SUPREME COURT OF INDIA

Tula Ram

Vs.

Kishore Singh

Crl.A.No.6 of 1976

(S. Murtaza Fazl Ali and P. S. Kailasam, JJ.)

05.10.1977

JUDGEMENT

FAZAL ALI, J.:-

1. Whether or not a Magistrate after receiving a complaint and after directing investigation under Sec. 156 (3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) and on receipt of the final report from the police can issue notice to the complainant, record his statement and the statements of other witnesses and then issue processes under S. 204 of the Code is the question of law that falls for consideration in this appeal.

2. This is an appeal by certificate granted by the High Court under Art. 134 (1) (c) of the Constitution. The answer to the proposition mentioned above would naturally depend on the true and proper interpretation of the scope and ambit of Sections 156 (3), 190, 200, 202 and 204 of the Code.

3. Before embarking on this enquiry it may also be necessary to consider the legal import and significance of the term "taking cognizance" as used in Sections 190, 200 and 202 of the Code. Before however considering the various aspects of the matter it may be necessary to summarise the facts which have led to the enquiry in the appeal before us.

4. A criminal case was registered by the Police Officer, Police Station, Guru Har Sahai on the basis of F.I.R. filed by Avinash Chandra against Mohd. Sadiq and others for having caused the murder of one Balbir Singh. This case was committed to the Court of Sessions by the Committing Magistrate. A cross complaint appears to have been filed before in the Court of Judicial Magistrate, First Class, Ferozepore on 30th December, 1974 by Kishore Singh the brother of the accused (sic) (deceased) Balbir Singh containing a counter version of the occurrence mentioned in the case registered by the police. On receipt of the complaint the Magistrate ordered the police to investigate the case under Section 156 (3) of the Code by his order dated 1-1-1975. The police submitted a final report on 8-3-1975 indicating that no case was made out against the accused. The Court after considering the report on 2nd April, 1975 ordered that notice may be issued to the complainant to appear before him. Consequently, the complainant appeared along with his witnesses before the Magistrate and his statement was recorded on 22nd May, 1975. On 23rd May, 1975 i.e. the next day the Magistrate issued process against the accused by directing a non-bailable warrant against the accused and summoned them under Ss. 304/149 and 148 of the Code. The accused appellants moved the High Court for quashing the order of the Magistrate on the ground that the Magistrate having once ordered investigation under S. 156 (3) of the Code was not competent to revive the complaint and issue process against the accused. The High Court held that no case for quashing the order of the Magistrate was made out inasmuch as the Magistrate had issued process against the accused after taking due cognizance of the case and applying his mind and recording the statement of the complainant. Thereafter the appellants prayed for a certificate for leave to appeal to this Court which was granted.

5. We may mention at the outset that we are not at all concerned with the merits of the case and the learned counsel Mr. D. Mukherjee appearing for the appellants has argued only a pure point of law before us. He has contended that the Magistrate after having referred the matter for investigation to the police was not at all in law entitled to revive the complaint when the report was in favour of the accused. The Magistrate could at the most order re-investigation but could not have acted on the complaint which merged in the investigation by the police and lost its complete identity.

6. Mr. Harbans Singh, counsel for the respondent however submitted that the Magistrate had directed investigation under S. 156 (3) of the Code obviously before taking cognizance and after receiving the report he was not debarred from taking cognizance and proceeding with the complaint filed by Kishore Singh in accordance with law.

7. The question as to what is meant by taking cognizance is no longer res integra as it has been decided by several decisions of this Court. As far back as 1951 this Court in the case of R. R. Chari

v. State of Uttar Pradesh, 1951 SCR 312 : (AIR 1951 SC 207) observed as follows (at p. 209 of AIR):

"Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applies his mind to the suspected commission of an offence."

While considering the question in greater detail this Court endorsed the observations of Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs, West Bengal v. Abani Kumar Banerjee, AIR 1950 Cal 437 which was to the following effect (at p. 438):

"It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under S. 190 (1) (a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding under Section 200 and thereafter sending it for inquiry and report under S. 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under S. 156 (3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence."

7A. Section 190 of the Code runs thus:-

"190. (1) Subject to the provisions of this Chapter, any Magistrate of the first class and any Magistrate of the second class specially empowered in this behalf under sub-s. (2) may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed."

It seems to us that there is no special charm or any magical formula in the expression "taking

cognizance" which merely means judicial application of the mind of the Magistrate to the facts mentioned in the complaint with a view to taking further action. Thus what Sec. 190 contemplates is that the Magistrate takes cognizance once he makes himself fully conscious and aware of the allegations made in the complaint and decides to examine or test the validity of the said allegations. The Court prescribes several modes in which a complaint can be disposed of after taking cognizance. In the first place, cognizance can be taken on the basis of three circumstances: (a) upon receiving a complaint of facts which constitute such offence; (b) upon a police report of such facts; and (c) upon information received from any person other than the police officer or upon his own knowledge, that an offence has been committed. These are the three grounds on the basis of which a Magistrate can take cognizance and decide to act accordingly. It would further appear that this Court in the case of Narayandas Bhagwandas Madhavdas v. The State of West Bengal, (1960) 1 SCR 93 at p. 106 : (AIR 1959 SC 1118 at p. 1123) observed the mode in which a Magistrate could take cognizance of an offence and observed as follows :-

"It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence under S. 190 (1) (a), Criminal Procedure Code, he must not only have applied his mind to the contents of the petition but must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter - proceeding under S. 200 and thereafter sending it for inquiry and report under S. 202."

8. It is now well settled by the decision of this court in Abhinandan Jha v. Dinesh Mishra, (1967) 3 SCR 668 : (AIR 1968 SC 117) that while a Magistrate can order the police to investigate the complaint it has no power to compel the police to submit a charge-sheet on a final report being submitted by the police. In such cases a Magistrate can either order re-investigation or dispose of the complaint according to law.

9. Analysing the scheme of the Code on the subject in question it would appear that Section 156 (3) which runs thus:

"Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned".

appears in Chapter 12 which deals with information to the Police and the powers of the police to investigate a crime. This section is therefore placed in a Chapter different from Chapter 14 which deals with initiation of proceedings against an accused person. It is, therefore, clear that Sections 190 and 156 (3) are mutually exclusive and work in totally different spheres. In other words, the position is that even if a Magistrate receives a complaint under Section 190 he can act under Section 156 (3) provided that he does not take cognizance. The position, therefore, is that while Chapter 14 deals with post cognizance stage Chapter 12 so far as the Magistrate is concerned deals with pre-cognizance stage, that is to say once a Magistrate starts acting under Sec. 190 and the provisions

following he cannot resort to Section 156 (3). Mr. Mukherjee vehemently contended before us that in view of this essential distinction once the Magistrate chooses to act under S. 156 (3) of the Code it was not open to him to revive the complaint, take cognizance and issue process against the accused. Counsel argued that the Magistrate in such a case has two alternatives and two alternatives only either he could direct re-investigation if he was not satisfied with the final report of the police or he could straightaway issue process to the accused under S. 204. In the instant case the Magistrate has done neither but has chosen to proceed under Section 190 (1) (a) and Section 200 of the Code and thereafter issued process against the accused under S. 204. Attractive though the argument appears to be we are however unable to accept the same. In the first place, the argument is based on a fallacy that when a Magistrate orders investigation under Section 156 (3) the complaint disappears and goes out of existence. The provisions of Section 202 of the present Code debar a Magistrate from directing investigation on a complaint where the offence charged is triable exclusively by the Court of Session. On the allegations of the complainant the offence complained of was clearly triable exclusively by the Court of Session and therefore it is obvious that the Magistrate was completely debarred from directing the complaint filed before him to be investigated by the police under Sec-202 of the Code. But the Magistrate's powers under S. 156 (3) of the Code to order investigation by the police have not been touched or affected by Section 202 because these powers are exercised even before cognizance is taken. In other words, Section 202 would apply only to cases where the Magistrate has taken cognizance and chooses to enquire into the complaint either himself or through any other agency. But there may be circumstances as in the present case where the Magistrate before taking cognizance of the case himself chooses to order a pure and simple investigation under S. 156 (3) of the Code. The question is, having done so, is he debarred from proceeding with the complaint according to the provisions of Sections 190, 200 and 204 of the Code after receipt of the final report by the police ? We see absolutely no bar to such a course being adopted by the Magistrate. In the instant case, there is nothing to show that the Magistrate had taken cognizance of the complaint. Even though the complaint was filed by the Magistrate, he did not pass any order indicating that he had applied his judicial mind to the facts of the case for the purpose of proceeding with the complaint. What he had done was to keep the complaint aside and order investigation even before deciding to take cognizance on the basis of the complaint. After the final report was received the Magistrate decided to take cognizance of the case on the basis of the complaint and accordingly issued notice to the complainant. Thus, it was on 2nd April, 1975 that the Magistrate decided for the first time to take cognizance of the complaint and directed the complainant to appear. Once cognizance was taken by the Magistrate under S. 190 of the Code it was open to him to choose any of the following alternatives:

(1) Postpone the issue of process and enquire into the case himself; or

(2) direct an investigation to be made by the Police Officer; or

(3) any other person.

In the instant case as the allegations made against the accused made out a case exclusively triable by the Court of Session the Magistrate was clearly debarred from ordering any investigation, but he was not debarred from making any enquiry himself into the truth of the complaint. This is what exactly the Magistrate purported to have done in the instant case. The Magistrate issued notice to the complainant to appear before him, recorded the statement of the complainant and his witnesses and after perusing the same he acted under Section 204 of the Code by issuing process to the accused appellants as he was satisfied that there were sufficient grounds for proceeding against the accused.

10. Mr. Mukherjee however submitted that the moment the Magistrate directed investigation he must be deemed to have taken cognizance, and, therefore, he could not have taken any of the steps excepting summoning the accused straightway or directing re-investigation. We have already pointed out that Chapter 12 and Chapter 14 subserve two different purposes: One pre-cognizance action and the other post-cognizance action. That fact was recognised by a recent decision of this Court in the case of Devarpalli Lakshminarayana Reddy v. V. Narayana Reddy, 1976 Supp SCR 524 : (AIR 1976 SC 1672) where the Court observed as follows: (at pp. 1677, 1678 of AIR):

"The power to order police investigation under S. 156 (3) is different from the power to direct investigation conferred by Sec. 202 (1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage, when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156 (3) can be invoked by the Magistrate before he takes cognizance of the offence under S. 190 (1) (a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156 (3)."

11. In the case of Gopal Das Sindhi v. State of Assam, AIR 1961 SC 986 this Court while approving the observations of Justice Das Gupta in the case referred to above observed as follows (at p. 989):

"It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of Chapter XVI but for taking action of some other kind, e.g. ordering investigation under S. 156 (3) or issuing a search warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence."

12. To the same effect is the decision of this Court in Jamuna Singh v. Bhadai Sah (1964) 5 SCR 37 at p. 41 : (AIR 1964 SC 1541 at p. 1544):

"It is well settled now that when on a petition of complaint being filed before him a Magistrate applies his mind for proceeding under the various provisions of Chapter XVI of the Code of

Criminal Procedure, he must be held to have taken cognizance of the offence mentioned in the complaint. When however he applies his mind not for such purpose but for purposes of ordering investigation under S. 156 (3) or issues a search warrant for the purpose of investigation he cannot be said to have taken cognizance of any offence."

13. In these circumstances the inescapable conclusion is that in the present case the Magistrate had not taken cognizance of the case and ordered investigation by the police under S. 156 (3) before applying his mind to the complaint. This being the position it was always open to the Magistrate to take cognizance of the complaint and dispose it of according to law, that is to say according to the provisions of Ss. 190, 200 and 202. In view of the facts in the present case he was prohibited from directing any investigation but he could take other steps. Even in the case of Abhinandan Jha v. Dinesh Mishra (AIR 1968 SC 117) (supra) this Court while holding that the Magistrate has supervisory power over the police and it was not open to him to direct the police to file a charge-sheet observes that the Court was not powerless to dispose of the complaint according to law. In this connection this Court observed as follows (at p. 122):

"We are not inclined to agree with the further view that from these considerations alone it can be said that when the police submit a report that no case has been made out for sending up an accused for trial, it is open to the Magistrate to direct the police to file a charge-sheet. But, we may make it clear that this is not to say that the Magistrate is absolutely powerless, because, as will be indicated later, it is open to him to take cognizance of an offence and proceed, according to law."

14. In these circumstances we are satisfied that the action taken by the Magistrate was fully supportable in law and he did not commit any error in recording the statement of the complainant and the witnesses and thereafter issuing process against the appellants. The High Court has discussed the points involved threadbare and has also cited number of decisions and we entirely agree with the view taken by the High Court. Thus on a careful consideration of the facts and circumstances of the case the following legal propositions emerge:

1. That a Magistrate can order investigation under S. 156 (3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation under Section 156 (3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Sec. 202 of the Code.

2. Where a Magistrate chooses to take cognisance he can adopt any of the following alternatives:

(a) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightaway issue process to the accused but before he does so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(b) The Magistrate can postpone the issue of process and direct an enquiry by himself.

(c) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance under S. 156 (3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightaway issue process against the accused or apply his mind to the complaint filed before him and take action under Section 190 as described above.

15. The present case is clearly covered by proposition No. 4 formulated above.

16. For these reasons, we find no merit in this appeal which is accordingly dismissed.

Appeal dismissed.

AIR 1978 SUPREME COURT 68 "State of Karnataka v. Union of India"

Coram : 7 M. H. BEG, C.J.I., Y. V. CHANDRACHUD, P. N. BHAGWATI, N. L. UNTWALIA, P. N. SHINGHAL, JASWANT SINGH AND P. S. KAILASAM, JJ.*

Original Suit No. 8 of 1977, D/- 8 -11 -1977.

Judgement

BEG, C. J.:-

1. "India, that is Bharat, shall be a Union of States." The very first mandate of the first Article of our Constitution to which we owe allegiance thus prohibits, by necessary implication, according to the plaintiff in the original suit now before us under Art. 131 of the Constitution of India, any constitutionally unjustifiable trespass by the Union Government upto the domain of the powers of the States. The State of Karnataka, has therefore, sued for a declaration that a notification dated 23-5-1977 (hereinafter referred to as 'the Central Notification') constituting a Commission of Inquiry in purported exercise of its powers under Section 3 of the Commissions of Inquiry Act, 1952 (hereinafter referred to as 'the Act'), is illegal asd ultra vires. This declaration is sought on one of two alternative grounds: firstly, that the Commissions of inquiry Act, 1952, does not "authorise the Central Government to constitute a Commission of Inquiry in regard to matters falling exclusively within the sphere of the State's legislative and executive power"; and, secondly, that if the provisions of the Act do cover the Central Govt. Notification, they are ultra vires for contravention of "the terms of the Constitution as well as the federal structure implicit and accepted as an inviolable basic feature of the Constitution." Consequently, the plaintiff seeks a perpetual injunction to restrain the respondents, the Union of India and Shri A. N. Grover, the one-man Commission on Inquiry into "charges of corruption, nepotism, favouritism and misuse of governmental power against the Chief Minister and other Ministers of the State of Karnataka", from acting under the Central Government's notification.

2. The plaintiff State's case is: that, the Congres party was returned by the electors by a majority at an election held in the State in 1972; that, the majority party in the legislature elected Shri Devraj Urs as its leader who then formed his Government as required by Art. 163 of the constitution; that, the Government thus installed, by what must be deemed to be the will and decision of the State Legislature, continues to enjoy the confidence of the legislature and is in office; that, in the recent Lok Sabha elections, the Congress party headed by Shri Devraj Urs achieved a resounding success by having won 26 out of 28 seats so that the Janta party, which is in power at the Centre, must be deemed to have been rejected by the electorate, but it is indirectly, through the appointment of a Central Commission of Inquiry, trying to discredit the Congress Party and its leaders in the State of Karnataka, and, thereby, interfering with the democratic machinery of control and supervision of the Government of the State provided by the Constitution itself.

3. On 26th April, 1977, the Union Home Minister sent a letter to the chief Minister of the State communicating the allegations contained in a memorandum submitted by certain members of the opposition party in the Karnataka State Legislature and asked him to make his comments. The Chief Minister gave a reply dated 13th May, 1977, a copy of which was attached to the plaint.

4. The Chief Minister, in his reply, complains that "slanderous propaganda has been unleashed without any verification of the truth or otherwise of the allegation or past history of most of the charges." He points out that broadcasts and press reports had given him an intimation of the allegations sent to him even before they were received by him with the Home Minister's letter. The Chief Minister said: "It is reasonable to presume that the object of this compaign of slander is

mainly to tarnish the image of the Congress party, my colleagues and myself in an effort to gain, if possible, power for your party in the State immediately after your party was totally rejected by the electorate of the State in the recent Lok Sabha elections." The insinuation was that the whole object of manipulated charges against the Chief Minister was to vilify him and his Government and to bring him down in the estimation of the public so as to destroy the support which the Congress party had from the people of the State. It was thus a charge of malice in fact.

5. The Chief Minister also took shelter behind the federal principles said to be embodied in our Constitution and described them as "the corner-stone of national unity and national integrity." He asserted: "the Constitution is the source of all power for the various organs of the Centre and the State and all actions and exercise of all power under any of the statutes either by the Centre or by the State must conform to and be subordinated to the scheme of distribution of powers, legislative and executive, under the Federal Scheme of the Constitution."

6. The Chief Minister also admitted, in his letter to the Union Home Minister, that the Constitution "in certain exceptional circumstances provides for the Centre making inroads into the exclusive domain of the State legislature or the State executive". But, he denied that the exceptional circumstances, expressly provided for in the Constitution, for interference by the Centre, existed in the instant case.

7. Evidently, the Chief Minister meant that there was no room for invoking the emergency provisions under Art. 356 of the Constitution which provides for the assumption by the President of India of any of the functions of the Government and by the Union Parliament of the functions of the State Legislature, provided "the President is satisfied on receipt of a report from the Governor of a State or otherwise that a situation has arisen in which the Government of the State cannot be carried on in terms of the Constitution."

8. The Chief Minister also invokes the aid of the principles of democracy which, according to him, permeate the whole scheme of the Constitution, so that Chief Ministers and other State Ministers can be called to account only by the State Legislature to which they are responsible. He asserted that "the Cabinet system of Government is a basic feature of the Indian Constitution." This implies, according to him, that all control over Ministerial actions vests in the State Legislatures only and not in the Union Government, subject, of course, to exceptions expressly provided. With regard to the actions of the State Government, he complained that the assumption of inquisitorial or supervisory functions by the Union Government at the instance of "an extra constitutional agency, however high, would destroy the basic character of the Cabinet system of Government and would rob the legislature of the State and its people, of the constitutionally guaranteed right of having a Government of their choice subject to their control." He claimed that the State had exclusive right to investigate charges relating to matters falling "within exclusive domain of the State under the Constitution." He warned against the dangers to national interest by undue interference with the federal scheme contemplated by the Constitution.

9. The Chief Minister, after having emphatically asserted what he conceived to be the object of the proceedings against him and his constitutional rights, very properly offered to place all the material having a bearing upon the 36 charges out of which he admitted that 23 related to him. He offered to clear himself of these charges. He pointed out that 4 of the charges related to his colleagues and had been discussed in the legislature. He also said that 3 charges had already been inquired into by the former Prime Minister. He said that he did not want these to be reopened. He cited the speech of Shri Om Mehta, a former Minister of State, in the Lok Sabha, on 5th May 1971, where it was stated that some memoranda had been sent, containing allegations of corruption and misuse of power made against the Chief Minister and other ministers of Karnataka by some members of the Legislative Assembly as long ago as 1973. According to that statement, there were 99 allegations out of which 16 concerned the Chief Minister personally. Shri Mehta was said to have declared that the allegations against the Chief Minister were found to lack substance after the settled procedure of inviting comments from the Chief Minister had been observed. The Chief Minister that dealt at considerable length with the individual charges.

10A. In the plaint before us, it was pointed out that charges of the nature now referred to the one man Commission by the Central Government had been made ever since 1972 elections both on the floor of the Legislature and elsewhere. It also said that they had been explained and answered on the floor of the Legislature repeatedly. The Chief Minister complained that the same allegations had been repeated after a new Government had assumed office at the Centre.

10. It was also asserted in the plaint that, in order to allay any suspicion in the minds of the public in the State, and, in view of the continued agitation for a judicial probe, and, in accordance with the highest and best traditions of Government, the State Government, by a notification, dated 18th May, 1977, appointed a Commission of Inquiry under Section 3 (1) of the Commissions of Inquiry Act, 1952. A copy of the notification of the State Government was attached to the complaint. It was alleged that a copy of it had also been sent to the Home Minister on 18th May, 1977.

11. One of the submissions by the plaintiff is that the State Government notification dated 18th May, 1977, appointing its own Commission to inquire into all the matters and irregularities, to which additions could be made and of which further particulars could be provided, covers all that could be enquired into by the Grover Commission under the notification dated 23rd May, 1977, which specifically excludes matters covered by the Karnataka Government's notification dated 18th May, 1977. Reliance is placed on proviso (b) to Section 3 (1) of the Act which prohibits the Central Government from appointing another Commission "to inquire into the same matter for so long as Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States."

12. The written statement filed on behalf of the Union of India raises 2 preliminary objections as follows before relying seriation to the paragraphs in the plaint. The preliminary objections are:

"1. The suit by the State of Karnataka is not maintainable inasmuch as the impugned notification S.O. No. 365 (E) dated 23rd May 1977 constituting the Commission of Inquiry does not affect the plaintiff-State. By impugned notification a Commission of Inquiry under Sec. 3 of the Commissions of Inquiry Act, 1952 has been constituted for the purpose of making an inquiry into the charges of corruption, nepotism, favouritism and misuse of Governmental power against the Chief Minister and certain other Ministers of the State of Karnataka specified in the notification. The inquiry is against the Chief Minister and certain other Ministers as individuals and not against the State of Karnataka. The inquiry is rather in the interest of State that such corruption, nepotism, favouritism should not exist in the State. The State of Karnataka is not directly interested in the inquiry proposesd to be held against the Chief Minister and certain other Ministers of the State. The individuals occupying the office of Chief Minister and Ministers and distinct from the State itself.

2. Article 131 of the Constitution of India gives original jurisdiction to the Hon'ble Supreme Court in any dispute between the Government of India and one or more States etc., if the dispute involves any question of law or fact on which the existence or extent of a legal right depends. There being no dispute between the Government of India and the State, the suit is not maintainable. There is no legal right of the plaintiff-State to file the present suit."

13. The Union of India denied that the matters now to be enquired into by the Grover Commission constituted a resuscitation of previous charges and allegations which had been disposed of. Mala fides in the institution of the Commission of Inquiry is denied. The validity of all provisions of the Act is staunchly defended. The Inquiry ordered by the Central Government is, it is asserted, quite competent and not covered by the State Government notification. It is denied that the federal scheme or democratic principles embodied in the Constitution are affected by the institution of a Commission of Inquiry of the kind set up. It is submitted that the Central Government Commission of Inquiry was ordered to enable an appropriate and completely impartial fact finding process to take place so that either the Central Government or any other authority or even members of the public may, in accordance with democratic principles, act in a manner which is constitutionally proper and fully justified. In any case, the conduct of the Chief Minister of State with regard to affairs of State and the manner in which he used his official position were, according to Union government, matters of public importance into which the Central Government was quite competent to order impartial fact finding inquiries in public interest.

14. On the above set of pleadings, the following issues were framed by this Court:

"1. Is the suit maintainable?

2. Is the impugned notification ultra vires the powers of the Central Government under S.3 of the

Commissions of Inquiry Act?

3. If Section 3 of the Commissions of Inquiry Act authorises the Central Government to issue the impugned notification, is the Section itself unconstitutional?"

15. An important preliminary question to be decided, for the reasons already indicated, concerns the nature of the two inquiries, one by the State Government and another instituted by the Central Government. If the two notifications cover substantially "the same matter", it may not be necessary to deal with other questions at all. The parties have very fully argued their cases on this question even though no separate or specific issue has been framed on it. Both the parties have raised this issue specifically in their pleadings. They have argued on the assumption that a decision on it is implied in the trial of other issues in the case. We will, therefore, take it up first separately as a preliminary question which we should decide before taking up other matters in issue. A determination of this question has an imported bearing on matters argued for purposes of deciding each of the three issues framed above. Even if the question was not directly or indirectly involved in the decision of each of the three issues framed above, a decision on it seems necessary forclearing the ground for a correct approach to the whole case. It is certainly not a question we could abstain from deciding simply because no specific issue was framed separately on it at the outset. Although, in view of the fact that the question has been put in issue and so understood and very fully argued by the parties, a separate and specific issue need not be framed upon it, yet, because of the crucial importance of it, we formulate it now separately and specifically as follows : Do both the state and the Central Govt. inquiries relate to the "same matter" within the meaning of proviso (b) to Section 3 (1) of the Act so as to bar an inquiry by the Central or Union Govt. so long as the State Commission is functioning? The State Govt.'s notification dated 18-5-1977, reads as under :-

"Government of Karnataka"

Karnataka Government Secretariat

Vidhana Soudha

Bangalore, May 19, 1977

NOTIFICATION

WHEREAS allegations have been made on the floor of the Houses of the State Legislature and elsewhere that irregularities have been committed/excess payments made in certain matters relating to contracts, grants of land, allotment of sites, purchase of furniture, disposal of foodgrains, etc.

WHEREAS the State Government is of the opinion that it is necessary to appoint a Commission of inquiry to inquire into the said allegations :

NOW, THEREFORE, in exercise of the powers conferred by sub-s. (1) of S. 3 of the Commissions of Inquiry Act, 1952 (Central Act, 60 of 1952) the Government of Karnataka hereby appoint Justice Shri Mir Iqbal Hussain. Retired Judge of the Karnataka High Court to be the Commission of Inquiry for the purpose of making an inquiry into the said allegations, particularly specified below and to submit a report thereon to the State Government within a period of four months from the date of this Notification :-

1. Whether improper or excessive payment was made to M/s. Nirmala Engineering Construction Company in respect of the contracts awarded to them by the Government of Karnataka and the Karnataka Urban Water Supply and Drainage Board for lift irrigation for water supply scheme?

II. Whether any improper or excessive payment was made to M/s. Balaji Engineering and construction Works Ltd., in respect of the contracts awarded to them for -

(1) the construction of the right bank earth dam of the Hemavathi Project from chainage No. 7890' to 8510';

(2) the construction of the right bank irrigation sluice of the Hemavathi Dam;

(3) the construction of the left bank irrigation sluice of the Hemavathy Dam;

(4) the construction of the masonry dam of the Hemavathy Project from Chainage No. 4400' to 5740' including the overflow section and the protective works;

(5) the construction of the spillway dam of the Hemavathy Project ;

(6) the construction of the masonry dam of the Harangi Project?

III. Whether any improper or excessive payment was made or undue favour shows to M/s. Nechipadam Construction Company in respect of the contract awarded to them for the construction of the Hemavathy right Bank Earth Dam from chainage 2025m. to 2405m. and chainage 1750m to 2025m.?

IV. Whether any improper or excessive payment was made or undue favour shown to M/s. Shankaranarayan Construction Company in respect of the contracts awarded to them for -

(1) the construction of the combined Board Administrative Division Building;

(2) the construction of the right bank earthern portion of the Hidkal Dam in the two reaches from 10,000 to 11,000 and 11,100 to 14,700?

V. Whether any improper or excessive payment was made or undue favour shown to M/s. EICIL in respect of the contracts awarded to them for -

(1) the construction of the head race tunnel from the Bommanhalli pick up dam to the surge point;

(2) the construction of the surge tank and the pressure shaft?

VI. Whether any undue favour was shown to M/s. Ghansham Commercial Co. Ltd., in the sale of 2,5000 tonnes of bajra at rate of Rs. 73.50, per quintal in 1972?

VII. Whether any undue favour was shown to M/s. Krishna Flour Mills in respect of the lease of the land next to its premises, measuring 200' x 200' for a period of 30 years?

VIII. Whether any improper or excessive payment was made or any undue favour was shown to M/s. Shah Construction Company in the settlement of their claims for the contract awarded to them for the construction of the Almatti Dam?

IX. Whether any undue favour was shown to M/s. Poornima Electronics in the placing of orders on them for supply of electronic equipments like Intercome etc.?

X. Whether there was any misappropriation or fraud in the dealings of the State Co-operative

Marketing Federation during the period 1971-72 and 1972-73?

XI. Whether any undue favour has been shown by the Government or the KSRTC in leasing out the building in the KSRTC bus stand at Mysore for a Canteen at Mysore?

XII. Whether any undue favour was shown by Government or the KSRTC in leasing out resting rooms in the KSRTC in Mysore to Shri Prem Kumar?

XIII. Whether the funds of the Agro Industries Corporation were wrongly diverted to the Gadag Co-operative Textile Mills, Hulkoti, Gadag, Dharwar district?

XIV. Whether undue favour was shown to M/s. Navrasa Fertilizers in purchasing fertilisers and whether payment was made even without receipt of the stock?

XV. Whether site on J.C. Road was leased to Shri M. B. Lal and N. V. Venkatappa contrary to the interests of the City of Bangalore Municipal Corporation?

XVI. Whether the grant of land in S. No. 15 of Bommenahalli Village. Nelamangala Taluk, Bangalore District was made contrary to rules?

XVII. Whether sites in Rajmahal Vilas and Place Orchards layouts were irregularly allotted?

XVIII. Whether the purchase of one thousand tonnes of paddy from Tamil Nadu by Shri Atheeq Ahmed, Proprietor of the Mandya Rice Mills, Mandya at the instance of the State Government and the subsequent disposal thereof were adverse to the interests of the State?

XIX. Whether the contract for the preparation of models and designs for the re-modelling of the K. R. Market, Bangalore was irregularly awarded to M/s. Karekar and Sundaram?

XX. Whether the conversion of land owned by Shri C. M. Dinshaw and family in Narasipura Village, Bangalore North Taluk (known as 'Dinshaw Estate') as non-agricultural land was not in

accordance with the rules?

XXI. Whether any irregularities or improprieties have been committed in the administration of the Karnataka Film Development Corporation since 1971?

XXII. Whether the cement or steel allotted for the construction of the Government Harijan Hostel building in Bangalore City was diverted to other purposes?

XXIII. Whether orders for the purchase of furniture for the Health Department for the years 1972-73, 1973-74 were placed at exorbitant rates with firms who were neither furniture dealers nor approved PWD contractors/suppliers?

XXIV. Whether essentiality certificates for stainless steel were issued to bogus firms or fictitious persons during the period 1st March 1974 to 30th June 1974?

XXV. Whether the purchase of Fargo and Bedford Chassis by the KSRTC in August 1972 was against the Corporation's interests?

XXVI Whether the appointments of agents, sub-agents and dealers during the years 1967-77 by the Visvesvaraya Iron and Steel Ltd. Bhadravathi for the distribution of steel and cement were adverse to the Company's interests?

XXVII. Whether the appointments of agents, sub-agents and dealers for the years 1967-77 by the Mysore Paper Mills Ltd., Bhadravathi for the distribution of paper were adverse to the Company's interests?

XXVIII. Whether improper or excessive payment was made to Shri M. S. Ramaiah, contractor, in respect of the contract awarded to him for the construction of the Talakalele dam and its appurtenant works. which form part of the Sharvathi Valley Project.

XXIX. Whether there were any defects in the construction of Talakalele Dam owing to bad design, use of sub-standard materials caused by negligence or wilful commission of the contractor or any individual?

XXX. Whether unjust or excessive payment wad made to M/s. Tarapore and Co., in respect of the contract awarded to them for rock fill work both up and down stream, in the Lingannamakki earthern dam?

XXXI. Whether there was any irregularity or impropriety in the grant of 3000 acres of land in Periyapatna Taluk to M/s. Oriental Aromatics?

XXXII. Whether any favour was shown to Shri Bhooma Reddy in the matter of award of the right to retail vend of liquors in the year 1968?

XXXIII. Who are the persons responsible for the lapses, if any, regarding the aforesaid and to what extent?

By order and in the name of the

Governor of Karnataka.

Sd/ - G. V. K. Rao,

Chief Secretary to the Government

To

The Compilor, Karnataka Gazette, for publication of this Notification in a Gazette Extraordinary and supply of 200 copies.

Copy to:

All Secretaries to Government,

The Registrar, High Court of Karnataka with a covering letter."

The Central Government Notification D/- 23-5-1977 reads as follows:-

"THE GAZETTE OF INDIA

EXTRAORDINARY

PART II - SECTION 3 -

SUB-SECTION (ii)

MINISTRY OF HOME AFFAIRS

DEPARTMENT OF PERSONNEL

and A. R.

NOTIFICATION

New Delhi, the 23rd May, 1977.

S. C. 365 (E) - Whereas the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely charges of corruption, nepotism, favouritism or misuse of Governmental power against the Cheif Minister and certain other Ministers of the State of Karnataka, hereinafter specified;

Now, therefore, in exercise of the powers conferred by Section 3 of the Commissions of Inquiry

Act. 1952 (60 of 1952) the Central Government hereby appoints a Commission of Inquiry consisting of a single member, namely, Shri A. N. Grover, retired Judge of the Supreme Court of India.

2. The terms of reference of the Commission shall be as follows:

(a) to inquire into the following allegations, namely:-

(i) such of the allegations contained in the memorandum dated 11th April, 1977, received from some Members of the Karnataka State Legislature and addressed to the Prime Minister as are specified in Annexure I;

(ii) such of the allegations contained in the memoranda aforesaid as are specified in Annexure II, but excluding any matter covered by the notification of the Government of Karnataka in the Chief Secretariat No. DPAR 7 GAM 77, dated the 18th May, 1977;

(b) to inquire into any irregularity, impropriety or contravention of law other than those specified in the said notification of the Government of the State of Karnataka, on the part of any person in relation to any matter referred to in the allegations aforesaid;

(c) to inquire into any other matter which arises from or is connected with or incidental to, any act, omission or transaction referred to in the allegations aforesaid;

Explanation- In the Annexures to this notification, "Chief Minister" means Shri Devraj Urs, the Chief Minister of the State of Karnataka.

3. The headquarters of the Commission will be at New Delhi.

4. The Commission will complete its inquiries and report to the Central Government on or before the 1st day of December, 1977.

5. And whereas the Central Government is of opinion having regard to the nature of the inquiry to be made by the Commission and other circumstances of the case, that all the provisions of sub-section (2), subsection (3), sub-section (4) and subsection (5), of Section 5 of the Commissions of Inquiry Act, 1952 (60 of 1952) should be made applicable to the Commission, the Central Government hereby directs, in exercise of the powers conferred by sub-sec. (1) of the said Section 5, that all the provisions of the said sub-secs. (2), (3), (4) and (5) of that section shall apply to the Commission.

ANNEXURE I

(1) Whether the Chief Minister practised favouritism and nepotism by appointing his own brother, Shir D. Kamparaj Urs, as a Director of the Karnataka State film Industries Development Corporation in place of Shri R. J. Rebella, Chief Secretary to the Government, in 1974, and later as Director-in-Charge with the powers to exercise all the powers of the Managing Director.

(2) Whether the Chief Minister had directed auction of excise shops out of turn in five districts on the eve of the recent Lok Sabha Elections in the month of February, 1977. with corrupt motives although the auctions were due in the month of May, 1977. and whether this was done with the object of collecting funds for the Elections.

(3) Whether the Chief Minister had released Rs. 50.60 lakhs to buy"Understanding Science" from I.B.M. overruling the decision of the Sub-Committee constituted for the purpose under the Chairmanship of the Chief Minister and also overruling the orders of the concerned Minister.

(4) Whether the Chief Minister was guilty of shielding corrupt officers, in particular, two officers of the Public Works Department, namely, Shri Seshagiri Rao, Assistant Engineer, and Shri Shivanna, a Clerk against whom prosecution orders were passed by the Government on the basis of the recommendations of the Vigilance Commission. Whether the Chief Minister on his own revised the order and withdrew the prosecution for any consideration.

(5) Whether Shri Hanumantha Reddy, Superintending Engineer, was promoted as Chief Engineer by the Chief Minister against the recommendation of the Vigilance Commission that he should be demoted and certain amounts should be recovered from him and whether the Chief Minister also overruled the orders of the concerned Minister and whether such action of the Chief Minister was for any consideration.

(6) Whether the following payments were made to M/s. Shankaranarayana Construction Co.:-

(i) an ex-gratia payment of Rs. 6.37 lakhs in Malaprabha Project;

(ii) excess payment to the tune of Rs. 12.00 lakhs in Ghataprabha Project with an intention to favour the contractors.

(7) Whether any misappropriation of funds and fabrication of accounts of the Social Welfare Department was made with the connivance of the then Minister Shri N. Rachaih to the extent of Rs. 30.00 lakhs and whether any fraud was practised in connection with the said matter.

(8) Whether appointment was made of fictitious persons as dealers in sandal soap by Mysore Sales International under the orders of the Chief Minister and the Minister for Industry and payment was made of huge amounts by way of commission.

(9) Whether gross misuse of powers and position was made by Shri H. M. Channa Bassappa, formerly Minister in-Charge of Public Works Department and Electricity (now Minister of Health) in converting the residential site which he got allotted to him by the Trust Board into a commercial site and starting a company with his family members as directiors.

(10) Whether any favouritism was shown or whether there was any corruption in the purchase of new tyres and in body building contract for the new chassis by Karnataka State Road Transport Corporation under the undue influence of the Chief Minister and the Minister for Transport Shri Aziz Sait.

(11) Whether there was any nepotism and favouritism and misuse of power by the Chief Minister and the Minister of Transport in the matter of nationalisation of contract carriages and wilfully benefiting certain parties with whom the Chief Minister's second son-in-law was a partner.

(12) Whether any favouritism was shown in the nomination of Shri K. V. Rao as a member of the Karnataka State Road Transport Corporation Board against the provisions of the Act.

(13) Whether an undue favour was shown to M/s. Balaji Engineering Construction Company by

accepting the tender for construction of houses under Housing and Urban Development Corporations's Low Income Group Scheme in Dumlur Lay-out by the Bangalore Development Authority, which is under the administrative control of the Chief Minister.

(14) Whether allotment of 20 acres of land was made to the three sons of the Finance Minister, Shri M. V. Ghorpade, in contravention of land grant rules and the provisions of the Land Reforms Act and the Land Revenue Acts.

(15) Whether any misuse of power was committed, or any corruption committed by Shri D. K. Naikar, Minister for Municipal Administration, with regard to the grant of land to Boroka Textile Mills in HubliDharwar Corporation Area.

ANNEXURE II

Whether the Chief Minister or any other Minister of the State of Karnataka was guilty of corruption, nepotism, favouritism or misuse of governmental power in connection with all or any of the following matters, namely:-

(1) Grant of 20 acres of Government land, reserved for grazing of cattle in Hommanahalli, Nelamangala taluk, Bangalore District, to the son-in-law of the Chief Minister, Shri M. D. Nataraj, in violation of the provisions of the Land Revenue Code and disregarding the claims of local Scheduled Caste applicants;

(2) Allotment of 4 large valuable house sites in the most posh locality of Bangalore, Raj Mahal Vilas Extension, to Shri Devaraj Urs and his family members in supersessions of the rightful claims of other applicants.

(3) Undue favours shown to Messrs Nirmala Engineering Construction Company, by releasing Government funds in spite of the fact that the concerned Minister had taken a decision to prosecute the firm on the basis of the recommendations of the Vigilance Commissions.

(4) Excess payment of Rs. 98.88 lakhs to Messrs Balaji Engineering Company, in Hemavathi Project, in contravention of the terms of the contract with a view of favouring the contractor;

(5) Undue favour shown on Messrs Nechipadam Construction Company in Hemavathi Project, by accepting the highest tender with an intent to benefit the contractors and involving excess payment to the extent of Rs. 3.5 lakhs;

(6) Excess payment of Rs. 1 crore to Messrs TICIL Contractors, in Kali Hydel Project, for the benefit of the contractors;

(7) Whether about 5,000 tons of rice purchased by the Government of Karnataka from the Tamil Nadu Government on government-to-government basis, was allowed to be marketed by a private party, Shri H. R. Athud Ahemed, without the knowledge of the Food Department instead of the Mysore State Co-operative Marketing Federation as was earlier agreed, with the sole intent of benefiting the private party;

(8) Undue favour shown to a fictious cooperative society in regard to conversion of 270 acres of agricultural land called Dinshaw Estate into non-agricultural purpose in violation of the mandatory provisions of the Land Reforms Act and the Land Revenue Act;

(9) Whether undue favour was shown to one Ghanshyam in the sale of 2500 tons of Bajra at the rate of Rs. 73.50 p. per quintal without calling for tenders and allowing Shri Ghanshyam to sell the Bajra in the State of Maharashtra at the rate of Rs. 125.00 per quintal during the time of drought in Karnataka.

(10) Whether undue favour was shown or concession was made to M/s. Karekar and Sundaram, Architects, in regard to the preparation of designs for remodelling the K. R. Market in supersession of the order of the concerned Minister.

(11) Whether undue favour was shown, or concession was made to M/s. Shah Construction Co., Contractors. in Upper Krishna Project at Alamatti.

(12) Whether undue favour was shown to M/s. Krishna Flour Mills in granting valuable land in Bangalore City, which land was meant for children's park, at a nominal rent by overruling the order of the concerned Minister.

(13) Whether there was any mis-appropriation of funds of the Karnataka State Film Industries

development Corporation to the tune of Rs. 10.00 lakhs, when the Chief Minister himself was the Chairman of that Corporation and whether the business of the Corporation, its members, creditors or any other person or otherwise for a fraudulent or unlawful purpose.

(14) Whether any undue favour was shown to M/s. Poornima Electronics, Bangalore, in the purchase of electronic equipment (intercom) by superseding the recommendation of the Head of the Department and orders of the concerned Minister.

(15) Whether any misappropriation of the funds of the Karnataka State Co-operative Marketing Federation to the extent of several crores of rupees was made by Shri H. S. Srikantiah, Minister of State for Home, when he was the President of that Federation and whether the business of the Federation was conducted with intent to defraud that Federation, its members, creditors or any other person or otherwise for a fraudulent or unlawful purpose.

(16) Whether any undue favour was shown to Shri Satya Pal by the Minister of Transport Shri Mohamed Ali, by accepting the once rejected tender of Shri Satya Pal in leasing out its building for canteen in Karnataka State Road Transport Corporation Bus Stand, Mysore, and whether any undue favour was shown by the same Minister to Shri Satya Pal's son Shri Prem Kumar, in leasing out its retiring rooms of the Karnataka State Road Transport Corporation in Mysore.

(17) Whether any undue favour was shown to four firms, nameley, All India Agencies, Vidyut Engineering Co., Trishul Enterprises and Mysore Woods, in purchasing furniture valued at Rs. 29.00 Lakhs in 1973-74 under I.P. Project by the Minister for Health, Shri H. Siddaveerappa.

(18) Whether and undue favour was shown by the Minister of State for Small-Scale Industries, Shri Koulajgi in 1974, in the issue of Essentiality Certificates to parties many of which are fictitious and bogus.

(19) Whether undue favour was shown by the Chief Minister and the Minister for Transport, Shri Aziz Sait in 1973-74 to M/s. Fargo in buying 150 chassis against the advice of the Chief Mechanical Engineer of the Karnataka State Road Transport Corporation.

