

SENATE OF PAKISTAN
SENATE DEBATES

Wednesday May 24, 1989

The Senate of Pakistan met in the Senate Hall (Parliament House) Islamabad at 5.30 of the clock in the evening, with Mr. Chairman (Mr. Wasim Sajjad) in the Chair.

(Recitation from the Holy Quran)

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

۷۔ وَلَوْ بَظَرَ اللَّهُ الرِّزْقَ لِعِبَادِهِ لَبَعَا فِي الْأَرْضِ وَيَكُنْ نَزِيلٌ
يُقَدَّرُ فَأَيُّ شَاءَ إِنَّهُ يُعِيدُ خَيْرَ لِمَصِيرِهِ
۸۔ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا مِمَّا ذَرَرَ مِنْهُ
مِنْ حَيْثُ لَا يَحْتَسِبُ وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ
فَهُوَ حَسْبُهُ إِنَّ اللَّهَ بِالْعُمُومِ قَدْرٌ جَعَلَ اللَّهُ
لِكُلِّ شَيْءٍ قَدْرًا



۱۔ مَا كَانَ لِيُشْرَكَ أَنْ يُؤْتِيَهُ اللَّهُ الْكِتَابَ وَالْحُكْمَ وَالنُّبُوَّةَ
ثُمَّ يَقُولُ لِلنَّاسِ كُونُوا عِبَادًا لِي مِنْ دُونِ اللَّهِ وَلَكِنْ
كُونُوا رَبَّيْنَ بِمَا كُنتُمْ تَعْلَمُونَ الْكِتَابَ وَبِمَا
كُنتُمْ تَدْرُسُونَ وَلَا يَأْمُرُكُمْ أَنْ تَتَّخِذُوا
الْمَلَائِكَةَ وَالنَّبِيِّينَ أَرْبَابًا أَيَأْمُرُكُمْ بِالْكُفْرِ
بِعَدْلِ اللَّهِ أَنْتُمْ مُسْلِمُونَ وَإِذْ أَخَذَ اللَّهُ مِيثَاقَ
النَّبِيِّينَ لَمَّا أُنْزِلَتْ مِنْكُمْ وَحِكْمَةً تَنْجَاهُ كُونُوا رُسُلًا

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۷۔ وَلَوْ بَظَرَ اللَّهُ الرِّزْقَ لِعِبَادِهِ لَبَعَزَ فِي الْأَرْضِ وَلَكِنْ نَزَّلَ
بِقَدَرٍ فَأَنشَاءُ إِنَّهُ عِبَادُهُ خَيْرٌ بِصِدْقِهِ
۸۔ وَمَنْ يَتَّقِ اللَّهَ يَجْعَلْ لَهُ مَخْرَجًا مِمَّا ذَرَرَ مِنْهُ
مِنْ حَيْثُ لَا يَحْتَسِبُ وَمَنْ يَتَوَكَّلْ عَلَى اللَّهِ
فَهُوَ حَسْبُهُ إِنَّ اللَّهَ بِالْغَلْغَلَةِ أَعْيُنُهُ قَدْ جَعَلَ اللَّهُ
لِكُلِّ شَيْءٍ قَدْرًا



۱۔ مَا كَانَ لِنَبِيٍّ أَنْ يَوْتِيَهِ اللَّهُ الْكِتَابَ وَالْحُكْمَ وَالنَّبُوءَ
ثُمَّ يَقُولُ لِلنَّاسِ كُونُوا عِبَادًا لِي مِنْ دُونِ اللَّهِ وَلَكِنْ
كُونُوا رَبَّيْنَ بِمَا كُنتُمْ تَعْلَمُونَ الْكِتَابَ وَبِمَا
كُنتُمْ تَدْرُسُونَ وَلَا يَأْمُرُكُمْ أَنْ تَتَّخِذُوا
الْمَلَائِكَةَ وَالنَّبِيِّينَ أَرْبَابًا أَيَأْمُرُكُمْ بِالْكُفْرِ
بِعَدْلِهِ أَمْ أَنْتُمْ مُسْلِمُونَ وَإِذْ أَخَذَ اللَّهُ مِيثَاقَ
النَّبِيِّينَ لَمَّا أُنْزِلَتْ مِنْكُمْ وَحِكْمَةً فَتَوَجَّاهُمْ كَوْرُسُولِ

ترجمہ :- شروع کرتا ہوں ساتھ نام اللہ کے جو نہایت مہربان اور رحم کر نوالا ہے اور اگر خدا اپنے بندوں کے لیے رزق میں فراخی کر دیتا تو زمین میں فساد کرنے لگتے۔ لیکن وہ جس قدر چاہتا ہے اندازے کے ساتھ نازل کرتا ہے۔ بیشک وہ اپنے بندوں کو جانتا (اور) دیکھتا ہے۔

(سورۃ الشوریٰ آیت ۲۷)

اور جو کوئی خدا سے ڈرے گا۔ وہ اس کے لیے (رنج و محنت سے) مخلصی کی صورت پیدا کر دے گا اور اس کو ایسی جگہ سے رزق دے گا جہاں سے وہم و گمان بھی نہ ہو۔ اور جو خدا پر بھروسہ رکھے گا تو وہ اس کو کفایت کرے گا۔ خدا اپنے کام کو (جو وہ کرنا چاہتا ہے) پورا کر دیتا ہے خدا نے ہر چیز کا اندازہ مقرر کر رکھا ہے (سورۃ الطلاق آیت ۳۱)

SUSPENSION OF QUESTION HOUR

Mr. Chairman: I think, we will not be able to take up the Question Hour because this was not scheduled for this purpose. So, I think a motion will have to be moved. Mr. Muhammad Ali Khan, you should move the motion.

(Pause)

Mr. Muhammad Ali Khan: The motion is:

"that the Question Hour may be suspended for today."

(The motion was carried)

Mr. Chairman: However, if it is sense of the House that the Question Hour will stand suspended for the day because this was not scheduled for business today. So, therefore, if it is the sense of the House, the Question Hour stands suspended.

Leave of Absence

جناب چیئرمین :- صاحبزادہ سلطان عبدالمجید نے چند ذاتی مصروفیات کی بنا پر ایوان سے ۲۴ تا ۲۸ مئی رخصت کی درخواست کی ہے کیا آپ ان کی درخواست منظور فرماتے ہیں؟
(رخصت منظور کی گئی)

جناب چیئرمین : الحاج سید محمد شاہ جیلانی صاحب نے چند ناگزیر وجوہات کی بنا پر ایوان سے ۲۴ مئی کی رخصت کی ہے کیا آپ ان کی یہ رخصت منظور فرماتے ہیں؟
(رخصت منظور کی گئی)

جناب چیئرمین : خواجہ محمود احمد منٹو صاحب نے بذریعہ فون اطلاع دی ہے کہ وہ ناسازی طبع کی بنا پر مورخہ ۲۴ مئی ۱۹۸۹ کے اجلاس میں شرکت نہیں کر سکیں گے کیا آپ ان کی درخواست منظور فرماتے ہیں؟
(رخصت منظور کی گئی)

جناب چیئرمین : صاحبزادہ یعقوب خان وزیر اعظم کے ساتھ بیرون ملک تشریف لے گئے ہیں اس لیے انہوں نے اطلاع دی ہے کہ وہ ۲۴ مئی تا ۱۱ جون ایوان میں شرکت نہیں کر سکیں گے۔

Mr. Chairman: Now, the privilege motion regarding the appointment of Attorney-General, he (Attorney-General indicated that he would be coming here today, is he present? I think Mr. Tariq Raheem would know about it. Mr. Tariq Raheem, is the Attorney-General going to be heard today.

Khawaja Ahmed Tariq Raheem: Sir he is expected to come.

Mr. Chairman: Please if you kindly check up, so that we can take up this matter.

ADJOURNMENT MOTIONS

Mr. Chairman: We will take up the adjournment motions in the meantime. This is adjournment motion No. 23, Professor Khurshid Ahmed. He is not present, so the adjournment motion stands dropped. Adjournment motions No. 24 and 60 stand dropped as Professor Khurshid Ahmed is not present.

Khawaja Ahmed Tariq Raheem: Mr. Chairman, may I make a statement? The Attorney-General is reaching here at 6.30 P.M., I think he has conveyed the time 6.30 P.M.

Mr. Chairman: In the meantime we take up the adjournment motions. Mr. Tariq Chaudhry, Adjournment Motion No. 35.

جناب محمد طارق چوہدری : جناب چیئرمین ! میں تحریک پیش کرتا ہوں کہ عوامی اہمیت کے حامل اس اہم مسئلے کو فوری طور پر زیر بحث لایا جائے کہ علامہ اقبال یونیورسٹی اسلام آباد کے وائس چانسلر کو یونیورسٹی کے اساتذہ اور کارکنوں نے وزیر مملکت برائے تعلیم کی کار سے کھینچ نکالا اور کیپس سے باہر پھینک دیا۔ اس افسوسناک واقعہ کی خبر پڑھنے اور تصاویر دیکھنے کے بعد ہر ذی ہوش پاکستانی مضطرب ہے کہ یونیورسٹی جہاں ملک کا سب سے زیادہ تعلیم یافتہ طبقہ موجود ہے جہاں اعلیٰ تعلیم بہم پہنچتی جاتی ہے وہاں پر اساتذہ کے ہاتھوں دوسرے استاد اور منتظم اعلیٰ کے ساتھ حد درجہ توہین آمیز کارروائی اساتذہ کے عز و وقار اور تعلیمی ماحول و امن کے لیے انتہائی خطرناک ہے لہذا اس مسئلے کو اس معزز ایوان میں فوری طور پر زیر بحث لایا جائے۔

جناب چیئرمین : وزیر صاحب کیا آپ اس کی مخالفت کر رہے ہیں۔
ڈاکٹر شیراگلن خان نیازی : میں مخالفت کر رہا ہوں۔

جناب محمد طارق چوہدری : جناب چیئرمین ! مجھے اس بات سے کوئی غرض نہیں ہے کہ کسی یونیورسٹی میں حکومت کسی شخص کو وائس چانسلر اور منتظم اعلیٰ مقرر کرتی ہے اس تحریک کے پیش کرنے کا میرا صرف مدعا اتنا ہے کہ یونیورسٹی کے وائس چانسلر کے خلاف بے قاعدگیوں کی کتنی بھی شکایات کیوں نہ ہوں کتنے بھی انبار کیوں نہ ہوں ان شکایات کا ازالہ کرنا ان شکایات پر توجہ دینا اور ان شکایات کو رفع کرنا یہ حکومت کا کام ہے۔ اس وقت جب انہی شکایات کے بارے میں جانتے کے لیے اور انکو اثری کرنے کے لیے خود وزیر مملکت برائے تعلیم وہاں موجود تھیں ان کے سامنے اساتذہ اور دوسرے ملازمین نے وائس چانسلر کو گریبان سے پکڑا آپ میری تحریک کے ساتھ اخبارات کی جو کاپی میں نے دی ہے وہ ملاحظہ فرما سکتے ہیں ان کو گریبان سے پکڑا ہوا ہے کوئی بازوؤں سے کھینچ رہا ہے کوئی دھکے دے رہا ہے کوئی پیچھے سے مار رہا ہے تو یہ ساری صورت حال انتہائی تشویش کا باعث ہے کیونکہ یہ واقعہ اسلام آباد میں ہوا اور اسلام آباد کے زیر انتظام ہی یہ یونیورسٹی ہے اس لیے یہ مرکزی حکومت سے متعلق ہے ایک خاص واقعہ ہے جس کا میں نے یہاں پر ذکر کیا ہے اور یہ فوری توجہ طلب ہے کیونکہ یہ یونیورسٹیوں میں اس غلط فہمی ضرب کر سکتا ہے اور میں سمجھتا ہوں اس طرح یہ

تحریر بالکل قاعدے کے مطابق ہے جسے ایڈمٹ کر لیا جائے تاکہ یہ ایوان تعلیمی ماحول پر دو گھنٹے کا کھلی بحث کر سکے۔

جناب چیئر مین :- شکریہ! جی ڈاکٹر صاحب۔

ڈاکٹر شیر انگن خاں نیازی :- جناب چیئر مین! یہ جو تحریک التوا معزز رکن نے پیش فرمائی ہے یہ تمام قاعدوں کے برعکس ہے اور تمام قواعد کے خلاف ہے اس میں انہوں نے جو فرمایا ہے ایک مسئلہ describe کیا گیا ہے وہ بھی غلط ہے یہ ارجنٹ پبلک میٹیر بھی نہیں ہے اس میں urgency بھی نہیں ہے بلکہ میں معزز رکن کو یہ عرض کرنا چاہتا ہوں اگر شق وار بھی ہم اس کو لیں تو محسوس ہوتا ہے کہ یہ کسی قاعدے کے تحت نہیں ہے جیسا کہ انہوں نے فرمایا ہے کہ یہ اسلام آباد کا واقعہ ہے اس لیے یہ وفاق کے تحت ہے لہذا وفاق سے اس کا تعلق ہے اور یہ گورنمنٹ کی چیز بن جاتی ہے اس ضمن میں اگر آپ مناسب سمجھیں تو میں رد لیز وائز پارلیمانی پریکٹس کے مطابق عرض کرنا چاہتا ہوں "I shall raise on issue of urgent public importance"

بنیادی رول یہ ہے کہ ارجنٹ پبلک امپارٹنس کا کوئی مسئلہ ہو اس ضمن میں، میں یہ عرض کرنا چاہتا ہوں آج تک ہمیں یہ سمجھ نہیں آئی کہ ارجنٹ پبلک امپارٹنس کی بات کیا ہے اس میں دو چیزیں ہیں وہ مسئلہ جو بیرون ملک واقع ہو اور اس کے اثرات ملک پر ہوں اور تمام ملک پر ہوں ایک علاقے میں وہ واقعہ ہو اس کے اثرات ایک طبقہ نگر پر نہ ہوں ایک جگہ پر نہ ہوں بلکہ سارے ملک کے تمام حوام پر یکساں اثرات مرتب ہوں ایک بات یہ ہے یا اندرونی ملک کوئی واقعہ اس شکل کا ہو جائے جس سے سارے ملک میں ایک خاص قسم کی ایسی صورت حال پیدا ہو جائے جبکہ وہ مسئلہ اگر ایوان میں لایا جائے تو وہ خود بتلائے کہ وہ اتنا اہم ہے کہ کارروائی جاریہ کو روکنا ضروری ہو جاتا ہے اس ضمن میں میں آپ کی قوم ایس ایس مور کی کتاب Practice and Procedure of Indian Parliament کی طرف دلاتا ہوں۔

"Matter must be urgent"

آپ صفحہ ۶۸ ملاحظہ فرمائیں۔

The matter upon which the matter is based must also satisfy the test of urgency. The matter must be *prima facie*, urgent

[Dr. Sher Afgan Khan Niazi]

that is of recent occurrence and raised without delay, the specific matter must be of recent occurrence".

