

समय न सगे। बहुत से कमीशन सरकार में बैठायें, राज्यों में और केन्द्र में भी बहुत से कमीशन बैठायें गए, दो दो, तीन तीन और चार चार साल लगे, कमीशन ने अपनी रिपोर्ट दी लेकिन लागू होने की बात आई तो क्या हुआ? मैं एक ही कमीशन का जिक्र करूंगा आई० सी० ए० आर० में गजेन्द्र गडकर कमीशन बैठा। वहां विनोद शाह ने आत्महत्या कर ली और सात साइटिस्ट्स ने आत्महत्या कर ली। गजेन्द्र गडकर कमीशन बना और उसने कहा कि डाइरेक्टर जनरल ने गलत फाईंडिंग्स दी हैं। बहुत सी फाईंडिंग्स उस ने दीं। डाइरेक्टर जनरल ने कहा कि सबती सोनरा गेहूं में लाइसिन कंटेन होता है। इसको गजेन्द्र गडकर कमीशन ने झूटा साबित किया। लेकिन इस पर वह डी० जी० मैकसे एवार्ड पा गए। तमाम सिफारिशें उस कमीशन ने कीं मगर तीन चार साल हो गए गजेन्द्र गडकर कमीशन जिसमें एमिमेंट साइस्टिस्ट्स थे, उसकी सिफारिशों को लागू नहीं किया गया मैं तो मांग करता हूं और इन सारी बातों को सभी लोग कहेंगे कि कितने कमीशन बने, उन्होंने कितनी सिफारिशें कीं और उन की कितने प्रतिशत सिफारिशें लागू की गई? इन शब्दों के साथ मैं लोकपाल विधेयक का हृदय से समर्थन करता हूं और मैं चाहूंगा कि यह कानून जल्दी से जल्दी इसी सत्र में कल ही पास कर के रात तक इस को कानून का रूप दे दिया जाय।

18.28 hours

[MR. SPEAKER in the Chair]

MR. SPEAKER: We will now take up the motion under Rule 199.

AN HON. MEMBER: It is not yet 6.30 p.m.

MR. SPEAKER: Only one or two minutes are left. If you want, I will call the next speaker, but he will have only two minutes.

Shri Durga Chand.

1144 L.S.—14.

डा० लक्ष्मी नारायण पांडेय (मंडसोर): अध्यक्ष महोदय, ... (व्यवधान) ...

MR. SPEAKER: We are still on the debate, because objection has been taken.

डा० लक्ष्मी नारायण पांडेय: मैं इस विधेयक का समर्थन करने के लिए खड़ा हुआ हूं। प्रस्तुत विधेयक अत्यंत ही महत्वपूर्ण है। प्रशासनिक सुधार आयोग की सिफारिश के अनुसार इसे बहुत पहले प्रस्तुत किया जाना था। कन्तु

MR. SPEAKER: I have not called you: I have called Shri Durga Chand. Anyway, the time is now over.

18.30 hrs.

DISCUSSION ON HOME MINISTER'S STATEMENT RE DECISION OF GOVERNMENT TO REFER THE CORRUPTION CHARGES AGAINST THE FAMILY MEMBERS OF THE PRIME MINISTER AND THE FORMER HOME MINISTER TO A RETIRED JUDGE OF THE SUPREME COURT

SHRI HARI VISHNU KAMATH (Hoshangabad): I rise on a point of order on this motion which is about to be moved by my Hon. friend Shri Stephen. I may draw your attention to Rule 354. I hope my hon. friends who are interested will pay close attention because this is an important matter which is going to be taken up in the House shortly, in case my point of order is not upheld.

Rule 354 reads as follows:—

"No speech made in the Council... That is, the Rajya Sabha, the Council of States:

"No speech made in the Council shall be quoted in the House unless it is a definite statement of policy by a Minister:

[Shri Hari Vishnu Kamath]

Provided that the Speaker may, on a request being made to him in advance, give permission to a member to quote a speech or make reference to the proceedings in the Council..."

That is, Rajya Sabha:

"...if the Speaker thinks that such a course is necessary in order to..."

Please mark these words:

"...in order to enable the member to develop a point of privilege or procedure."

The whole debate that is sought to be raised today, this evening, is based on a statement made by the Minister of Home Affairs in the Lok Sabha on the 30th April, 1979. In that statement, he refers to the proceedings of the Rajya Sabha there is nothing on record in the Lok Sabha proceedings. In that statement made on 30th April, the Home Minister has said—I quote the relevant part of his statement made in this House:

"Madam, in a statement I made on February 23, 1979, in the Rajya Sabha..."

Again, Rajya Sabha.

"...and in answer to a few Untarred Questions in the Lok Sabha, mention was made of Government's decision to refer the Debate on the motion that was adopted on August 10, 1978, in the Rajya Sabha..."

Again, Rajya Sabha:

"...to the Chief Justice of India with the request that he may inquire whether any *prima facie* case in respect of any of the charges referred to in the Debate aforesaid..."

That means, the Debate in the Rajya Sabha.

...which pertain to the period after the present Government took charge in March, 1977, is established against the family members of the Prime Minister and the former Home Minister so as to justify a formal inquiry under the Commissions of Inquiry Act. I accordingly requested the Chief Justice of India to take up this inquiry and give his advice in this connection."

My only aim and objective in raising this point of order is to ensure that in this House there will be, if at all, a meaningful, purposeful and effective discussion on this matter of major public importance.

Now, what will happen? Under this rule, we are hamstrung. The constraints of this rule will not permit, unless the rule is suspended and I do not think the House will agree to suspend the rule, it should not agree for suspension of the rule. But as long as the rule stands, unfortunately, for good or for ill, no Member of this House can refer in substance to any of the proceedings of the Rajya Sabha. The debate in the Rajya Sabha cannot be quoted by any Member of this House except to develop a point of privilege or procedure—that is the only saving grace, saving clause, in the proviso to rule 354.

MR. SPEAKER: Don't you think that your point of order is premature?

SHRI HARI VISHNU KAMATH: The debate cannot start unless you give a ruling and define what the parameters of this debate will be.

I will quote another rule. In a matter of this kind which is of major public importance, there is another rule which comes to our help. 'I would not say 'your help'...

MR. SPEAKER: Assistance.

SHRI HARI VISHNU KAMATH: It may persuade you to help us, and

that is, Rule 360. Before I proceed to read that Rule, I would request you to let me know whether Rule 186 also applies to today's discussion.

MR. SPEAKER: You are putting me on an examination.

SHRI HARI VISHNU KAMATH: You are the presiding deity of this House and whom else can we look up to except you on an occasion like this, and on all occasions in this House? You are the custodian of our rights and privileges and you are our light and guide. I almost said: lead, kindly light.

MR. SPEAKER: Don't embarrass me.

SHRI HARI VISHNU KAMATH: Now take rule 186, and a discussion under rule 193. I request you to let me know and let the House know whether the conditions laid down in rule 186 to discuss a motion of urgent public importance and general public interest also hold for the discussion of the kind we have taken up to-day. I do not know. Rule 186 makes it clear. One of the conditions is:

"It shall not refer to the conduct or character of persons except in their public capacity."

This arises because even though the Chief Justice of India, declined ultimately to take up this assignment, a retired Chief Justice has taken up this rather delicate and difficult assignment.

Now the question to be asked in this context is whether it is being done in a public capacity. It is only then that a reference can be made to a Judge—Chief Justice or this Judge. No reference can be made to the conduct of a person except in his public capacity. It is not clear from the statement made by the Home Minister whether the Judge is acting in his public capacity or otherwise....

MR. SPEAKER: That will arise if and when a rule is breached. You are now anticipating a breach of a rule. A point of order arises when a rule is breached. You are not asking my opinion before a debate starts.

SHRI HARI VISHNU KAMATH: In short, I want your ruling on these two points. We would like to participate in the debate. We would like to know the guidelines beforehand. Otherwise, why should we stand up and make some reference and then you say, 'It cannot be made.'? So please give us some guidelines.

(1) Whether you will give us a carte-blanche, a blank cheque....

MR. SPEAKER: I have no money in the bank to give you a blank cheque.

