

[Shri Nath Pai]

financial business? What we want to plead with you is that we would be ready to sit as long as is required—after all, all of us are here—to transact this business though it is a strain.....

**An hon. Member:** Not on Saturdays.

**Shri Nath Pai:** I did not say that we should meet on Saturdays. But let us sit a little longer on the other days and at least one motion under rule 193 should be taken up per week. Otherwise, many very important matters will be precluded from being discussed in the House.

**Shrimati Renu Chakravarty:** We also support this suggestion.

**Mr. Speaker:** I do not think that we need discuss it any further. What the hon. Minister of Parliamentary Affairs has said is about what we have been doing so far namely that during the budget session, we do not take up any no-day-yet-named-motion. But if hon. Members desire otherwise, we shall sit down and consider whether it is possible. We shall call the hon. Minister also and then we can consider whether it is possible to take up those motions, at least one in a week. We shall consider that.

**Shri Nath Pai:** Under you this Parliament is very alert about its duties.

**Shri Satya Narayan Sinha:** That would depend upon the urgency of the matter. As regards the discussion on Shri Nanda's statement, I said the other day that Government would find time. Then, there is the demand for a discussion of the Supreme Court's advisory opinion. For this also we shall consider. But we cannot take up all no-day-yet-named-motions. We shall have to decide according to the urgency of the matter.

12.46 hrs.

#### RULING RE. SECRET DOCUMENTS

**The Minister of Law and Social Security (Shri A. K. Sen):** On behalf of the Government, it will be our duty to oppose the laying of any of the documents to which reference has been made by a few hon. Members. I shall endeavour to place before you the reasons one by one.

There are no rules specifically governing the question of laying of documents either by the Members of the House or by Members of the Government. Therefore, that must be governed by your discretion exercised under rule 389 of our rules of procedure. There have been already some Directions in the matter, which are contained in this handbook on Directions. If I may read out with your permission from that Handbook, Direction 117 reads thus:

"A private Member can lay a paper on the Table of the House when he is authorised to do so by the Speaker."

That means that there is an absolute discretion vested in you in allowing a private Member to lay a document. It will, therefore, be my endeavour to give you as much assistance as I can in coming to a decision as to how your discretion in this matter should be guided. On the admission of those who have referred to this document, this is not a document which has come to them in the normal course.

**Shri Hari Vishnu Kamath (Hoshangabad):** What is the normal course?

**Shri A. K. Sen:** I do not think that I am supposed to explain to Shri Kamath what the normal course means.

**Shri Hari Vishnu Kamath:** The hon. Minister may explain to the House, not to me. The House wants to know it

**Shri Bhagwat Jha Azad** (Bhagalpur): The House does not want to know it.

**Shri Hari Vishnu Kamath:** Then, let him sit down.

**Mr. Speaker:** Order, order. Why should these interruptions be there?

**Shri Nath Pai** (Rajapur): We want to hear, but we are interrupted. What could we do?

**Mr. Speaker:** Everyone should listen patiently.

**Shri Nath Pai:** In spite of Shri Bhagwat Jha Azad's interruption, we are trying to listen.

**Shri A. K. Sen:** On the admission of those who have referred to this document or extracts from it, the document has not come into the possession of those who quoted from it, in the normal course. That is the least that I can say about it.

**Shri Nath Pai:** I want to hear that sentence again. I did not quite catch it because there was too much interruption. What did he say about quoting that document of which we have come into possession?

**Mr. Speaker:** The hon. Minister would probably be answering it now.

**Shri A. K. Sen:** On the admission of those who had quoted from this document or quoted extracts from it, the document has not travelled into their hands in the normal course.

**Shri Hari Vishnu Kamath:** We have said nothing about that document. On a point of clarification. Nothing was admitted as to how I got it. I said that I was laying it on the Table of the House. I never mentioned how I got it or how it came into my possession.

