

tion 16 of the Merchant Shipping Act, 1958.

(ii) Review by Government of the Report mentioned at (i) above.

[Placed in Library. See No. LT-2882/86 for (i) and (ii)].

II. A copy each (in English and Hindi) of the following Notifications of the Ministry of Transport (Department of Surface Transport) (Ports Wing), under subsection (4) of section 124 of the Major Port Trusts Act, 1963:—

(i) G.S.R. No. 869(E), dated the 16th June, 1986, approving the Tuticorin Port Trust Employees (Family Security Fund) Regulations, 1986.

(ii) G.S.R. No. 916(E), dated the 27th June, 1986, approving the Cochin Port Trust Services (Reward for Suggestions) First Amendment Regulations, 1986.

(iii) G.S.R. No. 929(E), dated the 2nd July, 1986, approving the Cochin Port Employees (Recruitment, Seniority and Promotion) First Amendment Regulations, 1986.

[Placed in Library. See No. LT-2861/86 for (i) to (iii)].

Reports and Audited Accounts (for the years ended 31st December, 1983 and 1984) of the Indian Red Cross Society and Related Papers

THE MINISTER OF STATE IN THE MINISTRY OF HEALTH (KUMARI SAROJ KHAPARDE): Sir, I beg to lay on the Table a copy each (in English and Hindi) of the following papers:—

(i) Sixty-third Annual Report of the Indian Red Cross Society, for the year ended the 31st December, 1983.

(ii) Audited Accounts of the Indian Red Cross Society, for the year ended the 31st December, 1983.

(iii) Sixty-fourth Annual Report of the Indian Red Cross Society, for the year ended the 31st December, 1984.

(iv) Audited Accounts of the Indian Red Cross Society, for the year ended the 31st December, 1984.

(v) Review by Government on the working of the Society.

(vi) Statement giving reasons for the delay in laying the papers mentioned at (i) to (iv) above.

[Placed in Library. See No. LT-2883/86 for (i) to (vi)].

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE

SHRI NIRMAL CHATTERJEE (West Bengal): Sir, I beg to lay on the Table a copy (in English and Hindi) of the Fifty-Third Report of the Public Accounts Committee on Avoidable extra Expenditure on the Purchase of Cross-bar Telephone Exchange Equipment for various Exchanges.

MR. CHAIRMAN: Hon. Members, yesterday, the debate on the Commissions of Inquiry (Amendment) Ordinance and Bill was not over. In order to complete the Business today and to have a little more time for clarifications on the statement in regard to the Chinese intrusion in Arunachal Pradesh, we will dispense with the lunch hour.

I. STATUTORY RESOLUTION SEEKING DISAPPROVAL OF THE COMMISSIONS OF INQUIRY (AMENDMENT) ORDINANCE, 1986 (NO. 6 OF 1986).

II. THE COMMISSIONS OF INQUIRY (AMENDMENT) BILL, 1986—contd.

MR. CHAIRMAN: We shall continue with the discussion on the Statutory Resolution and the Bill. Shri Pawan Kumar Bansal to continue his speech.

SHRI PAWAN KUMAR BANSAL (Punjab): Mr. Chairman, Sir, in a democratic society Governed by the rule of law the role of Parliament is pre-eminent as it is from its portals that emanate the laws of the land. The laws enacted by the legislature, as I said yesterday, are dir-

[Shri Pawan Kumar Bansal]

ected to the situation and to the problems made manifest by experience. Obviously, in a changing, moving and a dynamic society as ours, the laws cannot be static except at the cost of our national progress and national interest.

In our country, Sir, every citizen is guaranteed certain basic and fundamental freedoms, but unfortunately the experience has been that certain elements equate freedom with licence to do or indulge in any activity detrimental to the interests of the society and the State. There has been a spur in communal violence and subversive activities in many parts of the country. Religious tolerance seems to be a matter of the past and on the slightest pretext a vast but silent majority is held to ransom by the vocal, vociferous and the disruptive minority. They not only get away with nefarious acts of causing untold sorrow to the innocent but also get undue publicity from the media. This is the environment that surrounds us today.

[Mr. Deputy Chairman in the Chair].

Sir, any document brought before the Parliament becomes a public document, open to the press, both domestic and foreign. That the role of foreign press has been on occasions prejudicial to our national interest is well known. It is to ward off a situation where the material is scooped from the Parliament, distorted and reported with a bias to create trouble, that the present amendment to the Commission of Inquiry Act is sought to be brought about.

Sir, the Parliament does not function in camera. There has been no such occasion so far and in my humble opinion doing so in the future would serve no purpose for as the very name suggests, Lok Sabha is the House of the People. The Members of Lok Sabha are the directly elected representatives of the people. They call for information and speak for the people, and not merely to satisfy any personal ego. The proceedings of the Parliament are not akin to those of a judicial court where in a given case, the presiding officer directs the proceedings to be held in camera to avoid

embarrassment to the parties or on any other cogent ground, which of course goes unnoticed by the general public. So, Sir, if the appropriate Government genuinely feels that the publication of any report of a Commission of Inquiry on a sensitive matter may give rise to a reaction outside, which would not be conducive to the interests of the sovereignty and integrity of India, to the security of the State and friendly relations with foreign countries or would not be in the public interest, then in that rare case if such a report is not laid before Parliament, there would be no curtailment of its powers, particularly because the amendment itself acknowledges the right of the Parliament to decide as to whether any report should be or should not be withheld from it. With due respect to the hon. Members from the other side, I could not persuade myself to agree with their proposition that to decide whether the report should be withheld or not, they must see it, go through it and discuss it. Such a recourse would render the present amendment nugatory and meaningless. As said yesterday, for any intelligent brain, information about the reasons for not laying the report before the Lok Sabha as contained in the notification issued for the purpose would suffice.

Sir, yesterday the hon. Minister informed the House, in fact, he assured us that the provisions contained in the present Bill would only be used in extraordinary and compelling circumstances in sensitive matters and when the situation is really grave. We ought to accept that. And with that object in view, the present amendment is very reasonable.

The four situations visualised in the Bill are not the result of any whimsical imagination, nor were the words used therein conjured up overnight. These are the expressions used for placing reasonable restrictions by the Constitution itself and have invariably stood the test and scrutiny of the highest court of the land.

Sir, one hon. Member from the Opposition was critical of the use of the

term "public interest" saying that it had too wide a connotation and could be invoked arbitrarily. I am sure he would agree that "serious and aggravated forms of public disorder" and the "maintenance of peace and tranquility" are so essential for the society that they do justify the inclusion of such a term or such a ground for withholding the report.

Parliament, as I said earlier, occupies a pre-eminent position in our democracy. It is the custodian of the people's rights and normally has the right to every information. But who can deny that the interests of the country are most paramount.

Respected Advaniji gave an apparently very impressive speech yesterday. But I would humbly submit that the parallel drawn by him between the report of the Inquiry Commission appointed under the Commissions of Inquiry Act and those of the Parliamentary Committees is not tenable. Parliamentary Committees are an extension of the Parliament itself and that is not the case with an inquiry Commission. Also, his reference to the provisions of law requiring the laying on the Tables of the two Houses of Parliament of all the rules and regulations etc. framed under an Act of Parliament is out of place because all the rules and regulations, as we know, have the force of law and by their very nature are meant to be conveyed to the public and there is no secrecy about them. The provisions making it mandatory for laying the rules on the Table of the House are simply to ensure parliamentary control over the entire law-making process and to suggest and make amendments, if necessary. That, I humbly submit, is not the role assigned to Parliament in the case of a report of an Inquiry Commission brought before it.

Sir, going through the various amendments moved by some of the hon. Members, I was surprised to come across suggestions wanting the Chief Justice to be associated with the opinion on withholding the report from Parliament. When the final right in this matter has been

left to the Lok Sabha by the present amendment, I wonder how these hon. Members would feel about the independence or the primacy of Parliament with the Chief Justice deciding in every case as to what should be withheld from the the Parliament. Equally preposterous in my humble view, is the amendment suggesting that a collegium of chairman of the Rajya Sabha, Speaker of the Lok Sabha and Chief Justice of India together should decide the matter and thereafter the two Houses sit over the judgement of their Presiding Officers.

Finally, Sir, I was wondering yesterday as to why the Opposition was so much worked up over this innocuous amendment. After all, there was no impingement of any substantial right and the Principal Act itself was not the corner stone of democracy which seeks its sustenance and strength from various constitutional provisions and well-established conventions. I wondered where is the question of Government trying to avoid its accountability by bringing about this amendment where is this onslaught on the prestige of the Parliament and the democratic institutions of the country? Sir, my dilemma and my doubts were cleared when a veteran leader, Mr. A. G. Kulkarni, said that he was a politician and must take a political view of the matter. That, in my humble view, amply explains the opposition to the Bill which, I personally feel, should be passed by this House. Thank you.

SHRI N. E. BALARAM (Kerala): Mr. Deputy Chairman, Sir, having listened to some of the speeches including the introductory remarks by the honourable Minister, I think some of the problems raised from this side are not properly answered. With regard to this Bill all of us are saying that it is a very serious legislation, but when we say this is a very serious Bill I don't know if the understanding of both sides is identical. When I say it is a very serious Bill, I think I have a certain understanding about it. This Bill is actually trying to kill two birds with one stone. First of all it is seeking to curb or curtail or abridge the

[Shri N. E. Balaram]

rights of this Parliament. Secondly, it is trying to withhold sometimes certain important facts from Parliament and the public. These are the two dangerous things, according to me, that are sought to be done by this Bill. I do not know why the Government is trying to bring such a Draconian measure at this juncture.

The Minister had said in his introductory speech, some two or three points supporting his position. Number one is, while he was narrating the history of the Bill he had stated that experience of the past 15 years had convinced him to make some amendments to this Bill even though in detail he did not say about the experience. I would like to request the Minister to cite one single example from the last 15 years' experience to show how any report discussed either in this House or the other House, Lok Sabha, had endangered public interest or the security of the State because of such a discussion. If he can cite one single example of that kind, I can definitely agree with him that his position is one hundred per cent correct. Otherwise, saying that this 15-year experience has given us some lessons to revise the old position makes it very difficult for us to agree with the argument. I hope in his reply he will be able to enlighten me on this point.

The second point he has said is also a point on which I cannot agree. He put across the arguments of public interest, security of the State, relations with other countries, etc., I would like straightway to put a question at him: Sir, does he think that the Members of this Parliament are not interested in all these matters? As far as the public interest is concerned or the state of security is concerned or the relationship with our neighbouring countries is concerned, I think, he would at least concede that all of us are very much interested in that subject. So, by putting across that argument if the Minister is trying to justify his position, I am sorry to say, we cannot

agree to that. He is not only denying the right to the Opposition Benches, but he is denying the right to the entire Parliament. Can we not discuss such matters in this House? Sir, as far as this Thakkar Commission Report is concerned, it was submitted by Justice Thakkar. I think he knows the amplitude and the accountability of this particular act. Justice Thakkar must be definitely knowing the amplitude and accountability of this Act, the accountability of this Commission's Report to Parliament. Even when submitting the Report he would be knowing that it would be debated in Parliament. So, I do not know why the Minister is now taking a position that if some of the secrets in this Report or any other report are revealed to Parliament, it will endanger public interest or endanger the safety of the state. I cannot understand that argument. We cannot agree to that argument. I hope, when he explains the position, he will explain that point further.

Another point the Minister advanced is a very funny one according to me. He says that if the Government is satisfied that a particular report or a part of a report cannot be placed before the House, naturally the Government will issue a notification on that account, and the Government will give an opportunity for the House to discuss about the whole thing. This is the position taken by the Minister. But I would like to tell the hon. Minister, as far as this particular House, Rajya Sabha, is concerned, I think that this course of discussing the notification itself was not there in the original Act. According to the original Act it can be done only by the Lok Sabha. It is not allowed in Rajya Sabha. So, for us even that right was denied. How can he justify that the notification will be placed before the House and that the hon. Members will have the right to discuss about it? I do not understand the position taken by the hon. Minister.

Another thing is, the most dangerous thing in this Bill, according to me, is, Sir, that the decision to with-

hold a report will be taken by the executive or the Government if the Government feels or if the Government is satisfied that a particular part of the report or the particular report, if placed before Parliament, will create some problem for the public interest or the security of the state. But there the question is about "if the Government satisfies." I think we are giving a blanket power to the Government to take such a decision. Sir, I have my own apprehension because the Government may misuse this power. I am not saying that the Government will always do that, but the Government may. There are possibilities. If needed, I can cite example also. But I am not going to cite them now. When some top people in the Government are involved in some cases, the Government will say that they are satisfied and that they are not going to place the report before Parliament for discussion. So, there is every chance of misusing this particular amendment the Government is seeking to legislate. So, I am asking the Minister what in-built safeguard, guarantee is there to prevent misuse of such arbitrary power given to the executive or to the Government. It is now entirely in the hands of the Government. My question is why is the Government bringing in this particular amendment at this juncture. For the last fifteen years they never thought of bringing in such an amendment. But when the Thakkar Commission's report came into their hands the Government started thinking on this line. I do not know what are the reasons behind it. My presumption is that according to the Government's thinking there is something in the Thakkar Commission Report, which the Government cannot reveal to the public and to the Parliament. This is the only impression that has been created throughout the country. So, my point is if this blanket power is to be given to the Executive, then there must be some in-built safeguards to prevent misuse of the power which is not at all there in the Bill. If such a Bill is passed, I think we are trying to curtail the

right of the Parliament. And it is a very dangerous trend which will have a far-reaching consequences. Therefore, there must be some in-built safeguards.

Another point which is raised here is the right to information. I am not repeating the point. I am not trying to emphasise the right to information. Of course, the right must be there, but I am point out another aspect on this. The Government wants cooperation of the Opposition parties. Sometimes they say they want a national consensus or they want cooperation of the Opposition on such and such issues. The Government always says this to the public and to the Parliament. If you want this, why don't you take us into confidence? Without information can we discuss anything seriously on any subject? You may be withholding a particular item or a particular reference or a particular step on which we may have a basic difference with you. Unless we know the basic differences from our side, how are we going to have a debate? What sort of debate are we going to have in Parliament and what will be the benefit of such a discussion? So, it is not a question of right to information. If we want to take a collective decision, proper information must be made available to the Members of Parliament. Instead of giving proper information to the Parliament leaders, for the sake of convenience of the Government, they are trying to hide the facts.

I do not know what are the new circumstances which have prompted them to bring in such a Bill. We know what are the new circumstances in the country. We know the Punjab problem, we know the water problem, we know the communal problems and we know several other problems. We all are trying our best to understand the point of view of the Government

[Shri N. E. Balaram]

and the Government is trying to understand the viewpoint of the Opposition parties. There is no secret. If both of us are trying to understand, then what is the new situation for you to bring in such a legislation? I do not know what is the new public interest that has arisen at this juncture, what is the new threat to the security of the State that has arisen at this juncture, what is the new point in telling us that the nation's security will be endangered by bringing out certain facts? Therefore, I am posing certain questions from this side.

First, what are the reasons that promised the Government to bring in such a legislation now at this juncture? It was not explained by the Government. (2) When they take such a blanket power in their hand, what is the inbuilt guarantee or safeguard that it will not be misused by the Government? I have got apprehension that this Government will definitely misuse its power. I am not going to cite examples as to how they have misused the power in the past. When they take such draconian measure, what is the inbuilt institutional guarantee to prevent in misusing the Bill? These are the questions I want the Minister to answer, with these few words, I conclude.

SHRI P. N. SUKUL (Uttar Pradesh): Mr. Deputy Chairman, Sir, I rise to support rather this simple Bill which our Opposition friends have tried their best to make controversial. If you go through their speeches one of the Members has said that after the passage of this Bill there would be no democracy in this land and the Parliament will be entirely divested of its supremacy. But no such thing is going to happen. However, during their speeches they have displayed in a big way their capacity to make a mountain out of a mole hill. Our hon. friend, Mr. Dipen Ghosh has said that it was an attack on our democracy. Mr. Gurupadaswamy called it sinister and an attempt to hoodwink the Members of Parliament. Mr. Upendra has said that by bringing this Bill, the Government was trying to undermine

the importance of Parliament and so on and so forth. I do not know actually what they wanted to convey. Our friends like Mr A. G. Kulkarni was rather confused. He was trying to recall the Supreme Court verdict in the Keshavananda Bharati case. It simply does not apply here. In the Keshavananda Bharati case, the Supreme Court had said that the basic features of the Constitution cannot be altered. Here through this Bill no attempt is being made to alter the very basic tenets of the Constitution or the basic features of the Constitution. Sir, when this Bill was passed in 1952 originally this Clause was not there that the report of the Commissions of Inquiry would be placed necessarily before the Parliament. It was only on reconsideration in 1971 that it was inserted therein and it was said that the Government would present the report of the Commissions of Inquiry before Parliament. That amendment was not brought at the instance of the Parliament, but at the instance of the executive. Nobody had demanded it. This amendment has been brought because of the needs of the day. What is important is that we have to examine the Bill from angles—whether it is legally valid and whether it is proper? The legal validity and the propriety of the Bill have to be examined. That is why this Bill has been brought forward here. As regards the legal validity of the Bill which was raised by my hon. friend, Mr. Satya Prakash Malaviya yesterday that on the 14th May 1986 the Ordinance was issued and the Rajya Sabha had not been prorogued then, but according to article 123 (1) of the Constitution except when both Houses of Parliament are in session, the President is empowered to promulgate an Ordinance if necessary. Sir, one House, that is Lok Sabha had already been prorogued and the other House—Rajya Sabha had also adjourned *since die*. So both Houses of Parliament were not in session. Even if one House was not in session and the other House had been prorogued.

