

14.28 hrs.

ELECTION TO COMMITTEE

Estimates Committee

[English]

SHRI CHINTAMANI PANIGRAHI
(Bhubaneswar) : Sir, I beg to move :

“That the members of this House do proceed to elect, under sub-rule (3) of Rule 254, in the manner required by sub-rule (1) of Rule 311 of the Rules of Procedure and Conduct of Business in Lok Sabha, two members from among themselves to serve as members of the Committee on Estimates for the unexpired portion of the term of the Committee *vice* Shrimati Sheila Dikshit and Shrimati Krishna Sahi, ceased to be members of the Committee on their appointment as Ministers of State.”

MR. DEPUTY-SPEAKER: The question is :

“That the members of this House do proceed to elect, under sub-rule (3) of Rule 254, in the manner required by sub-rule (1) of Rule 311 of the Rules of Procedure and Conduct of Business in Lok Sabha, two members from among themselves to serve as members of the Committee on Estimates for the unexpired portion of the term of the Committee *vice* Shrimati Sheila Dikshit and Shrimati Krishna Sahi, ceased to be members of the Committee on their appointment as Ministers of State.”

The motion was adopted

14.29 hrs.

COMMISSIONS OF INQUIRY
(AMENDMENT) BILL*

[English]

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

OF HOME AFFAIRS (SHRI P. CHIDAM-
BARAM). On behalf of Shri Buta Singh, I
beg to move for leave to introduce a Bill
further to amend the Commissions of Inquiry
Act, 1952.

MR. DEPUTY-SPEAKER : Motion
moved: “That leave be granted to introduce
a Bill further to amend the Commissions of
Inquiry Act 1952”

PROF. MADHU DANDAVATE (Raja-
pur) : Mr. Deputy-Speaker, Sir, it is a very
important item... (*Interruptions*).

THE MINISTER OF PARLIAMENTARY
AFFAIRS AND MINISTER OF FOOD
AND CIVIL SUPPLIES (SHRI H. K. L.
BHAGAT) : Prof. Madhu Dandavate has
been moving so many things. We have never
opposed him at the introduction stage. Even
today he is going to move. I do not know
why he is setting this principle of opposing
at the introductory stage. I do not object to
his right. He can do that. But everyday we
accept his motion for introduction.

PROF. MADHU DANDAVATE: If they
listen to me, they will themselves withdraw
the Bill which they are moving.

MR. Deputy-Speaker Sir, I rise to
oppose, with all my strength, this Bill
further to amend the Commission of Inquiry
Act, 1952. Really speaking, this Bill seeks
to replace the disastrous ordinance that was
already promulgated by this Government
authorising the Government not to place be-
fore the Lok Sabha the Reports which have
been received by various Commissions of
Inquiry. I have with me so many precedents.
This Government has been issuing ordinances
of course, then replacing them by Bills as
required by the Constitution and the provi-
sions of the Commission of Inquiry Act.
But my contention is that since this Bill
arises out of the sin of the ordinance,
the manner in which that ordinance was issued
and the manner in which the Bill is being
sought to be introduced, I must refer to these
procedural matters because in the democratic
functioning of the Parliament the procedura

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[*Prof. Madhu Dandavate*]

matters and the sanctity of procedure are as important as the merits of the case. Both on the merits of this Bill as well as on procedure and also on the basis of Constitutional propriety I would like to oppose this Bill.

I have with me a publication—'Presidential Ordinances'. This is not the publication of the Janata Party. This is published by the Lok Sabha Secretariat and you will find that in this publication a number of precedents regarding promulgation of ordinance are given. There are significant precedents in the form of rulings—right from the First Lok Sabha upto the recent Lok Sabha which is presided over by Bal Ram Jakhar. I do not want to go into the details. But only I want to remind the House and through you the Hon. Minister. The first ruling on the Ordinance was given on February 22, 1952, by the then Speaker Shri G. V. Mavalankar. I myself do not like promulgation of ordinances. It is only in extreme cases that ordinances should be issued.

Then again on July 17, 1954 he wrote a strong letter to the Prime Minister.

Those were the days when Speaker used to pull up the Prime Minister. And he wrote a very strong letter.

“We, as first Lok Sabha, carry a responsibility of laying down traditions. It is not a question of present personnel in the Government but a question of precedents; and if this Ordinance issuing is not limited by convention, only to extreme and very urgent cases, the result may be that, in future, the Government may go on issuing Ordinances giving the Lok Sabha no option, but to rubber-stamp the Ordinances.

In the strongest words he had written that letter.

On November 16, 1971, the then...

SHRI H.K.L. BHAGAT: A very capable friend Prof. Dandavate is at this stage on the introduction of the Bill. Introduction of the Bill can be opposed at this stage on legal, constitutional grounds, while the argument

he is advancing is again propriety of issuing ordinance.

