

12 hrs.

RE: PRESIDENTIAL ORDER DATED 18-11-74 ON MISA (LAID ON THE TABLE) AND ADJOURNMENT MOTIONS THEREON

श्री अटल बिहारी वाजपेयी (ग्वालियर) : अध्यक्ष महोदय, मेरा व्यवस्था का प्रश्न है। सवाल खत्म हो गये। अब आप को लिस्ट आफ बिजनेस लेना है। आज लिस्ट आफ बिजनेस में प्रेसीडेंशियल आर्डर के बारे में कोई उल्लेख नहीं है जो जारी कर दिया गया राष्ट्रपति के द्वारा। आप संविधान का आर्टिकल 359 (3) देखें :

"(3) Every order made under clause (1) shall, as soon as may be after it is made, be laid before each House of Parliament."

अभी मैं आपका सचिवालय में पता लगाया ... (व्यवधान) ..

SHRI JYOTIRMOY BOSU (Diamond Harbour): I have a point of order. I want to make a submission.

MR. SPEAKER: I will allow you. Please sit down now when I am standing. I will allow enough time for circulation.

श्री इयाच नन्दन मिश्र (बेगुमराय) : रिवाइज्ड लिस्ट आफ बिजनेस हममें सर्कुलेट नहीं हुआ

अध्यक्ष महोदय : यह अभी दिया है श्रीर आर्डर की कापी भी दी है...

श्री इयाच नन्दन मिश्र : यह प्रिविलेज का सवाल भी बनता है। ये सदन का अपमान करने के दोषी हैं.... (व्यवधान)..... यह तो प्रोसीजर का सवाल है। उन्होंने क्यों नहीं इसको टेबल पर रखा?.... (व्यवधान)

अध्यक्ष महोदय : यह ऐसा नहीं है कि आपका सवाल उठाने का बाद आया हो।..

श्री इयाच नन्दन मिश्र : यह आपकी कब मिला ?

अध्यक्ष महोदय : अभी मिला।

श्री मधु लिमये (बाका) : प्वाइंट ऑफ आर्डर ... (व्यवधान) ...

MR. SPEAKER: It is not in the power of the Speaker to prevent an order of the President from being laid on the Table.

(Interruptions)

The Minister verbally informed me but I did not get anything in writing till today. He did inform me verbally, not today, but earlier.

PROF. MADHU DANDEVATE (Rajapur): Do you accept oral communication? It is not a marriage invitation.

MR. SPEAKER: I have received the written one now.

(Interruptions)

SHRI JYOTIRMOY BOSU: I have given written notice and I have seen you also in this regard, about the impropriety committed by the Government. On Saturday between 2 and 3 an order was issued and it reached the Press. I got confirmation after telephoning the Home Minister and also from Mr. Gokhale. They could have easily laid it on the Table. They could have sent it to the Speaker on that day. It is not necessary that you should be physically present to receive the document. They deliberately kept it out. They had chosen to give it to the Press first and not to this House although the House is in session. They have committed a serious breach of privilege of the House and we should take up the matter for discus-

[Shri Jyotirmoy Bose]

sion On the adjournment motion I have given, I would like to make a separate submission.

SHRI INDRAJIT GUPTA (Ahpore): There are two points involved in this. The order was issued on Saturday and the text of the order was broadcast over the radio; we heard it also at about 2 O'clock and it was given to the Press also.

SHRI MADHU LIMAYE: The Press Conference was held at 5.30.

SHRI INDRAJIT GUPTA: A copy of that order is not sent to the Speaker of the House on Saturday or on Sunday, not even on Monday morning. Article 359(3) is quite categorical. Assuming that they could not lay it on the Table of the House earlier, they could have at least sent you intimation that they proposed to lay it on the Table on Monday. In that case, Your Secretariat could have informed the Members by way of a revised list of business that such and such item had been added to the list of business. They had not cared to do even that. At last on Monday when we have completed the question hour and the hon. Members are raising this point, they rush to the Chair and hand over three or four sheets of paper. This is gross violation of the procedure and you have to censure the Government for this gross contempt of the House, because they violated the elementary rules of procedure which were being observed in this House. What have you got to say about it?

SHRI SEZHIYAN (Kumbakoran): Members are agitated over the violation of the rules. The order was issued two days ago. Should they not inform you about this matter? When a Member wants to raise something, Mr. Speaker, you insist that he should give notice before 10 O'clock or 9 O'clock. Why not you be satisfied with oral intimation in their case also? They have to write to you in a ceremonious way. What Government has done is most unceremonious to the dignity of the Chair and is a contempt of Parliament. There is a provision

in the Constitution. They have violated not only the constitutional provision but also the decorum of the House by handing over something to you when the members are agitated and want to raise it. You should take a serious note of this and censure the Government for the casual and cavalier way in which they are treating the House and also the Chair.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, आज की कार्यसूची में राष्ट्रपति द्वारा जारी किये गये आदेश को सभा पटल पर रखने का कोई हवाला नहीं है। इसमें जो अन्य चीजें जोड़ी जानी हैं उनके बारे में अगर सरकार आपको सूचित करती है तो आपका मन्त्रिवालय संशोधित कार्यसूची निकाल सकता था, लेकिन सरकार ने आपको सूचित करने की आवश्यकता नहीं समझी। यह सरकार इस सदन का अपमान करने पर तुली हुई है। सविधान की अवहेलना केवल 359 के अन्तर्गत आदेश जारी करने में ही नहीं हो रही है, लेकिन सविधान यह भी कहता है कि आदेश की प्रति सभा पटल पर जारी करने के बाद जल्द से जल्द रखी जानी चाहिये।

अध्यक्ष महोदय, आप सरकार से पूछिये—शुक्रवार को जब सदन उठा, सदन की बैठक समाप्त हुई—यथा उस समय इस आदेश के बारे में सदन को सूचित नहीं किया जा सकता था। शनिवार को आदेश निकला, सरकार जानती थी कि विरोधी दलों के नेताओं से परामर्श कर चुकी थी और सर्वसम्मति से प्रतिपक्ष ने इस आदेश का विरोध किया था, उस मामले में मैं अभी नहीं जा रहा हूँ, उस पर आगे बोलूंगा, अभी तो केवल प्रक्रिया का सवाल उठा रहा हूँ—शनिवार को आदेश जारी किया गया, रेडियो से पूरा विवरण दिया गया, अखबारों में भी छाप दिया गया, लेकिन सदन की कार्यवाही में शामिल कराने के लिये आप से अनुरोध नहीं किया गया—आप मुझे क्षमा करें, यह जो

आपने वर्बल इन्फार्मेशन की बात कही है यह हमारे गले में नहीं उतरी...

अध्यक्ष महीन्द्रिय : वर्बल इन्फार्मेशन दी थी ।

श्री अटल बिहारी वाजपेयी : इस संविधान के अन्तर्गत जो चार्ज आवश्यक है, उसके बारे में वर्बल इन्फार्मेशन कैसे संविधान की आवश्यकता पूरी कर सकती है ?

MR. SPEAKER: I agree with you.

श्री अटल बिहारी वाजपेयी : संविधान कहता है कि आपका सूचना देना काफी नहीं है । संविधान तो आपका उल्लंघन भी नहीं करता । संविधान कहता है कि सभा पटल पर रखा जाएगा और अगर आप मौखिक वाने उनका मानने तो क्या मौखिक वान हमारी भी मानेंगे ? इस बारे में दो तराजू नहीं हो सकती । गृह मंत्री भी इस मदद के मदद हैं, उनको संविधान के अनुसार चलना है, नियमों का पालन करना है । गृह मंत्री के लिए एक नियम और हमारे लिए दूसरा नियम—ऐसा नहीं हो सकता । इस पर लिखित रूप में आपको सूचना नहीं दी गई, आज 11 बजे भी सूचना नहीं दी गई । हम लगातार पूछते रहे कि क्या गृह मंत्री की ओर से कोई सूचना आई है, हमको बताया गया कि नहीं आई । जब हमने यहां यह मामला खड़ा किया तो रघुरमीया जी दौड़ते हुए कागज ले कर आये—यह संविधान की गरिमा के अनुकूल नहीं है ।

इसलिए वही बात तो यह है कि आप इनको फटकारिये, ये सदन की मान-हानि के दोषी हैं, वे संविधान के उल्लंघन के अपराधी हैं, इन्हें खूब फटकारिये, उसके बाद हमें सारे मामले को उठाने का मौका दीजिए.....

अध्यक्ष महीन्द्रिय : आप मुझे लिख कर दे दीजिए कि कौन सी भाषा इस्तेमाल करनी है ।

श्री अटल बिहारी वाजपेयी : यह तो आप जानते हैं, आप स्वयं भाषा के माहिर हैं ।

SHRI SHYAMNANDAN MISHRA. The fact of the matter is that the decision with regard to this order had been taken on Friday evening itself, when we were summoned to a meeting in the most unseemly fashion at about 9 O'Clock in the night. We had taken definite objection to the manner in which we were invited to this meeting where we were presented with a *fait accompli* in this matter. That being the case, three clear days have lapsed and during this period the Government did not think it fit to give you intimation in writing; they have informed you only verbally.

MR. SPEAKER: The written one has come now.

SHRI SHYAMNANDAN MISHRA: Parliament is concerned not only with the substance but also with the form. In a parliamentary system the form does not matter less than the substance. Now the form in which it has been presented to Parliament is most objectionable.

Then, I would like you to give us guidance in this matter whether it does not require your examination. Even if it is a request from the Government, is it the position that it is obligatory on the Speaker and the Speaker is not required to examine the proposition that is submitted by the Government? If it is not so, then this proposition should have been submitted to the Chair in writing, and the Chair, after due consideration of the proposition, should have come to some decision whether it should be placed on the Table of the House or not. I would not subscribe to the view that anything that is submitted by the Government would automatically be allowed to be placed on the Table of the House. If this proposition was not found by the Chair to be in order or

[Shri Shyamnandan Mishra]

in consonance with the Constitution, the Chair should say so because no one has taken the stand that the Chair cannot go into the order, whether this order is in consonance with the Constitution and other rules or not. A verbal intimation to you has no validity even for you, and much less for the House. We cannot take cognizance of the matter that it is verbally intimated to you earlier. Therefore, a clear breach of privilege of the House has occurred, a clear breach of the provisions of the Constitution has occurred and a clear contempt of the Chair has occurred, because the Chair had not been taken into confidence except verbally in this matter. So, it requires some observations from you, at least for the purpose that in future such an unseemly behaviour on the part of the Government does not recur

SHRI H. N. MUKERJEE (Calcutta—North-East): My worry is with the graceless and presumptuous manner in which the Government often proceeds on a subject which is something very substantially acceptable to the country. I find the Government, because it takes many things for granted towards Parliament, acts in this cavalier fashion even in a case where substantially many of us are prepared to stand by the Government. In this case what has happened? They have presumed upon the fact of their having intimated to you verbally that their unconscionable delay in communicating the order to your Secretariat would be condoned. In this matter I am sure you have to take a very stern stand and I should certainly expect from you, Sir, certain observations in the spirit in which the Speaker's office is entitled to make observations about the defaults on the part of the Government. This is a procedural matter which reflects upon the attitude of Government to Parliament, and that is a basic matter on which you have to make your observations.

