SHRI LOKANATH MISRA: It is not only press report.

SHRI CHANDRA SHEKHAR: I question even the statement of the Minister. If a press report comes in and any hon. Member rises in the House and wants to discuss the behaviour of a particular Governor of a State, is it proper to discuss the behaviour of the Governor of any State, and is it proper for the Minister to make a statement only because he made a promise to a particular Member? And after that all sorts of questions are put against the Governor when the Governor is not here to defend himself and all sorts of insinuations are being made. I should like your clear ruling . . .

SHRI BHUPESH GUPTA: I contest that if you allow that point of order.

THE DEPUTY CHAIRMAN: It is right that when the press report was mentioned Mr. Chagla had accepted to explain, and therefore he has collected the facts and he has put them before the House.

SHRI CHANDRA SHEKHAR: My point of order is perhaps not clear. My point of order is, if a particular Minister agrees to make a statement about the behaviour of a Governor only because a Member wants it, whether it will be constitutionally proper to allow the Minister to make such a statement in the House. I want your ruling on this.

SHRI A. D. MANI (Madhya Pradesh): I want to ask the Minister whether he considers the divulging by the Governor of Uttar Pradesh of the talks he had with Mr. Patnaik amounted to giving expression of his views to the press. If he had only confined himself to a private talk, we would have no objection. But the moment he goes and gives a press interview it becomes different and I am sure the Minister will agree that Governors do not give press interviews, and whatever view they want to express they announce it in the form of a communique. The Governor gave a press interview and it amounted to interference in Orissa politics.

SHRI M. C. CHAGLA: It is not true that the Governor gave any press interview. Well, you know how the press people surround you and how they want to find out information and how difficult it is to avoid them. My hon. friends do know it. This is what happened.

With regard to the question of my having made the statement, the facts of the matter are, this House wanted to know what was the truth about what had appeared in the press and I gave an assurance that we will make a statement (*Interruptions*) and that is the statement.

THE DEPUTY CHAIRMAN: Mr. Mulka Govinda Reddy, have you any point to raise?

SHRI BHUPESH GUPTA: Madam, another point . . .

THE DEPUTY CHAIRMAN: Please wait. I have called Mr. Mulka Govinda Reddy.

REFERENCE TO SUPREME COURT'S ADVICE TO THE PRESIDENT ABOUT DISPUTE BETWEEN THE U.P. LEGISLATURES AND THE ALLAHABAD HIGH COURT

SHRI MULKA GOVINDA REDDY (Mysore): Just a while ago, I had raised another issue with regard to the constitutional deadlock that has arisen out of the Supreme Court's remarks on the Presidential reference in the dispute between the Legislature of U.P. and the High Court. The Law Minister is here. I would like to know whether he can make a statement.

SHRI BHUPESH GUPTA (West Bengal): I would like to make the position . . .

THE MINISTER OF LAW AND SOCIAL SECURITY (SHRI A K SEN): In our submission, there is no constitutional deadlock Certain questions were referred to the Supreme Court for their opinion and the opinion has been given What further action is to be taken either by the Lok Sabha or by this House or by the Government remains to be seen. I do not accept the suggestion that there is any constitutional deadlock The Supreme Court, according to its own wisdom, has interpreted the provisions of the Constitution, so far as they relate to the provisions about the Legislatures in the States as also Parliament

SHRI BHUPESH GUPTA On this, I do not wish to say anything but I should like to have some guidance because we are adjourning today and we must know how we are going to function in the next few weeks. Even if it is not a constitutional deadlock, even if you maintain it, it certainly has arisen following the opinion expressed—not a verdict, but an opinion —on what may be described the conflict of authority between the legislative organ of the State and the judicial organ, the judiciary, of the State. Any such conflict is of a serious nature, is one which naturally shakes some of the very foundation almost. In view of that, I should like to know whether the Government has considered this matter as to how we should proceed because the Government party is the majority party; in all the Assemblies they function The Parliament and the Assemblies function really on the basis of the majority party Any decision cannot be passed unless the majority party takes the decision. Therefore, the majority party has a great responsibility in the matter, namely, the Congress Party here and also in the U P Assembly I should therefore suggest here that the majority party should take the initiative in consultation with the Opposition parties' representatives and also consult public opinion outside including the legal opinion at the bar, as to where we stand in regard to this matter. There should be a proper means of finding a solution to the problem which has arisen.

