

12.29 hrs.

STATUTORY RESOLUTION RE : DIS-
APPROVAL OF COMMISSIONS OF
INQUIRY (AMENDMENT)
ORDINANCE, 1986
AND
COMMISSIONS OF INQUIRY
(AMENDMENT) BILL—Contd.

[English]

MR. DEPUTY SPEAKER : We will now take up Items 10 and 11 together. Shri Banatwalla.

SHRI G. M. BANATWALLA (Ponnani) : Mr. Deputy Speaker, Sir, it is rather unfortunate that the Government deemed it fit to bring the Ordinance immediately after the last Session of this House was prorogued. One cannot help the feeling that the Government was waiting for the Session to come to an end and soon thereafter came out with the Ordinance. Therefore with respect to the Ordinance I have only to submit that the Ordinance represents a blatant misuse of the powers that are granted by the Constitution with respect to the issue of ordinances.

Sir, as far as the provisions of the Bill are concerned, I must submit that one must take a balanced attitude to the Bill. The Bill has to be judged on its merits. Various provisions have to be judged on their merits. A plea has been invoked in the interest of the security of the State and we are told that at times, the security of the State may be jeopardised if the report of the Commission is placed on the Table of House Sir, I must concede that when such a plea invoking the interest of the security of the State is made, one must take that plea with due caution. That plea cannot be taken in a light manner. Every restraint must be adopted. It must be conceded that if the laying of any paper whatsoever on the Table of the House may jeopardise the interest of the security of the State, then the considerations of the security of the State must prevail. I must therefore, give my qualified support to the provisions of the Bill. However, there must be certain inbuilt provisions, inbuilt safeguards in the Bill in order to ensure that

the Government of the day may not misuse the powers and may not come to arbitrary decisions with respect to not placing the reports on the Table of the House. Therefore Sir, while I say that the interests of the security of the State must be our paramount consideration and the Government must have the power on that plea to decide whether to place the report of the Commission on the Table of the house or not, but the sametime, I have to stress that the provisions of the Bill must contain some safeguards to see that the powers are not misused. Sir, what is the object ? We cannot give a blanket power without any inbuilt safeguards to any Government to withhold the reports of the Inquiry Commission. What is the object in appointing an Inquiry Commission ? I was told or this House was told that the Commission of Inquiry is a fact-finding body. Sir I differ. A Commission of Inquiry is not a mere fact-finding body; it is something more than that. If the objective is merely to ascertain facts or to merely gather the evidence for the Government, then ordinary investigating agencies can do that work. There is no need for an Inquiry Commission. Therefore, an Inquiry Commission should not be treated on par with just an ordinary investigating agency. Why is an Inquiry Commission appointed ? It is appointed to gather evidence in order to satisfy the public about the truth of the state of affairs concerning the matter which had created a crisis of public confidence There is therefore, a certain matter agitating the minds of the public. The public has to be satisfied. There is a crisis of the confidence. Therefore, we tell the Government that instead of depending merely on the investigating agency to find out the facts for themselves, a Commission of Inquiry should be appointed in order that the confidence of the people is rehabilitated and also to enable the Government to take legislative and administrative measures.

Therefore, I submit that a blanket power with the Government to decide arbitrarily whether to place a report on the Table of the House or not will defeat the very purpose of appointing a Commission. Therefore, I concede that where the Government comes to the conclusion that the placing of the report on the Table of the House will jeopardise the

interest of the security of our country, in that case, the report may not be placed on the Table of the House, provided that there is some safeguard in the provisions of the Bill in order to see that the power has not been arbitrarily used. For that purpose, I have an amendment to move at the appropriate stage. The Inquiry Commission is most competent to decide and recommend in its own report, as to whether the report may or may not be placed on the Table of the House. Therefore, let the Government make a plea to the Inquiry Commission, and let the Inquiry Commission while submitting the report, give a recommendation; and that recommendation should be binding on the Government as to whether the report should be placed before the House or not.

Further, you may not misuse the powers; but there are Inquiry Commissions being appointed not only by the Centre, but also by the States. Any State, after appointing a Commission, may misuse the power. It is not a question of expressing no confidence in the powers that be today; but it will be in order to have a Bill with the necessary safeguards in-built into it, Therefore, I submit that an Inquiry Commission should not be taken as a mere fact-finding body, i.e. to find facts for the Government. Today, Government has its own ordinary investigating agencies. This Commission is appointed because a particular issue agitates the mind of the people; and when the report comes, the people have every right to know as to what has happened with respect to the matter that was submitted to the Commission.

PROF. N. G. RANGA (Guntur) : Government must give reasons.

SHRI G. M. BANATWALLA : How is a Commission appointed? A Commission may be appointed by this House also. A Commission may be appointed by the Government, or it may be appointed pursuant to a resolution passed by this House. Will it not be an anomalous situation if, taking the public agitation into consideration this House directs the Government to appoint a Commission of Inquiry, and this House itself is left in a position where it cannot get the report placed on the Table of the

House? Therefore, that too is an anomalous situation.

The 24th Report of the Law Commission has stated specifically that specially when a Commission of Inquiry is appointed pursuant to a resolution passed by this house, in that case the report must be laid on the Table of the House. That recommendation has also been given a go-by.

Look at the reasons, the grounds on which the report may not be placed on the Table of the House. Security of the State, I have already conceded. I have already conceded that if the Commission of Inquiry itself suggests in its report that the interests of security are involved and, therefore, the report may not be placed on the Table of the House, that recommendation should be binding on the Government; and the report may not come. (Interruption) The Commission and the person constituting it would be having a better knowledge to decide as to whether the publication of a report would jeopardise the security of the State, or not. (Interruption) Therefore, there have to be certain standards. There have to be some in-built safeguards or the other, in order that the powers are not misused.

Another reason that is given, is 'in the interest of friendly relations with other countries'. This is very surprising. Why should the entire nation not be taken into confidence with the state of affairs, as far as our foreign affairs are concerned? There is no reason why the nation should not be told as to what the state of affairs is, with regard to our relations with other countries. The term public interest is a very vague term, and I most humbly submit that you cannot serve public interest by keeping back truth from the public itself.

PROF. MADHU DANDAVATE (Rajapur) : One printing mistake is there; that is why this has happened.

MR. DEPUTY SPEAKER : The professor is often finding spelling mistakes.

SHRI G. M. BANATWALLA : We are also told that, after all a resolution will come

[Shri G. M. Banatwalla]

before this Parliament for the approval of the notification; and, therefore, Parliament is supreme, and that if Parliament rejects that resolution, then the report will have to be placed on the Table of the House. I must submit that this method of bringing a statutory resolution for the approval of the notification stating that the report is not to be placed on the Table of the House—such a device is nothing but a fraud on parliamentary democracy. (*Interruptions*)

Consider the practical difficulties. Suppose you bring a resolution (*Interruptions*) saying that a particular report is not to be placed on the Table of the House on account of public interest. How am I to decide on what grounds it has been decided so? I have no material before me to decide as to whether the plea taken by Government is correct or not. I have just a bald statement of the Government itself that public interest will not be served thereby. I have no other material with me, on which to come to a decision. Therefore, it is the height of the thing. It is rather arrogant to say that this Parliament should make arbitrary decisions without any facts whatsoever, on the basis of which it can approve or disapprove the resolution.

I, therefore, say that I have given my qualified support to the Bill. Of course, powers are to be there with the Government.

PROF. MADHU DANDAVATE : The debate is on the disapproval Motion.

SHRI G. M. BANATWALLA : The disapproval Motion will come later on. First we are taking up the Bill, and I have said that while powers may rest with the Government, there must be certain in-built safeguards to ensure that the powers are not arbitrarily used. Who knows the Janata Party Government there in Karnataka may misuse the power...

THE MINISTER OF STATE IN THE
MINISTRY OF PERSONNEL PUBLIC
GRIEVANCES AND PENSIONS AND

MINISTER OF STATE IN THE MINISTRY
OF HOME AFFAIRS (SHRI P. CHIDAM-
BARAM) : Very likely.

SHRI G. M. BANATWALLA : Who knows the West Bengal Government there may misuse the power there.

PROF. MADHU DANDAVATE : Knowing our capacity to misuse it, I am asking for its disapproval.

SHRI G. M. BANATWALLA : Therefore, in-built safeguards are an absolute and a practical necessity.

SHRI G. G. SWELL (Shillong) : I am happy to see my good friend Prof. Dandavate back in his seat. I listened to his speech with the usual interest. I also listened, with usual interest, to the speeches of my other good friends Shri Somnath Chatterjee, Shri Indrajit Gupta and also Shri Dinesh Goswami yesterday. They are good Members of this House. They are knowledgeable.

SHRI E. AYYAPU REDDY (Kurnool) : By implication, are you suggesting that others are not?

SHRI G. G. SWELL : Not at all. I am referring to their speeches.

PROF. MADHU DANDAVATE : He is saying that we are good, but you are better.

SHRI G. G. SWELL : I am saying this, because I will refer to their speeches—that is why. They are hard working, knowledgeable and articulate. But I must say that on this occasion their arguments have been specious and diversionary. In his whole speech Shri Dandavate dealt with the technicalities of the promulgation of the ordinance, why it was done at this particular time, why it should not be done at this particular time and so on and so forth. And a lot of time has gone into the discussion whether the other House, the Rajya Sabha, was only adjourned or it was prorogued or whether it was right or whether it was proper. But in substance it made no difference. What difference would it have made

273 Stat. Res. re : Disapproval SRAVANA 8, 1908 (SAKA) Stat. Res. re : Disapproval 274
of Comm. of Inq. (Amdt.) Ord. 1986 of Comm. of Inq. (Amdt.) Ord. 1986
& Comm. of Inq. (Amdt.) Bill—Contd. & Comm. of Inq. (Amdt.) Bill—Contd.

if the Government had come with a Bill in the last session itself or if the Government had come with a Bill in the Rajya Sabha ? The effect would have been the same.

I would agree with Mr. Dandavate and other friends that powers of ordinance should be resorted to as sparingly as possible. But you cannot obviate the exigency of an ordinance. Things happen in this country at the time when two Houses of Parliament are not in session, the Government is bound to take some action and that action can come in the form of an ordinance. Whatever might be the reason as to why this ordinance was promulgated at this particular time, I am not in a position to say. The Minister of State of Home Affairs will be in a position to say that. There could be many reasons. The Government has many things on its plate, many things to be done. Suddenly this thing comes up at a time that they are before a deadline and, therefore, they have to go to do it. That much of concession has to be made to any Government. Apart from that, I do not find much in what Prof. Dandavate has to say with regard to the substance of the ordinance and the substance of the Bill. My friend, Shri Somnath Chatterjee, I am happy to see him here...

PROF. MADHU DANDAVATE : All other substantial arguments regarding the merits of the case I have already put forward at the time of opposing this particular ordinance at the introduction stage. Unfortunately, you did not read that. Of course, you were in a hurry I could see.

SHRI G. G. SWELL : When I listened to Shri Somnath Chatterjee speech with extreme care ..

SHRI SOMNATH CHATTERJEE (Jadavpur) : You are still not impressed.

SHRI G. G. SWELL : No, I have said in the beginning that most of the arguments were specious and diversionary.

SHRI SOMNATH CHATTERJEE : You are speaking without conviction,

SHRI G. G. SWELL : I will prove it to you that I have conviction. Shri Somnath Chatterjee dealt a great deal about the procedure in the Supreme Court. He made a reference, he quoted from certain ruling that when a claim is made for the privilege of not disclosing any information, the Supreme Court has the right to call for that information and to decide. That is what he said.

SHRI SOMNATH CHATTERJEE : Go through the document.

SHRI G. G. SWELL ; But this is not the Supreme Court.

SHRI SOMNATH CHATTERJEE : Therefore, the principle of privilege should not have been given. Why are you ignoring this point ?

SHRI G. G. SWELL : We are not discussing the Supreme Court here.

MR. DEPUTY SPEAKER : I request the Hon. Member to address the Chair. No arguments like that.

SHRI G. G. SWELL : We are not discussing the Supreme Court and it is not right and proper for us...

SHRI NARAYAN CHOUBEY (Midnapore) : You hear us with rapt attention because we always talk sense.

MR. DEPUTY SPEAKER : You listen to him.

SHRI G. G. SWELL : I listened to you all very carefully. Now listen to me also.

We are not here to discuss the procedures about the Supreme Court. We are ruled out of that; we cannot do that. But what I am saying is that we are here sitting in Parliament to discuss a particular issue and it is for us to take an independent decision on it. That is what I am trying to say.

PROF. MADHU DANDAVATE : You are depending on them.

SHRI G. G. SWELL : My friend Shri Indrajit Gupta made a lot about the freedom of speech and freedom of receiving information. I fully agree. But who stops him from getting information? This Bill does not say that information should not be given to him.

It does not say so.

SHRI SAIFUDDIN CHOWDHARY (Katwa) : It does not say so.

SHRI G. G. SWELL : The question of not divulging any matter which is not in the public interest has been a time-old practice in this House. Whenever a Minister answers a question and questions are put by the members, it is open for the Minister to say that it is not in the public interest. That is a time-old practice accepted by this House.

SHRI SOMNATH CHATTERJEE : Also a proclamation.

SHRI P. CHIDAMBARAM : That is the privilege of the Government.

SHRI G. G. SWELL : And here what does this Bill say? Exactly, what the Bill says here is what has been the practice in this House.

PROF. MADHU DANDAVATE : An inherent right to hide the skeletons.

SHRI SOMNATH CHATTERJEE : The same argument was put in support of the Emergency.

SHRI G. G. SWELL : You accept that this is the practice in this House that we give to the Government a right to withhold information when it is considered that it is not in the public interest. That has been accepted.

SHRI NARAYAN CHOUBEY (Midnapore) : You from a committee, it goes into the inquiry and... (Interruptions).

SHRI G. G. SWELL : What I am submitting is the same, that what this Bill seeks is only this. You may ask me, what is the need of the Bill? Or, what is the need of the ordinance? You may ask me that. It is necessary because of the amendment of the Commissions of Inquiry Act which made it incumbent on the part of the Government to lay on the Table of the House. The Government had no choice. It had to do it. But here, the Government is faced with a situation in which it is in possession of certain facts—I do not know what they are—certain things have been revealed by the Commission that the Government has appointed.

