

[Shri Jawaharlal Nehru]

that would be unfortunate from various points of view. So that one does not come in the way of Members of the other House considering these matters. Only, perhaps, it leaves them to consider them separately and in a way, perhaps, which would tend to make the two Committees try to out-do each other. It would not be a healthy rivalry.

The only thing they can do in this is, as I said, to criticise, or scrutinise things. Our own impression has been that not only is it perfectly justified, but, it is—if I may say so—desirable and wholly in the spirit of the Constitution. There is no question of the other House encroaching on any special privileges of this House in any way. The Chairman of the Committee is appointed by the Speaker. My hon. friend Mr. Chatterjee pointed out that perhaps Members of this House may not be present, and some other Members might be. Even if that remote contingency arises—and remember that there will be fifteen Members of this House on the Committee, while the other House will have only seven—all that would happen is that some point would be noted, that is all. The final report of the Committee comes out after long proceedings and the report is submitted to the House. So no vague or dangerous development can take place, even if Members are not present there, except some noting. I do submit that this is a simple proposition and important issues which are referred to do not really arise in this. When they arise certainly they should be considered fully. This is a simple matter, which is conducive to efficiency of working and prevention of waste and duplication of work, which would help, if I may say so with all respect, in certain promotion of an atmosphere of co-operative working between Members of the two Houses, and I submit that this proposition might well be accepted by this House. If, however, the House wants a little discussion on it we have no objection.

Mr. Deputy-Speaker: Hon. Members have heard the Leader of the House, and leaders of the Praja Socialist Party and the Communist Party. This subject need not take a long time, but if it is the desire of the House that it should be discussed, I have no objection.

Shri Jawaharlal Nehru: May I suggest for the consideration of the House that instead of the question hour tomorrow, we may discuss this tomorrow morning.

Opposition Members: No, no.

Shri B. S. Murthy (Eluru): The other day I raised a point as regards a Resolution which the other House has passed.

Mr. Deputy-Speaker: I am afraid we are going from one thing to another.

Shri B. S. Murthy: Please give me a minute to make out my case.

Mr. Deputy-Speaker: I will not give him even a second.

The only point for consideration now is whether we shall proceed with the discussion of this motion straight-away, or take it up tomorrow. Once a motion is made hon. Members are entitled to discuss it. Perhaps some hon. Members may feel that they received notice of this motion only yesterday and that they had not sufficient time to study it. If the Leader of the House also agrees, this may stand over till tomorrow. If the House agrees the question hour tomorrow may be given up.

Some Hon. Members: No, no.

Mr. Deputy-Speaker: But hon. Members must be prepared to do some business. The question hour is necessary; the afternoon cannot be spared. It will create an impression that we are not prepared to do some work, at some sacrifice.

Shri B. S. Murthy: We may take it in a night session.

Mr. Deputy-Speaker: Having regard to the nature of the work we may sit tomorrow afternoon. We shall meet for this purpose at four o'clock tomorrow and carry on till six o'clock. There must be an end to this. It will be taken up tomorrow.

VINDHYA PRADESH LEGISLATIVE ASSEMBLY (PREVENTION OF DISQUALIFICATION) BILL—Contd.

Shri U. M. Trivedi (Chittor): Yesterday in the midst of the debate the House rose and I was just discussing the question whether it would be proper for us and whether it would be dignified for us to have this piece of legislation. When the hon. Member Mr. Shah was speaking I just interrupted him to enquire whether in the illustrations which he was trying to give there was a single case when finality was reached and the House of Commons, after the finality had been reached, passed a law setting at naught that finality. The reply of Mr. Shah was that I had a very wrong conception of finality and he would

explain the point. I sat through the whole of his speech and heard every word he spoke, but I had still to find out what his explanation was about the finality.

Now, the point is this that we have to remember that we have got a certain tribunal and the Election Commission itself is the tribunal. The analogy between the Privy Council and the Election Commission is very patent to us. Those of us who know how the Privy Council works know very well that the Privy Council never pronounced judgments. The Privy Council expressed a particular opinion and it was His Majesty's pronouncement which followed the opinion expressed by the Privy Council. In this particular instance the tribunal itself was the Election Commission and our President was concerned with arriving at a decision according to the opinion expressed by the Election Commission. In other words, it was this tribunal which was there, and the final arbiter was the President—although it is very correct to say, and I should say in a blunt language, the President was merely a stamping machine. But a stamping machine of what? Of a tribunal which has been set up by our Constitution.