**Shri A. P. Sharma** (Buxar): How has it come to the hon. Member?

**Shri Hari Vishnu Kamath:** It is not for my hon. friend to ask.

**Shri Daji** (Indore): Who is he to ask? (*Interruptions*).

**Mr. Speaker:** I will entreat hon Members to exercise patience and listen to the hon. Minister now. If this mood is continued to be adopted, I am afraid I might not be allowed to do anything.

**Shri Hari Vishnu Kamath:** I only wanted to question him on what he said, namely, 'he said on his own admission'. I never admitted anything.

**Shri A. K. Sen:** No, no.

**Shri Nath Pai:** Obviously he does not have much to say.

**Shri A. K. Sen:** Whether my submission is accepted by you or not, is a different matter. But I am certainly at liberty to make my submission to you (*Interruptions*). Shri Kamath has usually the mind to hear me. I hope he will not deny me that.

**Shri Hari Vishnu Kamath:** Certainly not. With all my heart and mind.

**Mr. Speaker:** If every Minister also were to address me, there would be less difficulty.

**Shri A. K. Sen:** I was trying to do so. I will try to do so also. This document has curiously come into the possession of some people who had apparently thought it best to make it over for use on the floor of this House.

**Shri Hari Vishnu Kamath:** The word 'people' is wrong.

**Shri Nath Pai:** Say 'Some hon. Members'.

**Mr. Speaker:** Each word cannot be assessed like that.

**Shri Hari Vishnu Kamath:** He has used it.

**Shri A. K. Sen:** I still do not see anything wrong in that . . .

**Shri Hari Vishnu Kamath:** You referred to 'some people' who wanted to use it on 'the floor of the House'. That is not how hon. Members should be described.

**Shri A. K. Sen:** Naturally, it can only be used if it is laid . . .

**Shri Hari Vishnu Kamath:** It is the Table of the House, not the floor of the House.

**Shri A. K. Sen:** It has been already used on the floor of the House before being laid on the Table—it has already been used.

**Mr. Speaker:** Would the Minister be kind enough to address me and also face me while doing so?

**Shri A. K. Sen:** I am addressing you, though I may not be looking at you.

**Mr. Speaker:** Though it might be a little difficult for him, I will request him to do so.

**Shri A. K. Sen:** It has always been a pleasant duty to look at you and to address you.

As I was saying, this document has curiously travelled from lawful custody into hands which are unknown to us. And these methods are certainly not, in my submission, normal ones. And when documents are taken away from lawful custody without the consent of those who are in custody of them, we might describe such deprivation of lawful possession by various legal terms. But I think we shall be excused if we say that it certainly is not a legal way of bringing into light documents which are in the lawful possession of those who ought to have them, particularly confidential documents, secret documents.

Let us test it on principles.

**Shri Ranga (Chittoor):** We have the inheritance of the 1942 tradition.

**श्री मधु लिमये (मोंघिर) :** पकल साहब के सरकुलर की याद है आपको ?

**अध्यक्ष महोदय :** अब यह पकल साहब यहां कैसे आ गए ?

**Shri A. K. Sen:** Let us test it on principle. A highly secret document relating to our defence, if it is taken away from lawful custody, and if some hon. Members choose to lay it on the Table of the House—will it be open to you to allow them to do so as a matter of course? Or will you not be called upon to exercise your discretion by reference to various considerations including the security and the interest of the public?

Therefore, in my submission, it will not be proper for you to allow them to lay this document on the Table, unless they explain how it is that this document has come from its lawful custody into their hands.

**Shri Hari Vishnu Kamath:** No, no. You will never have it. Privilege.

**Shri A. K. Sen:** Normally, a police report, as it purports to be—I do not say it is; I have not had a look at it—ordinarily a police report is not admissible either in court or on the floor of the House.

**श्री मधु लिमये :** यह अदालत नहीं है ।

**Shri A. K. Sen:** I hope we shall never reach that stage when police reports will be regarded as Bible, and will be quoted as such.