(20) Whether any undue favour was shown by the Minister of Industries, Shri S. M. Krishna, in allotting of paper, cement and steel of the State-owned Industries to Non-traditional dealers/agents including his kith and kin.

(21) Whether an excess payment of Rs. 30.00 lakhs was made to M/s. Shankaranarayana Construction Company in regard to the construction of combined Board Administrative Building Complex at Bangalore over and above the contract rates.

(22) Whether any excess payment was made to M/s. Balaji Engineering Company to the tune of the Rs. 80.00 lakhs in Harangi Project with an intent to favour the contractor.

(23) Whether Shri K. H. Patil, the then Minister for Agriculture and Forest, was guilty of any misuse of power or undue favouritism in relation to Hukkeri Textile Mills or Gadage Co-operative Textile Mills, or both.

(24) Whether any undue favour was shown or any corruption committed by Shri Chikke Gowda, the then Minister for Animal Husbandry and Agriculture in relation to the payment of a sum of Rs. 3.00 lakhs to M/s. Navarasa Fertilizers.

(25) Whether there was any misuse of power and corruption committed by Shri D.K. Maikar, Minister for Municipal Administration in connection with the allotment of land on J.C. Road to Shri M. B. Lal and Shri M. V. Venkatappa.

(No. 375/16/77-AVD-III)

R.K. Trivedi

Secretary"

16. The first thing that strikes one, on a bare reading of the two notifications is that, whereas the State Notification seems scrupulously to avoid any mention of any particular act or part of any individual whatsoever, the whole object of the Central Government notification seems to be to inquire into the correctness of the allegations made against the Chief Minister of the State principally and into allegations against other specified individuals incidentally. The objects and subject matter of the Central Government notification become clearer by looking at Annexures 1 and 2 of it giving particulars of transactions to be investigated. The first five items of Annexure 1 are separate transactions in each of which the Chief Minister of the State is himself alleged to have played the principal role in such a way as to indicate his exclusive responsibility. In other transactions, such as in items 10, 11 and 13, the Chief Minister is shown as having participated with others. And, in the remaining transactions mentioned, the allegations do not place the responsibility on any particular individual, but they seem designed to elicit the truth of allegations of favouritism, nepotism, and misuse of power against whoever may be responsible. Annexure 2 of the Central

Government notification begins by a statement which shows that its object is to determine whether the Chief Minister or any other Minister of the Government of the State of Karnataka, indulged in nepotism, favouritism, or misuse of Governmental powers in a number of transactions which are listed as items 1 to 25 there. On the other hand, the State Government notification, without mentioning the persons who might be responsible for any excessive or improper payments, or favouritism, or misappropriation, or irregularity, mentions certain contracts in favour of various companies, or parties under 32 heads. It then states, as a separate item of inquiry, the question as to who were the persons responsible in the lapses, if any, mentioned earlier. In other words, apart from their parts in certain lapses the responsibility of the Chief Minister or any other Minister of the Government of Karnataka could not be inquired into by the Commission appointed under the State notification. And, all that the State notification seems to empower its Commission to enquire into with regard to transactions mentioned there is whether there was any excessive payment or irregularity involved. Hence, it speaks of responsibility for "lapses" as though one could assume that there was no dishonest motive. The emphasis, in the State notification, is on the question of observance or non-observance of rules coupled with the question whether certain payment were proper. And, the question of affixation of responsibility is confined to "lapses" in the course of these transactions only.

17. Even if a transaction has been made completely in accordance with the rules, it may, nevertheless, be an act of favouritism tainted with corruption or dishonesty. Less deserving parties could be deliberately preferred over more deserving parties in such transactions. It is not difficult to make out compliance with the rules or to show on paper that the most deserving party has received the benefit of a contract. Indeed, even the most deserving party may receive a contract or a benefit under decision taken by a Government or its Ministers who may have received an illegal gratification for it without anything whatsoever appearing on the records of the Government about the bribe received by the Minister concerned. Hence, in addition to the fact that the items mentioned in the two notifications mostly do not tally with each other, it appears to us that the objects of the State notification do not go beyond investigation into the illegality or irregularity of any transaction and "responsibility" only of persons concerned to point out what they were. If one may so put it, the State notification is meant to set up a Commission which has to inquire whether the veil worn by certain transactions is correct in form and covers it fully but the Central Government notification is clearly meant to enable the Commission appointed to tear down even the veil of apparent legality and regularity which may be worn by some transactions. It authorises the Grover Commission to inquire into and discover the reality or substance, if any, behind certain (mostly other) transactions. The object of the Central Government notification seems clearly not only to affix responsibility of transactions mentioned there on individuals who may be really guilty even if a few of them could be said to have been mentioned in both notifications. We do not think that such notifications would justly or fairly be spoken of as covering "the same matter", as contemplated by proviso (b) to S. 3 (1) of the Act, because the State Commission is there to examine the appearance or surface whereas the Central Commission is expected to delve deeper into what could only lie behind or below it.

18. It is certainly a matter for concern to a State if some irregularity or illegality has been committed in a particular transaction by its Government or a Minister. But, it would obviously be more helpful to determine why it has been committed. And, it should be still more important for it to find out who, however highly placed, is really responsible for the commission of that irregularity

and whether any dishonesty or corruption has operated at the highest levels in the State even if the form is proper and regular. If the State notification shows no concern for what seem to us to be the much more important objects of the Central Government notification, one could perhaps guess that the indifference of the State towards the more serious matters is not without some object or significance. Nevertheless, we do not propose to pass any judgment on the motives of the State Government or the fact that the most important or significant features of what has been alleged against the Chief Minister and members of his Government have been left out by the State Government notification even if the object of that notification was quite bona fide and proper so far as it went. We think, however, that the State notification does not go far enough. But, the Central Government notification does proceed further. It squarely levels charges against persons who, according to the allegations made, may have acted in a manner which makes them not only theoretically responsible but actually guilty of corruption.

19. For the success of the policies of any State or Government in it, in any part of the country over which its authority runs, it should be shown to be capable of carrying out the constitutional mandates contained in Part IV of the Directive Principles of State Policy so as to make the basic human rights guaranteed by our Constitution a reality and not a mirage. That, for the masses of our people, is the basic purpose of the whole Constitution which cannot be allowed to be frustrated. If the basic rights of the people are not to be stultified and to appear chimerical, those in charge of the affairs of the State, at the highest levels, must be above suspicion. This is only possible if their own bona fides and utterly unquestionable integrity are assured and apparent in the context of the high purposes of our Constitution and the dire needs of our poverty striken masses. We cannot view allegations or corruption lightly. We think that the interests of the State and of the Union are not antithetical when there are charges of corruption and misuse of power against those in authority anywhere. To serve the common interests of the whole people, on whose behalf our Constitution speaks, the States and the Union cannot stand apart. They must stand together united in purpose and action. It is as important that unjustified and malicious attacks and charges against individuals in high places should be unmasked and the reality behind them exposed for what it is worth, as it is that justified complaints must find adequate means of redress so that the interests of the dumb millions of our countrymen are duly safeguarded against unscrupulousness wherever found. If, as we find in this case, the State notification is meant only to superficially scratch the surface of the allegations made, whereas the Central Government notification is meant to probe into the crux or the heart of what may or may not have gone wrong with the body politic in the State of Karnataka, we could not be too technical or astute in finding reasons to hold that the subject-matter of the two enquiries is substantially the same. Obviously, this could not really be so. A bare reading of the two notifications, set out in full above, shows that.

20. In the circumstances of this case, it may be more graceful for the Chief Minister of the State of Karnataka to waive his technical objections, as he seems to do in undertaking to place all the material before whichever commission may be found to have jurisdiction to inquire into the allegations made against him. He could take the opportunity to honourably face and repel the charges which, according to him, have been repeatedly but unjustifiably and maliciously made against him over a sufficiently long period. He could thus be able to establish that he is serving the interests of his 'State', its inhabitants, and, indeed, of the country as a whole, if his assertions are correct.

21. The plaintiff has not suggested anywhere that the Grover Commission is not presided over by an individual of unquestionable integrity and independence who has been a Judge of this Court. Mr. Lal Narain Sinha, appearing for the plaintiff, has, very frankly and properly, conceded that he cannot successfully press want of bona fides on the part of the Central Government in issuing its notification. This means that the question whether the Commission is either unnecessary, except as a weapon of political warfare, as well as any doubts about whether it could be or was to be misused in this case, must be dismissed as unsustainable. The State Government must itself be deemed to admit that circumstances necessitated the appointment of a Commission, by appointing its own, to inquire into analogous matters which deserved investigation due to their public importance.

22. We find that the Central Government notification itself excludes from its purview those charges which may be fairly said to fall within the scope of the Commission set up by the State Government. We are not concerned with matters which may be subsequently added so as to expand the scope of inquiry by the State Commission. We think that the provisions of proviso (b) to S. 3 (1) of the Act will prevent the State Government from adding such matters as are already covered by the Central Government notification. We, however, leave it to the Grover Commission itself to determine, whenever it is faced with such an objection, whether a particular matter is already being properly enquired into by the State Commission.

23. In view of what we have observed above, it would perhaps be proper for the Government of Karnataka itself to withdraw its own notification if it thinks that certain members of the State Government will be unduly embarrased by having to face inquiries by two Commissions on matters which may have some connections or even some common areas. Indeed, to get to the heart of a transaction, its surrounding of superficial shell, which is all that the State Commission can inquire into with regard to some transactions, may have to be pierced, or, to some degree, traversed before the core of these transactions can be reached. As we hold that the two notifications authorise inquiries into matters which are substantially different in nature and object, the enquiry by the Grover Commission cannot be said to be barred by reason of the State Government notification under proviso (b) to S. 3 (1) of the Act, even if, in order to deal with the substantially different subject-matter, in view of the divergence in objects, certain areas of fact or rules governing transactions may be common. If the objectives are different the examination of common areas of fact and law for different purposes will still be permissible.

24. Without doubting the motives of the State Government in appointing its own commission perhaps we may observe that, in a case involving charges of the kind made against the Chief Minister and other Ministers of the State, it would be better if the State's own Commission did not even remotely appear to have been set up merely in anticipation of a thorough investigation by an outside Central authority which would, presumably, appear more impartial and objective, or, to impede or embarrass the proceedings of the Central Government Commission. Such doubts as could arise on these grounds will be dispelled by the withdrawal of the State notification. Although the prompt action of the State Government may seem quite commendable and bona fide, in appointing

its own Commission in the context and circumstances disclosed above, its continued existence may not give exactly that impression after what we have held above on an analysis of the apparent objects of the two Commissions judged by the contents of the two notifications. In any case, the subject-matter, not being sub-stantially same, the Central Government Commission could proceed with its investigations if other objections, which we now proceed to examine, are not really fatal to the validity of the Central Government's notification.

25. Those other objections to the validity of the Central Government's notification may be summarised as follows:

26. Firstly, it is submitted that express provisions of the Constitution relating to the federal structure, distribution of executive and legislative powers between the State and the Union, joint responsibility of a State's Council of Minister, conditions under which they can hold office or may be dismissed, the State Legislature's exclusive control over their actions and conduct of affairs of the State Government, are infringed by it, so that, if all this could be done, under the cloak of the powers conferred by Sec. 3 of the Act, by the Central Government, this provision of the Act is, pro tanto, invalid. Secondly, and following logically and naturally from the first set of propositions, as their necessary consequence, the notification constitutes violations by the Central Govt. of what must be held to be parts of the basic features or the basic structure of the Constitution which do not permit the destruction of either federalism or democracy by issuing executive fiats. Thirdly, carrying the logic of the last mentioned set of submissions a step further, it is urged that, as the basic features of the Constitution have been held by this Court to be outside the procedure for amendment contained in Article 368 of the Constitution, it must, a fortiori, be held to be outside the legislative competence of Parliament as contemplated by Article 245-255 in Part XI of the Constitution read with provisions of the Legislative Lists in Schedule 7. Fourthly, it is suggested, in the alternative, that, in any case, a necessary implication of the express provisions of the Constitution is that a control by the Union Government over the day-to-day working of the Governments in the States by the adoption of the legislative procedure found in Part XI of the Constitution must have a result which can only be achieved by a Constitutional amendment under Art. 368 of the Constitution. Fifthly, it is submitted that even if interference with the day to day working of the Governmental mechinery in the States is not barred by the basic structure of the Constitution, yet, the situations in which such interference is warranted, having been specifically laid down in the emergency provisions contained in Arts. 352-360 found in Part XVIII of the Constitution, any other mode of interference with the operations of State Governments, not expressly provided by the Constitution itself, must be deemed to be outside the ordinary legislative competence of Parliament. Sixthly, the plaintiff's counsel submitted that, in any event, the provisions of the Act must be so construed or interpreted, by reading them down if necessary, as to preclude interference by the Union Government with the operations of the State Government or the conduct of its Ministers keeping in view all the submissions mentioned above.

27. It is true that learned counsel for the plaintiff kept reverting to what he really meant to put forward as the basic or inviolable features of the Constitution, yet he felt reluctant to unequivocally commit himself to the view that the Act contained provisions which constituted a violation of the

basic structure of the Constitution which has been held to include both Democracy and Federalism. Apparently, this some-what shifting position arose from a realisation that the Act may have very little, if anything at all, to do with provisions meant to ensure Democratic Government, and that our Constitution has, despite whatever federalism may be found in its structure, so strongly unitary features also in it that, when the totality of these provisions is examined, it becomes difficult to assert confidently how much federalism such a Constitution contains, whether those parts of it which seem to override the federal elements of our Constitution are not more basic or significant than what is described as its federalism, and whether possible actions under the Act, intended to authorise investigation, presumably with a view to finding remedies into whatever dishonesty or corruption may be discovered in the conduct of governmental affairs by Ministers, are not really meant to safeguard or help rather than to destroy or hinder democratic government.

28. It is interesting to note what Sir Cyril Salmon, Lord Justice of Appeal, said in a lecture on Tribunals of Inquiry::

"In all countries, certainly in those which enjoy freedom of speech and a free Press moments occur when allegations and rumours circulate causing a nation-wide crisis of confidence in the integrity of public life or about other matters of vital public importance. No doubt this rarely happens, but when it does it is essential that public confidence should be restored, for without it no democracy can long survive. This confidence can be effectively restored only by thoroughly investigating and probing the rumours and allegations so as to search out and establish the truth. The truth may show that the evil exists, thus enabling it to be rooted out, or that there is no foundation in the rumours and allegations by which the public has been disturbed. In either case, confidence is restored."

29. In the lecture mentioned above, it was pointed out that the Tribunal of Inquiry (Evidence) Act. 1921, was passed in England to displace the procedure by which Select Parliamentary Committees were used "to investigate alleged wrong doing in high places." About the Select Committee procedure he said:

"Such a method of investigation by a political tribunal was wholly unsatisfactory. Being a progressive people it took us only little more than about 300 years to do anything about it. In the United States of America, however, which is still more progressive than we are, they still use virtually the same method. Congressional Committees of investigation, like our Parliamentary committees, consist of members representing the relative strength of the majority and minority parties. Clearly such bodies can never be free from party political influences. This is a very real defect in any tribunal investigating allegations of public misconduct - particularly as the subject-matter of the inquiry often has highly charged political over-tones."

He observed:

"The history of such investigations in England by Parliamentary committees is, to say the least unfortunate. Let me give you but one example. Early in the present century there occurred what became known as the Marconi Scandal. In 1912 the Post Master General in a Liberal Government accepted a tender by the English Marconi Company for the construction of State-owned wireless telegraph stations throughout the Empire. There followed widespread rumours that the Govt. had corruptly favoured the Marconi Company and that certain prominent members of the Govt. had improperly profited by the transaction. The Select Parliamentary Committee appointed to investigate these rumours represented the respective strengths of the Liberal and Conservative Parties. The majority report of the Liberal members of the Committee exonerated the members of the Government concerned whereas a minority report by the Conservative members of the Committee found that these members of the Government had been guilty of gross impropriety. When the reports came to be debated in the House of Commons, the House divided on strictly party lines and by a majority exonerated the Ministers from all blame. This is the last instance of a matter of this kind being investigated by a Select Committee of Parliament."

In other words,

"It was because in England investigation by a political tribunal of matters causing gave public disquiet had been discredited that the Tribunal of Inquiry (Evidence) Act, 1921, was passed, with a view to setting up some permanent investigating machinery to be available for use when required." Furthermore, he pointed out that even in America ad hoc tribunals are not infrequently appointed to avoid a matter being referred to a Congressional Committe as, for example, the Warren Commission to investigate the murder of President Kennedy.

30. It is thus clear that in democratic countries not only modern practice but statute can provide for Inquiries of the kind which are meant to be conducted under our Act of 1952. The Preamble of our Act shows that it was meant to "provide for appointment of the Commissions of Inquiry and for vesting such Commissions with certain powers." Section 1. sub-section (2) of the Act indicates that it extends to the whole of India; but, a proviso to it puts certain limitations to which its operation is subjected so far as the State of Jammu and Kashmir is concerned inasmuch as, for this State, Inquiries set up must relate to matters appertaining to such entries in List II or List III of the Seventh Schedule as may be applicable to the State. There is nothing in the Act to show any suc`h limitations with regard to any other State.

31. Section 2 of the Act provides : otherwise requires, -

(a) "appropriate Government" means -

(i) the Central Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List I or List II or List III in the Seventh Schedule to the Constitution; and

(ii) The State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution :

Provided that in relation to the State of Jammu and Kashmir, these clauses shall have effect subject to the modification that -

(a) in sub-clause (i) thereof, for the words and figures "List I or List II or List III in the Seventh Schedule to the Constitution" the words and figures "List I or List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir" shall be substituted;

(b) in sub-clause (i) thereof, for the words and figures "List II or List III in the Seventh Schedule to the Constitution", the words and figures "List III in the Seventh Schedule to the Constitution as applicable to the State of Jammu and Kashmir" shall be substituted;

(b) "Commission" means a Commission of Inquiry appointed under Section 3;

(c) "prescribed" means prescribed by rules made under this Act."

31-A. Section 3 of the Act reads as follows :

"3. (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People, or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly;

Provided that where any such Commission has been appointed to inquire into any matter -

(a) by the Central Government no State Government shall, except with the approval of the Central Government, appointed another Commission to inquire into the same matter for so long as the Commission appointed by the Central Government is functioning;

(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States.

(2) The Commission may consist of one or more members appointed by the appropriate Government, and where the Commission consists of more than one member, one of them may be appointed as the Chairman thereof.

(3) The appropriate Government may, at any stage of an inquiry by the Commission fill any vacancy which may have arisen in the office of a member of the Commission (whether consisting of one or more than one member).

(4) The appropriate Government shall cause to be laid before the House of the People or, as the case may be, the Legislative Assembly of the State, the report, if any, of the Commission on the inquiry made by the Commission under sub-section (1) together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government."

32. After the two sections, set out above, which disclose the apparently very wide and undefined scope of inquiries to be conducted under the Act the only limit being that they must relate to matters of "definite public importance", follow sections conferring upon Commissions under the Act powers of civil court for the purpose of eliciting evidence, both oral and documentary and powers to punish those guilty of its contempt. Section 6 of the Act, however, makes it clear that statements made by a person in the course of his evidence before the Commission "will not subject him to or be used against him in any civil or criminal proceeding except in a prosecution for giving false evidence by making such statements." But, this protection is not extended to statements made in reply to questions not required by the Commission to be answered, or, those made on matters which are not relevant to the subject-matter of the inquiry. The Act, however, contains no provisions for giving any effect to the findings of the Commission or for enforcing any order which could be made by the Commission against any person as a result of an inquiry. In fact, the only orders a Commission under the Act is empowered to make against anybody are those relating to addiction of evidence,

whether oral or documentary, and those which may be required to protect the Commission against "acts calculated to bring the Commission or any member thereof into disrepute." The proceeding of a commission could only result in a Report which is to be laid before the Legislature concerned under the provisions of Section 3 (4) of the Act. Hence, the obvious intention behind the Act is to enable the machinery of democratic government to functions more efficiently and effectively. It could hardly be construed as an Act meant to thwart democratic methods of government.

33. Even in countries with undiluted unitary systems of Govt. there is devolution of powers of local self-Government for restricted purposes. In our country, there is, at the top, a Central or the Union Government responsible to Parliament, and there are, below it, State Governments, responsible to the State Legislatures, each functioning within the sphere of its own powers which are divided into two categories; the exclusive and the concurrent. Within the exclusive sphere of the powers of the State legislature is local Government. And, in all States there is a system of local Government in both Urban and Rural areas, functioning under State enactments. Thus, we can speak of a three tier system of Government in our country in which the Central or the Union Govt. comes at the apex with certain subjects which are exclusively left to the States concerned ordinarily or in normal times. But, even problems which arise within the territories of States may fall within the sphere of overriding Central power in emergencies. And, if a subject is considered important enough to be regarded as the concern of the whole nation, the Constitution makers have themselves placed it either in the exclusively Central Legislative List I or in the concurrent Legislative List III of items mentioned in Sch. VII.

34. Our Parliament consists of the President and the two Houses of Parliament. The House of the People is not meant to represent the States as independent units of a federation (Art. 79). It has to have a strength of members not exceeding 525 in number chosen by direct election by the people from various territorial constituencies in the States and not more than twenty representative of people living in the Union territories (Art. 81). There the people of India living in the States and of the Union territories are directly represented so that their interests and rights could be presumed to be well looked after and protected by their direct representatives. The Council of States has 12 members in it nominated by the President for their special knowledge or experience in matters of art, science or social service, and not more than 238 representatives of the States and elected by members of the Legislative Assembly of each State in accordance with the system of proportional representation by means of single transferable vote and from the Union territories in the manner prescribed by law made by the Parliament (Art. 80). The representation of the Legislative bodies of the States and of the Union territories is certainly a recognition of the federal principle. But, this does not mean that the Central Government is precluded from all interference in matters concerning individual States. For determining the extent of that interference and the circumstances in which it is possible we have to turn to other provisions of our Constitution.

35. Article 245 (1) of our Constitution gives the territorial operations of the laws made by Parliament and the States legislatures. Art. 246 (1) enacts that items in List I of the Seventh Schedule fall exclusively within the domain of Parliament and those in List II come exclusively with-in the legislative power of the State legislatures, but those in List III are to be concurrent. Art.

248, however, vests Parliament with exclusive power to legislate with respect to matters not enumerated in either the concurrent or State list. This is what is spoken of generally as the "residuary power". In addition, Parliament has overriding powers of legislating even for matters in the State list for limited duration if the Council of States by resolution supported by not less than two thirds of its members declares that it is necessary to do so in national interest or during the continuance of a proclamation of emergency (Articles 249 and 250). Inconsistency between laws made by the Parliament and a State legislature on an item found in a concurrent list, is to be resolved in favour of the law made by Parliament (Art. 254). And, far-reaching powers, contained in Arts. 352-360 in Part XVIII of the Constitution, enable the President to suspend not only the enforcement of fundamental rights of citizens, and their operation as fetters on legislative powers but also the functions of the State legislatures which can be assumed by Parliament and of State Governments which can be taken over by the President. It is true that the emergency powers are so drastic that they can be abused. We have not, however, got before us a case of the exercise of emergency powers or of abuse of powers. We are only considering here the extents of what are put forward as federal and democratic features of Govt. which may or may not be capable of suspension. As the Constitution stands at present, the exercise of the emergency powers, whose validity is not questioned before us by any party in this case, can completely remove even the semblance of a federal structure in our Constitution for the duration of an emergency.

36. A look at Chapter II of Part XI on administrative relations between the Union and the States, shows us provisions for directions which can be given to the State Governments even in normal times by the Central Govt. described in Arts. 256-257 as "the Govt. of India." Art. 256 enacts :

"256. The executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

Article 257 (1) may also be quoted to illustrate the extent of Executive powers of the States and Union Govt.:

"257 (1) The executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose".

37. The extent of the normal executive powers of the Union are indicated as follows by Art. 73(1) of the Constitution :

"73(1) Subject to the provisions of this Constitution, the executive power of the Union shall extend -

(a) to the matters with respect to which Parliament has power to make laws; and

(b) to the exercise of such rights, authority and jurisdiction as are exercisable by the Government of India by virtue of any treaty or agreement;

Provided that the executive power referred to in sub-clause (a) shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws".

And, the extent and limitations of the executive power of a State are given in Art. 162 as follows:

"162. Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws :

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof".

38. The wide scope of executive powers of the Union Government was considered by this Court not long ago in State of Rajasthan v. Union of India. AIR 1977 SC 1361 at p. 1383-84 where, after examining the relevant Constitutional provisions, one of us observed in the context of what was sought to be construed as a "direction" to the State Government, given by the Home Minister in the Union Government, to dissolve a State Assembly.

"I may point out that there are various aspects of relations between the Union and the States governed by different provisions of the Constitution. I may here refer to those which relate to given of 'directions' by the Union Government to the State Governments because Art. 365 provides:

'365. Where any State has failed to comply with or to give effect to any directions given in the exercise of the executive power of the Union under any of the provisions of this Constitution, it

shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of this Constitution.'

Articles 256 and 257 mention a wide range of subjects on which the Union Government may give executive directions to State Governments. Art, 73(1) (a) of the Constitution tells us that the Executive power of the Union extends to all matters on which 'Parliament has power to make laws'. Art. 248 of the Constitution vests exclusively in the Parliament residuary power of making laws on any matter not enumerated in the Concurrent or State Lists. Art. 256 of the Constitution covers cases where the President may want to give directions in exercise of the executive power of the Union to a State Government in relation to a matter covered by an existing law made by Parliament which applies to that State. But, Art, 257 (1) imposes a wider obligation upon a State to exercise its powers in such a way as not to impede the exercise of executive power of the Union which, as would appear from Art. 73 of the Constitution, read with Art. 248 may cover even a subject on which there is no existing law but on which there is no existing law but on which some legislation by Parliament is possible. It could, therefore, be argued that although, the Constitution itself does not lay down specifically when the power of dissolution should be exercised by the Governor on the advice of a Council of Ministers in the State, yet if a direction on that matter was properly given by the Union Government to a State Government, there is a duty to carry it out. The time for the dissolution of a State Assembly is not covered by any specific provisions of the Constitution or any law made on the subject. It is possible, however, for the Union Government, in exercise of its residuary executive power to consider it a fit subject for the issue of an appropriate direction when it considers that the political situation in the country is such that a fresh election is necessary in the interest of political stability or to establish the confidence of the people in the Govt. of a State". (p. 1383-84).

39. In that case, after considering the extent of federalism in our Constitution it was also observed (p. 1383) :

"If then our Constitution creates a Central Government which is 'amphibian' in the sense that it can move either on the federal or unitary plane, according to the needs of the situation and circumstances of a case, the question which we are driven back to consider is whether an assessment of the 'situation' in which the Union Government should move either on the federal or unitary plane are matters for the Union Government itself or for this Court to consider and determine. Each organ of the Republic isexpected to know the limits of its own powers. The judiciary comes in generally only when any question of ultra vires action is involved, because questions relating to vires appertain to its domain".

40. In the first quotation, given above, what was spoken of a 'residuary executive power" of the Central Government analogous to the "residuary" legislative powers of Parliament, was relied upon in support of the alleged "direction" from the Centre. In the case before us it could certainly be urged that a consideration of the question whether a State Govt. or its Chief Minister is or is not

carrying out the trust which constitutional power places in the hands of a State Government and its head, so as to determine whether any exercise of extraordinary powers under Art. 356 of the Constitution is called for or not, is certainly a matter which lay within the powers of the central Government, Art. 356 speaks of the "satisfaction" of the President from a report of the Governor "or other wise" whether a particular situation has arisen in which the Govt. of the State cannot be carried on in accordance with the provisions of the Constitution. Such a matter would certainly be a matter of public importance. If the President deems it necessary to give the State Govt. or its Chief Minister an opportunity of being heard before an impartial Commission of Inquiry constituted under the Act, it could certainly not be said that such a mode of exercise of power under Art. 356 is not fully convered by what is necessarily implied by this article of the Constitution. Indeed, such a procedure would be a very fair and reasonable one. And, in judging the validity of provisions even hypothetical situations to which they could apply could be taken into account and not merely those present in the case before the Court. We do not think that an examination of the express provisions of the Constitution advances the case of the plaintiff. On the other hand, the Central Govt. can place reliance on, inter alia, provisions of Art. 356 of the Constitution for powers which could be held to be necessarily implied in the provisions of the Constitution - that is to say, a power to order an inquiry for the purposes of the satisfaction required by Art. 356. And the machinery provided by the Act could, it seems to us, be utilised to decide whether action under Art. 356 is really called for.

41. Reliance was, however, placed strongly on provisions of the Constitution setting up what in the words of Dr. Ambedkar, one of the prime architects of our Constitution, is "a Dual Polity" by which, as was explained in the case of States of Rajasthan (supra), he meant a Republic "both unitary as well as federal" according to the needs of the time and circumstances. This "Dual Polity" of ours is a product of historical accidents, or, at any rate, of circumstances other than those which result in genuine federations in which the desire for a separate identity and governmental independence of the federating units is so strong that nothing more than a union with a strictly demarcated field of Central Government powers is possible. A confederal Polity carries the attenuation of Central authority to the extent of confining combined or concerted action to the more strictly limited field of collaboration only to matters such as foreign affairs and defence so that it sets up a mechanism of co-operative action in limited areas which can hardly be spoken of as a Government. A genuine federation is combination of political units which adhere rather tenaciously to the exclusion of the Central authority from strictly demarcated spheres of State action, but there is a Central or Federal "Government". The extent of Federalism set up depends upon the extent of demarcation in the executive, legislative and judicial spheres. In a truly Federal Constitution this demarcation is carried out in a very carefully comprehensive and detailed manner. The limits are clearly specified. We will thus have to examine our Constitution to determine how much of it is found here.

42. No doubt, throughout the long course of our history, our successive rulers had been trying to build up a unity of India by establishing their imperial sway politically and administratively over the whole country, but, it was really the British who succeeded in giving reality to such an objective. And, even they preserved a duality of systems of Government. There was a British India under the Governor-General presiding over the destinies of the various provinces under Governors as Imperial sub-agents, but all acting on behalf of an Emperor whose governments ruled from Westminster and Whitehall. And, there were other parts of the country, ruled by Indian Princes owing allegiance to a foreign Emperor to whose authority they paid homage by acknowledging his suzerainty or the

paramountcy exercised through his Viceroy. These two parts were sought to be knitted together into a federal polity by the Government of India Act of 1935. Federal principles, including a Federal court, were embodied in it so as to bring together and co-ordinate two different types of political systems and sets of authorities. But, after the Constitution of our Republic, came the gradual disappearance of Princely States and a unification of India in a single polity with duality of agencies of Government only for the purpose of their more effective and efficient operations under a Central direction. It was, more or less, an application of the principle of division of labour under at least Central supervision. In other words, the duality or duplication of organs of government on the Central and State levels did not reflect a truly federal demarcation of powers based on any separatist sentiments which could threaten the sovereignty and integrity of the Indian Republic to which members of our Constituent Assembly seemed ardently devoted, particularly after an unfortunate division of the country with certain obviously disastrous results.

43. However, we may examine the express provisions of our Constitution relating to the organs of Government in the States which, no doubt, give the appearance of full-fledged separate States for certain purposes. Each State has its own Governor exercising the executive power of that State. But, all Governors, although undertaking to devote themselves to the service and well-being of the people of their respective States, owe an undivided allegiance to "the Constitution and the law". Each of them is appointed by the President and holds office during the pleasure of the President to whom he sends his reports with a view to any proposed action under Art.356 of the Constitution. The Governor's authority, under the warrant of his appointment is traceable to the President to whom he is to submit his resignation if he resigns.

44. Article 163 speaks of the Council of Ministers "with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion". Now, the Council of Ministers, theoretically appointed by the Governor, is certainly "collectively responsible to the Legislative Assembly of the State" (see : Art 164 (2)). But, this "collective responsibility" does not, as has been erroneously attempted to be argued before us, abridge or truncate the power of the Central Government to appoint a Commission under S. 3 of the Act. In fact, this "collective responsibility" has a scope and mode of operation which are very different from those of an inquiry under S. 3 of the Act even though the same or similar matters may, sometimes, give rise to both. "Collective Responsibility" is basically political in origin and mode of operation. It may arise even in cases which may not call for any inquiry under S. 3 of the Act. And, matters investigated under S. 3 of the Act may have no bearing on any "collective responsibility".

45. The object of collective responsibility is to make the whole body of persons holding Ministerial office collectively, or, if one may so put it, "vicariously" responsible for such acts of the others as are referable to their collective volition so that, even if an individual may not be personally responsible for it, yet, he will be deemed to share the responsibility with those who may have actually committed some wrong. On the other hand, in the case before us, the enquiry under S. 3 of the Act by the Grover Commission has been ordered by the Central Government so as to determine who is actually responsible for certain actions and what could be the motive behind them. The

sphere of this enquiry is very different from that in which "collective responsibility" functions. Explaining "collective responsibility", as understood in England, two writers on Constitutional matters (see: "Some Problems of the Constitution" by Geoffrey Marshall and Graeme C. Moodie) say: (at p. 71):

"If responsibility is taken in the formal constitutional sense, there would seem, granted collective governmental responsibility, to be no clear distinction to be drawn between Ministers inside and those outside the Cabinet. To be responsible in this sense simply is to share the consequences of responsibility - namely to be subject to the rule that no member of the Government may properly remain a member and dissociate himself from its policies (except on occasions when the Government permits a free vote in the house)".

They add:

"The substance of the Government's collective responsibility could be defined as its duty to submit its policy to and defend its policy before the House of Commons, and to resign if defeated on an issue of confidence".

46. Each Minister can be made is separately responsible for his own decisions and acts and omissions also. But, inasmuch as the Council of Ministers is able to stay in office only so long as it commands the support and confidence of a majority of members of the Legislature of the State, the whole Council of Ministers must be held to be politically responsible for the decisions and policies of each of the Ministers and of his department which could be presumed to have the support of the whole Ministry. Hence, the whole Ministry will, at least on issues involving matters of policy, have to be treated as one entity so far as its answerability to the Legislative Assembly representing the electors is concerned. This is the meaning of the principle underlying Art. 164(2) of the Constitution. The purpose of this provision is not to find out facts or to establish the actual responsibility of a Chief Minister or any other Minister or Ministers for particular decisions or Governmental acts. That can be more suitably done, when wrongful acts or decisions are complained of, by means of inquiries under the Act. As already indicated above, the procedure of Parliamentary Committees to inquire into every legally or ethically wrong acts was found to be unsatisfactory and unsound. The principle of individual as well as collective ministerial responsibility can work most efficiently only when cases requiring proper sifting and evaluation of evidence and discussion of questions involved have taken place, where this is required, in proceedings before a Commission appointed under S. 3 of the Act.

47. Text-books writers on Constitutional Law have indicated how collective ministerial responsibility to Parliament, which was essentially a political purpose and effects, developed later than individual responsibility of Ministers to Parliament which was also political in origin and operation. It is true that an individual Minister could, in England, where the principle of individual and collective responsibility of Ministers was evolved, be responsible either for wrongful acts done by him without the authority of the whole cabinet or of the monarch to support them, or under

orders of the King who could, in the eye of law, do no wrong. But, apart from an impeachment, which has become obsolete, or punishment for contempts of a House, which constitute only a limited kind of offences, the Parliament does not punish the offender. For establishing his legal liability recourse to ordinary courts of law is indispensable.

48. Responsibility to Parliament only means that the Minister may be compelled by convention to resign. Out of this liability arose the principle of collective responsibility. Thus, in Wade and Philips on "Constitutional Law". 8th Edn., p. 87 we find: "Just as it became recognised that a single Minister could not retain office against the will of Parliament, so later it became clear that all Ministers must stand or fail together in Parliament, if the Government was to be carried on as a unity rather than by a number of advisers of the Sovereign acting separately". This development of collective responsibility was thus described in 1878 by Lord Salisbury:

"For all that passes in Cabinet every member of it who does not resign is absolutely and irretrievably responsible and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded by his colleagues ... It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet, who, after a decision is arrived at remains member of it, that the joint responsibility of Ministers to Parliament can be upheld and one of the most essential principles of parliamentary responsibility established."

49. The whole question of responsibility is related to the continuance of Minister or a Government in office. A Minister's own acts or omissions or those of others in the Department in his charge, for which he may feel morally responsible or, for which other may hold him morally responsible, may compel him to resign. By an extension of this logic, applied to individual Ministers at first, emerged the principle of "collective responsibility" which we find enacted in Articles 75 (2) and 164 (2) of our Constitution. The only sanction for its enforcement is the pressure of public opinion expressed particularly in terms of withdrawal of political support by members of Parliament or the State Legislature as the case may be.

50. As Prof. S. A. de Smith points out in his Constitutional and Administrative Law, 1971, at pp. 170 to 179, the principle operates in a nebulous moral-cum-political sphere, sometimes forcing an individual Minister to resign, as in the case of Mr. Profumo, and, on other occasions, involving the fate of the whole Ministry, depending upon the extent to which the Cabinet as a whole could be, in the circumstances of a particular case, deemed to be responsible for a particular decision or action or inaction. In England, the principle operates as a matter of convention backed by political judgment, as reflected in Parliament whereas, for us, the principle is stated in our Constitution itself, but it, nevertheless, depends upon convention and upon public opinion, particularly as reflected in Parliament or in the State Legislature, as the case any be, for its effectiveness. The principle thus exists separately and independently from the legal liability of a Minister, holding an office in the Union or a State Government.

51. An investigation by a Commission of Inquiry should facilitate or help the formation of sound public opinion. That was the object of the Commission of Inquiry presided over by Lord Denning on the Profumo affair. The fact that the Minister concerned was considered individually responsible to the House for a wrong statement made to it did not prevent an inquiry by a Commission into matters on which he had made the statement. His individual actions, however, did not bring into operation the principle of collective responsibility because his colleagues in the Government could not reasonably be held guilty of dereliction or breach of any duty.

52. A Commission of Inquiry could not properly be meant, as sometimes suspected, merely whitewash ministerial or departmental action rather than to explore and discover, if possible, real facts. It is also not meant to serve as a mode of prosecution and much less of persecution. Proceedings before it cannot serve as substitutes for proceedings which should take place before a Court of law invested with powers of adjudication as well as of awarding punishments or affording reliefs. Its report or findings cannot relieve Courts which may have to determine for themselves matters dealt with by a Commission. Indeed, the legal relevance or evidentiary value of a Commission's report or findings on issues which a Court may have to decide for itself, is very questionable. The appointment of a Commission of Inquiry to investigate a matter which should, in the ordinary course, have gone to a Court of law generally a confession of want of sufficient evidence - as in the case of the appointment of the Warren Commission in the U.S.A. to inquire into facts concerning the murder of the late President Kennedy - to take it to Court combined with an attempt to satisfy the public need and desire to discover what had really gone wrong and how and where if possible.

A Commission of Inquiry has, therefore, a function of its own to fulfill. It has an orbit of action of its own within which it can move so as not to conflict with or impede other forms of action or modes of redress. Its report or findings are not immune from criticism if they are either not fair and impartial or are unsatisfactory for other reasons as was said to be the case with the Warren Commission's report.

53. Provisions of either Art.75 (2) or Art. 164 (2) could not operate as bars against the institution of inquiries by Commissions set up under the Act. To infer such bars as their necessary consequences would be to misunderstand the object as well as the mode and sphere of operation of the principles found in both Articles 75 (2) and 164 (2) of the Constitution and also the purpose, scope, and function of Commissions of Inquiry set up under the act.

54. In a somewhat desperate attempt to find some constitutional prohibition against the inquiries on which the Grover Commission has embarked, learned Counsel for the plaintiff relied on Art.194(3) of the Constitution. The particular Cl.(3) of Art.194 has to be read in the context of other clauses of Art. 194 as well as the remaining provisions of the Constitution as indicated by Art.194 (1) we may here set out the whole of Art. 194 which reads as follows:

"194(1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature, there shall be freedom of speech in the Legislature of every State.

(2) No member of the Legislature of a State shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof, and no person shall be so liable in respect of the publication by or under the authority of a House of such a Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature of a State, and of the Members and the committees of a House of such Legislature, shall be such as may from time to time be defined by the Legislature by law, and, until so defined, shall be those of the House of Commons of the Parliament of the United Kingdom, and of its members and committees, at the commencement of this Constitution.

(4) The provisions of Cls. (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of,a House of the Legislature of a State or any committee thereof as they apply in relation to members of that Legislature."

55. Article 194 reproduces the terms of Art. 105 with this evident difference that, whereas Art. 194 is applicable to Houses of a State Legislature, Art. 105 applies to the two Houses of Parliament. Each of these two articles subjects "the powers, privileges and immunities" of each House as well as all its Members and its Committees not only to the laws made by the appropriate legislature but also to all the other provisions of the Constitution. It is clear, from these articles, that they do not apply to legislative powers of Parliament or of the State Legislatures which are specifically dealt with by Articles 245 to 255 of the Constitution. Articles 105 and 194, far from dealing with the legislative powers of Houses of Parliament or of State Legislatures respectively, are confined in scope to such powers of each House as it may exercise separately functioning as a House. It also covers immunities and privileges of each House as a House as well as of its members. The correct principle of interpretation to apply is "noscitur a sociis", or, in other words, the word "powers" gets its meaning and colour not only from its context but also from the other words used in association with it.

56. It is evident, from the Chapter in which Art. 194 occurs as well as the heading and its marginal note that the "powers" meant to be indicated here are not independent. They are powers which depend upon and are necessary for the conduct of the business of each House. They cannot also be expanded into those of the House of Commons in England for all purposes. For example, it could not be contended that each House of a State Legislature has the same share of legislative power as the House of Commons has, as a constituent part of a completely sovereign legislature. Under our law it is the Constitution which is sovereign or supreme. The Parliament as well as each Legislature of a State in India enjoys only such legislative powers as the Constitution confers upon it. Similarly, each House of Parliament or State Legislature has such share in legislative power as is assigned to it

by the Constitution itself. The powers conferred on a House of a State Legislature are distinct from the legislative powers of either Parliament or of a State legislature for which, as already observed, there are separate provisions in our Constitution. We need not travel beyond the words of Art.194 itself, read with other provisions of the Constitution, to clearly reach such a conclusion.

57. There is, if we may say so, considerable confusion still in the minds of some people as to the scope of the undefined "powers, privileges and immunities" of a House of a State Legislature so much so that it has sometimes been imagined that a House of a State Legislature has some judicial or quasi judicial powers also, quite apart from its recognised powers of punishment for its contempts or the power of investigations it may carry out by the appointment of its own committees. Arguments of the kind which have been sometimes advanced in this country could not have been advanced if it was clearly understood that, even in England, where the Constitution is largely conventional, the exercise of judicial powers directly by Houses of the legislature, including powers such as those of impeachment, are practically obsolete. Whatever remained of the power enjoyed once by the High Court of Parliament, when the King could himself sit, as a part of Parliament with the Houses of Parliament, to administer justice is now concentrated in the House of Lords, exercised through a Committee of Law Lords.

