

[Shri Amjad Ali]

unist elements in contiguous areas in both the countries. Besides these, tribal unrest has on occasions been manipulated by foreign interests. No serious threat to security may arise so long as India and Burma jointly maintain vigilance and avoid being drawn into the war in the Far East. The presence of so many diverse elements capable of causing trouble in these remote regions naturally calls for close coordination of security measures between India and Burma. The risks of infiltration are well-known; it is equally important to prevent such provocative incidents as might be exploited by foreign Powers against the interests of these two lands."

Closely associated with it is our relationship with China. Our relationship with China has been always friendly. But the ideological differences are there and in the event of world war III, the alignment of China may be with powers which may not be well disposed towards India in spite of her continued neutrality. When looked at from this point of view the newly acquired strategic importance of Tibet is likely to prove a serious disadvantage to India. I do not for a moment suggest that China will send down her military hordes to attack and conquer the eastern provinces of India through Tibet, but a move for a slow infiltration of anti-social elements into India through Tibet and the possibility of active Chinese support to them is not unthinkable. The need for constant vigilance on these frontiers on this score and for maintaining a rigid check and control on this side over persons coming to India even during peace times seems most imperative.

The problems of defence of the eastern frontiers examined from this point of view do not present much difficulty. The various campaigns in Burma and fierce battles, fought on the frontier during the world war II, have made it clear that no major campaign can be successfully carried out on the terrain without a well-equipped army. Moreover it should not be very difficult to organise a sound defence on the Assam frontier, a fact to which the battles of Imphal and Kohima can well bear testimony.

Again there are suitable spots on the Tibetan plateau for building air bases and the entire Gangetic plain with its prosperous crowded cities from

Delhi to Calcutta will then be within easy bombing range from such air bases in Tibet and requisite steps for countering such eventualities must be thought of in advance and duly provided for. Any unpreparedness in India in this respect will most adversely affect its morale and independence of action.

Look at our Navy. We are no doubt on our way to gradual but definite expansion and strengthening of our Navy, but our perpetual dependence on Britain, by our being a member of the Commonwealth, as a source of weakness should go. No doubt our big brother Britain reigns supreme in Indian Ocean with Singapore as its Naval base, but it will be to our national advantage and prestige that we should expand our Navy also.

For expansion of our Air Force nationalisation of the Air Transport is a move in the right direction. During the debate on Foreign Affairs we had occasions to hear about the possibility of a joint defence with Pakistan. This comes into prominence when we look into our Western borders—whether Western Pakistan as a buffer State between India and any major invading power will by itself be able to bear the brunt and successfully repel any enemy land route attack from the west. The continued hostility of some of the frontier tribes to Pakistan makes the problems of Pakistan's defence in that region all the more difficult.

The existence of foreign pockets are rightfully considered possible danger-spot to Indian defence. The danger of those being used as spring-boards and base cannot be ruled out of account and must be provided for.

Mr. Chairman: We shall now proceed to the next business of the House.

#### MOTION RE: DETENTION OF THREE MEMBERS AND OTHERS

Shri R. N. S. Deo (Kalahandi-Bolangir): I beg to move:

"That this House is of opinion that there was a failure on the part of the Delhi administration in keeping in jail three Members of this House and some other citizens without lawful authority and in clear contravention of the provisions of the Constitution and Law as disclosed in the proceedings before and in the judgment of the

Supreme Court given on the 12th March, 1953 in connection with the *habeas corpus* petition by Shri Ram Narayan Singh, M.P. and that the Government should investigate into the matter and report to the House the results of such enquiry and action taken thereon by Government."

[MR. DEPUTY-SPEAKER in the chair]

At the outset, I should like to make it clear that we are not concerned with the arrest, and the events preceding the arrest of these hon. Members. The point that I wish to raise through this motion is confined to the illegal detention of certain citizens of this country, including three Members of this House. This motion has nothing to do with the Jammu movement or the movement in support of the Jammu movement that is going on in Delhi.

With regard to the present motion I wish to draw the attention of this House to the extraordinary state of affairs that has been revealed in the proceedings and in the judgment of the Supreme Court. Not only a series of irregularities have come to light—if it had been barely a question of irregularities or of mistakes the matter would not have been so serious—but here a series of irregularities have been committed and attempts have been made to cover up those irregularities by all sorts of means which do not redound to the credit of the executive authorities.

I wish to draw the attention of this House to some salient factors in this episode. The first point that I wish to draw the attention of the House to is the first irregularity that occurred on the 6th March 1953.

**The Minister of Home Affairs and States (Dr. Katju):** Sir, on a point of order. I wish to inform the House that the matter may not be overlooked. (An Hon. Member: What is the point of order?) The point of order is that this matter is *sub judice* and therefore you, Sir, may be pleased to see that the debate is confined to the limits. For it is sometimes said as if the case has been decided finally by the Supreme Court. It is not so. The Magistrate has taken cognizance of it and there is a date fixed, and before that Magistrate all the things relating to the arrest on the 6th and subsequent things will be a matter for discussion. That is the point of order. My hon. friend was just now mentioning this irregularity, that irregularity on the 6th, and so on. That will be a matter for discussion before the Magistrate.

**Shri R. N. S. Deo:** I am not going to raise any matter about the arrest.

**Mr. Deputy-Speaker:** This is what I thought when admitting this motion. From the time the Supreme Court decided—whatever might have happened before the 6th or from the 6th upto the 9th—on the 9th when the Magistrate adjourned the case to the 11th there was no formal order under section 344 of the Criminal Procedure Code committing the accused once again to custody. Now, irregularities have been said to have occurred with respect to that. That may not form the subject matter of the case that is now pending under section 188. What happened on the 9th or subsequent to that, that is whether there was an order of remand or not, that does not affect the decision of the case under section 188. Those matters can be gone into under this. We need not go back to the 6th, the arrest and other things, the arrest on the 6th, and before the 6th the breaking of the order under section 144 which might have led to the case under section 188—all this will be the subject matter of the case under section 188. That is *sub judice*. What happened on the 9th and thereafter, whether the detention was rightful or wrongful, is a matter that can be gone into in these proceedings here.

