

खान अब्दुल गफ्फार खान को रिलीज किया जाय जिस के लिये प्रधान मंत्री जी ने चिट्ठी लिखी जो कि अब्दुल गफ्फारों में है। लेकिन फल इस का उल्टा हुआ और नतीजा यह हुआ कि उन की नजरबन्दी और आगे बढ़ा दी गयी है। (व्यवधान)

श्री उपसभापति : यह तो कोई प्वाइंट आफ आर्डर नहीं है। (व्यवधान)

DR. BHAI MAHAVIR (Madhya Pradesh): Mr. Deputy Chairman Sir, I had requested you for a minute's time for a clarification. Yesterday, if you remember, I had put a supplementary question with regard to some reported criminals hiding in the Golden Temple. I had asked the Prime Minister if she had not said that she was not going to send the police into the Golden Temple although she was being pressurised to send the police in. The record bears that out. The Prime Minister had said that she had not been correctly reported in respect of whatever she had said on this. I was not quite satisfied, but then I accepted her statement. The press report from the UNI and PTI, as it had appeared today, seems to corroborate what the Prime Minister was alleging about press reporting what I said has been put in a perverted form and it gives a totally wrong impression. It says: "Intervening, Prime Minister Indira Gandhi denied Dr. Bhai Mahavir's observation that she was reportedly under pressure to see that the police did not enter the Golden Temple", whereas I had said just the opposite. I had said that she was reported to have stated that although she was under pressure to send the police in, she was not going to do it in deference to the religious sentiments of the Sikhs. So, Sir, this particular report seems to give a totally perverse impression that she was under pressure not to send the police in, whereas according to my information, which she contradicted, it was the other way about. I wish,

Sir, that the news agencies which have incorrectly reported this would kindly make a correction and ensure that such lapses do not occur in future.

MR. DEPUTY CHAIRMAN: I have already had a talk with the press reporter and showed him the proceedings of the House also. It appears he had been carried away and there has been some slip. May be it was because of some mishearing or something else might have happened. Therefore I asked him to carry the report in the correct form as it has appeared in the proceedings of the House and he has promised to do it. I think that will do.

श्री सत्यपाल मलिक (उत्तर प्रदेश): श्रीमन्, मेरा एक सवाल था कि रिलायस कम्पनी के शेयर नान-रेजिडेंट कम्पनियों ने खरीदे हैं। इस सिलसिले में मेरी जो जानकारी है उसके आधार पर मैंने एक प्रिविलेज मोशन मूव किया है। उसके बारे में क्या हुआ यह जानना चाहता हूँ।

श्री उपसभापति : अभी कल ही आया है, उस पर विचार होगा।

# CALLING ATTENTION TO A MATTER OF URGENT PUBLIC IMPORTANCE

Need for urgent electoral reforms with special reference to defections

SHRI A. G. KULKARNI (Maharashtra): Sir, I call the attention of the Minister of Law, Justice and Company Affairs to the need for urgent electoral reforms with special reference to defections.

Sir, you assured us yesterday that the Home Minister will be present. Is that assurance going to be observed or not? Is he coming?

THE LEADER OF THE HOUSE (SHRI PRANAB KUMAR MUKHERJEE): I will send the information so that he can come.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI JAGANNATH KAUSHAL): Sir, the House is aware that various proposals for electoral reforms, including proposals for dealing with defections are under the consideration of Government. The more important of these proposals involve issues of a vital nature.

As early as 1967, a high level Committee was constituted by Government in pursuance of the Resolution passed by Lok Sabha in August 1967 to go into the problem of defections and make recommendations. The report of the Committee was placed before the Houses of Parliament, in February 1969. In December 1970, a conference of Opposition Leaders in Parliament was convened by the Prime Minister to discuss the draft of certain legislative provisions for dealing with defections. In 1973, a Bill for amending the Constitution for providing for disqualification on the ground of defection was introduced and it was referred to a Joint Committee. In 1978, an attempt was made by Government to introduce a Bill for amending the Constitution for providing for disqualification on the ground of defection. A Committee of the Cabinet has considered the matter in depth and has formulated certain tentative views on the subject recently.

The successful functioning of the democratic system as envisaged by our Constitution depends upon a sound electoral system and Government has to be receptive to any proposals or suggestions for electoral reforms which it receives from any quarters. This is a matter in respect of which there is no room for complacency. At the same time, having regard to the fact that our electoral system has been functioning well, we should be careful in making any changes in the system. It is of the utmost importance to ensure that a reform which is intended to deal with a particular evil does not itself lead to a much greater evil. The history

of the proposals relating to defections itself illustrate this point forcefully. The 1973 Bill was vehemently opposed by well-informed persons like Pandit H. N. Kunzru and others. In his evidence before the Joint Committee which considered the Bill, Pandit Kunzru characterised the Bill as without any parallel worth mentioning and as trampling on the conscience and freedom of opinion and as representing political tyranny of the highest order and a kind of totalitarianism. Opposing the introduction of the 1978 Bill on the subject, Shri Madhu Limaye took exactly the same stand. He characterised the Bill which was sought to be introduced as the most sinister Bill. In his view, the Bill represented dictatorship and bossism.

When views of this nature are expressed with respect to a proposal, the matter has to be considered in great depth. Likewise, the other important proposals for electoral reforms under consideration also involve serious implications which require to be considered carefully. Any attempt to rush through such proposals would do more damage than good.

SHRI A. G. KULKARNI: Sir, this statement by the Minister, which has been read out, gives the historical background of what attempts were made for electoral reforms and also to move an Anti-Defection Bill. And I think the Jagannath Rao Committee which he referred to has given a report. (Interruptions).

There was another committee on defections. The Jagannath Rao Committee was on...

