

[Shri Ananda Gopal Mukhopadhyaya]

on strike. (*Interruptions*) Sir, there is a complete discrimination.

(*Interruptions*)

MR. SPEAKER: Give me something in writing.

SHRI ANANDA GOPAL MUKHOPADHYAY: This is a very serious situation. . . . (*Interruptions*)

MR. SPEAKER: What can I do?

(*Interruptions*)

SHRI BASUDEV ACHARIA (Bankura): The Public sector workers in West Bengal are being discriminated. (*Interruptions*)

MR. SPEAKER: How can they be discriminated?

(*Interruptions*)

MR. SPEAKER: Please sit down.

SHRI BASUDEV ACHARIA: You allow a discussion Sir.

(*Interruptions*)

MR. SPEAKER: Please sit down.

(*Interruptions*)

[*Translation*]

MR. SPEAKER: You are a leader, what are you doing? Are you not ashamed of it?

(*Interruptions*)

[*English*]

MR. SPEAKER: Sit down. I am on my legs. Sit down, I am on my legs. Sit down. . . . (*Interruptions*) I am on my legs. Sit down. What are you doing? Have some decency.

(*Interruptions*)

MR. SPEAKER: You can give me something. Sit down.

(*Interruptions*)

11.25 hrs.

QUESTION OF PRIVILEGE AGAINST SHRI H. K. L. BHAGAT, MINISTER

OF PARLIAMENTARY AFFAIRS AND MINISTER OF FOOD AND CIVIL SUPPLIES FOR HIS ALLEGEDLY INTIMIDATING SHRI RAM DHAN AND SHRI RAJ KUMAR RAI AND SUPPRESSING THEIR FREEDOM OF SPEECH THROUGH WHICH ISSUED TO THEM IN THE HOUSE ON 17-11-1987.

[*English*]

MR. SPEAKER: Sarvashri Ram Dhan, K. P. Uppikrishnan, S Jaipal Reddy, Prof. Madhu Dandavate and Shri Vidya Charan Shukla gave notices of question of breach of privilege against Shri H. K. L. Bhagat Minister of Parliamentary Affairs, for allegedly intimidating Sarvashri Ram Dhan and Raj Kumar Rai and suppressing their freedom of speech in the House by issuing a whip to them in the House on 17 November, 1987, seeking my consent under rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha to raise the matter in the House.

Having considered the points raised by the Members and the comments of the Minister of Parliamentary Affairs thereon. I give my consent to the raising of the question of privilege under rule 222 of the Rules of Procedure and Conduct of Business in Lok Sabha.

Shri Ram Dhan may now ask for leave of the House.

[*Translation*]

SHRI RAM DHAN (Lalganj) You can directly refer it to the Privileges Committee.

[*English*]

MR. SPEAKER: You go through the rule, I have done it according to the rule. You have a Committee, so you move. You sought my consent. And I, after considering all the aspects, have given my permission to raise this matter on the floor of the House.

SHRI RAM DHAN: I beg to seek leave of the House to raise a question of privilege against Shri H. K. L. Bhagat, Minister of Parliamentary Affairs.

MR. SPEAKER: I hope, there is no objection to it. So, you proceed with it.

(Interruptions)

SHRI A. CHARLES (Trivandrum): I would like to know whether he is still continuing in the Congress (I) Party... (Interruptions)

PROF. MADHU DANDAVATE (Rajapur): That is nothing to do with Congress(I). It is only a question of the membership of the House... (Interruptions)

MR. SPEAKER: This motion does not consider anything else except privilege.

(Interruptions)

SHRI RAM DHAN: I have gone through the "explanation"...

MR. SPEAKER: Mr. Ram Dhan, you will say that the matter regarding issue of whip to Sarvashri Ram Dhan and Raj Kumar Rai by the Minister of Parliamentary Affairs in the House on 17th of November, 1987 be referred to the Committee on Privileges...

PROF. MADHU DANDAVATE: Procedurally you are wrong. Let me tell you the procedure. You have allowed him to raise a question of privilege...

MR. SPEAKER: He has to raise it..

PROF. MADHU DANDAVATE: He does not want to move the motion...

MR. SPEAKER: O.K.

PROF. MADHU DANDAVATE: He wants to request you that you in your power should straightaway refer the matter to the Privileges

Committee. And he has the right to make that submission... (Interruptions)

SHRI RAM DHAN: I have gone (through the "explanation" of Shri Bhagat. He has explained nothing.

The "fracas" in the Lok Sabha really arose out of the unparliamentary remarks of Shri K. K. Tewari and his "menacing advance" in my direction. There was no question of any ruling by you. Every remark of the Chair is not a ruling. Even after a considered written ruling has been given by the Chair, it is open to Members to appeal for a review to seek clarification. Many instances of the Chair reconsidering its observations can be cited.

The main points to be considered are:

1. Is there anything in the Constitution and Rules of Procedure which gives Party Whips the right to curb members' freedom of speech? No. There is nothing in the Constitution and the rules which gives such a right to Chief Whips of parties. On the contrary Article 105 ensures members' right of freedom of speech.

2. There is no mention of the words "Party" and "Whip" in the Constitution. The 52nd Amendment, and the Tenth Schedule which it added, define the words "House", "legislature party", "original whip". It speaks of any person or authority authorised by the Party "in this behalf", that is, in relation to issuing direction about voting or abstaining from voting. Even if it is conceded that the Whips are the aforesaid authorities, their jurisdiction is limited to voting in a division and cannot be extended to an undefined power to encroach on rights conferred on members by the Constitution and Rules of Procedure.

3. Shri H. K. L. Bhagat has not stated in relation to what division he had issued the Whip.

[Shri Ram Dhan]

There was no motion before the House and no division in the offing. On matters of privileges, contempt and discipline there are no whips.

(4) The power of disciplining Members is vested in the speaker. The Leader of the House or Chief Whip cannot even move a motion for a Member's suspension till the speaker has named a Member for disorderly behaviour.

(5) Shri H. K. L. Bhagat has mentioned lists of Members given by Whips to the Chair to help him regulate the debate. This is for convenience only. This does not give the Whips right to shut out dissenting opinions. In fact, this is what is being done since the previous session. We should follow the example of the House of Commons. Winston Churchill often dissented from the Tory Party Line. Yet when he and his fellow dissidents wished to speak they could easily "catch the Speaker's eye". Here, Members of the Ruling Party, who do not agree with the official line on any Bill or motion, are being denied the opportunity to speak by the Chief Whip. There is no warrant for the exercise of such a dictatorship in the House.

(6) Since the whips are issued to ensure the presence of Members at divisions which are likely to materialise, the whips are necessarily directed to all the Members of the party without exception. To issue whips to a few individuals on a matter which does not involve vote or division, is to reduce the whips to mockery.

(7) Shri H. K. L. Bhagat has given quotations torn out of context. Thus, he has deliberately

skipped over the key exchange involving Shri K. K. Tewari and the speaker. Shri Arif Mohamad Khan and some of us heard some unprintable remarks uttered by Shri K. K. Tewari about me and also saw the menacing steps he took in my direction. The Speaker did not hear the words spoken by Shri K. K. Tewari about me because of the noise, but he saw Shri K. K. Tewari's action. At page 4362 of the report of the proceedings (17th November 1987), the following exchange has been shown to have taken place which Shri H. K. L. Bhagat has ignored:

"Mr. Speaker: I could not hear what he was saying. But I was seeing that there was menacing step towards him...

(Interruptions)

PROF. K. K. TEWARI: I did not take menacing step. I was going out and merely pleading with him. 'If you hold these views, it is no use paralysing the proceedings of House. Please go and sit on that side.' I was merely walking . . . (Interruptions).

MR. SPEAKER: Whosoever does it, it is the same . . .

(Interruptions)

PROF. K. K. TEWARI: When they all came, you remember, when hon. Members from the Opposition . . ."

At this point, Shri H. K. L. Bhagat could have intervened and administered rebuke to Shri K. K. Tewari, Instead of doing this, he issued his ridiculous whip in the House and announced it himself.

(8) The entire record will show that I was not defying the Chair. I

got up to offer an explanation with the permission of the Speaker. (pp. 4368-69). In fact, after I spoke, the Chair accepted my convention that I had used no unparliamentary expressions in the House (p. 4376). The Speaker had also admitted he did observe that Shri K. K. Tewari had "advanced menacingly" in my direction. Later he accepted Shri K. K. Tewari's explanation that he did not mean to threaten anybody (p. 4380).

Some Members were not satisfied with this. They insisted that Shri K. K. Tewari be made to apologise as had been done in the case of Shri Arif Mohammed Khan earlier in the day despite his explanations and that the Speaker should not apply a different standard in the case of Shri K. K. Tewari (pp. 4384-4385). Shri Indrajit Gupta, several other opposition leaders and some Congress Members insisted that Shri K. K. Tewari be asked to express regret. At this stage, the whole controversy could have been resolved if Shri H. K. L. Bhagat had asked Shri K. K. Tewari to apologise as Shri Indrajit Gupta had suggested (at page 4398). Shri Gupta said:

"Shri Indrajit Gupta: Mr. Speaker, Sir, will you permit me, Sir, for one minute to take Mr. Tewary's place? That means, please imagine that I am Mr. Tewary. I am not joking. I am speaking as follows:

"Although I had no intention of threatening Shri Ram Dhan, it seems I moved in a manner which gave you, Mr. Speaker, the impression that I had moved in a threatening manner. For giving you this impression, I express my regret."

This is the best thing he can do with grace. The whole house will

be happy to accept it. What is wrong with it?"

Throughout this debate I had neither defied the Chair nor violated any rule. In any case, the power to discipline members in the House vests in the Chair and not in the Whips. H. K. L. Bhagat has clearly abused his office by issuing bogus whips with the sole object of intimidating and overriding me and protecting members like K. K. Tewary who adopted a menacing posture towards me. Finally, I refer to Kaul's and Shakh-dhar's (*Practice and Procedure of parliament*, Third Edition, pp 118-120) and May's *Parliamentary Practice*, 20th Edition, Page 254 and there elaboration of the expression whips and its connection with divisions in the House. Whips cannot be issued to tell members that they abstain from drinking coffee or from wearing caps. Nor can whip be issued to compel members to wear polyester safari suits!

It has been declared by the Supreme Court in the case of Tej Kiran B. Sanjira Reddy that "it is the essence of Parliamentary system of Government that peoples representatives should be free to express themselves without fear of legal consequences. What they say is only subject to the discipline of the rules of Parliament the good sense of the members and the control of proceedings by the Speaker.

There are no rules framed by the House relating to powers and functions of whips nor even the same even refer to whips as the House can have nothing to do with the whips, which only concern internal affairs of parties.

The Hon'ble Speaker has the sole executive authority to regulate the procedure and control the proceedings of the House, though the ultimate authority is the House itself (May—page 442) and (Kaul-Shakh-dher—page 92). None else can control

[Shri Ram Dhan]

or regulate the procedure or the proceedings in the House and no law or rule confers such power on a whip.

'Whip' has been defined by Chambers Dictionary (1949 edition) as "one who enforces the attendance of a political party" while Oxford's sporter dictionary (second edition) defines it as "to summon to attend, as the members of a party for a division in Parliament". Under no law or authority can a whip arrogate to himself the power to discipline a member and that too, inside the House in the matter of proceedings in the House, where the sole authority is the Hon'ble Speaker. Decorum in the House cannot be brought about on the dictates of Whip on other matters.

In my submission, the reply of Shri Bhagat has only aggravated the contempt he has committed, by his claim and exercise of authority over members of his party to silence them in expressing their views inside the House and in the presence of the Hon'ble Speaker. It was a clear attempt by him to deny me my freedom of speech inside the House. If Whips can issue dictates to members inside the House to speak in a particular manner or not to speak, then the constitutional rights of members will be reduced to a mockery.

In the circumstances, I earnestly request you to send the matter to the Privileges Committee for its consideration and decision.

(Interruptions)

PROF. MADHU DANDAVATE: I have already given a notice, Sir.

(Interruptions)

MR. SPEAKER: Prof. Tewary, I will give you a chance.

PROF. K. K. TEWARY (Buxer): Sir, it is because my name has been dragged again.

[Translation]

MR. SPEAKER: Tewaryji, I will call you, then you speak.

(Interruptions)

[English]

PROF. MADHU DANDAVATE: Sir, I have given my name for submission.

MR. SPEAKER: Yes, I will come to you. Mr. Unnikrishnan is not here. Now, Prof. Dandavate may speak.

PROF. MADHU DANDAVATE: Sir, with great respect I would point out to you at the very outset that ever since the founding of the Parliament, for the first time the question of privilege arising out of the action of a Chief Whip is coming before the House.

I would request you very humbly to apply your mind to one crucial issue round which the entire question of privilege is pivoted.

MR. SPEAKER: That is why I put it to you.

PROF. MADHU DANDAVATE: Yes all are peripheral issues, but one central theme.

Sir, the Constitution of the country under Article 19(1)(a) gives us the freedom of speech in the country as a Fundamental Right. But even that right is circumscribed by Article 19(2) and reasonable restrictions can be placed on the Fundamental Right of freedom that can be enjoyed by the citizens. Sir, I would like to point out to you that the freedom of speech guaranteed to a Member of Parliament is qualitatively different from the freedom of speech that is assured to a citizen under Chapter III of Fundamental Rights of the Constitution. While Article 19(1)(a) gives us freedom of speech subject to reasonable restrictions, I would like to point out to you, Sir, that the freedom of speech that is guaranteed to us under Article 105 of the Constitution is more absolute and it is said—again remember that Article

105 had the title, "Powers, Privileges and Amenities of Parliament and its Members". Sir, it has been ruled long time back that in a Constitution even the caption and the title of an Article conveys a lot as far as the interpretation of the Constitution Articles is concerned.

Remember article 105 has the title "Powers, Privileges and Immunities of Parliament and its Members". It says, subject to provisions of this Constitution and to the rules and standing orders regarding procedure of Parliament, there shall be freedom of speech in Parliament.

THE MINISTER OF STATE IN THE DEPARTMENT OF DEFENCE PRODUCTION AND SUPPLIES IN THE MINISTRY OF DEFENCE (SHRI SHIVRAJ V. PATIL): Are you interpreting?

PROF. MADHU DANDAVATE: Yes, I am interpreting. Please have little patience, as the ex-Speaker of Maharashtra Assembly.

SHRI SHIVRAJ V. PATIL: This is very unfair. This is not called for.

PROF. MADHU DANDAVATE: I am paying respect to you. I am respecting your opinion. He was the former Speaker, Sir.

Unfortunately, in this House even praises are misunderstood. What to do?

SHRI VIJAY N. PATIL: It is sarcastic.

PROF. MADHU DANDAVATE: No. He does not take it that way. Even if it is sarcastic, it is permitted in the House.

PROF. K. K. TEWARY: It is a jibe and gibe. (*Interruptions.*)

PROF. MADHU DANDAVATE: It does not matter. After all, I am not a professor of English and my

level would not be the level of Prof. Tewary.

MR. SPEAKER: Professor Sir, you do not know English !

PROF. MADHU DANDAVATE: We speak in broken English. How can it be so sophisticated? And the scenario will completely change when he speaks.

MR. SPEAKER: One professor to another?

PROF. MADHU DANDAVATE: The freedom of speech that is guaranteed to us under article 105 is only subject to the procedures laid down in the Constitution, and then whatever has been laid down in various rules of procedure and standing orders. As far as the Constitution is concerned, there is article 121 which says that no Member shall discuss the conduct of the judges of the Supreme Court and the High Court. That is one restriction that is put.

Then, rule 352 of the Rules of Procedure says that a Member while speaking shall not—I need not elaborate it because we have implemented that—refer to any matter of fact on which a judicial decision is pending etc. etc. And then, he shall not reflect upon the conduct of persons in high office. Only substantive motion can be given and I have also utilised that. I have given three substantive motions which you have allowed me and all that. So, rule 352 also imposes certain restrictions on the freedom of speech. But beyond that, there is no restriction on the freedom of speech enjoyed by the Members of Parliament under article 105.

Sir, here comes the question of whip. As far as whip is concerned, there is only one oblique

[Prof. Madhu Dandavate]

reference to whip only in 10th Schedule of the Constitution. After the Anti-Defection Bill has been adopted, this relevant portion says—

(ii) that he has voted or abstained from voting in such House contrary to any direction issued by such party or by any person or authority authorised by it in that behalf without obtaining the prior permission of such party, person or authority and such voting or abstention has not been condoned by such party, person or authority within fifteen days from the date of such voting or abstention;

It is very clear that as far as the ambit of the powers of whip is concerned, it is also related to voting or abstention. When a direction is given through a whip—the word “whip” has not been used—but as direction by the party. That means, when a whip is given for a voting in a particular manner then voting against or abstention, that is the violation. And that again, if it is condoned by the Legislative party, in that case also, the Speaker cannot disqualify him. Only when they send him the copy of the whip with the resolution that because of the violation, it has not been condoned and action has been taken, then only, you are within your powers to declare that the Member loses the membership of Parliament. So, it is very clear. As far as the Constitution is concerned, there is article 121. As far as the restrictions imposed on the freedom of speech guaranteed under article 105 are concerned, only rule 352 is there. As a result of that, we find that freedom that we enjoy in this House is relatively unfettered as compared even to the freedom of speech that is enjoyed by the citizen outside, under

the Fundamental Rights guaranteed by the Constitution. The framers of the Constitution and the framer of the Rules of Procedure were more careful about this discretion because they wanted that there are certain immunities to be enjoyed by the Members of Parliament. There are certain privileges to be enjoyed by Parliament. So, the freedom which we enjoy in this House is not only a fundamental right of freedom of speech enjoyed by the citizens outside but it is a special privilege and a special right that we are accruing by becoming the Member of this House and I say that this particular right has been enforced upon us.

