

[Shri P. K. Deo]

ing at our Indian patrols right from 1959 at Kong La and Longju up to the fateful October, 1962. Sir, the Government of India is not a Bharat Sadhu Samaj that it would be chanting shanti mantras even when it is fired upon.

**Shri Bhagwat Jha Azad** (Bhagalpur): How can you think of it?

**Shri P. K. Deo:** Nor is it so irresponsible like any private individual or Acharya Vinoba Bhave who, can afford to indulge in occasional irresponsible stunts like sending school children to the border to change the heart of the Chinese or to arrange a peace march to Peking. After all, it is the Government of India that has to face hard realities.

**Dr. M. S. Aney** (Nagpur): Vinoba Bhave did not send any peace mission to China.

**Shri P. K. Deo:** I am sorry. I am speaking subject to correction. I was saying that for the Government which has to face hard realities to deal with questions in such half-hearted manner as has been done now is nothing but high treason.

We have tolerated times without number Chinese aeroplanes violating our air space. Time and again when we have asked why those intruding planes could not be shot down, even though our Canberras have been subjected to firing by Pakistani forces, some vague replies are given.

Sir, on 12th September 1959, when the discussion on the first White Paper took place, in which I had the privilege to initiate the debate, I told this House to streamline our defence forces. I still remember the words of the Prime Minister then, they are still ringing in my ears. He called us "timid", he called us "weak", he called us "panicky" and he called us "alarmists". At that time Shri Dange

**Mr. Deputy-Speaker:** The hon. Member may continue tomorrow. The House will now take up Private Members' business.

14.30 hrs.

COMMITTEE ON PRIVATE MEMBERS' BILLS AND RESOLUTIONS

TWENTY-SIXTH REPORT

**Shri Hem Raj** (Kangra): Sir, I beg to move:

"That this House agrees with the Twenty-sixth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 18th September, 1963."

**Mr. Deputy-Speaker:** The question is:

"That this House agrees with the Twenty-sixth Report of the Committee on Private Members' Bills and Resolutions presented to the House on the 18th September, 1963."

*The motion was accepted.*

RESOLUTION RE: DEFENCE OF INDIA ACT—contd.

**Mr. Deputy-Speaker:** The House will now proceed with the further discussion of Shri A. K. Gopalan's Resolution regarding the Defence of India Act.

Shi Gauri Shankar Kakkar was on his feet. One hour and four minutes are left for this Resolution. The Minister wants half an hour. How much time does Shri Gopalan want for the reply?

**Shri A. K. Gopalan** (Kasergod): Fifteen minutes.

**Mr. Deputy-Speaker:** Then I will call the Minister at 2-45. Shri Kakkar. He has already taken seven minutes.

**Shri Gauri Shankar Kakkar (Fatehpur):** Sir, in another seven minutes I shall finish.

**श्री गौरी शंकर कक्कर (फतेहपुर) :** उपाध्यक्ष महोदय, पिछली बार मैं यह कह रहा था कि यह जो प्रस्ताव श्री गोपालन द्वारा सदन में प्रस्तुत किया गया है, इसको जिस प्रकार से प्रस्तुत किया गया है, उससे मैं सहमत नहीं हूँ। परन्तु इसके साथ साथ मैं यह कहने को भी तैयार हूँ कि भारत रक्षा कानून जो बनाया गया था इस सदन द्वारा, उसका सदुपयोग नहीं हुआ है बल्कि दुरुपयोग ही अधिक हुआ है। जब इस प्रस्ताव पर बहस हो रही है तो हमारा ध्यान पिछले साल के अक्टूबर महीने की ओर जाता है जब कि चीनी आक्रमण हमारे देश पर हुआ था। उस समय समस्त भारतीय जनता में एक प्रकार की एकता की भावना उत्पन्न हुई थी और भारतीय निवासियों ने यह सोचते हुए भारत रक्षा कानून का स्वागत किया था कि इस कानून का सदुपयोग होगा, और देश की उन्नति होगी और जहाँ तक देश की रक्षा करने का प्रश्न है, तथा आक्रमण का मुकाबला करने का प्रश्न है, इस प्रकार का कानून उस काम में हमारी सहायता करेगा।

आप देखें कि जिस ध्यय को सामने रख कर इस कानून को लागू किया गया है वह ध्येय क्या पूरा हुआ है या नहीं हुआ है। मैं समझता हूँ कि वह पूरा नहीं हुआ है। ऐसी मिसालें आपको बहुत मिल जायेंगी कि रक्षा कानून की आड़ में मनमाने ढंग से सरकार ने मनमानी चीजों की हैं यह कहने के लिये तैयार हूँ कि रक्षा कानून की आड़ में भारत सरकार को यह अनेकार्य मिला कि वह गोल्ड कंट्रोल रूल्ज, अवसर वचत योजना जैसी चीजें बनाये। ये वे कानून हैं जो कि विधेयक की शक्त में इस

सदन में उपस्थित नहीं किये गये बल्कि रक्षा कानून की आड़ लेकर, नियम बना कर इनको लागू कर दिया गया। उसका सदुपयोग नहीं हुआ। उल्टे जनता व्याकुल और पीड़ित हुई जब से यह रक्षा कानून लागू किया गया। मैं अगर यह कहूँ कि उसके बाद से रूलिंग पार्टी या कांग्रेस संस्था में किसी तरह का एकीकरण नहीं हुआ है, उल्टे उनके जो आपसी डिफेंसिस थे, वे बढ़े ही हैं, तो कोई प्रतिशयोक्ति नहीं होगी। उनके आपसी मतभेद इस हद तक बढ़े कि आखिर में जाकर कामराज प्लान को लाना पड़ा और उसके अनुसार कुछ कदम उठाने पड़े। इस संकट की घड़ी में, इस रक्षा कानून को बनाने के बावजूद भी, इस कानून का इतना दुरुपयोग करने के बाद भी, रूलिंग पार्टी खुद अपनी संस्था को संभाल नहीं पाई है और सब से ज्यादा मतभेद इस रूलिंग पार्टी में ही पैदा हुए हैं। ऐसी हालत में कैसे वह यह आशा कर सकती है कि विरोधी दल तथा देश की जनता, सब मिल कर काम करें, सब में एकता स्थापित हो।

रक्षा कानून के लागू होने के बाद सत्ता-धारी पार्टी कामराज प्लान लाई। महात्मा गांधी ने राम राज्य का एक नक्शा देश को दिया था। उस राम राज्य वाले नक्शे को स्थापित करने के बजाय अगर सत्ताधारी दल कामराज स्थापित करे तो, मैं समझता हूँ, ज्यादा उचित होगा।

**Shrimati LakshmiKanthamma (Khammem):** Mr. Deputy-Speaker, Sir, I would like the Mover of the Resolution to lay his hand on his heart and say whether there was any instance of any abuse of the power under the Defence of India Rules. In fact, after the end of the last session, about two months back, the hon. the Mover of the Resolution had told the entire Andhra Pradesh, including my constituency, where he made such speeches—he said it is only border trouble, China has not invaded India, and he criticised the Government as he liked

[Shrimati Lakshmikanthamma]

—that the people were surprised and were asking me “how is this man left to move about as he likes even during the present emergency?”

Sir, the legitimate freedoms of the people have not been interfered with in the name of the emergency. No citizen in the country could legitimately complain that his normal liberties were curtailed after the promulgation of the Act. Such complaints can be heard only from hoarders, profiteers, traitors and other unsocial elements. It is only they who could complain that these powers were used against them.

