SHRI RAJ BAHADUR: I am just giving them. The figures shown in the statement were of the rostered strength. It will thus be seen that the shifts were equi-strength in spite of the accepted fact that the workload varied greatly from shift to shift. To meet the variation in workload, it became essential to detain workmen from the previous shifts to subsequent shifts. The actual number of workmen working in various shifts thus had not much relevance left to the rostered strength. It is this practice that led to such a heavy overtime bill and other wasteful practices. It was precisely to remedy this situation that the management introduced new shift patterns with effect from 12th November, based on the actual requirements of the workload in each shift.

In fixing the new shift pattern, the management has made sure that the agreements with the unions are not infringed and that no individual workman is made to work more than the permissible limit.

The House will thus see that I have at no stage misled it. On the contrary, my original statement of the 14th November states the facts correctly.

MR. SPEAKER: Now, we pass on to the next item. Shri S. M. Banerjee has to move the resolution under item No. 10. Items Nos. 10 and 11 will be taken together.

श्री मधु लिमये (बांका): अध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है। मेरी एक व्यवस्था है। जो आप के सामने रखना चाहता हूं . . .

MR. SPEAKER: It is not yet moved. It will be taken up after lunch. Shri S. M. Banerjee may move it after lunch. After Shri S. M. Banerjee, the Finance Minister will speak and will reply to the point of order.

13.06 hrs.

The Lok Sabha adjourned for Lunch till Fourteen of the Clock.

The Lok Sabha reassembled after Lunch at four minutes past Fourteen of the Clock.

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

STATUTORY RESOLUTION *re* DISAPPROVAL OF CENTRAL EXCISES AND SALT (AMENDMENT) ORDINANCE, 1973

MR. DEPUTY-SPEAKER: Statutory Resolution relating to the Central Excises and Salt (Amendment) Ordinance, 1973 (Ordinance No. 3 of 1973). Shri S. M. Banerjee.

SHRI S. M. BANERJEE (Kanpur): May I take it that I can speak on both the Ordinance and the Bill because we are discussing both?

MR. DEPUTY-SPEAKER: Yes, you can.

SHRI S. M. BANERJEE: I beg to move the following Resolution:

"This House disapproves of the Central Excises and Salt (Amendment) Ordinance, 1973 (Ordinance No. 3 of 1973) promulgated by the President on the 2nd November 1973...

I would add with your permission—

"on the advice of the Council of Ministers".

श्री मधु लिमये (बांका): उपाध्यक्ष महोदय, मेरा प्वाइन्ट आफ आर्डर है। मैं इसलिए इन्तजार कर रहा था कि मैं चाहता था कि यह बाकायदा रेजोल्यूशन आपके सामने आये।

पहले जो मेरे दस मुद्दे हैं उन को मैं आपके सामने रखूंगा और उस के बाद एक डेढ़ मिनट भाषण करूंगा।

MR. DEPUTY-SPEAKER: Only on a point of order.

SHRI MADHU LIMAYE: Yes.

लिखकर दिया है कल ही।

MR. DEPUTY-SPEAKER: Kindly sit down. Now, you can raise a point of order relating to the order of business before the House. I have received notices of certain motions which were given—

श्री मधु लिमये : उस पर नहीं बोल रहा हूं, अभी प्वाइन्ट आफ आर्डर पर बोल रहा हूं ।

MR. DEPUTY-SPEAKER: Order, please. Ten points—you have just described, if I have understood you correctly.

SHRI MADHU LIMAYE: 10 points of the point of order.

MR. DEPUTY-SPEAKER: You can raise only one point of order.

SHRI MADHU LIMAYE: It is only one point. Ten steps.

MR. DEPUTY-SPEAKER: It should be only a point of order.