SHRI HARI VISHNU KAMATH: I know you are very liberal, but certain kinds of blank cheques you cannot give and you should not give also. I am referring to a different kind of carte-blanche here. I want to know whether you will give a carte-blanche to all members, right, left and centre, to quote from the proceedings of the Rajya Sabha. In that case, we can go ahead and make it really an effective discussion. If you say 'No' You can quote only this much—thus far and no further, like Lakshman Rekha...

MR. SPEAKER: I have followed.

SHRI HARI VISHNU KAMATH: That is the first point.

SHRI K. RAMAMURTHY (Dharmapuri) How many points of order he has got, Sir?

MR. SPEAKER: You have already taken 9 minutes on your point of order(Interruptions) That much time will be added.

SHRI HARI VISHNU KAMATH: Sir, you are there to guide the business of the House....

MR. SPEAKER: Many times other people try to take up my responsibility.

SHRI HARI VISHNU KAMATH: They want to usurp your power. One last word and I have done. I refer to Rule 360 also. On an occasion like this Rule 360 is very relevant. I will read that rule so that my friends may follow:

"The Speaker may himself, or on a point being raised or on a request made by a member...

I made an earnest request to you.

"...address the House at any time.

No limits.

"...on a matter under consideration of the House with a view to aid members in their deliberations, and such expression of views...

There you are quite safe when you do that because the last bit of the rule is very helpful.

"...and such expression of views shall not be taken to be in the nature of a decision."

So I would request you to give us now under rule 360 read with Rule 354 as to what the limits of the discussion shall be and where we should draw the line and not transgress the limits.

In view of what I have said, the motion cannot be moved because it has a reference to the Rajya Sabha proceedings. If you do hold that it can be made, I will go to the next step and would request you to tell us and advise the House as to what the parameters of the discussion would be, what the limits would be and how far we can go and beyond what we cannot go.

SHRI K. RAMAMURTHY: Sir, I rise on a point of order.

MR. SPEAKER: I am first disposing of his point of order.

SHRI K. RAMAMURTHY: Sir, under Rule 354:

"No speech made in the Council shall be quoted in the House unless it is a definite statement of policy by a Minister"

(On the basis of Minister's statement only, you are admitting this).

MR. SPEAKER: This motion has been allowed on the basis of a statement made by the Minister in this House. The debate will be strictly in accordance with the rules.

Mr. Stephen, please go ahead.

SHRI C. M. STEPHEN (Idukki):

Mr. Speaker Sir, may I begin by congratulating my very honoured colleague, a veteran in the Parliamentary Jugglery that he managed somehow to speak for ten minutes, practically, on the merits also?

Anyway, the statement now under discussion relates to a matter of a charge of corruption which has been hanging in the air for about sixteen months now. I feel it is necessary that the background is spelt out in a chronological order.

As far back in 1978 January, a certain report appeared in a Weekly 'Samarthan' edited by Shri Pranubhai Bhatt, the District President of the Bhavnagar Janata District Committee and, Mr. Morarji Desai, in his speech at Bhavnagar made a reference to that. And as per the report appeared in the press he offered to submit this matter for an enquiry and also offered to resign if those charges were found to be well-based.

Now, on the basis of that, on 11.3.78, Shri Charan Singh, the then Home Minister, as per correspondence placed on the Table of the House here, in his statement, demanded an enquiry. And, certain correspondences followed between him and the Prime Minister. This was rocking in this House and in the Rajya Sabha and it has been a major matter for a long time. Finally,

on 10.8.78, the Rajya Sabha passed a Resolution suggesting that the Government be guided by the recommendations of a Committee to be appointed by the Chairman of the Rajya Sabha.

On 24.8.78, the Prime Minister, in a statement, in the Rajya Sabha, said that the Government could not accept the suggestion in the Resolution. Instead, he offered that any charge of corruption made by any Member relating to the period after the Prime Minister took office can be referred to the Chief Justice for his consideration and for his opinion.

SHRI HARI VISHNU KAMATH: Mr. Speaker, Is it permissible under the rule?

MR SPEAKER: That is mentioned by the Home Minister in his statement.

SHRI C. M. STEPHEN: Not only that. Rule 354 says:

"No speech made in the Council shall be quoted in the House unless it is a definite statement of policy by a Minister".

The rule does not say that it shall not be referred to in Lok Sabha. And no rule says that it cannot be quoted if it is a matter of policy. I am not quoting anything. I am only stating certain facts. I do not know why, of all persons, Shri Kamath should take up this sort of attitude (*Inter-ruptions*). Anyway, on 23-2-79, the Home Minister made another statement in the Rajya Sabha and, there, he says:

"In modification of what the Prime Minister said, the entire proceedings of the Rajya Sabha will be referred to the Chief Justice for his consideration."

On 26-2-1978, Mr. Shanti Bhushan made a statement saying that the

Prime Minister's statement in the Rajya Sabha was after consultation with the Chief Justice. He read out to the Chief Justice the entire statement, word by word and the Chief Justice approved of that. The statement was made by the Prime Minister after approval by the Chief Justice. Finally, on 20-4-79 the Home Minister came to this House and made the statement which is under consideration wherein he said that the Chief Justice had declined to go into this matter either on the basis of what the Prime Minister had said or on the basis of what the Home Minister had said and that he had made a certain new suggestion that the Government are accepting that suggestion and that according to the recommendation by the Chief Justice the matter was being referred to some retired Justice of the Supreme Court. This in one line is what had happened with respect to the allegations against Mr. Kanti Desai. Parallel to that another set of events happened. That is, on 13-3-79, Shri Morarji Desai, in a letter which was placed on the Table of the House here by Mr. Charan Singh insinuated that there were corruption charges against Mr. Charan Singh's son-in-law, wife and certain other relatives. On 21-3-79 as per the letter laid on the Table of this House, Mr. Charan Singh promptly accepted the challenge and demanded that an enquiry be instituted into those charges. On 28-3-79 certain allegations of land deal against the son-in-law and nephew of Mr. Charan Singh were raised and immediately Mr. Charan Singh accepted the challenge and offered to submit that matter for an enquiry by anybody that either of the Houses may constitute. Then I made a remark that the Government must clarify the position as to whether they are prepared to submit this matter for an enquiry as demanded by Mr. Charan Singh to clear him of the cloud. On 20-4-79 Mr. Patel came here and he said that they were not prepared to make any arrangement for any enquiry as demanded by Mr.

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Charan Singh clearing him of the charges, saying, that the persons concerned were not relatives of Mr. Charan Singh and that that does not relate to a period when he was a Minister.

Now, Sir, these are the two sets of developments.

In one set of development—with respect to Mr. Kanti Desai, we find the Prime Minister sticking to a position that he is not prepared to submit this matter to a Commission of Enquiry, a preliminary enquiry is necessary, firstly by the Chief Justice, then the whole proceedings will follow and finally the proposal is that it will go to the retired Judge of the Supreme Court. On the other side we find Mr. Charan Singh taking up the position step by step saying 'I am prepared to submit this matter for an enquiry'. This is what has happened. Comparing the two I must state at the outset that Mr. Charan Singh has taken up a position which is in accordance with dignity and with a clear conscience. He has now come out practically unscathed from out of this controversy and the Government is stubbornly refusing to order an enquiry even with respect to Mr. Charan Singh in spite of his demand that an enquiry be arranged for, so that he may get a clearance.

I have implied earlier in a speech which I made here that this refusal of the Government to arrange for an enquiry with respect to Mr. Charan Singh was presumably for the reason that they were afraid that if an enquiry is arranged, then, the demand for an enquiry against Mr. Kanti Desai will also come in. Therefore the Government are not prepared for an enquiry even with respect to Mr. Charan Singh in spite of his consistent demand that an enquiry be arranged for. From out of this therefore I am leaving Mr. Charan Singh out, because he demanded the enquiry, the enquiry is being refused, whenever a

challenge was made, he immediately accepted the challenge. So, this is how it has emerged.