SHRI I. A. K. ADVANI (Madhya Pradesh): That was the Chavan Committee.

SHRI A. G. KULKARNI: Yes. The Jagannath Rao Committee was on electoral reforms. Perhaps the Minister, as every Member here, is aware that in India elections have become a sort of black money operation. And

personally I feel that when great personalities like Pt. Hriday Nath Kunzru or my friend Mr. Madhu Limaye objected, they might not have envisaged the induction of black money in the elections. The acts of the new breed of workers in various States who are offering themselves for elections are on many occasions nothing else but an ostentatious expenditure of wealth, thereby controlling the votes. Everywhere the experience is the same. Perhaps, Sir, my friends here will be surprised that very recently we had a traumatic experience of witnessing a bye-election in my district, a bye-election calling for 600 vehicles to be enforced for propaganda purposes, when no workers were available to sit in the cars, and three helicopters run for 15 days. Mr. Minister, such expenditure, I think, is something which is not only surprising but also scandalous; and this amounts to mafiaism having taken control of the elections in the country. That is why, with due respect to Dr Kunzru and Mr. Madhu Limaye, I demand the electoral reforms which are very necessary.

In this connection, before the Cabinet Committee which was considering the question of electoral reforms there was a proposal for financing elections for various political parties in Lok Sabha and Assemblies. That is necessary now, since induction of black money has gone on a very large scale. That is why I demand that this also should be considered.

The present Calling Attention, as you know, Sir, has come about in the wake of the Karnataka scandal as we know.

**SHRI SULTAN SINGH (Haryana):** A concocted story.

**SHRI A. G. KULKARNI:** You know it because you come from Haryana. The master crusher, Mr. Bhajan Lal, is the guru of all these defections; Mr. Sultan Singh, who is the President of the Pradesh Congress Committee of Haryana, might be under

the training of Mr. Bhajan Lal, I do not know. Sir, why I say this is it is on record that the Chief Election Commissioner has stated that between 1967 and 1973, the period that saw the emergence of the threat to culture, "there were 2700 recorded defections, 15 Legislators crossed floors to become Chief Ministers, and 212 Members of Parliament were rewarded with Ministership, Chairmanship of public undertakings, the offices which carried various perquisites."

**श्री रामानन्द यादव (बिहार)**

आप गया राम आया राम में हैं या नहीं: यह बता दें।

Remember how many times you have . . .

**श्री अरविन्द गणेश कुलकर्णी :**

आपको थोड़ी शर्म आती चाहिये।

मैं श्रीरजनल कांग्रेस वाला ह। आपके यहां के प्रणव बाबू की पार्टी को कई एम० पी० दिये हैं।

**SHRI RAMANAND YADAV:** You have joined three parties. . .

.... (बयवधान)।

अब आप रामायण पढ़ रहे हैं....

(बयवधान)।

**SHRI A. G. KULKARNI:** At least you must be ashamed to say that I am an Aaya Ram or Gaya Ram I am suffering very much hardship for standing for the principle of not joining any other party. And I am suffering very much. Do not talk non-sense. Sir, what I want to say is that I ignore what he has said. Perhaps he does not know my history.

**SHRI RAMANAND YADAV:** I know.

**SHRI A. G. KULKARNI:** Perhaps the Leader of the House is aware. He is always obliged to my party for having contributed many Members to his side.

Sir, my point was that it comes in the light of the Karnataka tape scan-

dal. Here, Sir, leave aside Mr. Bhajan Lal. These are small people, they are after what power, money power, I do not know. How they get money and how they use money, I do not want to say.

Sir, I want to know from the Home Minister who has now come here—I think you are representing the Home Ministry. . .

MR. DEPUTY CHAIRMAN: Yes, he is the Home Minister.

SHRI A. G. KULKARNI: Mr. Deputy Chairman and the Leader of the House have assured that the Home Minister will be present. And we are asking for a probe into that. So, you have to take care of it. I will request you to reply because Shri Jagannath Kaushal cannot reply on this. I am quite aware of it. Sir, I quote. Various papers have carried various stories. There are two stories. One has appeared in the "SUNDAY" magazine. I am quoting here.

SHRI MURLIDHAR CHANDRAKANT BHANDARE (Maharashtra): A point of order. The hon. Member is seeking to quote certain extracts and excerpts from the "SUNDAY", and I take it that this is the only issue of the "SUNDAY" where the tape recording has been reduced. I will give the date, lest the hon. Member should quote from something else. It is 6—12 November, 1983.

MR. DEPUTY CHAIRMAN: Let him first quote. Then you can say.

SHRI MURBHAR CHANDRAKANT BHANDARE: I am on a point of order. Will you listen to me?

MR. DEPUTY CHAIRMAN: You are asking a question.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I wanted to be guided. Let me be quite sure. The point is that these tapes are between one Mr. Srinivasan and one Mr. Puttadasa, M.L.A. and Joint Secretary, Congress Party.

MR. DEPUTY CHAIRMAN: Why are you saying all these things? Mr. Bhandare, do not bring in those matters which have not been mentioned. he has not named these persons.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: He is referring to the tape. There is no other tape.

SHRI LAL K. ADVANI: What are you quoting? I do not know.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I must say before he refers. He has referred to the issue of the "SUNDAY", and that is good enough for my purpose to raise this point of order.

MR. DEPUTY CHAIRMAN: Mr. Bhandare, just please hear. Please sit down. Please hear me first. Just a moment. You cannot bring in matters which have not been already brought on record. He has not said all these things. All right, you mention the whole thing, bring the story your self.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: You are not listening.