श्री मधु लिमये : मेरा व्यवस्था का प्रश्न इस बात को लेकर है कि मेरी राय में यह जो इन्होंने संकल्प रखा है उस पर बहस नहीं हो सकती है । क्यों नहीं हो सकती है, उस के मैं सिर्फ कारण दूंगा और उस पर आप निर्णय दीजिये।

(1) संविधान की दफा 245 और 246 के तहत पार्लियामेन्ट को कानून बनाने के अधिकार प्राप्त हुए हैं। दफा 246 इन अधिकारियों की व्याप्ति निश्चित करती है।

(2) दफा 123 विशिष्ट परिस्थितियों में राष्ट्रपति को अध्यादेश के रूप में कानून बनाने का अधिकार देती है ।

(3) कानून बनाने के दफा 123 तथा 245 और 246 के अधिकार साधारण अधिकार हैं और इन अधिकारों की मर्यादा दफा 108, दफा 109 और दफा 110 के तहत तय की गई ।

(4) दफा 107 में कानून बनाने की प्रक्रिया का विवरण है ।

(5) साधारण बिलों के बारे में राज्य सभा और लोक सभा के अधिकार समान हैं, चाहे विधेयक पास करने की बात हो या संशोधनों को मंजूर करने की । जब दोनों सदनों में मत भेद हो जाता है तो दफा 108 के तहत संयुक्त बैठक होती है और लोक-सभा के संख्या बल को अपना प्रभाव कायम करने का मौका मिलता है।

(6) लेकिन वित्तीय विधेयकों के, मनी बिल के बारे में, दफा 109 लोक-सभा की श्रेष्ठता स्थापित करती है ।

(7) दफा 110 में वित्तीय विधेयकों की, मनी बिल्स की व्याख्या की गई है ।

(8) लेकिन अध्यादेश के जरिये और दफा 123 का इस्तेमाल कर यदि करों में और ड्यूटी में वृद्धि की जायेगी, जोकि मनी बिल्स का विषय होता है, तो हमारे संविधान की एक मौलिक विशेषता यानी सीधे चुनाव से जो सभा बनती है उसकी श्रेष्ठता बरकरार रहे, खत्म हो जाती है और अध्यादेशों के मामले में हम राज्य सभा के स्तर पर आ जाते हैं और इस में दफा 109 का हनन होता है ।

(9) दफा 109 के कारण यह निष्कर्ष अनिवार्य है कि 123 दफा के तहत अध्यादेश जारी करने का अधिकार और वित्तीय कानूनों तक ही, नान-मनी बिल्स तक ही सीमित है। संविधान की विभिन्न धाराओं में मेल बिठाने के सिद्धान्त का भी यही नतीजा निकलता है और इस लिए

(10) आपको चाहिए कि अध्यादेश वाली बहस पर वे पाबन्दी लगायें और सरकार से कहें कि अध्यादेश के जरिये जो अवैध कर वृद्धि की गई है और उस से जो रिक्तता उत्पन्न हुई है उसको पूर्ति करने के लिए वह अपने विधेयक में आवश्यक परिवर्तन करें ।

MR. DEPUTY-SPEAKER: What is your contention? Your contention is that this Bill cannot be discussed?

SHRI MADHU LIMAYE: The resolution and the ordinance.

MR. DEPUTY-SPEAKER: That they cannot be discussed?

श्री मधु लिमये : जी, आप दफा 123 देखें । मैंने कोई इधर उधर का भाषण नहीं दिया है । मैंने केवल संवैधानिक स्थिति को ही रखा है । कानून मंत्री इस सदन के सदस्य हैं, वित्त मंत्री इस सदन के सदस्य हैं, आप भी इस सदन के सदस्य हैं, और मैं नहीं मानता कि लोक सभा की गरिमा की उन को चिन्ता नहीं है बल्कि उस को भी उतनी ही चिन्ता है जितनी मुझ को है । इसलिए मैंने केवल कांस्टीटयूशनल की बात ही रखी है ।

MR. DEPUTY-SPEAKER: I will allow you only on this ground—(*Interruptions*)—order please. I will allow you only on this ground. If your contention is that this is outside the legislative competence of this House, then of course it is a point to be discussed. There cannot be any other ground for me to disallow this discussion except on that ground.

