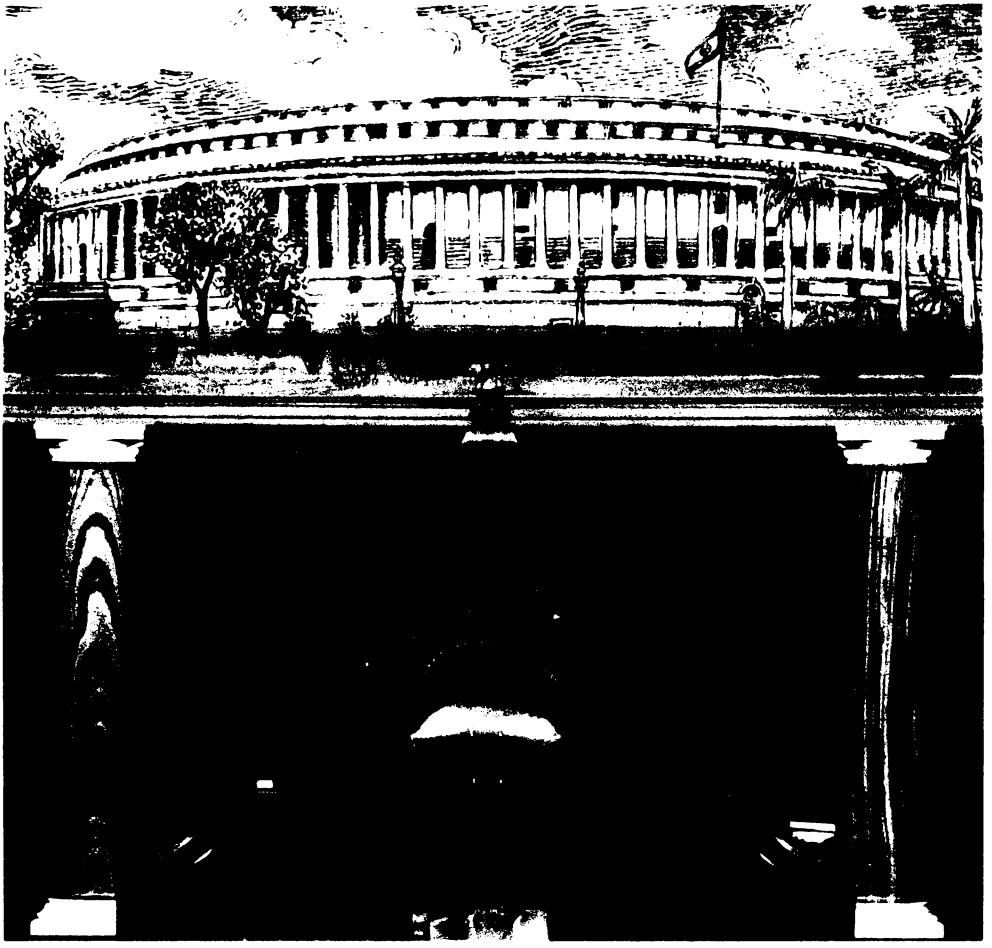
Speaker Rules



P. D. T. Achary

LOK SABHA SECRETARIAT
NEW DELHI

SPEAKER RULES

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P. D. T. ACHARY

LOK SABHA SECRETARIAT

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FOREWORD

The success of parliamentary democracy is reflected in the vibrancy of its supreme representative institution, namely, Parliament. To strengthen Parliament and for maintaining the vigour of the democratic process, the need for a well-established set of rules cannot be overemphasized. Rules help not only in securing consistency but also effectiveness in parliamentary debates and discussions. In this sense, it is imperative that the rules are constantly monitored and interpreted to *accommodate the needs of the time and to cope with the emerging* realities.

During the deliberations in the House, the Speaker as Presiding Officer tries to ensure that all sections of the House are heard. Whenever the situation demands or a clarification is sought on a point of order, the Speaker is required to interpret the rules, study past precedents and decisions, give directions and pronounce rulings. And he does so, only after taking into consideration the provisions of the Constitution, the established parliamentary practices, customs, conventions and precedent. Many a time he has to use his discretionary powers. The Speaker's ruling reflects the sense of the House, prevailing at that point of time. In fact, he is the sole judge of all situations in the House; he does not merely interpret the rules, he makes them as well. On his interpretation of rules depends the efficacy of parliamentary proceedings. The rulings given by the Presiding Officers, at different points of time, constitute precedents and become the guiding principles for successive Houses.

This compilation of select rulings from the Chair on various subjects is an important publication from the point of view of the parliamentary processes and procedure. In this light, the present effort to present the rulings, in a systematic and coherent manner, is indeed commendable. I appreciate the initiative of Shri P.D.T. Achary, Secretary-General, Lok Sabha for having brought out the first edition of this book in 2001 and now, for the second edition, which is more comprehensive and

contains all-important rulings on various subjects. I am sure this publication would be of immense use to the Presiding Officers and parliamentarians alike. I also congratulate all those who have helped in bringing out this voluminous compilation.

NEW DELHI
June 2007

SOMNATH CHATTERJEE
Speaker, Lok Sabha

PREFACE

The rules of procedure provide the framework for the smooth functioning of the Parliament. Rulings from the Chair clarify these Rules or supplement them. Thus rulings play a very important role in understanding the paragon of the Rules or their scope. A compilation of selected rulings, which have great precedence value, right from the days of the Central Legislative Assembly, through the Constituent Assembly and the Provisional Parliament till the present Lok Sabha, was felt necessary. Hence this publication.

This is the second revised edition of the book, which was first published in 2001. While the first edition contained the synopses of relevant rules, the highlights in the rulings and the text of the rulings, the present edition has attempted to give the synopses of constitutional provisions and relevant Directions as well, besides mentioning the background or the circumstances in brief that had actually led to the ruling in question, by the Presiding Officer. The purpose is to help the members have a better appreciation of the rulings so given. Five new chapters covering the subjects like expunctions of unparliamentary words or expressions from the proceedings, the powers of the Speaker, the power of the Deputy Speaker or other member while presiding over a sitting of the House, the ruling given on the working of the Departmentally-related Standing Committees (DRSCs) and also the ruling on the most recent case, *i.e.* the case of citizenship of a member have been added. Apart from these, an exhaustive subject index has been given at the end of the book to facilitate reference and consultation.

I am deeply beholden to the Hon'ble Speaker, Lok Sabha, Shri Somnath Chatterjee for his encouragement and for being a source of inspiration all through. I am also grateful to him for contributing an illuminating 'Foreword' to the Book, which has indeed enhanced the worth of the publication.

I would also like to mention here that but for the support of a dedicated team of officers and staff, the project could not be completed.

In this context, I would like to particularly acknowledge the hard work put in by Shri N.K. Sapra and Shri R.C. Ahuja, Joint Secretaries, Shri Ravindra Garimella, Deputy Secretary-I, Km. Samita Bhowmick, Joint Director-II and Smt. Musarrat Naushad, Deputy Director. Thanks are also due to Shri Radhey Shyam, Director, Printing and Publication Service.

I would also like to thank Jainco Art India for their cooperation in printing the book.

We hope that the work will be a valuable reference manual and a helpful guide to the parliamentarians, academics, researchers and scholars and all others interested in the functioning of parliamentary institutions, especially the working of rules, procedures and practices.

NEW DELHI
May 2007

P.D.T. ACHARY
Secretary General
Lok Sabha

1

ADJOURNMENT OF DEBATE ON A BILL

SYNOPSIS OF RULE 109

- A motion to adjourn the debate on a Bill which is under discussion may be moved by a member.
- The motion may be moved at any stage of the Bill.
- The motion may be moved only with consent of the Speaker.

Point No. 1

A motion under Rule 109 can be moved at any moment when the discussion is going on.

Point No. 2

A motion under Rule 109 is not a substantive motion. It is only procedural. So, Rules 186 (vi) and 338 do not apply to a motion under Rule 109.

On 25 November 1965, during further discussion on the Banaras Hindu University (Amendment) Bill, 1965, a member (Shri Hari Vishnu Kamath) moved a motion under Rule 109 for adjournment of further debate on the Bill. Rising on a point of order, another member (Shri M.R. Masani) submitted that as the motion had been rejected by the House on the previous day, the same could not be brought again. Shri Masani contended that the motion was inadmissible under the provisions of Rule 186 (vi) (which precludes revival of discussion of a matter which has been discussed in the same session) and Rule 338 (which bars raising, through a motion, of a question substantially identical with one on which the House has given decision in the same session).

The Speaker, Sardar Hukam Singh, thereupon, ***ruled***:

"So far as Rules 186 and 338 are concerned, there has not been any decision on any substantive motion. It has been only procedural. Suppose at this moment we decide that we do not adjourn the debate and after 5 hours discussion we find that it must be adjourned to some other day, it can be done. A motion under Rule 109 can be moved at any moment when the discussion is going on and it does not debar us from moving another motion in that respect."

[*L.S. Deb.*, 25 November 1965, cc. 3863-3868]

Point No. 3

A motion is required to resume discussion on a Bill on which the debate was adjourned.

On 15 February 1966, the Deputy Minister in the Ministry of Food, Agriculture, Community Development and Cooperation (Shri Anna Sahib P. Shinde), moved a motion seeking resumption of debate on the motion for consideration of the Seeds Bill, 1965 to provide for regulating the quality of certain seeds for sale and for matters connected therewith (as passed by Rajya Sabha), which was adjourned on 18 August 1965.

At this, a member (Shri Hari Vishnu Kamath), desired to know the rule under which the said motion was moved. Thereupon, Smt. Renu Chakravarthy, who was in the Chair, gave the following ***ruling***:

"Last time the House adjourned the debate on this Bill by a motion on 18 August 1965. The motion now before the House is that that debate which the House then decided to adjourn be resumed. Therefore, there must be a resolution of the House before that discussion can take place."

[*L.S. Deb.*, 15 February 1966, cc. 265-266]

Point No. 4

The motion for adjournment of debate can be moved only with the consent of the Speaker.

On 5 August 1993 when the Deputy Speaker asked a member (Shri Sudhir Giri) to continue his unfinished speech on Statutory

Resolution *re*: disapproval of recovery of Debts due to Banks and Financial Institutions Ordinance, 1993 and consideration and passing of Recovery of Debts due to Banks and Financial Institutions Bill, 1993 a member (Shri George Fernandes) sought adjournment of the debate under Rule 109 submitting that the Bill should have been referred to the Standing Committee on Finance under the provisions of Rule 331(E) of the Rules of Procedure and Conduct of Business in Lok Sabha. He was supported by some members.

The Minister of State in the Ministry of Parliamentary Affairs (Shri P.R. Kumaramangalam) submitted that the issue of referring Bills to the Standing Committees was discussed in the Rules Committee and also in the House when the rules were being adopted. He further submitted that Speaker had also discussed the issue in Business Advisory Committee and with Leaders of Parties/Groups, in which it was felt that the Bills replacing ordinances need not be referred to the Standing Committees, since ordinances lapse after a particular period. Moreover, there was no formal motion before the House for adjournment of debate.

Thereafter, the Deputy Speaker, Shri S. Mallikarjunaih ***ruled***:

"...Under Rule 109, at any stage of the Bill which is under discussion in the House, a motion that the debate on the Bill be adjourned may be moved with the consent of the Speaker.

The motion for adjournment of the debate can be only with the consent of the Hon'ble Speaker. The Hon'ble Speaker has not given his consent... The Hon'ble Speaker or the Deputy Speaker has not given his consent.

Further, I rule out the relevant objection raised by Shri George Fernandes..."

[*L.S. Deb.*, 5 August 1993, cc. 412-423]

Point No. 5

Motion for adjournment of debate on Bill can be moved even though motion for consideration of Bill is not actually moved.

Point No. 6

"Discussion" commences when somebody introduces the Bill. It is an omnibus word and its interpretation cannot be restricted.

On 24 August 1993, the Constitution (Eightieth Amendment) Bill, 1993 and the Representation of People (Amendment) Bill, 1993, as reported by the Joint Committee were listed in the List of Business for consideration and passing. When the items were taken up in the House, the Minister of Home Affairs (Shri S.B. Chavan) made a statement requesting deferment of the Bill on the ground that being a Constitution (Amendment) Bill, it required more consultations with political parties and also that a large number of representations received from various associations were being screened. The Minister of State for Law, Justice and Company Affairs (Shri H.R. Bhardwaj) also made a similar request for deferment of his Bill. Several members opposed deferment of Bills on the ground that the Ministers should have first moved any one of the motions listed under Rule 77 (*i.e.* the motions after presentation of Select/Joint Committee Reports) and only thereafter the motion for adjournment of debate under Rule 109, could be moved. A member (Shri George Fernandes) while pointing out that Rule 109 *inter-alia* says, "At any stage of a Bill which is under discussion in the House," said that at the relevant point of time, no Bill was under discussion in the House. He contended that the Minister's statement could not be taken as a discussion on a Bill. The Speaker, Shri Shivraj V. Patil, thereupon ***ruled***:

> "Even a motion may not be required on this matter and as far as Shri George Fernandes' point is concerned, he is emphasizing the word 'discussion'. What is discussion?
>
> 'Under discussion' means when the entire discussion is going on and then we move the motion. Now the discussion commences when somebody is trying to introduce the Bill. Somebody is trying to say that the Bill cannot be introduced and it is *ultra vires* of the Constitution or this House has no jurisdiction to entertain this Bill. The word 'discussion' is an omnibus word and that is why I am not going to restrict the interpretation of the word 'discussion' and say that there is no discussion. This is my final ruling and I am going to allow the Hon'ble Home Minister to move that the debate on the Bill be deferred."

[*L.S. Deb.*, 24 August 1993, cc. 374-390]

2

ADJOURNMENT MOTION

SYNOPSES OF RULES 56 TO 60

- The rules provide for discussion of a definite matter of urgent public importance.
- The motion for an adjournment of the business of the House shall be restricted to a specific matter of recent occurrence involving responsibility of the Government of India.
- On such a motion, discussion on only one matter can be raised.
- It shall not revive discussion on a matter which has been discussed in the same Session.
- It shall not anticipate a matter previously appointed for consideration.
- It shall not raise a question of privilege.
- It shall not raise any question, which under the Constitution or the rules can be raised on a distinct motion.
- It shall not deal with any matter under adjudication by a court of law having jurisdiction in any part of India.
- The motion seeking to raise discussion on a matter pending before any statutory tribunal or statutory authority, performing any judicial or quasi-judicial functions, or any commission or court of inquiry, shall not ordinarily be allowed.
- If objection to leave being granted is taken, and fifty members rise in support of the motion, leave is granted.

Point No. 1

The matter must involve responsibility of the Government of India or relate to its failure in discharging the duties enjoined upon it by the Constitution.

(a) On 4 September 1928, a member (Shri Gaya Prasad Singh) sought leave of the House to move an adjournment motion to discuss the malicious attack on the President* of the Central Legislative Assembly by the *'Times of India'* in its issue dated 24 August 1928. Some other members also expressed their views. The President, Shri Vithalbhai J. Patel, thereupon, made the following ***ruling***:

> "...I have no doubt whatever that the matter proposed to be discussed is a definite matter. I have also no doubt that the matter is urgent and it is quite clear that the matter is of public importance. But that is not all. Because the matter proposed to be discussed is a definite matter of urgent public importance, the President is not bound as a matter of course to rule the motion in order... A matter may be urgent, it may be definite, it may be of public importance and yet the President may in a proper case disallow such a motion... Generally speaking, motion for adjournment... must have a relation, directly or indirectly to the conduct or default on the part of Government and must be in the nature of criticism of the action of Government."

[*C.L.A. Deb.* 4 September 1928, cc. 149-153]

(b) On 31 May 1957, a member (Shri Atal Bihari Vajpayee) gave a notice of adjournment motion regarding the alleged failure of the Union Government in solving the language issue in Punjab resulting in the starting of a satyagraha campaign by the Arya Samaj in Chandigarh since 30 May 1957. While withholding his consent to the adjournment motion, the Speaker, Shri M.A. Ayyangar gave the following ***ruling***:

> "So far as an adjournment motion is concerned, first of all, I must be satisfied before I give my consent. Then, 25 or 50 members, as the case may be, will rise in their seats. Thereafter, it will be taken

*The Presiding Officer of the Central Legislative Assembly was then designated as President.

up for discussion... All that I wanted to know was whether *prima facie* there was any default on the part of the Central Government here. If there was, I would certainly allow the adjournment motion. But, I do not find that there is any responsibility of the Central Government which they have not discharged in this case. Therefore, I am not called upon to give my consent to this adjournment motion."

[*L.S. Deb.*, 31 May 1957, cc. 3204-3206]

(c) On 24 May, 1971, some members sought a discussion by way of an adjournment motion, on the issue of non-recognition of Bangladesh. Withholding his consent to the adjournment motion on the subject the Speaker, Shri G.S. Dhillon, gave the following ***ruling***:

"An adjournment motion is always admitted on the failure of actions of duties which are enjoined by the Constitution and the law. Here in this case non-recognition is not part of the duty. It is part of their discretion. ...An adjournment motion is meant only for discussion on the failure of the Government for which it is charged; failure of the Government to perform the duties which are enjoined by the Constitution and the law. Here, it is not a failure because recognition is not a part of the duty enjoined by the Constitution."

[*L.S. Deb.*, 24 May 1971, c. 154]

(d) On 5 August 1959, a member (Shri A.K. Gopalan) enquired from the Speaker, Shri M.A. Ayyangar, as to why his adjournment motion regarding the situation in Kerala had been disallowed. When the Speaker observed that under Rule 56 of the Rules of Procedure it was open to him to give or withhold consent to an adjournment motion and members could not enter into a discussion regarding the reasons for disallowing it, another member (Shri V.P. Nayar), on a point of order, stated that after the President by a Proclamation issued under article 356 of the Constitution, had dissolved the Legislative Assembly in Kerala, Parliament had assumed to itself the functions of that Assembly. This obviously meant that every subject which could have been allowed for discussion in the Legislative Assembly of Kerala became, by virtue of that Proclamation, admissible for such discussion in Parliament. In view of this position, Shri Nayar contended that the admissibility of an

adjournment motion on any matter pertaining to Kerala had to be determined not on the basis of the Rules of Procedure of the Lok Sabha but on the basis of the Rules of Procedure of the erstwhile Legislative Assembly of Kerala. Ruling out the point of order, the Speaker ***ruled:***

> "...Now, this Parliament has taken over jurisdiction over those subjects, which but for the Proclamation, the State Legislature alone will be competent to discuss. But, so far as the procedure is concerned, it is the procedure of this House that will rule, not the procedure of that Assembly."

When Shri Nayar sought a clarification if the Speaker's ruling was that although Parliament had assumed the functions of the Legislative Assembly of Kerala, but the subjects which were referred to in the State List would not be discussed in the Lok Sabha, the Speaker further ruled:

> "It is the very negation of what I said. All the subjects in the State List which that Legislature could discuss will be discussed here. But we are not bound by the Rules of Procedure of that Legislature that has been superseded. The Rules of Procedure of this House will govern us."

[*L.S. Deb.*, 5 August 1959, cc. 661-666]

(e) On 29 August 1959, the Speaker, Shri M.A. Ayyangar withheld his consent to an adjournment motion on the ground that it related to a State Subject.

A member (Shri Sarju Pandey), on a point of order, submitted that he had definite proof to show that the Uttar Pradesh Government had violated certain provisions of the Constitution. He, therefore, wanted to know if in such circumstances the matter could not be discussed on an adjournment motion. The Speaker, thereupon, ***ruled:***

> "If any Government breaks the Constitution, there are constitutional remedies. They (*members*) can go to the Supreme Court. There are also other ways of doing it, as has been done in some other cases. It is not by way of an adjournment motion that it has to be brought up here... We have no appellate jurisdiction here over any State."

[*L.S. Deb.*, 29 August 1959, c. 5086]

(f) On 20th July 1967, it was reported that 36 members of the Madhya Pradesh Legislative Assembly belonging to the Government party had crossed the floor and when the Assembly met for voting on the Demands for Grants of the Ministry of Education, the Speaker of the Assembly informed that the Government had prorogued the Assembly.

A number of notices of adjournment motions were tabled by members of Lok Sabha questioning the step taken by the Governor in the circumstances when defeat of the State Government was imminent. The Speaker observed that before giving his decision he would like to discuss with the members who tabled adjournment motions as to how far Parliament was competent to discuss matter. The Speaker also asked the Minister of Home Affairs to make a statement during the day on the developments in Madhya Pradesh and postponed his decision on the admissibility of the adjournment motions.

The Minister of Home Affairs (Shri Y.B. Chavan) made the statement at 5 p.m. After the statement, the Speaker gave his consent to the moving of the following adjournment motion by a member (Shri Madhu Limaye):

> "Failure of the Central Government to prevent prorogation of the Madhya Pradesh Assembly by the Governor when the Assembly session had been called to pass the budget and a vote was to be taken on Education Ministry's Grants and further when the vote was likely to go against the Govt. in view of crossing of the floor by several Congress members."

Another member (Shri R.D. Bhandare) rising on a point of order stated that the Assembly was prorogued by the Governor on the advice of the Chief Minister and Parliament had no right to discuss the powers exercised by the Governor on the advice of the Chief Minister. The Speaker, thereupon ***ruled*** as follows:

> "I have considered it. It is not as if I have not looked into it. There is article 355 which says:
>
> 'It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution'.

*** *** ***

If the House was not prorogued before voting, there was nothing. But now the Governor has come into picture. The House is interested in that and therefore, I have given my consent.

*** *** ***

It is not as if in the normal way the Assembly was prorogued. Voting ought to have taken place today at least, if not yesterday. Then, naturally, something extraordinary has happened necessitating urgent prorogation and all that. If it is routine prorogation, nobody can question it, either in this country or in any other democracy. Here, because something extraordinary has happened, naturally Government has to explain and state, and if something wrong has happened, the Central Government has to intervene. We have to strengthen the hands of the Central Government. So, naturally, this Parliament comes very much into the picture. If it is routine prorogation, nobody would have come into the picture and nothing would have happened. I have discussed all this myself, not only with the mover, but also with the Minister of Parliamentary Affairs. The Law Minister has also been good enough to attend that meeting. But the ultimate decision taken has been that of the Chair. I do not want to put the responsibility on anybody else's head; it is mine, after consulting not only the leaders of the Opposition but also the concerned Ministers."

The adjournment motion was discussed from 17.25 hours to 20.30 hours and was negatived.

[*L.S. Deb.*, 22 July 1967, cc. 13298-13306]

(g) On 10 March 1975, a member (Shri Madhu Dandavate) enquired about his notice of an adjournment motion regarding alleged failure of the Government to prevent Russian interference in the political affairs of the country. The member alleged in his notice that as per Press reports, Russian Consul at Calcutta and Second Secretary of the U.S.S.R. Embassy in Delhi had attended a Congress Party meeting in Orissa. The Speaker, Shri G.S. Dhillon thereupon ***ruled:***

"...It is not an adjournment motion, if somebody goes to some place; it is for the party concerned... Adjournment motion can be on a

matter which should be within the cognisance of the Minister. If some Minister is responsible for what happened in Orissa, if they were conveners, you may consider this. But it is not this Government which was responsible for having that meeting."

[*L.S. Deb.*, 10 March 1975, cc. 217-220]

Point No. 2

The matters should be 'Definite', 'Urgent' and 'of Public Importance'. It shall not anticipate a matter.

(a) On 10 January 1922, in the context of some notices of adjournment motion given by some members, which though cast in various ways, referred in more or less general terms to the political situation in the country, President* Mr. Frederick Whyte, gave the following ***ruling***:

"...Now, in the first place, that question, namely, the political situation in India is raised in a series of Resolutions of which notice has been given by different members of this House, and I must take it for granted that these Resolutions will before long come up for discussion. Therefore, the notice which I have received of the desire of Hon'ble Members to move the adjournment of the House must be read as an attempt to *anticipate* the debate which would otherwise arise on those Resolutions. On that ground, therefore, I am bound under the Rules and Standing Orders to rule that notice is out of order. I should add that a case of this kind, which is of a general character, is not sufficiently definite in the sense in which the word 'definite' is used in the Standing Order-to justify the interruption of business, and therefore on that ground also the motion cannot be accepted. *A matter to be 'definite', 'urgent' and 'of public importance' must have arisen suddenly in the manner of an emergency.* Now the political situation to which these notices refer has arisen over a series of weeks, indeed one might say, over a series of months, and it would make no material difference to the discussion whether it were taken today, tomorrow, next week or even next month. At all events, it is not of sufficient urgency to demand the interruption of the ordinary business of the Assembly in order that a debate may take place today. On all these grounds, therefore, the notices given are not in order".

[*C.L.A. Deb.*, 10 January 1922, c. 1453]

ibid, p. 6.

(b) On 6 February 1933, a member, Sardar Sant Singh proposed to seek leave of the House to raise a discussion under adjournment motion regarding restoration of half the cuts in the salaries of public servants without any reference to the Central Legislative Assembly. As soon as the matter was brought before the House by the Deputy President, Shri R.K. Shanmukham Chetty, Leader of the House (Sir Brojendra Mitter) opposed the motion *inter alia* on the ground that the matter was not urgent and the same could be discussed during the Budget debate. Sardar Sant Singh and some other members contended that the main point at issue was that the Government had failed to consult the House first, and hence the matter was urgent. While withholding his consent to the adjournment motion, the Deputy President gave the following ***ruling:***

> "...The one and only point, therefore, which the Chair has now to decide is whether a motion seeking to censure the Government on the ground that they did not consult the House before taking a decision is in order and is admissible as a motion for adjournment. That the matter is definite, there can be no doubt; that the matter is of public importance, there can be no doubt also. What the Chair has to decide is whether under the rules the matter is urgent. Now, in interpreting the word 'urgent' which occurs in the Standing Orders relating to adjournment motions, the Chair has to take into consideration the technical meaning of the word 'urgent' in the Standing Orders. On this point also there has been a previous ruling. On a previous occasion it was ruled:
>
> "A matter, to be definite, urgent and of public importance in the sense in which these terms are used in the Standing Order, must have arisen suddenly in the manner of an emergency."
>
> The point is whether the failure of the Government of India to consult this House in a particular matter is one which has arisen in the manner of an emergency. On that, without expressing any opinion, the Chair might say that some people might hold that this is not a matter which has arisen in the manner of an emergency, but often arises as a matter of everyday occurrence. Very often, the Government of India take decisions without consulting this House and Hon'ble members feel, rightly or wrongly that they ought to

have been consulted. But applying the technical meaning of the word 'urgent' to the question whether the Government of India were justified in arriving at a decision without consulting the House, the Chair must come to the conclusion that it is not a matter which technically comes within the meaning of the word "urgent". For this reason, the Chair has to rule the motion out of order".

[*C.L.A. Deb.*, 6 February 1933, cc. 237-240]

(c) On 22 May 1952, while withholding his consent to an adjournment motion regarding firing on the railway employees on 25 April 1952, the Speaker, Shri G.V. Mavalankar made the following ***ruling***:

"I have received notice of an adjournment motion which relates to the firing on the railway employees without due notice by the local authorities on the 25 April, 1952 causing death of two persons and injuries to several others.

I am unable, on the face of it, to entertain this motion... I am mentioning it in the House just to enable them to appreciate the necessary requirements and essentials of an adjournment motion.

In the first place, ... there is no basis of urgency in this motion. Obviously, the incident took place on the 25 of April and the usual conventional procedure has been, and also the rule, that notice of this motion should have been given on the very first day the Session began. *A delay of twenty four hours in giving notice has been considered by previous rulings as a delay which cannot be permitted and it was held by consistent string of rulings that the urgency is lost...*"

[*L.S. Deb.*, 22 May 1952, cc. 329-331]

(d) On 27 May 1952, withholding his consent to adjournment motions given notices of by two members regarding rioting near Civil Court and tension in the city of Delhi, Speaker, Shri G.V. Mavalankar gave the following ***ruling***:

"I have received notices of adjournment motions... They refer to the rioting that took place near the Civil Court on the 26 May 1952 causing grave threat to peace, order and safety of Delhi...

As regards these motions, I am inclined to think that whatever the degree of tension, it is a matter of opinion. The subject of the motions is not an abnormal one but a normal incident in the life of the country which is so vast and so wide. The only question, therefore, to my mind, is as to whether such rioting or tension as is stated to have taken place is a fit subject looking at the background and the nature of the business before the House to take notice of in the form of an adjournment motion. I am, not therefore inclined to treat this as a matter of public importance from that point of view. Of course, *the matter of importance is always a relative question and we have to look at the importance of an incident like that in the background of the entire administration of the country.* I am not inclined to give my consent to this motion on this sole ground".

[*L.S. Deb.*, 27 May 1952, cc. 619-621]

Point No. 3

Motion is disallowed when its basis falls through.

On 6 April 1964, the Speaker, Sardar Hukam Singh informing the House that he had received a notice of an adjournment motion from a member (Shri Hari Vishnu Kamath) regarding reported ambush of Indian border patrol by Pakistan army near Moel village on the cease-fire line near Jammu, asked Shri Kamath to seek leave of the House to move the motion. Accordingly, when Shri Kamath sought leave of the House to move the motion, the Minister of Home Affairs (Shri Y.B. Chavan) informed the House that the reported news was incorrect. Shri Kamath rising on a point of order *inter alia* submitted that the word, 'incorrect' was misleading. If the news report was totally false, he added that the Speaker may take a decision as per his discretion, but if it was partly incorrect, there was a basis for moving the adjournment motion. The Speaker, thereupon, gave the following ***ruling***:

"An adjournment motion can only be discussed after the facts are admitted, proved or established. Unless the facts are admitted or proved, there cannot be any discussion on that. So far as the stage that I had called upon the hon'ble member to ask for leave is concerned, it is at any stage that we can stop there. These are the rulings in the House of Commons and I can quote many of them.

At any stage if the basis falls through, we cannot proceed with it. Even if leave had been granted and we had come to know of the facts, we could stop it there and, there was no use going with it any further".

[*L.S. Deb.*, 6 April 1964, cc. 9401-9405]

Point No. 4

Motion is not generally allowed if it anticipates a debate in the House.

On 16 May 1952, withholding his consent to adjournment motions given notices of by two members (Sarvashri K. Subrahmanyam and A.K. Gopalan) on the question of food subsidies, the Speaker, Shri G.V. Mavalankar, ***ruled*** as under:

"I have received three notices of three differently worded adjournment motions... They all deal practically with the question of food subsidies... The position is that so far as the importance of the matter is concerned, so far as the definiteness of the motions is concerned and so far as the urgency of the matter is concerned, I am in full agreement with hon'ble members, but the right to move adjournment motions has certain limitations. One of the limitations is that it should not anticipate a debate in the House. The point is that, if hon'ble members have a fairly good chance of raising the question on a debate, then it will not be permitted as an adjournment motion and it is also advantageous from another point of view, that while a discussion on an adjournment motion will be restricted only to two hours it may be talked out, in an opportunity for a debate, it can be discussed more fully...

*** *** ***

The adjournment motion is a device to bring something before the House, which is not included in the agenda or the Order Paper. It is something like taking up a new matter which was not intended to be taken up and of which all hon'ble members had no notice whatever when the Order Paper was circulated. The ordinary principle is, so far as possible, unless there is extreme urgency or

emergency nothing new should be introduced in the daily order of business in the House. It does injustice to a large number of members who perhaps do not remain present in the House on the assumption that a certain business is coming in which they do not like to participate or do not like to discuss or oppose that particular point and if a new matter is taken up they find that something was done in their absence. So, in the interest of all it has been the practice to allow adjournment motions as a matter of exception where the matter is really urgent, and there is no other opportunity or change for the House to consider that matter. These are general principles. Therefore, I do not think I should give my consent to these adjournment motions being taken up or moved in the House."

[*L.S. Deb.*, 16 May 1952, cc. 65-67]

Point No. 5

A matter which is *sub judice* is not admitted. An adjournment motion seeking discussion on a sentence passed by a Martial Law Court is, however, admissible.

On 9 March 1953, the Deputy Speaker, Shri M.A. Ayyangar *inter alia* informed the House that he had received notice of adjournment motion from three members (Smt. Sucheta Kripalani, Shri S.S. More and Shri Ramachandra Reddi) regarding arrest and continued detention of three members of the House without their being produced before a Magistrate within 24 hours of their arrest. The Minister of Home Affairs and States (Dr. Kailash Nath Katju) thereupon informed the House that the Supreme Court was scheduled to take up the application for writ of *habeas corpus* in the matter the following day. He submitted that it would neither be permissible under the rules nor proper for the House to take discussion on the matter as the same was a subject of judicial process. After hearing some members, the Deputy Speaker ***ruled*** as under:

"...Now that the matter is in the hands of the... courts, I do not think it is proper for us to interfere... The moment a complaint is filed or a petition is launched invoking the jurisdiction of any of the courts, the courts are seized of the matter and to that extent the jurisdiction of this House is barred."

[*L.S. Deb.*, 9 March 1953, cc. 1577-1580]

Point No. 6

Discussion on a ruling of the Supreme Court is not admitted.

(a) On 25 July 1985, when a member (Dr. Datta Samant) sought to make a submission with regard to notice of an adjournment motion given by him (consent to which had already been withheld by the Speaker) on the judgement of the Supreme Court delivered on 24 July 1985 regarding Government's power to sack its employees without holding any inquiry, the Speaker, Shri Bal Ram Jakhar made the following ***ruling***:

"Mr. Datta Samant, your adjournment motion I have not allowed. That concerns a judgement of the Supreme Court which we cannot discuss here... You have other means. You can move a Private Member's Amendment or anything like that which can come on the floor of the House. Here it is clearly stated:

The wisdom of the judgement of the Supreme Court cannot be questioned on the floor of the House. It is not proper. Courts only interpret the law passed by the Parliament and where Members feel that the law is otherwise than what has been interpreted by the courts, they can have the law amended.

That is open to you."

[*L.S. Deb.*, 25 July 1985, c. 180]

(b) On 20 March 1943, President, Sir Abdur Rahim, informed the House that he had received a notice of adjournment motion from a member (Shri Yusuf Abdoola Haroon) regarding the reported sentence of death on and confiscation of properties of Pir of Pagaro and enquired whether the House had any objection to the motion. Thereupon, Secretary, War Department (Shri C.M. Trivedi) submitted that a sentence passed by a court of law is not a proper subject for adjournment motion. On the same analogy a matter relating to sentence passed by a Martial Law Court cannot be raised as an adjournment motion, he added.

The President thereupon ***ruled*** as under:

"...So far as the point of order is concerned, I rule that the sentence of a Martial Law Court can be the subject matter of an adjournment motion and that it stands on a different footing in this respect from the judgment of an ordinary court..."*

[*L.A. Deb.*, 20 March 1943, cc. 1277-1278]

* As objection to the motion was taken, the President asked Members who were in favour of motion to rise in their places. Since less than 25 members rose in favour of leave being granted, leave was refused.

Point No. 7

An adjournment motion is different from a censure motion.

On 6 August 1962, when a member (Shri P.K. Deo) sought a ruling on his notice of adjournment motion, given some time ago, on the situation arising in Ladakh due to Chinese firing, the Speaker, Sardar Hukam Singh, observed that he had received the member's notice as also several notices of adjournment motion from other members on different issues, he further observed that as some statements to be made on the subject had been listed on the agenda he would keep all those adjournment motions and would consider them after those statements were made. A *suo motu* statement by the Prime Minister on the situation in Ladakh was listed for 6 August 1962. Shri Deo rising on a point of order submitted that if the members await the statement of the Prime Minister, the subject would lose all its implications of censuring the Government by way of an adjournment motion. The Speaker, thereupon, ***ruled*** as under:

> "...I take this opportunity of taking the hon'ble members into confidence on what my view is on this point. I have also loosely used that word. Adjournment motion does involve a certain amount of censure but really it is not the same as a censure motion directly. If it is carried then it is very strong disapproval of policy. There is a separate provision for censure motion."

[*L.S. Deb.*, 6 August 1962, cc. 108-116]

Point No. 8

Discussion on an entire enquiry report is not a specific matter for adjournment motion. A matter on which an inquiry is pending is also inadmissible.

(a) On 26 August 1937, the notice of an adjournment motion given by a member (Shri Mohal Lal Saksena) regarding Mr. Mudie's Enquiry Report, on the Bengal, Nagpur Railway Affairs, came up for consideration. Another member (Sir Saiyed Sultan Ahmad) pointed out that the grounds for censuring Government for their action in the matter have not been specifically mentioned in the notice. The President, Sir, Abdur Rahim, thereupon, gave the following ***ruling***:

> "...This is the first time within my knowledge that a report of an inquiry of this nature is sought to be considered by the House on

an adjournment motion. There is no mention of any specific recommendation which has been accepted by Government and which is considered to be wrong by the Hon'ble member who has given notice of this motion; but it is a sort of roving discussion that is sought by this motion, covering the entire report. I have not been supplied with any precedent for such motion and, so far as I am concerned, I do not know of any. I, therefore, rule that this motion is out of order."

[*C.L.A. Deb.*, 26 August 1937, cc. 611-616]

(b) On 12 March 1958, withholding his consent to an adjournment motion given notice of by a member (Shri Braj Raj Singh) re: the death of a person in the police lock-up in Delhi, the Speaker, Shri M.A. Ayyangar ***ruled***:

"As the inquiry is still proceeding, I am not called upon to give my consent to any adjournment motion now. It will be not in the interest of public order or public justice that we should enter into a discussion on the floor of the House while the inquiry is proceeding."

[*L.S. Deb.*, (II) 12 March 1958, cc. 4526-4527]

3

ALLEGATION

SYNOPSIS OF THE RULE 353

- A member has to give previous intimation to the Speaker and the Minister, before he makes an allegation of defamatory or incriminatory nature against any person;
- The Minister may make an investigation into the matter for the purpose of a reply;
- The Speaker can prohibit any member from making any such allegation if he is of the opinion that:
  (i) such allegation is derogatory to the dignity of the House; and
  (ii) no public interest is served by making such allegation.

Point No. 1

An allegation against a Minister cannot be made after giving notice to him under Rule 353.

On 9 April 1981, a member (Shri K.P. Unnikrishnan), while speaking during discussion on Demands for Grants of the Ministry of Defence, made certain allegations against Minister of State in the Department of Science and Technology and Electronics (Shri C.P.N. Singh), when another member (Shri K. Lakkappa) objected to the allegations being made against a Minister, Deputy Speaker, Shri G. Lakshmanan observed that Shri Unnikrishnan had already written to the Speaker, Shri Bal Ram Jakhar and he had taken responsibility if he make any charges and had also undertaken to abide by the rules. The Minister of

Law (Shri P. Shiv Shankar), thereupon on a point of order submitted that provisions of Rule 353 were not applicable in the instant case as the question of giving notice to a Minister or the Speaker did not arise as the Minister came under category of high authority in terms of provisions of Rule 352(ii) or 252(v) of the Rules (which preclude casting reflection upon conduct of persons in high authority unless discussion was based on a substantive motion) and as such, no reflection upon his conduct should be made.

The Deputy Speaker, Shri G. Lakshmanan thereupon ***ruled*** as follows:

> "Now I am giving my ruling on the point of order raised by Shri Shiv Shankar, the Hon. Minister of Law. I have gone through *Kaul and Shakdhar.* I agree with Shri Shiv Shankar that the Constitution provides for discussion on the conduct of some of the authorities in the manner indicated therein. **The conduct of the Supreme Court and High Court Judges, the Comptroller and Auditor-General, Ministers and statutory authorities can be discussed on an appropriate motion, drawn in a form approved by the Speaker.** Therefore, Shri Unnikrishnan cannot mention the name of the Minister, Shri C.P.N. Singh. He should not reflect on the conduct of the Minister."
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> [*L.S. Deb.*, 9 April 1981, cc. 329-344]

Point No. 2

The member should be prepared to substantiate the allegation even if it is published in a journal.

On 21 December 1981, a member (Shri Bapusaheb Parulekar) while raising an half-an-hour discussion regarding permanent Railway card passes to Railway Committee, made reference to certain allegations against Minister of Railways (Shri Kedar Pande) and his family members as published in *'Sunday'* weekly. Another member (Shri Janardhana Poojary), on a point of order, enquired whether the member could make allegations merely relying on Press reports without giving prior notice to Speaker and without obtaining his consent as provided under Rule 353. The Deputy Speaker, Shri G. Lakshmanan, thereupon, gave the following ***ruling***:

> "The member should, before making an allegation in the House, satisfy himself after making enquiries that there is a basis for the

allegation. The member should be prepared to accept the responsibility for the allegation and the member should be prepared to substantiate the allegation. It might have appeared in *Sunday* or any other paper. But the point is that these are the allegations against the Minister. If you are not prepared to take the responsibility I do not allow..."

[*L.S. Deb.*, 21 December 1981, cc. 507-512]

Point No. 3

Raising a matter in the House, merely based on a newspaper is not allowed. The matter should be probed further by the member.

On 2 September 1965, a member (Shri Prakash Vir Shastri) during discussion on the Aligarh Muslim University Amendment Bill, 1965, *inter alia* made personal allegations against a Minister (Shri Humayun Kabir). When the Minister refuted the allegations, on 3 September, 1965, Shri Shastri reiterated his allegations and referred to some Press reports. The Speaker Sardar Hukam Singh there upon ***ruled*** as under:

"I wish to inform all the Hon'ble members with great respect that a mere report in a newspaper about anything does not give you the privilege to raise it in the House.

I know that normally the source of information available to members is newspapers. But that is not a sufficient basis for a member to make an allegation against a Minister, member or other dignitaries. It is necessary to probe it further and satisfy oneself about it... Even if the allegation is proved wrong, it will after all, affect the reputation of the person "

[*L.S. Debs.*, 2 September 1965, cc. 3424-3427 and 3 September 1965, cc. 3729-3736]

Point No. 4

If the allegations are proved to be frivolous, worthless or based on personal jealousy or animosity, directly or indirectly, the member will himself be liable to a charge of breach of privilege of the House.

A member (Shri Madhu Limaye) had given notice of a motion on 30 May 1967, regarding appointment of a parliamentary Committee to

investigate into the charges against Ministers who were alleged to be on a pay roll of Birlas (a business house). On 31 May 1967, the Speaker, Shri N. Sanjiva Reddy, while referring to Shri Limaye's motion, gave a ruling with regard to the procedure to be followed when charges are made against Ministers. The Speaker, *inter alia* quoted from the procedure that was adopted in 1951 when an *Adhoc* Committee was constituted to inquire into the conduct of a member of Provisional Parliament (Shri H.G. Mudgal), as follows:

> "Anyone who has a reasonable belief that a member of Parliament has acted in a manner which, in his opinion is inconsistent with the dignity of the House or the standard expected of a member of Parliament may inform the Leader of the House (Prime Minister) or the Speaker about it. The person making such an allegation should first make sure of his facts and base them on such authentic evidence, documentary or circumstantial, as he may have. He should be careful in sifting and arranging facts because, if the allegations are proved to be frivolous, worthless or based on personal jealousy or animosity, directly or indirectly, he will himself be liable to a charge of the breach of privilege of the House. Therefore, it is of the utmost importance that allegations are based on solid, tested and checked facts."

[*L.S. Deb.*, 31 May 1967, cc. 2045-2048]

Point No. 5

Members not to make allegations against persons or bodies outside unless supported by documents.

On 1 April 1958, during discussion on the Demands for Grants relating to the Ministry of Steel, Mines and Fuel, when a member (Shri Narayanakutty Menon) made allegations that the Petroleum Oil Companies in India were doing "dishonest business" as a result of which the prices of petroleum products had gone up, the Speaker, Shri M.A. Ayyangar ***ruled:***

> "...Hon'ble members should not make accusations unless they are supported by documents. The persons about whom the hon'ble member is making allegations are not represented here to answer

them... It is an extraordinary privilege that we have, that for whatever we say here we are not prosecuted. If similar statements are made elsewhere, the aggrieved are entitled to file a complaint and make the person concerned prove that what he says is correct. Under those circumstances, any hon. member making a statement here regarding honesty or otherwise of any person or body outside must have for his support some document or something on the face of which any person can come to the conclusion that the allegation is correct."

[*L.S. Deb.*, Part II, 1 April 1958, cc. 7685-7687]

4

ARREST OF A MEMBER

SYNOPSES OF RULES 229, 230, 231, 232 and 233

- The fact of arrest of a member on a criminal charge or for a criminal offence or of sentence to imprisonment by a court or detention under executive orders shall be immediately intimated to the Speaker by the committing authority.
- The intimation so sent should contain: (i) reasons for the arrest, detention or conviction, (ii) place of detention or imprisonment.
- The fact of release of a member after conviction either on bail or otherwise should also be intimated to the Speaker by the concerned authority.
- After receiving this communication, the Speaker will read it out in the House if in Session or direct that it may be published in the Bulletin for the information of the members.
- However, if the intimation of the release of a member is received before the House has been informed of the original arrest, the fact of arrest or of subsequent release or discharge need not be intimated to the House by the Speaker. But it may invariably be published in the Bulletin for the information of the members.
- No arrest can be made within the precincts of the House without obtaining the permission of the Speaker.
- Similarly, no legal process, civil or criminal can be served within the precincts of the House without obtaining the permission of the Speaker.

Point No. 1

A member cannot use the precincts of the House as a sanctuary after committing an offence under the Law.

On 18 March 1964, the Speaker, Sardar Hukam Singh informed the House that he had received the following notice of a question of privilege:—

> "On the 17 March 1964, at about 7 p.m. a member of the Watch and Ward staff stopped Shri Bagri,* member, Lok Sabha, from entering into the main gate of Lok Sabha. The Parliamentary Congress Party was meeting inside the building and newspaper correspondents were permitted to enter. This amounts to breach of privilege."

After hearing the views of several members on the matter, the Speaker *inter alia* gave the following ***ruling***:

> "...I want to make it very clear that my duty and in fact the duty of the House is to help the administration of Law and not to obstruct it. And this House will always help in this. However, it is also my duty to safeguard the privileges of our members. If there is any encroachment on these rights, I will not tolerate it. I want to tell Shri Bagri that, although I have not any information as to whether he has committed any offence or whether any warrant has been issued against him, these concessions cannot go on for long.
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> *** *** ***
>
> I agree that if we don't maintain our dignity outside, the people will suspect us. Members may not believe that an offence has been committed but if the authorities think otherwise and the member may take refuge within the precincts of the House, we cannot allow this place as a sanctuary. It will only diminish our dignity. ... We are not prepared to give refuge to anyone who commits an offence. But, as I have said, so far as the privilege of the members are concerned, it is our duty to protect and maintain them.
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> [*L.S. Deb.*, 18 March 1964, cc. 6092-6094]

*Shri Maniram Bagri

Point No. 2

After the Minister has denied the fact of arrest of a member, the matter cannot be proceeded with.

On 27 January 1976, a member (Km. Maniben Vallabhbhai Patel) sought to raise a question of privilege in the House alleging that on 12 December 1975 while participating in *satyagraha*, police arrested and took her to Kashmere Gate Police Station, Delhi. She was detained there for three hours and then released, but no intimation thereof had been sent to the Speaker, Lok Sabha. The Speaker, Shri B.R. Bhagat observed that the Minister of Home Affairs would clarify the position in the House. On 5 February 1976, the Minister of State in the Ministry of Home Affairs (Shri Om Mehta) made a statement in the House wherein he *inter alia* informed that the member was not arrested by police. The Speaker while disallowing the notice of question of privilege, gave the following ***ruling***:

"The House will remember that on the last occasion, I requested the Minister to make investigation and report. He has now reported and it is before the House. If there is a doubt about the veracity of the fact, then we cannot do anything. There must be a finality about it. When the statement is made, we cannot do anything. The Chair has no means to investigate. ... I think we should not go into this matter further because the Minister has denied that she has been arrested..."

[*L.S. Deb.*, 27 January 1964, cc. 136-137 and 5 February 1976, cc. 10-13]

Point No. 3

Complete information about arrest of a member should be given to the Speaker.

On 16 November 1966, when the Deputy Speaker, Shri S.V. Krishnamurthy Rao read out a communication from the S.D.M., New Delhi regarding arrest of a member (Dr. Ram Manohar Lohia), another member (Shri Hari Vishnu Kamath) on a point of order submitted that it did not give complete information required under Rule 229 of the Rules of Procedure and Conduct of Business in Lok Sabha, as neither the information regarding the place of detention

nor the reasons for arrest were given. The Deputy Speaker, thereupon, ***ruled*** as under:

> "The information given is incomplete. I request the Home Minister to give the necessary information regarding the place of detention and also the reasons for the arrest. The Home Minister will give a reply tomorrow."

[*L.S. Deb.*, 16 November 1966, cc. 3401-3404]

Point No. 4

It constitutes a contempt of the House if a member released on parole is prevented from attending the House by issuing another order.

During the third Lok Sabha while a question whether a member (Shri Umanath) who was released on parole could attend Lok Sabha was under consideration of the House, the Government of Madras issued a fresh order on 2 March 1966, prohibiting the member from going to Delhi. On 14 March 1966, the Speaker, Sardar Hukam Singh gave the following ***ruling*** in the matter:

> "Now, let us examine the new order dated the 2 March 1966. This prohibits Shri Umanath from coming to Delhi and thus is expressly intended to preclude him from attending the House. This was the only question that was pending for consideration by this House, and the State Government or the Officer responsible has created a situation under which Shri Umanath cannot attend the House even if the House had come to the contrary conclusion.
>
> Attendance in the House and participation in the debates can never be considered as indulging in objectionable activities.
>
> *** *** ***
>
> It is significant that the Central Government, which is answerable to this House, took no action to apprise the State Government of Madras of the discussion in the House on the 2 March and of its undertaking to make a further statement after examining the position; and subsequently, when it came to its notice that a fresh elucidatory order had been issued on Shri Umanath, did not advise the State

Government to cancel or hold in abeyance the said order pending a decision by this House.

*** *** ***

It is strange that while the Home Minister stated in the House that Shri Umanath could attend the House if the conditions of parole permitted it otherwise, the State Government of Madras had already neutralised the effects of its interpretation of the parole order. In the circumstances of this case, it is possible that the House may after fuller investigation of the case come to the conclusion that the service of the order dated 2 March 1966, prohibiting Shri Umanath from going to Delhi specifically where the Houses of Parliament sit, during the period, when this House was seized of this very matter, may amount to contempt of the House.

My function at this stage is to consider whether I should give consent to the Motion of Privilege being made. As I have stated above there is enough material before me to give such consent. But I would urge the House to consider that as this is the first case of its kind and possibly the order has been issued in ignorance of its implications, the House would be better advised to express its displeasure at the impropriety and let the matter rest there."

[*L.S. Deb.*, 14 March 1966, cc. 5330-5349]

5

BILLS

CONSTITUTIONAL PROVISIONS

The provisions regarding detailed legislative procedure with regard to introduction and passing of Bills have been laid down in detail in articles 107-111 of the Constitution. Of these, the special procedure in respect of the Money Bills and the definition of "Money Bills" have been provided for in articles 110 and 111. Procedure in financial matters has been laid down in articles 112-117 of the Constitution.

SYNOPSIS OF RULES*

- A member who desires to introduce a Bill gives notice of his intention to move for leave to do so.
- If a motion for leave to introduce a Bill is opposed, brief statements from the member who opposes and the mover are permitted.
- But if the introduction is opposed on the ground that the Bill is outside the legislative competence of the House, a full discussion may be permitted.
- The motions to introduce Finance Bill or Appropriation Bills are put forthwith.

Point No. 1

Constitutionality of the Bill is not decided by the Speaker.

On 24 March 1969, when the Constitution (Twenty-Second Amendment) Bill, as reported by the Joint Committee, was taken up

* For detailed procedure *see* Rules 65-154 of the *Rules of Procedure and Conduct of Business in Lok Sabha*.

for consideration, a member (Shri Srinibas Misra) raised a point regarding the constitutional validity of clause 2 of the Bill as, according to him, it empowered Parliament to amend the Constitution without undergoing the procedure laid down in article 368* of the Constitution. The member contended that this in a way meant amendment of article 368 itself and was also against the judgment of the Supreme Court in *Golak Nath's case* regarding the power of Parliament to amend fundamental rights. After submissions by some other members, the Minister of Home Affairs explained that the same point was raised in the Joint Committee when the Attorney-General appeared before the Committee and gave the opinion that the provisions were constitutional. The Speaker, Shri N. Sanjiva Reddy thereupon gave the following ***ruling***:

> "I do not think the Chair is asked to decide about constitutional issues, that is for the courts to decide. We have been amending the Constitution so many times. And it is not an amendment of the fundamental rights. *Golak Nath's case* was pointed and that is about the amendment of fundamental rights. This Bill is not for that.
>
> As to the point that we are creating new States or dividing old States and further sub-dividing them so many times we have done that. Whether it is legal or not, I am not going to express any opinion. That is for the courts to say, whether it is legal or not.
>
> Then in the Joint Committee also it was raised and he has read the Attorney-General's opinion. I do not think further than that I can elucidate or explain the legal aspect of the question.
>
> Of course, your points appear to be very valid. They are arguments for opposing the Bill. You can move an amendment or do something of that kind. It can be argued further. To that extent I agree but to say that the Bill cannot be moved here, I cannot agree. We have passed so many Bills creating so many States and abridging States. Therefore, we can proceed with the Bill."
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> [*L.S. Deb.*, 24 March 1969, cc. 323-334]

* The marginal heading of article 368 then was, "Procedure for amendment of the Constitution. The marginal heading has since been amended as Power of Parliament to amend the Constitution and procedure thereof" by the Constitution (Twenty-Fourth Amendment) Act, 1977.

Point No. 2

It is permissible for a member to move a motion for circulation of a Bill which requires the President's recommendation, even if he has not obtained the President's recommendation.

On 12 December 1958, when the Deputy Speaker, Sardar Hukam Singh requested the member-in-charge (Sardar A.S. Saigal) to continue his speech on the motion for circulation of the Sikh Gurdwaras Bill, 1958 a member (Shri Easwara Iyer), rising on a point of order, stated that as the Bill involved expenditure from the Consolidated Fund, under article 117 (3)* the hon'ble member ought to have obtained the recommendation of the President for consideration of the Bill. He further contended that the Bill did not satisfy the provisions of Rule 69** as it was not accompanied by a financial memorandum.

The Deputy Speaker, Sardar Hukam Singh, thereupon ***ruled*** as under:

> "Now it has been held previously that it is permissible for a member to move a motion for circulation of a Bill which requires the President's recommendation for consideration under article 117(3). It has not been obtained by the member-in-charge. Even if a Bill requires the President's recommendation and conceding that it has not been obtained—a motion for circulation can be made."

[*L.S. Deb.*, 12 December 1958, cc. 4799-4802]

Point No. 3

The word 'appropriation' as used in article 110, sub-clause (1) (d), is only a term of art and it applies only to cases which are referred to in article 114. The consideration stage of a Bill starts after the introduction and continues right up to the passing of

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* Article 117(3) of the Constitution provides that "A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the Consideration of the Bill".

** Rule 69(i) provides that "A Bill involving expenditure shall be accompanied by a financial memorandum which shall invite particular attention to the clauses involving expenditure and shall also give an estimate of the recurring and non-recurring expenditure involved in case the Bill is passed into law".

the Bill. Before a motion for consideration is made the recommendation of the President ought to be obtained.