Once we reach a finality by a decision of a tribunal then the point arises before us, and it is not very easy to say and it is not very simple to swallow that the moment a person who is a Member of the Legislature incurs a disqualification, that very moment he is disqualified to continue as a Member. No, it is not so. He must know. The indemnity begins from the moment he knows he is disqualified. He must know that he has been disqualified. That is the provision in article 104 of the Constitution. That is also the provision in section 18 of the Part C States Act. That being the provision it would be quite fit and proper if we were to call this law, instead of the Vindhya Pradesh Legislative Assembly (Prevention of Disqualification) Bill, as the Vindhya Pradesh Legislative Assembly (Indemnifying of Members) Bill. It would be something. Because the Members would be penalised, and they will be penalised only under the conditions that after having known that they were so disqualified they continue to come into the House and attend the meetings of the House. If there were such people, if there were those who after having known that they were disqualified still continued to go and attend the House, they would be penalised. Article 104 says: "If a person sits or votes as a member of either House of Parliament before he has complied with the re-

quirements of article 99, or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by Parliament, he shall be liable in respect of each day on which he so sits or votes to a penalty of five hundred rupees to be recovered as a debt due to the Union." In this case if such a Member who was disqualified had continued to sit in the Legislature, then we could indemnify him. But will we be justified in indemnifying persons for whom Pandit Thakur Das Bhargava was arguing that they were innocent people, that they were ignorant people? Would this qualification of ignorance apply to a person who deliberately wants to flout the law after knowing that he is so disqualified? I am not prepared to believe that these people had gone there not with any desire to make money, but had just gone there as ignorant people. And in that matter the argument of Pandit Thakur Das Bhargava was that we gave them a Constitution, that Constitution gave them an Advisory Council. I find that there is nothing of that kind. The Advisory Council is a creation of the Government of Vindhya Pradesh. It has been created by an order passed in the month of April 1953. Have we got District Advisory Councils all over India? Have we got them in the Part A States? Have we got them in the Part B States or in other Part C States? The Vindhya Pradesh people or the Vindhya Pradesh Government for the matter of that was anxious to create these Advisory Councils. Was there no desire on the part of these Members, who were in the majority and who did form the Government, was it not one of their desires to make hay while the sun shines? Was it not their desire that they must make more money and more and more of it as long as the present form of the Government of the day was going on; as somebody was saying:

‘कायें नाम की लूट है, लूटा जाय तो लूट’

Were they motivated with that desire that they should make more money? I should say that they were.

श्री भगवत झा (पुनिया व सन्धाल परगना):

आप भी कवि हैं? यह आप की ही बनाई हुई है?

Shri U. M. Trivedi: Some say that this small pittance of five rupees could not have moved them to go and accept these seats in the Advisory Council. It was not a question of five rupees. We do not know what was the income of those persons who had become Members of the Legislature, whether they were not in dire

[Shri U. M. Trivedi]

circumstances about money matters or whether they were very affluent persons. There is no data before us to find out what their position in life was. So we cannot say that they were just taken in or caught in a snare. There were certain Members, as the report says, who avoided it, so much so that a particular circular was also sent out that they will not be appointed as members unless they had accepted to be so. This was also an after-thought. The real desire why this office of profit is considered a hateful thing for any Member of the Legislature to accept is put down at page eleven of the report submitted by the Election Commission, and is like this that "the parliamentary life may be kept pure and unswayed and the functioning of true democracy may not run the risk of being hampered by undesirable interests". It is this that they wanted to prevent. And what are we going to do here? We have now come forward to say: all right, let them make more money, let the Government give them money. Let them hold an office of profit. We will say and declare that it is not an office of profit. There is a great deal of difference between a Minister of a State, a Minister of the Union, and the work done by the officer who is appointed on the District Advisory Council? What are his functions? Are these Advisory Councils in existence anywhere in the whole of the Constitution? Are they named in this Constitution? These members of the Advisory Council appear to me no more than just like the Maharajpramukh of Rajasthan. The Maharajpramukh of Rajasthan holds no office and he is being provided with a sumptuary allowance of Rs. 22 lakhs and in the whole of the Constitution, his name is not to be found. Similarly, these District Advisory Councils do not exist anywhere. They are not provided for under the law. They are not there by an Act of the Legislature. It is by an order of the Government that the District Advisory Councils are there and disbursements to various persons are being made in the name of these District Advisory Councils. We must put out such people. These people were regularly tried and were given an opportunity to be heard in the matter. They were all along maintaining that they were not holding an office of profit. We are not going to safeguard such people by making a provision that they can come through the backdoor. As I said yesterday in the course of my argument, article 327 lays down before us a proposition that anybody who wants to be in an elected body must go there under a

