C. B. II No. 251

LOK SABHA

JOINT COMMITTEE
ON
THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

EVIDENCE

LOK SABHA SECRETARIAT
NEW DELHI

November, 1970/Kartika, 1892 (Saka)
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Corrigenda to the evidence given before the Joint Committee on the Commissions of Inquiry (Amendment) Bill, 1969.

.....

1. Page (iii), line 4, for '11.9.1970' read '1.9.1970'
2. Page 2, (i) Col 1, line 23, for 'couse' read 'course'
   (ii) Col 2, line 29, for 'aLw' read 'Law'
3. Page 3, (i) Col 1, line 8, for 'be be' read 'be'
   (ii) Col 1, for the existing line 38 read 'hearing of a case. The Commission of'
   (iii) Col 1, line 40, for 'hink' read 'think'
4. Page 10, (i) Col 2, line 6, for 'be' read 'we'
   (ii) Col 2, line 8, for 'land' read 'law'
   (iii) Col 2, line 9, for 'further' read 'future' and for 'persuation' read 'persuasion'
   (iv) Col 2, line 11, for 'extent' read 'extend'
5. Page 14, (i) Col 1, line 9 from bottom for 'Arctile' read 'Article'
   (ii) Col 2, line 19 for 'fuch' read 'much'
6. Page 17, Col 1, line 7 for 'Rigsts' read 'Rights'
7. Page 22, Col 1, line 9 from bottom for 'or State' read 'of State'
8. Page 24, Col 1, line 10, for 'compromssed' read 'compromised'
9. Page 28, (i) Col 1, line 22 from bottom for 'puerson' read 'person'
   (ii) Col 1, line 19 from bottom for 'wihch' read 'which'
   (iii) Col 2, for line 11 from bottom read 'of the Law Commission Report, which'

P.T.O.

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10. Page 30,(i) Col 1, line 5 from bottom for 'Indian' read 'India'
(ii) Col 2, line 2, for 'citiben' read 'citizen'
(iii) Col 2, line 19, for 'dissocitaled' read 'dissociated'

11. Page 32, Col 2, for the existing line 13 from bottom read 'he has certain information which as'

12. Page 48, Col 2, line 16 from bottom for 'as' read 'was'

13. Page 50, (i) Col 1, line 7 from bottom for 'in' read 'is'
(ii) Col 2, line 5, for 'Bulam' read 'Gulam'
(iii) Col 2, omit line 3 from bottom
(iv) Col 2, after line 2 from bottom add 'of the State or not, he can appear'

14. Page 54, Col 1, line 5, for 'Act 370' read 'Art. 370'

15. Page 55, Col 1, for existing lines 1 and 2 from bottom, read 'the Concurrent List, some entries were first made applicable to the State vide'

16. Page 60, Col 2, line 3 from bottom for 'to' read 'to give'

JOINT COMMITTEE ON THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

COMPOSITION OF THE COMMITTEE

Shri N. K. P. Salve—*Chairman.*

MEMBERS

Lok Sabha

2. Shri N. C. Chatterjee
*3. Shrimati Indira Gandhi
4. H. H. Maharaja Pratap Keshari Deo
5. Shri C. T. Dhandapani
6. Shri Surendranath Dwivedy
7. Shri Hem Raj
8. Shri V. N. Jadhav
9. Shri Bhogendra Jha
10. Shri N. Sreekantan Nair
11. Shrimati Sucheta Kripalani
12. Shri D. K. Kunte
13. Shri Bal Raj Madhok
14. Shri Dhuleshwar Meena
15. Shri P. Ramamurti
16. Shri S. S. Syed
17. Shri Gajaraj Singh Rao
18. Shri Bhola Raut
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*21. Shri Sunder Lal
22. Dr. Sisir Kumar Sabha
23. Shri Shantilal Shah
24. Shri Viren Shah
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26. Shri S. M. Siddayya
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28. Shri S. Supakar
29. Shri P. R. Thakur
*30. Shri Krishna Chandra Pant

Rajya Sabha

£31. Shri Phool Singh
32. Shri Gulam Nabi Untoo
33. Shri N. P. Chaudhri
34. Shri T. G. Deshmukh
35. Shri Kota Punnaiah
@36. Shri Ram Niwas Mirdha
37. Shri M. L. Kollur
38. Kumari Shanta Vasisht

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*Appointed on the 1st September, 1970 *vice* Sarvashri Y. B. Chavan, Bishwanath Roy and Vidya Charan Shukla resigned.

£Died on the 27th September, 1970.

@Appointed on the 21st August, 1970 *vice* Shri Sheel Bhadra Yajee resigned.

39. Shri B. T. Kemparaj
40. Shri Chandramouli Jagarlamudi
41. Shri Rudra Narain Jha
42. Shri K. P. Subramania Menon
43. Shri Balachandra Menon
44. Shri J. S. Tilak
45. Shri Pranab Kumar Mukherjee

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer—*Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri J. M. Lalvani—*Joint Secretary.*
2. Shri B. Shukla—*Deputy Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

Witnesses Examined

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Spokesmen :

1. Shri P. K. Dave,
   Chief Secretary, Government of Jammu & Kashmir.

2. Shri M. Kaul.
   Ministry of Revenue.

JOINT COMMITTEE ON THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITEE ON THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

Thursday, the 20th August, 1970 at 16.00 to 17.15 hours.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

Lok Sabha

2. Shri V. N. Jadhav
3. Shri Bhogendra Jha
4. Shri N. Sreekantan Nair
5. Shri D. K. Kunte
6. Shri Bal Raj Madhok
7. Shri Dhuleshwar Meena
8. Shri S. S. Syed
9. Shri R. Dasaratha Rama Reddy
10. Shri Biswanarayan Shastri
11. Shri P. R. Thakur

Rajya Sabha

12. Shri Phool Singh
13. Shri Gulam Nabi Untoo
14. Shri Kota Punnaiah
15. Shri B. T. Kemparaj
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SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Shri Shri Chand Goyal, M.P.

(The witness was called in and he took the seat)

MR. CHAIRMAN: Mr. Goyal, I am sure, you are aware of this, but as a formality, I will mention to you that the evidence that you would give would be treated as public and is liable to be published unless you specifically desire that all or any part thereof is to be treated as confidential. Even then, the evidence is liable to be made available to the Members of Parliament.

SHRI SHRI CHAND GOYAL: I am sorry, I was not able to furnish a copy of my memorandum in time to the hon. Members.

In my Memorandum, I have made five suggestions. The first one relates to clause 2 of the Bill, sub clause (b) which suggests that the Government at any stage of an enquiry by the Commission can increase the number of members of the Commission. Sir, I feel that once a Commission has been appointed, there will be no justification for increasing the strength of the members during the course of the enquiry. That is likely to create this understanding and is also likely to be abused because we very well know the principle that justice should not only be done to a party, but it should also appear that justice is being given to the party. Supposing a particular Member is added during the couse of the enquiry, then it may give rise to a feeling that since the enquiry was proceeding in a particular direction, some member is being imported to change the decision or the verdict of the Commission or to give it a different direction. Therefore, Sir, it may be all right in the beginning to appoint as many mmebers as is necessary, but it may not be proper to add a member during the course of an enquiry. This is my submission.

My next point is...

MR. CHAIRMAN: It would be convenient, if we take your evidence point by point, and if some members want to ask questions on this suggestion, they will ask and then we will take up your next point.

MR. CHAIRMAN: Mr. Goyal, I for one am inclined to consider that the only objection you have raised to the amendment contemplated in clause 3 of sub-section (b) of Section 2 of the Amendment Bill is that the Government should not *increase* the number of the Commission. But, I think you have no objection to the contents of the clause so far as it relates to filling in the vacancy that may have arisen in the office of a member of the Commission. In other words, if the vacancy comes about as a result of some such reason as resignation of a person constituting the Commission, etc., then you have no objection to the Government filling in the vacancy; but should the Government want to *increase* the number of members of a Commission, you think it is likely to be abused or is likely to be misunderstood. Can you ascribe any reasons? Because, as you know, the very nature of an enquiry would contemplate a probe in which certain facts etc. will have to be looked into and resolutions have to be passed in the appropriate House—either in the Parliament or the State Legislatures. Government having appointed the Commission, I think they are entitled to select the people in the Commission themselves.

SHRI SHRI CHAND GOYAL: Sir, I have expressed my view on this. I have also gone through the Report of the Law Commission. I want to explain that the aLw Commission does not advance any reason for this in the note the Law Commission have appended to this clause. The Law Commission does not give its mind as to in what cases it is likely to increase the strength of the Commission. I would request that, if the Commission feels that it needs the assistance of some expert, as I have suggested in my note, an expert may be associated with this Commission. It may be assisted by retired judges or working judges of the High Court or Supreme Court. If it is felt necessary to take advantage of the services of an expert, he may be associated. He will not give cause for any misunderstanding; but so far as the question of increasing the strength of the members of the Commission is concerned it is not proper.—Now, there is a talk of a Committed Judiciary.

AN HON. MEMBER: What about a committed Judiciary? What do you mean?

SHRI SHRI CHAND GOYAL: You see, a judge with a particular ideology —Anyway, I don't want to enter into that controversy now. So, what I am suggesting is that, if during the course of an enquiry the strength of the members of the Commission is increased, it may be be abused in the sense that——supposing in the course of an enquiry a particular line is being followed or a particular decision is visualised and then the Government decides to increase the number of members of the Commission, those persons who are facing the enquiry may have an apprehension that this new man has been brought in so that the verdict of the Commission may not be favourable to them but favourable to the Government or the other party. That is quite natural. You know, when a case starts before a particular judge or a particular bench, we never change the strength of the judges. Only if the judge recommends that this case is fit enough to be heard and decided by a larger bench or a division bench or a full bench, then it is submitted for the orders of the Chief Justice. The file of the case is placed before the Chief Justice and the Chief Justice referrs the case to a larger bench or a division bench or a full bench. But we havenever seen a case where the strength of the bench has been increased during the course of the inquiry, which is just like a High enquiry, which is just like a High Court or the Supreme Court, I hink, should follow the same pattern.

MR. CHAIRMAN: Therefore, I understand you to say that it is to avoid any misaprehension in the minds of the persons who are being enquired into by the Commission that it is desirable that the constitution of a Commission is no changed in the course of an enquiry. But, do I also understand you to suggest that so far as experts are concerned, you have no objection to the clause? You have stated that you have no objection to an expert being appointed. So what you suggest is that you have no objection to an increase in the number of members of a Commission so long as it is an expert who is appointed. Now, what happens, Mr. Goyal, if a Commission itself asks for assistance of some person who may not be an expert or if the Commission itself says that "we are a small Commission; we want it to be enlarged"? Do you think that such a request of the Commission under certain circumstances is a legitimate request and that Government may then increase the number of members?

SHRI SHRI CHAND GOYAL: No Sir, I think, instead of increasing the number of members of the Commission, Commission feels that they cannot deliver the goods, that they cannot discharge the job, then another Commission can be appointed; but then, there will be difficulties of starting the proceedings afresh and all these complications would crop up. Therefore, I would request that the Hon'ble Members of this Committee may not adopt this unnecessary amendment, which is likely to give rise to complications.

SHRI BALACHANDRA MENON: Suppose a One-Man Commission has been appointed but there are very complicated issues and therefore the Government feel that it should be a bigger one. In that case, if the One-Man Commission feels it cannot discharge the job and that it is better to enlarge the Commission so that the matter can be finished quicker because, unlike other things, here you can decide only at a later stage as to how far the matter is complicated, would you then allow the Commission itself to request for a bigger Commission, ——for some other members being included?

SHRI SHRI CHAND GOYAL: I have already submitted that the pattern that we follow in the disposal of cases in courts must also apply here. What happens there is, supposing a single judge feels that this case requires consideration by a larger bench, then it is not he who suggest "I want assistance by another High Court Judge" etc. What he does is to send

the case to the Chief Justice, and the Chief Justice in his discretion ppoints a larger bench. The former judge may be a member of that new bench or he may not be a member. It is entirely in the discretion of the Chief Justice to appoint a lrager bench in which he may or may not be there.

SHRI BALACHANDRA MENON: When bigger issues are before them?

SHRI SHRI CHAND GOYAL: The issues are known in the beginning and it is for the Government to appoint a larger Commission in the beginning itself instead of increasing the strength during the course of the enquiry.

SHRI BAL RAJ MADHOK: So, what I gather is that if the Members of a Commission themselves feel that the work before them requires some more assistance and, may be, a new member and it makes such a demand, then I think, you do not have any objection?

SHRI SHRI CHAND GOYAL: No, Sir. What I have suggested is that, in that event, the Commission should submit a note to the Government that this Commission is not in a position to deal with the case. Then, the Government may appoint a new Commission in which these members may be there or may not be there——just as we do in the case of disposal of cases before the High Court or the Supreme Court.

SHRI BAL RAJ MADHOK:But, in the case of a Commission, it is a specially constituted body. The Machinery is special and therefore, if an absolutely new Commission is to be appointed, it may mean a lot of dislocation. If I understand you correctly, your apprehension is that suppose the Government feels that the Commission is moving in a direction in which its findings may not be suited to it, it might like to have a Member who is more amenable to it. It may even influence the findings of the Commission. That apprehension is there.

Therefore you say that they should not increase it. But, if the Commission members themselves feel that the work is of a complicated nature or that the work is heavier, they may like to have a Member to be added. If this is done, it will make their work easy. What objection can you have to that?

SHRI SHRI CHAND GOYAL: My objection to this is this. I have experience of the Commission for the last twently years. And I do not think I have come across a single case where the Commission found itself in an awkward position or found itself interested in having more members of the Commission. This is just a hypothetical question. Such a necessity has never arisen uptill now and I do not think that it is likely to arise in future also because, the Government, before appointing a Commission, is in the know of all the facts of the case. Looking to the facts of the case, it can detemine the strength of the Commission. That is my point.

SHRI BAL RAJ MADHOK: If a proviso is added to the clause for this; then that would satisfy you. If the Commission itself wants it, will you have any objection?

SHRI SHRI CHAND GOYAL: I have objection to that also. They can always manage it.

MR. CHAIRMAN: He wants the whole thing to be put up to the Chief Justice just as the high court does it.

SHRI N. SREEKANTAN NAIR: Shri Goyal, you said you had 20 years' experience of the Commission. And you have not come across any such instance. Enlargement of Member is proposed for the first time in India because in every state they are doing it in a different way. For instance, in our State of Kerala, we have gone to the extreme extent of putting up very honourable people who are ex-Judges or who are Members of Parliament in the Commission of Inquiry to go into the malpractices practised by Ministers, Members of Parliament

or even Members of the Legislature. In this particular instance, if and when we extend or widen the scope of the enquiry, we should like to have someone who is an expert in the line to be associated with the Commission; for example there is a trade union leader or a leader of the cooperative movement. His name may be considered for being added to the Commission of Inquiry. When malpractices cases are being examined, the court may feel like having an expert to just judge that from the employers' point of view as well as from the employecs' point of view. So far as the trade union or cooperative movement is concerned,, a member of the cooperative society may say that they would like to have experts on this line to be taken on the Commission. You said that there is no justification. I am just pointing out instances where this can be justified in including such members without impairing the overall requirements of the Commission. Would it not be much better to have such people on the Commission?

To-day, in our society, there is a lack of moral standards or moral values. This is a greatest evil which impairs the progress in this country. In such a set up one would at least conceive that in such cases, it would be better to have a balancing power by adding to this a jury or a judge or somebody else. Will you object to this?

SHRI SHRI CHAND GOYAL: I entirely agree that nowadays there is lack of moral standards or moral values as mentioned by you. Members of Parliament and other important persons may have to face enquiries before a Commission of Inquiry. But, what you are contemplating should be arranged in a practical way rather than having them during the course of the inquiry. I have also suggested in my note that experts may be associated.

SHRI N. SREEKANTAN NAIR: You mean that expert assessors should be appointed and they should not be appointed and they should not be judges. Is that your suggestion?

SHRI SHRI CHAND GOYAL: Assessors are different. I was only suggesting that if the nature of enquiry requires the understanding of the subject by an expert, then an expert, if he is not associated during the start of the inquiry, may be associated later.

SHRI N. SREEKANTAN NAIR: I have cited two cases wherein there is not a single expert associated so that he can hear both sides of the case. Here they require two experts. In the case of trade union movement or cooperative movement, not a single person can claim to be expert because he cannot see both sides of the case. He can only see one side of the picture. So, more than one here will be usefull. If you appoint two people among the judges, then there will be no injustice done to the people. At the same time they will be able to elucidate most important things. As pointed out by my friend Shri Madhok, once you find or the judge feels it necessary to have any one person to be appointed and if the Government also thinks it necessary to appoint him, they can do so under the Commissions of Inquiry Act. Do you want the old thing to come back and to start from the very beginning so that full justice can be meted out?

SHRI SHRI CHAND GOYAL: In fact I was suggesting that this necessity, to my knowledge, has never arisen uptill now. It is just a hypothetical question.

SHRI N. SREEKANTAN NAIR: What is being contemplated in this Bill and the Judges Inquiry Bill is totally different. Don't you think so?

SHRI SHRI CHAND GOYAL: You may kindly ask the Law Commission to make available to you the evidences in order to come to a conclusion. I have not been able to lay my hands on it.

SHRI N. SREEKANTAN NAIR: Mr. Goyal, you are entirely mistaken.

You seem to have confidence in government rather than in the judges.

Mr. CHAIRMAN: We wanted to hear your views. You please give more serious thought and consideration to this.

SHRI BISWANARAYAN SHASTRI: I want to ask a clarification from you. If I understand it correctly, once a Commission is appointed, the strength of the Commission should not be increased. You apprehend that if the person's findings are different, that might affect vitally the inquiry. It may happen that after the appointment of the Commission and the Commission has gone into action, it may find it difficult to go through the large number of documents, memoranda etc. It will take a long period and if a finding is delayed, justice is also delayed. Is it not the desire of the government or the people that the findings of the Commission should be published as early as possible. Therefore, don't you think that the members of the Commission should be increased.

My second point is that when a Commission is appointed with a limited number—say, one man or two or three—it is likely that they will be pressurized to give a certain verdict. But if the number is more, then it is very difficult to pressurize or influence them. Therefore, don't you think that if the number is increased later on, more justice will be done to the cause?

SHRI SHRI CHAND GOYAL: About your first point, I would clarify that the members of the Commission function as a team. There is no distribution of work. Recording of evidence, reading of documents etc., have to be done by the entire team of the Commission. So it is not a question of shortening the time by appointing more judges.

About your second point, I don't think so.

SHRI D. K. KUNTE: Mr. Goyal, do I take it that if the Commission was initially formed properly, there would be no occasion either for the Government to add a new member, or even for the Commission to suggest that they want any additional help? Is that your point?

SHRI SHRI CHAND GOYAL: Yes.

AN HON. MEMBER: You said that you have objection if the strength of the Commission is improved during the stage of the inquiry. But you said at the same time that you had no objection if a second commission is appointed. This appears to me to be a contradiction.

SHRI SHRI CHAND GOYAL In fact, what I had in mind was, as I have already submitted, with my experience of twenty years of these Commissions, that I don't think that a single case has even arisen where the Commission has recommended any increase in its strength.