**Shri R. N. S. Deo:** Sir, I would like to submit to you that I do not propose to go into the merits of the arrest or of the case that is *sub judice*, that is under section 188. I am only referring to certain irregularities that have emerged in the proceedings of the Supreme Court. My motion makes it...

**Shri Telkikar (Nanded):** Sir, on a point of order.

**Mr. Deputy-Speaker:** Is it different from what has been raised?

**Shri Telkikar:** Yes, Sir. Under Rule 63(2) of the Rules of Procedure and Conduct of Business it is open for any Member to raise an objection to leave being granted, and if that is the case the procedure is given there which has to be followed thereafter. Now, as I say, there are some reasons why objection can be taken and leave may not be granted.....

**Mr. Deputy-Speaker:** Leave has already been granted. What is the rule?

**Shri Telkikar:** Rule 63, sub-rule (2).

**Mr. Deputy-Speaker:** It relates to adjournment motions. I am sorry the hon. Member is not following the proceedings. The hon. Member may go on.

**Shri R. N. S. Deo:** My motion makes it quite clear that I wish to raise the question of the irregularities that have emerged from not only the judgment but also the proceedings of the Supreme Court.

**Mr. Deputy-Speaker:** Let me not take time over this. There is only one hour for this discussion. At six o'clock we will take up the other matter that has been set down for discussion. And the hon. Minister would like to reply. Therefore, I will give half an hour for the Opposition and half an hour for the Government and any other Member who might speak. Three persons can speak. Under the circumstances the points may be stated and the object of this motion may also be stated. If the hon. Member takes fifteen or twenty minutes other hon. Members relating to other Groups will be cut out. He may therefore bear this in mind. I will allow ten minutes.

**Shri R. N. S. Deo:** Sir, I will try to be very brief and I will conclude soon if there are no interruptions.

I was drawing your attention to the irregularities that have emerged from the Supreme Court's proceedings as well as judgment. There has been a violation of the provisions of the Constitution, of article 22 of the Constitution which guarantees Fundamental Rights to the citizens of India. If it had been only a question of violation of any ordinary provision of law I would have taken it as an ordinary matter. But here there is a mandatory provision of the Constitution, article 22, and that has been disregarded. That is the thing that has clearly emerged from the proceedings of the Supreme Court.

On the 6th certain persons were arrested, including three hon. Members of this House; and as required by law under article 22 of the Constitution they were not produced before a magistrate within twentyfour hours. There was no remand order passed in the presence of the accused and they were detained in jail.

What are the subsequent things that have emerged in this connection? Subsequently what did the Government do? If they had simply admitted the mistake that there had been an irregularity the matter would have ended there. But instead of that, they tried to prove that they had acted correctly. And then what happened? Subsequently the Solicitor-General had to admit that the order of the Magistrate was not correct, that the statement that he

had signed it when the accused were present before him was not a fact, that it was a wrong statement that he had made. And what is the explanation offered by the Solicitor-General? He says that the Magistrate was busy, therefore his assistant wrote out the order and he signed it without reading.

Now, this extraordinary sort of explanation is offered, and are we to take this thing quietly? Are we not to ask Government to be more strict in these matters when the question of the liberty of the subject is concerned? I will not dwell any more on that question.

Now I come to the second point, that is the irregularities that occurred on the 9th of March. These accused persons were produced before the trying Magistrate on the 9th March and he adjourned the case to the 11th of March, and he passed no order for remand as required under section 344 of the Criminal Procedure Code. The subsequent detention, without any lawful authority, of these persons including three important Members of this House, was absolutely without any justification, without any authority.

And yet what did the Government do? There again I quite concede the point, as stated by the hon. Home Minister, that Magistrates and Judges commit mistakes. And if it had been a *bona fide* mistake we would have nothing to say on it. But instead of admitting the mistake and allowing the Court to correct it, they tried to justify that mistake by fabricating a false evidence. That is a most serious thing which we cannot keep quite over. That is a serious thing which is agitating the minds of all the people.

**Dr. Katju:** My hon. friend has no justification for saying this.

**Shri R. N. S. Deo:** The hon. Minister will get a chance of replying. Have some patience.

The Supreme Court refused to believe that slip of paper, the so-called remand order. Now what does that indicate? It was a story as remarked by one of the newspapers like a chapter from the Arabian Nights. Today we learn truth is stranger than fiction. What reaction this sort of thing creates in the minds of the people? Now the faith in the existence of the rule of law has been shaken. Now people are asking "when, under the very nose of Parliament in the capital city of India,

such irregularities take place in respect of two or three respected Members of Parliament, then how can the ordinary citizen have any safety?" How many people can go to the Supreme Court and get relief if they are illegally detained? Is civil liberty going to be subject to the will of the executive authorities? These are very important points and I wish to bring to the notice of the House the callous attitude of the Government in this matter. When such irregularities have taken place it was the duty of the Government of India to have taken strong action against the guilty officers and taken them to task but what did they do? Instead of taking them to task, our Home Minister gets up in this House and solemnly condones, not only condones, but he tries to give all sorts of lame excuses, untenable excuses in support of the action taken. About officers he says, "On the 11th of March, he forgot", that is, the Magistrate, "I do not know whether he forgot or whether he was following the procedure which was being followed in the Delhi courts for many many years, but he forgot section 344." We have been used to these cock and bull stories in this House but does the hon. Home Minister seriously expect this House to accept this explanation that for many many years Delhi courts have been following this extraordinary procedure of fabricating false evidences. That is something rather too much to expect. The Home Minister even indulges in thought reading. He imagines, the Magistrate thought that they would go back where they had come from! They had come from jail, therefore they would go back to jail! From dust we come, to dust we shall go. How can this sort of thing carry any weight with any intelligent person? I fail to understand. Then he says he did not pass any order. What is most deplorable and most distressing in this whole episode is that the Government instead of taking strong action, are trying to shirk their responsibilities and trying to further shield these guilty officers.

