

**LOK SABHA  
JOINT COMMITTEE  
ON  
THE LOKPAL BILL, 1977**

**EVIDENCE**



**LOK SABHA SECRETARIAT  
NEW DELHI**

*February, 1978/Phalguna, 1899 (Saka)*

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LOK SABHA SECRETARIAT

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JOINT COMMITTEE ON THE LOKPAL BILL, 1977.

CORRIGENDA  
TO  
RECORD OF EVIDENCE

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- Page 2, line 9, for "Shdi" read "Shri"
- Page 9, col.2, lines 12-13, for "emmunity"  
read "immunity"
- Page 24, lines 12 & 14, for "Gupta"  
read "Gupte"
- Page 31, col.1, line 16, for "compelent"  
read "competent"
- Page 31, col.1, line 17, for "laken"  
read "taken"
- Page 32, col.1, line 5 from bottom,  
for "( )" read "(5)"
- Page 36, col.2, line 12 from bottom,  
for "Aaricle" read "Article"

# JOINT COMMITTEE ON THE LOKPAL BILL, 1977

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**JOINT COMMITTEE ON THE LOKPAL BILL, 1977**

**COMPOSITION OF THE COMMITTEE**

**Shri Shyamnandan Mishra—Chairman**

**MEMBERS**

**Lok Sabha**

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shri Somnath Chatterjee
5. Shri R. D. Gattani
6. Shrimati Mrinal Gore
7. Shri Kanwar Lal Gupta
8. Shri Ram Jethmalani
9. Shri M. Kalyanasundaram
10. Shri Hari Vishnu Kamath
11. Shri B. C. Kamble
12. Shri Krishan Kant
13. Shri M. V. Krishnappa
14. Shri Madhu Limaye
15. Shri Mangal Deo
16. Shri Nathu Ram Mirdha
- \*17. Shri Ragavalu Mohanarangam
18. Dr. V. A. Seyid Muhammad.
19. Shri Narendra P. Nathwani
20. Shri Balasaheb Vikhe Patil
21. Shri Gauri Shankar Rai
22. Shri Saugata Roy
23. Shri Sasankasekhar Sanyal
- @24. Shri Daulat Ram Saran
25. Shri B. Shankaranand
26. Shri Jagannath Sharma
27. Shri C. M. Stephen
28. Shri K. Suryanarayana
- £29. Shri Hukam Deo Narain Yadav
30. Shri Charan Singh.

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\*Appointed w.e.f. 2-12-1977 vice Shri S. D. Somasundaram resigned.

@Appointed w.e.f. 2-12-1977 vice Shri Chand Ram resigned.

£Appointed w.e.f. 2-12-1977 vice Shri Arif Baig resigned.

**Rajya Sabha**

31. Shrimati Margaret Alva
32. Shri A. R. Antulay
33. Shri Sunder Singh Bhandari
34. Shri Bipinpal Das
35. Shri S. W. Dhabe
36. Shri Devendra Nath Dwivedi
37. Shri Vithal Gadgil
38. Shri Bhupesh Gupta
39. Shri K. A. Krishnaswamy
40. Shri G. Lakshmanan
41. Shri N. G. Ranga
42. Shri Rabi Ray
43. Shri D. P. Singh
44. Shri Sawaisingh Sisodia
45. Shri Mahadeo Prasad Varma.

**SECRETARIAT**

Shri Y. Sahai—*Chief Legislative Committee Officer.*

**REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS (DEPARTMENT OF PERSONNEL  
AND ADMINISTRATIVE REFORMS)**

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shrimati J. Khanna—*Deputy Secretary.*
4. Shri R. C. Joshi—*Deputy Secretary.*
5. Shri G. P. Kalra—*Under Secretary.*

**LEGISLATIVE COUNSELS**

1. Shri R. V. S. Peri-Sastri—*Joint Secretary and Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

## **JOINT COMMITTEE ON THE LOKPAL BILL, 1977**

*List of points received from Members of the Joint Committee on Lokpal Bill for opinion by the Attorney-General of India.*

- (1) Whether the President, in case of a complaint against a Prime Minister, can be legally appointed a Competent Authority to exercise his power as such authority in his individual capacity?
- (2) Whether some forms of 'misconduct' as defined in clause 3 will include acts of an M.P. or M.L.A. of a State Legislature which also amount to breach of privilege of Parliament or State Legislature; if so—
  - (a) What provisions, in case of an M.P. should be made in the Act to protect the rights and privileges of the Parliament under Article 105; and
  - (b) What safeguards, in case of a Chief Minister, should be provided not to infringe Article 194 of the Constitution.
- (3) Constitutional positions of—
  - (a) Chief Ministers; and
  - (b) Members of Parliament—  
in the light of the provisions of Lokpal Bill.
- (4) Whether the inclusion of Chief Minister in the Lokpal Bill infringes on the Federal Structure of the Constitution?
- (5) Whether the inclusion of M.Ps. in the Lokpal Bill infringes on Parliamentary privileges?
- (6) Whether in case of Prime Minister the 'Competent Authority' can be the 'Prime Minister' himself?
- (7) In view of the federal structure of our Constitution whether it will be appropriate and proper to include the Chief Minister of a State, when in some States there are State Lokayukta Acts which include Ministers for the purposes of those Acts, in the Lokpal Bill of 1977 or whether those Acts in the States be amended to include Chief Ministers?
- (8) In view of the federal structure, whether it will be proper and appropriate to include the Members of Legislative Assemblies in the Lokpal Bill, 1977 when such categories can be included in State legislations?
- (9) In view of the various provisions of the Constitution and also in view of the Privileges Committee for the Members of Parliament whether it is necessary to include the Members of either House of Parliament in this Bill when forum is already available against them which if necessary can be further strengthened?

- (10) Whether the consent of State Legislatures will be necessary in view of the article 252 of the Constitution of India for passing the Lokpal Bill about the inclusion of the Chief Minister and Members of Legislature within the purview of this Bill? /
- (11) (a) Do you think that the definition of the term 'misconduct' given in the Bill is too wide?
- (b) If so, what in your opinion should be the definition?
- (c) Do you think that the definition of the term 'misconduct' in any way affects the privileges of Members of Parliament?
- (12) Whether it will be appropriate for action on the Report of Lokpal to be processed right from the lowest court to the highest in view of the high status of the Lokpal?
- (13) Whether action in any court can be initiated by the affected person to prevent Lokpal from going into the complaint against him?
- (14) If any action taken by Government does not satisfy any member of public, would the member of public be entitled to sue in a court, or, the matter would end with Government action, or, would the present practice that only an affected person can go to court would apply in this case also?
- (15) Under clause 22 of the Bill, provision is specifically made for appeal in High Court. There is no mention of any judicial remedy available to a person affected by the Report of Lokpal. Can it be taken that the forum of court would be available to such a person—say even for the vacation of an adverse remark against him?
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JOINT COMMITTEE ON THE LOKPAL BILL, 1977

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON  
THE LOKPAL BILL, 1977.

Monday, the 24th October, 1977 from 14.30 to 17.30 hours.

PRESENT

Shri Shyamnandan Mishra—*Chairman*.

MEMBERS

*Lok Sabha*

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri Ram Jethmalani
8. Shri M. V. Krishnappa
9. Shri Krishan Kant
10. Shri M. Kalyanasundaram
11. Shri B. C. Kamble
12. Shri Nathu Ram Mirdha
13. Dr. V. A. Seyid Muhammad
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18. Shri C. M. Stephen
19. Shri B. Shankaranand
20. Shri K. Suryanarayana
21. Shri Sasankasekhar Sanyal
22. Shri Jagannath Sharma
23. Shri Mangal Deo
24. Shri Charan Singh

*Rajya Sabha*

25. Shri Sunder Singh Bhandari
26. Shri Mahadeo Prasad Verma



27. Shri Vithal Gadgil
28. Shri D. P. Singh
29. Shri Devendra Nath Dwivedi
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31. Shri A. R. Antulay
32. Shri Sawaisingh Sisodia
33. Shri N. G. Ranga
34. Shri S. W. Dhabe
35. Shri Bipinpal Das
36. Shri G. Lakshmanan

#### SECRETARIAT

Shri Y. Sahai—*Chief Legislative Committee Officer.*

#### LEGISLATIVE COUNSEL

1. Shri R. V. S. Peri-Sastri—*Joint Secretary & Legislative Counsel.*
2. Shrimati V. S. Rama Devi—*Additional Legislative Counsel.*

#### REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

(*Department of Personnel & Administrative Reforms*)

1. Shri C. R. Krishnaswamy Rao Sahib—*Secretary.*
2. Shri R. C. Misra—*Additional Secretary.*
3. Shri G. P. Kalra—*Under Secretary.*

#### ATTORNEY-GENERAL OF INDIA

Shri S. V. Gupte—*Attorney-General of India.*

#### WITNESS EXAMINED

Shri S. V. Gupte—*Attorney-General of India.*

MR. CHAIRMAN: We are very glad that the Attorney-General is in our midst this afternoon. We are thankful to him that he has been able to adjust his schedule according to the convenience of the Committee. This Committee had desired that the Attorney-General should be invited to come and enable the Committee to resolve some of the doubts that were thrown up during the course of the general discussion. We have now embarked upon clause-by-clause consideration of the Bill and I think this the most appropriate time when the assistance of the Attorney-General should be available to the Committee.

Now, the Hon. Members know that a list of the points which some Hon. Members had taken pains to formulate has already been circulated. It may well be that there may be some other points coming up as we go along, but we thought we should give advance notice to the Attorney-General about some of the points, and those points have been made available to him also.

I think we may proceed now with the consideration of those points. The first point the Committee would like to put to him is whether the President, in the case of a complaint against the Prime Minister, should be

legally appointed the competent authority to exercise his power as such authority in his individual capacity.

**SHRI NARENDRA P. NATHWANI:** By way of explanation I would like to say that under the Constitution, the President has to act on the advice of the Cabinet. The question is whether, by a separate enactment or legislative measure, he can be authorised to exercise any right or function or power which might be conferred upon him under the Act. Is there no legal difficulty in his being so empowered?

**MR. CHAIRMAN:** This point was thrown up during the course of the general discussion as to whether we can add a new dimension to the Presidential power not contemplated by the Constitution—whether it would not go against the basic structure of the Constitution if you add a new dimension to the power of the President.

**SHRI S. V. GUPTE:** Under Article 74 of the Constitution, the President can only act with the aid and advice of his Council of Ministers. It would, therefore, not only be unconstitutional but sometimes even derogatory to the position of the Head of the State to be entrusted with such duties. I would put it in two ways. Supposing this process begins here and more duties are entrusted to the President in terms of either those contemplated in the Constitution or otherwise, it would undoubtedly be going against the concept of the Head of the State acting strictly constitutionally on the advice of the Council of Ministers. Supposing, a provision is put in the Bill that the President be the competent authority, but he can only act in terms of the Constitution on the aid and advice of the Council of Ministers. That would defeat the very purpose intended here.

Secondly, in course of time, a provision of such nature, if made, may embarrass the Head of the State.

**SHRI NARENDRA P. NATHWANI:** Apart from the present position in the

Constitution, we do not know what provisions of the 42nd Amendment are going to be abrogated, but if the provision which says that the President is bound to act on the advice of the Cabinet is repealed, and the position as it stood before this constitutional change was introduced, whether under such a law, was it not open to the President to exercise his discretion? Is there any provision in the Constitution, as it stood before the 42nd Amendment, wherein the President was authorised to exercise his individual discretion?

**SHRI S. V. GUPTE:** The matter had to be examined some years back and even without the 42nd Amendment, the position was that there are no functions—unlike those of the Governor—that is the point of distinction between the two—which he can really exercise in his discretion. He has to act at all times on the aid and advice of his Council of Ministers. What the 42nd Amendment has really done is to say expressly what was undoubtedly intended and understood before.

**MR. CHAIRMAN:** When the Council of Ministers loses the confidence of the Lok Sabha, and if at that time the Council of Ministers advises the President on some matter, what is the position of the President?

**SHRI S. V. GUPTE:** Supposing, they have lost the confidence of the House, that political sanction has disappeared, and the President or the Governor as the case may be, whatever the situation, can take a political decision, whether to accept that advice or take appropriate action. That is well understood and that was the situation when Shri Mishra went out of office as the Chief Minister of Madhya Pradesh.

**MR. CHAIRMAN:** Does it come to this that the President would be free whether to accept or not to accept the advice of such a Council of Ministers?

**SHRI S. V. GUPTE:** Only in this single aspect on the political side.

**MR. CHAIRMAN:** Don't you envisage a situation when the outgoing Council of Ministers functions as caretaker for a few days? Many things may have to be done during that period?

**SHRI S. V. GUPTE:** The caretaker Government is really named by the President himself to carry on until a new Government is formed. They would be answerable in a different way if they exceed their limited purpose.

**SHRI RAM JETHMALANI:** Would the advice at that time be binding on the President?

**SHRI S. V. GUPTE:** It is only a caretaker Government and it cannot generally take far-reaching policy decisions.

**SHRI RAM JETHMALANI:** What is the constitutional position?

**SHRI S. V. GUPTE:** Article 74 says:

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions".

The President then shall exercise his functions or act in accordance with such advice. The Council of Ministers until it ceases to exist either by reason of a new Government being formed or having lost, it is there. If it resigns, there is no Council of Ministers. But again they can be asked to carry on for some time, but nevertheless, in terms strictly of the Constitution, it will still be a Council of Ministers, but it does not matter that as a convention, they do not take any decision on policy matters.

**SHRI KANWAR LAL GUPTA:** Supposing, the Council of Ministers at that time ask the President to dissolve a particular State Government, what is the legal position? Is he to follow the advice?

**SHRI S. V. GUPTE:** I am afraid, it is not within the competence of the

President to do that, the Governor is there.

**SHRI KANWAR LAL GUPTA:** The advice of the Governor is there, the Council of Ministers takes a decision and then it goes to the President.

**SHRI S. V. GUPTE:** In certain situations, the Government of a particular State could be dismissed or could go out of office. But it is the Governor who can ultimately dissolve and not the President directly.

**MR. CHAIRMAN:** In terms of the 42nd Amendment, it may well become justiciable if the President does not act on the advice of the Council of Ministers because it makes it absolutely obligatory on the President.

**SHRI S. V. GUPTE:** In any case that is always implicit.

**MR. CHAIRMAN:** But don't you agree that by making it explicit, it has incidentally served to make it almost justiciable.

**SHRI S. V. GUPTE:** This is what is being put to me, that even a caretaker Cabinet which is a caretaker for the time being is a Council of Ministers strictly, as the hon. Member here said and, therefore, he is bound to act on it and if he does not act on it, that is totally a different situation.

**SHRI S. W. DHABE:** Art. 70 of the Constitution speaks of a contingency where Parliament may make law for the discharge of the functions of the President in any contingency not provided for in that Chapter. Can such a power be exercised and power given to the Lokpal to go into complaints against the Prime Minister? This is a very difficult proposition not contemplated by the Constitution.

**SHRI S. V. GUPTE:** Parliament may make such a provision as it thinks fit. This is so far as the office of the President itself is concerned . . .

**MR. CHAIRMAN:** He is saying that if the Governor acts in his capa-

city as the Chancellor of the University, what happens to that. Let us not deal with that question just now because we have many important questions to put to him.

SHRI A. R. ANTULAY: Art. 74 as recently amended reads as such:

"There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his function, act in accordance with such advice."

Don't you honestly contemplate the possibility of the President acting in the discharge of his functions, if, suppose, the advice is not forthcoming? Here, it says that if an advice is tendered, it is binding on him. Undoubtedly so. That means he has to act in terms of that advice. But suppose the advice is not forthcoming, then should he or should he not discharge his function?