AN HON. MEMBER : It was appointed by the Government.

SHRI RAJ MANGAL PANDE (Deoria) : In the very commission they have mentioned it. They recommended that it is in the public interest that it should not be divulged.

SHRI NARAYAN CHOUBEY : How does he know it Sir?

MR. DEPUTY SPEAKER : Let him complete his speech.

[Translation]

SHRI NARAYAN CHOUBEY : He is lucky.

[English]

MR. DEPUTY SPEAKER : Let him conclude his speech. The Minister will answer for that.

SHRI SOMNATH CHATTERJEE : Some are super Members!

MR. DEPUTY SPEAKER : Let him conclude his speech.

SHRI G. G. SWELL : I am on my legs. I am arguing my point and my friend here has supplemented that information, and it is on the record. I do not know what it is. But what I am saying is that the Commission after its inquiry has revealed certain facts and the Government, after considering those

things, conceded that it would be harmful, harmful to the sovereignty and integrity of this country, harmful to the security of the State and friendly relations with a foreign State, and not in the public interest, whatever it is—to disclose them.

(Interruptions)

MR. DEPUTY SPEAKER : Mr. Swell, please address the Chair.

SHRI G. G. SWELL : It is all right. It is all in a Parliamentary debate, give and take.

SHRI SOMNATH CHATTERJEE : He can look after himself. He is our Deputy Speaker, Mr. Swell

SHRI G. G. SWELL : In a debate give and take and thrust is the essence, is the spice of a discussion. It is all in good faith.

SHRI BALKAVI BAIRAGI (Mandsaur) : One Choubey is sufficient to spoil the debate.

SHRI G. G. SWELL : What I am saying is that this Bill is necessary in view of the amendment to the Commissions of Inquiry Act. But what that the Government is claiming here is nothing more than what has been the practice in this House. This is what I said. Of course, I will agree with you. I think you were in the Chair yesterday. I would agree with Mr. Dinesh Goswami that because I am against something, so that should not even be mentioned in the House. I am not happy that certain quotes objection was raised against made from certain magazines here. There was so much of noise about it. Let it be there. What does it matter. This is the freedom — freedom of the Press in this country, freedom of information. There should not be any objection to that. This is exactly what it is.

I would like to make another point. This is only an enabling provision that the Government may do it, may not do it. It is not a blanket sort of stopping and kind of information. No. It is sensitive, it is selective.. (Interruptions).

PROF. MADHU DANDAVATE :
Enabling like emergency provisions

SHRI SOMNATH CHATTERJEE :
Enabling like Preventive Detention.

SHRI G. G. SWELL : Well, it is in the Constitution. It depends on how you use it. It is on a case by case basis. Now I say that the Government has laid on the Table of the House, the notification with regard to the Thakkar Commission's Report that it may not be laid on the Table of the House. It is for the House to decide... (Interruptions).

SHRI SOMNATH CHATTERJEE :
How? Without knowing the contents... (Interruptions).

MR. DEPUTY SPEAKER : Will you please listen to his speech first ?

SHRI G. G. SWELL : I do not know. It is for you to decide whether the Government has been right or has been wrong in not laying this. The yardstick of cause will be what is said in this Bill—in the interest of the sovereignty and integrity of India, the sovereignty of the State, the friendly relations and in the public interest. If you say that every sensitive, every secret information with the Government should be laid on the Table of the House... (Interruptions).

SHRI SAIFUDDIN CHOWDHARY :
Nobody is saying this.

SHRI G. G. SWELL : All right, if you do not say that, then you also accede this, privilege to the Government. After all, a judgement has to be subjective. If you are in the Government tomorrow, you would claim the same thing... (Interruptions). When the Government is of the opinion that it is not in the interest of the sovereignty and integrity of the country or in the public interest, you may argue that... (Interruptions).

SHRI SAIFUDDIN CHOWDHARY :
How is it not in the interest of the country, that is what we want to know. We should know what is for the integration and what is against the integration.

279 Stat. Res. re : Disapproval of JULY 30, 1986 Stat. Res. re : Disapproval of 280
Comm. of Inq. (Amdt.) Ord. 1986 Comm. of Inq. (Amdt.) Ord. 1986
& Comm. of Inq. (Amdt.) Bill—Contd. & Comm. of Inq. (Amdt.) Bill—Contd.

MR. DEPUTY SPEAKER : What is this discussion going on like that, I do not understand.

PROF. MADHU DANDAVATE : I will only seek clarification.

MR. DEPUTY SPEAKER : No. You can seek clarification from the Minister. He is not a Minister, he is a Member. He wants to express his ideas. Why do you want to seek clarification from him ?

PROF. MADHU DANDAVATE : Only one clarification. As far as section 6 is concerned, it says that the matter will come before the House and then if the House decides that it is such an important thing that it should not be laid on the Table and this power should be given, that power is given. I want you to tell me, without even knowing what is contained in that Report, can we exercise our right to vote and right to decide ? What is the *modus operandi* for that ? Please tell us that.

SHRI SOMNATH CHATTERJEE : How do we apply our mind ? How do we apply our mind as to whether it is against the sovereignty of the State and integrity of the State when we do not know what is there ?

SHRI G. G. SWELL : In effect, what Prof. Dandavate is asking is that every secret information with the Government should be placed before the House...(*Interruptions*).

SHRI NARAYAN CHOUBEY : It is a distortion, Sir.. (*Interruptions*).

MR. DEPUTY SPEAKER : You finish your speech. This kind of discussion we can have in the Central Hall. You are to address the Chair. You cannot enter into a discussion like that. I cannot allow this kind of a discussion here.

SHRI G. G. SWELL : In effect, he is asking that the contents of this Report, which the Government thinks is not in the public interest and is against the sovereignty and integrity of India, should be published.

13.00 hrs.

If you say that these things should be there, then the whole purpose is defected.

PROF. MADHU DANDAVATE : How to exercise it ?

SHRI G. G. SWELL : This is all the Bill is all about and there is no need...

SHRI SOMNATH CHATTERJEE : He is a Class I debater.

MR. DEPUTY SPEAKER : Please wind up.

SHRI G. G. SWELL : There is absolutely no need to read more in the Bill and to try to achieve political advantage.

SHRI P. CHIDAMBARAM : The total time allotted for this Bill was four hours. Already 3.5 hours are over. I do not know for how long the Hon. Members will speak ? I want to know for how long we are going on with this ?

SHRI NARAYAN CHOUBEY : So long as Members want to speak.

MR. DEPUTY SPEAKER : There are many members to speak. Can we continue the debate ?

PROF. MADHU DANDAVATE : Lunch hour will not come in the way of national integrity.

SHRI P. CHIDAMBARAM : How long will this debate continue ?

SHRI SAIFUDDIN CHOWDHARY : It will continue till the truth comes out.

SHRI SOMNATH CHATTERJEE : The Parliamentary Affairs Minister can move for lunch.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRIMATI SHEILA DIKSHIT) : If you are feeling hungry, we can do that.

Is it the consensus of the House to rise for lunch even though the Business Advisory

Committee has recommended that the House may sit during lunch hour to-day ?

MR. DEPUTY SPEAKER : Is that the sense of the House ?

SOME HON. MEMBERS : Yes.

SHRI P. CHIDAMBARAM : I hope all the Hon. Members will finish by 3 O' Clock.

MR. DEPUTY SPEAKER : By 3 O' Clock the debate will be over.

PROF. MADHU DANDAVATE : We will cross the bridge when we come across the bridge.

MR. DEPUTY SPEAKER : The House stands adjourned for lunch to meet again at 2 O' Clock.

13.04 hrs.

*The Lok Sabha then adjourned for
Lunch till Fourteen of the Clock*

*The Lok Sabha reassembled after Lunch
at five minutes past Fourteen of the
Clock*

[MR. DEPUTY SPEAKER *in the Chair*]

STATUTORY RESOLUTION RE : DISAP-
PROVAL OF COMMISSIONS OF
INQUIRY (AMENDMENT)
ORDINANCE, 1986
AND
COMMISSIONS OF INQUIRY
(AMENDMENT) BILL—*Contd.*

[*English*]

MR. DEPUTY SPEAKER : Now, Mr. Mewa Singh Gill may speak.

I request the Members to be brief. We want to conclude this debate by 3 o'Clock. The Minister is going to reply at 3 o'Clock.

SHRI M. S. GILL (Ludhiana) : Mr. Deputy-Speaker, in the Revised List of Business for today I find that items Nos. 10 and 11 are to be discussed together. Item No. 10 is a Statutory Resolution moved by

Prof. Madhu Dandavate. Therefore, I propose to discuss these two together here in this House.

We have heard the discussion here on the Statutory Resolution. I cannot resist my impulse to support the Statutory Resolution moved by Prof Dandavate and oppose the passage of the Bill inasmuch as in my opinion and also in the opinion of my Party this Bill is a negation of the democratic principles which have been established in various democracies the world over. In my opinion, this is an attempt on the part of the Central Government to establish the supremacy of the Executive over the sovereign august House, this Legislative wing, by just withholding certain informations which are the crux of the whole problem, and in my opinion this Bill is an effort on the part of the Central Government to curtail certain rights of this august house which they have got, to know certain facts, to know the facts which are concerned with the people, the voters whose representatives they are. Therefore, I oppose this Bill. The Central Government by producing this Bill has marshalled all legal phraseology and various other factors to withhold the information from this august House. For example, they have said that in the interest of sovereignty if they deem it fit, they may withhold the information which even a Stenographer of the Commission knows it. They want to withhold this information from the representatives of the people which is ordinarily known or is understood by the councils who marshal and produce the evidence before the Commission. It is evident, as is clear from Article 51A of the Constitution, that every citizen has got a fundamental duty to up hold the sovereignty, unity and integrity of the country and these representatives who are sitting here in this august House have taken oaths by the Constitution here to up hold the integrity and unity as well as the sovereignty of the country. Yet, this information is being sought to be withheld from this House, from these representatives, on the ground that the sovereignty of the country may be endangered. What is sovereignty after all ? Sovereignty is nothing but a declaration of the people to be the master of their fate and final persons to determine their present and their future without the intervention from any other forces or any

[Shri M. S. Gill]

authority and also determination to uphold this declaration at the cost of their lives, at the cost of their property and even at the cost of the future of their children or their generation. This is sovereignty. Can we ever believe that if any information is passed on to the Members of this august House who are the upholders of the sovereignty of the country, the sovereignty of the country will be endangered? I wonder whether these phraseologies have been pressed into service only to mislead the people. Secondly, the phraseology which they have pressed into service is the integrity of the country. The integrity of the country is a force opposed to the forces of disintegration. This is a spirit which keeps the country united and keeps the people together. Now, these people together. Now, these people who have come to this House are the best judges as to what is the idea which goes against the integrity of the country or in favour of disintegration. If from this House, in the name of integrity of the country, certain information is kept away, then, of course, I would say that the provisions of the Bill are only a Baseless statement.

The third reason which has been pressed into service is, jeopardising friendly relations of a foreign country. Now, there are only two possibilities. One is that the findings of the report are in favour of the foreign country and the other is that they are against the foreign country. If they are in favour of the foreign country, of course, friendly relations will never be in danger. But if the findings are against the foreign country, then it is a misnomer to call that country a friendly country. Therefore, I would submit that the phrases are used to withhold information to which the representatives of the people are otherwise entitled to.

The fourth point pressed into service is the security of the State. For the last 34 years, ever since this Act was passed in 1952, we have had numerous commissions and the reports are published and placed on the Table of the House. But not a single incident came at any point of time, during the last 34 years, where the Government came to the conclusion that placing of the information on the Table of the House will

endanger the security of the State. How is it that as soon as the report of the Thakkar Commission was submitted, all of a sudden, the Government have come to the conclusion that the information contained in the findings of this Commission will be against the interests of the security of the State. It is not possible to judge all these things in right perspective.

There may be something for consideration of the Government that people may not know certain findings. Well, for that purpose action can be taken that sort of information may not go to the Press or may not go to the media. But how it is that the representatives of the people in this House should be kept away from this information and debarred from getting this information. To keep this House ill-informed is to keep this House misinformed.

Therefore, Mr. Chairman, I oppose this Bill tooth and nail and I think, in my opinion this Bill is just a counter to the sovereignty of this House. It is a step towards assuming more powers by the Executive and the Government. It is a sign of dictatorial temperament and therefore, this Bill should not be passed.

With these words, I oppose this Bill with all the force at my command.

14.13 hrs.

SHRI MULLAPPALLY RAMA-
CHANDRAN (Cannanore) : Sir, I rise to support the Commissions of Inquiry (Amendment) Bill, 1986 which seeks to replace the ordinance promulgated on the 14th of May, 1986.

In practice, the original Act of 1952 was found to have inherent infirmities as well as certain lacunae. The past experience in the working of the Act revealed that the Act did not provide for certain contingencies.

Today our country is passing through a very critical phase and presumably it is the Thakkar Commission report which was the immediate cause for the promulgation of the ordinance. In this respect, we should bear in mind that the Government is the best judge in respect or any situation con-

cerning the people and whether the decision on the disclosure or otherwise of any report of the Commission is in the best interest of the public.

Whenever we have intended to bring about suitable amendments in the various Acts, it was the necessity of the hour that warranted the change. Take, for instance, our very Constitution which has been amended many a time. We have brought about all these amendments in the larger interests of the society and they have had the complete sanction of the supreme law-making body of our country.

Of course, looking at it from a peripheral angle, many of our amendments may appear to restrict certain constitutional rights and privileges. However, going deeper into the various aspects and objects of these amendments, we can find that they were prompted by the urgency of existing situations.

Like any other amendments, this amendment also has attracted a good amount of criticism.

The Act of 1952 provides that :

“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 any Commission on the enquiry made by it together with a memorandum of action taken thereon within a period of six months of the submission of the report by the Commission to the appropriate Government.”

Apparently, the law-makers had not then foreseen the practical difficulties involved in the clause. So also it did not provide for contingencies that could arise in cases involving sensitive issues or matters into which a Commission makes a probe. Hence it may be noted that the original Act does not have any enabling provision to meet any such situations or contingencies.