A speaker never links as laid down the test of urgency in the following words :

"The test of urgency visualized in respect of an adjournment motion is best expressed in the old dictum of Mr. Speaker, Peel, in the House of Commons". He said:

"What I think was contemplated was the occurrence of some sudden emergency, either in Home or Foreign Affairs the crucial test always is as to whether the question proposed to be raised has arisen suddenly".

This is very important, that all at once it has arisen and created an emergent situation of such a character that there is a *prima facie* a case of urgency and the House must therefore, leave aside all other business and take up the consideration of the urgent matter at the appointed hour. The urgency must be of such a character that the matter really brooks no delay, that is very important to note, 'brooks no delay' means that it does not tolerate any delay and should be discussed on the same day that notice has been given."

یعنی اس کی urgency ایسی ہوا ب کئی دنوں سے یہ ہاؤس چل رہا ہے میں مانتا ہوں اگر یہ اتنا ہی ارجنٹ میٹر تھا تو پہلے ہی دن کیوں نہیں لیا گیا ایسے لیا جانا چاہیے تھا اس میں بہت urgency ہوتی یا ایسا مسئلہ ہوتا کہ ملکی نقطہ نظر سے اس کے اثرات مرتب ہونے ہوتے اور پھر یہ مسئلہ جس میں بہت سارے کو الف ہیں لیکن قاعدے کے مطابق A single specific matter must be described اس میں بہت سارے مسائل ہیں mal-handling ہوئی اسے کار سے نکالا گیا کمپس سے باہر پھینکا گیا یہ ہوا وہ ہوا۔ وزیر صاحب تشریف لے گئے۔ یعنی

It is not a single matter.

اب اس میں بھی یہ فرما رہے تھے کہ گورنمنٹ کا concern ہو تو اس کے ضمن میں بھی میں عرض کرتا ہوں کہ گورنمنٹ کے concern کا ایک خاص concept ہے کہ primarily وہ فیڈرل گورنمنٹ کی jurisdiction میں ہو اس کے ایڈمنسٹریشن

سے کوئی تعلق نہ ہو مثال کے طور پر ایک سیاسی اجتماع ہو رہا ہے اور ریل کے ذریعے سے وہ سیاستدان یا ان کے ورکر جا سکتے ہیں اس وقت کی حکومت اپنے ریل کے ٹائمنگ میں تبدیلی کر دیتی ہے یا وہ ریل کو بلا دم روک دیتی ہے تو وہ direct intervention ہے وہ کہا جا سکتا ہے کہ آر جنٹ میٹر تھا اب ایک چیز ہے وہاں کی لاء اینڈ آرڈر انفرسٹنگ ایجنسی موجود ہے وہاں پولیس موجود ہے لاء موجود ہے کامن لاء موجود ہے اس کے بارے میں کہا جا سکتا تھا اب یہ

direct responsibility of the Federal Government بنتی نہیں۔ وہاں کی انتظامیہ کے پاس انہیں رپورٹ کرنا چاہیے تھا اور دوسری چیز جس چیز کے بارے میں کامن لاء available ہے اس کو ایڈجرنمنٹ موشن کے طور پر لایا ہی نہیں جا سکتا اگر وہاں قانون نہ ہو لیجلیشن کی ضرورت ہو اور وہ واقعتاً ثابت ہو جائے کہ قانون نہیں تھا اور اس وجہ سے اسے یہ کرنا پڑا تو پھر یہ میٹر لیجلیشن کے . . .

جناب حمیرا مین :- یہ بتائیں کہ یہ معاملہ پولیس کو رپورٹ کیا گیا ہے یا نہیں۔
ڈاکٹر شیر افگن خان نیازی :- یہ تو انہیں پتہ ہونا چاہیے جو یہ پیش فرما رہے ہیں آیا ہوا نہیں ہوا جب انہیں یہ پتہ ہے کہ وزیر کی کار سے نکالا گیا۔ میل ہینڈل ہوا۔ ایف آئی آر ہوئی یا نہ ہوئی یہ تو ان کا کام ہے۔

جناب محمد طارق چوہدری :- یہ میرے ساتھ نہیں ہوا یہ معاملہ ان کی حکومت کا ہے میرے ساتھ نہیں ہوا کہ مجھے پتہ ہونا چاہیے کہ وہاں پولیس رپورٹ ہوئی یا نہیں ہوئی یہ کس طرح کی باتیں کرتے ہیں۔

بہر حال ان کو کرنے دیں یہ بتلائیے کہ آپ کو کوئی اطلاع ہے کہ یہ پولیس کو رپورٹ کیا گیا ہے یا نہیں۔ کسی کو نہیں پتہ ہے۔۔۔

جناب محمد طارق چوہدری :- یہ وزیر داخلہ صاحب بیٹھے ہیں ان سے پوچھیں۔

Mr. Chairman: Minister for Parliamentary Affairs you want to say something.

Khawaja Ahmad Tariq Raheem: Yes, Mr. Chairman.

The fact is that although this matter was reported in the press, as far as we understand when this incident took place

[Khawaja Ahmed Tariq Raheem]

we do not know whether the varacity is correct or not but we will certainly find out. If the Vice Chancellor had any problems, certainly he would have referred the matter to the Federal Government or to the Ministry of Education. If the Vice Chancellor has had any complaints, he has had any problems, I do not understand how this adjournment motion is to be discussed here. Nevertheless, I would do this thing, I will just say supporting Dr. Sher Afgan, because I hold this House in the greatest esteem and this matter relates to a Vice Chancellor, I will find out from the Ministry of Education and whatever the correct position is, I will refer it to you.

Mr. Chairman: So, we will take it up once you are able to get the information on this question.

Prof. Khurshid Ahmed: Mr. Chairman, Sir.

Mr. Chairman: Yes please.

پروفیسر خورشید احمد : جناب چیئرمین ! مجھے ہاؤس میں آنے میں کچھ دیر ہو گئی ہے میں یہ پوچھنا چاہتا ہوں کہ میری ایک آرج کے لیے ایڈجرنمنٹ موشن تھی، اس کا کیا بنا ہے۔

جناب چیئرمین : فی الحال تو وہ ڈراپ کر دی گئی ہے، ایسے شاید آپ کو پتہ نہیں تھا کہ پہلے ایک پروویج موشن رکھا ہوا تھا۔
پروفیسر خورشید احمد : میں اس شبہ میں تھا کہ شاید پہلے سوال کہنے ہیں۔

Mr. Chairman: Now you can take up Adjournment Motion No. 24.

Mr. Javed Jabbar: Sorry. Mr. Chairman, before that if we could take up the matter relating to Daily 'MARKAZ'.

(Pause)

Mr. Chairman: Yes, I think we could take up that adjournment motion where you were to make a statement on the events regarding daily 'MARKAZ'.

Mr. Javed Jabbar: Mr. Chairman, thank you very much. I was not present in the House yesterday because of the obligation of attending the National Economic Council meeting, and, there-

fore, I regret that I personally did not listen to the arguments on admissibility advanced by the honourable movers of the adjournment motion regarding the alleged attack on the offices of the daily newspaper 'MARKAZ'.

Mr. Chairman: You see the argument was that this incident has taken place, I think you visited the site also, within the

jurisdiction of the Federal Government. It is a matter which directly pertains to the Federal Government being a press matter. It involves a very important principle of the freedom of the press because the people who attacked this paper were shouting slogans in favour of a particular political party, and this was considered to be an infringement of the basic rights which are guaranteed to the people of Pakistan which include the right of freedom of press, and it was contended that this attack amounted to muffling the press, intimidating the press, threatening the press not to say what the press would like to say. So basically it was being pointed out that this is an attack on the freedom of the press within the jurisdiction of the Federal Government. It is a matter which was brought to the House at the earliest possible opportunity and, therefore, they said it should be admitted to a full discussion.

Mr. Javed Jabbar: Thank you very much Mr. Chairman. I am grateful to you for so ably summarizing the arguments on admissibility and with due respect I would like to submit that in the opinion of the Government the motion regrettably does not meet the qualifications of admissibility in principle on the basis of the alleged facts. Without in any way detracting from the arguments for or against the freedom of press, which I shall come to later, but purely on basis of fact, Mr. Chairman, I wish to submit that while the Federal Government is fully conscious of its responsibility for the administration of law and order in the Federal Capital area and for the protection of the life and property of all citizens residing here. In this particular instance, the facts have yet to be established. What is alleged to have taken place is that seven to eight people at a given time in the early morning of the 23rd of May are supposed to have arrived at this place and launched an attack on some part of the premises of this newspaper.

Having personally visited the site, as soon as I got the news and as soon as I was able to, it was clear that the identity of the attackers has not been clearly established by the people who were present at the spot, even though the Islamabad Police

[Mr. Javed Jabbar]

have recorded the statements of about forty different individuals concerned with the establishment and the neighbourhood. The proprietors of the 'Markaz' were kind enough to state that they were fully satisfied with the response of the fire brigade as well as the Administration. They had some reservations on whether the Administration was prompt enough in recording the FIR but when I verified this personally with the Secretary, Ministry of Interior he established, in the absence of the honourable Minister of the Interior, that on their personal intervention

and the Ministry itself no delay had been sought to be attempted in regard to the registration of the FIR. So, the responsiveness of the Administration to a violation of public peace and private property has been very clearly established. That all that could be done has been done.

Secondly, Mr. Chairman, regarding the attack on the freedom of the press, I would like to reiterate that this Government is fully and unequivocally committed to the freedom of the press and this is not just lip-service. From the very first day of our induction into office we have sought to give this concrete manifestation. In this specific instance, may I submit that this attack which has been supposedly carried out by people shouting slogans in favour of the ruling party and against certain other parties is so patently a doubtful case because any one attempting to create destruction would not want his own identity to be established. So, until the police investigation is completed, I would request that allegations and accusations be held back and that the facts be looked at.

Regarding freedom of the press Mr. Chairman, it is interesting to note.....

Mr. Chairman: Are you contending that we defer this matter or are you contending that on this basis it should be ruled out.

Mr. Javed Jabbar: Mr. Chairman, I am contending that this be ruled out on the ground that a major contention regarding freedom of the press is also rebutted by the facts that I will just present.

The facts of the case are that this newspaper was given exceptional encouragement by the previous government. In violation of the established rules it was given a certificate by the Audit Bureau of Circulation of over 10,000 copies as a starting incentive because a previous newspaper that had been published called 'PUKAR' had been closed down. The workers

were in a state of agitation and presumably in order to facilitate the publication of a new newspaper, the normal laws regarding due process of time were overlooked. However, this did not in any way affect the attitude of this Government. The political policy of this paper has had no effect on our continuing to provide the newspaper with whatever facilities are available. For instance, in the crucial area of newsprint, the record shows that from 1987-89 the total tonnage made available is 525 metric tons. Whatever was asked for has been provided.

Secondly and most interestingly that after the induction of the present Government the value of advertisement provided to this newspaper has actually increased, when you compare it to the advertisements provided even by the previous government. In the month of April alone, for example, the figure of Rs. 36,591/- is higher than what was given by the previous government in November which was only Rs. 28,650/-, and the figures can be checked. Therefore, I submit Mr. Chairman, there is absolutely no ground on the point made by the movers that there is an attempt to curb freedom of expression. Indeed the opposite is true.

Thank you.

Mr. Chairman: When do you expect the investigation to be finalized in this case.

Mr. Javed Jabbar: Mr. Chairman, the Islamabad Administration assures us that all possible efforts are being made. A time frame at this stage I am not in a position to give but if you permit I can return to the House later, possibly tomorrow with a more specific time commitment.

Mr. Chairman: So, we will take it up after you obtain the information from the concerned authorities.

پروفیسر خورشید احمد: جناب والا! ہم اپنے دلائل محفوظ رکھتے ہیں کیونکہ جو چیزیں اب بھی وزیر صاحب نے کہی ہیں وہ challengeable ہیں۔

Mr. Chairman: You see the statement is complete but I would like to know when the honourable Minister expects the investigation to be finalized.