law made for that purpose and by no other method. It has never provided that the franchise must be wiped out. It does not say that a man who has accepted a job should be told,—"Although you have accepted a job and you have been removed from the membership of such and such a body, we will just pass a law by which you will be a member".

One of the arguments in favour of this was that we are going to do justice, but justice to whom? I do not know. We have seen so many cases before the Election Tribunal in which, for no fault of the candidate who has won the election, his election has been set aside. Why? Simply because the scrutinising officer or the returning officer committed some mistake. For a mistake committed by the scrutinising or the returning officer, the person who has been elected as a Member of the House of the People or of a State Legislature has to suffer and he has only the satisfaction of being told by the Election Tribunal that as his election has been set aside not due to any fault on his part, they will only condone the costs against him and not that they will come out with a law that all those who have been thrown out could come through the backdoor and again become Members of the Legislatures. Have we provided that such people should continue to be Members of the House of the People? No. By virtue of the provisions of the Constitution, the Election Tribunal's finding is final. We know that in several cases retrospective legislation does take place. Nobody objects to this. When a new right is being created, when a vested right is being created, then the retrospective legislation is hateful. In this instance the Vindhya Pradesh electorate has got a vested right created by the false step taken by those Members of the State Legislature notwithstanding that they were holding an office of profit. If such people are going out, let them go out by all means. There should be no compunction. Let the fair name of our country and the fair name of this Parliament be not destroyed by the fact that we sided with those twelve people whom we found as not only qualified but who have been disqualified. It is just like a man becoming a bankrupt and wanting to sit in the house. When a Member holds an office of profit it is some sort of a moral turpitude and he can be removed from office. These people have behaved in such a manner that they have been disqualified. They should not be indemnified in the least. Having been once disqualified, they

have the audacity to come before the House and continue to sit. If the circumstances are in favour of indemnifying, it is one thing but when a finality is reached by a properly constituted tribunal, we should not try to undo a thing which has been properly done by a tribunal of our country. Otherwise the principle of *res-judicata* will disappear and we shall unnecessarily be creating precedents. Supposing a decree is passed against a great person who is a rich and influential man for recovery of Rs. ten crores. He comes to Parliament and we are sitting here guided by considerations other than honest considerations and say that that decree is set at nought. Are we sitting here as a High Court of Parliament? The whole world did not like the idea of the South African Government, after the *Apartheid* law was declared by the Supreme Court as *ultra vires*, that the High Court of Parliament should sit in judgment over that. Nobody liked it. Similar is the case here. If these seats had not become vacant, it would have been a different thing. You ought to have been very vigilant about it. You have been sleeping over it. You had ample time. You did not open your eyes then. Even after the decision of the Election Tribunal, you had plenty of time i.e., before it again came before the President. This matter started in the month of April, 1952. It was reported in the month of October, 1952. A letter was sent in January, 1953 and the decision was arrived at in March, 1953. All this time you were not doing anything. When the finality was not reached, you could have done something for face saving. Now we cannot say that we have no faith in our tribunals and our President who is bound to follow its decision. The Election Commission is put on the highest pedestal. Under these circumstances and taking in view article 327 of the Constitution, I submit that this cannot be indemnified and it is not proper for our country and for our Parliament to undo an act or undo a decision which has been properly and legally arrived at. We should therefore pause and consider whether the arguments advanced by the learned Attorney General, by Mr. C. C. Shah or by Pandit Thakurdas Bhargava will hold water. Pandit Thakurdas Bhargava in his arguments was telling us that he was guided by the consideration of justice and justice alone. Well, we know that as lawyers, there are two sides to be faced in a particular case.

