[Shri C. R. Pattabhi Raman.]

the premium will also be assessed and nothing can be said now. We may think of a certain area but the theatre of operation may be somewhere else. With the fast flying that we now have, it may happen anywhere in India. I do not want to occupy more of the time of the House.

It has been said that compensation should not be used up in hospitalisation and treatment; I think Dr. Seeta Parmanand raised that point. I may point out that the Employees State Insurance Scheme separately provides for it and that Act is being extended to various kinds of employment, for all the coal mines and so on.

Sir, I do not want to take any more time and I conclude by saying that I am glad this Bill has met with the approval of every section of the House and I hope it will be accepted by the House.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): The question is:

"That the Bill to impose on employers a liability to pay compensation to workmen sustaining personal injuries and to provide for the insurance of employers against such liability, as passed by the Lok Sabha, be taken into consideration."

The motion was adopted.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): We shall now take up the clause by clause consideration of the Bill.

Clauses 2 to 24 and the Schedule were added to the Bill.

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

SHRI C. R. PATTABHI RAMAN: Sir, I move:

"That the Bill be passed."

The question was put and the motion was adopted.

REPORT OF THE SELECT COMMITTEE ON THE MAJOR PORT TRUSTS BILL, 1963

SHRI SANTOSH KUMAR BASU (West Bengal): Mr. Vice-Chairman, with your permission I beg to present the Report of the Select Committee on the Bill to make provision for the constitution of port authorities for certain major ports in India and to vest the administration, control and management of such ports in such authorities and for matters connected therewith.

MOTION *RE.* A JUDGMENT OF SUPREME COURT AND CONTINUED DETENTION OF PERSONS UNDER THE DEFENCE OF INDIA ACT, 1962 AND THE RULES MADE THEREUNDER.

THE VICE-CHAIRMAN (SHRI M. P. BHARGAVA): There are two more minutes to go before it is 3 o'clock, but if the House has no objection I can ask Shri Bhupesh Gupta to move his motion.

SEVERAL HON. MEMBERS: Yes.

SHRI BHUPESH GUPTA (West Bengal): Mr. Vice-Chairman, I beg to move the motion standing in my name in today's list of Business, namely:

"That the continued detention of persons under the Defence of India Act, 1962, and the Rules made thereunder in the context of the judgment delivered by the Supreme Court on the 2nd September, 1963 in the case Makhan Singh Tarsikka and Others *versus* the State of Punjab and Others, be taken into consideration."

Hon. Members will remember that four months ago, on May 10th, I rose to speak on detention without trial, under the Defence of India Act and the Defence of India Rules, in this House. It is refreshing to note that the Law Minister now calls the detention laws a drastic measure. I was then fortified by the opinions given

by the eminent jurists of the country, the former Atterney-General Shri M. C. Setalvad and others. In the four months that have passed since I spoke here last, we have once again known how eternal vigilance must always be the price of liberty. May I to-day Sir, with your permission, express our great gratitude and profound admiration for the great service that Mr. Setalvad and other jurists have rendered to the cause of the Constitution, to the cause of liberty, to the cause of the defence of the Fundamental Rights and to the cause of the dignity of the nation which is engaged in a serious endevour and struggle for establishing the rule of law on secure and invincible democratic foundations.

Many of us will have gone in our time but the service which Mr. Setalvad and others have rendered will ring round the corridors of history.

3 P.M.

[THE DEPUTY CHAIRMAN *in the Chair.*]

We are proud we have such an intrepid man in our midst today. I was reminded in this connection of the great service Pandit Motilal Nehru rendered to the country when in this very premises some, many, years ago in unfree India he spoke out in his eloquent and forceful voice against the security laws and the preventive detention laws. May I ask the hon. Minister in this connection, is it enough to have a statue of Pandit Motilal Nehru in the precincts of Parliament or must we go by the traditions which that valiant son of India had established for us to carry forward? However, when I stood before this House on the subject and made my submission before the hon. House, I said that the law that we have enacted, the provisions of the Defence of India Act authorising the detention, in violation of the fundamental law of the land, namely, the Fundamental Rights contained in Part III of our Constitution, was one which—I then submitted in all humility—we as Members of Parliament had no competence and power to pass. We had no power to pass such a law in disregard of the mandatory provisions of the Constitution. At that time I appealed to the House to rectify the great mistake we had committed in enacting the measure in defiance of the Constitution, perhaps unwittingly. If the detention law is bad, invalid, unconstitutional, the fact that the detenus's remedy in a court of law is temporarily suspended during the emergency does not make a bad law good, an invalid law valid and an unconstitutional law constitutional. If a theft is committed in your house, the crime remains even if the police station is closed for accepting or entertaining the complaint on that account. The theft remains. Here in Parliament we are mainly concerned with the basic questions namely (i) whether Parliament has the power to make any law which is inconsistent with articles 14, 21 and 22 of the Constitution and (ii) whether the relevant provisions of the Defence of India Act and the Defence of India Rules are valid. Madam Deputy Chairman, we must seek answers to these questions in the light of the Supreme Court judgment today. When I say judgment, I mainly rely on the majority judgment and not merely on the minority judgment though every jurist and constitutional lawyer knows that minority judgments are also very important. The other day, even the Home Minister in connection with another case, that of Mr. Pratap Singh Kairon, was copiously quoting from the minority judgment. We cannot blow hot and cold, I hope. When I raised these basic issues during the last session, the hon. Shri Lal Bahadur was pleased to say—here I am quoting from the proceedings:—

> "We will certainly wait for the opinion of the Supreme Court and as was said just now by Mr. Basu, the opinion of the Supreme Court will have its own weight on the Government."

He continued:

> "We will have to accept the views of the Supreme Court, and, if necessary, make modifications."

I have quoted from the statement made in this House by the former Home Minister. Hon. Members will

[Shri Bhupesh Gupta.]

have noted that the former Home Minister was rightly attaching great importance to the opinion of the Supreme Court and was assuring the House and the country that such opinion will be given its due weight and respect. May I ask the hon. Members of the Government whether they are living up to the assurance that was given by the Home Minister and are giving due weight and respect to the clearly defined and expressed opinion of the Supreme Court in the matter under consideration. Everybody will agree with the Home Minister that no responsible government can do otherwise than show the utmost regard and respect to the opinion of the highest court of the land. Without this, there cannot be any rule of law. We have now before us the opinion of the Supreme Court given in the judgment in the case of Makhan Singh Tarsikka and Others *versus* the State of Punjab and Others, and I have, Madam Deputy Chairman, got a certified copy of the judgment for the benefit of ourselves in this House. Indeed, the judgement has shifted the whole matter once again back to Parliament for the law makers to apply their minds and do what is called for in the situation very urgently and we must not stand on false prestige much less indulge in pettifoggery. We are the supreme Parliament of the country. We are politicians; we are statesmen; may of us here perhaps are politicians, leaders of public opinion. When the Supreme Court has called upon us to fulfil our function and responsibility, it is our duty to do so in all seriousness and solemnity. The situation undoubtedly is serious for any pettifoggery or legal casuistry to be indulged in by some people. Today I stand here under the sublime light of the Supreme Court judgment just as on the previous occasion I came here buttressed by the opinion of legal luminaries of the country and I would appeal to the hon. Members to rise to the occasion and bring their great collective wisdom to bear upon this subject in full measure. Let it not be said by the generations, that would follow us that we allowed petty narrow political considerations to guide us in a matter of fundamental importance for the Constitution of the country, not only for the present but also for the future. Hon. Members know that there were two main issues before the Supreme Court in the above-mentioned detention appeals preferred by the detenus, namely, (i) whether there is any remedy for a citizen for enforcing the fundamental rights in a court of law during the emergency, and (ii), what is the effect of article 359 on the Presidential Order, whether an order under aticle 359 can suspend the Fundamental Rights enshrined in articles 14, 21 and 27 of the Constitution or does it merely suspend the remedy? Does the Presidential Order issued under article 359 widen the powers of Parliament to make laws in violation of the Fundamental Rights contained in Part III of the Constitution? Does it widen the powers of the executive Ministers to pass a law again in violation of the Fundamental Rights? These are vital basic questions today and a clear, categorical answer must be found in terms of democracy and of our Constitution. As far as the first issue, namely, the remedy of moving the courts, is concerned, the majority judgment of the Supreme Court has held that during the emergency the remedy is barred. The minority judgment, however holds that detentions are illegal and the remedy under section 491 of the Criminal Procedure Code is not barred. I proceed on the basis of the majority judgment and with respect also for the minority judgement. But we are not here primarily concerned with what right a detenu has got or has not got in a court of law. We are immediately, Madam Deputy Chairman, concerned here with the more basic question whether we have the power to pass such a law and whether the Constitution has given us such a power. We are concerned with whether a law is valid and should continue on the Statue Book or not. I hope the Law Minister and the

Home Minister will not seek to cloud the issue in regard to this question. Before I pass on to the other subject under discussion, I should like the Minister to say why the Government did not seek the opinion of the Supreme Court under article 143 of the Constitution as to the constitutional validity or otherwise of the main provisions of the Defence of India Act and the Defence of India Rules. On many previous occasions, when such issues arose, the Government sought the opinion of the Supreme Court by reference by the President to the Supreme Court. In fact, article 143 of our Constitution is intended for such occasions. The fact that the Government did not seek the opinion of the Supreme Court under article 143 in regard to this issue shows that it was afraid that such an opinion might hold the law as untenable or unconstitutional. That is why it fought shy of using article 143.

The second point I would like to mention in this connection is why the Attorney-General is not summoned here to tell us frankly whether he would advise us to have such a law on the Statute Book. Let him come here and advise us with arguments how we can have such a law which is patently unconstitutional. I should like, however, to invite the attention of the House in this matter to what the Attorney-General said before the Supreme Court when he was appearing for the Government of India. He said before the Supreme Court that the law was bad In fact, even the Law Minister speaking in the other House said that the law was bad and what he said, I think, is worth recalling today in this House. I think he said that only an insane person would say that such a provision was in accordance with the Constitution. I do not want to spend time in reading the entire quotation, Madam, I understand that the presiding Judge of the Supreme Court, Mr. Justice Gajendragadkar, made a striking observation that unconstitutionality was writ large on the face of the Defence of India Act.

Now, let me come to the judgment of the Supreme Court and the declaration of the law on this subject. That is important. Right at the beginning, Madam Deputy Chairman, I would lik to say in all solemnity and with all firmness in this House that both the majority and the minority Judges—kndly note both the majority and the minority Judges—are of the opinion that the Act has been passed in disregard of the Constitution. May I, Madam Deputy Chairman, quote what the majority judgment says in this respect?

> "Parliament has chosen to pass the Act under challenge and has disregarded the Constitutional provisions of articles 14 and 22."

This is the clear opinion of the majority judgment and no amount of legal casuistry will unsay what has been said by the Judges in the Supreme Court.

Now, let me come to the pronouncement of the majority judgment with regard to article 359 and the Presidential Order thereunder. Having pointed out that article 358, with which we are not concerned here, suspends article 19 with which again we are not concerned and the abrogation is complete the majority judgment says . . .

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI R. M. HAJARNAVIS): Will the hon. Member indicate which paragraph he is quoting from and which page?

SHRI BHUPESH GUPTA: I shall deal with everything. Wait a minute. You are buttressed by the Law Minister by your side; consult him. Having pointed that out, the majority judgment says in regard to article 359—I shall never be dishonest to the House; I have been here for twelve years and . . .

DIWAN CHAMAN LALL (Punjab): Mr. Bhupesh Gupta has not understood the point raised by the Minister of State. What he wants to know is which page and which paragraph the hon. Member is quoting from. Surely he is within his rights in demanding that. Please give him the page and the paragraph.

SHRI BHUPESH GUPTA: He has got the judgment. It will take time, Mr. Chaman Lall, you don't understand. (*Interruptions.*) All right; I will give it if he says that he has not found it and if he has not found it what is he there for as Home Minister? We are only a small Party, they are a big Government and you mean to say that I have to find out the paragraphs for him here.

DIWAN CHAMAN LALL: Surely, it is the right of an hon. Member to demand the page and paragraph he is quoting from.

SHRI BHUPESH GUPTA: But it is a reflection on the Government that the Government does not know to find out the paragraph.

DIWAN CHAMAN LALL: It is a very wrong thing on my hon. friend's part. My hon. friend is demanding the page and the paragraph. Why can't he give the page and the paragraph?

SHRI BHUPESH GUPTA: We shall give the page and the paragraph. It is from the judgment that I have quoted. Does he challenge it?

DIWAN CHAMAN LALL: Then give them.

SHRI BHUPESH GUPTA: You are only taking my time. Now, I realise. Everything will be given, page and paragraph.

THE DEPUTY CHAIRMAN: When you have quoted from the judgment, please give him the page. And you are quoting from the judgment.

SHRI BHUPESH GUPTA: All right; I will give everything, because I find that the Home Ministry did not have time to find out the paragraph and the pages. I will help my friends in the Home Ministry. Now, this is what the majority judgment said in regard to article 359 with which we are now concerned. Here, Madam Deputy Chairman, I have got a certified copy of the judgment. Must it be attested here? I can pass on the judgment to the Home Ministry. I would now. . .

THE MINISTER OF LAW (SHRI A. K. SEN): Madam, I am not at all contesting the authenticity of the judgment. Even if the hon. Member reads out from an ordinary copy I would have accepted it. But as a matter of curiosity can I ask from where he got that seal?

SHRI BHUPESH GUPTA: I would invite your attention to page 11, paragraph 2. It is page 11 in this copy. I do not know, Madam, whether you have got a copy. Kindly refer to it, but I do not know whether it is in the same order, this page marking in your copy. This is what has been said:

> "Article 359, on the other hand, does not purport expressly to suspend any of the fundamental rights. It authorises the President to issue an order declaring that the right to move any court for the enforcement of such of the rights in Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned shall remain suspended for the period during which the Proclamation is in force or for such shorter period as may be specified in the order. What the Presidential Order purports to do by virtue of the power conferred on the President by Article 359(1) is to bar the remedy of the citizens to move any court for the enforcement of the specified rights. The rights are not expressly suspended, but the citizen is deprived of his right to move any court for their enforcement. That is one important distinction between the provisions of Article 358 and Article 359(1)."

Article 358 suspends the right itself; with that we are not concerned for the present. Then on page 12 in the last paragraph it goes on to say:

"It would be noticed that the Presidential Order cannot widen the authority of the legislatures or the executive; it merely suspends the right to move any court to obtain a relief on the ground that the rights conferred by Part III have been contravened if the said rights are specified in the Order."

This is now the law of the land. This is the pronouncement of the Supreme Court with regard to the scope of article 359. The judgment goes on to say in the same paragraph:

"The inevitable consequence of this position is that as soon as the Order ceases to be operative, the infringement of the rights made either by the legislative enactment or by executive action can perhaps be challenged by a citizen in a court of law and the same may have to be tried on the merits on the basis that the rights alleged to have been infringed were in operation even during the pendency of the Presidential Order. If at the expiration of the Presidential Order, Parliament passes any legislation to protect executive action taken during the pendency of the Presidential Order and afford indemnity to the executive in that behalf, the validity and the effect of such legislative action may have to be carefully scrutinised."

Here is the effect of this thing. What follows from this is stated here; the invitable consequence of what you are doing. After a time when this emergency is gone, a citizen can go to the court, the detenus can go to the court, and ask for damages and then you will not be entitled to come here for passing a law to indemnify the wrong act done. For the Constitution says that an indemnity law can only be passed in regard to acts done under martial law. Emergency is not martial law. This has given us a warning. We are grateful to the Supreme Court for pointing this out in time because they have landed themselves in a situation when they will come forward some day and ask for money to pay damages. Let the Minister say that should such a situation arise in future they shall not call upon Parliament to sanction moneys but shall pay from out of their pockets or from other sources but not from the Government exchequer.

SHRI A. B. VAJPAYEE (Uttar Pradesh): From others' pockets?

SHRI BHUPESH GUPTA: I do not know, whatever it is. I know the damages will be so heavy that the Ministers with their earnings, visible and invisible, will not be in a position to meet the claim and pay the damages. This is the position. I would like to say we are indeed very grateful again to the Supreme Court. Kindly take note of this warning, consider it in all seriousness, keeping in view the future situation that might arise once the emergency is gone.

Now, let me invite the attention of hon. Members to the opinions and legal findings in the minority judgment. The entire judgment is there. I will read out portions from it. Here the minority judgment is very important. I would ask the House to reflect over the opinions and the legal findings in the minority judgment. What the minority Judges say in the beginning, I should point out. Here they say:-

"It is, therefore, a clear case of Parliament making a law in direct infringement of the relevant provisions of Art. 22 of the Constitution, and, therefore, the law so made is void under the said Article."

The minority position is that.

Then, again, I should like to point out another place in the minority judgment. That is also relevant and important in this connection:-

"It is, therefore, manifest that if the Act and the rules framed thereunder infringed the provisions of Act. 22 (4) and (5) of the Constitution, they would be *ab initio*

[Shri Bhupesh Gupta.]

void; they would be still born law and any detention made thereunder would be an illegal detention."

Then, I should like to point out another thing from the minority judgment:-

"Where they intended to suspend the right, they expressly said so, and where they, intended only to suspend the remedy, they stated so."