Even when one House had been prorogued and the other House had not been prorogued, even then, the President was empowered and competent to promulgate

an ordinance. In Kaul and Shakdhar, it is said that even if one House is prorogued, the President is fully empowered to pass an ordinance if necessary. So, as regards the legal validity, the legality of the process, there was nothing wrong in it. Moreover, on 30th of May, the Delhi High Court has already put its stamp on the ordinance. It has already upheld the legal validity of the ordinance that is now sought to be replaced by the proposed Bill into a proper enactment. So, there seems to be nothing wrong about the legality, the legal validity of the Bill or the ordinance to me.

Sir, as regards the propriety of the Bill. I would say, as my hon. friends was just saying, about the right to information, We do not have a fundamental right to information and we know that, even in Parliament in matters pertaining to defence preparations, security of State, espionage, there are so many things where the Government is not obliged to pass on that information to Members of Parliament. So, still Parliament is not supreme. It is the Government that is supreme. They know what is in public interest and what is not in public interest. They have more information than we have. We know only about newspaper report or we are motivated politically. (*interruptions*)

SHRI DIPEN GHOSH (West Bengal): Who are they who know the public interest?

SHRI P. N. SUKUL: The Government. the executive, I said.

SHRI DIPEN GHOSH: The new Alexandars, the new Dhawans.

SHRI P. N. SUKUL: What are you talking about? said executive only. I have not taken any name. Even in a court of law, once a Government files an affidavit that it is in the public interest that we shall not produce this document in the court, the court is guided by that version of the Government and even where a court of law inspects the relevant records of the Govt., the court also reserves its right to disclose those things, those details

to other party or parties concerned. They may not do so. Why such a right is reserved either by the court or by the executive? That is always reserved in the larger interest of the public, in the larger interest of the nation. Somebody was talking about Thakkar Commission. Although in the objects and reasons of this Bill, there is no mention of Thakkar Commission but our Opposition friends have been talking of Thakkar Commission and so many Commissions, Ranganath Mishra Commission. (*Interruption*)

SHRI DIPEN GHOSH: You see, the Thakkar Commission, report was to be submitted before 19th of May...

SHRI P. N. SUKUL: I know that. But what I am saying is that in the statement of objects and reasons, there is no mention of any Commission. Even if you quote Thakkar Commission, well the murder of our Prime Minister was not an ordinary thing. You see, it was as a sequel to the terrorist activities that had been continuing for long and which are still continuing and if the convicts are still under trial and their appeal is still pending before a court of law and if the findings of this Commission of Enquiry are divulged, of course, there will be embarrassment not only to convicts, not only to the judges but also all other concerned. So the purpose of this Thakkar Commission is not to embarrass anybody on this subject and you see, as I was saying, the executive is fully empowered to appoint a Commission of Inquiry to have information for its own purposes on a definite matter, on a definite subject. It is not that, that is appointed only to tell everybody; it is like that and that findings are like this for its own information and for its own satisfaction and you must not forget that there is a vast difference between the Judicial probe and the findings of a Commission of Inquiry.

SHRI DIPEN GHOSH: What is that?

SHRI P. N. SUKUL: It is not a trial. On the basis of this report, you cannot take action as it is. You have to go

[Shri P. N. Sukul]

through the process of law, and that process of law is already under way, in this particular case. So our aim, our object should not be to embarrass what is under way, to frustrate the process of law.

श्री लाल कृष्ण आडवाणी (मध्य प्रदेश) : चिदम्बरम जी, यह आपका कस बिगाड़ रहे हैं ।

SHRI P. N. SUKUL: No, we are not. You are trying to do it. So this matter is a very delicate one, a very sensitive one. My predecessor who was just speaking was asking, "What are the reasons?" These are the reasons—the sensitivity of the matter. In the case of the murder of Mrs. Gandhi, terrorists are involved. Behind the terrorists, so many forces are involved. Some of our neighbouring countries are involved. Our relations with those neighbouring countries are directly involved. And so many other things are involved. That is why the Government has brought this amendment in the Commissions of Inquiry Act, so that any matter that may go to inflame the situation should not be there. It is entirely in the fitness of things that this amendment is being sought to be incorporated in the Act by the Government.

Sir, there is a vast difference between a thing of public importance and public interest. A commission of inquiry may be asked to make a probe into a definite matter of public importance. But the disclosure of its findings may not be proper in the public interest, in the larger interests of the public. I do not know how my Opposition friends are not able to distinguish between these two things. It needs a little better sense of discrimination; that is all. So these two things are entirely different. That is why I would like to request my friends of the Opposition not to insist upon what they are saying, that this amendment should be withdrawn. In fact, they should co-operate with the Government in passing it unanimously.

As I was saying, it is not that the reports of all the commissions will not be placed before Parliament. Section 4 is not being deleted. It is only being amended slightly. Where such findings are there as can be disclosed to the public, without any harm to the law and order situation, without any problem being created for the Government...

SHRI SUKOMAL SEN (West Bengal): Yes, Yes.

SHRI P. N. SUKUL...and for the people, then the Government will disclose it and present the report to the House. Mr. Sukomal Sen, it is the Government, as I said, which for its own information appointed this commission, not for your information or for general information. Now, it is up to the Government, up to the sweet will of the Government to share the findings with the public or not to share the findings. Why should you grudge this power of the Government? As to what is in public interest, only the Government is competent to give its verdict, its ruling.

SHRI DIPEN GHOSH: That is the whole allegation against the Bill, that public interest is being made synonymous with Government interest.

SHRI P. N. SUKUL: There is no allegation. All your allegations on this point are baseless, if not mischievous, I should say. They are entirely baseless. That is why, in the end, without taking any more of your time, I will ask my Opposition friends, rather I will appeal to their good sense, to pass this amendment unanimously and to cooperate with the Government in this matter. Thank you.

SHRI CHITTA BASU (West Bengal): Mr. Deputy Chairman, Sir, I rise in support of the statutory resolution and also to oppose the Bill. I propose to take this stand primarily on three grounds which I shall not describe because of paucity of time at my disposal. The primary reasons for opposing the Bill are three. Firstly, this is yet another gross example of

the misuse of ordinance-making power by the Government under Article 123. Secondly, this Bill takes away the right which the Parliament at present possesses by a statute. You are taking away certain statutory rights the Parliament has been vested with. Thirdly, it is an unabashed denial of the rights of the Members of Parliament to know. The Members of Parliament have got certain rights and privileges and those rights and privileges are based on the fundamental right of being informed. As a Member of Parliament and representative of the people, I require some information for the discharge of my responsibility and only by having this information, I can discharge my responsibility. This is what is called parliamentary privileges and parliamentary rights. I think the House would agree that there has been an assault on that right to know. Therefore, these are the three basic grounds on the basis of which I have taken this stand. Other reasons are also there, but they are of minor nature. At this stage, I would only like to draw your attention to the fact that assaults on the privileges and rights of Parliament are being continuously and increasingly mounted. This is a trend which needs to be checked. At this stage, I am happy to inform the House that the Left-Front Government of West Bengal has taken a very firm political position. I am a political worker and an activist. There is no harm in it and I don't plead guilty for being a political worker. The Chief Minister of West Bengal has said:

"The West Bengal Government would never use the provisions of the Bill amending the Commissions of Inquiry Act which seeks to withhold the reports of the Inquiry Commissions from the Legislature."

This is what Mr. Jyoti Basu of West Bengal declared. He described this measure as deplorable. The Chief Minister says:

"This Bill sets one more dangerous precedent for our democracy."

This is what he said. Sir, I think the House will think twice before adopting this undemocratic measure. Yesterday, I was very patiently listening to the speeches of the Members on the opposite. Some of them said that the law cannot be frozen at a given point of time. Yes, I am one of those who say that the law cannot be frozen at a given point of time. Laws cannot be petrified. Laws are the expressions of the people. Laws must change along with the changes in the political and economic conditions of the society and the country. Therefore, I am not one of those who say that the laws are final. They should remain as petrified or frozen laws. Laws are to be changed. I am also for change. Would the House kindly take note of the changes that have taken place since 1952? The Parliament must respond to these changes. What are the changes that have taken place during the decades? Sir, excuse me when I say that there has been a sea-change in the attitude and the policies of the ruling party towards democracy, towards parliamentary democracy, towards democratic rights and civil liberties. This change has been not in the direction of expanding the rights of Parliament or expanding parliamentary democracy and the direction is not towards giving more powers to the people. Rather the change is for the worse. Whatever liberal attitude was there is not to be seen now. Whatever parliamentary rights and privileges were there, were enshrined and were protected, are being eroded. I charge that they are being eroded and they are being violated. Therefore, if there is any change, the change is for the worse only and the change is not for the expansion of democratic rights, but the change is only towards concentration of power. (Time bell rings). Sir, I want a few minutes more.

Sir, this leads to the most undesirable trend towards authoritarianism and Parliament should respond to these changes and it should not remain merely a spectator to these dangerous trends. Therefore, Sir, I want that

[Shri Chitta Basu]

there should be a change in the outlook also. Sir, the examples of this trend towards authoritarianism are many. But I would like to give only two or three examples. Now, look at the Ordinances. Ordinances are to be promulgated very sparingly only. I do not go into the merits because everybody knows it. But do you know that there have been 384 Ordinances promulgated by the President during the period from 1950 to 1984? What does it indicate? It indicates that the Government is more and more taking resort to Ordinances. Therefore Sir, this is one trend which I oppose and which everybody opposes. We must protect the democratic rights of the people and the supremacy of Parliament. There are many Acts like the National Security Act and there are so many Acts. There is a plethora of laws which are anti-democratic, which are Draconian and which do not extend the democratic rights of the people, but which restrict and curb and ultimately eliminate the rights of the people. Therefore, in this context, Parliament cannot work in a vacuum and Parliament cannot respond to the situation without being emotionally charged by what is happening outside.

Sir, I stand to oppose this Ordinance and I stand to oppose this Bill tooth and nail because of the trend and the trend is towards having Draconian laws and the trend is towards authoritarianism and, therefore, Parliament must resist this.

Sir, it has been mentioned that there are four things on the basis of which the reports can be withheld from Parliament. One is security of the State; the second is friendly relations with foreign powers; and the third is the unity and integrity of the country. These are the three areas. The fourth area or ground is public interest. Sir, the honourable Minister of State for Home Affairs might be knowing and he should know also that these phrases, that is, "security of the State", "unity

and integrity", "friendly relations with foreign powers", etc. have some conceptual ingredients and you can say something about these. But what can you say or conceive of so far as the phrase "public interest" is concerned? Here, Sir, please allow me to mention two or three incidents. "Public interest" is such an alarmingly wide term, is such an omnibus term, that everything can be brought within the domain of public interest. I can give you an example in this connection. One of the former Chief Ministers of Bihar was accused of criminal proceedings were launched against him. Don't get worked up. I did not mention any names. That was in public interest. The proceedings were drawn up in public interest. And again in the public interest those charges were withdrawn. This is public interest. Some C.B.I. inquiry was initiated against the Chief Minister of Tamil Nadu. (Interruptions) I do not mention names of individuals. It was withdrawn also in public interest. I mention Shah Commission's report because it has been referred to by many people. Do you know what happened with the Shah Commission report? The Commission completed its report. The reports were printed. The reports were placed before the Parliament. All this was in public interest. Again, under the cover of public interest, these reports were withdrawn from circulation. Even the possession of that report was considered to be seditious. No further example is needed to be cited to draw home to the Home Minister. So, public interest is all pervasive. You can misuse it. I am sure that it will be misused. There are many many inconvenient reports which you don't like to publish. (Time bell rings) I will take only two or three minutes more.

Sir, restoration of public confidence is the major and primary objective of an Inquiry Commission. The Inquiry Commissions, according to me, are instruments for restoration of public confidence. For the sake of brevity because you have rung the bell, I cite

Salwan's case because that will give expression to my views. Please allow me to quote:

"In all countries, certainly those which enjoy freedom of speech and a free press, moments occur when allegations and rumours circulate causing a nation-wide crisis of confidence in the integrity of public life or about other matters of vital public importance. No doubt, this rarely happens. But when it does happen, it is essential that public confidence should be restored, for without it no democracy can long survive. This confidence can be effectively restored only by thoroughly investigating and probing the rumours and allegations so as to search out and establish the truth."

This is the primary objective of Inquiry Commissions. So, the Inquiry Commissions become an instrument of finding out truth. The Bill dismantles this instrument. This Bill breaks as under the instrument which the Parliament, in the wisdom, has built up by taking away the right to know about the report of the Commission.

Sir, my last point and I finish. Mr. Chidambaram argued that the Bill does not allow the Executive to arrogate to itself. He might have been referring to Clause 26 of the Bill. He says that by the method of approval or disapproval of the notification, Parliament's right to know is guaranteed or protected. Now, I do not know what to say. A mere whip from Mr. Bhagat makes the approval of notification a *fait accompli*, Sir this notification is nothing but a smoke-screen 1.00 P.M. and a make-belief that Parliament has been consulted, and the consultation has been made in a way that the Parliament was supposed to have accepted and Parliament gave the consent. Therefore, Sir, this is a make-belief and, therefore, it is unrealistic, undemocratic, and also a smoke-screen of their sinister design to do something behind the back of the Parliament.

Lastly, Sir, a part cannot be the whole. He cannot make a part to be a whole. Notification is a part. Parliamentary rights are the whole and the whole concept. A mere notification to be approved or not to be approved does not guarantee the rights we are enjoying under the existing law. Therefore, Sir, the amending Bill is an assault on the right of the Parliament, and an assaulting Bill indicates the authoritarian tendencies of the Government. This amending Bill protects the Executive from being exposed in Parliament. Therefore, Sir, under no circumstances, I can support this. (Time bell rings) Just only one minute, Sir. Sir, their main argument is that they have the concern for the nation's security, integrity and unity. I can only say from this side of the House that we are second to none to those who are adorning those benches. Has there been any single instance where the Opposition did not rise equally for the protection and preservation of the integrity and the unity of the country and the security of the country? Therefore, Sir, to hurl charges against us that we have no concern for the unity and integrity and security of the country is nothing but. I would say, another insult hurled against us. I oppose it. I want to combat it politically. Thank you Sir.

MR. DEPUTY CHAIRMAN: Shrimati Bijoya Chakravarty—not present. Shri Babul Reddy. Please take three or four minutes.

SHRI P. BABUL REDDY (Andhra Pradesh): Sir, much have been said on this and I will not take the valuable time of the House unnecessarily I would only confine to two or three points.

Sir, in this, one main point which is to be noticed is that under the Commissions of Inquiry Act, the Commission is constituted by the Central Government either by itself on the directions in the form of a Resolution passed by the Parliament. Sir, here, the present proviso which empowers the executive to withhold the report from the Parliament enables the executive to withhold it in both the cases—either when the Central Gov-

[Shri P. Babul Reddy]

Government by itself constitutes a Commission to inquire into a definite matter of public importance or when Parliament passes a Resolution. Sir, when the Parliament passes a Resolution, the Central Government is bound to constitute a Commission. That Commission makes an inquiry. For whose benefit? Parliament is the father. It directed the executive to constitute a Commission. That Commission submits a report. And you don't want the Parliament to see the report. Sir, this situation recalls to my mind a parallel. You celebrate with fanfare the marriage of a young lady. And then ask her to go on a honeymoon. Then when she comes back pregnant, you celebrate *Srimantham* wishing a beautiful child. The mother is enjoying. But she is directed not to see the child after delivery. Sir, the Parliament by a Resolution directs the executive to constitute a Commission. That Commission goes into that. Lakhs of rupees are spent. A report is produced. But the present proviso says that the Parliament shall not see the report. *Graha dosham* as my friend here says. My submission is that at least in case where Parliament directs the Commission to be constituted, the report should not be withheld from Parliament.

This is the point. Rest of the provisions as my learned friend, Mr. Chitta Basu says, what sort of safeguards are there in sub-clause (6). As my friend says, with a whip you can achieve it. But my point is, whether Parliament can modify that notification also without knowing what the report says. What is this power to modify? It is a blind leading the blind. Unless I know something about the report, how can I modify. Why do you withhold the whole thing? Parliament can modify only if the report is known, a summary of the report is known at last. Otherwise the whole provision is a futile exercise. Sir, it is said that in the name of security it is always customary for the authority in power to say that please sacrifice a little liberty, we will assure you security. Sir, it is well said that those who willingly surrender their liberty for promised security will ultimately have neither liberty nor security. Sir, this is the danger. You

are now going to have permanently this law on the statute book. I have got greatest respect for democracy. The Government in power, not necessarily means the representatives of the majority of the people, very often we have seen that when elections were held parties with 30 per cent or 40 per cent votes formed the Government, will tend to act on its whims and there is a suspicion in the minds of the people whether this Government is going to act according to the will of the people or in some other way. In a democracy it is well settled that suspicion should be removed. But the question is how should the suspicion be removed. Sir kindly permit me to read from the judgment of the Supreme Court, particularly the majority judgement of Justice Bhagwati where he said, "There is already in every democracy a certain amount of public suspicion and distrust of Government varying of course, from time to time according to its performance which prompts people to insist upon maximum exposure of its functioning. It is axiomatic that every action of the Government must be actuated by public interest. But even so we find cases, though not many, where governmental action is taken not for public good but for personal gain or other extraneous considerations. Sometime governmental action is influenced by political and other motivations and pressures and at times there are also incidents of misuse or abuse of authority on the part of the executive. Now if secrecy were to be observed in the functioning of the Government process and the work of the Government were to be kept hidden from public scrutiny corruption and misuse or abuse of authority, it would all be shrouded in the veil of secrecy without any public accountability but if there is an open Government with men of information available to the public, there would be greater exposure of the functioning of the Government and it would help to assure the people a better and more efficient administration. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means of achieving a clean and healthy administration. Sir, It is this liberty which must be given the highest respect. Sir, in the same judgement, in the case of confirmation of an additional judge it has

been said: We have seen the document. We have seen the correspondence between the Chief Justice of Delhi High Court and the Government and also the communication between the Central Minister and the Chief Justice. This is said, public interest requires, we have seen those documents, they must be exposed to the public. That is the great principle in democracy. Sir, a provision like this in the long run, I am not going to say anything about this Thakkar Commission, is going to be doubtful. Might be you have very good reasons for doing it. But once this is permitted in democracy, it is well known that Governments are bound to bend to the pressures. Well, suppose there is the case of a Minister and an inquiry is held. You can tomorrow say that in public interest there are certain things which cannot be revealed. You will say that nobody should look into it and you will withhold it. Therefore, Sir, I oppose this Bill.