..

Mr. Deputy-Speaker: Other arguments may be found to show how they have acted.

Shri U. M. Trivedi: The position that I was just exposing before the House was this. Those of us who are guided in these matters by fair considerations, when the question is whether a particular thing is decent for us to do, and becoming of us, we must set aside at least for the moment all considerations of party politics from us and we should concentrate upon this question: whether the act that we are going to do, whatever be the result of it, is an act which, sitting as judicial officers and judicial minded people we can do; while we want to see equity and justice according to the dictates of good conscience, are we going to undo an act of a properly constituted tribunal, which has pronounced its final judgment. If we have that consideration before us, we can come to only one conclusion, that this Parliament not being a sort of a High Court, not sitting in judgment over the pronouncement of the highest tribunal, is not going to undo what has been done properly. Pandit Balkrishna Sharma, the poet, with a poetic mind, spoke very clearly on this point that we must forget all our party considerations and we must hold up the dignity of this House to the public at large and the world at large, by saying that we are not agreeable to put back these twelve Members who have been ousted by their own conduct from the Legislature of Vindhya Pradesh and ask them to come by the backdoor and go into the House.

An Hon. Member: He was not speaking as a poet.

Shrimati Sucheta Kripalani (New Delhi): Much discussion has gone on this small Bill. The Bill looks very small and apparently very limited in scope. But, it is of great constitutional and legal importance and even of political importance. Hence so much interest is being evinced and so much discussion has taken place. I would very much like the discussion on this Bill to be done in a dispassionate manner. Yesterday quite a good deal of heat was generated which was perhaps unnecessary. As far as this Bill is concerned, it goes to the fundamentals and therefore, we should look at it not from any party angle; but we should try to assess the matter and reach a solution by which the tone and standard of democracy functioning in India will improve. That is why I want to study the Bill and assess it in a dispassionate way.

Our democracy in this country is in its infancy. We ought to establish healthy and good conventions so that democracy may grow in this country. We have a federal structure. This is the supreme Legislature in the

[Shrimati Sucheta Kripalani]

country. Whatever we do sets a tone to the work of the other Legislatures. We have, therefore, to be extraordinarily careful and we have to see that we function in an unbiased way, that we study things objectively and arrive at conclusions which are good now and which will be good for the future. If we approach this subject with this view, I am sure we can arrive at the correct solution.

I do not wish to go into the question of legality; whether Parliament has got the authority to enact this Act or not. Much has been said and legal luminaries yesterday regaled us with their legal knowledge. I do not want to encroach on that field. I accept that Parliament has got very wide authority and that Parliament can make Acts as well as unmake them. The learned Attorney-General has given an opinion and I do not want to cross swords with him. I am concerned more with the propriety of this action and the benefit of this action, whether this action would be good for us now as well as in the future.

10 A.M.

Let us take the facts of the case. Twelve people in a small State, Vindhya Pradesh have been disqualified through the application of the disqualification clause of the Part C States Act and they have been unseated. What are we seeking to do? We are seeking to reinstate these unseated Members by an Act with retrospective effect. I do not wish to raise the question of *bona fides* or *mala fides*. This question was raised on the floor of the House yesterday. I accept that these Members accepted these posts without realising that they were incurring a disqualification. It is inconceivable that the Government of Vindhya Pradesh wanted to disqualify the entire Members of the Legislature and therefore made them members of the Advisory councils. I accept it as a *bona fide* mistake and that there was no *mala fides* in it, and that these people are victims of Government's ignorance in the matter. That is accepted. If they are the victims of Government's action, we have sympathy for them. Mr. Shah very eloquently pleaded that equity and justice demand that these people who have been inadvertently thrown out of their seats, must be restored to their seats. I agree with the argument that we should deal with clemency, sympathy and equity. But, I want to draw your attention to the fact that these twelve Members whose names are mentioned in the Schedule of the Bill are not the only people who, without any fault of theirs, have

