

[Shri Karmarkar]

manner that is beneficial to the growers, the consumers, labour and every other party affected. I appreciate the thorough support which has been given to this Bill.

Mr. Chairman: The question is:

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

The motion was adopted.

VINDHYA PRADESH LEGISLATIVE ASSEMBLY (PREVENTION OF DISQUALIFICATION) BILL

Shri Punnoose (Alleppey): I would like to make a submission before the hon. Minister moves the Bill.

Mr. Chairman: How can he do so before the Bill is moved?

Shri Punnoose: I have a point of order.

Mr. Chairman: What is the point of order?

Shri Punnoose: This Bill was included in the list that was placed before the Business Advisory Committee. When it met last, the Committee set apart time for only some important Bills and with regard to a few other minor Bills they were expected to be moved as and when time permitted. With regard to this particular Bill, strong opposition was raised by many Members of the Business Advisory Committee and we were given to understand—although not in a very formal way—that it may not be moved at all. The Whip of the Congress Party who was present at the meeting told us that he would think about it. Now, having once brought it up before the Business Advisory Committee I believe it was only fair that the Committee should have been consulted once again before bringing the Bill before the House.

Mr. Chairman: From what the hon. Member has said, I understand that there was no specific agreement that the Bill would not be taken up.

Shri Punnoose: There was no specific agreement.

Mr. Chairman: In the absence of an agreement, I do not know on what the hon. Member relies for his contention that this Bill should not be proceeded with.

Shri H. N. Mukerjee: (Calcutta North-East): On a point of clarification, Sir. I happened to be present at the meeting of the Business Advisory Committee. What happened was that, we decided to take up certain major Bills, whose importance the Government emphasized, and we allotted certain days for the discussion of those Bills. Government said that, to prevent the House finding itself without any employment in case a particular Bill is discussed and the discussion is completed before time, we may have a few other minor Bills. As far as this Vindhya Pradesh Legislative Assembly (Prevention of Disqualification) Bill was concerned, we expressed our strong opposition to its being brought forward in this session, and the feeling of the Business Advisory Committee definitely was that this, being a major Bill with very major signification, should not be brought forward before the House.

Shri P. T. Chacko (Meenachil): I would like to say a word, because what happened in the Business Advisory Committee has been misrepresented to a great extent. It is true that some of the Members of the Committee were against the introduction and the consideration of this Bill.

[MR. DEPUTY-SPEAKER *in the Chair*]

But I am sure that even at that time the hon. Minister of Parliamentary Affairs and the Government's spokesmen were expressing their strong opinion that this Bill should be taken up in this session itself.

Shri Punnoose: In that case, I have to make a further submission.

Mr. Deputy-Speaker: Before that, let me make the position clear. Of course, I was present in the Committee. I find from the Parliamentary Bulletin—Part II dated the 17th April 1953 the following mention:

"The Committee were informed that Government considered that the following 15 Bills should be passed before the current session concluded...."

and the Vindhya Pradesh Legislative Assembly (Prevention of Disqualification) Bill featured as item No. 7 in the list that was given. What we did in the Committee was that we agreed upon a time-table for the discussion of the Bills that were referred to in the Bulletin, and for the Estate Duty Bill we had agreed to the allotment of five days. So far as this Bill was concerned, if it could be taken up, we felt, it could be taken

up. We did not fix any particular time. No doubt, some hon. Members said in the Committee that no time could be fixed and if it was taken up, they would go on opposing it and even filibustering it. I attribute no motives. It is open to them to accept or not to accept or throw out the Bill. The point is that we did not fix any time-table for it. So, if we can get it through and find some time for it, there is nothing preventing the House from taking it up. All that we did not do was to fix up any time with respect to the other Bills than the ones for which definite allotment of time had been made. That does not mean that this Bill ought not to be brought forward today. We never understood that it ought not to be brought forward. There was only an expression of opinion on the part of some hon. Members who said that they were opposed to this Bill. By all means, it is open to them to oppose it and carry the House with themselves. That does not mean that we ought not to take up this Bill.

12 NOON

Shri H. N. Mukerjee: I can recall to you that when this particular circular was sent to all Members of Parliament, objection was raised on the floor of the House by Members belonging to certain parties other than my own that the Advisory Committee had not agreed to take up these Bills as being ones likely to be considered in this session. On that occasion, on behalf of Government a statement was made that these other additional Bills, apart from the first five, were included only in order to have a safeguard against Parliament having nothing to do on its agenda in case the first five Bills were completed before time. Government gave a more or less implied assurance—if it was not a formal assurance—that no major Bill with any major signification would be brought forward. In the meeting of the Business Advisory Committee, the representatives of the different parties in the House including, of course, some Members of the Congress Party expressed their misgivings in regard to this particular Bill, particularly because of the very serious constitutional signification which attaches to it. Naturally, we expected that Government would not bring forward this Bill at the fag end of the session and try to rush it through, when it raises such serious repercussions.

The Prime Minister and Leader of the House (Shri Jawaharlal Nehru): May I say a few words, Sir? The hon. Member has referred to what I said on a previous occasion. I do not

know what relevance that has, because this particular Bill was included in the essential ones. So, the non-essential ones which were added on do not make any difference. The hon. Member may have certain views about this Bill which may be at variance with ours. We know that this is a necessary Bill, an urgent Bill and an important Bill, about which the law is hundred per cent. clear. The hon. Member must study the law carefully, because it has to be approached from a legal point of view as much as it is approached from any other point of view. We think that the law is completely clear. We have gone into that with the greatest care, and I really do not see why, simply because some hon. Members have some misgivings about it, a large number of other hon. Members who have no misgivings should not proceed with this Bill.

Shri Punnoose: I think the hon. Prime Minister has not understood the position properly. We said that this Bill had been brought before the Business Advisory Committee and there was an understanding that this would not be pressed.

Shri P. T. Chacko: There was no such understanding.

Shri Punnoose: It was not said at that time that this was a necessary Bill or an urgent Bill and that it should be passed immediately. Further, since you, Sir, have tried to express the views that came up in the Committee, may I add that you were not there at that particular time and the hon. Speaker who was there expressed himself very strongly against this Bill being brought before the House. He said that it was improper.

The Minister of Parliamentary Affairs (Shri Satya Narayan Sinha): It is absolutely incorrect. No such thing was said.

Mr. Deputy-Speaker: No more arguments are necessary. The acting Leader of the Communist Party has already spoken, and I have allowed one other hon. Member also to express his objections. So far as this matter is concerned, the position is clear. In the Business Advisory Committee, Government expressed themselves as being anxious to see that this Bill was got through during this session. Unfortunately, hon. Members do not understand the scope of the Business Advisory Committee. They should bear that in mind. When a number of Bills have to be placed before the House, and when Government is interested or wants that some Bills

[Mr. Deputy-Speaker]

should be got through urgently, naturally we meet in the Advisory Committee so that, with the approval of the various Leaders of the different Groups, we may find out what exactly would be the time necessary for each Bill, lest there may be an impression that Government were trying to see a Bill through much earlier than warranted or were trying to rush it through. Therefore, we sit together in the Committee and if we find that the Government wants a set of Bills to be taken up, we try to allot time for the different Bills. Thereafter, with the consent of the House, the Chair decides that so much time will be allotted for the first reading, so much for the second reading and so much for the third reading, and so on.