MR. DEPUTY CHAIRMAN: Shri J. P. Goyal. You have only a few minutes.

SHRI J. P. GOYAL (Uttar Pradesh): Mr. Deputy Chairman, Sir, I very strongly oppose this Bill, as my other colleagues have done. I am very much worried. Since yesterday, I have been sitting here and have been hearing the speeches, particularly, from the other side. It appears, the trend is to do away with Parliamentary democracy in the country. I must point out to the House—the House knows it—that there is a distinction between Parliamentary democracy and other systems prevailing in some parts of the world. The system of Parliamentary democracy which prevails in our country, in the U.K and U.S.A. and some other countries give supremacy to Parliament. Under the system of Parliamentary democracy elections are held under adult franchise, people vote for their representatives in different constituencies and then Parliament is constituted. In fact, it is the Parliament which governs the country, not the executive. Executive is just a servant. It is outside Parliament. It is the Members of Parliament who choose the Prime Minister in the sense the President appoints the person, who is elected

as the leader of the majority party, as the Prime Minister. Article 75 says, 'The President shall appoint the Prime Minister. Under article 75, the President will decide as to who will be the person who can carry the House or who commands the majority in the House. In our system of Parliamentary democracy, where Parliament is supreme, the executive is only our agent and it is accountable to Parliament. Now, it says 'No, you are our servant. It says 'we can ask you to do certain things by whip, by majority, by anti-defection Act etc. Of course, we also supported that legislation. But a day will come when this legislation will have to be removed from the statute book. This is my view. You may or may not agree. Now, under the threat of this legislation, everybody is speaking one thing even though thinking otherwise. We know how the Muslim Women Bill was passed. By whip. Similarly, there is an implied whip here. As I said, executive is our agent. Agent is accountable to the principle. This is the reason why the Transport Minister informed the House today about some train accident in Bihar. Similarly when the House is not in Session, many notifications which are issued in that period are laid before the House when it meets again. Why do you do it if executive is supreme? It has come from the mouth of Mr. Sukul, but others did not say so. He said, executive is supreme, Parliament is not. For the first time, one hears such a thing. I would like to ask the hon. Minister, in any Parliamentary democracy, is there any such legislation as you have brought in now where you are saying we will not lay before the House the report of a Commission of Inquiry, which deals with a matter of urgent public importance, under section 3. This is an interesting thing. When Parliament is representing the people, on matter of public importance, you say 'we will not allow you to see it.' It is we who represent the people, 792 Members of Parliament. It is we who represent the country, for five years, all of us. But the executive which is only a servant, says to the master 'We are above you'. Mind you. If Parliament is dissolved, if the House of the People is dissolved, you will no longer be a Minister, you will no longer be a Prime Minister. This is an interesting thing. The report of a Com-

[Shri J. P. Goyal]

mission of Inquiry may be seen by a clerk, by a typist, by a chaprasi, by a Prime Minister or a Minister, but not by us. Why not? This is a matter of public importance and every one of us has the right to see it. My other colleagues have mentioned about the new sub-section(6) proposed to be added to section. This is a camouflage. If the High Court had upheld it, the Supreme Court is still there. It is bound to be declared *ultra vires*. You say the notification will be laid on the Table of the House. What is the use? Executive is telling Parliament 'here is the notification and you have to okay it'. Without seeing the report, how can we do it? Unless we see the report, how can we approve the notification? Therefore, this is no legislation at all. And this is the trend. I still ask the hon. Minister to please indicate any such legislation in the world. When England was being bombarded by Hitler still the Parliament was being held. They said the Parliament is supreme, they cannot dispense with the functioning of the Parliament. And here, tomorrow you are bringing Thakkar Commission, this Commission and that Commission and whenever it will not suit you, you will bring forward such notification. (Interruptions). Ranganathar Commission and others also. Suppose, the Prime Minister or any Minister is involved. There are so many scandals about Ministers. Suppose, some Commission of Inquiry is appointed which relates to the affairs of certain Ministers. Then they will say that the report can be seen only by the executive and not by the Parliament. Then, how are they accountable to us? The question is about accountability, through the people, to us. So, if you are not going to withdraw the Bill, please take it from me. Tomorrow you are not going to come into power. We will be there in power and we will throw away this amendment. You have come to power by some fluke. (Interruptions). We shall undo it just as the Forty-second Amendment to the Constitution.

SHRI RAOOF VALIULLAH (Gujarat): It is a wishful thinking on the part of the hon. Member. If wishes were horses beggars would ride. (Interruptions).

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): Who is 'we' (Interruptions). I was only asking who are the two members on his side who will come to power?

SHRI RAOOF VALIULLAH: They have miserably failed.

SHRI J. P. GOYAL: We will come to power.

SHRI ATAL BIHARI VAJPAYEE (Madhya Pradesh): We, the people of India.

MR. DEPUTY CHAIRMAN: Mr. Baby, your name is here in the Third Reading. You can speak now if you like. (Interruptions). All right, Mr. Advani will reply to the Resolution moved by him.

SHRI LAL K. ADVANI: Mr. Deputy Chairman, Sir, there has been a reasonably good debate on the issues that are involved in the Statutory Resolution that I have moved and the Bill that the hon. Minister has moved. Almost all the Members, who spoke from the opposition side, their first and foremost objection was that this is a case of abuse of article 123, abuse of the Ordinance-making powers of the Government. It is significant that virtually no one from the Treasury benches even tried to counter this argument. There was one indirect mention that if one House is in session and the other is not, even then an Ordinance can be issued. I am fully aware of it. The provision in the Constitution make it possible that if one House is adjourned, an Ordinance can be promulgated. But I am sure that no one from this side was questioning the legal validity of the Ordinance that you have issued. (Interruptions). At least I am clear in my mind.

SHRI MADAN BHATIA (Nominated): On a point of order. If I quote the hon. Member, he had categorically said that this Bill is unconstitutional.

SHRI LAL K. ADVANI: I had said that only in the context of what I have said on the right to information that it

Inquiry

1986

constitutional validity is dubious. It was in the context of that. But so far as timing of the ordinance is concerned, on that point I am fully aware that article 123 makes it possible for the Government to promulgate an Ordinance when one House is still in session. I would like to draw the attention of the Government to the fact that this particular Commission was constituted when this law required the Report to be published. When you framed the terms of reference, even while referring to the security problem, the security angle, you know that the report that was going to be given by the Commission, has to be placed before Parliament, has to be placed before the public so that I presume that those who drafted these terms of reference were fully aware of the implications of exposing this kind of issue to public scrutiny. Or they have made a monumental bungle.

Furthermore, I am also of the view that when you refer any matter to a Commission of Inquiry, particularly one presided over by a sitting judge or a former judge, you can be sure that he also will keep in mind the competing public interests which you have referred to. It is not that I am wanting to know how you arrange your security, how you are making security arrangements for the Prime Minister. If I were to ask a question of that kind in Parliament, you can certainly say that it is not in public interest to disclose the details of your arrangements. There were several avenues open to you if you wanted to make an enquiry. You could have held a departmental enquiry and the matter would have been over; you could have appointed a special panel to enquire into the circumstances of Mrs. Gandhi's assassination and be done with it. But the moment you decided to invoke the Commission of Inquiry Act and set up a judicial commission on that basis, in your heart of hearts you were willing to make the enquiry public. You had nothing to hide; you felt that you had nothing to hide; therefore there could be no objection to a report of this kind being made public. When did you get

this report? In the month of November 1985? Is that so?

SHRI P. CHIDAMBARAM: No.

SHRI LAL K. ADVANI : Anyway it was long before the promulgation of this Ordinance. My point is: why did you take recourse to Ordinance making if after receiving the report you came to the conclusion that publication of this document would adversely affect the security of the nation, would adversely affect the integrity of the nation, or would adversely affect our relationship with Pakistan or with America, or I do not know who, or public interest? Mind you, this is a significant departure because my friend, Bhandareji or Bansalji—perhaps both of them—said that they had not taken this phrase from out of the hat; it is from the Constitution. Article 19(2) has been cited from this side. Right of freedom of expression and from that is derived the freedom of information. But reasonable restrictions are permitted and the clause providing for reasonable restrictions has been almost *in toto* incorporated in this particular Bill No. not *in toto* Reference is there to friendly relations with foreign countries. Reference is there to the integrity and sovereignty of India. But instead of the word "public order" you bring in "public interest"—and that I regard as a significant change. If 'public order' is there, it is limited. Of course there is a definition given by the Supreme Court to 'public interest,' but I cited only yesterday an example where only day before yesterday a reply was given in this House—I am sure Mr. Chidambaram must have taken the trouble of finding out from the Minister of Industry as to why the Sengupta Committee's report was withheld from this House on grounds of public interest. There is nothing in it which could justify any secrecy, nothing in it pertaining to any creation of disorder outside. But this is the practice of all bureaucrats—and this is the practice politicians who do not want inconvenient facts to be revealed to the people to take recourse behind this veil of

[Shri Lal K. Advani]

public interest and say that it is not in public interest...

SHRI P. BABUL REDDY: Public interest is an unruly horse.

SHRIMATI JAYANTI NAT-RAJAN (Tamil Nadu): The word "public interest" also occurs in Art. 19 of the Constitution.

SHRI LAL K. ADVANI: What I was pointing out was that so far as ordinance-making is concerned, this is certainly not the occasion. Particularly when you must have made up your mind long back that this is a report which should not be placed before the Parliament, I would think at that point of time you could have come out with this Bill. You should have come to Parliament in a regular way and not confronted the House with a *fait accompli*. It is this *fait accompli* part of it I object to. If I were a Member of the ruling party today, I would be in a very difficult position today. Even though I disagree with the Bill, because Parliament functions on the basis of whips, parliamentary democracy functions on the basis of the party system, and in that situation an Ordinance gives very little scope to the Members of Parliament to exercise their independent and free will. I may appeal to you but you know well enough that privately there are Members among you who tell me, "My heart is not with the Bill but with my head I am speaking..." (*Interruptions*)..

SHRI THANGABAALU (Tamil Nadu): That must be your experience, not our experience.

SHRI DIPEN GHOSH: That is why they are not concerned about the right to information.

SHRI LAL K. ADVANI: What I am saying is that if this had not been true, then why should any Speaker like Mr. Mavalankar object to Ordinance-making? After all, even after an Ordinance is passed, Parliament's approval has to be sought. Government

has to come to Parliament for approval of the Ordinance and Government has to seek to replace that Ordinance with a formal Bill. Even then Ordinance-making has invited very scathing comments from every Presiding Officer concerned with the dignity of Legislatures and concerned with executive accountability to Legislatures. Only last year Mr. Sudheeran, Speaker of the Kerala State Assembly, ran into a series of Ordinances by the Government, promulgation and re-promulgation of Ordinances. On 18th September 1985 Mr. Sudheeran, Speaker of the Kerala State Assembly said:

"It is an extremely unhealthy tendency to convert the provision for the promulgation of Ordinance envisaged in the Constitution, to be used in exceptional and extreme circumstances, into a permanent style of legislative business. This approach will, in effect, deprive the Legislature's rights and opportunities to make legislation. We cannot, on any account, afford to make the Legislature a rubber stamp."

"Rubber stamp" is the term he uses again, which Mr. Mavalankar had used. In this case, Mr. Minister, the only argument that you gave in your introductory speech was, "After all, we are not arrogating the right of Parliament; we are coming back to Parliament with a notification and seeking its approval to the notification." Number one it is not to Parliament that you will come. You will go to the House of the People and, therefore, I am of the view that this is an occasion to correct that error that has been incorporated in the original Act, namely, instead of "the House of the People" we should have the word "Parliament" so that presentation of the report to Parliament makes it obligatory for you to come to both the Houses. In this case the notification that has already been issued will be discussed only in the other House and no approval from my side is necessary.

SHRI P. CHIDAMBARAM: Please see sub-section 4 of section 3. What does it say? ... (Interruptions)... Please see sub-section 4 of section 3 by which you swear. Please see what that says. The original one.

MR. DEPUTY CHAIRMAN: In the principal Act.

SHRI P. CHIDAMBARAM: Please see the principal Act.

SHRI LAL K. ADVANI: If my interpretation is incorrect and Rajya Sabha is as much involved, I have no objection.

SHRI P. CHIDAMBARAM: Sub-section 4 of section 3 imposes the obligation only to lay before the House of the People and, therefore, the notification (Interruptions)

SHRI LAL K. ADVANI: And that is what I am saying. In the original Act itself.... (Interruptions)...

SHRI P. CHIDAMBARAM: You could have changed it between 1977 and 1979.

SHRI LAL K. ADVANI: I am aware of it. It is only the other day when the notification was issued that I became conscious of it and at that very point of time I drew the attention of the Chair and told him that today nothing can prevent you from sharing the Thakkar Commission's report with us.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): They would become wiser.

SHRI LAL K. ADVANI: And certainly they would become wiser. But because we are amending the Bill, why not amend it in a manner as to see that this lacuna is removed I am sure, Members of that side also would be interested in seeing it removed.

SHRI M. S. GURUPADASWAMY (Karnataka): The powers of the two Houses are the same except in financial matters.

SHRI P. CHIDAMBARAM: I say, Sub-Section 5... (Interruptions)...

SHRI DIPEN GHOSH: That was wrong.

SHRI P. CHIDAMBARAM: Please listen to me, Mr. Ghosh. I say sub-sections (5) and (6) which we are introducing today are consistent with the existing sub-section (4).

SHRI LAL K. ADVANI: I am not questioning that. (Interruptions) I am pointing out a lacuna to which all of us have been parties, including Rajya Sabha. After all, Rajya Sabha has also approved of the amendment.

Sir, as I said, I regard this as an abuse of the ordinance-making powers and this abuse has to be stopped somewhere. In this case, the Government must explain when it took this decision to amend the law so as to prevent this Thakkar Commission Report from being presented to the House of the People. After all, between the period of its submission and the month of May considerable time was there. Why did it not come to Parliament with a regular Bill? Why did it take recourse to this ordinance making process?

In the case of an ordinary law, Members at least can read the law, read the ordinance and then approve or disapprove of it. Here the hon. Minister wants you to become a rubber stamp and that too blind-folded. I do not know what the content of the Report is, but I must say either 'Yes' or 'No'. You say, 'We approve that this is not in public interest' without knowing the content thereof, only on the basis of the terms of reference because it refers to the security. Therefore, you say, 'It is not in public interest.' Frankly, I have not known any other case of this kind.

In fact, if even a Member reads out from a document, quotes from a document the Rules require that the whole document must be placed on the table. Why? Because Parliament is expected to see, deliberate and give decision after due consideration. So if a member were to say anything, quote from a document, the Rules require that he must place the whole document on the table of the House. So if he thinks that revelation of the other

parts of a document would not be in public interest, he has to be cautious not to quote but to give only a summary.

I have given the example to emphasize that in case of Parliament very many devices have been developed to ensure executive accountability. I hope that this device of laying of important documents on the table of the House is one such device to ensure the executive accountability.

Sir, most of us are of the view that the amendment made in 1971 was a step in the right direction even though the original Act did not provide for any obligatory laying of the report on the table of the House. The Joint Committee, when it recommended this, did the right thing.

From that side this argument of ours has been countered in two different, contradictory ways. Justice Baharul Islam was kind enough to say that if the Government had come forth for repealing of this provision altogether about its statutory obligation to lay reports on the table of the House, then, perhaps, all these arguments given would have been perfectly valid; opposition would have been perfectly justified if Government were to come to repeal the provision altogether.

On the other hand, my friend, Mr. Bhatia, took a very strange position. He said the Joint Committee perhaps was misled into uncritical acceptance of Mr. Palkhivala's view. It took me totally aback. It left me flat because Mr. Salve is not a person to be so misled easily by Mr. Palkhivala Distinguished Members Mr. Salve, Mrs. Gandhi and Mr. Ram Niwas Mirdha were on that Joint Committee.

