

[Shri R. K. Sinha]

It is one of the parts of the generation of black money in this country and we have to be careful about it.

There is open sale on pavements in different parts of the country of smuggled goods. These are the places from which pursuit must be made of people who bring these smuggled goods. There must be a check on the shops which sell these goods; they must be forced to divulge the secret as to who are the people who have sold these goods to them. Thus the original organisers, the gang-masters, who generate millions of rupees of black money must be apprehended. In these conspiracies, sometimes a solitary politician, thousands of businessmen and so many policemen might also be involved. Therefore, it is necessary that this thing which is draining away millions and millions of rupees of our national wealth must be stopped.

There is another thing. There was a news-item in a Calcutta daily which said that there were certain foreign embassies involved in this smuggling racket in the last two years. *The Hindusthan Standard* reported that there were certain embassies which were involved in this. It should be ensured that those who seek protection on the ground that they are foreign nationals who are representing their countries in India are not allowed to have any links with smugglers and should not become smugglers themselves. Such people must also be apprehended.

Recently in Delhi one German national, George Heinrichh, was arrested with three kilos of hashish. He might have had a link with Solomon.

There are other things also which are important in this connection. The artificial border with Nepal has to be policed and it has to be protected against smuggling of hashish, smuggling of Indian goods into Nepal and

smuggling of goods from Hongkong and Singapore to Nepal and their resale in India.

Lastly, I appeal to the Home Minister to strengthen the laws of the land. There must be a stronger law and deterrent punishment provided to the smuggler and those who help him.

SHRI UMA SHANKAR DIKSHIT: He has suggested a number of measures. We will examine them all.

SHRI S. M. BANERJEE (Kanpur): Sir, smuggled goods are sold by the customs. Anybody who purchases them from the customs house should not be arrested.

श्री मधु लिमये (बांका): अध्यक्ष महोदय, स्थगन प्रस्तावों का क्या हुआ? आधा दर्जन स्थगन प्रस्ताव आपके सामने हैं

अध्यक्ष महोदय: मैंने नहीं लिया है।

श्री मधु लिमये: वे सरकार की बड़ी बड़ी असफलताओं के बारे में हैं। कल तो केवल दामों की चर्चा हुई है।

12.36½ hrs.

RE: ISSUE OF ORDINANCE INCREASING EXCISE DUTY ON PETROL, KEROSENE OIL, ETC.

MR. SPEAKER: I asked the Law Minister to throw some light on the point of order raised yesterday on the ordinance that was issued.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): If you desire and direct us that I should make a statement on the question.

श्री अटल बिहारी वाजपेयी (ग्वालियर):
अध्यक्ष महोदय, इस से पहले कि विधी मंत्री
वक्तव्य दें, मेरा निवेदन है कि यह मामला
प्रमुख रूप से आप से सम्बन्धित है।

अध्यक्ष महोदय : मैं तो बिल्कुल क्लीयर
हूँ चूँकि आप ने कहा था इसलिये मैंने मिनि-
स्टर साहब को बुलाया है। अगर आप नहीं
चाहते हैं, तो मैं रहने देता हूँ।

श्री अटल बिहारी वाजपेयी : अध्यक्ष
महोदय, पहली लोक सभा में स्पीकर के पद
पर बैठे हुये श्री मावलंकर ने जो विचार
व्यक्त किये थे, वे आप के सामने होंगे।
विधि मंत्री तो केवल कानूनी पहलू बता
सकते हैं, लेकिन पार्लियामेंट के अधिकारों
की रक्षा करना आप का काम है।

SHRI H. N. MUKERJEE (Cal-
cutta-North-East): We made a
very clear submission. We wanted
your ruling, and preparatory to that
ruling, you required the assistance of
the Law Minister, perhaps among
others who also will assist you. But
you have to make a pronouncement
on it, whatever is in your mind.

MR. SPEAKER: I studied it my-
self, and I am very clear on it.