MR. DEPUTY CHAIRMAN: I am listening. Please, Mr. Bhandare. Please just hear me first. You are an able lawyer. Please hear me. You are an able lawyer. If you try to bring all these matters on record before those matters are brought by him, I think you will help him. I have no objection. As a capable lawyer you can do that thing. I think it is not proper. If he utters and reads those portions, then, you raise the point of order.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I will raise it after he says.

SHRI KALYAN ROY (West Bengal): We have got the right to refer to the newspaper reports. (Interruptions).

SHRI GHOUSE MOHIUDDIN SHEIKH (Andhra Pradesh): The

"SUNDAY" has never mentioned any other article regarding defection. That is why Mr. Bhandare is saying.

श्री उपसभापति : वे कोई सेन्टेन्स पढ़ें तो आप देखिये और फिर कहिये...  
(व्यवधान)

SHRI A. G. KULKARNI: In the magazine as well as the newspaper reports of "THE TIMES OF INDIA" and "THE STATESMAN" various names have been mentioned, Sir, the tapes were recorded by these persons. There is one Mr. Srinivasan and the other is Mr. Byre Gowda. And the third is some other Murthy, etc.—I do not know. Sir, these tapes have revealed that an attempt was made...

SHRI MURLIDHAR CHANDRAKANT BHANDARE: On a point of order. Since he has mentioned the names, I shall be failing in my duty and the House will be failing in its duty.....

MR. DEPUTY CHAIRMAN: Yes, yes, now you raise it.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I want to raise a point of order that this whole matter about the publication of the tapes in "Sunday" is *sub judice* and should not be discussed in this House. This Mr. Puttadasa, MLA and General Secretary, Karnataka Pradesh Congress Party, has initiated legal action against the Chief Minister, Mr. Ramakrishna Hegde and the two news magazines, "India Today" and "Sunday" for defamation. Now, since this matter is *sub judice*, I would request the hon. Member not to refer to it.

SHRI A. G. KULKARNI: Sir, I am not mentioning anything on merits. What has gone to the court I am not disputing. I am not mentioning.....

SHRI MURLIDHAR CHANDRAKANT BHANDARE: It is *sub judice*. He just made a reference to it.

SHRI A. G. KULKARNI: My only contention is that one Mr. Puttadasa, Secretary of the Pradesh Congress Party or whoever he might be was alleged to be bribing and persuading Mr. Srinivasan. That is what is mentioned.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: Sir, I ask for a ruling.

SHRI MADAN BHATIA (Nominated): Mr. Deputy Chairman, Sir, I seek your kind permission to raise a very important point of order. I had submitted a letter to the hon. Chairman yesterday in which I had given notice of my intention to raise this point of order from the floor of this hon. House if the need so arose. Since the hon. Member has made a very serious allegation against a particular, individual, involving damage to his reputation, it is necessary for me, Sir, to raise this point of order. I submit, Sir, that it is a matter of privilege to me to be a Member of this hon. House. I have taken a solemn oath to bear true allegiance to the Constitution of India. Under this oath, it is my duty to uphold and preserve the rights, powers and privileges of Parliament, including this hon. House. But, Sir, I am equally bound by the solemn oath to protect the fundamental rights of the citizens. This particular allegation raises a very vital issue concerning the citizens of this country and that is this. Do the rules of this hon. House and the Constitution of India permit this hon. House to discuss the conduct of a person who is a stranger to this House and who has no opportunity of being here to defend himself? This point is a constitutional point and the point that I am raising is based on a number of judgments of the hon. Supreme Court. Number one, in Maneka Gandhi's case, the Supreme Court has held that article 21 which says that no person shall be deprived of his personal liberty except in accordance with the procedure established by law, means that the procedure

[Shri Madan Bhatia]

must be fair and just and reasonable, and that will involve an opportunity to the person concerned of being heard. Secondly, it has been held by a Division Bench of Delhi High Court in K. G. Khosla Vs. Union of India that the reputation of a person is a part of the personal liberty of that person. This is the view which has been taken by a series of American decisions. And the Supreme Court in 1975 in the Eurasian Equipment case took the same view. (Interruptions). I am coming to the Supreme Court Judgment also (Interruptions). This is AIR 1975 Supreme Court p. 266, para 17. It says, "Reputation"...

श्री कलराज मिश्र (उत्तर प्रदेश) : यह प्वाइंट आफ आर्डर क्या है (व्यवधान) यह तो हाउस का समय नष्ट किया जा रहा है (व्यवधान) भाषण हो रहा है। जान-बूझ कर के नष्ट करवाया जा रहा है (व्यवधान) यह तो भाषण है (व्यवधान)

श्री उपसभापति : : आप बैठिये। जब आप हल्ला मचाते हैं तब सब ठीक होता है (व्यवधान)

SHRI MADAN BHATIA: I have to make good my point of order under the Constitution. I can not just stand up and sit down...

SHRI KALYAN ROY: Sir, he does not know what he is saying.

SHRI MADAN BHATIA: The Supreme Court judgment says....

श्री कलराज मिश्र : यह क्या प्वाइंट आफ आर्डर है (व्यवधान) जान-बूझ कर के करवाया जा रहा है ताकि सारी चीज न आने पाएँ। जो लोग प्वाइंट आफ आर्डर रोज़ करते हैं (व्यवधान) यह क्या कर रहे हैं (व्यवधान)

MR. DEPUTY CHAIRMAN: Will you please sit down and listen to him?

श्री कलराज मिश्र : जानबूझ कर के समय नष्ट किया जा रहा है (व्यवधान)

श्री उपसभापति : सदन में जो भी काम होता है जानबूझ कर के होता है (व्यवधान) सब काम ऐसे होता है (व्यवधान) आप बैठिये।

I can hear all the people, all the parties. He has raised a point of order. He is not going to bring any matter in the garb of a point of order. So let us hear him. You may or may not agree with him.

