

MR. SPEAKER: ... sometimes we differ inside the House on questions of procedure or facts. But that does not detract or take away from our mutual and social relations. I do not think it should have been taken like that. But I think it is my fault that sometimes I try to restore myself after all this tension by a bit of wit and humour. If I am denied that, I think I will be losing many years of my life, which I do not think you would like.

SHRI SHYAMNANDAN MISHRA (Begusarai): Sir, in your greatness, would you consider another aspect of the same matter? On two pages, consecutively, 14 times "Mr. Speaker" occurs without any person coming in between. Only to introduce some rationality into this, would you not kindly consider that those also should be removed? Otherwise, it appears as if there is a soliloquy all the time.

MR. SPEAKER: When ten Members are standing up, it is impossible for the reporter to take down all of them. I allowed one Member the other day to speak and he was saying something. But he could not be heard even by me because other Members were speaking simultaneously. So, I would request you all that whatever be the difference of opinion, if only one or two Members stand up, I will be able to hear them one by one. But if all of you stand and speak, nothing is heard.

When the Speaker Stands, you should have the courtesy to sit down sometimes, if not always.

SHRI SHYAMNANDAN MISHRA: When you stand up, I always sit down.

MR. SPEAKER: Kindly give this advice to Shri Jyotirmoy Bosu also.

13.10 hrs.

MOTION FOR ADJOURNMENT

REPORTED STATEMENT OF ATTORNEY-GENERAL BEFORE SUPREME COURT ABOUT AMENDING MAINTENANCE OF INTERNAL SECURITY ACT

MR. SPEAKER: Now, about the Attorney-General's statement, I have received notice of a Privilege Motion from Shri Dinen Bhattacharyya, Shri Shyamnandan Mishra, Shri Kalyanasundaram, Shri Jyotirmoy Bosu and Shri Era Sezhiyan. Then, there is notice of an adjournment Motion from Shri Jyotirmoy Bosu and Shri Era Sezhiyan. There are notices under Rule 377 from Shri Indrajit Gupta, Shri Kalyanasundaram, Prof. Madhu Dandavate and Shri Bhogendra Jha.

After all these notices, there is another category. There are Call Attention Notices on the same subject from eleven Members. Should I mention all the names?

I have not been able to make up my mind as to under what motion I should apply my mind. Let me know what I should take up.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Let the Adjournment Motion be first taken up.

SHRI DINEN BHATTACHARYYA (Serampore): It is a question of privilege. The Attorney-General should come here and make a statement.

SHRI ATAL BIHARI VAJPAYEE (Gwalior): You may call one Member after another.

MR. SPEAKER: There are about 20 Members. It is impossible. I just wanted to know what type of motion I should take up out of these motions.

SHRI JYOTIRMOY BOSU: First you deal with Adjournment Motion.

MR. SPEAKER: One thing that we should not forget is that the Attorney General also has a right to participate as any Member of the House.....

SHRI SHYAMNANDAN MISHRA (Begusarai): He has only the right to participate.

MR. SPEAKER: He can sit in the House; he can participate in the discussion. He has the right to sit here. In this case, why not get the information from him? Then, we can take it up later on.

SHRI DINEN BHATTACHARYYA: The question relates to not only the utterances of the Attorney-General but the Judges also. Now, the Government is planning to promulgate an Ordinance in the meantime; because the Rajya Sabha is not in session. So, to make up that lacuna, they may resort to that sort of thing which will create another precedent as to how the Government is attacking the democratic rights of ordinary people. Thousands of people are rotting in jail. They must have been released by this time. Because of the assertion of the Attorney-General, this is happening. What right has he to utter this in this way that the Government may promulgate an Ordinance to make up the lacuna?

