

THE CONSTITUTION (AMENDMENT) BILL, 1963 (to amend article 143)

SHRI A. D. MANI (Madhya Pradesh): Madam Vice-Chairman, I beg to move:

"That the Bill further to amend the Constitution of India be taken into consideration."

Madam, I gave notice of this Bill soon after the report of Mr. Justice S. K. Das was given to the Prime Minister in what is known as the Malaviya case. I felt at that time that a serious constitutional impropriety had been committed by Government in asking a functioning Judge of the Supreme Court to conduct a private enquiry the results of which would be made available only to the Prime Minister and not to the public. Before I go into the circumstances of that case, I should like to draw the attention of the House to article 143 of the Constitution which says:

"If at any time it appears to the President that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it, he may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the President its opinion thereon."

Those who have followed the debates of the Constituent Assembly on this particular article will bear in mind that the Members of the Constituent Assembly had in view the functions exercised by the Federal Court of India in regard to inter-State disputes. It is for this reason, after enumerating the powers of the Supreme Court in the previous article, the constitution-makers laid it down that in case the President felt that there was a question of law or fact on which the opinion of the Supreme Court was

necessary, he might make the necessary reference to the Supreme Court. The President of India has utilised this article, if I may use that phrase, in regard to some recent cases, notable among them being the Kerala Education Bill and the recent controversy between the judiciary and the legislature of the State of Uttar Pradesh. The Members of the House will recall that the terms of reference of the President to the Supreme Court were specific and were published and whatever opinion was expressed by the Supreme Court was in the nature of a public opinion. The concept of law under which we have been brought up for over a hundred years has been that justice is done in public and not in private, that the public has access to all proceedings of a court of justice. There have been cases of modification in regard to this practice, in cases of espionage and in prosecutions launched under the Official Secrets Act. In such cases, *in camera* trials have been permitted but as far as the Supreme Court is concerned, it is open to any member of the public to go and attend the sessions of the Supreme Court whenever it seeks to hear cases. Admission cannot be refused to any member of the public unless it be on the ground that the available accommodation has already been taken up. Madam, I do not want to go into all these details of the so-called Malaviya case. Mr. Malaviya resigned his office, is now a Member of Parliament and it is not my object to seek a resurrection of that case to ventilate allegations against Mr. Malaviya. In his own way he has paid the penalty and I do not want to go into the transactions in which he was alleged to have been involved and which led Jawaharlal Nehru to refer this matter to a Judge of the Supreme Court to consider whether any impropriety had been committed by him. Madam, it may be recalled that Mr. Justice Das conducted the enquiry and it was made clear that he had the liberty to decide his own procedure. I do not know for certain where the enquiry was held but according to unofficial reports, I

understand that the hearings were held in his own chamber in the Supreme Court. Nobody knows who else were present besides Mr. Malaviya or whether Mr. Malaviya was allowed to be present at all stages of the proceedings when documents were being examined. Mr. Malaviya himself had serious objection to the kind of inquiry which Mr. Justice Das conducted at that time. If I may quote from what he said in the other House on August 17, 1963, Mr. Malaviya said while making a statement about his resignation as follows:

"In making any sufficient explanation about my resignation I am handicapped by a number of things. These include the nature and the procedure of the inquiry which was entrusted to Mr. Das, a Judge of the Supreme Court, particularly its informal and secret nature and the fact that Mr. Das did not permit me to have the benefit of legal counsel during the examination of the witnesses and the hearings before him. Some witnesses who could have testified with direct knowledge of the facts were not even called. However, inadvertently it might have happened this method of conducting the inquiry hamstrung me in my defence. Further there is the condition which the Prime Minister had to accept on which the Chief Justice agreed to Mr. Das holding in the inquiry, namely, that the Report would not be published or discussed even in Parliament but would be used only as a personal advice to the Prime Minister."

In other words, the accused, if I may use that description, in this case Mr. Malaviya, himself felt that justice had not been done to him. Whenever an inquiry is held of a formal nature the accused person is allowed to present his defence in a form which he considers appropriate.

