

14.36 hrs.

STATEMENT RE: RAW COTTON  
SUPPLY SITUATION

आ. दे० त्रि० पाटिल यवतमाल : नभापति  
मंडादय, मैंने महाराष्ट्र और गुजरात के संसद  
सदस्यों के दस्तबजों से कपास के बाजार की  
विकट स्थिति के बारे में और कपास की  
सोलिंग प्राइस इस दफ्ते बढ़ाने के बारे में  
ध्यान आकषेण प्रस्ताव । दिसम्बर, 1966  
को दिया था ।

अध्यक्ष महोदय : आर्डर, आर्डर ।  
आप तजरीक रखें ।

आ. दे० बि० पाटिल : मैं आपके जरिये  
से पूछना चाहता हूँ कि हमारे सार्वजनिक  
महत्व के ध्यान आकषेण प्रस्ताव का  
तुरफ मंत्री मंडादय का ध्यान हुआ नहीं ।

Mr. Chairman: Order, order. Shri  
Manubhai Shah.

The Minister of Commerce (Shri  
Manubhai Shah): Mr. Chairman, Sir,  
the House would recall that on the  
25th/26th of November,—

Mr. Chairman: How many pages?

Shri Manubhai Shah: Six pages.

Mr. Chairman: It may be laid on the  
Table.

Shri Indrajit Gupta (Calcutta South  
West): But as in the case of Call At-  
tention Notices, we should be per-  
mitted to ask one question each.

Mr. Chairman: Order, order. If he  
just lays it on the Table of the House,  
then on Monday, you can ask ques-  
tions, because that will save some time  
also.

Shri S. M. Banerjee (Kanpur): If  
the hon. Minister would be kind  
enough to supply a copy of it in ad-  
vance, we can put questions after  
studying it.

Mr. Chairman: That will be done.

Shri Manubhai Shah: Sir, I beg to  
lay the statement on the Table of  
the House. [Placed in Library. See  
No. LT-7518/66].

CONSTITUTION (TWENTY-THIRD  
AMENDMENT) BILL—contd.

Mr. Chairman: Yes, Dr. Singhvi.

Dr. L. M. Singhvi: Evidently, as  
two Supreme Court judges pointed  
out, the State Government of Uttar  
Pradesh has acted in clear contraven-  
tion of article 233 which relates to the  
appointment of district judges and  
article 235. As a matter of fact, if  
I may say so, the State Government  
has acted in clear contravention of the  
Constitution and has acted contem-  
ptuously of the Constitution. After all,  
articles 233 and 235 are very clear,  
and they clearly enjoin upon the  
State Governments to function in a  
particular way in respect of the judi-  
cial officers. While this was quite  
clear in the Constitution, the State  
Government resumes upon itself to  
treat the high court as a transmitting  
office; the State Government presumes  
to treat the high court with contempt,  
with disregard and, if I may say so,  
with an utter lack of respect. In this  
case, since the Supreme Court has  
struck down the appointments, it is  
only right that the Union Govern-  
ment should come here, not in defence  
of the action of the Government of  
the State but in rectification of it.  
What the hon. Minister of Law is  
claiming is that he seeks to rectify  
through this Act the mistakes or the  
errors of the lapses that were com-  
mitted by the State Government. It  
is far from the actual situation. As a  
matter of fact, if he was seeking only  
rectification, that would have been a  
different matter. But that is being  
sought is to validate what was wrong;  
what is being sought is that what was  
wrong and unconstitutional is sought  
to be made constitutional on the  
ground which is not correct.

[Dr. L. M. Singhvi] :—

In the Statement of Objects and Reasons of the Bill, it is stated that the functioning of the district courts in Uttar Pradesh has practically come to a standstill. I agree that after the constitution of the courts was exposed to certain objections, it may be a question of doubt. It may throw some doubt on the functioning and on their acts, but I would like to point out here that by no means the working of the judiciary in Uttar Pradesh has come to a standstill. I learn that out of the 10 directly recruited judges whose cases are in doubt, some were recruited while the matter was pending before the Supreme Court; that was hardly a correct thing to do for the State Government. What is more out of the 10 directly recruited district judges, why should the Government be so concerned about the appointment or validation of the appointment of these few judicial officers and even go so far as to bring about a constitutional amendment? It seems to me that this is quite improper, and the Government is doing this in a somewhat light hearted manner. It is wrong to say that the working of the judicial courts in Uttar Pradesh has come to a standstill or has been paralysed. I would like the hon. Minister to clarify as to how he came to make the statement like that, in the Statement of Objects and Reasons appended to this Bill, because I find from the information supplied to me that this is not the actual situation. As a matter of fact, the courts of these four district judges whose appointment has been invalidated by the Supreme Court have been functioning. The judiciary is functioning normally in the State of Uttar Pradesh. I would like to see that this matter is reconsidered even at this stage by the hon. Minister. Let the hon. Minister tell us as to whether Mr. Setalvad's opinion has been obtained and whether this action is in consonance with the opinion of Mr. Setalvad.

Finally I think the hon. Minister should tell us about the actual situa-

tion of the functioning of the judiciary in Uttar Pradesh. I hope that he would be willing to reconsider this matter and perhaps to withdraw this Bill from the House.

**Shri G. N. Dixit (Etawah):** Sir, I rise to support this Bill. A good number of hon. Members on the Opposition,—some of them are eminent lawyers—charged the Uttar Pradesh Government of *mala fides* with regard to these rules. My submission is this. The suspicions of theirs is ill-founded. If they know the facts as they are, I think they will themselves agree with me that the reasons that they have given for their suspicion were not well-founded.

What is the position? It was in the year 1951, 15 years ago, that these rules were framed and at that time, when the rules were framed, that illustrious and eminent statement and jurist, Pandit Govind Vallabh Pant was the Chief Minister of that State. The rules were framed after full support from the Advocate-General and under the provisions of the Constitution. They were all framed under article 309 of the Constitution which I shall now read. I shall leave the first part of that article, which refers to recruitment and conditions of service. I shall read the proviso; the rules were framed under the proviso, and the proviso reads as follows:

“Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature...”

It was under this provision of article 309 that these rules were framed. These rules having been framed, they were acted upon completely for 15 years. No challenge came from any quarter for complete 15 years.

**Shri Bade (Khargon):** Are these rules meant for the judicial services or the other services in the State?

**Shri G. N. Dixit:** The Government has got the power to make rules about all the services. These rules are about the judicial services. This is in the Supreme Court judgment itself and the high court judgment itself. I shall refer to Issue No. 1 that was framed before the Full Bench of the high court, and that was whether the Uttar Pradesh Civil Service (Judicial Branch) Rules, 1961, notified to have been made by the Governor were under the Constitution. These rules were made under article 309. Therefore, the question does not arise so far as the point that they were framed under article 309 was concerned. Having been framed, they were acted upon for 15 years without any challenge. When the challenge came, the High Court held that the rules were valid and rightly framed under article 309. The matter went to the Supreme Court which held otherwise by an interpretation of the words of article 233. When there is a difference in judgment between two courts, when the thing has been acted upon for 15 years, this argument will not hold good that there was no legal case for the Government to have framed these rules.

Every day matters go to the Supreme Court and the judgments of all the High Courts are set aside. At the moment, a matter has been heard for 25 days by the Supreme Court. From the time the Constitution was framed, it was acknowledged that the Parliament has got the power to amend fundamental rights. Several amendments have been made by this House. The Supreme Court—its constitutional bench—has upheld the Zamindari

Abolition Land Reforms Act of UP and Bihar and so many other Acts have been upheld by the Supreme Court—Acts of Parliament amending fundamental rights have been upheld by the Supreme Court. But for 25 days, all the 11 judges of the Supreme Court have been hearing the arguments that this Parliament has no power to amend fundamental rights. If this is upheld, all those decisions of the Supreme Court and all Acts passed by Parliament will vanish. Can anybody say what shall be the decision of the Supreme Court in a particular case? For 15 years these rules were acted upon. Now the Supreme Court holds that they are void for two reasons. One is that a class of judicial officers generally called JOs and who are entrusted with revenue work have been considered and from that rank also people have been taken in, which was prohibited by the provision of article 233. The second reason is there should have been consultation by the Governor with the High Court and not with two judges. The committee that was constituted under the rules consisted of 2 High Court judges and one judicial secretary of U.P., the legal Remembrancer. The Supreme Court held that the consultation of the Governor should have been with the full court. May I say, Sir, this committee never finalised anything. It sent the whole recommendation to the full court. It was with the approval of the full court that the matter went to the Governor and the appointments were made. But the Supreme Court goes not by substantial compliance, but by the interpretation of the statute as passed by Parliament and in their wisdom, they held that there was not complete compliance with that article.

In any case, there was substantial compliance. Then the question arises, what is the duty of this House in the matter? For 15 years so many judges have been appointed and thousands of cases have been decided. I have great regard for my friend, Mr. Nath Pai, but I am sorry he has not read between the lines correctly so far as these two decisions of the Supreme Court are

[Shri G. N. Dixit]

concerned, where it has been said that if a judge is held to be wrongly appointed or as holding office without validity, all these decisions given by him will be questioned. I am reading from the full bench decisions to which my hon. friends have referred. One case was referred to by the Law Minister also. In the case H. Kumar Bose Vs. Jyoti Prakash and Jyoti Prakash Vs. the Chief Justice, Justice Gajendragadkar said:

"Apart from the Government of India, it would *prima facie* be theoretically open to any litigant to raise the question about the competence of a judge to hold his office as such on the ground that he has attained the age of 60 years and if a serious allegation is made in that behalf, it may have to be judicially determined in a proper proceeding."

The other judgment says:

".... a serious situation may arise because the cases which the said judge might determine in the meanwhile would have to be reheard, for the disability imposed by the Constitution when it provides that a judge cannot act as a Judge after he attains the age of superannuation will inevitably introduce a constitutional invalidity in the decisions of the said judge."

After these two pronouncements of the Supreme Court, can this House say positively that the decisions given by these judges are perfectly all right, because the High Court has said so? It is the Supreme Court whose declaration of law is final in this land, not that of any High Court. With these two decisions of the Supreme Court and the appeal lying with the Supreme Court and 25 days having been given by the 11 judges in hearing arguments against all those decisions which they themselves have given, who can say that all these judgments which have

been given are correct? What is the duty of this House and of the Government? For 15 years, on account of one interpretation which was held to be good by the law officers of the State and by the High Court, they have been acting according to those rules and thousands of cases have been decided. What was the fault of the citizen? The Minister read that provision where 'District Judge' has been defined. From the munsif onwards up to the District Judge, everybody is a District Judge. All those appointments and all those decisions are invalidated. Is it not the duty of the House to clarify the position and say that all those appointments and decisions hold good?

14.49 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

A challenge has been made that it is not proper that constitutional amendments should be made so frequently and the Supreme Court's decision should not be tried to be side-tracked. I meet this challenge. I congratulate the Law Minister. For the first time I say this is a Bill in which the Supreme Court's decision has been honoured perfectly. There is no desire to supersede the Supreme Court's decision. I want you to pursue these things and not to hold opinions after a cursory glance.

I want you to see the Bill as it is. What the Supreme Court has done is this. The Supreme Court has held that the appointment of judicial law officers was wrong, the appointment of those officers who were holding revenue courts was wrong. This does not only to those judicial officers although they were appointed before the Supreme Court decision is complied with. From the time the decision of the Supreme Court has been made, after that all appointments shall be done according to the decision of the Supreme Court as interpreted by the Supreme Court and not



as interpreted by the rules. The only thing attempted by this Bill is that all those decisions which were given before this Bill comes into force and all those appointments of officers other than judicial officers which were made before under these rules should be held valid. My submission is, it is the duty of this august House to help the citizens of Uttar Pradesh to see that the judiciary in the State does function and the crisis that has been created by the Supreme Court decision may be set right.

With these words, Sir, I support the Bill.

**Shri N. C. Chatterjee (Burdwan):** Sir, a serious situation has developed in the State of Uttar Pradesh. The tangle has not been created by Shrimati Sucheta Kripalani or her Cabinet. It is a legacy from the past. In 1951 the U.P. Judicial Service Regulations were enacted when the late Pandit Pant was the Chief Minister. I was in Allahabad in connection with the Allahabad High Court Centenary celebrations, and after I heard a number of judges and lawyers I was convinced that the time has come when the Government has to take some action to put the whole thing in order, and the Government would have been guilty of dereliction of duty if they had not sponsored a Bill of this character.

Sir, nobody likes tampering with the Constitution. I am one of those who have raised their voice and protested against the frequent amendments of the Constitution. I remember that I won the great case of the Bengal Immunities where the Supreme Court struck down a previous judgment of that court itself—in the Bombay Motors case—and it declared the sales tax as illegal as it was imposed in certain States. But the then Government introduced a Bill to validate that decision. I raised a point of order that it was unconstitutional and it should not be done in this manner. Pandit Nehru was the Prime Minister then.

He said that he would call the Attorney-General. The Attorney-General was called and there was a debate. Ultimately it was accepted as constitutional and the Supreme Court upheld it as constitutional.

**Shri S. M. Banerjee:** Let us call the Attorney-General here also.

**Shri N. C. Chatterjee:** I am sorry the Attorney-General is in Geneva now fighting the great battle of India against Pakistan before the Kutch Tribunal, otherwise it would have been all right.

