which was appointed two or years ago to look into licences issued to monopoly houses. How many industrial houses have they covered? We were told that they have gone into 3,000 files. Has the scope of the enquiry been enlarged? We would also like to know what action they have taken in this direction.

With these words. I support the Demands for Grants of this Ministry.

श्री राम नारायण शर्मा (धनबाद) : उपाध्यक्ष महोदय, मैं इंडस्ट्रियल डेवेलपमेंट मिनिस्ट्री की मांगों का समर्थन करते हुए सरकार के सामने कुछ सुझाव रखना चाहता हूं ।

जहां तक प्रोडक्टिविटी कौंसिल का सम्बन्ध है, मुझे जानकारी है कि जब हमारी सरकार का सम्बन्ध यूगोस्लाविया की सरकार से हुआ और यहां के लोगों ने यूगोस्लाविया में जा कर देखा कि वर्कर्ज किस तरह से उद्योग को चलाते है, तो हमारे यहां प्रोडक्टिविटी कौंसिल का गठन किया गया । इस सम्बन्ध में एक उद्देश्य यह भी रखा गया था कि इससे जो अधिक उत्पादन होगा, उस में मजदूरों का भी हिस्सा होगा । इस के अतिरिक्त यह भी निश्चित किया गया कि मजदूर उद्योग की व्यवस्था में भी साझीदार होंगे—वर्कर्ज पार्टिसिपेशन इन मैनेजमेंट की बात को भी स्वीकार किया गया ।

ये दोनों बातें हमारे देश में 1957-58 में स्वीकार की गई, लेकिन आज तक उन को व्यावहारिक रूप नहीं दिया जा सका । अगर किसी रूप में वर्कर्ज पार्टिसिपेशन इन मैनेजमेंट की व्यवस्था की गई, तो वह यह थी कि बोर्ड आफ डायरेक्टर्ज के दस पंद्रह सदस्यों में से एक डायरेक्टर वर्कर्ज का भी नामीनेट कर दिया गया, जो या तो साइलेंट स्पेक्टेटर होता था और अगर वह बहुत वोकल भी हुआ, तो दस, बारह, चौदह सदस्यों के मुकाबले में उस की बात की कोई सुनवाई नहीं होती थी । अभी तक इस स्थिति में परिवर्तन नहीं हुआ है । आज भी बहुत से औद्योगिक संस्थान हैं, जिन में वर्कर्ज पार्टिसिपेशन की बात थ्यूरी मात्र रह गई है और उस पर अमल नहीं किया जाता है ।

आज तो वह समय आ गया है कि जहां से हम ने वर्कर्ज पार्टिसिपेशन का आइडिया लिया, वहीं से हम वर्कर्ज मैनेजमेंट का आइडिया ले कर उद्योग के संचालन और व्यवस्था को वर्कर्ज के हाथों में दे दें । मेरे ख्याल में ऐसा करने से उद्योगों की व्यवस्था ज्यादा अच्छी होगी ।

MR. DEPUTY-SPEAKER: You can continue later.

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16 hrs.

MOTION FOR ADJOURNMENT—*contd.*

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

MR. DEPUTY-SPEAKER: Before I call upon Shri Jyotirmoy Bosu to initiate discussion on the adjournment motion, I would like to make one or two observations. Under the extra-ordinary circumstances of the case and in the form in which the adjournment motion has been admitted, I do not know how reference to the Supreme Court can be avoided. Nevertheless, I would like to draw

[Mr. Deputy-Speaker]

his attention to Article 121 of the Constitution which says:

> "No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court in the discharge of his duties except upon a motion for presenting an address to the President praying for the removal of the Judge as hereinafter provided."

Now, I would only make a request to Mr. Jyotirmoy Bosu to exercise restraint as far as possible and to use as courteous a language as possible and that we make all efforts to avoid an unhealthy precedent of this House and the Supreme Court passing strictures on each other.

Shri Jyotirmoy Bosu.

SHRI JYOTIRMOY BOSU (Diamond Harbour): Mr. Deputy-Speaker, Sir, I move:

> "That the House do now adjourn."

This is to discuss a matter arising out of the Attorney-General's giving assurance, speaking on behalf of the Government, no doubt fully and suitably advised by the Government, before the Supreme Court, to have an amendment of the Act as a countermeasure against the present situation arising out of the Supreme Court's judgment striking down the detention beyond a certain period, within 10 days, thereby undermining the role of Parliament. I maintain, without being disrespectful to them, the Supreme Court Judges acting beyond the jurisdiction, without authority, which amount to contempt of their own Court and undermining the judicial system, assured the Attorney-General that the delivery of the judgment in the Maintenance of Internal Security Act can be withheld for 15 days to enable the Government to bring an amendment to the Act in order to prevent legally the release of detenue as required by law.

I would first deal with the primemover, that is, the Government, that is behind the whole trouble. I may point out the degradation that has overtaken the Congress and this Government. I remember, in 1964, the Eighteenth amendment to the Constitution in which the then Law Minister Mr. Ashoke Sen had asked for immunity of the Government against fundamental right of personal liberty was withdrawn even during Emergency period of 1964 at the insistence of late Shri N. C. Chatterjee, a former Member of this House and an eminent jurist. Late Prime Minister Pandit Nehru intervened and it was withdrawn. It is the Government which took the decision, whether to bring an enactment or to withdraw it. Therefore, we must here not lose sight of the fact that behind all that has happened in the Supreme Court, to bring an amendment to the Maintenance of Internal Security Act, the Government is solely responsible and nobody else. So, it is the hand that rocks the cradle that rules the world.

The Attorney-General is nothing more than a mouth-piece. If it is not so, then the Prime Minister or the Home Minister or the Law Minister should make their stand clear in this case here and now. I maintain that it is the Government under whose specific instructions the Attorney-General posed a false threat to the highest court of justice of the land in order to get breathing time of 15 or 10 days for the Government. Because the Prime Minister and the Government rule the country; not the Attorney-General.

The *Times of India* very nicely stated:

> "He (the Attorney-General), however, submitted that there were at present more than 5,000 detenus in West Bengal alone....

and we are pround of that, in fact

> "and if that Court were to strike down Section 17A, most of these

> detenus would have to be released immediately and there would be serious difficulties for the Government in ordering fresh detention of those whom it was necessary to detain."

Sir, however, Government gave him deliberately exaggerated figures for consumption of the Court in order to continue the illegal and unconstitutional law. The correct figures were given in reply to Unstarred Question No. 2269 dated 7th March, 1973, which says:

> "The number of persons under detention under the Act, as on 31st January, 1973 in West Bengal is 2449."

This neither 4,000 nor 5,000. In fact, the hon. Home Minister or the Law Minister or the Government gave specific instructions to the Attorney-General I have reasons to believe and understand that you exaggerate the whole figure and try to mislead the Court".

Now, this is a very serious matter. How dishonest the Government of a country can be is quite clear from this instance—the black and white documents that are produced before you. The newspaper says that the Attorney-General had said that in West Bengal—they make a mountain of a mole-hill—it is not 2449. The author is the same. But, in the Court, for the consumption of the Court, they have taken recourse to this dishonest method. They told a lie in order to reach the objective of unlawfully and illegally robbing the citizen of his fundamental right and freedom. This is undermining Parliament; this is contempt, disrespect and mockery and nothing short of that. I quote again:

> "The Attorney-General, Mr. Niren De, gave the assurance to the Supreme Court that Section 17A of the Maintenance of Internal Security Act would be suitably amended within ten days in the light of the arguments pressed."

Because, this Government has a steam-roller majority, a brute majority, they are constantly trampling the right of the people and the Opposition in this House...... (*Interruptions*). They are trampling upon personal liberty, freedom of speech and movement. They are showing disrespect to human dignity and honour. This is causing ruination of the very social fabric of the toiling masses, because, they are struggling for their very existence and perhaps for a little better life.

I quote again from the *Times of India*. It has done a good service, I must say.

> "Mr. Justice K. S. Hegde, sitting with the Acting Chief Justice Mr. Shelat, on this specially constituted seven-Judge Bench, stated that in the light of the assurance given by the Attorney-General, the Court would postpone giving a judgement in the case for two weeks so that the Government can take necessary action."

Sir, how ridiculous is this? Is the Judiciary an appendage to the Ruling Party and this Government? I want this question to be answered here today. I want a convincing reply, not by utterances alone, but, through action. Can any person—who is worth of course thinking—ever think that such an assurance could be given by a Court of Law and the highest Court of Law at that, to legalise this struck-down lawless Law? The whole thing is unconstitutional. This is what is happening, in the highest Court of the land, and how unfortunate is the common helpless citizen of this country. How can we have faith in this decadent star-chamber Judiciary?

[Shri Jyotirmoy Bosu]

More interesting is this:

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

To this, Justice Shelat says "Why not?" Perhaps, sarcastically, he said it. Does Government take a hint out of this sarcasm? Mr. Justice Shelat says further:

'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."

He bolts the stable after the horse was stolen. I want to ask Mr. Gokhle, 'Did you take the hint from the sarcasm that fell out of the mouth of the judge of the Supreme Court?'.

Then, there is this lamentation of our Attorney-General on the issue of 'retrospective effect'. I have quoted what Mr. Justice Shelat has said. It is a very important thing. It is casting serious aspersions on Government and its thinking. We must know what they have in mind with regard to the above utterances. But Government took no hint. This Government, on the one hand, is dazzeling the Constitution and, on the other hand, has also this permanent, peace-time and all-time law detaining persons without trial.... (*Interruptions*) I would read out a piece of judgment which came from Justice Mahajan. This is on page 80, paragraph 133:

"Preventive detention laws are repugnant to democratic constitutions and they cannot be found to exist in any of the democratic countries of the world. It was stated at the Bar that no such law was in force in the United States of America. In England for the first time during the first World War certain regulations framed under the Defence of the Realm Act provided for preventive detention at the satisfaction of the Home Secretary as a war measure and they ceased to have effect at the conclusion of hostilities. The same thing happened during the second World War. Similar regulations were introduced during the period of the war in India under the Defence of India Act. The Government of India Act, 1935, conferred authority on the Central and Provincial Legislatures to enact laws on this subject for the first time and since then laws on this subject have taken firm root here and have become a permanent part of the statute book of this country."

This should be enough for the Government to understand. The Court came forward and gave an opportunity. It came forward to rescue the Government from tilting the balance, in a losing battle, in favour of the citizen fighting for personal freedom. Entering into discussions and giving them advice against a helpless citizen is very partisan, and I regret to say that I feel terribly distressed and disappointed.

Section 17(A) which was passed in three minutes provides for detention for a maximum period of three years or until the expiry of the Defence of India Act, whichever is later. The 1962 Defence of India Act ended not before 1969. Now, there is no real Emergency. Still it is there and nobody knows when this will end. This performance in the Supreme Court was nothing short of contempt of their own Court, and by lowering it in the public eye, they have gone a step further.

May I mention here that once a former Chief Justice of the Federal Court, Sir Maurice Gwyer, in 1943, at the height of war—the second World War was on—struck down the Defence of India Rules and ordered the release of many forthwith and the persons released included very eminent persons like Shri Shibnath Sarcar, Shri Keshav Talpade and Shri Vasant Ghosh, etc. In 1949-1950 when the Security Act was declared *ultra-vires* by the Calcutta High Court, everybody was released, although the Preventive Detention Act came into force on the previous night.

Sir, we must have a categorical assurance here and now from the Government that there will be no ordinance to have a shortcut and the judgment must be pronounced by the court, the court should not be interfered with, Sec 17A should be replaced, the emergency must be ended and all detenus should be released and compensation to all persons who have been held without trial should be given.

I do not want to speak much. I made my submission.

Thank you, Sir.

MR. DEPUTY SPEAKER: The Law Minister.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): In view of the fact that the discussion so far in the morning and now have proceeded of the assumption of the report in the newspapers, with a view to clarify the position as to what actually happened in the court.... (*Interruptions*)

SHRI H. N. MUKERJEE (Calcutta-North-East): On a point of order, Sir. Is he replying or is the Prime Minister replying to the debate? Where is the Prime Minister? In that case, if she comes here and if she replies, I can understand that he is intervening. We should have a full-dress debate.. (*Interruptions*)

MR. DEPUTY-SPEAKER: Please sit down. The Government can field any speaker any time. The Minister is here. He wants to speak now. How can I prevent? ..(*Interruptions*) There is no question of replying now (*Interruptions*) Order, please.

SHRI P. K. DEO (Kalahandi): He can intervene, he cannot reply...... (*Interruptions*)

MR. DEPUTY-SPEAKER: Order, please. Mr. Daga, you are not helping me any way? Would you leave the House to my hands? ....(*Interruptions*) Order, please.

SHRI P. K. DEO: Who is going to reply to the debate?

MR. DEPUTY-SPEAKER: We shall see who replies when it comes to that time....(*Interruptions*). It is the prerogative of the Chair to call upon anybody to speak. The Minister is not replying. I am calling upon him to speak and to participate....(*Interruptions*) Where is the point of order?

SHRI H. N. MUKERJEE: Does not propriety demand....(*Interruptions*).

SHRI SHYAMNANDAN MISHRA (Begusarai): If he is going to speak now, he cannot speak again.

MR. DEPUTY-SPEAKER: Will you kindly sit down? We shall see when it comes to that time. Let us cross the bridge when we come to the bridge. Now, let him speak.

SHRI SHYAMNANDAN MISHRA: On a point of clarification, Sir.

If the Law Minister participates just now, then would it be taken that the Government is participating or as a Member of Parliament the Law Minister is participating....(*Interruptions*) That point will have to be clarified. Secondly, would we also have the opportunity of listening to the Attorney-General on this point?

MR. DEPUTY-SPEAKER: First of all, let us continue with the debate. The Law Minister is participating in the debate, he is not replying to the debate.

SHRI SHYAMNANDAN MISHRA: As a member, as an ordinary Member.

MR. DEPUTY-SPEAKER: You may take in any way you like. Then, there is no point of order as to the priority of a person who is called upon by the Chair. I have called the Minister. He can speak.

SHRI SHYAMNANDAN MISHRA: What about the Attorney-General?

MR. DEPUTY-SPEAKER: We shall see about that. You can raise that point. Now, let the debate continue.

SHRI H. R. GOKHALE: I said that I would like to speak now because much of what I have heard till now proceeded on the basis of certain press reports. I have got authentic information as to what happened in the court from the Attorney-General himself and in order that the discussion may not go on on the basis of the press reports which do not seem to be accurate, I wanted to clarify the position but I did not want to substitute this intervention for my reply.. (*Interruptions*)

SHRI SHYAMNANDAN MISHRA: On a point of order. Sir. Now, if there is an authentic report of the proceedings in the court, that report should be circulated amongst us. Then alone we can express our opinion on that. Otherwise, what is the use?

SHRI JYOTIRMOY BOSU: This is a censure on the Government. Therefore, the Prime Minister must make it a point to reply to this Debate. There should be no escape from that. (*Interruptions*).

MR. DEPUTY-SPEAKER: Order please. I will leave it to the Law Minister and to the Government to decide about this. I am not concerned with the reply to the Debate at this stage. If the Law Minister wants to participate now, he is at liberty to do it. If he thinks that he will be more effective to speak at a later stage, it is up to him. In that case I would call upon....

SHRI H. R. GOKHALE: I am not putting it on the ground that I will be more, or less, effective. The question is that the whole argument has proceeded on the basis of the press report.

MR. DEPUTY-SPEAKER: So you can speak on that....