श्री मधु लिमये : बिल नहीं, मैं रिजोल्यूशन की बात कह रहा हूं । रिजोल्यूशन इस में नहीं आता । मैं विधेयक के बारे में नहीं कह रहा रहा हूं । विधेयक के बारे में लेजिस्लेटिव कम्पीटेंस का सवाल आयेगा । इस वक्त केवल बनर्जी साहब का संकल्प है आप के सामने ।

अब आप आर्टिकल 123 देखें वह रिजोल्यूशन के बारे में है ।

"An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and"

इसका मतलब है कि निरनुमोदन था । संकल्प दोनों सदनों में पास होने के बाद ही आर्डिनेंस खत्म हो सकता है । अब रिजोल्यूशन के बारे में राज्य सभा और हमारे अधिकार बराबर हैं । कोई ज्यादा अधिकार नहीं है रिजोल्यूशन के बारे में । लेकिन मनी मैटर्स के बारे में हमारे श्रेष्ठता है । आप 109 देखिये . . .

MR. DEPUTY-SPEAKER: I have understood what you are driving at. You are making a long speech.

SHRI MADHU LIMAYE: I made no speech; I merely cited some articles.

MR. DEPUTY-SPEAKER: You were making this reference and that reference, I have not been able to follow, what is the purpose. What do you want to say?

श्री मधु लिमये : वही मैं समझाने की कोशिश कर रहा हूं ।

MR. DEPUTY-SPEAKER: If you say that this Resolution cannot be discussed—is that your point? . . . (*Interruptions*) I want to verify from him. You want to say that this Resolution cannot be taken up? You are separating it from the Bill.

SHRI S. M. BANERJEE: The Bill cannot be discussed. . . .

MR. DEPUTY-SPEAKER: Then, you give the ruling.

श्री मधु लिमये : रूलिंग देने से पहले मैं ऐसा क्यों कह रहा हूं उस की जरा सुन लें 10 धाराओं का इस में सम्बन्ध आता है तो समय लगेगा ही , मैं क्या करूं । यह कोई समय की बात है या महत्व की बात है । मुद्दे का महत्व क्या है यह देखना है । कितने आर्टि-

किल्स को उदधृत किया है । क्या मुझे पार्लियामेंट के कानून बनाने के अधिकारों की जो व्याप्ति है , राज्य सभा, लोक सभा और राष्ट्रपति के जो अधिकार हैं इन का वर्णन नहीं करना चाहिये? लोग वाइन्डेड क्या कर रहा हूं ? अगर वित्तीय मामलों में आर्डिनेंस आयेगा तो नतीजा यह होगा 123 धारा के तहत we will be reduced to the same position on the position of Rajya Sabha or position of equality with Rajya Sabha. जो कि नहीं है । 109 का जो सारा स्ट्रक्चर है और इसेंशियल फिचर संविधान का है उस के मुताबिक मनी मैटर्स में हमारी श्रेष्ठता है । इसलिए मेरा कहना है कि. राष्ट्रपति और चीजों के बारे मे आर्डिनेंस से कानून बना सकते हैं । लेकिन चूंकि आर्टिकिल 109 जो है, जो मनी मैटर्स में हमारी श्रेष्ठता को स्थापित करता है उस के अनुसार आर्डिनेंस के द्वारा टैक्सेशनों में वृद्धि नहीं हो सकती । इसलिए आर्डिनेंस गैर-कानूनी है । इस को डिसऐप्रूव करने का संकल्प गैर-कानूनी है और इस से जो रिक्तता उत्पन्न होगी उस के लिये मैं बिनती कर रहा हूं । सरकार इस विधेयक को वापस ले लें और जो वैकुआ हो गया है जिन से कर वसूला है उन को वापस देने वाले तो हैं नहीं आप ....

MR. DEPUTY-SPEAKER: I got your point at last. Kindly sit down.

श्री मधु लिमये : उपाध्यक्ष महोदय , मुझे स्थिति को स्पष्ट कर लेने दीजिए ।

MR. DEPUTY-SPEAKER: His main point is that this Ordinance relates to money matters. The Ordinance was promulgated by the President. The President is very much part of Parliament which includes both the Lok Sabha and the Rajya Sabha. It is an important point and I should like to be guided by the Law Minister. He has referred to article 109 wherein it is stated clearly that a Money Bill shall not be introduced in the Council of States.... (*Interruptions*) You can correct me if I have not understood you properly. The contention of Shri Madhu Limaye is that by promulgating this Ordinance relating to money matters, the Council of States too is involved in the very first stage. Being a Money Bill it should not have been involved.

