

Dr. Katju: No, not at all, I am not starting on that campaign. If I have to start that campaign, it will be outside, not here.

I was only trying to refute the charge which has been kindly made against me that this Bill was not a progressive but reactionary measure, and therefore it was trying to strengthen the English language. That is not the object at all. The object is that there should be no manner of doubt that just as you have it in the Part A or B States, in the same way, you can have the bills in the Part C States also in their regional languages.

Shri Algu Rai Shastri: But in any case, not in Hindi.

Dr. Katju: My hon. friend Shri M. L. Dwivedi referred to very many points about the services, about the Judicial Commissioners, etc. But that does not require any legislative enactment or any modification of the Government of Part C States Act. If my hon. friend will do me the honour of discussing this matter with me privately, he will find that on most matters which were raised here, there, there has been a settlement with consent.

Take for instance, the question of the Judicial Commissioners. When I wrote to these States, would you like to go to some other State, they said, no, we would not. When I asked, would you like to go to Rajasthan, the answer was, will the Rajasthan High Court come to Ajmer, and the Rajasthan High Court would not go to Ajmer, and they said, we would not. Therefore, on all these administrative matters, actions have been taken, and the matter has been discussed many times.

So far as my hon. friend Shri U. M. Trivedi is concerned, in his negative attitude, he practically seemed to oppose everything. I really did not know what exactly he meant. He said, for all time to come, you are perpetuating their subservience. That is not true at all. The anxiety is that

so long as the Commission on re-organisation of States do not finally decide this matter, they should rise up, and as I have said many times, I should like these Part C States to be well-administered, they should manage their affairs in a proper manner and harmoniously, and that they should be like the Part A or B States.

I do not want to take up the time of the House any more.

Mr. Deputy-Speaker: The question is:

"That the Bill to amend the Government of Part C States Act, 1951, be taken into consideration."

The motion was adopted.

5 P.M.

Mr. Deputy-Speaker: This matter will stand over for further consideration regarding the clauses.

ISSUE OF ORDINANCES

Mr. Deputy-Speaker: We will now take up the special discussion notice of which has been given by Dr. Krishnaswami and Dr. Lanka Sundaram. There are other Members also who want to participate in the debate.

Dr. Krishnaswami (Kancheepuram): I am grateful to you for having given me the opportunity of inviting the attention of the House to the serious infringement of those rights and privileges that has taken place since Parliament dispersed.

[Mr. SPEAKER *in the Chair*]

Parliament went into recess on the 24th December, 1953 and re-assembled on the 15th February, 1954. During this brief interval, seven ordinances have been issued, that is, at the rate of one ordinance per week. No Parliamentarian who has the interest and the reputation of this House at heart can afford to view with equanimity these developments, and it behoves us, irrespective of the party to which we belong, to examine the

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implications of this dangerous development and to take proper steps to safeguard the threat to the working of a free institution.

I shall take up the Constitution first, because those who rely on the issue of ordinances lean heavily on the Constitution. Article 123, subsection (1) of the Constitution which is frequently quoted, reads as follows:

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

It is clear that there are three conditions that have to be satisfied. The Power of the President, or rather, the executive to promulgate an ordinance is controlled and conditioned by three factors. Firstly, the legislature must not be in session. Secondly, an emergency must have arisen after Parliament has dispersed: and thirdly, the emergency must be of such a grave and serious nature that the executive cannot afford to wait until Parliament is summoned, or even to summon Parliament. We all know, that the Government have got the right to summon Parliament if they think it necessary, and that can be easily done. But if it is not possible to wait until Parliament meets, then of course an ordinance might be issued.

I should like to take up some of the main ordinances that have been passed during the past seven weeks and examine the general implications of those ordinances, because they would throw light on the working of the executive and its relationship to Parliament. In so doing, I shall try, as far as possible, to adopt a detached view and give the benefit of the doubt where it is necessary.

Let me take up at the outset the amending Bill to the Press (Objectionable Matter) Act. Now, this is a very controversial measure. During the last session, it was pointed out by several hon. Members from different sections of this House that the Bill should be introduced and passed by Parliament and that an ordinance should not be promulgated in order to achieve the object. The reason requiring extension did not spring into existence after the House was prorogued, but was present for a longer period. Obviously, the ordinance-making power is not intended to be employed when the necessity was existing throughout when Parliament was in session. The appointment of the Press Commission did not take place on the eve of prorogation, though that is said to be one of the important reasons for the Press (Objectionable Matter) Act being extended! The Government could certainly have given priority to this measure and we could have had the measure passed without much difficulty and without sacrificing other legislative business. Let us remember, and let the House also recollect, that this is an extension Act and in the case of an extension Act, no amendments are allowed to be moved to discuss the provisions of the main Act. The House is entitled only to say either 'Aye' or 'Nay' to the extension, and therefore, not much time would have been sacrificed. Besides, the Business Advisory Committee was not taken into confidence by the Government spokesmen. Suddenly, without giving us any warning, the ordinance was issued on the 25th January or thereabouts. A calculated affront to the dignity and the privileges of this House has been inflicted by the Home Minister and the Government. I do not think that this omission to bring it up before the House was accidental. It was deliberate, and I can say it is most repugnant to all canons of constitutional propriety. Some people who justify these ordinances point out that they are valid. The argument is not

whether ordinances are valid. Of course, courts of law can pronounce on the validity of ordinances, but working as we do in a Parliamentary institution, the main argument that we have to bear in mind is how far the issue of these ordinances is constitutional and proper. This gains additional validity because, to quote article 123(1), it is an enquiry into the subjective satisfaction of the President, an enquiry into the fact whether there has been an emergency. If the courts are precluded from enquiring into the emergency, I ask, who else is given the authority to "enquire into the emergency"? I feel that this is a matter in which Parliament has the greatest responsibility and it cannot avoid it. It is the responsibility of Parliament to see that Governments keep within the limit of good behaviour or power, and the only person to whom we can turn for redress and who can be expected to discharge that function is you, Mr. Speaker, the custodian of the rights and privileges of the House. We have to visualize the grave consequences that would flow from an exercise of the ordinance-making power in this reckless fashion. If once permitted, the obvious implication is that an ordinance can be repeated at any time. The constitutional rights as to the emergency would be reduced to a fake and a farce. In spirit, we would have violated the Constitution and we would have reduced the Legislature to a nullity.)

In the case of the Press (Objectionable Matter) Amendment Bill, the impropriety of this Ordinance will be apparent from an entirely different angle. An ordinance, by its very constitution, is expected to deal with an emergency, something new, something fresh, that has arisen. It could be used to enact a new law, but surely, it cannot be used to extend an expiring law which is what the Press (Objectionable Matter) Act is, and which ought never to have been done by a Government which relies on democratic public opinion. Besides, the Statement of Objects and Reasons discloses no reason at all for the in-

troduction of this Press (Objectionable Matter) Amendment Bill. The argument for extension should be on a consideration of facts and circumstances that necessitate the introduction of the amending Bill.

The Minister of Finance (Shri C. D. Deshmukh): May I rise on a point of order? I wanted to ask whether discussion of this kind would not be more relevant when the Ordinance at issue is actually before the Legislature in the form of a Bill, because then the discussion could be more specific with reference to the contents of the Bill. Otherwise, we shall have to deal with five or six different potential Bills, so to speak. And I was under the impression from the other notice that this was with reference to a matter which it was not proposed to bring before the House in the form of a Bill, because of the fact that it would have expired before the stated period, that is to say, six weeks from the date of convening Parliament.

Dr. Lanka Sundaram (Visakha-patnam) rose—

Mr. Speaker: Order, order. Of course, it will be open to hon. Members to criticise the fact of the Government legislating by Ordinance when the Bill comes up. But I admitted the discussion on the ground, as I felt, that it raises an important constitutional issue about the power of Government to issue Ordinances. It will be recognised that that is not a democratic way of doing things, and it is only in exceptional circumstances that Government may issue Ordinances. They can, only if they must. On that point, of course, every Ordinance will rest on its own facts. That is a different thing. Therefore, I thought that a general discussion might be helpful; and this question, as I see it, has to be looked at not from a party point of view but from the general point of view of setting up traditions of Parliament. That was why I thought the question was important and I have allowed the discussion. I do not think I need say

[Mr. Speaker]

anything more at this stage. But the discussion is generally limited to the desirability or the propriety of the exercise of the power of Ordinances. That is the general question at issue, not this or that particular, individual, ordinance. It may be justified; it may not be justified. But I do not see how a reference to a particular ordinance can be avoided if the argument is to be supported by illustrations. That is how I look at the discussion. That is why I think it is relevant even at this stage.

Shri C. D. Deshmukh: What I intended to say was that if this discussion had come at the end of this session, then much of the ground which would be covered specifically, so to speak, that is to say on the merits of a Bill, would already have been covered in the House, and, therefore, that would leave the House with the duty of discussing the general principles, without, so to speak, having to devote time going into the merits of each particular case. Now, here the Government feel somewhat handicapped, because we shall have to go over the whole ground. A principle cannot be established, we feel, without reference to the merits of each individual case, and that is the line on which the hon. Member is developing his point. He is going to take the Ordinances one by one and going to prove, according to him, that this was not necessary or that was not covered by the wording of article 123. That is where I feel that we should have to have recourse to extended discussion with regard to the specific merits of an individual ordinance, which process we shall have to go through at a later stage.

Mr. Speaker: I do not think I need say anything more, but we shall go generally into the question.

Shri Algu Rai Shastri (Azamgarh Distt.—East cum Ballia Distt.—West): I have one misgiving.