It was never intended that so far as this Bill was concerned, it should be given up. As a matter of fact, in a subsequent Parliamentary Bulletin issued on the 2nd May 1953, this particular Bill was put down as item No. 8. So far as I am able to see, Government was anxious, in the Business Advisory Committee, to see that this Bill was got through, but some of the Members were opposed to it. Of course, on principle, they are entitled to oppose it, but at no time was it said that this Bill would not be taken up. If the Government wants, it is open to it to bring a Bill. If it is a question of the House being taken by surprise, or sufficient notice not being given, etc., that is another matter. But, otherwise, the Business Advisory Committee can only go so far as to say that with respect to a particular Bill they agree to so much time being spent. Even then, the House has to approve of it, and then the time-table is adhered to. It does not stand in the way of Government bringing forward any important Bill and saying, "we will push out all these and proceed with this". The Speaker will only take care to see that there is no element of surprise and that sufficient time is given for discussion. But so far as this matter is concerned it has been sufficiently long on the Order Paper. Hon. Members are at liberty to express their views, oppose and carry on discussion on that matter. I will allow this Bill to go on.

The Minister of Home Affairs and States (Dr. Katju): I beg to move:

"That the Bill to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh, be taken into consideration."

I am aware that this matter has given rise to some controversy.

Shri H. N. Mukerjee: May I rise on a point of order, even before this Bill is taken up? I submit that this Bill is out of order because, I submit, that in clause 4 this Bill refers to certain members of the Legislative Assembly of the State of Vindhya Pradesh who are mentioned in a Schedule attached to the Bill. As far as these people are concerned, these gentlemen mentioned in the Schedule, the President had issued a notification after reference to the Election Commission which determined that these people suffer under a disqualification of the membership of the Assembly concerned. After the President had issued this notification, the notification was read by the Speaker of the Vindhya Pradesh Legislative Assembly and the twelve members of the Assembly concerned ceased from that point of time at any rate to be members of the Vindhya Pradesh Legislative Assembly. The President's order was published on the 31st of March 1953. I have not got the date when the Presidential notification was announced by the Speaker in the Vindhya Pradesh Legislative Assembly, but that must have been a few days after the 31st of March 1953. My submission is that these persons are no longer members of the Legislative Assembly of the State, in the sense that it is quite beyond our jurisdiction to sort of whip up a dead being into life, so to speak, to make non-members of the Legislative Assembly members of the Assembly by a sort of retrospective legislation which is almost a record in constitutional history. I submit therefore that this Bill, referring as it does, to certain members of the Legislative Assembly of Vindhya Pradesh who do not exist as members of the State Assembly of Vindhya Pradesh, is out of order.

Shri Algu Rai Shastri (Azamgarh Dist.—East cum Ballia Dist.—West): You cannot revive the dead.

Dr. Katju: It is really not a point of order because it is the substance of the Bill itself. Clause 3 of the Bill says:

"It is hereby declared that the offices of members of any District Advisory Council shall not disqualify, and shall be deemed never to have disqualified, the holders thereof for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh."

Then in clause 4 it is set out: "For the removal of doubts"—inasmuch as twelve members had been declared to be disqualified because they had been members of the Advisory Council, therefore they were by name declared and they are now sought to be declared to be properly qualified members of the Vindhya Pradesh Legislative Assembly.

It is open to the House either to pass the Bill or not to pass the Bill, but it does not raise a point of order as to whether it is within the competence of the House. That is a point to be considered, but I submit no point arises for any declaration by the Deputy-Speaker as such or by the Speaker as such.

When I come to the merits and the House hears, if it so desires, the Attorney-General there will be abundant authority produced that we have followed precedents exactly in point where something has happened of a similar kind and it was thought that the best and the only formula and legal procedure was to provide in the manner in which we are going to do now. That is my answer.

It is not a question of order but of the substance of the Bill itself.

Shri K. K. Basu (Diamond Harbour): If you read clause (3) of article 101 along with article 102 it specifically says that "if a member of either House of Parliament becomes subject to any of the disqualifications mentioned in clause (1) of article 102" immediately he ceases to be a member and his seat becomes vacant. So the whole point is this. And once a seat becomes vacant there is only one method provided for filling it. The Constitution provides that that seat can only be filled up by election. So from the point of time when the President declared that they were disqualified, naturally the seats became vacant. How can we have legislation in this matter which violates the specific article of the Constitution? So we submit that we cannot discuss this Bill. I do not know why the Attorney-General has been brought.

Dr. Katju: May I answer that briefly? The Constitution as such does not apply to the Part C States—these particular articles. So far as Part C States are concerned it is the subject-matter of legislation, the Government of Part C States Act 1951 (Act 49 of 1951) and this matter is governed by sections 16 and 17 of that Act. Formerly, as the Act stood, it was left to the President to decide as to whether there was a disqualification or not if

there was any dispute. But the President removed that difficulty or that doubt by promulgating an order under section 43 of the Act itself in which he said that the matter should be referred to the Election Commission, and the President would decide the matter on the advice of the Election Commission. The articles of the Constitution which my hon. friend read refer to Parliament and to the Legislatures in Part A States and Part B States. So far as Part C States are concerned they are entirely governed by this Act of Parliament, and it is open to Parliament, if it so chooses, to amend the Act or to do anything with it. Therefore, no question of any amendment of the Constitution arises here, nor are we by this Bill doing anything with the Constitution.

Shri Algu Rai Shastri: Is this Bill an amending Bill?

Shri Raghavachari (Penukonda): As regards the Act relating to Part C States, actually articles 102 and 103 of the Constitution have been made part of that Act. But in section 17 of the Act there is a phrase which is not to be found in articles 102 or 103 and it is this. Section 17 of the Act says:

"A person shall be disqualified for being chosen as, or for being, a member of the Legislative Assembly of a State if he is for the time being disqualified....."

The phrase used there is "for the time being". That phrase is not to be found in the Constitution either in article 102 or in article 103. Article 102 which is added there is supplemented by this phrase "for the time being". Therefore, the disqualification must relate only for the time at which the disqualification was existent or was considered so. It is not open now to pass a legislation and say that that phrase was not there. Therefore, the Bill will be out of order.

Shri K. K. Basu: May I just submit one point, Sir?

Mr. Deputy-Speaker: I have heard enough.

Shri K. K. Basu: My point has not been answered.

Mr. Deputy-Speaker: I will answer that point. The point is this. Under article 102 of the Constitution, a person would be disqualified for being chosen as or for being a member of

[Mr. Deputy-Speaker]

either House of Parliament. Assuming that all these three articles, 101, 102 and 103 have been made applicable to Part C States by the Order of the President, article 102 sets out the disqualifications for being chosen or being a member. Sub-clause (a) says:

"If he holds any office of profit under the Government of India... other than an office declared by Parliament by law not to disqualify its holder;"

This is the law which seeks to declare that the office of being a member of the District Council shall not be a disqualification for continuing to be a member. If this law had been passed before the Order of the President had been made, they will continue without any hiatus to be members of that Legislature.

The only difference that is sought to be made is that this is coming after the President's Order is passed. Hon. Members are aware that a law of Parliament can be both retrospective and prospective. Therefore, there is nothing preventing this House from passing a legislation saying that this office shall never be deemed to have been an office of profit at any time.