You understand of all the people what distinction I am making and you know that this is correct. When there is a regular discussion on the Bill he can raise this—why the Ordinance was issued, this that, and the like.

I placed the Ordinance on the Table of the House. At that time no objection was made. Now we are at the stage of introduction of the Bill. He can oppose on Constitutional or legal grounds. Why does he oppose introduction in this manner? When the Bill is introduced and the discussion comes, the hon. Member can say...

PROF. MADHU DANDAVATE: Before you give a ruling, can I help you?

(Interruptions)

I am not offering help to that Member. SHRI H.K.L. BHAGAT: I do not want to stop him at all.

MR. DEPUTY-SPEAKER: This is his suggestion. That is all.

PROF. MADHU DANDAVATE: It is only suggestion for inaction. Incidentally, I may say in relation to his point of order, I am prepared to place additional documents—various cases on which debates took place on the introduction of the Bill.

MR. DEPUTY-SPEAKER: You make a very brief statement.

PROF. MADHU DANDAVATE: I will make a brief statement but brevity will be slightly longer. Otherwise, I will be very brief.

MR. DEPUTY-SPEAKER: It is your thinking.

PROF. MADHU DANDAVATE: I am making a passing reference. Again on November 13, 1973, Shri Dhillon was the Speaker, who is now the Minister here. He may remember. I may remind you. Whether I am right or wrong, again he made a strong

observation. I do not want to go to further details.

Again on November 17, 1980, another observation was made by our Speaker-the Chair which you are occupying.

On 17th November, Dr. Bal Ram Jakhar, the present Speaker, said:

‘My distinguished predecessors have made observations in regard to these matters from time to time in the past. They did not approve of the issue of Ordinances on the eve of Parliament session. I agree with them’.

These are the various observations. So, it is very clear that the general tenor of the observations of the Presiding Authorities in this House was very much in favour of not issuing ordinances indiscriminately and I find that that convention is being thoroughly violated. That is one of the procedural grounds. There are also certain Constitutional provisions about the promulgation of ordinances. The spirit of those provisions is being violated. (*Interruptions*). The hon. and learned Member did not listen to my first observation. I said that this Bill is born out of the womb of the ordinance. While talking about the son, sometimes, reference to the mother has to be made. That is why I am making reference to the ordinance. So far as the spirit of the constitutional provisions is concerned, that is being totally violated. Sir, if you have a copy of the constitution book, please refer to Article 123 (1) of the Constitution. I quote:-

123 (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.

Now, please look at 123 (2) (a) which says:

‘(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six months from the re-assembly of Parliament...’

SHRI RAM PYARE PANIKA (Roberts-ganj): What is the objection, Sir?

PROF. MADHU DANDAVATE: Mr. Panika, there is a telephone for you; please go and attend it! (*Interruptions*) These are very clear constitutional provisions.

(*Interruptions*)

MR. DEPUTY SPEAKER: Order please.

PROF. MADHU DANDAVATE: Sir, the former Deputy Speaker is sitting by his side. He can educate him. Why should I do it, Sir?

Sir, please look at the constitutional provisions. The Lok Sabha was prorogued on 12 May 1986. This I am putting on record, because, for future guidance this will be very important. Sir, let me repeat it. Lok Sabha was prorogued on May 12, 1986. The former Secretary General of this House, Mr. S. L. Shakhder has said this-

‘A Bill could have been brought before Rajya Sabha and permission sought to promulgate ordinance since Lok Sabha was not in session.’

Sir, in number of countries, such occasions have occurred; they have followed this particular procedure and it could have been followed in this case. Coming to this point, I know what is the background of this particular Bill. I now wish to refer to the Thakkar Commission. The Thakkar Commission submitted its first interim report on 19 November, 1985. Six months after submission of the report ended on 19 May, 1986. As required by the Constitutional Provision, that is, Article 123 (2) (a), before the completion of 6 months, this report ought to have been laid on the Table of both the Houses of Parliament. Now, what happened? Sir, the Lok Sabha adjourned on 8 May, 1986. The Rajya Sabha adjourned on 13 May, 1986. The report ought to have been laid before 8 May, 1986. Sir, knowing fully well that 6 months period is going to be completed on 19 May, 1986, and at that time the House will not be in session, they ought to have

[*Prof. Madhu Dandavate*]

taken a special precaution, by way of abundant caution, to see that these reports are laid before 8 May, 1986. But, instead of doing that, this ordinance was promulgated on 15 May, 1986.

MR DEPUTY-SPEAKER: Why cannot you discuss all these things when we come to the Bill? You are going into many details.