**Mr. Deputy-Speaker:** The hon. Member has already taken 15 minutes.

**Shri R. N. S. Deo:** He says the Magistrates and Judges make mistakes. They do. I could have understood that Magistrates make mistakes sometimes. He does not even say sometimes. He says they do make mistakes every day. That is why higher courts are there to rectify the mistakes. How can we be satisfied with

this sort of explanation? The Home Minister says it was a purely procedural mistake. I am prepared to accept if it was a procedural mistake. Then, we would not have raised this question at all. It is not merely a procedural mistake but there has been deliberate concoction of false statements and signatures and all sorts of things. That is why this matter should be taken serious notice of and I most humbly submit for the consideration of this House that this is a matter which is not to be taken in a partisan spirit. This should be considered absolutely objectively. There is no intention in bringing this motion to censure Government. If Government rises to the occasion and do their duty by accepting the suggestions made in this motion and set up an enquiry and take the guilty officers to task, we would only be too happy and the Government also will get out of this awkward situation that they have got into and it would be able to rise to the full stature.

**Mr. Deputy-Speaker:** Motion moved:

"That this House is of opinion that there was a failure on the part of the Delhi administration in keeping in jail three Members of this House and some other citizens without lawful authority and in clear contravention of the provisions of the Constitution and Law as disclosed in the proceedings before and in the judgment of the Supreme Court given on the 12th March, 1953 in connection with the *Habeas Corpus* petition by Shri Ram Narayan Singh, M. P. and that the Government should investigate into the matter and report to the House the results of such enquiry and action taken thereon by Government."

**Shri Nand Lal Sharma.** He has requested me to allow him to speak as he is one of the three.

**Shri Nand Lal Sharma (Sikar):** I would like to speak on Jammu.

**Mr. Deputy-Speaker:** He said he wanted to speak on the *habeas corpus* application. Shrimati Renu Chakravarty.

**Shrimati Renu Chakravarty (Basirhat):** Within the short time allotted to me, I rise to talk on this measure because it is not only a question of just some big people being involved in this nor is it a question which has happened for one day. Our position regarding Jammu and Kashmir has been made clear. We want to separate the two issues today before the House clearly and very categorically.

[Shrimati Renu Chakravartty.]

We are grateful to the Home Minister for having said that such lapses of justice take place everyday because that is the fact of the case. We see so many cases that are taking place in the various villages—of *kisans* and workers who are brought up for trial. There are hundreds of cases in which we find these articles of the Constitution are never abided by. They are not produced before a Magistrate within 24 hours. For instance in Telegana there is a case of a woman Mrs. Butchamma of Devar-konda taluk, Nalgonda District. She was kept for 15 days in police custody before being produced before the court. There are other cases like this. There is the great case of Janardana-chari who was kept under detention for a long time. The Madras Court said that he was with the Hyderabad Court, the Hyderabad Court said he was with the Madras Court. Then after two years we heard when the case came before the Supreme Court that he had absconded. This is the type of justice we see and therefore we have to take very serious notice of this particular case because it brings to the forefront the happenings going on in our country. I refer to those poor people who have no means to pay Rs. 1,500 and other court fees and come before the Supreme Court to focus attention of the public or bring up the case before Parliament. Therefore, we want to bring the cases of hundreds of people who are today suffering the same lapses of justice as in this particular motion, before public attention.

I should also like to say that Mr. Daphtry's ingenuity could not think of anything better than to say that justice was in the pocket of the police officers. I would say we are not prepared to allow that—the police officer keeping justice in his pocket. That is exactly what most of us have been fighting against. That is the British tradition. That is why we find that in the entire period of British rule, the judiciary was subservient to the executive. That is why many of our young men turned their revolvers against the executives. Maybe that method was wrong but they tried to point out how they were subservient and therefore, I say that we are continuing in the same tradition. It is not a lapse. It is not a single case. It is not a case of a few Members of Parliament being brought before the Courts, it is something that is continuing right throughout everyday. In many cases the trial goes on for years. Take for instance the case of the Kakdwip trials in Bengal. One

Ordinance is thrown out, another comes in, the detention goes on. Various ways, various methods are utilised to rob the people of this justice of trial. Therefore, I feel that this House must take very serious note of the whole matter. It must be gone into and the entire system has to be checked up and tightened so that not only in the case of those who can get into the public eye, but in every case justice may be done. These lapses have to be corrected and those who are responsible whether in the lower judiciary or higher judiciary have to be properly proceeded against and punished.

**Shri Raghavachari (Penukonda):** This is an extraordinary situation that has arisen to be considered by this Parliament, and I am very sorry—a lawyer as I am. The Constitution was framed after so much of suffering in the country to establish the liberty of the people. Article 22 of the Constitution provides that a man must be produced before a Magistrate within 24 hours of his arrest. But, in Delhi, under the very nose of the Government, in spite of the provision in the Constitution, what is it that we find? They have not been produced before a Magistrate for days together. We are told, this happened that happened. I for one as a Member of Parliament, am perfectly prepared to believe three hon. Members who are our colleagues when they say that they have not been produced before a Magistrate. What more do you want? You may fabricate or show or you might indicate, all kinds of chits and papers. They carry no weight. In this case, the Supreme Court asked the Government to produce their papers from the District Magistrate as well as the trying Magistrate. Were they able to produce these chits? They were not there. Long after, they smuggled them in. The Supreme Court said, we will not burden our records with these chits. They rejected them. They say, there was an order passed. What was that order? An order written by a police officer, a Sub-Inspector and signed by the District Magistrate without even reading it.