श्री मधु लिमये : नहीं, नहीं, इनवौल्व का सवाल नहीं है । आप सवाल पूछते हैं और उत्तर नहीं देते ! हमारे ऊपर हंसते हैं बात ।

MR. DEPUTY-SPEAKER: I have not been able to understand, Mr. Limaye.

SHRI H. N. MUKERJEE (Calcutta-North-East): I stand in support of the point raised by Mr. Limaye, because the entire history of constitutional development sustains this view. Ever since the case of Proclamations in the 17th century, this idea has been very much there. Article 123 empowers the President to promulgate an Ordinance in order to legislate. No doubt about it. Legislation for the purpose of taxation, legislation which implies something to do with the Consolidated Fund of India requires special treatment and our Constitution when it thought of this matter gave to Lok Sabha a representative body of the people a special role in regard to Money Bills which meant legislation implying taxation. No taxation without representation being the basic principle, this principle was put in the Constitution in this manner. The idea therefore had been that for reasons of emergency or very essential urgency, the President might promulgate legislation but surely the President cannot promulgate legislation involving taxation of the people without getting the House of the People involved in the process...

MR. DEPUTY-SPEAKER: We are going into the much broader question What Prof. Mukerjee is raising now was raised on the very first day...(*Interruptions*) I was trying to reply to Mr. Mukerjee.

SHRI MADHU LIMAYE: He raised the very pertinent question of propriety; I raised a point of order. This is the difference.

MR. DEPUTY-SPEAKER: The Speaker opined at that time that it was undesirable to proclaim an Ordinance a few days before Parliament sits. He said that much. It is for the Government to take note of that. We are concerned with the specific, limited question whether we can proceed with the discussion on this Resolution. Mr. Limaye had made it clear that he separated the Bill from the Resolution. He says that this Resolution cannot be discussed. I have tried to follow what Mr. Madhu Limaye was saying. As far as I am able to understand him, he says that this also involves the Rajya Sabha in the very first stage and therefore it cannot be discussed. That is his contention; that is the meaning of article 109.

SHRI MADHU LIMAYE: My main contention is that this Ordinance reduces our House to a position of equality with Rajya Sabha; it destroys our supremacy. That is my point.

MR. DEPUTY-SPEAKER: It comes to the same thing, because as I said Rajya Sabha is involved. It comes to the same thing. You say, a special prerogative of this House has been eroded. This is the only valid point.

SHRI SHYAMNANDAN MISHRA (Begusarai): So far as I can see it, the hon. member Shri Limaye rightly makes a distinction between a Resolution and a Bill. There must be some rationale behind the intention of the Constitution that the Resolution should be placed before both Houses of Parliament. Resolutions and Bills are two different entities. The Constitution also says that the Money Bill would also go to the other House after it is passed here. So far as the question of the priority is concerned, whether it should be placed first before this House and then before the other House it is a different matter. But the Constitution does not prevent a Bill being placed before both the Houses nor does the Constitution prevent a Resolution being placed before both the Houses. There must be some rationale behind the provision in the Constitution that the Resolution has to be placed before both the Houses, without indicating the priority whether it is to be placed first before the Lok Sabha and then before the Rajya Sabha. I think the rationale is something like this. Even in article 123 there are two parts. One is that "the President is satisfied that circumstances exist". So far as the question whether the President was justified in thinking that circumstances existed is concerned, I think both Houses have similar right. The Resolution only seeks to establish that circumstances did exist for the President to take immediate action. Therefore, there is no question of priority with regard to the Resolution.

SHRI S. M. BANERJEE: The question is whether this ordinance was justified.

MR. DEPUTY-SPEAKER: Whether it is justified or not, the House will decide.

SHRI S. M. BANERJEE: Since they are going to extract money in the shape of taxation, the President should not have promulgated this ordinance.

MR. DEPUTY-SPEAKER: The question now is limited to the point whether we can proceed with this or not.