SHRI H. R. GOKHALE: I just wanted to clarify that the premises are wrong. That is to say, the premises on which the discussion has gone on, are wrong. That is why I wanted to say this and reply later on after the debate. Now, this report is from nobody else than the Attorney-General himself. (*Interruptions*) If hon. Members are interested in knowing what actually happened in the court they should hear me. (*Interruptions*).

MR. DEPUTY-SPEAKER: I request all hon. Members to sit down. Let me hear the point of order. I can hear only one point of order at a time, not five points of order, all at the same time. Shri Murasoli Maran.

SHRI MURASOLI MARAN (Madras South): When a Bill was under discussion last year, I was called upon by the Chair to speak. I just started a word and then, Sir, the House was adjourned. On the next day, when the House met, you called my name. I was not here then unfortunately and I came late. You gave a ruling that I should not participate for the second time.

MR. DEPUTY-SPEAKER: All right; that will be kept in mind; you are making a suggestion.

SHRI MURASOLI MARAN: Even thought I did not finish a sentence you ruled that I should not participate for a second time. Just look at your won ruling. If he participates now he should not participate for the second time also. These are your own rulings, Sir.

MR. DEPUTY-SPEAKER: I am telling you, whatever I do, I do under the ambit of the rules; I shall be guided by the rules. You are only making a submission and your submission is being noted. That is all. Now, Mr. Deo.

SHRI P. K. DEO: My point or order is this, that the entire basis of our discussion is on the press report and what the Law Minister is going to state here....

MR. DEPUTY-SPEAKER: How do you know what he is going to say?

SHRI P. K. DEO: ..is from heresay evidence. That is what he has stated just now. It is on hearsay evidence. Unless the *verbatim* report of the court proceedings is circulated here, we cannot have any relevance to the debate and it would be sheer waste of time if he intervenes at this moment.

SHRI G. VISWANATHAN (Wandiwash): All of us are proceeding on the basis of the Press report. It has appeared in almost all the newspapers. If the Minister says that this is wrong, then, the only person who can speak as to what happened in the Court, is the Attorney-General. Let the Attorney-General come....

SHRI SHYAMNANDAN MISHRA: Others are also there.

SHRI G. VISWANATHAN: Let them come to the House, because, you have got the right to ask them to appear before the House. (*Interruptions*).

MR. DEPUTY-SPEAKER: Order please. I want to get a clarification from Mr. Deo. Mr. Deo, you say, unless and until there is a *verbatim* report as to what transpired, then, this discussion is meaningless....

SHRI P. K. DEO: His intervention is meaningless.

MR. DEPUTY-SPEAKER: I want to understand. What is it that you want?

SHRI P. K. DEO: I said, the intervention of the Law Minister on the basis of some heresay evidence, unless we have full possession of the *verbatim* report, will be meaningless at this stage.

SHRI SHYAMNANDAN MISHRA: I have a submission to make. (*Interruptions*).

MR. DEPUTY-SPEAKER: Order please. Let me first deal with his point of order. Then I shall hear you. (*Interruptions*). Mr. Daga, I really don't understand this. Would you kindly sit down? Leave the House to me; it is only when I need your help, I shall call for that help. Mr. Deo, I only want to understand this. You are using the word meaningless. If what the Law Minister is anticipated to say is going to be meaningless... (*Interruptions*)-Order please-then, the whole discussion is meaningless.

SHRI P. K. DEO: The basis of the discussion is on Press report.

SHRI SHYAMNANDAN MISHRA: I had made a submission almost to the same effect—you would kindly recall it. The point now is, the Law Minister comes before the House and says that much of what had taken place in this House, much of what has been said in this House, is based on Press report. Then the hon'ble Member, Prof. Mukerjee, said that he had some talk with the Attorney-General

[Shri Shyamnandan Mishra]

and he had to say something to the contrary. Are we to go by the conversation that has taken place between the Law Minister of India and the Attoreny-General of India or we are to go by some authentic record. We would like to go by the authentic record. Then, Mr. Deputy Speaker, there is not only one party to the case before the Supreme Court but also another party. If there is a particular version as to what happened in the court we would like to have the version of the other party also; otherwise we will have to go by the authentic record of the proceedings in the court and that record should be circulated.

SHRI H. N. MUKERJEE: My submission is that the Minister appears to be only stalling the discussion. In any case it has got to happen. By referring to the idea that there is some contradiction that might be there between the press report and his information, if this kind of thing is going to happen we shall be nowhere. I myself, I did not want to say, was present in the Vice President's house yesterday and in the presence of reputable persons I had a talk with the Attorney-General. I was not going to refer to it, but if it is necessary that sort of thing will also be brought into the picture. We want to stand on the plank of principle. If this government fights shy let it go out. That is the only proper way. (*Interruptions*)

श्री अटल बिहारी वाजपेयी (ग्वालियर) : उपाध्यक्ष जी, विधि मंत्री महोदय का यह कहना सही है कि हमने अपने स्थगन प्रस्तावों का आधार समाचार-पत्रों में प्रकाशित खबरों को बनाया है लेकिन अगर समाचार-पत्रों में छपी हुई खबरें गलत थी तो सरकार को पिछले दो दिन का मौका था, जिस में वह समाचार-पत्रों में छपी हुई खबरों का खंडन कर सकती थी। यह मामला दूसरे सदन में उठा था, सरकार का ध्यान खबरों की ओर खींचा गया था, लेकिन सरकार ने चुप्पी धारण कर ली। इस से हमारा सन्देह बढ़ गया कि जो खबरें छपीं हैं वह सही हैं। अब अगर विधि मंत्री कहते हैं कि खबरें सही नहीं हैं तो फिर उन्हें सुप्रीम कोर्ट की सारी कार्यवाही—मैं नहीं जानता वहां सुप्रीम कोर्ट में वर्बेटिम रिपोर्ट होती है या नहीं—वह सारी कार्यवाही सदन की मेज पर रखनी पड़ेगी। यह सदन एटार्नी जनरल को भी सुनना चाहेगा। और भी जो गवाह वहां मौजूद थे, जिन्हों ने जो कुछ सुना है उन की बात भी सदन के सामने रखनी पड़ेगी क्योंकि विधि मंत्री द्वारा एटार्नी जनरल की बात का खंडन पर्याप्त नहीं हो सकता है।

श्री मूलचन्द डागा (पाली) : सवाल यह नहीं है कि समाचार-पत्रों में छपी हुई खबरें कभी झूठ नहीं हुआ करती हैं।

"Even if newspapers are admissible in evidence without formal proof, the paper itself is not proof of its content. It would merely amount to an anonymous statement and cannot be treated as proof of the facts stated in the newspaper. The speech reported in a newspaper is not admissible to prove it."

समाचार-पत्रों में छपी हुई खबरों में कोई त्रुटि नहीं होती—यह नहीं कहा जा सकता है। इसलिए जो आप कहते हैं वह गलत है।

MR. DEPUTY-SPEAKER: Order, order. There should not be any more debate. I think the issue are very clear. One submission is that until and unless there is an authentic record, we cannot proceed because it seems the facts are in dispute. The Law Minister says something and Shri Mishra and others dispute that.

SHRI SHYAMNANDAN MISHRA: Quite right.

MR. DEPUTY-SPEAKER: So I do not see any other way, when there is a dispute and the adjournment motion has been admitted....

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI K. C. PANT): Dispute about what he was about to say.

MR. DEPUTY-SPEAKER: Order, order. When there is a dispute about what has transpired or not transpired and the adjournment motion has been admitted, I see no other way except to have the discussion.

Now, as for the other two questions, about authentic record, that has to be seen. I do not know how that is going to be done. About the Attorney-General appearing here, I think it is up to the House after the discussion has begun. I think it is premature to discuss these things at the begining.

SHRI SHYAMNANDAN MISHRA: You as the guardian....

MR. DEPUTY-SPEAKER: I only say it is premature.

SHRI ATAL BIHARI VAJPAYEE: How?

MR. DEPUTY-SPEAKER: At this stage. Let the discussion take place. The Law Minister.

SHRI P. K. DEO: He should not intervene at this stage.

PROF. MADHU DANDAVATE (Rajapur): This issue was raised before in the Rajya Sabha. Here are the proceedings....

MR. DEPUTY-SPEAKER: Order, order. This morning also I noticed you reading from certain proceedings. If you want to read from the proceedings of the Rajya Sabha, it is most objectionable. Under the rules, you cannot refer to the proceedings in the other House except when it is about a statement of government policy. That is very wrong. You should not do that.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): I am grateful to you for giving me this opportunity. My intention in intervening at this stage was to clarify the misunderstanding which has been created mainly because of reports, which have appeared in the press. Ever since the report appeared in the press and copies of notices of privileges etc. came and were sent to me, I tried to ascertain the facts from the Attorney General.

As the House knows, this case had gone on for four days in the Supreme Court last week. The case was at the instance of a detenu who, amongst other grounds, had also challenged the constitutional validity of the Maintenance of Internal Security Act. He had contended that even if the Act was in consonance with art. 22, it could not be held valid until it also satisfied the test of art. 19. That was one part of the argument.

The other argument was that assuming that this argument was not correct, since cl. 7 of art. 22 was attracted in this case, it was *ultra vires* cl. 7 of art. 22. This was the argument before the Supreme Court.

Now, both these arguments had been dealt with by the Supreme Court as long back as 1950 in a case which is known and is famous as Gopalan's case. By a majority judgment in that case, both these arguments had been negatived. It was held that once you stand the test of Article 22, you do not have to

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test the law on the anvil of Article 19 over again. It was also held that under Article 22(7) the law would not be *ultra vires* because the two conditions prescribed in that article, namely, that the detention must have stated circumstances and must relate to a specified class of cases, were disjunctive and, therefore, even if you mention the circumstances but not the class of cases or *vice versa*, the order of detention was not invalid.

Now, for the first time these points were raised after over 20 years in the Supreme Court. When the Maintenance of Internal Security Bill was passed by Parliament, it had naturally proceeded on the basis of the law laid down by the Supreme Court over 20 years back. It was, therefore, for the first time after such a long lapse of time that the Government had to contend with an argument which wanted to reverse the majority judgment of 1950 and revert back to the minority view taken in that case.

After two or three days' time, the Attorney General reported to me that looking at the reactions of the hon. Judges, it was likely that if not the whole Act, at least sec. 17A might be struck down as unconstitutional and *ultra vires*.

Now, it is quite clear that the Government had acted *bona fide* on the basis of the law as it stood at that time, and on the basis of the powers vested in Government under this Act, and it detained a certain number of persons. Incidentally I may mention that the judgment has not come—and I state with confidence that so far as the Supreme Court's record is concerned, there is no verbatim record, but only an order of the Supreme Court. I have got a certified copy of what the Supreme Court has recorded, namely, "Hearing concluded; judgment reserved." Therefore, the present position is. "hearing is concluded and the judgment has been reserved." It does not say four days or 10 days or a week or 20 days. As is usual in most cases, the Supreme Court does not deliver an oral judgment immediately after the conclusion of the case. Invariably it reserves the judgment, and therefore, it is likely that in this case also, they did so in view of what has been happening all along.

But what is more important is that the action was taken by the Government under a law which Government had good reason to believe till now was valid, because of the pronouncement made by the Supreme Court 20 years back; because of the fact that the law had stood the test of time for 20 to 22 years, the Government was naturally concerned with the outcome of this case, and it was legitimate for the Government to say that they would have to take into consideration the consequences of the Supreme Court's judgment if and when it came and if it held that the law was *ultra vires* of the Constitution.

I had a discussion with the Attorney-General myself and the Attorney-General felt, as I felt, that it was necessary to point out to the court that all the actions taken by the Government were in good faith and were taken under the law which was valid, an indeed was valid according to the earlier pronouncement of the Supreme Court. Therefore, the Government would have to take into consideration what would be the consequences if the decision or otherwise, if section 17 A particularly was struck down. Therefore, I am assured by the Attorney-General authentically that he has not given any assurance to the court that the law will be amended. He has not told the court that the Government also is considering the amendment of the law. All that he has told the court is that in view of the fact that the consequences of an adverse view taken by the Supreme Court can be serious, the Government would like to consider the position, to consider

as to what steps they should take; and also consider as to whether or not it is necessary to amend the Act and then amend the Act if considered necessary. Therefore, all the argument that Parliament was taken for granted, that an assurance was given that the law will be amended, implying thereby that not only the Attorney-General's feeling but on the basis of the Government decision, the law will be amended—that he has already said so before the court—is, in my humble submission, without foundation.

In my humble submission, it was legitimate for the law officer or for the Government to take this view, that in a serious situation like this, what is important is, how many people are in detention; and according to Mr. Jyotirmoy Bosu's statement, over 2,000 detenus are in detention. He has referred to West Bengal, but West Bengal is not the whole country. There are the Naga hostiles; there are detenus in Nagaland, Tripura and elsewhere.

SHRI JYOTIRMOY BOSU: Sir, on a point of order. I have get the figures. Assam, 104; Bihar, 1, Gujarat, 7; Haryana, 1; Kerala, 6, Madhya Pradesh, 5; Manipur, nil; Mysore 1; Orissa, 1; Uttar Pradesh, 2; West Bengal, 2,449; Chandigarh, nil; Delhi, 5; Goa, Diu and Daman; none; Mizoram, 1. It is very important.

SHRI H. R. GOKHALE: There is no difference. It, in fact, supports what I was saying. I said there are 2,000 odd who are in detention. Now the consequences can be serious, because all the detenus are not of the same type. Some detenus might have been detained on grounds which are very serious, and the Government is undoubtedly entitled to consider the situation and decide whether any step should be taken to meet the situation which will arise on account of the Supreme Court's judgment. •

What the Attorney-General said, after he discussed it with me, before the court was this. Since the judgment was given a long time back, in Gopalan's case, and if that judgment is likely to be overruled, as it appeared to him from the reaction of the judges when the case was going on, he requested for some time, about a week or 10 days' time. (*Interruptions*) Please listen. Do not make such interjections. And he said that the Government would consider the matter in the meantime including an amendment of he Maintenance of Internal Security Act if considered necessary. The gist of the matter is, he did not say that the Act would be amended or that the Government had decided to amend the Act. No assurance was given that the Act would be amended. He only said that Government would consider whether any amendment was necessary. I respectfully submit that there is no substance in the submission that Parliament was taken for granted or that any assurance was given about the amendment. For that matter, Government has not taken any decision. The Attorney-General could not have said that it was the Government's intention to amend it. He could not have told the court that we were going to amend it. On this basis, I submit the entire discussion is without any foundation.

SHRI SEZHIYAN (Kumbakonam): On a point of order, Sir. Rule 368 says:

"If a Minister quotes in the House a despatch or other State paper which has not been presented to the House, he shall lay the relevant paper on the Table.

Provided that this rule shall not apply to any documents which are stated by the Minister to be of such a nature that their production would be inconsistent with public interest."

[Shri Sezhiyan]

So, if it is not inconsistent with public interest, he should lay the entire despatch on the Table from which he quoted a portion.

SHRI H. R. GOKHALE: I have no objection to laying it nor have I any objection to lay on the Table a certified record of the proceedings.

SHRI SEZHIYAN: He has quoted from a despatch given by the Attorney General. He should lay the entire despatch on the Table.

MR. DEPUTY-SPEAKER: As far as I could follow, there are only two documents. One is a note signed by the Attorney General and the other is certain excerpts from the Supreme Court order. He has quoted from the note given by the Attorney General. He says he has no objection to laying it on the Table.

SHRI SHYAMNANDAN MISHRA: Let both be laid on the Table.