We will assume for a moment that the President's Order is not there. Without the President's Order, this would really take you to that date and without any interregnum they would continue to be members. What is the effect of the President's Order? The President's Order will become a nullity in view of the fact that they are there from that time and continue to be fully qualified to continue as members. What follows is, on the basis that we are now acting, the Order becomes absolutely useless. Now, that provision is also made in clause 4.

Above all, hon. Members are aware this question goes to the very root of the matter. This is the soul of the Bill. As was stated by the hon. Home Minister, if exception is taken in a point of order to going on with the Bill, the very purpose of the Bill is defeated. In all these matters, the Speaker has never taken upon himself the responsibility of deciding this point of order whether it is constitutional or otherwise. It is for the House to take this also into consideration in voting down the Bill or accepting it.

Shri H. N. Mukerjee: May I point out one thing, Sir? It is an act of the President which we are trying to

change by an Act of Parliament. I find in the Statement of Objects and Reasons, it is stated....

Mr. Deputy-Speaker: Order, order. I have already said that I am not going to give a ruling regarding the point of order. The accepted practice of this House is, the Speaker never takes the responsibility for deciding this kind of point of order that the House has no jurisdiction. It is the duty of the House, it is the responsibility of the House to decide it for itself. It is open to it. Under these circumstances, it is not necessary to go into this point of order. When the hon. the Leader of the House, the Leader of the Communist Party or any other Member gets an opportunity to speak, he may put forward his arguments so as to influence the opinion of the House for that particular purpose. Otherwise, the point of order need not be raised now.

Shri K. K. Basu: My point of order I want to be decided. I do not say that it applies to Part C States. What I submit is, on the admission of the Home Minister himself....

Mr. Deputy-Speaker: Whatever it is, I am not allowing any point of order regarding this matter.

Shri K. K. Basu: My only submission is that the point of order be decided before the House proceeds..

Mr. Deputy-Speaker: The hon. Member will have an opportunity to speak on this point. What I say is this. All hon. Members have something to contribute to the debate in the House. They will have an opportunity to speak on this matter.

Shri K. K. Basu: I want to submit that the Attorney-General is here. He may be asked to reply to my point.

Mr. Deputy-Speaker: That stage will come when it is necessary. If hon. Members come forward with their arguments, if possibly the help of the Attorney-General is necessary, it is for the Government to ask him to intervene in the matter.

Shri H. N. Mukerjee: The arguments regarding the tenability of this Bill..

Mr. Deputy-Speaker: I am not competent to decide. How many times am I to tell hon. Members not to raise this point? It is not competent for the Chair to decide such issues as to want of jurisdiction of the House. So far, they had not taken the responsibility.

I am not prepared to take that responsibility. It is in accordance with the precedents. Such an important matter as this, I leave it to the House to decide. *Prima facie* I come to the conclusion that there is nothing so far as the point of order is concerned. This is quite constitutional.

Shri H. N. Mukerjee: Would you not call upon the Attorney-General to say about the tenability of the Bill?

Mr. Deputy-Speaker: Not now.

Shri H. N. Mukerjee: That would save the time of the House.

Mr. Deputy-Speaker: I am satisfied; it is not necessary. If there are sufficiently strong arguments here, if the Government feels that those arguments have to be refuted, possibly, they may request the Attorney-General to speak. Now, I do not feel it necessary at all to call upon the Attorney-General at present.

Shri Nambiar (Mayuram): It may be put to the House.

Mr. Deputy-Speaker: I will not put it to the House at present. I know the stage.

Shri Punnoose: Just now, you were good enough to state that it will be decided by the House.

Shri N. C. Chatterjee (Hooghly): We have got other points attacking the constitutionality of this measure. We are certain—I will not be so dogmatic as the Leader of the House to say 100 per cent. certain—that the Bill is unconstitutional and infringes the mandatory provisions of our Constitution. It will be better if we formulate our objections after the Home Minister has spoken and then the Attorney-General can deal with them and then we can deal with the matter as a whole.

Mr. Deputy-Speaker: Oh, yes. Hon. Members are aware that there is a consideration stage. If the consideration stage is passed, we will go clause by clause. Then, there is the third reading. The hon. Home Minister will start. Then, I will put the matter before the House. Then a discussion will ensue. At a particular stage the Attorney-General may intervene if the Government so chooses.

Dr. Katju: Let me give the House very briefly the very short history of what has actually happened. On the 26th of April 1952, the Vindhya Pradesh Government, in the interests of

public administration, passed an order whereby they constituted District Advisory Councils for each of the eight districts in Vindhya Pradesh. This Council was to consist of the local officials of various departments including the district officer and the members of the Legislative Assembly representing the district. Irrespective of the particular party to which they may belong, the order said that all the members of the district shall be members of the District Advisory Council. There were to be five other non-official members, nominated by the Lieut.-Governor. The function of the District Council, broadly speaking, was to review the activities of the previous month. The Advisory Council was to meet every month and so they were to review the activities of the previous month and make recommendations on matters affecting the district on general questions. The function was purely advisory and they were not entrusted with any executive functions. So far as the official members were concerned, they were to get their usual allowances. So far as non-official members were concerned, the provision was that they were to get their travelling allowance and also the allowance applicable to members of the Legislative Assembly for the day or days of the meetings.

When this Council began to meet, many members attended; many members did not attend. What happened was, there were five Ministers and one Speaker. They never attended and they did not probably think that they were members of the Council. Three members of the Legislative Assembly formally refused membership. Eight members neither accepted nor refused; nor did they attend any meeting at all. Fifteen members attended, and drew their travelling allowance and halting allowance. Twenty seven gentlemen did not do so. The House is aware that the rate of halting allowance was rupees five a day.

On the 30th of October, 1952, a representation was received by the President here from a member of the Vindhya Pradesh Assembly saying that the membership of the Councils as constituted by the Vindhya Pradesh Government constituted an office of profit, and therefore, it had disqualified all the members, because the executive order had made no distinction between one member and another member. They said it had disqualified all the members. When this representation came, then, as Vindhya Pradesh was a Part C State, we consulted the Act and we found that the

[Dr. Katju]

matter was left to the discretion of the President inasmuch as this was a sort of semi-judicial matter relating to elections. We thought that the provisions of the Constitution in relation to Parliament and in relation to Parts A and B States constituted a good precedent, and therefore, the President promulgated an Order saying that as part of the Government of Part C States Act, all questions arising and relating to the disqualification of any particular member shall be decided by him, but that it shall be decided after the matter had been referred to the Election Commission and the President shall abide by the advice of the Election Commission. That is the substance of article 103 of the Constitution and article 102 of the Constitution. I only repeat and emphasize this aspect because a good deal has been said in the discussions, viz., we are flouting the order of the President and it constitutes a reflection on the President. There is nothing of the kind. The President's order itself and the very language of the Constitution says that he shall abide by the advice of the Election Commission. Whether the Election Commission is right or wrong is a matter of opinion.