The present Ordinance inserted two new sub-sections (5) and (6) in Section 3 of the

Act. New Sub-section (5) provides that the provisions of sub-section (4) of the said Section 3 shall not apply in cases where the appropriate Government, being satisfied that in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or in the public interest, it is not expedient to lay such report before the House of the People or the Legislative Assembly of the State, issues a notification to that effect in the Official Gazette.

It is this clause probably that has caused some of the Hon. Members on the other side to raise vehement criticism suggesting that the power of the Parliament is curtailed or curbed.

By virtue of the new sub-section (6), the appropriate Government is required to lay every notification issued under sub-section (5) before the House of the People or the Legislative Assembly and seek approval thereon within the period mentioned therein.

So, it is totally baseless to allege that the rights of the Parliament are infringed. In fact, it upholds the rights of the Parliament which is sovereign.

In conclusion, I totally support this amendment.

SHRI K. P. UNNIKRISHNAN (Badagara) : The Bill that has been introduced and the statutory resolution that has been moved to amend Section 3 of the Commission of Enquiries Act, constitute, to put it succinctly, a brazen attack and assault on Parliament and its rights, on the very concept of executive accountability, answerability and responsibility as reflected in our Constitution and set procedures of the House and the legislation it undertakes. It is indeed a crude attempt to introduce a Government ‘in purdah’. But it is tragic to note that this Government which only a few months ago talked of creating a new spirit of reconciliation and democratic accountability, like Borbourns, have learnt nothing and forgotten nothing !

It is a remarkable achievement by any standard of which many of the tinpot dicta-

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tors of the third world countries would be proud of ! But it is an act which reflects the desire of this Government not to pursue the parliamentary path and the path of democratic accountability but to continue with the remnants of an authoritarian past which we had thought was over. I do not want to dwell at length on it—because I know the considerations of time that you have,—or on the misuse or ordinance-making powers which has been discussed in this House. I was very sad when my dear friend, Mr. Chidambaram yesterday briefly mentioned and tried to answer a technical point by saying that this ordinance was necessary because the Rajya Sabha was not in session at that time. It is a technical point. I know his skill in this kind of argument. And I do not want to get on to an argument with him on this point. But the question I would like to pose in this House is : did you notice in the Lok Sabha bulletin when this House was prorogued last time ? The date is important. If you go through it and compare the date of prorogation of the last session and the dates of prorogation of this House in the last one year or more, you will find the unseemly haste with which this House was prorogued last time the Parliament was not taken into confidence about this move throughout last year when questions were being answered in this House—because the idea was to perpetrate a fraud on this Parliament and that briefly explains this Bill and ordinance that preceived it. And I can challenge any one on this score. Therefore, it makes sense to say that the intention of this Government right from the beginning and all the time was to conceal this report. This was being cooked behind our backs as I said.

I am not surprised that a Party and a Government which accepts rule through ordinances and which patronises repromulgation of ordinances in the States contrary to all that we have said and done in this House and contrary to the letter and spirit of the Constitution, can alone be so brazen. The ordinance in question strikes at the very root of our Constitutional edifice, not to talk of its letter and spirit and its underlying basis and assumptions and I am sure Mr. Chidambaram knows the doctrine

of pith and substance its very pith and substance I repeat.

Now it is said that Mr. Justice Thakkar, an eminent jurist and Judge of the Supreme Court himself, was reluctant to take the onerous and crucial responsibility, the historic task that was assigned to him except in strict confidence. I do not know that he meant or what they meant that only on this condition that this report would not be made public that he was prepared to accept this assignment. I cannot believe for a moment because I have great respect for Justice Thakkar that he did not know the amplitude and compulsions of the Commission of Inquiry Act and the parliamentary accountability and the historic compulsions in this very specific case with which he was charged to inquire into. If that were so, why was not the Parliament told earlier ? They had plenty of opportunities since January 1985 when questions were asked as I said earlier—that this report will never see the light of the day. And is it that the Government could not find and with due humility and respect may I say, anyone-else who could risk himself if there was any risk involved,—to perform his duty within the ambit of the statute ? It cannot be a private enquiry for the Prime Minister or any other Minister or for the Government, for Indira Gandhi's assassination and sequence of events leading to it has a background which needs to be explored, closely examined and enquired into and the truth found out. The Commission underwent through its labours and gave its first interim report as early as 19th November 1985. What was the Government doing during this six month period which ended on May 1986 ? Am I to conclude that this Government does not know its own mind and its statutory responsibilities ? There you will have to agree with me when I say that it is a mindless government.

The main objective of the Commissions of Inquiry Act is to enquire and establish facts in a matter of grave public importance. Mr. Somnath Chatterjee and Prof Dandavate was in this House, in the Fifth Lok Sabha when this Commissions of Enquiry Act underwent a change, and a drastic change and the then Prime Minister herself, if I remember right, said at that time that it was of crucial importance that truth must be

found out and placed before the Parliament. We were all members then and we were deeply involved in it, in this amendment of 1971, and unanimous in our opinion that such reports shall be presented to the House. No parliamentary Government can function in a purdah. That is my charge to-day. We cannot hide issues of momentous importance. But today the clock is put back. The Parliament knew its mind when it was legislating this amendment, specifically, of Section 3, that such occasions will arise when such reports of momentous importance will have to be placed and what is more publicly debated; on the basis of facts established by persons who can be trusted to function independently, judicially—not in camera—and the reports are so important because facts are sacred. Therefore I charge this Government of having made a scandalous misuse first of the Ordinance-making powers and then committed a fraud on Parliament.

Sir, 31st October, 1984 was a great divide in the history of India the day of the tragic assassination of the Prime Minister Indira Gandhi. The nation was aghast and went through a trauma. It was not merely trauma or a shock but an event which deeply stirred the consciousness of the people of this country and the world. They were keen to know as free citizens of this country—whether on this side or on that side—regardless of our differences and affiliations, and they had the right to know as to how this could happen. And how it happens in terms of sequence of events, whether this dastardly crime could have been averted; whether there were lapses or dereliction of duty on the part of those charged with the responsibility of protecting the late Prime Minister's life and in charge of her security arrangements. People were concerned and Press reflected this concern and the Parliament had to be concerned. And we have a right to know what happened. Therefore, to go behind the plea public interest and of security of the State and to prevent Parliament from exploring it, publicly debating it and having free access to this information and answers to all these vital questions, constitute a grave contempt of Parliament. And what is of graver import is that it shows tremendous contempt for the feelings and rights of millions of our people even of people you claim to represent.

Sir, the question before us is whether or not there was a conspiracy—national or international! You remember the election campaign of 1984 when you went around and talked of an international conspiracy; yet another national conspiracy and had charged some of us by saying that we were in collusion with those who produced the Anandpur Sahib Resolution! Do you remember that? Did you say that? The question is whether those charged with security were competent or incompetent? And after the event did they provide her medical attention? Could she have been saved her precious life? Whom does this veil of secrecy help? Do you want these gnawing doubts to remain the skeletons to remain in the cupboard that will continue to rattle? It is said on one hand that the Commission had indicted many officers and men. It is also said—that is what we read in the Press that it had given a clean chit to one Mr. Ratan Sebgal, Deputy Director, Intelligence Bureau, who was himself looking after the Prime Minister's security and who was solely put in charge. But one who had gone on a Roman Holiday—even when he was not to leave the station—he had a holiday in Rome! Who slipped and where? Was it the Home Ministry which was in overall charge of security? Was it the Intelligence Bureau and the other security agencies? Was it the Delhi Police? Parliament and the people are entitled to know this. Was there a conspiracy as was alleged? I invite your attention to this very important thing. The Government cannot run away. Was it not said in the Executive Intelligence Report, a journal, that there was a conspiracy giving details of conspiracy. Was it true or not? Has this Government got any moral right, authority to come and say that this is wrong, or that is right. When you fiddle with facts. Who are the people involved? Was there a third assassin, as was written about in the papers abroad.

My friend talked about a 'film' or Video Tape. Who were the dramatis personae? Parliament is entitled to know; people are entitled to know. Therefore, it is the duty of any democratic Government to reveal all this by placing such reports of momentous importance on the table of the House. It cannot be that an agreement were between the Prime Minister and Justice Thakkar, however eminent he is and whatever may be his

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reservations if he had any—, I do not know;—they should put it on the Table of the House—explain clearly his reservations any agreement between the Prime Minister—and the Commission cannot get any over-riding procedure. And what is more are the gaping holes in the entire security system which failed to protect a Prime Minister and the organisation of security in the Prime Minister's house which are not just matters of private concern. These are matters of grave concern to this House. At a crucial time when the country is deeply concerned and has gnawing doubts about security threats, Parliament has every reason to feel concerned to be concerned deeply. You can not run this Government as a private estate of any individual or a group of individuals or a group of operators. You cannot run this Government in *purdah* as is sought to be done through this Bill...

MR. DEPUTY SPEAKER : Please conclude.

SHRI K. P. UNNIKRISHNAN : The alarm bells have rung. The fear remains that the authoritarian Frankenstein persists. My appeal to my friend, Mr. Chidambaram, and more than to him, to the Prime Minister is this : history will not absolve you; let not the skeletons remain to rattle for the ever— If they do they will continue to produce nightmares for you; it is in your own interest to come forward and put this Report on the Table of this House.

KUMARI MAMATA BANERJEE (Jadavpur) : Sir, I rise to support the Commissions of Inquiry (Amendment) Bill and also the Ordinance which it seeks to replace. There has been a criticism that, soon after both the Houses adjourned their last Session, the Ordinance was promulgated. I would say that it is not unconstitutional and this does not take away or curtail the powers of the Parliament. From the very beginning I have been listening very carefully to the views of the Opposition Members. I am really hurt to find that some Opposition Members are trying to criticise our Government like anything. Mr. Unnikrishnan, for whom I have great regard has stated that the Government is acting in such a way as

though it is a private thing, that this Government is working like a fascist government. I would like to know this from the Hon. Member : if this Government is being run like a private government, then how did he come here and how is our voice being raised here, how is the democratic power being exercised ? You are enjoying all democratic power here. This is the only Parliament, the Indian Parliament, where all Members of Parliament, from this side as well as from that side, are enjoying this democratic power like anything. If you look at China or if you look at Russia, then you can see what those people are enjoying and what our people are enjoying here. We are proud of our democracy, of our Indian Parliament. Everybody should appreciate this.

Why our Government has come forward with this, I have to clarify. The Thakkar Commission, which was set up under the Commissions of Inquiry Act, 1952, was a fact-finding and recommending body; its recommendations are not mandatory. So, its Report can be rejected by the Government, if necessary. The security of the State is the most important thing. The Thakkar Commission had been set up to unearth the truth of the late Shrimati Indira Gandhi's murder. This was not an ordinary murder, but an assassination with an international plot to destabilise India and where it is assumed that foreign hands are involved. If the Thakkar Commission's Report is disclosed in Parliament, then those foreign cats will come out of the bag and those foreign powers may ruin the interests of the people of this country. Is it necessary to disclose Mrs. Indira Gandhi's assassination report or is it necessary to protect the people of our country, to protect the security of the nation, to protect the nation's interests ? This is what I want to know. I agree with Mr. Unnikrishnan when he says that the truth must come out. It has been said that it is only to protect the country's interest that the Government has come forward with this Amendment. So, it is not unconstitutional. I would like to mention one thing. The Amendment says that, if the Government feels that the report of a Commission of Inquiry does not affect the public interest, then Government can bring the matter before the House, and at that time it is for the

House to decide whether Government should place it or should not place it before the House. But if, under the existing circumstances, it is considered essential that a report or a part thereof should not be made public for maintaining peace and tranquility in the country, or safety of the country, or interest of the State, certainly it would not be wise on the part of the Government to place such a report before the House. But in that case the Government will have to come before the House to seek its approval. If the House approves, then the Government will not place the report before the House. But if the House disapproves, then the Government can bring this amendment to the House. This amendment Bill is neither unconstitutional nor it is going to curtail the powers of the House.

Some Hon. Member mentioned that when a claim of privilege is made before a court of law, it is the duty of the court to see the background and also he mentioned the judgement of the Supreme Court. This is not a matter of High Court or the Supreme Court. This is the Indian Parliament. Everybody has a right to speak, everybody has a right to raise his voice; but the opposition party should realise that opposition must be constructive. Sometimes the opposition has to oppose; so they are criticising. This must be stopped. Who are the persons criticising this Sir? I would like to mention that I come from a State in which I know what is going on there. The Congress is the only party which is giving democracy. In Andhra Pradesh, Mr. N. T. Rama Rao is ruling; if you see Assam, AGP is ruling there; if you see Bengal and Tripura, CPM is ruling there and if you see Punjab the Congress party is sacrificing there only to protect the country. Our party is sacrificing like anything for the sake of our motherland.

We have to take note of what is going on in Bengal. Mr. Abraham Lincoln has already given the definition of democracy—Government of the people, by the people and for the people. But if you go to Bengal you will see the Government of Marxists, by Marxists and for Marxists. Only Marxism is going on in Bengal. People are not even getting proper justice there. Justice is crying behind the doors. But now they are shouting here in favour of all these things.

Mrs. Gandhi is no more. She was like a mother to us. We will no more be able to hear her voice. She lived for peace and non-violence. When she was alive these people had written that Mrs. Gandhi was a giant.

Some State Government Ministers said that this was only a propaganda; Mrs. Gandhi was going to make this propaganda only for the election. This is their attitude. When Mrs. Gandhi died then these people have said many things. Now they are stating that they are very much interested to know the report of the Thakkar Commission. This is very surprising.

I would like to support this amendment whole-heartedly because the Government will use this only when it is necessary to protect the interest of the people. So, it is necessary to bring out this amendment. Thank you.

SHRI PIYUS TIRAKY (Alipurduars) :
 Mr. Deputy Speaker Sir : I oppose the Bill which has been moved to further amend the Commissions of Inquiry Act, 1952. Sir, I wonder how this Government had the courage to bring such an amendment Bill. Most likely the Government wants to hide the inner weaknesses and inner working of the Intelligence, bureaucrats, police officers and the entire Prime Minister's Secretariat.

