

12 NOON

# **CALLING ATTENTION TO A MATTER OF URGENT PUBLIC IMPORTANCE**

SITUATION ARISING OUT OF THE DECISION OF THE SUPREME COURT REGARDING THE PRESIDENTIAL ORDER DE-RECOGNISING THE RULERS

MR CHAIRMAN : Calling Attention. Mr. Bhupesh Gupta.

SHRI MAHAVIR TYAGI (Uttar Pradesh) : Sir, on a point of order. I do not want to obstruct the Calling Attention notice, but I want your ruling for future guidance. Yesterday, a similar question was permitted by you to be mentioned by my hon friend. Even though this issue was not on the agenda yesterday, we spent about an hour or so on this issue. And it is coming again to-day.

SHRI A. G. KULKARNI (Maharashtra) . What is wrong with that ?

SHRI MAHAVIR TYAGI I am not obstructing it. I welcome it. What I am saying is that such important matters, if they are permitted once, should not be permitted to be raised again. This is for future guidance. My only request is that in future, whenever there is an important question like that, you may allow a regular discussion on that.

SHRI GODEY MURAHARI (Uttar Pradesh) . Sir, I would like to say something on this. The point of order raised by Mr Tyagi is completely out of order because in the first place, yesterday there was no report of the judgment of the Supreme Court before the House. It was only on certain information conveyed by certain Members here that some Members spoke. It was a very important issue and, therefore, the Deputy Chairman allowed some kind of a discussion. But, Sir, to-day's newspapers have carried the entire judgment and, therefore, you allowed the Calling Attention notice to be admitted. It is quite in order.

THE LEADER OF THE OPPOSITION (SHRI S. N. MISHRA) : Sir, I rise on a point of order.

SHRI MAHAVIR TYAGI : It should not be discussed twice. That is my submission.

SHRI S. N. MISHRA : Sir, my point of order is slightly different. I do recognise the importance of this subject being discussed in the House.

MR. CHAIRMAN . It is not a discussion.

SHRI S. N. MISHRA : But my objection is based on the fact that we have not had enough opportunity to go through the text of the judgment. May I say that it would be too much to expect of us to go through the whole judgment during the course of a night and then come prepared for a discussion on this ? This has been abruptly inflicted on us by the Chair. I have a serious complaint against the Chair that the Chair does not provide enough opportunity for a fuller discussion on the subject when we can come thoroughly prepared after studying the judgment.

SHRI GODEY MURAHARI . If you consider it so important, you should have studied it.

SHRI S. N. MISHRA : Please wait. I would not like any discussion on the subject to be stopped. I would like to fully participate in the discussion. Even at this point of time, may I say that I am not less prepared than any other hon Member on this subject ? But the point is that so many judgments have been delivered which are voluminous ones and they would certainly require some time to go through. The Chair should have exercised its discretion to the advantage of the Members in the sense that the Members would require much more time than has been available so far to them, and a discussion on the subject should not have been inflicted on us abruptly.

MR CHAIRMAN . Please sit down.

SHRI S. N. MISHRA : I would like to have your ruling on this. You have been a jurist.

MR CHAIRMAN : Yes, I will give a ruling.

SHRI M. M. DHARIA (Maharashtra) : Sir, I would like to say something on the point of order of Mr S. N. Mishra. The point of order raised by Mr Mishra has no validity whatsoever because it is not a notice for a discussion. You have only admitted a Calling Attention notice so that the Government can make a statement and we can ask for clarifications.

Mr. Chairman, Sir, this House should always remain alive to the problems in the country and his point of order has no justification whatsoever. So, from that point of view, in order to know what the feelings of this country are, you have justified this Calling Attention Notice, and the point of order raised by Mr. Mishra should not at all be allowed.

MR. CHAIRMAN : Let me give my ruling. I rule this point out of order.

SHRI S. N. MISHRA : That was expected of you.

MR. CHAIRMAN : I do have the discretion, and having received a notice from a number of Members who wanted to know the attitude of the Government I allowed this Call Attention matter to come today. It is not a question of discussion at all.

SHRI S. N. MISHRA : Could not the Chair have taken more time? It could have been fixed tomorrow or the day after. Is it only the attitude of the Chair and the attitude of the Government? You must not waste your discretion like this. It is failure of justice from the Chair. Why did you not allow it yesterday?

MR. CHAIRMAN : It has got to be followed.

SHRI S. N. MISHRA : Now you are going away. You are a jurist. You must listen to this.

[MR. DEPUTY CHAIRMAN in the Chair.]

MR. DEPUTY CHAIRMAN : Mr. Bhupesh Gupta, please let us continue the Calling Attention.

SHRI BHUPESH GUPTA (West Bengal) : Sir, we congratulate the Chair and we are only beholden to you that you have admitted it. Some unkind words have been uttered about you but let me utter something contrary to that. We are beholden to you, we are grateful to you, I must thank you, Sir.

I beg to call the attention of the Minister of Home Affairs to the situation arising out of the decision of the Supreme Court on the writ petitions challenging the Presidential Order recognising the rulers.

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS AND DEPARTMENT OF PERSONNEL IN THE CABINET SECRETARIAT (SHRI RAM NIWAS MIRDHA) : Sir, it was clear from the pattern of voting in the Lok Sabha on the Constitution (Twenty-fourth Amendment) Bill that an overwhelming majority of the Members of that House were in favour of the abolition of Rulership, and the privy purses and the privileges that go with it. In the Rajya Sabha also, a sizeable proportion even of those who opposed the Bill said that they were not in favour of continuance of Rulership. It was thus clear that there was very wide support for the termination of Rulership. Considering these circumstances, and to put an end to a period of political and other uncertainties so undesirable in a matter of this nature, the recognition of all the Rulers was withdrawn by the President by orders issued on September 6, 1970.

The derecognition orders were challenged by means of writ petitions in the Supreme Court, and by judgment delivered yesterday the court has struck down the orders. Government stand committed to the abolition of privy purses and privileges, and they will be in a position to take decision about the further steps to be taken in the matter after they have examined the Supreme Court's judgment carefully.

MR. DEPUTY CHAIRMAN : May I request the hon. Members to be brief in their observations and that they should not get excited while making the observations? Let us discuss this question in a peaceful atmosphere.

SHRI MAHAVIR TYAGI : Sir, this is a question on which the Government has to come to some conclusion and that conclusion is the basic thing which we would like to discuss again. Shall we have two discussions?

MR. DEPUTY CHAIRMAN : That depends on the circumstances or developments in the future.

SHRI S. N. MISHRA : Sir, I am on a point of order and it is this. After the statement made by the honourable Minister, the honourable Minister said that the Government would take time to study the judgment. Now, therefore, the discussion that would take place today would be of an ill-informed

[Shri S. N. Mishra]

nature. The Government would not be in a position to give replies to the points raised by us. The Government has gone on record to say that it would...

SHRI BHUPESH GUPTA : Is it a point of order ?

SHRI S. N. MISHRA : Yes, it is.

SHRI BHUPESH GUPTA : Then, Mr. Deputy Chairman, allow us to contradict his point of order. I shall demand it, I must be allowed to contradict his point of order.

SHRI S. N. MISHRA : Why is my honourable friend losing his temper ? I was only saying...

MR. DEPUTY CHAIRMAN : Mr. Mishra, you are saying the same thing.

SHRI S. N. MISHRA : Please listen to me. Would you be pleased to fix a time during the course of the current session when the Government would be fully prepared to reply to our points after a thorough study of the judgment? That is my point of order. That is what I wanted to submit to you.

SHRI GODEY MURAHARI : Sir, I would like to say something on his point of order...

SHRI BHUPESH GUPTA : Mr. Deputy Chairman, I rise on a point of order. You are allowing all propagandist points of order. So allow me to contradict them.

SHRI GODEY MURAHARI : I would like to say something on the point of order raised by Mr. Mishra.

MR. DEPUTY CHAIRMAN : Why do you want to say anything on his point of order ? Now, Mr. Bhupesh Gupta, please proceed.

SHRI GODEY MURAHARI : Please allow me, I would like to say something.

MR. DEPUTY CHAIRMAN : His point of order is very clear and I will give my ruling.

SHRI GODEY MURAHARI : In this House we have discussed ever so many subjects, I think, umpteen times. I remember the subject of small car was discussed perhaps a dozen times

in both Houses of Parliament. So I do not see any reason why we should not discuss the matter of Privy purses and the judgment, say, four times. We can discuss it today also, tomorrow and the day after tomorrow, if you think fit. I do not see any point in objecting to it...

SHRI S. N. MISHRA : I am not objecting to its discussion.

SHRI GODEY MURAHARI : Let us carry on with what we have before us.

MR. DEPUTY CHAIRMAN : It is very clear. Let us proceed with our Calling-Attention item. As pointed out by Mr. Murahari, we are discussing in this House issues according to the developments. Today a Calling-Attention Notice has been given and we are considering it. Supposing tomorrow there is a further development and some other friends may want to raise it, and if we find the time and if we find it necessary, the House will discuss that also. Because the Government could not make up its mind about the judgment of the Supreme Court, we should not discuss this matter in this House, that point of order is not valid. So let us proceed with the Calling-Attention Motion.