Now, coming to the present position, the demand was for the reference of all allegations against Mr. Kanti Desai. Subsequently the Prime Minister limited it as saying that only those allegations relating to this particular period will be referred to the Chief Justice and it was further modified now by saying that 'not any allegation of corruption, specific or otherwise, but only those allegations which were raised during the discussion in the Rajya Sabha will be referred to the Chief Justice'. So, Sir, the demand was for a larger one, the Prime Minister offered for a limited one and now, there is a further limitation by saying that no charges of corruption other than those raised in the Rajya Sabha will be referred to the Chief Justice. For example, Sir, from out of this, there was a corruption charge and an allegation that Rs. 90 lakhs were collected by Mr. Kanti Desai in connection with the election. That does not come under this. There was the allegation about the land deal by Mr. Charan Singh's relatives. That was not the subject on which the discussion took place in the Rajya Sabha. Therefore that will not come under this. What exactly is the public policy? It says that although corruption charges are specific, although corruptions relate to a particular period, nevertheless those corruption charges will not be referred to merely because the Members participating in the Rajya Sabha omitted to bring out those charges of corruption. But here is a very specific charge that Rs. 90 lakhs were collected by Mr. Kanti Desai, sitting in the house of the Prime Minister and now it will not go either to the Chief Justice or to the Commission of Enquiry. Now, this leaves out a large number of charges of corruption and whatever is offered for inquiry is only ephemeral. This is only the preliminary point that I have to make about it.

Now, the question is whether the present offer and previous offer will satisfy the public conscience. For example, what exactly are we dealing with? We are not dealing with any public person, we are not dealing with any Minister. We are dealing with just an individual by name, Mr. Kanti Desai and charges are made against him. The Home Minister of India at that time felt that the charges were specific that the charges were new and he said that those charges were reverberating throughout the country and he, as a person in authority, on hearing the corruption charges, felt that it was in the public interest that those charges be referred to a Commission of Enquiry. Now, the first question I want to raise is: when the Home Minister with respect to certain corruption charges against the private individual feels that those charges are specific and new and that they were reverberating throughout the country, is it not a formal demand that those charges be referred to a Commission of Enquiry? Would it be proper for the Prime Minister to come and say 'No, it will not be referred to a Commission of Enquiry'?

Now, the Home Minister, who is in charge of this subject comes and says that the person concerned is the son of the Prime Minister. Now, supposing the charges were raised against some other individual, would the Prime Minister have come into the picture? Would he have taken up this very strong position? Therefore, for example, as against Mr. Vengal Rao, a reference was made to a Commission of Enquiry. The Commission of Enquiry has given a finding that those charges were without any *prima facie* case at all. It is therefore clear that the Government of India did refer the charges which had not *prima facie* aspect for a Commission of Enquiry to consider. But when it comes to Mr. Kanti Desai, the Prime Minister comes in and takes up a very very strong position. Now, how strongly the Home Minister feels about it. Here the Home Minister says—

"We would like to know if according to the Prime Minister, the truth of an allegation is first ascertained, then what else remains for a Commission to Inquire?"

"One really fails to understand what objection the Prime Minister or anybody placed in a responsible position in the public life of the country could possibly have to the appointment of a Commission so that confidence in the public life of the country was restored."

"If we accept the Prime Minister's stand, we will have to bid good-bye to all hopes of establishing a clean public life or giving an efficient administration to the country and cease entertaining dreams of greatness of economic prosperity of our motherland."

And finally, very strongly he puts it in this manner:

"In his abounding affection for his son, Shri Desai does not realise that he has done a great harm to the Janata Party, public life of the country and to democracy. He is so much obsessed with the personal reasons as to endanger the public weal."

The Home Minister of the country feels so strongly about it and the Prime Minister stands stubbornly and says: "I would not refer it to them". I would like to know whether the same standard would be applied to everybody. Is it not desirable that the Prime Minister should be the last man to come into the picture in this case and leave it to the Cabinet even if there is a difference of opinion? This is vitiating the whole atmosphere. That is the point. What did he do with Shri Charan Singh? After he made this statement in the House, Shri Charan Singh was promoted as the first Deputy Prime Minister of India. He did not retract a syllable from the statement he made. He stands strongly by the statement and he became a member of the Government, Deputy Prime Minister. The position is that

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the Deputy Prime Minister of India is holding the position that the Prime Minister's refusal to yield to the demand will be contributory to the enhancement of the corruption charges and all that. That is the position that is emerging.

My second point is that all the opposition parties combine together and the Rajya Sabha passes a resolution. It suggests that a Committee of the House may go into these charges and give a report as to whether there is a *prima facie* case for reference of this matter to a Commission. The Rajya Sabha in our Constitution is not the same as the House of Lords, as you know. Rajya Sabha represents the elected Members of the legislative assemblies and is an integral part of the legislative machinery of our country. Of course, for appointing the Commission of Enquiry Rajya Sabha resolution has no mandatory force. But its decision was that these charges should be gone into by a Committee of the House to determine their *prima facie* tenability . . .

SHRI DINEN BHATTACHARYA
(Serampore): What do you want to derive at?

SHRI B. SHANKARANAND
(Chikkodi): It is not against you...
(Interruptions).

SHRI C. M. STEPHEN: Now, was it proper for the Prime Minister under the circumstances to stand stubbornly against that also and in a matter which concerns his son? He stands stubbornly against the Home Minister in a matter concerning his son; he stands stubbornly against the resolution of the Rajya Sabha and he goes on to find out some other formulae. How far that formulae will save the public conscience is the question? The attitude of the Prime Minister in order to protect his son in defiance of the Home Minister, in defiance of the Home Ministry and in defiance of the Rajya Sabha and

to find out a way-out will only cloud the sufficiency of the machinery he is proposing. That is the purpose of giving this background. The principle involved is that when the charges of corruption concern the son of a top functionary in the Government, is the decision to be taken by that particular person, whether it is the Prime Minister or the Home Minister, or whosoever he may be? Should not the Prime Minister, the father of the person against whom the charges are made, say: "It concerns my son, I have nothing to say. I will keep quiet let my Cabinet colleagues decide." But he did not take that position. He took the stubborn position of resistance at every stage. Finally, he says that it will go to the Chief Justice. And for that he has given two reasons. One, unless there is a precedent, he does not want to create a precedent. As far as the precedent is concerned, I have got before me the English precedent. Here is a book, *Trial by Tribunal* by George Keeton. What happened? The Lord Chancellor went into a particular case. The Lord Chancellor went into this matter, (*Interruptions*). The Lord Chancellor found that there was no *prima facie* case to be gone into by the Commission of Enquiry. It says, in this book, at page 229:

"Accordingly the Prime Minister decided not to proceed. The rumour, however, persisted and affair took a more serious aspect when the members of the Opposition associated with them a member of the Government. At this point, the Prime Minister had little choice but to order a tribunal which, it should be emphasized, found that the rumours had no foundation, and accordingly, the Lord Chancellor's original assessment of them had been correct."

The point I am emphasizing is that the question as to whether the matter should be referred to a Commission of Enquiry, is not to be determined by the consideration as to whether

there is a *prima facie* case. Here, I am citing an incident in which it was found that there was no *prima facie* case. Nevertheless, the Opposition demanded that the matter should be referred, and when it related to a member of the Cabinet, the Prime Minister decided to refer the matter, in order to quieten the rumours and to clear the atmosphere. Therefore if at all there is to be a precedent, the precedent is that irrespective of the *prima facie* thing, it must be referred to the commission of inquiry; but the Prime Minister is now very stubbornly refusing.

19 hrs.

MR. SPEAKER: You can take another 7 minutes. You will, then, be taking half an hour, out of one hour. All right, take 10 minutes.

SHRI C. M. STEPHEN: All right, Sir. Because I am forbidden from doing it, I do not quote from the Rajya Sabha proceedings. Why do they refer it to the Chief Justice? They say, in order to clear the doubt, in order that there may be no allegation about the Government wanting to hide anything, they referred it to the Chief Justice. This is the position they have taken.

What does your Deputy Prime Minister say? He has said this—the Deputy Prime Minister No. 1, who was promoted as the Deputy Prime Minister of India in recognition of the statement that he made; in recognition of this criticism, he was promoted. He says this:

"This was a course open to fundamental objections and fraught with grave consequences. For, the legal position is that the Chief Justice will have no authority to compel the attendance of any person for being examined as a witness, or for the production of any documents, so that the inquiry will be an informal one, not one conducted with the sanction of law."

Here, Mr. Charan Singh is not alone in the legal proposition that he has spelt out. This book, "Trial by Tribunal" says:

"To whom can a demand be referred for impartial decision? The Lord Chancellor will give an independent and judicial mind to the question. But he has no judicial powers in doing this. Is it fair to expect him to act in a judicial capacity without judicial powers?"