I do not at all share this kind of opinion that Mr. Bhatia has about that Joint Committee that it made the recommendation without due regard, and casually and carelessly accepted what Mr. Palkhivala said. In fact, I would like the House to be conscious of the fact that the Joint Committee was working against the background of the Law Commission's report. That Law Commission's report which

was quoted yesterday by Mrs. Jayanthi Natarajan very rightly did not favour laying on the table of the House of all reports. In spite of the Law Commission's opinion the Select Committee took a different view. I would think that they did it with due deliberation and care. I would not like to dismiss them that they were misled and that they were taken aback, swept of their feet by Mr. Palkhivala's arguments.

SHRI N. K. P. SALVE (Maharashtra): I am on a point of information on this. (Interruptions)

I do not accept that joint committee would be misled by either Mr. Palkhivala by Mr. Advani or by Mr. Dipen Ghosh.

SHRI NIRMAL CHATTERJEE (West Bengal): ...and ever by Mr. Madan Bhatia.

SHRI N. K. P. SALVE: That is why I am on my legs to explain the situation. It is a matter which came up several years ago, I think nearly 15 years ago. One thing I do remember very well is that the Select Committee while making this recommendation to the Parliament to enact the provision as would statutorily require placing of the report on the Table of the House was motivated entirely for purposes of public interest.

SHRI LAL K. ADVANI: That is right. Agreed.

SHRI N. K. P. SALVE: If it was so, the only thing which I would want Mr. Advani, while he is falling back upon the report of the Committee, to consider there not over the years be circumstances that the very demand of the public interest is that it should be laid on the Table of the House?

SHRI LAL K. ADVANI: Yes. Therefore, I am willing I am to accept what Mr. Baharul Islam said. I will come to that. I am first of all saying that there were two contradictory approaches. Approach one which virtually suggested that the joint select committee did a wrong thing in making this incorporation. The se-

1986

cond thing is that the joint committee did the right thing, but a proviso that is now added will make it still better. I am trying to be very fair to both of you. After all, as I said, I accept that a joint committee under Mr. Salve cannot have been careless and misled just because Mr. Palkhiwala or Mr. Bal Raj Madhok said something. I cannot agree that only because Mr. Balraj Madhok asked for it and Mr. Palkhiwala said it, therefore, the Committee accepted it. The joint committee after all had a far more weightier opinion of the Law Commission before it. That Law Commission did not favour this kind of amendment. Nevertheless, the Joint Select Committee disregarded that opinion and incorporated this amendment. The world over this is the trend. Today this device to ensure of executive accountability is being diluted.

Now, we come to the second part of it viz. whether this particular amendment which is now being made is really necessary. I really do not know. I have no means to judge. All that I would say is that this particular device of inquiry commission is reduced to the status of a departmental committee in accordance with the wishes of the executive.

My esteemed colleague and new member, Mrs. Natarajan appealed to us "Why do you distrust the Government? You trust the Government; trust the bona-fides of the Government." I would ask the lady Member and the ruling party: "Why do you distrust Parliament? Trust the Parliament." Furthermore, when you appoint a judge, you are trusting him and the Judge, who I am sure would never make a report which goes contrary to national security or interest. You may provide him with all details to enable him to come to a conclusion. To report what really went wrong in the matter of the security of the Prime Minister, does not obligate him to reveal all that you have told him. After all, even before the Judges, even before the Committees, and Joint Select Committees defence officials come and tell us many things. That does not mean we incorporate all of them in a report. And if a joint committee or if a committee on Public Undertakings or

if a public Accounts Committee takes due care not to incorporate anything in that report, that will go counter to the public interest. Why do you distrust a judge whom you have appointed for the sake of carrying on an investigation, that he will submit in its report something that will go counter to the public interest? So, this argument about competing public interest has no validity in this case. If I were to ask a question..

SHRI JAGESH DESAI (Maharashtra):
Through an oversight he may do it.

SHRI LAL K. ADVANI: Through an oversight even the Minister can do it. But that does not permit us to keep on altering the laws, statutory obligations, to suit the whims and fancies of the executive. Today all these Members who are going to vote for the notification as has been done in the other House are going to vote blind-folded without knowing anything about the contents of that report. Mr. Sukul was very frank in saying that after all it is only the Government that can determine what is in public interest and what is not in public interest, what should be kept secret and what should not be kept secret. Then why go through this farce of voting? You empower the Government totally. Why give only an argument to Mr. Chidambaram that we are not indulging in any executive arrogance and we are not arrogating to ourselves the right of Parliament.

Sir, from any angle that I look at it, whether it is a question of abuse of Ordinance-making power, whether it is a question of executive accountability, whether it is a question of right to information this Ordinance is wrong. My hon. friend said that if Right to information is a Fundamental Right, why are you relying on a Statute? Of course, Fundamental Right is there, but it is subject to reasonable restrictions. Further more what I am concerned with is the trend in all democracies in so far as this right of information is concerned. We do not have any such law in India enabling any

citizen to get any document. No. I am very happy that the Press Commission has recommended such a law.

SHRI MADAN BHATIA: Sir, if he has got a Fundamental Right then he does not have to rely on ordinary law.

SHRI LAL K. ADVANI: I know that. Frankly I am not a lawyer. I am not trying to score a legal point over you.

THE MINISTER OF STATE IN THE MINISTRY OF LAW AND JUSTICE (SHRI H. R. BHARDWAJ): Some people have insisted on right to information. But this is a recent thought.

SHRI LAL K. ADVANI: Sir, I am very happy the Law Minister is in sympathy with the demand. The Press Commission in 1980 said, "In a Republican form of Government like ours it is the great body of the people which govern the country through their elected representatives in order that they must govern, they must have the means of governing". Sir, reports of Inquiry Commission is one of those means. The Commission added: "They must have means of governing a popular Government and without popular information or means of acquiring it is but a prologue to a farce". I am sure that Mr. Chidambaram knows better than anyone else that this approval by any House of Parliament to a notification of the kind that you are moving will be nothing, but a farce, because they would not be knowing what for they are voting. Sir, our voting is against the principle of it. Suppose if that particular report were to be made available to us, I may also feel that it is against the public interest to publish it. The Judge has not acted very responsibly in incorporating all these things in the report and, therefore, it should not be published in the public interest. A touchstone of the Government's *bonafides* in this regard is provided by one of the amendments that we have moved. That amendment was criticised by one of the Members who spoke in this debate. But I think that would provide a touchstone as to how honest you are

in measuring that the Competing public interests are regulated and the dominant public interest of national security is preserved. The amendment is very simple. Before you issue a notification of this kind, let there be a consultation with the Chairman of this House who represents the whole House, the Speaker of the other House who represents the other House and the Chief Justice of the country who in a way is the repository of the judicial wisdom in the Constitution of the country. Only these three Bodies would be concerned. We are not concerned. The public is not asking anything. But these three persons must be consulted so that there is no executive arbitrariness in the decision that you are taking. There is no political expediency in the decision that you take. There is no perversion of the institution of Commission of Inquiry that is likely to take place because of this particular amendment. If that amendment were to be accepted, I am sure, the entire Opposition would be agreeable to your proposal. I regard that as a touchstone of the *bona fides* of this Government. All that I would say is that my...

(Interruptions).

SHRI VISHWA BANDHU GUPTA (Delhi): Sir, you quoted the Press Commission. Now, the Press Commission has only the Press Council in mind and all inquiries about the press and the freedom of the press go to the Press Council. I do not know what relevance it has? (Interruptions).

SHRI LAL K. ADVANI: I am thankful to Mr. Gupta for provoking me to complete the quotation. The Press Commission went on to commend the various freedom of information laws in vogue in different countries and the Commission said, I quote:

"It is only appropriate that we should have some provision enacted for the purpose."

My purpose in quoting this was that India also should move in the direction of some kind of freedom of information Act. Thank you.

(Interruptions).

SHRI DIPEN GHOSH: You do not know what for you are thumping the table. (*Interruptions*)

SHRI P. CHIDAMBARAM: Mr. Dipen Ghosh, please be charitable. It may not be my maiden speech. It is my maiden Bill as Minister in the Ministry of Home Affairs.

Mr. Deputy Chairman, Sir, I have heard over the last few hours a debate in this hon. House on the Bill. Sir, what is before this House is a Bill to replace an ordinance. Hon'ble Member, Mr. Lal K. Advani quite rightly pointed out, although belatedly, what is not before this House is a notification which has already been approved by the House of People. In the latter part of my reply, I will place before this House also the considerations which moved the Government to make a notification, the submissions which I made before the House of People and which the House of People found fit to accept, and approved the notification. Sir, criticism was levelled against us for making an ordinance under Article 123. I think, it is better, misconceptions are removed at the earliest moment. As far as the power to make an ordinance under Article 123 is concerned, it is the legislative power of the President. It is not a power which we put in into the Constitution at some later point of time. That power was deliberately given to the President in the Constitution by the founding fathers because knowing the complexities of administration in a country of this size and this variety, they thought that the President must have powers to promulgate an ordinance under Article 123. When does the President's power to promulgate an ordinance arise? I will only quote one line from Kaul and Sakdhar: - "if at any time except when both Houses of Parliament are in Session, the President is satisfied, circumstances exist, he may promulgate an ordinance". The ordinance making power of the President arises as soon as either House is prorogued. In this case, the House of People, the Lok Sabha, was prorogued on the 12th of May, 1986 and therefore, the President had the power to promulgate the ordinance. The ordinance

was perfectly valid. Of course, you fall back upon the argument that ordinance making power is an extraordinary power and we have invoked it so many times. Sir, I tried to look up some recent history. I find that between May, 1977 and November, 1979, in a space of 30 months, 28 ordinances were promulgated by the Government. And then, Sir, questions were raised about...

SHRI LAL K. ADVANI: What is the number up to June, 1979?

SHRI P. CHIDAMBARAM: Between May, 1977 and November, 1979, 28 ordinances were promulgated, at the rate of approximately one a month.

SHRI LAL K. ADVANI: Up to June 1979? (*Interruptions*)

SHRI H. R. BHARDWAJ: Why are you disowning your party-man?

SHRI P. CHIDAMBARAM: I will answer. From May, 1977 to June, 1979, in a space of 25 months, 19 ordinances were promulgated.

SHRI CHITTA BASU: What about the remaining 300?

SHRI P. CHIDAMBARAM: All I am pointing out is that the power to promulgate an ordinance is a necessary power in the working of our legislative system. It is a power which has been vested in the President to be exercised on the advice of the Cabinet. And it is not a power which only the Congress Party has exercised when it was in power or a power which no other Government has exercised. If I start reading out statistics about the number of ordinances promulgated in the States when the Congress was not in power, I think the House would be totally baffled. So let us not criticise the power. The power is there.

SHRI NIRMAL CHATTERJEE: How many in West Bengal between 1977 and 1986?

SHRI P. CHIDAMBARAM: If you put that question in Question Hour, I will give the reply.

SHRI LAL K. ADVANI: It is not the power that is being questioned. It is the abuse of power that is questioned. One day before Parliament is to meet, you can do it. You may do it. But if you do it, we will criticise it. (*Interruptions*).

SHRI H. R. BHARDWAJ: If you go back to the overall system that was prevalent in 1977, there was absolutely no respect for the legislature. You expelled our leader contrary to all canons. (*Interruptions*).

SHRI P. CHIDAMBARAM: If you talk about parliamentary conventions... (*Interruptions*).

SHRI LAL K. ADVANI: Even before that Mrs. Swamy was expelled.

SHRI H. R. BHARDWAJ: I have never seen Parliament being abused like that. (*Interruptions*).

SHRI N. K. P. SALVE: This very House passed a resolution demanding an enquiry against the son of the Prime Minister. And you, Mr. Advani, at that time, for and on behalf of that Government, refused to implement it. Where was then the question of respect for the House? (*Interruptions*).

SHRI P. CHIDAMBARAM: I will quote one other example. A Prime Minister who on the way to Parliament resigned and never faced Parliament for a single day....

SHRI LAL K. ADVANI: Because you supported him. You put him in office.

SHRI P. CHIDAMBARAM: ...and remained in office for six months, who never faced Parliament for a single day.....

SHRI LAL K. ADVANI: Because of the Congress (M).

SHRI P. CHIDAMBARAM: Not one day, Mr. Advani. We are here every day facing you. He did not face Parliament for a single day.

SHRI LAL K. ADVANI: You put him in office. Sir, they have said the

right thing. They are the guilty party for that.

SHRI ATAL BIHARI VAJPAYEE: He was brought to power by the present ruling party.

SHRI RAOOF VALIULLAH: It was your misdeeds that brought him to power. (*Interruptions*).

SHRI DIPEN GHOSH: Mr. Minister, by that do you want to say that two wrongs make one right?

SHRI H. R. BHARDWAJ: That is what I said. Two wrongs cannot make one right.

(*Interruptions*)

MR. DEPUTY CHAIRMAN: Please don't interrupt.

SHRI P. CHIDAMBARAM: Let me go back to the debate. Sir, I am grateful to hon. Members for taking the trouble to read my speech in the Lok Sabha because I think a number of them were really answering my speech which I made in the House of the People. But I must say with a certain sense of pride that Members on this side of the House had done their homework much better. When the hon. Member, Mr. Madan Bhatia... (*Interruptions*).

MR. DEPUTY CHAIRMAN: Don't interrupt him.

SHRI P. CHIDAMBARAM: Please listen. When Mr. Madan Bhatia traced the history of the Joint Committee and explained how the provision was introduced, on the sole ground, as I can see from the Joint Committee's report, that a lot of public money is spent and, therefore, the report should be placed, when he said that, there was no answer from that side. When another hon. Member read from the Law Commission's report—and I will again read that portion—there was no answer from the other side, there was no answer from the other side. What is the position now? The position is between 1952 and 1971 there was no obligation to place a report before the House of

Inquiry

1986

the People, before Parliament. In 1971 we found that inadequate. I am not denying that. We still think that a law which does not oblige the Government to place a report before Parliament, which makes no provision whatsoever, would be an inadequate law. Therefore, in 1971 the law was amended which provided for the report to be placed before the House of the People. That is something which we concluded after 19 years of working the Act. And today again after working the Act for fifteen years, when we find that the extreme position taken in 1952 that it need not be placed, supported by the Law Commission of 1962, and the other extreme position that all reports shall be placed before the House of the People, whether they impinge upon public interest or not, both positions are extreme positions, we have to take a middle road where, on occasion, Parliament will decide whether the report shall be placed or not. It is evidence that we are thinking human beings, it is evidence that we are reflecting upon our experience, it is evidence that we are willing to come before Parliament and say, while the 1952 extreme was not good, the 1971 extreme is also not good and therefore we have to take the middle road. Now what is wrong about that? (Interruptions) I have noted every single point and I am answering you, Upendraj; I won't run away.

What did the Law Commission say? Please see what the Law Commission said. I am not for a moment belittling what the Joint Committee said. But it still remains an opinion. What did the Law Commission say:

"Lastly, it is being suggested that the Act should provide that the report of a commission of inquiry should be published as soon as it is submitted to the Government. Whether a report should be published or not will depend upon the nature of the inquiry....."

Please underline the words "will depend upon the nature of the inquiry—

"....and the report made to the Government. There may be certain cases in which it may not be advisable to publish the report. We, therefore, think that this matter should be left to the discretion of the Government."

This Law Commission consisted of Justice J. L. Kapur and very eminent persons. I will not read the names. This is an opinion. The Joint Committee headed by my honourable friend, Mr. Salve, consisted of equally eminent people, and they gave an opinion. And what is the conclusion? We want to place it before Parliament today. We are not repudiating what the Joint Committee said. We say, invariably, the primary obligation under sub-section (4) of Section 3 is to place the report before the House of the People. That provision is not being repealed; we are not going back to the 1952 position. The primary obligation is indeed to place it before the House of the People. I say so on behalf of the Government. The Law Commission said, "whether it should be placed or not, let us leave it to the discretion of the Government." We are not even going that far. What we are saying is in a case where because of the nature of the inquiry and the contents of the report it becomes inadvisable to place it before Parliament, we say we will come before the House of the People, with all humility we will submit ourselves to the judgment and wisdom of the House of the People and let the House decide whether this report should be placed before Parliament or not. What is wrong with it? (Interruptions) I am coming to the point about disclosure. Bear with me. Now, this is all what the Bill says. You are reading far more into the Bill than what the Bill says. Criticism was levelled against us, "Well, you have taken omnibus powers, you are using omnibus expressions." Are these omnibus expressions? We make law everyday. Unfortunately, I find there is a certain amount of derisiveness when a lawyer speaks in terms of law. We are not all lawyers, and

[Shri P. Chidambaram]

I am grateful, not all of you are lawyers. But, Sir, since we make the law, we must make an attempt to understand the processes of law 2.00 p.m. and we must make an attempt to understand what words mean in a jurisprudential context. Where do we take these words from? And I said in my introductory remarks there are four grounds on which we can come before Parliament and say, "Please permit us not to place the whole or a part of this report." There are four grounds. What are those four grounds? The first ground is 'integrity and sovereignty of India'. Sir, I ask, not only with all my humility, but also with all the conviction on my part: is there any doubt in the mind of anybody as to what 'integrity and sovereignty of India' means? I have no doubt in my mind about what it means.

SHRI M. S. GURUPADASWAMY: Then why do you put it there?

SHRI P. CHIDAMBARAM: As a restriction on our power. There is no doubt in anybody's mind as to what 'integrity and sovereignty of India' means. But if there is an inquiry into a matter which concerns the integrity and sovereignty of India and if the report of that inquiry contains information which, if it is disclosed, will affect the integrity and sovereignty of India, then I think that not only the whole House, but also the whole country, should support us and say that we need not do so. (Interruptions).