PROF. MADHU DANDAVATE: Sir, do you think that discussing the procedural matters in the House is a waste of time?

MR. DEPUTY-SPEAKER: Not like that, but because.....(*Interruptions*).

SHRI A. CHARLES (Trivandrum) : We do not want to hear him.

(*Interruptions*)

PROF. MADHU DANDAVATE: It is not left to your choice whether you listen to me. If you do not want to listen to me, you can walk out of the House. Sir, I do not want to be told, I do not want to be bullied by any Member. (*Interruptions*). I do not want to be told by any Member that 'I do not want to listen to you'. If you have no capacity to listen, you can withdraw from the House and this freedom is granted to you. Sir, nobody can say that. (*Interruptions*).

Sir, you must restrain this Member. One Member, has the temerity to tell me that 'I do not want to listen to you'. Who forced him to listen to me? (*Interruptions*). Sir, now I come to the contempt of the House. (*Interruptions*). That is, this House in which you are sitting. Here fortunately I have got the Bill with me and if you open the Bill, you will find that Section 34 very clearly says.....(*Interruptions*).

SHRI T. BASHEER (Chirayinkil): Sir, is discussing the Bill in this House allowed?

SHRI BRAJAMOHAN MOHANTY: (Puri) Sir, I have a point of order.

(*Interruptions*).

MR. DEPUTY-SPEAKER: The Minister is on his legs. Yes, what is your point of order?

SHRI BRAJAMOHAN MOHANTY: My point of order is this.

I invite the attention of the House to Rule 72 of the Rules of Procedure which says:

"...Provided that where a motion is opposed on the ground that the Bill initiates legislation outside the legislative competence of the House, the Speaker may permit a full discussion thereon."

As far as I have heard Prof. Dandavate ji, my submission would be that nowhere he has contended that this Bill is outside the jurisdiction of this House. So, my submission would be that firstly, the discussion is not permissible. He can point out, no doubt he has risen for that, and I and many of the Members of the House are all anxious to learn from him, but I request him, let him not attempt to put in many things and misguide the House. Let him point out whether he contends that it is outside the jurisdiction of this House. If that is so, then let him say so. Then only full discussion will be allowed. Otherwise he may point out the constitutional impropriety.....

MR. DEPUTY SPEAKER: That is why I told him to be brief.

SHRI RAJ KUMAR RAI (Ghosi): Has the Parliamentary Affairs Ministers not explained it, Sir?

(*Interruptions*)

MR. DEPUTY SPEAKER: Already the Parliamentary Affairs Minister explained the same thing. I also told that he should be brief, there need not be so much discussion on this. Prof. Dandavate, please wind up.

PROF. MADHU DANDAVATE: Sir, I was almost concluding, but by your interruption, my speech is being lengthened.

H.K.L. BHAGAT: We are listening to him respectfully, Sir.

PROF. MADHU DANDAVATE: I am already concluding. Have a little patience. You don't listen to us during the Zero Hour. Now also you don't listen when we gave the notice.

SHRI H.K.L. BHAGAT: We not only listen to you, but we also listen to you with respect and attention. I only pointed out the scope of opposition at the stage of opposition and of all the people, you know more.

PROF. MADHU DANDAVATE: You know it very well, Sir. That is why I am on the procedural point.

In every point that I have raised, I have talked about the precedents, constitutionality and only violation and contempt of the House. I have not spoken about the merits and I am not going to speak about them.

SHRI RAJ KUMAR RAI (Ghosi): But all these things have no relevance here. These are all irrelevant things.

PROF. MADHU DANDAVATE: It is too late in the day for me to learn about relevance, Sir, you look at all the debates for the last seven years. On constitutional points for hours together people are debating.

(Interruptions)

SHRI T. BASHEER: We are very sorry we are not enjoying all this.

SHRI RAJ KUMAR RAI: It is a pity that a person like Prof. Dandavate says like that.

(Interruptions)

PROF. MADHU DANDAVATE: Am I allowed to speak, Sir? I am concluding. I hope the permission to conclude.

As far as sub-section (4) of Section 3 of the Commissions of Inquiry Act 1952 is concerned, it says:

"The appropriate government shall cause to be laid before the House of the People or as the case may be, the Legislative Assembly of the States, the report, if any, of the Commission on the inquiry made etc. etc."

So, these are the provisions. *(Interruptions.)* They are shouting so much, I cannot hear my own voice. That is the difficulty. Apart from you, my voice is not heard by me. Can you hear?

MR. DEPUTY-SPEAKER: Yes, I am listening to you.