Again the book says:

"The same difficulty applies to the idea of referring the *prima facie* evidence to any independent judicial body, to decide whether a public inquiry is justified. Without the powers of a court, could it be expected to take the responsibility? With those powers, could it sit in private? Would it not necessarily develop into the public enquiry itself?"

This is just the criticism which Mr. Charan Singh raised with respect to the procedure of referring this matter to the Chief Justice. The point of my assertion is that in the background of Mr. Moraji Desai's consistent endeavour to avoid a reference of the matter to the Commission of Inquiry, the devious method of suggesting that the matter may go to the Chief Justice, will not carry any conviction at all, particularly because the law does not contemplate that the Chief Justice has got any power to go into this matter. Therefore, it will not satisfy the public mind; Mr. Shanti Bhushan, in his statement, in the Rajya Sabha, he made, said—word by word I am not quoting—that he went to the Chief Justice. He read out the statement to the Chief Justice word by word, and the Chief Justice approved of the statement. And it was only then that the Prime Minister made a statement in the Rajya Sabha. He agreed that this was the statement he made. What was the statement of the Prime Minister? If you go

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through the statement, you will find that it was a political statement—Government policy with respect to all this matter—I am putting a question. Was it proper for the Law Minister of India to go to the Chief Justice of India and read out a political statement which the Prime Minister was to make in the Rajya Sabha, getting his approval for that and on the basis of his approval reading out the statement in the House? Was it proper to drag the Chief Justice of India into this? It is one thing to ask the Chief Justice whether he is prepared to accept this assignment. It is another thing to read out the statement to be read out in the Rajya Sabha, a political statement, spelling out the policy of the Government word for word. What Mr. Shanti Bhushan said, the Chief Justice approved of the statement word for word the whole statement, and on the basis of this, the statement came.

Our concept about the Chief Justice of India is that he is a judicial functionary, he has nothing to do with this. And the thin blade that has got to divide the judiciary and the executive has now been blunted and has been diffused. This was the most improper thing that the Law Minister did. And this was the most improper thing for the Chief Justice to agree to this sort of a thing and to become a party to this sort of a statement co-authoring a statement that was to be made in the Rajya Sabha.

Finally, we come to the statement made here. Now they tell us that the Chief Justice had declined and the reasons also he has given; and he has said that the Chief Justice suggested that a retired judge should be there. And the Government told the Chief Justice to name a retired judge. The Chief Justice obliged them by giving a name. And the statement says that the Government agreed. I emphasise the word 'agreed' to refer the matter to that judge. The whole

gamut of this event, according to me, is absolutely improper and you have dragged the Chief Justice of India into a political controversy. But we are dealing essentially with the political controversy in which the Rajya Sabha was involved, the Opposition was involved, the opposition in the Janata Party was involved. And in the Cabinet itself, it was a controversial matter. In such a matter the Chief Justice comes in, and what the Chief Justice now says is this. I can read it out without any inhibition, because it is a Lok Sabha's statement. The Chief Justice in his reply referring to the developments subsequent to the Prime Minister's statement on 24th August, 1978, in the Rajya Sabha noted that "there was a sharp cleavage of opinions among persons who did hold different political views. Forgetting about that, he has further stated that even if he were to devise a generally acceptable procedure for enquiring the charges, he would function essentially a *persona designata*. The Press and the public would be free to make assumptions regarding reasons for his opinion; and the Parliament would be at liberty to debate on the merit of the matter. The Chief Justice, therefore, felt that the office of the Chief Justice of India might be dragged into a public controversy thereby affecting the image of the high office."

Two questions immediately arise. Did not the Chief Justice know that by accepting this assignment he would be accepting the position of the *persona designata*? Did he or did not he know? If he did not realise it at that time,—I am not speaking about political thing and all that—and if he accepted that, is he to be swayed by different views for political consideration? Is any judge who is deciding the matter will be swayed by opinions in the political field? He must be shutting himself out. He knew it was a *persona designata*. If he did not know, then it shows that the Chief Justice is . . .

**Not recorded.

MR. SPEAKER: Not allowed under the rules. That will not go on record.

SHRI C. M. STEPHEN: I do not want to cast any aspersion. I will say within the limit. He is not functioning as a judicial officer. He says wisdom comes to him late on *persona designata*. I do not agree that wisdom came to him late because it is clear he was *persona designata* and it will come in for criticism in Parliament; he is coming in for criticism in Parliament. I am not free to comment on his functioning as a judicial officer but as extra judicial officer his functioning . . .

MR. SPEAKER: Even that is not allowed.

SHRI C. M. STEPHEN: It is allowed but I do not want to go into that, I do not want to waste my time on that. In the way he has been shown up in the statement, it is that he did not realise that he was functioning as *persona designata*. Finally he has to withdraw from the position and give up his consent. Knowing that he played that game and seeing that he functioned subsequently in this manner, I am asking: why did he give the suggestion that a retired judge be appointed? He had no business to do that; he had only to decline and say: I cannot do. Why should he come in with a suggestion; you refer it to a retired judge of the Supreme Court? Is it part of his function? Why did he make this officious advice? Why did he become, did he sort-of-discharge the function of the secretary to the government? A secretary could do it or a subordinate officer of the government could do, a note of a government officer could be put up. Why did he officiously offer the suggestion: refer it to a retired justice? That is finding out a solution to the political conundrum in which the government are caught? Immediately the government says: we agree to the suggestion. Why this question of agreeing to the suggestion? It says: government agree to refer this matter

MR. SPEAKER: You have to finish, you have taken more than thirty minutes.

SHRI C. M. STEPHEN: I will conclude in two minutes.

SHRI KRISHNA CHANDRA HALDER (Durgapur): On a point of order, there is no quorum.

SHRI C. M. STEPHEN: Government asks him and immediately the name is given. My only point is this.

SHRI KRISHNA CHANDRA HALDER: Please show me any rule which says that the House can continue without quorum.

MR. SPEAKER: Kindly do not raise it; do not be on technicalities.

SHRI C. M. STEPHEN: It is in public interest.

MR. SPEAKER: He has had his say, the other side will not be able to have its say.

SHRI C. M. STEPHEN: Therefore, what I am saying is that the whole procedure was entirely wrong. Government then comes out with the proposal; we are referring to Mr. Vaidialingam. Would we be satisfied? Obviously not . . . (Interruptions) Therefore, in order to give coverage, Chief Justice's name is brought in; his position is compromised. All I am saying is that the suggestion of the Chief Justice will not give sanctity; Vaidialingam reference will remain unacceptable and it will not serve the purpose of clearing the atmosphere and any decision given by Vaidialingam will not receive acceptance by the public at large.

MR. SPEAKER: Shri Somnath Chatterjee,

SHRI SOMNATH CHATTERJEE (Jadavpur): Mr. Speaker, Sir . . .

SHRI B. SHANKARANAND: Why not the question of quorum be raised now?

MR. SPEAKER: I disallowed then; it is not fair to raise it now,

SHRI KRISHNA CHANDRA HALDER: The hon. Speaker told me not to insist on technicalities and so I kept quiet at that time.

SHRI SOMNATH CHATTERJEE (Jadavpur): I wanted to take part in this discussion because some party questions were expected to be raised and have been raised, I am unhappily finding this, if I may say so. Public life in this country and elsewhere, I should imagine, should be clean, especially in places of high offices. There should not only be clean public life but it should also appear to be so. People in such high offices should conduct themselves in a manner that they should not even be open to criticism. This is what we feel.

There should be no compromise so far as charges of corruption are concerned especially in high places. In such case, however high the office may be—probably, the higher the office may be, the greater the responsibility to respond to this reasonable request for an enquiry. That is our stand. But the question is whether in this particular case on which discussion has been raised, whether a departure from accepted norms of behaviour has been made and whether it calls for a comment or criticism in the manner in which the hon. Leader of the Opposition has sought to do. I have been trying to listen very closely to the speech of the hon. Leader of the Opposition. The real object, apart from political gains—here and there, is to drive a wedge between the Prime Minister and the Deputy Prime Minister Incharge of Finance trying to give an impression as if they are persons of different types of reaction to problem they have to face, that the Prime Minister is trying to resist an enquiry, "Look at this person. They are now occupying high offices, therefore, why is this different standard?" The hon. Leader of the Opposition says, "I do not want to say anything about the hon. Deputy Prime Minister, but the Prime Minister is not willing." At least, we find there is a welcome

change. At least some deviation from the previous norms has been made. I remember when serious charges were made against Mr. Bansi Lal by a large number of Members of Parliament, I do not wish to give the figures as I do not remember . . .