The President's order was promulgated on the 14th of January, 1953 and that became a part of the Government of Part C States Act. Thereupon the President formally referred the matter to the Election Commission and the Election Commission by their report dated the 2nd March, 1953 advised that 12 of the members had become disqualified. I am not sitting here in judgment on the pronouncement of the Election Commission, but the way in which the Election Commissioner proceeded is this. He said it is a general order; it is an office because the executive Government has promulgated or made these appointments. And he said it is an office under the executive Government because it is open to the Government to revoke that order, and the result would be that all the members will cease to be members of the Executive Council. Now comes the question: is it an office of profit? He said: "Well, it is a very small, trivial sum". A member would go to the District headquarters from the mofussil. He would have to incur some travelling expense. Therefore, no question of profit arises there. Then, if he halts for the day in the District headquarters, he will have to incur some expense. That is only rupees five and therefore he exonerated every single member of the Vindhya Pradesh Assembly who was not a resident of the

District headquarters where the District Advisory Council was bound to meet. Then there were 12 Members who were residents of the District headquarters. And as to them, of course, they never charged any travelling allowance, but they did charge rupees five and it was said: "Well, for going to the place of the meeting, they will have to incur some conveyance charges, this thing and that thing" but the Election Commission said there was some element of profit there. From rupees five it may be five annas or one rupee or two rupees, and therefore, he said that the Act should be enforced, and he expressed the opinion that what he called "the resident members" were holding an office of profit and they should be disqualified.

This was, as I said, received here on the 2nd of March. The Government had then to consider as to what was the position. The Vindhya Pradesh Government represented that they had acted in perfect good faith, that the members of the Legislature had acted in good faith; as a matter of fact, before they passed the order, they had taken legal opinion, and they had been advised that there was no question of any office of profit arising under these circumstances. And they said it would be a great slur upon these members and it would cause great disruption in the whole, what I may call, the political life of the Assembly and something ought to be done. Thereupon we took legal advice. I am emphasizing this because we took legal advice and from the highest source available to us. And please remember that the Attorney-General is not a member of the Government. He is the legal adviser to the Government of India, whichever the Government of India may be. and he gave the opinion that it is a purely, what shall I say, trivial matter. He did not sit in judgment upon the opinion of the Election Commission. He said: "Whatever has been done has been done in good faith." There are previous precedents in the House of Commons in exactly similar circumstances where the House of Commons has intervened and especially by name passed a law whereby the Parliament there has declared that the member concerned was not disqualified, had never been disqualified, and it passed that with retrospective effect.

Then arose the question as to when Government should intervene here, and when should this Parliament be asked to legislate. That was also a question considered, and the legal

opinion that was given to us was that under the law as it stood, the President—because, under the rules and under the Part C States Act, he was bound by the advice—should first formally promulgate his Order saying that in accordance with the advice received by him, the members concerned had become disqualified. That formal declaration having been made, Parliament should intervene and pass the necessary legislation, and it is therefore, in strict accordance with legal opinion given to us that we have done so. Otherwise, I should like to make it quite clear we would have introduced this Bill earlier, because some people have said: "You might have brought this Bill before the President promulgated his Order accepting the Election Commission's opinion. Once the President having done so, your hands are tied." The legal opinion was—and I submit with whatever credit I may have as a lawyer—and the proper constitutional position was that the President was bound to abide by the advice. There was a dispute referred to him. He settles it first of all. The deck is cleared. Everybody knows how the matter stands, and then Parliament comes in and declares: "Well, here is this mistake", and says to all sections: "You declare your opinion that the membership of the District Advisory Council should never be considered to be an office of profit at all, or should never be considered sufficient to disqualify anybody today or from any time."

I emphasize that because one of the amendments says that the Act should come into operation from such date as the Central Government may declare, which means that it should be prospective and it should not be retrospective. The very object of the Bill is to meet this mischief, *viz.*, something has happened which nobody anticipated, not a single soul anticipated. It is not a question of one member doing this or another member doing that. The Vindhya Pradesh Government thought that in order to carry on their administration in a democratic manner, they would rather have the advice of all the members of the Legislative Assembly elected from a district available to the district authorities. And they having done so in perfect good faith believing that there was nothing wrong in proceeding in that manner. I think Parliament owes a duty to all those members who have acted in good faith. They have not made any money out of it. They have not exercised any power. As I said, there is no question of executive function. It was a purely advisory function, and the Election Commission having drawn

that distinction between resident members and non-resident members, we thought it was fair that we should do something in order to remove the disqualification.

To make it prospective will really be not to meet the mischief at all. That is the real history of the Bill and I have told you what the legal opinion we have received is. I have requested the Attorney-General to be present here and if any hon. Member wants, or if the House wants it, he would tell us as to what the legal aspect of the matter is.

I repeat once again that we are not considering any broad question under the Constitution. So far as the Part C States are concerned, the only piece of legislation binding on them or governing them is this Act which was passed in 1951. Any article of the Constitution which may be, you may say, brought into the thing or which may be considered a part and parcel of the Act—that is all done by virtue of the Act of Parliament. And therefore, it is open to Parliament to modify, amend or alter the Act of 1951 in any manner it likes. If such a question were to arise now in any Part A State or Part B State, then, with all respect to you, Sir, the argument that you have been pleased to put forward and the interpretation that you have been pleased to put upon article 102, read with article 101 of the Constitution, would have very great force, would be applicable and Parliament would have certain authority to intervene in a matter of this description. Because article 102 definitely says: 'other than an office declared by Parliament by law not to disqualify'. I say this because it may be that in other States, the State Governments acting, again, in complete good faith, may have appointed such Advisory Councils and may have requested members to come and serve at great inconvenience to themselves and by some flaw or wrong interpretation, there may be a great danger of the political economy of the State, so to say, being upset.

Mr. Deputy-Speaker: There is a small doubt. So far as the Vindhya Pradesh members are concerned, they are governed by the Government of Part C States Act, 1951. There is section 17 relating to disqualification of membership. It says, that the disqualifications shall apply to a person being a member of either House of Parliament under article 102. But there is article 103. If a doubt arises who ought to decide? There is no provision in this Bill.

Dr. Katju: That is what I said. Probably I did not make myself clear. In order to provide for that, under section 43 of the Part C States Act, if you will be pleased to refer to....

Mr. Deputy-Speaker: The President may remove any difficulty.

Dr. Katju: And thereupon the President, on the 14th January promulgated this order:

"Whereas a difficulty has arisen in giving effect to the provisions of clause (a) of sub-section (2) of section 16 and section 17 of the Government of Part C States Act, now, therefore, in exercise of the powers given by section 43, the President is pleased to make the following order."

And then he reproduces practically article 103 of the Constitution, namely, if any question arises as to whether a member of the Legislative Assembly has incurred a disqualification, the matter shall be referred for the decision of the President, and on any such question the President shall obtain the opinion of the Election Commission and shall act accordingly. Therefore, it is by virtue of this Order made under section 43 that the President has acted. I suggest, therefore, that it is entirely within the competence of Parliament to make any amendment or alteration and pass this Bill.

Mr. Deputy-Speaker: Can there not be a view that the Order of the President under section 43 is itself not valid in which case there is no disqualification at all?

Dr. Katju: Maybe. That may also be.

Mr. Deputy-Speaker: Removal of difficulties is only in the working, not creating an agency to decide as to whether these people have got a disqualification or not.

Dr. Katju: That may be another matter.

Mr. Deputy-Speaker: We will ignore the President's Order as being not valid. Therefore, there is no disqualification either so far as these gentlemen are concerned.

Dr. Katju: There is no disqualification now.

Shri Namblar: Then why take the Bill?