SHRI H. N. MUKERJEE (Calcutta North-East): Sir, I rise on a point of order. I am just as exercised as the rest of my colleagues in regard to this matter. But the Attorney-General is, after all, a spokesman of the Government of India and whatever he says before the Supreme Court or anywhere else is on the instructions of the Government. Just as in an earlier case, the pipeline inquiry matter, you made a very rightful distinction between the position of a lawyer and the position of those who are given instructions which are materially a part of the case, in this case also, I would think entirely inappropriate to condemn the conduct of the Attorney-General who

is the holder of a very highly respected and distinguished office. Therefore, since the Government is involved in a matter where they have announced their desire, if the reports are correct, to amend the law to the detriment of the civil rights of the citizens of this country, and the Supreme Court Judges have swallowed that..(Interruptions) this is a matter which the Lok Sabha, as the primary body, has to take into consideration. Therefore, I will beg of my friends here not to bring in the Attorney-General, either to approve of him or disapprove of him, at this present moment. Later, we may or may not have to do it. At this present moment, Government has got to be censured and the Adjournment Motion appears to be the only medium for that purpose.

SHRI JYOTIRMOY BOSU: An unusual situation has arisen as a result of which we are all exercised, and I think, we have to hang our heads down in shame before the civilised world. We will be robbed of the civil liberties that we enjoy, if Government takes recourse to a short-cut by bringing an Ordinance and clamping it on us. The Attorney-General has given an assurance, speaking on behalf of the Government, no doubt advised by the Government itself, before the Supreme Court confirming enactment of the Amendment as the counter measure against the present situation arising out of the Supreme Court's judgment striking down detention beyond a certain period—ten days—thereby undermining the role of Parliament. It is a very serious matter. This is what the *Times of India* has said:

"Mr. De said that the court would postpone giving the judgment in the case for two weeks, so that Government could take the necessary action.

"Mr. De said that the only difficulty would be that Government could not make the proposed amendment of the detention law retrospective.

"Mr. Justice Shelat: Why not? These days, every new law amending an old statute is deemed always to have the same effect as though the old law had been as amended. Then why not this Amendment also?

"The Acting Chief Justice added quickly, 'However, we are not here to advise the Government in the matter'."

That is, in the matter of the role of the Government and the role of the Supreme Court in robbing the people of the minimum civil liberties... (Interruptions) This is a very serious matter.

MR. SPEAKER: We should not go into the merits now...

SHRI JYOTIRMOY BOSU: Therefore, Sir, please consider the issue in that context. That is why I have made this submission and I request you to give your ruling in that regard.

SHRI INDRAJIT GUPTA (Allahabad): We should take up first things first, proceeding on the assumption, which I think nobody can challenge, that the Attorney-General was not speaking in his personal capacity but was acting under instructions. You remember, when I raised a privilege motion earlier about the utterances of certain counsel before the Takru Commission regarding the pipelines inquiry, the defence of the Government was that one could not challenge the right of advocacy; the advocate has the right to use certain expressions and terms according to his brief. In this case also it is obvious that Mr. Niren De must have been acting on instructions and was speaking to the brief of the Government. Is this fact being denied? Can it be denied? Is it being denied? The Law Minister is present. Has the Attorney General said something which Government had not authorised him to say? Then the whole question will come. We are seeking permission for an Adjournment

Motion. We want to censure the Government. If the Government wants to wash out the responsibility, which it cannot in my opinion, let the hon. Minister make it clear.

SHRI SEZHIAN (Kumbakonam). I have given notices of an Adjournment Motion as well as of a Privilege Motion. The Adjournment Motion and the Privilege Motion, though they are interlinked, represent two aspects of the incident. Regarding the adjournment motion, it should be towards the censure of the Government for failure in its duty. Here, my adjournment motion is very clear 'Failure of the Government in not giving to the Attorney-General of India a proper brief to argue the case on its behalf in the Supreme Court resulting in the Attorney-General giving on March 30, an assurance that the Maintenance of Internal Security Act would be amended in a particular way within ten days, which is in clear disregard of the Parliament in performing its functions'.

Therefore, I am particularly saying that there is a failure on the part of the Government in not briefing the Attorney-General properly, or they have briefed him but the Attorney-General has not followed it. Even in that case there has been a failure on the part of the Government... (Interruptions). This is regarding the adjournment motion. As I have pointed out, it is against the failure on the part of the Government.