On 12 April 1951, a member (Dr. P.S. Deshmukh) moved a motion for reference of his Bill *viz.* the Training and Employment Bill, 1951, to a Select Committee to provide for a comprehensive youth employment service. On a point of order, an objection was raised by another member (Shri Sidhva) that the Bill attracted provisions of article 117(3) and could not be taken up for consideration until President's recommendation had been obtained by the member in-charge. The Minister of Food and Agriculture (Shri K.M. Munshi) supporting the point of order, *inter alia* stated that clauses 5 and 6 of the Bill come within the purview of article 110(1)(d)* of the Constitution as they involved appropriation out of the Consolidated Fund and in effect made the Bill a Money Bill. Hence under provisions of article 117(1)** of the Constitution, the Bill cannot even be introduced without recommendation of the President. Then Dr. Deshmukh contended that article 117(1) did not apply to his Bill and that the same would come under article 117(3) and that as expenditure would be involved only on passing of the Bill, there was sufficient time to obtain the President's recommendation. The Minister of Law (Dr. B.R. Ambedkar) intervening in the matter observed the Clauses (5) and (6) of the Bill do not offend clause 117(1) and that the word, "appropriation" which has been used in sub-clause (d) of Article 117 involves: (i) a particular service, and; (ii) the exact allotment of money to be spent on that particular service.

The Deputy Speaker, Shri M.A. Ayyangar, thereupon ***ruled*** as under:

"We have heard this point *in extenso.* I entirely agree with the hon'ble Law Minister in coming to the conclusion that 'appropriation' as used in article 110, sub-clause (1) (d) is only a term of art and it applies only to cases which are referred to in article 114. Therefore, the provisions do not militate against the

* Article 110(1)(d) provides that the Bill shall be deemed to be a Money Bill if it contains only provisions *inter alia* dealing with the appropriation of moneys out of the Consolidated Fund of India.

** Article 117(1) of the Constitution *inter alia* provides that a Bill or amendment making provision for Money Matters specified in sub clauses (a) to (f) of article 110 shall not be introduced or moved except on the recommendation of the President.

provisions of article 117(1). Of course, it involves expenditure from the Consolidated Fund and therefore comes within the purview of sub-clause (3) of article 117.

The only question is whether the practical guidance that has been given by the hon'ble Law Minister that for the purpose of consideration, a recommendation of the President has to be obtained. It is not said that consideration ought to be barred. The objection is to the passing of the Bill. The President may give authority or refuse to give authority for consideration. So far as this House is concerned, it is the passing of the Bill that is prevented.

I will make my position clear by reference to the Constitution. Clause (3) of Article 117 says:

A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India shall not be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

All that this House is prevented from doing is the passing of the Bill.

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I do not think any hon'ble member can force me to agree to any particular view. I do still consider it is open to the President to recommend to the House the consideration of the Bill. He has not recommended, we will assume. Then it will be futile to go on with it until the passing. It cannot be passed. There is no good embarking upon an enterprise which will end in nothing. But we are in a different stage so far as this Bill is concerned. Today we have started the consideration of the Bill. It may be, in some cases, when the general body of opinion in the House is in favour of a particular Bill, notwithstanding certain commitments which will involve expenditure, that will be an important consideration for the President himself to grant sanction or recommend it for acceptance of the House. Therefore, that is not an absolute proposition. I agree with the hon'ble Law Minister that the consideration stage starts after the introduction and continues right up to the passing of the Bill. As it is, I leave it to the hon'ble House whether we should go on or not

go on with it. It is only twenty minutes more. Therefore we shall go on with it today. So far as the future is concerned, I would like that before a motion for consideration is made, the recommendation of the President ought to be obtained. Otherwise we will be taking away the time of the House needlessly. But an exception has to be made in favour of this Bill, particularly in view of the fact that there is no time for the hon'ble member to go to the President—unless it is the desire of the House that we should pass over this Bill, postpone its consideration and take up any other Bill. There is no chance of making such headway with respect to any other Bill to any large extent. Therefore, so far as this Bill is concerned we shall go on with it. We will not reach any particular stage.

[*Prov. Parliament Deb.*, 12 April 1951, cc. 6685-6728]

Point No. 4

The clause of a Bill before the House cannot be withdrawn by the mover as the whole Bill is before the House. It has to be negatived by the House.

On 21 December 1950, during the clause by clause consideration of the Representation of the People (Amendment) Bill, 1950, when clause 4 of the Bill came up, the Speaker, Shri G.V. Mavalankar informed the House that there was an amendment from the Minister of Law (Dr. B.R. Ambedkar) that the clause be omitted and *inter-alia* observed, "...I do not put for the present the proposition that clause 4 stand part of the Bill. ...If I do not put the clause itself, no question of the other amendment arises." At this a member (Shri Mahavir Tyagi) on a point of order submitted that even an amendment which seeks to delete a clause should be put and sanction of the House obtained as the whole bill has come in possession of the House. Another member (Shri M.A. Ayyangar) *inter alia* stated that as the whole Bill has been taken into consideration and if the Minister in-charge of the Bill does not want a particular clause to be there, then he should make a formal motion to withdraw the clause.

The Speaker, Shri G.V. Mavalankar, thereupon, gave the following ***ruling***:

"The Bill is introduced as a whole and therefore every clause is before the House. If any hon'ble member is keen to move any

amendment to this clause, I think the chair is bound to put the clause before the House. He cannot withdraw it after having placed the whole Bill before the House. The clause has to be negatived by the House. ..."

[*Prov. Parliament Deb.*, 21 December 1950, cc. 2213-2215]

Point No. 5

The recurring and non-recurring expenditure should be put down in the financial memorandum. In case it is not possible an explanation should be given as to what difficulties were.

On 8 December 1962, when the Speaker, Sardar Hukam Singh put the motion for consideration with regard to the Motor Vehicles Taxation Bill, 1962 to the Vote of the House, a member (Shri Hari Vishnu Kamath) rising on a point of order submitted that two clauses of the Bill, *viz.* clauses 20 and 25 involve expenditure from public funds and hence are covered under the provisions of Rule 69 of the Rules of Procedure and Conduct of Business in Lok Sabha pertaining to Financial Memorandum and clauses involving expenditure. The member pointed out that in the revised Financial Memorandum only clause 20 of the Bill had been referred to there was no mention of clause 25 being a clause which comes within the ambit of Rule 69. Furthermore in contravention to provisions of Rule 69(1) there was no mention of approximate figure of extra expenditure and the revenue realized by raising the taxes as envisaged in the said two clauses nor any estimate of the recurring and non-recurring expenditure had been mentioned.

The Speaker, gave the following ***ruling*** in this regard:

"So far as the requirements of Rule 69 are concerned, I agree that the Bill should give these details according to those requirements. So, the recurring and non-recurring expenditure should be put down there. If there really be a case where it cannot be ascertained, then there ought to be some explanation as to what the difficulties are so that at least some attention must be made to tell at least this much to the hon'ble members so that they can consider whether the ground given is justified or not. Simply ignoring the rule or over looking the rule is not fair. ...These requirements should be complied with

and always an effort should be made to mention the recurring and non-recurring expenditure... At least an attempt should be made to calculate and put the recurring and non-recurring expenditure."

[*L.S. Deb.*, 8 December 1962, cc. 4929-4935]

Point No. 6

Sections in the original Act which are not included in the Amending Bill cannot be touched.

On 14 August 1958, during discussion on the motion to refer the Banaras Hindu University (Amendment) Bill, 1958 to a Select Committee, when a member (Shri Nagi Reddy) suggested that the Select Committee, instead of confining only to the three clauses of the amending Bill, might go into all the provisions of the Original Act in order that the University's Administration might improve as a whole, the Speaker, Shri M. A. Ayyangar ***ruled***:

"...Whenever an amending Bill is introduced, which is not a consolidating Bill but which is an amending Bill, the scope of that amending Bill is only to the extent that it seeks to amend the Act; the other matters will be absolutely irrelevant, unless they are so intimately connected that though they may have been overlooked, they would require modification which is consequential or ancillary to a modification which is thought of here."

[*L.S. Deb.*, 14 August 1958, cc. 952-954]

Point No. 7

If the Select Committee examining and amending Bill goes beyond the scope of the Bill and deletes a section from the Principal Act, it is for the House to restore the *status quo* through an amendment.

Clause 15 of the Representation of the People (Amendment) Bill, 1958, sought to amend section 7(d) of the Representation of the People Act, 1951. When the Bill was referred to the Select Committee it amended clause 15, which had the effect of deleting section 7(d) altogether from the Principal Act.

On 20 December 1958, when clause 15* of the Representation of the People (Amendment) Bill, as reported by the Select Committee came up for discussion, a member (Shri Easwara Iyer) submitted that as per the provisions of Rule 80(i) of the Rules of Procedure, "an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates." He raised the objection that the Select Committee had exceeded its powers in deleting section 7(d) of the Principal Act which was only sought to be amended by the Bill as introduced. The member sought a ruling from the Chair if the Committee were justified to omit a provision from the Principal Act when the amending Bill never intended it.

The Deputy Speaker, Sardar Hukam Singh, thereupon ***ruled:***

"...When a decision has been taken by the Select Committee it is not for the Speaker here to decide that the Committee had gone outside the scope. It is for the House to decide... If the House thinks that this was not within the scope of the Committee, then the only remedy is that an amendment could be brought here so that the House could decide that the original position should stand."

[*L.S. Deb.*, 20 December 1958, cc. 6708-6715]

Point No. 8

If an amending Bill seeks to amend a clause of a section in the parent Act, the other clauses of that section are not automatically thrown open to amendment, unless the amendment proposed is ancillary to or dependent on the provisions in the amending Bill or it follows as a consequence.

The Government gave a notice of an amendment to the Land Acquisition (Amendment) Bill, 1962, seeking to insert new clauses 3A and 3B in the Bill. As part of the amendment (new clause 3B) was held by the Speaker, Sardar Hukam Singh, to be out of order as it was beyond the scope of the Bill. In this connection, the Speaker, ***ruled:***

"...Only amendments to sections which are sought to be amended in a Bill or which are closely and intimately connected with them

* At the conclusion of the debate on clause 15, the Minister of Law (Shri A.K. Sen) himself moved an amendment to restore the provision of the original Bill. The amendment was put to vote and adopted by the House.

can be admitted. Here we are only amending Part VII, not Part II; that is the difficulty. If there is any amendment to Part VII which is sought to be amended or if there is something else which is closely and intimately related to it, then I might allow that. But there are many matters contained in the Act which are not related to Part VII or the sections we are seeking to amend. ..."

[*L.S. Deb.*, 30 August 1962, cc. 5150-5152]

Point No. 9

Clause-by-clause consideration of a Bill on the same day, on which the motion for consideration has been adopted, is in order.

On 7 August 1962, when the motion for consideration of the Assam Rifles (Amendment) Bill, 1962 was adopted, a member (Dr. L.M. Singhvi) raised a point of order that clause-by-clause consideration of the Bill could not be taken up on the same day as the general discussion of the Bill, in view of the language of Rule 75(1). The Speaker, Sardar Hukam Singh, thereupon ***ruled***:

"...I do not agree with the hon'ble member that Rule 75 debars discussion on clauses on the day on which general discussion is held. He has put the interpretation on the wording of Rule 75. He will kindly look into it, and to the stage where we are. The heading indicates what we have to do. It says, "Discussion of principle of Bill". The emphasis is not on the day on which any motion referred to is taken up for consideration. But the emphasis is, and the objective is, on the day when it is taken up for consideration or on any other day to which it might be post-poned and consideration might be had, on the nature of the discussion; that is, what discussion shall it be. It would be only on the general principles of the Bill and the details of the Bill shall not be discussed during that stage. This is the objective of this Rule 75. If we just see the whole arrangement of the rules, we will come to this conclusion that here we are only on the discussion. After Rule 75, we come to "Persons by whom motions may be made" and then "Notice of amendments". Finally, it is under Rule 86 that we come to the stage of mode of moving amendments. It says:

"When a motion that a Bill be taken into consideration has been carried, any member may, when called upon by the Speaker, move an amendment to the Bill..."

After that, clause 88 provides that,

"Notwithstanding anything contained in these rules, the Speaker may, when a motion that a Bill be taken into consideration has been carried, submit the Bill, or any part of the Bill, to the House clause-by-clause."

Therefore, the interpretation which the honourable member put on Rule 75 is not the correct one that when the general discussion is over, we cannot discuss it clause-by-clause on the same day. That was not the intention of that rule. If there is any misapprehension on account of the words "on the day", that is amply laid at rest by Rule 88, which gives the power to the Speaker to take up the Bill clause-by-clause.

[*L.S. Deb.*, 7 August 1962, cc. 449-452]

Point No. 10

(a) There is no bar on a Bill being brought before the House on matters pending before the Courts of Law. The question of *sub judice* does not stand in the way of legislation.

(b) *Sub judice*: Scope of reference to cases pending before courts during discussion on a Bill brought before the House to protect the cases from interpretation of the judgement of the Supreme Court.

(c) Rule 344 of the Rules of Procedure does not apply to an amending bill seeking to add an explanation to a section which nullifies the effect of original Act.

In the case of *Shri Kanwar Lal Gupta vs. Shri A.N. Chawla and others* (Civil Appeal No. 1549 of 1974, decided on 3 October 1974), the Supreme Court interpreted the expression "incurred or authorised" in section 77(1) of the Representation of the People Act, 1951, as including within its scope the expenses incurred by a political party or other persons. The above judgement of the Supreme Court created a serious problem particularly with reference to the candidates against whom election petitions had been filed and were still pending decision. To meet the situation created for the candidates, the Government issued an Ordinance and later introduced the Representation of the People (Amendment) Bill, 1974, to clarify that the intention underlying

section 77 of the Act was that in computing the maximum amount any expenditure incurred or authorised by any other person or body of persons or political parties would not be taken into account.

On 12 December 1974, when the above Bill was taken up for consideration, a member (Shri Janeshwar Mishra) raised a point of order that the discussion on the Bill could not be proceeded with as the Bill amounted to contempt of the Supreme Court as certain election petitions were pending with the courts on issues with which the Bill was related. The member added that when references would be made to those pending cases during the discussion, there might be objections in the House that the matters were *sub judice*. Another member (Shri Madhu Limaye) also submitted that the Bill sought to amend section 77 of the Act by insertion of an explanation which would negate the very provision of the section and that being negative was not permissible under Rule 344.* Several members made submission that reference to cases relating to election petitions pending in various courts could not be avoided as the reference had been made to those cases in the statement of Objects and Reasons of the Bill and in the Law Minister's speech when moving motion for consideration of the Bill. The Minister of Law (Shri H.R. Gokhale) *inter alia* submitted that the purpose of the Bill was two-fold. First of all, to lay down the law, what Parliament thought was the law for the present and for future and the second purpose was, if that was going to be law, giving the benefit of that to all these cases where some question of law arose. It had no reference to any facts of any pending cases and, therefore, reference to the facts of the pending cases should not be allowed.

As regards the power of Parliament to legislate on matters pending with the court, the Deputy Speaker, Shri G.G. Swell ***ruled*** as follows:

> "I will come to this Bill and that is why I am giving great importance to the points you are making. This is one of the accepted practices. We do not, because it is *sub judice*. Another is that the law making power of this House is unfettered. Whatever be the case, the merits of the case, Parliament can make any law.... The question of *sub judice* does not stand in the way of law making here."

* Rule 344 provides that (1) an amendment shall be relevant to, and within the scope of the motion to which it is proposed, (2) an amendment shall not be moved which has merely the effect of a negative vote, and (3) an amendment on a question shall not be inconsistent with a previous decision on the same question.

With reference to the point raised by Shri Madhu Limaye, the Deputy Speaker, Shri G.G. Swell, on 16 December, 1974 ***ruled*** as follows:—

> "...An amending Bill can take any form. Here this Bill says very clearly that because the meaning of this particular provision – section 77 of the Representation of the People Act – is not very clear, because we have not brought it very clearly, we have run into this difficulty arising from the Supreme Court judgement and, therefore, we want to make their meaning of this particular provision very clear and we do it in the form of an explanation. Therefore, on that score that the amendment is sought to be made by an explanation—I do not think that objection can be maintained and I do not accept it. About the amendment being negative, this would apply to motions and amendments to clauses; under the rules. For instance, the Law Minister has moved the motion that the Bill be taken into consideration. If there is an amendment saying that the Bill should not be taken into consideration, that is merely a negative amendment and it would not be acceptable."

In regard to the reference by members during the debate to cases pending in courts, the Deputy Speaker, Shri G.G. Swell ***ruled***:

> "In their report of September 1968, the Committee of the Presiding Officers had this to say on this question—
>
> 'The Committee feel that, while applying the restrictions regarding the rule of *sub judice* care should be taken to see that the primary right of freedom of speech is not impaired to the prejudice of the Legislature. Every attempt should be made to strike a balance in this regard.'
>
> *** *** ***
>
> The best thing I can do is to rule that it is difficult for me in the circumstances to prevent members from making reference to these cases. In doing, so however, I would earnestly request them not to cross the limits and upset the delicate balance between Parliament and Judiciary. Whatever submissions they might make in this regard should be within the limited purpose of whether a measure of this

kind is called for, whether it is justified and whether we should go in for it. They should not try to pronounce on the merits of the various allegations and submissions. Nothing on merits. They should not even try to say that these are facts because the facts are to be determined by the courts. We are not to determine the facts... It is the courts that determine the facts and not we... The merits of each petition are to be determined by them, by the court and not by us. We should not pronounce that. Of course, after we pass this Bill, and it has become an Act, courts will have to interpret the facts as they find in the light of this Act."

[*L.S. Debs.*, 12 December 1974, cc. 201-282 and 16 December 1974, cc. 278-330]

6

BUDGET

CONSTITUTIONAL PROVISIONS: SYNOPSES OF ARTICLES 112-116

In respect of every financial year, the President shall cause to be laid before both the Houses of Parliament an "Annual Financial Statement" or the estimated receipts and expenditure of the Government of India.

- The estimates which relate to expenditure charged upon the Consolidated Fund of India shall not be submitted to Parliament but could nevertheless be discussed.
- Estimates which relate to expenditure not charged on the Consolidated Fund of India are submitted in the form of Demands for Grants of Lok Sabha which has the power to assent, or to refuse to assent to any demand, or to assent to any demand subject to reduction of the amount specified therein.
- No Demand for Grant can be made except on the recommendation of the President.
- No money can be withdrawn from the Consolidated Fund of India except under appropriation by law.
- As soon as the grants have been made by the House, a Bill is introduced to provide for the appropriation out of the Consolidated Fund of India of all moneys required to meet the grants made by the House and the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.

- The President shall cause to be laid before both the Houses of Parliament another statement of estimated amount of supplementary or additional expenditure of the Government of India, need for which has arisen during the current year.
- The Parliament has the power to make grants in advance and authorise the withdrawal of moneys from the Consolidated Fund of India to enable the Government to carry on till the Demands for Grants are voted and the Appropriation Bill is passed.

SYNOPSES OF RULES 204, 205, 206, 213, 215 and 219

- The Budget of the Government of India is presented on such day as the President may direct.
- The Budget is presented in such form as the Finance Minister may, after considering the suggestions, if any, of the Estimates Committee, settle.
- There shall be no discussion on the Budget on the day on which it is presented to the House.
- A separate demand is ordinarily made in respect of the grant proposed for each Ministry but the Finance Minister may include in one demand for grants proposed for two or more Ministries or Departments or make a conjoined demand in respect of expenditure which cannot readily be classified under particular Ministries.
- The Budget can be presented to the House in two or more parts and when such presentations take place, each part shall be dealt with in accordance with the rules applicable to the presentation of Budget.
- Supplementary, additional and excess or exceptional grants and votes of credit are regulated by the same procedure as is applicable in the case of Demands for Grants (main Budget) subject to such adoptions, whether by way of modifications, additions or omissions, as the Speaker deems necessary or expedient.
- "Finance Bill" means the Bill ordinarily introduced in each year to give effect to the Financial proposals of the

Government of India for the next Following Financial Year and includes a Bill to give effect to Supplementary Financial proposals for any period.

Point No. 1

Statement on new taxation proposals can be made by the Minister any time.

On 31 July 1974 when the Minister of Finance (Shri Y.B. Chavan) sought to make a statement on 'New Taxation Proposals', a member (Shri Shyamnandan Mishra) rising on a point of order submitted that such a statement was not in consonance with the well established position and was contrary to the rules. He contended that a supplementary budget was sought to be presented in the guise of the statement. Some other members (Shri Madhu Limaye, Shri S.M. Banerjee and Shri Somnath Chatterjee) supported Shri Mishra's point of order. The Speaker, Shri G.S. Dhillon, thereupon, ***ruled*** as follows:

"A point of order was raised by Mr. Mishra and other members followed it up. ... *According to the rules the Minister can make a statement any time.* I think even the Speaker should not know it till it comes up before the House. That is the general principle and, therefore, it was allowed. How can I see the Finance Bill? I cannot see the Budget when it is presented regularly in the Budget Session. How can I know about it now? It is expected to be very confidential. How does it make any difference if immediately after the Statement the Bill is introduced."

[*L.S. Deb.*, 31 July 1974, cc. 3-9]

Point No. 2

It would be appropriate to present the Supplementary Demands for Grants before the freights and fares are raised by the Railway Minister through a statement regarding Railway Financial matters.

On 7 December 1981, the Minister of Railways (Shri C.K. Jaffer Sharief) made a statement regarding financial position of Railways and announced increase in Railway Freights. While Minister was making Statement some members objected to the legality of such a Statement

involving financial implications without presenting the Supplementary Budget. On 8 December 1981, the Speaker, Shri Bal Ram Jakhar gave the following ***ruling*** in the matter.

"On 7 December 1981, while the Minister of Railways was making a statement regarding Railway Financial Matters, some members raised points of order:

(i) whether the Minister of Railways had occasion in the past to make an announcement in the House for increasing the railway freight and fares;

(ii) whether it was correct for the Minister to make such a statement involving financial implications without submitting a supplementary budget.

After submissions were made by the members, the Deputy Speaker, Shri G. Lakshmanan ***observed*** that the points raised by members would be examined and said:

"I have looked into the matter. In regard to the first point I find that on 21 August 1974, the Minister of Railways had made a statement in the House regarding the financial position of the Railways and had announced levy of supplementary charge on goods and additional supplementary charge for certain passenger fares. But in that case, before making the announcement, the Minister had presented Supplementary Demands for Grants in respect of Budget for Railways for 1974-75."

In regard to the second point, I would invite the kind attention of members to the provisions of Article 110 (2), which reads:

"A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes."

On 7 September 1974, when similar points were raised in the House, the Chair had observed *inter alia:*

"...Under the present provisions of the Constitution as they are, it is the courtesy of the Railway Minister that he comes forward and

asks the opinion of this House even in the matter of increase of fares and freights... I am afraid the Railway fares and freights are fees to be demanded for certain provisions of the Constitution, you do not even need to come... I am afraid the Railway fares and freights are fees to be demanded for certain services which the Railways are going to render to the community. Therefore, we do not have anything to say about it..."

In the present case, it would have been more appropriate if the Minister of Railways had presented the Supplementary Demands for Grants, before making the statement, as he did yesterday. Since the statement has already been made... I hope the Minister would come forward with the Supplementary Demands without further delay. This would also incidentally provide opportunity to members, to express their views.

[*L.S. Debs.*, 7 December 1981, cc. 373-381 and 8 December 1981, cc. 352-353]

Point No. 3

Details of all the expenditure, Demands for Grants and Appropriation Bill must be presented to the House before Finance Bill is sought to be passed. The sequence laid down in the Constitution in respect of articles 112, 113, 114 and 115 should be maintained in this regard.

(a) On 7 August 1974, when the motion for consideration of the Finance (No. 2) Bill was moved by the Minister of Finance (Shri Y.B. Chavan), several members sought to raise points of order. A member (Shri Somnath Chatterjee) pointed out that the Bill, which was in the nature of a Supplementary Budget, sought to raise additional finances by taxation for unexplained, unestimated and undisclosed expenditure. In view of provisions in various articles of the Constitution and in the Rules of Procedure, the Bill could only be considered in the House if it had been preceded by the Demands for Grants and the connected Appropriation Bill.

Discussion on the point of order was not concluded when the next item on the order paper, *viz.* Half-an-hour discussion which was scheduled to be taken up at that time (5.30 p.m.) was taken up.

On 8 August 1974, when further discussion on the point of order was resumed, several members made submission in this regard. They contended that voting on the Demands for Grants should always precede the Finance Bill. Discussion on the points of order could not be concluded on that day as a Short Duration Discussion was scheduled to be taken up.

On 12 August 1974, further submission on the points of order were made by several members. The Minister of Law (Shri H.R Gokhale) and the Minister of Finance (Shri Y.B. Chavan) expressed Government's view point. Their contention was that the measure was not 'Supplementary Budget' as interpreted by the members. It was a simple Bill containing certain taxation proposals. More so, there were precedents in the past when the Government had brought such Bills which were not preceded by the Demands for Grants or the statement of expenditure was not simultaneously laid on the Table of the House. The Speaker, Shri G.S. Dhillon thereafter, ***ruled*** as follows:

"Hon'ble members, this debate has been really very-very useful.

Very useful contribution has been made by distinguished members of the Opposition. I had also in the meantime, had the opportunity to go through the Rules, the Constitution, May's Parliamentary Practice, etc.

The interpretation with reference to Budget and Finance Bill given by the Law Minister may have been strictly correct according to the Constitution, but it is in contradiction with the practice which we have been following.

We have always mentioned it as a Budget in our proceedings, in our rules and everywhere. And, I think, this term, which is so much understood by the members and the people outside should continue, and we refer to this as Budget, whatever be the strict Constitutional provision or understanding, and I propose that this will continue.

Points of order were raised by Mr. Chatterjee, Mr. Sezhiyan, Mr. Mishra, Mr. Madhu Limaye, Prof. Hiren Mukherjee and Mr. Rao. I think the interpretation given by them starting from Mr. Chatterjee is very much relevant. Now, the only difficulty that comes is the sequence. I believe that according to the Constitution, according to the rules, this Finance Bill is in the form of a Budget.

It should come in the normal form as a Budget and the sequence is very clearly laid in articles 112, 113, 114 and 115 and other Rules 204, 205 and 209. There is no doubt about it. The sequence should be the same as mentioned in them. We have been mentioning it in the form of supplementary demands, supplementary budget or whatever you call it. After all, we cannot deny that this is a sort of a supplementary budget or an additional budget. When we laid down certain things, it is very much correct that we must know, as the House, as to in what form it has been given. That form and those rules and provisions are already laid down. I must appreciate the point which Prof. Mukherjee so effectively made, namely, that the annual statement should be upto the end of the year. That should really be upto the end of the year. This is an additional point that he has made.

...Two days have passed since then. I have been trying now that at least, as the Speaker of the House, it is my duty to see that the proper financial procedures are followed. Government has relied on the past practices, 1956, 1957 and 1967 and many years when such a thing has happened and this practice was followed. It is indeed a very interesting contradiction that Shri Sezhiyan referred to the provision and the procedure set by the Chair that should be followed. I have been looking for the procedures that are set by the Chair. Only observations were made, and nothing else followed.

I thought that something will pull me out. When my predecessors laid down something, it is not a question that it did not occur to them. It did occur to them as to what we should do. Mr. Chavan gave some reasons for this procedure followed by him, and I agree with him that an extraordinary situation and an emergent situation has arisen. Everybody agrees with this. He has quoted Mr. Mishra also. I am not abdicating my rights. I have been following the procedures laid down by my predecessors. They have relied on the past practice, and I accept that. They may rely on it. But, I am not going to allow this for the future. As for the other matters, Mr. Chavan must come before this House with details of all the expenditure and Demands for Grants. He must also come forward with the Appropriation Bill in this very session—not some time later, thinking that it will start

from 1975. But, for the future, if the House agrees with me, we must be allowed to lay down certain procedures. In that procedure, I may have to make a little departure from the precedents established by my predecessors. I am very much, out and out, a person to follow the old conventions, practices and precedents. When I have to depart from the practices and procedures, I never take upon myself this responsibility unless I consult the Secretary-General or unless I consult even the prominent members. I propose to consult the Rules Committee also. I do not want to lay it down off-hand. In such matters, it is very risky. I should not lay it down off-hand without consulting on the broad principle. They are mentioned in articles 112, 113, 114 and 115 alongwith the rules 204, 205 and 219. This is not a question that expediency requires, emergency requires or conditions require it and hence we should ignore the specific rule or articles in the Constitution. I fail to understand this. I am the last person to agree with this interpretation.

Only because of certain precedents which have been relied upon, on the spur of the moment. I am not going to change it, except that I have told the House that I am not going to follow this sequence for the future. I am allowing you to proceed through the Bill but with the specific direction to come with the Demands and the Appropriation Bill before the House."

[*L.S. Debs.*, 7 August 1974, cc. 287-293;
8 August 1974, cc. 177-201 and
12 August 1974, cc. 238-241]

(b) On 7 December 1956, during the discussion on the motions for consideration of the Finance (No. 2) and the Finance (No. 3) Bills, a member (Shri Tulsidas Kilachand) raised the following points of order: Firstly, that the provisions of the Finance (No. 3) Bill were intended to make permanent changes in the existing law, and, if enacted, would have far reaching effect. The proper thing was to adopt those provisions by a separate amendment Act and not to rush them through in a Finance Bill. Secondly, that the Finance Bill normally provides for expenditure for the current year but the provisions of the Finance (No. 3) Bill were intended to come into force with effect from the 1 April, 1957.

In support of the points of order, he drew attention to an earlier observation* made by the Speaker on 21 April 1956, during the discussion of the Finance Bill, 1956.

Another member (Shri Rama Chandra Reddi) pointed out that in order to give the members an opportunity to discuss matters relating to general administration, the provisions of Rule 238 should be made applicable also to the Bills under discussion.

Another member (Shri Raghavachari) questioned the desirability of bringing at the end of the year a Bill to raise funds and permanently alter and modify the existing laws under the name of a Finance Bill, and stressed that a Finance Bill must confine itself only to taxation for the current financial year and must not be permitted to take up future legislation for taxation.

Yet another member (Pandit Thakur Das Bhargava) disputed the propriety of having provisions in the Bill which were of a permanent character, the intention of which, at the same time was to get money not only for the next year but also for many more years.

The Minister of Finance (Shri T.T. Krishnamachari), pointed out that no departure from the usual practice, as to the provisions of the Finance Bill, was being made in the Bill under discussion.

The Speaker, Shri M.A. Ayyangar thereafter gave the following ***ruling***:

> "I have heard the two sides. So far as the motion for reference to a Select Committee is concerned, it is contended that it is a dilatory motion. Shri Tulsidas contends that the Bill was introduced only a short time ago and so it is not so. I have allowed the Bill to be

*The Speaker (Shri M.A. Ayyangar) had then observed that:
A Finance Bill is intended to raise taxes which would subsist only for the year. Other provisions relating to Statutes, which are of a more permanent character, ought not to be clubbed with the Finance Bill but discussed in a more leisurely manner. Discretion will be exercised by the Hon'ble Finance Minister or his Ministry in bringing them separately unless they are so inter-connected with the other provisions of the Bill, that the finances for any particular year depend upon those provisions. In such case they can be added on here. It is not so much a question of legality as a question of propriety.

introduced and the motion to be moved here. It is for the House to accept or reject it by taking into consideration all the points of view expressed from all sides.

So far as the point of order is concerned, two views have been pressed before the House. One point is that it is a Finance Bill and for every Finance Bill there is a particular procedure laid down both in the Constitution and under the Rules, and that must be followed. After the Demands for Grants are voted by the House and the House is satisfied that so much money is necessary, provision must be made by way of taxation, from year-to-year. That is the object of the Finance Bill. On that ground, these two Bills, the Finance (No. 2) and (No. 8) Bills ought not to be allowed here.

The hon'ble Minister explains there is an emergency and that this Parliament is not likely to continue and if the fresh Parliament were to come in, it would begin to function only by June. In the meanwhile, the year which is sought to be defined under this Bill, ending 31 day of March 1956, would be over. It would be too late for anybody to have all these accounts and so on. It would then be said that it would be taking people by surprise and so on.

There is the further need of the Plan which has been envisaged for a period of 5 years. This financial statement from year-to-year should be given not the ordinary import as purely a financial statement for the expenditure in the year only but as a permanent one for the revenue and expenditure for all years under the Plan. It is by that implication, therefore, the hon'ble Minister says that there is an emergency and that he will be able to satisfy that during the discussion whether that necessitates this or not. It is another matter which could be discussed.

That apart, it is contended that it is just on the eve of any particular year, the Finance Bill is brought—on the 28 February, that is, in advance of the coming year. The Act is passed not for that year but for the coming year. Therefore, there is no harm, if a Bill is introduced in advance of that—February or March—2 or 3 months in advance so as to come into operation from 1957-58. That objection is not also sound.

There is another point so far as that particular matter is concerned. The expenditure could not be incurred in the circumstances and it will be too late to bring in a Bill of that kind to cover the expenditure. It is likely that there might only be a vote on account.

So far as the other objection is concerned, it is that amending provisions of a substantial Act, the Income-Tax Act, provisions for amending the procedure, etc. are included in this—ought to be done by way of a separate Bill and more time and attention ought to be bestowed upon that. I understand from the hon'ble Minister that so far as the deposits are concerned, especially with respect to which a point has been raised by Shri Chettiar—the provision is ancillary or consequential. I do not say that is what he says. The Finance Minister says that in order that no speculation may be indulged in he wants to put this tax so that it may not go from one pocket to another. He thinks that the only way of avoiding it is by imposing this tax and make them deposit the amount and so on. This is a matter which could not be discussed in a minute.

There are some statements here which are not relevant. The hon'ble Minister who has brought this Bill with respect to an emergency according to him defends the clause regarding deposits, etc. Last year, it is true that I said—and I still stick to that view—that in a Finance Bill, only provisions relating to the taxation measures to meet the expenditure that has been voted upon by the House sought to be there. Otherwise, there is no meaning in a Finance Bill. During that discussion opportunity is taken to review the whole administration, whether it has been working right or wrong, whether the funds voted have been handled properly, with respect to the expenditure, whether a year is lean or fat and all that. All these should be taken into account.

So far as this is concerned, that is why though only a few Bills or a few Acts are allowed to be amended, like the Stamp Act, the Postal Act, etc., these are all necessary for the purpose of raising revenue wherever additional tax is put... The postal rates, sea customs rates etc., are improved from time-to-time, they can be improved, and therefore, they are brought under the annual Finance Bill.

I would normally urge upon the Finance Minister, not only he but also all his successors, to see to it that only those provisions

which relate to the raising of taxation should be included in the Bill. The procedure should be followed and no other provisions should be given attention to unless they are absolutely consequential. If we have to provide by way of an amendment to the Income-Tax Act or by way of an amendment to a substantial Act, Government must come forward with an independent measure separately, and the House will have ample opportunity to consider it. But in a Finance Bill those things ought not to be normally included. Even though 17 clauses were included last time by way of an amendment to the Income-Tax Act, I still hold the view but for the point having been raised and it is a little too late now. I would urge upon the hon'ble Minister to see that the House should bestow sufficient attention upon all these matters and there ought not to be any impression in any quarter that without knowledge of the full import of the discussion anything was brought in this House. That ought to be avoided, at any cost wherever it can be avoided.

But in the peculiar circumstances of this particular case and having heard the hon'ble Finance Minister that the clauses that touch or seek to amend the Income-Tax Act are only consequential, and also in view of the fact that we are not meeting again shortly and though this Bill is intended to come into operation from the beginning of 1957-58, it in a way touches upon the income from 31 March 1956 onwards, I do not consider that there is any point of order. I am not going to allow that. I will now allow discussion both on the Bills as also on the motion for reference to Select Committee."

[*L.S. Deb.*, 7 December 1956, cc. 2079-2105]

Point No. 4

The Government has to see that the discussion on the Budget takes place in the Lok Sabha first and then in the other House because it is the privilege of the Lok Sabha to discuss it and make modifications.

On 2 March 1963, the Minister of Parliamentary Affairs (Shri Satya Narayan Sinha) announced the Government Business in the House for the week commencing 4 March 1963 which included further discussion on the Railway Budget for 1963-64; Discussion and voting on Demands

for Grants (Railways) for 1963-64; Supplementary Demands for Grants (General) for 1962-63 and General Discussion on the General Budget for 1963-64. At this, a member (Shri Hari Vishnu Kamath) rising on a point of order *inter alia* expressed concern over the fact that both the Budgets *viz.* the Railway as well as the General Budgets were being first discussed in Rajya Sabha and then in Lok Sabha. Shri Kamath submitted to the Speaker to direct the Government, the Finance Minister and the Minister of Parliamentary Affairs to ensure that the both Railway Budget and the General Budget are discussed first in Lok Sabha, which has the prior right to have a discussion on them.

The Speaker, Sardar Hukam Singh gave the following ***ruling***:

"...I also feel that certain rights and privileges enjoyed by the members of this House should not be curtailed in any manner. The convenience of the Government alone cannot be a valid reason for curtailing the privileges of this House. Government has to see that the discussion on the Budget takes place here first and then in the other House because it is the privilege of this House to discuss that and to make modifications or sanction the grants without any modifications. If they discuss it first and then we follow it, it would amount to reversing the process. Therefore, it would not be possible for this House to agree to the curtailment of its rights. I have already drawn the attention of the Government to this matter and, I am sure, it will not happen again."

[*L.S. Deb.*, 2 March 1963, cc. 1740-1741]

Point No. 5

The Government can come before the House with more than one annual financial statement and it is not a violation of article 112 of the Constitution.

On 7 September 1974, at the time of discussion and voting on the Supplementary Demands for Grants (Railways) for 1974-75, a member (Shri Madhu Limaye) rising on a point of order *inter alia* submitted as to whether the Minister of Railways can bring more than one annual financial statements before the House.

The Deputy Speaker, Shri G.G. Swell, thereupon, gave the following ***ruling***:

"Here is a very ticklish constitutional question raised by Mr. Limaye. I am not saying that I am going to obstruct the whole thing. But let us look at it very carefully. As far as I can understand what Mr. Limaye is saying is this. He refers to article 112 of the Constitution and he says that according to the article, there can be only one financial statement in course of a year. That is his contention No. 1.

He also refers to Rule 213 of our House which empowers the Government to come before the House with more than one financial statement in the course of a year... Mr. Limaye posed the question whether the rules could override the Constitution. That is his submission.

The rules say that the Budget can be presented in more than one part. That means, he can come to the House more than once with the Budget. I am taking the first point, whether the rules can override article 112 of the Constitution or not. That is a very-very ticklish question. Why this Parliament in all its wisdom has made these rules despite this clear provision in the Constitution? Whether the different parts of the Budget coming in a year are a series or concatenation of the same annual financial statement? Whether that is the interpretation and that is why the rules allow the Government to come to the House more than once with the Budget. They must have taken that into consideration that the statement is one and these are a series of the same statement. That may be one interpretation.

I would like Mr. Limaye to refer to article 118 of the Constitution which also gives this House the power to make its own rules and regulations to conduct the proceedings of the House. Acting under article 118, each House of Parliament may make rules for regulating the proceedings subject to the provisions of the Constitution.

Now the Parliament in its wisdom has made these rules. It may be that we are not here to interpret the Constitution. But they have made these rules and we have followed them. It may be done on the understanding that these different financial statements are, as I said, a concatenation of the same annual financial statement. It is not a question of interpreting the Constitution.

Now, I think, we can dispose it of in this way. We have been following this. At this moment, unless we go into the question very carefully; at some later date, we will have to do what we have been doing. You have mentioned about the Demands of the Railways. Your main point is that while we discuss the Demands of the Railways, we can reject the demands, we can reduce them. It is within our power. In the case of the Finance Bill where certain taxation proposals come we can discuss them, we can throw them out; we can accept or reject them."

[*L.S. Deb.*, 7 September 1974, cc. 183-185]

7

CALLING ATTENTION

SYNOPSIS OF RULE 197

- A member may call the attention of the Minister with the previous permission of the Speaker on a matter of Urgent Public Importance.
- The Minister may make a Statement or ask for time for making the Statement later.
- No member can give more than two Notices for any one sitting.
- There is no debate.
- Each member whose name figures in the List of Business may ask a clarificatory question and the Minister shall reply at the end of all such questions.
- Not more than five members are shown in the List of Business.
- A ballot is held to determine the priority of each Notice given on the same subject before 10.00 hours on that day.
- Notices received till 10.00 hours on the last day of the week are valid for the whole week.
- Notices received after that will be valid for the next week.
- *Inter se* priority of the members giving Notices is determined by ballot.
- Not more than two matters shall be raised in the same sitting.
- However, the second matter can not be raised by the same members who have raised the first matter.

- All the notices given during a week which have not been taken up lapse at the end of the week.
- But the notice admitted by the Speaker for the next week does not lapse.
- A Notice referred to a Minister for facts by the Speaker also does not lapse till it is disposed of by him.

SYNOPSIS OF DIRECTION 47A

In case two calling attention matters are listed for a day; for the first matter the Minister concerned may make a brief Statement; for the second matter, Statement of the Minister concerned may be laid on the Table; copies of Statement so laid are made available to members in advance in whose name the item stands in the List of Business; The Minister shall reply in such cases at the end to the clarificatory questions; In case Prime Minister is to make a Statement in one of the matters, that matter is given *inter se* priority.

Point No. 1

The case of Law and Order created by Police inside the Assembly can be a matter of Calling Attention in Parliament.

On the 1 August 1969, the Deputy Speaker, Shri R.K. Khadilkar, referred to notices tabled by members on the unprecedented and outrageous attack by policemen in the West Bengal Assembly premises on 31 July 1969 and observed that he was considering admission of a Calling Attention on the subject later on. Objections were raised by several members that since the law and order was a State subject, the matter could not be discussed in Lok Sabha. Thereupon, the Deputy Speaker ***observed*** as follows:—

> "Shri Banerjee* has raised the point that this is a State matter. I fully recognise it. But he should bear in mind one thing. When the policemen entered the Punjab Assembly, we had a discussion on it. Apart from it, not going into the constitutional niceties of this point, can this House remain totally indifferent to this? ...Is it the way to interpret the Constitution? I do not think that was the intention of the Constitution makers. Therefore, I have permitted it."

* Referring to Shri S.M. Banerjee, member, *L.S. Debs.* 1 August 1969, cc. 232-239 and 4 August, 1969, c. 236.

A Calling Attention notice regarding the vandalism by policemen in West Bengal Assembly premises was accordingly admitted and put down in the List of Business for 4 August 1969. On that day when the item was reached several members raised objections regarding the admission of the calling attention. The Deputy Speaker, Shri R.K. Khadilkar ruled out the objections and ***observed***:

> "The main question which was raised and on which basis I had permitted was that the sanctity of the Legislature had been violated, that is the sanctity of the Legislature which is the custodian of the provisions of the Constitution. That was the basis on which I had permitted it."

[*L.S. Debs.*, 1 August 1969, cc. 232-239 and 4 August 1969, c. 236]

Point No. 2

A Statement under Rule 197 need not be confined to facts alone. It can include opinions, conclusions and decisions of the Government.

On 27 June 1967, in his Statement made in response to Calling Attention Notice regarding the reported assault on a member (Shri Bimalkanti Ghosh) in his constituency in West Bengal, the Minister of Home Affairs (Shri Y.B. Chavan) stated as follows in the last paragraph:—

> "This severe assault on a member of this House belonging to the Congress Party has come after several other incidents of assault on Congressmen and Trade Union opponents of a major partner in the West Bengal Ministry. If this kind of violence against political opponents of a party in power continues, orderly and civilised political life would become impossible. It is, therefore, a matter of grave concern to Government and I am confident that this House will share this concern and join me in condemning it unreservedly."

Points of order were raised by a number of members that the above portion of the Statement by the Minister contained matters beyond the scope of Rule 197 and reference to matters which were *sub judice* should

be expunged. The Speaker, Shri N. Sanjiva Reddy held over his ruling on that day and ***ruled***, as follows on 28 June 1967:

"Yesterday after the Home Minister made a statement in response to a Calling Attention Notice regarding assault on Shri B.K. Ghosh, M.P. a point of order was raised by Shri H.N. Mukherjee that it was not open to the Home Minister to add observations of his own when the matter was *sub judice.* He further asked whether it was proper for the Home Minister to make statements casting reflections upon particular parties. He was supported by Shri S.N. Dwivedy, Shri N.G. Ranga, Shri Uma Nath, Shri S.M. Banerjee, Shri S.A. Dange and Shri A.B. Vajpayee. The members urged that the Speaker should use his powers to expunge the observations of the Home Minister from the proceedings of the House. Shri N.C. Chatterjee, further to that Point of Order, stated that under Rule 197 only a statement of facts could be made and no debatable matter could come in. On the other hand, Shri P. Venkatasubbaiah stated that Home Minister was within his competence to draw such conclusions as he thought fit. He was supported by Shri Randhir Singh.

The Law Minister stated that Rule 197 did not say that the Statement should be on facts only and that the Home Minister's observations that the attack on the M.P. was regrettable was not barred by the rule. The Home Minister while clarifying his Statement said that what he wanted to condemn was violence and not any particular incident.

The following issues arise:—

(i) Whether a Statement under Rule 197 should be confined to the facts only and should not contain any observations or *conclusion that a Minister may like to make;*

(ii) Whether such a Statement should contain any matter which is debatable and on which opinions may be divided in the House;

(iii) Whether the Speaker should order expunction of any words and phrases from the proceedings which on examination relate to a matter which is pending judicial decision before a Court of Law.

I give my decisions on the above points *seriatim*:—

(i) A Statement under Rule 197 is not in the nature of an answer to a question and therefore it need not be confined to facts alone. The Statement can include opinions, conclusions and decisions of the Government or the Minister and it is not necessary that it should be of a nature on which there should be complete agreement in the House. Similarly the questions which are asked on such a Statement are not confined to matters of information only. Sometimes questions on such a Statement are in the nature of suggestions, criticisms and counter-opinions and therefore there is no restriction that the original Statement as well as the subsequent questions and answers should be confined to mere facts alone. The practice so far in this House confirms this.

(ii) It follows from my above observations that such Statements are open to debate. The only restriction is that there shall be no debate on such Statements at the time they are made. There is no prohibition against a notice for a debate on a matter contained in the Statement of a Minister in response to a Calling Attention Notice to a subsequent date being given. Hence if a section of the House is not in agreement with the opinions or conclusions given by a Minister in his Statement they are at liberty to rise a debate and to have the opinion of the House recorded on a proper motion or question before the House.

(iii) Rule 380 reads as follows:—

'If the Speaker is of opinion that words have been used in debate which are defamatory or indecent or unparliamentary or undignified, he may, in his discretion, order that such words may be expunged from the proceedings of the House.'

It is very clear. I have quoted the rule:

A matter which is sub judice and which has been referred to in a speech or debate or in any statement in the House does not fall within the ambit of this rule and therefore the Speaker has no power to order expunction of any words or phases which may relate to a matter which is pending for a judicial decision in a Court of Law.

He has no power. However, under Rule 352(1), a member, while speaking, shall not refer to any matter of fact on which a judicial decision is pending. It is 'shall not'. It is, therefore, necessary for a member who is speaking not to refer to any such matter and if he insists on referring to such a matter, the Speaker may ask him to discontinue his speech forthwith. The Speaker may also observe that the member should not have referred to a matter which was *sub judice*. Both the Statements will then be on record but the Speaker cannot and should not order expunction of such words. In the present case, however, I find from the statement of the Home Minister that the position at present is that the police have started investigation on complaints made to them and the Statement has not disclosed that any criminal proceedings have in fact been instituted in a Court of Law. I do not, therefore, agree that I am called upon or have the authority to expunge anything from the Statement of the Home Minister.

[*L.S. Debs.*, 27 June 1967, cc. 7825-7847
and 28 June 1967, cc. 8116-8120]

Point No. 3

The arrest of a person cannot be the subject-matter of a Calling Attention Notice.

On 24 March 1964, in the context of request made by a member (Professor N.G. Ranga) for admitting a Calling Attention given notice of by him regarding the arrest of another member (Shri Golwalkar), the Speaker, Sardar Hukam Singh ***ruled*** as under:

"That is exactly what I am going to decide forever. I want to bring it to the notice of the House that I have decided so many times not to allow such Calling Attention Notices to be moved here. I rule it once for all, and I seek the co-operation of all the members, that the arrest of an individual—of course the case of a member of Parliament could be different and that could be considered separately—whoever he might be, however big he might be, whatever sympathies we might have with him, cannot form the subject-matter of a Calling Attention Notice. Therefore, I will request the hon'ble members not to give notices on that."

[*L.S. Deb.*, 24 March 1964, cc. 7145-7147]

Point No. 4

Questions cannot be combined. Only one question can be asked.

On 22 July 1977, during clarificatory questions on the Calling Attention Statement *re*: disappearance of groundnut oil from the market and abnormal rise in price thereof, when a member (Shri Vayalar Ravi) made a lengthy submission and did not confine himself to one clear question, the Speaker, Shri K.S. Hegde asked the member to state the question as no debate was allowed on a Calling Attention Statement. When the member asserted that clarificatory questions were in the nature of a "mini debate", the Speaker ***observed***:

> "...The rule about calling attention provides that there shall be no debate on such Statement at the time it is made but each member in whose name the item stands in the list of business may, with the permission of the Speaker ask a question. Under the rules hereafter only one question will be allowed. There is no combining of questions. ...No precedent can overrule the rule."

[*L.S. Deb.*, 22 July 1977, cc. 239-249]

Point No. 5

A notice to consider the constitutional issues and a matter of national importance arising from the action of the Presiding Officer of a State Legislature is admissible.

A Calling Attention Motion in the name of a member (Shri Pattiam Gopalan) and four other members regarding the reported refusal to administer the oath/affirmation to some members of Uttar Pradesh Legislative Assembly in Urdu language was admitted and listed in the Revised List of Business for 20 March 1969. When the item was reached, a member (Shri K. Suryanarayana) objected to the admission of the Calling Attention on the plea that it was not proper to discuss the decision of the Presiding Officer on the floor of the House. Several members made brief submissions on the point. The Speaker, Shri N. Sanjiva Reddy over-ruled the objections and ***observed*** as follows:—

> "It is not a question of our discussing the Speaker's action there. The question is whether anybody can take the oath or affirmation in his own mother tongue. Here we allow all languages. Some take

in Tamil, some in Bengali, some in Telugu, some in Kannada and so on. ...It is not the Speaker's action at all that we are considering. The U.P. Assembly has full right to frame its own rules. As Parliament we have to take notice that what they are doing is the proper thing for unity of the country, for Hindi and for integration. Without going into the action of the Speaker and other things I thought if we discuss this broad question before this House it would be better."

[*L.S. Deb.*, 20 March 1969, cc. 193-201]

8

CENSURE MOTION AGAINST MINISTERS*

Point No. 1

Censure Motion is distinct from a Motion of No-Confidence. There are no provisions in the rules dealing with Censure Motions.

(i) Censure Motions are treated as *No-Day-Yet-Named* Motions,

(ii) It is left to the Government to find time and fix discussion thereon according to their convenience,

(iii) Speaker cannot give priority to such motions.

During the Tenth Session of Third Lok Sabha a member (Dr. Ram Manohar Lohia) tabled a motion regretting certain statements of the Prime Minister and deploring Government's failure to take action on certain matters. It was admitted by the Speaker as a *No-Day-Yet-Named* Motion.

On 18 December 1964, after the Minister of Parliamentary Affairs (Shri Satyanarayan Sinha) announced the Government Business for the last week of the Session, Dr. Lohia pressed that time might be found for discussion on what he called his "censure motion". The Speaker, Sardar Hukam Singh thereupon observed that unlike a Motion of No-Confidence for which discussion had to be fixed within a certain period, there was no such provision for a Censure Motion. As such it was not possible for him to give priority to Dr. Lohia's motion. Censure Motions were treated as *No-Day-Yet-Named* Motions.

* There are no provisions in the *Rules of Procedure and Conduct of Business in Lok Sabha* dealing with Censure Motion.

On 21 December 1964, when Dr. Lohia again urged that his motion must be discussed during the session, the Speaker ***ruled***:

"There is one No-Confidence motion. If notice of it is given, that must get priority and immediately a decision has to be taken when it is to be discussed within a specified period. There is another which is only a censure for a particular act. There is no other provision except that it is to be enumerated in the category of '*No-Day-Yet-Named Motion*'. It has recently happened in England also. There was a motion against Mr. Wilson. That has not been discussed. He has not allowed time for that. What my duty or responsibility is, that should be distinguished from the one that the Government has. I have only to see whether *prima facie* it is to be admitted or rejected. That everyone knows and I made it clear that I have admitted it. Then, it is for the Government to find time for all these motions..."

[*L.S. Debs.*, 18 December 1964, cc. 5701-5702; and 21 December 1964, cc. 5912-5925]

Point No. 2

A Censure Motion can be moved against an individual Minister.

On 4 August 1977, a motion* regarding disapproval of the conduct of the Minister of Home Affairs (Shri Charan Singh) was included in the List of Business for the day.

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*Motion:

"That having considered the acts of commission and omission on the part of the Home Minister with respect to the following matter, namely:—

(a) That he has been misusing the Floor of the House to make baseless and irresponsible statements as instanced among others, by his allegations on the 13 July, 1977 while replying to the debate on Demands for Grants for the Home Ministry that there was a preparation and thinking on the part of the previous Government to shoot the political leaders in detention.

(b) That he, misusing his official position meddled with the affairs of independent constitutional bodies as evidenced among others, by his conduct in withdrawing from the file of the Election Commission a letter dated the 5 May, 1977 he had written in his capacity as the Leader of the BLD. This House humbly records its indignation and disapproval of the conduct of the Home Minister."

[Moved by Shri C.M. Stephen, M.P.]

On that day when the item was taken up, several members raised points of order concerning the admissibility of the motion and *inter alia* contended that no such motion could be moved under Rule 184 as the House could not disapprove of the conduct of one individual Minister. Under article 75(3), no single Minister could be held responsible to the House and that a no-confidence motion should have been tabled. Intervening, the Prime Minister (Shri Morarji Desai) observed:

> "We are spending time on debating whether such a motion is in order under the Constitution or not. From the very beginning, I felt personally that if there is to be a censure motion, it should be against the whole Ministry or against the Prime Minister. But I did not want to take shelter under that convention and, therefore, when you admitted it I did not raise any objection. I beg of my friends not to press their objections. Let them raise it and then they will know what it means."

The Speaker, Shri K.S. Hegde thereupon ***ruled***:

> "As soon as this motion came up before me, I myself had doubt whether in view of the joint responsibility of the Cabinet, a Censure Motion could be moved against an individual Minister. I carefully went through our Rules as well as earlier precedents. On examination of the Rules, I did not find any rule either for or against it. In areas which are not covered by rules, I am of the view that I am governed by previous precedents. *I therefore went through previous precedents and in accordance with the previous precedents I came to the conclusion that this motion has to be admitted.* I have therefore admitted it. It is no more open to objection."

[*L.S. Deb.*, 4 August 1977, cc. 295-391]

Point No. 3

The Government has to find time for the Censure Motion to be discussed.

On 19 August 1968, when a member (Shri Madhu Limaye) was called to move the motion listed in his name for the disapproval of the conduct of the Deputy Prime Minister and Prime Minister in connection with Statements of Deputy Prime Minister about his son's business

connections, a member (Shri S.R. Rane) raised a point of order that the motion was inadmissible on the following grounds:

(i) It was not in consonance with the provisions of the Constitution to discuss the conduct of any individual Minister, since under article 75(2) and 75(3) of the Constitution, the Council of Ministers was collectively and not individually responsible to Lok Sabha.