SHRI S. V. GUPTE: As far as I can see, you have underlined the words 'his function'. You turn, for instance, to Art. 53 which says that the executive powers of the Union shall be vested in the President and shall be exercised by him either direct or through officers subordinate to him, because he is the chief executive in that sense. But there is no other article, as you see, which says what his functions are. His whole function is the function to be guided in all matters under Art. 74 on the advice of the Council of Ministers and if he has no independent function, it must mean in that context that he has only to act on their advice and if no advice is forthcoming, he can do nothing in that context.

SHRI A. R. ANTULAY: My point is that when an advice is tendered, it is binding and there is no dispute about that. Suppose, in the discharge of his function, the advice is not forthcoming, should he or should he not discharge his function?

SHRI S. V. GUPTE: The question is: what is his function in such a situation?

SHRI RAM JETHMALANI: Is it possible under the Constitution as it stands, for the Government to tell the President Mr. President, we propose to give no advice in this matter. You are free to act as you like.'

SHRI S. V. GUPTE: It is not open to the Council or any body else to set at naught the constitutional provision.

SHRI RAM JETHMALANI: You mean that it is bound to advise.

SHRI S. V. GUPTE: He cannot take any initiative and the matter has to come from the Council.

MR. CHAIRMAN: The point that the Attorney-General has made is that the President is the fountainhead of all executive actions. He is the supreme executive but the functions of the President will be exercised in a particular manner as enunciated in Art. 74 of the Constitution. In any executive action, if there has to be any action, that action has to be in accordance with Art. 74. That would postulate action on behalf of the Government.

SHRI SASANKASEKHAR SANYAL: It is in passive voice—'to aid and advise' is obligatory.

MR. CHAIRMAN: No action can ensue without the aid and advice of the Council of Ministers. There will have to be an advice. There is no situation in which I can imagine there will be no advice.

SHRI NARENDRA P. NATHWANI: May I just say one thing? They do tender the advice, namely, 'You kindly advise us on this matter.'

SHRI S. V. GUPTE: They cannot do that.

To clarify the same thing he is only a constitutional head. That means that he can never initiate any action on his own.

**MR. CHAIRMAN:** The second question is:

Whether some forms of 'misconduct' as defined in clause 3 will include acts of an M.P. or M.L.A. of a State Legislature which also amount to breach of privilege of Parliament or State Legislature; if so—

(a) What provisions, in case of an M.P. should be made in the Act to protect the rights and privileges of the Parliament under Article 105; and

(b) What safeguards, in case of a Chief Minister, should be provided not to infringe Article 194 of the Constitution?

**SHRI S. V. GUPTE:** As I understand, MLAs do not figure in the Lokpal Bill.

**SHRI NARENDRA P. NATHWANI:** MLAs in reference to the Chief Minister.

**SHRI S. V. GUPTE:** I do not think, so far as I can see, any provision of the Lokpal Bill, as it stands, has any impact on Art. 105. If you turn to Art. 105—you have also a corresponding Article for the States—it reads as follows:

Article 105 says:

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

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

Immunities are in two ways:

1. He shall not be liable for anything said or any vote given by him in Parliament or any Committee thereof,

2. He shall not be liable in respect of the publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings."

In *May's Parliamentary Practice* I do not think there is any Code of privileges or immunities.

The Bill picks out not the conduct of the person in the House or the matter of functioning as a Member of Parliament or as a Minister, but really what is understood as an act of omission which is covered normally by the Indian Penal Code or the Prevention of Corruption Act.

The Bill seeks to set out what is misconduct by a publicman. I think you omit the words 'improper or corrupt motive'. This does not happen in the House but outside.

**MR. CHAIRMAN:** An hon. member of the Lok Sabha was found putting questions at the instance of some of his clients outside for pecuniary considerations and you know that the hon. member was dealt with by the House. One can put questions, one can vote in a particular manner motivated by certain pecuniary considerations.

**SHRI S. V. GUPTE:** The point which I was making was slightly different.

He feels that there is material to show that he asks the questions for reasons which are outside his real ambit—not motivated by public duty but by considerations which may be called 'corrupt'. If it is there he may or may not ask a question. Is there any impediment in the way of his asking question if there is no collateral motivation.

**MR. CHAIRMAN:** One can impute.

SHRI S. V. GUPTE: It does not directly or indirectly stop his functioning. He can still ask questions. He does not keep mum in the House.

SHRI NARENDRA P. NATHWANI: I have raised this point—'actuated by improper or corrupt motive'.

A Member makes a speech or votes in a particular manner in a matter which, of course, otherwise does not amount to criminal offence, but in exercise of his duty as a Member of Parliament or while discharging his function as a Member of Parliament he votes or speaks or refrains from speaking when required to do so—that form of corruption is included in Clause (a).

Does it not amount to breach of privilege of the House is a question? It is in *May's Parliamentary Practice*. If you are a mill owner and the Government wants to compulsorily acquire it or fixes some compensation, I take up the matter. I support it or oppose it. Where my interests are involved I am supposed not to exercise my right. If I do so, it is a breach of privilege.

SHRI S. V. GUPTE: I was answering the question whether the Bill had an impact on Article 105 directly. That is a point which I am making.

He has functioned—voted or not voted as he thought fit at that stage. There is no interference with Article 105. It is a different thing whether that amounts to breach of privilege or not.

SHRI RAM JETHMALANI: The Bill does not seek to take away the jurisdiction of the House.

SHRI S. V. GUPTE: This does not say that this shall not be the subject matter of privilege.

SHRI SASANKASEKHAR SAN-YAL: This will stand until and unless we pass proper legislation defining the rights and privileges of the Members of Parliament. I am a Member of Parliament. I can be guilty in a

manner of misconduct under the Indian Penal Code as a citizen. When I am guilty as a Parliamentarian in a particular sense of the term, the House is there. The privileges of the House and the authority of the House are there. Do you not think that this Bill will be a piece of legislation affecting the rights of the Members of Parliament without coming to the front door i.e. without bringing anything for determining the rights and privileges?

SHRI S. V. GUPTE: I do not agree in this regard. Actually this Bill deals with the functioning of the Parliament and the Committee as it would ordinarily function. No fetters have been put.

SHRI SASANKASEKHAR SAN-YAL: All this is subject to exposure.

SHRI S. V. GUPTE: He may render himself liable but for privilege in the House. Suppose Article 105 were not there. If the man does something defamatory he will be hauled up in court. It is nothing more than that. Parliament can exercise its own privileges through its own committees and holding the member responsible.

SHRI C. M. STEPHEN: According to the Law of Parliament as it now stands, for any action of a member of Parliament in the discharge of his functions as a member of Parliament, the member of Parliament is answerable only to the House. The authority is the House or the House committee. We have got the conventions of the House of Commons. A member acts as a member in the discharge of his functions. Only the House can question him and nobody else. If he does something which is unlawful under the law of the land he is to be tried by the court of law. If there is corruption, if there is something like that which happens, he can be tried in a court of law. Now, here what happens is this. Another forum is being set up against me. This is,

therefore, a matter of privilege. As I have pointed out, if there is something done by him which comes under this connotation, it is to be gone into by the House only and by nobody else. This is in respect of his parliamentary conduct. If he attempts to abuse his position in his capacity as a member of parliament, the House is there to take notice of it. If I make a speech which harms somebody adversely or maliciously I am answerable to, and I owe, it, to the House. I will have to justify my action to the House only and to nobody else. So, this law is quite clear. The exclusive power of Parliament is there. Under sub-clause (3) this is the position that I am answerable only to the Parliament. Parliament has got its exclusive jurisdiction over me. This is the immunity which I enjoy under Art. 105(3). Now, setting up another forum to enquire into this matter thereby depriving the Parliament of its exclusive jurisdiction and making him to answer to some other forum is curtailing the parliamentary privileges which I enjoy. Sub-Article (3) says that these immunities and privileges are not absolute, which can be encroached upon not necessarily by a constitutional provision, but by a law of the Parliament. Here is a law of the Parliament and to the extent that this right, this privilege, stands abridged, to that extent, it is an encroachment on my parliamentary privilege. This is my fear. May I know your opinion?

SHRI CHARAN SINGH: I would like to state a point of view. Suppose a member abuses his privilege as a member of the House. Of course, any member can raise the question and the House can take notice of it. But, suppose the House does not take any notice on the question of privilege or the improper conduct committed by a member of the House and nobody raises the question within the House. Is it not open to a citizen who is not a member of parliament and who is outside to raise that question

before some other authority? There is the Lokpal in this case. So, if we look upon this question in that light, there is no question of breach of privilege or contravention of any privileges which a member enjoys.

SHRI C. M. STEPHEN: May I say something by way of clarification of the point just now made by the hon. Home Minister? If there is any objection with regard to the conduct of any Member of Parliament, it is always open to any member of the public to address a letter either to the Prime Minister or to the Speaker. The Speaker is bound to take action thereon. It can be placed before the House through a petition to the House. By just moving a petition, it automatically goes to the Petitions Committee. They will have to enquire into it and give their verdict. So, Parliament has untrammelled freedom to do whatever it chooses.

MR. CHAIRMAN: Before you deal with this question, extending the same argument about the rights, privileges and immunities belonging to a member of Parliament, as it exists in the House of Commons, I may bring this to the attention of the Committee that there, if there is any complaint to be made to the Parliamentary Commissioner, as they call him, this complaint has got to be processed through a Member of Parliament. This technical objection is dealt with in a proper manner; there is no external authority to deal with that matter; it is only a member of Parliament who can deal with that. That is the position. Our rights, privileges and immunities are those of the House of Commons. Our Lokpal is like their Parliamentary Commissioner. By saying that the complaint has to be processed only through a member of Parliament, that difficulty is taken care of. But here, as Mr. Stephen pointed out, if you appoint an external authority, would you not thereby encroach upon that very right and privileges and immunities as enshrined in our Constitution?

**SHRI DEVENDRA NATH DWIVEDI:** A question was put by Mr. Stephen. Another question was raised by the hon. Home Minister. You in your wisdom have asked yet another question. Can members express their view points together so that the Attorney-General can answer them together?

**MR. CHAIRMAN:** Kindly leave it to the Chair. The Chair regulates the business of the Committee. Questions which come under one topic have been asked and they will be dealt with by the Attorney-General in a comprehensive manner. It is for that purpose that all of them have been clubbed together. Let us hear the Attorney-General please.

**SHRI S. V. GUPTA:** I go back to Art. 105(3). This really deals with residuary privileges. Art 105(2) deals more specifically with privileges. Under that, protection is given. Suppose there is no sub-article (2). In that case, everything was referable to what happens in Parliament. Under that, would they get protection? Then, why has the Constitution given protection in respect of two specific matters? The reason is that but for this protection, other action which is possible under the law could be taken. But for this provision, he would be answerable under law wherever any action against him is justiciable. Therefore, to begin with, to say that a Parliamentary Committee has an exclusive right to deal with privileges is right only to the extent so far as privileges in the House are concerned and not what they mean to the outside world.

But, for this protection under sub-article 2, it would be possible to take proceedings against them for defamation, libel, scandal and so on or for publication of an obnoxious thing. In order to take away this possibility, it is more specifically mentioned. The reason for giving the protection is that but for this protection given to them, action could be taken against them. What the Bill is trying to do

is this. You are nevertheless answerable not to Parliament but you are answerable to the people at large as public men. Suppose sub-article (2) was not there. Let us test it. Could action be taken in a court of law against what a Member says which is defamatory of character?

**SHRI C. M. STEPHEN:** The answer is very simple. That need not be the only explanation for either sub-article (1) or (2) considers this as an immunity and so, he is not answerable to the court of law. But, this has given a constitutional protection to him that he shall not be tried in the court of law. Today, your privileges under sub-article (3) can be taken away by a mere law. And no constitutional amendment is necessary. That is the distinction. That constitutional guarantee that you cannot be tried in a court of law is there. And no law can take away that. Whereas your privileges under sub-Article (3) can be taken away by a mere law, the others can be taken away only by a constitutional amendment. Even if sub-article (2) is not there, it is a privilege which the House of Commons has fought for and won and so, you cannot be tried in a court of law.

**SHRI S. V. GUPTA:** The hon. Member is right to the extent of the distinction that he is making that the first one can be altered only by a constitutional amendment. Art. 105(3) says:

"In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom..."

Since Parliament makes its own law, this is a Parliamentary law itself. Surely this is a privilege which can be either taken away or not taken



away by it. For example, you are making Lokpal Bill which is a parliamentary law. Although it does not interfere with the privileges, the answer would be that it can very well interfere or take away your own privileges.

**MR. CHAIRMAN:** May I say that the intention of this article, particularly, of Sub-article (3) is that there shall be a special law of privileges and rights and immunities of each House of Parliament, and of the members and the committees of each House? So far as I can see the intention behind this article is that they must be codified.

**SHRI S. V. GUPTE:** The answer I gave him was this. It is possible for Parliament even to modify the privileges.

**SHRI R. K. AMIN:** Two points of view were presented—one by you and the other by Mr. Stephen as emanating from the practice prevalent in England. In England, the Parliamentary Commissioner is meant for the grievances of the public. That is why they want that to be routed through a Member of Parliament. Here the Lokpal is not meant for grievance but he is meant for investigating into the corruption. So, I do not agree with both the similes.

**MR. CHAIRMAN:** In other words, your contention is that the Parliamentary Commissioner would not receive any complaint about the administrative irregularities or corruptions?

**SHRI R. K. AMIN:** Corruption may be one of the grievances. That is why the complaint is routed through a Member. My question to the Attorney-General is this. In England, Parliament is supreme. We do not say that our Parliament is supreme but we consider Constitution only as supreme. I would like to know from him whether it is necessary, to look into the corruption charges against Members of Parliament, to have a machinery by a constitutional law.

Here we consider that our Constitution is supreme and not the Parliament as a supreme body. Therefore, anything which is curtailing the powers of Members of Parliament, their privileges and other things, should be done by a constitutional law and not by an ordinary law. Will it be a valid opinion?

**MR. CHAIRMAN:** The point that has been made by the Attorney-General is this. So far as sub-articles (1) and (2) of Article 105 are concerned, they are already enshrined in the Constitution. If you want to amend the powers enshrined in sub-article (2), then, you will have to undertake an amendment of the Constitution. But, so far as sub-article (3) is concerned, that can be modified by a law passed by Parliament. Therefore, my contention is that that law will be a comprehensive law and not the law of privileges, immunities etc.

**SHRI G. LAKSHMANAN:** Suppose an offence is committed by a Member of Parliament. That is placed before Parliament or Parliament is informed of it. I want to know from him whether, by including Members of Parliament in the Bill, the sovereignty of Parliament itself will be affected or not?

**SHRI RAM JETHMALANI:** It appears to me that the very premise of the argument that a Member of Parliament can only have his conduct investigated by Parliament is faulty. Even today a Member of Parliament is a public servant within the meaning of Section 21 of the Indian Penal Code. If he is found to be corrupt under the Indian Penal Code he is liable to be tried in a normal ordinary court.

Coming to Article 105(2), it talks of a liability for something done within the precincts of the House. The liability of the kind which is created by the Lokpal Bill, that is, your conduct is investigated by the Lokpal inflicts no liability and is not a liability at all.

MR. CHAIRMAN: It does create the basis for such liability. The Report will create the basis for liability.

SHRI RAM JETHMALANI: I would like to know from the Attorney-General as to what is the concept of liability under Article 105(2).

SHRI C. M. STEPHEN: I have no case that Lokpal Bill infringes the rights of Members of Parliament conferred on them either under Article 105(1) or 105(2). My difficulty is only with respect to the immunities and privileges which I am now enjoying under sub-Article (3) and which are liable to be altered or infringed by an ordinary law.

SHRI S. V. GUPTA: I do not agree with the hon'ble Member. It can also be enquired into by an outside body under certain circumstances.