**Shri Hari Vishnu Kamath:** Nor Cabinet Sub-Committee reports either.

**Shri A. K. Sen:** I did not say that.

Police reports are not, ordinarily, admissible, unless they are relevant to the issue.

**Shri Nath Pai:** Is the CBI report a police report?

**Shri A. K. Sen:** May I request the hon. Members through you to give me a patient hearing? I shall be ever ready to answer them, if there are any queries afterwards.

**Shri Nath Pai:** Very many.

**Shri A. K. Sen:** This document, which could not have been normally placed on the Table of the House, is thought to be read out before it is put on the Table of the House. The rule is that no document should be normally read out unless it is part of the record of the House by being laid on the Table.

**Shri Hari Vishnu Kamath:** Which rule?

**Shri Nath Pai:** Which is that rule?

**श्री मधु लिमये :** नियम पढ़िये, कहां है वह नियम ?

**Shri A. K. Sen:** There is no specific rule (*Interruptions*).

**Mr. Speaker:** We cannot proceed in this way.

**Shri Hari Vishnu Kamath:** Your ruling is that no Member can refer to a rule without specifying it.

**Mr. Speaker:** He has not said that it is a rule of our procedure.

**Shri Hari Vishnu Kamath:** An imaginary rule? That is all right.

**Mr. Speaker:** It may be his concept that ordinarily this is the procedure that is followed. Therefore, Members should not get impatient on that score.

**Shri Hari Vishnu Kamath:** Let him conceive as he likes—let him have his own concept.

**Shri A. K. Sen:** The ordinary rule is that no document should be quoted unless it is part of the record of the House (*Interruptions*).

**Shri Hari Vishnu Kamath:** Where is the rule?

**श्री मधु लिमये :** हम सुनने के लिए तैयार हैं, वह नियम पढ़ें ।

**Shri A. K. Sen:** I may tell Shri Limaye that I shall read it out. I shall quote the rule. But Shri Kamath will not wait.

**Shri Hari Vishnu Kamath:** I am waiting. I am listening to him, trying to listen to him.

**Shri Madhu Limaye rose—**

**Mr. Speaker:** I will ask him to resume his seat. If the hon. Minister is not allowed to speak, I am not going to proceed. This is a reply on behalf of Government to the point raised.. (*Interruptions*).

**Shri Madhu Limaye rose—**

**Mr. Speaker:** Unless I identify a Member, no one shall speak. First that should be observed.

**Shri Bagari rose—**

**Mr. Speaker:** He will sit down.

**श्री बागड़ी (हिसार) :** अध्यक्ष महोदय, मेरा एक व्यवस्था का प्रश्न है ।

**अध्यक्ष महोदय :** नहीं इस तरह नहीं, मैं आपको बुलाऊंगा तब बोलिएगा । अभी आप बैठ जाइए । जब मैं बुलाऊं तब व्यवस्था का प्रश्न करिएगा ।

एक डिबेट हुई, उसका अब जवाब दिया जा रहा है । पहले उस तरफ के माननीय सदस्यों ने कहा उसको सुना गया, पर अब उधर के माननीय सदस्य चाहते हैं कि रिप्लाय वैसा हो जैसा कि वह चाहते हैं । अगर वह इस

## [अध्यक्ष महोदय]

तरह से मंत्री महोदय को नहीं बोलने दगं तो कैसे जवाब दिया जा सकेगा ।

(Interruptions) पालियामेंट में इस तरह से बोलने लगना शोभा नहीं देता ।

मैं माननीय सदस्यों से अपील कर रहा हूँ कि इस रिप्लाय में कुछ चीजें आवेंगी जो उनको पसन्द नहीं होंगी । पर वे उनको सुननी होंगी । जो उन्होंने कहा वह चाहे उधर वालों के पसन्द न था तो भी उन्होंने सुना ।