AN HON. MEMBER: You say that before the Commission itself is appointed, Government is fully aware of the magnitude of the case, the importance of the case, the dimensions of the case, and therefore, they will take all this into consideration, and it would be abuse of power if any addition is made during the intervening period . . .

SHRI SHRI CHAND GOYAL: Yes.

MR. CHAIRMAN: Would you consider it as an abuse?

SHRI SHRI CHAND GOYAL: Yes.

Clause 4 reads like this: "In section 5 of the principal Act, in sub-section (2), the words and figures 'and any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the Indian Penal Code' shall be inserted at the end." My objection to this is two-fold. Firstly the violates Article 20(3)(c). No person accused of any offence shall be compelled to be

a witness against himself. Sir, this is a cardinal principle of criminal jurisprudence that nobody can be compelled to give evidence against himself and he cannot give incriminating evidence. Sir, the Constitution protects him but by incorporating this provision we are violating this provision of the Constitution in as much as we are making a provision that the Commission will be able to force a person to give evidence, irrespective of the fact that it may be incriminating or it may not be incriminating.

I would also invite the attention of the hon. Members of the Committee to Section 175 of the Code of Criminal Procedure . . .

MR. CHAIRMAN: Before you go to that, on clause (3) itself, would you read with me this clause? I want to understand whether your presumption is tenable or not It says, "No person accused of any offence shall be compelled to be a witness against himself . . ." Now, which is the person who is accused of what offence and against whom? What are you contemplating is the person referred to in clause (3) of the Article? Would you first clarify this?

SHRI SHRI CHAND GOYAL: My submission is that we have to carry this analogy even while we are dealing with a Commission. A person who is being proceeded against by the Commisison for certain allegations of corruption against him can also be compelled to give certain evidence. And when he appears as a witness in his own inquiry which is going on before the Commission then according to this provision the Commission will be able to compel him to give evidence in contravention of this Article of the Constitution.

Then, Sir, I invite your attention to Section 175 of the Code of Criminal Procedure. This salutary provision has been incorporated even in the Criminal Procedure Code. I would also invite your attention to the relevant para 28 of the Law Commission's Report.

So, Sir, I differ from this on the ground that the Commission of Inquiry Act is a self-contained Act and we shall be forbidden to derive assistance from other statues because if a specific provision is made in this Commission of Inquiry Act then it will over-ride the provisions given in other enactments. This is a well-established proposition of law that when there are two provisions—a specific and a general—the specific would prevail over the general one. I apprehend that you might not be able to get the assistance of the general law which is available in other statues. So, it would be safer to make provision in this Commission of Inquiry Act.

SHRI SREEKANTAN NAIR: I think, Mr. Goyal, you are a good lawyer. If there is any enactment by Parliament which goes counter to the provision of the Constitution do you know the Constitution provision prevails and not the enactment or sections of the enactment. If so, can such a provision go counter in its practical working against the fundamental provisions of the Articles of Constitution.

SHRI SHRI CHAND GOYAL: The legal position is if there is any provision in an enactment which goes contrary to the provisions in the Constitution then under Article 368 of the Constitution that provision is likely to be struck down by the law courts.

SHRI SREEKANTAN NAIR: In such an Inquiry if a witness goes to the witness box and says I won't answer quesations because it will incriminate my interests. Would there be any more evidence required?

SHRI SHRI CHAND GOYAL: You must be very well aware, in fact, in our criminal law you cannot compel an accused to appear in the witness box.

SHRI SREEKANTAN NAIR: When he comes in voluntarily and gives evidence can he say don't ask me that question. I do not answer that question. Will it be a moral conviction against him by himself?

SHRI SHRI CHAND GOYAL: A case against any person has to be substantiated by evidence given by others.

SHRI BHOGENDRA JHA: Some contradictory things seem to emerge from your submissions. With regard to accused the Constitution guarantees the right of the accused not to give evidence against himself but here it is not a question against accused but witness. Do you think this anology is fit here. Secondly, here a witness is asked to give evidence on an inquiry against somebody else. So, in that case unless he is asked to give the entire information to the best of his knowledge and belief I do not think the Commission's work will be of any use.

SHRI SHRI CHAND GOYAL: We have been administering criminal law for so many years and so many people are convicted everyday. It is not on the evidence of those persons who are accused but it is on the evidence of the other prosecution witnesses produced in the case.

SHRI BHOGENDRA JHA: Suppose I volunteer mself and go to the witness box. If I go there and in all possibility on my own confessions I can be convicted. That can incriminate me.

SHRI SHRI CHAND GOYAL: No. One can be convicted on his own statement but the question is whether you can compel him to give evidence which incriminates him. That is a short point and the Constitution protects him. You can amend the Constitution if you so like.

SHRI BHOGENDRA JHA: That is applicable to an accused and not to a witness.

SHRI SHRI CHAND GOYAL: I was placing them on the same pedestal when they face enquiries before a Commission.

MR. CHAIRMAN: Thank you very much Mr. Goyal. We are looking forward to your coming and concluding the rest of the evidence and we hope further suggestions will be made. When will it be convenient for you to come again ?

SHRI SHRI CHAND GOYAL: On any working day.

MR. CHAIRMAN: For the remainder part of evidence of Shri Goyal we fix Wednesday, the 26th August, 1970, 4 O'Clock.

We have to find from the Madhya Pradesh Bar Secretary when he would be in a position to come. That will be during the session.

I want to fix firm date for clause by clause discussion.

SHRI BAL RAJ MADHOK: Last time, the Minister made the legal position clear. The question is of the concurrent list and not with regard to the State subject. But our submission was that this Commission of Inquiry Act is now being enacted, and the situations are so developing, and particularly lot of reports are coming from Kashmir about the misuse of money etc., and if the Government of India or the Parliament feels that a Commission needs to be set up to deal with the subjects even dealt with at the present moment by the State, this Act should apply to that also. This Act which is being passed by the Parliament should be made applicable to all the States, and it should be applicable to the Jammu & Kashmir irrespective of the fact that that State has its own Act. We were all unanimous on this. Normally, we don't think there should be any objection. If there is any objection, we should know it.

SHRI D. K. KUNTE: At that time, it was pointed out to the Law Minister that he might persuade the President to make an enquiry to the J. & K. Government, whether they would like to come within the purview of this legislation by their positive consent. If you look to the minutes of the last meeting, you will see that all these points were made clear.

SHRI KOTA PUNNAIAH: My opinion is that it should be extended to Jammu and Kashmir.

SHRI BALACHANDRA MENON: It is better to leave as it is. That is no necessity to press for it now.

SHRI BHOGENDRA JHA: The previous day it was said that this Act should be extended to J&K also, if they so desire. There was no consensus, but that was the view. Here are two aspects; one is in the case of concurrent list, whether we should extend it, and the other with regard to the state list, for which they also have got an enactment. With regard to the question of application to the States is concerned, we ourselves are apprehensive in the light of the Iyyer Commission in Bihar. With regard to the State subject, it should not be decided here. With regard to the concurrent list and the central list, we should make this Act applicable to Kashmir.

SHRI BAL RAJ MADHOK: My friend put forth the view point that some States have this Act, and that hey have appointed Commissions. We do not contest. Here, the point is whether the Central Act should also apply. And if the State wants to find out on its own, nobody can stop it. If the Centre wants to appoint the Commission, it should not be debarred. But the question is that when one thought that a Commission has needed and the State Government would not appoint, what will happen in the wider interest?

MR. CHAIRMAN: Let us crystallise the things. In respect of subjects covered by the Union List, the law must extend to Jammu & Kashmir. Now, are you referring to the matters in the State List or the Union List?

SHRI BAL RAJ MADHOK: So far the Union and the Concurrent list are concerned, there can be no two opinions; the writ of the law should run all over the country. But my submission is that the Commission of Enquiry is only to help the public cause. And, therefore, I think the matter may be falling within the State list, but still it may have vital bearing on the national interest. And the State Government, for certain political reasons, may not like to appoint the Commission. But in the wider national interest, a Commission is needed. And, therefore, the Central Commission of Inquiry Act should apply even in regard to the State list also.

SHRI B. T. KEMPARAJ: Last time, we discussed the matter at great length, and the Government came with a proposal that they will try to get the opinion of the J & K Government, and that they will also try to know what would be the position if the Committee wants to include J&K within the purview of this Act. I want to know if the Government has taken any action in this regard. And secondly, under Cl. 11, this Act is made applicable to Nagaland and other States. Therefore, I do not think there is any difficulty for the Government to see that they secure the opinion of the State Government so that the State may be included in this Act.

MR. CHAIRMAN: I would request the Members to be brief.

SHRI D. K. KUNTE: The real point is that the original act is not applicable to J&K, and, therefore, the point raised by Shri Jha does not exist. And it was pointed out last time, that this Act as amended should be made applicable to J&K.

MR. CHAIRMAN: It is a matter of amendment.

SHRI D. K. KUNTE: The point is whether this Act should be made applicable to Jammu and Kashmir by an amendment in the Act. It was pointed out that it cannot be done withou the positive consent of the Jammu and Kashmir and, therefore, it was indicated to the Government that they might through the President find out from the—J & K Government whether they are amenable to

the position that this Act be made applicable by putting an amendment. That is all that was done.

MR. CHAIRMAN: Making of this Act applicable to Jammu and Kashmir is a matter which we can do straightway; there is no difficulty. The only question is whether in respect of the State List with the consent of the Jammu and Kashmir we can make it applicable or not and whether the consent will be given or not.

SHRI D. K. KUNTE: Last time, the discussion was limited to the point as regards obtaining the consent of the Jammu and Kashmir Government and if the amendment in the original Act is not applicable to the Bihar Government, the Committee did not consider it to make it applicable to Jammu and Kashmir. We are not creating any special position or encroaching upon the rights of the Jammu and Kashmir which are available to other States.

An HON. MEMBER: Last time the Committee discussed whether this Act should be applied to the State of Jammu and Kashmir or not and the consensus was that it should be. The ruling from the Chair was that the Committee is competent to make an amendment here, though I had my own differences that this Committee was not competent to introduce any amendments to the Bill because originally the Act was applied, there is no amendment to Section 2 of the Act.

There are other constitutional and legal difficulties. The constitutional difficulty is that as for as State List is concerned, this Committee or this Parliament cannot ipso facto extend any Act to the State, the other difficulty is that the State has already go an Act which is more exhaustive and comprehensive than the Act here. If we will extend this present Act to the State of J&K, it will only cover two lists, Concurrent and Union. It would not cover the State List. Then there is every possibility of clash, overlapping of the two statutes—one enacted by the State and the other enacted by the Parliamen. The second thing is that if we press the State Government to give the consent, the question is why should be invite such a trouble. This Committee of the Parliament can amend this land and some time in further after persuation or if the State Government thinks fit, they will ask the President to extent this Act and there will be no difficulty. Why should we enter into a controversy here which will end into nothing but unpleasantness?

SHRI KOTA PUNNAIAH: What was the opinion of the Government of J&K regarding the provisions of this Act?

SHRI BISWANARAYAN SHASTRI: I feel that before this Bill is enacted, Jammu and Kashmir Government should be contacted and their opinion should be taken.

SHRI R. N. MIRDHA: This point was discussed at the last meeting and to some extent, we have had a discussion just now. One thing is obvious that there was no unanimity either on that day nor is it there today on both the points. As regards the Government's view point I can only say at this stage that these are under the consideration of the Government.

MR. CHAIRMAN: We will have to take it that for the time being.

AN HON. MEMBER: As far as the statement of Mr. Goyal and his objections to clause 5, it is desirable that we also listen to the Law Secretary as to what he has to say.

MR. CHAIRMAN: Let the evidence of Mr. Goyal be completed. If the legal issue made by him is of such magnitude that it requires some technical illustration, then we can approach the Ministry to put somebody in the witness box and clarify.

I would request the Hon. Members to give their Memoranda by the 12th September. We may meet once on the 26th August to hear Shri Goyal and such other evidence as may be forthcoming, and thereafter on 1st September, 28th, 29th and 30th September,1970.

(*The Meeting then adjourned.*)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITEE ON THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

Tuesday, the 1st September, 1970 at 15.30 hours.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

Lok Sabha

2. H. H. Maharaja Pratap Keshari Deo
3. Shri V. N. Jadhav
4. Shri Bhogendra Jha
5. Shri N. Sreekantan Nair
6. Shrimati Sucheta Kripalani
7. Shri D. K. Kunte
8. Shri Bal Raj Madhok
9. Shri Dhuleshwar Meena
10. Shri S. S. Syed
11. Shri Bhola Raut
12. Shri R. Dasaratha Rama Reddy
13. Shri Sunder Lal
14. Shri S. M. Siddayya
15. Shri S. Supakar
16. Shri P. R. Thakur

Rajya Sabha

17. Shri Phool Singh
18. Shri Ram Niwas Mirdha
19. Shri Balachandra Menon

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer—*Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVE OF THE MINISTRY OF HOME AFFAIRS

1. Shri J. M. Lalvani—*Joint Secretary.*
2. Shri B. Shukla—*Deputy Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Shri Shri Chand Goyal, M.P.

MR. CHAIRMAN: Mr. Goyal, we may proceed further. You can start where you left last time.

SHRI SHRI CHAND GOYAL: Last time, I was dealing with Colume 4 which makes it obligatory upon a person who has been summoned to give evidence to furnish all evidence irrespective of the fact that that evidence may incriminate him. That was my point. I also suggested that this will not be in keeping with Columun 3 of Article 20 of the Constitution which affords protection to

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a person who is accused of an offence, as that Article of the Constitution gives him the protection and the privilege that he may not reply to such questions which are likely to incriminate him. I made that point, and today, in support of that point, I would cite one judgment of the Punjab High Court. This citation is AIR 1960, Punjab, Page 86. This is in the case of M|s. Allen Burry & Co. Pvt. Ltd., and another versus Vivien Bose and others. Instead of taking the valuable time of the hon. Members of the Committee by recording the judgement, I will just refer to the head-note given under Sub-Clause E.

This reads like this:

"Section 6, Commission of Enquiry Act covers the case of production of an incriminating document and gives no immunity with regard to the same. Section 6 will be operative only after a statement has been made or a document has been produced. But the inhibition in Article 20(3) of the Constitution extends to the very first stage and the person accused of an offence cannot be compelled to state a fact or produce a document which may tend to incriminate him. The moment such compulsion is exercised, he can claim the immunity. Section 6 will merely render his statement immune but will not afford protection against such compulsion to give self-incriminating answers or to produce self-incriminating documents. Therefore, the immunity under Section 6 of the Act is not co-extensive with the one under Article 20(3) of the Constitution and is not a complete substitute for the prohibition enjoined by Article 20(3). It must, therefore, be held that Article 20(3) can be invoked in proceedings before the Commission by witnesses who appear before it if and when the occasion arises."

MR. CHAIRMAN: The case arose under which law?

SHRI SHRI CHAND GOYAL: Under the Commission of Enquiry Act. One of the judges constituting the Bench is now a judge of the Supreme Court Mr. Justice A. N. Grover, and the other was Mr. Justice G. L. Chopra. These two hon. Judges delivered the judgement and has been clearly laid down that the aid of this Article of the Constitution can be invoked even under the Commission of Enquiry Act.

MR. CHAIRMAN: Nothwithstanding that there is no specific provision which is analogous to Article 20(3), you can always even under this Act wherever you feel that you are called upon to incriminate, fall back upon this and stifle the Commission.

SHRI SHRI CHAND GOYAL: Supposing that he is compelled to give the evidence and that evidence is on the record, then he can claim that that evidence should not be read against him because if it is used, it will violate Article 20(3) of the Constitution and since this Act also applies to this Article, the aid of this Article can also be invoked in the proceedings for the Commission of Enquiry Act. Therefore, I was sounding a note of warning and I was making my respectful submission that we should take that Article of the Constitution into consideration while dealing with this question.

Mr. CHAIRMAN: The first question that arises from this judgment is that they have undoubtedly stated that the Commission of Enquiry will not be able to go where they infringe Article 20(3). If that be correct, what further guarantees do you think are necessary. As far as sub-clause 3 of Article 20 is concerned, it only speaks of an accused and offence and, therefore, it should apply to cases where there is an accused and there is an offence being tried. Secondly, the Supresme Court has dealt with this matter and it is stated here:

"Section 6 provides that no statement made by a person in the course

of giving evidence before the Commission shall subject him to or be used against him in a criminal proceeding. In this connection, a question was raised as to whether a person can claim protection under clause (3) of Art. 20 of the Constitution at the time of answering a question put to him and the Punjab High Court answered it in the affirmative. Subsequently, in a Supreme Court decision, it has been held by a majority that clause (3) of Art. 20 applies only where at the time the statement is made the person stands accused of an offence. Section 6 does not require any amendment from this point of view.

Therefore, what you have read, no longer holds good.

SHRI SHRI CHAND GOYAL: I am aware of this judgment. At least in this authority, it has been laid down categorically that the evidence which is incrimnating, he can certainly claim that protection that that will not be used against him and if that evidence cannot be used against him, my submission is that what is the fun in collecting that evidence and thereby violating the spirit of this Art. of the Constitution. One may not be in the position of an accused, but certainly just as I submitted, an important person may be facing proceedings under the Commission of Enquiry Act, and, he will therefore, be more or less, in a similar position. He may not be an accused in that strict sense, I agree, but certainly the faces the same situation. We should be careful and we should certainly give due consideration to this Arctile. After all, this salutary provision has also been made in Sec. 175 of the Criminal Procedure Cod. I said it last time and I can repeat it today also. Why can't we add that salutary provision which is incorporated in sec. 175 of the Criminal Procedure Code in the proceedings under the Commission of Enquiry Act. This is my submission.

MR. CHAIRMAN: I do not want the matter to be confused. Let us be clear about the issues before us. If Art. 20(3) is applicable, then whatever you say is not necessary at all. It is already there and the protection already exists. If Clause 3 of Art. 20 is not applicable, then we go to the second question which you are now raising that in conformity with clause (3) of Art 20. we should have certain suitable safeguards. Let us be clear. Are you on the second point, or on the first?

SHRI SHRI CHAND GOYAL: On the second point, Sir.

MR. CHAIRMAN: How fuch less you are on the first.

I have read that judgment and from what the Law Commission has stated, I do take it that Art. 20(3) cannot be super-imposed here and to that extent, the witness should be taken to expose to the risk for which he may not have protection.

SHRI SHRI CHAND GOYAL: The position is that the Law Commission in its report while dealing about the procedure whether the cases should be triable directly by the High Court, has dealt with that aspect.

MR. CHAIRMAN: May I ask you one more question before the Member take over and that is this.

Section 6 says that no statement made by a person in the course of giving evidence before the Commission shall subject him to or be used against him in a criminal proceeding except a prosecution for giving false evidence by such statement. There is no other remification which will devolve upon him as a consequence of giving evidence which might be incriminating. What do you say to this?