SHRI S. A. KADER (Bombay Central South): On a point of order, Sir. You have permitted the hon. Minister to lay on the Table those two papers. Till we have studied those papers, this debate should be adjourned.

MR. DEPUTY-SPEAKER: There is no point of order.

SHRI SHYAMNANDAN MISHRA: I heartily agree with the proposal for postponement of this debate.

SHRI P. M. MEHTA (Bhavnagar): I support the suggestion of Mr. Kader.

SHRI H. R. GOKHALE: Sir, I lay the documents on the Table of the House. [*Placed in Library. See No. LT—4730/73*]

SHRI H. N. MUKERJEE (Calcutta—North-East): Mr. Deputy-Speaker, Sir, I would beg of the House and the whole House, I would beg of the entire House including my friends of the Congress Party, to take a genuinely serious view of what agitates the entire opposition today. I would beg of the Government even to consider if footling little points open to controversy and objection can, or ought to be, put forward in order to satisfy the pulsating Parliament which has taken a very serious view of what is reported on very sound authority to have happened. I am very sorry to have to say that the Law Minister, as has become his habitual practice in this House, opens his mouth to put his feet into it. His one object in intervening at this particular point was to tell us that the report in the newspaper was not to be trusted, but he has got a communication from the Attorney-General and a certified copy of the order given by the court. The order given by the court was reported absolutely accurately by the press. In so far as the communication from the Attorney-General is concerned, I had told you a little while earlier. I am goaded to say that though I never believe in referring to private conversation, if he can say all sorts of things, there is no compulsion on me to keep quiet. Only yesterday it so happened that the Vice-Chairman had invited certain friends, including me, to a meal and there, together with the former Attorney-General and so many other distinguished people, I had a talk openly with the Attorney-General, whom I have known almost all my life. And if the Minister wishes me to believe the truth of the communication as it purports to come from him, well, the Prime Minister may take it or not take it. I am not going to believe it.

But, that apart, I want to go to the root of the matter. This is not merely a formal matter. It refers to contempt of Parliament, very important particularly for those who brag about the democratic functioning of our society. Some of us know very well

that Parliament is not truly an effective instrument in times of crisis. But you think Parliament is a genuine, high-falutin institution, and that is why from that point of view contempt of Parliament has definitely been committed. There is no doubt whatever about it.

The other is a point of substance, and that relates to the rights of the citizens in independent India. A citizen who has seen more than 25 years of indenpendence is still subsisted to the barbarian law of preventive detention without trial. What has happened, to put it in a nut-shell if you allow me, is this here are citizens of our country who came to the Supreme Court to secure their rights, and their contention was that the Maintenance of Internal Security Act was invalid, violative of the Constitution, and the argument had filtered down to article 22, clause (7), and the idea was that the provisions of clause (7), the compulsion on Parliament to prescribe by law the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months and so on and so forth, that this particular provision had not been satisfied by the Maintenance of Internal Security Act with special reference to section 17(a), and so the contention was that the law was bad, and if the law was bad they would all be released. At that point of time the Government comes forward and says "we are ready and willing to consider" it—"consider" is the expression that is always used. According to the so-called report from the Attonrey-General, the Government came forward and asked the court to hold its hand, there is no doubt about it, to give an adjournment at a point of time when the court was more or less going to have a recess.

The Government came forward* and suggested that the law might be amended so that it could satisfy article 22, clause (7) and, pending that, if they had a little time, then these people could continue to remain in detention without trial and Government could get a favourable judgment later on. I wish the Prime Minister could apply her mind to it. Under the law, as it stands, here and now, at this particular moment, if a citizen has relief under it, he is being deprived of that relief by an adjournment which has come about as a result of Government asking for that adjournment.

The Supreme Court has in its wisdom and generosity in so far as this aspect of governmental activity is concerned, readily and willingly granted the adjournment. We have seen the Supreme Court not so particularly responsive to what the Government wishes the Supreme Court to do in so far as legislation for socio-economic improvement is concerned. The Supreme Court is not so malleable when we are concerned with the rights of our people. But the Supreme Court is very malleable when the right to keep people detained without trial for a very long time is concerned. That is the crux of the matter.

The country will never forgive us, whatever the image of the ruling party and of the presiding deity at its head might be. The country will never forgive us if we allow this kind of thing to happen with impunity. As I said, we have had the detention law without trial, imprisonment of people, throughout all these years. Mr. Jyotirmoy Bosu has already said how the Defence of India Act, the Emergency, continued till 1969. There was only a short period of respite between 1969, 1970 and 1971. Again, it was clamped down. Today, I am sorry, I am not too well, but even so I have to make my submissions to this House, even if this might be my swan-song....

SOME HON. MEMBERS: No, no.

SHRI H. N. MUKERJEE: I would like the House very much to apply its mind properly. Throughout this period, a citizen has had no remedy. Now, in addition to everything, you got the MISA and the MISA is in trouble. Therefore, they say, they are going to tighten it. The Law Minister says, not everybody is a pleasant fellow-he might be a Naga rebel; he might be a Naxalite rebel; he might be a young man who is ready to give his life and take other people's life. He is afraid. These political leaders of our country talking about radical reconstruction of social and economic life cannot trust our people. They cannot trust our people. They cannot trust our young men and women. They cannot trust the idealism of the people who comprise the population of our country. They will have to have not only punitive legislation but also preventive detention and all the kind of paraphernalia that goes along with it. This is what is going on.

What actually has happened? Why do we have to have this kind of law? We can discuss it later on. If under the law as it is at this present moment, a citizen has access to relief, don't deprive him of it. Do it later on; do some damage to him later on. So many of us and some on the other side also have suffered in different ways. I have also been in a small way a victim of preventive detention. I had applied in 1948 and 1949 for *habeas corpus*. That was turned down. That is a different story. I remember very distinctly, and quite apart from what had been done by Maurice Gwyer—I do not choose to remember it—in the Calcutta High Court, in 1950, that some of us were appearing to argue the case, the *habeas corpus*, the Constitution had just been promulgated and there was everybody's expectation that, and the Judges had more or less given it out, the next day 500 and more detenus would come before the court, and they would be released. Here, in Delhi, the Provisional Parliament in one day's single sitting passed a law, the First Reading, the Second Reading, the Third Reading—the whole gamut of it. In those days at least, Vallabhai Patel and, I think C. Rajagopalachari had the decency to apologise to the country. Earlier, when preventive detention law was passed, Vallabhai Patel said how he had spent sleepless nights because he did not want to do this damage to the people's liberties, and later they also said, 'We are terribly sorry, in one day's time, we had to do it—change the law to make it more drastic'. I could understand it to some extent; at least they came before Parliament and in one day's time they pushed through the legislation to make it harder. Now they do not come before Parliament. It was said, 'Give us a little time, ten days'. Justice Hegde has been on record: You cannot say all the time that the Press is wrong and whatever you want to put in the mouth of your representatives is the right version; you cannot always say that. Mr. Hegde has said: 'How Government changes the law is not our business. Anyhow, we give them fourteen days. They wanted ten days and we give them fourteen days' What is all this? What are you driving at? Why should this kind of thing happen?

You have told us that we are not to criticise the Supreme Court judges. I am not here to criticise the judges of the Supreme Court; some of them are personal friends of mine; I am not interested in that. Besides, I do not believe in personal attacks. Article 121 says:

> "No discussion shall take place in Parliament with respect to the conduct of any Judge of the Supreme Court or of a High Court...."

I am not discussing the conduct of any judge or more judges like that. But I am discussing, and I propose

to discuss, as long as I am in Parliament, the conduct of our judiciary as a whole. If we want to discuss the conduct of a particular judge, we shall impeach him. But if we want to discuss the conduct of the judiciary as a whole, we shall expect Mr. Gokhale to be answerable for them. And that is why I say, here is the judiciary which will listen to the Constitutional case for days on end, to Mr. Palkiwala and all the rest of that peculiar combination. We find out the kind of questions they ask, the kind of remarks they make. People have heads over their shoulders; they understand what is what. That is the judiciary of our country. At the highest level, our judiciary is so constituted that, if any socio-economic legislation is seriously in the contemplation of the Government, we can say good-bye to all hopes of having them okayed by the judiciary. That same judiciary, when it is approached with an authoritarian legislation of the most dastardly sort, comes forward to assist the Government in the way that Government—so many of them in the Government—desire. This is the most serious matter. This is a matter of which the country has got to take note. Are we to go forward or are we not to go forward? Are we to have a purely administrative view of our citizens or are we not to have? What point was there in my friend, Raja Pant, saying from time to time that he was going to win over the hearts of young Naxalites and all that? What is the point of that? What is the point of Mr. Priya Ranjan Das Munshi—where is he, I do not know—going and saying to the people, 'We shall win the hearts of these young people'? When are you and how are you going to win over the hearts of these young people? You keep thousands of them in jail. I am not interested like Mr. Jyotirmoy Bosu in this figure or that figure. I know it for a fact that it is a five-digit figure. People are in jail, detention, all over the place. I know how the people's minds are agitated. I know how in Andhra today the Prime Minister can solve so many problems if only she calls upon the real left elements, if she puts out her hand of friendship and understanding and affection to those who are today supposed to be rebels against the social order.

17 hrs.

She can save the life of Nagabbushan Patnaik who is now facing the gallows for such a long time and she has sometimes behaved well enough to the extent of allowing the person not to be killed off in the way the judiciary wanted him to be killed off, but, if she or her Government has any imagination, any sense, is it not time for them to extend the hand of friendship, the hand of affection, the hand of understanding, the hand of imagination? Without that, nothing would happen. Therefore, I feel that in spite of what Mr. Gokhale had pointed out, I cannot even personally, in view of what I know directly from the horse's mouth, accept the idea that the Government did not suggest to the court that the legislation would be changed, not in favour of the citizen, but against the liberty of the citizen. I cannot accept his version of the incident. I understand the commonsense conclusion from what appears in the Press and from what some of us have got from personal knowledge. I am sure is that in this regard not only is Parliament being sought to be circumvented but a very damaging thing, damaging to the liberty of the citizen is being attempted by the Government.

There have been references in the other House to the fear of an ordinance being passed in the present period in spite of the Lok Sabha being in session. The Constitution might technically provide for an

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ordinance being permissible when one of the two Houses is not meeting, might technically provide, but Lok Sabha should have the gumption to declare to the Government of India today, irrespective of Party differences, that when Lok Sabha is sitting, no ordinance on any account be passed. The Prime Minister will remember that when the Fascists were carrying on their depredations in Europe, in Spain a slogan was raised—*'No Passaran'*. "They shall not pass". When Lok Sabha is meeting, no ordinance shall be passed. Over the dead body of the Lok Sabha an ordinance might be passed at a point of time when the Lok Sabha is sitting and when the Rajya Sabha is not. If there is a technical provision in the Constitution to allow that, that will not be permitted practical implementation as far as this democracy is concerned. I want to tell this House, I want to tell the Government straightaway, that if there is anything of that idea in their mind, let them repudiate it, in the slightest, the intention of having an ordinance on account of the absence of Rajya Sabha from the scene when Lok Sabha to which alone the Council of Ministers is responsible, will not allow them and we shall not allow it to happen.

That is the point which I wish to make and I feel that the matter being so serious, the Government should take a genuinely serious view of it and not merely give footling, legalistic and longomackis arguments which mean nothing at all so far as political life is concerned. In so far as the public life of this country is concerned, this attack, this contemplated attack which the Government has in view, on the civil liberties of this country for which our people have fought, will not be tolerated. The freedom of this country is a great deal more precious than the power of a few who cannot carry on unless they have in their armoury of repression such things as MISA which even the Supreme Court is ready to strike down if they are going by the letter of the law as it stands here and now and if they allow that law to take its course here and now and any effort to subvert that law must be opposed by the Parliament.

SHRI JAGANNATH RAO (Chatrapur): Having heard the Law Minister who narrated the substance of the conversation that took place between himself and the Attorney-General, I feel this adjournment motion based on the press report is misconceived.

According to me, it is not a healthy practice to admit an adjournment motion which is based mainly on press reports without getting an authentic version from the other side. Here, the Attorney-General is said to have said so many things and the adjournment motion is based on those statements he is reported to have said.

About the MISA, arguments have been taking place as stated by the Law Minister for four days. Then the Attorney-General representing the Government, finding that perhaps the Judges were inclined to accept the arguments of the petitioners, felt it his duty as a responsible officer of the Government, to report to the Government what had happened and what was happening and his impression of the arguments that were being held in the Supreme Court.

And, it is nobody's case that the Government has decided to issue an ordinance much less it is going to bring a Bill to amend this Act. Therefore, the very substance, the very basis on which the adjournment motion is based, according to me, falls to the ground.

What is the failure of the Government in this case. This MISA was passed on the law prevailing in the

land which was laid down in A. K. Gopalan's case in 1950 which is the law till today and the Act was passed by both Houses of Parliament. Therefore, under that Act certain persons could be taken into custody and detained. Now, if the court holds a different view, certainly it is the right of the Parliament and the Government to bring forth an amending law. Then, those matters which are referred to by Mr. Bosu and Prof. Mukerjee could be urged, whether detention is valid, whether it should be a valid law in a democracy and all that. All those matters could be discussed then. Now, we are not discussing the substance of the preventive detention. Therefore, that is beside the point.

In this adjournment motion, the limited scope of the debate is whether there was a failure on the part of the Government as this motion is based on the statements reported to have been made by the Attorney-General and then the opposition presumes that the Government is going to issue an ordinance because the Rajya Sabha is not in session. It is all imagination.

Therefore, in this adjournment motion we cannot discuss the substance of preventive detention law. The law is valid because it was held that if the law satisfied Article 22, sub-article 7, it was a valid law and that the Article 19 need not be satisfied. Therefore, under this law, there are no *mala fides* on the part of the Government. The law was passed *bona fide*. The law is a valid law till it is struck down. Some fears were expressed by the Attorney-General and he has a duty to report to the Law Minister and the Government as to what his impression of the arguments was. Therefore, merely basing on this, all inferences drawn by Prof. Mukerjee, I consider, with due respect to him, are beside the point. When an amending Bill comes up before the House, it is open to us and to the Opposition to say whether preventive detention should be a law in a democracy, whether emergency should continue and for what purpose and all these matters could be well discussed and validly so at the appropriate time, but, not now.

According to me some detenus are in jail, the number may be 2,449 in West Bengal but in other Stats also some others are there. So, the effect of the Supreme Court striking down this MISA, would be that they have to be released, then what about the difficulty and hardship that the State Governments will have to face? In view of this, the Attorney-General might have reported to the Government, and we have not got before us what the Government's reactions are. The Government have not issued any ordinance nor have they indicated their intention to bring an amending Bill. Therefore, all fears and suspicions could be reserved to a future date when the Government comes forward with an appropriate legislation. Therefore, I submit the adjournment motion has no meaning. There is no failure on the part of the Government. There is no question of censuring the Government on this point. Therefore, I oppose the adjournment motion.