SHRI SAMAR GUHA (Contai): Sir, I think you should take a very serious view of the procedure followed

by the hon. Minister just now in sending to you a copy of the order, because it constitutes not only a violation of the provisions of the Constitution but also a violation of the Rules of Procedure of this House. I do not know whether it is a deliberate violation, or a callous attitude of the Government, or a callous way of functioning of the Government, in not informing this House or treating the honour and dignity of this House by only informing you verbally. I do not know what it is.

Here I want to draw your attention to the dramatic suddenness in which we were called to a meeting. The meeting continued for one and a half hours and we thoroughly discussed all the provisions of the Constitution. Both the Law Minister and the Home Minister were present in the meeting. When we asked whether they have taken any decision, both the Law Minister and Home Minister categorically stated that they have not taken any decision. This is an untruth. Then we asked them whether they are going to take a decision in the teeth of the opposition, a completely combined opposition, or they will take into account the unanimous views of the opposition. They said they will take into consideration the views expressed by the leaders of the opposition. Yet, we find that they have now come out with this Order.

Just now we have been told that you have been orally informed. You may be orally informed by the hon. Minister, or by any of his agents, or by the hon. Minister of Parliamentary Affairs, or by somebody over the phone.

As it has already been pointed out, the rights and privileges of each and every Member in this House are equal. These cannot be discriminated between one Member and another Member. If tomorrow any Member just sends a communication to you personally or through an agent or from his house, certainly, you are not going to accept it. If you are going to accept this, you please tell the House that you are

going to change the Rules of Procedure and that, hence-forth, you will accept any communication sent to you, either orally or over the phone, either personally or through an agent. This is a very important point that you have to take into consideration.

About the constitutional obligation, it has already been said in the case of the Ordinances issued during the inter-session period, on the very first day of the session of Parliament, the copies of those Ordinances are placed on the Table of the House. Saturday and Sunday were closed days. Today it is Monday. The first constitutional obligation on the part of the Government was to send you in writing that this should be included in the List of Business of the House.

I want to again remind you that the attitude either deliberate or callous, on the part of the Home Minister constitutes the violation not only of the dignity and privilege of this House but also the violation of the provisions of the Constitution.

श्री मधु लिमये : (बांका) : अध्यक्ष महोदय, मैं डायरेक्शन 116 की ओर आपका ध्यान दिलाना चाहता हूँ। इस डायरेक्शन को आपको प्राटिकल 359 के साथ पढ़ना है। 359(सी) के तहत यह स्पष्ट है कि इस तरह का आदेश तत्काल पार्लियामेंट के सामने रखना चाहिये। और आपके डायरेक्शन में यह लिखा हुआ है :

“(1) An entry shall be made in the list of business in respect of every paper or document which is received from a Minister duly authenticated for laying on the Table of the House.”

इसको भी इन लोगों ने पूरा नहीं किया।

“(2) Papers received from Ministries shall generally be included in the agenda for the following day for laying on the Table unless a specific date has been suggested by the Ministry concerned.

(3) Papers to be laid on the Table shall ordinarily be sent by Ministries two days in advance of the day on which the papers are proposed to be laid. In special circumstances, however, the Speaker may, on request, permit a Minister to lay a paper on the Table at shorter notice.”

अध्यक्ष महोदय, चूंकि आर्डर शुकवार को ही तय हो गया था निकलेगा और शनिवार को निकल भी गया, आप पूछ लीजिये किस समय निकाला गया। तो पूरे दो दिन की जो सीमा बनायी गयी है उसको भी कम्पलाई नहीं करता है। तो आपको स्पष्ट क्लियर देनी चाहिये कि क्या प्राटिकल 359 और आपके निर्देश 116 का उल्लंघन हुआ है कि नहीं? और अगर उल्लंघन हुआ है तो कौन सा दंड आप गृह मंत्री जा को देने जा रहे हैं, इसके बारे में हमको आप जानकारी।

SHRI S. A. SHAMIM (Srinagar): Mr. Speaker, Sir, there are three pillars of parliamentary system. One happens to the President. You are aware how signatures are sought or taken from the President. That having been demolished, another important pillar happens to be the judiciary. This Presidential Order itself will speak volumes as to what respect and regard the Government holds for the judiciary and how they have been treating the decisions of the judiciary with contempt. There is only institution left and that is the Parliament. You, Sir, happen to be the custodian of whatever is left of this Parliament now.

It is not a mere question of form. It is a question of attitude behind.

[Shri S. A. Shamim]

this act of complete disregard and contempt of Parliament that matters. The Home Minister invites the Opposition leaders, discusses with them about the Presidential Order, as to what can be done, presumably the Opposition leaders will agree and, in case they do not agree, their views will be disregarded. Why this formality of inviting the Opposition leaders, discussing with them and, then, telling the whole world that they do not agree with what the Opposition says?

What has happened before you? Unfortunately, you are trying to give respectability to this most disrespectful way in which the Minister of Parliamentary Affairs gave you a piece of paper. Whether it was under his name or the Home Minister's name, we really do not know. This is happening before this open House and you had rightly said that this was communicated to you verbally. You have got to protect your honour as well as ours. Today the Minister of Parliamentary Affairs thought it fit to give to you a piece of paper. Tomorrow he will talk to you on telephone and tell you that you should conduct the House in this manner. Therefore, I would request you not to treat the whole matter very lightly. A deterrent punishment should be given to the entire Government; otherwise, the whole Parliament will become useless. Already we have lost our credibility. They have lost the respect for Parliament. If you do not restore the prestige and honour of Parliament, then God knows what is going to happen the day after tomorrow.

SHRI P. G. MAVALANKAR (Ahmedabad): Parliamentary humour has a definite place in a Parliamentary democracy, but let me tell my friends on the Communist Benches particularly that it is not a matter for joke, it is a very serious matter. I do not want the Chair merely to admonish the Government. What

the Chair should do is to give a definite guidance and a very clear and sharp ruling on the matter. Parliamentary procedures, conventions and practices are established not only by the Constitution, not only by the Rules of Procedure, not only by the Directions that you give but also by the unwritten conventions well established in the mother of Parliaments, in England, and in other democratic Parliaments in the world. If all these are violated and if the Government were to take the entire House for granted, including you, then, I think, this is a matter which requires not only a great concern on behalf of all of us and an admonition of the Government by you but also a clear guidance and ruling from you.

Last week, on Monday, when we opened for the Winter Session, I had the occasion to tell you and the House how this Government was going on disregarding this House and treating this House with great contempt and was going on issuing Ordinances. I had said that this Government was waiting for the Session to end to issue Ordinances. Now they have gone several steps ahead: they are waiting for the week to be over so that on Saturday and Sunday they could issue executive orders—in between Friday and Monday. If this is how they want this Parliament to go on, they may follow not what you said but what was reported to be said by you and one Saturday or Sunday they may issue an order on an Ordinance that, because the Opposition is awkward, the independents are awkward, they obstruct, only one party should be there in this country, and on the following Monday, we will be automatically disqualified from attending the House, the Watch and Ward may ask us to go away. This may happen if this is the way Government is going to function. Therefore, it is not a matter for joke or humour; we must take it seriously; and I would request you to go into this question not only in terms of the Constitutional require-

ments but also in terms of the tremendous reputation built by the Chair that you are occupying today in the last 25 years and declare it in unmistakable terms that, if this Government want to function and govern according to the norms, practices and conventions of Parliament and Parliamentary rules, they must follow the rules not only in letter but also in spirit. Therefore, I would like you to be very categorical and straightforward and not only admonish the Government but also give a ruling that this will never happens, this would be the last of its kind.

THE MINISTER OF HOME AFFAIRS (SHRI K. BRAHMANANDA REDDY): Mr. Speaker, Sir, the preceding two days were Saturday and Sunday and the House did not sit. Therefore, the earliest that I could lay on the Table was today, and I have sought your permission to lay it on the Table of the House...

AN HON. MEMBER: Verbally.

SHRI K. BRAHMANANDA REDDY: 'Verbally' was before. (Interruptions). I reiterate with your permission that the attitude of the Government to the House is one of utmost respect ... (Interruptions).

SHRI SEZHIYAN: Why did you not come on Saturday itself?

SHRI INDRAJIT GUPTA: You must tell us whether you are satisfied.

SHRI JYOTIRMOY BOSU: In the face of complete opposition from the Opposition why have they promulgated the order? No. 2 Before going to the Press, why did they not write to you?

MR. SPEAKER: Hon. Members, I have listened to all your points and I should say, with utmost respect and full attention.

Now, strictly speaking, you have pointed out to the procedure, not wrongly, but in a very correct manner and the procedure I have seen twice and I thank Shri Madhu Limaye also for inviting my attention to Direction 116. Both of them, read together, make the position very clear.

Shri Shyamnandan Mishra has pointed out that I should go into the constitutional issue. I have seen it. Section 3 of Article 359 leaves no option for me. The word used is 'shall' and the provision is that the notification or order shall be laid on the Table and when we take into consideration as to when it shall be laid on the Table, it is the first day after the holidays. We meet today after the holidays.

SHRI SHYAMNANDAN MISHRA: But the notice for this could have been given on Saturday.

MR. SPEAKER: I asked the Secretary-General whether we have received any intimation or not. When we receive such things normally at short-notice sometimes from the Members like raising a matter under Rule 377 or from the Government, we add it. But till then it did not come and in your very presence I have received it today. My view is that proper intimation could have been sent immediately to our office...

SHRI SHYAMNANDAN MISHRA: Saturday was not a holiday. We have given notices on Saturday.

SHRI INDRAJIT GUPTA: If it could go to the radio, if it could be given to the press outside, what prevented them from giving it here?

MR. SPEAKER: When such a situation arises—this has not arisen for the first time—the Law Ministry and others' attention has been drawn to many such situations in the past and every time I say, 'Why are they so much hurrying for going to the

[MR. SPEAKER]

Press and radio?" The House is also one of those primary institutions. If you go to the Press or the Radio, then, it would have been much better that you write to the Secretary-General just at the same time that we are issuing this Notification and in my opinion, verbal information is nothing. I would consult the Rules Committee also to clear the position in future.

AN HON. MEMBER: It is already clear.

SHRI MADHU LIMAYE: This is contempt of the House. That is the whole thing.

MR. SPEAKER: In this case it was a holiday—what to do in that case....

SHRI ATAL BIHARI VAJPAYEE: Saturday was not a holiday. We gave notice on Saturday.

SHRI SHYAMNANDAN MISHRA: That was holiday only for the sitting of the House.

MR. SPEAKER: Saturday was not a holiday.

SHRI S. A. SHAMIM: On Saturday at 5-30 he addressed a Press Conference.

MR. SPEAKER: Saturday was not holiday. It should have been done immediately after that, when the Session is there already. The position would not change whether Parliament is sitting on those days or not. But, even if there were holidays, even if it is Sunday, it does not matter. Here it is a matter of delay. There was some impropriety because the proper time of starting this was giving intimation immediately to the Parliament Office. I have no alternative.