I have not spoken, Madam, intentionally on what I think about this thing My views on the ubject I reserve till such a discussion takes place. All I say is, we should not hastily run into any kind of action which would aggravate the situation but certainly, the dignity of both the Parliament and of the Judiciary must be established and reiterated in a proper way

SHRI G. MURAHARI (Uttar Pradesh) And also the freedom of the individual

SHRI BHUPESH GUPTA: And individual freedom

SHRI M P. BHARGAVA (Uttar Pradesh). I would like the Law Minister to circulate the printed copies of the judgment to the Members of Parliament and I would request the Rajya Sabha Secretariat and the Chairman to fix a date for its discussion in this House in the first week of the next session.

SHRI M RUTHNASWAMY (Madras): Is not this opinion of the Supreme Court an answer to the request of the President? It was the President that consulted the Supreme Court in regard to this matter and should we not wait for the next move of the President before we take any action?

SHRI FARIDUL HAQ ANSARI (Uttar Pradesh): In view of the opinion expressed by the Speaker of the Lok Sabha and also the Speaker of the Uttar Pradesh Vidhan Sabha and in view of some threat given by some Members of the Uttar Pradesh Vidhan Sabha, may I know whether the Government of India will move in this matter quickly?

SHRI A. D. MANI (Madhya Pradesh): The Minister of Law has said the other day that the judgment of the Supreme Court on this reference

[Shri A. D. Mani.]

was a deep erosion into the privileges of Parliament. Does that view represent his personal view or the view of the Government, and is he aware that there is a substantial body of opinion in the country which feels that the Supreme Court's opinion should be respected by Parliament and no extraordinary rights claimed for . . .

(Interruptions)

SHRI B. K. P. SINHA (Bihar): It is difficult for me to accept the contention of the Law Minister that there is no deadlock. Now the U.P. Assembly or, for the matter of that, any Assembly, has been taking action under the law of parliamentary privileges. The Supreme Court's judgment says, you cannot take action. If you take action, you have to take action under the supervision of the Supreme Court, even under the supervision of a subordinate judge and a munsiff. Parliament and the Assemblies are continuously sitting in this country, sometimes this Assembly, sometimes the other. If this opinion remains, then rowdy scenes may be created inside the precincts of the Assemblies and of Parliament. The Chairman may give some order and in two hours, a munsiff may is use an injunction. If this situation is not a deadlock, then I am afraid the word 'deadlock' is understood differently by me and the Law Minister. The Supreme Court has given an opinion. It was sought by the President. But then that opinion has created, in my opinion, an impossible situation. It is not only a question of erosion of the powers of Parliament and the Assemblies. The Law Minister is a master of understatement, in my opinion. He has put it very mildly. That opinion places the Parliament of India in subordination to all the courts . . .

SEVERAL HON. MEMBERS: No, no.

SHRI B. K. P. SINHA: Let me have my say. . . . including the court of a munsiff. The views of the Constituent Assembly made clear the intension of the framers of the Constitution, that within the limited circle drawn by the law of parliamentary privileges, Parliament shall be supreme and shall not be answerable to any outside body. That situation has been not badly disturbed, but—completely upset by the opinion of the Supreme Court. I therefore feel that this matter should receive very urgent and immediate attention by Government so that, by a proper constitutional amendment, the intention of the framers of the Constitution is carried out.

SHRI CHANDRA SHEKHAR (Uttar Pradesh): I should like to draw the attention of the hon. Law Minister to only one point. I am not entering into the controversy, and it is being preached that Parliament and the Legislature should have restraint. But may I know whether the hon. Minister's attention has been drawn to a press statement made by the Chief Justice of the Supreme Court somewhere in Punjab, in Chandigarh, that he is not satisfied only by giving the opinion . . .

SHRI BHUPESH GUPTA: On a point of order. He is now discussing the conduct of the Chief Justice of India.

SEVERAL HON. MEMBERS: No, no.

Interruptions

SHRI CHANDRA SHEKHAR: I am just asking the Minister whether his attention has been drawn to the reported statement of * * * *

Interruptions

SHRI BHUPESH GUPTA: On a point of order again . . .

SHRI A. D. MANI: On a point of order. The reference to the Chief Justice in that manner is disrespectful to the Supreme Court and so . . .

