any sort of ministerial order cannot come. As no appeal can be if its valuation is less than Rs. 20,000/-. It is apparent that it does not have the jurisdiction. That means that they know the privileges of the members are there and no appeal can lie. So, the ministerial order cannot come.

SHRI GOVINDA MENON: If an appeal is filed our privileges under article 105 arise. But our privileges will get breached only if a decision is made against us. Even to declare that under article 105 Members of Parliament have absolute privilege and absolute immunity, even for that the question has to be considered.

SHRI N. K. P. SALVE: My point is that the criteria will have to be the same for both the High Court and the Supreme Court. When the Delhi High Court issued the summons the Law Minister had taken a particular stand. (interruptions) It is not a frivolous point. (interruptions).

SHRI H. N. MUKERJEE (Calcutta North East) : The Law Minister has made a formulation which seems to me extremely dangerous. We have article 105 on the basis of which on that day, you gave your observations, which have a historical significance in view of what had happened earlier. Now the Law Minister talks of something which is laid down in the Constitution, of something of which judicial notice is automatically and necessarily taken by the judges of this country—whether they sit in the munsiff's court or in the Supreme Court, I make no differentiation between them; they have to take judicial notice of these things—because of article 105 being there, which is why you told us on that day "my members will not go", and in the mean time the judges come into the picture in a manner which I think is extremely regrettable. No body wants confrontation but if the judges try to drive a wedge into the relations between Parliament and the judiciary, things would be difficult. I know the Attorney-General very well and my relationship with him is such that I would not accuse him of anything unless I have reasons for it. From the reports I have seen from the papers I find that the Attorney-General has washed his hands off the matter by saying "I represent the Government of India, I do not represent Parliament; I am not supposed to say anything about the privileges of Parliament in this matter" at a point of time when the Judges of the Supreme Court—whether of the munsiff's court or the Supreme Court does not matter—when they were making some observations about the behaviour and the sense of responsibility of the Members of Parliament. We have been trying very hard to be as patient as possible. What has happened to the Supreme Court and what has happened to the High Court. The matter has went on appeal from the Delhi High Court to the Supreme Court and the High Court has got full cognisance of the point that in this case they could not do a thing to the Members of Parliament. Yet, in spite of that, a lodgement of notice takes place with some threatened consequences....(interruptions) So, I want the Minister to answer this. It is important that the judges must be under an obligation, legal, moral and otherwise, so

that judicial notice is taken of what is there in the article of the Constitution. If they do not do so, we cannot wait upon some application being made by some busy body to get something or other.

SHRI S. M. BANERJEE : I have nothing to add to what Shri Madhu Limaye and others have said on whether it was a summons or notice. I have read the newspaper today and I am surprised that the judges did not care to read the proceedings. They read only the report in the press about the proceedings. We are also discussing it from the newspaper reports. I would only request you that a copy of the proceedings should be sent to the learned judges, so that their mind will become clear. They should not say things against Members of Parliament. We do not want a confrontation but, at the same time, we want to establish once again that Parliament is not subservient to the Supreme Court Judges.

SHRI DATTATRAYA KUNTE (Kolaba) : As far as today's newspaper reports go, it seems the Chief Justice has said that the rules are framed under the Constitution and have been sanctioned by the President. Do the Judges want to forget that any rule which is contrary to any article of the Constitution is *ultra vires* and even if it is sanctioned by the President, it is not a rule at all? This ought to have been brought to the notice of the Supreme Court much earlier. They should have taken notice of it themselves, because as long as article 105 is disturbed there could be no rule and if there is a rule on the statute book, the Supreme Court as the best judges of law should have taken notice that no rule could be there against any article of the Constitution. The Supreme Court and the Law Minister should take notice of that.

SHRI S. KUNDU : Parliament must file a writ for quashing that order.

SHRIMATI TARKESHWARI SINHA : It has been said in the House that it would have been proper for the Attorney-General to defend Parliament. I would like to have a categorical explanation from the hon. Minister whether it will be considered as a

[Shrimati Tarkeshwari Sihna]

precedent so that whenever the Attorney-General is appearing before the Supreme Court, on his own he starts representing Parliament, or whether Parliament has to authorise the Attorney-General to appear on its behalf. If we say that Parliament is supreme and sovereign, do we really expect the Attorney-General to represent Parliament before the Supreme Court? In what capacity can he represent before the Supreme Court? Therefore I would like to know from the Law Minister whether he contends that the Attorney-General on his own can represent any matter concerning Parliament without being authorised by Parliament or Government. He says that he was representing the Union of India; when he appeared in the Supreme Court, he was not representing Parliament. He should clarify whether the Attorney-General should be authorised to represent Parliament or not.