I am ashamed that such a state of affairs should obtain in this Government and in this Delhi city. The Magistrate is not simply signing on ordinary form. It is a judicial function that he is discharging. He is depriving the liberty of a subject of the country. He must necessarily read it and know what he is doing. He cannot take the Sub-Inspector's writing and sign it. Is he the thumb impression of the Sub-Inspector? Is

he the thumb mark of the Sub-Inspector? I really feel very much pained about this matter. It is not produced when it is called for. It is subsequently attempted to be brought in and then too from the Sub-Inspector. The warrants must be with the jailer to whom they were committed. It is the jailer that must produce the warrants and not the Sub-Inspector. It is in his pocket. It looks as if, in my judgment, these orders, these chits have been—I do not wish to use the word fabricated—subsequently got up to save the face of these Magistrates. In fact, it is not that the Magistrates did not know the law or the requirements of the law. If they did not know it, they would have said, we were ignorant. They want to hide their ignorance: not even ignorance; I would put it, their carelessness; their extraordinary confidence that they can go on doing anything in this land. This is most serious.

When I see the Government and the Home Minister rising up and trying to justify the conduct of these men, to my mind, it is most reprehensible. That is what I feel honestly as a citizen of this country. I would have liked the Government to get up and say, here is a mistake, we are very sorry. I know and I also agree with the Home Minister that mistakes are done in the courts now and then. It may be corrected. But, there must be honesty to confess that they have made a mistake. I cannot hide my mistake by fabricating anything. I only commit the offence twice. Therefore, this matter, instead of engaging the supreme attention of the Government, does not call for an opposition and attempt to justify it. I would therefore request the Government to give their serious consideration to the public impression that would be created consequent on their act of this kind: a Government which not only wink or connives at these things, but tries to justify it and above all, not in the case of ordinary people, but of very respectable Members of this House, a Leader of the Opposition and another Ex-High Court Judge Member.

I do not wish to go into all that. As the Mover proposed, it is a matter of the liberty of every individual in this country, for whom the Constitution has provided a safeguard. You must uphold it. Democracy must not mean deprivation of the liberties of the people. Unfortunately more democratic forms come into play; liberties are more in jeopardy. Is the Constitution to be only on paper? Is it not to be enjoyed by the subjects

of this country? Therefore, I would with all my respect for the Home Minister and the Government, request them, not only to agree to the investigation of this question, but also to take very firm steps to prevent a matter of this kind recurring. Why I say this is because this is not the first time that as a Member of Parliament I hear something wrong in the Delhi administration. Some time ago, detention orders, were passed. I do not wish to go into details. There is an impression in my mind that some Member who was not present in Delhi, was stated to be present in Delhi and then there was some detention order against him. Then a reference to the Privileges Committee and a report about it. This appears to be a chronic State of affairs. The answer given by the Home Minister is, there is this new procedure in Delhi. The Criminal Procedure Code is the same. In our secular State, there should be uniformity of law and procedure throughout the country. Is there a separate Criminal Procedure Code for the Delhi State? I do not know. Therefore, this is a matter in which the Government must welcome a motion of this kind and establish the confidence of the public in themselves and in their administration. If they go on taking recourse to this kind of method, it will shake the public confidence and it will convert the Constitution and the rights provided solemnly therein to mere waste paper. I therefore support this motion.

पंडित ठाकुर दास भागंब (गुड़गांव) :

इस रेजोल्यूशन को पढ़ कर मुझे बड़ा ताज्जुब हुआ और इस हाउस में.....

कुछ माननीय सदस्य : अंग्रेजी में बोलिये।

पंडित ठाकुर दास भागंब : मुझे

इजाजत दी जाय कि वक्त बहुत थोड़ा है इसलिये जो कुछ मुझे धरज करना है वह मैं इसी जमान में धरज करके जिस में मैं बोलना चाहूँ।

इस रेजोल्यूशन को देख कर मुझे बड़ा भारी ताज्जुब हुआ कि किस तरह से यह रेजोल्यूशन इस हाउस के अन्दर कोई शकस्त साने की तरफ कर सकता है। मैंने अभी सुना है और अभी कई मेम्बर साहबान ने बताया कि हम डिमांडेसी चाहते हैं। हम चाहते हैं

[पंडित ठाकुर दास भार्गव]

रुल आफ ला, हम चाहते हैं कि कान्स्टिट्यूशन का एक एक लफ्ज़ माना जाय। मैं अर्ज कर सकता हूँ कि यह पार्टी और यह गवर्न-मेंट इस से भी ज्यादा चाहती है, बिन्होंने इस कान्स्टिट्यूशन को बनाया है, वह चाहते हैं कि इसके एक एक लफ्ज़ पर अमल हो। लेकिन मैं पूछना चाहता हूँ कि चार आदमियों का एक मुकदमा दिल्ली स्टेट के अन्दर हुआ। शायद इस से छोटा जुर्म पेनल कोड में नहीं है। दफा १८८ के अन्दर जो सजा हो सकती है वह है दोसरी जुमाने की और एक महीने की सजा, और अगर अप्रावेटेड जुर्म हो इस से भी सख्त सजा देनी हो तो वह है छः महीने की सजा और १००० रुपया जुर्माना। बिल्कुल मामूली सा आफेन्स जिस में मुजरिम को अख्तयार है कि अपनी जमानत दे कर बाहर चला आये।

वह मुकदमा लड़ सकता है, वह अपील कर सकता है और यह बेलेबल अफेन्स है।

**Shri U. M. Trivedi (Chittor):** An offence under section 188 is cognisable and non-bailable in the Delhi State under the Chief Commissioner's Notification.