Mr. Javed Jabbar: Mr. Chairman, it will only be an assumption. As you know there are large number of cases.

Mr. Chairman: Yes, obviously.

**FURTHER DISCUSSION ON THE ADMISSIBILITY OF PRIVILEGE
MOTION Re: APPOINTMENT OF ATTORNEY-GENERAL**

Mr. Chairman: Mr. Attorney-General, I think, you must have been informed that a ruling was referred to which is 1969 Supreme Court (page 42) which is relevant to the matter which was under discussion and we thought it appropriate that we would like to have your views on that matter.

Mr. Yahya Bakhtiar (Attorney-General): I am grateful for this opportunity Mr. Chairman, I had the occasion to read the ruling....

Sir, before I say anything on the ruling or on the merits of the case I just want to point out one or two objections which

I want to take later. One is about the admissibility or inadmissibility of the privilege motion and I do not want to create any impression that I want to take shelter behind technicalities. Therefore, I will not mention that straightaway. Secondly, Mr. Chairman, you are well aware that the question before the House is mainly about the interpretation of Articles 100, 177 and 179 of the Constitution. Now, who has a right to interpret the Constitution? This is something which has been stated repeatedly and very ably by the learned Minister for Justice and the Minister for Interior but I would like to make some submissions on this subject also with your permission later on. Now Sir, I will go again over the main provision of the Constitution. I am sorry I will take some of your time.

Mr. Chairman: Yes please do.

Mr. Yahya Bakhtiar: I will read Article 100 of the Constitution, not all of it but the relevant part.

Article 100. (1) "The President shall appoint a person, being a person qualified to be appointed a Judge of the Supreme Court, to be the Attorney-General for Pakistan".

Clause (2) reads:

"The Attorney-General shall hold office during the pleasure of the President."

This, as I submitted before, is the tenure and the term and the period until which he can hold that office. Then Sir, you will find and what has been pointed out:

".....a person qualified to be appointed a Judge of the Supreme Court,"

And Article 177 (2) says:

"A person shall not be appointed a Judge of the Supreme Court unless he is a citizen of Pakistan and -

For my purpose I will say:

"has for a period of, or for periods aggregating, not less than fifteen years been an Advocate of a High Court....."

This has been considered to be a part of the qualifications.

I will be making submission that this is not part of the qualifications. This is a guarantee about the independence of the judiciary and to assure the Judges that till this period a Judge will have the right to stay in the Supreme Court. This is the guarantee on the one hand or on the other hand you could call it a disability that perhaps after this period he may not be able as of right to stay as a Judge of the Supreme Court. I will also be referring to Article 182 which provides that even after a Judge of the Supreme Court has retired and before three years have elapsed he could still be asked to sit on the Bench and act as an ad hoc Judge. Age 65 is not the limit for a Judge to stay in Supreme Court.

- **Mr. Chairman:** Yes, but there is a difference between an ad hoc Judge and a Judge, I think.

Mr. Yahya Bakhtiar: This is a Judge. He is the same Judge. He gives the same judgement as you know that makes no difference. Temporary Judge, Acting Judge or ad hoc Judge they are all the same as a permanent Judge. Now, I will come back before I go to the Nagpur case again, I will come straight to what ruling, I suppose was placed before this House.

Mr. Chairman: Just before you go there the word "Judge" has been defined in the Constitution, Article 260, says :

[Mr. Chairman]

"Judge" in relation to the Supreme Court or a High Court, includes the Chief Justice of the Court and also includes:-

- (a) in relation to the Supreme Court, a person who is acting as a Judge of the Court; and
- (b) in relation to the High Court, a person who is an additional Judge"

So, therefore, the word "Judge" alone would not include an ad hoc Judge.

Mr. Yahya Bakhtiar: If you think an ad hoc Judge is not Acting Judge then I agree with you.

Mr. Chairman: No. No. An ad hoc Judge and an Acting Judge are two different things.

Mr. Yahya Bakhtiar: No, but if he is not a judge

(Interruption)

Mr. Chairman: What I am saying is, I am just trying to analyse this argument.

Mr. Yahya Bakhtiar: I will go into that again, I will just read Article 182:

"If at any time it is not possible for want of quorum of Judges of the Supreme Court to hold or continue any sitting of the Court, or for any other reason it is necessary to increase temporarily the number of Judges of the Supreme Court, the Chief Justice of Pakistan may, in writing,-

- (a), with the approval of the President, request any person who has held the office of a Judge of that Court and since whose ceasing to hold that office three years have not elapsed; or
- (b) with the approval of the President and with the consent of the Chief Justice of a High Court, require a Judge of that Court qualified for appointment as a Judge of the Supreme Court,

to attend sittings of the Supreme Court as an ad hoc Judge for such period as may be necessary and while so attending an ad hoc Judge shall have the same power and jurisdiction-

tion as a Judge of the Supreme Court."

So, I think, there is not dispute on that point.

Mr. Chairman: No dispute. What I am saying is that the word "Judge" has been defined. Your argument is that because a retired Judge can be appointed ad hoc Judge, therefore, a retired Judge would also be qualified or a person let us say over the age of 65 years would also be qualified

(Interruption)

Mr. Yahya Bakhtiar: I am only wanting to show Sir, that even after 65 he can sit and act as a Judge, with same powers as of a Judge. Call him by any name - ad hoc or temporary.

Mr. Chairman: Any how, yes.

Mr. Yahya Bakhtiar: I just go further on. Now, I come back to this ruling of Supreme Court 1969 page 42. As for I understand this was a case from Dacca when election to the Bar Council was being held. The requirement is that the Chairman of the Bar Council is Advocate-General who shall preside. The Advocate-General happened to gone away, gone abroad somewhere and some one else a Government Pleader was acting as an Advocate-General at that time. He was asked to preside over

the function. He presided over the election. Election was duly held. Later Dr. Kamal Hussain one of the parties to the election filed a petition in the Supreme Court that because this pleader whose name was Jan-e-Alam, I believe was over 60 years of age and as the Constitution requires that the Advocate-General shall be a person qualified to be appointed a Judge of the High Court and that the High Court Judge would hold office until he is of 60, therefore, he was not qualified to be appointed as an Advocate-General and hence he could not preside over this function, the election was illegal and void. This petition was allowed in the High Court. Then an appeal was filed in the Supreme Court. The Supreme Court, I would say respectfully, did not go into the question whether he was qualified or not qualified whether he was 60 or not. On a different issue altogether they then considered this at all in other words they say alright even we allow that he was not qualified doesn't matter at all because, the Vice Chairman of the Bar Council was present throughout the proceedings that assumed that he

[Mr. Yahya Bakhtiar]

was presiding, therefore, the election was not affected. With all respect I will say this got no relevance whatsoever to the issue before the court.

Mr. Chairman: The observation which was relied upon is on page 49.

Mr. Yahya Bakhtiar: Yes I will read that. They say:

"Under Article 94 of the Constitution the retiring age of a High Court Judge is fixed at 60 years after which he ceases to hold office. A person above 60 years of age cannot be appointed a Judge of the High Court nor by reference to that disqualification as the Advocate-General of a Province. Constitutionally, therefore, the appointment of Mr. Muhammad Jan-e-Alam was irregular and it does not seem to be the appellant's case that he was ever so appointed."

Now, if you will kindly see they referred that as by reference to that. Suppose he was to act like that. They go to the next point. Now they further say:

"It was conceded by Mr. Brohi, the learned counsel for the appellants that there is no provision in the Constitution for the acting or officiating appointment of an Advocate-General like it exists in the case of other constitutional appointments....."

Mr. Brohi thought that even if it was under 60, there was no provision for an acting Advocate-General, therefore, he could not have presided over the session. The issue was altogether different.

Mr. Chairman: So, is it your argument that these observations are obiter dicta.

Mr. Yahya Bakhtiar: Not even *obiter dicta*, their lordships had not applied their mind and they did not consider it to apply their mind.

Mr. Chairman: So, that is what *obiter dicta* means.

Mr. Yahya Bakhtiar: No, *obiter dicta* means that they come to the conclusion 'yes' he was not qualified. They did apply their mind at all to that. They said this is what they say but let us look at the matter even it was so, the election was valid because the Vice-Chairman was there. All these argu-

ments were there, Mr. Brohi never raised objection and against that the complete answer is given as I submitted earlier in the Nagpur case if you permit me.

Mr. Chairman: Yes Nagpur case supports your view point.

Mr. Yahya Bakhtiar: I think that contradicts this complete answer to the Dacca case.

Mr. Chairman: The Nagpur case definitely supports your point of view but the observation here

Mr. Yahya Bakhtiar: Another case also fully supports my case if you will bear with me.

Mr. Chairman: Nagpur case; there is no doubt about it.

Mr. Yahya Bakhtiar: But I just say that because of the argument if you permit me, the Nagpur case says that it is obvious that all the provisions relating to a Judge of the High Court can not be made applicable to the Advocate-General. Now, if you will kindly bear with me, I am repeating the same from the words of our Supreme Court. It is obvious that all provisions relating to a Judge of the High Court can not be made applicable to the Advocate-General. The provisions about remuneration are different.

A Judge of the High Court is governed by Article 221, the Advocate-General is governed by Article 165 (2) and receives a different remuneration. The first clause of Article 165 insists that the Governor shall appoint a person who is qualified to be appointed a Judge of the High Court to be Advocate-General for the State. The qualifications for the appointment of a Judge of the High Court are prescribed in (2) of clause of Article 217. It is true that clause (1) of Article 217 says that a Judge of a e High Court shall hold office until he attains the age of 60 years. The real question then is, whether this provision is to be construed as one prescribing qualifications or as one prescribing the duration for the appointment of a Judge of a High Court. As the provision does not occur in the clause, (2) it can only be construed as one prescribing the duration of the appointment of a Judge of the High Court. The provision about duration of clause (1) of Article 217 can not be made applicable to the Advocate-General because the Constitution

[Mr. Yahya Bakhtiar]

contains a specific provision about the duration of the appointment of Advocate-General in the clause (3) of Article 165 which says that:

"Advocate-General shall hold office during the pleasure of the President or the Governor".

As this provision does not limit the duration of the appointment with reference to any particular age as in the case of a Judge, it is not permissible to import into the words until he attains the age of 60 years, imported in the words 'attains the age of 60 years'. The specific provision in the Constitution must, therefore, be given effect to without any limitation if a person is appointed Advocate-General, say "at the age of 55 years" there is no warrant for holding that he must cease to hold his office on his attaining 60 years because it is so stated about a Judge of a High Court in clause (1) of Article 217. If that be the true position, as we hold it, then the appointment is not bad because a person has passed 60 years so long as he has the qualification prescribed in the 2nd clause of Article 217. It was not suggested that no Advocate-General possesses the qualifications prescribed in this clause. Then they further go on. Kindly see paragraph 28 that says that even a High Court Judge can be asked to sit on the Bench after they are sixty not as of right that they say. We say that is right because under Article 224 ;

"A person who has retired a Judge of the High Court may be required to sit and act as a Judge...."

He is also sitting as adhoc.

....sit and act as a Judge of the High Court may be required to sit in as a Judge of the High Court. The attainment of the age of 60 years by a person can not, therefore, be regarded as a disqualification for performing the function of a Judge."

Now Sir, I have on the previous occasion, you will kindly recall, drawn the attention of the Chair to Central Law Officers' Ordinance. This Ordinance was promulgated in 1970 which provided for qualifications and conditions of Service of Law Officers' appointment. Under that Ordinance the additional Advocate-General and the Deputy Advocate-General were required to be a person who is qualified to be appointed a Judge of the Supreme Court same as Advocate-General. The Standing Counsel to be a person who is qualified to be appointed a Judge of the High Court. It was also provided in the Ordinance that these

officers shall hold office during the pleasure of the President. These were the conditions of their appointment. Subsequently the Ordinance was amended in 1979; this is the Annex (c).

Wherein it is provided that subject to sub-section (2) of the Ordinance of 1970 that they will hold office during the pleasure of the President that condition was there and over and above that it was further provided that the Additional Advocate-General or Deputy Advocate-General shall hold office until he attains the age of 65 years. A Standing Counsel shall hold office until he attains the age of 62 years. Now Sir, it is a very simple question, in 1979 the legislature is supposed to know what the Supreme Court has said in 1969. If the meaning attached by the honourable Member or the interpretation given to the ruling was that Attorney-General or the Deputy Attorney-General, or the Deputy Attorney-General, or the Advocate-General who retires at the age which is prescribed for a Judge of the High Court or Supreme Court then there was no necessity at all for the legislature to lay this down in this Ordinance to amend it. Automatically the ruling would have applied, Dr. Kamal Hussain's ruling would have applied, it is very clear the Supreme Court said that the Advocate-General is supposed to retire at the age of 65. He can not hold office after that.

Mr. Chairman: You see, I think one point would be relevant here, number one; you will notice that the

Attorney-General's office is not dealt with under this Ordinance because that is dealt with under the Constitution.

And therefore, would you not agree that this Law Officer Ordinance is not applicable as far as Attorney-General is concerned.

Mr. Yahya Bakhtiar: Sir, if you think this is a very complicated position then I will make submission in a different way. They have borrowed the provision from the Constitution to put in the Ordinance. The Constitution says that:

"the Judge shall hold office until he attains the age of 65."