If you look to the Rules of Procedure in the House of Commons, they go a step further. Even the voting has not been brought in the ambit of the whip. There, they say.— I can point to you the books in which the working of the whip has been quoted in a number of parliamentary procedure book that only presence in the House when important matters are coming, that is all the ambit of the Whip in the House of Commons. Here we have gone a step further and voting has also been brought into picture for, voting or abstaining, against the direction of the Whip, can be acted upon. These are the only restrictions.

Let me make it very clear that according to my submission, my interpretation of Article 105 of the Constitution makes it very clear that as far as the freedom that we enjoy in the House is concerned, it is unfettered freedom and unless voting and abstention is involved, the Whip does not operate at all. The Whip was given to Mr. Ram Dhan and Mr. Raj Kumar Rai in writing in this House. When he was speaking, our Parliamentary Minister, on the

floor said that "I have already given the Whip to you Mr. Ram Dhan and remember that if you violate it, you will be doing it knowingly." That means, threatening him about the freedom of speech. What he said orally in the House and what he gave to him in writing through his deputy; is a clear restriction on the freedom of speech of Mr. Ram Dhan and Mr. Raj Kumar Rai. Therefore, the provisions of Article 105 and the privileges given by Article 105 have been assaulted. Therefore, it is a clear contempt of the House deliberately indulged in and deliberate contempt of constitutional privilege. It is a special case of privilege. Therefore, without putting it to the House, you have the inherent power, excepting the Prima facie case, to straightway refer the entire matter to the Privilege Committee as you have rightly done in the case of Mr. Vidya Charan Shukla and in the past in a number of cases that has been done. Therefore, without throwing this responsibility by referring the matter to the Privilege Committee, you in your wisdom and in your ability and in your basic sense consider the prima facie case. You can straightway refer the matter to the Privileges Committee and set up the precedent for all times to come. We may go and you may go. But this House will exist and if its freedom of speech must exist. for that, refer it to the Prjvilege Committee.

Thank you for allowing me to speak.

MR. SPEAKER: Now Mr. Jaipal Reddy will speak. Professor, have you read this 225?

PROF. MADHU DANDAVATE: I have read everything.

MR. SPEAKER: O.K.

SHRI BHAGWAT JHA AZAD (Bhagalpur): You have not said anything on that.

PROF. MADHU DANDAVATE: I have touched 105. I have given everything in writing.

MR. SPEAKER: Also 226.

PROF. MADHU DANDAVATE: I need not repeat everything that I have given in writing. I thought that I must touch the crucial and the positive points. That is why, I referred to all of them.

MR. SPEAKER: If leave under Section 225 is granted, the House may consider the question and come to a decision. Now Mr. Jaipal Reddy.

PROF. MADHU DANDAVATE: I have pointed out the precedent. Rightly in your own power and rightly in your wisdom, you can refer straightway to the Privilege Committee.

MR. SPEAKER: So far as the House is supreme, that is an enabling power I know there is. But when the House is supreme, then I leave it to your wisdom.

PROF. MADHU DANDAVATE: House is supreme and you have the discretion.

MR. SPEAKER: Why should I do? Then I leave it to you.

SHRI S. JAIPAL REDDY (Mahbubnagar): I thank you for this opportunity. This is an extraordinary question because it concerns the most scared part of the supreme institution of our country namely, the Parliament.

As has been pointed out by Prof. Dandavateji the right to freedom of speech has been specially guaranteed under the Constitution—under Article 105 I need not read that at all. A Member of Parliament does not become less of a citizen on account of belonging to a party. As has been pointed out even the citizen of this country has been guaranteed full freedom of speech subject only to reasonable restrictions under Article 19 of the Constitution. This of course, does not violate by any stretch of imagination, to the reasonable restrictions

[Shri S. Jaipal Reddy]

What happened on that day was two Members of Parliament were sought to be reduced to the status of second-class citizens of this country. I am not on the point of special privileges enjoyed by Members of Parliament. They have been already dilated upon. This right is so fundamental to the proper working of this Institution. It should not be made subject to mercurial majority. It is too sacrosanct a proposition to be made subject to mercurial majorities in the House. Under Rule 227, as has been pointed out, you have inherent right to refer an issue to the Privileges Committee. I read Rule 227: It says:—

“Notwithstanding anything contained in these Rules, the Speaker may refer any question of privilege to the Committee of Privileges for examination, investigation or report.”

I don't think in the chequered history of Indian Parliament, there has ever arisen a more important question of breach of privilege than this. This question really needs to be delved into in all its aspects and dimensions. What happened on that day was, the whip was issued to two Members selectively. There was discrimination against two Members. It was not a whip issued to all the Members of the party.

Secondly, I received the reply of Mr. Bhagat. He contended that he asked the Members not to defy the rulings of the Speaker. I do not know whether every observation made by the Speaker in the course of a discussion on an issue could be treated as ruling, in the first place. What happened that day was, you were making your observations on various things sought by him, and others. At one stage, you were good enough to observe that you found Shri K. K. Tewary advancing menacingly towards Mr. Ram Dhan. Later on, after you heard the explanations

from both Mr. Tewary and Mr. Ram Dhan, you said that you are wanting to treat the whole thing as a closed chapter. I may bring to your notice that Mr. Ram Dhan had not withdrawn his objections to the alleged misconduct of Mr. Tewary. Mr. Ram Dhan, as an aggrieved person, was persisting with his serious objections to the misconduct of a Member towards him. So, therefore...

AN HON. MEMBER: Alleged...

12.00hrs.

SHRI S. JAIPAL REDDY: Alleged, all right. Therefore, there was no question of the ruling to be defined. In this House, it is, axiomatic that the right to freedom of speech is absolute, subject to the Directions of the Speaker—even the Rule 352, all restrictions, even the Article 121. The observance of these restrictions is to be regulated by the Speaker. It cannot be regulated by a whip. If the Speaker took objection to a particular observation of a Member on the ground that the observation infringed the Rules of Procedure or any article of the Constitution, it would be a different matter. But no Member, much less a Whip, can take objection in the form of a whip. He can take objection and bring the objection to the notice of the Speaker. But in this case he gave the whip and flaunted the whip in the House through an ostensible verbal threat. Even the anti-defection law which came into being two years back does not curb the freedom of speech. I may draw your attention the classic illustration of Mr. Arif Mohammad Khan. When Mr. Arif Mohammad Khan was a member of the Congress-I Parliamentary Party...

AN HON. MEMBER: He is not now?

SHRI S. JAIPAL REDDY:... Before he was liberated from it by expulsion, he expressed a particular viewpoint on the Muslim Women's Bill which ran counter to the official

view of the Congress-I Parliamentary Party. When it came to voting, he voted in accordance with the whip but when it came to expressing his opinion, he vigorously opposed it. What does this incident show? It shows that the right of freedom of speech of Members of the House is absolute. It can be circumscribed only by the ruling or objection of the Speaker and nobody else. (*Interruptions*) I, therefore, plead that this is not a matter to be put to the House. This is a matter whose merits are to be decided upon in the wisdom of the Speaker himself. I therefore, plead with you, Mr. Speaker, that under your inherent powers, you may refer the issue to the Privileges Committee for final elucidation of the subject.

MR. SPEAKER: Mr. B. R. Bhagat.

SHRI B. R. BHAGAT (Arrah): Mr. Speaker, Sir...

PROF. MADHU DANDAVATE: Has he also given a notice of privilege?

MR. SPEAKER: He has a right to speak.

SHRI B. R. BHAGAT: Do you want to prevent me from speaking? (*Interruptions*)

PROF. MADHU DANDAVATE: I only wanted to know whether you had given any notice of privilege.

SHRI B. R. BHAGAT: Hon. Member, Prof. Madhu Dandavate, said that this was a very unique occasion, this privilege arising out of the whip issued by the Minister for Parliamentary Affairs. But I would like to say that there is no occasion for a privilege here. The facts as stated and which I am going to produce will show this. If at all, the Minister for Parliamentary Affairs has only prevented or held the two hon. Members, Shri Ram Dhan and Shri Raj Kumar Rai, from committing breach of privilege or committing contempt

of House by challenging, questioning, criticising the Speaker's ruling. It was at that point of time the Minister for Parliamentary Affairs had done it. If they had done so, the House was well within its rights, the Speaker was well with his rights, to name the Member and punish the Member. I can quote certain portions. What was the point at which the written notice or written letter, as has been alleged, was sent to him? I will come to that later. But the point was, when he said Mr. Ram Dhan, and I am quoting from the proceedings:

[*Translation*]

"Mr. Speaker, what is happening. If nothing is done by you, the House will not be allowed to proceed like this."

[*English*]

What is this. He has crossed all limits.

[*Translation*]

Then he said: "You change your ruling."

[*English*]

He challenged. There are many Members and even if he is a new Member, he knows that, in the House, Speaker's ruling is final. Speaker is not obliged to give any reason or anything. Everyday Members ask so many things in the debate. It is said that Speaker's ruling cannot be criticised; the Speaker's ruling cannot be objected; the Speaker's ruling cannot be opposed; the Speaker's ruling cannot be protested even. The only point is, as a very special case, Member can politely and respectfully ask the Chair for some clarification. He may seek that. But none of this was done.

(*Interruptions*)

SHRI B. R. BHAGAT: None of that was done.

(*Interruptions*)

MR. SPEAKER: / Order, order.

(Interruptions)

SHRI B. R. BHAGAT: None of these things happened.

[Translation]

MR. SPEAKER: You speak.

(Interruptions)

MR. SPEAKER: Do not do like this. Let him speak. First he was allowed to speak. Now let him also speak.

(Interruptions)

SHRI RAJ KUMAR RAI (Ghosi): Mr. Speaker Sir, I was also issued a whip. I should also be given a chance to speak

MR. SPEAKER: You shall also be called. Please sit down. We will not let the freedom of speech be curbed. You need not worry.

(Interruptions)

[English]

SHRI B. R. BHAGAT: The situation was very tense. I can only recall that you yourself, if I am quoting with all respect, appealed to the Hon. Member and I quote:—

[Translation]

Mr. Speaker said "Shri Ram Dhan you are a gentleman, you seem to be a perfect gentleman, you used to say 'I am a very good man.' Please resume your seat."

[English]

Now, Sir, this was the situation. If it had been allowed, if they had their way, they would have seen to it that the proceedings of the House was not conducted. There was neither a decorum; there was neither dignity; there was neither discipline in the House. This is the situation. These are the facts.

Now the hon. Member; I am surprised, he makes it a question of privilege against the Hon. Minister for Parliamentary Affairs. He did his duty. I come to that. What was his duty in a situation? What is the scheme and the structure of Whip system in a parliamentary system? Whether it is a direction of the Speaker, or the Rules of Business of the House or the directions or rulings given over a period, not only in this House but in all the Houses of Parliament including the House of Commons. They say that without the Whip, without the system of Whips, the proceedings of the House cannot be conducted in an orderly manner, in a manner of dignity and decorum. Even the Chambers English Dictionary defines Whip. According to it, the Whip is a system to enforce attendance and discipline in the House. And now the Hon. Member brings out this question, a very extraneous question if I may call it. I am surprised that even Professor Dandavate, who is the master in parliamentary procedure, is also taken in by that. Article 105 of the Constitution is a restriction on the Hon. Member and he has himself said that. There is nothing like it. The right is a Fundamental Right, but it is subject to reasonable restrictions provided by the Constitution itself. I need not go into it. Various judgements have defined what are the reasonable restrictions that apply to the freedom of speech. This matter is well known.

Another Hon. Member, Shri Jaipal Reddy, says with all disinformation on this issue. They know that they have no case; but they bring in other matters. He says for the Members, the right of speech is fundamental; but the right of speech in the House of a Member is absolute and fundamental. This is what he says. Then he quotes and contradicts himself that of course it is subject to the regulations and rules of procedures and directions of the Speaker. He himself says that.

What are the rules of procedures? A Member shall not address to another Member in a disrespectful manner. The rules provide that a Member should not address directly; he has to address another Member in a third person, through the Speaker. These are the procedures. A Member should not challenge the Speaker's ruling. A Member should not create indecorum and indiscipline in the House.

Precisely this was being done by the two Hon. Members, Shri Ram Dhan and Shri Raj Kumar Rai. At that point of time was it not his duty? What is a whip? It is said and recognised that without a system of whips—the whip does not apply to the Ruling Party or the Government Chief Whip; it applies to the Leaders, the Whips of all the Parties, it cannot function. It is a common day knowledge.

You yourself request to the group leaders to discipline their Members. For the orderly conduct of the House, the list is submitted to you by the various groups as to who should speak. You are not bound by this. The Speaker has unfettered right as to whom to call and whom not to call. But it is the Whips, the group Leaders who know what elements are to be satisfied, so that it does not create disorderly scene in the House. The Speaker is guided by the advice of the Leaders.

The point that I am making is that, if a Member says that a whip is issued on every day in the House when there is an emotional outburst in the House and when a point is reached that disorderly scene is going to take place, when the Chief Whip or his deputy runs and pacifies the Members, does it amount to restriction? It is beyond the wisdom and intelligence of any one, an ordinary Member, much less the most experienced Members and Leaders and people's representatives, to think that

the system of whip which is evolved over years and years is a restriction on the right of the freedom of speech, much less intimidatory.

It is a help, as the names submitted to you by the various party leaders is in the nature of suggestion. Similarly the whole scheme of whip is not a restriction, intimidation and a weapon it is in the nature of a friendly advice.

PROF. MADHU DANDAVATE: Thank God! In the Emergency, we were not in the House.

SHRI B. R. BHAGAT: Do you object to this, don't you agree to all this?

PROF. MADHU DANDAVATE: I only said that I was not in this House during Emergency.

(Interruptions)

SHRI B. R. BHAGAT: When you know that you have a bad case or no case, you bring in all kinds of extraneous things.

The point that I was emphasizing was about the party functioning. You yourself deserved the other day that whip is a matter between the Members and the Parties. Rightly so, Sir

Can I not question Shri Ram Dhanji and Shri Raj Kumar Rai that are they not Members of the Congress (I) Party? I hope they are still the Members of the Congress (I) Party. They may speak against it and except voting they may do everything. But they are still technically, really and substantially in the Party.

The problem has arisen mainly because of the misconduct—if I am allowed to use that expression... (Interruptions). I am not yielding. Please don't disturb my argument. Please don't disturb. I said, the whole problem has arisen by the wrong conduct of the Members. They belong to the Congress party and they want to use the Floor of the House to express views in a mannerly which is

[Shri B. R. Bhagat]

against it. So, what the Minister of Parliamentary Affairs has done is in the spirit he has advised in a friendly manner when he sees the hon. Member at the point of time going not only disorderly behaviour but is breaking the decorum and is on the point of contempt of the House to uphold the Speaker's ruling. Every Member will agree that Mr. Ram Dhan was at that point of time going to commit the contempt of the House and at that point it was the duty of the Parliamentary Affairs Minister and he has done his duty in advising him to obey the Chair. What is the whip? The Minister's whip, a written letter, says: You please must obey the Chair. Is it restriction?

So, Sir, I would conclude by saying that this is a non-issue. There is no privilege involved. The Minister for Parliamentary Affairs and the system of whips has done the right thing and you should reject it outright.

SHRI SHARAD DIGHE (Bombay North Central): Mr. Speaker, Sir, the Opposition that the freedom of speech given under Article 105 is unfettered. It is not like the fundamental right of speech given to an ordinary citizen. It is something special given under the privileges, given under Article 105 and it is controlled by the Rules of Procedure framed which are consistent with the provisions of the Constitution. Therefore, we do not discuss the conduct of the Judges. We do not use undignified—language. We do not use unparliamentary language and we are bound by the Rules of Procedure.

Now, the main question in this issue is whether there is any restriction of that fundamental right of the hon. Member which he was exercising here in this House. That is the crux of the whole problem.

Firstly I will refer to the wording of the so-called whip issued by the

Minister for Parliamentary Affairs, Mr. H. K. L. Bhagat. He says, "Mr. Ram Dhan, you are still in the Congress party." I do not think anybody disputes that. He further says, "I would ask you as Chief Whip of the Congress Party not to proceed further and accept the ruling of the Speaker." The Minister for Parliamentary Affairs has merely asked the Member accept the ruling of the Speaker. Is it any way restriction on the freedom of the speech? Every Member is bound to accept the ruling of the speaker. He has no right to challenge the ruling of the Speaker. He has no right even to make observations about the ruling and whenever we walk out as protest against the ruling of the Speaker my submission is that that is also contempt of the House but generally we take a lenient view. Here merely telling a Member of our party not to challenge the ruling of the Speaker and not to go further, it is, I should say, absurd to say that it curtails the freedom of the speech. Therefore, no breach of privilege is involved. Then, he says: Accept the ruling of the Speaker. This is a whip which must be obeyed.

SHRI SAJFUDDIN CHOWDHARY (Katwa): What is that whip?

SHRI SHARAD DIGHE: I will come to the word 'whip' also. But the only direction given, or the advice given, or the instruction given to the Member is to accept the ruling of the Speaker. Then what about the other Members? For them also, the learned Minister of Parliamentary Affairs says:

"Dear Shri Raj Kumar Rai,

You are still in the Congress party. The Speaker has given the ruling. We must all obey the same and not speak against his ruling further. I am writing to you this as Chief Whip. This is a whip which must be obeyed..."

So, ultimately...

SHRI S. JAIPAL REDDY: On a point of order. The point is, did the Speaker give the ruling? Was it a ruling? ... (Interruptions)... You earlier made an observation about the alleged misconduct of Mr. K. K. Tewary. Was that also ruling?.. (Interruptions)... I think a clarification was issued from the Chair.

