CONVENTIONS AND PROPRIETIES OF PARLIAMENTARY DEMOCRACY IN INDIA

K. SANTHANAM

INDIAN INSTITUTE OF
ADVANCED STUDY
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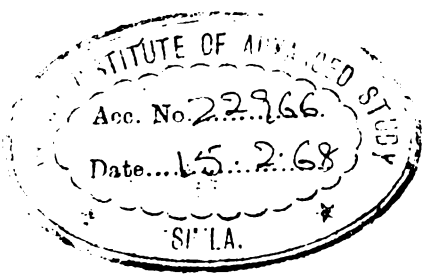
The Indian Institute of Public Administration
Indraprastha Estate, Ring Road
New Delhi-1.

NEW DELHI

JANUARY, 1966

Price : Rs. 5



Printed at the New India Press, Connaught Circus, New Delhi.

FOREWORD

The Indian Constitution is the outcome of a unique freedom struggle and is the embodiment of the liberal and democratic traditions of government of the West. While the structures of political institutions are easily transplanted from their native habitat in alien soils, the traditions—customs and usages, on which the working of these institutions so largely depend for their successful working are not easily adopted and acclimatized.

It is fundamental to the success of a system of government transplanted from a different political and social environment that the customs and usages on which it is based should also be adopted with the institutions or alternately analogous conventions evolved. No Constitution, however elaborate and detailed in its provisions, can provide for the solution of all problems that arise or determine the manner of its working in every particular. These necessarily depend on the political forces such as parties, interest and other groups, the level of political education and consciousness of the common man, and the political traditions of the country. This is especially so in the case of the system of parliamentary responsible government with the added difficulties of a federal system. India must adopt or evolve appropriate conventions to make a success of the system of government that she has deliberately chosen.

It is to this subject that these lectures delivered at the Institute are devoted. The Indian Institute of Public Administration was fortunate in securing Shri K. Santhanam undertake this task. Shri Santhanam is one of the most thoughtful students of constitutional problems in the country, and has played a distinguished role both in the framing of the Constitution and later in working it as a Member of Parliament, a minister in the Central Government, and as a Governor. He brings his vast and intimate knowledge and experience to bear upon the subject and has presented the essential conventions and proprieties that are needed to work the Constitution in the spirit in which it was intended to be worked. The lectures deal with the conventions and

proprieties necessary in relation to Responsible Government, Parliament, Federal Relations and Political Parties. The subject is largely unexplored and Shri Santhanam's lectures constitute a pioneer effort. He makes several valuable suggestions in regard to the relations of the President to the Cabinet and Parliament, the conduct of ministers and members of Parliament, the relations of the Houses, Privileges of the Houses, the relations of the organisational and parliamentary wings of political parties, and on other matters of importance bearing on the functioning of our system of government. One may not agree wholly with Shri Santhanam's views but at the same time cannot fail to be struck by their sincerity and high purpose. Shri Santhanam has performed a real service to our democracy in these stimulating lectures.

I.I.P.A.,
New Delhi,
January 29, 1966.

J. N. Khosla,
Director.

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I

RESPONSIBLE GOVERNMENT

Speaker: Shri K. Santhanam
Chairman: Shri A. C. Guha

Shri K. Santhanam Shri Guha, Shri Srinivasan, ladies and gentlemen: this is the second time the Indian Institute of Public Administration has conferred on me the honour of delivering a series of lectures. Some years ago I was invited to speak on federal relations and those lectures have been published in book form. I believe they have had a fairly good reception.

This time they invited me to speak on the Conventions and Proprieties of Parliamentary Government.

The subject of federal relations was complicated. But I was more or less on firm ground because it meant only an analysis and bringing known things together. But here the subject itself is rather vague, though I think it is quite important. Therefore, I felt that I should not add superfluous language to the vagueness of the subject. So I have tried to put all my thoughts in precise wording, so that there will be no confusion about it.

India has one of the most elaborate Constitutions in the world with 387 Articles and Nine Schedules. Yet, some vital parts of the Constitution have been deliberately left unwritten. It is an essential feature of a written Constitution that its Articles have to be clarified and amplified by judicial interpretation. I do not refer to this process. There are parts of our Constitution which are not only unwritten but which are outside the jurisdiction of the Courts. Legally and before Courts of Law, only the written Constitution can prevail. But, politically, the unwritten parts are no less important.

Further, however detailed a Constitution may be, it cannot provide all the requisite principles and standards of

action which are necessary for the successful working of parliamentary democracy. There is need for the development of healthy conventions and proprieties to supplement constitutional and legal provisions. In these lectures, I propose to deal with those conventions and proprieties which constitute the unwritten parts of our Constitution as well as those which, I feel, are specially necessary for this country. So far as I am aware, there is no book which deals with them systematically, though many books on politics refer to them incidentally. I have had, therefore, to rely largely on my own study and experience to bring all those conventions and proprieties into an orderly sequence. I do not claim that my treatment is adequate. I had no time to hunt up authorities and precedents for even those conventions which are fairly well established. I hope that the Indian Institute of Public Administration may find it worthwhile to investigate in greater fullness the scope and applicability of the conventions and proprieties I may suggest in these lectures.

According to Arthur Berriedale Keith, a convention is a usage which is followed and is held to be binding. For the purpose of these lectures, I wish to define it rather differently. By convention I mean a principle or rule of action or restraint which is essential for the working of parliamentary democracy but which cannot be enforced by any judicial or administrative sanction. In other words, a convention is neither justiciable nor enforceable by non-judicial authorities through the imposition of penalties. So, I exclude from the scope of these talks all matters which can be taken to the Supreme Court, directly or indirectly, through a writ petition or in any other manner. I also exclude those matters like the rules of procedure of Parliament and State legislatures which can be enforced by the Speaker or Chairman or the rules governing the conduct of public servants which can be enforced through departmental punishments and similar rules and regulations, the non-observance of which is subject to penalties.

While a convention must be deemed to be binding, I mean by a "Propriety" an observance which cannot be deemed to be essential but which facilitates the working of

democracy by creating a favourable atmosphere for it or preventing or eliminating tendencies or reactions which may disturb such atmosphere.

I propose to deal with four broad categories of conventions and proprieties. First of all, I shall take up those which are implied in the Constitution itself by the adoption of the British system of responsible Government with the Cabinet type of executive. Next, I shall deal with those relating to Parliament and State legislatures. Though these bodies function in accordance with rules, there are some matters which cannot be regulated by the rules; but which are no less necessary to enable them to be effective guardians of democracy. Thirdly, I propose to deal with some conventions and proprieties which flow from the system of federal relations embodied in the Indian Constitution and those which enable the Supreme Court and the High Courts, the Comptroller and Auditor-General, the Election Commission and the Public Service Commissions to maintain their independence of the executive and also those which are needed for the proper functioning of the public services. In the last lecture, I shall try to cover the large field of the relations of the political parties with the Government and between themselves, the inter-relationship of the organisational and the legislative wings of each party and in the case of the ruling party, the relationship of the Cabinet with each of those wings. In this field, there are hardly any clear precedents and even when we can trace some of them, it is doubtful whether they can apply to Indian conditions. Therefore, I shall be merely putting forward my own tentative proposals and suggestions as a basis for consideration and discussion by politicians and political thinkers. I shall wind up by referring briefly to the freedom of the Press and the limitations to such freedom and also some spurious growths in our public life which tend to distract the attention and divert the energies of our politicians.

The formation, powers and functions of the executive are among the most important parts of a Constitution. In the Indian Constitution, similar articles are found relating to the executive at the Centre and in the States; but there are

some important differences. Therefore, I shall deal first with the executive at the Centre and indicate the differences relating to the executive in the states at the end. The crucial Articles concerning the Central Executive are 52, 53, 74 and 75. By the former two Articles, the President has been vested with the executive power of the Union and he is also the Supreme Commander of the Defence Forces of the Union. Article 74 reads: "There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions; the question whether any and if so, what advice was tendered by Ministers to the President shall not be enquired into in any court." The relevant parts of Article 75 are as follows: "(1) The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister; (3) The Council of Ministers shall be collectively responsible to the House of the People; (5) A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a Minister."

A literal interpretation of these Articles will make the Indian President more powerful than the President of U.S.A. In the latter, there are checks relating to the power of appointment to chief offices, for declaration of war, conclusion of treaties and other matters. There are no such checks in the Indian Constitution. As a matter of fact, the Indian President is merely the Constitutional Head and it is the Council of Ministers that really exercises the executive power. This is because the British conventions relating to the Cabinet and its relations with the Crown are assumed to govern the application of these Articles.

What are these conventions? I cannot do better than quote the following passage from the pamphlet on "Democratic Executives" prepared for the Conciliation Committee of which Dr. Tej Bahadur Sapru was the Chairman. "The conduct of general executive business as well as the superintendence and control of the executive branches of Government and of the various departments of public administration is in the Cabinet. It is a body of party politicians selected

from among the members of the party or group of parties which has a majority in the House of Commons. It is increasingly recognised, although there have been exceptions to the rule, that the Prime Minister must be in the House of Commons, as the Government owes responsibility to that House alone. The composition of that House determines the nature of Government. Until recently, the office of Prime Minister was unknown to law and the holder of that office was always holding a ministerial position, normally that of the First Lord of the Treasury. In the Ministers of the Crown Act, 1937, statutory recognition has been given to this office. The choice of the Prime Minister is made by the King and the nature of the choice necessarily depends upon the state of parties in the House of Commons. The simplest case is that in which a party has a clear majority. The Government must clearly be formed out of that majority and if it has a recognised leader, he will be the Prime Minister. The other members of the Government are not elected by the House of Commons. They are chosen by the Prime Minister. This does not mean that the Sovereign may not have considerable influence. Royal influence has even kept individuals out of office altogether. But as against the King, the Prime Minister has the final word. He must have a Government which can work together and which can secure the support of the House of Commons. If he says that for this reason he must have the assistance of a certain person, the King must either give way or find another Prime Minister. The King cannot commission another member of the same party; for that is to interfere with the internal affairs of the party and is contrary to precedent. He must, therefore, find another party which can secure the support of the House of Commons and it must be a strange House that is willing to support two alternative Governments."

While there is no doubt that the Prime Minister in India has the primary responsibility for the appointment of a Minister, the position regarding the dismissal of a Minister is not clear. According to the strict letter of the Constitution, the Prime Minister can only have a Minister appointed.

As a Minister holds his office during the pleasure of the President, he can be removed on the advice of the Council of Ministers.

The position in U.K. is as follows: Lord George Hamilton claimed that "The Prime Minister has an undoubted right to request any of his colleagues whose presence in his Cabinet is, in his opinion or judgement, prejudicial to the efficiency of policy of the Government, to resign his office". Byrum E. Carter says in his book *The Office of the Prime Minister*: "In fact, overt dismissal has not occurred in this country. The normal procedure is resignation, but it is obvious that some resignations are made at the request of the Prime Minister, an action which is dismissal in everything but name. Normally, the Prime Minister need not fear that the minister who is requested to submit his resignation will fail to do so. There is a tradition –a kind of public school fiction—that no minister desires office, but that he is prepared to carry on for the public good. That tradition implies a duty to resign when a hint is given."

Some time ago, serious differences arose between the Chief Minister of Andhra and one of his Ministers. The latter refused to resign. The Chief Minister, for some reason, did not get him dismissed but deprived him of all his portfolios. Both of them took their cases to the Central Parliamentary Board of the Congress which finally supported the Chief Minister and asked the recalcitrant Minister to resign. If such incidents should become common, the system of Cabinet Government will fall into disrepute. A minister should not think he is a Government servant who has a right to continue in his post till he is removed according to prescribed rules. He should deem it altogether undignified to remain in office against the wishes of his chief or to appeal to an external authority. Similarly, no Prime Minister or Chief Minister should have any hesitation in asking the President or the Governor to dismiss a minister who does not take a courteous hint to resign. No interference from an outside authority should be permitted. The Head of a Cabinet should rather resign himself than allow any agency even of his own party to come between him and his ministers.

Obviously, the manner of choosing the ministers, their number, designation and distribution of work between them cannot be governed by precedents from other countries. India has to evolve her own conventions. I wish we could establish a firm convention that a minister should be chosen solely on the basis of his competence and integrity without any regard to religion, caste, community, language or region. Unfortunately, this is likely to be a counsel of perfection. I think, however, that two negative conventions are indispensable if our democracy is to be saved from confusion and disintegration. One is that no one should be appointed as a minister if his public life has been of doubtful integrity or his private life has been scandalous. No considerations of ability or influence should be allowed to weigh in favour of such persons.

Another convention is suggested by the Indian Constitution itself. It has set up many authorities who are expected to function in absolute independence of the executive government. The prospect of ministership in the Central or State Government is likely to undermine the integrity of these authorities. I shall be dealing with this question later as it is linked with the broader issue of the participation in politics of persons who had functioned as such authorities.

There is an incurable tendency in the system of Cabinet Government to increase the number of ministers in order to accommodate political groups and factions. It is also an unchallengeable fact that, after a certain number, further increase tends to weaken the ministry, destroys its unity and coherence and effects adversely its popularity with the public. If one remembers that India is a federation, a Central Ministry of nearly fifty appears to be unwieldy. Recently, an attempt has been made to limit State Cabinets to a maximum of twenty. Perhaps, a convention fixing a maximum and a minimum in terms of the strength of the House of the People or the State Assembly may suit our conditions. A minimum is also necessary as otherwise power may get overconcentrated. The minimum for the British Cabinet is twenty. I suggest that the strength of the Council of Ministers may be between three and six per cent of

Parliament or the Assembly and the minimum should be the strength of the Cabinet, the rest being ministers not having the Cabinet rank.

The Cabinet is only a committee of the more important ministers but in practice the other ministers have come to be mere political secretaries of their departments subject to the decisions of the Cabinet. It is difficult to justify the existence of Ministers of State and Deputy Ministers, besides Cabinet Ministers. I would suggest the abolition of the category of Deputy Ministers and the acceptance of the principle of a Cabinet Minister or a Minister of State being in sole charge of a Department assisted by a permanent Secretary. The institution of Parliamentary Secretaries has not been a success in India and I do not think there is any need for it. The convention governing the Cabinet has been stated as follows by Lord Morley in his *Life of Walpole:* "The first is the doctrine of collective responsibility. The second mark is that the Cabinet is answerable immediately to the majority of House of Commons and ultimately to the electors whose will creates that majority. Third, the Cabinet is, except under uncommon, peculiar and transitory circumstances, selected exclusively from one party. Fourth, the Prime Minister is the keystone of the Cabinet arch. Although in the Cabinet all the members stand on an equal footing, speak with equal voice and on the rare occasions when a division is taken, are counted on the flat principle of one man one vote, yet the head of the Cabinet is *primus inter pares* and occupying the position which, so long as it lasts, is one of exceptional and peculiar authority."

The Indian Constitution merely says in Article 75(3) that the Council of Ministers shall be collectively responsible to the House of the People. Let us consider the implications of this collective responsibility. The rules of procedure of the Lok Sabha provide only for a motion of non-confidence against the Council of Ministers. No such motion against an individual Minister is permitted. Even though the House may want to censure the policy of a particular Ministry, it cannot single out the Minister in charge and pass a motion

expressing want of confidence in him. So far as the opposition is concerned, the Cabinet stands or falls together.

The position is not so clear as to whether this responsibility obtains between the Cabinet and its legislative party. There have been many cases in the Centre when as a result of discussions in the party, individual ministers have had to resign. Such resignations have been due to errors of judgment, failure of particular departments and allegations of misuse of power. The rules of Lok Sabha provide that the resigning Minister may, with the consent of the Speaker, make a personal statement in explanation of his resignation. Such explanation has to be confined to purely personal reasons such as health or to serious differences on matters of policy. Otherwise, it may lead to embarrassing disclosures of Cabinet secrets which cannot be permitted.

On a strict interpretation of the principle of collective responsibiliy, a Minister can never plead that he was ignorant or unaware of what his colleagues were doing. He should also be prepared to defend both in Parliament and in public the policies and decisions both of the Cabinet and of his colleagues against critics. The modern Government is so complicated that it is not possible to expect these conventions to be strictly followed. It has been my experience that an alert member of Parliament, who attends the sessions regularly has a greater knowledge of the activities of the Government as a whole than any individual minister. It is, however, essential that no Minister should criticise his colleagues or ventilate his differences openly. Unfortunately, even this minimum convention is not followed in India. It has become common for the Central Ministers to plead openly for larger financial allotments to their departments. According to the principle of collective responsibility, the manner in which the revenues are allocated is not the sole responsibility of the Finance Minister. It is that of the Cabinet and also by implication of the Council of Ministers. It is open to a Minister to fight within the Cabinet for more funds; but, if he fails, he must graciously submit or resign. In other matters also, Ministers, both at the Centre and in the States, speak with different voices, causing a great deal of

confusion. A no less indefencible practice is for a Minister to think aloud and make observations and suggestions in his individual capacity. Recently, there was an instance of the Law Minister of the Government of India expressing in the Lok Sabha an opinion in his individual capacity on a legal issue. It is also not uncommon to find a Minister expatiating on the policy that should be pursued by another Minister. To some extent, this lack of discipline is due to the predominance of a single party and the weakness of the opposition. Still, an earnest attempt should be made to observe at least the elementary consequences of the principle of collective responsibility.

The Cabinet being only an informal committee of the Council of Ministers, its decisions cannot be arrived at by majority voting. Even if the whole Council is summoned to meet, decision by voting is not in conformity with the spirit of the conventions relating to responsible Government. It may be useful for the Prime Minister to ascertain the views of his colleagues by show of hands or otherwise; but, unless he himself is in agreement with the view of the majority, he will postpone the decision and let the matter be dropped or persuade the majority to come round to his views, or he is himself pursuaded that the majority view is the correct one. A general consensus and approval of the Prime Minister are necessary for Cabinet decisions.

It has been already pointed out that, in actual practice, the role of the President is almost diametrically opposite to the literal meaning of the provisions of Article 74 of the Constitution. Normally, he is to accept the decisions of the Cabinet and even of individual Ministers. Therefore, the question arises whether the President has at least the right to advise the Council of Ministers on important matters. Article 78 provides that: "It shall be the duty of the Prime Minister—

(*a*) to communicate to the President all decisions of the Council of Ministers relating to the administration of the affairs of the Union and proposals for legislation;

(*b*) to furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for; and

(*c*) if the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council."

I have no idea as to how far this Article and similar Articles in relation to States, are being followed in practice. I know only that Dr. Rajendra Prasad, the first President, was dissatisfied with the part he was playing. The relations between the Governors and their Cabinets have in some States been very unsatisfactory. Now that both the first President and Prime Minister have passed away, I think it is desirable that the correspondence between them on the relations between the President , the Prime Minister, Cabinet and the Ministers should be published. It will enable the evolution of appropriate conventions in these matters.

As Article 74(2) expressly says that the advice rendered to the President shall not be enquired into in any Court, if the President refuses to accept that advice, the Cabinet has no remedy except impeachment under Article 61. Even for a party with an overwhelming majority, it will not be easy to impeach a President successfully, if his differences with the Cabinet were on a controversial issue on which opinion in the ruling party itself is keenly divided. The only certain method of ensuring that a President will conform to the conventions of responsible Government is to treat him with respect and consideration, listen to his views on important matters, and, as far as possible, secure his approval.

At the time of laying the foundation stone of the Indian Law Institute in New Delhi, Dr. Rajendra Prasad suggested that the position and powers of the President in the Indian Constitution might be a fit subject of research for the Institute. The difficulty of any such research is that the Law and the convention are in conflict with each other. It may

be a legitimate subject of enquiry as to how far the British conventions are applicable to India; but, it is not so much a matter of actual research as of constructive thinking.