They have borrowed that from the Constitution. Now if the rules or interpretation are different. They apply to the Ordinance and the Constitution then I will agree with you Mr. Chairman. They have borrowed these words from the Constitution and they applied there. So, you will kindly appreciate that the legislature knew very well what the Supreme Court had held they also knew very well that the Supreme Court did not mean

[Mr. Yahya Bakhtiar]

that at all which the learned or the honourable members think it meant. In other words Sir, if general rules are applicable then this amendment was redundant. There was no need for it at all. If a person is holding office until qualified to be a Judge of the Supreme Court and the Supreme Court Judge retires at the age of 65 then there was no need, otherwise also, for this amendment.

At the previous occasion Sir, one of the honourable Member of this House, I think, it was Professor Khurshid Ahmed, said that we don't know about this Nagpur case whether it had gone to the Supreme Court of India or whether Supreme Court of India had considered it. Sir, I draw your attention to 1962, Supreme Court at page 1104. This is Annexure-D, I have been given a copy of the photo copy. In that, I am not going to waste time. You can see them later. It says that in our view the interpretation put on Article 270 N.D.G.Karkara's case of 1922 Nagpur, is correct.

Now, Sir, if you permit me I will come to the most important and relevant case on the point and that is PLD 1979 Supreme Court. Mr. Aitzaz Ahsan is looking at me, he appeared in that as a Counsel, alongwith Mian Mahmood Ali Kasuri. It is that in 1979 Supreme Court, page 991. In this case, the Supreme Court had directly decided this question by holding that merely prescribing certain qualifications for appointment as Attorney-General for Pakistan, does not mean that he would be governed by the same disabilities as applied to a Judge of the Supreme Court, a complete answer to this. I have the right of private practice. A Judge cannot have the right of private practice and here what happened in that case was that the learned Attorney-General happened to be the Law Minister also. He was holding an office of profit which was contrary to Article 207 as far as a Judge of

the High Court was concerned or a Judge of the Supreme Court was concerned. This matter was raised by Mian Mahmood Ali Kasuri before the Bench of the Supreme Court and it was held that the Attorney-General's qualifications are one thing, disability is something quite different. So, if you call that this is disability of 65 years and I think not even disability and not even qualification. This is just a guarantee but even if a disability, would not apply to the Attorney-General. This is the answer of Supreme Court and you can see in detail the judgement.

Then Sir, my next submission is that office of the Attorney-General is a political office. The office of the Attorney-General

has been held to be political office and therefore, no tenure has been fixed for it. He is not in the service of Pakistan within the meaning of Article 260 of the Constitution. Sir, in 1974, Attorney-General as well as Advocate-General were included in the definition of Service of Pakistan in the Constitution of 1973. My submission here is that the Service of Pakistan is governed by the rule of retirement. Those who are out of it they hold political offices whether a Minister, Chairman of the Senate, or the President and a Prime Minister anybody else, he holds the political office. He is not in the Service of Pakistan in the sense that he will be governed by the rule of retirement. Therefore, in 1974, at my instance, Attorney-General was removed from the list of those who were included in the list of Service of Pakistan. If you would kindly see Constitution First Amendment Act of 1974. Similarly, Constitution's Fifth Amendment Act because my friend Mr. Ghulam Ali Memon and Mr. G.M. Awan they wanted to get a selection and they also said that they wanted to be out of this list and the Constitution's Fifth Amendment Act also came in to delete them from the list of Service of Pakistan.

Then again, Sir, I will point out respectfully the comments from Munir Committee on the Constitution of 1973, it is from page 274. I do not think there is another edition. There was only one edition. The Attorney-General is appointed by the President. The qualification needed for the appointment being that he should be eligible for appointment as a Judge of the Supreme Court. Now after that, an exceptionally able Judge like Munir who stayed to the next point, the root of the thing - he is a political appointee, therefore, he holds the office during the pleasure of the President. That is a tenure. Mr. Munir knew very well that a Judge of the Supreme Court retires at the age of 65 and he could have said that Attorney-General cannot hold the office after that age. No. He said, he holds the office during the pleasure of the President. Similarly, Chekward's Constitution of India Seventh Edition, page 253 says:

"The office of the Attorney-General is regarded as a political office in the sense that he is a member of the Ministry and comes and goes with it. Huhud Philip's Constitution, Constitutional Law Fourth Edition, the Law Officers or Legal Advisers to the Crown and also to the House of Parliament. They hold the ministerial posts and, therefore, change with the Government".

[Mr. Yahya Bakhtiar]

May's and Bradley's Constitution Law says the same thing

"appointments are political and are conferred upon unsuccessful Barrister of a party in power".

Again Sir, as I submitted before if you will kindly make a note again Basu's Commentary on the Indian Constitution (Silver Jubilee Edition Volume-F,) page 8 says:

"There is no age limit for appointment or retirement of the Attorney-General".

Mr. M.N. Kaul, Practice and Procedure of Parliament with which Members should be well aware also says:

"There is no statutory age limit for the appointment and retirement of the Attorney-General".

Now, the wording of the Indian Constitution may be better drafting or may be bad drafting. I think it a better drafting.

"That the President shall appoint a person who is qualified to be appointed as a Judge of the Supreme Court to be Attorney-General of India. Exactly the same thing - qualified to be appointed a Judge of the Supreme Court of India".

Here, I may very briefly mention and I have got the Annexure there :

"That Mr. Motilal Seetalwat was the first Attorney-General of India."

I mean before that they had the Advocate General like Koyar Mr. Wasim Advocate-General in Pakistan under Government of India Act but after that the Constitution came into force on 26th of January, 1950. Mr. Motilal Seetalwat was appointed Attorney-General of India as I have already pointed out:

"qualification was the same - he shall be a person qualified to be a Judge of the Supreme Court".

In his biography 'My Life, Law and Other Things', he says:

"That he was born on the 12th of November, 1884 (I have got the photo copies of the relevant pages)".

Now Sir, according to this calculation when he took over as an Attorney-General on the 26th of January, 1950, he was 55 years 2 months and 14 days old, passed age of 65 which was required and he resigned as Attorney-General when he was well over 78 years old. He held the office for over 12 years.

Now, I will also, if you would kindly permit me, read Article 213 of the Constitution. I read it before. May I

Mr. Chairman: Yes, please.

Mr. Yahya Bakhtiar: This pertains to the Chief Election Commission. It says :

"213.(1) There shall be a Chief Election Commissioner (in this Part referred as the Commissioner), who shall be appointed by the President in his discretion".

(2) No person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified under paragraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court".

Now, the Chief Election Commissioner also is a person who could be appointed if he is qualified to be a Judge of the Supreme Court. There is no question of 'ad hoc' here, there is no question of 'acting' here.

Now, Sir, the honourable Members who have placed the rulings before you of Dacca case 1969 - Supreme Court they may realize that that judgement was written by your worthy father Late Mr. Justice Sajjad Ahmed Jan. He was one of the exceptionally brilliant judges we had with deep insight. If he knew that what interpretation they put on this provision he would not have accepted the office of the Chief Election Commissioner knowing very well that when he assumed office as Chief Election Commissioner he had already retired from the Supreme Court and over 65.

Mr. Chairman: No. That is permitted under Article 213 (2):

"No person shall be appointed to the Commissioner unless he is or has been a Judge of the Supreme Court".

Mr. Yahya Bakhtiar: Further, "..... or".

Mr. Chairman: Yes, 'or', that is a third category.

Mr. Yahya Bakhtiar: No, 'has been', what does it mean ?

Mr. Chairman: You see there are three types of persons.

No.1, person who is a Judge of the Supreme Court.

No.2, who has been a Judge of the Supreme Court. So independently they are qualified. No.3, who has been a Judge of a High Court. But not every Judge, not every Judge.

Mr. Yahya Bakhtiar: I will submit that if that is a disqualification then that will apply all the same. 'Who has been a Judge of the Supreme Court'. What does it mean? Is it retired?

Mr. Chairman: Yes.

Mr. Yahya Bakhtiar: No. Mr. Justice Dorab Patel is not retired, Mr. Justice Fakhruddin is not retired. These judges were not retired. They can still be appointed as Judges.

Mr. Chairman: No. 'has been' means he has held the office.

Mr. Yahya Bakhtiar: 'has been' but he has not attained 65 years of age.

Mr. Chairman: Therefore, in this case age is not relevant.

Mr. Yahya Bakhtiar: It is very much relevant. It is very much relevant.

تمہاری زلف پر پہنچی تو حسن کملائی
وہ تیرگی جو میرے نامہ سیاہ میں ہے

How can it be not relevant when it is said that he shall be qualified to be a Judge of the Supreme Court? If he is qualified and qualification includes age then after the age of 65.

Mr. Chairman: You see they do not say 'he is qualified'. They say, 'No person shall be appointed'....

Mr. Yahya Bakhtiar: They have also suggested it.

Mr. Chairman: That is a third category.

Mr. Yahya Bakhtiar: That is in my case also. That is Supreme Court, October, 1979.

Mr. Chairman: No. No. That is a separate issue. I am just trying to interpret Article 213(2). Your argument about 1979 Supreme Court is a separate argument.

Mr. Yahya Bakhtiar: Supposing, Sir, a Judge of the Supreme Court retires at the age of 60 or resigns.

Mr. Chairman: Retires or resigns.

Mr. Yahya Bakhtiar: Retires or resigns, whatever it is, like Mr. Justice Dorab Patel. He is not still 65. I give a glaring example. He is appointed through clause (1). That will apply to him.

Mr. Chairman: Yes, so he is qualified.

Mr. Yahya Bakhtiar: But if he goes to 65.

Mr. Chairman: Even then he is qualified.

Mr. Yahya Bakhtiar: Why ?

Mr. Chairman: Because there is no disqualification.

Mr. Yahya Bakhtiar: The provision says, "he shall be qualified to be a Judge of the Supreme Court". That is also added with it.

Mr. Chairman: No. No. You see it does not talk of qualification of the Supreme Court Judge. It says, "No person shall be appointed Commissioner unless he is or has been a Judge of the Supreme Court. So, it does not say, qualified to be a Judge of the Supreme Court. It says 'has been'".

Mr. Yahya Bakhtiar: There is also a sentence further on,or'. You kindly refer to that.

Mr. Chairman: That is a third category. The third category is, 'or has been a Judge of the High Court'. Then they further qualify it, not every Judge of the High Court which means that a person who has been a Judge of the High Court for only three years, he would not be qualified but if he has been

[Mr. Chairman]

a Judge of a High Court for five years then he would be qualified to be appointed Commissioner.

Mr. Yahya Bakhtiar: Yes, but if it is a qualification, this will apply to every one - in the case of Attorney-General, the High Court Judge and the Supreme Court Judge. In Article 177(2) it is stated:

"177 (2): A person shall not be appointed" the same wording.

"a Judge of the Supreme Court unless he is a citizen of Pakistan"

as in the case of Chief Election Commissioner.

"and (a) has for a period of, or for periods aggregating, not less than five years, been a Judge of a High Court".

The same as applies to the Chief Election Commissioner.

"or (b) has for a period of, or for periods aggregating, not less than fifteen years, been an advocate of a High Court (including.....)"

The same thing, the same provision.

Mr. Chairman: You see the difference is that in the case of the Chief Election Commissioner they do not say, 'he should be qualified to be appointed a Judge of the Supreme Court. If he has held the office of the Supreme Court Judge he is qualified.

Mr. Yahya Bakhtiar: In my case - the Attorney-Generalship - they say, first he should be a citizen of Pakistan and qualified to be a Judge. In the case of the Chief Election Commissioner, if you permit me I will read it again.

Mr. Chairman: In fact, a person who has been an advocate for 15 years would not be qualified to be a Chief Election Commissioner.

Mr. Yahya Bakhtiar: I agree. I agree because they confine it to Judges; a Judge who has retired from the Supreme Court or a Judge who retired from a High Court and has held office for five years but the qualification, if you call it qualification of retiring at the age of 65, is very much there.

Mr. Chairman: Therefore, the qualification for appointment as a Judge is not relevant because as I said, a person with 15 years practice is qualified to be appointed a Judge of the Supreme Court but was not qualified to be appointed Chief Election Commissioner.

Mr. Yahya Bakhtiar: I will read it again. It says:

"213. (2) No person shall be appointed to be Commissioner unless he is, or has been, a Judge of the Supreme Court or is, or has been, a Judge of a High Court and is qualified under paragraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court".

Mr. Chairman: So that 'and' qualifies a person who has been a Judge of a High Court and, therefore, they qualify it further by saying not every Judge of a High Court.

Mr. Yahya Bakhtiar: Now, Sir. If you want me to interpret it in this way that if a Judge of a High Court who has held office for five years, he happens to be appointed as a Chief Election Commissioner then the disqualification - so-called disqualification of 65 years will apply to him but not to others. That is what you mean. That makes no sense with all respect.

Mr. Chairman: Please, if you will kindly read it, it says: "..... and is qualified under paragraph (a) of clause (2) of Article 177 to be appointed a Judge of the Supreme Court".

So, the reference is to qualifications under paragraph (a) of clause (2). Paragraph (a) of clause (2) talks of, "has been for a period or periods aggregating not less than five years been a Judge of a High Court". So, they are referring to a specific qualification.

Mr. Yahya Bakhtiar: It says, "he shall be qualified to be a Judge of the Supreme Court".

Mr. Chairman: No. No. Qualified under this paragraph.

Mr. Yahya Bakhtiar: So, does it apply. If a Judge of a High Court has held office for five years he is also qualified to be appointed Attorney-General. Kindly see the provision. It says, "any person qualified to be appointed a Judge of the Supreme Court. So, a Judge who retires at the age of 60 from a High Court can very well be appointed Attorney-General but does it mean that as for his case is concerned he will not retire at the age of 65 from the Office of the Chief Election Commissioner, or Attorney-General.