(ii) Even if the motion, as it had been admitted, was classified as No-Confidence in the Council of Ministers under Rule 198, it ought to have fulfilled the requirements and formalities provided under the rules.

(iii) Even under Rule 186(4) and (6) the motion could not be discussed as the matter was not of recent occurance and the subject had also been discussed previously.

The Speaker, Shri K.S. Hegde, thereupon, ***ruled*** as under:

"All the aspects had been considered. It is not as though I just agreed to that. We went into the rules. It is not a No-confidence Motion where I should put it to the House and ask fifty members to rise in their seats. *Here is a censure motion. The Speaker may naturally admit it. But Government must find time. The Leader of the House has to find time for discussion of the motion.* Call it *No-Day-Yet-Named* Motion or whatever it is. Under Rules 184 and 185 there are a number of opportunities for the Speaker to admit a motion. *But time can only be fixed by the Leader of the House and the Government.* In the case of a no-confidence motion, the Speaker has got full power and immediately he puts it to the House and fifty persons get up and then it is discussed. But this is a censure motion which has been admitted and time is found only by the Leader of the House and the Government. Naturally, I secured the consent of the Leader of the House and she has agreed also for this being discussed on a particular date and time. After all, when it is discussed not only there in the House but outside also, in the Press, it is good that it is thrashed out on the Floor of the House and an opportunity

is given to hon'ble members on both sides of the House to speak about it. ... It is a Censure Motion and the Government also has found time. There is nothing illegal in this. And, it is good for the House also to discuss it, instead of some hush-hush or some news, coming up every day which is neither desirable nor good for democracy and the country...

[*L.S. Deb.*, 19 August 1968, cc. 2714-2719]

9

CONSIDERATION OF DEMANDS FOR GRANTS BY DEPARTMENTALLY-RELATED STANDING COMMITTEES (DRSCs)

SYNOPSES OF RULES: 331C, 331E AND 331G

- Rule 331C provides that there shall be Departmentally-related Standing Committees of the Houses to be called Standing Committees. The Ministries/Departments covered under the jurisdiction of each of the Standing Committees are specified in the Fifth Schedule to the Rules.
- Rule 331E provides that the function of each of the Standing Committee would *inter alia* be to consider the Demands for Grants of the concerned Ministries/Departments and make a report on the same to the Houses. The Report shall not suggest anything of the nature of Cut Motions.
- Rule 331G provides the following procedure relating to consideration of Demands for Grants:
    - — After the general discussion on the Budget in the House is over, the Houses are adjourned for a fixed period.
    - — The Committees consider the Demands for Grants of the concerned Ministries during the aforesaid period and submit their report within the period.
    - — The Demands for Grants are considered by the House in the light of the Reports of the Committees.

Point

In the event of consideration and voting of Demands for Grants without being referred to DRSCs, it would be appropriate for the Committees to examine the same.

During the Seventh Session of Fourteenth Lok Sabha, due to rescheduling of the Financial Business, the Lok Sabha considered and voted upon the Demands for Grants (Railways) and the Demands for Grants (General) for the year 2006-2007 before the House adjourned for recess on 22 March 2006.* Rule 331G of the Rules of Procedure and Conduct of Business in Lok Sabha was suspended to facilitate consideration and voting of Demands for Grants without the same being referred to Departmentally-related Standing Committees.

In this context on 11 March, 2006, the Speaker, Shri Somnath Chatterjee gave the following ***ruling***:

> "Hon'ble members, as you are aware, due to rescheduling of the Financial Business, the House would consider and vote the Demands for Grants (Railways) and the Demands for Grants (General) for the year 2006-07 before it adjourns for recess. Although, Rule 331G of the Rules of Procedure has been suspended to enable this House to pass the Demands for Grants without being referred to the concerned Departmentally-Related Standing Committees, the Committees may examine the Demands for Grants of the concerned Ministries during the recess period and make reports."
>
> [*L.S. Deb.*, 11 March 2006, c. 17]

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*Eventually the House adjourned *sine die* on 22 March 2006

10

CUSTODY OF PAPERS OF THE HOUSE

SYNOPSIS OF RULE 383

- The Secretary-General shall have the custody of all records, documents and papers belonging to the House or any of its Committees of the Lok Sabha Secretariat.
- He shall not permit any such records, documents, papers, etc. to be taken from Parliament precincts without the permission of the Speaker.

Point No. 1

Summons sent by the courts for the production of documents of the House should be different from the summons sent to ordinary individuals.

The Committee of Privileges (2nd Lok Sabha) in their First Report regarding the issue of summons to the Speaker by the Additional District Magistrate of Tiruchirapalli for the documents in the custody of the House, recommended the procedure to be adopted for production of documents connected with the proceedings of House before a Court of Law. On 13 September, 1957, the Chairman of the Committee of Privileges (Sardar Hukam Singh) moved the motion that the House do agree with the Report, laid on the Table of the House on 12 September, 1957. A member (Shri Sadhan Gupta), while supporting the motion *inter alia* stated that when some documents in the custody of the House were to be called for in a court, it should be done by way of petitioning the House and the language used should be such as not to offend the dignity of the Legislature.

The Speaker, Shri M.A. Ayyangar ***ruled*** as under:

"Summons sent to ordinary individuals are different from summons to produce documents sent to Collectors and other public officers. They are sent in the form of letter. The same procedure may be adopted here."

[*L.S. Deb.*, 13 September 1957 cc. 13760-13763]

Point No. 2

It is for the House to decide whether the documents are to be sent and in what form they have to be sent.

On 25 April 1958, the Chairman of the Committee of Privileges (Sardar Hukam Singh) moved the following motion:—

"That this House agrees with the Second Report of the Committee of Privileges laid on the Table on the 24 April, 1958."

A member (Shrimati Renu Chakravarty) stated that in the unanimous opinion of the Committee there was nothing in the records of the Lok Sabha Secretariat which was relevant to the sections referred to in the proceedings of the Election Tribunal. She, therefore, suggested that the files in the Lok Sabha Secretariat might not be produced and the Tribunal asked to refer the matter to the Director-General of Supplies and Disposals who probably had the relevant papers.

Another member (Shri Naushir Bharucha) stated that it was not necessary to refer every case of request for production of documents in courts to the Committee of Privileges and the House might revise the procedure approved earlier.

Another member (Shri Surendra Mahanty) stated that it would not be proper to spare officers of the Secretariat to run about from one end of India to the other with documents. He thought that it would be better if a Commission was appointed by the tribunal to take evidence in Delhi.

Another member (Shri Nemi Chandra Kasliwal) stated that it was not open to the Committee of Privileges to go into the question of relevancy or otherwise of the documents. It was for the Tribunal to decide the question. He thought that in accordance with the past precedent, an officer of the Secretariat might be sent to produce the documents.

At this, the Minister of Law (Shri A.K. Sen) stated that on the basis of the procedure obtaining in the House of Commons, U.K., the House had already decided that in cases where records or papers in the custody of Parliament were required to be produced before any Court of Law or Tribunal, it was for the Speaker to nominate a person who would produce them, with the leave of the House. The procedure could not be varied in the absence of any law being made by Parliament under article 105(3) of the Constitution.

The Minister further stated that so far as the relevancy of the document was concerned, it was for the competent authority under the Evidence Act or any other Act obtaining in the particular matter to decide it. It would also not be proper for Parliament to accept such an odious task of deciding in each particular case which document was relevant to the proceedings in a court.

The privilege of Parliament attached to the production of the document and not in deciding whether the document was, in fact, relevant or not.

The Speaker, Shri M.A. Ayyangar, thereupon, gave the following ***ruling***:

> "In a matter of this kind we are governed by the Evidence Act. Under that Act, any court is entitled to summon documents of witnesses—documents both private and public. It is then a matter for the person who appears. He must appear to do so and plead before the court that the document ought not to be looked into, etc. So far as public documents are concerned, it is common knowledge of a practitioner of law that documents can be summoned from any public office, from the Collector, etc. He sends those documents in a sealed cover. If he claims certain privileges, it is open to him to make representations to the court. The court looks into it and decides on such things. If it decides against it, it will exhibit it there, if it is relevant.
>
> We are in a little better position than a public office having particular documents. But in these matters we are governed by some precedents of the House of Commons. There they say that it is the privilege of the House to send the document. As a matter of fact, even with

respect to witnesses who are members of Parliament and who are called upon by the other House or by any other Legislature to give evidence, the matter coming up in the form of another Report and that will be placed before the House for consideration. If any member of Parliament is asked to be a witness in any of the legislatures, then the permission of the House has to be taken, besides the other gentleman consenting to appear as a witness. But it is for the court to decide. It is open to a court to summon any document. It is for the House to decide as to whether these documents are to be sent and in what form they have to be sent. Therefore, it is not the right peculiarly of the Speaker, as in some other cases, such as the Collector, etc. who decide. If the House so chooses to empower the Speaker to decide these matters, that is another thing. We are making a departure from the practice in the House of Commons.

Under the Evidence Act, no one shall be permitted to give any evidence derived from any public official records relating to any affair of the State except with the permission of the Officer or the Head of the Department concerned who shall give or withhold such permission as he thinks fit. That is according to Section 123 of the Evidence Act. According to Section 124, no public officer shall be compelled to disclose communications made to him in official confidence when he considers that the public interest would suffer by their disclosure.

These are matters in which some kind of discretion has to be exercised and some enquiry has to be made. Therefore, the Speaker naturally sends it as soon as it comes up, to the Privileges Committee to examine what has to be done, so far as this matter is concerned. Therefore, I do not propose taking the responsibility of saying whether this ought to be disclosed or not, whether you should claim privilege so far as this document is concerned, whether this document is in public official record or relates to an affair of the State. All these are matters in which I would certainly like to have the advice of the competent authority—the Privileges Committee of the House. It has made a report. It could have said: withhold. No power on earth could then do anything. It is for them to decide whether that particular document is relevant or not relevant,

necessary or not necessary. As a matter of fact, nowhere is it stated that the Tribunal should state for what purpose it is required. The document is called for. They need not have even said that they wanted this file for examining how far it was useful. It is for them to decide. Therefore, under those circumstances, let us not be under the impression that we will withhold or prevent law from having its course.

It is said by Shri Mahanty that we must have allowed them to send a commission. Even then this procedure is inescapable. If the Commission comes here and wants to examine Shri Kaul or the Secretary or the Joint Secretary, are they to do so on their own without the permission of the House? Even then they have to take my permission and I have to take the permission of the Privileges Committee or the advice of the Privileges Committee. The thing is inescapable there too.

Therefore, the only question is whether a Commission should come all the way. What is the harm if I send a clerk from here? I cannot understand what is its meaning. After all, all these courts have been appointed in accordance with the Constitution which we frame and in accordance with the Constitution we are legislating from day to day. We are the persons who legislate and they are the persons that interpret the legislation. In those circumstances, let us not be under the impression that one is inconsistent with the other. All of us are engaged in the same common purpose. Therefore, as both the Honourable Deputy Speaker and the Honourable Law Minister have pointed out, this is the only course that has to be adopted. I shall see if in future automatically the Speaker or the Deputy Speaker may take the responsibility of sending the documents except in cases where they want the advice of the Privileges Committee. That will be for the future. I will consider that."

[*L.S. Deb.*, 25 April 1958, cc. 11484-11497]

11

CUT MOTIONS*

SYNOPSES OF RULES 209-212

- A Cut Motion may be moved to reduce the amount of demand.
- There are three types of Cut Motions, *viz.*:
  - (i) Policy cut;
  - (ii) Economy cut; and
  - (iii) Token cut.
- A notice of Cut Motion may be allowed only if it satisfies the following conditions, namely:
  - (i) it shall relate to one demand only;
  - (ii) it shall be clearly expressed and shall not contain arguments, inferences, ironical expressions, imputations, epithets or defamatory statements;
  - (iii) it shall be confined to one specific matter;
  - (iv) it shall not reflect on the character or conduct of any person whose conduct can only be challenged on a substantive motion;
  - (v) it shall not make suggestions for the amendment or repeal of existing laws;
  - (vi) it shall not refer to a matter which is not primarily the concern of the Government of India;

*Cut motions were adopted by the House on a number of occasions. Some such cut motions, which are only illustrative and not exhaustive have been included in the Appendix to this Chapter.

(vii) it shall not relate to expenditure charged on the Consolidated Fund of India;

(viii) it shall not refer to a matter under adjudication in a Court of Law;

(ix) it shall not raise a question of privilege;

(x) it shall not revive discussion on a matter which has been discussed in the same Session and on which a decision has been taken;

(xi) it shall not anticipate a matter;

(xii) It shall not ordinarily seek to raise a discussion on a matter pending before any Statutory Tribunal or Statutory Authority performing any judicial or quasi-judicial functions or any Commission or Court of Inquiry appointed to enquire into or investigate a matter; and

(xiii) It shall not refer to trivial matter.

- The notice of the Cut Motion is to be given one day previous to the day on which the demand is under consideration.
- The Speaker has the power to admit or not to admit a notice. He may disallow any notice of Cut Motion when, in his opinion—

(i) The right of Cut Motion is being abused;

(ii) It is calculated to obstruct or prejudicially affect the procedure of the House; and

(iii) It is in contravention of the Rules of Procedure.

SYNOPSIS OF DIRECTION 43

When a Cut Motion is moved but not put to the vote of the House by the Speaker and the original motion is passed by the House, the cut motion shall be deemed to have been negatived by the House.

Point No. 1

A general Cut Motion cannot be allowed covering all the demands.

On 14 March 1922, after the House considered the Cut Motions for and voted the list of Demands relating to Budget, a member

(Dr. H.S. Gour) moved a Cut Motion, 'that all demands be reduced by 10 per cent'. On this, another member (Sir Malcolm Hailey), rising on a point of order, wanted to know whether the reduction should be voted on each clause or whether an omnibus Resolution like the one moved was a legitimate form of procedure. The President*, Sir Frederick Whyte, thereupon, ***ruled*** as follows:

> "A motion of this kind cannot be put from the Chair. The only motions which can be put from the Chair are those which refer to each individual grant.
>
> *** *** ***
>
> The motion as it stands is not in order. A general motion cannot be taken under an individual demand for grant."

[*L.A. Deb.*, 14 March 1922, p. 3047]

Point No. 2

A Cut Motion is not necessarily a motion for censure of the Government.

On 13 March 1939, a member (Sir Ziauddin Ahmed) moved a Cut Motion relating to inadequate representation of Muslims in Central Services other than Railways. Several members took part in the discussion that followed and the Home Member (Sir Reginald Maxwell) also spoke on the demands of the Home Department to highlight the need to find new avenues for the recruitment of Muslims in Government Service. In view of the assurance given by the Home Member, the member withdrew his motion. Thereafter, the President, Sir Abdur Rahim gave the following ***ruling***:

> "The Chair may mention at the same time that so far as these cut motions are concerned, *they are not necessarily motions for censure*. The practice has always been to raise questions for discussions as regards the working of the administration by a token cut like this. Though ordinarily a cut motion is intended by way of censure, it need not necessarily be so."

[*L.A. Deb.*, 13 March 1939, pp. 1946-1994]

*The Speaker of the Legislative Assembly was then called the President.

Point No. 3

The Cut Motions which are extraneous to the subject-matter of the demand are out of order.

On 6 March 1959, when the House was considering the Demands for Supplementary Grants (Railways), a member (Shri T.B. Vittal Rao) wanted to know as to why Cut Motions regarding certain surveys of railway lines were taken up and certain others left out. The Deputy Speaker, Sardar Hukam Singh, who was in the Chair, gave the following ***ruling***:

> "I have received notices of several Cut Motions. There are several cut motions that are out of order. The following cut motions are out of order as they are extraneous to the items which constitute the demands.
>
> *** *** ***
>
> The Cut Motions should relate to the surveys that are mentioned here. If he has certain other survey in mind, that would be extraneous to the demand."

[*L.S. Deb.*, 6 March 1959, c. 4836]

Point No. 4

(i) A Cut Motion (Policy cut) amounts to censure of the Government.

(ii) A Cut Motion seeking to censure the Government for not doing a thing which, if done, would amount to overriding a law passed by Parliament, is not in order.

On 20 August 1957, during the course of consideration of Cut Motions on Demands for Grants by the House, the Speaker desired to know whether any member wanted any particular Cut Motion to be put to the vote of the House. On this, a member (Shri Yadav Narain Jadhav) put the Cut Motion No. 200 which he had tabled earlier. The

Speaker, Shri M.A. Ayyangar allowed the Minister of Home Affairs (Pandit G.B. Pant) to speak on the subject first and then gave the following ***ruling***:

"I would like to know from the hon'ble member who has tabled the Cut Motion No. 200, Shri Jadhav, as to how this is in order. It reads:

Disapproval of Policy.

'That the demand under the head Miscellaneous Departments and Expenditure under the Ministry of Home Affairs be reduced to Re. 1 (Failure to form unilingual States of Maha Gujarat and Samyukta Maharashtra)'.

As the law stands at present if this is passed, it is a censure on the Government for not having broken the law. Therefore. it is out of order.

*** *** ***

... So far as the Government is concerned, an act has been passed by the Parliament and they are only to execute what we have done. Shall we ask them to ride over our heads when we have taken a particular decision? Assuming that the Opposition had carried a Bill through, is it open to anybody to move a Cut Motion saying that the Government has not contravened that Act? ... I am sorry. It amounts to a censure for not overriding an Act. ... I am exceedingly sorry. I have to disallow this Cut Motion."

[*L.S. Deb.*, 20 August 1957, cc. 8988-8989]

Point No. 5

A Cut Motion dealing with a very general subject cannot be allowed.

On 25 February 1942, a member (Shri N.M. Joshi), moving a Cut Motion, "that the demand under the head 'Railway Board' be reduced by Rs. 100," stated that the notice of the cut motion was given in order to bring to the attention of the House some of the grievances of the

employees of Indian Railways. Mr. President, Sir Abdur Rahim gave the following ***ruling***:

> "I must point out to the hon'ble member that the object of Cut Motions is to discuss some specific matters. The hon'ble member's motion refers to the grievances of the employees of Indian Railways. I believe that in the last Session pointed attention was drawn to this fact, and it has been ruled by the Chair before that the question to be raised under a Cut Motion should be definite, and that it should raise one particular question and should not be a roving motion like this."

[*L.A. Deb.*, 25 February 1942, p. 535]

Point No. 6

The mover of a Cut Motion does not have a right to reply.

On 27 February 1936, the House was considering the Cut Motions relating to the List of Demands in the Railway Budget, a member (Sir Abdul Halim Ghuznavi) moved a motion relating to the Dacca-Aricha Railway. On this, a member (Mr. F.E. James) submitted that before the question of vote arose he would like to make three short observations. On this the President, Sir Abdul Rahim ***ruled*** :

"There is no right to reply"

MR. ABDUL MATIN CHAUDHURY: Who rose on a point of order referred to a ruling of Sir Ibrahim Rahimtoola, when he was President of the Assembly, that in Cut Motions there was a right of reply.

THE PRESIDENT hereupon observed: *"That is not the general practice."*

[*L.A. Deb.*, 27 February 1936, pp. 1747-1748]

Point No. 7

(i) A Cut Motion cannot be moved when there is no time for discussion or division.

(ii) The notice of the motions to be moved is given to the Government.

On 25 February 1942, when the House was considering the List of Demands in the Railway Budget, a member (Shri Jamnadas M. Mehta)

wanted to move another Cut Motion (in addition to the motion he had moved earlier) and said that he would move the motion within four minutes, which were allotted to him by the President. On this, the President, Sir Abdur Rahim gave the following ***ruling***:

> "That can serve no purpose... I cannot allow the hon'ble member to move any other Cut Motion now, because there can be no division or discussion on it."

*** *** ***

Again on 26 February 1942, when the member (Shri Jamnadas M Mehta) wanted to move a motion under the head "Working Expenses–Miscellaneous Expenses" in the Railway Budget, the President said that all those motions were already called and no member got up then and gave the following ***ruling***:

> "It is the practice to give notice to the Government of the motion that is to be moved. Otherwise, it is not expected that the Government will be prepared to meet all the motions of which notice has been given... This is the practice. If the hon'ble member does not know, it is his fault."

[*L.A. Debs.*, 25 February 1942, p. 513 and 26 February 1942, pp. 600-601]

Point No. 8

The entire policy and the principles cannot be the subject matter of a Cut Motion on the Supplementary Demands.

On 23 December 1949, after the Question Hour was over, the House took up for consideration the first Demand, listed for the day, in the Supplementary Demands for Grants: "that a supplementary sum not exceeding Rs. 2,56,85,000 be granted to the Governor General to defray the charges which will come in course of payment during the year ending the 31 day of March 1950, in respect of 'Customs'." While putting the motion before the House, the Speaker, Shri G.V. Mavalankar made the following ***observation***:

> "Now with reference to this motion and certain other Cut Motions in respect of the demands, I find that hon'ble members have tabled

some cut motions in ignorance of the exact scope of discussion over these demands. I might just invite their attention to a previous ruling in this House wherein I had stated that these are Supplementary Demands, and in the case of original Demands, for whatever objects they were made, the principle as well as the policy of those demands had been discussed thoroughly by the House, at the time the Budget was sanctioned in respect of those demands as also again at the time of the Finance Bill. Any further discussion over the whole demand either in respect of the policy pursued or of the principles will be nothing but a repetition of the same debate over and over again. It is, therefore, that the scope of the discussion will be restricted only to such new things or new items as had not come up for discussion before the House when the Budget was voted upon. That is the principle on which the scope of discussion is restricted.

*** *** ***

A reference to the Demand will show that the additional sum is required for the payment of ...compensation to the Government of Saurashtra. ...All these questions which are sought to be raised by the Cut Motions refer to something about the Department, their policy or the way in which the Department is getting on and all that. That is entirely irrelevant for the present purpose. I do not, therefore, propose to allow these Cut Motions. ...

*** *** ***

... I am merely referring to the Cut Motions which are out of order because they try to deal with the policy which is already discussed before. None of these Cut Motions say that they want to discuss the propriety or otherwise if the agreement entered into with the Saurashtra Government. ..."

[*C.A. (Leg.) Deb.*, Part II, 23 December 1949, pp. 991-992]

Point No. 9

Approximate amount to be economised must be given in motions for 'Economy Cut'.

On 17 December 1956, during the discussion on the Supplementary Demands for Grants (General), 1956-57, a member

(Shri M.S. Gurupadaswamy) sought to move an Economy Cut under the demand in respect of limiting the size of the Cabinet. He moved the following Cut Motion:

"That the Demand for a Supplementary Grant of a sum not exceeding Rs. 4,56,000 in respect of 'Cabinet' be reduced by Rs. 1,000."

The Speaker, Shri M.A. Ayyangar, disallowed the Cut Motion and ***ruled***:

"... There are three kinds of cuts—one relating to policy, the other relating to individual grievances and the third Economy Cut. With respect to an Economy Cut the amount that is given must approximately, or as far as possible and as nearly as possible, tally with the amount to be economised."

[*L.S. Deb.*, Part II, 17 December 1956, cc. 3166-3184]

Point No. 10

Making Reference to Cut Motions on the Order Paper before they are moved in the House, is permissible.

On 23 July 1957, the Prime Minister (Pandit Jawaharlal Nehru) initiating discussion on the Demands for Grants under the control of the Ministry of External Affairs made a reference to the Cut Motions given notice of by members which were on the Order Paper for that day. On a point of order being raised by a member (Shri Jaipal Singh) that the Cut Motions could only be discussed after they had been moved formally by members, the Speaker, Shri M.A. Ayyangar ***ruled***:

"The Cut Motions have already been given notice of. They are in the Order Paper. Hon'ble members will be given an opportunity to choose from among those of which notice has been given. Such of the Cut Motions which they think are necessary and in the time allotted may be moved and referred to in the House. No member is prevented in anticipation from referring to all the Cut Motions in general or groups and categories. That is what the hon. Prime Minister is doing."

[*L.S. Deb.*, 23 July 1957, cc. 4733-4735]

APPENDIX

CUT MOTIONS ADOPTED BY THE HOUSE ON A NUMBER OF OCCASIONS

On 22 February 1939

Maulvi Muhammed Abdul Ghani, Member of the Legislative Assembly moved the following Cut Motion,

"That the demand under the head 'Railway Board', be reduced by Rs. 100 (To discuss inadequate representation of Muslims in Railway Services)."

Mr. President (Sir Abdur Rahim) put the motion to vote and it was adopted.

On 22 February 1939

Mr. Muhammed Azhar Ali moved the Cut Motion,

"That the demand under the head 'Railway Board' be reduced by Rs. 100 (To discuss the detailed administration and policy of the Railway Board)."

The motion was put by the President (Shri Abdur Rahim) and was adopted by the House.

On 24 February 1939

Mr. K. Santanam, Member moved the following Cut Motion,

"That the demand under the head 'Railway Board' be reduced by Rs. 70,000 (Economy)."

At 5 o'clock, the President (Shri Abdur Rahim) cut short the speech of the member (Minister) and put the question as follows,

"That a reduced sum not exceeding Rs. 9,39,498 be granted to the Governor-General in Council to defray the charges which will come in course of payment during the year ending 31 day of March, 1940 in respect of the Railway Board."

The motion was adopted.

On 14 March 1922

Shri Vithal Das D. Thackersey, member of the Assembly moved the following Cut Motion,

"That the demand under head 'Customs' be reduced by Rs. 3,52,900."

The motion was put by Mr. President. 63 voted in favour and 34 voted against.

The motion was adopted.

On 16 March 1922

Rao Bahadur T. Rangachariar, member, moved the following Cut Motion,

"That the demand under head 'General Administration' be reduced by Rs. 5,43,800."

The motion was adopted.

On 12 March 1929

A Cut Motion,

"That the Demand under the head 'Executive Council' be reduced to one rupee"

was moved and was adopted by 63 Members in favour and 52 against.

Mr. President: Do the Government desire that the Chair should put the amended motion for one rupee to the vote?

The Hon. Sir George Schuster (Finance Member): I think we might make hon'ble members a present of one rupee.

Mr. A. Rangaswamy Iyengar: The vote as now reduced has to be put to the House.

Mr. President: If the Government do not want the one rupee, how can I put it?

Mr. R.K. Shanmukhamchetty: A motion has been made by the Finance Member. Unless he withdraws it, the motion, as amended must be put to vote.

Mr. President: I will consider the point without deciding it at this moment.

Mr. President: The question is:

"That a reduced sum not exceeding rupee one be granted to the Governor-General in Council to defray the charges which will come in course of payment during the year ending 31 day of March, 1930 in respect of Executive Council".

The motion was adopted.

12

ELECTION COMMISSION

CONSTITUTIONAL PROVISIONS

Article 324 (1) of the Constitution provides that the superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the Offices of President and Vice-President held under the Constitution shall be vested in a Commission known as Election Commission.*

Point No. 1

The House cannot make any comment upon the actions and decisions of the Election Commission.

On 14 December 1988, as soon as the House met, a member, (Shri Basudeb Acharia) stated that the Election Commission had announced the date of elections to the three State Assemblies. There were some interruptions. Thereupon, the Speaker, Shri Bal Ram Jakhar ***ruled***:

"Mr. Acharia, you know that I cannot comment upon the actions and decisions of the Election Commission which is an autonomous body... Never before have I done it nor will I do it now. Until and unless you change the Constitution and bring the Election Commission under your purview we cannot comment upon its

* The constitutional provisions (article 324) relating to setting up of the Election Commission were brought into force on 26 November 1949, while the rest of the Constitution came into force on 26 January 1950. The nucleus of the Office of the Election Commission was set up on 25 January 1950.

actions...I am only concerned with this that the Election Commission is an autonomous body and its decisions cannot be discussed here."

[*L.S. Deb.*, 14 December 1988 cc. 1-3]

Point No. 2

Election Commission/Election Commissioner is competent under the Constitution to discharge functions entrusted under a Bill.

On 30 November 1966, when Goa, Daman and Diu (Opinion Poll) Bill, 1966, providing for taking of an opinion poll to ascertain the wishes of the electors of Goa, Daman and Diu with regard to future status thereof was taken up, a member (Shri H.V. Kamath) raising a point of order, *inter alia*, contended that there was no provision for referendum under article 324 of the Constitution and so the Election Commission could not undertake the work proposed to be entrusted to it.

After hearing other members, the Speaker, Sardar Hukam Singh, thereupon, gave the following ***ruling***:

"According to my reading of this article, it has been specified that elections would be the responsibility of the Election Commission alone and the Government cannot employ any other machinery to conduct the elections, in order to ensure fair and free elections. If the Government wants to employ any other machinery for this opinion poll, it is free to do so. But if it entrusts this work also to the Chief Election Commissioner and he is prepared to undertake it, there is nothing in the Constitution to preclude him from doing so".

[*L.S. Deb.*, 30 November 1966, cc. 6437-6452]

13

EXPUNCTION

SYNOPSIS OF RULE 380

If the Speaker is of the opinion that words have been used in debate which are defamatory or indecent or unparliamentary or undignified, he may, in his discretion order that such words be expunged from the proceedings of the House.

Point No. 1

Words used in debate which are defamatory or indecent or unparliamentary or undignified may be expunged from the proceedings of the House.

In connection with points raised in the House on 27 June 1967 that certain portion of Statement made by the Home Minister might be expunged. The Speaker, Shri N. Sanjiva Reddy gave the following ***ruling*** :

"A matter which is *sub judice* and which has been referred to in a speech or debate or in any statement in House does not fall within the ambit of this rule and, therefore, Speaker has no power to order expunction of any words or phrases merely on ground that they relate to a matter which is pending for the judicial decision in a Court of Law and under Rule 352(i) no reference could be made to them. Where a member insists on referring to matter which is *sub judice* in spite of Chair asking him not to do so, the Chair may ask him to discontinue his speech forthwith. The Speaker may also observe that member should not have referred to a matter which was *sub judice.* Both statements will then be on record but the Speaker cannot and should not order expunction of such words."

[*L.S. Debs.*, 27 and 28 June 1967, cc. 7829-7845 and 8116-8119]

Point No. 2

Speaker's power to expunge portions of proceedings when irrelevant questions of insinuatory character are put.

On 18 July 1956, on a question regarding Jeeps, a supplementary question was ordered to be expunged by the Chair, as it did not arise out of the main question. On a point raised by a member as to whether the rules provided for the expunction of questions which were irrelevant, the Deputy Speaker, Sardar Hukam Singh ***ruled*** as follows:

> "I ought not to allow any question which is irrelevant. No question which is irrelevant will be allowed on the floor of the House. If it comes in the form of a question put to me before admission, I can rule it out as irrelevant and it will not be put on the floor of the House. But so far as questions which are put on the floor of the House are concerned, I do not know whether they are relevant or not until I hear the hon'ble member. Therefore I wait to hear it and then rule it out as irrelevant. But, if in addition to that question being not merely irrelevant it contains insinuations it ought not to be there and I will remove it...
>
> "If the question is intended merely for the purpose of making an insinuation, I am not going to allow it to besmirch the record."
>
> [*L.S. Deb.*, Part I, 18 July 1956, cc. 113-114]

Point No. 3

Under the Rules Speaker has the power to expunge portions from Debates even after lapse of time.

On 13 August 1956, a member (Shrimati Renu Chakravartty) drew the attention of the Chair to a paragraph published in Bulletin-Part II dated 11 August 1956, regarding expunction of certain expressions used against the Comptroller and Auditor-General from debates, and enquired if it was open to any person to make a representation to the Speaker and whether the Speaker in turn could order expunction of portions from debates a long time after these had actually taken place in the House. The Speaker Shri M.A. Ayyangar thereupon ***ruled***:

> "So far as expunging is concerned, I am bound to watch and keep a watch upon what happens in the House. I can take time to expunge certain remarks and I can do so at any time. Any person can also, especially if the remarks are made about certain high dignitaries

referred to particularly in the Constitution, bring it to my notice. I can take time to consider such matters... If it is long after the debates took place then I will not do so. But immediately after the last session when these remarks were made, this high dignitary wrote to me a letter. I said I will consider the matter after the Parliament re-assembled and after I came back to Delhi. That is how it took time. Therefore, under the rules there is ample power, though I will not do so normally except in exceptional cases where such remarks are made".

Replying to a point raised by another member (Shri H.N. Mukerjee) that according to the practice in the House of Commons the debates were printed almost on the same day and thus there was no scope for such expunction at a later date, the Speaker further observed:

"Our rules as they stand have made a diversion or divergence from the rules practised in the House of Commons. In the House of Commons the whole House has to consider a question of expunction. Here it is not so; power is given to the Speaker to do so there and then. We also very often do so when it is brought to our ntoice. Sometimes it so happens that we do not recognise it immediately. Then it is brought to the notice of the House. Here, in this case it is the Auditor-General against whom the remarks have been made. He is an important authority and therefore this is an exceptional case".

[*L.S. Deb.*, Part II, 13 August 1956, cc. 3087-3090]

Point No. 4

When portions of a member's speech are ordered to be expunged, the member should be informed about the expunction.

On 21 December 1959, a member (Shrimati Renu Chakravartty) pointed out that certian remarks had been expunged from the speech of another member (Shri Hiren Mukerjee) delivered on 16 December 1959, without his knowledge under the orders of the Speaker but it was only late in the night that the member (Shri Hiren Mukerjee) came to know about it from the Press. Smt. Chakravartty suggested that the House must be informed or at any rate the member concerned should bc intimated about the expunction made from the speech. The Speaker, Shri M.A. Ayyangar, thereupon, ***ruled*** as follows:

"In this particular case, the hon'ble Shri M.A. Ayyangar, member, who made the remarks might not have been informed due to

inadvertence. I will certainly see to it that in such a case the hon'ble member concerned is informed of that fact".

[*L.S. Deb.*, 21 December 1959, cc. 6265-6266]

Point No. 5

If an allegation is made by a member against the Government during the course of his speech, Government might refute that on the floor of the House rather than seek its expunction by the Chair.

On 17 May 1972, during the course of his speech on the Finance Bill, a member (Shri Jyotirmoy Bosu) made an allegation against the Prime Minister and her party that they had taken money from monopolists for election purposes. He alleged that the election posters in five languages were got printed from Sarasvati Printing Press Ltd., Calcutta and the cost was borne by Shri R.P. Goenka, one of the biggest monopolists in the country. He also produced photostat copies of certain documents, to substantiate his allegation, which he sought to lay on the Table of the House. Another member (Shri Vikram Mahajan) raised a point of order that under Rule 353 of the Rules of Procedure, Shri Bosu should have given advance intimation to the Speaker of his intention to make the allegation and demanded that the remarks made by him should be expunged. Thereafter, several members made submissions for and against the point of order. The Deputy Speaker, Shri G.G. Swell, thereupon, ***ruled*** as follows:

"I am not quite sure whether the word 'person' here means a member of the House. I am not quite clear about it. If he is a person outside the House who cannot defend himself, then he must give prior notice to the Speaker. But when the member is here in the House, and he can defend himself, it is all a matter of record. That is the first point.

Secondly, I do not want this impression to go all over the country that certain charges are made, and the Government is strong enough, the Prime Minister is very strong enough, and the Finance Minister has said that these are baseless and they are fabrications, and this is all on record, and after all this, protection of the Chair is sought to expunge all these remarks; I do not want a wrong impression to go around the country that Government are seeking the protection of the Chair. This is not good. This is not good either for the Government or for the Chair I would like the Government to contradict it.

On 31 May 1972, the Speaker permitted a discussion under Rule 184 regarding the allegation made by Shri Bosu on the basis of photostat copies sought to be laid on the Table of the House by him on 17 May 1972. The documents were later permitted by the Speaker to be treated as papers laid on the Table.

[*L.S. Debs.*, 17 May 1972, cc. 202-208 and 31 May 1972, cc. 251-360]

Point No. 6

Speaker has no power to expunge words other than those falling under categories mentioned in this rule.

On 12 July 1967, during Question Hour two members (Sarvashri Madhu Limaye and S.M. Banerjee), referring to the Chief Minister of Rajasthan, stated that the man who should have been behind the bars was the Chief Minister. The Chair did not approve the use of such an expression. When expunction of expression was suggested. Thereupon, the Speaker, Shri N. Sanjiva Reddy gave the following ***ruling*** :

"The Speaker has no right to expunge anything... Unless it is unparliamentary... he has no power to expunge, therefore, we cannot expunge it."

[*L.S. Deb.*, 12 July 1967, cc. 11026-11054]

Point No. 7

If Chair is unable to catch objectionable words in the speech of a member at that moment, the Chair may order their expunction subsequently on the same day when those words came to his notice.

On 7 May 1965, a member (Dr. Rammanohar Lohia) used some objectionable words in relation to another member. The Chair did not catch those words at that time and no action was taken. Subsequently, when the matter came to the Speaker, Sardar Hukam Singh's notice, he ordered expunction of objectionable words from the Debates.

[*L.S. Deb.*, 7 May 1965, cc. 13923-13924]

14

LIST OF BUSINESS

SYNOPSIS OF RULE 31

- A List of Business for the day shall be prepared by the Secretary-General.
- A copy shall be made available for the use of every member.
- Unless otherwise provided in the rules, no business not included in the List of Business can be transacted without the permission of the Chair.

Point No. 1

The arrangement of Business is done with the consent of the Speaker. A Bill can be moved for consideration even when the House has discussed in part(s) another Bill or a Resolution.

On 28 November 1963, the Speaker asked a member (Shri R.R. Morarka) to move the motion to amend the Companies Act, 1956. On this another member (Shri Homi F. Daji) raised a point of order to know whether the Rules of Procedure permitted that a Bill which had already been introduced and partly discussed could be suspended and a fresh Bill be taken up for consideration. Another member (Shri Hari Vishnu Kamath) stated that when a Resolution or a Bill had been partly discussed, a formal motion had to be moved by the member or the Minister concerned to the effect that the debate on that subject might be adjourned and only then another Bill could be taken up. Thereupon, the Speaker, Sardar Hukam Singh gave the following ***ruling***:

"I do not think that has been the rule that first we must postpone the discussion by a formal motion to that effect and then only take

another bill. There have been instances where, when a Bill has been part-discussed and the debate had not been completed and something important had come up, we took it up. We can do that, and there is no harm in it.

*** *** ***

The arrangement of business is done with the consent of the Speaker. I received a letter from the Minister that he may be allowed to move this Bill today. I gave my consent and that has been the procedure throughout our history so far as I can see."

[*L.S. Deb.*, 28 November 1963; cc. 2008-2029]

Point No. 2

The House is supreme and it has the power to adjust its business.

On 7 December 1978, a member (Shri Hari Vishnu Kamath) raised a point of order stating that the report of the Committee of Privileges should be given priority over the Constitution (Forty-fifth Amendment) Bill, 1978, which was listed at item 2 in the List of Business for the day. Thereupon, the Speaker, Shri K.S. Hegde ***ruled***:

"The House is supreme and it has the right to adjust its own work... The House has taken a decision yesterday that the Constitution Amendment Bill be taken up after Question Hour today. Therefore, the objection does not arise."

[*L.S. Deb.*, 7 December 1978, cc. 264-265]

Point No. 3

The Leader of the House can announce the Business in the House.

On 25 February 1966, when the Leader of the House, Shri Satya Narayan Sinha rose to announce the Government Business for the ensuing week, a member (Shri Madhu Limaye) rising on a point of order submitted that the Statement should be made by him as the Minister of Parliamentary Affairs and not as the Leader of the House since the functions of planning and coordination of legislative and other official business and allocation of Government time in Parliament for discussion had been assigned to the Department of Parliamentary Affairs under

article 77(3) of the Constitution. Ruling out the point of order, the Speaker, Sardar Hukam Singh ***ruled***:

> "There is no dispute about it. Are there rules framed to say whether it would be the Minister of Parliamentary Affairs or the Leader of the House who would just announce this business?
>
> *** *** ***
>
> It is correct that the rules are silent on this business and unless some specific rule is framed, there cannot be any objection to the Leader of the House, if he so desires, to announce the Business."

[*L.S. Deb.*, 25 February 1966; cc. 2503-2509]

Point No. 4

An item can be dropped from the List of Business without the permission of the House. The Presiding Officer has the inherent right to change the timings of items of Business.

(a) On 29 August 1962, a member (Shri S.M. Banerjee) along with another member (Dr. L.M. Singhvi) raised points of order regarding omission of items concerning the Motions to be moved by the Minister of Commerce and Industry and by another member (Shri K.C. Reddy) relating to Public Undertakings, respectively from the Order Paper of that day. After hearing the views of the Minister of Parliamentary Affairs (Shri Satya Narain Sinha), the Minister of Law (Shri A.K. Sen) and some other members, the Speaker, Sardar Hukam Singh, ***ruled***:

> "There is no question of getting permission from the House to withdraw only because one item appears on the agenda. Certainly by this change, some inconvenience is caused. That is all right, but if something is brought that causes surprise, the hon'ble members can have objection that they were not prepared to take it up or they did not prepare themselves for that discussion, but simply because one item is dropped at the end, I do not think, unless the House is seized of the matter, any permission is required. Of course, it would be advisable that when once an agenda is prepared, normally it should be followed..."

[*L.S. Deb.*, 29 August 1962, cc. 4774-4786]

(b) On 28 July 1980, a Calling Attention given notice of by a member (Shri Bapusaheb Parulekar) regarding the resignation of Justice Ramesh Chandra Srivastava of Allahabad High Court, and admitted for the same day, was to be taken up at 17.00 hrs. When the item was reached, neither the Minister of Law (Shri P. Shiv Shankar) was present in the House nor any copies of the Statement to be made by him in response to the notice of Calling Attention had been received. Many members raised objection about it. The Minister who arrived after two or three minutes stated that as the Calling Attention was admitted at 11.00 hrs. That day, it took time to prepare the Statement and have it translated in Hindi. He added that he had sought the Speaker's permission to take it up at 17.30 hrs. Thereupon, on points of order raised by the members, the Chairman, Shri Shivraj V. Patil, who was in the Chair, ***ruled***:

> "The hon'ble Speaker or the Presiding Officer or the Presiding Member here has the authority to change the time... according to rules, according to conventions and according to the residuary powers available. Partly I agree with Mr. Jyotirmoy Bosu that the House should be informed. It is not that the Presiding Officer has no right. The Presiding Officer has... the inherent right and the right given by the rules to change the time. But what is required and which would be in consonance with the dignity of the House is to inform the House that it is done."

[*L.S. Deb.*, 28 July 1980, cc. 405-418]

15

MONEY BILLS AND FINANCIAL BILLS

CONSTITUTIONAL PROVISIONS: ARTICLES 109, 110 AND 117 and SYNOPSES OF RULES 74, 96, 103–108

- A Money Bill can be introduced only in the Lok Sabha.
- It can be introduced only on the recommendation of the President.
- After the introduction of a Money Bill, it cannot be referred to a Joint Committee of both the Houses.
- After it is passed it is transmitted to the Rajya Sabha for its recommendations.
- The Rajya Sabha is required to return the Bill with its recommendations. If any, to the Lok Sabha within 14 days from the date of receipt of the Bill.
- The Lok Sabha may accept or reject the recommendations of the Rajya Sabha.
- If the Lok Sabha accepts any of the amendments recommended by the Rajya Sabha, the Bill is deemed to have been passed by both Houses with the amendments recommended by the Rajya Sabha, and accepted by the Lok Sabha.
- In case, the Lok Sabha does not accept any of the recommendations of the Rajya Sabha, it is deemed to have been passed by both Houses in the form in which it was passed by the Lok Sabha.
- If the Rajya Sabha does not return the Money Bill within the period of 14 days, the Bill is deemed to have been passed by the Lok Sabha in the form in which that House had passed it.

Clause (1) of article 110 of the Constitution defines a Bill as a Money Bill if it contains only provisions dealing with all or any of the following:

"(a) The imposition, abolition, remission, alteration or regulation of any tax;

(b) The regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the Law with respect of any financial obligations undertaken or to be undertaken by the Government of India.

(c) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of money into or withdrawal of moneys from any such fund;

(d) The appropriation of money out of the Consolidated Fund of India;

(e) The declaring of any expenditure to be charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;

(f) The receipt of money on account of the Consolidated Fund of India or the public accounts of India or the custody or issue of such money or the audit of the accounts of the Union or of a State"

- Any matter incidental to any of the matters specified in (a) to (f) above.
- Article 110 further provides that a Bill *shall not be deemed to be a Money Bill* by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licenses or fees for services rendered or if it provides for imposition abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- The question whether a Bill is a Money bill or not, the decision of the Speaker thereon shall be final. When a Bill is held by the Speaker to be a Money Bill, he endorses a certificate

thereon signed by him to the effect that it is a Money Bill before the Bill is sent to Rajya Sabha or presented to the President of India for his assent.

- Article 117 of the Constitution covers two categories of Bills as Financial Bills. These are: those which make provision for any of the matters specified to make a measure as a Money Bill but do not consist solely of those matters and those which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of India.

Point No. 1

Composite Bills containing taxation proposals and other matters are not Money Bills, and they can be brought under article 117.

On 6 August 1974, when the Oil Industry (Development) Bill, 1974 was taken up for consideration, some members (Sarvashri Madhu Limaye, Shyamnandan Mishra, Somnath Chatterjee, R.V. Bade and H.N. Mukerjee) raised points of order *inter alia* submitted that the Bill combined provisions regarding the levy of excise duty, which was the basic idea, with those relating to the other matter, *viz* setting up of a Board for the development of the oil industry. In view of the objections raised by the members, the discussion on the Bill was postponed by the Speaker, Shri G.S. Dhillon. On 19 August 1974, the Speaker gave the following ***ruling***:

"On the 6 August, 1974 when the Minister of Petroleum and Chemicals moved that the Oil Industry (Development) Bill be taken into consideration, certain objections in respect of the Bill were raised by Sarvashri Madhu Limaye, Shyamnandan Mishra, Somnath Chatterjee, R.V. Bade and H.N. Mukerjee. The main points mentioned by them are as follows:

(1) Two proposals have been put forward in this Bill–one for setting up a board for the development of the oil industry and the other for levy of excise duty on crude oil produced in the country. The Speaker should consider whether two entirely different concepts could be joined together as is sought to be done in this Bill.

(2) The Bill has created a very strange situation. If the Speaker decides that it is a Money Bill, the rights of Rajya Sabha would be restricted. On the other hand, if it is deemed to be a non-Money Bill, then it violates the exclusive right of Lok Sabha in matters relating to taxation.

(3) It appears from the Statement of Objects and Reasons of the Bill that the primary object of the Bill is to impose taxation in the garb of regulating and controlling the oil industry by setting up Development Board. Therefore, this is a Money Bill.

(4) If this Bill had not been brought forward as a secret Bill, members could have expressed there views on the proposed Board.

At that time after making certain observations, I postponed consideration of the Bill in order to enable me to apply my mind to the points raised by the members.

I have since discussed the matter with the Minister of Petroleum and Chemicals and the Minister of Law. They have *inter alia* submitted that "since the commencement of the Constitution and extending to very recent times 'composite' or 'hybrid' Bills of the nature of the Oil Industry (Development) Bill have come before Parliament and have been duly enacted." For example, they have cited the following Acts:

(1) The Tea Act, 1953;

(2) The Coir Industry Act, 1953;

(3) The Cardamom Act,1965;

(4) The Produce Cess Act, 1966;

(5) The Textiles Committee (Amendment) Act, 1973.

I am satisfied that this is not the first time that a Bill of this nature has been brought forward before the House. The precedents show that identical clauses relating to imposition of cess are contained in all the Bills which were introduced and passed earlier. As the present Bill follows the past precedents, I allow it to be proceeded with.

Further, since this Bill does not contain only provisions dealing with all or any of the matters specified in clause (1) of article 110 of the Constitution, I hold that it is not a Money Bill.

Article 117 covers cases where Bills can be brought before Parliament containing not only taxation proposals but also other matters. These Bills cannot be called Money Bills under article 110. Therefore, there is no bar against any Bill of a composite of hybrid nature to be brought under article 117. However, I feel that it would be advisable that as far as possible Bills of composite or hybrid nature should be rare and only in cases where the proposed taxation and other matters connected therewith are inseparable."

[*L.S. Debs.*, 6 August 1974, cc. 127-141; and
19 August 1974, cc. 247-249]

Point No. 2

All Money Bills are Financial Bills. But all Financial Bills are not Money Bills. In a motion for suspension of the first Proviso to Rule 74, the bar of article 110 of the Constitution applies only in the case of a Money Bill.

On 15 May 1974, the Minister of State in the Ministry of Commerce and Civil Supplies and Cooperation (Shri Krishna Kumar Goel) moved a motion for suspension of first proviso to Rule 74 of the Rules & Procedure and Conduct of Business in Lok Sabha for the purpose of referring the Multi-state Cooperative Societies Bill, 1978 to a Joint Committee of the Houses. Thereupon, a member (Shri Vasant Sathe) on a point of order and objected to the Motion to suspend the first proviso to Rule 74. It was contended that the proviso was a mandatory provision and it could not be taken away through a suspension under Rule 388. Thereupon, the Speaker, Shri K.S. Hegde, ***ruled:***

"The Constitution uses three expressions – introduction of the Bill, consideration of the Bill and passing of the Bill. The Constitution uses these three independent expressions. Article 109 (1) merely prohibits stating that Money Bill simply shall not be introduced in the Council of States. The consideration and other aspects do not come. So, the introduction must be in this House. Both the Houses can consider the matter unless it is a Money Bill. The essential question is: Is this a Money Bill or only a Financial Bill?

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The real question for decision is: Is this a Money Bill or is this a Financial Bills? These are two different things. All Money Bills are the Financial Bills. But all the Financial Bills are not Money Bills. So, if it is Money Bill, it cannot be there so far as Rajya Sabha is concerned. If it is a Financial Bill, different considerations arise. The question which Mr. Sathe raised is, if it is a Financial Bill, it is superfluous. If it a Money Bill, it cannot be suspended.

The crucial question is: Is it a Money Bill or a Financial Bill? If it is a Money Bill, the proviso says, it cannot be suspended.

*** *** ***

I am told that there is only one clause which can be said to attract the Money Bill provisions: only one clause, *viz.*, guaranteeing the re-payment of the principal and payment of interest on the debentures issued by multi-State cooperative societies... But the definition of Money Bill says that it must be, *i.e.* the entire thing must be a Money Bill not one clause alone. Article 110 says:

'(1) For the purposes of this Chapter, a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with all or any of the following matters, namely:—

(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the regulation of the borrowing of money or the giving of any guarantee by the Government of India, or the amendment of the law with respect of any financial obligations undertaken or to be undertaken by the Government of India.'

Please remember: 'if it contains only provisions.' This has been interpreted by the Courts. And again;

(c) the custody of the Consolidated Fund...

(d) the appropriation of money.

(e) the declaring of any expenditure...

(f) any matter incidental...

The Bill must contain only these matters. "This is only a financial Bill. Therefore suspension is not necessary."

[*L.S. Deb.*, 15 May 1978, cc. 265-272]

Point No. 3

A Finance Bill should not contain provisions intended to make permanent changes in the existing law unless they are consequential upon or incidental to the taxation proposals.

On 7 December 1956, during the discussion on the motions for consideration of the Finance (No. 2) and the Finance (No. 3) Bills, a member (Shri Tulsidas Kilachand) raised the following points of order:

Firstly, that the provisions of the Finance (No. 3) Bill were intended to make permanent changes in the existing law, and, if enacted, would have far reaching effects. The proper thing was to adopt those provisions by a separate amendment Act and not to rush them through in a Finance Bill. Secondly, that the Finance Bill normally provides for expenditure for the current year but the provisions of the Finance (No. 3) Bill were intended to come into force with effect from 1 April 1957.

In support of the points of order, he drew attention to an earlier observation made by the Speaker on 21 April 1956, during the discussion of the Finance Bill, 1956. The Speaker had then observed:

"A Finance Bill is intended to raise taxes which would subsist only for the year. Other provisions relating to Statutes, which are of a more permanent character, ought not to be clubbed with the Finance Bill but discussed in a more leisurely manner.

Discretion will be exercised by the hon'ble Finance Minister or his Ministry in bringing them separately unless they are so inter-connected with the other provisions of the Bill, that the finances for any particular year depend upon those provisions. In such cases they can be added on here. It is not so much a question of legality as a question of propriety."

Another member (Shri Rama Chandra Reddi) pointed out that in order to give the members an opportunity to discuss matters relating to

general administration, the provisions of Rule 238 should be made applicable also to the Bills under discussion.

On this, another member (Shri K.S. Raghavachari) questioned the desirability of bringing at the end of the year a Bill to raise funds and permanently alter and modify the existing laws under the name of a Finance Bill, and stressed that a Finance Bill must confine itself only to taxation for the current financial year and must not be permitted to take up future legislation for taxation.

Yet another member (Pandit Thakur Das Bhargava) disputed the propriety of having provisions in the Bill which were of a permanent character, the intention of which, at the same time, was to get money not only for the next year but also for the coming years.

In response, the Minister of Finance (Shri T.T. Krishnamachari) pointed out that no departure from the usual practice, as to the provisions of the Finance Bill, was being made in the Bill under discussion. Even in the Finance Bill, 1956, as many as seventeen sections and several sub-sections of the Income-tax Act, were amended. Moreover, the changes in other Acts contemplated by these Bills were only consequential on raising the revenues, and therefore, in order. As to the second point of order, the Finance Minister observed that in view of the General Elections, the new Parliament might not be able to meet before May 1957 and then it might be objected that the taxes then to be imposed were being given retrospective effect. It was, therefore, necessary to provide now for taxes which may come into effect during the next financial year.

Dismissing the points of order, the Speaker Shri G.V. Mavalankar ***ruled***:

> "Two views have been pressed before the House. One is that it is a Finance Bill and for every Finance Bill there is a particular procedure laid down both in the Constitution and under the Rules, and that must be followed. After the Demands for Grants are voted by the House and the House is satisfied that so much money is necessary, provision must be made by way of taxation, from year to year. That is the object of the Finance Bill. On that ground these two Bills, the Finance (No. 2) and (No. 3) Bills ought not to be allowed here.

The hon'ble Minister explains there is an emergency and that this Parliament is not likely to continue and if the fresh Parliament were to come in, it would begin to function only by June 1957. In the meanwhile, the year which is sought to be defined under this Bill, ending 31 day of March 1956, would be over. It would be too late for anybody to have all these accounts and so on. It would then be said that it would be taking people by surprise and so on.

That apart, it is contended that it is just on the eve of any particular year the Finance Bill is brought—on the 28 February, that is, in advance of the coming year. The Act is passed not for that year but for the coming year. Therefore, there is no harm if a Bill is introduced in advance of that—February or March—2 or 3 months in advance so as to come into operation from 1957-58. That objection is also not sound.

There is another point so far that particular matter is concerned. The expenditure could not be incurred in the circumstances and it will be too late to bring in a Bill of that kind to cover the expenditure. It is likely that there might only be a vote on account.

So far as the other objection is concerned, it is that amending the provisions of a substantial Act, the Income-tax Act—and provisions for amending the procedure, etc. are included in this—ought to be done by way of a separate Bill and more time and attention ought to be bestowed upon that...

*** *** ***

...Last year, it is true that I said—and I still stick to that view—that in a Finance Bill, only provisions relating to the taxation measures to meet the expenditure that has been voted upon by the House ought to be there. Otherwise there is no meaning in a Finance Bill. During that discussion opportunity is taken to review the whole administration, whether it has been working right or wrong, whether the funds voted have been handled properly, with respect to the expenditure, whether a year is lean or fat and all that. All these should be taken into account.