दफा १२३ भाग १ में जिस तरह के शब्द हैं, उससे यह बात स्पष्ट है कि प्रेसीडेंट

को इस बात का सेंटिसफैक्शन होना चाहिये, संतोष होना चाहिये कि ऐसी स्थिति है जिस में आर्डिनेंस बनाये जाने चाहिएं। जब आर्डिनेंस बनाये जाने का यह अधिकार उस के सेंटिसफैक्शन पर छोड़ा गया है, तब जिस समय दोनों हाउसेज न मीट कर रहे हों, उस में आर्डिनेंस बनाने की जरूरत समझी गयी हो, वह आवश्यकता समझना या न समझना केवल प्रेसीडेंट के संतोष के ऊपर रखा गया है, तब उन आर्डिनेंसेज के बारे में जो कि उस बीच में बने हैं, इस प्रकार का आक्षेप करना और उस पर इस प्रकार का विवाद होना कहां तक उचित है, इस की शब्दावलि मेरे लिए स्पष्ट नहीं है। सर्वमस्टानसेज को जज करने का अधिकार हम ने प्रेसीडेंट को विधान में दिया है, तो हमारा फिर उस के ऊपर इतना आक्षेप और एतराज करना कहां तक उचित है, यह मेरी समझ में नहीं आया और उस पर में प्रकाश चाहता हूं।

Mr. Speaker: I do not think that I should be drawn into a discussion over the merits of this question. I would not like to be drawn, but I do feel.....

Shri N. C. Chatterjee: (Hooghly): The misgiving is due to a misreading of the Constitution.

Mr. Speaker: I do feel the propriety in raising this question for the simple reason that the President is a constitutional President who acts on the advice of Government. And therefore, it is apparent, unless I am mistaken—I am open to correction—that when it is said that the President is satisfied, it really means the Government are satisfied, and this House is entitled to criticise the Government on that issue.

Pandit Thakur Das Bhargava (Gurgaon): The necessity must be gone into. The question is whether it is necessary. Unless it is necessary, no ordinance can be issued.

Mr. Speaker: That is, again, a question of merits. Therefore, I said in the course of the few remarks which I made that this is really not a party question at all.

This is a question for the entire House to take into consideration, as to whether the executive government should be allowed to exercise the power of ordinance-making in the manner in which they have done according to the Member who is now urging it. It is a question for the entire House to take into consideration, and if they agree and say, "well, it is proper", it is proper. But if they think that it is not proper, they may say so; let them not be guided by party considerations or considerations of prestige. As I remarked, we are the first Parliament under the new Constitution and the greatest responsibility lies on us all concerned to set precedents or traditions, which will be really having a democratic foundation. It is not a question of challenging the powers under the Constitution. That is why I have allowed this question to be discussed.

Dr. Krishnaswami: I do not propose to go into the merits of these measures at all, Sir, but I shall concentrate only on the circumstances which have led to the issue of these ordinances. The argument for the extension of any Bill should be based on a consideration of facts and circumstances that necessitate the introduction of the amending Bill. The only reason that has been given to us—and here I am pointing out a very serious lacuna that has crept into the Statement of Objects and Reasons, because that would show how far even the Bill is out of order, and a Bill which is out of order is sought to be given life by an ordinance—the only reason vouchsafed to us by Government spokesmen is: 'We have appointed a Press Commission. We do not know what it will do. We do not know what it will recommend. Therefore, vote for extension'. With equal appropriateness, it may be suggested: 'We have appointed a Press Commission. We

do not know what it will do. Therefore, do not vote for extension'. There is no reason which can affect the legislative competence of this Parliament to say either 'aye' or 'nay'. The Bill has a two-fold object. A Bill without reason, a Bill which makes the legislature vote without knowing why it should do so—such a Bill is patently out of order. Yet, by this Ordinance issued on the 25th of January, this Bill has been given life, a Bill which is plainly out of order. I am mentioning these facts because I am one of those who feel, along with several hon. Members, that this first Parliament, which has been elected on the basis of adult franchise, should set up new conventions so that others might follow our example. It has been a matter of deep grief to many of us, hon. Members drawn from all sections of the House, that on many occasions Ordinances have been issued without any consideration whatsoever for the House. The great hurt that has been caused to the dignity of this House cannot be under-estimated. It is not the agitator who attempts to undermine the authority of the democratic Assembly that is the greatest enemy; it is the very Executive that has got power and which inflicts hurt that is today playing the role, unconsciously, of an enemy.

I should like to deal in conclusion with the two fiscal Ordinances because those also raise serious questions of principle. In this connection, my task is lessened by the fact of my friend from Visakhapatnam considering them at length. I shall content myself with a very brief analysis of the implications of these two Ordinances. No impost partaking of the nature of a tax can be levied without the consent of Parliament. In this instance, Parliamentary consent was not obtained at all.

Dr. Lanka Sundaram: Hear, hear.

Dr. Krishnaswami: The reason given is that Parliament was not sitting on the 12th of January. What was the emergency that led to the

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promulgation of these two fiscal Ordinances? Did the Government suddenly make the discovery some time during the cold month of January that Kumbh was to take place on the 3rd February and that pilgrims would congregate and hence be a fruitful source of revenue to them? Was this discovery so sudden, so emergent that it could not have been made when we were in session in November? Certainly, a more serious matter which faces Parliament is this. By the time we have met the Kumbh is over. The Government have no need to bring even a ratifying Bill. The test of emergency, Mr. Speaker, in the case of fiscal Ordinances should be much greater than in the case of other Ordinances. After all, in the case of fiscal measures, it is the Parliament and the House of the People that is the sovereign authority to vote and raise a tax and to direct how the money shall be spent. Therefore, in any case in which such emergency arises, the test should be stricter.

Having brought before the House some of the general aspects of these Ordinances, I should like to bring to your notice, Mr. Speaker, a similar statute in the United Kingdom. In 1920, the Emergency Powers Act was passed in Parliament after a heated and acrimonious discussion. Mr. Asquith was then the leader of the Liberal Party and he took grave exception to the Executive declaring an emergency and passing Ordinances. There were some lively interchanges and, as a result of these interchanges, Parliament came to the conclusion that this ordinance-making power should be curtailed within definite limits. They confined it to certain specific subjects and they said that this ordinance-making power should not be exercised freely. An assurance was given and that assurance was kept up. Even with their far-fung responsibility or irresponsibility as the case may be, they did not content themselves with merely issuing Ordinances. I should think

this is an example which we might emulate.

There is after all a constituency outside this House which is listening to, following and watching our deliberations. People outside know that Parliament means business; that it is respected both by the Ministry and by other Members of this House. I feel that during recent times the very great flow of Ordinances has positively helped to diminish the respect which is entertained for Parliament.

I should like to make one or two constructive suggestions to get over this difficulty. No one for a moment questions the constitutional validity of these Ordinances being issued. But, what is in question is the constitutional propriety of these Ordinances. The time has arrived when we should have a Committee of the whole House with you, Mr. Speaker, as chairman to go into these matters so that all these Ordinances might be submitted to that Committee for review. Then it might be open to the Committee to offer advice. Of course, it is the responsibility of the Executive either to accept or reject the advice. But at least the Executive would have applied its mind to what the state of emergency is, instead of reducing the concept of emergency to a fake and a farce. I think if we could have this, many of the disadvantages that we are suffering from from the hasty promulgation of Ordinances would be considerably mitigated. After all, when we suggest that it should be a Committee of the House, we are envisaging not a Committee representing a party but representing all sections of the House. We all feel that we have a stake in the reputation and dignity of the House and, since this is a matter which cannot be enquired into by courts of law, Parliament has the greatest responsibility to know what the emergency conditions are and why these Ordinances should be issued. By so doing, not only will the Executive be

strengthened but also the reputation and dignity and respect for Parliament would be heightened.

Dr. Lanka Sundaram: Sir, I am sure the House is grateful to you for the remarks you have made in reply to the point of order raised by my hon. friend the Finance Minister. I wish that the Government, for the time being, would consider this question sought to be raised by my hon. friend, Dr. Krishnaswami and myself, in a non-partisan, non-legalistic spirit in order that this House could lay down enduring conventions for all time.

The House would recall that on the 16th November last, I raised this issue from this place with reference to the six Ordinances which were promulgated during the inter-session period before that date. At that time, I had occasion to quote one of the rulings of the hon. Deputy-Speaker, of the 16th September. With your permission, I will re-quote it, only to direct the attention of the House to the point that the Government is not willing to abide by the rulings given by the Chair with respect to Ordinances. At that time the question was that the House should go through the Coir Bill and the Rehabilitation Finance Administration Bill. This was what the hon. Deputy-Speaker said in his ruling on the 16th September:

"In these circumstances, I am exceedingly sorry. The Government must make up their mind from time to time as to which Bills they want to get through in this session. The Coir Bill is, no doubt, part-heard. If they had told me a few days earlier, I would have persuaded the House to sit for longer hours and finish it. In these circumstances, I am exceedingly sorry. I feel that the general sense of the House is that these Bills need not be taken up now. The hon. Ministers have also left it to the House."

And, finally he said:

"There does not seem to be any urgency."

After this ruling of the hon. Deputy-Speaker, and some days after the House adjourned, a body of six Ordinances including the Rehabilitation Finance Ordinance were issued during the inter-session period.

I make a reference to this for the one reason that to my mind there is no legislative planning on the part of the people who advise Government as to the type of legislation which might become necessary to be put through when the Houses of Parliament are not in session. That is the case I argued on the last occasion and I am summarising the points. There were 54 Bills to be disposed of during the 29 working days and it so happened on the previous occasion that three of the Bills which were pending before Parliament were passed into Ordinances. That is the history. I have made attempts to recapture all this in order to focus one point, the point being that in reply to the debate I raised on the last occasion on the 16th November, my hon. friend Shri T. T. Krishnamachari said as follows—and I think the House is entitled to have this quotation. These ordinances, he said, are necessary for the purpose of carrying out the work of Government, because the policy underlying most of them—at any rate, three of them—has been made known to this Parliament and to the public. In the case of three others, it is slightly different.

The point that I am raising is this. Nobody in this House is anxious to obstruct the work of Government. What is required is adequate planning and respect for constitutional propriety and the rights and privileges of the House. My hon. friend, Dr. Krishnaswami in his very eloquent way has tried to fix the general bearings of the discussion dealing with as many as seven ordinances of varying importance and also nature. With your permission I would like to devote myself specifically to the two Kumbh Mela Ordinances, namely, Ordinance No. 1 of 1954 and No. 2 of 1954. In this connection, I would like to make this general proposition. The rights

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of taxation, supply, appropriation and authorisation of expenditure are all matters entirely germane to the competence of this hon. House. Even the other House does not come into the picture. In England there has been a considerable anxiety expressed as to the manner in which taxing laws have been promulgated without Parliamentary sanction. Here is what C. K. Allen in his very important book *Law and Orders* has said:

"The Donoughmore Committee called special attention to six Acts which were the product of national financial crisis of 1931 and which in large measure delegated to the executive the power of taxation. These are to be regarded as essentially emergency legislation and apart from any constitutional questions, they were justified on political grounds by the 'doctor's mandate' which the electorate had expressly given the Government."