SHRI MADAN BHATIA: The Supreme Court says: "Reputation is a part of a person's stature and personality. Then it says: "The fact that a disability is created by the order of .... indicates that the relevant authority is to have an objective satisfaction. The fundamentals of fairplay require that the person concerned should be give an opportunity to represent his case." Then Sir, it has been held by the Supreme Court in reference to No. 1 of 1964 that all the powers and privileges of the Parliament are subordinate to the fundamental rights of the citizens under Article 21 of the Constitution.

SHRI SYED SHAHABUDDIN (Bihar): Including defection.

SHRI MADAN BHATIA: ....and all the Rules of Business which are framed by the House under the Constitution are also subordinate to the fundamental rights of the citizens. This is AIR 1965 SC. I shall read two paragraphs.. (Interruptions)

SHRI KALYAN ROY: You could not have a better man

SHRI LAL K. ADVANI: Mr. Salve would have been a better man.

**SHRI MADAN BHATIA:** The Honourable Members don't even wish me to mention before this Honourable House the provisions of the Constitution. In any case, they have no right to stop me. It says: "In other words, where the House makes rules for exercising its powers under the latter part of Article 194(3), those rules must be subject to the fundamental rights of the citizens.

Further it says:

"As we have already indicated, we do not propose to enter into a general discussion as to the applicability of all the fundamental rights to the cases where legislative powers and privileges can be exercised against any individual citizen of this country and that we are dealing with this matter on the footing that article 19(1)(a) does not apply and Art. 21 does. If an occasion arises it may become necessary to consider whether article 22 can be contravened by the exercise of the power or privilege under Art. 194(3). But for the moment we may consider Art. 20. If Art. 21 applies Art. 21 may conceivably apply'....

(Interruptions)

Now, this is important. It says:

"In our opinion, therefore, the impact of fundamental constitutional right conferred... (Interruptions) on Indian citizens by Art. 32 on the construction of the latter part of Art. 194(3) is decisively against the view that power or privilege can be claimed by the House though it may be inconsistent with article 21. In this connection, it may be relevant to recall that the rules which the House has to make for regulating its procedure and the conduct of its business have to be subject to the provisions of the Constitution.. (Interruptions).

Therefore, I submit..

**AN. HON. MEMBER:** I have a point of order.

**MR. DEPUTY CHAIRMAN:** One point of order is going on. You will get full time. Yet the debate be lengthened. What is the hurry?

**SHRI HARI SHANKAR BHABHARA** (Rajasthan): Just now Mr. Kulkarni is going to start a debate. Now there will be several points of order.

**MR. DEPUTY CHAIRMAN:** Let them be relevant. Mr. Bhatia, please conclude now. Be brief.

**SHRI MADAN BHATIA:** Now, Art. 105(1) says:

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

**MR. DEPUTY CHAIRMAN:** Do not go into details. Please be brief.

**SHRI MADAN BHATIA:** I will be brief. It says that the right of free speech in Parliament is subject to the provisions of the Constitution and subject to the rules of business. And Rule 238 adumbrates exclusion of any debate concerning the conduct of a stranger to the House whose reputation is involved. Rule 238 says:

"A member while speaking shall not—

—make a personal charge against a member"

Even against a Member a personal charge cannot be made. Then it says in sub-rule (vii) that he shall not utter treasonable, seditious or defamatory words.

Therefore, my point of order is two-fold. One is that on a fair interpretation of the Rules of Business this Hon'ble House is not competent to discuss the conduct of a stranger to the House because it will involve damage to his reputation when he is not given an opportunity of being heard...

[Shri Madan Bhatia]

presuming, Sir... (*Interruptions*)... Presuming that the rules permit this honourable House to discuss the conduct of a person involving damage to his reputation. I would respectfully submit Sir, that unless the rules are amended to make a provision for an opportunity of hearing being given to a stranger to the House to defend his reputation, these rules, to that extent, are *ultra vires* of the provisions of the Constitution and unless these rules are amended for providing an opportunity for hearing to any person, no Member can discuss the conduct of a person... (*Interruptions*)... whose reputation is involved. (*Interruptions*).

SHRIMATI MARGARET ALVA: (Karnataka): Sir, I am on a point of order. (*Interruptions*).

MR. DEPUTY CHAIRMAN: Please sit down.

SHRIMATI MARGARET ALVA: Sir, you never allow me to raise any point of order. (*Interruptions*).

MR. DEPUTY CHAIRMAN: Please sit down. One point of order has been raised and you cannot raise another point of order unless I dispose of it. (*Interruptions*).

SHRIMATI MARGARET ALVA: You never allow me to raise any point of order. (*Interruptions*).

SHRI MADAN BHATIA: Sir,..... (*Interruptions*).

SHRI SAT PAUL MITTAL (Punjab): Sir, Mrs. Alva comes from that State and she should be allowed. (*Interruptions*).

SHRIMATI MARGARET ALVA: Sir, you never give me a chance to raise any point of order.

MR. DEPUTY CHAIRMAN: Madam, will you hear me? (*Interruptions*). Once a point of order has been raised, you cannot raise another before the first is disposed of.

SHRIMATI MARGARET ALVA: You never give me a chance. (*Interruptions*).

MR. DEPUTY CHAIRMAN: Please sit down.

SHRI MADAN BHATIA: Only one more point, Sir. (*Interruptions*). If the stranger happens to be a member of another legislature, he will have much more protection because his conduct is subject to the discussion in that House. (*Interruptions*).

SHRIMATI MARGARET ALVA: Sir, they are also raising points of order.

MR. DEPUTY CHAIRMAN: You don't follow their wrong practices.

SHRIMATI MARGARET ALVA: Sir, please... (*Interruptions*).