In my view, the President's role, as the Head of the Executive Government, is bound to be elastic and vary with circumstances. Where the ruling party has a large majority and stands united behind its leader, he has to function as a mere Constitutional head. But, if the majority is small or the ruling party is in actual minority, but the Government is carried on with the active or passive support of one or more opposition groups, the President's position becomes automatically stronger. He will be able to advise with effect and, if necessary, to refuse to approve important decisions, forcing the Government to resign and ask for a dissolution or let the President instal an alternative Ministry. Similarly, if dissentions within the ruling party become acute and the leadership breaks down, the President may become the deciding factor. Once in 1949, the differences between Sardar Patel and Pandit Jawaharlal Nehru became so acute that there was a fear that the Congress Party might break up into two halves; but, they were patched up soon. If such split had taken place, it would have been open to the President to have called either of the leaders to form the Cabinet. I do not think it is essential for the President to calculate precisely as to the number of adherents of either group because it will be the attitude of the opposition groups that will be the determining factor. As every one knows, this attitude itself is greatly influenced by the fact that a particular group is called upon to form the Government.

Conventions of responsible Government indicated above are applicable equally to the States. But, there are some important differences. The Governor is not elected like the President, but is appointed by the latter. Unlike the President, he can be required to exercise his functions in his discretion by or under the Constitution. The Governor can not only give or refuse assent to Bills passed by State Legislatures, but also reserve them for consideration by the President. These provisions emphasize the fact that the President of India is not only the Constitutional Head

of the Union but also of each of the States though, in regard to the latter, he functions normally through the Governor, who is his agent.

In the Report of the Committee on Prevention of Corruption, the following recommendation has been made:

> "A code of conduct for ministers including the provisions suggested by us for public servants relating to acquisition of property, acceptance of gifts and disclosure of assets and liabilities should be drawn up. This code of conduct should be placed before Parliament and State Legislatures. The Prime Minister and Chief Ministers should consider themselves responsible for enforcing the code of conduct."

It is a matter of satisfaction that the Home Minister, Shri Gulzarilal Nanda is making an earnest effort to implement this recommendation. I do not wish to refer here to actual corruption which, if established, should result in the resignation of the minister and probably his prosecution thereafter. There are, however, other matters which should be treated as binding conventions like joint responsibility. Collection of money by ministers for party purposes and particularly for fighting elections is common in all democratic countries. We all know that Mr. Lloyd George collected large amounts which he kept in a special account and when the Liberal Party was split, he made it available for his own group. I know that in India many ministers including some Chief Ministers collected large amounts for fighting the last general elections which they used partly for themselves and partly for other candidates of their party. In view of the fact that under the system of planned economy, which we are evolving, every industrialist and businessman has to depend directly or indirectly on Government favours, it has been argued by some that any collection for party purposes by a minister amounts to bribery and corruption and should be stopped. I wonder how far this is practicable. It is not humanly possible to prevent a minister using his influence for this purpose. I would, however, suggest the following conventions: No Minister should receive any money in cash or cheque made out in his name for any purpose. All

funds intended for party purposes should be sent to the party office and credited in its accounts. In no case should a minister directly or indirectly use his influence to collect donations from a party whose application for licence, loan or any other favour is pending with the Government. I shall deal with the question of donations from companies when I deal with the conventions and proprieties relating to political parties.

To what extent a minister should be entitled to collect donations for scientific or cultural societies or clubs with which he is associated is another difficult issue on which suitable conventions are needed. I feel that no minister should be an office-bearer or a member in the executive committee of such society or club if it gets any grant or other aid from his Government. There should be no room for conflict of loyalties. Even when a Minister does not hold such a position, he should not try to influence parties with whom his ministry is directly connected. In other cases, he should inform the Prime Minister or the Chief Minister of the amounts and purposes of such collection. So far as the Prime Minister and the Chief Ministers are concerned, they should rigorously refrain from making any collections for any purposes though they may be formally associated in Public appeals for such purposes as the Jawaharlal Nehru Memorial Fund, etc.

Integrity and Corruption cannot be dealt with on the plane of convention. Institutional and legal arrangements are necessary. Prime Minister and Chief Ministers should not take up the responsibility of under-writing the character of a minister in the face of allegations by responsible persons.

Now, let me indicate some of the proprieties which should be observed by Ministers. It is sad to reflect that for opening a cinema picture or a hotel or such trifling function, a Minister should always be available. Laying the foundation stones of factories or presiding over their annual days may be a little more dignified. But, I wonder if Ministers, especially Central Ministers, should participate in such functions. In some cases at least, the presence of the Minister is exploited for commercial purposes. Even in respect

of institutions and enterprises belonging to the Government, the multiplication of ceremonial functions and long journeys of Ministers, merely for inaugurating or presiding over such functions, is calculated to bring down the prestige of Government. I think this is a matter which should be carefully considered by a Committee of the Central Cabinet and some canons of propriety should be evolved. Some time ago, the Parliament and the Press were shocked at the disclosure of the large amounts spent on electricity and water supply and other maintenance charges of the residences of Central Ministers. They have now been subject to certain restrictions. I think some such restrictions are needed in respect of travelling by Ministers. Even a Deputy Minister does not travel alone. His Personal Assistant or Private Secretary, a Peon and a Guard have to go with him. If a Minister travels once from Delhi to Madras, the expenditure is bound to be more than a thousand rupees. I do not know if any accurate information is available about the burden imposed on the exchequer by this travelling. I suggest, therefore, that, if it is not already done, the Auditor-General should consider whether it is not in the public interest to see that the expenses of Private Secretaries and Personal Assistants, Peons and Guards are also debited to the travelling account of the Minister concerned. When this is done, a limit should be prescribed regarding the maximum expenditure that may be incurred by various categories of Ministers in a year. I think it is altogether improper for a Minister to incur, except in extraordinary circumstances, expenditure equal to or exceeding his salary. A maximum of half the salary may be reasonable.

It is also not uncommon for Ministers to avail themselves of the hospitality of rich industrialists and businessmen during their tours, though it is easy for them to stay in the Guest Houses of the State Government or the Raj Bhavans. There are individuals in every big cities who are anxious to give receptions, lunches and dinners to them. I think that Ministers should agree to such functions only when they are arranged by recognized institutions.

Severe restrictions have been placed by the Conduct Rules

on the acceptance of presents by officials. While such rigid rules may not be expedient in the case of Ministers, costly presents, say, those exceeding rupees one hundred in value, should be sent by Ministers to Museums or other public places. There should be no objection to keeping such presents in the Government residences occupied by the Ministers, provided that the Estate Office is intimated and they are considered to be Government property.

Normally, it is the President or the Governor who should represent the Central or State Government in formal functions. Owing to the fact that Lord Mountbatten became the first Governor-General, the formal functions on August 15, came to be divided between the President and the Prime Minister, the latter unfurling the National Flag at the Red Fort and the former giving a Reception at the Raj Bhavan. I believe the practice varies in the States, but, I would humbly suggest that the present Prime Minister may consider whether the existing practice should continue or as on 26th January, the President alone should function formally in the name of India in all ceremonial functions.

* * *

QUESTIONS AND ANSWERS

Question—Do conventions grow or do we prescribe conventions because prescription is an expedient which may differ from time to time or individual to individual: whereas conventions grow out of the ethos of the community where leaders react to the people and people react to the leaders?

Answer—That is quite true. Conventions are expected to grow. But in our country we have consciously to evolve conventions because we have taken our system from other countries and we have to work under special conditions. Just as our economics have to be planned and we have to proceed by forced marches, some such steps may be necessary in politics also. Unless the conventions are thought out consciously and accepted they are not likely to grow at all. Therefore I think both the processes are desirable processes. There are certain things that you cannot take to courts

but which are necessary. So far as they can be achieved by a concensus, by discussion, by agreement, by resolution of Parliament or by a code of conduct which is now being evolved by the Home Minister, conventions can be established also directly.

Question—If a conflict arises between the Prime Minister and the President there are two things. If the President wants to assert his position he can easily do so because he has to be removed by 2/3rd majority. In that case may I know whether the law and the Constitution will be followed or the conventions?

Answer—It becomes a political issue. If the Prime Minister is weak then the President will win. If the Prime Minister is strong, the President will have to yield. After all, if the Prime Minister has got either a 2/3rd majority or even a less majority, if he goes to Parliament and says, now this man wants to be a dictator, even the opposition parties will join with him and remove the President. But as I have said in marginal cases where the point of conflict is also a source of conflict in the party itself: supposing there is an issue in which a large number of the members of the ruling party are also against the Government decision, then it is just possible that the President may carry his view. This cannot be taken to a court. It has to be decided only by internal adjustment.

Question—Recently in the papers we read about a particular Minister in Maharashtra being asked to resign by the Chief Minister and he has not complied with it. Constitutionally speaking what should be done? You said he should be dismissed.

Answer—The Chief Minister should have had no hesitation to go to the Governor and advise him to issue an order of dismissal. That would have made the position clear. But it must be considered undignified altogether for a Minister to wrangle whether he should resign or not. That is where the convention has to prevail. Besides the convention there is the constitutional remedy also in the case.

Question—If this thing is resorted to on a fairly large scale, may it not mean strengthening the hands of the Governor to dismiss anyone?

Answer—It won't be so because in that case the whole Ministry must be rotten.

Question—In different places?

Answer—Once or twice if the man is properly dismissed, then the Ministers will know their fate and they will think it is much more honourable to resign and get out.

Question—From you I understand that if the President does not accept the advice of the Prime Minister then the Prime Minister has to impeach the President?

Answer—If the President does not accept the advice then the Prime Minister may choose to accept the President's advice. Then there is no conflict. But if both of them hold on to their views, the President will have to yield according to the British conventions implied in our Constitution. If he does not do so there will be a good case for impeachment.

Question—In that case the proper procedure should be that the Prime Minister should resign rather than impeach the President. After all the executive authority vests with the President.

Answer—That is exactly the point I have been trying to make. It does not vest because the rule is the President shall not act except on the advice of the Council of Ministers. Therefore the only snag is that if he does not accept the advice the Ministers cannot go to court and have some writ against the President. That is not possible. But then they will have to take political action. They are entitled to take political action.

Question—I think the compulsion of the President would be that if the Prime Minister resigns who has a majority, then the President would be in a difficult position to ask some one else to form a Ministry.

Answer—It depends upon the Prime Minister's position. If he has a secure majority there is no meaning in going through that formality. He will simply attack the President. But if the majority is slender, he will resign and make it impossible for him to have a Ministry. It depends upon the circumstances.

Question—If this precedent is followed it will have very dangerous consequences. Because every time a Prime Minister gives advice, the President will be afraid that he may be impeached.

Answer—Certainly that is why tradition has grown that the President accepts the advice normally. Then there is no conflict. That is what is intended by the Constitution. But the President may raise a point and argue with him. Finally if the Prime Minister is strong and says this is my view he has to accept his advice.

Question—Say the Prime Minister dies and the Cabinet must be dissolved. But the next man may take sometime to be elected as Prime Minister; is there no provision for a Deputy Prime Minister?

Answer—There is no provision in the Constitution for a Deputy Prime Minister. It is open to the Prime Minister to create that office for a time if he so chooses, or for the party to suggest it to him. But it will not be a constitutional office giving him any kind of right or power.

Question—Dr. Rajendra Prasad when he was President of the Constituent Assembly accepted the position of the President of India....but subsequently Dr. Rajendra Prasad has suggested that there should be some relation between the President and the Prime Minister which shows that the relations between the Prime Minister and the President should be something more than what is provided in the Constitution. Don't you think some research is required to be made?

Answer—I have said that it cannot be a matter of research because there is no basis on which research could be conducted. You can have a research about the British conventions. But to what extent they should be applied in India, it cannot be a matter of research, but only a matter of adjustment and conventions to be evolved here. As I said if the correspondence between Dr. Rajendra Prasad and the Prime Minister Nehru is published, then there should be some material for us to go on as to what points of differences arose and how they were adjusted.

Chairman (Shri A. C. Guha)—We have heard a learned lecture by Shri Santhanam and I think he has discussed many knotty problems of our Constitution and of our Parliamentary democracy, but clarity and precision of course is not possible in this matter. Still I feel that he has been able to somehow put the issues before the audience in clear perspective.

I think we should also remember some of those pioneers who fought for Parliamentary democracy for India even before Independence was achieved. There were many stalwarts in the then Imperial Assembly. Then it was followed by the Central Assembly. A man like Gokhale, men like Moti Lal Nehru, Pt. Madan Mohan Malaviya and so many others fought for the Parliamentary rights of the people. In this connection I think one man almost forgotten now, should be specially remembered, that is Vitthal Bhai Patel. He became the President of the Central Assembly in 1925 and it was from his insistence that a separate Legislative Department, an independent Legislative Department was formed free from the control of the administration. That was the beginning of our Parliamentary democracy.

Then after Independence from the time of the Constituent Assembly (legislative) Shri Mavlankar became the Speaker of the House. Shri Santhanam is in full agreement with me. The contributions he made in those formative periods must be remembered by generations yet to come. While Patel had to fight against an alien government, against which the whole nation was engaged in a fight, Shri Mavlankar was to engage himself in a more subtle and delicate fight, that means the fight against his own national government. There he had to assert the independnce of the Parliament against a permanent bureaucracy. This is the fundamental point of our Parliamentary democracy.

And the points that Shri Santhanam has covered, I think most of the points I would agree with. There may be some slight disagreement on some of the points.

I do not think in any democracy it has ever been possible to ban collection of funds for the party. His fourth lecture will be political parties. No party can depend only on contributions from its own members. It must have to collect

funds. But in theory I would agree with him that in the process of collection of funds there should not be any idea or any impression left with the public that collection of funds have been made on the basis of some consideration, some concession or leniency to be shown to the man who has given the funds.

It has been our misfortune that in certain cases funds have been collected not always for the party but sometimes for the group, sometimes for some other institutions. Some parties have been openly accused of some misbehaviour and also were almost on the verge of being prosecuted. They have given money and the prosecutions have been withdrawn. I think there have been some cases like that. These are bad cases and should not have been encouraged.

As for the relations of the Prime Minister or the Chief Minister with his other Minister colleagues, it is the accepted policy and principle of the Cabinet system that the Prime Minister or the Chief Minister, as the case may be, is the first among equals. But he holds a very strategic position. The party elects him as the leader and he selects his colleagues. The other colleagues are selected by him and the conventions should develop: and I think the present Prime Minister the other day in the debate on the no-confidence motion also mentioned this that a convention should be established that as soon as the Prime Minister or the Chief Minister, as the case may be, indicates his displeasure of any Minister he should resign. But that convention has not been properly developed yet.

He mentioned one case of Andhra. A similar case occurred in Assam and another case which has been mentioned came from Maharashtra.

What has been done in such cases? I think my friend Shri Santhanam has advocated that the Governor or the President should intervence in such matters and the Prime Minister or the Chief Minister should ask the President or the Governor to dismiss him. I am not quite in agreement with that suggestion. The Prime Minister or the Chief Minister must always be motivated with some public purpose or public spirit. He may have his own personal grudge

against somebody. So in all such cases if you immediately allow the President or the Governor to dismiss the Minister then they may also in a way create difficulties for our nascent democracy.

He has deprecated the idea of inviting the intervention of the party. I think my friend did not like that idea. But I feel in such cases, intervention of the party should be a healthy one. After all the Prime Minister or the Chief Minister is the creation of the party. The party is the base and the Cabinet and the Prime Minister—they are all the creation of the party. It is necessary that the party should have some say in this matter. Whenever there is any controversy between the Prime Minister and a colleague, or the Chief Minister and a colleague of his, I think the party machinery should be asked to interfere in this matter and decide the issue.

Another interesting matter in this connection I should mention. After the death of Pt. Jawaharlal Nehru a new leader was to be elected. There were some rumours and some news in the papers that the Working Committee of the Parliamentary Board of the Congress would decide who should be the leader. Immediately the Executive Committee of the Parliamentary Congress Party in the Parliament asserted its rights. Though it did not pass any formal resolution, it made it quite clear to what may be called the High Command that that would be an undue interference of the High Command in this matter, because the Prime Minister is the leader of the party in the Parliament. He must have the confidence of the majority members in Parliament. So it is the exclusive right of the party in the Parliament or the Assembly to elect the leader and not the Executive Committee of the whole organisation. The Working Committee took the hint and they avoided an open conflict with the Congress Party in the Parliament. Then a subtle process was suggested that the President of the Congress should sound members informally and get the concensus of opinion. And the concensus of opinion, without any convassing or lobbying was in favour of Shastri and that opinion was conveyed to him. He

gathered that opinion not only from the members themselves but also the Chief Ministers of different States who were present there. They also conveyed the view that the vast majority of members of the Congress Party in Parliament were in favour of Lal Bahadur Shastri and he conveyed that to the party and there were no other candidates. In this matter gradually convention has to be developed.

A friend put a question whether conventions should be developed or be prescribed. How can it be developed? The British convention of that legal fiction of the monarch's authority did not just fall from the heavens. It was in a way prescribed by the Members of the House of Commons by asserting their rights not in one year, not in one decade, but decade after decade, the fight was going on till the British monarch had to yield to the will of the House of Commons. So the convention develops in this way. Some one has to assert, the majority view has to be asserted, then the convention will develop. Now no British monarch would dare to go an inch against the wish of the Cabinet. You will recollect about the relations of the new Prime Minister in the House of Commons Sir Douglas Hume. The party did not like it but it was done in such a subtle way that the party could not take any definite objection to it. The outgoing Prime Minister Mr. MacMillan went to the Queen and he conveyed to the Queen the desire of the party and then the Queen declared the name of Sir Douglas Hume as the next Prime Minister. Even then it was felt that there was a slight but very subtle deviation from the procedure so long followed.

Then my friend Shri Santhanam has mentioned a very good point—the power or authority of the President. Under the Constitution, interpreted literally, the President has got all the powers. But these are fictions. He has simply to obey the behest of the Cabinet. To put it very bluntly he has no other way than to obey the behest of the Cabinet. But then the President cannot enter into a conflict with the Cabinet. The question of impeachment of the President is very very difficult. He has to be impeached on some definite charges and simply, I don't think on the question

of disagreement with the existing leader of the party, there can be any impeachment. So in such cases the best thing should be for the leader of the party to ask for a dissolution and then if he wins even in the elections the President will not come into picture. It should not be mentioned even in the election campaign that this election is on the issue of a conflict with the President. That may be known subtly, that may be circulated by some under-hand means but that cannot be made an issue because the President cannot be brought into any contest. But I do not think any President in India would dare to cause such a conflict.

We are yet a very young democracy, but I think even in these 15 to 16 years we have developed some healthy conventions.

The last Prime Minister was a towering personality. That has helped us in the development of conventions for Parliamentary democracy. If the present Prime Minister had been the first Prime Minister, I think the President might have taken some courage to oppose or in some matters to object to the decision or advice of the Prime Minister. But having Pandit Jawaharlal Nehru as a Prime Minister no President would have the courage to say a word against the decision of the Prime Minister. He might have been wrong. Surely in the 15 to 16 years of administration, he must have committed many mistakes. There is no doubt about that. Anybody in that position would have made many mistakes. And he also must have committed many mistakes and there have been many occasions perhaps when the President would not naturally have agreed with him, but the President either would try to persuade him in a very mild and persuasive language or he had to yield to the advice of the Prime Minister.