SHRI ATAL BIHARI VAJPAYEE: Let him apologise for the impropriety.

MR. SPEAKER: He has already done.

SHRI ATAL BIHARI VAJPAYEE: Let him say, I am sorry. (*Interruptions*).

MR. SPEAKER: No, no, please. I am on my legs. Kindly sit down.

SHRI JYOTIRMOY BOSU: You please reprimand them.

MR. SPEAKER: I am sorry at the language you use; in this House we have to use the parliamentary language. We have to use the parliamentary methods. Outside we can use abuses against each other.

SHRI JYOTIRMOY BOSU: You should reprimand him.

MR. SPEAKER: Mr. Home Minister, this delay has occurred; something has gone wrong somewhere and I think, in future, it should not be repeated.

SHRI JYOTIRMOY BOSU: What about my Adjournment Motion?

MR. SPEAKER: Unless it is laid, it cannot come. Kindly lay it.

SHRI ATAL BIHARI VAJPAYEE: I oppose the laying of it.

MR. SPEAKER: Order please. It is imperative under the Constitution. It must be laid on the Table. Let him lay it. Then I will listen to you on another motion. Please lay it.

PRESIDENTIAL ORDER RE MISA

THE MINISTER OF HOME AFFAIRS (SHRI K. BRAHMANANDA REDDY): I beg to lay on the Table under clause (3) of article 359 of the Constitution, a copy of the President's Order dated the 16th November, 1974 issued under clause (1) of the said article, published in Notification No. G.S.R. 859 (E) in Gazette of India dated the 16th November,

1974 [Placed in Library. See No LT-8481/74]

SHRI JYOTIRMOY BOSU: It violates the provisions of the Constitution. I want to make a few submissions.

MR. SPEAKER: What are you speaking about? Order please..

SHRI JYOTIRMOY BOSU: I want to make a few submissions.

MR. SPEAKER: I have got number of Motions. I will give you a chance. Now, the position is this ..

SHRI SEZHIYAN: I am opposing the laying because this is not strictly under the Constitutional provision. It violates the Constitution. It violates Article 359 itself.

MR. SPEAKER: When you brought Pondicherry you said the Speaker is not competent to go into the question of constitutionality. They are laid on the Table of the House. My predecessors have already made pronouncements on this.

SHRI SEZHIYAN: In this case you have said he has to lay on the Table of the House because of obligation under Article 359. My contention is that this order has not been issued strictly under Article 359. Then how can he place under Article 359?

MR. SPEAKER: Just now you were quoting Section (3) of Article 359. You agreed that it is under Article 359 and then you said it cannot be placed under Section (3) of Article 359 and only then I gave my ruling.

SHRI JYOTIRMOY BOSU: Sir, I rise on a point of order. My question is posed to gentlemen sitting opposite who claim to be great champions of Indian Constitution. I am asking in the present context and I expect Mr. Gokhale to answer my question. Is it not a fact that the Supreme Court has held that Parliament has full freedom to amend the Constitution even in respect of the

rights conferred under part 3 of the Constitution, there is one basic limitation to this power, namely, the amendment to be carried out, shall not in any manner, affect the basic structure of the Constitution as enshrined in the Preamble. The basic structure of the Constitution as enshrined in Preamble cites Justice, Liberty and Equality. The Ordinance or the Order cannot violate the same. If they do as in the case of Keshavan and Anant Bharat, then they will be struck down as violating the basic structure of the Constitution.

Secondly, the Supreme Court has sought to uphold social justice by analysing the freedoms into those which are preferred and those which are not

(Interruptions)

The preferred freedoms are those that relate to life and liberty, whereas the freedoms which are not preferred and which could be interfered in larger social and public interest are those which relate to property. Articles 14, 21 and 22 which have been done away with in this Presidential Order, take away even these preferred freedoms and thus violate the principle supporting the democratic Constitution. These basic freedoms are inviolate and inviolable. I want to ask Mr Gokhale is the Presidential Order constitutional? I maintain this Order offends the articles of the Constitution that I have already mentioned and, therefore, it is invalid and cannot be entertained on the Floor of the House.

श्री मधु लिमये : कृपया महोदय, आपने अभी फरमाया कि संसद के किसी भी आदेश को संसद के दारे में मैं निर्णय नहीं दे सकता। लेकिन आप को सबबजह में संविधान के धारा 144 को और खींचना चाहता हूँ। इस धारा में बहा गया है:

[श्र म सु लिनने]

"All authorities, civil or judicial, in the territory of India shall act in aid of the Supreme Court."

तो आप भी एग्जिस्टो है। हिन्दुस्तान की समस्त एग्जिस्टेंस का पुनः म त ई की एड मे काम करना चाहिए। अगर पुनः म कंट का यह निर्णय है कि फायमट्टा राइट्स को खत्म नहीं किया जा सकता तो इन आदेश को कास्टोडियनशिप के बारे में कम इतना तात्पर्य देना है कि यह कास्टोडियनशिप नहीं है। वरना म न क्या है?

अध्यक्ष महोदय : आगे पुते यह अधिकार दे दी जाये।

If this House gives me the authority in a regular way that my judgements on question of law and question of Constitution will be respected by the Supreme Court and they will not go against my observations. I will certainly come out with my observations.

SHRI S. A. SHAMIM: You try it, Sir.

MR. SPEAKER: I tell you the moment you give me such a power, I will be the most extra-ordinary man of this country. So, don't give me powers which are so dangerous.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय अगर आप का यह कहना ठीक नहीं है कि जो भी कांग्रेस सरकार की तरफ से आया आप उन टेबल पर रखने की ऊर्ध्व इच्छा करते। मानव अधिकार कोई ऐसा आदेश निरस्त दे जिसे के द्वारा हम सतत को सर्वप्रथम समाप्त कर दें और वह आप के जरिए समाप्त पर रखने को इजाजत चाहे

अध्यक्ष महोदय : जो कास्टोडियनशिप में लिखा है उसका तात्पर्य नहीं रोक सकता। देखिए आप दावा करते मत करिए। एक

तरफ तो आर 359 (3) का तरफ ध्यान दिलाते हैं कि इट शैन वॉ लेड आन द टबल आफ द हाउस और दूसरी तरफ यह कहते हैं कि न रखने दिया जाय।

श्री अटल बिहारी वाजपेयी : हमारी आपत्ति केवल वैधानिक नहीं है राजनैतिक भी हैं हम इस आदेश को सविधानिक मानस्य अधिकारों का हनन करने वाला मानते हैं। अदालतों को आत्मसमर्पण में बन्द रखने का एक प्रयत्न मानते हैं। क्या हम इसे केवल पर रखने का विरोध नहीं कर सकते।

अध्यक्ष महोदय : आप खुश हो सके। लेकिन मरे पाए एग्जिस्टो नहीं है कि मैं इनको रोकू कि टेबल पर नहीं रखे।

श्री अटल बिहारी वाजपेयी आप न करिए लेकिन हम को तो रोकने का कोशिश न करिए।

अध्यक्ष महोदय : आगे काँए न।

SHRI SHYAMNANDAN MISHRA: Mr. Speaker, Sir, you have to consider two separate issues—one issue is whether an Order under Art. 359 of the Constitution can be placed on the Table of the House even if there is an objection from the House. I quite agree with you that the Chair has absolutely no choice in the matter and the Order has to be placed on the Table of the House because it is a constitutional duty on the part of Government to lay it on the Table of the House. And the Chair does not come in the way of placing the order because it is a constitutional order. Now, if the Government does something unconstitutional, would the Chair subscribe to the dangerous theory that the Chair would not go into the issue whether it is a proper document to be placed on the Table of the House?

I would request you not to subscribe to the theory in a blanket way that any paper, if it is to be present-

ed to the House by Government, has to be accepted by the House. Don't subscribe to this.

MR. SPEAKER: I won't subscribe to this view. But, when the papers come, they can also be opposed. As you know, we have many precedents on the delay or some technical matters and I give the chance to all of you to speak on it.

So far as my authority to prevent to laying on the Table is concerned, my observation is this. If you raise questions of delay, I can ask the Minister as to whether it is proper or not. But, when you say that I should sit in judgment on the constitutional law that is involved I must say I cannot do this. I must say that I have thoroughly studied it.

SHRI INDRAJIT GUPTA: Then what about the adjournment motion?

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, हमने कामकाजको प्रस्ताव दिये हैं।

अध्यक्ष महोदय : मैं अभी बजताने लगा हूँ कि किने आये है और किम को तरफ से आये हैं।

SHRI BHOGENDRA JHA (Jainagar): Sir, I rise on a point of order. Now that you have allowed the Order to be laid on the Table, my submission to you is that you should direct the Government to circulate the order.

MR. SPEAKER: That will be done automatically.

SHRI BHOGENDRA JHA: Then we shall take action on that.

MR. SPEAKER: As I said immediately it would be circulated.

One zero hour has gone; and another has started.

SHRI DINEN BHATTACHARYYA (Serampur): Let us know what the Order is. I say that so far as smug-

glers are concerned, we are against that. Why don't you catch them under the provisions of law? Why are you bringing in this Order?

MR. SPEAKER: You better address this to Government.

SHRI DINEN BHATTACHARYYA: The total number of detenus is 16,800 or so (Interruptions).

SHRI INDRAJIT GUPTA: Are you allowing the Adjournment Motion?

MR. SPEAKER: I am trying to follow his point of order.

SHRI DINEN BHATTACHARYYA. rose.

MR. SPEAKER: I am not calling you.

Order please Kindly sit down.

SHRI DINEN BHATTACHARYYA: Why should I sit down? Give me one minute. You were the Speaker when MISA was passed here. At that time, the Government gave the assurance that it would not be used against political persons. I have the figures here. From these you will know how it has been used against political persons. They are now saying that they will not allow smugglers to go to court. They will not allow anybody to go to court.

श्री अटल बिहारी वाजपेयी : यह जो आदेश रखा गया है, यह खाना अग्रेको में रखा गया है या इनका हिन्दों अनुवाद भी है?

अध्यक्ष महोदय : यह तो अग्रेको में है।

श्री अटल बिहारी वाजपेयी : आप जरा उनसे पूछ लीजिये—यह मामला सम्भार है। सन्द में पेश होने वाले कानून केवल अग्रेको में ही नहीं रखे जा सकते, उनको हिन्दों में भी देना पड़ता है।

SHRI K. BRAHAMANANDA REDDY: There is a Hindi version also.

अध्यक्ष महोदय : इन्होंने रखा हुआ
है लेकिन मुझे नहीं पता।

I have received several notices about the Presidential Order of the 16th concerning suspension of the right to move the courts for enforcement of certain fundamental rights. I have adjournment motions on the subjects from Prof. Madhu Dandavate, Shri Indrajit Gupta, Dr. Ranan Sen, Shri C. K. Chandrappan, Shri Bhagandra Jha, Shri H. N. Mukerjee, Shri Jharkhanda Rai, Shri Madhu Limayee, Shri Viswanathan. Shri Samar Guha, Shri Shamim, Shri Sezhiyan and Shri Jyotirmoy Bosu.

SHRI INDRAJIT GUPTA: Are they all identical?