These included Acts like the Gold Standard (Amendment) Act, the National Economy Act and the Import Duties Act. These statutes had a prototype in the Safeguarding of Industries Act, 1921. Under section 2 of the Safeguarding of Industries Act, for example, orders were required to be approved in draft by the House if the House were sitting and at other times to remain in force only for one month unless renewed by resolution. In the case of the Kumbh Ordinances, nothing like this can ever happen—the time has expired, practically. In normal circumstances the attitude of the House of Commons would appear to be that any delegated legislation which imposed a charge on the public would, if permitted at all, demand the strictest scrutiny and control. I regret to say that the 'Power of the Purse' has been infringed by these two ordinances. I have tried to check up on this point the practice in France and the United States of America, but I would be very brief. In France also

there was delegation of power, but it is a very extraordinary fact, but very interesting for our purpose, that the ordinary law courts have taken a stricter view and have refused the application of many decrees which infringed the provisions of existing laws. For example, there was a decree which raised the extraction rate of wheat to 85 per cent. from 80 per cent., and it was declared illegal on the ground that a decree cannot suspend a law even if it is made solely in execution of laws. In the United States of America, according to the language of the U.S. Constitution, "The Congress shall have power to levy and collect taxes, duties, imposts and excises to pay the debts and provide for the common defence and general welfare of the United States." But there is no ordinance-making power in the United States.

It so happens that we in this country under article 123 (1) have been subject to not only general ordinance promulgation but also, in the case of the Kumbh Mela Ordinances, to a tax ordinance. Last time in November when this debate was raised by me, the Press and the public in general reacted very vehemently. Some people characterised it as a fraud on the Constitution and a constitutional abuse of power. Some others said that it was scant respect to the House and an affront to Parliament and that it was 'the new tyranny of the executive' under their rule-making power. I would like to say here that these two taxing ordinances are very important. *The Statesman* of the day before yesterday said that the U.P. Government spent Rs. 41.25 lakhs on the Kumbh Mela arrangements and the Railways spent Rs. 75 lakhs on this national festival. According to the Schedule in Ordinance No. 1, a differential scale was made and collected. It was one rupee eight annas on air-conditioned or First Class, one rupee on Second Class, eight to ten annas on Inter Class and six to eight annas on Third Class. The Prime Minister said yesterday

that there were four million people in the Kumbh Mela. I am only trying to show the enormity of the financial implications of these two taxing ordinances and my rough estimate is—I do not think I will be wrong, but if I am wrong I would stand corrected by the hon. Finance Minister—that not less than Rs. 20—25 lakhs were collected through these two ordinances. That is only by way of illustration. As my hon. friend Dr. Krishnaswami put it a little while ago, when did the circumstances requiring the invocation of article 123 (1) of the Constitution arise in respect of the Kumbh Mela for the Government to advise the President to issue the ordinances? Everybody knows that the publicity and propaganda inviting pilgrims to the Mela and also suggesting measures for looking after the comfort of pilgrims have been going on for months together, and that eleven days after the House adjourned, the first ordinance followed, and eight days after it, Ordinance No. 2, that is the amending ordinance, was promulgated, which again shows lack of legislative planning, lack of proper advice on the part of the people behind Government to look after these arrangements. I would like straightaway to say that I am not disputing the legislative competence of Government to advise the President to issue ordinances, but the question of propriety is very important. Here I would like to make a reference to what happened in 1950, which is within your own personal observation. On the 23rd January 1950, Ordinance No. IX of 1950 was issued, that is just three days before the commencement of the Constitution—that sacred document which lays down the rights and functions of this House and the rights and liberties of the people. It only shows—and I would like to be taken seriously—that Government have no respect for the Constitution. They could have avoided this. They could have pre-planned. I would put it to my hon. friend the Finance Minister that he could have brought it in the Supplementary Demands last September. In actual fact, he could have

even brought it in the Railway Budget or the General Budget in the last session. Kumbh Mela comes once in twelve years but here are these two ordinances, one eleven days after the House adjourned and the other eight days after the first one—an amending one.

Having said this much, I would briefly quote what Dr. Kunzru said while speaking in the Provisional Parliament on the 27th February, 1952 with reference to article 265 of the Constitution, and I would beg of my hon. friend the Finance Minister to bring in an amending bill if he thinks fit to set matters at rest:

“All that article 265 requires is that no tax should be imposed except by authority by law. But as an ordinance has the same effect as an Act of Parliament, even taxation can be imposed under the Constitution by an ordinance. My second suggestion, therefore is that the Constitution should be so altered as to substitute the word ‘Parliament’ for the word ‘Law’ in article 265.”

Article 265 to my mind recalls the noble language of the *Magna Carta*, and reads—

“No tax shall be levied or collected except by authority of law”.

This is not a tax proper; it is a terminal tax collected on tickets for every single journey to Kumbh Mela. Here the ordinances were sought to be made an instrument to prevent Parliament from taking cognizance of these issues, the issue being the collection of money necessary for making arrangements for these four million pilgrims. It is a Central responsibility, but I would not labour that point now.

The final point is that it is a subterfuge to issue these two ordinances, since this House cannot dispose of these two ordinances through Bills, and I do not know whether there is any intention on the part of the Government to bring forward a Bill to replace them. It would be utterly infructuous, because the time has expired now. It is infructuous, because

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the time has expired, with the result that the Executive goes on merrily—goes on merrily in a fashion which is an invasion on the rights of this House. I am not given, Sir, to make academic issues, because, as I said earlier, I had the privilege of raising this issue in the last session itself. Last time it was six ordinances: this time it is seven: God alone knows, Mr. Speaker, as time marches on, and if you would permit me to say so, the enlargement of the powers of the Executive takes new shapes, there may be a new tyranny unleashed upon the country and upon this House.

You, Sir, have done,—and we have the greatest admiration for you—the greatest service to this country by saying what you have said a few minutes ago in passing your remarks on the point of order raised by my hon. friend the Finance Minister.

Shri H. N. Mukerjee (Calcutta North-East): Sir, a little while ago, as I came to participate in this discussion, I noticed the somewhat deceptively cherubic presence of the Finance Minister and I had a feeling that perhaps Government would not take up a bellicose attitude in this matter. But that feeling vanished soon enough, and I find that on Government side, as far as I can make out, up to now there is not even a suggestion of a tinge of regret that this ordinance-making power of the President is being resorted to in the fashion that has been already explained by the two hon. Members who have spoken before me.

Now, Sir, what we object to is that an article in the Constitution, which if used at all should be used sparingly, has been used over-generously and in a manner which certainly suggests that in the eyes of Government, Parliament is not worthy of the kind of regard which it is entitled to. As we all know, since the famous case of Proclamations in 1610 the head of the Executive in England has not had the power to legislate by proclamation. Nowhere in the Dominions, not even in

Ireland, you will find a provision comparable to article 123. Now, I cannot go into the genesis of this article in our Constitution, and that is not my intention at all. But I wish to draw the attention of the House, Sir, to what happened in the Constituent Assembly when this article was put into the Constitution. I find that Dr. Ambedkar who was piloting this provision said that the ordinance-making power during the recess of Parliament was similar to the power of the Crown to make a proclamation of emergency under the Emergency Powers Act, 1920, in England, and then to make regulations. But, Sir, I do not see how it could be said to be so. Such powers in England are entirely statutory and the regulations are to be made subject to the limitations and conditions imposed by the statute of 1920 and they are liable to be set aside by the courts, if they are *ultra vires*. Article 123 does not lay down in what conditions and for what purposes the ordinance-making power is to be used, and our courts have no power to question the justification either as to the occasion or the purpose, or the subject-matter of an ordinance, even if the ordinance is not made in good faith. I do not suggest that any of these ordinances were made without good faith. But I refer to this matter because questions have arisen regarding the lack of good faith on the part of Authority in promulgating the ordinance.

I remember, Sir, in 1948 when my hon. friend Mr. Chatterjee was a Judge of the Calcutta High Court and I happened to be in detention without trial, a case came up before the Calcutta High Court (Jnan Prasanna and others v. the Province of West Bengal). In that case the Governor of West Bengal—possibly Dr. Katju was then the Governor of West Bengal—exercised his ordinance-making power in order to prevent the Calcutta High Court from pronouncing a decision which was unwelcome to the Provincial Government. This ordinance was nevertheless held by Chatterjee J. and other Judges to be valid on the ground

that the court was not competent to enquire into the circumstances justifying the promulgation of the ordinance, even though the Full Bench disapproved in very strong terms such an executive policy to prevent judicial decisions by ordinance. This happened in 1948.

Now this is the kind of thing which is likely to happen.

The Minister of Home Affairs and States (Dr. Katju): What was the decision actually of the High Court? I think they approved of it—they upheld the ordinance.

Shri H. N. Mukerjee: The High Court upheld what the Government had done, in spite of the High Court's definite decision that the Government had done it without good faith.

As I said, this is a relic of the Government of India Act of 1935, which the sooner we shed the better. And, if we cannot shed it, because it is there in the Constitution, let us be very chary about using it.

And what are the reasons for having used this ordinance-making power in the past? I shall refer, by way of illustration, to the Press (Objectionable Matter) Act. And in this connection I shall quote,—not a foam-at-the-mouth Communist, as Dr. Katju would like to characterise me, but I would like to quote the *Eastern Economist*, dated the 5th February, 1954. It says:

“There is no excuse for the Home Ministry's failure to get the Bill introduced in Parliament in sufficient time to have it enacted well before the date of the expiry of the Act. The circumstances in which the Press Act was passed in 1951” (when perhaps you were in the Chair), “should particularly have enjoined greater caution in this matter. The Act was then carried though in the face of severe opposition,” (and in those days we were nowhere in the picture), “and ultimately it was the clause which limited its life to two

years that reconciled many of its critics to agree to the measure. A routine extension of that life through an Ordinance is, therefore, doubly objectionable.”