MR. DEPUTY CHAIRMAN: Madam, please take your seat. He has raised a point of order. Please bear in mind that once a point of order has been raised, another point of order cannot be raised.

SHRIMATI MARGARET ALVA: But I will supplement it, Sir.

MR. DEPUTY CHAIRMAN: No; you need not raise that matter again. Yes, Mr. Advani. (*Interruptions*).

SHRI LAL K. ADVANI: Mr. Deputy Chairman, Sir, I think that it was a point of order on which, without much hearing, you could have disposed of. You should have been governed by the practice and the rules of this House itself and you could have yourself given your ruling. There was no difficulty, because two limited points have been raised. One is the question of *sub judice*. And Sir, the second is the question whether people who are not Members of this House can be referred to or can be criticised, etc. On both these matters, the rulings given by the Chair in this House



and the other House as well as the practice of this House are very clear and there has never been an attempt to stifle the debate on the basis of either of these issues.

So far as the question of *sub judice* is concerned, I have before me, not the very learned judgments of the American courts or the other courts that were referred to, but what I regard as the most authentic treatise on parliamentary practices and procedures, that is, the volume by Kaul and Shakdher. This book by Kaul and Shakdher clearly says that the fundamental thing is the right of speech. It says:

"The fundamental thing is the right of speech. It is the absolute privilege of the Legislatures and the Members thereof to discuss and deliberate on all matters, . . ."—it says, 'all matters'—"pertaining to the governance of the country and its people. Freedom of speech on the floor of the House is the essence of parliamentary democracy. Certain restrictions on this freedom have, to a limited degree, been self-imposed."

It is rather strange that they should raise the point about *sub judice*. (*Interruptions*). Please listen to me. It further says:

"One such restriction is that the discussion on matters pending adjudication before the courts of law should be avoided on the floor of the House so that the courts function uninfluenced by anything said outside the ambit of trial in dealing with such matters. While applying restrictions regarding the rule of *sub judice*, care has to be taken to see that the primary right of freedom of speech is not unduly impaired to the prejudice of the Legislatures."

And in this context, the Speaker ruled:

"While on the one hand the Chair has to ensure that no discussion in the House should prejudice the course of justice, the Chair has also to see that the House is not debarred from discussing an urgent matter of public importance on the ground that a similar, allied or linked matter is before a court of law . . ."

There is nothing in the Constitution, mind you. There is nothing that bars us. Today, if, for instance, this House or its Rules Committee in its wisdom decides to scrap that rule of *sub judice* it can do so. There is nothing in the Constitution. But we have accepted it. This matter has even been gone into by a committee of presiding officers in which this was emphasized that freedom of speech is the primary right, whereas the rule of *sub judice* is a self-imposed restriction where there is a clash "the latter must give weight to the former". This is the kind of *sub judice* rule that we have framed for ourselves and which has been guiding all the rules of this House. So far as Members outside this House are concerned, generally this House has restrained itself from referring to them. But there have been cases we have discussed in this House when for days on end, for weeks on end—for instance, Kanti Desai was discussed even though he was not a Member of this House. At no point of time I as the Leader of the House stifled the debate on the ground that Kanti Desai is not a Member; I would never do that and I would never say that. Therefore, it is the duty of the presiding officer to ensure that debates relating to matters of public or political importance are held without any constraints of this kind. And if there are constraints, they are already there, and we abide by them.

Lastly, Sir, I would like to plead with you not to allow the points of order to be raised in a manner only to prolong the discussion in a dilatory manner. After all, listening to the first point of order, I thought that a

[Shri Lal K. Advani]

person who has been in the House for a longer time would have been able to present it more succinctly than a person who has just now come and is perhaps more used to the manners of courts rather than of Legislatures. *(Interruptions)*

SHRI MADAN BHATIA: My learned friend has not cleared to me anything. *(Interruptions)*

SHRI GHANSHYAMBHAI OZA (Gujarat): Sir, most of the points that I wanted to make are made by my friend, Mr. Advani, and I am not going to repeat all these things. But I think the point of order is irrelevant. All the judgments that he has quoted are irrelevant. Mr. Kulkarni has not given an opinion. He said that allegations are made against responsible persons. He is not sitting in judgment. He is quoting from hard facts. *(Interruptions)* What more is required? Only facts have been... *(Interruptions)*

SHRIMATI MARGARET ALVA: I will not go into the details. I have only one point to make which, I think has been accepted before. The matter is that an elected Member of the Legislative Assembly is being discussed here. I believe that the convention is that when the behavior of an elected member of the legislature of a State is involved, the proper forum to discuss it is the State Legislature. You have the State legislature. You have the Privileges Committee there. And you have all the rights to discuss the matter in a proper forum and take a decision. After all, the Janata Party has the majority in Karnataka. You have your Government. You form whatever committee you want. I don't think this is the proper forum to discuss the behaviour of elected Members of the State Legislatures. *(Interruptions)* Tomorrow I may make charges against anybody from State Assembly. We cannot discuss it here. I think the proper procedure is to discuss it in the Legislative Assembly forum and necessary action to be taken there—not here.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): My small point is that while taking into consideration the point of order of Mr. Bhatia or Mr. Advani, you should take into consideration only one point as the Chairman of this House and that is the tradition of this House. If during the last 33 years of the existence of this House such things have been discussed without any impediments on the part of anybody, then we have a right to continue with this tradition. If you want to change this tradition, you should give a ruling saying that what had happened was illegal and unlawful and that a new interpretation has to be adopted.

SHRI DINESH GOSWAMI (Assam): The ruling should be very simple on this point of order. I am in agreement with Mrs. Alva that normally speaking this is not the forum which should discuss the conduct of a Member of the State Legislature. But if something appears in the newspapers, a Member has a right to quote from that newspaper. That is in fact the ruling of the speaker.