PROF. MADHU DANDAVATE: I am finding difficult to hear my own voice. Therefore, let me conclude. As far as these provisions are concerned, there is a total contempt. Afterwards what they do will be different. But as far as the Constitutional provisions are concerned, the traditions are concerned, the conventions of the House are concerned, and in addition to that, as far as the various rulings given by the Speaker are concerned, all are totally violated and what I feel is, all that the Bill tries to do is:

No (1), it curbs the power of Parliament. No. (2), it takes away the right to information which is the inherent right of this Parliament. It violates the Constitutional provisions and it creates a contempt of this House. By bringing such provisions is totally contrary to the spirit of the original Bill. And, therefore, at this introductory stage, without going into the merits and contents of the Bill, merely on procedural grounds, on grounds of power of Parliament, on grounds of the Constitutional provisions, I totally oppose the introduction of the Bill. I hope wiser counsel will prevail on the Treasury Benches and even at this stage, they will not seek permission to introduce the Bill.

DR. CHINTA MOHAN (Tirupati): Mr. Deputy Speaker, Sir, the Commission of Inquiry (Amendment) Bill is nothing but deliberate denigration of democracy, butchery of democracy and a slap on the face of parliamentary democracy. That is what the people outside are thinking.

The Ordinance should not have been issued at all, if they have any faith in democracy. Before introducing the Bill, in a statement, the Minister has said that to maintain the sovereignty of the country, to maintain the integrity of the country and to maintain friendly relations with other countries, he has brought forward the Bill. But

[*Dr. Chinta Mohan*]

people outside are thinking that there is no truth in it. We had the Thakkar Commission which was appointed after the assassination of the Prime Minister, Shrimati Indira Gandhi. The Commission submitted its report by 19th November, 1985. There was abundant time of six months to introduce the Bill in the Lok Sabha but the Government never bothered to introduce the Bill. Moreover, we sat for 2 1/2 months here in the Budget Session. Neither they consulted the top Opposition leaders nor did they introduce the Bill in the House. It goes to say that the Government of India have no faith in democracy.

Recently, the Prime Minister said in a statement that he wanted to strengthen democracy. I want to ask, it is the way of strengthening democracy? People outside are feeling that the Government of India is strengthening the democracy. The assassination of Indiraji had taken place and we all felt for the assassination of the Prime Minister. We wanted to know the secret of it; we wanted to know how the assassination had taken place, had it taken place when she was attending the scheduled interview or was there any deviation from her scheduled interview when assassination had taken place, were there any top Congress leaders involved in that, were there any senior officials involved in that, all these things we wanted to know.

SHRI PRIYA RANJAN DAS MUNSI (*Howrah*) : Out of the very circumference of the rule, we are allowing the discussion. Madhuji has pointed out certain issues. He is also giving a speech....(*Interruptions*).

DR. CHINTA MOHAN : I am on my legs, I am doing my duty here. I would like to say that top Opposition leaders at least should have been consulted but they were not consulted on this matter. ...(*Interruptions*).

At this juncture, I would like to demand from the Minister through you that at least this ordinance should be revoked and this Bill should not be introduced at all.

I conclude my speech.

MR. DEPUTY-SPEAKER : I do not want any discussion on this. Shrimati Geeta Mukherjee.

SHRIMATI GEETA MUKHERJEE (*Panskura*) : Yes, I am always brief. You would admit, I believe, if not, I will stop.

MR. DEPUTY SPEAKER : I hope you will be brief.

SHRIMATI GEETA MUKHERJEE : Already, certain procedural points have been clearly enunciated by my previous speaker, hon. Madhu Dandavate. Naturally, I shall not repeat. But I want to stress one thing. This Bill actually is not only an inheritor of that Ordinance but also it has no real Constitutional validity—It should not have in the convention also. This Bill again seeks our approval, post-date, of the very Ordinance, whose propriety we are challenging. Therefore, procedurally also, I say this post-dated approval, to that Ordinance, that is this Bill, is procedurally at fault. This I would like to say. First of all, it is the substantive thing that is being discussed, that is the sovereignty of Parliament which comes from the sovereignty of the people and it is through the peoples' elected legislature. That is why Parliament is sovereign. Withholding the report even from the knowledge of Parliament is, actually denying the sovereignty of Parliament because without the knowledge of the Act, you cannot act. (*Interruptions*).

This particular Bill takes away the sovereignty of the Parliament.

On this ground, I do oppose the Bill at the introductory stage and I hope they will revoke this.

PROF. MADHU DANDAVATE : They are opposing because she spoke briefly.

SHRI SAIFUDDIN CHOWDHARY (*Katwa*) : The Ordinance, and this Bill obviously are undemocratic and detrimental to the interests of the country. Earlier, Prof. Madhu Dandavate said that it takes away from the Parliament the right to information. Not only that. It encourages the state of mis-information. I pointedly ask at this juncture why the Thakkar Commission report was not placed when the House was in Session last time. I want to point out and so much confusion is there in the minds of the people. When Mrs. Gandhi was murdered, we said that an imperialist conspiracy was there.