So far as this is concerned, that is why though only a few Bills or a few Acts are allowed to be amended like the Stamp Act, the Postal

Act, etc. these are all necessary for the purpose of raising revenue wherever additional tax is put—not the Stamp Act, but the postal rates, sea customs rates, etc. are improved from time-to-time, they can be improved, and, therefore, they are brought under the annual Finance Bill.

I would normally urge upon the Finance Minister, not only he but also all his successors, to see to it that only those provisions which relate to the raising of taxation should be included in the Bill. The procedure should be followed and no other provisions should be given attention to unless they are absolutely consequential. If we have to provide by way of an amendment to the Income-tax Act or by way of an amendment to a substantial Act, Government must come forward with an independent measure separately, and the House will have ample opportunity to consider it. But in a Finance Bill those things ought not to be normally included. Even though 17 clauses were included last time by way of an amendment to the Income-tax Act, I still hold that view. I would urge upon the hon'ble Minister to see that the House should bestow sufficient attention upon all these matters and there ought not to be any impression in any quarter that without knowledge of the full import of the discussion of anything was brought in this House. That ought to be avoided, at any cost wherever it can be avoided.

But in the peculiar circumstances of this particular case, and having heard the hon'ble Finance Minister that the clauses that touch or seek to amend the Income-tax Act are only consequential and also in view of the fact that we are not meeting again shortly and though this Bill is intended to come into operation from the beginning of 1957-58, it in a way touches upon the income from 31 March, 1956 onwards I do not consider that there is any point of order. I am not going to allow that..."

[*L.S. Deb.*, Part II, 7 December 1956, cc. 2079-2105]

Point No. 4

Finance Bill should always be preceded by the Demands for Grants and the connected Appropriation Bill. The sequence of 'Budget' as per provisions of the Constitution and the Rules of Procedure should be maintained.

On 7 August, 1974, when the motion for consideration of the Finance No. 2 Bill was moved by the Minister of Finance (Shri Y.B. Chavan),

several members sought to raise points of order. A member (Shri Somnath Chatterjee) pointed out that the Bill, which was in the nature of a Supplementary Budget, sought to raise additional finances by taxation for unexplained, unestimated and undisclosed expenditure. More so, no expenditure could be incurred by the Government unless authorised by the Parliament. In view of provisions in various articles of the Constitution and in the Rules of Procedure, the Bill could only be considered in the House if it had been preceded by the Demands for Grants and the connected Appropriation Bill.

Discussion on the point of order was not concluded when the next item on the Order Paper *viz.* Half-an-Hour discussion which was scheduled to be taken up at that time (5.30 p.m.) was taken up.

On 8 August, 1974, when further discussion on the point of order was resumed, several members made submissions in this regard. They contended that voting on the Demands for Grants should always precede the Finance Bill. Discussion on the points of order could not be concluded on that day as a Short Duration Discussion was scheduled to be taken up.

On 12 August, 1974, further submissions on the points of order were made by several members. The Minister of Law (Shri H.R. Gokhale) and the Minister of Finance (Shri Y.B. Chavan) expressed Government's viewpoint. Their contention was that the measure was not 'Supplementary Budget' as interpreted by the members. It was a simple Bill containing certain taxation proposals. More so, there were precedents in the past when the Government had brought such Bills which were not preceded by the Demands for Grants, or the statement of expenditure was not simultaneously laid on the Table of the House. The Speaker, Shri G.S. Dhillon, thereafter, ***ruled*** as follows:

> "This debate has been really very very useful. Very useful contribution has been made by distinguished members of the Opposition. I had also in the meantime, the opportunity to go through the Rules, the Constitution, *May's Parliamentary Practice,* etc.
>
> The interpretation with reference to Budget and the Finance Bill given by the Law Minister may have been strictly correct according to the Constitution, but it is in contradiction with the practice which we have been following.

We have always mentioned it as a Budget in our proceedings, in our rules and everywhere. And, I think, the term, which is so much understood by the members and the people outside should continue, and we refer to this as Budget, whatever be the strict constitutional provision or understanding, and I propose that this will continue.

Points of order were raised by Mr. Chatterjee, Mr. Sezhiyan, Mr. Mishra, Mr. Madhu Limaye, Prof. Hiren Mukerjee and Mr. Rao. I think the interpretation given by them starting from Mr. Chatterjee is very much relevant. Now, the only difficulty that comes is of sequence. I believe that according to the Constitution, according to the rules, this Finance Bill is in the form of a Budget.

It should come in the normal form as a budget and sequence is very clearly laid in articles 112, 113, 114 and 115 and other Rules—204, 205 and 219. There is no doubt about it. The sequence should be the same as mentioned in them. We have been mentioning it in the form of supplementary demands, supplementary budget or whatever you call it. After all, we cannot deny that this is a sort of a supplementary budget or additional budget. When we laid down certain things it is very much correct that we must know, as the House, as to in what form it has been given. That form and those rules and provisions are already laid down. I must appreciate the point which Prof. Mukerjee so effectively made, namely, that the annual statement should be upto the end of the year. That should really be upto the end of the year. This is an additional point that he has made.

*** *** ***

Of course, you made earlier.* Two days have passed since then. I have been trying now that at least, as the Speaker of the House, it is my duty to see that the proper financial procedures are followed. Government has relied on the past practices, 1956, 1957 and 1967 and many years when such a thing has happened and this practice was followed. It is indeed a very interesting contradiction that Shri Sezhiyan referred to the provision and the procedure set by the

*Referring to Shri Shyamnandan Mishra who mentioned that he had made it earlier.

Chair that should be followed. I have been looking for the procedures that are set by the Chair and observations that are made. And nothing else followed.

I thought that something will pull me out. When my predecessors laid down something, it is not a question that they did not occur to them. It did occur to them as to what we should do. Mr. Chavan gave some reasons for this procedure followed by him, and I agree with him that an extraordinary situation and an emergent situation has arisen. Everybody agrees with this. He has quoted Mr. Mishra also. I am not abdicating my rights. I have been following the procedures laid down by my predecessors. They have relied on the past practice, and I accept that. They may rely on it. But, I am not going to allow this for the future. As for the other matters, Mr. Chavan must come before this House with details of all the expenditure and demands for grants. He must also come forward with the Appropriation Bill in this very session—not some time later, thinking that it will start from 1975. But, for the future, if the House agrees with me, we must be allowed to lay down certain procedures. In that procedure, I may have to make a little departure from the precedents established by my predecessors. I am very much, out and out, a person to follow the old conventions, practices and precedents. When I have to depart from the practices and procedures, I never take upon myself this responsibility unless I consult the Secretary-General or unless I consult even the prominent members. I propose to consult the Rules Committee also. I do not want to lay it down off hand. In such matters it is very risky. I should not lay it down off hand, without consulting on the broad principle. They are mentioned in articles 112 and 113, 114 and 115 along with the Rules 204, 205 and 219. This is not a question that expediency requires, emergency requires or conditions require it and hence we should ignore the specific rule or articles in the Constitution I fail to understand this. I am the last person to agree with this interpretation.

Only because of certain precedents which have been relied upon on the spur of the moment. I am not going to change it, except that I have told the House that I am not going to all this sequence for the

future. I am allowing you to proceed through the Bill but with the specific direction to come with the Demands and the Appropriation Bill before the House."

[*L.S. Debs.*, 7 August 1974, cc. 286-293; 8 August 1974, cc. 177-201 and 12 August 1974, cc. 216-241]

16

MOTIONS

SYNOPSES OF RULES 184-192

- Discussion on a matter of general public interest can take place only on a motion.
- Notice of a motion has to be given in writing.
- The motion shall be made with the consent of the Speaker.
- The Speaker decides whether the motion or a part thereof is admissible under the rules*.
- He may disallow any motion or a part thereof if it is an abuse of the right of moving a motion or is calculated to obstruct or prejudicially affect the procedure of the House or is in contravention of the rules.
- A matter pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions or any Commission or Court of Inquiry is ordinarily not permitted to be moved.
- But the matter may be admitted if it is concerned with the procedure or subject or stage of inquiry and if the Speaker is satisfied that the discussion is not likely to prejudice the consideration of such matter by the Statutory Tribunal, Statutory Authority, Commission or Court of Inquiry.
- If the notice of a motion is admitted and no date is fixed for its discussion it is called "*No-Day-Yet-Named* Motions.

See Rule 186 for conditions of admissibility of a motion.

Point No. 1*

Even after admitting the motion the Speaker can disallow a part of it if it comes to his notice that such part violates any of the conditions of admissibility.

On 4 August 1977, as the House was about to take up a motion to discuss the conduct of the Home Minister, the Deputy Speaker, Shri Godey Murahari, who was in the Chair, asked Shri C.M. Stephen, to move the resolution. On this, a member (Shri Samar Guha) raised a point of order stating that the motion was not in order since it did not raise a specific definite issue as required under the rule. On the contrary, the motion included three completely different issues which could not be adumbrated into one aspect or one matter or one objective. These were (a) the atrocities against the harijans, (b) the allegation supposed to have been made by the Home Minister, and (c) the withdrawal of a particular letter from the files of the Election Commission. Several members spoke thereafter objecting to the motion. In response thereto the Speaker, Shri K.S. Hegde observed, as he did not find any rules either for or against going by the previous precedent, he admitted the motion. As far as the question of raising of one definite issue was concerned, he said, it was that the Home Minister had given incorrect information to Parliament and he should, therefore, be censured. As for the specific issue in question, he gave the following ***ruling***:

> "Now, after the motion was admitted, it came to my notice that a criminal case is pending in respect of the Belchi affair. When a criminal case is pending, one of the important aspects of the matter is what is the motive for the offence. Therefore, since this has gone to the court any discussion on that point is likely to prejudice the trial of the case. I, therefore, rule out the first portion, that is,
>
> > (a) which came to my notice only after admitting it. The censure motion will therefore be confined only to (b) and (c) and will not extend to (a)."
>
> [*L.S. Deb.*, 4 August 1977, cc. 296-315]

**See also* the Chapter on "Censure Motion against Ministers" for Point No. 1.

Point No. 2

A motion under Rule 184 seeking to appoint a committee to investigate charges against Ministers or members may be admitted only after preliminary inquiries are made by the Prime Minister and the evidence collected is examined by the Speaker.

On 31 May 1967, responding to the notice of a motion given by a member (Shri Madhu Limaye) on 30 May 1967, seeking to appoint a committee to investigate certain charges against the members of the Cabinet, the Speaker, Shri N. Sanjiva Reddy informed the House about the procedure to be followed when charges were made against Minister in the following ***ruling***:

> "Yesterday when the Calling Attention Notice was being answered by the Prime Minister, Shri Madhu Limaye referred to notice of a motion which he had tabled regarding the appointment of a Committee of Parliament to investigate into the charges against the Ministers who were on the pay of Birlas. I then said that I had not seen the notice and after I had considered it, I would give my decision."

I have now looked into the notice by the member. The hon'ble member has tabled it under Rule 184. The Notice reads as follows:

> 'This House resolves that a Committee of 15 members of Parliament be appointed to investigate into the charges against the members of the Cabinet that they are in the pay of Birla group, and that Rajya Sabha be requested to appoint 6 of these members.'

The hon'ble member has not specified the names of the Ministers nor the charges against them. The notice is in the nature of an inquiry into the conduct of members of this House or the other House. At present there is no Minister who is not a member of either House. In order that a notice of a motion on the conduct of a member may be admissible, certain preliminary procedures have to be followed. I would refer the hon'ble member to the procedure that was adopted in 1951 when a Committee to inquire into the conduct of H.G. Mudgal, a member of Provisional Parliament, was appointed. Briefly speaking, the procedure antecedent to the discussion of a motion in the House is as follows:

> "Anyone who has reasonable belief that a member of Parliament has acted in a manner which, in his opinion, is inconsistent with the

dignity of the House or the standard expected of a member of Parliament may inform the Leader of the House (Prime Minister) or the Speaker about it. The person making such an allegation should first make sure of his facts and base them on such authentic evidence, documentary or circumstantial, as he may have. He should be careful in sifting and arranging facts because, if the allegations are proved to be frivolous, worthless or based on personal jealousy or animosity, directly or indirectly, he will himself be liable to a charge of the Breach of Privilege of the House. Therefore, it is of the utmost importance that allegations are based on solid, tested and checked facts.

When information regarding the alleged misconduct on the part of a member of Parliament is received, the usual practice is that the Prime Minister examines the whole evidence and if he is satisfied that the matter should be proceeded with, he should give a full and fair opportunity to the member to state his own version of the case, to disprove the allegations against him and to place before the Prime Minister such information as may assist him to come to a conclusion. After the member's explanation, oral or written, is received by the Prime Minister, he sifts the evidence critically and together with his conclusions places the whole matter before the Speaker. If the member has given adequate explanation and it is found that there is nothing improper in his conduct and he has cleared all the doubts, the matter may be dropped and the member exonerated. If, however, on the basis of the explanation given by the member and the evidence it is held by the Speaker that there is a *prima facie* case for further investigation, the matter is brought before the House on a motion for appointment of a parliamentary committee to investigate the specific matter and to report to the House by the specified date.

However, if in the course of preliminary investigation it is found that the person making the allegations has supplied incorrect facts or tried to bring discredit to the name of the member wilfully or through carelessness he shall be deemed to be guilty of a breach of privilege of the House.

I will, therefore, suggest to the members or anyone who wishes to make any charges against any Minister to follow the above procedure."

[*L.S. Debs.*, 30 May 1967, cc. 1743-1754 and 31 May 1967, cc. 2045-2047]

Point No. 3

The action of a Governor can be discussed under a motion under Rule 184.

On 28 February 1968, when a member (Shri Nath Pai) moved a motion disapproving the manner and procedure adopted by the Governor of Bihar in installing Shri B.P. Mandal as Chief Minister, another member (Shri R.D. Bhandare), on a point of order, contended that it was impermissible to discuss the conduct of a Governor under Rule 184. The Speaker, Shri K.S. Hegde thereupon gave the following ***ruling***:

"A point of order must have an end to it. It cannot be made into a speech. Now, I am giving my ruling whether you like it or not ... We have been discussing not the conduct of the Governor as an individual but the action of the Governor. After all, if this forum cannot discuss, where else can we discuss it? Instead of discussing it in the streets and *bazaars*, this is the forum where we can discuss it. Therefore, to prevent the discussion in the bazaar, this is the forum and we can certainly discuss and take some decisions and the decision of Parliament, which is the Supreme body, cannot be questioned."

[*L.S. Deb.*, 28 February 1968, cc. 505-509]

Point No. 4

A motion seeking to discuss the conduct of a Governor and his removal can be admitted in the circumstances wherein the Governor is said to have acted in a manner that impeded the executive power of the Union Government by publicly contradicting the Statement made by the Union Home Minister in Parliament regarding the law and order situation of a State which is under President's Rule.

On 6 March 1997, the Speaker, Shri P.A. Sangma gave the following ruling regarding the admissibility of notices of motion under Rule 184,

given by a member (Shri Jaswant Singh) and others, on the conduct of the Uttar Pradesh Governor seeking his recall:

"Members may recall that I had given my ruling on 26 February 1997, on notices of motion under Rule 184 for recall of the Governor of Uttar Pradesh *inter alia* on the ground of deteriorating law and order situation in U.P. and had admitted a Short Duration Discussion under Rule 193."

"Shri Jaswant Singh gave another notice of motion under Rule 184 on 27 February 1997 for recall of the Governor of Uttar Pradesh on the ground of his disagreement with the Union Home Minister's assessment of the deteriorating law and order situation in Uttar Pradesh. Subsequently on 28 February 1997, Shri Atal Bihari Vajpayee and Shri Pramod Mahajan gave identical notices of motion under Rule 184. Dr. Murli Manohar Joshi also gave a notice under Rule 184 on 28 February 1997 on similar ground.

These notices are based on subsequent developments in which the Governor of Uttar Pradesh is reported to have stated publicly that he had spoken to the Prime Minister who was quite satisfied with the law and order situation in Uttar Pradesh. It has also been reported that the Chief Secretary, Uttar Pradesh has expressed shock and surprise on the newspaper reports from New Delhi regarding the law and order situation in Uttar Pradesh. Reports about these developments were also referred to in the debates in the House on 3 March 1997."

Shri Jaswant Singh while seeking to raise the issue on the floor of the House on 3 March 1997 and earlier on 28 February 1997 tried to drive home the point that the disagreement between the Union Home Minister and the Governor of the State regarding the assessment of law and order situation was a matter of grave concern which warranted a discussion under Rule 184 rather than a Short Duration Discussion under Rule 193 as ruled by me on 26 February, 1997. Several other members also expressed their views on the matter.

The thrust of the arguments of the members who demanded that the motion under Rule 184 be admitted was that it is a very alarming situation indeed where the Governor of a State who has been described

as 'a part of the State apparatus' and who has 'a duty to report to the Union,' is publicly contradicting and controverting the statement made by the Home Minister of the Union Government on the floor of the House. It was also emphasized in the arguments that the Chief Secretary of the State, who acts directly under the control of the Governor during the President's Rule in the State, has chosen to express shock and surprise at the New Delhi reports regarding deteriorating law and order situation in Uttar Pradesh. It was, therefore, argued that a situation had arisen in which the Governor had acted in a manner that impeded the executive power of the Union Government, justifying a discussion on the conduct of the Governor.

The members who have opposed the admission of the notices under Rule 184, too felt that the issue was serious and the Government should clarify its stand on whether or not it was satisfied with the situation in Uttar Pradesh. They, however, have felt that a Short Duration Discussion on the law and order situation in Uttar Pradesh which had already been admitted would serve the purpose. The hon'ble Minister for Parliamentary Affairs, Shri Srikanta Jena, while intervening in the discussion on 3 March 1997 observed:—

> 'Perceptions differ. Sitting here in Delhi I will have a perception about the law and order situation in Uttar Pradesh or in any other State. But, the Governor has also got a right to submit to the Government of India about his perception regarding the law and order situation obtaining in Uttar Pradesh.'

I have also since received a fax communication dated 5 March 1997 from the Governor of Uttar Pradesh in which he has stated as under:—

> 'The law and order situation in Uttar Pradesh is under discussion in Parliament. In this regard, I would like to clarify that I hold the hon'ble Home Minister in high respect. He is an outstanding and distinguished Parliamentarian. When asked by the Press about the law and order situation, I merely revealed the statistics and information in my possession. I am arranging to separately submit to you all facts in a document. It was in no way to either contradict or criticise the hon'ble Home Minister. There was no intention to show any disrespect to him.
>
> May I also reiterate that Parliament is the guardian of our Constitution. I am totally committed to abide by the Constitution

and the decisions of Parliament. There can be no question of any disregard or disrespect to this august body.'

I have very closely followed the discussions in the House on the subject of the recall of Uttar Pradesh Governor from the time the initial notices under Rule 184 from the hon'ble members in the Opposition were taken up for consideration. I have also taken stock of the substance of all arguments for and against the issue from the beginning. I have particularly taken note of, and studied, the statements made by the Union Minister of Home Affairs and the Union Minister of Parliamentary Affairs and the reported observations of the Governor of Uttar Pradesh that the hon'ble Prime Minister is satisfied with the law and order situation in Uttar Pradesh, which have not been denied so far. Having done this, I hold with due respects to all concerned, that the voice from the treasury benches has not been unanimous. Lack of this unanimity of voice in the treasury benches in this regard is a matter of very serious concern which is inconsistent with the principle of collective responsibility of the Council of Ministers to the House as spelt out in article 75 (3) of the Constitution. This responsibility is joint and indivisible. The matter is especially grave considering that Uttar Pradesh is the most populous State in the country and law and order situation therein has implications for the country as a whole.

I have also noted the assurance given by the Governor of Uttar Pradesh in his communication addressed to me that he holds the Home Minister in high respect and that it was not his intention to contradict or criticise the Home Minister when he revealed to the Press the statistics and information in his possession.

The assurance given by the Governor is no doubt welcome but the fact remains that he has not specifically, and in clear terms, denied the remarks attributed to him in the Press reports about which reference has been made in the House. On the contrary, he has reiterated that he had merely revealed to the Press the statistics and information in his possession. Law and order situation is not a mere matter of statistics of number of lives lost, even as each human life is valuable. The overall situation does not detract from the fact of emergence of discordant notes and mixed and confusing signals from the Government side on the law and order situation in Uttar Pradesh.

The Government and the House owe it to the people of our country in general, and of Uttar Pradesh in particular, to assess the situation through objective discussion. A discussion on the law and order situation in the State is bound even if indirectly, to lead to a discussion on the conduct of the Governor which, under the rules, cannot be allowed except on a substantive motion under Rule 184.

In the circumstances, after giving a careful thought to all aspects of the matter, I admit the notices of motion under Rule 184.

[*L.S. Debs.*, 26 February 1997, cc. 312-313, and
6 March 1997, cc. 199-201]

Point No. 5

A motion is *'made'* only after it is *'moved'* in the House.

On 28 February 1997, the Speaker, Shri P.A. Sangma gave the following ***ruling*** on a point raised by the Minister of Finance (Shri P. Chidambaram) that a motion is 'made' before it is 'moved' in the House and therefore, the motion appearing in the List of Business (stood in the name of Shri Jaswant Singh, who did not want to move it) could not be withdrawn without the leave of the House under Rule 339:

> "I thank Smt. Sushma Swaraj for solving another problem. She solved the problem by pointing out that the question comes when the matter becomes the property of the House.... The rule is very clear on this point.... Section 340, sub-clause (4) of the Manual on Business and Procedure says that once a motion set down in the Agenda is moved, but not till then, it becomes the property of the House. So, that is a very clear-cut thing. So I do not think I have to give any ruling on that.
>
> As far as Rule 339 is concerned read with Rules 184 and 185, I will confine to that. I must be very grateful to the House. It was very-very enlightened debate on a very important issue of interpretation of the rule, particularly the Finance Minister made a very strong point. I was even tempted to agree with him. But I may be able to clarify the question of what is the meaning of "made" and what is the meaning of "moved". I think it is very clear that under Rule 185

of the Rules of Procedure and Conduct of Business in Lok Sabha, a notice is to be given. Then under Rule 184 of the Rules of Procedure, a motion is made. Now, the notice having been given in this case and admitted, the motion has to be made. The motion has to be made. How? By moving. Unless it is moved it cannot be made. I think that is a very simple interpretation."

[*L.S. Deb.*, 28 February 1997]

Point No. 6

The motion can be disallowed if the Speaker is of the opinion that no useful purpose will be served by implementing the proposal contained in the motion.

On 26 February 1997, the Speaker, Shri P.A. Sangma gave the following ***ruling*** on the notice of motion given by a member (Shri Jaswant Singh) for constituting a parliamentary committee to go into all aspects of the Bofors Gun Deal:

"On 24 February 1997, Shri Jaswant Singh, member of Parliament, had given a notice under Rule 184 of the Rules of Procedure and Conduct of Business in Lok Sabha for constituting a Committee of both Houses to go into all aspects of the documents received from the Swiss authorities and to consider the Government's response thereto.

The question of admissibility of the motion tabled by Shri Jaswant Singh and the scope of constituting another Parliamentary Committee was discussed yesterday, 25 February 1997, in the Zero Hour. I have heard the valuable views expressed by hon'ble members as well as the Government's view expressed by Shri Ramakant D. Khalap, Minister of State in the Ministry of Law and Justice, referring to the undertaking given by Government of India to Swiss authorities. The Minister stated as under:

'There are many more investigations which are going on and there are solemn undertaking between the two sovereign countries. If today we violate the undertaking given to the Swiss authorities, with what face could we go again to them and ask for further documents?' "

Informing about the conditionalities attached, the Minister stated as under:

'The document transmitted and the information contained therein may be used for investigatory purposes or as evidence only in the interest of the prosecution regarding an ordinary criminal offence. Any other use of this document and the information contained therein is subject to the explicit and previous authorisation of the Federal Office for Police Matter.'

The Minister added:

'Therefore, anticipating that such a question would be raised here, we requested the Swiss authorities whether they would allow us to disclose these papers. We have received last night a fax message from them saying that they cannot agree to this proposal of placing these documents on the Table of the House.'

The Law Minister, on being asked, as to whether the CBI had disclosed the names, stated as under:—

'There was a lot of kite flying going on. The newspapers were publishing so many things... Therefore, the CBI thought it proper to inform the country that these were the entire set of names which they have received.'

When asked to specify those names, the Minister added:—

They are before everybody.

There is no doubt that it is as much incumbent on the Parliament as on the Government to honour international commitments and abide by the conditionalities mentioned by the Minister. It is, however, not clear why the CBI took an inconsistent stand and thought it proper to disclose the names, which the Parliament, as it turns now, is not entitled to know. This is therefore a serious matter to be taken note of by the Government and appropriate action taken by them under intimation to the House.

It may be recalled that a Joint Parliamentary Committee to enquire into the Bofors contract was constituted in 1987. The Committee held 50 sittings taking 140.25 hours in its deliberations. I mentioned

it yesterday. The Report of the Committee was presented on 26 April, 1988. The Report of the Joint Parliamentary Committee was discussed in the House on 4 and 5 May 1988. Apart from this, the Bofors issue was discussed in one form or the other during the Eighth Lok Sabha and Ninth Lok Sabha for about 60 hours.

After going into all aspects of the matter, I am of the opinion that no useful purpose will be served by appointing another parliamentary committee. *I, am therefore, not admitting the notice."*

[*L.S. Deb.*, 26 February 1997; cc. 311-312]

Point No. 7

Motions for choosing the Speaker and Deputy Speaker are treated as distinct from other general Motions.

On 23 April 1962, when the motions for choosing the Deputy Speaker had been moved, a member (Shri Frank Anthony) submitted that though the rules regarding motions for choosing the Speaker and the Deputy Speaker did not permit members to speak on the motions, he might be permitted to avail himself of the right of the members to speak on any motion. Thereupon, the Speaker, Sardar Hukam Singh, ***ruled*** as follows:

"As there are specific rules laid down for the election of the Speaker and the Deputy Speaker, I have to treat this motion as distinct from other motions. I cannot include these motions as one of those general ordinary motions provided in the rules...Therefore, when a procedure is specifically provided in our rules, that has to be followed for this election."

[*L.S. Deb.*, 23 April 1962, cc. 482-486]

17

MOTION OF NO-CONFIDENCE IN THE COUNCIL OF MINISTERS

CONSTITUTIONAL PROVISIONS

Article 75 (3) of the Constitution provides that "the Council of Ministers shall be collectively responsible to the House of People".*

SYNOPSIS OF RULE 198

- The motion expressing want of confidence in the Council of Ministers is subject to two restrictions:—
  - (i) the member when called by the Speaker will ask for leave of the House to make the motion; and
  - (ii) the member shall give a written notice of the motion to the Secretary-General by 10.00 hrs. on that day.
- The Speaker when he finds that the motion is in order, reads it to the House and requests those in favour to rise in their places.
- The leave is granted if not less than fifty members rise in their seats.
- If less than fifty members stand, leave is not granted.
- On leave being granted the motion is taken up on a day not being more than ten days from the date on which leave is asked for.
- A day or days or part of a day is allotted by the Speaker for discussion of the motion.

* The provision is the basis for Motion of No-confidence in the Council of Ministers under Rule 198.

- The Speaker may prescribe time-limit for speeches.
- At the appointed hour, the motion is put for obtaining the decision of the House.

Point No. 1

(i) Giving of reasons in the Motion of No-confidence is not a condition precedent to admission of Motion;

(ii) Motion of No-confidence is distinct from a Censure Motion.

On 31 August 1961, a member (Shri Braj Raj Singh) gave notice of a No-confidence Motion in the Council of Ministers under Rule 198 of the Rules of Procedure. The Notice contained several grounds which formed the basis of the motion.

When the Speaker enquired whether 50 members supported the motion, a member (Shri Prabhu Narain Singh) raised a point of order that the ground stated in the motion should be read out to the House.

Another member (Shri N.G. Ranga) submitted that since the Opposition did not consist of one political party but of a number of small political groups, it was only desirable that grounds were read out in the House so that members of other political groups also knew what it was all about and would be in a position to decide whether they should support the motion or not.

Opposing the point of order, a member (Shri Mahavir Tyagi) stated that if the grounds of a No-confidence Motion were invariably read out to the House, then, it would become a routine affair and it would be open to any member to give notice of such a motion every day consisting of hundreds of charges against the Government.

Ruling out the points of order Speaker, Shri M.A. Ayyangar, ***ruled***:

"A point of order has been raised that grounds for the motion of No-confidence can be given and they have to be read out to the House...

Prima facie at least 50 members must have No-confidence in the Government; that is the number required to form a quorum. If 50 members do not rise and a single member gets up and reads all the charges... and ultimately there is not even one member to rise in

his seat to support him, am I to allow all this when there is no opportunity for others to state anything against it? The impression will be brought about that only there are not others to support for various reasons, but the grounds are there. They are read out *ex-parte* without any opportunity for anybody to refute it. Therefore, in the House of Commons, they have made a distinction. That distinction has not been read out. The distinction is between a Censure Motion and a No-confidence Motion. The Government can be censured for various reasons. The Government need not be censured but can be kept out of office if the majority do not want them.

We are aware of cases where members of one group have changed over to another group after the Parliament meets. Originally the Government party might have been in a majority. Subsequently, some members are taken over to the other side and the Opposition convince them that they are just. Therefore, if the majority is in favour of the Opposition, am I to say, 'you have not given the reasons, therefore you are out of court?' The point is, can I insist upon the reasons being given?... I cannot insist upon the reasons being given. You must judge it from both sides. Can I insist upon the reasons being given for the purpose of admitting a No-confidence Motion?...The giving of reasons is not a condition precedent to the admission of a motion.

*** *** ***

The other question is this. When the grounds are set out should I read those grounds here? If I do, then the position would be that even if leave is not granted, the grounds will stand and the other side will have no opportunity to meet those charges. I find that this would be an injustice done to the other side."

[*L.S. Deb.*, 31 August 1961, cc. 6173-6181]

Point No. 2

Opportunity to criticise the Government at the time of discussion on the President's Address, Budget, Demands for Grants, etc. is no bar in admitting a Motion of No-confidence in the Council of Ministers.

On 7 May, 1981, immediately after the Speaker, Shri Bal Ram Jakhar informed the House that notices of No-confidence in the Council of

Ministers under Rule 198 were tabled by eight members, some members opposed the admissibility of the notice on the following grounds:—

(i) The Prime Minister who was Leader of the House and had to reply to the discussion was out of the country on State tour;

(ii) Members had already had an occasion to criticise Government during discussion on Motion of Thanks on the President's Address, Budget 1981-82 and on Demands for Grants, and in accordance with the provision of Rule 388, a motion shall not raise a question substantially identical with one which the House has given a decision in the same session.

After hearing the arguments of the members opposing the admissibility of the Motion, the Speaker ***ruled*** as under:

"I have already gone through all this matter. The very fact is that there is a separate provision, a specific provision in the rules for expressing No-confidence in the Council of Ministers, this has to be dealt with accordingly.... It might be something different.... So, the opportunities available to members to criticise the Government through amendments, through cut motions and on other things like. Thanks on President's Address and Financial Bill also, they do not debar the members from tabling notices of 'No-confidence' in the Council of Ministers and in fact, I may point out to you, the No-confidence motions had been discussed in this very House during the Budget Sessions of 1965, 1968, 1969, 1974 and 1978. So, there is nothing wrong. I have to over-rule."

[*L.S. Deb.*, 7 May 1981, cc. 304-315]

18

MOTION OF THANKS

CONSTITUTIONAL PROVISIONS

Article 87(1) of the Constitution, provides that at the commencement of the first Session of Parliament after each General Election to Lok Sabha and thereafter at the commencement of the first session of every year, the President shall address members of both Houses of Parliament assembled together and inform Parliament of the causes of its summons. As per article 87(2), provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in the President's Address.

SYNOPSES OF RULES 16 TO 21

- The Speaker, in consultation with the Leader of the House, allots time for the discussion of the matters referred to in the President's Address.
- Discussion is held on such day or days or part of any day on a Motion of Thanks moved by a member and seconded by another member.
- The amendments to the motion may be moved in such form as the Speaker may consider appropriate.
- The discussion on the President's Address may be postponed in favour of a Government Bill or other Government Business.
- The discussion can be interrupted by an Adjournment Motion.
- The Prime Minister or any other Minister has the right to explain the position of the Government at the end of the discussion.

- The mover or the seconder of the motion does not have a right of reply after the Prime Minister or any other Minister has explained the position of the Government at the end of the discussion.

Point No. 1

Amendments which are inconsistent with the provisions of the Constitution are inadmissible.

On 20 March 1957, a member (Shri B. Pocker) tabled an amendment to the Motion of Thanks on the President's Address which sought to censure the Government for not taking steps to give representation to the minorities in the State Legislatures.

Disallowing the amendment, Speaker, Shri M.A. Ayyangar, ***ruled*** :

"We are supposed to be working under a Constitution. There is no good censuring the Government for not modifying the Constitution...."

[*L.S. Deb.*, 20 March 1957, c. 112]

Point No. 2

Amendments are not allowed to be moved after the discussion has started.

During the Seventh Session of Second Lok Sabha, the Motion of Thanks on the President's Address was moved on 13 February 1959, and selected amendments were also moved by the members on that day. On 16 February 1959, some members sent slips at the Table requesting the Speaker, Shri M.A. Ayyangar, that the amendments tabled by them might be treated as moved. The request was rejected by the Speaker and the amendments were not treated as moved.

On 19 February 1959, when the amendments were put to the vote of the House, a member, (Shri Jagdish Awasthi) submitted that he had requested in writing on 16 February, 1959 that his amendments be taken as moved. The Speaker thereupon ***ruled*** :

"I did not allow any amendments to be moved after the discussion started since hon'ble members who had spoken already would not have an opportunity to speak on them.

*** *** ***

...What is the meaning of giving notice after a motion or resolution is started? How does the hon'ble member who moves the motion or resolution address himself to those amendments and answer in advance? He has no second or third opportunity. So is the case with respect to other hon'ble members who want to participate."

[*L.S. Debs.*, 13 February 1959, cc. 898-996, 16 February 1959, cc. 1194-1265 and 19 February 1959, cc. 1960-1961]

Point No. 3

No reference to the President is allowed during the debate. However, reference to the rights and prerogatives of the President during discussion on Motion of Thanks on President's Address are in order.

(a) On 19 February 1965, while seconding the Motion of Thanks on the President's Address, when a member (Maharaj Kumar Vijya Ananda) made a personal reference to the President, the Speaker, Sardar Hukam Singh ***ruled*** :

"I have requested him not to refer to the President and his actions or other things. Everything has been done by the Government and the Government is responsible for its merits or demerits.... The Government is to be congratulated or criticised for whatever has been said."

Subsequently, on 22 February 1965, during debate on the Motion of Thanks on the President's Address, a member (Shri H.V. Kamath) made a personal reference to the President by using such expression as 'Did the President remember...' in order to show that President's observations made elsewhere were contrary to what had been said in the Address. The Speaker, thereupon, ***ruled*** :

"...For everything that he has said, Shri Kamath can criticise the Government. But to say in a personal way, 'did he remember', 'did he do that' and so on will not be fair, because in a way that would be commenting upon his own ideas and his own conduct."

[*L.S. Debs.*, 19 February 1965, cc. 485-486 and 22 February 1965, cc. 734-735]

(b) On 26 February 1986 when a member (Shri Somnath Chatterjee) during his speech on motion of thanks on President's Address stated that the Bills passed by Legislatures in certain States which had non-Congress Governments, were not assented to by the President for several years, another member (Shri Priya Ranjan Das Munsi) raised a point of order as to whether members were entitled to discuss the rights and prerogatives of the President during discussion on the Motion of Thanks on President's Address. Shri Sharad Dighe, who was in the Chair, thereupon ***ruled*** :

"It can be discussed. He acts on the advice of the Government always."

[*L.S. Deb.*, 26 February 1986, c. 329]

19

OATH/AFFIRMATION

CONSTITUTIONAL PROVISION

Under article 99 of the Constitution, every member of Parliament, before taking his seat, is required to make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation in the form set out for the purpose.

SYNOPSIS OF RULE 5

- A member who has not made and subscribed an oath or affirmation can do so at the commencement of a sitting of the House or at any other time of the sitting of the House as per the direction of the Speaker.
- Previous notice is required to be given in writing to the Secretary-General in this regard.

Point No. 1

Parliament has the right to discuss the matter which involves the violation of the Fundamental Right of taking oath in one's own mother tongue in an Assembly.

On 20 March 1969, when a Calling Attention regarding taking of oath in Urdu in the Uttar Pradesh Legislative Assembly was taken up, a member (Shri K. Surya Narayana), rising on a point of order, submitted that as to how could the Home Minister get information about a matter which took place in Uttar Pradesh Legislative Assembly under the presence of its Speaker. He further submitted that if the matter was allowed to be raised in the House, in future, some of Parliament's decisions and actions or orders too might be raised and discussed in the

State Legislative Assemblies. Besides, he also desired to know the extent of the responsibility or accountability of the Union Home Minister for what transpired in the Uttar Pradesh Legislative Assembly and sought a ruling in the matter.

After hearing many members who spoke on the issue, the Speaker, Shri N. Sanjiva Reddy gave the ***ruling*** :

> "It is not a question of our discussing the Speaker's action there. The question is whether anybody can take oath or affirmation in his own mother tongue. Here we allow all languages. Some take in Tamil, some in Bengali, some in Telugu, some in Kannada and so on.
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> *** *** ***
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> Supposing a citizen belonging to a minority is elected either in Madras, Andhra, Bengal, U.P. or Mysore, are you going to deny him the right to take oath or affirmation in his mother tongue?... Therefore, greater damage will be done to Hindi by this method by saying that nobody can take oath or affirmation in any language other than Hindi. I am looking at it from that angle. It is not the Speaker's action at all that we are considering. The UP Assembly has full right to frame its own rules. As Parliament we have to take notice that what they are doing is the proper thing for unity of the country, for Hindi and for integration. Without going into the action of the Speaker and other things I thought if we discuss this broad question before this House it would be better."

[*L.S. Deb.*, 20 March 1969; cc. 194-201]

Point No. 2

Until the oath is taken, a member cannot discharge his functions on the floor of the House.

On 1 February 1924, a member (Shri K.C. Roy) sought to put a question on behalf of another member (Dr. Gaur) who had not yet taken oath. On this, the President, Mr. Frederik Whyte, gave the following ***ruling*** :

> "A member who has not taken the oath of office cannot discharge his functions on the floor of this House. Hon'ble members are aware

that, as a matter of convenience, I have consented to receive notices of Questions and Resolutions before the oath was taken merely in order that the stage of admission might be gone through before business opened here. But when it comes to the asking of questions or the performance of any other function on the floor of this House, that cannot be done until the oath is taken."

[*L.A. Deb.*, 1 February 1924; p. 32]

20

PAPERS LAID ON THE TABLE

SYNOPSES OF RULES 368, 369 and 370

Rule 368

- The Minister shall lay on the Table of the House, a despatch, or other State paper which he quotes but have not been presented to the House.
- The Minister is not obliged to lay on the Table of the House the papers, which are stated by him to be of such a nature that their production would be inconsistent with public interest.
- The Minister need not lay on the Table of the House if he gives in his own words a summary or a gist of such State papers or despatch.

Rule 369

- A member shall duly authenticate the paper he wants to lay on the Table of the House.
- All papers and documents so laid are considered public.

Rule 370

- The Minister shall ordinarily lay on the Table of the House:
  - (i) the documents or parts of document which contain the opinion or advice given by an officer of the Government or any person or authority and which the Minister discloses in an answer to a question or during a debate, or
  - (ii) a summary of such opinion or advice in lieu of the document.

SYNOPSES OF DIRECTIONS 19 AND 24(1)

I. Direction 19 provides that when half-an-hour discussion is interrupted for want of quorum or when there is no time for the Minister to give a full reply to the debate, he may, with the permission of the Speaker, lay a Statement on the Table of the House; and

II. As per Direction 24(1) as soon as opinions on a Bill are received they are required to be laid on the Table of the House by the Minister concerned, in case of a Government Bill and by the member-in-charge, in case of Private Member's Bill. However, in case of a Private Member's Bill if the member-in-charge is absent, opinions thereon may be laid by the Minister concerned with the Bill.

Point No. 1

Laying of the report of an Inquiry Commission under the Commission of Inquiry Act, 1952.

(a) A report cannot be laid on the Table of the House without being listed in the Order Paper;

(b) An Interim report can also be laid on the Table;

(c) A report cannot be laid on the Table unless the Government considers the report and its decisions are embodied in a memorandum.

On 9 March 1978, a member (Shri Krishan Kant) suggested that the Report of the Inquiry Committee on Jaya Prakash Narayan's treatment should be placed on the Table of the House. He also wanted to know from the Minister of Health as to why this was yet to be laid on the Table of the House, despite the direction given by the Speaker. He further said that the Minister was bound by the directions given by the Speaker. While taking part in the brief discussion that followed on the matter, another member (Shri C.M. Stephen), on a point of order, raised three questions *viz.* (i) under the provisions of the Commissions of Inquiry Act, an interim report could not be placed on the Table of the House; (ii) a report submitted to the President could not be laid and that a copy of the report would be caused to be placed on the Table of the House;

and (iii) it was not in the Order Paper. In view of the foregoing discussion and the points raised therein, the Speaker, Shri K.S. Hegde gave the following ***ruling*** :

"So far as the first point is concerned, many times points have been raised in this House without their being listed. The point raised in this case was not by the Government but by the members. Therefore, I do not see such substance in that point.

So far as the second and third points are concerned, we are governed by sub-section (4) of section 3 of the Commissions of Inquiry Act, 1952. The sub-section reads :

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

It has been contended that the words, *'report, if any'* means only the final report. I am unable to accept that contention. Any report means every report. *Therefore, a report which is of an interim character can also be placed before the House.*

But the most important point is this: can a report made under sub-section (4) be placed before the House unless and until the Government considers it and takes a decision on that.

This is an important aspect of the section. No report can be placed before the House unless the Government has considered the same has come to conclusions on the report.

Therefore, a memorandum containing the conclusions of the Government is absolutely necessary to place the report before the House.

In this view, it is not permissible for the hon'ble Minister to place the report before the House without the Government considering it and the Government's conclusions being embodied in a memorandum. In this view, I uphold the point of order raised and

direct the Minister not to lay the report before the House unless it is accompanied by a proper memorandum."

[*L.S. Deb.*, 9 March 1978, cc. 258-280]

Point No. 2

Placing the Papers in the Parliament Library does not satisfy the requirement of laying a Paper on the Table of the House.

On 1 August 1977, a member (Shri Hari Vishnu Kamath) informed the House that while answering an Unstarred Question put by him, on the building plan of the former Prime Minister, the Minister of Works and Housing (Shri Sikandar Bakht) stated that the copies of the building plan would be placed in the Library of Parliament. He submitted that such a procedure would be irregular and contrary to the rules. Thereupon, the Speaker, Shri K.S. Hegde gave the following ***ruling***:

"The papers should be laid on the Table of this House and not in the Library.

*** *** ***

It is my direction that whenever any document has to be placed for the benefit of the House, it has to be placed on the Table of this House and not in the Library."

[*L.S. Deb.*, 1 August 1977, cc. 289-290]

Point No. 3

(i) A Minister, after reading out a portion of a document in the House, can claim privilege and not lay the document on the Table of the House.

(ii) Reading out a portion does not amount to a waiver of that privilege.

On 3 April 1963, a member (Shri Homi F. Daji) participating in the discussion on Demands for Grants raised a question pertaining to the Report of the Auditors into the working of two insurance companies—the New Asiatic Insurance Company and the Ruby Insurance Company and the action taken by the Government thereon. The reply given by the Minister of Law (Shri A.K. Sen) was not found satisfactory by the member who wanted the Report to be placed on the Table of the House. He further stated that on the advice of the Ministry of Law, it was decided not to take any further action

on the report. He sought a clarification as to why the Ministry gave such an advice. Thereafter, many other members participated in the discussion. While replying to the discussion, the Minister of Law informed the House in detail about the two insurance companies, their auditors and their roles and the report. He also read certain points from the report.

Shri Daji however kept on insisting that the report from which the Minister of Law was reading be placed on the Table of the House. Thereupon, the Speaker, Sardar Hukam Singh gave the following ***ruling***:

"What has been read out is known to the members. Ordinarily, if something is read out from any document, the members can demand that the rest of it also should be placed on the Table of the House and that should be placed. But the Minister has this privilege. He may claim that it is not in the public interest to place that document on the Table of the House. If he claims it that is a different thing. Otherwise, if something has been read out from a document, normally it ought to be placed here.

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The practice followed up to this time is that if a Minister or a member refers to some document and reads out certain portions, then a demand can be made that the whole of it must be placed on the Table of the House. That demand is justified, but the Ministers of the Government have that privilege: They can claim the privilege that it would not be in the public interest and they do not propose to place it there. *They have that privilege. Therefore, I cannot deny them. The Government has to decide it. If one portion is read, then it is not compulsory for the Minister to see that the whole document or the report is placed on the Table of the House.*

*** *** ***

It* does not mean that because he read out a certain portion, the whole privilege has to be waived and that the other portion must be laid on the Table of the House."

[*L.S. Deb.*, 3 April 1963, cc. 7519-7578]

*Referring to Rule 368.

Point No. 4

(i) A paper or a document including a plaint, affidavit, or petition filed in a court by the Government can be laid on the Table.

(ii) A member who seeks to lay on the Table an affidavit filed by the Government in a court can be allowed to lay it on the Table.

On 6 May 1968, during the discussion on the West Bengal Budget, a member (Shri Madhu Limaye) raised a question that discrepancies in the Statements made in the House and the *affidavit* relating to the implementation of the Kutch Award filed in the High Court of Delhi by an official on behalf of the Government should be discussed by adjourning the business of the House. He was supported by other members (Sarvashri Bal Raj Madhok and Prakash Vir Shastri). Shri Hem Barua, who was in the Chair, observed that he would ask the Prime Minister to make a statement. Later in the day, the Prime Minister came to the House and expressed her inability to make a statement. There was, however, a demand by certain members that copies of the affidavit, in question, should be circulated. On 7 May 1968, when the members reiterated their request, the Law Minister, made a statement objecting to the circulation of the copies of the *affidavit* on the grounds that it was a document in the record of the High Court; and that the points fit to be commented upon in the *affidavit* had been placed before the High Court by parties and the High Court had reserved Judgment. Hence, the matter was *sub judice.*

Subsequently, when Shri Madhu Limaye was called upon to move his motion standing in the List of Business, a member (Shri Narayan Rao) raising a point of order submitted that moving a motion related to a *sub judice* matter would amount to contempt of court. The Law Minister contended that as the court had reserved its judgment, discussion on the *affidavit* would mean discussing a matter which was *sub judice* and therefore, came within the rigours of Rule 186 (viii) which prohibits discussion on a matter that was under adjudication by a Court of Law.

Speaking on the point of order, another member (Shri Nath Pai) stated that the question whether a particular matter was *sub judice* or

not should be decided by the Speaker on the merit of each case and such matter could be discussed unless it appeared to the Chair that there was real and substantial danger of prejudice to the trial of the case. He further stated that the House could give instructions to the Government as to how the proceedings should be conducted before the court and mere filing of a writ could not immobilise Parliament. He also said that the *affidavit* was a public document and anybody could obtain it and make a legitimate use of it. Shri Limaye, also speaking on the point of order, stated that discussion on the discrepancies in the statements made in the House and the *affidavit* did not touch matters which were before the court of law as the merits of the case would not come under discussion. He further said that the *affidavit* was a public document. He also said that in fact he had got a copy of the *affidavit.* He sought to lay it on the Table of the House.

The Speaker, Shri N. Sanjiva Reddy, who had reserved his ruling gave the following ***ruling*** on 9 May 1968 :

"As regards the first question, a document or a paper is laid on the Table of the House for the information of the members and also to assist them in debates and discussions in the House. The document becomes public after it is laid on the Table. Government have unlimited rights in the matter of laying documents on the Table of the House. They can do so on their own accord or in response to requests from the members. The only restriction in the Rules of Procedure of Lok Sabha on this right is that a Minister may not lay a paper or document on the Table of the House if he states that it is of such a nature that its production would be inconsistent with public interest. So far as documents or papers including plaints, written statements, affidavits and petitions, which are filed in a Court of Law by or on behalf of the Government, are concerned, they are nonetheless Government documents. So far as I have been able to make out, the classification of documents as private documents under the Evidence Act does not debar the Government from producing them before the House. The classification of documents as public or private under the Evidence Act is primarily for the purpose of providing them before a Court of Law.

The relationship between Government and Parliament is on a Constitutional footing and in my opinion, there is nothing in the

Constitution or in the Rules of Procedure of Lok Sabha or in the Evidence Act to prohibit the Government from producing such a paper before the House, to which the Government is responsible. Rather the Government should not keep back from the House a document which they have filed in a court. *I, therefore, consider that ordinarily a paper or document including a plaint, written statement, affidavit or petition submitted before a Court of Law can be placed on the Table of the House.*

It is, however, open to a Minister to decline to lay a paper or document on the Table of the House if he states that it is of such a nature that its production would be inconsistent with public interest. *The Chair cannot compel the Minister to lay such a paper or document on the Table of the House, but the House had adequate remedies available to it.*

As regards the second question, in the light of my above decision, I permit Shri Madhu Limaye to lay on the Table of the House a copy of the affidavit, in question, provided he complies with other requirements under the rules for laying of documents by private members on the Table of the House."

[*L.S. Debs.*, 6 May 1968, cc. 2198-2202, 2246-50,
7 May 1968, cc. 264-265 and
9 May 1968, cc. 3149-3154]

Point No. 5

A Minister need not lay on the Table Documents under Rule 370, if he has made an observation relying on his own conclusions drawn from material gathered or based on talks he had with knowledgeable persons, etc.

On 18 April 1978, in the course of his speech during the demands for grants of the Ministry of External Affairs, the Minister of External Affairs (Shri Atal Bihari Vajpayee) stated that there was a secret understanding between Mr. Z.A. Bhutto and Smt. Indira Gandhi during their talks in Simla. Subsequently, several members demanded that the Minister should lay on the Table of the House the documents on which he relied. In support of their contention, while some members relied on Rule 370 and others on Rule 368. The Minister and several other

members took the position. The Minister (Shri Vajpayee) further stated that it was not in public interest to place the relevant papers on the Table of the House. Thereupon, on 24 April 1978, the Speaker, Shri K.S. Hegde gave the following ***ruling***:

> "Before Rule 370 is attracted the condition precedent is that the Minister must have disclosed the advice or the opinion given to him by any officer of the Government or any other person or authority. In the present case, the Minister has not disclosed any advice or opinion given to him by anyone. On the other hand, he relies on his own conclusions, drawn from various circumstances including the material gathered from various documents as well as from the talks he had with several persons. Hence, Rule 370 is not attracted."

[*L.S. Debs.*, 8 April 1978, cc. 395-416 and 24 April 1978, cc. 314-316]

Point No. 6

(i) The Speaker cannot compel the Minister to lay the Paper on the Table when the Minister takes the plea of Public interest.

(ii) The Speaker can examine the public interest angle when the Minister refuses to lay a Paper on the Table on the ground of public interest.

(a) On 26 February 1970, a member (Shri Piloo Mody) called the attention of the Minister of External Affairs (Shri Dinesh Singh) to the following matter of urgent public importance and requested him to make a Statement thereon: *The reported decision of the Government of India to close down all Cultural and Information Centres of foreign countries which are located in India outside their headquarters or their Consular and Trade Offices and reactions in the diplomatic circles in this regard.*

There were demands for laying of the report of the working of Cultural and Information Centres on the Table of the House. After a brief discussion that followed on the matter, the Speaker, Shri G.S. Dhillon gave following the ***ruling*** :

> "I cannot compel him if he says it is in the public interest not to disclose it. I have no power to compel him. I can only ask him in

my Chamber what is the public interest, and if I am satisfied, I can let it be known to members."

[*L.S. Deb.*, 25 February 1970, cc. 228-246]

(b) On 2 March 1970, a member (Shri S.M. Joshi) called the attention of the Minister of State in the Ministry of Home Affairs (Shri Vidya Charan Shukla) regarding the demand for laying on the Table the Mahajan Commission Report on Mysore-Maharashtra Border Dispute. Several members participated in the discussion. Thereafter, the Speaker, Shri. G.S. Dhillon gave the following ***ruling*** :

"Certain points have been raised on the proposal that they are not in the public interest to be disclosed or any other plea you have taken. *Can you satisfy me either here or in my Chamber how far this public interest is served?...To the Minister* I put a specific question. Can you satisfy me on this here or in my Chamber? *If he can satisfy I shall accept his plea."*

[*L.S. Deb.*, 2 March 1970, cc. 223-234]

Point No. 7

(i) A member of the House can quote from a document that is treated as secret by Government and has not been disclosed in Public Interest and lay it on the Table of the House.

(ii) The Government cannot be compelled to admit or deny the correctness of any document sought to be laid.

On 26 February 1965, the Minister of Law and Social Security (Shri A.K. Sen), made a Statement opposing the demand from some members for laying a CBI report on the Table of the House. He *inter alia* stated that there were no rules specifically governing the question of laying of documents either by the members of the House or by members of the Government. Citing Direction 178A of the Directions by the Speaker, which provided that a private member can lay a paper on the Table of the House when he is authorised to do so by the Speaker, he stated that it is governed by the discretion of the Speaker, exercised under Rule 389 of the Rules of Procedure. He also stated that the document which could not have been normally placed on the Table of

the House, was sought to be read out before it was laid on the Table. As per the rule no document should be read out unless it was part of the record of the House by being laid on the Table. Thereupon, the Speaker, Sardar Hukam Singh gave the following ***ruling***:

> A member can ordinarily quote from a document that is treated by Government as SECRET or CONFIDENTIAL and which the Government has not disclosed in Public Interest.
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> *** *** ***
>
> While the Government cannot be compelled to admit or deny the correctness of an alleged copy of a document which is classified as SECRET or CONFIDENTIAL, it is necessary for the member who quotes from such a document to certify that he has verified from his personal knowledge that the document is the true copy of the original with the Government and the member will do so on his own responsibility and the Chair will permit him to proceed. In case, the member is not prepared to give a certificate in these terms and he insists on quoting from such document, the Chair may find out from the Government about the authenticity of such a document and the facts placed by the Government before the Chair will be final in determining whether such a document is genuine or not. Where the Government declines to admit or deny the correctness of any alleged copy, the Chair will allow the member to proceed and it will be for the Government to give such answers as they think fit."
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> [*L.S. Deb.*, 26 February 1965, cc. 1698–1722]

Point No. 8

(i) The Government is normally not required to lay on the Table the agreement entered into with a foreign country.

(ii) The Government is required to make a Statement in the House on the discussion held between a Minister of the Government of India and that of a foreign Government.