incurred disqualification and so have lost their seats. In the last few months, we have seen that the Representation of the People Act and the Constitution are full of lacuna and that people, without any fault on their part, have lost their seats. For instance, you know a whole lot of cases where for the wrong rejection of some nomination papers, elections have subsequently been set aside. I will take a more serious case. Take the case of a double member constituency, where one member's nomination paper was wrongly rejected and the other member, for no fault of his own, without having incurred any technical defect, is also thrown out. What I want to submit is that these are not the only twelve people who have been unfairly dealt with, if you want to use that word. There are lots of people whose cases it is necessary for us to go into, who because of certain technicalities, have been thrown out, without any fault of their own. I want equity; but it must be non-discriminating equity, equity for all. Let us take all such cases and let us pass a general Act indemnifying them and restore them to their seats. I am ready and I shall co-operate. Here, I suspect there is a special softness for these twelve Members. Why? If I am convinced that this special softness to these twelve people does not emanate from any political motives, then, I am all with you. I see at the fag end of this session, this matter, which was not accepted by the Business Advisory Committee, has been brought in. Why? We are pressed for time. We have a very important Bill, the Estate Duty Bill, to go through, a Bill which is of very great significance to the country. We are deferring that and we have brought this Bill. Why? In order to restore twelve Members to their seats in a small State, Vindhya Pradesh.

Let us study the attitude of the Vindhya Pradesh Government as well as the Central Government to this matter. Let us go into the facts. I would like to tell the House how these District Advisory Councils came into existence. The District Board elections were to take place. The party in power or the Government in power, whatever you want to say, were apprehensive that if elections were to take place, then, all kinds.....

Pandit K. C. Sharma (Meerut Distt. —South): On a point of order, Sir, are facts relevant? In view of the fact that there is nothing on record relating to the topic, how can an hon. Member know whether this is a fact or otherwise.

Shrimati Sucheta Kripalani: I have not yet finished.....

Pandit K. C. Sharma: The hon. lady Member may have some patience. She may like to yield or not, but she shall have to yield.

Mr. Deputy-Speaker: There is a point of order.

Pandit K. C. Sharma: There is nothing on record to show that what the hon. lady Member says is correct or otherwise. There are no district board papers here. So, it is irrelevant or rather unjustified to make any reference whatsoever to district board or municipal board elections.

Mr. Deputy-Speaker: I do not think the hon. lady Member is saying that any of us is a district board member here. We may or may not be. It is only a question whether it is holding an office of profit. Any specific instance where a similar thing has been done or has not been done is relevant; not general observations of this kind.

Shrimati Sucheta Kripalani: I was not allowed to complete the sentence. The interruption was premature.

Shri Jajware (Santal Parganas cum Hazaribagh): There are district board members.

Shrimati Sucheta Kripalani: I should be allowed to complete the sentence. He interrupts before I conclude what I want to say.

Shri Nambiar (Mayuram): Anyhow you will win your twelve people back, but wait.

Shrimati Sucheta Kripalani: As far as my knowledge of the affair goes, they were not anxious to have district board elections. Therefore, this scheme of District Board Advisory Councils came into existence.

Mr. Deputy-Speaker: In Vindhya Pradesh?

Shrimati Sucheta Kripalani: Yes. I am only giving you the factual background, and I have also said if the facts are wrong, I shall be very happy to be corrected.

Mr. Deputy-Speaker: Are there District Boards under any constitution there?

Shrimati Sucheta Kripalani: In every Province, there are District Boards.

Mr. Deputy-Speaker: This is a part C State. Have they got....

Shrimati Sucheta Kripalani: As far as my knowledge goes, this has not existed anywhere.

Mr. Deputy-Speaker: In the other Provinces which were directly managed by the British Government before

1947, there were local Boards, Municipalities etc. Is it the contention of the hon. Member that there were District Boards in the State, and that instead of reorganizing them or allowing elections, this other method was adopted?

Shrimati Sucheta Kripalani: That is what I wanted to say. If the facts are wrong, you correct them.

The Minister of Home Affairs and States (Dr. Katju): Of course, they are wrong.

Shri Dhulekar (Jnansi Dist.—South): They are wrong.

Mr. Deputy-Speaker: Hon. Members will have a chance to reply.

Shrimati Sucheta Kripalani: Let him correct me. He will get his chance to speak.