58. Every power of the House of parliament in England is subject to an act of Parliament. The Act with which we are concerned is an Act of our Parliament. We have to satisfy ourselves by reference to our Constitution and not the British Constitution that the provisions of the Act before us are within the legislative competence of Parliament. But, if we could ignore the provisions of our Constitution relating to distribution of legislative powers, which is what the arguments based on Art. 194 (3) seem to imply, we would be left with no yard-stick for determining the legislative competence of our Parliament. It would be absurd to take that view simply because that is the position in England. Nobody could, in England, question the validity of an Act of Parliament on the ground that it is in excess of the power vested in a sovereign Parliament to legislate. If we could apply that principle here the Act before us would be a sufficient answer to all argument against its validity.

59. If that principle does not apply in our country because of the provisions of our Constitution, which constitute courts judges of constitutionality of even Acts of Parliament, we have to test the provisions of the Act on the anvil of express provisions of our own Constitution and not on the erroneously supposed powers of a House of Commons in England which could never ignore or invalidate the provisions of any Act made by the Parliament there although it could play a decisive role in its repeal if it so desired.

60. A source of confusion about the "powers" and "privileges" of the House of Commons even in England was sought to be removed long ago by Sir Erskine May when he pointed out in his "Parliamentary Procedure and Practice", in 1844, that Coke's dictum and Blackstone's views, according to which the ordinary law courts could not judge matters relating to "Lex Parliamenti" on

the ground that "the High Court of Parliament hath no higher", were out of date even in 17th Century England. He said about such views:

"The views belonged to a time when the distinction between the judicial and legislative functions of Parliament was undrawn or only beginning to be drawn and when the separation of the Lords from the Commons was much less complete than it was in the seventeenth century. Views about the High Court of Parliament and its powers which were becoming antiquated in the time of Coke, continued to be repeated far into the eighteenth century, although after the Restoration Principles began to be laid down which were more in accord with the facts of the modern Constitution. But much confusion remained which was not dismissed by the use of the phrase "privileges of Parliament."

61. Sir Erskine May went on to indicate the three notions resulting from this "confusion of thought" in the course of English Constitutional history. He wrote:

"Three notions arise from this confusion of thought:

(1) That the courts, being inferior to the High Court of Parliament, cannot call in question, the decision of either House on a matter of privilege.

(2) That the lex at conseutudo parlimenti is a separate law, and, therefore, unknown to the Courts.

(3) That a Resolution of either House declaratory of privilege is a judicial precedent binding on the courts."

62. Now, what learned counsel for the plaintiff seemed to suggest was that Ministers, answerable to a Legislature were governed by a separate law which exempted them from liabilities under the ordinary law. This was never the law in England. And, it is not so here. Our Constitution leaves no scope for such arguments based on a confusion concerning the "powers" and "privileges" of the House of Commons mentioned in Arts. 105(3) and 194 (3). Our Constitution vests only legislative power in Parliament as well as in the State legislatures. A House of Parliament or State legislature cannot try anyone or any case directly, as a Court of Justice can, but it can proceed quasi judicially in cases of contempts of its authority and take up motions concerning its "privileges" and "immunities" because, in doing so, it only seeks removal of obstructions to the due performance of its legislative functions. But, if any question of jurisdiction arises as to whether a matter falls here or not, it has to be decided by the ordinary courts in appropriate proceedings. For example, the jurisdiction to try a criminal offence, such as murder committed even within a House vests in

ordinary criminal courts and not in a House of Parliament or in a State legislature. In Smt. Indira Nehru Gandhi v. Shri Raj Narain, (1976) 2 SCR 347: (AIR 1975 SC 2299) this Court held that a House of Parliament cannot,in exercise of any supposed "powers" under Art. 105, decide election disputes for which special authorities have been constituted under the Representation of the People Act, 1951, enacted in compliance with Art. 329. Similarly, appropriate provisions for appointments of suitable persons, invested with power to determine, in accordance with a procedure which is fair and just and regular and efficient, for ascertainment of facts on matters of public importance, is provided by the Act. If such provisions are covered by specific provisions relating to legislative competence of Parliament and one of the items in Central List I or the Concurrent List III of the Seventh Schedule of the Constitution, we need not go to other provisions which would, strictly speaking not be relevant unless they could be relied upon to clearly carve out some exception operating against such legislative competence.

63. Learned Counsel for the plaintiff has relied also upon the provisions of Chapter II, Part XI, containing Arts. 256 to 263 of the Constitution. Here, we find Arts 256 and 257 (1) of the Constitution which we have already examined above to bring out the extent of Government of India's power to give necessary directions to every State. The term "State" used there could not possibly be held to apply merely to a geographical entity or territory. Article 1, sub-article (2) and Art. 3 of our Constitution make a distinction between "the State" and its territory. Art 300, in the context of legal proceedings, makes the Government of a State the legal representative of the State. A direction can only be given to a legal entity and not to a geographical or a territorial entity. Hence, "directions" to the "State", as these terms are used in Arts. 256 and 257, must necessarily mean directions to States as legal entities which must have legal representatives. There need be no difficulty in treating State Govts. as representatives of their respective individual States. Can we, with such a Constitution as ours, say that the Union Government must take no interest, and, consequently, no action whatsoever which savours of interference with governmental functions of a State Government? In the dissolution of State Assemblies' case (AIR 1977 SC 1361) we have already stated the views of this Court on such a subject at some length indicating there the kind of federation we have in this country with what has been characterised as "a strong unitary bias", or, at any rate, with powers given to the Union Govt. of supervision and even super-session, in certain circumstances, of State Governments temporarily to restore normalcy or to inject honesty integrity, and efficiency into State administrations where these essentials of good government may be wanting.

64. Neither Chapter II, Part XI of the Constitution, dealing with the administrative relations between the Union and the States, nor any other part of the Constitution could be held to imply a prohibition against the exercise of any legislative power of Parliament. Indeed, a glance through Chapter II in Part XI shows that, apart from Arts. 256 and 257 (I), it deals only with some special matters, such as maintenance of national highways, water ways, and railways, constructions to be undertaken for objects of national or military importance, delegation of certain powers, some arbitrations, recognition throughout the territory of India of certain public acts and judicial proceedings of the Union and of every State, determination of disputes relating to waters, and certain other matters involving co-ordination between the States. It could not be said to exhaust all matters which may involve the interests of particular States as well as of the Union. There is nothing in any of the provisions here or elsewhere in our Constitution which could, by a necessary implication, be said to

impose conditions on the exercise of legislative powers distributed by Chapter I of Part XI of the Constitution read with the three lists in the Seventh Schedule. Such a question must, therefore, be determined exclusively by the provisions of Chapter I of Part XI which refer us to the legislative lists in the Seventh Schedule. We cannot forget that we are really concerned here with legislative powers and not with administrative relations or directions. It is true that these powers cannot be so exercised as to displace or amend the Constitution. But, unless they have that effect, provisions meant to supplement and facilitate due discharge of Constitutional powers cannot be deemed to be in excess of ordinary legislative power.

65. Entry 94 in List I of exclusively Central subjects of legislation reads as follows:

"94. Inquiries, surveys and statistics for the purpose of any of the matters in this list"

It true that matters affecting relations between the Union Government and the State Government are not found mentioned specifically anywhere in the Union List. It was, therefore, urged that "inquiries" mentioned here, even if they extend beyond surveys and statistics, must, nevertheless, be confined to "matters in this list." It was submitted that such "inquiries" could not embrace the conduct of Ministers exercising governmental powers as such conduct does not fall under any item in the list but should, properly speaking, have found a place in the Chapter on "administrative relations." It was suggested that the Union Government was really trying to exercise a kind of unwarranted disciplinary authority and control over the conduct of Ministers in the States in the performance of governmental functions by setting up a Commission of inquiry - a subject, it is submitted, that could properly be dealt with only as a part of "Constitutional law" and should have found a mention explicitly in some part of our Constitution so as to be unmistakably identifiable there as such control exercisable through the means adopted for it.

66. We do not think that the term "Constitutional law" can be either clearly or exhaustively defined although its nature can be roughly indicated in the way in which textbook writers have attempted to do it. For example, Professors E. C. S. Wade and Godfrey Phillips (See: Constitutional Law, 8th Ed. page 4) say:

"There is no hard and fast definition of constitional law. In the generally accepted use of the term it means the rules which regulate the structure of the principal organs of government and their relationship to each other, and determine their principal functions."

In other words, it could be expected to contain only the basic frame-work. It is not part of its nature to exhaustively deal with all governmental matters.

67. As there is no written Constitution in Britain, the authors quoted abvoe said: "the Constitutional has no separate existence since it is the ordinary law of the land." They added: "There is a common

body of law which forms the constitution, partly statutory, partly common law, and partly conventions." It is not possible in England to equate all that passes as "constitutional law" with rules enforceable through Courts of law because conventions, which cannot be so enforced, are also, apparently, treated as parts of it since they also contain rules of conduct. Thus, not all "constitutional law" need be written or be even "law" in the commonly accepted sense of this term. In any case, there can be no clear cut distinction between what could or should and what could not or should not be comprehended within the body of rules called "constitutional law." In practice, it will be found that what is embodied even in a written constitution depends sometimes on the peculiar notions for the time being of people who make it. It reflects their views about what should be considered so basic or fundamental as to find a place in the constitutional document. For example, one of the provisions of the Swiss Constitution of 1893 prohibits "sticking of animals for butchers' meat unless they have previously been stunned." According to normal notions of "constitutional law", such a subject should not have found a place in it. Others think that a constitution should contain nothing more than the barest possible outlines of the structure of the Government of a country. The rest, whether "constitutional law" or not, could be done by the exercise of ordinary legislative powers.

68. Prof. K. C. Wheare, in his "Modern Constitutions", wrote a Chapter on "What a constitution should contain", where he observes:

"A glance at the Constitutions of different countries shows at once that people differ very much in what they think it necessary for a Constitution to contain. The Norwegians were able to say all that they wanted to say in about twenty five pages; the Indians occupy about two hundred and fifty pages in their Constitution of 1950. A principal line of division is found between those who regard a Constitution as primarily and almost exclusively a legal document in which, therefore, there is a place for rules of law but for practically nothing else, and those who think of a Constitution as a sort of manifesto, a confession of faith, a statement of ideals, a 'charter of the land', as Mr. Podsnap called it."

He opined that "the one essential characteristic of the ideal or the best form of constitution is that it should be the shortest possible." And, Chief Justice John Marshall of the United States said in 1819 in Mc Culloch v. Maryland, (1819) 4 L Ed 579:

"A Constitution to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves."

69. It is true that our Constitution-makers did not try to conform to the standards indicted above. This was due largely to the historical background and the manner of our Constitution making. We did not start with a clean slate. We accepted as our starting point the scheme embodied in the

Government of India Act, 1935, enacted by the British Parliament, evidently in an attempt to provide quite a comprehensive and fool proof set of legal rules for the governance of our country. On it, were engrafted a set of provisions containing principles, some-times conflicting, culled from the Constitutions of various countries, including Japan, and results of judicial wisdom and experience gathered from all corners of the earth, so that we have a Constitution which, as Mr. Granville Austin suggests in his book on "The Indian Constitution: The cornerstone of a Nation", resembles a coat of various colours.

70. Our Constitution may be lengthy and considerably more comprehensive and elaborate than Constitutions of other countries. Nevertheless, to expect its contents to be so all embracing as to necessarily specify and deal with every conceivable topic of legislation on all constitutional matters exhaustively, with sufficient particulars, so as to leave no room for doubt as to what could be meant by it - as though a topic of legislation had to be stated, with necessary particulars, like a charge to an accused person - is to expect the humanly impracticable if not the impossible. And, to build an argument founded on the supposed reasonableness of such an expectation and some loosely drafted comprehensive definition of either "constitutional law" or a "Constitution", to convince us that what is not so specified and identifiable as a subject of legislation, given in the Constitution, must be necessarily prohibited at least as a topic of ordinary legislation, although it may become permissible by an amendment of the Constitution, by an addition to it, appears very unrealistic to us. At any rate, our Constitution does not inhibit the growth or development of supplementary constitutional law through channels other than Article 368.

71. Excessive particularity is not consistent, as already indicated above, with the generally accepted notions of a basic or what may be characterised as the "structural" law of the State delineating its broad basic features only. The most that could be expected from the human foresight of Constitution-makers is that they should provide for that residual power of legislation which could cover topics on which, consistently with the constitutional framework, Parliament or State legislatures could depending on the constitutional pattern, legislate even though the legislation may not be easily assignable to any specific entry. Such a provision our Constitution-makers did make.

72. Item 97 corresponds to the residuary legislative powers of Parliament under Art. 248. It reads as follows:

"97. Any other matter not enumerated in List II or List III including any tax not mentioned in either of those lists."

It gives effect to Art. 248. No doubt resort to art. 248, read with Item 97 of List I, could not overcome any specific constitutional bar against legislation on investigation of conduct of Ministers of any State Government in the discharge of their duties had there been one. There is certainly no such express and specific bar in our Constitution. And, it is difficult to see how one can arise by

some necessary implication of provisions dealing with entirely different topics. There is no indication anywhere in our Constitution that, while enacting the provisions from which we are asked to infer a bar against or limitation upon legislation on such a topic as inquiries, that our Constitution-makers had any such bar or limitation even remotely in their minds. There seems no legal or rational nexus between such a supposed bar or limitation and the subjects dealt with in the articles relied upon. As already indicated above, the Constitution-makers cannot always mention and exhaust every conceivable topic. We think that it is in order to meet precisely such a situation that Art. 248 read with Entry 97 was inserted. Hence, we think that Art. 248 read with Entry 97 of List I will fully cover Section 3 of the Act even if Item 94 of List I does not.

73. Alternatively, Entry 45 of the Concurrent List III of the Seventh Schedule was relied upon on behalf of the Union. This item reads as follows:

"45. Inquiries and statistics for the purposes of any of the matters specified in List II or List III" To fall under Item 45 of List III the topic of inquiry must relate to one of those specified in List II or List III. If neither Items 94 and 97 of List I nor Item 45 of List III which refers to inquiries relating to topics in List II as well, could cover Section 3 of the Act, it would necessarily follow that such an enactment, assuming that Section 3 was meant to cover an inquiry against a State Minister's conduct in the exercise of powers enjoyed by him by virtue of his office, was not contemplated at all by our Constitution-makers. If such an argument was correct, Section 3 would, on the assumption made, fall entirely outside the legislative competence of both Parliament and State Legislatures because there would be no legislative power conferred upon any Legislature to deal with such a subject as it could not be covered by any entry in any list. Indeed, if we have correctly understood the argument of learned counsel for the plaintiff in the form it finally took, this is precisely what is submitted to us for acceptance. It was contended that this was so because the conduct of governmental affairs by State Governments and their Ministers is subject exclusively to the control by State Legislature and those of the Union Government by Parliament alone by reason of the constitutional provisions we have already examined and explained.

74. To accept such contentions of the learned counsel for the plaintiff is to place Ministers, both in the States and in the Union Governments, completely outside the scope of legal answerability on the ground that they were only politically responsible to and controllable by appropriate legislatures even when they, in the course of purported exercise of official powers, act dishonestly and corruptly and even commit criminal offences. This would mean that even if a Minister receives bribes, as we genuinely hope that none in the whole country does, he could not be made answerable in ordinary courts or be subjected to criminal proceedings. If no inquiry under any law into his conduct was possible simply because the act complained of was done by a Minister in purported exercise of a power vested in him by virtue of his ministerial office, he would be placed in a privileged position above the ordinary processes of law applicable to other citizens. Mere holding of Ministerial office would confer immunity from any inquiry. He would thus become a legally irresponsible despot above the ordinary law.

75. To determine whether there is a prima facie case for a criminal offence facts have to be necessarily investigated or inquired into. But, if every type of inquiry and investigation except one by the House of the Legislature of which he is a member is barred, the very first step towards a prosecution for any serious crime would be shut out in limine. No question of any further legal proceedings would arise under any enactment. Such a consequence of the constitutional provisions relied upon by learned counsel for the plaintiff could not, in our opinion, be possibly within the contemplation of our Constitution-makers. Indeed, such a view would clearly violate the express and very salutary provisions of Art. 14.

76. We prefer to infer and hold that the term 'inquiries', as used in Item 94 of List I and Item 45 of List III, without any limitations upon their nature or objects, is wide enough to embrace every kind of inquiry, whether a criminal offence by anyone is disclosed or not by facts alleged. Entry 45 in List III must include inquiries to cover allegations against all persons which bring them within the sphere of Entry I of List III relating to criminal law. All that "inquiries" covered by Item 45 require is that they must be "for the purpose of any of the matters specified in List II or List III". The language used - "any of the matters specified" - is broad enough to cover anything reasonably related to any of the enumerated items even if done by holders of ministerial offices in the States. Other subjects will be found in State List II. And, even assuming that neither Entry 94 of List I nor Entry 45 of List III, would cover inquiries against ministers in the States, relating to acts connected with the exercise of ministerial powers, we think that Art. 248, read with Entry 97 of List I, must necessarily cover an inquiry against Ministers on matters of public importance whether the charges include alleged violations of criminal law or not. A contrary view would, in our opinion, have the wholly unacceptable consequence of placing Ministers in State Governments practically above the law. We must lean against an interpretation which has consequences which, had they flowed from an express, enactment of Parliament or of a State Legislature, would have invalidated the provision for conflict with Art. 14.

77. It would not be out of place to mention that even for the purposes of an inquiry into the conduct of judges of the Supreme Court or of High Courts an Act of Parliament was passed for the specific purpose of Art. 124 to provide, through appropriate investigation and inquiry, "proof of the misbehaviour or incapacity of a Judge" before proceedings under Art. 124 (4) could be initiated for their removal. (See: The Judges' (Inquiry) Act. 51 of 1968). Hence, even Judges, who have to be protected against unfounded or malicious charges, as they have to give decisions which must necessarily displease at least one out of two or more parties to a case, are not in a more privileged position. It is true that, as somebody has observed, reckless charges are perhaps hurled against those holding public offices in our country with the abundance of confetti at a wedding yet, we cannot do away with inquiries under the Act for this reason. The liability to face such inquiries before a duly appointed impartial Commission is one of those hazards which individuals holding ministerial office have to face. They can perhaps find solace in the thought that inquiries which are thorough and impartial, conducted by competent persons who have held high judicial office, are the best means of clearing them of charges which are really unfounded and malicious.

78. As we think that the powers conferred by S. 3 upon the Central and State Governments,

including the power to institute inquiries of the kind set up under each of the two Notifications, are covered by the express constitutional provisions mentioned above, no question of any exclusion, either by necessary implication or by any principle supposed to form a part of or to flow from the basis structure of the Constitution, can arise here. Nor can we, upon the view we take, read down and so interpret S.3 of the Act as to exclude from its purview inquiries of the kind instituted under the two Notifications. To do so would be to give an incentive to possible misuse and perversion of governmental machinery and powers for objects nor warranted by law. Such powers carry constitutional obligations with them. They are to be exercised like the powers and obligations of trustees who must not deviate from the purposes of their trusts. Whether a Minister has or has not abused his powers and privileges could be best determined by fair and honest people anywhere only after a just and impartial inquiry has taken place into complaints made against him so that its results are before them.

79. It is evident from the foregoing discussion that the principle relied upon by the plaintiff's learned Counsel repeatedly, in support of which a passage from Crawford's "Statutory Construction"(1940 Edn.) (paragraph 195 at p. 334-335) was also cited, as the basis of the submissions of the learned Counsel, was that what is expressly provided for by the Constitution must necessarily exclude what is not so provided for. This reasoning is an attempted misapplication of the principle of construction "Expressio Unius Est Exclusio Alterius". Before the principle can be applied at all the Court must find an express mode of doing something that is provided in a statute, which, by its necessary implication, could exclude the doing of that very thing and not something else in some other way. Far from this being the case here, as the discussion above has shewn, the Constitution-makers intended to cover the making of provisions by Parliament for inquiries for various objects which may be matters of public importance without any indications of any other limits except that they must relate to subjects found in the Lists. I have also indicated why a provision like S. 3 of the Act would, in any case, fall under Entry 97 of List I of Sch. VII read with arts. 248 and 356 of the Constitution even if all subjects to which it may relate are not found specified in the lists. Thus, there is express provision in our Constitution to cover an enactment such as S. 3 of the Act. Hence, there is no room whatsoever for applying the "Expressio Unius" rule to exclude what falls within an expressly provided legislative entry. That maxim has been aptly described as a "useful servant but a dangerous master" (per Lopes L.J. in Colquhoun v. Brooks) (1888) 21 QBD 52 at p. 65. The limitations or conditions under which this principle of construction operates are frequently overlooked by those who attempt to apply it.

80. To advance the balder and broader proposition that what is not specifically mentioned in the Constitution must be deemed to be deliberately excluded from its purview, so that nothing short of a Constitutional amendment could authorise legislation upon it, is really to invent a "Casus Omissus" so as to apply the rule that,where there is such a gap in the law, the Court cannot fill it. The rule, however, is equally clear that the Court cannot so interpret a statute as "to produce a casus omissus" where there is really none (see: The Mersey Docks and Harbor Board v. Henderson Brothers, (1888) 13 AC 595 at p. 602). If our Constitution itself provides for legislation to fill what is sought to be construed as a lacuna how can legislation seeking to do this be held to be void because it performs its intended function by an exercise of an expressly conferred legislative power? In declaring the purpose of the provisions so made and the authority for making it, Courts do not supply an omission or fill up a gap at all. It is Parliament which can do so and has done it. To hold that Parliament is

incompetent to do this is to substitute an indefensible theory or a figment of one's imagination - that the Constitution stands in the way somehow - for that which only a clear Constitutional bar could achieve.

81. This brings me to the next question to be considered: are there any special rules relating to the construction of Constitutions in general or of our Constitution in particular ? And, if there be any such rules, would their application support the restrictive construction, submitted on behalf of the plaintiff for our acceptance, on the Parliament's power to enact S. 3 of the Act ? These seem to be important questions which need answers with some clarity if possible.

82. A written Constitution, like any other enactment, is embodied in a document. There are certain general rules of interpretation and construction of all documents which, no doubt, apply to the Constitution as well. Nevertheless, the nature of a Constitution of a Sovereign Republic, which is meant to endure and stand the test of time, the strains and stresses of changing circumstances, to govern the exercise of all Governmental powers, continuously, and to determine the destiny of a nation, could be said to require a special approach so that judicial intervention does not unduly thwart the march of the nation towards the goals it has set before itself.

83. Napoleon Bonaparte once said that the best Constitution for any country in one which is both short and vague. Obviously, he meant that a Constitution must have the capacity to develop and to be easily adapted to the changing needs of the nation, to the vicissitudes of its fortunes, to the growth and expansion of various spheres of its life - social, economic, political, legal, cultural, and psychological. If the Constitution is unable to perform this function it fails. Prof. Willis, whose work on "Constitutional Law of the United States" has been cited before by this Court, has said (at p. 19):

"Our original Constitution was not an anchor but a rudder. The Constitution of one period has not been the Constitution of another period. As one period has succeeded another, the Constitution has become larger and larger".

This elasticity or adaptability of the American Constitution may account for its durability.

84. Although, a written Constitution, which is always embodied in a document, must necessarily be subject to the basic canons of construction of documents, yet its very nature as the embodiment of the fundamental law of the land, which has to be adapted to the changing needs of a nation makes it imperative for Courts to determine the meanings of its parts in keeping with its broad and basic purposes and objectives. This approach seems to flow from what may be called a basic principle of construction of documents of this type: that the paramount or predominant objects and purposes,

evident from the contents, must prevail over lesser ones obscurely embedded here and there. The constitutional document, in other words, must be read as a whole and construed in keeping with its declared objects and its functions. The dynamic needs of the nation, which a Constitution must fulfill, leave no room for merely pedantic hair-splitting play with words or semantic quibblings. This, however, does not mean that the Courts, acting under the guise of a judicial power, which certainly extends to even making the Constitution in the sense that they may supplement it in those parts of it where the letter of the Constitution is silent or may leave room for its development by either ordinary legislation or judicial interpretation, can actually nullify, defeat, or distort the reasonably clear meaning of any part of the Constitution in order to give expression to some theories of their own about the broad or basic scheme of the Constitution.

85. The theory behind the Constitution which can be taken into account for purposes of interpretation, by going even so far as to fill what have been called the "interstices" or spaces left unfilled, due perhaps to some deliberate vagueness or indefiniteness in the letter of the Constitution, must itself be gathered from express provisions of the Constitution. The dubiousness of expressions used may be cured by Courts by making their meanings clear and definite if necessary in the light of the broad and basic purposes set before themselves by the Constitution-makers. And, these meanings may, in keeping with the objectives or ends which the Constitution of every nation must serve, change with changing requirements of the times. The power of judicial interpretation, even if it includes what may be termed as "interstitial" law making, cannot extend to direct conflict with express provisions of the Constitution or to ruling them out of existence. What the express provisions authorise cannot be curtailed by importing limits based on a mere theory of limitations on legislative powers.

86. The statement of general principles of construction set out above, is borne out by earlier pronouncements of this Court - some emphasizing the clearly expressed meanings of words used in the Constitution, which cannot be deviated from, others laying stress on the paramount purposes and objectives of the Constitution-makers, some asserting the undoubted power of Courts to declare void legislation in conflict with the Constitutional provisions, others pointing out the plenitude of legislative powers conferred by the Constitution upon Parliament and the State Legislatures, presumed to know best the needs of the people, so that Courts could not lightly invalidate statutes. I will briefly refer to some of the past pronouncements of this Court where emphasis would naturally differ from case to case according to the particular context in which some rule of construction arose for consideration.

87. Kania, C. J., quite clearly laid down a basically sound approach, if I may so characterise it with great respect, to the interpretation of the Constitution in A. K. Gopalan v. State of Madras, (1950) 1 SCR 88 at pp. 119 to 128: (AIR 1950 SC 27 p. 42) when he said:

"In respect of the construction of a Constitution Lord Wright in James v. The Commonwealth of Australia (1936 AC 578 at p. 614) observed that "a Constitution must not be construed in any

narrow and pedantic sense". Mr. justice Higgins in Attorney-General of New South Wales v. Brewery Employees' Union (1908) 6 Com LR 469 at ages 611-12 observed: 'Although we are to interpret words of the Constitution on the same principles of interpretation as we apply to any ordinary law these very principles of interpretation compel us to take into account the nature and scope of the Act that we are interpreting - to remember that it is a Constitution, a mechanism under which laws are to be made and not a mere Act which declares what the law is to be'. In In re the Central Provinces and Berar Act XIV of 1938 (1939 FCR 18 at p. 37): (AIR 1939 FC 1), Sir Maurice Gwyer, C. J., after adopting these observations said: 'especially is this true of a Federal Constitution with its nice balance of jurisdictions. I conceive that a broad and liberal spirit should inspire those whose duty it is to interpret it; but I do not imply by this that they are free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory or even for the purpose of supplying omissions or of correcting supposed errors'. There is considerable authority for the statement that the Courts are not at liberty to declare an Act void because in their opinion it is opposed to a spirit supposed to pervade the Constitution but not expressed in words. Where the fundamental law has not limited, either in terms or by necessary implication, the general powers conferred upon the legislature we cannot declare a limitation under the notion of having discovered something in the spirit of the Constitution which is not even mentioned in the instrument. It is difficult upon any general principles to limit the omnipotence of the sovereign legislative power by judicial interposition, except so far as the express words of a written Constitution give that authority. It is also stated, if the words be positive and without ambiguity, there is no authority for a Court to vacate or repeal a Statute on that ground along. But, it is only in express constitutional provisions limiting legislative power and controlling the temporary will of a majority by a permanent and paramount law settled by the deliberate wisdom of the nation that one can find a safe and solid ground for the authority of Courts of justice to declare void any legislative enactment. Any assumption of authority beyond this would be to place in the hands of the judiciary powers too great and too indefinite either for its own security or the protection of private rights".

88. In State of Bihar v. Kameshwar Singh, 1952 SCR 889 at p. 980-81: (AIR 1952 SC 252 at p. 285) this Court held that where two constructions are possible, "the Court should adopt that which will implement and discard that which will stultify the apparent intention of the makers of the Constitution".

89. Another principle which this Court has repeatedly laid down, for cases in which two constructions maybe reasonably possible, is that it should adopt one which harmonizes rather than one which produces a conflict between Constitutional provisions (See: I. C. Golaknath v. State of Punjab, (1967) 2 SCR 762 at page 791: (AIR 1967 SC 1643 at p. 1656, p. 1957); K. K. Kochuni v. States of Madras and Kerala, (1960) 3 SCR 887 at p. 905: (AIR 1960 SC 1080 at page 1089); Mohd. Hanif v. State of Bihar 1959 SCR 629 at p. 648: (AIR 1958 SC 731 at p. 739); State of M. P. v. Ranjojirao Shinde, (1963) 3 SCR 489: (AIR 1963 SC 612); (Sic) Prem Chand Garg v. Excise Commissioner, U. P., 1963 Supp 1 SCR 885 at p. 911". (AIR 1963 SC 996 at p. 1007); Devadasan v. Union of India, (1964) 4 SCR 680 at p. 695: (AIR 1964 SC 179 at p. 187).

90. Courts have been advised to adopt the construction "which will ensure smooth and harmonious

working of the Constitution and eschew the other which will lead to absurdity or given rise to practical inconvenience or make well-established provisions of existing law nugatory" (See: Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225 at p. 426: 1973 Supp SCR 1: (AIR 1973 SC 1461 at p. 1581, 1582)).

91. In Kesavananda Bharati's case (AIR 1973 SC 1461) (supra) Sikri C. J., said about the mode of construing the Constitution:

"One must not construe it as an ordinary statute. The Constitution, apart from setting up a machinery for Government, has a noble and grand vision in the Preamble".

92. In that vary case Khanna J. observed:

"A Constitution cannot be regarded as a mere legal document to be read as a will or an agreement nor is Constitution like a plaint or a written statement filed in a suit between two litigants.

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It provides for the framework of the different organs of the State, viz. the executive, the legislature and the judiciary. A Constitution also reflects the hopes and aspirations of a people."

93. Repeatedly, this Court has declared that a broad and liberal construction in keeping with the purposes of a Constitution must be given preference over adherence to too literal an interpretation (see: e. g. Sakal Papers Ltd. v. Union of India, (1962) 3 SCR 842: (AIR 1962 SC 305) of the Constitution.

94. In particular, the plenitude of power to legislate, indicated by a legislative entry, has to be given as wide and liberal an interpretation as is reasonably possible. Thus, in Jagannath Baksh Singh v. State of U. P. (1963) 1 SCR 220, at p. 228, 229: (AIR 1962 SC 1563 at pp. 1568-69) this Court said:

"..... it is an elementary cardinal rule of interpretation that the words used in the Constitution which confer legislative power must receive the most liberal construction and if they are words of wide amplitude, they must be interpreted so as to give effect to that amplitude. It would be out of

place to put a narrow or restricted construction on words of wide amplitude in a Constitute. A general word used in an entry like the present one must be construed to extend to all ancillary or subsidiary matters which can fairly and reasonably be held to be included in it".

95. In Union of India v. H. S. Dhillon, (1972) 2 SCR 33: (AIR 1972 SC 1061) Sikri, C. J., after discussing the tests adopted both in India and in Canada for determining whether a particular subject falls within the Union or the State List observed (at p. 51 of SCR): (at p. 1069 of AIR):

"It seems to us that the function of Art 246 (1) read with entries 1-96 List I, is to give positive power to Parliament to legislate in respect of these entries. Object is not to debar Parliament from legislating on a matter, even if other provisions of the Constitution enable it to do so. Accordingly we do not interpret the words 'any other matter' occurring in Entry 97 List I to mean a topic mentioned by way of exclusion. These words really refer to the matters contained in each of the entries I to 96. The words 'any other matter' had to be used because Entry 97 List I follows Entries 1-96 List I. It is true that the field of legislation is demarcated by Entries 1-96 List I, but demarcation does not mean that if Entry 97 List I confers additional powers we should refuse to give effect to it. At any rate, whatever doubt there may be on the interpretation of Entry 97 List I is removed by the wide terms of Article 248. It is framed in the widest possible terms. On its terms the only question to be asked is: Is the matter sought to be legislated on included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III? No question has to be asked about List I.If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter of tax."

96. It will be seen that the test adopted in Dhillon's case (supra) was that if a subject does not fall within a specifically demarcated field found in List II or list III it would fall in List I apparently because of the amplitude of the residuary field indicated by Entry 97, List I, Legislative entries only denote fields of operation of legislative power which is actually conferred by one of the articles of the Constitution. It was pointed out that Art. 248 of the Constitution conferring legislative power is "framed in the widest possible terms." The validity of the Wealth Tax Act was upheld in that case. The argument that a wide range given to Entry 97 of List I, read with Art. 248 of the Constitution, would destroy the "federal structure" of our Republic was rejected there. On an application of a similar test here, the powers given to the Central Government by Section 3 of the Act, now before us, could not be held to be invalid on the ground that federal structure of the State is jeopardized by the view we are adopting in conformity with the previous decisions of this Court.

97. I may next refer to what may be regarded as certain special features of our Constitution so as to indicate its broad purposes and objectives.

98. Our Constitution has,in it, not only an elevating preamble setting forth the presumed will of the whole people of India, conceived of as one entity, but a set of Fundamental Rights in Part III,

Directive Principles of State Policy in Part IV of the Constitution, a rough separation of powers between the Executive, the Legislative and the Judicial branches of Government, a pragmatic federalism which, while distributing legislative powers between the Parliament and State Legislatures, with a concurrent field also, and indicating the spheres of Governmental powers of State and Central Governments, is overlaid, as already indicated above, by strongly 'unitary' features, particularly exhibited by lodging in Parliament the residuary legislative powers, and in the Central Govt. the executive power of appointing State Governors, and Chief Justices and Judges of High Courts, powers of giving appropriate directions to the State Governments, and of even displacing the State Legislatures and Governments in exceptional circumstances or emergencies of not very clearly defined ambits or characters. No other "federation" in the world has exactly similar unitary features. One wonders whether such a system is entitled to be dubbed "federal" in a sense denoting anything more than a merely convenient division of functions operative in ordinary times. The function of "supervision" is certainly that of the Central Government with all that it implies.

99. It may be noticed that the basic allegiance contemplated by the Constitution is, legally speaking, to the Constitution itself about whose advent this Court once said (in Virendra Singh v. the State of U. P., (1955) 1 SCR 415 at (p. 436): (AIR 1954 SC 447 at p. 454):

".....at one moment of time the new order was born with the new allegiance springing from the same source for all, grounded on the same basis: the sovereign will of the people of India with no class, no caste, no race, no creed, no distinction, no reservation".

100. The Constitution, as its Preamble makes it clear, is of a sovereign republic. The legal sovereignty which it represents includes legal legislative sovereignty which must embrace the power of making any law on any subject. Such legislative power to enact any law must, therefore, vest somewhere in a legislative organ of the Republic. It cannot be placed anywhere outside these organs. To apply the test formulated in Dhillon's case (AIR 1972 SC 1061) (supra) the Parliament alone would have the power to enact by a simple majority, by reason of Article 248 read with Entry 97 of List I, if it falls neither in List II nor in List III. As indicated above, the contention on behalf of the plaintiff, if accepted, would excel the power of legislation itself on any matter involving an inquiry into the conduct of governmental affairs by a minister in a State Government from the legislative Lists and place it under Art 368. This means that, although the express provisions of the Constitution, broadly interpreted, as they should be, would prima facie authorise a provision such as Sec. 3 of the Act, yet, we should imply a constitutional prohibition against such an enactment by Parliament even if its wide terms could, as they prima facie do, include inquiries against State Ministers exercising governmental powers.

101. As indicated above, the first step of the argument mentioned above is a theory of what the Constitution must necessarily contain as contrasted with ordinary law. To support this submission, a passage was cited from the judgement of Wanchoo J., in I. C. Golak Nath v. State of Punjab, (1967) 2 SCR 762 at p. 828: (AIR 1967 SC 1643 at p. 1677) which contains the following question from Ivor Jennings on "The Law and the Constitution" (1933 Edn. at p. 51 onwards):

"A written constitution is thus the fundamental law of a country, the express embodiment of the doctrine of the reign of law. All public authorities..... legislative, administrative and judicial..... take their powers directly or indirectly from it..... whatever the nature of the written constitution it is clear that there is a fundamental distinction between constitutional law and the rest of the law, ... There is a clear separation, therefore, between the constitutional law and the rest of the law."

The learned Judge then went on to observe:

"It is because of this difference between the fundamental law (namely, the Constitution) and the law passed under the legislative provisions of the Constitution that it is not possible in the absence of an express provision to that effecting the fundamental law to change the fundamental law by ordinary legislation passed thereunder, for such ordinary legislation must always conform to the fundamental law (i.e. the Constitution)."

In Golaknath's case, Wanchoo J. had also pointed out at page 827 (of SCR): (at p. 1676 of AIR):

"The Constitution is the fundamental law and no law passed under mere legislative power conferred by the Constitution can effect any change in the Constitution unless there is an express power to that effect given in the Constitution unless there is an express power to that effect given in the Constitution itself. But subject to such express power given by the Constitution, itself, the fundamental law, namely the Constitution, cannot be changed by a law passed under the legislative provisions contained in the Constitution as all legislative Acts passed under the power conferred by the Constitution must conform to the Constitution can make no change therein. There are a number of Articles in the Constitution, which expressly provide for amendment by law, as for example, 3,4,10,59 (3), 65 (3), 73 (2), 97, 98(3), 106, 120 (2) 135, 137, 142 (1), 146 (2) 148 (3) 149, 169, 171 (2), 186, 187 (3), 189 (3), 194 (3), 195, 210 (2), 221 (2) 225, 229 (2), 239 (1), 241 (3), 283 (1) and (2), 285 (2), 287, 300 (1), 313, 345, 373 Sch. V. Cl. 7 and Schedule VI Cl. 21; and so far as these Articles are concerned they can be amended by Parliament by ordinary law-making process. But so far as the other Articles are concerned they can only be amended by amendment of the Constitution under Article 368. Now Art. 245 which gives power to make law for the whole or any part of the territory of India by Parliament is "subject to the provisions of this Constitution" and any law made by Parliament whether under Article 246 read with List I or under Art 248 read with Item 97 of List I must be subject to the provisions of the Constitution. If therefore the power to amend the Constitution is contained in Art. 248 read with Item 97 of List I, that power has to be exercised subject to the provisions of the Constitution and cannot be used to change the fundamental law (namely, the Constitution) itself".

102. The passages cited above cannot provide a foundation for the theory that "constitutional law"

and the rest of the law can, in respect of their contents or subject-matter, be placed in two sharply divided or distinct and water-tight compartments with no overlapping or uncertain fields between them. It must not be forgotten that Wanchoo J. repeatedly explained, by putting in the words "namely, the Constitution" within brackets, that he was really concerned with indicating the special features of a very detailed or comprehensive Constitution such as ours. Indeed, as regards the subject matter of the laws contained in the Constitution and those which may be introduced by the ordinary law making procedure, the above mentioned judgment of Wanchoo J. itself indicates how even certain parts of the law found in our written Constitution may be amended by the ordinary law making procedure. This passage was used by the learned Counsel for the plaintiff to urge that additions or changes in "Constitutional Law" cannot be made by ordinary law making procedure but must take place only in accordance with the provisions found in Art. 368 unless the Constitution expressly provides otherwise. This contention, however, overlooks the fact that Art. 368 of the Constitution only provides the procedure for an amendment of the Constitution", and says nothing about any amendment of other laws by the introduction of or changes in laws which conceivably be classed or construed as "constitutional laws" because of their subject-matter. This passage should not be torn out of its context, in which the difference in procedure, between the one for an amendment of "the Constitution", provided by Art. 368, and that for ordinary legislation, contemplated by Arts. 245 to 248, was under consideration. It was in that connection that the observation was rightly made that, unless there is specific authority given by constitutional provisions for changing the law laid down by "the Constitution" itself, by adopting only the ordinary law making procedure, a change in the law contained in express provisions of "the Constitution" itself could not be brought about without complying with Article 368 of the Constitution. This follows obviously from the very notion of a Constitution as an embodiment of a "fundamental law" which serves as a touchstone for all other "laws". The "fundamental distinction" between the Constitutional law" or "the fundamental law" and the ordinary laws, referred to there, was meant to bring out only this difference in the uses made of laws which, being "fundamental" can test the validity of all other laws on a lower normative level and these other laws which are so tested. In that very special or restricted sense, the law not found in "the Constitution" could not be "constitutional" or "fundamental" law. Other parts of the law, even though they may appertain to important constitutional matters, are not parts of "the Constitution", and, therefore, could not test the validity of laws made by Parliament. What was said with reference to the actual provisions of the Constitution could not, however, be used to infer some bar on legislative power which is not there in the Constitution at all for reasons repeatedly indicted above.

103. In an earlier part of this judgment, it is held that legislative power to enact a provision such as Section 3 of the Act could be found, in any event, in Art. 248 read with Entry 97 of List I, even if it could possibly be urged that it is not covered by Entries 94 of List I and 45 of List III, which seem to exhaust the three lists in so far as the subject-matters of enquiries are concerned. Learned counsel for the plaintiff tried to introduce some doubts on the ground that there is no specific entry in any of the lists to cover the conduct of Ministers in State Governments in relation to governmental functions. And, it was submitted, reference to subjects specified in the lists would exclude those which are unspecified. It could be urged in reply that, as indicated in Dhillon's case (AIR 1972 SC 1061) (supra) a legislative entry only indicates the field of operation of the power, but the sources of ordinary legislative power are to be found in one of the Arts. 245, 246, 247, 248, 249, 250, 252 or 253 of the Constitution, and, so far as the field of operation of the legislative power is concerned, both Entry 94 of List I and Entry 45 of List III are so widely worded as to embrace inquiries touching any of the fields indicated by any of the entries in the lists. A Minister must necessarily

exercise governmental powers in relation to one of these fields. It is not necessary to specify which that field is. The field of power to legislate about inquiries is indicated in wide enough terms to make it unnecessary to specify the field, in the law made itself, to which the inquiry must relate. It is enough if the enquiry set up relates to a matter of "public importance". Again, it is not a necessary part of entry in a legislative list, which only roughly indicates a field of legislation, that it must also specify the classes of persons who may be affected by the legislation. That is neither a constitutional nor a reasonable requirement.

104. This Court has already held that overlapping of fields of operation of legislative power does not take away the legislative power. Indeed, as we have said, both Entries 94 of List I and 45 of List III must necessarily be related to a variety of fields of operation of legislative power. And, in any case, even if an inquiry on a matter of "public importance" relates to an unspecified field, it should be covered by Entry 97 of Lit I itself. Therefore, it is immaterial whether we hold that Entry 97 of List I by itself singly or that entry, read with Entry 94 of List I, could be deemed to cover the field of operation of such legislation. What is material and important is that the three entries - Nos. 94 and 97 of List I and 45 of List III are bound to cover, between them, legislation authorising inquiries such as the one entrusted to the Grover Commission. If the subject of inquiries against ministers in State Governments is not mentioned specifically either in any of the articles of the Constitution or in the legislative lists it does not follow from it that legislation covering such inquiries is incompetent except by means of a constitutional amendment. On the contrary, such a subject would be prima facie covered by the wide terms of Art. 248 for the very reason that the Constitution contains no express or implied bar which could curtail the presumably plenary powers of legislation of our Parliament.