Dr. Katju: I would welcome the stand of my hon. friend from the Opposition because it will then....

Mr. Deputy-Speaker: Let there be no cross talk.

Shri Namblar: Then you withdraw it.

Mr. Deputy-Speaker: Motion moved:

"That the Bill to declare certain offices of profit not to disqualify their holders for being chosen as, or for being, members of the Legislative Assembly of the State of Vindhya Pradesh, be taken into consideration."

Shri N. C. Chatterjee: The first point that I want to raise is: whose disqualification is sought to be removed? The persons concerned are no longer members of the Vindhya Pradesh State Assembly and therefore, really there is no disqualification now existing. You cannot remove something which does not exist. What is the purpose of this Bill?

Under the Government of Part C States Act, there are provisions in section 16 and section 17 which correspond to article 101 and article 102 of the Constitution. My hon. friend, Dr. Katju, was saying that it was a very trivial matter, and he tried to oversimplify it. But we maintain that this is an unprecedented thing which ought not to be tolerated by this House. It is an unconstitutional encroachment as it is going to overrule the President's final decision and it should not be tolerated in any shape or form.

Under article 101, if a member of the House becomes subject to any of the disqualifications mentioned in clause (1) of article 102, his seat shall thereupon become vacant. Then if you turn to article 102, a person shall be disqualified for being chosen as and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State. The question was raised by one of the prominent members of the Vindhya Pradesh State Assembly, I think by Shri Narbada Prasad Singh, so far back as October last year, and it was kept pending for months. He raised the point whether the acceptance of this office of profit automatically incurred the disability specified in the Constitution. Under the Constitution the member becomes automatically disqualified on his holding an office of profit. A person shall be disquali-

fied for being chosen and for being a member if he holds any office of profit. There is no question that if it is an office of profit, then surely, automatically, he became disqualified; he could not sit any longer. They ceased to be members—all those gentlemen who held these offices of profit.

There was one lacuna in the Act. There was no provision like article 103—our article 103 of the Constitution—which says:

“If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final”.

And clause (2) of that article says:

“Before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion”.

The sum total is this. There was no machinery provided for deciding the question. That was the lacuna, and the President was approached that this lacuna should be filled up. And he did fill it up. He issued an Order, of course, after a lapse of months, he did issue an Order which really incorporated article 103 in the Vindhya Pradesh State Constitution. Therefore, the net effect is this that article 103 became fully operative.

Now there is the question raised as to whether these members who held or accepted this office of membership of the District Advisory Committee or Council had become subject to the disqualification mentioned in clause (1) of article 102. The President said that he would decide and that his decision shall be final. But the constitutional safeguard imposed by clause (2) of article 103 was very rightly accepted by the President. He said: here is an Election Commissioner with an independent authority; you have placed him in charge of the conduct of elections throughout India; you have vested him with high authority and prerogative. His powers and functions are on a par with a Judge of the Supreme Court and he has discharged his duties well according to the Government. Therefore, he decided to consult the Election Commission. In effect a tribunal was constituted. The Election Commissioner was the tribunal to decide this point. The Election Commissioner went down

to Vindhya Pradesh. He went to Rewa on the 23rd February 1953 and held a sitting. He heard the parties; he heard their arguments and then he gave his opinion definitely to the President that these twelve members who are residents of the headquarters of the district had become subject to disqualification as a result of holding offices of profit under the Vindhya Pradesh Government. The President considered the matter, he accepted the advice of the Election Commissioner and issued an order accordingly disqualifying the twelve members from being members of the Vindhya Pradesh Legislative Assembly.

As one of my hon. friends has already stated, the Speaker of the State Assembly communicated this order on the 2nd April 1953 to the members of the State Assembly on the floor of the Assembly and the twelve members accepted the position and withdrew from that Assembly. They recognised that the President's order was final and that they had ceased to be members of the Assembly.

This is not a “trivial” matter at all; it is oversimplifying the issue. You are putting democracy in peril. You are making our Constitution a laughing-stock if you behave in this way. You are doing this because they belong to the Congress party, that is, the majority party. Would you have done this, would you have vetoed the President's Order, would you have superseded the finality of the Election Commission's decision, as ratified by the President, if these members did not belong to your party, the ruling party?

The Election Commission's report is quite clear. According to that the Election Commission says it is not a trivial matter. I regret that Dr. Katju is trying to over-simplify it in his characteristic style. What does the Election Commission say? The Election Commission says:

“It would be more reasonable, more desirable that we should concentrate upon the underlying principles and the real intention of the Constitution in incorporating those salutary provisions against the acceptance of certain offices by members of legislature.”

What is the principle? If you once allow the executive of the day, or the Government of the day to throw crumbs, and to tempt the M.L.A.'s with small emoluments, some office, some remuneration, some D.A., T.A., anything you may call it, you may sugar-coat it in any way you like, you

{Shri N. C. Chatterjee}

will be putting responsible Government in peril. Are you not making today a mockery of democracy? Are you not really trying to affect the independence of thought of the members concerned. That is what the Election Commission points out. Here is a man who had been himself a judge of some experience and of some reputation, who had been conducting the elections throughout India, the biggest elections ever held, the most gigantic elections which have taken place. What does the Election Commission say:

"It was felt obviously that the Executive Government of the Union, or of a State, should be discouraged from holding out blandishments to members of the legislature so that the latter would be free to carry out their duties to their electorate uninfluenced by any considerations of personal loss or gain."

That is the principle for which we are fighting; that is the principle on which the Constitution is framed, and that is the principle which is going to be superseded in a cavalier spirit by this kind of Bill. It ought not to be tolerated.

The Election Commission goes on:

"If the Executive Government have untrammelled powers of offering legislators any appointments, positions or offices, however they may be described, which carry emoluments of some kind or other with them, there would be a clear risk that an individual member might feel himself beholden to the Executive Government and thus lose his independence of thought and action in his capacity as a member of the legislature and a true representative of his constituents."

I say we will be putting democracy in peril if this House accepts this Bill. I am using the language of the Commission again:

"That will be a very great danger to the proper development of democratic institutions and the democratic way of Government in the country."

My second objection is this. After the vacation of the seats in the State assembly by these members under section 16 of the Part C States Act by virtue of the Presidential Order, these seats in the State Legislature

can only be filled up by by-election under section 150 of the Representation of the People Act, 1951. It is not within the jurisdiction of anybody else; it is only within the jurisdiction of the Election Commission to arrange for the filling up of these vacancies so caused and it would not be right and proper to trespass upon this jurisdiction and to say: "No, this Parliament will set an evil example today. No more elections; no longer the people's will will matter; by legislation we will create M.L.A.'s in the State Assembly." (An Hon. Member: Nomination). Yes, parliamentary nomination, because you have got a majority.

My third point is this. Article 324 of the Constitution of India places the conduct of all elections to Parliament and to the Legislature of every State and the appointment of election tribunals for the decision of doubts and disputes arising out of or in connection with such elections to the Election Commission. This Bill infringes that article. It takes away the jurisdiction from the hands of the Election Commission and arrogates the power to say: "We declare that these people who have ceased to be members of the Assembly shall be declared M.L.A.'s again and they shall go on merrily." This is a kind of resurrection of dead people which should not be tolerated by this House.