Interruptions

THE DEPUTY CHAIRMAN: Mr. Chandra Shekhar, if you are making any reference to a press report, please do it correctly.

SHRI BHUPESH GUPTA: What happens to * * *

***Expunged as ordered by the Chair.

THE DEPUTY CHAIRMAN: You do not let me finish. And, therefore, that part of your statement will have to be deleted.

SHRI CHANDRA SHEKHAR: Madam Deputy Chairman, I am just referring to the statement made by the Chief Justice of the Supreme Court that Judges make mistakes but politicians and legislators make mistakes very often.

SOME HON. MEMBERS: It is true.

SHRI CHANDRA SHEKHAR: It may be true * * * *

SHRI A. D. MANI: On a point of order, Madam. This is imputing motives to the Chief Justice of India.

SHRI CHANDRA SHEKHAR Of course, we should not impute any motives to him.

THE DEPUTY CHAIRMAN: You are speaking on the report that had appeared. Just stick to that.

SHRI CHANDRA SHEKHAR Of course, Madam Deputy Chairman, I do not impute motives to anybody. But I should like it to be equally understood that if what I am saying is imputing motives, then it is also imputing motives against the legislators of India and no person howsoever big he may be has any right to impute such motives. May I request the hon. Law Minister to take due notice of this aspect of the question?

SHRI BHUPESH GUPTA: On a point of order. Mr. Chandra Shekhar is very fond of points of order. Now I am on a point of order. He referred to the Chief Justice of India. I would invite your attention . . . *(Interruptions.)*

THE DEPUTY CHAIRMAN: Mr. Bhupesh Gupta.

***Expunged as ordered by the Chair.

SHRI BHUPESH GUPTA: I would like you to hear me. He said that we may or may not agree with the judgement. That we can discuss later on, the opinion given by the Chief Justice of India. The hon. Member wanted to suggest that the Chief Justice of India has, in giving this opinion, imputed motives to Members of Parliament or legislators. That is a very unfair remark. We may or may not be satisfied . . .

THE DEPUTY CHAIRMAN: Mr. Chandra Shekhar has read a report in the newspapers. He may correctly give that information to the Law Minister here without trying to interpret in so many words as he is doing . . .

SHRI A. D. MANI: On a point of order, Madam . . .

THE DEPUTY CHAIRMAN: Please resume your seat. I want Mr. Chandra Shekhar to finish his statement as briefly as he can.

SHRI CHANDRA SHEKHAR: Madam Deputy Chairman, therefore, I shall request the Law Minister and, through him, the Government of India, to advise not only legislators but also the Judges of the Supreme Court to have restrain until and unless the matter is finally decided.

SHRI A. D. MANI: On a point of order. This sentence should be expunged. It is a reflection on the Supreme Court.

شری پیارے لال کریل ۔۔ظالب۔۔

(اتر پردیش) : سپریم کورٹ کے اس فیصلہ میں ایک خاص بات کی طرف توجہ دلائی گئی ہے اور وہ یہ ہے کہ پارلیمنٹ سپریم نہیں ہے - سورنگی پارلیمنٹ کے اندر نہیں ہے ۔

Parliament is not sovereign but the Constitution is sovereign.

[شری پیارے لال کریل 'طالب']

جسٹس کہ فریمرز آف دی کنسٹی ٹیوشن کی جو باڈی تھی اس کے چیئرمین ڈاکٹر امبیڈکر نے کہا تھا کہ پارلیمنٹ کے وہی ادھیکار ہیں جو برٹش پارلیمنٹ کے ادھیکار ہیں لیکن یہاں پر کلیرلی انہوں نے یہ بات بتائی ہے کہ پارلیمنٹ سورن ناتی نہیں ہے بلکہ کنسٹی ٹیوشن سورن ہے ؟ جب کہ فریمرز آف دی کنسٹی ٹیوشن کا یہ انٹینشن نہیں تھا - ان کا انٹینشن یہ تھا کہ جو پریولیجز برٹش پارلیمنٹ کے ہیں وہی ہمارے پریولیجز ہونے چاہئیں - میں لا منسٹر صاحب سے یہ عرض کرنا چاہتا ہوں اور خاص طور پر یہ بات کہوں گا کہ ان تمام باتوں کو ایکزامن کرنے کی اشد ضرورت ہے اور بہت جلد ہی اس کا فیصلہ کیا جانا چاہئے - یہ ہمارے ملک ادھیکاروں کا سوال ہے -