105. Once we have located the legislative power in one of the articles of the Constitution, authorising ordinary legislation by Parliament for inquiries covered by Sec. 3 of the Act, and we find also the appropriate entries in legislative Lists I and III indicating the fields of operation of that legislative power of Parliament, the well recognised principle which would apply and exclude an implied bar against the exercise of that plenary power has been stated by this Court and also by other Courts in Commonwealth countries on several occasions. That principle follows logically from R v. Burah (1878) 3 AC 889 which is the locus classicus on the subject. The general principle laid down in Burah's case was that once what is conferred upon a Parliament or other Legislature is legislative power its plenary character must be presumed so that, unless the instrument conferring the power to legislate itself contains some express limitation on the exercise of legislative power, the ambit of that power cannot be indirectly cut down by supposed implications. The cases on this subject were comprehensively considered by this Court in Kesavananda Bharati's case (AIR 1973 SC 1461) (supra) where the majority view was that there can be no merely implied limitations on expressly conferred legislative powers. This Court there referred to and adopted the principles laid down in Burah's case (supra). Palekar J. quoted the following passage from it (in Kesavananda Bharati's case at p. 607) (of SCR): (at pp. 1811-12 of AIR):

"The established Courts of Justice when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly

do so,is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation, within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions."

In that case, Judges of this Court also relied upon Attorney General for the Province of Ontrario v. Attorney General for the Dominion of Canada, 1912 AC 571 where Earl Loreburn had said (at p. 583):

"In the interpretation of a completely self-governing Constitution founded upon a written organic instrument such as the British North America Act, if the text is explicit the text is conclusive, alike in what it directs and what it forbids. When the test is ambiguous, as for example when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power within either, recourse must be had to the context and scheme of the Act."

106. The learned Additional Solicitor General has strongly relied upon the State of Victoria v. The Commonwealth, 45 Aus LJR 251: 122 Comm LR 353 where earlier cases applying the reasoning contained in Burah's case (1878) 3 AC 889 (supra) were surveyed and Barwick C. J. cited the two passages set out above by us, one from Lord Selborne's judgment in Burah's case (supra) and the other from the judgment of Earl Loreburn in the Province of Ontario's case (1912 AC 571) (supra) from Canada. Barwick, C. J. also cited the following passage from the Amalgamated Society of Engineers v. Adelaide Steamship Co. Ltd. (1920) 28 Comm LR 129 at pp. 152-153:

"'The nature and principles of legislation' (to employ the words of Lord Selborne in Burah's case), the nature of dominion self-government and the decisions just cited entirely preclude, in our opinion, an a priori contention that the grant of legislative power to the Commonwealth Parliament as representing the will of the whole of the people of all the States of Australia should not bind within the geographical area of the Commonwealth and within the limits of the enumerated powers, ascertained by the ordinary process of construction, the States and their agencies as representing separate sections of the territory."

107. In Victoria's case (45 Aus LJR 251) (supra) Barwick C. J., although not in entire agreement with the way in which Sir Owen Dixon, C. J., had expressed himself in West v. Commr. of Taxation (N. S. W.) (1937) 56 Comm LR 657 at p. 682 opined that it was only another way of putting what had been consistently laid down as the principle of interpretation of Constitutions of British self-governing Dominions since Burah's case ((1878) 3 AC 889) (supra). The passage thus explained was:

"..... the principle is that whenever the Constitution confers a power to make laws in respect of a specific subject-matter prima facie it is to be understood as enabling the Parliament to make laws affecting the operations of the States and their agencies. The prima facie meaning may be displaced by considerations based on the nature or the subject-matter of the power or the language in which it is conferred or on some other provisions in the Constitution."

108. Learned counsel for the plaintiff, conscious of the basic principles of construction of the plenary constitutional power to legislate, tried to base his very gallant and sustained attacks upon the validity of Sec. 3 of the Act by referring to express provisions of the Constitution where, as we have explained above, we could discover no such bar by a necessary implication. However, the theory of the basic structure of the Constitution kept "popping up", if we may so put it, like the "jack in the box", from behind the constitutional provisions, from time to time. It is said to "underlie" constitutional provisions.

109. Thus, the plaintiffs learned counsel did not entirely give up reliance on what has been described as "the basic structure of the Constitution" although he, very astutely and rightly, tried to put the express provisions of the Constitution in the fore-front. Whatever may be said about the strategic value for the plaintiff of this mode of using the doctrine of "the basic structure of the Constitution", it does not relieve us from the necessity of considering whether an application of such a doctrine could be involved in the case before us. We cannot overlook that Kesavananda Bharati's case (AIR 1973 SC 1461) (supra) where the very majority of learned Judges of this Court which rejected the theory of "implied limitations" upon express plenary legislative powers of constitutional amendment, accepted, we say so with the utmost respect, limitations which appeared to be not easily distinguishable from implied limitations upon plenary legislative powers even though they were classed as parts of "the basic structure of the Constitution." We are bound by the majority view in Kesavananda Bharati's case (supra) which we have followed in other cases. We have, however, to make it clear and explicit enough to be able to determine, without inconsistency and with some confidence, the type of cases to which it could and others to which it could not apply as specific cases come up before us for consideration.

110. What, therefore, is this doctrine of "the basic structure of our Constitution" of which, according to some learned Judges of this Court, expressing the majority views on this doctrine, "federalism" is a part ? We can only answer this question by indicating from certain passages from the opinions of the learned Judges who were parties to the decision of this Court in Kesavananda Bharati's case (AIR 1973 SC 1461) (supra).

111. Sikri C. J., who accepted the doctrine of implied limitations, and, consistently with its logic, found that the basic structure of the Constitution forms an orbit of exercise of power which is outside the purview of Art. 368, relied on the observations and dicta found in Melbourne Corporation v. The Commonwealth (1947) 74 Comm LR 31 and Australian National Airways Pvt. Ltd. v. The Commonwealth (1945) 71 Comm LR 29.

112. The learned Chief Justice cited Stark J.'s views expressed in Melbourne Corporation's case ((1947) 74 Comm LR 31) (supra):

"The federal character of the Australian Constitution carries implications of its own".....

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"The position that I take is this: The several subject-matters with respect to which the Commonwealth is empowered by the Constitution to make laws for the peace, order and good government of the Commonwealth are not to be narrowed or limited by implications. Their scope and amplitude depend simply on the words by which they are expressed. But implications arising from the existence of the States as parts of the Commonwealth and as constituents of the federation may restrict the manner in which the Parliament can lawfully exercise its power to make laws with respect to a particular subject-matter. These implications, or perhaps it were better to say underlying assumptions of the Constitution, relate to the use of a power not to the inherent nature of the subject-matter of the law. Of course whether or not a law promotes peace, order and good government is for the Parliament, not for a court,to decide. But a law although it be with respect to a designated subject-matter cannot be for the peace, order and good government of the Commonwealth if it be directed to the States to prevent their carrying out their functions as parts of the Commonwealth."

Again Gibbs J. was quoted:

"The ordinary principles of statutory construction do not preclude the making of implications when these are necessary to give effect to the intention of the legislature as revealed in the statute as a whole "..... "Thus, the purpose of the Constitution, and the scheme by which it is intended to be given effect, necessarily give rise to implications as to the manner in which the Commonwealth and the States respectively may exercise their powers, vis-a-vis each other."

After considering a number of cases the Chief Justice stated his conclusion on implied limitations as follows (at pp.163-64 of Supp SCR): (at p. 1534 of AIR):

"What is the necessary implication from all the provisions of the Constitution ?

It seems to me that reading the Preamble, the fundamental importance of the freedom of the individual, indeed its alienability, and the importance of the economic, social and political justice mentioned in the Preamble, the importance of directive principles, the non-inclusion in Art. 368 of provisions like Arts. 52, 53 and various other provisions to which reference has already been made an irresistible conclusion emerges that it was not the intention to use the word 'amendment' in the widest sense.

It was the common understanding that fundamental rights would remain in substance as they are and they would not be amended out of existence. It seems also to have been a common understanding that the fundamental features of the Constitution, namely, secularism, democracy and the freedom of the individual would always subsist in the welfare state.

In view of the above reasons, a necessary implication arises that there are implied limitations on the power of Parliament that the expression 'amendment of this Constitution' has consequently a limited meaning in our Constitution and not the meaning suggested by the respondents".

113. Sikri C. J. recorded his finding on the basic structure in Kesavananda Bharti's case (supra) (1973 Supp. SCR 1): (AIR 1973 SC 1461 as follows (at pp. 165-166): (of Supp SCR): (at p. 1535 of AIR).

"The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the constitution remains the same. The basic structure may be said to consist of the following features:

(1) Supremacy of the Constitution;

(2) Republican and Democratic form of Government;

(3) Secular character of the Constitution;

(4) Separation of powers between the Legislature, the executive and the judiciary;

(5) Federal character of the Constitution.

The above structure is built on the basic foundation. i.e. the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.

The above foundation and the above basic features are easily discernible not only from the preamble but the whole scheme of the Constitution, which I have already discussed".

114. Similarly, Shelat and Grover JJ. after surveying principles of interpretation and construction of the Constitution, accepted the theory of implied limitations on the power of Parliament as well as the doctrine of a basic structure. They recorded their conclusion as follows (at pp.280-281): (of Supp. SCR): (at p. 1603 of AIR).

"The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the Preamble, the entire scheme of the Constitution, the relevant provisions thereof including Art. 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be cataloged but can only be illustrated).

1. The Supremacy of the Constitution.

2. Republican and Democratic form of Government and sovereignty of the country.

3. Secular and federal character of the Constitution.

4. Demarcation of power between the legislature, the executive and the judiciary.

5. The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

6. The unity and the integrity of the nation".

115. Hegde and Mukherjea JJ. also considered at length principles of interpretation and construction in this country and in the Commonwealth countries. They distinguished earlier cases of this Court. They purported to apply well established principles of interpretation and construction such as the Mischief Rule in Heydon's case,the need to view the Constitution as a whole, and its history and objects. They said (at p.307): (of Supp. SCR): (at p. 1619 of AIR).

"While interpreting a provision in a statute, or, Constitution the primary duty of the Court is to find out the legislative intent. In the present case our duty is to find out the intention of the founding fathers in enacting Art. 368. Ordinarily the legislative intent is gathered from the language used. If the language employed is plain and unambiguous, the same must be given effect to irrespective of the consequences that may arise. But if the language employed is reasonably capable of more meanings than one, then the Court will have to call into aid various well settled rules of construction and in particular, the history of the legislation - to find out the evil that was sought to be remedied and also in some cases the underlying purpose of the legislation - the legislative scheme and the consequences that may possibly flow from accepting one or the other of the interpretations because no legislative body is presumed to confer a power which is capable of misuse".

They cited the Preamble and the objectives underlying the Constitution and found (at p. 316): (of Supp. SCR): (at p. 1625 of AIR).

"Implied limitations on the powers conferred under a statute constitute a general feature of all statutes. The position cannot be different in the case of powers conferred under a Constitution. A grant of power in general terms or even in absolute terms may be qualified by other express provisions in the same enactment or may be qualified by the implications of the context or even by considerations arising out of what appears to be the general scheme of the statute".

They did not enumerate all the basic features of the Constitution but recorded their conclusion as follows (at p. 356): (of Supp. SCR): (at p. 1648 of AIR).

"Though the power to amend the Constitution under Art. 368 is a very wide power, it does not yet include the power to destroy or emasculate the basic elements or the fundamental features of the Constitution".

116. Jaganmohan Reddy, J., in the course of a detailed consideration of constitutional provisions, dwelt on the Preamble largely and on the needs of the nation for stability of its values and gave a narrower connotation to the word "amendment" than one which could destroy the very identity of the Constitution. He said (at p. 517): (of Supp. SCR): (at p. 1753 of AIR).

"There is nothing vague or unascertainable in the preamble and if what is stated therein is subject to this criticism it would be equally true of what is stated in Art. 39 (b) and (c) as these are also objectives fundamental in the governance of country which the State is enjoined to achieve for the amelioration and happiness of its people. The elements of the basic structure are indicated in the

preamble and translated in the various provisions of the Constitution. The edifice of our Constitution is built upon and stands on several props, remove any of them, the Constitution collapses. These are: (1) Sovereign Democratic Republic; (2) Justice social, economic and political; (3) Liberty of thought, expression, belief, faith and worship; (4) Equality of status and of opportunity. Each one of these is important and collectively they assure a way of life to the people of India which the Constitution guarantees. To withdraw any of the above elements the structure will not survive and it will not be the same Constitution,or this Constitution nor can it maintain its identity, if something quite different is substituted in its place, which the sovereign will of the people alone can do".

117. Khanna, J., while definitely rejecting the theory of implied limitations on plenary powers of legislation, nevertheless, thought that the need to reconcile the urge for change with the need for continuity imposed even upon the wide power of amendment of the Constitution the limitation that it must move within the orbit defined by its basic structure. He did not, and I say so with great respect, explicitly attempt a reconciliation between his views on implied limitations with those on the basic structure, which at least resembled implied limits on the plenary power of legislation. He also relied heavily on the preamble to the Constitution. He explained later, in Smt. Indira Nehru Gandhi v. Raj Narain, (1976) 2 SCR 347: (AIR 1975 SC 2299) that he did not exclude such amendments in the chapter on Fundamental Rights as may form parts of the "basic structure" from the purview of what could not be touched by the power of amendment contained in Article 368 of the Constitution. The judgment of Khanna J. tilted the balance, by a narrow majority of one, in favour of "the basic structure" of the Constitution as limitation on the expressly conferred legislative power of amendment.

118. I need not set out similarly the views of Ray, Palekar, Mathew, Beg, Dwivedi and Chandrachud, JJ., as they, while accepting the undeniable proposition that the Constitution contained what was basic, held the view, supported also by reference to the history of our Constitution-making and to its express provisions, that the power to amend or change the Constitution in any manner and in any respect desired by the representatives of the people was also a part of that basic structure or the urges of the people which had found expression in Art. 368 of the Constitution and which had to be fully recognised by giving it the widest possible amplitude. They too, therefore, recognised that there was "a basic structure" of the Constitution in the light of its history and contents and by an application of well established rules of construction. The difference between the majority and minority views was only on the question whether a wide scope of powers of amendment given to the representatives of the people was or was not a part of this basic structure or its functioning as evidenced by the express declarations and provisions of the Constitution.

119. I do not think that what those learned Judges who, in Kesavananda Bharti's case (supra), (AIR 1973 SC 1461) found a narrower orbit for the legislative power of amendment of the Constitution itself to move in meant to lay down some theory of a vague basic structure floating, like a cloud in the skies, above the surface of the Constitution and outside it or one that lies buried beneath the surface for which we have to dig in order to discover it. I prefer to think that the doctrine of "a basic

structure" was nothing more than a set of obvious inferences relating to the intents of the constitution makers arrived at by applying the established cannons of construction rather broadly, as they should be so far as an organic constitutional document, meant to govern the fate of a nation, is concerned. But, in every case where reliance is placed upon is in the course of an attack upon legislation, whether ordinary or constituent (in the sense that it is an amendment of the Constitution), what is put forward as part of "a basic structure" must be justified by references to the express provisions of the Constitution. That structure does not exist in vacuo. Inferences from it must be shown to be embedded in and to flow logically and naturally from the bases of that structure. In other words, it must be related to the provisions of the Constitution and to the manner in which they could indubitably be presumed to naturally and reasonably function. So viewed, the doctrine is nothing more than a way of advancing a well recognised mode of constructing the Constitution. It should be used with due care and caution. No exposition of it which could make it appear as a figment of judicial imagination or as capable of such subjective interpretations that it may become impossible to decipher or fix its meaning with reasonable certainty could be accepted by us because that would amount to declaring its futility. In Kesavananda Bharti's case (supra), this Court had not worked out the implications of the basic structure doctrine in all its applications. It could, therefore, be said, with utmost respect, that it was perhaps left there in an amorphous state which could give rise to possible misunderstandings as to whether it is not too vaguely stated or too loosely and variously formulated without attempting a basic uniformity of its meanings or implications. The one principle, however, which is deducible in all the applications of the basic structure doctrine, which has been used by this Court to limit even the power of constitutional amendment, is that whatever is put forward as a basic limitation upon legislative power must be correlated to one or more of the express provisions of the Constitution from which the limitation should naturally and necessarily spring forth. The doctrine of basic structure, as explained above, requires that any limitation on legislative power must be so definitely discernible from the provisions of the Constitution itself that there could be no doubt or mistake that the prohibition is a part of the basic structure imposing a limit on even the power of constitutional amendment. And, whenever we construe any document, by reading its provisions as a whole, trying to eliminate or resolve its disharmonies, do we not attempt to interpret it in accordance with what we find in its "basic structure" or purposes ? The doctrine is neither unique nor new.

120. I may here point out that in Smt.Indira Nehru Gandhi v. Raj Narain (1976-2 SCR 347): (AIR 1975 SC 2299)(supra), when the doctrine of the basic structure of the Constitution was invoked to assail the provisions of Representation of the People Act, Ray C. J., seemed to reject the theory of basic structure altogether in its application neither to the construction of the Constitution or of ordinary legislation. He said (at pp. 436-437) (of SCR): (at p. 2331 of AIR):

"To accept the basic features or basic structures theory with regard to ordinary legislation would mean that there would be two kinds of limitations for legislative measures. One will pertainto legislative power under Arts. 245 and 246 and the legislative entries and the provision in Art. 13. The other would be that no legislation can be made as to damage or destroy basic features or basic structures. This will mean rewriting the Constitution and robbing the legislature of acting within the framework of the Constitution. No legislation can be free from challenge on this ground even though the legislative measure is within the plenary powers of the legislature".

He went on to observe (at p. 437) (of SCR):(at p. 2332 of AIR):

"The theory of basic structures or basic features is an exercise in imponderables. Basic structures or basic features are indefinable. The legislative entries are the fields of legislation. The pith and substance doctrine has been applied in order to find out legislative competency, and eliminate encroachment on legislative entries. If the theory of basic structures or basic features will be applied to legislative measures it will denude Parliament and State Legislatures of the power legislation and deprive them of laying down legislative policies. This will be encroachment on the separation of powers".

121. Mathew, J., observed in Smt. Indira Gandhi's case (1976) 2 SCR 347 (at pp. 525-526): (AIR 1975 SC 2299 at pp. 2385-86) (supra):

"I think the inhibition to destroy or damage the basic structure by an amendment of the Constitution flows from the limitation on the power of amendment under Art. 368 read into it by the majority in Bharati's case because of their assumption that there are certain fundamental features in the Constitution which its makers intended to remain there in perpetuity. But I do not find any such inhibition so far as the power of Parliament or State legislatures to pass laws is concerned. Arts. 245 and 246 give the power and also provide the limitation upon the power of these organs to pass laws. It is only the specific provisions enacted in the Constitution which could operate as limitation upon the power. The preamble though a part of the Constitution is neither a source of power nor a limitation upon the power. The preamble sets out the ideological aspirations of the people. The essential features of the great concepts set out in the preamble are delineated in the various provisions of the Constitution. It is these specific provisions in the body of the Constitution which determine the type of democracy which the founders of that instrument established; the quality and nature of justice, political, social and economic which was their desideratum, the content of liberty of thought and expression which they entrenched in that document, the scope of equality of status and of opportunity which they enshrined in it. These specific provisions enacted in the Constitution alone can determine the basic structure of the Constitution as established. These specific provisions, either separately or in combination determine the content of the great concepts set out in the preamble. It is impossible to spin out any concrete concept of basic structure out of the gossamer concepts set out in the preamble. The specific provisions of the Constitution are the stuff from which the basic structure has to be woven."

122. In Smt. Indira Gandhi's case (AIR 1975 SC 2299) (supra), Chandrachud, J., after making similar observations on the nature of the Preamble and pointing out that there was no agreed list of basic features of the Constitution given by learned Judges constituting the majority in Kesavananda Bharati's case (AIR 1973 SC 1461) (supra), said, on the applicability of the basic structure doctrine to the power of ordinary legislation (at p. 669-670) : (of Supp SCR): (at p. 2472 of AIR):

"The constitutional amendments may, on the ratio of the Fundamental Right's case, be tested on the anvil of basic structure. But apart from the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental Rights case that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution and (2) it must not offend against the provisions of Arts. 13 (1) and (2) of the Constitution. 'Basic Structure', by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subject to it because it is a constituent power. 'The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features' - this, in brief is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."

123. Both Khanna J., and I, however, expressed views there showing that aspirations of the people of India, set out in the Preamble as well as other parts of the Constitution, provided general guidance in judging the constitutionality of all laws whether constitutional or ordinary. I specifically said there that the doctrine of the basic structure of the Constitution could be used to test the validity of laws made by Parliament either in its constituent or ordinary law making capacities because "ordinary law making cannot go beyond the range of constituent power."

124. No doubt, as a set of inferences from a document (i.e. the Constitution), the doctrine of "the basic structure" arose out of and relates to the Constitution only and does not, in that sense, appertain to the sphere of ordinary statutes or arise for application to them in the same way. But, if, as a result of the doctrine, certain imperatives are inherent in or logically and necessarily flow from the Constitution's "basic structure", just as though they are its express mandates, they can be and have to be used to test the validity of ordinary laws just as other parts of the Constitution are so used.

125. In Smt. Indira Gandhi's case (AIR 1975 SC 2299) (supra) the differences of approach between the learned Judges were not so much on the question whether "the basic structure" was to be deemed to be really an additional part of the Constitution (on this there is agreement that it could not) or only a principle of its construction, but on the question whether, once it was found to be a permissible mode of construction, what followed from it was applicable to test the validity of both constitutional as well as ordinary law-making. The majority view of learned Judges of this Court seemed to be that it was not available to test the validity of the impugned provisions of the Representation of the People Act because the expressly laid down ordinary law making powers of Parliament are clear enough. In other words, it was held to be inapplicable here on the view that there was no ambiguity to be resolved about the ordinary law making powers of Parliament. It was applied to interpret the ambit of the constituent power as there was some uncertainty about its scope. It, however, seems to me that the test of "free and fair elections" and of "equality before the law"

were used by this Court in judging the validity of the impugned provisions of the Representation of the People Act in Smt. Indira Nehru Gandhi's case (supra) although the majority of learned Judges of the bench preferred to do so without characterising these features as parts of a basic structure of the Constitution. But, when deciding the question whether the purported constitutional amendment could take away the powers of this Court to hear an decide on merits the election appeals pending before it, all the learned Judges who participated in the decision of that case seemed to rely, in varying degrees, either expressly or impliedly, upon the "basic structure" of the Constitution itself, as revealed by its express provisions, to hold that, under the guise of exercising a legislative power the Parliament could not, in effect, adjudicate on the merits of an individual case under the Constitution as it stood.

126. It is important to note that majority opinions of Judges who participated in the decision in Kesavananda Bharati's case (AIR 1973 SC 1461) (supra) and those who took part in the decision in Smt. Indira Gandhi's case (AIR 1975 SC 2299) (supra) invalidating certain constitutional amendments, make out limitations founded on the basic structure of the Constitution. In Smt. Indira Nehru Gandhi's case (supra), parts of the Constitution (Thirty-Ninth Amendment) Act of 1975 were struck down primarily because specific provisions of Art. 368 of the Constitution left no room for doubt that what was conferred by the Constitution upon a majority of not less than two thirds of the members of the two Houses of Parliament present and voting, supported by resolutions of legislatures of not less than one half of the States, was a legislative power and not a judicial power judged both by its contents and procedure. Hence, it was held that, on the very terms of the specific power conferred, an exercise of judicial power, in purported exercise of legislative powers contained in Art. 368 of the Constitution, was prima facie ultra vires. Such exercise of power contravenes the basic structure of the Constitution of which the legislative orbit of power indicated by Art. 368 of the Constitution is also a necessary part. The principle asserted there was stated by me as follows:

"Neither of the three constitutionally separate organs of State can, according to the basic scheme of our Constitution today, leap outside the boundaries of its own constitutionally assigned sphere or orbit of authority into that of the other."

These orbits were expressly chalked out by the law found in the Constitution. There could be no doubt, whatsoever, upon reading the provisions of the Constitution as a whole, that the orbits of legislative and judicial power are not the same. But, so far as the orbits of legislative power are concerned, it is clear that those of Parliament and of the State legislatures are not mutually exclusive in every respect. There is also a concurrent field of legislation. And, there is nothing there which could come in the way of the plenary legislative power conferred upon our Parliament in fields assigned to it. These can be limited, at the most, by a necessary or unavoidable implication, such as the one which must flow from the conferment of judicial and legislative and executive powers separately, with unmistakably different characteristics, upon different authorities. The basic scheme of the Constitution could certainly be invoked to invalidate legislation by Parliament, acting in its ordinary law making capacity, on a subject which falls either exclusively within the orbit of an amendment of "the Constitution or in List II of the Seventh Schedule of exclusively State subjects. But, as I have indicated above, this is not so here.

127. Thus, it is clear that whenever the doctrine of the basic structure has been expounded or applied it is only as a doctrine of interpretation of the Constitution as it actually exists and not of a Constitution which could exist only subjectively in the minds of different individually as mere theories about what the Constitution is. The doctrine did not add to the contents of the Constitution. It did not, in theory, deduct anything from what was there. It only purported to bring out and explain the meaning of what was already there. It was, in fact, used by all the judges for only this purpose with differing results simply because their assessments or inferences as to what was part of the basic in our Constitution differed. This, I think, is the correct interpretation of the doctrine of the basic structure of the Constitution. It should only be applied if it is clear, beyond the region of doubt, that what is put forward as a restriction upon otherwise clear and plenary legislative power is there as a Constitutional imperative.

128. If this be the correct view about the basic structure, as a mode of interpreting the Constitution only, the so-called federalism as a fetter on legislative power must find expression in some express provision to be recognised by Courts. It may be mentioned here that a majority of Judges who decided the Kesavananda Bharati's case (AIR 1973 SC 1461) (supra) have not treated "Federalism" as part of the basic structure of the Constitution. And, none of them has discussed the extent of the "federal" part of this structure. It is not enough to point to Art. I of the Constitution to emphasize that our Republic is a "Union" of States. That, no doubt is true. But, the word "union" was used in the context of the peculiar character of our federal Republic revealed by its express provisions. We have still to find, from other express provisions, what this "Union" means or what is the extent or nature of "federalism" implied by it. The Constitution itself does not use the word "federation" at all. In any case, after examining all the express provisions of the Constitution, relied upon by the learned counsel for the plaintiff, I am unable to discover there any such fetter which could, by a necessary implication, prevent Parliament from enacting Section 3 of the Act.

129. Indeed, if the theory of necessary implications is to be applied here, the entrenched provisions of our Constitution, for which a special procedure for amendment is prescribed within Art. 368 itself, together with the other provisions discussed above, give the express limits to which the operation of the federal principles is confined in our Constitution. None of the expressly mentioned features could, by any necessary implication, impinge upon the expressly given and distributed legislative powers. The doctrine that express mention excludes that which is not so mentioned applies also to express limitations. If the scheme of distribution of legislative powers is basic and express,with its own express limitations, "implied" or unspecified alleged limitations going beyond that scheme are eliminated by the very force of the express provisions.

130. In Ram Krishna Dalmia v. Justice S. R. Tendolkar, 1959 SCR 279: (AIR 1958 SC 538), I find that the validity of the Act and of a notification under Section 3 of the Act was challenged but upheld by this Court, although a part of Cl.10 of the notification which, in addition to requiring it to recommend measures to prevent similar future cases, also directed it to report on "the action which in the opinion of the Commission should be taken as and by way of securing redress or

punishment", was held to be outside the purview of the Act in so far as the latter part went beyond the purely investigatory character of the inquiry authorised by the Act. In that case, the Commission was required to inquire into and report on the administration of affairs of certain companies specified in a schedule annexed to the notification. It was held there, inter alia, that mere possibility of misuse of powers given by the Act could not vitiate the power conferred by the Act. It was also held there that the act was made by Parliament acting in fields indicated by Entries 94 of List I and 45 of List III of the Seventh Schedule so that the inquiries could be ordered "for the purposes of any of the matters in List I, List II and List III." Incompetence of Parliament to legislate on matters in List II could not, it was held, vitiate, power to order inquiries relating to subjects in that list in view of the express terms of Entry 45 in List III. It was held that the scope of inquiry may also cover matters ancillary to the inquiries themselves. Furthermore, relying on Kathi Raning Rawat v. State of Saurashtra, 1952 SCR 435: (AIR 1952 SC 123) it was pointed out (at p. 293): (of SCR): (at p.p. 546 of AIR):

"The Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore. A clear distinction must, on the authorities, be drawn between a decision which, by itself, has no force and no penal effect and a decision which becomes enforceable immediately or which may become enforceable by some action being taken."

131. It is true that in R. K. Dalmia's case (AIR 1958 SC 538) (supra) the provisions of the act were not assailed on all the extensive grounds on which they have now been questioned before us. Nevertheless, the objects of the Act were considered and indicated there.

132. The purposes for which a Commission can be set up under the Act was considered long ago by a Division Bench of the Nagpur High Court in M. V. Rajwade v. Dr. S. M. Hassan, ILR (1954) Nag 1 at p. 13: (AIR 1954 Nag 71 at p.75) which was cited with approval by this Court in Brajnandan Sinha v. Jyoti Narain, (1955) 2 SCR 955: (AIR 1956 SC 66) and the following passage was quoted from the judgment (at p. 75 of AIR):

"The Commission in question was obviously appointed by the State Government 'for the information of its own mind', in order that it should not act, in exercise of its executive power, 'otherwise than in accordance with the dictates of justice and equity' in ordering a departmental enquiry against its officers. It was, therefore, a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature."

133. It may be mentioned here that in A. Sanjeevi Naidu v. State of Madras, (1970) 3 SCR 505 at p. 512: (AIR 1970 SC 1102 at p. 1106) this Court examined the position of an individual Minister who determines matters of policy and programmes of his Ministry, within the framework of major policies of the Government, vis-a-vis the officials in the Department in his charge who act on behalf of the Government subject to the directions given orally or in writing by the Minister concerned.

Hence, it may become a matter of considerable difficulty, delicacy, and importance in a particular case, to apportion the blame or responsibility for any act or decision, alleged to be wrongful, between the Minister concerned and the officials who work under his directions. Such apportionments could be safely entrusted only to experts who have had considerable judicial experience and can deal with complete impartiality and dexterity with issues raised. The moral or collective responsibility which is political is a different matter which may no doubt be affected by the report of a Commission of Inquiry. Individual liability may have even more serious consequences for the Minister concerned than the collective responsibility which carries only political implications.

134. In State of Jammu Kashmir v. Bakshi Ghulam Mohammad, 1966 Supp SCR 401: (AIR 1967 SC 122) this Court pointed out that even if Bakshi Ghulam Mohammad had ceased to be the Chief Minister of the State of Jammu and Kashmir his past actions would not cease to be matters of public importance. It definitely disapproved the view of the High Court when it said (at p. 407): (of Supp SCR) : (at p. 127 of AIR):

"These learned Judges of the High Court expressed the view that the acts of Bakshi Ghulam Mohammad would have been acts of public importance if he was in office but they ceased to be so as he was out of office when the Notification was issued. In taking this view, they appear to have based themselves on the observation made by this Court in Ram Krishna Dalmia v. Justice S. R. Tendolkar, 1959 SCR 279 : (AIR 1958 SC 538) that "the conduct of an individual may assume such a dangerous proportion and may so prejudicially affect or threaten to affect the public well-being as to make such conduct a definite matter of public importance, urgently calling for a full inquiry." The learned Judges felt that since Bakshi Ghulam Mohammad was out of office, he had become innocuous; apparently, it was felt that he could no longer threaten the public well-being by his acts and so was outside the observation in Dalmia's case. We are clear in our mind that this is a misreading of this Court's observations. This Court, as the learned Judges themselves noticed, was not laying down an exhaustive definition of matters of public importance. What is to be inquired into in any case are necessarily past act and it is because they have already affected the public well-being or their effect might do so, that they became matters of public importance. It is irrelevant whether the person who committed those acts is still in power to be able to repeat them."

135. The clear implication of the last mentioned pronouncement, with which I find myself in complete and respectful agreement, was that even if a Minister in the exercise of his official power does acts which may amount to criminal offences, yet, inquiry into them may be made as a matter of public importance and not of just private importance. And, what can be done when he is out of office may, a fortiori, be ordered when he is in office. This Court also said there as follows with which also I entirely agree (page 406 of Supp SCR): (at p. 126 of AIR):

".....it is difficult to imagine how a Commission can be set up by a Council of Ministers to inquire into the acts of its head, the Prime Minister, while he is in office. It certainly would be a most

unusual thing to happen. If the rest of the Council of Ministers resolves to have any inquiry, the Prime Minister can be expected to ask for their resignation. In any case, he would himself go out. If he takes the first course, then no Commission would be set up for the Ministers wanting the inquiry would have gone. If he went out himself, then the Commission would be set up to inquire into the acts of a person who was no longer in office and for that reason,if the learned Judges of the High Court were right,into matters which were not of public importance. The result would be that the acts of a Prime Minister could never be inquired into under the Act. We find it extremely difficult to accept that view."

136. In P. V. Jagannath Rao v. State of Orissa, (1968) 3 SCR 789: (AIR 1969 SC 215) it was held by a Constitution Bench of this Court that the appointment of a Commission of Inquiry under Section 3 of the act with the object of holding the Government to frame "appropriate legislative or administrative measures to maintain the purity and integrity of the political administration in the State" was valid.

137. Again in Krishna Ballabh Sahay v. Commission of Enquiry, (1969) 1 SCR 387 :(AIR 1969 SC 258) a similar view was taken and it was observed by this Court with reference to the charges of corruption into the conduct of Ministers at (page 394) (of SCR): (at p. 262 of AIR):

"It cannot be stated sufficiently strongly that the public life of persons in authority must never admit of such charges being even framed against them. If they can be made then an inquiry whether to establish them or clear the name of the person charged is called for. xx xx xx xx

A perusal of the grounds assures us that the charges are specific and that records rather than oral testimony will be used to establish them."

138. I may also say that I fully agree with the views expressed by Kailasam C. J., of the Madras High Court, in M. Karunanidhi v. Union of India, AIR 1977 Mad 192.

139. I may mention that the considerations placed before us for assailing the legislative competence of Parliament, having been rejected by us as quite insubstantial, could not be utilised for "reading down" the provisions of Sec. 3 of the Act - a procedure which may be sometimes available for saving a provision from partial or total invalidity. "Reading down" is, after all, only a logical outcome of the principle of construction - Ut Res Magis Valeat Quam Pereat (See: Craies on "Status Law" 6th ed. p. 103).

140. The last question I propose to advert to relates to the preliminary objection to the maintainability of the suit under Art. 131 of the Constitution on which I share the conclusions of Chandrachud J. and of Bhagwati J. and Kailasam J. as against those, with due respect, of our learned brethren who have held that the plaintiff should be non-suited on the ground that a suit such as the one now before us does not lie at all under Art.131 of the Constitution.

141. I have dealt at length with all the arguments which were advanced on behalf of the State of Karnataka because I accept as correct the submission of the learned counsel for the plaintiff that the case involves consideration of the exercise of governmental powers which vest in the Government of the State and its Ministers as such vis a vis those of the Central Government and its Ministers. They also raise questions relating to the meaning and the ambit and the applicability of the particular provisions of the Constitution whose operations are of vital interest to every State. Indeed, the interpretations given to these provisions must necessarily be of great concern to the Union as well. They are matters which involve the interests of the whole of the people of India who gave into themselves the Constitution whose provisions we have interpreted.

142. The Union of India, acting through the Central Government, could be said to represent the whole of the people of India. The individual States, acting through their Governments and Ministers, could be said to represent the people of each individual State and their interests. When differences arise between the representatives of the State and those of the whole people of India on questions of interpretation of the Constitution, which must affect the welfare of the whole people, and particularly that of the people of the State concerned, it appears to me, with great respect, to be too technical an argument to be accepted by us that a suit does not lie in such a case under Art. 131 of the Constitution.

According to both sides to the case before us an exercise of powers under Section 3 of the Act is called for. They differ, only on the question whether the Government of the State concerned or the Central Government also, on the facts of this case, can exercise those powers. Their claims conflict. There is a lis. The parties to the dispute are before us. We had to decide it and we have done so. It seems to me that a distinction between the State and its Government is, at the most, one between the whole and an inseparable part of the whole. It would be immaterial as regards claims on behalf of either the State or its Government whether the two are distinct juristic entities. Even if they could be distinctly separate, which is doubtful, the claim of the Government would be that of the State.

143. In State of Rajasthan v. Union of India, AIR 1977 SC 1361 this Court has recently considered the scope of Art. 131. There, I said, inter alia, on this question (at p. 1393):

"I do not think that we need take a too restrictive or a hyper-technical view of the State's rights to sue for any rights, actual or fancied, which the State Government chooses to take up on behalf of the State concerned in a suit under Art. 131."

It may be explained here that this observation was not meant to lay down more than that there would be presumed to be a nexus between the interests of the State and of the people it represents when the Government of the State takes up an issue relating to the interpretation of the Constitution against an action taken, or, even, as was the case there, one contemplated by the Central Government. I would like to remove the impression that no such nexus is needed if the use of the words "actual or fancied", in the observations quoted above, create it. I, however, think that, in the case before us, the nexus between the rival claims advanced and the interests of the public of the State is reasonably made out. It is a different matter that I do not accept the view put forward on behalf of the State of Karnataka that it alone and not the Union Government also has the power to set up a Commission under Sec. 3 of the Act on a matter of public importance primarily concerning the State.

144. It has to be remembered that Art. 131 is traceable to Section 204 of the Government of India Act. The jurisdiction conferred by it thus originated in what was part of the federal structure set up by the Government of India Act, 1935. It is a remnant of the Federalism found in that Act. It should, therefore, be widely and generously interpreted for that reason too so as to advance the intended remedy. It can be invoked, in my opinion, whenever a State and other States or the Union differ on a question of interpretation of the Constitution so that a decision of it will affect the scope or exercise of governmental powers which are attributes of a State. It makes no difference to the maintainability of the action if the powers of the State, which are Executive, Legislative and Judicial, are exercised through particular individuals as they necessarily must be. It is true that a criminal act committed by a Minister is no part of his official duties. But, if any of the organs of the State claim exclusive power to take cognizance of it, the State, as such, becomes interested in the dispute about the legal competence or extent of powers of one of its organs which may emerge.

145. I do not think that the fact that the State acts through its Ministers or officials can affect the maintainability of a suit under Art. 131 of the Constitution. Both Art. 166 (3) of our Constitution as well as Section 59 (3) of the Government of India Act of 1935 provided for allocation of the business of the Government among the Ministers for "the more convenient transaction of the business." This implies that the State can act not merely through its Government as a whole but also through its individual Ministers as provided by the rules. Sec. 49 (1) of the Government of India Act made this position absolutely clear by enacting:

"The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him."

The equivalent to that is Art. 154 (1) of our Constitution which reads as follows:

"154. Executive power of State - (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution."

146. In King-emperor v. Sibnath Banerji, 72 Ind App 241 at p. 266: (AIR 1945 PC 156 at p. 163) the Privy Council had held that "a Minister is an officer subordinate to the Governor" for the purposes of Section 49 of the Government of India Act only. This observation was no doubt relied upon by this Court in A. Sanjeevi Naidu v. State of Madras,(1970) 3 SCR 505 at page 512: (AIR 1970 SC 1102 at p. 1106) with regard to the position of our Ministers for the purposes of Article 154 (1) of the Constitution. These provisions, far from establishing any antithesis between the official capacity of a Minister and the State for which he acts, only show that, as a Minister, he is an agent or a limb of the Government of the State, and, therefore, he can be treated as an "officer" for purposes of Art. 154 (1) which corresponds to Section 49 of the Government of India Act. The result is that a Minister's official acts cannot be distinguished from those of the State on whose behalf he acts. With great respect for the view of my learned brethren who seem to hold otherwise, this feature cannot make a suit by the State under Art. 131 of the Constitution incompetent merely because it relates to the exercise of a Minister's powers enjoyed by virtue of his office. There is nothing in Art. 131 of the Constitution itself to debar the State, which must always necessarily act through its officers or agents or Ministers, from suing the Central Government not only to protect one of its agents, officers, or Ministers from being proceeded against, in any way, by the Central Government, but to prefer its own claim to exclusive power to deal with him; and, this is what the plaintiff has done by means of the suit, before us.

147. It is evident that a Minister has been treated, in the two cases cited before us as an "officer" for the very limited purpose of indicating that the State itself can act through him as he holds an office which enables him to act for it. They do notequate or assimilate his status or position with that of a Government servant. In my opinion, the Minister of a State, as the holder of an office provided for by the Constitution is, like a Judge of a High Court, a "dignitary of State" to use the expression employed by Sir William Holdsworth, the eminent British Constitutional lawyer and jurist, for a High Court Judge. His dignity and position is bound up with that of the State he represents. Hence, his State is entitled to sue to assert it.

148. It may be possible sometimes to distinguish a purely individual wrongful or criminal act, committed by a Minister, falling entirely outside the scope of his legal authority, as disconnected with his office. But, even this cannot, in my opinion, disable the State itself from suing for the protection of its own authority to deal with the Minister concerned. It is, as I have already indicated, a different matter if we hold, as we have held here, that the claim of the State to have exclusive power to deal with its Minister is not sustainable for some reason. The right to advance a claim, which is all that Art. 131 provides for, is to be distinguished from the strength of that claim in law. So long as the claim is of the State, the fact that a Minister, in exercising governmental powers, represents the State, can make no difference whatsoever to the maintainability of the suit by the State.

149. I think that the State concerned, which challenges the validity of the action of the Central Government against one or more of its Ministers in respect of acts involving exercise of its governmental powers, would have sufficient interest to maintain a suit under Art. 131 because it involves claims to what appertains to the State as a "State". It may be that, if the effect upon the rights or interests of a State, as the legal entity which constitutes the legally set up and recognised governmental organisation of the people residing within certain territorial limits is too remote, indirect, or infinitesimal upon the facts of a particular case, we may hold that it is not entitled to maintain a suit under Art. 131. But, I do not think that we can say that there.

150. The following cases were cited by the plaintiff's counsel: the Governor-General in Council v. Province of Madras, 1943 FCR 1: (AIR 1943 FC 11): United Provinces v. Governor-General in Council, AIR 1939 FC 58; Attorney-General for Victoria at the Relation of Dale v. The Commonwealth, 71 Comm LR 237; Attorney-General for Victoria (at the Relation of the Victorian Chamber of Manufacturers) v. The Commonwealth, (1935) 52 Com LR 533; State of Rajasthan v. Union of India, (AIR 1977 SC 1361) (supra). Except for the last mentioned case they are not directly helpful on the scope of Art. 131 or on the right of a State to sue under it. They, however, indicate the kind of questions on which and the persons through whom the units and the Central Authorities in a Federation may litigate.