My next point is that under section 17 of the Part C States Act, read with article 103 of the Constitution of India the Order of the President disqualifying these twelve members has become final. The power of the President is expressly vested in him. It cannot be transferred by Parliament to anybody else nor can it be taken away. You cannot arrogate that power to yourself. You have given him this power. That part of the Constitution is the integral part of the organic law that is binding on this Parliament and if you do something to supersede that finality you are really doing something against the Constitution. You are infringing that organic law and trespassing upon that organic law. You are acting both against the spirit and the letter of the law. Parliament cannot pass any Bill which qualifies or supersedes or affects the President's Order. This is an important and fundamental point. Once you allow that to be done, you will open the flood-gates to all kinds of nepotism and jobbery. Tomorrow a member may be unseated by an Election Tribunal, maybe for grounds which appear to the executive or to my hon. friend Dr. Katju

as "trivial". Is it suggested that on the ground that because the Tribunal has unseated him on grounds which to the Government appear to be trivial, or which in the opinion of the Attorney-General is not reasonable, Parliament will pass an Act with retrospective effect restoring his membership? I am not laying stress so much on the retrospective aspect of it. I am stressing the fundamental point that you are trespassing upon the cardinal principles of organic law, the fundamental principles of our Constitution which should not be done. So long as you have sworn your allegiance to the Constitution and so long as the Constitution stands as it is, that is the paramount law and you cannot pass this Bill which is to some extent going against the President's Order—unless you amend the Constitution. Here, you are trampling the President's Order under your feet. What is the good of saying 'No'? Can you deliberately ignore what article 103 says in the case of a Member of the House of the People? It is solemnly stated in article 103 that the question shall be referred to the decision of the President. It clearly says:

"If any question arises as to whether a member of either House of Parliament has become subject to any of the disqualifications mentioned in clause (1) of article 102, the question shall be referred for the decision of the President and his decision shall be final."

Unless and until you alter this provision, you cannot possibly say, "I will not pay attention to the finality of his decision". Finality means that his decision is sacrosanct. You cannot, tomorrow, say that he has done something which he ought not to have done. You have set up the tribunal. You have created the machinery or tribunal for judging the question. That machinery or tribunal has judged. It has acted according to the principles of natural justice. It has given a hearing. It has gone down to the particular State and heard the parties. It has heard the counsel's arguments and has then delivered a judgment. Here is a correct judgment, given in the conscientious discharge of judicial duties, with the fullest appreciation of the gravity of the situation. It points out that it is not a "trivial" matter, but you wrongly treat it as a trivial matter and then say that they should not have decided in that fashion. Are you not going to declare solemnly today, if you pass this Bill into an Act, that the President has done something which was wrong, that he has done

something which was improper, that he has accepted a decision, which was a wrong decision, an improper decision, an illegal decision?

Therefore, I say that this is an absurd Bill. It is a mischievous Bill. It is an unconstitutional Bill. It should not be pressed. It is an unprecedented procedure in the history of the Constitution of any country. It means really a censure on the conduct of our President. You are really trying to doubt the propriety, the integrity, of his conduct and saying that he ought not to have done this. These are very strong and cogent reasons which should make this Parliament not pass this law, or else, you will have to impeach the President according to the constitutional procedure prescribed. If you cannot do it, if you do not venture to do it, then do not think of passing this Bill. The powers of Parliament have been defined by article 245. You cannot go beyond those powers. You cannot, by a legislation of this type, substitute M.L.As. by law-making instead of M.L.As. by election and substitute the free choice of the electorate by your choice as the ruling party for the time being in power. These are the points I want to urge and I say that this Bill ought not to be pressed.

श्री अलगू राम शास्त्री : उपाध्यक्ष महोदय, मैं आप से यह अनुरोध करूंगा कि इस से पहले कि कुछ और बहस हो, एंटार्नी जनरल साहब का भाषण होना चाहिये।

The Attorney-General (Shri M. C. Setalvad): I am concerned with only two aspects of the matter. The two aspects of the matter are, first, is the proposed legislation unconstitutional? Then I take a further step; assuming for a moment, as I hope to convince you that it is not, is it any breach of constitutional propriety to introduce this legislation? In my view, it is neither unconstitutional nor is there any breach of propriety so far as the Constitution is concerned.

It appears to me that the whole basis of what has been put before you by the hon. Member who preceded me is this that this is really action which is being taken under the Constitution. Now, that basis is, in my opinion, fallacious. It overlooks the fundamental fact that, when this disqualification was incurred or when the Presidential Order was issued or when the procedure of the Election Commission was gone through and finally the Presidential decision was announced, these acts were not done in pursuance of any provision of the Constitution. All this was done in virtue

[The Attorney-General]

of the provisions of the Part C States Act, which is not the Constitution, but is merely a piece of parliamentary legislation which Parliament has, as in the case of any other piece of legislation, perfect jurisdiction to alter or amend, either prospectively or retrospectively. That appears to me to be the fundamental thing to remember in approaching the validity and the propriety of the proposed legislation.

1 P.M.

Hon. Members will remember that under article 240 Parliament has the power to legislate in respect of Part C States. Under that article it enacted the Part C States Act. The Legislative Assemblies were constituted; the procedure for election was provided; the disqualifications were created and the resulting unseating of the members was provided for, wholly by force of the legislation which was enacted under article 240. Attention has to be drawn to sub-clause (2) of that article which provides as follows:

"Any such law as is referred to in clause (1) shall not be deemed to be an amendment of this Constitution for the purposes of article 368 notwithstanding that it contains any provision which amends or has the effect of amending the Constitution."

I want to emphasise, what I have already pointed out, that what is contained in Part C States Act is pure and simple Parliamentary legislation like any other legislation by Parliament. If one remembers that, things become very plain. Whatever you do—and I am not concerned with the question whether the proposed legislation is or is not justified—whatever you do to affect anything that has been done under the Part C States Act, has nothing to do with the Constitution. You are not touching the Constitution. One has further to remember the way in which article 102 has been brought into the Act so far as disqualification is concerned. If I may draw attention to the actual provision which has been made in section 17, all that it states is:

"A person shall be disqualified for being chosen as and for being a member of the Assembly of a State if he is for the time being disqualified for being chosen as or for being a member of the Houses of Parliament under any of the provisions of article 102."

That means that if the member has certain attributes or certain disabili-

ties mentioned in article 102, he will be disqualified by reason of this section. Let us not forget that such disqualification as he incurs is, again, under this section. It will not be a disqualification under article 102 or under the Constitution. Therefore, I feel that any invocation of either article 101, article 102 or article 103 in connection with either the disqualification incurred in this case or that which followed the disqualification is not justified.

What has happened is that all the action that has been taken has been taken under the Part C States Act. That should completely remove all apprehensions as to the unconstitutionality of the proposed legislation. We are not dealing with the Constitution or a matter which really arises under the Constitution.