If any democratic process has been curtailed or suspended it can be said that these powers were misused. But in fact the democratic processes have been made more prompt and purposeful after the promulgation of this Act. The Indian Parliament was summoned no sooner than there was the declaration of emergency and the Members were apprised of the situation. Then, the Members spoke as they liked: in fact, more vehement speeches were made than ever before in Parliament. The only exception was that no speech which supported the Chinese cause was allowed to be made either in this House or outside. The prestige of the Indian Parliament has been enhanced to a great extent after the deliberations in the Parliament. The rights of every one are very well protected. We all know how the rights of Members and all properties are very well protected. But in the name of the emergency the President's own right to make a speech in a language which he liked was denied to him.

The democratic processes continued also in the States—in the State Legislatures, in the Zilla Parishads, in the Panchayat Samithis. In fact, they started functioning in full swing. And the entire country including the districts, the taluks and the villages have voiced their indignation against the Chinese. Village volunteer force and Defence

labour banks were all created and more and more activity is seen throughout the country in development and defence.

The present Act is different from the one promulgated during the Second World War in that this has the unanimous support of our Parliament and thereby of the entire people of this country.

I would like to ask our hon. friends how many citizens were proceeded against for having expressed their views either orally or in writing. I would also like to ask them how many were arrested for criticising the Government, and how many were victimised for differing with the ruling party.

On the other hand, there was a sudden increase in the severity of the attack on the Government. Some papers and the writings and cartoons published by them should engage the attention of the freedom-loving people of the country. We can never forget the cartoon which appeared in one of the papers depicting our Prime Minister as Napoleon coming back on horseback with his head hung down after he was defeated. This gives an impression as if our Prime Minister himself is the aggressor and being repulsed comes back, having lost the honour.

**Shri P. Kunhan (Palghat):** What is the name of that paper? Is it a communist paper?

**Shrimati Lakshmikanthamma:** It was in a paper. I know it for certain, and Government must be having all those cuttings. I think it was in the *Hindusthan Times*, but I cannot say definitely because I do not have the cutting at the moment with me. But it is a fact that it has appeared and I have seen it.

**Shri Daji (Indore):** It was the *Hindusthan Times*.

**Shrimati Lakshmikanthamma:** Sir, this sort of cartoon should have ap-

peared in some paper in Peking. They would very gladly borrow any such cartoons or writings from our papers. Would this have been tolerated in any other country or, say, in the UK during the Second World War?

Another leading daily published a cartoon showing the Chinese nursing our prisoners-of-war as a mother nursing her baby. This would show that the China is all mercy personified. Scores of such things appeared. Scores of writings criticizing the Government had appeared in the papers. No influential paper left any stone unturned to criticise the government and its policies. Any foreign visitor would be amazed seeing the way these things are allowed even at a time when the emergency is still supposed to be existing.

We cannot also say that the emergency powers were misused under the Defence of India Act because the functioning of any institution whatsoever, political, social and cultural, has not been affected. More intense activities, on the other hand, are there on all fronts. There is no inhibition in the functioning of any agency which promotes democracy and freedom which are the agencies to guard our freedom.

No sooner the emergency was declared defence committees were formed and some States included even the Communists among their members. Maybe, some States because they did not want to take a chance did not include some persons. That provoked our friends to criticize the Government. But now I can say that in my own State even people who are supposed to be against the resolution of the Communist Party and who have resigned from the executive committee are free. Not a single member of the Communist Party is behind the bars today.

We can also see the relative contribution of the different parties. For all these things we do not want members of the other parties to give us bouquets if anything. But let them recognise it. When the taxpayers was happily contributing to fight the Chinese, our

friends here who were arrested were in 'B' class prisons, enjoying at the taxpayers' expense. Let them say how the treatment was even for those friends whom the Government suspected of supporting the Chinese. What treatment was given to them in the jails?

No Government would be happy to tax the people because ultimately no government will have the courage to incur the dis-pleasure of the voters to whom they have to go and whom they have to approach. But still because the Government was conscious of its duty and responsibility, it took courage in both hands to tax the people. On the one hand, these friends were saying that we should fight the Chinese and, on the other, big demonstrations were held to oppose the Government in all the defence measures that they were taking.

In spite of that everybody knows in this country that the Opposition's voice was not silenced. Very few Communists of the Chinese lobby were arrested and even those belonging to the Chinese lobby are today no more in jails because we felt that they were no more effective. In fact, even though they have their own views, we felt that it is not necessary that they should be kept in prisons because they prove no more effective in doing any damage to the country.

**Mr. Deputy-Speaker:** The hon. Member's time is up.

**Shrimati Lakshmi Kanthamma:** One word more. The Opposition is getting weaker and weaker day by day. It is not because of our actions but because their voice is becoming feebler and feebler because of their actions. So, I would request my hon. friend to withdraw this Resolution because I am sure, in his heart of hearts he is convinced that no such misuse of this Act has been done. On the other hand, they enjoyed more rights and privileges for criticizing the Government than we ourselves had.

**Mr. Deputy-Speaker:** Shri Hajar-navis.

**Shri Daji (Indore):** There were one hour and four minutes left. So, it can go on till 3.30.

**Mr. Deputy-Speaker:** The hon. Minister wants half an hour and Shri Gopalan wants 15 minutes.

**Shri A. K. Gopalan:** I will take only ten minutes. He may be given five minutes.

**Mr. Deputy-Speaker:** If he agrees to finish in five minutes and Shri Gopalan agrees to take only ten minutes, he can speak.

**Shri A. K. Gopalan:** I will take only ten minutes.

**Shri Daji:** I do not want to enter into the polemics of abuse or misuse of these Rules. My hon. friend, Shri Gopalan, will take it up. I will like to point out that after the Resolution was moved it is no longer a question of its use or misuse against the Communist Party. We raised it in that way and we said it when we moved it that once if you start using it or misusing it against the Communist Party, the victim shall not only be the Communist Party. I will only point out that very recently in the Bombay strike, the striking municipal sweeper was also arrested under the Defence of India Rules. Even the negotiator who went to negotiate for him was arrested under the Defence of India Rules. A Bhilai worker was arrested under the Defence of India Rules. So, if you want us to catalogue the abuse and misuse, we can give you a big list.

But leaving aside that point, I want to press seriously only one aspect before the House and I want to press it irrespective of Party divisions. A new development has taken place, after my hon. friend, Shri Gopalan, moved the Resolution before the House. That development is the decision of the Supreme Court. Both the majority and the minority decisions of the

Supreme Court have held that the Defence of India Act and the rules framed thereunder are *ultra vires* of the Constitution.

**The Minister of State in the Ministry of Home Affairs (Shri Hajarnavis):** Which passage has the hon. Member in mind?

**Shri Daji:** In the five minutes that I have I cannot read out the passage.

**Shri Hajarnavis:** I have read it carefully and I have not yet found it out. If he can, I will request him to do so.

**Shri Daji:** All right. Both of them have held that the provisions are against article 22 of the Constitution and that we discriminated; that it is not open to Parliament to legislate in such a way. This has been held. The majority decision only says that though the Act is bad in law, because of the proclamation of emergency and the Proclamation of the President, the Supreme Court or the High Court is not in a position to give relief. So, leave aside the legal question of relief. What I submit and what I want to press before the House and before the Government is that as upholders of the rule of law do they want to place this Parliament in the awkward position of legislating and keeping on the statute book a legislation which has been declared to be beyond the competence of the Parliament to enact. That is very patent after the Supreme Court's ruling, namely, that whatever we passed was beyond our competence because it is a fact that even Parliament during an emergency cannot legislate beyond the powers given to us by the Constitution. The Supreme Court ruling has clearly laid down that a proclamation of emergency does not enlarge the legislative powers of the Parliament conferred upon it by the Constitution.