**Pandit Thakur Das Bhargava:** Under the Cr. P. C. Section 188 is bailable. I have got the book with me here.

**Hon. Members:** In Delhi.

**The Minister of Law and Minority Affairs (Shri Biswas):** The order was made under the Public Security Act and the offence has been made non-bailable and cognisable.

पंडित ठाकुर दास भार्गव: मैंने यह क्रिमिनल प्रोसीजर कोड के मुताल्लिक अर्ज किया लेकिन अगर किसी ऐक्ट के मातहत इस को दिल्ली के वास्ते नान बेलेबल बनाया गया है, यह दुस्त है, तो भी मैं अर्ज कर सकता हूँ कि इस रेजोल्यूशन में इतनी हीट जनरल

क्यों की जाती है? क्या यह डिमाक्नेसी का तकाजा है कि अगर इस हाउस के चन्द मेम्बर इस तरह से गिरफ्तार हों तो इस हाउस में यह मोशन आये?

अगर प्रामिनेन्ट आदमी इसके अन्दर हिस्सा लेते हैं तो यह मोशन इस हाउस के अन्दर लाया जाय। मैं अब से यह अर्ज करूंगा कि डिमाक्नेसी का यह तकाजा है कि छोटे से छोटा आदमी भी वही हक रखता है जो कि एक बड़े से बड़ा आदमी रखता है। ऐसी सूरत में मैं अब से अर्ज करूंगा कि यह चीज दिल से निकाल देनी चाहिये कि हमारे हाउस में तीन मेम्बर गिरफ्तार हुए हैं। हम उन की बहुत इज्जत करते हैं और मैं भी उनकी इज्जत करता हूँ। लेकिन मैं यह अर्ज करता हूँ कि यह मेजर जनरल पबलिक इंपारटेंस का इसलिये नहीं है कि दिल्ली एक स्टेट है उन चन्द स्टेट्स में से जो कि हिन्दुस्तान में बाके हैं। हर एक स्टेट में सेंकड़ों अदालतें हैं और हर एक अदालत में सेंकड़ों मुकदमे रहते हैं। मैं अब से पूछना चाहता हूँ कि अगर एक एक मुकदमे को हाउस में इस गरज से लाया जाये कि उसमें टेकनिकल मिस्टेक हो गयी है तो इस हाउस का काम कैसे चलेगा। मैं तो यहां तक अर्ज करूंगा कि आप द.न. १७१ और १७३ को मुलाहिजा फरमायें और फिर गौर करें कि यह मामला जनरल पबलिक इंटरस्ट का है या नहीं। जहां तक इन अफाज का ताल्लुक है, जनरल पबलिक इंटरस्ट, मैं कहूंगा कि यह मामला हरगिज इनकी जद में नहीं आता। इस प्राइवेट मामले को, जो कि इस तरह के हजारों मुकदमों में से एक मुकदमा है, हाउस में कैसे लाया जा सकता है।

अब मैं इस मामले की तरफ आना चाहता हूँ। इस रिजोल्यूशन में यह कहा गया है कि

सुप्रीम कोर्ट का जो फ़ैसला है उसकी बिना पर यह मामला यहां पेश किया है। सुप्रीम कोर्ट का फ़ैसला मेरे हाथ में है। सुप्रीम कोर्ट के फ़ैसले में कहीं यह नहीं लिखा कि यह आदमी २४ घंटे के अन्दर यानी ६ तारीख को पेश नहीं किये गये। इसमें लिखा है कि.....

**Shri V. G. Deshpande (Guna):** It was conceded by the Solicitor-General.

पंडित ठाकुर दास भार्गव: जहां तक इस रिजोल्यूशन का ताल्लुक है हम इस हाउस में किसी और चीज़ को नहीं देख सकते सिवा जजमेंट के क्योंकि इसमें जजमेंट ही दर्ज है। यहां यह कहने की कोशिश की जाती है कि चूंकि एक टेकनिकल मिस्टेक हो गयी इसलिये मजिस्ट्रेट डिल्लन ने जालसाज़ी की। मैं अदब से अर्ज़ करना चाहता हूं कि वह मजिस्ट्रेट यहां हमारे सामने मौजूद नहीं है। जो कुछ इस जजमेंट में दर्ज है उसकी बिना पर यह कैसे कहा जा सकता है कि उसने फेब्रिकेशन किया है।

इस के इलावा मैं अदब से यह अर्ज़ करूंगा कि सुप्रीम कोर्ट ने जो पहली चीज़ लिखी है वह यह है कि :

"Various questions of law and fact have been argued before us by Mr. Sethi on behalf of the Petitioner, but we consider it unnecessary to enter upon a discussion of those questions, as it is now conceded that the first order of remand dated the 6th March even assuming it was a valid one expired on the 9th March and it is no longer in force".