On 19 March 1979, a member (Shri Eduardo Faleiro) raised a point of order contending that the Government should have made a Statement regarding the discussion that the then Prime Minister (Shri Morarji Desai) and the then Minister of External Affairs (Shri Atal Bihari Vajpayee)

had with Mr. Kosygin, the then Chairman of the Council of Ministers of the erstwhile USSR. They should also have placed the agreements entered into with the Soviet government during the visit of Mr. Kosygin before the House. On this, the Prime Minister, Shri Morarji Desai, contended that no statements were made when discussion took place in the country. The then Leader of Opposition, Shri C.M. Stephen, however, also submitted that as per the convention, agreements concerning the country, wherever signed, must be reported to the House when the House was sitting. Thereupon, on 20 March 1979, the Speaker, Shri K.S. Hegde gave the following ***ruling*** :

"Under our Constitution, the Executive is empowered to enter into any agreement with foreign countries and the same does not require the sanction of Parliament unless—

(i) The agreement itself provides that it should be ratified by Parliament; and

(ii) Unless it involves any expenditure from the Consolidated Fund of India.

If there is any expenditure involved, an occasion will be available for discussion of the same during the discussion of the Demands for Grants.

Therefore, there is no constitutional requirement compelling the Government to place the agreements in question on the Table of the House. It is not the contention of the hon'ble members that the agreements in question provide for any ratification by Parliament.

As regards the Statement to be made by the Government relating to the discussion that took place between our Prime Minister or Foreign Minister and H.E. Mr. Kosygin, here again, there is no legal or constitutional requirement to make a Statement, though in practice, the Prime Minister made such Statements whenever they had discussions with foreign leaders outside the country.

Coming to the prevailing convention, there have been some occasions on which Statements were made by the Ministers relating to the discussions that they had with foreign visitors during their stay in India, but by and large no such Statements have been made

regarding the conversations that the Ministers had with foreign visitors during their stay in India. To cite only some recent examples, no such Statement was made relating to the discussions that the Prime Minister and the Foreign Minister had during the recent visits of President Carter, the Prime Ministers of U.K., Australia and Vietnam. That being so, I am unable to uphold the point of order raised.

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2nd part of the Ruling on the subject (The earlier ruling is amended)

"One of my predecessors earlier has gone deeply into the matter and he has gone into the constitutional aspects, he has gone into the rules... He has laid down that the House has no right to ask for an agreement to be placed before the House. The Constitution and also the rules do not provide for it. But undoubtedly, you can make a rule; you can make a convention.

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I am glad to announce to the House that a certain understanding has been arrived at. Suppose some important talks take place between the Prime Minister, or the External Affairs Minister or some other Ministers with some outside leaders and if any agreement is entered into between them, if either the leaders of any of the groups or any section of the members or a fairly large number of members require a Statement to be made by the Government and they write to the Speaker, the Speaker in turn would request the Government to make a Statement or place a report on the Table... This includes, the joint communique as well as the agreements entered into and the understanding arrived at."

[*L.S. Debs.*, 19 March 1979, cc. 261-265 and 20 March 1989, c. 273]

Point No. 9

(i) The Government is not under any obligation to place an enquiry report treated as SECRET when there is a demand by members to place it on the Table of the House.

(ii) **It is for the Government to treat a document, copies of which have been circulated among members and whose excerpts have appeared in the newspapers also as SECRET and CONFIDENTIAL.**

(iii) **A member cannot spring a surprise on the Speaker, the House and the Government by quoting from some document which the Government considers CONFIDENTIAL.**

(iv) **A member who may have obtained the document through stealth or in an irregular manner, does not have an absolute right to refer to such document. His freedom can be controlled by the Speaker in the public interest or for the security of the country.**

On 26 February 1965, when the discussion on laying the secret documents in the House was going on, the Speaker, Shri K.S. Hegde ***ruled*** :

"I have looked into that and I have considered it.... I have seen all the precedents though the Law Minister has not gone into it in his statement, I have seen all the precedents that were available with me.

*** *** ***

Prof. Ranga wanted to know how it would be possible for me immediately after the Law Minister sits down to give my decision if I had to consider and take account of the opinion expressed by him. My answer is that yesterday I had requested and I had got an advance copy of the opinion that he was going to express, and therefore, I have taken that into account as well. I am now in a position to straightaway give my opinion and I hope hon'ble members would bear with me."

RIGHT OF MEMBERS TO QUOTE FROM SECRET DOCUMENTS OR LAY COPIES THEREOF ON THE TABLE OF THE HOUSE

On 22 February 1965, when Shri P.K. Deo started his question on the Prime Minister's Statement, he observed. 'I quote' and then

proceeded to quote. I enquired 'Where are you quoting from' He said, 'From the CBI Report.' I questioned his right to quote from a document which could not be expected to be with him.

CBI is an agency of the Central Government to make enquiries into cases entrusted to it, and make reports to Government. The Government then takes decisions on the issues.

In the present case, certain complaints received by Government were passed on to the CBI for investigation and report. The CBI has done that. The Government has taken decision and that was announced by the Prime Minister. The issues before us are:

(i) whether such an enquiry and report can be withheld by Government, when there is a demand by members to place it on the Table of the House?

(ii) whether a document, copies of which have been circulated among members, and whose excerpts have appeared in the newspapers also, can still be treated as SECRET and CONFIDENTIAL?

(iii) whether a member can suddenly spring a surprise on the Speaker, the House and on the Government by quoting from some copy, which he might have got from some source, which he is not prepared to disclose, when the Government treats the original as SECRET or CONFIDENTIAL and is not prepared to lay on the Table?

(iv) such copies, if found true, can be obtained through leakage or stealth, or in an irregular manner. Whether a member has an absolute right to refer to any such copy or his freedom can be controlled in the public interest or for security of the country?

Unquestionably, a member has right of freedom of speech, which includes reference to any paper, document, book or publication and no action can be taken against him by any outside authority or agency. But this freedom is not absolute in the sense of license. A member has to exercise great restraint and first satisfy himself that the document he holds in his possession is a genuine one. Further, proper checks are to

be exercised by the Speaker in accordance with the provisions of the Constitution and the rules made thereunder:

> 'Speech and action in Parliament may thus be said to be unquestioned and free. But this freedom from external influence or interference does not involve any unrestrained license of speech within the walls of the House.'
>
> (Anson, Volume I, Parliament, Page 170)

During the course of discussion on the point on 22 February 1965, Shri Ajit Prasad Jain said that 'issue before the House was whether it was in the public interest for a member to make use of an information received illegally and which constituted an offence under the Official Secrets Act.'

I have looked into the practice in the House of Commons in the United Kingdom and I cannot do better than quote from the Report of the Select Committee on the Official Secrets Act in the House of Commons which examined a similar matter :

> Your Committee are of opinion that disclosures by members in the course of debate or proceedings in Parliament cannot be made the subject of proceedings under the Official Secrets Act.

This is based on the fundamental privilege of the member that he has freedom of speech in the House. Since our Constitution has also conferred a similar privilege on the members of this House, *it is quite clear that by quoting from a Secret or Confidential document or placing a copy thereof on the Table of the House, the member will not commit any offence under the Official Secrets Act.*

In this connection, I may also draw the attention of the members to a further paragraph in that Report, which reads as follows:

> The House of Commons has disciplinary powers over its members, and a member who abuses his privilege of speech may be punished not merely by suspension from the service of the House, but by imprisonment or expulsion from the House or both. Expulsion at least cannot be considered a light penalty. It is not so much on penal sanctions, however, that your Committee would desire to rely for the prevention of abuses of parliamentary privilege prejudicial to the

safety of the realm, as on the good sense of members themselves, who are as much concerned as Ministers to prevent such abuses.

Article 105(1) of the Constitution lays down that subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament.

Rule 368 of the Rules of Procedure and Conduct of Business in Lok Sabha lays down that if a Minister quotes in the House a despatch or other State Paper which has not been presented to the House, he shall lay the relevant paper on the Table :

Provided that this rule shall not apply to any documents which are stated by the Minister to be of such a nature that their production would be inconsistent with public interest :

Provided further that where a Minister gives in his own words a summary or gist of such despatch or State Paper it shall not be necessary to lay the relevant papers on the Table.

Rule 389 of the Rules of Procedure and Conduct of Business in Lok Sabha further lays down that all matters not specifically provided for in these rules and all questions relating to the detailed working of these rules shall be regulated in such manner as the Speaker may, from time-to-time, direct.

Direction 117 of Directions by the Speaker lays down that a private member may lay a paper on the Table of the House when he is authorised by the Speaker to do so. Direction 118 further lays down that 'If a private member desires to lay a paper or document on the Table of the House, he shall supply a copy thereof to the Speaker in advance so as to enable him to decide whether permission should be given to lay the paper or document on the Table.' It is further stated in Direction that 'If in the course of his speech, a member wishes to lay a paper or document on the Table without previously supplying a copy thereof to the Speaker, he may hand it over at the Table but it will not be deemed to have been laid on the Table unless the Speaker, after examination accords the necessary permission.

The Rules of Procedure and the Directions are silent on the question whether a member can quote from a paper which the Government treats

as secret or confidential, and which they are not prepared to make public. I have, therefore, looked into the past practice and precedents. So far as Lok Sabha is concerned, the following Precedents are relevant :

(1) In February 1958, Shri Feroze Gandhi, in the course of his speech, referred to certain notes of the Finance Minister to the Principal Finance Secretary. He also quoted from them in his speech. On an objection being raised as to how the hon'ble member had got access to these documents, Shri Feroze Gandhi stated, 'If I were to reveal all the sources of my information this inquiry would never have been held. I cannot.'

The Speaker giving his decision on the point of order observed *'It is not necessary to divulge the source of information. It has been repeatedly held in Courts of Law that even if a document is obtained by stealth so long as it is genuine it is admissible in evidence.'* The member then placed the document on the Table of the House.

(2) On 3 April 1963, Shri Homi Daji while speaking on Law Ministry's Demand, quoted from Auditor's Reports into the working of two Insurance Companies, *viz.* the New Asiatic Insurance Company and the Ruby General Insurance Company, which the Government had not agreed earlier to lay on the Table on the ground that it would not be in the public interest to do so. Shri Daji was asked whether he was prepared to place them on the Table of the House and he was permitted by the Chair to do so after he had recorded a certificate to the effect that he had verified from his personal knowledge that the documents were a true copy of the original with the Government.

(3) On 4 May 1963, Sarvashri Homi Daji and S.M. Banerjee raised a point in the House stating that Part I of Report of the Attorney-General and Shri Shastri on Vivian Bose Commission's Report had already been circulated by one 'Mehr Chand Khanna' to the Speaker and some members of Parliament. They argued that in view of the leakage of the said document which Government declared to be Confidential, Part I of that Report should also be laid on the Table. The matter was discussed at length in the House on that day.

> Ultimately the copy in the possession of the member was passed on the Minister of Parliamentary Affairs who said that Government would make enquiries about the genuineness or otherwise of the document.

On 6 May 1963, the Minister of Industry made a Statement and, *inter alia,* observed as follows :

> Since this part of the Daphtary-Shastri report is already in circulation, Government do not consider that any useful purpose will be served now by continuing to treat this part of the Report as secret. I am, therefore, laying it on the Table of the House.

I have also tried to ascertain the practice in the House of Commons in the United Kingdom. The following precedent has been placed before me:

On 28 February 1945 when a member quoted from a secret protocol, the Foreign Secretary, Mr. Eden, *inter alia,* made the following observations :

> I do not know that my hon'ble friend has got the complete document. In fact I do not know what he has got.... My hon'ble friend did not tell me he was going to read out from a secret document.... I am now going to look into these documents and lay them on the Table. I do not ask my hon'ble friend how he obtained this secret protocol.

When a member asked whether there was an obligation to lay the documents on the Table, the Chair ruled—'It is a rule that such documents should be laid, but not if it is against public interest, or if they are in the nature of private or secret documents' Mr. Eden clarifying the position further said, 'There is no obligation to lay a document unless you quote from it. I have not quoted from it. I have referred to it. We propose to lay these documents but I must consult others.'

After examining the constitutional position, the precedents and the general parliamentary practice, I give below my conclusions on the various issues that have arisen and which I have specified earlier.

(1) Government are not obliged to lay such a document on the Table of the House and the Chair cannot compel them to do

so, if they continue to hold the view that it is not in the public interest to do so.

(2) It is for the Government to consider whether a document, copies of which have been circulated among members or which have appeared in the Press, wholly or partially, shall still be treated as secret or confidential, and not laid on the Table.

(3) Normally a member is not expected to spring a surprise on the Speaker, the House and the Government by quoting from a document which is not public. In fairness to all, and in accordance with parliamentary conventions, the member should inform the Chair and the Government in advance so that they are in a position to deal with the matter on the floor of the House when it is raised. If this requirement is not complied with, the Chair may stop the member from quoting from such a document and may ask the member to make available to the Chair a copy before the Chair allows the member to proceed with any quotation therefrom.

(4) It is a fact that a document which is treated by the Government as secret or confidential, can be obtained through leakage or stealth or in an irregular manner, but the Chair would not compel the member to disclose the source from which copies have been obtained by the members.

(5) As I said above, the member has a right to quote from such a document subject to the conditions that I have specified above. But there is an over-riding authority with the Speaker and under his inherent powers he can stop a member from quoting from a document in the national interest where security of the country is involved. Such cases, I admit, shall be rare, but such a power exists in the Speaker and he can exercise it without assigning any reason.

According to this decision, if Mr. P.K. Deo wants to quote from the document, which he alleges to be CBI report, he must first give me the document with the prescribed certificate.

[*L.S. Deb.*, 26 February 1965, cc. 1698-1721]

Point No. 10

A Minister cannot be prevented from laying a notification on the Table of the House if it has been challenged in the Court and a stay order has been issued by the Court in respect thereof.

On 21 November 1980, a member (Shri Sunil Maitra) opposed laying on the Table of the House a Gazette Notification containing General Insurance (Rationalisation and Revision of Pay Scales and other Conditions of Service of Supervisory, Clerical and Subordinate Staff) Second Amendment Scheme, 1980, on the grounds that a writ petition challenging the validity of the notification had been admitted by the Supreme Court and that the Court had also granted a stay order against implementation of the Notification. The Minister of Finance (Shri R. Venkataraman) clarified that the Notification in question was being laid on the Table in pursuance of the requirement of the Statute. Thereupon, the Speaker, Shri Bal Ram Jakhar gave the following ***ruling*** :

"Under section 17 of the General Insurance Business (Nationalisation) Act, 1972, a copy of every scheme and every amendment thereto framed under the Act 'shall be laid as soon as may be after it is made, before each House of Parliament'.

In view of the position stated by the Minister and also in view of the fact that the present amendment to the scheme is required to be laid on the Table in pursuance of an Act of Parliament, I think, it would not be in order to stop the Minister from laying the Paper on the Table. The Minister may now lay the Paper on the Table."

[*L.S. Deb.*, 21 February 1980, cc. 252–261]

Point No. 11

If a Minister refuses to lay a Paper on the Table which he is bound to do under the rules, it will amount to a breach of privilege of the House.

On 19 November 1959, the Minister of State in the Ministry of Home Affairs (Shri B.N. Datar) moved the motion regarding the alternation of boundaries of the States of Andhra Pradesh and Madras and matters connected therewith. The Speaker, Shri M.A. Ayyangar

asked the Deputy Speaker to get through the Bill as the boundary matter related to his constituency also.

Participating in the discussion, a member (Shri Naushir Bharucha) pointed out that the Government has not circulated the plan showing the individual boundaries which it was supposed to do. Another member (Pandit Thakur Das Bhargava) stated that the right document, *i.e.* Survey Plan of 1957-58 were not produced for the information of the House. In response to the order of the Speaker, a map of 1957-58 should have been given and not the map of 1935 which covers only one half of the area. Several other members also participated in the discussion. Thereupon, on 23 November 1959, the Deputy Speaker, who was in the Chair, Sardar Hukam Singh ***ruled*** :

> "Now I quote a previous decision of the Honourable Speaker. It was on the occasion when the President's proclamation was being discussed here. The Speaker gave the ruling on that occasion. There was a motion that it was a case of breach of privilege on the part of the Government since they did not produce that document when Shri Nayar asked for its production."
>
> Then the Speaker remarked :
>
> "I have been anxious to see whether a *prima facie* case has been made out. Therefore, at the outset, I said that it must be shown to me that there is an obligation cast upon the Home Minister to place the document on the Table of the House whether an individual member asks for it or the whole House asks for it. I will assure that not merely Shri Nayar but the whole House asks for the production of this document. *If the Hon'ble Minister cannot withhold it and if he is bound to place it on the Table of the House, then if he refuses to do so certainly there would be a breach of privilege.*"
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> [*L.S. Deb.*, 23 November 1959, c. 1231]

Point No. 12

It is not necessary for a member to divulge his source of information while laying a paper on the Table of the House.

On 20 February 1958, a member (Shri Feroze Gandhi) while participating in the discussion on the report of the Commission of Inquiry into the Affairs of the Life Insurance Corporation, quoted a Top

Secret Government note in the context of the report. On this, another member (Shri Nath Pai) demanded that Shri Feroze Gandhi disclosed the source of his information. Thereafter, the Speaker, Shri M.A. Ayyangar ***ruled*** :

"It is not necessary to divulge the source of information. It has been repeatedly held in Courts of Law that even if a document is obtained by stealth, so long as it is genuine, it is admissible in evidence."

[*L.S. Deb.*, 20 February 1958, cc. 1746–1753]

Point No. 13

(i) The Government is not required to lay on the Table a document, a full copy of which has been laid on the Table by a member, which is still held as secret by the Government.

(ii) The members cannot make a demand that a report of the CBI be placed on the Table on the ground that in a previous House such a report was laid on the Table.

On 8 June 1967, after the then Home Minister (Shri Y.B. Chavan) had made a statement in response to a Calling Attention Notice regarding the reported refusal of the Central Government to make available to the Orissa Government, the CBI report on Shri Biju Patnaik. A member (Shri Nath Pai) supported by several other members raised a point of order that the report of the CBI which had been placed on the Table of the House by a member of the Third Lok Sabha was a part of the record of the House and hence the report was not a secret document. Prof. Ranga supported by several other members contended that it was not proper for the Central Government to refuse to supply the copies of certain documents in their possession to the Orissa Government. Another member (Dr. Ram Manohar Lohia) also speaking on the point of order stated that the refusal of the Central Government to give copies of the document to the Orissa Government would affect the Centre-State relations as provided in the various articles of the Constitution. On 9 June 1967, the Minister of Home Affairs and the Minister of Law made their Statements on this issue. In view of the above, on 12 June 1967, thereupon, the Speaker, Shri N. Sanjiva Reddy ***ruled*** :

"After my distinguished predecessor, Sardar Hukam Singh, gave his ruling on 26 February, 1965, an hon'ble member of the then

House, Shri Kamath, placed on the Table of the House what he claimed to be a summary of the CBI report with respect to some of the activities of the Orissa Ministers, and later Shri S.N. Dwivedi placed on the Table what he claimed to be a copy of the full report with respect to that matter. The Government has not so far admitted or denied the correctness of any of these documents. From the statement of the Home Minister, it is clear that they still classify the report as confidential and they are not prepared to make it public. The right of the Government in this respect is absolute and the Speaker cannot compel them to lay such a document on the Table of the House, much less to disclose it or communicate it to anyone else."

...Even if there had been a request and the Government had not complied with it, the Speaker had no power in the matter.

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As regards the contention that the document laid on the Table of the House by some members of the opposition during the Third Lok Sabha are part of the record of the House and hence are not secret documents, I have to say that according to Rule 369(2), all papers and documents laid on the Table shall be considered public. Therefore, the documents laid on the Table during the Third Lok Sabha by Shri Kamath and Shri Dwivedi are already public. But what is overlooked here is that those are not the documents which Government has placed on the Table of the House and, therefore, the documents which may be in the possession of the Government have not become *ipso facto* public.

*** *** ***

As I have already said the Speaker has no authority to compel Government to place it on the Table.

[*L.S. Debs.*, 8 June 1967, cc. 3818–3824
and 12 June 1967, c. 4367]

Point No. 14

A member is not permitted to lay a document independent of a relevant business before the House.

On 3 December 1985, a member (Prof. Madhu Dandavate) sought the permission of the Speaker to lay on the Table of the House, a copy

of each of the three parts of the Report submitted to the Government, which related to Central Sheep and Wool Research Institute and its malpractices. Thereupon, on 4 December 1985 the Speaker, Shri Bal Ram Jakhar gave the following ***ruling*** :

"Yesterday, Prof. Madhu Dandavate had sought permission to lay on the Table of the House a copy each of the three parts of the Report submitted to the Government in October 1980 (Part I), February 1981 (Part II) and March 1981 (Part III) of the Enquiry Committee on High Rate of Mortality and other malpractices at the Central Sheep and Wool Research Institute at Avikanagar. I have looked into the matter. In the case of Private members; the question of laying a paper on the Table normally arises when a member quotes from a document and is called upon to lay it on the Table or if a question of Privilege is involved and the member is required to substantiate the allegations made in that connection with documentary evidence. In the present case, Prof. Madhu Dandavate had neither quoted from the reports sought to be laid on the Table by him nor any question of privilege is involved. There was also no demand for the reports being laid on the Table. Moreover, no member has in the past been allowed to lay a document independent of any relevant business before the House.

In this context, I may point out that the interim report of the Wanchoo Committee on Direct Taxes which was treated by the Government as a Secret document and which the Government thought would not be in public interest to lay on the Table was allowed by the Speaker to be treated as a paper laid on the Table since Shri Jyotirmoy Bosu who had made the request had not only referred to the report but quoted from it during discussion on a motion regarding unprecedented rise in prices of essential commodities on 10 August, 1972.

Earlier, on March 3, 1965 Shri H.V. Kamath was allowed by the Speaker to lay on the Table a document purported to be a CBI report in Orissa ex-Chief Ministers, etc. and also a Cabinet Sub-Committee findings thereon since the member had quoted from the documents

and there was a demand both from the opposition and ruling party members that the documents be permitted to be laid on the Table.

In view of the position explained above, I am unable to give permission to Prof. Dandavate to lay the reports on the Table."

[*L.S. Deb.*, 4 December 1985, cc. 255-256]

21

POINTS OF ORDER

SYNOPSIS OF RULE 376

- A Point of Order relates to:
  (i) the interpretation or enforcement of the Rules of Procedure or such articles of the Constitution which regulate the business of the House;
  (ii) a matter which is within the congnizance of the Speaker.
- A point of order may be raised in the relation to the business before the House at the moment.
- The Speaker may allow a point of order to be raised between the termination of one item of business and the commencement of another if it relates to the maintenance of order in, or arrangement of business before, the House.
- The decision by the Speaker whether a point raised is a point of order or not is final.
- No debate is permitted on a point of order. But the Speaker may, if he thinks fit, hear members before he gives his decision.
- A point of order is not a point of privilege.
- A member is not allowed to raise a point of order to ask for information or to explain his position or when a question on any motion is being put to the House.
- A point of order should not be hypothetical or about the division bell not having been rung or heard.

Point No. 1

There cannot be a point of order in the middle of a speech.

On 29 March 1963, the House took up further discussion and voting on the Demands for Grants pertaining to the Ministry of Home Affairs. In the course of discussion, a member (Shri Ramsevak Yadav) wanted to raise a point of order. On this, the Deputy Speaker, Shri S.V. Krishnamoorthy Rao gave the following ***ruling*** :

> "Order, order, there is no point of order. There cannot be a point of order in the middle of a speech."

[*L.S. Deb.*, 29 March 1963, c. 6972]

Point No. 2

A point of order must refer to the procedure and not to any argument.

On 18 June 1952, while the Minister of Rehabilitation (Shri A.P. Jain) was replying to the debate on the Demands for Grants, pertaining to his Ministry, a member (Shri Meghnad Saha), on a point of order, sought clarification from the Minister regarding the figure given for the number of East Bengal refugees. Directing the member to address the Chair, and not the Minister, the Speaker, Shri G.V. Mavalankar, ***ruled*** :

> "Any point of order must refer to the procedure and not to the substantive argument that he is putting forth. At the end of the speech, if he so likes, he can ask for certain information without trying to make a speech in support of his own view. Otherwise, under the guise of a point of order, anybody can stand and interpose an argument. That is not the proper procedure."

[*L.S. Deb.*, 18 June 1952, cc. 2037-2038]

Point No. 3

There is no debate on a point of order.

On 17 August 1978, a member (Shri Raj Narain), who had resigned as the Minister of Health and Family Welfare earlier, was listed to make a personal Statement under Rule 199 in explanation of his resignation.

Subsequently, he decided not to make the Statement and the Speaker made the announcement in this regard in the House. On this, a member (Shri Vayalar Ravi) rising on a point of order wanted to know as to how long a member who had tendered his resignation from Ministership could claim the privilege to make a personal Statement as envisaged under Rule 199. He also wanted to know whether the Minister after having functioned as an ordinary member for as long as one month, could then make a Statement. A discussion on this point ensued. The Speaker, Shri K.S. Hegde dissuading them from doing so, gave the following ***ruling*** :

> "In a matter of points of order there is no debate. The Speaker may choose to ask somebody to explain the position. The real position always is if I am inclined to accept their point of view, before I decide in their favour, I hear the other side also. If I am not inclined to accept their view point, I need not ask. The real position is, it is not a debate. I seek the assistance of the member. If I feel inclined to accept that point of view, then I ask your assistance undoubtedly. If I am not inclined to accept it, I do not trouble you... I have given my ruling. There the matter ends."

[*L.S. Deb.*, 17 August 1978, cc. 224-238]

Point No. 4

(a) A member who has a point of order should stand up and say "point of order".

(b) The member should quote the specific rule or provisions of the Constitution, which might have been ignored or neglected or violated.

(c) A matter on which the Speaker cannot give any ruling should not be the subject of a point of order.

On 8 March 1965, when the calling attention regarding the murder of Sardar Pratap Singh Kairon and three others was taken up, a member (Shri R.S. Pandey) rose on a point of order, when the Speaker was standing. The Speaker, Sardar Hukam Singh, thereupon, ***observed*** :

> "I will just read out the decisions that we took when I called the leaders of Opposition groups and certain members from the Opposition."

*** *** ***

...I may refer to the decisions, rather we might call them suggestions if the House cannot take them as decisions, that have been taken:

(i) "A member who had a point of order should stand up any say "Point of Order". He should not proceed to formulate it until the member was identified by the Chair. Only after he had been identified, he should proceed to speak on his point of order;

(ii) While formulating his point of order, a member should quote the specific rule or the provision of the Constitution relating to the procedure of the House which might have been ignored or neglected or violated;

(iii) No member should rise or speak, either standing or sitting, when the Speaker was on his feet."

*** *** ***

Then, it was decided:

"The Speaker should be heard in silence and any member wanting to speak should rise only after the Speaker had sat down and he had called the member to speak."

(iv) Matters on which the Speaker could not give any relief should not be the subject of a point of order. Should a member desire to have a clarification from a Minister or subject to any statement which a Minister might have made, he should say so in the House with the permission of the Speaker and should not raise it in the garb of a point of order."

[*L.S. Deb.*, 8 March 1965, cc. 2975-2981]

Point No. 5

A point of order can be raised only on the interpretation of Statutes, Rule, etc.

(a) On 11 June 1962, during the Question Hour, on the question regarding the visit of a Trade Delegation from Pakistan, a member (Shri Hem Barua), on a point of order, submitted that there was a discrepancy between the Statement made by the Minister of Food and Agriculture previously and that of the Minister of International Trade

made that day. The member conferred that while the Minister of Food and Agriculture had stated that there was no shortage of cotton in the country, the Ministry of International Trade admitted there was shortage. The Speaker, Sardar Hukam Singh, thereupon, ***ruled*** the following:

> "There is no point of order. I have stressed it so many times that if the interpretation of any law, Statute, provision of Constitution, regulation or enforcement of rules is involved, then only a point of order arises... It might be misleading the House. There is no point of order in that. He can write to me pointing out that this is not the right thing, how we should proceed further, what action should be taken and how we can advise the Minister. That is a different thing altogether. There is no point of order."

[*L.S. Deb.*, 11 June 1962, cc. 9897-9899]

(b) On 17 April 1978, after the Question Hour was over and the House was about to take up the Laying of the Papers, a member (Prof. P.G. Mavalankar), on a point of order, wanted to know whether it was in order for the Chair to ask for reference to the rule which had been breached. Adding to this, another member (Shri Shayamnandan Mishra) said that though the Chair was perfectly in order to ask for the rule which had been violated or breached, but the Chair also had to be governed by certain rules while giving a ruling. Several members took part in the discussion that ensued. The Speaker, Shri K.S. Hegde, thereupon, gave the following ***ruling*** :

> "The main Rule is 376. The main provision is Sub-rule (1) which governs all other rules. Sub-rule (1) says: A point of order shall relate to the interpretation or enforcement of these rules or such articles of the Constitution as regulate the business of the House and shall raise a question which is within the cognizance of the Speaker. Two things are relevant. The first is, it must raise a breach of a rule or an article of the Constitution which regulates the business of the House and second, it must be one which is within the cognizance of the Speaker. These are the two things. The question is as soon as a matter is raised. Is there a breach of rule? Is there a breach of any article of the Constitution? Is there a breach of any other law? Further whether the point is within the cognizance of the Speaker.

It is again regulated by a Direction of the Speaker...The procedure he has laid down is that while formulating a point of order, a member should quote the specific rule or the Provision of the Constitution relating to the procedure of the House which might have been ignored, neglected or violated... This Direction is fully in accordance with the rules. The other remaining provisions are further limitations and they do not confer any further rights under Rule 376. Otherwise, ... under the guise of point of order, we will raise many disorders in this House. I am sticking to the rule for the benefit of the House, not for my benefit. I am perfectly in agreement with you that I am as much bound by the rules as any member is. But what the rule is, finally you should leave it to the decision of one person and that person can be no other than the Speaker of the House. It is more by convenience, not because I have greater knowledge than you. My knowledge need not be greater than yours, but my authority must be final for the benefit of the House."

[*L.S. Deb.*, 17 April 1978, cc. 288-296]

Point No. 6

A point of order cannot be raised when there is no item of business before the House.

(a) On 13 April 1963, before the House could take up the Official Languages Bill, 1963, a member (Shri Mani Ram Bagri) sought to raise a point of order. Since at that point of time, there was no issue before the House, the Speaker, Sardar Hukam Singh gave the following ***ruling*** :

"I have said that until some item comes before the House there cannot be a point of order. I have just now called Shri Lal Bahadur Shastri. There cannot be a point of order in the name of Shri Shastri. There is no business before the House at the moment. If something is placed before the House and you have some objection, it would be a different matter... Whatever is written in agenda, until something comes before the House no question can be raised in the House. Therefore, I say that no point of order can arise at this stage."

[*L.S. Deb.*, 13 April 1963, c. 9441]

(b) On 27 July 1978, when a member (Shri Vayalar Ravi) wanted to raise a point of order on a proceeding that was already over, the Speaker, Shri K.S. Hegde gave the following ***ruling*** :

> "The rule lays down two things. Whenever a point of order is to be raised, it must be raised when the House is seized of the particular proceedings and not otherwise. That is very clear in the rules. The rule itself lays down that.
>
> The second point is that the Speaker has one jurisdiction. It can be raised between one item and another. We shall discuss it at a proper time."

[*L.S. Deb.*, 27 July 1978, cc. 220-221]

(c) On 6 December 1960, as the Speaker invited the Prime Minister to make a Statement relating to discussions between the Central Government and Government of West Bengal regarding transfer of Berubari to Pakistan, a member (Shri Nath Pai) wanted to raise a point of order on an observation made by the Speaker earlier when the House was discussing the admissibility of an adjournment motion relating to Berubari. The Speaker, Shri M.A. Ayyangar, gave the following ***ruling*** :

> "...a point of order must relate to a matter which is immediately before the House. A point of order does not arise, as I have been saying, in a vacuum. Nobody is entitled to raise a point of order in this House unless the matter is such that if the point of order were accepted by me, no further proceedings relating to that matter could go on."

[*L.S. Deb.*, 5 December 1960, cc. 3847-3848]

Point No. 7

A Point of Order cannot be raised when Speaker is addressing the House.

On 13 May 1957, during the preliminary discussion on the notice of an adjournment motion regarding relief by Government to refugees from Bettiah, when the Speaker was addressing the House, a member

(Shri Tridib Kumar Chaudhuri) rose on a point of order. Thereupon, the Speaker, Shri M.A. Ayyangar ***ruled*** :

"When I am addressing the House there is no question of any point of order."

[*L.S. Deb.*, (II), 13 May 1957, c. 66]

Point No. 8

A point of order cannot be raised when Bell is ringing for clearing lobbies for purpose of holding division; during division Ministers who are not members of the House can be present in the House but cannot vote.

On 15 February 1966, when lobbies were being cleared for division on the adjournment motion regarding food situation in Kerala, a point of order was raised regarding presence of the Prime Minister (Shrimati Indira Gandhi), who was not a member of the House during the division as she could not participate in the division. The Speaker, Sardar Hukam Singh thereupon, ***ruled*** the following :

"Let the lobbies be cleared. There can be no point of order when the lobbies are being cleared.

*** *** ***

Article 88 clearly stipulates that a Minister who is not a member of the House, can take part in the proceedings of the House, but cannot vote. Accordingly, the Ministers who are members of Rajya Sabha can be present here, but they cannot vote."

[*L.S. Deb.*, 15 February 1966, cc. 399-402]

Point No. 9

A point of order can be raised even during the speech of the member if he says something which is unparliamentary.

On 29 July 1982, when a member (Shri Era Anbarasu) was speaking on the motion for consideration of the Special Courts (Repeal) Bill, 1981, another member (Shri Sudhir Giri) raised a point of order. When yet another member (Shri C.T. Dhandapani) enquired whether there

could be a point of order when the member was speaking, the Chairman, Shri Charanjit Yadav, who was in the Chair ***ruled*** :

"There can always be a point of order. Let me decide whether there is a valid point of order or not. The point of order can be raised even during the speech of a member, if he says something which is unparliamentary."

[*L.S. Deb.*, 29 July 1982, cc. 352-355]

Point No. 10

There is no point of order during Question Hour.

On 23 July 1984, immediately after the obituary references, a member (Prof. Madhu Dandavate) alongwith several other members sought to raise point of order in support of their demand for suspension of Question Hour on that day for taking up adjournment motion given notice of by them. The Speaker, Shri Bal Ram Jakhar thereupon ***ruled*** :

"No point of order during Question Hour."

[*L.S. Deb.*, 23 July 1984, cc. 9-10]

22

POWER OF DEPUTY SPEAKER OR OTHER MEMBER PRESIDING

CONSTITUTIONAL PROVISION

As per provisions of article 95(2) of the Constitution of India, during the absence of the Speaker from any sitting of the House of the People, the Deputy Speaker and if he is also absent, such person as may be determined by the Rules of Procedure of the House and if no such person is present, such other person as may be determined by the House, shall act as Speaker.

SYNOPSIS OF RULE 10

- The Deputy Speaker or any other member competent to preside over the sitting of the House, shall when so presiding have the same power as those of the Speaker.
- All references to the Speaker in the Rules of Procedure shall in the said circumstances, be deemed to be the references made to the person so presiding.

Point

No appeal lies to the Speaker from a ruling, given by the person presiding over a sitting of the House in the absence of the Speaker. The ruling given from the Chair settles the matter and cannot be reopened by anyone.

(a) On 11 July 1923, during the discussion on a resolution recommending to the Governor General in Council to set at liberty Mahatma Gandhi and other political prisoners, who were convicted at

the Karachi trial, an amendment to include the name of Lala Lajpat Rai in the main Resolution was also moved. The members sought permission of the Chairman, Shri N.M. Samarth, who was in the Chair, to speak on the Resolution as well as the amendment to the Resolution. The Chairman observed that he would like the debate to be confined to the amendment only. The discussion then continued. Later on, as the President (Speaker), Mr. Frederick Whyte assumed the Chair, he observed that only if the members wish to discuss the particular amendment, the debate might continue. On this, a member (Shri Vishindas) pointed out that the question was raised during the absence of the President and it was decided that the members be allowed to speak on both. Thereupon, Shri Samarth, who was in the Chair at the relevant point of time, pointed out that it was not so decided. Thereafter, another member (Dr. H.S. Gour), rising on a point of order, stated that it was he who raised the question and that unless he seriously mistook, the nod of the Chairman was in approval of his proposal. He proposed that there should be a general debate on both the points and he understood that it was the sense of the House too.

On this, the President, Mr. Frederick Whyte gave the following ***ruling*** :

> "It is not a question of the sense of the House, it is a question of the judgement of the Chair and there can be no appeal from the decision given by Mr. Chairman Samarth to the President. Decisions given from the Chair by the occupant then in the Chair hold good for the debate; therefore, there should be no discussion as to the ruling given by Mr. Chairman."

[*L.A. Deb.*, 11 July 1923, pp. 4521-4542]

(b) On 13 March 1924, when the Assembly was discussing the List of Demands under the Budget, a motion seeking reduction of Demand under sub-head 'Foreign and Political Department' was moved. The object of the motion was to bring to the notice of the Assembly several facts relating to the *Jaito incident.* Rising on a point of order, the Foreign Secretary (Mr. E.B. Howell) submitted that the subject matter proposed to be introduced was a matter relating to the administration of the territory of a Prince under the suzerainty of His Majesty and as such was outside the purview of the House. Responding to this, the President

Mr. Frederick Whyte observed that the member's point regarding the administration of an Indian State had been properly taken. Subsequently, when, in the course of the debate, Sir Chimanlal Setalvad occupied the Chair, the question was again raised. Thereupon, the Chairman observed that it would not be justified in discussing to what happened at *Jaito,* which was within the territory of a Native State but he could discuss anything that happened in British India with regard to *Jaito* incident. Later on, when Mr. President resumed the Chair, the issue was raised again. Thereupon, he delivered the following ***ruling*** :

> "There are two points which arise from what the hon'ble member has put to me. Let me deal first of all with the ruling given by the Chairman. I shall make it plain to the Assembly, first, that the Deputy President (Dy. Speaker) or the Chairman occupying the Chair in the absence of his superior officers possesses all the powers of the Chair and, second, that the President (Speaker) cannot make himself a court of appeal from, or offer explanation for or make reference to, ruling given by those who were the occupants of the Chair, at any time, in his absence..."

[*L.A. Deb.*, 13 March 1924, pp. 1689-1690]

(c) On 13 September 1954, a member (Shri H.N. Mukherjee) raised a point of order relating to the agenda items given in the Supplementary List of Business. The items related to further consideration of the motion on the flood situation and submission to the vote of the House of the motion regarding the third Amendment of the Constitution. Since under the rules, the outstanding matters have to be disposed of according to certain routine, it was felt that the same had been altered without the knowledge and consent of the House. The voting on the Bill was to be taken up after the debate on the flood situation was over. On this, the Chairman, Shri Pataskar had announced that the voting on the Bill would take place at 6 p.m. that day. Since no member had raised any objection, it was taken that the House had consented to it. Subsequently when the issue was raised again in the House, the Speaker, Shri G.V. Mavalankar gave the following ***ruling*** :

> "But one thing which I may say is that though I allow the members of the Opposition to have their arguments, it is not proper to challenge the ruling of the Chair. The matter was concluded by the

ruling of the Chairman on Saturday; it cannot be reopened by anyone, not even by me. It is not a desirable practice that the ruling of the Chair should be revised off and on..."

[*L.S. Deb.*, 13 September 1954, c. 1656]

23

POWERS OF THE SPEAKER

Point

The Speaker has only those powers which are given to him by the House and the Rules of Procedure and he cannot start a new procedure of his own.

On 22 November 1965, a member (Dr. Ram Manohar Lohia) proposed on that each day there should be an ordinary half-an-hour adjournment debate as in House of Commons (United Kingdom).

Thereupon, the Speaker, Sardar Hukam Singh gave the following ***ruling*** :

"I have only such powers as have been conferred by the House, otherwise I have no power. I am guided by such powers as are provided in the form of Rules... If you want any change in the Rules, that could be done only with the approval of the House.

*** *** ***

I have only such powers as have been conferred by the House, otherwise I have no power. I am guided by those very powers provided in the form of Rules to act according to them. If you want any change in the Rules, that cannot be done without taking the sense of the House."

[*L.S. Deb.*, 22 November 1965, cc. 3109-3111]

24

PRECINCTS OF THE HOUSE

SYNOPSES OF RULES 2 and 384

- "Precincts of the House" includes the Chamber, the Lobbies, the Galleries and such other places as the Speaker may specify.
- The Chamber of the House shall not be used for any purpose other than the sittings of the House.

SYNOPSIS OF DIRECTION 124

The 'Precincts of the House' includes the Central Hall and its Lobbies, Members' Waiting Rooms, Committee Rooms; Parliament Library; Members Refreshment Rooms, Banquet Hall, Lok Sabha Offices corridors and passages connecting or leading to various rooms located in the Parliament House Estate, approaches leading to Parliament House and Parliament House Annexe, etc. in addition to places specified in Rule 2, which are under the control of the Speaker.

Point No. 1

Lobbies or any part of Parliament is not intended for any demonstrations, strikes or fasts.

On 26 November 1964, the Speaker informed the House that he had received a letter from a member (Shri A.K. Gopalan) expressing his intention to go on a hunger strike in the Lobbies of the House as a protest against food situation in Kerala, due to which there was a great deal of suffering. Thereupon, the Speaker, Sardar Hukam Singh ***ruled*** :

"...I must make this observation that the Lobbies or any part of this Parliament are not intended for any such demonstrations, strikes or

fasts. Earlier also, I had not allowed it at any time and this time also I cannot permit that.

When the House rises for the day, for security reasons, we hand over the building to the police. Therefore, it will not be possible for any member to undertake any fast in the Lobbies. If he has any such intentions, then he can do so anywhere else but not in the Lobbies.

[*L.S. Deb.*, 26 November 1964, cc. 1899-1900]

Point No. 2

(a) The Parliament precincts cannot be used for something not connected with parliamentary work after the House has adjourned.

(b) It cannot be allowed to be used as a living accommodation.*

On 17 March 1964, at about 7 p.m., a member of the Watch and Ward Staff stopped a member, (Shri Mani Ram Bagri) from entering into the main gate of Lok Sabha. At the same time however, the Parliamentary Congress Party was meeting inside the building and newspaper correspondents were permitted to enter. Responding to the notice of a privilege motion next day *i.e.* on 18 March 1964, the Speaker observed that it was 7 p.m. and Shri Bagri could not come into the Parliament House after 7 p.m. as per his order. No question of Privilege, therefore, arose in this regard. On this, another member (Shri Ram Chandra Bade) raised a point of order. In the discussion that followed many members participated and felt that a discrimination had been made against Shri Bagri. On this another member (Prof. N.G. Ranga) stated that no one, whether he belonged to a party or was an individual, was allowed to be in the House after the House rose without the specific permission of the Speaker. The Speaker, Sardar Hukam Singh thereafter ***ruled***:

"The first question is whether any member has any right to keep sitting in the Parliament House after the House adjourns, may be at 6 o' Clock or 7 o' Clock or whatever. How long can be stay there? Of course a member can remain in the Parliament House for a

*Pl. also *see* entry under Point No. 1 in the Chapter "Arrest of a member".

reasonable time after the House adjourns in connection with his parliamentary work. But, if a member wants to continue to stay in the Parliament House after the House has adjourned for something unconnected with the parliamentary work, the Speaker has the power not to permit him to do so. This place cannot be converted into a living accommodation. That is why when Shri Bagri expressed his desire to stay in the Parliament House I told him that he could stay in the building only upto 7 P.M."

[*L.S. Deb.*, 18 March 1964, cc. 6076-6090]

Point No. 3

It is a breach of privilege to coerce or intimidate a member or use any offensive language in the Lobby. At the same time, the freedom of the members to talk freely inside the Lobbies also needs to be safeguarded. Both aspects have to be reconciled.

On 19 April 1965, a member (Shri J.B. Kripalani) stated in the House that Shri Gulzarilal Nanda (then Home Minister) had told the Chairman, Public Accounts Committee (PAC) (Shri R.R. Morarka) that the PAC Report relating to Bharat Sewak Samaj was prejudicial and that he was working against the interest of the Congress. The above statement had been contradicted neither by Shri Nanda nor by Shri Morarka although both of them were present in the House when Shri Kripalani mentioned about this. Hence this statement of Shri Nanda, according to Shri Kripalani was a serious breach of privilege of the House and its Committee. Many members participated in the discussion that followed on a question of privilege. In view of this, on 21 April 1965, the Speaker, Sardar Hukam Singh ***ruled*** :

"The question arose the other day when Shri Kripalani informed the House—though he did not say that he was himself present it is presumed that he heard them himself—that the Home Minister had used certain words which could rightly cause intimidation to the Chairman of the Public Accounts Committee. So far as this question is concerned, if any intimidation is caused, or is intended or is likely to be caused, to the Chairman of any parliamentary committee certainly it is a breach of privilege.

Now a breach of privilege issue can arise if in the view of the House something has happened inside the House. At that time, the House

can take cognizance of that episode of breach of privilege. It can be by either a member of the House himself or by a stranger who has been brought here for some purpose. If some breach of privilege is committed by such a person in the view of the House, the House can take action straightway here. Breach of privilege might also happen by publication in press, or by use of words on a platform or in a broadcast.

*** *** ***

*I would not include telephone, because the conversation by telephone is a private conversation. So, that cannot come under breach of privilege.** It may be a broadcast or words uttered on the platform. Then too, if any member brings to the notice of the House that a breach of privilege of any member or of the House has taken place, the House should proceed to take action on that. Now, there is a third category as has happened in the present case, of some conversation taking place in the Lobbies. The other day Shri Mukherjee and today Shri Khadilkar, Shri Azad and Shrimati Renu Chakravarty have pleaded that if the same rules which are applied to the House or applied to the conversation that takes place in lobbies, there would be no freedom left for any members there.

It has been said by Dr. Lohia and repeated by Shri Kripalani that if the talks take place between ordinary persons, that does not matter but if it is by people in authority then it should be taken in a different light.

First, I have to answer whether anything said in the lobbies can be the subject matter of a breach of privilege. *It is a fact that if anything is said which intimidates or coerces any member from discharging his duties, then it is a breach of privilege; even though it may be inside the lobbies, it is a breach of privilege; there is no doubt about it.* One question was raised by Shri Khadilkar; if I give a ruling, if members go to the lobby and say that I have shown partiality, is that a breach of privilege? It has been held by President Patel that it is objectionable and it is a breach of privilege. I have it before

* In reply to a clarification by a member, Shri Kapur Singh, as to whether the breach of privilege could happen by telephone also.

me. It happened in the lobbies. But I am not taking that view. I am not restricting the freedom of speech of the members. They might do it. I would not take note of that.

*** *** ***

I have already said that if the language is intended or is likely to cause coercion or intimidation, or any offensive language is used, even if it is outside the House, in the Lobby* certainly it is a breach of privilege, it comes under the discipline of the Speaker of this House, and this House can always take action against that. But the question boils down to this. Shri Nanda has said as I have read now, that he wanted to convey it to a member of his own party, and it cannot be said that because he is the Chairman of a Committee, he is not a party member. Shrimati Renu Chakravarty has said that the moment he becomes a Chairman. He ceases to be a member of the Congress. Yet, we have to function on party lines. There might be some meetings held inside the Central Hall. There are some rooms where the parties also hold their meetings. If they sit down and criticise each other, if some member over-hears it and brings it up here, of course, that would not be a subject of breach of privilege.

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If they sit in the lobbies** and talk and somebody over-hears them and reports, that would not be a subject of breach of privilege.

*** *** ***

At least Shri Nanda did not invite others to that conversation and did not convey to others that he was intimidating or giving a threat to Shri Morarka. At least that was not his intention.***

*** *** ***

* In reply to a query by a member, Shri Vishnu Kamath, whether the Speaker agreed with 'May' according to whom "misbehaviour in the lobbies, such as use of offensive expression or insulting words or threats, constitutes breach of privilege."

** In response to a query by Shri Hari Vishnu Kamath, whether the lobby formed part of the House.

*** In reply to a query by a member, Shri J.B. Kripalani, whether it meant that since he overheard, he was eavesdropping.

I am inclined to hold that if such an incident occurred in the lobby, then the person aggrieved is actually the one who has been intimidated or coerced, or against whom such language has been used. If he brings a complaint then the House should take notice of it; not if it is brought by other members who over-hear him or who happen to be present there at that time. I have to safeguard the freedom of the members to talk freely inside the lobbies. That must be reconciled with the breach of privilege that might be committed. Both things have to be taken together. In view of what Shri Nanda has written, that he is sorry that such an impression has been created, the matter is closed and there is nothing more that is required to be done by me."

[*L.S. Debs.*, 19 April 1965, cc. 9715-9744 and 21 April 1965, cc. 10271-10275]

Point No. 4

Compound of Parliament House not included in the precincts of the House: Security measures in the area are taken by the executive.

On 16 July 1956, a member (Shri M.S. Gurupadaswamy) gave notice of an adjournment motion for the purpose of discussing the order of the District Magistrate of Delhi prohibiting the holding of meetings or demonstrations and the taking of processions in the areas around Parliament House. The Speaker, Shri M.A. Ayyangar reserved his ***ruling**** in the matter on the day, which he gave on 27 July 1956:

"The adjournment motion relates to an Order under section 6 of the Punjab Security of the State Act, 1953 (Punjab Act XII of 1953), as extended to the State of Delhi, and as amended by the Punjab Security of State (Amendment) Act, 1954, passed by the District Magistrate, Delhi, prohibiting the holding of any public meeting or taking out of any procession or holding of any demonstration in any public place within the areas specified in the schedule attached to the Order. The main objection that was taken to the order was that among other areas it also extends over the compound of the

* The Ruling was given before the incorporation of Direction 124 in the Second edition (1958).

Parliament House. The compound of the Parliament House has not yet been included in the precincts of the House under the rules or orders. Hence, security measures in this area are taken by the executive."

Later in the day, Shri A.K. Gopalan and certain other members drew the attention of the Chair to the arrests that were being made in the precincts of the Parliament House. He requested the Chair, as the custodian of the House, to intervene and hear the grievances of the people, who were demonstrating outside. The Deputy Speaker, who was in the Chair observed that the Speaker had already ruled that the compound of the Parliament House was not included in the precincts of the House, and that he therefore, could not take cognizance of what was happening there.

[*L.S. Debs.*, 16 July 1956, cc. 2-4 and
27 July 1956, cc. 1117-1118]

25

PRIVILEGE

The privileges are certain rights and immunities enjoyed by each House of Parliament and committees thereto collectively, and by members of each House individually. While article 105 contains some of the privileges of Parliament and of its members and committees thereof. Others are specified in certain statutes and the Rules of the Procedure of the House. Still others are based on precedents and conventions.

CONSTITUTIONAL PROVISIONS

Article 105 provides that:

- Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament;
- No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof, and no person shall be so liable in respect of the.publication by or under the authority of either House of Parliament of any report, paper, votes or proceedings;
- In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law and, until so defined, [shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978].

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

SYNOPSES OF THE RULES 222 to 228

- The question involving breach of privilege of a member or of the House or of a Committee thereof, may be raised with the consent of the Speaker, notice of which shall be addressed in writing to the Secretary-General, Lok Sabha;
- The conditions governing the right to raise a question of privilege are:
  - — Not more than one question is allowed at a sitting;
  - — The question is restricted to a specific matter of recent occurrence;
  - — The matter requires the intervention of the House;
- The Speaker may either give consent or refuse to give consent;
- If satisfied about the urgency of the matter, the Speaker allows the questions to be raised at any time after the Question Hour;
- When leave is opposed, the Speaker grants leave if 25 members rise in support of the notice;
- After leave is granted, either the House itself considers the question or refers it to the Committee of Privileges;
- The Speaker has the power to refer any question of privilege to the Committee of Privileges for examination, investigation or report;
- The Speaker may issue directions for regulating procedure in matters connected with consideration of question of privilege either in the Committee of Privileges or in the House.

Point No. 1

(a) Members are not permitted to raise any points of privilege without first consulting the Chair.

(b) The proceedings are not vitiated because a member could not participate in the debate due to his late arrival and hence a matter of privilege.

On 20 December 1949, a member (Pandit Govind Malaviya) contended that submission of a point of privilege to the Speaker in the Chamber was an encroachment on the rights and privileges of members. In this context, the Speaker, Shri G.V. Mavalankar ***ruled*** as under:

"The hon'ble member has raised two points. The first point is that he thinks that the rights and privileges of members are seriously interfered with if they are not permitted to raise any points of privilege without first consulting the Chair or informing the Chair. I am afraid it is not possible for me to agree with that view because points are raised for clarifications or solution and I do not see how they can be immediately clarified or solved on the floor of the House. I think the House will agree that they will credit the Chair with that much of common sense and sense of justice that every point which is worth being brought before the House will be permitted by the Chair. ... In case the Chair goes so wrong as to refuse even the legitimate points that should be allowed to be raised, hon'ble members have got the remedy in their hands of removing the person occupying the Chair... I think the practice I am following here is on the whole very necessary and wholesome in the interests of saving the time of the House and also maintaining its decorum and decency.

The other point relates to his having been deprived — as he believes — of the opportunity of having his say. One needs not notice very seriously his argument that the proceedings of the House are, therefore, vitiated... Neither the Government nor the Chair much less the present occupant of the Chair had the remotest idea of debarring any person from expressing his views if he wished to do so. In a sense, it is unfortunate and very much regretted that he should have lost his chance, but it all developed in a way for which nobody is really responsible. If a member is keen to be here for a particular measure and to give his views, I think it is his first duty to give precedence to this engagement over others. It is more or less as a matter of convenience that members are given latitude. Those

latitudes cannot be construed as privileges. Otherwise it would be impossible for this House to function in the absence of one member or on one day, another member on another day, and so on.

*** *** ***

...It is too much to expect that after the moving of the closure of the matter should be kept pending just for one member who was not present here. I do not think it is a matter of privilege at all; it is only a matter of some kind of convenience which was expected to be given."

[*C.A. (Leg.) Deb.*, 20 December 1949, cc. 847-849]

Point No. 2

(i) The consent of the Speaker is a condition precedent to raising a question of privilege.

(ii) The Speaker's Chamber can be treated as a part of the House for discussion and deciding matters which according to the Speaker are not required to be brought before the House.

(iii) The practice prevailing in the House of Commons need not be followed when there is a specific rule dealing with the matter in question.

On 29 May 1957, a member, (Shri S.C.C. Anthony Pillai,) enquired from the Speaker the grounds on which leave had been refused to him to move the privilege motion given notice of by him two days ago. He also referred to the practice in the House of Commons in support of his contention.

The Speaker, Shri M.A. Ayyangar thereupon gave the following ***ruling*** :

"The hon'ble member is aware that under the rules I have to give consent for raising any question of privilege in the House. I did not give any consent. If the hon'ble member is not satisfied or wants further elucidation he may come and see me in my Chamber..."

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...The Constitution says that when there is no provision made for a particular position, the practice prevailing in the British House of Commons will prevail. Wherever there is a specific rule, the House of Commons practice will not prevail... We have framed certain rules suitable to our own needs and conditions. In other respects, where this Parliament has not made any rule or passed any law, the general practice prevalent in the House of Commons before the date of commencement of the Constitution will prevail. Here there is a specific rule, that is, the Speaker has to give his consent, and if he does not give consent, the matter cannot be raised. I have refused to give consent. If, however, the hon'ble member wants to convince me or wants to get some elucidation, I have no objection. *He may treat the Chamber as part of the House... and see me.*

...Otherwise, the provision that the consent of the Speaker is necessary will be absolutely ineffective... Discretion is vested in the Speaker.