MR. DEPUTY-SPEAKER : Why are you bringing that? No, no.

SHRI SAIFUDDIN CHOWDHARY : We said. But there are people who hinted something else even during the trial of Satwant Singh.

MR. DEPUTY-SPEAKER : Don't go into the case.

SHRI SAIFUDDIN CHOWDHARY : What are the rights of the Parliament ? Parliament has the right to know the real thing.

MR. DEPUTY-SPEAKER : If there are any procedural things, you can object to that.

SHRI SAIFUDDIN CHOWDHURY : But this is undemocratic, anti-constitutional, against the sovereignty of the Parliament, immature and ill-advised. Immature, I tell you this, I do not know who advised the Government to bring this Bill. I totally oppose this. I just cannot expect that something good will come out of this.

SHRI MANIK SANYAL (Jalpaiguri) : I oppose the introduction of this Bill.

SHRI AJIT KUMAR SAHA (Vishnupur) : I oppose this Bill which is going to be introduced.

MR. DEPUTY SPEAKER : You want to oppose.

SHRI BASUDEB ACHARIA (Bankura) : The Parliament once again is under attack. It is being by-passed. Government can promulgate ordinance ; that is there in the constitution. But under what circumstances ? When the House is not in session and when it is very necessary to promulgate ordinance, then the Government can promulgate ordinance, the President can promulgate ordinance.

In this particular case, what necessitated to promulgate this ordinance ? To take away the inherent right of the Parliament to information, just one day after the Rajya Sabha had adjourned and a few days after the Lok Sabha had adjourned (Rajya Sabha was not even prorogued), this ordinance was promulgated. That means that the decision to promulgate the ordinance was taken when the House was in session. So, why didn't the Government come with a Bill ? What is the intention of the Government ?

The Thakkar Commission had submitted its interim report on 19th November. But that report was not placed in the

House by the Government during the budget session. The Rangarajan Mishra Commission was constituted after ten months of Delhi violence. Why are they taking away the rights of the Parliament ? Is this the way they are doing ? This is the way they are behaving with the Parliamentary democracy. So, Sir, this Bill is anti-democratic, this Bill is anti-constitutional definitely because the Constitution has given right to the Parliament to know information. With this Bill you are taking away the inherent right of the Parliament. That is why it is unconstitutional.

(Interruptions)

MR. DEPUTY SPEAKER ; He is giving explanation because you wanted to know.

SHRI BASUDEB ACHARIA . That is why I oppose the introduction of this Bill.

(Interruptions)

PROF. MADHU DANDAVATE : Some of them also want to oppose, let them be given an opportunity.

SHRI ANANDA PATHAK (Darjeeling) : I oppose the introduction of this Bill because it is unconstitutional and the Government is trying to hide the fact from the Parliament. It is trying to butcher the parliamentary democracy. Therefore, I strongly oppose the introduction of this Bill.

SHRI SURESH KURUP (Kottayam) : Rose.

SHRI VAKKOM PURUSHOTHAMAN (Alleppey) : How many ordinances were issued at the time of Nayanar Ministry in Kerala ?

SHRI BASUDEB ACHARIA : You go to Kerala...(Interruptions)

SHRI SURESH KURUP : I oppose the introduction of this Bill. The Commission of Inquiry Act was amended in 1971 to enable the Parliament to know about the Inquiry reports.

The Inquiry Commissions are constituted when there is a crisis of 'confidence' in the

[*Shri Suresh Kurup*]

public, with regard to either administrative acts or findings which agitate the public mind. So, it is quite natural that the public should know about the outcome of those inquiry reports. This Bill makes inquiry reports and its findings a total farce. This strips the Parliament of its authority to know about the facts. The way in which this Ordinance was issued was like stabbing the Parliament on the back. The very fact that the Ordinance was promulgated a day after the Rajya Sabha adjourned shows how this Government treats the democratic institutions of our country or treats this august House. All evidence points to the fact that the immediate provocation for this Ordinance was the report of the Thakkar Commission. The same fate will follow to Ranganath Mishra Commission also. What is the use of appointing a commission if its report is to be shielded from the public view? These commissions are appointed because the public wants to know about the incidents in detail. It is the mockery of the democratic institutions of every report is kept secret when that report is embarrassing to the Government. This Bill is exactly meant for this purpose and, as such, I strongly oppose this Bill.

15.00 hrs.

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Mr. Deputy Speaker, Sir, I have listened very carefully to the observations made by hon. Members and, I think, that I am required only to answer any objection which is based on constitutional grounds or legal grounds.