MR. SPEAKER: 104.

SHRI SOMNATH CHATTERJEE: 104, I am obliged to you. 104 Members of Parliament had given in writing, demanding an enquiry on specific charges of corruption against the then Chief Minister of Haryana, who was known to be a very very close to the former Prime Minister. Then what happened? What was the procedure followed? Repeated reminders were there but no response was given to these repeated reminders. Then ultimately when the matter was pressed very hard, it was referred to a Committee of the Cabinet Ministers. This Committee of Cabinet Ministers without giving any opportunity to the persons who had made the charges, including the former Chief Minister of Haryana, without calling for any record or anything, sitting in their own chamber, may be, I have no doubt, may be at the instance of someone, they had prepared and signed some note. It was circulated. They were asked to sign, exonerating the then Chief Minister of Haryana. What happened? When the reasons were asked for, the reasons were not forthcoming for giving this clearance. The matter had been taken to the court. I am one of the aggrieved party, in the sense that as a lawyer I did not find justice to our liking. The Delhi High Court said that the matter is non-justiciable. It cannot be gone into whether Government will appoint an Enquiry Commission or not, they are not obliged to say. Even I could not get special leave in the Supreme Court. That was the stand taken. Not even those who made the charge, the persons who made the complaint were not told, why their

charges had been rejected. I believe, a norm was accepted that if some Members of Parliament make a complaint, enquiry should be gone into. At one time it was so stated. That was not followed. Repeated charges have been made against the son of the former Prime Minister. I am not going into here, whether charges were true or not. But what was the response? The response was a deliberate definite 'no'. A definite 'no' at all times was said. This is all that was said—no case was made out, nothing. What has happened since then? Discoveries have since been there. How things had been done, we have all come to know. The people have come to know. A list of charges had been made out against the son of the present Prime Minister and there were discussions and debates and there was a formal motion before the other House. Long discussions had taken place. A list of charges had been made out, but there is one significant fact, namely, it appears that excepting some charges, which may be recent ones since the Prime Minister assumed office, most of them were charges which had been gone into during the period when the former Prime Minister had caused some sort of enquiry to be held and had given clearance. I am not on the merits; I am only trying to find out what attitude was adopted.

Here what had been done is to see ultimately whether a *prima facie* case is there or not. Our stand also is that As soon as a charge is made, good, bad or indifferent, when in our country political considerations over-weigh so many other things, when questions of morality, propriety and political norms have been overshadowed by political expediency—this is unfortunately the situation in our country—therefore, when this charge was made, I believe a very fair attitude was taken. I yield to none in my respect for the judiciary. Whatever may be our views about the judiciary, so long as this constitutional set up is

there, we have to maintain a proper place for our judiciary and show respect. We have our feelings. In many cases we have had our grievances about judicial decisions. But so long as we are unable to change the set-up, we have to accept it. We have to understand that. Therefore, once the Government had gone to the hon. Chief Justice of India—the highest judicial functionary in this country—trying to clear an atmosphere of suspicion which had developed—the other House had almost come to a grinding halt and it was not doing any business—the Chief Justice said, "Yes; I will go into this to find out if there is a *prima facie* case". Ultimately in his wisdom, the Chief Justice said, "I wish to be kept aloof of it". His previous decision might not have been proper in the sense he should have anticipated all this. There I agree with the hon. Leader of the Opposition that he should have anticipated that it was likely to raise a controversy. He should have initially itself said, "No; but I can nominate somebody who will do it properly". Ultimately that realisation dawned on him. He appreciated the position that since he had said 'yes', so many things had been said in this country and so many statements had been made. Ultimately he said, "I would not do it. I want to remain out of it. But if you want I may make a suggestion." And, the Government did the right thing. I must thank the Government for taking the right attitude, namely instead of themselves recommending another learned judge or ex-judge, they said, "Can you please suggest the name of another judge or retired judge?" I think when they left it to the Chief Justice of India, then no comment can be made. I am very unhappy that the Leader of the Opposition, to score some debating point or political point, should have dragged the name of the Chief Justice in the manner in which he has done. Let us at least try to spare one part of our constitutional set-up as much as possible from being a play-

ground of politics . . . (Interruptions). I did not interrupt the Leader of the Opposition when he was speaking.

Therefore, I submit at the end, an attitude has been taken and a learned retired judge of the Supreme Court of eminence has been appointed. He has agreed to go into the question of *prima facie* nature. I have no manner of doubt that if there is any interference in the discharge of his duties and functions, the Government has to be condemned. But we have seen very recently how open threats have been held out at judges. It has been said and we have read it in the papers and I believe in one speech inside the House, the Leader of the Opposition did not make it uncertain or did not mince words when he said that any judge who becomes a judge of the special court will have to be answerable or something like that. If I am not mistaken, a threat has been held out here and repeated outside that any Judge in this country who becomes a Judge of a Special Court will have to face something or other. This is an attempt to cow down the judiciary, the Judges, in the discharge of their duty. Here, an attempt is being made to blacken the image of the Chief Justice of India by saying that he has done something, he is not a fit person to be the Chief Justice, that he should have anticipated these things, that he has co-authored a political statement etc. Therefore, my submission is this. I would have liked Government reacting favourably whenever there are serious charges against persons who are in the closest proximity with the powers that be, apart from the Ministers. They should react favourably and promptly and quickly in taking the charges to a proper authority to find out the *prima facie* nature of the case before referring it to a commission of inquiry. I cannot find any reason to quarrel with that, but the Government should have acted with much greater quickness. If they had acted with promptness and greater

openness of mind, it would have been solved.

Therefore, let us try to resolve this, to see that in our public life in this country there is no occasion to make such charges. The sooner the occasion for such charges goes, we will have a better place to work in. Also, that will give rise to a better prospect for the country in future. Therefore, the system that has been adopted should be gone through to its logical conclusion, and let us see the result.

MR. SPEAKER: The Law Minister.

SHRI HARI VISHNU KAMATH. (Hoshangabad): Is it only a one-hour discussion? I thought it was two hours.

MR. SPEAKER: Only one hour, short duration. Otherwise, we will have to order dinner here.

SHRI HARI VISHNU KAMATH. The Minister of Parliamentary Affairs agreed to it at that time in 1951.

MR. SPEAKER: On the next occasion I shall try to do it for you.

SHRI HARI VISHNU KAMATH: Is that a promise?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI SHANTI BHUSHAN): While many of the points which have been sought to be made by the Leader of the Opposition would be dealt with by the Home Minister, I rise to make some observations in respect of some of them, particularly because he has chosen to make a reference to me also, very rightly. I do not object to the reference being made to me in this connection. But, may I preface my observations with the remark that after listening very attentively to the Leader of the Opposition, I have been wondering as to what exactly he wants. In fact, perhaps I would not be blamed if the impression is left on my mind that even if these charges or allegations had been referred to

God Almighty Himself, he would have had objection.

It seems to me that the main reason for his objection is that after all they had also been in power for a very long time, and hence why are we not following the precedents which have been set up by them?

PROF. P. G. MAVALANKAR (Gandhinagar): May I request you to take the sense of the House to extend the time?

MR. SPEAKER: I think the House will agree to extend the time by another half an hour.

HON. MEMBERS: We agree.

SHRI SHANTI BHUSHAN: I am very sorry that this Government refuses to oblige the Leader of the Opposition by following the precedents which they have set up. Even when specific, very clear charges of corruption were made, in writing, signed by a large number of Members of Parliament, their Government would not concede any kind of proper enquiry being made into them. That is not the kind of precedent that this Government would follow.

Only today a motion has been made in this very House moving the Lokpal Bill, which makes it clear as to what the attitude of the Government is whenever any allegations of corruption or wrong or improper conduct are made against any person in high authority, so that I need not make any special pleading so far as the attitude of the Government in this matter is concerned.

So far as the procedure which has been followed in this case is concerned, the Leader of the Opposition tried to make out that the Prime Minister was not fair in restricting the ambit of the charges which could be referred to some person for enquiry. I would like to remind the Leader of the Opposition that the statement which the Prime Minister had made in the other House first had

said that if a single Member of Parliament made a charge in writing against the family members and sent it to the Government, he would refer it to no less a person than the Chief Justice of India, the highest repository of judicial authority, the highest repository of impartiality. Of course, if the Leader of the Opposition does not have confidence in anybody in this world, not even in God then I do not know as to in whom he can have confidence unless it is said that the Leader of the Opposition himself must inquire into everything.