This kind of thing goes on. In regard to the taxation ordinance, things have happened which, as Dr. Krishna-swami and Dr. Lanka Sundaram have ably pointed out, have impinged, as far as we can see on the right of Parliament to control the exercise of taxation powers by the Executive. We do not have the inner light which the Government appears to have. Being ordinary mortals all that we can see is that the manner in which Government has exercised its ordinance-making power is extremely dangerous and it is against that danger that the country wants us to warn Government. I know Government will not heed warnings, especially when they come from this side. But in the light of the advice which has been given to them so sedately by the two hon. Members who have spoken before me, Government should come forward and say that they would try to see to it that the legislative programme is arranged with greater circumspection with a view to a real discussion in this House and also with a view to expediting the passage of those items of legislation about which Government is really in earnest.

I am sorry, Sir. I do not see my hon. friend the hon. Minister of Parliamentary Affairs in his seat. But I do not see the point in this set-up, of the Ministry of Parliamentary Affairs if it cannot arrange the legislative programme in such a fashion that Bills of this kind are not pushed over and the necessity of having to take recourse to ordinance is not imposed upon the Government. The manner in which ordinances are issued is symptomatic of great danger to the liberties of this country and I warn Government that this kind of thing cannot go unnoticed by the House.

I have been told by an old Member of this House that on one occasion Government promulgated an ordinance

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in order to regularise payment of pension to a gentleman who acted as the Governor-General of this country for some time. There was no emergency about it: there was no urgency about it even, and yet Government went out of its way to issue an ordinance so that that worthy gentleman may collect his emoluments a little earlier than if the matter had come before Parliament.

I challenge Government to produce a list of ordinances which it has issued since independence and then to justify what it has done. I am sure it cannot. That is why I repeat my warning to Government that this kind of anti-freedom device is not going to be tolerated by public opinion which we try in our own way to represent.

Shri N. C. Chatterjee: Sir, I think you have administered a very timely admonition and we should approach this problem not in a partisan spirit. Sir, our infant democracy demands that we should build up healthy conventions and one of the healthy conventions which ought to be built up for our infant parliamentary democracy is that executive legislation should be weeded out as far as possible. This kind of despotism is repugnant to the basic principles of representative Government. Every democrat should hate it. There is a tendency always among hon. Ministers and bureaucrats to expand and exercise this power whenever it suits them. It is repugnant to my sense of understanding of parliamentary democracy that they are going to impose taxation by ordinances. That is really most reprehensible; they could easily avoid that.

The fundamental principle of our Republican Constitution is 'no taxation without representation'. We are the Parliament of India; we are the House of the People; we have been assigned the sole function, the sole privilege, and also the sole responsibility to be the guardians of the public revenues. No tax can be levied except with our consent. Government by a circuitous

method, indirect method, by a contrivance is trying to get rid of the salutary principles. It may be a compliance with the formalities of the Constitution because Article 123 gives you the power but it would be desirable to keep it within limits, to control it. Especially the imposition of taxation by Ordinance, as you are doing, is to bring the House into disrepute.

I should not say anything about the judgement which my learned friend quoted but that is the view Sir Trevor Harries C. J. took, deliberately took in that case—a judge of great experience. Nothing should be done which should bring one organ of Government into disrepute; and that is what you are doing. Executive legislation is bad enough; taxation by executive legislation is much worse and much more repugnant to the basic principles of democratic Government.

Sir, if we remember the history of England, you know that the great struggle for self-government meant curtailment of the powers of taxation by the executive. But we think of taxing people by Ordinances. One king lost his head and also lost his throne because he wanted to levy a tax by means of ordinances—ship money. The great and glorious days of struggle for human liberty were in the days of Stuart despotism and also Tudor tyranny because Parliament was then fighting that there should be no imposition of any taxes by the Crown. It is no good saying 'it is Kumbh Mela tax'; therefore, it may not be technically 'tax'. Our Constitution has also given a definition of taxation. Article 366 clause (28) says:

"'taxation' includes the imposition of any tax or impost, whether general or local or special, and 'tax' shall be construed accordingly;"

Therefore, any tax which levies any imposition, whether general or special or local comes within the cate-

gory and concept of taxation according to our Constitution. Certainly, it is taxation. Could it not be avoided? Could not the Executive avoid this kind of taxation? Could it not come before the House and get it through? It could easily do it.

Sir, you remember you presided over not one meeting but meeting after meeting of the Business Advisory Committee. We appealed to the Minister of Parliamentary Affairs—we were trying to help him. We wanted to know "what Bills you want to be passed in this House". He arranged the priority and according to that order of priority we fixed a time limit and schedule. Never, Sir, was it demanded that the Press (Objectionable Matter) Bill should be given top priority or any priority whatever. Therefore, there is some force in the contention of the previous speaker that it was not a genuine emergency. It is a manufactured emergency; it is an emergency which has been created and that is the greatest menace to freedom; the greatest menace to parliamentary government. That is the greatest impediment on your sovereign power, your undisputed sovereign right in the matter of taxation, in the matter of public exchequer, in the matter of controlling taxation, in the matter of levy of any kind of impost. It may be whittled down and affected by this kind of dubious methods. Surely this can be avoided. What I am pleading for is a constructive approach. They should definitely stand up and express their regrets for what they have done. And that is the only thing which would put the Executive in its proper place and the Parliament in the proper place.

Every time when the Parliament is prorogued they come out with a bunch of ordinances, some to renew the expiring laws and some at the same time levying taxation. This is bringing the House into disrepute; that is not treating the Parliament with the respect it deserves; that is not paying proper attention to the basic principles of our Constitution; this is really whittling down the cardinal principles

on which any democratic government can be run. Therefore, it is no good saying that I have got the power. I say, do not exercise the power.

In England, Sir, Parliament is supreme; Parliament is sovereign; Parliament can delegate—Parliament sometimes delegated—but every time they used to say 'Try to avoid any kind of taxation'. In the latest debate, in a volume of *Hansard* a great parliamentarian stood up and said:

"The third dialectical argument used by the Leader of the House was this. He said, 'Supposing Parliament was not sitting'. It suits the right hon. Gentleman and his friends not to have Parliament sitting. The longer they can have Parliament in recess the better they are pleased. What nonsense to say Parliament cannot be called quite easily in emergencies of that kind."

I do not want to use strong language like that which was used in the British House of Commons. But, the Parliament was sitting. You knew of Kumbh Mela; everybody in this country knew. The calendar everybody knew. Great preparations were being made and you could easily have come with a Bill of this character. I am suggesting, Sir, that efforts should be made that Parliament, as the supreme forum and the supreme representative of popular will, especially in the domain of taxation, should see that its powers are not frittered away; that there are no inroads; that there is no invasion; that nothing is done to affect them in any way.

Sir, you are looked upon, as the Speaker of this Parliament, Speaker of this House, as the repository of the dignity and privileges of this House and we are obliged to you for the way you have suggested reform. That should give very valuable guidance to the Executive. If the Executive cannot even chalk out the legislative programme so as to eliminate the possibility of taxation by ordinances, they are not fit to be there; they should get out of this place; they do not deserve

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to stay where they are. They could easily manage to do it and I am appealing that they should remember that if they continue to do this thing—repetition of ordinances for taxation—there will be a temptation to have a longer recess and have a longer list of ordinances and that will suit the Executive better. I am suggesting that there is some force in the observations made by Dr. Krishnaswami. There should be some Committee—call it a Committee of the whole House or a smaller Committee representative of this House—which should tackle these ordinances and see how far they are in consonance with the basic principles of our Constitution and suitable conventions ought to be built up to make Parliamentary democracy safe.

6 P.M.

Dr. Lanka Sundaram: May I interrupt the hon. Member for a minute? When the PEPSU Acts were first promulgated by ordinance, a committee of this House was consulted. The procedure is already there. Only, it has to be regularised and enforced.

Shri N. C. Chatterjee: I am obliged to my hon. friend for reminding me of it, but I submit that the time has come when there should be that committee or some other committee to scrutinise ordinances and report to the House as to whether there has been any flagrant breach and if so, what should be done, so that this new despotism may not develop into a periodical tyranny.

Shri V. B. Gandhi (Bombay City—North): I join wholeheartedly the speakers who preceded me in expressing the gratitude of this House to you, Sir, for making it possible to hold this debate on a very important issue, viz. legislation by ordinances. As you so rightly pointed out, the issue is one that deserves to be treated in a strictly non-partisan way.

I might begin by saying that none of us likes this habit of the Government relying increasingly on legislation by ordinances. But...

Shri Algu Rai Shastri: But there is a "but"!

Shri V. B. Gandhi: But we would also like to see if it would be fair to lay all the blame at the door of the Government. We want this question to be considered more seriously than, I am sorry to say, has been attempted by those who spoke before me. I would like this House to consider this question in a less theoretical manner. It is an intensely practical problem, and I would like that this House should avoid making this discussion surcharged with emotion.

What are the facts? Is this House really so helpless in the matter of making it difficult for Government to resort to legislation by ordinances? I hardly think so if we only reflect for a moment and try to be honest to ourselves. The second session of Parliament ended with arrears of as many as 26 Bills which were pending at various stages of consideration. The last session, viz., the fifth Session, closed with arrears of 19 Bills pending at various stages of consideration. Here is then the problem: there is a certain volume of business which in the interests of the country must be got through this House and there is only a certain amount of time which this House is prepared to devote to the disposal of that business. Then there is also a certain speed at which this House is pleased to proceed in dealing with that business. Now, these two quantities must be made equal. How can that be done? I am sure none in this House would wish that the volume of business should be reduced. Certainly, that would not be serving the interests of the people whom we are here to represent. Then what are we supposed to do? We must either increase the time that we are prepared to give for the disposal of this business; we can also consider increasing the rate of speed with which we dispose of this business. These are the two problems which very honestly, with a mind introspectively inclined, we ought to consider. I therefore think that, in a general way of saying, we ought to admit that what is happen-

ing in this Parliament at the present time is more of a misfortune than a fault to be laid at anybody's doors.

