

[Mr. Deputy-Speaker]

'That clause 1, as amended, stand part of the Bill'.

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting Formula

Amendment made :

Page 1, line 1, for 'Eighteenth' substitute 'Nineteenth'. (1)

(SHRI ANNASAHIB SHINDE)

MR. DEPUTY SPEAKER : The question is :

"That Enacting Formula, as amended, stand part of the Bill".

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

The Title was added to the Bill.

SHRI ANNASAHIB SHINDE : 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.

15-12 hrs.

STATUTORY RESOLUTION RE :
DISAPPROVAL OF ESSENTIAL
SERVICES (MAINTENANCE)
ORDINANCE

SHRI S. M. BANERJEE (Kanpur) :
On a point of order.

MR. DEPUTY SPEAKER : But there is no business before the House. Let Shri S. S. Kothari move his resolution. Then, I shall give him an opportunity to raise his point of order.

SHRI S. M. BANERJEE : My point of order is that this motion cannot be discussed.

MR. DEPUTY SPEAKER ; If that is the point, I shall consider. First, let Shri S. S. Kothari move his motion; let him get up and say that he moves it. Then, he can raise the point of order.

SHRI S. S. KOTHARI (Mandsaur) : I beg to move :

"This House disapproves of the Essential Services Maintenance Ordinance, 1968 (Ordinance No. 9 of 1968) promulgated by the President on the 13th September, 1968".

SHRI S. M. BANERJEE : I am sure that this resolution has been moved under article 123 of the Constitution. It has been admitted by you or by the Speaker under rule 184. Article 123 reads thus :

"(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require".

Then, there is a provision to the effect that every such Ordinance shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament and so on.

This ordinance was passed by the back-door and it has now been brought before this House and laid on the Table. I have no objection to that. Shri S. S. Kothari, Shri George Fernanades, Shri Joytirmoy Basu and myself in our wisdom have tabled a resolution seeking to disapprove of the ordinance. That resolution can only be admitted under rule 184 which reads thus :

"Save in so far as is otherwise provided in the Constitution or in these rules, no discussion on a matter of general public interest shall take place except on a motion made with the consent of the Speaker".

You have given your consent. That is why this has been admitted. Then it was decided to allot time for this in the Business Advisory Committee. Ultimately it has come up here. Now, Government are

seeking to convert the Ordinance into a Bill. Shri S. S. Kothari and others have moved a resolution seeking disapproval of the ordinance.

This resolution has been admitted under rule 184. There are certain conditions under which such resolution could be admitted. The first condition is that it shall raise substantially one definite issue; and the definite issue is one of banning strikes. Secondly, it shall not contain arguments, inferences, ironical expressions, imputations or defamatory statements, and thirdly it shall not refer to the conduct or character of persons except in their public capacity. We are not discussing the conduct of the Home Minister. We could have discussed it, but we are not discussing it now.

Then, "It shall be restricted to a matter of recent occurrence". This is a recent occurrence, on the 19th September. Then, "shall not raise a question of privilege". It is not raising a question of privilege. Then, "it shall not revive discussion of a matter which has been discussed in the same session;". We have not discussed it in the same session, though we had a no confidence motion on the same subject. Then, "it shall not anticipate discussion of a matter which is likely to be discussed in the same session. "Tomorrow, or even today, it is going to be discussed because the Bill is coming up.

Now I come to my main point, which is under rule 188, which reads :

"No motion which seeks to raise discussion on a matter pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions or any commission or court of enquiry appointed to enquire into, or investigate, any matter shall ordinarily be permitted to be moved :"

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI VIDYA CHARAN SHUKLA) : Read the proviso also; read the full thing.

SHRI S. M. BANERJEE : I am reading it.

"Provided that the Speaker may, in his discretion, allow such matter being raised in the House as is concerned with the procedure or subject or stage of enquiry if the Speaker is satisfied that it is not likely to prejudice the consideration of such matter by the statutory tribunal, statutory authority, commission or court of enquiry."

Sir, you are the supreme commander of the army of democrats. Now, I will quote to you some rulings of the Speaker. The same point of order was raised on the 7th April, 1965 when there was brutal firing in Bastar, killing even the Maharaja of Bastar, and all the sections of this House wanted that to be discussed. Then Shri G. N. Dixit, who is no more in this House contended that it cannot be discussed here by raising a point of order. Shri H. C. Mathur then said that so far as the commission appointed by the State Government is concerned, it cannot be discussed in this House. He said that the issue is "no more with us."

MR. DEPUTY-SPEAKER : It was over-ruled.

SHRI S. M. BANERJEE : I know. I am coming to that. I will refer to those things which have been upheld. Ultimately, it was decided by the hon. Speaker that anybody who was responsible for that, that also cannot be discussed. He said "you cannot discuss the merit or demerit of the case; you can only quote certain incidents, what happened there." Naturally, that was allowed.

Then, on 9th May, 1968, a question was raised by Shri Madhu Limaye :

"That this House disapproves of the statements made by Shri Ranganathan, Under Secretary, Ministry of External Affairs on behalf of the Government of India in his affidavit in opposition on the 21st April, 1968, before the Delhi High Court which are contrary to the statements made by the Minister of Home Affairs in the House on the 28th February, 1968 in regard to implementation of Kutch Award."

Shri Madhu Limaye wanted to move a motion disapproving the conduct of a

[SHRI S. M. BANERJEE]

particular officer and he explained why it should be done. Now, the Speaker took time to consider it. He did not give a ruling immediately. He patiently waited and referred the matter to the Law Minister. I am now reading only the ruling of the Speaker from page 36735 of the uncorrected proceedings—now corrected, perhaps—dated 9th May, 1968.

“On my enquiry from the Law Minister whether the affidavit was a privileged or secret document, the Law Minister stated as follows :—

“I did not say that it is a privileged document; I said that it is a document which is now being considered by a court.”

So, the Law Minister contended that a discussion cannot take place because the case is pending before a particular High Court. The Speaker ultimately gave a ruling, after weighing the rights of this House and the judiciary. I am quoting it :

“As regards the third question, the rule whether a motion which relates to a matter which is under adjudication by a court of law should be admitted or discussed in the House has to be interpreted strictly. While on the one hand the Chair has to ensure that no discussion in the House should prejudice the course of justice, the Chair has also to see that the House is not debarred from discussing an urgent matter of public importance on the ground that a similar, allied or linked matter is before a court of law. The test of *sub-judice* in my opinion should be that the matter sought to be raised in the House is substantially identical with the one on which a court of law has to adjudicate. Further, in case the Chair holds that a matter is *sub-judice*, the effect of this ruling is that the discussion on the matter is postponed till judgment of the court is delivered.

The bar of *sub-judice* will not apply thereafter, unless the matter becomes *sub-judice* again on an appeal to a higher court.”

Lastly, his ruling was, after this was pointed out to him by my hon. friends,

Shri Bhandare and others—I think, Shri Bhandare was there—

“Hence I consider”—

This is very important.

“Hence I consider that discussion on the notice of motion should be postponed until the court has delivered its judgement. I am, however, clear that the matter is of public importance which should be discussed in the House and its importance will not be lost if the House waits until the court has adjudicated in the matter.”

My submission is that the Ordinance, which we are going to discuss now, has been challenged—I have verified it—in the Supreme Court and in three High Courts, namely, the Delhi High Court, the Rajasthan High Court and the Andhra High Court. It may be said on behalf of the Home Minister that the Supreme Court has rejected it. I know that but it has not rejected it on merit; it was simply not admitted.

SHRI R. D. BHANDARE (Bombay Central) : It is a strange proposition.

SHRI S. M. BANERJEE : If you can show any judgement by which it has been rejected on merits, I am prepared to accept that.

This particular view was upheld even by the learned Speaker on the 9th May 1968. The case is not pending only in the Delhi High Court, but in Rajasthan and Andhra High Courts also it is pending. What we are going to discuss is an Ordinance which has been challenged in the High Courts, the highest judiciary in the States. It is pending there. What is coming next ? It is that the Ordinance should become law. Which Ordinance ? The Ordinance which is under challenge.

So, I say on the basis of past rulings, specially the latest ruling on 9th May, 1968, that this discussion should not be allowed and this should be kept pending the finalisation of the cases by the three High Courts.

SHRI K. LAKKAPPA (Tumkur) :
What about human rights ?

MR. DEPUTY-SPEAKER : So far as the first point is concerned, he mentioned article 123 of the Constitution. Will he kindly look at clause (2) of the same article, wherein it has been stated :—

“shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses” ?

SHRI S. M. BANERJEE : I know it.

MR. DEPUTY-SPEAKER : Under the Constitution, a right is given to this House to disapprove it. It is not simply allowed to lapse; the House has the right to approve or disapprove it.

SHRI S. M. BANERJEE : My point is not that.

MR. DEPUTY-SPEAKER : So far as the first objection under rule 184 is concerned, that does not apply here and I do not allow it.

SHRI S. M. BANERJEE : Under what rule have you admitted this motion ?

SHRI S S KOTHARI : Under direction 9A and article 123 of the Constitution.

MR. DEPUTY-SPEAKER : In the Constitution it is obligatory. How can we deny this House the right to disapprove an action ? No rules can prevent this House from acting because we have a right under the Constitution. That is not possible.

SHRI S. M. BANERJEE : You have not followed me correctly. I have the Constitution with me and I have quoted article 123. I can quote article 123 (2) also which you have quoted and quoted very ably than I could. I table a motion before this House under the Rules. My Bible is the Rules of Procedure.

Either it is 193 or 184. What is the rule under which this motion has been admitted ?

MR. DEPUTY-SPEAKER : It is under the Constitution. The heading goes as the Statutory Resolution. You have been in the House for more than 12 years now. You ought to know what procedure we follow. When there is a constitutional obligation there is no question of anything.

Now, coming to the second point, I would like to hear the Law Minister as to whether there are any cases pending or the same matter is being discussed

THE MINISTER OF LAW (SHRI GOVINDA MENON) : Sir, I do not know about it. What I submit is this...
(Interruptions)

SHRI UMANATH (Pudukkottai)
He does not know !

SHRI N. SREEKANTAN NAIR (Quilon) : He is ignorant. (Interruptions)

MR. DEPUTY-SPEAKER : He will find out.

श्री एस० एस० जोशी (पूना) : उपाध्यक्ष महोदय, अगर ला मिनिस्टर को पता नहीं है तो पता करके कल आयें और तब तक के लिए इसको मुस्तबी रखा जाए ।

SHRI K. LAKKAPPA : He cannot say, “I do not know”. He should come prepared. (Interruptions)

MR. DEPUTY-SPEAKER : Let us proceed quietly. The contention is that the matter is *sub-judice*. Now, I would say, those who are contending that should produce evidence to that effect. Otherwise, what will happen....

SHRI UMANATH : We are on oath here. We make statement on the floor of the House and from the Government side ...

MR. DEPUTY-SPEAKER : What he has said is his responsibility.

SHRI UMANATH : He says he does not know. We have made a statement here that the matter is *sub-judice*. From the Government side, they have not denied it. The Government does not say that it is not true. He only says he does not know. Let the Government verify it. Till then, this can be postponed.

MR. DEPUTY-SPEAKER : You must specify what exactly is the point.

SHRI S. M. BANERJEE : Kindly hear me. My point is this. The cases are before the Andhra High Court, the Rajasthan High Court and the Delhi High Court. In two cases, it is by employees and in the case of Delhi High Court, it is not an employee but a member of a particular Association has moved a writ petition praying that the effects of the Essential Services Maintenance Ordinance, 1968 should not be made operative. The legality of the Ordinance has been challenged in the High Courts.

MR. DEPUTY-SPEAKER : It has been challenged in the Delhi High Court.

SHRI S. M. BANERJEE : It has been challenged in the High Courts of Delhi, Rajasthan and Andhra Pradesh. The High Court of Andhra has even issued stay orders. I have checked it with the Home Minister. It is correct. These cases are pending. Mr. Shukla has himself said that there are three cases pending in these High Courts.

SHRI SHRI CHAND GOYAL (Chandigarh) : The writ petitions challenging the legality of this Ordinance are not only pending in various High Courts of the country but one High Court has even granted a stay order, that is, Andhra High Court.

Still, the Law Minister has pleaded ignorance. I think, being the Law Minister, he ought to have been apprised of the latest developments. But he pleads ignorance to the House. It has appeared in a section of the press, in leading newspapers, that these writ petitions have not only been admitted but stay orders have been granted by one High Court. Nobody

can challenge that this is not a *sub-judice* matter. They are pending. It is quite likely that the High Court may pronounce that this Ordinance is illegal.

SHRI GOVINDA MENON : I am surprised....(*Interruptions*)

SOME HOM MEMBERS *rose.*

MR. DEPUTY-SPEAKER : Let him clarify the position. I will give you an opportunity. Let him clarify the position.

SHRI S. M. KRISHNA (Mandya) : Let us first pay our compliments to the Law Minister and then he can say whatever he wants to.

SHRI THIRUMALA RAO (Kakinada) : This is, more or less, being discussed here. There are persons on this side also who want to have their say. Before you call the Law Minister, you must give an opportunity to these persons also.