And this convention, I do not think any President, even though the Prime Minister may not be as towering a personality like Jawaharlal Nehru, would dare to violate this convention and tradition which will develop and grow. And this is the basis of the cabinet system or the Parliamentary system of Government.

We have taken up the Parliamentary system of Government. It is in a way a heritage from the British Rule. I think the only countries in Asia that have a Parliamentary system of Government are India and Japan and Ceylon also.

Shri Santhanam—Malaysia also!

Shri Guha—Yes, yes. But no one knows what will happen in the near future. Ceylon has taken the one step that may lead to something else. They have taken the Marxists into the Government. Their ideology is not quite for Parliamentary democracy.

So we do not know what will happen to Ceylon. But I am sure India will maintain this dignity of Parliamentary democracy, and as a student of history and politics, I think most of you will agree with this case: the greatest protection to the common man, and the greatest right to the common man. Every man—one vote—and the government depends on the vote of the common man. This is the main basis of Parliamentary democracy and that is the greatest guarantee of an individual's right and liberty.

Another danger we have, and that is the Federal System of Government. I think in no other Parliamentary democratic country is there a federal system of Government. This is the only country which has got both, a federal system of Government and Parliamentary democracy—cabinet system of Government. The U.S.A. is not in that sense a Parliamentary democracy. Canada has only two States. Australia has also got three or four States. It is true that Canada and Australia are also federal and they have Parliamentary democracy. But their problems and our problems are far different, and here the relation between the States and the Centre is that some conventions develop.

We very often find that the State Governments put all the blame on the Centre and local newspapers also for anything they will blames the Centre, and they will absolve the State Government from all the blames and failures. That tendency has to be checked.

Friends, I come from West Bengal. I find on any issue, the banner headings of Bengal papers say: Step motherly attitude of the Central Government to West Bengal. Then that adjustment has to be made and certain conventions have to be developed.

My friend also mentioned the conflict between the different departments, particularly for the allocation of funds. In the fourth plan you will find each State, each Ministry would put forward demands which would make the total, I think, about 40/50,000 crores of rupees. We can ultimately go in no case more than 24,000 crores. But if you sum up the demand of all the States and all the Central Government ministries it will go even beyond Rs. 50,000 crores. When they make claims they should consider the total capacity and resources of the country also. Their claims should be on the basis not only of the judgment of the particular department or the ministry, but on the basis of the resources available, and also with respect to the comparative necessity of each of the departments.

Lastly, the Ministers, speaking as individuals. Sometimes in Parliament also, they do. I think a few days ago a Minister of the Central Government speaking from the same platform as that of the Head of the Delhi Administration, and the Minister asserting that he or she would be speaking in a personal capacity and the Head of the Delhi Administration was speaking as the representative of the State. And the Minister abused the Central Government and the Delhi Administration like anything. That should be avoided. Whatever they had to say, if they are dissatisfied with the Government, the only honourable course for that Minister is to quit the Government. He or she cannot even, after leaving the Government come down on the Government with bitter criticism. The Minister, once a Minister, he should exercise some control on his own public utterances. He must feel that at least once he shared the responsibility of the Government and he or she took some part in the framing of the policy of the Government. So to that extent, he or she must exercise control over his utterances. Therefore, this convention has also to be developed.

I hope with the passing away of a very towering personality, we need this convention to be developed in a healthy manner and quickly. I would like to remind you, friends, of what Shri Sham Lal Zaida told the parliamentary party in the election of Lal Bahadur Shastri. When Jawaharlal Nehru was the leader of the country, we could afford to commit some mistakes. The country and the people would have forgiven us. But now, in the absence of that towering personality, we must behave ourselves and develop healthy and honourable conventions so that the country may prosper and the nation develop and maintain its democratic set-up.

II

PARLIAMENT

Speaker: Shri K. Santhanam
Chairman: Pt. H. N. Kunzru

Shri K. Santhanam—Dr. Kunzru, Dr. Khosla, ladies and gentlemen: This evening I am to talk to you about the Conventions and Proprieties of Parliamentary Government in relation to Parliament and the legislature. Before I proceed to my subject I request permission to say how much I feel honoured that Dr. Kunzru has agreed to preside over this meeting. I consider him to be the most outstanding upholder of the traditions of fearless constructive thinking and intellectual integrity bequeathed to us by Ranade, Gokhale, Srinivas Shastri and Tej Bahadur Sapru.

We require for this country and for the evolution of democracy in India a happy blending of this tradition with the other tradition of self-sacrifice of moral consciousness we have derived from Tilak and Gandhi. If we could achieve a happy blending of these two traditions I have no doubt about the future of politics in this country.

The powers and functions of Parliament and State Legislatures have been set forth in the Constitution and their rules of procedure and conduct of business have been codified in manuals. It may, therefore, appear that there is little scope for conventions relating to them. It is quite true that the role of conventions is much more limited in this field as compared to that of the executive Government. Yet, there are important aspects in which the Constitution and the rules have to be supplemented or their operation restrained and modified.

Recently, the Legislative Assembly of Uttar Pradesh came into direct conflict with the Allahabad High Court. The original issue was whether the High Court could interfere with the orders of the Speaker on behalf of the Assembly

in imprisoning a person for contempt. When the Allahabad High Court took cognizance of a petition from the accused person, the Judge concerned was asked to appear and this was resisted by the High Court.

The President referred the case to the Supreme Court under Article 143(1) of the Constitution for its advisory opinion on the following five questions:

(1) Whether it was competent for the Lucknow Bench of the High Court consisting of Shri N. U. Beg and Shri G. D. Sehgal, JJ, to entertain and deal with the petition of Shri Keshav Singh, challenging the legality of the sentence of imprisonment imposed upon him by the House for its contempt and for infringing its privileges, and to pass orders releasing Shri Keshav Singh on bail, pending the disposal of his said petition.

(2) Whether Shri Keshav Singh by causing the petition to be presented to the High Court, Mr. Solomon, advocate, by presenting the said petition, and the two judges, by entertaining and dealing with the said petition and ordering the release of Shri Keshav Singh on bail pending disposal of the said petition, committed contempt of the House.

(3) Whether it was competent for the House to direct the production of the two judges and Mr. Solomon advocate, before it in custody or to call for their explanation for its contempt.

(4) Whether it was competent for the Full Bench of the High Court of Uttar Pradesh to entertain and deal with the petitions of the said two judges and the advocate, and to pass interim orders restraining the Speaker of the Assembly and other respondents to the petition from implementing the aforesaid direction of the House; and

(5) Whether a judge of a High Court, who entertains or deals with a petition challenging any order or decision of a Legislature imposing any penalty on the petitioner or issuing any process against the petitioner for its contempt or for infringement of its privileges and immunities, or who passes any order on such petition, commits contempt of the Legislature and whether the Legislature is competent to

take proceedings against the judge in the exercise and enforcement of its powers, privileges and immunities.

The case was ably argued by Shri Seervai on behalf of the U.P. Legislature and by Shri Setalvad on behalf of the Allahabad High Court. A majority of the judges headed by the Chief Justice gave the following answers to these questions:

"(1) It was competent for the Lucknow Bench of High Court of U.P. consisting of N. U. Beg and G. D. Sehgal JJ to entertain and deal with the petition of Keshav Singh challenging the legality of the sentence of imprisonment imposed upon him by the Legislative Assembly of U.P. for its contempt and for infringement of its privileges and to pass orders releasing Keshav Singh on bail pending disposal of the said petition.

(2) Keshav Singh by causing the petition to be presented on his behalf to the High Court, Mr Solomon, Advocate, by presenting that petition, and the two judges by entertaining and dealing with the said petition and ordering the release of Keshav Singh on bail did not commit contempt of the U.P. Legislative Assembly.

(3) It was not competent for the U.P. Assembly to direct the production of the two judges, Beg and Sehgal, and Solomon. Advocate before it in custody or to call for their explanation for its contempt.

(4) It was competent for the full bench of the High Court to entertain and deal with the petitions of the two judges and Solomon and to pass interim orders restraining the Speaker of the Legislative Assembly and other respondents to the petition from implementing the said directions of the Assembly, and

(5) In rendering our answer to this question which is very broadly worded, we ought to preface our answer with the observation that the answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four walls of the legislative chamber.

A judge of a High Court who entertains or deals with a petition challenging any order or decision of a legislature imposing a penalty on the petitioner or issuing any process against the petitioner for its contempt, or for infringement of its privileges and immunities, or who passes any order on such petition does not commit contempt of the said legislature; and the said legislature is not competent to take proceedings against such a judge in the exercise and enforcement of its powers, privileges and immunities. In this answer we have deliberately omitted reference to infringement of its privileges and immunities which may include privileges and immunities other than those with which we are concerned."

I have no doubt that the opinion of the Supreme Court will be given the highest respect by the Parliament and Legislatures. At the same time it should not be forgotten that it is only an advisory opinion. Further, the opinion does not cover the positive issue as to what exactly are the privileges of a House of Indian Legislature. For instance, in reply to the fifth question, the Supreme Court has stated that "The answer is confined to cases in relation to contempt alleged to have been committed by a citizen who is not a member of the House outside the four walls of the legislative chamber."

Does this mean that a legislature will be entitled to sentence a member for a long or indefinite term of imprisonment? Can it do so to a citizen who commits contempt within the four walls of the legislative chamber? Again suppose a Press Correspondent sends a malicious report about the Speaker or the legislature as a whole and he is summoned before the House for reprimand and he refuses to come, will the Speaker be entitled to issue a warrant for his being brought before the House and if he does issue the warrant, will the reporter be entitled to apply to the Courts for bail or stay of proceedings?

It is also to be noted that Mr. Justice Sarkar expressed his opinion that a judge has no jurisdiction to interfere with a commitment by a House under a general warrant. If he makes an order which interferes with such a commitment, his action would be without jurisdiction and an order a nullity.

Any officer executing that order would be interfering with the committal by the Assembly and such interference would be illegal. He concluded that it would, therefore, follow that the judge making such an order would be committing contempt of the Assembly.

It is, therefore, worthwhile considering this issue at some length and to indicate the nature of conventions that may prove adequate if the issue is not to be settled by a Constitutional amendment. Article 105 reads as follows:

"105 (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament,

(2) No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees at the commencement of this Constitution.

(4) The provisions of clauses (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of, a House of Parliament or any committee thereof as they apply in relation to members of Parliament."

Article 194 is a verbatim reproduction of Article 105 with the only substitution of the word "Legislature" for "Parliament".

This is the only Article where a direct reference has been made to the Constitutional practices of the British Government, though all the important conventions relating to Responsible Government have been implied in the Indian Constitution. Many members in the Constituent Assembly objected to this mention on the ground that the privileges of the House of Commons were vague, and that it was not dignified to refer in one Constitution to the practice of another. One member argued: "If they are well-defined and definite, there should be no difficulty in stating them in extenso. If they are vague and indefinite, it is wrong to console ourselves with a mere reference to such thing." In reply, Shri Alladi Krishnaswami Iyer, the great Constitutional lawyer from Madras, pointed out that a similar mention was made in the Constitutions of Canada and Australia. He stated further: "It is common knowledge that the widest privileges are exercised by the Parliament in England....It has been held that there is no power to punish for contempt any person who is guilty of the provincial or even the Central Legislature in India at present, whereas the Parliament in England has the inherent right to punish for contempt." He also said that there was nothing to fetter the discretion of the future Parliament of India and that only as a temporary measure, the privileges of the House of Commons were made applicable. Now, the situation is that though the Parliament and the State Legislatures have got the power to define their privileges, they are not likely to do so because such definition is bound to lead to a curtailment of their existing powers and privileges. Once they are reduced to a statute, they will become subject to the Articles of the Constitution, particularly to those relating to Fundamental Rights and the jurisdiction of the Supreme Court and the High Courts. If they are not so reduced, there is the risk of any citizen, whatever his status, office, rank or dignity may be, being called upon by any of the twenty-five Houses of the Legislatures in India to answer a charge of contempt. He will be liable to imprisonment without any right of appeal or other redress. It may be argued that during the last seventeen years, Parliament and State Legislatures have exercised their privileges with restraint. I may refer in this connection to the

sensational case in which the Editor of Blitz was held guilty of breach of privilege by the U.P. Assembly for a criticism of the Speaker's conduct. The Committee of privileges of that Assembly recommended his imprisonment. He was arrested, flown from Bombay to U.P. and detained. He presented a *habeas corpus* application to the Supreme Court, which ordered his release on the side issue that he was not produced before a Magistrate within twenty-four hours of arrest. The U.P. Assembly could well have taken the line that Article 22 of the Fundamental Rights prescribing such production before a Magistrate, would not apply to Article 194.

The position in U.K. has been summed up by Erskine May as follows: "Since the House of Commons has not for a hundred years refused to submit its privileges to the decision of the courts, it may be said to have given practical recognition to the jurisdiction of the courts over the existence and extent of its privileges. On the other hand, the courts have always, at any rate in the last resort, refused to interfere in the application by the House of any of its recognised privileges."

I have no doubt that if the Constituent Assembly could have visualised this possibility under Articles 105 and 194, the provision referring to the privileges of the House of Commons would not have been inserted.

The question now is what is to be done? Under the general scheme of the Indian Constitution, trial and punishment are judicial functions which belong to the courts. The House of Lords was the highest court in England and in its struggle with the Crown and the Lords, the House of Commons also claimed that it was also a High Court of Parliament with equal supreme powers of arrest and imprisonment. Actually, the House of Commons has not exercised this power for a long time. In 1955, however, a warrant was issued by the Australian House of Representatives against the proprietor and editor of a newspaper under a similar provision of the Australian Constitution. He applied to the High Court of Australia; but, this was refused on the ground that a similar writ would not be possible in U.K. There can be a proper solution of this tangle only if the

Parliament and State Legislatures are prepared to observe a convention, voluntarily surrendering the right of arrest and imprisonment. If they are willing to do so, the Parliament may enact a law by which the Government can prosecute at the request of a Speaker or Chairman any person who is considered guilty of contempt of the House of Legislature by its Committee of privileges. The only other alternative is to amend the Constitution deleting the clauses referring to the House of Commons and adding a Schedule of Privileges or empowering the Parliament to formulate them by law. The present provision providing for each State Legislature to decide upon its privileges is likely to cause much confusion.

Every House of Legislature has full power to make its own rules and standing orders and take disciplinary action against members who disobey them. A member may be suspended for one or more sittings and in extreme cases for a whole session or even for the remainder of the term of the House. Recently a large number of members of the opposition had to be excluded from the sittings in U.P. Assembly on account of their refusal to behave properly. It may happen that political passions become so bitter that the entire opposition absents itself from a House. It may be recalled that when such an occasion arose in the old Indian Legislative Assembly, the then Speaker, Vithalbhai Patel adjourned the House on the ground that in the absence of the entire opposition, the Assembly had lost its representative character. It will be a useful convention that in the case of withdrawal of the entire opposition, the proceedings should be suspended and reasonable time given for the passions to cool down. It must be deemed to be a failure of the Parliamentary process if the ruling party should be responsible by an act of commission or omission for the boycott of the legislature by the opposition parties and groups. In any case, it should be considered a moral obligation of the Speaker and the Leader of the House to do everything possible to pacify the opposition and not to display any eagerness to rush through important Bills or motions in their absence.

The provisions in Article 105 and 194 ensuring freedom of speech and immunity of legislators in respect of speech or

vote in the legislature are indispensable to enable the representatives of the people to perform their duties satisfactorily. Erskine May says: "Subject to the rules of order in debate, a Member may state whatever he thinks fit in debate, however offensive it may be to the feeling, or injurious to the character of individuals; and he is protected by his privilege from any action for libel, as well as from any other action or molestation."

The limitations of the freedom of speech have been set forth in rules 352 and 353 of the Rules of Procedure and Conduct of Business in Lok Sabha, as follows:

"352. A member while speaking shall not –

(*i*) refer to any matter of fact on which a judicial decision is pending;

(*ii*) make a personal charge against a member;

(*iii*) use offensive expressions about the conduct or proceedings of Parliament or any State Legislature;

(*iv*) reflect on any determination of the House except on a motion for rescinding it;

(*v*) reflect upon the conduct of persons in high authority unless the discussion is based on a substantive motion drawn in proper terms;

Explanation: The words "persons in high authority" mean persons whose conduct can only be discussed on a substantive motion drawn in proper terms under the Constitution or such other persons whose conduct, in the opinion of the Speaker, should be discussed on a substantive motion drawn up in terms to be approved by him;

(*vi*) use the President's name for the purpose of influencing the debate;

(*vii*) utter treasonable, seditious or defamatory words;

(*viii*) use his right of speech for the purpose of obstructing the business of the House.

353. No allegation of a defamatory or incriminatory nature shall be made by a member against any person unless the member has given previous intimation to the Speaker and also to the Minister concerned so that the Minister may be able to make an investigation into the matter for the purpose of a reply;

Provided that the Speaker may at any time prohibit any member from making any such allegation if he is of opinion that such allegation is derogatory to the dignity of the House or that no public interest is served by making such allegation."

While the immunity from all legal proceedings for speeches in legislature should continue, I think a convention should be established by which any person who is defamed inside a House of Legislature, is permitted at the discretion of the Speaker or Chairman, to appeal to the Committee of Privileges of that House against the offending member. If the charge is proved, it will be for the House to decide whether the member should be asked to withdraw his statements and allegations and apologise publicly or be subject to any other penalty. In a unitary system where there are only two Houses of Legislature, the danger of misuse of immunity by a legislator is not so great as in our country with a large number of Houses of Legislatures and thousands of legislators. It is not possible for me to deal in greater detail with this question of privileges and immunities. Those who are interested would do well to read pages 245-255 of "Parliament in India" by W.H. Morris-Jones and the instructive paper by Mr. C.V.H. Rao in the "Indian Parliament" edited by Shri A. B. Lal, Reader in Politics, University of Allahabad.

Another important matter in which there is need for healthy conventions is the relations between the Lok Sabha and the Rajya Sabha in Parliament and the relations between the two Houses of bi-cameral legislatures in the States. Analogy of the House of Commons and House of Lords in U.K. or of that of the Congress and the Senate in U.S.A. is not applicable. According to the Constitution, in all matters of ordinary legislation, motions, questions and discussions, the

powers of the Lok Sabha and the Rajya Sabha are identical. But the Lok Sabha, as the House containing the directly elected representatives of the people, is given a privileged position in three respects. The Ministry is responsible exclusively to it. It has got the exclusive right to vote on the demands for grants and has the final voice in all money bills. As against this, the Rajya Sabha is given the exclusive right to empower the Parliament to create All-India Services and to make laws temporarily with respect to any item in the State List. It is obvious that if the two Houses are controlled by different parties, a state of deadlock may arise. Bills may have to be referred to joint sessions frequently and each House may set up rival committees and select committees. With respect to the Public Accounts Committee, there was a dispute about representation of the Rajya Sabha. It was finally resolved by the Lok Sabha agreeing grudgingly to have some members from the Rajya Sabha. The Rajya Sabha is still excluded from membership of the Estimates Committee on the ground that financial matters are the exclusive field of the Lok Sabha. This is not correct. The Rajya Sabha has the right to discuss the Budget and return the appropriation and other financial bills with or without amendments, though the Lok Sabha may reject the amendments and pass it finally in the form it chooses. I think that, in the interest of future harmonious working of Parliament, equality of status should be established between the two Houses in relation to Committees of Parliament, subject to the usual provision that the Lok Sabha gets two thirds and the Rajya Sabha one third representation.