SHRI DIPEN GHOSH: If there are enemies to the integrity and sovereignty of India, Mr. Minister should not you take the people into confidence? (Interruptions).

MR. DEPUTY CHAIRMAN: Let the Minister finish his reply.

SHRI P. CHIDAMBARAM: I will answer your questions, Mr. Ghosh. I will answer all your questions. Please

bear with me. Every single question I will answer.

SHRI M. S. GURUPADASWAMY: We support you inspite of this Bill on that question.

SHRI CHATURANAN MISHRA: (Bihar): The question of sovereignty and integrity of India arises only because you have included them in the Bill? Were they not there in the Act? (Interruptions).

SHRI P. CHIDAMBARAM: I am sorry. You kindly read the Act. They were not there. (Interruptions) You kindly read it.

SHRI DIPEN GHOSH: If any Commission's Report discloses who the enemies are to our sovereignty and integrity, is it not the responsibility of the Government to take the people into confidence and tell the truth about those enemies and mobilise the people against them? (Interruptions)

SARDAR JAGJIT SINGH AURORA (Punjab): If something is mentioned in the report of a Commission of Inquiry and if you withhold it, it means the information is being denied to Parliament. (Interruptions). Are you not denying it to Parliament? (Interruptions).

MR. DEPUTY CHAIRMAN: Mr. Minister, do not yield to interruptions.

SHRI P. CHIDAMBARAM: I am not yielding.

Now, the second ground is 'friendly relations with foreign States'. Then the third ground is 'security of the State'. Where are these words taken from? These words are taken from article 19(2). What is the relevance of article 19(2)? All of you, all of us, swear by article 19(1) (a). In fact, the entire foundation of the honourable Member, Shri Advani's argument is the right to know, the right to information, which, he says, is implicit in article 19(1) (a). I concede that point. If you have a right to know, if you have a right to information, it must be implicit in article 19(1)(a).

Inquiry

1986

The very Constitution, the very article, on which you found your right to information, your right to know, says, "in the interest of integrity and sovereignty of India, in the interest of the security of the State and in the interest of friendly relations with foreign countries...". So, restrictions can be imposed on the very right to know, on the very right to information. We have taken these words from the Constitution. We have taken these words because if this law imposes a restriction on the right to know, on the right to information—this I will answer, Mr. Dipen Ghosh—it can only be on the ground of integrity and sovereignty of India, on the ground of friendly relations with foreign countries and on the ground of the security of the State. There is a fourth ground also.

SHRI NIRMAL CHATTERJEE: But it can be done by Parliament only and not by the Government.

SHRI K. MOHANAN (Kerala): The provision to declare an Emergency is also there in the Constitution. (Interruptions).

MR. DEPUTY CHAIRMAN: Mr. Minister, you continue.

SHRI P. CHIDAMBARAM: The only other ground, the fourth ground, is 'public interest'. They ask me: What is public interest? I am grateful to the honourable Members who have read out passages from the judgment of the Supreme Court on what is public interest. 'Public interest' is again traceable to the Constitution. Three aspects of public interest are there in the very article, that is, 19(2), and they are: public order, morality and decency. Three aspects of public interest are there in the very same article, that is, article 19(2). 'Public interest' is mentioned in article 19(5) and 'public interest' is mentioned in article 19(6). Public interest is simply what Mr. Madan Bhatia said—*Salus populi est suprema lex*. The welfare of the people is the highest law. You call us a Govern-

ment which wants to hide something. We are running the risk of criticism. Since the 14th May newspapers have criticised us, editorials have criticised us. And here I have sat listening to the criticism for over six hours. If we were wanting to hide something, we would not make a law of this nature. In fact, to make a law of this nature, to come and tell Parliament that this law is necessary, after the Session of Parliament is over to go out to the people and tell them why this law was necessary, why we made it—this is not the reaction of a nervous Government. This is a courageous decision of a concerned Government. You must have courage to take difficult decisions. You must have courage...

SHRI DIPEN GHOSH: You must have the courage to hide the conspirators, you must have the courage to hide the inefficiency of your intelligence machinery...

SHRI P. CHIDAMBARAM: The people will decide that...

SHRI NIRMAL CHATTERJEE: In place of 'courage' it should be 'desperation'.

SHRI DIPEN GHOSH: You are hiding the inefficiency of your intelligence machinery.

SHRI P. CHIDAMBARAM: The people will decide it. The House will pardon me if I cannot come down to that level of debate. Let me remain where I am.

The point is about public interest. What is public interest? I think honourable Advaniji should ask some of his colleagues who were with him in Government between 1977 and 1979 what public interest is. I find that on the 24th May, 1977 yoga undertakings were nationalised in public interest; the Smith Stein Company Limited was taken over on the 30th September, 1977 in public interest; high denomination notes were demonetised on 16th January, 1978 by an ordinance in public interest; sugar undertakings were taken over on the

[Shri P. Chidambaram]

9th November, 1978 by an ordinance in public interest; strikes were prohibited in the Reserve Bank of India on the 4th July, 1979 in public interest...

SHRI PARVATHANENI UPENDRA (Andhra Pradesh): They are really in public interest.

SHRI P. CHIDAMBARAM: The point is: What is public interest? What is public interest is what is in the welfare of the people in general, what is good at a given point of time and what is not good at a given point of time. One has to weigh these things. Now, unfortunately, I can understand the frustrations of sitting in the Opposition—the power to decide what is in public interest is now given to us. The power is given to us, the people have vested this power in us and reposed their confidence in us...

SHRI NIRMAL CHATTERJEE: A minority has given you the power.

SHRI P. CHIDAMBARAM: Therefore, what is in public interest....

SARDAR JAGJIT SINGH AURORA: On a Point of order, I am on a Point of order about public interest. Is hiding what has been found by the Thakkar Commission in public interest? The reason given by you is that what followed... (Interruptions).

SHRI SAT PAUL MITTAL (Punjab): Is this a point of order?

SARDAR JAGJIT SINGH AURORA: You do not want to face it. I am very concerned about it... (Interruptions).

SHRI SAT PAUL MITTAL: The new Member should be told what a point of order is.

SHRI PARVATHANENI UPENDRA: They should not jump like springs at the slightest criticism.

SHRI P. CHIDAMBARAM: Sir, have you understood the point of order? What is the point of order? There is no point of order...

SARDAR JAGJIT SINGH AURORA: They have taken cover behind public interest... (Interruptions) that is My opinion.

MR. DEPUTY CHAIRMAN: Please sit down.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): What is your ruling, Sir?

MR. DEPUTY CHAIRMAN: I have heard him. There is no point of order. He was only making a statement of what he felt.

SHRI P. CHIDAMBARAM: Sir, public interest is not a vague concept. It is a concept which imposes a very heavy obligation upon the elected Government of the day. And the elected Government of the day weighs the pros and cons, weighs what is good and what is bad. If I may quote from a very famous book 'Tirukkural' written about 2,000 years ago about what is the responsibility of the Government in a situation like this, the famous bard said: "He, whose nature leads him to choose the good, after having carefully examined both the evil and the good. Will be chosen to run the Government."

Sir, we have to choose between the good and the bad. We have to weigh between what is good for the people and what is bad for the people and then we decide. And that is public interest. That is a judgment we make (Interruptions) That is a judgement which the Executive Government is entitled to make Just as you made a judgment in the five Ordinances which I read out that it was in public interest to promulgate an Ordinance and got it approved by the Parliament we have to make a judgement whether it is in the public interest or not to invoke this law, invoke this power, and place the report or not and come before Parliament.

SHRI PARVATHANENI UPENDRA: Why do you quote Tirukkural to defend a bad case?

SHRI P. CHIDAMBARAM: If I knew Telugu, I would have quoted from a Telugu poet.

Sir, I would like to go back to the Commissions of Inquiry Act. Sir, there is a great misconception in the minds of some hon. Members about the purpose of an inquiry. It is not an accusative proceeding. It is not an inquisition. It is not a trial. It is not a Star Chamber proceeding. The purpose of the Commissions of the Inquiry Act, the original purpose which remains the purpose even today, is only to inform and instruct the Government, the mind of the Government. I will read out the very famous passage—I am sure everybody knows it—from the Ramakrishna Dalmia's case. It says:

"In our view, the recommendation of a Commission of Inquiry is of great importance to the Government in order to enable it to make up its mind as to what legislative or administrative measures should be adopted to eradicate the evil found or to implement the beneficial objects which it has in view."

Sir, to appoint a Commission, there must be a matter of definite public importance. It is important to know what went wrong. It is important to know who was at fault, it is important to know what further steps should be taken. But that is to inform and instruct the mind of the Government. Later on, once the mind of the Government has been informed and instructed, the primary obligation under Sub-section (4) is to share its views with the House of the people, with Parliament and with the people. But it is far different, it is a far cry, to say that whatever is important to know is also in the public interest to disclose. It may be important at a given point of time to know what went wrong. It will be important to know who was responsible. It will be important to know what steps should be taken. But it may not be in public interest at that point of time to share that knowledge, to share that information with the public.

Sir, people spoke about rumour-mongering, I have seen rumour-mongering even without reports of Commissions of Inquiry. I have heard the argument of innuendo. Even before Mr. Justice Ranganath Mishra has submitted his report, here we have heard the arguments of in-

nuendo which say that we will suppress the report of that Commission. I don't think you need the report of a Commission to spread rumours if it is in your nature to spread rumours. Rumours will be spread whether there is a Commission's report or there is no report of a Commission. I don't think the two need be connected at all. The question is—I will come back to it—why did we take this decision? After agonising consideration, after careful consideration, why have we taken this decision, and I will try to explain to the best of my ability why we have taken this decision. Sir, arguments were advanced about legality and legitimacy. I agree. What is legal may not be legitimate. Legitimacy certainly has to be established before the people. I may be acting totally legally. But I will have to show that I am acting legitimately. Sir, legitimacy is the felt necessities of the times. What do you feel today? What do you see today? What is happening? In terms of what is happening today, what we see today, what is happening around us, the kinds of forces that are rearing their head, the kind of poison that is being spread in this country, the kinds of pressures that are being brought, the kind of turbulence that is there in society, are we acting in a legitimate manner, are we acting in the interests of the public? That is the way to test legitimacy, not on the basis of any doctrinaire measure, whether the doctrine goes back to a particular philosopher or not. You cannot have doctrinaire measures to test legitimacy. It is only the felt necessities of the times. What are the times in which we are living? Sir, we are living in times when we do such things as this. When I participated in the debate on communal harmony in the House of the People, the whole House agreed with me when I said that when there is a communal outbreak people should not be encouraged to protest, people should not be encouraged to launch protest against the communal incidents. And barely 24 hours thereafter we found a political party announcing a bandh in the city of Delhi. We are living in times where people act out of several motivations, out of various motivations. All motivations are not legitimate. Even Mr. Dipen Ghosh will agree

with that. All motivations are not legitimate. There are some people who are motivated by narrow considerations. There are others who are motivated by larger concerns. Kindly look into the background. I go back to the Law Commission's report, the nature of the inquiry and the contents of the reply and I will come to the disclosure point. Don't worry. What is the nature of the inquiry? We appointed Justice Thakkar to conduct an inquiry into five matters. Five matters of great importance touching upon the assassination of the Prime Minister. Justice Thakkar submitted his interim report. I underline the words interim report, on the 19th of November, 1985. He submitted his final report on the 27th February, 1986. That itself was unprecedented. The law as it then stood contemplated only a report. Not that it precluded the learned Judge from submitting two reports, an interim and a final report. But I would have thought that the law as it then stood gave us the right and the power to place the reports together. The interim report was made on 19th of November, and the two reports could be placed together six months after the 27th February, 1986, when the final report was submitted, because in the final report he can modify his conclusions given in the interim report, in the final report he could make some recommendations which are a modification in the interim report. In the final report he could elaborate upon some points mentioned in the interim report and it would be imprudent to act on the interim report when a final report was coming. So, on the 27th February, 1986, we had six months' time. Time will begin to run only from the 27th of February, 1986. We have still time, if this Bill is not passed, till the 26th of August 1986, to place the report before the House of the People. It is not as though we have done anything totally illegal or contrary to section 3(4) in not placing the interim report because time will begin to run out, in my opinion, from the 27th of August, 1986. Then, Sir, the final report comes to us on the 27th February, 1986. We consider the report We

consider the circumstances. What are the circumstances? There are too many details, some of which are known. I will try to share as much as I can. Firstly, the hon. Members will know that the Thakkar Commission was not concerned with the trial of any particular person. But simultaneously a court trial had commenced for the trial of three persons accused of the murder of Shrimati Indira Gandhi. The trial was going on in a criminal court. We had also appointed another special investigating team known as the Anand Ram investigating team, to look into some matters which ran parallel in many respects to the Thakkar Commission of Inquiry because they were converging the same area. Justice Thakkar himself had utilised the Anand Ram special investigating team to do some of the investigative work on his behalf. The Anand Ram investigating team had formally interacted with the Justice Thakkar Commission. These aspects also are dealt with. I believe, in the report of the Commission. On the one hand, we had a formal court trial which ended in the conviction of three persons and the referred trial appeal is pending before the High Court. On the other hand, we have the Anand Ram investigating team which has now completed one stage of investigation and is now proceeding to the second stage. Under these circumstances, how is it fair, how is it just, how is it proper, how is it political, how is it wise, how is it in the national interest, how is it in the interest of administration of justice by which all of us swear, under any one of these considerations, how is it proper for the Government to disclose the Thakkar Commission's report when there is a formal court trial going on and there is another investigation which has completed only one stage? Look at it. We are not scoring points against each other.

SHRI DIPEN GHOSH: Before the Ordinance was promulgated, could you have not come before Parliament seeking the approval of Parliament on what you are saying?

SHRI P. CHIDAMBARAM: There are grave matters. Let us not reduce it to a mere debate. Please listen to me. My considered view is, we still have

Inquiry

1986

time until the 26th August and we could have moved this by way of a Bill itself but by way of abundant caution, the Ordinance was promulgated. Now, we have come before Parliament immediately after Parliament has been summoned. It is by way of abundant caution. I still hold the position that, in law, there was no obligation to place the report any time before the 26th August. We still have time. We could have come forward with a Bill and got the Bill passed. But there may be another view and hence by way of abundant caution...

SHRI NIRMAL CHATTERJEE: What is that abundant caution when Session is going to be called?

SHRI P. CHIDAMBARAM: I am spelling it out. Kindly listen to me. You are jumping the gun. You should be in the Olympics race. In the trial, a ground was taken that the Thakkar Commission's report should be disclosed. Government took the position that the report cannot be disclosed in the trial and the trial court upheld our contention. If you want, I will read out portions of the judgement which the Law Minister has been kind enough to give me. In the referred trial, a ground has been taken that the report should be disclosed to the accused. A writ of mandamus has been filed, saying that the report shall be placed before the court. These are matters which cannot be separated from each other. It is a very complex situation and the question whether the report should be published at all, if it should be published, what portion should be published, cannot be decided in vacuum. We have to take the whole national interest into account. Therefore, by way of abundant caution, an Ordinance was promulgated and we have now come forward with the Bill. As soon as Parliament has been summoned, we have come and said: 'These are the reasons why an Ordinance had to be promulgated and we have now come forward with the Bill'. What is wrong about it? Therefore, there are compelling reasons. One may not see the public interest if one takes an ostrichlike attitude. It is

only when one goes among the people, talks to the people, finds out what the mood of the people is, what fears and apprehensions they have, one will know what public interest is. One will not see public interest if one takes an ostrichlike attitude. We understand public interest and that is why we have come before you. Therefore, there is very good reason why the Ordinance had to be promulgated and we took the earliest opportunity to bring the Bill. I would most earnestly appeal to you to accept the compelling grounds in which we had to do this.

SHRI DIPEN GHOSH: You are not replying to my point.

SHRI P. CHIDAMBARAM: I can only try to reply.

SHRI DIPEN GHOSH: You are justifying the non-placing or the non-laying of the report of the Thakkar Commission before Parliament. I said, when you have received these two reports, whether interim or final, you had the occasion to go through them during the Budget session itself. So, instead of issuing an Ordinance, you could have come before Parliament during the Budget session itself and said these things what you are saying now.

SHRI P. CHIDAMBARAM: I am telling you, the time is still there.

SHRI DIPEN GHOSH: Instead of issuing the Ordinance...

SHRI P. CHIDAMBARAM: That is what I am telling you. We have still the time, until 26th of August. I can come today, I can come tomorrow, I can come till 26th of August. (Interruptions).

SHRI DIPEN GHOSH: That is why we smell something behind it. When Parliament was in session, you did not bring forward any Bill. (Interruptions). I know that. You shut up I am wiser than you. (Interruption). I am not a table-thumping boy like you. You can remain satisfied by becoming table-thumping boys..... (Interruptions). You may not be inclined to exercise your right, but I have to assert my right. (Interruptions).