†[श्री प्यारे लाल कुरील 'तालिब' (उत्तर प्रदेश) सुप्रीम कोर्ट के इस फैसले में एक खास बात की तरफ तवज्जह दिलाई गई है और वह यह है कि पार्लियामेंट सुप्रीम नहीं है । सावरनटी पार्लियामेंट में नहीं है । Parliament is not sovereign but the Constitution is sovereign. हालांकि फेमर आफ दि कोन्स्टीच्यूशन की जो बाडी थी, उस के चेयरमैन डा० अम्बेडकर ने कहा था कि पार्लियामेंट के वही अधिकार है जो ब्रिटिश पार्लियामेंट के अधिकार हैं लेकिन यहां पर क्लीयरली उन्होंने यह बात बताई है कि पार्लियामेंट सावरन बाडी नहीं है बल्कि कान्स्टीच्यूशन सावरन है । जब कि फेमर आफ दि कान्स्टीच्यूशन का यह इन्टेनशन नहीं था । उन का इन्टेनशन यह था कि जो प्रिविलेज ब्रिटिश पार्लियामेंट के हैं वही हमारे प्रिविलेज होने चाहियें । मैं ला मिनिस्टर साहब से यह अर्ज करना चाहता हूं कि और खास तौर पर यह बात कहूंगा कि उन तमाम बातों को एग्जामिन करने की अशद जरूरत है और बहुत जल्द ही इस का फैसला किया जाना चाहिए । यह हमारे मौलिक अधिकारों का सवाल है ।]

†[ ] English translation

SHRI G MURAHARI I would like to point out to the Government that while considering this issue, they should take into consideration the question of the fundamental liberty of the citizen in this country As we are aware, in all the States and at the Centre, there is one party which has an overwhelming majority And it is quite possible that this party might commit mistakes Then where is the remedy for the ordinary citizen of this country?

AN HON MEMBER Have faith in democracy

SHRI G MURAHARI We have faith in democracy But it should not be the democracy of brute majority That is the point That is why the Supreme Court has given this opinion Therefore, I would request the Government to take this into consideration and keep this in mind before taking any action, because we have been hearing threats by the U P Government and certain other politicians There have been illegal rules passed by Parliament and Assemblies where the citizen has been denied his liberty and the Supreme Court has ruled that such enactments are illegal Therefore, *if we take any action, it will put the* fundamental rights of the citizen in this country in jeopardy That will be ruining the very basis of our democracy

THE DEPUTY CHAIRMAN What is it that you really want?

SHRI G MURAHARI: That is the thing which the Government should keep under consideration

(Interruptions).

THE DEPUTY CHAIRMAN I only want the discussion to be pinpointed on the subject under discussion which the Law Minister is ready to reply I do not want any other extraneous matter to be discussed today, now

شری عبدالغنی (پنجاب) : میں کل چنڈی گڈھ تھا اور میں نے چیف جسٹس آف انڈیا کی تقریر کو غور سے سنا - میں صرف یہ عرض کرنا چاہتا ہوں کہ چونکہ یہ بنیادی جھگڑا ہو گیا ہے کہ سپریم کورٹ یا ہیج سدریم ہے یا لجسلیچر - میری درخواست ہے کہ ڈیموکریسی کو مد نظر رکھتے ہوئے بھی اور انصاف کی جو وقعت ہونی چاہئے اس کو مد نظر رکھتے ہوئے اس پر ڈیبیٹ ضرور ہونا چاہئے - تاکہ کسی نہ کسی طرح سے ملک اندنی مسئل کا حل نکال سکے - اور ججوں کی بھی عزت رہے اور لجسلیچروں کی عزت میں بھی کوئی فرق نہ آئے - جو ہمیں حق حاصل ہیں اور جو حقوق ہیں وہ بھی محفوظ رہیں -