I will now come to the other part of today's discussion, more specifically the two Ordinances dealing with the Uttar Pradesh Terminal Tax. I had expected that speakers on the other side would perhaps question the power of the President to issue ordinances levying taxation. But I am very glad to see that that power is conceded. It is conceded by all the speakers, I hope, including Dr. Lanka Sundaram, that article 123 gives that power to the President. Dr. Lanka Sundaram referred to article 265 and said something about some observation made by Pandit Hirday Nath Kunzru. I am a layman and I am going to venture a layman's observation on this point. Article 265 says that "No tax shall be levied or collected except by authority of law". And as I understood Dr. Lanka Sundaram to tell us, Pandit Hirday Nath Kunzru would like the words "by authority of law" substituted by the words "by authority of Parliament". Well, I am sure I am one of those who would welcome such a more definite definition of the authority of Parliament. But I do not see how that is going to prevent any future President from promulgating an ordinance imposing a tax of the kind that is done here in the present Uttar Pradesh Terminal Tax Ordinance; because the ordinance promulgated by the President, under article 123(2), is going to have the same force and effect as an Act of Parliament. Therefore, any taxation which only an Act of Parliament can levy is a taxation which can also be levied by the President's Ordinance. And this position is made further clear by clause (3) of article 123 which says "If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void". So that, anything that Parliament is competent to enact will be a proper subject for the promulgation of President's Ordinance.

Now, Sir, let us consider this Uttar Pradesh Terminal Tax Ordinance individually and on its merit.

Mr. Speaker: He has already taken more than ten minutes.

Shri V. B. Gandhi: May I take just four minutes?

Mr. Speaker: Just a couple of minutes. There are other speakers who have given me notices.

Shri V. B. Gandhi: Sir, the levy of a terminal tax is within the Union List, in item 89. Now, the situation here is this, that, if we want to be charitable and even ordinarily—I am sorry, not charitable—if we want to be even ordinarily fair to the Government, we must understand that the situation in respect of the Kumbh Mela was developing very fast. Only a few days ago things were in a state of flux. Here is a report in the *Hindustan Times* dated 7th January 1954, which says, "Pandit Pant indicated (at a meeting somewhere in Allahabad) that the State Government might impose a 'toll' to meet partially the heavy expenditure incurred on the Mela arrangements". This 'toll' is an imposition which only a State can levy, and as I said, a terminal tax is something which is beyond the purview of the State taxation powers and has to be levied only by the Union Government. Further, Pandit Pant says, "the expenditure might amount to Rs. 50 lakhs. All the money had to come from the poor. If by introducing a tax they could collect some money, that would lighten the burden on the poor." So, here was a very deserving case in which the Union Government had to do something to help the U. P. Government. After all Prayag is a possession of the Nation.

Dr. Lanka Sundaram: Who denies that?

Mr. Speaker: Let the hon. Member continue.

Shri V. B. Gandhi: After all Prayag is a possession of the whole Nation and not just the possession of one State like Uttar Pradesh. Nearly a third of the 50 lakhs of pilgrims who visited Pra-

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yag in Kumbh Mela came there by railway and as such, a very good and dependable source of assistance to the U. P. Government should not have been neglected. What should have been done? We can expect a Government to anticipate the need of such a levy well in advance. But, supposing they fail to do that; then what? Then, better late than never. In a case like this, I am sure, we would have blamed the Government much more if they had failed to use this power and not levied the tax.

Now, finally it is said that this kind of a habit of promulgation of ordinances for levying taxes might lead to disastrous consequences in future. What are the merits of this particular levy? Here is a levy which we can describe as a "just once and over". This levy is not to continue and if it were to continue, then it would certainly have come before the House for its consideration.

Mr. Speaker: Dr. Jaisoorya. The Member must finish in ten minutes.

Dr. Jaisoorya (Medak): I will finish in 9 minutes and 55 seconds.

Mr. Speaker: I might invite the attention of hon. Members that there is a rule under which this discussion is permitted. Those who wish to participate have to intimate their names before hand. Dr. Jaisoorya, is the last Member. No other Member has intimated his name. So, I shall, immediately after Dr. Jaisoorya call upon the Government to reply.

Pandit Thakur Das Bhargava: In regard to these discussions, the rule has been that even if the names were given at the time when the discussion was going on, Members have been allowed to speak. There is ample time yet.

Mr. Speaker: Even those names have not yet been given, unless the standing up of Members can be said to be giving of names.

Pandit Thakur Das Bhargava: Standing here for being called is virtually tantamount to an application in writing.

Mr. Speaker: What I am anxious is: not so much about the rules as about giving sufficient time to the Government to state their case. I think it could be done in half an hour? That is my estimate unless the Finance Minister requires more time.

Shri C. D. Deshmukh: Ample.

Mr. Speaker: I will call upon the hon. Finance Minister to reply at 6.30.

Dr. Jaisoorya: Essentially, there are certain vital principles at stake. This is what we have to decide today in this House. Right or wrong, however effective this body may be this Parliament embodies the will of the people. That is how the people look upon it, however defective it may be. Government is only the instrument to carry out the will of the people. Government has to be given certain powers for day to day work and in an absolute emergency it is given wider powers. It is no use splitting hairs as to the extent of the powers. What actually the people want to know is, is the Parliament the guide of the Government or has it deteriorated to be the handmaid of the executive? Essentially, what the fate of the people's will is going to be, will be decided today and therefore your ruling is of vital importance. History will be made, because, it will be a guide to the Assemblies and other bodies in the country.

Dr. Lanka Sundaram: And the State Governments.

Dr. Jaisoorya: No doubt, there are emergencies. Suddenly a thing arises. The President, under the advice of his Government and Executive, has got the power, and he should have the power. Nobody denies that. But we have no right to burden the President with responsibilities which are essentially the responsibilities of the executive. The function of Parliament is to curb what is naturally inherent in every executive, that is the tendency to excessive and arbitrary use of power. It is the function of this Parliament to watch very zealously when to

curb the excessive and arbitrary use of power. Therefore, the country looks to the Parliament and to the Supreme Court as the guardians and protectors against arbitrary and excessive use of power. That is how the people look at it and you are deciding historically the fate of the people's impression of Parliament, as to what powers Parliament has or has not.

If it was one Ordinance or two Ordinances, we can say: yes, an emergency arose. But, when Parliament is in recess and six or seven Ordinances arise people naturally begin to wonder whether there is something wrong somewhere in the technique and method. Let us be charitable; let us say: yes, the executive is very honest about it, very sincere about it and there was an absolute necessity. But, when you examine it, one Ordinance comes three days before the Constitution comes into force: that is Ordinance No. IX of 1950. Two Ordinances come miraculously eight days after the Parliament goes into recess. My hon. friend referred to the speech made by Shri Govind Ballabh Pant that such a levy is necessary, a speech on the 7th of January and this Ordinance miraculously comes three days earlier, on the 4th of January.

Dr. Lanka Sundaram: Had already come.

Dr. Jaisoorya: This hair-splitting argument is of no use. We do not deny that occasions may arise; but it is unfortunate that we have to think of two possibilities: either that the executive is extremely inefficient, that it does not know how in proper time to draw the attention of the people; or that it is doing something behind our backs because the Constitution gives it the power.

Shri Algu Rai Shastri: No.

Dr. Jaisoorya: I am saying 'possible' You make your own choice. I am no lawyer, no constitutional expert, but here in Basu's *Commentary on the Constitution*, on page 399, referring to article 123, he says:

"Since Parliament can amend or repeal its own Acts, it follows,

therefore, that the President may, by Ordinance, amend or repeal laws passed by the Parliament itself, subject, of course, to the limitation of clause (2) as to the duration of the Ordinance. Similarly where a law passed by the Legislature could be retrospective in operation, there is nothing to bar an Ordinance on the same subject from being retrospective. Hence an Ordinance can be given retrospective operation even from a date when the Legislature was in session."

That is the danger. All I am saying is this: either we are not able to understand each other, either there is enormous inefficiency in ordering and arranging matters, or the executive is doing something behind our back. That is for you to judge. I am only giving you the alternatives.

Here is a question today: what is the position of Parliament if in the recess, where there is no question of a war being waged or an invasion taking place, Ordinances are issued like this? In England they have made express provisions and it is a very desirable thing. However much faith we may have in the executive, there is an inherent tendency in the executive to use the powers in excess and arbitrarily. Therefore I submit that the role you are playing today, the decision you are giving today decides the fate of Parliament and the faith of people in democracy.

Mr. Speaker: Pandit Thakur Das Bhargava. He has only about six or seven minutes.

पंडित ठाकूर दास भार्गव : स्वीकर पाहून
इस मौके पर आप ने जो इशारा किया है
वह हम सब के वास्ते चिराग हिदायत है।
आप ने कहा है कि इस मामले में पार्टी
की तरह या पार्टी मेंब्रेट की तरह या पार्टी
के इंटरैस्ट की तरह देखना वाजिब नहीं है।
मैं समझता हूँ कि अगर जनाब वाला इशारा
न करता तो भी मेरा इस की तरह यही
खयाल होता क्योंकि ऐसे मामलों में सही नुकता

[पंडित ठाकुर दास भागव]

निगाह यही है। लेकिन जनाब के इशारे के बाद और भी तकवीयत हो जाती है। यह मामला हमारे लिये, खसूसून कांग्रेस के लिये और भी गौर करने के लायक है। हमारे ऊपर जब दूसरी सरकार राज्य करती थी तब आर्डिनेन्स के बरखिलाफ में समझता हूँ कि हर एक कांग्रेसमैन इस तरह महसूस करता था कि जैसे आर्डिनेन्स बिल्कुल लालस ला है। वह आर्डिनेन्स जिस का हम जिक्र किया करते थे वह दफा ३५२ में है। लेकिन यह आर्डिनेन्स १२३ दफा में है। इन दोनों में यह फर्क है कि ३५२ दफा का जो आर्डिनेन्स है वह सिम्प्योरिटी आफ स्टेट के मुताल्लिक है और ऐसी चीजों के मुताल्लिक है जिन का वास्ता सेपटी आफ दी स्टेट से है। वह बिल्कुल अलहदा चीज है। यह आर्डिनेन्स १२३ दफा के हैं इसमें कोई सवाल Emergency का पंदा नहीं होता। जब हम ने यह कांस्टीट्यूशन बनाया था तो कांस्टीट्यूएंट असेम्बली में इस दफा को रटीन मामलों के लिये बनाया था। और इस को इस तरह पर सरकार स्क्राइब कर दिया था कि कोई भी गवर्नमेंट हिन्दुस्तान पर आर्बिट्ररीली राज्य न कर सके। मैं अर्ज करना चाहता हूँ कि अगर जनाब इस के अलफाज को देखें तो यह बिल्कुल रोशन हो जायगा। इस के अलफाज यह हैं :

"That circumstances exist which render it necessary for him to take immediate action he may promulgate such ordinances as the circumstances appear to him to require".