MR. DEPUTY-SPEAKER : I only want to ascertain the fact whether the Ordinance has been challenged in the Delhi High Court and other High Courts. This is what I have asked him to clarify... (*Interruptions*)

SHRI UMANATH : What is he going to clarify on the basis of his ignorance. (*Interruptions*)

MR. DEPUTY SPEAKER : I am trying to ascertain only this fact from the Law Minister. (*Interruptions*)

SHRI S. M. KRISHNA : On a point of order.

MR. DEPUTY-SPEAKER : Let him clarify the position. Until I get a clarification from this side, I will not hear any one...

SHRI S. KUNDU (Balasore) : On a point of order.

MR. DEPUTY-SPEAKER : Please resume your seat. I am trying to ascertain the fact...

SHRI S. KUNDU : On a point of order.

MR. DEPUTY-SPEAKER : I am asking the Law Minister to clarify this point. Please resume your seat.

SHRI GOVINDA MENON : There are about 13 or 14 High Courts in India, and if I have said that I do not know whether certain petitions are pending in certain High Courts, there is nothing to be surprised about...

SHRI S. KUNDU : Please listen to this side also.

SHRI GOVINDA MENON : Subsequently, the Home Minister has told me that, in the Supreme Court, a writ challenging the validity of the Ordinance was moved and it was not admitted; the Supreme Court rejected the writ...

SHRI K. LAKKAPPA : Let him bring the relevant records. He cannot confuse the House like this. *(Interruptions)*

MR. DEPUTY-SPEAKER : Order, order.

SHRI GOVINDA MENON : In the Supreme Court of India, a writ challenging the validity of this Ordinance was moved and that writ was dismissed. In the Delhi High Court, a writ challenging the validity of the Ordinance has been moved; it has not yet been heard. *(Interruption)*

SHRI NAMBIAR (Tiruchirapalli) : The cat is out of the bag now.

MR. DEPUTY-SPEAKER : The writ is admitted but not yet heard ?

SHRI GOVINDA MENON : Yes.

MR. DEPUTY-SPEAKER : But notice has been issued to the Government ?

SHRI GOVINDA MENON : May be; I must enquire. There is a writ which has been moved and it may be taken. *(Interruptions)* It may be taken that a writ challenging the validity of the Ordinance is pending. In Rajasthan and Lucknow also, a writ challenging the validity of

the Ordinance is pending. In Andhra, a writ against the termination of services under the Ordinance is pending. Now it is not possible for me to know all these details.

I submit, Sir, what is now moved before you is a motion under Article 123 (2) of the Constitution, disapproving of the ordinance issued by Government. That is the motion, that the House disapproves the Ordinance which was issued. Now, that is a constitutional motion. It is the supreme, sovereign right of this House to say whether the Ordinance which was issued by the President under Article 123 is approved by this House or not; and a vote either approving the ordinance or disapproving the ordinance will not, in any way, invoke the rule of *sub-judice* because we do not go into any validity of that matter. Therefore my submission is. *(Interruption)* My submission is, the Motion before the House, disapproving the Ordinance should be considered and voted upon. *(Interruption)*

MR. DEPUTY SPEAKER : Order, order. Shri Bhandare.

SHRI S. M. BANERJEE : Sir, I wish to say something on this point. I will take only a few minutes. When the discussion of Kutch Award came up in this House, Shri Madhu Limaye raised this matter and pleaded for discussion; this House pleaded. But the Law Minister was adamant. What did he say then ? This is what Mr. Speaker has said :

"On my enquiry from the Law Minister whether the affidavit was a privileged or secret document, the Law Minister stated as follows :—

"I did not say that it is a privileged document ; I said that it is a document which is now being considered by the court and it is not open to a party in litigation in a court to publish that document. This is similar to a plaint and a written statement in a regular case. It is not usual for a party to a case to publish this..... It is so stated, for example, in the Commentary on the Evidence Act, that the class of documents which consists of

[Shri S. M. Banerjee]

plaints, written statements, affidavits and petitions filed in court cannot be said to form such acts or records of acts as are mentioned in this Section and are, therefore, not public documents. This is an affidavit which has been produced by one of the Under Secretaries to Government on behalf of Government. It has been produced in court and it is not correct to say that anybody will get a copy. A copy will be given only to the party and, after the case is decided, it may be available for others."

He further went on to say :

"The point is that, assuming but not conceding that the affidavit filed by the Under Secretary is in variance with the statement which the Home Minister may have made here, that is something which tells upon the strength and efficacy of that affidavit. And that is a matter which will be discussed in the court and which, as a matter of fact, was discussed in the court. As a matter of fact, now I can submit, on behalf of Government, that the question was raised in the court that this affidavit by the Under Secretary is slightly at variance with what the Home Minister has stated..... That is a matter which, probably, the judges are now considering, and, therefore, I cannot conceive of a matter which will be more directly and clearly in violation of the *sub-judice* rule which I pointed out."

SHRI R. D. BHANDARE : I wish to raise certain points before you for your consideration and for the consideration of the House. Sir, the first point is this. What is it that is pending in the high courts ? It is the legality of the Ordinance, not the merits of the Ordinance at all. That is the first point. Here, what is it that is before the House ?

The second point is : What is it that is before the House ? What is before the House is a Motion seeking to disapprove the Ordinance. The third point is that after this Motion is disposed of, what is it that has to be considered by the House ? The Bill.

MR. DEPUTY-SPEAKER : That is not before the House now.

SHRI R. D. BHANDARE : I know we have not touched it because at the initial stage, it was objected to and it was upheld.

MR. DEPUTY-SPEAKER : First is the Resolution.

SHRI R. D. BHANDARE : When the legality is challenged, it is outside the scope of the Resolution.

AN HON. MEMBER : Why ?

SHRI R. D. BHANDARE : And the matter is not *sub-judice*.

SHRI S. M. BANERJEE : It is *sub-judice*.

SHRI R. D. BHANDARE : I hope this subtlety will be appreciated by you.

MR. DEPUTY-SPEAKER : When the legality is challenged, it is on the basis of the terms of the Ordinance. It is not in vacuum. Whether it was right or wrong is a different matter.

SHRI R. D. BHANDARE : Therefore, I did not preface my speech or put in any preface or preamble. I thought in the ordinary parlance the distinction between the terms 'legality of the Ordinance' and the Ordinance itself will be appreciated, specially by you.

MR. DEPUTY-SPEAKER : I am following his argument.

SHRI R. D. BHANDARE : If we are able to appreciate this distinction, we must conclude that the matter which we are going to discuss is not *sub-judice*.

SHRI K. NARAYANA RAO (Bobbili) : Briefly stated, the intention behind this point of order does not appear to be honest.....

SHRI S. M. JOSHI : I object to this. He must withdraw it.

SHRI M. L. SONDHI (New Delhi) : What is he saying about honesty or dishonesty ?

Why does he say it? (*Interruption.*)

MR. DEPUTY-SPEAKER : I must ask the member not to attribute motives and import *mala fide* considerations into this.

SHRI K. NARAYANA RAO : The very fact that the Resolution by Shri Kothari and Shri Fernandes is being objected to by Shri Banerjee is suggestive proof of this.

Once you rule the objection out and hold that the discussion is in order, we take up the discussion. Coming to the merits of the discussion, this motion is something different from that contemplated in rule 184.

MR. DEPUTY-SPEAKER : This is under art. 123 (2).

SHRI K. NARAYANA RAO : I am coming to that.

Once you hold that this is not a motion under rule 184, naturally rule 180 would not apply.

May I refer you to article 118 (1) which says :

"Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business."

This motion has been brought under article 123. Therefore, this is a motion not contemplated under the rules. This House has every right, every member has every right, to bring any motion under this article. Such being the case, it is accidental if the matter is pending before a court. Even if it is litigated upon, it does not prevent this House from discussing it. Therefore, the rule of *sub-judice* will not apply.

SHRI TENNETI VISWANATHAM (Visakhapatnam) : When constitutional lawyers speak it is very difficult to know whether they support or oppose. Mr. Bhandare tried his best to convert a donkey into a horse. I admire his ingenuity, but with great respect to him I should say he was not successful.

As you have said, the legality of the ordinance is now pending and the Law Minister has also said that it is pending. You also added that the legality was questioned not upon the ground that it was not duly published or duly signed or anything like that but in relation to the contents of the ordinance which goes against the fundamental rights of certain citizens. Therefore, when a writ petition is pending, it cannot be said that it is not *sub-judice*. It is clearly *sub-judice*.

There is the other point raised that this House has got a constitutional right to approve or disapprove of the ordinance and therefore the rules cannot come in the way, but the rules are themselves part of the Constitution. The rules have been made under the Constitution, and thanks to Mr. Narayana Rao. I now know the number of the article also, namely article 180 (1) in order to see that the various constitutional obligations are discharged according to the Rules of Procedure. There are constitutional obligations but they are subject to the Rules of Procedure and under the Rules of Procedure we have taken it upon ourselves not to discuss matters which are *sub-judice* because once we start it there will be no end to it. When the matter is pending it cannot be said that we can discuss Mr. Kothari's resolution without any reference to the subject matter of the ordinance. The point raised by Mr. Banerjee is this, what will be the content of any speech on this resolution.

The speech will certainly go into the merits and the merits cannot be questioned because legality is based upon merits. Therefore, this is an extraordinary situation.

This point has not been mentioned by Mr. Bhandare, but it is open to the Government to bring the Bill by itself without reference to the ordinance. They can withdraw the Bill, change the Statement of Objects and Reasons and then bring it before the House and see the reaction of the public, instead of bringing an illegal thing and trying to argue that though the matter is pending before the Court, still we can discuss it.

[Shri Tehreti Viswanatham]

It is somewhat strange. If you give me a chance to speak on this motion I will have to go into the merits from the beginning to the end. The rule does not over-ride the Constitution; it is true but here the rule is part of the Constitution.

MR. DEPUTY-SPEAKER : As the Law Minister observed just now, there is a constitutional provision, article 123 (2), in which this House is given certain rights. During the off-session when we are not sitting, the President has a right to meet a situation, to legislate by ordinance. But as soon as we meet and as early as possible, within a certain specific period this House has been given a right to approve or disapprove. Can this right be taken away (*Interruptions*) because something is pending before some judicial authority. That is the main point.

SHRI GOVINDA MENON : Not only that, Sir. If the point of order is upheld, what happens is that this motion is ruled out and the ordinance survives.

SHRI TENNETI VISWANATHAM : Let me answer this. I just touched upon that point.

MR. DEPUTY-SPEAKER : You clarify it.

SHRI TENNETI VISWANATHAM : Your remark simply that this rule is debaring us from discharging a constitutional obligation. The Rule itself says how to discharge the constitutional obligation in a regulated manner. That is why the Rule is there. Now that approval or disapproval could have come if there was no petition pending before the court. Now the same Constitution which says that you can disapprove of it, also says that you can make rules to regulate that disapproval. The same Constitution has mentioned the procedure relating to the approval or disapproval. The river of discussion will have to flow in between the banks. Otherwise it will be like Ghaggar and Kosi.

SHRI R. D. BHANDARE : Where there is a conflict between the Rules and the Constitution, the Constitution must prevail. It is a simple proposition.

SHRI H. N. MUKERJEE (Calcutta North East) : The Constitution is intended to subserve the achievement of the rights of the citizens in actual implementation. And that is why the Constitution has provided to Parliament the responsibility of approving or disapproving of ordinances issued during the recess. It is in order to safeguard the citizen's rights that Parliament has been empowered by the Constitution to approve or disapprove of ordinances issued when it was not sitting. Similarly in order to safeguard the rights of citizens, the Constitution has given to every citizen the right to go to a court and challenge certain actions of the Government. I take it and I am sure the Law Minister will be constrained to agree that our High Courts are very well aware of the provisions of the Constitution and our High Courts know very well also that if an ordinance is kept hanging for a certain period of time, it lapses altogether. With full awareness of that, our High Courts, some of them-Delhi, Rajasthan and Andhra Pradesh-thought it fit to keep the matter pending because it requires fuller consideration. They know fully well that after the efflux of a certain period of time, this ordinance would cease to be, and knowing that they have kept the matter pending. That it is pending is not disputed by the Law Minister though he tried to prevaricate and hedge about it in the beginning. (*Interruptions*)

SHRI GOVINDA MENON : No, no Sir.

SHRI H. N. MUKERJEE : Therefore the matter is pending before the High Court and it is *sub-Judice*. That brings us to the point of or behaviour and the behaviour of the Chair in regard to discussion in this House. It has been very clearly established, particularly at the persistent advocacy of the present Law Minister, as Mr. Banerji pointed out with very apt quotation, and it has been repeatedly held by the Chair as on the occasion when the Law Minister figured, that if a matter is pending before a court, we postpone proceeding with that. Heavens would not fall as Mr. Viswanatham said. If they want to have this pernicious legislation, they can withdraw this kind of procedure which is so faulty because

they do not want it. The Law Minister of this country has the gumption to appear before Parliament and say that what happens in the Delhi High Court is not known to him. (*Interruptions*)

I wish the House to take very serious notice of an admission made by the Law Minister in a tone of voice which was not apologetic at all. On the contrary, it was something different, that he did not know, that he was not expected to know what was happening in the 13 or 14 high courts of this country. At least the Delhi High Court is right under his nose and one does know that we are functioning in Delhi. That is the sort of thing that has happened. And when this sort of thing happens, you have pointed out very correctly. You have been trying to tell the Government, and some over exuberant Government Members who do not have any argument but something else, you have told them that this matter is important. You have been upholding the dignity of the Chair, and because this matter is of a controversial nature(*Interruption*).....well, I am not trying to flatter you for supporting us. I know you stand by principles. Here is a matter; either it is a pending matter or it is not a pending matter. If it is a pending matter, it is *sub-judice*. If it is *sub-judice*, can we discuss this proposition in the House? If we cannot discuss this proposition, certain consequential things ensue. And there are constitutional provisions to quote that this House has the right to disapprove or approve certain measures. Therefore, it happens to be on this day, of all days, that this proposition has come up.