Article 312 empowers the Rajya Sabha to declare by Resolution, supported by not less than two thirds of the members present and voting, that it is necessary or expedient in the National interest so to do, to create one or more All-India Services, and if it does so, the Parliament may, by law, proceed to create them. By a similar process under Article 249, the Parliament may be empowered to legislate on a State subject. The justification for these special provisions is that the Rajya Sabha is composed of representatives elected by the legislative assemblies and, therefore, may be

expected to safeguard the interests of the States. In actual practice, such resolutions have been moved without reference to the wishes of the States. Sometimes, the Chief Ministers are consulted. I think it is essential to establish a convention that before action could be taken under either Article, the State Legislatures should be called upon to express their views on the proposed encroachment by the Centre into the legitimate field assigned to the States by the Constitution. I have been surprised that the State Legislatures have not given this matter sufficient attention. They can help to establish this convention by acting voluntarily and discussing such matters as soon as they come to know of the resolutions to be moved in Parliament. I do not also see why periodical consultation between State Assemblies and their representatives in Parliament should not be held to see that State autonomy is respected.

The main purpose of having two Houses in Parliament or a State Legislature is to ensure that every law that may be passed, may be properly scrutinised. Each House is to be the revising chamber of Bills passed by the other. The importance of establishing a tradition of detailed and exhaustive scrutiny of all legislation cannot be exaggerated. Even minor pieces of legislation may have effects which may not be apparent on a cursory consideration of its clauses. It has become an unfortunate habit of the Central and State Governments to treat the consideration and discussion of a Bill by the Second House as a mere formality. As most Bills are introduced in the Lok Sabha and the State Assemblies, the Rajya Sabha and the Legislative Councils are not today properly performing their functions of scrutinising and revising the legislation passed by the Lok Sabha and the Legislative Assemblies in the States. During my membership of the Rajya Sabha from 1960-64, I was continuously protesting against the manner in which Bills passed by the Lok Sabha were hurried through the Rajya Sabha. There have been cases when the Rajya Sabha was forced to consider, discuss clause by clause and pass important Bills on the very last day of a session. When a Bill is passed by the Lok Sabha, there should be sufficient time not only for the

members to study the Bill as it has finally emerged from the other House carefully; but also for parties and interests affected by any changes that may have been made in the other House to make representations to the Members of the Rajya Sabha for their modification or deletion. I would, therefore, like that a convention should be established that a Bill passed by one House would be taken up by the other House only after a fortnight's interval. Appropriation Bills and money Bills may be exempted from this convention. The result of such a convention will be that many Bills passed by the Lok Sabha in one session will come up before the Rajya Sabha in the next session and *vice versa*. This will enable a better arrangement of business of each House, besides giving opportunity for members and others to study and improve the Bills.

Article 368 prescribes a special procedure for amendment of the Constitution. The Bill has to be passed by a majority of the total membership of each House and by a majority of not less than two thirds of the members of that House present and voting. In the case of certain Articles, the amendment has to be ratified by resolutions of the Legislatures of not less than half of the States. Owing to the preponderant majority of the Congress Party in both Houses of Parliament and in most of the State Legislatures, the purpose of these special provisions has been defeated. Unless the whips of the Congress party are negligent, as it happened in one case recently, the passing of a Bill for Constitutional amendment, has been no more difficult than the passing of an ordinary Bill, except that for each clause and for the motions of consideration and passing, formal divisions have to be recorded. In course of time, a two thirds majority in both Houses will become difficult and for making a Constitutional amendment, the ruling party will have to obtain the support of the opposition, if India succeeds in evolving a two party system; or secure the support of one or more of the opposition parties or groups, if the Parliament should continue to have many parties and groups. I think that in order to maintain the spirit of the Constitution, a convention should be established that no Constitutional amendment should

be passed unless it secures the support of a majority of the members who do not belong to the ruling party. The sanctity of the Constitution cannot be maintained if it is made a plaything of party politics. It is only when the Indian Constitution becomes as permanent as the American Constitution that we can be quite sure of the stability of our democracy.

The office of the Speaker of the Lok Sabha is second in importance only to that of the President. Erskine May says: "Confidence in the impartiality of the Speaker is an indispensable condition of the successful working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognised. He takes no part in debate either in the House or in Committee. He votes only when the voices are equal, and then only in accordance with rules which preclude an expression of opinion upon the merits of a question. Until recently, at a general election his seat was often uncontested, and when he vacates his office he is usually created a peer and in any case always relinquishes his membership of the House."

It is a delicate but important question whether he should participate in the politics of his party. The complete severence of the Speaker from party politics is an established British convention. Shri Mavlankar, who, as the first Speaker of the Provisional Parliament and of the Lok Sabha after the first general elections, contributed a great deal for establishing a tradition of independence and impartiality, held the view that the Speaker might continue to be a member of his party but should not attend party meetings or participate publicly in controversial matters that are likely to come up for discussion before the House. Some Speakers of State Legislatures have departed even from this modified convention. Recently, we had the instance of the Speaker of the Punjab Assembly being included in the Cabinet. It hink that this departure from the British convention is not conducive to the proper evolution of Parliamentary democracy in India. So long as one party has a dominant majority, the Speaker's association with that party may not do much harm, though,

even then, his moral authority over the members of the opposition will tend to decline. When the strength of the opposition becomes considerable, the proper conduct of a legislative House becomes a difficult task. Strict dissociation of the Speaker from party politics will greatly facilitate the maintenance of order and discipline in the House. In any case, there should be a firm convention that between two general elections, the Speaker shall not participate in politics or be taken into the Ministry. It would also be a healthy convention if it is agreed before a general election between the ruling party and the opposition as to the person who will be the Speaker in the new House and no candidate is set up in opposition to him by any of there cognised parties participating in the general election.

The President is an integral part of the legislative process. When a Bill has been passed by both Houses of Parliament, it has to be presented to the President who can either assent to the Bill or withhold the assent or return the Bill with a message that it should be reconsidered. He may also suggest amendments. The question arises whether in withholding assent or returning the Bill for reconsideration, the President is bound by the advice of the Council of Ministers. A strict interpretation of Article 74(1), together with the British conventions suggests tha the is to act only on the advice, because, the wording is "to aid and advise the President in the exercise of his functions". No exception has been made as in the case of the Governor. But, except where a Bill has been passed against the wishes of the Council of Ministers, it is not easy to contemplate occasions when the President may be advised to veto or return a Bill. At least, so far as returning the Bill is concerned, I think, a convention is necessary that the President may act in his discretion. This is also expedient because if the Ministry advises assent and the President returns the Bill for reconsideration, it will be foolish to create a Constitutional crisis and proceed to impeach the President. In this connection, I may recall an incident. When I was a Minister of State for Railways, a Bill had to be passed to enable the Bengal Government to continue its contract with a light railway which

was operated by a private company. The Bill was passed on the day before the expiry of the contract. So, I took a certified copy of the Bill myself at about 6 p.m. to the President, Dr.Rajendra Prasad and informed him that his signature to the Bill was urgently required. He was greatly upset and told me that it had become a frequent practice of the Union Government to take a long time for discussion and passing Bills but give no time to the President to scrutinise the provisions of the Bill. I readily agreed with him that this practice was undesirable. After explaining the urgency of the Bill, I offered to abide by his wishes. He then asked me to explain the various provisions of the Bill and finally gave his assent. Here again, there is need for a healthy convention to give at least a week's time to the President to come to a decision. To make the Rajya Sabha or the President a mere rubber stamp, is not calculated to add to the prestige of Parliamentary democracy in India.

Articles 121 and 211 prohibit discussion with respect to the conduct of any judge of the Supreme Court or a High Court in the discharge of his duties except upon a motion in Parliament for presenting an address to the President praying for the removal of the Judge. Though these Articles appear to be mandatory, they cannot be enforced by any direct method. If a discussion takes place, I do not think the Supreme Court or the High Court will be in a position to do anything to prevent it as it will know of it only after the discussion, unless such discussion has been notified in advance and such notification had come to the knowledge of the Court. Even in that case, I doubt if any kind of injunction can be issued. Therefore, these Articles should be treated as mere conventions which the Speakers and Chairmen are morally bound to enforce. They find a place in the rules of business of the legislatures; but, the words "the conduct of any Judge in the discharge of his duties" is not easy to interpret. Suppose, a Judge indulges in reflections about the careless drafting of an Act, I do not see how the Legislature can be prevented from discussing the propriety of such remarks. With respect to the remarks made by the High Court about Shri Kairon, Shri Sanjeeva Reddy

and others, it was argued in the legislatures that these ministers not being parties in the cases concerned, the Judges had no right to indulge in such derogatory observations. The executive and the judiciary have to function in an atmosphere of mutual respect. When I deal with judiciary, I shall be dealing with its duty towards ministers and administrators. So far as the legislator is concerned, any reflection on the competency or impartiality of the Supreme Court or a High Court or of any Judge of either must be scrupulously avoided. At the same time, as the guardian of the interests of the people, the legislator is entitled to criticise generally the defects in judicial administration. The responsibility of determining the frontiers between legitimate and illegitimate criticism rests with the presiding officers.

It is needless to say that the dignity and prestige of a Legislature will depend largely upon the conduct of its members. In 1951, proceedings were taken in the Provisional Parliament against Shri Mudgal on the ground that he was receiving money from the Bombay Bullion Association for putting questions, moving amendments, etc. The charge was investigated by a Special Committee set up for the purpose and Shri Mudgal was found guilty. Though he resigned before formal expulsion, a resolution was passed that he had deserved such punishment. Since then, there have been demands for a code of conduct for legislators. The Committee on Prevention of Corruption has dealt with this issue in the following paragraph:

> "Next to the Ministers, the integrity of Members of Parliament and of Legislatures in the States will be a great factor in creating a favourable social climate against corruption. We are aware that the vast majority of members maintain the high standards of integrity expected of them. Still, it has been talked about that some Members use their good offices to obtain permits, licences and easier access to Ministers and officials for industrialists and businessmen. It may be that some legislators are in the employment of private undertakings for legitimate work. In such cases, it is desirable that

such employment should be open and well known and should be declared by the legislators concerned. It should be a positive rule of conduct that such legislators should not approach Ministers or officials in connection with the work of their employers and they should refrain from participating in the discussion or voting on the demands or proposals in which their firms or undertakings are interested. Other legislators, who are not such *bona fide* employees, should on no account undertake, for any valuable consideration or other personal advantage, to promote the interests of or obtain favours for any private party either in the legislature or with Government. It is desirable that a code of conduct for legislators embodying these and other principles should be framed by a special committee of representatives of Parliament and the legislatures nominated by the Speakers and Chairmen. This code should be formally approved by resolutions of Parliament and the legislatures and any infringement of the code should be treated as a breach of privilege to be inquired into by the Committee of Privileges, and if a breach is established action including termination of membership may be taken. Necessary sanctions for enforcing the code of conduct should also be brought into existence."

I shall now proceed to mention some of the proprieties essential for the smooth and dignified functioning of Parliament and the legislatures. The most important thing is that no one should lose his temper on any account. This is particularly necessary on the part of a Minister. It may be convenient tactics for the opposition to provoke the Treasury Benches or the ruling party; but, the latter should refuse to walk into the trap. It is no less necessary that, outside the chamber, political and party differences should not affect their social relations. Democratic legislators require an atmosphere of toleration, good temper and mutual goodwill.

In every legislature, there is always a recurring dispute

about the use of harsh and abusive words. To call a person a liar will be unparliamentary, while it may be legitimate to say that his statement was not true. It should be possible even for harsh and vehement criticisms to be clothed in polite language. I think it should be considered improper to indulge in intemporate language or irrelevant observations likely to hurt the feelings of another member. The following have been listed in May's Parliamentry Practice as unparliamentary expressions:

(*i*) Imputation of false motives;
(*ii*) Misrepresentation;
(*iii*) Charge of falsehood;
(*iv*) Abusive and insulting language.

The membership of Parliament or a State Legislature should be deemed to be the highest position a citizen could aspire to. Therefore, his work as a member therein should be deemed to be more important than any other. Recently, a Member of the Rajya Sabha applied for leave on the ground that he was engaged in organising some conference. In my view, such a plea amounted to contempt of the House. I also feel that it is not proper for a Member of Parliament having come to Delhi at the cost of Parliament and taking daily allowance to absent himself from his House to argue a case in the Supreme Court or attend to other professional work. While the Membership of Parliament should be open to persons engaged in any profession, there should be a clear understanding that where his work as a legislator comes into conflict with his professional pursuits, the latter should give way to the former.

Lastly, I consider it highly improper that Members of Parliament and legislators should be absent from the sittings of the House unless they are unable to do so on account of ill-health or other unavoidable causes. To be present at the place of legislature but to absent from the House and spend most of the time in the lobbies is also not quite proper. In these matters, the members of the Congress party in the pre-Independent legislatures observed higher standards. I cannot do better than citing the example of Shri Satyamurthi, who, in my view, was one of the most distinguished

Parliamentarians India has produced. He would never miss a sitting nor would he come unprepared for any question, Bill or motion. He used to criticise vehemently and even bitterly; but, even those who were the targets of his attacks admired his speech which was always dignified and free from discourtesy towards his opponents.

* * *

QUESTIONS AND ANSWERS

Question—Most of the dignitaries of the state are under very severe public criticism about their integrity. And it is urged even about a Speaker and you have stressed the impartiality, of the recognition of his impartiality, in dealing with the legislators in their discussions in Parliament. But once his integrity becomes a matter of doubt and a matter of public criticism, as the Speaker was supposed to be using his high office for getting advertisements for the paper he runs what would be the course open in such a situation ?

Answer—You cannot possibly prevent any person from behaving badly. If he does the remedy is clear that he must be handed over to the Committee of Privileges and it would take charge and when it finds there is something in the charge it will proceed to punish him, so that the whole country will know that this man was doing something which was altogether wrong. Therefore I have suggested that such a remedy should be open not only to Ministers but also to any citizen whomsoever who may be defamed inside a legislature. Therefore we cannot prevent people being bad but only take steps to prevent them from committing wrong acts and whatever punishment is possible may be meted out to them.

Question—I was seeking your opinion in this respect. Suppose there is a substantial number of legislators who doubt the integrity of the Speaker. Is it necessary for the Speaker to go to the Committee of Privileges or should he resign? Could there he a convention in such a thing?

Answer—Even under the present rules it is open for any member to move that the matter may be referred to the

Committee of Privileges. If any man questions the integrity of a Minister it is open to the Minister or member or the party to which the Minister belongs to say that the matter should be referred to the Committee of Privileges and action should be taken against the member. What else can you do? The Speaker can also stop him. And he can order that his remarks may be expunged from the proceedings of the Parliament. If he still persists he may be asked to quit the House and a motion of expulsion can be issued. That is possible. But what more can you do? In the case of the Speaker, there can be a motion to remove him from office.

Question—Your opinion is that the Parliament is a sovereign body in England and that our Parliament is not so sovereign. With that concept would you reconcile the inclusion of Article 105 and 194 with reference to the House of Commons privileges which possibly was taken as a somewhat temporary measure? Do you consider it as attacking the conventions of constitutional principles to retain it for all times.

Answer—I have already stated that either there should be a convention accepted by Parliament and all the legislatures not to claim the power of arrest and imprisonment over anybody and the actual contempt of the House by any outsider should be dealt with under a Parliamentary legislation or the clause itself should be deleted by a Constitutional amendment.

Question—My point was what is the sanction: the legislators or Parliamentarians, whether they belong to the party in power or the opposition are inclined to have privileges as far as possible. What is the sanction in the Constitution or in the public to compel the deletion of this? There is no question of referendum in India and how do we create a situation....

Answer—If the Supreme Court's opinion is accepted giving High Courts and the Supreme Court jurisdiction whenever the legislature does anything wrong that it could be set right by the courts: then there will be an end of this trouble. But if the Parliament and the legislatures do not accept the judgment as binding then I have given the alternatives and therefore the only sanction is the opinion

of the legislators in the country. The Constitution can be amended by the people who can amend it and therefore the sanction is to create public opinion.

Question—You suggested that a Member of Parliament should refrain from discussion of an organisation to which he is related. Will it apply when a Member of Parliament is on the Board of Directors ?

Answer—I have already said, if he is employed that applies even if he is a Director. He should first inform the Speaker or Chairman concerned, so that every one will know that he is a Director or employee of a particular firm. I have also suggested that it should become a convention that he should not take part in any proceedings which effect the concern with which he is interested.

Question—Are we not compelled by public opinion in the matter?

Answer—No person can abuse his trust. Parliament is a trust on behalf of the people and so when the obligations of this trust come into conflict with any of his personal interests then personal interests must be sacrificed. Therefore the right of speech is only admissible subject to the obligations of the trust that he is expected to discharge.

Question—The next question reads: "We have suggested that once a legislator has accepted the high office of "Speaker or Chairman he should not be included in the Cabinet. Don't you think it will be a healthy convention if the Presiding Officers of legislatures are made ineligible for appointments as Governors or to any other offices of profit"?

Answer—Here during the term I would say they should not be appointed as Governors or sent anywhere. But once they cease to be Speakers or resign their jobs I do not see anything in the office of Speaker which will unfit them to be Governors because it is not a case like a Judge or Auditor General or Election Commissioner. The Speaker has to preside over the Assembly and to be impartial. But after resignation or giving up his office I do not think it is necessary for political morality that he should be prevented

from holding other office. Then it may be difficult. Either the man should be made a Speaker for life as in the case of Article 65 like the Supreme Court Judge and once a man is elected Speaker he may be assured of his office until he is 65 or retirement. Then you can say that he ought not to be given a job. But if he is to be a Speaker for five years and prevented from any political office afterwards no one would become a Speaker.

Question—Is there any precedent for giving to the opposition an opportunity to be associated with the ratification of Constitutional amendments. Don't you think in the kind of opposition groups we are having in the opposition, we are faced with a right of veto which is not desirable.

Answer—That is why we do not give them a Constitutional power to veto. But I do not want to start with the assumption that all members of the opposition are very unreasonable people. Therefore, I assume so far as the Constitutional amendments are concerned, many of them would like the amendment. As a matter of fact for many of our Constitutional amendments we had practically the whole opposition voting for them. Only in one or two cases where such differences occur, I think the opinion of the opposition should be respected and I have suggested that this should be made a convention till the party system evolves further, so that the opposition is much stronger.

Question—Instead of conventions being used and we consider any provision is necessary so far as the fundamental rights are concerned would you be satisfied with 4/5th instead of 2/3rds?

Answer—I am not on the subject whether the Constitution is perfect or whether it can be amended or improved. That would be a big topic. But so far as the convention is concerned it is not possible to modify the terms of the statute.

Chairman (Pt. H. N. Kunzru)—It must have been quite clear to anyone of you that Shri Santhanam has carefully studied the subject on which he has addressed us. Whether

he dealt with the provisions of the Constitution or placed before us his own suggestions for establishing new conventions and proprieties, he spoke not merely with knowledge, but also with a desire to make constructive suggestions. He has evidently given considerable thought on this question and he has not merely read the views of others, but he has himself tried to be in a position to make suggestions that will lead to the better working of Parliamentary democracy in this country. There are many of his suggestions with which I agree, but there are some of them with which I am afraid I cannot agree.

The most important thing in Parliamentary life in a legislature, in a Parliamentary legislature, is the position of the Speaker. The Speaker occupies the key position in these legislatures. And unless we learn to respect the Speaker, unless we learn to take his rulings even when they are distasteful to us, as honest and just, there can be no proper working of any legislature.