SHRI D. P. SINGH: I would like to know whether this Lokpal Bill in this Section 3 infringes in any manner, directly or indirectly, in the field covered or prescribed by Article 105?

SHRI S. V. GUPTA: My answer is 'No'.

SHRI DEVENDRA NATH DWIVEDI: Mr. Chairman, I am puzzled at some of the formulations advanced by the Attorney-General. I should like to put forward two formulations against the background of which he should answer the questions which I will put to him. As Attorney-General you are the principal legal adviser to the Government of India. You appear before the Supreme Court and put forward the Government of India's viewpoint. But here your role is a very special one. You are helping the Committee in the process of law making. You have been asked to appear before this hon'ble Committee because before we pass this law we want to clarify some legal and constitutional points. Therefore, here you are not technically representing the Government of India but as an eminent lawyer, I think, you will be giving your advice.

My first formulation is that in an attempt to follow the principle of harmonious construction you were trying to harmonise Section 3 of the contemplated law and Article 105 of the Constitution. Unlike what the practice is you are giving a narrow construction and literal meaning to Article 105. What you ought to be doing is not to give a narrow interpretation to Article 105 but try to give rather such an interpretation to Section 3.

SHRI CHARAN SINGH: He is commenting upon this which gives an impression of casting reflection. These things are better understood rather than being commented upon.

MR. CHAIRMAN: I hope there is no implied reflection.

SHRI DEVENDRA NATH DWIVEDI: My point is this. There is a fear in the minds of some of the Members of Parliament and I share their fear. Section 3 is loosely worded. There is a danger of some of the actions, some of the utterances of the Members of Parliament because of Section 3 of the Bill. Let me draw your attention to Clause 3(1).

"3. (1) A public man commits misconduct—

- (a) if he is actuated in the discharge of his functions as such public man by motives of personal interest or other improper or corrupt motives; or
- (b) if he abuses or attempts to abuse his position as such public man to cause harm or undue hardship to any other person; or"

My submission is that the function of the Member of Parliament is such that there cannot be a clear-cut distinction between what he says in Parliament or what he does outside the Parliament. Suppose a matter comes before me. As a Member of the Rajya Sabha, somebody brings to my notice certain irregularities in which a multi-national, a Government ser-

vant and a Minister are involved. Naturally, I will be doing certain things outside the Parliament in order to find out the facts. I might write a letter to the Minister to find out the facts. I might receive a reply for that. Then I would raise the matter again in Parliament either in the form of question or in the form of call attention. Now, they are all interconnected. If somebody imputes motives and say that so far as your utterances in Parliament are concerned, they are of course covered by Article 105. But whatever I have done outside the precincts of Parliament, it might legitimately be connected with what I say, but then technically speaking Article 105 cannot be applied.

SHRI S. V. GUPTÉ: About the question of interpretation of Article 105, I would say it is a part of the larger question of the principle of sovereign powers.

SHRI DEVENDRA NATH DWIVEDI: There is a general feeling that this Bill will ultimately create a situation in which Members of Parliament will not be able to discharge their legitimate functions not only as legislators but as grievance men to people; it will make Ministers accountable, public undertakings accountable, Government servants accountable to the people through Parliament. When we make them accountable, when we put questions by making special references and all that in the discharge of that function, that function will be impinged upon and a situation might arise when a Member will feel like keeping quiet. He will feel that if he raises certain issue involving the misconduct of another public man according to the definition his rôle will be affected. I want to ask you whether this kind of formulation is not correct. Article 105 can come into conflict with the section contemplated in this Bill.

SHRI S. V. GUPTÉ: Here it deals with two things in two capacities,

first as a Member of Parliament and the second as public man where he attempts to abuse his position. Here we are concerned with the second one. The second one has nothing to do with the House.

SHRI DEVENDRA NATH DWIVEDI: The writing of a letter to the Minister about a Chairman of a Public Undertaking will not come within the precincts of Parliament.

SHRI S. V. GUPTÉ: None of these would affect him. Therefore his privileges to speak, participate, and act as he likes is not interfered with. That is the only way of answering your question. The question whether he is actuated is really not for me to say but I can say that there is no interference with his duties which he can discharge inside the House.

MR. CHAIRMAN: Suppose a Member is a shareholder of a company and he takes up a stand in Parliament by which that company has made a profit in some way, then what would you say?

SHRI S. V. GUPTÉ: The question is whether he has committed the misconduct.

MR. CHAIRMAN: The definition is to be made in such a way that it does not conflict with the rights and duties of the MPs and we are trying to find out a way....

SHRI NARENDRA P. NATHWANI: Can we make a clause saying that when such misconduct is brought to the notice of the Lokpal, it may be referred to the Speaker of the Lok Sabha.

SHRI B. C. KAMBLE: Article 105 provides for three things: powers, immunities and privileges, with regard to the House, committees and Members of Parliament. Having regard to sub-Article (3) of article 105, our powers, immunities and privileges have not been defined by any law, whatever are there for Members of the House of Commons are ours till they are defined. In the case of the

Member of the House of Commons, if he can be brought within the jurisdiction of the Parliamentary Commissioner, similar would be our position. That is to say, Members of Parliament cannot be brought under the jurisdiction of Lokpal. Is that correct?

MR. CHAIRMAN: No. May I put it in a different way? So far as I can see it, it could be brought before the Parliamentary Commissioner but it is to be processed through a Member of Parliament. That makes all the difference.

DR. V. A. SEYID MUHAMMAD: When you refer to Article 105(3) it says that the powers, etc. shall be such as may from time to time be defined by Parliament by law. This law has to be made under Entry 97, List I, because there is no Entry regarding parliamentary privileges in others. Is that correct?

SHRI S. V. GUPTA: Entry 74 deals with it.

DR. V. A. SEYID MUHAMMAD: The second question is this. This Lokpal Bill is under Entry 94, List I or Entry 45, List III. Am I correct?

SHRI S. V. GUPTA: Primarily Entry 97 will cover it; Entry 94 will partly come to rescue. Entry 97 may not even be necessary because Article 248 itself is very clear. But Entry 97 is also there and it takes care of everything which is not covered by any other entry.

DR. V. A. SEYID MUHAMMAD: The opinion circulated in support of the validity of this legislation mentions Entry 74, list I and Entry 45, list II. No reference was made to Entry 97.

SHRI S. V. GUPTA: Entry 94, list I refers to inquiries, etc. for the purpose of any of the matters in that list. To the extent that a particular Bill goes beyond that and does not relate to any of the matters mentioned in that list, it will certainly be covered by Entry 97.

DR. V. A. SEYID MUHAMMAD: The opinion relied upon by the Law

Ministry previously which had been circulated as the authoritative stand of the government relies on Entry 94 in list I and Entry 45 on the List III. Now you are falling back?

MR. CHAIRMAN: It was in the context of the appointment of a commission of enquiry and the point raised whether Chief Ministers could be brought within the purview of this. Then the hon. Home Minister quoted from the opinion given by Shri Gokhale.

DR. V. A. SEYID MUHAMMAD: The residuary class comes only when there is no entry.

SHRI S. V. GUPTA: There is a decision of the Court that Entry 94 can be utilised for the purposes of Commission of Enquiries Act. Likewise, it can be utilised for the purposes of Lokpal Bill. It may be read in a very restricted way. But the Court said, the words are wider. In any case, Entry 97 is there. I am not to be understood as saying that it is only covered by Entry 97 and not by Entry 94.

DR. V. A. SEYID MUHAMMAD: If it is under Entry 94, which according to the Court is very wide and will cover everything under the list and the Entry regarding Parliamentary Privileges is 74, can you utilise the Entry 94 to affect the law under Entry 74?

SHRI S. V. GUPTA: It does not affect. It does not deal with the privileges outside Parliament.

MR. CHAIRMAN: The point is this. It reads "the powers, privileges and immunities of each Houses of Parliament and of the Members of the Committees of each Houses, enforcement of attendance of persons for giving evidence and producing documents before the Committees of Parliament or Commissions appointed by Parliament..." It is rather comprehensive.

SHRI D. P. SINGH: Can I understand you to say that the entire field

that is covered by Article 105 is excluded from the scope of this Act? What I understood the Home Minister to say was, supposing here is a particular field which is a liability and if the House does not take note of it as a breach of privilege, then it should be open for the outside Lokpal authority to take note of it. Obviously, this means that they are both covering the same field and whatever is left by one is picked up by another. It is this doubt which is engaging the attention of everybody. Is it that what is covered by Article 105 is altogether excluded from the Lokpal Bill? Can you categorically say that anything that is covered by Article 105 is completely out of this?

SHRI S. V. GUPTE: If you look at the definition again, it has no impact. If you leave out (a)...

SHRI D. P. SINGH: Kindly take up (a) which constitutes the main point. What is meant by motive or personal interest inside and outside the House? The motive or personal interest arising within the precincts of Parliament—is that alone taken into consideration? I do not know how we can work out this.

SHRI S. V. GUPTE: My point is 'Does it really impinge on Article 105? Does it come to Article 105 at all? The way I read it is this. He discharges his functions and there is no impediment in his way. He can discharge his functions as he likes.

SHRI D. P. SINGH: If this Act were not in existence, he would discharge his functions as he likes.

SHRI S. V. GUPTE: The question is whether he is prevented from doing what he likes. That is not in the domain of what has been said.

SHRI D. P. SINGH: Here is the income-tax matter—the taxes structure, lower or higher affects him directly. Supposing a Member happens to call five Members outside for a smoke in the lobby, with the result it affects the voting—what is its effect? This is neither voting nor speaking.

SHRI S. V. GUPTE: The hon. Member is really considering the question as to what would be the chances of his being found guilty or not guilty. It has got nothing to do with Article 105.

SHRI D. P. SINGH: By any stretch of imagination, is it likely to come within the purview. If it impinges either directly or indirectly, then it impairs the effectiveness to function freely as a Member of Parliament.

SHRI S. V. GUPTE: You are trying to say that it indirectly impinges. The real question is whether in such circumstances he is actually guilty of misconduct.

SHRI D. P. SINGH: That is right and that is precisely what we are saying. The point is whether the immunities and privileges provided by Article 105 would be eroded by this Act.

SHRI NARENDRA P. NATHWANI: Under sub-Article (2), whatever you may say or do by way of voting is not subject to any proceeding in a Court of Law, whether criminal or civil. The question is whether under sub-Article (3) the breach of privileges of Houses is attracted or not. I shall give an instance. Suppose I say something wherein I am personally directly interested, it is not an offence. Even if it purports to be an offence no Court will take any notice. But the House would say, 'You are directly interested and therefore, the privilege of the House is infringed'. Is that misconduct or not?

MR. CHAIRMAN: The sovereign rule is, there can be no reflection on the proceedings of Parliament, whatever might be the motives behind those proceedings. But the House would not like the members to be protected from any kind of shady action. That is the problem we are grappling with. The question is, what can be done without encroaching upon the sovereign rule that there can be no reflection on the proceedings of Parliament.

SHRI VITHAL GADGIL: Let me give an illustration. I am a smoker. If there is an occasion for me to advocate in the House that tax on cigarette should be reduced, it may be held that I have been motivated by personal interest.

SHRI S. V. GUPTE: I do not think the freedom is so lightly disturbed.

SHRI VITHAL GADGIL: Do you agree that the definition as it stands requires to be amended in such a way as to make it consistent with the privileges and immunities of Members of Parliament?

SHRI S. V. GUPTE: It is a matter for this committee to resolve.

SHRI JAGANNATH SHARMA: There is an illustration in *May's Parliamentary Practice*. Some milkmen told some Members of Parliament, "If you do not vote in the manner we want, we would stop supplying milk at your residence from tomorrow". The members voted according to their choice. It is clear from *May's Parliamentary Practice* that the threat is neither improper nor amounts to corrupt practice or coercion. But if the members vote on the threat of a pistol, then to some extent it can be a criminal offence. But so far as the discharge of the duties as a member is concerned, it definitely infringes the rights and privileges of members. Do you think that after the passage of this Bill, there will be any change in this position?

SHRI S. V. GUPTE: There is no change.

SHRI SAUGATA ROY: The Attorney-General said, a Member of Parliament has two roles, one as a member of Parliament and the second as a public man. He also said, nobody can tell you where his first role ends and the second role starts. So, there is a big area which is a shade of grey. As far as his role as member of Parliament is concerned, the privileges are protected by Article 105. But as a public man he is not protected and he

will come under the Lokpal Bill. Because of this big area, this shade of grey, it is up to the Government which is in power to take advantage of the vagueness of the law and create all sorts of problems for the member. The vagueness creeps in at the time of definition of misconduct also. According to the Law Ministry's note, "misconduct in the case of a public man has to cover not only corruption in the sense of criminal law but also something more". So, here also it is not spelt out. The note also says that there had been no previous definition of 'misconduct' except in the original Bill in 1968 and 1971. Does the Attorney-General maintain that there is a lot of vagueness in the roles—where the first role ends and the second begins—and whether the vagueness in the definition of misconduct comes in the way of parliamentary privileges?

MR. CHAIRMAN: You have also emphasised the amphibian character of the Member of Parliament—both inside the water and on land. The Attorney-General also finds it difficult to demarcate it. What can he say?

SHRI MAHADEO PRASAD VARMA: Mr. Attorney-General, I have got one very simple short question. Legal and constitutional niceties apart; does or does not this Bill by including M.P.s. undermine the spirit of Article 105 at least, to some extent?

SHRI S. V. GUPTE: Directly it does not. But indirectly, most of the controversy is raised on (a) because what is said is 'actuated'. Where? He may be actuated inside as well as outside. But the other Article seems to be quite clear to me.

MR. CHAIRMAN: Any of the actions can be impugned inside the House.

SHRI S. V. GUPTE: As a matter of privilege.

MR. CHAIRMAN: Can any court cast a reflection on what he has said in the House?

**SHRI S. V. GUPTA:** Not in the House—nothing to do with what he has said or done in the House.

**SHRI K. SURYANARAYANA:** All my learned friends have questioned about many things. As a common man I have a problem. In my area certain irrigation projects are proposed. By the construction of these projects many people are benefited, but some people may be affected also. Both the parties—the benefited and the affected—come to me for support. I am afraid to support the proposal even though I know larger number of people are benefited and a few people are affected. But I cannot avoid supporting in the larger interests of the construction of projects. I want to know how to save this situation because a common man like me cannot become a lawyer. The Government also recently allowed us to sign Passport application forms. Many applicants are not known to us. But our constituency people bring them to us. So I have to sign. So, I want to know how to get rid of all these practical difficulties. With regard to projects, supposing two parties are there. I know both of them. I know some of them are affected, but the majority of the people are being benefited. But the lands of some poor people are being submerged. Whom I have to support now? Have I to support the majority party because I got elected through them? These are the practical difficulties in my area. It is a practical question. When the Home Minister introduced this Bill, I am one of those who accepted it. After hearing all these things, I am afraid that if I agree now, after some time I cannot question. I am asking the Legal Department as well as the political leaders about it. They say it is for political people. I want the Legal Department and the Home Minister also to clarify to me as to how I should help the people in a beneficial way.

**MR. CHAIRMAN:** How do you expect any solution from the Attorney-General on this?

**SHRI K. SURYANARAYANA:** I want to know how to avoid this. We have to know about the practical things. I want to know where I stand. Please get the clarification from the Home Minister.

**MR. CHAIRMAN:** This is a very important problem which will be borne in mind by the Committee. But we do not expect any solution from the Attorney-General.

**SHRI K. SURYANARAYANA:** Not legally. As a common man I am asking. As a common man, let him reply.

**SHRI DILIP CHAKRAVARTY:** Mr. Chairman, how can we request the Attorney-General to give his opinion as a lay man when he appears before us as an expert?