MR. SPEAKER: Almost.

SHRI INDRAJIT GUPTA: No, my notice is not. Do not give the impression that they are all identical. They are not.

PROF. MADHU DANDAVATE: Some say there is delay in issuing the Order.

SHRI INDRAJIT GUPTA: Some people are worried about delay in letting smugglers out of jail.

SHRI JYOTIRMOY BOSU: rose—

MR. SPEAKER: I am not calling you. Please sit down.

Several members have given notice of motions of disapproval of the Presidential Order, in these, the names of some members occur again, not all, but about seven of them. Then there are notices of a short duration discussion under Rule 193. Here the names of four occur but they are not common in the first list except one.

I have not been able to make up my mind as to which one should be taken up first. But adjournment motion comes first. Now I wonder if there

would be any adjournment motion on the Presidential Order. I will not have objection to discussion in any other form but not through an adjournment motion on the Order. I have tried to see the precedents.

PROF. MADHU DANDAVATE: You have misunderstood the working that I have given; failure of the Government to protect the fundamental rights guaranteed to the citizens by the Constitution as evidenced by the promulgation of the Order. This applies to all citizens. Tomorrow if I am arrested as a smuggler, I must have the right to go to the court.

श्री अटल बिहारी वाजपेयी : अध्यक्ष
ज, हम आप का मदद करना चाहते हैं किता
कैबले पर पहुंचने के लिये।

13 hrs.

SHRI JYOTIRMOY BOSU: Item No. 1. I will assist you.

MR. SPEAKER: You better say what submission you want to make, and not say "assist you." Well, shall I go from this side first or from the other side?—I will go according to this list. Mr. Dandavate. Be brief.

PROF. MADHU DANDAVATE: I will be very brief. In my Adjournment motion, I have specifically raised the issue of the failure of the Government to protect the fundamental rights guaranteed under the Constitution. (*Interruptions*) I am just mentioning in my Adjournment Motion that it is a failure of the Government to protect the fundamental rights of the citizens guaranteed by the Constitution, under articles 14, 21 and 32. In support of my adjournment motion, regarding the admissibility, I want to draw the attention of the House that when there was a discussion in this House on the 24th Constitution (Amendment) Bill, we were assured on the floor of the House that though the supremacy of Parliament is sought to be established through that

Bill, the articles concerning the Constitutional remedies will not be touched at all, and that in this country, every citizen will have the fullest freedom to go to the Supreme Court; that constitutional remedy will always be there. No less a person than the late Shri Kumaramangalam, while defending the Constitution (24th Amendment) Bill, had specifically stated that "we will not challenge the constitutional remedies offered by article 32."

Here, it is argued that this particular order relates only to the smugglers. But I want to bring to the notice of the House that out of political animus, Government may, through this order, bring in the name of any Member of the Opposition and allege that he is involved in smuggling and so he is detained—(Interruptions) Please listen to me; please listen to the voice of nationalism. Our contention is that if, out of political animosity, any Member of the Opposition is alleged as a smuggler or his involvement or his involvement in smuggling is alleged, deliberately as a vengeance, and if he wants to go to a court of law to establish that out of political animus the Government is taking action against him, what happens? That right is prevented. Through this order, the freedom is taken away. If tomorrow, my hon. friend Shri Bhogendra Jha is alleged to be in involvement in smuggling and he is detained, he will have no freedom. (Interruptions). I am not at all pleading for smugglers. But, out of political animus, if political are opponents are sought to be suppressed, then there is no freedom left. Therefore, I am moving this adjournment Motion and request that its admissibility should be considered. (Interruption).

MR. SPEAKER: Shri Indrajit Gupta.

SHRI VASANT SATHE (Akola): He is only raising a hypothetical issue. (Interruptions).

MR. SPEAKER: Order, please, I have called Shri Indrajit Gupta. Nothing will go on record. I have not called any of you.

(Interruptions).

There is no use shouting. It does not go on record. I have called Shri Indrajit Gupta... (Interruptions).

I had called Shri Indrajit Gupta; he is already on this legs. What he says will only go on record. What one Member says here or what the other Members say from there in reply—they are not going on record.

SHRI INDRAJIT GUPTA: The adjournment motion which I and some other Members have tabled reads as follows:

"The failure of the Government to take effective and comprehensive measures, legislative and otherwise, to penalise and suppress the smugglers and their political and other patrons and the inadequacy for this purpose of the Presidential Order of 16th November, 1974 under article 359 of the Constitution of India, despite its welcome intention to prevent the release of smugglers in detention by the Court."

The other night we were summoned at 9 o'clock by the Government and told orally what they proposed to do. All the Members present there had asked them categorically to give them the text of the order so that it could be studied and they could give their opinion. At that time the Ministers present said that they were sorry that they did not have a copy of the order with them and hence they could not show it to us. In those circumstances we had nothing to go by except what we were orally told. It is a fact and everybody knows it that the best laws with the best of intentions can always be misused by an irresponsible executive or administration. Therefore, I concede Mr. Dandavate's point; but I am not concerned only with Member

[Shri Indrajit Gupta]

of this House. I am aware of the fact that if one stretches it that far, the workers belonging to the Port and Dock Workers' union who are working at the ports through which some smuggling takes place—if there is a strike or agitation by those workers in some ports, some police commissioners or the inspectors of police or district magistrate can very well round up 15 or 20 leaders of the workers. They would not have a chance of going to the court to say that are not smugglers.

There is another fact which we cannot get round, namely, some of these smugglers who have been detained, among whom are some top smugglers, are being released by various courts on various technical grounds. I do not think anybody in this House would plead that these people should be let out. We have, therefore, to put forward some alternative. If we feel that this thing is absolutely inadmissible, some other suggestions should be made as to how to prevent the courts from releasing these people. I racked my brain and could not find any way at the moment. We are all united and the wordings of the adjournment motions agree on one point, namely, much more comprehensive legislative and other measures should be enacted, so that this whole smuggling operation in its entire gamut, including those political leaders, ministers, officials etc. who have patronised and protected these smugglers, without which it would not have been possible for smuggling to assume the dimensions that it has assumed—all that can be brought within the net. But that does not mean that on that round, because there is no such measure at present which I deplore, therefore these people should be allowed to be released. Where will we be after that. If people like Haji Mastan or Yusuf Patel or Bakhia are released by going to court....

AN HON. MEMBER: Shri Nityanand Kamungo also.

SHRI INDRAJIT GUPTA: I want him also to be brought within this.

SHRI SHYAMNANDAN MISHRA: People released by the Supreme Court have been re-arrested by the Government under the ordinary laws of the land and they have been kept under detention for 3 to 5 years. What prevents them from detaining Haji Mastan under those laws?

SHRI INDRAJIT GUPTA: Whenever Parliament in its wisdom has considered it necessary to put certain restrictions on the fundamental rights, it has done so with the support of all these friends. We have done it in the case of landlords, holders of property, ex-rulers, bank owners, coalmine owners etc. Does article 311 (2) (c) permit Central Government employees, who are dismissed from service arbitrarily on the ground that the President or the Governor is satisfied that in the interest of the security of the State it is not expedient to hold an enquiry, to go to court? No. Therefore, you have to judge each case having regard to its concrete implications. There is a certain category of people to whom the Presidential Order applies. That category, in the opinion of my part, does not deserve to have any fundamental right to carry on smuggling. But we have got a basic difference with the attitude of the Government in bringing forward this order. It has only one limited purpose of preventing the smugglers from being released by the courts of law. We want to move this adjournment motion because we consider this to be a completely inadequate measure. As far as it goes, it is all right. What happens after that? Here it is stated that this order will be in force for six months or up to the expiry of the emergency, which ever is earlier. What happens after that six months? These people can go to the court and they would be released. Or the implication would be that after every six months this order will be further extended by another six months and so on, indefinitely.

Our contention is that while it is necessary to see that these people are not released, and to that extent the effect of this order is welcome. I think this is totally inadequate and if it is left at that, there is ground for the country to suspect that they do not want the smugglers to be put up for trial, which we demand, so that everything can be brought out, all evidence can be brought up, their links exposed, they be made to answer questions, witnesses on their behalf be cross-examined, if they tell lies they be prosecuted for perjury and the whole ramifications be brought out. Because, it is obvious without high level protection and patronage these smugglers could never have done what they have been able to do, namely, running a parallel economy

It is not a moral question alone. Our entire foreign reserves have been depleted absolutely. That need not have happened if these over Rs. 500 crores per year, which these people had been allowed to smuggle into the country, which amount of foreign exchange our country has lost, had been stopped. But this Government does not bother about these things at all. Therefore, we demand that this measure must be supplemented with a clear-cut assurance from the Government that during this current session of Parliament, which is due to end on the 20th of December, they will come forward with more comprehensive legislative measures, and other measures, also, for example, for the acquisition of confiscated property of these smugglers. Please do not reply saying that it is all benami property; some of it is benami property; but there is a lot of property which is in their own names, which can be seized and confiscated. Why is it being left out?

Therefore, I say this is a very urgent matter. After all, when we move a motion for adjournment, it is, as stated definite matter of urgent importance. This is a definite matter of urgent importance when the whole country is exercised over this question of smuggling. It is sought to be stopped by a

certain order. What are the implications of that order, what are its limitations, what is its meaning, what is going to happen after this, we want to discuss all that, and that is why we have moved this adjournment motion here

As far as the limited purpose of that order is concerned, namely, to keep these two categories of people in jail at least for six months, I think that is a good move, some thing which I welcome. But if it is left at that, then it will make the government even more suspect in the eyes of the people. Therefore, I want a thorough discussion of this and, so, I request you to admit my adjournment motion

श्री मधु लिमय : इस आदेश के बारे में सब से सुनियारी सुवाल में उठाना चाहता हूँ। जिस आपतकालीन स्थिति के तहत यह आदेश जारी किया गया है उनके बारे में मेरे मित्र श्री इंद्रजीत गुप्त ने कुछ भी नहीं कहा है। लेकिन इसके पहले वह हम सउप बात में समा रहे है कि आपतकालीन स्थिति जो तीन दिनों के लिए घोषित की गई थी और पाकिस्तान के साथ जो लड़ ई हुई थी उसला देश के लड़ ई उनके सिवा ही में घोषित क गी य, उनके बाद पाकिस्तान के साथ मिलकर पुरान तया अन्य करार हो गए। मैं चाहता हूँ आप ईमानदारी से इस प्रश्न का जवाब दे कि आपतकालीन स्थिति को बनाए रखने का क्या औचित्य है ?