SHRI H. N. MUKERJEE: What-
ever you are clear about, you will
indicate to us in understandable
language a little later. (*Interrup-
tion*). I want to have your ruling.
This is a very serious proposition.

MR. SPEAKER: You want to hear
the Minister.

SHRI H. N. MUKERJEE: Not
particularly. You wanted the assis-
tance of the Minister.

MR. SPEAKER: This is not some-
thing which is new before this House.
I think he may have something to
explain to you on those things.

SHRI H. N. MUKERJEE: A very
serious constitutional point was in-
volved in the point of order raised
by Mr. Vajpayee yesterday. And that
is why we look up to you to tell us
something which would mean some-
thing important in the functioning of
parliamentary democracy in this
country. You only wanted the assis-
tance of the Law Minister as an
expert jurist to tell you something
about the point of order. And in re-
gard to that point of order, very
probably on the submissions made by
him, you should give an opportunity
for other Members also to place their
views.

MR. SPEAKER: If you want to
hear why they brought this ordinance
from the other side, they are welcome
to do it. Personally, I am very clear
about it in my own ruling.

SHRI H. N. MUKERJEE: But
we are making a very clear distinc-
tion between our attitude as Members
of Parliament to the ordinance and to
the idea of Government taxing the
country by ordinance. You may
consider that to be a frivolous point,
but it agitates our mind and we do
have an idea that it has constitutional
implications of a serious order.

MR. SPEAKER: Not at all frivo-
lous.

SHRI H. N. MUKERJEE: That is
why we should have a discussion.

SHRI SHYAMNANDAN MISHRA
(Begusarai): In the ultimate ana-
lysis, the Chair has to give the ruling
in the matter. But at this stage, we
have no objection to the hon'ble Law
Minister intervening and saying some-
thing on behalf of the Government as
to why they felt it necessary to come

[Shri Shyamnandan Mishra]

forward with the ordinance. We can hear that very well, but in the ultimate analysis, the Chair's ruling has to come.

MR. SPEAKER: I can give without the Law Minister even now, but if you want to listen why they came out with the ordinance, I have no objection. He is not to bind me with whatever his observations are. I have my own ruling on that.

SHRI S. M. BANERJEE (Kanpur): Sir, after all, this ordinance has been issued under article 123. If you read the provisions in that article, you will see that through an ordinance the Government can collect funds or revenues. It is a clear thing, and the explanation is also there under the same article. Here, the Law Minister is part and parcel of the entire Cabinet.

When they passed the Ordinance, I presume the President or the Prime Minister or the Minister should have consulted the Finance Minister. Here it is the collective responsibility of the Cabinet and the Law Minister is also a party to this decision. If you want to consult any law officer, it should be the Attorney General and not the Law Minister because he is a party to the entire thing.

श्री मधु लिये : (बांका) : अध्यक्ष महोदय, मुझे कुछ कहना है। मैंने कल जो आप की बात सुनी उसमें मेरे ऊपर यह असर हुआ कि श्रीचित्त्य के बारे में यह सफाई देंगे। अब आप कह रहे हैं कि आर्डिनमें क्यों निकाला इस की सफाई दें। वह तो देवकान्त बरूआ जी दे चुके। सवाल आर्डिनमेंस निकालने के कारणों का नहीं है। वाजपेयी जी का सवाल यह नहीं था। उम के प्रौचित्त्य के बारे में यह कुछ कहें तो वह हम गुनने के लिए तैयार हैं। लेकिन क्यों आर्डिनमेंस निकाला अगर

उसके कारण वह बताना चाहते हैं तो वह हम सुनने के लिए तैयार नहीं हैं।

अध्यक्ष महोदय : अगर आप उन से इस के बारे में सुनना चाहते हैं तो खुशी से सुनिए और आप मेरी रूलिंग अगर सुनना चाहते हैं तो सुन लीजिए।

SHRI DASARATHA DEB (Tripura East): The point made by Mr. Banerjee is quite right because when the Government takes a decision to issue an Ordinance, the Law Minister is part and parcel of the Cabinet and his duty would be to defend or justify the Government here, not to clarify the constitutional point. That is why it is before you to give a ruling. You should not be guided by him.