(Pause)

Mr. Yahya Bakhtiar: As I stated, Sir, just now this is not a qualification at all. This prescribes tenure and as I sub-

[Mr. Yahya Bakhtiar]

mitted if Mr. Justice Sajjad Ahmed Jan who gave the judgement had given this meaning to this, I am sure, he would never have accepted it because it is very clear. if the age of 65 applies, he retires, he would not have accepted this. So, this is not relevant.

Sir, further on as I have already stated under Article 196 and Article 195 a Judge of the High Court after he retires can again be appointed as a Chief Justice as in the case of Mr. Justice Mujaddad Mirza. So, that is not the sky limit - 62 years in a High Court. Similarly as I submitted after a Judge has retired from the High Court he can be appointed as an *ad hoc* Judge like Mr. Justice Waheed-ud-Din Ahmed. And at all times one has to bear in mind that the Attorney-General holds office during the pleasure of the President. He comes with a political party or political government and goes out with the political government, or as we have in Pakistan some fortunate who come with a military dictator and go with a military dictator come back with a military dictator and go back with a military dictator. His office is not specific to five years. It is a political office.

Now, Sir, I will, as I submitted before, not take more of your time and come to the privilege motion and its admissibility. And I stated earlier that I was suspecting about it that this privilege motion is misconceived and inadmissible. One of the conditions under Rule 62 on the admissibility of motion is that:

"the matter shall be such as requires the intervention of the Senate;"

How was the Senate called upon to intervene. If a stranger comes into the House, a person who is not qualified, the Senate will say, yes he is a stranger. I was not even in the House, I never came here, I never got the opportunity, never had the honour to come before the House.

Mr. Chairman: We will adjourn till 7.30 p.m.

(The House adjourned for *Maghrab* Prayers to meet again at seven thirty of the clock).

[The House re-assembled after interval with Mr. Chairman (Mr. Wasim Sajjad) in the Chair].

Mr. Chairman: So, you were saying that under Rule 62

this does not require the intervention of the Senate.

Mr. Yahya Bakhtiar: I was submitting that under Rule 62, if it requires the intervention of the Senate then it becomes a privilege motion. Now, Sir, as I submitted, I never came into this House, not that I did not want to, it would be an honour for me to be here any time, but because I had other pre-occupations. But the main thing which I would respectfully want you to make a note of is the position of the Senate. Is it a court of law or is it a legislature ?

Now, when an Attorney-General is appointed, he is appointed by the President on the advice of the Prime Minister. When he is appointed, it is gazetted. The gazette notification is brought to the attention of the Chairman of the Senate and the Speaker of the National Assembly. After that it is my respectful submission that nobody is authorized to question the validity of the appointment of the Attorney-General. It is just like a Member who is elected to this House and his name is gazetted. Nobody in this House has the authority to say he is not properly elected or there was rigging or he was not of appropriate age. These are matters which go either to the Chief Election Commissioner or to the court - the judiciary as to whether a person who is holding an office is qualified to hold that office or not. You will kindly appreciate this is a subject which the Constitution has given to the judiciary. The subject will be covered by Article 199 *quo warranto* and you will see that no provision in the Constitution authorizes the Senate to question the qualification or the validity of election or appointment of any Member of the Senate who is authorized or entitled to speak in the Senate under Article 57 but on the contrary under Article 199 of the Constitution a High Court on the application of a person may make an order requiring a person within the territorial jurisdiction of that court holding and purporting to hold a public office to show under what authority of law he claims to hold that office. No such power has been delegated to any other authority. Even the Senate or the National Assembly cannot go into the question that a Member is not properly appointed or properly elected. The privilege motion is therefore, out of order and not admissible. The Senate cannot go into this question because the Senate cannot convert itself into a court of law and if they do it, as I will be submitting in my next point, it will be interpreting the Constitution and that again is not permissible.

Mr. Chairman: That you have already said earlier. I have noted it.

Mr. Yahya Bakhtiar: I would like to say some thing more if you permit. The question before this House is that Articles 100, 177 and 199 have to be interpreted. What do they mean? What does interpretation mean? What is judicial power and what is jurisdiction? It is not the same thing as you are well aware. That jurisdiction is some thing quite different from judicial power. This is the legislature. It can confer jurisdiction on courts. It can take away jurisdiction from courts including the High Court and the Supreme Court but it cannot take away the judicial power of the High Court and the Supreme Court. That is the power of interpretation of law and the Constitution. This power resides only in the judiciary. I will give an instance, Sir, that General Yahya Khan in 1969 promulgated President's Order No. 3 of 1969. As your Lordship may have come across that in that order an attempt was made to take away the power of interpretation which vests in the courts.

Mr. Chairman: I do not think you see, anybody has argued that the courts have no power.

Mr. Yahya Bakhtiar: You have no power. That I want to show, not the courts.

Mr. Chairman: The only argument was that in this matter.....

Mr. Yahya Bakhtiar: What I am trying to point out, Sir, is that this House has no power whatsoever.

Mr. Chairman: That was the argument. They are not saying that courts have no power. They are saying that the Chairman also in these circumstances has the power.

Mr. Yahya Bakhtiar: The point is separation of powers. Some powers are given to you. Some powers are given to the National Assembly, some powers are given to the Executive, some powers are given to the Judiciary. Part of the Judiciary's powers are, what are your powers, what are the Parliament's powers and what are their powers - it is the Judiciary which decides.

Mr. Chairman: You see the argument was that in so far as it affects the procedures of the House, that is, anybody who is entitled to participate, not entitled to participate, what he should say, what he should do - that is the power of the House. So, in that context they had argued this.

Mr. Yahya Bakhtiar: That is what I am trying to explain,

Sir. That because of interpreting Articles 177, 179 and 100 they come to the conclusion that I am not entitled to be in this House. I say they have no right to interpret.

Yahya Khan tried and I am reading and I place before you that Order No. 3 of 1969. He said that if any question arises as to the interpretation of any Martial Law Regulation or Martial Law Order, it shall be referred to the Martial Law Authorities issuing the same for decision and the decision of such Martial Law Authority shall be final and shall not be questioned in any court, tribunal or other authority including the Supreme Court and the High Court.

In the Asma Jilani's case this point came up for consideration - the validity of this and I submitted as Attorney-General that this was an attempt to take away the judicial power of the courts which resides in courts and I quote from that case what the learned Judges said. It is page 195 Asma Jilani case, 1972, Supreme Court. It says:

"The learned Attorney-General does not seriously dispute the correctness of the contention that judicial power is different from jurisdiction and so far as judicial power is concerned it must exist in courts as long as the courts are there. In fact, he has been bold enough and I admire him for his boldness in characterizing these provisions of President's Order No. 3 of 1969 which seek to take away the judicial power itself, as absurdities. He frankly conceded that the courts must have the power to determine on questions of their own jurisdiction and it is a proposition so well settled that no one can challenge it. The law and the Constitution are made by the Parliament and if the Parliament were to assume the function of Judiciary by interpreting them also then the law maker or the Constitution maker would be acting like General Yahya Khan".

General Yahya Khan as a dictator came and he said, "I will make law, I will interpret it, I will enforce it". And what Montesque said that this is the very definition of tyranny-that the power of interpreting, the power of making and the power of enforcing are all in the same hand.

Mr. Chairman: Nobody has raised this contention.

Mr. Yahya Bakhtiar: You were taking the power of interpreting in your hand and you want to say you will make law and you will interpret it.

Mr. Chairman: No. No. The Chairman does not make any law.

Mr. Yahya Bakhtiar: I mean the Senate, Sir.

Mr. Chairman: So, this is not the Senate deciding, it is the Chairman who is going to decide whether it is admissible or not.

Mr. Yahya Bakhtiar: The Chairman can not give decision as a Judge.

Mr. Chairman: This argument is not even raised. So, I do not think it is relevant.

Mr. Yahya Bakhtiar: The question is that you are interpreting the Constitution.

Mr. Chairman: Yes, that is the question that in the circumstances of this case

Mr. Yahya Bakhtiar: My submission is that you have no right to interpret the Constitution. Let the court decide. It will be entirely for the court.

Mr. Chairman: Right. That is your point.

Mr. Yahya Bakhtiar: If you decide, I would respectfully say, it will be insulting this House; and it will be ignored because the real body is the judiciary and the court. The court may say, "yes he is not qualified because we interpret it like this".

Now, I will say, Sir, that since this body is the Legislature they should not act as a court and I would respectfully say that it will be acting as a court. If it says, "we hold that Mr. 'A' or 'B' is not qualified to be Attorney-General and, therefore, he is not allowed to enter this House or sit in the House." That is a verdict which only the Supreme Court can give or a High Court can give under *quo warranto* no such power is given. So, I will submit again that the provision in India and the provision of Pakistan are the same - qualified to be a Judge of the Supreme Court. In India also interpreted there, judgements are there and I pointed out the case of Mr. Motilal Sitalwal. He was Attorney-General after he was 65 and he remained till 1978 and the same applies here. This is not dis-qualification. A qualification is something very different from condition of service, very different from terms of service, it is very very different from disability as the Supreme Court has held that qualification cannot be mixed up with disability. A Judge of the Supreme Court is not authorized to hold another office of

private practice. A Judge of the Supreme Court is not authorized to have a right of private practice but the Attorney-General is allowed, tomorrow they will say - well Attorney-General cannot has a right of private practice also because he should be qualified to be Judge of the Supreme Court, it is not a qualification. This is a part of disability or assurance to a Judge that he will hold office upto that age. After that may be not as of right otherwise he could hold. I thank you very much, Sir.

Mr. Chairman: Thank you very much.

پروفیسر خورشید احمد: پوائنٹ آف آرڈر کیا میں محترم اٹارنی جنرل سے آپ کے توسط سے یہ clarification حاصل کر سکتا ہوں کہ ۱۹۷۱ء کے جس آرڈیننس کا وہ سہارا لے رہے ہیں کیا یہ وہی آرڈیننس ہے جو ایک آمر مطلق نے ۱۹۷۱ء کا سہارا لے کر نافذ کیا تھا اور جسے بدنام زمانہ Eighth Amendment نے sanctify کیا۔

جناب چیئرمین :- اس کا جواب دینے کی کوئی ضرورت نہیں ہے۔

Thank you very much. I think I will reserve my ruling on this question.

قاضی عبداللطیف: پوائنٹ آف آرڈر! گزارش یہ ہے کہ ہمارے قابل احترام اٹارنی جنرل صاحب نے جو کچھ فرمایا سر آئینکھوں پر لیکن میں گزارش کروں گا عدلیہ اور قانون ساز ادارے کے حدود کار ایک دوسرے سے بالکل مختلف اور واضح ہیں جہاں تک عدلیہ کا تعلق ہے وہ بنے بنائے قانون کی تعبیر ان کے الفاظ سیاق و سباق اور ان کی اصطلاحی لحاظ سے اس کی تعبیر کریں گے لیکن قانون ساز ادارے کا کام یہ ہے کہ وہ اس قانون کی کیفیت اس کی وجوہات اور اسباب پر بھی بحث کرے کہ یہ قانون کس لیے بنایا گیا تھا عدلیہ کا یہ کام نہیں ہے کہ اس کے اسباب اور وجوہات کی تلاش کرے وہ یہ نہیں بتائے گی کہ قانون سازوں کا ارادہ اس سے کیا تھا کیا وہ صحیح تھا یا غلط تھا اس کا اس سے کوئی تعلق نہیں ہے وہ تو یہ بتائے گا کہ ان الفاظ کے معنی اور اس کے سیاق و سباق کے معنی اور اس کی sitting جو ہوئی ہے اس کا مدعا اور

[Qazi Abdul Latif]

تعبیر یہ ہے لیکن قانون ساز ادارے کا کام یہ ہے کہ وہ یہ بتلائے کہ قانون سازوں نے یہ قانون کس لیے رکھا ہے اس کی وجوہات کیا ہیں اس کے اسباب کیا ہیں اس کے فوائد اور نقصان کیا ہیں جب کہ عدلیہ کو اس سے کوئی سرکار نہیں ہوتا کہ وہ کسی کو نقصان پہنچائے یا کسی کو فائدہ پہنچائے
جناب چیئرمین : شکریہ ! صرف ایک وضاحت کر دیں ۔

Has this matter been taken to court or is this pending somewhere ?
Because I have read about it somewhere.

Syed Iftikhar Hussain Gilani: It has not been but I just Mr. Chairman, if permitted, because there was a very pointed reference by you to Article 213, want to bring it to your notice that what would follow, if the interpretation that you were seeking to put on Article 213, will be like this that a person who is a Judge or has been a Judge of the Supreme Court he is appointed, even beyond 65 and there is no cavillery.

(Interruption)

Syed Iftikhar Hussain Gilani: No cavil with that proposition. Now, let us go to the second part. This would mean, what you Mr. Chairman, would mean that on the other hand if a High Court Judge is appointed under the same provision of Article 213 the moment he becomes 65 he is disqualified.

Mr. Chairman: No, it is not a general reference.

(Interruption)

Mr. Chairman: Let me just read it to you. The High Court Judge who is qualified, it says, I will omit the intervening words.

Syed Iftikhar Hussain Gilani: Forget the Supreme Court.

Mr. Chairman: Yes.