My hon. friend, Mr. Abdul Ghani who was one of the main factors in

the inquiry against Sardar Pratap Singh Kairon will recall that Sardar Pratap Singh Kairon was allowed to engage a counsel to state his case and whatever fees were paid for the counsel at that time were paid by the State Government of Punjab though subsequently it might have been recovered from him or his family. Sardar Pratap Singh Kairon did not make the allegation at any time that he was not given the opportunity to be represented by his counsel. In fact when Mr. Justice Das arrived at his findings on the so-called Kairon case there was no protest from Sardar Pratap Singh Kairon that any injustice had been done in regard to the assessment of evidence. It is a very important matter that we should bear in mind and here by conducting an inquiry through the agency of a functioning Judge of the Supreme Court who was being paid a salary out of public revenues at that time as a Supreme Court Judge, the Government, I would like to repeat, committed a serious constitutional impropriety by asking him to conduct the inquiry and tender personal opinion to the Prime Minister of the day.

Madam, a question will be asked: what did Jawaharlal Nehru himself feel about this matter? Jawaharlal Nehru, as all of us know, and as Members of Parliament know, was a very sensitive person and if at any time a case was made out on sufficiently strong grounds that some injustice or impropriety had been done by him he reacted to what others felt. He was not one of those who stood on prestige. Jawaharlal Nehru explaining why he accepted the resignation of Mr. Malaviya said in the other House:

"My acceptance of that resignation was certainly partly conditioned by Justice Das's report obviously. Although that report was in the nature of a decision—his decision was a *prima facie* decision and not a final decision—I thought that was enough. It might have been perhaps more desirable if a full judicial enquiry took place. That is a

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method I might have made a mistake, and Justice Das was himself rather conditioned by limiting factors it is not his fault. Maybe it is my fault that I pursued this course. That may be so."

Later on Shri Nath Pai, a Member of the other House asked the Prime Minister as follows

"Under what provisions of the Constitution can a private opinion of the Judge of a high court and the Supreme Court be obtained? What are the provisions of the Constitution under which opinion of the high court or the Supreme Court can be obtained?"

Mr Deputy Speaker Order, Order

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Then Jawaharlal Nehru goes on to say

"Maybe it might have been a wrong step on my part to proceed on these lines, because the other course would have been to have a statutory enquiry governed by certain rules laid down. That would be under the Constitution and the laws, etc. It was then decided, as is often done—it is not the first case—that a private advice on the papers that we have, on the evidence we have would be better. The question is not so much of Shri Malaviya but of the Supreme Court Judge himself. It puts him in a very false position if the opinion he has given in a private enquiry is made public because he himself is not protected then."

Madam it will be seen from the extracts that I have quoted from the proceedings of the other House that Jawaharlal Nehru himself was disturbed by the accusation that the method of inquiry that he followed in

the Malaviya case was not the right one. Also, Madam the Judges of the Supreme Court have a very special position under the Constitution. They are only to discharge the duties which the Constitution enjoins upon them to discharge. It is not open to the Judge of the Supreme Court to undertake any duty which is not prescribed by the Constitution. I believe it is one of the conventions of this House that the conduct of High Court Judges and Supreme Court Judges should not be commented upon adversely but I believe that I am within my constitutional rights as a Member of the House in saying that in my humble judgment the then Chief Justice of India did not take a correct view of his duties under the Constitution in permitting Mr Justice Das to hold this inquiry while he was a Judge of the Supreme Court. If any person had filed a writ of *quo warranto* at that time in the Supreme Court challenging the capacity of Mr Justice Das to conduct the inquiry the Judges of the Supreme Court would have been placed in a very invidious position. Madam, I would like to say further, if anyone had resorted to the appropriate writ processes asking the President of India not to make payment of salary to Mr Justice Das for the period he was doing this work he would have been within his rights under the Constitution. Madam, I am most anxious that the Supreme Court Judges should not be asked to do any kind of work to any person in authority whatever position he may hold. The result of this inquiry has been that whatever might have been Mr Malaviya's achievements, his name continues to be under a cloud. He has not been fully cleared. He is entitled to expect that as a Member of Parliament he should be cleared of the charges brought against him privately or otherwise.

DRWAN CHAMAN LALL (Punjab)
May I interrupt my hon friend? It is not right that any Member should

cast aspersions on another Member of another House. It is only fit and proper that my hon friend should reserve his comments and whatever he has to say for another occasion, a public occasion, so that Mr Malaviya can deal with him properly.