SHRI S. M. BANERJEE: The ordinance was wrong.

MR. DEPUTY-SPEAKER: The House will decide that.

श्री अटल बिहारी वाजपेयी (ग्वालियर): उपाध्यक्ष महोदय , मुझे लगता है कि श्री मधु लिमये ने एक महत्वपूर्ण मुद्दा उठाया है । हम आर्डिनेंस जारी करने पर विचार नहीं कर रहे हैं। इस आर्डिनेंस के द्वारा टेक्स लगाये गये हैं । यह आपत्तिजनक है, लेकिन इस समय हम उस पर भी आपत्ति नहीं कर रहे हैं । मुद्दा सिर्फ इतना है कि जब आर्डिनेंस द्वारा टैक्स लगाये जाते हैं और उस आर्डिनेंस को पुष्टि के लिए, या निरनुमोदन के लिए, दोनों सदनों के सामने एक

साथ रखा जाता है, तो दोनों सदनों के बीच में एक समानता स्थापित हो जाती है । जो संविधान के अन्तर्गत मनी बिल्ज के संबंध में नहीं होनी चाहिये । मैं चाहूंगा कि इस संबंध में विधि मंत्री सदन के सामने अपने विचार प्रकट करें, और अगर आवश्वक्ता हो, तो एटार्नी-जनेरल की भी राय ली जा सकती है । आज तक इस प्रश्न पर चर्चा नहीं हुई है । मेरा निवेदन है कि आप जल्दवाजी में कोई निर्णय न दें ।

MR. DEPUTY-SPEAKER: I do not know whether the Finance Minister or the Law Minister has anything to say on this.

श्री मधु लिमये : उपाध्यक्ष महोदय, आप ऐसे रिमार्क कर के प्रैजुडिस करते हैं । इस सदन के अधिकारों का सवाल है । अगर आप उन की रक्षा नहीं करेंगे तो कौन करेगा ?

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Sir, I have tried to understand the points raised in the course of the discussion. My hon. friend, Shri Madhu Limaye, was good enough to give me in advance a copy of the points which he was going to raise. That gave me some time to consider those points more carefully.

Taking all the objections which were raised by several hon. Members, the question revolves itself into two or three different aspects. The first is the basic question which, as you have rightly pointed out, was raised also during the initial stage of introduction, namely, whether the President has got the power to impose tax by Ordinance—because excise duty is also in the nature of a tax—under article 123 of the Constitution. In other words, can there be taxation by Ordinance?

SHRI SHYAMNANDAN MISHRA: That is not the question.

श्री मधु लिमये : दैट इज प्रिसाइजली माई क्वेश्चन । यह माननीय सदस्य की अपनी राय हो सकती है । मैं ने पायंट आफ़ आर्डर उठाया है और मंत्री महोदय उस का उत्तर दे रहे हैं । माननीय सदस्य बीच में क्यों पड़ते हैं ? वह कह रहे हैं कि वह क्वेश्चन नहीं है । क्वेश्चन ही यहां है ।

SHRI H. R. GOKHALE: That is the question which the hon. Member, Shri Madhu Limaye, raised. But there were other questions raised by other hon. Members. But, since hon. Members themselves do not agree among themselves.....

श्री मधु लिमये : यह जरूरी थोड़े ही है और वह मुझ से एग्री करें । यह जरूरी नहीं है कि हम सब लोग पायंट आफ़ आडर पर एग्री करें ।

SHRI H. R. GOKHALE: That is why I am saying that I am going to deal with his point.

It is the accepted position that in the Constitution there are two modes of legislation; one mode provides for legislation when both the Houses are not in session and the other mode provides for legislation when both the Houses are in session. The mode of legislation by Ordinance by the President, when the Houses are not in session, is provided for by article 123 of the Constitution. So far as that power is concerned, as the article itself very clearly shows, it is the equivalent of or similar to the power of legislation by Parliament. On any subject on which the Parliament has the legislative power, the President has the legislative competence to promulgate an Ordinance. I need not argue this point any further. It is enough for me to read the plain language of the relevant portion of article 123, which will make it very clear that the Presidential power of legislation by Ordinance is co-extensive with the power of Parliament to legislate on any matter. Naturally, it must be a subject which is within the legislative competence of Parliament itself; for example, he cannot legislate by Ordinance with respect to a matter which is within the jurisdiction of the State Legislature. Therefore, if it is not disputed