पहली चीज तो मैं यह अर्ज करना चाहता हूँ कि दोनों सेशन के दरमियान उस तरह के सरकारमस्टांसिज होने चाहियें जिन को पहले से नहीं देख सकते थे। यहां ऐसी कोई बात नहीं है कि जिस को पहले से नहीं देख सकते थे। इस वास्ते इन आर्डिनेन्स का जारी करना दु स्त नहीं था।

दूसरी बात यह है कि इम्पैरेंटिव नैसेसिटी आर्डिनेन्स के लिये होनी चाहिये। इतना ही काफी नहीं है कि आर्डिनेन्स को जारी कर दिया जाय क्योंकि यह एग्जीक्यूटिव के लिये एक हैंडी चीज है। फिर यह जरूरी है कि इमीजिएट ऐक्शन का होना जरूरी हो और आर्डिनेन्स के प्रत्यावा दूसरा कोई ऐक्शन नहीं हो सकता हो। फिर चौथी चीज यह है कि आर्डिनेन्स सिर्फ उतनी हद तक हो सकता है जितने के लिये कि सरकारमस्टांसिज वारंट करें। यह नहीं कि आप ने आर्डिनेन्स को दो वर्ष के लिये जारी कर दिया कि दो वर्ष तक के लिये प्रेस एक्ट (आबजैक्शनबुल मॅटर) चला जायेगा। और उस में और भी तरमीमें करी। अगर जरूरी है तो इतना ही होना चाहिये कि जब तक पार्लियामेंट न बैठे यह कानून लागू रहे। चूंकि शायद कोई मुकद्दमात् चल रहे हों, कोई आदमी क़ैद हों, इस तरह की कोई सूरत हो तो इतना ही करना चाहिये कि जब तक पार्लियामेंट बैठ कर इस का निर्णय न करे तब तक यह जारी रहेगा।

जहां तक टैक्स का मामला है, जनाब वाला, मैं बिल्कुल सहमत हूँ। उन मैम्बरान से जिन्होंने पहले राय दी है कि किसी भी गवर्नमेंट को पार्लियामेंट की राय के बग़र टैक्स नहीं लगाना चाहिये। यह हरगिज दफा १२३ की मंशा नहीं है कि गवर्नमेंट जितने टैक्सेज चाहे उतने लगा ले और जब चाहे रुपया जमा कर ले और उस को हाउस में आने की जरूरत न हो। आज हमारी गवर्नमेंट है। इस के लिये ही नहीं, लेकिन जब भी दूसरी गवर्नमेंट आयेगी तब भी मैं यही कहूंगा, यह बिल्कुल भी पाटों का सवाल नहीं है, कि कोई भी टैक्स पार्लियामेंट की राय के बग़र नहीं लगना चाहिये। मैं इस में नहीं जाना चाहता कि आया यह टैक्स जस्टी-फाइड था या नहीं। मैं इस में नहीं जाता।

लेकिन मैं चाहता हूँ कि हर एक टैक्स जो लगाया जाय वह टैक्स पार्लियामेंट की राय के बगैर नहीं लगाया जाना चाहिये।

इस के अलावा, जनाब वाला, मुलाहजा फरमायगे कि जब मैं इस बिल की तरफ देखता हूँ तो पिछली मर्तबा भी मैं न अर्ज किया था कि दफा १२३ कानूननू इजाजत देती है और गवर्नमेंट अपने फर्ज को अदा नहीं करेगी अगर सरकारमस्टांसैज देश में ऐसे हों कि आर्डिनैन्स जारी करना चाहिये। और गवर्नमेंट आर्डिनैन्स को जारी नहीं करती। आज भी मैं इसी बात को दोहराता हूँ कि अगर देश में सरकारमस्टांसैज ऐसे हों कि आर्डिनैन्स का जारी करना निहायत जरूरी है तो गवर्नमेंट को जरूर आर्डिनैन्स जारी करना चाहिये। लेकिन जैसा मैं ने पहले अर्ज किया उन सरकारमस्टांसैज का होना लाजमी है। इसलिये जनाब वाला ने जो इशार्द फरमाया वह बिल्कुल दुरुस्त है कि हर एक मामले को देखना है, उस के मैरिट्स को देखना है कि आया जो आर्डिनैन्स जारी हुआ वह दुरुस्त है या नहीं। मैं अर्ज करना चाहता हूँ कि टैक्स के लिये पहले से ही फोरसी किया जा सकता था। सब लोग जानते थे, १२ वर्ष पहले जानते थे कि कौन सी तिथि को कुम्भ आवेगा। मैं यह समझता हूँ और सब लोग जानते हैं कि शायद गवर्नमेंट को वक्त की लगी थी, लेकिन फिर बिजिनैस कमेटी के बनाने से क्या फायदा है अगर ऐसे इम्पार्टेंट लजिस्लेशन को प्रायोरिटी न दी जा सके।

दूसरे प्रैस आबजैक्शनेबुल मैटर के आर्डिनैन्स के बारे में जब मैं इस बिल को देखता हूँ तो मझे और भी ताज्जुब होता है। मुझे याद है कि पिछली मर्तबा जब यह बिल पेश था तो हमारे उस वक्त के होम मिनिस्टर साहब ने कहा था कि जो प्रैस कमीशन मकररं कर रहे हैं उस का इस बिल से कोई वस्ता नहीं है। आज

वह कहते हैं कि प्रैस कमीशन की मौजूदगी से यह आर्डिनैन्स जरूरी था मैं कहता हूँ कि यह बिल्कुल गलत है। अगर पुरानी हिस्ट्री को देखा जाय तो मालूम होगा कि दस पंद्रह दिन तक हाउस में इस कानून की चर्चा चली थी और उस से मालूम होगा कि यह बिल निहयात डिबेटेबुल है। इस आर्डिनैन्स को दो वर्ष के लिये जारी करना मैं समझता हूँ कि दफा १२३ की ठीक तरह का इस्तेमाल नहीं है।

जनाब वाला, बाकी जितने आर्डिनैन्स हैं, चार पांच, उन सब को हम को मैरिट्स पर देखना है। अगर मैरिट्स पर जायज हैं तो ठीक है, वरना गवर्नमेंट जस्टीफाइड नहीं होगी उन को जारी करने में। लेकिन टैक्स के मामले में मैं जरूर अर्ज करना चाहता हूँ कि सरकारमस्टांसैज ऐसे नहीं थे कि इस आर्डिनैन्स के लिये दफा १२३ का ठीक इस्तेमाल हुआ। हम को हर एक आर्डिनैन्स के मैरिट्स में जाना है। जहां तक इन दोनों आर्डिनैन्स का सवाल है, टैक्स के बारे में मैं बिल्कुल साफ हूँ कि गवर्नमेंट को किसी भी सूरत में जब तक कि सलत जरूरत न हो और सरकारमस्टांसैज वारंट न करें, टैक्स नहीं लगाना चाहिये। मैं इस मामले में श्री चैटर्जो साहब से इतिफाक करता हूँ। जब हमारे यहां दूसरी गवर्नमेंट थी तो वह जब इस तरह से टैक्स लगाना चाहती थी तो हाउस में एक इस तरह का एमंडमेंट मैं ने पेश किया था कि हाउस के मंत्रियों की एक ऐसी स्टैंडिंग कमेटी बनाई जानी चाहिये कि जब तक उस कमेटी की संवशन नहीं होती तब तक गवर्नमेंट कोई इस तरह के टैक्स नहीं लगा सके। गवर्नमेंट को याद होगा कि जिस वक्त त्यागी जी साहब मेरे पास इधर बैठे थे तो डैलीगेटेड लैजिस्लेशन के बारे में भी हम ने एक सिलेक्ट कमेटी के लिये कहा था और हम नहीं चाहते थे कि डैलीगेटेड लैजिस्लेशन के बारे में भी पार्लियामेंट के कंट्रोल के बिना ऐसा हो सके। लेकिन

[पंडित ठाकुर दास भार्गव]

यह डैलीगेटेड लैजिस्लेशन नहीं है। यह तो हमने जान बूझ कर प्रेसीडेंट को अख्तियार दिया था। यह डैलीगेटेड लैजिस्लेशन नहीं है ताहम लैजिस्लेशन जरूर है। और दोनों हाउसेज आफ पार्लियामेंट और प्रेसीडेंट को ही हक है कि लैजिस्लेशन बनायें। और दोनों हाउसेज नहीं बैठे हैं तो उस सूरत में यह चीज पैदा हुई है। जैसा कि जनाब वाला ने फरमाया यह तो लैजिस्लेशन गवर्नमेंट बनाती है। प्रेसीडेंट का तो नाम है। यह सब गवर्नमेंट की तरफ से आया है और गवर्नमेंट का काम है कि वह इस हाउस को रसपेक्ट करे और इस तरह का लैजिस्लेशन न बना दे कि जिस के ऊपर इतना एतराज हो और जोर्टक्स बगैरह के मुताल्लिक हो।

इसलिये यह भी मनासिब नहीं हागा कि गवर्नमेंट के ऊपर एक कमेटी बिठा दी जाय और उस को पूछ कर इस तरह का लैजिस्लेशन बनाया जाय। लेकिन यह मैं चाहता हूँ कि हाउस के जितने अपने राइट्स हैं उन को बहाल रखा जाय। जनाब वाला ने डैलीगेटेड लैजिस्लेशन के बारे में एक कमेटी बना दी है। इसी तरह इन आर्डिनैन्सेज के वास्ते भी एक कमेटी बैठे और वह देखे कि किन सूरत में यह जायज है कि गवर्नमेंट इस तरह के आर्डिनैन्सेज पास करे और क्या इस ताकत का ठीक इस्तेमाल हुआ है। इसलिये मैं अर्ज करूंगा कि इस बारे में हाउस को अख्तियार है कि वह इस चीज को रेग्युलेट करा सके। हम गवर्नमेंट में कोई नो कानफिडेंस जाहिर नहीं कर रहे हैं। मैं समझता हूँ कि गवर्नमेंट की खास मामल में राय दूसरी हो सकती है और उसी तरीके पर हमारी दूसरी राय हो सकती है। गवर्नमेंट के लोग शायद खास हालात में सेटिसफाइड हो गये हों। इस के बारे में मैं उन को बैनीफिट आफ डाउट देने को तैयार हूँ। लेकिन मैं बैनीफिट आफ डाउट तो एक्यूज