SHRI A D MANI I am afraid my hon friend, Diwan Chaman Lal was not present in the House when I made certain opening remarks in sponsoring this Bill. I made it clear at that time that I was not trying to resurrect the details of the Malaviya case or the Serajuddin affair.

DIWAN CHAMAN LALL Nevertheless, if my hon friend would permit me for a minute, he is making serious charges against an hon Member of Parliament. He has no business to do that.

SHRI A D MANI Madam, the entire Constitution (Amendment) Bill is based on a constitutional impropriety committed at that time. I am within my rights as a Member of this House and under the Rules of Procedure of this House to refer to any relevant matter connected with that case and all that I have done is to quote what Shri Malaviya himself said in the other House saying that he has not been given a fair enquiry. I am arguing the case from Mr Malaviya's point of view.

SHRI ATAL BIHARI VAJPAYEE (Uttar Pradesh) Mr Malaviya's conduct as a Minister is being referred to, not as a Member.

DIWAN CHAMAN LALL Madam, when the hon Member is not present in this House to answer my hon friend, it is very incorrect and improper on the part of my friend to refer to him.

SHRI A D MANI Madam, I would humbly submit to you

SHRI AKBAR ALI KHAN He is not a Minister now.

SHRI A D MANI not to come to conclusions about this matter. I would humbly submit to you.

SHRI ATAL BIHARI VAJPAYEE He is quite in order.

SHRI A D MANI that I am in order in making very relevant and very restrained remarks about the Malaviya case. I feel I am at a point when I have got a big majority against me on this Bill.

SHRI ATAL BIHARI VAJPAYEE We are not going to be cowed down.

SHRI A D MANI I am trying to persuade Members of the House to see the reasonableness of the point of view that is reflected in this amending Bill.

There is another point also which I want to refer to, all the things that had happened in the past, because it is necessary not only that this Bill should be passed, but also certain conventions should be accepted both by the Government and by the Judges of the High Courts and Supreme Court. They may be called upon to conduct enquiries in future. Pandit Jawaharlal Nehru said, again, in the same debate

"I am not placing the report of Shri Justice S K Das before this House for several reasons. Formerly I had stated in the Parliament that the condition on which the Judge had agreed to hold the enquiry was that the report was not to be published and discussed in Parliament or elsewhere. It is of a private and confidential character and was intended to guide me in the discharge of my functions as Prime Minister and was solely meant for my use."

He was not the servant of the Prime Minister at that time. He was the

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servant of the people of India, sitting as a Judge of the Supreme Court The Prime Minister said that it was entirely meant for his use Then, he said

‘It is obvious that it is not in consonance with the dignity of the office which Shri Justice Das is holding that his report should be made the subject of comment or discussion either in Parliament or in the public’

This is what he said Madam, these were extraordinary propositions that were laid down at that time I never approved of what happened in the so-called Orissa case, where the memorialists had made serious charges against persons in authority and persons were behind those in authority at that time The matter was enquired into by a Cabinet Sub-Committee We were not told about the findings reached in respect of the charges which were enumerated in the memorial We were only told in a general way that certain things were unbecoming and the Orissa charge-sheet was hushed up If any person wants to conduct an enquiry in respect of a person holding a high Ministerial office, that enquiry must be in public

My hon friend, Mr Akbar Ali Khan, may ask me What about the torture through which a man has got to go by facing a public enquiry? I may recall in this connection that when the J H Thomas case came up before the House of Commons, Mr Stanley Baldwin who was a master of the English language said “Cruel effect of the medium of modern publicity” He said that this man would suffer but then he went on to defend the need for a public enquiry in this case Madam, I feel that Pandit Jawaharlal Nehru almost admitted—he did not say so in so many words—but from the quotations I have given he almost said that he had committed a mistake in this matter Perhaps it