Prof. Dandavate has invoked what we call in a court of law every ground available to him. He says it violates the Constitution. Of course, he would not say which article of the Constitution. He says it violates law. although he would not say which provision of which Act. He says it violates procedure,

SHRI THAMPAN THOMAS (Maveli Kora): You change the basic character of Parliament. You will have to answer to that.

SHRI P. CHIDAMBARAM: I am going to answer it.

PROF. MADHU DANDAVATE: I have quoted Article 123 (1) (2). You better first reply to that.

SHRI P. CHIDAMBARAM: When an Ordinance is promulgated under Article 123 we are obliged to bring an Act to replace the Ordinance unless we want the Ordinance to lapse. Kindly refer to Article 123 (2) (a):

"An Ordinance promulgated under this Article shall have the same force and effect as an Act of Parliament, but 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-assembling of Parliament..."

When Government promulgates an Ordinance it is legislative determination. We determine that we want this on the statute book. The Ordinance has to be placed before Parliament. If we do not replace it by an Act the Ordinance will lapse at the end of six weeks.

Therefore, if Government wants this on the statute Book if Parliament approves the Government's decision and wants to place it on the statute Book I am obliged to bring a Bill to replace the Ordinance. Therefore, my bringing the Bill, my moving a Bill to replace the Ordinance is not in violation of Article 123 (2) (a). It is in compliance with Article 123. So, Article (123) (2) (a) is not violated. If hon. Member points out any other Article I am willing to answer him on that but Article 123 (2) (a) is not violated. There are eminent lawyers on that side and Prof. Dandavate, I am sure, is a professor of many subjects including law. We are not violating Article 123 (2) (a).

PROF. MADHU DANDAVATE: I am not at all saying that once the Ordinance is there then the Bill should not be brought because that is a constitutional obligation. All that I am saying is that it is to be laid before both the Houses of Parliament. I was saying one was already adjourned and the other was not prorogued.

SHRI P. CHIDAMBARAM: That is not a constitutional objection.

PROF. MADHU DANDAVATE : Therefore, Mr. Shakhdar himself suggested and he is an authority on Constitutional Law as well as the Procedures. He said that it could have been placed before the other House and took the Permission that, as the other House was not in session, they would like to go in for this type of Ordinance. That is the spirit of the Constitution.

SHRI THAMPAN THOMAS : Circumventing the Statute is genius violating the Statute. You are circumventing the Statute and you are not placing it before the Parliament.

SHRI P. CHIDAMBARAM : I am only answering the first objection. The point is : Have I violated any provisions of the Constitution ? My humble submission is that we have not violated any provisions of the Constitution. On the contrary, we are obliged under Article 123 (2) (a) to bring this Bill. If we do not want this on the Statute Book, of course, we will allow the Ordinance to lapse. If the Government wants it on the Statute Book, we would have to move a Bill.

Now, the hon. Member says that he would like to go back to 123 (1). Kindly see Article 123 (1). It reads like this—

“123. (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.”

President's Ordinance-making power is limited only in one circumstance, namely, when both Houses of Parliament are in session. Now, on the 14th May 1986, when we promulgated this Ordinance, both the Houses of Parliament were adjourned. The Lok Sabha was adjourned on the 8th May 1986 and the Rajya Sabha was adjourned on the 14th May 1986 and this Ordinance was promulgated on the 14th May 1986.

AN HON. MEMBER : But it was not prorogued.

SHRI P. CHIDAMBARAM : It says except when both Houses of Parliament

are in session” which means when the Houses are adjourned, but not that the House should not prorogued. It means that the House is adjourned. That is not not my explanation. That is the reading of the Constitution. Show me one authority which says that it means prorogued. So, we have the power to make the Ordinance. The limitation of 123 (1) did not apply and now we are obliged under Article 123 (c) (a) to move a Bill to replace the Ordinance. Now, all that I am doing is that I am asking for leave of the House to move a Bill and when I move the Bill and when I want it to be considered and passed, all the objections on merits can be raised.

My humble submission is, and I would appeal to the hon. Members to reconsider the position that we have not violated any provisions of the Constitution. My learned friends said that we have violated the law, although they would not specify which law we have violated. Now, what has happened here ? Commissions of Inquiry Act was made in 1952. Section 3, Sub-section 4 was not there when the Act was made in 1952. From 1952 to 1971, for 19 years, when several Commissions of Inquiry were appointed in this country, Section 3, Sub-section 4 was not there and there was no obligation to place the Commissions' report before Parliament.

PROF. MADHU DANDAVATE : Despite that, if you check the record, you would know that they were laid on the Table of the House because it was democratic.