**Shri S. M. Banerjee:** Then refer it to the Supreme Court.

**Shri G. S. Pathak:** The Supreme Court will say what they have already said.

**Shri N. C. Chatterjee:** It will not be right to criticise the decision of the Supreme Court. We have got to accept it as final. Article 141 of the Constitution says that the judgment of the Supreme Court shall be binding on all. There may be some exaggeration, as Shri Nath Pai has pointed out, in some of the statements in the Statement of Objects and Reasons. But one statement is correct, that as a result of this judgment a serious situation has arisen and doubts have been created as to the validity of a number of judgments, decrees and orders. Remember, after 1951, three times judicial appointments of this nature were made. In 1953 appointments were made, some years later another round and then in 1963. Therefore, three sets of judges were appointed from 1953 and they were posted in different districts. They have been functioning in different districts as District Judges, Sessions Judges and so on. Their judgments are being challenged. My friends are right that the Full Bench has decided, but now the decision of the Full Bench of the Allahabad High Court is itself under appeal and the Supreme Court may strike it down. I am, therefore, pointing out that the situation is such that hundreds of

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judgments, decrees and orders are in peril and the whole situation should be clarified.

What has happened? What has happened is that under article 233 the Governor or the Government of Uttar Pradesh should have consulted the High Court. Ordinarily the High Court does not sit. The High Court appoints two or three judges and they decide, possibly, in consultation with the Legal Remembrancer in my State or the Judicial Secretary as he is called in Uttar Pradesh, they decide who should be appointed judges. What happened here was, the Governor nominated two Judges of the High Court and the Judicial Secretary. Actually the judges themselves should have appointed these two judges, but here the Judges were appointed not by the High Court but nominated by the Governor. That is the whole trouble. Nobody doubts the ability of these people, the eligibility of these people, the qualification of these people. Their record has been quite clean and good and up to the mark. Why should these people suffer?

I have been looking into this matter a little carefully and I find our Supreme Court and our Federal Court have affirmed the view taken by the House of Lords in 1917—Appeal Cases, in the great case of 1917—Appeal Cases at page 174—Montreal Street Railway *versus* Normandin—I am reading from *Maxwell's Interpretation of Statute*—I, Tenth Edition—page 381:—

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be general understood as

mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only."

The same principle was applied by the Federal Court in 1945. The same principle is confirmed by the Federal Court in construing a section of the Government of India Act and this very case was valid. They said:

"Direction for consultation is directory and not mandatory."

They have referred to Section 256 which also speaks about consultation with the High Court. They have said:

"The direction as to consultation laid down in S.256 is directory and not mandatory and non-compliance with it would not render an appointment otherwise regularly and validly made ineffective or inoperative."

The principle is this. Why should these poor people suffer? Why should the litigants suffer? Why should the citizens suffer? The principle laid down by the House of Lords in the Montreal case is very sound. They have said that if it leads to general inconvenience, injustice to persons who have no control over those entrusted with the performance of duty etc. etc. why should they suffer? Both in the Federal Court and in the House of Lords this principle has been invoked. I am very happy to tell you that in 1957 the Supreme Court of India also held it in one case—1957 Supreme Court Page 912. I am advocating that this principle should be applied here.

It is true there has been some confusion. It may be that the Minister has gone a little too far to say that the entire judicial administration is coming to a stand-still or has become paralysed. It cannot be so. At the same time, we do not know what the position is. Supposing they remove them, then the entire judicial structure would have to be re-shuffled.

completely. It not merely affects these 17 or 18 persons but it affects others also. As I said, from 1953 three times Judges have been appointed in this manner. Those judges have delivered hundreds of judgments. Ordinarily, roughly, 600 to 700 judgments are delivered in each year by each judge. Therefore, these judges have delivered over 2000 judgments every year and in these 13 years many thousands of judgments have been delivered by them. According to the Supreme Courts decision, their judgments have not been directly challenged, but they will also have to be set aside as invalid. Then three judges were appointed and then eight and then six judges were appointed. If all the 17 judges go, very disturbing effects will be created on the entire judicial system.

15 hrs.

I am, therefore, submitting that although we deprecate periodical amendments of the Constitution and partial obliteration of our organic law, still situations do develop, not due to the fault of the citizens who will be penalised or of the litigants who will suffer. Therefore, this very salutary principle that you should look upon them as directory, so far as appointments and functions of the appointees are concerned, and not mandatory, should be held to be valid and we should proceed with this Bill.

It would have been much better if it were possible to have the opinion of the Attorney General or to refer it to the Supreme Court and have the candid opinion of the Supreme Court. But you know, Sir, that will take time. In the circumstances, very reluctantly, not very happily but with a certain amount of caveat we are saying that there is no way-out and we should put the entire judicial system in order.

Actually, two Judges of the High Court and the Judicial Secretary had been appointing the judges for the last 13 years all along. There has been no deviation from that. Look at the practical side of it. Supposing,

in conformity with article 233 this would have been done, what would the High Court have done? The Chief Justice would have been written to, the Chief Justice would have nominated or the Full Bench meeting would have nominated two Judges and they would have appointed them. Two senior Judges were there.

Then, the Judicial Secretary is an outsider. He is not a judge. He may be a potential judge. In my State of West Bengal, I know, the Judicial Secretary's post is the post from which a High Court Judge is recruited. He is practically called a potential judge. Ordinarily, his voice is not so effective as the voice of the other two Judges. Surely, in a committee of three, two would dominate over the third. Therefore, the voice of the Judges must have predominated.

Then, qualified men who have put in the requisite number of years of practice or who have served the State in some capacity according to the rules have been held to be perfectly eligible officials and they have been appointed. They have discharged their duties faithfully and loyally and have established a good record for themselves. Some have earned the promotion. Should they now be turned down and the citizens penalised, judgments invalidated? Should we wait till the Supreme Court decides whether the Full Bench judgment is correct or not? Suppose, after two years we get a judgment that all these judgments were wrong. So, there should be a certainty in this. People do not know whether they are appearing before a judge who is properly appointed or not. They do not know. All these 17 or 18 judges are also feeling rather embarrassed.

**Shri S. M. Banerjee:** They blundered and were waiting for 15 years.

**Shri N. C. Chatterjee:** I am only pointing out the situation that has now developed. I am not justifying their

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action. But having regard to the improper action—we must accept it as illegal action, as unconstitutional action—an unconstitutional action having been done with the concurrence of two Judges, and in every case men qualified to be appointed have been appointed and they have rendered a good account of themselves. I think, in the interest of all concerned we have got no other alternative but to submit to this kind of legislation and put the house in order.

**Shri Narendra Singh Mahida** (Anand): Mr. Deputy-Speaker, Sir, this Bill involves appointments of district judges in Uttar Pradesh which were challenged in the Supreme Court which ruled that all such appointments were invalid in accordance with articles 335 and 333. Under article 141, as Shri Chatterjee very rightly said, the decision of the Supreme Court is final. That is why we have to validate these appointments. We have to correct the errors which were committed by the authorities previously.

**Shri S. M. Banerjee**: You agree that they had made a mistake. Then, why not punish them for the mistake?

**Shri Narendra Singh Mahida**: I am coming to it.

At the introduction stage of this Bill, Shri S. M. Banerjee had stated:—

"the validation of the appointments, posting, promotion and transfer of district judges, which were held illegal under article 323 should not be allowed to be validated."

Shri Chatterjee just now gave the reply to that by saying that these appointments were made by the Governor instead of by the Court and it was a technical error probably.

**Shri S. M. Banerjee**: What I said was that the appointments need not be validated. What they are going to

do is to validate the appointments. Why should this Government for 15 years behave like Kumbhakarna? For 15 years they slumbered and now suddenly they realise it.

**Shri Narendra Singh Mahida**: Anyway, Shri Banerjee has his own right to say what he wants to say. I have to say that you cannot punish after 15 years, as it is, if 15 years ago some errors were committed. Even according to the Supreme Court—and we cannot challenge the Supreme Court order—even if it is taken for granted that it was a technical error, what can we do about it? What have to correct all those judgments. We cannot go back to 15 years and say that all these judgments were delivered wrongly. Then, a great confusion will be created.

Shri S. M. Banerjee says that he is not against the validation of those judgments, because the judgments, decrees and orders passed or sentences awarded, should be validated. Shri S. M. Banerjee asked for the validation of that. His objection is only to the validation of appointments. The situation has arisen out of the judgment of the Supreme Court in which the appointments of district judges in Uttar Pradesh and three other States have been rendered invalid because their appointments were considered not in accordance with the provisions of article 233.

Through this Bill we are introducing a new article, 233A, which states:—

"Notwithstanding any judgment, decree or order of any court,—

- (a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State,"

It is a well known practice that we have been selecting eminent lawyers who are experienced and appointing them as judges in the High Courts or in the lower courts. This practice is a welcome practice and it should be continued. If Members object to that also and say that they should also come through the public service commission, I do not think eminent lawyers' services can be utilised. When we want fair jurisprudence and when we want honest judgements, we must have this provision. Why should we object?

The other judgement also had created the position that the power of posting of district judges under article 233 did not include the power of transfer of such judges from one station to another station. All these provisions in article 233 are meant to be changed.

These two judgements have created a certain situation which this Bill seeks to correct. What is being done is that those persons, who were not ineligible or who were eligible under the Constitution, alone are being regularised. It is not a matter of merely protecting any individual; it is really a matter of protecting interests of litigants. Without this nobody in future will believe in the judgement of courts. It is this situation which is being corrected and regularised through this Bill.

Dr. L. M. Singhvi remarked at the introduction stage of the Bill, very rightly, that the device of constitutional amendments, even if it was permissible under the Constitution, was not to be caused in a light and casual fashion. This should be noted. But the facts are that the judges had delivered the judgements, whether the Government had proper authority to appoint them or not, but these judges had passed sentences and these sentences and judgements had been carried out. No legal wrong had been done to anybody. There was a procedural mistake according to the Supreme

Court. We are regularising the constitutional position and hence this Bill. Through this Bill we are only validating what had taken place. I therefore, support the Bill.

Shri Nambiar: I am strongly in opposition of the Bill and I request the whole House to throw it out and I hope that when the voting comes, it will be thrown out. I strongly support the points made by Mr. Nath Pai.

An hon. Member: We shall make it impossible.

Shri Nambiar: Let us see.

Is the Constitution to be amended for the sake of the evils committed deliberately by certain officials of U.P. administration? The very reading of Article 233 of the Constitution shows this very clearly. It is a very well written clearly. But after 233, 233A is coming and that Article gives a bad reading. Let us see what it says:

"...no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State..." etc., etc.

A long rigmarole is given. Is that to be added on to this Constitution? What for? We do not know the reason. The reason that the hon. Minister gives is that there is the possibility of all the judgments delivered by these judges getting invalidated later on. So far the Allahabad High Court has not invalidated them; on the other hand, the Allahabad High Court has validated them. It is contended that suppose it goes to the Supreme Court and the Supreme Court says that all these things are bad in law, then what will happen. That is a hypothetical position. Suppose something happens to the whole world tomorrow or something falls on this House tomorrow, then what will happen. That is a thing which we will face when it

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comes. We need not bring any Constitutional Amendment for that now. Let us not mix the problem of the people who are affected by these decrees. The hon. Minister wants to convince us by saying that the decrees already made are bad in law, the people affected are to be safeguarded and, therefore, the House must pass the Bill. We cannot agree because, the facts are not so. The decrees so far given are not bad in law. On the other hand, the decrees so far given are good in law, according to the Allahabad High Court's judgement. Then what is bad in law? Something is bad in law, and that is, the appointment of 11 judges. This House—the Parliament—with its Constitution (Twenty-Third) Amendment Bill is not going to regularize the appointment of those 11 judges. After all, the appointment of 11 judges or the removal of 11 judges is too small a matter for this House. This House deals with the problem of 40 crores of Indian people and those people who are helping us abroad. We are not here to look after the cases of 11 judges of U.P. District Courts. If there is a malady, if there is a mistake, those who are responsible must suffer.

An hon. Member: Must be dismissed.

Shri Nambiar: They may be dismissed. They may be put in those prisons where the District judges put others wrongly. My point is this. We should not be called upon to hold the ill-gotten baby of the misdeeds of the U.P. administration. We are not here to do that. Not only this, the black spot of it, the scar of the ill-gotten baby will be imprinted in the Constitution for ever, to be seen by all—not only in India but everywhere. It will be a very very bad and sorry affair that this will be imprinted there. This is not a separate legislation. I can understand if there is a separate legislation called the Validation of the Decrees made by the

District Judges of U.P. Bill. You may bring a separate Bill like that and we may pass it. But here in the Constitution which we hold very high, if this—I may be excused for saying this—nonsense is added on to the Constitution, then it will look that the entire work of this House is also nonsensical. Please, for Heaven's sake, do not make us commit that.

I must answer one point. It is contended that if all the decrees delivered by these district judges become invalidated later on, the people will suffer. I have an answer for that. If at all such a contingency arises, then the House will be there to save the people; we will go to the rescue of the people who are affected by this and say that since somebody had committed mistakes, the people should not suffer. Then we will pass a Bill validating anything. Then you will get the fullest co-operation from the Opposition. Then only you will be justified in doing so and not now, at the fag end of this session of the Third Lok Sabha. Unfortunately for us, this session has been extended just for this; otherwise, we would have finished the whole thing yesterday itself and gone back. We are made to stay here for one more day to pass this despicable sort of legislation—I may be excused for this expression. They are not sure that it will be passed today and that is why, they have extended this session upto Monday, the 5th December, so that they can lick their wounds and see what could be done.

I have a great respect for Mr. Pathak, for the efficient way in which he has been piloting this Bill. But I am sorry to say that he has confused us. I was also partly confused. I asked him whether the jail gates of U.P. would have to be opened and he said, 'yes, it is likely'. I went and verified the whole thing. Now I am convinced that this is a bad law and it should not be allowed to be passed.

I request you to help us in getting rid of this Constitution Amendment Bill.