*** *** ***

The consent of the Speaker is a condition precedent to raising a question of privilege... It is for the House to decide whether rule should be abrogated. There is nothing for the consideration of the Speaker. If automatically some member thinks there is a question of privilege, is the time of the House to be spent? If it is for the House to decide, I go out of the picture.

*** *** ***

...The Chair has first to give consent and that is a pre-requisite. There are other cases which have not come to the notice of the House, where I have refused to give consent, where there is no question of privilege at all. The second set is, if I have a doubt, I allow it to be brought before the House... The House says it need not be referred to the Committee. Thirdly, there are serious matters in which the House says, these may be referred. I also gave a ruling with regard to a similar matter. If I were to disclose it to the House, am I going to put it before the House? Then, it is the consent of the House, not my consent. Why should there be this rule? The Speaker has the right to find out *prima facie* whether there is a case to be

brought before the House. If I find that there is no such *prima facie* case, I will not bring it before the House."

[*L.S. Deb.*, 29 May 1957, cc. 2652-2657]

Point No. 3

When factual comments are called for from the Minister/ member, on a notice of privilege being given by a Member, the Minister/member should send the comments under his signature and not the signature of an Officer working under him?

A question of privilege was given notice of by some members (Sarvashri Ram Vilas Paswan, Atal Bihari Vajpayee, Jyotirmoy Bosu and K.A. Rajan) against the Minister of Health and Family Welfare (Shri B. Shankaranand) allegedly for making a misleading statement in the House regarding receipt of a Memorandum by the Minister from the Junior Doctors' Federation of Delhi. On 30 June 1980, some members pointed out that the factual note furnished by the Ministry of Health and Family Welfare in the matter which was sent by an Officer of the Ministry should have been sent by the Minister. On 9 July 1980, the Speaker, Shri Bal Ram Jakhar gave the following ***ruling*** in the matter:

"A question of privilege can be raised in the House only with the consent of the Speaker under Rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha. While giving his consent, the Speaker has to decide whether the matter should be given precedence over the pre-arranged items of business. In order to determine whether consent should be given under Rule 222 to raise a question of privilege in the House against a member/Minister, it is a well-established practice that a factual note/comments are called for from the member/Minister and the Ministry concerned for consideration of the Speaker.

It may be useful to divide the nature of reference to Ministries/ Minister under the following broad heads:

(i) Where factual information is called for and the Minister is not directly concerned; *e.g.* omission or incorrect mention of a member or the party to which he belongs in the radio/television broadcasts.

In such cases, the communication may be signed by an officer in the Ministry/Department not below the rank of Joint Secretary and should clearly indicate that the communication is being sent with the specific approval of the Minister.

(ii) Where the notice of privilege relates either to a reply given by the Minister in the House or his conduct as member of the House.

In such cases, the facts may be furnished over the signatures of the Minister concerned."

[*L.S. Debs.*, 30 June 1980, cc. 265-273 and 9 July 1980, cc. 233-235]

Point No. 4

(a) A question of breach of privilege and contempt of the House cannot be raised against a member of the other House or of a State Legislature.

(b) A question of privilege cannot be raised in a State Legislature against a member of Parliament.

(a) On 4 October 1982, a member (Shri Mani Ram Bagri), sought to raise a question of privilege regarding reported proposed summoning of another member (Shri Atal Bihari Vajpayee) before the Rajasthan Vidhan Sabha in connection with a question of alleged breach of privilege and contempt of Rajasthan Vidhan Sabha by Shri Vajpayee for alleging in a Press statement that the candidate belonging to his party for election to Rajya Sabha had been defeated because "some Opposition M.L.As. had been purchased".

The Speaker, Shri Bal Ram Jakhar gave the following ***ruling*** in the matter on 7 October 1982:

"I have not received any communication in this behalf either from Shri Atal Bihari Vajpayee or from the Rajasthan Vidhan Sabha. The House may, however, like to know that a similar case had arisen in 1962 in the Gujarat Legislative Assembly relating to an article in a paper alleging that money had been passed to get a particular candidate elected at the election to the Council of States. The matter

was referred to the Privileges Committee of Gujarat Assembly which thoroughly examined the subject and gave a learned report in which they had *inter alia* stated that "a member while voting at such election is acting in the capacity of a voter of the electoral college and not in the capacity of a member of the House... That the allegations of bribery and corruption made against the... members do not concern the character or conduct of the members in that capacity and do not cast reflections upon the members of the House for, or relating to, their service therein and, therefore, there is no breach of privilege of the House."

The report of the Privileges Committee was adopted by the Gujarat Legislative Assembly.

As hon'ble members know, it is a well-established convention that, if a *prima facie* case of breach of privilege or contempt of the House is made out against a member who belongs to another House, the matter is reported to the Presiding Officer of that House for taking such action as he considers necessary. In fact in pursuance of the decision taken at the Presiding Officers Conference, the Rajasthan Vidhan Sabha had, as early as, in December 1958, passed a resolution to this effect that if any member of a House of any other Legislature in India or the Indian Parliament was involved in any case of alleged contempt or of a breach of privilege of the Assembly, the Speaker would refer the matter to the Presiding Officer of the House to which the member belonged.

I have no doubt that all concerned would take the relevant facts into account while dealing with this sensitive and important issue."

[*L.S. Deb.*, 7 October 1982, cc. 258-259]

(b) On 23 April 1979, a member (Shri Jyotirmoy Bosu) gave notice of question of privilege against a member of Rajya Sabha (Shri Pranab Mukherjee) alleging that on 19 January 1976, Shri Mukherjee, the then Minister of State in charge of the Department of Revenue and Banking while speaking in Lok Sabha on the 'Voluntary Disclosure of Income and Wealth Bill,' made a wrong statement. Shri Bosu made his contentions on the basis of One Hundred and Twenty-third Report of the Public Accounts Committee. The Speaker, Shri K.S. Hegde in his

ruling given in the matter on 23 April 1979, *inter alia* directed the Government to hold an enquiry urgently with a view to ascertain whether the House was misled deliberately. He kept the matter pending till the inquiry report was made available to him.

After receipt of the report from the Ministry of Finance, the Speaker gave the following ***ruling*** on 16 May 1979:

> "A notice of question of privilege was given by Shri Jyotirmoy Bosu, M.P., regarding an alleged misleading statement made by Shri Pranab Mukherjee, former Minister of State in charge of the Department of Revenue and Banking on 19 January 1976 regarding voluntary disclosure of income and wealth in the context of the recommendation of the Public Accounts Committee of Lok Sabha contained in para 207 of their One Hundred and Twenty-third Report (Sixth Lok Sabha).
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> *** *** ***
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> The House would recall that on 23 April, 1979... I had observed that 'it appears that the information given to this House was wholly wrong. The question is whether the House was deliberately misled? If so, who is responsible for it? I expect the Government to direct an enquiry into these questions without delay.'
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> *** *** ***
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> I have since received a detailed note from the Ministry of Finance... In that Report, no finding was given fixing up the responsibility for the incorrect information.
>
> In view of the above position stated by the Ministry of Finance and in view of the fact that Shri Pranab Mukherjee is a sitting member of the other House against whom a question of breach of privilege can be dealt with only by the other House in accordance with the procedure laid down in the report of the Joint sitting of the Committee of Privileges of Lok Sabha and Rajya Sabha which was adopted by both Houses of Parliament. I refer the matter to the Chairman of Rajya Sabha."

[*L.S. Debs.*, 23 April 1979, cc. 255-257;
and 16 May 1979, cc. 237-244]

Point No. 5

A member cannot move a motion of breach of privilege against the Speaker.

In the context of a notice of question of privilege given by a member (Shri P.M. Sayeed) on 12 May 1979 against him, the Speaker, Shri K.S. Hegde gave the following ***ruling*** :

"Hon'ble member, Shri P.M. Sayeed, has given notice under Rule 222 against me in respect of a speech delivered by me on the 12th of this month under the auspices of Vasant Vyakhyanmala at Pune. Shri Mohammed Shafi Qureshi has also written a letter to me in that connection. The subject of my lecture was 'The Role of Legislatures under our Constitution'. The basis of the notice is the report of the speech that appeared in *The Times of India* dated 14 May 1979.

It is embarrassing to be a Judge in one's own cause. But an analysis of the rules and the examination of the precedents leave me with no other alternative.

Under the existing rules, it does not appear to be possible to move a motion under Rule 222 against a Speaker. It is well established parliamentary practice that the conduct and action of the Speaker cannot be criticized incidentally in debate or upon any form of proceedings except on substantive motion."

[*L.S. Deb.*, 16 May 1979, cc. 237-239]

Point No. 6

(a) Inadequate compliance of an assurance or delay in its fulfilment does not constitute a breach of privilege.

(b) Rule of *sub judice* does not apply to a case of breach of privilege.

(a) The notice of a question of privilege was given by some members (Sarvashri Madhu Limaye, Jyotirmoy Bosu, Shyamanandan Mishra and Atal Bihari Vajpayee) on the import Licence case involving a member (Shri Tulmohan Ram) wherein *inter alia* privilege proceedings were sought by them on 20 November 1974, against the former Minister of Home Affairs (Shri Umashankar Dikshit), Minister of Law

(Shri H.R. Gokhale) and the Minister of Home Affairs (Shri K. Brahmananda Reddy) for having not fulfilled assurances given on the floor of the House.

On 2 December 1974, the Speaker, Shri G.S. Dhillon gave the following ***ruling*** in this regard:

> "As I stated in the House on 12 November the assurances given by the Home Minister and the Law Minister were categorical and the Government were bound by them. However, it is not the case of the Minister that they would not fulfil them. Indeed though a little later they have come to the House and have placed before the House the gist of the enquiry held by the CBI, the charge-sheet filed in the court against the accused and have explained the manner in which the assurances have been fulfilled... There is, therefore, no question that the Government have deliberately declined to implement the assurance... There may be a dispute that the assurance was not implemented fully or in due time and it can only be resolved by a debate in the House.
>
> The House knows that it has various remedies available to it to call the Government to account and secure compliance with its directions, but inadequate compliance of an assurance or delay in its fulfilment will not constitute a breach of privilege."
>
> [*L.S. Deb.*. 2 December 1974, cc. 222-236]

(b) In their notice of question of privilege in import licence case, the members (as referred to above) also sought privilege proceedings against a member (Shri Tulmohan Ram) for having received bribe for furthering the cause of some import licence applicants in taking up the matter with the Government and forged the signatures of some members of Parliament. The member pleaded that since the matter had become *sub judice*, it should not be discussed in the House at that stage. The Speaker, Shri G.S. Dhillon, gave the following ***ruling*** in this regard:

> "Now, I come to Shri Tulmohan Ram, M.P. It has been stated by members in the House that he received bribe for furthering the cause of some Import Licence applicants in taking up the matter with the Government and forged the signatures of some members of

Parliament. The C.B.I. have also after investigation come to the conclusion. Shri Tulmohan Ram, in his letter dated the 14 November 1974 to me which I read out in the House on the 20 November 1974 has pleaded that since the matter has become *sub judice*, it should not be discussed in the House at this stage.

It is a well established law that the rule of *sub judice* does not apply to matters of privilege or in matters where disciplinary jurisdiction of the House with respect of its own members is concerned. However, in order to constitute a breach of privilege or contempt of the House, the misconduct of a member should relate to business in the House. In the present case, the member has allegedly abused his position as a member of Parliament in sponsoring an application to Government for money and also after forging signatures of other members. These allegations of bribery and forgery which have been *prima facie* established by the C.B.I. are certainly very serious and unbecoming of a member of Parliament and he may be held guilty of lowering the dignity of the House. I, therefore, hold that the House is free to discuss any motion relating to the conduct of Shri Tulmohan Ram and the rule of *sub judice* does not come in the way."

[*L.S. Deb.*, 2 December 1974, cc. 222-236]

Point No. 7

If the Deputy Speaker has given permission to raise a matter of privilege under Rule 222, the Speaker cannot revoke it subsequently.

On 16 July 1977, a member (Shri B. Rachaiah) sought to raise a question of privilege regarding alleged misleading information given to the House on 13 June 1977 in the Statement made by the Minister of Home Affairs on a Calling Attention matter about atrocities on Harijans at Belchi Village in Bihar. The Deputy Speaker (Shri Godey Murahari), thereupon observed that he had referred the notices to the Minister of Home Affairs for facts and that he would give his decision in the matter after a reply had been received from the Minister.

On 4 August 1977, when two members (Sarvashri C.K. Chandrappan and B. Rachaiah) raised the matter again and sought a ruling on their notices of privilege against the Home Minister, the Speaker observed

that he had disallowed the notices as the matter was pending before a court. The members submitted that the Deputy Speaker had already allowed the matter to be raised under Rule 222 and the House was seized of the matter. The Speaker, Shri K.S. Hegde thereupon, ***ruled***:

> "...I have already made the matter clear. If the Deputy Speaker has given permission—he is the Speaker at that time—I have no further right to revoke it. If the Deputy Speaker has not given any permission. I shall examine it personally. I will not give permission because the matter is pending before the court.
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> *** *** ***
>
> One thing is a—ruling can be revised. Another thing is permission. Once permission is given whether the permission is right or wrong, the House is seized of the matter. If the permission has been given I will see the records and I will go into the matter. I will consult the Deputy Speaker. I do not want to encroach upon his right. But, if it is a question of ruling, if the Deputy Speaker has given a ruling, the Speaker has a right to revise it. If the Deputy Speaker has given permission, I will not revoke it and if the permission had not been given, I shall examine it..."

[*L.S. Debs.*, 16 July 1977, c. 4 and 4 August 1977, cc. 262-266]

Point No. 8

The alleged misconduct should be related to the business of the House in order to constitute a privilege.

The notices of question of privilege by some members (Sarvashri Priya Ranjan Das Munsi, Bhogendra Jha, Indrajit Gupta, S.M. Banerjee, Ramavatar Shastri, K.P. Unnikrishnan, D.C. Goswami, Darbara Singh, Shashi Bhushan and Vayalar Ravi) against another member (Shri R.N. Goenka) in the context of a criminal case for cheating, forgery, criminal conspiracy, etc. against Shri Goenka filed in the Court of Special Metropolitan Magistrate of Madras. In response thereto, Shri Goenka *inter alia* submitted in the House on 18 December 1974 that the allegations related to a period when he was not a member

of the House and pleaded that a question of privilege against a member could arise only if the member had been guilty of misconduct or misdemeanour as a member of the House. On 20 December 1974, the Speaker, Shri G.S. Dhillon gave the following ***ruling*** :

"...As stated in my ruling in the House on the 2 December 1974 in order to constitute a breach of privilege or contempt of the House, the misconduct of a member should relate to business in the House. In the present case, the impugned conduct of Shri R.N. Goenka does not relate to business in the House. I do not give my consent to the notices of question of privilege.

The Chair shall in future disallow notices of questions of privilege *in liminie* where it is not clearly shown that the alleged breach of privilege is connected with the business of the House. There may, however, be cases where it may be alleged that a member's conduct involves moral turpitude and to that extent the member may be deemed to be guilty of lowering the dignity of the House. In such cases, appropriate procedure should be followed and the matter should not be brought as a question of privilege. I have already ruled in my ruling of 2 December 1974 that the rule of *sub judice* does not come in the way of disciplinary jurisdiction of the House. But the Chair and the House will have to consider each case on its merit."

[*L.S. Debs.*, 18 December 1974, cc. 223-250 and 20 December 1974, cc. 236-238]

Point No. 9

All India Radio cannot broadcast the expunged portions of the proceedings in the House. It may amount to breach of privilege.

On 19 December 1974, a member (Shri R.N. Goenka) sought to raise a question of privilege against All India Radio for broadcasting certain proceedings of the House which had been expunged by the Chair. The Minister of Information and Broadcasting (Shri I.K. Gujral) made a Statement explaining the position. On 20 December 1974, the Speaker, Shri G.S. Dhillon gave the following ***ruling*** :

"...I am... of the view that the All India Radio should not have broadcast the observations of members as proceedings of the House

which did not form part of the official record of the proceedings and the news agencies and the press should not have similarly carried the alleged report of the speeches in the House. It is, however, admitted that there was terrible noise in the House at that time and in the din and uproar it is possible that the Press Correspondents and other representatives did not clearly hear any orders, and as Shri Goenka has also said that there may have been a genuine misunderstanding in the Press Gallery and he wanted the Press Correspondents to have the benefit of doubt, I think, that the same benefit of doubt may also be extended to the Correspondent and Commentator of the All India Radio since they are also placed in the same position in the Press Gallery as other Press Correspondents and the House may be well advised to waive its privilege in this case and leave the matter where it is.

I should, however, make it quite clear that in future serious notice would be taken of such lapses and in order to prevent this repetitions I would advise the Press Correspondents in the Press Gallery to make sure from the official reporters about the correct position so that the proceedings are reported or broadcast faithfully."

[*L.S. Debs.* 19 December 1974, cc. 191-208 and
20 December 1974, cc. 238-242]

Point No. 10

Leakage of Budget proposal is not a breach of privilege of the House.

On 3 March 1956, the Deputy Speaker (Shri M.A. Ayyangar) informed the House that he had received notices of adjournment motions from two members (Shri A.K. Gopalan and Dr. Lanka Sundaram) regarding alleged leakage of Budget proposals in Bombay before it was presented to Parliament. Dr. Lanka Sundaram also contended that it constituted a breach of privilege of the House and that it might be referred to the Committee of Privileges. Thereupon, the Prime Minister (Pandit Jawaharlal Nehru) agreeing with the member that leakage of the budget is a very serious matter *inter alia* informed the House that an enquiry into the matter had been initiated.

The Deputy Speaker, thereafter, disallowed the adjournment motions on the ground that the Government had already taken steps to investigate the matter and that after an enquiry, the report would be placed before the House and the House could then consider what further steps had to be taken.

On 12 March 1956, the Prime Minister *inter alia* informed the House that it had been established that the leakage occurred from the Government Press, where the Budget papers had been given for printing and furnished other details. The Prime Minister also assured the House that everything possible would be done to punish those who had been guilty of the offence. The Prime Minister while stating that question of leakage of Budget was being investigated by the police, observed that, "the question of privilege is perhaps a slightly different type of thing, How the two things can be mixed up...".

After two members (Shri H.V. Kamath and Dr. Lanka Sundaram) made their submissions in the matter, the Speaker, Shri M.A. Ayyangar reserved his ruling.

On 19 March 1956, the Speaker gave the following ***ruling*** :

"...In the matter of determination of the privilege of the House, we are governed by the provisions of article 105 (3) of our Constitution which states that the powers, privileges and immunities of the House are such as were enjoyed by the House of Commons in the United Kingdom (U.K.) at the commencement of our Constitution. The precedents of the United Kingdom (U.K.) should guide us in determining whether any breach of privilege was in fact committed in the present case. So far as I can gather only two cases occurred in which the House of Commons took notice of the leakage of the Budget proposals. They are known as the *Thomas case* and the *Dalton case*. In neither of these cases was the leakage treated as breach of privilege of the House nor were the cases sent to the Committee on Privileges for enquiry. *The prevailing view in the House of Commons is that until the financial proposals are placed before the House of Commons, they are an official secret.* A reference of the present leakage to the Committee on Privileges does not therefore arise.

Though the leakage of Budget proposals may not constitute a breach of privilege of the House, the Parliament has ample power to enquire into the conduct of a Minister in suitable proceedings in relation to the leakage and the circumstances in which the leakage occurred. In the two English cases, aforesaid, matters were brought to the notice of the House of Commons by a resolution or a motion for appointment of special committees or tribunal to enquire into the matter and report the facts thereon to the House. In the *Dalton Case*, Mr. Dalton who was the Chancellor of the Exchequer admitted that he did not think of the consequences at the time of the disclosure and in the *Thomas Case*, it was alleged that he disclosed the Budget secrets, which he got to know as a Cabinet Minister. It is neither alleged nor even suggested in the case before us that the Finance Minister was himself responsible for any unauthorized disclosure of the financial proposals. Regarding other person, the Government has already taken steps to investigate into the matter and it is stated that persons have also been arrested and that prosecutions are being launched against them. In the circumstances, it is not clear as to what special advantage would be gained by appointing a special committee which to a large extent will go over the same ground covered during investigation by the Government.

However, I consider it desirable that while the matter is still fresh, the House should have an early opportunity to discuss the matter."

[*L.S. Debs.*, 3 March 1956, cc. 1457-1460,
12 March 1956, cc. 2244-2252 and
19 March 1956, cc. 2912-2913]

Point No. 11

A Privilege motion cannot stand against a Central Minister for turning down a resolution passed by a State Legislative Assembly under article 169 for abolishing the Legislature Council in the State.

On 22 August 1984, a member (Prof. K.K. Tewari) sought to raise a question of privilege regarding reference of a question of privilege against the Union Minister of Law, Justice and Company Affairs (Shri Jagan Nath Kaushal) [a member of Lok Sabha] on 21 February 1984 by the Andhra Pradesh Legislative Assembly to their Committee of

Privileges for allegedly turning down the resolution passed by the Assembly proposing abolition of the Legislative Council of Andhra Pradesh.

The Speaker, Shri Bal Ram Jakhar thereupon ***ruled*** as follows:

"...As hon'ble members know it is a well-established convention that if a *prima facie* case of breach of privilege or contempt of the House is made out against a member who belongs to another Legislature the matter is reported to the Presiding Officer of that Legislature for taking such action as he considers necessary. This convention was established in pursuance of the recommendations contained in the report of the Committee of Speakers adopted by the Presiding Officers' Conference on 17 September 1956.

I may also add here that as laid down in article 75(3) of the Constitution, the Council of Ministers is collectively responsible to the Lok Sabha; the responsibility is joint and indivisible. There is no specific provision in the Constitution laying down the individual responsibility of a Minister and his accountability to Parliament for the acts of omission and commission in his departmental charge.

In the present case, the Minister of Law, Justice and Company Affairs is stated to have informed the Chief Minister of Andhra Pradesh on 31 December 1983 that "Government of India have carefully considered the matter. They have not found it possible to agree to the proposal for undertaking legislation for abolition of the Legislative Council in Andhra Pradesh.

Article 169 of the Constitution under which the resolution for abolition of the Legislative Council of Andhra Pradesh was passed by the Legislative Assembly, does not have the effect of imposing any obligation on the Government of India to take action for initiating legislation in Parliament for the purpose. This question also figured before Lok Sabha in 1970 and in reply, the then Law Minister had made a Statement on 8 December 1970 that 'Parliament has to exercise its discretion and judgement; for, the words used in the article is 'may' and not 'shall'... 'May' denotes discretion and therefore Parliament is not bound blindly to implement the State Assembly resolution. The Parliament cannot only choose the line

for implementation of the resolution but also decide against it. The answer... is therefore that it is optional.

It is, therefore in my opinion exclusively for the Government to choose the time and occasion to initiate Legislation on a particular subject and bring it before Parliament. Moreover, even if it is considered to be a violation of constitutional provisions contained in article 169, it is a matter to be decided by courts and no question of parliamentary privilege would arise."

[*L.S. Deb.*, 22 August 1984, cc. 311-327]

Point No. 12

(a) The leakage of Railway Budget cannot be a matter of Privilege.

(b) It is a matter involving propriety.

On 25 February, 1982, the Speaker, Shri Bal Ram Jakhar informed the House that some members (Sarvashri Atal Bihari Vajpayee, George Fernandes and A. Neelalohithadasan Nadar) had given notices of Question of Privilege regarding alleged leakage of the Railway Budget before its presentation to the House. A notice of question of privilege was also given under Rule 222 by another member (Dr. Subramaniam Swamy) on 24 February 1982 against the Chairman, Railway Board for having said that sub-urban rail fare would be raised, the Speaker thereupon, gave the following ***ruling*** :

"...the notices of the members alleging leakage of Budget were sent to the Minister of Railways. I also sent yesterday the notice of Dr. Subramaniam Swamy together with the proceedings of the House of 24 February 1982 to the Minister of Railways.

I have received from him detailed note in which the Minister has denied that there was any leakage of the Railway Budget and has given a detailed factual statement in support thereof.

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As regards the question of leakage of Railway Budget, it has been held by my predecessors that Budget before presentation is a document the custody of which remains with the Government.

Therefore, the question of any breach of privilege would not arise. But, therefore is certainly the question of propriety while it is not unusual for economic analysis and newspapers to make intelligent forecasts of the likely features of a forthcoming Budget, it is evidently in Government's own interest to see that the Budget proposals are revealed only first in Parliament and no ground or cause is given for raising the question of leakage.

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"...However, it need hardly be emphasized that if a Press Conference is to be held after the presentation of the Budget in Parliament it would obviously be more appropriate for the Minister concerned to hold it himself where top functionaries could be present, as necessary.

I need hardly emphasise that every care should be taken to ensure that at the Press Conference nothing is revealed which is not consistent with the Statement made earlier in the House and that in important matters of policy it is but proper that the information is first given inside the House to the members and not revealed outside in any other forum."

[*L.S. Deb.*, 25 February 1982, cc. 275-278]

Point No. 13

Casting any reflection on the decisions or conduct of the Committee is a breach of privilege.

On 19 April 1965, the Speaker, Sardar Hukam Singh announced that he had received notices of two privilege motions from the members (Sarvashri Braj Raj Singh and Ram Chandra Bade and Sarvashri Ram Sewak Yadav and Kishan Patnaik who had sought to raise a question of privilege arising out a statement given to the Press by a spokesman of the Bharat Sewak Samaj which appeared to be a rejoinder to the report of the Public Accounts Committee on the Bharat Sewak Samaj. The member asserted that certain remarks were alleged to have been made by the Chairman (Shri B.K. Chandiwala), Delhi Pradesh Bharat Sewak Samaj, at a public function to the effect that the Public Accounts Committee's Report was like Miss Mayo's Report.

The Speaker, Sardar Hukam Singh informed the House that he had received a letter of apology from Shri Chandiwala. During the debate on the matter the Minister of Law and Social Security (Shri A.K. Sen)

inter alia stated that Shri Chandiwala's remarks characterizing the Public Accounts Committee's Report like Miss Mayo's Report which had a particular innuendo, did amount to casting a reflection on the Public Accounts Committee but he felt that the letter of apology made sufficient amends and the House should accept it.

The Speaker, thereafter, gave the following ***ruling*** in the matter:

"The Committees of the House are entitled to the same respect as this House is. Every section is represented there. We do not discuss even the reports because we presume that they have the sanctity of the unanimous decisions of the House when all the sections are represented there. They come to decisions that are unanimous; they have so far been unanimous and the dignity lies in that fact all the more. Therefore, if anybody cast any reflection on the decisions or conduct of the Committee really that is a *breach of privilege*. There is no doubt...

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The whole House has agreed that this is a clear breach of privilege; There is no doubt about it. I do not think that anybody can put a defence there.

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"...I think the House would be adding to its dignity, it is allowed the matter to rest there. I hope that if this House has not taken any action at this moment it should not be considered that it would not take any action in future if anything of that sort is repeated. It is a serious matter. Everybody concerned should take note of this."

[*L.S. Deb.*, 19 April 1965, cc. 9715-9737]

Point No. 14

A member of Parliament has to take permission of the House to which he belongs for appearing as witness before the other House of Parliament or of a State Legislature. Otherwise it is a contempt of the House.

On 25 April 1958, the Chairman, Committee of Privileges (2LS) [Sardar Hukam Singh] moved the motion that the House do agree with

the Second Report* of the Committee of Privileges regarding production of certain documents in the custody of the Secretariat of the House before Election Tribunal, Calcutta. After some members and the Minister of Law (Shri A.K. Sen) expressed their views, the Speaker, Shri M.A. Ayyangar ruling *inter alia* dwelling in detail on the issue of summoning of members of the House to appear as witnesses before the other House of Parliament or of State Legislatures, gave the following ***ruling***:

> "...As a matter of fact, even with respect to witnesses who are members of Parliament and who are called upon by the other House or by any other Legislature to give evidence, the matter is coming up in the form of another report and that will be placed before the House for consideration**. If any member of Parliament is asked to be a witness in any of the Legislatures, then the permission of the House has to be taken, besides the other gentleman consenting to appear as a witness."

[*L.S. Deb.*, 25 April 1958, cc. 11486-11498]

Point No. 15

(a) Incorrect Statements made by a Minister cannot make any basis for a breach of privilege. It is only a deliberate lie, if substantiated, would become a breach of privilege.

(b) Notice of a breach of privilege must be given immediately at the very first opportunity. A delay of even one or two days have been held to be fatal.

The Speaker, Sardar Hukam Singh announced on 17 August 1966 that notice of question of privilege was given by certain members (Sarvashri Madhu Limaye, Homi F. Daji and S.M. Banerjee) against the

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* The Report was adopted on 25 April 1958.

** On the same day (25 April 1958) after adoption of Second Report, the House adopted Third Report of the Committee of Privileges regarding the request made Secretary, Legislative Assembly of Bombay for according permission to member of Lok Sabha (Shri L.V. Valvi) to appear before the Privileges Committee of Bombay Legislative Assembly. The Committee of Privileges, Lok Sabha in their said Report recommended that Shri Valvi may be given permission to appear before the Privileges Committee of Bombay Legislative Assembly.

Minister of Food, Agriculture, Community Development and Cooperation (Shri C. Subramaniam) for certain statements made by him in the House and before the Public Accounts Committee (PAC). The main allegations made in the notice were as follows. The first was that the Minister made an incorrect Statement on 17 May 1966. The second was that he contradicted himself on 18 May 1966, though he had expressed regret as well. The third was that he abused his right to make a personal Statement and suppressed the truth and thus misled the PAC. The fourth was that he had cast reflections on the PAC. The fifth was that utter contempt was shown towards the PAC and the Committee had expressed displeasure that this late request of the Minister had caused some avoidable inconvenience to them. The sixth was that the order of suspension, which the Minister called as 'draft' was absolute, final and precise. He called it a 'draft' order, and in that way misled the Committee. Withholding his consent to the notice of question of privilege the Speaker, Sardar Hukam Singh gave the following ***ruling***:

> "Now I have to say at the beginning that privilege and its breach are special provisions which are the prerogative of the members of Parliament, of this House. Except those that are really established and were being enjoyed by the House of Commons on the day when our Constitution came into force, we cannot create new privileges...
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> *** *** ***
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> So far as this privilege is concerned, it is of utmost importance that the notice must be given immediately, at the very first opportunity; a delay of one day or two days has been held to be fatal to the entertainment of any notice of breach of privilege.
>
> ...What we have to see here is this. Incorrect Statements made by a Minister cannot make any basis for a breach of privilege. It is only a deliberate lie, if it can be substantiated that would certainly bring the offence within the meaning of a breach of privilege. Other lapses, other mistakes do not come under this category, because everyday we find that Ministers make their Statements in which they make mistakes and which they correct afterwards. That is happening everyday. If it were to be held that that also is a breach of privilege,

then probably it would be an everyday occurrence and then privilege would not mean anything of consequence.

*** *** ***

...'Recent occurrence' has been interpreted here by Speakers during the last 20 or 25 years. There are so many decisions... Yes. Three days or four days, all these delays have been held fatal. There are these decisions.

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I have not said particularly about 25 hours or 48 hours. Every case has to be decided on merits."

[*L.S. Deb.*, 17 August 1966, cc. 5165-5178]

Point No. 16

(a) No breach of privilege is involved if a statement on a matter of policy is made by the Government outside before it is made in the House when the House is in Session. However, a question of propriety arises in such a situation.

On 2 May 1990, the Speaker, Shri Rabi Ray announced that a member (Shri P. Chidambaram) had given a notice of question of privilege regarding an announcement made by the Prime Minister (Shri Vishwanath Pratap Singh) outside the House when the House was in session. The Speaker, withholding his consent to the notice of question of privilege, gave the following ***ruling***:

"Shri P. Chidambaram has given notice of a question of privilege regarding an announcement made by the Prime Minister (Shri Vishwanath Pratap Singh) outside the House when the House is in session.

The Prime Minister is reported to have made an announcement regarding the proposed setting up of a new Para-Military Organisation known as 'National Rifles'.

It is well established that no privilege of Parliament is involved if statements on matters of public interest are not first made in the House and are made outside. Such actions may go against

conventions and propriety but do not constitute any basis on which breaches of privilege can be found.

There have been several instances in the past when such matters were sought to be raised in the House as questions of privilege. It was held by successive Speakers that no question of privilege was involved in such matters.

In 1959, when a question of privilege was sought to be raised against the Minister of Defence for making an important policy statement regarding the expansion of NCC, Speaker Ayyangar observed as follows:—

I am clear in my mind that there is no breach of privilege in this matter.

Even if a matter of policy were to be announced outside the House while the House is in session, it was ruled in the House of Commons that there was no breach of privilege; it may be a breach of courtesy. When the House is in session all matters of policy ought to be announced first to the House. That is the rule that has been adopted for several years in this House also.

Similarly in 1985, my predecessor, Shri Bal Ram Jakhar, had held that:—

It is well established that no privilege of the House is involved if statements on matters of public interest are not first made in the House, it is, however, a matter of propriety that when the House is in session, so far as possible, important decisions should first be announced in the House. If for some reasons, like the House not being sitting on that date and important development taking place between the sittings of the House and necessitating a public announcement, earliest opportunity should be taken to bring the whole matter to the notice of the House.

I, therefore, withhold my consent to the raising of the matter on the Floor of the House as a question of privilege.

I, would, however, like to reiterate that it is a matter of propriety that when the House is in session, as far as possible, important decisions should first be announced in the House."

[*L.S. Deb.*, 2 May 1990, cc. 446-448]

(b) Sharing of the information by the Prime Minister with the Press about a Minister's desire to resign without revealing it in the House when it was in session and the Prime Minister had an opportunity to do so, does not amount to a breach of privilege.

On 8 December 1999, a member (Shri Sontosh Mohan Dev) gave a notice of question of privilege against the Prime Minister (Shri A.B. Vajpayee). Shri Sontosh Mohan Dev, in his notice of question of privilege, contended that the Prime Minister while responding to the submissions made by the members regarding Babri Masjid demolition issue in the House on 7 December 1999, did not share with the House, the information regarding tendering of resignation by two Ministers, namely, Sarvashri L.K. Advani and Murli Manohar Joshi. The member further stated that the Prime Minister, however, shared this information with the Media after adjournment of the House. The member, contended that this had amounted to insult as well as contempt of the House.

Disallowing the notice of question of privilege, the Speaker, Shri G.M.C. Balayogi *inter alia* ***ruled*** as follows:

"As for the Chair's observation, it is well-established that no privilege of Parliament is involved if statements on matters of public interest are not first made in the House and made outside.

*** *** ***

As a matter of fact, even making of announcements regarding policy decisions of Government outside the House while the House is in Session, does not involve any breach of privilege and contempt of the House. I therefore, withhold my consent to the notice of privilege given by Shri Sontosh Mohan Dev."

[*L.S. Deb.*, 8 December 1999, cc. 344-348]

Point No. 17

Whether a particular document should be placed in the House or given out to the Press first is to be decided by the Minister concerned.

On 8 April 1960, a member (Shri Atal Bihari Vajpayee) sought reactions of the Speaker on his letter with regard to a news item reporting that—the Government of India has received reply to its note from the

Chinese Government Press and that the report contained the contents of the reply as well. Shri Vajpayee contended that before the publication of the contents of the reported reply, the Government should have informed the House about it. In this context, the Speaker, Shri M.A. Ayyangar gave the following ***ruling***:

> "Let me make my position clear. With respect to these matters, I would like the hon'ble members to know what exactly I am going to allow and not to allow. It is for the hon'ble Minister to find out, and to decide for himself, whether a particular document ought to be placed on the Table of the House or not. If he makes up his mind that it ought to be placed here, the hon'ble members expect that this House must be the first to get information before it is given to the Press. But it is for the hon'ble Minister to decide whether it is a matter which is so important that the information ought to be given first to the House or whether it is not of such importance and might be given out to the press.
>
> Today, I understood him to say that somehow it had leaked out. In that case, every hon'ble member is entitled to ask how it has leaked out. If, on the other hand, he feels that it is not a matter which ought to be kept secret, there is absolutely no such question of leakage. If, the hon'ble Minister feels, on the other hand, that it is a matter of importance and the House ought to be taken into confidence first, before it goes out, every step ought to be taken to see that the outside world does not get information of this matter before the paper is laid on the Table of the House. It is for the Minister to decide."
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> *[L.S. Deb.,* 8 April 1960, cc. 10376-10380]

Point No. 18

The President is not required under the Constitution to consult Parliament when it is in Session before issuing the Proclamation under article 356. There is no breach of privilege involved in this case.

On 7 March 1988, notices of question of privilege were given by three members (Prof. Madhu Dandavate, Shri S. Jaipal Reddy and Shri Basudeb Acharia) wherein they contended that the Parliament

should have been consulted before issue of a Presidential Proclamation under article 356 of the Constitution of India regarding dissolution of the Punjab Legislative Assembly. The Speaker, Shri Bal Ram Jakhar gave the following ***ruling*** in the matter:

> "I have received three notices of privilege on the same issue from Professor Madhu Dandavate, Shri Jaipal Reddy and Shri Basudeb Acharia. Proclamations under article 356 and orders thereunder can be issued even while Parliament is in session. The only requirement is that the proclamation has to be laid on the Table of the House at the earliest opportunity. There is nothing in article 356 or elsewhere in the Constitution which enjoins upon the President to consult Parliament when it is in session before issuing the proclamation. No breach of privilege disallowed. However, it is well-established that when Parliament is in session, policy decisions must first be announced on the floor of the House. It is a matter of judgement whether the present decision amounts to a policy decision. I do feel that when Parliament is in session, it would have been more desirable to take the House into confidence and inform it of the proposed action, instead of the members knowing of the important development only through the newspapers. I mention it as a matter of propriety and hope that in future such decisions would be first announced on the floor of the House."
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> [*L.S. Deb.*, 7 March 1988, cc. 803-809]

26

PUBLIC ACCOUNTS COMMITTEE*

The Public Accounts Committee consisting of 15 members from the Lok Sabha and 7 members from the Rajya Sabha, examine the accounts showing the appropriation of the sums granted by Parliament to meet the expenditure of the Government of India, the annual Finance Accounts of the Government of India and such other accounts laid before the House as the Committee may think fit. Apart from the Reports of the Comptroller and Auditor General of India on Appropriation Accounts of the Union Government, the Committee also examine the various Audit Reports of the Comptroller and Auditor General on revenue receipts, expenditure by various Ministries/Departments of Government and accounts of autonomous bodies.

Point No. 1

The report of the Public Accounts Committee (PAC) can be discussed under certain circumstances. But it should be confined to a specific issue.

On 22 August 1966, a member (Shri Surendranath Dwivedy) moved the motion regarding the Fifty-fifth Report of the Public Accounts Committee. This was an extraordinary step as for the first time since independence a report of the Public Accounts Committee was going to

* The constitution and working of the Public Accounts Committee are governed by provisions of Rules 253 to 286, 308 and 309 of the Rules of Procedure and Conduct of Business in Lok Sabha and Directions 48 to 73, 97, 97A, 99 and 100 of the Directions by the Speaker, Lok Sabha.

be discussed in the House. In view of this, the Speaker Sardar Hukam Singh gave the following ***ruling***:

"This is an extraordinary step that we have taken because during the last so many years since independence we have not discussed any report of the Public Accounts Committee. This is the first time we are discussing it; I am talking of the period since independence; in the pre-independence days it might have been discussed.

*** *** ***

...My predecessor as well as myself have laid down, whenever there was an occasion for it, that the report of the Public Accounts Committee which contains so many matters should not be discussed, but a specific issue over which there is divergence of opinion between the Committee and the Minister can certainly be brought before the House and discussed. The House has got that authority, not that it hasn't. The authority is ultimately with the House and it can discuss, but it should be confined to a specific issue, because if the reports are to be discussed, they contain so many things, the discussion would not be specific, many members would refer to different things and there would be rather a confused discussion which might not enable us to come to a definite decision.

Therefore, in the case of the 55th Report I have allowed a discussion because it is pertaining to a specific issue and not to other things...

*** *** ***

The discussion should be confined to those observations, accusations or comments of the Committee, no new accusations, fresh blame or other things should be brought into that.

*** *** ***

The most important thing that I have to bring to the notice of the House is that the PAC is a House in miniature. Its decision should be respected and its dignity enhanced. There all parties work together in team spirit and no note of dissent is appended nor allowed. They work in the interest of the nation and of the House on behalf of the House."

[*L.S. Deb.*, 22 August 1996, cc. 6076-6077]

Point No. 2

Substitute Motion to the motion for discussing the PAC report under Rule 342* is not allowed.

On 22 August 1966, while the motion regarding the Fifty-fifth Report of the Public Accounts Committee was to be moved, the Speaker, Sardar Hukam Singh informed the House that certain substitute motions had been tabled by the members. With reference to the proposed discussion on the PAC Report, he ***ruled*** :

"Now certain substitute motions have been tabled from both sides. If these motions and amendments are allowed, there would be great divergence of opinion and the report of the Committee would be criticized; either they would be complimenting the Committee or criticizing it, which would not be desirable for the future smooth functioning of the PAC.

*** *** ***

We might take the conclusions of the Committee as they are; the observations the Committee have made might be accepted on all sides, and then what consequences should follow may be discussed, rather than the merits or the reasoning of what the PAC have given.

*** *** ***

If at this moment we go into those details, there would be divergent views, reasoning, arguments or other things on what the Committee have done; that would divide the members of different parties in the PAC in future deliberations. Therefore, that danger must also be avoided."

[L.S. Deb., 22 August 1966, cc. 6077-6078]

* Rule 342 provides that a motion that the policy or situation or statement or any other matter be taken into consideration shall not be put to the vote of the House, but the House shall proceed to discuss such matter immediately after the mover has concluded his speech and no further question shall be put at the conclusion of the debate at the appointed hour unless a member moves a substantive motion in appropriate terms to be approved by the Speaker and the vote of the House shall be taken on such motion.

Point No. 3

Members of Rajya Sabha in the Public Accounts Committee have all rights of members of the Committee but they work under the control of the Speaker.

On 10 May 1954, after the motion to associate the members of the Rajya Sabha with the Public Accounts Committee had been adopted, a member (Shri T.N. Singh) enquired whether the rules of procedure for Joint Committee meetings would be made available to the members in accordance with an undertaking therefor given earlier during the discussion on the association of members of the Rajya Sabha in Committees of Lok Sabha. Thereupon, the Speaker, Shri G.V. Mavalankar ***ruled***:

"It seems that there is some misconception on the part of the hon. Member. I think he refers to the motion for election of members of the Public Accounts Committee and if he sees the motion, he would find that all that is accepted by the House is to recommend to the Council of States that they do agree to nominate seven members from the Council of States to associate with the Public Accounts Committee. It is not a question of a Joint Committee. It is a Committee of this House with the association of seven members of the Council of States....It is not a Joint Committee. It is a Committee of the House of the People under the control of the Speaker. So far as the deliberations and voting and other things are concerned, they are of the same status, they are members after all. The only difference will be that they will be under the control of the Speaker of the House of the People and not under the control of the Chairman of the Council of States so far as their functioning in the Public Accounts Committee is concerned. That is the only difference."

[*L.S. Deb.*, 10 May 1954, c. 6960]

Point No. 4

Reference to an Audit Report laid on the Table of the House is in order even though the Public Accounts Committee had no opportunity to consider it.

On 9 April 1960, during further discussion on the Demands for Grants relating to the Ministry of Defence, a member (Shri N.G. Goray)

made a reference to the Audit Report, Defence Services, 1960, which was laid on the Table of the House on 8 April 1960. Another member (Shri Jagannath Rao) raised a point of order that it was not proper to refer to Audit Report which had been laid on the Table only the previous day, as the audit objections would first be answered by the Ministry concerned when this Report was considered by the Public Accounts Committee.

Some members opposed the point of order on the ground that once the Audit Report was laid on the Table, the House was seized of it and a reference to it was in order. The Speaker, Shri M.A. Ayyangar thereupon, ***ruled***:

> "...The point that is before me, that is, when once the Audit Report has been placed on the Table of the House, unless it is looked into and reported upon by the Public Accounts Committee, it ought not to be referred... Let us assume that the Public Accounts Committee takes months to deal with it; it may be legitimately taken, not that it wants to delay. Therefore, it may be said that when once the report is placed on the Table of the House, it is open to the House to refer to it... When the Public Accounts Committee send their report, then, if necessary, we shall have a discussion upon that. So far as this is concerned, this is the final Report hon'ble members could refer to it. They may refute it or support it..."

[*L.S. Deb.*, 9 April 1960, cc. 10650-10658]

27

QUESTIONS

SYNOPSES OF THE RULES*

- Unless the Speaker otherwise directs, the first hour of every sitting is used for the asking and answering questions.
- Unless the Speaker otherwise directs, the maximum period of notice is 21 clear days and minimum 10 days.
- Five clear days' notice of the question has to be given to the concerned Minister by the Secretary-General.
- The total number of Starred Questions in a day's list does not exceed 20 excluding the postponed or transferred questions.
- The overall limit of Unstarred Questions is 230.
- The Speaker, while deciding the admissibility of a question, he can disallow it, as a whole or a part of it when in his opinion it is:

  (i) an abuse of the right of questioning, or

  (ii) calculated to obstruct or prejudicially affect the procedure of the House, or

  (iii) in contravention of the rules.

- The Speaker may also direct that a question put down for oral answer may go as Unstarred.

*For details *see* Rules 32 to 54.

Point No. 1

Complete information on questions should be given to the members.

On 1 September 1959, during the Question Hour at the time of reply to S.Q. No. 5502 regarding Naga attack on Kohima, a member (Shri M.L. Dwivedi), referring to a newspaper report on the subject, wanted to know whether some of these rebels had crossed over to China. In response thereto, the Parliamentary Secretary to the Minister of External Affairs (Shri J.N. Hazarika) stated that he had no information in that regard. Later, the Deputy Minister of External Affairs (Smt. Lakshmi Menon) added that the Government of India did not go by newspaper reports. On this, the Speaker, Shri M. A. Ayyangar ***ruled*** as follows:

> "Very often such things come up. There are newspaper reports and on the strength of the newspaper reports hon'ble members come to this House and make enquiries. There is no other chance of their getting information. Either the Minister must give them information or the newspapers supply them. It is no good telling the House, 'we do not know'. The newspapers are as much available to the Minister as to the members. At least when they bring it to the notice of the Minister, the Minister must make enquiries. It is no good saying, 'So far we have had not any information'. As soon as a question is received, we allow ten days time; they must make enquiries, talk over the phone or otherwise get the information. Otherwise, Question Hour will be useless. I might suspend the Question Hour. I would tell the hon'ble Ministers, it is no good saying here, we have no information. They must say, 'We have made enquiries and we find it wrong or it is right'. Otherwise the Question Hour is absolutely infructuous."

[*L.S. Deb.*, 1 September 1959, cc. 5501-5503]

Point No. 2

Before serious allegations are made, the members should write to the Minister and try to find out what exactly is the position.

On 20 August 1957, while asking a supplementary to S.Q. No. 968 regarding gold smuggling, a member (Shri Surendranath Dwivedy)

mentioned about some charges levelled against the son of the Chief Minister of Punjab to the effect that he was the leader of a gang of smugglers and wanted to know whether the Government had taken note of these charges. The Minister of Finance (Shri T.T. Krishnamachari) responded by stating that he could not express an opinion about what was mentioned in newspapers, and more so about a person, who was not in a position to defend himself. The Speaker, Shri M.A. Ayyangar, thereupon, gave the following ***ruling*** :

"...With respect to such serious allegations about important men, I would like that, before any question is put, hon'ble members should ascertain facts. Of course, papers give information; that is one source hon'ble members may also get letters. Of course, I am not going to shut out such questions, because this is a forum for all legitimate grievances to be redressed. But when once a charge is made publicly, whether it is proved or not, whether it is true or not, it has an effect which cannot be undone. So, I would urge upon hon'ble members that before such very serious allegations are made they can write to the Minister and try to find out what exactly is the position. If he is not satisfied, he can write to me. I will look into it and if necessary, I will allow it to be brought before the House... It is my duty to see that no allegations are made unless they are supported by very authentic evidence, in which case I myself will allow it if it is on a matter within our jurisdiction.

*** *** ***

If a matter, which is within the jurisdiction of this House, has been agitated in the newspapers and it appears in such bold headlines, the House is entitled to ask whether it has come to the notice of the Government, not in every ordinary matter, but in serious matters which have appeared in very bold headlines in the papers, one can probably say, "it is true" or no, "it is wrong."

[*L.S. Deb.*, 20 August 1957, cc. 8821-8824]

Point No. 3

It is left to the Minister to decide when some information cannot be given during the Question Hour.

(a) On 4 April 1990, during the Question Hour, when a Short Notice Question (S.N. Q.No. 11) regarding Dalmia Jain Concerns was being

answered, a member (Shri A.P. Jain), rising on a point of order, wanted to know whether the discretion to refuse to disclose a fact need be based on some principle or it could be arbitrary. He also contented that once the Government chose to give some information, it could not arbitrarily chose to refuse further information. The Deputy Speaker, Sardar Hukam Singh, thereupon gave the following ***ruling***:

> "The Question Hour is not the period where a discussion can be had. Only brief questions are put and concise answers given. We have had them. Members have got so many remedies to extract other Information...
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> *** *** ***
>
> It is left to the Minister at that moment when he feels that some information cannot be given. If really any information is suppressed on grounds which may not be reasonable or justified that matter can be settled afterwards. But when the Minister claims that such and such information cannot be given, immediately he cannot be compelled to give that information at that moment, and particularly during the Question Hour. That cannot be done just now."
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> [*L.S. Deb.*, 4 April 1960, cc. 9530-9535]

(b) On 13 August 1959, during the Question Hour, in response to S.Q.No. 392 regarding arrest of Pakistan Couriers by a member (Shri Raghunath Singh), the Minister of Home Affairs (Shri B.N. Datar) replied that the matter was under investigation and, therefore, it would not be in public interest to divulge what was going on. As the members were dissatisfied with the reply, they raised further questions in the matter. Reiterating his earlier position, the Minister stated that it would not be proper even for a proper investigation of the case to give further facts. The Speaker observed that there were certain things which could be given to the House without prejudice to the investigation and that the hon'ble members were entitled to know whether these persons, who were arrested had letters on them or not. The Minister, thereupon stated that the Government had some documents and it would not be in public interest to divulge the nature of such documents. The Speaker then observed that it was open to a Minister to answer or not to answer a question in public interest and that neither the Speaker nor the House

was competent to ask and know the reasons. At this, a member (Shri Hem Barua), rising a point of order, wanted to know whether even after the Speaker had asked for certain information which was innocuous and not prejudicial to the enquiry, the Minister could refuse to answer in public interest or not? The Speaker, Shri M.A. Ayyangar, thereupon, gave the following ***ruling***:

> "The hon'ble member raised a point of order... The point of order is whether even after the Speaker has asked the Minister to give some information, he can refuse to disclose the amount in public interest and if so, what is the public interest in relation to this matter. But so far as the question of deciding as to what is in the nature of public interest with respect to which he can give information or refuse to give information, we are not entitled to go into that matter further, whether it is money or letter or ask to whom it was addressed. Therefore, it should be left at this stage. The Minister is ultimately responsible to the House and if he withholds any information, there are a number of ways in which he can be taken to task by the House. At this stage, let us not interfare with his discretion.
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> *** *** ***
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> I have been looking into all authorities. No authority has been shown to me so far whereby it is open to the Speaker to call upon an hon'ble Minister to divulge something when once he says that in public interest he is not prepared to disclose it. The Speaker also is in the same position as the other members of the House and, therefore, it is not open to me to call upon the hon'ble Minister to explain to us as to how he claims public interest. It is his discretion."
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> [*L.S. Deb.*, 13 August 1959, cc. 2153-2158]

(c) On 27 April 1976, during the Question Hour, a member (Shri Ramavatar Shastri) *vide* his S.Q.No. 544 regarding damage of two electric rail engines due to fire and resultant loss of rupees one crore, wanted to know whether the Ministry took any action against those responsible for the damage. When the Deputy Minister in the Ministry

of Railways (Shri Buta Singh) replied in the negative and stated that the information sought for was incorrect, the member insisted that the information was correct and that he had proof. On this, the Speaker, Shri G.S. Dhillon gave the following ***ruling***:

> "I am sorry I cannot agree to this. You can ask for the information. It is the duty of the Government to give information. They have given the information. The hon'ble member cannot say that information is wrong and his information is correct. In the Question Hour he can only seek information and not give information.
>
> That* has to be established. In the Question Hour, members ask for information and Government gives the information. Some hon'ble members may not agree with it, but we have to accept whatever is given by the Government."
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> [*L.S. Deb.*, 27 April 1976, cc. 31-33]

(d) On 13 August 1962, a member (Shri Subodh Hansda) along with six other members *vide* S.Q. No. 218 regarding manufacture of Helicopters in India, wanted to know the details about an agreement understood to have been signed in this regard with a French firm. In response thereto, the Minister of State in the Ministry of Defence (Shri K. Raghuramaiah) stated that it would not be in public interest to disclose the details of the terms of the contract. At this, another member (Shri Hem Barua) on a point of order contended how come the information on terms of contract regarding the manufacture of helicopters, which was not a defence matter, be refused to be divulged on ground of public interest. Later on, when Shri Hansda asked for the number of helicopters to be manufactured, the Minister again declined to give the same, as that would mean giving the size of the equipment. Shri Barua, again rising on a point of order, said that an agreement had been entered into with the French firm, which was already aware of the number and price of helicopters to be manufactured by them. The Speaker, Sardar Hukam Singh, thereupon, gave the following ***ruling***:

> "It is not in public interest to disclose the numbers. He has said so. The information is known only to the hon'ble Minister, how far he

*Referring to any wrong information given by the Minister.

should disclose it is a matter for him. I cannot interfere in every case. I will give him the privilege to disclose as much as he thinks fit, taking the public interest into consideration. In rare circumstances, where I come to the conclusion that something is being concealed from the House and that the information ought to be given, I would certainly interfere. Otherwise, I will give that option to the hon'ble Minister, the option or privilege of public interest.

*** *** ***

In such cases, earlier also, the grievance of the hon'ble members was that these terms and details are revealed and disclosed by the other party in their own country and the whole world knows it, but only this Parliament does not know it. That is the difficulty. ...

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If the Minister is sure that the other Party also would not do it certainly I can give this privilege to the hon'ble Minister, If they think that something is not to be disclosed in public interest I will not insist on it. But if ultimately the whole thing is disclosed and published, then probably the criticism is justified namely that it was only this Parliament that was kept in the dark and otherwise the whole world knew about it. If there is a condition they would also not disclose it, then I would not insist on it. I should give free option to the Minister to decide it certainly. But if there is no condition about it and they just do it and as a matter of course, publish it, then certainly the hon'ble members are justified in asking that they should also know it.

[*L.S. Deb.*, 13 August 1962, cc. 1351-1355]

Point No. 4

Question Hour is not used for discussing policy matters.

On 5 July 1977, during the Question Hour, a member (Prof. R.K. Amin) in his supplementary on S.Q. No. 329 regarding conversion of Parbhani-Mudkhed-Adilabad-Ghugno Line into broad gauge line, wanted to know from the Minister of Railways (Prof. Madhu Dandavate) whether there

was any general policy of converting the entire metre-gauge line into a broad gauge line. The Speaker, Shri K.S. Hegde, thereupon, gave the following ***ruling***:

> "It is all a question of a particular route about which we are discussing. We are here discussing the general policy also. I won't allow that question unless it pertains to a particular area. We have already discussed the general issues in the Budget discussions. Now, if you have anything to ask with regard to this particular area, then I have no objection... By experience I say that this Question Hour should not be utilised for discussing about policy matters."