151. My answers to the three issues framed are:

1. The suit is maintainable.

2. The Central Government's notification is valid.

3. Section 3 of the Act is valid.

On a fourth supplementary question framed on facts placed and arguments advanced before us, my answer is that the State and Central Government notifications do not relate substantially to"the same matter" within the meaning of proviso (b) to Section 3 (1) of the Act. It is, however, made clear that this question is answered by me on the assumption that there is no legal defect in the appointment of its own Commission by the State Government. The validity of the State Government's notification was not challenged before us on any ground whatsoever. The views expressed here will not, therefore, be deemed to have any bearing on questions relating to the validity of the State Government's notification which were not canvassed before us. This clarification seems necessary because the validity of the State Government's notification has also been, I understand, challenged in some other proceedings on grounds which can only be considered by us if and when they come up before us.

152. Consequently, this suit must be dismissed with costs.

153. **CHANDRACHUD, J:-**. Consequent upon the result of the elections held to the Karnataka Legislative Assembly in 1972, the Congress formed the Government with Shri D. Devraj Urs as the Chief Minister of the State. That party was then in power at the Centre too, but it lost its long held majority in the 1977 Lok Sabha elections after which the Janata Party formed the Government at the Centre. However in those elections to the Lok Sabha, 26 out of 28 seats allotted to the State of Karnataka were won by the Congress.

154. Certain opposition members of the Karnataka Legislative Assembly submitted to the Union Home Minister a memorandum containing allegations of corruption, favouritism and nepotism against the Chief Minister, Shri Devraj Urs. In response to a request of the Union Home Minister, the Chief Minister offered his comments on the allegations but, while repelling the accusations as frivolous and politically motivated, the Chief Minister raised a point which forms the nucleus of the arguments advanced in the suit before us. He contended that the federal structure enshrined in the Constitution is the corner-stone of national integrity; that the Constitution is the source of the power of the Centre and the States; that the exercise of all powers, whether by the Central Government or by the State Governments, must conform to the scheme of distribution of powers devised under the federal scheme of our Constitution that the erring Ministers of State Governments are accountable to the State legislature only; and that, the Central Government has no authority or control over the Government of a State in respect of matters which are within the State's exclusive domain, save in exceptional times when an emergency is in operation. The Chief Minister asserted that an enquiry into the charges levelled against him could only be held by or at the instance of the State Government.

155. By a notification dated May 18, 1977 issued under S. 3 (1) of the Commissions of Inquiry Act, 60 of 1952 the Government of Karnataka appointed a Commission of Inquiry consisting of Shri Mir Iqbal Hussain, a retired Judge of the Karnataka High Court, for the purpose of conducting an inquiry into the allegations specified in the notification. Within a few days thereafter, on May, 23, the Government of India issued a notification under the same Act, appointing a Commission of Inquiry consisting of Shri A. N. Grover, a retired Judge of the Supreme Court, for inquiring into the charges made against the Chief Minister, as described in the notification. The validity of this notification is challenged by the State of Karnataka by the present suit brought under Art. 131 of the Constitution. The Union of India and Shri A. N. Grover are impleaded to the suit as defendants 1 and 2 respectively.

156. The State of Karnataka contends by its plaint that the Central Government has no jurisdiction or authority to constitute the Commission in the purported exercise of its powers under the Commissions of Inquiry Act, 1952; that the appointment of the Commission of Inquiry by the Central Government for inquiring into allegations against Ministers of the State Government while they continue to be in office and enjoy the confidence of the State legislature is destructive of the federal structure of the Constitution and the scheme of distribution of powers provided for under it; that the Cabinet system of Government under which the Council of Ministers is responsible to the

legislature of the State would fail of its purpose if the Union executive were to assume to itself the power to direct an inquiry into allegations made against State Ministers while they are in office; that the provisions contained in S. 3 of the Act of 1952 cannot be interpreted so as to clothe the Central Government with the power to appoint a Commission for inquiring into matters relatable to any of the entries in List II of the Seventh Schedule to the Constitution, in respect of which Parliament has no power to make a law and the Union executive no power to take executive action; that such an interpretation would render S. 3 of the Act ultra vires the provisions of Part XI of the Constitution which deals exhaustively with the relations between the Union and the States; and that, the report of the Inquiry Commission appointed by the Union Government cannot serve any useful purpose as the Central Government is incompetent to take any remedial executive or legislative action against the Ministers of the State Government or the State Government itself.

157. These contentions are traversed by its written statement. It has, in the first instance, raised a preliminary objection that the suit itself is not maintainable as the appointment of the Commission to inquire into the personal conduct of the Chief Minister and other Ministers does not affect any legal right of the State of Karnataka. It further contends that the notification issued by the State Government neither covers the questions comprised in the notification of the Central Government nor does it cover all of the matters mentioned in the latter notification; that the Central Government is competent to constitute a Commission to inquire into a definite matter of public importance, namely, the conduct of a Minister of State Government; and that, the appointment of the Commission is neither destructive of the federal structure of the Constitution nor of any other basic feature thereof.

158. Three issues were framed by this Court on these pleadings. The first relates to the maintainability of the suit, the second to the question whether the notification issued by the Central Government is ultra vires the powers possessed by it under S. 3 of the Act of 1952 and the third to the contention whether, if S. 3 authorises the Central Government to issue the impugned notification, the section itself is at all constitutional.

159. On the preliminary objection as to the maintainability of the suit, I prefer to adhere to the view which I took in State of Rajasthan v. Union of India, (AIR 1977 SC 1361) where a similar objection was raised by the Union Government to the suits filed by the State of Rajasthan and certain other States under Art. 131 of the Constitution, challenging a directive of the Union Home Minister advising the dissolution of State Assemblies. I have had the benefit of perusing the judgment prepared by Brother Untwalia on behalf of himself and brethren Shinghal and Jaswant Singh in which they have taken the view that the Commission of Inquiry set up by the Central Government is not against the State or the Stare Government but is against an individual Minister or Ministers and since the setting up of the Commission does not involve any invasion of the legal rights of the State or the State Government, the suit is not maintainable under Art. 131 at the instance of the State of Karnakaka. I am free to confess that I have considerably profited by the judgment of my learned brethren because their point of view, with respect, is not to be overlooked simply because I have already expressed a contrary opinion in an earlier decision. But having given a fresh and closer thought to the problem in the light of the view expressed by them and a fuller argument advanced in

this case by the learned Additional Solicitor-General, I am inclined to the opinion that even taking a strictly legalistic view of the matter, the preliminary objection to the maintainability of the suit ought to be rejected.

160. The jurisdiction conferred on the Supreme Court by Art. 131 of the Constitution should not be tested on the anvil of banal rules which are applied under the Code of Civil Procedure for determining whether a suit is maintainable. Article 131 undoubtedly confers 'original jurisdiction' on the Supreme Court and the commonest form of a legal proceeding which is tried by a Court in the exercise of its original jurisdiction is a suit. But a constitutional provision, which confers exclusive jurisdiction on this Court to entertain disputes of a certain nature in the exercise of its original jurisdiction, cannot be equated with a provision conferring a right on a Civil Court to entertain a common suit so as to apply to an original proceeding under Art. 131 the canons of suit which is ordinarily triable under S. 15 of the Code of Civil Procedure by a Court of the lowest grade competent to try it. Advisedly, the Constitution does not describe the proceeding which may be brought under Art. 131 as a 'suit' and significantly, Art. 131 uses words and phrases not commonly employed for determining the jurisdiction of a Court of first instance to entertain and try a suit. It does not speak of a 'cause of action, an expression of known and definite legal import in the world of witness actions. Instead, it employs the word 'dispute', which is no part of the elliptical jargon of law. But above all, Art. 131 which in a manner of speaking is a self-contained code on matters falling within its purview, provides expressly for the condition subject to which an action can lie under it. That condition is expressed by the clause: "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". By the very terms of the article, therefore, the sole condition which is required to be satisfied for invoking the original jurisdiction of this Court is that the dispute between the parties referred to in cls. (a) to (c) must involve a question on which the existence or extent of a legal right depends.

161. The quintessence of Art. 131 is that there has to be a dispute between the parties regarding a question on which the existence or extent of a legal right depends. A challenge by the State Government to the authority of the Central Government to appoint a Commission of Inquiry clearly involves a question on which the existence or extent of the legal right of the Central Government to appoint the Commission of Inquiry depends and that is enough to sustain the proceeding brought by the State under Art. 131 of the Constitution. Far from its being a case of the "omission of the obvious", justifying the reading of words into Art. 131 which are not there, I consider that the Constitution has purposefully conferred on this Court a jurisdiction which is untrammelled by considerations which fetter the jurisdiction of a Court of first instance, which entertains and tries suits of a civil nature. The very nature. The very nature of the disputes arising under Art. 131 is different, both in form and substance, from the nature of claims which require adjudication in ordinary suits.

162. The Constitution aims at maintaining a fine balance not only between the three organs of power, the legislature, the executive and the judiciary, but it is designed to secure a similar balance between the powers of the powers of the Central Government and those of the State Governments. The legislative lists in the Seventh Schedule contain a demarcation of legislative powers between

the Central and State Governments. The executive power of the Central Government extends to matters with respect to which Parliament has the power to make Laws while that of the State extends to matters with respect to which the State legislature has the power to make laws. Part XI of the Constitution is devoted specially to the delineation of relations between the Union and the States. That is a delicate relationship, particularly if different political parties are in power at the Centre and in the States. The object of Article 13 is to provide a high powered machinery for ensuring that the Central Government and the State Governments act within the respective spheres of their authority and do not trespass upon each other's constitutional functions or powers. Therefore, a challenge to the constitutional capacity of the 'defendant' to act in an intended manner is enough to attract the application of Article 131, particularly when the 'plaintiff' claims that right exclusively for itself. If it fails to establish that right, its challenge may fail on merits but the proceeding cannot be thrown out on the ground that the impugned order is not calculated to affect or impair a legal right of the plaintiff.

162A. In an ordinary civil suit, the rejection of a right asserted by the defendant cannot correspondingly and of its own force establish the right claimed by the plaintiff. But proceedings under Article 131 are adjudicatory of the limits of constitutional power vested in the Central and State Governments. The claim that the defendant (the Central Government here) does not possess the requisite power involves the assertion that the power to appoint the Commission of Inquiry is vested exclusively in the plaintiff (the State Government here). In a civil suit the plaintiff has to succeed on the strength of his own title, not on the weakness of his adversary's because the defendant may be a rank trespasser and yet he can lawfully hold on to his possession against the whole world except the true owner. If the plaintiff is not the true owner, his suit must fail. A proceeding under Article 131 stands in sharp contrast with an ordinary civil suit. The competition in such a proceeding is between two or more governments either the one or the other possesses the constitutional power to act. There is no third alternative as in a civil suit wherein the right claimed by the plaintiff may reside neither in him nor in the defendant but in a stranger. A demarcation and definition of constitutional power between the rival claimants and restricted to them and them alone is what a proceeding under Article 131 necessarily involves. That is how in such a proceeding, a denial of the defendant's right carries with it an assertion of the plaintiff's. Firstly, therefore, I am unable to appreciate that if a State Government challenges the constitutional rights of the Central Government to take a particular course of action, Article 131 will still not be attracted. Secondly, the contention of the State Government in the present proceeding is not only that the Central Government has no power to appoint the Inquiry Commission for inquiring into the conduct of State Ministers but that such a right is exclusively vested in the State Government. There is, therefore, not only a denial of the right claimed by the Central Government but an assertion that the right exclusively resides in the State Government. In a sense, the instant case stands on a stronger footing than the Rajasthan case because there the challenge made by the State Government could perhaps be characterised as purely negative in nature since the basic contention was that the Central Government had no power to dissolve the State Assemblies. There is, therefore, all the greater reason here for rejecting the preliminary objection.

163. The State of Karnataka has claimed an alternative relief that if Section 3 of the Commissions of Inquiry Act is construed as authorising the Central Government to issue the impugned notification, it is ultra vires as being in violation of Article 164 (2) and the 'federal scheme' embodied in the

Constitution. Whether this contention is well-founded or not is another matter but it seems to me difficult to hold that the State of Karnataka does not even have the legal right to contend that the provision of a parliamentary statute authorising the Central Government to act in a particular manner is unconstitutional.

164. The palliative of a writ petition under Article 226 which is suggested on behalf of the Union Government as a sovereign remedy in such matters is hardly any substitute for a proceeding under Article 131. It is notorious that writ petition has its own limitations and indeed many a petition under Article 226 is rejected with the familiar quip : "Why don't you file a suit?" Apart from disputes between the Government of India and a State Government, Article 131 contemplates other permutations and combinations in the matter of array of parties. A dispute between one or more States or between the Government of India and a State on one hand and anther State or other States on the other hand cannot appropriately be decided by a High Court under Article 226 and that could not have been the intendment of the Constitution. Disputes of the nature described in Article 131 are usually of an urgent nature and their decision can brook no delay. It is therefore expedient in the interest of justice that they should, as far as possible, be brought before and decided by this Court so as to obviate the dilatoriness of a possible appeal. An original proceeding decided by this Court is decided once and for all.

165. For these reasons I reject the preliminary objection raised by the Union Government and hold that the proceeding brought by the State of Karnataka is maintainable under Article 131 of the Constitution.

166. Another point, also of a preliminary nature, may now be disposed of. Section 3 (1) of the Commissions of Inquiry Act authorises the 'appropriate Government' to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and perform such functions and within such time as may be specified in the notification. Clauses (a) and (b) of the proviso to Section 3 (1) cut down the width of that power with a view to ensuring that the Central Government and the State Governments do not appoint parallel Commissions which will simultaneously inquire into the 'same matter'. Since, in the instant case, the State of Karnataka had appointed a Commission of Inquiry before the Union Government issued the impugned notification clause (b) of the proviso will be attracted. That clause says that if a Commission has been appointed to inquire into any matter.

"(b) by a State Government, the Central Government shall not appoint another Commission to inquire into the same matter for so long as the Commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extended to two or more States."

The question for consideration is whether the appointment of the Commission of Inquiry by the Central Government violates the injunction contained in this clause.

167. Considering the terms of the notifications issued by the State Government and the Central Government and the matters into which the respective Commissions are directed to inquire, it seems obvious that the object and purpose of the two inquiries in basically of different character. The very preambles to the two notifications highlight this difference and show that they are directed to different ends. The preamble of the Karnataka notification recites :

"WHEREAS allegations have been made on the floor of the Houses of the State Legislature and elsewhere that irregularities have been committed/excess payments made in certain matters relating to contracts, grants of land, allotments of sites, purchase of furniture, disposal of food grains, etc. Now Therefore ..... The Government of Karnataka hereby appoint..... the Commission of Inquiry for the purpose of making an inquiry into the said allegations, particularly specified below....." The preamble of the Central Government notification of the other hand recites:

"Whereas the Central Government is of opinion that it is necessary to appoint a Commission of Inquiry for the purpose of making an inquiry into a definite matter of public importance, namely charges of corruption, nepotism, favouritism or misuse of Governmental power against the Chief Minister and certain other Ministers of the State of Karnataka, hereinafter specified....."

The terms of reference of the two commissions disclose the same fundamental difference. The primary object of the State Government in appointing the Commission is to ascertain whether improper or excessive payments were made, undue favours were shown, irregularity or fraud had occurred in the conduct of official business etc; and secondarily to find out as to "Who are the persons responsible for the lapses, if any, regarding the aforesaid and to what extent." On the other hand, the commission appointed by the Central Government is specifically directed to inquire "whether the Chief Minister practised favouritism and nepotism" in regard to various matters mentioned in the notification. It is, therefore, wrong for the State Government to contend that the Central Government has appointed the Commission of Inquiry for the purpose of inquiring into the 'same matter' into which the commission of Inquiry appointed by the State Government is directed to inquire. In fact, the Central Government notification provides expressly by clause 2 (a) (ii) that the Commission will inquire into the allegation contained in the memoranda submitted by certain members of the Karnataka State legislature, "excluding any matter covered by the notification of the Government of Karnataka."

168. The argument that the two notifications cover the same matter suffers from a lack of recognition of ordinary political realities. It is hardly ever possible, except in utopian conditions, that the State Government will appoint a Commission to inquire into acts of corruption, favouritism and nepotism on the part of its Chief Minister. It is interesting that Sir Thomas More coined the name 'Utopia' from the Greek ou (not) and tops (place) which together mean "No place." It is inconceivable that a Commission of inquiry will be appointed by a State Government without the concurrence of the Chief Minister and if the political climate is so hostile that he is obliged to

submit to an inquiry into his own conduct, he will quit rather than concur. Indeed, a Council of Ministers which considers that the conduct of its Chief Minister and some of the Ministers requires examination in a public inquiry, shall have forfeited the confidence of the legislature and would ordinarily have to tender its resignation. Thus, the objection of the State Government that the notification of the Central Government offends against clause (b) of the proviso to Section 3 (1) of the Act is factually unfounded and theoretically unsound.

169. Having disposed of the objections which were of a preliminary nature, it is necessary now to consider the merits of the rival contentions on issues 2 and 3.

170. Shri Lal Narayan Sinha, who appears on behalf of the State of Karnataka, contends that Section 3 (1) if the Commissions of Inquiry Act should not be construed as authorising the Central Government to appoint a Commission of Inquiry for the purpose of inquiring into the conduct of a sitting minister of State Government. It is impossible, on a plain reading of the section, 2 (a) (i) and (ii) of the Act define 'appropriate Government" to mean

(i) the Central Government, in relation to a commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in list I or list II or list III in the Seventh Schedule to the Constitution; and

(ii) the State Government, in relation to a commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the seventh schedule to the Constitution;

Section 3 (1) empowers the appropriate Government' if it is of opinion that it is necessary so to do and obliges it if a resolution in that behalf is passe by the House of the People or the Legislative Assembly of the State as the case may be, to appoint a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance. The constitutional considerations for which the learned counsel contends that Section 3 (1) should be given a restricted meaning and the minute niceties of his submission will be considered later. But, keeping those considerations apart for the moment, I see no justification for reading down the provisions of Section 3 (1) so as to limit the power of the Central Government to appointing Commissions of Inquiry for inquiring into the conduct of persons in relation to matters concerning the affairs of the Union Government only. Section 3 (1) empowers the Central Government to appoint a commission for making an inquiry into any definite matter of public importance. It is inarguable that the conduct of ministers of State Governments in the purported discharge of their official functions is not a definite matter of public importance within the meaning of Section 3 (1). To what extent the principle of federalism will be impaired by such a construction will of course have to be examined with care but I see no substance in the contention that the Central Government does not even possess the power to collect facts in regard to allegations of corruption made by a section of the State legislature against sitting ministers

of the State Government. That power must undoubtedly be exercised sparingly and with restraint because under the guise of directing an inquiry under Section 3 (1), the Central Government cannot interfere with the day-to-day working of the State Government. One cannot also contradict that what appears to be a proper use of power may sometimes contain a veiled abuse of power, howsoever infinitesimally. But statutory construction cannot proceed on distrust and suspicion of those who are charged with the duty of administering laws. Section 3 (1) must, therefore, receive its proper construction with the reservation that mala fides vitiate all acts. Lack of bona fides was alleged but was not pressed in this case. In my opinion, therefore, Section 3 (1) cannot be given a restricted meaning as canvassed by the State Government.

171. On this view, the contention that Section 3 (1) should be read down and the impugned notification should be set aside as falling outside the scope of that section, has to be rejected. But then it is urged by the State that if the section cannot be given a restricted meaning and has to be construed widely so as to authorise the Central Government to direct the holding of inquiries into the conduct of sitting State ministers, the provision would be rendered unconstitutional for a variety of reasons. Those reasons must now be considered.

172. It is said in the first place that if the language of Section 3 (1) is construed widely, it will not only enable the Central Government to appoint a commission of Inquiry to inquire into the conduct of sitting ministers of State Governments but it will, applying the same rule of construction, also enable the State Government to appoint similar Commissions of Inquiry to inquire into the conduct of the Central ministers. This according to the State's counsel, would offend against the provisions of Articles 75 (3) and 164 (2) of the Constitution. These articles provide respectively that the Central Council of Ministers shall be collectively responsible to the House of the People and the State Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. The argument is that the power to appoint a commission of inquiry for the purpose of inquiring into the conduct of sitting ministers of another Government is destructive of the principle of collective responsibility enunciated in these articles. This argument is said to receive support from the circumstance that by virtue of Article 194 (3), it is the privilege of the Legislative Assemble of the State to appoint a committee for inquiring into the conduct of any of its members, including a minister. That privilege, according to the learned counsel, is as inviolable as the principle of collective responsibility.

173. I find it impossible to accept this contention. Articles 75 (3) and 164 (2) speak of the collective responsibility of the Council of Ministers as a body, to the House of the People or the Legislative Assembly of the State. Whatever may be the findings of Commission of Inquiry, the Council of Ministers, whether at the Centre or in the States, continues to be collectively answerable or accountable to the House of the People or the Legislative Assembly. Indeed, neither the appointment of the Commission nor even the rejection by the Commission for all or any of the allegations referred to it for its inquiry would make the Council of Ministers any the less answerable to those bodies. The object ofthe two articles of the constitution on which the State of Karnataka relies is to provide that for every decision taken by the cabinet, each one of the ministers is responsible to the legislature concerned. It is difficult to accept that for acts of corruption, nepotism or favouritism

which are alleged or proved against an individual minister, the entire council of Ministers can be held collectively responsible to the legislature. If an individual minister uses his office as an occasion or presence for committing acts of corruption, he would be personally answerable for his unlawful acts and no question of collective responsibility of the Council of Ministers can arise in such a case. As observed by Hegde J. while speaking for a constitution Bench of this court in A. Sanjeevi Naidu v. State of Madras, (1970) 3 SCR 505, 512 : (AIR 1970 SC 1102), the essence of collective responsibility of the Council of Ministers is that the cabinet is responsible to the legislature for every action taken in any of the ministries. In other words, the principle of collective responsibility governs only these acts which a minister performs or can reasonably be said to have performed in the lawful discharge of his official functions.

174. The history of the principle of collective responsibility in England shows that it was originally developed as against the King. The ministers maintained a common front against the King, accepted joint and several responsibility for their decisions whether they agreed with them or not, and resigned in a body if the King refused to accept their advice. In relation to the British Parliament, collective responsibility means that the cabinet presents a common front. In Melbourne's famous phrase, 'the cabinet ministers must all say the same thing. The principle of collective responsibility perhaps compels ministers to compromise with their conscience, but in matters of policy they have to speak with on voice, each one of them being responsible for the decision taken by the cabinet. (Chambers,s Encyclopedia, 1973 Ed Vol. 2, page 736 under the heading 'Cabinet ... ... Collective Responsibility.')

175. In his book on "Constitutional and Administrative Law" (Ed. 1971, page 175), S. A. de. Smith says that the collective responsibility of the cabinet to the House of Commons is sometimes spoken of as a democratic bulwark of the British Constitution. According to the learned author, collective responsibility implies that all cabinet ministers assume responsibility for cabinet decisions and action taken to implement those decisions. A minister may disagree with a decision or with the manner of its implementation, but if he wishes to express a dissent in public he should firs tender his resignation.

176. While explaining the principle of collective responsibility, Sir Iver Jennings in his book "Cabinet government" (Third Ed., 1959 p. 277) says :

"For all that passes in Cabinet (said Lord Salisbury in 1878) each member of it who does not resign is absolutely and irretrievably responsible, and has no right afterwards to say that he agreed in one case to a compromise, while in another he was persuaded, by his colleagues-- It is only on the principle that absolute responsibility is undertaken by every member of the Cabinet who, after a decision is arrived at, remains a members of it, that the joint responsibility of Ministers to Parliament can be upheld, and one of the most essential principles of parliamentary responsibility established."

The learned author says that perhaps Mr. Joseph Chamberlain's definition of collective responsibility was better since he had occasion to study the matter both as enfant terrible under Mr. Gladstone and in his middle age under Lord Salisbury. According to Mr. Chamberlain

"Absolute frankness in our private relations and full discussion of all matters of common interest ..... the decisions freely arrived at should be loyally supported and considered as the decisions of the whole of the Government. Of course there may be occasions in which the difference is of so vital a character that it is impossible for the minority..... to continue their support, and in this case the Ministry breaks up or the minority member or members resign."

177. Thus the argument that Section 3 (1) of the Act will offend against the principle of collective responsibility unless it is construed narrowly is without any substance. As regards the suggested involvement of Article 194 (3), in the absence of a specific provision in the Constitution that the conduct of a member of the legislature shall be inquired into by the legislature only, it is impossible to hold that the appointment of a Commission of Inquiry under the Act constitutes an interference with the privilege of the legislature. English precedents relating to the privileges of the House of Commons, which are relevant under Article 194 (3) do not support the State's contention.

178. That disposes of an important limb of the State's submission. The other contentions of the State Government directed towards showing that the impugned notification is unconstitutional are these :

(a) the charges contained in the impugned notification relate to corruption, nepotism, favouritism and misuse of government power by the Chief Minister and other ministers in relation to the executive powers exercisable directly or through subordinate officers and neither the Central Executive nor the Parliament can exercise any control over the State executive, except during an emergency;

(b) India being a Union of States one must, while interpreting the Constitution, have regard to the essential features and the general scheme of our federal or quasi-federal Constitution in which the powers of the Union of India and the States are clearly defined and demarcated. "To hold otherwise would mean that the Union executive would effectively control the State executive which is opposed to the basic scheme of our Federal Constitution.";

(c) Neither Article 248 of the Constitution which confers exclusive residuary powers of legislation on Parliament with respect to any matters not enumerated in the Concurrent List or the State List nor the residuary entry 97 in List I can include the power to make a law vesting in the Central Government a supervisory control over the State Government;

(d) Entry 94 in List I is manifestly irrelevant on Parliament's powers to pass the impugned law. It confers power on Parliament to legislate on the topic; "Inquiries, surveys and statistics for the purpose of any of the matters" in List I. Misuse of power by ministers of State Governments, which is stated to be one of the matters of public importance dealt with in Section 3 (1) of the Commissions of Inquiry Act, does not fall within the scope of any of the matters enumerated in List I;

(e) Entry 45 of List III : "Inquiries and statistics for the purpose of any of the matters specified in List II or List III" cannot also empower Parliament to pass the impugned legislation. The reason is that if, as contended by the Union Government, the essence of the notification issued by the Central Government is not the transactions described therein but the misuse of power by the Chief Minister or ministers of the Government of Karnataka, there is no entry in List II or List III relating to the misuse of governmental power by ministers of a State Government;

(f) A law conferring power on Parliament or the Central executive to inquire into the conduct of a sitting minister of a State Government in regard to alleged misuse of governmental powers, by an agency chosen by the Central executive, is beyond the "Legislative" competence of Parliament because in reality, such a law is supplemental to the provisions of Part XI, Chapter II of the Constitution which deal with the administrative part of the relations between the Union and the States and would fall in the category of Constitutional law. Parliament has no power to add to or vary or supplement the provisions of the Constitution by means of an ordinary legislation except when the Constitution provides to that effect specifically;

(g) To confer upon the Union executive the power to call upon the State executive to render explanation of its executive actions and the further power to compel the State executive to submit to the jurisdiction of an authority chosen by the Union executive for investigating charges against the State executive brigs into existence a new relationship between the Central executive and the State executive which is not a permissible exercise of legislative power. Such an empowerment can be made in the exercise of constituent power only after following the procedure prescribed by Article 368 of the Constitution; and

(h) Legislative and administrative relations between the Union and the States having been defined in the Constitution, the provisions relating thereto are exhaustive of that subject and therefore legislation in regard to Centre-State relationship is prohibited by necessary implication. By providing by Article 164 (2) that the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State, by conferring on the Legislative Assembly by Article 194 (3) the necessary powers to effectuate that responsibility, by enumerating the situations in Part XI, Chapter II as to when the Central executive can control the State executive and finally by providing for emergencies in Articles 355 and 356, the Constitution has impliedly prohibited the imposition of the control of the Central executive over the State executive in any other manner. If an instrument

enumerates the things upon which it has to operate, everything else is necessarily and by implication excluded from its operation and effect.

179. The dominant note of these submissions is one and one only : that the Central executive cannot, save by a constitutional amendment, be given power to control the functions of the State executive through the medium of a Commission of Inquiry. Whether Parliament has the competence to pass the impugned legislation in the exercise of its legislative, as distinguished from constituent power is a separate matter, but before considering the validity of the State's contention in that behalf, it is necessary to examine whether the assumption underlying that contention is at all justified, namely that by the impugned legislation, Parliament has conferred on the Central Government the power to control the executive functions of the State Government. For that purpose it is necessary to have a proper understanding of the scheme and purpose of the Commissions of Inquiry Act and the true effect of its more important provisions.

180. The Commissions of Inquiry Act was passed by the Parliament in 1952 in order to provide for the appointment of Commissions of Inquiry and for vesting them with certain powers. Section 3 (1) read with Section 2 (a) of that Act empowers, in so far as is relevant, the Central Government to appoint by notification a Commission of Inquiry for the purpose of making an inquiry into any definite matter of public importance and perform such functions as may be specified in the notification. The Commission has thereupon to make the inquiry and perform its functions, one of which of course is to submit its report to the Government. Section 3 (4) requires that the Central Government shall cause to be laid before the House of the People the report of the Commission of Inquiry together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission. Section 4 confers on the Commission some of the powers possessed by a Civil Court while trying a suit, like enforcing the attendance of witnesses, examining them on oath, discovery and production of documents, receiving evidence on affidavits requisitioning any public record, etc. Having regard to the nature of the inquiry and the other circumstances of the case, the Government can under S 5 (1) direct that all or any of the provisions contained in sub- ss. (2), (3), (4) and (5) of S. 5 shall apply to the Commission. Some of these sub-sections empower the Commission to require any person to furnish information to the Commission and to enter into any building or place where any document relating to the subject-matter of the inquiry may be found. For the purpose of conducting any investigation pertaining to the inquiry, the Commission by S. 5-A can utilise the services in the case of a Commission appointed by the Central Government, of any officer or investigation agency of the Central Government.

181. It is clear from these provisions and the general scheme of the Act that a Commission of Inquiry appointed under the Act is a purely fact-finding body which has no power to pronounce a binding or definitive judgment. It has to collect facts through the evidence led before it and on a consideration thereof it is required to submit its report which the appointing authority may or may not accept. There are sensitive matters of public importance which, if left to the normal investigational agencies, can create needless controversies and generate an atmosphere of suspicion. The larger interests of the community require that such matters should be inquired into by high-powered commissions consisting of persons whose findings can command the confidence of the

people. In his address in the Lionel Cohen Lectures, Sir Cyril Salmon speaking on "Tribunals of Inquiry" said:

"In all countries, certainly in those which enjoy freedom of speech and a free Press, moments occur when allegations and rumours circulate causing, a nation-wide crisis of confidence in the integrity of public life or about other matters of vital public importance. No doubt this rarely happens, but when it does it is essential that public confidence should be restored, for without it no democracy can long survive. This confidence can be effectively restored only by thoroughly investigating and probing the rumours and allegations so as to search out and establish the truth. The truth may show that the evil exists, thus enabling it to be noted (rooted?) out, or that there is no foundation in the rumours and allegations by which the public has been disturbed. In either case, confidence is restored." A police investigation is, at its very best, a unilateral inquiry into an accusation since the person whose conduct is the subject-matter of inquiry has no right or opportunity to cross-examine the witness whose statements are being recorded by the police. Section 8-C of the Act, on the other hand, confers the right of cross-examination, the right of audience and the right of representation through a legal practitioner on the appropriate Government, on every person referred to in S. 8-B and with the permission of the Commission, on any other person whose evidence is recorded by the Commission. Clauses (a) and (b) of S. 8-B refer respectively to persons whose conduct the Commission considers it necessary to inquire into and persons whose reputation, in the opinion of the Commission, is likely to be prejudicially affected by the Inquiry. It is undeniable that the person whose conduct is being inquired into and if he be a Chief Minister or a Minister, the doings of the Government itself, are exposed to the fierce light of publicity. But that is a risk which is inherent in every inquiry directed at finding out the truth. It does not, however, justify the specious submission that the inquiry constitutes an interference with the executive functions of the State Government or that it confers on the Central Government the power to control the functions of the State executive. After all, it is in the interest of those against whom open allegations of corruption and nepotism are made that they should have an opportunity of repelling those allegations before a trained and independent Commission of Inquiry which is not hide-bound by the technical rules of evidence. "It is only by establishing the truth that the purity and integrity of public life can be preserved" and that is the object which the Commissions of Inquiry Act seeks to achieve.

182. In M. V. Rajwade v. Dr. S. M. Hassan, (AIR 1954 Nag 71) it was held by the Nagpur High Court that S. 4 of the Act merely clothes the Commission with certain powers of a Civil Court but does not confer on it the status of a Court and that the Commission is only fictionally a Civil Court for the limited purposes enumerated in S. 5 (4). The court observed that there is no accuser, no accused and no specific charges for trial before the Commission, nor is the Government, under the law, required to pronounce one way or the other on the findings of the Commission. In other words (at p. 76),

"The Commission governed by the Commissions of Inquiry Act, 1952 is appointed by the State Government 'for the information of its own mind'..... It is, therefore, a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature."

These observations were extracted and quoted with approval by this Court in Brajnandan Sinha v. Jyoti Narain, (1955) 2 SCR 955 (at p. 975) : (AIR 1956 SC 66) (at p. 75).

183. It is, therefore, clear that the power conferred by Parliament on the Central Government to appoint a Commission of Inquiry under S. 3 (1) of the Act for the purpose of finding facts in regard to the allegations of corruption, favouritism and nepotism against a sitting Chief Minister or Ministers cannot be held to constitute interference with the executive functions of the State Government. On receipt of the Commission's report, the Central Government may or may not take any action, depending upon the nature of the findings recorded by the Commission. If it decides to take any action, the validity thereof may have to be tested in the light of the constitutional provisions. But until that stage arrives, it is difficult to hold that the Central Government is exercising any control or supervisory jurisdiction over the executive functions of the State Government. As observed by this Court in Ram Krishna Dalmia v. S. R. Tendolkar, 1959 SCR 279, 293 : (AIR 1958 SC 538) (at p. 546) "the Commission has no power of adjudication in the sense of passing an order which can be enforced proprio vigore."

184. Thus, the very assumption on which the State's counsel has built up the edifice of his argument seems to me to be fallacious. The rejection of that assumption furnishes at once an answer to most of his other submissions but, since the matter has been argued on both sides fully and earnestly, it is desirable to consider all the rival contentions and set the dispute that India is a Union of States and that one must, while interpreting the Constitution, have regard to the essential features and the general scheme of our federal or quasi-federal Constitution by which, the powers of the Union of India and the States are clearly defined and demarcated. Quoting a learned author on "Constitutional Law of India" Vol. 2, page 1074, counsel contends that to hold otherwise would mean that the Union executive would effectively control the State executive, which is opposed to the basic scheme of our federal Constitution.

185. The statement from the "Constitutional Law of India" on which counsel relies is out of contest because it occurs in relation to the question whether in dismissing the Ministry or in dissolving the legislature, the Governor acts as an agent of the President or under his directions. While expressing the opinion that a responsible Union Ministry would not be justified in advising the removal of a Governor merely because he takes action which does not fall in line with the policy of the Union Ministry, the learned author says that any other view would vest in the Union executive effective control over the State executive, which is opposed to the basic scheme of our federal Constitution. Apart from the consideration that the statement relied upon is out of context, I have already rejected the submission that the appointment by the Central Government of a fact-finding Commission of Inquiry for inquiring into the conduct of sitting States Ministers can be deemed to vest effective control over the State executive in the Central executive. Counsel's submission shall, therefore have to be examined keeping aside this aspect of the matter.

186. India, Undoubtedly, is a Union of States and that is what Art. 1 of our Constitution expressly provides. Whether we describe our Constitution as federal or quasi-federal, one cannot ever blind one's vision to the stark reality that India is a Union of States. The Constitution contains a carefully conceived demarcation of powers, legislative and executive, between the Central Government on the one hand and the State Governments on the other. The balance of that power ought never to be disturbed, but that is a different thing from saying that inherent or implied limitations should be read into legislative powers or that because India is a Union of States, one must read into the Constitution powers and provisions which are not to be found therein but which may seem to follow logically from what the Constitution provides for expressly.

187. The first question which one must tackle is whether Parliament has the legislative competence to enact the Commissions of Inquiry Act, 1952. This question, in my opinion, is concluded by a judgment of a Constitution Bench of this Court in Ram Krishna Dalmia, (AIR 1958 SC 538) in which the validity of the very Act was challenged in a matter in which a notification was issued by the Central Government under S. 3 of the Act for inquiring into the affairs of certain companies. It was held by this Court that Parliament had the legislative competence to pass the law under Entry 94 of List I and Entry 45 of List III of the Seventh Schedule of the Constitution. Entry 94 of List I relates to "Inquiries, surveys and statistics for the purpose of any of the matters" in List I, while Entry 45 of List III relates to "Inquiries and statistics for the purposes of any of the matters specified in List II or List III." It is well established that entries in the legislative lists must receive not a narrow or pedantic but a wide and liberal construction and, considered from that point of view, the word "inquiries' which occurs in the two entries must be held to cover the power to pass an Act providing for appointment of Commissions of Inquiry. It is in the exercise of this power that the Parliament has passed the Commissions of Inquiry Act, 1952. Since the power to appoint a Commission to inquire into the conduct of sitting Ministers of State Governments which is comprehended within S. 3 (1) of the Act does not offend against the principle of collective responsibility of the State's Council of Ministers or against the privileges of the Legislative Assembly and since it does not also confer on the Central Government the power of control over the State executive, the provision must be held to be a valid exercise of the legislative competence of the Parliament.

188. Ram Krishna Dalmia, (AIR 1958 SC 538) in so far as it decides that the Commissions of Inquiry Act, 1952 falls within the legislative competence of the Parliament in view of Entry 94 of List I and Entry 45 of List III must, with respect, be affirmed and accepted as good law. I may, however, add that if for any reason it were to appear, which it does not, that these entries do not justify the passing of the Act, the residuary Entry 97 of List I will in any event support the legislative validity of the Act. That entry confers on Parliament the power to legislate on 'Any other matter not enumerated in List II or List III...'. Entry 97 is in the nature of a residuary entry and the words 'Any other matter' which appear therein mean 'Any matter other than those enumerated in List I.' If Entry 94 does not cover the impugned Act, 'Inquiries' of the nature contemplated by the Act, will fall within the description 'Any other matter'; and if Entry 45 of List III and, admittedly, the whole of the State List are to be kept out of consideration, the Act will relate to 'a matter not enumerated in List II or List III'. Shri Sinha objected to recourse being had to Entry 97 of List I on the ground that it cannot, any more than other entries in Lists I and III, confer on Parliament the power to make a law vesting in the Central executive. That contention having been rejected, Entry

97 will in any event sustain the legislative validity of the Act.

189. It is unnecessary to consider the implications of Art. 248 because that may require an examination of the question, which is needless here in view of the decision in Ram Krishan Dalmia, (AIR 1958 SC 538), whether that article confers power which is not to be found in Art. 246 (1) read with Entry 97 of List I and whether an affirmative answer to this question will render Entries 1 to 96 of List I otiose. One, may sum up the discussion on the question of Parliament's legislative competence by stating that adopting "the construction most beneficial to the widest possible amplitude" of powers conferred by the Constitution and interpreting the legislative entries in "a broad and liberal spirit", the impugned Act cannot be held to suffer from want of legislative competence in the Parliament to enact it. Entry 94 of List I, Entry 97 45 of List III and failing these, Entry 97 of List I must sustain the Act.

190. That disposes of points (a) to (e) set out above, leaving for consideration (f), (g) and (h). For the sake of easy reference, these points may be summarised thus : (i) Administrative relations between the Union and the States are dealt with in Chap. II of Part XI of the Constitution; (ii) The Commissions of Inquiry Act. as interpreted above, purports to supplement the provisions contained in Chap. II, Part XI; (iii) Parliament cannot supplement any provision of the Constitution except by an amendment of the Constitution; (iv) The Commissions of Inquiry Act creates a new Centre-State relationship by vesting in the Central executive an added control over the State executive not provided for in the Constitution, and (v) Since the provisions contained in Chap. II of Part XI are exhaustive of matters governing the administrative relations between the Union and the States, any legislative addition thereto or supplementing thereof must be held to be impliedly prohibited.

191. The short answer to the first four points, (i) to (iv) above, is that though it is true that administrative relations between the Union and the States are dealt with by Chap. II, Part XI of the Constitution and though the provisions contained therein cannot be altered save by a constitutional amendment, the Commissions of Inquiry Act does not bring about any change in the Centre-State relationship as envisaged by Part XI. The Act merely empowers the Central Government to appoint a Commission of Inquiry for the purpose of collecting facts with a view to informing its own mind; and the report of the Commission, not being binding on any one, has no force of its own. Revelations before the Commission may conceivably produce an impact on the credibility of the State Government, but the inquiry is directed not to the manner in which the State Government or the State executive conducts itself in the discharge of its constitutional functions but to the manner in which, if at all, its Ministers have used their office as a cloak for committing acts of corruption and favouritism. It is possible that a Commission may accept the accusations against the Minister and in fairness emphasise that the private doings of the Minister have nothing to do with the public administration of the States executive affairs. Indeed, the Commission may reject the allegations as totally baseless and frivolous. These are all imponderables and they cannot influence the decision of the basic question as to the nature of the Commissions' functions. Therefore, the contention that by empowering the Central Government to appoint a Commission for inquiring into the conduct of the sitting Ministers of State Government, Parliament has legislated on the Centre-State relationship which is a constitutional subject, is without any force.

192. However, it is necessary to say a word about the somewhat novel argument of the State Government that, by ordinary legislation, the Parliament cannot even supplement a constitutional provision, unless the Constitution expressly authorises it to do so. Ordinary legislation, as contended by the learned Additional Solicitor-General, has to answer only two tests: Firstly, the law must be within the legislative competence of the legislature, and secondly, the law must not offend against the provisions of Part III or infringe any other specific provision of the Constitution. Once the legislative competence is established and no violation of any specific constitutional provision is made out, the validity of the Act cannot be assailed on the ground that it 'supplements' a constitutional provision. The fallacy of the State's argument consists in the assumption that every law "in respect" a subject-matter dealt with by the Constitution amounts necessarily to an amendment of the Constitution. An illustration or two may help clarify the true position. Article 297 of the Constitution provides that all lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India shall vest in the Union and be held for the purposes of the Union. It is inarguable that since "lands, minerals and other things of value underlying the ocean within the territorial waters or the continental shelf of India" is the subject-matter of Art. 297, no legislature, even if it possesses legislative competence to do so, can legislate on that subject-matter. It is elementary that the legislature cannot, while legislating on a topic enumerated in the relevant list, violate or infringe any provision of Constitution. But so long as there is no such infringement, legislation on the subject dealt with by Art. 297 cannot be declared unconstitutional on the ground that it supplements the provisions of that article. Article 299 of the Constitution deals with contracts. It seems to me equally inarguable that a legislation dealing with the subject-matter of contracts, even though not lacking in legislative competence, becomes unconstitutional for the reason that it deals with the subject-matter of contracts. The argument of the State in this behalf is therefore wholly devoid of substance, apart from the consideration that the impugned legislation does not bear on the Centre-State relationship.