श्री मधु लिमये : वह हमारी बातें सुनने के लिए सभा में मौजूद नहीं थे ।

अध्यक्ष महोदय : उन्होंने उसको पढ़ लिया है और अब रिप्लाय दे रहे हैं ।

श्री बागड़ी : अध्यक्ष महोदय मेरी बात सुन लीजिए ।

अध्यक्ष महोदय : बोलिए ।

श्री बागड़ी : मैं यह निवेदन करना चाहता था कि मैं सुन रहा था बोला नहीं, लेकिन मैं जनाब की खिदमत में बड़े अदब के साथ अर्ज करूंगा कि यह शोर गुल करने में किसी को मजा नहीं आ रहा है । कुछ हालात होते हैं, कुछ बात बनती है जिसके ऊपर दिमाग और मन में उत्साह उठता है । अगर इस तरह के वायुमंडल को रोकना है तो उसका यह इलाज नहीं है कि कार्रवाई को बन्द कर दिया जाए । उसका यह इलाज नहीं है कि मंत्री महोदय जवाब न दें, या उनसे जवाब न दिलाया जाए । यह शोर गुल हो रहा है इसलिए काम नहीं बन्द किया जा सकता । इसका एक तरीका होता है । मंत्री महोदय खुद अपनी तरफ से ऐसे शब्द या व्यक्तिगत बातें न कहें जिससे जज्बात माननीय सदस्यों के भड़कें । इस तरह से रोब से सदन को काबू में नहीं किया जा सकता । इसके कुछ नियम हैं कुछ तरीके हैं . . . . . (Interruptions).

अध्यक्ष महोदय : मैं बागड़ी साहब का धन्यवाद करता हूँ कि उन्होंने मुझे कुछ नियम और तरीके सुझाए । उन्होंने कुछ तरीके बतलाए और यह बतलाया कि काम किस तरह से चल सकता है । मैंने उनकी बात सुनी और अगर मैं उनसे कुछ सीख सकता हूँ तो सीखूंगा । मगर मेरी अर्ज यह है कि जब तक मैं बागड़ी जी से सीख न लूं तब तक जो मुझे बुद्धि है उसके मुताबिक मुझे काम चलाना है । इसलिए उस वक्त तक मुझे इजाजत दें ताकि मैं काम चला सकूँ ।

अब मेरी दरखास्त है कि जो ला मिनिस्टर साहब कहेंगे, अगर उनका कहना न भी पसन्द हो तो उसको मुना जाए ।

13.36 hrs.

श्री बागड़ी : अध्यक्ष महोदय, मंत्री महोदय यह न कहें (इंटरप्शंस) ।

अध्यक्ष महोदय : अब मैं उन्हें यह कैसे कह सकता हूँ कि वे यह कहें और वह न कहें ? मैं उनके मुंह में यह कैसा डाल सकता हूँ कि वे यह कहें और वह न कहें ?

Shri A. K. Sen: I am used to quote the authority for my propositions after I cite them. I cannot state the authority and the proposition simultaneously as some hon. Members have demanded. That is a feat in which I shall not prefer to indulge ever. Therefore, I was putting the proposition first that the ordinary rule is that no document can be quoted on the floor of the House unless it is made a part of the record of the House by being laid on the Table of the House. Otherwise, all sorts of unauthenticated documents would come in.

Now, I quote the authority for which Shri Limaye is anxious. I may say again that whenever I try to assist the hon. Members and you, I shall state the proposition first, unless you prevent me from doing so, and then quote

my authority. That is a habit which has grown in me for years, during years of practice.

**Shri Hari Vishnu Kamath:** Very good habit.

**Shri Nath Pal:** Was that necessary now?

**Shri A. K. Sen:** Yes, it was.

It is May's Parliamentary Practice, latest edition, which is the Seventeenth Edition, page 458:

"Another rule or principle of debate may be here added. A Minister of the Crown is not at liberty to read or quote from a despatch or other state paper not before the House, unless he be prepared to lay it upon the table. This restraint is similar to the rule of evidence in courts of law, which prevents counsel from citing documents which have not been produced in evidence."