SHRI SHRI CHAND GOYAL: I have already submitted that Section 175 of the Criminal Procedure Code which provides that protection to a witness and that it should be taken as an analogy in Commission of Enqury Act because a person facing an enquiry before the Commission is more or less in a similar position. Though he may be strictly an accused person, he faces more or less a similar situation. Therefore I am suggesting that if we provide a safeguard it will be proper and it will not injure the course of the enquiry in any manner.

SHRI NAYAR: I cannot understand what the Articles of the Constitution have to do with this. When a man is definitely charged with an offence I think the Constitution should protect him from any penalty under the law. That is meant to protect a citizen. Therefore, as pointed out by the Chairman he is already protected under Article 20(iii) which gives him civil protection. Any other safeguard is unnecessary and improper.

SHRI SHRI CHAND GOYAL: Are you suggesting, Sir, that this provision in the Fundamental Rights given under Article 20(iii) is superfluous and unnecessary. Then, you should amend the Constitution. But so long as it is found to be.... (*interrupted*).

SHRI NAYAR: I would say that at that time you would want to say that the amendment to the Constitution is no right!

SHRI MENON: Now, there is protection, as you stated, that this would not be used against him. Why should you insist that he should have recourse to the provisions of the Criminal Procedure Code so long as the provision of the Constitution itself is not going to be used against him. It is clearly stated that it is not going to be used against him. Any statement made by him in the course of an enquiry will not be used against him. If you tried to take away that right you will not be able to have access to the facts; he may hide them and it would be very difficult to bring them out from any other witness. When it assures him that it will not be used against him, why not this provision remain?

SHRI SHRI CHAND GOYAL: That is exactly my point. When the evidence cannot be made use of, where is the fun in collecting that evidence? When it cannot be used, why force him to give that evidence?

SHRI MENON: I was not saying that it will not be used against him in a criminal case. But to get certain facts, this may be required. This alone will not go against him, but it will enable us to arrive at the truth much earlier.

SHRI SHRI CHAND GOYAL: That is the point I was trying to make. When, with regard to that, he enjoys protection and when the evidence deposed by him cannot be used against him.... (*interrupted*).

MR. CHAIRMAN: That is in the sense that it will not be used against him in any criminal or civil action. But for the purposes of enquiry, this should be used; for the purpose of finding the facts it should be used. It may not be used for a criminal or civil proceeding, but it will get us all the facts——clear facts.

SHRI SHRI CHAND GOYAL: My point is that any allegation has to be substantiated by evidence to be collected from other sources——from other witness—and not from the person who is facing the enquiry and therefore, whatever evidence incriminates him should not be utilised even if it comes to light in the course of this enquiry by the Commission.

MR. CHAIRMAN: I fully accept what Mr. Reddy has said. We will come to that clause when we discuss clause by clause. Mr. Goyal has submitted a Memorandum and we are trying to see what his views are in this matter.

SHRI D. K. KUNTE: You want to go to Clause 6 of the original Act.

The original act states as follows:

"No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in any civil or criminal proceeding except a prosecution for giving false evidence by such a statement".

Therefore, the protection that you want is given. As regards committing himself into any criminal action or any civil acton, you want to extend to him further right of refusing to give evidences on the ground that they might harm him. That is what you want.

SHRI SHRI CHAND GOYAL: Yes, sir.

SHRI KUNTE: What are the reasons?

SHRI SHRI CHAND GOYAL: Sir, I have already sumitted the reasons.

SHRI KUNTE: Section 175 also gives the protection only because he should not be proceeded against. Article 20 sub-clause 3 also gives that he will not be incriminating himself when this guarantee is given under Section 6. The decision envisaged under article 20(3) or under Section 175 of the Criminal Procedure Code does not exist in the case of a particular witness. Why does the witness want to refuse giving evidence?

SHRI SHRI CHAND GOYAL: This is exactly my point. When this protection or privilege exists elsewhere, this should exist here also because we have to be uniform in the formulation of the law.

SHRI KUNTE: May I clarify the position? The point is that you are giving the right for refusing information. Therefore, I would like to know whether it is proper for the witness to have imaginary assumpton that it might incriminate him and therefore he has the right to refuse giving evidence. Because in the other case under Article 20 or Clause 6 and Section 175, a person is an accused person, so this matter is not problematical and because where he is involved and the protection is limited and where a person is deceitfully involved, no enquiry with be held. I am not referring to the point given by Shri Reddy. That is another matter. Sir, normally this will be used either in criminal or civil Courts. I am afraid no enquiry could be held in this matter.

MR. CHAIRMAN: This is a different case.

SHRI S. SUPAKAR: I may explain this. Shri Goyal may please look into the provision made in Clause 4. This includes not only persons against whom there may be some incriminatting evidence but also includes all persons from whom this information was shought. For example, I may be asked to give certain information and I find that it incriminates my friend and therefore I may not be willing to give that information. So, I think it is clear from the interpretation of Clause 4 that it not only includes the persons against whom the incriminating evidences come from the reports or decuments but also all witnesses. Therefore, you see Section 176 which says that "they were bound to furnish information that is required and if they do not give the information then they are liable to be penalised." So Article 20 sub-Clause 3 comes in conflict with this Clause and only comes in contact with the linked category of persons who may be involved personally and may be liable to prosecution. It cannot protect those persons who do not furnish information themselves personally and therefore you will agree that it is not necessary to give that protection to these persons. Am I correct?

SHRI SHRI CHAND GOYAL: Sir, you are right. This applies not only to the persons who do not appear

before the Commission of Enuiry but also applies to all persons who appear as witnesses. My submission is that this golden principle of Criminal jurisprudence which is incorporated in our Constitution under "Fundamental Rigsts" should be followed. Because, in keeping with this golden principle of jurisprudence, nobody is allowed to be a witness against himself. Sir, I have to offer views in a few other Clauses. As per Clause 6 (a) we have mentioned in the Section that no persons will be compelled to give evidence before the Commission to disclose any secret process of manufacture of any goods. My submission in this behalf is that Clause 6 is very limited in scope. It is very narrow and it protects only secret process of manufacture of any goods and it does not extend to scientific discoveries or to other inventions. Therefore, the words "secret process" which have been provided in the section should also be extended to other cases where the information relates to a secret precess, discovery or invention. I do not see any reason why discoveries and inventions should not be given the same protection and safeguard as is being done, in the case of manufacture of any goods. So my suggestion is that this should be extended so as to include secret process for discovery and inventions by scientists also.

SHRI P. R. THAKUR: Does this come in the Patent Bill that we have passed the other day?

SHRI SHRI CHAND GOYAL: No, Sir. This is a self-contained Act. We will not be able to derive any support or strength from the provisions of another Act. From the interpretation of this Act, therefore, if we feel that the process of scienific inventions and discoveries should also be protected, I would suggest that this should be included.

MR. CHAIRMAN: I think Mr. Goyal has very sympathetically considered. What you have stated on this point is a good suggestion for the consideration of the Committee. Only one question I would like to ask you on this.

What precisely is to be inserted in 6A? You said something about inventions.

SHRI SHRI CHAND GOYAL: As regards the secret process of manufacture of any goods etc., these provisions which have been incorporated in another bill, Contempt of Courts Bill where, the words used are 'where the information relates to a secret process, discovery or invention' and I want these words to be used here also.

MR. CHAIRMAN: All right. What is the other point?

SHRI SHRI CHAND GOYAL: My next point is with regard to Clause 9 dealing with penalties.

> "If any person, by words either spoken or intended to be read, makes or publishes any statement or does any other act, which is calculated to bring the Commission or any member thereof into disrepute, he should be punishable with imprisonment for a term which may extend to two years, or with fine, or with both."

My submission in this behalf is that the penalty of two years herein provided for is without any justification. Even in the contempt of courts or high court judges or supreme court judge, the act provides only a punishment of six months and not for two years. Why have years here? The Members of the Commission are not to be placed at a higher pedestal than the judges of the high courts and the supreme court.

I was a Member of the Committee on Contempt of Courts Bill and a lot of evidence came. Not a single witness favoured the increase of the penalty from six months to one year or two years. We have therefore retained six months in the new Contempt of Courts Bill.

MR. CHAIRMAN: Originally it was for two years. You know it was then reduced to six months and this continued. In this Bill the period mentioned is two years; in the Contempt of Court Bill that has been reduced from two years to six months.

SHRI SHRI CHAND GOYAL: My submission is that this should be changed into six months. The contempt of the judges of the High Courts and the supreme court should not be treated more lightly than the Contempt of the members of the Commission of Inquiry.

SHRI N. SREEKANTAN NAIR: As I understand it the Commission is placed in a very difficult position. They are not having any judical authority. Their judical authority comes in only when a particular individual is hauled up for an offence before the Inquiry Commission. Thev have no judicial statues. So much so any man who is in danger of being dubbed as anti-social, a cheat or a tot may escape with six months' imprisonment if he is convicted. But, in this particular case, I belived that a higher punishment is called for because a sentence for a contempt of court is not so great to a citizen as condemnation for his anti-social activities.

I am a political worker and am connected with my political activities for the last thirty years and I would prefer to abuse a judge and get six months' conviction than to go to a jail and be condemned with a punishment as anti-social element, So, I think necessarily the punishment of the contempt of the Commission must be much higher.

SHRI SHRI CHAND GOYAL: I do not think that this was in the minds of the framers of the Act, Probably this error has crept in because it was mentioned as two years in the earlier act.

SHRI N. SREEKANTAN NAIR: This was only my personal opinion.

MR. CHAIRMAN: Mr. Modhok, will you put a question?

SHRI BALRAJ MADHOK: I think what Shri Goyal has said may be considered by us. Originally it was two years and then it was brought down to six months. It has been modified and the law has been brought down to six months. If has been modified and the law has been brought upto-date and I think we may consider his suggestion.

MR. CHAIRMAN: We sholl certainly consider it.

SHRI SHRI CHAND GOYAL: I have got with me a copy of the Contempt of Courts Act, 1952. In this also it is six months.

"Save as expressly provided that any law for the time being in force, a person for a contempt of court my be punished with simple imprisonment for a term extending to six months"

MR. CHAIRMAN: I this Bill it was contemplated that it should be enhanced to two years. But, on the recommendation of the Select Committee, it was brought down to six months. That is the position.

In the Select Committee you might remember that this was brought down to six months whereas two years were contemplated in the new Bill in the beginning.

SHRI SHRI CHAND GOYAL: It was not in the draft. In the draft it was six months from the very beginning.

MR. CHAIRMAN: What I am trying to say is that originaly in the Bill six months were contemplated but in the amending bill two years was contemplated. The Select Committee recommended six months and that is how six months was incorporated in the Bill.

SHRI SHRI CHAND GOYAL: That is not the position. I was a Member

of this Committee and I know this fact. It was not at the instance of this Committee that the period was changed from two years to six months. It was always six months.

MR. CHAIRMAN: May be, our information is not correct.

SHRI N. SREEKANTAN NAIR: Here my arguments will hold good.

MR. CHAIRMAN: We shall certainly do that. But, we will not have the benefit of Shri Goyal for giving his guidance.

SHRI SHRI CHAND GOYAL: Clause 11 says:

> "The principal Act shall, as from the commencement of this Act, extend to, and come into force in, the Kohima and Mokokchung districts in the State of Nagaland."

I have perused the original Act which says:

> "This Act extends to the whole of India except the State of Jammu and Kashmir."

The only exception which has been made is with regard to the State of Jammu and Kashmir. Otherwise it applies to the whole of India including Nagaland.

So, I fail to understand why these two districts are being added now when the Bill already stands extended to the whole of Nagaland. The only exception which I find in this original Act is with regard to the State of Jammu and Kashmir. My point is that if this proviso applies already to the whole of Nagaland, then where is the necessity of adding these two districts. I have not been able to trace any amendment which suggests that the two Districts were outside the purview of this Act.

MR. CHAIRMAN: There is a mention in the Sixth Schedule. I am reading that for your benefit. It says:

> "As soon as possible after the commencement of this Constitution the Governor shall take steps for the Constitution of a District Council for each autonomous district in the State under this Schedule and, until a District Council is so constituted for an autonomous district, the administration of such District shall be vested in the Governor and the following provisions shall apply to the administration of the areas within such district in respect of the foregoing provisions of this Schedule, namely:—
>
> (a) no Act of Parliament or of the Legislature of the State shall apply to any such area unless the Governor by public notification so directs; and the Governor in giving such a direction with respect to any Act may direct that the Act shall, in its application to the area or to any specified part thereof, have effect subject to such exceptions or modifications as he thinks fit;"

The Governor has not issued any such notification and therefore it becomes necessary for us to adopt this course.

SHRI SHRI CHAND GOYAL: Instead of making a provision in the Act, it would be advisable to vest the power of retension to the Governor himself.

MR. CHAIRMAN: There is one more constitutional difficulty which I must point out to you. After the State of Nagaland was established in 1962, we are unable to get the Governor to act under this. It applies to the third district and it does not apply to Mokokchung and Kohima. Now, that being the position, how do we get out of it?

SHRI SHRI CHAND GOYAL: It is only a technical matter.

MR. CHAIRMAN: That is right. We are only taking care of the technical requirements.

Mr. Goyal on behalf of this Committee I thank you immensely for the troubles you have taken in submitting

a memorandum. Your evidence has been very enlightening and illuminating and I shall certainly look into whatever you have said when we shall take up the clause by clause consideration of the Bill.

SHRI SHRI CHAND GOYAL: Mr. Chairman, I am grateful to you and the honourable members of this Committee for affording me an opportunity to place my viewpoints.

Thank you very much.

(The witness then withdrew)

MR. CHAIRMAN: Some Members have approached me to-day in the Lobby and suggested that 28th and 29th September are the dates which had been fixed by the Committee. I may mention to this Committee that when recently I was in Bombay, Mr. Palkhivala talked to me about this Bill and he said that in view of the importance of the Bill he would like to give evidence before the Committee. We have sent him a telegram asking him to come and appear before us either on the 19th or on the 28th; we have to accommodate him for one day.

We have not received any other memorandum. Mr. Nair had said that some memorandum will be coming....

SHRI SREEKANTAN NAIR: yes, it is coming.

MR. CHAIRMAN: This is the position. I am entirely in the hands of the Committee. I am only anxious that we should in good time take up clause by clause discussion and submit our report as soon as we can. If Mr. Palkhivala comes on the 19th of September, we shall have to meet, otherwise on the 28th. On the 29th and 30th we shall have clause by clause discussion.

Thank you very much.

(The Committee then adjourned)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

Monday, the 28th September, 1970 at 10.00 hours.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

Lok Sabha

2. Shri N. C. Chatterjee
3. Shri Surendranath Dwivedy
4. Shri Hem Raj
5. Shri V. N. Jadhav
6. Shri N. Sreekantan Nair
7. Shri D. K. Kunte
8. Shri Bal Raj Madhok
9. Shri Dhuleshwar Meena
10. Shri P. Ramamurti
11. Shri S. S. Syed
12. Shri Gajaraj Singh Rao
13. Shri Rabi Ray
14. Shri R. Dasaratha Rama Reddy
15. Shri Sunder Lal
16. Dr. Sisir Kumar Saha
17. Shri Biswanarayan Shastri
18. Shri S. M. Siddayya
19. Shri Sant Bux Singh
20. Shri S. Supakar
21. Shri P. R. Thakur

Rajya Sabha

22. Shri Gulam Nabi Untoo
23. Shri N. P. Chaudhri
24. Shri Ram Niwas Mirdha
25. Shri M. L. Kollur
26. Kumari Shanta Vasisht
27. Shri B. T. Kemparaj
28. Shri Rudra Narain Jha
29. Shri J. S. Tilak
30. Shri Pranab Kumar Mukherjee

LEGISLATIVE COUNSEL

Shri S. H. Iyer—*Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri J. M. Lalvani—*Joint Secretary.*
2. Shri B. Shukla—*Deputy Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

Shri Gopinathan Nair, M.P.

(The witness was called in and he took the seat)

MR. CHAIRMAN: Today we shall record evidence from the hon. witness from Kerala; tomorrow morning we shall meet at 11 O'clock for general discussion in the morning and in the afternoon we shall record Mr. Palkhivala's evidence.

Mr. Gopinathan Nair, an hon. Member from Rajya Sabha is giving evidence before us. I should draw his attention to rule 58 which says that the evidence shall be treated as public and is liable to be published and that even if a witness wants it to be treated as confidential such evidence is liable to be made available to the Members of Parliament.

SHRI GOPINATHAN NAIR: I have to give my opinion on three or four points with regard to this Bill.

Firstly, any aggrieved person must be allowed to proceed against any public servant or any public man in authority if he deposited Rs. 500|-. In making this point I follow the 1968 Kerala Public men enquiry Bill which says: any person who is aggrieved can send a petition to the Chief Secretary to be Government of Kerala requesting for an enquiry into allegations of misconduct against any public men specified in that petition and every petition so sent shall be accompanied by an affidavit in support of the allegations contained there in and a treasury receipt evidencing deposit of Rs. 500 provided that no such treasury receipt is necessary where the petition is presented by not less than ten members of the Kerala legislative Assembly jointly or by the branches or Sate committees of a political party.

MR. CHAIRMAN: I have followed your point. Would we not be duplicating the provision that we have already in the Lokpal and the Lokayukt Bill? In terms of that provision also, an enquiry can be instituted against any public servant including the Ministers other than the Prime Minister, persons in the service of the public sector undertakings, etc. by the Lokpal or the Lokayukt as the case may be. Allegations of corruption and other malpractices would be covered by that enactment which had been passed by the Lok Sabha but which is pending in the Rajya Sabha. Clause 2(b) defines what allegations mean in relation to public servants.

SHRI GOPINATHAN NAIR: Proceedings against any public servant not public men. The Lokpal Bill covers only public servants, not public men who are in authority.

MR. CHAIRMAN: It covers Ministers also. Clause 2(a) says who will be covered by that Bill: it includes many categories of persons and it also includes the Ministers. It also covers the public sector undertakings' employees.

SHRI GOPINATHAN NAIR: That does not cover that class of public servants I am going to mention next.

MR. CHAIRMAN: Are you suggesting that some public men are excluded both from Lok Ayukt and Lok Pal Bill and the Commission of Inquiry Bill?

SHRI GOPINATHAN NAIR: That is my point. The provisions of the inquiry under this Bill should cover an public men in authority who hold responsible positions in life.

MR. CHAIRMAN: If it relates to a matter of public importance, is such a man free from the operation of the Commission of Inquiry Act?

SHRI GOPINATHAN NAIR: As the provision is at present worded it is not clear. A specific provision should be made to enlarge the scope of the inquiry to cover Members of Parliament including Central Ministers, Members of the State Legislature including State Ministers, members of the Panchayat, jilla parishad and municipal corporation.

MR. CHAIRMAN: According to my reading of the Bill, jurisdiction vests in the Commission to inquire with reference to any matter of public importance, irrespective of the person involved. If that is the correct reading of the provision, would you still insist on your suggestion?

SHRI SURENDRANATH DWIVEDY: What the hon. Member is presenting before the Committee is something different from the purview of the Bill which we are discussing. The Public Corruption Inquiry Bill, on the anvil of the Kerala Legislature, the Act which has been passed by UP Legislature and the Lokpal and Lokayukt Bill stand in a different category. The Commission of Inquiry Act deals with the scope and function of the Commissioner, how he is appointed and so on. This Bill does not cover what the hon. Member has in mind.