We need not go ahead with this. We can keep this matter pending provided the Government knows how to keep order and get on with the proceedings properly. Something ought to be done to stop this kind of laches on the part of the Law Minister. I hope the Law Minister understands what I mean by that legal expression. This kind of lapse, this kind of failing, must not be repeated in the manner that the Law Minister is doing. He is too busy going about the country and asking the people to take the law into their own hands..... (*Interruption*).

SOME HON. MEMBERS : *rose*—

SHRI S. M. BANERJEE : He should have been guillotined.

SHRI H. N. MUKERJEE : We do not want condign punishment for the Law Minister but something ought to be done in order to bring the Law Minister to book for all that he has done and exhibited here. (*Interruption*).

SOME HON. MEMBERS : *rose*—

SHRI S. KUNDU : Sir, it is a very important matter, and I would request you, implore you, demand of you, that we should not deal with this point in a cavalier manner. I would like to draw your attention to the provisions of sub-clause (3) of article 123. What does it say? It says :

“If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.”

Now, whether it shall be void or not, the matter is under the direct jurisdiction of the high courts now. After this has been admitted, and the Law Minister, after a little bit of vacillation and prevarication—

SHRI GOVINDA MENON : No vacillation. (*Interruption*)

I do not know. There is no use in shouting.

SHRI S. KUNDU : After all he has made the statement; these matters have been admitted, and it is in the high court, and it means that there is a *prima facie* case, and we cannot proceed with it. When this question is directly under the purview of the high court, you will be violating sub-clause (3) of article 123 if we discuss this matter here.

SOME HON. MEMBERS : *rose*—

MR. DEPUTY-SPEAKER : Shri Bhandare.

SHRI S. KANDAPPAN (Mettur) : Sir, he is monopolising it. (*Interruption*)

MR. DEPUTY-SPEAKER : He wants to add something.

SHRI R. D. BHANDARE : There is a section in the Indian Penal Code, and that section is to be repealed. Now, certain cases are pending in the courts. What happens to those cases pending in the courts after the repeal of that section ?

16 hrs.

Take another illustration. Certain offences have been committed and they are tried in the court. In the meanwhile the statute has been taken out of the statute-book. What happens to those matters which are before the court ? Similarly, once an ordinance is promulgated, the Constitution gives the power to both Houses of Parliament other to approve of it or to disapprove of it and take it out of the statute-book. The question is whether or not the exercise of power by Parliament under article 123 of approving or disapproving of an ordinance is barred by the matter before the court. Once the ordinance is disapproved and taken out of the statute-book, all these petitions pending before the court would become infructuous. Therefore, I submit that Parliament is justified in exercising its power under the Constitution.

SHRI SEZHIYAN (Kumbakonam) : Sir, the illustrations that have been cited do not hold good here, because the very legality of the ordinance has been questioned in a High Court and certain operations have taken place. When we discuss this resolution, we have necessarily to go into the legality of the ordinance and the operations part of it and we will touch upon the very matters which are before the High Court. As an individual, the Law Minister is entitled to say, "I do not know", but he is here not as an individual, but as the Law Minister representing the Government of India. It means as if the Government of India does not know anything about it. He takes that responsibility,

Secondly, under the Constitution, it is not obligatory that a resolution approving or disapproving the ordinance should be brought before the House. The relevant article only says :

"every such ordinance—

- (a) shall be laid before both Houses of Parliament and shall cease to operate

at the expiration of six weeks from the re-assembly of Parliament or, if before the expiration of that period, resolutions disapproving it are passed by both Houses, upon the passing of the second of these resolutions."

So, the obligation is only that it should be laid before Parliament, and that has been fulfilled. There is no obligation to pass a resolution approving or disapproving of it. Nowhere it has been said that Government should bring in such a resolution.

SHRI GOVINDA MENON : We have not brought the resolution.

SHRI SEZHIYAN : No harm will be done if the resolution is kept pending and a decision is taken upon it at a later stage.

Therefore, because there is no constitutional obligation, either on the part of government of Parliament that we should approve or disapprove of it and because it is a matter which is *sub-judice*. I think we should keep the matter pending. We are not competent to discuss this at this stage. So, it should be postponed.

SHRI SHRI CHAND GOYAL : As regards the point raised by Shri Bhandare that since some action has been taken and some cases are pending and, therefore, it has to be proceeded with, I was surprised to hear that argument because it can be raised only before a village panchayat court. Whether some action has been taken under that legislation, whether some cases are pending before law courts, that is entirely irrelevant for considering the question whether a certain piece of legislation is legal and valid. When a piece of legislation is declared void by courts, what happens ? Either the action that has already been taken is saved or the cases are withdrawn. Not that because some cases are pending, therefore, there is any hitch or any difficulty in declaring a particular piece of legislation as void or illegal.

The Law Minister stated that a writ petition filed in the Supreme Court

was dismissed. But he subsequently admitted that there are three or four writ petitions pending before different High Courts and the point for decision in those writs is the legality or validity of this piece of legislation.

Now, our hon. friends opposite will not give us an undertaking that they will not insist on our approval of this motion. Of course, if they agree with us with regard to disapproval, then we might be in a position to take our objection back. But our hon. friends opposite will insist for the approval of this Resolution. My hon. friend, Shri S. KUNDU has raised a legal point under article 123 (3) and article 14 (2) that this House cannot pass a legislation which either abridges or takes away the fundamental rights.

MR. DEPUTY-SPEAKER : That point can be raised only at a later stage.

SHRI SHRI CHAND GOYAL : Then, there is another motion of which I have given notice that this Bill may be referred to a Joint Committee.

SHRI VIDYA CHARAN SHUKLA : But there is no Bill before the House.

MR. DEPUTY-SPEAKER : We are only on the Resolution.

SHRI SHRI CHAND GOYAL : I am suggesting a *via media*. Since this measure suffers from so many legal infirmities, I do not think it would be proper to consider this motion at this moment, especially when some legal points have been raised. So, if the House agrees, it can be referred to a Joint Committee.

श्री एस० एम० जोशी (पूना) : उपाध्यक्ष महोदय, मैं कभी ज्यादा बोलता ही नहीं, बोलना आता ही नहीं। मगर आज जो सवाल इस सदन के सामने खड़ा है उसको हमें गम्भीरता से सोचना चाहिये। आप को उलझन में डाला गया, यह बताया गया कि कांस्टीट्यूशनल कोर्ट हमारा फर्ज है इसलिये वह अंदा करना चाहिये इसलिये इस रिजोल्यूशन को साना चाहते हैं। ऐसा नहीं

है। अगर हम चाहें तो रिजोल्यूशन नहीं भी ला सकते हैं। अभी जैसा हमारे बहुत लायक दोस्त श्री सेमियान ने कहा उससे बात साफ हो जाती है कि अनुच्छेद 123 जो है उसमें क्या-क्या बताया गया है। अखिर उसका ओबजेक्टिव क्या है? ओबजेक्टिव यह है कि जब आर्डिनेंस निकाला जाता है या तो उसको कन्फर्म करना चाहिये, या विद्वड़ा करना चाहिये। अब विद्वड़ा करने के लिये सब दिया है (ए) में। मेरी शिकायत यह है कि इसमें इसकी चर्चा ही नहीं हो सकती, जैसा कि मेरे लायक दोस्त कुन्डू साहब ने बताया है।

इसमें बताया है कि हाउस कुछ करे या न करे, हाउस एपूव करे या डिस्-एपूव करे लेकिन असल बात यह है कि एक कामन मिटीजन का यह निजी हक रहता है कि वह कोर्ट में जाकर किसी भी कानून को चैलेंज करे और यह कहे कि यह अवैध है। कामन मिटीजन का वह राइट किम प्रकार से समाप्त हो सकता है? यह मेरा राइट जो है, वह पेन्डिंग है जैसा कि मैंने कहा वह कैसे हो सकता है और ऐसा किसी ने कहा भी नहीं कि एक कामन आदमी का जो अधिकार है उसको छीन लिया जाये। लेकिन यहाँ पर जैसा कि भंडारे साहब ने बताया कि अगर हमने उसको डिस्-एपूव कर दिया, तो ठीक है लेकिन मैं कहना चाहता हूँ कि आप डिस्-एपूव करने जा रहे हो? जब एपूव हो जायेगा तब कोर्ट में जुडिस हो जायेगा.....(व्यवधान).....

MR. DEPUTY-SPEAKER : I would like you to explain one point. We are a supreme legislative body and a certain legislation is brought forward anticipating that somebody goes to the court. Are we going to surrender our right as a supreme body to the judiciary? Let us apply our mind to it. I want an explanation from you on this.

श्री एस० एम० जोशी : आपने जो कहा है वह ठीक कोर्ट को कानून बनाने का

[श्री एस एम. जोशी]

रहे हैं उसके बारे में लेकिन हम जो बोल रहे हैं वह तो अध्यादेश के बारे में बोल रहे हैं। अध्यादेश पहले आ चुके हैं और उनके कारण हमारी सजायें भी हुई हैं।..... (व्यवधान).....

MR. DEPUTY--SPEAKER : Under article 123 this shall have the same force and effect as an act. So what we are debating today is legislation. That must be admitted.

श्री एस० एम० जोशी : वह ठीक है, मैं आपको बता रहा हूँ।

जैसा कि गजेन्द्र गदकर माहब ने बताया है एक जगह पर कि जैसे हाईकोर्ट है, वह हमारा जुडोकेचर का दर्जा है, लेकिन किस लिए? दोनों का एक दर्जा होता है। अगर किसी एक कोर्ट में कोई केस है तो फिर दूसरी कोर्ट में उस पर कोई चर्चा करना मुनासिब नहीं होता है। अगर कोई रिट एप्लीकेशन हाईकोर्ट में गई है तो वह सुप्रीम कोर्ट में भी जाये, यह बात तो नहीं हो सकती। इसलिए मैं कहता हूँ कि यह कहना ठीक नहीं होगा।.....(व्यवधान)

MR. DEPUTY-SPEAKER : I have put a specific question. Let us forget the Ordinance for the time being. We are a supreme legislative body and we take pride in this sovereign body. Either because in anticipation of a certain piece of legislation coming before the House somebody goes to a court or because a certain piece of legislation is challenged, are we to surrender to a judicial authority our sovereignty? That is the point.

SHRI GOVINDA MENON : Then no legislation will be possible.. (Interruption)

SHRI S. KANDAPPAN : It is true that we are a sovereign body. We can amend the constitution; we can make laws. But is it the argument of Government.....

MR. DEPUTY-SPEAKER : I am not concerned with the Government.

SHRI S. KANDAPPAN : ...or of yourself that we can interpret the Constitution? The question involved here is about the interpretation of the Constitution because it is a question of fundamental rights. Those people, who have gone to the court and are questioning the validity of this Ordinance, are questioning it on the basis that it is a denial of the basic fundamental rights. The supreme authority to interpret the Constitution and to give a verdict whether it is in accordance with the Constitutional provisions or not is definitely not this Parliament but the courts.

MR. DEPUTY--SPEAKER : Forget the Ordinance for the time being. I have put a simple question.

SHRI S. KANDAPPAN : For a moment let us take it that it is a piece of legislation. The question involved here is whether it is a denial of the fundamental rights or not. On that it has gone to the court. The court has got the supreme authority to interpret the Constitution. Our sovereignty and authority is only to change the law and not to interpret.

MR. DEPUTY-SPEAKER : Shri Kandappan has raised another point. The interpretation of the Constitution is left to the Supreme Court.....(Interruption)

AN HON. MEMBER : The Law Minister is going away. (Interruptions)

श्री रवि राय (पुरी) : उपाध्यक्ष महोदय, मेरा एक व्यवस्था का प्रश्न है कानून मन्त्री ने अभी यहां पर पहले जो कहा था उस पर बहस हो रही थी और उसका कोई जवाब देने के बजाए वे मदन से ही उठकर चले गए। यह कहां तक उचित है? कानून मन्त्री की तकरीर पर ही तो यहां पर बहस चल रही है लेकिन वे उसको सुनने से पहले ही चले जा रहे हैं। आप उनको बुलवाइये।

MR. DEPUTY-SPEAKER : He will come at an appropriate time.

SHRI S. KANDAPPAN : What is the appropriate time ? This is the appropriate time. (*Interruptions*)

SHRI UMANATH : The Law Minister must come here. (*Interruptions*)

श्री रवि राय : यह आपकी डिस्रिगार्ड है। यह इस सदन का असम्मान है और आपका भी असम्मान है। उनको बुलाना नहीं चाहिए। वे यहां से कैसे चले गए ?