would have been better if a judicial enquiry had been conducted

Now, I would like to go into the balance-sheet of the public What are the losses and gains of this enquiry? I do not want to tread on the toes of my hon friend, Diwan Chaman Lal Mr Malaviya was cleared on four grounds, but on two counts the Prime Minister said something adverse had been said by Mr Justice S K Das He was fully convinced about Mr Malaviya’s integrity, but because the Judge had objected to it, as I said, he did not publish it He wanted to maintain standards of public life The public was entitled to know what those two charges were on which Mr Justice Das had come to conclusions which were not favourable to Mr Malaviya We heard a lot about the Serajuddin case at that time The Serajuddin case has been lost in the limbo of oblivion at the present time Nobody knows where Mr Serajuddin is My hon friend Mr Lokanath Misra, is not here but the Serajuddin case has not seen the light of day It is not only one person who would have been involved in the matter, but many members of the ruling Party and many members in Orissa were involved in the Serajuddin case Have we, the public of India, not the right to ask this Parliament, of which we are all servants and creatures, that in a matter where a person in high office is accused of misconduct, the public must be made aware of the facts? In Parliament it is not our duty to seek the prosecution of Ministers and to see that they are put in jail In politics and in public life all that we expect is that persons who hold high office must so conduct themselves in public and in private as to deserve the respect that people give to high office There are standards which have been set and I may in this connection quote what Mr Churchill found in a very memorable quotation from what Mr Attlee had said previously in the House of Commons—on 3rd February 1949 I

refer to the "Hansard", Volume 460, 1948-49 in which he said this . . .

SHRI M. RUTHNASWAMY (Madras): Fortunately Mr. Bhupesh Gupta is absent.

SHRI A. D. MANI: Yes. This was the Belcher case. He said:

"We must all sympathise with the families of the Members who necessarily suffer, though entirely innocent, and I think we all have a very natural reluctance to pass judgment on others. We are all conscious of our own faults; at the same time, we must not allow our personal sympathy for men who are down to lead us to condone in any way the seriousness of the offences committed. It is our clear duty to vindicate the honour of this House. We owe that duty not only to this House but to democratic government and to the servants of the State. There are many attacks made on democratic government today, and any action of the nature of utilisation of a public position for private gain cuts at the root of democratic government. The corruption which accompanies dictatorships is generally hidden; the corruption which enters into a democracy is brought to light and must be dealt with drastically, and if there is any suggestion at all, it is that, as a democratic assembly, we are bound to take action."

We are having in Asia perhaps the most successful demonstration of the working of parliamentary government on a soil which is more or less alien to the culture in which parliamentary governments have been nurtured in Europe. It was said by Lord Morley that parliamentary government had no chance of succeeding in India and we have all proved that Lord Morley, though he was a great philosopher, was wholly wrong in giving his assessment of the Indian people. We are having this parliamentary form of government, but I am afraid we have detracted from the value of this

kind of government by permitting cases of corruption to be enquired into privately, as was done in the case of Mr. Malaviya.

DIWAN CHAMAN LALL: Again, I rise to protest very strongly against the charge that the hon. Member is making.

HON. MEMBERS: He is not making any charge.

DIWAN CHAMAN LALL: Will you please permit me? I understand English probably better than my hon. friends over there. He is making a charge. I say that he has charged Mr. Malaviya with corruption. If my hon. friends had not been so prejudiced in their own minds, they would have listened to this particular charge that my hon. friend is making against Mr. Malaviya. Madam, may I draw your attention to rule 238 of the Rules of Procedure? Rule 238 says:

"A member while speaking shall not make a personal charge against a member."

I take it that my hon. friend is a Member of Parliament. He is making a personal charge against a Member. Then further on it says:

"shall not utter treasonable, seditious or defamatory words."

When my hon. friend charges Mr. Malaviya with corruption, I say that these are defamatory words. Let him go outside and make this charge and then face the consequence.

Shri A. D. MANI: Madam, I would like to make a submission on this point of order. What I have said here is not a new matter being brought to the surface. What I have said here is with reference to the proceedings in the other House, to the proceedings in public, to the circumstances which led to the appointment of a private enquiry through Mr. Justice S. R. Das. If it was not a case of corruption, what was it then?

DIWAN CHAMAN LALL: Why do you beg the question? Why does my hon. friend beg the question "if it was not a case of corruption, what was it"? He makes a serious charge against my hon. friend, Mr. Malaviya and he says that he is guilty of corruption.