Shri Santhanam referred to what Sir Erskine May has to say about the Speaker in British Parliamentary life. There is no doubt that we have to go a pretty long way forward in order to give the Speaker that position in our Constitution -I mean in the working of our Constitution, in our daily discussions, in debates and so on, and in the asking of the questions—that the British Speaker enjoys in the Parliament of U.K. Now here I find, and what I say of the Speaker in Parliament, is true also of the Speaker in the State Assemblies and the Chairman of the Rajya and of the Vidhan Parishad. In the old days except before Ireland had got Home Rule, I have not known the rulings of the Speaker being seriously questioned by the opposition. The Speaker may be asked to consider other matters, but he is addressed very respectfully and his ruling is final. It is accepted by all sections of the House. No opposition will dream of walking out of the House because a ruling given by the Speaker or the Chairman does not appear to be a correct one. Well that is the first thing.

Somebody asked what should be done when people are disrespectful to the Speaker, either expressly or by

implication. Shri Santhanam suggested that if the offender persists in his behaviour the Privileges Committee should consider his conduct. I am afraid that this will not lead to the better working of our Parliamentary institutions. In every legislature the majority will be that of the party in power; and if that majority holds the offender to have been guilty, but the representatives of the various parties of the opposition take another view then the differences in the opinion of the Members of the Committee will only lead to greater bitterness between the opposition and the majority party. I think this particular suggestion made by Shri Santhanam has to be reserved for a very special occasion, when a man has been seriously guilty of disregarding the Speaker's ruling even after the warnings given by him.

Shri Santhanam—I agree with Pt. Kunzru. I take it that the Speaker has a right to ask the member to get out of the House. I went further and suggested expulsion. Probably he would not have the power unless he is backed by the House.

Chairman—As regards certain things that have happened in the legislatures in the recent past I do not at all approve of the argument. I entirely agree with Shri Santhanam that when an important measure is discussed in the legislature, the majority should not make an effort to rush it through the House. The opposition should be given a fair opportunity of expressing its opinion. The majority may turn them down but it is quite possible that one or two of the suggestions made by the opposition may be accepted. In any case it should be one of the accepted conventions of Parliamentary life that the opposition should have a fair opportunity of expressing its opinions and pointing out the defects for the measure proposed by the government.

I then come to the Constitutional changes. I do not think Shri Santhanam went so far as to say that unless a certain proportion of the members of the opposition vote in favour of a Constitutional change the majority should refrain from passing it. I do not think it is

practicable. We are following the British model in India. But what happens in England ? There is no written Constitution there which the Parliament has to act according to. But in regard to important measures and questions affecting the rights of citizens, the opposition very seldom votes with the government. Usually the opposition votes *en bloc* against the majority. We cannot, therefore, ask the majority to carry a certain proportion of the opposition with it in regard to any Constitutional change. The only really effective antedote to this will be provided when the legislatures contain such a proportion of members of the opposition that no Constitutional amendment can be passed in accordance with the provisions of the Constitution unless some members of the opposition vote in favour of the proposal made by government. That unfortunately has not taken place here. That is not the fault of the Congress. We must give it every credit for being able to secure 3/4th of the seats at every election for its members. But the voters must be educated to realise that unless a certain proportion of the total membership of a House consists of members not belonging to the Congress Party, the Constitutional changes can be carried by the majority in any way it likes.

I come now to certain other things, where I am in complete agreement with Shri Santhanam. Shri Santhanam referred to the legislative work and said that the Rajya Sabha was not being properly treated in this matter. I think he is quite right in saying that a sheaf of bills are brought before the Rajya Sabha practically towards the end of the session, just a couple of days before the termination of the session; and they are expected to go through them and pass them. Even under the British Constitution, the most important role of the second chamber is to go carefully into the provisions of the bill and see that they are in accordance with the law prevailing in the country. Here, in many cases the Rajya Sabha has succeeded in pointing out drafting mistakes in the bills and having them set right. This complaint is an old one. Every year members of the Rajya Sabha are

told that the next year the programme will be so devised as to enable the Rajya Sabha to have adequate time for the consideration of the bills. But those promises have never been kept so far.

Then Shri Santhanam spoke of the differences in the powers of the two Houses. I agree with the suggestions made by him, namely, that in view of the fact that the Rajya Sabha has a part in all legislation including the passing of the money bills and the appropriation bills, it is proper that the Rajya Sabha members should be included in the Estimates Committee, just as they are now in the Public Accounts Committee. Of course the majority will be of the other House because it is more numerous and we will be a little more respectful to it because of the fact that it is directly elected. But I think there is no argument for debarring members of the Rajya Sabha from being members of the Estimates Committee.

As regards the discussion of various measures there is one difficulty. It is not merely that legislative measures are placed before the Rajya Sabha practically when Parliament is about to rise. But there is one other aspect of the matter to which I should like to draw your attention. Shri Santhanam, I am sure, is well aware of that matter, and I am sure he will agree with me. I refer to the position of those members of the Cabinet who are members of the Rajya Sabha. I refer Shri Santhanam to the case of Shri Biswas when he was Law Minister. I need not go into the details of that matter. But in regard to not giving an explanation to the other House he acted in accordance with the decision of the Rajya Sabha of which he was a member. On the other hand the Lok Sabha held that as every Minister was responsible exclusively to the Lok Sabha, it was the duty of Shri Biswas to come to the Lok Sabha and explain the point raised by the members of the Lok Sabha. Happily the question which threatened to create bitterness between the two Houses was settled amicably on account of the intervention of Pt. Jawaharlal Nehru. In this intervention his personality played a much greater part than his argument.

Nobody would have listened to the arguments, they were so excited at the time. But happily it was settled and no such question has arisen again.

But there is one other matter in which also the Rajya Sabha has a right to complain. You will remember, Shri Santhanam, that sometime ago at the time of the General Budget and the Railway Budget or rather the Railway Budget and the General Budget—because the Railway Budget is always discussed before the General Budget—the Railway Budget was discussed by the Rajya Sabha before it was discussed by the Lok Sabha; and this was due to the fact that Lok Sabha took so much time over the discussions of legislative measures that Government thought that unless the discussions of these two budgets in the Rajya Sabha are over before the Lok Sabha consider them, Parliament would have to be detained for over a week or a fortnight longer. But the members of the Lok Sabha objected to it. They felt that members of the Rajya Sabha were stealing their thunder. I hope that jealousy between the two Houses will not go so far as to reach to the formation of a convention that these measures should always be discussed in the Lok Sabha before they are discussed in the Rajya Sabha.

There is one other matter in connection with the differences of opinion between the Rajya Sabha and the Lok Sabha. Shri Santhanam observed that the wheels of government would move smoothly so long as both the Houses were controlled by the same party. But if they were controlled by different parties, different difficulties would arise. Now the method of election to the Lok Sabha is such that the party which is in a majority in the provincial legislatures will have a majority in the Lok Sabha also. The difficulty pointed out by him is real difficulty and it has to be thought about. Difficulties may arise owing to another cause also. Some of the State legislatures and the Central legislatures, that is Parliament, may be controlled by different parties. In that case, of course, the majority party cannot have everything in its own way as it can now. But it will not be tragic if these differences occur, if the State Governments are not always controlled by the majority in power. Take Australia,

or take Canada. All the States in Australia are not controlled by the majority party. In fact, one or two may be. The rest are controlled by other parties than the party which rules at the Centre. In Canada, too, there are States which have passed laws, completely against the views of the Prime Minister of Canada and the party in majority. Take, for instance, the case of Alberta which passed legislation replacing currency by labour social credit certificates which a man could get and sell whatever he had to the customer. The Central Government did not like it. In fact, it strongly disapproved of the measure. But nothing happened. The State Government was allowed to have its way under the Constitution and the Central Government is going on as well as it did before the passing of this legislation. In fact, it would be a good thing for India, if some of the States were controlled by parties which are not in a majority at the Centre. Then, perhaps, there would be less need for the establishment of one or two conventions of the kind that was referred to by Shri Santhanam. Shri Santhanam is a Congressman but he is not fanatic. I have known him for a long time and I know that he can hold liberal opinions on many subjects on which members of his party might only have a party view. He has the courage to express his views which are not always agreeable to his party. But it is because of that that we listen to him always with respect and also profit by some of the suggestions made by him.

He has today spoken with knowledge and ability and with proof of having given a great deal of thought to his subject. He has made suggestions which are unorthodox and I am sure that you will, when you have some time, devote some of it to the consideration of the questions that he has raised. The best result of such discussions is that we should be led in our leisure moments to think over important questions, to be tempted to study them and then form a reasonable opinion.

Shri Santhanam has performed this duty very ably today and I, therefore, propose that he should be given a hearty vote of thanks.

III

FEDERAL RELATIONS : THE JUDICIARY AND OTHER AUTHORITIES

Speaker : Shri K. Santhanam

Chairman : Shri A. T. Govinda Menon, M.P.

Shri K. Santhanam—Shri Govinda Menon, Dr. Khosla, ladies and gentlemen: I am very glad that Shri G. Menon is the Chairman because one of the topics I am going to deal with today is about the conventions and proprieties of parliamentary government in relation to federal relations. As the ex-Chief Minister of Kerala and at present Member of Parliament, he should be able to give a considered view of my suggestions on this part of the address.

Before I proceed to give my talk on the subject of today, I have to make a brief reference to the judgment delivered by the Supreme Court regarding the relation between the judiciary and legislature. Yesterday, I had not read the full judgment. I have no quarrel with that judgment so far as it goes. But I do not think that it ends the dispute. For one thing, it is only an advisory opinion and in that judgment, though generally it says that regarding fundamental rights and the jurisdiction of the Courts, the Constitution will prevail over the so-called privileges of the House of Commons, they have admitted some significant exceptions. They have said that their observations do not apply to members of the Legislature and for persons inside the four walls of the Legislative Chambers. Now, what will happen if a Legislature chooses to imprison a member for say five years? Would he have a right to go to the Courts about the imprisonment? Reason says that he should have the right but that is one of the things on which that judgment is not very clear. So also, suppose there is a visitor to a Legislature, and he does something which is considered to be contempt of the House, and he is sentenced or put in jail indefinitely. What then? There is

also another difficulty which will occur. Suppose somebody outside the Legislature, say a press man, does something which the House considers to be contempt. Suppose the Legislature wants to call him to the Bar of the House and censure him and issues notice and he refuses to come? What happens? Can it issue a warrant? If it issues a warrant, can he go to the Court and say: the Legislature has no right to issue a warrant? Then should the Legislature go and plead before a court that it has got the inherent power for censuring a man for contempt?

All these things raise numerous problems which will have to be solved in one or two ways which I suggested in my talk yesterday. Either there should be a constitutional amendment, defining once for all what kind of privileges our legislatures have: or, there should be a firm convention of all the Legislatures about such privileges on an undertaking by the Government of India that whenever there is such a contempt it will be punishable by a special law made by Parliament. I do not see any other alternative and it is to be hoped that the matter will not be allowed to lie in the present vague position and some steps will be taken as soon as possible.

Now I shall proceed to the subject of today.

The Indian Federation has many unique features of its own and is not easily comparable with other federations. So, it is not possible to look for precedents from other federations except to a limited extent from the United States of America in relation to the Supreme Court and Canada in respect of the matters relating to the overlapping of Central and State jurisdictions. Ordinary relations between the Union and the States have been set forth in Part XI of the Constitution and Article 131 gives the Supreme Court original jurisdiction in any dispute (*a*) between the Government of India and one or more States; or (*b*) between the Government of India and any State on the one side and one or more other States on the other; or (*c*) between two or more States if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends. But the structure of the Indian

Federation makes the relations between the Union and the States elastic in many respects and conventions are required to regulate their relations in all such matters.

The first major issue is the role of the President in Union-State relations. Article 52 says: "There shall be a President of India", and Article 53(1) reads: "The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution." In the same way Article 153 says that there shall be a Governor for each State and Article 154(1) vests the executive power of the State in the Governor. It would, therefore, appear that the President and the Governor have similar Constitutional status. There were proposals in the Constituent Assembly that the Governor should also be elected in some fashion as the President so that he might be able to safeguard the autonomy of the State. But these proposals were rejected and it has been left to the President to appoint the Governor, who holds office during the former's pleasure.

The President's power of appointing the Governor has been hitherto interpreted as belonging to the executive of the Union in view of Article 74(1). I doubt if this was the intention of the Constituent Assembly; but, it can be reasonably argued that if it were not so, the President's power of appointment would have been clearly stated to be in his discretion or individual judgment. There was a general reluctance in the Constituent Assembly to make use of these expressions which had become obnoxious in the implementation of the Government of India Act, 1935. Still, I think it is not in the fitness of things to allow the Governor to be appointed purely on considerations of party politics. The first Prime Minister Pandit Jawaharlal Nehru was himself above party politics and some distinguished public men not belonging to the Congress party have been appointed as Governors. I think it is essential to set up a convention that no one should be appointed as a Governor unless he is acceptable to the President.

The term "President of India" has a wider connotation than that of Executive Head of the Union. The President

should be an arbitrator in all matters where the interests of the Union and the States may differ. Already in the States, the dominance of the Congress party has been declining. India seems to be entering a period in which in some States there may be no majority party at all or when there is one, its position will be precarious on account of internal factions. We had a dramatic illustration of this fact in the recent breakdown of the Kerala Ministry owing to the defection of a dissident faction. The question whether the normal provisions of the Constitution should prevail somehow or whether there should be resort to Article 356 may arise frequently. In the last fourteen years, this Article has been applied thrice in Kerala and also in Orissa, Andhra and Punjab.

This Article is to be applied when "a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution". In my opinion, this condition has been interpreted in a manner which was not contemplated in the Constituent Assembly. So far as the Union Government is concerned, there is no analogous Article. If there is a breakdown of the Ministry, as was the case in Kerala, the President will have no alternative but to instal another ministry or order a dissolution and the defeated ministry or another will be asked to function as a care-taker till the general elections are over. This process will have to be continued indefinitely, even if a ministry breaks down every few months. It seems to me that it is a total denial of democratic Governments in the States to apply Article 356 whenever there is any difficulty. The application of that Article should be restricted to considerations of absolute necessity. When a majority party breaks down, there should be an attempt to form a coalition and if this is not possible, there should be the dissolution of the Assembly and general elections should be held. It is only when there is a breakdown of law and order or total instability ascertained after one or two general elections that resort to Article 356 should be made. Unless such a convention is observed, I expect that the entire Constitution, so far as the States are concerned, will fall into

disrepute. Neither the voters nor the legislators will feel a sense of real responsibility if they can count on Presidential rule as a normal protection against political intrigues and factions. If Presidential rule is considered only as a last resort and if it involves that the State concerned will be put on a minimum maintenance basis and all development activities will come to a stop, the people and the politicians will realise their folly and the necessity of discipline and co-operation.

I have already referred to the need for conventions in the exercise of the special power vested in the Rajya Sabha for the creation of All India Services and temporary transfer of State subjects to the jurisdiction of Parliament. As a consequence of Planning, Central co-ordination in almost every subject assigned to the States has become a necessity. This co-ordination is sought to be ensured by annual conferences of ministers and officials of particular departments and finally by the National Development Council consisting of the Prime Minister and the Chief Ministers of all States. This is desirable but care has to be taken that it does not degenerate into Central dictation and State submission. A remedy against such deterioration is to keep the legislatures of the States informed of the proceedings of these conferences and the decisions arrived at therefrom. I do not know if in any State there is a regular practice of placing before the Legislature a report prepared by the Minister or official concerned participating in such conferences. The mere obligation of preparing a report for submission to the legislature will ensure that the State Government does not accept casually or in an absent minded fashion proposals calculated to reduce the initiative or the autonomy of the State.

Many important Articles of the Constitution can be changed by Parliament without reference to the States. It cannot be argued that such changes do not affect them. They do. I consider that a convention is needed that in the case of all Articles which are not subject to ratification by a majority of the States, the State Assemblies should be given an opportunity to discuss them and forward their views to Parliament.

To maintain the Constitutional status of the State, the Governor should deal only with the President and not with the Home Minister or the Prime Minister of India. In a recent case involving the trial of a naval officer, the Governor released him from detention on instructions from the Prime Minister. This became a matter of dispute between the Executive and the Judiciary and the officer had to be sent back to judicial custody. It is also common for Governors to discuss the affairs of the State with Central Ministers and their Secretaries. It is possible that they are thereby assisting their own Ministries. But, I feel that such procedure is likely to lower the Constitutional position of the States still further. Direct contact between the State and the Central Governments should be only on a ministerial level. The Governor should act only through the President if he finds it necessary to intervene.

It is generally accepted that no adverse references should be made in Parliament against any State Legislature or in a State Legislature about Parliament or another State Legislature. In 1960, a Resolution was passed in the Bengal Assembly against the transfer of Beru Bari Union. This was agreed upon in the Indo-Pakistan Border Agreements and implemented by Parliamentary legislation. There were also painful reactions in the Bengal Legislative Assembly in respect of the linguistic riots in Assam. One can understand the acute feelings of West Bengal on both these issues; but, still, open accusations and allegations between the legislatures and executives of the Union and the States have to be scrupulously avoided if the Federal Constitution is to function satisfactorily.

The tours of Central Ministers and officials and members of all kinds of Committees and Commissions appointed by the Central Government have become so frequent that many delicate issues of hospitality and propriety have continuously to be faced. Some times they are treated as State Guests and at other times they have to pay for themselves. I have had the embarrassing experience of being treated as State Guest while other members of my Committee of which I was the Chairman, were not so treated. I think that the

issues of accommodation, boarding and transport in respect of the tours of Central Ministers, officers and Committees should be rationalised. I suggest they should all be treated as paying guests and the charges should be so fixed as to be within the daily allowance or they should all be treated as State Guests on the condition that the Centre gives to each State Government a grant for this purpose fixed on a rough and ready estimate of the expenditure involved.

It has become a fashion for Ministers, both in the Centre and in the States, to seek self-advertisement by becoming the principal guests at functions which could normally be done with greater dignity by the President and the Governors. If the functions were so important as to require all-India publicity, such as the opening of a multi-purpose project or a big industry in public sector, it should be done by the Constitutional heads, while if they were comparatively unimportant, they should be left to the local officials and public men. I cannot help feeling that many superfluous functions are organised by officials to flatter the Ministers and the latter have to return the compliment by praising the officials. There have been occasions when Ministers have been lured to commit themselves to schemes and projects which had not been sanctioned. Recently, a Member of Parliament was explaining to me with much amusement how he overcame the opposition of departmental officials by organising a function in connection with a proposed scheme and inviting the Minister responsible to inaugurate it.

An independent and impartial judiciary is an indispensable bulwark for democracy and good Government. In the Indian Constitution, many safeguards have been provided to ensure that recruitment of high judicial officers, particularly, the judges of the High Courts and the Supreme Court, the security of their tenure, conditions of employment and pensions are such as to make them function without fear or favour of the executive authorities or powerful private vested interests. The age of retirement of a judge of the Supreme Court has been fixed at 65 and that of a judge of a High Court was originally sixty and has now been increased to sixty-two. They have also been provided with liberal pensions.

There are some matters which could not be regulated by the law or the rules, for which suitable conventions are necessary. It is obvious that no judge of the Supreme Court or a High Court should, while he is in service, be offered lucrative or attractive posts in other lines, such as that of an ambassador, the Chairman of the Board of Directors of a public undertaking or a Minister of the Central or State Government. Will it be right to offer them such posts after retirement? We have actually the case of the Chief Justice of a High Court having been posted first as an Ambassador and he is now a Central Cabinet Minister.