193. The fifth and the last contention is also capable of being disposed of with the answer that the Commissions of Inquiry Act does not deal with the subject of Centre-State relationship, directly or indirectly. There is, therefore, no question of its creating a new relationship between the Union and the States not known to the Constitution or inconsistent with that provided for in Chap. II, Part XI of the Constitution. Not only that the pith and substance of the Act is " Inquiries", but it does not even incidentally encroach or trespass upon a constitutional field occupied by Part XI. If it does not touch the subject-matter of Centre-State relationship, there is no question of its impinging upon a subject dealt with by the Constitution. Therefore, even assuming that legislation on the question of Centre-State relationship is impliedly barred, the impugned Act does not fall within the vice of that rule and cannot, therefore, be pronounced as unconstitutional.

194. All the same, it is necessary to examine briefly the validity of the State's contention that since the provisions in Chap. II, Part XI are exhaustive of matters governing the administrative relations between the Union and the States, any legislative addition thereto, or supplementing thereof, is impliedly prohibited. As already observed, if a law is within the legislative competence of the legislature, it cannot be invalidated on the supposed ground that it has added something to, or has supplemented a constitutional provision so long as the addition or supplementation is not

inconsistent with any provision of the Constitution. I am, therefore, unable to appreciate the relevance of the State's reliance on the passage from Crawford's Statutory Construction (Ed. 1940 pages 334-335) to the effect that if a statute enumerates the things upon which it has to operate, everything else is necessarily and by implication excluded from its operation and its effect. As I have said more than once in my judgment, the one common thread which runs through the argument of the State is that the Constitution mustbe deemed to have impliedly prohibited the imposition of the control of the Central executive over the State executive except in emergencies, and since the Commissions of Inquiry Act transgresses that constitutional prohibition, it is void . The very assumption being unfounded, the supposed consequence has to be rejected. Besides, the doctrine of implied prohibition which is necessarily based on the principle of inherent limitations has been rejected by this Court in the Fundamental Rights case. (1973 Supp SCR 1 (at pp. 608, 916-917, 977-978) : (AIR 1973 SC 1461 at pp. 1812, 2005, 2006, 2042, 2043) and in Indira Nehru Gandhi v. Raj Narain, (1976) 2 SCR 347 : (AIR 1975 SC 2299).

195. I am, therefore, of the opinion that though the suit filed by the State of Karnataka is maintainable under Art. 131 of the Constitution, the notification issued by the Government of India on May 23, 1977 is within the scope of S. 3 (1) of the Commissions of Inquiry Act, 1952, and that the Act is not unconstitutional for any of the reasons mentioned on behalf of the Stare Government. Accordingly, I agree respectfully with the conclusions reached by my Lord the Chief Justice in the case.

196. **BHAGWATI, J:**.

I entirely agree with the judgment just delivered by my learned brother Chandrachud so far as the merits of the claim in the suit are concerned, but on the question of maintainability of the suit under Art. 131 of the Constitution, I would like to express my opinion in a separate judgment, not only because the constitutional issue it raises is one of some importance, but also because I find that though there was some discussion in regard to the scope and ambit of this article in the judgment delivered by me on behalf of my learned brother Gupta and myself in the State of Rajasthan v. Union of India, AIR 1977 SC 1361 it did not take into account certain aspects of the question and a fuller consideration appeared to be clearly necessary. The facts giving rise to the suit are set out in detail in the judgment pronounced by my Lord the Chief Justice and hence it is not necessary to reiterate them. Suffice it to state that the suit has been filed by the State of Karnataka against the Union of India to quash a notification issued by the Central Government setting up a Commission to inquire into certain charges of corruption and nepotism against the Chief Minister and some other ministers of the State of Karnataka. The question is whether the suit is maintainable under Art. 131, for a preliminary objection against the maintainability of the suit has been raised by the learned Additional Solicitor- General on behalf of the Union of India.

197. The answer to the question depends primarily on the true interpretation of Art. 131. This article confers on the Supreme Court, subject to the other provisions of the Constitution, exclusive original

jurisdiction in any dispute- (a) between the Government of India and one or more States, or (b) between the Government of India and any State or States on one side and one or more other States on the other, or (c) between two or more States, if and in so far as the dispute involves any question (whether of law for fact) on which the existence or extent of a legal right depends. It is clear on a plain reading of this article that it does not lay down any particular mode of proceeding for exercise of the original jurisdiction conferred by it. No doubt, Part III or the Supreme Court Rules contemplates that the original jurisdiction of the Supreme Court under this article shall be invoked by means of a suit, but that is not the requirement of the article and in interpreting it, we should be careful not to allow our approach to be influenced by considerations of 'cause of action' which are germane in a suit. The scope and ambit of the original jurisdiction must be determined on the plain terms of the article without being inhibited by any a priori considerations.

198. Now, plainly there are two limitations in regard to the dispute which can be brought before the Supreme Court under Art. 131. One is in regard to parties and the other is in regard to the subject-matter. The article provides in so many terms that the dispute must be between the Government of India and one or more States or between two or more States. The object of the article seems to be that since in a federal or quasi-federal structure, which the Constitution seeks to set up, disputes may arise between the Government of India and one or more States, or between two or more States, a forum should be provided for the resolution of such disputes and that forum should be the highest court in the land, so that final adjudication of such disputes could be achieved speedily and expeditiously without either party having to embark on a long, tortuous and time consuming journey through a hierarchy of courts. The article is a necessary concomitant of a federal or a quasi-federal form of Government and it is attracted only when the parties to the disputes are the Government of India or one or more States arrayed on either side. This is the limitation as to parties. The other limitation as to subject-matter flows from the words "if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends". These words clearly indicate that the dispute must be one affecting the existence or extent of a legal right and not a dispute on the political plane not involving a legal aspect. It was put by Chandrachud, J., very aptly in his judgment in the State of Rajasthan v. Union of India (AIR 1977 SC 1361) (supra) when he said: "Mere wrangles between governments have no place under the scheme of that article.....". It is only when a legal, as distinguished from a mere political, issue arises touching upon the existence of extent of a legal right that the article is attracted. Hence the suit in the present case would obviously not be maintainable unless it complies with both these limitations.

199. The contention of the learned Additional Solicitor-General on behalf of the Union of India was that the test for determining the maintainability of the suit was not whether the right of the Central Government to set up a Commission of Inquiry against the Chief Minister and other ministers of the State of Karnataka was questioned in the suit, but whether the impugned action of the Central Government infringed any legal right of the State. Even if the impugned action of the Central Government were invalid and I must assume it to be so in order to determine the maintainability of the suit the question is as to whose legal right would be infringed: who would have a cause of action ? Can the State say that its legal right is infringed and is, therefore, entitled to maintain the suit? The learned Additional Solicitor-General submitted that since the impugned action of the Central Government was directed against the Chief Minister and other ministers of the State, the legal right infringed would be that of the Chief Minister and the concerned ministers and they would have a

cause of action against the Union of India since they would be prejudicially affected by the executive action of the Central Government which is alleged to be in contravention of the Constitution and the law. They have a legal right to immunity from subjection to the unconstitutional exercise of power by the central Government and this right can certainly be enforced by them. But that would be by way of a petition under Art. 226 or Art. 32, if a fundamental right is involved, and not under Art. 131. Even the State Government maybe said to have a cause of action on the ground that the impugned action of the central Government affects its personnel, namely, the Chief Minister and other ministers and the State Government may legitimately claim to have sufficient interest to maintain a petition under art. 226 to challenge the impugned action. But it cannot file a suit under Art. 131 because it is only the State which can maintain such a suit and not the State Government. The learned Addition Solicitor-General contended that the expression used in Art. 131 is 'State' and not 'State Government' and there is a fundamental distinction between 'State' and not 'State Government' and it is, therefore, not enough to attract the applicability of Art. 131 that the State Government should have a cause of action. It is the State whose legal right must be infringed and who must have a cause of action in order to invoke the jurisdiction under Art. 131. The impugned action of the Central Government in the present case, argued the learned Additional Solicitor General, affects the legal right of the Chief Minister and the concerned Ministers and also possibly of the State Government, but it does not infringe the legal right of the State as a legal entity as distinct from the legal right of its executive agent, namely, the State Government and the State is, therefore, not entitled to maintain the suit under Art. 131. This contention of the learned Additional Solicitor General is, in my opinion, not well founded and cannot be sustained.

200. There are two fallacies underlying the contention of the learned Additional Solicitor General. One is in drawing a rather rigid, water-tight distinction between 'State' and 'State Government' in the context of Art. 131 and the other, in assuming that it is only where a legal right of the plaintiff is infringed that the suit can be maintained by the plaintiff under that article. Turning first to the distinction between 'State' and 'State Government', it is true that theoretically this distinction does exist and it finds recognition in sub-secs. (58) and (60) of S. 3 of the General Clauses Act, 1897. The majority Judges in the State of Rajasthan v. Union of India (AIR 1977 SC 1361) also accepted that there is a distinction between 'State' and 'State Government'. Willoughby points out in 'The Fundamental Concepts of Public Law' at page 49:

"The distinction between the State and its Government is analogous to that between a given human individual, as a moral and intellectual person, and his material physical body. By the term 'State' is understood the political person or entity which possesses the law making right. By the term 'Government' is understood the agency through which the will of the State is formulated, expressed and executed. The Government thus acts as the machinery of the State, and those who operate this machinery - act as the agents of the State."

And to the same effect are the observations of the United States Supreme Court in Poindexter v. Greenhow, (1884-85) 29 L. Ed 185:

"The State itself is an ideal person, intangible, invisible and immutable. The Government is an agent....."

"It would thus be seen that the State Government is the agent trough which the State exercises its executive power. Now, if the State Government is the agent through which the State expresses its will, it is difficult to see how the State can be said to be unconcerned when any right or capacity or lack of it is attributed to the State Government. It would be wholly unrealistic to suggest that since the State Government is distinct from the State, any action or capacity or lack of it in the State Government would not affect the State and the State would not be interested in it. This is to ignore the integral relationship between the 'State' and the 'State Government'. Any action which affects the State Government or the ministers in their capacity as ministers - for in that capacity they would be acting on behalf of the State - would raise a matter in which the State would be concerned. It is true that analogies and metaphors are apt to mislead and it would be unsafe to base an argument upon them, but to reinforce what I have said, I may take the analogy given by Willoughby in the above quoted passage and ask the question: if any action or capacity or lack of it is attributed to the "material physical body", would not be ascribable to the individual whose body it is and would he not be affected by it? I agree with Dr. Rajeev Dhavan and Prof. Alice Jacob when they say in their forthcoming article on the Assembly dissolution case, namely, the State of Rajasthan v. Union of India that:

"Any communication that is made to a Chief Minister in his capacity as Chief Minister: and equally to a minister in his capacity as minister, "must create a matter which involves the State".S. Murtaza Fazal Ali. J., in the State of Rajasthan v. Union of India (AIR 1977 SC 1361) sought to make a distinction between permanent institutions of the State and their changing personnel and observed:

"The question as to the personnel to run these institutions is wholly unrelateable to the existence of a dispute between the 'State' and the 'Government of India'. It is only when there is a complete abolition of any of the permanent institutions of a State that a real dispute may arise."

I do not think that this is a valid distinction for determining when a dispute can be said to be one with the State as distinct from the persons constituting the State Government. To quote again from the forthcoming article of Dr. Rajeev Dhavan and Prof. Alice Jacob:

"The hair-splitting distinction cannot be between the permanent institutions of the State and the non-permanent institutions of the State; nor can it be between actions which limit the powers of the officials of the Government of a State and those that abolish the institution of the State. The hair splitting distinction is between those actions which can be attributed to the State or any official thereof and those actions which are personal and not ascribed to the officials in their capacity as

officials of the State - A letter sent to the Chief Minister questioning his capacity or power to rule as Chief Minister may not allege lack of confidence in the Chief Minister as person, wife, husband, father or friend. It alleges lack of confidence in the Chief Minister in his capacity as Chief Minister."

I find myself in agreement with this opinion and I wholly endorse it. I would, therefore, hold that when any right or capacity or lack or it is attributed to any institution or person acting on behalf of the State, it raises a matter in which the State is involved or concerned. The State would, in the circumstances, be affected or at any rate interested, if the Chief Minister and other ministers in their capacity as such, or to put it differently, in the matter of discharge of their official functions, are subjected to unconstitutional exercise of power by the Central Government. If the Central Government were to issue a direction to the Chief Minister and other ministers to exercise the executive power of the State in a particular manner, the State would be clearly affected if such direction is unconstitutional and would be entitled to complain against it. Then is the position any different, if the Central Government, instead, proceeds, without any constitutional authority, to inquire how the executive power of the State is exercised by the Chief Minister and other ministers and whether it is exercised in a proper manner. The State would clearly in such a case have locus to challenge the unconstitutional action of the Central Government.

201. It may also be noted that, on a proper construction of Article 131, it is not necessary that the plaintiff should have some legal right of its own to enforce, before it can institute a suit under that article. It is not a sine qua non of the applicability of Art. 131 that there should be infringement of some legal right of the plaintiff. What art. 131 requires is that the dispute must be one which involves a question "on which the existences or extent of legal right depends." The article does not say that the legal right must be of the plaintiff. It may be of the plaintiff or of the defendant. What is necessary is that the existence or extent of the legal right must be in issue in the dispute between the parties. We cannot construe Article 131 as confined to cases where the dispute relates to the existence or extent of the legal right of the plaintiff, for to do so, would be to read words in the article which are not there. It seems that because the mode of proceeding provided in Part III of the Supreme Court Rules for bringing a dispute before the Supreme Court under Article 131 is a suit, that we are unconsciously influenced to import the notion of 'cause of action', which is germane in a suit, in the interpretation of Article 131 and to read this article as limited only to cases where some legal right of the plaintiff is infringed and consequently, it has a 'cause of action' against the defendant. But it must be remembered that there is no reference to a suit or 'cause of action' in Article 131 and that articles confers jurisdiction on the Supreme Court with reference to the character of the dispute which may be brought before it for adjudication. The requirement of 'cause of action' which is so necessary in a suit, cannot, therefore, be imported while construing the scope and ambit of Article 131. It is no doubt true that the judgment delivered by me in the State of Rajasthan v. Union of India (AIR 1977 SC 1361) proceeds on the assumption that a suit under Article 131 can be instituted only if some right of the plaintiff is infringed, but there was no proper discussion of this question in the course of the arguments in that case and on fuller consideration, I think that no such restriction can be imported in the construction of Article 131 so as to narrow down the ambit and coverage of that Article. The only requirement necessary for attracting the applicability of Article 131 is that the dispute must be one involving any question "on which the existence or extent of a legal right" depends, irrespective of whether the legal right is claimed by

one party or the other and it is not necessary that some legal right of the plaintiff should be infringed before a suit can be brought under that article. The plaintiff must of course be a party to the dispute and obviously it cannot be a party to the dispute unless it is affected by it. The plaintiff cannot raise a dispute in regard to a matter which does not affect it or in which it is not concerned. It cannot act as mere busybody interfering with things which do not concern it. But if the plaintiff has interest in raising the dispute in the sense that it is affected by the action taken it can bring the dispute before the Supreme Court under Art. 131, even if no legal right of its is infringed, provided of course the dispute is relatable to the existence or extent of a legal right.

202. It would be convenient at this stage to consider what is the meaning of the expression 'legal right' as used in Article 131. It is obvious that the word 'right' is used here in a generic sense and not according to its strict meaning. 'Right' in its narrow sense constitutes the correlative of duty, but in its generic sense it includes not only right stricto sensu, but "any advantage or benefit conferred upon a person by a rule of law." Dias in his Jurisprudence, 1976 ed., pages 33-34, says that the word 'right' has undergone successive shifts in meaning and Hohfeld in his "Fundamental Legal Concepts as Applied to Legal Reasoning" gives four different meanings of the word 'right'. One is right stricto sensu, the other is liberty, the third is power and the fourth is immunity. In its strict sense 'right' is defined as interest which the law protects by imposing corresponding duty on others. 'Liberty' is exemption from the right of another and its correlative is 'no-right' and in the same way 'power' is ability to change the legal relations of another and its correlative is liability. Similarly, 'immunity' is exemption from the legal power of another and the correlative of immunity is disability. To illustrate, where there is a right stricto sensu in A, there is a correlative duty in B to do X. Similarly, where A has liberty to do X., there is a correlative no-right in B to interfere in regard to it. The correlative of power in A is liability in B as regards X and similarly, where there is immunity in A from the legal power of B, its correlative is disability in B as regards X. These are the four different jural relationship recognised by law and they are comprehended within the generic term 'right.' Now, there can be no doubt that the word 'right' is used in Article 131 in this generic sense. If, for example, the State claims to be entitled to legislate exclusively on a particular matter on the ground that it falls within List II of the VII Schedule to the Constitution and the Union of India questions this right of the State, the dispute would be one relating, not to any right of the State in the strict sense of the term, but to the 'liberty' of the State to legislate on such matter and it would come directly within the terms of Art. 131. Even a dispute relating to the power of the Union of India to abolish the legislative assembly of a State or to dissolve it would fall within the scope and ambit of Art. 131 as held expressly by Chandrachud, J., Gupta, J., and myself and impliedly by Beg. C. J., in the State of Rajasthan v. Union of India, (A. I. R. 1977 SC 1361). What has, therefore, to be seen in order to determine the applicability of Art.131 is whether there is any relational legal matter involving a right, liberty, power or immunity qua the parties to the dispute. If there is, the suit would be maintainable, but not otherwise.

203. The question which arises for consideration on this interpretation of Art 131 is whether there is any dispute between the State of Karnataka and the Union of India involving a question as to the existence or extent of a relational legal pattern within the generic sense of the term 'right'. It is true that it may not be possible to say that by reason of the impugned action of the Central Government in setting up a Commission of Inquiry against the Chief Minister and other ministers who constitute the State Government, any legal right of the State is infringed, but, as already pointed out above, it

is not necessary, in order to invoke the jurisdiction of the Supreme Court under Art. 131, that the State should be able to show that some legal right of its is breached. It is enough to show that the State is interested not as a busybody or as a meddlesome interloper, but in a real sense in questioning the power of the Central Government to set up such Commission of Inquiry. If we look at the averments in the plaint, and for the purpose of determining the question of jurisdiction we must proceed on the assumption that the averments are correct, it is clear that according to the claim made by the State, the legislature of the State and the State Government alone have power to investigate and control misuse of Governmental power by the Chief Minister and other ministers of the State and the Central Government has no power to inquire into the same or to set up a Commission of inquiry for that purpose. This claim of the State clearly raises a dispute as to the extent of the power of the State and the existence of a superior or co-ordinate power in the Central Government to inquire into the conduct of the Chief Minister and other ministers of the State in the discharge of their Governmental functions. Such a dispute concerns the content of the respective powers of the State and the Union of India and the inter se relationship between the two entities and the State is vitally interested in it. The State, is very much concerned whether the conduct of its Council of Ministers in the discharge of Governmental functions can be inquired into only by itself through its own agency or it can also be subjected to scrutiny by the Union of India. The State would certainly have locus to say that the Union of India has no right to encroach upon its exclusive power to investigate into misuse of Governmental power by its Council of Ministers. There can be no doubt that, apart from the Council of Ministers, the State can also competently make a claim that the Council of Ministers acting on its behalf is immune from subjection to the power of the Central Government to inquire into their conduct as ministers. This immunity claimed in respect of the Council of Ministers, can be ascribed to the State and it can certainly raise a dispute touching upon the existence of this immunity. So far as dispute as to the scope of respective legislative fields between the Commonwealth and the States in Australia is concerned, it is now well settled as a result of the decision in Attorney-General for Victoria v. The Commonwealth, (1945) 71 CLR 237 that the Attorney-General of a State can sue for a declaration of the invalidity of Federal Legislation as an invasion of a purely State field of legislative power and similarly the Attorney-General for the Commonwealth can sue a State in order to obtain a declaration of the invalidity of State legislation where it encroaches upon the legislative power entrusted to the Commonwealth. The High Court of Australia pointed out in this case that the position was correctly summarised by Gavan Duffy, C. J., Evatt and Mc Tiernan, JJ. in Attorney-General for Victoria v. The Commonwealth, (1935) 52 CLR 533 in the following words: "It must now be taken as established that the Attorney-General of a State of the Commonwealth has a sufficient title to invoke the provisions of the Constitution for the purpose of challenging the validity of Commonwealth legislation which extends to, and operates within, the State whose interests he represents." Now, if a State has sufficient title to challenge the validity of union legislation on the ground that it interferes with the exercise of State legistrative power, it must follow a fortiori that the State would have locus to challenge unconstitutional exercise of power by the Central Government which encroaches upon its exclusive sphere in relation to the conduct of its Council of Ministers. The State would also be entitled to challenge the impugned action of the Central Government as unconstitutional, because it prevents the State from exercising its power to direct inquiry into matters which are specified in the notification issued by the Central Government, by reason of proviso (a) to sub-section (1) of Sec. 3 of the Commission of Inquiry Act, 1952. The suit filed by the State against the Union of India must, in the circumstances, be held to be maintainable under Article 131.

204. Since, however, the claim made by the State in the suit is not sustainable on merits as pointed

out by my learned brother Chandrachud in his judgment, I agree with him that the suit should be dismissed with costs.

The judgment of Untwalia, Shinghal and Jaswant Singh, JJ. was delivered by

205. **UNTWALIA, J:-**.

We agree that this suit should be dismissed with costs. We however regret our inability to concur in the view expressed by Bhagwati J., in regard to the maintainability of the suit under Art. 131 of the Constitution. For the reasons stated hereinafter we have come to the conclusion that the suit is not maintainable. We have also briefly discussed and decided the other issues in the suit on merits. While generally agreeing respectfully with the leading judgment of the learned Chief Justice, we think it advisable to add a few pages by way of our concurring note.

206. The first issue in this suit is: "Is the suit maintainable?"

207. Although the decision of this issue is interlinked with the other issues settled for adjudication, it can be dealt with separately also.

208. What, in substance, is this suit filed under Art. 131 of the Constitution on India? Certain allegations of corruption, nepotism, and favoritism, in relation to the administrative actions of the Chief Ministers and some other Ministers of the State of Karnataka were made by some legislators of that State. A memorandum signed by 46 legislators of the State containing the allegations was forwarded to the Central Government. Its Home Minister in his letter dated April 26, 1977, requested the Chief Minister to give information and his comments apropos the allegations made. The Chief Minister, in his reply letter dated May 13, 1977, inter alia, challenged the authority of the Central Government to call for an explanation and make any inquiry in the matter. He claimed that it was the exclusive right of the State to do so. It seems, to forestall the appointment of any Commission of Inquiry by the Central Government, the State Government hastened to issue a notification on May 18, 1977 to set up some kind of inquiry in respect of the allegations made, although, in terms the inquiry was not specifically in relation to the various charges of misconduct and mal-administration made against the Chief Minister and the other Ministers. The notification was issued by the State Government under S. 3 of the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952) (hereinafter to be referred to as the Act). Shri Justice Mir Iqbal Hussain, a retired Judge of the Karnataka High Court, was appointed as the sole member of the Commission of Inquiry by the State Government. Five days later, on May 23, 1977, the Central Government, in exercise of their power under S. 3 of the Act, appointed another Commission consisting of a single Member, namely, Shri Justice A. N. Grover, a retired Judge of the Supreme Court of India, to

inquiry into the various allegations specified in Annexures 'I' and 'II' to the notification excluding, however, from the letter- "any matter covered by the notification of the Government of Karnataka in the Chief Secretariat No. DPAR 7 GAN 77, dated the 18th May, 1977". Thereupon the State of Karnataka filed the present suit claiming certain reliefs mainly on two grounds: (1) On a proper interpretation of the Act the State Government is the appropriate Government and not the Central Government to set up a Commission of Inquiry; and (2) in the alternative the provisions in the Act in so far as they authorise the Central Government to issue the impugned notification are ultra vires the Constitution. The first defendant in the suit is the Union of India, the second being Shri A. N. Grover. The contest is by the first defendant only and hereinafter in this judgment it will be referred to as the defendant. In substance and effect the claim of the defendant is that it has got the legal right to issue the impugned notification; the right conferred by S. 3 of the Act is not ultra vires the Constitution. The right of the State of Karnataka to institute the suit under Art. 131 is challenged mainly on the ground that the nature of the dispute in the suit is such that it does not affect any legal right of the State.

209. Under Art. 1 of the Constitution, India is a Union of States. The State of Karnataka is one of the constituent units of the Union of India. The concept of State is that by itself it is an ideal person, a legal entity. It is intangible, invisible and immutable. The Government, in a sense, is an agency through which the will of the State is formulatated, expressed and executed. Both the expressions have been separately defined in the General Clauses Act, 1917. In relation to the existence of a dispute between the Union of India on the one hand and one or more States on the other, the expression used in Art. 131 for the former is the Government of India, signifying that the dispute may be with the Government of India but the other party to the dispute must be the State only and not any limb of the State - the Government, the Legislature or the Judiciary. Article 300 is an enabling provision to describe the Government of India in a suit as the Union of India and to enable the Government of a State to sue or be sued in the name of the State. If there is an invasion on the legal right of a State the agency through which the action will be commenced may well be the Government of the State. An inroad upon the right of the Government may, in certain circumstances, be an inroad upon the legal right of the State. Article 300, therefore, merely prescribes the mode of describing a party to the suit. The real answer to the question of maintainability, however, has got to be found from the words of Art. 131 itself. The following conditions must exits for invoking the original jurisdiction of the Supreme Court under the said Article:

(1) The dispute must be between the Government of India and one or more States or between two or more States; and

(2) The dispute must involve any question whether of law or of fact on which the existence or extent of the legal right depends.

210. There is some departure in this regard from the corresponding provision of S. 204 of the

Government of India Act, 1953 which is not necessary to be pin-pointed here. In specify terms it has not been stated in the Article as to whose legal right the question involved in the dispute must relate and in what respect. Chandrachud J., in this regard has expressed his opinion in the case of State of Rajasthan v. Union of India, AIR 1977 SC 1361 at p. 1396 as follows:-

"It is sufficient in order that its provisions may apply that the plaintiff questions the legal or constitutional right asserted by the defendant, be it the Government of India or any other State."

The learned Chief Justice in his leading judgment did not decide this question. The other five Judges including one of us (Untwalia J.) took a contrary view. Yet, Bhagwati and Gupta JJ. on the facts of that case held that the legal right of the State, the plaintiff, had been infringed. The other three, even on merits, expressed an opposite view. If we may say so with great respect, we are unable to agree with the view aforesaid, expressed by Chandrachud J. Ordinarily and generally, in any suit including the one under Art. 131 the competition is between the legal right of the plaintiff and the defendant. But primarily, and most invariably, the plaintiff has to establish his legal right in order to succeed in the suit. As against the claim of the plaintiff, if the legal right of the defendant is establishes, the suit is bound to fail. But on failure of either to establish his own legal right, the suit will still fail because the plaintiff cannot succeed unless he establishes his legal right. This proposition of law is so clear and axiomatic that the expression - "the existence or extent of a legal right" - used in Art. 131 undoubtedly is meant to bring about this result. It was neither necessary, nor perhaps advisable, to state further in the article that the dispute must involve any question on which the legal right of the plaintiff must depend. It is matter of common experience that more often than not absence of a legal right in one party helps the other party to establish its legal right and vice versa.

211. In the case of King-Emperor v. Sibnath Banerji, 72 Ind App 241 : (AIR 1945 PC 156) Lord Thankerton opined at page 266 (of Ind App): (at p. 163 of AIR PC) that "a Minister is an officer subordinate to the Governor within the meaning of the Government of India Act, 1935." The same view was expressed by Hegde J., in the case of A. Sanjeevi Naidu v. State of Madras, (1970) 3 SCR 505 : (AIR 1970 SC 1102), with reference to the provisions of the Constitution.

212. In the present case the inquiry set up by the Central Government is not against the State or the State Government. It is against the Chief Minister and some other Ministers who are officers of the State. It may be open to them to take the plea in an appropriate proceeding, such as a writ petition under Art. 226 of the Constitution, that the action of the Central Government is illegal and ultra vires. Under Art. 131-A (introduced by the 42nd Amendment), the question of vires of S. 3 of the Act may then have to be referred for the decision of the Supreme Court by the High Court. But that in no way entitled the State to invoke the original jurisdiction of the Supreme Court under Article 131. The submission made by Mr. Lal Narayan Sinha on behalf of the plaintiff State that the legal right of the State has been invaded by the impugned notification, is not correct. Counsel submitted that it is only the State's right to order an inquiry under S. 3 of the Act against its Ministers acting through its Government, that the Central Government has no right, that it has put an impediment in

the right of the State Government to modify or issue a subsequent notification for the purpose of enlarging or clarifying the scope of the inquiry and that it has thus affected the legal right of the State. We find no substance in this argument. There may be a competition between the power of one authority and the other, here in this case between the Central Government and the State Government. But unless the power exercised by one authority brings about a dispute impining upon the legal right of the other authority, the letter cannot come under Art. 131 and say that merely because it was within its power to do so its legal right is affected by the illegal exercise of the power by the other authority. The said exercise of the power must directly or by necessary implication affects the legal right of the other authority. We may support the proposition by an illustration. Suppose, the Central Government, in pursuance of a law made by the Parliament in respect of an Entry in List II, say Entry 8, relating to intoxicating liquors, makes an order against a person residing in or an officer of any State. The order will be obviously bad, as having been issued under an invalid law made by the Parliament. Who can challenge this order? Obviously the person affected or aggrieved by the order. If the order does not affect the legal right of the State or the State Government (for the purpose of testing the argument, the two may be equated), can the State file a suit under Art. 131 merely because the order has been made against its resident in accordance with a law which encroached upon the exclusive legislative field of the State? The answer, in our opinion, must be in the negative. In the instant case if the stand on merits taken on behalf of the State Ministers is correct, then the impugned notification is an invasion on their legal right. They can press into service the power of the State Government to order an inquiry and challenge the impugned notification, but the said notification can in no way be said to have affected or restrained the State Government from giving effect to its notification.

213. Some help may be derived from the definition of the word 'State' given at pages 856-57 of Vol. 81 Corpus Juris Secundum. It says:

"The word 'State' has various meanings, but as used in the Federal Constitution, acts of congress, and State Statutes, it has a definite, fixed, and certain legal meaning as designating a member of the Union in contradistinction to the United States as nation.....The State is a legal entity, and is entitled to the fundamental rights, privileges and immunities belonging to every legal entity."

If a restricted meaning were not to be given to the scope of the suit which can be filed under Art. 131, very anomalous, and sometimes absured, results may follow and it will be difficult to put a dividing line and a stop to the very wide scope of the suit resulting from such an interpretation. Any action taken by the Central Government either under the Act or otherwise, against any citizen residing in, or an officer of, the State could be challenged by institution of a suit under Art. 131 by the State on the ground that the action of the Central Government is ultra vires and without any legal right. The argument that the State is interested in protecting its people and officers when their legal right has been illegally invaded by the Central Government and, therefore, it has a locus to invoke Art. 131, in our opinion, is too obviously wrong to be accepted.

214. As we have said above, a Minister is an Officer of the State. An order affecting him cannot confer a right of suit on the State under Art. 131. So the present suit, in our opinion, is not maintainable. We, however, do not propose to non-suit the plaintiff on that ground alone, and proceed to discuss the other issues.

215. The other two issues framed for consideration in this suit are in the following terms:

"2. Is the impugned notification ultra vires the powers of the Central Government under S. 3 of the Commissions of Inquiry Act?

3. If S. 3 of the Commissions of Inquiry Act authorises the Central Government to issue the impugned notification, is the section itself unconstitutional?"

Both these issues may conveniently be dealt with together. Several points of view were canvassed by Mr. Lal Narayan Sinha for the plaintiff with his usual clarity and precision but, at times, because of the inherent difficulties of the points involved and the case being one of first impression, he was obliged to change and modify his line of argument. Mr. Soli Sorabjee, the learned Additional Solicitor General, combated the aguments of the plaintiff very ably and succinctly. Eventually, the main points of attack of the plaintiff were crystallized in the following terms:

1. Our Constitution is of a Federal character clearly defining and dividing the legislative and executive functions of the Centre and the State and their inter se relationship. The judicial functions of the Judiciary are in a welldefined and demarcated separate compartment.

2. Except to the extent permitted by the Constitution the Centre cannot encroach upon the legislative or executive field of the State.

3. The Act does not and cannot authorise the Centre to set up a Commission of Inquiry against the State Executive; S. 3 must be read down to save it from being constitutionally invalid.

4. If it be not possible to read down the Act in the manner suggested then the Act is invalid in so far as it authorises the Centre to set up a Commission of Inquiry against the State Executive.

5. Such a law is beyond the legislative competence of the Union Parliament as in substance and in effect it violates either expressly or by necessary implication certain provisions of the Constitution, its basic scheme, or the fundamental backbone of the Centre-State relationship as enshrined in the Constitution.

6. The law having the effect as aforesaid will really be a constitutional law bringing about an amendment in the Constitution which is obviously not permissible; an ordinary legislation unless expressly permitted by the provision of the Constitution cannot in any way amend the Constitution.

7. The Act is beyond the legislative competence of the Central Parliament if it means authorisation by the Central Government of any machinery for making inquiries in the executive actions of the State Government or the Chief Minister or any other Minister either collectively or individually.

8. Strictly speaking the subject-matter of the present inquiry is not covered by the Act if it be held that it has been enacted in exercise of the power of the Parliament under Entry 94 of List I, Entry 45 of List III or the Residuary Entry 97 of List 8 or the Art. 248 of the Constitution.

9. Lastly it was also submitted that the scope of the two inquiries one set up by the State Govt. and the other by the Central Govt. are more or less the same. Almost all matters of inquiry are overlapping and, therefore, the impugned notification is bad on that account too.

216. We proceed to discuss and consider briefly, as far as possible, the propositions aforesaid, but not strictly in the order we have set out above.

217. Strictly speaking, our Constitution is not a federal character where separate, independent and sovereign States could be said to have joined to form of a nation as in the United States of America or as may be the position in some other countries of the World. It is because of that reason that sometimes it has been characterised as quasi-federal in nature. Leaving the functions of the Judiciary apart, by and large the legislative and the executive functions of the Centre and the States have been defined and distributed, but, even so, through it all runs an overall thread or rein in the hands of the Centre in both the fields. The Parliament has the exclusive authority to legislate on matters enumerated in List I. So has the State Legislature the exclusive legislative power with respect to the various entries in List II. Both have concurrent powers in regard to the entries of List III. The residuary power in accordance with Art. 248 and Entry 97 of List I, lies with the Central Parliament. It has got a predominant hand in respect of the matters in the concurrent list as is apparent from Art. 254. Article 249 confers powers on Parliament to legislate with respect to a matter in the state List, in the national interest. When a proclamation of emergency is in operation as provided for in Art. 250, the Parliament has got the power to legislate with respect to any matter in

the State List. Some inroad in the State legislative field by the Centre is permissible under circumstances mentioned in Arts. 252 and 253. As provided for in Art 254 in some situations, the State is under an obligation to reserve a Bill for the consideration of the President and receive his assent before it is made into a law.

218. "It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution". (vide Art. 355, emphasis supplied).

In case of failure of the constitutional machinery in States, provision has been made in Art. 356 for the Centre to assume legislative and executive powers but not the powers vested in or exercisable by a High Court of a State. The effect of proclamation of an emergency under Art. 352 is to enlarge the executive power of the Union and extend it to the giving of direction to any State as to the manner in which the executive power thereof is to be exercised as provided for in Art.353. There could not have been, for obvious reasons, any such provision in regard to the administration of the Centre.

219. The administrative relations between the Centre and the State are by and large governed by the provisions of Chapter II of Part XI of the Constitution. While providing in Art. 256 that

" the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State."

it is significant to note that it has further been engrafted therin that

"executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose."

The control of the Union over the States in certain cases has been provided for in Art. 257. Mr. Sinha pointedly refered to Art. 258-A introduced in the Constitution by the Constitutiion (Seventh Amendment) Act, 1956, to lend support to his argument. But, in our opinion, instead of strengthening the point as urged, it weakens it because the said Article provides:

"258-A. Power of the States to entrust functions to the Union.- Notwithstanding anything in the Constitution, the Governor of a State may, with the consent of the Government of India, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the State extends."

Of course, the Governor of a State would mean the State Government or the Council of Ministers and it is not meant to authorise the Governor to act in his discretion in this regard.

220. We may now refer to some other characteristics and features of our Constitution to demonstrate the weak character of our federal structure and the controlling hand of the Centre on States in certain matters. Some of the salient ones are the following:

1. The Governor of a State is appointed by the President and holds office at his pleasure. Only in some matters he has got a discretionary power but in all others the State administration is carried on by him or in his name by or with the aid and advice of the Ministers. Every action, even of an individual Minister, is the action of the whole Council and is governed by the theory of joint and collective responsibility. But the Governor is there, as the head of the State, the Executive and the Legislature, to report to the Centre about the administration of the State.

2. Making a departure from the corresponding provision in the Government of India Act, Entry 45 in List III of the Seventh Schedule empowers the Parliament to legislate on the subject of "inquiries..... for the purpose of any of the matters specified in List II" also besides List III, and List I as mentioned in Entry 94 of that List. The constituent power of amendment of the Constitution lies with the Parliament under Art. 368 providing for concurrence by half the number of the States in certain matters.

3. Article 2 empowers the Parliament by law to admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

4. Parliament is also empowered by Art. 3 to make law for formation of new States and alteration of areas, boundaries of names of existing States.

Such is the nature of our federal structure.

221. In State of West Bengal v. Union of India, (1964) 1 SCR 371 : (AIR 1963 SC 1241) in the majority judgment delivered by B.P. Sinha, C.J., the character and nature of our federal structure has been discussed from pages 396 onwards. The learned Chief Justice observed at page 397 (of SCR) : (at p. 1252 of AIR SC) that in our Constitution the supreme authority of the Courts to interpret the Constitution and to invalidate action violative of the Constitution is to be found in full force.

"The exercise of powers legislative and executive in the allotted fields is hedged in by numerous restrictions, so that the powers of the States are not co-ordinate with the Union and are not in many respects independent."

At page 398 (of SCR) : (at p. 1253 of AIR SC) it is observed:

"The political sovereignty is distributed between, as we will presently demonstrate, the Union of India and the States with greater weightage in favour of the Union."

222. If any Article of the Constitution in terms permits the Centre to encroach upon the legislative and the executive field of the State, as some of the Articles do, then there could be no doubt that the encroachment is perfectly legal and valid. If, however, either the law or the action taken under it makes an inroad on the executive power of the State in express violation of any provision of the Constitution or, even assuming, as was argued by Mr. Sinha, violating the provisions of the Constitution by necessary implication, then such a law or the action taken thereunder would be invalid. The Constitution does not permit the Centre to violate it in any matter.

223. But in order to appreciate as to weather the Act or the action taken by the Centre under S. 3 thereof has gone against the Constitution either expressly or by necessary implication, one has to appreciate the nature of the provisions made and the scope and functions of the Commission in question. The extent of the executive power of the Union is co-extensive with the legislative power of the Parliament. The position in respect of the executive power of the State is identical (vide Arts. 73 and 162 respectively). Entry 94 in the Union List empowers the parliament to legislate concerning inquiries for the purpose of any of the matters in that List, that is to say, if any kind of inquiry is necessary for any kind of purpose connected with any of the matters in List I then the Parliament is empowered to make a law for the setting up of a machinery or a Tribunal for the purpose of the said inquiry. List II does not contain any such entry. Then comes Entry 45 in List III which has already been alluded to. This authorises both the Central and the State Legislatures, of course subject to the other provisions of the Constitution e.g. Art. 254, to enact law for the purpose of providing for the machinery of inquiry for the purpose of any of the matters specified in List II and List III. It has been so held in the case of Ram Krishna Dalmia v. S. R. Tendolkar, 1959 SCR 279 : (AIR 1958 SC 538) where Das C. J. has lucidly discussed the matter, if we say so with great respect, at pp. 289-291 (of SCR) : (at pp. 544-545 of AIR SC).

224. Empowering the Central Legislature to make a law for the purpose of inquiry in regard to the matters specified in List II is in no sense empowering it to legislate vis-a-vis such matters. It is only for the purpose of achieving the object of the inquiry to be set up in List II. The purpose may be as a matter of policy in relation to the legislation proposed to be passed by the various States or may be with regard to their executive actions taken apropose such matters. We may just illustrate our view by referring to Entry 6 of List II. The State Legislature has the exclusive authority to legislate on

"public health and sanitation; hospitals and dispensaries"; of course, within the territory of that State. The executive power being co-extensive, the hospitals may be established and doctors appointed therein by the State Government either in accordance with the law made in that regard or even in pure exercise of the executive power. If there has been corruption, nepotism, favouritism or mal-administration in connection with the said executive action of the State Government, the law made under Entry 45 of the Concurrent List can undoubtedly cover an inquiry in such matters. It neither interferes with the legislative power of the State nor with its executive action. A mere inquiry under the Act by a Commission appointed thereunder which is a fact-finding body, is for the purpose of finding the facts. No body is a prosecutor; no body is an accused; all are invited and welcomed by the Commission to assist it to find the necessary facts within the scope of the inquiry set up.

225. In passing we may also refer to Entry 8 of List I in the Seventh Schedule to the Constitution. It is in respect of "Central Bureau of Intelligence and Investigation". The Central Parliament is therefore competent to legislate on this topic and the Central Government can make an executive order asking the Central Bureau of Intelligence and Investigation to make any enquiry in relation to the acts of commission and omission whether amounting reasonably to say that the Commission appointed by the Central Government under the Act cannot be appointed for finding facts in relation to the allegations made against the Minister of a State? Obviously not.

226. It was strenuously submitted on behalf of the plaintiff that no such fact-finding Inquiry Commission could be set up against the Judiciary either Subordinate or Higher. Reference was made to the cases of State of West Bengal v. Nripendra Nath Bagchi, (1966) 1 SCR 771 : (AIR 1966 SC 447) and Shamsher Singh v. State of Punjab, (1975) 1 SCR 841 in support of this proposition. But the exclusion of the inquiry under the Act against the Judiciary is based on entirely different principles. So far as the Subordinate Judiciary is concerned, inquiry of this nature will be impermissible on the basis of the express language of Art. 235 as interpreted by this Court in the two cases referred to above and in various others. The setting up of such an inquiry against a High Court Judge or a Supreme Court Judge will be barred because of the constitutional provisions contained in cls. (4) and (5) of Art.124 read with Art. 218. As a matter of fact in accordance with cl. (5) of Art. 124 the Parliament has enacted the Judges Inquiry Act, 1968 (Act 51 of 1968).

227. As already pointed out, in an inquiry set up under the Act there is no prosecution, no framing of a formal charge, no accused before the Commission of Inquiry. There is no exercise of any supervisory or disciplinary jurisdiction by the Central Government against the State Government by the appointment of a Commission, nor is there any usurpation of any executive function of the State. Reference in this connection may be made to the following cases:

(1) M. V. Rajwade v. Dr. S. M. Hasan, ILR (1954) Nag 1: (AIR 1954 Nag 71); (2) Brajnandan Sinha v. Jyoti Narain, (1955) 2 SCR 955: (AIR 1956 SC 66); (3) Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar, 1959 SCR 279:(AIR 1958 SC 538); (4) State of Jammu and Kashmir v. Bakshi Ghulam

Mohammad, (1966) Supp SCR 401:(AIR 1967 SC 122); (5) P.V. Jagannath Rao v. State of Orissa, (1968) 3 SCR 789:(AIR 1969 SC 215); and (6) Krishna Ballabh v. Commission of Enquiry, (1969) 1 SCR 387 : (AIR 1969 SC 258). The Centre, however, must be and is concerned with and interested in knowing and ascertaining fact as regards the allegations made against any Chief Minister, Minister or any other Officer of the State Government.