सारे सुप्रीम कोर्ट के फ़ैसले में ६ मार्च के फ़ैसले के बारे में एक लफ़्ज भी दर्ज नहीं है। इसलिये हमको ६ तारीख के फ़ैसले के बारे में हाउस में कुछ नहीं कहना चाहिये। मैं अदब से अर्ज़ करूंगा कि जब तक इस हाउस के सामने उन लोगों का ऐप्रीटिवट न हूं और जब तक

मजिस्ट्रेट डिल्लन यहां न हों तब तक यह हाउस इसका फ़ैसला कैसे कर सकता है।

मैं अदब से अर्ज़ करना चाहता हूं कि दूसरे मामले की तरफ जनाब बाला तवज्जह करें। ६ मार्च को एक मजिस्ट्रेट के सामने ये मुलज़िमान पेश हुए मजिस्ट्रेट ने दफा ३४४ के मातहत यह ब्याल करके कि रीजनेबिल काज़ आफ ऐडजर्नमेंट है ११ तारीख दे दी। मैं मानता हूं कि दफा ३४४ के मातहत यह हुक्म देते वक़्त मजिस्ट्रेट को यह भी लिखना चाहिये था, ऐक्यूज्ड आर रिमन्डेड टू कस्टडी। सिर्फ यह लफ़्ज लिखने से रह गये। इसके सिवा और कोई गलती नहीं है। जो साहिबान क्रिमिनल प्रोसीड्योर से वाकिफ हैं उनको मालूम होगा कि जब किसी मजिस्ट्रेट के रोबरू एक मुलज़िम पेश होता है तो वह देखता है कि रीजनेबिल काज़ फार 'ऐडजर्नमेंट' है या नहीं। वह दफा ३४४ की रू से लिख सकता है कि उसको रिमांड किया गया। अगर यह लोग बेल पर न होते तो उसका यही असर होता कि कस्टडीचलती जाय। मैं अदब से पूछना चाहता हूं कि इसके अन्दर कांस्टीट्यूशन से क्या वास्ता है। कांस्टीट्यूशन के दफा २२ में यही लिखा है कि अगर किसी शरूब को गिरफ्तार किया जाय तो उसको २४ घंटे के अन्दर मजिस्ट्रेट के सामने पेश करना चाहिये। लेकिन जो कुछ ९ मार्च को हुआ वह तो दफा ३४४ क्रिमिनल प्रोसीड्योर कोड के मुताबिक हुआ है। क्रिमिनल प्रोसीड्योर कोड में ५६५ दफाएँ हैं। मैं पूछना चाहता हूं कि हज़ारों कोर्टस में इन दफाओं में कितनी टेकनिकल गलतियां नहीं होती होंगी। सिर्फ यही एक टेकनिकल मिस्टेक नहीं हुई है। इसमें सिर्फ यह दर्ज नहीं किया गया कि फलां तारीख को यह मुलज़िम पेश हों मैं अर्ज़ करना चाहता हूं कि



[पंडित ठाकुर दास भार्गव]

यह गलती टेकनिकल मिस्टेक से भी कम है। एक वारंट है। उस वारंट की पुस्त पर लिखा गया है कि ११ मार्च को पेश हों। सिर्फ इसी बिना पर यह कहना कि जालसाजी की गयी कहां तक जायज और दुरुस्त माना जा सकता है। सुप्रीम कोर्ट ने सिर्फ यह कहा है कि चूंकि यह कागजात दस तारीख तक पेश नहीं हुए इसलिये हम इनको वक्त नहीं देने। हमारे कुछ दोस्त कहते हैं कि इसमें होम मिनिस्टर साहब ने यह कहा था वह कहा था। मैं पूछना चाहता हूं कि इससे होम मिनिस्टर साहब को क्या वास्ता हो सकता है। दिल्ली के कोर्टस पंजाब हाईकोर्ट के मातहत हैं। उनसे इस गवर्नमेंट को क्या वास्ता है। अगर किसी कोर्ट में कोई गलती की जाती है तो उससे ऊपर की अदालत उसको ठीक कर सकती है। होम मिनिस्टर साहब को इस मामले में न कोई इख्तियार है न जिम्मेदारी है मैंने 'सी' स्टेट का एक पढ़ा है। उसको रू से हमारी इस गवर्नमेंट को उस मजिस्ट्रेट पर कोई इख्तियार नहीं है एक ग्रीक्यूटिव व जुडीशियरी की जुदायगी का प्रसूल मुसल्लेमा है। मैं अबब से अर्ज करना चाहता हूं कि चूंकि यह मामला उन तीन चार लोगों के मुकदमे में हुआ जिनकी हम इश्कत करते हैं इसलिये क्या कांस्टीट्यूशन में कोई खराबी हो गयी या कोई चीज कांस्टीट्यूशन के खिलाफ की गयी। हजारों लाखों मुकदमे इस तरह के होते हैं। यह एक ऐसी गलती है जिसको दूसरी अदालत ठीक कर सकती है एक ग्रीक्यूटिव के जरिये ऐसे मामले में अदालत को तजवीज खिलाफ कांस्टीट्यूशन व डेमोक्रेटिक प्रसूल के है। मैं अबब से अर्ज करूंगा कि यह एक ऐसा मामला है कि जिसकी हाउस को कोई परवाह नहीं करना चाहिये और इसको धो धाउट कर देना चाहिये।

**Shri Vallatharas (Pudukkottai):** There is my amendment. I want to know what position it occupies.

**Mr. Deputy-Speaker:** The amendment to this? Yes, it may be moved. Discussion has gone on along with that.

**Shri Vallatharas:** I beg to move:

"That in the motion for the words 'and that the Government should investigate into the matter and report to the House the results of such enquiry and action taken thereon by Government' the following be substituted:

'and that a Committee of enquiry be appointed by the Prime Minister consisting of five members, the Chairman of the Committee to be a retired High Court Judge or a retired District Judge and two nominees of the Government to be chosen by the Government, and two Members of this House to be selected by the Speaker in consultation with the Leaders of the Opposition Groups, which should enquire into the matter and report to this House the results of its enquiry and the action to be taken against the officers who may be held responsible for any illegal act and commission of excess or abuse of power'."