That is to say, where the Constitution-makers have intended only to suspend the remedy, they have stated so. It says:—

'We cannot, therefore, accept this contention.'

It means the contention of the Government.

Then, again, the minority judgment says:—

"It is contended that when remedy is suspended in respect of infringement of Art. 22, the right thereunder also falls with it."

This, of course, the minority judgment could not accept at all.

Then, I shall invite your attention to another observation of the minority Judge. This is what he says:—

"This does not preclude the High Court to release the detenus in exercise of its power under S. 491 of the Code of Criminal Procedure."

This is what the minority judgment says, *viz.*, the law is invalid and illegal and the detenus should be set free. Such is the position.

Then, the minority judgment has made a very significant remark which has a bearing on what we are discussing here for our guidance, I believe on the face of it:—

"I cannot for a moment attribute to the august body, the Parliament, the intention to make solemnly void laws. It may have made the present impunged Act *bona fide* thinking that it is sanctioned by the provisions of the Constitution. Whatever it may be, the result is, we have now a void Act on the statute book and under that Act the appellants before us have been detained illegally. To use the felicitous language of Lord Atkin, in the country 'amid the clash of arms, the laws are not silent; they may be changed but they speak the same language in war as in peace.' The tendency to ignore the rule of law is contagious, and, if our Parliament, which unwittingly made a void law, not only allows it to remain on the statute book, but also permits it to be administered by the executive, the contagion may spread to the people, and the habit of lawlessness, like other habits, dies hard. Though it is not my province, I venture to suggest, if I may, that the Act can be amended in conformity with our Constitution without it losing its effectiveness."

This is what the minority judgment has said and this is addressed to us. That is why I have read out at some length.

I need not say any more on the minority judgment. It is quite clear that according to the minority judgment, the law is illegal and the detention is illegal. The following points would clearly emerge from what I have stated about the two judgments—minority and majority judgments—given by the Supreme Court. What are those points? Firstly, none has said, neither the Attorney-General appearing for the Government of India in the Supreme Court nor the Supreme Court, that the impunged provision of the Defence of India Act is valid. I mention this because Mr. Lal Bahadur Shastri speaking in this House said. It has already been read out. I am quoting from Mr. Lal Bahadur Shastri's speech:—

"We had then and even now consulted the Law Ministry and they hold the opinion that when article 359(1) provided for suspension of

enforcement of this right, it *ipso facto*, suspends the rights themselves for the duration of the emergency."

Neither the majority nor the minority judgment has said this. The Supreme Court has categorically and clearly rejected this statement of the Home Minister in this House, namely, according to him, after consulting the Law Ministry the rights were also *ipso facto* suspended with the remedy. Will the Home Minister now apoligise on behalf of the Government to the nation and Parliament for having said such a thing which is not sustained either by the Supreme Court nor even maintained by the Attorney-General, Mr. Daphtary, when he appeared before the Supreme Court?

Then, I should like to point out, secondly, that nothing done hereunder is valid or constitutional. Both the majority and minority judgments are agreed that the law does not comply with aritcles 14 and 22 of the Constitution. The Law Minister seems to be agitated. I can understand his being agitated.

Thirdly, all the Judges are agreed that if the Act contravenes Fundamental Rights and the law is bad, then the detention under the Act is equally illegal. This is agreement among the Judges. Consider this seriously from the point of view of what the Judges have said. The minority judgment has gone a step further and held it in positive terms that the Defence of India Act is *ultra vires* the Constitution and the detentions are illegal. Of coure, the majority judgment has hesitated to declare what the minority has said. Incidentally I would invite the attention of the House to the fact that despite the assurances of Shri Lal Bahadur Shastri that the opinion of the Supreme Court would be sought on the question of constitutional validity and otherwise of the law, the Attorney-General appearing for the Government, under instructions from the Government of India, first conceded before the Supreme Court that the law was unconstitutional and then surprisingly asked the Supreme Court that it need not pronounce an opinion on this question. It is a strange thing. The Supreme Court was there. It was the task of the Attorney-General of India to ask the Supreme Court: "What is your opinion? Do you think the law is valid or invalid? Frankly tell us in your judgment. If you think it is invalid, we shall bow to the Supreme Court and translate it into an amendment of the law." But the Supreme Court was prevented from doing so.

THE DEPUTY CHAIRMAN: I think you should now wind up. You have taken more than half an hour now.

SHRI BHUPESH GUPTA: I am finishing. After all, having denied the remedy, the learned Judges thought that such an avoidance in the present case would be a wise one. No extraordinary wisdom is, however, needed for Parliament or the executive to understand what the judgment means. The judgment means what it says. It says: Before Emergency Parliament did not have the power to make laws in contravention of the Constitution, of Fundamental Rights. Article 13 prohibits it. During the emergency, Parliament's powers are not widened by article 359. Even an insane man—I am quoting the Law Minister—can see if powers are not widened, the law cannot be valid. Where was the power for us to pass such a law then? I would put it before the House for hon. Members to consider. If Parliament disregarded the Constitution, how can people respect the law enacted by Parliament? This is the clearest warning contained in both the majority and the minority judgments, and the majority judgment has pointed to the need for vigilance of public opinion. We are the representatives of the people. It is our duty, solemn and sacred duty to exercise in an impartial and objective manner that vigilance to which we have been summoned by the highest Court in the country.

[Shri Bhupesh Gupta.]

Madam Deputy Chairman, I should like to anticipate the Law Minister's argument that will close my constitutional point. All that the Law Minister can now say is this that the majority Judges of the Supreme Court have been successfully prevented from pronouncing in so many words that the law was invalid and they have only assumed in favour of the detenus that the fundamental rights are theoretically alive because the remedy is temporarily suspended. Theoretical aleveness of the law is not in question even by the majority. Laws are alive, rights are alive. The question is whether we have to take into account and see that the law passed here is in conformity with the constitutional rights and obligations. But the majority Judges have not accepted the Government's contention—I would ask the Law Minister to note—that the right itself is suspended once the remedy is suspended. Justice Subba Rao has given convincing reasons when he rejected the contention. Article 359 or the Presidential Order does not, I repeat does not widen the powers of Parliament. If that is so, as the judgment says, where from does Parliament get the power to make the law under discussion, that is, the Defence of India Act and the Rules, authorising detention? This is the question for the consideration of the House in a dispassionate manner.

Madam Deputy Chairman, I think I have spoken enough. I have spoken at length on constitutional points, because I want the country to discuss the whole thing not in a partisan spirit not with past grudges, not in a temper of superiority or of anger but in spirit of the Constitution. We are to defend the Constitution. Here on the floor of the House we take the formal oath to the Constitution, and it is our bounded duty, when the Constitution is challenged in this cavalier manner by this Government with such an enactment as this, it is the task of Parliament to rise above anything else and to see that the Constitution is defended by the collective efforts of Members of this side and that side. If my contention is wrong, it should go. If what I have said is right and the Judges have said is right, what is needed is (1) revocation of the Presidential proclamation; (2) the amendment of the Defence of India Act in order to bring it in line with the Constitution; and (3) the immediate release of all those who are detained under this illegal law. It is a matter of profound shame that today in a democratic system, as we call our Parliamentary System, and headed by Pandit Jawaharlal Nehru, we have so many men, political leaders and members of the State Legislatures, political workers of various leading Parties, workers of not only the Communist Party but Mr. Fernandez of the Socialist Party, and women workers, Madam Deputy Chairman, are held in captivity and in custody under a law which according to the findings of the Supreme Court is untenable, patently unconstitutional, derogatory to the Constitution—what language the Judges have chosen, that is for the Judges to decide. Today after this judgment we should not try to take shelter under the fact that the majority has not said it in so many words, that it is *ultra vires* the Constitution. But they have said that you have enacted it in disregard of the Constitution. They have said that the law that we have passed violates the fundamental rights.

Madam Deputy Chairman, before I sit I would appeal to the Government to reconsider the whole matter not only on constitutional grounds but also on moral and political grounds, because we have so many people, more than 400 people, still under detention, some of them for nearly a year. Friends of India wonder here and also in other countries as to how it is that the Government which is headed by Pandit Jawaharlal Nehru has come to such a position that it has to hold so many people in custody, in

detention without trial and that too under an illegal law. French papers and London papers including the "Manchester Guardian" gave wide publicity to the scandal created by continuing this illegal, unconstitutional, patently invalid measure. It does not do honour and credit to our country.

THE DEPUTY CHAIRMAN: You must finish now.

SHRI BHUPESH GUPTA: I say save the country from dishonour. As far as the detenus are concerned, I demand their release. But here I am standing not in a court of law but in the forum of Parliament after the guidance from the Supreme Court, lawyers, jurists and Judges, in order to impress upon the Government so that they set the wrong right and also undue the mischief that is done by holding so many people in detention.

THE DEPUTY CHAIRMAN: You should wind up now.

SHRI BHUPESH GUPTA: Thank you very much. I do not wish to say anything much. I would appeal to the Prime Minister finally and the Home Minister who has come today to view this matter in the larger perspective keeping in view constitutional considerations, political considerations and moral considerations and find their way to ordering the immediate release of all detenus, political detenus and others, who are held in illegal detention, because the law is illegal, the rule is illegal, the order is illegal. Let us not certify illegality, unconstitutionality, and allow the executive to get away, to run away with the fundamentals of our constitutional principles, dignity and honour of the country. Thank you.

The question was proposed.

SHRI ABDUL GHANI (Punjab): Madam, I beg to move:

"That at the end of the Motion, the following be added, namely:—

'and having considered the same, this House recommends to the Government to review the position and take necessary action'.".

The question was proposed.

THE MINISTER OF LAW (SHRI A. K. SEN): *Madam,* I am sorry that I have to address a little early because I have to reply to the motion for reference to a Joint Select Committee on the Constitution (Seventeenth) Amendment Bill in the other House presently. But as this is a matter on which certainly the Law Minister was, and legitimately, drawn into the discussion, I thought I might say a few words and leave the rest to be said by my colleague, the Minister of State in the Ministry of Home Affairs—though he was with us until the other day, I still consider him as part of our Ministry.

I appreciate the rather high pitch of emotion to which the hon. Member, Mr. Bhupesh Gupta, worked himself up and also the feeling of indignation which he expressed at the detention of some persons particularly in the State from which he comes. But we are not concerned, at least I am not concerned, with the propriety or legitimacy or justification of the detention of these people, excepting indirectly. What I am concerned with and what I want to answer is the argument that the Defence of India Rules, Rules 30 and 30(a) are void and that we conceded before the Supreme Court through the Attorney General that they were void. In my submission, Madam Deputy Chairman, this is unfortunately not a correct quotation of what the Attorney General said in court and what we said here. Mr. Bhupesh Gupta quoted the last Home Minister, Shri Lal Bahadur. He quoted him very correctly when he said that the Home Ministry was advised by the Law Ministry that during the currency of the Proclamation under article 359(1), the rights as are specified in the Proclamation remain suspended during the period of the Proclamation. That was the advice

[Shri A. K. Sen.]

we tendered. Well, that advice would not have been necessary nor would article 359(1) be necessary nor would any such suspension of any of the rights in Chapter III be necessary if during an emergency all the laws were in conformity with the fundamental rights. I mean, why suspend rights, why take powers under the Constitution to suspend rights? If the Constitution contemplates that even during an emergency all the laws must conform with the fundamental rights, article 359 would have been unnecessary and such an opinion that during the period of the Proclamation . . .

SHRI BHUPESH GUPTA: This is not the point. Article 13 gives a mandate to Parliament as to what kind of law it can pass and under the Proclamation of Emergency, to some extent, the fetters are removed and that is done under article 358 and under no other article in that Chapter.

SHRI A. K. SEN: I appreciate that argument. That is exactly the argument which has not been accepted, and we do not accept the validity of that argument either because, as I said, that article 359 specifically contemplates laws being passed during an emergency, which may be inconsistent with the fundamental rights mentioned in Part III. If they were not there, then article 359 would be unnecessary. The power to suspend remedies for the enforcement of rights was taken because it was foreseen that during an emergency laws had to be passed which might not be strictly in accordance with the fundamental rights in Part III. Take a very simple illustration, Madam. Enemy forces are coming in. Parts are possibly occupied by the advance forces or are apprehended to be occupied very soon and we might have to make arrangements straightway for evacuating the people, for billeting the soldiers in several people's houses, for requisitioning properties and for even destroying private property not to give access to the enemy forces to places which we want to deny them, like burning of crops and other resources which keep up the sinews of war. Now, during an emergency, these would be impossible to achieve if all the rules and regulations to be framed for this purpose were to be in accordance with article 14 or 21 or 22 or 31 or other articles. That is why, in the wisdom of the Constitution-makers, they knew that an emergency is an emergency and that laws would be passed dictated by the needs of the emergency, which would be inconsistent with the provisions of article 21, 22 or other articles, like requisitioning of property, destruction of property without compensation for the purpose of denying access to the enemy and for various purposes. That is why article 359 gave the President power to proclaim which rights would not be enforced in courts. And as I said, from that the reasonable interpretation which must be given, in our submission, is that since the remedy to enforce rights remains suspended, the rights must themselves remain suspended during the period during which the Proclamation remains. It is a fundamental principle of law that there is no right without a remedy and if a remedy is barred, there is no remedy; if a remedy is barred partially for a time, for that time the right also remains suspended.

SHRI BHUPESH GUPTA: The Supreme Court has not accepted it.

SHRI A. K. SEN: You have said so. I will come to it. I have followed it. You were quite clear in your argument, if I may say so with respect, and there is no equivocation in your argument. Therefore, I do not intend to skip over Shri Gupta's arguments and I intend to meet them. Shri Lal Bahadur Shastri said so in exactly the same words as were uttered by the Attorney-General before the Supreme Court while these matters were being arguded, as read out just now from the quotation by Shri Gupta. Shri Lal Bahadur Shastri said the Law

Ministry's advice to the Home Ministry was that by reason of the Proclamation under article 359(1) these rights *ipso facto* remained suspended. This is what the Attorney-General said—

> "The learned Attorney-General has contended that the suspension of the citizens' right to move any court . . .

This is on page 7 of the cyclostyled copies which we have circulated.

> "The learned Attorney-General has contended that the suspension of the citizens, right to move any court for the enforcement of the said rights, in law, amounts to the suspension of the said rights themselves for the said period."

He says exactly what Shri Lal Bahadur Shastri said on our advice that the suspension of the citizens' right to move any court—that means, a bar of remedy—for the enforcement of the said rights, in law, amounts to the suspension of the said rights, themselves for the said period.

SHRI BHUPESH GUPTA: Which paragraph?

SHRI A. K. SEN: Well, in your certified copy it will possibly be 11.

SHRI BHUPESH GUPTA: Page 11?

SHRI A. K. SEN: Possibly, from the calculations that I made having regard to the page you gave.

> "We do not propose to decide this question in the present appeals. We will assume in favour of the appellants that the said rights are, in theory, alive and it is on that assumption that we will deal with the other points raised in the present appeals."

Or in other words, because of the categorical provision in the Constitution itself that there is no remedy available to challenge, they said, we do not want to decide this theoretical question whether notwithstanding . . .

SHRI BHUPESH GUPTA: May I say this? We assume theoretically that the rights are alive; they have not only said about theoretical questions, they have not decided . . .

SHRI A. K. SEN: Though I am a lawyer, I am not a very distinguished one but I know this much that it would be interpreted in a way as meaning that the matter has been left, as it is called, *res integra* . . .

SHRI BHUPESH GUPTA: I was reading exactly what he had said.

SHRI A. K. SEN: . . .left open, not decided. Assuming that it is so, even then, the remedy is barred, but they say, we prefer not to decide this. Or in other words, they say that it is not necessary to be decided because the categorical, imperative provision of the bar of remedy is so clear that no citizen who is detained under Rule 30 would be able to challenge the right so long as the Presidential Proclamation remains current. That is the position, Madam. I am very sorry to say that some extracts were circulated in print all over Parliament. I do not know who did it. And I understand also that some advocates of the Supreme Court did it, printed them. They quoted all the passages excepting this very relevant one which precedes the Supreme Court's dealing with the arguments on behalf of the appellant. I am very surprised. I hope that no advocate was associated in the preparation of the printed document and in its circulation to Members of Parliament. If it were, I am very sorry to say that it is a case where a very relevant part of the judgment has been left out in the hope that it will not be noticed. It is a very serious lapse which anyone would be entitled to take serious notice of. In other words, it is to convey the impression that the Supreme Court has held the law as

[Shri A. K. Sen.]

bad but you are taking all the advantage of the bar of remedy, which is exactly the opposite of what the Supreme Court has decided. As I said, it is a very important principle of law which is well settled that where there is no remedy to enforce a right and where the remedy is specifically barred, the right itself does not remain.

SHRI BHUPESH GUPTA: Why then in our Constitution do we have two distinct provisions, article 358 which abrogates the fundamental right under article 19 and then we have article 359? In fact, the Supreme Court very clearly drew the distinction between the two.

SHRI A. K. SEN: Madam, I was coming to it because Mr. Bhupesh Gupta had referred to these two. But I cannot deal with all the points simultaneously; I have to deal with these points seriatim, one after the other.