Therefore the anomalous position created now is that though this Act is bad, is against the provisions of the Constitution and is beyond the competence of the Parliament to enact, mere-

ly because citizens cannot get redress in a court of law during the emergency, these Rules and this Act continue in force and the State continues to use these powers and detain persons for an indefinite period.

This being the position, I submit that as the sovereign body of the nation and as the supreme law-making body we have to set certain standards. I am almost confident that if this fact had been known when the Act was passed and the Rules were framed, the House irrespective of Party divisions would not have allowed the statute to be passed that was not in consonance with the Constitution and the powers of the House. But we did it. Now we are faced with the situation where having passed it we want to continue it even after the Supreme Court has given a clear verdict against it. Therefore I say that we will be setting a very wrong example in the maintenance of the rule of law. We cannot expect the citizens of India to follow the rule of law when the sovereign body itself and the Government trample upon the rule of law after the decision of the Supreme Court. It is a challenge to the conscience; it is a challenge for the maintenance of the rule of law as set forth now and it is not a question of Party divisions and Party loyalties.

Therefore from this angle I appeal that the Government should reconsider the entire question and not stand on technicalities and prevent action from being taken for their release just merely because the citizen cannot go to the court and get legal relief. It is not a question of legal relief. Morally, politically and as a rule of law, I say, the Defence of India Act and the Rules stand condemned before the bar of legal and public opinion and the Government should immediately take steps to remedy this situation.

**Dr. M. S. Aney:** May I ask one question?

**Mr. Deputy-Speaker:** I am sorry; there is no time.

**Dr. M. S. Aney:** I want to know whether the opinions expressed were the decisions of the Supreme Court or *obiter dicta*.

**Shri Daji:** And even the Attorney-General and Justice Gajendragadkar said that the Act is *ultra vires* of the Constitution. Mr. Asoke Sen said in this House that only an insane person will say that the Act is valid. These are the words of the Law Minister.

**The Minister of State in the Ministry of Home Affairs (Shri Hajarnavis):** It is not that... (*Interruption*.)

**Dr. L. M. Singhvi:** I would like to make a suggestion. I do not want to speak on this. All I want to say is that in the interest of the preservation of the rule of law at least, would the Government be willing to consider the possibility of appointing a committee of Members of Parliament to go into these complaints and grievances of misuse of power so that these complaints may be given up?

**Shri Hajarnavis:** Mr. Deputy-Speaker, Sir, I shall divide my submissions in three parts so as to enable me to deal with the criticism which has been made, firstly, about the Act, secondly, the rules framed under it and, thirdly, the use to which they have been put.

First of all, it has been said that there is no longer any necessity of continuing the Emergency. Now, I may remind the House that when the Chinese aggressed on the sacred soil of this country, the President was pleased, under article 352, to issue, what is called, the proclamation of Emergency. Article 352 says:

"If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclama-

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tion, make a declaration to that effect."

Now, that Proclamation under the Constitution, is to be laid before Parliament. It is not a fiat, it is not an executive decree for which the Government can claim their own authority. But they must immediately come to the House which they did. And I remind the hon. Members of this House and myself that when this Proclamation was placed before the House, it received the unanimous approval of this House. There was not a single dissentient vote against it that the Proclamation of Emergency was unjustified.

What happens when the Proclamation of Emergency is declared under article 352? Normally, under the Constitution, the powers of legislation are divided between the States and the Centre, between the State Legislatures and Parliament. Article 353 says that as soon as the Proclamation of Emergency is declared, then the whole legislative field is open to Parliament. Similarly, the whole executive area, arena, becomes open to the Government of India. That is all that happens. What I am concerned to point out is that when we speak of Emergency, we must distinguish between the external objective threat and the steps taken to meet it. The expressions are sometimes used as if the Emergency has been created by the Government, that it is within the power of the Government to end the emergency by making a decree. I wish it were so. If we had the power, we will certainly issue a decree and then the Emergency would be at an end. But the Emergency consists in the threat to the security of the nation. I have not heard anything either from the Mover of the Resolution or the other two Members of his party who followed him—I am sorry, Mr. Banerjee glories in the name of being an independent and I do not know whether Mr. Daji is also a member of the party—perhaps he is also an independent.....

**Shri Daji:** I am a member of the Communist Party.

**Shri Hajarnavis:** I do not think the hon. mover and his supporters in their conscience could suggest that the external threat of aggression has been lifted, that it no longer exists and that they can say, guaranteeing behaviour of our great neighbour, that they would not utilise any opportunity provided if they get such an opportunity of repeating what they did last time. If that is so, then is it not necessary that the nation should be geared to meet that threat? Should we not arm ourselves with the powers to meet that threat? Should we not keep our powder dry? Should we not keep our weapons' edge keen? If that is so, all that we have done is that we have armed ourselves with powers to take executive action unhampered by the fact that certain areas normally are reserved for action to be taken by the States. That is all that happens.

So, Mr. Deputy-Speaker, I want to remind the House and I want to remind everybody who assails us on this subject that the Emergency has not been created by the Government. We are faced with an Emergency because of the aggressive act of the neighbour to whom we had done no wrong and against whom we never had any aggressive intentions and with whom we have always thought of settling our disputes by negotiation. But there he sits. It is an objective fact. Government would be failing in their duty, Government would be doing something against the sacred trust of the people of this country which has entrusted them with the responsibility of the administration, if they did not notice the fact that there is a hostile power sitting on our border and in some part of our territory. Therefore, we have got to be fully prepared to meet that aggression. It can never be denied by any responsible person anywhere that Emergency exists and it will continue to exist so long as the threat exists and if the threat exists, we have got to have powers which

under article 352 the Proclamation of Emergency gives. And that power is nothing but the power to cover the whole of the legislative area by laws made by Parliament. By virtue of this power, Parliament passed the Defence of India Act. Again, I remind myself and I remind the hon. Members of this House that it was passed without any dissent. Those powers were gladly given. It was thought that those powers were essential if the Government were to carry out their duties to the people of this country. I entirely agree.....

**Shri Nambiar:** That was one year back. After one year, is it necessary?

**Shri Hajarnavis:** Has the objective condition changed? If the hon. Member is going to say that the external threat has ceased to exist. . . .

**Shri Daji:** The declaration of Emergency is not necessary. Emergency is never resorted to when there is a threat. It is resorted to when there is actual fighting. In that case, there has been a threat existing from Pakistan for several years and that will still continue. And China's threat also will continue for a generation. Are you going to continue Emergency for a generation?

**Shri Hajarnavis:** That is for the executive to decide, whether a nation is friendly to us, or has peaceful intentions, if they say that the hostile power has peaceful intentions—if my friend says so—then surely their ideas are not the ideas with which I credit them, that they are not the ideas which they profess in public.

**Shri Daji:** This is also public.

**Shri Hajarnavis:** Let them go out and say that there does not exist a threat; and emergency should be withdrawn even though the Chinese army is sitting on our border.

**Shri Daji:** I do not say that the threat does not exist.

**Shri Hajarnavis:** Then, if the threat exists, the responsibility of taking steps to meet that threat is ours, so long as we are in power, so long as we are the Government.

15 hrs.

**Shri Daji:** You can take those steps without the Defence of India Rules.

**Shri Hajarnavis:** It is a matter of opinion.

**Shri Nambiar:** The Preventive Detention Act is there.

**Mr. Deputy-Speaker:** Order, order. The leader of the party to which the hon. Member belongs will reply. So, why should he disturb?