[Shri H. R. Gokhale]

in fact, it is accepted by all—that the imposition of a levy of this type was within the legislative competence of Parliament by making an ordinary law, it was equally within the legislative competence of the President to do it by promulgation of an Ordinance. In fact, sub-clause (2) of article 123 says in terms:

> "An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament,"

Therefore, when an Ordinance is issued it is *per se* an Act of Parliament during the time the Houses are not in session. So, everything that is within the power of Parliament to legislate, it is within the power of President to legislate by Ordinance. Therefore, the stand that legislation by Ordinance is not permissible is not, in my respectful submission, a correct view to take.

Moreover, it has not been done only in this case. I can cite at least four or five instances from 1951 onwards when taxation by Ordinance has taken place. But there is a safeguard, and that is not only with respect to legislation relating to taxation but relating to all legislation by Ordinance.

There are two safeguards. The legislation by Ordinance does not endure for an indefinite time. There is a point of time, a time-limit, which is fixed in sub-article (2) of article 123 upto which an Ordinance can remain in force. Otherwise, it lapses. Either it is after six weeks' period as indicated in sub-article (2) of article 123 or the day on which the House disapproves the Ordinance that the Ordinance must lapses. The object of this is to see that the power to promulgate an Ordinance by legislation, whether in respect of tax or otherwise, is limited to a particular point of time before which either the Government must bring a proper legislation in the form of a Bill and see that the effect of the Ordinance remains in tact, or the Ordinance lapses. That is the only safeguard. That is why within the specified time, the Finance Minister has brought forward a proper Bill in respect of duties which are sought to be levied. I would respectfully submit that there are other articles to which a reference has been made which clearly show that the power of the President is co-extensive with the power of Parliament in respect of legislation by Ordinance. That is one aspect of the matter.

The other aspect of the matter, as I understand, is that in respect of the approval or disapproval of the Ordinance, apart from the Bill which is there for consideration, this House has no power to approve or disapprove the Ordinance. Take, for example, a regular legislation which is a Money Bill under articles 107 to 110, particularly article 109. Money Bill is defined in article 110. Supposing a regular Bill had been brought forward, it could not have gone to the Rajya Sabha first. It was imperative that it should be introduced in the Lok Sabha first. That is why, in fact, the Bill is being introduced in the Lok Sabha first. This is a Money Bill and when it is passed by the Lok Sabha, it will go through the same procedure as is contemplated in articles 109, 110, etc. But it does not apply in respect of Ordinance which is another mode of legislation.

If the quarrel is that the Constitution should be different, that is a different matter. I am saying that there are two modes of legislation provided here. One mode of legislation is by a proper Bill, by a proper form of legislation in Parliament, and article 109 will undoubtedly apply and the procedure under articles 107 to 110 would have been gone through. But article 123 deals with a special case where under certain circumstances, the President has been given power to legislate, and as the hon. Member rightly said, for the purpose of approval or disapproval, there must be some rationable behind it.

Here, two points have been mentioned in the article 123. Either you must do something to legislate properly by a Bill of the Ordinance lapses, or, before that, one of the Houses, the latter of the two, should have rejected the approval of the Ordinance, should have disapproved the Ordinance. The rationale is to give a

time-limit upto which an Ordinance can remain in force, beyond which it cannot remain in force.

My submission is this. I cannot quarrel with the Constitution here. I am only telling you what the constitutional provision is. I submit there is no difficulty in going ahead with the discussion.

MR. DEPUTY-SPEAKER: Now, I have to give my rulling....

श्री मधु लिमये : एक मुद्दे की सफाई नहीं हुई ।

MR. DEPUTY-SPEAKER: I really don't understand. You have made your submission and he has given a reply.

श्री मधु लिमये : आप रेल-रोड करना चाहते हैं तो करिए ।

MR. DEPUTY-SPEAKER: We are encroaching into the Private Members' Business time. It is 2.30 P.M. now.