Article 213.(2) - "No person shall be appointed to be Commissioner unless he is, or has been, a Judge of a High Court and is qualified under paragraph (a)"

Syed Iftikhar Hussain Gilani: Exactly.

دیکھیں نہ Paragraph (a) of Article 177 تو Article 177 paragraph (a) of clause (2) that only reference to the five year period which a person as Judge must serve as Judge before he is qualified

to become Judge of the Supreme Court. So, a person let us say, who is a Judge only for three years he is not qualified, a person who is a Judge only for four years is not qualified but if a person has held office of a Judge for five years then he is qualified to become a Judge of the Supreme Court of Pakistan.

(Interruption)

Syed Iftikhar Hussain Gillani: We talk of Article 177.

Mr. Chairman: Yes, reference is to Article 177 (2) (a).

Syed Iftikhar Hussain Gillani: Correct.

Mr. Chairman: Article 177 (2) (a) says:

"A person shall not be appointed a Judge of the Supreme Court unless he is a citizen of Pakistan and-

(a) has for a period of, or for periods aggregating, not less than five years been a Judge of a High Court (including a High Court which existed in Pakistan at any time before the commencing day);"

That is all. So, the only reference is to disqualification.

Syed Iftikhar Hussain Gillani: Exactly. So, the total qualification, as such which I had earlier also submitted are contained in Article 177.

جناب چیئرمین : نہیں وہ argument تو آپ کی آپ کی ہے ۔
سید افتخار حسین گیلانی : اچھا جی ۔

Mr. Chairman: Now we are only interpreting Article 213.

Syed Iftikhar Hussain Gillani: Yes, 213. Now, the last which I will just reiterate that as learned Attorney-General has also stated before you that the Government's stand I must make it clear.

Mr. Chairman: We know your stand. You are saying, "we are not going to accept it."

Syed Iftikhar Hussain Gillani: We are not going to accept it, we don't consider this forum to be competent to interpret the Constitution

Mr. Chairman: My jurisdiction only is to decide whether this is admissible or not, that is my jurisdiction. It has nothing to do with your jurisdiction.

Syed Iftikhar Hussain Gillani: Mr. Chairman, admissibility would mean what ?

Mr. Chairman: As I said, whatever it means my jurisdiction only

(Interruption)

Syed Iftikhar Hussain Gillani: It would mean arriving at certain conclusion

(Interruption)

Mr. Chairman: I have only limited jurisdiction. When a privilege motion is raised I have to decide whether it is admissible or not. What is the effect of that I am not concerned with that. The House will decide, you will decide. But I will not issue a writ of *certiorari*, I will not issue a writ of *quo warranto*. I will only decide whether this privilege motion is admissible under the Constitution, law and the rules, that is all.

Syed Iftikhar Hussain Gillani: Assuming, for the sake of argument that you have held that it is admissible now what happens after that.

Mr. Chairman: We will see.

Syed Iftikhar Hussain Gillani: This is an august House that we have a respect for. It is an Upper House in the country and we don't want that this situation to be confronted with.

(Interruption)

Mr. Chairman: There are several privilege motions which are admitted what happens, they are admitted. Heavens don't fall.

(Interruption)

Mr. Chairman: I will only exercise the jurisdiction which has been given to me.

Syed Iftikhar Hussain Gillani: Only to the admissibility ?

Mr. Chairman: Yes, that is all. I will decide after all these arguments whether this privilege motion is admissible

under rule so and so of the Rules of Procedure and in doing that I will be referring to of course the Constitution, the law etc. and I will come to a decision.

(Interruption)

Syed Iftikhar Hussain Gillani: And therefore as I was submitting where such intricate legal arguments and submissions have to be addressed.

Mr. Chairman: No, that argument I have noted.

Syed Iftikhar Hussain Gillani: That means that we have to go to a superior court.

(Interruption)

Mr. Chairman: That argument has been noted. You are saying that an intricate legal question involving interpretation shall not be entertained, that I have noted.

Syed Iftikhar Hussain Gillani: Thank you.

Mr. Chairman: Prof. Khurshid Ahmed.

پروفیسر خورشید احمد :- میں صرف یہ پوچھ رہا تھا کہ آپ کے اس اعلان کے بعد کہ آپ رولنگ reserve کر رہے ہیں اگر لاؤ منسٹر Debate open کر سکتے ہیں تو ہمیں بھی حق ہے کہ ہم بھی پھر گفتگو شروع کر دیں۔
جناب چیئرمین :- کافی لمبا ہو گیا ہے۔

I would not like any further discussion on this, the ruling is reserved.

جناب چیئرمین :- جی reference دے دیں۔
(مداخلت)

Mr. Aitzaz Ahsan: You will see it directly, I will just tell you that Article 38 of the Constitution of 1956 provides similarly as in the provision of the present Constitution that:

[Mr. Aitzaz Ahsan]

"The Attorney-General shall be a person qualified for appointment unless he is qualified for appointment as a Judge of the Supreme Court."

Similarly, now, I am comparing these two. It does not mention the age as such.

جناب چیئرمین :- نہیں وہ تو دہی بات ہو گئی ناں۔

What is new in this ?

جناب اعتراز احسن :- مگر اگر آپ بھٹوٹی دیر ایک منٹ اور صرف آدھا سیکنڈ

اور ذرا تحمل کریں۔

جناب چیئرمین :- نہیں پوائنٹ کیا ہے۔

What are you trying to say ?

Mr. Aitzaz Ahsan: Article 72 of the same Constitution.

جناب چیئرمین :- یہی تو Formulate کریں نا۔

What is your point ?

جناب اعتراز احسن :- Formulation اس میں موجود ہے۔

آرٹیکل ۷۲۔

Mr. Chairman: What are you trying to say, what is your argument ?

Mr. Aitzaz Ahsan: My argument is very simple Mr. Chairman, if you will only bear with me.

Mr. Chairman: No. No. I will not bear with you, give me your argument.

Mr. Aitzaz Ahsan: I know you will not bear with me Mr. Chairman, but please

(Interruption)

Mr. Chairman: Please give me your formulation, what is your point ?

Mr. Aitzaz Ahsan: Mr. Chairman, there is an age limit - despite a similar language prescribed for the Advocate-General which would not be necessary. Had an age limit been implicit in the language of Article 38 - Article 72 I will just read to you.

Mr. Chairman: So, you are saying that under the 1956 Constitution there is a specific age limit on the office.

Mr. Aitzaz Ahsan: On the Advocate-General.

Mr. Chairman: I see, what is that Article ?

Mr. Aitzaz Ahsan: Now Article 72, allow me just to read these two Articles, I will add nothing of my own.

Mr. Chairman: Just read Article 72.

Mr. Aitzaz Ahsan: "No person shall be qualified for appointment as Advocate-General unless he is qualified for appointment as a Judge of the High Court but no person shall be appointed as Advocate-General if he is or has been a Judge of the Supreme Court or a High Court."

The first part:

Unless he is qualified for appointment as the Judge of the High Court."

The Sub-article (3).

This Sub-article(3) is not present with the Attorney-General, disqualification is specifically introduced here and not there.

جناب چیئر مین ! وہ کیا ہے - وہ بتائیں۔

Mr. Aitzaz Ahsan: "A person shall not hold office as Advocate-General after he has attained the age of 65 years".

[Mr. Aitzaz Ahsan]

Now, this is not there. This limit is not placed although the qualification is prescribed and if you will permit me now to read 38 of this Constitution which is in the same language. "No person shall be qualified....."

جناب چیئرمین : آپ کی بات سمجھ میں آگئی ہے ۔

You are saying that in the 1956 Constitution, specific age limit has been laid on the office of the Advocate-General. The same thing is not existing in the 1973 Constitution with respect to the Attorney-General or in the 1956 Constitution.

Mr. Aitzaz Ahsan: What I am saying is that in the prescription of the qualification to be a Judge of the Supreme Court, the age limit is not implicit.

جناب چیئرمین : ٹھیک ہے وہ سمجھ گئے ہیں ۔

Mr. Aitzaz Ahsan: that had to be specifically set out separately and if not set out, it is not an age limit.

جناب چیئرمین : شکریہ! سلیم صاحب، آپ کچھ کہنا چاہ رہے تھے ۔

جناب سلیم سیف اللہ خان : جناب والا! ...

Mr. Chairman: No, further discussion on this.

جناب سلیم سیف اللہ خان : میں جناب اتنی گزارش کرنا چاہتا ہوں کہ جب استاد محترم بول چکے ہیں تو شاگردوں کو کوئی حق نہیں ہے کہ وہ بولیں ۔
جناب چیئرمین : بس ٹھیک ہے، انہوں نے نئی بات کی ہے ۔

about 1956 Constitution which is relevant.

جی پروفیسر صاحب ۔

پروفیسر خورشید احمد : جناب چیئرمین! میں نے آج رول ۱۹۴ کے تحت ایک

بڑی اہم قرار داد کا نوٹس بھیجا ہے، جو اس امر سے متعلق ہے کہ جو deadlock

National Economic Council میں پیدا ہوا

جناب چیئرمین : قاعدہ ۱۹۴ کے تحت . . . لیکن آج پرائیویٹ میمرز
ڈے نہیں ہے ۔

Today is Government business, how is Rule 194 relevant today ?

MOTION UNDER RULE 236

پروفیسر خورشید احمد : جی، میں آپ کے اعتراف کا بڑا ممنون ہوں، میں اس
سے واقف تھا اس لیے میں نے اس کے ساتھ ہی ایک بات بھی move کرتا ہوں کہ

I beg to move that under Rule 236, the requirements of Rule 22 and 26 may be suspended to enable the House to discuss the motion under Rule 194. I want to move today i.e.;

"This House may discuss the situation arising out of deadlock in the National Economic Council and the refusal of the Federal Government to hold a meeting of the Council of Common Interests before the ensuing budget resulting in a grave constitutional crisis in the country."

تو جناب والا ! یہ ایک ایسا مسئلہ ہے کہ جو فوری اہمیت کا ہے، اور میں اسی
لیے یہ بات مود کرتا ہوں کہ ہم ایوان سے اس بات کی اجازت لیں کہ ۲۳۶ کے تحت جو
normal condition ہے، اس کو suspend کر کے، اس قرار داد کے اوپر
فوری طور پر غور کیا جائے ۔

جناب چیئرمین : لیکن اگر ہاؤس آپ کو اجازت دیتا ہے تو مجھے

I can not object to that.

پروفیسر خورشید احمد : تو ہاؤس سے پوچھ لیں۔ آپ ہاؤس سے اجازت
لے لیں ۔

Put it to the House.

Mr. Chairman: I will put it to the House but also I would say that a matter like this, you should give notice to the Government, so that they can also answer it.

پروفیسر خورشید احمد: پہلے آپ ہاؤس سے اجازت لے لیں، اس کے بعد ہم modalities کے بارے میں غور کر سکتے ہیں، پہلے یہ دیکھ لیں کہ ہاؤس اجازت دیتا ہے یا نہیں،

Mr. Chairman: O.K. I will put it to the House if the House so desires, but normally we take up the business which is on the agenda and it is not permissible to take.....

پروفیسر خورشید احمد: جناب چیئرمین! روایت یہ ہے کہ ہم نے پرائیویٹ کی تقریر پر، بحث کے لیے قربان کیا تھا،۔۔۔۔۔

Mr. Chairman: I agree with you, the House has the power. I don't have the power.

Prof. Khurshid Ahmed: Then you should ask the House.

Mr. Chairman: It has been moved by Professor Khurshid Ahmed under Rule 236 of the Rules of Procedure and Conduct of Business in the Senate 1988 that the requirements of Rule 22 and 26 may be suspended to enable the House to discuss the motion under Rule 194, today.

(The motion was adopted)

Mr. Chairman: The Rule 22 and 26 stand suspended. Now please read your motion. What is the motion you want to take up.

Motion Re: refused of the Government to hold meeting of the Council of Common Interests.

Prof. Khurshid Ahmed: I beg to move:

"This House may discuss the situation arising out of deadlock in the National Economic Council and the refusal of the

MOTION Re: REFUSAL OF THE GOVERNMENT TO HOLD MEETING
OF THE COUNCIL OF COMMON INTERESTS

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Federal Government to hold a meeting of the Council of Common Interests before the ensuing budget resulting in a grave constitutional crisis in the country."

جناب والا! میں چاہتا ہوں کہ فوری طور پر اس مسئلہ کے اوپر ایوان میں بحث کی جائے
اور رول ۱۹۴ کے تحت میں discussion کے ساتھ ساتھ، ایک
substantive resolution بھی move کرنا چاہتا ہوں۔

Mr. Chairman: Mr. Law Minister would you be prepared or you want time because I think you have been taken by surprise, I am sure. So, I think what you can do is

مام بھی آج کم ہوگا۔

May be, you can move this and make a brief statement and then we can take it up in more detail tomorrow, so that the Government can answer this in detail.

Syed Iftikhar Hussain Gillani: Mr. Chairman, if I can just make a request because the Prime Minister is not in the country and I will unfortunately not be available tomorrow, I mean just put it to the House, you can take it up on Saturday.

Mr. Chairman: Saturday is an off day.

Syed Iftikhar Hussain Gillani: Next rota day - Sunday.

Mr. Chairman: Professor Sahib, what is your opinion, the Law Minister has requested that tomorrow he would not be here, so he is requesting that it may be as far as Government is concerned taken up on Sunday.