This is based on the principle that you cannot cite as evidence any document unless it is made a part of the records of the House. The hon. Member was ready to lay it on the Table of the House.

**Shri Hari Vishnu Kamath:** I was prepared. Even now I am prepared.

**Shri A. K. Sen:** Therefore, the question is whether he should be allowed to lay it.

**Shri Hari Vishnu Kamath:** That comes later.

**Shri A. K. Sen:** I said this because people had started quoting before the Speaker had given his permission.

**Shri Hari Vishnu Kamath:** The Deputy-Speaker had given me permission to read from that.

**Shri A. K. Sen:** My submission in support of the contention that it should be refused is that there are reasons of public policy.

First of all, under rule 369(1) of our rules, it has to be authenticated. It reads:

"A paper or document to be laid on the Table shall be duly authenticated by the member presenting it."

I take it that nobody was prepared to authenticate it.

**Shri Hari Vishnu Kamath:** I said so. I challenged you to disprove it.

**श्री मधु लिमये :** इसी से पता चलता है कि उन्होंने कारवाही पढ़ी नहीं है। कामत साहब ने कहा था कि मैं रखने के लिए तैयार हूँ।

**Shri Hari Vishnu Kamath:** He has not read the proceedings.

**Mr. Speaker:** Would the hon. Members have some patience?

**Shri A. K. Sen:** Authentication has a very peculiar meaning in law. Any and every one cannot authenticate. Only those responsible for the making of a document or under whose supervision and care a document has been prepared can authenticate it. A man cannot pick up a paper from the street and say this is a document.

**Shri Hari Vishnu Kamath:** You disprove it.

**Shri Daji (Indore):** We are responsible Members of Parliament.

**Shri A. K. Sen:** I shall not expect that my hon. friends shall accept my submission, but it is a submission made to you. Authentication has a peculiar meaning, and I cannot just pick up a paper and say this is what it purports to be. I must know it from my own personal knowledge or the document must have been prepared under my care and supervision.

Then, what happens? Ordinarily such privileged and confidential documents should not be admissible anywhere, but if it is allowed to be laid on the Table of the House, under rule

[Shri A. K. Sen]

369(2) it becomes a public document. It becomes a public document by the rule itself. And when it becomes a public document, all that is necessary is for some one to take a certified copy of it and tender it in any court.

**An hon. Member:** Yes.

**Shri A. K. Sen:** That is exactly what should prevent this being laid on the Table of the House, because what cannot be done directly cannot be done indirectly. Otherwise, every secret document would be made a public document, and certified copies will be taken and published all over the world.

**Shri Hari Vishnu Kamath:** You disprove it.

**Shri A. K. Sen:** In my submission, neither this House nor your authority should be lent for that purpose.

Then, my submission is that, apart from anything else, it casts a reflection on certain persons which, according to rule 41(2) (ix) and rule 352(v), can only be raised by way of substantive motions. I will read rule 352(v) first.

**श्री मधु लिमये :** जो आरोप किया गया है उसका क्या दृष्टा ?

**अध्यक्ष महोदय :** माननीय सदस्य जिस ग्रुप के हैं उस ग्रुप के कोई लीडर भी यहां पर हैं ?

**एक माननीय सदस्य :** बागड़ी जी लीडर हैं ।

**अध्यक्ष महोदय :** अब मैं उन के लीडर बागड़ी जी से यह अपील करूंगा कि यह बहुत ज्यादा दखल देते हैं और वे उन माननीय सदस्य को सलाह दें कि वे ऐस. न करें ।

**श्री बागड़ी :** ठीक है । लेकिन मेरा निवेदन यह है कि जब अन्य माननीय सदस्य बोलते हैं तो अध्यक्ष महोदय द्वारा उनको

सुन लिया जाता है लेकिन इधर वह इनायत नहीं की जाती है और इधर हम लोगों के ऊपर ज़रा उनकी नज़र रोकने के लिए ज्यादा जाती है ।