(Interruptions)

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF FOOD AND CIVIL SUPPLIES (SHRI H. K. L. BHAGAT): I wish to tell my Hon'ble friend, Shri Jaipal Reddy that I will quote Kaul & Shakdher to say that Speaker's ruling, observation, statement, nothing can be challenged... (Interruptions)... You do not know... (Interruptions)..

MR. SPEAKER: Let the Hon'ble Member continue his speech. Let him continue. No arguments. I have not allowed.

PROF. K. K. TEWARY: I want to speak on a point of order. Mr. Jaipal Reddy is in the habit of very malicious distortion and he continues with them.

MR. SPEAKER: What is the point of order?

PROF. K. K. TEWARY: After the ruling you gave last time accepting my explanation, the Member's attempt to refer to that incident as misconduct is a distortion of the worst kind and should not be allowed.

(Interruptions)

MR. SPEAKER: Carry on the same speech...

SHRI SHARAD DIGHE: If you go through the whole proceedings, the ruling was given by the Speaker. That was being challenged and wanted it perhaps to be revised. But the subject-matter of this breach of privilege motion is only the two whips issued by the Hon'ble Minister for

Parliamentary Affairs. I have read the contents of these and it is quite clear that he wanted an Hon'ble Member of his Party not to challenge the ruling; the ruling should be accepted; the ruling should be obeyed. I do not think there is any case of breach of privilege if we consider these two aspects of the matter.

Now, as far as the institution of Whip is concerned, I will only read extracts from Roland Young, 'The British Parliament', Chapter XIII.

"The Whip organisation supporting the Government arranges for the orderly consideration of the Government's business. It is necessary to plan ahead and to coordinate action, making certain that the process in Parliament runs smoothly..."

So, it is the duty of the Chief Whip to see that the proceedings in the Parliament are run smoothly and for that purpose, to give instructions, to give advice and to give directions even to the Members regarding the conduct and behaviour in this House. No breach of privilege question will arise as far as that is concerned.

I have seen umpteen times that whenever there is disorder in the House, the hon. Speaker rightly looks to the Parliamentary Affairs Minister to help him to put the House to order and give instructions to the Member. He also looks to the Opposition to see that the leaders of the Opposition also control their Members and help the Speaker in running the House smoothly. Therefore, the whips on both the sides have to help the Speaker in running the House smoothly. From this point of view, if any directions are given to the Members, no question of breach of privilege will arise and there is no curtailment on the freedom of speech.

I will put another aspect of this matter also. Now, the Parliamentary Affairs Minister calls it a whip but I say that the document does not

[Shri Sharad Dighe]

become that document merely because the nomenclature is given to it. This is the fundamental principle of law as my friend, Mr. Amal Datta appreciated that whenever we call it a lease and if it is not merely a lease, the lease does not mean the lease at all. My submission is that these are mere instructions, mere advices to the Members and there is no question even of this whip at all. He calls it a whip. Let him call so. I will go further to say and put an alternative argument that this is not even a whip at all. It is only a direction, a mere friendly advice to a Member of this House not to commit further contempt. If he commits the breach or if he disobeys the ruling of the Speaker, he will be hauled up for the contempt of the House. Therefore, just to help in the smooth running of the House, to see that his own Members do not commit any contempt of the House, there is nothing wrong in giving directions of advices openly in the House, in the presence of other Members. There is no question of breach of privilege as the whole incident has taken place in this House before the eyes of everybody and before your eyes. I submit that there is no question of sending it to the Committee of Privileges. This House itself should decide that there is no question of breach of privilege involved in this. Therefore, the Motion may be thrown out.

THE MINISTER OF STATE IN THE DEPARTMENT OF DEFENCE PRODUCTION AND SUPPLIES IN THE MINISTRY OF DEFENCE (SHRI SHIVRAJ V. PATIL): Sir, I am making my submission on three points. The first point which I would like to make relates to the facts, the second point relates to law. And the third point relates to the course that can be adopted by us. In what situation was the advice given by the Parliamentary Affairs Minister? The two hon. Members who spoke before

me have made it very clear. There was a disorder in the House. The Members were rushing to the well and the hon. Speaker was directing them that they should behave themselves and help to maintain the order in the House. One of the Members was saying that he should change his ruling. The other Member was saying that they would not allow the House to work. In that situation, if the Parliamentary Affairs Minister directs his Members of his own party not to obstruct the proceedings of the House and to behave properly to help the House to conduct the business, can it be called a breach of privilege? If the ruling is given by the hon. Speaker, it is not to be challenged. Very often, we find that the Members walk out against that ruling from the Presiding officer. The hon. Speaker is very lenient. Always the presiding officers are lenient and they do not interpret the rules and the laws very strictly. But the law provides that if the ruling of the hon. Speaker is challenged, if any walk out takes place on the basis of the ruling given by the hon. Speaker, it is a breach of privilege.

MR. SPEAKER: That interpretation is always there, but I think, we are not very strict about it.

SHRI SHIVRAJ V. PATIL: I am not objecting to that; very rightly, it is done, but strict interpretation of law provides that even walking out of the House against the ruling is a breach of privilege. Shri Dighe, hon. Member, was speaking just now and he said that at times the assistance of the Parliamentary Affairs Minister or other whips is also sought to see that the Members whose feelings have been roused do not speak at one time or do not object to the proceedings and they help the hon. presiding officer to conduct the business of the House. This is the situation.

We have to consider and see what has been said by the Parliamentary Affairs Minister against the two

Members on the floor of the House in the background of the situation. If we do not consider the background of this situation and if we come to the conclusion on the basis of some assumptions and presumptions in our mind, that would be a wrong thing to do. We are not assuming and presuming things, but we have to decide on the basis of the facts which are available in the House.

What is the legal position? Prof. Dandavate will object to my referring to the legal aspects saying that I was the Speaker. I was not only the Speaker, but I am also a student of constitutional law and Prof. Dandavate is a student of physics. There is a little difference.

PROF. MADHU DANDAVATE: Law makes the law sharper, but physics makes it narrow.

SHRI SHIVRAJ V. PATIL: Physics probably makes the mind very broad and law is also all-pervasive.

What does Article 19 of the Constitution say? Article 19(1)(a) says:

"All citizens shall have the right—
to freedom of speech and expression..."

There is no dispute on this point. Restrictions are placed in Article 19(2):

"Nothing in sub-clause (a) of clause (1) shall affect the operation of an existing law, in so far as such law imposes reasonable restrictions..."

Let us understand it very clearly that no right given in the chapter of Fundamental Rights is absolute. It has its own restrictions and limitations. Without understanding the restrictions and limitations, which are put by the Constitution on those rights, it will be difficult to understand the real purport of the Fundamental Rights given to the citizens under the Constitution. This Article says:

"...in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence".

My submission is that nobody has a right to be abusive; nobody has a right to be unruly, nobody has a right to obstruct the proceedings in the House, nobody has a right to say certain things which cannot be said under the Constitution.

I very respectfully want to differ from the interpretation put by Prof. Madhu Dandavate on Article 105. Article 105 says:

"Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of Parliament, there shall be freedom of speech in Parliament."

Article 105 says... "subject to the provisions of the Constitution", it is not subject to the provisions of this Article.

Let us try to understand this distinction 'subject to the provision of this Constitution'. That means Article 19(2) is a provision in the Constitution. So, the right available to the Members on the floor of the House is subject to the provisions from Article 19(2). Let us understand this, Sir. There is one more restriction to the rules and standing order regulating it. There are two restrictions; one is the Constitutional restriction and the second is the restriction under the Rule. Sir, this kind of provision in Article 105 is modified a little and the modification is found in Article 105(2). Article 105(2) says:

"No Member of Parliament shall be liable to any proceedings in any

[Shri Shivraj V. Patil]

court in respect of anything said or any vote given by him in Parliament or in Committee thereon and no person shall be so liable in respect of the publication by or under the authority of either House of Parliament on any report, paper, votes and proceedings."

This is the Article. - This is the provision. It distinguishes Article 105 from Article 19(2). Now, the distinction is not in the restriction put on the right of the Member but the restriction is on taking the matter to the court of law. If any Member says anything on the floor of the House, this matter will not be challenged in the court of law. But Article 19(2) says that defamatory language will not be used. Sir, does this House allow any Member to use the defamatory and abusive language in the House? The matter will not be taken to the court of law but the matter will certainly be taken to the Presiding Officer who is the final authority on deciding whether the right available to the Member is absolute, restrictive or used properly. Let us understand this distinction.

Now, the distinction is that the matter will not be taken to the court of law but it will be subject to the provisions of the Constitution, subject to the Rules, subject to the directions, subject to the conventions which are followed. Now, is there any convention in the House that the Member can rush from his seat to the Well? Is there any convention in the House that the Member can use abusive language? Is there any convention in the House that the Member has the immunity and the right to get up and obstruct the proceedings of the House? Is there any convention? Is there any Rule? Is this right available to the Member to flout the ruling given by the Hon. Speaker and yet claim the right to have a fundamental right? This is stretching the right of freedom to speech too far. This interprets the

right of freedom to speech in such a manner that it becomes ridiculous when we say that under the right of freedom to speech we are allowed to do anything. What is the impact? Was the Hon. Member propounding his philosophy when he was obstructed? Was he saying that the planning should be done in a different fashion? Was he saying that the Budget provisions have to be different. Was he saying that the legislation has to be in a different manner? Was he criticising any philosophy or policy of the Government? When was he obstructed? He was not allowed to obstruct the proceedings of the House. He was not allowed to flout the rules. He was not allowed to disrespect the ruling given by the Hon. Speaker. Then Hon. Speaker had to adjourn the House two times. Can we forget this fact? And can we say that the Member has a right to behave in the House which will not allow the House to work and yet claim privilege in the House? This is too much. This is stretching the rules and laws and stretching the statute too far. Sir, if you do that, it will be very difficult to behave or act in the House itself. So, if the Hon. Parliamentary Affairs Minister had objected to his propounding any different policy, putting forth different policies, giving some new ideas or criticising the idea of the Government, there was a ground for us to think that he was obstructed in expressing his views. But here the situation was completely different. Sir, I do not have anything more than this to submit all these points.

Now what course of action can be taken? The hon. members were very eloquent on this issue and they said that it was a very important issue. If you ask me, I will tell you this. I do not think that we have any doubts as far as the provisions of the Constitution and also the rules are concerned. We have no difficulty in saying that. But then, if the hon. members think that this is a very important issue, well let it be decided by the entire House.

PROF. MADHU DANDAVATE:
And suppress the freedom of the
speech by brute majority!

SHRI SHIVRAJ V. PATIL, Pro-
fessor, I would expect you to behave
like a professor and not like a stu-
dent. Do you mean to say that the
freedom of speech will not be pro-
tected by the House, but that it will
be protected by the Privileges Com-
mittee? You have less faith in the
House and more faith in the Privi-
leges Committee. This is very
strange.

PROF. MADHU DANDAVATE: It
cannot be left to the vagaries of
minorities and majorities.

SHRI SHIVRAJ V. PATIL: Well,
it is more like the interpretation of
a novice than that of a professor ...
(Interruptions)

PROF. MADHU DANDAVATE:
Let me tell you one thing. To protect
our fundamental right you can go to
the court of law. But it is not de-
cided on the basis of minority and
majority in the Parliament. That is
how they are insulated.

SHRI SHIVRAJ V. PATIL: The
Committee on Privileges is not a court
of law. We are not referring this
matter to find out the facts. It is
not going to be a fact-finding committee.
The question is only that of inter-
pretation of the Constitution, the
question is that of interpretation of
rules, the question is that of adopt-
ing a policy, and the question is that
of adopting a philosophy with
respect to the rights available
to the members. And there is
no greater or higher body than this
august House of Parliament itself to
decide this issue. If we refer it to
the Privileges Committee, we are
referring it to a committee which is
a part of the Parliament and thus we
are not referring the matter to the
highest body. So Sir, my submission
is, according to Rule 226, as is refer-
red to by the hon. Speaker, this

House may consider this question
here and come to a decision. Why
is the provision made in Rule 226, if
it cannot be made use of? If the
provision is made under Rule 226, it
should be used to decide this august
and important issue. Why cannot
this provision be used? What is more
important than the privilege of the
members to speak freely in the House?
Let it be decided by the House. Why
should it go to the Privileges Com-
mittee? Is it only to prolong it, to
publicise the matter and to create
difficulties. Further, there is no
question of finding facts. Facts are
before all of us. Therefore, let it be
decided by this august House. Those
who object to the discussion in the
august House are really not interested
in protecting the privilege, the real
privilege available to the members
and I would be within my right to
say that they have some ulterior
motive.

PROF. MADHU DANDAVATE: Do
you mean to say that referring the
matter to the Privileges Committee
means delaying the matter? Is this
not casting aspersion on the Privilege,
Committee and committing another
breach of privilege

SHRI SHIVRAJ V. PATIL: I am
only saying that the Privileges Com-
mittee is a part of the Parliament. Is
it not better to decide this august
issue in this august House? It is not
necessary to take this problem to the
Privileges Committee. Here we have
the advantage and fortune of having
your good counsel. Here we also
have the advantage of having the
views of so many hon. members
sitting in the House. This will not
be available in the Privileges Com-
mittee.

PROF. MADHU DANDAVATE: And
also a brute majority!

SHRI SHIVRAJ V. PATEL: When
the issue is so important, let it be
decided on the floor of the House.

SHRI ARIF MOHAMMAD KHAN (Bahraich): Mr. Speaker Sir, I would like to thank you for giving me a chance to speak on the question of breach of privilege. Sir, I was listening to the senior members of the House like Shri Bhagat, Shri Dighe, and Shri Shivraj Patil. I have no hesitation in saying that they have very ingeniously tried to shield an action which openly violated Constitutional provisions and the Rules of Business of the House. Sir, before you go in I want to recite an Urdu couplet which you too will appreciate:

**Khiraad ko Junoon kar diya, Junoon
ko khiraad, Jo chahe aapka husne-
Karishma-saz kare.**

12.45 hrs.

[Mr. Deputy Speaker in the Chair.]

As to the question of those arguments...

SHRI ABDUL GHAFOOR (Siwan): You should have explained its meaning by translating it into Hindi.

SHRI ARIF MOHAMMAD KHAN: I believe that as long as you are present there you can clearly understand what I mean to say. Sir, the arguments put forward by the ruling party mean that the rights conferred by the Constitution can be used subject to reasonable restrictions—that order should be maintained within the House; unparliamentary language should not be used within the House, there should not be chaos and indiscipline in the House. There cannot be two opinions about this. But in regard to any question of maintenance of order in the House, or of violation of laws, rules and constitutional provisions, it is given in our Constitution and Rules of Business as to which official has the authority to maintain order in the House. If a Member in the House is found guilty of indiscipline or as the hon. Shri Shivraj Patil has said—No one can be allowed to use abusive language in the House. Now my question is if somebody uses abusive language in the House, if

some one creates problems in the House, is it going to be the right of Shri Shivraj Patil to go to that member and try to silence him.

[English]

SHRI SHIVRAJ V. PATIL: I have no right to punish him. I have every right to counsel him, to advise him to ask him to behave properly. (Interruptions) I am not punishing him. (Interruptions)

[Translation]

SHRI ARIF MOHAMMAD KHAN: Sir, basically I want to bring to your notice this very fact. It is clearly stated in Rule 378 of our constitution.

Rule 378 reads as follows:

“The Speaker shall preserve order and shall have all powers necessary for the purpose of enforcing his decisions.”

Now I am not going into the question of ruling of the Speaker on the whip of one party or the whip of the other party; that is not disputable. But the question is whether the question of enforcing order in the House can be left to the whips of the respective parties. No, Sir. Once it is a question of maintaining order in the House, it is entirely within the power, it is the prerogative of the Speaker, it is the prerogative of the Chair; and this right definitely, this power cannot be delegated even to the whip or the Chief Whip of any party.

PROF. MADHU DANDAVATE: Except when Mr. Bhagat becomes the Minister.

[Translation]

SHRI ARIF MOHAMMAD KHAN: We have no objection if Mr. Bhagat wants to take over this job. We will rather welcome it and after that he will have no need to issue any whip. We will accept his ruling with pleasure but unless he is promoted to that office, he can't be authorised to take over the work of running the House.

It is not a question of breach of privileges of Members but our hon. Parliamentary Affairs Minister has tried to snatch the authority which is solely vested in the Speaker of this House. The notice which has been given is not for protecting the rights of Members but it is a basic question of protection of those powers which have been given by the Constitution and the Rules to the occupier of the Chair on which you are now sitting. Increasing encroachment by the Minister of Parliamentary Affairs... (Interruptions)

[English]

Even he is trying to encroach upon the powers which have been given to the Speaker or to his Chair.

[Translation]

In the context of the first point which I have raised I want to raise a second point. If any hon. Member goes on creating indiscipline or disorder in the House, our Rules of Business say what action can be taken against the Members and how discipline can be maintained in the House. This is given under Rule 374. Sir, I hardly need to read this rule. Under this Rule a member can be suspended and even asked to withdraw from the House. The whip has no authority as to what and how action can be taken in order to maintain discipline. As long as the Speaker does not name that Member our laws, the Constitution or the Rules do not authorize the Chief Whip to even move any motion against any member in the House. It can only be tabled after the Member has been pointed out by the Speaker. [English]

PROF. MADHU DANDAVATE: Mr. Tewary knows that rule very well. [Translation]

SHRI ARIF MOHAMMED KHAN: Mr. Tewary will definitely be knowing it because he is concerned with the maintenance of order. He has to deal with its provisions. He must be aware of it.