SHRI LOKANATH MISRA (Orissa) : What do we discuss then ?

MR. DEPUTY CHAIRMAN : The Calling-Attention Notice.

(Interruptions.)

SHRI PITAMBER DAS (Uttar Pradesh) : To discuss the situation, not the judgment.

MR. DEPUTY CHAIRMAN : Here is a statement made by the honourable Minister and according to the procedure for Calling-Attention motions, if the honourable Members want to ask for further clarifications, they can ask.

SHRI BHUPESH GUPTA : I thought my friends have won their legal victory while it is a moral defeat... (Interruptions) I have never seen the alleged victors talking in such funk and fear...

DR. B. N. ANTANI (Gujarat) : A wonderful evaporation.

SHRI BHUPESH GUPTA : Sir, we have gone through, naturally, the summary of the judgment. It is a very

sweeping judgment. I have rarely come across such a retrograde, conservative, reactionary, anti-social, judgment as the one which was delivered in regard to the Presidential Order. *(Interruption.)* That is number one.

SHRI S. I. MISRA (Uttar Pradesh) : He is imputing motives. There cannot be any motives.

SHRI BHUPESH GUPTA : It is Parliament's sovereign right. We have amended the Constitution several times. Refer to the speech of Pandit Jawaharlal Nehru in regard to the Constitution (Fourth Amendment) Bill ; what a devastating criticism of the High Court and the judgment he made ! I think some of our friends are new-comers to Parliament...

MR. DEPUTY CHAIRMAN : You should not cast any aspersions on the Supreme Court.

SHRI LOKANATH MISRA : Mr. Bhupesh Gupta who made that criticism ?

SHRI BHUPESH GUPTA : I congratulate the Government for its reiteration, for the stand that it is taking. . .

SHRI LOKANATH MISRA : Who made that criticism ?

SHRI BHUPESH GUPTA : Pandit Jawaharlal Nehru

SHRI LOKANATH MISRA : You are not Pandit Nehru.

SHRI BHUPESH GUPTA : We can understand the loss of balance in the Swatantra Party. He is breaking his mind whether I was Pandit Jawaharlal Nehru.

SHRI LOKANATH MISRA : That is what you said. You cannot compare yourself with Shri Nehru. Shri Bhupesh Gupta who represents Russia in this country cannot compare himself with the late Prime Minister of this country. . .

*(Interruptions.)*

SHRI BHUPESH GUPTA : My friend Shri Misra was not here when the Fourth Constitution (Amendment) Bill was discussed. For his benefit, I have mentioned the precedent. . . *(Interruptions.)* Surely, I know that I am not Pandit Jawaharlal Nehru. But then you are talking like, shall I say, the

Maharaja of Baroda or some such thing. The judgment is very sweeping. . . *(Interruptions.)* It has challenged Articles. . . *(Interruptions.)* Sir, how can I proceed? This judgment has challenged Articles 291, 362, 396 and sub-clause (20) of Article 366 of the Constitution. It is a sweeping judgment. They have actually taken away the Parliament's and the people's right to make such legislation as is necessary for providing social justice and social progress and even to come out of the legacy of the colonial and feudal past. Obviously, the House cannot accept such a decision from the Supreme Court. I should like to know. . .

*(Interruptions.)*

AN HON. MEMBER : What is the clarification ?

SHRI BHUPESH GUPTA : Please do not talk. . .

*(Interruptions.)*

MR. DEPUTY CHAIRMAN : Please continue your question.

SHRI BHUPESH GUPTA : He is asking me : "What is the clarification that you are asking?" . . . *(Interruptions.)* Do my friends think that by talking like this, they can silence me?

AN HON. MEMBER : It can never be done.

SHRI BHUPESH GUPTA : All the princes' money cannot silence the voice of the people. I should like to know why there is delay in the government coming to the conclusion that the Constitution can be, should be and must be amended at once in regard to these particular Articles. I think that the other House passed the Constitution (Amendment) Bill and two-thirds majority was there. Here also there was almost that majority but for one-third of a vote. Now we have that majority. The Government can easily pass the Bill now. I say that the Government can easily pass the Constitution (Amendment) Bill now—specially when the Syndicate is cracking under the weight of its sins and Shri Manubhai Shah will now vote with us. . .

*(Interruptions.)*

SHRI LOKANATH MISRA : You are going to be a dead weight. Shri Manubhai Shah was rejected in the general election by the people.

SHRI BHUPESH GUPTA : I am not concerned with Shri Manubhai Shah. . .

*(Interruptions.)*

MR. DEPUTY CHAIRMAN : Order, order...

SHRI BHUPESH GUPTA : I am not allowed to speak. First of all, the the Constitution (Amendment) Bill should be brought during the...  
(Interruptions.)

DR. B. N. ANTANI : On a point of order. What is his clarification?

SHRI BHUPESH GUPTA : I am asking the clarification. I am very glad that in this hour of defeat, they are uniting all of us for a counter revolution. Very well, we shall do it...  
(Interruptions.)

SHRI LOKANATH MISRA : You are a left reactionary...  
(Interruptions.)

MR. DEPUTY CHAIRMAN : One minute. Would you please... (Interruptions). I am on my legs. We have spent 20 minutes till now, but we could not...

SHRI BHUPESH GUPTA : I am not allowed to speak.

SHRI LOKANATH MISRA : He is not clear what he should talk.

MR. DEPUTY CHAIRMAN : Please do not interrupt me at least. I would appeal to the hon. Members to allow individual members to ask questions... (interruptions) so that we can have a number of questions during one hour...  
(Interruptions.)

SHRI BHUPESH GUPTA : I will not be cowed down.

MR. DEPUTY CHAIRMAN : Let there be no interruptions. please.

SHRI BHUPESH GUPTA : Sir, the first point I want to know is why there is no clear and categorical decision that there should be a Constitution (Amendment) Bill in regard to all the articles in order to put it into force and implement what the Government has accepted and enact this Bill. We are entitled to this, Sir.

Secondly, Sir, the Golak Nath case should also be gone into. Sir, I have read the judgment, I have gone through it. Some judges have said that it is property and also that it is a Funda-

mental Right and all that. If that is so, Sir, then again the hurdle arising out of the Golak Nath case will come. Therefore, Sir, Nath Pai's Bill amending the Constitution should also be simultaneously passed in the same session...  
(Interruptions.)

SOME HON. MEMBERS : No.

SHRI BHUPESH GUPTA : Sir, if we do this, if we pass the two Bills, then we would have cleared the decks for easy sailing; otherwise, there will be difficulty. I should also like to know from the Prime Minister, Sir, that the Government will not think in terms of rushing to the elections and so on. Elections we shall think of later. Today let us come here, pass this Bill and if we want to pass this Bill and we cannot pass on account of opposition in either House, that should be made an issue for going to the elections. None should be called upon to go the polls now. I know, Sir, that will not serve the purpose and that will not solve the problem. As far as the Rajya Sabha is concerned, it is a permanent body... (Interruptions)... Sir, again this disturbance... As far as the Rajya Sabha is concerned, it is a permanent body and they are in large numbers. But there is a provision in the Constitution... (Interruptions)... If, in the Lok Sabha, the rightist elements and the progressive people are divided, there can be a joint session of the two Houses and we can amend the Constitution in the joint session counteracting the influence of the rightist forces inside the House. Therefore, I will suggest to the Government that steps should be taken immediately, without delay, and we shall not allow the grass to grow under the feet. The Government acted very promptly when it passed the Presidential Order and it won the admiration of the people, the applause of the whole nation. Whatever be the judgment of the Supreme Court, the whole country applauded the Government when, on the 6th of September 1970, they issued the Presidential Order...  
(Interruptions.)

MR. DEPUTY CHAIRMAN : That is enough. Please sit down.

SHRI BHUPESH GUPTA : Sir, I suggest to the Prime Minister...

MR. DEPUTY CHAIRMAN : Please sit down.

SHRI BHUPESH GUPTA : I suggest to the Prime Minister. . .  
(Interruptions).

MR. DEPUTY CHAIRMAN : That is enough. Please sit down.

SHRI BHUPESH GUPTA : Sir, I suggest to the Prime Minister. . .  
(Interruptions) . . . that next week a message be sent to all the Members of Parliament, draft the Bill and get it ready for the Budget session and we shall have the Bill passed. . .  
(Interruptions).

MR. DEPUTY CHAIRMAN : Please sit down.

SHRI BHUPESH GUPTA : We shall try and see if it is challenged in the Supreme Court. . . (Interruptions) . . . Sir, it is not a political question, but it is a Constitutional question, it is a question of the supremacy of Parliament. Sir, it should be done. . .  
(Interruptions) . . . in the manner in which I have suggested. The Government should act.

MR. DEPUTY CHAIRMAN : Please sit down.