**MR. CHAIRMAN:** We will deal with it.

**SHRI KRISHAN KANT:** Mr. Chairman, through you I would like to ask the Attorney-General about the question of misconduct. Suppose we appoint a Lokpal today. Tomorrow we are confronted with a situation. How will he interpret the clause about misconduct? Rule 20 of the Central Civil Services (Conduct) Rules, 1964, reads as follows:

"No Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government."

The above is the rule. Now, if you see 3(a), (b) and (c)—(c) includes also not only relatives and friends, but also 'associates' which has been defined in relation to public man any person in whom such public man is interested. Supposing he writes a letter to the Minister that something has been done to him wrongly or for promotion or something else and tries to influence the Minister. Other persons can say that because he knows such and such M.P., he approached him and got the work done. But in

terms of that, the M.P. may be thinking that he has done justice. But according to this Rule, it is influencing and putting pressure. Will it be termed as 'misconduct' in terms of what has been defined in clause 3 of the Bill and in terms of Rule 20 of the Central Civil Services (Conduct) Rules? When a petition is given to the Lokpal, the petition will be made in terms of Section 3 and supposing many civil servants have given notice through their Secretaries that an officer has brought pressure and therefore action has been taken. We know that hundreds of M.Ps. and M.L.As. daily do these things by which they think they have done justice. Will this honest and sincere work be treated as misconduct?

MR. CHAIRMAN: It is a question of facts on an overall picture, an overall picture of what has happened and then you decide whether he has really been guilty of corrupt practice. If you know that there is nothing sinister about it, then there is no question of misconduct.

SHRI KRISHAN KANT: Here is a rule which clearly says—there is no ambiguity about it—that "no Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government". Then this letter is certainly a misconduct in terms of this rule.

SHRI S. V. GUPTA: On the part of the public man or on the part of the Government servants?

SHRI KRISHAN KANT: And he is an accomplice.

SHRI S. V. GUPTA: You would have to see who has really done that. The question so far as he is concerned is whether he has done something improper. That is the gist of the matter. He merely conveys a grievance. That would not be misconduct.

Anyhow, it is a matter which goes to the facts of a case. Clause 3(c) says:

"If he directly or indirectly allows his position as such public man to be taken advantage of by any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favour to himself or to another person...."

All these components must be fulfilled. Suppose a man has merely represented, or he has merely put the point of view of that civil servant, the former has not allowed himself to be taken advantage of for getting any undue favour either to himself or to another person.

SHRI KRISHAN KANT: It is misconduct under rule 20 of the Rules I have quoted. It is an abetment.

SHRI S. V. GUPTA: It is not abetment.

MR. CHAIRMAN: The point is made. We shall now proceed further.

SHRI KANWAR LAL GUPTA: I will elaborate what Mr. Krishan Kant said. Suppose there is an election in-charge in my constituency. He is a farmer. He comes to me and says: "Kindly send a letter to the Minister asking him to provide irrigational facilities to the particular area where I owe land." He does not send a representation. From my own side, I write a letter to the Minister. Suppose there are more important areas in the village. A particular farmer helps me; I also help him. Write a letter to the Minister requesting him to provide irrigational facilities to the area covering the land of that man, ignoring others. Does it amount to misconduct?

SHRI S. V. GUPTA: I am afraid it does not.

MR. CHAIRMAN: If the peasants in that area, out of gratitude to you, send you a bag of wheat, then it would be for a pecuniary consideration.



**SHRI KANWAR LAL GUPTA:** Secondly, the definition of misconduct is very wide in the Lokpal Bill. Clause 3(a), (b) and (c) make it very wide. But the rules of the Privileges Committee also concern a Member of Parliament. There can be a conduct of an MP which is covered under this Lokpal Bill as well as under the rules of the Privileges Committee. We can visualize it. Suppose somebody makes a complaint to the Lokpal against me as an MP and the latter makes an enquiry. Similarly an MP might raise an issue of breach of privilege against me. Then the matter will go to the Privileges Committee. Suppose the finding of the Privileges Committee and that of the Lokpal are not consistent; and suppose there are different findings by the two bodies. What will be the legal position in that case? The definition of 'misconduct' is overlapping. To what extent will the provision in the Lokpal Bill infringe on the rights of the Privileges Committee?

**MR. CHAIRMAN:** We can discuss the first point later on. Regarding the second points viz. the respective jurisdictions of the two different bodies, I think that each of them has the right to decide within its jurisdiction. The Member may not be punished by one body, but may be punished by the other.

**SHRIMATI MARGARET ALVA:** We the women MPs. very often get involved in various amendments being suggested, or in other battles for the rights of women—probably for furthering personal interests. Under this definition of 'misconduct', will the women who lead this movement for the rights and privileges of women also be charged with misconduct?

**SHRI S. V. GUPTE:** The words used are "improper or corrupt motives." Fighting for women's rights is not covered by them.

**SHRIMATI MARGARET ALVA:** The definition by itself will prevent us from working for the rights. Of

course it is for furthering personal interests.

**MR. CHAIRMAN:** The Feminist movement will not be affected by it. That is what Mr. Gupte says.

Now I am proceeding to question No. 3, due to lack of time. We will take our own decisions; in the light of the discussions which have taken place. We can now take up the question relating to the safeguards to be provided in cases concerning Chief Ministers—which is linked to questions 3, 4, 7 and 8 in the Annexure.

**SHRI S. V. GUPTE:** There is no question of the Centre or the Union interfering in their administration at all. It does not interfere. Really, what is sought to be done is to bring certain individuals, or citizens throughout the country, who were guilty of misconduct, to come within the mischief of this provision. Shall I put it this way? There is no interference in the sense of any interference with the administration by the State within their lists at all. There is no interference either by the executive or the legislature. Only public men throughout India are brought under this Act for enquiry. There is no question of any invasion of either Legislative or executive authority of the State. If that is the only objection to the inclusion of the Chief Minister, there is no interference at all.

What is important to notice is that when the earlier Act was passed there was no federal structure in India. It was not a federal structure at all, though we will not go into the niceties of it. Even in the Government of India Act, which was hardly federal, there was some distribution of powers. If it is within the competence of the Union by reason of Entry 97 read with Article 248, then it is within the field of legislative distribution between the federation and the States. So, actually, not only is it not acting contrary to the federal

structure, but it is acting within the framework of the federal structure, for it is a power which is given, and that power can be used and exercised with reference to people. So, there is no question of violation or interference with the legislative or executive functions of the State.

MR. CHAIRMAN: Under what provision of the Constitution is this power given to the Centre?

SHRI S. V. GUPTE: Entry 97 read with Article 248. If there is power to legislate it is there with reference to all people.

MR. CHAIRMAN: Suppose the Lokayukt Bill includes the Chief Minister?

SHRI S. V. GUPTE: You cannot say that there is no jurisdiction to legislate for them. The legislation will take its own course.

MR. CHAIRMAN: Could there not be a case of double jeopardy? He may be undergoing investigation under both laws at the same time? A person can be subject to two investigations concurrently. There is the Karnataka case.

SHRI S. V. GUPTE: In the Commissions of Inquiry Act, there are provisions as to what should happen in case there are two enquiries in the same matter. So far as Lokpal is concerned, no such provision is really necessary. It is entirely within the competence and there is only one provision made. Under section 10(2) there can be two enquiries, one under the Lokpal and the other under the Commissions of Inquiry.

MR. CHAIRMAN: Then one can conceive of three enquiries.

SHRI S. V. GUPTE: If there is jurisdiction of more than one body to look into the matter, there can be no objection in law. But, very often, the material would not be the same.

MR. CHAIRMAN: The Centre can take the view that the Commission of the State would not be able to do justice to the case.

SHRI S. V. GUPTE: At the moment there is no provision as to how the situation can be resolved, if it is the same subject, same fact. More often, the facts may be different under the Lokayukt and the Lokpal Act.

SHRI CHARAN SINGH: The Lokayukt Act of no State deals with the Chief Minister. It is doubtful whether a State Government has the right to appoint a Commission of Inquiry against its Chief Minister. There is doubt about it. But suppose it does contain such a provision, then he will be excluded from this.

SHRI S. W. DHABE: The Administrative Reforms Commission, of which the Prime Minister was the Chairman, in its recommendation excluded the Prime Minister and the Chief Minister from the scope of enquiry by the Lokpal and the Lokayukt. Following that recommendation, the Maharashtra Lokayukt Act only includes the other Ministers and not the Chief Minister. Under the Bill, in the case of the Chief Minister, the competent authority is the Prime Minister. The Prime Minister may be of a different political party, and the Chief Minister can be put to harassment by this method. So, it is but proper that the Chief Minister should be excluded. The Attorney-General has also given the opinion that it is possible to amend the Lokayukt Act to include the Chief Minister.

SHRI CHARAN SINGH: Suppose the State Legislature does not include the Chief Minister? Also, there is legal advice given to us that the State Legislature cannot appoint a commission of inquiry against the Chief Minister.

SHRI S. W. DHABE: Under the Commissions of Inquiry Act the position may be different, but under the Lokayukt Act he can be included.

**SHRI CHARAN SINGH:** That has to be considered further. The legal advice is that the State Legislature cannot institute any enquiry against its own Chief Minister. There is a rule to that effect.

**SHRI RAM JETHMALANI:** The executive authority of the Chief Minister of a State extends to the subjects which are mentioned in Lists II and III, but the Constitution has deliberately provided that both the Centre and the State would be able to enact laws relating to enquiries, but the supremacy of the Central law is preserved by the Constitution to avoid the danger either of simultaneous proceedings before two Commissions or of two successive proceedings before two Commissions. So, you can always have a provision in the Central law stating that if a matter is pending before the State Commission, it shall not be enquired into by the Central Commission and *vice versa*, or that if it is pending before two authorities, only the first shall operate. All these provisions are within the sovereignty of the Central Legislature. There is no doubt at all that enquiry into a Chief Minister's conduct is possible both under the State and Central laws.

**SHRI CHARAN SINGH:** That was our view also, but the Attorney-General differed from us.

**MR. CHAIRMAN:** This is a very important point, whether it is within the powers of a State Legislature to enact a law authorising any action against the Chief Minister in a corruption charge.

**SHRI S. V. GUPTE:** Entry No. 94 of List I and Entry No. 45 of List III are identical except for one word "surveys" which makes no difference to our present discussion. Entry No. 94, for instance, enables the Union to institute inquiries "in any of the matters in this List". None of the Lists has anything to do with Ministers or Chief Ministers or any individual as such. What should be the nature of

the enquiry is a matter which must be investigated further, but supposing an enquiry has to be made, it must be with reference to subjects and matters connected with the subjects in Entry No. 94 of List I and likewise in Entry No. 45 of List III, but the executive power in respect of List III is not with the Union, but only with the State. The question here is whether any particular person is to be included or not. If enquiries are competent generally, then in so far as items in Lists II and III are concerned, the State is competent; the Union is competent in respect of Lists I, II and III. Under Item 45 of List III, enquiries can be undertaken. The State List is confined only to II and III. I do not understand the question about the Chief Minister.

**MR. CHAIRMAN:** Whether the State Legislature is competent to enact a law involving the Chief Minister in respect of corruption, etc.

**SHRI S. V. GUPTE:** List II.

**MR. CHAIRMAN:** Whether that subject is mentioned.

**SHRI S. V. GUPTE:** Subject is only enquiry.

**SHRI C. M. STEPHEN:** Whether there is any clause in List II.

**SHRI S. V. GUPTE:** No.

**MR. CHAIRMAN:** If there is no such power to the State Legislature under List II, whether the State Legislature can enact a law involving the Chief Minister.

**SHRI S. V. GUPTE:** List III. Item 45.

**MR. CHAIRMAN:** The Concurrent List does not give legislative power.

**SHRI S. V. GUPTE:** It does. It does not give executive power. If you see Item 45, you will find that.

**SHRI C. M. STEPHEN:** If the legislative competence is to be conferred, mere enquiry will not be enough. The enquiry will have to be in relation to

a matter specified in this List. Which is that item?

SHRI S. V. GUPTE: Take for instance, Commissions of Inquiry Act. There is a certain definite matter which has been referred. Now, in the case of Lokpal Bill, the complaint may be in respect of foreign exchange or more other entries.

SHRI C. M. STEPHEN: In the case of Commission of Inquiry Act, an enquiry can be instituted with respect to a matter which is of public importance and the enquiry can be sustained only if the matter is covered by some of the items in one of the three Lists. Here, it is not specifically specified that these are the items regarding misconduct, etc. under which enquiries will have to be done.

SHRI S. V. GUPTE: Here is Lokpal Bill which brings into existence a forum. No specific complaint is before anyone at this stage. It will come up at a later stage. You look at the definition of misconduct. It may arise with reference to several situations. Somebody may get the licence by abusing his position. Look at Section 3.

SHRI C. M. STEPHEN: My simple question is, looking through the Lists I, II and III, which exactly is the item mentioned in these Lists which will take care of the definition given in this Bill?

MR. CHAIRMAN: We can get the assistance from the Attorney-General to the extent it is necessary. Would not "actionable wrongs" cover that?

SHRI C. M. STEPHEN: It will not cover.

SHRI S. V. GUPTE: It does not arise with reference to Entry 97 at all. That is a very wide one.

SHRI C. M. STEPHEN: If this jurisdiction can be taken only under Entry 97, it is not a matter to be discussed with the Attorney-General. It is a very serious constitutional matter.

MR. CHAIRMAN: It is not covered under Entry 97. This relates to the Centre. What we are struggling with is to find out whether the State Legislature can enact such a law and, if so, under what powers. The Attorney-General refers to Entry 97 of List I which only covers so far as the Centre is concerned. The Centre has got the power. But so far as the State Legislature is concerned, the question is as to whether it is competent to enact a law involving the Chief Minister. You have raised a very valid point as to which is the item in Lists I, II and III which relates to this matter.

SHRI C. M. STEPHEN: He could point out only Entry 97. I do not want to pursue the question. He has given the reply. I am not satisfied with it. Entry 97 is the only reply that I have got.

My second question is, assuming and even conceding for argument's sake that it is covered under "inquiry", there are two stages in the Bill, one is the inquiry part of it and the other is the competent authority part of it. With respect to the Chief Minister, this Bill appoints a competent authority. The Lokpal must be satisfied that the competent authority has taken an appropriate action. The competent authority is the Prime Minister over the Chief Minister. The question is, whether the Prime Minister can be appointed as a competent authority over the Chief Minister in the federal structure of our country, whether the Prime Minister can take any action against the Chief Minister—I am not speaking about the individuals—whether the Chief Minister comes under the ambit of this law and whether the Prime Minister, under the Constitution, can take any action against the Chief Minister who is answerable to the State Legislature.

My third question is, if the Lokpal is not satisfied with the action taken, then the report must be directed to be placed before the Parliament, whether the Parliament is given competence

to discuss the matter. Taking in view the federal structure of our country, my question is, whether any allegation against the Chief Minister who is answerable to the State Legislature can be discussed in the Parliament which he cannot answer, whether the Parliament can take an *ex-parte* decision with respect to the Chief Minister. It is far different from the Commissions of Inquiry Act. If you want, you can reply tomorrow.

MR. CHAIRMAN: All these points are mere questions of propriety. So far as the constitutional view is concerned, the Attorney-General tried to answer the point in the beginning that the federal structure is not affected thereby. You have raised very important points of propriety. If the

Attorney-General finds any point of constitutional or legal importance, he can address himself to that. If that is not there, then probably the first concern should be that the State Legislatures must be vested with that kind of power. (*Interruptions*). I do not get that also. You kindly help us.

SHRI S. V. GUPTE: Tomorrow, what time would suit you?

MR. CHAIRMAN: We will meet at 10.30 A.M. I must warn the Committee that we may not be able to transact any business for which we have come here if we go like this. We adjourn the meeting today and will meet tomorrow at 10.30 A.M.