**Mr. Deputy-Speaker:** Amendment moved:

"That in the motion for the words 'and that the Government should investigate into the matter and report to the House the results of such enquiry and action taken thereon by Government' the following be substituted:

'and that a Committee of enquiry be appointed by the Prime Minister consisting of five members, the Chairman of the Committee to be a retired High Court Judge or a retired District Judge and two nominees of the Government to be chosen by the Government, and two Members of this House to be selected by the Speaker in consultation with the Leaders of the Opposition Groups, which should enquire into the matter and report to this House the results of its enquiry and the action to be taken against the officers who may be held responsible for any illegal act and commission of excess or abuse of power'."

**Dr. Katju:** The House would bear in mind that this matter has been a

judicial matter right from the start, from the very inception of it. I am reluctant to go very deeply into facts because the matter is *sub judice*, but it is a matter of record that the accused in this case were arrested by a Magistrate on the 6th of March this year in the evening. It was not a question of any Police officer or any executive officer arresting them. They were arrested by the Magistrate himself. As to what happened at that time, I will not go into it because that is a matter for enquiry. Now, the Magistrate having arrested them, caused them to be sent to the Police Station. Therefrom they were sent, because of lack of comfortable lodging in the Police Station, to the District Jail. And on the 6th of March, that Magistrate passed an order of remand directing postponement and production before another Magistrate for trial on the 9th of March. As my learned friend Mr. Bhargava has just now pointed out—I wish the House to remember this and note this—the *habeas corpus* application was made in the Supreme Court on the 9th of March before any proceedings had been taken, on the ground that the arrest having been made on the 6th of March, the accused had not been produced before a Magistrate within 24 hours.

That was the first matter. As to how far the arrest by a magistrate himself would be affected by this question, I do not propose to go into, because it is a matter of law. But on the 9th March, this is what happened. On the one side, there was an argument in the Supreme Court, at two o'clock, for the admission of the application. And the Supreme Court directed notice to go to the opposite party, namely the Government, returnable the next day, the 10th instant. If this application had been made, the House would picture to itself what happened on the 9th March at three o'clock, not in any ordinary court, but in the District Jail itself. The magistrate was there. The accused were brought before him, and he was prepared to go on with the trial. Thereupon an application was made by the accused or on behalf of the accused informing the magistrate that an application for *habeas corpus* had been made, and adjourned to the 10th, and the accused thereupon said that the matter should be adjourned. The Magistrate acceded to their application and fixed the case for the 11th. I ask hon. Members to remember—I am not justifying anything as to whether a Magistrate committed a mistake or not, that is a different matter—what is the environment. The Magistrate goes to the District Jail, the accused are produced before him from custody in the District

Jail, the accused want a postponement of the case, and that application is acceded to. The accused do not apply for bail, and nobody mentions about bail. Everybody knew where the accused were going to be taken back, namely, back into the jail itself for custody, and there the matter ended. Now, the Magistrate—he is supposed or not supposed to—note on his judicial file that the case is adjourned to the 11th instant. Thereupon the case comes before the Supreme Court on the 10th. Argument is raised. Records are called for, and on the 11th the case appears, and those four slips are produced, on the back of which it was noted that the accused may be remanded to custody. Now whether those slips are genuine or not genuine, is not germane to the matter. I ask the House to remember that from the 9th onwards, I had nothing to do with the case, the Government had nothing to do with this case. It was being dealt with by a Magistrate in his judicial capacity. Somebody asked me to confess to errors. When I had made none, do you mean to say I should make a false confession here? (*Interruptions*).

**Shri V. G. Deshpande:** On a point of information. (*Interruptions*).

**Dr. Katju:** I do not know how my learned friend there is getting up. I am only saying that the accused were brought from the jail, and were sent back to the jail. Bail not having been applied for, everybody thought that they would go back to the jail. Now, the whole thing is this. I do not wish to say one word against the Supreme Court. Their judgment is law. Five learned judges decided the case. Of course, ordinarily it would have gone before a Sessions Judge or a District Magistrate. But the case being in Delhi, it went straight to five learned Judges of the Supreme Court, on that *habeas corpus* application. There it was argued 'Look at this technical fault'. Now, what is the technical fault? Section 344 provides that if the case is adjourned, there should be an express order in so many words, that the accused are remanded to custody. Inasmuch as these four charming and magical words are not used on the judicial order, the detention therefore becomes illegal. I accept the Judgment of the Supreme Court. Of course, it must be correct. Otherwise, ordinarily, I would have thought—I would remind you, Sir—that there is another section in the Cr. P.C. which has been often cited by everybody known as section 537, which says that where there is an error or omission in the procedure or some irregularities due to something not being copied out or written out, but no injustice has been

[Dr. Katju]

done, or there has been no miscarriage of justice, the court will overlook that. But here of course—the Supreme Court has stated it, it has decided it, and their judgment is the law of the land—the Supreme Court says 'You must copy it out', and having said that, they ordered the release.

I shall now come back again to the point. There was no question of any miscarriage of justice here, because the accused never wanted or suggested that they should go out. They wanted to remain in jail—and I am saying this, with all respect. They only wanted to be released by the order of the court. Now, I ask this question again, because this is a motion which says that this House, the High Court of Parliament, representing 36 crores of people—I would not say go to waste, but I will say—should engage itself through a committee of inquiry to go into this simple matter. So far as judicial proceedings are concerned, everybody will agree that you are not to make any distinctions between a citizen and a citizen, and a citizen and a Member of Parliament. I put it to this House, supposing this mistake had been committed in regard to A, B, or C in Delhi or in Meerut or anybody else, could anybody have dreamt of asking this Parliament to go into this matter, or for the matter of that, a State Legislature?