I would like to say that this is an open violation of the constitutional provisions and breach of privileges accorded to a member. Along with this, the authority given to the Speaker under the Constitution and the Rules of Business has been encroached upon by the Minister of Parliamentary Affairs.

So far as reference of this matter to the Privileges Committee is concerned, Shri Shivraj Patil has said, this matter need not be referred to the Privileges Committee but should be decided within the House. This certainly is welcome. Today the Government seems to place greater faith in the House than in Committees. So much so that according to them even important issues can be decided within the House. I shall be very happy if the government adopts the same attitude towards other important issues as well. Matters relating to Bofors have been referred to the Committee. Debate on those matters too can be held in the House. There are many other issues. The Government should trust the House in these matters also. Let the documents come here; let such issues be discussed here so that the general public in our country can know about them. When the Government finds it convenient it can refer the matter to the Committee. When the Government finds it inconvenient it shall raise objections and push for a solution to the problem in the House itself.

Sir, we have no objections to this. But I would urge this august House and all its members that at least matters of Parliamentary Privileges should not be seen from the viewpoint of party-politics. This matter is not limited to breach of privileges of hon. members like Shri Ram Dhan or Shri Raj Kumar Rai. This matter of privileges does not concern any individual but concerns the House as a whole. If the Government considers it from this angle, I believe that many Members who feel stifled will not feel so to arrive at a decision. They will

[Shri Arif Mohammed Khan]

not take long to know that privileges accorded to them in the House are encroached upon. There is no need to look at this from the view point of party politics. On the contrary, it needs to be seen from the viewpoint of breach of privileges of an individual or the House. If we consider it from this viewpoint it will not take long to arrive at a decision. And the decision will definitely be that the motion is in keeping with the letter and spirit of the Constitution and it should be adopted.

[English]

SHRI SOMNATH RATH (Aska): Mr. Deputy-Speaker, each privilege matter has to be decided on its own merits. Now, it has been said by members of the Opposition that the Speaker can refer it to the Privileges Committee. My submission is, that that stage is gone. Of course, the Speaker can *suo motu* refer the matter to the Privileges Committee. But after Rule 225, we have Rule 226.

Rule 226 reads like this:

"226. If leave under rule 225 is granted, the House may consider the question and come to a decision or refer it to a Committee of Privileges on a motion made either by the member who has raised the question of privilege or by any other member."

So, the matter is now to be decided by the House, not by the Speaker.

The freedom of speech as defined in article 105 of the Constitution has been mentioned. But the fact remains that it is restricted by rules and procedures of the House. The "Rules of Procedure and Conduct of Business in Lok Sabha" has been framed under power derived from article 105. Standing Order means the Standing Order of the Speaker. We have got a Code of Conduct of Members also. As envisaged under the Rules of

Procedure and Conduct of Business, a 'Member' shall conduct himself in such a manner so as to maintain the dignity of the House." It has been mentioned in the 'Practice and Procedure of Parliament' by Kaul and Shakhder, on page 96:

"Members cannot criticise directly or indirectly, inside or outside the House any ruling given opinion expressed or statement made, by the Speaker."

Not only a ruling but observations and statements of Speaker also cannot be criticised inside or outside the House. It is the contempt of the Speaker and the contempt of the House. In the parliamentary form of government, a party has its own internal organisation inside the parliament and is served by the Chief Whip.

It has also been stated in the 'Practice and procedure of Parliament' by Kaul and Shakhder and I quote:

"This gives him (the Whip) quite a wide power of patronage which comes handy in keeping the party members amenable to his influence..."

Whips, both of the ruling party as well as those of the Opposition, play a very significant role in the smooth and efficient functioning of parliamentary democracy."

In the conference of Whips from all over the country, the privileges and the conduct of the Members inside the House have been discussed at length. The Conference's opinion is that the erring Member should be disciplined by the Whips of the ruling party as well as of the Opposition parties. So, under these circumstances, we must consider the matter at issue. The matter at issue is not what transpired before the so-called whip, the matter at issue is whether the so-called whip issued by the Chief Whip of the Congress (I) party is a matter of contempt. As I have said, it is an inter-party arrangement. Each party has to

work inside the parliament and it has nothing to do with the contempt of the House. Not only the Congress party but also Opposition parties issue whips. So, it cannot be said that the so-called whip is meant to gag the Member not to speak. On the other hand, it only reminds the two hon. Members of the own party—that cannot be forgotten—to conduct themselves in the manner envisaged under the rules and procedures of the House and not to commit contempt of the Speaker and of the House.

13 00 hrs.

So, under these circumstances, we cannot import our knowledge or the other facts into this particular issue and speak that it should be referred to the Privileges Committee. I have no objection that it should be referred to the Privileges Committee, but it is not necessary to do so. As has already been stated under Rule 226, it is this House and this House alone should decide whether it should go to the Privileges Committee. Secondly, having heard the matter whether there is a *prima facie* case that it should be referred to the Privileges Committee, I humbly submit that as the matter stands, it is an inter-party matter and it is a matter of the Chief Whip who enjoys the position for functioning in his party affiliation to discipline the Members, to advise them, to remind them how to behave inside the House which cannot be a matter of privilege and as such it should be rejected.

THE MINISTER OF STATE IN THE MINISTRY OF PARLIAMENTARY AFFAIRS (SHRIMATI SHEILA DIKSHIT): Sir, if the House feels, we can skip over the Lunch-break and continue this important discussion.

SOME HON. MEMBERS: Yes, yes.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF FOOD AND CIVIL SUP-

PLIES (SHRI H. K. L. BHAGAT): It is a very important subject that is being discussed.

PROF. MODHU DANDAVATE: We accept the suggestion of Mr. Bhagat. We treat it as an inter-party whip.

MR. DEPUTY SPEAKER: We will forgo our Lunch-break now and we will continue our debate. Mr. Saifuddin Chowdhary to speak.

SHRI SAIFUDDIN CHOWDHARY (Katwa): Sir, the Members of this House articulate with almost unfettered right of speech within this House and no whip can restrict them. Now, it has been said that the Speaker of ten seeks the help of the Members of different parties and looks upon the Whips of different parties for bringing order in this House. Mr. Speaker is absolutely right in that and it is the duty of the whips, the official whip and all the Members of this House to respond to that. There is no question in this and any individual Member is also within his right to accept, whether it is oral or in writing the advice sent to him when he is in action, to restrain that action and the direction sent to him by the whip of his party; nobody can dispute that fact. But the question comes when this oral direction or written direction is sent to an individual Member and that individual Member objects to that very proposition and he insists that this very particular direction is nothing but an attempt to throttle his right to speak. In this circumstance, when Mr. Bhagat, as the Chief Whip of the party sent the direction to Mr. Ram Dhan and Mr. Ram Dhan did not submit to it...

PROF. MADHU DANDAVATE: Not direction, it is whip.

SHRI SAIFUDDIN CHOWDHARY: Whip or anything. Though Mr. Bhagat claimed that it was a whip, I did not consider it a whip. But in this House, we can only take cognisance of that whip which is connected with.

[Shri Saifuddin Chowdhary]

the voting of abstention or going against. So, it is not a whip. But in his wild imagination he thought he could give the direction under the name of the whip. That is the aberration of his mind and he tried to act as a mini dictator in this House and it is for the members of the Ruling Party, the Congress (I) Party, to consider whether this kind of ridiculous direction in the name of whip should continue or not. This is the first thing that I want to say.

The second thing is, now anything you may call it, you may call it direction, you may call it instruction, you may call it whip or anything. That is not the question for the House to consider. But the point is that when a Member is in action, when he is seeking the help of the Speaker against something that happened, he advance of a Member towards hi menacingly and when he is appealing to the Speaker, maybe in the background of observation made by Speaker and if he was violating the Rules of Procedure of the House, it was for the Speaker to take action and for that our rules are abundant. There are plenty of measures that Speaker can take to bring the rule in the House. But in this particular context when a Member of this House, may he be the Whip or anyboy, when he sends a direction and instructs a particular Member that 'you stop your action, you don't speak', that is nothing but amounting to the attempt to interfere in the right of that particular Member. So, here we come down to a particular point of the Member's right to speak in this House and what action, if he want unruly, if he has violated the norms of the House is to be taken is dependent on the decision of the Speaker of this House and in that, no particular direction or instruction or the so-called whip is at all valid or to be taken note of by this House or by the Speaker.

13.07 hrs.

[MR. SPEAKER in the Chair].

Sir, in this respect there is no question that this particular case is a very serious violation of the freedom, the right that we have as the Members of this House to speak in this House, our right to speak unfettered subject to the Rules of Procedure and that has been attempted to be throttled, curbed by the whimsical aberration of the Chief Whip of a particular party. So, it is a matter of concern for the whole of the House, it is a matter of concern for the dignity of the House, it is a matter connected with the Rules of Procedure of the House, and it should at once, immediately, be referred to the Privileges Committee and should not be left to the dictatorial directions of that particular whip who will instruct his Members to defeat this particular motion on the floor of the House. That will be another assault on the directions on the procedures and rules of this House.

So, to save the dignity, to save the grace in this House, Sir, I appeal to you that you directly refer it to the privileges Committee and let us have a decision about this particular Whip who does not know what is the meaning of whip. Mr. Sharad Dighe has said, it is not a whip at all. I also think so, Sir. We have the rules, according to them, it is not a whip. But how can a Chief Whip issue a whip which is not at all a whip? It is a very ridiculous thing for Mr. Bhagat to do so. Sir, to save the dignity of the House, you refer it to the Privileges Committee.

(Interruptions)

THE MINISTER OF PLANNING, MINISTER OF PROGRAMME IMPLEMENTATION AND MINISTER OF LAW AND JUSTICE (SHRI P. SHIV SHANKER): Mr. Speaker, Sir, quite a lot of arguments have been addressed on this privilege issue, and hon. Members were also pleased to put an interpretation in diverse ways on Article 105. Speaking for myself, I do not think that Article 105 comes into operation in this case. However,

because a lot of arguments have been addressed and there is bound to be a little bit of overlapping, I would be as short as possible.

What exactly is the breach of privilege, is the question in this case. The hon. Member who raised the issue of privilege has very pithily put it in two paragraphs. One is, he said 'In the written whip I was warned not to proceed with my observations and I was directed to accept the Speaker's Ruling.' Therefore, he was warned (a) not to proceed with these observations, and

(b) to accept the Speaker's ruling.

Then, he proceeds to say in the next paragraph. It is obvious that the whip issued on the spur of the moment and issued only to me and to Shri Raj Kumar Rai but not to other Party Members, was a calculated move to intimidate me and to suppress my freedom of speech in the House. Therefore, what we have to find out is, whether he should have been allowed to proceed with the observations on the Speaker's ruling. If so, whether there were observations or anything else. That is the first part of it.

The second part of it is, does it amount to a suppression of the freedom of speech of the hon. Member. These are the points which have to be taken into consideration. If it is a suppression of right to freedom of speech, it is, of course, I concede, that that is a matter where it makes out a *prima facie* case of breach of privilege.

Now, what had happened on that day? I was not here. I will not read the whole thing. But I will read one or two observations, to make the position clear. I find it at page 4380. You were pleased to give your ruling after the House assembled again. You gave the opportunity for the two hon. Members to give their explanations. After that you said:

"I have heard the two explanations, both from Shri Ram Dhan

and Prof. K. K. Tewary and find that there were some misgivings. Now, I think, as the hon. Members have said neither of them had any bad intention; neither Shri Ram Dhan, because he had completely gone by the hon. members' regard to the House and to other members; he did not want to say anything... Once he advanced to that, I said, he was advancing menacingly...

There were some interruptions and again you proceeded:

"I did say and that is why I ask for his personal explanation; and that is why, in the mean time, I had also postponed it. I wanted to clarify the position. Prof. Tewary, in all good faith said that he did not mean anything."

Afterwards, you were pleased to observe:

"In view of all this let us close this and let the matter rest here." That was your ruling, in my submission You wanted to close the whole chapter. After you had made this direction, issued this direction or ruling, whatever one could call it—I am not particular about the wording that should be used—then the wrangling started. (*Interruptions*) I am sorry; have I used a wrong word?

PROF. MADHU DANDEVATE: Absolutely, most parliamentary.

SHRI SHIV P. SHANKAR: Immediately after that I find that Ram Dhanji went to the extent of saying—

"Mr. Speaker, Sir, you have changed your ruling."

I am reading this only to say that even the hon. Member knew that it was your direction.

"The decision you have given."

That was the direction. That was the decision.

PROF. MADHU DANDEVATE: He said, let it rest there.

SHRI P. SHIV SHANKAR: That is what I am saying. Therefore, the matter must be closed; no more further discussion.

MR. SPEAKER: Right. Treated as closed.

SHRI P. SHIV SHANKAR: I thought so. The hon. Member had a right to say "No" to it. But I am only trying to put it, from my own point of view, how I read it. Therefore, he wanted to treat the matter to be closed; no more discussion on this issue. But still the wrangling went on.

The argument of the hon. Member who raised the privilege motion was, that earlier you had taken a decision, you have changed the decision. That could be so. But the fact remains that there was a ruling. He also knows that there was a ruling, there was a decision by you. I have only read that part of it for that purpose. This went on for about more than 20 pages, I find. Finally, comes this issue of Whip after a great deal of wrangling that went on. Mr. H. K. L. Bhagat just issued this. What exactly the implication of it, we have got to go into it. "Mr. Ram Dhan, you are still in the Congress Party. I would ask you as Chief Whip of the Congress Party not to proceed further and accept the ruling of the Speaker. This is the Whip which must be obeyed."

Therefore, the point is what is it that he is doing? He is saying "Look, the Speaker has given a ruling" which I have just now read. He is doing this after a considerable wrangling that was going on in the House and he says that "Look, you obey the ruling" assuming for a moment, I will take it this way, supposing if he were to say, day in and day out when you are pleased to see that the order is maintained, when you try to maintain the order in the House, the Whips here sitting often ask the Members to sit down and, I am sure, that if we take that narrow meaning, then every

time they make a gesture, they are subjecting themselves to a breach of privilege. On many other occasions, when the hon Members had a very right point to say, because you take a view that there should be no interruption or they should sit down, they sometimes ask them to sit down, even by me. In my submission, that would be a much worse case where an hon. Member has something to say I would have said at that time that it is my right of expression guaranteed under Article 105, as Professor Saheb has very rightly said, it, and it is on that occasion, supposing if they say, I am sure every day the Chief Whip and the Whip are committing the breach of privilege if we take this narrow meaning or if you interpret in the manner in which you are trying to interpret it.

PROF. MADHU DANDEVATE: You can understand the position if you hear me for a second. Even if the ruling is given, has not the Member the right to request the Speaker that we request you in the light of what you have said in the past, you may review? I will give one instance. When he gave his ruling on matters *sub judice*, I gave him in writing that I may raise the point of order and he gave a written ruling. He said at that stage "I did not know what is the stage of proceedings in the court. Therefore, I will ascertain the matter." In a way, he will review. If I had not made the appeal, I am sure, he would not have done that. This instance itself shows that when we appeal to the speaker, he has that much accommodation to consider our appeal and then he can sometimes even review that ruling. That Fundamental Right is there in the House.

SHRI P. SHIV SHANKAR: I entirely agree with you, Professor Saheb. I am not in any way denying or trying to join issue with you on the proposition that you have laid down. We have a right for the purpose of making the request to review the ruling. There is no difficulty about it. Let me complete that part of it so that whether it was really a case...

PROF. MADHU DANDAVATE:
If at all it is a ruling.

change? What is the substratum of it?

(Interruptions)

SHRI P. SHIV SHANKER: I have said that it is a ruling. In my interpretation, I have said it is a ruling. Now the point is, was it a mere case of seeking the review or what was following thereafter, I am not reading the whole thing what has happened but, I am coming to that stage whether the Whip has been issued and then what followed. Few lines I am reading. *(Interruptions)*. Mr. Acharia, may I just make a submission? Then I am prepared to answer anything you would like. This part of it I must explain my position. I am not reading this. He issued the whip. I would not call it a so-called or etc. etc. because I would go by the language of it. I was trying to say that there is no methodology or there is no proforma that has been provided as to how the whip are issued. In the absence thereof, a whip could be oral, a whip could be written as well. I am saying the same thing. Supposing if he were to say "Please stop", if that were the attitude which we take every day, many of us, Ministers also, I must submit, sitting here often request our hon. Members to maintain order and say: "Please do not proceed." I am sure one of us..

SHRI SAIFUDDIN CHOWDHARY: Shiv Shankerji, May I seek a clarification? Can I speak for a minute? Now, giving advice to sit down to somebody when he is speaking and if the Member sits down after getting the advice from the Whip, that is all right. There is nothing wrong in it. But if one individual Member does not listen to that advice and he is threateningly given instructions to sit down and when he raises a question in this House saying: "I was threatened; my right to speech was cut", then this question arises. This is a very simple question.

(Interruptions)

SHRI P. SHIV SHANKER: Here. I would like to submit that the whole thing has to be read and it is a clear case where he was trying to defy the order of the Chair. I will come to it at a later stage. The hon. Speaker himself viewed it. I will read that portion of it. He only said: "Look, you obey the Chair's ruling. Don't create any problems." That only shows that he was feeling that here is a person who is defying the Chair's ruling and I want that he should.... *(Interruptions)* Well, it could be a case of difference of opinion.

(Interruptions)

SHRI SAIFUDDIN CHOWDHARY:
That is all right.

MR. SPEAKER: Let him speak.

SHRI INDRAJIT GUPTA (Basirhat): That is advice. That is all right. What is the wrong in it?