228. Now let us proceed to examine the matter a bit more carefully with reference to the other arguments of Mr. Lal Narayan Sinha. Counsel Submitted that neither the Council of Ministers nor any individual Minister is under the disciplinary control of the Central Government, setting up of a Commission of Inquiry to find facts in relation to the alleged misconduct or mal-administration of the Ministers is, in substance and effect, an exercise of disciplinary control over them. He further submitted that the State Legislature to whom the Ministers are responsible is competent to set up an inquiry against them in accordance with the powers and privileges as provided for in Art. 194. It may be so. It may well be, as further argued by Mr. Sinha, that not only the State Legislature but the State government itself is competent to appoint a Commission of Inquiry against itself or its Ministers and officers. But it sounds incongruous and highly anomalous that the State Government would think of instituting an inquiry against itself. It is equally strange to think that the Ministers in power, while remaining in office, would set up a Commission of Inquiry for inquiring into their alleged mis-deeds in the matter of administration of the State. We shall assume for the purpose of argument that legally and technically the position is correct. Even so, how does it lead to the conclusion that their power is exclusive and excludes the power of the Central Government under the Act? We fail to find any words in any of the Articles of the Constitution to indicate that the power of the State Legislature or the State Government in this matter is exclusive. It may be co-extensive, and such a situation is undoubtedly postulated and provided for in the proviso appended to sub-sec. (1) of S. 3 of the Act. Although technically and literally the Ministers are appointed by the governor and hold office at his pleasure, in reality, in the constitutional set up of our Parliamentary democracy, the Governor in his disretion cannot by himself set up a Commission of Inquiry against the sitting Ministers, nor can the President direct him to do so - emergency provisions in Part XVIII apart. what them excludes the power of the Central Government to set up a Commission of Inquiry for finding facts in regard to the alleged mal-administration of the Ministers or officers of a particular State Government? After ascertainment of facts, further action may follow or be taken in accordance with the provisions of the Constitution or the law. But surely the Act does not nor could it, provide for any kind of disciplinary action such as removal or suspension of a Minister in office by the Centre on ascertainment of the truth of the alleged facts against him-provisions in the Emergency Chapter apart. If it were otherwise undoubtedly it will be encroaching upon the power of the State Government or the State Legislature. India is a single country as a whole. The nation is one and one alone. Leaving also the special provisions of Art. 370 in relation to the State of Jammu and Kashmir, there is no dual citizenship; there are no different nationalities.

229. While assailing the impugned notification Mr. Lal Narayan Sinha has strenuously contended that Art. 164 (2) of the Constitution which makes the Council of Ministers collectively responsible to the Legislative Assembly of the State indicates that a Minister is in no other way responsible, answerable or accountable for anything that he does while in office and he cannot be subjected to an inquiry under the Commissions of Inquiry Act. This contention is based on a misconception of the true import and meaning of the doctrine of collective resposibility and as such cannot be

countenanced. The following discussion on the subject in "Representative and Responsible Government" by A. H. Birch will be found useful in this connection:-

"Ministerial accountability to Parliament has two aspects: the collective responsibility of Ministers for the policies of the Government and their individual responsibility for the work of their departments. Both forms of responsibility are embodied in conventions which cannot be legally enforced. Both conventions were developed during the nineteenth century, and in both cases the practice was established before the doctrine was announced. (Page 131)."

230. In "Government and Law" by T. C. Hartley and J. A. C. Griffith, the position in regard to the collective responsibility of Ministers to the Legislature is tersely stated as under:-

"Ministers are said to be collectively responsible. This is often elevated by writers to the level of a 'doctrine' but is in truth little more than a political practice which is commonplace and inevitable. Ordinarily, Ministers form the governmental team, all being appointed by the Prime Minister from one political party. A Cabinet Minister deals with his own area of policy and does not normally have much to do with the area of other Ministers. Certainly no Cabinet Minister would be likely to make public statements which impinged on the work of another Minister's department. On a few important issues, policy is determined by the Cabinet after discussion. Collective responsibility means the Cabinet decisions bind all Cabinet Ministers, even if they argued in the opposite direction in Cabinet. But this is to say no more than a Cabinet Minister who finds himself in a minority must either accept the majority view or resign. The team must not be weakened by some of its members making clear in public that they disapprove of the Government's policy. And obviously what is true for Cabinet Ministers is even more true for other Ministers. If they do not like what the team is doing, they must either keep quiet or leave" (page 60).

231. Dealing with the collective responsibility of the Council of Ministers to the Legislative Assembly of the State, Sarkar C.J., speaking for the Court said at page 405 as follows in State of Jammu and Kashmir v. Bakshi Ghulam Mohammad, (1966) Supp SCR 401 : (AIR 1967 SC 122) (at p. 125 of AIR):-

"Sec. 37** talks of collective responsibility of Ministers to the Legislative Assembly. That only means that the Council of Ministers will have to stand or fall together, every member being responsible for the action of any other."

** Section 37 of the Constitution of Jammu and Kashmir corresponds in Art, 164 of the Constitution of India.

232. From the above, it is crystal clear that the doctrine of collective responsibility on which Mr. Lal Narayan Sinha has so heavily leaned does not grant immunity to the State Ministers from being subjected to the provisions of the Commissions of Inquiry Act and the plaintiff can derive no help from it.

233. If the Act is really a constitutional law as understood and explained by eminent scholars, surely the Parliament has transgressed its limits in enacting such a law. It is axiomatic that the amendment of the Constitution cannot be allowed except as provided for in Art. 368. There are certain exceptions to it. Examples of exceptions are very few. Numerous such examples given by Wanchoo J., as he then was, in Golak Nath's case, (1967) 2 SCR 762 at p. 827: (AIR 1967 SC 1643), if we may say so with great respect, are not quite accurate. The powers given to a particular Legislature under any of the Entries in the respective Lists of the Seventh Schedule or by any particular Article of the Constitution are of the same kind and quality; as for example, when Arts. 10, 59 (3) and 65 (3) speak about a law to be made by the Parliament then it is not conferring a power on the Parliament to amend the Constitution. The power is an ordinary legislative one. But there are a few Articles in the catalogue given by Wanchoo J., which empower the Parliament, in substance and in effect, to amend a particular provision of the Constitution by an ordinary legislative procedure and that necessitated an express provision to say that no such law as aforesaid shall be deemed to be an amendment of the Constitution for the purposes of Art. 368 vide, for example, Arts. 4 (2) and 169 (3). Although the law made under cl. (1) of Art 4 and cls, (1) and (2) of Art. 169 will be tantamount to an amendment of the Constitution, by a legal fiction cls. (2) and (3) of the said Articles respectively provides that such law shall not be deemed to be an amendment of the Constitution and the procedure prescribed by Art.368 will not be necessary to be followed.

234. A quotation from Hood Philips 'Constitutional Law' was given to us by Mr. Sinha to say:

"The Constitutional Law of a State is the law relating to the Constitution of that State." (page 1).

"The Constitution of a State is the system of laws, customs and convention which define the composition and powers of organs of the State and regulate the relations of the various State organs to one another and to the private citizen." (page 4).

It is not necessary to multiply the quotations. In no sense the impugned law is a constitutional law.

235. Mr. sinha also contended that an ordinary law cannot go against the basic scheme or the fundamental backbone of the Centre-State relationship as enshrined in the Constitution. He put his

argument in this respect in a very ingenious way because he felt difficulty in placing it in a direct manner by saying that an ordinary law cannot violate the basic structure of the Constitution. In the case of Smt. Indira Nehru Gandhi v. Raj Narain, (1976) 2 SCR 347: (AIR 1975 SC 2299), such an argument was expressedly rejected by this Court. We may rest content by referring to a passage from the judgment of our learned brother Chandrachud J., at pages 669-670 (of SCR):(at p. 2472 of AIR SC) which runs thus:

"The constitutional amendments may, on the ratio of the Fundamental rights case, be tested on the anvil of basic structure. But apart form the principle that a case is only an authority for what it decides, it does not logically follow from the majority judgment in the Fundamental rights case that ordinary legislation must also answer the same test as a constitutional amendment. Ordinary laws have to answer two tests for their validity: (1) The law must be within the legislative competence of the legislature as defined and specified in Chapter I, Part XI of the Constitution and (2) it must not offend against the provisions of Art.13 (1) and (2) of the Constitution. 'Basic structure', by the majority judgment, is not a part of the fundamental rights nor indeed a provision of the Constitution. The theory of basic structure is woven out of the conspectus of the Constitution and the amending power is subjected to it because it is a consituent power. 'The power to amend the fundamental instrument cannot carry with it the power to destroy its essential features' - this, in brief, is the arch of the theory of basic structure. It is wholly out of place in matters relating to the validity of ordinary laws made under the Constitution."

236. The doctrine of "implied prohibition", relied upon by Mr. Sinha, has repeatedly been rejected by the Courts in England, Australia and by this Court. There is a veritable roll call of such cases. We may just refer to a few: Webb v. Outrim, 1907 AC 81, followed in the Amalgamated Society of Engineers and the Adelaide Steamship Co. Ltd., (1920) 28 Com WLR 129 wherein at page 150 it has been stated:

"The doctrine of "implied prohibition" against the exercise of a power once ascertained in accordance with ordinary rules of construction, was definitely rejected by the Privy Council in Webb v. Outrim, (1907) AC 81."

Reference may also be made to State of Victoria v. The Commonwealth of Australia, 122 Com WLR 353. These and many earlier cases of this Court were all considered and the doctrine of 'implied prohibition' was definitely rejected by overwhelming majority in the case of Kesavananda Bharti v. State of Kerala, (1973) Supp SCR 1:(AIR 1973 SC 1461) popularly known as Fundamental Rights case. We may just refer to the observations of Palekar J., at page 608 (of SCR): (at p. 1812 of AIR SC), Dwivedi J., at page 916 (of SCR):(at p. 2005 of AIR SC) and Chandrachud J., at page 977 (of SCR) : (at p. 2042 of AIR SC). To the same effect is the view expressed by Ray J., as he then was, Khanna J., and others. The power granted to the Central Legislature under Entry 45 of the Concurrent List is clear and explicit for passing a law of inquiry in regard to any of the matters in List II. That being so, the power cannot be curtailed on the doctrine of 'implied

prohibition'. As a matter of fact one had to search in vain the basis for even applying this doctrine in this case.

237. Wynes in his book Legislative, Executive and Judicial Powers in Australia, Fourth Edition, has said at pages 12 and 13:

"The only way in which the Court could determine whether the prescribed limits of legislative power had been exceeded or not was "by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which negatively, they are restricted."

.....

.....

"The effects of the Engineers' case (1920) 28 com WLR 129 upon Common wealth-State relations are considered in Chap. IX. what is important for present purposes are the principles of interpretation there laid down and acted upon ever since. The rejection of the doctrines of mutual non-interference and State reserved powers has had a profound effect upon the Constitution inevitably leading to what Professor Sawer has described an "expansive" interpretation of Federal powers. For it followed from the principle that Dominion and Colonial Legislative powers are plenary (a principle from which the High Court has never deviated) and an interpretation of specific grants of power read in their entirety without regard to a reservation of all non-specified powers, that the enumerated powers of the Commonwealth were to be read in their full sense subject only to the prohibitions expressly or by implication set upon them in the Constitution itself. And the express provision for supremacy of Commonwealth over state laws in the event of conflict completed the process; as Dixon C.J. remarked in 1947, the Commonwealth is bound to be in the better position, because it is a Government of enumerated powers."

238. There is , in our opinion, no justification for reading down the provisions of the Act, viz. Sections 2 and 3, nor are the said provisions constitutionally invalid on any account.

239. It is not necessary for us to discuss or deal with any detail the last submission made on behalf of the plaintiff. It was a faint, weak and hesitant argument to escape the Commission of Inquiry appointed by the Centre. The grounds of mala fides, somewhat vaguely and faintly alleged in the plaint, could not be, and were not, pressed at the time of the hearing of the suit. What was, however, argued for our consideration was that the two inquiries-one set up by the State earlier and the other appointed by the Centre later- are almost one and the same; they cannot be allowed to go side by side. However the fact that the Commission of Inquiry appointed by the Centre is for the purpose of

making an inquiry into the definite matter of public importance within the meaning of Section 3(1) of the Act could not be and was not disputed. The only point debated was whether another Commission appointed by the Central Government to inquire into the same matter for which a Commission had already been set up by the State Government is violative of proviso (b) to Section 3 (1). But there is no substance in this argument. Firstly, the notification of the State Government has not in terms appointed any Commission for inquiry into the matters of alleged corruption, nepotism, favoritism and mal-administration of the Chief Minister or any other Minister of the Government of Karnataka. The items specified in clauses (I) to (XXXII) are said to be.

"irregularities committed or excess payments made in certain matters relating to contracts, grant of land, allotment of sites, purchase of furniture, disposal of food-grains etc."

In none of those clauses it is mentioned as to who is said to be responsible for the alleged irregularities or mal-administration. There is no reference to any alleged misconduct, corruption or mal-administration of the Chief Minister or of any other Minister. The last Clause (XXXIII) is very vaguely and conveniently worded. It says.

"who are the persons responsible for the lapses, if any, regarding the aforesaid and to what extent?"

The terms of reference in the Notification issued by the Centre is to inquire into the specific matters enumerated in Annexure I, none of which is covered by the notification of the State Government, as for example, Item 1 of annexure I reads thus:

"Whether the Chief Minister practised favoritism and nepotism by appointing his own brother, Shri D. K. Komparaj Urs, as a Director of the Karnataka State Film Industries Development Corporation in place of Shri R.J. Rebello, Chief secretary to the Government, in 1974, and later as Director-in-charge with the powers to exercise all the powers of the Managing Director."

In regard to the specific matters in annexure II there may be found some common matters which are the subject-matter of inquiry by the State Government but then, as we have already stated, in regard to the matters in Annexure II the notification in clear terms excludes any matter covered by the notification of the Government of Karnataka dated 18th May, 1977. The Grover Commission, therefore, would be competent to exclude such matters from the purview of its inquiry.

240. **KAILASAM, J: -**.

This suit is filed by the state of Karnataka against the Union of India through the Secretary to the Government of India, and Shri A.N. Grover, Commission of Inquiry to inquire into charges of corruption, nepotism, favouritism, and misuse of governmental power against the Chief Minister of the State of Karnataka under Art.131 of the Constitution of India. The reliefs prayed for in the suit are:

(a) to declare that the notification No.S. O. No. 365(E) dated May 23, 1977 constituting the Commissions of Inquiry in purported exercise of powers under S. 3 of the Commission of Inquiry Act, as illegal, ultra vires; and unconstitutional and not authorised by law;

(b) to declare that the provisions of the Commission of Inquiry Act, 1952 do not authorise the Central Government to constitute a Commission of Inquiry in regard to matters falling exclusively within the sphere of the State's legislative and executive power; or

(c) in the alternative, declare the said provisions of the Commissions of Inquiry Act as ultra vires both the terms of the Constitution as well as the federal structure implicit and accepted as inviolable basic feature of the Constitution;

(d) for a perpetual injunction restraining the respondent from acting or taking any further steps in furtherance of the Notification No. S. O. No. 365 (E) dated 23rd May, 1977.

241. The facts of the case briefly are: The Union Home Minister addressed a communication dated April 26, 1977 to the Chief Minister of the State of Karnataka enclosing a copy of a memorandum of allegations purporting to be submitted by certain members of the opposition party in the Karnataka State Legislature seeking his comments thereon. The Chief Minister of the State of Karnataka replied to the Union Home Minister on May 13, 1977 answering the various allegations and charges. The Chief Minister of Karnataka also questioned the powers of the Central Government to ask for the comments of the State Government. On May 18, 1977 the State Government by a notification appointed a Commission of Inquiry under S. 3 (1) of the Commissions of Inquiry Act, 1952 to inquire into various allegations and irregularities specified in the notification. The Chief Minister also addressed a letter on May 18, 1977 to the Union Home Minister informing him on the appointment of the Commission. On May 23, 1977 by a notification the Union of India appointed another Commission of Inquiry for the purpose of inquiring into charges of corruption, favoritism and misuse of governmental power against the Chief Minister and other Ministers of the State of Karnataka.

242. In this suit the action of the Union Government in constituting a Commission of Inquiry under S. 3 (1) is challenged as illegal, ultra vires and unconstitutional. The contention of the State Government is that the Central Government has no jurisdiction or authority to constitute the Commission of Inquiry in the exercise of its powers under the Commissions of Inquiry Act, 1952. The plaintiff contended that the impugned notification is destructive of the federal structure of the Constitution and scheme of distribution of powers, that the Constitution does not confer any supervisory or disciplinary control by the Union Executive over the State Government or its Ministers and that the Constitution does not vest the Central Government with any general supervisory or inquisitorial power over the functioning of the State Governments within the respective fields. As the matter in dispute affects the legal right of the State it was submitted that a suit under Art. 131 of the Constitution is maintainable in the Supreme Court.

243. On behalf of the 1st defendant, the Union of India, it was averred that the suit by the State of Karnataka is not maintainable as such as the impugned notification dated May 23, 1977 does not affect the plaintiff State. The inquiry against the Chief Minister and the other Ministers is against individuals and not against the State of Karnataka. There being no dispute between the Government of India and the State, a preliminary objection was taken that the suit was not maintainable under Art. 131 of the Constitution. The various pleas put forward by the plaintiff were denied and it was submitted that the impugned notification was well within the powers of the Central Government and that there had been no infringement or inerference with the State's executive functions.

244. On the pleading the following issues were framed:

1. Is the suit maintainable?

2. Is the impugned notification ultra vires the power of the Central Government under S. 3 of the Commissions of Inquiry Act?

3. If S. 3 of the Commissions of Inquiry Act authorises the Central Government to issue the impugned notification, is the section itself unconstitutional?

245. The main question involved in the suit is one of Centre-State relationship and whether the impugned notification is within the powers of the Central Government under S. 3 of the Commissions of Inquiry Act. Though certain allegations are made in the plaint that the impugned order was mala fide it was not pressed during arguments. So also the power of the State government to appoint a Commission of Inquiry is not challenged. It is therefore not necessary to go into the reasons which induced the State Government to appoint a Commission of Inquiry. Before dealing with the various contentions of the counsel on behalf of the State and the Central Government it is

necessary to set out the background and the revalent provisions of the Constitution dealing with the Centre-State relationship and the scope of the Commissions of Inquiry Act, 1952.

246. The British Crown assumed sovereignty over India from East India Company in 1858 and the British Parliament enacted the first statute for the Governance of India Act, 1858 (21 and 22 Vict., 106). The Act provided absolute imperial control without any popular participation in the administration of the country. The powers of the Crown were exercised by the Secretary of State for India assisted by a Council of Members. Subsequently the Indian Councils Acts, 1861, 1892 and 1909 were passed. Later on the Government of India Acts, 1912 and 1915 were passed by the British Parliament.

247. The Government of India Act, 1919, was the first step taken by the British Government for increasing the association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to progressive realisation of responsible Government in British India. The Government of India Act, 1919 introduced for the first time dyarchy in the Provinces. The Central subjects were exclusively kept under the control of the Central Government. The provincial subjects were divided into 'transferred' and 'reserved' subjects. Transferred subjects were administredred by the Governor with the aid of Ministers while reserved subjects were administered by the Governor and his Executive Council without any responsibility to the Legislature. By Devolution Rules made under the Government of India Act, 1919 a separation of the subjects of administration into Central and Provincial was made. To some extent the relation of Central control over the Provinces was relaxed. Under the Act of 1919 the Provinces were delegates of the Centre and the Central legislature retained the power to legislate for the whole of India relating to any subject. The passing of the Government of India Act, 1935 introduced for the first time a change in the form of the Government i.e. the Government which was unitary under the Government of India Act, 1919 gave way to a federation with the Provinces and the Indian States as the units. Under the unitary system the Provinces were under the administrative as well as the legislative control of the Central Government. The Governor-General in Council was the keystone of the whole constitutional edifice and the British Parliament discharged its responsibility through the Secretary of State and the Governor-General in Council.

248. The intention of the Government of India Act, 1935 was to unite the Provinces and the Indian State into a federation under the Crown. The unitary State was to be broken into a number of autonomous Provinces deriving their authority directly from the Crown instead from the Central Government and then building them up into a federal structure in which both the Federal and Provincial Government would get powers directly from the Crown. The basis of the change is the resumption into the hands of the Crown all rights, authority and jurisdiction in or over the territories of the British India and redistribution of the powers between the Central Government and the Provinces. Though the federal structure contemplated under the Government of India Act, 1935 did not come into existence as the Indian States refused to join the federation, so far as the Provinces were concerned it took effect. The Government of India Act, 1935 divided legislative powers between the Central and the Provincial Legislatures and within its defined sphere, the Provinces were no longer delegates of the Central government but were autonomous units of administration.

The Government of India assumed the role of the federal Government. With regard to Provincial Governments the executive authority of the provinces was exercised by the Governor on behalf of the Crown and not as a subordinate of the Governor-General, with the advice of Ministers responsible to the Legislature. In the Centre the executive authority was vested with the Governor-General and with regard to reserved subjects, defence, external affairs, etc, the Governor-General was to act in his descretion, with the help of counsellors appointed by him without being responsible to the Legislature. Governor-General was to act on the advice of the Council of Ministers who were responsible to the Legislature with regard to subjects other than reserved subjects. The Governor-General was to act under the control and directions of the Secretary of State regarding his special responsibilities. The Government of India Act, 1935 distributed the powers between the Federal Legislature and the Provincial Governments by having (i) Federal List over which the Federal Legislature had exclusive powers of legislation; (ii) A Provincial List over which the Provincial Legislature had exclusive jurisdiction; and (iii) A Concurrent List over which both the Federal and Provincial legislature had competence. The Federal law prevailed over a provincial law if there was any repugnancy and the residuary power of legislation under the 1935 Act vested with the Governor-General. Under the scheme, the legislative powers of both the Central and Provincial Legislatures were subject to various limitations and either of them was not a sovereign legislature. Another feature of the 1935 Act was that the Federal Court was set up mainly for determining the dispute between the units and the federation. The separation of legislative powers as Federal, Provincial and Concurrent Lists and the division of powers between the Centre and the Provinces and the setting up of the Federal Court under the 1935 Act were all adopted in the Constitution of India.

249. The Indian Independence Act, 1947 was passed as an interim measure before the coming into force of the Constitution. The object of the Indian Independence Act, 1947 as amended by Adaptation Orders was to make provisions for an interim Constitution untill the Constituent Assembly could draw up a future Constitution. Indian Independence Act, 1947 altered the constitutional position by declaring that with effect from August 15, 1947 the suzerainty of the British Crown over the Indian States would lapse and from that date United Kingdom would cease to have any responsibility in respect of the Government of the territories included in British India. The Central Legislature of India ceased to exist from August 14, 1947. The Constituent Assembly came into existence for framing of the Constitution and also functioned as the Central Legislature of the Dominion. The new Constitution adopted the bulk of the provisions of the Government of India Act, 1935. The provisions relating to distribution of powers between the units and the Centre were adopted and in fact extended. The Constitution-makers gave up the unitary bias and adopted detailed provisions regarding the distribution of powers and functions between the Union and the States in all aspects of their administrative and other activities. Inter-State relations, co-ordination and adjudication of dispute amongst the States were also provided for.

250. The Indian constitution cannot be described as a Federal Constitution as the Indian Federation is not a result of an agreement by various States and the territorial integrity of the States is not guaranteed as the territories of the States can be changed or a State completely abolished under Art. 4 of the Constitution. But it has to be borne in mind that after the lapse of paramountcy of the British Crown, the India states acceded to the Dominion of India were brought within the Union envisaged by the Constitution. The Indian States which acceded to the Dominion were brought

under the federal system on the same footing as other units of the Federation, namely the Provinces. The position of the States in the Constitution is in several respects subordinate to the Central Government in that the formation of the federation was not as a result of any treaty between the States and the Federation, and that the State may be reformed or altogether eliminated under Art. 4 of the Constitution. Though the Constitution divides executive power between the Union and the States, the States are bound to execute certain directions of the Union. The executive power regarding the laws made by the Union in the Concurrent subjects will be exercised by the States unless the Parliament directs otherwise and as regards the Union subjects the Union may delegate its executive functions to a State either by legislation by Parliament or by consent of the State Government. It is a duty of the State to execute the Union law and the executive power of the State must be exercised in such manner as not to interfere with the executive power of the Union and the State shall be under the direction of the Union regarding the Union laws. The failure of the State to carry out the directions of the Union would empower the Union to supersede the State Government by assuming to itself the powers of the State Government. These features make the Constitution strictly not a federal Constitution. It has been variously called as quasi-federal or federal in structure or federal system with a strong Central bias. But whether the Constitution is recognised as federal or not the position of the States is distinctly recognised. Under Art. 1 of the Constitution of India, India shall be a Union of States. Without States there can be no Union. Historically as the Princely Indian States joined the Union and for other reasons the State as an entity was recognised. The Constitution is the source of power for the Union as well as the States. While under the Government of India Act, 1935 the source of power for the Federal and the Provincial Government was the Crown, under the Constitution of India, the source of power for the States as well as the Union is the Constitution. In its own field i.e. as regards the power conferred on the State, it is supreme so also the Central Government. But in determining what are the powers of the Union and the State one has to look into the Constitution and nowhere else. The States are not the delegates of the Central Government and the Central Government cannot exercise any power over the State which is not provided for in the Constitution.

251. Part V of the Constitution deals with the Union. Chapter I deals with the Executive, Chap. II with Parliament, Chap. III with legislative Powers of the President, Chap. IV the Union Judiciary and Chap. V. with the Comptroller and Auditor-General of India. Part VI of the Constitution deals with the States. Chapter I is General, Chap. II deals with the Executive, Chap. III with the State Legislature, Chap. IV with Legislative Power of the Governor, Chap. V with the High Courts in the States and Chapter VI with Subordinate Courts. Part XI deals with the relations between the Union and the States. Chapter I of Part XI deals with Legislative Relations and distribution of Legislative Powers while Chap. II deals with Administrative relations between the Union and the States. A few of the articles in these Chapters will be referred to in detail later. But it is sufficient at this stage to note that while Part V is assigned to the Union executive and Part VI to the States, Part XI deals with the Relations between the Union and the States. The distribution of powers between the Union and the States can be discerned from the various provisions of the Constitution. A machinery is also provided for, for settling their disputes in the Constitution. In the distribution of powers it is clear there is strong tilt in favour of the Union. According to the Constitution, the Union can assume powers of the State Government by taking over the State Administration under certain contingencies provided for in the Constitution. But the Union Government cannot claim any power which is not vested in it under the provisions of the Constitution. There is no overriding power with the Union Government. It cannot deal with the States Government as its delegate, for the source of power for the Union as well as the State, is the Constitution and the Union Government cannot claim any

powers over the State which are not found in the Constitution.

252. The nature of our Constitution has been discussed by the Supreme Court in a few decisions which may be referred to at this stage. In Atiabari Tea Co. Ltd. v. The State of Assam, (1961) 1 SCR 809: (AIR 1961 SC 232), Gajendragadkar J. as he then was, in construing Art. 301 observed:

"We must adopt a realistic approach and bear in mind the essential features of the separation of powers on which our Constitution rests. It is a federal Constitution which we are interpreting, and so the impact of Art. 301 must be judge accordingly."

The matter was dealt with by S. K. Das J. in the Automobile Transport (Rajasthan) Ltd. v. The State of Rajsthan, (1963) 1 SCR 491:(AIR 1962 SC 1406). The learned Judge after tracing the history of the Indian Constitution observed (at pp. 1415-1416 of AIR SC):

"The evolution of a federal structure or a quasi-federal structure necessarily involved, in the context of the conditions then prevailing, a distribution of powers and a basic part of our Constitution relates to that distribution with the three legislative lists in the Seventh Schedule. The Constitution itself says by Art. 1 that India is a Union of States and in interpreting the Constitution one must keep in view the essential structure of a federal or quasi-federal Constitution, namely, that the units of the Union have also certain powers as has the Union itself."

The learned Judge further observed:

"In evolving an integrated policy on this subject our Constituton-makers seem to have kept in mind three main considerations which may be broadly stated thus: first, in the larger interests of India there must be free flow of trade, commerce and intercourse both inter-State and intra-State; second, the regional interest must not be ignored altogether; and third, there must be a power of intervention by the Union in any case of crisis to deal with particular problems that may arise in any part of India."

The learned Judge concluded:

"Therefore, in interpreting the relevant articles in Part XIII we must have regard to the general scheme of the Constitution of India with special reference to Part III (Fundamental Rights), Part XII

(Finance, Property etc. containing Arts. 276 and 286) and their inter-relation to Part XIII in the context of a federal or quasi-federal Constitution in which the States have certain powers including the power to raise revenues for their purposes by taxation."

The decision is clear authority for the proposition that the essential structure of Indian Government is of federal or quasi-federal character, the units having also certain powers as the Union itself.

253. On this aspect the learned Solicitor-General very strongly relied on certain passages in State of West Bengal v. Union of India, (1964) 1 SCR 371 : (AIR 1963 SC 1241), in the majority judgement delivered by Sinha C. J. Referring to Art. 4 of the Constitution which empowers the Parliament by legistation to alter the territory of the State or abolish it altogether, Sinha C,J. observed (at p. 1255 of AIR) :

"When the Parliament is invested with authority to alter the boundaries of any State and to diminish its areas so as to even destroy a State with all its power and authority, it would be difficult to hold that the Parliament which is competent to destroy a State is, on account of some assumption as to absolute sovereignty of the State, incompetent effectively to acquire by legislation designed for that perpose the property owned by the State for Governmental purposes.

The learned Chief Justice further observed that

"Even if the Constitution were held to be a federal and the States regarded qua the Union as sovereign the power of the Union to legislate in respect of the property situate in the State would remain unrestricted."

The Court was considering an Act passed by the Parliament, the Coal Bearing Areas (Acquisition and Development) Act, 1957, enabling the Union of India to acquire certain coal bearing areas in the State of West Bengal. The State field a suit contending that the Act did not apply to lands vested in or owned by the State and that if it applied to such lands the Act was beyond the legislative competence of the Parliament. The decision as far as it holds that even if the Constitution were held to be a federal Constitution and the States regarded qua the Union as sovereign, the power of the Union to legislate in respect of the property would remain unrestricted, may be right as falling within the power of the Parliament under Entry 42, List III and Entries 52 and 54 of List I. But with very great respect the observation that

"the Constitution of India is not truly Federal in Character.....that only those powers which are

concerned with the regulation of local problems are vested in the States." is not in accordance with the decisions of this Court in Atiabari Tea Co. Ltd. v. The States of Assam, (AIR 1961 SC 232) and the Automobile Transport (Rajasthan) Ltd. v. The State pf Rajasthan, (AIR 1962 SC 1406) which is a decision of a Bench of seven Judges of this Court. The observation of the Court that from the powers conferred on the Parliament under Art. 4 it cannot be held that it is incompetent for the Parliament to acquire by legislation the property owned by the States on the theory of the absolute sovereignty of the States, cannot be understood as having laid down that the States have no sovereignty even in their own sphere or that Parliament has any overriding or supervening powers. The observation of Subba Rao J. as he then was in the dissenting judgment that the Indian Constitution accepts the federal concept and distributes the sovereign powers between the co-ordinate constitutional entities, namely, the Union and the States and that this concept implies that one cannot encroach upon the Governmental functions or instrumentalities of the other, unless the Constitution expressly provides for such interference, is in accordance with the accepted view of this Court. It is unfortunate that the earlier decisions of this Court in Atiabari Tea Co. Ltd. v. The State of Assam and the Automobile Transport (Rajasthan)Ltd. v. The State of Rajasthan were not brought to the notice of the Court. In Special Reference No. 1 of 1964: (1965) 1 SCR 413:(AIR 1965 SC 745) dealing with the Centre-State relationship this Court observed (at p. 762 of AIR):

"Our Legislatures have undoubtedly plenary powers, but these powers are controlled by the basic concepts of the written Constitution itself and can be exercised within the legislative fields allotted to their jurisdiction by the three List under the Seventh Schedule; but beyond the Lists, the Legislatures cannot travel. They can no doubt exercise their plenary legislative authority and discharge their legislative functions by virtue of the powers conferred on them by the relevant provisions of the Constitution; but the basis of the power is the Constitution itself. Besides, the legislative supremacy of our Legislature including the Parliament is normally controlled by the provisions contained in Part III of the Constitution. If the Legislature step beyond the legislative fields assigned to them or acting within their respective fields, they trespass on the fundamental rights of the citizens in a manner not justified by the relevant articels dealing with the said fundamental rights, their legislative actions are liable to be struck down by Courts in India. Therefore, it is necessary to remember that though our Legislatures have plenary powers, they function within the limits prescribed by the material and relevant provisions of the Constitution."

It was further observed:

"In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign . It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Art. 368 of the Constitution itself makes a provision in that behalf and the amendments of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the Constitution, it has to comply with the relevant mandate of the Constitution itself."

254.The political development of British India took the form of dismantling a unitary Constitution and introducing a federal scheme through Devolution Rules and the Government of India Act, 1935. Our Constitution accepted a federal scheme though limited in extent having regard to the regional interests, resources, language and other diversities existing in the vast sub-continent. These facts have been taken into account by the Constitution-makers and a limited federalism was made a part of the Constitution by Art. 1 itself providing that India shall be a Union of states. Effect is given to this mentioned intention by separation of the Lists and by providing legislative and executive power to the Union and the States in separate chapters of the Constitution. This principle has been accepted by the Supreme Court in the decisions in Atiabari Tea Co. Ltd. v. The State of Assam (AIR 1961 SC 232) and the Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan (AIR 1962 SC 1406) cited earlier. The observations made in the West Bengal case (AIR 1963 SC 1241) (supra) which have been referred to already are not in conformity with the otherwise consistent view of the Supreme Court that the Constitution is supreme and that the Union as well as the States will have to trace their powers from the provisions of the Constitution and that the Union is not supreme and the States are not acting as delegates of the Union.

255. It may be useful to refer to the views expressed by the Supreme Court in the Kesavananda (1973) Supp SCR 1 : (AIR 1973 SC 1461) and Election (1976) 2 SCR 347 : (AIR 1975 SC 2299) cases on this subject . The question that arose in those cases was how far the Constitution could be amended. In Kesavananda case, the majority was of the view that the basic structure of the Constitution cannot be amended. The Election case proceeded on the basis of Kesavananda's case that the basic structure could not be amended. The learned counsel for the plaintiff Mr. Lal Narain Sinha made it very clear that he is not inviting the Court to find any undefined basic structure but is confining his arguments to points out that the federal structure in the limited sense is an integral part of the Constitution and that the Union Government is not supreme and it has no power apart from what is found in the Constitution. In kesavananda case it was held by the majority that Art. 368 does not enable the Parliament to alter the basic structure or the framework of the Constitution. Chief Justice Sikri in discussing as to what is the basic structure of the Constitution held that it consisted of (1) Supremacy of the Constitution, (2) Republican and democratic form of Government, (3) Secular character of the Constitution, (4) Separation of powers between legislatures, executive and judiciary, and (5) Federal character of the Constitution. For the purposes of the present discussion it is unnecessary to go into the question as to whether the federal structure as found in the Constitution could be amended or not as it is sufficient to note that it is recognised that the States do constitute an integral part of the Constitution having their legislative and executive powers and that these powers cannot be interfered with by the Union Government unless in accordance with the provisions of the Constitution.

256. Before dealing with the position of the States in the Constitution, it has to be borne in mind that in the distribution of powers between the Union and the States there is a strong bias in favour of hte Union. In the event of an emergency the federal Government can convert itself into a unitary one. The Union Government can supersede the State Government which refused to carry out its directions as are authorised under Art. 365 of the Constitution. While the Union Government is given powers to give directions in certain specified matters under Articles 256 and 257, when a Proclamation of Emergency is made under Art. 352, the power of the Union executive to give directions to the State Government will extend to any matter and the legislative power of the Union

Parliament will extend to matters in the State List under Art. 250. There are provisions in the Constitution conferring wider powers on the Union in case of Financial Emergency. The executive authority of the Union becomes enlarged enabling the Union to give directions to the State requiring financial discipline. The Union Parliament can assume the legislative powers over any subject included in the State List by a Resoluton under Art. 249 if such legislation is necessary in the national interest. Whenever the State Government cannot be carried out in accordance with the provisions of the Constitution the President is empowered to take over and the Union can assume the executive and Legislative powers of the State under Art. 356. Though there is a division of powers between the Union and the States there is provision for control by the Union Government both over the administration and legislation of the State. These are provided for under Art. 201 which empowers the President to disallow any State Legislation which is reserved for his consent. A duty is cast upon the States by the Constitution under Arts. 256 and 257 to execute the Union laws. The executive powers of every State shall be so exercised as not to interfere with the executive power of the Union and that in these matters the States shall be under the directions of the Union. These powers are specifically mentioned in the Constitution and it is not disputed that the Union Government can exercise them.

257. The question that arises for consideration is whether the Union Government can order an inquiry into the Governmental functions of the State which is not specifically conferred on the Union by the Constitution. The preliminary objection of the Union Government that it is not the State but only the Government of the State or the Ministers that are aggrieved will be dealt with in due course. The position of the States is indicated in Art. 1 which declares that India shall be a Union of States and the States and the territories thereof shall be as specified in the First schedule and the territory of India shall comprise the territories of the States, the Union territories and such other territories as may be acquired. Part VI of the Constitution deals with the States. Art. 154 (1) vests the executive power of the State in the Governor and provides that it shall be exercised by him either directly or through officers subordinate to him in accordance with the Constitution. Art. 162 provides that subject to the provisions of the Constitution the executive power of the State shall extended to the matters with respect to which the Legislature of the State has power to make laws. There is a proviso to Art. 162 which provides that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by this Constitution or by any law made by Parliament upon the Union or authorities thereof. Art.163 provides that there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion. Under Art. 164 the Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister. It further provides that the Ministers shall hold office during the pleasure of the Governor and the Council of Ministers shall be collectively responsible to the Legislative Assembly of the State. Chapter III deals with the State Legislature. Art. 168 relates to constitution of legislatures in the States. This Chapter confers executive power of the State in the Governor who shall exercise it with the aid and advice of the Council of Ministers with the Chief Minister at the head. It is also provided that the executive power of the State shall extend to matters with respect to which the legislature of the State has power to make laws. So far as the executive and legislative power of the State is concerned it is absolute subject only to the other provisions of the Constitution. Part XI of the Constitution deals with relations between the Union and the States: Ch. I with legislative relations and Ch. II with administrative relations between the Union and the States. The

scheme for the distribution of legislative power between the Union and the States has been taken over from the Government of India Act, 1935 and Arts. 245 and 246 more or less reproduce Sections 99 and 100 of the 1935 Act. Article 245 (1) provides

"Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State."

Art. 246 confers on the Parliament the exclusive power to make laws with respect to any of the matters enumerated in List I of the Seventh Schedule. The Legislature of the State has exclusive power to make laws for the State in respect of any matters enumerated in List II i.e. State List. The Parliament and the Legislature of the State shall have power to make laws with respect to any matter enumerated in List III i.e. Concurrent List. It is important to note that the powers conferred under Articles 245 and 246 are subject ot the provisions of the Constitution. Therefore the laws made by a Legislature may not be valid for either lack of jurisdiction in respect of the subject matter or on the ground that they violate the provisions of the Constitution. The residuary power of legislation is conferred on the Parliament under Art. 248 which provides that the Parliament has exclusive power to make any law with respect to any matter not enumerated in the concurrent List or in the State List. Under Art. 246 (1) and (2) and Article 245 (1) when a State law is in conflict with a State (sic) (an existing-Ed.) law or repugnant to Union law which Parliament is competent to enact the Union law shall prevail and the State law shall be void to the extent of repugnancy. But an attempt should be made to see whether the conflict could be avioded by construction. If a reconciliation is impossible only then the federal power should prevail, Article 248 (1) and Entry 97 in List I of the Seventh Schedule make it clear that the residuary power is with the Parliament and when a matter sought to be legislated is not included in List II or List III the Parliament has power to make laws with respect to that matter or tax. But function of the List is not to confer powers on the Legislature. They only demarcate the legislative field. The federal Court in The Governor-General in Council v. The Raleigh Investment Co., 1944 FCR 229 at p. 261 : (AIR 1944 FC 51 at p. 62), observed that

"the purpose of the List was not to create or confer power but only to distribute to federal and provincial legislature the powers which had been confered by Ss. 99 and 100 of the Act."

While approving the observations of the Federal Court in Union of India v. H. S. Dhillon, (1972) 2 SCR 33 : (AIR 1972 SC 1061), the majority for whom Chief Justice Sikri spoke held that

"It (Art. 248) is framed in the widest possible terms. On its terms the only question to be asked is: Is the matter sought to be legislated included in List II or in List III or is the tax sought to be levied mentioned in List II or in List III? No question has to be asked about List I. If the answer is in the negative, then it follows that Parliament has power to make laws with respect to that matter or tax."

But this observation does not decide the question whether the residuary legislative power of the Union includes a right to direct inquiry into the governmental functions of the State for as laid down by the Federal Court in the Governor General in Council v. The Releigh Investment Co. the purpose of the Lists is not to create or confer powers and the powers conferred under Articles 245 and 246 are subject to the provisions of the Constitution. As there is no provision in the Constitution conferring on the Union the power to supervise the Governmental functions of the State the refernce to the List will not solve the problem.

258. The crux of the controversy is, while the Karnataka State would contend that relation between the Union and the States is a subject matter of the Constitution and is not a subject covered by any of the three Lists, the contention on behalf of the Union Government is that the notification does not contravenee any of the specific provisions of the Constitution and as such the legislative competence of the Union cannot be questioned. While on behalf of the State of Karnataka it is submitted that the power to inquire into the conduct of a Minister who is responsible to the Legislature is only with the Legislature of the State, the submission on behalf of the Union is that the power of the Union is not specifically taken away by any of the provisions of the Constitution and therefore the contemplated inquiry is within the competence of the powers of the Union. According to the Solicitor, the right question to ask is

"Does the legislation provided for some matter which runs counter to or is inconsistent with or brings about a change in the existing provisions of the Constitution in such manner that the original and the amended provisions are different and inconsistent?"

If it does so then it can be regarded as amendment howsoever it may be brought about i.e. by addition, variation or reapeal. At the same time mere enactment of provisions which are not in any manner qualitatively inconstistent with the existing provisions of the Constitution but deal with certain aspect of legislative topics or a Constitutional subject, does not postulate exercise of constituent power for amendment of the Constitution. In support of his contention that unless as express provision of the Constitution is contravened the law can not be questioned on the ground of implied prohibition the learned counsel relied on Webb v. Outrim, 1907 AC 81. The question that arose for decision by the Privy Council in that case was whether the respondent, an officer of the Austrilian Commonwealth, resident in Victoria and receiving his official salary in that State, was liable to be assessed in respect thereof for income tax imposed by an Act of the Victorian Legislature. It was not contended before the Court that the restriction on the powers of thr Victoria Constitution is enacted by any express provision of the Commonwealth Constitution Act but was argued that inasmuch as the imposition of an income-tax might interfere with the free exercise of the legislative or executive power of the Commonwealth, such interefernce must be impliedly forbidden by the Constitution of the Commonwealth, although no such express prohibition can be found therin. The Court held:

"The enactments to which attention has been directed do not seem to leave any room for implied prohibition."