SHRI VIDYA CHARAN SHUKLA : Sir, when you called upon Mr. S. S. Kothari to move his motion, Mr. S. M. Banerjee raised a point of order. I may submit to you that the motion and his point of order is before the House. The Law Minister has nothing to do. (*Interruptions*)

श्री रवि राय : वे जब तक यहाँ नहीं आते हैं तब तक सदन की कार्यवाही नहीं चलेगी।

MR. DEPUTY—SPEAKER : When there is a procedural and constitutional matter before the House, I asked him to give the facts.

SHRI VIDYA CHARAN SHUKLA : He has given.

MR. DEPUTY—SPEAKER : On such matters, the law officer of the Government is expected to say something. He must take the permission of the Chair. Without the permission of Chair, if the law officer of the Government goes, it is not proper. (*Interruptions*) Let us proceed. He will come shortly.

श्री रवि राय : आप उनको हुक्म दीजिए कि वे यहाँ पर आयें। यहाँ पर आकर उनको माफी मांगनी चाहिए। जब आप खड़े थे उस समय वे कैसे चले गए ?

SHRI S. KANDAPPAN : Let him come to the House and apologise to the House.. (*Interruptions*)

MR. DEPUTY—SPEAKER : Please resume your seats. An important point has been raised. I am giving my undivided

attention to it. I want to dispose of it. I want assistance from the hon. Members. I want certain clarifications. It is not a question of general debate. When the Law Minister left the House, it was pointed out to me whether his presence was required or not. (*Interruptions*) He must have gone for a short while.

SHRI M. L. SONDHI : He treats the House with contempt. He left in that manner...(*Interruptions*)

MR. DEPUTY-SPEAKER : He will come shortly.

SHRI M. L. SONDHI : He should apologise to the House.

DR. RAM SUBHAG SINGH rose— (*Interruptions*)

MR. DEPUTY SPEAKER : So far as his motion is concerned, I agree. What is the motion ? It is a Statutory Resolution. A certain objection was raised and, at an earlier stage, when it was raised, I sought some clarification from him regarding the facts and other things.

At that time he was not on the scene. I thought the Law Minister was engaged elsewhere. When an important issue is being raised, if he were to leave in the middle, it is not proper....(*Interruptions*)

SHRI UMANATH : Send the Marshal to bring him.

SHRI S. KANDAPPAN : Dr. Ram Subhag Singh may go and bring him... (*Interruptions*)

MR. DEPUTY—SPEAKER : I have expressed my views...

SHRI SRINIBAS MISRA (Cuttack) : On a point of order under rule 361... (*Interruptions*)

SHRI H. N. MUKERJEE (Calcutta North East) : You were pleased to say that it was not proper for a Minister of Government to do what the Law Minister did now. We wish you only to secure an open ascertainment from Government in regard to their calling back the Law Minister, or

[SHRI H. N. MUKERJEE]

if he cannot be called for some specific reasons, they should apologise to you. You have expressed the displeasure of the House. When you speak, the House speaks. They do not say a word; they sit quiet. And you want us to keep our temper when they sit quiet in spite of the observations from the Chair which only come in very serious circumstances. Some people might feel that we try to flatter you. Nothing of that sort. When you make certain observations of that sort, it is because, as the occupant of the Chair, you believe that the House has been slighted. They say nothing. Dr. Ram Subhag Singh gets up and mumbles something. We want them to say that they are sorry for the Law Minister's absence; we want them to say that the Law Minister will come back as soon as the other job is over. That is due to you and to the whole House. (*Interruptions*) I have been in this House long enough. (*Interruptions*) I hope you will appreciate this.

MR. DEPUTY-SPEAKER : For the time being, nothing will be recorded. Nothing will be recorded unless there is some order in the House. I will individually call the members. Let there be some order, and then I will begin.

SHRI M. L. SONDDHI :*

SHRI VASUDEVAN NAIR (Peer-made) :*

*Interruptions**

AN HON. MEMBER : Here comes back the Law Minister.

SOME HON. MEMBERS : Shame, shame.

SHRI GOVINDA MENON : Shame, shame.

MR. DEPUTY-SPEAKER : Shall we proceed now ? (*Interruption*) I have given patient hearing to every point, major or minor. Sometimes repetitions are there; even that, I am tolerating. There has been some latitude

given in a debate. But this is a matter where we must apply our minds objectively, not in a partisan spirit. (*Interruption*)

SHRI A. SREEDHARAN (Badagara) : He must apologise first.

श्री रवि राय : ला मिनिस्टर को आपसे व हाउस मे माफी मांगनी चाहिए ।

SHRI M. L. SONDDHI : Are you going to encourage his conduct ? (*Interruption*)SOME HON. MEMBERS—*rose*

MR. DEPUTY SPEAKER : Order. order. If you want to cooperate with the Chair, then, you must resume your seat. (*Interruption*)

SHRI H. N. MUKERJEE : We are both fairly senior members of this House. We have known this House sufficiently. When the Minister commits a lapse, whether intended or unintended, God alone knows, when the Chair is driven to comment on that lapse, that is to say, the House through the Chair expresses its displeasure of certain behaviour or certain discourtesy, intended or unintended by the Minister concerned, what is it that is expected from him when he comes back ?

When he comes back, naturally the expectation is a simple, graceful word of apology to the House from him. That is not forthcoming. We have to shout because they do not apologise for the fault which the Chair has censured. This goes against the grain of parliamentary functioning. How can Parliament function if Government, merely because it has got some votes on its side, can behave in this presumptuous manner ? That is why I would like you to insist on an apology from Government. If he is too shy, Dr. Ram Subhag Singh might do it. The Leader of the House might come. Why should the House function without the Leader of the House on these crucial occasions ? Why should nobody be there to deputise for the Leader of the House in her absence ?

We are not going into the merits of the ordinance. When I spoke, I never spoke on the merits of the Ordinance. We referred only to certain particular aspects on which you concentrated very rightly, when this kind of thing happens, how does the House appear to the world like? My hon. Friend, Shri Sondhi, asked, what is the example we are setting to our people?

I therefore want to put this simple proposition before you. You have by implication done it; but you have been too polite to ask for an apology. You naturally have censured them already. But we want that the insult to the Chair, which is implicit in not tendering an apology to the house, must be appropriately recompensed.

SHRI S. S. KOTHARI : Let him say something.

MR. DEPUTY-SPEAKER : As Prof. Mukerjee has observed, the responsibility for preserving the dignity of the House is a collective one. It is not an individual case or individual responsibility; it is the collective responsibility of the house. As I said, perhaps there might have been some urgent work awaiting him. But it was not proper to leave in the middle of the discussion. I was not looking to that side; it was when the Opposition side rose that I was taken aback and looked at the Treasury Benches.

SHRI GOVINDA MENON : I do not know whether I have been discourteous to you.

MR. DEPUTY SPEAKER : I never meant to say that.

SHRI GOVINDA MENON : But what I want to say is this. Here is a non-Official Resolution. I am not the Minister in charge. With respect to the legal point involved in it, you wanted me to speak, and I spoke. I had work elsewhere. After that, when I entered the house, I was accosted with 'Shame, shame'. There is no copyright in that word. I too can utter that word.

SHRI UMANATH : But Only after coming to his seat. (Interruptions)

SOME HON. MEMBERS : Shame.

SHRI GOVINDA MENON : If they shout 'Shame', I repeat 'Shame'. (Interruptions)

SHRI S. K. TAPURIAH (Pali) : He should be suspended.

SHRI GOVINDA MENON : They have no copy right in that word.

MR. DEPUTY SPEAKER : I fully realise it is far from the Law Minister's mind to show disrespect to the House or the Chair. I entirely agree there. But one point he will have to concede. When I asked him what he had to say about it, it is because he is supposed to be the law adviser to Government. (Interruptions). I wanted a clarification. If he says that he is not the law officer of Government, I have nothing to say. When I am engaged in considering a legal matter, I wanted his assistance. When the Chair wants such assistance, it has to look to him. Otherwise, I would have asked the Minister of state in charge.

SHRI VIDYA CHARAN SHUKLA : He had no business; he came accidentally.

SHRI GOVINDA MENON : There was no business in my name.

MR. DEPUTY SPEAKER : This is a specific question. Is not the Law Officer of the Government to be at the disposal of the House?

SHRI GOVINDA MENON : Whatever I had to say on this matter I had said, and when I entered, they shout "shame, shame." Is it a matter over which they have copyright?

MR. DEPUTY SPEAKER : Shri Shantilal Shah.

SHRI SHANTILAL SHAH (Bombay-North-West) : May I say a word about the functions of the Law Minister? (Interruptions)

MR. DEPUTY SPEAKER : I put him a specific question. In between all this disturbance took place. (Interruptions)

SHRI SRINIBAS MISRA : Please refer to rule 361 (2). It reads :

"No member shall leave his seat while the speaker is addressing the House."

Our rules are made to maintain the dignity of the Chair. You were on your legs when he left the House.

MR. DEPUTY SPEAKER : I do not know, I was looking at this side. (Interruptions)

SHRI SRINIBAS MISRA : There is another point. This rule that no member shall leave his seat while the Speaker is addressing the House is a mandatory provision under our Rules which the Law Minister is supposed to know. He does not know the rules. He left the House when you were on your legs and addressing the House. It was a discourtesy that has shown to the House. It is a violation of the rules. He cannot say that because we shouted "Shame, shame," he will not apologise. It is a violation of the rules for which he should apologise to the House.

MR. DEPUTY SPEAKER : That rule stands. I do not know what happened because I was looking at the other side and putting a specific question.

श्री रवि राय : आप खड़े थे उपाध्यक्ष महोदय, तब वह चले गये। आप बोल रहे थे तब वह चले गए। उस समय मैंने प्वाइंट आफ आर्डर उठाया था। आप प्रोसीडिंज को उठा कर देख लें।

MR. DEPUTY-SPEAKER : How can I say whether it is true or false.

SHRI UMANATH : It should be referred to the Privileges Committee.

SHRI VASUDEVAN NAIR : It is a question of elementary honesty. Let the Minister himself say whether you were not addressing the House when he left the House.

SHRI NAMBIAR : Let the whole matter go to the Privileges Committee. (Interruptions)

SHRI GOVINDA MENON : When I came, they were shouting 'Shame, Shame'. They have no copyright in that word. I repeated it. (Interruptions)

SHRI H. N. MUKERJEE : We knew what to think of people who have not got the grace and civilisation to say 'They are sorry'. (Interruptions)

SHRI M. L. SONDHI : Is it not a parody that on the Human Rights day the Law Minister raised his hand in the Nazi fashion.

SHRI S. K. TAPURIAH : You must have noticed the way in which he walked away. Rule 349 of our Rules of Procedure says that a member shall bow to the Chair while entering or leaving the House. You might have noticed that the Law Minister walked away in a cavalier and insolent manner.

MR. DEPUTY-SPEAKER : On behalf of the Government it is said that he meant no disrespect to the Chair and they were always respectful to the Chair.

श्री अटल बिहारी वाजपेयी (बलरामपुर) : उपाध्यक्ष महोदय, संसद्-कार्य मंत्री ने खेद प्रकट कर दिया, तो यह मामला यहाँ समाप्त हो जाना चाहिए। अच्छा होता कि कानून मंत्री स्वयं खेद प्रकट करते। लेकिन उन्होंने नहीं किया, तो उनके वरिष्ठ सहयोगी ने कर दिया। हम उसको मान लेते हैं।

SHRI DATTATRAYA KUNTE (Kolaba) : Just now we have heard an apology on behalf of the Government.

SOME HON. MEMBERS : No apology.

SHRI DATTATRAYA KUNTE : I thought the hon. Minister of Parliamentary Affairs was explaining to the House that the Ministers are always respectful to the House.

AN HON. MEMBER : That is true.

SHRI DATTATRAYA KUNTE : I am glad that once in a way it has been said. I

am glad. The real point is even a Minister has to remember that he is a Member of the House and, therefore, if the conduct of a person who happens to be a Minister and a Member of this House is being questioned—well, the Chair can say that he is satisfied—but when a point of order is raised—Mr. Tapuriah raised a point of order—(Interruptions)

SHRI K. N. TIWARY (Betteab): Nobody on that side is prepared to show any respect to the Chair.

SHRI DATATRAYA KUNTE: A member while going out and coming in the House should bow. It is an indication that he seeks the permission of the Chair and while going out, he seeks the permission of the Chair to go out. That is what is meant thereby.