SHRI A. D. MANI: Madam Vice-Chairman, I am not a lawyer but I have been an experienced journalist, and I am not going to be taken in by the specious arguments of my hon. friend. What I have said is borne out by parliamentary record.

SHRI ATAL BIHARI VAJPAYEE: Why did he resign?

SHRI A. D. MANI: The charge of corruption was made against him by an hon. Member in that House, and that was the basis on which the enquiry was started, and these are relevant circumstances . . .

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): The hon. Member was not present when he introduced his Bill here. The remarks which you have given on corruption and all those charges—I think as far as possible you should avoid them.

SHRI A. D. MANI: Madam, the enquiry into charges against Mr. Malaviya involved many matters of a character which were likely to reflect on his integrity. These are all based on . . .

SHRI ATAL BIHARI VAJPAYEE: There is no denying fact that charges of corruption were levelled against Mr. Malaviya. The private enquiry was ordered by the Prime Minister and then he had to resign.

SHRI A. D. MANI: I have spoken often in this House and as you will bear me out, I have always been very restrained in the expressions that I use. I have great respect for Mr. Malaviya. He is a friend of mine. Diwan Chaman Lall makes his exits

and entrances in this House so rarely that he does not follow, with due respect to him, the proceedings of this House and the other House too. (Interruption).

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): I am on my legs. When he introduced the Bill, in the remarks which he had given in the beginning he referred to the debates in the other House. I should like that the hon. Member does not refer to the word "corruption" and all that, which is not there I think in the debates which he had quoted. If possible, he should avoid those words.

SHRI A. D. MANI: Enquiry into charges which might be construed as reflecting on his integrity. I am using the phrase of Shri Jawaharlal Nehru.

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): This word "corruption" is not there in the words which you had given. I think it will be better if you do not refer to that.

SHRI A. D. MANI: For the future that is all right, Madam. I do not want to use the word "corruption".

SHRI DAHYABHAI V. PATEL: (Gujarat): It is a bad precedent. What he said may mean corruption also. It is clear. This ruling should not impose any disability on other Members. Mr. Mani may want to praise Mr. Malaviya. I would have protested against all that.

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): The hon. Member, Diwan Chaman Lall, was not here and also the hon. Member, Mr. Dahyabhai Patel, was not here. I am here since the beginning and I feel that this word should not be used.

SHRI A. D. MANI: If the Vice-Chairman requests, we ought to accede to the request. If you do not want me to argue that point, I am most unwilling to enter into any kind

of controversy on a purely trivial point like this. As my hon. friend, Mr. Vajpayee, said, the word "corruption" was mentioned in the other House.

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): I have my ruling. The quotation which you have given does not include the word "corruption", the quotation from the late Prime Minister.

SHRI A. D. MANI: If I were to say this in order not to offend the susceptibilities of my hon. friend, Mr. Chaman Lall, I would like to annotate what I said. The charges of corruption and those charges which reflected on his integrity, they were referred to the Supreme Court, and Shri Jawaharlal Nehru refers to his personal integrity, he is convinced, and so on. But both of us are students of the English language and Diwan Chaman Lall knows that what I say is the reverse coin of the other things that I said to which you, Madam, took objection.

Madam, I know that my hon. friend, Mr. Hathi was not here. We would like to see the standard of conduct maintained in this Parliament and in the Parliament of the generations to come that when a serious allegation is made against a Minister saying that he is misusing his position for personal profit, that Minister should offer to clear his conduct in a court of enquiry, in a public enquiry. This is the tradition of Great Britain. One of the very few persons who followed it was my hon. friend, Mr. Hathi, Minister of State for Home Affairs, against whom certain allegations were published in a journal, which Mr. Vajpayee knows and which all of us know. He wrote a letter immediately to the Prime Minister saying that these allegations have been made against him and that therefore he would like to resign. He did not want to continue in office. He said that he wanted to resign and face an enquiry.

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): Please do not go into personal things. Is it necessary to refer to all those personal things?

SHRI A. D. MANI: It was a very good thing. I am only applauding his conduct. Diwan Chaman Lall accused me of making a defamatory charge. I am showering praises on a Minister of the Government. He said he wanted an enquiry. Against many Ministers both here and in the States allegations are being made. They have been made in the case of Orissa Ministers. We had a hush hush enquiry with which the public has not been satisfied.