**Shri A. K. Sen:** Rule 352(v) reads:

"352. A member while speaking shall not—

\* \* \* \*

(v) reflect upon the conduct of persons in high authority unless the discussion is based on a substantive motion drawn in proper terms;

**Explanation.**—The words 'persons in high authority' mean persons whose conduct can only be discussed on a substantive motion drawn in proper terms under the Constitution or such other persons whose conduct, in the opinion of the Speaker, should be discussed on a substantive motion drawn up in terms to be approved by him;"

There were reflections on the past Chief Ministers, on the present Chief Minister, and various other high officers.

**Shri Hari Vishnu Kamath:** Both have resigned.

**Shri Daji:** He is not taking us seriously. It is elementary nonsense, what he is talking. Is an official a person in high authority? He must show some respect for our intelligence, for the intelligence of the House. An official becomes a person in high authority?

**Shri Kapur Singh (Ludhiana):** He is treating us with contempt as if we are school children.

**Shri Daji:** Not even school children. He is not taking Parliament seriously. This is illegal nonsense.

**श्री बागड़ी :** अध्यक्ष महोदय, आप नेता होने की हैसियत से मुझे तो अपने मेम्बर

को सलाह देने के लिए कहते हैं लेकिन यह जो इतने बोल रहे हैं तो उनको रोकने के वास्ते उनके लीडरों से आप क्यों नहीं कहते हैं यह मैं बड़ी नम्रता से निवेदन करना चाहता हूँ ?

**अध्यक्ष महोदय :** अगर आप बैठे रहते तो मैं उन से भी कहता (इंटररूप्शंस) ।

**Shri A. K. Sen:** I have been making my submissions to you as you have asked me to do, and I was not trying to address this either to Shri Daji or a few others. Therefore, he should not have invited the cap to fit himself if I was addressing this submission to you.

**Mr. Speaker:** Yes, he might just go with the arguments.

**Shri A. K. Sen:** If I was making this statement to you, I was making it with full respect to you, occupying the Chair as you do; with a full sense of my responsibility I am trying to make a submission that you have to decide who are the high persons in authority—that is the rule,—“which, in the opinion of the Speaker,” should be made by way of a substantive motion. It is the opinion of yours, Sir, and not the opinion of Shri Daji or others. (*Interruption*). Therefore, he should not have said that I was insulting anybody's intelligence. He may not agree with me.

Therefore, in my submission, all these considerations have one collective effect, namely, that your authority should not be invoked to lend support to that most serious procedure of allowing a document not lawfully taken away from lawful custody to be laid on the Table of the House and made part of the records of the House so that certified copies may be taken and used as evidence in the highest courts of law and which indirectly would put a seal upon the future procedure of a similar sort, namely, people may be encouraged to take documents in a similar way and

to be brought on the Table of the House.

**Shri Nath Pai:** On a point of clarification. I just want to show to you certain—

**Mr. Speaker:** He will just depend upon my understanding.

**Shri Nath Pai:** I do not want to argue. I only want to invite your attention to a very important ruling which has been given in this House.

**Mr. Speaker:** I have seen all those rulings. He can just tell me the name of the case.

**Shri Nath Pai:** Yes, Sir. But how can I do it, when you are standing?

**Mr. Speaker:** That is all right; I will sit down.

**Shri Nath Pai:** May I invite your attention to Lok Sabha Debates—11th Session—8th to 12th August—of the second Lok Sabha, column 1683. That is identical with this case.

**Mr. Speaker:** Which is the case?

**Shri Nath Pai:** The case is this. An hon. Member was quoting a confidential letter of the Prime Minister of India before the House. The point of order was raised by a Congress Member, saying that “how did the Member come in possession of this official document and how can he quote it.” The ruling given by Shri Anantasayanam Ayyangar, your distinguished predecessor, is that there is no point of order and the Member may proceed. May I point out here—I hope you have got the volume with you.