Then Mr. Gupta said—naturally his argument I anticipated. It is a very obvious argument—"Why these two separate provisions?" The answer is clear. One does not depend upon the Proclamation of the President because under article 358 automatically article 19 is suspended. What the Constitution made us think was whether the President proclaims a bar or not, the moment the emergency is declared, automatically article 19 will cease to be operative. But article 359 is important because what further is sought to be barred will depend from time to time upon the President's Proclamation. For instance, it may not be necessary to bar all the rights. For instance, we have not barred the right to private ownership of property in the disturbed areas yet. We have only barred articles 21 and 22 and so on. What was contemplated was to make article 19 inoperative.

SHRI BHUPESH GUPTA: Will the hon. Minister yield for a minute.

SHRI A. K. SEN: I have read article 358.

SHRI BHUPESH GUPTA: But kindly answer this only. Article 359 says—the wording is important:

> "Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of the rights conferred by Part III as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned," etc. etc.

The right to move has been specifically mentioned.

SHRI A. K. SEN: Apart from article 19, if other rights are going to be barred, that will depend upon each case on what the President considers fit to be specified in his Proclamation from time to time. Or, in other words, it was not contemplated that all of them would be inoperative straightway. Some might have to be barred while on others the bar may have to be lifted again and some others may have to be barred. Therefore, it is left to the judgment of the President from time to time as to what rights should be barred from being agitated in court. For enforcement, he might say, "Partially bar them". He might say it will be barred. Here, for instance, the right to deprive citizens of property to prevent excess to enemy may have to be exercised in the forward areas, not in the backward areas. It may have to be barred possibly in N.E.F.A. and other places if unfortunately we are again entangled with serious trouble but not in other places, in Kerala or other places where it is not necessary. So any one would know that article 359 has a specific object, namely, not to impose a general ban on all the rights straight-

way but only on those rights which may be thought necessary to be barred as and when it is thought necessary by the President, as he may declare by Proclamation. That is the position. I have no difficulty in appreciating why the two provisions were made because in the wisdom of the Constitution-makers, article 19 will be inoperative generally, completely. So long as the emergency continues article 19 will be inoperative. It will not depend upon the judgment of the President or anybody else.

But with regard to other rights, they are treated separately from article 19. They will only be barred if the President so thinks.

SHRI BHUPESH GUPTA: Remedy is barred, not the right.

SHRI M. N. GOVINDAN NAIR (Kerala): Madam Deputy Chairman, I am not a lawyer. Can I ask a question?

SHRI A. K. SEN: If you are not, you may leave it to your colleagues who are lawyers.

SHRI BHUPESH GUPTA: He has common sense.

SHRI M. N. GOVINDAN NAIR: I want to know whether sometimes . . .

SHRI A. K. SEN: I am sorry I have not much time.

THE DEPUTY CHAIRMAN: Please go on.

SHRI M. N. GOVINDAN NAIR: Madam, he has given me time and I would request my leader not to intervene.

SHRI A. K. SEN: I shall certainly answer your point. But let me finish within a few minutes because I have to go to the other House at 4 o'clock. This was the position. And, therefore, Madam, the point has now been settled. And naturally after the emergency we are faced with claims of damages. The claims will certainly be made, and if we are made liable, they will be paid for that. Mr. Gupta need not be very anxious because the Government has not yet become insolvent so that these claims may not be paid up.

Now, Madam, one word more only and that is this. Certainly, I have written to one of the hon. Members of the Lok Sabha . . .

SHRI M. BASAVAPUNNAIAH (Andhra Pradesh): But is it the contention of the Law Minister that there is nothing to think about after the Supreme Court judgment, both minority and majority?

THE DEPUTY CHAIRMAN: I think the Law Minister should be allowed to go on.

SHRI M. BASAVAPUNNAIAH: Is it the contention of the Law Minister that there is nothing for the Government to think about after the Supreme Court judgment, both minority and majority?

SHRI CHANDRA SHEKHAR (Uttar Pradesh): I think the Law Minister should keep in view that this debate is after the judgment of the Supreme Court. But there is no difference between the speeches made by the Law Minister and the Home Minister before the judgment of the Supreme Court and even after the judgment. There should be some difference between the two. That is the point.

SHRI A. K. SEN: Madam, it is rather a curious proposition that appellants, though they have lost and the respondents though they have won in the Supreme Court, are asked to reconsider the views they have taken. We took certain views and we have succeeded in the highest court. The hon. Members said, "Are you not thinking? What are you saying?" I hope, Madam, that what we are saying is a product of a little thinking on our part and what we are saying is not utterly nonsense.

SHRI G. MURAHARI (Uttar Pradesh): I hope what you are thinking will not produce any result. Your thinking does not seem to be fruitful. It seems to be barren thinking. That is the whole trouble.

SHRI A. K. SEN: It is unfortunate that we always produce barren thinking. We are not capable of fruitful thinking as the hon. Member appears to be capable of. I shall be very obliged if he lends us a bit of his faculties so that we may be very fruitful.

SHRI MAHESH SARAN (Bihar): We do not want it.

SHRI A. K. SEN: Now, Madam, if I may conclude by saying that it is certainly distasteful for any country, far more for a country which is proud of a democratic Constitution which allows the Opposition Members to castigate the Government as we have been witnessing just now, to resort to the extreme step of detaining persons without trial. And I personally think—that is entirely my personal feeling—that it is a remedy which should be resorted to only as a last resort if the security of the State warrants no other course. As a lawyer myself and being a believer in adjudication in an open court, allowing all the opportunities to an accused to defend himself and then only imposing on him the punishment of being detained, I always find it difficult to reconcile myself to a state of affairs where the Government will have to resort to some unpleasant step of detaining persons without trial. And all that I can hope is that a situation will come as speedily as possible, which will allow us not to continue that unpleasant course which, I have no doubt, was undertaken with the utmost of reluctance. And for that purpose the responsibility of the Opposition, particularly of the Party to which the hon. Member belongs is very great.

SHRI M. N. GOVINDAN NAIR: Madam, two doubts have been created in our minds. The judgment is on two points: (i) Whether the fundamental right at least theoretically exists? and (ii) Whether Parliament has the right to enact a law which is not in conformity with the Constitution? These two doubts have been created in the minds of the people and I expect from the Law Minister a clear cut answer. That point he has not clearly dealt with.

SHRI A. K. SEN: If I have not been able to convince the hon. Member, that is a different matter because I never anticipated that I will be able to convince him. But it is another thing to say that I have not clearly stated. What I stated was that during the emergency it is permissible to pass laws which cannot be challenged. That is exactly what the Supreme Court judgment has said. So long as the Presidential Proclamation lasts, the appellants cannot be heard to say that the law is bad or contravenes any of the rights.

4 P.M.

SHRI A. B. VAJPAYEE: May I put a straight question, Madam? May I know whether, in view of the Judgement of the Supreme Court, the Government proposes to bring forward any amendment to the Defence of India Act or the Defence of India Rules?

SHRI A. K. SEN: We have not considered it necessary.

THE DEPUTY CHAIRMAN: Mr. Vajpayee.

श्री ए० बी० वाजपेयी : महोदया, मैं यह समझता था कि सर्वोच्च न्यायालय ने जो निर्णय दिया है उस के प्रकाश में सरकार भारत सुरक्षा अधिनियम में ऐसा संशोधन करेगी जिन से उस निर्णय के कारण संसद की जो विषम स्थिति हो गई है उस स्थिति में से संसद निकल सके। मैं विधि मंत्री के इस तर्क को अभी पूरी तरह नहीं समझ सका हूं कि जब हमने संकटकाल की घोषणा की तभी

ही हमने समझ लिया कि संसद् को ऐसा कानून बनाना पड़ेगा जो संविधान की कसौटी पर खरा नहीं उतरेगा । मैं समझता हूं कि यदि विधि मंत्री महोदय को या गृह-मंत्री को यह मालूम था कि वह ऐसा कानून बनाने जा रहे हैं जिस को बनाने का संविधान हमें अधिकार नही देता तो यह भारत सुरक्षा अधिनियम या उसके उपनियम पर विचार करते समय स्पष्ट होना चाहिये था । जब इस सदन ने या संसद ने भारत सुरक्षा अधिनियम पर अपनी स्वीकृति दी तो इस विश्वास के साथ दी कि संकटकाल को ध्यान में रखते हुए हम नागरिकों के मौलिक अधिकारों पर उस सीमा तक प्रतिबंध लगा रहे हैं कि उन्हें किसी अदालत का दरवाजा खटखटाने की छूट नहीं होगी । लेकिन एक क्षण के लिये भी मैं नहीं सोचता और न कहता हूं कि किसी माननीय सदस्य ने सोचा होगा कि हम कोई ऐसा कानून बनाने जा रहे हैं जो संविधान के अनुकूल नहीं है और सर्वोच्च न्यायालय जिस के विरुद्ध निर्णय देगा । लेकिन सर्वोच्च न्यायालय के निर्णय के बाद स्थिति ऐसी है कि शासन भी और संसद भी अपने को बड़े धर्म संकट में पाते हैं । सर्वोच्च न्यायालय कहता है कि हमने ऐसा कानून बनाया है जो संविधान के अनुकूल नहीं है ।

श्री आर० एम० हजरनवीस : यह तो नहीं कहा ।

श्री ए० बी० वाजपेयी : इतने शब्द में न भी कहा हो तो भी जो निर्णय हुआ है उस का निचोड़ यही है ।

श्री आर० एम० हजरनवीस : जो निर्णय नहीं दिया गया है उस का निचोड़ क्या ?

श्री ए० बी० वाजपेयी : मेरा कहना यह है कि यह वायड है, संविधान की धारा के अनुसार वह ला वायड है । यदि संविधान की धारा १४ या २२ रहे तो उस धारा के रहते हुए इस प्रकार का कानून नही बना सकते हैं, यह सर्वोच्च न्यायालय के निर्णय में बिल्कुल स्पष्ट दिया गया है । मैं उन उद्धरणों को नहीं दोहराना चाहता हूं जो श्री भूपेश गुप्त ने कहे थे लेकिन कानूनी भाषा में या शब्दों की जादूगरी में उस को किस प्रकार रखा जाता इस बात से हम इन्कार नहीं कर सकते कि सर्वोच्च न्यायालय के निर्णय के बाद इस सदन, संसद और सरकार की स्थिति बड़ी विषम हो गई है और उस विषमता को यह कह कर समाप्त नही किया जा सकता है कि जब हम ने संकट काल की घोषणा की तभी हमें सोच लेना था कि हम ऐसा कानून बनायेंगे कि जो संविधान के पूरी तरह अनुकूल नहीं होगा किन्तु संकटकाल के नियमों पर जिन की वैधता को चुनौती नहीं दी जा सकेगी । मेरा निवेदन है महोदया, विधि मंत्रालय ने ऐसा कानून बनाने के लिए जिस के आधार पर सिफारिश की थी यह स्पष्ट किया जाना चाहिये था । यह पहला अवसर नहीं है जब विधि मंत्रालय सरकार को गलत राय देने का दोषी साबित हुआ है और उसकी राय अनेक मामलों में सर्वोच्च न्यायालय द्वारा ताक पर रख दी गई और जब यह विवाद खड़ा हुआ ...

श्री आर० एम० हजरनवीस : मैं नहीं समझता कि आप का कहना ठीक है ।

श्री ए० बी० वाजपेयी : मैं आपको याद दिलाऊं । बेरूबाड़ी स्थानांतरण के समय ला मिनिस्ट्री ने राय दी थी कि संविधान में संशोधन करने की आवश्यकता नहीं होगी और प्राइम मिनिस्टर चाहे भारत की जो भूमि देना चाहते हैं दे सकते हैं । मगर यह विधि मंत्री की सलाह गलत साबित हुई है और बेरूबाड़ी के स्थानांतरण के लिए संविधान में संशोधन करना पड़ा । विधि मंत्री अटार्नी जनरल बन जायं यह भी सिफारिश की गई विधि मंत्रालय की ओर से, किन्तु बाद में उस सिफारिश को ठुकराना पड़ा ।

श्री आर० एम० हजरनवीस : मैं माननीय सदस्य को बतला दूं कि बेरूबाडी में कांस्ट्यू-

[श्री आर० एम० हजरनवीस]

शन अमेन्डमेंट की जरूरत नहीं है, यह सलाह अटार्नी जनरल की थी ।

THE DEPUTY CHAIRMAN: The time is so limited that you can give a reply at the end, Mr. Hajarnavis?

SHRI R. M. HAJARNAVIS: Even statements are made without reference to facts.

श्री ए० बी० वाजपेयी : महोदया, अगर यह सलाह अटर्नी जनरल की है तो विधि मंत्रालय को यह बात स्वीकार कर लेनी चाहिये थी कि डिफेन्स आफ इंडिया ऐक्ट के बनाने में अटार्नी जनरल की राय ली गई थी । लेकिन विधि मंत्री जी ने अटार्नी जनरल की राय उस समय नहीं ली (*Interruption*) अगर मालूम नही है तो मंत्री जी खड़े हो कर खंडन करेंगे ।

एक माननीय सदस्य : आप का क्या सूत्र है ?

श्री ए० बी० वाजपेयी : मेरे अनेक सूत्र हैं, मैं अपनी हर एक सूचना का सूत्र बताने का जिम्मेदार नहीं हूं । मेरा निवेदन है कि इस मामले में विधि मंत्रालय ने सरकार को भी, सदन को भी, अगर मैं अंग्रेजी शब्द का प्रयोग करूं तो मैं कहूंगा :

The Law Ministry has badly let down the Government and Parliament on this question.

और मैं आशा करता था कि सर्वोच्च न्यायालय के निर्णय के बाद विधि मंत्री आ कर कहेंगे कि हमने जो कानून बनाया है वह जैसा होना चाहिये था वैसा नहीं है और सर्वोच्च न्यायालय के निर्णय के प्रकाश में हम उस कानून में आवश्यक संशोधन करेंगे ।

अभी उन्होंने जो भाषण दिया है उससे मुझे बड़ी निराशा हुई है । मैं इस सवाल को पार्टी की दृष्टि से नहीं देखता हूं, यह व्यक्तिगत स्वतंत्रता का सवाल है । शस्त्रों की झंकार के बीच में भी अगर व्यक्तिगत स्वतंत्रता को कायम रखना है तो उन मर्यादाओं का पालन किया जाना चाहिए जो संविधान..... (*Interruptions*). देश की आजादी की बात मत करिये । जिस सरकार ने कम्युनिस्ट पार्टी को उस दिन दिल्ली में अपनी शक्ति प्रदर्शन करने का अवसर दिया वह सरकार उसी आधार पर उस कम्यूनिस्ट पार्टी को कुचलने का अधिकार नहीं मांग सकती । एक कम्युनिस्ट पार्टी देश के खिलाफ... (*Interruptions*). ये बातें छोड़ दीजिये । आपके मन, वचन और कर्म में एकरूपता नहीं है और कभी संकट काल का आप नाम लेकर कम्युनिस्ट पार्टी को दबाना चाहते हैं और कभी किसी गुट को और किसी बाहरी देश का समर्थन प्राप्त करने के लिए उस कम्युनिस्ट पार्टी के गुट को आप बढ़ाना चाहते हैं । इसलिए मैं कहता हूं कि कम्युनिस्ट पार्टी को मत लाइये । और यह बात गलत नहीं है । केवल कम्युनिस्ट पार्टी ही नहीं, गैर कम्युनिस्ट लोगों पर, राजनीतिक कार्यकर्त्ताओं पर सुरक्षा अधिनियम का प्रहार किया गया है । जनसंघ के दो कार्यकर्त्ताओं को नजरबन्द किया गया सोशलिस्ट पार्टी के एक बम्बई के नेता अभी भी नजरबन्द हैं । मैं पार्टी के सवाल में नहीं जाना चाहता हूं । हमने एक संविधान बनाया है और उस संविधान में व्यक्तिगत अधिकार दिये गये हैं । संकट काल में सर्वोच्च न्यायालय ने यह भेद किया है कि संकट काल में अगर उन अधिकारों पर आघात हो तो अदालत के दरवाजे न खटखटाये जा सकते हैं, संकट काल में संसद् ऐसे कानून बना सकती है जिससे उन अधिकारों पर आंच न आये । मैं समझता हूं कि सर्वोच्च न्यायालय के निर्णय के प्रकाश में सरकार को अपनी स्थिति पर विचार करना चाहिये और इस संबंध में ऐसे निर्णय लेने चाहिये जो संविधान की मर्यादा के अनुकूल हों, जो रूल आफ ला की भावना की रक्षा कर सकें और साथ ही राष्ट्रीय सुरक्षा की आवश्यकताओं को भी पूरा करें । धन्यवाद ।

SHRI SANTOSH KUMAR BASU (West Bengal): Madam Deputy Chair-

man, at the very outset I am free to confess that my hon. friend Shri Bhupesh Gupta has done well in bringing this matter up before the House at this stage. When it is a question of the suspension of our fudamental rights which have been guaranteed by the Constitution to the citizens of India and when that question came up so prominently before the highest court of the land and a certain decision has been given which has far-reaching effect, it is necessary that the leader of the Communist Group or for that matter, of any group or any Member should have brought up this matter for consideration of this House in order to analyse the effect of this decision and see how far it had any impact upon the Defence of India Act and the Defence of India Rules and the policy of the Government based upon that Act and those Rules. Unfortunately, however, Mr. Gupta's approach has not been quite on a legal basis, in the sense that he has not scrutinised the judgment of the Supreme Court for the purpose of finding out what its real effect is. He has naturally been carried away by emotion which we so often enjoy in this House, because he raises us to a particular level by means of his emotions, but that also induces us to lose sight of facts.