SHRI N. SREEKANTAN NAIR: According to the witness this Bill does not cover public men in authority; neither are they covered by the Lokayukt Bill which deals only with Ministers. He wants the scope of this Bill enlarged to bring within its ambit all public men. Any aggrieved person should have the right to level a charge against any men in authority provided he is prepared to substantiate them and provided also he is prepared to deposit a sum of Rs. 500.

SHRI GOPINATHAN NAIR: Yes, that is my point.

SHRI HEM RAJ: So far as Lokpal and Lokayukt Bill is concerned, it applies only to the Central Government. If the States want to pass such an enactment, they can do so.

SHRI GOPINATHAN NAIR: My suggestion is that there should be uniform legislation throughout the country on corruption and malpractices.

MR. CHAIRMAN: If I have understood your point correctly, all public men are not covered by either the Lokpal and Lokayukt Bill or the Commission of Inquiry Act. You want all of them to be roped in under this Bill.

SHRI GOPINATHAN NAIR: Yes, that is my point.

SHRI KEMPARAJ: If there is such a provision, any citizen can level a charge against a person in authority provided he is prepared to deposit Rs. 500. Will it not result in unnecessary harassment of men in authority? Will it not keep the field wide open?

MR. CHAIRMAN: That is right. If this provision is included in the Bill it is liable to be abused. Anyone can deposit Rs. 500 and make even a frivolous charge.

SHRI GOPINATHAN NAIR: Any person who levels a charge which is later found out to be *mala fide* vexatious, frivolous or fictitious can be proceeded against.

MR. CHAIRMAN: This Commission is only a fact-finding body; it has no judicial status or power. In that view of the matter, how can we provide what you are suggesting? Also, it is likely to be abused by some persons by depositing Rs. 500.

SHRI GOPINATHAN NAIR: Persons making frivolous charges can be proceeded against.

SHRI N. SREEKANTAN NAIR: Under clause 5 of the Bill certain offences can be referred to the magistrate by the Commission. If the scope of that provision is enlarged to include those people who make malicious or fictitious or unreasonable charges, will that not serve as a better protection than the procedure suggested in the Code of Criminal Procedure? When a man is prepared to go to jail for six months, he can do it with impunity in public today and the poor man who is responsible for it will not be able to clear himself. On the other hand, when an exhaustive

inquiry is conducted and it is proved. will it not be a better means of safety to the public men than what is provided under the Criminal Procedure Code?

MR. CHAIRMAN: Shri Nair is almost supplementing the witness.

SHRI BISWANARAYAN SHASTRI: The honour and importance of the man is compromssed in consideration of Rs. 500 only. Even by inviting self-injury one may institute an inquiry against a person of public importance. That will open the floodgates of harassment. Nobody will be safe in holding public offices. What is the answer to that?

SHRI NAIR: The answer to the first point is, "No". Regarding the other point, I do not think that it will open the floodgates of corruption charges or allegations of misconduct or misappropriation.

SHRI HEM RAJ: Do you not think that men of public importance, whom you want to rope in in this Bill itself, should be under the jurisdiction of the State Legislatures or State Governments rather than of the Central Government? Will they not be governed by the Acts of their own Legislatures rather than by the Central Act because those subjects are dealt with by the State Legislatures?

SHRI NAIR: They are governed by the Legislations of the State governments but my point is that in this matter it is desirable to have a uniform legislation applicable throughout the country.

SHRI HEM RAJ: Though the Constitution does not allow it.

SHRI NAIR: I am not a constitutional pandit.

SHRI RABI RAY: I think, the witness is aware of the fact that almost all the State Legislatures have passed or are going to pass the Lok Ayukta and the Lok Pal Bill. If you want that this Bill should not be unnecessarily unvieldy, would you not agree that this should be left to the State Legislatures to enact about sarpanches, panchayat chairman and zila parishad chairmen about corruption charges levelled against them? You can imagine how many charges and counter-charges will be levelled against each other before the Commission if there is a gram panchayat election pending.

SHRI NAIR: I do not think, State Legislatures will be deprived of any of their rights.

SHRI J. S. TILAK: You want to enlarge the scope of the Bill by bringing in MPs. But an MP has no authority or power. He may have influence indirectly but not directly. If he is in a position of authority, he can be brought under the Lok Ayukta Act if he abuses it.

SHRI NAIR: A Member of Parliament or of a Legislature should not be allowed to exercise, what you call, indirect authority against the interest of any person or any section of the community.

MR. CHAIRMAN: Even a Member of Parliament is not free from the operation of this Act once it is a matter of public importance. He may not be covered by the Lok Pal and Lok Ayukta Bill but no person is outside the operation of the Act once it is a matter of sufficient public importance.

SHRI R.D. REDDY: As far as I am able to understand, the Commission of Inquiry Act does not deal with any person or individual. When the Government or the Legislature consider that it is a matter of public importance on which some information has to be gathered by the Government for its own elucidation and not for further action, these authorities are given the power. So, it does not deal with X, Y or Z as such. If an MP comes within the purview of the Commission and his conduct has to be inquired into--in fact, it has been done in the Mundhra case--his conduct is inquired into and information

is gathered. That is intimated to the Government for such action as it considers proper. Therefore it will not be proper for us to consider it in relation to the other Act.

SHRI NAIR: Then, my next point is that once the Commission has been appointed for an inquiry, the appropriate Government should not have the right to dissolve the Commission. Extraneous factors should not be taken into consideration for dissolving the Commission.

MR. CHAIRMAN: This aspect of the matter is dealt with in section 7. Do you read section 7 as providing that the Commission might come to an end even before it has done its work?

SHRI NAIR: Yes. Political considerations or personal considerations or electoral prospects of a party in power may come in. These extraneous considerations should not come in.

SHRI SRADHAKAR SUPAKAR: What about the other side of the picture? Suppose, the Commission tries to perpetuate itself by unnecessarily lengthening the process of inquiry.

SHRI GOPINATHAN NAIR: It is a Commission appointed for a specific purpose and it should complete its work.

SHRI R. D. REDDY: The Commission is appointed for the purpose of inquiring into the conduct of a particular individual. If that individual dies, then the Commission becomes unnecessary. In such a case the Government has the authority to dissolve the Commission. If in the public interest it is necessary, the Government will continue it. Where it is appointed by the resolution of the Parliament or the Legislature, in such a case, the Government may be kept under obligation to report the matter to the Parliament or the Legislature for their consent.

MR. CHAIRMAN: He seems to feel that the Government yielding to extraneous influence might also stultify and bring to naught the very purpose for which the Commission is appointed.

SHRI R. D. REDDY: I am putting it the other way. Supposing the man concerned dies, it becomes unnecessary.

SHRI GOPINATHAN NAIR: Where a person against whom the inquiry is conducted dies, that is an extra-ordinary circumstance. I do not object to having a provision that when the person dies, the Commission shall cease to exist.

SHRI HEM RAJ: The Commission can be appointed in three ways by a resolution of the Parliament, by a resolution of the State Legislature or by the Government *suo motu*. So far as the Parliament and the State Legislatures are concerned, once they have passed a resolution, the Government shall have to go before them for resicinding the resolution. So far as the Commission appointed by the Government is concerned, do you want that there should be some modification in Section 7 of the present Act or do you want that this Section should be deleted from the Act?

SHRI GOPINATHAN NAIR: When the Commission is appointed under a resolution of the Parliament or the State Legislature, actually the appointment is made by the Government.

MR. CHAIRMAN: You want that the Government should have the power to appoint the Commission but no power to dissolve it.

SHRI GOPINATHAN NAIR: Yes.

SHRI SURENDRANATH DWIVEDY: I would like to ask one thing. If a person against whom the inquiry is conducted dies, the Commission becomes defunct. Is it your intention only to punish the person concerned or to find out really the kind of offence that is being enquired into?

The purpose of the Commission is to find out what sort of offences have been committed. Take, for example, an election petition. An elected Member against whom there is a petition dies. In the case of late Dr. Lohia, the Allahabad Court did not permit the petition to be withdrawn only because the person who was elected died. They went into the matter and elected the petitioner as a valied Member to the Legislature. Th inquiry is held to find the facts.

SHRI GOPINATHAN NAIR: That was not my point of view. That was the point of view expressed by the hon. Member here.

MR. CHAIRMAN: You readily agreed that if a person dies, it should come to an end.

SHRI GOPINATHAN NAIR: A person dying is an extraordinary circumstance.

MR. CHAIRMAN: That is a very normal circumstance.

SHRI HEM RAJ: I wanted to know whether he wants some amendment in Section 7 of the present Act.

MR. CHAIRMAN: He wants that the discretionary power in the hands of the Government to dissolve the Commission when it considers necessary to be taken away.

SHRI GOPINATHAN NAIR: Yes.

MR. CHAIRMAN: You want to delete Section 7 altogether.

SHRI GOPINATHAN: NAIR: My point is that the Government should not have any power to dissolve the commission unless the commission completes the job.

MR. CHAIRMAN: Any other point?

SHRI GOPINATHAN NAIR: That is all.

MR. CHAIRMAN: We are thankful to you for coming and elightening us on these points. We shall very carefully consider them.

SHRI GOPINATHAN NAIR: Thank you.

(The witness then withdrew)

MINUTES OF THE EVIDENCE GIVEN BEFORE THE JOINT COMMITTEE ON COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

Tuesday, the 29th September, 1970 at 14.30 hours.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Hem Raj
3. Shri V. N. Jadhav
4. Shri Bhogendra Jha
5. Shri N. Sreekantan Nair
6. Shri D. K. Kunte
7. Shri Bal Raj Madhok
8. Shri Dhuleshwar Meena
9. Shri S. S. Syed
10. Shri Gajaraj Singh Rao
11. Shri Rabi Ray
12. Shri R. Dasaratha Rama Reddy
13. Shri Sunder Lal
14. Dr. Sisir Kumar Saha
15. Shri Biswanarayan Shastri
16. Shri S. M. Siddayya
17. Shri Sant Bux Singh
18. Shri P. R. Thakur

Rajya Sabha

19. Shri N. P. Chaudhri
20. Shri T. G. Deshmukh
21. Shri Ram Niwas Mirdha
22. Shri M. L. Kollur
23. Kumari Shanta Vasisht
24. Shri Rudra Narain Jha
25. Shri Balachandra Menon
26. Shri J. S. Tilak

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer—*Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

1. Shri J. M. Lalvani—*Joint Secretary.*
2. Shri B. Shukla—*Deputy Secretary.*

SECRETARIAT

Shri M. C. Chawla—*Deputy Secretary.*

WITNESSES EXAMINED

Shri N. A. Palkhivala, *Senior Advocate, Supreme Court of India.*

(The witness was called in and he took his seat)

MR. CHAIRMAN: It would be presumptuous on my part to introduce Shri Palkhiwalla to the Members of the Committee. Mr. Palkhiwalla has been kind enough to come all the way from Bombay to give evidence before the committee.

Before he starts his evidence, as is customary, I must draw his attention to one of the Directions by the Speaker, namely direction No. 58 which says that the evidence shall be treated as public and is liable to be published unless it is desired that all or any part of the evidence given is to be treated as confidential, and even in case the witness desires that the evidence should be treated as confidential, such evidence is liable to be made available to the Members of Parliament.

SHRI PALIKHIVALA: I have tried to reduce to writing the main comments I have to make on the Commissions of Inquiry (Amendment) Bill, 1969. I would just like to clarify some of the points which are dealt with in this memorandum. Firstly, the Bill seeks to amend section 5 (2) of the existing Act by enacting that a puerson who is required by the commission to give evidence shall be legally bound to furnish such evidence.

In the memorandum wihch I have submitted copies of, we have given in parallel columns the text of the amendment as per the Bill and the text of the amendment as per the Law Commission's report. If hon. Members will be pleased to turn to page 2 of the memorandum, they will find that the Law Commission recommended the addition of merely the words 'any person so required'— that is, so required by the commission to give evidence—'shall be bound to furnish such information'. Instead of that, what the Bill seeks to do is to say that any person so required shall be deemed to be legally bound to furnish such information within the meaning of section 176 of the IPC .

I think the draft of the Law Commission is better for this reason that it takes care of the eventuality of the witness giving false evidence, which eventuality is not taken care of by the draft as per the Bill. The reason is this. There are two separate sections of the IPC which punish the person who does not give evidence or who gives false evidence befor a public authority. Section 176 punishes a person who being legally bound to supply information will not give the information, and section 177 punishes the person who being bound legally to give information gives false information. In the Law Commission's draft, the words are merely that the person required to give information shall be bound to furnish such information. That means that he is legally bound, and if he is legally bound, his failure to furnish information or his furnishing false information will be automatically taken care of by sections 176 and 177 of the IPC. But in the Bill what you have said is 'for the purpose of section 176', and that is a limited purpose, and by a fiction of law, so to speak, he shall be deemed to be bound. 'Deemed' means that he is deemed in the eye of the law to be bound when in fact he is not, and the reference is only to section 176. So, if he is deemed to be bound to furnish information, and if he gives the information, section 176 cannot hurt him. But if he has given false information, which is punishable under section 17, he may say that the fiction of law embodied in the draft Bill does not touch section 177 at all. Therefore, either we should keep the words of law embodied in the draft Bill does are comprehensive enough, or alternatively, if you want to keep the draft as per the Bill, it would be better to add the words 'and section 177' after the words 'section 176' in order that the offence of giving false information may be covered by the Bill.

Incidentally, I may mention that is quite unnecessary to say, as is said in

the Bill 'legally bound', because when the section says 'bound' and it is the law, he is legally bound. So it is pure tautology in any view of the matter. The word 'legal' should be dropped.

MR. CHAIRMAN: You say that the Law Commission's draft takes care of two eventualities, firstly, the unwillingness of the witness to come and give evidence, and secondly, the eventuality arising out of tendering false evidence, whereas the present draft takes care of only the former.

SHRI PALKHIVALA: Yes.

MR. CHAIRMAN: If we include 177 along with 176, that would be taken care of. But may I draw attention to sec. 6 of the principal Act?

SHRI PALKHIVALA: I have considered that, and still I have made this comment. There is a difference in law between furnishing information and giving evidence. It only takes care of giving evidence, but not furnishing information, which are two separate concepts in law. For example, I am now appearing before you and giving evidence. But later I may send you some information. There I am not giving evidence, but furnishing information. The section deals only with giving false evidence, it does not deal with furnishing false information.

MR. CHAIRMAN: One clarification. The Law Commission's draft merely says 'and any person so required shall be bound to furnish such informatin.' You say it takes care of both eventualities. How?

SHRI PALKHIVALA: This way Section 176 says: if any persoin who is legally bound to furnish information, does not do so, he is punishable; Section 177 says if any person legally bound to furnish information, gives false information, he is punishable. Once you say in your draft simply that he is bound to furnish information, you have taken care of those cases where anyone bound to give information either does not give it or gives false information.

There is another reason why you may retain the Law Commission draft. Your penal laws may be amended from time to time; there may be two other sections added to the IPC. But you are not going to amend this Act every time you amend the IPC. Therefore, if you use simply the words 'he shall be bound to furnish information' you have taken care of all the possible sections which may be in any part of the law of India where a person legally bound to give information is liable to certain consequences in certain eventualities. So it is always better to have a draft which dispenses with the necessity of enumerating the various sections under which a man would be punishable.

MR. CHAIRMAN: So we should rather go by the draft of the Law Commission which is fairly comprehensive and would not need any further amendment even if the IPC were amended.

SHRI PALKHIVALA: Yes. Hereby using fewer words you are covering a wider field.

Section 5A

The proposed addition suffers from two infirmities which might be removed at this stage. First, it seeks to provide that where a Commission is appointed by the Central Government, it can take the assistance only of an officer or investigation agency of the Central Govt., and by the same token, if the Commission is appointed by a State Government, it can take the assistance of an officer or investigation agency of that State Government. There is no reason to fetter the discretion of the Commission in this way. After all, a Commission appointed by the Central Government may desperately need the assistance of a State Government agency and vice versa; there is no rational reason why we should deprive the Commission of the benefit of the assistance of governmental agencies because light may come

from any window, from any quarter; if it is a State government agency, let it be used if it is useful; if it is a Central Government agency, let that be used. But let not the powers of the Commission be confined and circumscribed by reference to the question as to which Government appointed the Commission. So what I am suggesting is that every Commission, whichever Government has appointed it, should have the power of using the agency or officer of any Government, Central or State, subject only to the qualification, in the public interest, that the Commission must obtain the concurrence or the concerned Government whose officer or agency is sought to be availed of.

Secondly, ther is no reason why the Commission's power to take the benefit of an agency or officer should be confined to governmental agencies and governmental officers. After all, there may be very valuable information available to a private citizen, who may have his own investigation agency, who may be able to give certain assistance to the Commission. In fact, the Law Commission recommended without making a specific draft that the Commission should have the assistance of assessors. The suggestion I am making on p. 4 of the memorandum is that the Commission should be given the power to associate with it as assessors any other persons or investigation agencies, that is, other than government officers and government agencies, having special knowledge of any matter relevant to the inquiry, to assist and advise the Commission with the concurrence of such person or investigation agency and on such terms and conditions etc.

I may mention that when the Finance Minister of Japan was in Indian, I asked him a specific question— to what did he attribute the phenomenal growth of Japan? He mentioned three factors: first there is no dichotomy or antithesis between government on the one hand and the private business house or citiben on the other; they are just one nation, one force, one human factor working for the common development of the country; they always cooperate to the maximum possible extent. Secondly, he mentioned the savings of the people— 30 per cent of the GNP. Thirdly, he mentioned that the labour force was not given to strikes and disorder and indiscipline; they are totally dedicated to the cause of the company or public sector where they were working. Taking the cue from the first idea, the time has now come for us to get rid of the notion that the Government can function best when it is dissocitaled from private citizens. Government functions best and the truth is best ascertained when you bring the two together and when they co-operate with each other in finding out the truth. What is the object of the commission? To ascertain the truth. Do not exclude any agency which can be useful in this task. After all the commission will be appointed by the Government and you have confidence in the men you appoint; let them have the discretion to decide. If there is a private citizen or agency which can work as an assessor and assist the commission and help it in ascertaining the truth more accurately and speedily and if the commission wants it, let them have it.

MR. CHAIRMAN: You have stated that 5(a) circumscribes the authority of the commission and confines its authority to taking assistance form people mentioned in 5(a). You read this clause as being exhaustive, to mean that they can go thus far and no further?

SHRI PALKHIVALA: Other persons will be called to furnish information. It is not as if the commissions search for truth is confined to section 5(A); ou have other sections under which it can call for informa-

tion, it can summon witnesses to give evidence, etc. It has also the power of the civil court to call for documents. But over and above those powers you are now giving, there are two additional powers to be given to the commission according to my suggestion or one additional power according to the Bill. One power according to the Bill is to call upon a governmental agency to assist the commission in carying on its day to day work—'to utilise the service' of that agency or that Government officer. The other power that I have suggested is to have assessors. Take the railway accident enquiry or other public enquiries. You always find that if you have assessors who may be a scientist or technocrat or businessman or professor or teacher, their asistance will be of great value. In other words they will assist the commission in evaluating the information and the evidence placed before it.