Shri K. K. Basu (Diamond Harbour): He miscorrects many times!

Shrimati Sucheta Kripalani: First they decided to have the District Board Advisory Councils. Then, the District Board Advisory Councils were appointed on the 26th April, 1952. Then, one Member Mr. N. P. Singh sent a letter to the President drawing his attention to the disqualification incurred, on the 30th October. Then he raised the same question on the floor of the House in the Vindhya Pradesh Assembly on the 5th November, but nothing happened from October to November. His letter is lying with the President. No action had been taken. So, he came to Delhi and saw the President in December. After that, the leaders of Opposition of this House sent a letter to the President drawing his attention to the fact that this matter has to be settled. That happened on the 16th December. Then, after the 16th December one month passes before the President is allowed to function. He refers the matter to the Election Commission on the 17th January. The Election Commission goes into the case and comes to a decision on the 2nd March. The President promulgates an order declaring the seats vacant on the 31st March. Then the Speaker announces that the seats have fallen vacant. From this long procedure you will see that the attitude of the Government has been obstructive. There is no attempt to settle the case quickly. There is always an attempt to delay. A lot of questions were raised behind the door about which we do not know. We can only surmise. And after that what happens? The seats have been declared vacant. The usual procedure is that the Election Commission should arrange for a by-election. But we do not hear anything about the by-election, but this Bill comes to the House. So, the whole procedure is

[Shrimati Sucheta Kripalani]

suspect, makes us feel that there is something wrong somewhere.

बाबू रामनारायण सिंह (हजारीबाग
पश्चिम) : जरूर ।

Shrimati Sucheta Kripalani: That the Government is deeply involved in the case is further proved by other facts. During the hearing of this case, the Election Commission mentions that on the 16th December, i.e., after Sardar N. P. Singh had set this whole question into motion, the Government tried to modify their original order in order to facilitate exoneration of the disqualification they had incurred. Here I shall read out to you, Sir, from the proceedings of the Commission. Here it says:

"By a subsequent order, No. 129 of the 6th December, 1952..... order No. 47 previously referred to was amended to the effect that members of the Legislative Assembly representing a district would be members of the District Advisory Council....."

—mark these words—

"Provided they had given their consent in writing to act as such."

This extraordinary proviso was added in order to save them from incurring the disqualification, and very rightly this plea was not accepted by the Election Commission.

Now, this is before the Election Commission. This is a matter of election dispute. Let the parties concerned appear before the Election Commission. But who appears? The Government representative appears. I have not seen the Government taking so keen interest in other election dispute matters. Why in this case the Government takes special interest? That makes us feel that Government is interested in this case. We have seen that when we discover such a technical flaw or a lacuna in a matter, the Government is not so keen to come forward and settle the matter, to rectify it. I shall give you an analogy. It is not a very close analogy, but something which has occurred very recently. Let us take the case of the Bank Award. The Sen Award was a little in favour of the employees. This was set aside by the Supreme Court on a small technical ground. Government could easily have revalidated it by an Ordinance, but Government did not do that, did not care to do that. The people had to go through the gamut of a second Award, the whole litigation, and the second Award came which is unfavourable to them.

I want equity in all spheres. I want equity for all. If you can set right the disqualification of twelve Vindhya Pradesh Members, I do not understand why in this case also, Government did not exercise similar principles of equity and help them in the matter.

I have no objection to a general law exempting certain types of offices. I personally felt that the Removal of Disqualifications Act that we have passed was rather narrow. We can improve it. We can bring an amendment to the People's Representation Act. We can bring an amendment to the Constitution. I have no objection. But when you narrow down, when you do it merely for twelve Members then I feel there is something wrong, that you are misusing this House, this august body called Parliament. We are here discussing the disqualification of twelve particular Members in which the Government is interested. It is also a very dangerous precedent. Suppose in some other Province a similar thing happens, then the Government will bring forward another Bill. Where will we end? There is no end to this kind of thing. And this brings us under the mischief of article 14 of the Constitution,—discrimination. If we go on discriminating like this, then we nullify the Constitution; we render democracy into a farce.