**Shri Nambiar:** He has asked me a question, and I am replying to it.

**Shri Hajarnavis:** Then what is the other result of article 352? That is given in article 358. Article 358 says that the moment a Proclamation is made, the rights guaranteed under article 19 are suspended.

Then follows article 359, and I note that article 359 is as much a part of the Constitution as the other articles dealing with fundamental rights. That also must be read in the Constitution, and it has a certain function to perform. It cannot be read as if it has no effect. Article 359 says that if in the Proclamation certain articles are indicated, then the remedies in respect of those articles will not be available in any court. That is what article 359 says. It is certainly intended that at some time or the other it must be used. Of course, there may be difference of opinion as to whether the use is justified or not. But so long as it forms a part of the Constitution, then, surely article 359 must be used, and if it is used, the effect would be that the remedies are suspended. That is all that happens. But it is certainly intended to be used.

[Shri Hajarnavis]

Then, it is provided that when an order is made under article 359 it shall be laid before each House of Parliament. When the order was made, it was so laid, and when it was laid, there was no discussion, and there was no dissent.

So, the point that I am making is that it may be that there is difference between the words of article 358 and those of article 359, but so long as article 359 is there in the Constitution, certainly it has to be given effect to.

**Shrimati Renu Chakraverty** :—

**Shri Hajarnavis**: I would not like to be disturbed. I shall answer questions at the end. I shall dispel all doubts of the hon. Member at the end. Now, she should listen to me patiently.

**Shrimati Renu Chakraverty**: What is the use, if you do not even answer our questions?

**Shri Hajarnavis**: Is there any country in which in the case of an emergency, the fundamental rights are not suspended? I would like that whoever has any doubts may refer to cases in the United States of America where there is only the Bill of Rights; and unlike our Constitution, in the Bill of Rights, there are no exceptions. But the rule of restriction is there, which I might say is absolutely necessary for the continuance of the State; what the width of a right is, what the content of a right is depends upon the situation in which those rights are existing.

There is the famous judgment of Justice Holmes in which he said that you certainly have the right to freedom of speech, but if you go in a crowded theatre where there are women and children and shout the word 'fire' so that there is panic, then certainly your right to freedom of speech must be curtailed. That is what

happens even though there is no article like article 359 and there are no exceptions. Our Constitution, of course, is more elaborate.

As regards the question which has been posed, namely whether the legislative competence is not to that extent restricted, I would answer by saying that the restriction will depend upon the nature of the legislation, upon the circumstances in which it is used.

Then, I would go on to the next point. If you ask whether the legislative competence is restricted, I would say 'Yes'; but what the width of the restriction is, and how much it is restricted will all depend upon the nature of the legislation and the circumstances in which that legislation is to be used. This is exactly what the majority judgment of the Supreme Court....

**Mr. Deputy-Speaker**: Their main point in the resolution seems to be that the powers have been abused. They do not deal with the constitutional question at all.

**Shri Hajarnavis**: I am coming to that.

**Shri A. K. Gopalan**: The amendment is there; the amendment and the main resolution both read together are being replied to by the hon. Minister.

**Shri Hajarnavis**: It has been said that the Supreme Court judgment is against us. This is what the majority judgment has said:

"Before proceeding further, we may at this stage, in parenthesis, observe that there has been some argument before us on the question as to whether the fundamental rights specified in the Presidential Order issued under Art. 359 are even theoretically alive during the period specified in the said Order. The learned Attorney-

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

That was the argument raised; if the remedy is lost, then the right is lost. The court does not pronounce as to whether the argument is good or bad. But it is an argument which has been used and which will be used at a proper time. Supposing the remedy goes, does the right survive? The judgment says:

"We do not propose to decide this question in the present appeals."

So, any suggestion coming from anywhere that the Supreme Court had decided the question that the rights survive and since the rights survive, the infringement amounts to a violation of the Constitution is not something which Their Lordships have thought it fit to pronounce upon.

**Shri H. N. Mukerjee:** Would the hon. Minister explain how it is that the majority judgment of the Supreme Court makes it expressly clear that the right persists and that after the emergency is over, the remedy for that right might very well be asked for in the courts, and the courts will have to examine the whole position?

**Shri Hajarnavis:** I shall not cross swords with Shri H. M. Mukerjee on many subjects, but so far as the interpretation of the judgment is concerned, I think that I am entitled to have my own opinion which I am now expressing before the House.

**Shri H. N. Mukerjee:** It is not a question of opinion, but it is a question of reference to the Supreme Court's judgment.

**Shri Hajarnavis:** That is what I am saying. The judgment says:

"We do not propose to decide this question in the present appeals."

This is the majority judgment. I shall read out that portion again:

"The learned Attorney-General has contended that the suspension of the citizen's right to move any court for the enforcement of the said rights, in law, amounts to the suspension of the said rights themselves for the said period. We do not propose to decide this question in the present appeals."

That is as clear as it could be, unless we deliberately decide to delude ourselves. The judgment further says:

"We will assume in favour of the appellants that the said rights are, in theory, alive and it is on that assumption...."

That is only their assumption, and the best case that could be made available to the detenus has been assumed by the Supreme Court. They say:

"...it is on that assumption that we will deal with the other points raised in the present appeals."

Then, Their Lordships go on to say:

"It would be noticed that the Presidential Order cannot widen the authority of the legislatures or the executive; it merely suspends the right to move any court to obtain a relief on the ground that the rights conferred by Part III have been contravened if the said rights are specified in the Order. The inevitable consequence of this position is that as soon as the Order ceases to be operative, the infringement of the rights made either by the legislative enactment or by executive action can perhaps be challenged by a citizen in a court of law and...."

[Shri Hajarnavis]

This is the paragraph on which Shri H. N. Mukerjee can take his stand upon.

**Mr. Deputy-Speaker:** When it ceases to be operative.

**Shri Hajarnavis:** They further say:

"...and the same may have to be tried on the merits on the basis that the rights alleged to have been infringed were in operation even during the pendency of the Presidential Order. If, at the expiration of the Presidential Order, Parliament passes any legislation to protect executive action taken during the pendency of the Presidential Order and afford indemnity to the executive in that behalf, the validity and the effect of such legislative action may have to be carefully scrutinised."

This is all that they have said, namely that when the question arises, they shall certainly take that into consideration and decide it.

Then, they have stated what I am going to read. Reference has been made to what passed between one of the judges and the Attorney-General, but what is conclusive, and what is binding and what is operative is the judgment of the Supreme Court. And Their Lordships further say:

"Before we part with these appeals, we ought to mention one more point. At the commencement of the hearing of these appeals when Mr. Setalvad began to argue about the validity of the impugned provisions of the Act and the Rules, the learned Attorney-General raised a preliminary contention that logically, the appellants should satisfy this Court that it was open to them to move the High Courts on the grounds set out by them before the validity of the said grounds is examined."