†[श्री अब्दुल गनी (पजाब) मैं कल चडीगढ था और मैं ने चीफ जस्टिस आफ इडिया की तकरीर को गौर से सुना। मैं सिर्फ यह अर्ज करना चाहता हू कि चूकि यह बुनियादी झगडा हो गया है कि सुप्रीम कोर्ट या जज सुप्रीम है या लेजिस्लेचर। मेरी दरख्वास्त है कि डेमोक्रसी को मद्देनजर रखते हुए भी और इसाफ की जो वकत होनी चाहिए उसको मद्देनजर रखते हुए इस पर डिबेट जरूर होना चाहिए। ताकि किसी न किसी तरह से मुल्क अपनी मुश्किल का हल निकाल सके। और जजो की भी इज्जत रहे और लेजिस्लेचरो की इज्जत मे भी कोई फर्क न आये। जो हमे हक हासिल है और जो हकूक है वह भी महफूज रहे।]

SHRI D P KARMARKAR (Mysore) Madam Deputy Chairman, I would like to say one word I want to know what is the precise scope of this discussion, whether this discussion can be extended to give some advice to the Law Minister or to the Government or any one who wishes to proceed with it There are some hon Members who are not satisfied with the Law Minister's statement as such at this stage May I respectfully submit that before we ourselves have carefully considered the opinion given by the Chief Justice of India in response to the President's request I am afraid, any long discussion would be premature. Here is a very simple proposition We have the opinion of the Legislature and the opinion of the Supreme Court, their outlook, regarding the respective jurisdiction in respect of the particular matter which arose before the U P Legislature They wanted to take action The party concerned went to the Supreme Court The Supreme Court intervened and the U P Legislature thought that there was a real deadlock To my mind there does not appear to be a real deadlock so far as the discussion here is concerned And therefore, the President, which means the Government of India, with full responsibility referred the matter to the Chief Justice of the Supreme Court Now the Chief Justice, along with his colleagues in a constitutional manner has given an opinion There, so far as I can see, that opinion has to be respected by the Government Now the Supreme Court's opinion is as good as a directive It is always given

† [ ] Hindi translation

[Shri D P Karmarkar]

as opinion but their advice has a mandatory character in that sense And therefore for the time being really there need not be any trouble here Any trouble possibly is in Uttar Pradesh So far as I know they have been advised to take matters lightly, slowly, be patient about it, legislature and everybody And therefore, it is open to them, on the motion of the Government or, if the Government does not proceed in the matter, on the motion of any independent Member, for this House to discuss this matter At the present moment, may I respectfully submit, going into the merits of the thing would be absolutely premature? If we do that, well, we might come to hasty conclusions Of course it is open to us to say that this being a very serious matter the Government may be asked to give as speedy consideration as possible In the meantime, we can take it for granted that no crisis is going to happen either in U P or elsewhere

THE DEPUTY CHAIRMAN You have heard Mr Karmarkar's directive to this hon House but the deadlock is that there are so many more hon Members who want to express their views and seek clarifications Mr Shukla

श्री महाबीर प्रसाद शुक्ल (उत्तर प्रदेश) महोदया, मै यह निवेदन करना चाहता हू कि यह विषय जितना गभीर है, इस सदन को उतनी ही गभीरता से इस पर विचार करना चाहिये । यह किसी दल विशेष का या किसी पार्टी का प्रश्न नही है । जो विषय सुप्रीम कोर्ट के चीफ जस्टिस या सुप्रीम कोर्ट के सामने उनका मत व्यक्त करने के लिये राष्ट्रपति ने प्रस्तुत किया था, उस पर जो उन्हो ने अपना मत व्यक्त किया है उसका सीधा सम्बन्ध इस पार्लियामेट के दोनो सदन और इस देश के सारे राज्य के विधान मडलो की प्रिविलेजिज से है उन के विशेषाधिकारो से है, आज हमारे सदन के कुछ सदस्यो ने यह मत व्यक्त किया है कि सुप्रीम कोर्ट की राय हमारे द्वारा जो कानून बनाये जाते है, उन पर ली जाती है, लिहाज़ा इस सदन की प्रिविलेजिज के सम्बन्ध मे भी सुप्रीम कोर्ट ही सुप्रीम है सुप्रीम कोर्ट सुप्रीम है अथवा यह सदन सुप्रीम है, यह प्रश्न ऐसा है जिस पर विचार इस सदन को करना है । यह सदन सावरेन है क्योकि जो सावरेन पीपुल है उन के प्रतिनिधि इस सदन मे है जिन्हो ने सविधान का निर्माण किया है और जैसा चाहे सविधान को रख सकते है । इस लिये इस सदन की जो सर्व प्रभुसत्ता है उस पर विचार करने के लिये सुप्रीम कोर्ट की राय पर गभीरता से विचार करना होगा और इस जल्दबाजी की बहुत जरूरत नही है । इसलिये मै यह समझता हू कि इस सदन मे टेम्पर लूज़ करने से कोई लाभ नही होगा ।

THE DEPUTY CHAIRMAN: Do not bring heat, please Make your point in one minute.