This is what the Prime Minister has said, namely, no 104 Members of Parliament, let a single Member of Parliament level any allegation in writing. The reason is that before any kind of an inquiry is made, before a reference is made to the highest judicial authority there must be some sanctity, somebody must take a *prima facie* responsibility of making an accusation and then only some inquiry can be made. But not a single Member of Parliament followed up that statement of the Prime Minister by sending any allegation in writing to the Government relating to the son of the Prime Minister or any family member of the Prime Minister. Therefore, a stage for making a reference to the Chief Justice did not arise.

Thereafter, it was suggested, on behalf of certain other political parties, why should there be an insistence, particularly when there had been a debate in the House and certain allegations had been made during the debate in the House, that even a single Member of Parliament should make those allegations in writing in a communication addressed to the Government. They said, "You drop even that insistence. So far as any allegations which can be culled out from the debate itself are concerned, why not refer them to the Chief Justice?" The Home Minister made a statement, all right. Even this was agreed to so far as this:

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limited occasion was concerned. Of course, it cannot be a generality that whenever anything is said, any vague allegation is made, it might be culled out from anywhere and an inquiry made. So far as this occasion was concerned, it was said, all right, there need not be any insistence on that, whatever allegations are contained in those debates may be culled out.

Of course, it was said that those allegations must relate to the period during which this Government has been in office. Can there be any objection to that? So far as this Government is concerned, obviously, this Government would not go back to 200 or 500 years and all that. This Government is responsible for the period for which the Government has been functioning. It is only for the period for which this Government has been functioning that the Government will come into the picture and make an inquiry. Since this Government is answerable and responsible for anything which has happened during the period that this Government has been in office, it did not want to usurp the functions which the earlier Government may or may not have performed. It cannot extend its authority over that period also. Therefore, it is said, "All right, if there are any allegations in respect of the period for which the Prime Minister has been the Prime Minister and, during this period, even if these can be culled out from the debates, the Government has no objection to the allegations being referred to the highest functionary of the judiciary in this country, that is, the Chief Justice of India."

One point that has been raised by the Leader of the Opposition is, what is the theory of a *prima facie* case etc.? Why cannot the Commission of Inquiry be set up to start with? Why should there be any kind of a preliminary examination? The theory seems to be, whenever any-

body says anything, you appoint a Commission of Inquiry. Of course, when there are very serious charges, etc. against high functionaries, an objection is raised as to why a Commission of Inquiry is appointed. On the other hand, it is said, whenever, anywhere, anybody might say the slightest thing, immediately you must jump to the appointment of a Commission of Inquiry and, if you do not do that, you are doing something wrong. Obviously, the Leader of the Opposition is a very competent person; he knows the law very well. So far as the appointment of a Commission of Inquiry is concerned, it is a power coupled with duty and that power has to be exercised with a sense of responsibility. A joke cannot be made in the exercise of that power. In fact, even the Leader of the Opposition has been objecting to the appointment of certain Commissions of Inquiry. I will not go into all that. Therefore, even he agreed that this power cannot be converted into a joke. This power has to be exercised with a sense of responsibility.

First of all, the Government has to apply its mind and determine, would it be a fit and proper matter for the appointment of a Commission of Inquiry. Normally, this function has to be performed by the Government.

SHRI C. M. STEPHEN: The point that I was emphasizing was that charges were raised by your party functionaries and your Home Minister was demanding it, satisfied that there was a case and the Prime Minister was avoiding it. Was it proper? I have not put forward any charges. This is what your Home Minister has been demanding and the Prime Minister has been avoiding. That is the point.

SHRI SHANTI BHUSHAN: I appreciate the point that has been made and I would deal with it.

So far as the decision to appoint a Commission of Inquiry is concerned, it is a Cabinet matter. There might be individual views, but so far as the Government is concerned, Government has to function on the basis of the collective wisdom of the Cabinet in regard to constitution of a Commission of Inquiry. And the collective wisdom of the Government is that there have to be certain norms. First of all, the totality of the circumstances has to be seen, as to whether there is a proper case for the constitution of a Commission of Inquiry. Then, in that case, Government has to perform this function of judging this: has a case been made out for the constitution of a Commission of Inquiry? The case can be made out in different ways and in different circumstances. But then somebody will have to judge as to whether a case has been made out for the constitution of a Commission of Inquiry, because a Commission of Inquiry cannot be constituted merely for the asking of it.

Now, while Government, in a normal case, would perform this function and reach this satisfaction, in regard to allegation, which are made and to which some political parties also lend their force—and then it is also said that the Prime Minister is the Head of the Government—, if the Government itself comes to the conclusion and says that no proper case has been made out for the constitution of a Commission of Inquiry, then what would be suggested is this: 'Look here, since the allegation related to the son of the Prime Minister or a relation of the Prime Minister or an important Minister, obviously the Government came to this conclusion'. This might not get the full credibility of the people. Therefore, even this function which normally would have been performed by Government, Government did not want to perform and they agreed to this: 'Alright, we can understand that you may not have confidence in

our conclusion on this point; therefore, we are willing to have this function performed by a functionary on whose impartiality on whose objectivity, on whose ability, nobody in the country can have any doubt". When I say this, I would like to emphasize that, in spite of what the Leader of Opposition might say, so far as the citizens of this country are concerned, they have absolute confidence in the judiciary. The Indian judiciary has glorious traditions, and therefore, the Indian judiciary cannot be successfully denigrated by anybody, howsoever important that person may be. So far as the people are concerned, they do have confidence in the judiciary.

In regard to the statement which was made by the Prime Minister that, if any Member of Parliament made any allegation in writing to the Government against his family members, he would immediately refer those allegations to the Chief Justice of India for being gone into, the Leader of Opposition has raised an objection as to whether it was proper on my part to go with that statement to the Chief Justice of India to read out that statement and take his consent for the Prime Minister making that statement in the other House. Now, Sir, the ground on which he has raised the objection is this. He says that this was a political matter, this was a political controversy; his point was. 'Look here, these charges which had been made were politically motivated charges made for a political purpose, by way of political propaganda; why should any such statement, namely, that the Government is willing to refer these allegations for a *prima facie* looking up by the Chief Justice of India, be read out to the Chief Justice of India? It is quite clear that the Chief Justice of India was not obliged; he could not be compelled to go into this matter. So far as Government was concerned. Government was willing if the people of this country would have con-

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fidence and if the Opposition also would have confidence in the Chief Justice going into this matter and giving his conclusion. So far as the Government was concerned, Government was willing. Speaking for myself, I would have thought that the Opposition should have welcomed this statement, unless, of course, the attitude of the Opposition is 'No; even if you had referred the matter to the God Almighty, we would not agree; we have no confidence in anybody else'. There was nothing political about this matter. Here were certain charges of corruption which had been levelled. Some methodology had to be evolved so that people may have confidence as to whether there is a proper case for constituting a Commission of Inquiry. On account of the relationship between the person against whom the allegations were made and the head of the Government, namely, the Prime Minister himself, it was supposed that if the government itself says 'No, there is no proper case for a Commission of Inquiry', people may not have confidence. Therefore, it was said, 'All right. The Chief Justice of India will look into it.' But if a statement is going to be made by the Prime Minister, would it be proper that such a statement should be made without bringing the Chief Justice of India into the picture and without making reference to the Chief Justice of India? The Chief Justice of India must be informed, 'This is what the Prime Minister intends to do, that he intends to go to the Parliament making an offer that if any such allegations are made, they would be referred to the Chief Justice of India.' I insist that it was the most proper thing. It was asked—when a statement was to be made in the Parliament, why did we go to the Chief Justice to say 'This is what intend to do. Have you any objection?'. If doing the most proper thing . . . (Interruptions)

MR. SPEAKER: He did not interrupt you when you spoke.

SHRI B. SHANKARANAND: Do you consult the Chief Justice for your statement in the House?

SHRI SHANTI BHUSHAN: Now let me complete. Now a reference was made to a precedent in England in which a Lord Chancellor . . .