(*The Committee then adjourned*)

RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON  
THE LOKPAL BILL, 1977

Tuesday, the 25th October, 1977 from 10.30 to 13.30 hours

PRESENT

Shri Shyamnandan Mishra—*Chairman*

MEMBERS

*Lok Sabha*

2. Shri R. K. Amin
3. Shri Dilip Chakravarty
4. Shrimati Mrinal Gore
5. Shri R. D. Gattani
6. Shri Kanwar Lal Gupta
7. Shri M. V. Krishanappa
8. Shri Krishan Kant
9. Shri M. Kalyanasundaram
10. Shri B. C. Kamble
11. Shri Nathu Ram Mirdha
12. Dr. V. A. Seyid Muhammad
13. Shri Narendra P. Nathwani
14. Shri Balasaheb Vikhe Patil
15. Shri Saugata Roy
16. Shri Gauri Shankar Rai
17. Shri C. M. Stephen
18. Shri B. Shankaranand
19. Shri K. Suryanarayana
20. Shri Sasankasekhar Sanyal
21. Shri Jagannath Sharma
22. Shri Somnath Chatterjee
23. Shri Mangal Deo
24. Shri Charan Singh

*Rajya Sabha*

25. Shri Sunder Singh Bhandari
26. Shri Mahadeo Prasad Varma
27. Shri Vithal Gadgil
28. Shri D. P. Singh
29. Shri Devendra Nath Dwivedi
30. Shrimati Margaret Alva
31. Shri Sawai Singh Sisodia
32. Shri N. G. Ranga
33. Shri S. W. Dhabe
34. Shri Bipinpal Das
35. Shri G. Lakshmanan

## SECRETARIAT

Shri Y. Sahai—Chief Legislative Committee Officer.

## LEGISLATIVE COUNSELLORS

1. Shri R. V. S. Peri-Sastri—Joint Secretary and Legislative Counsel.
2. Shrimati V. S. Rama Devi—Additional Legislative Counsel.

## REPRESENTATIVES OF THE MINISTRY OF HOME AFFAIRS

(Department of Personnel & Administrative Reforms)

1. Shri C. R. Krishnaswamy Rao Sahib—Secretary.
2. Shri R. C. Misra—Additional Secretary.
3. Shri G. P. Kalra—Under Secretary.

## ATTORNEY-GENERAL OF INDIA

Shri S. V. Gupta—Attorney-General of India.

## WITNESS EXAMINED

Shri S. V. Gupta—Attorney-General of India.

MR. CHAIRMAN: We begin our work now. We pick up the thread from where it was left yesterday. We were trying to identify the source of power for legislation by the State Legislature because the legislation might involve even the Chief Ministers. Now I have been told that we have to do the same thing with regard to the Central legislation also—identify the item, that is, the inquiry has to be related to a particular specific purpose in the List. Where is that purpose in the List? That is what has to be identified, located. It is precisely in that context that we require the assistance of the Attorney-General.

SHRI S. V. GUPTA: There is the decision of the Supreme Court in a well-known case, which was in the context of Commissions of Inquiry, and the same reason must apply here. That decision, which dates as far back as 1958 relates to the case of Ram Krishna Dalmia V. Justice Tendolkar (A.I.R. 1958 S.C. 538). The relevant portion says:

“Entry 45 in List III, which is the Concurrent List, speaks, *inter alia*, of ‘inquiries...for the purpose of any of the matters in List II or List III’ Under Art. 246 read with this

entry, Parliament as well as the Legislature of a State may make a law with respect of ‘inquiries for the purpose of any of the matters in List II’. Parliament under Art. 246, has no power to make a law with respect to any of the matters enumerated in List II. Therefore, when Parliament makes a law under Art. 246 read with entry 45 in List III with respect to an inquiry for the purposes of any of the matters in List II, such law can never be one for inquiry for the purpose of future legislation by Parliament with respect to any of those matters in List II. Clearly Parliament can make a law for inquiry for the purpose of any of the matters in List II and nonetheless so though Parliament cannot legislate with respect to such matters and though none of the State Legislatures wants to legislate on such matters. Therefore, the law to be made by the appropriate legislature with respect to the two legislative entries viz. List I Entry 94 and List III Entry 45 may cover inquiries into any aspect of the matters enumerated in any of the list, mentioned therein and is not confined to those matters as mere heads of legislative topic. Quite

conceivably the law with respect to inquires for the purpose of any of the matters in the lists may also be for administrative purposes and the scope of the inquiry, under such a law will cover all matters which may properly be regarded as ancillary to such inquiries. The words 'for the purposes of' indicate that the scope of inquiry is not necessarily limited to the particular or specific matters enumerated in any of the entries in the list concerned but may extend to inquiries into collateral matters which may be necessary for the purpose, Legislative or otherwise, of those particular matters. Therefore, the inquiry which may be set up by a law made under these two entries, is in its scope or ambit not limited to future legislative purposes only."

So, the argument was that it must be for the purpose of making legislation and since you cannot legislate in respect of items in List II, you cannot make a law. That is the gist of the matter. The matter was then pursued at great length and two things were brought out.

One is that, so far as Parliament is concerned, whether Entry 94 applies or not, Article 248 does apply and, even supposing Entry 94 were not there, Entry 97 gives residuary power and, therefore, so far as Parliament is concerned, there is no kind of difficulty whatsoever.

Now please turn to Entry 97 for a minute. There is no reference to any entry in any list, and this must be read along with Article 248. (This is a series of those provisions which deal with distribution of powers). Art. 248 says that Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or the State List—that is, any matter outside these lists. Such power should include any power not mentioned in either of these lists—but that is not necessary for the present purpose.

Now please turn to Entry 97. It says 'any matter not enumerated in

List II or List III' and this follows up Art. 248. Therefore, so far as the Parliament is concerned, there is no question that it is competent to legislate on the subject.

SHRI D. P. SINGH: Does this carry the matter forward at all, because under Art. 248, Entry 97, List I and the Seventh Schedule are confined to legislation on subjects which are not covered by Entry 2: that is, these are residuary powers in respect of matters not covered or which are outside the scope of List II. The question here is whether Parliament is competent to legislate in respect of matters directly covered by List II. In regard to residuary matters of course Art. 248 is there and the decision in Justice Tendolkar's case takes it to that extent. Now, Entry 97, which was added subsequently by an amendment of the Constitution, also reiterates the same position. But the question is whether any legislation is possible in respect of matters directly covered by List II—that is, the State List and not the Concurrent List—because the Chief Minister of the State has to exercise the powers given in respect of List II. Now, this is a matter which is confined particularly and specifically within the State's power.

SHRI C. M. STEPHEN: List II is covered by Entry 45 which says 'any matter specified in List II or List III'. So, in the concurrent jurisdiction . . .

SHRI D. P. SINGH: I am not referring to concurrent jurisdiction; I am referring to exclusive jurisdiction of the State.

MR. CHAIRMAN: The point is that, if a specific subject is not covered by List II (and we still don't know whether this is covered by List II) whether this would not apply.

SHRI D. P. SINGH: My submission is that the scope of all matters coming within the governance of the State are covered by List II. Now, can you legislate in respect of matters which are particularly within the domain of the State?



**SHRI NARENDRA P. NATHWANI:** Please look at Entry 39 of State List. If some form of misconduct amounts to a breach of privilege of a State legislature, you would be by this enactment providing for encroachment on their Entry in List II.

**MR. CHAIRMAN:** The point is that mention here is made of Chief Minister and not as the Executive head. He is the head of the Government there. We are trying to make a distinction between a person possessing executive powers and a person possessing legislative powers. Therefore, the insistence in this Committee has been that those who are possessing legislative powers should not be brought within the net of this. But so far as the persons possessing executive powers are concerned, we do not want to leave them out. Here, the head of the Government is being brought in. He is not here as a Member of the legislature.

**SHRI NARENDRA P. NATHWANI:** The Chief Minister does not cease to be an ordinary member of the State legislature.

**MR. CHAIRMAN:** When you are insisting that the Members of Parliament should not be included.

**SHRI NARENDRA P. NATHWANI:** I am very much for including them.

**MR. CHAIRMAN:** When some hon. Members are insisting that Members of Parliament should not be included, then you should say that the Ministers and the Prime Minister should also not be included because they would continue to be Members of Parliament.

**SHRI JAGANNATH SHARMA:** The various entries in the three Lists are not powers, are not heads or subjects or matters, but in fact, they are fields of legislation. Under Enquiry 94, there is a word 'enquiry'. All ancillary matters connected with it come within the purview and ambit of the legislation. There are Supreme Court judgments on this. Each general word

should be held to extend to all ancillary and subsidiary matters." The provision in Lokpal Bill should not stop at the enquiry level, it can even extend to the proposed action that can be taken under the Lokpal Bill.

Shri Stephen had mentioned specifically yesterday that the Commissions of Enquiry Act stops at the level of enquiry. My submission is that after the point was debated and some judgments of Supreme Court pronounced the Act was amended in 1971 and the effect of the amendment was section 3(4):

"The appropriate Government shall cause to be laid before the House of the People or as the case may be, the legislative assembly of the State, the report, if any, of the Commission on the enquiry made by the Commission under sub-section (1) together with action thereon within a period of six months of the submission of the report . . ."

What precisely the Bill wants is follow up action which has been incorporated by amending the Commissions of Enquiry Act. Therefore, now the question of confusion does not arise.

Take for example the "deprivation of property." This is a valuable right under Art. 31 but laws could have been framed under Articles 245 and 246. List I, Entry I which reads:

"Defence of India and every part thereof including preparation for defence and all such acts as may be conducive in times of war to its prosecution and after its termination to effective demobilization".

Now, the Supreme Court has held that you can deprive a person of his property by law made under List I. What I want to say is that these Lists are not narrow in their scope. They just suggest the fields.

My point is that nowhere there is a prohibition to hold an enquiry against the Chief Ministers. You can have an enquiry and also follow up

action by law enacted under Lists I and II or III. You cannot say that Chief Ministers do not come within the ambit of the Bill.

MR. CHAIRMAN: So far as central legislation involving Chief Ministers is concerned, there does not seem to be a difficulty. Shri D. P. Singh had pointed out that only those subjects which are not directly and clearly covered in List II can come within the purview of the Central legislation. My difficulty is that List II also does not contain any specific mention. It can come under those very Lists which have been pointed out by the Attorney-General. Therefore, the central legislature would be competent in legislating measures involving the Chief Ministers.

As regards Shri Sharma's point, certain powers flow from the Constitution directly, and, therefore, there is no question whether it is covered in the Lists or not.

SHRI D. P. SINGH: Shri Sharma has gone too wide, probably he has ignored Article 31, which says that no person shall be deprived of . . .

MR. CHAIRMAN: The basic law itself gives power. There is no question of any List giving that power.

SHRI D. P. SINGH: My submission is; when various items are enumerated in List II the widest amplitude has to be given and, therefore, in respect of those matters enumerated all kinds of legislations are possible. It defines the competence of the State to legislate. Once you indicate the field of legislation with respect to various things, who will use it or who may not use it and the punishment for misuse or non-use of power, everything conceivable is covered. The purpose of putting an item in a specific list of the State or the Centre is that the State or the Centre has all powers of legislation in respect of all matters connected directly or indirectly or even ancillary matters. Therefore, the fact that these items are enumerated in the State List would suggest that

it would not be proper to say that an inquiry is not referred to under each of these items. Therefore, the interpretation is that when a subject is put in, everything conceivable with respect to that matter is implied. That is my submission.

MR. CHAIRMAN: That subject is not even indirectly mentioned.

DR. V. A. SEYID MUHAMMAD: Apart from the difficulties in the Entries in the Lists, I feel there is another difficulty and perhaps the Attorney-General may enlighten us on that. Under Art. 162 the executive power of the State is co-extensive with the legislative power. So, when a Chief Minister acts in the field allotted to the State, how can the Prime Minister, whose executive power is also co-extensive with the legislative power of the Union call into question the Chief Minister and make inquiries and recommend punishments? Under what power it is done?

SHRI CHARAN SINGH: Kindly read the proviso to Art. 162.

DR. V. A. SEYID MUHAMMAD: Yes, I have read it. The proviso deals with the concurrent list. But here reliance is not on Entry 97—residuary power. Therefore, the proviso does not apply.

SHRI S. V. GUPTE: May I reply to one or two questions?

First, it seems to me, speaking with great respect to this House, that there is some confusion. You must forget what misconduct is. That is totally a distinct question.

Dealing merely with the source of power to legislate, the source will be found in Entry 97 but the members here asked: where is the item? It is not on the basis of the judgement of the Supreme Court. Entries 45 and 94 are both available to Parliament. Entry 45 is available only to the State because it occurs in the Concurrent List. The result is that Parliament

has power both under Entries 84 and 97 in List I and Entry 45 in List III and if you see Entry 45, it, in its turn, makes reference to inquiries in respect of matters in Lists II and III. The result is, as the Supreme Court points out, that although Parliament has no power to legislate in respect of List II, so far as inquiries are concerned, by reason of Entry 45 which says 'inquiries for the purpose of matters specified in Lists II and III', Parliament has a right to make inquiries or provide a forum for inquiry under Entries 94 and 97 of List I and under Entry 45 for Lists II and III.

Since it was disturbing the members here as to which is the specific item to which it can relate, the inquiry must relate to something. The answer is that there is no limitation on the nature of the inquiry. Even if it happens to be in the State List or List III, then under item 45 Parliament is competent to legislate in the matter of inquiries. It is competent to make inquiries or legislate in the matter of inquiries or for the purpose of an inquiry under Entries 94 and 97.

The argument is being put to me: ignore for the time being the existence of both Entries 45 and 94. You still have the residuary power.

One of the points which was troubling the House was: where is the matter which specifically deals with inquiry say, for instance, misconduct and corruption and so on? There under Entry 97 Parliament has power to legislate in that matter.

Then the next question is: if it has the power and competence to legislate, is there any ban on legislating with respect to a particular individual only because he happens to be a Chief Minister. Once that power is there, it is available to cover every person in India wherever it has the jurisdiction and so far as Parliament is concerned, you know, it has even extra-territorial jurisdiction.

Then a reference is made to Entry 74 which has nothing to do with it. It assumes first that the provisions of the Lokpal Bill do entrench upon the privileges. It is a totally different and distinct question. You cannot test the competence that way. First you have the power. Parliament has a right to legislate. There is no exemption in favour of any person. Art. 105 does not come in. There is no fetter on that power.

Then does the definition of misconduct entrench upon the privilege—that is precisely the question which was discussed at great length.

That is the position. As far as I am concerned, nobody is legislating in the matter of privileges. The only question that arises is this. Having got the competence, is it the requirement of law or the Constitution that the Chief Minister or anybody else for that matter be excluded. I am not interested in that controversy. I am purely talking of competence. This is not a law which infringes the privileges under sub-clause 3 of Art. 105. If you turn for a moment to another Entry, Entry No. 93, you may consider the offences mentioned therein against the laws with respect to any of the matters in this List.

Suppose Parliament, instead of putting that here, makes a certain type of misconduct an offence. Can any person throughout India guilty of the offence be exempted. Anybody who commits an offence is guilty of it. Therefore, the two questions are distinct. Suppose, tomorrow, Parliament were to say that misconduct is an offence, then the other important question may arise namely whether that infringes upon the privilege. That is totally a different question from the competence of Parliament to legislate. Reference was made by Dr. Muhammad that under Art. 162 the Executive have got powers to interfere. But, by means of this Bill, neither the Executive authority nor the Administration of the State is interfered with. On this there can be no dispute. That

is not what the Lokpal Bill is seeking to do. Lokpal Bill is seeking to set up a shining example of a public man to others. That is how the misconduct should be defined. It is a totally distinct question whether any particular clause or clauses infringe upon the privileges of the House or not.