If that has not happened, and if it is being brought to your notice, well, we have also to remember that in this House we are not the only people who are present here and are functioning in this House. We allow people to sit in our galleries, young boys and girls, and old people as well, and what is the impression that we are creating? (Interruptions) It is a matter where the hon. House is concerned, and my friends will concede that I am not one of those who indulge in anything of this sort. Therefore, as a Member of the House who follows the rules and who is law-abiding, let me say this: (Interruption) Well, my friend gets annoyed, but I have no objection. He has a right to get annoyed. But I want to make this point. That is with regard to the decorum and order in this House. I appeal to you that the decorum and order ought to be restored by each and every Member. Due to certain circumstances, however, some hon. Members were saying "shame, shame", and therefore, he seems to have raised his hand in Hitler fashion. That is all. (Interruption)

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, मेरा कहना यह है कि विधि मंत्री ने जो आचरण किया, अगर वह न करते, तो अच्छा होता। अगर उस पर आपत्ति की गई थी, तो वह उस पर खेद प्रकट कर

सकते थे। लेकिन अगर वह अपना मान-जल्लम नहीं करना चाहते, तो संसद-कार्य मंत्री ने खेद प्रकट कर दिया। (व्यवधान)

श्री विद्याचरण शुक्ल : नहीं किया। (व्यवधान)

श्री अटल बिहारी वाजपेयी : मैं आप से कहूंगा कि आप सब सदस्यों को फिर से यह बात कहें कि सदन में किस तरह से आचरण करना चाहिए, उन्हें उसका ध्यान रखना चाहिए। और फिर आगे की कार्यवाही चलाई जाये। अब इस बात को ज्यादा दूल देने की आवश्यकता नहीं है।

SHRI S. M. BANERJEE: Sir, let me speak for just one minute, because a particular rule has been referred to. I am not going to aggravate matters. After hearing Dr. Ram Subhag Singh, I do not want to pursue this matter. I only want to say this: since you have been so good to the Law Minister to defy the Chair almost—(Interruption) well, let us forget and forgive. But I only wish to say that had he entered the House in all dignity and decorum, it would have been good, but he entered the House as an elephant from Kerala does in a circus.

SOME HON. MEMBERS rose.—

MR. DEPUTY SPEAKER: Order, order. Just now as Shri Vajpayee has said, no Member in this House should look at this problem from a personal point of view. It is not a question of personal dignity or dishonour. The question, and that was rightly posed by Shri Kunte, is this. If I were to abide by this rule, I can say that there are several occasions on this side also, as there were on the other side, when there were lapses. It is on both sides. What I suggest is, every Member is expected—I again repeat—and every Member should show due regard to the Chair and the House both. That is the first point.

Secondly, I want to make it very clear; if there is a lapse and if it is pointed out, certainly the Chair should take note of it to that extent. But the matter should not be pursued in the way it was pursued now.

SHRI SHANTILAL SHAH : May I say a word on the duties and functions of a Law Minister in a bicameral legislature? (Interruption) I only want to put it to the Chair. If he says yes, I will proceed. Otherwise not.

SHRI SURENDRANATH DWIVEDI (Kendrapara) : Is this the proposition in the House, namely, a discussion on the functions of the Law Minister?

SHRI SHANTILAL SHAH : If the Chair says yes, I will proceed. But who is a Member to intervene between me and the Chair? The point of order raised was that since the matter of the ordinance was *sub-judice*, the motion could not be taken up. But the motion is under articles 123 (2) (a). This is a constitutional motion. Other motions and resolutions are under the rules. Rules lay down the procedure. Here is a substantive right given to this House to disapprove of an ordinance. It is common sense that if there is difference between a substantive right and procedural right, the substantive right should prevail. During all these years of my experience, never have I seen the discussion of a constitutional or statutory motion being ruled out on the ground of *sub-judice*. The examples cited here were of ordinary motions, not constitutional motions. Simply because somebody has filed a writ, if this House is to be completely deprived of its right of approving or disapproving an ordinance, the consequences would be that parliamentary rights could be nullified by somebody filing a writ. That cannot be the intention.

Sub-judice does not mean that anything which is raised before a court can never be discussed in Parliament. It only means that the discussion in the House should not be such as would tend to prejudice any proceedings in the court. Now, an ordinance can end in three manners. One is, it may be withdrawn by the President at any time, even before Parliament meets. Secondly after the House has met, the House can disapprove it. Thirdly, the House may not approve or disapprove, but after six weeks have expired, the ordinance will lapse. Now here is one way. This resolution proposes that a certain legislative

action taken by the President ought to be terminated by passing this resolution. The suggestion is that this House has no right even to terminate this ordinance, even if it desire to do so because a writ is pending. That is an absurdity.

Article 123 (3) says :

"If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void."

An Act may be void on the ground that it is not within the jurisdiction of Parliament e.g. when the subject-matter relates to the State list. It may be void on the ground that it infringes on the fundamental rights or on certain other constitutional provisions. That is a point of law and normally the Speaker does not go into the legality or constitutionality of the legislation except on points of procedure. Therefore, sub-article (3) and the points which have been raised in the writs are points of constitutional validity, legality, jurisdiction or want of jurisdiction, *ultra vires* or *intra vires*, matters which this House is not going to discuss.

SHRI S. KANDAPPAN : What prevents us from discussing them?

SHRI SHANTILAL SHAH : I do not want my hon. friends to agree with my arguments; but I expect them to listen to my arguments.

An Ordinance may be disapproved for three reasons. One is that the Ordinance deals with a State subject and, therefore, it is disapproved. One can also say that the Ordinance relates to a subject which Parliament can deal with, but when the President says that circumstances exist which require immediate action, in the opinion of the House those circumstances do not exist and, therefore, the House may disapprove of the Ordinance. The House may also say : the ordinance is in our legislative competence, certain circumstances also exist but we do not

like the manner or method of it; so, we do not approve of it. These are the three grounds on which an Ordinance can be disapproved.

On the ground of constitutionality which is pending before the court, that may or may not be discussed here. Nothing has been placed before the House except stating that a writ is pending and the point to be discussed here is also the same point to be discussed there and, therefore, further discussion here will prejudice the decision of the court. I hope at least Shri Kunte will bear me out when I am referring to this, because when he was the Speaker of the Maharashtra Assembly he has allowed discussion on matters pending before the court on points of fact in a manner which will not prejudice the issue before the court. That is the correct rule.

श्री एस० एम० जोशी (पूना) :
उपाध्यक्ष महोदय, आप ने मुझ से प्रश्न किया था और उसका जवाब मैं दे रहा था। मैंने पहले भी वह बात बताई जिसको दोबारा हमारे मित्र शांति लाल शाह ने दोहराया। सवाल यह है कि जो सब-जूडिस का कानून है या प्रथा है कि हम यहाँ डिस्कस नहीं करेंगे आखिर वह क्यों है इसकी बुनियाद में जाना चाहिए। एक तो आप के लिए दिक्कत यह थी कि जब यह कांस्टिट्यूशनल रेजोल्यूशन है तो हम उसके ऊपर आर्डिनरी रूल कैसे लगाएंगे? यह कोई सामान्य प्रस्ताव नहीं है। यह संविधान के मातहत प्रस्ताव है। इसलिए वह जो रूल है वह यहाँ लागू नहीं होगा। पहले तो मुझे इसमें यह कहना है कि मैं ऐपी करता हूँ अपने मित्र श्री शेरियन साहब से कि यह कोई आबलिंगेटरि नहीं है। अगर ऐसा होता कि हर वक्त जब हम अध्यादेश निकालेंगे तब इस हाउस को या तो उसको अड्रूव करना चाहिए या डिसेंजूर करना चाहिए तो बात और थी लेकिन ऐसा कोई हमारे ऊपर लाजिमी नहीं है और मुझे संतोष है कि शांति लाल शाह ने बताया कि आर्डिनंस के क्या क्या नतीजे हो सकते हैं?

एक तो विद्वद्गण कर सकते हैं, दूसरे अड्रूव या डिसेंजूर कर सकते हैं या लैप्स हो सकता है और जैसे 1960 में लैप्स हो गया वैसे ही यह भी लैप्स हो सकता है। सवाल जो है वह 123 के मातहत जो हमारे मित्र कुन्दू साहब ने उठाया वही है। मैंने पहले भी कहा और उस रोज भी मैंने यही कहा था कि जो एक सामान्य नागरिक है उस सामान्य नागरिक को कोर्ट में जाकर यह पूछने का हक है और यह फैसला करवाने का हक है कि जो अध्यादेश जारी हुआ और जिससे मुझे नुकसान हुआ, वह अध्यादेश सही मानों में.....(अध्याधान).....

17 hrs.

[SHRI VASUDEVAN NAIR in the Chair]

सभापति जी, मैं यह इस लिये बता रहा हूँ कि उपाध्यक्ष जी ने यह कहा था कि एक कोर्ट तो वह है, लेकिन यह भी तो एक कोर्ट है। यह कोर्ट कहा है और यदि यह अदालत है भी तो प्रिविलेज को लेकर अदालत है, दूसरे मामलों को लेकर अदालत नहीं है। अगर प्रिविलेज का मामला आयेगा, तब यह सदन अदालत हो जाता है, लेकिन यदि यह दूसरे मामलों में अदालत होती तो उपाध्यक्ष महोदय बार्ट निकाल सकते थे, उनको यहाँ ले आ सकते थे, लेकिन उनको यह अधिकार नहीं है। इसलिये यह कहना कि वहाँ पर एक अदालत है और यहाँ पर दूसरी अदालत है, इसका फैसला हम करेंगे—यह बिलकुल बेबुनियाद चीज है।

जब हम इस पर यहाँ चर्चा कर रहे हैं तो यह अदालत नहीं है, यहाँ हम बिधि का कार्य कर रहे हैं, एक तरह से यह ना-मेकिंग लेजिस्लेचर है। ऐसी स्थिति में भी रूल हमारे यहाँ है कि सब-जूडिस मैटर पर हम यहाँ चर्चा नहीं करेंगे, वह पूरी तरह से लागू होता है। सब-जूडिस इस लिये है कि मैं एक

[श्री एन. एम. जोशी]

सामान्य नागरिक के नाते कोर्ट में गया है, मुझे जो सजा मिली है आर्डिनेन्स के मातहत, वह सजा गलत है और मुझे बरी करना चाहिये। जब मैं कोर्ट में यह प्लोड कर रहा हूँ कि अनुच्छेद 123 के क्लॉज 3 के मातहत इसे वायड करना चाहिये, तब यहाँ पर इस तरह का प्रस्ताव आये और उस पर चर्चा हो, उल्टी-सीधी बातें कही जायं, उससे कोर्ट प्रेजुडिस हो सकती है। इस लिये यह बिलकुल सबजुडिस बात है। यह कोई सिविल मामला भी नहीं है, यह तो एक त्रिमनल केस है। हम लोगों को जेल में भेजा जा रहा है, नौकरियां छीनी जा रही हैं— इस आर्डिनेन्स की वजह से इस स्थिति में मुझे इस से बचना है और यही कारण है कि मैं 123 (3) के मातहत कोर्ट में गया हूँ— ऐसी स्थिति में इस सदन में ऐसी चर्चा नहीं करनी चाहिये, जिसके कारण हाइकोर्ट में मेरा केस प्रेजुडिस हो जाय।

इसलिये इस पर यहाँ बहस नहीं होनी चाहिये क्योंकि यह बिलकुल सबजुडिस मामला है। जैसा मेरे लायक दोस्त बनर्जी ने बताया—पहले भी एक केस में ला मिनिस्टर ने ऐसी ही सलाह दी थी, लेकिन उसके बाद चेअर की तरफ से रूलिंग आया, उसी तरह का मामला यह है, बल्कि उससे भी ज्यादा सब-जुडिस है क्योंकि यह हमारे जीवन का सवाल है। इसलिये मेरा अनुरोध है कि इसको नहीं लेना चाहिये।

SHRI UMANATH : I would like to submit that Shri Shantilal Shah was trying to frighten this House and was trying to play up his innocence in certain matters.

SHRI S. M. BANERJEE : In his ignorance.

SHRI UMANATH : I accept your amendment. On the basis of his ignorance he created a big horrible picture saying that if this point is upheld this House will be rendered absolutely without any power to legislate.

SHRI S. M. BANERJEE : And he will have no job.

SHRI UMANATH : He will be helpless.

The contention he made was that this House cannot proceed with legislation if this particular point is upheld. Many of my hon. friends on the other side got frightened. But is that a fact? If this particular point of order is upheld, will the result be that this House will not be able to legislate anything at all if somebody goes to the High Court on that particular thing?

The normal procedure of legislation in this House is not by Ordinances and their approval. Ordinances and their approval come once in a way.

SHRI S. KANDAPPAN : Under extraordinary circumstances.

SHRI UMANATH : The normal procedure is for the Government to introduce a Bill and for the House to discuss and adopt the Bill. That is the normal procedure. Almost 90 per cent of the legislation is by this procedure of Bills being brought forward.

He will be right if it is possible in this country that when legislation is at the stage of a Bill any citizen can go to a court and get a stay of that Bill admitted. That is absolutely not possible because the court, whether it is the High Court or the Supreme Court, will simply say that it is not yet a legislative act affecting you; it is not law; it is only a Bill; so, we cannot admit this particular writ or anything of the kind. So a writ cannot lie at the stage of a Bill. Therefore the absolute power of this House to legislate according to the normal procedure—about 98 or 95 per cent of it being subject to this procedure—will be absolutely untouched if this point is upheld. He is wrong on that point.

Secondly, in this connection, I would like to deal with the point raised by the Deputy-Speaker. He made a specific point

to many of us saying that when this House is supreme, the sovereign body, when we have got absolute, supreme, statutory, powers to enact legislation for this Ordinance itself, can that be infringed upon? That was the specific point raised again and again by the Deputy-Speaker.

17.05 hrs.

[MR. DEPUTY-SPEAKER *in the Chair*]

Now, Sir, I would like to repeat the point for your convenience.