SHRI C. M. STEPHEN: Now it is one thing to say that you got the consent and it is an entirely different thing to say that you drew up the statement, went to the Chief Justice and got his approval for the statement.

SHRI SHANTI BHUSHAN: I do not know if the objection is that the consent should have been taken on the phone or the objection is that the Ministers of the earlier government would not go to the Chief Justice they would just ring him up and find out 'Do you agree to it?' The objection is: why did the Minister go to the Chief Justice? I do not quite follow what the objection is . . .

SHRI C. M. STEPHEN: That is happening every day now.

SHRI SHANTI BHUSHAN: So that there may be no confusion, so that the Chief Justice may understand what is the role which is being contemplated for him, so that the exact terms in which his role was referred to in the statement and so that there may not be any confusion, I thought that would be the most proper method of finding out what his reactions were in the matter.

Now I was adverting to the precedent which has been referred to—in England where the Lord Chancellor made a similar kind of inquiry namely whether there was a proper case for constituting a Commission of Inquiry. The Leader of the Opposition tried to make use of that precedent by referring that in spite of the fact that the Lord Chancellor came to the conclusion that there was no

sufficient case for constituting a Commission of Inquiry, yet, on account of the political insistence and so on and there was a furore and so on in the public, in order to clear all doubts in the matter, the Prime Minister thought that since his colleague was involved, to constitute a commission of inquiry. I am not saying that a Commission of Inquiry cannot be appointed unless a charge is established even *prima facie*. It all depends as to when it becomes a matter of public importance. It must be a definite matter of public importance, but, at the same time, you cannot go to the other extreme and say that whenever anybody levels any allegation, immediately a commission of inquiry must be constituted. So a balance has to be kept and the totality of the circumstances will have to be seen and the totality of circumstances may change from time to time also. At one stage it may be a quite proper conclusion to say 'No, there is no sufficient case for constituting a Commission of Inquiry' and yet if there was a lot of furore in the general public, then to clear all the mist from the air, it might become proper to constitute a commission of inquiry. That is why this matter was being left—as to whether a proper case was made out to constitute a Commission of Inquiry—to an impartial authority.

Another point which has been made is: if the Chief Justice agreed to the Prime Minister making this statement on the first occasion, then why was it that he declined when the reference was actually made to him? I would like to clear the position. What he agreed to earlier was different from what was later sought to be referred to him. Secondly, the context also had changed because nobody could have anticipated that in spite of such an offer, such a plain, simple and clean offer by the Government, yet a political controversy would be raised and it would be opposed that the Chief Justice of India should not go into the matter. No-

body could have anticipated it. I cannot blame the Chief Justice even if he did not anticipate it. But, thereafter, when, in spite of such statements being made, all kinds of things were said, it was said that it would be improper for the Chief Justice to embark upon this enquiry etc. If he comes to the conclusion, which he did not anticipate and which he could not have properly anticipated, there would be a sharp cleavage of opinion, the Leader of the Opposition would have let the cat out of the bag by saying that it was a political matter that it was a political propaganda and a political motivation etc. Obviously all these things we would arise. (Interruptions).

SHRI C. M. STEPHEN: It is going to be on the basis of his being *persona designata*.

SHRI SHANTI BHUSHAN: Not merely that. On the whole question, political controversy is raised; different parties are raising a controversy about the reference to the Chief Justice of India. In that case, it would not be proper for him to place the Office of the Chief Justice in the position of *persona designata* in the matter if a political controversy is being referred. But, if there had been a unanimity in the matter as should have been expected in the matter of this kind, in that case, the Chief Justice's reaction would come. Because of that, although he would have been *persona designata*, even in that case, he would have said well, if people want me to perform this function as *persona designata* I have no objection. After all, this is a public office in order to serve the people and if they want me, through the representatives of the country, to perform that function, in that case, I am willing to perform it. On an earlier occasion it was contemplated that a charge made in writing by a Member of Parliament would be sent to Government. What actually happened was this. His consent to the Prime Minister's mak-

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ing that statement was in that context.

SHRI C. M. STEPHEN: That is not the point.

SHRI SHANTI BHUSHAN: That was changed. He had never agreed to the Prime Minister's saying that even if something which is part of the debate in the House is given in writing by a Member of Parliament to the Government about levelling some allegations etc., they will be referred to a Committee. He has agreed to Prime Minister's making only that statement which he made. So, it was entirely different what happened later. A statement was made by the Home Minister. On that certain political parties made certain points. So, that was entirely different.

No, I would like to reply to the last point that was made by him. He asked: why did the Chief Justice of India suggest to nominate a retired judge? The Chief Justice had earlier agreed to the Prime Minister's making that statement. Although there was a departure, the departure was only in regard to whether a specific allegation was made by a Member of Parliament in writing to the Government or not. So something was to be culled out from the debates of the House etc. Of course, a sharp cleavage had arisen among the political parties on the Chief Justice's undertaking this task. So, the Chief Justice declined it. And he said that it would not be right for him to put the office of the Chief Justice of India, which is a very important constitutional office, into such a state of affairs. What is wrong if he suggests or says that so far as the retired judge is concerned? A retired judge is equally objective. If the Leader of the Opposition is in that Chair, I would have complete confidence in his objectivity.

Therefore, so far as the people of this country are concerned, they have complete confidence. We know that

in this country it used to be said that there was a story—what was his name—about Vikramaditya's throne. And anybody occupying that throne used to administer justice. If any village boy sat on the throne, he would immediately start rendering justice completely, impartially and so on. These are the traditions which is this country has known.

Therefore, the Chief Justice said that he would not like to involve the constitutional office of the Chief Justice into a controversy. Your objective is that you want an impartial person—somebody in whose ability and in whose objectivity, the entire country can have confidence. He said 'all right, then, why not have a retired judge who can go into the matter?' Government, again, very rightly said, would not like to suggest the retired judge. Since he is the Chief Justice of India, why not he nominates a judge? He nominated a judge. So, all these things are most proper. But, if everything which is proper, according to the Leader of the Opposition's dictionary is not proper or improper, then, I have nothing more to say to that.

SHRI B. SHANKARANAND: Sir, I rise on a point of order.

MR. SPEAKER: What is your point of order?

SHRI B. SHANKARANAND: It is a constitutional point of order.

MR. SPEAKER: What is your constitutional point of order?

SHRI B. SHANKARANAND: After he finished. I wanted to raise two points of order. If any minister or any Member of this House wants to make any statement, it has been the practice and procedure that you have to allow him. (Interruptions).

MR. SPEAKER: This is not a point of order. (Interruptions) I asked him

whether he wanted to make a statement in view of the reference made to him. He said 'yes'.

SHRI B. SHANKARANAND: Please listen to me. Is it the practice in this House that the Ministers, before making statements before the House should get these statements approved by the Chief Justice? Sir, that is the first point . . .

MR. SPEAKER: Order please. Mr. Shankaranand, that is not a point of order at all. This is a point of debate.

No, I am sorry, Mr. Shankaranand. You are really obstructing the proceedings.

SHRI B. SHANKARANAND: I am not obstructing. Secondly, under the Constitution.. (Interruptions) is it the Chief Justice who has to approve?

MR. SPEAKER: Mr. Shankaranand, this is not a point of order. This is a point of debate.

Now, the hon. Home Minister.

THE MINISTER OF HOME AFFAIRS (SHRI H. M. PATEL): Mr. Speaker, Sir, my task has been greatly eased by the observations which Mr. Somnath Chatterjee and the Law Minister made. They have dealt effectively with the various legal sides of the question and other issues also. And once those points have been dealt with, precious little really remains for me to answer.

What is it that the hon. Leader of the Opposition objects to?