(Interruptions)

SHRI P. SHIV SHANKER: What I am trying to say is: what is it that Mr. Bhagat has done?... *(Interruptions)* Why don't you allow me to speak?...

(Interruptions)

PROF. MADHU DANDAVATE:
That advice is in respect to other parties...

(Interruptions)

MR. SPEAKER: You can speak afterwards.

SHRI P. SHIV SHANKER: Now, the question is whether this is beyond the advice. Merely, you give the nomenclature as Whip. Does it

SHRI P. SHIV SHANKER: I must at least have the modicum right of

[Shri P. Shiv Shanker]

my expression here without interruptions.

MR. SPEAKER: I think that will be called as privilege.

(Interruptions)

[Translation]

PROF. MADHU DANDAVATE: He issued a whip and is facing a difficult situation. What will happen if I do the same?

SHRI P. SHIV SHANKER: Mr. Prof. you also issue the whip you told me

For sometime, I will speak. All right ... This is the Whip on your side because there is no proforma.

(Interruptions)

SHRI INDRAJIT GUPTA: He is taking it very lightheartedly.

SHRI P. SHIV SHANKER: Nobody is making it lighthearted.. (Interruptions) I am trying to explain as to how it happened in this House I am sorry that you are reading it as though that it is made lightheartedly. Nobody is making it lighthearted But it happens day-in-and day-out. I assure you that supposing if I get up to speak on an issue and if some body says: "you sit down"... then, I will take it that it is an interference with my right to speech. It is obviously a breach of privilege... (Interruptions). Therefore, this is what has happened. Then, the point is...

(Interruptions)

[Translation]

MR. SPEAKER: All right, you just listen. We have listened to you, now listen to them also. You have been given time and we will also listen to others, if they speak.

SHRI P. SHIV SHANKER: After Mr. Bhagat has said in this House, after

giving it in writing saying: "Look I have issued the Whip that you should obey the ruling of the Chair"... Now I will go to the next page. Only a portion, I will read where after you have been pleased to adjourn the House, Mr. Buta Singh observed. "Nobody can challenge the ruling of the Chair. The ruling of the Chair is the property of the House and the House must accept the ruling of the Chair"... Now, I would like to read your observation, Mr. Speaker Sir. I quote: "I don't find the situation such as will allow us to work. I find nothing except that I can name the Members which I do not want to do. I want to work. I want that this House should run.

[Translation]

you compel us and do not allow us to do our work.

[English]

I adjourn the House till 11 A.M. tomorrow."

I have only read this portion. I am saying that you were so vexed. You were vexed that the situation was such that it become uncontrollable. Now, I have read this portion of it.

Would you call it a case where you are seeking in all honesty, with all civility, for the review of the ruling that has been given or that those who were concerned were clearly obstructing the proceedings of the House? By reading this, I am only trying to demonstrate that a situation had arisen where there was a clear defiance, where there was an obstruction for the proceedings of the House which compelled you, Sir, to take this decision. If that be so, just preceding thereto if Mr. Bhagat as the Chief Whip had issued an instruction to his colleague saying, "Look, you accept the ruling of the House; things are going beyond..." (Interruptions)

SHRI BASUDEB ACHARIA: Obstruction was not from an individual Member.

SHRI P. SHIV SHANKAR: If you read the whole proceedings, Mr. Ram Dhan had been continuously trying to defy....

SHRI BASUDEB ACHARIA: He was appealing...

SHRI P. SHIV SHANKAR: You may call it 'appeal'...

(Interruptions)

SHRI P. SHIV SHANKAR: This only shows that they have such a weak case that they would not allow me to put my case...

(Interruptions)

MR. SPEAKER: Mr. Saifuddin Cowdhary, that may be his way of speaking. Let him speak. I gave you a chance. Why are you all the time interrupting? Why are you getting into this bad habit? You are going to be a good Parliamentarian. Why should you do this all the time?

[Translation]

SHRI RAM DHAN: Mr. Speaker, Sir, they advance to attack us, we are not even entitled to make a complaint?

MR. SPEAKER: Have you said, now please sit down.

SHRI P. SHIV SHANKAR: The concept in the parliamentary law that has developed is that it is the sole concern of the Speaker to maintain order in the House, and if the whips are there, they are only to assist him for the purpose of efficiency and betterment of the working of the House. This part of the position is clear. In fact, I am thankful to one of the hon. Members who argued from that side of the House. He has quoted Rule 378. He has tried to bring it to the notice of the House, and very rightly so, that the

Speaker shall preserve order and shall have all powers necessary for the purpose of enforcing his decisions—precisely that which you expressed yourself when you were saying, "I would have named you, but I would not like to name you; you are compelling me to do so". This was the feeling. Sir, you felt so vexed that you were compelled to adjourn the House. This was precisely what you were trying to do in terms of Rule 378 and this is what you were pleased to observe. If you kindly refer to *Kaul and Shakhder*, I would read only one sentence from page 97:

"He may direct any Member guilty of disorderly conduct to withdraw from the House and name a Member for suspension if the Member disregards the authority of the Chair and persists in obstructing the proceedings of the House."

Therefore, the point which I am trying to make is this: what exactly motivated the Chief Whip to give this instruction to his colleague? My submission is that he was afraid it would have been a case of contempt of the House, it would have been a case where you could have named him, it would have been a case of suspension of the Member from the House, and if in such circumstances the Chief Whip, as long as the Member remains a party Member, gives him an instruction, where has he committed a mistake? How do you call it a breach of privilege? The point is this. Arguments have been advanced to say that it constitutes a violation of the right enshrined in article 105 of the Constitution. Have things passed to that stage? Is it right to speech to obstruct? Is it right to speech to defy the Chair? Is it right to speech to obstruct when the Chair is trying to maintain order in the House? If the hon. Members think that defiance of the Chair is the right to speech within the meaning of article 105, I

[Shri P. Shiv Shanker]

have nothing to argue. But if it is a defiance which is very clear if you read the whole proceedings, if it is a defiance... (Interruptions) That is precisely what I tried to explain and demonstrate. What you, Sir, said at the end, by itself, showed that you had come to the end of your nerves. Precisely at that stage, moments before that, Mr. Bhagat had issued this direction.

And I see nowhere as to now it could be called that it is an interference with the right to speech of the Hon. Members so that it could invite this Privilege Motion. It is a matter of interpretation. We can easily read these things by the proceedings themselves. The whole Privilege Motion rests on that. There is a case of violation. I am not going into niceties of it. What is the definition of Article 105? Well, Hon. Members have already said that the Right to Speech is subject to (a) the provisions of the Constitution; and (b) the Rules and procedure that has been framed by the House itself. Now the Rules of Procedure is that the Rule 378 says that the Speaker has the right to maintain the order and if that is defied, he has a right to name a person, to suspend the person. And if the Chief Whip, in pursuance thereof, being afraid or being apprehensive—I will call it being apprehensive, of the conduct of a Member, it might lead to suspension or he being named. Supposing he issues a Whip. It is a far-fetched approach to say that it is a case of interference with the Right to Speech. Therefore, in my submission, there is no case, not even a prima facie case so that one can think of in any form.

SHRI DINESH GOSWAMI (Guwahati): Mr. Speaker, Sir, this is not a simple case as has been stated by my friends. Because, if this is a simple case, you would not have granted consent to move this, to seek

the leave for this Privilege Motion. The fact that you have given consent, to seek leave, itself shows that there is a prima facie case which needs adjudication. Now who is to adjudicate? Will this House adjudicate on this privilege or the matter will go to the Privileges Committee? That is a point which we have tried to make.

Now, what are the points made? Mr. Shiv Shankar, the learned Law Minister has argued his case and Mr. Shivraj Patil has argued. But the point that is made is, does this Whip amount to violation of Article 105 of the Constitution? Mr. Shivraj Patil wanted to read Article 105 saying that Article 105 is subject to Article 19(2). I strongly differ with it because Article 105 is not subject to Article 102. 105 says, "Subject to the provisions of this Constitution and rules and standing orders regulating procedure of Parliament...". Therefore, if there is any constitutional provisions which regulates the procedure of Parliament, Article 105 is subject to that. Assuming that you are correct. Now this is a point which needs adjudication. In my view Article 105 is not subject to Article 19. In your view, Article 105 is subject to Article 19. Are we going to decide this important constitutional point by vote? By voting this House will either accept or reject this Motion. This is a very important point raised by an important Member, disputed by us that Article 105 is not subject to Article 19. What is the viewpoint of this House will never find clarity. Therefore, so many important points are involved in this question itself. I think, the matter should go to the Privileges Committee so that Privileges Committee can give a reasoned judgment about the scope and ambit of Article 105 and about other points raised therein.

Now, coming to the issue... (Interruptions)

SHRI SHIVRAJ V. PATIL: Will you allow me to say?

SHRI DINESH GOSWAMI: I am disputing. I saying that you are at a different viewpoint and I have a different viewpoint. We cannot settle this viewpoint, an important constitutional interpretation cannot be decided by a vote of the House.

SHRI SHIVRAJ V. PATIL: I am making a submission that the interpretation of the Constitution is the responsibility of the Supreme Court and the High Court. It is not the responsibility of the Privileges Committee. Privileges Committee may be a fact finding Committee. (Interruptions)

SHRI S. JAIPAL REDDY: In that case, let the President refer it to the Supreme Court. (Interruptions)

SHRI DINESH GOSWAMI: With respect to Mr. Shivraj Patil, if a privilege is dependent upon the interpretation of the Constitution, then the Privileges Committee shall have to interpret the Constitution. We will not allow this power to be dictated by outside body even the High Court or the Supreme Court. Now the question is why a Whip was issued. Whip was issued because there was a breach of certain legal connotation. And the legal connotation is, if you defy Whip, you are liable to lose your membership. In fact, Mr. Bhagat, unfortunately, probably was misled. Probably, somebody advised Mr. Bhagat that if you use the word 'Whip' and if it is defied you can... (Interruptions)

SHRI H. K. L. BHAGAT: Let me say, Sir. Just give me half a minute, I will reply. Let me make it clear that I myself wrote this. I was not led by anybody. I know law, I am a graduate, I have practised. And let me tell my Hon. Member that in 1954, I had acted as Chief Whip as also Chief Parliamentary Secretary. I

have done it. The responsibility is mine. Do not try to shift it to others.

SHRI DINESH GOSWAMI: But unfortunately, Mr. Speaker...

PROF. MADHU DANDAVATE: Even the Fotedar did not interfere. (Interruptions)

SHRI H. K. L. BHAGAT: Do not presume things. I have never said that. I have never said that this has to be used for this and that. You are supposing things which are not there.

SHRI DINESH GOSWAMI: I concede on everything. But the difficulty is that law regarding the Whip was made at the time when he was not practising. It is a new law which many of us even now are not fully cognisant of. Why the Whip was issued. (Interruptions)

SHRI H. K. L. BHAGAT: You were here and I was here.

SHRI DINESH GOSWAMI: I was not here.

SHRI SHARAD DIGHE: Whip was regarding voting.

SHRI DINESH GOSWAMI: That is precisely correct. But may I point out that one of the very senior Council of Ministers, while addressing the new Members from Mizoram and Haryana said that if somebody defies the Whip, irrespective of voting or no voting, he will be disqualified. I am not going to name it. Therefore, don't take it that nobody knows it. The point is not merely the scope of Article 105. But the point is can you, inside the House intimidate a Member? The second point is Mr. Somnath Rath has very correctly said that this is an intra party matter. Can you circulate an intra-party document inside the precincts of the House when the debate is on? (Interruptions)

SHRI DINESH GOSWAMI: Inner party or intra party.

PROF. MADHU DANDAVATE: I am using not even intra party but both inner party and intra party.

SHRI DINESH GOSWAMI: The point is this. One point made by Shri Shiv Shankar is that supposing Mr. Tewary tomorrow defies a direction, I can definitely ask him to stop. But can I pull him down and say that you must sit down? If I pull him down and ask him to sit down will that amount to a breach of privilege or not? That is a point which I ask you. I can request. But can I pull him down? Even if a Member disobeys the Speaker, no other Member has the right to pull him down physically because that amounts to a breach of privilege. Only course open for you is to name him. That power cannot be taken by the Chief Whip. Therefore, I submit that, there are number of questions involved in this scope and interpretation of Article 105. Whether Article 105 is subject to Article 19(2)? Whether this type of document will amount to intimidation and whether such type of inner party or intra party document can be circulated inside the precincts of the House? Because Mr. Speaker, you don't even permit us to circulate document in the Central Hall. Today, I wanted to circulate some documents and I was prevented by the Watch and Ward Staff by saying that there is a clear direction that no document can be circulated by any Member inside the House. Therefore, these are the questions. How are you going to decide it? We may decide it by vote. If we decide it by vote and I say that the House has full right to decide it. I do not concede that right. I do not doubt that right. The House may decide. But if the House decides, then the reasoned judgment on all the points for the future guidance will be missing. And I believe, that all these points enable the Privileges Committee to give judgment which

can be the point not only for this occasion but for all future occasions. That is why, I want that the matter should go to Privileges Committee. The prima facie case against Mr. Bhagat has already been found irrespective of the fact whether you send it to the Privileges Committee or the case is decided in the House itself.

[Translation]

SHRI RAJ KUMAR RAI (GHOSI): Mr. Speaker, Sir, I will not take more than two minutes. I thank you for allowing me. The crux of the matter is whether the Minister of Parliamentary Affairs as a Chief whip can prevent any Member from expressing his views by issuing a whip in the House. A fact committed need not be proved.

It has been admitted by you and the Members who have participated in the discussion in your support that it was a whip. Sir, the moot point is whether they can prevent some Members from expressing themselves by issuing a whip after turning the House into a party office. I do not want to go into the motive because it has a background. Sir, on that very day when the whip was issued I wrote a letter to your office that we are members of the Congress Party and we pointed out certain things and demanded that the Prime Minister should resign. That is why it was announced on the radio and T.V. that we have been suspended. Beyond that we are not aware of anything. Neither we have received any letter. Now the Parliamentary Affairs Minister asks us to do this and not to do that saying that it is a party matter.

So it is an internal matter of the party you are all aware of it. Now you and this House have to think whether Mr. Bhagat can make use of this House as a party office or not. Now, what were the circumstances under which the hon. Law Minister and Senior Members of the House raised so much hue and cry on which we have to hold a discussion. It is also possible that Bhagatji might have issued the whip seeking

our protection. You think over this matter honestly and tell whether he should have a discussion on it.

Sir, I want to submit one thing that in the case of Shri Ram Dhan and Prof. K. K. Tewary you said that as a gentleman I find there were no such intentions and as such the matter might now be ended. As Shri Ram Dhan and Shri Indrajit Gupta said that you have yourself seen and said in what manner he was advancing. Mr. Speaker, what you yourself have seen is the best evidence.

[English]

You are the best judge, you have seen with your own eyes.

[Translation]

At least you cannot do any wrong thing. Therefore, you yourself know that we were neither defying your ruling nor opposing that what you had said.

Thirdly, if we were defying any ruling or doing such a thing which was derogatory to the Parliament or the Lok Sabha then only you had the right to take action. Only you had the privilege to direct us to keep quiet. You might have said it smilingly or strictly. If you had said that then I would have been the last person to say anything and would have resumed my seat quietly. But Sir, would you like to forego this very right, the right of the Speaker in favour of the Minister of Parliamentary Affairs, Shri Bhagat so that he may send us written slips, love letters in the house?

[English]

"Mr. Raj Kumar Rai, you are still a Member of the Congress(I)".

[Translation]

What does it mean?

He sent a slip saying that:

[English]

"You have to obey whip. Otherwise you have to meet the consequences. And what are those consequences Sir? We will unseat you. He wanted to say that; but perhaps...."

SHRI H. K. L. BHAGAT: I refuse to be provoked by you. Time will show.

[Translation]

SHRI RAJ KUMAR RAI: Because he thought that these petty whips will do the needful and we will be frightened. Sir, it is true that I was frightened because this whip came from the Minister of Parliamentary Affairs. I thought though I am educated, yet some amendment might have been made in the Constitution about which I might have committed a mistake.

I had thought that there is freedom of speech in India and on becoming an M. P. after leaving my agricultural occupation I would speak in the House what I think right and legal in my view. But when I received a slip of hon. Bhagatji, I was frightened. Actually, my knowledge being little I was afraid of any punishment. I want to submit that there can be no case better than this which you have seen with your own eyes and about which you are aware of all rules and regulations and the practices so far followed here and in the House of Commons. Nothing like this has ever happened. Would you now like to submit this matter to the vote of the House and compel us to cast our votes against ourselves in the name of their majority? It amounts to this that you are giving a sword in my hand to cut down my own throat by giving a vote in their favour. If there had not been so much majority, such a big constitutional problem, such as a big right might not have been put to the vote of the House.

Why the Privileges Committee was constituted? If all these things were to be settled by voting then why it was constituted. With these words I submit that this is a very good case which should be referred to the Privileges Committee forth with without any argument.

[English]

SHRI BHOLANATH SEN (Calcutta South): Mr. Speaker, Sir I have arisen to

[Shri Bholanath Sen]

Speak only because the Chief Whip has sent my name to you. If my name would not have been sent I would not have been able to speak. Therefore, when the Speaker is told that these are the persons who are going to speak on behalf of the party they **only speak unless the Speaker decides** otherwise. So Article 105 subject to certain conventions, understanding and **practice, and that is why so far as the party is concerned we have to obey the decisions of the Chief Whip.**

We cast votes in various committees. Very often the Chief Whip or somebody on his behalf informs us that such and such person should be voted. Well we do that. That is one of the things that has to be done by him and we also follow. There are times when shouting, etc. is going on and the Chief Whip waves his hand and we stop. These are not written in the Constitution or in the Rules. When you get up, I have noted, in the Opposition and also on this side the Members do not sit but there is a custom that when you stand we ought to sit. That is not written anywhere.