MR. SPEAKER: As far as this point is concerned, I personally do not need the Law Minister's guidance to give my ruling.

SHRI S. A. SHAMIM (Srinagar): Please do not give your ruling just now.

अध्यक्ष महोदय : शमीम साहब आप बैठिए। कुछ मुझे पता लगे कि आप के मन में क्या है? मुझे कहते हैं कि रूलिंग भी दें और फिर कहते हैं कि ला मिनिस्टर को भी सुनें।

SHRI S. A. SHAMIM: The constitutional validity of the Ordinance is not in question; Government can issue an Ordinance, the condition precedent being that the Legislature should not be in session and there must be an emergency which compels the Government to issue the Ordinance. That is how an Ordinance should be issued. In Punjab the Government recently issued an Ordinance that Legislators can hold office of profit and it is now being questioned. This is a parallel example. Keeping that in view, we have

to see whether there was necessity, was there constitutional propriety in issuing an Ordinance when a new tax was being levied. That is the question. We know that the Constitution provides. Here we would like the Speaker to say whether the Government had done the right thing or not. If we had to question the legal validity, you would have found us in the Supreme Court, not here. The point is whether the Government has behaved or misbehaved in the exercise of that power.

SHRI P. G. MAVALANKAR (Ahmedabad): The hon. Member Shri Vajpayee yesterday raised an important and basic issue dealing with both parliamentary democracy and our own Constitution. Can any executive Government take Parliament for granted, especially in regard to taxation policies? Yesterday, when this matter was raised we said: let the Law Minister assist you and then you can give your ruling. Instead of coming out with a statement here, let him assist you in the Chamber you must have before you the statement from the Law Minister and you should kindly allow us to explain our points of view. Otherwise you will be denying us an opportunity to express our views.

MR. SPEAKER: He says that the Law Minister has got to defend the actions of his Cabinet. But as far as the ruling is concerned, it is not only for my knowledge but for your knowledge also.

I have looked into the precedents and I find the position has been very clearly stated by my predecessors as well as by myself. After going through them, I do not think I need the advice of the Law Minister.

श्री श्यामनन्दन मिश्र : हम लोग कुछ सबमीशन कर दें तब आप उन की रोशनी में रूलिंग दीजिए ।

अध्यक्ष महोदय : बड़ी खुशी से करिए ।

I have got the rulings right from the time of my distinguished predecessor, Shri Mavalankar. He did not approve of ordinances on the eve of Parliament session. It was repeated by others till I came here. On 22nd November, 1971, Shri Indrajit Gupta raised a similar point, saying that,

"13 ordinances which are now being presented in the form of Bills relate to additional measures of taxation. They are different from other ordinances."

I said,—

"Ordinance is an ordinance whatever it might be... I have tried to see whether there could be any ordinance demarcated into financial and also non-financial ordinance... I had already made in very strong terms some observation. But if you think that there should be some distinction between financial and non-financial, tax and non-tax ordinance, there is nothing in my knowledge on which I can base my ruling. All I can say is, I do not approve of an ordinance just at the time when the House is about to meet."

Ordinances by themselves are not very welcome, specially so when the date is very clear. It is not only clear but it is also near. In such cases, unless there are very special reasons, ordinance should be avoided. This is the ruling which I gave on 22nd November, 1971—and the same was given by my predecessors.

श्री मधु लिमये : लेकिन ये, परसिस्टेंटली चेयर को डिफाई करते जाते हैं अध्यक्ष की अवहेलना करते जा रहे हैं, इसका कोई इलाज होगा ?

श्री अटल बिहारी वाजपेयी : नहीं, अध्यक्ष महोदय, क्या आप यह रूलिंग देकर अपनी जिम्मेदारी से मुक्त हो जायेंगे ? क्या आप यह नहीं देखेंगे कि सरकार आपकी रूलिंग के हिसाब से आचरण करती है या नहीं करती है ?