MR. CHAIRMAN: It comes to the same thing that the Central Authority has an unqualified power but that is subject to certain provisions in the Constitution, particularly, relating to the privileges, immunities and so on. What the Members are trying to stress is that the legislation that we are seeking to bring about would not be affected by those provisions in the Constitution. That is what they are trying to do. That is a limited purpose for their intervention in the matter.

Now, so far as the Attorney-General is concerned, he says that you can examine it from that point of view. But, so far as the source of power for legislation is concerned, the power is there. But, that would be subject to certain provisions in the Constitution.

SHRI SAUGATA ROY: Is your original query replied to?

MR. CHAIRMAN: I am coming to that. We have not so far come to that.

SHRI SAUGATA ROY: He is only on the source of the power. He has not yet replied to your original query.

MR. CHAIRMAN: I have myself not gone into that aspect yet. I have divided it into two parts. I am coming to that. His point is clear and we are now coming to the source of power.

SHRI D. P. SINGH: What the Attorney-General said—what I understood him to say—was this. Its source is distinctive. With respect to enquiries, he does not go further than this because inadvertently he also referred to penalties. And if I understood him aright, you may kindly see Entry No. 93 to which he just now referred. Entry 93 refers to offences against the laws with respect to any of the matters in that list, that is, List

No. I. By this Lokpal Bill, we are seeking to extend the jurisdiction of having not only the matter enquired into with respect to matters in other List but with respect to punishing also on matters connected with the other List. That is not covered by Entry 93.

SHRI S. V. GUPTE: Lokpal Bill does say what are the 'offences' which could be subject-matter of enquiry. What happens thereafter is outside the ambit. He only makes the recommendations.

MR. CHAIRMAN: It does not create a new offence. That point has been very clear to the Committee.

SHRI D. P. SINGH: We want to satisfy ourselves by asking the questions. This is the gravamen of charge which I have made. We will deal with each one of them separately.

MR. CHAIRMAN: Anybody will be proceeded against under the existing law. There is no new law going to be enacted for dealing with those offences. This point is very clear to us. Only limited point is this that whatever action would ensue from the report of the Lokpal would be the action under the existing law and no new law is going to be enacted.

SHRI D. P. SINGH: On that point we are going to differ. You deal with it retrospectively. So, you will please see the Article 21 that is before you.

MR. CHAIRMAN: Let us leave it at that. So far as prospective implications of the measures are concerned, there are a number of case-laws on that. And we can go into that.

SHRI D. P. SINGH: I am here entering into a caveat in regard to the new offence. You will keep that thing in mind.

MR. CHAIRMAN: Now, let us go to the State legislation.

DR. V. A. SEYID MUHAMMED: The Attorney-General said that the enquiry into the activities of the chief Minister will not be an interference

in the executive power of the State. With great respect I beg to differ. I will cite an example. A Chief Minister gives a contract to a particular company or firm or individual. After taking into consideration all the facts of the case, I believe, there has been a corruption involved in that. The Prime Minister feels that it is so. Then he orders an inquiry. That affects directly or infringes the power of the Executive—the executive power of the Chief Minister . . .

MR. CHAIRMAN: May I say this from commonsense point of view? If it has been a *malafide* action and if that is the motive, then there would be action on that under the law.

DR. V. A. SEYID MUHAMMED: Before enquiry you will decide that.

MR. CHAIRMAN: You are taking a *malafide* action.

DR. V. A. SEYID MUHAMMED: Not at all. I am only giving you an example.

SHRI NARENDRA P. NATHWANI: I am seeking a clarification from him whether the proviso to Art. 73 has any bearing or not. This only is an extension of executive power of the Union. So, kindly see whether Parliament is competent to legislate or not. We have discussed the source of powers. Now comes the question of the executive power. Kindly listen to me. The Article says:

'Subject to the provisions of the Constitution, the executive power of the Union shall extend to matters other than those mentioned in (b) Proviso'.

This is important according to me. I want to know whether this has a bearing to the question which we are considering—I want the Attorney-General to enlighten me on this aspect of the question.

SHRI S. V. GUPTE: I am afraid this question is not involved. Nobody is seeking to exclude. At the moment

the question is whether it has the power to legislate. Executive power has been exclusively given to the State but no such question is involved here at all. If the competence of Parliament is referred to either Entry 94 or 97 then this executive power is concurrent and co-extensive with the power to legislate.

MR. CHAIRMAN: At this stage I would request the hon'ble Members to read the Supreme Court judgment of 1958 in this respect.

SHRI C. M. STEPHEN: Mr. Chairman, I have not got replies to the questions which I had raised. I have no doubt that Parliament has competence to legislate for the enquiries with respect to all these matters. With respect to the source of legislative authority, I have no doubt. But my doubt is with respect to the enquiry as the Lokpal Bill goes further than the enquiry. Whether it has got competence. That is the question which I raised. As regards the State it is very clear that the council of Ministers are responsible to the legislative assembly of the State. It is specifically provided there. Even if it is provided that the Chief Minister has committed corruption who is the person to take action. Who is the authority to take action? The authority to take action is the legislative assembly or the Governor. The State legislature can take action because under Article 164(2) the Council of Ministers and the Chief Minister are responsible to the State Legislature. Upto the stage of finding whether mis-conduct has been committed the Parliament can provide machinery. My difficulty arises when this Bill goes further. This Bill says that the Prime Minister will be a competent authority over the Chief Minister. On the failure of the action by the Prime Minister it contemplates laying before the House a report and discussion on that. Under what provision it comes in. According to me there is no constitutional provision.

**SHRI S. V. GUPTE:** First of all the proposition that is put is that the Chief Minister and the Ministers are answerable to the Council of Ministers and the legislature there in the State and the Governor. That is only true to the extent that they are politically responsible and not responsible for any offence or misconduct committed. That is outside the ambit. Actually the Lokpal Bill does not deal with this topic at all. Where action is to be taken it is not mentioned. The report should reach a certain quarter which is called a competent authority. What action is to be taken as a follow-up is a question which is not dealt with. The report may or may not disclose an offence. It will have to be dealt with according to the law of the land.

**MR. CHAIRMAN:** May I say what Mr. Stephen has said has got a certain amount of validity in the sense that here in clause 17 to which you have made a reference says that the competent authority shall examine the report forwarded to it and communicate to the Lokpal within three months of the date of receipt of the report the action taken or proposed to be taken.

**SHRI S. V. GUPTE:** Proposal is based on the report only and nothing else. Nobody is really initiating action in terms of this Bill. Action will have to come later.

**MR. CHAIRMAN:** I am laying stress on the proposal aspect.

**SHRI S. V. GUPTE:** Clause 17 says:

"(1) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report the action taken or proposed to be taken on the basis of the report."

By whom it does not.

**MR. CHAIRMAN:** It may well be that the proposal for action might

emanate from another source and it is only the competent authority for communication. The proposal for action would be processed not by the Prime Minister himself but it may be processed by the authority whom you consider to be competent. The Prime Minister is the communication channel.

**SHRI SOMNATH CHATTERJEE:** I find that item 45, List-III, covers this Bill, although I am not very sure of Entry 94 or 97. That is my personal view. Therefore, I am not raising question of legislative competence, although you would have liked that the Parliament would have no authority to legislate on Chief Ministers. According to me it appears that there is legislative competence. The second point which is troubling me is the competent authority: so far as the competent authority is concerned, I would request the Attorney-General to tell us about the competent authority which is mentioned in the Clause 2 of the Bill. Clause 2(a) (i) says "such authority as may be prescribed". Whether the prescribed authority, the *persona designata* under this law will be exercising the power of Prime Minister by any authority may have to be described. Supposing under 2(a) (ii) anybody, for instance, Chairman of the L.I.C. let us say is the prescribed authority. But as Chairman of the L.I.C. he will not have executive power. Therefore, what power will he exercise? What power will the Prime Minister, as the competent authority or the prescribed authority, under Clause 2, exercise?

**MR. CHAIRMAN:** You have given me a good point to take up. Now, what does exactly the competent authority mean? Now, this is not clear from this Bill. Competent authority is mentioned but what would be the exact nature of competence is not examined. When you interpret clause 17, you mean to interpret the competence to extend only to the communication channel. So, one of

the lacunae in the Bill is that the competent authority is not defined and what exactly does the competent authority mean?

SHRI S. V. GUPTA: As for the definition, I would say that it is to be found in Section 2 as to who the competent authority is. That answer can only be found if the functions are assigned to him under the Act, that is in Clause 17 of the Bill. There is nothing more than that. Now, I will read out Clause 17(b).

"17(1)(b). that all or any of the allegations made in the complaint can be substantiated either wholly or partly, he shall, by report in writing, communicate his findings and recommendations to the competent authority."

Now, what is the competent authority supposed to do and not to do?

"(3) The competent authority shall examine the report forwarded to it under clause (b) of sub-section (1) and communicate to the Lokpal, within three months of the date of receipt of the report, the action taken or proposed to be taken on the basis of the report."

That is all that is given. Now, action to be taken 'by whom' is not indicated in the Act. Now, I will read further.

"(11) If the Lokpal is satisfied with the action taken, or proposed to be taken on the basis of his report under clause (b) of sub-section (1), he shall close the case under information to the complainant.....

"(4) The Lokpal shall present annually to the President a consolidated report on the administration of this Act.

"(5) As soon as may be after the receipt of a special report under sub-section (3), or the annual report under sub-section (4), the President shall cause a copy thereof

together with an explanatory memorandum to be laid before each House of Parliament."

Now, whatever is put on the table of the House would be the starting point.

MR. CHAIRMAN: Clause 17 may be made clear incorporating this point.

SHRI S. V. GUPTA: As I understand the Bill, what action is to be taken and where is not indicated except that the House will be informed of the report.

MR. CHAIRMAN: The point that I have raised is whether the proposal for action in the case of Chief Ministers should emanate from the Prime Minister.

SHRI S. V. GUPTA: This Bill is silent on that subject.

MR. CHAIRMAN: If the Bill is silent, the ambiguity could be exploited both ways. Should not the Bill make it clear? Should not the competent authority be clearly defined?

SHRI SOMNATH CHATTERJEE: Clause 2 defines who will be the competent authority in respect of the Chief Ministers and members of the Council of Ministers. In the Centre the Prime Minister will be the competent authority. What will be the duty of the competent authority? Then there is this point. Will the Prime Minister exercise his powers under this Bill *quo* Prime Minister and head of the Government or as *persona designata*. The Prime Minister's powers are laid down under the Constitution in Articles 74 and 77. Those powers do not relate to powers as competent authority under the Lokpal Act. Will he act in consultation with the Council of Ministers? To find out what the powers of the Prime Minister are, we have to go to the rules of business. Kindly take this anomalous position. Suppose it is the hon. Speaker of the Lok

Sabta. What are his executive powers? He has no executive power at all.

MR. CHAIRMAN: You are taking us to the second lap of the journey. We are in the very first lap. To what does the competence of the Prime Minister extend in this particular matter? What is the extent of his competence?

SHRI SUNDER SINGH BHANDARI: Competent authority can be any person designated under the Bill. Even though he has no executive power, he can get whatever power has to be exercised by him under this law. Unless power has been given to him, he is nobody; he is just an individual.

SHRI NARENDRA P. NATHWANI: Though there is no express provision as regards the power of competent authority, it is implicit. By implication, the competent authority is empowered to take action also. There is very firm indication as Mr. Chatterjee pointed out. The authority is described as competent; he is also to examine it. Why should he examine it if he is merely acting as a post office. It is not stated in so many words. The second question is whether he has to consult his cabinet or not. He need not consult his cabinet; according to me he is competent to take action in his individual capacity.

SHRI S. V. GUPTE: Reading clauses 17 and 18 together, he does it in his individual capacity; he is *persona designata*. It is not in his capacity as Prime Minister. You find the indication in clause 18. He cannot take any action himself. Clause 17 also is there. He receives the report. What he is told to do by the Bill is there in his individual capacity. What action has to be taken and who will take it is not indicated either expressly or by implication.

MR. CHAIRMAN: The Attorney-General says that the Prime Minister is only *persona designata*. Some hon. Members say that any person can be

authorised. I am told that section 15 of the General Clauses Act mentions the power to appoint any person to fill an office; it says "...unless it is otherwise expressly provided, any such appointment if it is made after the commencement of this Act may be made either by name or by virtue of his office."

SHRI SAUGATA ROY: While talking about the M.Ps. yesterday, the Attorney-General said that he was not sure where the jurisdiction as a private person ended and where the jurisdiction as a public man started. While commenting on the competent authority, he said: 'I think the competent authority is some sort of a channel of communication, some method to give publicity to the thing.'

This makes us all the more confused. To my mind, it appears that this Bill covers twilight areas which have not been clearly defined. I would like to know the Attorney-General's opinion in this respect as to whether he would agree with my opinion that this Bill is irreparable and should be thrown out.

MR. CHAIRMAN: This is a general question which cannot be addressed to him.

SHRI G. LAKSHMANAN: With respect to the competent authority, supposing there is a complaint involving both the Chief Minister and the Prime Minister in the same case, who would be the competent authority? Therefore my point is that a person who comes under the purview of this Lokpal Bill should not be a competent authority to any person.

SHRI C. M. STEPHEN: It is a point which I raised and I have been seeking clarification. The clarification is not complete.

MR. CHAIRMAN: The point which he raised is that if both the Prime Minister and the Chief Minister happen to be accomplice in the same case or transaction, then who would be the competent authority?



SHRI C. M. STEPHEN: It makes no difference to me whether the Prime Minister is appointed as the competent authority whether in his official capacity or as *persona-designata*.

MR. CHAIRMAN: The proposal of the Government is that the Report would be sent to the Governor of the State.

SHRI C. M. STEPHEN: To that also I have objections. To that I will come later. Now the question is, the Chief Minister is answerable to the Legislature or to the Governor. He holds office at the pleasure of the Governor. He can be dismissed by the Legislative Assembly. He is answerable to the State Legislature. The enquiry takes us to a stage in which a finding is given that the person is guilty of some misconduct. Who is the person to take action is the question. Now could the Parliament legislate appointing somebody other than the authority stipulated under the Constitution viz., the Governor or the Legislative Assembly, and whether this is permitted under the Constitution is the question.

The second question is this. In view of the provision under Article 164, sub-Article (2) viz., the Council of Ministers have the collective responsibility to the Legislative Assemblies of the States, he can be called up at the bar of the Legislative Assembly, he can be made responsible and answerable to the Legislative Assembly. In view of this, I would like to know, whether a charge against him or an accusation against him can be brought before the bar of the Parliament, the House of the people or the Rajya Sabha. Can he be called at the bar or in absentia can he be accused? I want a clarification. According to me, enquiry is perfectly allowed, absolutely competent. But any step beyond the enquiry, appointing anybody to take action, contemplating the taking of the action and placing things before the House of the

people and discussion on that—these are all violative of the provision of the Constitution so far as this applies to the Chief Minister.

SHRI S. V. GUPTE: The point is this. Since who is to take action is not indicated, it has to be assumed that it may be taken by an appropriate authority. I can only deal with what is here.

SHRI C. M. STEPHEN: Assuming that this clause is interpreted to mean that the person to take action is the Prime Minister whether in his official capacity or . . .

SHRI S. V. GUPTE: The answer is, if it does not amount to interference with the Administration, then the Parliament is entitled to enact as to who should take action. The Prime Minister would simply receive the report and . . .

SHRI D. P. SINGH: The Attorney-General was pleased to say that the Prime Minister in such a situation would be merely like a post office and a channel of communication. Would the Attorney-General like to reconsider his opinion to give some meaning to the words 'the authority shall examine'? Does it have any meaning?

MR. CHAIRMAN: It is not only action but also proposal for action.