Now coming to the second one, the privilege motion is against the action of the Attorney-General. These two things should be kept apart—one is the privilege motion against the Attorney-General and the other one is the adjournment motion against the Government for its failure to give a proper brief to the Attorney-General. Therefore, I am pressing my adjournment motion on the failure of the Government.

श्री अटल बिहारी वाजपेयी: अध्यक्ष जी, मेरा निवेदन है कि आप काम रोको प्रस्ताव लें। अटोनी जनरल का संविधान में एक महत्वपूर्ण स्थान है। लेकिन सर्वोच्च न्यायालय में उन्होंने जो कुछ कहा उसमें ऐसा लगता है कि या तो वह अपनी जिम्मेदारी नहीं समझते, या जिस सरकार का प्रतिनिधित्व करने के लिये वह वहां गये थे उस सरकार ने उनको ठीक तरह से जानकारी नहीं दी। अध्यक्ष महोदय, आप कल्पना कर सकते हैं कि कोई अटोनी जनरल सुप्रीम कोर्ट में खड़ा होकर यह कहे कि 10 दिन में घमंड कर दिया जायगा कानून? क्या पार्लियामेंट को टोकिन फ़ौर अटान्ड मान कर चला जा सकता है?

अध्यक्ष महोदय, मैं जजों के आचरण पर कुछ नतीजा कहना चाहता हूँ। लेकिन उनका आचरण ऐसा है जिसमें वह आलोचना के बिषय बन गये हैं। लेकिन हम चाहते हैं कि इस सम्बन्ध में सरकार की निन्दा करें और आप हमें काम रोको प्रस्ताव की अनुमति दीजिये। उस पर मंत्री महोदय को क्या कहना है यह भी बाद में पता लग जायगा, अटोनी जनरल को क्या जानकारी दी गई, क्या सूचनाये दी गई थी, इसमें भी सदन को अवगत कराया जा सकता है। लेकिन आप मंत्री महोदय से सफाई मांगने में पहले हमारा एडजर्नमेंट मोशन स्वीकार कर लीजिये।

SHRI SHYAMANANDAN MISHRA: My submission is that there need be no polemics whether the Attorney-General represented himself or as an advocate or as a person belonging to the Government because the whole adjournment motion is directed to the Attorney-General and it is not directed to Shri Niren De. Therefore, there is absolutely no ground for controversy in this respect.

Now, the second question that should be uppermost in the minds of the Members of Parliament is that

we are confronted with a situation which leads to the restriction of the personal liberty of the citizen and that is as a result of the action both of the Attorney-General and the Bench. My humble submission is that here both have acted in a manner prejudicial to the personal liberty of the citizens, and that might lead to the citizen being in detention for a longer period than what is necessary. Therefore, we, as the Parliament of India are now grappling with this problem of the personal liberty which has been restricted by the utterances of the Attorney-General and the Supreme Court, and since personal liberty happens to be the very foundation of our Constitution, it is a fit subject for an adjournment motion.

PROF. MADHU DANDAVATE (Rajapur): I want to draw your attention to one more aspect. Not only the democratic norms have been violated here, not only have the Government failed in giving a correct advice to the Attorney-General but these men have taken the Parliament for granted. That is the most important aspect. The Attorney-General is reported to have said that within ten days it will be amended. I am really surprised; but not only that, there was an impact of this statement on the court and, therefore, in the court it was declared by Mr. Justice K. S. Hegde, sitting with the Acting Chief Justice, Mr. Justice J. M. Shelat, on the specially constituted Special Bench, that in the light of the assurance given by the Attorney-General—of course, on the advice of the Government—the court would postpone giving the judgment in the case for two weeks so that the Government could take necessary action. The Government has completely misguided the court and that too by flouting the authority of Parliament. Therefore I think that the Adjournment Motion should be admitted.