को दिया जाता है, इन लोगों को जो कस्टोडियन हैं हमारे राइट्स के, जिन्होंने यह सारा कांसटिट्यूशन बनाया है, और जिन की सारी उम्र जेल में लिबर्टीज के कायम व महफूज करने में लगी है। मैं नहीं समझता कि यह आर्डिनैन्स का जारी करना lightly लेवेंगे—बहरसूरत हमारी राय में हालात ऐसे नहीं थे कि इस क्रिस्म के यह दो आर्डिनैन्सेज जारी किये जाते। बाकी पांच आर्डिनैन्सों के बारे में मैं नहीं जानता कि गवर्नमेंट का क्या जस्टिफिकेशन है। गवर्नमेंट जब जस्टिफिकेशन देगी तो मैरिट्स पर हम सोचेंगे कि क्या किया जाय और क्या न किया जाय।

Shri C. D. Deshmukh: It appears to me that this debate has reached an intensity which the circumstances do not justify and it was for that reason that I made my submission to you. What I meant was that one could arrive at a judgment on this matter after one had had the chance of ascertaining in each individual case whether the exercise of the power under article 123 was justified or not, and that was the only point which I had in mind in regard to the discussion. It was not a question of its absolute relevance, but it was a question of its opportuneness at this moment rather than at the end of the session when we shall have discussed most of the matters arising out of these ordinances on merits. However, I admit that there are two ordinances which will not come before the House and therefore, in the course of my speech, I shall give the circumstances in which those two ordinances came to be enacted. Before I do so, I shall deal with some of the general points that have been made by hon. Members. Much of what they have said has reference, however indirect, to the appropriateness of the provision made in the Constitution. Now, it seems to me that one cannot go behind this, and one must take the Constitution as it stands.

Mr. Speaker: I think it is not 'appropriateness' of the provision, but appropriateness of the 'use' of the provision.

Shri C. D. Deshmukh: The statement I made was that many of the observations seem to me to relate to the appropriateness of the provision. That is my opinion. I state it for what it is worth.

Mr. Speaker: I stated that point so that the hon. Finance Minister may reply to that point.

Shri C. D. Deshmukh: I leave that point—in so far as those observations related to the desirability of such a provision, and its absence in U.K., the history of how such a provision came to be qualified, and its absence in U. S. A.—all these are points to which I do not propose to answer.

Now, in regard to the actual provision, some loose use has been made of the words 'emergency' and 'immediate'. Immediate is the word used in article 123 of the Constitution, and I am obliged to the hon. Member who spoke last for drawing attention to that other set of ordinances under article 352. The position, before the Constitution came into force, was that the section that applied to this kind of ordinance was section 72 of the Government of India Act, 1919, continued by section 317 of the Government of India Act, 1935, and reproduced in the ninth schedule of that Act. Section 42 of the Government of India Act, 1935, which is similar to the provision in the Constitution, did not come into force at all, as no federation was formed. The language of the old section was: "The Governor-General may in cases of emergency make and promulgate Ordinances for the peace and good government etc. etc., Now, I should like to contrast this with the wording of this article—article 123:

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

cumstances appear to him to require."

Then there are checks and balances and they are contained in the subsequent clauses. Clause (2) says:

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

(a) shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the re-assembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and

(b) may be withdrawn at any time by the President."

Then there is the Explanation and lastly, there is clause (3) which says:

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

Therefore, it seems to me that that could also be referred to the courts for declaring its validity. Now, the whole scheme assumes that during the inter-session period there may be occasions on which the President must in the public interests act, and if he does not act, then public interests would suffer. So again this brings us back to the judgment of what were the precise circumstances which impelled the President to issue the Ordinance. Therefore, it seems to me that unless one went into the merits of each case, merely by mentioning the statistics, whether this or that Ordinance was issued, one could not possibly come to the conclusion that the President is in the habit of issuing Ordinances or that the executive government is in the habit of advising him in that direction.

Now, Sir, I shall read article 269. It says that among the duties and taxes to be levied and collected by the Union but assigned to the States is this particular terminal tax on goods or

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passengers carried by railway, sea or air. Then in clause (2) it says that the net proceeds shall be assigned to the States within which that duty or tax is leviable in that year. That, incidentally, disposes of the observation made, I think, by Dr. Lanka Sundaram, that it might have been possible for us to ask for a supplementary demand or make any other motion, before this Parliament. Now, so far as this expenditure is concerned, it is not incurred by us; it is incurred by the U. P. Government, and the proceeds from the tax also do not form part of the Consolidated Fund of the Union but will go to the Consolidated Fund of the U. P. State.

There was some reference to imposition of taxes by law. I think that particular argument has already been answered by one hon. Member. So far as the legal position is concerned, there is no difference between imposition of a tax by Ordinance and securing any other matter by Ordinance. Whether it is an Ordinance or whether it is a law passed by Parliament, it is law for all purposes.

Now, as regards precedents, there are no less than six precedents of a tax having been raised by means of an Ordinance. There was the Indian Post Office Amendment Ordinance, 1935. That was in the old days. Then the Indian Taxes on Income (Deduction at Source) Ordinance, 1935, and the Excess Profits Tax Ordinance, 1943, and in the lifetime of this Parliament the Additional Excise Duty on Cloth Ordinance, 1953. Then, just before the Constitution came into operation, there was the U.P. Terminal Tax on Passengers Ordinance, 1950, which was called the Hardwar Kumbh Mela Ordinance. There is an example of a State Government also having imposed a tax by an Ordinance.

The point I would make is that in each case, and certainly in the case of the Excise Duty on Cloth, the matter did come up before the Parliament. So far as the material before me goes, I do not find that any objection was raised to the power of the President to

raise a tax for a certain purpose and in certain circumstances by means of an Ordinance.

Now, that is the general legal position. In regard to the facts of the case, particularly the facts of the imposition of the Kumbh Mela Terminal Tax, the facts are these. It was sometime towards the end of October, 1953, that we received a communication from the U. P. Government making several proposals on the basis of their estimate of the expenditure that would be required for the Kumbh Mela. They pointed out that as the river had changed its course, a new site would have to be developed for purposes of the Mela or the approaches would have to be made differently and that the total expenditure to be incurred by them would be very much larger than in the past. Therefore, the first proposal was that the Centre should pay them a grant to cover a part of the expenditure.

The second proposal was that they should be allowed to increase the yield from their old pilgrim tax, which was utilised for a similar purpose. They pointed out that the yield would be about Rs. 2 or 2½ lakhs which would be entirely inadequate for the present purpose. Therefore, they suggested that a terminal tax should be levied on the model of the Hardwar Terminal Tax—precedent of 1950—and they calculated that they would be enabled thereby to raise about Rs. 15 lakhs.

Then a great deal of time was spent in correspondence to and fro in regard to the merits of these proposals. The Finance Ministry took the view that it would not be advisable for the Centre to make any grant. Then, there were representations again from the U. P. State Government which had to be replied to. Then, we pointed out that even in regard to the terminal tax, it did not seem to be so necessary to raise just another additional Rs. 12 or 13 lakhs in view of the resources at the disposal of the U. P. Government. The case was represented by

them again through various channels and it was towards the end of December, after the House was adjourned or prorogued, that the decision was taken that we should accept that part of the U. P. State Government's proposal, that is to say, to raise the terminal tax, especially in view of the fact that we had denied them the grant that they had asked for.

Now, all this you might say was administrative delay. Certainly it was, but I cannot see that, having regard to the hundred and one preoccupations of Government, especially their preoccupation with the Parliamentary business itself, one could come to the conclusion that it might have been possible for them so to hurry matters as to ensure that a Bill imposing this tax was brought before the House. This is an unvarnished account of what happened.

There could not be any reluctance to bring this small measure before the House, because in the light of revenues that are being raised with the consent of the Parliament, the present Finance Minister could not have been entertaining any apprehensions that the House would adopt a particularly rigid view in regard to this small tax, which had been imposed a year before for some specific purpose. Now it might be possible for hon. Members to say that the Finance Minister is transferring his burden of lashes for negligence to the shoulders of the U. P. Government. They will say that all executive is one as it is run by the same Party. It was the U. P. Government which failed to foresee that the correspondence between the two Governments would take in the ordinary course a couple of months and they should have, therefore, addressed the Government of India towards the end of August and not towards the end of October. I am not in a position to answer that charge. They themselves might have some very good reason why they were unable to make those proposals earlier. It may be that their engineers had not advised them as to the character of the works that would be necessary for the Kumbh Mela in the altered

circumstances of the case, namely, the altered course of the river (*Interruption*).

Mr. Speaker: Order, order. Let him proceed.

Shri C. D. Deshmukh: I am not in possession of the data in regard to the change of course of the river.

Shri Sarangadhar Das (Dhenkanal-West Cuttack): That was just at the end of the last monsoon.

Shri C. D. Deshmukh: I am frankly not in a position to defend the U. P. Government. All I can say again is that the reference reached us on the 30th October, that with the caution, which is characteristic of the Finance Ministry, we refused to accept part of the burden and in any case we did not readily agree that the public should be taxed unless we were convinced. Therefore, if we took a couple of months to be convinced that a tax on the public is necessary, I should say that it is not a penal offence. That is all that happened in this particular case.