श्री महाबीर प्रसाद शुक्ल : महोदया, दो मिनट मे समाप्त कर दूगा । तो यह दलगत प्रश्न नही है । यह सारे सदन की प्रिविलेजिज का प्रश्न है । सभी दलो के जो प्रतिनिधि है उनकी प्रिविलेजिज का प्रश्न है । इसलिये इस पर दलगत भावना से विचार नही होना चाहिये और गवर्नमेट को अवसर दिया जाना चाहिये ताकि वह गभीरता से इस पर विचार कर सके । इस के साथ जैसा कि श्री एम० पी० भार्गव ने सजेस्ट किया, हम को फैसले की नकल मिलनी चाहिये ताकि हम उस पर विचार कर सके और अगले अधिवेशन के शुरू मे ही इस पर विचार करने का हम को अवसर मिलना चाहिये । यही मेरा निवेदन है ।

SHRI I K GUJRAL (Delhi): I have been hearing with concern the type of debate, if I may call it, we have been having. Unfortunately an impression has been created that there are some of us who are not interested in upholding the respect of

the Supreme Court. I think that is far from ture. This House is absolutely unanimous that the respect for the Supreme Court and its role must be preserved because that is one of the 'musts' in our country. The Supreme Court has given its opinion or advice to the President. Now there I agree with some of my friends that we are not in a hurry to arrive at a decision but this is also a fact that not being in a hurry to arrive at a decision should not imply that we can postpone it as long as we wish to because if we do not in a very reasonable time, give guidance to all the Legislatures and to the Houses here, such like things may be enacted which may neither add to the dignity of the Houses nor to the dignity of our image outside. I would therefore submit to the Law Minister that he might examine and the Government might examine the whole issue as early as possible and if need be, a Special Session of the Parliament may be called to debate this and decide it and if necessary an amendment of the Constitution may be brought forward so that the wording of the Constitution is in line with the spirit of the thinking of the framers of the Constitution. I am one of those who feel and I would like to submit to the Law Minister that the framers of the Constitution . . .

SHRI BHUPESH GUPTA: Their discussion is also there.

SHRI I. K. GUJRAL: The framers of the Constitution, to my mind, meant something different than what has been opined and in this I mean no disrespect to the Supreme Court. It can be a matter of opinion but I feel that that basic spirit which was in the minds of the framers of the Constitution and the Constituent Assembly should be preserved because only that will take us forward and only that will make the democracy and the running of the Constitution safer in our land.

SHRI A. K. SEN: Madam, Deputy Chairman, this is not the first occasion when a pronouncement by the highest court in the country has not exactly found agreement in the minds of many of us here and in the other House so far as they understood the law to be up-to date and many have felt--whether they are right or wrong is not the question here but many have felt—sincerely that the meaning which the Constitution makers wanted to imply by the provisions which came up for determination by the Supreme Court was not the meaning which has found acceptance with the Supreme Court, and even one previous decision of the Supreme Court has been more or less reversed by the present opinion namely, we have so long followed the previous decision in thinking that the privileges of the Parliament as also the State Legislatures were not subjects of Part III of the Constitution. That was the decision of the Supreme Court in M.S. Sharma's case but the present opinion makes a departure from the previous decision but we have at the same time followed this basic principle namely, that so long as the Parliament does not reverse a decision of the Supreme Court or any other court in the constitutional manner which is laid down in our Constitution, that decision holds the field. Therefore it is no use trying to debate here and now whether the Supreme Court decision is right or wrong excepting to give expression to our feelings, individual feelings or collective feelings, that the opinion might have caused what I termed in the other House as an erosion of our privileges as we understood them. What I meant was that we have understood the privileges in a particular context and according to the latest decision, there has been certainly an erosion of the quantum and extent of privileges which we accepted as rightly belonging to us. How far we decide in the future to restore our originally as we understood them originally before the present opinion was given will be a matter which will have to be decided by both the Houses because no Consti-