SHRI A. G. KULKARNI: Antulay's case is a monument which was discussed here.

SHRI DINESH GOSWAMI: Exactly this point was raised even in the Lok Sabha yesterday that the matter is *sub judice* and, therefore, you cannot raise it. The ruling was that a *sub judice* case may not be discussed, but a Member has the right to quote from a newspaper and the right to quote from a newspaper is not subject to the *sub judice* rule. The reason is this. If we discuss something here, a Member does not have a right to take recourse to law. But if a matter has already been published in a newspaper, the right of a Member to take recourse to law is there, we cannot use any privilege and thereby deny a Member the right to take recourse to law. If a matter has come in the

newspapers, he has the right to take recourse to law. We have Shri Antulay's case in point.

**SHRI MURLIDHAR CHANDRA-KANT BHANDARE:** What was *sub judice* in that?

**SHRI DINESH GOSWAMI:** I can refer to the article which is *sub judice*. I cannot express any opinion on this article. I can refer to the article.

**SHRI HARKISHAN SINGH SURJEET (Punjab):** I only want to request the Leader of the House to give his opinion. It is not for the first time that we are discussing such things. We are discussing a very important question today, that is the subversion of the Constitution. In this House, we have debated Antulay. We have discussed for days together Shri Kanti Desai and Chaudhuri Charan Singh who were not Members of this House at all. Why has this question come today? I think it is because of time factor. He is concerned about the agenda. Why is he sitting quietly? I should like him to give his opinion. I would like to get his opinion. Earlier also when he was in the opposition these issues were discussed. Shri Advani has quoted the rule. No more time should be taken. I would like to know his opinion so that the debate continues.

श्री लाडली मोहन निगम (मध्य प्रदेश)  
श्रीमन् मैं व्यवस्था का प्रश्न नहीं उठाता। लेकिन अगर अदालतों के फैसलों को सदन में नहीं लाया गया होता तो आप को मालूम होगा कि उत्तर प्रदेश की स्टेट एसेम्बली में सार्वभौम अधिकार के बारे में न्यायपालिका और लेजिस्लेचर के ऊपर एक बहस चली : इलाहाबाद

हाई कोर्ट के जज इतने घबड़ाये कि 24 जजों ने एक साथ बैठकर प्रिविलेज का मामला डिस्कस किया, तब भी एसेम्बली को सार्वभौमिकता को, उसके विशेषाधिकार को कोई खत्म नहीं कर सका और एक नहीं सैकड़ों नाम मैं बता सकता हूँ जिनके बारे में सदन में चर्चा हुई। जो सदन के कभी सदस्य नहीं रहे इन माननीय सदस्यों में धर्म तेजा, तुलमोहन राम, स्वराज पाल आदि 25-सौ चारों पर बहस हो चुकी है। यह मामला भी करप्शन से जुड़ा हुआ है। मैं इतना ही निवेदन करना चाहता हूँ कि प्रिविलेज का इशू बना कर कि अदालत को मान हानि हो रही है अगर इस पर बहस होती है तो यह निरर्थक है, इस पर तबज्जों नहीं देनी चाहिये। हम यह मानकर चलते हैं कि पार्लियामेंट अदालतों से बड़ी है। यह प्रधान मंत्री ने कहा है कि Parliament is supreme than a court. मैं नहीं कह रहा हूँ। प्रणब बाबू जी इसको मदद नजर रखकर आपको अपने विचार देने हैं। आपके सामने एक चीज कहना चाहता हूँ कि अदालत कभी हमारे आड़े नहीं आ सकती। हम अदालत को ला सकते हैं।

**SHRI A. G. KULKARNI:** I would request Mr. Mukherjee to stop this. Is it not proper? We have helped you when you were here. We have helped you to discuss Kanti Desai. We have helped you to discuss everybody. It is for you now to ask your Party Members not to go into this.

**SHRI PRANAB KUMAR MUKHERJEE:** Sir, I would like to clarify one point. Perhaps, it is not fair for Mr. Kulkarni or Mr. Advani to say that when we wanted to raise the Kanti Desai issue and other issues you have helped because you know that all those were related to the conduct of the Prime Minister and the Deputy Prime Minister. The Prime Minister

[Shri Pranab Kumar Mukherjee]

and the Deputy Prime Minister of the country are accountable to this House directly. Therefore, don't bring in those issues. So far as the moot point which Mr. Surjeet has raised is concerned, we had discussed issues rightly or wrongly, constitutionally or without constitutional sanction. And the fact has been that we have discussed and persons were brought in. I told you why Kanti Desai was brought in. And if you want to draw an analogy, it will not be the same thing. But persons have been mentioned and discussions have taken place. At the same time, it is for the Chair to decide to what extent he would permit, to what extent he would not permit. (Interruptions) Why I am telling you this thing is, I am afraid, you cannot take a position. Let us think with a cool mind. Sometimes we are taking positions where this House may be placed in a position of confrontation, and it is not a hypothetical proposition. Once or twice it happened. The conduct of this House was discussed on the floor of the Assembly of a State. And let us not repeat that embarrassing situation. We should restrain ourselves. We are the best judge of ourselves as to what extent we should go and to what extent we should not go.

The second point is that it is not fair on the part of the Members to come to the conclusion that the Members who were making their observations are something orchestrated. Each and every hon. Member is entitled to make his own observation, to express his own views. And, for instance, Mr. Bhatia is a Nominated Member, sitting independently. He is not subjected to my discipline. And on these matters we never discuss what Member will say what. Therefore, do not bring the question that as if I have orchestrated somebody to raise certain issues. Certain points have been raised. Conventions, traditions and precedents are there before you. You have also listened to the leaders, of

the various Groups and Parties. And in view of that, you come to your own conclusion. But as the Leader of the House, my request would be that let us restrain ourselves. And if we can restrain ourselves, and if we can maintain the dignity of this House in uttering words, in expressing ourselves, it will go to our credit and it will bring a healthy precedent.