SHRI K. S. CHAVDA (Gujarat) : Sir, who will protect us?

MR. DEPUTY CHAIRMAN : Mr. Minister, you want to reply? Afterwards? All right. That will save the time also. All right.

SHRI RAM NIWAS MIRDHA : Sir, Shri Bhupesh Gupta has given certain suggestions as to what the Government should do. He has referred to the Golak Nath case as well as the Constitutional amendment which he wants the Government to bring forward. As I said in my statement, all these questions will be taken into account and the Government will take the necessary steps.

SHRI MAHAVIR TYAGI : By which time the Government will be in a position to take a final decision in this regard? I want to know this, Sir. . . (Interruptions) . . . I do not want to listen to them.

SHRI ARJUN ARORA (Uttar Pradesh) : Sir, what is this?

SHRI A. G. KULKARNI : I do not know what his point of order is.

MR. DEPUTY CHAIRMAN : Mr. Tyagi, please sit down.

SHRI MAHAVIR TYAGI : May I request you, Sir. . .

MR. DEPUTY CHAIRMAN : All right. I have understood your point.

SHRI GODEY MURAHARI : Sir, I suggest that the reply be given at the end of all clarifications. . . (Interruptions). Sir, I suggest that the reply be given at the end of all clarifications.

SHRI LOKANATH MISRA : I would like my question to be replied too.

SHRI MAHAVIR TYAGI : What about my question? By which time will the Government be in a position to take a decision?

MR. DEPUTY CHAIRMAN : Do you want to say anything, Madam Prime Minister?

THE PRIME MINISTER (SHRI-MATI INDIRA GANDHI) : This is a lengthy document. We have received it only this morning. Therefore, it is difficult to give a time or date by which the study can be completed. I did not hear what you said, Shri Mishra. However, I have replied to Shri Tyagi's question. (Interruption by Shri Arjun Arora).

MR. DEPUTY CHAIRMAN : Mr. Arjun Arora do not interrupt, please.

SHRI A. G. KULKARNI : May I know from the Government whether the Supreme Court judgment has added new dimensions to the duties and rights of Parliament and the duties and rights of the court in this country? Usually, Sir, in my mind I attach the maximum value and, what you call, respect to the Supreme Court or whatever court it is. The days have changed. It is not only the legal interpretation of the matter but the entire gamut of the social change in the country that has to be taken into consideration. But, Sir, in my clarification what I want to know from the Government is whether the Government will first do away with article 362 as provided for which gives these privileges to the Princes. Sir, unless these personal privileges and exemption from income tax and from the Criminal Procedure Code go the

[Shri A. G. Kulkarni.] Princes will not come to a proper level of the other people in the country. But, apart from that, Sir, I wanted to know from the Government right now whether they will consider going to the polls with a clear mandate. Let the new Lok Sabha also be a constituency which will give recognition and which will enact new laws and which will do away with property rights which are inherent in the vested interest and in the lollipop socialists.

In this connection I wanted to say that property rights above a certain level have to be curtailed in this country; conspicuous living is making a very wide gap in between. . .

(Interruptions.)

MR. DEPUTY CHAIRMAN : Order, order.

SHRI LOKANATH MISRA : They are vodka socialists.

SHRIMATI YASHODA REDDY (Andhra Pradesh) : On a point of clarification. . .

MR. DEPUTY CHAIRMAN : No clarification, Mrs. Yashoda Reddy. Please sit down.

SHRI A. G. KULKARNI : My second point is this. The Government has also to take into consideration the quality of the Judges. When I say the quality of the Judges, the reference is to the midnight order. The paramountcy etc. are out of context with these high personages occupying the Supreme Court. . .

SHRI S. N. MISHRA : This is not proper.

SHRI A. K. KULKARNI : . . . What right the Supreme Court Judges have to speak about the midnight order?

My second point is will the Government also take into consideration the usages, the letter and the statement issued by the Maharaja of Dhrangadhra and Mr. Bhanu Pratap Singh? It is a very clever move to induce the Government into negotiations. But these negotiations should not be carried out. The Government will do away with bringing forward before Parliament a new move to abolish the privy purse in this session. Unless this is done these Maharajas will serve lollipop socialism in this country for ever.

श्री पीताम्बर दास : श्रीमान्, मैं एक मुझाव देना चाहता हूं। अभी अभी प्रधान मंत्री जी ने यह बात बतायी कि यह जजमेंट बहुत लम्बा है और यह बात लीडर आफ दि अपोजीशन भी कहते थे कि यह जजमेंट बहुत लम्बा है और इस को समझने में टाइम लगेगा। तो जब उन्होंने यह स्टैंड लिया है कि इस को समझने में टाइम लगेगा तो फिर हम प्रश्न किस बात पर करें? यह मैं जानना चाहता हूं।

SHRI BHUPESH GUPTA : We are discussing the effects of the judgment. . .

(Interruptions.)

MR. DEPUTY CHAIRMAN : Order, order, please.

SHRI PITAMBER DAS : 'We are discussing the effect of the judgment.' यह श्री भूपेश गुप्त जी ने कहा। तो मैं यह पूछ रहा था कि Is it a discussion over certain things or we are seeking clarifications?

(Interruptions)

SHRI RAM NIWAS MIRDHA : The hon. Member was given a number of suggestions and asked the Government to consider them. I can assure him that all these things will be properly considered. One thing he mentioned about the abolition of property rights and things like that. I may make it clear that the Government is not opposed to property rights as such. But we do feel that there should be reasonable limits over these rights, so that the general social welfare is maintained. . .

(Interruptions.)

SHRI A. G. KULKARNI : Sir, on a point of order. The hon. Minister has not replied to my positive query : Will the Government consider the peace move initiated by the Maharaja of Darbhanga?

MR. DEPUTY CHAIRMAN : He has replied.

SHRI A. G. KULKARNI : He has not said 'yes' or 'no'. . .

(Interruptions.)

SHRI RAM NIWAS MIRDHA : The Government's position is very clear on this point. We have taken a deci-

sion to abolish the privy purses, but alongwith that an assurance is also given that some transitory arrangements will be made. . .

*(Interruptions.)*

SHRI BHUPESH GUPTA : No transitory arrangements. What transitory arrangements? No.

SHRI RAM NIWAS MIRDHA : In the context of these decisions, any suggestions coming from any quarters which would help in implementing this decision, would be welcome.

SHRIMATI INDIRA GANDHI : The hon. Member referred to the midnight order. I would like to point out that the Government works night and day. . .

*(Interruptions.)*

SHRI LOKNATH MISRA : I am happy to listen about the justification of the midnight order, given by the Prime Minister. She accepts that it was a midnight order . . .

*(Interruptions.)*

MR. DEPUTY CHAIRMAN : Please ask your questions.

SHRI LOKANATH MISRA : I have three or four specific questions to ask. I would not like to be interrupted by people from the other side. . . *(Interruptions)*. Alright, for you convenience, would relish interruptions.

Sir, I would like to ask—No. 1—whether the Government has taken this defeat. . .

*(Interruptions.)*

SHRI KALYAN ROY (West Bengal) : Is he talking about the disintegration of the Swatantra Party in Gujarat?

SHRI LOKANATH MISRA : If it is disintegrating in Gujarat, it is not trying to merge with the Congress (R) as the CPI fellows are doing all the time. We hate to merge with the Congress (R).

SHRI KALYAN ROY : You have been swallowed by the Jan Sangh.

SHRI LOKANATH MISRA : The gentleman who is already in the belly of the Congress (R) is shouting : 'You are being swallowed'. What an irony! May I know whether the Government of India and the Prime

Minister who presides over it has taken in good grace the defeat?

*(Interruptions)*

MR. DEPUTY CHAIRMAN : I have already appealed to Members not to interrupt and if the Members interrupt, I will have to adjourn at 1 P.M. and I will not bother whether the Members get a chance or not. I do not want any interruptions from either side. Let Mr. Misra continue.

*(Interruptions)*

SHRI LOKANATH MISRA : I was asking whether the Prime Minister—unless I repeat it, the deaf people do not hear it—and if there is interruption, I have told you repeatedly, there would be replies definitely.

*(Interruptions)*

May I know whether the Prime Minister considers it or would take it in good grace even if the judgment has gone against her, and rightly so? They have called it a midnight decision or order of the President and the Prime Minister and her Government were responsible for misdirecting, misleading the President so that he had to ultimately sign it because he was guided by the advice of the Government. I am not asking for the resignation of the President. I said yesterday and I am saying today also. . .

SHRI KOTA PUNNAIAH (Andhra Pradesh) : On a point of order. He says that the Government pressurised the President to sign the document. He is repeating the aspersion against the President which is not allowed.

MR. DEPUTY CHAIRMAN : Please proceed, Mr. Misra.