[Shri A. K. Sen]

tutional Amendment would be possible without the concurrence of both the Houses in accordance with the provisions of the Constitution. Whether we decide to bring about any such amendment or not, it is too early to express the view of the Government on such a vital point. Mr. Gupta cautioned us against being hasty but at the same time there were certain observations in his statement which meant to imply that we have been rather tardy in coming to a decision. In my submission, the House does not expect nor does the country expect the Government to take any hasty decision on such an important matter. Whatever decision we arrive at, before we come up to the Parliament, will have to be arrived at after due consideration of the implications of the whole subject, the necessary powers which both the Houses and the Legislatures must be armed with in order to make their deliberations effective and in order to preserve the authority which must be conceded to the Parliament as also the State Legislatures as representing the sovereign will of the nation. The Government have already undertaken the task of considering the implications of this opinion and will no odubt in due course arrive at a conclusion with which it will come up before both the Houses. It will be premature to try to fix a date for a discussion on this subject. The Government will no doubt come to the Parliament immediately after they arrive at a decision on this question but in the meantime it is a fair request of Mr. Bhargava that we should circulate printed copies of the opinion of the judgment, both the majority and minority judgment, so that the Members will read for themselves the judgment and will appreciation also the implications of the judgment. When I say 'judgment' I mean the opinion because there has been some quarrel over the words 'opinion' or 'verdict' . . . .

AN. HON. MEMBER: Opinion, according to the judgment.

SHRI A. K. SEN: It is a judgment in substance though technically it is an opinion but as I said, let nothing be said here or in the other House or in any of the State Legislatures which may convey the impression that our Legislatures or our Parliament are lacking in due respect for the judiciary or for the Supreme Court. But nothing would be more destructive of our democratic fabric than disrespect for the judiciary. The Constitution has given them the right to arrive at a finding which may not accord with our view of the law. But the remedy for that is not to decry the judiciary, but change the law if you think it necessary. Whether you think it necessary or not is a different matter. On many other occasions Parliament has changed the law when the Supreme Court took a view which had not been in accord with the opinion of Parliament. Well. that is a different matter. Parliament is entitled to change the law. But let nothing be said here or elsewhere which would imply that we do not respect our Judges. We do respect our judges even when they go wrong They are entitled to go wrong and we are entitled to change the law according to our notions of right or wrong. To what extent a change of law would be called for will be a matter which no doubt will have to be determined by both the Houses, and the Government will no doubt place its recommendations and its views before them.

SHRI BHUPESH GUPTA: What about us, Opposition?

SHRI A. K. SEN: I say both Houses; it includes the Opposition, also Mr. Gupta, and I have no doubt that, before the Government come to a final decision on the point and before they approach Parliament with a firm decision, no doubt the Leaders of both the Houses will consult the leaders of all the Groups which are represented here as also in the other House. Mr. Gupta was very anxious to know whether they will be consulted. They certainly will be consulted, and they

certainly will be told what the views of the Government would be in this matter.

SHRI BHUPESH GUPTA: I want the Opposition to be consulted at every stage. It is not that after you have formulated an opinion you come to the Opposition and say this is our opinion. I wish that the matter be discussed with all parties, together, and that at every stage you consult the Opposition.

SHRI A. K. SEN: It is very difficult to discuss, at every stage, with Mr. Gupta, because he is not always very accommodating. But let us not quarrel about stages or every stages. I do not think that even the Congress Party representatives will be consulted at every stage.

SHRI B. K. P. SINHA: I fail to understand the claim of the Opposition. There have been more important amendments of the Constitution; before Government formulated their proposals and put them before the House neither the Opposition nor the Congress Party was ever consulted. I fail to understand why a departure should be made in this matter.

SHRI A. K. SEN: In such a matter, Madam Deputy Chairman, it would be fair to consult the Opposition, because we have never treated the question of privilege as belonging to any particular party or group, and during my seven years of association with the Privileges Committees of both this House as also of the other House I have seen that our decisions have always been unanimous and we have never viewed a matter of privilege from a party point of view. Let it be the same in this particular case also, and whatever may be the decision of the Parliament ultimately, it will be a happy day if we decide unanimously on such an important matter.