Suspension of a number of high officials and degradation of many and transfer of so many others have all been done. It has become a mystery to the people of India as to what exactly was happening after the assassination of the Prime Minister Smt. Indira Gandhi.

Perhaps the Governments wants, willingly to keep in dark the Mishra Commission which is now enquiring about the riots in Delhi after the assassination of Mrs. Gandhi because if that commission comes out then some turmoil may come out again. So it may be the intention of the Government to put the Mishra Commission in dark. This is very very extra-ordinary procedure. The course of action that has been taken appears to be contradictory. I am not a lawyer but I understand this Commission was meant for

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the inquiry of the assassination and the circumstances in which the ex-Prime Minister was killed in her own house by her own bodyguard. This commission was exactly meant for this purpose. They need not have appointed this commission. Nobody had asked the Government to have an inquiry commission. At the same time they have allowed the case to be tried and the trial has gone on and the accused have already been punished. The judgement has been given and the accused have already been punished when the inquiry for which the commission was made has not given its report. How can there be a judgement before the inquiry report has appeared either in preliminary stage or in full text? The outcome of the inquiry is not known to the people and the Parliament but the judgement has already come. So it seems contradictory. You are a lawyer. You may understand but I fail to understand. Before the preliminary report is there how can the judgement be pronounced.

Now this case is before the High Court. How will the High Court proceed with the case because the counsel of the accused may ask what is the commission's report which is meant for the inquiry of the assassination itself. There should be no hiding the report and the circumstances under which this heinous thing has been committed by her own body-guard and the involvement of the Prime Minister's Secretariat staff and also the foreign hand is suspected. So the country must know the truth. Even for the sake of avoiding mis-carriage of justice the report should be made public. Naturally it is not a handiwork of a few Sikhs. There has been some conspiracy. Maybe some politics or vested interests are also involved in this? So, people should know. She was not an ordinary lady. She was the Prime Minister and very much loved by the people.

If you try to hide the truth then your action may be compared to a lady in the rain. One lady was there. She had a small umbrella and in the stormy rain she tried to save her belongings which she bought in a bucket from the market and she also tried to save herself. But in the stormy rain when

she put her small umbrella this side her clothes fluttered in such a way that she nearly became nude. This is the thing. You try to hide this side but the things will open up on the other side. You will get naked after all before the nation and all the people of India will blame you for this.

SHRI SRIBALLAV PANIGRAHI (Deogarh) : Mr. Deputy Speaker, Sir. I thank you for calling me to participate in this debate. A lot has already been said from either side in support and against the amending Bill. From the very stage of introduction of this Bill it is being opposed tooth and nail by the Opposition—at least a section of the Opposition. It appears that many Hon. Members on the other side are very much exercised over this and according to them, with this amendment the privileges and powers of the Parliament are going to be encroached to a certain extent, and as professed custodians of the privileges, functions and powers of Parliament, they are coming out with their opposition to this amendment. I would like to tell them that we are also equally as Members of Parliament, concerned with the powers, functions and privileges of the Parliament. We have great regard for Parliament sovereignty, but if we look at the contents of the Bill, it does not provide for a general ban on the placing of the Reports of the Commissions of Inquiry before the Parliament or the Legislature, as the case may be. Where the question of national unity or the national integrity comes, where the question of security of the State comes, and the interest of friendly relations with foreign countries comes, only in that case, the Government is going to be vested with the powers to withhold such portions of the report or the whole of it, as the Government may think fit. But for that also, the Government will have to come to the Parliament for approval. What is wrong in it? I do not understand how the sovereignty of Parliament, the prestige or the powers, functions and privileges of Parliament are greater than the sovereignty or integrity of the country. National security, national unity and solidarity of the country should paramount or upper most in our mind and I do not think, there is any second opinion about it. Our is a very complex country complex society, it is

a multi-lingual, and multi-religious society, so many religions are there with different customs and cultures and sometimes emotions do play their part and in fact, emotions have played havoc in different parts of the country, sometimes here and sometimes there. What is the type of situation we have in the country now? The country is passing through a critical situation during last two years or so Is it unknown to the opposition Members? Are we not aware of the riots and tension that has been built up in different parts of the country in the recent past? Who does not know about it? If the subject matter of a report of a Commission is quite sensitive, quite emotive, and if that is placed before the House, will it solve problems or will it create more problems? Will it or will it not give rise to violence or further law and order problem? What is important for us? There is an apprehension working in the minds of the Members on the other side also, and in fact, I have heard them with rapt attention, some of them have said that to a certain extent, it cannot be opposed, such discretion should be there with the Government. It is a vast country with numerous problems; situations are different; different situations prevail in different parts of the country of different times, therefore, general rules cannot be applied uniformly wholesomely. Certain amount of discretion has to be given to the elected Governments. As you know, Congress Party is at the helm of affairs at the Centre, but what about several other States? Different political parties, represented here by the members sitting on the other side are also ruling in different States. In our country, power is shared by different political parties. So, naturally such benefits will go to them also. My only submission is that we should not lose sight of security aspect.

I would like to stress one point regarding public interest. This provision should be used sparingly and it should be used only when it is a must in the interest of the sovereignty and integrity of our country and security of our nation. I say this because this term 'public interest' is a very vague term and sometimes people may take advantage of this 'public interest' to meet their political exigencies. Since different political parties are ruling in different States,

here and there, I would request the Hon. Minister that certain safeguards and certain modalities may kindly be thought of so that this provision is not misused. You should see to it that it is sparingly used and the nation's interests are also kept uppermost in our mind. Even fundamental rights provisions can be amended. But there are certain restrictions in the Constitution. So, this provision also should not be misused. *(Interruptions)*

MR. DEPUTY SPEAKER : You please sit down. You have already taken a lot of time Mr Patil.

SHRI D. B. PATIL (Kolaba) : I would like to make only two points Sir. We are aware that there is a provision in the Constitution for ordinance making and both the Central and State Governments have this power. The Central Government has taken advantage of this provision and it has come forward with this ordinance.

This Hon. House as also the Hon. Minister are quite aware that the Constitution framers assumed that this power would not be used very often and that it would be used sparingly and judiciously. It was presumed that when Parliament was not in Session, this law making power should be with the Government. But at that time also, it was presumed that promulgation of ordinances would be resorted to only in an unforeseen eventuality. Was this ordinance due to any unforeseen eventuality? No Sir. Because the report of the Thakkar Commission was with the government. The interim report as also the final report were with the Government. But Still, the Government was determined not to lay this report on the Table of the House. When the Government was determined not to lay the report on the table, they ought to have come with a legislation when this House was in Session in April or May. But the Government did not come forward with that legislation. The Government did wait, with purpose, so that an ordinance can be promulgated after both the Houses are prorogued. So after the prorogation of both the Houses, this ordinance was promulgated. I would like to submit that this is unconstitutional and unfair on the part of the

[Shri D. B. Patil]

Government. This vitiates the provisions of the Constitution.

As far as the Bill is concerned, I cannot deal with the detailed provisions of this Bill. But I have to say this much only. The result of the provisions made in Sub-section (6) is just making a laughing stock of ourselves. This clause says that if the Government is not inclined to put the report before the Parliament, before the House of the People, then it will issue a notification and that notification will be ratified by the House. The notification will be ratified by the House or it can end. But, here there is no provisions for an open discussion because it is presumed that the House will vote for or against without knowing the contents of the report. Simply the Government has stated that the report will not be laid on the Table of the House and on that basis only the Government is saying that the placing of the report on the Table of the House will be not in the interest of the security of the nation or in the public interest. So without knowing, the Members will be voting for it or voting against it. We will be voting against it because we have a right to know what is there in the report, but we are denied that right. We are entitled to hold that right. As we do not know what is contained in the report, we are not going to vote that it should not be put before the House. On the contrary the treasury benches would be voting for the resolution ratifying the decisions of the Government not to place the report on the Table of the House. Then, I will compare the Hon. Members and say that it is like putting a thumb impression on a statement without knowing what is written in it and what is not written in it. Then may I ask one thing? When they do not know anything about the contents simply because the Government says that it is not in the interest of the public, so they are supposed to believe in it. Mr. Deputy Speaker, I know that there has to be discipline. But in a democracy, so far as discipline is concerned, there should be inner-democracy and free discussion. If there is no free discussion, the freedom of expression is shut out.

So, I oppose the Bill.

SHRI THAMPAN THOMAS (Ernakulam) : Sir, I oppose this Bill tooth and nail. The very genesis of this Bill is in sin. When Parliament was in Session, it was brought in and the State Governments are also taking the same lesson. There are cases where for eight years the ordinances are being promulgated and re-promulgated. And on the basis of this, the executive is continuing its functions. This Government has also adopted the same method to circumvent the right of the Parliament, Government has brought an ordinance and thereafter they are placing it before us. This is an encroachment on the sovereign, inherent power of the Parliament. Our society is an open society and corrections can only be made by public criticism. When these documents are not presented before the Parliament and the executive gets the right to keep it away from the representatives of the people who have got a sovereign power and the Parliament—supreme authority—they keep it away from them, the public will not be knowing it. The consequence will be, I will say peoples' court will be organised in the nook and corner of the country, where people will start their own enquiry.

Sir, I am submitting this, on the basis of my experience. In my place—Calicut—in the Medical Colleages, the Doctors are taking bribe. The courts and other bodies are not properly punishing them. The executive is not coming forward. The youngsters gathered together and they decided to examine publicly to Doctors who are taking bribes.

MR. DEPUTY SPEAKER : How can you say Thomas, that all Doctors are taking bribes? I thank you are generalising it.

SHRI THAMPAN THOMAS : I am not saying all doctors.

MR. DEPUTY SPEAKER : You say some doctors.

SHRI THAMPAN THOMAS : Yes some Doctors who are taking bribes, were taken out by the young people in the streets Two days back, when I was in Kottayam, I saw some people gathered together placing a bag on the head of a man who has stolen it from there. He was taken through the streets.

301 Stat. Res re : Disapproval SRAVANA 8, 1908(SAKA) Stat. Res. re : Disapproval 302
of Comm. of Inq (Amdt.) Ord. 1986 of Comm. of Inq. (Amdt.) Ord. 1989
& Comm. of Inq. (Amdt.) Bill—Contd. & Comm. of Inq. (Amdt.) Bill—Contd.

These things are happening because the proper remedies are not made by the authority ? People are compelled to take recourse to such methods. So, when the peoples' representatives are denied the right to know what is there inside the report of public enquiry, I say, the people themselves will take law into their own hands. Therefore, when you encroach on the right of the peoples' representatives, you are bringing this lawlessness into this country. I would like to say that this is another Draconian Law which has come in along with the National Security Act is going to curtail the freedom of the country and it is an onward march towards the dictatorship.

Therefore Sir, I oppose it. This is against the basic principles of the Constitution and Indian democracy.

15.00 hrs.

(Interruptions)

[Translation]

SHRI C. JANGA REDDY (Hanamkonda) : Mr. Deputy Speaker, Sir, I am sorry to say that you always allot me time to speak at the end. At the outset, I would like to inform the House that when this Bill was enacted in 1952, it did not contain Section 3. This Section was later added in 1968-69. A Joint Committee of both the Houses was set up at that time to look into it. Serious thought was given whether the report of the commission should be laid on the table of either House and this Section 3 was added envisaging that report should be laid on the Table of the House and that it should be placed in the form of a memorandum for action being taken. The two aspects which were not dealt with in 1952 were added later in 1969.

[English]

This was done by the Congress Government and now they are removing the same provisions of the Act.

[Translation]

The previous Parliament felt its need and that is why it was added. I would like

to inform that there are two views at present. We would like to know whether the Cabinet meeting was held and if so, when ? The Thakkar Commission report was to be laid latest by 17th May. It was only when Shri Lekhi, the defence counsel of the accused, filed a writ petition in the Delhi High Court that this change of opinion took place.

[English]

SHRI PRIYA RANJAN DAS MUNSI : The name should not go on record. (Interruptions).

MR. DEPUTY SPEAKER : Anyway, you conclude now.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : I do not think he should refer to any pending Bill, about this Section 6, etc.

MR. DEPUTY SPEAKER : Yes. Sir.

[Translation]

SHRI C. JANGA REDDY : I am not referring to anybody. A write petition was filed in the High Court that the Commission's report be laid on the Table of the House. The prosecution disclosed that the Government has a right to withhold action on any report under section 6 of the Act. The second aspect to which even the judge agreed was that the statements of witnesses cannot be taken once the arguments have been heard whether it is a civil case or a criminal case. To gain time in respect of the writ petition and to get the decision in its favour, the Government asked to shelve the matter upto 14th of the month and then an ordinance was issued and it came in the newspapers on the 15th. People even doubt whether the ordinance was signed. I want to emphasize here, that the earlier Parliament and the Government had felt the need that the reports should be laid on the Table of the House and that is why the section was added later even though it did not exist in the original Act. Now the Government feels that it has brought this amendment on the ground of maintaining unity, integrity and sovereignty

[Shri C. Janga Reddy]

of the country, and for the sake of friendly relations with other country and with many other good intentions but there is hardly any justification for it. This should be treated as a black Act. Sir, you may be aware that one Chief Minister in our country said that if the High Court in his State considered the petition seeking invalidation of his election; there would be law and order problem and even bloodshed. That is what he said. Similarly, the Government says that if the report is made public, it would be detrimental to the interest of the country and endanger its unity thereby leading to bloodshed. Government should not come out with such pleas. I oppose this measure as it is against rules.

[English]

SHRI P. CHIDAMBARAM : I have carefully listened to the observations made by the Hon. Members. While I sought leave of the House to move the Bill I had explained how the opposition to this Bill is based on an inadequate appreciation of the provisions of the ordinance and the Bill which replaces the ordinance. In fact, the accusation of non-application of mind should really be made against those who rushed to judgment without reading the provisions of sub-section 5 and sub-section 6. Over the last two days, we, on this side, have heard the same arguments being repeated again and again. I am afraid, I have to conclude that even after explaining the scope of section 3, sub-section (5) and sub-section (6) if they do not see their ambit, scope and effect, it is because they come pre-determined to oppose the ordinance and pre-determined to oppose the Bill.