SHRI P. CHIDAMBARAM : Sir, I am only making a statement of fact. My hon. friend can't say that the statement of fact which I am making is wrong. There is no legal obligation to place the report before the Parliament.

PROF. MADHU DANDAVATE : I will only point out to you that there is no written Constitution in the UK. But because their behaviour is democratic, they did not need any written Constitution. So was the democratic country, probably the written Constitution would not be necessary. Here the way they are behaving, the way they are bringing emergency, it is very necessary that provisions should be there,

AN HON. MEMBER : They have completely forgotten the lesson that they have learnt.

SHRI P. CHIDAMBARAM : Now, Act 79 of 1971 introduced Section 3, Sub-section 4 which said that within six months of the submission of the report, the report should be laid on the Table of the House or the Assembly as the case may be, with the Action Taken Report.

(Interruptions)

MR. DEPUTY SPEAKER : Please do not interrupt the Minister. You are not allowing him to answer the points raised by you. Please listen to him.

(Interruptions)

MR. DEPUTY SPEAKER : The Minister listened to you patiently, please listen to him now. He cannot answer unless you listen to him patiently. This is not the way.

(Interruptions)

SHRI P. CHIDAMBARAM : For nineteen years, Section 3, sub-section (4) was not there and Section 3, sub-section (4) was placed on the statute book in 1971. After 1971 till now 1986, we have seen the working of the Commissions of Inquiry Act, and, Government, therefore, proposes to introduce Section 3, sub-section (5) and sub-section (6). With great respect to hon. Members, and Prof. Madhu Dandavate particularly, they have not quite read the provisions of sub-section (5) and sub-section (6) and if they had read it carefully, they would not have made this complaint that Parliament's right is being taken away.

What are we doing now ? We are now saying that if Government is satisfied on four independent grounds that it is not in public interest to place the report or a part of it before Parliament, it may make a notification to that effect, but—this is important—the notification shall be placed before Parliament and Parliament may either approve the notification or modify it or reject it. It is not executive determination ;

we still come back to make a legislative determination, whether the report shall be placed before Parliament or not, The power of this House is till paramount. This House can still say : "No, this report shall be placed on the Table of the House." This House can still say : "This report, or the part of the report which the Government does not want to place before the House be placed on the Table of the House". And that is why this morning the notification regarding the Thakkar Commission has also been placed on the Table of the House.

With great respect, it is not Government curbing Parliament's right ; it is not Government curbing Parliament's right to information, it is not an executive fiat taking away the Parliament's right. On the contrary, the executive and the Government submit to the jurisdiction and wisdom of Parliament, whether a report should be placed on the Table of the House or not. If Parliament says that this notification should be thrown out, or the entire report should be placed, the report will be placed. So, it is totally wrong to read Section 3, sub-section (5) and sub-section (6) as an executive determination which curbs and takes away the right of Parliament to information. On the contrary, the executive submits to the jurisdiction of Parliament whether a part of the report or the whole of the report should be placed before the Parliament.

PROF. MADHU DANDAVATE : It is Government misusing its parliamentary majority to curb the power of Parliament...
(Interruptions).

SHRI P. CHIDAMBARAM : This is a verry extraordinary thesis...

*(Interruptions)***

MR. DEPUTY-SPEAKER : No, nothing goes on record.

SHRI P. CHIDAMBARAM : If the people of this country have voted our party eighty per cent of this Parliament, we represent the majority and it is the representation of the will of the people...

(Interruptions).

PROF. MADHU DANDAVATE : Is it not a fact that you utilised the majority of Parliament to continue the Emergency and destroy the civil liberties in the country? Give us a straight reply.

SHRI RAJ KUMAR RAI : Is it a relevant argument? Can he be allowed to argue like this?

PROF. MADHU DANDAVATE : For example, Fundamental Rights are not determined by majority. Tomorrow, they cannot destroy the basic structure of the Constitution by majority votes.

(Interruptions)

SHRI RAJ KUMAR RAI : It is strange that a person like Prof. Madhu Dandavate talks so irrelevant.

MR. DEPUTY-SPEAKER : No interruptions please.

SHRI P. CHIDAMBARAM : Sir, there is no contempt of the House. On the contrary, immediately after the Parliament has been called into session, the Government has come before Parliament, Government has laid the Ordinance before Parliament. The Government is moving a Bill to replace the ordinance. The Government has also placed a notification before this House and Parliament can always debate and discuss whether (1) the Bill itself shall become a law and (2) whether the notification made under Section 3, sub-Section 5, when it is enacted will govern this particular Commission.

Sir may I only read a portion from a recent judgement of the Delhi High Court?