श्री शिव चन्द्र झा (मधुबनी) : मंत्री महोदय ने कहा कि यूनियन आफ इंडिया का एक पार्ट यह पार्लमेन्ट है और एटार्नी जनरल जो हैं वह यूनियन आफ इंडिया को प्रोटेक्ट करने के लिये हैं। लेकिन इस हिसाब से पार्लमेन्ट के सदस्यों ने जो यहां पर कहा कि 105 में जो उनको रक्षा करनी चाहिए वह रक्षा उन्होंने नहीं की जिससे साफ हो जाता है कि अपने कर्तव्य से वे च्युत हो गए। इसलिए जुडिशियरी और पार्लमेन्ट में कन्फ्लिक्शन न हो, क्या सरकार एटार्नी जनरल को इस तरह की कोई वार्निंग देगी ताकि वह सबेते हो जायं वरना फिर उनको बदलने की बात सरकार सोचेगी ?

SHRI GOVINDA MENON : What happened yesterday in the Supreme Court was that the Chief Justice enquired as to how the Union of India was a party to the suit in view of the fact that the suit was for defamation between the appellant and the other respondents. The Attorney-General pointed out that the Union of India was added as a party to the suit before the High Court; so,

in the appeal also it will be there. The Chief Justice pointed out that he remembered the matter and felt that the Speaker was not to blame; if he had been informed of the correct position, the whole difficulty would not have arisen particularly in view of the fact that what the Supreme Court had done was that it issued merely a notice of the filing of the petition on appeal. When it was stated that the Law Minister should have pointed out the position to the House, the Attorney-General pointed out to the Court the observation made by the hon. Law Minister which showed that the act of issuing the notice was an administrative matter and not a judicial one.

This is what happened yesterday in the Supreme Court. While I contended and continue to contend that any action against any Member of Parliament for speaking anything in the House would be a breach of privilege on account of article 105, I would say that if a suit is filed in the Supreme Court or any other court—it was given a number in the office and summons were issued.....(Interruption).

SHRI RANGA : Not summons, notice.

SHRI GOVINDA MENON : or notice was issued; both are the same—that will not, according to me, be a breach of privilege. (Interruption) There are thousands of cases, writ petitions, appeal petitions, filed in the High Courts and the Supreme Court from day to day. It will be too much to expect that all these things will be read by the judges and then notices will issue.

What I am trying to do is to request the Attorney-General to point out to the court that this particular appeal which is in the Supreme Court contains an allegation with respect to what some Members said in Parliament. It is not bringing article 105 to the judicial notice of the judges. What is brought to their notice is, what is contained in the case is something which is covered by article 105. That has to be pointed out and it is for that purpose that the Attorney-General is attempting to place the case under article 105 on the 29th of this month.

This is exactly what we did in the High Court. Any question of breach of privilege will arise only when any action is taken in respect of any Member of the House.

MR. SPEAKER: Now, after this, do you expect me also to say something?

SOME HON. MEMBERS; Yes.

SHRI H. N. MUKERJEE: You stick to what you said last time.

MR. SPEAKER: I would just briefly state the whole position. After reading this thing in the newspapers, I again went into the whole background. Article 105 gives us immunities and privileges not to be dragged into any proceedings in the court for anything said or vote given in this House. Whether the Court issues a summons or a notice, it does not make any difference to us. I expect the Registrar to know... (*Interruption*) We are aware of the difference between summons and notice. In the notice of lodgement it was said that "if you do not appear, the proceedings will go *ex parte*."

The fact is that the proceedings are there in which the MPs are required to appear before the court, for what they said in this House. Whether the notice of lodgement is a part of the proceedings or not, whether the proceedings start after the notice, or whatever the point is, I think, the moment the notice is issued or any petition is submitted to the court on which a notice of lodgement is issued; the proceedings start.

The Members informed the House that they had received a notice in which they were asked to appear before the Supreme Court in connection with what they said in the House, and enquired whether they should appear or not. I thought, whether it is a summons or a warrant or a notice or even a request, it makes no difference. Ultimately, the privileges of the House are involved when they are asked to defend themselves for what they said in the House. The courts must know what is provided in article 105. That is the position.

As far as the rules of the Supreme Court

are concerned, I had a chance to look into them. I had a chance to discuss them with an able and competent senior officer, and the position is that the Registrar may issue a notice *suo motu* or, if he thinks there are certain matters, he may put up the case before the Judges for their orders. This is what I understood. In this case, the Registrar knew that in the proceedings not only Members of Parliament are concerned, but the former Speaker, Mr. Sanjiva Reddy, is also involved. Not only the MPs, but the then Presiding Officer also was asked to appear before the court. The only question before this House is: If once we accept that the Courts have a right to call us, whether it is an optional notice or a judicial summons, our privileges are at an end. So, in the circumstances, it was my duty to request the hon. Members of Parliament to ignore the notice.

14 hrs.

SOME HON. MEMBERS: Well done!