MR. DEPUTY-SPEAKER. You need not repeat. I have followed what you have been saying. We must dispose it of.

SHRI UMANATH: I am coming to the second point. The second point that you raised again and again was that when this House is supreme, when it has got absolute powers to legislate, can any rules or anything be quoted and can that be infringed upon? Apart from the point that Mr. Sezhiyan explained very well, I proceed on your own point. You said that this Ordinance, so far as the Constitution goes, has got the force of an Act. On the general point of procedure, I would like to say that the Constitution has given us powers to legislate. But this very Constitution, in another article, says that the power to legislate must be exercised in accordance with certain rules. The rules are not independent of the Constitution. That point is already met. We have got absolute powers to legislate. We have been given certain powers under the Constitution. But that very Constitution has specifically laid down that whatever powers this House has been given to legislate must be exercised in accordance with certain procedure which must be laid down by the House.

SHRI GOVINDA MENON: Subject to the Constitution.

SHRI UMANATH: Quite right; subject to the Constitution. Now, these Rules have not been challenged by any Member from the other side. This House has laid down certain rules and these rules which are in existence today are subject to the provisions of the Constitution. I agree with the Law Minister when he says that the rules are subject to the Constitution. I

say that the present rules of procedure which have not been challenged so far *vis-a-vis* the Constitution are subject to the Constitution.

SHRI GOVINDA MENON: The should be applied subject to the Constitution.

SHRI UMANATH: Not applied and all those things. These rules are subject to the Constitution. Now, in one of these rules which are subject to the Constitution, it has been specifically laid down, on the question of *sub-judice*, that any discussion that takes place in the House with regard to any legislation or any resolution or anything...

MR. DEPUTY-SPEAKER: You kindly read it again and then argue. You are on a slippery ground.

SHRI UMANATH: I am not on a slippery ground. One of the rules is that any discussion here should not be on a matter which is *sub-judice*. Already, many of my hon. friends have made it clear that the content, the body or the form of the entire Ordinance which we consider to have the force of law is pending before a court of law. It is going to decide all the aspects of legality, constitutionality and merits or otherwise of the entire thing. When that is there, no discussion should take place in the House touching upon them. As Mr. Viswanatham clearly said, when we discuss this particular point, what else are we going to discuss? When the Resolution is going to be discussed, we are not going to discuss how the President signed, whether he held the pen on this hand or that hand; nothing is going to be discussed excepting the legality.....

SHRI R. D. BHANDARE: You are on a slippery ground.

SHRI UMANATH: Like a drowning man catching the straw, you are holding on to this...

MR. DEPUTY-SPEAKER: I will tell you where the slippery ground is. Does it mention specifically legislation? Read the rule again.

SHRI UMANATH : Here we are not on the legislation. Earlier also you made the point : we have got the right to legislate; can that conflict with the procedure ? Here we are discussing whether the Resolution can be admitted or not. The discussion is around a particular Resolution and not around any legislation. I would like to remind you of your own ruling. I am not on a slippery ground. Now that you have pointed it out, my ground has been further strengthened with concrete. I should thank you for that. So, we are not on any legislation. The whole discussion will be around the Resolution and not around any legislation. Whether it is *sub-judice* or not is based on facts. Whether one likes it or not, whether Mr. Govinda Menon likes it or not, it is based on points of facts. The facts have been admitted. That is *sub-judice*. On that point, this is my reply.

SHRI S. M. BANERJEE : You put a question, Sir, whether this House is supreme or not. I only invite your kind attention to two other rulings given in this House. One was when the question of privilege motion in connection with Shri Madhu Limaye's arrest and detention in a particular place and the statement made by the Home Minister thereon, was raised in this House; my hon. friend, Shri Fernandes, pointed out that it was a clear case involving privilege, but the Speaker in his wisdom, as usual, said that the matter was before the Supreme Court. Even after Mr. Limaye was set free by the Supreme Court and he came running to this House and raised the question on one afternoon, he was asked to wait for the decision of the Supreme Court. Even after the decision of the Supreme Court was given, the Home Minister said, "We are getting a copy of the judgment; we have only read in the newspaper; we do not know."

Then, you may remember the case of Shri R. K. Karanjia. The entire House decided that he should be reprimanded, and when he was going to be reprimanded, he went to the Supreme Court. He was to be reprimanded on a particular day, but the moment he went to the Supreme Court, it could not be done. Though the Supreme Court did not pass any judgment later on,

he was reprimanded only after the court pronounced its judgment. These are two other cases in addition to the Speaker's ruling already given in the case of Shri Limaye's motion on Kutch. Therefore, I would beg of you, I would appeal to your sense of impartiality, to take into consideration all these things.

MR. DEPUTY-SPEAKER : I want to seek a clarification from the Law Minister....

श्री मधु लिमये (मुंबेर) : कानून मंत्री हमारी बात सुनने के बाद बोले ।

MR. DEPUTY-SPEAKER : I am just seeking a clarification from him.

So far as the legislation part is concerned, as I said, this body is supreme, and if anything that is raised in the Supreme Court or anywhere were to stall the proceedings of this House, this House being a sovereign body cannot function. That is a different matter. Now a new point has been raised by Mr. Sezhiyan, and since then I am considering this, whether this Resolution that we are debating is not a legislation. In that sense, it is not a legislation. In such a situation, though it is approval or disapproval, how would you approach this matter if that certain thing is contained in the Resolution; it is not a legislation; the second motion is different. This particular motion is a Statutory motion under the Constitution. Is it a legislation ? No. It is a motion. Certain matter which is referred in the motion is before the court. What is your view on this ? This point was raised by Shri Sezhiyan. So I want to know as to what is your view on this specific point. Is it permissible that without this Resolution we can proceed with a legislation ?

SHRI GOVINDA MENON : I am very glad that you put this question. I have not been able to speak because I myself also contributed to the noise in this House. The Government is not particular whether this Resolution should be moved or not. The Resolution has been moved by a member. If the non-

official Member who has moved this Resolution does not want that Resolution and if the Opposition in the House does not want that Resolution Government is not affected.

MR. DEPUTY-SPEAKER : I am not asking that, I want a specific reply from you whether this Resolution is necessary at all, because the matter of *sub-judice* has been raised, and there has been a challenge given in the court of law, and so I want that.

SHRI GOVINDA MENON : In order to discuss the two motions, hon. Speaker has said that they may be discussed together.

MR. DEPUTY-SPEAKER : That is for convenience.

SHRI GOVINDA MENON : In discussing the motion or in considering the Bill, Government by itself are not concerned whether this Resolution is moved or not...

MR. DEPUTY-SPEAKER : I want your opinion on that specific point.

SHRI GOVINDA MENON : First of all, those who should be concerned with the Resolution are the mover and the Members of the Opposition. Indications are that they do not want it. Regarding the constitutionality the question was whether the rule of *sub-judice* would be affected if this Resolution is discussed. My humble submission is this. This Resolution has been one under the Constitution. Mr. Shantilal Shah said whether there have been conditions which existed which would have justified the promulgation of an Ordinance. That is the only question. And, if the Bill can be moved, the Resolution can be moved.

MR. DEPUTY-SPEAKER : As I have already made it clear, Shri Shantilal Shah has said about it.....

श्री मधु लिमये : मेरी प्रार्थना है कि सब की बातें सुनने के पश्चात् मंत्री जी बोले तो ठीक रहेगा क्योंकि दूसरे मुद्दों पर भी हम उन्हें सुनना चाहेंगे।

MR. DEPUTY-SPEAKER : I put a specific question, whether it is a matter of *sub-judice* so far as the legislative sovereignty is concerned, and Shri Shantilal Shah conceded, so far as the Resolution is concerned, with reference to certain Act of Government; and that Act has been challenged in the court of law. It is not a question now that the Act has been challenged. Various references have been made to your plea that you made in this House before, in a similar situation. Therefore I want to seek from your opinion whether this Resolution will come under that. That is all.

श्री मधु लिमये : उपाध्यक्ष महोदय, मुझे बहुत घोर आपत्ति है। यहाँ सदस्यों द्वारा तरह तरह की बातें उठायी जा रही हैं, उसके बाद ही मंत्री जी कहें। आपकी राय में एक ही चीज का महत्त्व हो सकता है, जब कि पचासों चीजों का हमारे लिये महत्त्व है।

MR. DEPUTY-SPEAKER : I want to come to the conclusion. We have debated this subject for two hours and twenty minutes.

श्री मधु लिमये : मैं बहुत कम समय लूंगा। लेकिन हमको सुनने के पश्चात् यह जवाब दें। उपाध्यक्ष महोदय, मैं आज खड़ा नहीं होता लेकिन बूँकि मेरे एक प्रस्ताव को यह कह कर कि अदालत में मामला है—इस बिना पर बजट सत्र में मुलतबी रखा गया था। और उस समय यही साहब जो आज समर्थन में बोल रहे हैं, विरोध करने के लिए खड़े हो गए थे। इस समय तो यहाँ पर कानून मन्त्री का भाषण नहीं है लेकिन आप उस समय की रिपोर्टें मंगवाइये... (ब्यबचाल)...

तो मैं यह मानता हूँ कि यह संकल्प है, रेजोल्यूशन है, कोई प्रस्ताव नहीं है। लेकिन रेजोल्यूशन के बारे में भी सैक्टर 13, नियम 173 (5) में दिया हुआ है :

[श्री मधु लिमये]

In order that a resolution may be admissible, it shall satisfy the following conditions :—

- (v) it shall not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India.

174 में यह अधिकार आपको दिया गया है कि आप निर्णय दें कि यह प्रस्ताव या संकल्प चर्चा के लिए आ सकता है या नहीं आ सकता है। लेकिन मेरा मुद्दा बिलकुल अलग है। मैं कई दफा अपनी राय व्यक्त कर चुका हूँ कि हम समूचे राष्ट्र के प्रतिनिधि हैं हमें चर्चा करने का अधिकार होना चाहिये—मैं यहाँ पर सार्वभौम या सुप्रीमसी की चर्चा नहीं करना चाहता—लेकिन हमें संविधान के दायरे में रहना है, न कोई सार्वभौम है, न कोई सर्वोच्च है, सभी संविधान के दायरे में है। लेकिन सवाल यह है कि अगर मेरे प्रस्ताव पर, चूँकि अदालत के सामने यह मामला है, इस बिना पर चर्चा नहीं हो सकती तो इस प्रस्ताव पर या संकल्प पर चर्चा कैसे हो पायेगी, जबकि नियम वही हैं। अब इसमें मेरे अधिकार का सवाल आता है इसलिए इसके सामने शांति लाल शाह या किसी का आक्षेप चलने नहीं पायेगा। अब मैं संविधान की धारा 14 पर आ रहा हूँ :

The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

इसके साथ ही 118 पढ़िये :

Each House of Parliament may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

हमने नियम बनाये हैं लेकिन उन नियमों को भी संविधान के अन्तर्गत ही रहना है। संविधान में और नियमों में कोई टकराव नहीं है लेकिन अगर सभापति कोई ऐसा निर्णय देते हैं जो नियमों के भी विपरीत है, संविधान के भी विपरीत है और

आर्टिकल 14 के भी खिलाफ है तो फिर वह निर्णय चलने वाला नहीं है-। आर्टिकल 14 में दो शब्द हैं : स्टेट ऐन्ड ला। उसके बाद आपको आर्टिकल 13 पर आना पड़ेगा। और आर्टिकल 12 में कहा गया है : State includes Government, Parliament of India. तो स्टेट में पार्लियामेंट आ गई और ला में यूजेज भी आ गया है। जब साधारण यूजेज है तो ला आफ पार्लमेंट नहीं है, यह कोई नहीं कह सकता। अब मेरा निवेदन यह है कि जब हमारे संविधान में मुझे यह मौलिक अधिकार दिया गया है और पार्लमेंट के मेम्बर के नाते भी यह अधिकार है तो आप अपने निर्णय के अनुसार दो सदस्यों के बीच फर्क कैसे करने वाले हैं ? कोठारी साहब का प्रस्ताव आयेगा और मधु लिमये का नहीं आयेगा, ऐसा क्यों ? जब इक्वल प्रोटेक्शन आफ लाज है तो फिर यह कैसे हो सकता है ? या तो यह नियम बनाइये कि चूँकि हम राष्ट्र की पंचायत हैं, सभी प्रश्नों पर बहस करने का मौका मिलना चाहिए। मेरे मामले में भी एक हलफनामा किया गया था हाईकोर्ट में, अगर उस पर चर्चा होती तो शायद सरकार अपना गलत हलफनामा वापिस लेती। लेकिन वह नहीं हुआ। इसलिए मेरा कहना यह है कि समानता का व्यवहार हो या फिर यह निर्णय दीजिए कि मेरे प्रस्ताव पर यहाँ कल ही बहस शुरू हो जाये, सुप्रीम कोर्ट में भी बहस चले और यहाँ भी चले। और अगर आप अपने पुराने निर्णय पर कायम हैं तो फिर सभी के साथ न्याय किया जाए। बस इतना ही मुझे कहना है।
... (व्यवधान) ...

SHRI NAMBIAR : You may give your ruling tomorrow. You need not be in a hurry.