It was further held that

"It is impossible to suppose that the question now in debate was left to be decided upon an implied prohibition when the power to enact laws upon any subject whatsoever was before the Legislature."

The basic principles of construction of the Constitution are laid down by Lord Selbourne in R. v. Burah, (1878) 3 AC 889, which are accepted and applied by Earl Loreburn L. C. in Attorney-General for the Province of Ontario v. Attorney-General for the Dominion of Canada, 1912 AC 571 at p. 583. The rule laid down in R. v. Burah is that

"When a question arises whether the prescribed limits have been exceeded the only way in which it can be done is by looking into the terms of the instrument by which affirmatively the legislative powers were created and by which negatively they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited, it is not for any court of justice to inquire further, or to enlarge constructively those conditions and restrictions."

In 1912 AC 571 it was held that

"if the text is explict the text is conclusive, alike in what it directs and what it forbids. When the text is ambiguous, as for example, when the words establishing two mutually exclusive jurisdictions are wide enough to bring a particular power wihtin either, recourse must be had to the context and scheme of the Act."

The decision of the Austrilian High Court in The Amalgamated Society of Engineers v. The Adelaide Steamship Company Ltd., (1920) 28 CLR 129, in which it was held that the doctrine of implied prohibition against the exercise of power once ascertained in accordance with ordinary rules of construction was rejected by the Privy Council in Webb v. Outrim 1907 AC 81.

259. The decision in The State of Victoria v. The Commonwealth of Australia 122 CLR 353, was referred to but as that decision reiterates the principles laid down in R. v. Burah, (1878) 3 AC 889 it

is not necessary to refer to it. The principle laid down is that if what has been done is legislation within the general words which give the power and if it violates no express condition or restriction by which that power is limited, then it is not for the court of justice to inquire but it cannot be understood as meaning that the word 'express' does not exclude (sic) (include?) what is necessarily implied. In Liyange v. R. 1967 AC 259 the Privy Council while interpreting the Constitution of Ceylon held that the Constitution did not expressly vest the judicial power exclusively in the judiciary but,that fact was not decisive as the scheme of the Constitution particularly the provisions relating to the judiciary viewed in the light of the fact the judicial power had always been vested in courts, held that the judicial power vested exclusively in the judisiary. To the same effect is the decision of this Court in The State of West Bengal v. Nripendra Nath Bagchi, (1966) 1 SCR 771: (AIR 1966 SC 447). The question that arose in that case was whether the inquiry ordered by the Government and conducted by an Executive Officer of the Government against a District and Sessions Judge contravened the provisions of Article 235 of the Constitution which vests in the High Court the control over the District Court and the court subordinate therto. The Court construed the word 'control' used in Article 235 as including disciplinary control or jurisdiction over District Judges. Relying on the history which lay behind the enactment of these articles the Court came to the conclusion that 'control' was vested in the High Court to effectuate a purpose, namely, the securing of the independence of the subordinate judiciary and unless it included disciplinary control as well, the very object would be frustrated. It also took into account the fact that the word 'control' is accompanied by the word 'vest' which is a strong word which showed that the High Court is made the sole custodiam of the control over the judiciary. The Court observed:

"This aid to construction (the history which lies behind the enactment) is admissible because to find out the meaning of a law, recourse may legitimately be had to the prior state of the law, the evil sought to be removed and the process by which the law was evolved."

Though there is no express provision in the Article conferring the disciplinary control and jurisdiction over the District Judge it was implied from the wording of the Article. Reading the decision of the Privy Council in Liyanage v. R. and the decision of this Court in the State of West Bengal v. Nripendra Nath Bagchi, the word 'express' in R. v. Burah, should be construed as including what is necessarily implied. Taking into account the history and the scheme of the Consitution, the safeguards in the Consitution regarding the States have necessarily to be implied though it is conceded on behalf of the State of Karnataka that no particular provision of the Constitution has been expressly modified, amended or altered.

260. The extent of the executive power of the Union is found in Art. 73 and that of the State is given in Art. 162. In part XI, Chapter II, which deals with the administrative relation between the Union and the States Articles 256 and 257 list the obligations of the States and the Union and control of the Union over the States in certain cases. Article 256 provides that the executive power of every State shall be so exercised as to ensure compliance with the laws made by Parliament and any existing laws which apply in that State, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Under this Article it is obligatory on every State to so exercise its executive power as

to ensure the compliance with the laws made by the Parliament and the executive power of the Union shall extend to giving such instructions to the State as are necessary for that purpose. Article 257 (1) provides that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union, and the executive power of the Union shall extend to the giving of such directions to a State as may appear to the Government of India to be necessary for that purpose. Sub-article (2) extends the power of the Union to giving directions as to the construction and maintenance of means of communication declared in the direction to be of national or military importance; sub-article (3) extends the power of the Union to the giving directions to a State as to the measures to be taken for the protection of the railways within the State. By 42nd amenment to the Constituion Art. 257-A was introduced by which Government of India is empowered to deploy any other force of the Union or any other force subject to the control of the Union for dealing with any grave situation of law and order in any State. Sub-article (2) of Art. 257A provides that any armed force or other force or any contingent or unit therof deployed under clause (1) in any State shall act in accordance with such directions as the Government of India may issue and shall not, save otherwise provided in such directions, be subject to the superintendence or control of the State Government or any officer or authority subordinate to the State Government. No reliance was placed by the Government of India on any of its inherent or overriding powers. Except in cases referred to in Articles 256 and 257 and 257-A, the Constitution does not provide for the Union Government to give any directions to the State Government. Though under Article 355 it shall be the duty of the Union to protect every State against external aggression and internal disturbance, it was thought a constitutional amendment was necessary to enable the Govt. of India to deploy armed forces to deal with grave situation of law and order. As there is no specific Article in the Constitution enabling the Union Government to cause an inquiry into the governmental functions of the State the power cannot be assumed by ordinary legislation but resort must be had to a constitutional amendment.

261. In I. C. Golak Nath v. State of Punjab AIR 1967 SC 1643, Wanchoo J. has stated, (at p. 1676).

"The Constitution is the fundamental law and no law passed under mere legislative power conferred by the Constitution can affect any change in the Constitution unless there is an express power to that effect given in the Constitution itself. But subject to such express power given by the Constitution itself the fundamental law, namely the Constitution, cannot be changed by a law passed under the legislative provisions contained in the Constitution as all legislative Acts passed under the power conferred by the Constitution must conform to the Constitution. There are a number of articles in the Constitution which expressly provide for amendment by law, as for example, 3, 4, 10, 59, (3). 65 (3), 73 (2), 97, 98 (3), 106, 120 (2), 135, 137, 142 (1), 146 (2), 148 (3), 149, 169, 171 (2), 186, 187 (3), 189 (3), 194 (3), 195, 210 (2), 221 (2) 225, 229 (2) 239 (1), 241 (3), 283 (1) and (2), 285 (2), 287, 300 (1), 313, 345, 373, Sch. V. cl. 7 and Sch. VI, cl. 21."

Art. 2 enables the Parliament by law to admit inot the Union, or establish, new States on such terms and conditions as it thinks fit and Art. 3 enables the Parliament by law to form new States and alteration of the areas or boundaries of any State and the names of the existing States. Article 4 provides that laws made under Articles 2 and 3 shall contain such provisions for the amendment of

the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions as Parliament may deem necessary. Sub article (2) of Art. 4 provides that no such law as aforesaid shall be deemed to be an amendment of the Constitution for the purpose of Article 368. So also Art. 169 (1) enables the Parliament by law to provide for the abolition of the Legislative Council of a State and Sub-article (3) provides that no such law as aforesaid shall be deemed to be an amendment of the Constitution for the purposes of Article 368. Similar provisions are found in Schedule V, cl. 7 and Schedule VI, cl. 21 where the law made by Parliament is deemed not to be an amendment of the Constitution for the purposes of Art. 368. So far as the other Articles mentioned above are concerned the Articles themselves enable the Parliament to make law for the purposes mentioned in the various Articles. Regarding the Articles in which no power is conferred on the Parliament to make laws, Parliament cannot add to the Constitution by ordinary law-making process.

262. The Union Government relied on Entry 94 in List I and Entry 45 in List III in the Seventh Schedule as empowering it to enact the Commissions of Inquiry Act 1952, and to issue the impugned notification. Entry 94 in List I runs as follows:

"94. Inquiries, surveys and statistics for the purpose of any of the matter in this List."

Entry 45 in List III, concurrent List, is as follows:

"45. Inquiries and statistics for the purposes of any of the mater specified in List II or list III."

As Entry 94 in List I is confined to matters in List I learned Solicitor rightly did not rely on that Entry but relied mainly on Entry 45 List III. Entry 45 enables the Union to make laws for inquiries for the purpose of any of the matters specified in Lists II and III i.e. State List and the Concurrent List. The question that arises is whether the word 'inquiries' would include the power to make inquiry into misuse of the Governmental powers by the Chief Minister and the other Ministers of a State Government while in office. The golden rule of interpretation is that the words should be read in their ordinary, natural and grammatical meaning and in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude. But this rule is subject to certain exceptions. If it is found necesary to prevent conflict between two exclusive jurisdictions a restricted meaning may be given to the words. The Federal Court in Re the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938 (Central Provinces and Berar Act No. XIV of 1938) (in Re A Special Reference under Section 213 of the Government of India Act, 1935) 1939 FCR 18: (AIR 1939 FC 1) in construing the expression "duties of excise" in Entry 45 of List I in the Seventh Schedule and "Taxes on sale of goods" in Entry 48 of List II i.e. the State List, held that the conflict could be resolved by giving the expression "duties of excise" a restricted meaning, namely that the duty of excise is a tax on manufacture or prodution of goods. Thus it is permissible to give a restricted

meaning in construing the language of conflicting provisions. In State of Madras v. Gannon Dunkerley and Co. (Madras) Ltd. 1959 SCR 379: (AIR 1958 SC 560), it was held that though in construing a legislative entry widest construction must be put on the words used, as the expression "sale of goods" was a term of well-recognised legal import in the general law relating to the sale of goods and in the legislative practice relating to that topic, it must be interpreted in Entry 48, List II, Sch. 7 of the Act as having the same meaning as in the Sale of Goods Act. The rule that in construing the words in a Constitution most liberal construction should be put upon the words is not a universal rule as is seen from the judgment of Lord Blackburn in River Wear Commissioners v. Adamson, (1877) 2 AC 743 where Lord Blackburn expressed his view that in interpreting the words, the object is to ascertain the intention expressed by the words used and that the object of interpretation of documents and statutes is to ascertain "the intention of them that made it." Lord Coke in Heydon's case ((1584) 3 Co. Rep. 7 a: 76 ER 637) applied the principle which was laid down by Lord Blackburn. In R. M. D. Chamarbaugwalla v. The Union of India, 1957 SCR 930: (AIR 1957 SC 628), Venkatarama Ayyar J. cited with approval the rule in Heydon's case and added that the principles laid down are well-settled and have been applied in Bengal Immunity Co. Ltd. v. State of Bihar (1955) 2 SCR 603: (AIR 1955 SC 661), and observed that the legislative history of the impugned law showed that prize competitions involving skill had presented no problems to the legislatures, and that having regard to that history, and also the language used in the Act, the degfinition must, by construction, be limited to prize competitions of a gambling nature. Thus there is ample authority for the proposition that in interpretation of statutes the main object is to ascertain the "intention of them that made it."

263. It is therefore necessary to discern the intention of the Parliament in enacting the Commissions of Inquiry Act, 1952. The inquiry under Entry 45 is for the purpose of any of the matters specified in List II or List III. It is seen that inquiry into the misconduct in exercising governmental functions by the Chief Minister of a State cannot be discerned from any of the entries in List II or List III. Entry 45 is in the Concurrent List and if a law could be enacted by the Parliament empowering the Union Government to conduct an inquiry into the misuse of the governmental functions by a Minister of State, it cannot be denied that the State Government will have the power to legislate empowering the State to inquire into the misuse of Governmental powers by a Union Minister relating to matters in List II and List III. Obviously the powers conferred under Entry 45 cannot be construed in such mannner, for it could never have been intended. Otherwise the result will not be conducive to the harmonious functioning of the Union and the States. This circumstances is a strong indication that Entry 45 in List III 'inquiries' should not be given a wide meaning as conferring on the Union and the State Governments powers to enact a provision to embark on an enquiry as to the misuse of the Governmental powers by the other.

264. The provisions of the Commissions of Inquiry Act, 1952, Act 60 of 1952 will now be examined. The Preamble of the Act, is as follows:-

"An Act to provide for appointment of Commissions of Inquiry and for vesting such Commissions with certain powers."

Section 2 defines the "appropriate Government" as meaning the Central Government in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in list I or List II or List III in the Seventh Schedule to the Constitution and the State Government, in relation to a Commission appointed by it to make an inquiry into any matter relatable to any of the entries enumerated in List II or List III in the Seventh Schedule to the Constitution. Section 3 (1) provides for the appointment of Commission. It runs as follows:--

"3. (1) The appropriate Government may, if it is of opinion that it is necessary so to do, and shall, if a resolution in this behalf is passed by the House of the People or, as the case may be, the Legislative Assembly of the State, by notification in the Official Gazette, appoint a Commission of Inquiry for the purpose of making an Inquiry into any definite matter of public importance and performing such functions and within such time as may be specified in the notification, and the Commission so appointed shall make the inquiry and perform the functions accordingly."

The proviso to Section 3 (1) bars the State Government except with the approval of Central Government to appoint another Commission to inquire into the same mattter when a Commission appointed by the Central Government is functioning and bars the Central Government from appointing a commission from inquiring into the same matter so long as the Commission appointed by the State Government is functioning unless the scope of the inquiry is extended to two ro more States. Under Section 3 (1) the appropriate Government may appoint a commission but shall appoint one if a resolution is passed by the House of the People or, the Legislative Assembly of the State as the case may be. The purpose of the commission is to make an inquiry into any 'definite matter of public importance'.

265. The Parliament under the Act has delegated its legislative functions to the appropriate Government and has conferred the discretion to appoint a commission if it is in its opinion necessary to do so and makes it obligatory on the Government to appoint a commission if there is a resolution by the Legislature concerned. The purpose of appointment of the commission is for making an inquiry into any definite matter of public importance. There is no mention or guidance as to the person against whom an inquiry is to be conducted. In the proviso which bars the State Government from appointing the commission to inquire into the same matter when already the Central Government has appointed a commission and vice versa, it is clear that the section could not have contemplated the appointment by the Central Government of a commission to inquire into the abuse of the power by the State Government being aware of the fact that such a construction would enable the State Government to appoint a commission to inquire into the misuse of the power of the Central Government in any of the matters relating of List II and III. Such a construction would not reflect, the intention of the Parliament. Before dealing fully with the scope of the powers of the appropriate Government as a delegate and the construction that has to be put on the scope of appointment of a commission of inquiry under this section, it is necessary to notice other relevant provisions of the Act. Sub-section (4) of Section 3 requires the appropriate Government to lay before the House of the People or the House of the Legislative Assembly of the State, the report of

the commission on the inquiry made by the commission together with a memorandum of the action taken thereon, within a period of six months of the submission of the report by the Commission to the appropriate Government. Sub-section (4) therefore contemplates some acton to be taken by the appropriate Government. Section 4 deals with the powers of a commission. It shall have the powers of a civil court while trying the suit under the Code of Civil Procedure, 1908, in respect of matters mentioned in the Section. Section 5 enables the Commission to require any person to furnish information on the subject matter of the inquiry and any person so reuired shall be deemed to be legally bound to furnish such information within the meaning of Ss. 176 and 177 of the Indian Penal Code. The commission may also cause search and seizure of books of account and documents or take extracts or copies therefrom so far as they are applicable. The Commission is deemed to be a civil court for certain purposes mentioned in Sub-sections (4) and (5) of Section 5. S. 5-A empowers the Commission to utilize the services of certain officers in the case of a Commission appointed by the Central Government of any officer or investigation agency of the Central Government or any State Government with the concurrence of the Central Government or the State Government, as the case may be, or in the case of a Commission appointed by the State Government of any officer or investigation agency of the State Government or Central Government with the concurrence of the State Government or the Central Government, as the case may be. The Commission may summon and enforce the attendance of any person and examine him, require the discovery and production of any ducument, and requisition any public record or copy thereof from any office. Section 8-B provides that if at any stage of inquiry the Commission considers it necessary to inquire into the conduct of any person and is of opinion that his reputation is likely to be prejudicially affected by the inquiry the Commission shall give to that person a reasonable opportunity of being heard and Section 8-C confers a right of cross-examination and representation by the legal practitioner to persons referred to in Section 8-B of the Act.

266. Reading the Act as a whole the Commission is given wide powers of inquiry compelling the attendance of witnesses and persons who are likely to be prejudically affected giving them a right of cross-examination. When a report is submitted by the Commission Section 3 (4) contemplates action to be taken by the appropriate Government.

267. While considering the scope of Entry 45 in List III and particularly the word 'inquiries' it has been found that in the context a restricted meaning should be given and if the word is given a wide meaning as to an inquiry into the Governmental action of the State or the Union, as the case may be, it would not be conducive to the smooth running of the Constitution. Under Section 3 the Parliament has conferred the power on the appropriate Government to appoint a Commission of inquiry to inquire into any definite matter of public importance. On behalf of the Union it was submitted that the words "definite matters of public importance" would embrace the inquiry into the misuse of the Governmental functions of the State and in support of this contention several decisions were cited.

268. In M. V. Rajwade v. Dr. S.M. Hassan ILR (1954) Nag 1:(AIR 1954 Nag 71) the question arose as to whether a Commission appointed under the Commissions of Inquiry Act, 1952, has the status of a court. The High Court at Nagpur held that the Act does not confer on it the status of a court.

The facts of the case are that the Government of Madhya Pradesh appointed a commission of inquiry under the Commission of Inquiry Act, 1952, with Hon'ble Shri Justice B. K. Choudhari as the sole member. The Commission was asked to inquire and report whether.

(i) the firing was justified;

(ii) excessive force was used; and

(iii) after the firing adequate action was taken to maintain peace and order, to prevent recrudescence of trouble and to give adequate medical and other aid to the injured.

Dealing with the nature of the inquiry the court held that the commission in question was obviously appointed by the State Government for the information of its own mind, in order that it should not act, in exercise of its executive power, otherwise than in accordance with dictates of justice and equity, in ordering a departmental inquiry against its officers. It was therefore a fact finding body meant only to instruct the mind of the Government without producing any document of a judicial nature. So far as the scope of the inquiry in the case was concerned it falls strictly within Section 3 as the inquiry related to a definite matter of public importance and not an inquiry into the misuse of Governmental functions of a Chief Minister or a State Minister. On the facts of the case it was appropriate that the court found that it was merely a fact finding body meant to instruct the mind of the Government. In Brajnandan Sinha v. Jyoti Narain (AIR 1956 SC 66) the Supreme Court considered the question whether the Commission appointed under the Public Servants (Inquiries) Act, 1850, is not a court within the meaning of the Contempt of Courts Act, 1952. The Court approved the view taken by the Nagpur High Court that the Commission was only a fact finding Commission meant only to instruct the mind of the Government and found that a Commission under the Public Servants (Inquiries) Act, 1850 is not a court. In Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar 1959 SCR 279: (AIR 1958 SC 538) the Central Government appointed a Commission of Inquiry to inquire into and report in respect of certian companies mentioned in the schedule attached to the notification and in respect of the nature and extent of the control and interest which certain persons named in the notification exercised over these companies. The validity of the Commissions of Inquiry Act was questioned. The Supreme Court held that the Act was valid and intra vires and the notification was also valid excepting the words "as and by way of securing redress or punishment" in clause 10 thereof which went beyond the scope of the Act. The Court also held that the Act does not delegate to the Government any arbitrary or uncontrolled power and does not offend Article 14 of the Constitution. The Court further observed that the discretion given to the Government to set up a commission of inquiry is guided by the policy laid down in the Act and the executive action is to be taken only when there exists a definite matter of public importance into which an inquiry is necessary. The facts of the case are that the Central Government appointed a commission of Inquiry under S. 3 of the Commisions of Inquiry Act, 1952, to inquire and report in respect of the administration of the affairs of companies specified in the schedule and other matters mentioned in clause (2) to (11) of the Order. The inquiry under clause (3) is regarding the nature and extent of the control, direct and indirect, exercised over such companies and firms or any of them by Shri R. K. Dalmia and 3 others, their relatives, employees

and persons connected with them. Under clause (10) the inquiry was against any irregularities, frauds or breaches of trust etc. and required the Commission to recommend the action which in the opinion of the Commission should be taken as and by way of securing redress or punishment or to act as a preventive in future cases. This Court held that the Commission in the Case was merely to investigate and record its findings and recommendations without having any power to enforce them. It was further held that a portion of last part of cl. (10) which called upon the Commission of Inquiry to make recommendations about the action to be taken as and by way of securing redress or punishment cannot be said to be at all necessary or ancillary to the purpose of the Commision. The Court held that the words "as and by way of securing redress or punishment" clearly go outside the scope of the Act, and such a provision was not covered by the two legislative entries in the Constitution and should therefore be deleted. Considering the scope of S.3 it is observed that the "answer is furnished by the statute itself for Sec. 3 indicates that the appropriate Government can appoint a Commission of Inquiry only for the purpose of an inquiry into any definite matter of public importance and to no other matter. In other words, the subject-matter of inquiry can only be of a 'definite matter of public importance'." Rebutting the contention on behalf of the appellant that the delegation of the authority to the appropriate Government is unguided and uncontrolled, the Court observed that

"the executive action of setting up a Commission of Inquiry must conform to the condition of the section, that is to say, that there must exist a definite matter of public importance into which an inquiry is, in the opinion of the appropriate Government, necessary or is required by a resolution in that behalf passed by the House of the Pelple or the Legislative Assembly of the State." The Court proceeded to observe that if the Parliament had declared with sufficient clarity the policy and laid down the principles for the guidance of the exercise of the powers conferred on the appropriate Government it cannot be said that an arbitrary and uncontrolled power had been delegated to the appropriate Government. On the facts of the case bafore the Court the conclusion was reached that the power was exercised within the policy laid down by the Parliament and the guidance afforded by the preamble and S.3 of the Act. The decision was not dealing with a case in which the inquiry is ordered into the misuse of governmental functions of the Chief Minister of a State exercising the executive functions of the State. The Court also rejected the plea on behalf of the appellant that the Act and conduct of individual persons can never be regarded as definite matter of public importance, observing that the act and conduct of individuals may assume such dangerous proportions as may well affect the public well-being and thus become a definite matter of public importance. An inquiry into "definite matter of public importance" may as incidental or ancillary to such inquiry require inquiring into the conduct of persons. Section 8-B which was introduced by an amendment by Act 79 of 1971 provides that if at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a reasonable oppourtunity of being heard in the inquiry and to produce evidence in his defence. The amendment would indicate the procedure to be adopted if in the course of the inquiry it becomes necessary to inquire into the conduct of any person. This would suggest that principally the inquiry is as regards a matter of definite public importance. It may be that in some cases that conduct of individuals may become a definite matter of public importance as laid down in R. K. Dalmia's case. But the decision does not conclude the point that has arisen in this case, namely whether the definite matter of public importance should be construed as to include the right to inquire into the abuse of governmental functions by a State Government when no such intention could have been in the minds of the Parliament.

269. In State of Jammu and Kashmir v. Bakshi Gulam Mohammad, 1966 Supp SCR 401:(AIR 1967 SC 122), the State Government of Jammu and Kashmir issued a notification under S. 3 of the Jammu and Kashmir Commission of Inquiry Act, 1962, setting up a commission to inquire into the wealth acquired by the first respondent and certain specified members of his family during his period of office. It may be noted that the Commission of Inquiry was set up by the State Government after Bakshi Gulam Mohammad resigned and ceased to be the Chief Minister of the State.

270. Two of the three Judges of the High Court took the view that the matter referred to was not of public importance because on the date of the notification Bakshi Gulam Mohammad did not hold any office in the Government and that there was no evidence of public agitation in respect of the conduct complained of and that showed that they were not matters of public importance. The Supreme Court rejected the view taken by the High Court observing:

"It is difficult ot imagine how a Commission can be set up by a Council of Ministers to inquire into the acts of its head, the Prime Minister, while he is in office. It certainly would be a most unusual thing to happen. If the rest of the Council of Ministers resolves to have any inquiry, the Prime Minister can be expected to ask for their resignation. In any case, he would himself go out. If he takes the first course, then no Commission would be set up for the Ministers wanting the inquiry would have gone. If he went out himself, then the Commission would set up to inquire into the acts of a person who was no longer in office and for that reason, if the learned Judges of the High Court were right, into matters which were not of public importance. The result would be that the acts of a Prime Minister could never be inquired into under the Act. We find it extremely difficult to accept that view." The decision of the Court is that the inquiry into the past acts which have affected the public well-being would be matters of public importance and it was irrelevant whether the person who committed those acts is still in power to be able to repeat them. The pronouncement is an authority for the proposition that inquiry into the acts of a person who had ceased to be a Chief Minister may continue to be a matter of public importance.

271. In Bakshi's case (AIR 1967 SC 122) the inquiry was directed by the State Government against the conduct of an erstwhile Chief Minister of the State. This Court rejected the contention that the inquiry against a person is outside the scope of S. 3 of the Commissions of Inquiry Act. It was contended before this Court relying on S. 10 of the Jammu and Kashmir Commission of Inquiry Act, 1962 that the inquiry directed into the conduct of Bakshi Ghulam Mohammed was outside the scope of the Act. Section 10 of the Jammu and Kashmir Act is similar to the present Ss. 8-B and 8-C of the Commissions of Inquiry Act, 1952. The Section states that if at any stage of the inquiry the Commission considers it necessary to inquire into the conduct of any person or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry the Commission shall give to that person a resonable opportunity of being heard in the inquiry and to produce evidence in his defence. Basing on the wording of the section it was submitted that the inquiry is normaly only into a difinite matter of public importance and inquiries into the conduct of a person can arie only as

incidental or ancillary to such an inquiry. As the section contemplates the necessity of inquiry into the conduct of a person arising at any stage of the Inquiry Commission's proceedings, it was submitted that the inquiry into the conduct of a person is only incidental. This Court rejected the contention on the ground that S. 3 which permits a Commission of Inquiry to be appointed is wide enough to cover as inquiry into the conduct of an individual and it could not be natural reading of the Act to cut down the scope of S. 3 by an implication drawn from S. 10. This observation was, as the subsequent sentence makes it clear, made in rejecting the plea that S. 10 does not apply to a person whose conducct comes up directly for inquiry before a Commission set up under S. 3. In Bakshi's case as the inquiry was orderd by the State Government into the affairs of a Chief Minister who had ceased to be in office, the Court was not called upon to consider the question whether the Union Government can appoint a commission of inquiry into the conduct of a Chief Minister of a State in office which implies the determination of Centre-State relationship under the constitution. In this case the appointment was by the State Government against the erstwhile Chief Minister. Apart from this question it is seen that if S. 3 of the Commissions of Inquiry Act, 1952 is construed as enabling the appointment of a commission of inquiry into the conduct of a State Chief Minister in office it would result in empowering the Central Government which is a delegate of the Parliament to exercise the powers which would never have been contemplated by the Parliament, for as already pointed out the result of such construction would be inviting the State Government to appoint a commission of inquiry into the conduct of Central Ministers regarding matters in List II and List III. It is significant to note that after Bakshi's case was decided by the Supreme Court in 1966, amendments were introduced to the Commission of Inquiry Act by Act 79 of 1971. Section 8-B runs as follows:-

"8-B. If, at any stage of the inquiry, the Commission,-

(a) consideres it necessary to inquire into the conduct of any person; or

(b) is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry, the Commission shall give to that person a resonable oppurtunity of being heard in the inquiry, and to produce evidence in his defence:

Provided that nothing in this section shall apply where the credit of a witnesss is being impeached."

No doubt, there was corresponding section, S. 10 of the Jammu and Kashmir Commission of Inquiry Act, 1962, which was considered in Bakshi's case by the Supreme Court, and the Court had held that S. 10 was also applicable to a case in which the conduct of a person was directly under inquiry. It observed that the scope of S. 3 cannot be cut down by an implication drawn from S. 10. The subsequent amendment of the Act by introduction of S. 8-B, which provides that if at any stage of the inquiry, the Commission considers it necessary to inquire into the conduct of any person, or is of opinion that the reputation of any person is likely to be prejudicially affected by the inquiry,

would indicate that the Parliament was aware of the consequences of such wording, and intended the Act to be applicable in the main to any definite matter of public importance while an inquiry into the affairs of persons would be permissible if it arose as incidental or ancillary to such inquiry. This construction appears to be justifiable, for otherwise S. 3 would have the result of empowering the delegate i.e. the Union Government, to order an inquiry into the affair of the Chief Minister of a State and inviting the same treatment from the State Government.

272. The decision in P. V. Jagannath Rao v. State of Orissa, (1968) 3 SCR 789: (AIR 1969 SC 215) also relates to the appointment by the State Government of a Commission of Inquiry into the conduct of the Chief Minister and Ministers who ceased to hold office on the date of the notification in regard to the irregularities committed during the tenure of their office and it does not relate to the Commission of Inquiry appointed by the Central Government to inquire into the abuse of governmental functions by the Chief Minister and other Ministers.

273. It will be seen on an examination of the cases cited above that in no case the Central Government had ordered an inquiry into the abuse of powers by the State Chief Minister in office. It is stated that an inquiry was ordered by the Central Government against Pratap Singh Kairon, a State Chief Minister, while in office but the validity of such an order was not questioned before a court. The Sarkaria Commission was appointed by the Central Government to inquire into the conduct of the Chief Minister when he ceased to hold that office and the President took over the administration of the Tamil Nadu State. While in office the Chief Minister questioned the Union Government's power to appoint such a Commission.

274. The impugned notification by the Central Government was challenged on the ground that it is in violation of the proviso to S. 3 (1) of the Commissions of Inquiry Act. Under the proviso when a State Government has appointed a commission of inquiry, the Central Government shall not appoint another commission to inquire into the same matter for so long as the commission appointed by the State Government is functioning, unless the Central Government is of opinion that the scope of the inquiry should be extend to two or more States. In this case it is common ground that the State Government had appointed a Commission of Inquiry earlier. The scope of the inquiry ordered by the Central Government does not extended to two or more States. In the circumstances the notification is sought to be supported by the Central Government on the plea that the inquiry does not relate to the 'same matter' and therefore the validity of the notification cannot be challenged. Reading S. 3 (1) along with the proviso, it is apparent that the intention of the Act is to enable the appropriate Governments i.e. the Central or the State Government to appoint a Commission of Inquiry for the purpose of making an inquiry into any definte matter of public importance. The Central Government can appoint a commission to make an inquiry into any matter relatable to any of the Entries enumerated in List I, List II or List III of the Seventh Schedule of the Constitution while the State Government can appoint a commission to inquire into any matter relatable to any of the entries enumerated in List II and List III of the Constitution. As both the Central Government and the State Government have power to appoint a commission of inquiry relating to entries in List II and List III there might arise occasions when there may be overlapping. In order to avoid such a contingency proviso (a) and (b) to Section 3 (1) enact that when the Central Government has appointed a

commission of inquiry the State Government shall not appoint another commission to inquire into the same matter without the approval of the Central Government as long as the commission appointed by the Central Government is functioning and the Central Government shall not appoint another commission to inquire into the same matter as long as the commission appointed by the State Government is functioning. These provisions are for the purpose of avoiding any conflict by the two Governments appointing two separate commissions to inquire into the same matter. In a speech made by the Minister for Law Shri C. C. Biswas while introducing the Bill on August 6, 1952 in the Rajya Sabha, he explained the provisions of S. 3 and its underlying purpose as follows:-

"Then there is also the question whether and how far there may be overlapping inquiries by the Centre appointing a Commission on its own and a State also a commission of its own to deal with the same matter. That is dealt with here in the proviso. The danger of overlapping is avoided by providing that if there is a Commission appointed by the Central Government already functioning then it will not be open to a State Government, except with the approval of the Centre, to appoint another Commission to inquire into the same matter. Similarly, if there is already a Commission appointed by a State Government functioning with respect to a matter which is within the jurisdiction of the State it will not be open to the Central Government to override the State Commission except in certain circumstances which are indicated, that is, unless the Central Government is of the opinion that the scope of inquiry should be extended to two or more States. Then of course this will be done, obviously not without reference to the State. So, as you will see, Sir, provision is made in this clause for avoiding conflict between the Centre and the State."

It will be seen that the provisos were enacted for the purpose of avoiding conflict between the Union and the State. The very object of the proviso to S. 3 is defeated by the construction sought to be put upon by the Union Government. The objection to the appointment of a commission by the Union Government when there is already a commission appointed by the State functioning is sought to be got over by the Union on the plea that by the impugned notification the inquiry is not directed against the same matter for which the State has appointed a commission of inquiry. In the written statement filed on behalf of the Union of India, it is contended that the matters referred to the Grover Commission of Inquiry appointed by the Union Government are those which are not covered by the terms of reference of the Hussain Commission of Inquiry appointed by the Government of Karnataka and that Annexure 1 to the notification dated May 23, 1977 lists such allegations contained in the Memorandum dated April 11, 1977 as are not at all included in the terms of reference of the Hussain Commission of Inquiry and that relating to allegations contained in Annexure II the said allegations stipulated that the Grover Commission of Inquiry will inquire into the said allegations excluding any matter covered by the notification of the Government of Karnataka dated May 18, 1977. It was submitted that while the matter referred to by the State Government is regarding various irregularities, the inquiry directed by the Central Government is for making an inquiry on charges of corruption, nepotism, favouritism or misuse of governmental power against the Chief Minister and certain other Ministers of the State of Karnataka. The notification of the Karnataka State Government appointing a Commission of Inquiry runs as follows:-

"Whereas allegations have been made on the floor of the Houses of the State Legislature and elsewhere that irregularities have been committed/excess payments made in certain matters relating to contracts, grant of land, allotment of sites, purchase of furniture, disposal of foodgrains, etc.;

Whereas the State Government is of the opinion that it is necessary to appoint a Commission of Inquiry to inquire into the said allegations;

Now therefore, in exercise of the powers conferred by sub-sec. (1) of S. 3 of the Commissions of Inquiry Act, 1952 (Central Act 60 of 1952) the Government of Karnataka hereby appoint Justice Shri Mir Iqbal Hussain, Retired Judge of the Karnataka High Court to be the Commission of Inquiry....."

The plea on behalf of the State is that the inquiry is directed against all the allegations that have been made on the floor of the Houses of the State legislature and elsewhere and the charges therefore comprehend all the matters that are found in the impugned notification. Further it was submitted that as the commission is to go into and determine as to who are the persons responsible for the lapses the inquiry would include charges against the Chief Minister also. As the purpose of the two provisos to S. 3 (1) is to avoid conflict, the words "the same matter" in the provisos should be given a wide interpretation and only matters that are not referable to the subject-matter of the inquiry by the Commission appointed by the State can be taken over by the Central. We were not called upon to go into the two notifications and determine which item in the notification of the Central Government is not covered by the State Government notification. In giving a wider meaning to the words 'the same matter' with a view to avoid conflict, the contention of the Central Government that the inquiry into the conduct of the Chief Minister about the same incident will make it a different matter cannot be accepted.

275. The contention as to the maintainability of the suit under Art. 131 of the Constitution may now be considered. Article 131 is as follows:

Subject to the provisons of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute-

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

(c)between two or more States,

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

The point is whether the dispute involves any question whether of law or fact on which the existence or extent of a legal right of the State depends. In other words, a suit would be maintanable if there is any infringement of a legal right of the State. The submission on behalf of the Union Government is that what is affected is not the legal right of the State but if at all that of the State Government or the Ministers concerned. Ministers may have a cause of action in which case the remedy will be by way of a petition under Art. 226. If the State Government feels aggrived they can also take action under Art. 226 but unless the legal right of the State is affected recourse to Art. 131 cannot be had. Relying on the General Clauses Act and the distinction that is maintained in the Constitution between the State and the State Government it was submitted that the State itself is an ideal person intangible, invisible, and immutable, and the Government is its agent. In order to appreciate the contentions of the parties it is necessary to refer to the relevant articles of the Constitution to determine the question as to whether any of the legal rights of the State is affected. Part VI of the Constituion relates to the States and Art. 154 provides that the executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through the officers subordiante to him in accordance with the Constitution. Article 162 provides that subject to the provisons of the Consitution the executive power of the State shall extend to the matters with respect to which the Legislature of the State has power to make laws. In other words the executive power of the State is co-extensive with the legislative power of the State. The executive power of the State will be exercised by the Governor with the aid and advice of the Chief minister and other Ministers of the State. According to the impugned notification the Commission of Inquiry is appointed for the purpose of making an inquiry into a definite matter of public importance, namely charges of corruption, nepotism, favouritism or missuse of governmental power against the Chief Minister and certain other Ministers of the State of Karnataka. The inquiry therefore is amongst other things regarding the misuse of the governmental power against the Chief Minister and other Ministers of the State. The executive function of the State which is vested in the Governor is exercised by him with the aid and advice of the Chief Minister and the Council of Ministers. The power is also exercised by the Governor either directly or indirectly through officers subordinate to him in accordance with the Constitution. The Governmental functions of the State are performed by the Governor as required by the Constitution with the aid and advice of the Ministers. The scope of the inquiry would inevitably involve the functioning of the executive of the State. The plea of the State Government is that its powers are derived from the Constitution and its existence and its exercise of powers as executive of the State is guaranteed by the Constitution, and the Centre cannot interfere with such exercise of executive functions. The question involves the extent of the executive power of the State and any intereference with that power by the Central Government would affect the legal right of the State. The plea on behalf of the Union Governemnt is that Art. 154 contemplates the exercise by the Governor of his executive power through officers subordiante to him in accordance with the Constitution. The submission is that when the powers are exercised through Ministers who, according to the learned counsel for the respondent, are officers the rights of such Ministers or officers are only interfered with and not the legal rights of the State. Further it was submitted that State is different from the Government of a State and if any action of the State (Govt.?) or the Ministers of the State is questioned the State as such cannot have any grievance. When the exrcise of the executive function of the State through its officers is interfered with by the

Central Government it cannot be said that the legal right of the State is not affected.

276. Strong reliance was placed by the Union Government on a recent decision of the Supreme Court in State of Rajasthan v. Union of India (AIR 1977 SC 1361). The States of Rajasthan, Madhya Pradesh, Punjab, Bihar ,Himachal Pradesh and Orissa filed suits under Art. 131 of the Constitution against the Union of India challenging a directive contained in a letter dated April 18, 1977 issued by the Union Home Minister to the Chief Ministers of the States as unconstitutional, illegal and ultra vires of the Constitution and for a declaration that the plaintiff States are not Consitutionally or legally obliged to comply with or give effect to the directive contained in the said letter. The power of the Central Government to dissolve the State Assemblies was questioned. A preliminary objection was raised to the maintainability of the suit on the ground that no legal rights of the State were infringed and that the State is different from the State Government and if at all any one was aggrieved it was the State Government and not the State. Chief Justice Beg observed that even if there be some grounds for making a distinction between a State's interest and rights and those of its Government or its members, the Court nedd not take a too restrictive or a hyper technical view of the State's rights to sue for any rights, actual or fancied, which the State Government choose to take up on behalf of the State concerned in a suit under Art. 131. Mr. Justice Chandrachud was of the view that when the State question the Constitutional right of the Union Government to dissove the State Assemblies on the grouds mentioned in the Home Minister's letter to the Chief Ministers a legal, not a political, issue arising out of the existence and extent of a legal right squarely arises and the suits cannot be thrown out as falling outside the purview of Art. 131. The learned Judge proceeded to express his view as follows (at p. 1396 of AIR SC):-

"The legal right of the States consists in their immunity, in the sense of freedom from the power of the Union Government. They are entitled, under Article 131, to assert that right either by contending in the absolute that the Centre has no power to dissolve the Legislative Assemblies or with the qualification that such a power cannot be exercised on the ground stated."

Bhagwati and Gupta JJ. were of the view that the exercise of the power in the case would affect the constitutional right of the State to insist that the federal basis of the political structure set up by the Constitution shall not be voilated by an unconstitutional assault under Art. 356 (1). As the suit sought to enforce a legal right of the State arising under the Constitution the suit could not be thrown out in limine as being outside the scope and ambit of Art. 131. Goswami and Untwalia JJ. were of the view that the legal right must be that of the State. When the Home Minister asks the Chief Minister of the Government of the States to advice the Governors to dissolve the Legislative Assemblies and the Chief Ministers decline to accept the advice it is not a dispute between the State on the one hand and the Government of India on the other. It is a real dispute between the Government of the State and the Government of India. It is no doubt a question of life and death for the State Government but not so for the as a legal entity as even after the dissolution of the Assembly the State will continue to have a Government for the time being as provided for in the Consitution. Fazal Ali. J. was of the view that the mere fact that letters were sent to the State Governemnt containing gratuitous advice would not create any dispute if one did not exist before nor would such a course of conduct clothe the State Government with a legal right to call for a determination under Art. 131 as the State did not possess a legal right. The State Government who have raised dispute are not covered by the word 'State' appearing in Art. 131 and therefore the suits

were not maintainable on that grounds also. It will be seen that four of the seven Judges were of the view that the suits are maintainable though Bhagwati and Gupta JJ. were of the view that there is a difference between the State and the State Government. Whatever the question that might have risen regarding the dissolution of the Assemblies, in the present case the dispute relates to the functioning of the State in exercise of the powers conferred under the Constitution and the State's legal rights are affected. The preliminary objection therefore fails.

277. To sum up taking into account the history of the development of the Indian Consitution and its scheme the impugned notifiaction impinges on the right of the State to function in its limited sphere. Further, the impugned notification is beyond the powers conferred on the Union Government under S. 3 of the Commissions of Inquiry Act, 1952. In this view the question whether S. 3 of the Commissions of Inquiry Act, 1952 is ultra vires of the power of Parliament or not does not arise.

278. It is necessary that Commission of Inquiry should be appointed in order to maintain and safeguard the purity of the Union and the State administration. But such Commission of Inquiry should be strictly in accordance with the Constitution and should not affect the Centre-State relationship. The proposal now pending before Parliament for appointment of a Lok Pal to conduct such inquiries is a move in the right direction, if sufficient constitutional safeguards are provided for the institution of Lok Pal.

279. In view of the judgment the first issue whether the suit is maintainable is answered in the affirmative. Under Issue No. 2 the impugned notification is ultra vires of the powers of the Central Government conferred on it by S. 3 of the Commissions of Inquiry Act. In this view issue No. 3 does not arise for consideration. The suit has to be decreed as prayed for.

ORDER

280. In accordance with the view of the majority, the suit is dismissed with costs.

Suit dismissed.