So far as this particular appointment is concerned, no one can question the motives of either those who appointed him or of the person himself. It may be argued that as the Constitution does not put any restrictions on their employment, there is no harm in trying to get the best service out of these persons who are highly competent; but, in all such cases, the desirability of the practice can be judged only by imagining an exaggerated application. Suppose it becomes the practice to appoint many of the Supreme Court and High Court Judges for such posts after retirement, can we expect the Supreme Court and the High Court to maintain the standard of independence and impartiality which fortunately they have been able to do so far? Even if they are able to maintain it, will the people have the same unqualified trust in their independence and impartiality as at present? We have to remember that in the long run, judges are no less human than others and future prospects will have an inevitable and often an unconscious tendency to affect their judgments when they have to decide complicated cases in which the Government is a party. It must be remembered that the essence of a convention is that it seeks to promote a desirable tendency or to prevent an undesirable one and it should not be attacked or defended by its applicability to particular instances. A convention by which no judge of the Supreme Court or a High Court will be eligible for an appointment which may be considered to add to his social status or prestige or increases his emoluments will, undoubtedly, ensure a moral and intellectual climate of

independence and impartiality. There are obvious exceptions to such a convention. For judicial enquiries and commissions in which the members are expected to function with the same independence and impartiality as if they were judges, there may be no harm in utilising the services of retired judges. But, they should not be offered any additional remuneration except in the way of allowances which will just cover the extra-expenditure involved in the new assignment.

It is also essential for the dignity and prestige of the Supreme Court and the High Courts that its judges should not be lent for conducting private enquiries as in the case of Justice S. K. Das in connection with the allegations against Shri K. D. Malavia or a similar investigation by a Judge of the Madras High Court in connection with an enquiry relating to an Inspector General of Police. While it may be assumed that the judges did their job conscientously, it cannot be contended that their proceedings were strictly judicial. It is no wonder that the public were not convinced about the results of such enquiries. On the other hand, the appointment of Shri S.R. Das to enquire into the affairs of Shri Pratap Singh Kairon or of Shri S. Varadachariar and B. Jagannadha Das as Chairmen of the Pay Commissions cannot be questioned from any point of view.

What should be the relation of retired judges to politics? As citizens, they are entitled to join any party, fight elections and become Ministers. But, here also, the same objection is valid. The prospect of a successful political career is inconsistent with the attainment of a mental state of objectivity and detachment, which is necessary for a judge. Therefore, it is for this purpose that the judges of the Supreme Court of the U.S.A. are appointed to hold office during good behaviour and can only be removed by impeachment. It is because after a certain age, a person becomes senile and is unable to perform the arduous duties of a judge, an age limit has been imposed in the Indian Constitution. It is also possible for a judge to start consulting practice, to be legal adviser of business concerns or take up other lucrative employments. But, there is no doubt that

resort to such occupations will tend to lower the dignity of the Supreme Court and the High Courts.

It cannot be argued that retired judges cannot find useful public work if they are expected to abstain from politics, private employment or practice. They can become watch-dogs of the nation over legislation and judicial administration. I think it will be a useful convention if the reports of the Supreme Court and the High Courts and all Bills and Acts and reports of Parliament and similar publications are supplied to all retired judges of the Supreme Court and the High Courts free of charge. Similarly, for judges resident in a State, such material relating to the local legislature may be sent. When any of these retired judges care to send their views on any pending Bills to the Secretaries of the legislatures concerned, they should be circulated promptly among the members.

There should also be no objection to judges becoming Vice-Chancellors of Universities, Heads of Departments of Legal Studies or undertake research in jurisprudence, provided that the limitation regarding emoluments suggested above is observed. Science, literature, art and cultural and social activities constitute such large and fruitful fields of work, that, there should be something wrong with a retired judge who cannot find sufficient scope for his activities after retirement.

There is a healthy rule that the conduct of the judges should not be discussed in Parliament and the legislatures and any person doing so outside will be liable to be charged for contempt of Court. Should there be no restraint on judges making observations on the conduct of ministers, legislators, administrators and public men in their judgements? When such conduct is before a court and the pros and cons have been argued, there can be no restriction. But when such conduct comes up indirectly, what is the duty of a judge? He has to act according to his judgment in relation to all matters directly involved, but, where the conduct comes up indirectly and the judge cannot abstain from making his observations, there should be a procedure to issue notice to the person concerned and get affidavits or

explanations. I do not know if this can be secured by rules. If not, it should be done by convention. There have been some recent examples of such observations being objected to in high quarters.

Turning to proprieties, I think it is right to expect judges to be more careful than others of their social preoccupations while in office. The growing habit of giving receptions, lunches and dinners to judges on their appointment and retirement and on other occasions by prominent advocates and others has to be discouraged. It will be a healthy practice for judges to refuse all functions other than those organised by recognised institutions, such as, Bar Councils.

There have been reports that in some cases too much intimacy is allowed to develop between judges and particular advocates. It is quite possible that the independence and impartiality of the judge may not be affected by such intimacy. But, it is natural for the client world to try to exploit that intimacy. On the whole, it is desirable that some degree of detachment should be observed.

It is natural and customary all over the world for sons and son-in-laws and other relations of a prominent advocate to become his apprentices and juniors and to be closely associated with him in his legal practice. When the advocate becomes a judge, it is neither right nor possible to ask that they should not be allowed to appear in cases heard by him. The Registrars of the Supreme Court and the High Courts should make it a practice to bring to the notice of the Chief Justices the fact of the relationship between the judges constituting a bench and the advocates briefed in cases appearing before them. This will enable the Chief Justice to try to minimise the embarrassment of his colleagues.

The conventions and proprieties which have been suggested above for the judges of the Supreme Court and the High Courts in relation to their public or private employment after retirement and participation in politics are applicable to other authorities set up by the Constitution who have to be no less independent of the executive than the judges of the Supreme Court and the High Courts. They are the Comptroller and Auditor-General, the Election

Commissioner and the members of the Public Service Commissions of the Union and the States. The Constitution already prescribes some limitations. Thus, Article 148(4) reads: "The Comptroller and Auditor-General shall not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office." Yet, there was the case of one Comptroller and Auditor-General who was first appointed to head a Committee of Enquiry and later as Chairman of the Finance Commission. It was argued that these did not come under the prescription of "Office under the Government". I wish to deprecate the tendency of indulging in unconstitutional practices under cover of interpretation. Though a similar restriction on the employment of the Election Commissioner has not been inserted in Part XV of the Constitution, it is obvious from the manner of appointment and removal that he has to function in the same manner as a judge of a Supreme Court.

The restrictions placed on the members of the Public Service Commissions are like those of the Comptroller and Auditor-General in relation to taking up office under Government after retirement. It is true that no formal restrictions have been imposed upon these persons regarding their participation in party politics, entering legislatures and seeking political careers; but, one has only to imagine the embarrassment of any Government, if an Auditor-General, an Election Commissioner or a member of a Public Service Commission, became the leader of an opposition party or group and attacked the Government with his inside knowledge. I do not think that their political participation will be less objectionable, if they join the ruling party. I do not know how many of these officers have joined political parties after retirement. There is at least one case of a retired member of the Union Public Service Commission being elected to the Rajya Sabha on a party ticket.

All matters relating to civil services are set forth in elaborate rules and regulations that there is not much scope for conventions. This is right because it will not do for an official to be disputing with his senior or junior about their

relations with one another. Still where the official world has to come into contact with the non-official world, any attempt to regulate their conduct by precise rules and regulations is bound to be futile. This is particularly so when the senior officers like Secretaries and Heads of Departments have to deal with ministers and legislators.

First of all, there is the question of responsibility. "One of the fundamentals of our system of Government" says Herbert Morrison in his book *Government and Parliament*, "is that some Minister of the Crown is responsible to Parliament, and through Parliament to the public, for every act of the Executive. This is a corner-stone of our system of Parliamentary Government. There may, however, be an occasion on which so serious a mistake has been made that the Minister must explain the circumstances and processes which resulted in the mistake, particularly, if it involves an issue of civil liberty or individual rights. Now and again the House demands to know the name of the officer responsible for the occurrence. The proper answer must be that it may have his head as the responsible Minister, and that it must leave him to deal with the officer concerned in the department." Acting on this principle, the present Prime Minister, Shri Lal Bahadur Shastri resigned his office as Minister when there were some serious railway accidents.

The issues were more complicated in Justice Chagla's enquiry into the Mundra Dealings with the Life Insurance Corporation of India. Though the Minister could have accepted constitutional responsibility and resigned, the case had some features which made it necessary to order a judicial enquiry. I quote the following from an article of mine regarding the responsibility of the Minister and the Secretary included in the collection "Planning and Plain Thinking". "It became clear in that case that the mutual responsibility of the Minister and the Secretary cannot be precisely laid down by law and that some definite convention should regulate their responsibilities. One simple convention was obviously suggested by the proceedings themselves. It is that no Minister, Secretary or other high

official should plead oral advice or instructions as mitigation of his responsibility....The position of a Secretary to Government is a delicate one. He cannot plead freedom from responsibility on the ground of having taken the approval of his minister unless he can show that he had recommended policy or action which could be defended as reasonable, coming from a person of his standing and experience but which was rejected by the Minister. In most cases, the Ministers rely on the judgment of the Secretaries and when it proves to be seriously faulty, the Secretary cannot escape responsibility. It may not be questioned in the legislature but the Cabinet or Minister concerned will be perfectly entitled to take action. The same remarks hold good for Joint Secretaries and Heads of Departments. In the case of autonomous companies and corporations, it must be deemed a grave dereliction of duty if they depart from their statutory responsibility except on written directions issued in pursuance of statutory provisions."

Another issue of considerable importance is the relations of Members of Parliament and of the State legislatures with officials. The latter are frequently approached by the former on many matters. It is the role of legislators in all countries to promote the interests of their constituencies and to seek redress of complaints of persons therein. It may be a healthy rule that the legislator should seek redress only through ministers; but, this is not always possible and in the case of minor matters, this seems to be impracticable. Therefore, it should not be right for Collectors, Secretaries and Heads of Departments to refuse to see legislators. It goes without saying that these representatives of the people should be treated with the utmost courtesy and there should be no grievance on that score. If the matters represented are obvious issues of public importance, *viz.*, a new school or health measures, the officials should do their best to redress the grievances as far as they can reasonably do so. But often requests for transfer of officers or for preferential treatment of particular persons or localities are made. The correct step in such matters is to inform the legislator

politely that such requests could not be considered but this may be difficult and may give rise to bitterness or false accusations of discourtesy. It is to be hoped that, in the code of conduct suggested for legislators, the impropriety of such requests would be emphasised. The official can always note down such requests and communicate them to his superior for necessary instructions. In all cases, it should become a settled practice to record the time and date of interview and its purpose and to forward a copy to the superior officers. The mere fact that all interviews will be recorded immediately and communicated to others will be a major deterrent against improper requests.

With the establishment of Panchayati Raj, the Presidents of Zila Parishads and the Chairmen or Pradhans of Panchayat Samitis have become influencial and their contacts with district officials have to be rather intimate. In some cases, there are complaints that the officials continue as before and do not treat the Panchayati Raj institutions with due regard. There are complaints on the other side also that the non-official members of these bodies and their Chiefs expect the officials to show them special favours. The future of Panchayati Raj depends upon the cultivation of mutual respect between the new non-official leaders and the public servants who have to work with them and under them.

Next, there is the difficult issue of retired officers taking employment under private concerns. This issue has been dealt with in Annexure V to the Report of the Committee on Prevention of Corruption. That Committee has recommended that there should be a complete ban against Government servants, Class I and II and select categories of Class III and IV, to accept private, commercial and industrial employment for two years after retirement. The reason given is "We consider that a strict restriction is necessary to dispel any impression that there is any sort of link or partnership or community of interest, or collusion between the higher echelons of administration and the private corporate sector, as such an impression whether justified

or not, not only affects the prestige of the civil service but also affects the social climate".

I am not personally convinced of the adequacy of this provision. I consider that so far as senior administrative officers are concerned, the same convention should apply as in the case of the judges and others I have dealt with before.

The question of participation of Government servants in politics is not analogous to that of these other persons mentioned above. It is the duty of the civil servant to carry out the orders of his superiors and no question of independence of the executive is involved. Therefore, it should be open for a civil servant to enter politics after retirement like any other citizen. Distinguished retired civil servants have been included in almost every Ministry since 1947. There have been some in the State Ministries also. They are also to be found in the ranks of the opposition parties. While no objection can be taken to this, I feel that either through convention or through some other methods, they should be prevented from referring to confidential notes and discussions of which they had knowledge in their official capacity. They are not, like ministers, bound by an oath of secrecy. I do not think it is necessary in the case of all officers and it will be enough to apply such conventions to Secretaries, Joint Secretaries, Deputy Secretaries and Heads of Departments. It is possible that they are already prevented by the Official Secrets Act. But, I doubt whether that Act will apply to speeches in the Legislatures. In any case, even outside, it will be difficult to apply that Act when a retired official who has become legislator, considers it his duty to criticise or support official policies by referring to what happened when he was in office.

My observations relating to the propriety of ministers accepting private hospitality and indulging in unnecessary travelling apply with greater force to Government servants. There is an unfortunate impression that the conduct rules relating to drinking and other matters of propriety are not observed strictly, as they cannot obviously be enforced by penalties except in rare cases. It is only when there is

a general consensus of opinion among Government servants of the propriety of these rules that they will be effective.

Chairman (*Shri A. T. Govinda Menon*)—Ladies and Gentlemen: I am sure you enjoyed Shri Santhanam's observations on a wide variety of subjects of great interest to everyone of us. It will not be possible for me to give my views on all the matters which he has referred to in his speech. Shri Santhanam's observations are characterised by what I would call uninhibited thinking, which is very necessary when very many things are taken for granted by most of us.

I would like to make a few observations about the autonomy of the Indian States to which he made a reference. There are built-in provisions in our Constitution which take away a good deal of the autonomy of federating units which should be present in every federation. For example, I do not know whether many people have thought about this matter. The Indian States have no permanency under the Constitution. Like the units of the United States of America they are not indestructable.

What is permanent in the Indian Constitution is only the Indian State and not the units of the Indian Union. A State which could be enlarged, which could be divided, whose name could be changed, to which territories may be added, which could be destroyed or created by simple parliamentary legislation—that is the provision in the Constitution—cannot be expected to have good urges of autonomy which will be found in any federation.

Articles 3 and 4 of our Constitution, which provide the constitutional basis for States reorganisation, were perhaps included in the draft of the Constitution, because at that time there was great agitation in the country from the Linguistic provinces, particularly from the Andhra leaders. Even within the Constituent Assembly and in the Committees thereof, there were demands that there should be some provision for the formation of the Andhra State to begin with. Therefore, it was that those provisions were mainly included in the Constitution—3 and 4, that gave hope to these aspirants for separate linguistic States that later on action

could be taken to create the States which they wanted. That is point No. 1.

I understand Shri Santhanam has also made observations about this in a lecture of his which I have not had the pleasure of reading previously.

Secondly, I am sure it would be conceded that in every federal arrangement, a sort of federal supremacy is taken for granted and unless provisions, which will provide for federal supremacy, are there, there would be difficulty which a federation or a union would face. But during the last 14 years, through which the Indian States have gone through after the enactment of the Constitution, I should think that apart from federal supremacy, another kind of supremacy also was visible in India, which for want of a better word, I would term parental supremacy. Now this arose this way. The fortunes of the Indian States were in the hands of the second-line leaders of the Indian National Congress and those who were conducting the affairs of the Union were the first-rank leaders of the Indian National Congress. That being so, many questions of disputes between States and States and between States and the Union were settled. I do not say for a moment that the settlement was wrong. It was settled not in the constitutional or in the legal way but by a sort of parental advice that was administered from the Centre. Take for example, the great personality like the late Sardar Patel, or the late Prime Minister, Jawaharlal Nehru. They were the leaders of the people for the last many years, for many years before the Constitution was enacted and their followers, big and small, came to occupy positions of power in the Indian States: and it was easy to remove difficulties, to create smooth working of the political and governmental machinery by giving extra legal, extra constitutional advice to these ministers. It has been good often, but at the same time it has prevented the evolution of proper constitutional precedents in our country. Probably, with the removal from the scene of the tycoons of the national movement, a new situation has arisen in India under which better constitutional conventions would develop regarding the relations between the State and the Union.

A third factor which has contributed to the calling of the autonomy of the State was planning which was not in contemplation at least in the Articles of the Constitution. The Constitution was drafted at a time when it was thought that the States under our Constitution would be permanent units, fighting for their rights in the courts and before other forums. It seems to me that under the Government of India Act of 1935, there was greater consciousness of the rights of States or provinces than was feasible after the enactment of the present Constitution. At least, there have been no litigations in the Supreme Court, so far as I could remember of any significance regarding State-rights after the enactment of the Constitution. Before, under the 1935 Act, there have been a few.

Now please recollect for a moment the provisions of the Constitution regarding the distribution of federal revenues between the Centre and the States. Remember the fastidious provisions incorporated in that part of the Constitution. They were very very fastidious, as fastidious as between a money lender and his client. For example, income-tax has to be distributed. But in distributing income-tax, corporation tax had to be excluded. Tax on federal emoluments will not go into the pool to be distributed, etc. These are very very fastidious provisions in that part of the Constitution. Have those provisions any meaning today? If you do not get enough from the income-tax, you will get enough from the grant under Article 282 of the Constitution. Or, when things are at breaking point, or gradually reaching breaking point, the Centre will step in and save the State. That feeling is there. This is on account of planning, and this is further on account of a feeling that the Centre will do everything. That has created a situation in which the autonomy of the States has got blurred to a very large extent.

I am a person who does not believe that it would be good for a vast country like India to have highly centralised government. To a vast country like India, if democracy and good citizenship should develop and evolve in this country, there should be democracy at all levels and at State levels particularly. That has been disappearing. It is high time that a

publicist like Shri Santhanam, institutions like the one where the meeting is held and over which Dr. Khosla is presiding, and other institutions in our country, began to think furiously about the relations between the State and the Centre. Today they are not at all in good form.

I conclude: Shri Santhanam spoke about the application of Article 356 to Kerala. I spoke strangely enough along the same lines along which Shri Santhanam spoke here, in the Lok Sabha. I am coming from Kerala, as you know, and I know the psychology and the mentality of the people. If you have a government, and that is a democratic government, no citizen, normally speaking, would like to see that government falling to pieces, unless a government of his choice is placed in the seat vacated. But what is it that happened in Kerala? I am not entering into controversial politics, but just for analysis. A leader of a group of 15 people—I am not speaking of the Congressmen who defected. I am speaking of the S.S.P.--the leader of a group of 15 people belonging to the S.S.P. moved the no-confidence motion. All disparate elements in the Assembly, including these 15 persons, who defected from the Congress Party, supported that no-confidence motion. At that time there was absolutely no thought bestowed as to what would happen immediately thereafter. I hope you would agree with me that in a system of administration such as we are having in India today, a no-confidence motion will be absolutely meaningless unless it has a device to replace a government, to remove a government and have another government to replace them. That meaning which should attach to a no-confidence motion has been lost sight of on account of the readiness of the Centre to rush to the scene and take over the administration, with the result that the people do not feel that they have lost anything. That is what has happened in Kerala on all the three occasions, when President's rule came. The people feel that the Centre will get them food.