क्या आर्थिक सहाय और आर्थिक बठिआइयों को लेकर 352 धारा का इस्तेमाल किया जा सकता है ? अगला श्री इंद्रजीत गुप्त ने कहा है कि इन लोगों के साथ डल करने का और क्या तरीका है ? मैं कहता हूँ कि प्रपर्टी फ्रॉज को आन अमेंड काजिए, इन लोगों को प्रपर्टी जव्त कीजिए। लेकिन इन को प्रपर्टी को आप हाय नहीं लगाते। .. (अवधान) जेल में रखने की क्या जरूरत है ? आप प्रपर्टी छिन लेगे तो ये करेगे क्या ? असली जो

[श्री: मधु लमिये]

इन का मनो पावर है उस के बारे में आप कुछ नहीं करना चाहते हैं। अभी कुछ लोगों ने वयस में कुछ बातें कही। लेकिन इन मन्त्रियों को पता है कि 1966 से लगातार चाहे वह नेपोल बांडर का स्मरिग हो चाहे परिवर्तन विचारों का स्मरिग हो, इन का गार्तव्यिग के बारे में मं बोलना रहा है। अतः वा यह है, जैसा कि मैंने अपने इंटरव्यू में कहा है

"The total failure of the Government to ensure effective trial and conviction of smugglers and other economic offenders in an open court for fear of exposure of the link of bureaucrats and politicians with these smugglers and other economic offenders and the Government's wilful encroachment on the civil liberties as evidenced by the latest Presidential Notification under 359 which is bound to be misused and which is something unheard of in the history of Independent India "

तो सब में पहले आचार्यजी को जारी रखना यह अस्वीकार्य, मेलाफाइडी गेट है और दूसरे के चले हुए यह आदेश है। तस्करा की गार्तव्यिग के बारे में यह कहना चाहता है कि केवल कन्स्टम और पुलिस के अधिकारी ही नहीं बड़े बड़े राजस्व यान, गवर्नर, मंत्री और विधायक भी इस के साथ जुड़े हुए हैं। गवर्नर नियमित कानून के अन्तर्गत भी अभियोग लगा

(अध्यक्ष) : सार्वभौमिक अधिकार टोक रहे हैं क्या गवर्नर कानूनो ने परजरी को या नहीं? राज्यों का किस किस में 1973 में जजमेंट हुआ अभी तब दया नहीं फिटने दिया गया? आप के नयत पर उम्मीद हमें शक करने है, अगर आप ने गवर्नर वानतियों के खिलाफ केम क्रिया होता तो मैं मान लेता। लेकिन ऐसा उत नहीं है। कई एम एल एज, कई सर्जिगो वा सवाल है, भानु शर्मा याज्ञिक आपका लम्बई म्यानसिपल कारपोरेशन में

लीडर है वह कुनो मस्तान को एग्जिस्टेंट को गरी में टेलीफोन दिलाने का प्रयास करता था, एस के पाटिल ने भी किया था। मैं विधायकों का भी नाम ले सकता हूँ। सुकर नारायण बखिया का साजू कौन है? हरि भाई पांडे कांग्रेस पार्टी का इमन का एम एल ए है जिस के प्रचार में दादरा जा गई थी। आप मुझे सिद्धा रहे हैं? मैंने मुकेश्वर को यह अभियोग लगाया कि मार्ग के इन्वैस्टमेंट को जो लिस्ट है उन में रेना भाई पांडे और सुधानंद ट्रेडिंग कम्पनी के बनावुधन दो रमगन्धरी ने प्रमशः पंद्रह हजार और तीस हजार शेयर लिए हैं। इनका आप प्रोटेक्शन दते हैं, गिरफ्तार नहीं करते। सरकार को ताकत में मजोनी का शुद्धकरण करना चाहिये और इन सब लोगों के खिलाफ कार्रवाई करनी चाहिये।

सावधान का धारा 32 में एक मात्राण नागरिक को सोचे सजांच न्यायालय में जाने का अधिकार है। क्या दुनिया के किनो सावधान में यह अधिकार है? इनके एक राज्य क्रान्त में, अमराका और फा। का राज्य क्रान्त में। अब आरू राइट्स हूनुन राइट्स को चर्चा को गये है लेकिन हम सावधान को यह गर्मा है और मैं डा. अम्बेडकर का इसके लिए धन्यवाद दता हूँ कि उहां मूमाना नागरिक का भा। सधे सवाच्च न्यायालय में जा कर अपन मकसद देन का मौका दिया (इंटरपोज) आप शाश भूषण जा डिस्टेंशन का बान करत है। इस सदन में रहने का आपको अधिक अधिकार ही नहीं है। आप लोकतंत्र के विरोधी है। यह आपका अपनी एडमिशन है।

श्री ज्योतिर्मय बसु : चेन्न। पेट्री का इनेकशन कर्पेट प्रेडिक्शन को बजह से सट एसाइड हुआ और उनको गवर्नर बना दिया।

श्री मधु लमिये : राम लाल नारायण टेलीफोन एडवाइजर का कमेटी या मेम्बर बनता है। क्या बिना मंत्री जो की सिफारिश

के बनता है ? फिर सैर प्रोई का मेम्बर बन जाता है यह क्या था. इंद्र गुजराल को अनुमति के बिना बन सकता है ? उनकी शायदा में छः छः च फ मिनिस्टर और कई केन्द्रीय मंत्री गए थे और हम लोगों को आप कहते हैं। आप करिए इन लोगों के बिनाक कार्यवाही में आपका साथ देने के लिए तयार हूँ।

सब से पहले आप सबकेबान में सगोवन करके उतका आपकीका एएएन में जा जवन करें। उनको पावर का त. डे। यह सभ नाटक-क्या कर रहे हैं भिने सुना है काप्रेन के कुछ नेता दिना में पड़े गए स्मनवरी से मिन कर नेगोशरु करन के लिए गये। हो सकता है बड़े नेता से बिना पूछे गए है। लेकिन इस तरह कोबाने हावे है तो आता उनका छ मडूने रखार उन स रया रेकर चुनव लडो और बाद मे छ. डेगे, क्या यहा आप करना चाहते है ?

इसलिए इस एडजर्नमेंट मोशन का इजाजत दी जाए।

SHRI G. VISWANATHAN (Wandiwash). When the Presidential Order was proclaimed suspending articles 14, 21 and 22, we opposed it on two grounds. When we opposed the Presidential Order, some of the friends from Congress Benches asked us whether it would not help the smugglers to go out of the jail. I would say that we will certainly be with the Government, we will give them whole-hearted support if the Government bring forward, in this Session itself, a legislation to check smuggling, foreign exchange racket and other economic offences. Are they prepared to come forward with a legislation in this Session itself?

Secondly, they say, "why don't you trust us? We will use it only against smugglers and foreign exchange racketeers". But how are we to trust you? In this very House when Shri K. C.

Pant was piloting the MISA Bill, he gave us a solemn assurance that the MISA would be used only against anti-national elements and that it would never be used against political workers. But what is happening now? There are more than 3,000 political workers detained under MISA in West Bengal. Even Shri Atal Behari Vajpayee was arrested the other day under MISA. Are you not violating your assurance? When you behave in this fashion, how are we to trust you, how are we to believe you? When you suspend the Fundamental Rights, we have every doubt that you may use it against your political opponents, not only against the Opposition but also against your own members, against the members of the Congress Party, if they are not linked by the High Command. That is why we are opposed to it. You bring forward any measure, any legislation, to check smuggling, to detain the smugglers, to charge sheet them and give them whatever punishment you want under the law of the Constitution, we will support you, but not under MISA which you go on extending. You have issued the Presidential Order under Emergency. Where is the need for continuing the Emergency? We are already asking for the Emergency to be lifted and the Home Minister has given an assurance that he is examining whether the Emergency should be lifted. If the Emergency is lifted, under what Act will you detain them? Hence there is need for a special legislation to be enacted to check smuggling and other economic offence. It cannot be done under MISA or other Presidential Orders.

There is another difficulty also. Under article 359, suspension of the Fundamental Rights can be done by the President in respect of the entire country or he can restrict it to a particular territory of India. But the President cannot suspend the Fundamental Rights of a particular class of citizens. This is a legal difficulty. I do not know how the Law Ministry is going to explain away this difficulty.

[Shri G. Viswanathan].

Article 359(2) says:

"An order made as aforesaid may extend to the whole or any part of the territory of India."

But this can be done only for a part of the territory or the entire country. On the other hand, it cannot be restricted to a particular class of citizens.

Art 359(1) says:

"Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of such of that rights conferred by Part III..."

It applies to the entire citizens of the country. It cannot be restricted to a particular class of persons. That is why it may be challenged. I want the Law Minister to explain this.

SHRI SAMAR GUHA (Contai):
The Government media of mass communication is trying to create an impression in the people that the Opposition Parties are opposed to either penalise or punish the smugglers. But what has happened today? The jails have been converted as good rest-houses for the smugglers who are being luxuriously treated as royal guests of the government. We are opposed to this treatment given out to these smugglers as royal guests of the government.

I want to draw your attention to the fact that this government is terribly afraid of punishing or penalising these criminals according to the ordinary laws of the land. If there is any shortfall or lacuna in these ordinary laws, they can be amended as it has been done many times before in the case of Bank Nationalisation (Amendment) Bill, the Constitution (Amendment) Bill and recently, in the case of Constitution (Amendment) Bill in regard to Sikkim which were all brought before this House with a notice of only a day or two and most of them were passed unanimously. So, if there are any shortcomings in the ordinary laws, they can be amended in

a day or two and we are all agreeable to it but these criminals should be brought and tried before the court according to the ordinary law that is prevalent in the country.

But the point is that the Government is afraid to prosecute them and bring these cases before the open court because if they are brought before the open court, during cross-examination, things will come out and these smugglers will make an exposure of the connections of the Central Ministers, State Ministers and many MPs, many Members of the Assembly and many high persons in the Congress Party. That is why they do not want to prosecute them and bring them in the open court. This is an attempt to subvert the whole constitution itself. The Fundamental Rights are the major plank, I would say, they are the fundamental plank of the democratic principle of the constitution. This is an attempt to subvert the whole democracy.

I would further say that this order is also unconstitutional. For what purpose a proclamation of emergency can be made? Art. 352 visualises three cases: (1) threat to the security of India or any part of the territory, (2) external aggression and (3) internal disturbance. This Article is followed by Art 359 wherein power has been given to the President to make an order suspending the enforcement of rights conferred by Part III. So, this can be done only, where there is an external threat to the country and in no other case can there be a suspension of the fundamental rights. I want to draw your attention that this kind of smugglers' offence is a type of an economic offence. Article 360 of the Constitution implies the economic offences. Emergency is not according to Article 360 of the Constitution. Article 360 visualises economic offences. That is to say, this is only in case of economic offences. This power is not given to the President. I say this because Art. 359 precedes Article 360. This means, Art. 359 is related only to the proce-

mation, if it is made according to Article 352, which relates only to the case of external aggression. But Article 360 is preceded by Art. 359. Article 360 implies economic offences. This is in case of threat to economic stability, credit failure, etc. That is to say, Article 360 of the Constitution visualises a situation where a proclamation can be made if the economic situation of the country is threatened, financial stability is threatened and credit facility is threatened and so on. That means, due to some kind of economic offence. Article 359 is not preceded by Article 360; Article 359 precedes Article 360. Therefore what I say is that this step is unconstitutional. The President has no such right. This provision has been wrongly interpreted. He has been wrongly advised. He has no right to suspend the fundamental principles. This proclamation is made not according to Art. 360 but according to Art. 352.