SHRI LOKANATH MISRA : The President is the custodian of the Constitution and if he goes wrong, he will be subject to impeachment by this House. Therefore I have every right as I am one of his electors, to say whatever I feel. There is so much of interruptions that I am going off the track. We are generous people in the Opposition and if the Prime Minister admits that she committed a mistake, as I said yesterday, we shall pardon this Government and will not demand for its resignation. But they will have to admit that they committed a mistake. I want to know whether she would admit that she had committed



[Shri Lokanath Misra.]

a mistake in recommending to the President that the midnight order should be passed.

SHRI KALYAN ROY : Is he making a speech ?

SHRI LOKANATH MISRA : He should have only listened to his leader—his Russian-inspired leader—in order to take the example. Secondly, now that the judgment from the court has come, would the Prime Minister let us know what she is going to do so far as the implementation part of it is concerned? Would the Comptroller and Auditor-General be immediately advised to restore the privy purses and would the Chief Secretaries of the different State Governments be advised to restore the privileges of the princes immediately? How soon would she do it? That is number two. Number three.

MR. DEPUTY CHAIRMAN : How many points ?

SHRI LOKANATH MISRA : Three questions only.

MR. DEPUTY CHAIRMAN : So this is the last question.

SHRI LOKANATH MISRA : Number three ; in view of the positive response from the spokesman of the rulers that they are prepared to have talks with the Government—because they are also people with great sacrifices to their credit, (*Interruptions*) sacrifices much more than the sum total of the sacrifices of this entire House. . .

HON. MEMBERS : No, no.

SHRI LOKANATH MISRA : Yes, yes, because they have sacrificed their territory and they have merged their territories into the Union of India. Therefore, . . .

SHRI AWADHESHWAR PRASAD SINHA (Bihar) : Mr. Lokanath Misra's remark is a reflection on the Members of this House and I would like him to withdraw this remark.

SHRI LOKANATH MISRA : If any reflection on the Chief Justice of the Supreme Court is not taken as a reflection, Mr. Awadheshwar Prasad Sinha, you should not lose your head if somebody makes a comment in his presence, and I have the courage to make a comment in your presence.

SHRI AWADHESHWAR PRASAD SINHA : All the same it amounts to a reflection on the Members of the House.

SHRI LOKANATH MISRA : But the Congress Party members show less courage when they make comments here on the Judges in the absence of the Judges of the Supreme Court. Now, therefore, I would ask, because there has been a definite response from the rulers' side, whether the Prime Minister would now think it desirable to have bilateral decisions. . .

HON. MEMBERS : No, no.

SHRI A. G. KULKARNI : No.

SHRI LOKANATH MISRA : Mr. Kulkarni is not the Prime Minister, unfortunately, in this country. If a co-operative man would have been the Prime Minister, the country would have gone to ruin.

SHRI K. S. CHAVDA : Why do you say 'unfortunately'? It is 'fortunately'.

SHRI LOKANATH MISRA : I am asking the Prime Minister whether she would think that the time has come for the purpose, whether, when the other party is responsive, she would think of having bilateral talks with the princes. . .

AN HON. MEMBER : Never.

SHRI LOKANATH MISRA : . . . and have a bilateral decision, instead of a hasty unilateral decision which might ultimately lead. . .

SHRI C. D. PANDE (Uttar Pradesh) : Against the wishes of Parliament.

SHRI LOKANATH MISRA : . . . to another predicament.

SHRIMATI INDIRA GANDHI : I do not consider this to be a predicament or a defeat. In the speech which I made when I was introducing this Bill here I stated clearly that we expect obstacles at every step in our march towards progress, towards bringing about a better life for our people, towards bringing about greater equality among our people. What is astonishing today is not what we might be feeling, but the reaction of those who consider themselves the victors, why are they so excited and upset? That is what I am wondering.

**SHRI S. N. MISHRA :** Who is upset ?

**SHRIMATI INDIRA GANDHI :** This is the impression that we get from your speech. It is writ large on your face. I can see this. The second point is whether we shall send instructions to the States and various people. I think that this point is covered by the answer I gave some time ago, so also is the point regarding bilateral talks. Both these points have been covered. We have to look into all aspects of the judgment and this will take time. Then there was something said about sacrifice. Sir, I think the House itself can judge how seriously this point can be taken. When we compare the sacrifices, what does it mean? The territory belonged to the people. Were the people of India slaves of these people? Were the people of the princely States not citizens of India? What does it mean, that they gave up territory?

**SHRI LOKANATH MISRA :** I did not say that anybody was the slave of another. Was it not a sacrifice that they made?

**SHRIMATI INDIRA GANDHI :** May be you have that view, but it is not our view at all. (*Interruptions*) To say that lakhs and lakhs of people. . . (*Interruptions*) I am not yielding. To equate these people with the lakhs and lakhs of people who sacrificed their lives and their all during the freedom movement, I think this is sacrilege and desecration of the history of India.

**SHRI PRANAB KUMAR MUKHERJEE** (West Bengal): Unfortunately a situation has arisen in which two constitutional machinery, the Supreme Court and the Parliament, have come face to face. We should not forget that the Supreme Court has also to discharge its constitutional obligations and for having discharged its obligations conferred upon it by the Constitution it should not be criticised on the floor of the House. Again Parliament, being the sovereign legislature of the country, has every right to pass any legislation to do away any outmoded system and in view of that may I know from the Government whether the Government would examine all the existing provisions of the Constitution and find out how to get rid of the present situation?

Secondly, in view of the observations made in the Golaknath case would the Government give a second thought about the Fundamental Rights Chapter in the Constitution?

Thirdly, may I know from the Government whether they would apply the constitutional provision to increase the number of Judges of the Supreme Court so that the existing structure of the Supreme Court does not stand in the way of bringing progressive legislation by Parliament?

**SHRIMATI INDIRA GANDHI :** We have already said that so far as this matter is concerned we will take the appropriate constitutional measures.

**MR. DEPUTY CHAIRMAN :** Mr. Goray.

**SHRI N. G. GORAY** (Maharashtra): Sir, I look at this judgment of the Supreme Court.

**SHRI M. M. DHARIA :** Sir, those who have given this motion should get a chance.

**SHRI CHITTA BASU :** (West Bengal) : Yes, Sir; We should also be called.

**MR. DEPUTY CHAIRMAN :** We are following the procedure of one from each party being given the chance. There are other parties why are not in the list.

**SHRI M. M. DHARIA :** I can understand your calling the leaders of the various parties but those who are interested and who have given notice of this motion should get a chance.

**MR. DEPUTY CHAIRMAN :** I am not giving any assurance. I am following the procedure.

**SHRI M. M. DHARIA :** In that case we shall have to insist on our right to get the chance.

**MR. DEPUTY CHAIRMAN :** We have already taken 50 minutes.

**SHRI M. M. DHARIA :** But Mr. Deputy Chairman, . . .

**MR. DEPUTY CHAIRMAN :** I have called Mr. Goray. I cannot give any assurance. I have made very clear in the beginning that if you interrupt and engage yourselves in interruptions I would not be able to accommodate a

[Mr. Deputy Chairman.]

large number of Members. (*Interruptions*) I have no objection; I can adjourn the House at 1 o'clock and after reassembling we can discuss this same question. I am not worried at all but is it the desire of the House that we should go on discussing the same matter?

I am prepared to follow the instructions of the House.

SOME HON. MEMBERS: Yes, yes.

MR. DEPUTY CHAIRMAN: Let me know the wishes of the House. Now Mr. Goray.

SHRI N. G. GORAY: In view of the fact that the Government have stated their position that they will take some time to study the judgement I would like to confine my question to two aspects. One is I would like to know whether the Government looks at this judgement as a water-shed between the days of privileged society and the society of free and equal people that we want to create and therefore whether the Government when they come to certain decision will see to it that this perpetual hindrance of the interpretations of property rights will be removed once for all.

Secondly I would like to know whether this power of Parliament to legislate on any issue of public importance without any hindrance from the Supreme Court will be restored to Parliament when the Government will think of new measures in the light of the Supreme Court judgement.

SHRIMATI INDIRA GANDHI: I do not think, Sir, that it is right to use the word 'hindrance'. The Constitution is clear and I think we can proceed according to the Constitution but the Constitution, as we have said and as other Members have said on various occasions, is not a static thing. The Constitution has been changed in other countries, it has been changed in our country too and if it is necessary to change it in the people's interest certainly we should do so and Government will think about it.

SHRI THILLAI VILLALAN (Tamil Nadu): With great respect to the Supreme Court, I want clarifications from this Government about the consequential steps to be taken after the

pronouncement of the judgment quashing the Presidential Order derecognising Princes. This has been given an adjective 'midnight' order. In this connection I want to remind you that our independence is also a midnight independence. We should not forget that it started only in the midnight of 14th August, 1947. As we are the lawmakers here, the courts are law-interpreters there. For every judgment there is scope for appeal. For an appeal against the Supreme Court there is a court of appeal, that is the court of the people. I would like to know....

SHRI LOKANATH MISRA: They would abolish you with it.

MR. DEPUTY CHAIRMAN: Please put your question.