श्री मधु लिमये : आप बोलते नहीं देते हैं । प्राइवेट मेम्बर का सवाल नहीं है । अभी आज जल्दी में मत कीजिए । मैं किसी का समय नहीं लेना चाहता हूं । आप सोमवार को लीजिए । अभी लेना चाहते हैं तो मुझे कुछ कहना है ।

MR. DEPUTY-SPEAKER: I have to give my ruling.

SHRI H. N. MUKHERJEE: When this kind of a subject comes on the anvil, the Chair also should exercise discretion. The heavens will not fall if the discussion is postponed. (*Interruptions*)

MR. DEPUTY-SPEAKER: Order, please. You kindly hear me. I am concerned at the moment only with this limited question, whether we can proceed with the discussion on the Resolution. That is the only point of order as far as I can see. As for other constitutional questions, whether the Ordinance has been right or wrong, whether the President has rightly or wrongly promulgated the Ordinance, that is for the House to decide. The question whether the prerogative of the House has been eroded by the promulgation of the Ordinance is for the House to decide. They are bigger issues. I am concerned with the limited question—whether we can proceed on with this or not. Now, as far as I can see, there is nothing to stop it.

श्री मधु लिमये : आप जरा सुनेंगे तब पता चलेगा ।

MR. DEPUTY-SPEAKER: I am prepared to hear you again, but, on this limited question—how can this discussion be stopped. Please do not go into all legal and constitutional arguments. If you could prove to me convincingly that it cannot be proceeded with, I am prepared to listen to you again. But please do not be long-winded.

SHRI MADHU LIMAYE: The legislative power conferred on the President under Art 123 is co-extensive with the legislative power of Parliament. I myself said that when I cited Art 245 and 246.

My point is that this power, as far as money matters are concerned, is limited by Art 109.

अभी मान लीजिए डिस अप्रूवल का प्रस्ताव हम ने पास किया

and if the other House does not agree

तो क्या स्थिति होगी ?

That is the point. If we reject the Bill, that is the end of the matter. For harmonious construction you must read Art 123 with Art. 109.

MR. DEPUTY-SPEAKER: I do not know why we get confused. If that is your point, it is for the House to deliberate on it.

SHRI MADHU LIMAYE: Then allow a full discussion.

MR. DEPUTY-SPEAKER: If a discussion on this very question....

श्री मधु लिमये : आप रेल रोड करना चाहत हैं तो करिए ।

SHRI H. N. MUKHERJEE: In the House of Commons, point of procedure..

MR. DEPUTY-SPEAKER: I will hear you.

What Mr. Madhu Limaye has submitted specifically is a question to be discussed by the House and the House must give an opinion on how it prevents a discussion and how can it stop even taking up this.

SHRI MADHU LIMAYE: Let us hear the Attorney-General. Please do not try to rail-road the Bill.

MR. DEPUTY-SPEAKER: I am concerned with the order. Even if you want the House to pronounce on this, the House must discuss it. Without discussion....

SHRI MADHU LIMAYE: Not on disapproval but on illegality.

SHRI H. N. MUKHERJEE: Not on the merits of the ordinance.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष जी, क्या यह मेंजारिटी से तय होगा कि यह इल्लीगल है या लीगल है ?

MR. DEPUTY-SPEAKER: You want me to give a ruling?

SHRI SHYAMNANDAN MISHRA: I want to seek a clarification from the hon. Minister. To my mind, he has confused the issue. By passing this resolution, we do not pass the ordinance by the President *in toto*. The ordinance is a legislation. We do not pass the ordinance *in toto* for, in order to pass the ordinance in totality, we go to the introduction of the Bill which would contain all the provisions of the ordinance. Therefore, the hon. Minister was not right in saying that, by seeking to discuss this, we are discussing a particular form of legislation. We are not discussing a particular form of legislation. We are only discussing whether circumstances did exist. It is that part of the matter that we are seeking to discuss through the resolution.

So far as the provision relating to the imposition of the tax is concerned, that would be discussed when the Bill is placed before the House.

MR. DEPUTY-SPEAKER: Do you want a separate discussion?