"He suggested that, logically, the first point to consider would be whether the detainees can challenge the validity of the impugned Act on the ground that they are illegally detained. If they succeed in showing that the applications made by them under s. 491(1)(b) are competent and do not fall within the purview of art. 359(1) and the Presidential Order, then the stage would be reached to examine the merits of their complaint that the said statutory provisions are invalid."—

that is to say, if s. 359(1)(b) does not come in, they can certainly inquire into the validity of detention. You can say that the order was *mala fide*. It has been said that many of these detentions are *mala fide*. If so, the Supreme Court would certainly go into the question whether the statutory power which has been undoubtedly given is being used for an ulterior purpose. There are judgments of the Supreme Court which show that if properly approached in proper cases before them, they will strike down the statutory Act within the legal authority because of misuse or abuse of power. The judgement goes on to say:

"If, however, they fail on the first point, the second point would not fall to be considered. We then took the view that since a large number of appeals were placed for hearing before us and they raised important issues of constitutional law, it would be better to allow Mr. Setalvad to argue the case in the manner he thought best, and so, Mr. Setalvad addressed us on the validity of the Act in the first instance and then dealt with the question about the competence of the applications made under s. 491(1)(b) of the Code. In the main, the same method was adopted by the learned advocates who followed Mr. Setalvad on the appellants' side. Naturally, when the learn-

ed Attorney-General made his reply, he also had to address us on both the points. It appeared that as regards the validity of the impugned provisions of the Act and the Rules, he was not in a position to challenge the contention of the appellants that the Act contravened art. 14, 21, 22(4), (5) and (7)".

Now, certainly there is a variation between this provision and some other provision, but this is the very purpose of making an additional order under art. 359. What is the use of art. 359 if in spite of the Presidential Order under it, we were still to have to conform to the various articles mentioned? Either we put them out of action or we don't. Art. 359 says that we suspend the remedy. What the Attorney-General said was this:

"Even so, he strongly pressed before us his original contention that we would not reach the stage of expressing our opinion on the validity of the Act if we were to uphold the preliminary objection that the applications made by the detainees were incompetent. In our opinion, the learned Attorney-General is right when he contends that we should not and cannot"—

we should not and cannot—

"pronounce any opinion on the validity of the impugned Act if we come to the conclusion that the bar created by the Presidential Order operates against the detainees in the present cases. In fact, that is the course this court adopted in dealing with Mohan Choudhury's case and we are satisfied that that is the course which this court can logically and with propriety adopt".

If in spite of these clear observations, limitations which the Supreme Court Judges placed upon themselves, the hon. Members say that they have de-

ecided the question, which they said they have deliberately kept open, they are accusing the Supreme Court Judges of having done something which they said cannot be done with logic or propriety.

On the first question, the court held in our favour, that the remedies are suspended. They went on to say that when the second question arises, it should certainly be considered carefully, but so long as it does not arise, they that logic and propriety would require of them not to pronounce any opinion—though we have a contention to raise whether it is valid or invalid. It is not for me to decide; it is for the judiciary to finally pronounce upon the correctness or otherwise of our submission on points of law.

I will now deal briefly with the manner in which these powers have been used. Whenever an occasion has arisen, Government have used the powers with the greatest restraint, greatest moderation and greatest understanding. The other day we were accused of allowing a large communist procession marching here to present a petition. Somebody found fault with us, as to how we did allow that. It merely means that we do not interfere with the democratic rights of the people, whether they belong to one party or another.

Then Shri Gopalan waxed eloquent on the question of our not using the Act against hoarders effectively. On the one hand, you find fault with the Act itself; on the other, you want us to use it against people whom you do not like.

On 1st September 1963, the number of detenus was 562, of which communists are 378. I do not know how many cards have been printed for distribution by the distinguished party, to which the Mover belongs, for their membership, but he will certainly concede that that number is very much more than 378.

**Shri A. K. Gopalan:** They are not all arrested according to the party membership?

**Shri Hajarnavis:** So far as prosecutions for anti-social activities etc. are concerned, they are 1617. It is not that Government have stayed their hand.

**Shri Surendranath Dwivedi:** Are they detained?

**Shri Hajarnavis:** No. There will be regular trials under the Act.

**Shri A. K. Gopalan:** Preventive detention.

**Shri Hajarnavis:** Of course, these powers were used in Bombay when the life of that great city was sought to be totally paralysed, when the Corporation themselves were willing to sit round the table and negotiate. But those who spoke or professed to speak for labour held a pistol at the head of the Corporation and said: 'Unless you guarantee this, concede this, we will go on strike'. Surely, society cannot be held to ransom like this, however sympathetic we may be to the demands of labour.

It will be found in section 3 of the Act:

"The Central Government may by notification in the official gazette, make such rules as appear to it necessary and expedient for securing the defence of India and civil defence, public safety, the maintenance of public order, efficient conduct of military operations and maintenance of supplies and services essential to the life of the community".

Now, Bombay is a commercial nerve-centre, an important industrial centre through which we receive many things essential for the prosecution of the war. I ask: what sense of responsibility—in spite of the industrial truce resolution, which is being im-

plemented by Government, which Government are doing their best to see is being implemented by everybody—was displayed by those unions and leaders who asked the workers to go on strike?

One of the unions to which Shri Gopalan drew the attention of the House was a union engaged in defence production. I do not think there can be a greater misuse of freedom than trying to stop defence production merely because you have an industrial dispute to raise with your employer. The record of the Government in this respect is certainly not bad, not something for which we need apologize, and we are always willing to look into every grievance.

Therefore I submit that so long as the external threat continues, so long as we feel that there is danger to the independence of this country, we must be prepared night and day, we must have those powers with which every country in such a situation arms itself. If the even tenor of the life of the people goes on uninterrupted it is merely because Government puts these powers into motion only when they are convinced it is absolutely necessary. In which other country would you find Members of the Opposition criticising the Government so freely, being allowed to exercise their rights so freely? It is the glory of our democracy, of our democratic tradition, that we have Shri Gopalan calling us to account for what is being done, and it is our privilege to try to convince him that we are doing our duty by the country.

**Shri A. K. Gopalan (Kasergod):** I am sorry that within the short time available, I will not be able to answer all the points raised by the hon. Minister.

I have dealt with the Supreme Court judgment in detail in my original speech, and I have now only to say that the contents or the spirit of the judgment are not what he has represented them to be. Parliament has

chosen to pass the Act under challenge and has disregarded the constitutional provisions of articles 14 and 22. This is a summary of what they have said in their judgment. They have said that though the imprisonment of the detenus who had appealed was unconstitutional and the law which sanctions such imprisonment void, the victims of this void law could not move any court to look into the illegality because the remedy has been taken away by article 359 of the Constitution. It is because of this they have expressed their inability to release the detenus. Without enlarging its powers, how can Parliament make a law violating articles 22 and 13(2). Anyhow, as far as the Act is concerned, the Supreme Court has clearly said that it is unconstitutional and void.

The law Minister told the Rajya Sabha yesterday that if the detenus go to court after the expiry of the emergency, government would be prepared to pay them damages.

**Shri Hajarnavis:** He said if there was a decree of the courts, if our contentions were overruled, not otherwise.

**Shri A. K. Gopalan:** The judgment has said that they have the right to go to court and ask for damages. If the court decrees damages, they are prepared to pay them. From where? It must be paid only from the pocket of the Law Minister, not from the public revenue, because such a law has been made and he has been advised badly that it leads to such things.

Is it not the duty of Government in the light of the judgment of the Supreme Court, the resolution of the Bar Association of India and the several editorials that have appeared in many newspapers, to release the detenus, to make some changes in the rules in keeping with the spirit of the Supreme Court judgement?

For fifteen minutes the Minister argued as if the situation in the country today is the same as it was in

November or December last year. If he thinks so, I am sure I cannot convince him. In November last year there was an armed clash, but in no country in the world is the emergency kept for a day longer than necessary, even for a moment after the cessation of the armed clash.

The situation has changed since last November. There is a cease-fire. There have been the Colombo proposals. Only fifteen days back Dr. Subandrio, representing one of the Colombo proposal countries, said openly in the papers that China had definitely told him that she was not going to attack India again, and that if India provoked her, she would write to the Colombo countries as to what was happening.