[*L.S. Deb.*, 5 July 1977, cc. 2-6]

Point No. 5

Even after the Question is over the Speaker can ask the Minister to answer a question.

On 29 February 1960, the reply by the Minister of Home Affairs (Shri G.B. Pant) to S.Q.No. 471 regarding Bombay-Mysore Border Dispute led to further discussion. While the discussion was going on, the Question Hour was over. On this, a member (Shri Mahavir Tyagi) rising a point of order, said that the Question Hour being over, not even the Chair was entitled to extend it. The Speaker, Shri M.A. Ayyangar, thereupon, gave the following ***ruling***:

> "...After the Question Hour, if there is any very important question I ask the hon'ble Minister if he is willing to answer it. If he is not willing I will not at all force any hon'ble Minister to answer a question. After the Question Hour is over, it is left to the hon'ble Minister to comply with the request, or to say 'No, I am not prepared to answer it.' In the latter case I would have kept quite. But if he is willing... In other cases too, if I find that a particular question is very important, I will give preference to it and put it before other questions. Under the rules I can do so."

[*L.S. Deb.*, 29 February 1960, cc. 3119-3122]

Point No. 6

A Minister cannot withhold information from the House on the ground that it is not customary to give such information.

On 27 November 1961, in the course of giving reply to S.Q. No. 310 regarding establishment of an Air Force College at Hyderabad,

the Minister of Defence (Shri Krishna Menon) said that it was not customary to give information about acquisition of land. On this, rising on a point of order, a member (Shri Hem Barua) wanted to know the difference between the term 'in the public interest' and 'it is not customary'. The Speaker, Shri M.A. Ayyangar, thereupon, gave the following ***ruling***:

> "By customary, I understand, that of their own accord they won't give information. But if information is asked on the Floor of the House, no hon'ble Minister can withhold it on the ground that it is not customary, but only in public interest. Therefore, what is customary or not must be left to the House to decide or to me to decide. If the hon'ble Minister feels that it is not in the public interest, he may say so. I leave it to him to decide."

[*L.S. Deb.*, 27 November 1961, cc. 1462-1464]

Point No. 7

A member can table notices of questions but cannot participate before actually taking oath or making affirmation.

On 29 March 1971, when a member (Shri Annasaheb Gotkhinde) raised a point of order whether a member can table notices of questions before he had actually taken oath, the Speaker, Shri G.S. Dhillon ***ruled*** :

> "They can send notices, but they can participate only after they take the oath or make the affirmation."

[*L.S. Deb.*, 29 March 1971, c. 2]

Point No. 8

The Speaker can expunge portions of proceedings when irrelevant questions of insinuatory character are put.

On 18 July, 1956, on a question regarding Jeeps, a supplementary question was ordered to be expunged by the Deputy Speaker, as it did not arise out of the main question. On a point raised by a member (Shri Hari Vishnu Kamath) as to whether the rules provided for the expunction of questions which were irrelevant, the Deputy Speaker, Sardar Hukam Singh ***ruled*** :

> "I ought not to allow any question which is irrelevant. No question which is irrelevant will be allowed on the floor of the House. If it

comes in the form of a question put to me before admission, I can rule it out as irrelevant and it will not be put on the floor of the House. But so far as questions which are put on the floor of the House are concerned, I do not know whether they are relevant or not until I hear the hon'ble member. Therefore, I wait to hear it and then rule it out as irrelevant. But, if in addition to that question being not merely irrelevant it contains insinuations it ought not to be there and I will remove it...

"If the question is intended merely for the purpose of making an insinuation, I am not going to allow it to besmirch the record."

[*L.S. Deb.*, 18 July 1956, cc. 112-113]

28

RAISING A DISPUTE ON THE CITIZENSHIP OF A MEMBER

CONSTITUTIONAL PROVISIONS

Article 102 (1)(d) of the Constitution provides that a person shall be disqualified for being chosen as and for being a member of either House of Parliament if he is not a citizen of India.

Article 103 provides that if a question of disqualification of a member on the ground *inter alia* that he is not citizen of India arises:—

- The question shall be referred to President of India and his decision shall be final.
- Before giving any decision on any such question, President shall obtain the opinion of the Election Commission of India and shall act according to such opinion.

Point

Speaker or the Lok Sabha are not the competent authorities to consider or take a decision on the question of disqualification of a member of Lok Sabha on the ground of his not being a citizen of India.

On 6 March 2007, CNN-IBN TV Channel in its news telecast reported that Shri M.K. Subba, a sitting member of the Fourteenth Lok Sabha, was not an Indian citizen. On 7 and 8 March 2007, a member (Prof. Vijay Kumar Malhotra) raised the issue of citizenship of Shri M.K. Subba.

On 20 March 2007, the Speaker, Shri Somnath Chatterjee after considering documents on record, gave the following ***ruling*** in the matter:

"Hon'ble members may recall that the issue regarding the citizenship of one of the hon. members of this House, namely, Shri M.K. Subba was raised by Prof. Vijay Kumar Malhotra in the House on 7 and 8 March 2007. As per the request of Prof. Malhotra, I met the Leaders of the Parties in Lok Sabha on 9 March 2007. In that meeting, I had requested Prof. Malhotra to give me the details regarding the case which he had in his possession. Prior to that, at his request, I had also heard Shri M.K. Subba in my Chamber and asked him to furnish his comments on the issue raised by Prof. Malhotra in the House and also to furnish any documentary evidence that he might have in his possession.

I received a communication from Shri Subba along with photocopies of several documents on 9 March 2007. I also received a communication from Prof. Vijay Kumar Malhotra on 12 March 2007. Prof. Malhotra had with his communication enclosed transcript of a news-item telecast on CNN-IBN TV Channel on 6 March 2007. The thrust of the news-item was that Shri M.K. Subba is not an Indian citizen.

Shri M.K. Subba has tried to establish with the help of documents supplied by him that he is an Indian citizen. He had also referred to the judgement given by the Sikkim High court in his favour on the same issue. Shri Subba has also requested me that he may be permitted to make a personal explanation to clarify his position on the issue in the House.

I also held a meeting with the hon'ble Leaders of the Parties to have the benefit of their views in the matter on 14 March 2007.

The two questions involved in this matter are (i) whether Shri M.K. Subba is a citizen of India or not, and (ii) whether he is disqualified to be a member of this House. It goes without saying that the answer to the second question depends on the determination of the first question by the courts. I have been informed that the matter of citizenship of Shri Subba is presently *sub judice* in the Supreme Court.

As regards the question of disqualification of Shri Subba, which can arise only after the matter of his citizenship has been decided by the Court, the limited issue, as far as it appears to me, is whether the Speaker, Lok Sabha or for that matter even Lok Sabha is competent to consider or take a decision in the matter.

Article 102 of the Constitution provides for disqualification for membership of either House of Parliament, *inter alia*, on the ground that the person is not a citizen of India. According to article 103 of the Constitution, if the question of disqualification of a member on the ground that he is not a citizen of India arises, "the question shall be referred for the decision of the President and his decision shall be final." Article 103 also provides that "before giving any decision on any such question, the President shall obtain the opinion of the Election Commission and shall act according to such opinion."

In view of the unambiguous provisions of the Constitution, I am of the view, as were the Leaders of the Parties with whom I had discussed the matter on 14 March 2007 that neither the Speaker, Lok Sabha nor this House is competent to take a decision in the matter.

On 7 and 8 March 2007, when the matter was raised on the floor of the House, a reference was made to the case against ten members of Lok Sabha who were alleged to have accepted money for raising questions in the House. A parallel was sought to be drawn with that case and it was demanded that this matter may also be referred to a Committee of the House for examination and report, as was done in the case of ten members.

I am convinced that it would not be appropriate to draw a parallel between the two cases. The earlier case, popularly known as the 'Cash for Query' case, related to the parliamentary conduct of the said ten members. The complaint against the said members was that their conduct was unbecoming of members of Parliament. It was, therefore, considered that it would be just and appropriate if the matter was investigated into by a Committee consisting of members from all sections of the House. I had decided to constitute the Committee and did so, after consulting Leaders of the Parties in Lok Sabha. Based on the recommendations of the Committee, motion to expel the members was moved by the hon'ble Leader of

the House and adopted by the House. In the present case, the allegation against Shri Subba has no nexus with his parliamentary duties. In my opinion, the House has no jurisdiction to examine this matter.

In view of this, I feel that no action is called for by the House or the Presiding Officer in the matter."

[*L.S. Deb.*, 20 March 2007]

29

REMOVAL OF THE SPEAKER/ DEPUTY SPEAKER FROM THE OFFICE

CONSTITUTIONAL PROVISIONS

Article 94(c) of the Constitution provides that the Speaker/the Deputy Speaker may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House. However, at least fourteen days' notice has to be given of the intention to move the resolution. Article 96(1) provides that, while a resolution for the removal of the Speaker from his office is under consideration in the House, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside. According to article 96(2), the Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the House of the People while any resolution for his removal from office is under consideration in the House and shall, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

SYNOPSES OF RULES 200-203

- The notice of a resolution for removal of the Speaker or the Deputy Speaker shall be given to the Secretary-General in writing.
- Full text of the resolution shall be given.
- A motion for leave to move the resolution shall be entered in the List of Business in the name of the member concerned.
- The motion shall be put down in the List of Business only 14 days after the notice was received.

- The resolution shall be specific with respect to charges.
- The resolution shall be clearly and precisely expressed and shall not contain arguments, inferences, ironical expressions, imputations or defamatory statements.
- Leave is granted when not less than 50 members stand in their places in support of it.
- The resolution is taken up by the House on a day not later than ten days from the date on which leave is asked for.
- Discussion shall be strictly confined to the charges preferred in the resolution.

Point No. 1

(a) Specific instances should be given so that the objections raised can be met or any inference that he is guilty of partiality can be drawn.

(b) Even when specific provisions have been made relating to the removal of the Speaker, general provisions, unless inconsistent, should apply.

(c) It is necessary for the House to consider as to how the Speaker ought to be removed. It is necessary for the hon'ble members to consider the pros and cons before they can come to a conclusion. A discussion is a matter of substance.

On 18 December 1954, before the House could take up a resolution regarding removal of the Speaker, listed in the Order Paper of the day, a member (Shri Kotha Raghuramaiah), rising on a point of order, submitted that the resolution was not specific and that it offended the Rule 191(i)* and therefore, was out of order. Several other members also raised objections to moving of the Resolution. Responding to the situation, the Deputy Speaker, Shri M.A. Ayyangar, gave the following ***ruling***:

Regarding this resolution, a point of order was raised that it is not admissible under Rules 191(1)* and 193 (3)**. Sub-rule (1) of Rule 191 says:

"It shall be clearly and precisely expressed;".

*New Rule 173(i).

**New Rule 173 (iii).

Sub rule (3) says:

"It shall not contain arguments, inferences, ironical expressions, imputations...etc."

Regarding sub-rule (1) the details or instances or facts on which arguments could be based for the rejection or for supporting this resolution have not been given. They are general in terms. Taking questions, it is the privilege or the duty of the Speaker to admit or disallow questions. Therefore, when he has had to look into more than 30,000 questions during the course of a session or since his assumption of office, unless attention is drawn to particular questions which have been disallowed from which the House can be asked to draw an inference that it was on account of the partiality or for one or the other of the reasons which are set out as grounds for his removal, it will be impossible for the House to consider those matters. It will be a rambling discussion. We won't come to a particular point. Thirty thousand questions cannot be taken up one after another. One hon'ble member can refer to one question and another hon'ble member to another question. To meet the case, that question or other questions may be referred to. Therefore, it is necessary that specific instances 1, 2, 3, 4 regarding questions or adjournment motions should be given so that the objections raised can be met, or any inference that he is guilty of partiality can be drawn.

That is one thing. This was met by the argument that special rules of procedure have been laid down in Rules 219 and 220 relating to the removal of the Speaker and that when specific provisions have been made, the general provisions relating to resolutions ought not to apply. Rules 218 to 220 also form part of the same rules which have made provisions for resolutions. All the rules have to be taken together. As a matter of fact, Rules 219 to 220 do not refer to any time limit. Am I to allow any hon'ble member to go on speaking on the resolution indefinitely? The hon'ble member will have to be allowed 15 or 20 minutes only. Wherever provision is not made, unless a provision is inconsistent, that other provision under the rules ought to be applied. It is not at every stage that all rules will be made. The rules as to resolutions will be added to every other matter. I do not find any force in that argument.

Article 94 of the Constitution has been referred to for the purpose of showing that no grounds need to be set out. If we strictly go by article 94, no ground need to be set out and straightaway. I will have to put the question to the House as to whether the Speaker ought to be there or not irrespective of any particular point. As, at the time of the election, no arguments are addressed, likewise, this is a reversal of the election process and as soon as a resolution is tabled, without any ground whatever, the question will be put and as things are decided by the majority, if the minority has become the majority against a particular Speaker, they can remove him. That would be the regular and logical meaning of article 94. But, there is a later article where it is said that if the Speaker chooses, he can participate in the proceedings. *Therefore, it is necessary for the House to consider as to how the Speaker ought to be removed. Unless he knows what are the charges which he has to answer, it is impossible for him to answer. Therefore, it is not a matter of technicality, it is a matter of substance.* It will be just and necessary for the hon'ble members here to consider the pros and cons before they can come to conclusion. This analogy of the Criminal Procedure Code need be drawn upon. Principles of natural justice require that when something is attributed against someone, he must be made to know what are exactly the points, and in what particulars he has offended. Now, therefore, that is the vital objection.

Shri Raghavachari said that I have already admitted it, and therefore it is too late and I cannot go behind it. But, I have not yet admitted it. I have merely put it on the Order Paper here, for the purpose of my coming to a conclusion. Before I admitted, I wanted to hear the hon'ble members who have sponsored it; I did not want them to come to my Chamber, and have a discussion with me. I wanted to know how this is admissible.

*** *** ***

Therefore, unless there are specific charges which could be met, and of which due notice has been given, this resolution is clearly out of order. But as the hon'ble Leader of the House said, on a technicality, with respect to such a serious matter, I do not want to disallow this motion; I do not want to refuse to admit it on a mere technicality.

This is one of first impression. There has been no ruling till now, and no precedent for this, after independence has been obtained, and

after we have started working under a Constitution. Even under the previous regime, there was a specific rule which required the consent of the Leader of the House. That rule is not here before us. And rightly, the hon'ble leader of the House has said that he does not desire that he ought to be consulted, though he expected that for various good reasons, it might have been desirable that he should have been consulted. However, that is another matter.

As this is one of first impressions, though *prima facie* this resolution has not been a resolution which has been worded properly so as to give notice, yet particularly since this happens to be a resolution for the removal of the Speaker, I would say that I am going to allow it or admit it now; of course, subject to hon'ble members supporting it, I am going to allow it. I do not want to stand on technicalities, because it is one of first impressions, and a matter of this kind ought to be thrashed out in the House. Though this would not be a precedent for the future, I decide or rule that this is a Resolution which is not purely governed by Rules 219 and 220 read with Rule 191(1) which require that a resolution ought to be specific. Therefore, to obviate the difficulty and to focus attention on particular points, whoever speaks first on behalf of the signatories to this Resolution may start by saying, one, two, three, these are the things relating to Questions, and again, one, two, three, these relate to the adjournment motions. So far as 'etc.', is concerned, 'etc.' is not a legal language. Therefore, I am not going to allow any discussion further or allow 'etc.' to be clothed with flesh and blood here on the floor of the House. Therefore, I will allow discussion only on these points. Condoning the fact that regularity has not been adopted in this matter of giving the details and making it more specific, I would ask that whichever hon'ble member might begin must set out the three or four questions which he intends placing before the House for the purpose of focussing attention with respect to the questions, and also the three or four adjournment motions, which he wants to place before the House in respect of adjournment motions. No other subject which the hon'ble Speaker had dealt with during the course of this regime would be allowed to be referred to merely because the word 'etc.' is there. Therefore, the discussion will be specific. I admit this resolution, subject to all these observations. I would like to know now how many hon'ble members are supporting it."

[*L.S. Deb.*, 18 December 1954, cc. 3282-3301]

Point No. 2

(a) A resolution shall be clearly and precisely expressed.

(b) It shall raise substantially one definite issue.

On 15 April 1987, the House took up the motion for leave to move a resolution regarding removal of the Speaker, given notice of, by a member (Shri Somnath Chatterjee) and 14 other members on 30 March 1987. In this context, the Deputy Speaker, Shri M. Thambi Durai gave the following ***ruling***:

"So far as the question of admissibility of the notice is concerned... the notice suffers from many infirmities, which I should like to place before the House. As members are aware, article 94 of the Constitution confers upon the House the power to remove the Speaker by a resolution passed by "a majority of all the then members of the House". Rules 200 to 203 framed under this article lay down the procedure to be followed in this respect. But that is not all. Such a resolution is governed not only by the aforesaid article of the Constitution and the rules mentioned above, but also by article 96 of the Constitution and the general rule applicable to other resolutions, *viz.* Rule 173 of the Rules of Procedure.

Article 96(2) provides, *inter alia*, that the Speaker shall have the right to speak in, and otherwise to take part in the proceedings of the House when any resolution for his removal from office is under consideration in the House.

Rule 173 of the Rules of Procedure, *inter alia,* provides that in order that a resolution may be admissible, it shall satisfy the following conditions, namely:

(i) It shall be clearly and precisely expressed, and

(ii) It shall raise substantially one definite issue.

In the light of the foregoing, the resolution should have been specific with respect to the charges. The notice under consideration refers to 'rulings given by the Speaker of the House, including the one on 19 March 1987, on the question of privilege and adjournment motions.....'. It also speaks of denial by the Speaker of their right

to raise "vital constitutional issues and procedural issues and burning problems". It is, therefore, not at all specific with respect to the charge.

Viewed in the light of the constitutional provisions as well as the requirements of the Rules of Procedure, is mentioned above, I am of the view that it is not a matter of mere technicality but one of substance. As the Speaker has the right to participate in and to vote on such a resolution, it is only fit and proper that he must know precisely what the charges against him are so that he could reply to them. Principles of natural justice also demand the same. In as much as the charges are not specific, are not "clearly and precisely expressed" and do not raise "one definite issue" of which due notice has been given, the resolution would be *prima facie* out of order...

However, notwithstanding all this. I would not like to stand between the members who have given the notice and rest of the House. Since this happens to be a resolution given under article 94 of the Constitution and concerns the removal of the Speaker himself, I would leave it to the House to decide for itself whether leave should be granted to the member... to move the resolution."*

[*L.S. Deb.*, 15 April 1987, cc. 560-564]

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*The House granted the leave to move the resolution under Rule 201(3).

30

RESOLUTIONS

SYNOPSES OF RULES 172-183

- A member or a Minister may move a Resolution relating to a matter of general public interest.
- In order to be admissible, a Resolution:
  - — *should be* clearly and precisely expressed and raise substantially one issue.
  - — *should not* contain arguments, inferences, defamatory statements etc., refer to the conduct of persons except in their official capacity; and relate to any matter, which is under adjudication by a Court of Law.
- The Speaker decides whether a Resolution or a part thereof is or is not admissible.
- The matters pending before statutory tribunals, commissions, etc. are not ordinarily admitted. But the Speaker in his discretion can allow such matter relating to the procedure, subject or stage of enquiry on being satisfied that the discussion is not likely to prejudice the consideration of such matter by the tribunal, commission, etc.
- A member in whose name the Resolution stands moves it when he is called upon to do so.
- He may withdraw the Resolution before moving it.
- The member may authorise another member listed in the List of Business to move the Resolution.

- A Resolution or an amendment to a Resolution which has been moved can be withdrawn only by the leave of the House.
- When a Resolution has been moved, no Resolution or amendment raising substantially the same question can be moved within one year from the date of the moving of the earlier Resolution.
- When a Resolution has been withdrawn with the leave of the House, no Resolution raising substantially the same question can be moved during the same Session.
- A copy of every Resolution which has been passed by the House is forwarded to the Minister concerned.

Point No. 1

(a) The admissibility of a resolution is to be decided only in terms of the conditions of admissibility laid down in the rules;

(b) A resolution seeking to implement a constitutional directive is admissible although the matter is a State subject;

(c) Rule of anticipation is not applied when the chances of the discussion on the anticipated matter are remote.

On 16 March 1979, a member (Shri G.M. Banatwalla) raised a point of order involving three points for consideration of the Chair. His submissions were that it was not proper to discuss the Resolution regarding a total ban on cow slaughter that the House had taken up for consideration. His contentions were: the subject-matter of the Resolution had come up before the House earlier also and that the House was not in a position to come to any effective decision capable of implementation; that the very admissibility of the Resolution was in question under the relevant rules; and that the subject-matter of the Resolution anticipated the discussion on an identical Bill already introduced in the House. The Deputy Speaker, Shri Godey Murahari, who was in the Chair, then gave the following ***ruling***:

"Shri G.M. Banatwalla has raised points of order regarding the admissibility of this resolution which now is already under discussion... He had raised this point last time on 2 March 1979

when Dr. Ramji Singh wanted to move the resolution. The Chair had then observed that the resolution had already been admitted by the Speaker. The Speaker is empowered under Rule 174 to decide the admissibility of a resolution. Admissibility of a resolution is governed by the conditions laid down in Rule 173. The resolution has been admitted, because it does not contravene any of the conditions laid down in Rule 173.

So far as the question of competence of the House to discuss the resolution is concerned, I may inform the House that a resolution seeking to implement a constitutional directive has been held, in the past, to be admissible even though the matter raised therein is primarily a State subject. At the time of admitting a resolution its constitutionality is not so strictly examined. If *prima facie* no defect is noticed, the resolution is admitted. Moreover, Seventh Schedule to the Constitution pertains to the subject-matter of laws by Parliament and by the State Legislatures and not to the subjects for discussion.

As regards the objection that the subject-matter of the resolution anticipates the discussion on a Bill on the same subject pending before the House, it has been held earlier that even if a Bill on the same subject is pending but the chances of its coming up for discussion are remote the rule of anticipation does not apply. ...I, therefore, rule out the points of order raised by Shri Banatwalla."

[*L.S. Deb.*, 16 March 1979, cc. 387-392]

Point No. 2

Unless the resolution is placed before the House by the Chair after the mover has concluded his speech, there is no motion before the House.

On 14 February 1958, the House took up for consideration a Resolution regarding the appointment of a Committee to review the working of banks for the purpose of nationalization, moved on 13 December 1957 by a member (Shri Rameshwar Tantia). On the day, when the member was called upon to resume his speech that he had started on the previous day when he moved the Resolution, he informed the House that he did not want to proceed with the Resolution any more

and that it should not be proposed to the House. On this, raising objection, another member (Shri Prabhat Kar) submitted that Shri Tantia could not withdraw it without the permission of the House. The Deputy Speaker, Sardar Hukam Singh, who was in the Chair, thereupon, gave the following ***ruling***:

> "It has not been proposed to the House. The mover of the Resolution has not concluded his speech. He says he does not want to proceed with it, and he has not finished his speech. There was a case only a few days ago. An hon'ble member had moved the resolution, but he had not concluded his speech. But then he was absent on the next day when it was continued. In that case it was held that he had moved it because he had said what he had to say and he did not turn up the next day to continue it. But today the hon'ble member who is to continue the speech is here, but he does not want to go on with the speech. He says he does not want to proceed further. In my opinion, the motion has not been placed before the House so far... I expressed earlier also the view that the House comes into possession of a motion when it has been proposed to the House by the Chair. Unless that is done, the House is not in possession of that motion.... Unless the resolution is placed before the House by the Chair after the mover has concluded his speech there is no motion before the House. It has not been placed before the House by the Chair, and, therefore, there is no motion in possession of the House."
>
> [*L.S. Deb.*, 14 February 1958, cc. 893-896]

Point No. 3

After the amendment has been moved no objection can be raised against it.

On 26 March 1975, while the House was discussing a resolution relating to "Growth of Fascism", an amendment was moved for deleting a word from it. A member (Prof. Madhu Dandavate) rising on a point of order submitted that any amendment that negated the main resolution was not permissible at all. The Chairman, Shri Nawal Kishore Sinha, who was in the Chair, gave the following ***ruling***:

> "It is too late to raise this objection. This amendment is already before the House. I will have to put it to the House. So far as I am

concerned, there is no other alternative... The first thing is that the amendment has already been moved and it was not objected to at that stage. According to rule, this objection should have been taken at that stage."

[*L.S. Deb.*, 26 March 1975, cc. 384-91]

Point No. 4

Amendments enlarging the scope of the original Resolution are out of order:

On 14 April, 1961, a member (Shri D.A. Katti) moved a Resolution that the constitutional safeguards granted to the Scheduled Castes be extended to the Buddhist converts from the Scheduled Castes. To that Resolution, a member (Shri Mathew Maniyangadan) sought to move an amendment that the State aid and facilities granted to the Scheduled Castes be extended to converts to other religions from the Hindu Scheduled Castes.

Ruling the amendment out of order, the Chairman, Shri Mulchand Dube, who was in the Chair, ***ruled*** :

"The amendment tabled by Shri Maniyangadan seems to be out of order, for the simple reason that it widens the scope of the original resolution. The original resolution relates only to the facility being granted to converts to Buddhism. This amendment seeks to give facilities to the converts to every religion. Therefore it is beyond the scope of the resolution and I think it is out of order."

[*L.S. Deb.*, 14 April 1961, cc. 11485-11500]

31

RIGHT OF A MEMBER OF THE OTHER HOUSE TO SIT IN THE HOUSE DURING VOTING

CONSTITUTIONAL PROVISION

As per article 88 of the Constitution, every Minister shall have the right to speak in, and otherwise to take part in the proceedings of, either House, any joint sitting of the Houses, and any committee of Parliament of which he may be named a member, but shall not be entitled to vote.

Point

The Minister, who is a member of the other House, has a right to sit in the House during voting.

On 15 February 1966, as the House took up voting on the Adjournment Motion to discuss the food situation in Kerala, a member (Shri Madhu Limaye) rising on a point of order, wanted to know about the right of a member of the other House to be present in the House during the voting. The Speaker, Sardar Hukam Singh, thereupon, gave the following ***ruling***:

> "Now regarding article 88 of the Constitution of India which speaks about voting. This article makes it very clear that a Minister who is not a member of the House can participate in the proceedings. He cannot vote. The proceedings are continuing. If the motion is negatived, then also the proceedings will continue. So those who are members of Rajya Sabha have the right to be present here althrough. However, they will not be able to vote."*
>
> [*L.S. Deb.*, 15 February 1966, c. 402]

*Original in Hindi.

32

RIGHT OF A MEMBER WHO HAS BECOME A MINISTER/CHIEF MINISTER OF A STATE TO VOTE IN THE HOUSE

Point

Though constitutionally he continues to be a member of the House since he has not yet been elected to the Legislative Assembly, it is not desirable for him to participate in the proceedings of the House.

(a) On 6 September 1963, a member (Shri S.M. Banerjee) raised a point of order, enquiring whether a member* could be a Minister in a State Government and at the same time continue to sit in the House. On this, the Speaker, Sardar Hukam Singh gave the following ***ruling***:

> "Now that he has been sworn in as a Minister there, so far as the constitutional provisions are concerned, I cannot immediately see how we can debar him though it would be more desirable that he should not participate in the deliberations here."
>
> [*L.S. Deb.*, 6 September 1963, cc. 4822-4823]

(b) On 12 December 1963, a member (Shri H.N. Mukerjee) sought clarification with regard to the presence of a member (Shri Jaipal Singh), who was sworn in as a Minister in the State of Bihar, in the House taking part in the discussion. The Speaker, Sardar Hukam Singh, thereupon, gave the following ***ruling***:

> "He can be a Minister without being a member. Therefore, he is at present not a member of two Legislatures. In that case there is no harm.

*Referring to Shri Jaipal Singh.

But really, as I expressed that day, though I would very much like him to be here, it looks very odd that a Minister there in a local Legislature coming over and attending the Parliament."

[*L.S. Deb.*, 12 December 1963, c. 4440]

(c) On 17 April 1999, before the Motion of Confidence in the Council of Ministers was put to vote of the House, the Minister of Parliamentary Affairs, Shri P.R. Kumaramangalam submitted that as per convention, Shri Giridhar Gamang, Chief Minister of Orissa, should not be allowed to cast his vote. The Leader of Opposition (Shri Sharad Pawar) and some other members of Opposition submitted that since Shri Giridhar Gamang continued to be a member of the House, he was entitled to cast his vote on the Motion of Confidence in the Council of Ministers. Thereupon, the Speaker, Shri G.M.C. Balayogi ***ruled***:

"...With regard to the notice received from the hon'ble Parliamentary Affairs Minister on Shri Giridhar Gamang's attendance in the House, ...as per provision of article 101 (4) of the Constitution if a member of Lok Sabha is, without permission of the House, absent from all meetings of the Lok Sabha for a period of sixty days, the House may declare his seat vacant.

There are instances where members, on their appointment as Ministers in the States have signed the Attendance Register of Lok Sabha to avoid loss of seats for non-attendance in the House. However, in a few instances, it had been observed from the Chair that while such Ministers continued to be members, it would not be desirable for them to participate in the deliberations of the House. Accordingly, such members withdrew from the House forthwith.

Shri Giridhar Gamang who is the Chief Minister of Orissa continues to be a member of Lok Sabha. He has come to cast his vote on the Confidence Motion. In view of the aforesaid, I leave it to the good sense of the member as regards the question of casting his vote on the Confidence Motion."

[*L.S. Deb.*, 17 April 1999, cc. 30-31]

33

STATEMENT BY MINISTER

SYNOPSIS OF RULE 372

- A Minister may make a Statement of a matter of public importance with the consent of the Speaker.
- No question shall be raised at the time the Statement is made.

SYNOPSIS OF DIRECTION 119

- A Minister desiring to make a Statement under Rule 372, shall
  - — intimate in advance the date he proposes to make the Statement.
  - — send a copy of the Statement for information of the Speaker.
- The Statement proposed to be made, shall
  - — certain to a subject for which the Minister is responsible.
  - — explain Government's policy on a matter of public importance or topical interest.

Point No. 1

A Minister is required to take the Speaker's permission and send him a copy of the Statement he proposes to make. It need not necessarily be notified in the Order Paper.

On 16 December 1963, the Minister of Finance (Shri T.T. Krishnamachari) made a Statement regarding the economic situation in the country. After the conclusion of the Statement, a member (Shri Nath Pai) along with another member (Shri Hari Vishnu Kamath) raised a

point of order, objecting that the Minister had not followed the normal procedure and made the Statement without it being notified in the Order Paper of the day. The Speaker, Sardar Hukam Singh, thereupon, gave the following ***ruling***:

> "So far as Ministers' Statements are concerned, if they get my permission and inform me beforehand and send me also a copy, I can allow them. My permission was asked for and I allowed that. Sometimes, important Statements are to be made without previous intimation also. There is some urgency, some importance which require that they should make these Statements at shorter notice. When I got that I had entered it in my own note, though it had not been notified to the hon'ble members. There is nothing extraordinary that has happened. Many a time we have done so and we are doing it. That procedure is probably advisable. Sometimes they have to make these Statements."

[*L.S. Deb.*, 16 December 1963, cc. 4879-4893]

Point No. 2

The Minister should make the Statement in the House when it is sitting before the proposed enhancement of the prices.

On 28 August 1973, as the Minister of Petroleum and Chemicals (Shri Dev Kant Barooah) was called upon to make a Statement regarding increase in the price of certain petroleum products, a member (Shri S.M. Banerjee) rising on a point of order, stated that the Statement by the Minister was being made after the increase had been effected. He further wanted to know as to why the House, which was in Session, it was not taken into confidence. Replying to the point raised by the member, the Speaker, Shri G.S. Dhillon gave the following ***ruling***:

> "In my opinion, when the House is sitting and the Minister is coming with a Statement, it is much better that he takes the House into confidence at a much earlier stage. I must lay down that in future also when the prices are enhanced when the House is sitting it is much better that the Minister comes and makes the Statement in advance rather than enhancing it and then coming here after so many days. Now there has been so much of controversy in the Press on the subject."

[*L.S. Deb.*, 28 August 1973, cc. 245-247]

Point No. 3

There is no bar against the Minister making a Statement on a subject on which a notice of privilege is pending.

On 25 March 1968, when the Prime Minister was called to make a Statement regarding sale of cards by certain members of Parliament before the expiry of the statutory period of two years, a member (Shri Madhu Limaye) enquired as to under what rule the Statement was being made. When Shri Limaye was informed that the Statement was being made under Rule 372, he raised a point of order that the Statement could not be made under that Rule as he had tabled notice of a Privilege Motion regarding conduct of the members involved in the sale of cards. The Prime Minister stated that she was making the Statement as advised by the Speaker. The Chairman, Shri G.S. Dhillon, who was in the Chair, gave the following ***ruling***:

> "These are two separate matters. One is the right of a Minister to make a Statement of his own independently. Another is the Privilege Motion based on certain understanding; I am not aware of that. There was a question whether the privilege motion can be debarred. There is no bar against it, if it comes later on. Similarly, there is no bar against a Minister making a Statement. That is my ruling."

[*L.S. Deb.*, 25 March 1968, cc. 3017-3027]

Point No. 4

A copy of the proposed Statement should be given to the Speaker in advance.

On 21 December 1978, the Minister of Petroleum and Chemicals and Fertilizers (Shri H.N. Bahuguna) made a Statement in the House regarding discovery of a new offshore gas source off Mahim. After he concluded his Statement, the Speaker, Shri K.S. Hegde ***ruled*** the following:

> "Mr. Bahuguna, because of the importance of the matter, I have allowed you to make a Statement without giving me a copy of the Statement in advance. Under the rules, you have to give me a copy of the Statement in advance. Please follow this practice in future."

[*L.S. Deb.*, 21 December 1978, cc. 287-289]

Point No. 5

The Railway Minister can make a Statement regarding the financial matters of the Railways including proposals for raising freights and fares without presenting a supplementary budget. It would, however, be more appropriate if he presents the Supplementary Demands before making the Statement.

On 7 December 1981, while the Minister of Railways (Shri Kedar Pandey) was making a Statement regarding Railway's Financial Matters, members rising on points of order, *inter alia* raised a point. Whether it was correct for the Minister to make such a Statement involving financial implications without submitting a Supplementary Budget. The Deputy Speaker, Shri G. Lakshmanan, then in the Chair, observed that the submissions made by the members would be examined. Referring to the matter the following day, *i.e.* on 8 December 1981, the Speaker, Shri Bal Ram Jakhar, gave the following ***ruling***:

"In regard to the ... point I would invite the attention of members to the provisions of article 110(2) which reads:

A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fine or other pecuniary penalties or for the demand or payment of fees for licences or fees for service rendered or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

On 7 September 1974, when similar points were raised in the House, the Chair had observed *inter alia:*

"...Under the present provisions of the Constitution as they are, it is the courtesy of the Railway Minister that he comes forward and asks the opinion of this House even in the matter of increase of fares and freights. It is your courtesy that you come here... Under the provisions of the Constitution you do not even need to come... I am afraid the Railway fares and freights are fees to be demanded for certain services which the Railways are going to render to the community. Therefore, we do not have anything to say about it..."

In the present case, it would have been more appropriate if the Minister of Railways had presented the Supplementary Demands for

Grants before making the Statement as he did yesterday. Since the Statement has already been made. I hope the Minister would come forward with the Supplementary Demands without any further delay...."

[*L.S. Debs.*, 7 December 1981, cc. 371-382
and 8 December 1981, cc. 352-353]

Point No. 6

A Minister's Statement should be comprehensive to include points raised in notices of Calling Attention and Short Notice Questions relating to the same subject on which the Statement is proposed to be made.

On 19 March 1958, in pursuance of a Direction by the Speaker, Shri M.A. Ayyangar, given earlier on an adjournment motion, the Deputy Minister of Railways (Shri Shah Nawaz Khan) made a Statement regarding the murder of three Railways Mail-Service employees in a train between Agra and Tundla on the night of 12 March 1958.

In this connection, certain members desired that the Statement of the Minister should also cover the points raised by them in their Short Notice Questions which were pending disposal.

The Speaker, Shri M.A. Ayyangar, thereupon, ***ruled***:

"I would suggest that in future, whenever a Minister makes a Statement on the floor of the House in pursuance of an earlier direction, or in answer to a Calling Attention Notice, he will kindly answer all those points that have been raised in the Short Notice Questions and other questions on the same subject, notices of which would have reached him before that date; that is to say, if it is possible to get the information by that time, let the Statement be as comprehensive as possible instead of replying only to a particular point for the time being and then making a fuller Statement later on. If a full statement is made by the hon'ble Minister, it will avoid my admitting Calling Attention Notices or Short Notice or other Questions on the same subject. This is for future guidance".

[*L.S. Deb.*, 19 March 1958, cc. 5613-5616]

Point No. 7

Where a Statement is made outside the House even clarifying the policy already enunciated, the Minister should also make a Statement about that in the House at the earliest opportunity.

On 18 March 1970, Shri Madhu Limaye raised a matter under Rule 377 regarding the reported announcement made outside the House by the Minister of Industrial Development, Internal Trade and Company Affairs (Shri Fakhrudin Ali Ahmed) about the licensing policy while the House was in Session. The Minister of Industrial Development, Internal Trade and Company Affairs explaining the position *inter alia* stated that the Statement was with regard to clarification of policy adopted earlier and it was not necessary for the Government to place the matter before the House.

Thereupon, the Speaker, Shri G.S. Dhillon ***ruled*** as under:

"The question before us was about the Statement on major policies. The healthy convention that has been followed and that should be followed here is that on all new or major policies, immediately after the meeting of the House, if that is possible, the matter should come before the House, but in this case the position taken by the Minister is that the notification was in the nature of a clarification of a policy already enunciated... Even if it is so, the practice is that immediately following that the Minister makes a Statement in this House also, so that we discuss it at the earliest moment".

[*L.S. Deb.*, 18 March 1970, cc. 220-229]

34

STATEMENT BY A MEMBER WHO HAS RESIGNED AS MINISTER

SYNOPSIS OF RULE 199

- A member who has resigned the office of Minister may make a personal statement in explanation of his resignation.
- The Statement is made with the permission of the Speaker.
- It can be made on any day during the Session in which the resignation has been accepted by the President.
- If the House was not in Session when the resignation was accepted by the President, the Statement can be made at the earliest opportunity on a day not being more than seven days from the date of commencement of the Session.
- A copy of the Statement is to be forwarded to the Speaker and the Leader of the House at least one day in advance.
- No debate is permitted on such Statement.
- After the Statement has been made, a Minister may make a Statement pertinent thereto.

Point No. 1

It is not obligatory on the part of a Minister who has resigned to make a Statement in the House.

On 18 February 1965, on the question of resignation of the Minister of Food and Agriculture (Shri C. Subramaniam), a member (Shri Nath Pai) on a point of order sought a Statement from Shri Subramaniam

about his resignation from the Council of Ministers. He contended that the reasons for resignation might be partly personal, but were not completely personal and the Parliament must, therefore, be given a chance to hear Shri Subramaniam. The Speaker, Sardar Hukam Singh reserved the matter for the day and subsequently, on 2 March 1965, gave the following ***ruling***:

> "The House will recall that on 18 February 1965, Shri Nath Pai raised a point that in accordance with the traditions of the House of Commons, U.K., the Minister of Food and Agriculture should make a Statement in the House about his resignation from the Council of Ministers. I promised to look into the matter and let the House know my reactions.
>
> I have looked into the matter and I find that under Rule 199(i) it is not obligatory on the part of a Minister who has resigned from the Council of Ministers to make a Statement in the House. Further in this case, we do not have any official information whether the Minister tendered his resignation and whether it was not accepted by the Prime Minister or it was withdrawn by the Minister himself. All those details are the internal affairs of the Cabinet.
>
> In the circumstances, I do not think that it is obligatory on the part of the Minister to make any statement in the House."
>
> [*L.S. Debs.*, 18 February, 1965, cc. 137-38 and 2 March 1965, c. 1986]

Point No. 2

Every Minister who resigns has a right to make a Statement.

On 17 August 1963, Shri K.D. Malaviya was called upon to make a Statement in explanation of his resignation from the Council of Ministers. In this context, a member (Shri Ramsewak Yadav), rising on a point of order, objected to Shri Malaviya making the Statement and pleaded that since the reason for his resignation was related to the Sirajuddin incident and that the Commission appointed to look into the matter had already given a report, the report be first laid on the Table of the House and only thereafter, the member be allowed to make a

Statement. The Deputy Speaker, Shri S.V. Krishnamoorthy Rao gave the following ***ruling***:

> "Every Minister who resigns has got right to make a Statement, and it is under the rules of the House that he is making the Statement. So, there is no point of order."

[*L.S. Deb.*, 17 August 1963, cc. 950-951]

Point No. 3

A query or a demand for a Statement under Rule 199 can be made by a member.

On 17 July 1978, the Leader of the Opposition (Shri C.M. Stephen), after being permitted by the Speaker, rose to make a submission about the Statement to be made by the Home Minister. Thereupon, many members raised the objection that Shri Stephen could not be permitted to raise a query or a demand under Rule 199 since it has been provided neither for the Leader of the Opposition nor for any member of the House; it has been provided only for the member who was a Minister and who has resigned his Ministerial post. The Speaker, Shri K.S. Hegde, thereupon ***ruled***:

> "This position has been examined in three earlier cases in the House. The first case that we took up was when Mr. Subramaniam resigned from the Ministry. A demand was made to compel Mr. Subramaniam to make a Statement. In that connection, the Statement made by the Prime Minister outside the House was quoted, and a demand was made that Mr. Subramaniam must explain the circumstances under which he resigned. The Speaker went into the matter and said, 'It is for Mr. Subramaniam to either make a Statement or not to make a Statement and we cannot compel him to make a Statement.
>
> The next occasion was when Mr. Krishna Menon resigned. Here again, the question was gone into by the Speaker, and he came to the conclusion that though it is permissible for the member to make a demand, it is optional for the Minister either to accede to the demand or to decline the demand.
>
> And the third occasion was when Mr. Asoka Mehta resigned and this very question was again examined by my predecessor.

On all the three occasions, they have consistently come to the conclusion that it is open to a member to make a Statement within the rule. Of course, it is not at all a Statement that they are making. It is only a query or a demand to make a Statement. It is upto the ex-Minister to accede to the demand or refuse to accede to the demand.

All these were done under Rule 199. On all the three occasions, it was done under Rule 199. And the Speaker had permitted the member to make the demand, permitted him to briefly explain why he wanted that statement to be made and to briefly explain the reasons for making the remarks, and the Speaker ultimately said it was for the ex-Minister to make a choice—and not for others.

I think these precedents were rightly decided, because every rule implies within itself certain implications, *and one of the implications is that if there is a privilege on the part of a person to make a Statement,* it is open to the members to request him to exercise that privilege. It is upto him to exercise or not to exercise it. But that is a different matter."

[*L.S. Deb.,* 17 July 1978, cc. 315-334]

Point No. 4

(a) A member cannot be compelled to make a Statement.

(b) Merely because a Statement has been sent to the Speaker, it does not become the property of the House.

On 17 August 1978, after the conclusion of the Question Hour, the Speaker made an announcement in the House that Shri Raj Narain would not be able to make a Statement in explanation of his resignation from the office of the Minister of Health and Family Welfare. A member (Shri Vayalar Ravi) along with several other members objected to this and contended that the member could not retrance his step once the Speaker had given him the permission to make a Statement and the item was included in the List of Business of the day. After a brief discussion that ensued thereafter, the Speaker, Shri K.S. Hegde gave the following ***ruling***:

"The first contention is, having given notice under Rule 199, he has no right to withdraw the same and refuse to make the Statement.

I have not found any rule, nor any principle of law under which a member can be compelled to make a Statement. Whether to make a Statement or not is the discretion of the member. The Speaker has no power to compel any member to make a Statement.

The second point raised is, the Statement having been made available to the Speaker, it becomes the property of the House. I am unable to accept this contention. Many communications are being sent to the Speaker on various matters. They automatically do not become the property of the House. A Statement becomes the property of the House only when it is laid on the Table of the House. Till then it is not the property of the House. My attention has not been invited to any rule or any other proviso of law in support of the contention that a communication sent to the Speaker automatically becomes the property of the House."

[*L.S. Deb.*, 17 August 1978, cc. 224-239]

Point No. 5

(a) Whenever a Minister resigns voluntarily or at the request of the Prime Minister, he is entitled to make the Statement.

(b) A member has the freedom to make changes in his Statement provided it remains a Statement in personal explanation.

(c) There cannot be any limitation as regards the time for making the Statement.

(d) Speaker has the duty to examine the Statement before it is allowed.

On 24 August 1978, when a member (Shri Raj Narain) was called upon to make a Statement under Rule 199, explaining the reasons for his resignation as Minister, several members raised a number of objections. They contended that Shri Raj Narain did not resign on his own will but did so at the instance of the Prime Minister and therefore, as a dismissed Minister he had no right to make such Statement; that the member had no right to make any change in the Statement and also that having given one Statement at an earlier stage, he should not be allowed to give another Statement at a later stage; that he could not raise

any extraneous matters not relevant under the rules as reasons for his resignation; that having forwarded one Statement to the Speaker and having taken a date for making the Statement and failing to make the Statement on that day, he was not entitled to make a Statement on a subsequent day either; that the Speaker should not intervene in a matter which is not in the domain of the Chair; and that he can only give or not give permission. Responding to the points raised by the members in the matter, the Speaker, Shri K.S. Hegde gave the following ***ruling***:

"The first contention raised is that Shri Raj Narain did not resign voluntarily but he resigned only at the instance of the Prime Minister and therefore he has no right to make a Statement under Rule 199.

I do not see any substance in this contention. Rule 199 covers all types of resignations. It has been well accepted in the British Parliament as well as in this country that whenever a Minister resigns either voluntarily or at the request of the Prime Minister, it will entitle him to make a Statement in the House.

The second contention taken is that Shri Raj Narain has no right to make any change in the Statement. It has been said that having given one Statement at an earlier stage, he should not be allowed to give another Statement at a later stage. I see no force in that contention. The Statement is that of a Minister resigning and it is in his Personal Explanation regarding his resignation. People might try to polish their words. People might try to put their ideas in a different manner.

So long as the Statement in question is a personal statement in explanation of his resignation, any change that might be effected by the Minister concerned cannot be objected to. It will not be proper for me to disclose to the House what Statement Shri Raj Narain had submitted to me at an earlier stage. That Statement, as I ruled earlier, has not become the property of the House. That is entirely a communication submitted by an hon'ble member of the House to me and that communication is with me. As I mentioned earlier, he has a right to make any change as long as the change conforms to Rule 199.

It has been contended that having given one Statement and having taken a date for making the Statement, as he has failed to make that Statement on a subsequent day, he is not entitled to make a Statement

on a subsequent day. I see no support for such contention under Rule 199. No limitation whatsoever has been prescribed in Rule 199 as regards the time for making the Statement. It may be that when a Statement is unduly delayed, the Speaker may not permit the member to make a Statement. The Statement has been made during Session and, therefore, I do not think, I will be justified in refusing him permission to make the Statement.

It was contended that the Speaker does not come into the picture under Rule 199 and he has merely to allow a member to make a Statement and nothing more. I am unable to accept this contention. *It is the Speaker's duty to examine the Statement and see whether it is relevant under Rule 199 and it is only thereafter that he has to give his consent in the matter.*

*** *** ***

It is rightly contended that the Minister who has resigned cannot bring in extraneous matters which are not relevant to his Personal Statement in explanation of his resignation. I will not permit Shri Raj Narain to make any Statement which is extraneous to Rule 199 (1).

Shri Unnikrishnan has raised a contention that he is entitled under Rule 41 to put questions to Shri Raj Narain after he makes his Statement. I do not think that rule is relevant for the present purpose. Rule 41 is a general rule. In my opinion, Rule 199 is a self-contained rule and, therefore, Rule 41 does not come into operation.

[*L.S. Deb.*, 24 August 1978, cc. 304-323]

35

SUB JUDICE

Freedom of speech on the floor of the House is the essence of parliamentary democracy. Certain restrictions on this freedom have, to a limited degree, been self-imposed. One such restriction is that the discussions on matters pending adjudication before Courts of Law should be avoided on the floor of the House, so that the courts function uninfluenced by anything said outside the ambit of trial in dealing with such matters. Under the rules of Lok Sabha, any matter, which is under adjudication by a Court of Law having jurisdiction in any part of India, therefore, cannot be raised in any form such as questions, adjournment motions, motions, resolutions and cut motions.

At the Conference of Presiding Officers in 1967, the Chairman of the Conference appointed a Committee of Presiding Officers, headed by Shri V.S. Page, Chairman, Maharashtra Legislative Council to examine, *inter alia,* as to what conventions, etc., should be adopted or evolved to enable Parliament/Legislatures to function effectively. Known as Page Committee, the recommendations contained in the Report of the Page Committee were adopted at the Conference of Presiding Officers held at Trivandrum in October 1968. The Committee considered the scope of the rule of *sub judice* and recommended the following guidelines, *viz.*

- Freedom of speech is a primary right whereas the rule of *sub judice* is a self-imposed restriction, so where need be, the latter must give way to the former;
- The rule of *sub judice* shall have no application in privilege matters;

- The rule of *sub judice* does not ordinarily apply to legislation;
- The rule of *sub judice* should apply in regard to proceedings before the civil and the criminal courts and courts martial in any part of India and not ordinarily to other judicial or *quasi-judicial* bodies such as tribunals, etc. which are generally fact-finding bodies;
- The rule of *sub judice* applies to questions, statements, motions, resolutions, and other debates;
- The rule of *sub judice* applies only in regard to the specific issues before a court. The entire gamut of the matter is not precluded. In case of linked matters, part of which are *sub judice* and part not *sub judice,* debate can be allowed on the matters which are not *sub judice;* and
- The rule of *sub judice* has application only during the period when the matter is under active consideration of a Court of Law or Courts Martial.

Point No. 1

Discussion on the motion for consideration of a Bill is permissible when the subject matter of the Bill is under adjudication by a Court of Law.

On 26 September 1955, the House took up the Prize Competitions Bill, 1955 for discussion. After the Minister of Home Affairs (Pandit G.B. Pant) moved the motion for consideration of the Bill, a member (Dr. A. Krishnaswami), rising on a point of order, submitted that the discussion on the Motion should not be proceeded with since the matter was admitted on the basis of delegation of legislative power by the States to the Parliament as per article 252 of the Constitution. He added that the very question whether the States had such legislative power or not, had been the subject matter of adjudication by the High Court of Bombay and was under appeal before the Supreme Court. He further submitted that while the matter was pending and by virtue of the facts disclosed in the petition, it would be difficult to have a real debate without reference to and discussion of matters, which are *sub judice.* The Speaker, Shri G.V. Mavalankar, thereupon, ***ruled*** the following:

"To my mind the point is very small and very clear... the only small point raised is as to whether pending an appeal, the matter being

sub judice this Bill should be taken up, if taken up, the fear is expressed that there will not be any full and free discussion or debate. That seems to be the only point at issue...

*** *** ***

Now, let us see why he says that the matter being *sub judice,* we need not discuss it here. I have dealt with the part of the legal aspect and whatever law might have been discussed there in the appellate judgement or the first court's judgement or is going to be discussed before the Supreme Court is not the point which we are going to discuss here at all. So, that disposes of a major portion of the argument.

What was the decision? The decision was only as regards certain specific facts and those were whether a particular set of circumstances that have been before the courts, constitute gambling, and betting whether they are liable to the tax imposed by the Government of Bombay. These are all questions of facts, these are not general questions and the Bombay High Court did not decide as to whether gambling was good or bad or whether it should be permitted or not.

*** *** ***

...A debate on the present Bill can take place without a reference to the subject matter of the pending appeal. I am quite clear in my mind that we shall not and we need not discuss the facts of this case in appeal though arguments are perfectly competent on the question of the evil nature of these prize competitions, how they are arranged and how they are worked and all that. The court is not going to hear the general question, the court will restrict itself to particular facts of the case. Therefore, if we do not refer to the facts of that particular case to support any arguments here, there is no bar as to why this question could not be taken up in this House and I do not see how the appellants or the respondents can be prejudiced by a discussion in this House. I am clear in my mind that any debate in this House cannot prejudice the hearing of the appeal.

*** *** ***

...It is the inherent power of Parliament to legislate. Supposing there is a bad law, shall we sit with folded hands and allow the bad law to continue. The hon'ble member, Shri Nageshwar Prasad Sinha just now pointed out a case of the amendment of the Constitution and validation of the Bihar Act which was declared *ultra vires* by the High Court of Bihar while the appeal was pending. The legislature sits here for the purpose of taking stock as to what should be done for the welfare of the people and if the legislature feels that a particular measure declared *ultra vires* or invalid by the courts requires recasting again, I think it is perfectly competent to legislate...

*** *** ***

I may also remind the House that in this very House a Bill for controlling prize competitions was recently introduced by a Private Member and it was discussed in this House even though an appeal was pending.... So, there is a precedent also that we can discuss without reference to the particular decision or particular matter pending before the Supreme Court.

*** *** ***

Therefore, I think I must overrule the point of order and allow the motion to proceed with only this request to the members that they will not refer to the facts—not of the law—but of the particular case under appeal. That is the only limitation on the debate. So, let us proceed."

[*L.S. Deb.*, 26 September 1955, cc. 15231-15254]

Point No. 2

(a) Discussion is permissible through a motion on a matter which is before a Commission of Inquiry.

(b) Reference to the Judge of the Enquiry Committee being a relative of the Chief Minister, can be made during discussion.

On 7 April 1966, before the House took up for discussion the Motion regarding situation in Scheduled Areas of Bastar District, in view of

reservation over discussion as the matter was pending before a Commission of inquiry, the Speaker, Sardar Hukam Singh made the following ***ruling*** :

> "As the members are aware, this discussion has been allowed under the proviso to the Rule 188. There are inhibitions put down there that when a matter is before a Commission of Inquiry, that matter cannot be discussed in the House, but there is a provision that those aspects whose discussion might not prejudice the inquiry can be allowed by the Speaker. So, I have, in my discretion, because it was a matter of public importance, of great importance, allowed that discussion, but we shall have to confine ourselves within limits.
>
> *** *** ***
>
> ...One thing would be that no reflection should be made personally against the judge. The second thing is that under the proviso, we can have discussions so far as the procedure, subject and stage is concerned, not the other things... There is scope for discussion but that is limited. How these deaths occurred, who was responsible for that, whether there was any provocation, was any motive behind it, if there was what was it...? That has to be found out by the Commission of Inquiry. Then we can also say..... that the Commission of Inquiry should be enlarged, the terms of reference may be widened. Probably, I think it could also be urged here that the enquiry should be expeditiously conducted and report made to the State. When the facts are known certainly the Legislature can discuss. Unless the facts are agreed or admitted we cannot have any discussion of these controversial things."

On this, a member (Shri N. Sreekantan Nair) requested the Speaker to give his ruling on the question: whether the members were allowed to make out the point that the Judge who was appointed (to the Commission) was the brother-in-law or a relative of the Chief Minister (Madhya Pradesh). The Speaker ***ruled***:

> "That can be done in speeches."