I have the details in regard to the other ordinances, but as you have pointed out, this is not the occasion that one could go into the merits of the ordinances. I would like to refer to the Barsi Light Railway legislation. In this particular case, the Barsi Light Railway Company, a company registered in the United Kingdom, was given a year's notice on the 19th December 1952, notifying the intention of the Government of India to purchase the undertaking on the 1st January 1954. In order to safeguard the interests of the workers, Government got that company to agree that the company should pay to Government suitable sums to represent the liability of the company in regard to gratuity and leave salary of the staff in respect of the period of service of such staff under the company. Although the company expressed its willingness to make the necessary payments, we found that it was not legally competent to do so according to the law of England—not our law—in view of the fact that

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the business of the company would come to an end on the purchase of the undertaking on the 1st January 1954 and therefore there was a danger of the gratuitous payment made by the company being challenged by its shareholders in the United Kingdom. In order to safeguard the interests of our workers—and I knew that that matter was causing a good deal of anxiety to the Members of Parliament from that part of the country—we thought that the best thing would be to tie up this position by an ordinance. And since the undertaking was to be taken over on the 1st January 1954, there was no alternative but to issue an ordinance. Here again, it could be argued—quite validly I think—that there is no reason why this investigation into the possible legal rights of the company according to the law in England could not have taken place before. I have no answer except that this is the way in which matters come up in every Ministry. A decision is taken and then somebody raises some issue. Then there are negotiations with the company and so many proposals are made to them. Some are accepted and some rejected by them. Then at a certain period of time something is fixed, and that thing fixed in this case was the payment of a gratuity out of their own funds to our workers here. That, as I said, took place towards the end of December, or the middle of December, and it took us a little time to find out what the legal position was. Therefore, in this case too, I think any dispassionate student of the matter would come to the conclusion that possibly this ordinance was also justified.

And, therefore, Sir, I say that unless one knows the details of every case it is not really possible to generalise and that the real trouble is not any desire on the part of the Executive to ignore the House, but perhaps the inability on the part of the Executive to foresee each and every circumstance as it develops. There are administrative delays and there are, as I said, lapses in regard to foreseeing the future. You may perhaps say that these are in-

stances of lapse of foresight. Those are defects from which Executives all over the world, I think, do suffer. When we sometimes say that we are not sure if our Plan will be executed, if our National Plan will be implemented, we have the same thing at the back of our mind. It is a hydra-headed defect. One cannot always tell readily where the defect lies, or how delays take place. But I take it that what has exercised the mind of the House here is not so much the question of administrative delays, or lack of foresight—although they are certainly entitled to blame the Government in individual cases where these things could have been foreseen—but it seems to me that it is a case of indirectly, so to speak, ascribing *mala fides* to the Executive, and that I am in a position to deny. I say that in every case there was an honest exercise of judgment and a great deal of cogitation, because by this time the Executive also is very keenly aware of the view that the legislature takes of the issue of ordinances, and I can assure the House that if an ordinance is issued it is issued after the most mature and deliberate consideration. Therefore, it seems to me that the purpose of this discussion is really in a sort of indirect way to say that the Executive is somewhat inept. I suggest that that is a matter which ought to take another form and not the form of a discussion of whether certain ordinances were justified or not, or, what is worse, whether the executive has a habit of issuing ordinances.

And that leads me to the last point that hon. Members made that it might be worthwhile for the Parliament to set up a Committee in order to sit in judgment on all the ordinances that have been issued since the inauguration of the Republic. (*Some Hon. Members: No, no.*) Indeed, one hon. Member challenged me to produce all the ordinances that have been issued since independence. It is not possible for me to comply with that order. I have got all the ordinances that have

been issued only in the last inter-session period. But it seems to me, Sir, that much of this work will be really a waste of energy of the House, that is to say an *ex post facto* or *post mortem* examination, which is so far behind events. I have no doubt that in the course of enacting these ordinances into law the Parliament has had on almost every occasion—cases like Kumbh Mela are very few—or at least in a very large majority of cases, a very extended and specific opportunity of giving its verdict on the judiciousness or otherwise of the use made by the President, on the advice of the Executive, of the powers vested in him under article 123. In regard to this particular ordinance, where, as I said the Legislature had no chance of discussion, the Mela was actually to commence sometime in December, according to the Uttar Pradesh Government.

Some Hon. Members: In January.

Shri C. D. Deshmukh: I am reading from my brief. The Mela was expected to last from 1st December to 15th March.

An Hon. Member: You have been badly briefed.

Shri C. D. Deshmukh: They might have been badly advised, or it may be that people started coming for the Mela even earlier than the expected period. But in any case, we gave effect to it as soon as we could issue the ordinance—that is to say from the 7th January. The point I am making is that the date, 15th of March, was given by the U. P. Government, that is, on their first communication, when we had agreed there was ample time in consultation with the Business Advisory Committee to have the necessary legislation passed in this House. Therefore, it is quite clear that by making that ordinance expire on the 15th March, we did not make any deliberate attempt to keep the House in the dark. It just happened that the Mela disperses on the 15th March and it also happened that somebody—it must be

you, Sir, fixed the date on 15th February for the commencement of this Session so that there are four weeks and not six weeks. Had it been otherwise, no one would have been happier than myself to bring this piece of legislation before the House and face its verdict. That is all that I have to say.

Dr. Katju: Sir, my hon. colleague has narrated to you the facts relating to the financial ordinances. I should like to ask you, in these three or four minutes, to take a more general view. There has been plenty of denunciation and plenty of observations of a general nature: democracy, Parliament, and all that. My hon. friend, Mr. Bhargava who has left ... (*An Hon. Member:* He has not left.)... was very severe about the Press Act. I am absolutely unrepentant about it and my conscience is quite clear.

Shri N. C. Chatterjee: Always.

Dr. Katju: Always—at least—this time. The Bill was introduced. The House was congested with legislative business. There was a debate on Foreign Affairs, Scheduled Castes—and God knows what—and I gave clear notice that inasmuch as the Bill has not been taken up I would have an ordinance promulgated. I would ask you to consider—my hon. friend, the Finance Minister rather hurried over article 123—but please consider: First,—should this Government or any Government share the responsibility for advising the President to promulgate an ordinance on the question of fact as to whether immediate action is necessary or not? Or should it not? That is my submission to the House.

A suggestion was made—it was twofold: first, a *post-mortem* examination of all the ordinances, and secondly, before you promulgate an ordinance have a Committee of the whole House to advise the Government as to whether there is really a necessity for an ordinance.—if I understand rightly. I do not know what a Committee of the whole House is.

Dr. Krishnaswami: A Committee of the House.

Dr. Katju: I thought you said the 'whole House'. A Committee of the House to come from all parts of India might take ten, fifteen or twenty days and then it might come to some conclusion. I say it is the function of the Executive Government to take upon itself the responsibility.

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Consider what actually happened. The Constitution makers inserted this provision deliberately. Mr. Bhargava said so. They suggested as soon as Parliament meets the ordinances shall be laid on the Table of the House. Take the Press Act Ordinance or any other ordinance. What does the Constitution say? It is open to Parliament to express its disapproval of that particular ordinance by tabling a motion for disapproving that ordinance even on the second day. This House met on the 15th and supposing it does not approve of any of the ordinances, under article 123, you can table a motion and say this is an ordinance totally unnecessary; there was no emergency; there was no necessity for taking immediate action; that this was purely arbitrary; that the Government was power-drunk; it wanted to ignore the Parliament; and therefore, we want to disapprove of these ordinances. They could have gone to you, Sir, and said that this is a matter most urgent and important and so please suspend all the rules of business and have our motion and discuss it. On the 17th of February everything can be considered. Let us have a sense of perspective about these matters. It is not an ordinance which goes for two years or three years; it is not as if the executive government is passing an Act simply superseding Parliament. It says, number one, the executive government has some sense, it will take some action where immediate action is called for. And then comes Parliament; as soon as it meets, the Ordinance is to be laid on the Table. Then comes the opportunity for disapproval. And then there is opportunity for further action, ordinary action, vote of censure. There is

the Debate on the Address, or any other occasion. They say: here this Government has been acting in a most improper, indecent hasty manner, completely disregarding our existence. These, I submit, are the ordinary methods by which parliamentary democracy works and not by suggesting that ordinance is a hateful word and should not really be used at any time. I can quite understand; amend the Constitution; you may say that Parliament should have the legislative power and executive government should never have any legislative power. I do not dispute that. But so long as this Constitution exists, here is the executive government—I am not talking of this particular executive government, any executive government—vested with responsibilities. If it introduces an ordinance on the Barsi Light Railway or so far as this poor Press Bill is concerned, just consider this. (*Interruption.*) I can go into a sort of eloquence, melodramatic eloquence. What does this say? The Press Bill was to expire on the 31st January, 1954. A Bill was introduced in the House sometime in December, extending the period. We waited. The House was busy. And I intimated to the House when my friend Dr. Lanka Sundaram

Mr. Speaker: I may just correct the hon. Minister. When the Business Advisory Committee met, it distinctly asked the Minister for Parliamentary Affairs to give it a list of the Bills pending, all the Bills which Government want to introduce but which had not been introduced, and the priority which Government wanted in respect of the Bills. At that time a list of other Bills which were not introduced was given, but this Bill—which was later introduced—was not supplied to the Business Advisory Committee. That is the point of grievance.

Dr. Katju: Very well, Sir, I stand corrected. But with all due respect to you, it does not take you very far.

Mr. Speaker: I am not arguing.

Dr. Katju: I bow with respect to your observations. We will have a discussion. The Press Bill is third on the list. I am waiting for declamations, from this side, that side, every side. I have got all the newspaper cuttings. What has happened? Have the heavens fallen? The original Press Act was due to expire on the 31st January. The House was not in session. We only said this. The Bill was there. We did not want to have a gap. I am not saying anything as to what the Press is capable or not capable of. We did not want a break. So we said: Here is the Ordinance. Parliament will meet on 15th February. This Bill will be one of the first matters to come up before it. Therefore, for this short period, twenty-four days or one month, let us have this.

Sir, I do not want to add anything further. In short I say this. It is open to Parliament, it is open to the people of India to decide that the Constitu-

tion should be amended and that the ordinance-making power should be completely taken away from the executive government. But if they want to give it, then I say it would be most improper that that responsibility should be shared with anybody. The executive government should be solely responsible for the exercise of that power. An Ordinance may be called for at twenty-four hours notice, forty-eight hours' notice. Secondly, the Constitution as it exists gives the most complete power of supervision to Parliament to approve of the action, to disapprove of the action and to censure the Government. What more do you want? That is all that I have to say, Sir.

Mr. Speaker: The House may now adjourn.

The House then adjourned till Two of the Clock on Wednesday, the 17th February, 1954.