**Shri P. R. Patel (Patan):** What comes in the way of China writing to this country itself?

15.25 hrs.

[MR. DEPUTY-SPEAKER in the Chair]

**Shri A. K. Gopalan:** You sit down. You have spoken. He will write to you. I will ask China to write to you.

I did not interrupt anybody. They do not want to hear my reply.

**Mr. Speaker:** He may go on addressing me instead of asking them to sit down.

**Shri A. K. Gopalan:** I thought I should not trouble you. He said we had accepted the proclamation and passed the resolution unanimously in Parliament. We did because the situation then was such that it should be accepted. Today we are saying that the emergency powers are necessary for strengthening our defence. What do we mean by that? Increasing food production, improving the morale of the people. If anybody makes a speech as the hon. lady Member said, there are ordinary laws in the country under which you can prosecute him, and convict him for 12 to 15

[Shri A. K. Gopalan]

years. You want this emergency and these powers because under them you can detain anybody you like, without making any charge. Your police goes and catches a man and puts him inside jail, all in the name of emergency. No grounds are given to him.

**Shri A. K. Gopalan:** He cannot go to court, he has no right to go to court on merits, that is barred. There is no need for these emergency powers since you can deal with anti-social activities under the ordinary law of the land. Suppose this continues for ten years. Do you want the emergency to continue for ten years? Why do you want to use it? Nothing was said about the misuse. I thought that at least that pertinent question should have been answered. I pointed out, showing the summons issued by the sub-divisional officer, how the sub-divisional officers proceed in the matter; they say, "because you did not give money, gold, you must attend." I had written about these things to the Prime Minister and asked for an answer. There was no answer for it. They must say that either it is wrong or that they found that after enquiry they have found it wrong. But nothing of the sort was said. I specifically sent a copy of the summons that had been received. Nothing was said in reply to it. So, the emergency has been misused in many cases.

The Minister said that these rules had been used in respect of the workers in the ordnance factories at Ambala. He said that the workers did something which was against the rules. But in March, 1963, the workers were transferred from place to place. There was representation made, and from March, 1963 till 21st August, 1963, what did the authorities do? At least in the defence department, and other departments, when they ask for a conciliation, when they ask for a settlement, the authorities must do

something. But from March, 1963 to 21st August, 1963, nothing was done. On the other hand, the authorities said that they will take action against the workers and threatened them under the emergency, saying that they have done this or that. The authorities who do not care for the workers of the defence factories and for their grievances must be punished and not the workers.

These rules have been used in Bombay against the people who went on strike. What was the reason? I have got the details but I have no time to go into them. The ordinary man says that the prices have gone up and asks for a dearness allowance. He waits for six months and then for a year. He finds that he will not be able to work hard if he has to see to increasing food production and increasing defence potential without any enhancement in dearness allowance. Then he says that he is going on strike. I say that the continuation of the emergency is no longer necessary; the special powers, whatever they are, are also no longer necessary; they go against the defence of the country. The existing powers are adequate.

Then there is another point. Some hon. Member asked, "Why was not Gopalan arrested?" I do not know what I have to say. But I would like to put another question to him. Why is it that eight persons including Shri Nambiar, Shri Umanath and Shri Yellamanda Reddy who are Members of this House and members of my party arrested? They were sitting here and one fine morning they were arrested. What is the thing that they have done except that they came to Parliament and went to their house afterwards? What is it that they have done? Why were they arrested? Today, in Kerala and Andhra Pradesh and Tamilnad all those who had been arrested were released. Why is that that some others at some other

places were not released? The authorities say that those are border areas, and so they must be careful. Take Maharashtra. Which is the border area for Maharashtra where somebody is waiting to attack us? So, it is not the question of any border area. If the communists of West Bengal are released today, you must know that the food struggle is there. The food situation is bad. If they are released they will also join the others who are struggling and fighting over this issue. As far as Punjab is concerned, there were those who conducted the struggle for a betterment levy there. So, there is no question of China lobby or any other lobby coming in. Merely throwing in some words here and there and then saying that these people cannot be released is no good. You can take action against anybody who does wrong and who goes against the defence of the country or against the security of the country; take them to the court and then give them punishment. Nobody is against such a measure. But in some places you release the persons and in other places you are keeping them in jail. The Supreme Court judgment itself has held this measure void and unconstitutional, but also added that they cannot do anything about it because the remedy has been taken away; and once the emergency goes, those aggrieved can go to the court and challenge the authority and ask for a remedy. That is what they say.

Today, the situation in the country is this: even against the ruling party, the situation is such that, when there is an emergency, and threat to the country, there have been changes in the Ministry. Otherwise, will there be any such changes? Certainly they will not be there. The emergency or the situation in the country today can be understood by the life of the people, and by what is happening in the country. When there is threat, the authorities must take some action and they must have the preparedness to

meet the enemy, when he comes from any side. So, increase the production; increase your armed forces; strengthen the morale of the people. All these things have got to be done. If all these things have to be done, the help of the people is necessary. The co-operation of the people is necessary. Instead of that, you are keeping the Defence of India Rules and when there is a strike you arrest 400 to 500 people. When an agricultural labourer asks for two annas more, you arrest him also, and create a situation which can be avoided. So, those who want to increase the production, those who want to keep up the morale of the country are also frightened because they also think there is something which is absolutely not normal. The Supreme Court judgement is there. It has to be read in another context also. That is, all the newspapers—not communist newspapers but other newspapers—have said that now that the Supreme Court has given its judgement there is no question of continuing the Defence of India Rules. I have got cuttings from those newspapers but I have no time to read them here. They have said that there is no need for the continuance of these rules.

Now, I want to ask the Home Minister as to what those who have not been released within the last three months had done. Have they done anything against the defence of the country? You must release all those who are inside the jails and remove the emergency. If there is anything done by anybody, then certainly there are the existing rules under which the authorities can proceed against them. If the situation changes and it becomes such as it was in November or December last, certainly within five minutes the emergency can be restored, and just as we have all unanimously approved of the proclamation of emergency, we will agree to it, but then, the situation is now different from what it was in August, or October last. So, I request the Minister at least to realise the spirit of the

[Shri A. K. Gopalan]  
resolution and do whatever is possible and also respect the spirit of the judgement of the Supreme Court. I think he would do it.

Shri S. M. Banerjee: Does the hon. Member accept my amendment?

Shri A. K. Gopalan: I accept it.

Mr. Speaker: I have to put the amendment of Shri Banerjee first.

Shri Nambiar: It may kindly be read.

Mr. Speaker: Shri Gopalan's resolution reads as follows:

"This House is of opinion that the powers under the Defence of India Act have been abused with a view to carrying on attack on the Communist Party and a number of Trade Union and other organisations and calls upon the Government to release all political and mass leaders detained under the Defence of India Rules."

The amendment of Shri S. M. Banerjee is:

That in the resolution, add at the end—

"in view of the judgement of the Allahabad High Court and certain observations made in the Supreme Court judgement."

Shri A. K. Gopalan: They may be put together.

Mr. Speaker: It is not a substitute motion. The amendment has to be disposed of first. (*Interruption*). The amendment has to be put. If it is accepted, then the resolution, as amended, could be put to the House. The question is:

That in the resolution, add at the end—

"in view of the judgement of the Allahabad High Court and certain observations made in the Supreme Court judgement."

#### The Lok Sabha Divided

Mr. Speaker: Hon. Members whose notes have not been recorded may kindly rise in their seats; five 'Noes' to be added and one 'Aye' to be added.

#### Division No. 11

#### AYE

[15.43 hrs.]