[*L.S. Deb.*, 7 April 1966, cc. 10029-10033]

Point No. 3

The scope of discussion on a matter when that matter is *sub judice* is that it should not touch the points that are in the court.

On 18 July 1967, during the discussion on Home Minister's Statement regarding assault on Shri Bimalkanti Ghosh, MP, a member (Shri H.N. Mukerjee) rising on a point of order sought to know whether the stipulation under Rule 186 that discussion on a matter under adjudication should not take place, had been taken into consideration. The Speaker, Shri N. Sanjiva Reddy thereupon gave the following ***ruling***:

> "The point is, unfortunately, when I am considering these motions, it is not as if the Speaker is aware as to what case is there, whether it is in the munsiff's court or the district court and other details. I only see whether they are matters to be discussed before the House. Until the Government brings to my notice I cannot possibly know whether a case is there in a court. Even presuming it is in a court of law... I do not know what is in a court, against whom it is, whether the matter can be raised here, etc. All these details the Speaker is not expected to know. Even if it is in a court, whether it is a case of assault or something that is in a court, I think we can discuss matters without touching the points that are in the court. At least we should express our sympathy. We will not refer to cases pending in the courts. We do not know who the culprits are and we do not want to condemn anybody but we want to condemn that act as such... Whether a case is pending in a Court of Law, I have no agency to know, unless I am informed by some parties. Therefore, I would request hon'ble members not to deal with those aspects which deal with the case in court and take the discussion to a higher level instead of going into small details.
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> [*L.S. Deb.*, 18 July 1967, cc. 12738-12741]

Point No. 4

The power of Parliament is unfettered in regard to legislation even when the subject matter of the legislation is *sub judice.*

On 12 December 1974, as the Minister of Law, Justice and Company Affairs (Shri H.R. Gokhale) wanted to move the Bill to further amend

the Representation of the People Act, 1951, a member (Shri Janeshwar Misra), followed by several other members, raised points of order on the propriety of discussion on the Bill in the House since the subject-matter of the Bill itself was *sub judice*. The Deputy Speaker, Shri G.G. Swell, who was in the Chair, gave the following ***ruling***:

> "...Now I see from the submissions made by different members that there are two issues on which the Chair is expected to give a ruling— One is whether a discussion on this Bill should preclude reference to the pending cases in various courts. That is one submission that has been made. This is regarding the cases that are before the court.
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> *** *** ***
>
> Let me first state what are the accepted practices. One of the accepted practices is that we do not discuss the merits or the facts of any case that is pending before the court. This is one of the accepted practices... We do not, because it is *sub judice*. Another is that the law-making power of this House is unfettered. Whatever be the case, the merits of the case, Parliament can make any law... You can make even an unconstitutional law. It is for the Supreme Court to decide, whether it is constitutional or unconstitutional. Your right is unfettered. But, we are expected to take all these into consideration... Therefore, the question of *sub judice* does not stand in the way of law-making here."

[*L.S. Deb.*, 12 December 1974, cc. 220-242]

Point No. 5

A point which is *sub judice* cannot be discussed in a motion.

On 4 August 1977, a member (Shri C.M. Stephen) was called upon to move a motion regarding the conduct of the Home Minister, for allegedly misusing the floor of the House by making incorrect statements. Before Shri Stephen could move the motion, several members raised points of order, contending that, (a) the motion was inadmissible under the rules; (b) it did not raise substantially one definite issue as was required under the rules; and (c) a particular portion of the

motion being objectionable should be removed. After hearing all the sides, the Speaker, Shri K.S. Hegde ***ruled*** the following:

> "Now, after the motion was admitted it came to my notice that a criminal case is pending in respect of the Belchi affair. When a criminal case is pending, one of the important aspects of the matter is, what is the motive for the offence. Therefore, since this has gone to the court, any discussion on that point is likely to prejudice the trial of the case. I, therefore rule out the first portion, that is (a) which came to my notice only after admitting it. The censure motion will therefore be confined only to (b) and (c) and will not extend to (a)."

[*L.S. Deb.*, 4 August 1977, cc. 295-315]

Point No. 6

The members are free to make their observations by way of advancing arguments on a matter which is *sub judice.*

On 22 November 1965, after the Minister of Steel and Mines (Shri Neelam Sanjiva Reddy) moved the motion for consideration of the Metal Corporation of India (Acquisition of Undertaking) Bill, 1965 in the House, a member (Shri S.M. Banerjee) and some others raised points of order on the ground that since the subject matter of the Bill was *sub judice*, it would not be appropriate to proceed with the Bill at that stage. Responding to the brief discussion that took place in the matter, the Speaker, Sardar Hukam Singh gave the following ***ruling***:

> "Two or three points have been raised. One is that the Ordinance has been challenged in the High Court and because identical provisions are incorporated in the Bill now before the House, we should await the fate of that Ordinance. If that is declared *ultra vires,* we should not proceed with it... Mr. Daji's point was that a *rule nissi* has been issued and so the Government shall not proceed with it. It is not issued to us, it has been issued to the Government. It is for the Government. I do not say that there is a contempt of court, but it is implied that the Government has looked into it and if the Government wants to proceed with this we cannot just debar it from doing so.

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So, Government has brought forward this Legislation in order to replace that Ordinance. That is perfectly legitimate. The only question is that the same arguments that are to be raised there so far as the constitutionality or... the *mala-fides* of the steps taken by the Government are concerned, they have to be discussed and hon'ble members say that they will have to put forward the same arguments that are to be advanced there. They can challenge those facts that are stated by the Government in adopting this line or advising the President to pass that ordinance. *But I do not think that can be a bar to preclude us from proceeding with this legislation.* It is not that we cannot take up those arguments which are advanced there*. The first thing is the constitutionality or otherwise would be decided by the courts themselves; whether it is the Ordinance or the law itself. If the same provisions of the Ordinance are declared *ultra vires* then those provisions will go automatically or the party can take them to the courts—this law as passed and then the proceedings may be declared *ultra vires*. There is no need to debar a court and we would not have done anything which comes into conflict with the Judiciary in that respect, because we are not deciding that just now. At least, it is not for the Speaker to make a declaration whether it is in accordance with the Constitution, whether it is *ultra vires* or *intra vires*. The Speakers have not taken it upon themselves to take such a decision. The House takes a decision, but never on the point whether it is *ultra vires* or not. *All the facts are combined together and everything is taken into consideration by the members of the House*. Therefore, even when it is a declared *ultra vires* by the Supreme Court or the High Court, it is not said that it has overruled any particular decision taken by it. Parliament may or may not just consider that aspect.

So, at this moment I do not feel that there would be any conflict created between us and the Judiciary if we only pass this law to replace that Ordinance... Shri Kamath has quoted Rule 352 (1) which says, 'A member while speaking shall not refer to any matter of fact on which a judicial decision is pending.' But what is that fact?

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*Referring to Court.

...Nobody could be stopped from making the allegations on that account.... They would not be precluded from advancing those arguments and imputing those motives. They may do it... They can refer to the intentions of the Government, whatever they think... I do not think there is any need to suspend or withhold the rule. *Without that we can proceed* with the Bill, though the Judiciary shall have their own job to perform and they will just decide the case on merits and on whatever they think proper. At this stage, I do not think there is any bar.

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I have suggested that they will be free to make their observations, whatever they like, and rule 352 (i) will not come in their way of just imputing motives or saying anything to that effect."

[*L.S. Deb.*, 22 November 1965, cc. 3113-3128]

Point No. 7

The test of *sub judice* should be that the matter sought to be raised in the House is substantially, identical with the one on which a Court of Law has to adjudicate.

On 6 May 1968, during the discussion on the Demands for Grants (West Bengal), 1968-1969 a member (Shri Madhu Limaye) raised a question that discrepancies in the Statements made in the House and the *affidavit* relating to the implementation of the Kutch Award filed in the High Court of Delhi by an official on behalf of the Government should be discussed by adjourning the business of the House. Two other members (Sarvashri Bal Raj Madhok and Prakash Vir Shastri) supported the points raised by Shri Limaye. Shri Hem Barua, who was in the Chair then, observed that he would ask the Prime Minister to make a statement. Since the Prime Minister expressed her inability to make a statement in the matter, it was decided that the matter would be discussed next day. There was also a demand by certain members to circulate the copies of the *affidavit* in question. Next day, *i.e.* on 7 May when the issue of circulating the copies of the *affidavit* was raised again, the Law Minister objected to the demand saying that the subject matter of the document was *sub judice*. Later, on the same day, when Shri Limaye was called

upon to move the motion listed in his name, a member (Shri Narayan Rao) rising on a point of order, submitted that the subject matter of the *affidavit* being *sub judice,* moving of the motion would amount to contempt of the Court. Besides, the Law Minister contended that such discussion would attract the provisions of Rule 186 (viii) which preclude discussion on a matter under adjudication by a Court of Law. Speaking on this, another member (Shri Nath Pai) stated that the question whether a particular matter was *sub judice* or not should be decided by the Speaker on the merit of each case and such matter could be discussed unless it appeared to the Chair that there was real and substantial danger or prejudice to the trial of the case. He also added that the *affidavit* was a public document and anybody could obtain it and make a legitimate use of it. Subsequently, on 9 May, the Speaker, Shri N. Sanjiva Reddy gave his ***ruling*** on the matter as under:

> "As regards the question... whether a motion which relates to a matter which is under adjudication by a court of law should be admitted or discussed in the House, the rule has to be interpreted strictly.
>
> While on the one hand the Chair has to ensure that no discussion in the House should prejudice the course of justice, the Chair has also to see that the House is not debarred from discussing an urgent matter of public importance on the ground that a similar, allied or linked matter is before a Court of Law.
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> The test of *sub judice* in my opinion should be that the matter sought to be raised in the House is substantially identical with the one on which a court of law has to adjudicate. Further, in case the Chair holds that a matter is *sub judice* the effect of this ruling is that the discussion on the matter is postponed till judgement of the court is delivered. The bar of *sub judice* will not apply thereafter, unless the matter becomes *sub judice* again on an appeal to a higher court.
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> Applying these two tests to the present notice of motion by Shri Madhu Limaye, I consider that in view of the Statement by the Law Minister that 'the question that the affidavit filed by the Under Secretary is slightly at variance with what the Home Minister has stated has been raised in the court and is under adjudication of the

court', the very matter which is sought to be raised by the member is awaiting adjudication by the court of law. Hence I consider that discussion on the notice of motion should be postponed until the court has delivered it's judgement. I am, however, clear that the matter is of public importance which should be discussed in the House and its importance will not be lost if the House waits until the court has adjudicated in the matter."

[*L.S. Debs.*, 6 May 1968, cc. 2198-2202,
7 May 1968, cc. 2649-2665
and 9 May 1968, cc. 3149-3154]

Point No. 8

A Bill can be taken up for discussion in the House even if the subject-matter of the same is pending an appeal in a Court of Law.

On 26 September 1955, during the discussion on a motion for consideration of the Prize Competitions Bill, 1955 in the House, several members (Dr. A. Krishnaswamy and others) raised points of order objecting to taking up the Bill, mainly on the ground that an appeal was pending and also that the matter was *sub judice*. On this account, the members also expressed there apprehensions about the possibility of having a full and free discussion on the Bill. Responding to their queries, the Speaker, Shri G.V. Mavalankar gave the following ***ruling***:

"To my mind the point is very small and very clear. There have been arguments on different aspects; they are no doubt very learned but some of them seem to be irrelevant.

Nobody doubts the competence of this House. Shri Raghvachari explained the position, I think, very well. Whatever name you give it, it will be for the courts later on to decide whether this is betting or gambling. What you call gambling or betting may or may not be so? The Act, if challenged in a court of law, (if the Bill is passed into an Act), will be the subject-matter of interpretation by courts, including the question of the powers of this House.

The only small point raised is as to whether pending an appeal, the matter being *sub judice,* this Bill should be taken up, if taken up, the fear is expressed that there will not be any full and free discussion or debate. That seems to be the only point at issue, to my mind.

Now, if the hon'ble members will look to the Bill and take the contents of the petition as correct, I am not quite sure whether the petition represents all aspects of the matter. It certainly represents those aspects which affect the petitioner. But whatever that may be, the issue is very limited.

There has been a certain dispute between certain parties and the Government of Bombay in which it appears that one issue was about the competence of the State Legislature to control this kind of transactions—call them gambling, trade, industry, whatever you like—when it was outside the limit of the State. That seems to have been one point. I must say I have not read the full judgement of the first court: I only read the headlines; but that seems to me the point. The first court held that some parts of the legislation were *ultra vires* of the Government of Bombay. The appeal court took a different view; they did not hold it as *ultra vires* and thus that point is disposed of.

But it can be argued that that point is again open for argument before Supreme Court. The respondent is entitled to support his case and even to plead the same arguments which were rejected by the appellate court but upheld by the first court. For ought we know, the Supreme Court may uphold the first court. It can therefore be reasonably argued that the point of the *ultra vires* character is still a point in dispute.

But we have to remember that this applies only to the competency of legislation by the Bombay Legislature. We have nothing to do with that. Whether the Bombay Legislature was competent or incompetent, the question for us is whether we are competent and that question is not raised by Dr. Krishnaswami. He concedes that this House has got the power. I am not dealing with that aspect, therefore, any longer as part of the point of order.

Now, let us see why he says that the matter being *sub judice* we need not discuss it here. I have dealt with the part of the legal aspect and whatever law might have been discussed there in the appellate judgement or the first court's judgement or is going to be discussed before the Supreme Court is not the point which we are going to discuss here at all so, that disposes of a major portion of the argument.

What was the decision? The decision was only as regards certain specific facts and those were whether a particular set of circumstances, that have been before the courts, constitute gambling, betting and whether they are liable to the tax imposed by the Government of Bombay. These are all questions of facts; these are not general questions and the Bombay High Court did not decide as to whether gambling was good or bad whether it should be permitted or not. It was not their business to express any opinion on the policies that the Government should follow. They were only considering a certain legislation of the Government of Bombay and came to a certain conclusion. The first court came to the conclusion that it was gambling. The appellate court came to a different conclusion but it maintained the order of the first court on the ground that a licence was given and therefore the Government could not take action. That is a different proposition again.

So, my mind is clear on this point and I need not go into all details. Though Dr. Krishnaswami was good enough to request me to give a detailed ruling, I do not think there is any occasion for that. This ruling is also confined to facts of a particular case which we are considering.

It has to be remembered that when the pending matter arises under a certain act the two main questions to be considered are whether having regard to the facts of the particular case the competition amounts to a lottery and whether by reason of the licence it is protected from tax. A debate on the present Bill can take place without a reference to the subject-matter of the pending appeal. I am quite clear in my mind that we shall not and we need not discuss the facts of this case in appeal though arguments are perfectly competent on the question of the evil nature of these prize competitions, how they are arranged and how they are worked and all that. The court is not going to hear the general question; the court will restrict itself to particular facts of the case. Therefore, if we do not refer to the facts of that particular case to support any arguments here there is no bar as to why this question could not be taken up in this House and I do not see how the appeallants or the respondents, whoever may be interested can be prejudiced by a discussion in this House. I am clear in my mind that any debate in this House cannot prejudice the hearing of the appeal.

Then Dr. Krishnaswami himself was good enough to point out an authority against himself and that is—what is stated in May's

Parliamentary Practice—that this does not apply to Bills. It is the inherent power of the Parliament to legislate. Supposing there is a bad law, shall we sit with folded hands and allow the bad law to continue. The hon'ble member, Shri Nageshwar Prasad Sinha just now pointed out a case of the amendment of the Constitution and validation of the Bihar Act which was declared *ultra vires* by the High Court of Bihar while the appeal was pending. The legislature sits here for the purpose of taking stock as to what should be done for the welfare of the people and if the legislature feels that a particular measure declared *ultra vires* or invalid by the courts requires recasting again, I think it is perfectly competent to legislate. We have this instance of the amendment of the Constitution. It is a telling instance on that point and I need not repeat these instances here.

I may also remind the House that in this very House a Bill for controlling prize competitions was recently introduced by a private member and it was discussed in this House even though the appeal was pending. That has happened in this House and discussion has taken place, but the private Bill was not pursued further because the Government were going to bring a Bill. So, there is a precedent also that we can discuss without reference to the particular decision or particular matter pending before the Supreme Court.

I need not, I think, speak with details on the point made about the Statement of Objects and Reasons and all that. I have not been able to understand the argument. Whatever is stated in the Objects and Reasons, the Objects and Reasons are not going to control the language of the particular Bill.

That is not incorporating—the Objects and Reasons and referring to the Objects and Reasons. The Objects and Reasons are always expressed in simple language and not in the language of a law though of course it is not very loose language. But, so far as I remember, the rule of interpretation has been that the language of the statute will be taken into consideration and only in cases of doubt that other circumstances may be referred to. But, where the language of the statute is clear, one will not be allowed to go behind the statute and, whatever the intention of the legislature is, that intention will be taken to be found in the enactment itself. Therefore, to my mind,

any reference to Objects and Reasons—I will not say, is irrelevant—I will say, as a matter of courtesy to hon'ble members who urge the point, that I could not understand their argument on that point.

I believe I have touched most of the important points and I need not reply to every point that has been raised. Therefore, I think I must overrule that point of order and allow the motion to proceed, with only this request to the members that they will not refer to the facts—not of the law—but of the particular case under appeal. That is the only limitation on the debate. So, let us proceed.

[*L.S. Deb.*, 26 September 1955, cc. 15249-15254]

Point No. 9

Where a legislation has to be brought or Papers have to be laid on the Table, the rule of *sub judice* does not apply.

On 11 April 1974, when the item regarding laying on the Table of the House by the Minister of State for Finance (Shri K.R. Ganesh) of a copy of Notification No. S.O. 222(E) published in Gazette of India dated 29 March 1974 containing the President's Order in regard to the authorisation of expenditure out of the Consolidated Fund of the Union territory of Pondicherry, was reached, several members (Sarvashri Madhu Limaye, Shyamnandan Mishra, Indrajit Gupta, Atal Bihari Vajpayee and others) raised objections contending that the order of the President was unconstitutional and illegal. It was also pointed out that the legality of the document had been challenged and was pending before the Madras High Court and since the matter was *sub judice,* a paper relating thereto could not be allowed to be laid on the Table.

Allowing the Minister to lay the Notification on the Table, the Speaker, Shri G.S. Dhillon ***ruled*** as under:

"...As regards the matter being *sub judice* and the Bill coming up—I have seen relative provisions in the various books on Procedure—this very matter was referred by the Presiding Officers to a Committee known as the Page Committee of which we have the report here. That Committee after very careful examination, after many sittings and examination of many subjects came to a conclusion that as regards the matter being *sub judice,* of course, it may not be referred to in the debate so that it may not affect certain

decisions of the court but where a legislation has to be brought, the law making has to be done, the rule of *sub judice* does not apply.

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Any matters which are to be referred to this House, which are to be the basis of any discussion, have to be laid on the Table of the House. That is why I have allowed it today.

[*L.S. Deb.*, 11 April 1974, cc. 215-240]

Point No. 10

Rule of *sub judice* does not apply to matters of privilege or to matters falling within the disciplinary jurisdiction of the House with regard to its own members.

On 20 November 1974, four members (Sarvashri Madhu Limaye, Jyotirmoy Bosu, Shyamnandan Mishra and Atal Bihari Vajpayee) sought to raise a question of privilege against a member (Shri Tulmohan Ram) for alleged misconduct involving bribery and forgery by him in the Pondicherry Import Licence case. They, contended that the Central Bureau of Investigation had after investigation, came to the conclusion that the member had received bribe and forged signatures of some members. Thereupon, the Speaker, Shri G.S. Dhillon informed the House that Shri Tulmohan Ram *vide* his letter, dated 14 November 1974 addressed to him had pleaded that since the matter had become *sub judice,* it should not be discussed in the House at that juncture.

In the instant matter, the Speaker, Shri G.S. Dhillon, gave the following ***ruling*** on 2 December 1974:

"It is a well established law that the rule of *sub judice* does not apply to matters of privilege or in matters where disciplinary jurisdiction of the House with respect to its own members is concerned. However, in order to constitute a breach of privilege or contempt of the House, the misconduct of a member should relate to business in the House. In the present case the member has allegedly abused his position as a member of Parliament in sponsoring an application to Government for money and also after forging signatures of other members. These allegations of bribery or forgery which have been

prima facie established by the CBI are certainly very serious and unbecoming of a member of Parliament, and he may be held guilty of lowering the dignity of the House.

I, therefore, hold that the House is free to discuss any motion relating to the conduct of Shri Tulmohan Ram and the rule of *sub judice* does not come in the way."

[*L.S. Debs.*, 20 November 1974, cc. 193-239 and
2 December 1974, cc. 222-236]

36

SUSPENSION OF RULES

SYNOPSIS OF RULE 388

- Any member can move the motion to suspend the rule in its application to a particular motion before the House.
- Motion can be moved only with the consent of the Speaker.
- If the motion to suspend the rule is carried, the rule in question shall remain suspended for the time being.

Point No. 1

(a) 'Any member' used in the rule includes a Minister who is not a member of the House.

(b) Reference to the suspension of the whole refer to suspension of any portion also.

(c) The Rules Committee has nothing to do with whether the rules should be suspended or not. It is the peculiar privilege and responsibility of the Speaker to arrive at a conclusion.

On 23 April 1956, the Minister of Home Affairs (Pandit G.B. Pant) moved a motion in the House, seeking suspension of the first proviso to Rule 92 (now Rule 74) in its application to the motion for reference of the State Reorganization Bill to a Joint Committee. Thereupon, a member (Shri H.N. Mukerjee) along with some other members raised points of order questioning the very authority of the Home Minister to move the motion for suspension of the rule since he was not a member of the House. Members pointed out that the relevant rule referred only to a rule and not to a part of a rule; also that the motion for Suspension

being an exceptional measure could be invoked only where there was no other remedy. A demand was made that the matter should be referred to the Rules Committee. Thereupon, the Speaker, Shri M.A. Ayyangar delivered the following ***ruling:***

"An objection has been raised to the making of this motion. Firstly, the point of order was that this motion is incompetent; secondly, it is not right that this rule ought to be suspended. So far as the point of order is concerned, the Speaker has the right and the duty to deal with the point of order. So far as the other matter whether it is expedient to suspend this rule is concerned, it is for the House to decide whether it is a Financial Bill including financial provisions or it is a Money Bill. So far as the point of order is concerned, objection has been raised first on the ground that the application for suspension of the rule was made by the hon'ble Home Minister, who is not a regular member of this House, according to them. They even omit the word 'regular'; they say that he is not a member of this House. It is true that under Rule 402, a member, who wants to move has to obtain the consent of the Speaker. The question, therefore, is whether the hon'ble member Home Minister, who is a Minister and is entitled, under article 88 of the Constitution, to address this House, has the right to move this motion or not. He is not a member. Article 88 has been construed a little narrowly by the hon'ble members who referred to it. Article 88 refers to the privilege of a Minister to take part in all the proceedings of the House as good as a member or as a member will do, except in the matter of voting.

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When the question of Attorney-General comes in, we will decide it. In advance I am not going to decide that matter.

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

Let him not be a member. The provision here is made for this purpose. It so happens that the hon'ble Home Minister comes from

the other House. Let them also feel that there are more hon'ble Ministers from this House who have to go to that House from time to time. A reference was made to the definition of member in the rules. Even under this rule, irrespective of the question whether the Attorney-General should have the right or not, it is swayed by convention. We shall look into the convention whether the Attorney-General has been doing it or not at any time. So far as a Minister is concerned, he is a member for the purpose of making a motion for reference to a Joint Committee. We will assume that there are no provisions relating to a Financial Bill. Is he or is he not in-charge of the Bill? Under the same definition a member in-charge of the Bill includes a Minister also. A member in-charge of the Bill means a member who has introduced a Bill and a Minister in the case of a Government Bill. The hon'ble Home Minister is the member now in-charge of this Bill, because a member in-charge of the Bill includes any Minister. I ask: If a member in-charge of the Bill is not competent to be a member for the purpose of Rule 402.

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...A member in-charge has introduced the Bill. Rule 402 is applicable to everything and any rule, whether it relates to a question, whether it relates to a resolution or a motion or a Bill, can be suspended under Rule 402. The member can make a motion for suspension of that rule. So, a member in-charge of the Bill can make a motion under Rule 402 and he is entitled to do it. Therefore, this applies to Bills also. And a Minister can take the place of the member in-charge of the Bill. Under those circumstances, the hon'ble Home Minister is entitled to make this motion. I gave my consent to it.

A point has been raised by Dr. Krishnaswami, which goes into the root of the matter. He challenges the discretion of the Speaker to give consent. He says that it is not my consent but it is the consent of the Rules Committee that has to be taken. I wonder what he means. He says rules are framed for all purposes. The rule is not abrogated permanently, but for the time being on account of the exigencies when a rule has to be suspended temporarily, the power has to be given to the Speaker to admit the motion subject to the acceptance of the House. There is a discretion vested in the Speaker;

I will not part with the discretion. The hon'ble member, Dr. Krishnaswami, tells me that I ought not to take this. Whom should I consult? He says that I should consult the Rules Committee. The Rules Committee have framed rules and one of the rules is that in the case of an emergency, the Speaker can suspend a rule. Am I to go to them and ask them to suspend a rule? It is a wonder of wonders and there is no logic behind it. Under those circumstances, the Rules Committee have already stated the position. If I go to them, they will now say: "We have given this power to the Speaker; why do you come again to us?" The question as to whether a rule ought to be suspended or not is according to the exigencies of the circumstances. The Rules Committee have nothing to do with it, but it is the peculiar privilege and responsibility of the Speaker to arrive at a conclusion.

I find that the other thing that was raised by Shri More was somewhat a curious one. Now, hon'ble members will kindly refer to Rule 92. It is under Rule 92 that a member in-charge of a Bill, including a Minister, can make one or the other of the motions for reference to the Select Committee, for circulation and so on. There is also a proviso that it cannot be referred to a Joint Committee. The proviso comes to this. In cases where the Bill refers to such and such items covered under article 110 and referred to in sub-clause (1) of article 117 relating to financial Bills, the reference shall not be to a Joint Committee. Shri More says: "Let the whole of the rule be suspended." If I suspend the whole rule, there cannot be any reference to any Committee at all. It is under that rule that a reference to either a Select Committee or Joint Committee or anything could be made. Again the whole includes the part. Reference to the suspension of the whole refers to suspension of any portion also. So, I do not agree with this suggestion. The point is, therefore, simple. There is no point of order, in so far as this matter is concerned."

[*L.S. Deb.*, 23 April 1956, cc. 6051-6076]

Point No. 2

Suspension of rule is not justified when the matter is not before the House.

(a) On 12 August 1978, a member (Shri Vasant Sathe) wanted to withdraw a Statutory Resolution for appointment of an Inquiry

Commission given notice of by him earlier and admitted by the Business Advisory Committee. Opposing the move, two members (Sarvashri Saugata Roy and K.P. Unnikrishnan) moved a motion under Rule 388 seeking suspension of Rule 80(1) so that the member could not withdraw the Resolution and the House could discuss it. On this, the Speaker, Shri K.S. Hegde gave the following ***ruling***:

"Mr. Saugata Roy and Mr. Unnikrishnan have moved under Rule 388 to suspend Rule 180, sub-clause (1). The suspension, prayed for is not permissible under the rules because there is no resolution before the House. Moreover, I am not very clear whether Rule 388 applies only to motions or also to resolutions. It applies to motion and not to resolution under our rule. Resolution is separate from motion. They are dealt with separately. I need not go into that question at this stage as I think that the suspension prayed for is not permissible under the rules, though they are justified in mentioning that a great deal of inconvenience has been caused by summoning this House on a holiday and making the members come from distant places.

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...Therefore, I see force in the observations of several members of the House when they say that they have been greatly inconvenienced by the motion not having been withdrawn earlier.

*** *** ***

...I do think that the rules in this regard require to be modified, so that the House may not be deprived of the opportunity of discussing important motions by manoeuvres by one party or the other."

[*L.S. Deb.*, 12 August 1978, cc. 54-82]

(b) On 12 November 1965, the debate on a resolution regarding India quitting the Commonwealth moved by a member (Shri Bhagwat Jha Azad) on 24 September 1965, was adjourned *sine die* on a motion adopted by the House. On 26 November 1965, two members (Pt. D.N. Tiwary and Shri M.L. Dwivedi) moved two motions for suspension of Rules 30 and 30(2), respectively, in application to this resolution so that the adjourned debate on this resolution could be resumed on 10 December 1965,

without determining its priority by ballot as required under Rule 30(2). A member (Shri Nath Pai) raised a point of order that Shri Azad's resolution was not before the House as it was not on the order paper for the day and, therefore, motion for suspension of the rule was not in order. The Speaker withheld his ruling on that day. On 30 November 1965, the Speaker, Sardar Hukam Singh upheld the point of order raised by Shri Nath Pai and ***ruled*** as follows:

"There are two sub-clauses to Rule 30, one is 30(1) and the other is 30(2). The first objection taken was that the Order Paper contained only a motion for suspension under Rule 388 or Rule 30(2) and not 30(1) and that unless a separate notice is given, it cannot be moved. That was the first objection taken. But, if I give the consent, then it could be moved. Therefore, I do not stand in the way because there was a general desire in the House. So far as those motions are concerned, I will deem that both have been moved, one by Mr. D.N. Tiwary and the other by Mr. M.L. Dwivedi. Both are before the House.

So far as this particular case is concerned, Rule 30(1) does not apply because that is only when the discussion on the motion has been adjourned to the next day allotted. In this case, when there is no mention of the next day allotted, then certainly it would only fall under Rule 30(2), as has been argued by the Law Minister also. Therefore, that is the one that we have to take, whether under Rule 388 this rule can be suspended. Now, sub-rule (2) of Rule 30 says:

"When the debate on a Private Member's Bill or Resolution is adjourned *sine die*....

It has been admitted by the Law Minister that this was adjourned *sine die*.

"...the member in-charge of the Bill or the mover of the resolution as the case may be, may, if he wishes to proceed with such Bill or resolution on a subsequent day allotted for private members' business, give notice for resumption of the adjourned debate and on receipt of such notice the relative precedence of such Bill or resolution shall be determined by ballot."

Of course, the ballot is there in both cases. That does come in the way of the debate being resumed on that resolution. Now, the question is whether Rule 388 can really help us to remove that bar which it places on our resuming the debate. If we read Rule 388 we find that it says that any rule may be suspended in its application to a particular motion before the House. The words 'a particular motion before the House' are very important words. As I said the other day, the only question that has to be decided is whether the resolution re: Quitting the Commonwealth was before the House when this motion was moved last time.

There is only one other rule where the words 'business before the House' or motion before the House have been used, and that is in regard to points of order, and that is Rule 376(2). Every day we deal with these points of order and whenever they are raised I just reject them on the ground that the item is not before the House; but when I say that it is not before the House it is actually meant thereby that it is not before the House at the moment. That is exactly the language used in Rule 376(2). The sub-rule reads thus:

> "A point of order may be raised in relation to the business before the House at the moment."

If it is not before the House at the moment, then certainly no point of order can be raised in relation to that.

There is another place also in the rules where the phrase 'before the House' is used, and that is in the proviso to Rule 376(2), which reads thus:

> "Provided that the Speaker may permit a member to raise a point of order during the interval between the termination of one item of business and the commencement of another if it relates to maintenance of order in, or arrangement of business before the House."

It is in relation to business 'before the House'. It is very clear that a point of order can be raised only in relation to the business before the House at the moment. But if it is on the Order Paper for that day and it is not before the House at the moment, and the point of order relates to

the regulation of business or the arrangement of business, then...in that case, I can allow the point of order to be raised in between two items on the Order Paper of that day, and not about any business that might be pending in the House. The words are 'during the interval between the termination of one item of business and the commencement of another'. That means that the Order Paper might have those items. We might be seized of one at that moment. But if somebody wants to say something at that moment and raise a point of order about another that is to come afterwards, then certainly I can allow that; with my consent he can raise that if it relates to the arrangement of business.

Now, we have got two things clear. One is business before the House at the moment and the other is business before the House—that is in the proviso—for that day. That is the language used, namely business before the House for that day and not other business.

Then, there are three classes of business. One is business before the House at the moment; the second is business before the House for the day and the third is business that is pending with the House but not before the House. There are many motions of which notices have been given and there are so many Bills that are there; all are pending; they will remain there, but they are not before the House at all.

Therefore, so far as I can think, under Rule 388, the resolution is not before the House.

[*L.S. Debs.*, 26 November 1965, cc. 4178-4200 and
30 November 1965, cc. 4661-4669]

Point No. 3

Motion for suspension of rule in its application to Private Members' Business cannot be moved unless there is unanimity in the House.

On 9 May 1975, *i.e.* on the last day of thirteenth Session of the Fifth Lok Sabha, Private Members' Business was to be transacted from 15.00 to 17.30 hrs. After leave was granted by the House to a member (Shri Jyotirmoy Bosu) to move a Motion of No-confidence in the Council of Ministers, the Minister of Works and Housing and

Parliamentary Affairs (Shri K. Raghu Ramaiah) sought to move a motion under Rule 388 that Rule 26 in its application to Private Members' Business be suspended so that Motion of No-confidence might be discussed immediately. Several members objected to this and raised points of order. Quoting the relevant rule, the members pointed out that since the Private Members' Resolution in question was a carry over from the last day, it would have precedence over all other Business including the No-confidence Motion. The Speaker, Shri G.S. Dhillon, thereupon, gave the following ***ruling***:

> "I fulfil the rule. The House is to adjourn today as decided by this House. *'If the leave is granted under sub-rule (2), the Speaker may, after considering the state of business in the House, allot a day or days or part of a day for the discussion of the motion.'* So, I have considered this and today is for Private Members' Business. The time available today is till midnight, that is 12 o'clock. Beyond that I have no authority to fix any time unless the House decides to revoke its decision and adjourn today and continue tomorrow for considering the motion.
>
> *** *** ***

I am going to take up Private Members' Business.... I have allowed Private Members' Business because it could be done by only unanimity.

[*L.S. Deb.*, 9 May 1975, cc. 338-367]

Point No. 4

Suspension of rule in its application to motion for leave to move resolution for removal of Speaker included in the List of Business is out of order, as suspension of the rule would create a vacuum.

On 24 November 1966, when points of order were raised by members (Sarvashri Kapur Singh and S.M. Banerjee) that Speaker should not have withheld his consent to moving of motion for suspension of Rule 201(3) as it related to him, the Deputy Speaker, Shri S.V. Krishnamoorthy Rao, who was in the Chair, observed that under Rule 388, motion for suspension of a rule could be moved only with

the consent of the Speaker and the Speaker could withhold his consent. He thus, ***ruled:***

> "I am not sitting in judgment over the Speaker. I disallow it. Rule 202(3) gives the entire procedure for moving the No-confidence Motion against the Speaker. If it is suspended, there will be a vacuum. I refuse to give my consent. There is no point of order."
>
> [*L.S. Deb.*, 24 November 1966, cc. 5316-5323]

37

VOTE ON ACCOUNT

CONSTITUTIONAL PROVISIONS

Article 116(1)(a) and (2) of the Constitution provides for Votes on Account, *i.e.* for grants in advance to be made by the Parliament to enable the Government to carry on until the voting of the Demands for Grants and the passing of the general Appropriation Bill.

SYNOPSIS OF RULE 214

- A motion for Vote on Account should state the total sum required and the various amounts needed for each Ministry or Department.
- The schedule appended to the motion should state the items of expenditure which compose the sum.
- Amendments can be moved for the:
  - (i) Reduction of the whole grant; and
  - (ii) Reduction or omission of the items.
- A general discussion may be allowed on the motion or any amendments moved thereto. However, the details of the grant shall not be discussed further than is necessary to develop the general points.
- In other respects, a motion for vote on account is treated as a Demand for Grant.

Point No. 1

(a) Vote on Account is a formal affair.

(b) No discussion is allowed on it as a Rule of Procedure.

(c) The Vote on Account under certain circumstances can be intended to be a Vote of No-Confidence.

(a) On 12 March 1951, before the House took up the general discussion of the Budget, the Speaker, Shri G.V. Mavalankar, made the following ***ruling*** with regard to the procedure for Vote on Account.

"As the hon'ble members are aware, the procedure for Voting on Account is designed to give the members a longer time for discussion on the Budget by putting the same off to convenient dates after the 31 March. The principle of the practice is that the House ought to grant sufficient funds to Government to enable it to carry on till the Demands are scrutinized and voted upon. In this procedure, as full discussion follows, the grant of supply for the interim period on the motion for Voting on Account is always treated as a formal one just like a motion for leave to introduce a Bill or the introduction of a Bill. I trust the hon'ble members will appreciate this position and *treat voting on Account as a formal affair* as they would have a full opportunity to discuss the Demands for Grants in a detailed manner later from the 26 March to 10 April...

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Of course, this will be a precedent. The whole idea is that the Budget is coming up for scrutiny and discussion at great length. In the present case, Government wants to carry on only for a month. I do not see what useful discussion can be had on a month supply, when eleven months' supply is going to be discussed... Any discussion on the motion for voting on Account will mean a repetition of the same discussion. If the House is not agreeable, certainly, I shall end this discussion tomorrow and have the motion for Voting on Account. That will be a wrong precedent, to my mind.

*** *** ***

The Speaker does not want to be arbitrary at all. What he wants to see is that no member acts arbitrarily so as to deprive other members of their legitimate rights. Now each Demand will be there and voted upon to the extent approximately, not exactly, of one-twelfth.... The whole idea of Voting on Account is that the Government functions may not come to a standstill because of the absence of the vote of

the House authorizing the expenditure. That is the whole point.... *If an occasion arises where the motion for one-twelfth is intended to be taken as a vote of no-confidence, then, of course, that will stand on a different footing.* I do not wish to bind myself to anything just now. We will consider that when the occasion arises. Just as in the ordinary circumstances, though it is perfectly competent for an hon'ble member to speak on a motion for leave for introduction of a Bill or introduction of the Bill, still, we never do that but accept the motion as it is and the discussion takes place at the consideration stage. Similarly on this Vote on Account, we shall not have any discussion now but shall treat it as a formal business... It will be a precedent for the future.

*** *** ***

I may also make it clear further. Because of the question put by Mr. Kamath a suspicion arises in my mind. *I have to be satisfied that the vote on the question is reasonably going to be treated by the House as a Vote of No-confidence.* Merely, because a member says that he treats the thing as a Vote of No-confidence, I am not going to treat it as such. That is not going to change the position."

[*Parl. Deb.*, Part II, 12 March 1951, cc. 4350-4353]

(b) On 9 March 1954, during the discussion on Demands for Grants (Railways), the Speaker, Shri G.V. Mavalankar announced that the Demands would be taken up for discussion in two groups and within a specified time limit. On this, a member (Shri Albert Ernest Thomas Barrow) suggested that one and a half hour each might be allotted to the two sets of Demands and that the remaining time might be devoted to the discussion of the Appropriation Bill thereafter. In response, the Speaker observed that as per practice after the Demands for Grants were debated upon, there would be no further debate on the Appropriation Bill because all the Demands for whatever it be, would be discussed within time. Later on when the Minister of Parliamentary Affairs (Shri Satya Narayan Sinha) wanted to know whether the Vote on Account would be discussed or not, the Speaker replying in the negative gave the following ***ruling:***

"I think it was during the time of the Provisional Parliament, when the period was four months, that we followed a different procedure.

The point is, the Vote on Account is made to enable the House to have more time for discussing the Demands in full. That is why Vote on Account is passed without a discussion. It is only a month's supply so that the House can sit for a longer time and discuss the Demands. The same points cannot be discussed once, twice, three times, four times.... That is why the Appropriation Bill is not discussed after the Demands are passed. That is why the Vote on Account is also not discussed."

[*Parl. Deb.* Part II, 9 March 1954, cc. 1587-1591]

(c) On 14 March 1975, before taking up the Demands for Grants on Account, the Deputy Speaker, Shri G.G. Swell, who was in the Chair ***observed:***

"We take the next item—Demands for Grants on Account. According to the convention that we follow, there is no discussion on that."

*** *** ***

If we strictly go by rule, we cannot prevent you. The point is that this is an interim grant to enable the Government to run its business for an interim period. And that is the convention.*

*** *** ***

"I looked into the rule and strictly according to the rule I cannot stand in your way."

[*L.S. Deb.*, 14 March 1975, cc. 282-283]

Point No. 2

The Appropriation (Vote on Account) Bill is not discussed in the House.

On 11 March 1958, as the Deputy Minister of Finance (Shri B.R. Bhagat) moved a motion for consideration of Appropriation (Vote on Account) Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of India for the service of a part of the

* Replying to a query by a member (Shri Madhu Limaye) as to why a discussion cannot take place and if the rule allows, members may be allowed to make brief observations.

financial year, 1958-59, a member (Shri Surendra Mahanty) pointed out that the sum which the Bill proposed to appropriate was more than 90 per cent of the estimated expenditure for the whole year, 1958-59. He also pointed out that under article 116 of the Constitution it was not clearly defined as to what percentage of the expenditure and for what period a sum could be appropriated as a part expenditure of a financial year. On this the Speaker, Shri M. A. Ayyangar gave the following ***ruling*** :

"...But so far as this Bill is concerned, it is not an ordinary or normal Appropriation Bill. It is an Appropriation (Vote on Account) Bill. If on the day on which the Demands on Account were passed the hon'ble member had said what he is saying now, possibly, I would have allowed a discussion though it has been the convention all along that no discussion is allowed on a vote on account.

*** *** ***

This particular Appropriation Bill relating to vote on account has been treated so, all along from the inception of the Constitution down to the present day; it is not allowed to be discussed. It is automatically passed. The Appropriation (Vote on Account) Bill always precedes the discussion on the General Budget. If there is any irregularity or if an enormous amount is taken away or some expenditure is sought to be made with respect to some demand, then it may be raised on the Budget. It is a long established convention which I do not want to be broken.

An attempt was made by some hon'ble members some years back to raise this matter and I would read the last and operative part of what my predecessor had said.

On 5 March 1952, when the Speaker put the motion for consideration of the Appropriation (Vote on Account) Bill to the House, a member...rose to speak on the Bill. The Speaker, thereupon, made the following observation:

"The hon'ble member knows that no debates are permitted. There is no debate on an Appropriation Bill, not by rules, but by convention of the House firmly established. The grants have already been passed and as I explained on the last occasion all that is done now is to provide a machinery only to give legal effect to

the withdrawal of money from the Consolidated Fund. Nothing further on merit has to be done."

In these circumstances, I am not prepared to allow any discussion at this stage."

[*L.S. Deb.*, 11 March 1958, cc. 4330-4333]

Point No. 3

(a) A threadbare discussion into every detail of the Vote on Account, would be inconsistent with the spirit of article 116 of the Constitution.

(b) Vote on Account shall be restricted to a period of one month. If the period is longer than one month, the House shall discuss it in detail.

(c) The House shall discuss the Vote on Account if a new service is introduced.

On 5 May 1958, a member (Shri Naushir Bharucha), on a point of order objected to the convention precluding discussion on Vote on Account and submitted that a reasonable opportunity should be given to discuss it. Intervening in the discussion with regard to convention to the House regarding Vote on Account, the Minister of Law (Shri A.K. Sen) *inter alia* stated that the history of this convention was based on a voluntary curtailment by the House itself of its right to enter into detailed discussion or general discussion on votes on account at the stage when those votes were sought, a voluntary agreement to defer its discussion until the grants were in fact completed ultimately. It was only for the purpose of allowing the House a longer time to discuss the Budget in detail as well as in its generality that this convention was evolved in the United Kingdom and was incorporated in the form of an article in the Constitution, so that the Government could carry on after the end of the financial year and as soon as the new financial year begins. In the mean time, the House would consider it according to the time it chose for itself as sufficient so that the Budget might be discussed threadbare and considered from all its aspects. Later on, the Speaker, Shri M.A. Ayyangar gave the following ***ruling***:

"A point has been raised that the establishment of this convention or the continuance of this convention is opposed to the Constitution

itself and also to the Rules of Procedure that have been framed under the Constitution, and that no convention could be established which is inconsistent with and goes contrary to the express provisions of law. The second point is regarding the limits. I was more anxious to ascertain from the hon'ble mover and also from Shri Mahanty, who followed him, as to within what limits, if any, the discussion should be allowed. If it is a question of allowing discussion on all those points that are raised on all the Demands which formed the subject matter of the Vote on Account that will be a duplication of the General Discussion which has already preceded it and anticipating a discussion which will follow on everyone of these Demands."

In the letter that Shri Bharucha wrote to me he refers to the precedent and says that the vote on account should be dealt with on the analogy of Supplementary Demands for Grants. I have not seen any Supplementary Demand on all the Demands. Supplementary Demands generally relate to a few Demands. Therefore, we go into those particular demands, which are very few. But this is a case where a vote on account with respect to most of the Demands for all the Demands is sought and therefore, it will in effect involve the same procedure, (whatever might be the language of the statute), about which I shall give an explanation to the House. If that means a general discussion on all those points followed by a discussion on the various Demands, there would then be no need for a vote on account at all.

Hon'ble members will kindly refer to article 116 of the Constitution. The object is that after the presentation of the Budget and before the regular Demands are granted, there will be discussion in this House under article 113 for each item. For each Demand, there may be cut motions. Time is allotted for the discussion on the Demands. Article 113 (2) says:

"So much of the said estimates as relate to other expenditure shall be submitted in the form of demands for grants to the House of the People, and the House of the People shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein."

"Other expenditure" here means votable expenditure, *i.e.,* other than charged expenditure. So, there is a normal procedure set out under article 113 with respect to the Demands for Grants.

Then, article 116 which follows refers in the following terms to the earlier article and the limitation is contained in the article itself:

> "Notwithstanding anything in the foregoing provisions of this Chapter...
>
> ...the House of the People shall have power—
>
> (a) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in article 113...."

What is the procedure prescribed in article 113? The procedure prescribed is that each Demand should be discussed by the House before the Demand is finally put to the House. Cut Motions must be allowed and there must be a regular discussion. Ultimately, the demands with or without cuts are put to the vote of the House.

Now with regard to the vote on account, I am not able to see exactly as to how the House will consider it in the same manner as in the case of the regular Demands. As a matter of fact, whenever any hon'ble member goes out or possibly any officer goes out, he takes some advance from his office for expenditure. If he has to give the details of all the expenditure at that time, he might as well wait till the expenditure is incurred. How is it possible in the case of vote on account to discuss the details?

Now, this convention has been adopted in terms of article 116. I am doubtful if Rule 214 which we follow is itself *intra vires* or *ultra vires.* The rule does not seem to follow the spirit of article 116 and therefore, the Rules Committee has thought it fit to amend it. Shall, there be a discussion at each stage—discussion on the General Budget, discussion on the Vote on Account, discussion on the Demands and finally discussion on the Appropriation Bill also to some extent on matters which have not been dealt with earlier, *i.e.,* once, twice, thrice and four times? On the whole, the House has accepted the present convention.

So far as the Appropriation Bill is concerned, it is specifically set out under the rules that excepting those points that have been dealt with

already, if some points have been left out in the debate on the Budget and the Demands, the House may address itself to them. There is no confusion in the mind of anyone that article 116 and article 114 which refer to the Appropriation Bill are independent. This is an anticipation midway between a General Discussion on the one side and the detailed discussion on the Demands for Grants. The vote on account is an advance of a lump sum given at that stage. Therefore, it is inconsistent with the spirit of article 116 (in fact it makes it nugatory) if we go threadbare into every detail of the vote on account. It will have to be left to the good sense of the hon'ble members.

With all respect, I do not think that Rule 214 has been framed so rigidly. The interpretation that has been given does not seem warranted. Therefore, the rule itself has to be changed in accordance with the recommendation of the Rules Committee which has gone into this matter thoroughly. It is, therefore, in this background that a convention was set before the House and duly adopted by the whole House in 1951.

The same point arose in 1951 as has been raised now. Hon'ble members then raised the objection that it was going to set up a precedent. My predecessor, on the 12 March 1951, said:

> "As hon'ble members are aware, the procedure for vote on account is designed to give hon'ble members a longer time for discussion by putting the same off to convenient dates after the 31 March. The first point is whether we should have a full dress debate on everyone of these items in the Vote on Account. That will mean that we are not going to allow them to spend the money or we will have to rush through the entire Demand before the 31 March. Shall we hustle ourselves or allow this money to be paid, *i.e.*, $^{1}/_{12}$th of the amount? We can take all this into account."

Whatever has been granted on the vote on account is not conclusive. It might be spent by Government, but the House is entitled to withhold the rest of the money and make it impossible for Government to proceed. Now, he says further—

> "The principle of the practice is that the House ought to grant sufficient funds to the Government to enable it to carry on till the Demands are scrutinised and voted upon. In this procedure as full

discussion follows the grant specially for the interim period in the motion for voting on account is always treated as formal. One such is a motion for leave to introduce a Bill or the introduction of a Bill. I trust hon'ble members will appreciate this position and treat the vote on account as a formal affairs as they would have a full opportunity to discuss the Demands for Grants in a detailed manner later from the 26 March to 10 April."

Upon the House agreeing to the above procedure, the Speaker stated that this decision meant that the motion for Voting on Account shall be assented to by the House without discussion.

We have been following the convention since 1951. The other day when this matter was brought up, I said I will set out the limits within which some discussion can be allowed. The limits are that *if any hon'ble member has got a doubt that it is not merely* $^{1}/_{12}$ *or for one month but for a longer period of, say, four or five months, that a Vote on Account is asked for, then this House may go into all those matters as if they were discussing the General Demands for Grants.*

If a Vote on Account is for more than a month or a reasonably long period, a discussion has always been allowed. It is open to the House to restrict the period. Or it is open to the Government to say, "No, we want it only for one month", in which case the discussion may be curtailed.

The other point is this. We shall adopt it as a convention except in certain cases, as for instance, when a new service is introduced. Honourable members need not depend only upon the assurance of the Government. It is this House that is adopting the convention. It is for the Government to say what they will do, any if any assurance is going to be broken, the House is always there. Either ourselves or our successors will be there to enforce whatever assurance has been given, and irrespective of the assurance, to stick on the convention that is established. Therefore, nothing is dependent upon an individual Minister who may come and go. It is this House which accepts the convention. It has already accepted it. Under the circumstances, it is not correct to say that the Minister may go away and, therefore, this assurance is nothing.

The next point relates to the limits. Any hon'ble member can say that the period for the vote on account is too long. He can say, "Within

this period this amount is not likely to be spent; therefore, let us not vote this much. These are the limits within which we shall spend during this period."

I shall, of course, see that the vote is not asked for before the general discussion on the Budget. The convention will continue in this manner on the understanding that a vote on account shall be asked for only after the presentation of the Budget and the general discussion on the Budget is over. *The vote on account shall be restricted to a short period and the period shall normally be a month. If the period is longer, this House is entitled to express an opinion.* It can say, "It shall not be a longer period; it shall be one month or one and a half months, according to circumstances". That aspect may be discussed on the Floor of the House. And even so far as that period is concerned, it is open to this House to say, "So far as these items are concerned, it is too much; you are not going to spend so much; therefore, spend less." Let us not get into further details, as to whether the provision is proper or not.

The next thing is, in as much as we are not allowing a regular discussion but all the same the House is called upon to vote, it must have fuller details. And the hon'ble Minister also has said that he will give fuller details regarding these items than have been given till now. They had given on the last occasion some details, but we were not able to understand them in the context in which they were given. They will certainly give fuller details on every vote on account.

Subject to these limitations, I would say the House should continue to follow the convention that has been observed all along. This convention is not contrary to article 116. There is no convention which cannot be revised; it is always open to the House to do so in the interests of proper working of the House. It is a matter of procedure, not a matter of substance. Hon'ble members are not altogether denied the opportunity; later on, they have an opportunity to discuss the Demands. A vote on account is only for the interim period.

Under these circumstances, I do not think there is any necessity to deviate from the convention, except in so far as some opportunity may be allowed to ask for explanations, if necessary, at the time the motion for vote on account is made.

[*L.S. Deb.*, 5 May 1958, cc. 13107-13131]

Point No. 4

Cut motions can be allowed on Vote on Account.

On 26 February 1952, when the House took up the Demands for Grants on Account of the Railway Budget, 1952-53, a member (Shri R. Venkataraman) rising on a point of order submitted that since it was for the first time that a vote on account was proposed to be taken, he enquired whether cut motions could be moved *vis-a-vis* vote on account.

The Speaker, Shri G.V. Mavalankar, gave the following ***ruling***:

"...I do not see why there should not be any cut motions. I think the procedure has to be the same whether you have a vote for the Budget or a Vote on Account. An hon'ble member is always entitled to invite the attention of the Government to matters of policy and also ventilate his grievances. He can do so either during the general discussion or through cut motions. I do not see why there should be a distinction between the two. Of course, the time factor is there but that does not mean that the fundamental right should be taken away."

[*Prov. Parl. Deb.*, 26 February 1952, cc. 1283-1284]

PRESIDING OFFICERS OF LOK SABHA

SPEAKERS

Sl.No.	Name	Period	
		From	To
1.	Shri G.V. Mavalankar	15.05.1952—	27.02.1956
2.	Shri M.A. Ayyangar	08.03.1956—	10.05.1957; 11.05.1957—16.04.1962
3.	Sardar Hukam Singh	17.04.1962—	16.03.1967
4.	Shri N. Sanjiva Reddy	17.03.1967—	19.07.1969
5.	Shri G.S. Dhillon	08.08.1969—	19.03.1971; 22.03.1971—01.12.1975
6.	Shri B.R. Bhagat	05.01.1976—	25.03.1977
7.	Shri N. Sanjiva Reddy	26.03.1977—	13.07.1977
8.	Shri K.S. Hegde	21.07.1977—	21.01.1980
9.	Shri Bal Ram Jakhar	22.01.1980—	15.01.1985; 16.01.1985—18.12.1989
10.	Shri Rabi Ray	19.12.1989—	09.07.1991
11.	Shri Shivraj V. Patil	10.07.1991—	22.05.1996
12.	Shri Purno Agitok Sangma	23.05.1996—	23.03.1998
13.	Shri G.M.C. Balayogi	24.03.1998—	20.10.1999; 22.10.1999—03.03.2002
14.	Shri Manohar Joshi	10.05.2002—	02.06.2004
15.	Shri Somnath Chatterjee	04.06.2004—	Till date

DEPUTY SPEAKERS

Sl.No.	Name	Period	
		From	To
1.	Shri M.A. Ayyangar	30.05.1952—	07.03.1956
2.	Sardar Hukam Singh	20.03.1956—	04.04.1957; 17.05.1957—31.03.1962
3.	Shri S.V. Krishnamurthy Rao	23.04.1962—	03.03.1967
4.	Shri R.K. Khadilkar	28.03.1967—	01.11.1969
5.	Shri G.G. Swell	09.12.1969—	27.12.1970; 27.03.1971—18.01.1977
6.	Shri Godey Murahari	01.04.1977—	22.08.1979
7.	Shri G. Lakshmanan	01.02.1980—	31.12.1984
8.	Shri M. Thambi Durai	22.01.1985—	27.11.1989
9.	Shri Shivraj V. Patil	19.03.1990—	13.03.1991
10.	Shri S. Mallikarjunaiah	13.08.1991—	10.05.1996
11.	Shri Suraj Bhan	12.07.1996—	04.12.1997
12.	Shri P.M. Sayeed	17.12.1998—	26.04.1999; 27.10.1999—06.02.2004
13.	Shri Charnjit Singh Atwal	09.06.2004—	Till date

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