SHRI BASUDEB ACHARIA: It is written in the Rules.

SHRI BHOLANATH SEN: There are certain things which are not written in the Rules. Where is the right to sit in the well of the House? Now they do. Sometimes you punish. Sometimes you do not. Sometimes you adjourn the sitting of the House. This happens.

Sir, we forget that there has been a sea change in the Constitution. By addition of the Tenth Schedule the party system has been recognised and here it has been said that if the Member abstains from voting—now voting may be by voice vote or may be by ballot or by other means. Therefore, it is incongruous to think I shall go on attacking the resolution brought by my party and at the same time when the voting comes up by voice vote I do not say anything. Now was it conceivable that you have to cast vote according to the decision of the political party which

came into the Constitution for the first time! It was not known before. Even an independent member may lose his membership if he joins some other party. It was not known before. This is a new aspect. It is no use of thinking of Parliament in England. It is no use of thinking what happened in 1978 or before that. Things have changed totally. Today, the party system has been recognised in the Constitution itself and Article 105 must be read subject to all the provisions of the Constitution, including Art. 19, which is about fundamental rights, and Schedule X, which has been recently incorporated.

Sir I am quite surprised. It is an internal matter. What I can say and what I cannot say is not written everywhere in everything. Even some Members object to something **being said. Then it is not allowed.** Some Members say something, even if it is not shouting and sometimes there is chaos and commotion and the House has to be adjourned.

My submission is that it is our internal **system internal democracy of the party** itself in the Parliament. We have said that the Chief Whip shall see that our attendance is assured because that is his job, **discipline is maintained because that** is his job. In order to see that the discipline is maintained, if the Chief Whip says: Please don't say this or that thing or please say this, is it anything wrong? Please propagate our policy, if he says, is it anything wrong? Please say this. Please say in favour of non-violence, so to say, a broad example. Can he plead violence at that time? There is nothing against it in the party system. Otherwise why this party system? One has to see why they are sitting there. One has to see what is the object behind Chapter X. Now this is the idea behind. There was some debate on this. There was no division. Everybody accepted as far as I remember because the parties have now decided to take up certain stand and the party must put forward in Parliament the same stand. In order to see that, if the Chief Whip says something to his own party men, I do not see how

a question of privilege arises with regard to the functioning in the Parliament.

SHRI INDRAJIT GUPTA (Basirhat): Sir, if there were not any weighty questions which are worthy of examination and determination by a body like the Privileges Committee, I do not know why so much time is being spent on this debate and why you are sitting patiently hour after hour listening. If there is no case at all as it is sought to be made out, now I am in a bit of confusion because two eminent ex-Speakers of the same Assembly and one Law Minister ..

PROF. MADHU DANDAVATE: Emergency Speaker also spoke.

SHRI INDRAJIT GUPTA: ...have spoken things which are contradictory to each other. Now whose view point am I supposed to appreciate?

SHRI SHARAD DIGHE: See first into the law book.

14.00 hrs.

SHRI INDRAJIT GUPTA: I am not a lawyer. All the people speaking here are lawyers. Unfortunately I am not a lawyer. I have never been a lawyer. Mr Dighe said something which was contradicted by Mr. Shivraj Patil regarding Article 105. Mr. Dighe made it quite clear. You please consult the records to see what he said. He made it quite clear that the rights of freedom of speech which are given to ordinary citizens of this country, are different from what are given to the Members of Parliament as far as right to freedom goes. This is not the same thing at all. There are restrictions on the right of freedom of speech of ordinary citizens of this country. There are reasonable restrictions. He said that there are no such restrictions whatsoever when it comes to Members of Parliament except what is there in the rules or what the Speaker decides. But hon. Shri Patil has based his whole argument on Article 105 and then comes the Law Minister. I don't think that Article 105 comes into the picture at all. Even if assuming that Article 105 is governed by Article 19—I am just reminding as to what are those considerations on which Article 19

seeks to restrict the laws. It was reasonable restriction on the exercise of right of freedom of speech. It is given in Article 19(2). Let us see whether any of them have been in danger or have been contravened or have been violated. One is the sovereignty and integrity of India. I don't think that anybody will allege that such a thing was in danger. Then comes the security of the State, friendly relations with foreign States, public order. This is another point which I would like to know from you whether you consider that order in the House and "public order" which is referred to are the same. Here it says decency or morality. My friends are trying to make out...

MR. SPEAKER: I think public order and this order are quite different from each other.

SHRI INDRAJIT GUPTA: They are two different things. Here, you as the custodian of this House and Speaker can decide if order in this House is being violated by somebody and how it is to be maintained. It is your directions which will have to be followed. It has got nothing to do with restrictions which are visualised in Article 19. So, Mr. Dighe was correct when he said that there was a distinction between exercise of this right by ordinary citizens and that exercised by Members of Parliament. They are not the same at all.

SHRI SHIVRAJ PATIL: Article 105 starts with the words 'Subject to the provisions of this Constitution'.

SHRI INDRAJIT GUPTA: There are so many points and somebody has to examine them. There are so many contentions and counter contentions based on the rules, based on the Constitution. Who is going to decide? Is it going to be decided by a simple vote of the House?

SHRI SHARAD DIGHE: The Supreme Court has already decided.

SHRI INDRAJIT GUPTA: One or two words about the famous piece of literature whose author is Mr. H. K. L. Bhagat about which so many things are being said. Mr. Bholanath Sen said that everything has

[Shri Indrajit Gupta]

changed and that we must not think in old terms now because the concept of the parties as it is now enshrined in the Schedule of the Constitution is not what it was previously. I do not know as to what limits one can stretch this argument. I can mean that once this party is being recognised in that annexure, it means that whoever is a Member of that party, in spite of being a member of this Parliament, becomes a kind of, well I cannot call him a **probe** but a person who is not free to speak as he wants.

SHRI BHOLANATH SEN (Calcutta South): Article 105 has not become subject to the Tenth Schedule because the Tenth Schedule has come now.

SHRI INDRAJIT GUPTA: It has to be gone into whether this Schedule has brought in a new concept which means that the Member of Parliament because he happens to be a Member of a particular political party no longer enjoys that freedom of speech as has been guaranteed to him under this Constitution and under the rules. Something has come in to limit or restrict that right.

(Interruptions)

MR. SPEAKER: No cross-talk please.

SHRI INDRAJIT GUPTA: If the submissions that were made by Shri Ram Dhan were in any way defamatory, abusive or threatening, then I can understand it but that has not been alleged. Mr. Bhagat's whip is very interesting. I have read it many times and I am trying to understand its meaning and implications. 'You are still in the Congress Party'. Why was it necessary to write this? It could have been that Mr. Bhagat honestly felt that Mr. Ram Dhan had forgotten that he is a Member of the party or he should be reminded about it or it can be that he is still in the Congress party but cannot remain there for long if he does not behave himself. Then he says, quite clearly that he is issuing a whip as Chief Whip not to proceed further and to accept the ruling of the Speaker. This is for you to clarify

whether you had actually ruled or not. We cannot say anything about it. We don't think that you have given the ruling on all these matters. You had adjourned the House since there was disorder according to you which did not permit to continue the proceedings of the House. So, Mr. Bhagat says that you should not proceed. It is a whip which must be obeyed. He is a Member of the party and therefore, according to Mr. Bholanath Sen's argument this kind of whip can be issued and should be issued and must be obeyed. Who is to judge all that discipline? Is it the Speaker or the Chief Whip?

SHRI BHOLANATH SEN: Even inside the House, we are to be the representatives of the party.

SHRI INDRAJIT GUPTA: If this is the interpretation and if it is being accepted finally either by vote or in any way, I am afraid that you have to vacate the Chair. You will have no function to perform. Functions are to be taken over by the whips of different parties. This is elevating the party system to an absurd height. We know that whips are generally used to ensure attendance and to ensure voting according to the decision of the party. Subject to these, he can give advice to his Members and nobody can object to that but this is not a piece of advice when he says that he is the chief whip and he is issuing a whip which must be obeyed. He can give even 20 pieces of advices and I have not objection over it whatsoever. He can even call him out to the lobby and 20 Members of the Congress party could have given him advices. I hope you remember Sir that he was being physically pulled down by three or four members in order to prevent him from speaking. After that arrangement was made to change his seat. Anyway, I am not going into that. What I am saying is that this is an unprecedented thing which has happened—this kind of a whip issued inside the House to a Member while he is speaking and saying that you have been challenging the ruling of the Speaker. First of all, was there any ruling or not, that is for you to say Sir. If you say: "Yes, I had given my ruling", I will accept it, but as far as we understand, in the ordinary sense

of the term, there was no ruling given. Anyway, if he was arguing and he was arguing with the Speaker and asking him to reconsider the matter, claiming that he had not done anything wrong, is that his right as a Member or not? It may not be something which is to the liking of Mr. Bhagat, but that does not mean that he can try to shut him up.

What I submit, first of all, that this is not a question of Article 105 at all. Article 105 does not apply at all to Members of Parliament. They are not governed primarily by Article 105. It is quite clear, Article 19 does not apply in the present case at all. None of these contingencies in which reasonable restrictions are to be imposed were of any relevance in this particular case. The question is: Why was this whip given? It was given in order to prevent him from speaking and he had the right to speak. Many Members on that day were shouting and creating what you would consider disorder. He was not the only one and certainly he never said anything which was defamatory, abusive, threatening or anything like that. In such a case, if it is decided that there is nothing wrong with the issue of a whip of this type inside the House, then a new situation will be created which never existed before. I do not know whether Shri Bholanath Sen includes that contingency in the new set up which he visualizes as a result of the new Schedule. Whether it means now that henceforward such whips can be issued inside the House to prevent a Member from speaking or saying something which is not to the liking of the Chief Whip.

I submit that this is totally wrong and so many questions cannot be settled. Of course, if you, in your own right, chose to give a ruling, that is up to you to decide either it must be by your ruling or it must be by a reference to the Privileges Committee, it cannot be decided suddenly like this by a vote of the House.

According to the rules—you will of course give your interpretation—you can give a ruling also if you like. But unless it goes to that Committee, I would like to know how all these complicated and weighty questions are going to be settled. We can go on making speeches for the

rest of the day, but nobody will convince the other side... (Interruptions).

PROF. K. K. TEWARY: A few words by way of personal explanation.

MR. SPEAKER: All right, if it is on this subject.

SHRI INDRAJIT GUPTA: I did not go into that subject at all. If Mr. Tewary is going again to all that, who was threatening whom, who was responsible for disorder etc., that will open up another big chapter. I am not going into that all. I have restricted myself faithfully to Mr. Bhagat's whip.

PROF. K. K. TEWARY: Sir...
[Translation]

MR. SPEAKER: Do you want to speak on this subject.

[English]

PROF. K. K. TEWARY: Not on this, but on a personal explanation.

[Translation]

MR. SPEAKER: I had accepted that proposition.

[English]

PROF. K. K. TEWARY: You had accepted, even then...

[Translation]

SHRI INDRAJIT GUPTA: I have not mentioned your name.

MR. SPEAKER: That was being quoted from the former text. There is nothing else; I accepted that. No problem. I had accepted that proposition. That is over.

THE MINISTER OF PARLIAMENTARY AFFAIRS AND MINISTER OF FOOD AND CIVIL SUPPLIES (SHRI H. K. L. BHAGAT): Mr. Speaker, Sir, I must confess that I am speaking with a lot of sadness in my heart, because as Minister for Parliamentary Affairs and Chief Whip of my party, I believe it is one of my responsibilities and jobs to keep the members of my party happy and keep the members of the opposition also happy. This I consider as one of my responsibilities and if—a few members from the

[Shri H. K. L. Bhagat]

opposition feel unhappy, I do not feel happy about it. Therefore, I say that I speak with some sadness in my heart.

I would like to state that the issue has been raised and this, to my mind, needs to be settled. Let me make it clear that I believe fully in the freedom of speech of the hon. Members. Today, I am a Minister, earlier I was a Member and I know every Member has a right to speak. I have a very great respect for all the opposition members and leaders and members of my party and when they speak, I give very respectfully consideration to what they say. Among the opposition leaders, when the senior leaders speak—Prof. Dandavate speaks, or Shri Acharia speaks, or Shri Indrajit Gupta speaks—I would say more about when Shri Indrajit Gupta speaks—I always think twice before speaking. He has spoken and I was listening all the time to what he was saying. He says that Article 105 is not relevant at all.

SHRI INDRAJIT GUPTA: Law Minister said the same thing.

SHRI H. K. L. BHAGAT: Shri Indrajit Gupta says that Article 105 is not relevant at all. It is Article 105 which gives this freedom of speech to a Member of Parliament. The matter which has been raised; I believe, is an important matter. With all humility at my disposal, I would try to answer the points which have been raised. As per my own capability, I can do it. And yet I am not only speaking from my head; I am speaking from my heart as well. I felt that this needs to be gone into and that is why I have made my point. This issue has been raised from time to time. Sir, there is absolutely no two opinions that it is your privilege, your prerogative and your right and responsibility to maintain decorum in the House. There are no two opinions about it. It is absolutely your responsibility. The only question is, whether it is the responsibility of all of us or not? And, secondly, whether it is the responsibility of the Leaders and Whips of the House to assist or not?

SHRI INDRAJIT GUPTA: Including the Leader of the House.

SHRI H. K. L. BHAGAT: Please do not interrupt me.

PROF. MADHU DANDAVATE: He is assisting you.

SHRI H. K. L. BHAGAT: You should not interrupt me. I am speaking with the permission of the Speaker. I am talking of all the parties and not my party alone.

PROF. MADHU DANDAVATE: You said 'Leader of the House'. He may be from any Party.

SHRI H. K. L. BHAGAT: I am talking of the leader of all the parties and groups in the Parliament, whether it is their responsibility to assist in maintaining the decorum and discipline in the House or not? Every case depends on its own peculiar circumstances. As I said earlier, there is absolutely no dispute to the fact that it is your responsibility and your prerogative. I am only saying, is it not the responsibility of all of us, particularly the Leader of the parties and the Chief Whip, who are the functioning institution of the House, to assist in maintaining the decorum in the House? When a Member is persistently criticising the Speaker's ruling they should come to help.

Now, Indrajit Guptaji said, "Whether it was a ruling or not"? Now, I will come to this point a little later. Even Shri Ram Dhan has considered it as a ruling. He said:

[Translation]

"You have changed your ruling".

[English]

He is accepting it as a ruling. But the law goes a bit further, I am quoting from Kaul and Shakhder, page-96:

"Speaker's ruling, as already stated, cannot be questioned except on a substantive motion. A Member who protests

against the ruling of the Speaker commits contempt of the House and the Speaker. Speaker is not bound to give reasons for his decision. Members cannot criticise directly or indirectly, inside and outside the House any ruling given, opinion expressed or statement made by the Speaker."

PROF. MADHU DANDAVATE: You also quote the other ruling from the same book.

SHRI H. K. L. BHAGAT: Prof. Dandavate, please, I have the greatest respect for you. Everyday I learn some or the other thing from you. I always do not wish to say anything which may annoy you. Therefore, please let me speak. So, Sir, it says any opinion expressed or statement made by the Speaker. I agree that a Member has a right to request the Speaker to clarify or re-consider certain thing. He has such a right. The question is that in the given circumstances was that **done or something else was done? Though** it may be a repetition, I would like to refer to the proceedings of the House on that day because it is an important matter. It is nothing personal. A Privilege Motion is raised against me. I have respect for everybody. I always try to maintain the best relations with all. The whole question is very basic. The point is that Shri Indrajit Gupta says that the Article 105 is not relevant. So, the question is whether Article 105 is relevant or not? **In fact, I would say that this is the only provision in the Constitution which gives the right of the freedom to speech. Article 105(1) says:**

"Subject to the provisions of this Constitution and the Rules and the standing orders regulations of the procedure of Parliament, there shall be **freedom of speech in Parliament.**"

So, this is the only Article in the Constitution which specifically talks about the freedom of speech to the Members of Parliament. But Shri Indrajit Gupta said that it is not relevant. It does no matter to me whether anybody agrees with me or not. I am entitled to give my opinion. **According to me this is the only provision**

in the Constitution which is relevant at this point. I am not going into other clauses. **This is the only Article which** very clearly, specifically unequivocally says that the Members have the freedom of speech. There are very solid reasons as to why the framers of Constitution have provided this Article. Now, do you want us to forget Article 105 and also Article 19? Do you mean to say that a Member has a right to say anything?

Shri Indrajit Gupta has quoted and tried to give some interpretation as to why I have written that he is still a Member of the Party. I think Shri Indrajit Gupta knows that they are the suspended Members of our Party. I only told them.

"You are in the Party and you are **supposed to follow the instructions given on any matter.**" **And what was the matter? I just told them that they should not disobey the Chair.** They did not dispute when I said that they are the Members of the Party. Even Ram Dhanji got up and said...

[English]

"**SHRI RAM DHAN:** There is no provision in the Constitution of the Party. Nor there is any letter of suspension."

SHRI H. K. L. BHAGAT: Therefore, what I am trying to say is that the language of the whip should be read in a manner in which it is used. I am not an expert in the English language. I have studied in the ordinary school and college of India. So, I use simple language and what exactly I wanted to say was that please do not obstruct the proceedings of the House and do not oppose the Speaker's ruling any more. That is all I wanted to say. But I could not understand why some other meaning has been drawn out of it. Now, Shri Indrajit Gupta was hinting that the anti-defection Law was at the back of my mind. What was there in my mind I have written it clearly. There was nothing more, and nothing less than that.