The Fourth Finance Commission is going to Kerala in a few days. The people feel that the Governor and his advisers will present the case of Kerala properly before the Finance Commission. The measures for drafting the Fourth

Five Year Plan are afoot. I know that because I am associated with it. They feel there will be no trouble whatsoever with respect to that plan. Therefore with impunity all kinds of irresponsibilities may be indulged in. That has been the result. Let us consider, suppose it was known that the President would not be taking over so easily. Some sort of representation, some sort of demonstration of a situation in which the President has necessarily to intervene—that was necessary, and the consciousness that that was necessary was there. What would have been the result? From the Congress party, whose strength was more than 50 per cent, 15 gentlemen, including a lady, are reported to have seceded. It is not unusual in the history of political parties the world over for things like that happening. We, here, in India think that this is an extraordinary situation. But things like this happen very often. Remember what happened during the Second World War in England when Chamberlain was the Prime Minister. Even members belonging to his party thought that he should go. He was pulled down and somebody must step into his place -- Mr. Churchill. Suppose the legislators of Kerala and the people of Kerala knew that President Rule was difficult to obtain, just as advocates in the Court, who move for a receiver petition know that it would be very difficult to persuade the Court to accept the point that a situation has arisen where an estate should be managed by the Court itself. If that were so, what would have happened? It is said, or it has been reported that these 15 persons did not want the gentleman who was then Chief Minister to continue as Chief Minister. They wanted a change. I am not taking sides. I do not come to any conclusion on that matter. Suppose it was known that President's rule is difficult. The Congress party there and here would not have taken the same rigid attitude in this matter. They would have thought of adjusting to the situation and avoiding the calamity of the fall of the Congress government. All these things are there: this idea that President's rule should be imposed whenever there is a difficulty; and whenever there is a difficulty is also due to the parental supremacy about which I referred to earlier.

I do not want to say more about these things except to give expression of my great appreciation, with which I am sure all of you would agree, of the role Shri Santhanam has been playing in our public life for the last many years by putting forward views without fear or favour. These views will help in the long run, I am sure, not that all of them will be accepted; some of them are acceptable and some of them are not. But they set into motion a train of thought of a critical character which will contribute to the health of the nation.

IV

POLITICAL PARTIES AND THE PRESS

Speaker: Shri K. Santhanam
Chairman: Shri B. Shiva Rao

Director (IIPA)--We welcome you here to share with us the great treat that Shri Santhanam has been giving us during these lectures. Today he is speaking on "Political Parties and the Press". This is the fourth lecture of a series on Conventions and Proprieties of Parliamentary Democracy in India. These lectures have been exceedingly well received and have aroused a lot of interest. We cannot judge merely from this audience here, but many people have been asking for the copies of the lectures because some good summaries have appeared in the press. We hope to be able to publish these very shortly and I hope they will be widely read for the simple reason that Shri Santhanam has brought to bear upon the subject the vast knowledge and experience that he has accumulated at first-hand and also fresh thinking. One may not always agree with some of the solutions that he has proposed, but he has raised these problems in a manner which is very interesting, and at the same time has aroused a lot of thinking amongst other people.

We are very happy today to have as Chairman of the meeting Shri B. Shiva Rao, a friend of the Institute, a person who has contributed himself a great deal on the subject of Parliamentary democracy. He has, as you know, published numerous books. Perhaps many of you do not know that at the moment he is engaged on a work which is nearly finished on the Constituent Assembly, which the Institute is going to publish in five or six volumes, including documents, and I have no doubt that work, when published, will be of national importance. We are happy that in spite of his various activities he has been able to come and spend this evening with us. His recent trip to Pakistan, his articles on

Kashmir have aroused a lot of interest in the two subjects. I must confess, I do not agree entirely with some of the views that he has expressed, but I am glad that Shri Shiva Rao says what most people do not. I, for one, coming from Kashmir State myself, have my own views about this. I hope to discuss them with Shri Shiva Rao at his convenience.

I thank you, Sir, for coming to honour this occasion.

Shri B. Shiva Rao—I consider it really an honour to be asked to preside over this meeting which is to be addressed by my friend and colleague in more than one sense, Shri Santhanam. I think it is appropriate that he should have continued the series of lectures he has been delivering here on the Convention and Proprieties of Parliamentary Demoracy in India with a discussion of Political Parties and the Press. I think, ever since we achieved our Independence, there has been a very healthy recognition both on the part of the Government and the people of this country of the important role that the Press has played in the past and can play in the functioning of democracy. One of the first acts of the Government of free India was to appoint a Press Commission, and its report deals comprehensively with many problems of the Press. As a result of the recommendations of the Press Commission, there has been a good deal of legislative activity. And even in this current session of Parliament, which I think is closing today, there has been a Press Council Bill which has been referred, I think, to a Joint Select Committee of the two Houses. But even outside Parliament, there has been much discussion on the functions of the press in a free India. I myself remember about a year ago taking part in a Seminar at the I.I.C. on the Freedom of the Press and from this very platform about three or four years ago, a senior member of the editorial staff of the "Hindu" of Madras, Shri V. K. Narasimhan, delivered a course of three lectures on the Press, the Public and the Administration. While there had been so much of discussion of the role and functions of the Press, so far as I am aware, there has not been any discussion of the relations between the Political Parties and the Press in India, and in that

respect I am glad that my friend, Shri Santhanam, is breaking new ground. He has been a distinguished and experienced journalist and only very recently I had a volume sent to me by the "Hindu" for review entitled "India in Transition". It is a collection of various articles written by Shri Santhanam in many papers on a variety of themes and reading that volume I was struck once again with the fact that whatever the theme that Shri Santhanam may handle, he brings to bear on it an informed mind and his conclusions and views are expressed not only with elasticity and a spirit of detachment, but with remarkable dignity and restraint of expression. Now these are characteristics which entitle him to respectful attention and I am very grateful in asking him to deliver his address.

Shri K. Santhanam—Both Dr. Khosla and Shri Shiva Rao have spoken very kindly about me and these kind words are particularly necessary for today's talk. Both of us have been members of political parties, but fortunately or unfortunately neither of us has the unqualified loyalty or submission to any political party whatsoever. Therefore my views today are likely to be rather more controversial than the views and suggestions which I happened to express in the other three talks.

Parliamentary democracy cannot function without organised political parties. But the problems created by the existence of political parties are difficult, confusing and complicated. In respect of each political party, the relations between leadership, the parliamentary wing and the organisational wing determines the manner in which the party functions. It is obvious that they give rise to many problems. Where one of the parties is the ruling party, there are the additional problems concerning the relations of the Government as such and the parliamentary and organisational wings of that party. Lastly, there is the issue of mutual relations between the political parties. None of these problems can be regulated by rigid rules and regulations which can be enforced by any kind of sanctions.

The party system is really the Achilles' heel of democracy. Dictatorship flourishes by exploiting the weaknesses, factions

and follies of political parties. It is, therefore, of vital importance to India that her political parties should be organised and function in a manner consistent with stable democratic Governments. As India has adopted the British system of Cabinet Government, she would do well to follow as far as it is practicable the British conventions in these matters. The fact that India is a Federation necessitates some modifications and adjustments.

"The Party Leader", says Byrum E. Carter, in his book *The Office of Prime Minister* "whether he be Prime Minister or Leader of the Opposition, is the most important single member of the party. It is only upon the most extraordinary occasions that another member of the party reaches a position of higher public status". Herbert Morrison says in his book already referred to, "The Chairman (and Leader of the Parliamentary Party) is recognised as the leader of the Labour Party not only in Parliament but also in the country." He further points out that the leader of the Conservative Party possesses powers much greater than those of the Labour Party.

The division of leadership between the Leader of the Parliamentary Party and the Leader of the organisation outside is inconsistent with a democratic system of politics. It is expected that the party organisation will put up its best men to represent the party in the legislature. All those candidates who are elected constitute the parliamentary party which elects the leader who should, therefore, be the acknowledged leader of the party both inside and outside the legislature. The powers of the organisation outside the Parliament became a matter of important issue in the Labour Party before the 1945 election. Mr. Attlee, who was the Leader of the Labour Parliamentary Party had been invited by Mr. Churchill to attend the Conference at Potsdam between the U.K., U.S.A., and the U.S.S.R. Mr. Laski who was the Chairman of the National Executive Committee of the Labour Party, issued a statement that Mr. Attlee could attend only in the role of an observer who could not commit the party executive or the Parliamentary Labour Party. Mr. Churchill wrote

to Mr. Attlee: "I had no idea, during the late coalition that the National Executive Committee of the Labour Party possessed the powers which have now become obvious..... When I invited you to form part of the British delegation to the tripartite conference shortly to assemble in Berlin, I did so because I believed that you were effectively the leader of your party, and would have the discretion accorded you which has been customary up to the present time in British politics." Mr. Attlee replied: "Within the programme adopted by the annual party conference, the Parliamentary Labour Party has complete discretion in its conduct of Parliamentary business and in the attitude it should adopt to legislation tabled by other parties. The standing orders which govern its activities are drawn up and determined by the Parliamentary Labour Party itself. I accepted the invitation to go to Berlin as the responsible leader of the Parliamentary Labour Party." Mr. Laski was driven to accept this position.

From the above we see that in U.K. the following conventions govern the relations between the leader, the Parliamentary Party and the organisational wing. Actual leadership of both the Parliamentary party and the organisational wings is with the leader of the Parliamentary party, though there may be a Chairman or President of the organisational wing. While the organisational wing has the right to draw up the election manifesto and set up candidates for the general elections and between the elections and discuss, in general, the policies pursued by the Government, the Parliamentary Party has the exclusive right to decide all matters relating to legislation or other issues that come up in Parliament. This has been made clear by the following observations in the letter of Mr. Attlee already quoted. "Neither by decision of the annual party conference nor by any provision in the party constitution is the Parliamentary Labour Party answerable to or under the directon of the National Executive Committee. The National Executive Committee had only the right to confer with the Parliamentary Party at the opening of each Parliamentary session and at any other time when it or the Parliamentary Party may desire a Conference on any matters relating to the work and progress of

the party. But, at no time and in no circumstances, has the National Executive Committee ever sought to give or given instructions to the Parliamentary Labour Party arising out of the consultations."

So long as Pandit Jawaharlal Nehru was the Prime Minister, this was the *de facto* position, though it was not openly acknowledged. But, in the States, the leadership was often divided between the Chief Minister and the President of the State Congress Committee. Whenever this was the case, there was always confusion, groupings and faction. It was only in those States where the Chief Minister was the *de facto* leader of both the legislature and the organisational wings of the party that the State ministry functioned effectively.

It is unfortunate that the situation should have become confused even at the Centre on the death of Prime Minister Nehru. An impression is gaining ground that leadership is divided between the Prime Minister and the Congress President. I wish to make it clear that I have no direct or indirect personal predelictions or prejudices. All that I am concerned is with the future of democracy in India. I am convinced that for this purpose, leadership should be concentrated in the office of the Prime Minister. Also, the Central Executive of the Congress Party should claim no right whatsoever to issue any kind of instructions to the Cabinet or the Parliamentary Party regarding the conduct of the Government. There may, of course, be consultations between the Congress High Command and the Executive of the Parliamentary Party; but, that can only be for mutual information and clarification. I have no doubt that this principle of undivided leadership of the Prime Minister for the whole of India and the Chief Minister for the State will have to be accepted as a binding convention if democarcy is to function smoothly. Hence, the sooner it is openly and consciously accepted, the better for the country.

It is not only in the Congress but also in all the other parties, this divided leadership is found. There is a curious belief that the organisation outside the legislature has got some mysterious importance. It cannot be too clearly emphasised

that, in a democratic country, all important political activities between two general elections is concentrated in the legislatures. There is room for some propaganda outside, explaining, criticising or opposing the policies and actions of the ministry or the laws passed by the legislature. Even this has to be done largely by the legislators. The only other political work is the enlisting of members, collection of funds, fighting bye-elections and preparing for the next general elections.

During the struggle for freedom, the Indian National Congress had three-fold activity. The first was the struggle against the foreign Government, either by propaganda or by satyagraha. Secondly, there was the work in the legislatures mainly of opposition and for the short period between 1937-1940, the governments of some provinces under the limited scheme of provincial autonomy, embodied in the Government of India Act of 1935. At the Centre, the Congress party always functioned in the opposition.

The third line of activity was the constructive programme; promotion of Khadi, prohibition, removal of untouchability, encouragement of village industries, Hindu-Muslim unity and other items which gave scope for many kinds of work to go amongst the masses and strengthen the national movement.

Owing to the smooth transfer of power, the implications of the radical changes brought about by the exit of the British Government and the assumption of power by the Congress leaders have not been realised by many congressmen who have continued to think and speak in the old terms. There is still much talk about the Congress politicians engaging in constructive work. All those who had become full-time workers during the struggle for freedom and could not enter the legislatures or the local bodies have been forced to nourish the illusion that the Congress organisation is still a centre of political gravity and work in the legislatures and activities of the ministries are subsidiary. This illusion was, to some extent, strengthened by the struggle for power within the legislative parties and ministries which gave some scope for the organisational wing to function as a

mediating agency. All these factors have been tending to concentrate a considerable amount of power in the Congress Working Committee and the Parliamentary Board. It has become the practice for the latter or the Congress President on its behalf, to send its representatives to preside over meetings of the legislature parties in the States at the time of the election of the leader, to summon the leader to Delhi to discuss the composition of the State Cabinet and in many other ways to give the impression that the State Governments are being controlled and directed by the High Command. The situation was similar when the Communist Party managed to form the Kerala Ministry for a short period. The structure of the other parties in India are also such that similar procedures will be followed if their legislative wings are in a majority in any State or even if they are in such strength as to force a coalition in which they participate.

It is no wonder that even some of the politicians who ought to know better have begun to talk about the dominant role of the party organisation outside the legislature. The so-called "Kamaraj Plan" professed to take out Ministers and Chief Ministers from the Central and State Cabinets for party work. There is logic in the argument that the same persons should not continue indefinitely in the ministries, especially when they have not particularly distinguished themselves. It is reasonable to adopt a convention that no one should continue to be a minister at the Centre or in the State for more than two terms continuously. Exceptions may be provided for those who have so distinguished themselves that their retention is required by not less than three-fourths of the legislative party concerned. But, to call upon Ministers doing responsible work to resign on the ground that there is more important work in the party, corresponds neither to facts nor to democratic practice in other countries of the world.

Herbert Morrison says: "Neither party when in power would, however, accept the view that its Parliamentary party could instruct or control the Cabinet. This is constitutionally correct, for it is important to maintain

the doctrine that the Government is responsible to the House of Commons as a whole and, through Parliament, to the nation. If the Parliamentary party of the Government in formal meeting assembled, could control the Government in detail and determine its policies before they were announced to Parliament, certainly the most undesirable situations would arise." Though the leader may be elected by the Parliamentary Party, and the Cabinet formed on his advice, it should not be forgotten that the Ministry constitutes the executive Government of the whole counrty or a State, has equal responsibility towards all sections of the people whether they are supporters or opponents of the party in power and is responsible to the House of the People or the State Assembly as a whole including the opposition. To quote Morrison again: "It would be unconstitutonal, injurious to good Government, and likely to lead to ill-thought-out decisions being foisted upon the Government to admit the right of the party to instruct ministers or to receive premature details in advance of Cabinet decisions. The quality and coherence of Government would deteriorate and great delays and confusion would arise. It just would not work." This distinction between the ministry and the party is of fundamental importance.

Centralisation is another defect of our party system. If the Indian Constitution had been based on a unitary form of Government, this may be justifiable. But in a federation consisting of autonomous units, political parties also should be organised in a similar fashion. On account of the existing centralisation, the State unit of the Congress, Communist, Swatantra and other parties all function under the dictation of the Central Executive. This is also necessitated by the joint elections to Parliament and State Assemblies. This is certainly convenient for administrative purposes and reduction of expenditure on elections. There would be no harm also if the people are able to distinguish between the policies of the Central and State Governments and are able to discriminate between the candidates for Parliament and those for the State Assemblies. The political education of the

electorate during the last three general elections has been in the reverse direction. The Indian voter has come to think that he should vote for the same party all along the line. This is one of the major obstacles in the way of the evolution of the two party system in India. Such system would have to develop stage by stage in state after state and lastly in respect of the Central Government. It cannot be expected that the same two parties will be found in all the States in the early stages. It is not unlikey that after another ten or fifteen years, the general elections for the State Assemblies in many states may not coincide with those for Parliament as is now in Kerala and Orissa. When that happens, decentralisation of political parties may become a necessity. It is wiser to start now and accept the convention that for selecting candidates for the State legislature or preparing the manifesto of the State Government and similar purposes, the State branch of an All India political party should be largely autonomous. It will then be easy to operate on the three principles of single leadership of the legislative and organisational wings, dominant position of the legislative wing and in the case of a ruling party, the combination of leadership of the Cabinet and the *de facto* leadership of the two wings.

Maintenance of goodwill and cordial social relations between the members of various political parties in spite of sharp political differences in respect of policies and programmes will help the smooth functioning of democracy. To a considerable extent this prevails in the Indian Parliament. In the lobbies and the Central Hall, it is usual to find members of different parties chatting and discussing in a friendly spirit. It is also not uncommon for a member of one party to invite members of different parties for private receptions. The atmosphere of a legislative chamber is conducive to amiable social relations irrespective of political opinions. I wish that the same spirit could prevail among the organisational wings of the parties and among their workers. Occasionally members of different political parties are brought together in meetings and receptions organised by non-political associations and *ad hoc* committees. This tendency must be encouraged. During election

time, feelings tend to become acute and unfair abuses and baseless accusations are unfortunately too common. Standards of propriety in connection with election propaganda have yet to be evolved. It is the duty of the leaders of the political parties to enforce discipline on their workers and prevent resort to vulgar abuse and slander against their political opponents.

Though all the three general elections since 1950 have gone off peacefully, it cannot be denied that the standards of electioneering have been going down continually. Money has unfortunately been assuming an increasing role. An expenditure of a lakh of rupees or more for a membership of Parliament or a State Assembly has been reported in many cases. This has led to collection of funds by parties and their leaders in many objectionable ways. The Committee on Prevention of Corruption has suggested the prohibition by law of company donations to political parties. It has also suggested that they should be obliged to keep proper accounts and have them audited properly. Even if these proposals are adopted, there will be need to discover ways and means of reducing expenditure, by reducing the period between dissolution and election, simplifying and rationalising methods of propaganda and other means.

Transfer of allegiance of members from one political party to another is a common feature of Parliamentary democracy. Mr. Churchill changed over from the Conservative to the Liberal party and back again to the former. But in India, such changes are becoming frequent at the time of general elections and in the legislatures after the elections whenever there is a chance of ministerial changes. A candidate rejected by one party tries to become a candidate of another. Many members of the P.S.P. and Swatantra party in Parliament and State Legislatures have joined the Congress party. Suitable conventions are needed so that political opportunism may not corrode the very basis of all political parties. It will be a healthy convention for a legislator to resign his membership before changing his party. It should be considered improper and undignified for a person to change over to

another party within six months of a general election and apply for its ticket. The platform of the Swatantra Party is that the entire socialist ideology and planning policies of the Congress are to be rejected in favour of liberalism and *laissez-faire*. It is difficult to conceive how those who had publicly pledged themselves to the latter policy could so easily change over to the Congress. Without insistence on a minimum degree of political consistency, parties will easily disintegrate.