Here also my friend has adopted that method, consciously or unconsciously. If on the other hand, he had analysed the judgment and scrutinised the judgment, he would have found that the majority judgment of six to one, has been very much against his contention. I have been trying for the last one hour or so, since I got a copy of the judgment in my hand, to find out what exactly is the effect of this judgment.

Now, having regard to the very short time at my disposal—and this is a very big subject dealt with by the Supreme Court—I will only try to place before the House a short analysis of the main points which have been gone into and which have been decided upon. The provisions of article 358 and article 359 were gone into and at the very outset the Attorney-General raised the question that as regards the validity of the provisions and the Defence of India Act and the Defence of India Rules based on the relevant articles of the Constitution, that can only be gone into in court in a proceeding which is a competent proceeding, not an incompetent proceeding, a proceeding which does not lie in law. That was the stand which the Attorney-General so clearly and definitely took at the very outset. You can only raise this question as to validity or otherwise of the Defence of India Act and the Defence of India Rules based on the provisions of the Constitution, in a proceeding which is competent in law, not in a proceeding which is entirely incompetent, where the appellants, the detenus, are absolutely out of court. The court is precluded, is debarred from going into the question. The court also thought that as there are so many appeals coming from two different States, and as this question has been raised by such an eminent lawyer as Shri Setalvad, to whom I take this opportunity of paying my tribute of respect—that this question ought to be gone into, even from a theoretical point of view, but no decision could be arrived at. Therefore, the majority judgment has refrained, deliberately, definitely, from expressing any firm opinion upon that question. If it has let fall some observations here and there, they are in the nature of *obiter dicta*. Certainly they did not give any judgment at all. Now I will place before the House certain relevant portions of the judgment. The appellant's contention was that the fundamental rights have been suspended or the right to move the court in defence of the fundamental rights, has been suspended, but section 491 of the Criminal Procedure Code which confers the right of *Habeas Corpus* upon the citizen, has not been suspended; and so that remains intact. Now, that was the only real and substantial point before the court—*Habeas Corpus* was a common law right confined to the presidency towns of Calcutta, Madras and Bombay. That common law right was converted into a statutory right by the Criminal Procedure Code of 1923

[Shri Santosh Kumar Basu.]

and it became a part of the statutory right of the citizens of India. Then the court goes on to say that under the Constitution, that statutory right was merged in a fundamental right, a constitutional right. The statutory right remains on the Statute Book, no doubt, but it forms part and parcel of a higher right, namely, the fundamental, constitutional right, and that right cannot be agitated in a court of law after the emergency, after the Presidential Order. Therefore, if it is part of the fundamental right, the citizen cannot fall back upon the statutory right of *Habeas Corpus* in view of the Presidential Order. That is the stand that they have taken and that is the majority stand of the Supreme Court. Therefore, on that ground and on that ground alone, these appeals were dismissed by a very closely reasoned judgment which the majority of the court had delivered in this case.

Now with regard to the other point which has been raised by Mr. Gupta, it is of great interest to this House because it relates to the question whether the Presidential Order and the Defence of India Act and the Rules are *ultra-vires* of the Constitution. It is worthwhile looking into the judgment of the Supreme Court in so far as it deals with that point. I will not take the time of the House by dealing with it at any great length, but will only refer to the portion towards the end of the judgment where this question has been dealt with. It is this:

"Before we part with these appeals, we ought to mention one more point. At the commencement of the hearing of these appeals when Mr. Setalvad began to argue about the validity of the impugned provisions of the Act and the Rules, the learned Attorney-General raised a preliminary contention that logically, the appellants should satisfy this Court that it was open to them to move the High Courts on the grounds set out by them before the validity of the said grounds is examined. He suggested that, logically, the first point to consider would be whether the detenus can challenge the validity of the impugned Act on the ground that they are illegally detained. If they succeed in showing that the applications made by them under section 491(1)(b) are competent and do not fall within the purview of article 359(1) and the Presidential Order, then the stage would be reached to examine the merits of their complaint that the said statutory provisions are invalid. If, however, they fail on the first point, the second point would not fall to be considered."

That is the attitude which the Attorney-General took on behalf of the Government. And now this is the judgment of the Supreme Court.

"In our opinion, the learned Attorney-General is right when he contends that we should not and cannot pronounce any opinion on the validity of the impugned Act if we come to the conclusion that the bar created by the Presidential Order operates against the detenus in the present case. In fact, that is the course which this Court adopted in dealing with Mohan Chowdhury's case, and we are satisfied that that is the only course which this Court can logically and with propriety adopt."

Therefore, that question of the validity or invalidity of the Defence of India Act or the Defence of India Rules, has not been gone into by the Court and they have expressly said so in so many words. They have said, no doubt, that if these fundamental rights are kept in suspension till or as long as the emergency exists, then on the expiry of the emergency, somebody may contend that his fundamental rights remained in suspension and he can bring up that question after the emergency ceases and sue the Government for damages, for indemnity because of the suspended rights having been dealt with in the manner in which the Government had done by putting him in jail, in detention, in defiance and violation of his rights. The Court says that in that

case, it will be for Parliament to consider whether legislation could be brought forward to indemnify the executive for its action and if such law comes up before the courts, it would be the duty of the court to scrutinise the validity of such a law. That is very fair and therefore the whole matter remains at that stage. There is no pronouncement by the Supreme Court that this Act and the Rules are illegal or unconstitutional. So far as the fact of the suspension of these rights is concerned, that will have to be taken up later on. My hon. friend, Mr. Gupta, has framed his motion in the following manner:

> "That the continued detention of persons under the Defence of India Act, 1962, and the Rules made thereunder in the context of the judgment delivered by the Supreme Court on the 2nd September, 1963, in the case Makhan Singh Tarsikka and Others *versus* the State of Punjab and Others, be taken into consideration."

His whole argument, his whole case and his whole appeal to this House is based upon the judgment of the Supreme Court and a close analysis of the judgment would show that his main argument has no legs to stand upon. He has taken this opportunity of making an appeal to the Government against the continued detention of many people. Many people will support his argument that if they are no longer security risks certainly they should not be kept in detention for one single day more than is necessary. I myself wholeheartedly support that attitude. At the same time, we must concede to the Government the right to consider whether security risk still continues or not, whether the continued detention of these persons is necessitated by the continuation of the security risk. My friend will certainly not say, "Even if proved cases of security risks are there, those persons should be let out of detention." He may take that attitude if he is against all detentions without trial but at the time of emergency, no citizen of India should take up that attitude that even if they are considered to be security risks by persons in authority, who are in a position to know what really the matter is much better than we do, that Government should be pressed to release those also and bring their detention to an end. I suppose nobody will go to that length. At the same time, the stand always remains that if they cease to be security risks they should not be kept in detention a minute longer; but so far as the Supreme Court judgment is concerned, upon which this very timely motion is brought up, I should say that my friend has failed to make out a case because the Supreme Court judgment does not support the view that he has taken. I am not thinking of the minority judgment. That is never done. If anybody has taken advantage of a minority judgment, I do not support it, in whichever context it may be. If certain facts are sought to be sifted and if a certain judgment gives indication of these facts in a better light than other judgments, it is a different matter but so far as the decision of the court is concerned, upon which my hon. friend takes his stand, that does not support his claim at all because the decision that has been arrived at is not something which would lead or ought to lead to the termination of these detentions. That could only have been reached if the Supreme Court had held that these detentions had no legal or constitutional basis or foundation. My learned friend's failure to establish that the constitutional validity of these rules and the Act had been absolutely denied by the Supreme Court, is clear proof that there is no basis for this motion at all.

PROF. M. B. LAL (Uttar Pradesh): May I ask a question? According to my learned friend, the Supreme Court has passed no judgment on the question of the validity of the Act itself. That is to say, there is no judgment on the question so far as the Supreme Court is concerned but there is a judgment of the Allahabad High Court on the question and because the Supreme Court has not passed any judgment, the judgment of the Allahabad High

[Prof. M. B. Lal.]

Court continues to exist, at least so far as the jurisdiction of the Allahabad High Court is concerned. Am I right in my interpretation?

SHRI SANTOSH KUMAR BASU: I thank my friend for bringing up this matter in a pointed form because it gives me an opportunity of trying to remove any misunderstanding that might remain in the mind of any friend. Now, so far as this particular motion is concerned, very wisely my hon. friend has confined it to the Supreme Court judgment and has not cared to refer to the Allahabad High Court judgment. He is very right, if I may say so with great respect. This issue which has been raised by my friend, Prof. M. B. Lal, is, in the first place, irrelevant having regard to the Motion before the House and secondly, we can very well understand the fate that the Allahabad High Court judgment will meet with if it comes before the Supreme Court. All such judgments of subordinate High Courts will be brushed aside in the face of this judgment of the Supreme Court. I must, however, admit at the same time that the Uttar Pradesh Government took the only right course open to the executive by abiding by the decision of the Allahabad High Court and releasing all the appellants before the High Court at that time. In other words, they have given effect to the decision of the High Court although they did not agree with the view that has been expressed in the judgment on the legal aspect or any other aspect. The operative part of the judgment, namely, that these persons should be released, has been faithfully given effect to by the Government of Uttar Pradesh as it is only to be expected from a responsible Government So far as this point is concerned, I do not think that point arises.

THE DEPUTY CHAIRMAN: Mr. Chandra Shekhar.

SHRI M. N. GOVINDAN NAIR: The point raised about the Supreme Court or other courts' judgment on the validity or invalidity of the Act . . .

THE DEPUTY CHAIRMAN: I have called Mr. Chandra Shekhar. You can raise these points later on.

श्री चन्द्र शेखर : महोदया, इस विषय पर बोलने में पहले मुझे थोड़ा संकोच था; क्योंकि विधान और नियम की जानकारी मुझे कम है। कानून का न तो मैं पंडित हूं और न इसका कोई विद्यार्थी रहा हूं, लेकिन खासतौर पर कानून मंत्री महोदय का भाषण सुनने के बाद मेरी झेंप कुछ कम हो गई। मुझे अफसोस के साथ कहना पड़ता है कि हमारे विधि वेत्ताओं ने, कानून के जानने वाले लोगों ने, इस सवाल को केवल एक पहलू से सोचा है। पार्लियामेंट में और सुप्रीम कोर्ट में थोड़ा फर्क होना चाहिये, दोनों के सोचने के तरीके में और दोनों जगहों पर विवाद करने के तरीकों में भी फर्क होता है। मैं मानता हूं, जैसा कि हमारे याजी जी ने कहा कि देश की सुरक्षा के लिये ऐसे कानून की जरूरत है।

मैं यह भी मानता हूं कि देश के ऊपर जब बाहरी हमला होता है तो उस हालत में देश के सामने कुछ ऐसे प्रश्न आते हैं कि मौलिक अधिकारों को भी दूर करके देश की सुरक्षा को प्रतिष्ठित करना ज्यादा आवश्यक होता है। लेकिन साथ ही प्रश्न यह उठता है कि जब हम ऐसे नियम बनाने लगें तो हमें अपनी मौलिक मान्यताओं को कभी नहीं भुलाना चाहिये। मुझे दुःख के साथ कहना पड़ता है कि चाहे जिस वजह से हुआ हो, गृह विभाग ने या ला मिनिस्ट्री ने यह विधान बनाने के समय, ये नियम बनाने के समय यह नहीं सोचा कि भारत आजाद है और आजाद होने के साथ ही साथ हमने प्रजातांत्रिक मान्यताएं मानी हैं, साथ ही हमने यह माना है कि कानून सर्वोपरि होता है, हमने यह भी माना है कि हर एक नागरिक की सुरक्षा पर तब तक आंच नहीं आनी चाहिये, जब तक कि उसकी वजह से देश की सुरक्षा के ऊपर कोई खतरा नहीं होता। हमारे माननीय वक्ताओं ने कहा है

कि आज देश के सामने ऐसी हालत है कि यह कानन जो पारित हुआ है, संविधान के मुताबिक हुआ है, लेकिन क्या यह सोचने की बात है कि संविधान में जो कानून बनाने का हक दिया था, उसकी जरूरत आज थी कि नहीं। आज जो डिफेन्स आफ इण्डिया रूल्स बने हैं, उनमें और जो सन् १९४२-४३ में अंग्रेजों के जमाने में कानून बना उसमें कोई फर्क नहीं, सीधे उसी को उठा कर रख दिया। नागरिक अधिकारों का ख़याल नहीं रखा गया और महोदया, मैं कहना चाहूंगा कि उस जमाने में भी, १९४२-४३ में भी, "इम्परर वर्सेज़ शिवनाथ बनर्जी" का एक केस हुआ कलकत्ता हाई कोर्ट में और हमारे माननीय मित्र बसु जी जानते हैं कि उस समय वहां हाई कोर्ट ने होल्ड किया कि जो धारा २६ थी, डिफेन्स आफ इण्डिया ऐक्ट की उसको ठीक से लागू नहीं किया गया। १९४२-४३ में अंग्रेजों के जमाने में भी लोगों को, यह अधिकार था कि वे उस कानन के अंतर्गत कोर्ट में जा सकते थे। लेकिन आज सवाल यह है कि कानून ऐसा बना हुआ है कि कोर्ट के अंदर कोई अपनी गरज को लेकर नहीं जा सकता, अपने दुख:दर्द को लेकर नहीं जा सकता। यह सवाल हमको सोचना जरूरी है कि क्या इसकी आवश्यकता--उसको अधिकार देने की--थी या नहीं। सर्वोच्च न्यायालय के फैसले में कहा गया है कि इस पार्लियामेंट ने जो कानून बनाया वह एक चुनौती की हालत में बनाया, उस चुनौती की हालत में उसने यह समझा कि कोई जरूरत नहीं है नागरिक अधिकारों को बरकरार रखने के लिये--थोड़े दिनों तक कानून की निगाह में उनको अदालत में जाने का मौका नहीं मिलना चाहिये।

मेरे मित्र याजी जी ने कहा है कि देश की सुरक्षा के विरुद्ध विरोधी दल के लोग कानून का विरोध कर रहे हैं। मैं बड़े अदब के साथ कहता हूं कि एक्जीक्यूटिव को कितने ही अधिकार आप दे दीजिए, सारे अधिकार दे दीजिए लेकिन अगर सरकार भ्रष्ट है, अगर सरकार में कार्य करने की क्षमता नहीं है तो कानून के जरिये देश की सुरक्षा नहीं हो सकती और अगर हो सकती है तो आप इसका जवाब दीजिए। आज से पन्द्रह दिन पहले प्राइम मिनिस्टर ने कहा था कि हिन्दुस्तान में चाइना लाबी चल रही है; डिफेन्स आफ इण्डिया रूल उन पर लागू हो सका है क्या? नहीं हो सका। इसलिये नहीं हो सका कि कार्यकारिणी में जो हुकूमत है उसमें काम करने की क्षमता नहीं है। दूसरी तरफ मैं आपको बताऊं--इसमें बड़ा खतरा होता है--कि एक बार रूल आफ ला को तोड़ दीजिए, जैसा कि माइनारिटी जजमेंट में कहा गया है, तो उसकी कोई रोक नहीं होती। एक बार कानून के जरिये शासन नहीं चलता तो शासन दोनों तरफ अपने को पेण्डुलम की तरह ले चलता है। माननीय भूपेश गुप्त जी माफ करेंगे, एक तरफ हमारे बहुत से लोग डिफेन्स आफ इण्डिया रूल्स के अंतर्गत ऐसे पकड़े गये होंगे, जिनको पकड़ना जरूरी था, लेकिन क्या यह सही नहीं है कि बहुत से लोग ऐसे पकड़े गये, जिनके पीछे कोई ग्राउण्ड नहीं है। केरल में प्रजा सोशलिस्ट पार्टी के एक एम० एल०ए० पकड़े गए। क्यों? क्योंकि मजदूरों की हड़ताल हो रही है। बिहार में प्रजा सोशलिस्ट पार्टी के नेता बसावन सिंह पकड़े गए; क्योंकि यहां एक्स्प्लोसिव फैक्टरी में हड़ताल हो रही थी--सरकार मालिकों का पक्ष लेना चाहती थी, मजदूरों के हकों पर कुठाराघात करके मालिकों के पक्ष में डिफेन्स आफ इण्डिया रूल्स को अख्तियार करके हमसे कहा जाये कि मुल्क के ऊपर खतरा है, इसलिए तुम कचहरी में नहीं जा सकते। मैं बड़े अदब से कहूंगा जो दोस्त उन मान्यताओं का समर्थन करते हैं, इसके पहले कि ये अधिकार दिये जायें, सरकार को इस बात के लिये जिम्मेवारी के साथ देश के सामने, दुनिया के सामने कहना पड़ेगा, समाज के सामने कहना पड़ेगा कि जो जरूरतें हैं,