Now, Sir, I would like to recapitulate and place before you as to what had hap-

[Shri H. K. L. Bhagat]

pened. I would like to place it on the record.

I would like to recapitulate and place before the House as to what had happened during the course of the proceedings of the House on 17 November 1987. Before I come to that, I would like to mention just another point. Shri Dinesh Goswami who is a very eloquent and intelligent member and who is a good friend of mine questioned as to why it should not go to the Privileges Committee and why we should discuss it here. Firstly, as one of our hon. members has put it the whole thing had happened before this House itself. Therefore, this is one reason why this House itself should go into it. Secondly, we belong to different parties and the Privileges Committee also comprises members of my party as well as members of other parties in the same way as this House has. And it is not for the first time that a matter relating to breach of privilege is coming before the House itself directly. Let me refer to page 729 of 'Kaul and Shakdher'

"There arose a case in 1967 when opinion was divided in the House about the alleged breach of privilege. Instead of referring the matter to the Committee of Privileges, the issue was decided on the floor of the House."

It happened not once. It had been done a number of times and particularly when the matter had happened on the floor of the House itself. (Interruptions)

I cannot anticipate the decision of the House. It is the wisdom of the House to decide it... (Interruptions)

I am just recapitulating. After the question hour on 17th November 1987 at about 12.10 PM, hon. member Shri Dinesh Goswami raised the question of the Government of Nagaland having tried to set up some polling booths within the territorial jurisdiction of Assam. A number of Members made their observations. You were also pleased to make certain observations. There were repeated interruptions and a number of members went to the well of the House. Shri Raj Kumar Rai, Shri Ram Dhan

and Prof. K. K. Tewary made some observations. Let me clarify here that I am not commenting on who went to the well of the House or what their behaviour was and so on. The hon. Speaker in his wisdom—and rightly too—does not go by the strict technical interpretation of rules. Most of us violate the rules sometime or the other. Let me come back to the proceedings of 17th November. The members went on in this fashion for about half-an-hour and sensing that there was no order in the House you were pleased to adjourn the House.

The House again met under your instructions at 2.30 P.M. A number of members made their observations and they included Prof. K.K. Tewari and Shri Ram Dhan. Then you were pleased to give your ruling. Your ruling which was quoted by Shri Shiv Shanker also, is as follows:

"I have heard the two explanations both from Shri Ram Dhan and Prof. K.K. Tewary. I find that there were some misgivings... In view of all this, let us close this and let the matter rest there."

You were pleased to observe this, whether it be called a ruling or not. Even if it were to be considered a statement or an opinion or a direction, I take it only as a ruling. It has the same meaning. And it has to be respected and accepted.

After giving your ruling, you had given the floor to the Home Minister who was trying to explain the position with regard to the point raised by hon. member Shri Dinesh Goswami. While the Home Minister was on his legs, Shri Ram Dhan and Shri Raj Kumar Rai continued to stand and oppose your ruling for a long time and made a number of observations. You were also pleased to make some observations to restore order in the House.

Sir, I will not take your time quoting all the observations. But I would certainly like to quote some of your observations to show the situation which we were in on that day and I want this hon. House to understand it. Sir, you had exercised utmost restraint, utmost persuasion, utmost patience and acted in utmost wisdom.

I would like to use the word 'cajoling' even if it were unparliamentary. You had used your cajoling powers to the utmost to make the members see reason. The following are some of the extracts from the proceedings as to what Shri Ram Dhan and Shri Raj Kumar Rai said and what the Chair was pleased to observe:

[Translation]

SHRI RAM DHAN: Mr. Speaker, Sir, you have changed your ruling". It was a clear reflection on the chair. (Interruptions)

You just listen please.

"SHRI RAM DHAN: Mr. Speaker, what is this happening? If nothing is being done by you then we will not allow the House to run in this manner".

I am pointing out that to what extent you went.

"MR. SPEAKER: All right, if you do not want, I will adjourn it. I have no problem in it".

(Interruptions)

"MR. SPEAKER: If you do not want to run the House then what can I do?"

It is not so, that the situation was not to obstruct the proceedings of the House.

(Interruptions)

[English]

SHRI S. JAI PAL REDDY (Mahbubnagar): He is threatening Sir.

PROF. MADHU DANDAVATE: Was it written there that he said it loudly and angrily?

SHRI H.K.L. BHAGAT: Madhuji, you not only coordinate the Opposition but you also listen to us. We learn from you. Sometimes, I say off the record that you coordinate all of us. Then why do you act in this manner sometimes.

[Translation]

SHRI RAJ KUMAR RAI: You yourself have seen, you yourself have said. Then what more can be said."

SHRI RAJ KUMAR RAI: What is the point in it? (Interruptions)

SHRI H.K.L. BHAGAT: The point is that even after having repeatedly asked you remained standing and obstructed the proceedings. (Interruptions).

MR. SPEAKER: You please sit down, don't argue.

SHRI H. K. L. BHAGAT: Shri Raj Kumar Rai says that you have yourself seen and have yourself said. What more can be said? I say that this House has seen and listened everything and finally has the authority under law to decide, then why this House should not decide it. (Interruptions)

Just listen, you should now bear with me. I have listened to you and all of you.

[English]

"MR. SPEAKER: I agree with you, Professor Sahib."

This is with reference to Prof Dandavate.

"I fully endorse what you have said. I do not retrace my steps, and I do not hide anything behind anybody's face. I do not have anything to gain if I am partial. I cannot be."

This means the Speaker is reiterating his observation or ruling. Now, what Mr. Ram Dhan says:

[Translation]

"SHRI RAM DHAN: Mr. Speaker, I have no doubt in it. If you had done justice properly, I would have neither raised any objection nor said anything else."

(Interruptions)

[English]

SHRI H.K.L. BHAGAT: In other words, Prof. Sahib don't think you are repository of all reasons. (Interruptions)

SHRI H.K.L. BHAGAT: Again this reflection was cast on the Chair.

[*Translation*]

He says, if you had done justice properly, I would have neither raised any objection nor said anything else.

[*English*]

That means he is charging you being unjust. Is it not a reflection? What else is it? Then, Sir, Shri Ram Dhan.

[*Translation*]

"SHRI RAM DHAN: Now it is being done in this manner. I accept your earlier ruling".

[*English*]

In other words, after the Speaker has closed the matter in his wisdom, he is challenging it again and again and pressing the Speaker, criticising the Speaker, reflecting the Speaker again to revise his observation.

(*Interruptions*)

[*Translation*]

SHRI H.K.L. BHAGAT: After this the hon. Speaker, says.

"MR. SPEAKER: Ram Dhanji, you are a gentleman and you seemed to be a perfect gentleman. You used to say that I am a very good man. Now you may sit down".

[*English*]

How he reacts to you? This should be known.

(*Interruptions*)

SHRI H.K.L. BHAGAT: I won't stop until I finish. You have brought a Motion against me. You must hear me.

[*Translation*]

To this what Ram Dhanji says:

"SHRI RAM DHAN: I am not able to hear what you are saying. I would like to request you not to set up such a pre-

cedent, if any Member is attacked in the House..."

I am quoting faithfully.

[*English*]

"MR. SPEAKER: I have not allowed anything."

[*Translation*]

The Hon. Speaker did not allow anything. Even then they remained standing and went on speaking without his permission. Then what the Hon. Speaker said, I quote:

"MR. SPEAKER: Ram Dhanji at least some interest of this House and the country should be kept in mind. Whatever I have said. I have said it after keeping this all in mind. I have not said any improper thing. It is neither against anybody nor insults anybody. I want to respect each and everyone unhesitatingly. your honour is my honour and the honour of this House is the honour of all of us, therefore, when you accepted it earlier why don't you accept it now. Now don't pursue it any more and sit down."

After this they neither sit nor accept it and remain standing and what they say:

"SHRI RAM DHAN: In this way the case is being disposed of." What more serious reflection can be on the Chair than this."

[*English*]

Ram Dhanji, with respect to him, has caused aspersions on the Chair not once but half a dozen times.

[*Translation*]

After this the Hon. Speaker says:

"MR. SPEAKER: I have no option but to adjourn the House. I cannot do anything else."

(*Interruptions*)

"MR. SPEAKER: I have seen it, had there been such a word, I would have

asked him to apologise and got it expunged but if he says that he did not say so, there must be some misgivings. Now what can be done in this matter.

SHRI RAJ KUMAR RAIS: A coward has no courage.

English

Mr. Raj Kumar Rai also continue. Despite the Hon. Speaker's advice he goes on speaking. You are continuing.

Sir, this something Mr. Ram Dhan is teaching you :

Translation

What Ram Dhanji says? "Above your seat 'Dharamchakra Pravartnaya' is written. This should not happen. Whatever injustice is meted out to us outside the House the same is meted out to us within the House also."

English

He is again repeatedly disobeying you.

One question is raised now, namely, why these two Members were given this whip. The whips are generally issued to the whole party. (*Interruptions*) I can see that. Number one: I wish to say this with respect. As a number of my hon. colleagues have said, forget for a moment the new law relating to defection. There, the parties have been given statutory recognition; but by present, by our various rules, the parties have been recognised, and the functioning of the parties in the House is the essence of parliamentary democracy. That is how, Sir, you distribute time to them, that is how they do so many things. That is how you ask for their names, and that is how the parties are guided in Ayes and Noes, to vote this way or that way.

The institution of Whips is a functioning institution in the House for a long time.

Sir, with respect, I want to say this. I would like to ask: Do the hon. Members think that the leaders and the Chief Whips should not interfere at all in any manner, if a Member behaves in any manner, or, if any Member speaks in any manner? Is that your meaning? That would be a sad day for the Indian democracy—let me tell you. (*Interruptions*)

Mr. Basudeb Ji, let me tell you that when I went on the Jan Vani programme, one of the questions put to me by one of the questioners was :

[*Translation*]

"What happens in the Houses, how the Members behave and what do you do to check it?"

I said—"all this happens in a democracy."

Now just see, read and listen attentively. (*Interruptions*)

Many newspapers and journals have been reporting from time to time and criticising what sometimes happens in the House. They are of the opinion that it is in violation of the Rules and it is for the Leader of House to see into it. I do not say that only you people do this but sometimes the hon. Members belonging to my party also indulge in such things. They also stand up and remain standing while the Hon. Speaker is on his legs. This is often done by your side and sometimes by our side and that too I do not support.

SHRI MADHU DANDAVATE: Have you heard. What the Press has published about Fairfax?

SHRI H. K. L. BHAGAT: I have also seen that but now don't raise those points.

[*English*]

Sir, I am saying this. Irrespective of that, I have a right to say, and I am going to say this. (*Interruptions*)

[*Translation*]

You leave aside that point. You said this twice or thrice either yesterday or day before yesterday :

[English]

'Mr. Minister of Parliamentary Affairs, what is happening?' Am I not supposed to respond to you, and ask my Members to sit down? Am I not to ask them: 'Please sit down; please don't do that.' If I can do it orally, I can surely do it in writing. (Interruptions) Now please sit down. No, no. Do not interrupt.

SHRI RAJ KUMAR RAI: Sir, I am on a point of order.

MR. SPEAKER: What is your point of order? Mr. Bhagat Ji, one minute.

[Translation]

SHRI RAJ KUMAR RAI: My Point or Order is that you gave a ruling on the day when the No-Confidence Motion against the Government was under consideration. On that all the senior Ministers and even the Prime Minister have been arguing against your ruling for half an-hour to one hour.

[English]

MR. SPEAKER: That is not a point of order.

[Translation]

SHRI RAJ KUMAR RAI: Was not that disobedience at that time, when all the hon. Members were asking for changing and reviewing it. What was the Minister of Parliamentary Affairs doing at that time. We would like to have your ruling on this because there can no other occasion greater than this one when the Council of Ministers and the Hon. Prime Minister himself went on arguing for one to one hour and a half. (Interruptions)

MR. SPEAKER: Have you finished, now sit down.

(Interruption)

[English]

(Interruptions)

PROF. MADHU DANDAVATE: Three-fourth of the Cabinet Ministers were on a point of order. (Interruptions)

SHRI H. K. L. BHAGAT: The hon. members know that there is no comparison. Will you tell me did any member of the party say we will not let the House function? Did any one challenge, criticise.... (Interruptions)

SHRI RAJ KUMAR RAI: Everybody did not allow the Speaker to function on that day. You asked the Speaker to adjourn the House.... (Interruptions)

MR. SPEAKER: They spoke with my permission; they sought my permission and allowed everybody to make his submission. That is all.

(Interruptions)

SHRI S. JAIPAL REDDY: They were allowed; you allowed them to make submissions on your ruling. (Interruptions)

MR. SPEAKER: I was listening to their point.....

(Interruptions)

PROF. MADHU DANDAVATE: When I rose, three-fourth of the Cabinet Ministers were on a point of order.

(Interruptions)

SHRI INDRAJIT GUPTA: But the fact remains that half of the Cabinet Ministers were opposing your ruling.

(Interruptions)

MR. SPEAKER: They were pointing out certain things....

(Interruptions)

SHRI INDRAJIT GUPTA: I had remarked, Mr. Bhagat, where is your whip now. You were sitting there quietly. (Interruptions)

MR. SPEAKER: No, no; don't twist it.

(Interruptions)

SHRI INDRAJIT GUPTA: You want double standard to be observed.

SHRI SHIVRAJ V. PATIL: I had said that other Ministers had said that

before you give ruling, we would like to make a submission. (*Interruptions*)

SHRI BASUDEB ACHARIA (Bankura): He gave the ruling and you challenged it. (*Interruptions*)

PROF. MADHU DANDAVATE: I can show you the record. He has given the ruling. (*Interruptions*)

SHRI BASUDEB ACHARIA: He gave the ruling and you wanted to revise the ruling. You go through the record. (*Interruptions*)

MR. SPEAKER: Please sit down. I have my own opinions. I go by my own opinions. I do not follow anybody's opinions.

(*Interruptions*)

SHRI H. K. L. BHAGAT: One point is that the whip is issued to the entire party and why to an individual member. I want to answer this. Only these two suspended members from the Congress (I) Party were violating the Rules of Procedure and clearly disobeying the Chair, defying the Chair's ruling by speaking without your permission, by criticising your ruling, by not obeying your ruling and casting aspersions on the Chair as also obstructing the proceedings of the House for a long time and thus it is they who have committed contempt of the House. Should I at that time issue a whip to all my members for the fault of Shri Raj Kumar Rai? (*Interruptions*)

[*Translation*]

SHRI RAJ KUMAR RAI: If you do this thing....

MR. SPEAKER: Again you have started speaking.

SHRI RAJ KUMAR RAI: When we say, it is termed as disobedience and when they say then...

MR. SPEAKER: Now you sit down.

(*Interruptions*)

MR. SPEAKER: Will you sit down or not? Sit down.

[*English*]

SHRI H. K. L. BHAGAT: I have no intention, nor has my party any intention nor do we believe in this standing on technicality, nor did I ask any member to bring a privilege motion against them, which could be brought. But I do not do it; I will not do it. A point which I think some of the opposition members made was this. It is not correct to say that they were seeking mere clarification about your ruling; they were clearly disobeying it and criticising it. Rule 352 (viii) of the Rules of Procedure and Conduct of Business in the Lok Sabha clearly states that "a member while speaking shall not use his right of speech for the purpose of obstructing the business of the House", which was done. To quote Kaul & Shakhder (p. 96): "A member who protests against the ruling of the Speaker commits contempt of the House and the Speaker."

PROF. MADHU DANDAVATE: You also see page 97. (*Interruptions*)

[*Translation*]

MR. SPEAKER: Mr. Acharia, it has become your habit to interrupt and it is a very bad thing.

[*English*]

SHRI H. K. L. BHAGAT: It is at this stage, when, in spite of your repeated appeals, the situation had reached a point where the two Hon'ble Members, namely Shri Ram Dhan and Shri Raj Kumari Rai, along with other members belonging to the opposition, were persistently defying the Chair, obstructing the proceedings and thus committing contempt of the House, that I sent a written whip to the two Hon'ble Members of the Congress (I) Party to accept the Ruling of the Chair. I also said that on the floor of the House. Finally, you were pleased to adjourn the House at 3.41 P.M. after making the following observations:

"I do not find the situation such as will allow us to work....."

SHRI H. K. L. BHAGAT: Who has created this situation?

SHRI ARIF MOHAMMAD KHAN (Bahraich): You!

SHRI H. K. L. BHAGAT: No! You! Not we.

"I find nothing except that I can name the Members, which I do not want to do. I want to work. I want this House to run.

[Translation]

You compel us and do not want to allow us to work.

[English]

I adjourn the House till tomorrow 11.00 AM."

Now, Sir, these are the circumstances under which and as I said in the beginning I was not promoted by anybody to issue this whip. That is one. My honourable colleagues and friends may be more knowledgeable about law and procedure. Yet, I want to tell them that they are very senior, perhaps they have been in the Parliament, some of them, longer than me. I came to Parliament in 1971. I am in public life from my childhood. I am as much educated as most of you are. I have not gone to London. (*Interruption*) But I have been in the public forum at Delhi, though I have learnt my lessons more from the laboratories of life. But I know law, I know the rules.