MR. CHAIRMAN: My point is this: Is the commission barred from taking any assistance of the agencies other than those enumerated in 5(a)?

SHRI PALKHIVALA: It would be because otherwise you will not need 5(A) at all. A person might successfully argue ultimately that the power to have assessors is inherent in any commission, but it is a highly debatable point. Your object in having 5(A) is to put things beyond the pale of controversy and I do recommend that it is better to have the power to have assessors specifically put in. To take the assistance of a Government officer is a smaller power; to have assessors is something more basic. If you provide only for the smaller power in the Bill, by implication the bigger is denied.

SHRI RAM NIWAS MIRDHA: Your two points are actually covered by the proposed Government's amendment, which substitutes 5(a): it reads, 'The commission may for the purpose of conducting any investigation pertaining to the enquiry utilise the services of (a) in the case of a commission appointed by the Central Government of any officer or investigating agency of the Central Government or any State Government with the concurrence of the Central Government or such State. Government as the case may be, and (b) in the case of a commission appointed by the State Government, of any officer or investigation agency of the Stat Govrnment or the Central Government with the concurrence of the State Government or the Central Govrnment as the case may be.

SHRI PALKHIVALA: It says in more words what I have tried to say in fewer words: 'The commission may utilise the service of any officer or investigation agency of the Central Government or any State Government with the concurrence of the appropriate Government'.

SHRI RAM NIWAS MIRDHA: This is about drafting; we can look into it. I mean to say that your first point is substantially met. Your second point is about assessors. There is a provision for the appointment of such assessors in the commission of enquiry rules of 1954.

SHRI PALKHIVALA: One could as well then not have Section 5(A). The point is that when you are dealing with such a basic concept as assessors to assist the commission, the concept is so basic to the whole institution of commissions that it is better to have it in the Act itself. Frankly, I would be a bit anomalous if the much smaller power of taking the assistance of a government officer is conferred by the Act and the much more basic power of having assessors is conferred by the rules.

MR. CHAIRMAN: In these circumstances do you think that the rule might be challenged as *ultra vires* the section?

SHRI PALKHIVALA: It is certainly possible. Suppose you want it to

be done in the rules, I would strongly recommend: do not have 5(A) at all to say that the Government officers may be utilised by the commission. Our laws must be of such language and clarity and precision and some kind of balance should be maintained. It is a very unbalanced law where important things are dealt with by the rules and unimportant things, by the Act. I would preserve the balance in this case by either putting both in the Act or both in the rules. The power to have assessors is *intra vires*. But why not take the opportunity, now that you are amending the Act, of putting it in the Act, particularly when you are putting in a much smaller power.

MR. CHAIRMAN: The amendment reads:.."....with the prior concurrence of the appropriate authority or Government". May I know precisely what are the circumstances or what are the reasons you think would justify such a prior concurrence?

SHRI PALKHIVALA: That is in the case of Government officials.

MR. CHAIRMAN: It also states "with the concurrence of the Government."

SHRI PALKHIVALA: That is of the private person. A man cannot be compelled to be an assessor without his concurrence. There, Government does not come in. If you want to appoint an assessor, you seek his concurrence. You do not appoint him against his will.

MR. CHAIRMAN: The amendment is that such assistance is utilised after the Commissioner takes the consent of the appropriate Government.

SHRI PALKHIVALA: That is where the officer belongs to the Government. There, you take the Government's concurrence. In the case of a private agency, you take the private agency's concurrence; not the Governments concurrence.

SHRI DASARATHA RAMA REDDY: Who is to pay for them, if the Government's concurrence is not there?

SHRI PALKHIVALA: The Commission will have the funds Even today when you appoint an expert as an assessor, you pay his fee. The fund is made available to the Commission; it will take care of that.

SHRI N. SREEKANTAN NAIR: When there is a definite provision to get information as well as evidence, why should there be a private agency appointed as assesors? Will they be that much useful or much more useful than they would be useful when they give evidence and when they give information? Would the gain be proportionate to the quantum of money that is given? Of course, your remarks about the Prime Minister of Japan and all those things are basically your own, and we expect that from you. But all of us do not fully swallow it. Therefore, with regard to private agencies also, for the information and evidence which they can give, what is the extra benefit you get from the assessor which you cannot get from him as a witness or as a man who supplies information?

SHRI PALKHIVALA: It is a very relevant question and I am glad to have the opportunity to elucidate it. There is all the difference in the world between a man giving evidence or suplying information on the one hand and a man who evaluates the evidence or information supplied by others. When you have an assessor, you appoint a man for his judgement, not for the informaion in his possession, not for the evidence he will give. He is a man who has, say, 40 years of intellectual background; he has gained. When you have him a result of training and experience, he has gained. When you have him as an assessor, he will assist the Commission in evaluating the evidence given by , say, 40 witnesses and information given by, say, 32 other persons. He will sit down and asses and evaluate. To assess and evaluate is a completely different mental function and duty totally different from the duty of giving evidence or information.

You are quite right in reminding me that this is my personal belief. I strongly believe in it; I do believe that there are citizens of such great integrity in this country that their assistance as assessors on all matters before you would be invaluable to the Government. After all, the whole object of the Act is this. Look at section 3, and you will appoint Commission to enquire into any definite matter of public importance, you take the assistance of assessors; that means those who can evaluate, who have judgement, who have integrity. Take their assistance and let the Commission be benefited by them. If they are useless, the Commission will reject their assessment. If the assessment is useful, the Commission will benefit by it. After all, it is your option to have them or not. Assessors do not thrust themselves on you. They are available to you, if you would like to take their help. Therefore, I do submit that there would be a very good public purpose served by having assessors as distinct from mere persons giving evidence or information.

SHRI N. SREEKANTAN NAIR: The Law Commission's recommendations allow additional members to be added on to the Commission. There is also an amendment to that effect. It itself is a controversial matter, but if the Government feels that an expert is called for, there is provision in the initial stages itself to appoint such an eminent man in the Commission, because there is no limitation that all the people on the Commission should be judges or legal experts only Therefore, if the Government wants it, they can initially appoint such a man in the Commission.

Secondly, they can add to the membership of the Commission as it stands today. Whether that clause itself is right or wrong, is debatable, and some high court judges and persons of eminence have objected to it. I would like to have your opinion on that aspect of the question. But apart from that, this particular question can be met fullly by appointing such an eminent man as a member of the Commission rather than make him an assessor, because I feel-and I would like to have your opinion on that question- that to take away the responsibility of assessing the evidence from the members of the Commission will not be quite good, because there must be some uniform approach to the investigation which will not in anyway be mitigated or diluted by an outside agency. To be fair to the person under investigation, there must be some sort of uniform attitude and approach. This will bring diverse attitudes and approaches, because the assessors will have their own attitude and approach to the problem.

SHRI PALKHIVALA: Let me give two answers to this. The first answer is that, why the Government to only a single alternative? Either have the man as a member of the Commission or do not have him at all. Why not leave it to the Commission and to the Government, taking the two of them together, to have another alternative, namely, not make him a full fledged member and yet be an assessor? It is better for the Government because if a man as a member of the Commission has his own views, it will not be binding but they will have an effect on the view of the Commission. If you have them as assessors, you are entitled to even reject their views. If there is an ellbowroom, given by the amendment, the Government may take the benefit or ignore the views of the assessors, I think it is better that this particular alternative should be made available to the Government. After all, it is always up to the Government to appoint first-class people on the Commission. But, if the Government chooses for political reasons or otherwise, not to have first-class men on certain Commissions, let it be open to the Commission to have such men as assessors.

My second answer is that all over the world, not only in India, but in

other countries as well, where democracy or the democratic way of life flourishes, this institution of assessors is a proven institution, of great utility. In fact, our very rules provide for this institution as the hon. Member pointed out. What I am trying to do is to put on the Statute-Book what your rules already provide, because I do not want this kind of imbalance: that you provide for a minor thing in the Act and a major thing in the rules. This is the only object in having it here.

So, the second answer is, it is a proven institution, the institution of assessors, and it is with great respect to the hon. Members that I say that it is perhaps not altogether right to suggest that since the Government has the alternative of having first-class men on the Commission, therefore, you do not need the institution of assessors. It is an aternative which should be available to the Government or to the Commission if they are so inclined.

SHRI HEM RAJ: You want that the Commission itself should appoint assessors. But under the rules, "the Central Government or with the previous approval of the Central Government, a Commission may from time to time appoint one or more assessors.." etc. So, should the appointment of assessors be left to the Commission itself or should the Government step in?

SHRI PALKHIVALA: I would recommend that it may be left to the Commission. The whole object of the commission is to have an independent agency to ascertain the truth away from the dust in the arena of political life. I feel facts can be ascertained and truth arrived at more accurately if political prejudices do not sway the working of the commission. Therefore, if you leave it to the commission, the objective is more likely to be achieved than otherwise.

SHRI BALRAJ MADHOK: You seem to be proceeding on the assumption that commissions are necessarily meant for the purposes you have in view. If that purpose is very clear in the mind of the appointing authority and the mind of the person appointed, perhaps many of the difficulties would not arise. You talk of first class assessors. But those who do not want to have first class men on the commission will not bother about first class assessors. Now, taking things as they are in this country, in the light of our experience of commissions so far and within the framework of this Bill, what would you suggest to make these commissions really useful?

SHRI PALKHIVALA: You have raised a fundamental point and I know my memorandum is totally silent about it. You can have any law but unless it is worked in the spirit in which it has been intended, you are serving no purpose. Here normally commissions are appointed of people whose report is a foregone conclusion, which is sheer waste of public money and time, because you may as well do without that report. If the commission is to serve any useful purpose, they should appoint people known for their complete detachment in the matter and who have no views formed already, or they should have two or three people so that divergent points of view may be reflected in the report. But with the notion of what we regard as commitment, we have commissions appointed where if you tell me in advance who the members of commission are, I can tell you what their report will contain, even before evidence is taken. That is not the purpose of this Act. If your point of view is to be met—I would say it deserves to be met—you need a separate section expressly making it mandatory for the Governmnt to appoint popple on the commission for their suitability for job, for their integrity and knowledge of the subject and not because of a particular type of report expected of him.

MR. CHAIRMAN: This aspect of the matter is completely outside the scope of the present Bill. Of course,

Mr. Madhok is certainly entitled, as all of us are, to be enlightened by Mr. Palkhiwala.

Your next point, please.

SHRI PALKHIVALA: The next point is about section 6A. We have said in the Bill that "no witness will be compelled to give evidence which may amount to disclosure of a secret process of manufacture of any goods". It is a healthy provision, but your objective would not be adequately met by this because firstly 'manufacture' is not defined in this Act. Also, there are various items of "know-how" which is a compendious term, which do not involve manufacture of any goods, but yet they are as valuable to the possessor of that know-how as the secret process of manufacture would be to a manufacturer. Therefore, I suggest that you may add the words "or any other secret know-how" after the words "secret process of manufacture of any goods." For instance, take electricity. If a man has evolved a new chemical composition, it may not involve any manuacfture of goods at that stage, but its application may result in the manufacture of some goods. I am sure it is not intended that things which are tangible should be secret and things which are intangible should be disclosed. The whole object is to facilitate the giving of evidence without putting the burden on a citizen of disclosing something which is his valuable property.

MR. CHAIRMAN: We appreciate it, but don't you think we will again be confronted with the same difficulty of what is "know-how"? Where do we start and where do we end?

SHRI PALKHIVALA: There are Acts like the Income-tax Act which use the expression "konw-how" without defining it. It has now become a term of art or a technical term. Although you are quite right in reminding me that debatable questions will arise, the idea of this amendment is not to eliminate debate but to enlarge the field of non-disclosure to cover cases of intangible "know-how". There may be borderline cases of what is "know-how" but they have to be dealt with in the normal course or as judicial cases.

MR. CHAIRMAN: You know more than anybody else what an amount of litigation "know-how" has caused under income-tax law. Therefore, is it possible for us to define "know-how"?

SHRI PALKHIVALA: You are dealing with an Act where this question will not arise in the generality of cases. Once in ten years perhaps this section may present a problem. In the context of the Act which you are amending, it is not necessary to define it precisely. It would have been more necessary to define it in income-tax laws where royalty for know-how which is transmitted abroad is totally exempt. Yet, rather wisely, the Income-tax Act has not defined it. It is true that it has resulted in litigation. But there are cases where a certain amount of vagueness is preferable to rule of thumb which may work hardship and injustice in several cases.

SHRI RAM NIWAS MIRDHA: I think the present phrase 'process of manufacture" would cover what is intended by Shri Palkhivala. He refers to "any secret process of know-how" and gives the example of electricity. Electricity comes under the definition of manufacture. It is treated even as a goods, you can impose sales tax on electricity.

SRI PALKHIVALA: You have included 'electricity' in the definition of 'goods' by an artificial definition.

SHRI RAM NIWAS MIRDHA: Here we say "process of manufacture". 'manufacture' is a well-defined concept. It is a concept about which we are sure; we know what it involves. I do not think it would be proper to bring in a nebulous concept like "know-how" simply because the other definition is nebulous somewhere.

SHRI PALKHIVALA: Suppose a man is asked to disclose which would be the most satisfactory way of building an airport. If he is an expert in the line, it is a secret know-how; it has nothing to do with the manufacture of goods. He can charge a fee of Rs. 5 lakhs for disclosing that know-how on a contract basis. Are you going to compel him to disclose that information? Or, take the water shortage in Bombay. There may be an expert who knows how to solve that problem. Can you appoint a commission, call him as a witness and compel him to give information on how he will solve the water problem of Bombay? It is a secret know-how and he can make a million by disclosing it to the right people. Technology has developed so much that know-how has become very important and the manufacture of goods is an out-dated concept altogether.

MR. CHAIRMAN: As you say, we would rather have vagueness than the rule of the thumb.

SHRI BHOGENDRA JHA: By enlarging this category of secret process of manufacture or even technical know-how, we should not entirely exclude a certain class of people, moneyed people, because then the very purpose of the Commission would be defeated. Some one can say that he knows some secret process or secret method of winning elections or capturing power. That will make it ridiculous. So, could we not rather say "unless warranted by the purpose of the inquiry"?

SHRI PALKHIVALA: May I say a couple of things? If you look at the history of the various commissions appointed so far, I do not think this clause has been much in operation. For the last twenty years not a single witness has taken that stand, asking for protection. In other words, it would be a rare case where this particular section will come into operation. Secondly, how can you ever compel a witness because we are talking of secret know-how? Secret means ex hypothesis what is in his mind. If he does not disclose it, you will never know it and if it is known to you it will not be secret.

SHRI BHOGENDRA JHA: Then it is irrelevant.

SHRI PALKHIVALA: This is one such case where you make people commit perjury. No one in India can file a gift tax return without committing perjury because if you pay one rupee to your peon even that must be disclosed in that gift tax return. A legitimate law would have said that gift below Rs. 100 would be ignored. We do not do that. In this case, suppose a man conceals a secret know-how you do not do anything. But if he is truthful—and a witness wants to be truthful because he is on oath—and the Commission asks this question and if he honestly answers "Yes, I know a secret know-how but, frankly, I would not disclose it", you can prosecute him for not disclosing that information. Without the co-operation of that person you can never get the know-how because it is secret and you are not aware of it. The object of putting this section should not be to put a premium on dishonesty, as is unfortunately the case in our country all along.. If an honest man honestly says in public "it is a secret know-how" and he would rather not disclose it because it is valuable to him then he is penalised. It is not a question of money alone; a struggling young scientist of 22 would not like to disclose his plans and know-how to the Commission.

SHRI BHOGENDRA JHA: Suppose we add the words "unwarranted by the very purpose of the Commission"?

SHRI PALKHIVALA: With the greatest respect, it would mean that you are assuming that the Commission will ask questions which are not warranted by the purpose of the Commission. If you add the words it will

mean either the Commission is inept and does not do what it should do or you are saying that anything which is irrelevant should be disclosed in which case the section is meaningless.

My next suggestion is on page 7 and that is a matter entirely for the hon. Members to decide. Under section 10(A) you are going to punish anyone who is guilty of contempt of the commission, to use an expression which I may coin for the purpose of this meeting. If you are going to imprison somebody for contempt of the Commission, what the Law Commission recommended was simple imprisonment whereas your draft Bill talks of imprisonment for a term which may extend to two years. I would only say that in a matter like that, when the Commission is not a court of law, simple imprisonment would meet the ends of justice and no one is likely to malign the Commission because the punishment is only simple imprisonment and he would never do it if it is rigorous imprisonment. That question is not likely to arise. The Commission, after all, is not like a final court or the highest court in the country. Simple imprisonment would be all right.

The last point I have on the actual provisions of the Bill is on page 10. It may be that I have missed something but before coming here I tried to see whether I was wrong but I could not find an answer to the question I have raised. In the principal Act you have already mentioned that the Act applies to the whole of India, except the State of Jammu and Kashmir. That means that apart from Jammu and Kashmir to the entire territory of India, the Act applies. Now you say in the Bill that the principal Act shall, as from the commencement of this Act, "extend to and come into force in Kohima and Mekokchung districts of Nagaland." If the entire State of Nagaland is part of India, as I believe it is, then the Act applies to the whole of that State. If an Act says that it applies to the whole of India and in that very Act you say that it applies to some districts of Nagaland, it is a reflection on our territorial integrity. It is wrong cartography in our own maps.

MR. CHAIRMAN: We raised this question because we thought that the Home Ministry had committed cartographic aggression in this Bill. We have received a note from the Home Ministry on which we would like to be enlightened by you. The note says:

"A new area called the Naga Hills Tuensang Area was formed by the Naga Hills Tuensang Area Act, 1957. This area comprises of Naga Hills district, which was in Part A and Naga tribal areas; which was in Part B.

"The new area, namely, the Naga Hills Tuensang area was put in Part B. Naga Hill districts comprised the existing districts of Kohima and Mokokchung and the Naga tribal areas comprised the existing district of Tuensang. No. Act of Parliament will apply to the Naga Hills Districts, that is, Kohima and Mokokchung unless the Governor of Assam by public notification otherwise directs. The Commission of Inquiry Act was enacted in 1952 and it is found that the Governor of Assam did not apply that Act to the districts of Kohima and Mokokchung by public notification.

Consequent on the formation of Naga Hills Tuensang area, the State of Nagaland, in 1962, the power of the Governor of Assam to apply any Act of Parliament to areas in parts shall cease to exist even though the district of Kohima and Mokokchung are included in the territory of India. Since the 1952 Act aforesaid has not been applied by the Governor of Assam, the only course now open is to have an express extension of this Act to the districts of Kohima and Mokokchung as now proposed in

clause 11 of the Bill. Since the 1952 Act applies and continues to apply to the district of Tuensang, no extension of that Act is necessary."

Therefore, far from committing any aggression, in fact, by bringing out expressly what might have been implied aggression has been warded off.