Now the basic question comes to this. What are we going to investigate? How is this executive Government going to be responsible for any error of omission or commission committed by the Magistrate in forgetting to write these four words 'I remand the accused to custody'? He must have thought that the matter was quite plain, and that they would go back to custody. So what is the use of putting that question before me? Please remember again—I am repeating myself—that the question which has been raised on the *habeas corpus* petition which was filed on the 9th instant, related to the arrest on the 6th and the non-production of the accused before a Magistrate—there was nothing after the 9th. And that was the point taken up during the course of argument, and of course, the Supreme Court said 'We will go into it', and they said that inasmuch as there was nothing in writing there, 'We will order their release', and they ordered their release then and there. They expressly said in the passage which was read out by Mr. Bhargava, that 'We are not going behind the orders made on the 9th instant'. I respectfully therefore submit to this House that it is not a question of any defence of liberty or any defence of

the Constitution. If you accept this motion, in any sense of the word, you will be making a precedent which will be dangerous to the liberties of the country. The one thing that is essential is that Magistrates and Judges should never be interfered with by parliamentary or executive authority. The only person or the only authority competent to correct their mistakes is the judicial court. The Supreme Court was there. They corrected the mistake. What is there to inquire into?

I therefore submit—considering the case as very important, with all respect—that it is neither here nor there. The question of principle is this that Parliament as such, or a State Legislature as such, and nobody in this world can interfere with any judicial officer, Judge, Magistrate or anybody, even the *gram panchayats* for that matter, in the exercise of their judicial authority.

My hon. friend cited two irregularities. Irregularity No. 1 was violation of article 22 of the Constitution, and non-production of the accused within 24 hours, before a Magistrate. The Supreme Court did not go into it. I have pointed out before you that the accused were arrested by a Magistrate.....

**Dr. S. P. Mookerjee (Calcutta South-East):** May I ask one question? I did not wish to speak, but I would ask only one question. Apart from the 9th, on the 6th itself, it is a fact that the persons concerned were not produced before any Magistrate. If the hon. Home Minister knows this, is it not his duty to enquire into it—leave aside the Supreme Court judgment. The Magistrate stated that we were produced before a Magistrate. But we were not produced before a Magistrate. Does the hon. Home Minister know this?

**Dr. Katju:** I am very glad that one of the accused is intervening in the debate. (*Interruptions*).

**Shri N. C. Chatterjee (Hooghly):** Does the hon. Home Minister know that it was conceded by the learned Solicitor-General in the Supreme Court, that the statement in the remand order by the Additional District Magistrate was not correct, and that the statement that the accused were produced before him, and a remand order was issued in their presence was not true? Does the hon. Home Minister know that?

**Dr. Katju:** The hon. Minister knows very many things which he does not want to say here.

If this were to be a point of law, it is really well worth an argument; I would have liked to argue it myself.

Therefore, the Supreme Court did not go into it. Is any order even necessary when it is the Magistrate himself who arrested? That is the point. Under article 22 of the Constitution, the man must be produced before the Magistrate. This presupposes that the individual concerned was arrested by somebody else than a Magistrate. It may be that my argument is wrong. But that is the obvious point. It is, therefore, that the Supreme Court stated thus:

"Various questions of law and fact have been argued before us by Mr. Sethi on behalf of the petitioner. But we consider it unnecessary to enter upon a discussion of these questions as it is now conceded.....etc."

The question was a difficult question. Therefore, the Supreme Court got hold of another question, namely, what happened on the 9th. Nothing to do with the *Habeas corpus* petition. I do not say that they were not entitled to take notice of whatever happened. But so far as the 6th is concerned, I suggest with due humility that there was really nothing in the petition.

Now, so far as the question of the 9th, 10th and 11th is concerned, it is purely a judicial matter—purely exercise of judicial authority. Men are ordered to be hanged. Do you mean to say that this High Court of Parliament is going into those matters?

I, therefore, say, with all respect, it is not a question which we should go into. We might mislead ourselves by bringing the personality of the accused in this case into our consideration. It is just the other way. The question is that we should not act in the excitement of the moment or out of respect to the accused in this case and create a precedent which will be fatal to judicial independence. It is on this ground that I suggest that this motion should not be carried.

**Mr. Deputy-Speaker:** I shall first put the amendment of Shri Vallatharas to the vote of the House.

The question is:

"That in the motion for the words 'and that the Government should investigate into the matter and report to the House the results of such enquiry and action taken thereon by Government' the following be substituted:

'and that a Committee of enquiry be appointed by the

Prime Minister consisting of five members, the Chairman of the Committee to be a retired High Court Judge or a retired District Judge and two nominees of the Government to be chosen by the Government, and two Members of this House to be selected by the Speaker in consultation with the Leaders of the Opposite Groups, which should enquire into the matter and report to this House the results of its enquiry and the action to be taken against the officers who may be held responsible for any illegal act and commission of excess or abuse of power'."

The motion was negatived.

**Mr. Deputy-Speaker:** Now I will put the motion itself to the vote of the House.

The question is:

"That this House is of opinion that there was a failure on the part of the Delhi administration in keeping in jail three Members of this House and some other citizens without lawful authority and in clear contravention of the provisions of the Constitution and Law as disclosed in the proceedings before and in the judgment of the Supreme Court given on the 12th March 1953 in connection with the *Habeas Corpus* petition by Shri Ram Narayan Singh, M.P., and that the Government should investigate into the matter and report to the House the results of such enquiry and action taken thereon by Government."

The motion was negatived.

#### SITUATION IN JAMMU

**Mr. Deputy-Speaker:** The House will now take up the next item. Dr. Syama Prasad Mookerjee.

**Shri Amjad Ali** (Goalpara-Garo Hills): On a point of order, Sir.

**Shri Radhela Vyas** (Ujjain): I want to know whether this discussion has arisen out of reply to any question or it is as a matter of public importance.

**Mr. Deputy-Speaker:** This is a procedure which has been settled by convention. For a long time I have been sensing the feeling of the House; with respect to matters of public importance, there is no specific provision except