I will not go into the points which have already been made about the promulgation of the ordinance. All those who criticised the promulgation of the ordinance as unconstitutional have been effectively answered by the Hon. Member, Shri Somnath Chatterjee, who graciously agreed that there was no legal infirmity in promulgating the ordinance.

SHRI SOMNATH CHATTERJEE (Jadavpore) : That shows that there was no pre-determined opposition on this issue.

SHRI P. CHIDAMBARAM : The ordinance was rightly promulgated. The President has the power to promulgate the ordinance. It is perfectly within Article 123 (1).

We now come to the substance of the ordinance and the Bill. As I made the point even at the very outset, this Act did not have sub-section 4 of section 3 when it was first made. For 19 years nobody criticised it as the death knell of democracy. Nobody said that if you do not place the report before Parliament, it is executive arrogance. Nobody said that it was a draconian measure. For 19 years we lived with an Act which had no provision whereunder the report had to be placed before Parliament.

Hon. Members know the purpose of a commission of inquiry. Somehow, thanks to some commissions set up with certain kinds of motivations when some people enjoyed brief tenures of power, commissions have now come to be looked upon as pronouncing judicial verdicts, which is not correct. No commission pronounces any verdict. It is not an inquisition. It is a commission of inquiry to inform the mind of Government, to instruct the mind of Government. I quote from one of the most famous judgements on this subject :

“In our view the recommendations of the Commission of inquiry are of great importance to the Government in order to enable it to make its mind as to what legislative or administrative measures should be adopted to eradicate the evil or to implement the beneficial object it has in view.”

AN HON. MEMBER : Who said this ?

SHRI P. CHIDAMBARAM : It was said by the Supreme Court in 1958 in Ramakrishna Dalmia's case.

Government sets up a commission because it thinks that a high authority, who has held a high judicial office or high administrative office, should go into the matter with great care and submit a report so that the Government mind will be informed, Government will be instructed what it should do to

305 Stat. Res. re : Disapproval SRAVANA 8, 1908 (SAKA) Stat. Res. re : Disapproval 306
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& Comm. of Inq. (Amdt.) Bill—Contd. & Comm. of Inq (Amdt.) Bill—Contd.

remove the evil or to implement the beneficial objects. That was the object of the original Act. May I submit with great respect that this remains the object of the Act even today? In 1971, it is true that there was a committee which went into the question of proposed amendment to the Commission of Inquiry Act. It is true that sub-section (4) of section 3 was introduced. But then the Hon. Members are reading more than what the Committee did. All that the Committee said was it was brought to their notice that many a time Reports of Commissions of Inquiry on important issues of national interest could not see the light of the day even though considerable money from public funds had been spent thereon. That is the only ground given in the notes on clauses which is extracted from the Report of the Committee. The Joint Committee, therefore, considered it necessary that a specific provision should be made in the Act requiring the appropriate government to cause the Report of every commission of inquiry to be laid before the House of the people or the Legislative Assembly along with a memorandum in regard to the action taken.

Regarding money spent, I am not denying that. Money has been spent on the Thakkar Commission of inquiry. But then can the ground that public money has been spent be the only ground to determine what the public interest is? This is where I would appeal to the whole House to kindly bear with me when I explain what is this concept of public interest, what is this concept of security of State which we have invoked in making these new sub-section (5) and sub-section (6), Kindly read with me sub-section (5)—

“(5) The provisions of sub-section (4) shall not apply if the appropriate Government is satisfied that in the interests of : (1) sovereignty and integrity of India, (2) the security of the State, (3) friendly relations with foreign States or (4) in the public interest, it is not expedient to lay before the House...”

Are these empty words? Don't these words have very pregnant meaning? Are these words not words which we invoke every time when we talk, when there is aggression

against India, when there is communal violence, when there is threat to the unity and sovereignty of India? Are these not the very words on which the Hon. Members take their oath in this House? Are these not the words on which Ministers take oath? Are these not the words on which the President of India takes the oath? How can you dismiss this as though these words have been lightly invoked? These are not frivolous grounds, these are strong grounds invoked only under compelling circumstances, where there is an overriding public interest.

Kindly see article 19 of the Constitution which has been invoked by my learned friends. Article 19 uses the very same words. Article 19 which enables this Parliament to impose restrictions on certain Fundamental Rights, says that a law imposing restrictions may be made in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States. It was pointed out that the word 'public interest' does not occur in article 19 (2). That is a superficial reading of the article. The word 'public interest' does not occur in article 19 (2), but it occurs in 19 (5). In 19 (2) there are at least three aspects of public interest which are mentioned. 19 (2) mentions 'public order, decency or morality'. 19 (5) and 19 (6) mention 'public interest'. These are not words which we have dreamed us overnight, these are words which are put in our Constitution. These are words which have received judicial interpretation. These are words on which the whole democracy, the whole polity of this country is founded, and on each one of these grounds alone can the Government come before Parliament and say, "Please, on this ground we think it is not expedient to lay it before Parliament, so please approve our notification". Now, what is frivolous about it? What is lighthearted about it? In fact, my learned friend Mr. Somnath Chatterjee said, it is a nervous reaction of the Government. No, Sir, it is a courageous decision of a concerned government. We have taken this decision because we are concerned about public interest and time alone will show whether we are right or wrong ..(Interruptions).

SHRI SOMNATH CHATTERJEE :
When did you realise this public interest?

SHRI P. CHIDAMBARAM : I did not interrupt Mr. Chatterjee and he should do me the favour, otherwise the record will show that he is speaking and I am interrupting. This is what he has been doing to others.

SHRI SOMNATH CHATTERJEE : You are also nervous... (*Interruptions*).

SHRI P. CHIDAMBARAM : I am not nervous. We have invoked two grounds in this notification, and since I believe there will not be another round of speeches on the notification, let me mention those two grounds. One is security of State and the other is public interest. These are the two grounds we have invoked.

Why have we invoked these grounds? What is the context in which these have been invoked? Kindly see the terms of reference of the Thakkar Commission. Everybody knows what the terms of reference were. Five items were referred to the Thakkar Commission. The Thakkar Commission submitted two reports. The first report was submitted on the 19th November, 1985. Under the law, as it then stood, we had time to place it before Parliament until 10th May, 1986. But it was only an interim report, the first report. No conclusions could be drawn from that report. As every one will know, one has to wait for the whole report. The final report was submitted on 27th February, 1986. Therefore, we had time until 28th August, 1985. We still have time to place before Parliament under the Act as it originally stood. These reports...

AN HON. MEMBER : What about the first report?

SHRI SAIFUDDIN CHOWDHARY (Katwa) : The interim report will come after some time.

SHRI P. CHIDAMBARAM : On the 27th of February, 1986 the final report of Thakkar Commission comes to us. Government, therefore, waits for the final report and Government has to make up its mind.

The Commission itself was unprecedented. We had no such precedent before and I hope that there will be no such occasion in future. The nature of the matters referred to the Commission were unprecedented. After carefully reading the report Government comes to the conclusion that there is a compelling public interest. There is a public interest in open Government. I am not denying it. But there is a public interest in responsible Government. Responsible Government cannot be sacrificed at the alter of open Government. There is a public interest in disclosure. There is a public interest in non-disclosure. There is a public interest in making everything known to the people at a point of time. There is a public interest in preserving confidentiality for a period of time. This is the point. There are competing public interests. You seem to think on that side what we are doing is putting public interest of disclosure against some kind of private interest. Certainly not. We are putting this public interest of disclosure against public interest of confidentiality.

SHRI SOMNATH CHATTERJEE : That is your statement.

SHRI P. CHIDAMBARAM : It is my statement. I cannot make statements on your behalf. (*Interruptions*).

Kindly listen I am trying to explain. Two thousand years ago there was a famous bard in Tamilnadu. You may have heard his name—Thiruvalluvar. He wrote 1330 verses. Each one of them is a gem by itself. In one of the verses he said—

*Kalam Karudi Iruppavar Kulangadu
Gnalam Karuthu Pavar*

Those who hold the interest of society at heart will remain impassive, patient for some time.

In Latin :

Salus Populis Est Suprema Lex

The welfare of the people is the highest law.

To-day, Government believes and Government submits humbly before Parliament that it is not in the interest of

the people, it is not in the interest of the security of this country and it is not in the interest of public welfare that this Report should be placed before Parliament.

SHRI BASUDEB ACHARIA (Bankura) :
You explain before Parliament

SHRI P. CHIDAMBARAM : Kindly listen, I am coming to that. There is another investigation which is going on. There is another investigation going on which is done by a Special Investigation Team. This team is investigating certain matters relating to the assassination of the former Prime Minister. Matters referred to the Thakkar Commission to some extent overlap over that investigation. There is a trial of three persons—accused of the murder of the former Prime Minister. One accused died on the date of the incident. The other three accused have been sentenced to death.

In the trial certain questions were raised regarding the proceedings before the Thakkar Commission. The contentions of the Government were upheld by the trial judge. There is an appeal pending before the High Court. There are certain other matters pending before the High Court. That is one aspect. I cannot on it. The matter is *sub judice*. Now, parallel to that, there is an investigation going into certain matters under the Special Investigation Team. Some matters were investigated by that team which to some extent did work in close cooperation with the enquiry conducted by Justice Thakkar. Justice Thakkar had used that team to investigate certain aspects on his behalf. These investigations will take time. These investigations will have to be done carefully and slowly. It is in nobody's interest, it is not in the interest, of the pending cases, it is not in the interest of the pending investigation, it is not in the interest of whatever the investigation team may have found and will find, it is not in anybody's interest to place this Report before Parliament or before the people today Sir, we have not come before Parliament in a light-hearted way. We have come after careful consideration and agonising appraisal of the situation. Therefore we have come with this Bill to replace the Ordinance and the Notification under Section 6. Sir, a question

was asked : How can we decide whether the ground invoked is good or bad unless we see the report ? With great respect to those who raised the question, I would say it is logic standing on its head. What do we say ? We say that we cannot lay this before the House because of this reason. The only way the report can be published is by laying it before the House. That is the statutory mandate. There is no other way in which it can be published.

PROF. MADHU DANDAVATE : Like Marx putting Hegel upside down !

SHRI P. CHIDAMBARAM : I repeat it. The only way in which this Report can be published is by placing it on the Table of the House. Now you turn round and ask us : Place it before the House, lay it on the Table of the House and then we will decide whether you shall publish it or not. Because, by laying it on the Table of the House, we would have already published it. Then, what should I do about not publishing it afterwards ? This is logic standing on its head .
(Interruptions)

SHRI SOMNATH CHATTERJEE : You said about privilege.

SHRI P. CHIDAMBARAM : I am coming to it, Mr. Chatterjee I am not running away. Sir, I have never run away from a Senior Advocate like him

SHRI SOMNATH CHATTERJEE : You will not be allowed to run away.

SHRI P. CHIDAMBARAM : I am not running away. I come to privilege. All I am now answering is...

PROF. MADHU DANDAVATE : We have accepted your allegation that head is our basis.

SHRI P. CHIDAMBARAM : It is an inverted view of the world. If you stand on your feet and look at the world you will know exactly what is happening in the world. The point is this Once I lay it on the Table of the House, what is there for me then to claim that on the ground of security of State, on the ground of public interest,

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I shall not publish it? Because, the only manner in which it can be published—kindly look into the Act—is by laying it on the Table of the House. There is no point in saying, lay it before us first, publish it, and before us first, publish it, tell you whether you can published it or not.

SHRI SOMNATH CHATTERJEE :
Please refer to the context. Be fair please.

(Interruptions).

SHRI P. CHIDAMBARAM : Sir, I did mention and I quote again from my speech. I said : This is something akin to the claim of privilege which is made in court. Now my learned friend of course will omit the words 'something akin' and will only cling to privilege. I will answer him on privilege. It is something akin to a claim of privilege. Certainly, the Parliament is not equivalent to a High Court or a Supreme Court. Parliament's powers are not the same as those of the High Court and the Supreme Court. In order to draw a parallel, I said, this is something akin to a claim of privilege. My learned friend turned round and said and I don't want to convert this into a court of Law or to enter into a lengthy arguments he turned round and said : You are wrong on that. In every court the document has to be looked into. With great respect, I would say, that is not a correct proposition and I am willing to demonstrate that it is not a correct proposition. I am not going to convert this into a court room argument. (Interruptions). Don't worry about that. Come out and we will argue it outside. I can explain it to you. There is Section 123 of the Evidence Act. There is Section 162 of the Evidence Act. (Interruptions). I am saying it in brief. So, there are Section 162 and Section 123 of the Evidence Act. What does Section 162 of the Evidence Act say? It says :

"The witness summoned to produce a document shall, if it is in his possession or power, bring it to court etc..."

Then,

"The court, if it sees fit, may inspect a document unless it refers to matters of State or to take other evidence to enable it to—"

Even under Section 162, if it is a document referring to matters of State, the court cannot inspect the document. This question came up. As early as in 1961, my Hon. friend, Shri Somnath Chatterjee will remember in Sodi Sukhdev Singh's case, the Constitution Bench said : 'You cannot look into the document under any circumstances'.

SHRI SOMNATH CHATTERJEE :
Much water flowed.

SHRI P. CHIDAMBARAM : No, no. Much water has not flowed. I will answer it.

Then the Constitution Bench of the Supreme Court unanimously said : 'You cannot look into the document'. My learned friend is relying upon, if I remember right, Rajnarain's case, in 1975 and S. P. Gupta's case of 1982. In S. P. Gupta's case it consisted of 7 Judges, there is no ratio supported by a majority on this aspect and we won't argue it here. Justice Bhagawati who delivered the leading Judgment has dwelt at great length on this aspect. My learned friend unfortunately read only a portion of the Judgment and did not, read the other portions of the Judgment.

SHRI SOMNATH CHATTERJEE :
Allow me to quote all the relevant portions.

SHRI P. CHIDAMBARAM : I will read them.

(Interruptions)

SHRI SOMNATH CHATTERJEE : Sir, he has accused me for not reading the entire judgment.

(Interruptions)

SHRI P. CHIDAMBARAM : I will read it.

(Interruptions).

MR. DEPUTY SPEAKER : Please order.

SHRI SOMNATH CHATTERJEE : Let him say what is there.