[श्री चन्द्र शेखर]

केवल उसी के मुताबिक काम किया जायेगा। चुनौती जिस समय थी उस समय ऐसा कानून पास करना ठीक था। लेकिन क्या चुनौती की हालत आज ज्यों की त्यों सरकार की नजर में बरकरार है? क्या आज हुकूमत इस तरह से चुनौती को लेने को तैयार है? सुरक्षा कानून के अंदर लोगों की गिरफ्तारी कर चुके हैं। एमरजेन्सी बनी रहे, लेकिन मैं नही समझता हूं कि कचहरी में जाने का अधिकार लोगों को क्यों नही होना चाहिये।

मैं आपको यह भी कहूंगा कि आप इतना घबराए क्यों हैं? आखिर जुडीशियरी बैरोमीटर होती है समाज का, समाज के हर स्पन्दन का असर जुडीशियरी पर होता है। जिस समय विश्व युद्ध के जमाने में अमेरिका पर हमला हो रहा था, जापानी लोग हजारों की तादाद में पकड़ कर जेल में बंद कर दिये, उस समय फेडरल कोर्ट ने उनका मामला नहीं सुना; क्योंकि उस समय एक परेशानी की हालत थी, हंगामे की हालत थी। लेकिन उसके बाद उनके मामले की सुनवाई जुडीशियरी के सामने हुई। जुडीशियरी जहां विधान से संचालित होती है, वहां पर राष्ट्रीय भावना, वहां पर युग की पुकार से संचालित होती है। मैं नहीं समझता कि कोई भी जुडीशियरी विधान के नुक्ते नजरिये को देख-कर, देश की सुरक्षा का ख़याल नहीं करती। लेकिन अफसोस है कि इस सरकार को अपनी जुडीशियरी पर यकीन नहीं। सरकार को अगर सबसे ज्यादा यकीन है, तो एक्जीक्यूटिव पावर के ऊपर है और इस एक्जीक्यूटिव पावर का किस तरह से दुरुपयोग किया जा रहा है, मैंने संक्षेप में आपसे कहा।

दूसरी बात मैं कहना चाहूंगा कि यह रूल आफ ला को तोड़ने का नतीजा क्या होगा? केवल यही नहीं होगा कि माननीय भूपेश गुप्ता जी कल गिरफ्तार कर लिये जायें—भूपेश गुप्ता जी उसके हकदार भी हैं, उससे लाभ भी उठाए हैं—मैंने एक बार जिक्र किया था और बड़ी जिम्मेवारी के साथ कहता हूं: कम्युनिस्ट पार्टी में एक ग्रुप को बढ़ाने के लिये हिन्दुस्तान के सबसे जिम्मेवार आदमी वजीरे आजम पंडित जवाहरलाल नेहरू ने यू० पी० गवर्नमेंट को यह राय दी कि तेजा सिंह 'स्वतंत्र' के ऊपर कत्ल का मुकदमा है पंजाब का, वह वापस ले लिया जायें। हमारे मित्र याजी जी ने कहा, सोवियट लाबी को मजबूत करने के लिये आंदोलन के लिये, मुजाहिरा करने के लिये हक दिया गया था. . .

श्री शील भद्र याजी (बिहार): वे रूसी पंथी हैं, चीनी पंथी नहीं।

श्री चन्द्र शेखर: वे रूसी पंथी हैं और इसी रूसी पंथी के नाम पर पंडित जवाहरलाल नेहरू, वजीरे आज़म ने—माफ करेंगे भूपेश गुप्ता जी—इनके लीडरों के कहने पर तेजा सिंह के ऊपर से मुकदमा उठाने के लिये यू० पी० गवर्नमेंट के ऊपर दबाव डाला। एक मर्त्तबे यू० पी० गवर्नमेंट ने इनकार किया। दूसरा खत लिखा गया। मैं यह कहूं, कोई भी हुकूमत, कोई भी एक्जीक्यूटिव जो दूसरी राजनैतिक पार्टियों की आपसी गुटबंदी को बरकरार रख कर, उनको तेज़ करके हुकूमत चलाना चाहती है, वह सरकार कभी देश की सुरक्षा नहीं कर सकती, वह सरकार कभी रूल आफ ला को लागू नहीं कर सकती। हमें सबसे खतरा इसलिये है कि आज की इस हुकूमत के हाथों में ये सारे अधिकार दे दिये जायेंगे जो इस डिफेन्स आफ इण्डिया रूल्स में दिये हुए है और ऐक्ट में दिये हुए हैं तो फिर शायद किसी की भी सुरक्षा नहीं हो सकेगी।

मैं दूसरी बात आपसे अर्ज करना चाहूंगा। हमारे विधि मंत्री ने बड़ी कार्वालयत के साथ यह कहा कि ५८ में और ५९ में फर्क है—थोड़ा फर्क, हम लोग समझते हैं। बहुत कानून का पंडित नहीं हूं, लेकिन मैं जानना चाहता हूं कि क्या केवल ५८ के प्राविज़न्स के ऊपर. . .

श्री रोहित दवे (गुजरात) : ३५८।

श्री चन्द्र शेखर : माफ कीजिएगा, ३५८ और ३५९ के प्राविजन्स। क्या काम नहीं चल सकता था? चल सकता था, अगर हुकूमत काम करने की जिम्मेवारी समझती, अगर हुकूमत को काम करने की गर्ज होती। लेकिन अगर यह नहीं है, तो काम नहीं होना है।

मैंने एक बात अर्ज की थी बीच में, *जब मिनिस्टर साहब बोल रहे थे। आखिरकार* समाज में जो विचार उठते हैं, उसका कुछ ज्ञान होना चाहिये। अटार्नी जनरल साहब जब बहस कर रहे थे तो उन्होंने यह कहा कि कोर्ट में न जाने का जो प्राविजन है वह डिफेक्टिव है, यह बात अटार्नी जनरल साहब ने सुप्रीम कोर्ट के सामने कही। 'टाइम्स आफ इंन्डिया' के, महोदया, मैं अगर गलती नहीं करता हूं तो 'स्टेट्समेंन' का एडीटोरियल है, इस एडीटोरियल को मैं पढ़ना चाहूंगा :

"The Attorney-General conceded before the Supreme Court that lack of provision in the D. I. R. for Communication of grounds of detention and for an opportunity for the defence to make a representation was a defect. The State need not be seriously handicapped if it has to apply the normal law of detention. Its provisions for review had paralysed during the last war when even known enemy agents were offered secret trial and opportunity for review of sentences on them. Under a special ordinance in the light of the Supreme Court's verdict therefore the Government would do well to revoke the ban under article 359 if not the emergency as well."

केवल एक 'टाइम्स आफ इंडिया' ने नहीं लिखा, 'स्टेट्समेंन' ने, 'इन्डियन एक्सप्रेस' ने, 'हिन्दुस्तान टाइम्स' ने—कोई भी डेली ऐसा नहीं है, जिसने यह कहा हो। गवर्नमेंट को संशोधन करना है इसके ऊपर? नहीं करना है संशोधन। क्यों? जरूरत नहीं समझती।

मैं बड़े अदब के साथ माननीय गृह मंत्री जी से कहूंगा, एक बार सिविल लिबर्टीज के ऊपर जानबूझ कर जो हमला बोलता है, शायद उसके कान्सीक्वन्सेज, उसके परिणाम नहीं जानता। मुझे एक वक्त की याद आती है—माफ करेंगे हमारे मित्र—जिस समय ट्राटस्की ने दबाया था रूस में हड़ताल करने वालों को और कहा था मौलिक अधिकारों की कोई जरूरत नहीं है, लेकिन जिस दिन स्टालिन का हथौड़ा ट्राटस्की के ऊपर पड़ा, आप याद रखिये, ट्राटस्की सबसे बड़ा सिविल लिबर्टीज का और मानव अधिकारों का मानने वाला बन गया।

मैं दूसरी बात कहता हूं। अभी मैं एक किताब पढ़ रहा था Conversation with Stalin' by Milovan Djilas। मेरे पास इस समय इसके बारे में बतलाने के लिए समय नहीं है। सेकिन्ड वर्ल्ड वार के जमाने में क्या हुआ, किस तरह से स्टालिन ने उन लोगों को दबाया? मैं अपने मित्रों से जो दूसरी साइड में बैठे हैं कहूंगा कि कम्यूनिस्ट पार्टी को दबाने के नाम पर कहीं उस जहनियत के शिकार न हो जाइये, जिस जहनियत का शिकार हो कर कम्यूनिस्ट पार्टी ने मानव मर्यादाओं को हमेशा के लिए ठुकरा दिया। मैं आपसे यह अर्ज करना चाहूंगा कि इस नुक्ते नज़र से आपको इस सारे पहलू पर विचार करना पड़ेगा। अगर हम उस पहलू पर थोड़ा गौर करें, तो हम ऐसा समझते हैं कि जरूरत इस बात की है कि आप सुरक्षा का ध्यान रखें, लेकिन उनको यह हक दें कि कचहरी के सामने, जुडीशियरी के सामने जाकर अपनी फरयाद रख सकें। अगर ऐसा नहीं होता तो रूल आफ ला नहीं रहेगा, देश की मर्यादाएं और मान्यतायें नहीं रहेंगी और प्रजातंत्र की वे मान्यताएं, जिसके ऊपर हम आज इस सदन में बैठे हैं वह नहीं रहेंगी। मुझे डर है महोदया कि इस हुकूमत के हाथ में यह ऐक्ट

[श्री चन्द्र शखर]

वैसे ही है जैसे एक बन्दर के हाथ में मशाल हो, चाहे तो उस मशाल से अन्धेरे में उजाला करे, चाहे उस मशाल से खुद अपने ही घर को फूंक दें जिस घर से उसने मशाल पाई थी। इसलिए आज जो हुकूमत है उसके हाथ में डिफेन्स आफ इन्डिया ऐक्ट वैसे ही है जैसे बन्दर के हाथ में एक मशाल देना है। मुझे उम्मीद है कि यह पार्लियामेंट, यह सदन, इस खतरे को कभी सहन नहीं करेगा, इस खतरे को कभी लेने के लिए तैयार नहीं होगा। हमारा यह अनुरोध है कि आप सुरक्षा की कार्यवाहियों को तेज करें लेकिन लोगों को ज़ुडीशियरी में जाने का हक दें। यह देश की मौलिक मान्यताओं का प्रश्न है, इसलिए मैं विधि मंत्री तथा गृह मंत्री जी से अनुरोध करूंगा कि सुप्रीम कोर्ट की भावना को देखते हुए, देश के जनमत को देखते हुए, इसमें संशोधन लायें।

मुझे अफसोस है कि ला डिपार्टमेंट ठीक वैसा ही काम करता है जैसा डिफेन्स डिपार्टमेंट काम करता है। जिस तरह से नेफा में डिफन्स के लोग भागे, पता नहीं चला कहां दे गये, वैसे ही मालूम होता है कि दिल्ली में कोई खतरा आ रहा है जिसकी वजह से जल्दी जल्दी में सारे कानून बनते हैं, जल्दी जल्दी में पता नहीं ला मिनिस्टर क्या करते हैं। ऐसे ला मिनिस्टर के रहने का कोई हक नहीं है जिस ला मिनिस्टर के जमाने में अटार्नी जनरल कहता है कि यह दोषपूर्ण कानून बना हुआ है और उस दोष को हमने नज़रअन्दाज़ कर दिया। इसलिए यह हुकूमत सोचेगी, खासतौर पर वजीर आजम साहब सोचेंग कि जो दूसरों को सुरक्षा का पाठ पढ़ाते हैं, दूसरों को जम्हूरियत का पाठ पढ़ाते हैं, वे रूल आफ ला के रास्ते में हायल न बनें, उस रास्ते में प्रतिरोध न लगायें। अगर वे इस तरह की कोई कठिनाई लगाते हैं तो हो सकता है हम उसका फैसला नहीं कर सकें, लेकिन आने वाला कल, आने वाला इतिहास उसका फैसला करेगा।

SHRI ABID ALI (Maharashtra): Madam Deputy Chairman, the hon. Member who has moved the motion quoted extensively from the Supreme Court's judgment, but there is nothing in it to reach the conclusion which he has tried even now to reach, that the persons before the Court were illegally detained. My submission is that even if the Supreme Court had held that the appellants before the Court were illegally detained, the Government would have and ought to have come before Parliament to change the Act and, if necessary, the Constitution and certainly every patriotic citizen would have supported the Government in changing the Constitution.

SHRI P. N. SAPRU (Uttar Pradesh): No.

AN HON. MEMBER: Why not?

SHRI ABID ALI: Please. My friend, Mr. Sapru, will say 'Yes' after hearing later portion of the sentence. I was going to say that every citizen would support the Government if the Constitution was to be changed with the intention of preserving the security of the country. Certainly to this Mr. Sapru will not say 'No'. He will say 'Yes'.

The mover of the motion has quoted the previous Home Minister, Shri Lal Bahadur Shastri, and about the assurance given by him. Certainly the Government will stand by that assurance. The assurance was that they would consider the judgment of the Supreme Court and, if necessary, change the Constitution with the intention of implementing the Act, which was passed by Parliament, to preserve the security and integrity of the country. In case any loophole had been found—fortunately nothing wrong has been found in the Act—certainly an amendment would have been brought forward. Remember, Madam, as was quoted, our revered Pandit Motilal Nehru rightly opposed the Defence of India Rules, but which Defence of India Rules? They were promulgated by an imperialist power

to keep the country under its rule and these very members of the Communist Party were the supporters not only of the imperialist government but also of the Defence of India Rules passed by the British Government.

(*Interruptions*).

SOME HON. MEMBERS: No, no.

SHRI ABID ALI: All right, I can mention it. Did they not support British rule in India?

SOME HON. MEMBERS: No, no.

SHRI ABID ALI: No use shouting . . . (*Interruptions*).

. . .

SHRI K. L. NARASIMHAM (Andhra Pradesh): It is a slander.

SHRI ABID ALI: The Indian public will not excuse the communists for their supporting the war efforts of the British imperialist power in this country.

(*Interruptions*).

SOME HON. MEMBERS: Shame, shame.

SHRI ABID ALI: Of course, every child in the country knows it. If they want to fool the youngsters we are here to remind them that here are the people who supported the British rulers. They were opposed to the war so long as Russia was against the British and it was an imperialist war. Overnight, as soon as the Russians . . .

SHRI K. L. NARASIMHAM: We know you well.

(*Interruptions*).

SHRI ABID ALI: As soon as the Russians joined the British and allied with them it became a people's war. The communists were out to support the war effort and one of the war efforts, a part of the war effort was that the British Government should maintain its rule in this country. And that is a thing which everybody knows. No use shouting and telling 'No'. It is as much fact as we are here today. If the hon. Members are ashamed of their action then they should come forward and say that they were wrong. But they have never said that up to this time. But they went to this extent that even after the British army left, they never said that the British had left India. Even till the time our good friends Bulganin and Khrushchev had to come to India to tell these people "here is the Indian flag; no British flag is here now; It is Indian Government. India has become independent", after that "certificate" only the Communist Party in India accepted that it is an independent India and not British India.

(*Interruptions*).

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

SHRI ABID ALI: I am not yielding. Is it on a point of order?

SHRI BHUPESH GUPTA: I am very glad that you yield. There is a certain rule which we try to observe, as far as possible, called the rule of relevancy.

SHRI ABID ALI: It is not a point of order. I am not yielding. I am only reminding the people. I want to warn the Government that they must be having information about what is happening in the border. Persons who came from the border area formerly educated . . .

THE DEPUTY CHAIRMAN: I think you must speak on the subject.

SHRI ABID ALI: It is very much relevant. I am opposing the intention of the motion. This is, of course, consideration of it. I am opposing the suggestion that the Government should release the detenues. Legal side apart, in case anything wrong has been found, it should be amended and I am requesting the Government not to be bullied. I am requesting the Government to be very strong. We are on the crossroads, Madam. This is a question of integrity of the country. The high principles and pre-

[Shri Abid Ali.]

cepts that the Communists want to claim cut no ice. This Government should know what they are. The Government should be aware of it and also I have a right to tell them of what is happening in the border. The residents of the border area, who were here educated and indoctrinated, those friends, have been sent there. A large number of persons have been trained as communists and trained to do things about which they themselves will be ashamed, when this will be done there. To the border they have been sent and a large number of bulletins have been started in the border areas to say that China is your friend.

SOME HON. MEMBERS: Shame, shame.

SHRI ABID ALI: China is not coming as your enemy. China is coming to give you protection and Netaji Subhas Chandra Bose is leading the Chinese Army. That is what these people are being told in the border. Government should beware. But let the public also beware.

SHRI CHANDRA SHEKHAR: Shame to the Government that they are not able to check it.

SHRI ABID ALI: So far as I am mentioning the thing which I know. They talk of Netaji Subhas Bose. The same Subhas Bose was called by them "Tojer kukur", dog of Tojo. That was the title the Communist Party gave him, a man who was dear to everybody in this country.

In border areas a large number of people are doing subversive activities. Even the posters which have been pasted on the walls in Delhi advocate only class war. There is no question of this war against the Chinese.