Sir, does he object to the fact that we are responsive to the demand for an enquiry? Here is the hon. Leader of the Opposition completely forgetting his immediate past when his conscience did not prick him, when his present leader and the former Prime Minister refused to do anything in regard to the charges and allegations that were levelled against Mr. Bansi

Lal. No response, no enquiry, nothing at all. That satisfied his conscience. Time and again we put questions, sitting on the other side. I had put questions and also other members of the Opposition had put questions about Mr. Sanjay Gandhi, his Maruti and the rest of it. No replies were ever provided—there was complete evasion—and the hon. Leader of the Opposition then had nothing to say. His conscience never pricked him at all. But I agree with Mr. Somnath Chatterjee that, we do want that our Chatterjee that, we do want that our administration should be clean and proper. It is following those things that I made my statement and the hon. Leader of the Opposition has just tried to draw red herrings right through. But all that he has to do is to read carefully the two statements which I made in this House. And I would really like to bring these to your notice. What is it that I said in the first statement that I made in this House? It was this and I quote:

"On the 24th August, 1973, while making a statement on the Government's attitude towards the resolution that the Rajya Sabha had adopted on the 10th August, 1973, the Prime Minister said:

'My Government yields to none in its desire to maintain the highest standards of purity in the administration and would not allow any allegation of corruption to survive which may fully its image. So, even while regretting its inability to accept either of the two recommendations contained in the Resolution, in the event of any specific charges of corruption in the context of the resolution being made to it in writing by any hon. Member since my Government took office, the Government proposes to refer the same to the Chief Justice of India for being examined by him'."

Please mark the words;

[Shri H. M. Patel].

'In writing by any hon. Member'

Then I said:

"In spite of this statement and the opportunity provided by it to enable those who wanted the charges of corruption to be inquired into, no hon. Member of the house or anyone else has sent any specific charges of corruption in writing."

This is what I said and yet the hon. Leader of the Opposition does not attach any importance to this. Here months passed. It was in August that this statement was made and my statement was in February 1979. During those six months, none of them was anxious to make any charge. How was it that nobody could come and put down in writing a complaint? Not only they, but even the Leader of the Opposition who has plenty of time now . . .

SHRI B. SHANKARANAND: This is objectionable. He says that the leader of the Opposition has a plenty of time now. This is sarcastic.

MR. SPEAKER: Sarcasm is part and parcel of the Parliamentary life. (Interruptions).

SHRI H. M. PATEL: Sir, I can do nothing better than read out my statement, I would like to relate concisely, precisely the position. However, Shri Bipinpal Das tabled a motion under Rule 170 to the effect that the Government should refer forthwith all the allegations of corruption made on the floor of the House during the debate to the Chief Justice of India for scrutiny and examination and for his finding as to which of the allegations referred to above called for the appointment of a Commission under the Commissions of Inquiry Act, 1952. While the Government has the highest respect for this august House and attaches the utmost importance to the views expressed therein, the Government has already stated its view that charges of corruption have to be specific . . .

SHRI C. M. STEPHEN: When I made an attempt to quote. It was from the Lok Sabha Debate, but he is quoting this from Rajya Sabha debate.

MR. SPEAKER: No. no. Don't quote from that.

(Interruptions)

SHRI C. M. STEPHEN: Two standards must not be applied. I would have no objection if he quotes from the Lok Sabha debate.

MR. SPEAKER: If it is a statement made in this House, you can quote

SHRI H. M. PATEL: I am not sure about that. But I will now read out the statement which I did make in this House.

What I said was that the request was made by an hon. Member in the Rajya Sabha that these allegations be referred to the Chief Justice. That, I mentioned in the debate and that is why, after careful consideration, even though the Government did not consider that this was the right course to follow, in response to the wishes of the hon. Members of that House and because no one had come and submitted any charge in writing, the Government felt that something should be done and so they said: "We would refer the entire debate of the 10th of August to the Chief Justice of India for him to find out whether there is any *prima facie* case etc. for reference to a Commission of Inquiry" Then when the Chief Justice had some difficulty, I pointed this out and this is the statement I made here.

"Madam, in a statement I made on February 23, 1979 in the Rajya Sabha and in answer to a few Unstarred Questions in the Lok Sabha, mention was made of Government's decision to refer the debate on the motion that was adopted on August 10, 1978 in the Rajya Sabha to the Chief Justice of India with the request that he may inquire whether any *prima facie* case in respect of any of the charges

referred to in the debate aforesaid, which pertain to the period after the present Government took charge in March, 1977, is established against the family members of the Prime Minister and the former Home Minister so as to justify a formal inquiry under the Commission of Inquiry Act. I accordingly requested the Chief Justice of India to take up this enquiry and given his advice in his connection."

20 hrs.

Then comes the reply of the Chief Justice of India. He referred to the developments subsequent to the Prime Minister's statement in his reply, which the hon. Member quoted from and found justification to criticise the Chief Justice of India. I would have thought that so learned a man as the Leader of the Opposition would have resisted in the ordinary course, but he is carried away by passion and emotion when certainly conventions etc. can fly by the window. Appreciating the reasons put forward by the Chief Justice and sharing his anxiety that nothing should be done which would involve the office of the Chief Justice in any controversy, or impair in any way his dignity and position, Government agreed to refer this matter to a retired judge of the Supreme Court, but felt that it would be more appropriate if the retired judge to make the enquiry were to be nominated by the Chief Justice of India rather than selected by the Government. If we had selected the judge, he would have objected; when we ask the Chief Justice to do that then also he objects. After careful consideration, the Chief Justice suggested the name of Shri Justice C. A. Vaidialingam for this assignment. We referred the entire question to him. This is the correct story. I would like to know what exactly his objection is.

SHRI C. M. STEPHEN: You had no business to make the Chief Justice your law officer. That is the objection.

SHRI H. M. PATEL: The understanding of the hon. Leader of the opposition is unfortunately getting dimmer; he forgets also the party to which he belongs.

SHRI C. M. STEPHEN: Abuse is no answer to an argument.

SHRI H. M. Patel: That is what you indulge in all the time. Never once do I abuse (Interruptions).

Both of you being lawyers, elegantly, go on saying whatever you like, but not according to the facts. That is how you have unnecessarily dragged the Chief Justice. If that is what you say, I will make the charge that you try to put words in such a way by selection that you can tell any amount of untruth. Selectivity of facts is one of the best ways of telling untruth.

SHRI SOMNATH CHATTERJEE: *Suppressio veri* and *suggestio falsi*.

SHRI H. M. PATEL: That is what exactly they do.... (Interruptions) The lawyer is pointing out what you have done in your speech. *Suppressio veri* and *suggestio falsi*. Suppression of truth is more insidious than propagation of falsehood. That is exactly the correct translation.

I would like to tell you that in the days of Prime Minister Nehru, there were a number of occasions on which the assistance of the Chief Justice was sought and the assistance came forward readily and nobody questioned it. Not even our learned friend sitting opposite has ever been known to have criticised those references. He forgot those references. He is very fond of precedents, but he wants to rely on precedents of England, not precedents in this country.

Now, in February 1963 some Calcutta paper mentioned that some Central Ministers were involved in the Sirajuddin transactions and subsequently the matter was raised in the Lok Sabha. And then, what did

Shri H. M. Patel

the Prime Minister do? The Prime Minister referred the matter to the Attorney General for his opinion, under intimation to Lok Sabha Secretariat. Later, the P. M. made a statement in the Lok Sabha that the Attorney General had advised further enquiry in respect of this matter, to be referred to the Chief Justice, Shri Das.

SHRI B. SHANKARANAND: So, you can compare that with this!

SHRI H. M. PATEL: I compare only this. The reference to the judiciary, in this country, has been the correct procedure. I am referring only to the precedents.

There is another occasion when, similarly, a memorial was presented to the President by the Leader of the Opposition in the Orissa Legislative Assembly and what happened then was that the Union Home Minister forwarded the memorial to the Chief Minister of Orissa and suggested that it may be referred to a Justice; and it was again referred to a Supreme Court Judge.

SHRI HARI VISHNU KAMATH: He was a sitting Judge.

SHRI H. M. PATEL: Yes, to a sitting Judge. Then again, a memorandum was submitted to the Presi-

dent by some Members of Parliament containing certain allegations. There are any number of such cases.

MR. SPEAKER: Is it necessary to go through all of them?

SHRI H. M. PATEL: It is not necessary. I am quite content; and I have said that the precedents justify the course that the Government of India had adopted in this case. We have acted correctly. We have, I think, followed the right course. We have given every opportunity to the Opposition to come forward, if they had any specific allegations to come forward chapter and verse. They have failed to do it so far. It is because they have failed, it is because, in the course of the debate they had made nothing but vague allegations, that they are afraid that all of them will be shown out to be completely baseless and meaningless, with no weight behind them.

Thank you.

MR. SPEAKER: The House now stands adjourned till 10.30 hrs. tomorrow.

2008hrs.

The Lok Sabha then adjourned till half past Ten of the Clock on Friday, May 18, 1979/Vaisakha 28, 1901 (Saka).