SHRI THILLAI VILLALAN: I would like to know from this Government whether it would be going to the court of appeal, that is, the court of the people, as the last step or whether it is going to take the immediate step of amending the Constitution or any other interim arrangement. I would like to know that first. Secondly, I would like to have clarification on this point There are so many steps for the delivery of progress in this country. If we read the pages of world history we can see that the delivery of progress is always painful. Our Mother India is pregnant with the child of progress, but it requires sometimes a surgical operation also. I would like to know from the Government whether it is prepared to have a surgical operation by an amendment of the Constitution or whether it will go straightway to the people, the court of the people, to get their final decision on this.

SHRI RAM NIWAS MIRDHA: The hon. Member wants to know what consequential steps the Government propose to take after the judgment of the Supreme Court. The first consequential step is to study the judgment and whatever next needs to be done, whether legally or administratively, will be done after a proper study of the judgment.

SHRI A. D. MANI (Madhya Pradesh): May I ask the Prime Minister about an incidental aspect of the matter and that is whether the midnight order, which has been struck down by the Supreme Court, was passed on the advice of the Attorney-General, who is

a statutory officer under the Constitution? I have got a right to ask the question because the Attorney-General has a statutory position. He has misled the Government and asked it to pass an order which has been declared null and void by the Supreme Court. Secondly, may I ask her whether, in view of the fact that the Supreme Court has held, by implication, at least two Judges have said so, that privy purses are private property, the Government would assess what the country will have to pay as compensation? If the compensation amount is very high, may I know whether it would not be desirable, as has been the practice of the Government in this matter in the past, to negotiate a settlement with the Princes in a proper way, so that we also move a constitutional amendment removing the articles guaranteeing it in the Constitution? The third point is, there have been many suggestions made that the Constitution should be amended. I quite agree that no Constitution is sacrosanct, but if you want to amend the Constitution, the State Assemblies also must be consulted. It cannot be decided at the Central level, because we are developing a regional pattern of politics in this country and the States have got to be consulted in this matter.

**SHRI RAM NIWAS MIRDHA:** The hon. Member has asked if the Attorney General advised the Government in a particular way. Well, I think it is not very fair to ask the Government as to who advised them and what.

**SHRI A. D. MANI:** He is paid by us.

**SHRI RAM NIWAS MIRDHA:** If you have any legal doubt, you can go and ask him. Simply because he is a constitutional authority and he can come and speak before the House, it does not mean that we should disclose all that he says. He is legal adviser to the Government and Government has got all sorts of legal advice available to it after consideration of which decision was taken.

**SHRI A. D. MANI:** What about the other specific question, whether they are prepared to consider not to rule out a negotiated settlement?

**SHRI RAM NIWAS MIRDHA:** I have already answered.

**SHRI LAL K. ADVANI (Delhi):** The Supreme Court's judgment is a vindication of democracy and a refresh-

ing reaffirmation of the fact that neither the Government of India nor even the President is above the Constitution. However, I would like to invite the attention of the Government to one specific aspect of the judgment, a brief review of which has appeared in the Press today, and that is a dissenting judgment by Justice Mitter in which he has said that "if ever there was a case for the President to make a reference to this Court the present was eminently suited to the purpose." Not only that he has virtually held the President guilty of dereliction of duty. He has said, I quote, "when disputes of such public importance were agitating the minds of the Members of Parliament and the Cabinet, it was not only his right but his duty to consult the Court." I think that this is very serious. We have been repeatedly asking the Government that on issues of this kind it would be proper to consult the Supreme Court. You will recall that on this particular issue of Privy Purses also we had suggested that the Supreme Court should be consulted before any step was taken. But deliberately the Government has been advising the President not to do so. Why? My other question in this regard is, confronted with the situation arising out of the judgment about which the hon. Minister has just now stated that the Government would come to the House with a considered decision. I would like to know whether Government was willing to learn from its present experience. Two or three alternatives have been mooted as to what should be done in this situation. One suggestion is that a Bill should be brought immediately before this House in this very session. Another suggestion is that we should call a special session of Parliament to pass such a Bill. The third suggestion is that we should go to the electorate for this particular purpose, for this issue. I feel that this judgment of Justice Mitter—this is a dissenting judgment, dissenting on other grounds, namely, of jurisdiction, but substantially endorsing the majority judgment—this particular judgment makes it incumbent on the Government first to consult the Supreme Court on whatever course it wants to adopt. My submission is that the approach in this regard should not be only political. Politics necessarily comes in, I admit it but grave constitutional and legal issues are involved in the whole situation, whether it is in regard to bringing in a fresh Bill or whether it is in regard to advising the President to dissolve the

[Shri Lal K. Advani.]

Lok Sabha. I hold that the head of a minority Government has no right in a situation of this kind to advise dissolution. But I submit for the consideration of Government, and I would be happy if I get an answer, whether the Government is prepared to consult the Supreme Court on two issues: (1) dissolution of Lok Sabha; (2) on the new Bill proposed. Some friends have referred to the Golaknath case

1. P.M. which is indeed very pertinent.

In view of the decision in the Golak Nath case, any Bill that you propose to bring forward now or even Mr. Nath Pai's Bill, they also need to be examined by the Supreme Court first before you take a decision.

Sir, the hon. Minister has just now said that it is not proper for the Government to reveal who has advised what, particularly with reference to the Attorney-General. I think that it is a wrong stand to take. This House will recall that on an earlier occasion when we demanded that the Attorney-General's advice in respect of nationalisation of the sugar industry in UP should be placed on the Table of the House, it was duly placed on the Table of the House. It is but proper that on an important issue of this kind, we should know what the Attorney-General has advised. And I think that it is the advice of this man which has landed the Government and the President in soup on this issue. He should either resign or he should be dismissed.

MR. DEPUTY CHAIRMAN: The Prime Minister.

SHRI SASANKASEKHAR SAN-YAL (West Bengal): Sir, on a point of order, before the Prime Minister speaks. Are we forgetting the fact that neither Parliament was a party in that case nor the other fact that the Constitution (Amendment) Bill was the issue there? Therefore, we are arguing as if we are bound by the decision. . .

MR. DEPUTY CHAIRMAN: What is your point of order?

SHRI SASANKASEKHAR SAN-YAL: This is the point of order.

MR. DEPUTY CHAIRMAN: There is no point of order.

SHRI SASANKASEKHAR SAN-YAL: Why should they hold up the

hands of the Government? If there is no case before the Supreme Court our Bill would have proceeded in that session or this session. What is there to prevent the onward march of the legislation on the amendment Bill which was before this House?

SHRIMATI INDIRA GANDHI:

All Mr. Advani's questions are covered by the replies which I have given earlier that we shall consider our future action. But I must make it clear that obviously the hon. Member's view of democracy and the world's view—I am not saying mine—are entirely different; the view held, for instance, in the USA and in other countries is entirely different from what he has expressed here. In the USA such a crisis took place earlier. The question is: What is the Constitution for? What are laws for? Laws are not dropped from the heavens; laws are made to make life more orderly for the people who live in this country. The Constitution is made so as to have better functioning. Laws are made by Parliament. Therefore it is possible to change the laws, it is possible to change the Constitution. This is obvious—democracy must mean the right of the largest number of the people. . .

(Interruptions.)

MR. DEPUTY CHAIRMAN: Order, order.

SHRIMATI INDIRA GANDHI:

Whether you talk of the Fundamental Rights or any other right, it does not mean that you can suppress the rights of some people for the sake of the rights of some of other people. This is evident in democracy.

So far as the Attorney-General is concerned, to the implication of the question asked by Shri Mani was whether because we had followed the Attorney-General's advice, and because of this, we went wrong. My colleague had spoken of this. I should like to repeat that the Government and I take full responsibility for the decision. I do not want to hide behind the Attorney-General or anybody else.

AN HON. MEMBER: Therefore, she should resign.

SHRI GODEY MURAHARI: In the first place, let me make it clear that I completely disagree with the attitude taken by my friend, Mr. Mishra, and also the other friend on this question.

(Interruption.)

**SHRI S. N. MISHRA :** What attitude?

**SHRI GODEY MURAHARI :** It is very clear that it is an obstructive attitude. Mr. Deputy Chairman, with the obstructive attitude that Mr. Mishra and Mr. Tyag have taken, I disagree. We are fully seized of this affair. It is an important issue—the country paying crores of rupees to the Princes. And if something goes wrong, if the Government had passed an order derecognising the Princes and their privileges and if the Supreme Court in its wisdom thinks it fit to vacate that order, then, Sir, it is Parliament which is seized of the affair, and I do not see any reason why anybody should be obstructive in this matter. That is why I said that I disagree with him . . .

**SHRI S. N. MISHRA :** Nobody is obstructing.

**SHRI GODEY MURAHARI :** Everybody knows who was obstructing and who was not obstructing. I need not elaborate on that.

**SHRI S. N. MISHRA :** We know where you stand.

**SHRI GODEY MURAHARI :** I know where we stand. You need not tell me about that because that is very clear in a few days where we stand. Everybody knows where we stand. Why should you talk about it. And, Mr. Mishra, it does not pay to get irritated like that?