SHRI S. V. GUPTE: It would still be within the power of Parliament to advise as to who will take action in respect of misconduct covered by the definition given in this Act, even in respect of a Chief Minister. There is no fetter on that power.

SHRI C. M. STEPHEN: If the Parliament proceeds to appoint somebody to take action against the Chief Minister on the basis of misconduct committed by him in the discharge of his official functions, the question is whether Parliament has that competence. If you feel it has the competence, would you tell us which is the provision—except the residuary power—which gives Parliament that competence?

SHRI S. V. GUPTE: I will put it the other way. If we keep clear of breach of privilege, is there any fetter on the power of Parliament?

SHRI C. M. STEPHEN: Unless you show the source of legislative power, you cannot legislate. Where is the source of legislative power except under the residuary powers?

MR. CHAIRMAN: The attention of the committee is drawn to the proposed amendment by the government, i.e. in page 10, after line 13, insert:

"(6) where any special report made under sub-section (3) or any portion of an annual report made under sub-section (4) relates to a complaint against a person who is or has been Chief Minister of a State, the Lokpal shall also forward a copy of such report or such portion of the annual report to the Governor of such State and the Governor shall cause the same to be laid before the House or as the case may be the Houses of the legislature of the State."

I have some difficulty because it comes after (3). Anyway, the intention of the amendment seems to be quite healthy. The intention of this amendment would be incorporated in an appropriate way at an appropriate place. When we consider the Bill clause-by-clause, we will take it up.

SHRI C. M. STEPHEN: I am raising a question of law. The Governor's powers vis-a-vis the Legislative assembly and vis-a-vis the Council of Ministers are defined under the Constitution. He can have no more power than that. You are providing that the report may be sent to the Governor and he shall cause it to be laid before the legislature. Under—what provision? The Governor vis-a-vis the legislative assembly has got certain powers. With respect to other powers, under Article 208 the legislative assembly is the exclusive competent authority to decide what paper must be considered, what must be

laid before the House etc. and on what discussion might take place. The Governor has no business to do it. This is violative of the powers of the Legislative Assembly. It is encroachment of the powers of the Legislative Assembly. Under what competence we can legislate? Under what powers can we legislate on that? That is the fundamental question I am raising. Can I not have a reply on this?

MR. CHAIRMAN: You will have a reply. The reply is there that whatever powers are not possessed by the President we are not giving any powers to him. In the same direction, the Governor cannot be given the powers that he does not possess. When we come to clause-by-clause consideration, we will take up all these things.

Now, let me go to the second aspect: whether the State legislature has got any source of power for legislation.

SHRI S. V. GUPTE: Let us go back to the entries. You have the State List and then you have the Concurrent List. There is no entry for enquiries in List II. So, take resort to Entry 45 of Concurrent List. But you have to keep in mind only Article 254 which says that if there is repugnancy in what is being done by Parliament and the State Legislature as well under the same entry, then of course the Parliament's law would prevail to the extent of repugnancy so that if the Chief Minister is brought it under the Lokayukt Act, then you have to see whether there is any repugnancy and that repugnancy can also be avoided by taking the President's consent. Now, you take Article 254. If there is overlapping, then Article 254 can straightway be resorted to. Article 254 says:

"254(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing

law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State:

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law With respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

**SHRI SOMNATH CHATTERJEE:** The question that has been put to the Attorney-General is about the State's power. He has said that Entry 45 authorises a State Legislature to pass a law like this if there is no Central law. But Entry 45 in List III confers powers on State Legislature to pass laws relating to inquiry for the purpose of any of the matters specified in List II or III. Then we have to find out a matter specified in List II for the purpose of which an inquiry can be instituted.

**MR. CHAIRMAN:** Where is it mentioned in Entry 45? The States' power should be found only in the States List.

**SHRI SOMNATH CHATTERJEE:** Kindly see item 45 in the list—in-

quiries etc. for the purpose of any of the matters specified in Lists II, III.

There one has to go through List II or List III to find out what matter is specified in respect of which an inquiry is made. Then we have to go into Lists II and III to find out which matter there is specified. It is not the general power we are concerned with. It must be a specified matter. 'Specified' means specifically mentioned.

**MR. CHAIRMAN:** But this Entry does not say that in the case of a State Legislature the power would be relatable to the powers included in the State List.

**SHRI D. P. SINGH:** Article 245 says:

"Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole of any part of the State."

Therefore, the function of the State is confined to making laws in respect of the State or a part thereof.

**MR. CHAIRMAN:** Where is it? It does not say that.

**SHRI SOMNATH CHATTERJEE:** The State Legislatures in this country do not have any residuary power of legislation as the Parliament has. Whether it is desirable or not, we are not on that. Like Entry 97 in List I we do not have any similar entry with regard to any State List or Concurrent List. If you kindly come to Article 246(2) and (3), it has been made very clear that there must be specified matters in Lists II and III with regard to which legislation can be done by a State. There is no residuary power at all. Item 45 in List III says that the power to make a law relating to inquiry must be in respect of matters specified in Lists II and III. Therefore, we have to go through Lists II and III to find out which matters are specified.

MR. CHAIRMAN: What do you specifically refer to in Article 246?

SHRI SOMNATH CHATTERJEE: Article 246 makes it clear what is the specific power of the State Legislature. It says:

"(2) Notwithstanding anything in clause (3), Parliament, and subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with respect to any of the matters enumerated in List II in the Seventh Schedule."

MR. CHAIRMAN: But the stress is on the word "exclusive" matters.

SHRI SOMNATH CHATTERJEE: With regard to matters enumerated.

MR. CHAIRMAN: My doubt is that here is Article 246 which clearly says that the exclusive power would belong to the State in a certain matter when there is a concurrent power.

SHRI SOMNATH CHATTERJEE: That is in List III.

MR. CHAIRMAN: My doubt is that it is not mentioned there that respectively a State would have such power only with regard to the items covered by List II. That is not mentioned there in Entry 45. Am I quite clear on this? When it is said that this is a jurisdiction of concurrent domain, in List III it is not mentioned that only this part of the domain would belong to the State and all that.

SHRI SOMNATH CHATTERJEE: So far as the Concurrent List is concerned, the State Legislature can operate so long as the field is not covered by Central legislation. If there is a Central law, the State Legislature cannot make a repugnant

law. Otherwise it can. Suppose the Lokpal Bill is not passed by Central Parliament. Can the State legislature pass it?

MR. CHAIRMAN: That is a different problem. Let me state the problem before the Committee—the problem as I see it. The first point is: if, in the first instance, the State legislature is able to enact a law which will involve the Chief Minister, then the law at the Central level may not even be necessary.

SHRI SOMNATH CHATTERJEE: On this, I have something to say.

MR. CHAIRMAN: That power belongs to the State legislature.

SHRI SOMNATH CHATTERJEE: That is what I am trying to raise.

MR. CHAIRMAN: You are only referring to the situation arising, if the law has been passed by the Central legislature.

SHRI SOMNATH CHATTERJEE: No, no. Item 45 confers a concurrent power on the Central and State Legislatures to make laws in respect of enquiries in respect of matters specified in lists II and III. Therefore, even if a State legislature passes a law providing for enquiry, one has to scan lists II and III. Therefore, we have to point out which item in List II or list III in respect of which an enquiry is to be done, and see which item therein will authorize the State legislature to pass a law under item 45. Unless you find out a subject specified there, even item 45 will not help.

SHRI S. V. GUPTE: This question was discussed at some length yesterday also, and Mr. Chatterjee is really emphasizing the words specified in the entry. So, you must find an entry in list II or III which can be the subject matter of a legislation like this. When construing item 94, the same question came up before the Supreme Court for consideration. If Mr. Chatterjee looks it up, a part of his doubts will be resolved.

On an interpretation of the entry, I find this. It was considered whether it should be limited to those subjects.

**SHRI SOMNATH CHATTERJEE:** It will cover ancillary and allied matters. Of course, we are not deeply concerned with it, because we are trying to make a Central law. I have my doubts whether the State legislature can pass such a law. But we are concerned only with the Central legislature. According to me, Central Parliament has this power.

**SHRI S. V. GUPTE:** This question will be raised at the appropriate place ultimately, because there is no residuary clause. But the Supreme Court's decision is that it should not be confined to the topic. At the moment, that is the decision.

**SHRI SOMNATH CHATTERJEE:** Even then, you have to find out an enquiry somewhat connected with some item. I feel that the State legislature may not be held to have the same power.

**SHRI S. V. GUPTE:** At page 5 of the judgment, it is said that the words 'for the purpose' indicate that the scope of the enquiry is not necessarily limited to the particular or specific matters enumerated in any of the entries in the lists concerned; but may extend to enquiries into collateral matters which may be necessary for the purpose.

**SHRI SOMNATH CHATTERJEE:** Let us find out whether even for collateral matters it will be relevant for the purpose.

**SHRI S. V. GUPTE:** We will find out. The language used is: "for the purpose of legislation or otherwise, of those matters." If the construction put by Mr. Chatterjee is correct, it will be clear that the Lokayukt Acts are not within the powers of the State legislatures.

**MR. CHAIRMAN:** But the Home Minister points out to me that there

is the concrete and physical fact of certain Lokayukt Acts having been enacted in some of the States.

This matter has now been discussed to some extent for our purpose. We were only trying to find out whether, when the State legislature has the competence to do it, it is necessary for the Central legislature to take up the responsibility. That was only one way of looking at the problem. So far as the competence of the Central authority is concerned, there is no doubt.

The Home Minister is also trying to tell me that we should proceed in such a way that we achieve results. We will now proceed to item 10 dealing with the question whether the consent of the State legislature will be necessary in view of Article 252 of the Constitution, for passing the Lokpal Bill providing for the inclusion of Chief Ministers etc. within its purview.

**SHRI S. W. DHABE:** It is not correct to say that lists I and III specify the same thing. Suppose the misconduct attracts certain privileges of Members of Parliament or of State Assembly. We are not discussing corruption by a person, or an offence against the State; but corruption by a person who is occupying the position of Member of Parliament, or a Minister—since we want to eliminate corruption. Therefore we are trying to define 'public man' with reference to the official position that he is occupying. If a person misuses such a position, he will come under this. Under Article 194 there is power given for the Parliament and State legislatures to legislate for the privileges and immunities of Members. Certainly, this misconduct can be covered by the code of conduct; or a specific law can be made by Parliament or the Assembly under Article 194. Item 39 is specifically included in list II. There is mention there of exclusive powers for the State legislatures to pass a law to deal with cases arising as a result of breach of privilege or immunity.

Suppose some provisions of this Act infringe upon item 39; then under the provision made under Article 249, Rajya Sabha should give consent in the national interest, to pass the legislation with reference to list II; otherwise, the consent of the State legislature is necessary—which is to be given by its passing a resolution. Therefore my question: will it not be necessary to go through the procedure of Article 252, unless you want to go by Article 249 and obtain the consent of Rajya Sabha?

SHRI S. V. GUPTE: Article 252 reads:

"If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law..."

I do not see what bearing this article has on the subject on hand.

MR. CHAIRMAN: We have already covered up to question No. 10. We will now take up Question No. 11. Do you think that the definition of the term "misconduct" given in the Bill is too wide? If so, what in your opinion should be the definition?

SHRI S. V. GUPTE: The clause reads:

"A public man commits misconduct—

(a) if he is actuated in the discharge of his functions as such public man by motives of personal interest or other improper or corrupt motives; or

(b) if he abuses or attempts to abuse his position as such public man to cause harm or undue hardship to any other person; or

(c) if he directly or indirectly allows his position as such public man to be taken advantage of by any of his relatives or associates; or...

(d) if he fails to act in any case otherwise than in accordance with the norms of integrity and conduct which ought to be followed by the class of public men to which he belongs..."

Here the words are "actuated in the discharge of his functions... by motives of personal interest or other improper or corrupt motives". In all Civil Service Regulations quite often the expression used is "a person is guilty of an unbecoming conduct". So, this is more concrete. What is "unbecoming" should depend upon the situation. Here the words are "actuated by improper or corrupt motives", a motive which is not proper. I think it is not wide.

If it is abuse of position, it should be with the object of causing harm to other people. Then, clause (c), is "directly or indirectly allows his position as such public man to be taken advantage of". It is not vague. Perhaps part (d) is the most important one.

SHRI CHARAN SINGH: We propose to delete it.

MR. CHAIRMAN: How do you define the word "associates" in clause (c)?

SHRI S. V. GUPTE: It has been defined here to say "it includes any person in whom such public man is interested".

MR. CHAIRMAN: Don't you consider that it widens the scope very much?

SHRI S. V. GUPTE: Because of the ramifications of family in India, relationship must be decided in the context of the situation. Suppose there is a cousin or nephew brought up in the family of the man. He is a relative undoubtedly. If you go by Hindu law, relationship goes up to the seventh degree.

MR. CHAIRMAN: I am speaking of "associates".

**SHRI S. V. GUPTE:** Whether he would be interested in securing any undue gain or favour to himself or to harm others must be interpreted in that light. It must be considered in the context of the object of this provision.

**MR. CHAIRMAN:** I am a Minister and I am a party to a transaction which involves a man of the CPM, a party which is completely opposed to me. But I may have a friend in that party and my action may benefit that friend in that party. Would he become an associate? Even if he is not considered an associate, he must be brought under the net. So, what is the special significance attached to the word "associate"? He does not happen to be an associate of mine and belongs to a party which is completely opposed to mine, but he is a friend of mine. He cannot by any stretch of the term be called an associate, because he has not been associating with me in my activities, but is only a friend of mine. So, is any special purpose served by bringing in the word "associate"?

**SHRI SOMNATH CHATTERJEE:** The definition is not exhaustive and it only says: "Associate" in relation to a public man includes any person... Therefore, anybody and everybody can be brought in.

**MR. CHAIRMAN:** So, what is the purpose served by having "associate"? Why not merely have the word "relative". Any one who gets an undue advantage from me may not be an associate of mine necessarily.

**SHRI S. V. GUPTE:** Suppose you say "a person interested".

**SHRI G. LAKSHMANAN:** Suppose a hundred people work for my election. They are all my associates. It is a very wide and dangerous term. It should be deleted.

**MR. CHAIRMAN:** I want to know whether from the legal point of view any particular purpose is served by including the word "associate".

**SHRI S. V. GUPTE:** I think the purpose is to spread the net wide. First of all, the word "associate" would take in a person like a partner who would otherwise go out. Similarly if you construed the word "relatives" very strictly, a number of them would be left out.

**MR. CHAIRMAN:** Or. you can say "any one who benefits".

**SHRI S. V. GUPTE:** "Any one in whom he is interested", and that interest will be spelt out by the fact that he stands to gain.

**SHRI KRISHAN KANT:** I draw your attention to part (c). A Member of Parliament or a Member of a Legislature from morning to evening goes on signing certificates about scheduled castes, for getting concessions in schools, passports etc. and the wording is "I have known this person for more than two years", but most of them are not known to him at all. It is giving an advantage to a certain person. Is this misconduct or not? The wording here is "any person in whom such a public man is interested". I am interested in my voter, to get his vote. I do not want to antagonise him.

**SHRI S. V. GUPTE:** That is not meant by the word "associate". It refers to a kind of relationship spread over a period with a person who is not a relative.

**SHRI KRISHAN KANT:** I can tell you that all these MPs and MLAs sign false certificates, that they have known such and such a person for more than two years. It is morally a bigger misconduct.

**SHRI DEVENDRA NATH DWIVEDI:** Two questions have been addressed to the Attorney-General 11(a) and 11(c). There are two aspects to this question of definition. We are defining "misconduct". If it is proved, then somebody might go to jail. For all practical purposes this is a penal law and, therefore, it should be defined in such a way that we make

sure that acts which are not specified here or are not meant to be punished are not interpreted by any court of law as coming within the purview of the word "misconduct".