Let us take the other question, the question of the propriety of filling the seats declared vacant by the President. Much has been said. I do not want to say much on it. But, as has been pointed out by several Members, we have a written Constitution. We have a machinery provided for dealing with election matters under the auspices of the Election Commission. The position of the Election Commission is very high. The Commission has functioned in this case through the President. So the President and the Election Commission have come to a decision. Now, what are we seeking to do? We are wanting to legislate, trying to bring a *post facto* measure. This, I consider, is improper. Let us take the case of the Supreme Court. I think the position of the Election Commission is somewhat like that of the Supreme Court. Now, suppose the Supreme Court arrives at a decision, gives a judgment. They are bound by the existing law. Under the law they give a particular decision, but we feel that the judgment was wrong, that the law was wrong or defective. We may amend the law in the Parliament. I concede that Parliament has the right to amend the law, but when we amend the law, will we be in a position to set aside the judgment that the Supreme Court gave?

Dr. Katju: Yes.

Shrimati Sucheta Kripalani: Suppose a man has been condemned to die, and he has already been hung. After four months we come and pass a Bill. Will we revive that dead man? I cannot understand. So, here I think we are assuming far-fetched powers.

बौ० रणबीर सिंह (रोहताक): वह तो कोई

डाक्टर कर सकता है ।

Shrimati Sucheta Kripalani: : ऐसा

कांग्रेसी डाक्टर भी नहीं कर सकता ।

Then it has been said that the President's power was there. Mr. C. C. Shah was eloquently putting his case that the President was bound to follow the advice of the Election Commission and therefore, whatever he did was very formal. Therefore, no derogation or contempt of the President's prestige is meant by this Act. Well, I want to draw your attention to the fact that these are discretionary powers which we have given under the Constitution. Here in this case we are giving him certain discretionary powers. The discretionary power is vested in him. Under that, he has acted. Let us not take a very rigid view of things. Here it was said that it was a stamping authority. I am sure the learned Attorney-General inadvertently used that word. Who is the President after all? Is the President a dummy? What about his constitutional position? Who is the personality who is the President today? The President of India is Dr. Rajendra Prasad, an eminent leader of the Congress party. He is an eminent leader not only of the Congress party, but of this country. All of us who may be sitting in the Opposition have got the greatest respect for him. He is an eminent lawyer and he knows what he is doing. I am sure, if the Government, although he is the constitutional head, asks him to do a thing, he does exercise his intelligence and understand what he is doing. So this eminent lawyer who happens to be the President of India has done this. There are discretionary powers vested in him by the Constitution. Now, we say it is all formal. He was asked to give his decision. By passing another Act, we are undoing what he has done.

When we drew up the Constitution, why did we vest the President with these powers? We vested him with these powers after much serious deliberation, because we thought that these powers were necessary for the smooth and proper functioning of the Constitution. We gave him these powers. We prescribed the machinery

and we prescribed the form, how he should exercise these powers. Through that machinery, in that prescribed manner and in that prescribed form, the President has exercised the power which we gave. Now, when he has given a decision—a very right and correct decision—simply because it does not suit us, simply because it does not suit some people, one administration called Vindhya Pradesh, we ask this august House, this Parliament, to pass this Bill which we say is a small thing! And we say that no contempt is implied in it. I say contempt is implied. We asked the President to do a certain thing. After that, we now want to undo what he has done. Now, when this Bill is passed it has to go the President for his assent. One month after he gives another decision, and then afterwards another decision. By doing this you are putting the President in a very ridiculous, awkward position. Therefore, I would say that this Bill should be withdrawn.

Besides, this Bill involves discrimination. In one case where an elected Member, for some reason or other—may be through no fault of his—loses his seat, you order a bye-election. In another case, when the same thing happens you do not order a bye-election but by a measure of legislation you tell the people that 'these people are your representatives'. This is discrimination, not only in the case of the Members who are standing for election but in the case of the voters also. It goes very much against the fundamental principles that we have adumbrated in our Constitution. It is absolutely against the spirit of the Constitution. It is against article 14 and against article 19(1) (a).