Then there was the industrial truce. In November last we had a meeting and so many decisions were taken. Did these Communist trade unions, who were a party to that, voluntarily agreed, carried out part of the truce? Everywhere strikes, everywhere trouble, everywhere demonstrations, and of course all in the name of class war. Take this opportunity, the employers are earning, take as much benefit as you can, wage a class war against the employers—this is what they advocate. Nothing about this war, nothing about the Chinese. They are very clever people. They give a twist to every situation to their own advantage. But Government also knows, and should know, what should be done.

Madam, so far I was submitting that we are on the cross roads. I, as a Congressman with 44 years of connection with the organisation, must warn Government that if they show any weakness in dealing with any one of the two groups—one is pro-Russian and the other is pro-Chinese —they will repent it. Government should remember that when the occasion came, from anti-British they became pro-British because something happened in a foreign land, in a foreign country, but nothing concerning India and we were at war with the British Government in 1942. The same thing may happen. There may be Chinese Communists, there may be Russian Communists, but are there also Indian Communists? Have they any grain of love left as far as this country is concerned? None. Nothing. They are sold. They are bartered away. They are just dancing to the tune of foreign powers; might be this or that power, we are not concerned with that. Nobody knows what will happen tomorrow, in which country and for what purpose. Let us be warned to this extent that we should not take chances.

(Interruptions).

Mr. Chavan has said that we will learn by what has happened in the past. Very good, I am glad, and I am sure they will learn. Similarly so far as this particular sphere is concerned

also, Government should learn by what has happened in Czechoslovakia and so many other countries, about the treacherous part played by the Communist Party, first having a little friendship with the people in the Centre and then gradually capturing the power. The same thing they are attempting here, and the same thing they want to happen in this country. Government should not show any weakness about that side even though they may call themselves something else. No chances are to be taken so far as these Communists are concerned. Therefore, we must remember all that the Congress has done in the past under Mahatma Gandhi's leadership. Our nation will not excuse, it will not pardon, the Congress Government and the Congress organisation if any weakness is shown at this juncture, if appropriate action is not taken (*interruption*) to treat the traitors in this country properly wherever they are, (*interruption*) to safeguard the Constitution and the honour and dignity of the country.

SHRI M. N. GOVINDAN NAIR: Madam, you should not allow that nonsense to be spoken against us.

AN HON. MEMBER: You must be ashamed.

SHRI ABID ALI: Nothing less will suffice whatever they may say. Thank you, Madam.

THE DEPUTY CHAIRMAN: I will expunge the words that are indecorous.

SHRI ABID ALI: Madam, I did not say anything about particular people here. I said about traitors in the country. There should be no objection to that.

THE DEPUTY CHAIRMAN: Mr. Abdul Ghani. You take five minutes.

SHRI ABDUL GHANI: Madam, I would request you to give some more time. This is a matter which must be considered thoroughly.

مدثم ڈپٹی چیرمین - جب ڈیفنس آف انڈیا رولز یہاں پر پاس کرنے جا رہے تھے تو اس وقت مجھے یقین تھا اور میں نے کہا تھا کہ اسٹیٹ گورنمنٹ کو آپ ایسے ہتھیار نہ دیں کہ جو اپنے ذاتی انتقام میں کچھ لوگوں کو جیل میں بند کر دیں - جب میں یہ بات کر رہا تھا اور شری لال بہادر شاستری ہوم منسٹر تھے تو میرا یقین تھا کہ سب سے پہلے جو اس کا وار ہوگا وہ ان کے اوپر ہوگا جنہوں نے نہرو میں غداری کی - وہ اس انٹیلیجنس ڈیپارٹمنٹ پر ہوگا جس نے ہماری سرکار کو غلط اطلاعیں دیں اور میرا یقین تھا کہ سب سے پہلے جو نظر بند ہوگا وہ ڈیفنس منسٹر ہوگا - میرا یہ بھی یقین تھا کہ اور جس کے اوپر وار ہوگا وہ ہمارے پرائم منسٹر پر ہوگا جس نے ہمارے دیش کا ایمان کیا جنگ میں -

अनेक माननीय सदस्य : ग़लत है, ग़लत है ।

شری عبدالغنی : آپ کہہ سکتے ہیں - غلط صحیح آپ کہتے رہیں لیکن میں یہ نہیں جانتا تھا کہ کچھ لوگوں کو صرف اس لئے کہ وہ کمیونسٹ ہیں ان سے چاہے کوئی خطرہ ہو یا نہ ہو وہ دیش کے ہتیشی ہوں ان کو پکڑ لیا جائیگا اور آپ مجھے کہتے ہیں کہ غلط ہے -

THE DEPUTY CHAIRMAN: Order, order. There is too much noise in the House. The reporters cannot take down.

شری عبدالغنی : آپ سپریم کورٹ کا ججمنٹ دیکھیں - سپریم کورٹ کے ۱۳ ججمنٹ آئے ہیں جن میں یہ کہا گیا ہے کہ پنجاب کے چیف منسٹر نے میلا فائیدی کی ہے اور ذاتی بنا پر انتقام لیا ہے - مکھن سنگھ ترسکہ کے جس کیس کو ہمارے بھوپیش جی نے پیش کیا ہے اس میں کہا گیا ہے کہ پنجاب سرکار نے میلا فائیدی کی ہے - اگر ایسے لوگوں کو بھی آپ موقعہ نہیں دینا چاہتے ہیں کہ وہ عدالت میں جائیں اور عدالت میں جاکر اپنے کو بے گناہ ثابت کریں تو میں سمجھتا ہوں یہ آپ کی بھول ہے - آپ اس وقت ڈیموکریسی کو بالکل ختم کر کے جوڈیشری کو ختم کرکے جا رہے ہیں ڈکٹیٹرشپ کی طرف اور جس بے گناہ کو آپ نے چاہا اس کو پکڑ لیا - آپ اپنے اٹارنی جنرل کی رائے بھی نہیں لیتے ہیں -

THE DEPUTY CHAIRMAN: Mr. Ghani, will you please talk a little softly? I am not able to follow, and so also the hon. Members.

شری عبدالغنی : آپ اٹارنی جنرل کی رائے کو بھی نہیں لیتے ہیں کہ اس میں کچھ ڈیفیکٹ ہے کیوں کہ بنیادی حقوق جو ہمیں حاصل ہیں کنسٹی ٹیوشن کی رو سے وہ ان ڈیفنس آف انڈیا رولز کے تحت ختم ہو جاتے ہیں اور ان میں سپریم کورٹ کوئی دخل نہیں دے سکتا اس لئے کہ پریذیڈنٹ صاحب نے جو یہ آرڈیننس نافذ کیا اس کو سپریم کورٹ کہتی ہے کہ اس کی رو سے یہ حق بجانب ہیں لیکن جو بنادی حقوق ہیں ان کو ختم کیا جاتا ہے اور اس لئے اٹارنی جنرل کہتے ہیں کہ موقعہ دینا چاہئے اگر کسی کو انتقام کی بنا پر پکڑیں یا کسی کو بے ایمانی سے پکڑیں - ہر جگہ شری لال بہادر شاستری اور نندا جی نہیں ہیں - ایسے بھی لوگ ہیں جو ذاتی بنا پر پکڑ سکتے ہیں - ایسے ۱۳ کیسیز ہیں - کل نے اسٹیٹسمین نے ۱۳ کیسیز کا حوالہ دیا ہے جن میں لوگوں کو ذاتی انتقام کی بنا پر گیا - خاص طور پر میں پنجاب کے ڈیٹینیوز کی بابت کہتا ہوں - میں جانتا ہوں کہ وہ ملک کے ہتیشی ہیں وہ ملک کے دشمن نہیں ہیں لیکن ان کو پکڑتے ہیں اور کہتے ہیں کہ ہمارا جیسے بس چلیگا ویسے کرینگے - کیروں صاحب (*Interruption.*) نہیں یہاں اور بڑے صاحب کا قصہ ہے - کیروں صاحب تو آپ ختم ہو رہے ہیں کہوں کہ اس کو بچانے والا کوئی نہیں ہے -

5 P.M.

میں یہ عرض کر رہا تھا کہ آپ ایک طرف کہتے ہیں

کہ چیف منسٹر پارٹی ہے لیکن کچھ نہیں کیا - لیکن اگر بھوپیش جی کہتے ہیں کہ جن کو بے ایمانی سے پکڑا گیا یا ذاتی انتقام میں کسی کو پکڑا گیا ہے ان کو حق دیا جائے تو ہماری یہ سرکار جس میں گاندی جی کے چیلے بیٹھے ہیں گاندھی جی کے ماننے والے بیٹھے ہیں یہ نہیں چاہتی کہ ان کو یہ حق دے کہ وہ عدالت میں اپنے آپ کو بے گناہ ثابت کرنا چاہیں تو کر سکیں ۔ میڈم - میں نے انگریزوں سے لڑائی لڑی اور بھی میرے ساتھی تھے جو سامنے کی کچھ بینچوں پر بیٹھے ہیں یہ تھوڑے سے میرے ساتھی تھے اور جب انگریزوں نے اس بات پر پکڑ لیا کہ یہ ستیہ گراہ کرنے والا ہے اور ہمارے ہائی کورٹ نے کہا کہ یہ غلط ہے کیونکہ اس کا کیا پتہ ہے کہ کل کو یہ کریگا یا نہیں کریگا تو انگریزوں نے اس کو ڈیفائی نہیں کیا اور سب کو چھوڑ دیا یہ کہکر کہ جب تک ہم فیصلہ نہ کروالیں تب تک یہ ٹھیک ہے - تو جب تک ہم عدالت سے یہ اپرو نہ کرالیں کہ یہ غدار ہیں یہ چائنا کے ساتھ ہیں یہ ہمارے دیش کو تکلیف پہنچانے والے ہیں جب تک عدالت کوئی ایسا فیصلہ نہ دے تب تک اپنے آپ ہم فیصلہ کچھ نہ کریں - یہ وہ لوگ ہیں جن کے بارے میں یہ آج ساری دنیا چلا رہی ہے - -

کہ کمیونسٹ دیش کا دشمن ہے اور دوسری طرف آپ دیکھیں کہ دلی کی تواریخ میں اتنا بڑا جلوس کمیونسٹوں کا کبھی نہیں نکلا - کیونکہ انہوں نے یہ نہیں کہا تھا کہ نہرو ڈ کوئٹ ، اور ہم نے کہا نہرو ڈ کوئٹ ، - باقی ڈیموکریٹک اپوزیشن پارٹی نے جب جلوس نکالا تو آپ نے اس کے مقابلہ میں جلوس نکالا اور دو دفعہ آپ نے جلوس نکالا - حافظ محمد ابراہم اور اُچاریہ کرپلانی کے الیکشن میں کمیونسٹ آپ کی مدد کر رہے تھے لیکن آج عابد علی صاحب کہتے ہیں کہ کمیونسٹ دیش دروہی ہیں - جب وہ ساتھ دیں تب تو دوست اور جب ساتھ نہ دیں تب دیش دروہی ہیں میں اس نظر سے نہیں دیکھتا - میں اس نظر سے دیکھتا ہوں کہ ہمارا ودھان اگر دنیا میں شاندار ہے تو وہ اس لئے ہے کہ وہ بنیادی حقوق کو تسلیم کرتا ہے اور اگر ڈفنس آف انڈیا رولز کی اور سے آپ ایک کمیونسٹ یا ایک ہندوستانی کے بنیادی حقوق کو ختم کریں اس کو غصب کریں - آپ جوڈیشیری کی اس طرح توہین کر رہے ہیں کہ آپ پر فیصلہ آتا ہے لیکن ہمارے پرائم منسٹر کے کانوں پر جوں نہیں رینگتی کیونکہ ایک چیف منسٹر ان کے پیارے ہیں - سپریم کورٹ نے جو فیصلہ دیا ہے اس میں جسٹس ایس - کے - داس نے کہا ہے

सरदार रघुबीर सिंह पंजहज़ारी : पंजाब सरकार ने तो उन को छोड़ दिया है ।

شری عبدالغنی : وھی تو میں نے کہ میڈم میڈم ہپ اور کروا کروا تھو - چونکہ وہ ان کے ساتھ تھے اس لئے ترسکہ وغیرہ کو چھوڑ دیا اور ان کو گرفتار رکھا

सरदार रघुबीर सिंह पंजहज़ारी : सभी को छोड़ दिया है ।

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सरदार रघुबीर सिंह पंजहज़ारी : पंजाब सरकार ने तो उन को छोड़ दिया है ।

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सरदार रघुबीर सिंह पंजहज़ारी : सभी को छोड़ दिया है ।

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†[SHRI ABDUL GHANI: Madam, I would request you to give some more time. This is a matter which must be considered thoroughly.

मैडम डिप्टी चेयरमैन, जब डिफेन्स आफ इंडिया रूल्स यहां पर पास करने जा रहे थे तो उस वक्त मुझे यकीन था और मैंने कहा था कि स्टेट गवर्नमेंट को आप ऐसे हथियार न दें कि जो अपने ज़ाती इन्तकाम में कुछ लोगों को जेल में बन्द कर दें । जब मैं यह बात कर रहा था और श्री लाल बहादुर शास्त्री होम मिनिस्टर थे तो मेरा यकीन था कि सब से पहले जो उसका वार होगा वह उन के ऊपर होगा जिन्होंने नेफा में गद्दारी की । वह उस इंटेलिजेन्स डिपार्टमेंट पर होगा जिस ने हमारी सरकार को ग़लत इत्तलाहें दीं और मेरा यकीन था कि सब से पहले जो नज़रबन्द होगा वह डिफेन्स मिनिस्टर होगा । मेरा यह भी यकीन था कि और जिस के ऊपर वार होगा वह हमारे प्राइम मिनिस्टर पर होगा जिस ने हमारे देश का अपमान किया जंग में ।

अनेक माननीय सदस्य : ग़लत है, ग़लत है ।

***Expunged as ordered by the Chair.

†[ ] Hindi transliteration.

श्री अब्दुल ग़नी : आप कह सकते हैं; ग़लत सही आप कहते रहें लेकिन मैं यह नहीं जानता था कि कुछ लोगों को सिर्फ इसलिये कि वह कम्यूनिस्ट हैं, उन से चाहे कोई खतरा हो या न हो, वह देश के हितैषी हों उन को पकड़ लिया जायेगा और आप मुझे कहते हैं कि ग़लत है ।

THE DEPUTY CHAIRMAN: Order, order. There is too much noise in the House. The reporters cannot take down.

श्री अब्दुल ग़नी : आप सुप्रीम कोर्ट का जजमेंट देखिए । सुप्रीम कोर्ट के १३ जजमेंट आये हैं जिन में यह कहा गया है कि पंजाब के चीफ मिनिस्टर ने मेलाफाइडी की है और जाती बिना पर इंतकाम लिया है । मक्खन सिंह तरसिक्का के जिस केस को हमारे भूपेश जी ने पेश किया है उस में कहा गया है कि पंजाब सरकार ने मेलाफाइडी की है । अगर ऐसे लोगों को भी आप मौका नहीं देना चाहते हैं कि वह अदालत में जायें और अदालत में जा कर अपने को बेगुनाह साबित करें तो मैं समझता हूं कि यह आप की भूल है । आप इस वक्त डैमोक्रेसी को बिल्कुल खत्म कर के जुडीशियरी को खत्म कर के जा रहे हैं डिक्टेटरशिप की तरफ और जिस बेगुनाह को आप ने चाहा उस को पकड़ लिया । आप अपने अटार्नी जनरल की राय भी नहीं लेते हैं ।

THE DEPUTY CHAIRMAN: Mr. Ghani, will you please talk a little softly? I am not able to follow, and so also the hon. Members.