Badrudduja, Shri  
Bagri, Shri Mani Ram  
Banerjee, Shri S.M.  
Bhattacharya, Shri Dinen  
Chakravarty, Shrimati Renu  
Chatterjee, Shri H.P.  
Daji, Shri  
Dharmalingam, Shri  
Gopalan, Shri A.K.  
Gupta, Shri Indrajit

Gunta, Shri Kashi Ram  
Imblichava, Shri  
Kakkar, Shri Gauri Shankar  
Kunhan, Shri P.  
Misra, Dr. U.  
Mukerjee, Shri H.N.  
Murmu, Shri Sarkar  
Nair, Shri Sreekantan  
Nair, Shri Vasudevan  
Nambiar, Shri

Pandey, Shri Sarjoo  
Pattnayak, Shri Kishen  
Pottekatt, Shri  
Raghavan, Shri A.V.  
Ramabdran, Shri  
Reddy, Shri Eswara  
Reddy, Shri Yallamanda  
Sen, Dr. Ramen  
Sivasankaran, Shri  
Utiya, Shri  
Vimla Devi, Shrimati

#### NOES

Achuthan, Shri  
Alva, Shri A.S.  
Alva, Shri Joachim  
Aney, Dr. M.S.  
Babunath Singh, Shri  
Bajaj, Shri Karnalnayan  
Barkataki, Shrimati Renuka  
Basant Kunwari, Shrimati

Basappa, Shri  
Basumatari, Shri  
Baswant, Shri  
Bhakt Darshan, Shri  
Bhanja Deo, Shri L.N.  
Bhatkar, Shri  
Bhattacharya, Shri Dinen  
Birendra Bahadur Singh, Shri

Bist, Shri J.B.S.  
Brajeshwar Prasad, Shri  
Brij Raj Singh, Shri  
Chakraverti, Shri P.R.  
Chanda, Shrimati Jyotsna  
Chandrasekhar, Shrimati  
Charurvedi, Shri S.N.  
Chaudhry, Shri C.L.

Chuni Lal, Shri	Mahadeva Prasad, Dr.	Ray, Shrimati Renuka
Das, Shri N.T.	Malsichami, Shri	Samanta, Shri S.C.
Das, Shri Sudhansu	Mallick, Shri	Saraf, Shri Sham Lal
Dass, Shri G.	Mandal, Shri J.	Scindia, Shrimati Vijaya Raje
Deshmukh, Shri B.D.	Mandal, Shri Yamuna Prasad	Sen, Shri P.G.
Dighe, Shri	Masuriya Din, Shri	Shah, Shri Manabendra
Dwivedi, Shri M.L.	Minimata, Shri	Shakuntala Devi, Shrimati
Gahmari, Shri	Mirza, Shri Bakar Ali	Sharma, Shri K. C.
Gaitonde, Dr.	Misra, Shri Mahesh Dutta	Shashi Ranjan, Shri
Ganapati Ram, Shri	Misra, Shri Shyam Dhar	Shastri, Shri Ramanand
Gandhi, Shri V.B.	Mukane, Shri	Sheo Narain, Shri
Ganga Devi, Shrimati	Mukerjee, Shrimati Sharda	Shinde, Shri
Guha, Shri A.C.	Murti, Shri M.S.	Shree Narayan Das, Shri
Hajarnavis, Shri	Musafir, Shri G.S.	Shyamkumari Devi, Shrimati
Hansda, Shri Subodh	Naidu, Shri V.G.	Sidhe hwar Prasad, Shri
Harvani, Shri Ansar	Naik, Shri D.J.	Singh, Shri K.K.
Hem Raj, Shri	Nanda, Shri	Singha, Shri G.K.
Iqbal Singh, Shri	Nehru, Shri Jawaharlal	Sinha, Shri B.P.
Jamunadevi, Shrimati	Pande, Shri K.N.	Sinha, Shrimati Ramdulari
Jedhe, Shri	Pandey, Shri R.S.	Sinhasan Singh, Shri
Jena, Shri	Panna Lal, Shri	Sonavane, Shri
Joshi, Shri A.C.	Pant, Shri K.C.	Subramanyam, Shri T.
Jyotishi, Shri J.P.	Parashar, Shri	Surendra Pal Singh, Shri
Kadadi, Shri	Patel, Shri Man Singh P.	Tahir, Shri Mohammad
Kamble Shri	Patel, Shri P.R.	Tiwary, Shri K.N.
Khan, Dr. P.N.	Patel, Shri Rajeshwar	Tiwary, Shri R.S.
Kishan Veer, Shri	Patil, Shri J. S.	Tula Ram, Shri
Kripa Shankar, Shri	Patil, Shri V.T.	Uikey, Shri
Krishna, Shri M.R.	Pratap Singh, Shri	Upadhyaya, Shri Shiva Dutt
Krishnamachari, Shri T.T.	Raguramaiah, Shri	Verma, Shri M.L.
Kureel, Shri B.N.	Rai, Shrimati Sahodrabai	Verma, Shri Ravindra
Lakshmikanthamma, Shrimati	Raj Bahadur, Shri	Veerabesappa, Shri
Lalit Sen, Shri	Ram, Shri T.	Venkatasubbaiah, Shri P.
Laskar, Shri N.R.	Ramaswamy, Shri V.K.	Verma, Shri K.K.
Lonikar, Shri	Rane, Shri	Vyas, Shri Radhela
Mahadeo Prasad, Shri	Rao, Shri Ramapathi	Yadav, Shri Ram Harkab
	Rao, Shri Thirumala	

Mr. Speaker: The result of the division is 'Ayes' 31; 'Noes' 135.

*The motion was negatived.*

Mr. Speaker: I will now put Shri Gopalan's resolution.

The question is:

"This House is of opinion that the powers under the Defence of India Act have been abused with a view to carrying on attack on the Communist Party and a number of Trade Union and other organisations and calls upon the

Government to release all political and mass leaders detained under the Defence of India Rules."

*The Lok Sabha divided.*

The Minister of Home Affairs (Shri Nanda): I am for 'Noes'. It has been wrongly recorded as 'Aye'.

Shri Nambiar (Tiruchirapalli): Home Minister's vote is on our side.

Mr. Speaker: So, one 'Aye' is to be deducted and one 'No' to be added. Any other hon. Members whose votes have not been correctly recorded may kindly rise in their seats.

## AYES

Badrudduja, Shri  
 Bagri, Shri Mani Ram  
 Banerjee, Shri S.M.  
 Bhattacharya, Shri Dinon  
 Chakravarty, Shrimati Renu  
 Chatterjee, Shri H.P.  
 Dahi, Shri  
 Dharmalingam, Shri  
 Gopalan, Shri A.K.  
 Gupta, Shri Indrajit

Gupta, Shri Kashi Ram  
 Imbichibava, Shri  
 Kakkar, Shri Gauri Shankar  
 Kunhan, Shri P.  
 Misra, Dr. U.  
 Mukerjee, Shri H.N.  
 Murmu, Shri Sarkar  
 Nair, Shri Sreekantan  
 Nair, Shri Vasudevan  
 Nambiar, Shri

Pattanyak, Shri Kishen  
 Pottakkatt, Shri  
 Raghavan Shri A.V.  
 Ramabadrn, Shri  
 Reddy, Shri Esvara  
 Reddy, Shri Yallamanda  
 Sen, Dr. Ranen  
 Singh, Shri Y.D.  
 Sivasankaran, Shri  
 Utiya, Shri  
 Vimla Devi, Shrimati