**Mr. Speaker:** I have looked into that and I have considered it, that particular case also. 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.

**Shri Nath Pai:** But yesterday you gave us the impression that after the

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Law Minister had made his observations, if you feel inclined, you may allow some time for asking clarification. You have said yesterday that an interval of 15 minutes or so would be reserved for that purpose.

**Mr. Speaker:** 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. Members would bear with me.

**RIGHT OF MEMBERS TO QUOTE FROM SECRET DOCUMENTS OR LAY COPIES THEREOF ON THE TABLE OF THE HOUSE**

On the 22nd 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:

- (1) Whether any member can quote from a document that is treated by the Government as secret or confidential, whose disclosure Government resists in public interest?

- (2) 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?
- (3) 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?
- (4) Whether Government can be compelled to admit or deny the correctness of any alleged copy of such document, which it classifies as secret or confidential?
- (5) 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?
- (6) 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 freed. 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 the 22nd 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 Acts 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 mem-

bers, 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

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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 the 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. 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 April 3, 1963, Shri Homi Daji while speaking on Law Ministry's Demands, quoted from Auditors' 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 interests to do. 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 the 4th 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 to the Minister of Parliamentary Affairs who said that Government would make enquiries about the genuineness or otherwise of the document.

On 6th May, 1963, the Minister of Industry made a statement, and *inter alia*, observed as follows:

"Since this part of the Daph-tary-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 the 28th 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. friend has got the complete document. In fact I do not know what he has got.... My hon. 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. friend how he obtained this secret protocol."

When a member asked that 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) A Member can ordinarily quote from a document that is treated by Government as secret or confidential, and which government have not disclosed in public interest.

(2) 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.

(3) 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.

(4) While Government cannot be compelled to admit or deny the correctness of any 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 Government decline 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 and the House possesses ample power to deal with the matter under the Constitution and the Rules.

(5) 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.

[Mr. Speaker]

(6) 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 Member.

(7) 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.

**Shri Hari Vishnu Kamath:** On a point of clarification, Sir. In the last sentence of your momentous ruling, you have said that it may be given to you. May I hand it over to you, now, Sir?

**Mr. Speaker:** When the occasion arises, we shall see.

**Shri Hari Vishnu Kamath:** You have said that a Member is at liberty to quote from the document.

**Mr. Speaker:** Yes, when he wants to proceed with it; when the occasion arises, we shall see.

**Shri Nath Pai:** You have not referred to Mr. Ayyangar's ruling. You said, you have taken this into consideration.

**Mr. Speaker:** I have; he only said that there was no point of order. He did not give any consideration to it.

**Shri Daji**

**Mr. Speaker:** Order, order.

**Shri Daji:** Sir, this is a different matter.

**Mr. Speaker:** Now we should proceed with the business for the day.

**Shri Daji:** Sir, may I ask the Prime Minister and the Home Minister, through you, whether, as it has now been widely known that the Cabinet Sub-Committee's report has been under circulation and it has been quoted in the Orissa Assembly, they still want to deny that to us....

**Mr. Speaker:** Now it is for them.

**Shri Hari Vishnu Kamath:** We want to know whether your ruling will cover that also?

**Mr. Speaker:** What I have to say I have already said.

**Shri D. C. Sharma (Gurdaspur):** Sir, I want to make one request. I request that the ruling which you have just now given may be circulated to all of us.

**Mr. Speaker:** Very well.

13.32 hrs.

MOTION ON THE PRESIDENT'S ADDRESS—contd.

**Mr. Speaker:** The House will now take further consideration of the following motion moved by Shri Harish Chandra Heda and seconded by Lt. Col. Maharajkumar Dr. Vijaya Ananda of Vizianagram on the 19th February, 1965, namely:—

"That an Address be presented to the President in the following terms:—

"That the Members of Lok Sabha assembled in this Session are deeply grateful to the Pre-