Shri A. N. Vidyalkar (Hoshiarpur): Some friends on the Opposition side have very vehemently opposed the amendment to the Constitution. But I think they have not tried to realise what is going to happen if this amendment was not passed. In fact, I believe, it was really most reluctantly that Law Minister has brought this amendment. No one desires to make an amendment to the Constitution every now and then. No one desires that every day we should come before Parliament and propose amendments to the Constitution. I also agree with all the friends—I think the Law Minister also agrees—that frequent changes in the Constitution really bring down the respect for the Constitution and it does not do credit to us. But having said that, I also agree with my hon. friend who had just spoken, Mr. Nambiar, that those who have been guilty, those who could not take proper action at proper time and those who have been responsible for creating this situation, should be punished. But the difficulty is whatever punishment you might impose, howsoever severely you might punish them, that will not solve the problem of the people who would be affected if we did not make this amendment to the Constitution. That is the difficulty. We should concentrate our attention on those who have been responsible for all that, and I would request the Home Minister and the Government that they should take proper action; they should issue proper instructions to the administrative officers and wherever they neglected their duties or faltered, they must be punished very severely because they created this situation. But having said all that, I would say that this does not solve the problem because the administrative difficulty is there; that confusion will be there; if we did not accept this amendment, that will create a new situation which would be worse than

the present one. Therefore, I agree very reluctantly to this amendment. But I may assure you that no one just wants an amendment of the Constitution and no one agrees to it readily. We also desired that the Law Minister will take care to see that amendments were not brought forward very frequently, but still we had to accept this amendment because there is no other go.

There is one thing more that I would like to add. Ours is a new democracy. We are still in a nascent State. We made our Constitution some years ago. What is the process going on now? In fact, our judiciary and legislature are trying to correct each other. When we passed some law, some amendments were suggested; or when certain difficulties arose in the Constitution and the judiciary took some attitude, we come before Parliament and we try to correct ourselves. This is the process that is going on and I think it is a healthy process that the judiciary and the legislature are correcting each other. That is very necessary and very essential and very inevitable at this stage of our Constitution, when we are groping in the dark and we are trying to proceed further and trying to correct the provisions of our Constitution and our laws. So, this process should not altogether be rejected, I think; it is a healthy process and we should take it in that spirit. We should not think that the judiciary has intervened or that the judiciary has imposed its will on the legislature or that the judiciary and the legislature were on fighting terms. In fact, they were trying to correct each other and help each other. Therefore this process should be welcomed. I think that this process will continue for some more time, and afterwards we shall come to a stage where the defects which we are finding and which we could not foresee earlier would have been removed and then frequent amendments to the Constitution would not be necessary. We should consider this Bill in that perspective that when the judiciary points

[Shri A. N. Vidyalankar].

out something we just try to correct ourselves and give a correct shape to our Constitution. It is in that spirit that I would say that this amending Bill should be accepted.

**Shri Bade:** I strongly oppose this Bill because this Congress Government is habituated to committing mistakes first and then coming to Parliament to correct those mistakes. The Statement of Objects and Reasons appended to the Bill says:

"As a result of these judgments, a serious situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these district judges and a number of writ petitions and other cases have already been filed challenging their validity."

I would submit that this is not a correct statement of facts. Is it not a fact that the judgment of *de facto* judges is never declared void or illegal? And yet the hon. Minister has said that after 8th August, the judgments will be declared invalid. If doubt has been thrown, why should he not refer the matter to the Supreme Court and ask for their opinion as to whether the judgments will be valid or not? The Allahabad High Court has already decided that the judgments of these judges are not invalid.

Then, it has been stated:

"The functioning of the district courts in Uttar Pradesh has practically come to a standstill."

That is also wrong. According to my knowledge and my information, about 100 judges are functioning at the district level and they have been appointed in the U.P. Judicial Service; only 11 judges are affected; and out of these 11 judges also, the question arises only in the case of four judges,

because the rest are serving somewhere else.

I find that in the Congress Party also there was some difference of opinion, and no less a person than Shri Raghunath Singh himself had said at the party meeting that only four judges would be affected and not all the judges. For the sake of these 11 judges or 4 judges only, are Government going to snatch away the rights which are given to the public at large? It is very essential that the judiciary should remain quite independent of the executive. But what is the provision that we find in the Bill? It reads thus:

"no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(ii) no posting, promotion or transfer of any such person as a district judge, made at any time before the commencement of the Constitution (Twenty-third Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void.....".

In other words it means that it shall not be questioned in any court. Under the Constitution, certain rights were given to the public and they were given an assurance or guarantee that they will have an independent judiciary. Now, under this amendment, if appointments are made by the executive or by the Chief Minister or by the Public Service Commission of a State or by the Home Minister, that cannot be questioned. That is really a mischievous provision, for that would mean that the executive would have the upper hand over the judiciary.



I thought that Government would bring forward some amendment to ensure the independence of the judiciary; I had thought that they would appoint some Judicial Minister or Minister of Justice and make judiciary a separate portfolio or a separate Ministry. This is what Shri M. C. Setalvad has to say on this matter. The report goes on as follows:

"Shri M. C. Setalvad, former Attorney-General of India said here this afternoon that a constitutional change by providing for a Minister of Justice independent of the Home Ministry for making judicial appointments and supervising the administration of justice was an urgent need widely felt for securing the independence of the judiciary in India. Mr. Setalvad who proceeded said, the role of the judiciary was dependant upon the judiciary functioning entirely independent of the executive; particularly in a welfare State where the executive powers and functions were legitimately growing and were bound to grow further, the independence of the judiciary, he suggested, should be secured by the selection of proper persons as judges. In that direction, the establishment of a Ministry of Justice independent of the Home Ministry to select the right persons to function as judges was bound to have a good effect."

I would also like to refer to the Law Commission's report in this connection. There is a circular to the following effect in Madhya Pradesh and I shall point that out presently by quoting from the Law Commission's report itself. This is what the Law Commission has to say:

"One may in this connection draw attention to a provision in the Madhya Pradesh Judicial Service Recruitment Rules, 1955, which is as follows:

"21(2). The Governor may, if he thinks fit, appoint a Judge of the High Court to be present at the interview. This judge so appointed shall advise the Commission on all points on which the Commission may require his advice, but he shall not be responsible for selection of the candidates."

These are the rules framed by the Madhya Pradesh Government. The Commission has also stated:

"In the result, the judge's view of the eligibility of the candidate does not prevail. It is, therefore, not surprising that in these circumstances the High Court judges in some of the States have refused to participate in conducting the test. As has been stated 'this method appeared to have been abandoned, because, as is generally believed the role of the Judge was reduced to that of a supernumerary spectator and the High Court naturally declined to accept such a position.'"

In regard to the Public Service Commission, this is what the Commission has to say:

"Having regard to the important part played by the Public Service Commission in the selection of the subordinate judiciary, we took care to examine as far as possible the Chairmen and some of the members of the Public Service Commissions in the various States. We are constrained to state that the personnel of these Public Service Commissions in some of the States was not such as could inspire confidence, from the points of view of either efficiency or of impartiality. There appears to be little doubt that in some of the States appointments to these Commissions are made not on considerations of merit but on grounds of party and political affiliations."

[Shri Bade]

The Commission further says:

"However, the evidence of experienced lawyers and some of the judges clearly established that the impression in the public mind was that the Commissions did discharge among other functions that of redressing communal inequality in the State Judicial Service."

My contention is that the first point that the hon. Minister has made that all the judgments would be thrown as invalid is not correct. If there is any doubt Government should have referred the matter to the Supreme Court. Secondly he has stated that the working of the judiciary has come to a standstill. That is also not correct.

Besides, if this amendment were made, everywhere, the Chief Minister, the Home Minister plus the politics and plus the party feelings will enter the field and all the judges would merely become tools in the hands of the Chief Minister. Articles 233 and 235 give the judiciary independence from the executive in the matter of appointments etc. But by this amendment Government are enunciating a very dangerous principle in the Constitution which would take away the independence of the judiciary.

Therefore, I oppose this Bill.

Shri K. C. Sharma (Sardhana): I am in a position to say that the Ministers concerned and the government machinery in U.P. did what they did with the best of motive when they were lacking the necessary personnel in the judiciary. There is no point in reading into it something that did not exist.

The Judges were qualified. They were appointed by competent authority. The only mistake was that instead of referring to the High Court, two of the Judges of the High Court were called. Those very Judges might have

been sent by the Chief Justice. It was just a procedural mistake. These mistakes do happen.

I think one of the mistakes we made was to give to ourselves too long a Constitution with too many provisions. Human life refuses to be restricted to the letter of the Constitution or to the letter of even the scriptures. What was good in the days of the Vedas is no longer true today; what was the situation in 1946 is no longer true today.

Shri S. M. Banerjee: So there is no Constitution now!

Shri K. C. Sharma: The Constitution exists. A Supreme Court Judge in the USA has said:

"If men were angels, no government would be necessary. If angels govern men, no law would be needed. The problem is when men govern men. Then let government govern the governed and next government governs itself".

The point is that when government governs by men, they are bound to err. The question that governing power is limited, is the question. The first question is that the King's Government, as they used to say, must be carried on. The principle of government in modern times is that justice is done to the common man. When justice is done to the common man, it means that it must be a lawful authority, and authority is the rightful authority. It was not a man from the street who was put in the exalted chair of judicial authority. He was duly qualified.

We were short of judges. Many people were requested. Many people refused to accept the offer of district judgeship. So a situation arose when with all the good motive in the world and with the best capacity of the man in the chair, something was done where the letter of the law was not strictly speaking adhered but the spirit of the law was taken good care of. The man was qualified. The man was appointed by qualified people. But the

procedure was not followed. Therefore, some lacuna remains.

Shri Nambiar: It is a constructional provision.

Shri K. C. Sharma: He does not understand the meaning of due process of law. Law consists of two things substantive law and procedural law. Every Constitution has a procedure; every Constitution has in it substantive law. In order to protect yourself from the cold, you have the coat which is also has the crease and is well knit. We must differentiate between procedure and substance. Without substance, no life exists. You must understand that principle.

This question arose in the United States when war was going on. President Lincoln did something which was not in accord with the constitutional provision. He said:

"To save the Constitution, I must save the nation. To save the limb, I must save the body. If the body goes, the limb goes itself. If the nation is destroyed, the Constitution does not remain".

Modern society is based on equal justice, equal opportunity for development. Liberty and life will be in danger if the right to justice is not given to the subject. Justice in substance, in natural law, is rightly given. The procedure is wrong. Therefore, you have to convince the man whose father was hanged that it was not only natural justice, but it was also legal justice. If you do not proceed, what will happen. The young man says from the top of his house "My father has been hanged. The judge who hanged him is not really a judge. Therefore, I am not going to suffer the wrong. A grievous wrong has been done to me." What is the result? The result is revolution. Do you want that peace should not be there in the country (*Interruptions*). We want peace and prosperity. Therefore, for the good of the people, these amendments must be carried out.

With regard to constitution, I may read what a Supreme Court Judge has said:

"....a constitution intended to endure for ages to come, and consequently to be adopted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change entirely the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly...."

The principle is that no constitution can be so framed as to meet all requirements for all times. Consistent with the exigencies of the situation, the constitution must change and it must serve the needs of the people. Where the letter of the constitution and the common weal of the common man stand against each other, the common weal of the common man must prevail.

I support the Bill.

श्री भूषु सिन्घे (मुंजर) : आज जो कानून हम पास करने जा रहे हैं वह कोई मामूली कानून नहीं है। संविधान में परिवर्तन करने वाला यह कानून है। आज की बहस के पीछे दो बड़े सिद्धान्त हैं। एक सिद्धान्त यह है कि देश में कानून का धीर नियमों का राज्य रहेगा या मनमानी, स्वेच्छाचारिता और सिफारिश का राज्य चलेगा। नियमों के बाहर जाकर किसी को मकान देना हो और लाइसेंस में नियमों के खिलाफ जाकर परिवर्तन करना हो या जंजीबार से जो शरणार्थी प्राया है उसको जो वचन दिया गया है उसके विपरीत उसका माल बैरकानूनी ढंग से रोक लेना हो या संविधान की धीर नियमों की धाराओं को तोड़कर न्यायपालिका के लिए निम्निका

[बी सबू लिये]

करती हो, ये सब कानून की बिसाई के नमूने हैं, नियमहीनता के नमूने हैं।

जब यह बहस यहां पर घाब उठाई गई थी तो कानून मंत्री का यह कम से कम फर्ज था कि जिस सुप्रीम कोर्ट के फैसले को लेकर हम बहस करने जा रहे हैं उसकी कापियां सब्सर्गों में बंटवाते। जब हम संविधान को दुस्त करने वाले कानून पर बहस करने जा रहे हैं तो यह जरूरी था कि सुप्रीम कोर्ट के फैसले को सब्सर्गों को दिया जाता।

सुप्रीम कोर्ट के फैसले में क्या क्या बातें हैं। दा बसवाल सुप्रीम कोर्ट के सामने थे। गवर्नर ने एक सिलेक्शन कमेटी की मार्फत उत्तर प्रदेश हायर ज्यूडिशल सर्विस नियमों के मातहत, जहां नियुक्तियों की थीं क्या संविधान की धाराओं के मातहत की थीं, उसके अनुकूल की थीं ?

चूंकि इसके बारे में सुप्रीम कोर्ट का फैसला यहां पर नहीं रखा गया था, इसलिए मैंने उसी नक्कल प्राप्त की है। मैं उसमें से कुछ जुमले पढ़ना आवश्यक समझता हूँ। उत्तर प्रदेश में इन नियुक्तियों को लेकर जा कम दुआ, उसके बारे में सुप्रीम कोर्ट कहता है :

"It is clear from the Rules that the High Court is practically reduced to the position of a transmitting authority of the lists of suitable candidates for appointment prepared by the Selection Committee."