## NOES

Achuthan, Shri  
 Alva, Shri A.S.  
 Alva, Shri Jashima  
 Aney, Dr. M.S.  
 Babunath Singh, Shri  
 Bajaj, Shri Kamalnayan  
 Barkataki, Shrimati Renuka  
 Basant Kunwari, Shrimati  
 Basappa, Shri  
 Basumatari, Shri  
 Baswant, Shri  
 Bhakt Darshan, Shri  
 Bhanja Deo, Shri L.N.  
 Bhaskar, Shri  
 Bhattacharya, Shri Dinon  
 Birendra Bahadur Singh, Shri  
 Bist, Shri J.B.S.  
 Barajeshwar Prasad, Shri  
 Brij Basi Lal, Shri  
 Brij Rai Singh, Shri  
 Chakravarty, Shrimati Renu  
 Chanda, Shrimati Jyotsna  
 Chandrasekhar, Shrimati  
 Chaturvedi, Shri S.N.  
 Chaudhry, Shri C.L.  
 Chuni Lal, Shri  
 Daffe, Shri  
 Das, Shri N.T.  
 Das, Shri Sudhansu  
 Dass, Shri G.  
 Deshmukh, Shri B.D.  
 Dighe, Shri  
 Dwivedi, Shri M.L.  
 Gahmari, Shri  
 Gaitonde, Dr.  
 Ganapati Ram, Shri  
 Gandhi, Shri V.B.  
 Ganga Devi, Shrimati  
 Guha, Shri A.C.  
 Hajarnavis, Shri  
 Hansda, Shri Subodh  
 Harvani, Shri Anasir  
 Hem Rai, Shri  
 Imbichubava, Shri  
 Iqbal Singh, Shri

Jamunadevi, Shrimati  
 Jeehe, Shri  
 Jena, Shri  
 Joshi, Shri A.C.  
 Jyotishi, Shri J. P.  
 Kadadi, Shri  
 Kamble, Shri  
 Khan, Dr. P.N.  
 Kishan Veer, Shri  
 Kripa Shankar, Shri  
 Krishna, Shri M.R.  
 Krishnamachari, Shri T.T.  
 Kureel, Shri B.N.  
 Lakshikanthamma, Shrimati  
 Lalit Sen, Shri  
 Laskar, Shri N.R.  
 Lonikar, Shri  
 Mahadeo rasad, Shri  
 Mahadeva Prasad, Dr.  
 Malaichami, Shri  
 Mallick, Shri  
 Mandal, Shri J.  
 Mandal, Shri Yamuna Prasad  
 Masuriya Din, Shri  
 Minimata, Shri  
 Mirza, Shri Bakar Ali  
 Misra, Shri Shyam Dhar  
 Mukane, Shri  
 Mukerjee, Shrimati Sharda  
 Murti, Shri M.S.  
 Musafir, Shri G.S.  
 Naidu, Shri V.G.  
 Naik, Shri D.J.  
 Nanda, Shri  
 Nehru, Shri Jawaharlal  
 Pandey, Shri K.N.  
 Pandey, Shri R.S.  
 Panna Lal, Shri  
 Pant, Shri K.C.  
 Parashar, Shri  
 Patel, Shri Chhotubhal  
 Patel, Shri Man Sinh P.  
 Patel, Shri N.N.  
 Patil, Shri D.S.  
 Patil, Shri V.T.

Pratap Singh, Shri  
 Raghuram iah, Shri  
 Rai, Shrimati Sahodrabai  
 Raj Bahalur, Shri  
 Ram, Shri T.  
 Ramaswamy, Shri V.K.  
 Rane, Shri  
 Rao, Shri Ramapathi  
 Rao, Shri Thirumala  
 Ray, Shrimati Renuka  
 Samanta, Shri S.C.  
 Samnani, Shri  
 Saraf, Shri Sham Lal  
 Scindia, Shrimati Vijaya Rajee  
 Sen, Shri P.G.  
 Shah, Shri Manabendra  
 Shakuntala Devi, Shrimati  
 Sharm, Shri K.C.  
 Shashi Ranjan, Shri  
 Shastri, Shri Ramchand  
 Sheo Narain, Shri  
 Shinde, Shri  
 Shree Narayan Das, Shri  
 Shyam Kumari Devi, Shrimati  
 Sidheshwar Prasad, Shri  
 Singh, Shri K.K.  
 Singha, Shri G.K.  
 Sinha, Shri B.P.  
 Sinha, Shrimati Ramdulari  
 Sinhasan Singh, Shri  
 Sonavane, Shri  
 Subramanyam, Shri T.  
 Surendra Pal Singh, Shri  
 Tahir, Shri Mohammad  
 Tiwary, Shri K.N.  
 Tiwary, Shri R.S.  
 Tula Ram, Shri  
 Uikey, Shri  
 Upadhyay, Shri Shiva Dutt  
 Varma, Shri M.L.  
 Varma, Shri Ravindra  
 Veerabasappa, Shri  
 Venkatasubbaiah, Shri P.  
 Verma, Shri K.K.  
 Vyas, Shri Radhelal  
 Yadav, Shri Ram Harik

Mr. Speaker: The result of the division is: 'Ayes' 31; 'Noes' 135.

The motion was negatived.

15.47 hrs.

RESOLUTION RE: PENSIONS FOR ARMED SERVICES

Shrimati Sharda Mukerjee (Ratnagiri): Mr. Speaker, Sir, I beg to move:

"This House is of opinion that pensions of Army Jawans, Airmen and Naval ratings are inadequate and should be revised upwards."

While we have been showing a considerable amount of sympathy for our wounded and for the widows, nevertheless, I feel that since pension rates have not been revised since the last ten years, the Government should give special attention to this matter. In the case of widows, where the death of a jawan or airman or rating occurs in conditions which are not attributable to service conditions, the pension is only for five years. But there is no allowance for children's education or maintenance of children. That is the first thing that should be put right. What is more, in spite of the fact that the emergency has been on for the last one year, we have made no changes whatsoever to provide for a war disability pension. The usual disability pension which exists is continuing. But if a young man, who has been serving only for about a year is disabled, the total amount he would get would be about Rs. 15. You can understand, Sir, that in the present conditions where the cost of living is high, where the chances of re-employment are very limited, Rs. 15 is hardly enough for a man of 22 or

23. Therefore, I feel that there should be a special war disability pension, as it existed in England, to cover the period of the emergency. Normally disability pension is given where a jawan or rating or an officer suffers disability due to service conditions. The war disability pension should have a higher rate because the age of the wounded is much lower and he may have to suffer years of disability. Therefore, war disability pension should have a higher rate than the normal disability pension which is given for disability suffered due to service conditions.

Further, I understand, in the case of other ranks, unless a person has worked or served for a minimum of 15 years his widow is not eligible for pension. That means, if he dies under conditions which are not attributable to service conditions then his wife will get a gratuity and that gratuity seems to be very inadequate. I shall quote the figures for the information of the House. Apparently, in non-attributable conditions a widow will get something like Rs. 300. If the jawan has served for less than five years the gratuity is equal to six months pay. If he serves from 5 to 15 years the gratuity is equal to a year's salary. It is only when he has served over 15 years that the widow will get a pension for five years.

With regard to death which occurs under conditions which are attributable to service reasons, these are called special family pensions. There also I feel that the pension should be revised upwards. Here I understand that in the lowest cadre the family will get Rs. 24.50 going up to the highest cadre which would be about Rs. 65 to Rs. 75. I would like some clarification on this point from the hon. Minister. What is the minimum period of service which the other ranks have to put in for their families to qualify for pension? Is it a