SHRI SEZHIYAN (Kumbakonam): The adjournment motion that we are discussing today raises a very basic issue that is before the country and this Parliament as pointed out by my hon. friend, Prof. Mukherjee. This is a matter that should be considered by the entire House irrespective of Party affiliations because this affects the very basic structure of the functioning of democracy in this country. Before I go into the merits of the two adjournment motions—one by Mr. Bosu and another by me—I may point out that in my adjournment motion I have exactly pin-pointed the failure of the government in not giving a proper

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brief for arguing the case on behalf of the Government of India in the court where the Autorney General is reported to have given an assurance that the Maintenance of Internal Security Act would be amended in a particular way. It is very strange for the Law Minister to come forward to this House at this late hour with some correction because the question has already been discussed in the other House; press reports have come and no contradiction was issued either by the spokesman of the Government or by the Attorney General himself. The statement from which he has quoted which has been laid on the Table of the House clearly says:

> "In the circumstances, the Attorney General on the instructions given to him at the Conference aforesaid and in view of the grave consequences that might arise if the Supreme Court gave judgement immediately over-ruling Gopalan's case requested for some time namely about a week or 10 days and assured the court that the government would consider the matter in the mean time including amendment of the Internal Security Act, if considered necessary."

Therefore, the Attorney General had been previously briefed on this question and it has been a deliberate attempt to ask for time because he was afraid the Supreme Court might strike down the basis of 17(a). I do not want to drag in the Supreme Court. We are more concerned with the instance of the Government.

The Preventive Detention Act which came in 1950 was enacted for one year. At that time the excuse given was the Telangana trouble. Then in 1951 the Act was again renewed on the plea not of Telangana but to deal with the communists throughout the country. Since 1951 it is being brought to this House and again and again giving three years life everytime. Now it has been changed into Maintenance of Internal Security Act. When this Bill was introduced in this House in May 1971 what was the assurance given by the Government? If you look at the Statement of Objects and Reasons, it says:

> "In view of the prevailing situation in the country and the developments across the border......"

Because there was trouble in Bangla Desh across the border this Bill was passed in May-July, 1971. Even at that time many members expressed their misgivings. At that time Mr. Pant was piloting the Bill and he gave a solemn assurance to this House. He said that it would not be misused and it would not be for a long time. In December the Defence of India Act was introduced and this 17(a) was included. Actually, there was some discussion on that.

The entire clauses—it was a bulky bill—were passed in three minutes. Such was the unanimity in the House in support of the action taken by Government in that particular situation.

Before taking up the clause by clause discussion, there was a discussion in the House in which very many members had expressed doubts that this might be misused. At that time, Shri Indrajit Gupta had said that only 24 hours earlier, a CPI member in Delhi by name Ved Prakash was arrested under the same provision without assigning any reason and asked: Why are you misusing the powers under this? At that time, Shri Pant stated thus:

> "This Bill is a logical consequence of the declaration of emergency by the President. I am grateful to various members from different sections of the House who have supported it. No one from this side of the House spoke to save time, but I may say that I am voicing the opinion of the entire section on this side of the House when I say that we all support it fully not merely because we are the government

party but because this matter is above party and what is involved is the survival of this nation".

Therefore, this was taken above the party level. Not only in December 1971, but I say even today above the party level we should approach the problem. At that time, Shri Pant assured the House:

"I can say that our intention is that this should not extend beyond the requirements of emergency".

So when the Maintenance of Internal Security Bill was passed in this House, they referred to the prevailing situation in the country and developments across the border. The Bangladesh question is now happily settled and it has become a fully sovereign State. In December also the whole House had given united co-operation to Government in getting the Bill amended. But now Government are thinking of bringing in an Ordinance to circumvent what they feel will be the decision of the Supreme Court.

Before I go into this, I would say this. As rightly pointed out by Prof. Mukerjee, they should not try to promulgate any Ordinance until the Supreme Court gives its decision. This will tantamount to circumventing the proposed decision of the Supreme Court. Not only that. It means we are having an illegal Act by which we have been depriving very many citizens of their personal rights. It does not matter if it is 2,000, 4000 or 5,000; even if there is a single individual in the country who has been put behind bars without any inquiry, that is very bad. That principle must hold. Otherwise, it is a blot on the functioning of democracy.

In the UK even in the very hard days of the second world war, how many persons were detained under their Security Act? Only about 200. When they were engaged in a grim battle against the Nazi and Fascist forces, even then it was not given to an ordinary magistrate or district magistrate to detain a person. If anybody was to be detained, the Home Secretary should personally issue the orders. Otherwise, nobody could be detained. When the UK could stand the test of such an onslaught on their very existence during the second world war without having recourse to detaining 5,000 persons, now there is no such emergency in this country to warrant this sort of measure. As I said, the Bangladesh question is now happily over. Therefore, there is no such excuse for Government to continue the emergency and the Preventive Detention Act or the Maintenance of Internal Security Act. Instead of scrapping it, Government are thinking of circumventing any judgment that might be given by the Supreme Court.

He laid on the Table a note given by Shri Niren De. There is a counter-statement by Prof. Mukerjee. Of course, Prof. Mukherjee has not yet said exactly what he was told by Mr. Niren De. But if he is going to reveal it or not, I am afraid we should have not only what was told to Prof. Mukerjee but also the versions of other persons involved in this. Because there have been the opposite counsels also, Mr. R. K. Garg and Mr. N. Guptoo. These two persons should be called. If they are not to come before the bar of this House, the entire matter should go to the Privileges Committee, and the Privileges Committee should go through all the evidence and give an account of what has happened.

Again, I feel that this is a matter of privilege for the House. The decision of the House cannot be taken for granted either by the Attorney-General or by those who advised him from the Ministry. Therefore, this is a fit case for the Privileges Committee. They should not have given adequate instructions, because, as per the note of Mr. Niren De, as per the instructions given by the Government, he wanted extra time because if an immediate judgement was given, it

[Shri Sezhiyan]

could be very unfavourable to the Government and they could not act. This is a very undemocratic way of doing things. As rightly pointed out by Mr. Mukerjee, we should try to extend personal liberty and the fundamental rights of the people and not to curb them at every stage. If there is an opportunity, we should be in favour of the citizen and not against him.

Before I conclude, I want to say that the Government has not come out creditably here. Whatever may be the explanation given by the Minister, it has been very weak in the sense that for two or three days they have not opened their mouth and they have come before the House now. Tomorrow, one will be forced to place on the Table of the House some statements obtained from the opposite counsel and it is for the House and for the Privileges Committee to go into the entire question and find out where exactly the House has been misled.

THE MINISTER OF PARLIAMENTARY AFFAIRS (SHRI K. RAGHU RAMAIAH): Sir, may I suggest that the half-hour discussion be postponed to a later date?

SEVERAL HON. MEMBERS: Agreed.

SHRI N. K. P. SALVE (Betul): Mr. Deputy-Speaker, Sir, with rapt attention I have listened to the speeches made by Mr. Jyotirmoy Bosu and Prof. Mukerjee, and much as I may share the very highsounding principles propounded by Prof. Mukerjee....(*Interruptions*) he is not listening to the reply to what he has said: I wish he was here—because he spoke with great depth of feeling, much as I wish to share some of the highsounding principles that he propuounded to save parliamentary democracy. I must submit to him, in all humility, that most of the things that he spoke were utterly irrelevant for the purposes of the motion which we are discussing today. We are not discussing the merits of this legislation of section 17A, nor are we discussing at this juncture the desirability or otherwise of the Government coming with an amendment of section 17A in a particular manner, or to save it from being struck down, to save its constitutional validity. That is not the question in this motion at all. The Government is sought to be consured for two things.

The first thing for which it is sought to be censured is that the Attorney-General has sought to undermine the role of Parliament by confirming in advance the enactment of the amendment of section 17A. That is the first part. In the second part, the Supreme Court is sought to be criticised for withholding for 15 days the delivery of its judgment in order to enable the Government to make the necessary amendment to section 17, so that its virus may not be challenged. This is the motion and therefore the scope of the motion is entirely limited. If one were to be relevant to this motion and not utterly irrelevant and indulge in cheap gibes. It was very unfortunate that an eminent Member, a senior Member like Prof. Mukerjee, should have stated that whenever the Law Minister opens his mouth he puts his foot into it. In view of the statement he has made, he should have realised that it is the Opposition that seems to have put its foot into its mouth by urging this adjournment motion on the floor of the House in this manner, on a matter where angles might have feared to tread.

So far as Mr. Jyotirmoy Bosu's somewhat unrestrained criticism of the Supreme Court is concerned, I can only submit that it is most unfortunate. We have had our differences with the Supreme Court on principle, but that does not entitle anyone in this House to cast any aspersions of a personal nature on anyone in the Supreme Court, or to say the least, bring an

adjournment motion to censure the Government for what the Supreme Court has not done. In fact, the Attorney General has not given any assurance, for which the Government is sought to be censured nor has the Supreme Court withheld its judgment for the purpose for which it is attributed to have withheld its judgment. It has only reserved its judgment for 10 days. One of the submissions which the Attorney General made was that Government would like to consider the steps which are to be taken, but no assurance was given. If the Government is worth its salt, is it going to allow itself to be put in a difficulty? Is it worth to save a section which this august House has enacted or to have a section abolished? Much can be said on both sides so far as the merits of the section go. But is it relevant to the motion we are debating? Therefore, I submit that this sort of adjournment motion has become a sheer spectacle of political gimmickry. Prof. Mukherjee spoke with great feeling about the rights of those people who are languishing in jail without being given the right of a trial. These are no doubt serious matters, but have they to be brought in here in this manner? Are we not playing with the lot of those unfortunate people by treating it in this manner? That is why I called it a political gimmickry. If you bring a motion for an appropriate debate, maybe you will find supporters even on this side of the House. We are equally interested in upholding the dignity of the House. Whenever a question has arisen about the prestige or dignity of this House, we have ourselves protested. Not long ago, the Home Minister brought a Bill here validating certain regulations under the All India Services Act, giving a blanket immunity to various acts done by various bureaucrats under certain regulations which had not been laid on the Table of the House. What those regulations and acts were, were not enumerated in the Bill. We did not allow him to proceed with the Bill until it was revised. So, we are concerned about the dignity and prestige of the House. If the opposition members are equally concerned about it, as they pretend to, they would not act in this manner, and one of the ominent dailies—*The Hindustan Times*—will not have to write, commenting on the unseemly scenes in the House and the Chair's expunction of some remarks. "Even if he had not done so, it would have been difficult for any decent newspaper to publish them." So, if we are really worried about the dignity of the House, let us not be oversensitive about things which have not happened in the Supreme Court. Let us be concerned about our own behaviour. Let us be more decorous and decent. That is one way in which we would be able to maintain the dignity of the House.

AN HON. MEMBER: Is all this relevant?

SHRI N. K. P. SALVE: When Prof. Mukherjee was waxing eloquent about section 17A and wrapped his entire speech with legalistic loquaciousness, most of which was utterly unnecessary, the opposition members listened to all that, though it was a monument of absolute irrelevance. They have realised after the statement of Mr. Gokhale that by opening their mouth on this issue, they have put their foot into it.

श्री अटल बिहारी बाजपेयी (ग्वालियर): उपाध्यक्ष जी, इस काम रोको प्रस्ताव के विरोध में जो भाषण हो रहे हैं वह इस बात की पुष्टि कर रहे हैं कि यह प्रस्ताव कितना उचित था और इस को लाकर प्रतिपक्ष ने एक महत्वपूर्ण समस्या की ओर देश का ध्यान केन्द्रित किया है ।

[श्री अटल बिहारी वाजपेयी]

विधि मंत्री महोदय ने प्रारम्भ तो यहां से किया था कि काम रोको प्रस्ताव समाचार-पत्रों में प्रकाशित खबरों पर आधारित है, लेकिन उन्हों ने एटार्नी जनरल का जो नोट सदन की मेज पर रखा है उस से अखबारों में छपी हुई इस खबर की पुष्टि हो गई कि अटार्नी जनरल ने सुप्रीम कोर्ट से कहा कि इस मामले में आप अभी फैसला न दें, हमें थोड़ा समय चाहिये और इस समय के बीच में हम कानून में संशोधन करने का भी विचार कर सकते है । उपाध्यक्ष महोदय, मैं जानना चाहता हूं फिर समाचार-पत्रों में छपी खबर गलत कहां है ? विधि मंत्री महोदय इस से इंकार नहीं कर सकते कि अटार्नी जनरल ने सुप्रीम कोर्ट से समय मांगा । विधि मंत्री इस से भी इंकार नही कर सकते कि सुप्रीम कोर्ट में कहा गया कि सरकार संशोधन लायेगी, इस के लिये 8 और 10 दिन का समय मांगा गया । क्या यह बात इस आरोप की पुष्टि नही करती कि सरकार ने, सुप्रीम कोर्ट का निर्णय कुछ भी हो, यह मान कर चलना प्रारम्भ कर दिया है कि जैसा भी कानून वह सदन में चाहें, जैसा कि संशोधन वह लाना चाहें, पास करा सकते हैं ।

विधि मंत्री महोदय कहते हैं कि अटार्नी जनरल

did not take Parliament for granted.

फिर अटार्नी जनरल के इस कथन का क्या मतलब है :

"..requested for some time, namely, about a week or ten days and assured the court that the Government would consider the matter in the mean time, including amendment of the Internal Security Act."

समाचार पत्रों में यही बात छापी गयी है । उपाध्यक्ष महोदय मेरा निवेदन है कि यह मामला दूसरे सदन में उठने के बाद भी सरकार सोती रही । उस ने खंडन नही किया, क्योंकि खंडन करने की स्थिति में सरकार थी नहीं । जो बात सुप्रीम कोर्ट में अनेक लोगों के सामने कही गयी है, जो केवल समाचार-पत्रों ने नही दी, जिसे संवाद समितियों ने भी प्रसारित किया है, किस मुंह से सरकार उस बात का खंडन कर सकती थी । और आज खंडन करने के बजाय जो कुछ अखबारों में छपा है उस की पुष्टि हो गयी ।

उपाध्यक्ष महोदय, अटार्नी जनरल एक जिम्मेदारी के पद पर बैठे हैं । ऐसा लगता है कि वह सुप्रीम कोर्ट में कुछ कहते है । विधि मंत्री से अलग बात कहते हैं और अगर उप-राष्ट्रपति के यहां प्रोफैसर हीरेन मुखर्जी से उन की मुलाकात हो जाय तो वह तीसरी बात कहते हैं । ऐसा व्यक्ति अटार्नी जनरल के पद पर रहने लायक नही है । उन्होंने अपने पद की प्रतिष्ठा के अनुरूप काम नही किया है । मैं विधि मंत्री महोदय से पूछना चाहता हूं कि आप के मंत्रालय में सम्मेलन हुए, अटार्नी जनरल ने उस में भाग लिया और आप को आशंका पैदा हुई कि शायद सुप्रीम कोर्ट उसी निर्णय पर वापस चला जाय जिस पर गोपालन के मामले में माइनारिटी बैंच ने फैसला दिया था, तो क्या अटार्नी जनरल को यह आदेश देने की जरूरत थी कि आप सुप्रीप कोर्ट से कहिये अपना फैसला टाल दें ? अगर सुप्रीम कोर्ट आज उस कानून को रद्द कर देता है तो सरकार के सामने इस के सिवा

कोई विकल्प नहीं है कि जो उस कानून के अन्तर्गत बन्दी हैं उन्हें मुक्त कर दिया जाय।

उपाध्यक्ष महोदय, शस्त्रों की झन्कार के बीच भी व्यक्तिगत स्वाधीनता का स्वर रुद्ध नहीं होना चाहिये । आज तो सीमा पर लड़ाई नहीं हो रही है ।

श्री शशि भूषण (दक्षिण दिल्ली) : ब्लैक मार्केटियर्स भी हैं, अटल जी, उस में ?