Now, Sir, I had, in the preceding paragraph, tried to explain the circumstances leading to the issuance of the whip. I fully believe in the freedom of speech of Hon. Members in accordance with the provisions of Article 105 of the Constitution. The language of the whip is very clear. The whip was issued only to ask them to desist from further questioning the Ruling of the Chair so that decorum of the House could be maintained. That was the only reason for issuance of the whip. There was no question of any other motivation. In my oral observations also I emphasised the same

thing. Now some friends said (*Interruptions*) Mr. Dandavate is very sharp. I must say, too sharp—rather very sharp. Now, he says that I chose the words knowingly. (*Interruptions*) Please wait. I have used the words knowingly. I want to reiterate. What can be the consequences? I did not say that you should be taken under anti-defection law, knowingly. What are the consequences? The consequences are, you could name the Member. As the Speaker, you could ask him to go out of the House. If he had refused, I would have to move a motion against, even against my member—if necessary I do it—asking them to leave the House or make a motion for suspension. Now, if I tell my members this, "You should not disobey the Chair, and obey by instructions" if asking a member to obey the Chair, a member who is persistently defying the Chair, challenging him again and again repeatedly, if that is a sin, I am a sinner.

SHRI S. JAIPAL REDDY: You are an unrepentant sinner.

SHRI H. K. L. BHAGAT: Now, Sir, in this context I would like to submit that it is the privilege and responsibility of the Chair to maintain decorum, dignity and discipline of the House. They have tried to rub this point. Shri Dinesh Goswami, Indrajitji and others, it is the responsibility of the Chair, as if I am infringing on your rights and privileges. No. In fact, asking my members to obey your ruling, I am assisting you. I am strengthening the decency and decorum of the House. It is my responsibility. If I do not do it, unfortunately I must admit neither they nor we do it to the extent and on occasions we do not do it, that is why the functioning of Parliament is getting a bad name also.

SHRI MANVENDRA SINGH (Mathura): I am on a point of order.

SHRI H. K. L. BHAGAT: It is also the duty of the hon. Members of the House. (*Interruptions*)

Are you allowing the point order?

MR. SPEAKER: What is the point of order?

[Translation]

SHRI MANVENDRA SINGH: Mr. Speaker, Sir, has the hon. Minister ascertained and will he tell the House as to on what point the heated discussion and objection were raised in the Parliament?

[English]

What action has been taken against Prof. K. K. Tewary?

MR. SPEAKER: There is no point of order. Not allowed.

SHRI H. K. L. BHAGAT: Now, Sir, Shri Arif Mohd. Khan is a very good friend of mine. He is also too, too, sharp. I am not using the word 'clever', deliberately. He has asked "Why this foundness for committees, Bofors Committee, why this foundness for House?"

I want to remind him. Firstly it was the Opposition who demanded a Committee on Bofors. Secondly, there is no parallel and I want to tell you, how much do you respect the freedom of the speech we have.

PROF. MADHU DANDAVATE: Why not come to the Privilege?

(Interruptions)

SHRI H. K. L. BHAGAT: We know the hon. Members are suspended members of our party. We all know what they say. When you are sitting on this bench, you had your say. You spoke against the Muslim Women Bill. You remember, you have voted for it. Why you voted for it? You must search your conscience... (Interruptions) Why you voted for it? Whether you are a votary of muslims or anything else, you must think within yourself. I only put this question to your conscience. I am putting this question to your conscience and the hon. Members who are sitting there. Now you are out of our party and I am nothing to do with you. The other Members who are yet suspended Members of our party, I know what they say here, what they talk here, what they do here and

why. It is all right. As long as the legal constitutional courses are there, I am not bothering also.

PROF. MADHU DANDAVATE: Many of your Members criticise your action outside.

SHRI H. K. L. BHAGAT: Just one minute. In this context, I would like to submit that it is the privilege and responsibility of the Chair to maintain decorum, dignity and discipline in the House. It is also the duty of the hon. Members of the House to act according to the Rules and Directions and assist the Chair in that respect. It has been and it is also—I reiterate that it has been and it is also the duty and responsibility of the leaders|whips of various parties|groups in the House to help the Chair by restraining their members in a given situation to ensure smooth running of the proceedings of the House.

Now the question of maintenance—now it is not my view—the question of maintenance of decorum and dignity of the House has been discussed in various All-India Whips' Conference and many recommendations were adopted. These conferences do not belong to my party and all your whips are there. (Interruptions)

[Translation]

SHRI RAM DHAN: It has not yet been included in the rule.

[English]

SHRI H. K. L. BHAGAT: In January 1986, I am quoting:

"The conference considered the different aspects of the problem of maintaining decorum and discipline in the Legislatures and recommends that in the interest of maintaining the prestige of our representative institutions at a very high level, legislators and Members of Parliament should always endeavour to promote an atmosphere of decorum and discipline which adds to the sobriety and dignity of the deliberations of the representative institutions".

[Shri H. K. L. Bhagat]

See further. Then they say in October, 1967:

"Those Members who indulge persistently and deliberately in disobeying the Chair and create disorder by scenes should be discouraged".

How do I discourage? This is the recommendations of all of you and your party.

Now, Sir at the 7th All-India Whips' Conference held in Madras in September, 1969, they say:

"Those members who indulge persistently and deliberately in disobeying the Chair and create disorderly scenes, should be discouraged".

"Members should also raise matters in the House only with the permission of the Presiding Officer".

"The ruling of the Chair must be respected and not challenged on the floor of the House".

These all are your and my recommendation.

Now, the responsibility of the whips is, therefore, not only to ensure the attendance of the members and to ask them for voting and supporting the stand of the party, but also to assist the Chair in maintaining the decorum and dignity of the House by members of the concerned parties. The whips are a functioning institution in the House. It is they who send the names of speakers on various issues to the Chair for participation in the debates. To this extent others cannot complain that their right to freedom of speech is violated under Article 105 of the Constitution if their names are not furnished in the list and debarred from speaking. This procedural approach is necessary for the smooth functioning of the House. It is the whips who indicate to the party members to vote in a particular way. It is they who approach the party members to cooperate with the Chair and ask them not to commit any

breach of privilege. On many occasions, the Chair has drawn attention of the Chief Whip (Minister of Parliamentary Affairs) or his colleagues to the situation in the House and asking them for restraining the members. "In fact, there have been instances when the role of the Chief Whip|Leader of the House has been criticised on party forum for their failure to act promptly and firmly to meet the situation" (page 617—*Law of Parliamentary Privileges in India* by Shri V. G. Ramachandran).

Now Sir, I am quoting: According to Chambers Dictionary, my friend has already quoted—I am quoting two lines. A whip is one who enforces the attendance and discipline of a party". Now Sir, as to whether a whip can be issued in the House, I am of the opinion that there is nothing that could prevent the Chief Whip|Whips from issuing a whip to his party members in the House. It is borne out by the practice that when divisions take place in the House, or when some issues are unexpectedly raised on the floor of the House, the Chief Whip|Whip clearly indicates to his party members the line of action and it is within his competence to take a decision and direct the members of his party accordingly. If it is contended that the whip cannot be issued in the House, it will be difficult to meet such situations which occur quite often. In fact, party members seek such directions from the Chief Whip.

I quote an example. When the Constitution (48th Amendment) Bill was under consideration on August 7, 1975 in the Lok Sabha, the hon. Speaker himself was pleased to observe during the course of the debate in the House as follows:

I hope, I am not wrong. Perhaps, hon. Shri Dhillon was the Speaker of the House then. And Mr. Raghuramiah had gone to the seat of a Congress Member to ask him not to move his amendment. The member did not move the amendment. And the issue was raised by them that the freedom of speech was being curbed. Then the Speaker said:

"—The whip has right to issue instructions to his partymen."

This incident was inside the House.

"...As far as the Whips are concerned, they inform them about their decision. Both sides do it. This is the Whip's work..."

These observations relate to an incident which happened in the House. It is not correct to say that the whips can issue instructions only to entire party members and not to any individual members. In the case of erring members who are committing breach of privilege, decorum and discipline of the House by persistently questioning the ruling of the Speaker and so on... (Interruptions)

[Translation]

SHRI NARAYAN CHOUBEY (Madras): Mr. Speaker, Sir, please save us

MR. SPEAKER: Now even God cannot save you

SHRI H. K. L. BHAGAT: I shall leave it if you stand up and admit that there has been no breach of privilege. (Interruptions)

[English]

That day you yourself had allowed both Ram Dhanji and Tiwariji to make some submissions. And with that they were satisfied. There was no question on that day of any action against Shri Tewari or anybody else.

Dignity of the Chair is the dignity of the House and dignity of the nation. It should be maintained. I tried to assist in the same. If this concept of responsibility of the party leaders and whips to assist the Chair in maintaining decorum, dignity and discipline is not accepted, with respect I submit, it can have disastrous consequences for the smooth functioning of democracy in the country.

I would reiterate with all humility that I fully believe in the freedom of speech

of members as enshrined in Article 105 of the Constitution and in the instant facts of the case there was no question of intimidating them or obstructing them in discharge of their duties as Member of Parliament. There was no other motive in me except that I asked them not to proceed further in defiance of the Chair in pursuit of maintaining the decorum and discipline in the House. I bear no ill-will whatsoever towards the hon. Members. My intention was only to maintain high standards of discipline, decorum and dignity of the august House... (Interruptions)

SHRI VIDYA CHARAN SHUKLA (Mahasamund): Shri Bhagat has made a very good speech. He has made a very good case for reference of this matter to the Privileges Committee... (Interruptions)

MR. SPEAKER: I invite the attention of the House to Rule 226. It says:

"If leave under rule 225 is granted, the House may consider the question and come to a decision or refer it to a Committee of Privileges on a motion either by the member who has raised the question of privilege or by any other member."

It is thus for the House now (a) to take a decision on the matter or (b) to refer the matter to the Privileges Committee. (a) or (b) can be done on a motion made by any member. I would like to know if any member will like to move a motion thereto.

SHRI S. JAIPAL RADDY: You move the motion and refer the matter to the Privileges Committee.

MR. SPEAKER: No, I cannot... (Interruptions) According to the rule, I have to put it before the House now... (Interruptions)

PROF. MADHU DANDAVATE: I have one submission to make... (Interruptions)

MR. SPEAKER: There is no provision for me to move the motion... (Interruptions)

PROF. MADHU DANDAVATE:
They are in majority.... (Interruptions)

MR. SPEAKER: There is no question of majority. The question of majority or minority is there and here also... (Interruptions) I have given you my consent. There is no option for me but to put it to the House. Either of the way you like.... (Interruptions)

MR. SPEAKER: If there is no motion I am going to the next business.... (Interruptions)

I have done my job and it is now your job.... (Interruptions)

MR. SPEAKER: I have done my job. I have put it to the House. I am not superior to the House. I have done my job. I think I have spent more than four hours on this subject because I thought it was important. Now it is for you to move it.... (Interruptions)

MR. SPEAKER: If you do not move it, then I am going to the next item.

PROF. MADHU DANDAVATE:
Sir, you are leaving the freedom of speech to the vagaries of the majority.

SHRI DINESH GOSWAMI (Guwahati): Sir, I am on a point of order... (Interruptions)

MR. SPEAKER: Look here. Freedom of speech will never be curbed in this House. That is for sure. No problem on that score as far as this question is concerned....

(Interruptions)

MR. SPEAKER: No, no. Nothing doing. It will not be done...

(Interruptions)

PROF. MADHU DANDAVATE:
Sir, freedom of speech and the privilege of the House is violated. We want the remedy to that.

MR. SPEAKER: Mr. Prof. you make a noise. Freedom of speech in accordance with the parliamentary procedures

and our rules will never be curbed in this House. That is for sure...

(Interruptions)

[Translation]

MR. SPEAKER: You go on speaking. If you want to have your way then move it.

[English]

MR. SPEAKER: I cannot do it. That is not for me now, that if for you now. I have put it to the House. If you want to move the motion, move it, otherwise don't bother me.

SHRI DINESH GOSWAMI: Sir, I am on a point of order.

MR. SPEAKER: No, there is no question of point of order now. What is your point of order?

SHRI DINESH GOSWAMI: Sir, my point of order is that you have quoted rule 226. But subsequent to rule 226, there is rule 227... (Interruptions).

MR. SPEAKER: That has nothing to do with this.

SHRI DINESH GOSWAMI: Rule 227 says: "Notwithstanding anything contained in these rules, the Speaker may refer any question of privilege to the Committee... (Interruptions).

MR. SPEAKER: That is why I have put it to the House.... (Interruptions)

MR. SPEAKER: No, no.

PROF. MADHU DANDAVATE:
Sir, you may not exercise that right, but the right is there. You may decide not to exercise it.

MR. SPEAKER: Why should I use it when I put it to the House? The House is there and I have done it.

PROF. MADHU DANDAVATE:
Sir, don't leave the freedom of speech to the vagaries of the majority. By brute majority they may suppress the freedom of speech in the House.

MR. SPEAKER: Look here The notice you have given says: "I, therefore, give notice under rule 223 to raise the question of privilege against Shri H. K. L.; Bhagat and seek Speaker's consent under rule 222 to raise the question of privilege." That I have allowed. Now it is up to you.

PROF. MADHU DANDAVATE: Sir, we have requested you to refer the matter to the Privileges Committee.

MR. SPEAKER: You can move a motion;

PROF. MADHU DANDAVATE: Yes, I am moving the motion that we request the Speaker that the matter be referred to the Privileges Committee. (Interruptions)

Sir, we request. It is an appeal to you. Sir, we have the right to make an appeal to you. You are the custodian of our freedom of speech.

MR. SPEAKER: That is what I have done....

(Interruptions)

PROF. MADHU DANDAVATE: Sir, you are the custodian of our freedom of speech... (Interruptions).

MR. SPEAKER: No question of threat to anybody or to any freedom of speech. Not at all... (Interruptions)

PROF. MADHU DANDAVATE: Sir, can the freedom be protected by throwing it to the vote of the brute majority?... (Interruptions).

MR. SPEAKER: If no body is moving the motion then I am going to the next item. Mr. Namgyal;

PROF. MADHU DANDAVATE: Sir, you have to defend the freedom of the House.

MR. SPEAKER: I have done it... (Interruptions)...

PROF. MADHU DANDAVATE: You are not prepared to refer it to the

Privileges Committee.... (Interruptions).

SHRI BASUDEB ACHARIA: Sir, why don't you refer it to the Privileges Committee?... (Interruptions)

MR. SPEAKER: How can I do it? Move a motion. Why are you shirking your responsibility now?

PROF. MADHU DANDAVATE: Because we have no faith in the brute majority of the House.

MR. SPEAKER: Look here. If you talk about majority, majority and minority is there in the Committee also.... (Interruptions)

PROF. MADHU DANDAVATE: Just as Fundamental Rights, the freedom of speech and the privilege of the House cannot be treated at par with other powers.

[Translation]

MR. SPEAKER: Mr. Prof., I respect you but at the same time I am not afraid of you.

[English]

PROF. MADHU DANDAVATE: Will you treat at par any of the resolutions in the Parliament and the demand for the freedom of speech? Are they to be treated on par? Just as the Supreme Court does not put the Fundamental Rights and other issues on par... (Interruptions).

MR. SPEAKER: I have assured this House time and again that there is no question of curbing of speech or freedom of expression in this House, and there cannot be any question on that score. This is only a question now about this thing. If you want to give a motion, give it... (Interruptions).

PROF. MADHU DANDAVATE: Can they take away our freedom by majority vote, Sir?

MR. SPEAKER: No question.

PROF. MADHU DANDAVATE: They cannot take away our freedom of speech in this House and our privilege by majority vote.

MR. SPEAKER: That is not allowed.

PROF. MADHU DANDAVATE: Sir, it cannot be tolerated.

SHRI ARIF MOHAMMAD KHAN: Sir, I am on a point of order.

MR. SPEAKER: Yes, what is your point of order?

SHRI ARIF MOHAMMAD KHAN: Sir, my point of order is that this is a very serious question... (Interruptions).

MR. SPEAKER: That is why I did it.

SHRI ARIF MOHAMMAD KHAN: Sir, just one minute. I won't take even one minute, Sir. Sir, this question is involving interpretation of the Constitutional provisions... (Interruptions).

MR. SPEAKER: I have done it.

SHRI ARIF MOHAMMAD KHAN: Sir, just a moment. Please let me complete. All those who have given the notice of privilege, have got information from Lok Sabha Secretariat only this morning. I think this matter is too serious.

Sir, this matter is most serious....

MR. SPEAKER: No point of order. (Interruptions)

SHRI DINESH GOSWAMI: Sir I have given a notice. (Interruptions)

MR. SPEAKER: Now, Matters under Rule 377—Mr. Namgyal; (Interruptions)

SHRI DINESH GOSWAMI: Mr. Speaker, I have given a notice that under Rule 227 the hon. Speaker may refer the question of privilege to the Privileges Committee.

(Interruptions)

PROF. MADHU DANDAVATE: Sir, we appeal to you. (Interruptions). That is not for the House, that is an appeal to you.

SHRI DINESH GOSWAMI: You can decide, Sir.

MR. SPEAKER: No, I can't. It is for the House now.

(Interruptions).

MR. SPEAKER: I have given my permission. What they asked me was to seek permission to raise it in the House and I have done it. Now, it is for the House to decide what to do about it.

SHRI DINESH GOSWAMI: Should it be put to the vote?

(Interruptions)

MR. SPEAKER: I have received a motion which says.... (Interruptions).

At this stage, Prof. Madhu Dandavate and some other hon. Members left the House.

MR. SPEAKER: Now, Matters under Rule 377, Mr. Namgyal.

15.02 hrs.

MATTERS UNDER RULE 377

[English]

Demand for reviewing priority allocation of seats in Indian Airlines Services operating in Ladakh Sector

SHRI P. NAMGYAL (Ladakh): Twenty seven priority seats of Indian Airlines already stand allocated to various State and Central Government organisations located in the Ladakh sector, such as Deputy Commissioner of Leh and Kargil, the ITBF, the ITBP, the BSF, the Special Bureau and the Army etc. Recently the Indian Airlines authorities have allocated another 40 seats to the Army thereby