SHRI DAHYABHAI V. PATEL: What about Rajasthan? What about Mysore?

SHRI A. D. MANI: We have not had an enquiry. (*Interruptions*).

All that I want is that this Government which has got the support of a very big party and therefore has the signs of stability must set up certain standards of conduct which will govern those who hold office not only now but will hold office in the years to come, in the days of our children and in the days of our grandchildren. All that I want them is to accept this principle that when a person is accused of serious charges of maladministration or charges affecting his personal integrity, that person must face an enquiry of the kind which Sardar Pratap Singh Kairon faced—thanks to the efforts of my hon. friend, Mr. Ghani and others. I would like to go on, therefore, to suggest that this House should accept and should warmly welcome my amendment to article 143 of the Constitution. According to my Bill it says:

"In article 143 of the Constitution, after clause (2) the following clause shall be inserted, namely:

“(3) The Supreme Court or any Judge of the Supreme Court

[SHRI A D MANI]

shall not be called upon to tender any opinion or give any advice except as provided in this article'."

I have quoted the article and what does the article say' The President can ask for the opinion of a Supreme Court Judge

SHRI P N SAPRU (Uttar Pradesh)
But he was not a Supreme Court Judge at the time the enquiry took place

SHRI A D MANI He was a functioning Judge of the Supreme Court I am afraid the ex-Judge of the Allahabad High Court is a little out of date about these matters Otherwise, I would not have given notice of this Bill at all If Justice Das had retired from the Supreme Court he was a free individual, as free as my friend, Mr Sapru, is, to accept any commission of inquiry But he was a Judge of the Supreme Court and that is why I think that this sound principle should be accepted not only by the House but also by the Government that as far as the Supreme Court Judges are concerned, leave them severity alone, do not seek their advice in any matter do not ask them to tender private advice They are not assistants to any Prime Minister, whatever the position of the Prime Minister may be They hold office because the Constitution gives them certain special privileges and they have got certain duties which they have got to discharge under the Constitution

Madam I humbly submit that this is fundamental to the rule of law that we do not get Supreme Court Judges mixed up in such matters It may be argued that in the United Kingdom a Judge, The Master of the Rolls, Lord Denning, was asked to conduct a private enquiry, to conduct a secret enquiry into the case of Mr Profumo and Miss Christian Keeler Lord Denning had the opportunity of meet-

ing Miss Christian Keeler and many of her associates and had subjected them to detailed examination Dewan Chaman Lal is wondering whether I am going to trip, I am not going to trip over this matter I have great respect for Lord Denning But his Report⁺ was made available to the public, and it was the subject of a discussion Here there is the Malaviya case, nobody knows what has happened The public has been denied those materials . .

SHRI DAHYABHAI V PATEL
For how many years

SHRI A D MANI It should have gone a long way to raise the standards of public life in this country and I hope that I would have the enthusiastic support not only of the Members of this side but also the Members of that side also for the amendment that I have moved

The question was proposed

SHRI AKBAR ALI KHAN (Andhra Pradesh) Madam Vice-Chairman, when I read the Bill, I thought that as a veteran politician and journalist, Mr Mani has throughout this matter purely on legal and constitutional issues I would have been very much happier to meet him on that ground but when he stood up to explain, he gave himself up by bringing in the case of Malaviya as well as Orissa Ministers And it appears that the real spirit or his object in bringing forward this Bill is to have a dig at the ruling party or at some of these Ministers We are quite prepared to meet you hon Mr Mani But when you are bringing forward a Bill and when you are discussing a matter relating to constitutional and legal significance I think it is but fair that you should confine yourself to those matters and to those matters only The other thing that struck me is this While discussing the Press Council Bill in the Select Committee when it was suggested by Mr Mani and others that the Chief Justice of the

Supreme Court should be asked to nominate the Chairman of the Press Council, I took objection

SHRI A B VAJPAYEE On a point of order, Madam Can he refer to the proceedings of the Select Committee?