This is *ultra vires* of the Constitution. They have no right to advise President to issue these orders. If there was proclamation according to Art. 360, visualising to take measures against the economic offences, even in that case, what I say is, this Constitution has not given even right to the President to suspend fundamental principles, fundamental rights. This is a very important point that I am making, Sir. They have advised the President to do something which is against the Constitution. The provision is made for completely different purpose. That purpose is, the country's sovereignty being threatened. In that case, for that purpose, the fundamental principles can be suspended for no other purpose and no other case, not even for economic offences. Therefore what I say is, this order is *ultra vires* of the Constitution. They only want to continue the emergency which was opposed by all of us. The Home Minister himself said in the meeting of the Consultative Committee on the 4th that Government is seriously considering the question of lifting national emergency. Now in an

indirect way they are trying to continue the emergency for the next 6 months. Under the guise and under the umbrella of national emergency they are curbing the fundamental rights, and for that matter, the fundamental principles of Indian democracy and Indian Constitution. This is my respectful submission. Thank you.

SHRI S. M. BANERJEE (Kanpur)
Kindly see that some of the submissions do not go to the Press that will encourage the smugglers. You should screen it before sending it to the Press.

श्री एस० ए० शर्मा (श्रीनगर) : जनाब स्पीकर साहब मे दो बुनियादी बातों की तरफ आप की तबज्जह दिलाना चाहता हु । एक बात तो यह कि यह कोई ऐसी बात नहीं है कि फौरन ही हुकमरान जमायत के मेबररान के नोटिस में आई हो कि कल, परसों या 8 दिन पहले से स्मगलिंग शुरू हो गया है इस लिए इन की परेशानी और ध्वराहट को जाइज समझा जाए ।

जनाब स्पीकर साहब यह घबराहटले 27 साल से चल रहा है । अगर इस के खिलाफ कभी आवाज उठी है तो वहा से नहीं उठती बल्कि वहाँ से उठती है । दूसरी बात यह कि स्मगलिंग के घरे मे दो पार्टीज है । एक स्मगलर दूसरी जो स्मगलिंग भलाऊ करता है । वह भी उतना ही दोशी है जितना कि स्मगल करने वाला । स्मगलरों से खुद बड़ा है कि यह कारोबार हम एक दिन के लिए भी जारी नहीं रख सकते अगर हमे आला से आला सरकारों का कोऑपरेशन शामिल न होती । आप ने स्मगलरों को गिरफ्तार किया । सवाल यह है कि उन के दूसरे एवाफिन्स जिन की वजह से कारोबार तरकीबर रहा था वह कहाँ है ? उन के ऊपर यह कानून क्यों लागू नहीं होता ।

[श्री: एस० ए० शर्मा:]

हमारे इसाफ की बुनियाद जो प्रिन्सिपल आफ जूस्टिस यूजेन है वह कुछ साल है जिन पर कायम है। अगर एक आदमी खुने बाजार में कल करना है और इस देश में रिठले 100 साल में सब से बड़ा क्राइम गांधी जी का कल हुआ, उनके कान का हजारा आदामा ने देखा और जिसने कल किया उन आदमी को मुकम्मल कानून का महारा नेने की इजाजत दी गई ताकि कोर्ट में गुजरे और उनका वाद सजा हो। दूसरी बात अगर कोई शख्स खुद अदालत में जा कर कता है कि मैंने कन किया है सिर्फ उसकी शहदत पर ही उनको सजा नहीं दी जा सकती जब तक कि काराउरटरी ऐंडीडेम न हो। इस वक्त आप ने म्मासं कनिए यह कानून बनाया। कन आर होडंस पर लागू करेगे, पर गो आप कह देग कि जो वजन का दुगमन सरगमीं करने ने उन पर यह लागू होगा और फिर धीरे धीरे इनका दायरा शादद सिपामी जातो पर भी हो। हम उन घनर की निशानदेडी कर रहे है। हम जानें है कि स्मगलर को यह धारा कनेकी जाजा नहो मिननी चाहि। हम मान सबत है कि यह सरकार नेरु है, लेकिन डेनक्लोडक प्रामस म यह म्माकन है कि एन गलन विस्म को सरकार वरसर इस्तदार आए। हम उमूल की बात कर रहे हैं। कानून क बात नहीं कर रहे हैं। बुनियादी बात है स्मगलरो को रेस्ट करने क बाद आप ने स्मगलर को रोकने क लिए और क्या किया। कोर्ट में क्या फैसला दिए जिसके लिए आप यह आर्डर लाए। कोर्टस न कहा आप ने जितने ह् जामान स्मगलर्स पर लागू इनका ताल्लूक, प्रोक्सिमिटेकनेशन नहीं है। इसका मतलब यह है कि अगर एक स्मगलर ने 10 साल पहले कोइ जूम किया ता 10 साल तक आप कहा रहे? पहले उस में शरीर रहे और क्लिसला करते है कि इसको गिरफ्तार करेग। अगर इसी तरह से कोर्ट के हर आर्डर को बाईपास करके, कमी प्रीसीडेणियल आर्डर, से, कमी पोल ऐक्सपोजेज पर आर्डर निकाल कर, ओ फिद कोर्टस की जरूरत क्या है? आप को

अपने कोर्टस इस पर विरवास नहो है। जो चीज आप को परेशान करती है कि स्मगलर छूट न जायें तो यह बना क्या जम नही समझ सकता, क्या वह नहीं सोचता है। फिर आप अपने हाथ में यह अख्तियार क्यों लेने है। और कौन जाच करेगा कि कौन स्मगलर है?

जगठीक है कि दो तो स्मगलरो के बारे में आप के पान शहादा है। लिनन 6 महीने, साल भर या दो मान बात जब उन्हें यह कह दिया जाएगा वह अदालत में जाए और अगर कोर्टस ने फिर फैसला दिया कि उनको गिरफ्तारी, नज खन्दी नाजायज थी तब क्या करे। आप? बुनियादी बात यह है कि आप ने वर गन को ऐंस्टे बिलिटी दी है। क्या यह हकफत नहो है कि एन चीफ मिनिस्टर आफ ए स्टेट क खिताफ बाकायदा इन्कायरी वमीशन, बैडा, उस ने कहा इमने चार बार काउंसिलिंग के लिए है। कमीशन की रिपोर्ट जिन ताराख का आधी उस ताराख का एक महान क अन्दर आप ने उसको कांग्रेस को टिकट दिया और पार्लियामेंट के लिए इमूशन लडयाया। यह अलग सवाल है कि उसको लागू नहरा दिया। हम आप कने। नियती पर तब शुभहा नहो करेग जब आप बहुत से एम० पी० और मिनिस्टर जिन पर इल्जाम हैं उनका भी गिरफ्तार करेगे। हिन्दुस्तान क सब से बडे स्मगलर हाजी मस्तान से भरी मुलाकात कित हालान में हुई। वह कांग्रेस पार्टी क प्लेटफाम पर बैठे हुए थे मिटीजना कमेटी का जलना था, चूकि में भी मम्बर था इसलिए म भी वहा उन जलसे में मौजूद था। में ने जब तकरीर की तो स्टेंज पर बैठे हुए सब लाग के गले में हार डाले गए। पहले मेरे, उसके बाद कांग्रेस के प्रेजिडेंट के और तीसरा हार हाजी मस्तान के गले में डाला गया। उसने मुझ से खुद कहा है जो अखबारो ने छपा है कि मिनिस्टर्स रात में मुझे से पैस लेने है। कौन दावा कर सकता है जिसकी पैसा नहीं किया। आप में से बहुत से लोग, जो इस वक्त चिल्ला रहे हैं, कौन जानता है उसका पैसा न जाए हों?

“इती न बड़ा पाकिये दामा की हिकायत
दामन को जरा देख, जरा बडे कवा देखे !”

[شری ایس۔ اے۔ شمیم (سرینگر) -
جناب سٹیٹو صاحب - میں دو
بنیادی باتوں کی طرف آپکی توجہ
دلانا چاہتا ہوں۔ ایک بات تو یہ ہے
کہ یہ کوئی ایسی بات نہیں ہے کہ
فوراً ہی حکمران جماعت کے ممبران
نے نوٹس میں آئی ہو کہ کل برسوں
یا آٹھ دن پہلے سے سنگلنگ شروع ہو
گیا ہے۔ اس لئے انکی پویشانی اور
کھبراعت کو جائز سمجھا جائے۔

جناب سٹیٹو صاحب یہ دہندا
پچھلے 27 سال سے چل رہا ہے۔ اگر
اس کے خلاف کبھی آواز اٹھی ہے تو
وہاں سے نہیں اٹھتی بلکہ یہاں سے
اٹھتی ہے۔ دوسری بات یہ ہے کہ
سنگلنگ نے دہندے میں دو پارتیز
ہیں۔ ایک سنگلو دوسرا جو سنگلنگ
ایلاچ کرتا ہے۔ وہ بی بی اننا ہی
دوشی ہے چنانکہ سنگل کرنے والا۔
سنگلوں نے خون کہا ہے یہ کاروبار ہم
ایک دن کے لئے بھی جاری
نہیں رکھ سکتے اگر ہمیں اعلیٰ سے
اعلیٰ سرکاری افسران کا کوآپویشن شامل
نہ ہوتا۔ آپ نے سنگلوں کو گرفتار
کہا۔ سوال یہ ہے کہ دوسرے اکھلسیٹو
جن کی وجہ سے کاروبار ترقی کر رہا
تھا۔ وہ کہاں ہیں؟ ان کے اوپر قانون
کہوں نہیں لگو ہونا؟

ہمارے اصف کی بلیاد جو پرنسپل
آف جوسٹیس ہیں وہ کچھ اصل
میں جن پر کیا ہے اگر ایک آدمی
کیلے راز میں قتل کرنا ہے اور اس دیہی
میں پچھلے سو سال کیلے سب سے بڑا
فواد گاندھی جی کا قتل ہوا ان کے
قتل کو ہزاروں آدمیوں نے دیکھا اور
جس نے قتل کیا اس آدمی کو مکمل
قانون کا سہارا لینے کی اجازت دی
گئی تاکہ کورٹس سے گزریں اور اسکے
بند نہ ہو۔ دوسری بات اگر کوئی
شخص خود عدالت میں جا کر کہتا
ہے کہ میں نے قتل کیا ہے۔ صرف
اسکی شہادت پر ہی اسکو سزا نہیں
دی جا سکتی۔ چہ نک کہ کوریہ
ریٹری اوڈیلنس نہ ہو۔ اس وقت
آپے سنگلوں کے لئے یہ قانون بنایا۔ کل
آپ ہورڈگ پر لاگو کریں گے۔ پرسوں
آپ کہہ دینگے کہ جو وطن کے دشمن
سرگرمی کرتے ہیں ان پر یہ لاگو ہوگا۔
اور پھر دیکھتے دیکھتے اس کا دائرہ
شاید سیاسی جماعتوں پر ہی ہو۔
ہم اس خطرو کی نشان دہی کر
رہے ہیں۔ ہم مانتے ہیں۔ کہ
سنگلوں کے لئے دہندا کرنے کی اجازت
نہیں ملنی چاہے ہم مان سکتے
ہیں کہ یہ سرکار نیک ہے۔ لیکن
ڈیٹرکریٹک پروسیس میں یہ ممکن
ہے کہ ایک غلط قسم کی سرکار برسر
قتدار آئے۔ ہم اصول کی بات کر رہے
ہیں قانون کی بات نہیں کر رہے