Examining things in that light, let us see what has happened. There was, under section 17 of the Part C States Act, a provision for disqualification and, under section 16, for the vacating of the seat by reason of the disqualification. But when that Act was framed, there was no provision in it as to how a question as to disqualification was to be decided. That, we have been told, was brought in by the machinery of section 43. Here again, it is fundamental to remember that section 43 brought in the Presidential Order and it is under the Presidential Order that a decision was first made by the Election Commission which was accepted by the President. Therefore, the whole series of events culminating in the President's decision followed, not under or from the Constitution, but derived their force completely from the Part C States Act. I am assuming of course for the purpose of this argument that the Presidential Order is a valid order. We must remember that that Order was made, not by the President acting under or in exercise of his powers under the Constitution; it was made by the President acting under section 43, which constitutes the authority conferred on the President by Parliament by its legislation. Therefore, all that has been said about flouting the President's final decision made under the Constitution has, in my view, no relevance. The President has not exercised his functions as President under the Constitution at all. He has acted under the authority conferred upon him by a Parliamentary statute which Parliament, as we all know, is competent at any time to alter, revoke or amend, either prospectively or retrospectively.

May I call attention to an instance of a similar kind which arose, I believe in 1932, when a question arose with regard to the membership of the Ceylon Legislative Council? The elections had taken place under an Order-in-Council made by His Majesty. After the elections a disqualification had supervened, and the person disqualified was being prosecuted as being liable to a penalty for having acted as a member though disqualified. This is reported in 1932 Appeal Cases. When such a prosecution was pending, an amending Order-in-Council was made, again by His Majesty, retrospectively curing the disqualification, giving him an indemnity, in terms, in respect of the prosecution which was pending. That is the length to which legislation went in curing the disqualification. An objection was raised as to the validity of the retrospective legislation which was effected by the Order-in-Council and the answer of the Privy Council was. . . .

Shri Vallatharas (Pudukkottai): Will he kindly quote the case?

The Attorney-General: 1932 Appeal Cases, page 260. The Privy Council dealt with the objection raised, in these very cryptic words:

"The legislators certainly have every right to prevent, aiter or reverse the consequences of their own decrees".

That is what the Privy Council said; and that is the principle which underlies this legislation. What has happened and what is sought to be cured is entirely the consequence of Parliamentary legislation commencing, you will remember, with the election, the incurring of the disqualification and the subsequent acts of the Election Commission and the President. All that was a consequence of parliamentary legislation. It is open to Parliament to get rid of these consequences of its own legislation retrospectively. That, I believe, is sufficient to dispose of the question of unconstitutionality in regard to the proposed measure.

But, as I have said already, I wish to take a further step and express the view that not only is the proposed legislation not unconstitutional but it is constitutionally proper, and for this reason. In England, as most of us know, by a long series of statutes, resolutions of Parliament, reports of Select Committees, spread over two or three hundred years, attempts have

been made to get rid of executive influence over Parliament by disqualifying members, who hold offices of profit, from membership. There are over a hundred statutes of various kinds in regard to this matter. Notwithstanding all care, sometimes members commit mistakes. A member not knowing that he is accepting what is an office of profit accepts the office and becomes disqualified. In such cases, it has been the practice of Parliament, a reference to May's Parliamentary Practice will show—I will presently give the reference—to pass Acts of Indemnity retrospectively curing the disqualification, and indemnifying the member against the penal consequences of his action in having acted as a member while not being qualified to act as a member. May I invite attention to what has been stated in May's Parliamentary Practice at pages 212 and 213? Three illustrations are given of fairly recent legislation of the character which I have mentioned. The first is legislation referring to Mr. A. Jenkins. The Act was passed in 1941, called the Arthur Jenkins Indemnity Act. The book quotes the words of the Minister who introduced the Bill.

"In the words of the Minister who moved the second reading, this was 'not an appointment to which there is a salary attached in the ordinary sense of the word, but there is a certain small sum payable per sitting. Mr. Jenkins did not take that fee, but... there is no doubt that, as the law now stands, it is an office of profit under the Crown, though it is not in the colloquial sense an office at all, and in this particular case, though the fee was payable, it was not accepted, so there was no profit....'"

There was a debate in the House of Commons and a reference is given. One finds that the whole basis of the recommendation made to Parliament that an Act of Indemnity be passed is that Mr. Jenkins, who was relieved of the disqualification retrospectively had acted *bona fide*. He had not the least notion that he was doing anything which the law prohibited or that he was accepting an office of profit. That was in 1941.

We have another instance mentioned there. That was in 1945-46.

Pandit Balkrishna Sharma (Kanpur Dist. South cum Etawah Dist.—East): What would have happened to Mr. Jenkins had he accepted the fees?

The Attorney-General: That would have made no difference. In fact, we have such illustrations also in subsequent legislation. The next instance mentioned happened after the General Elections in 1945. This is how it is set out:

"..... it was found that the persons elected for the Coatbridge Division of Lanark and the Springburn Division of Glasgow were disqualified at the time of their election because they were members of tribunals appointed by the Minister under the Control of Furnished Rents Act, 1943, which entitled them to a trivial amount for subsistence and travelling expenses."—Something similar to what we have here—"A Select Committee reported that the disqualification was incurred inadvertently, and in accordance with their recommendation the Coatbridge and Springburn (Elections Validation) Bill was introduced to validate the irregular elections."

That is the length to which Parliament went in that case. They validated the election. That again was on the ground, I may mention, that the action of the persons concerned was perfectly *bona fide*.

You have before you the statement already made that in the present case the persons concerned, or rather the Government concerned, went to the length of ascertaining whether these were offices of profit. It appears that they were advised—erroneously advised—that they were not offices of profit. But the fact remains that they acted *bona fide* and having acted *bona fide* came into these difficulties.

A further instance is mentioned here. That is of two sitting members who were elected to the General Medical Council. That carried some remuneration. The result was that the two members vacated their appointments and an Act of Indemnity was passed to protect them. That was as late as 1949.

Pandit Balkrishna Sharma: Were they made members again?

The Attorney-General: I do not think they were made members in that case. But, the disqualification was removed.

Pandit Balkrishna Sharma: That is another matter. Here you are filling up the seats.

The Attorney-General: That, of course, is one way of doing it. The question as to what you should do in a particular case is entirely for the hon. Members. I am only concerned with pointing out what is legally competent for you to do and that if you do it in a particular way, it would not be unconstitutional, nor would there be any constitutional impropriety. Having heard that, what action should be taken, whether in a particular manner or in a different manner, is a matter entirely for the House.

If you examine the matters also from the larger point of view of constitutional propriety leaving alone constitutional legality, even there, I submit, in a case like the present, where the disqualification has been incurred *bona fide*, and though legally and technically it is an office of profit, is of a trivial nature, it would not only be constitutionally not improper, but I think, having regard to the precedents that we have, it would be constitutionally proper to set the position of these members right and allow them to continue to be members of the Legislature.

Only one word more. Something has been said about flouting the President's Order by reason of the finality of his Order being questioned. After great deliberation I say it is nothing of the kind. The President, as I have already pointed out, has exercised his function under parliamentary legislation. By the proposed legislation no slur is cast either on the Election Commission, the tribunal or on the President. On the contrary, the decision which they have given is accepted to be correct, and it is in order to cure the effects of that correct decision that the legislation is being brought. So, in my submission, there is no question of either flouting the Election Commission or the President, and the legislation proposed is not only constitutional, but constitutionally proper.

Shri V. G. Deshpande (Guna): May I ask one question about the English law? May I know from the Attorney-General whether there is any difference between the English law and the Indian law so far as deciding the composition of the House is concerned, is there any Election Commission or a separate authority created in England for deciding these matters, or whether the House of Commons is the final authority there, and therefore, whether the analogy of the English Parliament or House of Commons is applicable in the case of the qualification

or disqualification of the members of Indian Legislatures? I would be highly obliged if he can enlighten us on this point.