پروفیسر خورشید احمد: حکومت کے پاس تو وزراء کی بہت بڑی فوج ہے۔

Mr. Chairman: You see, what we will do is that you move it today, I am sure you would be wanting to make some speeches on it tomorrow and we will see it tomorrow what the position of the Government is. If they are prepared, fine, if not, then we will take it up on Sunday. So, you can move this today and make a brief statement.

Prof. Khurshid Ahmed: Sunday is the Private Member's Day.

Mr. Chairman: We will decide this tomorrow but for the time being you just read your motion and make a brief statement on it.

پروفیسر خورشید احمد :- جناب والا! جہاں تک اس موشن کے الفاظ کا تعلق ہے وہ تو میں نے ابھی پڑھ کر سنائے ہیں۔ اور میں جس بنا پر یہ قرارداد ایوان کے سامنے لایا ہوں، وہ یہ ہے کہ ہم سب کو وہ جمہوری عمل بہت عزیز ہے جو بڑی مشکل اور بڑی کوششوں کے بعد شروع ہوا ہے، لیکن اس جمہوری عمل کے استحکام، اس کے پروان چڑھنے اور اس کے صحیح سیاسی ثمرات produce کرنے کا انحصار اس بات پر ہے کہ ہم سب قانون کا احترام کریں، دستور کا احترام کریں، اور عوام نے جو mandate اور جتنا mandate دیا ہے، اسی کے مطابق معاملات کو، آگے - چلانے کی کوشش کریں۔

جناب والا! میری نگاہ میں پاکستان کی تاریخ میں ایسا نازک لمحہ کبھی نہیں آیا جتنا کل کی نیشنل اکنامک کونسل میں پیدا ہونے والے تنازعہ سے رونما ہوا ہے۔ جناب والا! اختلاف ہمیشہ رہے ہیں لیکن اختلافات کو accommodate کرنا، ایک دوسرے کی رٹے کا خیال کرنا اور دیل کے ساتھ، انہام و تفہیم کے ساتھ کوئی نہ کوئی راستہ نکالنا، یہ طریقہ رہا ہے اور یہی طریقہ ہے کسی بھی ملک کے نظام کو چلانے کا، سیاست اسی وقت کامیاب ہو سکتی ہے جب اس ذہن کے ساتھ کام کیا جائے اور آپ کو یاد ہو گا کہ جب ہلک در کس پروگرام پر میں نے یہ بات کہی تھی کہ دستور میں تین راستے موجود ہیں جن کے تحت اس کا حل نکالا جاسکتا ہے، تو میں ممنون ہوں کہ جناب وزیر عدل نے جن کا رویہ بالعموم بڑا accommodating رہا ہے، بہت ہی balanced رہا ہے، انہوں نے یہ بات کہی تھی کہ ہاں، نیشنل اکنامک کونسل، کونسل آف کامن انٹرسٹس، اور جوائنٹ کیشن، یہ تینوں دستور کے تحت وہ راستے ہیں، جن سے صوبوں اور مرکز کے درمیان ابھرنے والے تنازعات کو resolve کیا جاسکتا ہے، اور مجھے ان کے اس بیان کے بعد بڑی توقع تھی کہ نیشنل اکنامک کونسل میں انہام و تفہیم کا راستہ اختیار کیا جائے گا لیکن جناب والا! جو رویہ دیا گیا اختیار

کیا گیا ہے، اور اس کے نتیجے کے طور پر پہلی مرتبہ درصوبوں نے
Annual Development Program کے اوپر dissent دیا، اور یہ میڈیا
کی ستم ظریفی ہے کہ ایک طرف بلوچستان کا چیف منسٹر اور پنجاب کا چیف منسٹر
disagree کر رہا ہے لیکن کل ٹی وی نے یہ کہا کہ نیشنل اکنامک کونسل نے متفقہ فیصلے
کیے، حالانکہ اس کے بعد وزیر مملکت برائے مالیات نے اپنی پریس کانفرنس میں ان اختلافات
کی طرف اشارہ بھی کیا لیکن اس کے باوجود ٹی وی کو یہ ہمت ہوئی کہ اس نے ان فیصلوں کو متفقہ
کہا، لیکن پاکستان کی تاریخ میں پہلی مرتبہ یہ سانحہ رونما ہوا تھا کہ متفقہ فیصلے نہیں ہوئے اور
دونوں صوبوں کے وزراء اعلیٰ نے تحریری طور پر وزیر اعظم سے مطالبہ کیا ہے کہ وہ کونسل آف
کامن انٹرسٹس کا اجلاس بلائیں، اور جس بنیاد پر بلائیں وہ کیا ہے، مثلاً چیف منسٹر بلوچستان
کہتے ہیں کہ

Dear Prime Minister,

In the meeting of the National Economic Council, held today, I raised a number of issues pertaining to the socio-economic development of Baluchistan. The major issues relate to the distribution of National Development Funds between the Federation and the Federating Units, enhancement of allocations of some important projects of Baluchistan involvement of Baluchistan in economic development by inducting Baluchistanis at all levels particularly, at the decision-making level in Ministries, federal corporations, electrification through WAPDA providing development surcharge on gas to Baluchistan. These issues were also discussed in the meeting of Annual Plans Coordination Committee which decided that these letters be placed before the NEC for consideration. I was hoping for a favourable response from the Federation in the meeting of the NEC. Unfortunately, the meeting of the NEC ended in a deadlock between the provincial and federal positions on these issues, of vital economic significance. I had no choice except to disagree to the proposals submitted by the Federation before the NEC. The role of the National Economic Council is purely advisory, under Article 156(2), of the Constitution. In the circumstances, it has now become imperative to convene a meeting of the Council of Common Interests under Article 153 and 154 read with the IV schedule Part II of the Constitution. In this manner, a solution to the present deadlock could be found, within the framework of the Constitution.

[Prof. Khurshid Ahmed]

I am of the view that such a meeting should be convened before the presentation of the forthcoming budget which is bound to be affected by the decisions to be taken in the Council of Common Interests.

جناب والا! بلوچستان کے وزیر اعلیٰ نے یہ بھی کہا ہے کہ میں نے ڈیڑھ ماہ پہلے Council of Common Interests کے بارے میں حکومت کو متوجہ کیا تھا کہ اس کا اجلاس بلایا جائے۔ لیکن مجھے کوئی جواب نہیں دیا گیا۔ اسی طرح جناب والا! چیف منسٹر پنجاب نے جو خط وزیر اعظم کو لکھا ہے اور اس میں بھی اسی صورت حال کو واضح کیا ہے چیف منسٹر پنجاب کہتے ہیں :-

The meeting of the National Economic Council held today has unfortunately led to serious deadlock between the Provincial and the Central positions on issues of vital economic significance. I am personally very disappointed since I had come to the meeting in a positive and constructive spirit, hoping for a consensus in the national interest. Since the National Economic Council is only an advisory body, under Article 156(2) of the Constitution, it becomes imperative that a meeting of the Council of Common Interests should be immediately convened under Article 153 and 154. A solution to the present deadlock could then be found within the framework of the Constitution.

I suggest that such a meeting should take place before the presentation of the forthcoming budget which are dependent on decisions to be taken in the Council of Common Interests.

جناب والا! یہ ایک بڑا ہی نازک وقت ہے بڑا ہی پریشان کن

Constitutional crisis پیدا ہوا ہے - Council of Common Interests

کو بلائے بغیر فیصلے نہیں کئے جاسکتے اور اگر Council of Common Interests

صحیح فیصلوں پر نہ پہنچ پائے تو دستور کے تحت فیڈریشن یا provinces کو اختیار ہے

کہ وہ درخواست کریں Joint Session بلانے کے لیے، اور پھر Joint Session

کو یہ اختیار حاصل ہے that it can give directions to the Government

اور اس کا فیصلہ binding ہے under the Constitution تو جناب والا! اس

موقع کے اوپر سینیٹ کی ذمہ داری ہے کہ وہ پوری سمجھ داری کے ساتھ ایک مثبت ردِ عمل ادا کرے۔ ہم حیدرآباد نہیں چاہتے کہ ایسے معاملات سڑکوں پر طے ہوں اگر آپ نے ان کو سڑکوں پر طے کیا تو پھر اس ملک میں جمہوریت کے دن گنے جا چکے ہیں۔ ہم نہیں چاہتے کہ اس کے نتیجے کے طور پر تلخی پیدا ہو، جھگڑے پیدا ہوں اور وہ کیفیت پیدا ہو جو ایک صوبے میں پیدا ہو گئی ہے کہ ایک طرف مرکز سے زیرِ حکم کچھ اقدامات کئے جاتے ہیں اور دوسری طرف صوبے کے زیرِ حکم ان کو nullify کیا جاتا ہے۔

Mr. Chairman: I think, we will take up further discussion on this matter tomorrow. Yes, Law Minister, on point of order.

Syed Iftikhar Hussain Gillani: I am really grateful to the honourable Member for expressing this matter in the spirit that he is doing and I am sure, that he means every word that he has uttered but it is really painful today, the way the official documents are being circulated, the Official Secrets Act is being blown to the winds. We have become so unreasonable unfortunately today, Mr. Chairman, it is really painful. Now let us see the resolution, Mr. Chairman, and I just beg of you, you are a very eminent lawyer. It says :

"And the refusal of the Federal Government to hold a meeting of the Council of Common Interests."

This letter of which I have not as yet got a copy the Prime Minister has not yet got a copy and they say that we have refused. I make this statement before this august House and I beg to honourable Members who unfortunately against the very kind nature that today, a little more excited, agitated that this letter has not and I assure you last night the press informed me about this, Sir, and I make this statement with all the responsibility before this very august and honourable House, the press informed me and I checked up with the Prime Minister. I am making this statement Sir, I checked up with the Prime Minister at quarter to ten p.m. I asked whether the Prime Minister had received a letter. The Prime Minister informed me 'No'. The Prime Minister and I am grateful to destiny. You were present there, she left this country this morning on an official tour at about 9.30 A.M. So, I assure you, Sir, that the contents of the resolution itself may kindly be considered

by you, Sir.

Mr. Chairman: We will take it up tomorrow.

Syed Iftikhar Hussain Gillani: The refusal of the Federal Government; where is the refusal. It has not even been considered once, God forbid. If it is considered and there is a cause of action they can come, and I assure every Member. Sir, we are very grateful for talking about the Constitution, we shall abide by its every word, every letter but let us not become so unreasonable about Official Secrets Acts and I beg to every Member that they should have quietly said that we read it in the press. These official documents you, Mr. Chairman, Sir, need not be told that these are official documents and signed by a Chief Minister to the Prime Minister of a country, not a document of a political leader to another political leader. The political leaders have their own entities but once a Chairman Senate under an oath has a statute in this country number two by the President, so as the Chief Minister in a province, so as the Prime Minister in the country. I hope and pray that we become reasonable and not talk about and circulate these documents in the press the photostat of the letters which is totally Sir, a violation of the Official Secrets Act, of the oath of this very Constitution that we took over.

Mr. Chairman: But they were circulated yesterday, I believe.

Syed Iftikhar Hussain Gillani: Yes, Sir. Yes, Sir.

Mr. Chairman: Anyhow, we will take it up in detail later today. I want to have the statement of Mr. Farooq Leghari, he is here.

پروفیسر خورشید احمد: جناب سپریمین! ایک بات کی وضاحت کرنا ضروری ہے وہ یہ ہے کہ آفیشل سیکرٹس ایکٹ کیا ہے؟ ہم بھی جانتے ہیں؟ اس بات کو، اور N.E.C. کی کارروائی کے جو حقے اخبارات میں آتے ہیں وہ بھی ہمارے سامنے ہیں اور میں نے جو بات مکھی ہے اسکی بنیاد یہ ہے کہ مسلم میں، نہ صرف مسلم میں بلکہ سارے اخبارات میں خود گیلانی صاحب کا بیان موجود ہے جس میں انہوں نے اس بات کا اظہار کیا ہے کہ چیف منسٹر کا یہ خط بالکل unwarranted ہے۔ uncalled for ہے۔ اور

کے بلائے جانے کا ان حالات میں سوال
 Council of Common Interests
 پیدائیں ہوتا۔ یہ تمام چیزیں اخبارات میں
 printed موجود ہیں۔ اور ہم نے اسی کی بنیاد
 پر یہ بات کہی ہے

Mr. Chairman: You see, we will take up this matter in more details tomorrow.

Syed Iftikhar Hussain Gillani: I honestly reiterate that I have not and neither the Prime Minister

پروفیسر خورشید احمد: یہ دونوں خطوط چیف منسٹرز کے نمائندوں نے
 Press Conference میں officially release کئے ہیں۔۔۔۔

- مداخلت -

پروفیسر خورشید احمد: اگر آپ کہیں گے تو میں آپ کو مثالیں دے سکتا
 ہوں کہ اس سے پہلے خود جناب بھٹو صاحب۔۔۔۔ (مداخلت)

Mr. Chairman: Prof. Sahib, please take your seat. We will take it up tomorrow.

Dr. Noor Jehan Panesayi: Point of Order, Sir.

Mr. Chairman: No point of order.

ڈاکٹر نور جہاں پانیڑی: لیکن باتی movers کو بھی تو move کرنے دیں گی۔

جناب چیئرمین: ابھی نہیں۔ We will take it up tomorrow.

Mr. Chairman: Yes you please Farooq Leghari Sahib, you were to answer the Call Attention Notice moved by Maulana Sami-ul-Haq, Mr. Tariq Chaudhry, I think.

[Mr. Chairman]

غائباً مولاً سمیع الحق صاحب کا تھا۔

Only Maulana Sami-ul-Haq Sahib's Call Attention Notice regarding the load-shedding.