SHRI P. CHIDAMBARAM: Sir, I may be permitted to continue. The only other point which superficially is very attractive, is the argument, take the Parliament into confidence, give us the report, place the report on the Table of the House, we will read the report and then we will tell you whether you can publish it or not. *Prima facie* it is a very attractive argument, but an argument which simply ignores the provisions of law and the implications of complying with the provisions of law. What does section 3, sub-section (4) say. Please bear with me, please listen to me with a little patience. Section 3, sub-section (4) says, lay the report on the Table of the House. When an act requires that a particular thing shall be done in a particular manner, it shall be done in that manner and every other manner of compliance is excluded. It is a well-known proposition of law. The only manner, Sir, I repeat, the only manner in which this report can be published is by laying it on the Table of the House. If I lay it on the Table of the House, it is published. Nobody can keep it away from the people after that. The document, once it is laid on the Table of the House, is published and everybody has access to that document. If I lay it on the Table of the House under section 3, sub-section (4) and take Parliament into confidence, that is the only manner of doing it, what is this exercise of my coming before Parliament and saying, let me not publish it? I have published it the moment I lay the report on the Table of the House. You know, the world knows, the press knows, the media knows, every body knows the report. Then what is the purpose of sub-section (5), sub-section (6) and what is the purpose of the notification? After publishing it why should I come to you for permission not to publish it? It is logic standing on its head. The only manner in which this report can be published is by laying it on the Table of the House. Therefore, I cannot do it. Now we go back to an argument...

SHRI DIPEN GHOSH: You are not replying to my point. Tell me, please Mr. Minister, instead of issuing the Ordinance why did you not bring this

type of Bill during the Budget Session? What prevented you from doing that? You give categorical answer to me. (Interruptions)

SHRI JAGESH DESAI: Mr. Deputy Chairman, Sir, we heard Mr. Advani with rapt attention without any interruption. So, we would like to hear the Minister in the same fashion.

SHRI A. G. KULKARNI (Maharashtra): In all humility I want to know from the Minister, what argument he has given. You are making very good arguments and I appreciate them. But the point is, we are all along posing a question: right of information for the Parliament. When your arguments were flowing, and you were telling us why the Government came to this conclusion, you either advertently or inadvertently said that two Commissions are going on, two court cases are going on and this will help the accused. Is that your point?

SHRI P. CHIDAMBARAM: Please don't put words into my mouth.

SHRI A. G. KULKARNI: You don't care for the Parliament. You care more for the accused.

SHRI P. CHIDAMBARAM: This should be struck off. Please don't put words into my mouth. You cannot prejudice the trial of the case. You should consider the interest of administration of justice. This is what I said.

SHRI A. G. KULKARNI: No, you can move for the accused... (Interruptions)

SHRI H.R. BHARDWAJ: Nobody (Interruptions) can make him wiser (Interruptions)

SHRI P. CHIDAMBARAM: We are not hiding anything. What I said is there on record. You did not hear properly. I have repeatedly said that we have to take into account all the circumstances; we cannot prejudice the administration of justice. That is what I said. If you don't understand what I mean by saying it, I cannot help it.

Inquiry

1986

Rule 249 of the Rules of this House says : "If a Minister quotes, etc., etc. Provided that this rule shall not apply to any documents which are stated by the Minister to be of such a nature that their production would be inconsistent with public interest". I rely upon this rule. If I invoke the ground of public interest, if I invoke the ground of security of State and say that its non-disclosure is in public interest. I think there is no point in saying: you first lay it on the Table of the House and then we will decide whether it should be published or no". As I said it is an argument which is an inverted argument, which is an illogical argument.

Finally, Sir, may I say this...

SHRI N. E. BALARAM : Nobody from this side argued like that. (*Interruptions*).

SHRI P. CHIDAMBARAM: Everybody argued like that. (*Interruptions*)

SHRI DIPEN GHOSH: You are not replying to my point.

MR. DEPUTY CHAIRMAN: Please sit down. Let me have one word.

SHRI DIPEN GHOSH: What prevented you from bringing a Bill in the Budget Session?

MR. DEPUTY CHAIRMAN: Nothing will go on record till I have my say. Till now we were maintaining a very high standard of debate on this subject on both sides. I wish the Members will cooperate and see that the Minister completes his statement.

SHRI N. E. BALARAM: I accept your ruling, Sir. But I would like to ask one question. (*Interruptions*)

SHRI P. CHIDAMBARAM: Under what rule are you asking a question? I have heard you with patience. I cannot bear with interruptions any more. (*Interruptions*)

SHRI P. N. SUKUL: They only want to waste the time of the House. (*Interruptions*)

SHRI P. CHIDAMBARAM: Sir, I think I have answered all the points raised by hon. Members and once again I submit....

SHRI N. E. BALARAM: You never answered the basic points raised by us. (*Interruptions*) Sir, he is provoking.

SHRI P. CHIDAMBARAM: Unfortunately, Sir, the record will show that the Opposition is speaking in a chorus and I am interrupting them.

MR. DEPUTY CHAIRMAN: Perhaps because we skipped the lunch.

SHRI P. CHIDAMBARAM: May I again...I am meeting it. We on this side are equally concerned about open Government. We on this side are equally concerned about access to information. We on this side are equally concerned about taking the public into confidence, taking the people into confidence. But let me just add one or two things. Open Government is a good policy. But equally, responsible Government is also a very high ideal to follow. . . (*Interruptions*) I think Mr. Dipen Ghosh is simply incorrigible. We cannot sacrifice responsible Government at the altar of open Government. Knowledge is power. But in confidentiality, sometimes, lies the security of the nation. Merely because you seek knowledge, you cannot sacrifice or compromise the security of the nation, the interests of people.

SHRI DIPEN GHOSH: This report will find its way to some Larkins and be sold in the market.

SHRI P. CHIDAMBARAM : Sir, with full responsibility, after careful consideration, after weighing the good and the evil that will come from publishing this report at this point of time, knowing that we will receive some criticism, some genuine and some motivated, knowing that we will have to explain our position to the people, we have taken this decision. Therefore, I still maintain it is a courageous decision taken in the interest of the people.

[Shri P. Chidambaram]

Sir, I commend the Bill to the House.

MR. DEPUTY CHAIRMAN: I shall first put the Resolution moved by Shri Lal K. Advani to vote. The question is:

"That this House disapproves of the Commissions of Inquiry (Amendment) Ordinance, 1986 (No. 6 of 1986) promulgated by the President on the 14th May, 1986."

The House divided

MR. DEPUTY CHAIRMAN: Ayes—34;
Noes—128

Ayes—33

Advani, Shri Lal K.

Aurora, Sardar Jagjit Singh

Baby, Shri M. A.

Balram, Shri N. E.

Basu, Shri Chitta

Bhuyan, Shri Gaya Chand

Chakravarty, Shrimati Bijoya

Chatterjee, Shri Nirmal

Chowdhury, Shrimati Renuka

Ghosh, Shri Dipen

Gurupadaswamy, Shri M. S.

Jaswant Singh, Shri

Kalvala, Shri Prabhakar Rao

Kar, Shri Narayan

Kulkarni, Shri A. G.

Lakshmana, Prof. C.

Mahajan, Shri Pramod

Malaviya, Shri Satya Prakash

Mishra, Shri Chaturanan

Mohanan, Shri K.

Poddar, Dr. R. K.

Quasem, Shri Mostafa Bin

Radhakrishna, Shri Puttapaga

Rao, Shri Gopala Rao

Rao, Shri Yalla Sesi Bhushana

Reddy, Shri B. Satyanarayan

Reddy, Shri P. Babul

Reddy, Dr. G. Vijaya Mohan

Sen, Shri Sukomal

Upendra, Shri Parvatharani

Vajpayee, Shri Atal Bihari

Verma, Shri Ashok Nath

Verma, Shri Virendra

Yadav, Shri Jagdambi Prasad

Noes—128

Ahluwalia, Shri S. S.

Alva, Shrimati Margaret

Amarjit Kaur, Shrimati

Amla, Shri Tirath Ram

Anand Sharma, Shri

Antony, Shri A. K.

Arun Singh, Shri

Bagrodia, Shri Santosh

Bansal, Shri Pawan Kumar

Basumatari, Shri Dharanidhar

Bekal Utsahi, Shri

Bhajan Lal, Shri

Bhandare, Shri Murlidhar Chandrakant

Bhardwaj, Shri Hansraj

Bhatia, Shri Madan

Bhatt, Shrimati Ela Ramesh

Bhattacharjee, Shri Kamalendu

Bhim Raj, Shri

Birla, Shri Krishna Kumar

Chatterjee, Prof. (Mrs.) Asima

Chaturvedi, Shri Bhuvnesh

Chowdhary Ram Sewak

Darbara Singh, Shri

Deori, Shrimati Omem Moyong.

Desai, Shri Jagesh

Dhusiya, Shri Sohan Lal

Faguni Ram, Shri

Ganeshwar, Kusum, Shri

Ghan Shyam Singh, Shri

Gupta, Shri Vishwa Bandhu

Hanspal, Shri Harvendra Singh

Hanumanthappa, Shri H.

Heptulla, Dr. (Shrimati) Najma

Islam, Shri Baharul

Jadhav, Shri Vithalrao Madhavrao

Jamuda, Shri Durga Prasad

Jani, Shri Jagadish

Jha, Shri Lakshmi Kant

Jogi, Shri ~~Am~~ P. K.
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Khaparde, Miss Saroj
Khatun, Kumari Sayeeda
Kidwai, Dr. Mohd. Hashim
Laxmi Narain, Shri
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Manhar, Shri Bhagatram
Masodkar, Shri Bhaskar Annaji
Meena, Shri Dhuelshwar
Mehta, Shri Chumanbhai
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohapatra, Shri Basudeb
Mohanty, Shri Subas
Moopnar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natarajan, Shrimati Jayanthi
Natha Singh, Shri
Pahadia, Shrimati Shanti
Paaniyandi, Shri M.
Pandey, Dr. Ratnakar
Panicker, Shri K. Vasudeva
Panwar, Shri B. L.
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Suryakanta Jayawantrao
Prasad, Shri K. L. N.
Puglia, Shri Naresh C.

Rafique Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Ramamurthy, Shri Thindivanam K.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsinghbhai Pattaliya-
~~bhai~~
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richaria, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K.
Saring, Shri Leonard Solomon
Sharma, Shri A. P.
Sharma, Shri Chandan
Sharma, Dr. H. P.
Sharma, Shri Satish Kumar
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap,
Singh, Shri Vishvajit Prithvijit
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Surendra Singh, Shri
Thakur, Prof. Chandresh P.
Thakur, Jagatpal Singh
Thakur, Shri Ratneshwar
Thangabalu, Shri
Tiria, Kumari Sushila
Tiwari, Shri Narayan Datt
Tripathi, Shri Cnandrika Prasad
Tyagi, Shri Shanti
Vaduthala, Shri T. K. C.

[Mr. Deputy Chairman]
 Valiullah, Shri Raoof
 Verma, Shri Kapil
 Verma, Shrimati Veena
 Vikal, Shri Ram Chandra

The motion was negatived

MR. DEPUTY CHAIRMAN: I shall now put the amendment moved by Shri Satya Prakash Malaviya for reference of the Bill to a Select Committee of Rajya Sabha to vote. The question is:

"That the Bill further to amend the Commissions of Inquiry Act, 1952, be referred to a Select Committee of the Rajya Sabha consisting of the following members, namely:—

1. Shri Shankar Sinh Vaghela
2. Shri J. P. Goyal
3. Shri Sharad Yadav
4. Shri Gurudas Das Gupta
5. Shri Ram Awadesh Singh
6. Shri Kailash Pati Mishra
7. Shri Chaturanan Mishra
8. Prof. C. Lakshmanan
9. Shri Ajit Singh
10. Shri Ghulam Rasool Matto
11. Shri Satya Prakash Malaviya

with instructions to report by the first day of the next Session."

The motion was negatived

MR. DEPUTY CHAIRMAN: The House has already rejected the amendment for reference of the Bill to the Select Committee.

I am not putting the amendments moved by Shri N. E. Balaram and others to vote since they are similar in nature.

I shall now put the Motion moved by Shri P. Chidambaram to vote.

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill further to amend the Commissions of Inquiry Act, 1952, as passed by the Lok Sabha, be taken into consideration."

The House divided

MR. CHAIRMAN:

Ayes 127 Noes 34

Ayes—127

Ahluwalia, Shri S. S.
 Alva, Shrimati Margaret
 Amarjit Kaur, Shrimati
 Amla, Shri Tirath Ram
 Anand Sharma, Shri
 Antony, Shri A. K.
 Arun Singh, Shri
 Bagrodia, Shri Santosh
 Bansal, Shri Pawan Kumar
 Basumatari, Shri Dbaranidhar
 Bekal Utsahi, Shri
 Bhajan Lal, Shri
 Bhandare, Shri Murlidhar Chandrakant
 Bhardwaj, Shri Hansraj
 Bhatia, Shri Madan
 Bhatt, Shrimati Ela Ramesh
 Bhattacharjee, Shri Kamalendu
 Bhim Raj, Shri
 Birla, Shri Krishna Kumar
 Chatterjee, Prof. (Mrs.) Asima
 Chaturvedi, Shri Bhuvnesh
 Chowdhary Ram Sewak
 Darbara Singh, Shri
 Deori, Shaimati Omem Moyong
 Desai, Shri Jagesh
 Dhusiya, Shri Sohan Lal
 Faguni Ram, Shri
 Ganeshwar Kusum, Shri
 Ghan Shyam Singh, Shri
 Gupta, Shri Vishwa Bandhu
 Hanspal, Shri Harvendra Singh
 Hanumanthappa, Shri H.
 Heptulla, Dr. (Shrimati) Najma
 Islam, Shri Baharul
 Jadhav, Shri Vithalrao Madhavrao
 Jamuda, Shri Durga Prasad
 Jani, Shri Jagadish
 Jha, Shri Lakshmi Kant
 Jogi, Shri Ajit P. K.
 Joshi, Shri Krishna Nand

Joshi, Shrimati Sudha Vijay
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Khaparde, Miss Saroj
Khatun, Kumari Sayeeda
Kidwai, Dr. Mohd. Hashim
Laxmi Narain Shri
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Manhar, Shri Bhagatram
Masodkar, Shri Bhaskar Annaji
Meena, Shri Dhuleshwar
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal Shri Sat Paul
Mohapatra, Shri Basudeb
Mohanty, Shri Subas
Moopanan, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natarajan, Shrimati Jayanthi
Natha Singh Shri
Pahadia, Shrimati Shanti
Palaniyandi, Shri M.
Pandey, Shrimati Manorama
Pandey, Dr. Ratnakar
Panicker, Shri K. Vasudeva
Panwar, Shri B. L.
Patel, Shri Vithalbhi Motiram
Patil, Shri Dinkarrao Govindrao
Patil, Shrimati Suryakant Jayawantrao
Prasad, Shri K. L. N.
Puglia, Shri Naresh C.
Rafique Alam, Shri
Rai, Shri Kalpnath

Rajagopal, Shri M.
Ramamurthy, Shri Thindivanam K.
Rao, Prof. B. Bamachandra
Rao Shri R. Sambasiva
Ratan Kumari, Shrimati
Rathvakoli, Shri Ramsinghbhai Pata-
liyahai
Rayka, Shri Sagar
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Richharia, Dr. Govind Das
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K. P.
Saring, Shri Leonard Solomon
Sharma, Shri A. P.
Shrama, Shri Chandan
Shrama, Dr. H. P.
Sharma, Shri Satish Kumar
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Prasad
Singh, Thakur Kamakhya Prasad
Singh, Shrimati Pratibha
Singh, Dr. Indra Pratap
Singh Shri Vishvajit Prithvijit
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Surender Singh, Shri
Thakur, Prof. Chandresh P.
Thakur, Jagatpal Singh
Thakur, Shri Rameshwar
Thangabalu, Shri
Tiria, Kumari Sushila
Tiwari, Shri Narayan Datt
[Mr. Deputy Chairman]
Tripathi, Shri Chandrika Prasad
Tyagi, Shri Shanti
Uppendra, Shri Parvathaneni (Andhra

Vaduthala, Shri. I. K. C.
Valiullah, Shri Raoof
Verma, Shri Kapil
Verma, Shri Virendra
Vikal, Shri Ram Chandra

Noes—34

Advani, Shri Lal K.
Aurora, Sardar Jagjit Singh
Baby, Shri M. A.
Balram, Shri N. E.
Basu, Shri Chitta
Bhuyan, Shri Gaya Chand
Chakravarty Shrimati Bijoya
Chatterjee, Shri Nirmal
Chowdhury, Shrimati Renuka
Ghosh, Shri Dipen
Gurupadaswamy, Shri M. S.
Jaswant Singh, Shri
Kalvala, Shri Prabhakar Rao
Kar, Shri Narayan
Kulkarni, Shri A. G.
Lakshmana, Prof. C.
Mahajan, Shri Pramod
Malaviya, Shri Satya Prakash
Malaviya, Shri Satya Prakash
Mishra, Shri Chaturanan
Poddar, Dr. R. K.
Quasem, Shri Mostafa Bin
Radhakrishna, Shri Puttapaga
Rao, Shri Gopala Rao
Rao, Shri Yalla Sesi Bhushna
Reddy, Shri B. Satyanarayan
Reddy, Shri P. Babul
Reddy, Dr. G. Vijaya Mohan
Sen, Shri Sukomal
Upendra, Shri Parvathaneni
Vajpayee, Shri Atal Bihari
Verma, Shri Ashok Nath
Verma, Shri Virendra
Yadav, Shri Jagdambji Prasad

The Motion was adopted

MR. DEPUTY CHAIRMAN: We shall now take up clause-by-clause consideration of the Bill. Clause 2 there are 17 amendments. Amendment Nos. 1 and 13 are in the name of Mr. Mohanan.

SHRI K. MOHANAN: Sir, I want to move my amendments.

MR. DEPUTY CHAIRMAN: We had already sufficient discussion still you want to speak.

SHRI K. MOHANAN: Yes, Sir.