अध्यक्ष महोदय : कांस्टीट्यूशन में जो ला-मेकिंग पावर्स हैं और आर्डिनेंस के संबंध में जो पावर्स हैं उसमें आप तब्दीली करिए और मेरे हाथ में कुछ ताकत दीजिए, तब तो मैं कुछ कर सकता हूँ। मैंने तो प्रोप्राइटी पर रूलिंग दी है। लीगलिटी पर तो मैं क्या कह सकता हूँ।

SHRI SHYAMNANDAN MISHRA: There is no statute even in England that all Money Bills should originate in the House of Commons itself. It was only after a continuous and tenacious struggle that the supremacy and the authority of the House of Commons came to be established. So, it is not a matter of legal or constitutional provision. It is a matter of convention and we want to set up this convention that when Parliament has been summoned and the date has been announced, Government should not come forward with any ordinance. But I am not one of those who subscribe to the view that in matters of taxation Government should not come forward at any stage with any ordinance.

I would not subscribe to that, because there may be a vacuum when a particular law has been invalidated and the exchequer might come to incur loss. So, the Government may be compelled to come forward with an Ordinance. It is in this perspective that I do not agree with the view that in the matter of taxation, there should

not be any Ordinance at any stage. Even so, when the Parliament has been summoned, is it not imperatively necessary that the Ordinance should be of such a nature that it is not made operative until it is approved by Parliament?

MR. SPEAKER: It is on the eve of the Parliament session.

SHRI SHYAMNANDAN MISHRA: It makes the situation grave that the taxation has been made operative. Could not the Ordinance have been framed in a way so as to make these taxes operative after the approval of Parliament with retrospective effect? I have gone into this matter. An Ordinance can be made retrospective. Now we are giving only a rubber stamp.

MR. SPEAKER: The Bill would be coming before you when you can express your view on that.

SHRI SHYAMNANDAN MISHRA: What I am submitting is that the Chair should also take into account this fact that this tax is borne by the people even before the approval of Parliament is given.

MR. SPEAKER: I am prepared to sit with you when you can let me know whether I have got that authority.

SHRI SHYAMNANDAN MISHRA: A convention has to be established. If we want to have a struggle in Parliament for establishing this convention, this is one step we have taken in this direction.

MR. SPEAKER: So far as this House is concerned, it also goes by conventions. The conventions here are the earlier rulings. I gave the same ruling which was given by my predecessor.

SHRI SHYAMNANDAN MISHRA: We do not want your rulings to become infructuous.

SHRI H. N. MUKERJEE: What you have just now said gives the cue to what I was submitting. Right from the time of Speaker Mavalankar to your time, the Chair has repeatedly expressed itself against the impropriety of Government introducing Ordinances during the recess, especially when the next session was so very near, and this has happened, and the Government goes on violating a direction of the Chair, that is, of the whole House. Then again, the question that was referred to by my friend, Shri Mishra, is one which has got to be gone into at some depth, because this particular article 123, which provides the President with the power to promulgate Ordinances, is a very sad relic of the Government of India, Act, 1935, and the result is that the much-cherished liberties of the citizen continue to be violated.

In regard to taxation measures there is a long history to the arrogation to the elected chamber of representatives of the people their right of originating taxation measures, and there is an entire array of constitutional provisions in regard to Money Bills, financial provisions and all that. There must be a point to it.

Now legislation by Ordinance, normal legislation in special circumstances, might be connived at, might even be justified, but taxation by Ordinance, particularly on the eve of a Parliament session, is an absolutely retrograde and reprehension action, and it is entirely against the grain of parliamentary decency, but yet this kind of thing continues to be practised. There should be no taxation without representation, is an old slogan which was echoed in this House yesterday, and here taxation measures are introduced on the sly by the Government at a point of time when Parliament was going to be

called in ten days' time. This is contempt of the Parliament, this is treating the elected members of the House with contumely, this is doing something which is entirely unconstitutional.