ہیں - یہاں ہی رہتے تھے کہ سگلو کو
لوہست کرنے کے بعد آپ نے سگلو
کو روکنے کے لئے کہا تھا - کورٹس
نے کہ فیصلے دیکھیں جس کے لئے آپ
یہ آکر لائے؟ کورٹس نے کہا آپ نے
حتمی الزامات سگلو پر لگائے ان کا
تعلق ایگزیکسٹو پاور نہیں
ہے اس کا مطلب یہ ہے - کہ اگر ایک
سگلو نے دس سال پہلے کوئی جرم
کیا تو دس سال تک آپ کہاں رہے؟
پہلے اسمبلی شویک رہے - اور آپ
فیصلہ کرتے ہیں کہ اسکو گرفتار
کرینگے - اگر اسی طرح سے کورٹ کے
ہر آرڈر کو ہائی پاس کرے دہی
پرینڈس سل آرڈر ہے، کبھی پول ایکسٹنڈ
پر آرڈر نکال کر ہے تو پھر کورٹس کی
ضرورت کیا ہے؟ آپکو اپنے کورٹس پر
وشواس نہیں ہے - جہاں چھوڑ آپکو
پریشان کرتی ہے کہ سگلو چھوڑ نہ
جائیں تو یہ بات کہا چچ نہیں
سمجھ سکتا کہ وہ نہیں سوچتے ہے؟
پھر آپ اپنے ساتھ میں یہ اظہار کہوں
لیکتے ہوں؟ اور کون چنچ کرے گا؟
کہ کون سگلو ہے؟

یہ تھیک ہے کہ دو تین سگلوں کے
بارے میں آپکو پاس شہادت ہے -
لیکن چھ مہینے پہلے - سال بھر یا
دو سال کے بعد جب انہوں نے حق
دیا جائے گا - وہ عدالت میں جائیں
اور اگر کورٹ نے پھر فیصلہ دیا کہ ان
کی گرفتاری نظام عدلیہ ناجائز تھی
تب کہا کرینگے آپ؟ بلکہ دی بات
یہ ہے کہ آپ نے کرپشن
دیکھ سکتی تھی - کہا حقیقت
نہیں ہے کہ ایک چیف منسٹر آف

لے سگلو کے خلاف ہائیڈرو انکوئری
کمیشن ہوگا - اس نے کہا اس نے
چار کروڑ روپے ایڈوانس لئے ہیں -
کمیشن کی رپورٹ جس تاریخ کو آئی
اس تاریخ کے ایک مہینے کے اندر آپ
نے اسکو کانگریس کا ٹکٹ دیا - اور
پارلیمنٹ کے لئے الیکشن لڑوایا - یہ
الگ سوال ہے کہ اسکو لوگوں نے ہرا
دیا - ہم آپکی ٹھیک نیتی پر سب
شہرہ نہیں کرینگے جب آپ بہت
سے ایم - پی - اور منسٹرز جن پر
الزام ہیں انکو بھی گرفتار کرینگے -
ہندوستان کے سب سے بڑے سگلو
حاجی مستان سے مدہی ملاقات
کن حالات میں ہوئی؟ وہ کانگریس
پارٹی کے پلیٹ فارم پر ہوتے ہوئے
تھے شہری زنگی کا جسے تھا
چونکہ میں بھی ممبر تھا اسلئے
میں بھی وہاں اس اجلاس میں
موجود تھا - میں نے جب تقریر کی
تو سٹیج پر ہوتے ہوئے سب
لوگوں نے گلے میں ہار ڈالے گئے - پہلے
مدہی اس کے بعد کانگریس کے
پریزیڈنٹ کے اور تیسوا ہاں حاجی
مستان کے گلے میں ڈالا گیا - اس
نے مجھ سے خود کہا، جو اخباروں
میں چھپا ہے کہ منسٹر رات
میں مجھ سے پیسے لیتے ہیں -
کون دعویٰ کر سکتا ہے جس کو
پیسے نہیں دیا - آپ میں سے
بہت سے لوگ جہاں اسوقت چلا رہے
ہوں کون جانتا ہے اسکا پیسہ نہ
کہائے ہوں -

ادتی نہ بڑھا پاکی دامن کی
حقیقت
دامن کو ذرا دیکھو ذرا بند تھا دیکھو -

SHRI SEZHIYAN: Mr. Speaker, the adjournment motion given by me reads as follows:—

“Failure of the Government to punish smugglers and eradicate anti-social activities by stringent statutory measures which resulted in the issue of the Presidential Order, dated 16th November, 1974 in depriving the citizens of the fundamental rights to approach the courts on charges against them.”

Therefore, the first from this side is that action should be taken against the smugglers. Smuggling and economic offences should be eradicated. Smugglers and antisocial elements should be punished in an exemplary way. There can be no two opinions on this score. But, Sir, it is not as if the Government lacks the statutory powers; it is not as if the Government lacks the executive apparatus; it is only the Government lacks the executive will to implement the statutory provisions. Therefore, even if they feel that the present provisions are not enough, in this House, we on this side are ready to support any stringent legal provisions required by Government. If they want more statutory provisions, we are ready to arm the Government with more statutory provisions. But, instead of coming with more statutory provisions and instead of implementing the provisions that we already have, now they are trying to apply Art. 359 and prevent a citizen from going to the court. It is not only the prevention of a citizen to approach the court but it is a prevention of the courts themselves to interpret the Constitution and the legal measures that have been taken by Government.

Therefore, Sir, while we oppose the blanket way in which the constitutional and fundamental rights are being usurped or are being suspended by this Government and while there can be

no two opinion that smuggling should be dealt with sternly, the way in which the Government is coming has given a suspicion that it will go the same way in which MISA, D.I.R. and other provisions which given on an emergency basis are being utilised when there is no emergency.

The other side may say that while we should oppose the smugglers from being held, why should we support the smugglers from getting free? Nobody on this side want any smuggler to be left free. Take action in the most severe way possible. But, what prevents an Executive or what prevents an Officer from clamping down the innocent under the blanket powers given? That is not illusory; it is not day dreaming. It is not as if I am saying this on behalf of anyone.

I can give you an instance that happened in Madras. There one of the customs officers came to me and gave a report. He said that one of the informers who was giving regular information to the Government has been caught under MISA. What happened was this. He has been reporting cases expecting 10 per cent of the confiscated smuggled goods and the officers to whom he reported, inspector or otherwise, got about 2 per cent subject to a maximum. But after some time, I do not know for what reason, this informer changed his loyalty and started giving information to a second set of officers. After MISA came, the first set of officers nabbed this chap under MISA and put him in prison. The second set of officers came to me. I asked them how this could be explained because he is not a smuggler but he has been helping the department in so many cases. They said that this could never go to court. Probably the court would let him out and then he may not be alive when he came out. Because one of the worst crimes in the smuggling world is if anybody betrays them. Then his life will be out.

[Shri Sezhayan]

Therefore it can be misused, and it has been misused. That is why we feel that the present Order is not only unconstitutional, I feel that art 359, as rightly pointed out by my colleague, Shri Vishwanathan, can be enforced throughout the country and it can be enforced in a part of the territory but you cannot classify, divide the citizens into two classes. Article 359 does not allow it.

You were good enough to say that in matters concerning *vires*, the Chair is helpless and it can be tested in the court. But while you cannot give a ruling, you can point out if there is any unconstitutionality because while *Shakdher and Kaul* say

'It is an accepted practice that the Speaker of the Lok Sabha does not give any ruling on points of order raised whether a Bill is constitutionally within the legislative competence of the House.

they say afterwards

"There have, however, been occasions when the Speaker leaving the ultimate decision on the matter to the House has expressed his own views on the *ultra vires* aspect

So if there is any unconstitutionality you are empowered to draw the attention of the House. You cannot give a ruling. I do not want you to, but when there is an unconstitutionality you can pay your attention to it and invite the attention of the House and others to it.

Therefore, my plea is that the Presidential Order is a very draconian piece reprehensible and anti-democratic. It is likely to be misused, as MISA and other pieces of legislation have been misused. Therefore, I vehemently oppose it as unconstitutional, undemocratic and indecent for any democracy to have.

SHRI JYOTIRMOY BOSU If you read article 14, 21 and 22, (4) (5), (6) and (7) and also article 359, you will see that even the pending proceedings cannot proceed any further--those should go back. What happens? First of all you deprive a man as far as equality before the law is concerned (article 14). We are a democratic country. Then life can be taken off a person without going through the established procedures of law. That means a police inspector or an Additional Secretary in the Home Ministry can pull out a revolver and shoot Jyotirmoy Bosu and say 'I have acted under art 359. So, there will be no inquiry, no trial, nothing will happen.' Maybe I criticise somebody on the floor of the House and the Intelligence Bureau decides that you must dispense with him. So that can be done.

We are in a democratic country. Do not lose sight of that. That is the garb you wear in the world, in international politics. But here no grounds to be given, no disclosure of facts to be made. Let us see what they are capable of doing.

SHRI VAYALAR RAVI (Chirayinkil) Is it a speech?

SHRI JYOTIRMOY BOSU I will tell you what happened in Kerala House on Friday till 7:30 PM just before we got the telephone call from Shri Raghuramaiah. That also I can disclose. The Home Minister came. Shri D. P. Dhar came. Closed-door meetings took place. The Muslim League had to be tackled. I will tell you all that.

SHRI VAYALAR RAVI Shri Nambudiripad offered to release the smuggler Abdullah provided the League joined CPI(M). That is why he is saying all this.

SHRI JYOTIRMOY BOSU My hon friend, Shri Vayalar Ravi, will realise in course of time where he is putting his neck into. He will realise it. Mr Dinesh Singh is sitting in front of him.

Now what has the Government done? In May, 1971, the Government had said that MISA would be used to rope in only anti-nationals, foreign spies, etc. According to the figures that I have—they are up to the 30th June, and after that, they have done a lot—the total number of detenus comes to 16,825. Out of that, if I go into the real examination of the figures, I assure you that not less 15,000 are political opponents of the ruling Congress party.

Then, in the State where we have defeated Mrs Indira Gandhi in the 1971 Lok Sabha elections—the State of West Bengal—and that is the only State in the country where Mrs. Gandhi was defeated in the Lok Sabha elections—you count the number of seats and votes and you will see it—the CPM alone, out of the 15,000, has contributed 70 per cent, whereas the population of West Bengal does not exceed nine per cent of the country's total population. That is the past performance. (*Interruptions*). Do not get agitated. There is another aspect. On a particular date, when the total number of detenus was 3,800 odd, the number from West Bengal alone came to 3,200. When you come to smuggling and evasion and foreign exchange racketeers, out of 16,000 up to the 30th June, the total figure roped in is 474. Out of the total population of 550 million people in the whole country, you have been able to rope in 474. In West Bengal it is industrially and economically very backward—its quota is 37. In the matter of food and economic offences, it is 7½ per cent. but when it is political, it is 75 per cent. Mr. D. P. Chattopadhyaya knows what I am talking about.