श्री अटल बिहारी वाजपेयी : ब्लैक मार्केटियर्स की बात मत कीजिये । ब्लैक मार्केटियर्स तो पैसा दे कर बच जाते हैं, उन्हें जेल भेजने की हिम्मत आप में नहीं है ।

श्री शशि भूषण : आर० एस० एस० को, ब्लैक मार्केटियर्स को भेजना ही चाहिये, मैं सहमत हूं माननीय बाजपेयी जी से ।

श्री अटल बिहारी वाजपेयी : युद्ध के दिनों में भी प्रत्येक व्यक्ति की स्वाधीनता का संरक्षण आवश्यक है । आज तो युद्ध नहीं है । आपातकालीन स्थिति को बनाये रखने का कोई औचित्य नहीं है । यदि कुछ नौजवान गुमराह हो गये हैं तो क्या जेलों में उन की जिन्दगी और जवानी सड़ाकर उन के विचारों के परिवर्तन का प्रयास किया जायेगा ? मैंने पश्चिम बंगाल के मुख्य मंत्री का वक्तव्य देखा "हम ने सब नक्सलवादियों को समाप्त कर दिया है ।" यह खातमा करने की भाषा लोकतन्त्र की भाषा नहीं है । और बिहार के मुख्य मंत्री, श्री केदार पांडे, उन से भी एक कदम आगे हैं । बड़े मियां सो बड़े मियां, छोटे मियां सुब्हान अल्लाह । श्री केदार पांडे कहते हैं कि नक्सलवादी तब तक छोड़े नहीं जायेंगे जब तक जेल में उन को डी-नक्सलाइट नहीं किया जायेगा । क्या जेल में उन के दिमागों का कोई उपचार किया जा रहा है ?

श्री शंकर दयाल सिंह (चतरा) मान्यवर, मेरा व्यवस्था का प्रश्न है, और वह यह कि जो मुहावरा माननीय बाजपेयी जी ने कहा है कि बड़े मियां तो बड़े मियां, छोटे मियां सुब्हान अल्लाह, यह गलत है । कृपया उस को वापस लें । यह निराधार है । इस में साम्प्रदायिक भावना भी है । इस तरह से नहीं कहना चाहिये । मैं अनुरोध करता हूं कि इस तरह का उदाहरण नहीं देना चाहिये ।

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, यह सदस्य लेखक बनने का दावा करते हैं, मगर व्यंग और विनोद भी नहीं समझ सकते हैं ।

श्री शंकर दयाल सिंह : व्यंग, विनोद में ऐसी बात नहीं कहनी चाहिये जिस से किसी को ठेस पहुंचे ।

MR. DEPUTY-SPEAKER: Order, please. You have made your point. That should be enough.

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष महोदय, अगर मेरे मित्र श्री कुरैशी साहब कहें कि उन के दिल को चोट पहुंची है तो मैं वापस ले लूंगा ।

रेल मंत्रालय में उप-मन्त्री (श्री मुहम्मद शफ़ी कुरैशी) : आपने जो मजाक किया है बिल्कुल मजाक की सेंस में है और यह साबित करता है कि छोटे मियां सुब्हान अल्लाह ।

श्री अटल बिहारी वाजपेयी : उपाध्यक्ष जी, मैं आपसे निवेदन कर रहा था कि जिनसे राज्य की सुरक्षा के लिये खतरा है, और खतरे का अनुमान सरकार लगाती है, उन्हें भी कानून का संरक्षण प्राप्त होना चाहिये । और अगर सुप्रीम कोर्ट का निर्णय उन्हें आज कारागार की परिधि के बाहर रखता है तो जल्दबाजी में कानून में संशोधन करके, या अध्यादेश जारी करके सरकार कानून के राज्य की प्रतिष्ठा को बढ़ाती नहीं है ।

उपाध्यक्ष जी, यह चर्चा हो रही है कि संविधान का अनुच्छेद 22(7) को टुकड़ों में लिया जायगा या उसको एक साथ जोड़ा जायगा ? आप अगर सुप्रीम कोर्ट की सारी कार्यवाही पढ़ें जो पत्रों में प्रकाशित हुई है, और मैं चाहता था कि केवल अटौर्नी जनरल का नोट मेज पर नहीं रखा जाता, सुप्रीम कोर्ट की सारी कार्यवाही से सदन को अवगत कराया जाता, तो आप को पता लगेगा कि अटौर्नी जनरल ने वहां एक तर्क यह भी दिया है, और जिसे विधि मन्त्री महोदय ने दोहराया है :

> "Shri Niren De further argued that Parliament was by no means bound to provide for circumstances or to classify cases before it, take away the safeguards of advisory boards. Article 22(7) enable Parliament to provide either for the circumstances or for classes of cases and not necessarily for both."

इसी की व्यवस्था के बारे में मतभेद पैदा हो गया है । हमारा निश्चित मत है कि अनुच्छेद 22(7) को टुकड़ों में नहीं देखा जा सकता है । सर्कमस्टांसिज भी बताने होंगे और क्लासिज का भी विचार करना पड़ेगा । शायद सुप्रीम कोर्ट अटार्नी जेनेरल की बात से सहमत नहीं है । इसी लिए इस बात की आशंका पैदा हो गई कि सारा कानून गैर-कानूनी घोषित कर दिया जायेगा ।

मैं विधि मन्त्री महोदय से कहूंगा कि वह इस सदन को आश्वासन दें कि सुप्रीम कोर्ट का निर्णय कुछ भी आये, उस का सम्मान किया जायेगा । दस दिन में तो कानून में संशोधन करने का सवाल ही पैदा नहीं होता । राज्य सभा बैठक में नहीं है, तो भी यह सदन अध्यादेश जारी करने की इजाजत नहीं देगा । और न यह सदन किसी ऐसे संशोधन में भागीदार बनेगा, जो सुप्रीम कोर्ट के निर्णय को पलटने वाला हो ।

मैं यह भी मांग करता हूं, जो अनेक सदस्यों ने की है, कि संकट-काल की स्थिति को समाप्त किया जाये । आज उसको बनाए रखने का कोई औचित्य नहीं है । अब तो पाकिस्तान से मित्रता के लिए नये इनिशिएटिव लिये जा रहे हैं । अब तो पीकिंग के साथ प्रेम की पींगें बढ़ाई जा रही हैं । जब आन्तरिक सुरक्षा के लिए खतरा नहीं है, तो फिर उसके आधार पर किसी की व्यक्तिगत स्वतन्त्रता का अपहरण करना किसी सभ्य सरकार को शोभा नहीं देता है । अटार्नी जेनेरल आकर सुप्रीम कोर्ट में आश्वासन दें कि सरकार का इस तरह का कोई मंशा नहीं है कि हम पालियामेंट में इस कानून का संशोधन करा लेंगे । पालियामेंट कोई खिलौना नहीं है और मैं समझता हूं कि कांग्रेस के सदस्यों की आत्मा भी अभी जाग्रत है, वे केवल सरकारी व्हिप, हंटर, पर काम नहीं करेंगे, सुप्रीम कोर्ट का निर्णय जो भी हो, उसका सम्मान करेंगे और इस बात का प्रयत्न

करेंगे कि इस देश में व्यक्तिगत स्वाधीनता की मशाल निरन्तर जलती रहे ।

हमारे कुछ मित्र कमिटिड जुडिशरी की बात करते रहे हैं । उस दिन जो कोर्ट में हुआ, वह थोड़ी सी झलक देता है कि अगर जुडिशरी कमिटिड हो गई, तो देश में व्यक्तिगत स्वाधीनता का सर्वनाश हो जायेगा । जुडिशरी स्वाधीन रहनी चाहिए । जुडिशरी निष्पक्ष रहनी चाहिए । पार्लियामेंट अपने दायरे में स्वतन्त्र है, लेकिन अगर सर्वोच्च न्यायालय का निर्णय पार्लियामेंट के निर्णय के खिलाफ़ जाता है, तो पार्लियामेंट को सर्वोच्च न्यायालय का निर्णय सम्मान के साथ स्वीकार करना चाहिए ।

SHRI A. K. SEN (Calcutta-North-West): Mr. Deputy-Speaker, Sir, if we are convinced on this side that the Attorney-General has been guilty of affecting the dignity of this House, it will not be very difficult to support the motion, for, the House is greater than individuals or Government or any party and on this House rests the destiny of a great nation and the freedom and liberty of millions of our citizens. More than the judiciary, this House is the supreme custodian of the citizen's liberty. If I am also asked to concur with the noble sentiments expressed of individual liberty, freedom, the right of the citizens to lead their own life and the vice of preventive detention as such, it would also not be difficult for us to extend our agreement with such sentiments.

While I was listening to the speech of Prof. Mukerjee and the speech of my esteemed friend, Shri Vajpayee—I always admire the Hindi speech of my friend—,

I found that, so far as the principles went, there was hardly any difference between us and what they were saying. I had always wished that Mr. Mukerjee may always charm us with his peroration for many years to come and it will be a sad day when it will be a swan song. I disagree with him that it is going to be a swan song. Nor do I apprehend that the tourch of liberty about which Mr. Vajpayee had been assuring us has any chance of being dimmed in the hands of this pulp. But where we differ, it appears, is the applicability of the sentiments on an occasion like this. If we were asked to vote against a measure which tries to snatch away the rights won after a great battle, if we were asked to vote for a measure which tramples down the great liberties that the Constitution enshrines, most of us would certainly refuse to be a party to such an invitation. But I know the whole history of what happened in court. It had been in relation to section 17A inserted by the Defence of India Act which, I must say, was a very unwise Act. Though this House passed it, I wish it was not passed. It meant that the man could be kept in detention for over two years without his case being sent to the Advisory Committee. Preventive detention as such is a very odious thing. No democracy can tolerate it for all times to come. Only in cases of grave emergencies can Parliament extend its support for such a measure, and the House always has the duty to scrutinise every time its support is wanted for the law of preventive detention. This measure tried to give power to Governments, State Governments, District Magistrates and others, to keep a man in prison without sending his case to the Advisory Committee, and it must be said that, in many cases, the Advisory Committees go into the matter and find that the detention has been unjust. The Constitution says that if a man is going to be kept for more than three months, his case must be sent to the Advisory Committee, and if the power is taken that the man will be kept in prison for over two years without any trial, without even the scrutiny of an inde-

[Shri A. K. Sen]

pendent Advisory Board, then it is really a heavy sentence by all standards. I myself had told the Attorney-General that it was ethically very unjust; it was very difficult to support such a measure ethically, leave alone the Constitution, leave alone what Gopalan's case had decided, leave alone the question of article 22 having its inherent limitation which prevents a man from being detained for over two years without any investigation. I said that it was wrong ethically. If the judges hearing the arguments felt, and felt very openly, that this was an atrocious provision, the Attorney-General was bound to take note of it. In any democracy, when the Attorney-General speaks for the Government, he has the duty not merely to express the views of the Government but also of this House and re-convey the views of the judges to the Government and to this House. That is why, the Attorney-General is a Constitutional adviser of the Government, and I think, he would have been failing in his duty if he had not conveyed the feelings of the judges about this rather unhappy provision to the Government, and if the Government had told him to inform the Court that the Government would be considering what has passed in Court, what has been observed from the Bench, I do not think there was any intention, far less any fact, of hurting the dignity of this House. If I did feel that way, though the Attorney-General happens to be a very old friend of mine and Mr. Mukherjee's—we have known each other for years and I admire him—I would have been the first to criticise him because he had no authority to commit this House before anybody, for less a Court. *(Interruptions)* If you know the background, it would be apparent that he had no authority to commit, the Government had no authority to commit. If Mr. Gokhale had made that statement he would have been equally guilty because he cannot commit what the House will do in advance. He can only say that the Government will recommend to the House. It is for this House as a sovereign body to accept that recommendation or to reject that recommendation. That authority and that sovereignty, this House possesses for all times to come. *(Interruptions)*. The Attorney General never meant it. I have read it as was read out by the Law Minister and it is clear that what he said to the court was that we shall consider the matter and see if it needs amendment. That is the view of the Government. It is a case and not an amendment for the worse because I myself welcome this amendment—an amendment which will say that the Government will not be able to detain a man beyond three months without sending his case to the Advisory Board. Ethically, there is nothing objectionable in such a recommendation

But even if it was a measure for the better the Attorney-General would have been completely in the wrong if he tried to commit the House before the court. Even the Prime Minister has not that authority. Therefore, let it be clearly understood that we on this side are eager to maintain the liberty and the freedom of the individual citizens as dearly as this House ought to feel about it. On principle there is hardly any difference. But we feel it very difficult to support this measure as a measure of censure of the Attorney-General for having committed the government.

17.52 hrs.

[MR. SPEAKER *in the Chair*]

Contempt is a quasi-criminal term which has to be judged on the same standards and, according to me, is to be judge in relation to a person. We must be quite certain that the Attorney-General knowingly committed this breach of hurting the dignity of the House by committing the destiny of the House. Knowing him as I do personally—if a personal reference is allowed—I shall be the last to believe that he ever wanted to affect the

dignity of this House because every democrat knows what this House stands for and knows the consequence of any reduction in the dignity of this House. Our democracy stands on two great pillars—this House and that of the judiciary, and if anyone said anything which hurts the foundations of any one, he will be doing a grave folly. With these words I would recommend to the government to scrap this particular provision as quickly as possible and also suggest that the Hon. Member may not press his adjournment motion.

SHRI SHYAMNANDAN MISHRA (Begusarai) Mr. Speaker, Sir, it is clear and let me make it quite emphatic so far as I am concerned and probably this side of the House is concerned, that we cannot persuade ourselves to go by the version of the hon. Law Minister about the proceedings before the hon. Supreme Court, more particularly about the submission of the Attorney-General before the Supreme Court. By now Mr. Speaker, we have seen what an infinite capacity the members of this government have to indulge in blatant untruths. The facility with which they can unabashedly deny all that involves them in trouble is astounding. There are no norms so far as the members of this Government are concerned, no standards; the only standard they observe is whether they can get away with it. If that is the standard to be observed, we can imagine in what way they want to run the administration of this country.

Now, therefore, we find it absolutely clear that the only defence this Government has is untruth for an indefensible position. This is a clear accusation which we would like to make. There must be some machinery of this House to get at the truth of it.

Now, in this case, the Law Minister has contradicted what has appeared in the newspapers so far as the proceedings of the Supreme Court are concerned. He has done it on the basis of a conversation that took place between him and the Attorney-General. He has said something which goes against the reports in the newspapers.

SHRI ATAL BIHARI VAJPAYEE: The note confirms what has appeared in the press.

SHRI SHYAMNANDAN MISHRA: According to his version, the Attorney-General denies all that has appeared in the newspapers. Here we have got the testimony of an hon. member of this House who has probably a much greater standing than the Attorney-General in the public life of this country that the Attorney-General did say to him that what had appeared in the newspapers was substantially correct.

SHRI JAGANNATH RAO: He did not say that.

SHRI SHYAMNANDAN MISHRA: That is what it amounts to.

SHRI JAGANNATH RAO: No, no.

SHRI SHYAMNANDAN MISHRA: Then there are some other circumstantial evidences by which we are bound to go in this particular case. Would you ask us to believe what the hon. Law Minister has said on the basis of his conversation with the Attorney General or would you like us to believe what the Attorney General said to Prof. Mukherjee, an hon. member of this House?

SHRI N. K. P. SALVE: What did he say to him?

SHRI SHYAMNANDAN MISHRA: He has contradicted—here is Prof. Mukherjee sitting....

SHRI N. K. P. SALVE: Let him say so.

SHRI SHYAMNANDAN MISHRA: I really do not know whether we can persuade members of the other side who are determined not to undrstand what Prof. Mukherjee has said.