MR. SPEAKER: Without any reflection on the hon. Chief Justice or Judges or without questioning their authority, I have said in the very beginning that we are the last persons to seek any confrontation with the judiciary. But they also must know the position of this House and legislatures in general. I read in the papers that a Speaker of a Legislative Assembly is being called to appear before a High Court in connection with an adjournment of the House. I assure the Supreme Court that if within our rights we have every right to exist and protect ourselves and our rights also, we are the last persons to question their powers in their own sphere. We will show all respect to them.

About the Attorney-General there is not much to say. The Law Minister has brought to the notice of the House that in accordance with my earlier direction he has asked the Attorney-General to appear before the Court. I think when he appeared before the Court, he appeared on behalf of the Union Government; he is appearing again and he will be there to explain the whole position.

Mr. Salve is very impatient to appear before Supreme Court. If he appears before them

[Mr. Speaker]

fully knowing Article 105, I think we will have to bring a privilege motion against him.

SHRI NAMBIAR (Tiruchirappalli) : Today the Speaker commands the highest position.

MR. SPEAKER : The Speaker and the hon. Members are conscious of their privileges. I hope that all the other wings of the Government are aware of that also.

Now we adjourn and meet again at 3 p. m.
14.02 hrs.

The Lok Sabha adjourned for Lunch till Fifteen of the Clock.

The Lok Sabha reassembled after Lunch at Four Minutes past Fifteen of the Clock.

[MR. DEPUTY SPEAKER in the Chair]

*DEMANDS FOR GRANTS, 1970-71—(Contd.)

MINISTRY OF EDUCATION AND YOUTH SERVICES
—(Contd.)

श्री जनेश्वर मिश्र (फूलपुर) : उपाध्यक्ष महोदय, शिक्षा मंत्रालय पर बोलने के पहले मैं एक निवेदन करना चाहता हूँ कि आज सुबह जब रेडियो सुन रहा था तो उस समय एक सफेद हाथी का किस्सा सुनाई पड़ा। वह मेघालय में मिला और कल जब यहाँ बहस चल रही थी तो इनके शिक्षा मंत्रालय में हमको दो सफेद हाथी दिखाई पड़े। एक तो सी० एस० आई० आर० था और दूसरा एन० सी० ई० आर० टी०। मैं चाहूँगा और राव साहब से निवेदन भी करूँगा कि इन दोनों संस्थानों के बारे में इस सदन में अलग से बहस करावें। सी० एस० आई० आर० का इतना किस्सा बिगड़ चुका है कि वहाँ पर भ्रष्टाचार, अफसरों की आपसी गुटबन्दी और उसके साथ-साथ जो अफसरशाही की शृंखला है, वह बड़ चुकी है।

इनकी एक रीजनल रिसर्च लेबोरेट्री हैदराबाद में है, वहाँ के डाइरेक्टर डा० सिद्धू हैं और इनके सी० एस० आई० आर० के जो डाइरेक्टर जनरल हैं, इन लोगों के खुले आम एक दूसरे पर आरोप-प्रत्यारोप लगाते हुए बयान अखबारों में छपते हैं। 16 अप्रैल के अखबार को आप पढ़ेंगे तो देखेंगे कि इन लोगों ने एक दूसरे पर जम करके कीचड़ उछाला है। मैं चाहूँगा कि राव साहब अपने कर्मचारियों को काबू में रखें और इतने काबू में रखें कि वह उच्छ्वसल न हो जाएँ और समय-समय पर इस तरह एक दूसरे के निन्दा करने की कोशिश न करें।

अब मैं बात शुरू करूँगा और सच पूछिये तो उपाध्यक्ष महोदय, इनके महकमे ने और केन्द्रीय सरकार ने देश की शिक्षा व्यवस्था को पिछले बीस सालों में इतना खराब किया है कि कभी-कभी तो इतना गुस्सा आता है कि हम मांग करें कि इनके मंत्रालय को एक कोड़ी भी न दी जाए। बहुत ही खराब इन्होंने किया है और बहुत ही दिशा-हीन और गतिहीन शिक्षा व्यवस्था बनाकर यहाँ रख दी है। कल शिक्षा मंत्री जो ने रिपोर्ट में भी कहा है कि शिक्षा संविधान के मुताबिक राज्य का विषय है और इसलिए इनको जिम्मेवारी से भागने का बहाना मिल जाएगा। कल इनके छोटे वजीर साहब सफाई दे रहे थे। उन्होंने कहा कि संविधान के मुताबिक हमने जो देश की जनता से वायदा किया था, धारा 45 के मुताबिक, कि 14 साल की उम्र वाले बच्चों को लाजिमी तौर पर अनिवार्य, जरूरी और मुफ्त शिक्षा देंगे दस साल के अन्दर, वह दस साल हो गये और अब 22 साल होने जा रहे हैं और कहते हैं कि हमको अभी भी मालूम नहीं है कि कब तक पूरा करेंगे। फिर यह कहते हैं कि हमारे शिक्षा मंत्रालय को पैसा कम मिलता है। यह तो हम को कहना चाहिए। मंत्री जो अगर यह समझते