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE) No, the proceedings of the Select Committee should not be referred to

SHRI AKBAR ALI KHAN I am not referring to the proceedings of the Select Committee, I am referring to the point that so far as the bringing in of the Chief Justice is concerned in regard to the Press Council Bill I took objection on principle that the Chief Justice should not be involved in this, and Mr Mani and everybody else

SHRI A B VAJPAYEE What happened in the Select Committee need not be referred to

SHRI A D MANI Sir I object and I am surprised that a senior Member of the House

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE) Will you please sit down? I think it will be better if you do not refer to those things which were discussed in the Select Committee Without referring to them, you can put your point

SHRI AKBAR ALI KHAN I submit Madam, that on this question of whether the Chief Justice should be involved in some other matter Mr

Mani was very insistent that he should have the opinion I am not referring to any Committee, I am not referring to it And now (Interruptions)

SHRI A D MANI I would like to know (Interruptions)

SHRI AKBAR ALI KHAN Now, Mr Mani gives a proviso where he says that even in important matters, in difficult matters, in matters of national importance or in matters of highly complicated affairs, the Supreme Court Judge or the Supreme Court should not be consulted And he says, 'except as provided in this article' If you read article 143, it is also an advice If my friend is basically against anything, that the Government or the President should not take advice from the Supreme Court or from any Judge of the Supreme Court I would have been very glad if he had proposed the amendment for the deletion of article 143

SHRI A B VAJPAYEE Not in cases of corruption

SHRI A D MANI Not in cases of corruption

SHRI AKBAR ALI KHAN I am coming to it The hon Mr Vajpayee is very keen, I will come to that also

Now, if he is of the view that in no case the Supreme Court as it is or a Judge of the Supreme Court should be asked to give opinion, I think it is a point which can be argued, which can be discussed But article 143 itself—and article 131 also—gives authority to the President to have the opinion of the Supreme Court That will not be a judgment, that will be an opinion, subject to

[Shri Akbar Ali Khan]
approval, modification or alteration
by the President

SHRI A D MANI I am surprised I would ask you, kindly you must answer these points Madam, I want him to refer to article 143 Does he mean to say 'subject to modification'? I am surprised that a lawyer of his standing should say this 'subject to modification' No opinion of the Supreme Court under article 143 can be subject to modification Please read it

SHRI AKBAR ALI KHAN I am sorry I think my friend himself has not read it

"If at any time it appears to the President that a question of law or fact has arisen or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the Supreme Court upon it "

SHRI A D MANI Modification?

SHRI AKBAR ALI KHAN He may 'o it or not That is a different thing but it is not a judgment It is the opinion that he has given, an advice, or the consideration of the President I am sorry that my learned friend has not even read this article There is reference, there is opinion But I think there is a difference between opinion and judgment I know that in 999 cases the President may not differ from the advice He will follow the convention that he will not modify the opinion But according to the Constitution it is perfectly open for the President either to follow that opinion or not (Interruptions)

SHRI P N SAPRU Madam Vice-Chairman, what I understand Mr Mani to suggest is that enquiries should not be in camera enquiries,

there should be the principle of public hearing

SHRI A D MANI That is what I meant

SHRI AKBAR ALI KHAN Madam, I am in possession of the House I am going by the wording of the Bill Mr Mani might have meant something else If he had meant something else, he will put it clearly What he says is that so far as this is concerned, the Supreme Court or any Judge of the Supreme Court shall not be called upon to tender any opinion, to give any advice except as provided in this article That is to say, so far as this article is concerned, it is the opinion that is permitted He says that so far as article 143 is concerned, his opinion can be called for But, apart from this, the opinion should not be called for Why is it to be limited? If he is intrinsically against opinion, I can understand and he can bring forward an amendment that this should be deleted But he concedes the principle that the President—it is obvious, Madam, that President means the Prime Minister, so when the Prime Minister can advise the President—can get an opinion Then to suggest that this section should stand and this another thing should be put in will be contradictory

Then my friend mixes up the responsibility of the legislature with the judiciary If a Minister in the Orissa Assembly has done anything and he has to be brought to book, it is the Assembly which is responsible It should pass a vote of no-confidence and he will be out I am afraid a veteran journalist like Mr Mani is confusing the issue and does not understand the spheres of the judiciary, the legislature and the executive If there is a criminal case, the courts are there If there is a question of lack of confidence or corruption the legislature is there In normal circumstances it is not at all proper for anybody else to interfere

into this. So let us keep these compartments as envisaged by our Constitution

So far as the opinion sought by a Supreme Court or other Judges is concerned, I would like to point out that it is the confidence of the public in the judiciary that makes it necessary to entrust such important matters to the Judges of either the Supreme Court or the High Courts. Let us leave aside these controversial issues. Take the case of the Pay Commission. Take the Mundhra case. We did entrust it to Supreme Judges who were in office. Does my learned friend mean that they should not have been entrusted to them? If a Supreme Court Judge would not have dealt with the Mundhra case, do you think it would have created confidence in the public?