Sardar Farooq Ahmad Khan Leghari: Mr. Chairman, Sir, it is good to see Senate reverting back to its normal work. For sometime I thought we were sitting in a court of law.

Sir, Senator Sami-ul-Haq has moved a motion regarding load shedding in the country. It reads:

"Senator Sami-ul-Haq seeks to call attention of the Minister for Water and Power to the following matter of grave urgent public importance regarding loadshedding of electric power from 8 to 12 hours in a day as a result of which Agriculture and Industry are suffering huge losses and general public is experiencing immeasurable difficulties and problems in the prime of hot season".

Mr. Chairman, this country is suffering from loadshedding. We have inherited loadshedding. Pakistan is deficient in power generation. We have been deficient in power generation for the last 12 years. For the first time when this country experienced heavy loadshedding it was in the year 1982-83. At that time the illegal Martial Law Government of the day declared that they would embark upon a special programme to cut short loadshedding. In five long years of Martial Law Government they could only add 1500 Mgwts. The rate of growth of power generation remained abysmally low. The demand for electricity kept rising at an average of more than 10% a year. Today the increase in demand is of the order of roughly 12% according to conservative estimates. My own estimates keeping in view suppressed demand is roughly 15% annually and it was for this reason - for the reason that over the last 12 years sufficient investment was not made in this vital sector and sufficient attention was not paid to the very important infra-structure on which the welfare of the people of this country, of the economy is based, it was for this reason that today we have such a wide gap. Whereas in 1982-83 the gap was small about 450 Mgwts, it has now gone up to 1800 Mgwts.

I do not wish to harp too much on the failings of the previous regime. When the time comes for debate, we can debate

it, we can talk about it, we can talk about it during the budget. Since I am required to make a short statement it would suffice to state that the investment made was very low, the demand was increasing at a fast pace, there was lack of policy, ad-hocism prevailed, the Government of the day sometimes talked of increasing hydel generation. They just raised controversies and did nothing about it. They raised controversy over the Kalabagh Dam. Provincial Governments under the same Martial Law regime spoke in different languages. They accused each other - one Provincial Assembly said that the dam would be built over their dead bodies, another Provincial Assembly passed resolutions that the dam i.e. Kalabagh Dam was essential for its existence. So, this controversy was started, it was fueled and encouraged by the dictators of the day because it helped them to stay on in power and the self-serving experts and technocrats helped them in that. They talked of evolving policies, of coming up with new initiatives and they did nothing. They set up thermal power stations based on expensive fuels which only acted as a drain on the country's balance of payments and in this manner for want of a policy, for want of a clear policy and because the entire policy was based on ad-hocism there was very little progress. Whatever investment was made was not put to proper use. There was wide scale corruption. There was talk of commissions. Defective machinery was installed. Purchases were made in such a way that a technology which was fifteen years old was purchased and its units were installed with the result that there were unusual outages. Some of the thermal power stations and the turbines that were put up were of such inferior type that their outages were much greater than the normal outages and the result of all that is excessive loadshedding. Today, the people of Pakistan have to suffer, today, the industry, agriculture, the commerce and most of all domestic consumers of electricity - the citizens of Pakistan have to suffer because of the misdeeds of the previous regimes.

The difference between the demand and supply today has a certain pattern. From six O'clock in the evening i.e. 1800 hours to 22.30 hours or roughly 2300 hours, that is, for these $4\frac{1}{2}\%$ to 5 hours there is a load shedding of approximately 1800 Mgwts, from 2300 hours to 0800 hours in the morning the next day load shedding is roughly of the order of 700 to 800 Mgwts, from 0800 hours to 1800 hours the same day, load shedding is roughly of the order of 1100 Mgwts. So, during the 24 hours cycle of the day and night load shedding varies and that reflects the pattern of demand.

[Sardar Farooq Ahmed Khan Leghari]

As far as the supply is concerned our installed capacity is more than the electricity that is being generated today. During certain months of the year the flows in the rivers go down. The worst month for the river Indus from the point of view of hydel generation and keeping in view the existence of Tarbela Dam, is the month of May because river Indus is a late riser. Flows into the lake of Tarbela are low during the months of winter but during the early winter and going upto early spring there is sufficient water available in the reservoir at Tarbela and keeping in view the needs of irrigation downstream and also on account of the high levels of the pond because water has to be stored and there is sufficient head available the drop in output is not very large. But the drop in output is the greatest i.e. the least amount of electricity is generated from Tarbela Dam in the month of May, this is the normal pattern. So, from an installed capacity of roughly 1750 Megawatts but with a peak output of roughly 2200 Megawatts at its highest Tarbela comes down to something like 560 Megawatts every year. This year because of unusually high snow fall which is a good thing and it will prove beneficial during the later part of the year but because of the unusually high snow fall and because of the persistence of relatively cooler temperatures in Skardu and in the Northern areas the melting of the snows was less than in the previous years and the inflow into Tarbela was, therefore, lesser than before and the result was that the levels of Tarbela came down even more and they reached more or less the lowest critical level beyond which we could not release more waters and it was for this reason because of the low head available that the production of electricity from Tarbela came down to 544 Megawatts.

Similarly we have a problem on the other major hydel project which is Mangla. In Mangla we have an installed capacity of 800 Megawatts but at its peak we can produce almost 1000 Megawatts and yet today Mangla is producing 700 Megawatts. The worst month for Mangla is March. The river Jhelum is an early riser and therefore by May the pond starts filling up and the head increases with resultant increase in the electricity output. The other hydel we have in Pakistan which has any significance is Warsak. There again the pattern is more or less the same during the summer months when there is rain fall and when snows melt in Afghanistan and other parts, the catchment areas of the Kabul river the production of electricity goes up and then it reduces by more than sixty or seventy percent during the lean period. So, always there is a significant reduction in hydel power. In Pakistan we have also developed over the years thermal generation capability.

Right now I am only talking of WAPDA's system. Apart from WAPDA there is the Karachi Electric Supply Corporation, we will come to that later but as far as WAPDA system is concerned almost fifty percent of the total installed capacity is in hydel and fifty percent approximately in thermal. Now, in thermal because of the faulty policies that I eluded to earlier a sound base load system has not developed. We had vast resources of coal in Pakistan. The coal was known to exist in Pakistan for many years. We had coal reserves in Baluchistan, we had coal reserves in Punjab and we had very significant and very large coal reserves in Sind. The coal reserves of Lakhra which are estimated to be over one billion tons have been known for more than twenty years but in the last twelve years when technology for exploitation of the high sulphur, high ash, low BTU value coals which are also known as licknites when the technology for utilizing those coals was available had developed to a point where they could usefully be utilized for power generation. When all this was known nothing was done to exploit it. So, twelve valuable years were lost. There was no policy. We had high sounding names who were involved in planning, who were involved in finance etc. etc. and they did nothing about it. They failed to evolve a clear policy to develop thermal power with a sound load base.

Apart from Lakhra there are even bigger coal deposits in Thatta. It is estimated that in Thatta the coal deposits may be of the order of seven or eight billion tones and yet nothing was done to carry on investigations and detailed surveys to enable either the Government or the private sector to produce coal for energy production. Then, again I remember governments of the past and specifically the governments which came under the umbrella of the last dictator, those governments kept talking of the need for more power generation, they kept talking of crash programmes, of emergency programmes to reduce the gap but they never came up with a significant programme and they kept complaining of shortage of investable funds in the public sector.

Mr. Chairman: How much longer will you take, you think?

Sardar Farooq Ahmed Khan Leghari: Whatever time you give me, Sir.

Mr. Chairman: The Rules permit you only ten minutes.

Sardar Farooq Ahmed Khan Leghari: I am sorry, I am not very well conversant with the procedure in the Senate.

[May 24, 1989]

Prof. Khurshid Ahmed: Point of order Mr. Chairman.

Mr. Chairman: Prof. Khurshid Ahmed on a point of order.

پروفیسر خورشید احمد: ہم سپریم کورٹ سے پولی ٹیکنک تک تو پہنچ گئے ہیں لیکن یہ جاننا چاہتے ہیں کہ موجودہ حکومت نے 4 مہینے میں کیا کیا ہے اس سچویشن کو حل کرنے کے لیے اور جو میٹرن سب کے سامنے تھا اور جس کے بارے میں آپ نے منسٹر میں کہا تھا کہ ہم اگلے گیارہ سال میں 10 ہزار میگا واٹ تک بجلی کی پیداوار پہنچا دیں گے، تو ان چھ مہینوں میں آپ نے کیا کیا۔ یہ بتائیے۔

Mr. Chairman: You (Mr. Minister for Water and Power) don't have to respond to this.

Sardar Farooq Ahmed Khan Leghari: If I had known that I can only speak for ten minutes I would have confined myself to that.

Mr. Chairman: I will give you another five minutes.

Sardar Farooq Ahmed Khan Leghari: Now, I will try to make myself as brief as possible but I must respond to what the honourable Senator has said.

Mr. Chairman: O.K. If you care to it, you can.

Sardar Farooq Ahmed Khan Leghari: Yes. Now, it is in our manifesto surely, certainly that we would aim to produce forty thousand Megawatts by the end of the century and we think this country needs that kind of power and we do not agree with a Seventh Five Year Plan's targets and we do realize that there is a constraint, we have a shortage of resources and I would also add that in the last twelve years structural reform you mobilizing of resources, for increasing the capacity to mobilize resources which was over due, nothing was done to go ahead with that and important decisions were postponed. So, today our Government has to take those measures and we will take those measures. We will increase our capacity to mobilize resources and if we cannot mobilize sufficient resources in the public sector for power generation, we will encourage the private sector.

We heard a great deal in the previous regime of efforts to encourage the private sector but the result was zero. There are honourable Members of this very body who will bear testimony to the fact that there was a great deal of talk about associating the private sector in power generation but nothing substantial was ever done. Not a single project was approved by the previous regimes. It was only after the PPP came into power during these last four or five months that the honourable Senator is referring to that we took bold decisions we shook the bureaucracy up, we made files move and very soon we will have the first agreement on a very big power project in the private sector which will add almost twenty percent to our total generation capability and quite apart from that we have also laid down a new policy and let everyone hear that and that new policy is that we are going to base our entire new thermal generation programme on indigenous coal, and on low quality gas which cannot be used for fertilizer or domestic use. So, that is going to be our policy. Our base-load is going to be thermal power based on coal and let me also add that one of the major reasons why we feel this big gap which faces us stockily today is that over the last 12 years the nuclear programmes for peaceful purposes for generation of electricity was scuttled, was deliberately sabotaged by the previous regime and nothing concrete was done. Had those policies of the Pakistan Peoples Party initiated by Shaheed Zulfiqar Ali Bhutto been followed, had Martial Law not been imposed, we would not have had this gap because we would have generated a great deal of electricity from nuclear energy and even today, it is a part of our manifesto and it is a part of our programme to make all efforts to get power from nuclear stations as well. So, we are doing a great deal. The honourable Senator must know that it requires sometime to put up thermal or hydro-electric power stations, a big power station based on hydel energy and on water it is really a super dam and that takes almost 12 years to complete. We are processing and we are hastening all those hydel projects which are of relatively shorter gestation period. We are also hastening all those projects in the thermal side which are of a shorter gestation period and we are introducing a crash programme. We have done the planning, we have evolved a new policy and we are going to go ahead very fast with it. Now, on the other side given this gap - given the situation which we have, what have we done to mitigate the ill-effects, what have we done to reduce the ill-effects of this horrible gap on the public on our industry and agriculture. Well, first of all we have made a programme of distributing the effects of load-shedding in such a manner that the least ill-effect is obtained.

[Sardar Farooq Ahmed Khan Leghari]

No. 1, we have decided and in fact we are implementing a policy where the industries which are not of a continuous process type, they are compulsorily shut down during the peak load hours - 4 hours between about 6.30 and 10.30 at night. We are not doing any load-shedding for continuous process industries. So, industries such as cement, fertilizers, chemicals, oil, ghee, edible oil etc., they are not subject to any load-shedding. Industries which are wasteful of electrical energy like furnaces are shut down for one whole shift that is approximately eight hours. We have also asked the commercial centres not to display neon signs and other wasteful electricity consumption. We have also laid down that expensive electricity consuming things like lot of lights on weddings etc., these will be discouraged and these will not be allowed.

Let me also declare on the floor of this House that we have directed the Federal Government that all airconditioning from the hours of 8.00 'O' clock in the morning till 11.00 A.M. will henceforth be stopped so all federal agencies will be informed by tomorrow that they will not use airconditioners from 8.00 'O' clock in the morning to 11.00 'O' clock. We are also advising the Provincial Governments and all the public sector organizations under the Provincial Governments as also under the Central Government that they should reduce - they should in fact stop using airconditioners between the hours of 8.00 'O' clock in the morning to 11.00 'O' clock in the morning. We are also appealing to the public to reduce the consumption of electricity as much as is possible. An appeal has already been made by Chairman WAPDA. I will also be making this appeal. We are also appealing to the public through advertisements in the national press and through the radio and television. We are also informing the public in every Area Electricity Board in every region about details of load-shedding area-wise, sector-wise and we try to ensure that the effects of load-shedding do not fall on any one community or class or people more than the others. Thank you very much.

Mr. Chairman: Thank you very much. The House is adjourned to meet again that is the 25th of May, 1989 at 10.00 A.M.

[The House adjourned to meet again at ten of the clock in the morning on Thursday, May 25, 1989].