So far as I am concerned, the credibility of this Government is minus zero. I have seen it in the question of privilege which I had sought to raise before this House. Therefore, I would like this House to remember what a great English poet, W. H. Auden, had said:

"Let mortals beware of words, with words we lie".

Here, what are the circumstantial evidence which go to prove that what has appeared in the newspapers is correct and what Prof. Mukherjee has said about the conversation that took place between him and the Attorney General is correct? Firstly, it has been admitted by the hon. Law Minister that there were certain pronounced inclinations of the Court in the matter. Secondly, on the basis of these pronounced trends of the opinion of the Supreme Court, there was an exchange of views, there was a consultation between him and the Attorney General. Thirdly, Government wanted to take into account the consequences of an adverse verdict by the Supreme Court. So it is abundantly clear that so far as the verdict of the Supreme Court is concerned, it was made known to all those who were present in the court in unmistakable terms that they wanted to strike down the Draconian provisions of this Act. Now, that being so, what should be the natural presumption in this case? And if the newspapers have reported in a particular way, which forms the basis of our adjournment motion today, I think their reports are supported by the circumstantial evidence that we have in this matter. They confirm the naturalness, the plausibility and the truth of the newspaper reports. This is my reading of the whole situation.

In this situation, when there is a conflict between two kinds of reports, what is the duty of this hon. House? How are we to get at the truth? This cannot be done by a simple majority in this House. There must be a machinery for getting at the truth or otherwise of the newspaper report in this matter. My humble submission would be that the Attorney-General should be summoned to this House to give his own version in this matter. Secondly, we should get the full record.

SHRI ATAL BIHARI VAJPAYEE: There is no record.

SHRI SHYAMNANDAN MISHRA: If there is no record, there should be a Committee of the House to get into touch with the hon. Judges of the Supreme Court. (*Laughter*) Yes, Mr. Subramaniam, you also have a weak laugh at it! What I say is, untruth cannot be allowed to go unchallenged; they have got an infinite capacity for stating untruths.

श्री शशि भूषण: अध्यक्ष महोदय, मेरा प्वाइन्ट आफ आर्डर है। माननीय मिश्रा जी कह रहे हैं संसद् सदस्यों को एन्क्वायरी करने के लिये सुप्रीम कोर्ट के जजों के पास जाना चाहिये। जबकि अभी उन्होंने फैसला नहीं दिया है। ये सदस्यों की कीमत इतना कम क्यों करना चाहते हैं– यह मेरी समझ में नहीं आता है। क्या संसद् सदस्यों की कमेटी जजों के पास एन्क्वायरी के लिये जा सकती है, इस पर अपना निर्णय दीजिये।

SHRI SHYAMNANDAN MISHRA: There are many parties in this particular matter. Government is one party; and there is another party which was represented by the advocate of the detenus and then there are the Judges. We must get into touch with all the three parties concerned; then

alone we can get at the truth of the matter. (*Interruptions*).

MR. SPEAKER: No interruptions please.

• SHRI SHYAMNANDAN MISHRA: The first duty of this House is to find out the truth in this matter and punish those who are indulging in blatant untruth. I repeat that is the first duty of this House. Therefore, I have suggested that there should be some machinery devised by this House to find out the veracity of the report.

What are the grave issues that arise out of this case? It is extremely important for us to consider them. Here, what we find is that the Attorney-General and, in fact, the Government as it has been emphasised by many hon. Members, has arrogated to itself the powers that belong to Parliament. It is only a Fascist government or an incipient trend of fascism which can take Parliament for granted. They have made Parliament appear as a rubber-stamp, and this is a thing to which we have to take very strong exception. The executive wing of the Government cannot take Parliament for granted and (*Interruptions*). Why do you go on interrupting me?

MR. SPEAKER: Order please.

SHRI SHYAMNANDAN MISHRA: Mr. Speaker, Sir, the Attorney-General in this case had tried to unduly influence the decision of the court by anticipating the decision of Parliament and thereby they have tried, if I may say so not in the usual sense, to corrupt the highest court of justice. What else is it except corrupting the proceedings of the highest court in the country? He had also tried to delay the decision in this matter. The Supreme Court became a party to the trap that was laid by the Government in this matter.

MR. SPEAKER: There was a clear understanding this morning that this will only concern the Government and we will not go into the conduct of the judges or the Supreme Court.

SHRI SHYAMNANDAN MISHRA: I am not going into the conduct of the judges. I am saying that the Supreme Court, it seems, fell into the trap laid by Government.

MR. SPEAKER: You are commenting on their conduct. This should not be done. You must avoid it..

SHRI SHYAMNANDAN MISHRA: This morning you allowed an hon. member to call the judges of the court unworthy.

MR. SPEAKER: It did not happen in my presence. I do not know about it.

SHRI SHYAMNANDAN MISHRA: The decision in this case has been delayed. Justice delayed is justice denied. We are confronted with a situation in which some citizens of the country find themselves deprived of their personal liberty. Had the decision been given then and there expeditiously, probably these citizens could have been freed.

I make two concrete suggestions. In the first instance, the period of emergency should be ended. There is absolutely no justification for continuing the period of emergency when the conditions of emergency have disappeared. Secondly, all those who would have been released as a result of the spontaneous decision of the Supreme Court at that time should be released forthwith without any delay.

SHRI VIKRAM MAHAJAN (Kangra): Mr. Speaker, Sir, never before in the history of Parliament a more frivolous adjournment motion has been brought than the present one. This is an adjournment motion based on newspaper reports which have been completely denied by the Attorney-General. We all stand for the supermacy of Parliament. We have always

[Shri Vikram Mahajan]

propagated and advocated the supermacy of Parliament. If any person tries to arrogate to himself the power to dictate to Parliament anything, we will strongly oppose that individual, party or power. But here is a case where deliberately an effort is being made to malign a particular individual to malign the party in power. Not only that, a deliberate attempt is being made to bring judiciary into disrepute, to throw mud at the judiciary, which is the consistent policy of some parties.

After all, what has happened in the Supreme Court? The liberty of a particular detenue was the short question before the court. There was an impression that the court was going to strike out a particular provision which deals with detention. The Attorney-General said that he will request the Government to consider whether it should be amended or not, so that the detenus get more liberties. My hon. friends on the other side have spoken sentimentally about certain people who have been imprisoned. They have spoken about the struggling masses who have been detained and the languishing young men. The object of this Act is to imprison those individuals who have indulged in anti-national activities, like spies of foreign governments or hostile Nagas and Mizos. This Act is not aimed at citizens who are law-abiding and who are engaged in normal activities. Yet, here are soem people here who are supporting that class of people who are indulging in anti-national activities, eulogising their activities by calling them "struggling masses" and "languishing youth".

It is the function of the Government to see that honest citizens are protected and the integrity of the country is protected. The object of the amendment of the Act is to protect the honest citizens against anti-national elements. That is why it is necessary to bring in some amendment. This particular opportunity has been utilized by the opposition parties, which have no interest in national homogenity, for creating disorder and chaos. That is why they are trying to attack the Government and the govenmental machinery. Otherwise, what was the necessity to bring in the Supreme Court?

SHRI S. M. BANERJEE (Kanpur): On a point of order, Sir.

SHRI VIKRAM MAHAJAN: I am not yielding.

SHRI S. M. BANERJEE: He is accusing all the Opposition parties that they are not for a homogenous country.... *(Interruptions)*.

MR. SPEAKER: This is not a point of order.

SHRI S. M. BANERJEE: The hon. Member has never gone into jail. He is a child in politics. Has he ever gone into jail? Simply because he is a son of a judge, he has come here.

SHRI VIKRAM MAHAJAN: I repeat that some Opposition parties are interested in creating disruption in the country. The very fact that they are supporting a frivolous adjournment motion proves what I have said.

With these words, I submit, there is nothing in this adjournment motion and it should be rejected and thrown out.

MR. SPEAKER: Out of 2½ hours fixed for discussion according to rules. 2 hours and 15 minutes have already been taken. There is very little time left.

Shri P. K. Deo—Only 5 minutes.

SHRI P. K. DEO (Kalahandi): Mr. Speaker, Sir, we are having the 25th Anniversary of our Independence. We hang our head in shame that this Draconian law, this black law, is on our statute book.

My hon. friend, Shri Sezhiyan, has given the history of this black law as to how it came to be put on the statute book. It was in 1950 that it was introduced for one year. Then, it was further extended, and it became the preventive Detention Act. Only in 1971, it was called the Maintenance of Internal Security Act because at that time we had trouble on our frontiers. Under some pretext or other, this thing has been continuing except for a small gap of three years.

When there has been a constant erosion of our fundamental rights, the only very precious right, that is, the right of personal liberty is in jeopardy today. The people numbering thousands are being detained in various parts of the country. There are more than 2,000 in West Bengal. They have been detained without trial.

Now, the Adjournment Motion is being discussed in the House and the Government is in the dock. I do not blame the Attorney-General because the Attorney-General is the spokesman of the Government. Our basis was the press report which has been further corroborated by the statement of Mr. Niren De which has been just placed on the Table of the House by Mr. Gokhkale. On page 2, it is stated:

> "In the circumstances, it was felt that the Government should have some time to reconsider the matter and to take steps, *inter alia*, to bring about an amendment to the Maintenance of Internal Security Act, if considered necessary, and the Attorney-General was instructed accordingly."

This happened at a meeting of the Attorney-General, the Law Minister and the Joint Secretary of the Ministry of Hime Affairs. On the basis of this, the Attorney-General had stated in page 3, that he assured the court that the Government would consider the matter in the meantime including amendment of the Internal Security Act, if considered necessary.

Sir, this is the height of arrogance. The Attorney-General should not have arrogated to himself the power of the Parliament and should not have given a hint in the Supreme Court that within a short period they are going to amend this Act which is bound to be declared *ultra-vires* the Constitution. It was the Law Minister who directed the Attorney-General, and so I charge the Law Minister of dereliction of duty and sheer contempt of this Lok Sabha, and if they adopt the back-door method as the Rajya Sabha is not in session and come with an ordinance, that will be the last nail on the coffin of democracy in this country.

Lastly, I urge that the state of emergency should come to an end this Internal Security Act should be scrapped and the detenus should be freed. Unless these three things are done, when the Supreme Court is going to pronounce the judgement that the Act is *ultra-vires* the Constitution, any change at this moment will be a contempt of this august House.

SHRI V. K. KRISHNA MENON (Trivandrum): I was one of the people who stood up when the motion for adjournment was moved and I think in the context of the traffic of words and the various meanings attributed to this motion, you will allow me to say what, I understand, a motion of adjournment is. So far as I know, in my limited knowledge of parliamentary procedures, it is a well-known parliamentary procedure that the ordinary or the scheduled business of the House is suspended, in order to consider whatever you want to put forward. It may be a motion of condolence, it may be a motion of congratulation or it may be a motion of censure. I am no party to any censure. My own desire in this matter and my own reasons for participating in it are that a very important subject has arisen that requires to be aired, and under the present modern parliamentary systems, the governments have got

[Shri V. K. Krishna Menon]

complete control of time and, therefore, the only way to bring these matters out is an occasion of this kind.

Therefore, what we have to consider is not so much whether the Attorney-General has been guilty of a breach of privilege or not, and in my knowledge of the gentleman concerned, it is most unlikely; not only unlikely, it is impossible that he would have committed a breach of privilege of this Parliament with his knowledge of parliamentary procedure and with his knowledge of the procedure in the courts.

. .

Secondly, I take this opportunity also of saying....

MR. SPEAKER No question of breach of privilege. I allowed it because you made certain observations and it is in the spirit of that.

SHRI V. K. KRISHNA MENON: I am only referring, and that we could never anticipate a decision and, what is more, I think it is right to say because this sort of things happen everyday in the court—'Give us ten days, we will settle somehow or the other'. This happens even in a small matter between two people. If the House feels that there is anything that is material, it is open to it and take action as it may like, but, to intervene in the debate it will be wrong for me not to say that the most improbable thing has taken place.

Now, we come to another part of it, the main part of it, that is to say, the question of preventive detention. That is what I want to speak about. Preventive detention is a reprehensible state of affairs. It does not take place in civilised parliamentary systems as a normal part of the law. Unfortunately owing to the condition of an infant democracy, it was enacted at the beginning soon after the Constituent Assembly. But, the time has come for us to realise that in this country, there are ordinary criminal laws, not only criminal laws like Penal Code and the Criminal Procedure Code but also laws like the Prevention of Food Adulteration Act Foreign Exchange Control law and various other things that go on which arm the Government with sufficient powers that you cannot escape. Therefore, while the ordinary law provides for this except in conditions of war or when the country is in invasion, preventive detention law does not seem warranted. When we should have any preventive detention law at all, it is a blot to our democracy which we swear so much about. But apart from the general proposition it should be understood that the recent position is that there are two preventive detention laws in the country—one is Maintenance of Internal Security Act and the other is DIR. The amendment of the Defence of India Regulations had been affected by merging this one into the Maintenance of Internal Security Act. Earlier, the maximum imprisonment that was provided for was for one year; now it is two years. Various other things have been brought in. This is being challenged not only in the Supreme Court but in almost all the High Courts. It is challenged on various grounds. The amendment of DIR into the Maintenance of Internal Security Act makes it *ultra vires* of the Constitution. That is to say, the amendment literally means not for two years, three years, but for an unspecified time, because these people can be kept in imprisonment under the Act till the expiry of the emergency. Therefore, it is not for a specified period of two or three years. It is a sentence whereby they can be kept for a period which is six months after the emergency. Therefore, it is an indefinite period. Section 17(a) is one of the pernicious measures and part of this amendment and there is every reason to think that it will be struck down. Now, striking down of this would lighten the government because parts of DIR have already been struck down. Striking down of these laws and bringing in other laws

is a normal procedure of this government. It has been done in regard to DIR earlier. I want to refer specifically to the amendments introduced in it. The period was extended. What is more is, the so-called Advisory Board do not have to review the case for 21 months having extended it to 24 months. For 21 months the Advisory Committee need not go into it.

I do not want to leave it at that. I want to oppose vehemently this whole conception of advisory committee. We are always told, particularly by Ministers who are not lawyers: you have the advisory committee, tribunal, etc. My answer is, when this body of people who are of the stature of High Court judges was formed, people of that kind who agree to filing of a case in secret without leading evidence, without hearing the other side—they may be High Court judges—they do not qualify for having a judicial mind. The person who is put under detention cannot cross-examine what the advisory committee says. The record of the advisory committee is not open to inspection by anybody except by the Home Ministry or its Intelligence Bureau. That is to say, we do not know anything about it. We cannot be produced before the court. The worst part is that the judgment is subjective. There is no way of measuring this judgment. Then there is no criterion. When there is no foot-rule whereby the conduct can be measured, then it is illegality. There are no individuals in the world, the most intelligent, the justest among them, who can be trusted with uncontrolled power. And this is unguided power which was permissible only in very difficult times. That is one aspect of it.

The other is that with this amendment the power to put somebody in prison has been delegated to district magistrates, magistrates, commissioners and various other people. This delegation is not accompanied by the provision of cl. 7 of art. 22 of the Constitution which says:

"Parliament may by law prescribe the circumstances under which, and the class or classes of cases in which a person may be detained for a period....".

I am not going into the argument which the former Chief Justice Patanjali Shastri raised whether it is disjunctive or conjunctive—I leave that out. But as the Constitution stands, it says certain criteria should be laid down. It is common knowledge, and Government knows, that these officials who arrest these people, put them into prison and so on have been given no guidance. No criteria have been laid down, no principles have been laid down in regard to this, even inasmuch as we have them in regard to paying compensation.