SHRI P. CHIDAMBARAM : I did not quote. He quoted from a passage. Sir, he started this by quoting from a passage ..

SHRI SOMNATH CHATTERJEE :
Your reference to privilege is totally misconceived.

SHRI P. CHIDAMBARAM : Sir, I am entitled to quote.

SHRI SOMNATH CHATTERJEE : You did not understand what it was.

SHRI P. CHIDAMBARAM : I know that you are an eminent lawyer, I know that we are small lawyers. But if you quote something, I am entitled to quote.

SHRI SOMNATH CHATTERJEE : You try to insinuate...

SHRI P. CHIDAMBARAM : I am not insinuating anything.

SHRI SOMNATH CHATTERJEE :
Allow me, I shall do it and I shall follow it up by the recent Judgments of the Supreme Court. It is totally misconceived.

SHRI P. CHIDAMBARAM : I am not arguing a court case here. All I am pointing out is that he quoted a passage and I would like to quote another passage. If he started this line of argument, I am entitled to pursue the same line of argument.

PROF. MADHU DANDAVATE : Your Lordship, what is your intervention, Sir ?

MR. DEPUTY SPEAKER : I can't. Let him first finish it.

SHRI P. CHIDAMBARAM : If he did not quote, I would not have quoted it. Since you have quoted, I am entitled to quote.

Sir, in S. P. Gupta's case Justice Bhagwati categorically said—I will only read this passage :

“It might be that there are certain classes of documents which are of such a character that even without inspecting them or conducting an inquiry, it might be possible to say that by virtue of their character their disclosure is

injurious to public interest and therefore, they are documents relating to the affairs of the 'State.'”

SHRI SOMNATH CHATTERJEE : The court did not say that, the Government said that.

SHRI P. CHIDAMBARAM : The court said that. That is the ratio. What we say is, 'Look into the terms of reference. Look into the nature of the proceedings before Justice Thakkar. Look into the context in which this country is placed today.' The terms of reference are questions of unprecedented nature in a matter of an unprecedented tragedy. The Commission itself conducted its inquiry *in camera*. The Commission did not hold an open inquiry. The Commission has relied upon another investigation term whose work is going on. The Commission has submitted a report. Taking all this into account and looking at the situation objectively, without trying to take advantage of the tragedy and the consequences of that tragedy, my submission is that the Government is right in invoking Section 3(5) and say, 'In the interest of security of State, in public interest this document should not be placed before the people of the country.' (*Interruptions*). Sir, all of us want everybody to be responsible and concerned. But that is not the way, the world is. There will be people who will read the report. There will be people who will read the report. There will be people who will distort the report. There will be people who will take valuable lessons from the report and there will be people who will use the report to create a situation of conflict. We know what happened in Delhi when some self-styled people conducted their own kind of mock enquiries and published certain reports and the consequences of those reports. We cannot behave in such an irresponsible manner. We have to keep the public welfare in mind:

SHRI K. P. UNNIKRISHNAN : You are referring to Shah Commission.

SHRI P. CHIDAMBARAM : No I am referring to some other thing which happened later.

We have to keep the welfare of the people in mind. And when we come forward

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with this Bill, we come forward with humility and we submit ourselves to the wisdom of Parliament. Today Parliament has to decide whether this report should be placed on the Table of the House or not. And my appeal to Parliament is.....

SHRI SAIFUDDIN CHOWDHARY :
 Parliament will decide by majority.

SHRI P. CHIDAMBARAM : Your frustration cannot run so deep as not to recognise that Parliament will decide by a majority. Let Parliament decide whether this should be placed before Parliament or not. Kindly look at the notification which is presently placed for approval. Kindly look at the notification. We have invoked security of the State and we have invoked public interest. See the context in which the country is placed today; what is going on around us and what we see. Even the slightest provocation turns out into some kind of conflagration and conflict. In the context in which the country is placed. I would most humbly beg of Parliament to approve this notification so that this report need not be placed before Parliament. I, Sir, on behalf of Government assure this House that we will not misuse, this power. We will use it so sparingly.....
(Interruptions.) I am not speaking only to the Opposition. Through this House, every Member speaks to the people of this country. And the people of this country believe our assurances, the people of this country believe our promises, the people have reposed confidence in us and the people have voted us....
(Interruptions.) I am speaking more to the people of this country than to the Hon. Members in the Opposition. I appeal through you, I appeal to the people of this country, to see this in the interest of the security of that State, in the public interest, because the welfare of the people, is the highest law and we have regard for the welfare of the people. We appeal Sir, to Parliament to approve this notification and approve Government's action in not placing this report before Parliament.

SHRI SAIFUDDIN CHOWDHARY :
 You want to run away from the people.

PROF. MADHU DANDAVATE : Mr. Deputy Speaker, Sir, with rapt attention, I listened to the intervention of the Hon. Minister. Now, certain questions were raised in a specific way in the course of the debate. They have remained unreplied and in the course of his reply, the Hon. Minister tried to put certain interpretations which, to my mind, are totally incorrect. I will try to meet the arguments of the Hon. Minister.

Sir, at the very outset, he said that though the Commission of Inquiry Act was adopted in 1952, for long 19 years, sub-section (4) of 3 which made it obligatory on the part of the Government to lay the Commission report on the Table of the Lok Sabha, that provision was not there and no harm was done. It is an accepted norm of parliamentary life and the legislative practice that everyone tries to learn from experience and as the Constitution is amended and as laws are changed, they are liberalised and not made more rigid. The provision is made...

THE MINISTER OF STATE IN THE DEPARTMENT OF PUBLIC ENTERPRISES (PROF. K. K. TEWARY) : Only sometimes, you reduce it to ... *(Interruptions.)*

PROF. MADHU DANDAVATE : I was trying to find out who is the back-bencher. Now I discovered that the back-bencher is the Hon. Minister. *(Interruptions.)*

SHRI SOMNATH CHATTERJEE : He is indulging in the mahem of parliamentary norms.

PROF. MADHU DANDAVATE : Anyway, Mr. Tewary, I will not complain for any remark of yours, either inside or outside.

MR. DEPUTY SPEAKER : Professor is in the middle bench. He is not a back-bencher.

PROF. MADHU DANDAVATE : No. It is almost a back-bench.

I want to meet that argument first. It is an accepted legislative practice, that with more and more experience about the working of laws and, also working of the public mind, and also the nature, tone and temper of the

317 Stat. Res. re: Disapproval SRAVANA 8, 1908 (SAKA) Stat. Res. re: Disapproval 318
of Comm. of Inq. (Amdt.) Ord. 1986
& Comm. of Inq. (Amdt.) Bill—Contd. of Comm. of Inq. (Amdt.) Ord. 1986
& Comm. of Inq. (Amdt.) Bill—Contd.

Government, certain legislative changes are required to be made. I will give a very significant illustration and plead for an argument that on the basis of our legislative experience, certain changes are necessary and I will give the illustration of Ordinance itself because that is at the root of the problem.

The framers of the Constitution have made certain provisions regarding the Ordinance, how the Ordinance is to be promulgated. There have been certain conventions when it has to be done in the inter-session period, what is the limit for bringing out a legislation in the Parliament or in the concerned Legislative Assembly, to convert the Ordinance into law, the outer limit for the survival of the Ordinance is already prescribed in our Constitution and despite that, I will give a very interesting illustration of Bihar and I am making this argument to plead that in spite of enactments and even the Constitution, further safety values have become more and more necessary on the basis of this.

I was telling the House that the other limits for the existence of an Ordinance, till it is converted into law, is already prescribed in our Constitution. After that, it dies. If it is disapproved, it goes away or if it is converted into law, in that case, it survives indirectly the outer limits and a period is fixed. I will give a concrete illustration as to how even the aberration of the existing provisions takes place and that is why, though the Constitution was adopted in 1950, probably in the year 1986, certain Constitutional amendment regarding the provisions of the Ordinance will have to be made. Take the instance of Bihar.

One of the learned friends from the Gokhale Institute of Pune had made a special study on the working of Ordinances, re-promulgation of Ordinances and he has shown on the basis of facts that in Bihar, Prof. Ranga, one particular Ordinance, when they found that it is likely to lapse, exactly with the same word, not even an alteration of a comma, he re-promulgated the same Ordinance as a new Ordinance.

SHRI K. P. UNNIKRISHNAN : Kerala is following.

PROF. MADHU DANDAVATE : How many times have they re-promulgated? They re-promulgated one Ordinance 34 times and so, without converting it into law, that Ordinance survived for 14 long years in Bihar.

AN HON. MEMBER : It is Congress culture.

PROF. MADHU DANDAVATE : Very good. It is irrespective of particular parties.

SHRI P. CHIDAMBARAM : It is not a case of promulgation of Ordinance..... (Interruptions).

PROF. MADHU DANDAVATE : I am telling you I am making this argument irrespective of the political parties because parties have come and parties have gone but the aberration of re-promulgation of Ordinance is continued. Each one of us is guilty of that crime and want to insulate the Constitution in such a manner whether it is a communist party in power, Janata party in power or the Congress party in power irrespective of the parties in power, the Constitution must be insulated in such a manner that its aberration will not take place.. (Interruptions). We are continuing that the process of debate and dialogue. This instance I gave to indicate that he could have argued in 1950 Constitution has been framed and adopted and 36 years apart. We did not find the need of changing the provisions regarding re-promulgation of ordinance whereby they tried to circumvent this particular provision regarding the outer limit and the survival of the ordinance. But when we come across experiences wherein in one State we find that the same ordinance was re-promulgated 34 times without converting it into a law and it survived for as many as 14 years and in this all of us are sinners, I want a constitutional amendment be made. I am putting forward this particular illustration to meet his argument that in 1952 this Commissions of Inquiry Act was enacted. For long 19 years nobody felt the need. You yourself were in power and therefore, try to understand why did you have the imperative need of amending that part of the Constitution and making it obligatory that it must be laid on the Table of the House. You found that undemocratic tendencies are found to creep in. You had that broader outlook.

[Prof. Madhu Dandavate]

There were men at the helm of affairs and others who had a collective thinking and who had a community thinking and they decided that such a provision should be made. Sir, amendments are made in the law on the basis of empirical knowledge and not on the basis of the knowledge of mere lawyers and Judges. That is how actually experience demanded that this section and sub-section needed to be amended. That is why this provision of laying it on the Table of the House came in. I think it was a welcome amendment. I was not a Member of Parliament at that time but I can tell you that they acted in a correct way and they put a built-in safety valve by which the aberrations of our legislative processes could be avoided. I welcome that. The same thing is happening about so many other process, Therefore, this process is a must.

There is another argument that he tried to put forward and he said that in the public interest certain things had to be done. This is very dangerous when once you leave it to the interpretation of the executive and even of the Parliament regarding what is really meant by public interest and integrity and all that. There is a House of Commons in England. So many reports were put forward. That is a Parliament which functions even without a written constitution. It functions even without a written constitution because there is the spirit of democracy which functions. Today if we were to find that there were to be no aberrations in the law for so many years, an amendment to sub-section 4 and Sec. 3 of the commissions of Inquiry Act would not have become necessary. In a similar manner so many provisions would not have been necessary at all. Today what do we find? He talks about public interest and all that. He wants in the interest of the integrity of the country. I want to ask him a plain and simple question. Even 19 years after 1952 when this particular provision was amended did not the farmers of the law at that time imagine that placing this overriding clause without any restrictions and without any ifs and buts may probably create difficulties for the country? They could imagine that there are certain fundamental rights associated with the functioning of a legislature and they are to be safeguarded.

We are sitting in a Parliament. But what is a Parliament without the power of the Parliament? What is a Parliament without the Parliament's right to information which is one of the basic and collective rights of the Parliament? Can the Parliament function even for a minute even in times of war without this right? Even when bombs were falling in the vicinity of the House of Commons in England, the Speaker said that England's House of Commons will not adjourn even during the war because the functioning of the House of Commons represents the will of the people to continue. That was the democratic spirit that even when London was being bombed, the session of the House of Commons was going on. We want that spirit to be preserved in this Parliament. We want this Parliament to be alive and vibrant. We want discussions in this House to be well informed, discussions. And if discussions are to be well informed, we must be well informed about the various aspects of the problem and that is why these reports must come before the House.

The Minister made a very interesting argument. He gave us the dates. In fact I have no quarrel with them. I had already quoted the same days when the first report-interim report was submitted; when the second interim report was submitted. He gave the last date the when final report had been submitted. He draws a very fine distinction. With due respect to all the lawyers, I quote Bernard Shaw who has said: Laws makes the mind sharp by making it narrow. So, sometimes these people go and make legal arguments by which politically they develop a narrow-mindedness. He tries to draw a subtle distinction between interim report and the final report.

Sir, what has been the convention of this House and what has been the convention of democratic Parliaments all over the world? As reports submitted, they were laid on the Table of the House, in the past.

SHRI PRIYA RANJAN DAS MUNSI (Howrah): Are you referring to senior lawyer or junior lawyer?

SHRI SOMNATH CHATTERJEE (Bolpur): Whether it is senior or junior, first learn something out of this.

PROF. MADHU DANDAVATE : Don't worry. You are neither; You are only a client.

SHRI SOMNATH CHATTERJEE : He is a lawyer.