Therefore, I have objection to the Bill because it is a very narrow Bill, because of the manner in which the Government have handled the whole matter, the manner in which this is being attempted to be rushed through at the fag end of the session, because only twelve Members are involved. Now, what will happen? Suppose these twelve Members are no longer in the Vindhya Pradesh Assembly. I would have understood in the beginning when we thought that the entire lot of the Members would be involved and it would bring a great political crisis there. But now the Election Commission has narrowed down the scope of this and only twelve Members have been disqualified. What difference does it make? I would draw your attention to the fact that some of our party men are also in it. But that is not the point. We have to see what is just and do accordingly. What is the picture? We have got in the whole of India how many elected

[Shrimati Sucheta Kripalani]

Members in the Parliament and different Legislatures? 3877. Out of these, twelve have been unseated. If only twelve are unseated and if we order a bye-election for these twelve seats, heavens will not fall. The whole Constitution of India will not be in jeopardy. That is why I want to say that the Government have not made out any case. There is no proper case for doing this thing which will put our President, who is respected by the whole of India, in an awkward position. It raises constitutional issues, it creates innumerable difficulties and at the same time it reflects on the Government. I would like the Government to act in such a manner that nobody—even we in the Opposition—can point a finger at the Government. I would like that Government always act rightly. I would like that Government always stand for equity and justice.

So, I think the effect of this legislation will not be good. What will be the psychological effect of such a measure in the country? The people—average people—will not understand all these niceties and constitutional and legal implications. All that they will know is that twelve Members were unseated, and the Vindhya Pradesh Government and the Central Government wanted that they should be restored by hook or crook, by any method, taking advantage of some legal loopholes by which they can act and put them back there.

Therefore, Sir, in all humility I plead before you to kindly prevail upon the Government to withdraw this Bill. Bring in a Bill of wider import, of general scope; bring a fair Bill, or bring an amendment to the Representation of the People Act, or a Bill to amend the Prevention of Disqualification Act or an amendment of the Constitution; all our support is with you and we shall always help the Government to be just and equitable.

QUESTION OF PRIVILEGE

ARREST OF A MEMBER

Mr. Deputy-Speaker: I have just received a telegram, at 9.55, from the Chief Secretary to the Jammu and Kashmir Government:

"Hon. Speaker, House of the People, New Delhi.

Dr. Syama Prasad Mookerjee declared publicly his intention to enter Jammu and Kashmir State in connection with his agitation launched against the Government by Praja Parishad, a local party. In Jammu for the last six months

an organised movement started with a view to subverting law and order through unlawful and violent means. This movement had the avowed support of Bharatiya Jana Sangh in India. Dr. Syama Prasad Mookerjee as the President of Bharatiya Jana Sangh did not merely justify this unlawful movement but also lent it the full support of the Sangh for the purpose of continuing and intensifying it. Even today in some parts of Northern India volunteers inspired and organised by Bharatiya Jana Sangh have in defiance of law been demonstrating in support of this movement. It was apprehended that the presence of Dr. Syama Prasad Mookerjee who along with his political party has been supporting the subversive movement launched by the Praja Parishad in Jammu would constitute a grave threat to public peace and law and order. It was, therefore, with deep regret that the Jammu and Kashmir Government had to serve a notice under section 4(1) of the Jammu and Kashmir Public Security Act on Dr. Syama Prasad Mookerjee according to which his entry was banned into the State. Dr. S. P. Mookerjee, in defiance of this notice, entered the territory of Jammu and Kashmir State. Taking into account the presence of Dr. S. P. Mookerjee in the State and also the threat that it constituted to the peace and tranquillity of the State, the Inspector General of Police ordered his detention under section 3 of the Jammu and Kashmir Public Security Act.

Chief Secretary."

Kumari Annie Mascarene (Trivandrum): When was this received by the Secretary, Sir?

Mr. Deputy-Speaker: 9.55.

Kumari Annie Mascarene: How is it that it was not read out earlier when the House was sitting?

Mr. Deputy-Speaker: The House was in session. It has been placed before me at 9.55. Mr. Trivedi was on his legs and I did not want to interrupt. Even now when Mr. Mookerjee was about to speak, I called him to stop. This was brought to my notice. There is therefore no harm. I received it at 9.55.

Now, so far as the notice is concerned, this was received at 8.45 A.M. If it should stand over till tomorrow, I have no objection. Otherwise, in view of this telegram, if this is to be disposed of then also I have no ob-