अग्रे चलकर सुप्रीम कोर्ट कहता है :

"It clearly demonstrates that the Rules are intended to tie down the hands of the High Court in the matter of consultation."

फिर आगे सुप्रीम कोर्ट ने कहा है :

"As we have noticed earlier, under the Rules the consultation

of the High Court is an empty formality...."

The Governor in effect and substance, does neither consult the High Court nor acts on its recommendations, but only consults the Selection Committee or acts on its recommendations. In that view also, the relevant rules are illegal and the appointments made there under are bad."

सुप्रीम कोर्ट के सामने दूसरा सवाल यह था कि जिन व्यक्तियों की नियुक्तियां की गई थीं, उनमें से कुछ व्यक्ति ऐसे थे, जो "जुडिशल" आफिसर की व्याख्या में आते हैं या नहीं। उसके बारे में सुप्रीम कोर्ट ने न्यायपालिका और कार्यकारी की पृथक्ता के सिद्धान्त को लेकर रुक कहा है :

"The expression 'judicial officers' is a misleading one. It is common case that they belong to the executive branch of the Government though they perform certain revenue and magisterial functions."

और आगे बताया गया है :

"Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in the Chapter VI of Part VI under the heading 'Subordinate Courts'. But at the time the Constitution was made, in most of the States the magistracy was under the control of the executive."

इसलिए सुप्रीम कोर्ट ने यह कहा है कि कार्यकारी के जो सदस्य हैं, उनको "जुडिशल आफिसर" शब्द में शामिल करना हर तरह से ग़लत है। इसलिए सुप्रीम कोर्ट का फैसला है :

"We therefore construe the expression 'the services' in Clause (2) of Article 233 as Judicial service."

इसलिए जबकि सुप्रीम कोर्ट का यह क़ैसला है, तब क्या उस क़ैसले को ख़त्म करने के लिए संविधान में संशोधन लाना ठीक है? संविधान के अनुच्छेद 141 में कहा गया है कि सुप्रीम कोर्ट का क़ैसला सभी प्रवासनों पर बंधनकारक होगा। अनुच्छेद 144 में कहा गया है कि देश के सभी प्राधिकारी सुप्रीम कोर्ट की मर्च करेंगे। लेकिन यहां पर हम अपनी शक्ति का दुरुपयोग करके सुप्रीम कोर्ट को ख़त्म करने की कोशिश करते हैं। कानून मंत्री यह जवाब देंगे कि इस सदन को यह अधिकार है और हम संविधान की धारा के अनुसार यह तरमिम ला रहे हैं। लेकिन यह तो एक तत्त्विक, टेक्निकल, जवाब हो जायेगा। लोकतंत्र का जो सिद्धान्त है, और हमारे संविधान के जो सिद्धान्त है, उसकी इसमें हत्या हो रही है।

आपको याद होगा कि आजादी से पहले जो अदालतों के जज होते थे, उनमें आई० सी० एस० के जज भी नियुक्त किये जाते थे। लेकिन स्वतंत्रता के बाद आई० सी० एस० की जगह पर इंडियन एडमिनिस्ट्रेटिव सर्विस भ्रमण से कायम की गई और यह तय किया गया कि इंडियन एडमिनिस्ट्रेटिव सर्विस के सदस्य अदालतों पर नहीं बैठेंगे। उसी तरह से संविधान के अनुच्छेद 50 में यह कहा गया है कि कार्यकारी और न्यायपालिका के भ्रमण के पृथक्ता के सिद्धान्त पर जल्द से जल्द अमल किया जाये।

ये सारी जितनी ग़िफ़्तियां हुई हैं, इनके पीछे किसी न किसी ऐसे आदमी को बढ़ाने का उद्देश्य था, जिसकी हमारे संविधान के अनुसार अदालतों तर नहीं बिठाया जा सकता था। इसलिए मैं माननीय मंत्री से यह प्रार्थना करता हूँ कि वह इस संविधान के संशोधक विधेयक को पास करवाने के लिए जल्दबाजी न करें। सुप्रीम कोर्ट के क़ैसले को वह छत्रबायें या साइक्लोस्टाइल करवायें और उसको सभी खर्चों में बांटें। हम लोग विधायक हैं,

कानून बनाने वाले लोग हैं, लेकिन जिस क़ैसले के कारण यह कानून बनाने की आवश्यकता हुई, उस क़ैसले को समाप्त पर रखने या सदस्यों में उसका वितरण करने की आवश्यकता कानून मंत्री ने क्यों नहीं समझी? इसलिए मैं इस विधेयक का बट कर विरोध करना चाहता हूँ और यह सरकार मनमानी स्वेच्छाचारिता और नियमहीनता का जो साम्राज्य फैला रहा है, मैं उसका भी विरोध करता हूँ।

अन्त में मैं यह कहना चाहता हूँ कि इस लोक सभा का मियाद ख़त्म हो रही है और फरवरी में नया चुनाव हो रहा है। आज जो स्थिति है; उसमें वर्तमान लोक सभा और इसमें इन लोगों का जो राक्षसी बहुमत है वह मैं कहूँगा कि लोकमत का सही मानों में प्रतिनिधित्व नहीं करता है। इसलिए अगर किसी संबैधानिक आपत्ति के कारण कोई क़ैसला, कोई निर्णय या कोई हुकम गैरकानूनी करार दिया जाता है, तो उसको कानूनी करार देने के बारे में यह सरकार कार्यवाही कर सकती है, लेकिन जो नियुक्तियां सुप्रीम कोर्ट की निगाह में संविधान के बरख़्तिताफ़ हैं, उनको ठीक करने के लिए यह सरकार अपने राक्षसी बहुमत का दुरुपयोग न करे, वरना फरवरी में उसको इस बात का जनता के सामने जवाब देना पड़ेगा, यह चेतावनी मैं दे देना चाहता हूँ।

श्री शिव नारायण (बाँसी): उपाध्यक्ष महोदय, मैं आपका बहुत अनुगृहीत हूँ कि आपने मुझे दो-तीन मिनट का समय दिया। मैं उत्तर प्रदेश की रिज़ॉल्यूट करता हूँ। मैंने माननीय सदस्य, श्री नम्बियार, को सुना। मैंने अपने मित्र, श्री नाथपाई को नहीं सुना, लेकिन मैं उनको जवाब देना चाहता हूँ कि 1953 से लेकर आज तक मुल्क में उपायंतमेंद्वष्ट हुए। हमने ला में यह पड़ा है कि हर एक स्टेट में हाई कोर्ट ज़ुबनारी की हाइएस्ट और सुप्रीम

## [श्री शिव नारायण]

एथारिटी है। उसके फैसले पर अपील सुप्रीम कोर्ट में होती है। सौलह बरस तक वे लोग बैठे क्या कर रहे थे ? इस अवधि में किसी ने भी सुप्रीम कोर्ट में अपील नहीं की। जब हमने उस चीकनैस को पाया, तो हमने गवर्नमेंट को प्रैस किया कि वह इस मामले को देखे, जिसके बाद ला मिनिस्टर ने यह कांस्टीट्यूशन एमेंडमेंट बिल पेश किया है।

मैं श्री नम्बियार को बताना चाहता हूँ कि यह सिर्फ उत्तर प्रदेश का ही मामला नहीं है। स्टेटमेंट आफ् आबजेक्ट्स एंड रीजन्स में दिया हुआ है कि केवल उत्तर प्रदेश में ही नहीं, बल्कि और स्टेट्स में भी ये गड़बड़ियाँ हैं। केवल उत्तर प्रदेश ही नहीं, बल्कि मैसूर और राजस्थान आदि में भी यह सवाल उठा है।

कांस्टीट्यूशन के आर्टिकल 233 के मुताबिक गवर्नर ने ये एपायंटमेंट्स की। चाहे एक जज ने रीकमेंड किया और चाहे पूरे हाई कोर्ट ने रीकमेंड किया, फाइनल एथारिटी गवर्नर था। हर एक जज गवर्नर के द्वारा एपायंट हुआ था। उसको किसी स्ट्रीटमेन ने या श्री नाथ पाई ने या श्री नम्बियार ने एपायंट नहीं किया। यह रिकार्ड मौजूद है कि वे एपायंटमेंट्स गवर्नर के आर्डर से की गई थी। ला मिनिस्टर ने रेप्लाय किया है कि ये एपायंटमेंट्स गवर्नर द्वारा हुई हैं। हाई कोर्ट हमेशा एपायंटमेंट्स के मामले में नहीं बैठेगा। उसको मूकदम देखने का काम रहता है। हाई कोर्ट ने दो जज दिये।

इसके अलावा जिन लोगों को एपायंट किया गया, उनकी सविस सात साल से ज्यादा थी। उनमें से जो सविस के आदमी थे, वे भी एबल थे और जो सविस के बाहर के आदमी थे, वे भी एबल थे। मेरे मित्र मधु क्षिमये बड़ा विरोध करते हैं सरकार का लेकिन मैं उन को जवाब देता हूँ। उन्होंने खुद कहा है कि अंग्रेज के

जमाने में आई० सी० एस० भी जजेज होते थे, यह उन्होंने कहा और हम रेकॉर्ड कर रहे हैं उन को जो ला प्रेज्युटस हैं। कोई जज बिना ला के नहीं हुआ है। एक मित्र ने कहा हमारे पास कम आदमी मिलते थे जजों के लिए। हमारे ला मिनिस्टर यहाँ मौजूद हैं, उन्होंने भी रिफ्यूज किया था जजी के लिए . . . . (अवधान) . . . . सुनिए सुनिए। मान्यवर, नम्बियार साहब अब हाथ हिला रहे हैं। जब जवाब मिल रहा है तो हाथ हिला रहे हैं। केवल उत्तर प्रदेश का सवाल नहीं है और सूबों में भी गड़बड़ी हुई। लेकिन हाई कोर्ट सुप्रीम है हमारे सूबों में। लोअर कोर्ट्स, डिस्ट्रिक्ट जजेज और फिर हाईकोर्ट। हाई कोर्ट के रेकमेंडेशन पर दो जज अप्वाइंट हुए और आपके एग्जीक्यूटिव का जो ला सेक्रेटरी है तीनों ने बँठ कर कमेटी बनायी। उस ने अप्वाइंट किया। किसी राही ने नहीं अप्वाइंट किया। किसी चीफ मिनिस्टर ने अप्वाइंट नहीं किया। ओनली टु ब्लेम दि गवर्नमेंट यह सब नानसेंस कहा जाता है। मान्यवर मैं बहुत ईमानदारी से कहना चाहता हूँ कि इस कांस्टीट्यूशन के बमोजब हाईकोर्ट ने कमेटी अप्वाइंट की। हाँ, सुप्रीम कोर्ट हमारा मान्य है। मैं सुप्रीम कोर्ट का आनर करता हूँ, रेस्पेक्ट करता हूँ। उसके डिसीशन के सामने सिर झुकाता हूँ और इसलिए मान्यवर, हम को मजबूर हो कर कांस्टीट्यूशन को बदलना पड़ रहा है क्योंकि सुप्रीम कोर्ट इधर दि हाइएस्ट एथारिटी जो हम को ज्ञान देता है ला का और हम को करेक्ट करता है . . . . (अवधान) . . . . मान्यवर यह मिडिल फेल और दर्जा चार फेल लोग, यह ला का ज्ञान देने चले हैं। . . . (अवधान) इसलिए मैं आपका अनुगृहीत हूँ और कांस्टीट्यूशन प्रमोडमेंट का समर्थन करता हूँ। उत्तर प्रदेश में आज भी बड़े अच्छे अच्छे बेंच हैं और उस अच्छे बेंच का एक नमूना यह हमारे ला मिनिस्टर साहब यहाँ बैठे हुए हैं

**Shri Nambiar:** Withdraw the Bill.

**Mr. Deputy-Speaker:** Order, order  
**Shri Banerjee.**

**Shri S. M. Banerjee:** Sir, I oppose the motion of the law Minister and those who supported the Bill. I have moved to amendments. One is that under article 88 of the Constitution, the Attorney-General should be summoned in this House and the House should be given the benefit, the advice, of the Attorney-General. I am told that the Attorney-General is not here and that is why this motion could not be accepted by the House. May I remind you that when a controversial Bill the Compulsory Deposit Bill came before this House, the House in its wisdom requested the Speaker that the Attorney-General should be asked to address the House and the Attorney-General did address the House and said that that was a reasonable restriction. Though we did not agree, and we did not agree with his contention, still, taking his word as correct or that it was a correct interpretation of the law, we accepted it as right.

The second motion before the House today, that is moved by me, is that this House resolves that the Constitution (Twenty-third Amendment) Bill, 1966 be referred to the President for obtaining the opinion of the Supreme Court. The Attorney-General may not be here, but the Supreme Court is very well here. Why I request that this Bill should be referred to the Supreme Court is for two or three reasons which have been very ably expressed by my hon. friend **Shri Nath Pai.** "

I know the history of this case. It has been argued in this House that this was happening since 15 years. I want to know why the Government did not come forward with an amending Bill or with some provision during these 15 years. Only after the judgment of the Supreme Court when they heard that all these appointments were illegal, irregular

and not in accordance with the various provisions of the Constitution that they rose from slumber. We know that Kumbhakarana used to sleep for 10 years at a stretch, and just like that, the Law Minister has risen after 10 years of sleep or 15 years of sleep. He is the big brother of Kumbhakarana. Naturally I have every feeling, and justifiably, that this is being done simply to whitewash the misdeeds of the Uttar Pradesh Government.

My hon. friend **Shri Sheo Narain** whom I consider to be Mr. Lok Sabha (*Interruption*) said that the Governor has taken a decision. Perhaps he does not know that the Government takes a decision on the advice of somebody. Ignorance is no virtue. That is why I say that something wrong has been done. I would request the hon. Minister to throw some light on the various points.