SHRI PALKHIVALA: With great respect to the legal advice of the Home Ministry, I don't agree. If your Act says that it applies to the whole of India, and if you go on to say in the same Act that it will extend to certain districts of Nagaland, it means you are assuming that other districts of Nagaland are not part of India. The only way to do is to clarify that this is your intention and you can have a separate Act of Parliament extending to these areas. But I would very strongly deprecate the practice of our Indian Parliament to do like this. It is wrong to have in the same Act these two inconsistent provisions, one that it will apply to the whole of India and another that it will apply to certain districts of Nagaland. What would any foreigner think? Imagine if you were reading the Act separately. This explanation is legally incorrect.

MR. CHAIRMAN: Broadly speaking, how is it legally incorrect?

SHRI PALKHIVALA: Once you say in your Act that it applies to the whole of India, you have made it applicable to the whole of India including the whole of Nagaland. You will need another separate Act to make it inapplicable to certain areas. In other words, you do not need a positive provision to make it applicable but a negative provision to make it inapplicable. Once any district of Nagaland has come under the jurisdiction of Parliament, it becomes automatically a part of India. Suppose India were to conquer another territory tomorrow, I hope, it will not—and it became a part of India. All the Indian laws will apply to that. This has been a part of India right from the very beginning. It is not a new territory we are acquiring. All that we are talking of is about the reorganisation of the districts of Nagaland which were all a part of India before. They were never ceased to be a part of India. How do you reconcile that with a law made by Parliament where one part says that it applies to the whole of India and another part says it applies to certain districts of Nagaland.

With great respect to the Committee, I would say, it cannot make any sense. There are two alternatives before you. One is to have a separate Act if you like. You make certain laws applicable to certain areas to which so far the laws were inapplicable. Alternatively, you take the existing clause itself, and say, it applies to the whole of India which includes the whole of Nagaland and you say, to what part of Nagaland it does not apply. The drafting should not be such as to give a handle to anybody to say that ours is not one single country and that some areas are not part of India. With great respect to the legal advisers to the Home Minister, I would say, they are not on the right path. You can make some kind of an explanation to say that though certain laws were made inapplicable to certain areas, they are now made applicable to them. But you cannot have two inconsistent Sections in the same Act, one saying that it will apply to the whole of India and the other saying that it will apply to certain districts of Nagaland.

MR. CHAIRMAN: Is this Section 11 going to form part of the principal Act?

SHRI PALKHIVALA: I think so.

MR. CHAIRMAN: No. What we are advised is that this will not be part of the principal Act. If this is not the part of the principal Act, would it not be a sort of compromise between what you are suggesting and what the Law Ministry has suggested?

SHRI PALKHIVALA: Yes; I follow your point that Section 11 will not

form part of the principal Act. But it will form part of the amending Act when it is made into law. That is a valid point. But I would recommend that you might improve upon the drafting. You may say that the principal Act which has so far been made inapplicable to such and such districts in the State of Nagaland shall, after the commencement of this Act, extend to and come into force in those districts. In other words, you indicate it is a part of India to which it would have normally applied. The Act which was made inapplicable is being made applicable now.

SHRI P. R. THAKUR: There is a difference between universal laws and general laws. We are not going to pass any universal law. Universal laws have no exception. But general laws have exceptions. These are general laws.

SHRI PALKHIVALA: I am not disputing the power of Parliament to have exceptions. I think, I have not made my point clear to the hon. Member. The point that I am making is not that a law made by Parliament must necessarily apply to the whole of India. You can have exceptions. I am only on the point of drafting. In one Section you say it shall apply to the whole of India and in another Section you say it will apply to certain parts of Nagaland. That is the inconsistency I am referring to. I am not disputing the power of Parliament to make certain exceptions.

SHRI BAL RAJ MADHOK: The point that you have made is really valuable. In our Constitution, in article 1, we say, India, that is Bharat, includes this and that, and in the same Constitution, we say, it will not apply to Jammu and Kashmir. As you know, the State of Jammu and Kashmir have a separate Constitution. Don't you think that also militates against the concept of unity of our country and that there should be something done to remove that also?

SHRI PALKHIVALA: It is a matter of high principle which the hon. Members would, I have no doubt, apply their minds to. It is true that to an outside observer the more laws made inapplicable to certain parts of India, the greater the psychological tendency to thing that that part is not integrated into the rest of India. That is a matter for hon. Members to consider.

SHRI RAM NIWAS MIRDHA: It has been suggested that a law should be made applicable to the whole country. and if an exception is sought to be made, it should be done specifically. But under our Constitution all Acts of Parliament do not *ipso-facto* apply to certain areas that are mentioned there. Even in regard to a basic law or an important law like the Criminal Procedure Code, it is not through an Act of Parliament as such but by regulation that that Act has been applied to certain areas in the Eastern Frontier. But our Constitution says that if you want to apply a certain Act of Parliament to these areas, you have to specifically issue a regulation and since no regulation was issued in the case of these two districts, now it is being supported by this phraseology.

SHRI PALKHIVALA: Let me put the record straight. When I made a lot of criticism in the beginning about Sec. 11, I made the mistake of thinking that it will be a part of the principal Act. It has been rightly pointed out to me by the hon. Chairman that Sec.11 will not be a part of the principal Act. Therefore, a substantial part of my criticism was misconceived. But I am only left with one point which I am making. That only I am talking now as a matter of drafting device. I do think that if we are to present a front of a united integrated country, perhaps our drafting may take a different form from the form we have been used to so far. Otherwise there are impressions created particularly about the border areas that they are not really a part and parcel of the country whereas by a little change in drafting we could have the same objective achieved but in a form which does

not convey this impression of the country not being united integrated republic.

MR. CHAIRMAN: After you have finished, we would like to take the liberty with you of asking some questions on this Bill which may not be covered by your point.

SHRI PALKHIVALA: I may just deal with three points which I have mentioned in Part II of the memorandum.

This is again a matter for the hon. Members. Sec. 3(1) of the principal Act to-day says that the Government is bound to appoint a commission if the Lok Sabha passes a resolution. The Law Commission recommended that if there are two Houses of Parliament either at the Centre or in a State, let both the Houses pass a resolution because both Houses stand on the same footing. I have sufficient respect for both Houses of Parliament to think that the Law Commission's recommendation is justified and I would think that if you are going to bind the Government to appoint a Commission and if it is a binding obligation on the Government to appoint a commission, then, if there are two Houses at the Centre or two houses of legislature in the State, let both the Houses pass a resolution because after all your bills are passed by both the Houses. Now you are going to enjoin a duty on the Government to appoint a commission. Because Government has no alternative but to appoint a commission and when this has to be done, let both Houses of the Legislature be put on the same footing. That was the Law Commission's recommendation and I think in our constitutional set up it is a valid recommendation.

MR. CHAIRMAN: This, I believe, is the practice in England that the resolution must be passed by both Houses. Am I right?

SHRI PALKHIVALA: That is my recollection.

MR. CHAIRMAN: Would you in the light of the experince of working of this enactment so far really see any jeopardy to basic democratic institutions in our country if the law was not amended on the lines suggested by you? What would be the real jeopardy caused?

SHRI PALKHIVALA: The whole philosophy of two Houses is to eliminate the margin of error. All human beings are fallible. All human beings act in the heat of passion or moments of extremism and second thoughts are often better than the first. The whole object of the second House is that you reduce the margin of error. You will never be able to eliminate the entire margin of error but you reduce it by having a second chamber, a kind of a revising authority, a kind of authority whose concurrence will give some more time to think and will act sometimes as a brake on what may otherwise be passed as the law of the land or the decision of the legislature for the time being. Now if this is the objective which you seek in respect of all your laws and all your laws have to pass the gamut of both the Houses and they cannot be laws unless both the Houses approve of it and if you find that philosophy in the democratic set up healthy, useful and something to be adhered to then, Sir, I find it a little difficult to see how when it comes to compelling the government to appoint a commission, the same philosophy should not be allowed to work because after all what is good enough for making your laws is also good enough for compelling the Government to appoint a commission. Sometimes, unfortunately—again I would prefer to be frank, otherwise as I said, I will be just wasting your time—if we ourselves exercise a little restraint, will it do anybody any harm? Perhaps the little restraint may make us progress very quickly and bring about economic development much faster than extremism or haste and I am inclined to think that your commission will have far-reaching consequences for ordinary citizens you may involve a man. It is no use saying, 'if

you are innocent, nothing will be found against you.' Imagine a man being hauled up for trying to murder. You say, 'If you are innocent, you need not fear'. The point is that he has to go through the mill and go through the gruellin examination for 2 or 3 or 4 or 5 years. Afterwards at the cost of enormous time and money, he may be able to vindicate his honour. Meanwhile the damage may be done. Probably impressions are created. They are not easily obliterated once they are created in the protection of ordinary citizens who may be subjected to these inquiries and if you are going to bind the Government to have a commission appointed as a matter of legal necessity, I do think the restraint which is exercised by a second House will be a very salutary check on any hasty action.

SHRI BHOGENDRA JHA: Do you mean that when the Lok Sabha passes a resolution and the Rajya Sabha also passes a similar resolution, it is binding on the Government or do you mean that after the Lok Sabha adopted a resolution, that should go to the other House also? In that context would you think that the House which is directly elected should have a preference because it is on the Lok Sabha vote that Governments are formed or changed or removed. The other House has not got that power. Don't you think that the lower House elected on the basis of direct suffrage should have the preference here also?

SHRI PALKHIVALA: My submission is: here I think the two Houses should act first of all together.

Your first question is: should it be the resolution of either House or the resolutions of both the Houses? The answer is both the Houses.

The Rajya Sabha by a single resolution of its own without that of the Lok Sabha cannot compel the Government to appoint a Commission nor can the Lok Sabha by its own resolution without the approval of Rajya Sabha compel Government to appoint a Commission. You need the concurrence of both the Houses. You are reducing the margin of error. Even elected Members are sometimes as prone to error as nominated Members or people not directly elected. The whole object is, the collective wisdom of both the Houses is applied. There is no reason to assume that a directly elected representative is wiser than the person of the Upper House. The collective wisdom concept which is underlying our constitution is a healthy principle. The chances of commissions being wrongly appointed will be reduced if you have a resolution of both the Houses.

SHRI RAM NIWAS MIRDHA: Under British Parliament Act reference of both Houses is necessary and they have to pass resolutions for commission or tribunal to be appointed. But although this is based on the British legislation. Government in India can *suo motu* without consulting any House appoint any commission of enquiry. There are two cases. First, the Government of its own may appoint a commission of enquiry. Secondly, even though the Govt. may not be willing, the public opinion may assert itself and force Government to appoint a commission. Is it your opinion this will be much more difficult if it is to be from both the Houses? Would you protect the Government in that respect and to what extent?

SHRI PALKHIVALA: As the hon. Minister has rightly reminded me, the Government may appoint a Commission on its own. Without Parliament obliging it, the Government can do so. Government is completely at liberty to do so. What we suffer from today is not a paucity of laws, but we have many more laws than what we really require or need. We make more laws under the impression that existing laws are inadequate. It is not so. I was talking to a highly placed Government official and I asked him: Without a particular Act, which I shall not name—cannot you take action under other laws? The man said, Yes, that could be done.

The position is this today. There are existing laws to deal with defalcations, defaults, malpractices etc. Now, a Commission is a peculiar kind of thing. You subject the person to a gruelling type of enquiry without any compensatory benefit even if he is ultimately found to be not guilty. The representatives of the Rajya Sabha are as public minded and conscious as other legislators, as other Members of the Lok Sabha. I don't think there is any reason for excluding the Rajya Sabha from the deciding voice on whether a commission should be appointed or not.

SHRI SREEKANTAN NAIR: There is large amount of corruption, nepotism and favouritism rampant in the country since independence. It is better we compel individual freedom under threat of exhaustive enquiry which cannot be compensated even if found innocent. That is better than allowing nepotism and corruption to continue unbridled. Therefore too much of individual prestige etc. is not a relevant factor. In certain cases even individuals can approach Government after paying Rs. 100 and after taking declaration on oath. There are provisions where 10 Members of local legislature can demand it in writing. Would you still argue that concurrence of both the Houses is necessary? It is the majority Government which functions in a democracy. If the majority in Lok Sabha goes against the Government that Government will have to resign because the majority will be against Government. So, this concept of compelling Government is not there. Should it not be made more easy rather than more difficult to bring into being higher standards of morality in the country?

SHRI PALKHIVALA: I have no doubt the hon. Member is actuvated by the highest motives. The point is this. Practical experience discloses that the ultimate safeguard of democracy is only the standard of decency, morality in public life, and standards of high integrity in public administration. I don't think any commission will be able to bring that about even if you have hundreds of such commissions and the abuse which the hon. Member refers to will persist. It is only when the national character becomes evolved that such abuses can be stopped. Even if you allow the Government every alternate day to appoint a commission, this mischief you refer to will persist.

MR. CHAIRMAN: You may come to the next point.

SHRI PALKHIVALA: The second suggestion which the Law Commission made is this. This is about addition of the words in Section 3(i) "functions necessary or incidental to the enquiry", because as the section stands it is not quite aptly provided for. Your power is to appoint a Commission only in a case where you want an inquiry into any definite matter of public importance and then you talk of a Commission to perform such functions as may be specified in the notification. Those functions can only be those which are necessary or incidental to inquiry because inquiry into a matter of public importance is the only foundation on which a Commission's appointment can rest and, therefore, as a matter of logical thought and as a matter of neat drafting the addition of words would make clear what already is implicit in the Section. Therefore, Sir, it is better to make explicit what is, in my opinion, implicit in Section 3, *viz.*, when you appoint a Commission to make an inquiry into any definite matter of public interest and specify in the notifications the functions to be performed by the Commission what you mean—functions necessary or incidental to the inquiry. This is what the Law Commission recommended and it is a reasonable clarification of the existing law.

The third point is again a minor matter but as the Section stands today you have given the Government the power to specify the period within which the inquiry can be completed. I am not very keen on it but since you are amending the Act you may as well give an express power to the Government to extend by an appropriate notification the period from time to

time within which the Commission has to submit its report and that is why the Law Commission made the recommendation that in Section 3 you add these words: The Commission shall complete its inquiry and make its report to the appropriate Government within such time as may be specified by the appropriate Government by notification in the official gazette or within such further period or periods as that Government may by notification specify. If you are going to have that clause which expressly confers the powers you would omit the words 'and within such time' which are today in Section 3(i) because those words would become unnecessary.

MR. CHAIRMAN: The first question arises out of certain amendment proposed in clause 2 and clause 2 which amends Section 3 *inter alia* provides that the Government would hereafter be able to increase the number of Members of the Commission. Having constituted a Commission thereafter it has the power to increase the number of Members of the Commission. It had been represented to us that this is a provision which is likely to have in due course of time in certain cases very undesirable effects and ramifications. With your experience in the legal world and in view of the proceedings which have taken place before different Commissions do you think this provision would really be undesirable?

SHRI PALKHIVALA: I am sure when the Law Commission recommended it, it did in all innocence thinking it would enable the Government to bring about a state of affairs in discharging of functions. I can quite see the point the hon'ble Chairman is making that you can dilute both the integrity and competence of a Commission by the addition of some Members. I would say, Sir, that risk undoubtedly there is. It is like this anything which is worked in good faith will work all right. If in the present context you ask me is there risk having regard to my experience, I would say there is palpable danger of that sort. Today in the present context that danger is there and if the hon. Members feel that there is such a danger then as a humble witness it will be my duty to say that it is better not to give this power.

SHRI BALACHANDRA MENON: If the Members are increased with the permission would you allow that. There might be some danger in increasing the number of Members but why not get the Parliament's permission and then increase it?

SHRI PALKHIVALA: We are dealing not only with Parliament but State legislatures. It may lead to various pressures being built up within State legislatures which may result in unhealthy practices being adopted and the object which the hon'ble Member has in mind may be frustrated. I am inclined on the whole that if at all you wanted to retain this power the amendment you suggest would be a kind of good check. I am asked to choose between two alternatives—having no power and having the power to increase with the permission of appropriate legislatures. In the present context, I would be inclined to think that to avoid the generation of undue pressures, it may be better to leave the legislature out, to leave the Government of it, once the Commission is appointed.

SHRI R.N. MIRDHA: It was stated that the Government should not have the power to increase the number of Members of the Commission and according to Shri Palkhivala, it could be done with the permission of the Commission. Actually, we propose to bring an amendment that if the commission only so recommends in the course of its work, to facilitate its work, only then the Government would be able to increase the number.

SHRI PALKHIVALA: I think, Sir, that would be a reasonable solution of this somewhat difficult problem.

MR. CHAIRMAN: Supposing a one-man Commission finds himself that

he is not able to cope up with the work and he makes a recommendation to the Government.

SHRI PALKHIVALA: What the Minister has suggested is, I think, a fair amendment to what is stated in the Bill.

SHRI BAL RAJ MADHOK: Just now you were discussing about the way, the Commission should be appointed and you said that if both the Houses want this. We have a party system Government and if the party in power wants to do it, it can appoint independently or even through the legislature. In case it does not want to appoint a Commission or public wants it, but the Government for reasons best known to it, may be partisan reasons, or political reasons, does not want to do it, what would you suggest for the appointment of a Commission, or any such provision in this Bill?

SHRI PALKHIVALA: Very frankly speaking, Sir, it is quite relevant as to how to ensure that a Commission is really appointed. Everything depends on the person who is appointed as the Commission. In our country, traditions have not grown up to that degree of public decency and integrity where you feel that once the law has given you power, you can exercise it in the public interest. If that is the general climate in the country and the power to appoint a Commission is not exercised to use the very best man for the job, and you try to appoint a person from whom you expect a certain type of report, I think, there is no use or good in compelling the Government to appoint a Commission. If there was some kind of convention developed in this country, which made it obligatory on a man in power to exercise his power only in the public interest and not for his personal advantage, then, Sir, what you have said, would be desirable. There should be a healthy restraint by conventions or by law on the Governments power to appoint Commissions and choose really good men for the job.

SHRI BAL RAJ MADHOK: It has been suggested that some conditions or qualifications should be laid down and the man who is appointed should fulfil certain conditions. There we agree that the Bill should have something like that. Provided if that is there, supposing that provision is made then what is your answer to my question?

SHRI PALKHIVALA: It would be rather difficult to conceive of a provision, where you can compel the Government to appoint a Commission. If you want to have a legal mechanism which can work in every case, it would be very difficult except by providing for a resolution of both the Houses or of one House. You can say more than one-thirds of the members or law can provide for a resolution of both the Houses if you wanted to have a larger area within which to compel the Government to appoint a Commission.

SHRI BAL RAJ MADHOK: You have long experience of these and other legal matters. Sometimes Commissions are appointed, they take undue long time to give the reports. Even when the reports are available, they are not made public, and therefore, the people do not know what has been done and they cannot pass judgement about the work of the Commission. Don't you think that it will be advisable to have a provision in the Bill itself that when a Commission is appointed, some kind of a deadline should be fixed that the report should be given by such and such date and the report should be made public compulsorily?