MR. DEPUTY-SPEAKER : Not in a hurry, but after three hours.

SHRI KUNTE : I want particularly some light on the resolution.

SHRI DATTATRAYA KUNTE: We are discussing whether the discussion on the admission of the motion moved by Shri Kothari is barred by our Rules of Procedure. The hon. Member who preceded me quoted from the rules. He has referred to rule 173 (5) and later on to rule 175 which also supports him. So, so far as the rules are concerned, there are no two opinions.

Now we have really to see what the motion is. The motion is that this House disapproves of the ordinance. Is the approval or disapproval of the ordinance a matter before any court? According to me, and I hope every hon. Member of this House will agree, the approval or disapproval of the ordinance is not before any court.

SHRI TENNETI VISWANATHAM: What about legality?

SHRI DATTATRAYA KUNTE: My hon. friend Shri Vishwanatham is in a hurry to know about legality. I am thankful to him for reminding me.

What is the matter before the High Court? The point raised there is whether the ordinance is *ultra-vires* of the Constitution, *ultra-vires* of the powers delegated to the President or anything like that. So, the court is not debating what is contained in our Bill. The word contained in the Bill or ordinance will be used in order to find out whether under the Constitution such an ordinance could be passed or not. Therefore, the legality of the ordinance is not being discussed. That is the only point. The ordinance is not being discussed before the High Court. The legality of the ordinance is before the High Court and only the legality is *sub-judice*. The ordinance is not *sub-judice*.

SHRI NAMBIAR: Suppose we approve it. Will it not prejudice the court?

SHRI DATTATRAYA KUNTE: I am thankful to him for putting the question. Whether we approve or disapprove of it here, it is an expression of opinion not on the legality or otherwise of the ordinance. Secondly, it is laid down in the Constitution that whatever resolutions we pass

whatever legislation we pass, the legality or otherwise of it can always be challenged in a court of law and whatever the ruling of the court may be we have humbly to bow before it. That is the reason for Mr. Nath Pai's Bill. Therefore, confusion has arisen as to what exactly is *sub-judice* the matter *sub-judice* as I pointed out is merely whether the ordinance is legal or illegal. Therefore, at this stage when the admissibility of the motion has been challenged, since the motion does not contain anything regarding the legality or otherwise of the ordinance, it is quite in order.

SHRI K. NARAYANA RAO: I shall be brief. (Interruptions) There are some new things which have been focussed.

First of all this rule is not mandatory as it appears to be. Lot of discretion is open to you. For that I would invite you to Rule 188 of the Rules of Procedure. It says 'shall ordinarily be permitted'. There is an important proviso under which it can be permitted even if it is a matter pending in the court also. The permissibility is within your discretion. It says:

".....the Speaker may, in his discretion, allow such matter being raised in the House as is concerned with the procedure or subject or stage of inquiry."

MR. DEPUTY SPEAKER: Your views should be on this one point only and not on the motion.

SHRI K. NARAYANA RAO: I invite your attention to Rule 175. This is very relevant here. It says:

"No resolution which seeks to raise discussion on a matter pending before any statutory tribunal or statutory authority performing any judicial or quasi-judicial functions or any commission or court of enquiry appointed to enquire into, or investigate, any matter shall ordinarily be permitted to be moved".

I am emphasizing the word 'ordinarily'. That means that any matter pending before any court or tribunal shall not be permitted to be discussed. Now I invite your attention to the proviso which says:

[Shri Narayana Rao]

"Provided that the Speaker may, in his discretion, allow such matter being raised in the House as is concerned with the procedure or subject or stage of enquiry, if the Speaker is satisfied that it is not likely to prejudice the consideration of such matter by the statutory tribunal, statutory authority, commission or court of enquiry".

Here our guiding factor thrown by the proviso is whether your discretion is likely to prejudice the outcome in the Court of law. (*Interruptions*) If it is a question of facts or certain things like guilty or not guilty and if it is a question of legality, the ultimate decision making process lies in the Supreme Court or for that matter with the High Court. Any amount of discussion, variation or disagreement and even the criticism of these judgments is not likely to prejudice the opinion of the Court. Whatever we decide, that is not going to prejudice or in any way influence the legal opinion of the Supreme Court. Therefore, even if it is a matter to which this Rule applies, this is a fit case for you to apply your discretion and see that this can be permitted for discussion.

MR. DEPUTY SPEAKER : You have referred to Speaker's discretion. The matter before the court, whatever its nature be, is very grave because the ordinance deprives certain sections of our citizens their rights. In such a situation I am not going to exercise my discretion. I can exercise it provided judicially I can apply my mind to that effect. Beyond that you cannot appeal to my discretion on this point.

SHRI SURENDRANATH DWIVEDI : The only remedy seems to be that we should adjourn this and we will have your ruling tomorrow.

MR. DEPUTY SPEAKER : At 6 O'clock we will adjourn. We will conclude the debate.

SHRI SAMAR GUHA (Contai) : On a point of order, Sir. We are creating an extra ordinary precedent in this House today that the same set of speaker's speak over and over again. I do not know what you aim at and what is your objective ? The same arguments are being repeated.

(*Res.*)

You can adjourn this discussion and you can give the ruling next day and the other item can be taken up. I do not understand why the time of the House is wasted in this way. You are allowing the same set of members over and over again in the cyclic order, to speak on the same subject and the same argument.

SHRI TENNETI VISWANATHAM : I am not making a speech. My hon. friend Shri Kunte said that the legality is not under question here, but it is only a question of disapproval or approval. It is a very nice distinction the man is not questioned but his body is questioned. I do not disagree with Shri Kunte but I disagree with the 'body'. That is the kind of difference he wants to make. If you want to disapprove, you have to disapprove of it on certain grounds and those grounds are the very grounds which are stated in the writ petition. That is a very simple and clear point. Even the Law Minister was speaking against his own conviction : I could see it.

SOME HON. MEMBERS : *rose*

MR. DEPUTY SPEAKER : Shri George Feranandes. I want to conclude this.

श्री जार्ज फरनेन्डीज (बम्बई दक्षिण) : उपध्यक्ष महोदय, हम लोगों के सामने यह दो किताबें हैं जिनको कि इस सदन में हम लोग हमेशा इस्तेमाल किया करते हैं। एक तो मेज पार्लियामेंटरी प्रैक्टिस है और दूसरी हमारे इस सदन के सेक्रेटरी श्री शकधर को लिखी हुई पुस्तक प्रोमोज्योर इन पार्लियामेंट है। इन दोनों को ही मैं पेश करना चाहूंगा। पहली वाली अर्थात् मेज पार्लियामेंटरी प्रैक्टिस की 17 वीं एडिशन में से पेज 396 में यह लिखा हुआ है :

"Matters pending judicial decisions : A matter awaiting or under adjudication by a court of law should not be brought before the House by a motion or otherwise."

बाई ए नोशन और अवर बाइज, किसी भी प्रकार से यह मामला यहाँ पर वा नहीं

सकता है और इस के लिए इस सदन में सबसे बड़ी जो माने जाने वाली किताब है नियमों की उस को आपके सामने पेश करना चाहता है।

अब अगर आज के प्रस्तावों की ओर देखेंगे तो पायेंगे कि जो प्रस्ताव मैंने खुद दिया था। मुझे खेद है कि उस प्रस्ताव पर ही मुझको इस प्रकार से विरोध में बोलना पड़ रहा है। लेकिन जब मैंने प्रेसीडेंट द्वारा लागू किये गये आर्डिनंस को डिस्एप्रूव करने के वास्तं अपना प्रस्ताव उस अध्यादेश के जारी होने के बाद तत्काल दिया था उस वक्त तक किसी भी हाई कोर्ट में जहाँ तक मेरी मालूमात है कोई भी उस बारे में रिट पेटिशन नहीं हुई थी। लेकिन जबकि वह रिट पेटिशन पेश हो गयी है तो उसके बाद परिस्थिति तत्काल बदल गयी है और इस वक्त मुझको उस प्रस्ताव को लेकर जोकि मैंने उस समय पेश किया था आपके सामने मेज पार्लियामेंटरी प्रेक्टिस और सदन के नियमों और प्रोसीज्योर आदि इन तमाम चीजों को पेश करना पड़ रहा है।

उपाध्यक्ष महोदय, अब अगर आज का आर्डर पेपर देखेंगे तो पायेंगे कि एक स्टूटुटरी रेजोलूशन है जिसे कि श्री एस० एस० कोठारी, श्री जाजं फरनंडोज, श्री स. मो. बनर्जी और ज्योतिर्मय बसु पेश करेंगे और दूसरा श्री वाई० बी० चव्हाण दूसरे हैं।

"that the Bill to provide for the maintenance of certain essential services and the normal life of the community, be taken into consideration."

और नीचे उसी आर्डर पेपर पर यह लिखा हुआ है :

मे बी डिस्करिड टुगेवर इसके पहले जब रेलवे वाला मामला आया था तब भी यही बात हुई थी। हम लोगों में से कई लोगों ने उस बारे में ब्यवस्था के प्रश्न उपस्थित किये

थे और दोनों को एक साथ लेने का काम हुआ था। आज भी दो प्रस्ताव सदन के सामने हैं। एक प्रस्ताव तो हम लोगों ने पेश किया है और दूसरा मंत्री महोदय ने वह अपना विधेयक पेश किया है।

मेज पार्लियामेंटरी प्रेक्टिस के अनुसार ये दोनों प्रस्ताव नियम के बाहर हैं। वहाँ पर लिखा हुआ है :

"a matter awaiting or under adjudication"

हमारे मित्र कुंटे साहब चले गए हैं। आखिर अदालत के सामने क्या मामला है। अदालत सिर्फ लीगैलिटी पर विचार करे, यह प्रश्न नहीं है। लीगैलिटी अथवा इलीगैलिटी यहाँ तक अदालत के सामने चीज नहीं है।

The entire matter is before the court.

पूरा यह मामला, पूरा अध्यादेश का मामला उसके सामने पेश है।

The matter is the ordinance issued by the President, not the legality of the ordinance.

इस वक्त अदालत के सामने यह सारा अध्यादेश पड़ा हुआ है। अगर नियम को, मेज पार्लियामेंटरी प्रेक्टिस को मैं ए मैटर की जगह, एन आर्डिनंस करके पहुँच तो यह इस तरह से पढ़ा जायगा :

"An ordinance awaiting or under adjudication by a court of law should not be brought before the House by a motion or otherwise."

अदरवाइज़ का मतलब है कि न बिल आ सकता है, न अध्यादेश पर यहाँ बहस हो सकती है, वह बहस के लिए आ सकता है और न बहस के लिए प्रस्ताव आ सकता है क्योंकि ये दोनों चीजें नियम के विपरीत हैं।

अब मैं शकवर साहब की जो किताब है, उसको आपके सामने पेश करना चाहता

हूँ। उसमें से केवल एक वाक्य पढ़ कर मैं सुनाऊँगा। यह बिल्कुल साफ कहता है :

"Scrutiny of resolution and conditions of admissibility : In order that a resolution might be admissible, it should not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India."

यह बिल्कुल साफ है प्रस्ताव के बारे में मोशन के बारे में भी आप देखें कि गृह मंत्री ने विधेयक लाया है और उस विधेयक के पीछे उनका प्रस्ताव है। पहला रहा पेज 505 रेजोल्यूशन को लेकर, जो आर्डर पेपर का पहला हिस्सा है। अब दूसरा हिस्सा मोशन को लेकर हम चलें। यह 530 पेज पर है।

"In order that a motion for discussion on a matter of general interest, etc. may be admissible, it should not relate to any matter which is under adjudication by a court of law having jurisdiction in any part of India."

जहाँ तक मोशन का प्रश्न है और जहाँ तक रेजोल्यूशन का प्रश्न है इन दोनों चीजों के बारे में दो व्यक्तियों ने इस चीज का अभ्यास किया है और जिनमें से एक का नाम लेकर हम लोगों ने अपने संविधान में लिखा है कि इतिहास के हाउस आफ कामन्स में जो नियम चलेंगे, वही नियम इस सदन में भी चलेंगे, तो इन का मामला बिल्कुल साफ है। वे दोनों हमें बताते हैं कि इस पर यहाँ बहस नहीं चल सकती है।

एक बात और मैं पेश करना चाहता हूँ। आर्टिकल 226 को आप पढ़िये। इस बात जो रिट पेटिशन है, वे बहुत महत्वपूर्ण हैं। इस सदन को यह अधिकार नहीं है कि संविधान में किसी भी व्यक्ति को दिये हुए अधिकार को यह सदन इस बात यहाँ पर बैठ कर छीन ले। अगर कल को एक विशेष विधेयक यहाँ पर आ जाए आर्टिकल 226 को एमेंड करने वाला या दूसरे किसी भी न्यायिक अधिकार को लेकर या उधर पर

कोई भी तरमीम पेश करने वाला तो वह मामला अलग है। लेकिन अगर इस विधेयक पर यहाँ पर हम बहस चलायें, अगर इस प्रस्ताव पर बहस चलायें तो मैं कहूँगा कि यह आर्टिकल 226 का भंग होगा और आगे एक कदम बढ़ कर मैं यह भी कहना चाहूँगा कि आर्टिकल 121 का भंग होगा। आप आर्टिकल 226 को पढ़ें.....