Therefore, my submission is that cl. 7 as it stands is not honoured. Clause 7 is contrary to other parts of the Constitution with the result that where it is an integral law, information in regard to what may be done must be communicated as soon as possible. Would anybody say that 21 months were 'as soon as possible'? that is the position.

Then it is also known especially by those people who handle these cases that very often this is used in the non-political cases: where a person cannot be convicted, there is not sufficient evidence to convict him under the penal law, he is put into prison for four or five days and then if after all persuasion by the police, nothing comes out, and there is not enough evidence before the magistrate to convict him, then the DIR comes that is to say, it is a maleficent law, a law which is used for a purpose for which it is not intended.

[Shri V. K. Krishna Menon]

Also it is known that the article about continued detention is contrary to the purposes of the law itself and has been struck down by the Calcutta High Court, and I hope will be struck down by the Supreme Court also.

There are various other provisions —this is not a court of law and I do not have to argue this out—there are so many things introduced by this amendment which make it more Draconian than it ever was. What is more it makes it necessary....

SHRI SHANKERRAO SAVANT (Kolaba): On a point of order. We are concerned here with what Shri Niren De said or did not say. We are not concerned with the validity of the law at present. This is not relevant.

MR. SPEAKER: Please sit down. He is concluding.

SHRI V. K. KRISHNA MENON: My purpose in intervening was to say that the time, has come, specially after so many years of the operation of the Constitution and after the continuation of this law for such a long time, for the Government to take stock of the situation, to go into the whole question of the desirability of the advisory boards. Why should they not go into open discussion, that is to say, they must be able to examine the evidence that is before them, not rely upon the evidence—some informer gives without subjecting it to cross-examination.

Similarly, there is no justification whatsoever for extending the period of such examination for more than three months—even that is much too long. We are now going back to the Bengal Regulations of 1818 under which a person can be kept in detention for any length of time. It is not every detainee who can go to a court of law because those procedures are costly. Even a *habeas corpus* takes probably as long as any other writ before the court. It defeats its purpose. Once it is adjourned, the Government is never ready. That is the funniest part of it. Even the Union of India is not ready in most cases. My personal experience is that you go there and the court gives notice to the Union of India. Then the next day you appear, but the Union of India is not ready. That means the other fellow is imprisoned during that period. I do not mind this going on. It is all right from my point of view to go two or three times. But the Union of India is not ready. That means, it is quite likely that they cannot dispose of the case without hearing the Union. That means more delay, and all the time the fellow is in prison.

As the Speaker has rung the bell several times, I say nothing about the other procedures that took place in this matter. I intervened, as I said, in the hope that the Government, in the quietness of their mind, will give consideration to this later on, whether, after 25 years of our Constitution, the preventive detention Bill must become a permanent operation in the normal procedure, and secondly, after so many years of the Bengal war, there should be still a situation where the DIR should be proceeded with in this way. Government has got a massive majority. It can pass any law in five minutes. As things stand today, they can pass any law in five minutes; a total control of time. They have got a Parliament, and therefore, if it should be required to re-enact these laws, then there is no difficulty of any kind. All that it does is, it puts an uncontrolled, unbridled power into the hands of a large number of people; it increases the amount of corruption, and an amount of disrespect, and what is more, it denigrates the respect for the rule of law as such. I deeply regret what is said by some people in regard to the role of the judiciary in this matter.

I may say, before I sit down, that if there has been any protection of the citizen, it has come from the judiciary rather than from anywhere else or

habeas corpus or anything else. Whatever may be the policy in economic matters,—I would not be a party to it—but so far as the liberty of the subject is concerned, the courts in this country are far more watchful today than otherwise. Of course, they cannot make law; they have to administer the law. They do not pretend to make law, and if they tried to make law we would be against it.

Finally, in this business of delegating to the Commissioners, this, that and the other and not prescribing the conditions, the law suffers from this defect; that is, abrogation or abdication of the sovereignty of Parliament; that is to say, these powers of Parliament are handed over to the magistracy. These are important. Therefore, in that sense also, it is unconstitutional.

MR. SPEAKER: The time that was allotted under the rule, two hours and 30 minutes, is already over. I will call just one or two Members who may speak for two or three minutes (*Interruptions*) I will call the Law Minister to reply, and after that, Mr. Jyotirmoy Bosu will reply. Now, Mr Dandavate, two or three minutes.

PROF. MADHU DANDAVATE (Rajapur): Mr. Speaker, Sir, the tabling of this motion, the adjournment motion is really an expression of the vigilance shown on the part of the hon. Members to preserve and protect the supremacy of this Parliament, its powers and authority. The fifth Lok Sabha began with a Constitutional amendment Bill to restore the supremacy of Parliament and its authority in this sovereign country. As an anti-climax, we find that by the backdoor, the very supremacy of this Parliament is being challenged. The hon. Minister has already made some statements and he has already tabled certain documents. I wish to bring to the notice of the House that whatever has appeared in the press and the statement that has been made by the hon. Minister, in substance, there is no difference at all between those two. They have already accepted and conceded that in a very guarded manner, hint was already thrown to the Supreme Court that some importance should be given and that we will consider all the steps including amendments to be introduced. Now, this is a matter in which any judge of the Supreme Court-- any judge with common sense, and certainly we should give respect to the Supreme Court—can very well understand that Government, by the backdoor, has sent a suggestion that they are likely to amend the law, or likely to amend this Act and therefore a decision might be deferred.

Therefore, to that extent, the supremacy of Parliament which has been taken for granted has been challenged and that is really the subject-matter of the adjournment motion, and therefore, in order to protect our own laws and not only the rights of the Members of the Opposition but also the rights of the Members in the Treasury Benches, in order to protect the right of Parliament and its authority, this adjournment motion has been tabled.

In a few seconds, I will end my speech. We would also like this episode of the adjournment motion to be utilised by the treasury benches to take cognizance of the criticism and see that some convention is introduced by which even when the other House is not sitting an ordinance will not be brought, making some sort of amendment. That would be a murder of democracy. We hope this will not be done and the rights and privileges of the House will be protected.

SHRIMATI MAYA RAY (Raiganj): Sir, contempt of Parliament is only in the minds of the hon. members opposite and not in the law of parliamentary privileges. As the hon. Law Minister has already told the House, Mr. Gopalan's case has reigned supreme and stood the ground for 22 long years. I do not want to be technical because everybody is not a lawyer in this House and it becomes

[Shrimati Maya Ray]

boring. But briefly I would say, Mr. Gopalan's case had laid down that article 22 is a complete code and no other article affected the law passed under article 22. This was the gist of the case. In this particular case, it is being suggested and argued that to the extent that article 22 is a complete code according to Mr. Gopalan's case, the test of article 19 has also to be satisfied. This is what the Law Minister has already put before the House. Under these circumstances, there has been re-thinking by the Supreme Court, which it is entitled to do and we also have to respect their views. Since the Supreme Court is having further thoughts about this matter, I think it is right that Parliament also should follow suit and re-examine the question. I do not see anything wrong in this. Nobody has committed Parliament into doing or passing anything. I think it is an absured interpretation, whatever the newspapers might have given out. All that the Attorney General has said was that the Government is re-considering it. What on earth is wrong this? I hope it is not being suggested that just because the Attorney General had said something in the court or outside, it would affect our processes of thinking or independent judgment. I think this is belittling and underestimating the intelligence of the hon. members of this House and I for one am not prepared to accept this position.

On the contrary, to suggest that Parliament cannot re-examine this question shows utter disrespect for Parliament. That is the interpretation I would give to the view of the hon. members opposite. The object of this motion is to prevent us from re-examining this question when it really needs re-examination.

It is always a rare privilege to hear Prof. Mukerjee. His impassioned appeal and his rhetoric is a sheer delight to anybody who understands the words he uses. Although I do not agree with everything that he says I would like to pose this question to him. Just as we understand his feelings for the young man who is languishing in prison because he is inspired by dreams of revolution through a method to which we do not subscribe, does he not also have any feelings for the victims when two or three of these boys descend upon the poor unarmed defenceless families in remote villages of Bengal far away from communications, 10 or 12 miles from metalled road and beat up and attack the wife and children and murder them? And all this in the name of a class war but it was not the rich classes that were attacked or murdered. Coming to courts in our part of the country, even a High Court Judge has been murdered. Are these people not citizens too and do they not require protection and security also? But I do feel that we cannot deal with this problem of MISA so lightly. I quite agree with him that it is a black Act, odious and not exactly in consonance with democracy. But there are times of emergency when we have to have it and it has to be used. I am sure that if it is used judiciously, and not lightly, it can be a protection also. As I have said, it is always a pleasure to hear Shri Mukerjee though there are so many points of disagreement. It is certainly not possible to deal with all the points in so short a time and not only are most of the points exhausted but this House is also exhausted. With these words, I oppose this motion for adjournment.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. GOKHALE): Mr. Speaker, at the beginning of the debate, I had clarified what actually had transpired in the court and from the note sent by the Attorney-General, which has now been placed on the Table of the House, it has become amply clear that the reports in the press, on the basis of which this motion was moved, were certainly not justified. This was a law which had stood for 20 years and it

was sought to be struck down. It was a law made by Parliament in good faith, on the basis of the exposition of the law made by the Supreme Court itself in 1950. One would not have normally expected that after 20 years that view would be over-ruled. Our Constitution says that the law, as laid down by the Supreme Court, is the final law. It was on the basis of the ruling of the Supreme Court that this legislation was undertaken. It is a matter of surprise that the judgment in Gopalan's case was sought to be reversed after 20 years. When it appeared that it was likely to be reversed, it was undoubtedly and legitimately a matter of concern for the Government as well as for the Attorney-General and there was in my respectful submission, nothing wrong if the Attorney-General told the court that we will have to consider the position, what steps we have to take.

SHRI SHYAMNANDAN MISHRA: Sir, on a point of order. You were pleased to say that there should be no reflections on the opinion or decision of the Supreme Court. Have you not heard the hon. Minister saying that it is surprising that a decision which prevailed during the last 22 years is sought to be reversed? I certainly expect some objectivity from the Chair.

MR. SPEAKER: Something might have happened during my absence. When I am here I have never allowed it.

SHRI H. R. GOKHALE: The main point I was making was that under these circumstances it was legitimate for the Attorney-General to say that the Government have to consider the position.

An attempt is being made to show as if they are the only champions of liberty in this country. Let me tell you that even when this Bill was moved, it was stated on behalf of the government, that they would not like a measure of preventive detention in the normal course. Yet, when the Constitution was framed, that also contemplated that circumstances might exist in this country in the future when in exceptional cases, in cases of emergency, it might be necessary for Government to sponsor a legislation for preventive detention. Now this attempt, I regret to say, has been mainly motivated by the desire to show that the Government is acting undemocratically, that it does not care for the liberties of the people at all. I can assert without hesitation that the Government, the party in power and the members of that party on this side of the House, they are as much, if not more, concerned than the members on the other side.

But do we not remember what was happening in this country in 1971, to be precise in June 1971, when this Bill was brought here? Do we not remember the situation prevailing in some parts of the country, particularly in West Bengal? Do we not know that but for the passing of this Bill at that time, looting, arson and violence would have become the order of the day in some parts of the country, as has been mentioned just now by the hon. Member from West Bengal? A judge was stabbed in West Bengal. Innocent people walking in the streets were stabbed.... (*Interruptions*)

Is it that the liberty of a few people who have accepted violence as their creed should be at the cost of the liberty of a large number of people in this country who deserve protection at the hands of the Government? The whole idea of the law of Preventive Detention Act is to see in exceptional cases of Emergency that it might be necessary, although unwillingly, to prevent people from being outside the jails for the purpose of protecting the liberty and freedom of many other people who are outside. These were the cir-

[Shri H. R. Gokhale]

cumstances in which the law was undertaken.

There is Section 17A in the Act. I do not want to, and I should not, go into the merits or demerits of the case. I do not want to anticipate what the Supreme Court will do because the case is still *sub judice*, the judgment is reserved. It is very unfortunate that many arguments for and against the legal provisions of the MISA were made in the course of the debate when the court is just considering the matter. The position still remains that Section 17A itself states that it is to be used for purposes of emergent situations only. It is not a law which will be made use of in ordinary circumstances. There are other provisions in the Act itself when you deal with miscreants in ordinary circumstances, where the special conditions do not apply. Section 17A has been put rightly because of the emergent situation created in 1971 in this country which everyone knows. It is not necessary to remind the House as to what happened when a large number of refugees came to West Bengal, when the situation of defending the country against aggressors had arisen. It is in the context of that that an emergent provision had been made.

I may remind the House that the law takes into account those who have transgressed into our territory illegally. Is it suggested that we should have no powers to detain foreigners who transgress into our territory illegally? *(Interruptions)* I would ask Mr. Vajpayee to study the Foreigners Act and then refer to it. That is nothing to do with it. That does not provide for preventive detention. It is no use doing anything to foreigners after the mischief has been done. The idea is to prevent mischief, not to see that something is done after the michief has already been done. These were the circumstances in which the law had been enacted.

I can imagine why all this furore is made. The idea is to create an apprehension, to create a scare, in the minds of the people that the Government is going to use this power of promulgating an Ordinance in order to amend the Act. It is with a view to taking credit for saying that the Government did not do it because of opposition. I mentioned it myself in the beginning that the Government has not even given thought to this question of amending the Act as a result of the Supreme Court judgment. The Government has not reached any conclusion. The only note that was made was that the situation which could lead to grave consequences may arise. The Government, certainly, has the opportunity and is entitled to say that it has the opportunity to consider the whole situation to see what steps should be taken, whether by way of amendment or not. It is certainly not anticipating what Parliament is going to do. It is not fore-stalling the Parliament. If a measure comes it will come in the way in which the law permits it to be brought. Therefore, to say that a measure may be brought, if at all considered necessary— that is what the Attorney-General has said—it is not a matter where Parliament has been taken for granted.

I only want to emphasize that this is the whole object which I am sure is not going to succeed because the people in the country are fully conscious of tremendous dangers to the general mass of people by the activities of the few.

With these words, I say, this Adjournment Motion should be defeated.

SHRI JYOTIRMOY BOSU: I regret to say that an elderly person and a senior politician like Shri Gokhale has tried to mislead the House. With your kind permission..... *(Interruptions)* I would like to read from the original note that I have before me.

I am quoting certain paragraphs from Mr. Niren De's note:

"The observations of the majority of the seven Judges Bench who had already heard the said writ Petition for four days, as reported by the Attorney-General at the Conference, suggested that the Bench would, in all likelihood, uphold the minority judgment in Gopalan's case and strike down Section 17A of the Maintenance of Internal Security Act. In the circumstances, it was felt that Government should have some time to reconsider the matter and to take steps, *inter alia*, to bring about an amendment of the Maintenance of Internal Security Act, if considered necessary, and the Attorney-General was instructed accordingly. The time factor was vital because ordinarily in *habeas corpus* cases the Supreme Court releases the detenu immediately on the conclusion of the hearing if the detenu's contentions are accepted and the judgment is given at a later date; and if the Supreme Court released the detenu in the said Writ Petition immediately on the conclusion of the hearing on the ground that Section 17A of the Maintenance of Internal Security Act was *ultra vires* Clause (7) (a) of Article 22 of the Constitution, a very large number of detenus detained under Section 17A of the Maintenance of Internal Security Act all over the country would have to be released forthwith.