Now, what are the facts? All the sessions courts in Uttar Pradesh are functioning as usual. The 11 district judges appointed by direct recruitment in the past are also working as district judges even after the pronouncement of the Supreme Court decision. Only those persons who were appointed during the pendency of the appeal before the Supreme Court after the stay orders were vacated by the Supreme Court and who were parties to the writ are not working. I would request the attention of the hon. Law Minister to this judgment of the Full Bench in the case of *Jaikumar vs. the State*. There, the validity was questioned, but the Court held that any order passed by any district judge who was not appointed in accordance with the provisions of the Constitution was invalid, on the basis of a innumerable decisions in England, the USA and Canada where it has been held that a *de facto* judge cannot be questioned because of the want of valid appointment. I am not a lawyer. I would request the hon. Minister to throw more light on this: whether this

[Shri S. M. Banerjee]

House validates or it does not validate, whether on such flimsy grounds this Constitution can be tampered or tinkered with. The Constitution is being amended now for the 23rd time, and if this Government remains in power, I am sure all the articles of the Constitution will be amended and it will result in a new Constitution. What was the necessity? Was there no other remedy? I feel that this is being done to show favour to some of these judges who were appointed illegally and wrongfully and irregularly.

I, therefore, oppose the Bill and I request the hon. Minister to kindly explain to this House why he cannot possibly refer it to the President for getting the opinion of the Supreme Court, or why this House should not wait for the Attorney-General to come and express his opinion on this. It will be a sad commentary on our judiciary; it will be a sad commentary on parliamentary democracy, if we do not get the opinion of the highest law officers of the country.

With these words, I oppose this Bill and I request the hon. Minister to kindly throw some light on the two motions which I have moved. If he has valid reasons for opposing them, let them put forward those reasons. I will be convinced; if he cannot show any reasons, I am sorry I will not accept this Bill.

16 hrs.

Shri G. S. Patil: Sir, I entirely agree with Mr. Vidvalankar that we should be very careful when we amend the Constitution. But it has happened in the history of some democracies where there is a written constitution that for some period after the Constitution is framed, difficulties are discovered, complicated questions arise and matters come to light which could not be envisaged at the times the Constitution was framed. In such situations for a certain period amendments would be made in the

Constitution until important provisions of the Constitution become clarified. If a person says that 'posting' used in the Constitution would cover 'transfer' could it be so unreasonably wrong that it could be said that he was not acting *bona fide*? But if after 15 years, the Supreme Court says 'posting' does not include 'transfer' within the meaning of the Constitution and that creates administrative difficulties of a very great magnitude, what is to be done except amending the Constitution?

If for 15 years, consultation with the High Court is understood to mean consultation with a selection committee and the selection committee's result being transmitted by the High Court itself is considered as sufficient consultation, as there anything so unreasonable in it that you can impute negligence to the Government or say that the Government was not acting *bona fide*, when the High Court was also a party to this practice? It was the High Court which transmitted—to use the language of the Supreme Court—the result of the selection committee. Those who have read the judgment would note that implied approval of the High Court is also mentioned there. Therefore, was it so unreasonable that the High Court and Government should have interpreted the Constitution in this manner and held that consultation held in this manner would be perfectly constitutional? The High Court itself decided that the practice was constitutional. If an interpretation made by the Supreme Court which is binding on everybody creates administrative difficulties, can you say that the amendment of the Constitution is sought in a light-hearted manner?

I submit that the objections that have been raised are not valid. The move for reference to a select committee, calling the Attorney-General knowing that he is not in the country or reference to the Supreme Court—all these are calculated to delay the



solution of the problem, so that there may be confusion in the State. What would the Attorney-General do? Will he say that the two decisions of the Supreme Court are wrong? Has anybody argued that the decisions of the Supreme Court are not the law which binds every Government and every person in the country? Can anybody say that the decisions of the Supreme Court do not apply to all the appointments made of judges since 1954? It is on account of the respect which Government has for the Supreme Court Judgement that we have this amendment here. It is really intended to implement what the Supreme Court has said and to carry out what they have said. We are merely validating the past judgments, the past appointments and past orders of transfer. We are not introducing anything in the constitution which is contrary to the judgment of the Supreme Court. We are on the other hand, observing the principle laid down by the Supreme Court, viz., executive officers under the name of the judicial officers were not contemplated by the expression 'judicial service' of the State thus we are merely seeking the validity of their judgments, not their appointments. Therefore, it is absolutely necessary that there should be this amendment of the Constitution. In none of the speeches was it said that the consequences I pointed out are not the consequences. All that has been said is that the judgments will not be invalid. What is the answer to this: After 8-8-68, when the law was made absolutely clear by the Supreme Court, has any court in the world laid down that after the exposure of the illegality and constitutional defect, the judgments would still remain legal and the appointments would still remain legal? What answer has been given by the Opposition to this? The controversial period is only the time prior to 8th August. For that period, the Supreme Court itself said in another case that after the discovery, there would be "a serious situation", "invalidity of judgments" and also "rehearing of cases". These were the words used.

What will the Attorney-General do in the face of these Supreme Court judgments? How will reference to the Supreme Court help? We have to frame the questions for the reference. The questions will be identical with those already answered by the Supreme Court. The Supreme Court can refuse to answer the questions even on reference. It is not possible to frame any question which has not been already answered by the Supreme Court in its judgments. Shall we refer the question whether 'transfer' will be included in 'posting'? The Supreme Court will say that they have already decided it. Shall we refer the question about the significance of the expression 'consultation with the High Court or recommendation by the High Court'? The Supreme Court will say, "we have already said it in so many words". I quoted the operative part of the judgment in Chandra Mohan's case. All the appointments under these rules are void. These rules are unconstitutional. Only a few cases were before the Supreme Court. Mr. Nath Pai said four. There were really six. That does not matter. The Supreme Court has got a dual function. It decides cases between parties and it also lays down the law for the country which would apply to all similar cases to which that law could possibly apply. It is that law which governs all other appointments in U.P.

I will answer Mr. Nath Pai's question.

He put me a question. He asked, is there no other way of solving this problem and validating the appointments and judgments. I can assure this House that I have devoted considerable attention to this problem. When there is a constitutional defect in any act of the Government that defect cannot be removed except by a constitutional amendment. If the defect

(Shri G. S. Pathak)

had arisen by reason of non-compliance of a statute passed by the Parliament that defect could be removed by another statute made by Parliament, but if the defect arises as a result of non-compliance with the Constitution, itself, there is no lawyer who has told me that that defect could be removed except by a constitutional amendment. If you seek to remove it by any law made by Parliament that law itself will be invalid and will run counter to the Constitution. There are eminent lawyers in this Parliament. I very anxiously waited to see whether there could be suggestion made to remedy this defect except by a constitutional amendment. There is not a single speech, a single suggestion made by any lawyer, even by non-lawyers, which could have shown that without this amendment this remedy could have been reached, or this defect could have been removed. On the other hand, Shri N. C. Chatterjee, who has got vast experience, and Shri Dixit, who has got considerable experience, have shown that the constitutional amendment is the only remedy to meet this situation. Shri Chatterjee has supported the argument by citations of cases. And, I submit, Sir, the Government is quite correct in taking the view that it has taken, namely, that constitutional amendment was the only remedy. If you do not make the constitutional amendment, the result would be great confusion, the District Judges working without any authority, their judgments illegal and so on. And, what would happen to the various writ petitions in which their appointments have been challenged. There are quo-warranto writ petitions also. If these writ petitions are allowed and the judges are parties to these writ petitions, the result will be that the entire judicial work done in this State will be completely obliterated. So far as the judgments prior to the 8th August, 1966 are concerned, they are also in jeopardy. Therefore, Sir, this constitutional amendment is the only remedy.

**Mr. Deputy-Speaker:** I shall put Shri Banerjee's amendments to the vote of the House. The question is:

"This House resolves that the Attorney-General be summoned to Lok Sabha to give his opinion on the Constitution (Twenty-third Amendment) Bill, 1966 and Government should take necessary steps in regard thereto." (6).

*The motion was negatived.*

**Mr. Deputy-Speaker:** The question is:

"This House resolves that the constitution (Twenty-third Amendment) Bill, 1966 be referred to the President for obtaining the opinion of the Supreme Court under article 143 of the Constitution on the following question of law:—

Whether the judgments and orders passed by the District Judges appointed by the U.P. Government where appointments have been declared ultra vires by the Supreme Court in a recent writ petition are valid or not." (7).

*The motion was negatived.*

**Mr. Deputy-Speaker:** I shall now put Shri Yashpal Singh's amendment. The question is:

"That the Bill be circulated for the purpose of eliciting opinion thereon by the 31st March, 1967." (4).

*The motion was negatived.*

**Mr. Deputy-Speaker:** I shall now put the original motion to the vote of the House. The question is:

"That the Bill further to amend the Constitution of India, be taken into consideration."

This being a Constitution (Amendment) Bill, voting has to be by Division. Let the Lobbies be cleared.

Lobbies have been cleared. The question is: the Constitution of India, be taken into consideration."

"That the Bill further to amend The Lok Sabha divided:

Division No. 26]

AYES

16.20 hrs.

Abdul Wahid, Shri T.

Achal Singh, Shri

Achuthan, Shri

Akkamma Devi, Shrimati

Alageyan, Shri

Alva, Shri A.S.

Alva, Shri Joachim

Anjanappa, Shri

Ankineedu, Shri

Arunachalam, Shri

Azad, Shri Bhagwat Jha

Babunath Singh, Shri

Bal Krishna Singh, Shri

Balmiki, Shri

Barkataki, Shrimati Renuka

Barnan, Shri P.C.

Berupal, Shri P.L.

Besappa, Shri

Besumatari, Shri

Besra, Shri

Bhagat, Shri B.R.

Bhagvati, Shri

Bhakt Darshan, Shri

Bhanja Deo, Shri L.N

Bhanu Prakash Singh, Shri

Bhatkar, Shri

Birendra Bahadur Singh, Shri

Biset, Shri J.B.S.

Brajeshwar Prasad, Shri

Brij Basi Lal, Shri

Chakraverti, Shri P.R

Chanda, Shrimati Jyotsnu

Chandak, Shri

Chandrabhan Singh, Dr.

Chandrasekhar, Shrimati

Chandriki, Shri

Charurvedi, Shri S.N.

Chaudhry, Shri Chandramani Lal

Chaudhuri, Shri D.S.

Chaudhuri, Shrimati Kamala

Chavan, Shri D.R.

Chavan, Shri Y.B.

Chavda, Shrimati Johraben

Das, Shri B.K.

Das, Shri N.T.

Das, Shri C.

Deo Bhanj, Shri P.C.

Deasi, Shri Morarji

Dehmukh, Shri B.D.

Dehmukh, Shri Shivaji Rao Sa

Dehmukh, Shrimati Vimla

Dey, Shri S. K.

Dhuleshwar Meena, Shri

Dighe, Shri

Dixit, Shri G.N.

Dobey, Shri R.G.

Dwivedi, Shri M.L.

Elaasaperumal, Shri

Ering, Shri D.

Pirodia, Shri

Geckwad, Shri Patehsinhao

Gahmarl, Shri

Gajraj Singh Rao, Shri

Ganapati Ram, Shri

Gandhi, Shri V.B.

Ganga Devi, Shrimati

Ghosh, Shri Atulya

Ghosh, Shri N.R.

Ghosh, Shri P.K.

Govind Das, Dr.

Gowdh, Shri Veerasana

Guha, Shri A.C.

Gupta, Shri Badashah

Hansda, Shri Subodh

Hanumanthaiya, Shri

Haq, Shri M.M.

Harvani, Shri Anwar

Hazarika, Shri J.N.

Heda, Shri

Hem Raj, Shri

Iqbal Singh, Shri

Jadhav, Shri M.T.

Jadhav, Shri Tulsidas

Jaggiwan Ram, Shri

Jamunadevi, Shrimati

Jayaraman, Shri

Jedhe, Shri

Jena, Shri

Jha, Shri Yogendra

Joshi, Shri A.C.

Jyotishi, Shri J.P.

Kadadi, Shri

Kamble, Shri

Kappen, Shri

Kedaria, Shri C.M.

Keishang, Shri Rishang

Khanna, Shri P.K.

Kindar Lal, Shri

Kisan Veer, Shri

Kotaki, Shri Liladhar

Koujalgi, Shri H.V.

Kripa Shankar, Shri

Kripalani, Shri J.B.

Krishna Shri M.R.

Krishnamachari, Shri T.T.

Krishnapal Singh, Shri

Kureel, Shri B.N.

Lalit Sen, Shri

Laskar, Shri N.R.

Laxmi Bai, Shrimati

Lonikar, Shri

Mahadeo Prasad, Shri

Mahadeo Prasad, Dr.

Mahida, Shri Narendra Singh

Mahishi, Dr. Sarojini

Malaviya, Shri K.D.

Mali Mariyappa, Shri

Mallick, Shri Rama Chandru

Mandal, Dr. P.

Mandal, Shri J.

Mandal, Shri Yamuna Prasad

Maniyangaden, Shri

Mantri, Shri D.D.

Marandi, Shri

Masuriya Din, Shri

Matcharaju, Shri

Mathur, Shri Harish Chandru

Mathur, Shri Shiv Charan

Mehdi, Shri S.A.

Mehrotra, Shri Braj Bihari

Mehta, Shri J.R.

Melkote, Dr.

Mengi, Shri Gopal Datt

Menon, Shri Krishna

Menon, Shri Govinda

Minimata, Shrimati

Mirza, Shri Bakur Ali

Mishra, Shri Bibhuti

Misra, Shri Bibudhendra

Mishra, Shri M.P.