श्री अब्दुल ग़नी : आप एटर्नी जनरल की राय को भी नही लेते हैं कि उस मे कुछ डिफैक्ट है क्योंकि बुनियादी हुकूक जो हमें हासिल हैं कान्स्टीट्यूशन की रूह से, वह इन डिफेन्स आफ इंडिया रूल्स के तहत खत्म हो जाते हैं और उन में सुप्रीम कोर्ट कोई दखल नहीं दे सकता, इसलिये कि प्रेसीडेन्ट साहब ने जो यह आर्डिनेन्स नाफिज किया उस को सुप्रीम कोर्ट कहती है कि उस के तहत से यह हक बजानिब है । लेकिन जो बुनियादी हुकूक हैं उन को खत्म किया जाता है और इस ये एटर्नी जनरल कहते हैं कि मौका देना चाहिय अगर किसी को इन्तकाम की बिना पर पकड़ें या किसी को बेईमानी से पकड़ें । हर जगह श्री लाल बहादुर शास्त्री और नन्दा जी नहीं हैं । ऐसे भी लोग हैं जो जाती बिना पर पकड़ सकते हैं । ऐसे १३ केसेज हैं । कल के स्टेट्समैन में १३ केसेज का हवाला दिया है जिनमें लोगों को जाती इंतकाम की बिना पर पकड़ा गया । खास तौर पर मैं पंजाब के डेटीनूज की बाबत कहता हूं । मैं जानता हूं कि वे मुल्क के हितैषी हैं, वह मुल्क के दुश्मन नहीं हैं, लेकिन उन को पकड़ते हैं और कहते हैं कि हमारा जैसे बस चलेगा वैसे करेंगे । (*Interruptions*) कैरों साहब, नहीं यहां और बड़े साहब का किस्सा है । कैरों साहब तो आप खत्म हो रहे हैं क्योंकि उस को बचाने वाला कोई नहीं है ।

मैं यह अर्ज कर रहा था कि आप एक तरफ कहते हैं कि कम्युनिस्ट देश का दुश्मन है और दूसरी तरफ आप देखें कि दिल्ली की तवारीख में इतना बड़ा जलूस कम्युनिस्टों का कभी नहीं निकला । क्योंकि उन्हों ने यह नहीं कहा था कि नेहरू "क्विट" और हम ने कहा, नेहरू "क्विट" । बाकी डैमोक्रेटिक अपोजीशन पार्टीज ने जब जुलूस निकाला तो आप ने उस के मुकाबिले में जुलूस निकाला और दो दफे आप ने जुलूस निकाला । हफिज मुहम्मद इब्राहीम और आचार्य कृपलानी के इलैक्शन में कम्युनिस्ट आपकी मदद कर रहे थे लेकिन आज आबिद अली साहब कहते है कि कम्युनिस्ट देशद्रोही हैं । जब वह साथ दें तब तो दोस्त और जब साथ न दें तब देशद्रोही हैं—मैं इस नजर से नहीं देखता । मैं इस नजर से देखता हूं कि हमारा विधान अगर दुनिया में शानदार है

[श्री अब्दुल ग़नी]

तो वह इसलिये है कि वह बुनियादी हुकूक को तसलीम करता है और अगर डिफेन्स आफ इंडिया रूल्स की रूह से आप एक कम्युनिस्ट या एक हिन्दुस्तानी के बुनियादी हुकूक को खत्म करें, उस को हसब करें। आप जुडीशियरी की इस तरह तौहीन कर रहे हैं कि आप पर फैसला आता है लेकिन हमारे प्राइम मिनिस्टर के कानों पर जूं नहीं रेंगती क्योंकि एक चीफ मिनिस्टर उन के प्यारे हैं। सुप्रीम कोर्ट ने जो फैसला दिया है उस में जस्टिस एस० के० दास ने कहा है कि चीफ मिनिस्टर पार्टी है लेकिन कुछ नहीं किया। लेकिन अगर भूपेश जी कहते हैं कि जिन को बेईमानी से पकड़ा गया है या जाती इंतकाम में किसी को पकड़ा गया है उन को हक दिया जाये तो हमारी यह सरकार, जिस में गांधी जी के चेले बैठे हैं, गांधी जी के मानने वाले बैठे हैं, यह नहीं चाहती कि उन को यह हक दे कि वे अदालत में अपने आप को बेगुनाह साबित करना चाहें तो कर सकें। मैडम, मैं ने अंग्रेजी से लड़ाई लड़ी और यही मेरे साथी थे जो सामने की कुछ बेंचों पर बैठे हैं। ये थोड़े से मेरे साथी थे और जब अंग्रेजों ने इस बिना पर पकड़ लिया कि यह सत्याग्रह करने वाले हैं और हमारी हाई कोर्ट ने कहा कि यह गलत है क्योंकि इस का क्या पता है कि कल को यह करेगा या नहीं करेगा तो अंग्रेजों ने इस को डिफाई नहीं किया और सब को छोड़ दिया यह कह कर कि जब तक हम फैसला न करवा लें तब तक यह ठीक है। तो जब तक हम अदालत से यह एप्रूव न करा ले कि ये गद्दार हैं, ये चाइना के साथ हैं, ये हमारे देश को तकलीफ पहुंचाने वाले हैं, जब तक अदालत कोई ऐसा फैसला न दे तब तक अपने आप हम फैसला कुछ न करें। ये वह लोग हैं जिनके बारे में ये आज सारी दुनिया चिल्ला रही है।

सरदार रघुबीर सिंह पंजहजारी (पंजाब): पंजाब सरकार ने तो उन को छोड़ दिया है।

श्री अब्दुल ग़नी : वही तो मैं ने कहा कि मीठा मीठा हप्पा और कड़वा कड़वा थू। चूंकि वह उन के साथ थे इसलिये तरसिक्का वगैरह को छोड़ दिया और उन को गिरफतार रखा।

सरदार रघुबीर सिंह पंजहजारी : सभी को छोड़ दिया है।

श्री अब्दुल ग़नी : मैडम, तो मैं यह अर्ज कर रहा था कि ऐसी हालत में मैं ने सरकार से अपील की है इस अमेंडमेंट के द्वारा कि यह हाउस उन से रिक्वैस्ट करता है, उन से सिफारिश करता है कि वह यह सोचें कि उन की काली करतूतों से कहीं देश तबाह न हो जाए, कहीं देश में डैमोक्रेसी न खत्म हो जाये। कम्युनिस्ट दुश्मन नहीं हैं। उन को हुकूमत चाहती है। हमें ऐसा दिखाई दे रहा था जब कि उन का प्रोसेशन आ रहा था जैसे कि वे हुकूमत को जीतने वाले हैं और वह पार्लियामेंट पर और सैक्रेटेरियट पर कब्जा कर लेंगे। तब उन का स्वागत करते थे. और उस दिन तो कहते थे कि इतना बड़ा जुलूस है, बाकी और अपोजीशन से कहीं शानदार जुलूस है और आज कहते हैं कि दुश्मन हैं। दुश्मन भी हो तो पंडित जी कहते हैं कि दुश्मन पर फैसला लागू कर दें बगैर उस को सुने। उस से हम बयान मंगवायेंगे, सुप्रीम कोर्ट के फैसले पर उस का फैसला लेंगे कि वह क्या फैसला देते हैं और उस के होम मिनिस्टर ने जैसा दिया वह शर्मनाक है हर एक के लिए। लेकिन अगर वहां यह लागू होता है तो फिर कम्युनिस्ट डेटीनूज के बारे में क्यों लागू नहीं होता। उन को हक दिया जाये कि वह अदालत में अपने आप को बेगुनाह साबित करें और यह साबित करें कि हम भी वतन के इसी तरह वफादार हैं जैसे कि बाकी लोग वफादर हैं। * * * *]

SHRI SHEEL BHADRA YAJEE: *

*Expunged as ordered by the Chair.

THE DEPUTY CHAIRMAN: I will look into that. I have got eight more names before me. The Chairman has allotted two hours for this discussion. It is now 5.05 P.M. So, I would call the Home Minister to reply. (*Interruptions.*) Order, order.

(*Several hon. Members stood up.*)

THE DEPUTY CHAIRMAN: All of you should not stand up together. Please sit down. I am on my feet.

SHRI P. L. KUREEL *URF* TALIB (Uttar Pradesh): At least some minutes should be given to us. (*Interruptions.*)

THE DEPUTY CHAIRMAN: I have to call the Minister. Please sit down.

SHRI P. L. KUREEL *URF* TALIB: As a protest we walk out of the House.

(*At this stage, the hon. Member walked out of the House.*)

SHRI BHUPESH GUPTA: The Minister should not reply. We should adjourn. (*Interruptions.*)

THE DEPUTY CHAIRMAN: I am on my feet. Order, order.

SHRI G. MURAHARI: If you do not allow us to speak, we walk out.

(*The hon. Member then walked out of the House.*)

SHRI B. D. KHOBARAGADE (Maharashtra): We should be allowed to speak.

THE DEPUTY CHAIRMAN: I would call the Minister now to speak in reply to this discussion.

SHRI BHUPESH GUPTA: He cannot reply under the rules, the Minister can only intervene. The motion is mine and the reply is mine.

THE DEPUTY CHAIRMAN: Whatever you may . . .

SHRI BHUPESH GUPTA: Anyway, I hope you are extending the session.

AN HON. MEMBER: No.

SHRI BHUPESH GUPTA: Why not? Every day we sit here for Government motions. It would be very unfair not to do so about the motions coming from the Opposition.

THE DEPUTY CHAIRMAN: Mr. Bhupesh Gupta, if your speech had been very much shorter, many more Members would have spoken, Mr. Hajarnavis.

SHRI BHUPESH GUPTA: Under the rule, half an hour is given. You know it very well. Therefore, we might continue.

SHRI R. M. HAJARNAVIS: Madam, I will not, since it is past five of the clock, go over the same ground as it has been traversed very ably by the Law Minister and by my learned friend, Shri S. K. Basu. But I will remind the House that when the Proclamation of Emergency was issued under article 352 as required by the Constitution, it was placed before both Houses of Parliament and was approved without dissent. Then the Defence of India Act which was framed in exercise of the powers which were conferred upon Government by Parliament by virtue of the Proclamation of Emergency was also adopted by both Houses without any dissent. Therefore, these are the powers which the House thought it fit to endow upon itself and Government without protest, without dissent. And there is only one single question I want to ask of Shri Bhupesh Gupta and in all conscience he will reply to me. Have the circumstances which existed when the Proclamation was made in any way changed? Is the threat which then existed to the independence of this country removed or has it worsened? And if it is not, are we or are we not entitled to exercise the powers which the House in its wisdom has given to the Government both by the Proclamation and by the passing of the Defence of India Act?

SHRI NIREN GHOSH (West Bengal): There is no Emergency now.

SHRI R. M. HAJARNAVIS: If you do not get the feeling that there is any emergency, it is because we have used the powers with the greatest amount of moderation, and only when it became absolutely necessary. (*Interruption.*) Is it said that the Government of India should not use the powers to meet this emergency? Is it suggested that the danger has so far receded that we should continue to function under the normal Constitution? Should not the Government have the power? Look at the physical conditions obtaining. I want any responsible Member to say in this House that the external danger to this country has ceased to exist.

SHRI BHUPESH GUPTA: It is not the point at issue.

SHRI R. M. HAJARNAVIS: We have not arrested every person belonging to the Communist Party or to the other parties but we have only gone after individuals after satisfying ourselves that their continuance at liberty is a risk to the security of the State. To blame us by saying that there is no emergency because we do not use the power indiscriminately all over, in all matters, is not to understand . . .

SHRI NIREN GHOSH: It need not arise for the security of the State. For other reasons you did it.

SHRI R. M. HAJARNAVIS: That is a point of view you may have, it is your own point of view. But I am quite sure that there are several Members in the respectable party to which the hon. Member belongs who would have been detained even if his party had to take decision in this behalf. I agree with Shri Bhupesh Gupta that the Constitution ought to be defended, we ought to defend the Constitution.

And we defend the Constitution by defending the independence of this country. The Constitutional rights can only be exercised if this country continues to be independent, that is, if there is a Government which is able to permit exercise of constitutional rights, the various agencies created by the Constitution continue to function, that the courts continue to function. And we are quite sure that we had come to the conclusion that the persons whom we have only deprived of their liberty are being treated very well. I will refer Mr. Bhupesh Gupta to a novel which has been published in the Soviet Union probably a year back, "A day in Siberia" or some such thing, with the tacit approval of the Premier of the Soviet Union, Mr. Khrushchev. He will find what is the condition of the prisoners in the Soviet Union. Let him compare that with the conditions of his comrades who are only deprived of their liberty so that they may not indulge in activities which will endanger the independence of the country.

DR. A. SUBBA RAO (Kerala): Oh, don't tell us. I know the conditions that the prisoners here are subjected to?

SHRI R. M. HAJARNAVIS: I will send him a copy of the book if he is so interested. Therefore, Madam, these are the powers which the House invested us with.

Then, an hon. Member said that the law is more drastic than what it was under the British, when the British took powers under the Defence of India Act. May I refer him to rule 30 and 30A in which after detention there is a right of representation to an advisory board, and that advisory board does take into consideration representations, if there are any, and then an order is made. Let him compare it with Regulation 18-B which was promulgated in the United Kingdom under the Defence of the Realm Act. Does he find a difference between the two? Assuming that the power is being abused—that is the point

which Mr. Ghani also made. I am sorry he is not here to listen to the answer—the Supreme Court have made it clear, if it needed being made clear. They have said that the only effect of the proceedings and Proclamation is to stop a challenge to the detention on the ground that the fundamental rights, which are mentioned in the Presidential Order, are infringed. On the other grounds mentioned, namely, that the detention is of a wrong person, or that it is *malafide*, or that it is not in accordance with the Constitution, any court can be approached under section 491, High Court I mean, or under artical 226, and also the Supreme Court can be approached under article 32. The orders of detention are not challenged on the ground that it is based upon a law which contravenes the provisions which are mentioned in the Presidential Order. That has been made clear later on in the judgment.

It still remains to consider what are the pleas which are now open to the citizens to take in challenging the legality or the propriety of their detentions either under s. 491 (1) (b) of the Code, or Art. 226(1) of the Constitution. We have already seen that the right to move any court which is suspended by Art. 359(1) and the Presidential Order issued under it is the right for the enforcement of such of the rights conferred by Part III as may be mentioned in the Order. If in challenging the validity of his detention order, the detenu is pleading any right outside the rights specified in the Order, his right to move any court in that behalf is not suspended, because it is outside Art. 359(1) and consequently outside the Presidential Order itself. Let us take a case where a detenu has been detained in violation of the mandatory provisions of the Act. In such a case, it may be open to the detenu to contend that his detention is illegal for the reason that the mandatory provisions of the Act have been contravened. Such a plea is outside Art. 359(1) and the right of the detenu to move for his release on such a ground cannot be affected by the Presidential Order.

Therefore, the challenge is not on the ground that the detention has taken place in violation of articles of the Constitution which have been suspended under article 379, if that is not challenge, then any other ground of challenge which were available to a detenu before would continue to be available. On this point I might elaborate a certain point which was made by the Law Minister.

Assuming that the right of liberty does not depend upon the fundamental right guaranteed by the Constitution which has the effect, as the Supreme Court says, of abridging the legal competence of a legislature, then in well-known case, the Privy Council said the right to liberty is certainly an inherent right of an individual and the court will certainly go into the question if he is detained without authority. Now, it is well known that so far as the English Jurisprudence is concerned, they did not believe in abstract legal rights. The whole English law which is administered in the courts depends upon remedy. The question is not, "Have you the right? Therefore, you have a remedy?" The question always is, "Have you a remedy?" If there is remedy, then remedy pursued in that particular form is the content of the right.

PROF. M. B. LAL: I wish to point out here that in the Indian Constitution fundamental rights constitute a fundamental law. So there is the question of abstract right. The analogy of the English law does not prevail here. Under the English law there is no charter of fundamental rights.

SHRI SANTOSH KUMAR BASU: May I just point out one single thing in answer to my friend, Mr. Mukat Behari Lal's intervention? My friend says that it is the fundamental right in the Constitution irrespective of a remedy. But if you will kindly consult Part III of the Constitution, which confers fundamental rights, you will

[Shri Santosh Kumar Basu.]

see that included in Part III is also article 32 which enables people to go to the Supreme Court for a remedy when their fundamental right is infringed. So the right and the remedy are tied up with each other in the constitution, and if the exercise of the remedy is suspended, the right also remains in abeyance.

PROF. M. B. LAL: The remedy is secondary to the right.

SHRI R. M. HAJARNAVIS: I wish to point out to the learned professor that I am arguing of a position where the fundamental rights are suspended. The remedy is in respect of the rights suspended. The question is, "Does the right exist apart from remedy?" The proposition which I am asking the House to consider and which will be considered at an appropriate stage when the question is raised is: Assuming that the remedy goes, does the right still survive? And I was pointing out that there are phrases in the English Jurisprudence which say that there may be damage without remedy. Now, if all injuries were capable of being redressed by remedies, that is to say, if for a moment there is an abstract right for which a remedy must flow, if that were the proposition, then the expression damages without remedy would have no meaning. Therefore, it is a serious question and the Supreme Court held it to be a very serious question, and they said in the passage which has been read out by the Law Minister that these things will have to be considered very carefully when the question arises. At this stage we are not considering them. And what has been done, Madam, by the hon. the mover of this Resolution is that having lost his case in the court, having lost all the arguments there—they were negatived by the court—he wants now to move the same arguments in Parliament which he can do, but he cannot support it by legal arguments which have been negatived. He cannot say that the Supreme Court has so decided. They have not so decided. He can say that this kind of law which allows detention on these conditions ought not to be allowed. That is an argument which I can understand, which we will consider, whether the conditions should be relaxed, whether there should be any kind of bar. These are things which can certainly be advocated. But to say that the Supreme Court said that the present procedure is wrong, *ultra vires*, against the Constitution, is to read in the judgment what certainly is not there.

I will not, Madam, go over what the Law Minister has already read, but I will merely read one more passage from the judgment. Which says:—

> "If the detenus are justified in contending that the Ordinance and the Act which took its place contravened the fundamental rights guaranteed by articles 14, 21 and 22, the said Ordinance and the Act would be and would continue to be invalid; but the effect of the Presidential Order is that their invalidity cannot be tested during the prescribed period. Therefore, the argument that since the Ordinance or the Act is invalid, the Presidential Order cannot preclude a citizen from testing its validity, must be rejected."

That is to say, they say that they will not go into this question.

> "The same argument is put in another form. It is argued that we have merely to examine the Ordinance and Act to be satisfied that articles 14, 21 and 22(4), (5) and (7) have been contravened and it is suggested that if these infirmities in the Ordinance and the Act are glaring, it would not be open to the President to issue an Order preventing the detenus from challenging the validity of the said statutory provisions. That, in substance, is what is described by this Court in Mohan Chowdhury's case as 'arguing in the circle'."