MR. DEPUTY SPEAKER : So far as the resolution is concerned, I shall hear you. But is the scheme of our Constitution such that if anywhere in India, a matter has been raised in a High Court or in the Supreme Court, we should stop functioning ?

श्री अटल बिहारी वाजपेयी : रेजोल्यूशन के साथ बिल जुड़ा हुआ है। दोनों का सबजेक्ट मैटर एक है।

श्री जार्ज फरनेन्डोज : आपने आर्डर पेपर पर दोनों चीजों को एक साथ जोड़ा है। दूसरी बात यह है कि रेलवे का आर्डिनेंस यहाँ पर आया था, रेलवे का विधेयक आया था तब एक साथ उसको आपने ले लिया था, एक साथ उस पर मतदान किया था, एक साथ बहस की थी।

MR. DEPUTY-SPEAKER : Though they are to be simultaneously debated, as it is mentioned in the Order Paper, when the first resolution was moved I was pleading that the other motion may also be moved but, before that, objection was taken. So, at the present moment what is before the House is only the Resolution. They did not allow the second motion to be moved.

श्री जार्ज फरनेन्डोज : जब मैं आर्टिकल 226 पर बोल रहा हूँ तब मैं विधेयक वाली बात को आपके सामने उपस्थित नहीं कर रहा हूँ। मैं नागरिकों के जो अधिकार हैं उन पर ही बोल रहा हूँ। रिट पेटिशन आर्टिकल 226 के आधार पर फाइल हुई है। 226 में लिखा हुआ है।

"226. (1) Not with standing anything in article 32, every High Court shall have

[श्री जाजं करनेन्डीज]

power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *man-lamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose."

आपने 123 में अध्यादेश जारी किया। कानून जितना अधिकार रखता है इस सदन में पास किया हुआ जो कायदा है, इतना ही उस अध्यादेश का भी कायदा है। इसलिए जब कोई भी नागरिक पार्ट तीन में उसको दिये हुए अधिकारों का भंग होगा, इस आधार पर अदालत में जाता है तब.....

MR. DEPUTY SPEAKER : I have followed his argument. Now he should conclude.

श्री जाजं करनेन्डीज : मैं बहुत महत्व-पूर्ण बात रख रहा हूँ। आपने इस पर अभी चार घंटे बहस चलाई है, क्या आप मुझे चार मिनट भी नहीं दे सकते हैं। मैं एक नया विषय पेश कर रहा हूँ। सदस्य कोई परेशानी व्यक्त करें तो मैं समझ सकता हूँ। लेकिन आपकी परेशानी से मैं ज्यादा परेशान होता हूँ।

जब कोई भी नागरिक 226 में अदालत में जाए तो वह नागरिक इस सदन द्वारा बनाये गये कानून को लेकर और उसके विरोध में नहीं जाता है। वह यह नहीं कहने जा रहा है कि इस सदन को कोई कानून बनाने का अधिकार है या नहीं है। इस सदन को कानून बनाने का जो अधिकार है वह सार्वभौम है, वह सर्व श्रेष्ठ है, उसके विरोध में कोई अदालत में नहीं गया है। अदालत में जो गया है वह अध्यादेश को लेकर गया है जो कि 123 के अन्तर्गत जारी किया गया है। अध्यादेश ने जो अधिकार को छीन लिया है, उसको लेकर एक नागरिक 226 में

इस वक्त अदालत के सामने है। अगर आप यहाँ पर इस वक्त प्रस्ताव के द्वारा और आगे आने वाले उसके साथ-साथ जुड़े हुए बिल के द्वारा अध्यादेश को भंग करते हैं, अध्यादेश को आप कहते हैं कि आप हटा रहे हैं और उसकी जगह पर आप विधेयक ला रहे हैं तब तत्काल जो नागरिक अदालत के सामने इस वक्त खड़ा है, आप उसको अदालत से बाहर फेंकने का काम करते हैं, उसको आप कहते हैं कि नये विधेयक के अन्तर्गत तुम वहाँ पर जाओ। मैं चाहता हूँ कि अगर इसके बारे में मतभेद हो तो माननीय सदस्य अपनी राय व्यक्त करें। मेरे मन में जो बात आई वह मैंने पेश कर दी है।

अब आप 121 को देखें। जब किसी नागरिक ने इस वक्त दिल्ली, आंध्र प्रदेश, लखनऊ और राजस्थान में अथवा किसी कर्मचारी ने रिट अध्यादेश के खिलाफ दाखिल की है, अपनी कैफियत को दाखिल किया है और अदालत ने सरकार को यह कहा है कि तुम्हें इस पर जो कुछ कहना है तत्काल अदालत में आकर कहो, फिर उपाध्यक्ष महोदय, इस प्रश्न पर इस सदन में बहस करना किसी भी रूप में और अध्यादेश के स्थान पर प्रस्ताव लाना या विधेयक लाना मैं समझता हूँ कि 121 को भंग करना होगा। आप देखें कि 121 क्या कहता है :

"Restriction on discussion in Parliament.

No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties."

MR. DEPUTY SPEAKER : We are not concerned with the conduct of the judiciary.

श्री जाजं करनेन्डीज : हमारा उस से सम्बन्ध है। मैं आप को बताता हूँ कि कैसे।

चउ किसी बदावत ने सरकार को

नोटिस दिया है और कहा है कि इस अध्यादेश के बारे में अपनी राय दो...

MR. DEPUTY SPEAKER : I have followed you. I have given you 15 minutes. I have to conclude this debate at 6 o'clock. As Shri Dwivedy has suggested, I will give my ruling tomorrow. Let the debate be concluded today.

श्री जार्ज फरनेन्डीज : मैं खत्म कर रहा हूँ।

जब इस सदन में इस अध्यादेश या विधेयक पर बहस होती है, तो वह बहस जरूर आर्टिकल 121 को भंग करेगी और इस लिए आप इस बहस को स्थगित कर दीजिए।

SHRI NAMBIAR : rose—

MR. DEPUTY SPEAKER : Every group has been represented. I have given more than reasonable opportunity for debate. Please resume your seat.

श्री प्रेमचन्द बर्मा (हमीरपुर) : उपाध्यक्ष महोदय, मेरा पायंट आफ आर्डर है। आप जानते हैं कि इस डिस्कशन पर चार घंटे लग गये हैं। आप को याद होगा कि 1964-65 के हिसाब से पार्लियामेंट पर अठारह हजार रुपया फी घंटा खर्च होता है। (ब्यबधान) इस बहस को लगातार चार घंटे तक जारी रखने का कोई मतलब नहीं है। यह मुनासिब नहीं है कि जनता के पैसे को इस तरह जाया किया जाये। इन चार घंटों में 72,000 रुपये जाया करके विरोधी दल इस देश के गरीबों के साथ खिलवाड़ कर रहे हैं। (ब्यबधान)

श्री जार्ज फरनेन्डीज : कान्तिलाड देसाई को कहो। (ब्यबधान)

SHRI K. LAKKAPPA : The hon. Member has said that we have wasted public money. It is a reflection on you and on the House... (Interruption)

श्री अटल बिहारी वाजपेयी (बलरामपुर) : उपाध्यक्ष महोदय, इस चर्चा में से कुछ मुद्दे निकले हैं, जिन पर आपको विचार करना होगा और अपना निर्णय देना होगा।

अब संसद का सत्र नहीं होता है, तब राष्ट्रपति अध्यादेश जारी कर सकते हैं। वह अध्यादेश कानून की तरह से प्रभावी है। संविधान के अनुसार उस अध्यादेश को संसद के सामने पेश करना पड़ता है। इस सम्बन्ध में तीन स्थितियाँ हैं : संसद उसे स्वीकार कर सकती है, उसे ठुकरा सकती है या वह अध्यादेश अपने आप प्रभावहीन हो सकता है। मैं यह समझने में असमर्थ हूँ कि अगर किसी हाई कोर्ट या सुप्रीम कोर्ट में कोई रिट पेटिशन कर दिया जाये, तो क्या वह इस संसद के, इस सदन के, अधिकार को बांधती है? क्या वह हमें उस मामले पर विचार करने से रोकती है?

कठिनाई इसलिए बढ़ गई है कि श्री मधु लिमये के मामले में एक निर्णय दिया जा चुका है। मैं चाहता था कि वह निर्णय न दिया जाता, लेकिन वह निर्णय आज उन्हीं विधि मंत्रों के खिलाफ प्रयोग में लाया जा रहा है, जिन्होंने उस निर्णय की वकालत की थी। चूंकि कच्छ का मामला सुप्रीम कोर्ट में पेश है, इसलिए उस पर सदन में चर्चा नहीं हो सकती है, तो आज विधि मंत्रों किस मुंह से कह सकते हैं कि इस अध्यादेश के बारे में किसी कोर्ट में रिट पेटिशन होने पर भी इसके बारे में यहाँ बहस हो सकती है? मुझे लगता है कि श्री मधु लिमये के मामले पर भी बहस होनी चाहिए थी। वहाँ भी सदन ने अपने अधिकारों को सीमित किया, यह अच्छा नहीं किया और इस मामले में भी हम बहस करने के अपने अधिकार को नहीं छोड़ सकते।

यह कहा जा रहा है कि अगर श्री कोठारी के संकल्प पर चर्चा होती, तो

[श्री अटल बिहारी वाजपेयी]

वही मामले उठेंगे, जो अदालत के विचाराधीन हैं। मगर जब गृह मंत्री, श्री चव्हाण, के विधेयक पर चर्चा होगी, तब क्या वे मामले नहीं उठेंगे, जो अदालत के विचाराधीन हैं? अगर संकल्प पर चर्चा नहीं हो सकती है, तो फिर विधेयक पर भी चर्चा नहीं हो सकती है। यह अन्तर करना ठीक नहीं होगा कि संकल्प पर तो चर्चा नहीं हो सकती है, लेकिन विधेयक पर चर्चा हो सकती है, क्योंकि दोनों का विषय एक ही है। अगर वह विषय अदालत के विचाराधीन है, तो संकल्प और विधेयक दोनों को छोड़ना पड़ेगा।

रिट पेटिशन में अदालत के सामने क्या विचाराधीन है? कुछ नागरिकों ने रिट पेटिशन किये। उनका कहना यह है कि जो अध्यादेश जारी किया गया है, वह संविधान के प्रतिकूल है और संविधान ने हमें जो अधिकार दिये हैं, उससे उन अधिकारों पर कुठाराघात होता है। अगर सदन श्री कोठारी का संकल्प स्वीकार कर ले, तो जिन्होंने रिट पेटिशन पेश किये हैं, उनको किसी तरह से नुकसान नहीं होता है। अगर सदन श्री कोठारी के संकल्प को टुकरा दे, तब भी अदालत को यह अधिकार है कि वह कर्मचारियों के पक्ष में निर्णय दे सकती है, वह ऐसा निर्णय दे सकती है, जो सरकार के अध्यादेश को अवैध घोषित कर दे। इसलिए मैं नहीं समझता कि अगर सदन इस बारे में चर्चा करता है तो जिन्होंने रिट पेटिशन पेश किये हैं, वे किसी तरह से प्रभावित नहीं होते हैं। लेकिन एक बार श्री मधु लिमये के मामले में ऐसा निर्णय दिया जा चुका है, जो आज बाधा बन कर खड़ा है। मैं चाहूंगा कि आप इन सारी बातों का विचार करके निर्णय दीजिए और अगर आप इस संकल्प पर चर्चा करने की छूट देते हैं, तो श्री मधु लिमये के संकल्प पर चर्चा का मौका मिलना चाहिए।

MR. DEPUTY SPEAKER : The Law Minister.

SHRI GOVINDA MENON : Mr. Deputy-Speaker, Sir, I will go step by

step. It is the constitutional right of the President to promulgate an Ordinance. It is the constitutional right of a Member of this House to move a resolution under article 123 (2). It is the constitutional right of the Home Minister to move a Bill to replace the Ordinance under article 107. These are all motions. The one is a motion under article 123 (2) and the other is a motion, that is, the Bill, under article 107.

Now, the matter has been covered by a previous ruling given by your distinguished predecessor. In 1967, the President issued the Metal Corporation Ordinance and the Metal Corporation Ordinance was being questioned in the High Court of Punjab in its Delhi Branch. When that writ was pending, the bill was brought before the House and Mr. S. M. Banerjee himself raised an objection that since the writ was pending, the Bill could not be considered. On the 22nd November, 1965, at p. 3125 of the Debates, there is the ruling given by the Speaker that, in spite of the writ against the Ordinance being pending, it was open to this House to consider the motion to replace the Ordinance.

SHRI NAMBIAR : That was the Bill. You are misleading the House.

SHRI GOVINDA MENON : That is all right. Now the Bill which stands in the name of the Home Minister to replace the Ordinance is a motion under article 107. This resolution is a motion under article 123 (2). The two stand on the same footing

SHRI NAMBIAR : No, No.

SHRI GOVINDA MENON : Therefore, I submit, these objections are without any merit. I would request you to read the previous ruling given by the Speaker.

MR. DEPUTY SPEAKER : I will give the ruling tomorrow. The House stands adjourned to meet again tomorrow at 11 A. M.

18 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Wednesday, December 11, 1968 Agrahayana 20, 1890 (Saka).