SHRI SHYAMNANDAN MISHRA: What I mean is that the hon. Minister wrongly said that by discussing the resolution, we are discussing a special form of legislation, that is, legislation by President. We are not doing that. We would be doing that when the Finance Bill comes and now we would be only discussing whether circumstances did exist for the President to take an immediate action. That is the rationale behind the resolution. He must not say that we are going to pass the legislation.

SHRI H. N. MUKHERJEE: You have been pleased to concede that certain fundamental questions, whatever view one may take of it, have been postulated. You also said that they deserve discussion. Perhaps you have implied that they could be discussed in the course of the discussion on the resolution and the Bill to follow. But my point is this. These matters should go to the root of the procedure of the House and the rights of the House which are even more important. They should be discussed threadbare and when the question of the Attorney-General's presence in this House being desirable or not has already been brought, I would like to submit, Sir, that this House should have an opportunity to discuss it at some reasonable length. Before this Bill can be discussed, before we can apply our mind to the merits and demerits of the proposition, I submit, first this constitutional hurdle has to be cleared. I would suggest that you give us some time for a discussion of that.

MR. DEPUTY-SPEAKER: Prof. Mukherjee has supported me that all these have got to be discussed. How it should be discussed, whether Attorney-General, should be called, all these have been mentioned. I think it is really open to the House. If you want to call the Attorney-General, you can come forward with a regular motion on this....

SHRI MADHU LIMAYE: Everything to be decided with the help of two-thirds majority!

MR. DEPUTY-SPEAKER: When you don't like anything you want to shout me down.

SHRI MADHU LIMAYE: I am not trying to shout you down, Sir.

जब सन्देह उत्पन्न होता है, तो सैटिस्फाई करने के लिये बुलाना चाहिये ।

SHRI ATAL BIHARI VAJPAYEE: They have the majority and we have the arguments.

MR. DEPUTY-SPEAKER: I am to decide on the point of order. There is no question of any majority. The point of order is my special, my exclusive jurisdiction. I am to decide whether there is a point of order or not. And I rule there is no point of order. We can go on with the discussion.

Now we take up Private Members' Business.

14.42 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

THIRTY-FOURTH REPORT

SHRI GIRIDHAR GOMANGO (Koraput): Sir, I beg to move the following:

"That this House do agree with the Thirty-fourth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 5th December, 1973."

MR. DEPUTY-SPEAKER: The question is:

"That this House do agree with the Thirty-fourth Report of the Committee on Private Members' Bill and Resolutions presented to the House on the 5th December, 1973."

The motion was adopted.

14.43 hrs.

RESOLUTION RE: COLLECTIVE SECURITY IN ASIA—*Contd.*

MR. DEPUTY-SPEAKER: We will now take up further discussion of the Resolution moved by Shri D. K. Panda on the 23rd November, 1973. He had begun his speech on the last occasion. He has taken one minute. He may continue his speech.

SHRI D. K. PANDA (Bhanjanagar): Mr. Deputy Speaker, Sir.....

MR. DEPUTY-SPEAKER: If you want to withdraw you can withdraw..

SHRI D. K. PANDA: I have already moved for adjournment of this and I want to briefly state the reasons for the same. The Resolution was tabled..

SHRI MADHU LIMAYE (Banka): Once you seek adjournment, you will have to get priority in the ballot. Please for God's sake, don't withdraw..

SHRI D. K. PANDA: This Resolution was moved on 23rd November and subsequently some developments have taken place. As a result of Mr. Brezhnev's visit, talks have taken place between our Prime Minister and Mr. Brezhnev. He addressed Members of both Houses of Parliament. In view of the series of agreements which have been already entered into between our Government and also the USSR Government, now I feel that most of the broad principles, for safeguarding the peace and security of the Asian region on the basis of mutual cooperation among nations against the forces of Imperialism and Neo-colonialism and also for consolidating their independence and attaining rapid economic development, have been embodied therein, and therefore, at this stage, I want that the debate may be adjourned. I move under Rule 340:

"That the debate on the Resolution be adjourned."

SHRI SHYAMNANDAN MISHRA (Begusarai): This is completely unconvincing.