MR. DEPUTY CHAIRMAN: I hope you will be brief and to the point.

Clause 2

Shri K. Mohanan: Sir, I move:

1. "That at page 1, lines 10-11, for the words 'if the appropriate Government is' the words 'if the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha and the Chief Justice of India are unanimously' be substituted."

13. "That at page 1, after line 18, the following provisos be inserted, namely:—

'provided that a Committee of fifteen Members elected by proportional voting system of the Lok Sabha and Rajya Sabha be constituted to scrutinise the decision of the appropriate Government not to lay the report or any part thereof. If the Committee is not unanimously satisfied about the justification for the decision of the appropriate Government not to lay before the House the report, or part thereof, then the decision of the appropriate Government shall stand revoked.

Provided further that the proceedings of the Committee shall be held in camera and shall be confidential'.

[The Amendment No. 1 and 13 also stood in the names of S/Shri Dipen Ghosh, Mostafa Bin Quasem and Nirmal Chatterjee]

The question were proposed.

SHRI K. MOHANAN: Sir, my first amendment pertains to clause 2. Under sub-section (1) of section 3 of the principal Act, Parliament or a Legislative Assembly with a simple majority can pass a Resolution and ask the Government to appoint a Commission to look into some matters of public importance. Sir, by passage of this Bill, it is not only aimed at preventing the Government in submitting any report of the Commission appointed by the Government, but also a Commission appointed by the Legislature with a majority decision. So in that way it is a blatant attack on the rights and privileges of this august House.

Sir, regarding public interest, my colleagues have already explained in detail how the Government behaved in the past in the name of public interest. The hon. Minister, Mr. Chidambaram has quoted

from the Constitution. He said that there is a provision in the Constitution for promulgation of an Ordinance. But may I tell him that there is a provision in the Constitution for declaring emergency. You have declared emergency and unleashed atrocities against the people of this country. At that time also you have done according to the Constitutional provision. So don't quote Constitutional provision? (*Interruptions*)

MR. DEPUTY CHAIRMAN: Don't make a general discussion.

SHRI K. MOHANAN: My point is: We are not for giving authority to the executive to decide whether it is in the public interest or not. We know that in the past the executive has misused the power for partisan and narrow political ends. That is why we are against giving more powers to the executive. Instead a body consisting of the Chairman of this House, the Speaker of the other House and the highest judicial authority of this country, that is, the Chief Justice of Supreme Court may be consulted. That is why I am moving my amendments.

MR. DEPUTY CHAIRMAN: Mr. N. E. Balaram. Take only one minute.

SHRI N. E. BALARAM: Sir, I move:

2. "That at page 1, lines 10-11, for the words 'if the appropriate Governments' the words 'Leader of the House, the Speaker and the Opposition Leaders are unanimously satisfied and agreed' be substituted."

The question was proposed.

SHRI N. E. BALARAM: Sir, we have made repeated requests from this side as to why this Ordinance was passed. What was the reason for this ordinance? The repeated requests made from this side as to why this ordinance was passed, except that point, on all other points, the Minister was trying to answer. But on this specific point, the Minister refused to answer as to why this ordinance was required. It has not been replied to. So, my amendment is and I would like to ask the hon. Minister as to what is the difference between the public interest and

other interests because the Minister has explained that everything comes under the concept of public interest? If that is the public interest, I am afraid, if this power is given to the Government and when the Government is satisfied that no reports may be placed before the House, I would think, you may misuse the power. That is why, I am afraid of that. It may happen because of several reasons. You said, pressures are there. Pressures have come from different quarters. I am afraid, this Clause may be misused. So, I want some inbuilt safeguard not to misuse this blanket power to the Government. I say this is a blanket power because the admissibility of the report to be placed before the House is decided by the Government. So, what I am suggesting is that some mechanism should be there to verify whether the admissibility is correct or not. On the question of admissibility, there must be a second look. That is what I am suggesting. I quote:

"if the Minister in the spirit of argument is saying, the Minister says that the Bill does not take any power of the House, if that is the position, we must have check on this."

SHRI M. S. GURUPADASWAMY: Sir, I move:

3. "That at page 1, line 11, for the words 'appropriate Government' the words 'collegium of the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and the Minister of Parliamentary Affairs, be substituted."

4. "That at page 1, lines 12-13, the words 'the security of the State, friendly relations with foreign States or in the public interest be deleted."

The questions were proposed

SHRI M. S. GURUPADASWAMY: Sir, I have differently worded my amendments though broadly, I agree with the principle of setting up of a Collegium of three people, I have excluded the Chief Justice of India but I have included the Minister of Parliamentary Affairs advisedly. The friends on the treasury benches may not charge me that I being a member of the Opposition may not trust them because there is no question of mistrusting anybody in the House. My object in mov-

[Shri M. S. Gurupadaswamy]

ing this amendment is to see that the executive may be free from the responsibility of exercising its discretion in the matter of withholding reports from the Houses of Parliament and entrusting this power to a body of persons who are eminent and responsible. I have said in my amendments, therefore, that the Collegium of three persons may be set up. In that collegium, I have included the Chairman of Rajya Sabha, an eminent person, the Speaker of Lok Sabha and the Minister of Parliamentary Affairs who belong to treasury benches. Sir, the independent body like this can take care of the fear of my friends that once this document is 3.00 p.m.,

placed on the Table of the House it becomes a public document and in national interest it may not be good that the document is placed on the Table of the House. Therefore, this amendment takes care of that fear of my friend, the Minister.

My second amendment deals with the other aspects which are contained in the Bill. In this amendment, I have said that the words "the security of the States, friendly relations with foreign States or in the public interest" be deleted. I have not touched the other matter "the sovereignty and integrity of India". That may be retained. Why do I propose so? Sir, it may be in the mind of the members of the ruling party or the Government that the sovereignty and integrity of India is very paramount, very important, unique and it has got to be safeguarded. We have said, on this side of the House, that in matters which affect the sovereignty and integrity of India or the unity of India we are second to none in supporting the Government. We have done it in the past. But with a view to removing the misgivings of the Government, I have retained these words. But with regard to the other words dealing with public interest, relations with foreign countries and security of the State, I have said that these words may be removed; because I feel that this is redundant, superfluous. My friend himself has said that in the garb of protecting the

public interest, many things have been done in the past by previous Governments. And he wanted to criticise the Janata Government. But I say that all Governments behave in a particular manner, whether it is this Government or that Government, whether it is of this party or that party. Sir, you have heard of the famous words of Lord Acton: "Power corrupts and absolute power corrupts absolutely". All governments, whether of the right, left or the centre, of any political party for that matter, behave in a particular manner when dealing with power. Therefore, Sir,.....

SHRI N. K. P. SALVE : Including the Government in Karnataka?

SHRI M. S. GURUPADSWAMY : I have said, any Government for that matter. I am not making any distinction between this Government and any other Government. Therefore, Sir, I have said that this gives vast power to the Government. Why are you afraid of Parliament?—I ask. Why don't you have faith in Parliament, in Members of Parliament? Trust Parliament. We have debated very vital issues in the past and we have taken responsible decisions. The Government also should be a responsible Government. Any responsible Government should agree that it should share its responsibilities with Parliament. That is the meaning of responsibility. I believe, Sir, the executive is only a creature of Parliament. Parliament is the master. The creature cannot destroy the master. We are asked today to pass an amendment to negate the very powers of Parliament. We are asked to preside over the liquidation of certain powers and responsibilities of Parliament. We are asked to agree to surrender our own rights and powers on the ground that we may not behave responsibly. That is the lurking fear. Therefore, I want the Minister to consider this. We should remove these things which I have suggested in the amendment and agree to retain only that phrase, that is "the sovereignty and integrity of India". That will be adequate, that will satisfy the fears of the Minister, perhaps. Though I do not agree, I am conceding there may be gen-

aine fears. But that will be adequate enough to meet his arguments.

SHRI SATYA PRAKASH MALAVIYA (Uttar Pradesh): Sir, I move:—

5. "That at page 1, line 13, the words 'or in the public interest', be deleted".

[*The amendment also stood in the name of Shri Aladi Aruna alias V. Aruna chalam*].

8. "That at page I, after line 18, the following proviso be inserted, namely:—

"Provided that these provisions shall not be applicable without the concurrence of the Chief Justice of India".

Sir, these are my amendments. My argument is that public interest is very wide and is very vague. Even on the previous occasions the constitutional provisions were misused and a commissions of inquiry appointed under Section 3 also gave a warning to all the successive Governments, and that is the finding of the Shah Commission also at para 15.6 interim report (part II) (I quote):

"The nation owes it to the present and the succeeding generations to ensure that the administrative set up is not subverted in future in the manner as it was done to serve the personal ends of any one individual or a group of individuals in or near the Government."

The Minister has not cited a single example where any ordinance, right from the year 1950, i.e. 26-1-1985, till date was promulgated by the President on the date on which the Rajya Sabha or either House of Parliament was adjourned. I have gone through the documents issued by the Lok Sabha Secretariat and I have not been able to lay my hands on any such document. Therefore, I would request the Minister—because he cited so many Ordinances issued during the Janata regime—to clarify this point.

My second argument was that the provisions of sub-clause (5) should not be made applicable without the concurrence of the Chief Justice of India. In a democratic set-up the Chief Justice is a per-

son in whom the entire nation reposes its confidence. Therefore, I request the Government to accept my amendment and accept that these provisions will not apply without the concurrence of the Chief Justice of India. I request the Government to accept the amendments moved by Opposition leaders, and thereafter we will sit together and see whether we can vote for this Bill or not.

PROF. C. LAKSHMANNA (Andhra Pradesh): I am very much concerned with the valiant but unsuccessful, courageous but misplaced, effort on the part of the Minister to defend an indefensible black Bill which has plunged this House into darkness as a result of which the House will corrode its own responsibility for which the Members of this House have been elected. Having said that I will come to only two points. The Minister said there are four compelling reasons for a Bill of this nature, I will take up only two. Yes, he said it is in the interests of the integrity of the country. As it is, there is a right and a commission has been appointed. Is this right detrimental to the integrity of the country. A Commission has been appointed. The Commission comes to certain conclusions. If as a result of this Bill becoming an Act, the report of that Commission is withheld from Parliament and from the people, is the integrity of the country safeguarded? What happens? Will there be any action taken by the Government? If any action is taken by the Government, it will be bypassed in Parliament (*Interruptions*).

SHRI N. K. P. SALVE: Sir, I am not interrupting him. But he should speak on his amendments only.

MR. DEPUTY CHAIRMAN: I thought you were going to speak only on your amendments.

SHRI N. K. P. SALVE: He must speak on his amendments only.

PROF. C. LAKSHMANNA: I am coming to the amendment Sir. I am coming to the question of public interest. Suppose a Commission of Inquiry is appointed and that Commission comes to certain conclusions and it also suggests

[Prof. C. Lakshmanan]

some course of action perhaps. If that Inquiry Commission's Report is withheld in public interest from this House and the other House, that means that the Government will not take any action. Therefore, will it be in public interest if such withholding takes place? Therefore, I plead very earnestly with the Minister and the Government to see the reasonableness with which arguments have been presented by us. Do not come to the conclusion that it is only a debating point, that we have to score a point this way or that. This concerns the rights and privileges of Parliament. Therefore, I would request you to kindly accept my amendments and, in the light of those amendments, amend the law. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Now, Mr. Atal Bihari Vajpayee to move his amendments No. 6, No. 7 and No. 9. Yes, Mr. Vajpayee.

SHRI ATAL BIHARI VAJPAYEE: Sir, I have moved two amendments.

MR. DEPUTY CHAIRMAN: The third amendment is also in your name.

SHRI ATAL BIHARI VAJPAYEE: Sir, I beg to move:

6. "That at page 1, line 14, for the words 'House of the People' the 'Parliament' be *substituted*."

"That at page 1, line 15, for the word 'Legislative Assembly of the State' the 'State Legislature' be *substituted*."

9. "That at page 1, after line 18, the following proviso be *inserted*, namely:

'Provided that no such notification shall be issued unless the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and the Chief Justice of India or, as the case may be, the Chairman of the Legislative Council (if there is a Legislative Council in the State), the Speaker of the Legislative Assembly of the State and the Chief Justice of the High Court, unanimously hold that it is not expedient so to lay the Report before Parliament or the concerned Legislature'."

[The Amendment Nos. 6, 7 and 9 also stood in the names of S/Shri Lal K. Advani, Pramod Mahajan and Kailash Pari Mishra].

The questions were proposed.

SHRI ATAL BIHARI VAJPAYEE: Sir, the first amendment is very simple. I would like the Government to treat both the Houses of Parliament on an equal footing.

Sir, we know that in money matters, the other House is supreme. We also know that the Council of Ministers is responsible to the other House and we, the Members of the Rajya Sabha, cannot move a 'No-Confidence' Motion against the Council of Ministers. But, in all other respects, the Constitution guarantees the equality of status to both the Houses. Somehow, in 1952

SHRI LAL K. ADVANI: In respect of article 149, we are higher.

SHRI ATAL BIHARI VAJPAYEE: We are higher in the sense that we are the Upper House and we can look down upon them!

SHRI N. K. P. SALVE: *Nahin, nahin.*

SHRI ATAL BIHARI VAJPAYEE: But they can look up to us. Sir, in 1952, a lacuna was left in the Act. Only the House of the People was mentioned. Sir, I know that Mr. Chidambaram is not responsible for that omission. But now, having come forward with an amending Bill, he should have suggested an amendment to this clause also. Even now it is not too late in the day. If a notification is to be issued and if it is to be placed only before the House of People, it will not be fair to the Council of States.

SHRI M. S. GURUPADASWAMY: Why discrimination?

SHRI ATAL BIHARI VAJPAYEE: Sir, my friend, Shri Gurupadaswamy, says that it will mean a discriminatory treatment to this House. I knew that the Minister will have to go back to the Lok

Sabha if he accepts my amendment. But this has got to be done and I would like to tell him that this has nothing to do with political motivation. I do not know why the Rajya Sabha has been excluded. Sir, this is my first amendment.

About my second amendment, Sir, I would like to state that it deals with the question of consulting the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and the Chief Justice of India, before issuing a notification, seeking the permission of the House not to place on the Table a particular Report. Sir, I would not like to go into the circumstances. The honourable Minister has made out a case for not laying on the Table the Report of the Thakkar Commission. But why entrust the House or throw the responsibility on the House to decide without going through the Report that the publication of the report, will not be in public interest. The Government can show a copy of the report to the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and the Chief Justice. They don't trust Members of Lok Sabha. They don't trust the Members of Rajya Sabha either. They are not ready to lay a copy of the notification even on the Table of this House. But do they trust high dignitaries of the Republic, namely, the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha and the Chief Justice? Sir, behind public interest many things can be sheltered. I do not want to go into that argument at this stage. But let the Government approach the three high dignitaries and if they say that the report should not be laid on the Table of the House, then the House will be convinced and the people at large will feel that they have not been cheated and the Government has nothing to hide. I hope my amendments will be given consideration by the hon. Minister.

SHRI CHATURANAN MISHRA: Sir, I move:

10. 'That at page 1, after 18 the following proviso be inserted, namely:—

'Provided that such report shall be discussed in the House in Camera.'"