Mishra, Shri Mahesh Dutta

Misra, Shri Shyam Dhar

Mohammad Yusuf, Shri

Mohanty, Shri Gokulananda

Mohsin, Shri

Morarka, Shri

More, Shri, K.L.

Mukerjee, Shrimati Sharda

Munani, Shri David

Murthi, Shri B.S.

Murthi, Shri M.S.

Muthiah, Shri

Naidu, Shri V.G.

Naik, Shri C.J.

Naik, Shri Maheswar

Naskar, Shri P.S.

Nayak, Shri Mohan

Nigam, Shrimati Savitri

Niranjan Lal, Shri

Pande, Shri K.N.

Pandey, Shri R.S.

Pandey, Shri Vishwa Nath

Pandit, Shrimati Vilas Lakshmi

Panna Lal, Shri

Pani, Shri K.C.

Patel, Shri Chhorubhai	Reddhar, Shri	Sinhasan Singh, Shri
Patel, Shri N.N.	Reddy, Shri H.C. Linga	Sivappraghasan, Shri Ku.
Patel, Shri P.R.	Reddy, Shri Narayan	Sneak, Shri Nardeo
Patel, Shri Rajeshwar	Reddy, Shri S-render	Somavase, Shri
Patil, Shri D.S.	Reddy, Shrimati Yashoda	Soundaram Ramachandran,
Patil, Shri J.S.	Sadhu Ram, Shri	Shrimati
Patil, Shri M.B.	Saha, Dr. S.K.	Soy, Shri H.C.
Patil, Shri S.B.	Sahu, Shri Rameshwar	Subbaraman, Shri
Patil, Shri S.K.	Saigal, Shri A.S.	Subramanyam, Shri T
Patil, Shri T.A.	Sanji Rupji, Shri	Sumat Prasad, Shri
Prabhakar, Shri Naval	Saraf Shri Sham Lal	Sunder Lal, Shri
Pratap Singh, Shri	Sarma, Shri A.T.	Swaran Singh, Shri
Puri, Shri D.D.	Satyabhama Devi, Shrimati	Tahir, Shri Mohammed
Raghuramaiah, Shri	Satyanarayana, Shri	Thengal, Shri Nallakoya
Rai, Shrimati Sahodra Bai	Sen, Shri P.G.	Thimmaiah, Shri
Raj Bahadur, Shri	Shah, Shrimati Jayaben	Thomas, Shri A.M.
Raja, Shri C.R.	Shakuntala Devi, Shrimati	Tiwary, Shri D.N.
Rajdeo Singh, Shri	Sham Nath, Shri	Tiwary, Shri K.N.
Raju, Shri D.B.	Shankariya, Shri	Tiwary, Shri R.S.
Ram, Shri T.	Sharma, Shri A.P.	Tripathi, Shri Krishna Deo
Ram Sewak, Shri	Sharma, Shri D.C.	Tula Ram, Shri
Ram Subhag Singh, Dr.	Sharma, Shri K.C.	Tyagi, Shri
Ram Swarup, Shri	Shastri, Shri Ramanand	Uikey, Shri
Ramdhani Das, Shri	Sheo Narain, Shri	Ulaka, Shri Ramachandra
Ramabekhar Prasad Singh, Shri	Shinde, Shri	Upadhyaya, Shri Shiva Dutt
Ramanjai Singh, Shri	Shinkre, Shri	Vaichya, Shri M.B.
Rane, Shri	Shivananjappa, Shri	Varma, Shri Ravindra
Ranga Rao, Shri	Shree Narayan Das, Shri	Veerabasaappa, Shri
Ranjit Singh, Shri	Shyamkumari Devi, Shrimati	Veerappa, Shri
Rao, Shri Jaganatha	Siddananappa, Shri	Venkata Subbalah, Shri P.
Rao, Shri Muthyal	Siddiah, Shri	Verma, Shri Balgovind
Rao, Shri Rajagopal	Sidheshwar Prasad, Shri	Verma, Shri K.K.
Rao, Shri Ramapathi	Singh, Dr. B.N.	Vidyalankar, Shri A.N.
Rao Shri Rameshwar	Singh, Shri D.N.	Virbhadra Singh, Shri
Rao, Shri Thirumala	Singh, Shri K.K.	Wadiwa, Shri
Raut, Shri Bhola	Singha, Shri G.K.	Wasnik, Shri Balkrishna
Rawandale, Shri	Sinha, Shrimati Ramdulari	Yadav, Shri N.P.
Ray, Shrimati Renuka	Sinha, Shri Satya Narayan	Yadav, Shri Ram Harkh
Reddi, Dr. B. Gopala	Sinha, Shrimati Tarkeshwari	Yadava, Shri B.P.

## NOES

Khan, Shri Shah Nawaz

Roy, Shri Bishwanath

**The Deputy Minister in the Ministry of Labour, Employment and Rehabilitation (Shri Shah Nawaz Khan):** Sir, I have voted wrongly, I am for "Ayes".

**Shri Bishwanath Roy (Deoria):** Sir, I have also voted wrongly. I am also for "Ayes".

**Mr. Deputy-Speaker:** Those corrections will be made.

The result of the division is :

Ayes :	—	281
Noes :	—	2

The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the members present and voting.

*The motion was adopted.*

**Mr. Deputy-Speaker:** Now, we shall take up clause-by-clause consideration of the Bill.

**Clause 2—(Insertion of new article 233A.)**

**Amendments made:**

(i) Page 2, line 4,—

for "Twenty-third" substitute—  
"Twentieth". (2).

(ii) Page 2, lines 12 and 13,—

for "Twenty-third" substitute—

"Twentieth". (3).

(Shri G. S. Pathak).

Mr. Deputy-Speaker: The question is:

"That clause 2, as amended, stand part of the Bill."

The Lok Sabha divided:

## Division No. 27]

## AYES

[10.33 hrs.]

Abdul Wahid, Shri T.  
 Achal Singh, Shri  
 Achuthan, Shri  
 Akkamma Devi, Shrimati  
 Alagesan, Shri  
 Alva, Shri A. S.  
 Anjanappa, Shri  
 Ankineedu, Shri  
 Arunachalam, Shri  
 Azad, Shri Bhagwat Jha  
 Babunath Singh, Shri  
 Bal Krishna Singh, Shri  
 Balmiki, Shri  
 Berkataki, Shrimati Renuka  
 Barman, Shri P. C.  
 Barupal, Shri P. L.  
 Basappa, Shri  
 Basumatari, Shri  
 Beara, Shri  
 Bhagat, Shri B. R.  
 Bhagwati, Shri  
 Bhakt Darshan, Shri  
 Bhanja Deo, Shri L. N.  
 Bhatkar, Shri  
 Birendra Bahadur Singh, Shri  
 Bist, Shri J. B. S.  
 Brajeshwar Prasad, Shri  
 Brij Basi Lal, Shri  
 Chakraverti, Shri P. R.  
 Chanda, Shrimati Jyotasa  
 Chandak, Shri  
 Chandrabhan Singh, Dr.  
 Chandrasekhar, Shrimati  
 Chandriki, Shri  
 Chaturvedi, Shri S. N.  
 Chaudhry, Shri Chandramani Lal  
 Chaudhuri, Shri D. S.  
 Chaudhuri, Shrimati Kamala  
 Chavan, Shri D. R.  
 Chavan, Shri Y. B.  
 Chavda, Shrimati Johrabai  
 Das, Shri B. K.  
 Das, Shri N. T.  
 Das, Shri C.  
 Deo Bhanj, Shri P. C.  
 Desai, Shri Morarji  
 Deshmukh, Shri B. D.  
 Deshmukh, Shri Shivaji Rao S.  
 Deshmukh, Shrimati Vimala  
 Dey, Shri S. K.  
 Dhuleghwar Meena, Shri  
 Dighe, Shri

Dixit, Shri  
 Dubey, Shri R. G.  
 Dwivedi, Shri M. L.  
 Elaysperumal, Shri  
 Ering, Shri D.  
 Firodia, Shri  
 Gaeckwad, Shri Fatehainbrao  
 Gahmari, Shri  
 Gajraj Singh Rao, Shri  
 Ganapati Ram, Shri  
 Gandhi, Shri V. B.  
 Ganga Devi, Shrimati  
 Ghosh, Shri Atulya  
 Ghosh, Shri N. R.  
 Ghosh, Shri P. K.  
 Govind Das, Dr.  
 Gowdh, Shri Veerasuna  
 Guba, Shri A. C.  
 Gupta, Shri Badshah  
 Hanada, Shri Subodh  
 Hanumanthaiya, Shri  
 Haq, Shri M. M.  
 Harvani, Shri Anwar  
 Hazarika, Shri J. N.  
 Heda, Shri  
 Hem Raj, Shri  
 Iqbal Singh, Shri  
 Jadhav, Shri M. L.  
 Jadhav, Shri Tulsiadas  
 Jagjivan Ram, Shri  
 Jamunadevi, Shrimati  
 Jayaraman, Shri  
 Jedhe, Shri  
 Jena, Shri  
 Jha, Shri Yogendra  
 Joshi, Shri A. C.  
 Jyotishi, Shri J. P.  
 Kadadi, Shri  
 Kamble, Shri  
 Kappen, Shri  
 Kadarla, Shri C. M.  
 Keishing, Shri Rishang  
 Khan, Shri Shahnewaz  
 Khanna, Shri P. K.  
 Kindar Lal, Shri  
 Kisan Veer, Shri  
 Kotaki, Shri Liladhar  
 Koujalgi, Shri H. V.  
 Kripa Shankar, Shri  
 Kripalani, Shri J. B.  
 Krishna, Shri M. R.  
 Krishnamachari, Shri T. T.

Krishanpal Singh, Shri  
 Kureel, Shri B. N.  
 Lalit Sen, Shri  
 Laskar, Shri N. R.  
 Laxmi Bai, Shrimati  
 Limaye, Shri Madhu  
 Lonikar, Shri  
 Mahadeo Prasad, Shri  
 Mahadeva Prasad, Dr.  
 Mahida, Shri Narendra Singh  
 Mahishi, Dr. Serojini  
 Malaviya, Shri K. D.  
 Mali Mariyappa, Shri  
 Mallick, Shri Rama Chandra  
 Mandal, Dr. P.  
 Mandal, Shri J.  
 Mandal, Shri Yamuna Pr  
 Maniyangadan, Shri  
 Mantri, Shri D. D.  
 Merandi, Shri  
 Masuriya Din, Shri  
 Matchareju Shri  
 Mathur, Shri Harihar Chandra  
 Mathur, Shri Shiv Charan  
 Mehrotra, Shri Braj Bihari  
 Mehra, Shri J. R.  
 Melkote, Dr.  
 Mengi, Shri Gopal Datt  
 Menon, Shri Krishna  
 Menon, Shri Govinda  
 Minimata, Shrimati  
 Mirza, Shri Bakar Ali  
 Mirza, Shri Bibudhendra  
 Mishra, Shri M. P.  
 Misra, Shri Mahesh Dutta  
 Misra, Shri Shyam Dhar  
 Mohammad Yusuf, Shri  
 Mohanty, Shri Gokulananda  
 Mohsin, Shri  
 Morarka, Shri  
 More, Shri K. L.  
 Mukerjee, Shrimati Sharda  
 Munzai, Shri David  
 Murthi, Shri B. S.  
 Murti, Shri M. S.  
 Muthiah, Shri  
 Naidu, Shri V. G.  
 Naik, Shri D. J.  
 Naik, Shri Maheswar  
 Naskar, Shri P. S.  
 Nayak, Shri Mohan  
 Nigam, Shrimati Savitri

Niranjan Lal, Shri  
 Pande, Shri K. N.  
 Pandey, Shri R. S.  
 Pandey, Shri Vishwa Nath  
 Pandit, Shrimati Vijay Lakshmi  
 Panna Lal, Shri  
 Pant, Shri K. C.  
 Patel, Shri Chhotubhai  
 Patel, Shri N. N.  
 Pat I, Shri P. R.  
 Patel, Shri Rajeshwar  
 Patil, Shri D. S.  
 Patil, Shri J. S.  
 Patil, Shri M. B.  
 Patil, Shri S. B.  
 Patil, Shri S. K.  
 Patil, Shri V. T.  
 Prabhakar, Shri Naval  
 Pratap Singh, Shri  
 Puri, Shri D. D.  
 Raghuramaiah, Shri  
 Rai, Shrimati Sahodra Bai  
 Raj Bahadur, Shri  
 Raja, Shri C. R.  
 Rajdeo Singh, Shri  
 Raju, Shri D. B.  
 Ram, Shri T.  
 Ram Sewak, Shri  
 Ram Subhag Singh, Dr.  
 Ram Swarup, Shri  
 Ramdhani Das, Shri  
 Ramchekhhar Prasad Singh, Shri  
 Rananjai Singh, Shri  
 Rane, Shri  
 Ranga Rao, Shri  
 Ranjit Singh, Shri  
 Rao, Shri Jagannatha  
 Rao, Shri Muthyal  
 Rao, Shri Rajagopala  
 Rao, Shri Ramapathi  
 Rao, Shri Rameshwar  
 Rao, Shri Thirumala