I think there was some suggestion from the other side, from some hon. Members, that we should do nothing to change the law as expressed by the Supreme Court. Well it is certainly not always possible. We respect the decisions of the Supreme Court, but the law has to be changed if the Parliament thinks that it should be changed because in the matter of making the law Parliament is certainly supreme and will continue to be supreme, but so long as they act within the ambit of their powers, their decisions will certainly hold the field. Now, Madam Deputy Chairman, I can only say that we shall try to give this matter our most anxious consideration. The Opposition will be consulted, if not at every stage, certainly substantially, in this matter, and the Exectuive Committee of the majority party, the Congress Party . . .

SHRI BHUPESH GUPTA: Why not a Joint Session of Parliament discuss it?

HON. MEMBERS: No no.

THE DEPUTY CHAIRMAN: You can make that suggestion later.

SHRI A. K. SEN: I cannot indulge in such quick flights as my hon. friend here.

SHRI BHUPESH GUPTA: But under the Constitution you can always call a Joint Session.

SHRI A. K. SEN: It is not for me to commit the Government to such a course. The two Leaders of the Houses will no doubt deliberate on this matter and will inform the House accordingly, but I hope there will be no Joint Session necessary in such a matter. The Opposition will be consulted and, as far as I know, the Executive Committee of the Congress Parliamentary Party has already taken up the matter and has initiated discussion, and the Government will no doubt keep in close touch with all the parties, and I hope, Madam Deputy Chairman, we will arrive at a decision quickly. But quickly does

[Shri A. K. Sen]

not mean immediately. Such a matter cannot be decided immediately, but let us hope that during the next session . . .

SHRI BHUPESH GUPTA: You are the Law Minister also.

SHRI A. K. SEN: Yes, but not a magician like Mr. Gupta. Therefore, Madam, let us await a careful consideration of the entire matter, if I may say so, make an impartial and objective study of it and then consider it at a later stage in both the Houses.

Thank you very much.

REFERENCE TO STUDENTS' AGITATION IN ORISSA AND THE SETTING UP OF AN INQUIRY COMMISSION

SHRI LOKANATH MISRA (Orissa): With your permission, Madam, I would like to raise a subject of public importance. We have been receiving, Madam, alarming reports about the repression of students in Orissa by the State Government. Strictly speaking, it is a State matter, the subject of law and order is a State matter, but we cannot sit here unconcerned when a part of the country is in chaos and, naturally, I would like that the Home Minister in the Centre should intervene in the matter. It is, I think, particularly because of the lack of confidence in the present Ministry and also because of the delay in setting up the inquiry commission that there has been the chaotic condition prevailing in Orissa. So I would repeat that the Home Ministry should intervene in the matter and the setting up of the commission of inquiry should be expedited.

Thank you.

REFERENCE TO RELEASE OF DETENUS ARRESTED UNDER THE D.I.R.

SHRI BHUPESH GUPTA: (West Bengal): Today is the last day and that notice I gave in the beginning of the Session. Up to now Government have not given proper answer. Now, as you know, I raised the point about the use of the D.I.R., specially Rule 30, for detention of people without trial. I pointed out at that time, Madam Deputy Chairman, and have been pointing out ever since that some people were arrested in 1962 and some of them are still in detention, for two years or so. Among them are 13 in Bombay including leaders like Mr. B. T. Ranadive, Mr. Parulekar and others; then in Bengal we he have got 2, in U.P. there is 1, and there are some other people also. Now two years have passed; still they are not being released. I should like to know from the Government why it should not be possible for the Government to release the detenus, the 15 or 17 detenus, who had been arrested two years back. Not only are they not releasing them, they are going on using this D.I.R. to suppress legitimate, peaceful agitations; people are being arrested in connection with the food agitation and other things under the D.I.R. May I ask the House—when the House passed this D.I.R.—did you authorise the Government to use it in order to suppress legitimate agitations? In Bihar they are using it; in Bengal they have been using it. We just take it lying even when 2,000 and 3,000 people are roped in under the D.I.R.—they perhaps released some of them later.

SHRI MULKA GOVINDA REDDY (Mysore): It is going on in Mysore also.

SHRI BHUPESH GUPTA: This, Madam, is going on all over the country, and I do request, through you, before we adjourn, the Home Minister, again, to intervene. D.I.R. should not be used to suppress the trade union or the people's movement, and these detenus, in Bombay, U.P. and Bengal should be released, who have already spent two years in prison, and others too who had been arrested under the D.I.R. The cases against