SHRI V. K. KRISHNA MENON (Trivandrum): I am not involved in

whatever the party angles are in this matter. I think it is common ground, as you are discussing the question of preventive detention and the violation of liberty as we understand in a parliamentary system, that this is perhaps the only Parliament and the only country where we have a permanent law of preventive detention and I hope this will not be lost sight of (Interruptions) The Justice is entirely right in listening to the Attorney-General when he is speaking on behalf of his clients; he is not concerned with the discussion over here. I think whatever you, Mr. Speaker, do should, I hope, be in the way of enabling Members to discuss the basic proposition. The Government has rightly come to the conclusion that there must be some amendment. But whether that amendment is hitting hard, hitting harshly or whether it is considered to do something else, is a matter to be considered because most of the legislations, eighty per cent of them, that had come through are not necessarily aimed at or against anybody but by ill-drafting, by not giving careful thought to it, they had produced the contrary results. I hope the decision will be in the way of enabling a full discussion on the question of preventive detention as part of the law of this country as also whether one is trying to amend it in such a way that the so-called guidance that is given is against the people who are detained.

SHRI R. K. DEO (Kalahandi): There cannot be a more appropriate occasion to censure the Government. We want to have this Adjournment Motion to be discussed.

SHRI V. K. KRISHNA MENON: Mr. Speaker, whatever I said is not in terms of censure of the Government, but I want to see this matter clarified.

SHRI P. K. DEO: Adjournment Motion is the only motion by which

the entire thing can be discussed threadbare. It is a matter of urgent public importance. The Attorney-General, as the spokesman of the Government has arrogated to himself the power of the Parliament and has taken it for granted by saying that he will get this Bill passed or this law amended, all, according to his sweet will. The fundamental rights are eroded. Even the little of civil liberties are in jeopardy. Under these circumstances I request you to admit the adjournment motion and let us have a full discussion on this subject.

SHRI M. KALYANASUNDARAM (Tiruchirapalli) rose—

MR. SPEAKER: He has mentioned it on your behalf.....

SHRI M. KALYANASUNDARAM: I want to say something, Sir. I have also given notice of the Motion.

MR. SPEAKER: There are so many.

SHRI M. KALYANASUNDARAM: I only want to say this that whether the Attorney General is responsible or Government is responsible or both of them are responsible, is a different matter. How is it that Mr. Justice Hegde agrees to give two weeks' time so that this Parliament can be made to amend the Act? What will the people think of this Parliament? Will they not think that this Parliament can be made to pass any law according to the wish of the Attorney General? Can the Supreme Court take the assurance and do it? Will they do it in any other thing, Sir? Will not the people think that judges are seeking to curry favour of this Government? Otherwise what will the people think of the Supreme Court, Sir? It amounts to contempt of this House. The dignity of the House must be protected.

SHRI P. G. MAVALANKAR (Ahmedabad): I want to say in all seriousness that this is a very grim matter.....

MR. SPEAKER: I want to hear only Members whose names are there.

SHRI P. G. MAVALANKAR: I just want to say this.....

MR. SPEAKER: Have you not finished, Mr. Kalyanasundaram?

SHRI M. KALYANASUNDARAM: Sir, it cannot be finished with Adjournment Motion alone because this House has been brought into contempt. It amounts to breach of privilege. Simply because the House gets an opportunity to discuss the Adjournment Motion. The Privilege Motion should not be dropped.

SHRI G. VISWANATHAN (Wandiwash): It should be kept pending.

MR. SPEAKER: How can you have everything?

SHRI P. G. MAVALANKAR: This is a very grim matter because from the very beginning of our country's constitutional regime in 1950 the government have got into the habit of taking parliamentary processes for granted. You will realise, Sir, that quite often in the past, even when Parliament was about to meet, ordinances had been issued, and this has been extremely a dangerous process. Now, when we are seized of the matter and the House is already in Session and when things are being said outside without any consideration of the parliamentary practices, I feel, unless we take this opportunity urgently, and at this very moment, of censuring the government we will not be able to save whatever little democracy is left in the country. Therefore, I request you to kindly allow this adjournment motion.