श्री बुद्ध प्रिय सौर्य (आंध्र प्रदेश) :

माननीय उपसभापति जी, मैं यह कहने जा रहा था कि सदन के माननीय नेता ने शंका का समाधान सदन के सामने रख दिया। जहाँ तक सदन में बहस की बात है मैं हमेशा इस विचार का रहा हूँ कि सदन की शक्ति और क्षमता अथाह है इसमें कोई शक नहीं है। बल्कि स्वयं आडवाणी जी जब सदन के नेता थे उन्होंने स्वीकार नहीं था कि सदन का प्रस्ताव जो पारित हो गया था बहुमत से उसका सरकार ने कहा था कि कोई सरकार बाध्य नहीं है कि इस प्रस्ताव को स्वीकार करे। मैं उसमें नहीं जाना चाहता पिछले गुजरे वक्त में। लेकिन मैं एक शंका जरूर कहना चाहता हूँ कि हमारी बहस का ऐसा स्तर रहे कि कहीं ऐसी परिस्थिति पैदा न हो जाए कि किसी माननीय सदस्य का जो इस सदन का सदस्य नहीं है उनका या उनके दल का या पूरे सदन का उसी रूप से विरोध हो या उसके बारे में किसी प्रदेश की असेम्बली में विचार हो। तो 1 P.M. इस बात का हमें ध्यान जरूर रखना पड़ेगा। मेरा केवल इतना निवेदन है कि सदन के माननीय नेता महोदय ने जो बात कही है उसी बात को कहने के लिए मैं खड़ा हुआ हूँ।

श्री शिव चन्द्र झा (बिहार) :

उपसभापति महोदय, आप भी इस सदन के सीनियर मेम्बर रह चुके हैं। हम

लोग जब वहां बैठा करते थे तो हमने देखा था कि आप किस तरह से लड़ा करते थे। यह सब जानते हैं। मेरे कहने का मतलब यह है कि जो पाइन्ट आफ ऑर्डर उठाया गया है उसको अगर आप चाहते तो एक मिनट में खत्म कर सकते थे।

And that point was out of order. आपने उसको उठने दिया। जो बाहर का आदमी है, चाहे वह अंतुले हो या जगन्नाथ मिश्र हो, हमारे यहाँ यही परम्परा रही है कि कुछ बातों के साथ मामलों को उठाया जा सकता है। यही नियम रहा है। मैं समझता हूँ कि आप चाहते थे कि पाइन्ट आफ ऑर्डर पर कुछ कहा जाय। यह हम देख रहे थे (व्यवधान)। यह नहीं होना चाहिए।

**श्री उपसभापति :** यह ठीक नहीं है। आप रोज सुबह पाइन्ट आफ ऑर्डर उठाते हैं। What Mr. Madan Bhatia and Shri Bhandare have said, I think the House and many speakers have already admitted that those arguments have some strength no doubt and those points may be considered later on by the House itself or by its Rules Committee, which may go into all these matters. So far, I think, the House has been exercising restraint and I hope it will exercise restraint today also while discussing the conduct of any stranger, particularly when he is a Member of another Legislature. Therefore, I would beg of the Members to please restrain themselves while referring to a person, to a Member of another House, because he has got his own privileges. We are not sitting in judgement over his conduct in that House. So far as *sub judice* matters are concerned, we do not go

into the merits of the case. You can refer to the reports which have appeared in the press.

I think we will have to continue this debate after lunch also. If the House agrees, we shall take up this Calling Attention at 2.30 p.m. and after that, when it is finished, then Private Members' business will be taken up.

**श्री शिव चन्द्र झा (बिहार) :** प्राइवेट मैम्बर्स का समय ढाई बजे शुरू होता है। यह बात साफ हो जानी चाहिए कि ढाई बजे के बाद प्राइवेट मैम्बर्स बिल चलेगा आप जानते हैं कि इस कॉलिंग एटेंशन नोटिस पर लोक सभा में सात घंटे तक बहस हुई है। हम भी इस पर बहस चाहते हैं। क्या राज्य सभा पीछे हटने वाला है? यहाँ पर इस पर छः सात घंटे तक बहस होगी। आप इसको पांच बजे के बाद ले सकते हैं। प्राइवेट मैम्बर्स बिल का टाइम इसमें शामिल न करें... (व्यवधान)।

**श्री कलराज मिश्र :** आप इसको कंटैन्गू करिये... (व्यवधान)।

**MR. DEPUTY CHAIRMAN:** Order please. Please do not create disorder in the House.

**SHRI PRANAB KUMAR MUKHERJEE:** I am told that it is the normal practice on Fridays to have one and a half hours lunch on account of Jumma prayers. I do not know. I may be corrected. I am told that it is the practice. If it is so, then you will have to reassemble at 2.30 p.m. and from 2.30 p.m. Private Members' business is to be taken up, for two and a half hours. Then at 5 o'clock we can start this thing.

**SHRI A. G. KULKARNI:** Shri Shiva Chandra Jha has agreed to continue the Calling Attention because his Bill is also on the same subject.

**SHRI PRANAB KUMAR MUKHERJEE:** I am sorry. Here let us not make any departure. Many a times you have all agreed with me that Private Members' business should be sacrosanct. It should not be touched, even if the Members want it. If he does not want, let the debate collapse on his Bill or on his Resolution. Then some other item will come up. Certain other item will come because he is not monopolising for 2-1/2 hours. If he is not interested, if the private Member is not interested, then the next item on the agenda of Private Members will come. What right has he to deprive others? It is not fair.