The press plays a vital part in the working of democracy. A free press is one of the most reliable checks on misuse of power by Governments and other authorities under them. It is also indispensable for the political education of the people through its news columns, editorial comments and special articles. Even the Parliament and the Courts depend upon the Press for reporting their proceedings. It is a matter of satisfaction that the Indian Press has a fine record of service both during the struggle for freedom and after transfer of power. Most of the important papers in India are not committed to any party. This is as it should be. While the freedom of the Press is guaranteed by the fundamental rights, it is subject to limitations. I shall not deal with the legal limitations relating to slander and defamation. Though it may be said that contempt of courts is likewise a legal restriction, it is a matter in which there is room for considerable difference of opinion. Obviously attribution of motive to judges and deliberately perverse reporting of the proceedings of any court cannot be defended. But, it is a proper function of the Press to report and criticise defects and failures of the judicial system. Also, limitations of space make it necessary to give condensed reports. In all such matters, conventions have to be evolved which are acceptable both to the judiciary and to the Press. Even more important is the relations of the Press with the Parliament and the State Legislatures. It is needless to say that it is the duty of the Press to treat these bodies and the legislators with respect. But, there is a tendency of members of Parliament and of State Legislatures to become hypersensitive about the reports and comments on their

speeches in the Press. Some questions were asked in the Bombay Legislature whether granting of liquor permits to Magistrates and Judges was likely to influence judicial decisions in prohibition cases. There was an editorial comment condemning the singling out of Magistrates and Judges for public obloquy and suggesting that the question should have been disallowed. The Committee of Privileges of the Bombay Assembly held the editor and the paper guilty of contempt. This was endorsed by the House, which called upon the editor of the paper to publish an unconditional apology and unless he did so, resolved to withdraw the Press facilities given to the paper. It has to be conceded that the wording of the editorial comment was rather unrestrained. But members of the legislature are public men who should have thick skins. The legislatures themselves are public institutions which should be able to take even harsh criticisms in their stride. It is to be hoped that the Indian Press Council which is to be set up as soon as the necessary legislation has been passed will take earnest steps to formulate proper conventions in consultation with the Chief Justice of the Supreme Court and the Speakers defining as clearly as possible, the bounds of legitimate criticism.

There is a tendency in the Press to report the speeches and statements of ministers at great length and dismiss the speeches of others with a paragraph or two which give an entirely distorted version. Naturally speeches and statements outlining important policies deserve to be given greater space. But, I cannot help feeling that it is the duty of the Press to report proceedings of legislatures and public meetings with a greater sense of proportion. It was my experience that speeches in the Lok Sabha were generally reported at greater length than those in the Rajya Sabha even though the latter were often weighty and deserved to be reported more fully.

While the Indian Press as a whole is responsible and deals with men and things in a spirit of fairness and decency, there is an unfortunate growth of sensational journalism which seeks to pull down or abuse individual politicians

by unfair methods. It would be a pity if they drive the Government to impose legal restrictions which may be used by short-sighted officials to suppress even legitimate criticisms. Here again, the evolution of a code of voluntary restraint may be the best method for safeguarding the freedom of the Press while preventing abuse of such freedom.

Parliamentary democracy requires an alert public opinion. The apathy of the people towards legislation and policy discussions in Parliament and State Legislatures is most regrettable. In Pre-Independence days, commercial and other organisations used to send their considered views and suggestions to members of the Indian Legislative Assembly on every important Bill. Such activity has declined considerably at present. It should become the regular practice of Bar Councils, Merchants Chambers, Associations of auditors and other bodies to take active interest in the work of legislatures and forward their views to the legislators.

For a developing country like India, the utmost economy of time, labour, material and money is essential. There is unfortunately a tendency to waste them by all kinds of unnecessary gatherings, celebrations and ceremonies. The following paragraphs have been taken from an article of mine under the head: "Ritualism –Old and New". "The growth of what may be called secular ritualism has been particularly alarming since the advent of freedom. The new priests of politics, economics, and science are demanding more time, effort and money than the old religious priesthood. This is, perhaps inevitable and protests may be of no avail. Still, it may be useful to point out that this development is not healthy, and even if the growth of secular ritualism cannot be stopped altogether, it can be rationalised and made less burdensome.

The advent of freedom is being celebrated on August 15 and January 26. In the national capital, the Prime Minister hoists the flag on the Red Fort on the former date and on the latter, the President presides over the colourful

parades and pageants. This arrangement may be considered to be a symbolic exposition of the Indian Constitution in which the Prime Minister has the power, and the President prestige and dignity. Both the days are also celebrated in all State Capitals though the State Governments are being forced to depend increasingly on official spectators for these functions.

It is but right that the great makers of Free India should be duly honoured. Mahatama Gandhi, the Father of the Nation and his unparallelled services are remembered on his birthday, October 2, and on the day of his martyrdom, January 30. There is continuous pressure for celebrations on a national scale—the birthdays and death anniversaries of Lokamanya Tilak, Lala Lajpat Rai, Deshbadhu Das, Pandit Motilal Nehru, Sardar Patel, Abdul Kalam Azad and others. The great men of Indian history are also clamouring for recognition. With the celebration of the 2500th birthday of Lord Buddha, national opinion is being forced that there should be annual celebrations on a large scale. Kalidasa is at last getting a little of his due. Vyasa, Valmiki and others cannot be neglected. Regional celebrities are also being celebrated.

According to Indian tradition, birthdays are celebrated only at the end of the first, the sixtieth, eightieth and the hundredth years. The Western custom of annual birthday celebrations is coming into fashion. So long as it is confined to domestic precincts, no one need complain. But when it takes the form of public celebrations of birthdays of persons in power, it can become a national epidemic. Each year we read about such celebrations of an increasing number of persons, including prominent Central Ministers and Chief Ministers of States (and political leaders). All India Radio is ready to broadcast them, and this tends to increase the number of persons who feel left out if their adherents and admirers do not organise such functions in their honour.

Exhibitions are becoming no less common. Central and State Government departments have had to organise sections whose sole business is to carry the same exhibits from place to place. There may not be much harm if a place sees

these things once in a way. But the same kind of exhibition is held in the same place every year, and in many cases they have become vested interests.

Free India has had to develop her own technique of receiving distinguished guests from abroad. Green arches, flower garlands, presents of products of highly skilled, artistic handicrafts and open-air receptions have become natural features of this ritual. All this is unobjectionable except that, in the cold weather, the receptions have to be repeated too often. It is amusing to see the Central and State P.W.D. or their contractors erecting and dismantling arches along the routes of distinguished guests.

Any of these things taken singly is free from objection and may even be commended. But, cumulatively, they tend to become an oppressive burden without the saving grace of faith which lies behind religious ceremonials. It may not be possible to avoid them altogether, but I feel that there is a clear case for their simplification and rationalisation. For instance, all the patriots of the past may be honoured on a single day. For the poets also, one day may be set apart, every region honouring both all India and regional poets simultaneously.

Unfortunately no statistical information is available regarding this waste of national effort. If public expenditure on all the varieties of the new secular rituals mentioned above can be shown as a separate item in the Central and State budgets, some check to their unlimited growth will be provided. The root cause of this expansion of wasteful gatherings, ceremonies and celebrations is official patronage and direct or indirect assistance from public funds. If a convention is established that such functions should not be subsidised but should be wholly met by voluntary contributions by those who are interested, they will shrink in number; but will increase in worth and utility.

The main purport of these lectures has been to emphasise the fact that a democratic government has to rely more on consent and persuasion than on coercion. This is the ultimate distinction between convention and legal provisions or administrative orders. I have shown that in

a system of Parliamentary democracy the former could be even more important than the latter. But a convention cannot be enforced. It depends upon the voluntary observance of the parties concerned. In this respect, the conventions and proprieties of Parliamentary democracy are like the rules of a game. It is not possible to have a hockey or football match, if the players reject or do not observe the rules. They cannot be condemned or punished; but the game breaks down. The difference is that such breakdown in a game may not matter much, though, in these days, where thousands assemble to witness a cricket or a foot-ball match, the refusal of the players to observe the rules may cause a serious riot. If the conventions and proprieties of democracies are not faithfully observed in any country, it is bound to drift to some kind of dictatorship and it may not be possible to rescue the people from the resulting oppression and tyranny.

As I have said in the beginning, I have not dealt only with conventions which other democracies have found useful and necessary. I have suggested the adoption of some new conventions. Just as in the field of economics, we have to make up for lost time by bold planning and forced marches, in the field of politics also, we cannot wait for the process of provisional expedients becoming well known usages which, in turn, mature into settled conventions. The only alternative to the adoption of new conventions is Constitutional amendment, legislation and rigid rules and regulations under them. It will make our politics rigid and entangle the politicians in endless arguments and in disputations about the meaning and application of such laws, rules and regulations. The courts may also intervene. Flexibility is the great merit of Parliamentary democracy and this will be provided by the evolution of an adequate system of conventions and a reasonable code of proprieties, to supplement the Constitution and the laws.

* * *

QUESTIONS AND ANSWERS

Question—What do you think is the best way to raise funds for parties in this country?

Answer—My own view is that each party should raise funds of small amounts from a very large number of persons. I would suggest that they should issue one rupee, five-rupee, ten-rupee and 100-rupee coupons. They should not take more than Rs. 100 from anyone and if the workers are sufficiently active, the party itself will become popular and the collection cannot degenerate into any form of corruption or undue influence.

Question—In your very fine observations, one of the things that I feel is that you are trying to implant British traditions and conventions of Parliamentary democracy in a soil in our country which is probably not ripe for planting them as they should be. According to the role of the party and organisation practice, while in a developed economy and a developed polity, it is quite all right that the organisational wing and the parliamentary wing should have a single leader and accept his unquestioned leadership, in a developing society, may be in our country, some of those functions of social transformation may be performed by the organisational wing. I do not believe it can be disputed that merely the Government and its administrative organs can adequately perform that social transformation process and, therefore, the need of a very important organisational wing is there, and its leadership having a very important influence on the parliamentary leadership arises. I thought possibly you had missed this important function.

Answer—No, I did not miss it at all. But I fully considerd it. I was very careful. I have come to the deliberate conclusion that all this is mainly an argument because actual experience in the last 15 years shows wherever the party leadership was as strong as the Government leadership, there was only confusion not only in the administrative side but also on the social side. In a democracy, social transformation cannot be effected by the bureaucracy, but the legislative party has the leadership for effecting social transformation, and after all when a person is put up deliberately by a party, and there is an electorate of one lakh, and sometimes for the Parliament, 5 or 6 lakhs,

somebody who is unknown cannot come and say, all right, I am a better representative and listen to me. People will refuse to listen. Unfortunately this happens in America also. ..They become a cesspool of corruption. That is what will happen. Just took at the politics in Madras and the U.P. Why has it been so steady in Madras? But it has not been steady all the time. After 1947 every two years, the Madras Ministry was falling, but since 1956 it has been steady because the organisational and the governmental leadership became concentrated. That was the case in Bombay also to a large extent. In the U.P. and other places, there is a permanent struggle between the organisational and legislative wings and when there is a struggle, what social transformation can there be? Therefore, divided leadership does not make for any kind of change, either revolutionary or evolutionary. Even revolutionary transformation can take place when a strong man becomes Chief Minister and direct public opinion, and enforce reforms, including land reforms. As a matter of fact, while the Congress in its sessions had been advocating all kinds of land reforms, all this has been completely neutralised by the strong peasant proprietorship, rather the big owner proprietorship in the legislative wing. The legislators have vested interests in land and so all tenant legislation has been multified as everyone recognises. If on the other hand there were prominent tenant leaders in the legislative wing, our land reforms would have been effected much more satisfactorily. As a matter of fact all the leaders outside are those who have either not been selected or been rejected.

Question—I feel that the divided powers between the (party) organ of the Congress and the party inside, can have a check and balance and can be conducive to democracy.

Answer—I think I have already replied to it. This check and balance can only lead to factions.

Question—What do you feel should be the role of the Central leadership in guiding a State Parliamentary party for the selection of their leaders? Take the example of

Shri Mitra who has been asked by a majority of the members of the legislature to continue. The Centre seems to be having the usual veto in such matters.

Answer—I think this is a good example. The Centre tried to veto but it could not....Suppose an enquiry commission with a Supreme Court Judge had been appointed. He would have been disqualified but because both the Centre's Parliamentary party and the Central Government were wobbling, the legislators have insisted on their choice, and they have won their way. That is what will happen and what ought to happen normally because he is their leader and he has to depend upon their support. Therefore what has happened in Orissa is unfortunate in the sense that the leader should not have undiluted public confidence. Otherwise what has happened is constitutionally the correct thing. If these legislators are strong, what is it that the Congress Parliamentary can do? They can say that Congress ceases to exist in Orissa, and then these people will call themselves by another name. But nobody is prepared for such drastic steps and so nobody knows what the position is.

Question—You mention at one stage the leadership being focussed in the personality of one. If you look at the Kamaraj Plan, it is only when they lost two bye-elections it was realised that the party was disintegrating and the Kamaraj Plan came out of the losing of those bye-elections....Isn't it time that we re-organise all political parties as centres of authority in society.

Answer—Take the Congress. The only way the Congress can make itself popular with the people is to solve the problems of the people. If the food problem is solved and prices are brought down and the economy goes forward, then there is nothing to be done, and all the people will rally. If the people feel that its representatives and its ministers are mismanaging the Government, and they are not able to control the prices, or give food and everything goes wrong, what can the organisation do? Of course, in the case of the opposition, even there the people will look how the people

in the Parliament and the Legislatures heckle the Government, oppose it and put forward arguments. It is that which will strengthen the opposition. Therefore, while an organisational background is essential, the real political work is to be done either through the Government or the opposition parties in the legislatures. So long as this is not realised parties will not function properly.

Question—You said something about the two-party system: I will say a Government in waiting, as it happens in other democracies. You say certain factors are barring the certain evolution of two parties. Where do you think is the beginning and what do you think we should do to remove cobwebs which are stalking that evolution of the two party system.

Answer—I said if the opposition to the Congress consists of a real federation of local parties, it would be considerable. Take the Swantantra Party. If it were organised as a federation of the Jan Sangh and such people with only a central policy, leaving the local policy to the local parties, then it would probably have summoned all the existing opposition members and so we will conform to one party. That would be the beginning of an all-India party. Otherwise, I do not see any possibility suddenly of an all-India party getting the majority both in the Legislatures and in the Centre. So, though the Congress may find it worthwhile to have a centralised party, it is not worthwhile for the opposition parties to have centralised organisations. They should decentralise and leave people to work out things in their own States, and whichever party is able to gather strength it should join the federal party. That is the way, I think, the two party system can come more swiftly and more quickly in India.

Question—I wish to have your comments on two aspects of the administration of Great Britain. We have learned that the Prime Minister of Great Britain has lost his right to vote because he forgot to enlist as a voter when he had his Peerage. In our country, we are not required to enlist ourselves. In fact, I voted in the two general elections, and I never knew that my name was listed in those lists.

Answer—It is also the case in Great Britain. This man was a Lord and, therefore, he was not entitled to be a voter in the Commons. When he gave up his Peerage, then it was outside the regular procedure of the normal automatic registration, as such people are left out of the ordinary rolls. They have to put in an application. So there is some difference. In our country if a person is not a voter he will not stand for the Legislature. But apparently it seems to be different there.

Question—During our election our Government declares the election day as a holiday. In Great Britain they say you have a right to vote and you find time to vote even without a holiday.

Answer—This is a comparatively minor issue. Our voters are many times more. We have such a large electorate. There is a one day holiday and then the people are able to realise that there is a particular election. I do not think any great harm is done by having a holiday.

Chairman : (*Shri B. Shiva Rao*) The number of questions asked is evidence of the interest Shri Santhanam's very refreshing remarks have aroused. I myself would have liked to ask a great many questions on the points with which he has dealt. But the hour is late and I would like to say how deeply grateful we are all to Shri Santhanam for the address that he has delivered this evening. So far as the role of the Press is concerned, I think we have a great tradition behind us. I do not think it was an accident that most of the leaders of the freedom struggle had been associated with the Press, and many of them were Editors of newspapers. And until Mahatma Gandhi gave a mass face to the freedom movement at the end of the first world war, practically every one of our frontline leaders was editing a newspaper. We have this great tradition behind us. I am still connected with the Press. Those standards are being maintained, though not at the same level as before the advent of freedom.

Recently I was in Pakistan for a few days and saw what a contrast there is between the standards of the Press in

Pakistan and in India. I think we can still be proud of the high traditions that a great many of our newspapers are maintaining at the present moment.

Now there are dangers and there are evils to which the Press Commission has drawn attention of Government and Parliament.

I think in general I would say that the Indian Press today is not as sensitive to the mistakes of the executive as it used to be when we had a foreign executive. I remember reading the life of DeLane, who was the brilliant editor of the London Times in the last century. He was an unorthodox kind of an editor and he followed the practice of publishing in the "Times" reports and news items which were causing great embarrassment to the Government of the day. And so on one occasion the Prime Minister - I think it was Disraeli went to the office of the Editor of the "Times" and said: I am willing to give you advance information on what we have knowledge to have published, provided you will give up on your side this practice of publishing news items which cause embarrasment. And DeLane said : Whether you supply the news items or not, they come into the office of the "Times" anyhow, and as for obliging me, I hold that the primary function of an Editor of a newspaper is to expose the arbitrariness of the executive. That I think was a very clear and frank enunciation of the duties of the editor of a paper.

It is no doubt the fashion in many quarters today, high and low, to accuse the Indian Press of being a capitalist press, the implication being that the Press is not as responsible to the needs of the Government of the day as it should be. But I hope our members will remember for the future the enunciation of the principle which DeLane gave expression to when he spoke to the Prime Minister of Britain.

I would like to say in conclusion how grateful we are to Shri Santhanam for his very stimulating address this evening.

CORRIGENDA

Page 7: Para 3, Line 6
Read 'affects' for 'effects'

Page 10: Line 1
Read 'indefensible' for 'indefencible'

Page 17: Para 2, Line 2
Read 'courses' for 'things'

Page 18: Line 4
Read 'prompt' for 'properly'

Page 19: Para 2, Line 1
Insert Comma (,) after 'Certainly'

Page 21: Para 5, Line 3
Read 'intervene' for 'intervence'

Page 22: Line 3 from below
Read 'a' for 'the'
Read 'a consensus' for 'the concensus'

Page 23: Para 2, Line 14
Insert Comma (,) after 'Commons'

Page 25: Para 4, Line 4
Read 'view' for 'case'

Para 5, Line 11
Insert 'in' after 'here'
Insert 'the need' after 'the Centre is'

Para 6, Line 3
Read 'blame' for 'blames'
Read 'faults' for 'blames' (Line 4)

Page 26: Line 3
Read 'Thus' for 'Then'
Omit 'that' occurring in Line 4

Para 3, Line 15
Read 'over' for 'on'

Line 2 from below
Insert 'or her' after 'his'

Page 28: Para 2, Line 3
Read 'and' for 'of'

Page 41: Line 5 from below
Read 'I think' for 'It hink'

Page 42: Line 13
Read 'the recognised' for 'there cognised'

Para 2, Line 10
Read 'that he' for 'tha the'

Page 49: Para 3, Line 2
Insert 'and' after 'applies'
Read 'affect' for 'effect' (Line 6)

Page 51: Para 3, Line 14
Read 'views' for 'matters'

Page 52: Para 3, Line 3
Read 'them' for 'the argument'

Page 75: Line 1
Read 'reduction' for 'calling'

Para 3, Line 3
Read 'In' for 'To'

Page 76: Para 2, Line 12
Insert dash (—) for full stop (.)
Read 'it' for 'them' (Line 23)

Page 85: Para 3, Line 4
Read 'workers' for 'work'

Page 93: Para 2, Line 8
Read 'Abul' for 'Abdul'

Page 96: Para 2, Line 6
Read 'roles' for 'role'
Insert 'in' after 'organisation' (Line 7)

Para 3, Line 2
Read 'considered' for 'considerd'

Page 97: Para 2, Line 14
Read 'directs' for 'direct'
Read 'enforces' for 'enforce' (Line 15)

Page 98: Para 2, Line 14
Insert 'Board' after 'Parliamentary'

Page 99: Para 3, Line 7
Read 'to form' for 'and so we will conform to'