SHRI ATAL BIHARI VAJPAYEE: That was done under the Commission of Enquiry Act

SHRI AKBAR ALI KHAN: His point is so long as a Supreme Court Judge is in office he should not be asked to give opinion because that is his opinion and not his judgment. I want to remind my hon. friend . . .

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): The Mundhra case was done by a High Court Judge and not by a Supreme Court Judge.

SHRI AKBAR ALI KHAN: The same principle applies here. So far as the High Court Judges are concerned or the Supreme Court Judges are concerned, on principle I do not think my friend will contend that the opinion asked for from a High Court or a Supreme Court Judge when he is in office is apart from the duties that are entrusted to them, and for these matters they should not be asked for opinion . . .

SHRI A. D. MANI: Certainly, that is my point.

SHRI AKBAR ALI KHAN: Following that there is not much distinction between a High Court Judge and a Supreme Court Judge (*Interruption*).

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): You can meet him in your reply. He does not want to yield.

SHRI A. D. MANI: Madam, my submission is . . .

SHRI AKBAR ALI KHAN. I was not yielding but he was so insistent . . .

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): You can have your chance when you reply.

SHRI AKBAR ALI KHAN: With due respect, Madam, I can see he feels uncomfortable. When he sees that he has put in such arguments which do not stand at all to reason, naturally he feels restless. I could sympathise with Mr. Mani. What I want to say is it is absolutely open for him to bring out matters which are of public importance. But the distinction that the Constitution has made between these three sectors should also be borne in mind. On the one hand he says that this should be deleted.

SHRI A. D. MANI: No, Madam.

SHRI AKBAR ALI KHAN: Not deleted, but added. I stand corrected. You say . . .

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): Address the Chair.

SHRI AKBAR ALI KHAN: Yes, Madam. You are perfectly right.

SHRI P. N. SAPRU: May I point out . . .

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): No, no. Let him have his say.

SHRI P. N. SAPRU: On a point of order. The other day there was a very important decision given by the British House of Lords.

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): But what is the point of order?

SHRI ATAL BIHARI VAJPAYEE: He is coming to it.

SHRI P. N. SAPRU: I am coming to it. The question was whether a lady who had been appointed a Judge should be addressed as Her Lordship or His Lordship. And the decision was that she should be addressed as His Lordship because masculine includes the feminine. Therefore, Madam Vice-Chairman, I would request you to suggest to my friend, Mr. Akbar Ali Khan, to address you as 'Sir'.

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): It is a convention to say Madam.

SHRI AKBAR ALI KHAN: I am in your hands, Sir, or, Madam. Whatever your orders I will carry out.

Madam, article 131 is very intimately connected with article 143. Article 131 says:

"Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute—

(a) between the Government of India and one or more States;
or

(b) between the Government of India and any State or States on one side and one or more other States on the other; or

(c) between two or more States,

if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends:

Provided that the said jurisdiction shall not extend to a dispute arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument which, having been entered into or executed before the commencement of this Constitution, continues in operation after such commencement, or which provides that the said jurisdiction shall not extend to such a dispute."

This as referred in article 143 says:

"The President may, notwithstanding anything in the proviso to article 131, refer a dispute of the kind mentioned in the (said proviso) to the Supreme Court for opinion and the Supreme Court shall, after such hearing as it thinks fit, report to the President its opinion thereon."

THE VICE-CHAIRMAN (SHRIMATI TARA RAMCHANDRA SATHE): You can continue next time.

The House stands adjourned till 11 A.M. on Monday.

The House then adjourned at five of the clock till eleven of the clock on Monday, the 6th September, 1965.