1. The question was proposed

श्री चतुरानन मिश्र : उप सभापति महोदय, इस सदन में दो दिनों तक जो हम लोगों ने बहस की उस में दोनों पक्ष से यह कहा गया कि ऐसा अवसर आ सकता है कि जब राष्ट्रहित में और राष्ट्र की सुरक्षा के हित में यह जनहित में किसी रिपोर्ट को गुप्त रखने की जरूरत हो सकती है। यह बात दोनों पक्ष के लोग मानते हैं कि ऐसी स्थिति आ सकती है। अब प्रश्न उठता है कि सरकार किस पर ज्यादा भरोसा रखे। एक रिपोर्ट जिस को अगर किसी सिविल सर्वेंट को रखने के लिये दे दिया गया तो क्या वह उस को गुप्त रखेगा और क्या सदन के लोग उस को प्रकाशित कर देंगे ? मैं सरकार से यह जानना चाहता हूँ कि आप किस पर ज्यादा भरोसा करते हैं ? जब से यह पार्लियामेंट बनी है, मुझे इतना ज्ञात है कि एक बार भी ऐसा अवसर नहीं आया कि इस सदन के किसी माननीय सदस्य पर विश्वासघात का, देश के गुप्त भेदों को खोल देने का एक भी मुकदमा चला हो। लेकिन ऐसे केसेज हुए हैं कि जब सिविल सर्वेंट्स पर मुकदमा चलाये गये हैं जासूसी कांड के, लेकिन किसी माननीय सदस्य पर आज तक कोई मुकदमा नहीं हुआ है। इसलिये मैं अनुरोध करूंगा कि माननीय सदस्यों पर भरोसा कीजिए। इन्दिरा जी की हत्या सिविल सर्वेंट के हथियार से हुई, सरकार द्वारा खरीदे गये हथियार से हुई, सरकार द्वारा सेंक्शन किये गये रुपये से जो हथियार खरीदा गया उस से उन की हत्या की गयी। आज तक किसी माननीय सदस्य ने किस कांग्रेसी मंत्री की हत्या नहीं की है। तो फिर क्या कारण है कि हम पर विश्वास न किया जाये। आखिर इस रिपोर्ट को आप कहाँ रखेंगे। अपने साथ रखेंगे और जहाँ-जहाँ जायेंगे इस को लेते जायेंगे। या कहीं रखेंगे। यदि कहीं रखेंगे तो वह कहाँ रखेंगे ? या उन्हीं सिविल सर्वेंट्स के पास रखेंगे। तो फिर हम को विश्वास में न लेने का क्या कारण हो सकता है ? या फिर आप हम लोगों पर अविश्वास करते हैं।

तीसरा मुद्दा आप ने बताया है पब्लिक इंटेरेस्ट का। तो जो लोग जन

[श्री चतुरानन मिश्र]

प्रतिनिधि चुने जाते हैं वे ज्यादा पब्लिक इंटरेस्ट को समझते हैं या सरकारों नौकर पब्लिक इंटरेस्ट को ज्यादा समझते हैं, माननीय मंत्री जी इस बात को जरा स्पष्ट कर दें। अगर हम लोग—यहां के दोनों पक्ष के लोग जनहित को नहीं रिप्रेजेंट करते हैं तो क्या खाक रिप्रेजेंट करते हैं। आखिर कहां को हम लोग यहां इस सदन में आये हैं। इसलिये मुझे यह तर्क नहीं जंचता कि सदन से छिपा कर सारी बातें रखी जायें। मैं इस बात से सहमत हूँ कि कुछ रिपोर्ट्स गुप्त रखी जा सकती हैं, अल्पकालिक तौर पर गुप्त रखी जा सकती हैं, ज्यादा दिनों तक रखी जा सकती हैं, यह मैं मानता हूँ, लेकिन उन को सदन को न देना यह सर्वथा अनुचित है। मंत्री महोदय ने राम कृष्ण डालमिया के केस का उद्धरण दिया, लेकिन उस उद्धरण के नीचे के भाग को भी वे देखें उसमें यह भी लिखा हुआ है कि इक्वायरी कमीशन इन लिये बनाया जाता है कि सिर्फ सरकार को नहीं, पार्लियामेंट को भी सूचना देने के लिये वह होता है और जब सरकार सूचित हो जायेगी तो फिर विधेयक प्रस्तुत करेगी, इस सदन में बिल पास करने के लिये। अगर हम सारी सूचनाएं ग्रहण नहीं कर सकेंगे, आप हमको सारी सूचनाएं ग्रहण नहीं करने देंगे तो फिर कैसे आप उम्मीद करते हैं कि आपके लेजिस्लेशन में, आपके कानून बनाने में आपका साथ देंगे। इसीलिए मैं सरकार से अनुरोध करता हूँ कि वह इस पर विचार करे, अगर मैं समझता हूँ कि हमारी सरकार अभी अनुरोध से परे है, अपील से परे है, अभी आप सुनने के लिए तैयार नहीं हैं। यह उचित नहीं होगा कि आप सदन से बातों को छिपाकर रखें। थोड़ी देर के लिए मैं समझ सकता हूँ कि कुछ समय के लिए आप रखें।

आपने कहा कि इसे सदन की टेबल पर रख देंगे तो वह आटोमैटिक प्रकाशित हो जाएगी। तो वैसा ही नियम आप ले आते कि हम इस ढंग से रखेंगे कि जिससे यह प्रकाशित न हो सके। आखिर यह सदन अपने बनाए हुए नियमों का

गुलाम नहीं है। नियम हमने बनाया है इस सदन को सुचारू रूप से चलाने के लिए, इस सदन को ज्यादा से ज्यादा सूचना ग्रहण करने के लिए। अगर कोई नियम इसमें बाधा डालता है, तो इसको बदल सकते हैं। इसलिए मैं मंत्री महोदय से इस तर्क से सर्वथा असहमत हूँ, उनका यह तर्क अनुचित है। लेकिन एक बात मैं कहना जरूरी समझता हूँ कि अगर इस ढंग से आप पार्लियामेंट पर, इस सदन पर अंकुश लगाना चाहते हैं, चीजों को जानने नहीं देना चाहते हैं तो यह न आपके हित में है, न जनता के हित में है, न इस देश के, न प्रजातंत्र के हित में उचित है। मैं मानता हूँ कि इसे आप स्वीकार करेंगे नहीं, फिर भी मैं आपसे अपील करता हूँ क्योंकि अपील करने के अलावा दूसरा रास्ता नहीं है। दूसरा रास्ता सदन के बाहर है। इसलिए एक बार फिर मैं अपील करता हूँ कि आप इसे मंजूर नहीं करेंगे।

MR. DEPUTY CHAIRMAN: Amendment Nos. 11, 12, 16 and 17 by Shri P. Upendra. He is not here. Now Amendment No. 15.

SHRI ALADI ARUNA alias V. ARU-NACHALAM: Sir, I beg to move:

15. "That at page 1, line 20, for the words 'interim report' the words 'final report' be substituted."

Sir, it is very difficult to define the phrase 'public interest'. At the same time it can be interpreted according to our convenience. It authorises the Government to keep every report in the cold storage because of the inclusion of this phrase 'public interest'. Therefore, I oppose the inclusion of this phrase 'public interest' in this clause.

Sir, Dr. Krishnaswamy, in his speech in the Constituent Assembly sarcastically defined what is public interest. He said: "Public interest is as wide as pacific ocean." So, the Government is getting an over-riding power by adding this phrase. By the inclusion of this phrase,

you are denying one of the fundamental rights of democracy. So, it is a mockery of democracy. Sir, if the Government passes the Bill with deletion of this phrase 'public interest', perhaps, the public may think that our Government is very serious in keeping the integrity and sovereignty and the unity of the country. If you pass the Bill with all these phrases, then people will think that the Government is dead against the publication of any report. That is why, Sir, I oppose this phrase 'public interest'.

SHRI BAHARUL ISLAM (Assam): Sir, I want to speak on the amendment moved by Mr. Vajpayee (*Interruptions*). His idea is very good that three persons, namely the Chairman of the Rajya Sabha, the Speaker of the Lok Sabha, and the Chief Justice of India, should be there. They are great personalities. No doubt about it. But the difficulty is that the Chief Justice of the Supreme Court is in the know of law and justice. He or any other Judge of the Supreme Court or the judiciary itself does not have the expertise on such matters. Similar is the case with the Speaker of the Lok Sabha and the Chairman of the Rajya Sabha. It is the Executive only who have got the expertise. For example, we the Members of Parliament may say that there is drought in one particular area and that people need food. But it is the Executive who knows where the food is and how it is to be distributed. Similarly, the Executive knows about these matters whether it is in the interest of the sovereignty, unity and integrity or security of the State. Therefore, it may not be a practical suggestion... (*Interruptions*)

SHRI DIPEN GHOSH: Experts can be made available to the Committee.

SHRI BAHARUL ISLAM: It is not a practical and legal suggestion. Politically they may be taken into consideration. That is a different matter altogether.

MR. DEPUTY CHAIRMAN: Now I am putting the amendments to vote. Those in favour... (*Interruptions*).

SHRI K. MOHANAN: We would like to hear the Minister.

SHRI LAL K. ADVANI: Or is that the reply from the Government. Justice Baharul Islam was saying that the Chief Justice and the Lok Sabha Speaker and the Chairman cannot decide on a matter of this kind, it is only the executive...

SHRI P. CHIDAMBARAM: That is his view.

SHRI LAL K. ADVANI: What is the Government's reply then?

SHRI P. CHIDAMBARAM: Sir, with respect I cannot accept any of these amendments. Sir, there is considerable force in what hon. Member Mr. Vajpayee has said that there should not be any discrimination between the House of the People and the Council of States but that really goes back to amending sub-section (1), (4) and (5) of section 3. That is a matter which we will consider at a later stage. At this stage, I do not think it is possible to consider that. There is force in his argument, I am not denying.

As far as creating a collegium or vesting a small group of people with power is concerned, I have great reservations about it. I think the power is now with the House of the People. And, after this Ordinance has been made we have invoked the power only once in respect of one report of the Commission, namely, the Thakkar Commission of Inquiry. I have repeatedly promised that the Government is bound, primarily, to place the report under sub-section (4) of section 3. It is only on that rare occasion when one of those four compelling grounds are there that we will invoke the power. We will invoke it very sparingly and after a most careful consideration and after an agonising appraisal of the pros and cons. If after some years more safeguards are necessary, we can always consider building in more safeguards into sub-section (5) of section 3. This we can do after we see the working of the Act and after the country sees how this Government is working this law.

MR. DEPUTY CHAIRMAN: Amendment moved. (*Interruptions*) I think the hon. member has it.

SHRI K. MOHANAN: Sir, I press the first amendment to division.

MR. DEPUTY CHAIRMAN: All right. The question is:

"That at page 1, lines 10-11, for the words 'if the appropriate Government is, the words 'if the Chairman of the Rajya Sabha and the Speaker of the Lok Sabha and the Chief Justice of India are unanimously' be substituted."

The House divided.

MR. DEPUTY CHAIRMAN: Ayes—32; Noes—123.

Ayes-32

Advani, Shri Lal K.
Aurora, Sardar Jagjit Singh
Baby, Shri M. A.
Balaram, Shri N. E.
Basu, Shri Chitta
Bhuyan, Shri Gaya Chand
Chakravarty, Shrimati Bijoya
Chowdhury, Shrimati Renuka
Ghosh, Shri Dipen
Gurupadaswamy, Shri M. S.
Jaswant Singh, Shri
Kalvala Shri Prabhakar Rao
Kar, Shri Narayan
Kulkarni, Shri A. G.
Lakshman, Prof. C.
Mahajan, Shri Pramod
Malaviya, Shri Satya Prakash
Mishra, Shri Chaturanan
Mohan, Shri K.
Naik, Shri R. S.
Poddar, Dr. R. K.
Quasem, Shri Mostafa Bin
Radhakrishna, Shri Putapaga
Rao, Shri Gopala Rao
Rao, Shri Yalla Sesi Bhushana
Reddy, Shri B. Satyanarayan
Reddy, Shri P. Babul

Reddy, Dr. G. Vijaya Mohan
Sen, Shri Sukomal
Uppendra, Shri Parvathaneni
Vajpayee, Shri Atal Bihari
Yadav, Shri Jagdambi Prasad

Noes-123

Ahluwalia, Shri S. S.
Alva, Shrimati Margaret
Amarjit Kaur, Shrimati
Amila, Shri Tirath Ram
Anand Sharma, Shri
Antony, Shri A. K.
Arun Singh, Shri
Bagrodia, Shri Santosh
Bansal, Shri Pawan Kumar
Basumatari, Shri Dharanidhar
Bekal Utsahi, Shri
Bhajan Lal, Shri
Bhandare, Shri Murlidhar Chandrakant
Bhardwaj, Shri Hansraj
Bhatia, Shri Madan
Bhatt, Shrimati Ela Ramesh
Bhattacharjee, Shri Kamalendu
Bhim Raj, Shri
Birla, Shri Krishna Kumar
Chatterjee, Prof. (Mrs.) Asima
Chatterjee, Shri Nirma
Chaturvedi, Shri Bhuvnesh
Chowdhary Ram Sewak
Darbara Singh, Shri
Deori, Shrimati Omen Moyong
Desai, Shri Jagesh
Dhusiya, Shri Sohan Lal
Faguni Ram, Shri
Ganeshwar Kusum, Shri
Ghan Shyam Singh, Shri
Gupta, Shri Vishwa Bandhu
Hanumanthappa, Shri H.
Heptulla, Dr. (Shrimati) Najma
Islam, Shri Baharul
Jadhav, Shri Vithalrao Madhavrao
Jamuda, Shri Durga Prasad

Jani, Shri Jagadish
Jha, Shri Lakshmi Kant
Jogi, Shri Ajit P. K.
Joshi, Shri Krishna Nand
Joshi, Shrimati Sudha Vijay
Kailashpati, Shrimati
Kakodkar, Shri Purushottam
Kalita, Shri Bhubaneswar
Kar, Shri Ghulam Rasool
Kaul, Shrimati Krishna
Kaushik, Shri M. P.
Khaparde, Miss Saroj
Khatun, Kumari Sayeeda
Kidwai, Dr. Mohd. Hashim
Laxmi Narain, Shri
Mahendra Prasad, Shri
Mahto, Shri Bandhu
Majhi, Shri Prithibi
Malaviya, Shri Radhakrishnan
Malik, Shri Mukhtiar Singh
Malik, Shri Satya Pal
Manhar, Shri Bhagatram
Masodkar, Shri Bhaskar Annaji
Meena, Shri Dhuleshwar
Mehta, Shri Chimanbhai
Mishra, Shri Mahendra Mohan
Mishra, Shri Sheo Kumar
Mittal, Shri Sat Paul
Mohapatra, Shri Basudeb
Mohanty, Shri Subas
Moopanar, Shri G. K.
Naik, Shri G. Swamy
Nalwa, Shri Hari Singh
Narayanasamy, Shri V.
Natarajan, Shrimati Jaynathi
Natha Singh, Shri
Pahadia, Shrimati Shanti
Palaniyandi, Shri M.
Pandey, Shrimati Manorama
Pandey, Dr. Ratnakar
Panicker, Shri K. Vasudeva
Panwar, Shri B. L.
Patel, Shri Vithalbhai Motiram
Patil, Shri Dinkarrao Govindrao

Patil, Shrimati Pratibha Devisingh
Puglia, Shri Naresh C.
Rafique Alam, Shri
Rai, Shri Kalpnath
Rajagopal, Shri M.
Ramamurthy, Shri Thindivanam K.
Rao, Prof. B. Ramachandra
Rao, Shri R. Sambasiva
Rathvakoli, Shri Ramsinghbhai Pataliyabhai
Reddy, Shri Adinarayana
Reddy, Shri T. Chandrasekhar
Rohatgi, Shrimati Sushila
Roshan Lal, Shri
Sahu, Shri Rajni Ranjan
Sahu, Shri Santosh Kumar
Salve, Shri N. K. P.
Saring, Shri Leonard Solomon
Sharma, Shri A. P.
Sharma, Dr. H. P.
Sharma, Shri Satish Kumar
Shukla, Shri Keshavprasad
Siddiqi, Shri Shamim Ahmed
Silvera, Dr. C.
Singh, Shri Bir Bhadra Pratap
Singh, Thakur Kamakhya Prasad
Singh, Shrimati Pratibha
Singh, Dr. Rudra Pratap
Singh, Shri Vishvijit Prithvijit
Sukhdev Prasad, Shri
Sukul, Shri P. N.
Surender Singh, Shri
Thakur, Prof. Chandresh P.
Thakur, Jagatpal Singh
Thakur, Shri Rameshwar
Thangabalu, Shri
Tiria, Kumari Sushila
Tripathi, Shri Chandrika Prasad
Tyagi, Shri Shanti
Vaduthala, Shri T. K. C.
Valiullah, Shri Raoof
Verma, Shri Kapil
Verma, Shrimati Veena
Vikal, Shri Ram Chandra

[Mr. Deputy Chairman]
The motion was negatived

Amendment Nos. 2, 3, 4, 5, 6, 7, 8, 9; 10, 13, 14 and 15 were put and negatived.

MR. DEPUTY CHAIRMAN: I shall now put clause 2 to vote. The question is:

"That clause 2 stand part of the Bill"

The motion was adopted.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

MR. DEPUTY CHAIRMAN: Now, Mr. Minister will move that the Bill be passed.

SHRI LAL K. ADVANI: Sir, we would not like to be associated with the passing of this Bill and in protest we walk out.

[At this stage, some hon. Member left the Chamber].

SHRI P. CHIDAMBARAM: Sir, I move:
"That the Bill be passed."

The question was put and the motion was adopted.

CLARIFICATIONS ON THE STATEMENT REGARDING RECENT CHINESE INTRUSION INTO INDIAN TERRITORY

MR. DEPUTY CHAIRMAN: Hon. Members would seek clarifications on the Statement made in Rajya Sabha on the 18th July, 1986, by the Minister of External Affairs and Commerce regarding the recent Chinese intrusion into Indian territory.

Yes, Mr. Jaswant Singh.

SHRI JASWANT SINGH (Rajasthan): Mr. Deputy Chairman, Sir, when the statement was made on the 18th July, voluntarily those on the side of the Treasury as also this side of the well had given up their right to seek clarification on a request from the Chair. It was then our under-

standing that rather than seeking clarifications on a statement which is now almost a month old, what would actually take place would be a more substantive and meaningful discussion on this whole question. It does not hold good for me to complain about that because we can take it up subsequently.

Now the fact remains that the circumstances of making that statement and coming forward to the House now to provide such clarifications as the Members may have, have so altered, so many additional events have taken place and so much additional input has been provided that necessarily one has to go slightly outside of what is contained in the text of the statement proper. The hon. Minister of External Affairs' statement of 18th of July, to start from there, providing skeletally essential and largely unavoidable information, shed little light on the real situation, precisely because it was not illuminated by a coherent and recognisable policy. Central to the difficulties that have recently cropped up on the Sino-Indian question and are manifesting themselves in this little trouble on the border, is precisely this—the absence of an overall—and mark my words, please—and a continuing policy. Of course this is on par with Government's approach on other important issues which are largely shadow and do not have much substance. Therefore, my first clarification is: What is Government of India's China policy? We have not had a substantial discussion on this. There is insufficient explanation of it. That is my first query.

There is then of course a logical corollary to it: What is Government of India's understanding of and appreciation about the People's Republic of China's attitude to issues which are currently bedevilling the situation.

Thirdly, on the question of border incursions, I have to regrettably say that this border incursion—what does it convey? All border incursions have essentially either a military message or a diplomatic message. Now therefore what is Government of India's assessment of the mili-