Raut, Shri Bholi  
 Rawandale, Shri  
 Ray, Shrimati Renuka  
 Reddi, Dr. B. Gopals  
 Reddier, Shri  
 Reddy, Shri H. C. Linga  
 Reddy, Shri Narayan  
 Reddy, Shri Surender  
 Reddy, Shrimati Yashoda  
 Roy, Shri Bishwanath  
 Sadhu Ram, Shri  
 Saha, Dr. S. K.  
 Sahu, Shri Rameshwar  
 Saigal, Shri A. S.  
 Sanji Rupji, Shri  
 Saraf, Shri Sham Lal  
 Sarma, Shri A. T.  
 Satyabhama Devi, Shrimati  
 Satyanarayana, Shri  
 Sen, Shri P. G.  
 Shah, Shrimati Jayaben  
 Shakuntala Devi, Shrimati  
 Sham Nath, Shri  
 Shankarajye, Shri  
 Sharma, Shri A. P.  
 Sharma, Shri D. C.  
 Sharma, Shri K. C.  
 Shastri, Shri Ramanand  
 Sheo Narain, Shri  
 Shinde, Shri  
 Shivananjappa, Shri  
 Shree Narayan Das, Shri  
 Shyamkumari Devi, Shrimati  
 Siddananjappa, Shri  
 Siddiah, Shri  
 Sidheshwar Prasad, Shri  
 Singh, Dr. B. N.  
 Singh, Shri D. N.  
 Singh, Shri K. K.  
 Singha, Shri G. K.  
 Sinha, Shrimati Ramdulari  
 Sinha, Shri Satya Narayan

Sinha, Shrimati Tarkeshwari  
 Sinhasan Singh, Shri  
 Sivapraghassan, Shri Ku.  
 Satak, Shri Nardev  
 Sonavane, Shri  
 Soundaram Ramachandran,  
 Shrimati  
 Soy, Shri H. C.  
 Subbareman, Shri  
 Subramanyam, Shri T.  
 Sumat Prasad, Shri  
 Sunder Lal, Shri  
 Swaran Singh, Shri  
 Tahir, Shri Moha  
 Thengal, Shri Nallakoya  
 Thimmaiah, Shri  
 Thomas, Shri A. M.  
 Tiwary, Shri D. N.  
 Tiwary, Shri K. N.  
 Tiwary, Shri R. S.  
 Tripathi, Shri Krishna Deo  
 Tula Ram, Shri  
 Tyagi, Shri  
 Uikey, Shri  
 Ulaka, Shri Ramachandra  
 Upadhyay, Shri Shiva Dutt  
 Vaishya, Shri M. B.  
 Varma, Shri Ravindra  
 Veerabasappa, Shri  
 Veerappa, Shri  
 Venkatasubbalah, Shri I  
 Verma, Shri Balgovind  
 Verma, Shri K. K.  
 Vidyasankar, Shri A. N.  
 Virbhadra Singh, Shri  
 Wadiwa, Shri  
 Wasnik, Shri Balkrishna  
 Yadav, Shri N. P.  
 Yadav, Shri Ram Harkh  
 Yadava, Shri B. P.

## NOES

Bade, Shri  
 Banerjee, Shri S. M.  
 Dwivedy, Shri Surendranath  
 Kapur Singh Shri

Nambiar, Shri  
 Nath Pal, Shri  
 Raghavan, Shri A. V.  
 Ranga, Shri

Swamy, Shri Sivamurthy  
 Yadav, Shri Ram Sewak

श्री मधु लिमये : उपाध्यक्ष महोदय,  
 यंत्रां में कुछ खराबी है। मेरा हाँ में बोट घा  
 गया है। मैं ने न के लिए बोट दिया है।

श्री विमलित मिश्र : जब मैं दबाने लगा  
 तो इन्हीं ने बटन की छोड़ दिया। मेरा बोट  
 हाँ में गिन लिया जाए।

Shri Basappa (Tiptur) : I had pres-  
 sed the button but my vote has not  
 come. I am for "Ayes".

Shri D. C. Sharma : Shri Nanda's  
 machine is out of order.

Mr. Deputy-Speaker : These correc-  
 tions would be noted and made.

The result of the division is :

Ayes : 279.

Noes : 10.

The motion is carried by a majority  
 of the total membership of the House

and by a majority of not less than two-thirds of the members present and voting.

*The motion was adopted.*

*Clause 2, as amended, was added to the Bill.*

Clause 1— (Short title.)

*Amendment made:*

Page 1, line 3,—

for "twenty-third" substitute—

"Twentieth". (1).

(Shri G. S. Pathak).

**Mr. Deputy-Speaker:** The question is:

"That clause 1, as amended, stand part of the Bill."

*The motion was adopted.*

*Clause 1, as amended, was added to the Bill.*

*The Enacting Formula and the Title were added to the Bill.*

**Shri G. S. Pathak:** Sir, I move:

"That the Bill, as amended, be passed."

**Mr. Deputy-Speaker:** Motion moved:

"That the Bill, as amended, be passed."

**Shri Nath Pal:** Mr. Deputy-Speaker, Sir, I beg to register once again our protest against this kind of tampering of the Constitution. I tried to see that the Law Minister will be replying at least to one of the valid points that we have been trying to raise. It was a pity . . .

**Shrimati Savitri Nigam (Banda):** He has replied.

**Shri Nath Pal:** Madam, perhaps if you pay more attention, you will know the difference between a reply and the appearance of a reply.

Sir, we had tried to point out to him that he should not take shelter behind the so-called inconvenience

that will be caused by the absence of such a law. Again and again Shri Pathak has been trying to take shelter behind the so-called invalidation of the judgements of *de facto* judges whose appointments may be rendered invalid. That is not the law of the country. The law of the country and of countries which follow similar systems of law is very clear. Once an appointment is *de facto*, every act exercised by the appointee, the *de facto* judge, is a valid thing till it is directly challenged in a *quo warranto*. That was the only point he accepted but again and again he has been creating a fear psychosis in the House and trying to get the consent of the House. It is not a willing consent of Parliament.

I want to raise two pleas at this late stage. I know what will happen to them and what will be the fate of these pleas. We tried to argue and he tried to take shelter behind Shri Chatterjee's opinion. But what did Shri Chatterjee say in support of the Government? I want to say that this is a Parliament whose mandate is more or less over. We will all be seeking a renewal of this mandate. At this late hour this Government comes and asks us to do what? Not to pass an ordinary law but to change the basic law of the country. I would say that it is palpably irresponsible not to say that it is dishonest. You have had 15 long years during which you could have sought recourse to this valid method of changing the organic law of the country. You refrained from that and today at the fag-end of this last session of Parliament, you come forward with this proposal to change the organic law of the country.

And what is the argument to mislead the House? It is that if they do not change the Constitution, the judgements rendered by the entire judiciary of UP will be invalidated. I beg to submit respectfully to him that in the judgement of the Calcutta High Court Full Bench in 1912 in *Phu'an Prasad Versus the King*

[Shri Nath Pai]

Emperor the law is very clearly stated. Whatever happens to an appointment the functions discharged by a judge do not become invalidated by his appointment being subsequently challenged or even held invalid by a court of law. This is an important point.

Shri Pathak has tried to mislead the House. I am sorry to use strong language.

Some hon. Members: No, no.

Shri Nath Pai: What no, no? Do you understand what I say?

An hon. Member: We understand.

Shri Nath Pai: No. Do not pretend that you do.

Shri N. C. Chatterjee quoted what is an elementary book on law for students preparing for the bar in Eng'and, namely, Maxwell's code or interpretation. What has that to do with this? That was the only citation. It is a pity that Members voted without caring to listen to their own man. The Law Minister tried to make out a case for the passing of this Bill and there was no case except a false case that if we do not pass this law all the judgements of the UP judiciary will be invalidated and the consequences and suffering of the people of UP will be unimaginable. It is a false plea. It is an untenable argument. I plead, let not the last act of this Parliament be a hurried act, an act which was entered into without proper reflection and mature deliberation.

I would say in conclusion, having raised every single argument to persuade the Law Minister, that I am reminded of this proverb: Argument is exhausted but obstinacy is not won. It was his obstinacy that was prevailing; it was not his judicial sense or scholarship as a lawyer. Ultimately, what prevailed was his loyalty to this party, not his loyalty

to the Constitution. This will be recorded as a sad day that we voted an amendment of the Constitution when we hardly had the authority even to pass an Act. I think, the new Parliament will take a fresh look and you will be held answerable to the electorate who will never pardon the fact that you tampered with the sacred law of this country in such a flippant manner.

Shri Namblar: Mr. Deputy-Speaker, even the passage of this Bill here today is a very narrow one. The minimum that is required is 255 and you managed to get 26 more. At the fag-end of this session and this Parliament you have reduced yourself to this stage and I warn that next time they will not have the opportunity to amend the Constitution at all because they will never get that majority... (Interruption). That is the fear why they came forward with this, rushing and are passing this.

After all, what is this amendment? They have tried to amend the Constitution in order to validate the appointment of judges and transfer of 11 judges.

Mr. Deputy-Speaker: You are repeating the argument.

Shri Namblar: For this they had to make the Parliament amend the Constitution. Therefore it is very sad that they came forward with such a thing at this fag-end of the session and that too by an extension of the session. Today they could manage by some narrow margin through a trick, but it is not proper. This is not correct. The Constitution should not have been tampered with in the manner that they did today.

श्री राज सेवक यादव : उपाध्यक्ष महोदय, कानून मंत्री ने बहस के दौरान में यह कहा कि उन्हें सर्वोच्च न्यायालय की बहुत बड़ी इज्जत है और उस इज्जत को ध्यान में रख कर वह संविधान में यह संशोधन ला



रहे हैं। लेकिन अगर इस को साफ़ तौर से देखा जाये, और मैं समझता हूँ कि श्री पाठक इस को बहुत अच्छी तरह से समझते हैं कि जब सर्वोच्च न्यायालय ने इन नियुक्तियों को गैरकानूनी बताया, तो उसके बाद संविधान को संशोधित करने का अर्थ यह होता है कि यह सरकार एक गैरकानूनी काम को कानून बना रही है, यानी जो गैरकानूनी नियुक्तियाँ हुई थीं, अब वे बनी रहेंगी और वे हटेंगी नहीं। कानून मंत्री ने कहा है कि वह सर्वोच्च न्यायालय का सम्मान कर रहे हैं, लेकिन इस से बड़ा असम्मान सर्वोच्च न्यायालय का और कोई नहीं हो सकता है।

कानून मंत्री ने कहा है कि चूँकि ये नियुक्तियाँ गैर-कानूनी करार दी गई हैं, इसलिए उन जजों के फैसले भी गैरकानूनी हो जायेंगे। मैं मंत्री महोदय से यह जानना चाहता हूँ कि क्या वह प्रिवी कौंसिल या अमरीका की सुप्रीम कोर्ट या किसी अन्य देश की कोर्ट या हमारी सुप्रीम कोर्ट का कोई केस बता सकते हैं, क्या वह इस तरह का कोई फैसला बता सकते हैं कि अगर कोई नियुक्ति गैर-कानूनी करार दी गई, तो उस की वजह से सम्बद्ध जज का फैसला भी गैर-कानूनी हो गया। अगर कानून मंत्री सही मानी में सर्वोच्च न्यायालय का सम्मान चाहते हैं, तो उस के फैसले को उलटने के लिए, उस का फैसला लागू न हो, उस के लिए संविधान में संशोधन न लायें, क्योंकि वह उचित नहीं होगा।

अन्त में मैं यह कहना चाहता हूँ कि सर्वोच्च न्यायालय का फैसला अगस्त में हुआ, जिस के बाद चार पांच महीने बीत गए हैं। अब दो महीने में चुनाव आने वाला है, नई लोक सभा अप्रैल में आयेंगी। तो कोई आसमान नहीं फट जायेगा, अगर इस मामले में कुछ और देर हो जाये। एक मानी में इस संसद को, इस सदन को, अब इस तरह के प्रामाण्य परिवर्तन का या संविधान

में संशोधन का अधिकार नहीं है। इस के लिए नया मॉडेल ले कर आना चाहिए।

इसलिए मैं चाहूँगा कि अब भी कानून मंत्री को जनतंत्र की रक्षा के लिए, संविधान की रक्षा के लिए और देश में मनुष्यता और कानून तथा व्यवस्था ठीक बनाए रखने के लिए सदबुद्धि आए और वह इस बिस को वापस ले लें।

**Shri S. M. Banerjee:** rose—

**Shri Bade:** I want to say something. This is the Third Reading.

**Mr. Deputy-Speaker:** Order, order.

The hon. Minister,

**Shri S. M. Banerjee:** I shall take only one minute, Sir

**Shri Bade:** We have got a right. This is the Third Reading.

**Mr. Deputy-Speaker:** No, no. I am calling the Minister. I am sorry I cannot allow.

**Shri G. S. Pathak:** Why is it—I am putting this question to Mr. Nath Pai—that he waited for 15 long years. (Interruptions).

**Shri Bade:** This is a sad day. We are tampering with the Constitution. I want to know . . .

**Mr. Deputy-Speaker:** Order, order.

**Shri G. S. Pathak:** The practice which was prevailing was unconstitutional. That is number one. Number two is this. Any one who reads the judgment of the full bench of . . . (Interruptions).

**Mr. Deputy-Speaker:** Mr. Bade will resume his seat. I am not allowing him.

**Shri Bade:** I have got a voice. This is the Third Reading.

**Mr. Deputy-Speaker:** If he continues, I shall have to ask him to go out.

**Shri Bade:** I will go out.

**Mr. Deputy-Speaker:** He may please go out.

**Shri Bade:** I can go out. I want only my right, Sir. This is the Third Reading.

**Mr. Deputy-Speaker:** I have asked Mr. Bade to go out. He is disobeying the Chair. I ask him to go out. I am not allowing him. (Interruptions)

**Shri Ranga (Chittoor):** Here is a very important Bill. (Interruptions).

**Shri Surendranath Dwivedy (Kendrapara):** In the Third Reading, everybody has a right to speak.

**Shri Ranga:** I wanted to co-operate with the Chair. I did not rise on my seat because it was already a foregone conclusion. But at the same time some of our members feel strongly, and there is no reason why you should not be generous, why you should not be tolerant or why you should not be reasonable. Heavens are not going to fall if we allow one or two members to speak. He happens to be the Deputy Leader of a Group and you are dealing with him in such a light-hearted manner. You cannot very well ask the Deputy Leader of a Group to go out like this.