**SHRI S. N. MISHRA :** Why are you not issuing directives against that. . .

**SHRI GODEY MURAHARI :** Why do you not wait? I would like to make our stand very clear on that question. If the Government were to take any action derecognising the Princes, denying them any cent of compensation, we are with the Government in spite of anybody else. But if the Government goes on paying crores of rupees or even lakhs of rupee by way of compensation or interim relief, we shall oppose that also. As far as we are concerned, our stand is that these Princes have been exploiting the common people of this country and the people who have lived in their States. It is not a conferred right on them; it is an *ex-parte* right which they established on themselves. Therefore, I would be one with any-

body who suggests that the Constitution be changed, that the fundamental rights guaranteeing the right to property be changed. We are one with them. Of course, let me make it clear that we are against any amendment of the other fundamental rights. Therefore, I would like the Government to come forward with a new Constituent Assembly. We will be making a demand for a new Constituent Assembly all the time, and even today if the Government is prepared for a new Constituent Assembly, we are prepared for it.

**SHRI M. M. DHARIA :** Under what article?

**SHRI GODEY MURAHARI :** Article or no article. The people are the article. If the people want a new Constituent Assembly they will have it irrespective of any Government. Even if this Government stands in the way of that demand there will be a revolution and a new Constituent Assembly will come in the country. Therefore, do not talk of articles and all that. As far as the new Constituent Assembly is concerned, it will take its own course. Therefore, may I know from the Government in the first place the concrete steps the Government would take to see that this Constitutional amendment is effected forthwith? Also I would like the Government to give us an assurance that they shall not negotiate with the Princes over the payment of huge amounts as compensation because that is what is being contemplated. I may make it very clear that we will be opposing any move to give them any compensation.

**SHRI RAM NIWAS MIRDHA :** The hon'ble Member has again given certain suggestions that there should be no compensation or interim relief.

**SHRI GODEY MURAHARI :** I wanted an assurance from the Government that the Government will not pay any compensation. . .

(*Interruption.*)

**MR. DEPUTY CHAIRMAN :** Please listen to the reply.

**SHRI RAM NIWAS MIRDHA :** . . . As regards the Constitutional amendment about which the hon'ble referred, as I said earlier, the Government believes even in the property right with certain limitations. And as regards other rights, of course, we are fully in agreement with the hon'ble Member that they should not be tampered with.

SHRI A. D. MANI: Shall not be tampered with

SHRI RAM NIWAS MIRDHA: That is what I was saying, Mr Mani

MR. DEPUTY CHAIRMAN: Why do you interrupt, Mr Mani? He does not need your help. Please keep quiet.

SHRI RAM NIWAS MIRDHA: As I said earlier, we will take into consideration what the hon'ble Member has said.

SHRI S. N. MISHRA: Mr Deputy Chairman, we are neither in the category of all-wise persons who know everything about the judgment even without reading it, nor are we in the category of those who have browsed through the 400 pages and would like to rush to certain conclusions.

Sir, I can appreciate the statement of the Government that it would require more time to study the judgment before it can give reply to the points raised by us. One thing which seemed to justify in the minds of the hon'ble Members a discussion of this nature was that they were simply seeking to analyse the effects produced by the judgment. Even there my submission is that the effects produced by the judgment cannot be analysed unless we have gone through the judgment. That would be a foolhardy way of going about it (*Interruption*). But I must take note of your midnight performance. So, Sir, my humble submission is that this voluminous judgment, extending over 400 pages, would require to be more carefully studied, closely scrutinised and seriously pondered. Now, Sir, my another submission would be that you should be good enough to ask the Government to circulate a copy of the judgment—that is, all the judgments—to all the Members before we can form our own views on this. This is particularly necessary in view of the fact that this House has discussed the executive order that was promulgated in defiance of the opinion of this hon. House. And this hon. House had raised the point of contempt of the House also. Therefore, it becomes incumbent on the Chair to ask the Government to supply us with a copy of the judgment.

Now, Sir, the hon. Prime Minister was pleased to say—and she was saying it in a moment of exasperation, probably with reference to the hon. Sup-

reme Court—that the Government was accustomed to functioning both during day and night.

SHRI KALYAN ROY: The High Court does not function during day also.

SHRI S. N. MISHRA: One of the hon. allies of the Government, *i.e.* an hon. Member of the D.M.K. said that we got independence during midnight. I do not think that the midnight Independence, with capital T, gives freedom to the Prime Minister to act as she likes during midnight. Now, Sir.

SHRI M. M. DHARIA: No, Mr Deputy Chairman. Let Mr Mishra behave properly (*Interruptions*). It is most unbecoming of the hon. Member (*Interruptions*).

SHRI S. N. MISHRA: What is the objection? Why are you objecting? After all, my hon. friend, Mr Dharia.

MR. DEPUTY CHAIRMAN: Please put your questions.

SHRI S. N. MISHRA: Yes. But if something is said by hon. Members, I am bound to take note of it (*Interruptions*). Sir, we have seen that midnight missiles were sent to the Congress President during the days of the split. We have been accustomed to certain midnight performances.

MR. DEPUTY CHAIRMAN: Please come to your questions.

SHRI S. N. MISHRA: Yes, I am coming to that. You had given perfect liberty to all others.

Now, this order was promulgated during midnight. It becomes important, Mr Deputy Chairman, because we still have doubts whether the President had accorded his assent to the Cabinet's decision in a proper manner. I had carried on some correspondence with the President on the subject. Now that the judgment has been delivered, I am going to release that correspondence with the President on whether the assent was properly accorded and whether it was accorded on a written decision of the Cabinet. I have still my doubts, and the President will be fair to us if he takes us into confidence on whether it was done in a proper manner because it related to certain decisions of the House overriding which the President

had been made to issue that order. Mr. Deputy Chairman, one thing which is very much in our minds is that since there seems to be almost a consensus that there should be abolition of the privy purses, our basic task our constructive task, now would be to see that it is done in a proper constitutional manner. And what is the way to do it? That is a constructive task on which we can give our advice to the Government and the Government also should seek our advice on that. It has to be done in a proper constitutional manner. That the Government has come ultimately to realise under the shock of the judgment delivered by the Supreme Court. This is the clarification that I want, whether the Government wants to bring it about in the proper constitutional manner. Does the Government contemplate holding consultations on this subject with the political parties so that this is done in the right manner?

SHRI BHUPESH GUPTA: Not with you.

SHRI S. D. MISRA: Yes, only with the CPI.

SHRI BHUPESH GUPTA: Only with those who supported it, not with those who voted against the Bill.

SHRI LOKANATH MISRA: You are in the pocket of the Government.

SHRI BHUPESH GUPTA: Not at all with the lobby of the princes.

MR. DEPUTY CHAIRMAN: Mr. Mishra, you please continue.

SHRI S. N. MISHRA: Sir, I find that the Prime Minister has vacated her seat now. . .

*(Interruptions.)*

SHRI S. D. MISRA: How insulting and damaging it is!

SHRI M. M. DHARIA: When the Leader of the Opposition himself does not show any respect, does not have any decorum, for the Prime Minister, why should we respect him?

SHRI S. N. MISHRA: I am not yielding. *(Interruptions)* I am not yielding. I am on my feet..

MR. DEPUTY CHAIRMAN: Order, order please.

SHRI S. N. MISHRA: If the Prime Minister is not pleased to be present in this House, we are bound to take notice of it. . .

SHRI S. D. MISRA: It is an insult.

SHRI M. M. DHARIA: No, Mr. Deputy Chairman, the Leader of the Opposition himself does not show any respect to the Prime Minister. . .

MR. DEPUTY CHAIRMAN: Please sit down, Mr. Dharia; it is very bad; do not interrupt every now and then.

SHRI M. M. DHARIA: The Leader of the Opposition has lost all sense of proportion. . .

SHRI S. N. MISHRA: I am not yielding to anybody, Mr. Deputy Chairman. . .

*(Interruptions by Shri A. G. Kulkarni)*

MR. DEPUTY CHAIRMAN: Please sit down, Mr. Kulkarni. Do not interrupt.

श्रीमती विद्यावती चतुर्वेदी : (मध्य प्रदेश) : कालिग अटेन्शन के क्या माने होते हैं? कालिग अटेन्शन में तो डाइरेक्ट क्वेश्चन पूछने हैं और यही पूछने के लिए कहें।

MR. DEPUTY CHAIRMAN: Order, order please.

SHRI S. N. MISHRA: Sir, my honourable friend, Shri Bhupesh Gupta, said that the Prime Minister should not consult all other parties. All right, I wish him to be the only party to be consulted. I would not grudge it....

श्रीमती विद्यावती चतुर्वेदी : श्रीमान्, मेरा एक प्वाइंट आप आर्डर है और वह यह है कि कालिग अटेन्शन के बीच में इस तरह के सवाल पूछना कि फलों ने ऐसा कहा फलों ने ऐसा कहा, कहाँ तक ठीक है?