Mr. Gokhale is here. I do not know why he left his job as a judge and why he has come here in the present set-up. (*Interruptions*) He has invited us to dinner some day. He is feeling very hot. I do not know how it will work.

SHRI VAYALAR RAVI. This is only about the admissibility of the
2482 L. S.—9

Adjournment Motion. He is arguing the case. We can agree to a debate, but not now in this way.

SHRI N. K. P. SALVE (Betul). Sir, let us follow some rules of procedure. This is an extremely new innovation which we have never had. My submission is, unless there is a formal Adjournment Motion admitted by you, we cannot go on like this. Is this not a regular debate that is going on? If that is what you have admitted and if that is what you want, it is a different story. We do not know what is happening. I am waiting because there is a motion in my name; otherwise I would have gone home. There must be some time-limit set for this matter. I beg of you to have some rules, some procedures in this matter. Otherwise, it will go on *ad infinitum, ad nauseam*.

SHRI JYOTIRMOY BOSU: I am asking this question. Mr. Gokhale, you champion of the Indian Constitution in the present set-up, would tell me, "Did not the Supreme Court hold that Parliament has full freedom to amend the Constitution?" But, at the same time, tell us kindly in clear language, "can it alter the basic structure of the Constitution?" The basic structure, as described in the preamble to the Constitution—I do not want to read it and take the time of the House—is to secure justice, liberty and equality for all the Indian citizens.

14 hrs

An Ordinance or order cannot violate the same. There is a clear judgement in this regard in the case of *Keshavan versus Ananta Barati*. According to the constitution the preferred freedom of life and liberty cannot be touched; article 19 is there, you cannot touch them. But the other items under article 19, non-preferred items relating to property, etc.—you are not touching them because if you touch them your patron saints will be in difficulties. This Order covers preferred items of life and liberty under articles 14, 21 and 22 and it is an outrage on

[Shri Jyotirmoy Bosu]

the basic freedom guaranteed under the Constitution; they are inviolate and inviolable. Can the Presidential order be above the Constitution? Can article 359 be used to destroy the Constitution of which it is a part? I have got here a quotation of what Mr. Reddy said on 4 November, ten days before the session. He says: "with subsequent talks between the delegations of the two countries in September 1974 and the resumption of telecommunication links and travel facilities between the two countries with effect from 15 October 1974 the overall situation has improved and it is proposed to consider whether the question of revocation of the emergency in the perspective of the current situation may be taken up for review." This is what was said by Mr. Brahmamanda Reddy ten days before. But now he comes forward with this Order which completely negates human liberties and freedom in this country. Laws are already there; the Foreign Exchange Regulation Act, Sea Customs Act and so many other Acts under which imprisonment upto seven years could be given. I want to know: in how many cases you have prosecuted the smugglers and foreign exchange racketeers like Union Carbide Indian Tobacco and gramophone company who were caught red handed while under-invoicing and over-invoicing. In how many cases were you able to get them punished? If your powers are not sufficient under those Acts strengthen them and we shall support you. We want to see the affidavits and evidence that had come during the course of the trials of these cases; I am told a lot of skeletons are coming out of the cupboard. That is why Mr. Reddy had to summon a special meeting through Mr. Raghu Ramaiah because the next day the cases will reveal that Coolie Mastan had paid Rs. 20 lakhs to so and so Congressman and Bhakia had been photographed with some Minister in Daman or whatever it is, and you did not want that to happen. Why are these people being released?

Why are they ineffective? Because the Government departments have no real mind to tackle the broad basic things; they do not want to hit at the root; whatever they do now is only a gimmick because I am told that the involvement of topmost people in power, in politics in this is very significant. I do not wish to disclose much but when you hear more about the importation of woollen rags or the big gold smuggling cases, I can tell you that you will sit up and see what is happening at the topmost level in the country.

I oppose this Order; that is my Party's line. Nobody should be detailed without trial because when you give this Government any power, it is only used to further their selfish party ends and party interests; they do not bother about anything else. So, my adjournment motion should be taken up.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, मैंने नोटिस दिया है।

अध्यक्ष महोदय : इस पर नहीं।

श्री अटल बिहारी वाजपेयी : इस पर नहीं तो आप सुन तो सकते हैं।

अध्यक्ष महोदय : अब यह तो बड़ी बात है कि चर्चा कर के भी आप कहें कि अब भी कुछ कहना है। चर्चा का भी एक नया तरीका है निकाल लिया कि एडमिनिस्ट्रिविटी पर करना है या यह करना है, वह करना है, मैंने तो शुरू में कह दिया है था कि डिस्कशन तो इस में डिबाई नहीं है। आप बड़ी खुशी से इस पर डिस्कशन कीजिये लेकिन मैंने यह कहा था कि इस तरह किसी आर्डिनेंस या आर्डर पर एडजर्नमेंट मोशन कभी नहीं आया।

We have never at any time had any adjournment motion over an ordinance. You can come with a disapproval motion. I do not want to deny you a discussion. You have already taken that much time just to plead the admissibility of the motion. Long speeches have been made and all sorts of matters have been introduced. I do not accept these adjournment motions, but you can have the discussion, notice of which has already been given by Shri Bosu, Shri Vajpayee and others.

SHRI INDRAJIT GUPTA: Notices of discussion cannot be tabled until the order has been laid on the Table.

MR. SPEAKER: The order is laid on the Table today. We took about 2 hours discussing the admissibility. That is something very unusual. Now, the notice is already there and we will have a discussion. We will fix the time tomorrow evening when the Business Advisory Committee meets.

श्री अटल बिहारी वाजपेयी : एडजर्नमेंट मोशन के द्वारा हम सरकार को संशंकर करना चाहते हैं। वह दूसरे मोशन में कैसे होगा ?

अध्यक्ष महोदय : वह भी आप का ही दिया हुआ है डिमअप्रूवल का ।

श्री अटल बिहारी वाजपेयी : डिमअप्रूवल तो अलग चीज है। वह तो हम दे ही सकते हैं।

MR. SPEAKER: I will permit a discussion.

श्री अटल बिहारी वाजपेयी : अध्यक्ष महोदय, इस आदेश के खिलाफ अपना रोष प्रकट करने के लिये हम सदन से बाहर जाते हैं। यह संविधान की हत्या है। अदालत के दरवाजे बन्द कर दिये गये हैं। आप एक मिनट मुझे दीजिये। गृह मंत्री कह रहे हैं स्मगलर्स छोड़े जा रहे हैं

अध्यक्ष महोदय : डिस्कशन होगा, उम में सब कुछ आएगा ।

श्री अटल बिहारी वाजपेयी : आया तो बाद में। अभी हम जो मामला उठा रहे हैं उस के लिये मुझे दो मिनट दीजिये ।

MR. SPEAKER: You have already taken 2 hours. You have given to me three motions. It means you yourself have given the alternatives. Adjournment motion is one. Then there is a second motion by Shri Bosu, Shri Vajpayee etc. The third motion is again by Shri Vajpayee. We cannot have an adjournment motion on a notification or ordinance. I will give you a chance over the second one, which is also yours.

SHRI INDRAJIT GUPTA: The whole motion will have to be repeated when it is laid on the Table of the House.

श्री अटल बिहारी वाजपेयी : अध्यक्ष जी, एक ही बात गृह मंत्री जी कह रहे हैं कि स्मगलर्स को छोड़ा जा रहा है, इस लिये हम ने इस आदेश को निकाला है। अब अगर मीसा के अन्तर्गत जो डिटेन्शन का प्राउण्ड है वह बंग है, इन्डेफिनेट है, तो किसी को भी छोड़ा जा सकता है। जो डिटेनिंग अर्थो-टीज हैं उन से क्यों नहीं पूछा जाता है कि स्मगलर्स के खिलाफ बंग और इन्डेफिनेट प्राउण्ड्स क्यों दे रहे हैं। सरकार चाहे तो प्राउण्ड्स डिफिनेट बना सकती है, निश्चित बना सकती है, लेकिन सरकार चाहती नहीं है कि स्मगलर्स को अदालत में लाया जाय। इसी लिए यह आदेश निकाला गया है। हम इस आदेश के खिलाफ अपना गुस्सा प्रकट कर रहे हैं और हम सदन के बाहर जा रहे हैं। (व्यवधान)

(Shri Atal Bihari Vajpayee and some hon. Members then left the House).

SHRI INDRAJIT GUPTA: If you are pleased to admit it either under rule 184 or 193, then we can discuss it.

MR. SPEAKER: I will take it as a motion under either of those rules, but not as an adjournment motion. I do not think there has been any adjournment motion on the orders or notifications or on the papers laid.

SHRI INDRAJIT GUPTA: The House should be given the earliest opportunity to discuss it.

MR. SPEAKER: That is why tomorrow I have called a meeting of the BAC, where you can take it up.

This order was circulated today. So, this may be repeated. It is a technical thing; it would not make any difference.

SHRI INDRAJIT GUPTA: It will make a difference.

MR. SPEAKER: Coming to the question of privileges, it is pending for quite some time. It can wait for some more time because it is repeated every day. Then, there is the Calling Attention Notice. Should we take it up now?

SOME HON. MEMBERS: After lunch.

MR. SPEAKER: All right. Now the papers to be laid on the Table.

14.14 hrs

PAPERS LAID ON THE TABLE

REPORTS OF THE COMPTROLLER AND AUDITOR GENERAL OF INDIA—UNION GOVERNMENT (COMMERCIAL) AND (CIVIL)

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI PRANAB KUMAR MUKHERJEE):
(1) A copy each of the following parts of the Report of the Comptroller and Auditor General of India for the year 1970-71, Union Government (Commercial), under article

151(1) of the Constitution:—

Part VII—Appraisal of the working of the Marketing Division of the Indian Oil Corporation Limited (Hindi version)

Part VIII—Appraisal of the working of the Modern Bakeries (India) Limited (Hindi version).

Part IX—Appraisal of the working of the Hindustan Photo Films Manufacturing Company Limited (Hindi version).

Part XII—Appraisal of the working of the National Instruments and Ophthalmic Glass Limited (Hindi and English versions).

Part XIII—Individual irregularities noticed in the undertakings not taken up for comprehensive appraisal by the Audit Board and a resume of the Reports of the Company Auditors (Hindi and English versions). [Placed in Library. See No. LT-8477/74].

(2) A copy of the Report (Hindi version) of the Comptroller and Auditor General of India for the year 1973—Union Government (Commercial) Part I—Introduction, under article 151(1) of the Constitution [Placed in Library. See No. LT-8478/74].

(3) A copy of the Report (Hindi version) of the Comptroller and Auditor General of India, for the year 1972-73, Union Government (Civil), under article 151(1) of the Constitution. [Placed in Library. See No. LT-8479/74].

(4) A copy of the Union Government Appropriation Accounts (Civil) for the year 1972-73 (Hindi version). [Placed in Library. See No. LT-8480/74].

MR. SPEAKER: If hon. Members agree, we will take up items No 3 and 4 in the afternoon, because the concerned Members are not present here. We will now take up items No. 5, 6 and 7.