PROF. MADHU DANDAVATE : Is he a lawyer? God save the country. Now, this is fine distinction between interim report, first report, second report and the final report. Here are the veterans like Shri H. M. Patel. They have not only been in the Parliament but they have been in the administration and they have been in the bureaucracy also. They have seen functioning of the Executive and the Legislature and probably they will be able to tell you the fact and as reports go and coming, they are presented before the House. If they refuse to present, we try to bring them out. I want to inform this House about one instance and I am very sorry, one of the ablest members of our Parliament, a Member of the Lok Sabha, Shri Jyotirmoi Basu, is missing here. We remember him on this occasion. There was a direct taxation report and when that Wanchoo report was not submitted, the interim report had been submitted. The interim report contained the chapter about blackmoney. He requested the Government that interim report be submitted. When they refused to do it, one day, he laid it on the Table of the House and the world came to know what were the recommendations regarding unearthing blackmoney. Some members of the Treasury Benches got up and asked. How did he get the report? They were not worried about the report which was submitted. That means as somebody goes to the Police Station and says that an atrocity has been committed on the women and if the police ask, "How did you know that atrocity has been committed rather than enquiring into the atrocity?", the same thing they were trying to ask as to how did Mr. Jyotirmoi Basu get the report? There are glorious traditions of this House, when Shri H. V. Kamath laid on the Table of the House, the famous, CBI report and someone was asking we would like to know what is happening to the Administration? How did he brought the CBI report and laid it on the table of the House? The Speaker gave the ruling, "I am not concerned as to how the report is produced by the Members. He gave the ruling, "Even if the report is

produced by stealth, I will allow it to be laid on the table of the House as long as the person who lays the report accepts the authenticity and responsibility of the House and the documents which he has laid." This has been the convention. Interim reports have been submitted. For instances, there is the Monopoly and Restrictive Trade Practices Commission Law. Look at section 62 of the Act. That makes it obligatory that all the reports will be laid on the table of the House. On one occasion, when I was interested in looking into some law in one particular case, when I went to the Library, I found for years together they were not laid on the Table of the House. I brought a privilege notice against Mr. Gokhale that they have violated Section 62 of the Act. He said, "No, I have not deliberately done it" They consulted the Attorney-General. He told the Government, "You have blundered and blundered." Then he had given unqualified apologies to the House. From that time onwards, you find that all these reports are regularly laid on the Table of the House—whether they are individual report or administrative report—under the MRTP Commission Act. That is the way this House had been functioning. Even 19 years after the formulation of the Act, the framers of this Act did not find it necessary that under the cover of India's integrity, friendly relations with neighbours, do you mean to say that in 1952 when the law was enacted, those who framed this law, they were least concerned about India's integrity, least concerned about the stability? Of course, these are the new spokesmen of stability and integrity. They are small type of men. Pandit Jawaharlal Nehru and Sardar Patel they had been there. They were not worried about the integrity. Let us not forget that the 'Iron Man' who welded India's unity in action, even that man, did not find it necessary to talk in terms of integrity and try to hide reports from the common people and the representatives of people in Parliament. They did not indulge in such atrocious acts. Therefore, this fine distinction between 'Interim Report' and 'final Report' is completely unjustified.

There was not even a word offered by the Hon. Minister; in fact, he ought to have offered an apology on behalf of the Government. He himself gave the dates. He said that on 8th May, the period of six months

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after the submission of the first Report was completed. I may remind him that on 8th May the Lok Sabha was adjourned; after ten days, the six-month period required by the law was being completed for presentation of the Report. Could they not imagine that the six-month period is being completed on 18th May and Lok Sabha is going to adjourn on 8th May and, therefore, before the adjournment of Lok Sabha they should bring the matter before the Lok Sabha? They could have done it. But they refused to do it. They are trying to hide these Reports from us in the name of integrity as if we see the Reports, our friendly relations with neighbours will be spoiled. Are the relations with our neighbours so tender that everything else that is happening outside does not disturb the friendship, but the moment the reports are laid on the Table of the House the friendship will be completely destroyed? If that friendship is so tender, then there is no sense in having such a friendship at all. I am not at all afraid. The friendship with our neighbours is not so tender that by their laying the Reports on the Table of the House, that friendship and India's unity, integrity and stability will be destroyed. You must take note of this particular fact.

One more aspect I would like to bring to your notice, and I hope you will allow me to do that. Not only are you hiding the Reports from us, now you are taking permission also through this. We know what is going to be the fate of this Bill because when the Government has decided that this should be passed, then you will find that all Members of the ruling party are going to say 'Ayes' and it might be passed .. (Interruptions)

SHRI P. CHIDHMBARAM : Did you function differently in terms of majority and minority? We are entitled; each one of us is entitled to take a decision here.

PROF. MADHU DANDAVATE : Give them the conscience vote and let us see what happens. Give them the conscience vote as was given in the Presidential election. Let us see what happens,

I would like to ask one simple question. Not only are you trying to hide these Reports from us—I am revealing to the House a very important thing and let it be contradicted—but my information is that even** is not able to see these Reports, even he could not get a copy... (Interruptions).

MR. DEPUTY SPEAKER : Not allowed. I cannot allow his name to be mentioned here.

SHRI PRIYA RANJAN DAS MUNSI : It is against the procedure. It should be expunged immediately.

MR. DEPUTY SPEAKER : I cannot allow this, Prof. Dandavate. You cannot involve his name here.

(Interruptions)

SHRI PRIYA RANJAN DAS MUNSI : He often takes the name of the House of Commons. But he himself violates the procedure of the House.

(Interruptions)

MR. DEPUTY SPEAKER : You cannot use his name for anything. You cannot involve his name here. You were mentioning that even he could not see these Reports... (Interruptions).

SHRI K. P. UNNIKRIISHNAN (Badagara) : I will quote the precedents.

MR. DEPUTY SPEAKER : Using his name for any argument cannot be allowed. His name cannot be involved, in any argument. That will not be allowed.

SHRI K. P. UNNIKRIISHNAN : He is only accusing the Government.

MR. DEPUTY SPEAKER : His name cannot be used.

PROF. MADHU DANDAVATE : Sir, before you give your ruling, I will only ask you.. (Interruptions) Prof. Tewary, you are a Minister now. Sir, kindly inform him that he is a Minister and not Deputy Speaker. The ruling has to come from the

Chair. The interpretation has to come through you, Sir.

SHRI C. MADHAV REDDI (Adilabad) : It is only when** is accused... (Interruptions)

MR. DEPUTY SPEAKER : Even for argument's sake, his name cannot be used.

SHRI K. P. UNNIKRISHNAN : He is not casting aspersions.

MR. DEPUTY SPEAKER : Even for argument's sake, it cannot be used.

PROF. MADHU DANDAVATE : Sir, before you give your final expunction orders I will only say this. According to the rule,** conduct cannot be brought into the discussion. I am not bringing** conduct, I am bringing their conduct. It is not that** has not given the report to them; I am saying that they have not given the report to the President.

MR. DEPUTY SPEAKER : You are using his name. Under the Rules I cannot allow. You cannot involve his name. Not only aspersion, but to influence the debate also you cannot use his name. That is my ruling.

(Interruptions)

SHRI BASUDEB ACHARIA : He is not using the name of** to influence the debate. He is referring to the executive.

(Interruptions)

PROF. MADHU DANDAVATE : Are you expunging the name of the Government or the name of** ? I have been criticising their action. I am only criticising their action that they are not prepared to show it even to the high dignitaries like**. That is all I said.

PROF. N. G. RANGA : It is not germane to your argument. You better drop it and go ahead.

PROF. MADHU DANDAVATE : All right Sir, I will accept the joint advice of the Deputy Speaker and the veteran Parliamentarian. After all, he is the founding father of the Constitution, I must listen to him.

I would say, without referring to** that they refuse to hand over a copy of the report even to high dignitaries in the country who are supposed to guard and protect our Constitution.. (Interruptions) I used plural; I have used plural—not to the high dignitaries of the country who are supposed to protect and defend the Constitution of the country. If that happens about high dignitaries what will happen about Members of Parliament like us ? Therefore, it is very necessary...

MR. DEPUTY SPEAKER : You are also a high dignitary, professor.

PROF. MADHU DANDAVATE : As far as legislative sanctions are concerned, both on the occasion of opposing the introduction of the Bill and while bringing my Statutory Resolution I had put forward certain arguments and I expected that the Hon. Minister will not merely discuss the matter with the charming Parliamentary Minister, but also listen to me and try to argue my case. I was trying to point out to him this. I deliberately raised this question both on the occasion of opposing this particular Bill at the introduction stage and again while initiating a discussion on my Statutory Resolution. I will repeat that. The argument is like this : He was trying to argue that no doubt, Section 5 had been introduced; but you must read Section 5 in conjunction with Section 6 which is sought to be introduced. What does Section 6 say ? It says that no doubt, a notification will be issued, no doubt we will seek the permission to withhold the report from the House; but in doing that we will take the sanction and support of this very House. They will come before the House.

Apparently this appears to be a very fine legal argument. But it is only fictitious and I have given illustration. I will again

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repeat that. Sir, there are occasions in which superficially certain arguments appear to be correct. I had given one concrete instance. In 1975 when emergency was proclaimed in this country, no doubt, it was in terms of the provisions of the Constitution—whether properly they were consulted or not, that matter cannot be discussed. I won't discuss that. Again you will rise and again Prof. Ranga will also rise. So, I do not want to disturb their conscience.

16.00 hrs.

I would like to tell you that when emergency was proclaimed many of us went to jail. I can understand the censorship of the Press but as ill-luck would have it even who were in this House and opposed the emergency on the Floor of the House, opposed 42nd amendment to the Constitution it was ensured by the Government that not a word that was said in this House against emergency was allowed to be published in any corner of the Press. That was done. All this tragedy took place. Then after sometime a resolution was brought before this House seeking continuation of the emergency and, no doubt, with we in jail actually with majority the resolution was passed, the emergency was continued. Only when in 1977 the conscience of the people were aroused and the Government was thrown away then only the emergency ended and after that the 42nd amendment to the Constitution also ended. That was the tragedy of this country.

Therefore, merely talking in terms of legislative majority is not actually the safety valve especially while defending the fundamental rights and fundamentals of the Constitution. Therefore, in order that he may understand the language in terms of law I had quoted the famous judgement—the Keshava Nand Bharati judgement. A lot of controversy was there whether Supreme Court is supreme or Parliament is supreme. Article 368 gives us full powers to amend any part of the Constitution. Now we found when that absolute power is given to Parliament what can happen. We found out during the emergency that what was not thinkable for generations to come that

happened and actually one Constitutional amendment was passed in the Upper House but the sense of shame was so much that under the weight of their conscience they did not allow it to come to Lok Sabha. They passed the Bill in which they said the President of India, the Prime Minister of India, the Vice President of India and the Speaker of Lok Sabha will be made immune from criminal prosecution even if Prime Minister or President commits any murder. I am saying it hypothetically. I am not casting any aspersion on anyone... (Interruptions).

THE MINISTER OF PARLIAMEN-
TARY AFFAIRS AND MINISTER OF
FOOD AND CIVIL SUPPLIES (SHRI
H. K. L. BHAGAT) : Sir, I have absolutely no intention to interrupt him. I wish to point out that he is one of the senior most Members of the House and he knows what is the scope of the right to reply. When he is exercising that right of reply he is bringing in all kinds of absolutely new arguments... (Interruptions). You talk of emergency as you like but I want to tell you that after all your eloquence about emergency you were defeated neck and crop in the elections.

PROF. MADHU DANDAVATE : Sir, my parliamentary talent is not commensurate with that of Shri Bhagat. I have certain deficiencies. But I in my own humble way feel that I am trying to build up a case that merely by parliamentary majority and parliamentary sanctions certain aberrations cannot be prevented and certain built-in safety valves in our Constitution and in our laws are necessary. That is what I am driving at.

Therefore, Sir, the 42nd amendment to the Constitution took place and even some high dignitaries were made immune from criminal prosecution but, fortunately, after that during the Janata regime and, of course, in cooperation with the Congressmen—I give compliments to you because wisdom dawned on you rather late but it did dawn—and unanimously then the resolution was passed. I mean a new amending Bill was passed and 42nd constitutional amendment which was a matter of disgrace removed.

So, I say merely because during the emergency by parliamentary majority some of the basic structures were destroyed that does not mean that they were justified. Therefore, in-between had come the Keshava Nand Bharati judgement in which they said that Article 368 which gives you the power of Parliament to amend the Constitution, you can amend any part but there is only one restriction, namely, the basic features of the Constitution cannot be destroyed. Article 368 can be utilised to change the Constitution but not to destroy the Constitution. Amending constitution is one thing but obliterating and destroying the Constitution is another thing. Tomorrow by majority you may decide that there will be no adult franchise. In Yugoslavia it had happened. In the lifetime of Marshal Tito it was decided that till his death he will continue to be the President of Yugoslavia. Tomorrow if you were to enact something like that in the Parliament, that would be against the basic and democratic structure of the Constitution. In the Keshavananda Bharati judgement, it was said that even by two-thirds majority in both the Houses, you cannot change the basic features. That is why some of us want these built-in safety valves like Section 3, Sub-section 4 of the Commissions of Inquiry Act, which is there. It will be useful not only for us, not only for you, but for generations together it will be useful. Whosoever tries to hide the facts from the people and tries to keep the skeletons in the cupboard, they will be exposed, when the report is placed on the Table of the House. For example, tomorrow what will be the practical proposition. Any report of a Commission of Inquiry may cast aspersions and pass strictures against the ruling party or the Government; no matter whether it is the Janata Government or the Congress Government or the CPIM Government, or the Government of the Telugu Desam or any other Government anywhere else, because it is applicable to Assemblies and Lok Sabha also. If any skeletons are there and those of us who are in powers, whether in Karnataka or in Andhra, or at the Centre, they will try to hide those skeletons behind the cupboard and in that case we will be doing a great disservice to democracy. It is not against any particular party, X or Y. Many of us sitting here are partly ruling party or partly opposition parties. If you are a ruling party in some States, you are in the opposition in

the other parties. There is no question of the ruling party or the opposition parties; built-in safety valves have to be there. I think, Section 3, Sub-section (4) of the Commissions of Inquiry Act really provides that built-in-safety valves, otherwise under the grab of friendly relations, integrity, stability of the country and some times public interest—and sometimes the public interest will get identified with the interest of the ruling clique, whenever there are certain skeletons to hide—they will utilise this amended law to hide the skeletons from the people to save their skin. That is what is likely to happen. I do not want that to happen in the case of any political party; at least there are 10 or 11 ruling parties in this country. That is why not from the narrow partisan angle, but from the broader democratic point of view and democratic conventions of the country, I demand that this Bill should be repealed and I urge upon the Hon Members to feel their conscience and convictions and in the democratic traditions and conventions of this House pass my Statutory Resolution disapproving this Ordinance unanimously; if not unanimously, at least by an overwhelming majority.

MR. DEPUTY SPEAKER : I shall now put the Statutory Resolution moved by Prof. Madhu Dandavate to the House vote of the House. The question is :

“That this House disapproves of the Commissions of Inquiry (Amendment) Ordinance, 1986 (Ordinance No. 6 of 1986) promulgated by the President on the 14th May, 1986.”