“Sub-Section 6 provides that every such notification issued under Sub-Section 5 shall be laid before the House of the people or the Legislative Assembly as the case may be within the time specified in the said sub-Section. The approval of the House of the people or the Legislative Assembly has to be obtained by a resolution being moved within a period of 15 days beginning with the day on which the notification is so laid by the appropriate Government.”

Ultimately this is what I wanted to emphasise.

“Ultimately, it is for the House of the people or the Legislative Assembly as the case may be to decide by a resolution whether it approves of the notification or it may direct the notification to be modified or not to have any effect at all.”

In other words, whether the report is to be laid before the House of the people or the State Assembly, is a matter which has finally to be decided by the House of the People or the State Assembly as the case may be and the decision of the appropriate Government under Sub-Section 5 of the Section 3 of the Act is neither final nor conclusive. It may therefore happen that even though the appropriate Government issues a notification under Sub-Section 5, the House of the People or the Legislative Assembly as the case may be, may come to a different conclusion and may direct the appropriate Government to place on the Table of the House of the People or the Legislative Assembly, whole or the part of the Report submitted by the Commission of inquiry.

Can anything be more clear than this? We have come before the Parliament; we are placing the ordinance; we are placing the Bill; we are placing the notification and we respect the power of the Parliament. The Executive is submitting to the wisdom of the Parliament and yet the hon. Members say, Parliament's being curtailed; Parliament's right is being curtailed and this is an executive determination. With great respect, I submit there is no force in any of the objections raised by the hon. Members. At this stage, I once again request the leave of the House to introduce the Bill.

(Interruptions)

MR. DEPUTY SPEAKER : The question is :

“That leave be granted to introduce Bill further to amend the Commissions of Inquiry Act, 1952.”

The motion was adopted.

SHRI P. CHIDAMBARAM : I introduce the Bill.

15.17 hrs.

STATEMENT RE COMMISSIONS OF
INQUIRY (AMENDMENT)
ORDINANCE, 1986

[English]

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM) : I beg to lay on the Table an explanatory statement (Hindi and English versions) giving reasons for immediate legislation by the Commissions of Inquiry (Amendment) Ordinance, 1986.

15.18 hrs.

INDUSTRIAL FINANCE CORPORATION
(AMENDMENT) BILL—Contd.

[English]

MR. DEPUTY-SPEAKER : The House will now take up for further consideration of the following motion moved by Shri Janardhana Poojary on the 2nd May, 1986 namely :

“That the Bill further to amend the Industrial Finance Corporation Act, 1984, be taken into consideration.”

Already we had exceeded the time limit by 23 minutes. Therefore my request to the hon. Members is that they may make brief speeches on this subject. Now Shri Das Munsi.

SHRI PRIYA RANJAN DAS MUNSI (Howrah) : Mr. Deputy Speaker, Sir, the scope of this Bill—IFCI (Amendment) Bill is quite wider having a very good intention to intensify the industrial activities largely in the industrial cities and towns and specially providing such assistance which were never given earlier by the public financial institutions to any industrial city or the industrial investment centre. Now, what I would like to submit before the Minister is that in the scope of the Amend-

ment of the Bill, wider powers and the opportunities are provided to the Chairman and the Managing Director as a whole time Chairman and Managing Director. But it is a matter of great regret today that in India, in most of the cases often we find that superannuated people and the people who hardly have any knowledge of fiscal policies of the country or the general industrial development of the country are taken there by assignment either through Bureau of Public Enterprises or nominated by the Government, as the Directors of the Board who hardly take any interest.

As a result, what happens ? If you carefully follow the minutes of the meetings of the Board, minute by minute—I do not blame anybody—you will observe that in most cases the follow-up measures and actions are not conducted appropriately. They are conducted in such a manner that industrial growth is hardly brought about. Therefore, I would submit to the hon. Minister that to be in tune with our Prime Minister's wishes, competence in public financial institutions speedy economic growth and result-oriented actions are necessary, if this country is to be taken to the 21st Century. There, this particular institution, and institutions of this nature e.g. IRBI and IFCI, play a vital role. Without blaming any individual, I once again request the hon. Minister to find out, while he appoints the Directors in the Board, or the Managing Director, either through BPE or any other authority, whether they are dedicated only to this job and not to any other job. It happens that somebody is shunted from here to the Bank of India, then from Bank of India to IRBI.

I know a particular incident. A person happened to be the Chairman in IRBI. Having done a good or bad job of it, we do not know, he was shunted to be the Chairman of the Bank of India. A particular man having failed in a particular field, is again placed as the Managing Director in a different institution. This kind of things not only brings ill-reputation to the Government, but also takes the country backward. So, such things should not be repeated.

I will now suggest a few more things, within the scope of this amending Bill. The Bill envisages a few other major things which were not seen earlier in the country.