**Mr. Deputy-Speaker:** I have allowed three persons from the Opposition. He has already spoken once and the same arguments are being repeated.

**Shri Ranga:** Please listen to me, Sir.

**Mr. Deputy-Speaker:** Yes.

**Division no. 28 ]**

**AYES**

**[ 16'43 has.**

Abdul Rashid Bakshi, Shri  
Abdul Wahid, Shri T.  
Achal Singh, Shri  
Achuthan, Shri  
Akkamma Devi, Shrimati  
Alagesan, Shri  
Alva, Shri A.S.  
Alva, Shri Joachim  
Anjanappa, Shri

Ankineedu, Shri  
Arunachalam, Shri  
Azad, Shri Bhagwat Jha  
Babunath Singh, Shri  
Bai Krishna Singh, Shri  
Balmiki, Shri  
Barkataki, Shrimati Renuka  
Berman, Shri P.C.  
Barupal, Shri P.L.

Basappa, Shri  
Basumetari, Shri  
Beare, Shri  
Bhagat, Shri B.R.  
Bhagwati, Shri  
Bhakt Darshan, Shri  
Bhanja Deo, Shri L.N.  
Bhanu Prakash Singh, Shri  
Bhatkar, Shri

**Shri Ranga:** As a result of this unnecessary controversy, we have already lost three minutes. He could have finished it by now. Why don't you be patient, Sir? Let him speak for one or two minutes.

**Mr. Deputy-Speaker:** All right; I will give him one minute.

**Shri Bade:** This evil will be considered and written in the history as a said Act. This Congress Party are tampering with the pious Constitution. The Constitution is tampered not according to wants or the needs of the people, but to suit their own purposes. (Interruptions).

**Mr. Deputy-Speaker:** He is repeating his argument.

**Shri Bade:** They are killing the rights of the people.

**Mr. Deputy-Speaker:** The hon. Minister.

**Shri S. M. Banerjee:** I wanted one minute, Sir. I am also a member of this House.

**Mr. Deputy-Speaker:** Order, order

**Shri G. S. Pathak:** The case was confined to a period prior to the discovery of the Constitutional defect and those observations were made reserving the position as to what would happen after the exposure of this defect.

**Mr. Deputy-Speaker:** The question is:

"That the Bill, as amended, be passed."

Let the lobby be cleared.

The Lok Sabha divided:

Birendra Bahadur Singh, Shri  
 Bist, Shri J.B.S.  
 Brajeshwar Prasad, Shri  
 Brij Basi Lal, Shri  
 Chakraverti, Shri P.R.  
 Chanda, Shrimati Jyotsna  
 Chandak, Shri  
 Chandrabhan Singh, Dr.  
 Chandrasekhar, Shrimati  
 Chandrika, Shri  
 Chaturvedi, Shri S.N.  
 Chaudhry, Shri Chandramani Lal f  
 Chaudhuri, Shri D.S.  
 Chaudhuri, Shrimati Kamala  
 Chavan, Shri D.R.  
 Chavan, Shri Y.B.  
 Chavda, Shrimati Johraoen  
 Das, Shri B.K.  
 Das, Shri N.T.  
 Dass, Shri C.  
 Deo Bhanj, Shri P.C.  
 Desai, Shri Morarji  
 Deshmukh, Shri B.D.  
 Deshmukh, Shri Shivaji Rao S.  
 Deshmukh, Shrimati Vimla  
 Dey, Shri S.K.  
 Dhuleshwar Meena, Shri  
 Dighe, Shri  
 Dixit, Shri G.N.  
 Dubey, Shri R.G.  
 Dwivedi, Shri M.L.  
 Elayaperumal, Shri  
 Firodia Shri  
 Gackwad, Shri Fatehsinhrao  
 Gahmari, Shri  
 Gajraj Singh Rao, Shri  
 Ganapati Ram, Shri  
 Gandhi, Shri V.B.  
 Ganga Devi, Shrimati  
 Ghosh, Shri Atulya  
 Ghosh, Shri N.R.  
 Ghosh, Shri P.K.  
 Govind Das, Dr.  
 Gowdh, Shri Veeranna  
 Guha Shri A. C.  
 Gupta, Shri Badabab  
 Hansda, Shri Subodh  
 Hanumanthaiya, Shri  
 Haq, Shri M.M.  
 Harvani, Shri Anwar  
 Hazarika, Shri J.N.  
 Heda, Shri  
 Hem Raj, Shri  
 Iqbal Singh, Shri  
 Jadhav, Shri M.L.  
 Jadhav, Shri Tulajda  
 Jagunadevi, Shrimati  
 Jayaraman, Shri  
 Jedhe Shri  
 Jena, Shri  
 Jha Shri Yogendra  
 Joshi, Shri A.C.  
 Jyotishi, Shri J. P.

Kadadi, Shri  
 Kamble, Shri  
 Kappen, Shri  
 Kedaria, Shri C. M.  
 Kelshing Shri Rishing  
 Khanna, Shri P.K.  
 Kindar Lal, Shri  
 Kisan Veer, Shri  
 Kotaki, Shri Liladhar  
 Koujalgi, Shri H.V.  
 Kripa Shankar, Shri  
 Kripalani, Shri J.B.  
 Krishna, Shri M.R.  
 Krishnamachari, Shri T.T.  
 Krishnapal Singh, Shri  
 Kureel, Shri B. N.  
 Lalit Sen, Shri  
 Laskar, Shri N.R.  
 Lonkar, Shri  
 Mahadeo Prasad, Shri  
 Mahadeva Prasad, Dr.  
 Mahida, Shri Narindra singh  
 Mahishi, Dr. Sarojini  
 Malaviya, Shri K.D.  
 Mali Marjappa, Shri  
 Mallick, Shri Rama Chandra  
 Mandal, Dr. P.  
 Mandal, Shri J.  
 Mandal, Shri Yammuna Prasad  
 Maniyangadan, Shri  
 Mantri, Shri D.D.  
 Marandi, Shri  
 Masuriya Din, Shri  
 Matcharaju, Shri  
 Mathur, Shri Harish Chandi  
 Mathur, Shri Shiv Charan  
 Mehdi, Shri S.A.  
 Mehrotra, Shri Braj Bibari  
 Mehta, Shri J.R.  
 Melkote, Dr.  
 Mengi, Shri Gopal Datt  
 Menon, Shri Krishna  
 Menon, Shri Govinda  
 Minimata, Shrimati  
 Mirza, Shri Bakar Ali  
 Mishra, Shri Bibhuti  
 Miern, Shri Bibhubendra  
 Mishra, Shri M.P.  
 Miara, Shri Shyam Dhar  
 Mohammad Yusuf, Shri  
 Mohanty, Shri Gokulananda  
 Mohin, Shri  
 Morarka, Shri  
 More, Shri K.L.  
 Mukerjee, Shrimati Sharda  
 Munjal, Shri David  
 Murthi, Shri B.S.  
 Murti, Shri M.S.  
 Muthiah, Shri  
 Naidu, Shri V.G.  
 Naik, Shri D.J.  
 Naik, Shri Maheswar  
 Naskar, Shri P.S.

NaYak, Shri Mohan  
 Nigam, Shrimati Savitri  
 Niranjan Lal, Shri  
 Pande, Shri K.N.  
 Pandey, Shri R.S.  
 Pandey, Shri Vishwa Nath  
 Pandit, Shrimati Vijay Lakshan.  
 Panna Lal, Shri  
 Pant, Shri K.C.  
 Patel, Shri Chhotubhai  
 Patel, Shri Man Singh P  
 Patel, Shri N.N.  
 Patel, Shri P.R.  
 Patel, Shri Rajeswar  
 Patil, Shri D.S.  
 Patil, Shri J.S.  
 Patil, Shri M.B.  
 Patil, Shri S.B.  
 Patil, Shri S.K.  
 Prabhakar, Shri Naval  
 Pratap Singh, Shri  
 Puri, Shri D.D.  
 Raghuramiah, Shri  
 Rai, Shrimati Sahodra Bai  
 Raj Bahadur, Shri  
 Raja, Shri C.R.  
 Rajdeo Singh, Shri  
 Raju, Shri D.B.  
 Ram, Shri T.  
 Ram Sewak, Shri  
 Ram Subhag Singh, Dr.  
 Ram Swarup, Shri  
 Ramdhani Das, Shri  
 Ramdhan Singh i 11  
 Rane, Shri  
 Ranga Rao, Shri  
 Ranjit Singh, Shri  
 Rao, Shri Jagannatha  
 Rao, Shri Muthyal  
 Rao, Shri Rajagopala  
 Rao, Shri Ramapathi  
 Rao, Shri Rameshwar  
 Rao, Shri Thirumala  
 Raut, Shri Bhola  
 Ray, Shrimati Renuka  
 Reddi, Dr. B. Gopala  
 Reddiar, Shri  
 Reddy, Shri H.C. Linga  
 Reddy, Shri Narayan  
 Reddy, Shri Surinder  
 Reddy, Shrimati Yashoda  
 Roy, Shri Bishwanath  
 Sachu Ram, Shri  
 Saha, Dr. S.K.  
 Sahu, Shri Rameshwar  
 Saigal, Shri A.S.  
 Sanji Rupji, Shri  
 Saref, Shri Sham Lal  
 Sarma Shri A. T.  
 Satyabhama Devi, Shrimati  
 Satyanarayana, Shri

Shab, Shrimati Jayaben  
Shakuntala Devi, Shrimati  
Sham Nath, Shri  
Shankarajya, Shri  
Sharma, Shri A.P.  
Sharma, Shri D.C.  
Sharma, Shri K.C.  
Shastri, Shri Ramanand  
Sheo Narain, Shri  
Shinde, Shri  
Shivanarajappa, Shri  
Shree Narayan Das, Shri  
Shyamkumari Devi, Shrimat  
Siddananjappa, Shri  
Siddiah, Shri  
Singh, Dr. B.N.  
Singh, Shri K.K.  
Singha, Shri G.K.  
Sinha, Shri Satya Naryan  
Sinha, Shrimati Tarkeshwari

Sinhaan Singh, Shri  
Sivappraghasan, Shri Ku.  
Snatak, Shri Nardeo  
Sonavane, Shri

Soundaram Ramchandran, Shri-  
mati

Soy, Shri H.C.  
Subbaraman, Shri  
Subramanyam, Shri T.  
Sumat Prasad, Shri  
Sunder Lal, Shri  
Swaran Singh, Shri  
Tahir, Shri Mohammad  
Thengal, Shri Nallakoya  
Thimmalah, Shri  
Thomas, Shri A.M.  
Tiwar, Shri D.N.  
Tiwar, Shri K.N.  
Tiwar, Shri R.S.  
Tripathi, Shri Krishna Deo

Tolia Ram, Shri  
Tyagi, Shri  
Ulkey, Shri  
Ulaka, Shri Ramachandra  
Upadhyaya, Shri Shiva Dutt  
Vaishya, Shri M.B.  
Varma, Shri Ravindra  
Veerabhasappa Shri -  
Veerappa, Shri  
Venkatasubhaiah, Shri P.  
Varma, Shri Balgovind  
Verma, Shri K.K.  
Vidyalankar, Shri A.N.  
Virbhadr Singh, Shri  
Vyasa, Shri Radhelal  
Wadiwa, Shri  
Wasnik, Shri Balkrishna  
Yadab, Shri N.P.  
Yadav, Shri Ram Harkh  
Yadava, Shri B.P.

## NOES

Bade, Shri  
Banerjee, Shri S.M.  
Bheel, Shri P.H.  
Dharmalingam, Shri  
Dwivedy, Shri Surendranath  
Imbichibava, Shri  
Kapur Singh, Shri  
Kunhan, Shri P.  
Limaye, Shri Madhu

Mate, Shri  
Mukerjee, Shri H.N.  
Nair, Shri Vasudevan  
Naskar, Shri P.S.  
Omkar Singh, Shri  
Pandey, Shri Sarjoo  
Raghavan, Shri A.V.  
Ramabadrnan, Shri  
Ranga, Shri

Singha, Shri Y.N.  
Sivasankaran, Shri  
Swamp, Shri Sivamurthi  
Utiya, Shri  
Verma, Shri S.L.  
Vishram Prasad, Shri  
Yadav, Shri Ram Sewak  
Yashpal Singh, Shri

**Mr. Deputy-Speaker:** The result of the division is as follows:

Ayes : 274; Noes : 26.

**Shri Krishan Pal Singh (Jalesar):** The machine has failed on my table.

**Mr. Deputy-Speaker:** That will be noted.

**Shri S. M. Banerjee:** Shri Raghunath Singh is absent and he has not voted.

**An hon. Member:** He is a conscientious objector.

**Mr. Deputy-Speaker:** The motion is carried by a majority of the total membership of the House and by a majority of not less than two-thirds of the Members present and voting. So, the Bill, as amended, is passed.

*The motion was adopted.*

16.43 hrs.

## STATEMENT RE-RESIGNATION OF COUNCIL OF MINISTERS IN GOA, DAMAN AND DIU, DISSOLUTION OF LEGISLATIVE ASSEMBLY AND PRESIDENTIAL ORDER THEREON

**Mr. Deputy-Speaker:** Now, Shri P. S. Naskar may make his statement.

**The Deputy Minister in the Ministry of Home Affairs (Shri P. S. Naskar):** The Council of Ministers.... (Interruptions).

**Shri Nambiar (Tiruchirappalli):** It was for this that they were called. The job is over and they are all going out. How can we take up the next business now when everyone is going out? This shows very clearly that all these persons were called only for this purpose.

**Mr. Deputy-Speaker:** If the hon. Member wants he may also go out.