SHRI PALKHIVALA: I am very strongly in favour of this. I think, you are serving half the purpose by not having a provision to make it obligatory to publish the reports. It is like this otherwise, that if I get a verdict in my favour, I tell the whole world about it, else I keep silent. You cannot serve the public interest by keeping back the truth. The whole object of the Commission is to bring forth the truth. It should be made mandatory to publish the report of the Commis-

sion. Firstly it should be placed on the table of legislature and then it should be published within one month. I am very strongly of the view that, with the present political atmosphere in the country, it should be made mandatory to publish the report of the Commission. It should be first laid on the Table of the Legsilature and published within one month.

SHRI RAMA REDDY: Would it be proper that once a Commission is appointed, the Government could take a decision that the Commission should not go ahead with the duties entrusted to it?

SHRI PALKHIVALA: If one reads Section 7, the Government can vertually put an end to the Commission's life by a simple notification.

SHRI RAMA REDDY: If Government could resort to this method of issuing a notice and appointing another Commission again, it would involve public money and so many other things (you know the various responsibilities). Do you not think it right and proper that Government should be given this power to put an end to the Commission's existence only subject to certain conditions.

SHRI PALKHIVALA: You mean putting an end to the Commission's existence by a mere notification? Yes, I would suggest that the best solution would be, as the Hon'ble Member has suggested, that if the Commission makes a recommendation the Government may increase the number of members of the Commission and, at the same, the power under Section 7 should not be allowed to be exercised till such time the Commission has not made a report. It may be exercised only after the Commission has made its report and if, for the reasons explained in the report, the Commission expresses its inability to proceed further. In other words, it should not be binding on the Government to put an end to the Commission's existence merely because the Commission finds it inconvenient to go ahead.

SHRI RAMA REDDY: In case a Government appoints a Commission and the Government goes out of office, this would apply to the next Government also.

SHRI PALKHIVALA: Yes, you are quite right. In fact I would say that it is so clear that nobody can possibly oppose the suggestion the Hon'ble Member has made, namely that no Government should have the power to put an end to the existence of a Commission before it has made its report.

MR. CHAIRMAN: The Committee is extremely grateful to you, Mr. Palkhivala, for coming and giving evidence. Our Secretariat was always aware and we are also aware that your coming here to give evidence will be a matter of inconvenience to you. But despite this, we persisted and saw to it that you came. Your evidence has been extremely illuminating and extremely valuable to us and would assist us in the discharge of our obligation. Kindly accept our most grateful thanks, Mr. Palkhivala.

SHRI PALKHIVALA: On the contrary, I am grateful to the Hon'ble Members for calling me here and letting me see and have a share in all the work that day in and day out the Committee has been doing to place a report before Parliament and assist in the implementation of the law.

(The Committee then adjourned)

MINUTES OF EVIDENCE GIVEN BEFORE THE JOINT COMMITEE ON THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1969

Wednesday, the 21st October, 1970 from 08.30 to 10.00 hours in the Legislative Assembly Building, Srinagar.

PRESENT

Shri N. K. P. Salve—*Chairman.*

MEMBERS

Lok Sabha

2. Shri Surendranath Dwivedy
3. Shri V. N. Jadhav
4. Shri Bhogendra Jha
5. Shri N. Sreekantan Nair
6. Shri D. K. Kunte
7. Shri Dhuleshwar Meena
8. Shri S. S. Syed
9. Shri Gajaraj Singh Rao
10. Shri Bhola Raut
11. Shri Rabi Ray
12. Shri Shantilal Shah
13. Shri S. M. Siddayya

Rajya Sabha

14. Shri Gulam Nabi Untoo
15. Shri N. P. Chaudhri
16. Shri Ram Niwas Mirdha
17. Shri M. L. Kollur
18. Kumari Shanta Vasisht
19. Shri B. T. Kemparaj
20. Shri Chandramouli Jagarlamudi
21. Shri Pranab Kumar Mukherjee

LEGISLATIVE COUNSEL

Shri S. Harihara Iyer—*Additional Legislative Counsel, Ministry of Law.*

REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

Shri J. M. Lalvani—*Joint Secretary.*

SECRETARIAT

Shri Ram Kishore—*Assistant Committee Officer.*

WITNESS EXAMINED

REPRESENTATIVES OF GOVERNMENT OF JAMMU AND KASHMIR

Spokesmen

1. Shri P. K. Dave, *Chief Secretary,*
Government of Jammu and Kashmir, Srinagar.

2. Shri M. N. Kaul, *Revenue Minister,*
Government of Jammu and Kashmir, Srinagar.

MR. CHAIRMAN: Shall we begin now? Mr. Dave—Do you want to mae general statement before we put question to you on the enactment?

SHRI P. K. DAVE (Chief Secretary, Jammu and Kashmir State): No Sir.

MR. CHAIRMAN: Your detailed note has been circulated amongst the members of the Committee.

SOME MEMBERS: We have not so far received this note.

MR. CHAIRMAN: I am sorry. I will just now ask the concerned to handover the above mentioned note.

MR. CHAIRMAN: Mr. Dave, will you read out the note before the committee?

SHRI P. K. DAVE: Yes Sir

(Reads the written note—Appendix)

MR. CHAIRMAN: Mr. Dave, are you very particular about the wording of the note you have read before the committee.

SHRI P. K. DAVE: No Sir, This proviso will be looked after by the legal draftsman.

MR. CHAIRMAN: Did you apply your mind and whether the State Government made any recommendation to the Central Government about the desirability of application of this Act to the State of Jammu and Kashmir before formulation of this amending enactment?

SHRI P. K. DAVE: Recently we had this matter under consideration. A suggestion was made by Government of India to apply these entries or entry 45 of the concurrent list in the original form to the State of Jammu and Kashmir. At the same time we considered the matter that a reference should be made to the Government of India to fill up this lacuna, and meanwhile I got your programme and we thought it proper to place our point of view before you here.

MR. CHAIRMAN: Any of the hon. members wants to put any question to the Chief Secretary.

SHRI GAJRAJ SINGH RAO: Before I put you question on two or three points I would raise some preliminary points. It is that this is now a considered thing that Kashmir is integral part of India from all quarters so far we and you are concerned. Then again Enquiry Commission sometimes is mixed with a legislation action. The Enquiries held only to certain facts or certain considerations and after that a legislation action comes if any, to be taken or a certain action, if any, to be taken in accordance with the Constitution and powers of State Legislature or the Central Legislature. But that does not become a law of the Commission's report. These are the preliminary points with regard to the Commission. Now I would say about every state, of course, I come from a poorest state and so other hon'ble members also. The Enquiry Commission has been appointed under this enactment to survey whole of India where what type of agriculture and what type of aid is given. So then the agriculture is a State Subject and if Kashmir alone is excluded from the purview of the Inquiry Commission because they are doing themselves in a better way. Would it be an interference in the powers of the State Government if some recommendations of the Commission are made applicable to the State of Jammu and Kashmir for improvement of agriculture. For instance I would refer the recommendations of the Administrative Reforms Commission set up under the Enquiry Commission Act. Under the present law the State Government may take up the recommendations of this commission or may not take up. So it would so it in the best interest of the State itself that this enquiry Act should be applied here as a whole which does not reduce the powers of the State Government or takes away powers of the State Government in any way. We are pressing

now for the development of the backward areas and there are some parts like Ladakh in the State also which are very backward. After holding an enquiry the Government of India could press for the development of backward areas like Ladakh and thereby we can have best results of the developmental works. The Commission set up for this purpose wants to call a witness from the State or outside the State. You as a Chief Secretary of Kashmir Government can appear before this Commission as an important witness. But a man from Gauhati cannot be called for as a witness. Similarly there are thousands of question which are likely to arise. For instance there is a question of boundaries. Kashmir State is claiming as a mountenous area a part of Gurdaspur District. Similarly Himachal Pradesh and Panjab are claiming also. I think Kashmir is only State in which case no enquiry can be held even if they claim that some part of other State is very necessary for the State. I can cite instances of water dispute also. Though these matters come under the purview of the Central Government but the enquiry made under the Enquiry Commission Act in this respect should also be made applicable on the State Government. But in this way there is encroachment upon your powers. This is one more legal thing which would be contradictory with the spirits of the proposed bill. I will now refer section 3(B) of the proposed amendment of the bill. These things are as a matter of fact only be taken into consideration if I may be excused, is in the best interests of the State. The main thing is about the development of the States and for the further advancement of the country's development as a whole. And in these circumstances, I may be excused, that if the State can afford to hold an inquiry on the available material about the officials and other available documents which Centre can have and after that if I may be wrong I may be corrected that the action against a member of executive or legislative is contemplated as part of it to which the State is entitled they may take it or may not take it but the advantage of conducting inquiries into the all India developing matter they can be at the disposal and Centre may be spending on it and you will be entitled to claim for such assistance. I am very sorry that I have taken a long time. After I have completed the preliminaries I would like to say about Nagaland who insist that some parts have been excluded and these may be included. Nagaland people say that we are backward and are not in a position to afford inquiries, we have no money and they insist for an inquiry. The State of Jammu and Kashmir is on the whole a backward State and the inclusion of the Commission of Inquiry Act would not in any case be an enroachment of the State rights. If you make a request to Centre for supplying the material under this Bill they are bound but in other case if this Act does not apply to Kashmir as suggested the, of course, from Central resources nothing can be made available but I think it is in the best interests of the State that this Act applies to the whole of Jammu and Kashmir State and if there is anything to be clarified which I have stated then for which I afford clarification.

SHRI P. K. DAVE: There are usually two devices for appointing a Commission of Inquiry either formally under the commission of Inquiry Act, or informally under a Government resolution. As regards the Administrative Reforms Commission, if I am not mistaken a Commission as not appointed under the Commission of Inquiry Act. The State of Jammu and Kashmir was thus covered by the Administrative Reforms Commission. So this fear that Administrative and Agriculture Commission will not cover the State, I think is not correct. Then about the total application of the Act if you would notice list 2 of the seventh Schedule, is wholly in applicable to the State of Jammu and Kashmir for it has its own Constitution which provides for legislation of the State and the legislative powers given in Union Constitution are not applicable

to the State of Jammu and Kashmir. As you will see entry 45 of Constitutional List talks of subjects in list 2 and 3 and list 2 is not applicable to Jammu and Kashmir State. So under the Constitution and its application to the State as it stands today subject in list 2 cannot be covered by a Central enactment.

SHRI GAJARAJ SINGH RAO: Mr. Chairman! with your permission Sir, I would like to say that even in small and latest matters governed by the administrative reforms commission from time to time you will see that such acts do not apply to the Jammu and Kashmir State but we advise them that they may consider the application of these in the State of Jammu and Kashmir.

SHRI P. K. DAVE: But the commission as such covers the State of Jammu and Kashmir as one of States of the Union. The Commission came here and held a long session here and we appeared before it.

SHRI GAJARAJ SINGH RAO: May I put one question. How would it deprecate the authority of State Inquiry Act when it does not mean the legislation. My point is that the State will be benefitted.

SHRI RABI RAY: Mr. Chairman! I would put two questions to Shri Dave. When he says that Jammu and Kashmir is an integral part of the country does he not agree that there is a dictotomy between his conception and the fact that the Jammu and Kashmir is an integral part of the country under the real federal structure. I would ask him that in the interest of national integration would his government not agree that this Act which is indeed not an encroachment on the rights of the State, to be extended to Jammu and Kashmir. This Commission of Inquiry Act is extended to the State taking in view the matters of very urgent public importance, when the State of Jammu and Kashmir is represented in both the Houses of Parliament what is the difficulty if this Act is also made applibacle to the State of Jammu and Kashmir?

SHRI P. K. DAVE: I have explained the difficulty. The difficulty is constitutional. List 2 of the 7th Schedule to the Indian Constitution is not applicable to the State, therefore, the legislation on the subjects covered by that list cannot be under taken by the Parliament.

SHRI P. K. MUKHERJEE: May I know from the Chief Secretary that when the Constitution was adopted the political conditions of the State in which Jammu and Kashmir marched to India were peculiar. That peculiar condition you understand has changed. At the time of the merger some special provisions were kept in the Constitution but now the situation has changed and is it not adviceable to think that list 2 of the 7th Schedule and certain other provisions of the Constitution can be changed and so far these efforts are concerned, I find there is no encroachment on the rights of the State and, therefore, if this Act is extended to the Jammu and Kashmir State in a better way it would be in the best interests of the State.

SHRI P. K. DAVE: There are two questions. The first question I have already answered as for the second question I would say that it would be beyond me to answer.

SHRI SHANTILAL SHAH: Mr. Chairman! the Chief Secretary is continuously mentioning about the list 2 and Schedule 7 of the Constitution but I would like to know from him how far this contemplated bill before us would create any trouble if this Act is made applicable to the Jammu and Kashmir because this is an Act which is meant for constituting Commission of Inquiry throughout the country, therefore, at one time separate statehood was given to Jammu and Kashmir, does it mean that the same statusco should remain there and this bill no where affects or creates any constitutional complications with reference to list 2 and schedule 7 of the Constitution?

SHRI P. K. DAVE: I have answered already that question and I would again submit that Parliament is not competant to enact certain laws for the State of Jammu and Kashmir.

MR. CHAIRMAN: I think, the Chief Secretary has made the position already clear so far the application of enactment is concerned in the State of Jammu and Kashmir, in his written note, which he read out before the committee. He has also made the constitutional position clear with respect to certain provisions of the law. It is not for the Chief Secretary to decide certain things of political nature which do not come under the scope of this enquiry commission. So the Hon'ble members will put the question only relating to Enquiry Commission.

SHRI GULAM NABI UNTOO: I understand that you have made the position very clear about the schedule VII of the Constitution. So far as the question raised here with respect to application of other acts passed by Parliament I would submit that these acts are made applicable in the State of Jammu and Kashmir in due course of time. There is a history behind the State Constitution and that history has assumed the shape of article 370 of Schedule VII of the Indian Constitution. It was a historical achievement for the people of the State. Whenever any exigency arises we need more amendments or changes and these changes should come from both sides i.e., from the people of State and the other side of the country. For such thing guarantee has been given to the people of the State under article 370. This is a historical enactment. Now the question is whether the act passed by the State Legislature in more exhaustive than the act passed by Parliament. Have you gone through that Act?

SHRI P. K. DAVE: I have gone through both the Acts. Our Act also incorporated some changes now sought to be made by the Parliament. There are some differences on two or three points in respect of Central enactment for which we should make necessary changes.

SHRI BULAM NABI UNTOO: After the application of the Central Act, would the State Act will continue to function more efficiently?

SHRI P. K. DAVE: It will continue to function.

SHRI GULAM NABI UNTOO: Would not the State Act. Serve the purpose for which the Central Act is being enacted.

SHRI P. K. DAVE: I could not follow your question.

SHRI N. SREEKANTAN NAIR: The question of non application of certain laws in the State of Jammu and Kashmir has been decided at political level. Have you briefed by the State Government about the changes to be made in respect of this constitutional provision?

SHRI P. K. DAVE: I am duly briefed by the State Government.

SHRI NAIR: Suppose you institute an Inquiry Commission in the State. I would like to know the administrative functioning with regard to this commission, and do you thing that it is satisfactory functioning?

SHRI P. K. DAVE: We had some experience in calling some people from outside the State before such commissions of the jurisdiction Althoug commission does not compel a person outside the State to appear before it, even then we have had no difficulty in calling the persons from outside the State. Whether a person is a esident State. Whether a person is a resident before the Commission in the State.

SHRI NAIR: I would refer sub section 3(d) of your Act. Do you think that such provision is likely to result injustice or tampering of justice or denial of justice to the people. After sometime some political changes may occur and they may bring some changes in the enquiry commission Act because this Act is not meant for a day or two and I have some personal experience about it. Will this provision then jeopardise the objective of this Inquiry Commission Act as promulgated and their general approach of the question?

SHRI P. K. DAVE: Well, all the executive power is amenable to abuse and if it is abused then there is the legislature which has to supervise the action of the executive and I don't think that the members of the legislature will allow abuse of this provision of this Act. In case, membership of the Commission is to be raised to facilitate the enquiry, the executive has power to increase the membership of the commission for the purpose of proper enquiry.

SHRI NAIR: You are refering the legislature. In case majority of the members of the legislature interfere in the working of the commission. Would you then appoint a new commission?

SHRI P. K. DAVE: No Sir, the Legislature is supposed to supervise the functioning of the executive.

SHRI NAIR: I would read clause C of section 8. Do you think that section 8 empowers the State Government the dissolution of the commission before enquiry is completed?

SHRI P. K. DAVE: In this connection I would only say that if the initiative for the enquiry is taken by the executive the executive should have the facility to review its earlier judgement in the light of developing situation. However, if the commission is appointed in accordance with a resolution passed by the Lok Sabha or State Legislature it would be a different matter and the executive should not have the power to dissolve the commission.

SHRI NAIR: So there is a lacuna in the Act.

SHRI P. K. DAVE: There appears to be a lacuna.

SHRI NAIR: I would like to seek your expert opinion with regard to a person who is an aggrieved person and wants to appear before an enquiry commission as a witness against the Chief Secretary of the State Government for the corruption of Rs. 500 or so unlike Kerala State, will it not be a transitory legislation?

SHRI P. K. DAVE: The kind of inquiry you have mentioned refers to complaints against the administrative machinary or the functionaries of the administration. If it is against the officials at least in the State of Jammu and Kashmir we have an Anti-Corruption Commission constituted by Statute. In other States, I don't think that they have such a statutory Anti-Corruption Commissions anywhere to go into the complaints against a Government servant. At the Centre it is now suggested to institute the Lok Pal and Lok Ayukts who may be able to look after these complaints and make the necessary inquiry but I don't envisage that under the Commission of Inquiry Act we can agree that a Commission may be instituted merely because a person has deposited Rs. 500 or so, that would be very difficult. This is my view.

SHRI N. S. NAIR: In spite of the law one Commission of Inquiry has been instituted in Kerala State and the inquiry is going on effectively and

there is no fabrication or vindictiveness and that it serves us to bring some feeling of responsibility to the Ministers.

SHRI P. K. DAVE: In Kerala does it cover matters of public importance or simply charges of corruption?

SHRI N. S. NAIR: Every thing is a matter of public importance, may be mis-use of power even.

SHRI P. K. DAVE: But there are several other things which are not matters of public importance that is why I suggest an Anti-Corruption Commission or Lok Pal might be a better agency for that kind of enquiry.

SHRI N. S. NAIR: Thank you.

SHRI V. N. JADHAV: To what extent is the constitutional difficulty to extend the Central Inquiry Commission Act into the State of Jammu and Kashmir and is it not that the difficulty can be over come by getting concurrence under Article 370?

SHRI P. K. DAVE: No Sir, Under schedule 7(2) it is not applicable to the State of Jammu and Kashmir. The difficulty cannot be over-come; i.e., the stage at present.

SHRI V. N. JADHAV: That means that with the concurrence of the State Government the difficulty cannot be over-come?

SHRI P. K. DAVE: Sir, unless list 2 itself is made applicable by a Presidential Order in consultation with the State Government this difficulty cannot be over-come, as the whole list is not applicable to the State and there ih a separate constitution of the State which has its own legislative powers.

SHRI SURENDRANATHA DWIVEDY: Sir without going the other questions, may I ask you whether there are already some provisions which are similar to the Central Act and by your experience would you suggest any other amendment of the Central Act which will be extended to the State of Jammu and Kashmir after the amending Bill is passed in the Parliament?