SHRI MUHAMMED KHUDBUKHSH (Murshidabad): Mr. Speaker, Sir, while I have profound admiration for the line of argument advanced by my hon. friends, I think, what we are all consistently glossing over is that the Supreme Court Bench consisting of 7 judges have accepted the contention of the Attorney General.

(Interruptions)

श्री अटल बिहारी वाजपेयी : जो एडजर्नमेंट मोशन रखी गई है उस पर इजाजत देना है या नहीं यह प्रश्न चर्चा का विषय है। ये मेम्बर कहाँ से बीच में आ सकते हैं ?

अध्यक्ष महोदय : जैसे आप बोलते हैं।

श्री अटल बिहारी वाजपेयी : ग्राम बहस नहीं हो रही है। आप काम रोको प्रस्ताव का फैसला करें।

(Interruptions)

MR. SPEAKER: After all, as the matter was raised by Prof. Hiren Mukherjee that it is Government's failure, when you want that, in that case the Law Minister should make the position clear.

Mr. Gokhale.

SHRI ATAL BIHARI VAJPAEYEE: You cannot allow the Minister to speak at this stage. You admit the motion and allow a discussion and let the Minister speak.

SHRI JYOTIRMOY BOSU: Under what procedure are you asking the Law Minister to speak?

SHRI BHAGWAT JHA AZAD (Bhagalpur): You have called the Law Minister. He must be allowed to speak. It is the right of a member to be heard when you have called him.

SHRI MUHAMMED KHUDA BUKHSH: If we discuss this matter now, it will be tantamount to sitting in judgment on the Supreme Court, the highest judiciary in the land. We must take this point into consideration.

MR. SPEAKER: I follow your point.

SHRI VIKRAM MAHAJAN (Kangra): Two fundamental points have been raised; one is regarding a matter which is pending in a court of law, i.e. a case pending in the Supreme Court in which an assurance has been given by the Attorney General; secondly, a question of privilege is involved against the Attorney General. In the adjournment motion, both these issues are involved.

SHRI SHYAMNANDAN MISHRA: No, no.

SHRI VIKRAM MAHAJAN: Before an adjournment motion is admitted, there are certain conditions which have to be fulfilled. I refer to rule 58 which says:

"The right to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance shall be subject to the following restrictions, namely"—

Kindly to (iv) and (vii).

(iv) the motion shall not raise a question of privilege;

"(vii) the motion shall not deal with any matter which is under adjudication by a court of law having jurisdiction in any part of India".

Since these two matters have been brought in in the adjournment motion, it is out of order.

MR. SPEAKER: Shri Mahajan has raised a very vital and important

point, that there is no question of privilege which can be raised in an adjournment motion. You cannot have everything, the best of both the worlds and 'treat it as either privilege or as adjournment', because the rule is clear on the point. He has pointed it out. I myself was thinking alike.

(Interruptions)

MR. SPEAKER: All right. I hold it in order as an adjournment motion. Those who are in favour of leave being granted will kindly rise in their seats—I find 58 have risen. Leave is granted.

SHRI ATAL BIHARI VAJPAYEE: When do we discuss it?

SHRI JYOTIRMOY BOSU: Tomorrow.

MR. SPEAKER: The time is already fixed in the rules. I have accepted it. The rules provide that it will be taken up at 4 O'clock.

13.40 hrs.

PAPERS LAID ON THE TABLE

NOTIFICATION UNDER MERCHANT SHIPPING ACT

THE MINISTER OF STATE IN THE MINISTRY OF SHIPPING AND TRANSPORT (SHRI M. B. RANA): Sir, on behalf of Shri Raj Bahadur, I beg to lay on the Table—

(1) A copy of the Merchant Shipping (Examination of Engineers and Engine Drivers of Fishing Vessels) Rules 1973 (Hindi and English versions) published in Notification No G.S.R. 136 in Gazette of India dated the 10th February, 1973, under sub-section (3) of Section 458 of the Merchant Shipping Act, 1958. [Placed in Library. See No. LT-4674/73.]

(2) A copy of the Delhi Motor Vehicles (Sixth Amendment) Rules, 1972 (Hindi and Eng-