The second aspect is more important. Yesterday and today several questions have been addressed to the Attorney-General. They show that there is an underlying fear that this Bill may come in the way of the legitimate discharge of the functions of Members of Parliament or affect their privileges.

In regard to privileges, the Attorney-General gave his interpretation yesterday, but I would like to draw his attention to the whole concept of privileges. It is not as if by claiming privileges, Members of Parliament want to be treated as a special privileged class. Privileges have nothing to do with the personal privileges of the Members of Parliament. Very recently a Select Committee of the House of Commons had something very relevant to say about the whole concept of privileges, and against the background of what has been said here, I think we should examine this whole question of privilege again. It is not a question of any Member of Parliament wanting to be above the law.

The Report of the Select Committee says:

"Your Committee have reached the conclusion that the word 'privilege' has, in modern times, acquired a meaning wholly different from its traditional parliamentary connotation. In consequence, its use could convey to the public generally the false impression that Members are, 'and desire to be, a privileged class. It is out of keeping with modern ideas of Parliament as a place of work and of the status of its Members as citizens who have been elected to do within that place of work their duty as representatives of those who elected them. Your Committee cannot too strongly em-

phasize the fundamental principle that privileges are not the prerogative of Members in their personal capacities. In so far as the House claims and Members enjoy these rights and immunities which are grouped under the general description of privileges, they are claimed and enjoyed by the House in its corporate capacity and by its Members on behalf of the citizens whom they represent. Your Committee, therefore, strongly favour the discontinuance of the use of the term 'privilege' in its traditional parliamentary sense."

What this Committee says is that it is not as if Members of Parliament need some immunities, some privileges so that in the eyes of law they may be treated differently. But the question is very simple one. We, the Members of Parliament, have to perform certain functions. Let all the provisions of Indian Penal Code and Anti-Corruption Act be applicable to us if in the discharge of our duties we do certain things which are violative of the law. The question is that here we are evolving an institution—the institution of Lokpal—which is being given a power which is unknown in any democracy in the world. No democracy in the world so far has authorised Lokpal, Ombudsman or any institution to examine the misconduct of the legislators. We are going to do it for the first time in this. This Bill involves certain fundamental questions. This was referred to the Select Committee; otherwise it would have been passed in the normal course by the two Houses of Parliament and in the deliberations in the Select Committee, we have invited the Attorney-General not as an advocate but as a jurist, not somebody who represents the viewpoint of the executive branch of the Government but to help the executive branch of the Government in enacting the law. We are framing a law. We want to be clear about certain basic concepts as well as whether Section 3 as presently worded, might be interpreted



by any court of law in a manner as to impinge upon the powers and privileges conferred on us by the Constitution of India. Now, I want to ask a very specific and pointed question. Are we justified in having the fear that the definition is so loosely worded that there is a possibility of any court of law interpreting misconduct in a manner as to effect some of the actions which we take in the legitimate discharge of our functions?

SHRI CHARAN SINGH: No such matter will go before the Court.

SHRI DEVENDRA NATH DWIVEDI: I stand corrected. I did not mean court. Ultimately the Prime Minister or somebody appointed by the Prime Minister will be the competent authority. It might be the hon. Home Minister, this Home Minister or future Home Minister.

MR. CHAIRMAN: You are compromising on a position which I would not allow you to do. What I mean is that you are only speaking about action to be taken in a court of law. There can be an outside authority which can even comment upon the rights and privileges of Members of Parliament. So, you are compromising on that account.

SHRI DEVENDRA NATH DWIVEDI: After all, the decision as to whether a given complaint is to be referred to the Lokpal or not is to be taken by a certain person because once he decides to refer a certain matter to the Lokpal, that Lokpal will examine whether there is any case of misconduct or not. There is always a danger that this might be done with malice. The Prime Minister or the Home Minister may refer to it with malice and the poor Member of Parliament who decides to pull the ears of the Minister in the Parliament, will be hauled up before the Lokpal. I want the hon. Attorney-General to give his views about the real purport of Article 105 of the Constitution. What really he visualises to be the

philosophy underlying Article 105 of the Indian Constitution? And to what extent the privileges, the immunities and the powers of the Members of Parliament go?

MR. CHAIRMAN: So far as the second question is concerned, I can only address it to the Attorney-General if, I think, as Members of Parliament, we do not have sense enough in understanding all the privileges, immunities and so on.

According to the Constitution, the Attorney-General is to advise the Government. It may well be that even in the drafting of the Bill, he might be consulted. What I am saying is that nowhere in the Constitution it is mentioned that the Attorney-General will advise the Parliament. Article 76(2) says:

"It shall be the duty of the Attorney-General to give advice to the Government of India upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the President—the President means the Government—and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force."

Then, there is article 88 which says:

"Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not by virtue of this article be entitled to vote."

Here, the Home Minister can help us in securing the presence of the Attorney-General. The House cannot do that unless the Government agrees to that. It is not left to the discretion of the Speaker. Once I moved an amendment to the Rules of Procedure to the effect that it should be also left to

the discretion of the Speaker, that is, if the Speaker thinks that at a particular stage, the Attorney-General should be invited to come, he should be empowered to get him.

Would you like to answer the point raised by Mr. Dwivedi?

**SHRI S. V. GUPTE:** Yesterday, we discussed all that, whether a privilege is involved. I said, no.

About the concept of the office of the Attorney-General, even an ordinary lawyer, when he appears in court, is not supposed to identify himself with the litigant but to assist the court. The Attorney-General is appointed by the Government. But it is a very narrow concept of the office of the Attorney-General to say that he can only speak on behalf of the Government. He is entitled to interpret the Constitution.

**MR. CHAIRMAN:** Article 88 says about the participation of the Attorney-General in the proceedings of the House. That does not mean, it is on behalf of the Government. The Attorney-General has also said that. So, we have got now a conception of the functions of the Attorney-General very clearly in our mind. The Home Minister has also been kind enough to say that if his presence is required, his presence can be made available to the House.

**SHRI CHARAN SINGH:** He has the right to attend the House.

**SHRI S. V. GUPTE:** Although he has got the right, as a matter of convention, he does not get involved in the day-to-day arguments during the debate in the House. If he is invited, he brings a fresh mind on the subject, if has one.

**SHRI B. SHANKARANAND:** I want to put a question. Clause 3(1) (c) says:

"If he directly or indirectly allows his position as such public man to be taken advantage of by

any of his relatives or associates and by reason thereof such relative or associate secures any undue gain or favour to himself or to another person or causes harm or undue hardship to another person."

It says, "such relative", not a public man. There is a difference. Undue gain or favour is secured or supposed to be secured by such person who is either a relative or an associate, without direct involvement of the public man.

**SHRI S. V. GUPTE:** If you read the first sentence, the whole thing will be clear.

**SHRI B. SHANKARANAND:** Whether a public man can be involved without any motive or intention. The public man may not have any motive or intention to help anybody.

**MR. CHAIRMAN:** He says that there must be an element of participation of that public man in that transaction.

**SHRI B. SHANKARANAND:** We are not to presume many things. We are not to go only by the opinion of the Attorney-General.

**MR. CHAIRMAN:** We shall exercise our own judgment when we come to clause-by-clause consideration. The interpretation given by the Attorney-General indicates that if the associates are left out, then the definition would be much wider. We would not be making the definition narrower, if we leave out the associates. We will consider that matter when we come to this. If it is dropped, then it would become much wider. That is what I said. I am quite clear about it.

**DR. V. A. SEYID MUHAMMAD:** Corruption is defined under Clause 2(c), that is, corruption under the Penal Code and Prevention of Corruption Act. Now you see Clause 3(e). From (a) to (d), they do not come under corruption.

**SHRI S. V. GUPTE:** What is corruption under (e) is also misconduct.

DR. V. A. SEYID MUHAMMAD: That is true. Can you say under some law which is an offence?

SHRI S. V. GUPTE: You are setting model for the conduct of public men.

DR. V. A. SEYID MUHAMMAD: Under the Indian Penal Code, a man has got the benefit. You see chapters 11 and 12 of the Indian Penal Code.

SHRI S. V. GUPTE: Assuming some thing new is put on a par.

MR. CHAIRMAN: Point 12.

SHRI S. V. GUPTE: Now that happens.

MR. CHAIRMAN: After the report is presented, then some action might ensue in a court of law. Now if the action is to be taken from the lowest court to the highest court, would it be in conformity with the status of the Lokpal that his report should be taken up from the lowest court to the highest court?

SHRI S. V. GUPTE: The ambit is totally different. This is in a sense to find out whether there is any case and what recommendation should be made. But if he is actually guilty of an offence which also comes under the Indian Penal Code, then it has to be processed through all courts. It has nothing to do with the status of the Lokpal.

MR. CHAIRMAN: Supposing the Lokpal comes to a conclusion that a *prima facie* case exists for action. You go to the lowest court to find out whether there is a case or not and the court pronounces its verdict that there is no *prima facie* case.

SHRI S. V. GUPTE: Supposing the court says that he is not guilty. Does the Lokpal suffer an eclipse? This is a judicial process which must take place.

MR. CHAIRMAN: May I draw your attention to the election petition only in regard to the High Court? Earlier the election petition could be taken up in a lower court. But now the elec-

tion petition can be taken up only in the High Court. Could any provision of that kind be made so that the authority of the Lokpal does not suffer an eclipse?

SHRI S. V. GUPTE: It is not a question of norms being established in the case of public servants. The High Court should be made responsible for this prosecution or any other action which is warranted. The normal law of the land must take its course.

MR. CHAIRMAN: Point 13.

SHRI S. V. GUPTE: Normally the writ would not lie due to lack of jurisdiction.

MR. CHAIRMAN: For any other purpose, again the High Court issues a writ.

SHRI S. V. GUPTE: It is nothing more than a recommendation: it is not a judgment; it is not a determinate finding. It is only a tribunal, not even a court. It is a tribunal in a truncated form. Its pronouncement is no judgment which is effective, therefore that matter cannot be made justiciable in a court of law. What can be said by any one? He can challenge the *vires* of the Act.

MR. CHAIRMAN: It suffers a damage.

SHRI S. V. GUPTE: There is no definite judgment or order against a person.

SHRI NARENDRA P. NATHWANI: A *prima facie* case is made out of the factual position of a person on the ground of lack of jurisdiction because of the provisions of law and violation of the principle of natural justice.

MR. CHAIRMAN: The hands of the Lokpal can be straightened by any court if it comes to judgment.

SHRI S. V. GUPTE: Unless there is jurisdiction, the court does not sit in appeal.

SHRI B. SHANKARANAND: In view of what the Attorney-General says about the nature of the decision

or recommendation or finding of the Lokpal, does it follow that an appeal will not lie under article 136 to the Supreme Court?

SHRI S. V. GUPTE: It is no more than a report. This particular forum does not decide whether he is guilty or not. 'Appears to be guilty'; that is what it comes to nothing more than that. An appeal under article 136 will not lie at all.

MR. CHAIRMAN: Then we come to Qn. 14. If any action taken by Government does not satisfy any member of public, would the member of public be entitled to sue in court, or, the matter would end with Government action, or, would the present practice that only an affected person can go to court would apply in this case also? Suppose Government takes action on the report of Lokpal, but the action is not considered to be adequate by a member of public. A particular person happened to be a Minister and he had amassed a great deal of wealth. He has to be made to disgorge all that wealth and so on. What the Government has succeeded in doing is that he has been made to resign. If any member of public feels that the action taken by the Government is not adequate, can he go to court?

SHRI S. V. GUPTE: That would depend on the nature of the finding and whether he has been found guilty of corruption under the Prevention of Corruption Act. And who can initiate action? In most matters action cannot be taken on a private complaint..

MR. CHAIRMAN: Then would the present practice that only an affected person can go to court apply in this case also?

SHRI S. V. GUPTE: That is the normal course.

MR. CHAIRMAN: Can a member of the general public go to court?

SHRI S. V. GUPTE: He has no cause of action in a court of law.

MR. CHAIRMAN: When you are dealing with a matter like corruption,

a matter of sufficient public importance....

SHRI S. V. GUPTE: The matter of public importance cannot be handled by any individual unless he is aggrieved, there would be no remedy.

MR. CHAIRMAN: If, in terms of the report of the Lokpal, it warrants a more severe action than has been taken by the Government....

SHRI S. V. GUPTE: The question is whether any private individual, irrespective of what the Government does or does not do can go to a court and say that he is guilty of corruption and should, therefore, be sentenced. The report by itself would not be the material for that.

MR. CHAIRMAN: Well, action may be political through Parliament itself because the report will come before Parliament. There can be a political remedy in Parliament, but there cannot be a judicial remedy.

The last point. Under clause 22 of the Bill, provision is specifically made for appeal in High Court. There is no mention of any judicial remedy available to a person affected by the report of Lokpal. Even if it is not available through the law—and the Bill is silent on this point—would not any remedy be available to such a person even for the vacation of an adverse remark against him?

SHRI S. V. GUPTE: It is not a judgment at all. That is not a matter for a remedy.

MR. CHAIRMAN: That would depend on the nature of the report or finding, whether it would be justiciable or not. We can interpret it in our own way.

SHRI B. SHANKARANAND: Please refer to Clauses 4, 23 and 27 of the Bill. These Clauses confer certain rights or powers on the President; they give him some authority to act. Clause 4 gives him the authority to

appoint the Lokpal. Clause 23(1) says:

"The President, by notification in the Official Gazette and after consultation with the Lokpal, confer on the Lokpal such additional functions in relation to the eradication of corruption as may be specified in the notification."

Clause 23(2) says:

"The President may, by order in writing and subject to such conditions or limitations as may be specified in the order, require the Lokpal to inquire into any allegations of misconduct specified in the order...." etc., etc.

Clause 27 says:

"The President may, by notification in the Official Gazette, make rules for the purpose of carrying into effect...." etc.

Here the President will be acting *suo motu*, not on the advice of the Council of the Ministers. In my view, these provisions amount to a sort of amendment to the Constitution....

MR. CHAIRMAN: This point was raised yesterday.

SHRI B. SHANKARANAND: Yesterday it was only in respect of the limited scope of acting as the competent authority against the Prime Minister. Now I am speaking on very important provisions of the Bill, whether the President can appoint the Lokpal without the Constitution being amended. The President has no such authority unless the Constitution is amended. Under the Constitution as it is now, the President is empowered to appoint the Chairman and other members of the Union Public Service Commission, to appoint the Comptroller and Auditor-General of India, to appoint the judges of the Supreme Court, to appoint a Commission to report on the administration of scheduled areas and scheduled tribes, to appoint a Commission on Official Language, to

appoint a Commission to investigate on the conditions of the backward classes, etc.; all these are provided in the Constitution.

MR. CHAIRMAN: The point is taken note of.

SHRI B. SHANKARANAND: Let me make myself clear. How can you make the President competent to act *suo motu* under Clause 23? This would be a sort of amendment of the Constitution without actually amending it. Can you empower the President under ordinary statutory laws? This is going to be struck down by the court. We cannot give him power without amending the Constitution.

MR. CHAIRMAN: There is no disagreement on the point that the President should not be clothed with any powers not contemplated by the Constitution.

SHRI B. SHANKARANAND: I want the opinion of the Attorney-General as to whether the President can be given additional authority and power by an ordinary statute or whether it can be done only by amending the Constitution.

SHRI S. V. GUPTE: There is no objection: it has been done time and again—for example, in the case of the Universities Act and several other Acts. It really implies that as a person who makes the appointment he acts on the advice of the Council of Ministers. It must mean that otherwise the Hon. Member is right that you cannot give him powers which are not within the framework of the Constitution.

MR. CHAIRMAN: Now, we must thank the Attorney-General for giving us so much of his valuable time.

Your assistance has been very valuable and fruitful.

Thank you.

(The Committee then adjourned)