The motion was negatived.

PROF. MADHU DANDAVATE : This is an undemocratic act; to lodge our protest, we are walking out.

16.08 hrs.

(Prof. Madhu Dandavate and some other Hon. Members then left the House)

MR. DEPUTY SPEAKER : I shall now put amendment to the motion for consideration moved by Shri Anil Basu to the vote of the House.

331 Stat. Res. re : Disapproval of JULY 30, 1986 Stat. Res. re : Disapproval of 332
Comm. of Inq (Amdt.) Ord. 1986
& Comm. of Inq. (Amdt.) Bill—Contd.

*Amendment No. 16 was put and
negatived.*

MR. DEPUTY SPEAKER : The ques-
tion is :

“That the Bill further to amend the
Commissions of Inquiry Act, 1952,
be taken into consideration”

The motion was adopted.

MR. DEPUTY SPEAKER : The House
will now take up clause by clause considera-
tion of the Bill.

Clause 2—Amendment of Act 60 of 1952

SHRI E. AYYAPPU REDDY (Kurnool):
I beg to move—

Page 1, lines 12 and 3,

Omit “the security of the State, friend-
ly relations with foreign States or
in the public interest.” (2)

Page 1,—

after line 18, *insert*—

“Provided that the Presiding Officer
of the House of the People or
the Legislative Assembly of the
State is also satisfied that in the
interest of the sovereignty and
integrity of India, it is not expedi-
ent to lay before the House of
the People or the Legislative
Assembly of the State, the report,
or any part thereof.” (3)

Page 2,—

after line 13, *insert*—

“Provided that the appropriate
Government within thirty days
of the passing of such resolution
by the House of the People or
the Legislative Assembly of the
State, as the case may be, shall
take a final decision on the
report of the Commission.” (4)

332 Stat. Res. re : Disapproval of 332
Comm. of Inq. (Amdt.) Ord. 1986
& Comm. of Inq. (Amdt.) Bill—Contd.

SHRI G. M. BANATWALLA (Ponnani):
I beg to move :

Page 1,— lines 10 and 11,—

after “apply if” *insert*—

“the Commission which has made the
inquiry under sub-section (1) has
recommended in its report and
the appropriate Government is
satisfied or where the Commission
has failed or rejected the plea to
make any recommendation as
hereunder, if the appropriate
Government is satisfied and the
Chief Justice of India or the
Chief Justice of the High Court,
as the case may be, concurs and
if” (5)

Page 1, lines 11 to 13,—

for “in the interests of the sovereignty
and integrity of India, the secu-
rity of the State, friendly relations
with foreign States or in the
public interest.”

Substitute—

“in the interests of the sovereignty and
integrity of India or the security
of the State,” (6)

Page 1, line 18,—

add at the end—

“within a period of six months of the
submission of the report by the
Commission to the appropriate
Government” (8)

Page 1, line 19,—

after “shall” *insert*—

“along with a memorandum setting
forth a general description of the
content of, and the nature of
Government action taken on, the
report or any part thereof not
considered expedient to be laid
before the House.” (9)

SHRI D. B. PATIL : I beg to move ;

Page 1 line 17 and 18,—

omit "and issues a notification to that effect in the official Gazette." (14)

Page 1—

after line 18 insert—

"Provided that a Committee of fifteen members elected by proportional voting system of the House of the people or, as the case may be, the Legislative Assembly of the State shall be constituted to scrutinise the decision of the appropriate Government not to lay before the House of the People or, as the case may be, the Legislative Assembly of the State, the report or any part thereof, of the Commission on inquiry made by the Commission under sub-section (1).

The proceedings of the Committee shall be held *in camera* and shall be confidential.

Provided further that if the Committee is unanimously satisfied about the justification for the decision of the appropriate Government, not to lay before the House of the people or, as the case may be, the Legislative Assembly of the State, the report, or any part thereof, of the Commission on inquiry made by the Commission under sub-section (1), then the decision of the appropriate Government shall stand undisturbed.

Provided further that if the Committee is not unanimously satisfied about the justification for the for the decision of the appropriate Government not to lay before the House of People or, as the case may be, the Legislative Assembly of the State, the report, or part there-of of the Commission on inquiry made by the Commission under sub-section (1), then the decision of the appropriate Government shall

stand revoked and the provisions of sub-section (4) shall apply to the report or part thereof, as the case may be, of the Commission on inquiry made by the Commission under sub-section (1)." (15)

SHRI P. CHIDAMBARAM : I beg to move—

Page 1,—

after line 18 insert—

'Explanation,—For the purpose of sub-section (5), "report" includes an interim report and all proceedings of a Commission.'

(21)

MR. DEPUTY SPEAKER : Shri Ayyapu Reddy, if you want to make any observations, you may do it.

SHRI E. AYYAPU REDDY : Mr. Deputy Speaker Sir, I have moved three amendments. The first amendment is that the words "the security of the State, friendly relations with foreign States or in the public interest" may be omitted. I say this because there is no definition with regard to these things and what is public interest has to be completely decided by the respective Governments. There is no standard by which they can say as to what is in public interest and what is not in public interest. Many a time, the party in power equates its own interest with the interest of the public. Therefore, all these three phrases should be omitted, i.e. "security of the States .etc." Security of the state is again a very vague term. As far as the phrase 'integrity and unity of the India' is concerned, we understand the importance and it can be retained. But the other phrases 'security of the State, friendly relations with foreign state or in public interest' may be omitted.

My second amendment is this: "Provided that the Presiding Officer of the House of the People or the Legislative Assembly of the House is also satisfied that in the interest of the sovereignty and integrity of India, it is not expedient to lay before the House of the

[Shri E. Ayyappu Reddy]

People or the Legislative Assembly of the State, the report or any part thereof."

One of the important points that has been made out is that you will be moving a resolution either in Parliament or in the Assembly asking the Parliament or the Assembly to approve of the notification. But no reason are given as to why the notification should be accepted, or as to how it is going to affect the interest of the public or the integrity of the nation. Even without disclosing the reasons, Parliament or the Assembly is asked to approve of it. Therefore, practically, it will be an insult to the House to ask it to approve a resolution without even informing the reasons as to why they have to approve. They have to merely accept it as the *ipse dixit* of the Government that it is in public interest or for the integrity or unity of India, and that the Government do not want it to be published. If there are any further questions by the members as to how and why it is going to affect the public interest, there will not be any answer. So, this will be adding insult to injury. A person who was found fault as to why he was beating his wife, said that he would not only beat his wife but he would also make her say that she was happy because he was beating her. You are not only not disclosing any reasons as to why the notification should be approved, but you are saying that you will get the notification approved even without disclosing any reason. This will expose how weak the functioning of democracy in India is, if a notification or for that matter anything, has to be approved even without disclosing the reason. That will be in a very bad spirit and not a true and correct democratic spirit. In order to avoid that, I have come forward with this amendment that at least the Speaker or the Presiding Officer must be satisfied that it is the interest of the integrity and unity of India that the notification should be approved or that the report should not be placed before the House. So, that is my second amendment. My third amendment also is that "Provided that the appropriate Government within thirty days of the passing of such resolution by the House of the People or the Legislative Assembly of the State, as the case may be, shall take a final decision on the report of the Commission."

This is where you are resorting to the extraordinary procedure of withholding the report from the House. It is absolutely mandatory for the Government to take a decision on the report at least within a prescribed time. To say that it is a secret document and not to take any decision or action will not be sound and will not be healthy. Therefore, it is incumbent in such cases for the Government to take a final decision on the reports submitted. These are my three amendments. I request that at least the second amendment should be accepted because it will act as a safety valve. It will be at least reposing trust on the Presiding Officers that they must also be satisfied that it will be necessary to withhold the report from the House. The Presiding Officer will be the best judge. There must a counter-check not only from the Government side, but the Presiding Officer should also act as a counter-check and give his consent that the report should be withheld for the reasons stated by the Government.

SHRI G. M. BANATWALLA : Mr. Deputy Speaker, Sir, my Amendments seek to provide for some safeguard against misuse or abuse of the powers that are being granted to the Government. The Government may decide that it cannot place the report on the Table of the House on certain grounds. But then, these powers may be misused or may be abused

Sir, the Hon Minister has assured the entire nation through this House that they will not misuse the powers that they will get. I thank them. It is because of this confidence that my Party is in coalition with your Party in Kerala. But, it is rather presumptuous to assume that you may be there in power for all times to come. It is presumptuous on your part to presume like this. Please do not. It is not in the public interest to identify yourself with Power in this manner. The parties come and the parties go. Then, there are several other parties also which are in power in States. You cannot assure the nation through this House about all parties that may happen to come to power or all parties that are in power in the States at present. Therefore, it is our duty to the nation to enact such statutes which have in built safeguards; which have at least reasonable safeguards; and it is with this

particular intention that I have moved my Amendment.

Sir another point to be noted is that up to now, the situation was that the reports were not acted upon. There are so many reports. For example, reports on communal disturbances in our country. No action have ever been taken in spite of their being placed on the Table of the House.

Now, we are going a step forward that these reports will also not be submitted to this House. Several grounds are mentioned for not placing the reports on the Table of the House. I submit that these grounds are very comprehensive. I have therefore in my Amendments tried to restrict the grounds. Yes, if the plea is for security, in the interest of the security of the country, one may concede that. But then you have cast your net too wide. So wide that any and every report can fall into the mischief of this particular sub-Section. Therefore, it is my fervent appeal even at this late hour, to have such a law on the Statute, which has in-built safeguards, so that the powers are not misused and abused. I hope Government will have a second thought on this particular provision.

SHRI D. B. PATIL : It is very embarrassing for all of us to do a thing without knowing what we are doing. This is actually what you are asking us to do here. This Bill envisages that the Government may take a decision not to lay the report of a Commission on the Table of the House, and thereafter issue a notification. After having issued a notification, Government is supposed to put up a resolution before the House; and the resolution has to be ratified by the House.

You are having a majority. So, Government will have that resolution passed. But the Members who will be passing that resolution without knowing what are the contents of the report, whether the contents are actually in public interest, or in the interests of the country, whether the contents were against the security of the country, etc., Therefore, I have suggested a *via media* : Instead of doing it without knowing anything

I have suggested that a Committee of the House should be appointed on the basis of proportional system of voting; and that committee should scrutinize the decision of the Government not to lay the report on the Table of the House. And if the committee is satisfied that the Government will stand is justified in doing it, then the decision of the Government undisturbed. But if the committee is not satisfied with the decisions of the Government not to lay the report on the Table of the House, then the decision of the Government will stand revoked. I think this is a *via media*, and this *via media* will not embarrass anybody. I request that the House may kindly accept my amendment.

SHRI P. CHIDAMBARAM : I regret that I cannot accept any of the amendments moved by Hon. Members. As far as Mr. Ayyapu Reddy is concerned, I have already said that these words are not vague. On the contrary, each one of the four grounds is contained in Section 3(5) has been taken from Article 19(2) or Article 19(6). These words occur in the Constitution; and these are the grounds on which we can impose restrictions even on Fundamental Rights. These words have meaning; these words have been interpreted and these words are well known both to Parliament and to courts of law.

As regards involving the Speaker, I beg to submit that we are asking for the approval of the House. Therefore, when the whole House is deliberating on the grounds that we have invoked, it would be superfluous to leave the decision to the Speaker alone.

As far as taking action is concerned, it is certainly not Government's intention not to take action on the reports of the Commissions of Inquiry, even if those reports are not placed before Parliament. And what action is being taken and what are the results of such action, can always be elicited by the hon. Members through other Parliamentary devices. There are other Parliamentary devices to find out from Government what action has been taken on the report.

SHRI E. AYYAPU REDDY : What is the difficulty in obtaining Speaker's consent ? He will see whether the reasons which are stated for withholding it are justified.

SHRI P. CHIDAMBARAM : The Speaker, as I understand the position, speaks with the voice of the House. The Speaker merely reflects the view of the House. When the approval of the House is taken, I do not think there is any necessity to remit the matter to the individual decision of a Speaker.

As far as Mr. Banatwalla's amendment is concerned, I appreciate the spirit in which he has brought these amendments. I am not being presumptuous, and I do not claim to speak for all times to come or for all Governments. I say that this Government has brought in this Bill, and this Government has made this notification.

SHRI NARAYAN CHOUBEY : This Government may remain, even if you go away.

SHRI P. CHIDAMBARAM : I am glad that subconsciously you agree that this Government will remain.

I am glad that you recognise even sub-consciously that even if I go, this government will remain. Time alone will tell us what amendments are necessary. In 1971 we made some amendments based on experienced in 1986 we have made some more amendments based on experience. If based on experience, it is necessary to amend this Act, Parliament certainly has power to amend this Act later. I am not speaking for all time to come; I am speaking for this government which has moved this Bill and which has made this Notification.

As far as Mr. Patil is concerned, again I say the same thing; when I am asking for the approval of the whole House, there is certainly no need to ask for the approval of a smaller Committee.

MR. DEPUTY SPEAKER : The question is :

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after line 18, insert—

'Explanation For the purpose of sub-section (5), "report" includes an interim report, and all proceedings of a Commission.' (21)

The motion was adopted

MR. DEPUTY SPEAKER : If the House agrees, I shall put all other amendments together to the vote of the House.

Amendments Nos. 2 to 6, 8, 9, 14 and 15 were put and negatived

MR. DEPUTY SPEAKER : The question is :

"That Clause 2, as amended, stand part of the Bill."

The motion was adopted

Clause 2, as amended, was added to the Bill

MR. DEPUTY SPEAKER : The question is :

"That Clause 3 do stand part of the Bill."

The motion was adopted

Clause 3 was added to the Bill

MR. DEPUTY SPEAKER : The question is :

"That Clause 1, Enacting Formula and Title stand part of the Bill."

The motion was adopted

Clause 1, Enacting Formula and Title were added to the Bill

SHRI P. CHIDAMBARAM : I beg to move :

"That the Bill, as amended, be passed."

MR. DEPUTY SPEAKER : The question is :

"That the Bill as amended be passed."

The motion was adopted