*(Interruption.)*

SHRI S. N. MISHRA: Although we know that on many important occasions it is only my honourable friend, Shri Bhupesh Gupta, who is consulted, we have never made any grievance of it. I was asking the Government....

*(Interruptions by Shri Sheel Bhadra Yajee)*



श्री एस० डी० मिश्र : इनकी अकल क्या मध्य प्रदेश चली गई थी जब श्री भूपेश गुप्त बोल रहे थे ?

श्री लोक नाथ मिश्र : इन्हें बीमारी हो गई है और इन्हें विनिगडन अस्पताल भेज दिया जाय। क्या आगरा चलेगे या राची ?

SHRI S. N. MISHRA. I was asking whether the Government proposes to consult the political parties with regard to the constructive task that lies ahead of us (*Interruption by Shri Bhupesh Gupta*) You are such a dunce that I cannot make you understand. The second thing about which I would like to ask the government is this. A suggestion has been made that the Bill standing in the name of an hon. Member of the other House—Shri Nath Pai—should be proceeded with. May I submit that that Bill is a self-defeating measure which concedes the thesis of the hon. Supreme Court that the Parliament does not have the authority to amend Part III of the Constitution.

SHRI SHEEL BHADRA YAJEE (Bihar) Parliament is supreme to the Supreme Court.

MR DEPUTY CHAIRMAN: Please do not interrupt.

SHRI S. D. MISRA We would like Shri Yajee to speak first, instead of giving sermons.

SHRI SHEEL BHADRA YAJEE I can give you sermons

श्री लोकनाथ मिश्र : श्रीमन, आप उनके लिए इलक्ट्रिक राड रखिए।

SHRI S. N. MISHRA: There are Constitutional remedies to the problems that we are confronted with. But there is no Constitutional remedy so far as the actions of certain hon. Members are concerned. Anyway, I would like to proceed with my contention. With regard to Shri Nath Pai's Bill, I was saying that the Bill is self-defeating in the sense that it concedes the thesis of the honourable Supreme Court that on the basis of the existing provisions of the Constitution, the Parliament of India has no right to amend Part III of the Constitution. There a substantive proviso is introduced that it will

have to be ratified by 50 per cent or more than 50 per cent of the State legislatures. That does not occur in the Constitution at the present moment. That means that the Bill also recognises the fact that it cannot be done on the basis of the existing provisions of the Constitution. So, it would not help us in this respect. Even so, I would like to know the opinion of the government in this matter whether it wants to proceed with Shri Nath Pai's Bill with regard to the amendment of Part III of the Constitution.

SHRI RAM NIWAS MIRDHA Of all the things that the hon. Member has said, only some which are relevant, will be given due consideration.

SHRI K. CHANDRASEKHARAN (Kerala) Mr. Deputy Chairman, the hon. Minister of State has stated that the government stand committed to the abolition of rulership. I join the chorus of welcome that has been given to that statement by large sections of this House because that statement is good so far as it goes. But except that particular part, I do not find anything by way of a positive suggestion or a clear indication and I am sorry to state that the statement is bald and blank, even though what was pronounced yesterday was expected for some time past. The confusion has, according to me, become more on account of a statement made by the hon. State Minister today that he would like to make it clear that government is not opposed to property rights as such. I do not know what exactly that statement means. The twin aspects of the decision of the Supreme Court may be summed up as, firstly, that the abolition of privy purse cannot be done by executive action, and secondly, clear indications are there in at least the judgments of two of the honourable Judges that the abolition of privy purse and rulership involve rights in relation to property as secured by Articles 19 and 31 of the Constitution of India. So, Sir, the Supreme Court has made it clear that this could be done only by way of a Constitutional amendment and in the course of seeking clarifications today, hon. Members have suggested that firstly, the Bill that was there formerly should be pursued once over again in both Houses of Parliament and, secondly, the enabling provisions contained in the Bill of Shri Nath Pai to amend Article 363 of the Constitution should also be pursued. May I state, Sir, that even these two actions by

this Parliament may not be adequate to meet the requirements of the judgment of the Supreme Court for, unless Articles 19 and 31 of the Constitution are drastically amended and the rights in relation to private property in certain sections are reduced, if not taken away, it will be impossible to remove the obstacles about which the hon. Prime Minister has been stating so much. There is no use of criticising the judgments of the Supreme Court or the High Courts. My submission, Sir, is that they are not in the wrong and they are applying the provisions of the Constitution. The Articles of the Constitution, as they stand today, the Constitutional provisions, are not in tune with the modern socialistic approaches that this Government and this Parliament desire.

Sir, the Constitution has been modelled largely on the provisions of the Government of India Act of 1935 which itself was outmoded when the Constitution was framed. It may be necessary to work out a second Constitution for this country. It is undoubtedly necessary to work out drastic amendments to the Constitution and unless these amendments are made, may I submit to and tell the Government, Sir, that it will not be possible for us to proceed with any socialistic executive measures.

MR. DEPUTY CHAIRMAN: Please put the question.

SHRI K. CHANDRASEKHARAN: Sir, may I know from the Government whether they would seriously think of amending Articles 19 and 31 of the Constitution so that the large amount of compensation that otherwise will necessarily have to be paid to the rulers if rulership and the privy purses are to be abolished could be avoided? No doubt. . .

MR. DEPUTY CHAIRMAN: That is all right.

SHRI K. CHANDRASEKHARAN: No doubt, the Government have stated that transitional payments will be made. But transitional payments cannot be avoided when compensation under Article 31. . .

MR. DEPUTY CHAIRMAN: That will be enough. No speech now, please.

SHRI K. CHANDRASEKHARAN: Sir, I want a clarification from the Government whether the Government

would think in terms of amending all these provisions of the Constitution.

SHRI RAM NIWAS MIRDHA: Sir, the House would appreciate that it is not possible for the Government to say anything definite at this stage because of the time that it will take to study the judgment and come to proper conclusions and, as regards the suggestions made by the hon. Member, all those suggestions are in our view and would be given due consideration.

SHRI SUNDAR SINGH BHANDARI (Rajasthan): I think he can have a taperecorder which will go on saying "It will be given due consideration".

MR. DEPUTY CHAIRMAN: Mr. Dharia.

SHRI M. M. DHARIA: Mr. Deputy Chairman, Sir, the judgment on the Golak Nath case, the judgment on the bank nationalisation case and the judgment on the privy purses issue by the Supreme Court have made it very clear, with due respect to their Lordships of the Supreme Court, that their judgments and rulings have created obstacles in the way of social and economic changes in this country.

Sir, having regard to the impediments, may I know from the Government whether the Government were treating this House of Parliament, both Houses of Parliament, as the Constituent Assembly, not being bullied by the idea that a separate Constituent Assembly will be convened, because there is no provision whatsoever in the Constitution. But, under Article 368. . .

SHRI SUNDAR SINGH BHANDARI: Who is bullying?

SHRI M. M. DHARIA: Please try to listen. I am not speaking from a passionate point of view, but I am speaking from a dispassionate point of view. I hope due consideration will be given by Shri Bhandari.

MR. DEPUTY CHAIRMAN: Mr. Bhandari, please. . .

SHRI M. M. DHARIA: Under Article 368, no sooner than any legislation is before the House to amend the Constitution, because of the restrictions we turn ourselves into a Constituent Assembly. Otherwise, under Article 100, it is by a simple bare majority to pass that legislation. So, under these circum-

[Shri M. M. Dharia]

tances, let us affirm our right to amend the Constitution including the Fundamental Rights and let us not be a victim of the judgment in the Golak Nath case. Let us make it very clear that this judgment of the Supreme Court on the privy purses has again created one more obstacle, as the view expressed by some learned judges is that privy purses are also properties. If it is a property, then the right to property is a fundamental right and naturally it cannot be amended because of the judgment in the Golaknath's case. In these circumstances, it is high time that the Government say to the country that beyond certain prescribed limits, the right to property shall not be a fundamental right in this country. And we shall have a social change.

Sir, so far as this measure is concerned, I was just listening to the criticisms levelled by many. Let us not forget the way in which the Supreme Court has unfortunately degraded itself "The President is not a Moghul, the President is not a Moghul Badshah, the President is not a Crown. . ."—in these words they have criticized the President. . . (Interruptions) Mr Deputy Chairman, Sir, I do believe that the Supreme Court should not be criticized. But at the same time it is necessary that the Supreme Court judges should take care that they also do not cross the limits of dignity. . . (Interruptions) I do not want to go to that level of the Supreme Court. . .

SHRI BHUPESH GUPTA : We should evolve a procedure for the removal of the judges  
(Interruptions)

SHRI M. M. DHARIA : We have the executive, we have the legislative, and we have the judicial wings. But let not the eleven judges of the Supreme Court be under the impression that they are here to decide the destiny of the whole country of the whole people.  
(Interruptions.)