**SHRI LAL K. ADVANI:** Mr. Deputy Chairman, this morning, you yourself had suggested that because this is an important matter and it is likely to spill over, so if Shri Shiva Chandra Jha agrees we can continue after 2.30 with the calling attention itself. . . . (Interruptions). This was suggested by the Deputy Chairman. Therefore, if the Hon'ble Member does not agree, the matter ends; but if he agrees, soon after calling attention, we can take up the private Member's Bill. This was the suggestion that you yourself made on the basis of which Shri Kulkarni spoke to him.

**SHRI MURLIDHAR CHANDRAKANT BHANDARE:** We are not prepared to surrender our right.

**SHRI JAGANNATH KAUSHAL:** Mr. Deputy Chairman, I also joint in the request that this should be taken up after 5, because I have a personal reason. In the Private Members' Business in the Lok Sabha, I am required to be there.

**SHRI A. G. KULKARNI:** Let us take it up on Monday; we don't mind.

**SHRI PRANAB KUMAR MUKHERJEE:** You can't bend the rule and make it flexible on every point of time. There have been precedents; on Fridays we have taken up calling attention after 5; we have taken up Government business after 5 if it is so urgent. So, let us not break the rule and bend it at every stage. I do not find any reason why it cannot be taken up at 5.

**SHRI V. GOPALSAMY (Tamil Nadu):** Members have been invited at Rashtrapati Bhawan for a function so, let us take it up on Monday.

श्री शिव चन्द्र झा : उपसभापति महोदय यह जो यहां की परम्परा है आप जानते हैं। मेरे से कहा गया था : वह प्राइवेट बात है : श्री कुलकर्णी जो ने मेरे से कहा और मैं देख रहा था लेकिन चेयरमैन साहब ने उसका अनाउन्समेंट भी नहीं किया। चले गये। कहां तक चेयरमैन साहब को इनसे बात हुई, चेयरमैन साहब ने क्या कहा यह मुझे नहीं मालूम। लेकिन इन्होंने कहा कि 3.30 तक यह चलेगा और उसके बाद प्राइवेट मੈम्बर, बिल चलेगा। मैंने उनसे कह दिया था कि इस बात को क्या गारन्टी है कि यह 3.30 पर खत्म हो जायेगा। तब फिर कहीं बात हो जाती है। इसलिये मेरा कहना है कि जो परम्परा है उसको चलने दिया जाय। ऐसे इम्पोर्टेंट विषय बराबर आते रहते हैं और ऐसे विषयों को 5 बजे के बाद हम लोगों ने लिया है। इसलिये मेरा कहना है कि पहले मेरा प्राइवेट बिल जो कि इस विषय से संबंधित है, जो कि डिफेक्शन के बारे में है, वह हो। जो कुछ मेम्बर, बोलना चाहते हैं इसमें भी बोल सकते हैं। वह क्लेयर कट डिफेक्शन के बारे में हो है।

इसलिए मेरा निवेदन है कि जो परम्परा है उसका कायम रखा जाय और वही चले।

MR. DEPUTY CHAIRMAN: There is no unanimity in the House. So, the usual procedure will be followed. Calling Attention will be taken up at 5.

#### PAPERS LAID ON THE TABLE—contd.

##### Notifications of the Ministry of Finance (Department of Revenue)

SHRI PATTABHI RAMA RAO: I beg to lay on the Table, a copy each (in English and Hindi) of the Ministry of Finance (Department of Revenue) Notification Nos. 272/83-Central Excises and 273/83-Central Excises, dated the 18th November, 1983, together with an Explanatory Memorandum thereon. [Placed in Library. See No. LT-7046/83]

#### MESSAGES FROM THE LOK SABHA

##### (I) The Punjab Disturbed Areas Bill, 1983

##### (II) The Chandigarh Disturbed Areas Bill, 1983

##### (III) The Armed Forces (Punjab and Chandigarh) Special Powers Bill, 1983

THE SECRETARY-GENERAL: Sir, I have to report to the House the following messages received from the Lok Sabha, signed by the Secretary of the Lok Sabha:—

#### (I)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Punjab Disturbed Areas Bill, 1983, as passed by Lok Sabha at its sitting held on the 17th November, 1983."

#### (II)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Chandigarh Disturbed Areas Bill, 1983, as passed by Lok Sabha at its sitting held on the 17th November, 1983."

#### (III)

"In accordance with the provisions of Rule 96 of the Rules of Procedure and Conduct of Business in Lok Sabha, I am directed to enclose herewith the Armed Forces (Punjab and Chandigarh) Special Powers Bill, 1983, as passed by Lok Sabha at its sitting held on the 17th November, 1983."

Sir, I lay a copy of each of the Bills on the Table.

#### ANNOUNCEMENT RE. GOVERNMENT BUSINESS FOR 21ST AND 22ND NOVEMBER, 1983

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI KALPNATH RAI): Sir, with your permission, I rise to announce, that Government Business in this House for 21st and 22nd November, 1983, will consist of:—

1. Discussion on the Resolution seeking disapproval of the Punjab Disturbed Areas Ordinance, 1983 and consideration and passing of the Punjab Disturbed Areas Bill, 1983, as passed by Lok Sabha.

2. Discussion on the Resolution seeking disapproval of the Chandigarh Disturbed Areas Ordinance, 1983 and consideration and passing of the Chandigarh Disturbed Areas Bill, 1983, as passed by Lok Sabha.

3. Discussion on the Resolution seeking disapproval of the Armed Forces (Punjab and Chandigarh) Special Powers Ordinance, 1983 and consideration and passing of the Armed Forces (Punjab and Chandigarh) Special Powers Bill, 1983, as passed by Lok Sabha.