SHRI P. K. DAVE: No, Sir, I have no further amendments to suggest.

SHRI BHOGENDRA JHA: Before I ask any question for clarification, I would like to congratulate the State Government for pointing out the lacunas in the Acts. But I would like to have clarification on two points. First of all Secretary has said that there is no difficulty in summoning any person residing outside the State, but here is the question of legal compulsion. If on the advice of State Government such a lacuna is removed by amending the Central Act so that any person can be made to appear before the Commission of Inquiry wherever he may be? And then secondly I want to know when a Commission has to be appointed in accordance with the concurrence of the State Legislature and the State Government is not willing for that in such a case if the number of these commissions is increased or the commission itself is terminated, what is the suggestion with regard to this lacuna that a Commission of Inquiry appointed by passing the resolution in the State Legislature is terminated by the State Government without consulting the Legislature.

SHRI P. K. DAVE: Sir, about the first question we have to examine it purely on technical grounds. The Parliament does not have legislative competence on this subject and this is a point worth looking into. We may be faced with this difficulty one day. Therefore, we have to go into this question. Then about the second question raised by the Hon'ble Member, it does appear that if the Government is bound to appoint a Commission of Inquiry on a resolution passed by the Legislature it should be left free and un-fettered in the matter of abolition of that Commission. That is something which I suggest that this Committee might go into; whatever decision is taken we would like to consider it for adoption in our Act.

SHRI BHOGENDRA JHA: I would like to know whether that can be done by amending the State Act or amending Central Act.

SHRI P. K. DAVE: I think that we will have to go into that. This is a question of technical nature and I have not applied my mind to it.

MR. CHAIRMAN: Mr. Dave I am happy that you have faired well in the evidence as also in the memorandum that your State has circulated in connection with this amending Bill. There is only one aspect of the Question which I should like to ask and the Question is this that while taking into account view point of Mr. Gajraj Singh Rao that under the Lok Pal and Lok Ayukta Bill covering the group of inquiries there is a certain scope of, inquiry under that law and the scope of inquiry contemplated under the Commission of Inquiry Act is of different nature entirely on a matter of public importance to more or less fact finding body. Now assuming that the Legislature consider it worth while to appoint Commission in respect of a matter which is passed by the Legislature and is very important and the Government under various pressures does not consider to hold an inquiry what would you think the Committee should do in that case where the Government is un-willing even when in the larger national interests.

SHRI P. K. DAVE: I think from this kind of arrangement whether an individual or a group of individuals or pressure of one kind or the other can not force the hands of the Government and the Legislature contrary to their own judgment. This position might not be accepted. It is very difficult to accept that the executive Government and the legislature would become so ineffective that they would not appreciate a matter of grave national importance.

MR. CHAIRMAN: I will not couch my language now. There is a matter of public importance. Do you think that they should be no remedy available for a responsible citizen or a group of citizens. Of course, the black mailers cannot be put under the category of citizens.

SHRI P. K. DAVE: I wish to submit that no arrangement should be devised which is not a practical one. In democracy we have to accept the legislature as elected for the period it exists, and the Government as constituted under the constitution for the period it exists.

SHRI RAM NIWAS MIRDHA (MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS): You said that the Presidential Order could be amended with the consultation of the State Government. "There are two ways in which the Presidential Order can be amended. With respect to maters that are specified in the Instrument of Accession, the amendment can be made after consultation with the State Government, but in all other matters the amendment can only be made with the concurrence of the State Government. If you read the two provisos to Subsection (d) of Section I of Article 370 of the Constitution of India, position will be clear."

SHRI P. K. DAVE: I stand corrected Sir, this needs concurrence of the State Government.

MR. CHAIRMAN: Thank you Mr. Dave, Now we will examine Shri M. N. Kaul, Revenue Minister. Mr. Kaul before you give your evidence it is customary to point out the relevant rule under which you have to give the evidence (*reads the rule*).

Besides the memorandum by your State Government would you like to add something more in the matter.

SHRI M. N. KAUL: These are the views of the Government and I have nothing to add in it.

MR. CHAIRMAN: May I request you let me know if there is any desirability to the application of this act in the State of Jammu and Kashmir.

SHRI M. N. KAUL: We have made it clear in our written note that we want to make this Act applicable to certain extent. The other question in regard to Act 370, you have rightly remarked that this does not come within the scope of your inquiry.

MR. CHAIRMAN: Apart from technical aspects already pointed in your memorandum, do you want to say anything more?

SHRI M. N. KAUL: I have nothing to add. What Chief Secretary has said is from the Government.

SHRI GULAM NABI UNTOO: Is Mr. Kaul appearing as witness?

MR. CHAIRMAN: Yes, I appreciate Mr. Untoo's anxiety that he wants to ensure that the procedure is correct at least in his State.

SHRI S. N. DWIVEDY: You are not an officer so I think you will give evidence not confining to merely to technical aspects but to other aspects also. Since the matter have been raised in the committee and we want to know from you dont you think that it is time that this article 370 which creats difficulty in proper integration and application of all laws passed by the Parliament, should be deleted. Dont you think that this thing should be considered by the State Government now and necessary recommendation made to the Government of India for taking steps for full application of this bill. During the discussion it is been pointed that list 2 creats obstables in our way. What is your personal view about it?

SHRI M. N. KAUL: Perhaps Mr. Untoo has already made the position clear. I am not supposed to commit myself to any view which is not of the State Government.

MR. CHAIRMAN: After your reply nothing remains to be asked I want to ask one question only. What is the criteria of the State Government over the question of applicability of certain Acts in the Jammu and Kashmir State.

SHRI M. N. KAUL: Pardon Sir.

MR. CHAIRMAN: Since applicability of various acts comes within the purview of State Legislature, is there any criteria for applying these acts in the State?

SHRI KAUL: There is no particular criteria. But the desirability and utility is there for the application of certain Acts.

MR. CHAIRMAN: The desirability is determined by the judgement of the Government?

SHRI KAUL: Yes Sir.

SHRI UNTOO: Is it not a fact that the State Government is always anxious to rush for all those legislations which are passed by the Parliament, Keeping view their utility?

SHRI KAUL: Yes.

MR. CHAIRMAN: Thank you Mr. Kaul.

Before we start clause by clause discussion of the bill, I would beg apology for being late in the morning. I had impression that the proceedings will be started at 10 A.M. But when I got a telephone call I rushed to the meeting of the Committee. We will have now no evidences more. We will take up clause by clause discussion of the Bill tomorrow at 11.00 A.M.

(The Committee then adjourned)

APPENDIX

Note Submitted by the Government of Jammu and Kashmir

The Commission of Inquiry Act, 1952 (Central Act) is relatable to entries 94 of the Union List and 45 of the Concurrent List, which as applicable to the state read as under:—

Entry 94 Union List—"Inquries, surveys and statistics for the purpose of any of the matters in this List".

Entry 45 Concurrent List—"Inquries, and statistics for the purposes of any of the matters specified in List II or List III.

In its application to the State of Jammu and Kashmir, in entry 45 for the words and figures "List II or List III", the words "this List" shall be substituted."

As will be seen, in respect of the State of Jammu and Kashmir, the said entry 94 of the Union List authorises Parliament to enact a law for making inquiry into any matter relating t any subject which is enumerated in List I as applicable to the State, and, likewise, entry 45 of the Concurrent List authorises Parliament to enact a law for making inquiry into any matter relating to any subject enumerated in the Concurrent List as applicable to the State.

Entry 94 of the Union List was made applicable to the State by virtue of the First Constitution (Application to Jammu and Kashmir) Order, 1950, i.e. the first order issued by the President under article 370 of the Constitution of India. Subsequently, it was repeated in the Constitution (Application to Jammu and Kashmir) Order, 1954, which superseded the previous Presidential Order of 1950. As regards the Concurrent List as applicable to the State, however, the position is a Notification C.O.66 dated 25th September, 1963 by the Constitution (Application to Jammu and Kashmir) Amendment Order, 1963, and besides other entries of the Concurrent List Entry 45 was made applicable in the following form:—

"45. Inquiries and statistics for the purposes of any of the matters specified in this List."

As a result of this Constitutional position, therefore, the Central Commission of Inquiry Act, 1952 could have been made applicable to the State—

(1) In respect of inquiries in any matter relating to subjects falling under List I as applicable to the State, from the date of commencement of the Act: and

(2) In respect of inquiries into matters under the entries of the Concurrent List applicable to the State from the date these entries were made applicable to the State.

Notwithstanding the Legislative power of Parliament to the extent indicated above, the Central Act has not so far been extended to the State. Section 1(2) of the Act expressly excludes the State of Jammu and Kashmir from its application. This has obviously left a lecuna in respect of the matters falling under the entries of the Union List applicable to the State, relating to which there is no law regulating inquiries in matters of public importance arising in such subjects. For purposes of inquiries in the matters relatable to Entries of the Concurrent List as applicable to the State, however, the position is a

little different, as in the absence of the Central law, the provisions of the State Commission of Inquiry Act, 1962 can be resorted to.

There can, therefore, be no legal objection if the Central Commission of Inquiry Act, 1952 is made applicable to the State for purposes of making inquiry into any matter relatable to any of the Entries enumerated in List I and List III as applicable to the State. In respect of the entries from List I and List III not applicable to the State, and in respect of other residuary matters including those enumerated in the State List, the State Law Will remain applicable.

Accordingly, therefore, in the application of the Central Commission of Inquiry Act, 1962 to the State of Jammu and Kashmir, the following amendments need to be inserted in the amending Bill:—

1. Sub-section (2) of Section 1 of the Principal Act may read as under:
"1. it extends to the whole of India:

Provided that it shall not apply to the State of Jammu and Kashmir except to the extent to which the provisions of this Act relate to any subject enumerated in the entries of List I or List III of the Seventh Schedule to the Constitution of India as applicable to te State.

2. In section 2 of the Principal Act, the expression "the appropriate Government" in respect of Jammu and Kashmir shall mean:—

(i) the Central Government in relation to a Commission appointed by it, to make an inquiry into any matter relatable to any of the entries enumerated in List I of the Seventh Schedule to the Constitution of India as applicable to the State; and

(ii) the Central Government or the State Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List III of the Seventh Schedule to the Constitution of India as applicable to the State."

As regards the State Commission of Inquiry Act, 1962 this law will continue and after the amendments suggested above are inserted in the Central Act, the scope of the State Commission of Inquiry Act, will be limited to the making of inquiries only in respect of matters falling within the State sphere including such entries of the Union List and Concurrent List as are not applicable to the State.

ANNEXURE

THE JAMMU AND KASHMIR COMMISSION OF INQUIRY ACT, 1962.

ACT No. XXXI TO 1962

(Received the assent of the Sadari-i-Riyasat on 17th November, 1962 and published in Government Gazette dated 17th November, 1962).

An Act to provide for the appointment of Commission of Inquiry and for vesting such commission with certain powers.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirteenth Year of the Republic of India as follows:—

1. *Short title.*—This Act may be called the Jammu and Kashmir Commission of Inquiry Act, 1962.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Commission" means a Commission of Inquiry appointed under section 3;

(b) "Prescribed" means prescribed by rules made under this Act.

3. *Appointment of Commission*—(1) The Government may, if it is of opinion that it is necessary so to do and shall if a resolution in this behalf is passed by the Jammu and Kashmir state Legislative Assembly or the Jammu and Kashmir Legislative Council by notification in the Government Gazette, appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance which shall be specified in the Notification, and performing such functions being functions necessary or incidental to the inquiry and within such time as may be specified in the notifiation and the Commiscsion so appointed shall make the inquiry and perform the functions accordingly.

(2) The Commission may consist of one or more members appointed by the Government, and where the Commission consists of more than one member, one of them may be appointed by the Government as the Chairman thereof.

(3) The Government may, at any stage of the inquiry by the Commission—

(a) fill any vacancy which may have arisen in the office of a member of the Commission (whether constituting of one or more than one member); or

(b) increase the number of members of the Commission.

(4) The Commission shall complete its inquiry and make its report to the Government within such period as may be specified by the Government by notification in the Government Gazette, or within such further period as the Government may by like notification specify.

4. *Powers of Commission.*(1) The Commission shall have the powers of a Civil Court, while trying a suit under the Code of Civil Procedure, Svt 1977, in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any Court or Office;

(e) issuing commission for the examinination of witnesses or documents;

(f) any other matter which may be prescribed

Explanation.—For the purpose of enforcing the attendance of any person, the local limits of the jurisdiction of the Commission shall be throughout the State.

(2) For the removal of doubts it is hereby declared that notwithstanding any Judgment, Order or direction of any Court, Tribunal or the Commission to the contrary, nothing in this Act shall empower or be deemed ever to have empowered the Commission to—

(a) compel or permit any person to give evidence derived from unpublished official records relating to any affairs of the State, except with the permission of the officer at the Head of the Department.

(b) compel any public officer to disclose any information or communication made to him in official confidence if he considers that the public interests are likely to suffer by the disclosure; and

(c) compel or permit the discovery and production of any document relating to the affairs of the State or any comunication written in official conference, if the officer at the Head of the Department concerned considers that public interests are likely to suffer by such discovery, production or disclosure of the document".

5. *Additional powers of Commission.*

(1) Where the Government is of opinion that, having regard to the nature of the inquiry to be made and other circumstances of the case, all or any of the provisions of sub-section (2) or sub-section (3) or sub-section (4) or subsection (5) or sub-section (6) should be made applicable to a Commission, the Government may by notification in the Government Gazette direct that all or such of the said provisions as may be specified in the notification shall apply to that Commission and on the issue of such a notification, the said provisions shall apply accordingly.

(2) The Commission shall have power to require any person, subject to any privilege which may be claimed by that person under any law for time being in force, to furnish information on such points or matters as, in the opinion of the Commission, may be useful for, or relevant to, the subject matter of the inquiry and any person so required shall be bound to furnish such information.

(3) The Commission or any officer, not below the rank of a Gazetted officer, specially authorised in this behalf by the Commission may enter any building or place where the Commission has reason to believe that any books of account or other documents relating to the subject matter of the inquiry may be found, and may seize any such books of account or documents or take extracts or copies here from, subject to the provisions of section 102 and section 103 of the Code of Criminal Procedure, Svt. 1989, in so far as they may be applicable.

(4) The Commission shall be deemed to be a Civil Court and when any offence as is described in section 175, section 178, section 179, section 180 or section 228 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989 is committed in the view or presence of the Commission, the Commission may, after recording the facts constituting the offence and the statement of the accused as provided for in the Code of Criminal Procedure, Svt. 1989, forward the case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused as if the case had been forwarded to him under section 482 of the Code of Criminal Procedure, Svt. 1989.

(5) If any person does any act or publishes any writing which is calculated to bring the Commission or any member thereof into disrepute or to lower its or his authority or to interfere with any lawful process of the Commission he shall be deemed to be guilty of an offence and the Commission may, after recording the facts constituting the offence, forward the case to the Magistrate having jurisdiction to try the same for taking cognizance thereof; and the Magistrate, if he finds him guilty, may sentence him to simple imprisonment which may extend to six months or to fine which may extend to one thausand rupees, or both.

(6) Any proceeding before the Commission shall be deemed to be a

judicial proceeding within the meaning of sections 193 and 228 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989.

6. *Statement made by persons to the Commission.*—No statement made by a person in the course of giving evidence before the Commission shall subject him to, or be used against him in, any civil or criminal proceeding except a prosecution for giving false evidence by such statement:

Provided that the statement—

(a) is made in reply to a question which he is required by the Commission to answer, or

(b) is relevant to the subject matter of the inquiry.

7. *Secret process not to be disclosed.*—Nothing in this Act shall make it compulsory for any person giving evidence before the Commission to disclose any secret process of manufacture.

8. *Commission to cease to exist when so notified.*—The Government may, if it is of opinion that the continued existence of a Commission is unnecessary, by notification in the Government Gazette, declare that the Commission shall cease to exist from such date as may be specified in this behalf in such notification and thereupon, the Commission shall cease to exist.

9. *Procedure to be followed by the Commission.*—The Commission shall, subject to any rules that may be made in this behalf, have power to regulate its own procedure (including the fixing of places and times of its sittings and deciding whether to sit in public or in private and, may act notwithstanding the temporary absence of any member on the existence of a vacancy among the members.

10. (1) If at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially effected by the inquiry, the Commission shall give to that person a reasonable opportunity of being heard in the inquiry and producing evidence in his defence.

Provided that nothing in this subsection shall apply when the credit of a witness is being impeached.

(2) The Government, every person referred to in sub-section (1) and with the permission of the Commission, any other person whose evidence is recorded by the Commisison—

(a) may cross-examine any person appearing before the Commission other than a person produced by it or him as a witness;

(b) may address the Commission.

(3) The Government, every person referred to in sub-section (1) and, with the permission of the Commission, any other person whose evidence is recorded by the Commission may be represented before the Commission by a legal practitioner, or with the permission of the Commission, by any other person.

11. *Inquiry not to be interrupted by reason of vacancy or change in Constitution.*—(1) When the Commission consists of two or more members it may act notwithstanding the absence of the Chairman or any other member or any vacancy among its members;

Provided that if the Government notifies the Commission that the services of the Chairman have ceased to be available the Commission shall not act unless a new Chairman is appointed.

(2) Where during the course of an inquiry before the Commission a change has taken place in the constitution of the Commission by reason of any vacancy having been filled or by

an increase in the number of members of the Commission or for any other reason, it shall not be necessary for the Commission to commence the inquiry afresh.

12. *Protection of action taken in good faith.*—No suit or other legal proceeding shall lie against in Government, the Commission or any member thereof, or any person acting under the direction either of the Government or of the Commission in respect of anything which is in good faith done, or intended to be done in pursuance of this Act or of any rules or orders made thereunder or in respect of the publication, by or under the authority of the Government or the Commission, of any report, paper or proceedings.

13. *Members, etc to be public servants.*—Every member of the Commission and every officer appointed or authorised by the Commission to exercise functions under this Act shall be deemed to be a public servant within the meaning of section 21 of the Jammu and Kashmir State Ranbir Penal Code, Svt. 1989.

14. *Act to apply to other inquiring authorities in certain cases.*—Where any authority (by whatever name called), other than a Commission appointed under section 3, has been or is set up under any resolution or order of the Government for the purpose of making an inquiry into any definite matter of public importance and the Government is of opinion that all or any of the provisions of this Act should be made applicable to that authority, the Government may, by notification in the Government Gazette direct that the said provisions of this Act shall apply to that authority, and on the issue of such a notification that authority shall be deemed to be a Commission appointed under section 3 for the purpose of this Act.

15. *Power to make rules.*—(1 The Government may, by notification in the Government Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office and the conditions of service of the members of the Commission;

(b) the appointment by the Commission as assessors of persons being experts or having special knowledge of any matter relevant to the inquiry to assist it in its deliberations;

(c) the manner in which inquiries may be held under this Act an dthe procedure to be followed by the Commission in respect of the proceedings before it;

(d) the powers of Civil Court which may be vested in the Commission;

(e) the travelling and other expenses payable to persons summoned by the Commission to evidence before it or to perform other acts incidental to the enquiry before it.