Sir, May I know from the hon. Government that they will take into consideration all the aspects? Let us go in a dispassionate way. We want to implement the social objectives that we have announced to the people. And, Sir, from that point of view, either the Government will think, if so necessary of extending this session or calling a special session of the Parliament for the

necessary amendment of the Constitution. When I say a special Session, it is not only to do away with the privy purses but also to assert ourselves that we are a supreme body and we can amend the Constitution, to assert ourselves that there cannot be a right to property beyond prescribed ceilings, to assert ourselves that we are here for a social change, and if any impediments are created from nay quarter, let us go to the people, if necessary. . .

(Interruptions)

SHRI RAM NIWAS NIRDHA : As I said earlier, the Government believes in legal, personal right of property of the citizens of India and also in the other fundamental rights that our citizens are enjoying. But as regards restrictions, certain reasonable restrictions have to be imposed on them. We are constantly considering those things. The Government's policy is very clear in these matters. The Government stands committed to the abolition of privy purses and privileges at the earliest possible time. . .

(Interruption)

SHRI BHUPESH GUPTA : Sir, on a point of order. . .

(Interruptions.)

SHRI K. S. CHAVDA : Unless you ask the reporters not to record, Mr. Bhupesh Gupta will not sit down.

SHRI A. P. CHATTERJEE (West Bengal) : Is it not a fact that in the course of the arguments on the Princes matter the Supreme Court almost directly referred to the debates in the Parliament as the squables in Chandni Chowk and that came out in the Press also and if that is so, what steps the Government do propose to take in regard to this serious reflection on parliamentary debates and proceedings in the Supreme Court by the Supreme Court Judges? Secondly, as far as the Judges of the Supreme Court are concerned, is it not a fact that most of the Judges of the Supreme Court are drawn from classes which really will create in them bias in favour of property and in favour of property rights? If that is so, does the Government propose to take any steps in regard to the conditions for recruitment of Judges to the Supreme Court so that the socialistic bias of the Judges may be properly tested and examined? Thirdly, our Party has said often and some Members even in this House raised objections to what our leader said that this Constitution is a useless Cons-

tution, it is a Constitution completely biased in favour of the privileged classes, in favour of the propertied classes, that this Constitution has to be wrecked—that was the word used by some of our leaders in the last one or two years but that raised some objections in the minds of some Members and certainly in those Benches. In view of this fact that this Constitution has so far become an unworkable Constitution so far as socialism and socialistic point of view is concerned it has become useless so far as any step towards progress is concerned and further because we have seen also that the Supreme Court on the basis of this Constitution has struck down the Kerala Education Act, the Kerala Land Reforms Bill, the Kerala University Act and other progressive measures, it is quite time now that the Constitution has to be changed lock, stock and barrel, not merely Part III of the Constitution but other provisions also which are pernicious. Therefore the question now arises squarely before the Ruling Party as to what they are going to do with this Constitution. If Mrs. Indira Gandhi's socialism is not soda water socialism, as it looks like—soda water merely bubbles and froths—Mrs. Indira Gandhi should take some steps in order to see that this Constitution is changed and is wrecked and a new Constitution be brought in so that the Constitution may give right to the people and may give such provisions by which we can take property from the propertied persons that we can take away the privilege from the privileged people. These are the questions that are squarely raised by the Supreme Court judgment before the people and before the Ruling Party. The test of the sincerity of the Ruling Party, the sincerity in their profession will be determined by their declaration here and now whether they are going to amend the Constitution and this should go lock, stock and barrel.

SHRI BHUPESH GUPTA : My friend Mr. Chatterjee has made very good points. My only fear is at the time of the next voting he may not absent himself...

(Interruptions.)

SHRI A. P. CHATTERJEE : Mr. Bhupesh Gupta has been picked by the Congress Party as the soda water socialist...

(Interruptions.)

SHRI RAM NIWAS MIRDHA : I do not believe, as the Member has said...

SHRI A. P. CHATTERJEE : Had not Sardar Gurmukh Singh Musafir been sent outside, then also it might have been passed. About the DMK, on whose support Mrs. Gandhi depends, if that Party's Member had also come here, then also things would have been different.

श्री शीलभद्र याजी : चटर्जी साहब यह क्यों बोलते हैं ? उस वक्त तो यह भाग गए ।

SHRI A. P. CHATTERJEE : We have seen it, how you had sent away Shri Gurmukh Singh Musafir. We know what happened.

श्री शीलभद्र याजी : आप कहा चले गए थे बेकार की बात करते हैं ।

SHRI RAM NIWAS MIRDHA : Sir, Government does not believe, as the hon. Member has said, that the Constitution is useless and it has to be wrecked, but as the Prime Minister has said, the Constitution has to evolve at times and it has to be one of the instruments for social progress. From that point of view the Government has come, in the past also, when it thought it necessary to amend the Constitution, and in future also, if we think that it is necessary to do so, we will not hesitate to come for amendment of the Constitution.

SHRI JOACHIM ALVA : Has not this issue come up before the Government, namely, that the present Bench of the Supreme Court of India has not only proved impregnable, but reactionary and illiberal as well? Does the Government think of appointing a new set of Judges?

(Interruptions.)

SHRI S. D. MISRA : More Kumar-amangalams.

SHRI JOACHIM ALVA : Above all, in the matter of appointing the new Chief Justice when the present Chief Justice leaves, will the Government appoint the right person at the right time and in the right manner? Further I want to know whether Government's attention has been drawn to a very important Article in the Indian 'National Herald' entitled 'Supreme Court Appointments' in its issue dated November 29, 1970 (Interruptions.) It is

[Shri Joachim Alva.]  
very relevant editorial by one of India's leading Editors, Mr. Chelapathi Rau. Please hear me, The quotation is from Mr. M. C. Setalvad, India's most illustrious living lawyer. The quotation is not from me please :

"The Law Commission, presided over by Mr. Setalvad in its Fourteenth Report, rejected the argument of seniority and of judicial experience, and said that 'it is necessary to set a healthy convention that appointment to the office of the Chief Justice rests on special consideration and does not as a matter of course go to the seniormost puisne Judge', and the Law Commission then consisted of eminent lawyers including Mr S M. Sikri, then Advocate-General, Punjab, and now in the Supreme Court. Mr. G S. Pathak, then Advocate and now the Vice-President and even Mr. Chagla, then Chief Justice of Bombay High Court and now back at the Bar. What has happened since then?" They were the Members of the Commission Mr. Justice Sikri, whose judgment is also known in the other case, in the other well known case, namely, the Bank Nationalisation case, his connection with banks has been alleged. I want to know whether all these people are going to become the Chief Justices of India in succession in order to hold up the progress of India and the March of the people of India, or we are going to follow the other great democracy of the world, namely, the United States of America where President Roosevelt elbowed out all the illiberal and unworthy Judges and put in new people and where even the present President Nixon tried to throw out the illiberal people. Are we here similarly going to move with the times and act in the right manner and in the right way and see that the unpleasant Judges are left to take care of themselves and also see that the next Chief Justice of India to be appointed is a patriotic man, a man of the masses, a man who knows how to deliver the goods?

MR. DEPUTY CHAIRMAN : It is a suggestion for action. Shrimati Yashoda Reddy.

SHRIMATI YASHODA REDDY : I do not agree with Mr. Alva in one thing, where he says that the Judges are wrong. The Constitution may be wrong; change the Constitution if you want. On that I have got one sugges-

tion to make. So many suggestions were made and the Government has been pleased to say at every stage "in the name of the people", "in the name of the people". May I suggest this to the Government? Will it not be desirable to go to polls on this one question because there are two opinions on this question? One opinion is that the Fundamental Rights in the Constitution cannot be changed by the present Parliament, and another opinion is that a Constituent Assembly should be convened if there were any idea to change the Fundamental Rights. Though many of my friends may not agree with me, I am one with Mr. Dharia that even the present Parliament can change the Fundamental Rights. But that is neither here nor there. Now, will it not be desirable on the part of the Government to go to polls on this one issue whether the present Parliament can be given the right to change the Fundamental Rights in the Constitution? Shall this not be a good point to go to polls tomorrow and seek the verdict of the people, in whose name you go on saying things from morning till evening? Take the verdict of the people and, if their verdict is favourable, then change the Constitution; I have no objection. Will Government take this suggestion? As long as the present Constitution is there, you cannot tamper with the property rights enshrined therein. In the case of these Fundamental Rights it is the people's verdict that should count, and I think we should not abuse the Judges for what they are doing according to the present Constitution.

SHRI BHUPESH GUPTA : Suppose we make the reference whether privy purses should be given to the princes or not?

SHRIMATI YASHODA REDDY : I agree even for that but privy purse is only one of the many matters; we may be having many other things. Whether the right of changing the Fundamental Rights should be given to Parliament is the issue and would it not be desirable for the Government to go to the polls on this issue and take the people's verdict?

SHRI RAM NIWAS MIRDHA : The hon. Member has suggested that we should go to the polls on this question. Well, I can assure her that this suggestion would also be seriously considered.