Therefore we are satisfied that the challenge to the validity of the Presidential Order is not well founded.

I will again read, Madam, what has been read by my friend, Mr. S. K. Basu, because it will bear repetition. They made it very clear:

> "In our opinion the learned Attorney-General is right when he contends that we should not and cannot pronounce any opinion on the validity of the impugned Act if we come to the conclusion that the bar created in the Presidential Order operates against the detenus in the present case. In fact that is the course which this court adopted in dealing with Sree Mohan Chowdhury's case and we are satisfied that is the only course which this court can logically and properly adopt."

These apparently are not the inhibitions of the hon. the mover.

Madam, I have done.

THE DEPUTY CHAIRMAN: Mr. Bhupesh Gupta.

SHRI BHUPESH GUPTA: Madam, I have 15 minutes. I would speak only for five minutes and give ten minutes to my friends on the Opposition.

THE DEPUTY CHAIRMAN: I am calling upon the mover to reply.

SHRI B. D. KHOBARAGADE: Madam, may I say something? (*Interruptions*).

THE DEPUTY CHAIRMAN: I have called upon the mover to reply.

I think the Chair's ruling must be observed.

SHRI BHUPESH GUPTA: Madam, normally in the case of Government motions and others we do sit longer and the proceedings will bear me out. I do not know why today suddenly, even after I had talked to the Congress Party and they had more or less agreed that we could sit a little longer, this extension was not given. I do not blame you but perhaps it has suited the Government very well, because all these friends on the Opposition side would have spoken against the Government position. I maintain and I do repeat in their hearing that all these friends of the Opposition would have spoken against the Government position and to that extent the Government can seek comfort from the fact that they had not had the chance to speak. But anyhow, Madam, by their protests and other things it has been made clear what they stand for.

I am grateful to the Opposition in the beginning, whatever may be our differences, that we are a solid opposition here with regard to the constitutional issue that has been raised, namely, Parliament does not have the powers to make such a law in defiance and in contravention of the Constitution. That is the issue. And if we do not have the power and if we have made a law in excess of our power, it stands to reason that this law is unconstitutional, no matter what happens to the detenu in a court of law. I was surprised at the speech of both the Home Minister and the Law Minister. They bypassed the issue, and deliberately so. What does article 13 say? It says:

> "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

That is the mandatory injunction of the article. That article stands. The emergency has not suspended this article. It is binding and it is in force; that mandate operates. The question arises after that whether the law that we have passed touching articles 21, 14 and 22 of the Constitution conforms to the mandate of Par-

[Shri Bhupesh Gupta.]

liament. The answer of the Supreme Court is clear. It says, 'No. It does not conform to the mandatory requirements under article 13.' This is the position. And here the Supreme Court makes it very clear in that majority judgment that Parliament has chosen to pass an Act under challenge and disregard of the Constitutional provisions of articles 14 and 22. How am I to understand this thing? Why does the Supreme Court say so? If the Supreme Court had kept it open, it would not have come out with these legal findings that "What you have done you have done as Members of Parliament in disregard of the Constitution." The provisions are mentioned. You will have noted, Madam Deputy Chairman, in the entire course of the speeches of the two Members who spoke from the Treasury Benches there was no attempt to explain what happens to the law-making powers of Parliament, what happens to the fetters that are imposed under Part III of the Constitution. Do they go or do they remain? The Constitution tells us that article 358 takes it away. As far as article 19 is concerned, the Constitution again tells us that nothing else is taken away and what is said in article 359 is this that only the remedy to the aggrieved party put under detention if suspended, not the law, not the right. And the Supreme Court repeatedly in different places clearly says this. Yet the Law Minister and the Home Minister were at pains to explain it away as if nothing of importance has been said. Well, you can argue out like that. You have the majority and you have the final say in such matters for the present But lawyers will judge it, jurists will judge it and the whole world will judge it. What the Supreme Court has said is not an *obiter dictum*. What the Supreme Court has said is a legal finding. There was an issue. Undoubtedly the majority, having denied the remedy, has not thought it fit to declare in clear and categorical terms that the law is *ultra vires* the Constitution. But they have made it clear that even the Attorney-General could not challenge. That is what they say:

> "It appeared that as regards the validity of the impugned provision of the Act and the Rules, Shri C. K. Daphtary, Attorney-General, was not in a position to challenge the contention of the appellant that the Act contravens articles 14, 21 and 22 (4), (5) and (7)."

This is what the Supreme Court says You allowed your Attorney-General in the court of law not to challenge, not to contradict when it was challenged in this manner. On the contrary he bowed to the challenge and said the law was bad. On the other hand you are coming here as if nothing has happened. The Supreme Court has noted it. Not only does it note it, in many other places in the judgment you will find that the Supreme Court does not leave anything in doubt. I have to repeat it again: It is quite true that if this Act has been contravened, the citizens' fundamental right under articles 14 and 22 would be void and the detention effected under the relevant provisions of the said Act would be equally in operative. Such was the position, Madam. Now this is quite clearly said.

If we can prove, as indeed we have proved, that article 22 remains, article 14 remains, they are not abrogated as article 19 has been, then we have to invite our attention to article 13 and see whether we are observing article 13 and passing a measure in consonance with the provisions of article 14, 21 and 22. Clearly we have not done it. Safeguards are not there. Representations given under article 22 are not there. That is admitted. And yet they say that the law is in consonance and nothing is invalid in the law. Well, you can say that. But why don't you even now go to the Supreme Court with a straight question under a Presidential reference under article 143 and ask the Supreme Court to tell you whether it is a valid law or an invalid law? I ask you, I challenge you. Madam Deputy Chairman, on June 1. I wrote a

letter to the Prime Minister requesting him to seek the opinion of the Supreme Court through a Presidential reference under article 143 as to whether this particular piece of legislation is valid or invalid, constitutional or unconstitutional. The Prime Minister did not seek the opinion of the Supreme Court in this matter. But on minor matters, he seeks the opinion of the Supreme Court and of the Supreme Court Judges. But here when it is such a vast question, a question of great constitutional importance, the Prime Minister thought it fit not to seek—that it was not necessary to seek—the opinion of the Supreme Court. Well, we draw our own conclusion from that. What is this conclusion? Wise as he is, the Prime Minister knows that to that question there can be only one answer. The Supreme Court will say to such a reference that your law is bad, that it is unconstitutional, and he will be faced with such a situation.

Madam Deputy Chairman, I therefore, very much regret the way the Government spokesman discussed this subject. I did not bring in any political question into this general matter. I did not try to indulge in party politics. You would have seen that Shri Vajpayee when he spoke, he kept himself aloof from party politics and rightly he did it. My friend Shri Chandra Shekhar digressed slightly, but even so, he said the rule of law has to be maintained and I congratulate him. The Communists are not a petty-minded people who when they get a few attacks here and there, forget what is right or good. We Communists are large-hearted.

SHRI ARJUN ARORA (Uttar Pradesh): You will also appreciate the large-heartedness of Mr. Abid Ali.

SHRI BHUPESH GUPTA: We are large-hearted people. The issue was not whether Communists were bad or good. That was not the issue. The issue was whether the law is good or bad, and our friend of the P.S.P. has said that the law is bad and that is enough for me and I congratulate him.

As for Mr. Abid Ali, his is the lamentation of an oppressed soul, the cry of an agonised heart. Mr. Abid Ali, whenever he speaks, I always feel that the Prime Minister should, perhaps have controlled him by keeping him in a Ministry, rather than letting him go out. The whole balance is gone, whatever restraint was there by sitting on the Treasury Benches by the side of Cabinet colleagues, is totally gone and he runs amuck. We heard Mr. Abid Ali and we saw how he indulged in pure and simple anti-Communism and that over a question of law and the Constitution. But then, Madam Deputy Chairman, in America there are people who dream of anti-Communism in midnight and jump out of windows and some people even carpets and so on. I can understand such things. But why should my esteemed friend Mr. Abid Ali came to have such a kind of mental delirium and hysteria of anti-Communism, I cannot understand. I would request friends to save my friend and colleague in Parliament from this delirious frame of mind.

Madam Deputy Chairman, as I said, this is a simple thing that is before the House. The question is, Had we the power to pass such a law? To that there is no answer. Can the emergency widen the power of Parliament so that article 13 does not come now? The answer is clear in the judgement of the Supreme Court, they say "No". Emergency or no emergency, the power of Parliament to pass law cannot be widened by anybody. Now, therefore, if we had passed a law without having our powers widened, as indeed they cannot be widened, then it is in contravention of the Fundamental Rights and the Constitution, to which our attention is drawn by article 13. And we were told while passing this law that we must conform to that article and Part III. What am I to say? I say we should be in a mood of

[Shri Bhupesh Gupta.]

self-criticism. Madam, we Communists know that self-criticism is very important from the point of view of progress and so on. Why should not Parliament put itself into a self-critical mood? It will add to the glory and prestige of Parliament. Here is Parliament sitting and discussing these things and reviewing the whole position. It must criticise itself and improve matters. That will be adding to the substance of our democracy, instead of our just going about with the form of it. Therefore, that point has not been answered.

The second point is: Is the law consistent with the provisions of the Constitution? Well, the answer is: No. They did not deal with it. Which judge, jury, or lawyer in the country, has said that this particular piece of legislation, authorising detention without trial is consistent with the provisions of the Constitution? None, not one, none of the seven judges who sat on the benches of the Supreme Court, not one has said it. Are we not to draw the conclusion?

SHRI B. D. KHOBARAGADE: The Law Minister says so.

SHRI BHUPESH GUPTA: The Law Minister gives wrong advice to the hon. Prime Minister. What advice did he give in that case of that Commander who was prosecuted?

SHRI R. M. HAJARNAVIS: May I again interrupt the hon. Member to say that the advice given by the Law Minister was upheld by the Supreme Court?

SHRI BHUPESH GUPTA: I don't know. I know you love each other. The advice given by the Law Minister to Shri Lal Bahadur Shastri was that the right *ipso facto* goes. Has the Supreme Court said that the right *ipso facto* has gone? No. On the contrary, it said that what goes is the right to move the court, not the fundamental right itself. Am I to think even after that clear and categorical and wise pronouncement of the Supreme Court, that our beloved Law Minister gave good advice to the Ministry of Home Affairs? Well, we should not be carried away by love. You may have love for each other, you may admire your Law Minister, if you like. But we love the Constitution more than we admire the Law Minister or any Minister. We want to know what has happened. You have not answered two simple questions put before this House from this side of the House. So many things were said by the Law Minister, as to what would happen to the grains? What would happen to the requisitioning of houses and so on Were these relevant? A learned lawyer of the Calcutta High Court talking all kinds of things which have not the slightest relevancy to the debate. We ask him to tell us if Parliament has the power to make that law. You have done jolly well by passing it. But had you the power? Did he answer that question? No, he could not say it, because he knows that then his position in that case would be totally unsustainable. It was said that the Supreme Court had not given an opinion, nor has it pronounced that it is *ultra vires* of the Constitution. But has not the Supreme Court said many other things? Have I not quoted them? Are they not relevant? The Supreme Court Judges are not like some Members of Parliament, like Mr. Abid Ali, speaking whatever they like. They speak on points of law They speak on the points placed before them and here was a point placed before them to which they have furnished an answer saying that this is disregard of the Constitution. Well, after that, I am shocked and surprised to find the Law Minister trying to bypass the issue. He had not the courage to deal with it, he bypassed it

As far as the Home Minister is concerned, I do not blame him very much, because he has no case to make. That is why I find for once, two hon. Ministers taking part in a

two-hour debate and taking away half of the time from us. Well, that is not right.

SHRI R. M. HAJARNAVIS: Both of us together took less time than you took for one of your speeches.

SHRI BHUPESH GUPTA: Mr. Hajarnavis . . .

THE DEPUTY CHAIRMAN: Mr. Gupta, you have taken 15 minutes. Please wind up.

SHRI BHUPESH GUPTA: Yes, Madam. But Mr. Hajarnavis seems to be getting needlessly excited over a matter which needs cool thinking, deep judgment and dispassionate approach.

Now, I have spoken at length because the matter is a very important one. I did not come here because we lost the battle any where. Mr. Setalvad fought the lawyers' battle with great courage, knowledge, wisdom and legal acumen and of him the entire Bar and the public are proud. We are fighting here the constitutional and if I may say so, the political and moral battle. I say constitutional in the sense that laws are made here and it is we who have to see after hearing even public opinion, whether the laws which we have passed are in consonance with the Constitution. Not one has said that this law is in consonance with the Constitution. And so the only honourable course for the Law Minister, for the Prime Minister and for the Government would be to amend the law, that is the least that I can expect them to do, and to revoke the Presidential Order and immediately release the persons under detention, of all parties, who are now in prison. Madam Deputy Chairman, I say this thing in sorrow. Even under the Preventive Detention Act, you cannot hold any person in dentention for more than a year but for ten months now under an illegal law, a law which does not stand the scrutiny of constitutional test at all, they are holding hundreds of people still in detention without trial.

SHRI ABID ALI: Rightly.

SHRI BHUPESH GUPTA: Well, here comes the moral question. I would have liked Shri Sapru to speak I do not know who silenced him.

THE DEPUTY CHAIRMAN: You did not give him a chance.

SHRI P. N. SAPRU: I was deprived of that.

SHRI BHUPESH GUPTA: Here was a jurist and I was very keen to hear him, because, I hear it inorder to learn from him. I do not know what happened in the Congress Party that the only jurist of great eminence, tremendous courage, wisdom and knowledge did not speak. His place was taken by Mr. Abid Ali, my hon. friend who sits there What is this? Are you to meet constitutional argument by anti-communism? Is that the way to serve the Constitution? Are we to encourage dispassionate non-party discussion over matters of constitutional principles or not. Madam Deputy Chairman . . .

THE DEPUTY CHAIRMAN: I thought you were winding up.

(Interruption)

SHRI BHUPESH GUPTA: Don't think that I am speaking because some people are in jail. This grievance I take up separately. I have spoken here at such length and have brought in all these issues in order to draw the attention of my esteemed friends opposite and those who sit on this side to the problems that have arisen. I know that in the Congress benches there are many who cherish constitutional principles, just as we here are, who cherish democracy, who would like the rule of law to be carried forward, established and not trampled under foot. I know that in the Congress benches there are many today, in the front bench as well as in the rear, in the House as well as

[Shri Bhupesh Gupta.]

outside, who feel pained at heart that in the Government which is under their control such a thing should have happened. If the voice is not spoken today, it is because of some particular reason but I know that in their bosoms, in their heart of hearts, they realise that something grossly wrong has been done and it has to be rectified. I would once again appeal to the Government to act in this situation, show courage, not to stand on false prestige and thereby serve the cause of the Constitution, rule of law, democracy and principles that we cherish to uphold in our public life.

Thank you.

THE DEPUTY CHAIRMAN: I shall put Mr. Ghani's amendment to the vote.

"That at the end of the Motion, the following be added, namely:-

'and having considered the same, this House recommends to the Government to review the position and take necessary action.' "

The motion was negatived.

MESSAGE FROM THE LOK SABHA

THE CONSTITUTION (SEVENTEENTH AMENDMENT) BILL, 1963

DEPUTY SECRETARY: Madam, I have to report to the House the following Message received from the Lok Sabha, signed by the Secretary of the Lok Sabha:

"I am directed to inform Rajya Sabha that Lok Sabha, at its sitting held on Thursday, the 19th September, 1963, adopted the annexed motion in regard to the Constitution (Seventeenth Amendment) Bill, 1963.

I am to request that the concurrence of Rajya Sabha in the said motion, and also the names of the members of Rajya Sabha appointed to the Joint Committee, may be communicated to this House."

Motion

"That the Bill further to amend the Constitution of India be referred to a Joint Committee of the Houses consisting of 45 members, 30 from this House, namely:-

1. Shri S. V. Krishnamoorthy Rao
2. Shri Bibhuti Mishra
3. Shri Sachindra Chaudhuri
4. Shri Surendranath Dwivedy
5. Shri A. K. Gopalan
6. Shri Kashi Ram Gupta
7. Shri Ansar Harvani
8. Shri Harish Chandra Heda
9. Shri Hem Raj
10. Shri Ajit Prasad Jain
11. Shri S. Kandappan
12. Shri Cherian J. Kappen
13. Shri L. D. Kotoki
14. Shri Lalit Sen
15. Shri Harekrushna Mahatab
16. Shri Jaswantraj Mehta
17. Shri Bibudhendra Misra
18. Shri Purushottamdas R. Patel
19. Shri T. A. Patil
20. Shri A. V. Raghavan
21. Shri Raghunath Singh
22. Chowdhry Ram Sewak
23. Shri Bhola Raut
24. Dr. L. M. Singhvi
25. Shri M. P. Swamy
26. Shri U. M. Trivedi
27. Shri Radhelal Vyas
28. Shri Balkrishna Wasnik
29. Shri Ram Sewak Yadav, and
30. Shri Asoke K. Sen

and 15 from Rajya Sabha;

"that in order to constitute a sitting of the Joint Committee the