The Attorney-General: It is true, as the hon. Member points out, that so far as England is concerned, these questions of disqualification are dealt with by the House of Commons itself. They appoint Committees, and those Committees make reports, and the House of Commons deals with the reports. But may I also point this out that that really makes no difference either to the legality of the matter or to the propriety of the matter, because the Commission in this case derives its authority from an Act of Parliament, and it is perfectly open to Parliament to alter the position laid down by itself in the Act.

Shri Raghavachari: Is it not the point that those disqualifications were held to be no disqualifications before the final order was actually passed in those cases to which you referred?

The Attorney-General: In fact, it was because there were disqualifications the parliamentary statutes had to be passed. Otherwise, there would be no need for them.

Mr. Deputy-Speaker: There is no question of order, because automatically....

Shri Raghavachari: No, no. The reports were submitted to Parliament and Parliament had to accept them finally before it was called disqualification. There was no final order about disqualification before the Parliament acted.

The Attorney-General: If the hon. Member looks into the report he will find that as is usual in Parliament, Select Committees are appointed to look into the matter of the alleged disqualification. The Select Committee goes into the matter. It reports that there is a disqualification, and it also reports the circumstances under which the disqualification is incurred, whether it is *bona fide*, or how and so on. Having all those circumstances before it, the House of Commons accepts the position that there is a disqualification. But because it is incurred inadvertently and *bona fide*, it adopts legislation retrospectively curing the disqualification.

Shri K. K. Basu: I would like to know whether, according to the English law, when the Select Committee sits and decides that there is already a disqualification, it is incumbent on them, before the man is actu-

ally unseated, to pass some sort of order or resolution to unseat him, because our provision says immediately disqualification is declared by the President, *ipso facto* he vacates his seat. So, I would like to know whether there is any difference between these two positions so far as our law and the English law is concerned.

The Attorney-General: In substance, there is no difference, for this reason. In England, as I have already mentioned, there are a large number of Acts which prescribe that offices of profit of a certain nature are disqualifications. Now, suppose a man steps into the office, unwittingly, as in some of these cases, and incurs a disqualification. There the law has already applied. He has incurred a disqualification. A disqualification having been incurred, the question comes before the House of Commons, and a Select Committee is appointed to investigate and so forth. So it will be seen that the law has already applied. He has incurred a disqualification just as under our section 17 these gentlemen have incurred disqualification. The position is the same.

Shri K. K. Basu: My point is that....

Mr. Deputy-Speaker: He wants to know this. There is a provision here that if any member is absent for 60 days, it is open to the House to take notice of it and either to condone it or not; until that step is taken, he may continue to be a member and the House need not take action. In the other case, if he incurs a disqualification, his seat automatically becomes vacant. The hon. Member evidently wants to know whether there is a similar provision in the House of Commons that until a Committee is appointed and a declaration made, the disqualification having been incurred, till then whether he continues or irrespective of any declaration his seat will automatically become vacant the moment he assumes an office of profit, as in these cases here.

Shri K. K. Basu: May I make it even more clear? The Committee sits on it and the Committee decides that there has been a disqualification. I want to know whether immediately on the decision of the Committee the seat becomes vacant or there is another process, say by a resolution; or in any other manner, it is decided that the seat should become vacant.

The Attorney-General: So far as I know, the seat becomes vacated at the moment he incurs a disqualification by reason of the law which disqualifies him, so that if thereafter he actually sits in the House of Commons, he

[The Attorney-General]

would be incurring a penalty, a fine of so much per day, day by day. In the representation of the People Act we have a penal provision. Similarly they also have a penal provision. It is in order to relieve him from that penalty that some of these Acts have provided an indemnity to him; he having actually sat, after incurring the disqualification. He is liable therefore to pay the penalty. But he is protected against that; the House of Commons indemnifies him against the payment of that penalty.

Shri N. C. Chatterjee: May I put three questions to the Attorney-General, Sir? Is it correct that the Parliament in England itself issues writs for election? Secondly, is there any written Constitution which in any way has any control or any fetter on the powers of the Parliament? Thirdly, is it not that in these cases which he has cited Parliament itself appointed a Sub-Committee or Select Committee and the Select Committee's report came up before the House of Commons recommending in the very report itself that there has been actually no real offence committed and if any technical offence has been committed, that should be condoned? Therefore, there is no question of any tribunal functioning, adjudicating the matter and passing a final order. Parliament itself, while accepting the recommendation of the Committee, really removes any technical difficulty if it is there.

The Attorney-General: There are three points raised by the hon. Member. As to the last, the answer is obvious; I have already stated that there is no separate tribunal there like the Election Commission as we have here. The Parliamentary Committee there goes into the question, each Committee being appointed for a particular case coming before Parliament.

As to the second point, I do not think that it requires an answer. Everybody knows that the British Parliament does not function under a written constitution.

As to the first question, I am not in a position categorically to state who issues the writs. I have not gone into it at the moment.

Mr. Deputy-Speaker: I understood the Attorney-General to say that with respect to Part C States we are governed by the Act that has been pas-

sed by Parliament. The question is, so far as Part A and Part B States are concerned—we will assume a similar question arises—whether under article 102(a) it is not open to Parliament here to say that membership of such-and-such District Committee is not an office of profit? Even here in Part A and Part B States, if some Member of Parliament, of any House of the Legislature, should be appointed a member of a District Committee or local board, with a sitting fee of rupees five, the question is, under article 102(a)—“other than an office declared by Parliament by law not to disqualify its holder”—whether under similar circumstances a similar act would be quite constitutional or not?

The Attorney-General: As I have stated, the position does not arise. But I will deal with what is put to me by you, Sir. The position is that it is Parliament which has been given power under that clause of article 102 to decide what are offices of profit and what are not offices of profit. They may decide this by a comprehensive legislation laying down what are not offices of profit or they may do it piecemeal dealing with particular offices. Under that clause, even in the case of a parliamentary election, in my view, it would be competent to Parliament to say that certain offices of profit, actually involving gain, are not offices of profit. If they are entitled to say that, I do not see any reason why they should not say it both prospectively and retrospectively.

Mr. Deputy-Speaker: Has the President under the Constitution the right to disqualify or only to declare the disqualification already provided for?

The Attorney-General: The position is very clear. The President, as the executive head of the Republic, has been obliged by the Constitution, wherever the articles apply, to accept as binding on him the decision of the Election Commission. So, he is merely constituted an authority who accepts a decision really arrived at by the Election Commission. That is the position. Under article 103, no option is left to him to reject the decision or exercise his mind over it. It is really the decision of the Election Commission which he is obliged under the Constitution to accept.

Mr. Deputy-Speaker: Has the Election Commissioner or the President the right to remove a disqualification

or is it the peculiar privilege of Parliament only?

The Attorney-General: They cannot possibly remove the disqualification. This is a matter either under the Constitution or under some legislation. In this case we are concerned with legislation. If it is legislation, Parliament can remove it by proper legislation. If it is a constitutional

disqualification, Parliament can again remove it in the manner in which it would alter a constitutional provision.

Mr. Deputy-Speaker: I thank the Attorney-General.

The House then adjourned till a Quarter Past Eight of the Clock on Monday, the 11th May, 1953.