We know that for purposes of legislation the President and the two Houses of Parliament are together. But this House, our House, we make bold to say, because we are the elected House we have a very special position in regard to financial legislation and taxation measures and that special position of this House can never be impinged upon by the kind of Government action which has been taken. Therefore, from every point of view, constitutional, political and financial, this is something which is utterly unconstitutional.

In regard to the substantial nature of the Ordinance and the content of it, there will be a discussion later on. But I have tried to indicate that there is a long history to the whole process, going to the days of Magna Carta and the Bill of Rights. Since we have adopted this system, we have to work it in a proper spirit to the extent it is in conformity with the interest of our country and our people.

Here, we discover something which is done in defiance of Parliament. In spite of the rulings you yourself have given and the rulings given by the hon. Speaker Mr. Mavalankar—you have reaffirmed it—the Government treats all these observations of the Chair that are directives by implication to the Government, with contempt and contumely. That is absolutely something that goes against the grain of Parliamentary decency. You represent all the sections of the House and you assert the dignity and the authority of the House over the kind of fiddling that the Government tries to do perhaps because it is sure of its overwhelming majority.

SOME HON. MEMBERS rose—

MR. SPEAKER: There is going to be a discussion on the Bill. You please sit down. I am not allowing any further debate on it now. All I can do is to fix time for that. I will have the discretion to extend the time on that.

SHRI S. M. BANERJEE: Article 123(2) (b) says:

"may be withdrawn at any time by the President."

Since the President has promulgated the Ordinance, after knowing your reaction, after your ruling, Sir, he may withdraw it.

MR. SPEAKER: Don't go too far. That is not my job to do it. No more discussion please. You can take it up at the time when the Bill comes.

SHRI SAMAR GUHA (Contai): We are happy with the ruling that you have given. I want to know what is the reaction of the Government. The President acts on the advice of the Government. What is the reaction of the Government to the ruling that you have given now?

MR. SPEAKER: Papers to be laid.

12.57 hrs.

PAPERS LAID ON THE TABLE

LAW COMMISSIONS REPORT ON CODE OF CIVIL PROCEDURE, 1908, DELIMITATION OF COUNCIL CONSTITUENCIES (ANDHRA PRADESH) AMENDMENT ORDER, 1973, ETC.

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI NITIRAJ SINGH CHAUDHARY): I beg to lay on the Table—

(1) A copy of the Fifty-fourth Report of the Law Commission on the Code of Civil Procedure, 1908. [Plac-

(2) A copy of the Delimitation of Council Constituencies (Andhra Pradesh) Amendment Order, 1973 (Hindi and English versions) published in Notification No. G.S.R. 445(E), in Gazette of India dated the 18th September, 1973, under sub-section (3) of section 13 of the Representation of People Act, 1950. [Placed in Library. See No. LT-5663/73.]

(3) A copy of the Conduct of Elections (Amendment) Rules, 1973 (Hindi and English versions) published in Notification No. S.O. 505 (E) in Gazette of India dated the 18th September, 1973, under sub-section (3) of section 169 of the Representation of the People Act, 1951. [Placed in Library. See No. LT-5664/73.]

(4) A copy of Notification No. S.O. 461(E) (Hindi and English versions) published in Gazette of India dated the 3rd September, 1973 containing Order No. 5 of the Delimitation Commission in respect of the State of Uttar Pradesh, under sub-section (3) of section 10 of the Delimitation Act, 1972. [Placed in Library. See No. LT-5665/73.]

12.58 hrs.

ASSENT TO BILLS

SECRETARY-GENERAL: Sir, I lay on the Table following three Bills passed by the Houses of Parliament during the last session and assented to since a report was last made to the House on the 5th September, 1973:—

(1) The Coking and Non-coking Coal Mines (Nationalisation) Amendment Bill, 1973.

(2) The Orissa Appropriation (No. 3) Bill, 1973.

(3) The Manipur Appropriation