"At the conclusion of the Attorney-General's arguments, he felt that the majority of the Bench hearing the said Writ Petition was not with him on the question of the validity of Section 17A of the Maintenance of Internal Security Act and the majority of the Bench found the arguments of the detenu's counsel more acceptable. In the circumstances, the Attorney-General, on the instructions given to him at the conference as aforesaid, and in view of the grave consequences that might arise if the Supreme Court gave judgment immediately over-ruling Gopalan's case, requested for some time....".

Some time!

"....namely, about a week or ten days and assured the Court that the Government would consider the matter in the meantime including amendment of the Internal Security Act, if considered necessary."

Therefore, Sir, he has misled the House, he has spoken an unmixed untruth here, he has tried to fish in troubled waters. I am sorry to say this. I am asking once again, as has been done by the previous speakers, if they were in the know of this, why did they not contradict the Press conference even after the debate was held at length in Rajya Sabha. All that you tried to do was to sell an idea before the House, 'Do not trust the press reports'. I maintain that the Press had done a good job, and we are very thankful to them. (*Interruption*).

SHRI H. N. MUKERJEE: Mr. Speaker, you are the head of this House. Yours is the organ voice.

MR. SPEAKER: Please do not make the Chair the scape-goat for everything.

19 hrs.

SHRI JYOTIRMOY BOSU: I propose to bring a privilege motion tomorrow.

Let me tell you Mr. Gokhale....

MR. SPEAKER: Please do not address him as if he is standing in the dock.

SHRI JYOTIRMOY BOSU: That naked fascism is perhaps less dangerous than this type of garbed fascism as we see in the Ruling Party today....(*Interruptions*) The MISA is being utilised for furthering the political interests of the ruling Party and is being used against political opponents, especially, the leftist forces

[Shri Jyotirmoy Bosu]

who are struggling hard to get a better living and a better life for the working classes.

May I tell Mr. Gokhale—I do not want to call him an ignorant Minister sitting here—Mr. Justice Roy's murder was committed some time ago and they have apprehended half a dozen boys, they have been prosecuted but no MISA has been applied against them. You are again misleading the House. I feel sorry for you..

SHRI ATAL BIHARI VAJPAYEE: Another privilege motion.

SHRI JYOTIRMOY BOSU: The emergency enactment, when there is no real emergency—why do they want to keep it alive? The reasons I have explained to you just now. In order to apply it against those who are politically opposed to the Congress Party, not against the black-marketeers, not against those anti-social elements, not against the hoarders. We have seen how in a recent case where the MISA case was withdrawn—it was levelled against Mr. S. K. Modi who was a worst black-marketeer and a hoarder of flour and wheat.

How did Mr. Hiren Mukerjee forget one thing? I want to say one thing. He made a wonderful, emotional and impressive speech. But I cannot understand how he lost sight of one thing as if the Judiciary alone is responsible for lack of progress and advancement in the country. How did he lose sight of the fact that this Government is seeking to do something which is grossly wrong and they are seeking collaboration with their non judiciary. Judges are the creatures of this Government and part of the class structure that is in power.

Mr. Salve said that the dignity of the House is very relevant. Where the dignity of the man whom we represent here, where the dignity of the man who sends me or sends us here, is being brutally repressed and suppressed, what are you talking about the dignity of this House? He does not know where the shoe pinches. How many thousands of people have perished in the jails under the Preventive Detention law and how many families have been ruined—you are not aware of that, Mr. Salve.

Now, Mr. Shashi Bhushan talked about arresting black-marketeers. I put it back again to him—what happened to Mr. S. K. Modi, the beloved man of the ruling Congress Party..

श्री शशि भूषण : अध्यक्ष महोदय, मुझे रेफर किया गया है, इसलिये मैं भी कुछ कहना चाहता हूं। मोदी को गिरफ्तार किया जाना चाहिये, इसे मैं सहमत हूं, लेकिन एक जमाने में ये अपनी कांस्टीचूएन्सी में भी नहीं जा सकते थे, ये कहते थे कि नक्सलाइट्स का खतरा है।

SHRI JYOTIRMOY BOSU: यह गलतफहमी कर दिया। इन लोगों को झूठ बोलने की आदत हो गई है।

Now, about the application of this MISA, I have quoted the reply which came before the House. That goes to show that out of a total number of 2600 or so held under the MISA, 2449 come from West Bengal. This brings me to the conclusion that black-marketeers and anti-social elements have congregated in West Bengal and the rest of the country is free from black-marketeers and hoarders because there is no detention under MISA of people who have indulged in black-marketing and anti-social activities in other parts of the country.

Mr. Vikram Mahajan talked about foreign spies and agents. May I remind my friends coming from the minority communities, I do not forget for a moment that in 1965 during the

Indo-Pak war, with one stroke of pen, 9000 persons belonging to the minority communities were put behind the bars. And after some time with another stroke of pen thousands of people were set free. That is what you do. You misuse your power to further you own ends. Mr. A. K. Sen in his speech sounded quite fair. But what about himself when he was Law Minister in 1963? He had brought in the 18th Amendment of the Constitution which wanted an immunity for the Government against the Constitution. He said 17A provides detention for 2 years. It is not so. It provides for a maximum detention of 3 years or until expiry of the DIR Act. We have seen that the DIR lasted for 7 years from 1962 to 1969. Therefore, we know Congressman, your character.

MR. SPEAKER: Please listen to 'Mr. CPI(M)'.

SHRI JYOTIRMOY BOSU: Then Mrs. Ray and Mr. Gokhale talked about certain things. Mrs. Ray talked about the variety of persons who raided villages. I am asking very humbly from Mrs. Ray where have these variety of persons—that she talked about —gone to. Are they not in the lap of Yuva Congress?

They talked about young boys and others raiding villages. I only want to put a simple question, where are those boys now? Are they not in the lap of the Congress Party, in its different wings in Chhatra Parishad, etc.? What are you trying to tell us?

This government had wrongly briefed the Attorney-General as a result of which he had talked in a manner which is prejudicial to the dignity and decorum of the House. This government intends to prolong these draconian laws and bring repressive measures. There is no real emergency. Why should this misuse be continued? Therefore, I press my adjournment motion.

MR. SPEAKER: Now I am putting this Motion to vote. The question is:

"That the House do now adjourn".

The Lok Sabha divided:

Division No. 13] **[19.12 hrs.**

AYES

Agarwal, Shri Virendra
Balakrishnan, Shri K.
Banerjee, Shri S. M.
Bhagirath Bhanwar, Shri
Bhattacharyya, Shri Dinen
Bosu, Shri Jyotirmoy
Chandrappan, Shri C. K.
Chavda, Shri K. S.
Chowhan, Shri Bharat Singh
Dandavate, Prof. Madhu
Deb, Shri Dasaratha
Dhandapani, Shri C. T.
Durairasu, Shri A.
Dutta, Shri Biren
Goswami, Shrimati Bibha Ghosh
Halder, Shri Krishna Chandra
Hazra, Shri Manoranjan
Joarder, Shri Dinesh
Joshi, Shri Jagannathrao
Kalyanasundaram, Shri M.
Kathamuthu, Shri M.
Kiruttinan, Shri Tha
Lalji Bhai, Shri
Malik, Shri Mukhtiar Singh
Mavalankar, Shri P. G.
Mayavan, Shri V.
Mehta, Shri P. M.
Mishra, Shri Shyamnandan
Modak, Shri Bijoy
Mukerjee, Shri H. N.
Mukherjee, Shri Saroj
Narendra Singh, Shri
Nayar, Shrimati Shakuntala

Roy, Dr. Saradish
Saha, Shri Ajit Kumar
Sezhiyan, Shri
Singh, Shri D. N.
Sinha, Shri C. M.
Vajpayee, Shri Atal Bihari
Verma, Shri Phool Chand
Vijay Pal Singh, Shri
Viswanathan, Shri G.

NOES

Agarwal, Shri Shrikrishna
Ahmed, Shri F. A.
Anand Singh, Shri
Ansari, Shri Ziaur Rahman
Arvind Netam, Shri
Azad, Shri Bhagwat Jha
Aziz Imam, Shri
Babunath Singh, Shri
Bajpai, Shri Vidya Dhar
Barman, Shri R. N.
Barua, Shri Bedabrata
Barupal, Shri Panna Lal
Basappa, Shri K.
Basumatari, Shri D.
Bhagat, Shri B. R.
Bhargava, Shri Basheshwar Nath
Bhatia, Shri Raghunandan Lal
Bist, Shri Narendra Singh
Brahmanandji, Shri Swami
Buta Singh, Shri
Chakleshwar Singh, Shri
Chanda, Shrimati Jyotsna
Chandrika Prasad, Shri
Chaudhari, Shri Amarsingh
Chaudhary, Shri Nitiraj Singh
Chavan, Shri D. R.
Chavan, Shri Yeshwantrao
Chawla, Shri Amar Nath
Chhotey Lal, Shri
Choudhury, Shri Moinul Haque
Daga, Shri M. C.
Dalbir Singh, Shri
Damani, Shri S. R.
Darbara Singh, Shri
Das, Shri Dharnidhar
Daschowdhury, Shri B. K.
Dixit, Shri G. C.
Doda, Shri Hiralal
Dwivedi, Shri Nageshwar
Engti, Shri Biren
Gandhi, Shrimati Indira
Ganesh, Shri K. R.
Gangadeb, Shri P.
Gavit, Shri T. H.
Ghosh, Shri P. K.
Gill, Shri Mohinder Singh
Gokhale, Shri H. R.
Gomango, Shri Giridhar
Gopal, Shri K.
Hansda, Shri Subodh
Hari Kishore Singh, Shri
Hashim, Shri M. M.
Ishaque, Shri A. K. M.
Jagjivan Ram, Shri
Jamilurrahman, Shri Md.
Jeyalakshmi, Shrimati V.
Jha, Shri Chiranjib
Joshi, Shri Popatlal M.
Joshi, Shrimati Subhadra
Kadam, Shri Dattajirao
Kadam, Shri J. G.
Kader, Shri S. A.
Kailas, Dr.
Kakodkar, Shri Purushottam
Kale, Shri
Kamble, Shri T. D.
Kapur, Shri Sat Pal
Karan Singh, Dr.
Kaul, Shrimati Sheila
Kavde, Shri B. R.
Khadilkar, Shri R. K.
Kisku, Shri A. K.
Kotoki, Shri Liladhar

Kureel, Shri B. N.
Lakkappa, Shri K.
Lakshmikanthamma, Shrimati T.
Lakshminarayanan, Shri M. R.
Laskar, Shri Nihar
Mahajan, Shri Vikram
Mahata, Shri Debendra Nath
Mahishi, Dr. Sarojini
Majhi, Shri Gajadhar
Majhi, Shri Kumar
Mallanna, Shri K.
Mallikarjun, Shri
Maurya, Shri B. P.
Mehta, Dr. Jivraj
Mehta, Dr. Mahipatray
Mishra, Shri Bibhuti
Mishra, Shri L. N.
Mohammad Tahir, Shri
Mohammad Yusuf, Shri
Mohsin, Shri F. H.
Muhammed Khuda Bukhsh, Shri
Murthy, Shri B. S.
Nahata, Shri Amrit
Negi, Shri Pratap Singh
Oraon, Shri Kartik
Oraon, Shri Tuna
Pahadia, Shri Jagannath
Painuli, Shri Paripoornanand
Palodkar, Shri Manikrao
Pandey, Shri Krishna Chandra
Pandey, Shri Sudhakar
Pandey, Shri Tarkeshwar
Pandit, Shri S. T.
Panigrahi, Shri Chintamani
Pant, Shri K. C.
Paokai Haokip, Shri
Parashar, Prof. Narain Chand
Parikh, Shri Rasiklal
Parthasarathy, Shri P.
Patel, Shri Arvind M.
Patel, Shri Natwarlal
Patel, Shri Prabhudas
Patil, Shri Krishnarao
Patil, Shri T. A.
Peje, Shri S. L.
Prabodh Chandra, Shri
Qureshi, Shri Mohd. Shafi
Raghu Ramaiah, Shri K.
Rai, Shrimati Sahodrabai
Ram, Shri Tulmohan
Ram Dhan, Shri
Ram Prakash, Shri
Ramshekhar Prasad Singh, Shri
Rana, Shri M. B.
Rao, Shri Jagannath
Rao, Shri K. Narayana
Rao, Shri M. S. Sanjeevi
Rao, Shri P. Ankineedu Prasada
Rao, Shri Pattabhi Rama
Rathia, Shri Umed Singh
Raut, Shri Bhola
Ray, Shrimati Maya
Reddy, Shri M. Ram Gopal
Reddy, Shri P. Ganga
Richhariya, Dr. Govind Das
Roy, Shri Bishwanath
Salve, Shri N. K. P
Samanta, Shri S. C.
Sanghi, Shri N. K.
Sarkar, Shri Sakti Kumar
Sathe, Shri Vasant
Satish Chandra, Shri
Satpathy, Shri Devendra
Savant, Shri Shankerrao
Sethi, Shri Arjun
Shailani, Shri Chandra
Shankar Dayal Singh, Shri
Shankaranand, Shri B.
Sharma, Shri A. P.
Sharma, Dr. H. P.
Sharma, Shri Madhoram
Sharma, Dr. Shankar Dayal
Shashi Bhushan, Shri
Shastri, Shri Biswanarayan

Shenoy, Shri P. R.
Sher Singh, Prof.
Shetty, Shri K. K.
Shinde, Shri Annasaheb P.
Shivnath Singh, Shri
Shukla, Shri Vidya Charan
Siddheshwar Prasad, Shri
Sinha, Shri Dharam Bir
Sinha, Shri R. K.
Subramaniam, Shri C.
Sudarsanam, Shri M.
Surendra Pal Singh, Shri
Suryanarayana, Shri K.
Swaminathan, Shri R. V.
Swaran Singh, Shri
Tiwari, Shri Chandra Bhal Mani
Tiwary, Shri D. N.
Tiwary, Shri K. N.
Tombi Singh, Shri N.
Uikey, Shri M. G.
Vekaria, Shri
Venkatasubbaiah, Shri P.
Venkataswamy, Shri G.
Verma, Shri Ramsingh Bhai
Virbhadra Singh, Shri
Yadav, Shri Karan Singh
Yadav, Shri R. P.
Yadav, Shri D. P.
Zulfiquar Ali Khan, Shri

MR. SPEAKER: The result* of the division is: Ayes: 42, Noes: 186.

The motion was negatived.

19.4 hrs.

DEMANDS FOR GRANTS, 1973-74—*contd.*

MINISTRY OF INDUSTRIAL DEVELOPMENT AND DEPARTMENT OF SCIENCE AND TECHNOLOGY—*contd.*

MR. SPEAKER: We will proceed with further discussion and voting on the Demands for Grants under the control of the Ministry of Industrial Development and Department of Science and Technology, together with cut motions moved.

श्री मूलचन्द डागा (पाली) : अध्यक्ष महोदय, देश में उत्पादन बढ़ाने के लिए जो नवीन उद्योग नीति सरकार ने घोषित की है उसके अनुसार...

MR. SPEAKER: He can continue tomorrow.

19.15 hrs.

The Lok Sabha then adjourned till Eleven of the Clock on Tuesday, April 3, 1973/ Chaitra 13, 1895 (Saka).

*The following Members also recorded their votes:
AYES: Shri Y. Eswara Reddy. NOES: Shri Banamali Patnaik.

MGIPND—92LS—29-6-73—1010